

10/12/2023  
10A

1 **WINSTON LAW GROUP, P.C.**

2 David S. Winston, Esq. CA Bar No. 301667

3 david@employmentlitigators.com

4 1880 Century Park East, Suite 511

5 Los Angeles, California 90067

6 Phone: (424) 288-4568

7 Fax: (424) 532-4062

OCT 12 2023

Filed

STEPHANIE BOHRER, CLERK

By

DEPUTY

8 Attorney for Plaintiff, the Proposed Class  
9 and the aggrieved employees

10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

11 **FOR THE COUNTY OF SAN JOAQUIN**

12 ANGELICA DIAZ VALDEZ, an individual,  
13 on behalf of herself, others similarly situated,  
14 and as a private attorney general on behalf of  
15 the State of California,

16 Plaintiff,

17 v.

18 NBC MANTECA MERCHANTS, INC., a  
19 California Corporation, and DOES 1 thru 50,  
20 inclusive,

21 Defendants.

Case No.: STK-CV-UOE-2021-0009075

[Assigned For All Purposes to the Hon. George  
J. Abdallah, Dept. 10A]

22 **[PROPOSED] ORDER OF FINAL  
23 APPROVAL AND ENTRY OF  
24 JUDGMENT**

Date: October 12, 2023

Time: 9:00 a.m.

Dept.: 10A

Complaint Filed: September 27, 2021

Trial Date: None Set

25  
26  
27  
28  
ORIGINAL  
FILED

1           The Motion for Final Approval of Class Settlement and for Attorneys' Fees and Costs (the  
2 "Final Approval Motion") was heard on October 12, 2023, in Department 10A, of the above titled  
3 court. The Motion for Final Approval and for Attorneys' Fees and Costs were unopposed by  
4 Defendant NBC Manteca Merchants Inc. Having considered the Motion for Final Approval and  
5 for Attorneys' Fees and Costs, the Settlement, the Motion for Attorneys' Fees and Costs, the  
6 Declarations, and all other materials properly before the Court and having conducted an inquiry  
7 pursuant to California Rules of Court, rule 3.769(g), the Court finds that the Settlement  
8 Agreement was entered by all Parties in good faith, and the Settlement Agreement is approved.  
9 Due and adequate notice having been given to the Class, and the Court having considered the  
10 Settlement Agreement, all papers filed, and proceedings had herein, and having reviewed the  
11 record in this Litigation, and good cause appearing, IT IS HEREBY ORDERED, ADJUSTED,  
12 AND DECREED AS FOLLOWS:

13           1.       All terms used in this Order Granting Final Approval of Class Action Settlement  
14 and Attorneys' Fees and Costs (the "Order") shall have the same meanings given as those terms  
15 are used and/or defined in the Parties' Settlement Agreement.

16           2.       The Court has jurisdiction over the subject matter.

17           3.       The Court is satisfied that ILYM Group, which functioned as the Settlement  
18 Administrator, completed the distribution of the Notices of Settlement to the Class Members in a  
19 manner that comports with the requirements of California Code of Civil Procedure section 382,  
20 California Civil Code section 1781, California Rules of Court 3.766 and 3.769, the California and  
21 United States Constitutions, and other applicable law, and constitutes the best notice practicable  
22 under the circumstances. The Notice of Settlement informed the potential Class Members of the  
23 Settlement terms, their rights to do nothing and receive their Settlement share, their rights to  
24 submit a Request for Exclusion, their rights to comment on or object to the Settlement, and their  
25 rights to appear at the Final Approval Hearing and be heard regarding approval of the Settlement.  
26 Adequate periods of time to respond and to act were provided by each of these procedures. Based  
27 on evidence and other material submitted, the actual notice to the class was adequate.  
28

1           4.     The Court finds that the instant action presented a good faith dispute of the claims  
2 alleged, and the Court finds in favor of settlement approval.

3           5.     No Class Members submitted a request for exclusion.

4           6.     No Class Members submitted an objection.

5           7.     The Court approves the Settlement of the above-captioned action, as set forth in  
6 the Settlement Agreement and each of the releases and other terms, as being entered into in good  
7 faith, fair, just, reasonable, and adequate as to the Settling Parties. The Settling Parties are  
8 directed to perform in accordance with the terms set forth in the Settlement Agreement.

9           8.     The Settling Parties are to bear their own costs, except as otherwise provided in the  
10 Settlement Agreement.

11          9.     For settlement purposes only, the Court finally certifies the Class as defined in the  
12 Party's Settlement Agreement and as follows:

13           as all individuals who were employed by NBC Manteca Merchants, Inc. as a non-exempt  
14 employee at any point from April 2, 2017 to October 13, 2022.

15          10.    The Court deems this definition sufficient for the purpose of California Rule of  
16 Court 3.765(a), and solely for the purpose of effectuating the Settlement. The Court also finds and  
17 concludes that: (a) the Class Members are ascertainable and so numerous that joinder of all  
18 members is impracticable; (b) there are questions of law or fact common to the Settlement Class  
19 Members, and there is a well-defined community of interest among the Settlement Class  
20 Members with respect to the subject matter of the Action; (c) the claims of the Class  
21 Representative are typical of the claims of the Class Members; (d) the Class Representative has  
22 fairly and adequately protected the interests of the Class Members; (e) a class action is superior to  
23 other available methods for an efficient adjudication of this controversy; and (f) the counsel of  
24 record for the Class Representative, *i.e.*, Class Counsel is qualified to serve as counsel for  
25 Plaintiff in their individual and representative capacity and for the Settlement Class.

26          11.    The Court appoints and confirms Plaintiff Angelica Diaz Valdez as Class  
27 Representative.  
28

1           12.     The Court finds David S. Winston of Winston Law Group, P.C. to be adequate  
2     Class Counsel and appoints David S. Winston and Winston Law Group, P.C. as Class Counsel.

3           13.     Upon the Effective Date (the first business date of entry of this Order per I(O) of  
4     the Parties Settlement Agreement), the Class Representative and each of the Settlement Class  
5     Members shall be deemed to have, and by operation of this Order and Judgment shall have, fully,  
6     finally, and forever released, relinquished, and discharged the Released Claims, as defined in the  
7     Settlement Agreement. Upon the Effective Date, all Settlement Class Members shall be and are  
8     hereby permanently barred and enjoined from the institution or prosecution of any and all of the  
9     Released Claims as provided by the terms of the Settlement.

10          14.     Neither the Settlement Agreement nor the Settlement contained therein, nor any  
11     act performed or document executed pursuant to or in furtherance of the Settlement Agreement  
12     of the Settlement (i) is or may be deemed to be or may be used as an admission of, or evidence of,  
13     the validity of any of the Class Members' Released Claims, or of any wrongdoing or liability of  
14     Defendant or any of the other Released Parties; or (ii) is or may be deemed to be or may be used  
15     as an admission of, or evidence of, any fault or omission of Defendant or any of the other  
16     Released Parties in any civil, criminal, or administrative proceeding in any court, administrative  
17     agency, or other tribunal.

18          15.     The Gross Settlement Amount to be funded under the Settlement Agreement is  
19     \$190,000.00. From this amount, Class Counsel sought an award of attorneys' fees of \$63,333.33  
20     (1/3 of the monetary Gross Settlement Amount), case costs of \$14,043.61, a Service Award for  
21     the Class Representative Angelica Diaz Valdez of \$6,500.00); and Settlement Administration  
22     Costs on behalf of ILYM Group, Inc. of \$10,640.00. Defendant did not oppose these requests.  
23     The Court finds that the Amount to be Funded is fair, reasonable, adequate, and awards the  
24     payments set forth below from the Amount to be Funded:

- 25           a.     \$63,333.33 to Class Counsel for attorneys' fees;
- 26           b.     \$14,043.61 to Class Counsel for litigation costs/expense reimbursements;
- 27           c.     \$6,500.00 to Class Representative Angelica Diaz Valdez as a Service Award;
- 28           d.     \$10,640.00 to the Settlement Administrator ILYM Group;

1 e. PAGA Payment to the LWDA of \$15,000.00 (75% of the \$20,000 in PAGA  
2 penalties recovered under the settlement)

3 f. After deducing the foregoing payments from the Amount to be Funded, the  
4 remainder of \$80,483.06 shall form the Net Settlement Amount payable to the participating Class  
5 Members and shall be distributed as set forth in and in accordance with the Settlement Agreement  
6 and as calculated by the Settlement Administrator.

7 g. In awarding the attorneys' fees to Class Counsel, the Court considered both the  
8 common fund method and the lodestar information presented by Class Counsel and finds that the  
9 fees sought were reasonable under either method.

10 16. The Court finds that distribution of any residual funds to the proposed *cy pres*  
11 beneficiary the Child Abuse Prevention Council of San Joaquin County complies with the  
12 requirements of Code of Civil Procedure section 384. The Court hereby appoints the Child Abuse  
13 Prevention Council of San Joaquin County as the *cy pres* beneficiary for any residual funds,  
14 pursuant to the terms of the Settlement. Upon the expiration of the check cashing deadline, the  
15 Settlement Administrator shall promptly send all unclaimed funds to the Child Abuse Prevention  
16 Council of San Joaquin County and provide a report to Class Counsel after the transmission of the  
17 funds that shall be filed with this Court evidencing that such payment has been made.

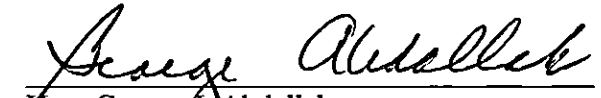
18 17. The Court shall hold a compliance hearing on FEB, 15, 2024 at 9:00 a.m. in  
19 Department 10A to confirm the distribution of funds under Code of Civ. Proc. section 384. Class  
20 Counsel or the Settlement Administrator shall submit a compliance report no later than 5 court  
21 days before the date of the hearing, which shall include the total amount that was actually paid to  
22 the class members.

23 18. Upon entry of this Order, compensation to the Settlement Class shall be effected  
24 pursuant to the terms of the Settlement.

25 19. This Judgment is intended to be a final disposition of the class action and  
26 representative claims in the above captioned action and is intended to be immediately applicable.  
27  
28

1           20.     This document shall constitute a Judgment for purposes of California Rule of  
2 Court 3.769(h). The Court reserves exclusive and continuing jurisdiction over the Action, the  
3 Class Representative, the Class Members, and Defendant for purposes of supervising the  
4 implementation, enforcement, construction, administration, and interpretation of the Settlement  
5 Agreement and this Judgment.

6 DATED: October 12, 2023

  
Hon. George J. Abdallah  
Judge of the Superior Court