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SUPERIOR COURT OF THE STATE OF CALIFORNIA
 FOR THE COUNTY OF SACRAMENTO

NICOLE MCGARITY, as an individual
 and on behalf of all others similarly
 situated,

Plaintiffs,

v.

THE DEMMON FAMILY
 PARTNERSHIP, a California limited
 partnership; The Demmon Family
 Partnership II, a California limited
 partnership; and Demmon Family LLC, a
 California limited liability company; and
 DOES 1 through 50, inclusive,

Defendants.

CASE NO. 34-2021-00308214

[Assigned for case management purposes to the
 Hon. Jill H. Talley, Dept. 23]

**~~PROPOSED~~ ORDER GRANTING MOTION
 FOR FINAL APPROVAL OF CLASS ACTION
 SETTLEMENT**

Date: August 9, 2024
 Time: 9:00 a.m.
 Department: 23

Reservation No.: Set by Court

Action Filed: September 10, 2021
 Trial Date: Not Set

1 Plaintiff Nicole McGarity's ("Plaintiff") Motion for an Order Granting Final Approval of Class
2 Action and PAGA Settlement hearing was held before this Court on August 9, 2024.

3 The Court has considered the papers and evidence, including the Joint Stipulation of Class
4 Action and PAGA Settlement and Release (the "Agreement" or "Settlement Agreement"), the
5 arguments of counsel, and all other matters presented to the Court regarding final approval of the
6 Settlement, approval of requested allocations from the Settlement fund, and entry of final judgment.

7 **I. BACKGROUND**

8 On or about July 8, 2021, Plaintiff sent written notice to Defendant and to the California Labor &
9 Workforce Development Agency ("LWDA") of Defendants' violations of Labor Code §§ 201201-204,
10 226, 233, 246, 510, 558, 1194, and 1197.1, pursuant to Labor Code § 2698, *et seq.* On that basis, on
11 September 10, 2021, Plaintiff filed her Class Action and Representative Complaint in this Action in the
12 Sacramento County Superior Court alleging Violation of Labor Code § 201, 233, 246; Violation of
13 Labor Code §§ 201-204, 510, 558, 1194, and 1197; Violation of Labor Code § 226; Violation of Labor
14 Code § 2698, *et seq.* and Violation of Business & Professions Code § 17200, *et seq.*

15 On October 18, 2023, the Parties participated in a full-day, arms-length mediation before
16 Christopher M. Panetta, Esq., of Fenton & Keller. With the assistance of the mediator, the Parties were
17 able to come to a settlement of the claims in the Action, subject to the Court's approval. The settlement
18 was memorialized in a Memorandum of Understanding, subject to later completion of the long-form
19 Agreement.

20 **II. CLASS MEMBERS**

21 The Settlement Classes are defined to include:

- 22 a. All current and former non-exempt employees who have worked for Defendant in
23 California at any time from September 10, 2017, through the Class Period End Date
24 (December 18, 2023), and was paid overtime and earned non-discretionary pay
covering the same pay period (the "Regular Rate Class"); and
- 25 b. All current and former non-exempt California employees who were paid sick pay in
26 the same workweek in which they earned any non-discretionary incentive wages from
Defendant at any time from September 10, 2017, through the Class Period End Date
(December 18, 2023) (the "Sick Pay Class").

27 **III. OPERATION OF THE SETTLEMENT**

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1 Pursuant to the Court's Preliminary Approval Order, the Court conditionally certified the Classes
2 and granted preliminary approval to the Settlement. The Preliminary Approval Order also approved of
3 the proposed form of notice to the Class. The Court entered the Preliminary Approval Order after review
4 and consideration of all of the pleadings filed in connection herewith. Pursuant to the Court's Tentative
5 Ruling, the Parties revised the Notice of Pendency of Class Action Settlement and Final Hearing ("Class
6 Notice"). The Class Notice was sent to all Class Members via first class mail. The notice process was
7 timely completed.

8 This Court finds that the Agreement appears to be the product of serious, informed, non-
9 collusive negotiations, has no obvious deficiencies, and does not improperly grant preferential treatment
10 to any individuals. The Court finds that the Settlement was entered into in good faith pursuant to
11 California Code of Civil Procedure section 877.6. The Court further finds that the Agreement is fair,
12 adequate, and reasonable and that Plaintiffs have satisfied the standards for final approval of a class
13 action settlement under California law. Under the provisions of California Code of Civil Procedure
14 section 382 and Rule 23 of the Federal Rules of Civil Procedure, as approved for use in *Vasquez v.*
15 *Superior Court*, 4 Cal. 3d 800, 821 (1971), the trial court has discretion to certify a class where:

16 [Q]uestions of law or fact common to the members of the class predominate over any questions
17 affecting only individual members, and that a class action is superior to the available methods for
the fair and efficient adjudication of the controversy ...

18
19 FED. R. CIV. PROC. 23.

20 Certification of a settlement class is the appropriate judicial device under these circumstances.

21 Good cause appearing, **IT IS HEREBY ORDERED AND ADJUDICATED** as follows:

- 22 1. For purposes of this Order, the Court adopts all defined terms as set forth in the
23 Agreement.
- 24 2. The Court has jurisdiction over the subject matter of the litigation, Plaintiff, Participating
25 Class Members, and Defendant.
- 26 3. The Court finds that the dissemination of the Class Notice to the Class Members by the
27 appointed Settlement Administrator, Phoenix Settlement Administrators, constituted the best notice
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1 practicable under the circumstances to all Class Members, and fully met the requirements of California
2 law and due process under the State and Federal Constitutions.

3 4. The Court approves the settlement of the above-captioned action, as set forth in the
4 Agreement, as fair, adequate, and reasonable to the Parties and Class Members. The Parties are directed
5 to perform in accordance with the terms set forth in the Agreement.

6 5. Except as otherwise provided in the Agreement, the Parties are to bear their own costs
7 and attorneys' fees.

8 6. With respect to the Class and for purposes of approving the Settlement only, and for no
9 other purpose, the Court finds and concludes that: (a) the members of the Class are ascertainable and so
10 numerous that joinder of all members is impracticable; (b) there are questions of law or fact common to
11 the Class, and there is a well-defined community of interest among members of the Class with respect to
12 the subject matter of the claims in the Action; (c) the claims of the Class Representative are typical of
13 the claims of the members of the Class; (d) the Class Representative has fairly and adequately protected
14 the interests of the members of the Class; (e) a class action is superior to other available methods for an
15 efficient adjudication of this controversy; and (f) the counsel of record for the Class Representative, i.e.,
16 Class Counsel, are qualified to serve as counsel for Plaintiff in her individual and representative
17 capacities and for the Class.

18 7. The Court approves the Settlement Agreement's PAGA component. The PAGA-
19 Aggrieved Employees are defined as follows:

20 a. All current and former non-exempt employees who have worked for Defendant in
21 California at any time during the PAGA Period [July 8, 2020, through the Class Period
22 End Date, or December 18, 2023] and was paid overtime and earned non-discretionary
23 pay covering the same pay period.

24 b. All current and former non-exempt California employees who were paid sick pay in the
25 same workweek in which they earned any non-discretionary incentive wages from
26 Defendant at any time during the PAGA Period.

27 8. Not later than ten (10) calendar days after the Effective Date, to the extent practicable,
28 the Settlement Administrator will provide Defense Counsel with an accounting of all anticipated
payments from the QSF as specified in this Agreement and approved by the Court, including all
necessary routing and payment instructions to the QSF, and including the amount due for the employer's

1 share of payroll taxes on the wage payments to be made outside the Maximum Settlement Amount. The
2 Settlement Administrator also will provide counsel for the Parties with at least fourteen (14) calendar
3 days, whether before or after the funding date but before the date of the scheduled distribution date, in
4 which to review and approve the Administrator's proposed payment calculations.

5 9. Defendant shall pay the Maximum Settlement Amount, together with the amount the
6 Settlement Administrator has determined or estimated to be Defendant's share of employer taxes due on
7 the wages being paid under the Settlement, in one lump sum payment within thirty (30) calendar days
8 after the Effective Date. Defendant shall provide the Maximum Settlement Amount to the Settlement
9 Administrator in any feasible manner, including, but not limited to, a wire transfer or a check. From the
10 Maximum Settlement Amount, the Administrator shall pay:

- 11 1. to Class Counsel, attorneys' fees in the amount of \$26,166.67 and reimbursement
12 of costs in the amount of \$7,415.94;
- 13 2. to Plaintiff as her Service Award, and as consideration for the execution of her
14 general release, the amount of \$10,000.00;
- 15 3. to the California Labor and Workforce Development Agency, the amount of \$
16 \$6,562.50, for its 75% share of PAGA Penalties; and
- 17 4. to ILYM Group, Inc., the amount of \$3,650.00 for its fees and costs in
18 administering the Settlement.

19 10. The Court finds that these amounts are fair and reasonable. The Administrator is directed
20 to make such payments in accordance with the terms of the Agreement.

21 11. The Court approves the Individual PAGA Payment amounts and Individual Class
22 Payment amounts, which shall be distributed by the Administrator pursuant to the terms of the
23 Agreement.

24 12. The Court hereby orders the parties to implement the terms of the Agreement, including
25 distributing any uncashed settlement checks to Legal Aid at Work.

26 13. The Court approves the Agreement's Class Members' Released Claims following the
27 Agreement's Effective Date and Defendant's funding of the Maximum Settlement Amount and its share
28 of employer-side payroll taxes as follows:

1 Upon the Effective Date and Defendant's funding of the Maximum Settlement Amount
2 and its share of employer-side payroll taxes, Plaintiff and each member of the Settlement
3 Class other than those who submit a timely request to opt out of the Settlement will
4 release and discharge the Released Parties, from any and all claims, rights, demands,
5 liabilities, and causes of action of every nature and description, arising from September
6 10, 2017, through the Class Period End Date, including statutory, contractual, or common
7 law claims for damages, penalties, liquidated damages, interest, attorneys' fees, litigation
8 costs, restitution, or equitable relief – whether asserted under the California Labor Code,
9 Business and Professions Code §§ 17200 et seq., the applicable wage orders at California
10 Code of Regulations, Title 8, Section 11000 et seq., or otherwise – that arise out of or are
11 reasonably related to the factual allegations that were alleged or could have been alleged
12 in Plaintiff's Complaint herein, i.e.,: (a) any and all claims for failure to pay sick leave at
13 the correct regular rate of pay; (b) any and all claims for unpaid overtime wages at the
14 correct regular rate of pay; (c) any and all derivative claims for failure to furnish accurate
15 itemized wage statements in accordance with Labor Code section 226 based on alleged
16 failures to pay sick pay and overtime wages at the correct regular rate of pay; (d) any and
17 all derivative claims for failure to provide wages when due upon separation of
18 employment under Labor Code §§ 201-203 based on alleged failures to pay sick pay and
19 overtime wages at the correct regular rate of pay; (e) any and all derivative claims for
20 "late payment" penalties under Labor Code §§ 204 and 210 based on alleged failures to
21 pay sick pay and overtime wages at the correct regular rate of pay; and (f) any and all
22 claims for attorneys' fees and costs arising from alleged failures to pay sick pay and
23 overtime wages at the correct regular rate of pay.

24 14. The Court approves the Agreement's PAGA Released Claims, defined in the Agreement
25 as:

26 Upon the Effective Date and Defendant's funding of the Maximum Settlement Amount
27 and its share of employer-side payroll taxes, Plaintiff, the State of California and all
28 PAGA-Aggravated Employees shall release the Released Parties from any and all claims

1 for PAGA civil penalties arising during the PAGA Period, that were alleged or
2 reasonably could have been alleged based on the facts contained in Plaintiff's operative
3 Complaint, as enumerated in Paragraph 17 above, and/or in Plaintiff's LWDA Notice. It
4 is understood and agreed that PAGA-Aggravated Employees will not have the opportunity
5 to opt out of this PAGA Release.

6 15. All Class Members who did not opt out of the Settlement shall be bound by the releases
7 provided in the Agreement. Pursuant to the Settlement Administrator's declaration, the Court finds that
8 no Class Members opted out. Therefore, all Class Members shall be bound by the Class Release. All
9 PAGA Members shall be bound by the PAGA releases provided in the Agreement. The Class
10 Representative shall be bound by the additional general release provided in the Agreement.

11 16. The Court hereby enters final judgment in this case in accordance with the terms of the
12 Settlement, Preliminary Approval Order, and this Order. Without affecting the finality of the Settlement
13 or Judgment entered, this Court shall retain exclusive and continuing jurisdiction over the action and the
14 Parties, including all Participating Class Members, for purposes of enforcing and interpreting this Order
15 and the Settlement.

16 17. Pursuant to Code of Civil Procedure section 668.5, final judgment shall be entered as of
17 the filing of this Order. This judgment makes no finding of any violation of the Labor Code, liability, or
18 other wrongdoing. Nothing in this Settlement or any of its terms, the order approving the Settlement, or
19 this judgment are an admission of any liability or finding of any violation of the Labor Code on the part
20 of Defendant.

21 18. The Court sets a compliance hearing for May 16, 2025 @ 10:30 a.m. ~~a.m./p.m.~~ on
22 _____, 2025. The Parties shall file the administrator's
23 declaration and amended judgment at least fifteen (15) calendar days before the compliance hearing.

24 **IT IS SO ORDERED AND ADJUDGED.**

25 DATED: 08/20/2024, 2024



26 *Jill Talley*
27 THE HONORABLE JILL H. TALLEY
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On this date I caused to be served the **[PROPOSED] ORDER GRANTING MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT** on the parties in this action, by placing copies of the same in envelopes, addressed as follows and delivered in the manner indicated:

— **(By Mail)** I caused each envelope, with postage prepaid to be placed in the United States mail at Hollister, California. I am readily familiar with the business practices of the firm regarding the collection and processing of correspondence for mailing with the United States Postal Service. Pursuant to such business practices, and in the ordinary course of business, all correspondence is deposited with the United States Postal Service on the same day it is placed for collection and mailing.

(By Hand) I delivered the envelope to addressee.

X (By E-Mail) I caused each document to be send via e-mail to the e-mail stated above via Drop Box.
The transmission was reported as complete and without error.


Jeanette LaCorte

Proof of Service