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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**

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  
28

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  
pay covering the same pay period.

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

25 8. Not later than ten (10) calendar days after the Effective Date, to the extent practicable,  
26 the Settlement Administrator will provide Defense Counsel with an accounting of all anticipated  
27 payments from the QSF as specified in this Agreement and approved by the Court, including all  
28 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 \_\_\_\_\_ 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 **IT IS SO ORDERED.**

26 DATED: \_\_\_\_\_, 2024

27 \_\_\_\_\_  
28 THE HONORABLE JILL H. TALLEY

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