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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 Plaintiff,

15 vs.

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

18 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 PRELIMINARY
APPROVAL OF CLASS ACTION
SETTLEMENT; AND MEMORANDUM
OF POINTS AND AUTHORITIES IN
SUPPORT**

Date: April 17, 2024
Time: 8:30 a.m.
Dept.: 1

Reservation No.: 768143336788

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

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

2 **PLEASE TAKE NOTICE THAT** on April 17, 2024, at 8:30 a.m., or as soon thereafter
3 as the matter may be heard in Department 1 of the Superior Court of the State of California for
4 the County of Riverside, Historic Courthouse, located at 4050 Main Street, Riverside, CA
5 92501, before the Honorable Harold W. Hopp, Judge presiding, Plaintiff John Nevins
6 (“Plaintiff”) will and hereby does move the Court for an Order:

7 (1) preliminarily approving the Class Action and PAGA Settlement Agreement
8 (“Settlement Agreement,” which is attached to the Declaration of Dennis Hyun as Exhibit “C”)
9 between Plaintiff and Defendant Neighborhood Garage Door Services, Inc. (“Defendant”) and
10 the settlement fund in the amount of Seventy-Seven-Thousand-Five-Hundred Dollars
11 (\$77,500.00) (“Gross Settlement Amount”), which is to be distributed as follows: out of the
12 Gross Settlement Amount, (a) an estimated minimum of \$18,104.17 to be paid to the
13 Participating Class Members; (b) up to \$7,500 to be paid to the Class Representative Service
14 Payment for his services to the Class; (c) up to a total of \$25,833.33 to be paid to Class Counsel
15 for attorneys’ fees and reimbursement of actual costs up to a maximum of \$15,000.00; (d) the
16 PAGA Payment of \$7,750.00, 75% of which, or \$5,812.50 will be paid to the Labor Workforce
17 Development Agency (the “LWDA”) and 25% of which, or \$1,937.50 will be paid to Aggrieved
18 Employees; and (e) the Settlement Administrator to be paid for its fees and costs relating to the
19 settlement administration process in the amount of \$5,250.00;

20 (2) finding on a preliminary basis that the settlement appears to be within the range of
21 reasonableness of a settlement, and that the Class Representative Service Payment, Class
22 Counsel’s attorneys’ fees and costs, the settlement administration fees, and the allocation of
23 payments to Participating Class Members, could ultimately be given final approval by this
24 Court;

25 (3) approving the Class Notice Packet (“Class Notice”) to be sent to Class Members, that
26 is attached as Exhibit A to the Agreement;

27 (4) appointing ILYM Group, Inc. as the Settlement Administrator; and

(5) setting the matter for a Final Fairness and Final Approval hearing.

1 This Motion is made pursuant to Rule 3.769 of the California Rules of Court, which
2 provides for court approval of the settlement of a purported class action and allows the Court to
3 preliminarily certify a class for settlement purposes.

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

8 This Motion will be based on the Memorandum of Points and Authorities included
9 herein, the Settlement Agreement concurrently filed herewith, and the supporting Declarations
10 of William Marder, Dennis S. Hyun, Jocelyn Hannah, and Lisa Mullins of ILYM Group, Inc.,
11 and upon the oral arguments of counsel (should there be any) and on the complete records and
12 file herein.

13 Dated: February 14, 2024

POLARIS LAW GROUP

14 By: William L. Marder
15 William L. Marder
16 Attorney for Plaintiff and the Class
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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION AND SUMMARY OF THE CASE**

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

11 The terms of the settlement provide that Defendant shall pay a Gross Settlement Amount
12 of Seventy-Seven-Thousand-Five-Hundred Dollars (\$77,500.00), which will be distributed to the
13 class on a **non-reversionary** basis without the need to submit claim forms. (Class Action and
14 PAGA Settlement Agreement (“Settlement Agreement”) ¶ I.S.)

15 The settlement was achieved after extensive litigation, a full-day mediation well-respect
16 mediator, Honorable William C. Pate (Ret.). The settlement complies with the Court’s Case
17 Management Order and meets all of the elements required for approval. Thus, the Court should
18 grant preliminary approval of this matter.

19 **II. PROCEDURAL HISTORY**

20 On or about February 13, 2020, Plaintiff provided written notice to the California Labor
21 & Workforce Development Agency (“LWDA”) of Defendant’s violation of California Labor
22 Code § 204, pursuant to the California Labor Code § 2699 *et seq.*, the Private Attorney General
23 Act (“PAGA”). (Declaration of Dennis Hyun (“Hyun Decl.”) at ¶ 7, Ex. A). On or about
24 February 26, 2020, Plaintiff provided written notice to the LWDA of the violations of Labor
25 Code §§ 201-203, 510, 1194, 1197, 1197.1, and Wage Order No. 7-2001, regarding the failure to
26 pay overtime and minimum wages for travel time beyond the ordinary commute. (*Id.*, Ex. B).

27 On July 28, 2020, Plaintiff filed a Class Action Complaint for : (a) unpaid minimum
28 wages for work-related travel; (b) unpaid overtime wages for work-related travel; (c) For

1 violation of California Labor Code § 226; (d) violation of the Unfair Competition Law (the
2 “UCL”), Business & Professions Code § 17200, *et seq.*; and (e) violations of the PAGA. (Hyun
3 Decl. at ¶ 8).

4 After exchanging informal discovery consisting of the number of class members and
5 workweeks worked, the Parties engaged in negotiations between counsel. (Hyun Decl. at ¶ 9).
6 The Parties could not settle and thereafter agreed to engage in private mediation with well-
7 respected mediator, Honorable William C. Pate (Ret.) on June 29, 2023, and successfully
8 reached a resolution of the entire matter. (*Id.*) Plaintiff now moves for preliminary approval of
9 the class claims against Defendant.

10 **III. THE PARTIES’ SETTLEMENT NEGOTIATIONS**

11 Again, on June 29, 2023, the Parties attended a full-day mediation session with
12 experienced wage and hour mediator Honorable William C. Pate (Ret.). (Hyun Decl. at ¶ 9). In
13 advance of the mediation, the Parties discussed the basis of Plaintiff’s legal claims under the
14 asserted Labor Code sections and the legal authorities for and against Plaintiff’s theories of
15 liability. (*Id.*) The Parties also engaged in informal discovery, where Defendant provided
16 Plaintiff with data which included the class members’ dates of employment, average rates of pay,
17 and the number of former employees. (*Id.*). Based on the data produced by Defendant, Plaintiff
18 subsequently conducted an exposure analysis. (*Id.*).

19 After independently analyzing and investigating the facts and law relevant to the
20 Plaintiff’s claims, the parties outlined their respective positions in mediation briefs for Judge
21 Pate. (*Id.*) Based on data provided by Defendant, Plaintiff’s counsel also calculated the
22 maximum exposure in damages and penalties in preparation for mediation. (*Id.*) During the
23 mediation, the Parties debated the strengths and weaknesses of Plaintiff’s claims and
24 Defendant’s defenses thereto and the scope of employees whom Plaintiff could represent even if
25 Plaintiff’s legal claims had merit. (*Id.*)

26 After a full day of mediation, the Parties were able to resolve this matter and executed the
27 Memorandum of Understanding. (*Id.* at ¶ 10). The Parties subsequently memorialized all formal
28 terms in the Settlement Agreement, a true and correct copy of which is attached to the

1 Declaration of Dennis Hyun as Exhibit “C.” (*Id.*)

2 **IV. DISCUSSION**

3 Any settlement of class litigation must be reviewed and approved by the Court. This is
4 done in two steps: (1) an early (preliminary) review by the trial court, and (2) a final review after
5 notice has been distributed to the class members for their comment or objections. The Manual
6 for Complex Litigation (Third) states:

7
8 “Approval of class action settlements involves a two-step process.
9 First, counsel submits the proposed terms of settlement and the
10 court makes a preliminary fairness evaluation. If the preliminary
11 evaluation of the proposed settlement does not disclose grounds to
12 doubt its fairness or other obvious deficiencies, such as unduly
13 preferential treatment of class representatives or of segments of the
14 class, or excessive compensation for attorneys, and appears to fall
15 within the range of possible approval, the court should direct that
16 notice ... be given to the class members of a formal fairness
17 hearing, at which arguments and evidence may be presented in
18 support of and in opposition to the settlement.”
19 § 30.41.

20 Thus, the preliminary approval by the trial court is simply a conditional finding that the
21 settlement appears to be within the range of acceptable settlements. As Professor Newberg
22 comments, “[t]he strength of the findings made by a judge at a preliminary hearing or conference
23 concerning a tentative settlement proposal may vary. The court may find that the settlement
24 proposal contains some merit, is within the range of reasonableness required for a settlement
25 offer, or is presumptively valid subject only to any objections that may be raised at a final
26 hearing.” 4 Alba Conte & Herbert B. Newberg, Newberg on Class Actions, § 11.26 (4th ed.
27 2002).

28 The procedures for the parties’ submission of a proposed settlement for preliminary
approval by the court also are discussed in 4 Newberg on Class Actions:

“When the parties to an action reach a monetary settlement, they
will usually prepare and execute a joint stipulation of settlement,
which is submitted to the court for preliminary approval. The
stipulation should set forth the central terms of the agreement,
including but not limited to, the amount of settlement, form of

1 payment, manner of determining the effective date of settlement
2 and any recapture clause.” *Id.* at § 11.24.

3 Here, the Parties have reached such an agreement and have submitted to this Court in
4 connection with this Motion a copy of the Settlement Agreement fully setting forth the
5 agreement reached among the Parties. The Agreement sets forth all terms of the agreement
6 reached by the Parties, which complies with the Court’s August 15, 2022 Class Action Case
7 Management Order #1 (“CMO”).

8 **A. PROPOSED CLASS (CMO G(3)(a)(i))**

9 **The current settlement is being settled on behalf of:**

10 “Class” means all individuals employed by Defendant Neighborhood
11 Garage Door Services, Inc. in California as non-exempt service technician
12 employees and who worked at least one hour during the Class Period
13 [March 30, 2019 to Preliminary Approval]. Individuals employed by
14 Defendant who worked at least one hour during the Class Period, but who
15 have Previously Released Class Claims (defined herein at Section I(AA)),
16 and who terminated their employment with Defendant on or before
December 30, 2019, are excluded from the Class. Those individuals
excluded from the Class on this basis remain Aggrieved Employees and
will receive their pro rata portion of the Aggrieved Employee Portion of the
PAGA Penalty.

17 (Settlement Agreement ¶¶ I.D., I.K.)

18 The number of class members is estimated at 42 individuals. (Hyun Decl. ¶ 11). There
19 are approximately 49 Aggrieved Employees. (*Id.*) While the definition of the Class Period and
20 PAGA Period are the same, and both Class Members and Aggrieved Employees are non-exempt
21 service technicians, there are seven (7) more Aggrieved Employees than Class Members because
22 these individuals were excluded from the Class as they were subject to a prior class action
23 settlement, but they remain Aggrieved Employees, given that the prior settlement did not include
24 a PAGA release. (*Id.*)

25 **B. ATTORNEY'S ESTIMATE OF THE TOTAL AMOUNT OF DAMAGES,**
26 **MONETARY PENALTIES OR OTHER RELIEF THAT THE CLASS WOULD**
27 **BE AWARDED IF THE ACTION WERE SUCCESSFUL AT TRIAL ON ALL OF**
28 **ITS CLAIMS (CMO G(3)(a)(ii))**

1 Based on the data provided, Plaintiff believes that the class could have obtained damages
2 of approximately \$318,017, plus PAGA penalties. (Hyun Decl. ¶ 9). Specifically, Plaintiff
3 estimates the following damages for each of the sub-classes as follows:

4 **1. Failure to Pay Minimum/Overtime Wages**

5 “Hours worked” is defined in the relevant IWC Order as “the time during which an
6 employee is subject to the control of an employer, and includes all the time the employee is
7 suffered or permitted to work, whether or not required to do so.” IWC Order No. 7-2001 § 2(G).
8 All time spent under the control of the employer, including compulsory travel time, is “time
9 worked” and must be compensated. *Morrillion v. Royal Packing Co.*, 22 Cal. 4th 575, 578
10 (2000). Significantly, California law provides that that commutes longer than the normal
11 commute is considered time worked and, thus, must be paid. DLSE Opinion Letter 2003.04.22.
12 Plaintiff’s counsel estimated the maximum exposure for underpaid wages amounts to \$20,546.35
13 based on 30 minutes of overtime and minimum wages per week. (Hyun Decl. ¶ 9(a)).

14 **2. Derivative Labor Code Penalties**

15 Plaintiff alleged that Defendant failed to provide compliant wage statements because the
16 wage statements failed to identify the applicable rate of pay and hours for the alleged unpaid
17 minimum and overtime wages. (Hyun Decl. ¶ 9(b)). Based on the data produced, Plaintiff
18 estimated the maximum exposure at \$88,226.00. (*Id.*) The formula for Labor Code §226
19 penalties for each class member is \$50 for the first pay period with a violation plus \$100 for each
20 subsequent pay period with a maximum of \$4,000.00. (*Id.*)

21 The mediation data provided 51 terminated employees during the Class Period. For each
22 of these employees, Plaintiff estimated waiting time penalties pursuant to Labor Code § 203 at
23 \$209,245.40. (Hyun Decl. ¶ 9(c)). The formula for waiting time penalties for each class
24 member is their final rate of pay X 8 hours X 30 days. (*Id.*)

25 Assuming 100% liability, the derivative PAGA penalties amounted to \$201,200.00 for
26 the claims alleged above using \$100 per pay period. (Hyun Decl. ¶ 9(d)).

27 **C. ATTORNEY’S ESTIMATE OF WHAT THE CLASS COULD REASONABLY**
28 **EXPECT TO BE AWARDED AT TRIAL, TAKING INTO ACCOUNT THE**

1 **LIKELIHOOD OF PREVAILING AND OTHER ATTENDANT RISKS (CMO**
2 **G(3)(a)(ii))**

3 Plaintiff believes that he can prevail at trial and be awarded the entire amount of the
4 maximum exposure. (Hyun Decl. ¶ 12). Plaintiff's counsel, however, is also aware of the risks
5 of losing on class certification. Indeed, Plaintiff's counsel lost class certification in a commute
6 case against Chevron, in the case entitled, *Asad v. Chevron Stations, Inc.*, No. B259333, 2016
7 WL 4540076, at *1 (Cal. Ct. App. Aug. 31, 2016) While Plaintiff's counsel believes that the
8 plaintiffs' commute claim should have been certified in *Asad*, the decision shows that losing on
9 certification is a definite risk. (*Id.*)

10 Plaintiff's counsel has also tried several class/PAGA cases to judgment. (Hyun Decl. ¶
11 13). Plaintiff's counsel has lost some at trial and on appeal, such that there are definite risks in
12 pursuing cases through trial and appeal. (*Id.*) Defendant would have likely relied on these
13 cases to argue that trying an unpaid commute case presents individualized questions and/or
14 convinced the Court of Appeal to reverse. (*Id.*) Thus, there was a possibility that Defendant
15 may have prevailed on class certification and/or on appeal, such that the class recovered
16 nothing. (*Id.*) Defendant would have also argued that it maintained lawful compensation
17 policies. (*Id.*)

18 Likewise, with respect to waiting time penalties, Defendant contended that it would not
19 be subject to Section 203 penalties, based on a good faith defense since its policy was
20 compliant. (Hyun Decl. ¶ 14). With respect to wage statement liability, Defendant contended
21 that liability under Section 226(e) would be subject to additional defenses requiring proof of
22 injuries resulting from knowing and intentional violations. (*Id.*) Moreover, there is a split in
23 authority as to Section 226(e) penalties and a recent decision held that an employer's good faith
24 litigation of its affirmative defenses may preclude a finding of knowing and intentional conduct
25 to support 226 penalties. *Naranjo v. Spectrum Security Serv.*, 2023 Cal. App. Lexis 143 (Feb.
26 27, 2023). Plaintiff's counsel disagrees with *Naranjo* and believes that *Furry v. East Bay*
27 *Publishing, LLC*, 30 Cal. App. 5th 1072, 1085 (2018), and *Kao v. Holiday*, 12 Cal. App. 5th
28

1 947, 961-62 (2017) control, which hold that an employer’s good faith belief is not a defense.
2 Nevertheless, this Court could have followed *Naranjo*.

3 PAGA penalties are also subject to any good faith defenses that Defendant may raise.
4 (Hyun Decl. ¶ 15). Moreover, PAGA penalties are discretionary and subject to reduction by this
5 Court. Pursuant to Labor Code § 2699(f)(2), the Court can decline to award the full amount of
6 PAGA penalties where “...if, based on the facts and circumstances of the particular case, to do
7 otherwise, would result in an award that is unjust, arbitrary and oppressive, or confiscatory.”
8 Indeed, courts have affirmed the reduction of PAGA penalties in the past. As shown in
9 *Carrington v. Starbucks Corp.*, 30 Cal. App. 5th 504, 517 (2018), the Court of Appeal affirmed
10 the trial court’s reduction of PAGA penalties by 90 percent, citing the employer’s good faith
11 attempt at complying with the law. Defendant argued that based on their compliant policies, that
12 the Court would not be inclined to impose maximum PAGA penalties based on their compliant
13 policies and good faith attempt to pay out any premiums that were due to class members. (Hyun
14 Decl. ¶ 15).

15 While the Parties disagree on the application of the law to the facts, each Party
16 recognized in negotiations that, if taken to trial, the other Party would at least have reasonable
17 arguments, such that the Gross Settlement Amount to which the Parties ultimately agreed was
18 reasonable. (Hyun Decl. ¶ 16).

19 The total maximum exposure for class claims amounts to approximately \$318,017.75.
20 (Hyun Decl. ¶ 17). The total PAGA Penalties amounted to \$201,200.00. (*Id.*) Based on the
21 foregoing, total settlement amount is 10.88% of the total class and PAGA penalties assuming
22 no reduction at 100%. (*Id.*) If the class claims were not dismissed, Plaintiff believes that the
23 court could award the full amount of damages for the unpaid wage claim in the amount of
24 \$53,204.50. (*Id.*) However, if the Court were to reduce the PAGA penalties by 90% similar to
25 *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 **D. ATTORNEY'S ESTIMATE OF THE RECOVERY BY THE AVERAGE CLASS**
5 **MEMBER IF THE SETTLEMENT WERE APPROVED (CMO G(3)(a)(iv)).**

6 Based on the number of class members, which is estimated at 42, and the estimated
7 total cumulative workweeks worked during the Class Period of 539 workweeks, the workweek
8 value is estimated to be \$33.59 (the estimated Net Settlement Amount of \$18,104.17 divided by
9 539 total estimated workweeks). Each class member will receive a pro rata share of the Net
10 Settlement Amount by multiplying this workweek value by each individual class member's
11 total number of workweeks worked during the Class Period. Thus, each individual
12 Participating Class Member will receive between approximately \$33.59 (one workweek) and
13 \$1,477.96 (forty-four workweeks). The average number of workweeks worked by class
14 members is estimated to be eleven workweeks and, thus, the average estimated recovery per
15 class member is \$369.49. (Hyun Decl. ¶ 18).

16 **E. ATTORNEY'S ESTIMATE OF THE RECOVERY BY THE AVERAGE**
17 **AGGRIEVED EMPLOYEE IF THE SETTLEMENT WERE APPROVED (CMO**
18 **G(3)(a)(v)).**

19 All Class Members are also Aggrieved Employees. (Hyun Decl. ¶ 18). In addition, there
20 are seven Aggrieved Employees that are not Class Members, for an estimated total of 49
21 Aggrieved Employees. The total number of workweeks worked during the PAGA Period by the
22 Aggrieved Employees is estimated to be 919 workweeks. The PAGA workweek value is
23 estimated to be \$2.13 (\$1,937.50 [the Aggrieved Employee Portion of the PAGA Payment]
24 divided by 919 workweeks). Each Aggrieved Employee will receive a pro rata share of the
25 portion of the Aggrieved Employee Portion of the PAGA Payment by multiplying the PAGA
26 workweek value by each individual Aggrieved Employee's total number of workweeks worked
27 during the PAGA Period. Thus, each individual Aggrieved Employee will receive between
28 approximately \$2.13 (one workweek) and \$132.06 (sixty-two workweeks). The average number

1 of workweeks worked by Aggrieved Employees is estimated to be nineteen workweeks and,
2 thus, the average estimated recovery per Aggrieved Employee is \$40.47. (*Id.*)

3 **F. DISCOVERY AND OTHER FACTUAL INVESTIGATION CMO G(3)(a)(vi).**

4 The Parties agreed to try to resolve this case through informal discovery. (Hyun Decl. ¶
5 9). Defendant provided Plaintiff with data which included the class members' dates of
6 employment, average rates of pay, and the number of former employees. (*Id.*). Based on the
7 data produced by Defendant, Plaintiff subsequently conducted an exposure analysis. (*Id.*).

8 **G. OTHER PENDING LITIGATION (CMO G(3)(a)(vii) and G(3)(b))**

9 Defendant is not aware of any other current class, representative or other collective
10 action in any other court in this or any other jurisdiction that asserts claims similar to those
11 asserted in this action on behalf of a class or group of individuals some or all of whom would
12 also be members of the class defined in this action. (Declaration of Jocelyn Hannah ("Hannah
13 Decl.") ¶ 2).

14 **H. UNCASHED CHECKS, UNPAID RESIDUE OR OTHER UNCLAIMED OR**
15 **ABANDONED FUNDS (CMO G(3)(c)(i)-(v))**

16 Participating Class Members shall have one hundred eighty (180) days from the date of
17 issuance of the check to negotiate the check. (Settlement Agreement ¶ III.E.10.). The funds from
18 any checks returned as undeliverable, and any checks not negotiated within 180 days, shall be
19 transmitted to the California State Controller's office in the name of the class member. (*Id.*)

20 Plaintiff believes that sending the funds to the unclaimed funds is superior to
21 redistribution to class members that cashed their checks because the class members that either
22 had their checks lost in the mail or otherwise did not deposit their checks within 180 days will
23 still have an opportunity to receive their settlement funds beyond the 180 days. (Hyun Decl. ¶
24 19). In Plaintiff counsel's experience, there have been occasions where class members have
25 contacted Plaintiff's counsel after the 180-day expiration to claim their settlement proceeds, and
26 because the funds were sent to the State Controller's office (or being held in trust by the
27 settlement administrator per the direction of the State Controller), the class members were able to
28 receive their settlement funds. (*Id.*). Thus, each of the class members' right to receive their

1 settlement proceeds will be best protected by transmitting the funds to the State Controller.

2 **I. SETTLEMENT ADMINISTRATOR (CMO G(3)(d)(i))**

3 The Settlement Agreement provides that \$5,250 will be paid for administration fees.
4 (Settlement Agreement ¶ III.B.4.). Defendant’s counsel obtained bids from several class action
5 administrators and received the lowest bid from ILYM. (Hannah Decl. ¶ 3). ILYM has extensive
6 experience in administering employment class action settlements. (Declaration of Lisa Mullins
7 (“Mullins Decl.”) ¶ 2, Ex. A).

8 **J. RELEASE BY CLASS MEMBERS IS LIMITED (CMO G(3)(e)(i)-(iv))**

9 The release is limited to Defendant, including its agents, officers, directors, and
10 employees. (Settlement Agreement ¶ I.BB.) The following is a description of the Participating
11 Class Members’ Released Claims:

12 As of the date the Judgment becomes Final, Plaintiff and the Participating
13 Class Members shall release all Released Class Claims that occurred
14 during the Class Period as to the Defendant and the other Released Parties.

15 a. “Released Class Claims” are any and all claims based on the factual
16 allegations contained in the Complaint, i.e., claims for unpaid minimum
17 and overtime wages arising from work-related travel hours beyond the
ordinary commute, and associated penalties for violations of Labor Code
§§ 201-203 and 226, arising from said unpaid minimum and overtime
wages or those which could have been alleged based on the facts asserted
in the Complaint.

18 (Settlement Agreement ¶ III.F.1.). As the Court can see, the Release is narrowly tailored and
19 complies with CMO G(3)(e)(ii). Further, the release is limited to the class period as defined by
20 the settlement pursuant to CMO G(3)(e)(iii).

21 The following is a description of the Aggrieved Employees’ Released Claims:

22 As of the date the Judgment becomes Final, Plaintiff releases all claims for
23 statutory penalties that could have been sought by the Labor Commissioner
24 for the violations identified in Plaintiff’s pre-filing letter to the LWDA;
Plaintiff does not release any Aggrieved Employees’ claim for wages or
damages.

25 (Settlement Agreement ¶ III.F.2.) The PAGA release complies with CMO G(3)(e)(iv).

26 **K. NOTICE TO CLASS MEMBERS (CMO G(3)(f))**

27 Notice to class members will be given by First Class Mail. (Settlement Agreement
28 ¶III.E.2.) Specifically, no later than 21 calendar days after the Court enters an Order Granting

1 Preliminary Approval of the Settlement, Defendant will provide to the Settlement Administrator
2 an electronic database containing each Class Member's Class and PAGA Data. (*Id.* at
3 ¶III.E.2.a.) The Settlement Administrator shall update the Class Data using the National Change
4 of Address database prior to mailing the Class Notice Packets. (*Id.* at ¶III.E.2.b.). No later than
5 14 days after receiving the class data, the Settlement Administrator will mail the Class Notice
6 Packets to all Class Members via first-class regular U.S. Mail using the mailing address
7 information provided by Defendant. (*Id.*) If a Class Notice Packet is returned because of an
8 incorrect address, the Settlement Administrator will promptly within 10 days from receipt of the
9 returned packet, search for a more current address for the Class Member and re-mail the Class
10 Notice Packet to the Class Member. (*Id.* at ¶ III.E.2.c.). If a Notice Packet is returned as
11 undeliverable with no forwarding address, the Settlement Administrator shall take reasonable
12 steps including, performing address searches for all mail returned without a forwarding address
13 using available email addresses, phone numbers, social security numbers, credit reports; and
14 promptly re-mailing to Class Members for whom new addresses are found. (*Id.*)

15 **L. SETTLEMENT DOES NOT REQUIRE ANY CLASS MEMBERS TO SUBMIT**
16 **CLAIMS (CMO G(3)(g))**

17 Class members will be automatically paid from the settlement and do not need to submit
18 claim forms to be entitled to settlement payments pursuant to the terms of the Agreement.
19 (Settlement Agreement ¶ III.E.3.c., Ex. A.) If a class member does not wish to take part in this
20 settlement and be bound by the release, the class member must submit an exclusion/opt-out
21 request. (*Id.* at ¶ III.E.3.c.) Should any class member fail to submit an exclusion/opt-out
22 request, the class member will automatically become a Participating Class Member and will be
23 bound by all terms and conditions of the Settlement. (*Id.*) Such obligations are thoroughly
24 identified in each class member's Notice. (Settlement Agreement; Ex. A).

25 **M. SETTLEMENT DOES NOT PROVIDE ANY REVERSION TO DEFENDANT**
26 **(CMO G(3)(h))**
27
28

1 This is a non-reversionary settlement, as the entirety of the settlement amount will be
2 fully paid out. As such, none of the settlement funds will revert to Defendant. (Settlement
3 Agreement ¶ III.A.)

4 **N. THE SETTLEMENT INCLUDES COMPENSATION FOR UNPAID WAGES**
5 **(CMO G(3)(i) & (j))**

6 One-fifth of each Participating Class Member's Settlement Share is in settlement of
7 wage claims ("Wage Portion") and is subject to wage withholdings and shall be reported on
8 IRS Form W-2. (Settlement Agreement at ¶III.C.3.a.) Four-fifths of each Participating Class
9 Member's Settlement Share shall be considered penalties and interest and reported on IRS
10 Form 1099. (*Id.* at ¶III.C.3.b.) 100% of the Aggrieved Employees Portion shall be classified as
11 penalties not subject to wage withholdings and shall be reported on IRS Form 1099. (*Id.* at
12 ¶III.C.4.)

13 **O. PROPOSED NOTICE, OBJECTION FORM AND EXCLUSION FORMS (CMO**
14 **G(3)(k))**

15 The Class Notice attaches the Objection and Exclusion Forms. Plaintiff prepared the
16 forms based on previously approved forms by this Court. The Parties have attempted to draft
17 the notice in a manner that will be likely to be readily understood. The Parties have agreed to
18 include a Spanish translation. (Mullins Decl. ¶ 8).

19 **P. TYPICALITY AND ADEQUACY OF REPRESENTATION**

20 **1. Class Representative's Claims are Typical of the Class**

21 The commonality requirement is met when there are questions of law and fact common
22 to the class. *See Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1019 (1998) ("The existence of
23 shared legal issues with divergent legal factual predicates is sufficient, as is a common core of
24 salient facts couple with disparate legal remedies within the class"). Commonality requires
25 only that some common legal or factual questions exist; the plaintiffs need not show that all
26 issues in the litigation are identical. *See Richmond v. Dart Industries, Inc.*, 29 Cal. 3d 462, 473
27 (1981). Defendant's conduct is central to the commonality inquiry. *See City of San Jose v.*
28 *Superior Court*, 12 Cal. 3d 447, 460 (1974); *Vasquez v. Superior Court*, 4 Cal. 3d 800, 812-13

(1971). Where the employer's conduct is uniformly directed at a class of employees, as it is here, the class wide impact of the Defendant's policies satisfies the commonality requirement. *See Stephens v. Montgomery Ward & Co., Inc.*, 193 Cal. App. 3d 411, 421 (1987).

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

Plaintiff does not have any interests adverse to the class, nor has any such issue been raised or presented. (Nevins Decl. ¶ 4). Plaintiff has taken all necessary steps to represent the interests of the Class, by making himself available to answer questions, gather and provide documents, and review and execute the Settlement Agreement and accompanying declaration. (*Id.* at ¶ 7). For such reasons, the Class Representative has adequately represented the class members and will continue to do so.

2. Class Counsel Have Adequately Represented the Class and Has Experience with Wage and Hour Class Actions

From the inception of the case, Class Counsel have protected the interests of the class. Class counsel all of the time and pay records prior to the mediation to perform a damage analysis. The mediation and settlement were obtained for the benefit of the class, not for the individual Class Representative. Class counsel have been approved as class counsel on a number of prior cases and are competent to represent the class. (Hyun Decl. ¶¶ 3-6; Declaration of William Marder ("Marder Decl.") ¶¶ 8-14).

Q. CLASS REPRESENTATIVE ENHANCEMENT AND ATTORNEYS' FEES AND COSTS

1. Attorneys' Fees and Costs

The Settlement Agreement allows Plaintiff to seek up to 1/3 of the Gross Settlement Amount, or \$25,833.33 as payment for attorneys' fees. (Settlement Agreement ¶ III.B.2.) The California Supreme Court established that when class action litigation establishes a monetary fund for the benefit of the class members, and the trial court in its equitable powers awards

1 class counsel a fee out of that fund, the court may determine the amount of a reasonable fee by
2 choosing an appropriate percentage of the fund created. *Laffitte v. Robert Half Int'l*, 1 Cal. 5th
3 480, 503 (2016). “The recognized advantages of the percentage method—including relative
4 ease of calculation, alignment of incentives between counsel and the class, a better
5 approximation of market conditions in a contingency case, and the encouragement it provides
6 counsel to seek an early settlement and avoid unnecessarily prolonging the litigation.” (*Id.*)
7 (internal citations omitted).

8 In *Laffitte*, the Court affirmed an award of attorneys’ fee award of \$6,333,333.33, based
9 on 33 1/3% of the \$19 million common fund. (*Id.* at 503) As in *Laffitte*, the parties have agreed
10 to a 33 1/3% of the common fund for attorney’s fees.

11 Further, the parties have agreed to payment of up to \$15,000.00 as reimbursement for
12 class counsel’s litigation costs. (Settlement Agreement ¶ III.B.2.) Class counsel have, at their
13 own risk, expended costs, for example, to file this instant action, service of process, payment of
14 mediation fees and other litigation related costs. Class counsel will only request the amounts
15 actually expended up to a maximum of \$15,000.00 and will provide their supporting declarations
16 at the time of final approval. Based on the foregoing, the court should preliminarily approve the
17 attorney’s fees and costs being requested by class counsel.

18 **R. PROPOSED PAYMENT TO CLASS REPRESENTATIVE**

19 Plaintiff/Class Representative requests an enhancement of \$7,500. As shown in the
20 supporting declaration, Plaintiff has not previously been a named plaintiff in any other class
21 action cases. (Nevins Decl. ¶5). Plaintiff understood that the filing of this action was a matter
22 of public action and this was being prosecuted on a representative basis. (*Id.* at ¶6). Plaintiff
23 further understood that a representative action would take longer in litigation than an individual
24 action and undertook such risks. (*Id.*). Plaintiff did not incur any expenses, but has expended a
25 significant amount of time on this matter. (*Id.*). Plaintiff spent approximately 30 hours
26 discussing this matter with Counsel on a number of occasions to discuss the case with his
27 counsel, including providing substantive information regarding Defendant’s practices, and
28 providing documents related to his own claims and the claims of the Class. (*Id.* at ¶ 7.)

1 Further, given that future employers are much less likely to hire individuals who have
2 filed suit against their prior employer, particularly cases of this nature, Plaintiff also faced, and
3 likely continues to face, significant risk in not being able to find suitable employment, all as a
4 result of the filing of this case against Defendant.

5 Plaintiff assumed these risks to the class' benefit. Class members did not have to file
6 individual lawsuits and bear the risks of payment of fees and costs if they did not prevail, nor
7 did they have to face the potential for retaliation and not getting future employment had they
8 filed a lawsuit which is a public record.

9 These are significant benefits, even apart from the time the Class Representative has
10 spent working on this case, that weigh in favor of granting the requested enhancement, which is
11 also consideration for the general individual release to which Plaintiff agreed.

12 Courts have routinely granted approval of settlements containing such enhancements.
13 In *League of Martin v. City of Milwaukee*, 588 F. Supp. 1004 (E. D. Wis. 1984), the court held
14 that the proposal settlement properly granted the Class Representatives individual relief. It is
15 "not uncommon for Class Members...to receive special relief in settlement... [The
16 Plaintiff]...had been instrument in prosecuting this lawsuit since the date it was filed." *Id.* at
17 1024. In *Kyriazi v. Western Elec. Co.*, 527 F. Supp. 18 (D. N. J. 1981), a named plaintiff in a
18 Title VII class action was awarded individual relief of back-pay and interest, reinstatement,
19 punitive damages and counsel fees. Similarly, in *Women's Committee for Equal Employment*
20 *Opportunity v. NBC*, 76 F.R.D. 173 (SDNY 1977), the court approved as fair a settlement that
21 included awards to 16 Class Representatives of virtually all the damages they sought.

22 **V. CONCLUSION AND ACTION REQUESTED AS PART OF**
23 **THE MOTION FOR PRELIMINARY APPROVAL**

24 For the foregoing reasons, Plaintiff respectfully requests that the Court grant preliminary
25 approval of the proposed settlement, sign the proposed Order, and approve and authorize mailing
26 of the proposed Class Notice. Plaintiff further requests that a hearing date for the final fairness
27 and final approval hearing be set for a date on or after August 15, 2024.
28

1 Dated: February 14, 2024

POLARIS LAW GROUP

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3 By: William L. Marder
4 William L. Marder
5 Attorney for Plaintiff and the Class
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