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Superior Court of California,
County of Tulare
03/29/2024
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ELECTRONICALLY FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF TULARE
04/23/2024
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EDDIE HERNANDEZ

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF TULARE**

EDDIE HERNANDEZ, individually and on
behalf of others similarly situated,

Plaintiff,

vs.

NEW IMAGE POOL INTERIORS, INC., a
California corporation; and DOES 1 through 50,
inclusive,

Defendants.

Case No.: VCU293400

*Assigned for all purposes to the Honorable Bret
D. Hillman, Dept. 7*

**[PROPOSED] FINAL APPROVAL ORDER
AND JUDGMENT**

Date: April 23, 2024
Time: 8:30 a.m.
Dept.: 7

Complaint Filed: September 16, 2022
FAC Filed: November 21, 2022
Trial Date: Not set

1 Plaintiff Eddie Hernandez's unopposed Motion for Final Approval of Class Action and
2 PAGA Settlement ("Motion") in the above-captioned matter came for hearing on April 23, 2024,
3 before the Honorable Bret D. Hillman in Department 7 of the above-entitled Court located at 221
4 S. Mooney Blvd., Visalia, California 93291.

5 On December 12, 2023, the Court entered an Order Granting Preliminary Approval of
6 Class Action and PAGA Settlement ("Preliminary Approval Order"), thereby preliminarily
7 approving the settlement of the above-entitled action in accordance with the Joint Stipulation of
8 Class Action and PAGA Settlement (hereinafter, "Agreement" or "Settlement") which, together
9 with the exhibits thereto, set forth the terms and conditions for settlement of this Action.

10 Due and adequate notice having been given to all Class Members as required in the
11 Preliminary Approval Order, and the Court having considered the Agreement, Plaintiff's Motion
12 and all documents submitted in support thereof, all papers filed and proceedings had herein, and
13 otherwise being fully informed and good cause appearing therefore, **IT IS HEREBY
ORDERED, ADJUDGED AND DECREED AS FOLLOWS:**

14 1. Pursuant to California law, this Court hereby grants final approval of the
15 Agreement. The Agreement is hereby deemed incorporated into this Final Order and Judgment.
16 All terms used herein shall have the same meaning as defined in the Agreement.

17 2. This Court has jurisdiction over the subject matter of this Action and over all
18 Parties to this Action, including all Class Members.

19 3. The Court finds that the requirements of California Code of Civil Procedure
20 section 382 and Rule 3.769 of the California Rules of Court have been satisfied with respect to
21 the Class and the Settlement. The Court hereby makes its earlier provisional certification of the
22 Class for settlement purposes, as set forth in the Preliminary Approval Order, final. The Class is
23 hereby defined to include:

24 All current and former hourly-paid, non-exempt employees of Defendant New
25 Image Pool Interiors, Inc. who were employed by Defendant New Image Pool
26 Interiors, Inc. in the State of California at any time during the period commencing
27 on September 16, 2018, and ending on October 1, 2023.

28 4. The Court hereby confirms S. Emi Minne and Jill J. Parker of Parker & Minne,

1 LLP and Benjamin Smith of Smith Law as Class Counsel in the Action.

2 5. The Court concludes that distribution of the Notice directed to the Class Members
3 as set forth in the Agreement and the other matters set forth therein has been completed in
4 conformity with the Preliminary Approval Order and constituted the best notice practicable under
5 the circumstances. The Court concludes that the Administrator, ILYM Group, Inc., took all
6 reasonable and necessary steps to locate and notify each Class Member of the Agreement, as
7 required in the Preliminary Approval Order. The notice given to the Class fully and accurately
8 informed the Class of all material elements of the Settlement and their opportunity to object or
9 comment thereon; was the best notice practicable under the circumstances; was valid, due and
10 sufficient notice to all Class Members; and complied fully with the laws of the State of California,
11 Federal Rules of Civil Procedure, the United States Constitution, due process, and other
12 applicable law. The notice fairly and adequately described the Settlement and provided Class
Members adequate instructions and a variety of means to obtain additional information.

13 6. The Court hereby finds the Agreement was entered into in good faith pursuant to
14 and within the meaning of California Code of Civil Procedure section 877.6. For the reasons set
15 forth in the Preliminary Approval Order, and in the proceedings at the Final Approval hearing,
16 which are adopted and incorporated herein by reference, the Court further finds that Plaintiff has
17 satisfied the standards and applicable requirements for final approval of this class action
18 settlement under California law, including the provisions of California Code of Civil Procedure
19 section 382 and Federal Rule of Civil Procedure 23, approved for use by the California state
20 courts in *Vasquez v. Superior Court*, 4 Cal.3d 800, 821 (1971).

21 7. The Court finds that the Settlement is, in all respects, fair, adequate and
22 reasonable, and in the best interests of the Class as a whole. More specifically, the Court finds
23 that the Settlement was reached following meaningful informal discovery and investigation by
24 Class Counsel; that the Settlement is the product of intensive, serious and non-collusive arms-
25 length negotiations between the parties; and that the terms of the Settlement are in all respects
26 fair, adequate, and reasonable. In so finding, the Court has considered all of the evidence
27 presented, including evidencing regarding the strength of Plaintiff's claims, Defendant's potential
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1 exposure; the risk, expense, complexity, and delay associated with further litigation; the risk of
2 maintaining Plaintiff's claims through class certification, trial, and appeals; the amount offered
3 in the Settlement and the benefit provided to Class Members; the extent of investigation and
4 informal discovery completed; the experience and views of Class Counsel; and the absence of
5 objections to the Settlement, as well as other relevant factors. Accordingly, the Court hereby
6 directs that the Settlement be affected in accordance with the Agreement and the terms and
7 conditions set forth in this Judgment.

8 8. A full opportunity has been afforded to Class Members to participate in this
9 hearing, and all persons wishing to be heard have been heard. Accordingly, the Court determines
10 that all Class Members who did not timely and properly request exclusion from the Settlement
11 ("Participating Class Members") are bound by the Settlement and by this Judgment.

12 9. The Court hereby finds that there have been zero (0) objections to the Agreement.
13 The deadline for Class Members to submit written objections to the Agreement was March 11,
14 2024. The Court also finds that there were zero (0) objections at the hearing on Final Approval.

15 10. The Court hereby finds that zero (0) Class Members have requested to be excluded
16 from the settlement. The deadline for Class Members to request to be excluded from the
17 Agreement was March 11, 2024. Accordingly, 157 Participating Class Members are bound by
18 this Judgment.

19 11. Upon entry of this Judgment and remittance of the Gross Settlement Amount and
20 all applicable employer-side payroll taxes by Defendant to the Administrator, Participating Class
21 Members, shall fully release and discharge Released Parties from all claims, rights, demands,
22 liabilities and causes of action that are alleged, or reasonably could have been alleged based on
23 the factual allegations and claims asserted in the Action arising during the Class Period, including
24 the following claims: (1) Violation of California Labor Code §§ 510 and 1198 (Unpaid Overtime);
25 (2) Violation of California Labor Code §§ 226.7 and 512(a) (Unpaid Meal Period Premiums); (3)
26 Violation of California Labor Code § 226.7 (Unpaid Rest Period Premiums); (4) Violation of
27 California Labor Code §§ 1194, 1197, and 11971. (Unpaid Minimum Wages); (5) Violation of
28 California Labor Code §§ 201 and 202 (Final Wages Not Timely Paid); (6) Violation of California

1 Labor Code § 226(a) (Failure to Provide Accurate Wage Statements); (7) Violation of California
2 Labor Code §§ 2800 and 2802 (Failure to Reimburse Necessary Business Expenses); and (8)
3 Violation of California Business & Professions Code §§ 17200, et seq. based on violations of
4 Labor Code sections 201, 202, 203, 226(a), 226.7, 510, 512(a), 1194, 1197, 1197.1, 2800, and
5 2802.

6 12. Upon entry of this Judgment and remittance of the Gross Settlement Amount by
7 Defendant to the Administrator, any and all claims for the recovery for civil penalties, attorneys'
8 fees and costs permissible under PAGA which Plaintiff, the LWDA, the State of California,
9 and/or the PAGA Members had, or may claim to have, against Released Parties, arising out of the
10 violations alleged in the Complaint or the PAGA Notice during the PAGA Period, including
11 failure to pay overtime compensation, failure to pay minimum wages, failure to provide compliant
12 meal and rest breaks, failure to pay meal and rest period premiums, failure to pay all wages owed
13 at discharge or resignation; failure to timely pay wages during employment; failure to provide
14 complete and accurate wage statements; failure to keep complete and accurate payroll records;
15 failure to reimburse necessary business-related expenses; and violations of Labor Code sections
16 201, 202, 203, 204, 226(a), 226.3, 226.7, 510, 512(a), 1174(d), 1194, 1197, 1197.1, 1198, 2698,
et seq., 2800, and 2802 and the Industrial Welfare Commission Orders.

17 13. The Court finds the settlement payments provided for under the Agreement to be
18 fair and reasonable in light of all of the circumstances. Pursuant to the terms of the Agreement,
19 the Court orders Defendant to fund the Gross Settlement Amount of \$585,000.00 within fourteen
20 (14) calendar days after of the date of entry of this Judgment to provide payments for Individual
21 Class Member Payments, Individual PAGA Payments, the Class Representative Enhancement
22 Payment(s), Class Counsel's Fees and Costs, Settlement Administration Costs, and PAGA
23 Penalties to the LWDA. The Court further orders Defendant to separately pay any and all
24 employer payroll taxes owed on the wage portion of the Individual Class Payments. Defendant
25 shall fund and the Settlement Administrator shall distribute these amounts in accordance with the
26 terms of the Agreement.

27 14. Pursuant to the terms of the Agreement, and the authorities, evidence and argument
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submitted by Class Counsel, the Court hereby awards Class Counsel attorneys' fees in the amount of \$204,750.00, and awards reimbursement of costs and expenses incurred by Class Counsel in the amount of \$8,773.07 from the Gross Settlement Amount. The award of attorneys' fees and costs is the final payment for and complete satisfaction of any and all attorneys' fees and costs incurred by and/or owed to Class Counsel and any other person or entity related to the Action. The Court further orders that the award of attorneys' fees and costs set forth in this Paragraph shall be administered pursuant to the terms of the Agreement. Any allocation of attorneys' fees and costs between and among Class Counsel shall be made by the Administrator pursuant to the separate and independent agreement between Class Counsel.

15. The Court hereby approves and orders a Class Representative Enhancement Payment of ~~\$7,500.00~~ ^{At Fee} to Plaintiff Eddie Hernandez from the Gross Settlement Amount in accordance with the terms of the Agreement.

16. The Court find that the settlement of the Released PAGA Claims for \$35,000.00, which is designated and allocated as penalties under the California Labor Code Private Attorneys General Act of 2004, is fair, reasonable, and appropriate, and is hereby approved. The Court further approves allocation and payment of the PAGA Penalties as follows: \$26,250.00 (75% of \$35,000.00) to the California Labor Workforce Development Agency, and \$8,750.00 (25% of \$35,000.00) to PAGA Members on a *pro rata* basis as set forth in the Agreement. 100% of the amounts distributed to PAGA Members as penalties under PAGA shall be reported on an IRS Form-1099.

17. The Court also hereby approves and orders payment from the Gross Settlement Amount for actual settlement administration expenses incurred by the Administrator, ILYM Group, Inc., in the amount of \$5,000.00.

18. The Court hereby approves and orders payment of Individual Class Payments from the Net Settlement Amount to the Participating Class Members on a *pro rata* basis as set forth in the Agreement.

19. The Court also hereby approves and orders that any checks distributed from the Gross Settlement Amount yet remaining un-cashed after one hundred and eighty (180) calendar

1 days after being issued shall be void. All uncashed settlement checks shall be transferred to the
2 Controller of the State of California to be held pursuant to the Unclaimed Property Law,
3 California Civil Code § 1500, *et seq.* for the benefit of the Class Member or Aggrieved Employee
4 who did not cash their checks until such time that they claim their property, or the property is
5 otherwise disposed of pursuant to the Unclaimed Property Law.

6 20. Provided the Settlement becomes effective under the terms of the Agreement, the
7 Court also hereby orders that the Administrator distribute the Individual Class Member
8 Payments, Individual PAGA Payments, the Class Representative Enhancement Payment, Class
9 Counsel's Fees and Costs payment, Settlement Administration Costs payment, and PAGA
10 Penalties to the LWDA within fourteen (14) calendar days of receipt of the Gross Settlement
11 Amount.

12 21. Without affecting the finality of this Judgment, the Court shall retain continuing
13 jurisdiction over this Action and the Parties, including all Class Members, and over all matters
14 pertaining to the implementation and enforcement of the terms of the Agreement pursuant to
15 California Rule of Court 3.769(h) and California Code of Civil Procedure section 664.6. Except
16 as provided to the contrary herein, any disputes or controversies arising with or with respect to
17 the interpretation, enforcement, or implementation of the Agreement shall be presented to the
18 Court for resolution.

19 22. A post-approval final accounting hearing shall be held on
20 February 1, 2024 at 10:00 a.m. ^G~~p.m.~~ in Room 107 of the above-entitled
21 court, located at 221 S. Mooney Blvd., Visalia, California 93291. Class Counsel shall submit a
22 final compliance status report by no later than February 1, 2024.

23 23. Notice of this Order and Judgment shall be posted by the Administrator, ILYM
24 Group, Inc., on its website for a period of at least sixty (60) days.

25 24. Plaintiff shall file and serve formal Notice of Entry of Judgment with the California
26 Labor and Workforce Development Agency (LWDA).

27 **IT IS SO ORDERED. LET JUDGMENT BE ENTERED ACCORDINGLY.**

Dated: 04/23/2024



Honorable Bret D. Hillman
Judge of the Superior Court