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APR - 9 2024

SUPERIOR COURT OF CALIFORNIA
COUNTY OF FRESNO

BY DEPUTY

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FRESNO COUNTY SUPERIOR COURT
By: A. Hoffman, Deputy

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF FRESNO**

SHELTON HARPER, an individual, on
behalf of himself and others similarly
situated,

PLAINTIFF,

v.

SAN MAR PROPERTIES; and DOES 1 thru
50, inclusive,

DEFENDANTS.

CASE NO. 21CECG03563

[Case Assigned for All Purposes to Hon.
Jonathan Skiles in Dept. 403]

**~~PROPOSED~~ ORDER GRANTING
FINAL APPROVAL OF CLASS ACTION
SETTLEMENT AND ENTERING
JUDGMENT**

Date: January 18, 2024
Time: 3:30 PM
Dept.: 403

Complaint Filed: December 2, 2021
FAC Filed: February 7, 2022
Trial Date: None Set

1 **TO ALL PARTIES AND TO THEIR ATTORNEYS OF RECORD:**

2 The above captioned Action is a class and representative action lawsuit brought by Plaintiff
3 Shelton Harper (“Class Representative” or “Plaintiff”) against Defendant SAN MAR
4 PROPERTIES (“Defendant”). The Motion for Final Approval of Class Action Settlement came
5 before this Court, on January 19, 2024.

6 **WHEREAS**, Judge Jonathan Skiles granted preliminary approval of the Amended Class
7 Action and PAGA Settlement Agreement (“Agreement”), attached to the concurrently-filed
8 Declaration of Kelsey M. Szamet as Exhibit “1”, on September 11, 2023.

9 **WHEREAS**, Plaintiff Shelton Harper has applied to the Court for an order granting final
10 approval of the Agreement.

11 **WHEREAS**, the Agreement sets forth the terms and conditions for the proposed
12 Agreement and for entry of an Order of Final Approval and entry of final judgment thereon. The
13 Court having read and considered Plaintiff’s Motion for Final Approval of Class Action
14 Settlement; Motion for Approval of Attorneys’ Fees and Costs; the Declarations of Kelsey M.
15 Szamet, Shelton Harper; and Makenna Snow of ILYM Group, Inc.; and the supporting documents
16 annexed thereto, now finds:

17 **NOW THEREFORE, GOOD CAUSE APPEARING, IT IS HEREBY ORDERED:**

18 1. The Court has personal jurisdiction over all Class Members and that the Court has
19 subject matter jurisdiction to approve the Agreement;

20 2. The terms of the Agreement are fair, just, reasonable, and adequate, consistent and
21 in compliance with California Code of Civil Procedure, the California and United States
22 Constitutions (including the due process clauses), the California Rules of Court and any other
23 applicable law, and in the best interest of each of the Parties and the Class Members and is hereby
24 finally approved in all respects.

25 3. The Parties are hereby directed to perform the terms of the Settlement as described
26 in the Agreement according to its terms and provisions.

27 4. The Agreement is binding on Plaintiff and all other Class Members, except those
28 who timely and properly filed Request for Exclusion, as well as their heirs, executors and

1 administrators, successors and assigns.

2 5. There are zero (0) valid requests for exclusion.

3 6. There are no objectors to the Agreement.

4 7. It is ordered that the Class is certified for settlement purposes only. The Court
5 finds that an ascertainable class exists and a well-defined community of interest exists in the
6 questions of law and fact involved because in the context of the Agreement: (i) there are questions
7 of law and fact common to the Class Members which, as to the Agreement and all related matters,
8 predominate over any individual questions; (ii) the Claims of Plaintiff are typical of the Claims of
9 the Class Members; and (iii) in negotiating, entering into and implementing the Agreement,
10 Plaintiff and Plaintiff's Attorneys have fairly and adequately represented and protected the interest
11 of the Class Members.

12 8. The Court finds that the Notice and notice methodology implemented pursuant to
13 this Agreement (i) constituted the best practicable notice; (ii) constituted notice that was
14 reasonably calculated, under the circumstances, to apprise Class Members of the pendency of the
15 Action, their right to object to or exclude themselves from the proposed Agreement and their right
16 to appear at the Final Settlement Hearing; (iii) were reasonable and constituted due, adequate and
17 sufficient notice to all persons entitled to receive notice; and (iv) met all applicable requirements
18 of the California Code of Civil Procedure, the California and United States Constitution (including
19 the Due Process Clause), the California Rules of Court and any other applicable law.

20 9. The Class is hereby made final. The Class is defined as: "all non-exempt employees
21 who are employed or have been employed by SAN MAR PROPERTIES, INC., in the State of
22 California who worked one or more pay periods during the Covered Period." ("Class")

23 10. The "Covered Period" is from December 2, 2017 through May 31, 2022.

24 11. The Aggrieved Employees are hereby made final. The Aggrieved Employees are
25 defined as: "all non-exempt employees who are employed or have been employed by SAN MAR
26 PROPERTIES, INC., in the State of California who worked one or more pay periods during the
27 PAGA Period." ("Aggrieved Employees" or "PAGA Members")

28 12. The "PAGA Period" is from December 2, 2020 through May 31, 2022.

1 13. The Agreement is not an admission by Defendant, nor is this Final Order a finding
2 of the validity of any allegations or of any wrongdoing by Defendant. Neither this Final Order,
3 the Agreement, nor any document referred to herein, nor any action taken to carry out the
4 Settlement, shall be construed or deemed an admission of liability, culpability, negligence, or
5 wrongdoing on the part of Defendant.

6 14. Pursuant to the Agreement, upon entry of this Final Order, Plaintiff and each Class
7 Member shall fully release and discharge the Released Parties pursuant to the following release
8 and expressly waive and relinquish any and all claims, rights or benefits that they may have under
9 California Civil Code § 1542, which provides:

10 “any and all claims, debts, liabilities, demands, obligations,
11 penalties, guarantees, costs, expenses, attorney’s fees, damages,
12 action or causes of action of whatever kind or nature, whether
13 known or unknown, contingent or accrued, that are alleged, or that
14 reasonably could have arisen out of the same facts alleged in the
15 Action, including: (1) failure to pay wages and/or overtime under
16 Labor Code sections 510, 1194, 1194.2, and 1199; (2) failure to
17 provide meal breaks pursuant to Labor Code sections 512 and 226.7;
18 (3) failure to provide rest breaks pursuant to Labor Code section
19 226.7; (4) failure to provide accurate itemized wage statements
20 pursuant to Labor Code section 226(a); (5) waiting time penalties
pursuant to Labor Code section 203; (6) violation of Business &
Professions Code section 17200; and (7) penalties pursuant to Labor
Code section 2699. (collectively, the “Released Claims”). Except as
set forth in Section 6.3 of this Agreement, Participating Class
Members do not release any other claims, including claims for
vested benefits, wrongful termination, violation of the Fair
Employment and Housing Act, unemployment insurance, disability,
social security, workers’ compensation, or claims based on facts
occurring outside the Covered Period.

21 15. Pursuant to the Agreement, upon entry of this Final Order, Plaintiff and each
22 Aggrieved Employee shall fully release and discharge the Released Parties from any and all claims
23 for PAGA penalties that were alleged, or reasonably could have been alleged, based on the PAGA
24 Period facts stated in the Operative Complaint, the PAGA Notice and ascertained in the course of
25 the Action including, violations of Labor Code sections 201, 202, 203, 226(a), 226.7, 510, 512,
26 551, 1194, 1194.2, and 1199 .

27 16. Plaintiff and all Class Members who have not been timely and properly excluded
28 from the Class, and any person acting on their behalf, are permanently barred and enjoined from:

(i) filing, commencing, prosecuting, intervening in, participating in (as class members or otherwise), or receiving any benefits or other relief from, any other lawsuit, in any state or federal court, arbitration, or administrative, regulatory or other proceeding or order in any jurisdiction based on the Released Claims; and (ii) organizing such non-excluded Class Members into a separate class for purposes of pursuing as a purported class action (including by seeking to amend a pending complaint to include class allegations, or by seeking class certification in a pending action) any lawsuit based on or relating to the Released Claims;

17. The Agreement provides that the Gross Settlement Amount is three hundred twenty-five thousand dollars and zero cents (\$325,000.00). The Net Settlement Amount shall be determined according to the terms of the Agreement.

18. The Court orders the calculations and the payments to be made and administered in accordance with the terms of the Agreement.

19. The Court hereby finds that Plaintiff and Class Counsel adequately represented the Class for purposes of entering into and implementing the settlement. The Court hereby confirms Kingsley & Kingsley, APC and Abramson Labor Group as Class Counsel in the Action.

20. The Court hereby finds the unopposed application of Class Counsel for a costs and attorneys' fees award provided for under the proposed Agreement to be fair and reasonable in light of all the circumstances and is hereby granted. Of the Gross Settlement Amount, \$108,333.33 shall be paid for attorney fees and \$6,692.91 shall be paid for litigation costs.

21. The unopposed application of Class Counsel for an enhancement payment to Plaintiff is hereby granted. Of the Gross Settlement Amount, a \$5,000.00 Class Representative Enhancement Payment shall be allocated to Class Representative Shelton Harper.

22. The unopposed application of Class Counsel for claims administration fees to ILYM Group, Inc. is hereby granted. Of the Gross Settlement Amount, ~~\$15,000.00~~ ^{\$8,500} shall be paid for settlement administration fees.

23. Defendant shall have no further liability for costs, expenses, interest, attorneys' fees, or for any other charge, expense, or liability, except as provided for in the Agreement.

24. The Court approves the PAGA Penalties in the amount of \$10,000.00. The Court

1 approves 75% of the PAGA Penalties being allocated to the Labor and Workforce Development
2 Agency ("LWDA") in the amount of \$7,500.00. The Court further directs that the remaining 25%
3 of the PAGA Penalties, in the amount of \$2,500.00 shall be allocated to the Net Settlement Amount
4 for distribution to the Class Members.

5 25. If a Class Member does not cash his or her settlement check by the void date, the
6 uncashed funds shall be transmitted by the Administrator to the State of California Office of the
7 Controller in the name of the class member who did not cash his or her Individual Settlement
8 Payment check.

9 26. Defendant shall have no further liability for costs, expenses, interest, attorneys'
10 fees, or for any other charge, expense, or liability, except as provided for in the Agreement.

11 27. The Court hereby grants and authorizes the Parties, without further approval from
12 the Court, to agree to and to adopt such amendments, modifications and expansions of this
13 Stipulation and all exhibits attached hereto as (i) are consistent with the Final Judgment; and (ii)
14 do not limit the rights of Class Members under the Stipulation.

15 28. Pursuant to California Rule of Court Rule 3.769(h) and C.C.P. §664.4, the Court
16 shall retain jurisdiction over the Action, the Parties, and the Class, as well as the administration
17 and enforcement of the terms of the Settlement of this action to enforce the terms of the judgment.
18 Without affecting the finality of the Final Judgment, the Court shall retain continuing jurisdiction
19 over the Action, the Parties, and the Class, as well as the administration and enforcement of the
20 Settlement. Any disputes or controversies arising with respect to the interpretation,
21 consummation, enforcement, or implementation of the Settlement shall be presented by motion to
22 the Court; provided however, that nothing in this Part shall restrict the ability of the Parties to
23 exercise their rights to terminate the Settlement pursuant to the terms of the Agreement.

24 29. This Final Order shall constitute a final judgment.

25
26 DATED: 4-9-2024


JUDGE OF THE SUPERIOR COURT

(PROOF OF SERVICE)
[CCP 1013(a)(3)]
STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles, State of California. I am over the age of 18 years and not a party to the within action. My business address is 16133 Ventura Boulevard, Suite 1200, Encino, California 91436.

On December 20, 2023, I served all interested parties in this action the following documents described as: **[PROPOSED] ORDER GRANTING FINAL APPROVAL OF CLASS ACTION SETTLEMENT AND ENTERING JUDGMENT** by placing a true copy thereof enclosed in a sealed envelope addressed as follows:

SUTTON HAGUE LAW CORPORATION, P.C. S. Brett Sutton brett@suttonhague.com Jared Hague jared@suttonhague.com Jonathan W. Black jonathan@suttonhague.com Brady Briggs brady@suttonhague.com 5200 N. Palm Ave., Ste. 203 Fresno, California 93704 Attorneys for Defendant	William Zev Abramson Abramson Labor Group 11846 Ventura Blvd., Suite 100 Studio City, CA 91604 <u>Wza@abramsonlabor.com</u> Attorneys for Plaintiff
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[XX] BY ELECTRONIC SERVICE: I caused a true and correct copy thereof to be electronically filed using the Labor and Workforce Development Agency Electronic Filing ("EF") System (<https://dir.tfaforms.net/315>) and service was completed by electronic means by transmittal of the documents referenced herein on the EF System.

[XX] BY ELECTRONIC MAIL TRANSMISSION: I caused the document to be send to the persons at the e-mail address(es) listed on the attached service list. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful. A pdf copy of which was sent via email to the below email address(es).

[XX] (STATE) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on December 20, 2023, at Woodland Hills, California.



Michelle Tanzer