

**FILED**  
Superior Court of California  
County of Los Angeles

**FEB 09 2021**

Therri R. Carter, Deputy Clerk  
*Alfredo Morales* deputy  
ALFREDO MORALES

**SUPERIOR COURT OF CALIFORNIA  
COUNTY OF LOS ANGELES**

11 RAFAEL HERNANDEZ on behalf of himself  
12 and all others similarly situated

13 Plaintiff,

14 vs.

15 MISSION LANDSCAPE COMPANIES, INC. a  
16 California corporation, and DOES 1 through 50,  
inclusive,

17 Defendants.

Case No.: BC534124

~~[PROPOSED]~~ ORDER GRANTING  
MOTION FOR FINAL APPROVAL  
OF CLASS ACTION SETTLEMENT  
ON CONDITIONS

Date: February 9, 2021  
Time: 11:00 a.m.  
Dept.: SSC-7

21  
22 **I. BACKGROUND**

23 On January 27, 2014, Plaintiff Rafael Hernandez filed a Complaint asserting  
24 causes of action for: (1) failure to pay all wages owed; (2) failure to provide statutorily  
25 compliant meal breaks; (3) failure to provide statutorily compliant rest breaks; (4)

1 failure to timely pay wages; (4) failure to reimburse employee expenses and lawful  
2 deduction of employee expenses; (5) failure to provide accurate wage statements; and  
3 (6) unfair business practices based on the above violations.

4 On March 14, 2014, Plaintiff filed a First Amended Complaint (“FAC”) adding a  
5 claim under the Labor Code Private Attorney General Act (“PAGA”) Lab. Code § 2699  
6 et seq.

7 Plaintiff brings this action pursuant to Labor Code sections 201, 202, 203, 226,  
8 226.7, 510, 512, 1194, 2802, 2699 et seq., and California Code of Regulations, Title 8,  
9 section 11050 et seq. seeking unpaid wages and overtime compensation, unpaid rest  
10 and meal period compensation, unreimbursed expenses, penalties and other equitable  
11 relief, and reasonable attorneys’ fees and costs pursuant to Business and Professions  
12 Code sections 17200-17208, Plaintiff also seek restitution for unpaid wages.

13 Counsel represents that the parties engaged in formal and informal  
14 discovery, which included: 1) Plaintiff’s propounding multiple sets of written discovery  
15 on Defendant; 2) Mission’s production of thousands of pages of information, including  
16 time and payroll records of putative class members which reflect time punches at the  
17 start of employees’ shifts, at the beginning and end of the meal period, and at the end of  
18 the shift, as well as the applicable pay rates; 3) Mission’s providing Plaintiff’s  
19 personnel file, documents identifying the nonexempt positions at Mission Landscape  
20 California, information regarding the number of employees holding these positions  
21 during the relevant time period and various corporate documents reflecting Mission  
22 Landscape’ wage and hour policies and practices, including meal and rest breaks.

23 On April 22, 2015, the parties participated in an unsuccessful mediation with  
24 Mark Rudy, a wage and hour class action mediator. At the mediation, the parties  
25 exchanged further information and documentation concerning Plaintiff’s claims and

1 Mission Landscape' defenses; however, they did not reach a settlement as the focus  
2 became Defendant's financial condition and ability to pay. Thereafter, the parties  
3 continued negotiations and Defendant also produced documents pertaining to  
4 Defendant's financial condition and Employee Stock Option Plan ("ESOP").

5 On or about October 23, 2017, Defendant provided Plaintiff with a proposed  
6 Memorandum of Understanding ("MOU") which was subsequently revised and  
7 executed by the parties on November 30, 2017. Thereafter, on February 20, 2018,  
8 Defendant provided the initial draft of the Joint Stipulation of Class Action Settlement  
9 ("Settlement Agreement"). The parties exchanged several drafts of the Settlement  
10 Agreement and Notice Documents and engaged in discussions regarding proposed  
11 revisions thereto.

12 In May 2018, the parties had finalized the Settlement Agreement and the only  
13 issue that was pending was Defendant's compilation of the class list to be provided to  
14 the Claims Administrator upon the Court's granting of preliminary approval of the  
15 Settlement Agreement. Soon thereafter, Defendant's counsel notified Plaintiff's counsel  
16 that Defendant had discovered an error in the calculation of class members which had  
17 been provided to Plaintiffs counsel during the mediation and which could impact the  
18 pending Settlement Agreement.

19 In light of the changed circumstances surrounding the number of class members,  
20 the parties engaged in renewed settlement discussions. In November and December  
21 2018, the parties exchanged and executed a MOU. Thereafter, the final terms and  
22 provisions of the settlement agreement were approved and executed by all the parties in  
23 March 2019.

24 Counsel represents that the following factors were also taken into account  
25 regarding Defendant's financial condition: 1) Defendant has relatively low net income

1 per year (2010: \$30,551; 2011: \$144,843; 2012: \$461,328; 2013: \$339,482; 2014:  
2 \$525,756; 2015: \$511,170); 2) In 2010, Defendant had a \$4.9 million outstanding term  
3 loan due to the ESOP purchase in 2004 and acquisition of design firm Landarc West in  
4 2009, along with an outstanding credit line balance of \$765,000; 3) As of 2015,  
5 Defendant had a \$2.46 million outstanding term loan, plus a \$1.16 million outstanding  
6 credit line balance; and 4) Due to the high labor costs involved in the landscaping  
7 business and low profit margin for the services provided, Defendant generally has  
8 extremely slow cash flow.

9 A fully executed copy of the Settlement Agreement is attached to the  
10 Declaration of James R. Hawkins ("Hawkins Decl.") as Exhibit 1.

11 On May 29, 2019, the court continued the preliminary approval motion and  
12 provided a checklist of items for the parties to address. In response, on March 20, 2020,  
13 counsel filed a Motion for Preliminary Approval ("Supp. Brief") and an Amended  
14 Settlement Agreement attached to the Declaration of James R. Hawkins ("Hawkins  
15 Supp. Decl.") as Exhibit 1.

16 The Court granted preliminary approval of the Amended Settlement Agreement  
17 on April 19, 2020. Notice was given to the Class Members as ordered. (See  
18 Declaration of Nathalie Hernandez ("Hernandez Decl.")).

19 Now before the Court is Plaintiff's motion for final approval of the Settlement  
20 Agreement, including for payment of fees, costs, and service awards to the named  
21 plaintiffs.

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1 **II. THE TERMS OF THE SETTLEMENT**

2  
3 **A. SETTLEMENT CLASS DEFINITION**

- 4 • “For purposes of this Settlement, the “Class” or “Class Members” consist of all  
5 non- exempt hourly employees who were employed by Defendant in California  
6 at any time from January 27, 2010 through December 31, 2015. (Settlement  
7 Agreement, ¶3.)
- 8 • For purposes of this Settlement, the “Class Period” is January 27, 2010 through  
9 December 31, 2015. (¶4)
- 10 • There are approximately 1,605 Class Members. (Hernandez Decl., ¶5.)

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

12 The essential monetary terms are as follows:

- 13 • The Gross Settlement Amount (“GSA”) is **\$950,000, non-reversionary.** (¶13)
- 14 • The Net Settlement Amount (“NSA”) (**\$575,852.70**) is the GSA minus the  
15 following:
- 16 ○ Up to **\$316,667 (1/3)** for attorney fees (¶15.h);
  - 17 ○ Up to **\$20,000** for litigation costs (*Ibid.*);
  - 18 ○ Up to **\$5,000** for a Service Award to the Class Representative (¶15.i);
  - 19 ○ **\$7,500 (75% of \$10,000 penalty)** to the LWDA (¶15.k); and
  - 20 ○ Estimated **\$24,980.30** for Settlement Administration Costs. (¶15.j)
- 21 • Defendant will be separately responsible for any employer payroll taxes required  
22 by law. (¶13)
- 23 • There is no claims process. (¶13)
- 24 • **Settlement Payment:** Settlement Payments will be paid out of the Net Settlement  
25 Amount. Each Class Member will be paid a pro-rata share of the Net Settlement

1 Amount, as calculated by the Claims Administrator (“Settlement Payment”). The  
2 pro-rata individual Settlement Payment will be determined by comparing the  
3 individual Class Member’s Covered Workweeks employed during the Class  
4 Period in California to the total Covered Workweeks of the Class during the Class  
5 Period. Class Members who will be paid Settlement Payments based on the shares  
6 as calculated by the Claims Administrator. Settlement Payments in the appropriate  
7 amounts will be distributed by the Claims Administrator by mail to the Class  
8 Members. (¶15.e)

- 9 ○ Settlement Payments shall be allocated as 33% wages, 33% interest, and  
10 33% penalties. (¶15.f)

- 11 • **Funding of Settlement Account:** Defendant will fund the settlement account  
12 within 10 calendar days of the Effective Date of the Settlement. (¶15.k)
- 13 • Class Members have 90 days from the original mailing date of the Notice to  
14 submit objections, requests for exclusions, or disputes. (¶¶15.n-p, 16, 20.b, 21)
  - 15 ○ If 5% or more of the Class Members request exclusion or opt out of this  
16 Settlement, then Defendant in its sole discretion may terminate, nullify and  
17 void this Settlement. (¶33)
- 18 • **Uncashed Checks:** Settlement Payment checks shall remain valid and negotiable  
19 for 180 days from the date of their issuance. (¶22) Funds from un-cashed checks  
20 will be distributed to the State of California’s Unclaimed Property Fund based on  
21 a 180-day void date. (¶23)
- 22 • **"Settlement Administrator"** means ILYM Group, Inc. (¶15.k)

23  
24 **C. TERMS OF RELEASES**

1           Upon the final approval by the Court of this Settlement, and except as to such  
2 rights or claims as may be created by this Settlement, the Class Representatives, the  
3 Class and each Class Member who has not submitted a valid and timely request for  
4 exclusion, each fully releases and discharges Defendant, its present and former parent  
5 companies, subsidiaries, related or affiliated companies, shareholders, officers,  
6 directors, employees, agents, attorneys, insurers, successors and assigns, and any  
7 individual or entity which could be jointly liable with Defendant and their respective  
8 present and former parent companies, subsidiaries, related or affiliated companies,  
9 shareholders, officers, directors, employees, agents, attorneys, insurers, successors and  
10 assigns, from any and all claims and/or causes of action directly arising from this case  
11 under any federal, state or local law or administrative order that were plead in this case  
12 based on the facts alleged in the operative class action complaint or which arise out of  
13 or directly relate to such facts, whether known or unknown, including but not limited to  
14 claims for failure to pay wages, failure to pay minimum wages, failure to pay overtime  
15 wages, failure to provide meal periods, failure to pay meal period premiums, failure to  
16 provide rest periods, failure to pay rest period premiums, failure to pay wages upon  
17 termination, failure to pay wages timely during employment, failure to provide accurate  
18 wage statements, failure to keep required wage and payroll records failure to reimburse  
19 business expenses and unlawful deduction of employee expenses failure to pay  
20 waitmng4lme penalties and any other claims whatsoever that were alleged in this case  
21 or which arise out of or directly relate to such facts including without limitation all  
22 related and/or derivative claims for relief, including restitution and other equitable relief  
23 under Business and Professions Code § 17200 et seq., conversion, liquidated damages,  
24 punitive damages, civil penalties, statutory penalties, and penalties under the Labor  
25 Code Private Attorneys General Act of 2004, and any other related claims and/or



1 penalties of any nature, for the period of January 27, 2010 through the date of final  
2 approval of the settlement (“Released Claims”). (§25)

3 • Named Plaintiff will also provide a general release and a release under CCP  
4 Section 1542. (§§26-28)

### 6 **III. ANALYSIS OF SETTLEMENT AGREEMENT**

7 “Before final approval, the court must conduct an inquiry into the fairness of the  
8 proposed settlement.” Cal. Rules of Court, rule 3.769(g). “If the court approves the  
9 settlement agreement after the final approval hearing, the court must make and enter  
10 judgment. The judgment must include a provision for the retention of the court's  
11 jurisdiction over the parties to enforce the terms of the judgment. The court may not  
12 enter an order dismissing the action at the same time as, or after, entry of judgment.”  
13 Cal. Rules of Court, rule 3.769(h).

14 As discussed more fully in the Order conditionally approving the settlement, “[i]n  
15 a class action lawsuit, the court undertakes the responsibility to assess fairness in order to  
16 prevent fraud, collusion or unfairness to the class, the settlement or dismissal of a class  
17 action. The purpose of the requirement [of court review] is the protection of those class  
18 members, including the named plaintiffs, whose rights may not have been given due  
19 regard by the negotiating parties.” See *Consumer Advocacy Group, Inc. v. Kintetsu*  
20 *Enterprises of America* (2006) 141 Cal. App.4th 46, 60 [internal quotation marks  
21 omitted]; see also *Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 245  
22 (“*Wershba*”), disapproved on another ground in *Hernandez v. Restoration Hardware*  
23 (2018) 4 Cal.5th 260 [Court needs to “scrutinize the proposed settlement agreement to the  
24 extent necessary to reach a reasoned judgment that the agreement is not the product of  
25 fraud or overreaching by, or collusion between, the negotiating parties, and that the



1 settlement, taken as a whole, is fair, reasonable and adequate to all concerned.”] [internal  
2 quotation marks omitted].

3 “The burden is on the proponent of the settlement to show that it is fair and  
4 reasonable. However ‘a presumption of fairness exists where: (1) the settlement is  
5 reached through arm's-length bargaining; (2) investigation and discovery are sufficient to  
6 allow counsel and the court to act intelligently; (3) counsel is experienced in similar  
7 litigation; and (4) the percentage of objectors is small.’” See *Wershba, supra*, 91  
8 Cal.App.4th at pg. 245, citing *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794,  
9 1802. Notwithstanding an initial presumption of fairness, “the court should not give  
10 rubber-stamp approval.” See *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th  
11 116, 130. “Rather, to protect the interests of absent class members, the court must  
12 independently and objectively analyze the evidence and circumstances before it in order  
13 to determine whether the settlement is in the best interests of those whose claims will be  
14 extinguished.” *Ibid.*, citing 4 Newberg on Class Actions (4th ed. 2002) § 11:41, p. 90. In  
15 that determination, the court should consider factors such as “the strength of plaintiffs'  
16 case, the risk, expense, complexity and likely duration of further litigation, the risk of  
17 maintaining class action status through trial, the amount offered in settlement, the extent  
18 of discovery completed and stage of the proceedings, the experience and views of  
19 counsel, the presence of a governmental participant, and the reaction of the class  
20 members to the proposed settlement.” *Id.* at 128. This “list of factors is not exclusive and  
21 the court is free to engage in a balancing and weighing of factors depending on the  
22 circumstances of each case.” *Wershba, supra*, 91 Cal.App.4th at pg. 245.)

#### 23 A. A Presumption of Fairness Exists

24 The Court preliminarily found in its Order of April 19, 2020, that the presumption  
25 of fairness should be applied. No facts have come to the Court’s attention that would

1 alter that preliminary conclusion. Accordingly, the settlement is entitled to a presumption  
2 of fairness as set forth in the preliminary approval order.

3 **B. The Settlement Is Fair, Adequate, and Reasonable**

4 The settlement was preliminarily found to be fair, adequate and reasonable.

5 The notice process resulted in the following:

6 Number of class members: 1,605

7 Number of notices mailed: 1,605

8 Number of undeliverable notices: 132

9 Number of opt-outs: 0

10 Number of objections: 0

11 Number of participating class members: 1,605

12 (Hernandez Decl. ¶¶5-13.)

13 The Court finds that the notice was given as directed and conforms to due process  
14 requirements. Given the reactions of the Class Members and the LWDA to the proposed  
15 settlement and for the reasons set for in the Preliminary Approval order, the settlement is  
16 found to be fair, adequate, and reasonable.

17 **C. CLASS CERTIFICATION IS PROPER**

18 For the reasons set forth in the preliminary approval order certification of the  
19 Class for purposes of settlement is appropriate.

20  
21 **D. ATTORNEY FEES AND COSTS**

22 Class Counsel requests \$316,667 (33%) for attorney fees and \$18, 261.62 for  
23 costs. (Motion ISO Final, 13:23-24; Hawkins Decl. ISO Final ¶30.)

24 Courts have an independent responsibility to review an attorney fee provision and  
25 award only what it determines is reasonable. *Garabedian v. Los Angeles Cellular*

1 *Telephone Company* (2004) 118 Cal.App.4th 123, 128. A percentage calculation is  
2 permitted in common fund cases. *Laffitte v. Robert Half Int'l, Inc.* (2016) 1 Cal.5th 480,  
3 503.

4 In the instant case, fees are sought pursuant to the percentage method. (Motion  
5 ISO Final, pgs. 15-21.) The \$316,667 fee request is 33% of the Gross Settlement  
6 Amount.

7 Here, the \$316,667 fee request represents a reasonable percentage of the total  
8 funds paid by Defendant. Further, the notice expressly advised class members of the fee  
9 request, and no one objected. (Hernandez Decl., ¶12 and Exhibit A thereto.)

10 Accordingly, the Court awards fees in the amount of **\$316,667**.

11 Class Counsel requests \$18, 261.62 in costs. (Hawkins Decl. ISO Final ¶30.)  
12 This is less than the \$20,000 cap provided in the settlement agreement (¶15.h). The  
13 amount was disclosed to Class Members in the Notice, and no objections were received.  
14 (Hernandez Decl., ¶12 and Exhibit A thereto.) Class Counsel represent that they have  
15 incurred actual costs in the amount of \$18, 261.62. (Hawkins Decl. ISO Final ¶30 and  
16 Exhibit 2 thereto.) The costs include, but are not limited to research costs (\$1,530),  
17 mediation (\$7,000), filing fees (\$1,435), and service costs (\$2,640). (*Ibid.*)

18 The costs appear to be reasonable and necessary to the litigation, are reasonable  
19 in amount, and were not objected to by the class.

20 For all of the foregoing reasons, costs of **\$18, 261.62** are approved.

## 21 22 **E. SERVICE AWARDS TO CLASS REPRESENTATIVES**

23 A service (or incentive) fee award to a named class representative must be  
24 supported by evidence that quantifies the time and effort expended by the individual and  
25 a reasoned explanation of financial or other risks undertaken by the class representative.

1 See *Clark v. American Residential Services LLC* (2009) 175 Cal.App.4th 785, 806-807;  
2 see also *Cellphone Termination Cases* (2010) 186 Cal.App.4th 1380, 1394-1395  
3 [“Criteria courts may consider in determining whether to make an incentive award  
4 include: (1) the risk to the class representative in commencing suit, both financial and  
5 otherwise; (2) the notoriety and personal difficulties encountered by the class  
6 representative; (3) the amount of time and effort spent by the class representative; (4) the  
7 duration of the litigation and; (5) the personal benefit (or lack thereof) enjoyed by the  
8 class representative as a result of the litigation. (Citations.)”].

9 Here, the settlement agreement provides for up to \$5,000 for a service award to  
10 Plaintiff Rafael Hernandez. (Settlement Agreement, ¶15.i.)

11 Mr. Hernandez represents that his contributions to this litigation include, but are  
12 not limited to having numerous conversation with counsel and providing oral and  
13 documentary evidence. (“R. Hernandez Decl., ¶6.)

14 In light of the above-described contributions to this action, and in  
15 acknowledgment of the benefits obtained on behalf of the class, a \$5,000 service award  
16 to Plaintiff is reasonable and approved.

#### 17 18 **F. SETTLEMENT ADMINISTRATION COSTS**

19 The Settlement Administrator, ILYM Group, Inc., requests **\$24,980.30** in  
20 compensation for its work in administrating this case. At the time of preliminary  
21 approval, costs of settlement administration were estimated at \$24,980.30. (¶15.j) Class  
22 Members were provided with notice of this amount and did not object. (Hernandez  
23 Decl., ¶12 and Exhibit A thereto.)

24 Accordingly, claims administration costs are approved in the amount of  
25 **\$24,980.30.**

1 **IV. CONCLUSION AND ORDER**


2 Contingent on the Releases herein to be effective only after the settlement is funded, the  
3 Court hereby:

- 4 (1) Grant class certification for purposes of settlement;  
5 (2) Grant final approval of the settlement as fair, adequate, and reasonable;  
6 (3) Award \$316,667 in attorney fees to Class Counsel;  
7 (4) Award \$18,261.62 in litigation costs to Class Counsel;  
8 (5) Award \$5,000 as a Class Representative Service Award;  
9 (6) Award \$24,980.30 in claims administration costs to ILYM Group, Inc.;  
10 (7) Orders class counsel to lodge a proposed Judgment, consistent with this ruling  
11 and containing the class definition, full release language, and a statement that no  
12 class members opted out by 2/16/, 2021;  
13 (8) Orders class counsel to provide notice to the class members pursuant to  
14 California Rules of Court, rule 3.771(b); and  
15 (9) Sets a Non-Appearance Case Review re: Final Report re: Distribution of  
16 Settlement Funds for

17 12/7/2021, at 10:00 a.m.  
18 Final Report is to be filed by

19 11/30/2021.

20  
21 Dated: 2/9/2021

22   
23 Hon. Amy Hogue  
24 Judge of the Superior Court  
25