

**BLUMENTHAL NORDREHAUG BHOWMIK
DE BLOUW LLP**

Norman B. Blumenthal (SBN #068687)
Kyle R. Nordrehaug (SBN #205975)
Aparajit Bhowmik (SBN #248066)
2255 Calle Clara
La Jolla, CA 92037
Telephone: (858) 551-1223
Facsimile: (858) 551-1232
Email: Kyle@bamlawca.com

KINGSLEY & KINGSLEY, APC

ERIC B. KINGSLEY, Esq. (SBN 185123)
eric@kingsleykingsley.com
KELSEY M. SZAMET, Esq. (SBN 260264)
kelsey@kingsleykingsley.com
16133 Ventura Blvd., Suite 1200
Encino, CA 91436
Tel: (818) 990-8300, Fax (818) 990-2903

Attorneys for Plaintiffs

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SANTA CLARA

GINA MARTINEZ, ISMAEL ORTEGA,
JESSICA SAELOR, as individuals, on behalf
of themselves and others similarly situated,

Plaintiffs,

v.

MOBILE-MED WORK HEALTH
SOLUTIONS, INC.; and DOES 1 thru 50,
inclusive,

Defendants.

CASE NO.: **23CV410264**

**[PROPOSED] PRELIMINARY
APPROVAL ORDER**

Hearing Date: August 28, 2024
Hearing Time: 1:30 p.m.

Judge: Hon. Theodore C. Zayner
Dept.: 19

Action Filed: January 19, 2023
Trial Date: Not set

1 This matter came before the Honorable Theordore C. Zayner of the Superior Court of the
2 State of California, in and for the County Santa Clara, on August 28, 2024, for the motion by
3 Plaintiffs Gina Martinez, Ismael Ortega, and Jessica Saelor (“Plaintiffs”) for preliminary approval
4 of the class settlement with Defendant Mobile-Med Work Health Solutions, Inc. (“Defendant”).
5 The Court, having considered the briefs, argument of counsel and all matters presented to the
6 Court and good cause appearing, hereby GRANTS Plaintiffs’ Motion for Preliminary Approval of
7 Class Action Settlement.

8 **IT IS HEREBY ORDERED:**

9 1. The Court preliminarily approves the Class Action and PAGA Settlement
10 Agreement (“Agreement”) submitted as Exhibit #1 to the Declaration of Kyle Nordrehaug in
11 Support of Plaintiffs’ Motion for Preliminary Approval of Class Action Settlement. This
12 preliminary approval is based on the Court’s determination that the Settlement set forth in the
13 Agreement is within the range of possible final approval, pursuant to the provisions of section 382
14 of the California Code of Civil Procedure and California Rules of Court, rule 3.769.

15 2. This Order incorporates by reference the definitions in the Agreement, and all
16 terms defined therein shall have the same meaning in this Order as set forth in the Agreement.

17 3. The Gross Settlement Amount is One Million Two Hundred Thousand Dollars
18 (\$1,200,000). It appears to the Court on a preliminary basis that the settlement amount and terms
19 are fair, adequate and reasonable as to all potential Class Members when balanced against the
20 probable outcome of further litigation and the significant risks relating to certification, liability and
21 damages issues. It further appears that investigation and research have been conducted such that
22 counsel for the Parties are able to reasonably evaluate their respective positions. It further appears
23 to the Court that settlement at this time will avoid substantial additional costs by all Parties, as
24 well as avoid the delay and risks that would be presented by the further prosecution of the Action.
25 It further appears that the Agreement has been reached as the result of serious and non-collusive,
26 arms-length negotiations. The Court therefore preliminarily finds that the Settlement is fair,
27
28

1 adequate, and reasonable when balanced against the probable outcome of further litigation and the
2 significant risks relating to certification, liability, and damages issues.

3 4. The Agreement specifies an attorneys' fees award not to exceed one-third of the
4 Gross Settlement Amount, an award of litigation expenses incurred, not to exceed Forty-Five
5 Thousand Dollars (\$45,000), and proposed Class Representative Service Payments to the Plaintiffs
6 in an amount not to exceed Twelve Thousand Five Hundred Dollars (\$12,500) each. The Court
7 will not approve the amount of attorneys' fees and litigation expenses, nor the amount of any
8 service award, until the Final Approval Hearing. Plaintiffs will be required to present evidence
9 supporting these requests prior to final approval.

10 5. The Court recognizes that Plaintiffs and Defendant stipulate and agree to
11 certification of a class for settlement purposes only. This stipulation will not be deemed
12 admissible in this or any other proceeding should this Settlement not become final. For settlement
13 purposes only, the Court conditionally certifies the following Class: "all non-exempt employees
14 who are employed or have been employed by Defendant in California at any time during the Class
15 Period." The Class Period is January 1, 2019 through June 13, 2024.

16 6. The Court concludes that, for settlement purposes only, the Class meets the
17 requirements for certification under section 382 of the California Code of Civil Procedure in that:
18 (a) the Class is ascertainable and so numerous that joinder of all members of the Class is
19 impracticable; (b) common questions of law and fact predominate, and there is a well-defined
20 community of interest amongst the members of the Class with respect to the subject matter of the
21 litigation; (c) the claims of the Plaintiffs are typical of the claims of the members of the Class;
22 (d) the Plaintiffs can fairly and adequately protect the interests of the members of the Class; (e) a
23 class action is superior to other available methods for the efficient resolution of this controversy;
24 and (f) counsel for the Class is qualified to act as counsel for the Class and the Plaintiffs are
25 adequate representatives of the Class.

26 7. The Court provisionally appoints Plaintiffs as the representatives of the Class. The
27 Court provisionally appoints Norman B. Blumenthal, Kyle R. Nordrehaug, Aparajit Bhowmik,

1 and Christine T. LeVu of Blumenthal Nordrehaug Bhowmik De Blouw LLP; Eric B. Kingsley and
2 Kelsey M. Szamet of Kingsley & Kingsley, APC; and Samuel A. Wong, Kashif Haque, Jessica L.
3 Campbell, and Lisa B. Iturriaga of Aegis Law Firm, PC as Class Counsel.

4 8. The Court hereby approves, as to form and content, the Court Approved Notice of
5 Class Action Settlement and Hearing Date for Final Court Approval (“Class Notice”), attached as
6 Exhibit A to the Agreement. The Court finds that the Class Notice appears to fully and accurately
7 inform the Class of all material elements of the proposed Settlement, of the Class Members’ right
8 to be excluded from the Class by submitting a written opt-out request, and of each Class
9 Member’s right and opportunity to object to the Settlement. The Court further finds that the
10 distribution of the Class Notice substantially in the manner and form set forth in the Agreement
11 and this Order meets the requirements of due process, is the best notice practicable under the
12 circumstances, and shall constitute due and sufficient notice to all persons entitled thereto. The
13 Court orders the mailing of the Class Notice by first class mail, pursuant to the terms set forth in
14 the Agreement. If a Class Notice Packet is returned because of an incorrect address, the
15 Administrator will promptly search for a more current address for the Class Member and re-mail
16 the Class Notice Packet to the Class Member.

17 9. The Court hereby appoints ILYM Group, Inc. as Administrator for the Settlement.
18 No later than twenty-one (21) calendar days after issuance of this Order, Defendant shall provide
19 to the Administrator an electronic spreadsheet with the Class Data. This information will
20 otherwise remain confidential and will not be disclosed to anyone, except as required to applicable
21 taxing authorities, to carry out the procedures in the Agreement, or pursuant to Defendant’s
22 express written authorization or by order of the Court. The Administrator will perform address
23 updates and verifications as necessary prior to the mailing of the Class Notice. Using best efforts
24 to mail it as soon as possible, and in no event later than fourteen (14) calendar days after receiving
25 the Class Data spreadsheet, the Administrator will mail the Class Notice Packet to all Class
26 Members via first-class U.S. Mail.

1 10. The Court hereby preliminarily approves the proposed procedure for exclusion
2 from the Settlement. Any Class Member may individually choose to opt-out of and be excluded
3 from the Class as provided in the Class Notice by following the instructions set forth in the Class
4 Notice. All requests for exclusion must be sent to the Administrator and postmarked by no later
5 than the Response Deadline, which is forty-five (45) calendar days after the Administrator initially
6 mails the Class Notice Packets to the Class Members. If the Class Notice Packet is re-mailed, this
7 Response Deadline will be extended an additional fourteen (14) calendar days. Any person who
8 chooses to opt-out of and be excluded from the Class will not be entitled to any recovery under the
9 Settlement and will not be bound by the Settlement or have any right to object, appeal or comment
10 thereon. Aggrieved Employees shall be sent their Individual PAGA Payment and will be subject to
11 the release of the Released PAGA Claims regardless of whether they opt-out of the Class. Class
12 Members who have not requested exclusion shall be bound by all determinations of the Court, the
13 Agreement, and the Judgment. A request for exclusion applies only to the individual submitting
14 the request for exclusion, and any attempt to effect an opt-out on behalf of any other individual or
15 individuals (including a group, class, or subclass of individuals) is not permitted and will be
16 deemed invalid.

17 11. Any Class Member who has not opted-out may appear at the Final Approval
18 Hearing and may object or express the Class Member's views regarding the Settlement and may
19 present evidence and file briefs or other papers that may be proper and relevant to the issues to be
20 heard and determined by the Court as provided in the Class Notice. Class Members will have
21 until the Response Deadline set forth in the Class Notice to submit their written objections to the
22 Administrator in accordance with the instructions in the Class Notice. If the Class Notice is re-
23 mailed, the Response Deadline will be extended an additional fourteen (14) calendar days.
24 Alternatively, Class Members may appear at the Final Approval Hearing to make an oral
25 objection.

26 12. A Final Approval Hearing shall be held before this Court on January 15, 2025 at
27 1:30 p.m. in Department 19 at the of the Santa Clara County Superior Court to determine all
28

1 necessary matters concerning the Settlement, including: whether the proposed settlement of the
2 Action on the terms and conditions provided for in the Agreement is fair, adequate and reasonable
3 and should be finally approved by the Court; whether the Final Approval Order and Judgment
4 should be entered herein; whether the plan of allocation contained in the Agreement should be
5 approved as fair, adequate and reasonable to the Class Members; and to finally approve attorneys'
6 fees and costs, the service awards, and the expenses of the Administrator. The motion for final
7 approval of the class settlement and for award of attorneys' fees, costs and service awards shall be
8 filed with the Court and served on all counsel no later than sixteen (16) court days before the
9 hearing and shall be heard at the Final Approval Hearing.

10 13. Neither the Settlement nor any exhibit, document, or instrument delivered
11 thereunder shall be construed as a concession or admission by Defendant in any way that the
12 claims asserted have any merit or that this Action was properly brought as a class or representative
13 action, and shall not be used as evidence of, or used against Defendant as, an admission or
14 indication in any way, including with respect to any claim of any liability, wrongdoing, fault or
15 omission by Defendant or with respect to the truth of any allegation asserted by any person.
16 Whether or not the Settlement is finally approved, neither the Agreement, nor any exhibit,
17 document, statement, proceeding or conduct related to the Settlement or Agreement, nor any
18 reports or accounts thereof, shall in any event be construed as, offered or admitted in evidence as,
19 received as or deemed to be evidence for any purpose adverse to the Defendant, including, but not
20 limited to, evidence of a presumption, concession, indication or admission by Defendant of any
21 liability, fault, wrongdoing, omission, concession or damage.

22 14. In the event the Settlement does not become effective in accordance with the terms
23 of the Agreement, or the Settlement is not finally approved, or is terminated, canceled or fails to
24 become effective for any reason, this Order shall be rendered null and void and shall be vacated,
25 and the Parties shall revert to their respective positions as of before entering into the Agreement,
26 and expressly reserve their respective rights regarding the prosecution and defense of this Action,
27 including all available defenses and affirmative defenses, and arguments that no claim in the
28

1 Action could be certified as a class action and/or managed as a representative action. In such an
2 event, the Court's orders regarding the Settlement, including this Order, shall not be used or
3 referred to in litigation or otherwise for any purpose.

4 15. The Court reserves the right to adjourn or continue the date of the Final Approval
5 Hearing and all dates provided for in the Agreement without further notice to Class Members and
6 retains jurisdiction to consider all further applications arising out of or connected with the
7 proposed Settlement.

8 16. The Action is stayed and all trial and related pre-trial dates are vacated, subject to
9 further orders of the Court at the Final Approval Hearing.

10 **IT IS SO ORDERED.**

11
12 Dated: _____

HON. THEODORE C. ZAYNER
JUDGE, SUPERIOR COURT OF CALIFORNIA

13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

PRELIMINARY APPROVAL ORDER