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Attorneys for Plaintiff CARL EMPY,
as an individual and on behalf of all employees
similarly situated

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF LOS ANGELES

CARL EMPY, individually, and on behalf of
all others similarly situated,

Plaintiff,

vs.

24 WINDWARD AVENUE LLC, a
California Limited Liability Company; and
DOES 1 through 10, inclusive,

Defendants

Case No.: 23STCV18608

[Assigned for all purposes to Hon. Lynne M.
Hobbs, Dept. 61]

**[PROPOSED] ORDER GRANTING
PLAINTIFF'S MOTION FOR AN ORDER
APPROVING SETTLEMENT OF CLAIMS
BROUGHT PURSUANT TO THE PRIVATE
ATTORNEYS GENERAL ACT OF 2004**

Reservation ID: 456611727168

Date: July 24, 2024

Time: 10 a.m.

Courtroom: Dept. 61

Judge: Hon. Lynne M. Hobbs

Action Filed: August 7, 2023

Trial Date: Not Set

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

2 Plaintiff CARL EMPY("Plaintiff") and Defendant 24 WINDWARD AVENUE LLC
3 ("Defendant") (Plaintiff and Defendant are the "Parties") have reached the terms of a settlement of this
4 action alleging a claim for relief pursuant to the Labor Code Private Attorneys General Act of 2004,
5 Labor Code § 2698, *et seq.* ("PAGA").

6 Pursuant to PAGA, Plaintiff, on behalf of the Parties, has filed a motion for approval of the
7 settlement of the claims asserted against Defendant in this action. Specifically, Plaintiff moves for an
8 order:

9 1. granting approval of the terms of the Agreement pursuant to the Labor Code Private
10 Attorneys General Act of 2004, Labor Code § 2698, *et seq.*, including the amount of the
11 settlement; the amount of distributions to the State and Aggrieved Employees; the amount
12 allocated to Plaintiff's service award; the amounts allocated to attorneys' fees and costs; and, the
13 amount allocated to the settlement administrator; and,

14 2. directing disbursement of the Gross Settlement Amount pursuant to the terms of the
15 Agreement.

16 The PRIVATE ATTORNEYS GENERAL ACT SETTLEMENT AGREEMENT AND
17 RELEASE (referred to as the "Agreement," or "Settlement," and attached to the Declaration of Lilit
18 Tunyan as Exhibit 1) is conditioned upon the Court's approval. Capitalized terms in this Order have the
19 same meaning as in the Settlement unless indicated otherwise. A summary of the terms of the
20 Settlement is as follows:

21 (a) The Aggrieved Employees: The Aggrieved Employees (also known as the
22 "PAGA Members") are: "All non-exempt or hourly employees of Defendant who
23 worked for Defendant in the State of California from June 1, 2022 through the
24 date of entry of order for PAGA settlement approval of the Settlement or
25 modified under Section 8 of the Agreement ("PAGA Period")." It is estimated
26 that there are approximately 5,546 pay periods from June 1, 2023 through April
27 11, 2024. (Agreement, ¶ 1.4, 1.19, 4.1.)

28 (b) No Reversion: The Settlement is ***non-reversionary***. (Agreement, ¶ 3.1.)

- (c) Gross Settlement Amount: Defendant agrees to pay the maximum sum of **\$70,000.00** (hereinafter referred to as the “Gross Settlement Amount” or “GSA”) for settlement of the PAGA Penalties, which shall be inclusive of Individual PAGA Payments, the LWDA PAGA Payment, Plaintiff’s Service Award, Plaintiff’s Counsel’s attorneys’ fees and costs and the settlement administrator’s fees. (Agreement, ¶ 1.10.)
- (d) Net Settlement Amount: At least **\$31,585.22** will be available for distribution to the Aggrieved Employees and the LWDA. Of this amount, the LWDA will receive at least **\$23,688.92** under the Agreement, and Aggrieved Employees will receive at least **\$7,896.31**. (Agreement, ¶¶ 1.15., 3.2.4)
- (e) Plaintiff’s Service Award: Plaintiff shall receive **\$5,000.00** as a Service Award for representing the PAGA group and a general release of all known and unknown claims beyond PAGA claims (Agreement, ¶ 3.2.1.)
- (f) Attorneys’ Fees: Plaintiff’s Counsel request an award of attorneys’ fees in the amount of **\$23,333.33**, which is one third of the GSA. (Agreement, ¶ 3.2.2.)
- (g) Litigation Costs: Plaintiff’s Counsel’s litigation costs are capped to a maximum amount of **\$9,000.00**. The actual costs are **\$6,731.45** which include the future costs of motion, final report and Case Management Conference statement filing fees. Therefore, Plaintiff requests **\$6,731.45** for litigation costs. (Agreement, ¶¶ 3.2.2.)
- (h) Settlement Administration: Payment to Aggrieved Employees and administration will be accomplished through third-party settlement administrator ILYM Group, Inc., which has agreed to perform Administrator duties for a flat not to exceed fee of **\$3,350.00**, which is reasonable, based on all of the services offered. (Agreement, ¶ 3.2.3.)
- (i) Uncashed Checks: Funds represented by checks returned as undeliverable after a re-mailing, and funds represented by checks remaining un-cashed for more than 180 days after issuance, will be tendered to the Unclaimed Property Fund in the

name of the Aggrieved Employee. (Agreement, ¶ 4.4.3.)

(j) Release: In exchange for the above settlement consideration, Defendant shall be entitled to a release from the LWDA and each and every Aggrieved Employee, including Plaintiff.¹ (Agreement, ¶¶ 5.1-5.2.)

(k) Notice to LWDA: The Declaration of Lilit Tunyan confirms that notice was provided to the LWDA and attaches the confirmatory submission documents. (Tunyan Decl., ¶ 46 and Exh. 3.)

After reviewing the Settlement and other related documents, and the filings submitted by Plaintiff, **IT IS HEREBY ORDERED AS FOLLOWS:**

1. The Court hereby GRANTS approval of the PAGA settlement upon the terms and conditions set forth in the Agreement. The Court finds that the terms of the proposed settlement are reasonable. In granting approval of the settlement the Court has considered the factors identified in *Moniz v. Adecco USA, Inc.*, 72 Cal. App. 5th 56 (2021), *O'Connor v. Uber Technologies*, No. 13-CV-03826-EMC, 2016 WL 4398271 (N.D. Cal. Aug. 18, 2016), *Hanlon v. Chrysler Corp.*, 150 F.3d 1011 (9th Cir. 1998), *Dunk v. Ford Motor Co.*, 48 Cal. App. 4th 1794 (1996), and other authority providing a coherent framework for evaluating this Settlement.

2. The Court hereby identifies the Aggrieved Employees as:

All non-exempt or hourly employees who worked for Defendant in the State of California from June 1, 2022 to July 24, 2024.

3. The Court hereby finds the Settlement was the product of informed, non-collusive negotiations conducted at arms' length by the Parties. In making these findings, the Court considered Defendant' potential liability, the benefit to the State of California, allocation of settlement proceeds among Aggrieved Employees, and the fact that a settlement represents a compromise of the Parties' respective positions rather than the result of a finding of liability at trial. The Court further finds that the terms of the Settlement have no obvious deficiencies. The Court finds that the risks of further

¹ This comports with settled California Supreme Court authority. *See Arias v. Superior Court*, 46 Cal. 4th 969, 986 (2009) (concluding that "with respect to the recovery of civil penalties, nonparty employees as well as the government are bound by the judgment in an action brought under the act....").

1 prosecution are substantial and include the risks that (1) penalties would be reduced after evaluation of
2 the totality of the circumstances, or (2) that no penalties would be awarded for some or all of the alleged
3 violations.

4 4. The Court hereby approves ILYM Group, Inc. to serve as the Administrator. The
5 Administrator will be paid pursuant to the Agreement's terms for such distribution, in the requested
6 amount of **\$3,350.00** out of the Gross Settlement Amount to effectuate the administration of the
7 Settlement.

8 5. Pursuant to the Agreement, the amount distributed as penalties under PAGA shall be
9 **\$70,000.00**, less administration costs, Plaintiff's Service Award, attorneys' fees and costs awarded to
10 Plaintiff's counsel. After these amounts are deducted from the Gross Settlement Amount, the amount
11 remaining to distribute as penalties is **\$31,585.22**. The LWDA shall receive 75% of the penalties
12 allocated, which is **\$23,688.92**. Aggrieved Employees shall receive 25% of the penalties allocated,
13 which is **\$7,896.31**.

14 6. The Court hereby awards Plaintiff's Counsel attorneys' fees in the amount of **\$23,333.33**.
15 The Court finds that the attorneys' fees are reasonable compared to amounts routinely approved in
16 similar settlements and as guided by the California Supreme Court's decision concerning the awarding of
17 fees from monetary funds for class members. *Laffitte v. Robert Half Intern. Inc.*, 1 Cal. 5th 480, 503
18 (2016). Counsel proceeded on a contingency basis despite the uncertainty of any fee award. Counsel
19 were necessarily precluded from pursuing other potential sources of fees because of work in connection
20 with this Action. The Court observed that this is not a class action. It is more akin to contingent
21 representation with an additional requirement of Court review due to the qui tam nature of a PAGA
22 claim. Attorneys' fees that are fifty percent of a common fund are typically considered the upper limit,
23 with thirty to forty percent commonly awarded in cases where the settlement is relatively small. *See Van*
24 *Vranken v. Atlantic Richfield Company*, 901 F. Supp. 294 (N.D. Cal. 1995) (stating that most cases
25 where 30-50 percent was awarded involved "smaller" settlement funds of under \$10 million). Based on
26 these considerations, including the lodestar cross-check, a fee award of one third of the total settlement
27 amount is reasonable.

28 7. The Court hereby awards Plaintiff's Counsel litigation costs in the total amount of

1 **\$6,731.45.**

2 8. Upon entry of this Order, the Parties shall effectuate all terms of the Settlement based on
3 the provisions and timelines set forth in the Agreement.

4 Pursuant to the terms of the Settlement, the released persons and entities include
5 Defendant (as defined above) and each of their former and present directors, officers,
6 shareholders, owners, members, attorneys, insurers, predecessors, successors, assigns,
7 subsidiaries, and affiliates (referred to in the Settlement as the "Released Parties").

8 9. Upon entry of the Order approving this Settlement and the Judgment thereon, PAGA
9 claims are released as follows:

10 Effective on the date when Defendant fully fund the entire Gross Settlement Amount,
11 all Aggrieved Employees are deemed to release, on behalf of themselves and their
12 respective former and present representatives, agents, attorneys, heirs, administrators,
13 successors, and assigns, the Released Parties from all claims for PAGA penalties that
14 were alleged, or reasonably could have been alleged, based on the PAGA Period facts
15 stated in the Operative Complaint and the PAGA Notice ("Released Claims"). With the
16 exception of Plaintiff who will provide a general release of all claims, this settlement
17 shall not impact aggrieved employees' ability to assert claims other than the PAGA
18 claims being released by this Agreement, i.e., the Released PAGA Claims.

15 10. The action is DISMISSED WITH PREJUDICE.

16 11. The Court will enter Final Judgment in accordance with this Order.

17 12. The Court shall retain jurisdiction with respect to all matters related to the administration
18 and consummation of the Settlement, and any and all claims asserted in, arising out of, or related to the
19 subject matter of the lawsuit, including but not limited to all matters related to the Settlement and the
20 determination of all controversies relating thereto.

21
22 **IT IS SO ORDERED.**

23 Dated: _____

Honorable Lynne M. Hobbs
LOS ANGELES COUNTY SUPERIOR COURT
JUDGE

1 **PROOF OF SERVICE**

2
3 STATE OF CALIFORNIA)
4) ss
COUNTY OF LOS ANGELES)

5 I am employed in the county of Los Angeles, State of California. I am over the age of 18
6 and not a party to the within action; my business address is 535 N Brand Blvd. Suite 285
7 Glendale, California 91203. On May 15, 2024, I served the foregoing document described as:

8 On the date indicated below, I served the document described as: **PROPOSED] ORDER**
9 **GRANTING PLAINTIFF'S MOTION FOR AN ORDER APPROVING SETTLEMENT OF**
10 **CLAIMS BROUGHT PURSUANT TO THE PRIVATE ATTORNEYS GENERAL ACT OF**
2004 on the interested parties in this action by sending a true copy thereof to interested parties as follows and as stated on the attached service list:

11 John Wu
12 jwu@ohaganmeyer.com
Thalia Rofos
13 trofos@ohaganmeyer.com
Lisa Kupfer
14 lkupfer@ohaganmeyer.com
15 **O'HAGAN MEYER**
4695 MacArthur Ct., Suite 900
Newport Beach, California 92660
Telephone: (949)942-8537

16 *Attorneys for Defendant 24 Windward Ave LLC*

17 [✓] **BY E-MAIL:** I hereby certify that this document was served from Glendale, California,
18 by e-mail delivery on the parties listed herein at their most recent known e-mail address
19 or e-mail of record in this action.

20 [✓] **BY ELECTRONIC SERVICE:** Based on an agreement of the parties to accept electronic
21 service, I caused the documents to be sent to the persons at the electronic service addresses listed
above via electronic mail. I did not receive an error message.

22 I declare under penalty of perjury under the laws of the State of California that the
23 above is true and correct. Executed on May 15, 2024 at Glendale, California.

24 Lilit Tunyan

25 Name



26 Signature