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10

11 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
12 **FOR THE COUNTY OF RIVERSIDE**

13 JOHN NEVINS, individually and on behalf of  
all others similarly situated,  
14

15 Plaintiff,

16 vs.

17 NEIGHBORHOOD GARAGE DOOR  
SERVICES, INC., a California corporation; and  
18 DOES 1 through 25, inclusive,

19 Defendants.  
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Case No. RIC2002958

[Assigned to the Hon. Harold W. Hopp,  
Dept. 1]

**PLAINTIFF'S NOTICE OF MOTION  
AND MOTION FOR FINAL APPROVAL  
OF CLASS ACTION SETTLEMENT;  
AND MEMORANDUM OF POINTS  
AND AUTHORITIES IN SUPPORT**

Date: August 26, 2024  
Time: 8:30 a.m.  
Dept.: 1

**Reservation No.: Set by Court**

Action Filed: July 28, 2020  
Trial Date: Not Set

1 **TO ALL PARTIES AND THEIR COUNSEL OF RECORD:**

2 **PLEASE TAKE NOTICE THAT** on August 26, 2024, at 8:30 a.m., or as soon  
3 thereafter as the matter may be heard in Department 1 of the Superior Court of the State of  
4 California for the County of Riverside, Historic Courthouse, located at 4050 Main Street,  
5 Riverside, CA 92501, before the Honorable Harold W. Hopp, Judge presiding, Plaintiff John  
6 Nevins ("Plaintiff") will and hereby does move the Court for an Order: (1) Granting final  
7 approval to the Class Action and PAGA Settlement Agreement ("Settlement Agreement")  
8 between Plaintiff and Defendant Neighborhood Garage Door Services, Inc. ("Defendant"); (2)  
9 Approving distribution of the settlement funds to the class members pursuant to the terms of the  
10 Settlement Agreement; (3) Approving Plaintiff's request for an award of the class representative  
11 enhancements of \$7,500.00 to Plaintiff pursuant to the terms of the Settlement Agreement; (4)  
12 Approving Plaintiff Counsel's request for an award to Class Counsel in the amount of  
13 \$25,833.33 for attorneys' fees and reimbursement of actual costs in the amount of \$7,261.38  
14 pursuant to the terms of the Settlement Agreement; (5) Approving Plaintiff's request for payment  
15 of the claims administration costs to ILYM Group in the amount of \$5,250.00 pursuant to the  
16 terms of the Settlement Agreement; (6) Entering final judgment as to all members of the  
17 Settlement Class in this action; and (7) setting a Compliance Hearing date on or after June 23,  
18 2025, with a deadline to file a compliance declaration on June 16, 2025.

19 This Motion is made pursuant to Rule 3.769 of the California Rules of Court, which  
20 provides for court approval of the settlement of a class action and authorizes the Court to grant  
21 final certification of a class for settlement purposes.

22 The basis for this Motion, filed without any opposition from Defendant, is that the  
23 proposed settlement is fair, adequate, and reasonable and the procedures proposed by the Parties  
24 are adequate to ensure the opportunity of class members to participate in, opt out of, or object to  
25 the settlement.

26 This Motion will be based on this Notice, concurrently filed herewith, the Memorandum  
27 of Points and Authorities, the Settlement Agreement, the supporting Declarations of Dennis S.  
28

1 Hyun, William Marder, Plaintiff, and Nicole Bench on behalf of ILYM Group, and upon the oral  
2 arguments of counsel (should there be any) and on the complete records and file herein.

3  
4 Dated: July 25, 2024

POLARIS LAW GROUP

5  
6 By:   
7 William L. Marder  
8 Attorneys for Plaintiff and the Class  
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## I. INTRODUCTION

On July 28, 2020, Plaintiff filed a Complaint against Defendant in the Superior Court of the State of California, County of Riverside. Plaintiff asserted the following claims against Defendant: (a) unpaid minimum wages for work-related travel; (b) unpaid overtime wages for work-related travel; (c) For violation of California Labor Code § 226; (d) violation of the Unfair Competition Law (the “UCL”), Business & Professions Code § 17200, *et seq.*; and (e) violations of the Private Attorneys General Act (the “PAGA”), Labor Code § 2698, *et seq.*

The settlement was achieved after extensive litigation, a full-day mediation well-respect mediator, Honorable William C. Pate (Ret.) The settlement complies with the Court’s Case Management Order and meets all of the elements required for approval. This Court entered its Order preliminarily approving this Settlement on April 30, 2024 (the “Preliminary Approval Order”). As set forth in this Court’s Order, this Court directed distribution of the Notice of Proposed Settlement of Class Action and Hearing Date for Final Court Approval (the “Class Notice”).

NOTICE OF MOTION AND MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT

1 participation rate. (*Id.* at ¶ 14). Therefore, an inference can be made that the Class supports the  
2 Court's Preliminary Approval Order finding that the Settlement was fair and reasonable.

3 In sum, as a result of the notice process, and the amount of class funds being paid out to  
4 the class members, the Court may confirm its preliminary approval as this process supports the  
5 Court's initial finding that the Settlement is fair and reasonable. The fact that no objections and  
6 requests for exclusion were submitted shows that class members believe that the settlement is  
7 fair and reasonable.

8 In addition to the results of the notice process, for the same reasons as set forth earlier in  
9 Plaintiff Motion for Preliminary Approval of Class Action Settlement, the following represent  
10 the basic points previously covered supporting approval of the Settlement:

- 11 • The total number of Class Members is 42 individuals and there are 49 Aggrieved  
12 Employees (7 were excluded from the Class because they signed settlement  
13 agreements, but remain Aggrieved Employees pursuant to *Kim v. Reins Int'l Cal.,*  
14 *Inc.*, 9 Cal. 5th 73 (2020)). (Admin Decl. ¶¶ 8, 11);
- 15 • Estimate of recovery by each class member is \$569.17 with the highest Settlement  
16 Share of \$1,939.20 and lowest of \$25.29. (Admin Decl. ¶ 16);
- 17 • There are no claim forms to be submitted. The settlement class will automatically  
18 receive their settlement funds unless they opt-out of the settlement; and
- 19 • There is no reversion to the Defendant (Settlement Agreement ¶ I.S.)

20 With this additional information, the Court should grant Final Approval consistent with  
21 the Preliminary Approval Order.

## 22 **II. CLASS MEMBERS WERE PROVIDED PROPER NOTICE OF THE** 23 **SETTLEMENT (CMO (H)(5)(a))**

24 The notice procedures required by the Preliminary Approval Order, have been followed  
25 and satisfy all due process rights of Class Members.

26 The Preliminary Approval Order directed the Class Notice to be sent to all Class  
27 Members by first class mail pursuant to the terms of the Settlement Agreement. The  
28

1 Preliminary Approval Order approved ILYM Group (“ILYM” and/or “Settlement  
2 Administrator”) to serve as the Settlement Administrator.

3 As clearly stated in the Declaration of Nicole Bench, notice was provided to Class  
4 Members, as required by the Preliminary Approval Order. The Settlement Administrator  
5 received the Class and PAGA Data from Defendant’s counsel that contained each Class  
6 Member and/or Aggrieved Employee’s last-known mailing address; Social Security number;  
7 his or her number of workweeks worked during the Class Period as a Class Member; his or her  
8 number of workweeks worked during the PAGA Period as an Aggrieved Employee. (Admin  
9 Decl. ¶ 5). On May 14, 2024, the Settlement Administrator mailed English versions of the  
10 Class Notice to the 49 individuals listed in the Class and PAGA Data. (Admin Decl. ¶ 7; Ex.  
11 A). A total of four (4) notices were returned due to a defective address, of which all were re-  
12 mailed based on newly discovered addresses obtained through skip-traces. (*Id.* at ¶¶ 8-10). As  
13 of the date of this filing, zero Class Notices remain undeliverable. (*Id.* at ¶ 10).

14 The Class Notice specifically directed Class Members to the Court and Class Counsel,  
15 where they could further receive information regarding the class settlement. Class Counsel has  
16 received a number of calls and emails during the notice period from Class Members who are  
17 both current and former employees of Defendant with questions about the case and the current  
18 settlement.

19 The provision of sending the notice to class members as described above meets the  
20 requirements for the “best notice practicable” in this case as necessary to protect the due  
21 process rights of class members. (*See, e.g., Phillips Petroleum Co. v. Shutts* (1985) 472 U.S.  
22 797, 811-12 [provision of “best notice practicable” with description of the litigation and  
23 explanation of opt-out rights satisfies due process]; *Eisen v. Carlisle & Jacquelin* (1974) 417  
24 U.S. 156, 174-75 [individual notice must be sent to class members who can be identified  
25 through reasonable means]; *Mullane v. Central Hanover Bank & Trust Co.* (1950) 339 U.S.  
26 306, 314 [best practicable notice is that which is “reasonably calculated, under all the  
27 circumstances, to apprise interested parties of the pendency of the action and afford them an  
28 opportunity to present their objections”].)

1 The Court, therefore, may proceed to determine the fairness and adequacy of the  
2 Settlement and order its approval, secure in the knowledge that all absent Class Members have  
3 been given the opportunity to participate fully in the claims, exclusion, and approval process.

4 **III. THE SETTLEMENT TERMS ARE FAIR, ADEQUATE AND REASONABLE,**  
5 **AND THE SETTLEMENT SHOULD BE GIVEN FINAL APPROVAL**

6 **A. STRENGTH OF PLAINTIFF’S CASE AND LIKELIHOOD OF**  
7 **CERTIFYING THE CLASS**

8 Under California law, there are two basic requirements which must exist to sustain a  
9 class action: “[t]he first is existence of an ascertainable class, and the second is a well-defined  
10 community of interest in the questions of law and fact involved.” (*Vasquez v. Sup. Ct. (Karp)*  
11 (1971) 4 Cal.3d 800, 809)

12 **1. The Class is Ascertainable and Sufficiently Numerous**

13 Whether a class is “ascertainable” within the meaning of Code of Civil Procedure  
14 section 382 “is determined by examining (1) class definition, (2) the size of the class, and (3)  
15 the means available for identifying the class members.” (*Reyes v. San Diego County Board of*  
16 *Supervisors* (1987) 196 Cal. App. 3d 1263, 1271)

17 The class is defined as: “[a]ll individuals employed by Defendant Neighborhood Garage  
18 Door Services, Inc. in California as non-exempt service technician employees and who worked  
19 at least one hour at any time from March 30, 2019 to Preliminary Approval [April 30, 2024].”  
20 Based on this objective definition, Defendant was able to identify 49 individuals who fall  
21 within this definition. As such, the class is ascertainable. Further, as to numerosity, there is no  
22 minimum number of class members required for maintenance of a class action. (*Rose v. City of*  
23 *Hayword* (1981) 126 Cal. App. 3d 926). The size of the claims involved, and any public  
24 interest factors in the case may be determinative. (*Id.* at p. 934). “Numerosity” is met when a  
25 plaintiff demonstrates the “impracticability” of joinder. (Fed. Rules Civ. Proc.23(a)(1); *Harris*  
26 *v. Palm Springs Alpine Estates, Inc.* (9th Cir. 1964) 329 F.2d 909, 913-14). In *Bowles v.*  
27 *Superior Court* (1955) 28 Cal.2d 574, a class was certified with only 10 members.  
28

1           Given that there are 42 members that comprise of the Class, this meets the minimum  
2 required to certify a class. Within the context of manageability, the issue is whether there  
3 exists sufficient means for identifying class members at the remedial stage. (*Reyes v. San*  
4 *Diego County Board of Supervisors, supra*, 196 Cal.App.3d at pp. 1274-75). Class members  
5 were identified by Defendant, and Class Notice was provided to all of the above class  
6 members.

7                           **2.       There is a Community of Interest**

8           The “community of interest” requirement embodies three separate factors: (1)  
9 predominant common questions of law or fact; (2) class representatives whose claims are  
10 typical of the class; and (3) class representatives who can adequately represent the class.  
11 (*Richmond v. Dart Industries, Inc., supra*, 29 Cal.3d at p. 470; *Reese v. Wal-Mart Stores, Inc.*  
12 (1999) 73 Cal. App. 4th 1225, 1234).

13                           **a.       There Are Predominant Common Questions of Law and Fact**

14           “The ultimate question in every case of this type [class actions] is whether ... the issues  
15 which may be jointly tried, when compared with those requiring separate adjudication, are so  
16 numerous and substantial that the maintenance of a class action would be advantageous to the  
17 judicial process and to the litigants.” (*Lockheed Martin Corp. v. Sup. Ct. (Carrillo)* (2003) 29  
18 Cal.4th 1096, 1104-05).

19           Plaintiff claims that Defendant, as a matter of its corporate policy, practice, or  
20 procedure violated the Labor Code by not paying for travel time beyond the ordinary commute.  
21 Plaintiff believes that said claim presents predominant questions of law and fact applicable to  
22 all class members.

23                           **b.       Plaintiff’s Claims Are Typical of the Class Claims**

24           The purported class representative’s claim must be “typical” but not necessarily  
25 identical to the claims of other class members; it is sufficient that the representative is similarly  
26 situated so that he or she will have the motive to litigate on behalf of the class. (*Classen v.*  
27 *Weller* (1983) 145 Cal.App.3d 27, 45). Courts look to whether class members have similar  
28 injuries, “whether the action is based on conduct which is not unique to the named Plaintiff,”

1 and whether other class members were injured by the same conduct. (*Hannon v. Dataproducts*  
2 *Corp.* (9th Cir. 1992) 976 F.2d 497, 508; *Schwartz v. Harp* (C.D.Cal. 1985) 108 F.R.D. 279,  
3 282). The purpose of the typicality requirement “is to assure that the interest of the named  
4 representative aligns with the interests of the class.” *Hannon v. Dataproducts Corp., supra*,  
5 976 F.2d at p. 508).

6 Plaintiff claims that Defendant, as a matter of its corporate policy, practice, or  
7 procedure violated the Labor Code by not paying for travel time beyond the ordinary commute.  
8 (Declaration of John Nevins (“Nevins Decl.”) ¶ 3). Plaintiff believes he was subjected to this  
9 same alleged practice. (*Id.*) Thus, Plaintiff’s claims are typical of the class.

10 **c. Plaintiff Adequately Represented The Class**

11 The class representative, through qualified counsel, must be capable of “vigorously and  
12 tenaciously” protecting the interests of the class members. (*Simons v. Horowitz* (1984) 151  
13 Cal.App.3d 834, 846). Since the judgment rendered in a class action will bar further relief to  
14 the class members, the representative plaintiff must assert all claims reasonably expected to be  
15 raised by members of the class. (*City of San Jose v. Sup. Ct. (Lands Unlimited)* (1974) 12  
16 Cal.3d 447, 464). Plaintiff does not have any interests adverse to the class, nor has any such  
17 issue been raised or presented. (Nevins Decl. ¶ 4). Plaintiff has taken all necessary steps to  
18 represent the interests of the Class, by making himself available to answer questions, gather and  
19 provide documents, and review and execute the Settlement Agreement and accompanying  
20 declaration. (*Id.* at ¶ 7). For such reasons, Plaintiff has adequately represented the class  
21 members.

22 In order to proceed as a class, there are two requirements which must be met --  
23 ascertainability and community of interest. (*See Daar v. Yellow Cab Co.* (1967) 67 Cal.2d.  
24 695, 704) “The community of interest requirement embodies three factors: (1) predominant  
25 common questions of law or fact; (2) class representatives with claims or defenses typical of  
26 the class; and (3) class representatives who can adequately represent the class.” (*Richmond v.*  
27 *Dart Industries* (1981) 29 Cal.3d. 462, 470.)  
28

1 As already noted above, this Court previously granted conditional certification of the  
2 Class pursuant to the Preliminary Approval Order. As such, all of the factors for class  
3 certification have already been met.

4 **B. THE TERMS OF THE SETTLEMENT, THE NEGOTIATION OF THE**  
5 **SETTLEMENT AND THE RECEPTION OF THE SETTLEMENT BY**  
6 **CLASS MEMBERS ALL STRONGLY SUPPORT THE CONCLUSION**  
7 **THAT THE SETTLEMENT IS FAIR, ADEQUATE AND REASONABLE**

8 Without reiterating the parties' showing that the Settlement Agreement and the  
9 negotiation process that led up to it was fair and adequate, as set forth in detail in the Motion  
10 for Preliminary Approval of Class Action Settlement, the parties highlight the following facts.  
11 The Agreement was the product of negotiation between highly able and experienced attorneys  
12 on both sides who possessed the relevant data and extensive legal research which they had  
13 carefully analyzed. (Declaration of Dennis Hyun ("Hyun Decl.") ¶¶ 8-15). In addition, the  
14 resolution of this case was reached only after the parties engaged in substantial investigation  
15 and mediation. (*Id.*)

16 The results after mailing of the Class Notice support confirmation of the Court's  
17 preliminary approval of the settlement with final approval of the settlement, as evidenced by  
18 the fact that there are no objections or disputes to the current settlement and only three request  
19 for exclusion. (Admin Decl. ¶¶ 11-12).

20 The Court may appropriately infer that the class action settlement is fair, adequate and  
21 reasonable when, among other reasons, few class members object to it. (*See Class Plaintiff v.*  
22 *City of Seattle* (9th Cir. 1992) 955 F.2d 1268, 1291.) The Court should further construe the lack  
23 of any objection to this current settlement as an indication that Class Members themselves view  
24 the settlement as fair, adequate and reasonable.

25 **C. UNDER WELL-ESTABLISHED LEGAL PRINCIPLES, THE COURT**  
26 **SHOULD GRANT FINAL APPROVAL OF THE SETTLEMENT**

27 **1. Standard Of Review**  
28

1 On a motion for final approval of a class action settlement under Civil Code §1781(f), a  
2 court's inquiry is whether the settlement is "fair, adequate and reasonable."<sup>1</sup> (*Officers for*  
3 *Justice v. Civil Serv. Comm'n* (9th Cir. 1982) 688 F.2d 615, 625, cert. denied subnom., *Byrd v.*  
4 *Civil Serv. Comm'n*, (1983) 459 U.S. 1217.) A settlement is fair, adequate and reasonable, and  
5 therefore merits final approval, when "the interests of the class are better served by the  
6 settlement than by further litigation." (See Manual for Complex Litigation Fourth (Fed. Judicial  
7 Center 2004) ("Manual"), § 21.6 at 309.)

8 The law favors settlement, particularly in class actions and other complex cases, where  
9 substantial resources can be conserved by avoiding the time, cost, and rigors of formal  
10 litigation. (See 4 *Newberg on Class Actions* 4th § 11.41 (2008); *Chemical Bank v. City of*  
11 *Seattle*, 955 F.2d 1268, 1276; *Van Bronkhorst v. Safeco Corp.* (9th Cir. 1976) 529 F.2d 943,  
12 950.)

13 Although the Court possesses "broad discretion" in determining that a proposed class  
14 action settlement is fair, the Court's role must be limited to the extent necessary to reach a  
15 reasoned judgment that the agreement is not the product of fraud or overreaching by, or  
16 collusion between, the negotiating parties, and that the settlement, taken as a whole, is fair,  
17 reasonable and adequate to all concerned. (See *Officers for Justice v. Civil Serv. Comm'n*,  
18 supra 688 F.2d at 625.) Accordingly, the Court should give due regard to what is otherwise a  
19 "private consensual agreement" between the parties. (Id.; see also *Church v. Consolidated*  
20 *Freightways, Inc.* (N.D. Cal. 1993) 1993 WL 149840; *In re Wash. Pub. Power Supply Sys. Sec.*  
21 *Litig.* (D. Ariz. 1989) 720 F.Supp. 1379, aff'd sub nom., *Class Plaintiff v. City of Seattle* (9th  
22 Cir. 1992) 955 F.2d 1268; Manual § 21.61 at 309 ["The judicial role in reviewing a proposed  
23 settlement is critical, but limited to approving the proposed settlement, disapproving it, or  
24 imposing conditions on it. The judge cannot rewrite the agreement"].)

25 A court's approval of a class action settlement will only be reversed for a clear abuse of  
26 discretion. (See *Dunk v. Ford Motor Co.* (1996) 48 Cal. App. 4th 1794, 1801; see also *Officers*  
27

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28 <sup>1</sup> Both Civil Code §1781(f) and Rule 23 have been expressly authorized by the California  
Supreme Court for use in all California class action litigation. See *Vasquez v. Superior Court*, 4  
Cal. 3d 800, 820-821 (1971).

1 *for Justice v. Civil Serv. Comm’n*, supra, 688 F.2d at p. 626 (“reverse only upon a strong  
2 showing that the district court’s decision was a clear abuse of discretion”); *Chemical Bank*,  
3 supra, 955 F.2d at 1276; *Ackerman v. Kassar*, 1993 WL 326453 (9th Cir. 1993); *Linney v.*  
4 *Cellular Alaska P’ship* (9th Cir. 1998) 151 F.3d 1234, 1238.)

5 As the court in *7-Eleven Owners for Fair Franchising v. Southland Corp.*(2000) 85 Cal.  
6 App. 4th 1135 cautioned: “[i]t cannot be overemphasized that neither the trial court in  
7 approving the settlement nor this Court in reviewing that approval have the right or duty to  
8 reach any ultimate conclusions on the issues of fact and law which underlie the merits of the  
9 dispute. It is well settled that in the judicial consideration of proposed settlements, ‘the [trial]  
10 judge does not try out or attempt to decide the merits of the controversy,’ [citation] and the  
11 appellate court ‘need not and should not reach any dispositive conclusions on the admittedly  
12 unsettled legal issue.’” (*Id.* at p. 1146.)

## 13 **2. The Settlement Is Presumed To Be Fair**

14 The Court should begin its analysis with the presumption that the settlement is fair and  
15 should be approved:

16 [A] presumption of fairness exists where : (1) the settlement is reached through  
17 arm’s-length bargaining; (2) investigation and discovery are sufficient to allow  
18 counsel and the court to act intelligently; (3) counsel is experienced in similar  
19 litigation; and (4) the percentage of objectors is small.  
20 (*Dunk v. Ford Motor Co.*(1996) 48 Cal. App. 4th 1794, 1802; *7-Eleven Owners for Fair*  
21 *Franchising, supra*, 85 Cal. App. 4th at p. 1146; accord, *Ellis v. Naval Air Rework Facility*  
22 (N.D. Cal. 1980) 87 F.R.D. 15, 18; *In re Wash. Pub Power Supply, supra*, 720 F Supp at p.  
1387.)

23 The settlement in the case at bar warrants approval and carries a presumption of fairness.  
24 As previously noted in the Motion for Preliminary Approval, on June 29, 2023, the Parties  
25 attended a full-day mediation session with experienced wage and hour mediator Honorable  
26 William C. Pate (Ret.). (Hyun Decl. at ¶ 7). In advance of the mediation, the Parties discussed  
27 the basis of Plaintiff’s legal claims under the asserted Labor Code sections and the legal  
28 authorities for and against Plaintiff’s theories of liability. (*Id.*) The Parties also engaged in  
informal discovery, where Defendant provided Plaintiff with data which included the class

members' dates of employment, average rates of pay, and the number of former employees. (*Id.*). Based on the data produced by Defendant, Plaintiff subsequently conducted an exposure analysis. (*Id.*). After independently analyzing and investigating the facts and law relevant to the Plaintiff's claims, the parties outlined their respective positions in mediation briefs for Judge Pate. (*Id.*) Based on data provided by Defendant, Plaintiff's counsel also calculated the maximum exposure in damages and penalties in preparation for mediation. (*Id.*) During the mediation, the Parties debated the strengths and weaknesses of Plaintiff's claims and Defendant's defenses thereto and the scope of employees whom Plaintiff could represent even if Plaintiff's legal claims had merit. (*Id.*)

Further, Class Counsel are highly experienced in this type of litigation. (Hyun Decl. ¶¶ 3-6; and Declaration of William L. Marder ("Marder Decl." ¶¶ 8-14).

### **3. Two-Way Fees and Costs and Other Risks Inherent In Continued Litigation Favor Final Approval**

To assess the fairness, adequacy and reasonableness of a class action settlement, the Court also should weigh the immediacy and certainty of substantial settlement proceeds against the risks inherent in continued litigation. (*See also In re General Motors Corp.* (3d Cir. 1995) 55 F.3d 768, 806 ["present value of the damages Plaintiff would likely recover if successful, appropriately discounted for the risk of not prevailing, should be compared with the amount of the proposed settlement" (internal citations omitted)]; *Girsh v. Jepson* (3d Cir. 1975) 521 F.2d 153, 157; *Boyd v. Bechtel Corp.* (N.D. Cal. 1979) 485 F. Supp. 610, 616-17.)

If Plaintiff pursued this case without settlement and failed to prevail, Plaintiff may have faced liability for Defendant's costs. As such, should individual, current or former employees of the Defendant want to bring individual claims on the same causes of action, they would each face the uncertainty of prevailing and the possibility of paying costs to Defendant. Accordingly, such claims likely would not be brought by many of these current and former employees—thus, this lawsuit achieves a true benefit for the class that they might not otherwise get or seek as individuals. Here, given that a fair and reasonable settlement has been reached,

1 neither Plaintiff nor any of the class members will be required to pay for Defendant's litigation  
2 fees and costs.

3 The risks of this case were weighed by Class Counsel and, should be considered a  
4 significant issue by the Court in its determination of final approval. Class Counsel obtained a  
5 very substantial settlement for the Class that results in a fair recovery which at the same time  
6 provides for finality and no risk of costs by the Class or the Class Representative.

7 The Settlement Agreement also affords the Class prompt, fair relief, while avoiding  
8 significant legal and factual battles that otherwise may have prevented the Class from obtaining  
9 any recovery at all. While Class Counsel believe the Class Members' claims are meritorious  
10 and can be successfully litigated, Class Counsel are experienced and fully understand the  
11 inherent risks and uncertainty involved with such matters as the resolution of class certification,  
12 the outcome of a potential trial, and the outcome of any appeals that would inevitably follow  
13 should the Class prevail at trial.

14 Class Counsel has also assessed the same risks in connection with the current  
15 settlement. Because the settlement provides immediate and substantial relief, without the  
16 attendant risks and delay of continued litigation – not to mention the threat of litigation costs –  
17 Class Counsel believes that the settlement warrants the Court's final approval.

18 **4. The Complexity, Expense and Likely Duration of Continued**  
19 **Litigation Against Defendant Favor Final Approval**

20 Another factor considered by courts in approving a settlement is the complexity,  
21 expense, and likely duration of the litigation. (*See Officers for Justice v. Civil Serv. Comm'n*,  
22 *supra*, 688 F.2d at 625; *Girsh v Jepson, supra*, 521 F.2d at 157.) In applying this factor, the  
23 Court must weigh the benefits of the settlement against the expense and delay involved in  
24 achieving an equivalent or more favorable result at trial. (*See Young v. Katz* (5th Cir. 1971)  
25 447 F.2d 431, 433-434.)

26 As noted above, continued litigation could have led to appeals on a number of issues.  
27 On the other hand, the settlement that was reached provides to all Class Members – regardless  
28 of their means – fair relief in a prompt and efficient manner. Were the Court to deny final

1 approval, the Class Members would be left without a remedy as a practical matter and courts  
2 across the State would have to address the issues presented here in a piecemeal, costly, and  
3 time-consuming manner. The settlement in this case is therefore consistent with the “overriding  
4 public interest in settling and quieting litigation” that is “particularly true in class action suits.”  
5 (*See Van Bronkhorst v. Safeco Corp.*, *supra*, 529 F.2d at 950 (footnote omitted); *see also* 4  
6 Newberg at § 11.41.) In the present case, had the case not settled, the case would have  
7 proceeded to trial with potentially longer litigation for appeals.

#### 8 **5. The Opinion of Experienced Counsel Favors Final Approval**

9 Class Counsel support the settlement as fair, reasonable and adequate, and in the best  
10 interest of the Class Members as a whole. (Hyun Decl. ¶¶ 10-15; and Marder Decl. ¶¶ 2-4).  
11 Similarly, Counsel for Defendant is also in favor of this settlement.

12 The endorsement of qualified and well-informed counsel of a settlement as fair,  
13 reasonable, and adequate is entitled to significant weight by the Court in its final approval  
14 determination. (*See Officers for Justice v. Civil Serv. Comm’n*, *supra*, 688 F.2d at p. 625; *Ellis*  
15 *v. Naval Air Rework Facility*, *supra*, 87 F.R.D. at p. 18; *Boyd v. Bechtel Corp.*, *supra*, 485  
16 F.Supp. at p. 617; *Linney v. Cellular Alaska P’ship*, *supra*, 151 F.3d at p. 1242.)

#### 17 **6. Investigation, Mediation, and the Settlement Discussions Undertaken** 18 **In This Action Favor Final Approval**

19 The total maximum exposure for class claims amounts to approximately \$318,017.75.  
20 (Hyun Decl. ¶¶ 7, 15). The total PAGA Penalties amounted to \$201,200.00. (*Id.*) Based on  
21 the foregoing, total settlement amount is 10.88% of the total class and PAGA penalties  
22 assuming no reduction at 100%. (*Id.*) If the class claims were not dismissed, Plaintiff believes  
23 that the court could award the full amount of damages for the unpaid wage claim in the amount  
24 of \$53,204.50. (*Id.*) However, if the Court were to reduce the PAGA penalties by 90% similar  
25 to *Carrington*, the PAGA penalties exposure would amount to approximately \$20,120. (*Id.*)  
26 Then, the Gross Settlement Amount is 22.9% of the total exposure. (*Id.*)

27 However, applying a risk of 50% to the unpaid wages, and Sections 203 and 226  
28 penalties due to the risks of class certification and Defendant’s good faith defenses, the total

1 realistic exposure is \$159,008.88 in Labor Code damages and penalties, plus the 10% realistic  
2 exposure of PAGA penalties, for a total of \$179,128.88. (*Id.*) The Gross Settlement Amount is  
3 43.26% of this realistic exposure. (*Id.*)

4 As detailed above, each of the factors counsel strongly in favor of final approval of the  
5 Settlement by this Court.

1 **IV. THE REQUESTED CLASS REPRESENTATIVE ENHANCEMENT SHOULD BE**  
2 **APPROVED (CMO#1 (H)(2))**

3 Plaintiff respectfully requests an enhancement of \$7,500.00. Plaintiff's declaration sets  
4 forth the information required in the Court's CMO #1 (H)(2).

5 As shown in the supporting declaration, Plaintiff has not previously been a named  
6 plaintiff in any other class action cases. (Nevins Decl. ¶ 5). Plaintiff understood that the filing  
7 of this action was a matter of public action and this was being prosecuted on a representative  
8 basis. (*Id.* ¶ 6). Plaintiff further understood that a representative action would take longer in  
9 litigation than an individual action and undertook such risks. (*Id.*) Plaintiff did not incur any  
10 expenses, but has expended a significant amount of time on this matter. (*Id.*) Plaintiff spent  
11 approximately 30 hours discussing this matter with Counsel on a number of occasions to  
12 discuss the case with his counsel, including providing substantive information regarding  
13 Defendant's practices, and providing documents related to his own claims and the claims of the  
14 Class. (*Id.* ¶ 7). Plaintiff did not receive any other benefits, other than being a class member  
15 and the enhancement that he is seeking. (*Id.* at ¶ 4). Plaintiff expects to receive \$1,280.38 as  
16 payment for his Settlement Share. (*Id.* at ¶ 9). Further, Plaintiff will be providing a general  
17 release of his individual claims, something that the Settlement Class Members did not have to  
18 do. (*Id.* at ¶ 8). As stated above, Plaintiff believes that he satisfies all of the factors to justify  
19 his enhancement request for \$7,500.00. Further, there have been no objections to Plaintiff's  
20 enhancement requests by the class members. Thus, Plaintiff believes that his enhancement  
21 request is fair and reasonable.

22 **V. THE REQUESTED ATTORNEYS' FEES AND COSTS SHOULD BE APPROVED**  
23 **(CMO #1 (H)(3) & (4))**

24 **A. CLASS COUNSEL SEEK A PERCENTAGE FEE AWARD UNDER WELL**  
25 **ESTABLISHED CASE LAW**

26 Class Counsel seeks a fee award calculated as one-third (1/3) of the total value of the  
27 Settlement for the successful prosecution and resolution of this action. In 2016, the California  
28 Supreme Court issued its ruling regarding the award of attorney's fees in wage and hour class

1 action settlements. Under California law, the award of attorneys' fees in common fund wage  
2 and hour class action settlements should start with the percentage method. *See Laffitte v. Robert*  
3 *Half Int'l*, 1 Cal. 5th 480, 503 (2016) ("We join the overwhelming majority of federal and state  
4 courts in holding that when class action litigation establishes a monetary fund for the benefit of  
5 the class members, and the trial court in its equitable powers awards class counsel a fee out of  
6 that fund, the court may determine the amount of a reasonable fee by choosing an appropriate  
7 percentage of the fund created."). Under the percentage of the fund method, the Court's  
8 objective remains to "mimic the market" in fixing a reasonable fee. *See Gaskill v. Gordon*, 160  
9 F.3d 361, 363 (7th Cir. 1998) (J. Posner) ("When a fee is set by a court rather than by contract,  
10 the object is to set it at a level that will approximate what the market will set... The judge, in  
11 other words, is trying to mimic the market in legal services.").

12 The California Supreme Court in *Laffitte* affirmed a fee award representing 33 1/3  
13 percent of the fund. *Laffitte*, 1 Cal. 5th at 506. And this was based on a lodestar amount that  
14 required a multiplier of 2.13. *Id.* at 487. As the Court held, only when the multiplier is  
15 "extraordinarily high or low [should] the trial court [] consider whether the percentage method  
16 should be adjusted so as to bring the imputed multiplier within a justifiable range." *Id.* at 505.

17 Moreover, in the *Laffitte* intermediate court decision, the court observed that "33 1/3  
18 percent of the common fund is consistent with, and in the range of, awards in other class action  
19 lawsuits." *Laffitte v. Robert Half Int'l*, 231 Cal. App. 4th 860, 871 (2014). Here, the fee award  
20 representing 33 1/3% of the fund clearly falls within that range, and is consistent with other  
21 comprehensive surveys of class action settlements and fee awards. *See Fitzpatrick, An*  
22 *Empirical Study of Class Action Settlements and Their Fee Award*, 7 J. Empirical Leg. Stud.  
23 811, 833 (2010) (analyzing 444 cases between 2006-2007 and concluding that "[m]ost fee  
24 awards were between 25 percent and 35 percent, with almost no awards more than 35  
25 percent."); Eisenberg & Miller, *Attorney Fees in Class Action Settlements: An Empirical Study:*  
26 *1993-2008*, 7 J. of Empirical Leg. Stud. 248, 262, fn.16 (2010) (independent studies of class  
27 action litigation nationwide conclude that fees representing one-third of the total recovery is  
28 consistent with market rates).

1 The results delivered by Plaintiff's Counsel also support the requested percentage of the  
2 fund. Here, Plaintiff and his counsel secured a \$77,500.00 common fund settlement.

3 Finally, "the response of the class members to attorneys' fee notice, though not decisive,  
4 is relevant to the... reasonable determination" regarding fees. *Swedish Hospital v. Shalala*, 1  
5 F.3d 1261, 1272 (D.C. Cir. 1993). A positive response rate tends to suggest that the court's  
6 "approximation of the market" for fees is well supported. *Id.* at p. 1269. In this case, the class  
7 notice specifically notified class members that Plaintiff's Counsel would be seeking 1/3 of the  
8 settlement fund as attorneys' fees. To date, no class member has opted out or objected to the  
9 settlement. This strong favorable response also supports the requested fees.

10 Here, it is clear that a common fund of \$77,500.00 has been created. For Class Counsel,  
11 the fees here were wholly contingent in nature and the case presented far more risk than the usual  
12 contingent fee case. Among the risks was the cost inherent in class action litigation, as well as a  
13 potentially drawn-out battle with a defendant that has retained premier defense counsel.

14 **B. CLASS COUNSEL'S LODESTAR CROSS-CHECK SUPPORTS**  
15 **GRANTING THE ATTORNEY'S FEES REQUESTED**

16 As a secondary backup support for the percentage of the fund method, when fees are  
17 allocated by percentage method, courts have discretion to "cross-check" the fees awarded  
18 through the lodestar method. However, the *Laffitte* Court "emphasize[d] [that] the lodestar  
19 calculation, when used in this manner, does not override the trial court's primary determination  
20 of the fee as a percentage of the common fund and thus does not impose an absolute maximum  
21 or minimum on the potential fee award." *Laffitte*, 1 Cal. 5th at 505 (emphasis added).

22 The Supreme Court in *Laffitte* stated: "If the multiplier calculated by means of a lodestar  
23 cross-check is extraordinarily high or low, the trial court should consider whether the percentage  
24 used should be adjusted so as to bring the imputed multiplier within a justifiable range, but the  
25 court is not necessarily required to make such an adjustment." *Id.* (emphasis added). Thus, a  
26 lodestar cross-check is aimed at astronomical multipliers. Indeed, cross-checks are not required;  
27 in many cases, performing a cross-check "undermines" one of the primary reasons for using the  
28 percentage method: aligning counsel's incentives with the benefits delivered to the class and

discouraging protracted litigation. *Id.* at 506 (finding trial courts “retain the discretion to forgo a lodestar cross-check”); *Report of the Third Circuit Task Force, Court Awarded Attorney Fees* 108 F.R.D. 237, 258 (1985); *Lealao v. Beneficial California, Inc.*, 82 Cal. App. 4th 19, 29–30 (citing the recommendations of the Third Circuit Task Force with approval and observing that “[t]he criticisms of the lodestar approach set forth in this Report are now echoed by many authorities, who have been most vocal about the manner in which it exacerbates the problem of ‘cheap settlements’ and burdens already overworked trial judge.”).

Class Counsel’s lodestar is more than the fees being sought. To date, over 92.9 hours have been expended by Class Counsel in this. (Hyun Decl. at ¶ 16, Ex. A; Marder Decl. ¶ 15, Ex. A). Moreover, Class Counsel expects to incur approximately 20 additional hours of attorney time in finalizing this settlement. (Hyun Decl. ¶¶ 16-17, Ex. A; Marder Decl. ¶ 15, Ex. A). Class Counsel request an hourly rate of \$850.00 per hour (which has been previously approved by other courts. (Hyun Decl. ¶ 18; Marder Decl. ¶ 15).

Further, courts are quite liberal in the evidence required to prove an attorney’s hours. Detailed time records are not required. An attorney’s testimony alone may suffice: “Testimony of an attorney as to the number of hours worked on a particular case is sufficient evidence to support an award of attorney fees, even in the absence of detailed time records.” *Martino v. Denevi*, 182 Cal. App. 3d 553, 559 (1986).

Reasonable hours include, in addition to time spent during litigation, the time spent before the action is filed, including time spent interviewing the clients, investigating the facts and the law, and preparing the initial pleadings. *New York Gaslight Club, Inc. v. Carey*, 447 U.S. 54, 62 (1980). Further, the fee award should include fees incurred to establish and defend the attorneys’ fee claim. *Serrano v. Unruh*, 32 Cal. 3d 621, 639 (1982) [*Serrano IV*]. Thus, Class Counsel requests that the court find that these hours were reasonable in this litigation.

A reasonable hourly rate is the prevailing rate charged by attorneys of similar skill and experience in the relevant community. *PLCM Group, Inc. v. Drexler*, 22 Cal. 4th 1084, 1095 (2000). The court may consider other factors when determining a reasonable hourly rate, e.g., the attorney’s skill and experience, the nature of the work performed, the relevant area of

1 expertise and the attorney's customary billing rates. *Flannery v. California Highway Patrol*, 61  
2 Cal. App. 4th 629, 632-33 (1998).

3 Class Counsel's skill and experience justify the requested rate. As shown in the  
4 supporting declarations, Class Counsel have significant experience in the area of employment  
5 and wage and hour class actions. Specifically, Class Counsel's practice focuses on representing  
6 employees in employment matters, particularly wage and hour cases and have been previously  
7 certified as class counsel by numerous courts. (Hyun Decl. ¶¶ 3-6; Marder Decl. ¶¶ 8-14).  
8 Based on the hours and applicable rate, the total lodestar to be expended by Class Counsel  
9 through finalizing this settlement will be approximately \$95,965.00, which results in a negative  
10 multiplier. Thus, Plaintiff's **negative** multiplier further supports Plaintiff's request for 1/3 of the  
11 common fund.

12 As such, the requested fee award is fair and reasonable, and should be awarded in its  
13 entirety. Class Counsel risked not only a great deal of time, but also a great deal of expense to  
14 ensure the successful litigation of this action on behalf of all Class Members. For such  
15 reasonable, Class Counsel's request for attorneys' fees in the amount of \$25,833.33 is fair,  
16 reasonable, and adequate.

17 Plaintiff's Counsel will be splitting the approved fees as follows: 50% to Hyun Legal,  
18 APC; and 50% to the Polaris Law Group, which the Plaintiff has previously authorized in  
19 writing. (Hyun Decl. ¶ 19; Marder Decl. ¶ 17; Nevins Decl. ¶ 10).

## 20 **VI. THE COURT SHOULD APPROVE THE REQUEST FOR REIMBURSEMENT** 21 **OF COSTS**

22 In addition to Class Counsel's lodestar, Class Counsel has also expended \$7,261.38 in  
23 litigation related costs, which have been detailed in the supporting declarations of Class  
24 Counsel. (Marder Decl. at ¶ 16, Ex. B). The authority for the Court to award costs is the parties'  
25 Settlement Agreement and Labor Code §§ 218.5, 226(e), 1194 and 2699(g)(1). Further,  
26 pursuant to the Settlement Agreement, Defendant has agreed not to oppose any request for  
27 reimbursement of costs up to \$15,000.00. Class counsel's requests costs are substantially less  
28 than the agreed upon \$15,000.00. Thus, the cost request of \$7,261.38 should be approved.

1 **VII. THE SETTLEMENT ADMINISTRATOR’S FEES AND COSTS SHOULD BE**  
2 **APPROVED (CMO#1 (H)(5))**

3 Pursuant to the terms of the Settlement Agreement, the fees and costs of the Settlement  
4 Administrator, are to be paid out of the class settlement funds. As shown in Ms. Bench’s  
5 Declaration, the settlement administration fees are \$5,250.00. (Admin Decl. ¶ 18, Ex. B). The  
6 Settlement Administrator was selected by the Parties to provide notice of settlement and  
7 administration duties in this action. To date, the Settlement Administrator has spent time (i)  
8 preparing, printing, and mailing the Notice of Proposed Settlement of Class Action and Hearing  
9 Date for Final Court Approval, *Request for Exclusion Form*, and *Objection Form* (herein  
10 referred to collectively as the “Notice Packet”), including conducting skip-traces on  
11 undeliverable Notice Packets; (ii) responding to inquiries from Class Members; (iii)  
12 determining the validity of opt-outs; and (iv) providing weekly reports. (*Id.* at ¶ 2). After the  
13 final approval, PSA will be (i) calculating the Net Settlement Amount and the Individual  
14 Settlement payments; (ii) issuing the Individual Settlement Payment checks and distributing  
15 them to Participating Class Members; and (iii) issuing the payment to Class Counsel for  
16 attorneys’ fees and costs, the Enhancement check to Named Plaintiff, payment to the LWDA.  
17 All of these duties are included in the agreed-upon fee of \$5,250.00. (*Id.*) For such reasons, it is  
18 requested that the Settlement Administrator’s fees be approved.

19 **VIII. THE LWDA HAS BEEN PROVIDED WITH NOTICE OF THIS HEARING**

20 Plaintiff provided notice to the LWDA by uploading a copy of this Motion and proposed  
21 Order. (Hyun Decl. ¶ 20).

22 **IX. CONCLUSION**

23 For all the foregoing reasons, and on the basis of the authorities cited herein, Plaintiff  
24 respectfully submits that the standards for final approval have been met, and the terms of the  
25 Settlement Agreement are fair, adequate and reasonable.

26 Accordingly, Plaintiff respectfully requests that the Court enter an Order in the form  
27 proposed and submitted:

- 28 1. Granting final approval to the proposed Settlement Agreement and release in this

1 action;

2 2. Approving distribution of the settlement funds to the class members pursuant to  
3 the terms of the Settlement Agreement;

4 3. Approving Plaintiff's request for an award of the class representative  
5 enhancement of \$7,500.00 pursuant to the terms of the Settlement Agreement;

6 4. Approving attorneys' fees in the amount of \$25,833.33 that will be paid as  
7 follows: (1) Hyun Legal, P.C. in the amount of \$12,916.66; and (4) Polaris Law Group, P.C. in  
8 the amount of \$12,916.67.

9 5. Approving attorneys' costs in the amount of \$7,261.38 to Polaris Law Group;

10 6. Approving Plaintiff's request for payment of the settlement administration costs  
11 to ILYM Group in the amount of \$5,250.00 with payment pursuant to the terms of the Settlement  
12 Agreement;

13 7. Approving that the funds from any checks returned as undeliverable, and any  
14 checks not negotiated within 180 days, shall be transmitted to the California State Controller's  
15 office in the name of the class member.

16 8. Setting a non-appearance compliance hearing on or after June 23, 2025, with a  
17 deadline to file a compliance declaration on June 16, 2025; and

18 9. Entering final judgment as to all members of the Settlement Class in this action.

19  
20 Dated: July 25, 2024

POLARIS LAW GROUP

21  
22 By: William L. Marder  
23 William L. Marder  
24 Attorney for Plaintiff and the Class  
25  
26  
27  
28