

FILED
Superior Court of California
County of Los Angeles

DEC 06 2023

David W. Slayton, Executive Officer/Clerk of Court

By: N. Navarro, Deputy

SUPERIOR COURT OF CALIFORNIA
COUNTY OF LOS ANGELES

FABIOLA CANO, on behalf of herself and
others similarly situated,

Plaintiff,

v.

CH LABORATORIES, INC.; and DOES 1
to 100, inclusive,

Defendants.

Case No.: 22STCV10449

**ORDER GRANTING
MOTION FOR PRELIMINARY
APPROVAL OF CLASS ACTION
SETTLEMENT ON CONDITIONS**

I. BACKGROUND

Plaintiff Fabiola Cano sues her former employer, Defendant CH Laboratories, Inc., for alleged wage and hour violations. Plaintiff seeks to represent a class of Defendant's current and former non-exempt employees.

1 On March 25, 2022, Plaintiff filed a complaint alleging causes of action for: (1)
2 failure to pay wages for all hours worked at minimum wage in violation of Labor Code
3 §§ 1194 and 1197, (2) failure to pay overtime wages for daily overtime worked in
4 violation of Labor Code §§ 510 and 1194, (3) failure to authorize or permit meal
5 periods in violation of Labor Code §§ 512 and 226.7, (4) failure to timely pay earned
6 wages during employment in violation of Labor Code § 204, (5) failure to provide
7 complete and accurate wage statements in violation of Labor Code § 226, (6) failure to
8 timely pay all earned wages and final paychecks due at time of separation of
9 employment in violation of Labor Code §§ 201, 202, and 203, and (7) unfair business
10 practices in violation of Business and Professions Code §§ 17200, et seq.

11 On August 17, 2022, Plaintiff filed a separate complaint (Case No.
12 22STCV26602) alleging a cause of action for civil penalties pursuant to the Private
13 Attorneys General Act of 2004 (“PAGA”), Labor Code §§ 2689, et seq.

14 On March 13, 2023, the parties attended a mediation session with the Hon. Lisa
15 Hart Cole (Ret.), which resulted in settlement after the parties accepted a proposal by
16 Judge Cole. The terms of settlement were finalized in a Class Action and PAGA
17 Settlement Agreement, attached to the Declaration of Vincent C. Granberry
18 (“Granberry Decl.”) filed June 26, 2023 as Exhibit 1.

19 On April 27, 2023, Plaintiff filed a First Amended Complaint adding a cause of
20 action for civil penalties pursuant to PAGA. On May 2, 2023, Plaintiff submitted a
21 request for dismissal of the separate PAGA action.

22 Plaintiff’s motion for preliminary approval of the settlement came on for hearing
23 on September 7, 2023. The court issued a “checklist” of matters required to be
24 addressed and continued the matter to October 26, 2023 with papers to be filed by
25 October 4, 2023.

1 The papers filed were not complaint with the Court's orders and the matter was
2 again continued to November 15, 2023, with papers to be filed 5 court days in advance.
3 They were not. Instead, moving party filed her papers on the evening of November 14,
4 2023.

5 Accordingly, the Court took the matter under submission and now Court
6 preliminarily grants approval for the settlement on condition that the parties:

- 7
8
9 (1) Clarify by Declaration filed no later than December 15, 2023 that there is no cy
10 pres recipient for excess settlement funds (See Settlement Agreement at 4.4.3, in
11 which the parties and counsel represent they have no interest or relationship with
12 the cy pres recipient but also state that unclaimed funds will go to the California
13 Controller's Unclaimed Property Fund, which is not a cy pres recipient.
- 14 (2) Correct the Notice to delete at page 1, first full paragraph, "is used herein as a
15 placeholder."
- 16 (3) Correct the box at the top of page 3 to reflect the date of the Final Approval
17 hearing
- 18 (4) Correct the box at top of page 3 to reflect the correct Section number (Currently
19 written as See Section ____).
- 20 (5) Correct the Notice at Section 2 to delete "an experienced"
- 21 (6) Correct the underlining in the Notice at section 3 (i).
- 22 (7) Add the contact information for ILYM Group at Sections 9 and 11 of the Notice.
23
24
25

1 Any failure to completely and correctly comply with these conditions may result
2 in denial of preliminary approval.

3
4 **II. THE TERMS OF THE SETTLEMENT**

5 **A. SETTLEMENT CLASS AND RELATED DEFINITIONS**

6 "Class" means a person employed by Defendant in California and classified as
7 an hourly, non-exempt employee who worked for Defendant during the Class Period,
8 except the following individuals: Domitilo Saldana, Bercely Hernandez, Jose Pedraza,
9 Edna Ramirez, Maria Reyes, Irma Bautista, Ana Bautista, and Mayra Calix, as these
10 persons have previously released their claims. (¶1.5)

11 "Class Period" means the period from March 25, 2018 through May 18, 2023.
12 (¶1.12)

13 "Aggrieved Employee" means a person employed by Defendant in California
14 and classified as an hourly, non-exempt employee who worked for Defendant during
15 the PAGA Period. (¶1.4)

16 "PAGA Period" means the period from March 25, 2021 through March 15,
17 2023. (¶1.31)

18 "Participating Class Member" means a Class Member who does not submit a
19 valid and timely Request for Exclusion from the Settlement. (¶1.35)

20 **B. THE MONETARY TERMS OF SETTLEMENT**

21 The essential monetary terms are as follows:

- 22 • The Gross Settlement Amount ("GSA") is **\$120,000** (¶3.1). This includes
23 payment of a PAGA penalty of **\$15,000** to be paid 75% to the LWDA (\$11,250)
24 and 25% to the Aggrieved Employees (\$3,750) (¶3.2.5).
25

- 1 ○ Escalator Clause: Based on its records, Defendant estimates that, as of the
2 date of mediation on March 13, 2023, (1) there are 55 Class Members and
3 2,500 Total Workweeks during the Class Period and (2) there were 50
4 Aggrieved Employees who worked 2,000 Pay Periods during the PAGA
5 Period. If the number of Total Workweeks worked by the Settlement
6 Class during the Class Period is more than 10% greater than this figure
7 (i.e., if there are 2,750 or more Workweeks worked by the Settlement
8 Class Members during the Class Period), Defendant agrees to increase the
9 Gross Settlement Amount on a proportional basis above 10% (i.e., if there
10 was 11% increase in the number workweeks during the Class Period
11 above 2,750, then Defendant would agree to increase the Gross
12 Settlement Amount by 1%). (¶8)
- 13 • The Net Settlement Amount (“Net”) (\$42,500) is the GSA less:
- 14 ○ Up to \$40,000 (33 1/3%) for attorney fees (¶3.2.2);
- 15 ○ Up to \$15,000 for attorney costs (*Ibid.*);
- 16 ○ Up to \$2,500 for a service award to the proposed class representative
17 (¶3.2.1); and
- 18 ○ Up to \$5,000 for settlement administration costs (¶3.2.3).
- 19 • Defendant will separately pay any and all employer payroll taxes owed on the
20 Wage Portions of the Individual Class Payments (¶3.1).
- 21 • Assuming the Court approves all maximum requested deductions, approximately
22 \$42,500 will be available for automatic distribution to participating class
23 members. Assuming full participation, the average settlement share will be
24 approximately \$772.72. (\$42,500 Net ÷ 55 class members = \$772.72). In
25 addition, each Aggrieved Employee will receive a portion of the PAGA penalty,

1 estimated to be \$75 per Aggrieved Employee. (\$3,750 or 25% of \$15,000
2 PAGA penalty ÷ 50 Aggrieved Employees = \$75).

- 3 • There is no Claim Requirement (§3.1).
- 4 • The settlement is not reversionary (§3.1).
- 5 • Individual Settlement Share Calculation: Each Participating Class Member's
6 Individual Class Payment will be calculated by (a) dividing the Net Settlement
7 Amount by the total number of Workweeks worked by all Participating Class
8 Members during the Class Period and (b) multiplying the result by each
9 Participating Class Member's Workweeks. (§3.2.4) Non-Participating Class
10 Members will not receive any Individual Class Payments. The Administrator
11 will retain amounts equal to their Individual Class Payments in the Net
12 Settlement Amount for distribution to Participating Class Members on a pro rata
13 basis. (§3.2.4.2)
- 14 • PAGA Payment Calculation: The Administrator will calculate each Individual
15 PAGA Payment by (a) dividing the amount of the Aggrieved Employees' 25%
16 share of PAGA Penalties (\$3,750) by the total number of PAGA Period Pay
17 Periods worked by all Aggrieved Employees during the PAGA Period and (b)
18 multiplying the result by each Aggrieved Employee's PAGA Period Pay Periods.
19 (§3.2.5.1)
- 20 • Tax Withholdings: Each Participating Class Member's Individual Class Payment
21 will be allocated as 20% to wages; 80% to interest and penalties (§3.2.4.1). The
22 Administrator will report the Individual PAGA Payments on IRS 1099 Forms.
23 (§3.2.5.2)
- 24 • Funding of Settlement: Defendants shall fully fund the Gross Settlement
25 Amount, and also fund the amounts necessary to fully pay Defendant's share of

1 payroll taxes by transmitting the funds to the Administrator no later than 30 days
2 after the Effective Date. (§4.3)

- 3 • Distribution: Within 14 days after Defendant funds the Gross Settlement
4 Amount, the Administrator will mail checks for all Individual Class Payments,
5 all Individual PAGA Payments, the LWDA PAGA Payment, the Administration
6 Expenses Payment, the Class Counsel Fees Payment, the Class Counsel
7 Litigation Expenses Payment, and the Class Representative Service Payment.
8 Disbursement of the Class Counsel Fees Payment, the Class Counsel Litigation
9 Expenses Payment and the Class Representative Service Payment shall not
10 precede disbursement of Individual Class Payments and Individual PAGA
11 Payments. (§4.4)
- 12 • Uncashed Settlement Payment Checks: The face of each check shall prominently
13 state the date (not less than 180 days after the date of mailing) when the check
14 will be voided. (§4.4.1) For any Class Member whose Individual Class Payment
15 check or Individual PAGA Payment check is uncashed and cancelled after the
16 void date, the Administrator shall transmit the funds represented by such checks
17 to the California Controller's Unclaimed Property Fund in the name of the Class
18 Member thereby leaving no "unpaid residue" subject to the requirements of
19 California Code of Civil Procedure Section 384, subd. (b). (§4.4.3)

21 C. TERMS OF RELEASES

- 22 • Releases of Claims: Effective on the date when Defendant fully funds the entire
23 Gross Settlement Amount and funds all employer payroll taxes owed on the
24 Wage Portion of the Individual Class Payments, Plaintiff, Class Members, and
25 Class Counsel will release claims against all Released Parties as follows: (§5)

- 1 • Release by Participating Class Members Who Are Not Aggrieved Employees:
2 All Participating Class Members, on behalf of themselves and their respective
3 former and present representatives, agents, attorneys, heirs, administrators,
4 successors, and assigns, release Released Parties from (i) all claims arising
5 during the Class Period that were alleged, or reasonably could have been alleged,
6 based on the facts stated in the Operative Complaint and ascertained in the
7 course of the Action including, e.g., (a) failure to pay wages for all hours worked
8 at minimum wage; (b) failure to pay all overtime wages for daily overtime
9 worked; (c) failure authorize or permit meal periods; (d) failure to timely pay
10 wages during employment; (e) failure to provide complete and accurate wage
11 statements; (f) failure to timely pay all earned wages and final paychecks due at
12 time of separation of employment; and (g) unfair business practices, *et seq.*

13 Except as set forth in Section 5.3 of this Agreement, Participating Class
14 Members do not release any other claims, including claims for vested benefits,
15 wrongful termination, violation of the Fair Employment and Housing Act,
16 unemployment insurance, disability, social security, workers' compensation, or
17 claims based on facts occurring outside the Class Period. (§5.2)

- 18 • Release by Aggrieved Employees: All Aggrieved Employees are deemed to
19 release, on behalf of themselves and their respective former and present
20 representatives, agents, attorneys, heirs, administrators, successors, and assigns,
21 the Released Parties from all claims for PAGA penalties arising during the
22 PAGA Period that were alleged, or reasonably could have been alleged, based on
23 the facts stated in the Operative Complaint, and the PAGA Notice and
24 ascertained in the course of the Action including, e.g., (a) failure to pay wages
25 for all hours worked at minimum wage; (b) failure to pay all overtime wages for

1 daily overtime worked; (c) failure authorize or permit meal periods; (d) failure to
2 timely pay wages during employment; (e) failure to provide complete and
3 accurate wage statements; and (f) failure to timely pay all earned wages and final
4 paychecks due at time of separation of employment. (§5.3)

- 5 ○ “PAGA Notice” means Plaintiff’s March 25, 2022 letter to Defendant and
6 the LWDA providing notice pursuant to Labor Code section 2699.3,
7 subd.(a). (§1.33)
- 8 ○ “Released PAGA Claims” means the claims being released as described
9 in Paragraph 5.3. (§1.40)
- 10 ● “Released Parties” means: Defendant and each of its former and present
11 directors, officers, shareholders, owners, members, attorneys, insurers,
12 predecessors, successors, assigns, subsidiaries, and affiliates including but not
13 limited to Jay Daly and Brid Nolan. (§1.41)
- 14 ● The named Plaintiff will also provide a general release and a waiver of the
15 protections of Cal. Civ. Code §1542. (§5.1)
- 16 ● The releases are effective on the date when Defendant fully funds the entire
17 Gross Settlement Amount, no later than 30 days after the Effective Date. (§4.3)

19 **D. SETTLEMENT ADMINISTRATION**

- 20 ● The proposed Settlement Administrator is ILYM Group, Inc. (§7.1), which has
21 provided evidence that no counsel are affiliated with it and that it has adequate
22 procedures in place to safeguard the data and funds to be entrusted to it. (See
23 Declaration of Kimberly Sutherland.)
- 24 ● Settlement administration costs are estimated to be \$5,000 (§3.2.3).
- 25 ● Notice: The manner of giving notice is described below.

- Opt Out/Objection Dates: "Response Deadline" means 60 calendar days after the Administrator mails Notice to Class Members and Aggrieved Employees, and shall be the last date on which Class Members may: (a) fax, email, or mail Requests for Exclusion from the Settlement, or (b) fax, email, or mail his or her Objection to the Settlement. Class Members to whom Notice Packets are resent after having been returned undeliverable to the Administrator shall have an additional 14 calendar days beyond the Response Deadline has expired. (§1.43)
The same deadline applies to the submission of workweek disputes. (§7.6)
 - Because future PAGA claims are subject to claim preclusion upon entry of the Judgment, Non-Participating Class Members who are Aggrieved Employees are deemed to release the claims identified in Paragraph 5.3 of this Agreement and are eligible for an Individual PAGA Payment. (§7.5.4)
 - If the number of valid Requests for Exclusion identified in the Exclusion List exceeds 10% of the total of all Class Members, Defendant may, but is not obligated, elect to withdraw from the Settlement. (§9)
- Notice of Final Judgment will be posted on the Settlement Administrator's website (§7.8.1).

III. SETTLEMENT STANDARDS AND PROCEDURE

California Rules of Court, rule 3.769(a) provides: "A settlement or compromise of an entire class action, or of a cause of action in a class action, or as to a party, requires the approval of the court after hearing." "Any party to a settlement agreement may serve and file a written notice of motion for preliminary approval of the settlement. The settlement agreement and proposed notice to class members must be filed with the

1 motion, and the proposed order must be lodged with the motion.” See Cal. Rules of
2 Court, rule 3.769(c).

3 “In a class action lawsuit, the court undertakes the responsibility to assess
4 fairness in order to prevent fraud, collusion or unfairness to the class, the settlement or
5 dismissal of a class action. The purpose of the requirement [of court review] is the
6 protection of those class members, including the named plaintiffs, whose rights may not
7 have been given due regard by the negotiating parties.” *Consumer Advocacy Group,*
8 *Inc. v. Kintetsu Enterprises of America* (2006) 141 Cal. App.4th 46, 60 [internal
9 quotation marks omitted]; *Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224,
10 245, disapproved on another ground in *Hernandez v. Restoration Hardware, Inc.* (2018)
11 4 Cal. 5th 260 (“*Wershba*”), [Court needs to “scrutinize the proposed settlement
12 agreement to the extent necessary to reach a reasoned judgment that the agreement is
13 not the product of fraud or overreaching by, or collusion between, the negotiating
14 parties, and that the settlement, taken as a whole, is fair, reasonable and adequate to all
15 concerned.”] [internal quotation marks omitted].

16 “The burden is on the proponent of the settlement to show that it is fair and
17 reasonable. However, “a presumption of fairness exists where: (1) the settlement is
18 reached through arm's-length bargaining; (2) investigation and discovery are sufficient
19 to allow counsel and the court to act intelligently; (3) counsel is experienced in similar
20 litigation; and (4) the percentage of objectors is small.” *Wershba*, 91 Cal. App. 4th at
21 245 [citing *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1802].

22 Notwithstanding an initial presumption of fairness, “the court should not give
23 rubber-stamp approval.” *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th
24 116, 130 (“*Kullar*”). “[W]hen class certification is deferred to the settlement stage, a
25 more careful scrutiny of the fairness of the settlement is required.” *Carter v. City of*

1 *Los Angeles* (2014) 224 Cal.App.4th 808, 819. “To protect the interests of absent class
2 members, the court must independently and objectively analyze the evidence and
3 circumstances before it in order to determine whether the settlement is in the best
4 interests of those whose claims will be extinguished.” *Kullar*, 168 Cal. App. 4th at 130.
5 In that determination, the court should consider factors such as “the strength of
6 plaintiffs' case, the risk, expense, complexity and likely duration of further litigation,
7 the risk of maintaining class action status through trial, the amount offered in
8 settlement, the extent of discovery completed and stage of the proceedings, the
9 experience and views of counsel, the presence of a governmental participant, and the
10 reaction of the class members to the proposed settlement.” *Id.* at 128. “Th[is] list of
11 factors is not exclusive and the court is free to engage in a balancing and weighing of
12 factors depending on the circumstances of each case.” *Wershba*, 91 Cal. App. 4th at
13 245.

14 At the same time, “[a] settlement need not obtain 100 percent of the damages
15 sought in order to be fair and reasonable. Compromise is inherent and necessary in the
16 settlement process. Thus, even if ‘the relief afforded by the proposed settlement is
17 substantially narrower than it would be if the suits were to be successfully litigated,’
18 this is no bar to a class settlement because ‘the public interest may indeed be served by
19 a voluntary settlement in which each side gives ground in the interest of avoiding
20 litigation.’” *Id.* at 250.

21 22 **IV. ANALYSIS OF SETTLEMENT AGREEMENT**

23 24 **A. THERE IS A PRESUMPTION OF FAIRNESS**

25 The settlement is entitled to a presumption of fairness for the following reasons:

1
2 **1. The settlement was reached through arm's-length bargaining**

3 On March 13, 2023, the parties attended a mediation session with the Hon. Lisa
4 Hart Cole (Ret.), which resulted in settlement after the parties accepted a proposal by
5 Judge Cole. (Granberry Decl. ¶6.)
6

7 **2. The investigation and discovery were sufficient**

8 Plaintiff's counsel represents that as part of settlement negotiations, the parties
9 engaged in formal and informal discovery exchange where Plaintiff's counsel and their
10 expert reviewed and analyzed the following: (1) all of the electronic time and pay data
11 for all of the putative class members and alleged aggrieved employees that Defendant
12 had available; (2) the total number of current and former putative class members and
13 aggrieved employees who worked during the relevant time periods; (3) the total number
14 of workweeks at issue during the relevant time periods; (4) the total number of pay
15 periods at issue during the relevant time periods; (5) the average hourly rate for the
16 putative class members; (6) photographs and videos of Defendant's worksite; and (7)
17 other relevant information, including Plaintiff's personnel file, wage statements, and
18 time records. (*Id.* at ¶8.) Plaintiff's counsel and their expert reviewed the data
19 produced by Defendant which included 100% of the pay data for all putative class
20 members and time punch data which spanned from January 2018 through February
21 2023. (*Ibid.*)

22 This is sufficient information to value the case for settlement purposes.
23

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25

1 **3. Counsel is experienced in similar litigation**

2 Class Counsel represent that they are experienced in class action litigation,
3 including wage and hour class actions. (*Id.* at ¶28.)

4
5 **4. Percentage of the class objecting**

6 This cannot be determined until the final fairness hearing. Weil & Brown et al.,
7 Cal. Prac. Guide: Civ. Pro. Before Trial (The Rutter Group 2019) ¶ 14:139.18 [“Should
8 the court receive objections to the proposed settlement, it will consider and either sustain
9 or overrule them at the fairness hearing.”].

10
11 **B. THE SETTLEMENT MAY PRELIMINARILY BE CONSIDERED**
12 **FAIR, ADEQUATE, AND REASONABLE**

13 Notwithstanding a presumption of fairness, the settlement must be evaluated in its
14 entirety. The evaluation of any settlement requires factoring unknowns. “As the court
15 does when it approves a settlement as in good faith under Code of Civil Procedure
16 section 877.6, the court must at least satisfy itself that the class settlement is within the
17 ‘ballpark’ of reasonableness. See *Tech-Bilt, Inc. v. Woodward-Clyde & Associates* (1985)
18 38 Cal.3d 488, 499–500. While the court is not to try the case, it is ‘called upon to
19 consider and weigh the nature of the claim, the possible defenses, the situation of the
20 parties, and *the exercise of business judgment* in determining whether the proposed
21 settlement is reasonable.’ (*City of Detroit v. Grinnell Corporation, supra*, 495 F.2d at p.
22 462, italics added.)” *Kullar*, 168 Cal.App.4th at 133 (emphasis in original).

23 //

24 //

1. Amount Offered in Settlement

The most important factor is the strength of the case for plaintiffs on the merits, balanced against the amount offered in settlement.” (*Id.* at 130.)

Class Counsel estimated Defendant’s maximum exposure at \$1,140,310, based on the following analysis:

Violation	Maximum Exposure
Unpaid Wages	\$92,055.00
Meal Break Violations	\$87,500.00
Timely Wages Claim	\$11,000.00
Wage Statement Penalties	\$220,000.00
Waiting Time Penalties	\$159,600.00
PAGA Penalties	\$570,155.00
Total	\$1,140,310.00

(Granberry Decl. ¶¶11-27.)

Class Counsel obtained a gross settlement valued at \$120,000. This is approximately 10.5% of Defendant’s maximum exposure and in excess of the claim for unpaid wages.

2. The Risks of Future Litigation

The case is likely to be expensive and lengthy to try. Procedural hurdles (e.g., motion practice and appeals) are also likely to prolong the litigation as well as any recovery by the class members. Even if a class is certified, there is always a risk of decertification. *Weinstat v. Dentsply Intern., Inc.* (2010) 180 Cal.App.4th 1213, 1226 [“Our Supreme Court has recognized that trial courts should retain some flexibility in conducting class actions, which means, under suitable circumstances, entertaining

1 successive motions on certification if the court subsequently discovers that the propriety
2 of a class action is not appropriate.”].) Further, the settlement was negotiated and
3 endorsed by Class Counsel who, as indicated above, are experienced in class action
4 litigation. Based upon their investigation and analysis, the attorneys representing
5 Plaintiff and the class are of the opinion that this settlement is fair, reasonable, and
6 adequate. (Granberry Decl. ¶27.)

7 The Court also notes that Plaintiff brings a PAGA claim on behalf of the LWDA,
8 which was sent a copy of the Settlement Agreement on October 4, 2023 and has not yet
9 objected. (Exhibit 7 to Antonia McKee Dec. filed October 4, 2023. Any objection by it
10 will be considered at the final fairness hearing.

11 12 **3. The Releases Are Limited**

13 The Court has reviewed the Releases to be given by the absent class members and
14 the named plaintiff. The releases, described above, are tailored to the pleadings and
15 release only those claims in the pleadings. There is no general release by the absent
16 class. The named plaintiff’s general release is appropriate given that she was represented
17 by counsel in its negotiation.

18 19 **4. Conclusion**

20 Class Counsel estimated Defendant’s maximum exposure at \$1,140,310. Class
21 Counsel obtained a gross settlement valued at \$120,000. This is approximately 10.5% of
22 Defendant’s maximum exposure, which, given the uncertain outcomes, including the
23 potential that the class might not be certified, that liability is a contested issue, and that
24 the full amount of penalties would not necessarily be assessed even if the class is certified
25 and liability found, the settlement is within the “ballpark of reasonableness.”

1 **C. CONDITIONAL CLASS CERTIFICATION MAY BE GRANTED**

2 A detailed analysis of the elements required for class certification is not required,
3 but it is advisable to review each element when a class is being conditionally certified.

4 *Amchem Products, Inc. v. Winsor* (1997) 521 U.S. 591, 620, 622-627. The party
5 advocating class treatment must demonstrate the existence of an ascertainable and
6 sufficiently numerous class, a well-defined community of interest, and substantial
7 benefits from certification that render proceeding as a class superior to the alternatives.”
8 *Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal.4th 1004, 1021.

9 **1. The Proposed Class is Numerous**

10 There are approximately 55 putative Class Members. (Granberry Decl. ¶11.)
11 Numerosity is established. *Franchise Tax Bd. Limited Liability Corp. Tax Refund*
12 *Cases* (2018) 25 Cal.App.5th 369, 393: stating that the “*requirement that there be many*
13 *parties to a class action is liberally construed,*” and citing examples wherein classes of
14 as little as 10, *Bowles v. Superior Court* (1955) 44 Cal.2d 574, and 28, *Hebbard v.*
15 *Colgrove* (1972) 28 Cal.App.3d 1017, were upheld).

16 **2. The Proposed Class Is Ascertainable**

17 “A class is ascertainable, as would support certification under statute
18 governing class actions generally, when it is defined in terms of objective
19 characteristics and common transactional facts that make the ultimate identification
20 of class members possible when that identification becomes necessary.” *Noel v. Thrifty*
21 *Payless, Inc.* (2019) 7 Cal.5th 955, 961 (*Noel*).

22 The class is defined above. Class Members are ascertainable through
23 Defendant’s records. (Granberry Decl. ¶11.)

24 **3. There Is A Community of Interest**

1 “The community of interest requirement involves three factors: ‘(1) predominant
2 common questions of law or fact; (2) class representatives with claims or defenses typical
3 of the class; and (3) class representatives who can adequately represent the class.’”
4 *Linder v. Thrifty Oil Co.* (2000) 23 Cal.4th 429, 435.

5 As to commonality, Plaintiff contends that common questions of law and fact
6 include, but are not limited to: 1) Whether Defendant failed to pay minimum and
7 overtime wages; 2) Whether Defendant failed to provide the Class Members meal periods
8 and premium wages for missed meal periods; 3) Whether Defendant failed to pay timely
9 wages to Class Members; 4) Whether Defendant failed to provide the Class Members
10 complete and accurate wage statements; 5) Whether Class Members are entitled to
11 waiting time penalties for Defendant’s failure to pay all wages upon separation of
12 employment; and 6) Whether Defendant violated Business and Professions Code section
13 17200. (MPA at 20:1-9.)

14 As to typicality, Plaintiff contends that she suffered the same alleged violations
15 (e.g. failure to pay minimum and overtime wages, failure to pay meal period premium
16 wages for non-compliant meal periods, failure to pay timely wages during employment,
17 failure to provide complete and accurate wage statements, and failure to pay all wages
18 due upon separation of employment) as the class as a whole did and, thus, the claims of
19 the named Plaintiff fairly represent the claims of the class as a whole. (*Id.* at 19:6-12.)

20 As to adequacy, Plaintiff represents that she has participated in the litigation and is
21 aware of the risks and duties of serving as class representative. (Declaration of Fabiola
22 Cano ¶¶4-9.) As previously stated, Class Counsel have experience in class action
23 litigation.

24 **4. Substantial Benefits Exist**

25

1 Given the relatively small size of the individual claims, a class action is superior to
2 separate actions by the class members.

3
4 **D. THE PROPOSED NOTICE PLAN MEETS THE REQUIREMENTS**
5 **OF DUE PROCESS**

6 The purpose of notice is to provide due process to absent class members. A practical
7 approach is required, in which the circumstances of the case determine what forms of
8 notice will adequately address due process concerns. *Noel*, 7 Cal.5th at 982. California
9 Rules of Court, rule 3.766 (e) provides that in determining the manner of the notice, the
10 court must consider: (1) the interests of the class; (2) the type of relief requested; (3) the
11 stake of the individual class members; (4) the cost of notifying class members; (5) the
12 resources of the parties; (6) the possible prejudice to class members who do not receive
13 notice; and (7) the res judicata effect on class members.

14 **1. Method of class notice**

15 Not later than 15 days after the Court grants Preliminary Approval of the
16 Settlement, Defendant will simultaneously deliver the Class Data to the Administrator,
17 in the form of a Microsoft Excel spreadsheet. (§4.2) Using best efforts to perform as
18 soon as possible, and in no event later than 14 days after receiving the Class Data, the
19 Administrator will send to all Class Members identified in the Class Data, via first-class
20 United States Postal Service ("USPS") mail, the Class Notice with Spanish translation,
21 if applicable. Before mailing Class Notices, the Administrator shall update Class
22 Member addresses using the National Change of Address database. (§7.4.2)

23 Not later than 3 business days after the Administrator's receipt of any Class
24 Notice returned by the USPS as undelivered, the Administrator shall re-mail the Class
25 Notice using any forwarding address provided by the USPS. If the USPS does not

1 provide a forwarding address, the Administrator shall conduct a Class Member Address
2 Search, and re-mail the Class Notice to the most current address obtained. The
3 Administrator has no obligation to make further attempts to locate or send Class Notice
4 to Class Members whose Class Notice is returned by the USPS a second time. (§7.4.3)

5 The deadlines for Class Members' written objections, Challenges to Workweeks
6 and/or Pay Periods, and Requests for Exclusion will be extended an additional 14 days
7 beyond the 60 days otherwise provided in the Class Notice for all Class Members
8 whose notice is re-mailed. The Administrator will inform the Class Member of the
9 extended deadline with the re-mailed Class Notice. (§7.4.4)

10 **2. Content of class notice.**

11 A copy of the proposed class notice is attached to the Settlement Agreement as
12 Exhibit A. The notice includes information such as: a summary of the litigation; the
13 nature of the settlement; the terms of the settlement agreement; the maximum
14 deductions to be made from the gross settlement amount (i.e., attorney fees and costs,
15 the enhancement award, and claims administration costs); the procedures and deadlines
16 for participating in, opting out of, or objecting to, the settlement; the consequences of
17 participating in, opting out of, or objecting to, the settlement; and the date, time, and
18 place of the final approval hearing. See Cal Rules of Court, rule 3.766(d). It is to be
19 given in both English and Spanish (§1.11).

20 **3. Settlement Administration Costs**

21 Settlement administration costs are capped at **\$5,000**, including the cost of notice
22 (§3.2.3). Prior to the time of the final fairness hearing, the settlement administrator
23 must submit a declaration attesting to the total costs incurred and anticipated to be
24 incurred to finalize the settlement for approval by the Court.

E. ATTORNEY FEES AND COSTS

California Rule of Court, rule 3.769(b) states: “Any agreement, express or implied, that has been entered into with respect to the payment of attorney fees or the submission of an application for the approval of attorney fees must be set forth in full in any application for approval of the dismissal or settlement of an action that has been certified as a class action.”

Ultimately, the award of attorney fees is made by the court at the fairness hearing, using the lodestar method with a multiplier, if appropriate. *PLCM Group, Inc. v. Drexler* (2000) 22 Cal.4th 1084, 1095-1096; *Ramos v. Countrywide Home Loans, Inc.* (2000) 82 Cal.App.4th 615, 625-626; *Ketchum III v. Moses* (2000) 24 Cal.4th 1122, 1132-1136. In common fund cases, the court may use the percentage method. If sufficient information is provided a cross-check against the lodestar may be conducted. *Laffitte v. Robert Half International, Inc.* (2016) 1 Cal.5th 480, 503. Despite any agreement by the parties to the contrary, “the court ha[s] an independent right and responsibility to review the attorney fee provision of the settlement agreement and award only so much as it determined reasonable.” *Garabedian v. Los Angeles Cellular Telephone Company* (2004) 118 Cal.App.4th 123, 128.

The question of class counsel’s entitlement to **\$40,000** (33 1/3%) in attorney fees will be addressed at the final fairness hearing when class counsel brings a noticed motion for attorney fees. If a lodestar analysis is requested class counsel must provide the court with current market tested hourly rate information and billing information so that it can properly apply the lodestar method and must indicate what multiplier (if applicable) is being sought. Counsel should also brief why the fees should exceed 25% given the delays in presenting the settlement for approval.

1 Class counsel should also be prepared to justify the costs sought (capped at
2 **\$15,000**) by detailing how they were incurred.

3
4 **F. SERVICE AWARD**

5 The Settlement Agreement provides for a service award of up to **\$2,500** for the
6 class representative (§3.2.1). Trial courts should not sanction enhancement awards of
7 thousands of dollars with “nothing more than *pro forma* claims as to ‘countless’ hours
8 expended, ‘potential stigma’ and ‘potential risk.’ Significantly more specificity, in the
9 form of quantification of time and effort expended on the litigation, and in the form of
10 reasoned explanation of financial or other risks incurred by the named plaintiffs, is
11 required in order for the trial court to conclude that an enhancement was ‘necessary to
12 induce [the named plaintiff] to participate in the suit’” *Clark v. American*
13 *Residential Services LLC* (2009) 175 Cal.App.4th 785, 806-807, italics and ellipsis in
14 original.

15 The Court will decide the issue of the enhancement award at the time of final
16 approval.

17
18 **V. CONCLUSION AND ORDER**

19 Contingent upon the parties addressing the above-listed issues the Court hereby:

- 20 (1) Grants preliminary approval of the settlement as fair, adequate, and
21 reasonable;
22 (2) Grants conditional class certification;
23 (3) Appoints Fabiola Cano as Class Representative;
24 (4) Appoints Lavi & Ebrahimian, LLP as Class Counsel;
25 (5) Appoints ILYM Group, Inc. as Settlement Administrator;

1 (6) Approves the proposed notice plan; and

2 (7) Approves the proposed schedule of settlement proceedings as follows:

- 3 • Deadline for Defendant to provide class list to settlement administrator:
- 4 December 20, 2023 (within 15 days from preliminary approval)
- 5 • Deadline for settlement administrator to mail notices: January 3, 2024 (within 14
- 6 days after receiving the Class Data)
- 7 • Deadline for class members to opt out: March 4, 2024 (60 calendar days from
- 8 the initial mailing of the Notice Packets)
- 9 • Deadline for class members to object: March 4, 2024 (60 calendar days from the
- 10 initial mailing of the Notice Packets)
- 11 • Deadline for class counsel to file motion for final approval:
- 12 April 29, 2024 (16 court days prior to final fairness hearing)
- 13 • Final fairness hearing: May 21, 2024, at 9:00am.

14 **Any failure to fully and timely comply with the contingencies may result in**

15 **the revocation of this Order in its entirety.**

16

17 Dated: 12/5/23

Maren E. Nelson

18 MAREN E. NELSON

19 Judge of the Superior Court

20

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