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7 Attorneys for Plaintiff and the putative class

ENDORSED
FILED

JUN 20 2018

SUPERIOR COURT OF CALIFORNIA
COUNTY OF SONOMA

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA

9 COUNTY OF SONOMA

10
11 JAMIE WATERMAN, on behalf of himself
and all others similarly situated,

12 Plaintiffs,

13 vs.

14 AMERITECH FINANCIAL, a California
Corporation; and DOES 1 through 10,
15 inclusive,

16 Defendants.

CASE NO. SCV-261327

CLASS ACTION

ANT
[PROPOSED] ORDER GRANTING
PLAINTIFFS' MOTION FOR
PRELIMINARY APPROVAL OF CLASS
ACTION SETTLEMENT AND
CONDITIONALLY CERTIFYING
SETTLEMENT CLASS

Date: June 20, 2018

Time: 3:00 p.m.

Dept: 19

Judge: Allan D. Hardcastle

Action Filed: September 22, 2017

1 On June 20, 2018, a hearing was held on Plaintiffs' Motion for Unopposed
2 Preliminary Approval of Class Action Settlement and Provisional Class Certification.
3 Thomas A. Rist of Humphrey & Rist, LLP appeared telephonically for Plaintiffs, and Lisa
4 Ann Hilario of Spaulding McCullough & Tansil, LLP appeared for Defendant.

5 The Court, having read and considered the motion, the memorandum of points and
6 authorities, supporting declarations, and all other filed documents and exhibits, and having
7 heard argument of counsel, preliminarily finds that:

8 1. It is impracticable to bring all members of the settlement class before the
9 Court;

10 2. The class is ascertainable and is sufficiently numerous to warrant class
11 treatment;

12 3. The questions of law or fact common to the class are substantially similar
13 and predominate over the questions affecting the individual members;

14 4. The claims or defenses of the representative plaintiff are typical of the claims
15 or defenses of the class;

16 5. The representative plaintiff will fairly and adequately protect the interests of
17 the class;

18 6. A class action is the superior means for settling the claims in the litigation;

19 7. The proposed settlement of this action as set forth in the Parties' Stipulation
20 of Settlement and Release, filed with the Court as Exhibit A to the Declaration of
21 Thomas A. Rist ("Settlement"), falls within the range of possible approval;

22 8. The proposed notice of the settlement to members of the settlement class
23 complies with applicable standards and should be distributed;

24 9. Upon notice being mailed to Class Members and expiration of any opt-out
25 and objection periods, a final approval hearing ("Fairness Hearing") shall be held to
26 determine whether the settlement should be finally approved and if a Final Approval Order
27 and Final Judgment should be entered in this action based upon the Settlement.
28

1 10. The parties clarified with the Court during the hearing on the Motion that
2 they have agreed to the following: (1) Defendant will pay the gross amount of \$155,000
3 into the settlement fund; (2) after attorneys fees and costs are deducted, approximately
4 \$76,875 will be paid to the estimated sixty-four class members according to the formula set
5 forth in the Settlement Agreement; (3) that class members will not be required to submit
6 claim forms in order to receive their share of the settlement proceeds; (4) the settlement
7 amount is non-reversionary; (5) notice will be sent to the putative class to notify them of
8 their right to a portion of the settlement sum; (6) the parties agreed to provisional
9 certification of the proposed class; (7) class members who object to the settlement may opt
10 out of the settlement; and (8) if more than five percent of the class members opt out,
11 Defendant shall have the right to rescind the Settlement Agreement, in which case the
12 Agreement shall be null and void. All class members who do not opt out from the
13 settlement agreement will release Defendant from any and all related claims.

14 11. The Settlement also includes an "incentive award" not to exceed \$5,000 to
15 the "Named Plaintiff" for his time and effort to bring the action; a payment of \$5,000 to the
16 settlement administrator; attorneys fees of \$62,000 in addition to approximately \$5,000 in
17 costs; and payment to the LWDA in the amount of \$1,125.

18 **IT IS THEREFORE ORDERED:**

19 1. The proposed class satisfies the requirements of a settlement class because
20 the Class Members are readily ascertainable and a well-defined community of interest
21 exists in the questions of law and fact affecting the parties.

22 2. The Settlement is granted preliminary approval as it meets the criteria for
23 preliminary settlement approval. The Settlement falls within the range of possible
24 outcomes if the case proceeded to trial and appears to be fair, adequate and reasonable.
25 Additionally, the Settlement appears to be the product of arm's-length and informed
26 negotiations and treats all Class Members fairly. The Court however, reserves the right to
27 review Plaintiffs' application for attorneys' fees and costs and incentive award on final
28 approval.

1 3. The Court approves, as to form and content, the class notice and class
2 information sheet filed with the Court as Exhibits A(1) and A(2) to the Declaration of
3 Thomas A. Rist. As was clarified during the hearing, the LWDA payment in Exhibit A(1)
4 will be corrected to reflect that \$1,125 is being paid to the LWDA. The class notice meets
5 the requirements of § 382 of the Code of Civil Procedure, Rules 3.766 and 3.769 of the
6 California Rules of Court, and due process.

7 4. The following persons are certified as Class Members solely for the purpose
8 of entering a settlement in this matter:

9 a. Plaintiff Class: All persons employed at Ameritech locations owned and/or
10 operated by Defendant in the State of California between January 1, 2017 and
11 June 20, 2017, who left employment prior to the expiration of their 90-day
12 probationary period.

13 5. Plaintiff Jamie Waterman is designated as the Class Representative for the
14 Settlement Class. Thomas A. Rist and Christina A. Humphrey of Humphrey & Rist, LLP
15 are appointed Class Counsel.

16 6. ILYM Group, Inc. is appointed to act as the Settlement Administrator,
17 pursuant to the terms set forth in the Settlement Agreement.

18 7. Notice shall be disseminated according to the notice plan described in the
19 Settlement Agreement and substantially in the form submitted by the parties. Proof of
20 distribution of notice shall be filed by Plaintiffs' counsel at or prior to the final approval
21 hearing.

22 8. Defendant is directed to provide the Settlement Administrator not later than
23 15 days after the date of this Order the class data as specified by the Settlement Agreement.

24 9. The Settlement Administrator is directed to mail the approved Class Notice
25 by first-class mail to the Class Members not later than 21 days after receipt of the class
26 data.

27 10. Any Class Member who has not elected to opt-out of the Settlement and who
28 objects to approval of the Settlement, including the allocation and distribution plans and

1 any application for attorneys' fees and expenses, may object in writing or orally at the
2 Fairness Hearing in person or through counsel to show cause as to why the Court should
3 not grant final approval of the Settlement.

4 11. All requests of Class Members to opt-out of the Settlement, to object to the
5 Settlement, and/or to appear at the Fairness Hearing shall be mailed to the Settlement
6 Administrator 30 days after the mailing of the Class Notice at the following address:

7 ILYM GROUP, Inc.
8 PO Box 130
9 Tustin, CA 92781

10 12. For any comments or objections to be considered at the hearing, the Class
11 Member must send comments or objections to the Claims Administrator as set forth in the
12 Notice. Counsel for the Plaintiff shall bundle together all materials submitted by Class
13 Members and shall file these as a group at the time of briefing for the Final Fairness
14 Hearing.

15 13. Any Class Member who does not make an objection to the Settlements
16 and/or appear at the Fairness Hearing in the manner provided herein shall be deemed to
17 have waived the right to object by appeal, collateral attack, or otherwise.

18 14. Plaintiffs' counsel shall process for delivery to the Court all timely copies of
19 opt-outs or objections received from class members and shall file these received forms,
20 along with any valid and timely papers or briefs in support of objections from class
21 members, with the Court at least 20 days before the Fairness Hearing.

22 15. Plaintiffs' briefs and supporting papers in response to objections shall be
23 filed with the Court at least 16 days before the Fairness Hearing.

24 16. Plaintiffs' briefs and supporting papers in support of final approval of the
25 Settlement, and application for an award of incentive payments, fees, costs, and expenses
26 to counsel shall be filed with the Court at least 16 days before the Fairness Hearing.

27 17. A Fairness Hearing will be scheduled upon the filing of a properly noticed
28 motion for final approval with the Clerk's Office and the Court will set a hearing date at
that time. The Court will hear all evidence and argument necessary to evaluate the

1 Settlement, and will consider Plaintiffs' request for class representative payments and class
2 counsel's request for payment of attorney's fees and litigation costs. Class Members and
3 their counsel may support or oppose the Settlement and the motion for awards of the class
4 representative payment and attorney's fees and litigation costs payments, if they so desire,
5 as set forth in the Class Notice.

6 18. The Fairness Hearing may be postponed, adjourned or continued by order of
7 the Court without further notice to the Plaintiff Class. After the Fairness Hearing, the
8 Court may enter a Settlement Approval Order and Final Judgment in accordance with the
9 Settlement Agreement that will adjudicate the rights of all class members.

10 19. In the event the Settlement is not approved by the Court, or for any reason
11 the parties fail to obtain a Settlement Approval Order and Final Judgment as contemplated
12 in the Settlement Agreement, or the Settlement Agreement is terminated pursuant to its
13 terms, all orders entered in connection therewith with the terminated Settlement Agreement
14 shall become null and void and of no further force and effect, and shall not be used or
15 referred to for any purpose whatsoever. In such event, such terminated Settlement, and all
16 negotiations and proceedings relating thereto, shall be withdrawn without prejudice as to
17 the rights of any and all parties thereto.

18 SO ORDERED.

19 **JUN 20 2018**

20 DATED: _____, 2018

ALLAN D. HARDCASTLE

Hon. Allan D. Hardcastle
Judge of the Superior Court

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