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and all others similarly situated and aggrieved

**SUPERIOR COURT OF THE STATE OF CALIFORNIA**

**FOR THE COUNTY OF ORANGE**

STEVEN GONZALEZ and GIANA  
PADILLA on behalf of themselves and all  
others similarly situated and aggrieved,

Plaintiffs,

v.

H&M HENNES & MAURITZ L.P., a  
Domestic limited partnership; ALYSE  
DIGILDO, an individual; and DOES 1  
through 100, inclusive,

Defendants.

CASE NO.: 30-2021-01217029-CU-OE-  
CXC

[Assigned to the Hon. William Claster in  
Dept. CX101]

**[PROPOSED] ORDER GRANTING  
PRELIMINARY APPROVAL OF CLASS  
ACTION AND REPRESENTATIVE  
ACTION SETTLEMENT AND  
CERTIFYING CLASS FOR  
SETTLEMENT PURPOSES ONLY**

1 This Court, having considered the motion of plaintiffs Steven Gonzalez (“Plaintiff Gonzalez”)  
2 and Giana Padilla (“Plaintiff Padilla”, and with Plaintiff Gonzalez, the “Plaintiffs”), for Preliminary  
3 Approval of the Class Action and Representative Action Settlement and Provisional Class  
4 Certification for Settlement Purposes Only (“Motion for Preliminary Approval”), the Declarations  
5 of Vedang J. Patel, David D. Bibiyan, Plaintiffs, and Anthony Rogers, the Class and PAGA  
6 Settlement Agreement (the “Settlement,” “Settlement Agreement” or “Agreement”), the proposed  
7 Notice of Proposed Class Action Settlement and Date for Final Approval Hearing (“Class Notice”),  
8 and other documents submitted in support of the Motion for Preliminary Approval, hereby  
9 **ORDERS, ADJUDGES AND DECREES THAT:**

10 1. The definitions set out in the Settlement Agreement are incorporated by reference  
11 into this Order; all terms defined therein shall have the same meaning in this Order.

12 2. The Court certifies the following settlement class (“Settlement Class,” “Settlement  
13 Class Members” or “Class Members”) for the purpose of settlement only: all retail workers currently  
14 or formerly employed by Defendant H&M Fashion USA, Inc.(“Defendant”), either directly or  
15 through any subsidiary, staffing agency, or professional employer organization, as non-exempt  
16 employees during the period from August 18, 2017 through November 6, 2024 (“Class Period”) in  
17 the State of California.

18 3. The Court preliminarily appoints the named Plaintiffs as Class Representatives. The  
19 Court also preliminarily appoints David D. Bibiyan and Vedang J. Patel of Bibiyan Law Group,  
20 P.C. as Class Counsel.

21 4. The Court preliminarily approves the proposed class settlement upon the terms and  
22 conditions set forth in the Settlement Agreement. The Court finds, on a preliminary basis, that the  
23 settlement appears to be within the range of reasonableness of settlement that could ultimately be  
24 given final approval by the Court. It appears to the Court on a preliminary basis that the settlement  
25 amount is fair, adequate, and reasonable as to all potential class members when balanced against the  
26 probable outcome of further litigation relating to liability and damages issues. It further appears that  
27 extensive and costly investigation and research has been conducted such that counsel for the parties  
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1 at this time are reasonably able to evaluate their respective positions. It further appears to the Court  
2 that the settlement at this time will avoid substantial additional costs to all parties, as well as the  
3 delay and risks that would be presented by the further prosecution of the Action. It further appears  
4 that the settlement has been reached as the result of intensive, non-collusive, and arms-length  
5 negotiations utilizing an experienced third-party neutral.

6 5. The Court approves, as to form and content, the Class Notice that has been submitted  
7 herewith.

8 6. The Court directs the mailing of the Class Notice by first-class regular U.S. mail to  
9 the Class Members in accordance with the procedures set forth in the Settlement Agreement. The  
10 Court finds that dissemination of the Class Notice set forth in the Settlement Agreement complies  
11 with the requirements of law and appears to be the best notice practicable under the circumstances.

12 7. The Court hereby preliminarily approves the definition and disposition of the Gross  
13 Settlement Amount of \$7,500,000.00 which is inclusive of: attorneys' fees of not more than thirty-  
14 five percent (35%) of the Gross Settlement Amount, which, if not escalated pursuant to the  
15 Settlement Agreement, amounts to \$2,625,000.00, in addition to actual costs incurred of up to  
16 \$85,000.00; a service award of \$7,500.00 to each of the Plaintiffs, for a total amount of \$15,000.00  
17 to Plaintiffs; costs of settlement administration of no more than \$71,950.00 and Private Attorneys'  
18 General Act of 2004 ("PAGA") penalties in the amount of \$200,000.00, of which \$150,000.00  
19 (75%) will be paid to the Labor and Workforce Development Agency ("LWDA") and \$50,000.00  
20 (25%) to Aggrieved Employees.

21 8. "Aggrieved Employees" means all retail workers currently or formerly employed by  
22 Defendant, either directly or through any subsidiary, staffing agency, or professional employer  
23 organization, as non-exempt employees during the period from August 18, 2020 through November  
24 6, 2024 ("PAGA Period") in the State of California.

25 9. The Gross Settlement Amount expressly excludes Employer Taxes, which will be  
26 paid separately and apart by Defendant on the wages portion of the Gross Settlement Amount.

27 10. "Workweek" means any week (i.e. 7-day period) during which a Class Member was  
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1 employed by Defendant for at least one day in a non-exempt position during the Class Period in  
2 California, based on hire dates, re-hire dates (as applicable), and termination dates (as applicable).

3 11. The

4 12. Settlement was negotiated based on Defendant's representation that there are  
5 approximately 1,020,974 Workweeks worked during the Class Period. In the event the number of  
6 Workweeks worked increases during the Class Period by more than 10%, or an additional 102,097  
7 Workweeks, then, at Defendant's election: (1) the Gross Settlement Amount shall be increased  
8 proportionally by the Workweeks worked in excess of 1,123,071 (1,020,974 Workweeks + 102,097  
9 Workweeks) multiplied by the Workweek Value; or (2) the Class Period shall be reduced in order  
10 to ensure that the Workweeks do not exceed 1,123,071. The Workweek Value shall be calculated  
11 by dividing the Gross Settlement Amounts by 1,020,974. The Parties agree that the Workweek  
12 Value amounts to \$7.35 per Workweek ( $\$7,500,000 / 1,020,974$  Workweeks). Thus, for example,  
13 should there be 1,200,000 Workweeks in the Class Period, then, if Defendant elects option 1 above,  
14 the Gross Settlement Amount shall be increased by \$565,428.15. (1,200,000 Workweeks –  
15 1,123,071 Workweeks) x \$7.35/Workweek.) Defendant shall have ten (10) business days from  
16 receiving notice that there are greater than 1,123,071 Workweeks to exercise its election; otherwise,  
17 it will be assumed that Defendant has exercised Option (1).

18 13. The Court deems, ILYM Group, Inc. ("Settlement Administrator," "Administrator,"  
19 or "ILYM"), and payment of administrative costs, not to exceed \$71,950.00 out of the Gross  
20 Settlement Amount for services to be rendered by ILYM on behalf of the class.

21 14. Not later than 14 days after the Court grants Preliminary Approval of the Settlement,  
22 Defendant will deliver the Class Data to the Administrator, in the form of a Microsoft Excel  
23 spreadsheet. "Class Data" means Class Member identifying information in Defendant's custody,  
24 possession, or control, including the Class Member's (1) name; (2) last known address(es); (3) last  
25 four digits of the last known Social Security Number(s); and (4) the dates of employment (i.e., hire  
26 dates, and, if applicable, re-hire date(s) and/or separation date(s)).

27 15. The Settlement Administrator shall perform an address search using the United States  
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1 Postal Service National Change of Address (“NCOA”) database and update the addresses contained  
2 on the Class List with the newly-found addresses, if any.

3 16. Using best efforts to perform as soon as possible, and in no event later than 14 days  
4 after receiving the Class Data, the Administrator will send to all Class Members identified in the  
5 Class Data, via first-class United States Postal Service (“USPS”) mail, the Class Notice with Spanish  
6 translation.

7 17. “Response Deadline” means forty-five (45) days after the Administrator mails Notice  
8 to Class Members and Aggrieved Employees and shall be the last date on which Class Members  
9 may: (a) mail Requests for Exclusion from the Settlement, or (b) mail his or her Objection to the  
10 Settlement. Class Members to whom Notice Packets are resent after having been returned  
11 undeliverable to the Administrator shall have an additional 15 days beyond the Response Deadline  
12 has expired.

13 18. Class Members who wish to exclude themselves from (opt-out of) the Class  
14 Settlement must send the Administrator, by mail, a signed written Request for Exclusion not later  
15 than 45 days after the Administrator mails the Class Notice (plus an additional 15 days for Class  
16 Members whose Class Notice is re-mailed). A Request for Exclusion is a letter from a Class Member  
17 or his/her representative, signed by the Class Member, that reasonably communicates the Class  
18 Member’s election to be excluded from the Settlement and includes the Class Member’s name,  
19 signature, the last four digits of their Social Security Number, address, and email address or  
20 telephone number.

21 19. Every Class Member who does not submit a timely and valid Request for Exclusion  
22 is deemed to be a Participating Class Member under the Agreement, entitled to all benefits and  
23 bound by all terms and conditions of the Settlement, including the Participating Class Members’  
24 Releases, regardless whether the Participating Class Member actually receives the Class Notice or  
25 objects to the Settlement. Every Class Member who submits a valid and timely Request for  
26 Exclusion is a Non-Participating Class Member and shall not receive an Individual Class Payment  
27 or have the right to object to the class action components of the Settlement.

20. Each Class Member shall have 45 days after the Administrator mails the Class Notice (plus an additional 15 days for Class Members whose Class Notice is re-mailed) to challenge the number of Class Workweeks and PAGA Pay Periods (if any) allocated to the Class Member in the Class Notice.

21. Only Participating Class Members may object to the class action components of the Settlement and/or this Agreement, including contesting the fairness of the Settlement, and/or amounts requested for the Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment and/or Class Representatives Incentive Award. Participating Class Members may send written objections to the Administrator, by mail. In the alternative, Participating Class Members may appear in Court (or hire an attorney to appear in Court) to present verbal objections at the Final Approval Hearing.

22. If a Class Member submits both an objection and a Request for Exclusion, the Request for Exclusion will control and the Objection will be overruled.

23. All papers filed in support of final approval, including supporting documents for attorneys' fees and costs, shall be filed by \_\_\_\_\_.

24. A Final Fairness and Approval Hearing shall be held with the Court on \_\_\_\_\_ in Department CX101 of the above-entitled Court to determine: (1) whether the proposed settlement is fair, reasonable and adequate, and should be finally approved by the Court; (2) the amount of attorneys' fees and costs to be awarded to Class Counsel; (3) the amount of service award to the Class Representatives; (4) the amount to be paid to the Settlement Administrator; and (5) the amount to be apportioned to PAGA and/or paid to the LWDA and PAGA Members.

25. For any Class Member whose Individual Class Payment check or Individual PAGA Payment check is uncashed and cancelled after the void date (180 days), the Administrator shall transmit the funds represented by such checks to Legal Aid at Work.

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**IT IS SO ORDERED.**

Dated: \_\_\_\_\_

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Judge of the Superior Court

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