

1 Kane Moon (SBN 249834)
 2 S. Phillip Song (SBN 326527)
 3 Stanley J. Park (SBN 334747)
MOON LAW GROUP, PC
 4 1055 W. Seventh St., Suite 1880
 Los Angeles, California 90017
 Telephone: (213) 232-3128
 5 E-mail: kmoon@moonlawgroup.com
 E-mail: psong@moonlawgroup.com
 6 E-mail: spark@moonlawgroup.com

FILED
 KERN COUNTY

JUN 6 2024

BY _____ DEPUTY

7 Attorneys for Plaintiff SHAWNECE MACKEY

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

11 SHAWNECE MACKEY, individually, and on
 12 behalf of all others similarly situated,

13 Plaintiff,

14 v.

15 AIMES CONSULTING, INC., a California
 16 corporation; and DOES 1 through 10,
 inclusive,

17 Defendants.

Case No.: BCV-21-101040

[Hon. Thomas S. Clark, Dept. 17]

CLASS ACTION

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

Hearing Date: June 6, 2024

Hearing Time: 8:30 a.m.

Hearing Place: Department 17

Complaint Filed: May 6, 2021

FAC Filed: July 13, 2021

Trial Date: None Set

1 The Court, having read the papers filed regarding Plaintiff Shawnece Mackey's
2 ("Plaintiff") Motion for Final Approval of Class Action Settlement, Class Counsel Fees
3 Payment, Class Counsel Litigation Expenses Payment, and Class Representative Service
4 Payment, and after considering the papers submitted in support of the motion, including the
5 Class Action and PAGA Settlement Agreement ("Settlement Agreement," "Settlement," or
6 "Agreement"), hereby FINDS AND ORDERS as follows:

7 Plaintiff and Defendant Aimes Consulting, Inc. ("Defendant") entered a Settlement
8 Agreement on or about July 28, 2023 to settle this lawsuit.

9 The Court entered an Order dated August 18, 2023, preliminarily approving the
10 settlement of this lawsuit ("Preliminary Approval Order"), consistent with the Code of Civil
11 Procedure section 382 and California Rule of Court 3.769, ordering notice to be sent to Class
12 Members, scheduling a Final Approval Hearing, and providing Class Members with an
13 opportunity to object or request exclusion.

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

18 2. Jurisdiction. Because adequate notice was disseminated, and all Class Members
19 were given the opportunity to request exclusion, the Court has personal jurisdiction over the
20 claims. The Court also has subject matter jurisdiction over this matter, including jurisdiction to
21 approve the settlement and grant final certification.

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. Accordingly, the Court certifies a Class consisting of all current and former hourly-
25 paid or non-exempt employees who were employed by Defendant within the State of California
26 at any time during the period from May 6, 2017 to August 18, 2023 ("Class," "Class Members,"
27 and "Class Period"). There are six hundred fifteen (615) Participating Class Members in the
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1 Settlement ("Participating Class Members") who will receive their share of the Net Settlement
2 Amount.

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

6 5. Class Notice. The Court finds the Class Notice and its distribution to Class
7 Members have been implemented pursuant to the Settlement Agreement and this Court's
8 Preliminary Approval Order. The Court also finds the Class Notice:

9 a. constitutes notice reasonably calculated, under the circumstances, to
10 apprise Class Members of: (i) pendency of this lawsuit; (ii) material terms and provisions of
11 the Settlement Agreement and their rights under the Settlement; (iii) their right to object to any
12 aspect of the Settlement; (iv) their right to exclude themselves from the Settlement; (v) their
13 right to challenge their Workweeks value; (vi) their right to appear at the Final Approval
14 Hearing; and (vii) binding effect of the orders and judgment in this lawsuit, whether favorable
15 or unfavorable, on Participating Class Members who do not request exclusion from the
16 Settlement;

17 b. constitutes notice fully satisfying the requirements of Code of Civil
18 Procedure section 382, California Rule of Court 3.769, and due process;

19 c. constitutes notice reasonable, adequate, and sufficient to the Class; and

20 d. constitutes the best practicable notice to Class Members.

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

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1 7. Binding Effect. The terms and provisions of Settlement Agreement and this
2 Order and Judgment are binding on the Participating Class Members, as well as their heirs,
3 executors and administrators, successors, and assigns. In addition, those terms shall have res
4 judicata and other preclusive effect in all pending and future claims, lawsuits, or other
5 proceedings maintained by or on behalf of any such persons to the extent those claims, lawsuits,
6 or other proceedings involve matters that were or could have been raised in this matter and are
7 encompassed by the Released Claims. The Agreement will have no binding effect upon, and
8 provide no res judicata preclusion to, Class Members who timely submitted Requests for
9 Exclusion.

10 8. Enforcement of Settlement. Nothing in this Order and Judgment shall preclude
11 any action to enforce the terms and provisions of the Settlement Agreement.

12 9. Release of Claims by Class Members. Upon the Effective Date and condition on
13 the fully funding of the settlement, Plaintiff and Participating Class Members will be deemed to
14 have fully, finally, and forever released, settled, compromised, relinquished, and discharged
15 with respect to all the Released Parties any and all Released Claims for any period during the
16 Class Period.

17 a. General Release by the Class Representative. As a condition of the class action
18 settlement, Plaintiff shall provide a general release to the Released Parties.
19 Plaintiff also expressly waives and relinquishes any rights or benefits available to
20 her under the provisions of section 1542 of the Civil Code.

21 b. Released Parties. The Released Parties include Defendant and each of its past,
22 present and future subsidiaries, parents, affiliated and related companies,
23 divisions, successors, predecessors or assigns; and their past, present, and future
24 officers, directors, shareholders, partners, agents, insurers, employee, advisors,
25 accountants, representatives, trustees, heirs, executors, administrators,
26 predecessors, successors or assigns.

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1 10. Class Representative Service Payment. The Court finds the Class Representative
2 Service Payment of \$7,500.00, to be paid out of the Gross Settlement Amount by Defendant to
3 Plaintiff, to be reasonable and appropriate. The Class Representative Service Payment is to be
4 paid pursuant to the terms and provisions of the Agreement.

5 a. The rationale for making service payments is that the class representatives
6 should be compensated for the expense and risk incurred in conferring a benefit
7 on other class members. Such service payments are appropriate if they are
8 necessary to induce individuals to participate in the suit. Criteria courts may
9 consider include the: (1) risk in commencing this suit; (2) notoriety and personal
10 difficulties encountered; (3) amount of time and effort spent; (4) duration of the
11 litigation; and (5) personal benefit (or lack thereof) enjoyed.

12 b. The Court reviewed Plaintiff's declaration outlining her involvement in the case.
13 Given the risks inherent in the services as the class representative, the duration of
14 the case and time involved, and the benefits created for the Class, the Court
15 approves the Class Representative Service Payment of \$7,500.00.

16 11. Class Counsel Fees Payment and Class Counsel Litigation Expenses Payment.
17 The Court finds Class Counsel Fees Payment of \$118,482.42, to be paid out of the Gross
18 Settlement Amount by Defendant to Class Counsel, to be reasonable and appropriate. The Court
19 also finds the Class Counsel Litigation Expenses Payment of \$25,000.00, to be paid out of the
20 Gross Settlement Amount by Defendant to Class Counsel, to be reasonable and appropriate.
21 Such fees and costs are to be paid pursuant to the terms and provisions of the Settlement
22 Agreement. Defendant shall not be required to pay for any other attorneys' fees, costs, or
23 disbursements incurred by Class Counsel or any other counsel representing Plaintiff or Class
24 Members. Defendant shall also not be required to pay for any other attorneys' fees, costs, or
25 disbursements incurred by Plaintiff or Class Members in connection with or related to this
26 matter, Settlement, administration of the Settlement, and/or Released Claims.

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1 a. The Court has an independent right and responsibility to review the requested
2 attorneys' fees 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 Class Counsel Fees Payment of \$118,482.42 is thirty-three and
5 one-third percent (33 1/3%) of the common fund created for the benefit of the
6 Class Members and is supported by use of the percentage-fee method. (See
7 *Laffitte v. Robert Half International, Inc.* (2016) 1 Cal.5th 480, 504.)
8 Considering the results achieved for the Class, financial risk undertaken, novel
9 and difficult nature of this litigation, skill required to deal with these issues,
10 percentage fees award in other cases, and contingent fees charged in private
11 marketplace, the Court finds the request for the Class Counsel Fees Payment is
12 consistent with the legal marketplace, is reasonable, and is approved.

13 b. The Court reviewed Kane Moon's declaration regarding the costs expended in
14 the prosecution of this case. Under the terms of the Settlement Agreement, Class
15 Counsel may seek reimbursement of up to \$25,000.00 in litigation costs. The
16 Court finds Class Counsel expended \$14,379.33 in litigation costs and that such
17 costs were reasonable. The Court approves the Class Counsel Litigation
18 Expenses Payment of \$25,000.00 for the reimbursement of the costs and
19 expenses incurred by Class Counsel.

20 12. Administration Expenses Payment. The Court finds the Administration
21 Expenses Payment of \$14,750.00, to be paid out of the Gross Settlement Amount by Defendant
22 to the Administrator, to be reasonable and appropriate. The Administration Expenses Payment
23 is to be paid pursuant to terms and provisions set forth in the Settlement Agreement.

24 a. The Court reviewed the declaration of Nick Castro from ILYM Group, Inc., the
25 Court-approved Settlement Administrator. The Court finds notice was provided
26 to the Class pursuant to the Preliminary Approval Order, constitutes the best
27 practicable notice to the Class, and satisfied due process. Therefore, the Court
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1 approves the payment of the Administration Expenses Payment of \$14,750.00 to
2 the Administrator for its services in administering the Settlement.

3 13. PAGA Penalties. The Court finds the Private Attorneys General Act of 2004
4 ("PAGA") Penalties of \$20,000.00, seventy-five percent (75%) of which (\$15,000.00) will be
5 paid out of the Gross Settlement Amount by Defendant to the California Labor and Workforce
6 Development Agency and twenty-five percent (25%) of which (\$5,000.00) will be distributed to
7 all PAGA Aggrieved Employees, pro rata, to be reasonable and appropriate. The PAGA
8 Penalties are to be paid pursuant to the terms of the Settlement Agreement.

9 14. Funding of the Gross Settlement Amount. Within thirty (30) days of the
10 Effective Date of the settlement, Defendant will deposit the total funds necessary to satisfy of
11 the Court approved Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment,
12 Class Representative Service Payment, Administration Expenses Payment, PAGA Penalties,
13 total of the Individual Class Payments expected to be paid to Participating Class Members, and
14 employer-side payroll taxes computed by the Administrator into a Qualified Settlement Fund
15 ("QSF") account, to be established by the Administrator. Individual Class Payments shall be
16 mailed by regular First-Class U.S. Mail to the Claimants' last known mailing address within
17 fourteen (14) calendar days after Defendant deposits all Court-approved amounts from the
18 Gross Settlement Amount into the QSF.

19 15. Fairness of the Settlement. As noted in the Preliminary Approval Order, the
20 Settlement is entitled to a presumption of fairness. In her moving papers, Plaintiff contends the
21 proposed Settlement was the product of arm's-length negotiations following extensive
22 litigation, discovery, and exchange of documentation. The negotiations were facilitated with the
23 help of mediator Steve Serratore, an experienced and well-respected mediator.

24 a. With respect to the fairness of the Settlement, there were no Objections to the
25 Settlement nor any Requests for Exclusion from the Settlement.
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b. With respect to the benefit to the Class, the gross *average* Individual Settlement Payment is about \$275.96, and the gross *highest* Individual Settlement Share is around \$1,719.70 under the proposed allocation.

16. Uncashed Checks. Any checks issued by the Administrator to Participating Class Members will be negotiable for at least one hundred eighty (180) calendar days. Uncashed checks will be sent to the California State Controller's Unclaimed Property Division in accordance with California Unclaimed Property Law.

17. Modification of Settlement Agreement. The Settlement Class Members are hereby authorized to agree to and adopt amendments to or modifications of the Settlement by a written instrument signed by the named Parties and counsel for all Parties or their successors-in-interest. Such amendments or modifications shall be consistent with this Order and Judgment and cannot limit the rights of Participating Class Members under the Settlement.

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

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

19. Further notice shall be given by publication on the Settlement Administrator's website for a consecutive period of 90 days. *le*

1 The Motion for Final Approval of Class Action Settlement, Class Counsel Fees Payment,
2 Class Counsel Litigation Expenses Payment, and Class Representative Service Payment is
3 GRANTED. The Administrator is directed to carry out the terms of the Settlement Agreement
4 forthwith.

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

12 **IT IS SO ORDERED.**

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14 DATED: 6-6-24



HONORABLE THOMAS S. CLARK
SUPERIOR COURT JUDGE