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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SANTA CLARA

DIANA SMYTH, LISA VAUGHAN and
TAMMI PALFREYMAN, individually, on
behalf of themselves and on behalf of all
persons similarly situated,

Plaintiffs,

v.

EVEREVE INCORPORATED, a corporation;
and DOES 1 through 50, inclusive,

Defendants.

CASE NO.: **23CV425684**

**[PROPOSED] PRELIMINARY
APPROVAL ORDER**

Hearing Date: April 30, 2025 _____
Hearing Time: 1:30 p.m.

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

Action Filed: November 9, 2023
Trial Date: Not set

PRELIMINARY APPROVAL ORDER

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 April 30, 2025, for the unopposed
3 motion by Plaintiffs Diana Smyth, Lisa Vaughan and Tammi Palfreyman ("Plaintiffs") for
4 preliminary approval of the class and PAGA settlement with Defendant Evereve Incorporated
5 ("Defendant"). The Court issued a tentative ruling for April 30, 2025, which was not contested
6 and was therefore confirmed by the Court and is now incorporated herein by reference. The
7 Court, having considered the briefs, argument of counsel and all matters presented to the Court
8 and good cause appearing, hereby GRANTS Plaintiffs' Motion for Preliminary Approval of Class
9 Action Settlement.

10 **IT IS HEREBY ORDERED:**

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

18 2. This Order incorporates by reference the definitions in the Agreement, and all
19 terms not otherwise defined in this Order shall have the same meaning as set forth in the
20 Agreement.

21 3. The Gross Settlement Amount is Four Hundred Twenty-Five Thousand Dollars and
22 zero cents (\$425,000.00). It appears to the Court on a preliminary basis that the Settlement
23 amount and terms are fair, adequate and reasonable as to all potential Class Members when
24 balanced against the probable outcome of further litigation and the significant risks relating to
25 certification, liability and damages issues. It further appears that investigation and research have
26 been conducted such that counsel for the Parties are able to reasonably evaluate their respective
27 positions. It further appears to the Court that settlement at this time will avoid substantial
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1 additional costs by all Parties, as well as avoid the delay and risks that would be presented by the
2 further prosecution of the Action. It further appears that the Agreement has been reached as the
3 result of serious and non-collusive, arms-length negotiations. The Court therefore preliminarily
4 finds that the Settlement is fair, adequate, and reasonable when balanced against the probable
5 outcome of further litigation and the significant risks relating to certification, liability, and
6 damages issues.

7 4. The Agreement specifies an attorneys' fees award not to exceed one-third of the
8 Gross Settlement Amount, an award of litigation expenses incurred, not to exceed Thirty
9 Thousand Dollars (\$30,000), and proposed Class Representative Service Payments to the Plaintiffs
10 in an amount not to exceed Ten Thousand Dollars (\$10,000) each. The Court will not approve the
11 amount of attorneys' fees and litigation expenses, nor the amount of any service award, until the
12 Final Approval Hearing. Plaintiffs will be required to present evidence supporting these requests
13 prior to final approval.

14 5. The Court recognizes that Plaintiffs and Defendant stipulate and agree to
15 certification of a class for settlement purposes only. This stipulation will not be deemed
16 admissible in this or any other proceeding should this Settlement not become final. For settlement
17 purposes only, the Court conditionally certifies the following Class: "all individuals who were
18 employed by Defendant in California and classified as a non-exempt employee at any time during
19 the Class Period." The Class Period is October 31, 2019 through December 18, 2024.

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

3 7. The Court provisionally appoints Plaintiffs as the representatives of the Class. The
4 Court provisionally appoints Norman B. Blumenthal, Kyle R. Nordrehaug, and Aparajit Bhowmik
5 of Blumenthal Nordrehaug Bhowmik De Blouw LLP as Class Counsel.

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

20 9. The Court hereby appoints ILYM Group, Inc. as Administrator for the Settlement.
21 No later than fifteen (15) calendar days after issuance of this Order, Defendant shall provide to the
22 Administrator an electronic spreadsheet with the Class Data. This information will otherwise
23 remain confidential and will not be disclosed to anyone, except as required to applicable taxing
24 authorities, to carry out the procedures in the Agreement, or pursuant to Defendant’s express
25 written authorization or by order of the Court. The Administrator will perform address updates
26 and verifications as necessary prior to the mailing of the Class Notice. Using best efforts to mail it
27 as soon as possible, and in no event later than fourteen (14) calendar days after receiving the Class
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1 Data spreadsheet, the Administrator will mail the Class Notice Packet to all Class Members via
2 first-class U.S. Mail.

3 10. The Court hereby preliminarily approves the proposed procedure for exclusion
4 from the Settlement. Any Class Member may individually choose to opt-out of and be excluded
5 from the Class as provided in the Class Notice by following the instructions set forth in the Class
6 Notice. All requests for exclusion must be sent to the Administrator and postmarked by no later
7 than the Response Deadline, which is sixty (60) calendar days after the Administrator initially
8 mails the Class Notice Packets to the Class Members. If the Class Notice Packet is re-mailed, this
9 Response Deadline will be extended an additional fourteen (14) calendar days. Any person who
10 chooses to opt-out of and be excluded from the Class will not be entitled to any recovery under the
11 Settlement and will not be bound by the Settlement or have any right to object, appeal or comment
12 thereon. Aggrieved Employees shall be sent their Individual PAGA Payment and will be subject to
13 the release of the Released PAGA Claims regardless of whether they opt-out of the Class. Class
14 Members who have not requested exclusion shall be bound by all determinations of the Court, the
15 Agreement, and the Judgment. A request for exclusion applies only to the individual submitting
16 the request for exclusion, and any attempt to effect an opt-out on behalf of any other individual or
17 individuals (including a group, class, or subclass of individuals) is not permitted and will be
18 deemed invalid.

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

1 12. A Final Approval Hearing shall be held before this Court on September 24, 2025 at
2 1:30 p.m. in Department 19 at the of the Santa Clara County Superior Court to determine all
3 necessary matters concerning the Settlement, including: whether the proposed settlement of the
4 Action on the terms and conditions provided for in the Agreement is fair, adequate and reasonable
5 and should be finally approved by the Court; whether the Final Approval Order and Judgment
6 should be entered herein; whether the plan of allocation contained in the Agreement should be
7 approved as fair, adequate and reasonable to the Class Members; and to finally approve attorneys'
8 fees and costs, the service awards, and the expenses of the Administrator. The motion for final
9 approval of the class settlement and for award of attorneys' fees, costs and service awards shall be
10 filed with the Court and served on all counsel no later than sixteen (16) court days before the
11 hearing and shall be heard at the Final Approval Hearing.

12 13. Neither the Settlement nor any exhibit, document, or instrument delivered
13 thereunder shall be construed as a concession or admission by Defendant in any way that the
14 claims asserted have any merit or that this Action was properly brought as a class or representative
15 action, and shall not be used as evidence of, or used against Defendant as, an admission or
16 indication in any way, including with respect to any claim of any liability, wrongdoing, fault or
17 omission by Defendant or with respect to the truth of any allegation asserted by any person.
18 Whether or not the Settlement is finally approved, neither the Agreement, nor any exhibit,
19 document, statement, proceeding or conduct related to the Settlement or Agreement, nor any
20 reports or accounts thereof, shall in any event be construed as, offered or admitted in evidence as,
21 received as or deemed to be evidence for any purpose adverse to the Defendant, including, but not
22 limited to, evidence of a presumption, concession, indication or admission by Defendant of any
23 liability, fault, wrongdoing, omission, concession or damage. Nothing in the Settlement or this
24 Order shall be deemed a waiver of Defendant's rights to enforce arbitration agreements entered
25 into by Class Members or Aggrieved Employees.

26 14. The Agreement provides for a PAGA Penalties out of the Gross Settlement
27 Amount of \$10,000, which shall be allocated \$7,500 to the Labor & Workforce Development
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1 Agency ("LWDA") as the LWDA's 75% share of the settlement of civil penalties paid under this
2 Agreement pursuant to the PAGA and \$2,500 to the Aggrieved Employees. "Aggrieved
3 Employees" are all individuals who are or were employed by Defendant in California and
4 classified as a non-exempt or hourly employee at any time during the PAGA Period (September 5,
5 2022 through December 18, 2024). The Court finds the PAGA Penalties to be reasonable.
6 Plaintiffs are hereby ordered to give notice of the Settlement to the California Labor and
7 Workforce Development Agency, as required by PAGA.

8 15. In the event the Settlement does not become effective in accordance with the terms
9 of the Agreement, or the Settlement is not finally approved, or is terminated, canceled or fails to
10 become effective for any reason, this Order shall be rendered null and void and shall be vacated,
11 and the Parties shall revert to their respective positions as of before entering into the Agreement,
12 and expressly reserve their respective rights regarding the prosecution and defense of this Action,
13 including all available defenses and affirmative defenses, and arguments that no claim in the
14 Action could be certified as a class action and/or managed as a representative action. In such an
15 event, the Court's orders regarding the Settlement, including this Order, shall not be used or
16 referred to in litigation or otherwise for any purpose.

17 16. The Court reserves the right to adjourn or continue the date of the Final Approval
18 Hearing and all dates provided for in the Agreement without further notice to Class Members and
19 retains jurisdiction to consider all further applications arising out of or connected with the
20 proposed Settlement.

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

23 **IT IS SO ORDERED.**

24
25 Dated: May 2, 2025



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

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PRELIMINARY APPROVAL ORDER