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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. 27]

**[PROPOSED] ORDER GRANTING MOTION
FOR PRELIMINARY APPROVAL OF CLASS
ACTION SETTLEMENT**

Date: March 29, 2024
Time: 9:00 a.m.
Department: 27

Reservation No.: A-308214-001

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

1 Plaintiff Nicole McGarity’s (“Plaintiff”) Motion for an Order Granting Preliminary Approval of
2 Class Action Settlement hearing was held before this Court on March 29, 2024.

3 I. RECITALS

4 On or about July 8, 2021, Plaintiff sent written notice to Defendant and to the California Labor &
5 Workforce Development Agency (“LWDA”) of Defendants’ violations of Labor Code §§ 201201-204,
6 226, 233, 246, 510, 558, 1194, and 1197.1, pursuant to Labor Code § 2698, *et seq.* On that basis, on
7 September 10, 2021, Plaintiff filed her Class Action and Representative Complaint in this Action in the
8 Sacramento County Superior Court alleging Violation of Labor Code § 201, 233, 246; Violation of
9 Labor Code §§ 201-204, 510, 558, 1194, and 1197; Violation of Labor Code § 226; Violation of Labor
10 Code § 2698, *et seq.* and Violation of Business & Professions Code § 17200, *et seq.*

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

16 II. FINDINGS

17 The Court conditionally certifies the following Classes:

- 18 a. All current and former non-exempt employees who have worked for Defendant in
19 California at any time from September 10, 2017, through the Class Period End Date
20 (December 18, 2023), and was paid overtime and earned non-discretionary pay
covering the same pay period (the “Regular Rate Class”); and
- 21 b. All current and former non-exempt California employees who were paid sick pay in
22 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
(the “Sick Pay Class”)

23 The Court hereby approves the terms and conditions provided for in the Agreement. The Court
24 finds that on a preliminary basis the Agreement falls within the range of reasonableness of a settlement
25 and appears to be presumptively valid, subject to any objections that may be raised at the final fairness
26 hearing and subject to final approval by the Court. It appears to the Court on a preliminary basis that the
27 settlement is fair, adequate, and reasonable as to all potential Class Members when balanced against the
28 uncertain outcome of further litigation relating to liability and damages issues. It also appears that

1 investigation, research, and proceedings have been conducted so that counsel for the Parties are able to
2 reasonably evaluate their respective positions. It appears to the Court that settlement at this time will
3 avoid substantial additional costs by all Parties, as well as avoid the delay and risks that would be
4 presented by the further prosecution of the action. It also appears that settlement has been reached as a
5 result of intensive, serious, and non-collusive arms-length negotiations.

6 III. ORDERS

7 After considering the papers and evidence, arguments of counsel, and all other matters presented
8 to the Court, and having taken the matter under submission, **IT IS HEREBY ORDERED** as follows:

9 1. The Court grants preliminary approval of the Joint Stipulation of Class Action and PAGA
10 Settlement and Release (“Agreement”) submitted by the Parties. The Agreement appears to be fair,
11 adequate, and reasonable to the Class.

12 2. The Court appoints and designates: (a) Plaintiff Nicole McGarity as Class Representative,
13 and (b) William L. Marder of Polaris Law Group and Dennis S. Hyun of Hyun Legal APC as Class
14 Counsel for the Class. Class Counsel is authorized to act on behalf of the Class with respect to all acts or
15 consents required by, or which may be given, pursuant to the Agreement, and such other acts reasonably
16 necessary to finalize the Agreement and its terms. Any Class Member may enter an appearance through
17 his or her own counsel at such Class Member’s own expense. Any Class Member who does not enter an
18 appearance or appear on his or her own behalf will be represented by Class Counsel.

19 3. A final fairness hearing on the question of whether the proposed Agreement, the
20 allocation of Individual Class Payments, Individual PAGA Payments, the LWDA PAGA Payment, the
21 Class Counsel Award for attorneys’ fees and litigation costs, the Class Representative Service Award,
22 and the Settlement Administration Costs should be finally approved as fair, reasonable, and adequate as
23 to the members of the Class is set for _____, 2024, at 9:00 a.m. in this
24 Court.

25 4. The Court hereby approves, as to form and content, the Notice of Pendency of Class
26 Action Settlement and Final Hearing (“Class Notice”) attached as Exhibit 1 to the Agreement. The Court
27 finds that distribution of the Class Notice to Class Members substantially in the manner and form set
28

1 forth in the Agreement and this Order meets the requirements of due process and shall constitute due
2 and sufficient notice to all parties entitled thereto.

3 5. The Court appoints and designates ILYM Group, Inc. as the Administrator. The Court
4 hereby directs the Administrator to provide the approved Class Notice to Class Members using the
5 procedures set forth in the Agreement.

6 6. Any Class Member may choose to opt out of and be excluded from the settlement as
7 provided in the Agreement and Notice Packet and by following the instructions for requesting exclusion.
8 Any person who timely and properly opts out of the settlement will not be bound by the Agreement or
9 have any right to object, appeal, or comment thereon. Any request for exclusion must be in writing and
10 signed by each such Class Member opting out and must otherwise comply with the requirements
11 delineated in the Notice Packet. Class Members who have not requested exclusion by submitting a valid
12 and timely request for exclusion shall be bound by all determinations of the Court, the Agreement, and
13 Judgment.

14 7. Any Class Member may object to the Agreement or express his or her views regarding
15 the Agreement. Any Class Member may present evidence and file briefs or other papers relevant to the
16 issues to be heard and determined by the Court as provided in the Agreement and Class Notice.

17 8. A Motion for Final Approval shall be filed by the Class Representatives no later than
18 sixteen (16) court days before the final fairness hearing.

19 9. The Court reserves the right to adjourn or continue the date of the final fairness hearing
20 and all dates provided for in the Agreement without further notice to the Class. The Court retains
21 jurisdiction to consider all further applications arising out of or connected with the Agreement.

22 10. Should for whatever reason final approval is not granted, the fact that the Parties were
23 willing to stipulate to certification of a class as part of the settlement shall have no bearing on the issue
24 of whether a class should be certified in a non-settlement context.

25 **IT IS SO ORDERED.**

26
27 DATED: _____, 2024

28 _____
THE HONORABLE JILL H. TALLEY