

FILED
Superior Court of California
County of Los Angeles

MAR 08 2021

Sherri R. Carig, Officer/Clerk
Alfredo Morales deputy
ALFREDO MORALES

SUPERIOR COURT OF CALIFORNIA
COUNTY OF LOS ANGELES

Case No.: 18STCV05531

BRIANNA COOKS, an individual,
on behalf of herself and on behalf of all
persons similarly situated,

Plaintiff.

vs.

RELIANT REAL ESTATE
MANAGEMENT, INC., d/b/a THE REMM
GROUP; and DOES 1
through 50, inclusive

Defendant.

ORDER GRANTING MOTION FOR
PRELIMINARY APPROVAL OF CLASS
ACTION SETTLEMENT ON CONDITION
PLAINTIFF FILES DECLARATION

Date: March 8, 2021
Dept.: SSC-7
Time: 11:00 a.m

I. BACKGROUND

On November 19, 2018, Plaintiff filed the Class Action alleging the following causes of action: (1) Failure to Pay Minimum Wages; (2) Failure to Pay Wages and Overtime Under Labor Code § 510; (3) Meal Period Liability Under Labor Code § 226.7;

1 (4) Rest-Break Liability Under Labor Code § 226.7; (5) Violation of Labor Code §
2 226(a); (6) Violation of Labor Code § 221; (7) Violation of Labor Code § 203; and (8)
3 Violation of Business & Professions Code § 17200, et seq.

4 Counsel represent that they have conducted investigation and discovery including:
5 conducting formal discovery and informal discovery; reviewing and analyzing time and
6 pay records as well as employment handbooks, Plaintiff's personnel files, relevant
7 policies and other documentation; retaining an expert to review sampling of data and
8 damages; reviewing and analyzing Defendant's tax return data due to claimed financial
9 hardships; and reviewing additional information provided by Defendant at the mediation
10 Counsel further represents that Defendants counsel provided Plaintiff's counsel the
11 following documentation informally: applicable employment handbooks from November
12 14, 2014 through October of 2019; payroll, timekeeping records, and paystubs for
13 Plaintiff; payroll, timekeeping records, and paystubs comprising of a random sampling
14 of 47 employees (out of 66 non-exempt potential class members where 14 had signed
15 arbitration agreements which contained a class waiver). It is further represented that the
16 Parties agreed to a 50% random sampling figure for a total of 24 Class Members, where
17 Defendant provided a redacted list of the 47 employees from whom Plaintiff agreed to a
18 production of every other employee.

19 On October 18, 2019, the parties mediated this case with Debra L. Mellinkoff
20 where the parties agreed to a settlement. A fully executed copy of the Settlement
21 Agreement was filed with the Court on May 19, 2020 attached as Exhibit 1 to the
22 Declaration of David Yermian ("Yermian Decl.").

23 On October 19, 2020, the Court issued a checklist of items for the parties to
24 address and continued preliminary approval. In response, on January 22, 2021, counsel
25

1 filed an Amended Settlement Agreement attached as Exhibit 1 to the Supplemental
2 Declaration of David Yeremian (“Yeremian Supp. Decl.”).

3 Now before the Court is Plaintiff’s motion for preliminary approval of the
4 settlement. For the reasons set forth below the Court preliminarily grants approval for
5 the settlement on condition Plaintiff **within three days files an executed declaration**
6 **evidencing that she understands the obligations of being an adequate class**
7 **representative, the details of what she has done or will do to demonstrate the**
8 **adequacy of his representative, and the substantial burden she will undertake in**
9 **order to represent the putative class in this case.**

10
11 **II. THE TERMS OF THE SETTLEMENT**

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

13 “Settlement Class” means all current and former non-exempt leasing agents of
14 Defendant who worked in California during the Class Period (or if any such person is
15 incompetent, deceased, or unavailable due to military service, the person’s legal
16 representative or successor in interest evidenced by reasonable verification). (Settlement
17 Agreement, ¶B.3)

18 “Class Period” means November 14, 2014 through December 17, 2019. (¶B.8)

19 If the total Class Members increase by more than 10% of the 73 Class Members
20 set forth in the Memorandum of Agreement (“MOU”), then there shall be a corresponding
21 pro-rata increase in the Maximum Settlement Amount. (¶B.17)

22 The Parties stipulate and agree to the conditional certification of this Action for
23 purposes of this Settlement only. (¶C.2)

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

25 The essential monetary terms are as follows:

1 The Gross Settlement Amount (“GSA”) is \$180,000 (¶B.17)

2 The Net Settlement Amount (“Net”) (\$92,500) is the GSA less:

- 3 ○ Up to \$60,000 (33 1/3%) for attorney fees (¶B.5);
 - 4 ■ Fee Split: 35% to the Davtyan Professional Law Corporation and
 - 5 65% to David Yeremian & Associates. (Yeremian Supp. Decl., ¶5.)
- 6 ○ Up to \$15,000 for attorney costs (¶B.5.);
- 7 ○ Up to \$5,000 for a service award to the proposed class representative
- 8 (¶D.1.b); and
- 9 ○ Estimated \$7,500 for settlement administration costs. (¶D.1.c)
- 10 ● Employers share of Payroll Taxes shall be paid by Defendant separately and in
- 11 addition to the Gross Settlement Amount. (¶B.17)
- 12 ● Assuming the Court approves all maximum requested deductions, approximately
- 13 \$92,500 will be available for automatic distribution to participating class
- 14 members. Assuming full participation, the average settlement share will be
- 15 approximately \$1,267.12. ($\$92,500 \text{ Net} \div 73 \text{ class members} = \$1,267.12$)
- 16 ● There is no Claim Requirement. (¶B.21)
- 17 ● The settlement is not reversionary. (¶G.14)
- 18 ● Calculation:
 - 19 ○ The Settlement Administrator will divide the Net Settlement Amount by
 - 20 the number of weeks worked by Plaintiff Class Members during the Class
 - 21 Period, to establish a weekly value. The weekly value shall then be
 - 22 multiplied by the number of weeks worked by each Plaintiff Class Member
 - 23 to determine his or her Settlement Payment. (¶D.1.e)
 - 24 ○ 10% of the Net Settlement Amount will account for California Labor Code
 - 25 section 203 penalties and be allocated to and evenly apportioned to those

1 former nonexempt Settlement Class members who do not submit a valid
2 request for exclusion from the Settlement (“203 Penalties”). (¶D.1.d)

- 3 ▪ Tax Withholdings: 20% as wages and 80% as penalties and
4 interest. (¶D.3.a)

- 5 • **Uncashed Checks:** All amounts contained in settlement checks that were not
6 cashed within 180 calendar days, and all interest that has accrued, shall be
7 distributed to the Controller of the State of California to be held pursuant to the
8 Controller of the State of California, California Civil Code § 1500 et seq., for the
9 benefit of those Settlement Class Members who did not cash their checks until
10 such time that they claim their property. (¶G.14)
- 11 • **Within 5 business days after the Effective Date, Defendant shall remit the Gross**
12 **Settlement Amount (\$180,000.00) to the Settlement Administrator to pay all**
13 **fees, costs, payments and claims. (¶E.5)**

14 **C. TERMS OF RELEASES**

- 15 • **Plaintiff and all Plaintiff Class Members who do not submit a valid and timely**
16 **Request for Exclusion, on behalf of himself or herself, his or her heirs,**
17 **descendants, dependents, executors, administrators, assigns, and successors, fully**
18 **and finally release and discharge the Released Parties from any and all of the**
19 **Released Claims for the entirety of the Class Period. This waiver and release will**
20 **be final and binding on the Effective Date, and will have every preclusive effect**
21 **permitted by law. Plaintiff and the Settlement Class Members may hereafter**
22 **discover facts or legal arguments in addition to or different from those they now**
23 **know or currently believe to be true with respect to the Released Claims.**
24 **Regardless, the discovery of new facts or legal arguments shall in no way limit the**
25

1 scope or definition of the Released Claims, and by virtue of this Agreement,
2 Plaintiff and the Settlement Class Members shall be deemed to have, and by
3 operation of the final judgment approved by the Court, shall have, fully, finally,
4 and forever settled and released all of the Released Claims. The parties understand
5 and specifically agree that the scope of the release described in this Paragraph: is
6 a material part of the consideration for this Agreement; was critical in justifying
7 the agreed upon economic value of this settlement and without it Defendant would
8 not have agreed to the consideration provided; and is narrowly drafted and
9 necessary to ensure that Defendant is obtaining peace of mind regarding the
10 resolution of claims that were or could have been alleged based on the facts, causes
11 of action, and legal theories contained in the operative complaint in the Action.
12 (¶C.3)

- 13 • “Released Claims” or “Settled Claims” means with respect to Plaintiff Class
14 Members: a. All causes of action and factual or legal theories that were alleged in
15 the operative complaint or that could have been alleged against Defendant based
16 on the facts contained in the operative complaint, including all of the following
17 claims for relief: (a) failure to pay all regular wages, minimum wages and overtime
18 wages due; (b) failure to provide proper meal periods and rest, and to properly
19 provide premium pay in lieu thereof; (c) failure to provide complete, accurate or
20 properly formatted wage statements; (d) violation of Labor Code § 221 (e) waiting
21 time penalties; (f) unfair business practices that could have been premised on the
22 claims, causes of action or legal theories of relief described above or any of the
23 claims, causes of action or legal theories of relief pleaded in the operative
24 complaint; (g) all that could have been premised on the claims, causes of action or
25 legal theories described above or any of the claims, causes of action or legal

1 theories of relief pleaded in the operative complaint; (h) any other claims or
2 penalties under the wage and hour laws pleaded in the Action; and (i) all damages,
3 penalties, interest and other amounts recoverable under said claims, causes of
4 action or legal theories of relief (collectively, the "Released Claims"). The period
5 of the Release shall extend to the limits of the Class Period. The res judicata effect
6 of the judgment will be the same as that of the Release. Defendant shall be entitled
7 to a release of Released Claims which occurred during the Covered Period only
8 during such time that the Settlement Class Member was classified as non-exempt,
9 and expressly excluding all other claims, including claims for vested benefits,
10 wrongful termination, unemployment insurance, disability, social security,
11 workers' compensation, claims while classified as exempt, and claims outside of
12 the Class Period. (¶B.26.a)

- 13 • The named Plaintiff will also provide a general release and a waiver of the
14 protections of Cal. Civ. Code §1542. (¶¶B.26.b. C.4)
- 15 • The releases are effective until the the Effective Date and the settlement has been
16 fully funded. (¶B.23; C.3.

17 **D. SETTLEMENT ADMINISTRATION**

- 18
19
20 • The proposed Settlement Administrator is ILYM Group, Inc. which has provided a
21 second March 3, 2021 Declaration confirms it has adequate procedures to
22 safeguard information and are covered by insurance.
- 23 • Settlement administration costs are estimated to be \$7,500. (¶D.1.c)
- 24 • Notice: The manner of giving notice is described below.
- 25

- 1 • “Objection/Exclusion Deadline” means a date that is not later than 45 calendar
2 days after the date the Notice was mailed to Plaintiff Class Members. (¶B.22)
3 Class Members also have 45 days to submit workweek disputes. (¶E.1.b)
4 ○ If 10% or more of the Class Members timely opt out of the Settlement,
5 Defendant shall have the sole and absolute discretion to withdraw from
6 this Agreement. (¶E.3)
7
- 8 • Notice of Final Judgment will be available on Class Counsel’s website. (Notice,
9 pg. 6, ¶15.)
10

11 **D. ATTORNEYS’ FEES**

12 Counsel for the proposed class seek \$60,000 (33 1/3 %) in attorney’s fees and \$15,000
13 in costs. (¶B.5).

14 Counsel represents that Plaintiff have consented to the following fee split: 35% to the
15 Davtyan Professional Law Corporation and 65% to David Yeremian & Associates.
16 (Yeremian Supp. Decl., ¶5.)
17

18 **E. SERVICE AWARDS**

19 The named plaintiff seeks an enhancement award of \$5,000. (¶D.1.b).
20

21 **III. SETTLEMENT STANDARDS AND PROCEDURE**

22 California Rules of Court, rule 3.769(a) provides: “A settlement or compromise
23 of an entire class action, or of a cause of action in a class action, or as to a party,
24 requires the approval of the court after hearing.” “Any party to a settlement agreement
25

1 may serve and file a written notice of motion for preliminary approval of the settlement.
2 The settlement agreement and proposed notice to class members must be filed with the
3 motion, and the proposed order must be lodged with the motion.” See Cal. Rules of
4 Court, rule 3.769(c).

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

18 “The burden is on the proponent of the settlement to show that it is fair and
19 reasonable. However, “a presumption of fairness exists where: (1) the settlement is
20 reached through arm's-length bargaining; (2) investigation and discovery are sufficient
21 to allow counsel and the court to act intelligently; (3) counsel is experienced in similar
22 litigation; and (4) the percentage of objectors is small.” *Wershba*, 91 Cal. App. 4th at
23 245 [citing *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1802].

24 Notwithstanding an initial presumption of fairness, “the court should not give
25 rubber-stamp approval.” *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th

1 116, 130 (“*Kullar*”). “[W]hen class certification is deferred to the settlement stage, a
2 more careful scrutiny of the fairness of the settlement is required.” *Carter v. City of*
3 *Los Angeles* (2014) 224 Cal.App.4th 808, 819. “To protect the interests of absent class
4 members, the court must independently and objectively analyze the evidence and
5 circumstances before it in order to determine whether the settlement is in the best
6 interests of those whose claims will be extinguished.” *Kullar*, 168 Cal. App. 4th at 130.
7 In that determination, the court should consider factors such as “the strength of
8 plaintiffs' case, the risk, expense, complexity and likely duration of further litigation,
9 the risk of maintaining class action status through trial, the amount offered in
10 settlement, the extent of discovery completed and stage of the proceedings, the
11 experience and views of counsel, the presence of a governmental participant, and the
12 reaction of the class members to the proposed settlement.” *Id.* at 128. “Th[is] list of
13 factors is not exclusive and the court is free to engage in a balancing and weighing of
14 factors depending on the circumstances of each case.” *Wershba*, 91 Cal. App. 4th at
15 245.

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

23
24 **IV. ANALYSIS OF SETTLEMENT AGREEMENT**
25

1 **A. THERE IS A PRESUMPTION OF FAIRNESS**

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

3
4 **1. The settlement was reached through arm’s-length bargaining**

5 On October 18, 2019, the parties mediated this case with Debra L. Mellinkoff
6 where the parties agreed to a settlement. (Yeremian Decl., ¶14.)

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

9 Counsel represent that they have conducted investigation and discovery including:
10 conducting formal discovery and informal discovery; reviewing and analyzing time and
11 pay records as well as employment handbooks, Plaintiff’s personnel files, relevant
12 policies and other documentation; retaining an expert to review sampling of data and
13 damages; reviewing and analyzing Defendant’s tax return data due to claimed financial
14 hardships; and reviewing additional information provided by Defendant at the mediation
15 (Id. at ¶12.) Counsel further represents that Defendants counsel provided Plaintiff’s
16 counsel the following documentation informally: applicable employment handbooks
17 from November 14, 2014 through October of 2019; payroll, timekeeping records, and
18 paystubs for Plaintiff; payroll, timekeeping records, and paystubs comprising of a random
19 sampling of 47 employees (out of 66 non-exempt potential class members where 14 had
20 signed arbitration agreements which contained a class waiver). It is further represented
21 that the Parties agreed to a 50% random sampling figure for a total of 24 Class Members,
22 where Defendant provided a redacted list of the 47 employees from whom Plaintiff
23 agreed to a production of every other employee. (Yeremian Supp. Decl., ¶3.) This is
24 sufficient to value the case for settlement purposes.
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3. Counsel is experienced in similar litigation

Class Counsel represent that are experienced in class action litigation, including wage and hour class actions. (Ycremian Decl., ¶¶3-9, 64.d.)

4. Percentage of the class objecting

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

B. THE SETTLEMENT MAY PRELIMINARILY BE CONSIDERED FAIR, ADEQUATE, AND REASONABLE

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

1. Amount Offered in Settlement

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

3 Counsel has provided the following exposure analysis:

CLAIM	MAXIMUM EXPOSURE
Meal Periods	\$138,564
Rest Periods	\$179,486
Unpaid Wages	\$113,284
Waiting Time Penalties	\$159,073
Wage Statement Penalties	\$45,800
TOTAL	\$636,207

8 (Yeremian Decl., ¶25-55.)

9 Class Counsel obtained a gross settlement valued at \$180,000. This is 28% of
10 Defendant’s maximum exposure.

12 2. The Risks of Future Litigation

13 The case is likely to be expensive and lengthy to try. Procedural hurdles (e.g.,
14 motion practice and appeals) are also likely to prolong the litigation as well as any
15 recovery by the class members. Even if a class is certified, there is always a risk of
16 decertification. *Weinstat v. Dentsply Intern., Inc.* (2010) 180 Cal.App.4th 1213, 1226
17 [“Our Supreme Court has recognized that trial courts should retain some flexibility in
18 conducting class actions, which means, under suitable circumstances, entertaining
19 successive motions on certification if the court subsequently discovers that the propriety
20 of a class action is not appropriate.”].) Further, the settlement was negotiated and
21 endorsed by Class Counsel who, as indicated above, are experienced in class action
22 litigation. Based upon their investigation and analysis, the attorneys representing
23 Plaintiff and the class are of the opinion that this settlement is fair, reasonable, and
24 adequate.

3. The Releases Are Limited

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

4. Conclusion

Class Counsel estimated Defendant's maximum exposure at **\$636,207**. Class Counsel obtained a gross settlement valued at \$180,000. This is approximately 28% of Defendant's maximum exposure, which, given the uncertain outcomes, including the potential that the class might not be certified, that liability is a contested issue, and that the full amount of penalties would not necessarily be assessed even if the class is certified and liability found, the settlement is within the "ballpark of reasonableness."

C. CONDITIONAL CLASS CERTIFICATION MAY BE GRANTED

A detailed analysis of the elements required for class certification is not required, but it is advisable to review each element when a class is being conditionally certified. *Amchem Products, Inc. v. Winsor* (1997) 521 U.S. 591, 620, 622-627. The party advocating class treatment must demonstrate the existence of an ascertainable and sufficiently numerous class, a well-defined community of interest, and substantial benefits from certification that render proceeding as a class superior to the alternatives." *Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal.4th 1004, 1021.

1. The Proposed Class is Numerous

1 There are 73 putative Class Members. (Yeremian Decl., ¶64.a.) Numerosity is
2 established. *Franchise Tax Bd. Limited Liability Corp. Tax Refund Cases* (2018) 25
3 Cal.App.5th 369, 393: stating that the “*requirement that there be many parties to a*
4 *class action is liberally construed,*” and citing examples wherein classes of as little as
5 10, *Bowles v. Superior Court* (1955) 44 Cal.2d 574, and 28, *Hebbard v. Colgrove*
6 (1972) 28 Cal.App.3d 1017, were upheld).

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

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

13 The class is defined above. Class Members are ascertainable through
14 Defendant’s records. (Yeremian Decl., ¶64.b.)

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

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

20 Here, Plaintiff contends that common questions of law and fact are present, which
21 would involve a determination about Defendant’s alleged failure to provide meal periods,
22 failure to pay wages and overtime due to allegedly common and unlawful policies, failure
23 to properly calculate wages alongside non-discretionary bonuses, the resulting failure to
24 pay final wages when required, the failure to provide accurate paystubs, the derivative
25 claims under the Business & Professions Code. Counsel contends that the outcome of

1 litigation on this matter depends upon questions that are common to Class Members.
2 (Yeremian Decl., ¶64.f.)

3 Counsel further contends that Plaintiff's claims are typical of Class Members'
4 claims because they arose from the same factual basis and are based on the same legal
5 theories. (*Id.* at ¶64.c)

6 Finally, there appears to be no conflicts of interest between the named Plaintiff and
7 the Class. (*Id.* at ¶64.d.) Class Counsel have experience in class action litigation. *Id.* at
8 ¶¶3-9.) Plaintiff has served on Caseanywhere but failed to file in Court an unsigned
9 March Declaration confirming her adequacy as a class representative pursuant to
10 *Soderstedt v. CBIZ Southern California, LLC* (2011) 197 Cal.App.4th 133, 155-156;
11 *Jones v. Farmers Ins. Exchange* (2013) 221 Cal.App.4th 986, 998-999).

12 13 **4. Substantial Benefits Exist**

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

16 **D. THE PROPOSED NOTICE PLAN MEETS THE REQUIREMENTS 17 OF DUE PROCESS**

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

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1. Method of class notice

Within 10 business days after entry of the Preliminary Approval Order by the Court, Defendant shall provide to the Settlement Administrator a list of Class Members.

(¶E.1) The Settlement Administrator will use available telephone numbers and the appropriate skip tracing and National Change of Address (“NCOA”) searches to reasonably ensure delivery of the Class Notice. The Notice shall state the number of Work Weeks worked by the Class Member and the total approximate amount the Class Member is estimated to be entitled to receive as their Settlement Payment under the Settlement. Within 15 calendar days after receipt of the above electronic Class Member identification information, the Settlement Administrator shall send by first class mail the Class Notice to each Class Member. The Settlement Administrator shall make a rebuttable presumption that each and every Class Member whose Class Notice is not returned to the Settlement Administrator as undeliverable within 15 calendar days after the Mailing Date has received proper notice of the Settlement. (¶E.1.b) The Settlement Administrator shall re-mail any Class Notice returned by the Post Office with a forwarding address within 5 calendar days. The Settlement Administrator shall make a rebuttable presumption that each and every Class Member whose re-mailed Class Notice is not returned to the Settlement Administrator as undeliverable within fifteen (15) calendar days after re-mailing, has actually received notice of the Settlement. (¶E.1.c) The Settlement Administrator shall not be obliged to do more than two re-mailings to any addressee. Should any class notices be returned to ILYM Group’s office as undeliverable, ILYM Group will attempt to locate an updated address using the NCOA database and/or other skip trace efforts and will promptly remail the class notice. (Hartranft Decl., ¶6.)

1 **2. Content of class notice.**

2 A copy of the proposed class notice is attached to the Amended Settlement
3 Agreement as Exhibit A. The notice includes information such as: a summary of the
4 litigation; the nature of the settlement; the terms of the settlement agreement; the
5 maximum deductions to be made from the gross settlement amount (i.e., attorney fees
6 and costs, the enhancement award, and claims administration costs); the procedures and
7 deadlines for participating in, opting out of, or objecting to, the settlement; the
8 consequences of participating in, opting out of, or objecting to, the settlement; and the
9 date, time, and place of the final approval hearing. See Cal Rules of Court, rule
10 3.766(d).

11
12 **3. Settlement Administration Costs**

13 Settlement administration costs are estimated at \$7,500, including the cost of
14 notice. Prior to the time of the final fairness hearing, the settlement administrator must
15 submit a declaration attesting to the total costs incurred and anticipated to be incurred to
16 finalize the settlement for approval by the Court.

17
18 **E. ATTORNEY FEES AND COSTS**

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

24 Ultimately, the award of attorney fees is made by the court at the fairness
25 hearing, using the lodestar method with a multiplier, if appropriate. *PLCM Group, Inc.*

1 *v. Drexler* (2000) 22 Cal.4th 1084, 1095-1096; *Ramos v. Countrywide Home Loans, Inc.*
2 (2000) 82 Cal.App.4th 615, 625-626; *Ketchum III v. Moses* (2000) 24 Cal.4th 1122,
3 1132-1136. In common fund cases, the court may use the percentage method. If
4 sufficient information is provided a cross-check against the lodestar may be conducted.
5 *Laffitte v. Robert Half International, Inc.* (2016) 1 Cal.5th 480, 503. Despite any
6 agreement by the parties to the contrary, “the court ha[s] an independent right and
7 responsibility to review the attorney fee provision of the settlement agreement and
8 award only so much as it determined reasonable.” *Garabedian v. Los Angeles Cellular*
9 *Telephone Company* (2004) 118 Cal.App.4th 123, 128.

10 Counsel represents that Plaintiff have consented to the following fee split: 35% to the
11 Davtayan Professional Law Corporation and 65% to David Yeremian & Associates.
12 (Yeremian Supp. Decl., ¶5.)

13 The question of class counsel’s entitlement to \$60,000 (33 1/3%) in attorney fees
14 will be addressed at the final fairness hearing when class counsel brings a noticed
15 motion for attorney fees. If a lodestar analysis is requested class counsel must provide
16 the court with current market tested hourly rate information and billing information so
17 that it can properly apply the lodestar method and must indicate what multiplier (if
18 applicable) is being sought.

19 Class counsel should also be prepared to justify the costs sought (capped at
20 **\$15,000**) by detailing how they were incurred.

21

22 **F. SERVICE AWARD**

23 The Settlement Agreement provides for a service award of up to **\$5,000** for the
24 class representative. Trial courts should not sanction enhancement awards of thousands
25 of dollars with “nothing more than *pro forma* claims as to ‘countless’ hours expended.

1 ‘potential stigma’ and ‘potential risk.’ Significantly more specificity, in the form of
2 quantification of time and effort expended on the litigation, and in the form of reasoned
3 explanation of financial or other risks incurred by the named plaintiffs, is required in
4 order for the trial court to conclude that an enhancement was ‘necessary to induce [the
5 named plaintiff] to participate in the suit’” *Clark v. American Residential Services*
6 *LLC* (2009) 175 Cal.App.4th 785, 806-807, italics and ellipsis in original.

7 In connection with the final fairness hearing, the named Plaintiffs must submit a
8 declaration attesting to why they should be compensated for the expense or risk they
9 have incurred in conferring a benefit on other members of the class. *Id.* at 806.

10 The Court will decide the issue of the enhancement award at the time of final
11 approval.

12
13 **V. CONCLUSION AND ORDER**

14 Contingent upon counsel addressing the following:

- 15 (1) File, within three days, an executed Declaration from the Plaintiff declaration
16 evidencing that she understands the obligations of being an adequate class
17 representative, the details of what she has done or will do to demonstrate the
18 adequacy of his representative, and the substantial burden she will undertake
19 in order to represent the putative class in this case.

20 The Court hereby:

- 21 (2) Grants preliminary approval of the settlement as fair, adequate, and
22 reasonable;
23 (3) Grants conditional class certification;
24 (4) Appoints Brianna Cooks as Class Representative;

1 (5) Appoints the Davtyan Professional Law Corporation and David Yeremian &
2 Associates, as Class Counsel;


3 (6) Appoints ILYM Group, Inc. as Settlement Administrator;

4 (7) Approves the proposed notice plan; and

5 (8) Approves the proposed schedule of settlement proceedings as follows:

- 6 • Preliminary approval hearing: March 8, 2021
- 7 • Deadline for Defendant to provide class list to settlement administrator: March
8 20, 2021
- 9 • Deadline for settlement administrator to mail notices: March 30, 2021
- 10 • Deadline for class members to opt out: May 14, 2021
- 11 • Deadline for class members to object: May 14, 2021
- 12 • Deadline for class counsel to file motion for final approval: 16 court days prior
13 to final fairness hearing
- 14 • Final fairness hearing: July 21, 2021, 2021, at 10:00 a.m.

15
16
17 Dated: March 8, 2021

18 
19 Hon. Amy Uogue

20 Judge of the Superior Court
21
22
23
24
25