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12 Attorneys for Plaintiff(s),

13 MARTHA P. BRIANO MARTINEZ, and all others similarly situated

14 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

15 **FOR THE COUNTY OF SONOMA**

16 **(UNLIMITED JURISDICTION)**

17
18 MARTHA P. BRIANO MARTINEZ, on behalf
19 of herself, all others similarly situated, the
20 general public, and as an “aggrieved employee”
21 on behalf of other “aggrieved employees” under
the Labor Code Private Attorneys General Act of
2004,

22 *Plaintiff(s),*

23 vs.

24 NOR CAL FOODS, LLC, a California
corporation; and DOES 1–50, inclusive,

25 *Defendant(s).*

Case No. SCV-270596

**[PROPOSED] ORDER
PRELIMINARILY APPROVING
CLASS ACTION SETTLEMENT**

Hearing Dept.: 16, The Hon. Patrick
Broderick

Action filed: April 13, 2022



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1 The Motion of Plaintiff Martha P. Briano Martinez (hereafter referred to as “Plaintiff”)
2 for Preliminary Approval of a Class Action Settlement (the “Motion”) was considered by the
3 Court, The Hon. Patrick Broderick presiding. The Court having considered the Motion, the Joint
4 Stipulation of Class Action Settlement and Release of Claims (“Settlement” or “Settlement
5 Agreement”), and supporting papers, HEREBY ORDERS THE FOLLOWING:

6
7 1. The Court grants preliminary approval of the Settlement and the Settlement Class
8 based upon the terms set forth in the Settlement filed as an Exhibit to the Motion for Preliminary
9 Approval. All terms herein shall have the same meaning as defined in the Settlement. The Court
10 has determined there is sufficient evidence to preliminarily determine that (a) the terms of the
11 Settlement appear to be fair, adequate, and reasonable to the Settlement Class and (b) the
12 Settlement falls within the range of reasonableness and appears to be presumptively valid, subject
13 only to any objections that may be raised at the final hearing and final approval by this Court. The
14 Court will make a determination at the hearing on the motion for final approval of class action
15 settlement (the “Final Approval Hearing”) as to whether the Settlement is fair, adequate and
16 reasonable to the Settlement Class.
17
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19 2. For purposes of this Preliminary Approval Order, the “Settlement Class” means
20 The “Settlement Class” or “Class Members” consists of means all persons employed by
21 Defendant in California and classified as hourly, non-exempt employees who worked for
22 Defendant during the Class Period (collectively “Class Members”), who worked anytime during
23 the Class Period. The “Class Period” shall mean the period of time from April 13, 2018, through
24 the date of preliminary approval. Defendant estimates that at the time of the mediation on January
25 10, 2023, there were 131 potential Settlement Class Members. The “Effective Date” means as
26 follows: If no objection to this Settlement or to any of the terms and or conditions of the
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1 Settlement are filed by Plaintiff, another member of the Settlement class, or any intervenor to this
2 Lawsuit, the Effective Date shall occur on the day that the Court enters an order of final approval
3 of this Settlement; however, if any objection to this Settlement or to any of the terms and or
4 conditions of the Stipulation is filed by a member of the Settlement class, or any intervenor to
5 this Lawsuit, the Effective Date shall occur upon the expiration of the time for the filing any
6 appeal of the order of final approval of this Settlement. If an appeal is filed or any writ granted,
7 then the Effective Date shall occur after the appeal has been dismissed or the writ dissolved and
8 when there is no further time to appeal the dismissal of the appeal or the dissolution of the writ.
9 The occurrence of the Effective Date is a prerequisite to any obligation of Defendant to pay any
10 funds into the Settlement Account.
11

12
13 3. This action is provisionally certified pursuant to section 382 of the California Code
14 of Civil Procedure and Rule 3.760, et seq. of the California Rules of Court as a class action for
15 purposes of settlement only with respect to the proposed Settlement Class.
16

17 4. The Court hereby preliminarily finds that the Settlement was the product of
18 serious, informed, non-collusive negotiations conducted at arm's length by the Parties. In making
19 this preliminary finding, the Court considered the nature of the claims set forth in the pleadings,
20 the amounts and kinds of benefits which shall be paid pursuant to the Settlement, the allocation
21 of Settlement proceeds to the Settlement Class, and the fact that the Settlement represents a
22 compromise of the Parties' respective positions. The Court further preliminarily finds that the
23 terms of the Settlement have no obvious deficiencies and do not improperly grant preferential
24 treatment to any individual Class Member. Accordingly, the Court preliminarily finds that the
25 Settlement was entered into in good faith.
26

27 5. The Court finds that the dates set forth in the Settlement for mailing and
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1 distribution of the Class Notice meet the requirements of due process and provide the best notice
2 practicable under the circumstances, and constitute due and sufficient notice to all persons entitled
3 thereto, and directs the mailing of the Class Notice by first class mail to the Settlement Class as
4 set forth in the Settlement. Accordingly, the Court orders the following implementation schedule
5 for further proceedings:
6

7 a. By fifteen (15) days, Defendant shall provide ILYM, Group, Inc., the
8 appointed Settlement Administrator, with: (a) An electronic database of all
9 Class Members, last known mailing address, Social Security number and
10 Defendant's employee identification number ("Class Members' Data"); and
11 (b) Corresponding to each Class Member's name, Defendant shall provide a
12 figure indicating the total number of Work Weeks during the Class Period in
13 which Defendant employed the Class Member. That number of Work Weeks
14 shall be referred to as that Class Member's "Individual Work Weeks;" (c) If
15 any of the Class Members' Data are unavailable to Defendant, Defendant will
16 so inform Class Counsel and the Parties will make their best efforts to
17 reconstruct or otherwise agree upon the Class Members' Data prior to when it
18 must be submitted to the Settlement Administrator. Class Members' Data will
19 otherwise remain confidential and will not be disclosed to anyone, except as
20 necessary to applicable taxing authorities, or pursuant to Defendant's express
21 written authorization or by order of the Court.
22
23
24

25 b. **Mailing of Class Notice.** Approximately fourteen (14) days after receiving the
26 Class Members' Data, or as soon thereafter as it can do so, the Settlement
27 Administrator will mail the Class Notice to all identified Class Members via
28



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1 first-class U.S. mail using the mailing address information provided by
2 Defendant, unless modified by any updated address information that the
3 Settlement Administrator obtains in the course of administration of the
4 Settlement.

5
6 c. **Returned Class Notice.** If a Class Notice is returned because of an incorrect
7 address, the Settlement Administrator will promptly, and not later than ten (10)
8 days from receipt of the returned Class Notice, search for a more current
9 address for the Class Member and re-mail the Class Notice to the Class
10 Member. The Settlement Administrator will use the Class Members' Data and
11 otherwise work with Defendant's Counsel and Class Counsel to find a more
12 current address. The Settlement Administrator will be responsible for taking
13 reasonable steps, consistent with its agreed-upon job parameters, court orders,
14 and fee, to trace the mailing address of any Class Member for whom a Class
15 Notice is returned as undeliverable by the U.S. Postal Service. These
16 reasonable steps shall include the tracking of all undelivered mail; performing
17 address searches for all mail returned without a forwarding address; and
18 promptly re-mailing to Class Members for whom new addresses are found. If
19 the Class Notice is re-mailed, the Settlement Administrator will note for its
20 own records and notify Class Counsel and Defendant's Counsel of the date and
21 address of each such re-mailing as part of a weekly status report provided to
22 the Parties.

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26 d. **Declaration of Settlement Administrator.** Not later than twenty-one (21)
27 court days prior to the Final Approval Hearing, the Settlement Administrator
28



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1 will provide the Parties for filing with the Court a declaration of due diligence
2 setting forth its compliance with its obligations under this Agreement. Prior to
3 the Final Approval Hearing, the Settlement Administrator will supplement its
4 declaration of due diligence if any material changes occur from the date of the
5 filing of its prior declaration.
6

7 **e. Requests for Exclusion from Settlement; and Objections to Settlement.**

8 Class Members may submit requests to be excluded from the effect of the
9 Settlement, or objections to the Settlement, pursuant to the following
10 procedures:
11

12 **i. Request for Exclusion from Settlement.** A Class Member may
13 request to be excluded from the effect of this Agreement, and any
14 payment of amounts under this Agreement, by timely mailing a letter
15 to the Settlement Administrator stating that the Class Member wants to
16 be excluded from this Action. This letter must include the Class
17 Member's name, address, telephone number, and signature. To be valid
18 and timely, the request to be excluded must be postmarked by the date
19 specified in the Class Notice (60 days from the initial mailing of the
20 Class Notice by the Settlement Administrator). A Class Member who
21 properly submits a valid and timely request to be excluded from the
22 Action shall not receive any payment of any kind in connection with
23 this Agreement or this Action, shall not be bound by or receive any
24 benefit of this Agreement, and shall have no standing to object to the
25 Settlement. A request for exclusion must be mailed to the Settlement
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1 Administrator at the address provided on the Class Notice. The
2 Settlement Administrator shall transmit the request for exclusion to
3 counsel for the Parties as follows:

4 *To Class Counsel:*

5 David G. Spivak, Esq.
6 The Spivak Law Firm
7 8605 Santa Monica Bl
8 PMB 42554
9 West Hollywood, CA 90069

To Defense Counsel:

Ian B. Wieland
Sagaser, Watkins & Wieland PC
5260 N. Palm Ave.
Ste. 400
Fresno, CA 93704

10
11 ii. **Objections to Settlement.** The Class Notice will provide that any
12 Class Member who does not request exclusion from the Action and
13 who wishes to object to the Settlement should submit an objection in
14 writing to the Settlement Administrator by 60 days after the Settlement
15 Administrator mails the Class Notice, a written objection to the
16 Settlement which sets forth the grounds for the objection and the other
17 information required by this paragraph. The objection should be mailed
18 to the Settlement Administrator at the address provided on the Class
19 Notice. The Settlement Administrator shall transmit the objections to
20 counsel for the Parties as follows:

21
22
23 *To Class Counsel:*

24 David G. Spivak, Esq.
25 The Spivak Law Firm
26 8605 Santa Monica Bl
27 PMB 42554
28 West Hollywood, CA 90069

To Defense Counsel:

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1 The written objection should state the objecting Class Member's full
2 name, address, and the approximate dates of his or her employment
3 with Defendant. The written objection should state the basis for each
4 specific objection and any legal support in clear and concise terms. The
5 written objection also should state whether the Class Member intends
6 to formally intervene and become a party of record in the action, and
7 upon formally intervening, appear and argue at the Final Approval
8 Hearing. However, the objectors will be provided with the opportunity
9 to speak at the final approval hearing regardless of whether they have
10 filed an appearance or submitted a written opposition beforehand.

11
12
13 If the objecting Class Member does not formally intervene in the action
14 and/or the Court rejects the Class Member's objection, the Class
15 Member may still be bound by the terms of this Agreement.

- 16 f. **Report.** Not later than fourteen (14) days after the deadline for submission of
17 requests for exclusion, the Settlement Administrator will provide the Parties
18 with a complete and accurate list of all Class Members who sent timely
19 requests to be excluded from the Action and all Class Members who objected
20 to the settlement.
21

22 6. The Court approves, as to form and content, the Class Notice, Exclusion Request
23 form, and Work Weeks Dispute form in substantially the form attached as Exhibit A to the
24 Settlement.

25 7. The Court approves, for settlement purposes only, David Spivak of The Spivak
26 Law Firm and Walter L. Haines of United Employees Law Group, PC as Class Counsel.
27
28



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1 8. The Court approves, for settlement purposes only, Martha P. Briano Martinez as
2 the Class Representative.

3 9. The Court approves ILYM Group, Inc. as the Settlement Administrator.

4 10. The Court preliminarily approves Class Counsel's request for attorneys' fees and
5 costs subject to final review by the Court.

6 11. The Court preliminarily approves the estimated Settlement Administrator costs
7 payable to the Settlement Administrator subject to final review by the Court.

8 12. The Court preliminarily approves Plaintiff's Class Representative Payment subject
9 to final review by the Court.

10 13. A Final Approval Hearing shall be held on _____ at _____.m. in the
11 Superior Court for the State of California, County of Sonoma, located at Sonoma Superior Court,
12 600 Administration Avenue, Room 107J, Santa Rosa, CA 95403-2878 to consider the fairness,
13 adequacy and reasonableness of the proposed Settlement preliminarily approved by this
14 Preliminary Approval Order, and to consider the application of Class Counsel for attorneys' fees
15 and costs and the Class Representative Payment to the Class Representative. The notice of motion
16 and all briefs and materials in support of the motion for final approval of class action settlement
17 and motion for attorneys' fees and litigation costs shall be served and filed with this Court on or
18 before sixteen (16) Court days before the Final Approval Hearing.

19 14. If for any reason the Court does not execute and file a final approval order and
20 judgment, or if the Effective Date, as defined in the Settlement, does not occur for any reason, the
21 proposed Settlement that is the subject of this order, and all evidence and proceedings had in
22 connection therewith, shall be without prejudice to the status quo ante rights of the Parties to the
23 litigation, as more specifically set forth in the Settlement.



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1 15. The Court expressly reserves the right to adjourn or continue the Final Approval
2 Hearing from time to time without further notice to members of the Class. The Plaintiff shall give
3 prompt notice of any continuance to Settlement Class Members who object to the Settlement.

4 **IT IS SO ORDERED.**

5
6 DATED: _____

THE HON. PATRICK BRODERICK
JUDGE OF THE SUPERIOR COURT



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