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10
11 SUPERIOR COURT OF CALIFORNIA
12 COUNTY OF SAN BERNARDINO

13 CHARLES NOE, on behalf of himself and all
14 others aggrieved,

15 Plaintiff,

16 v.

17 MY PILLOW, INC., a corporation; and
DOES 1 through 100, inclusive,

18 Defendants.
19
20
21

Case No. CIVDS2011360

ASSIGNED FOR ALL PURPOSES TO
JUDGE DAVID COHN – DEPT. S26

**JOINT STIPULATION OF CLASS AND
PAGA ACTION SETTLEMENT
AGREEMENT**

IMAGED FILE

Trial Date: None Set
Complaint Filed: May 29, 2020

22 Subject to the approval of the Court, this Joint Stipulation of Class and PAGA Action
23 Settlement Agreement (“Settlement” or “Settlement Agreement”) is made and entered into by and
24 between Plaintiff Charles Noe (“Plaintiff”, “Class Representative” or “Named Plaintiff”), individually
25 and as representative of the Participating Class Members, as defined below, on the one hand, and
26 Defendant My Pillow, Inc. (“Defendant”), on the other hand. The Class (as defined below) and
27 Defendant are jointly referred to herein as the “Settling Parties” and individually referred to herein as
28 a “Settling Party.”

DEFINITIONS

In addition to the other terms defined elsewhere in this Settlement, the terms below have the following meanings in this Settlement:

I. DEFINITIONS

A. "Action" means the civil action entitled *Charles Noe v. My Pillow, Inc.*, San Bernardino Superior Court Case Number CIVDS2011360, which was commenced on May 29, 2020.

B. "Class Counsel" means David D. Bibiyan and Jeffrey Klein of Bibiyan Law Group, P.C.

C. "Class Counsel Fees and Expenses" means the total amount of attorneys' fees, litigation costs, and expenses awarded to Class Counsel by the Court to compensate Class Counsel for their representation of the Class in the Action, including pre-filing investigation, filing of the Action, all related litigation activities including discovery, mediation, this Settlement, and all post-Settlement compliance procedures.

D. "Class" or "Class Member(s)" means: All current and former individuals engaged to demonstrate Defendant's product at Costco stores in California from May 29, 2016 through the date of preliminary approval, excluding the one individual with a full settlement of claims.

E. "Class Period" refers to the date of the filing of the First Amended Complaint in this Action through the date of preliminary approval.

F. "Class Representatives Incentive Award" means the amount awarded by the Court to the Class Representatives pursuant to Paragraph III.D.

G. "Class Representative" or "Plaintiff" means Charles Noe.

H. "Court" means the Superior Court of California for the County of San Bernardino.

I. "Defendant's Counsel" means Jody A. Landry of Littler Mendelson, PC.

J. "Effective Date" means the date by which all of the following have occurred: the Court has finally approved the Settlement and entered Judgment thereon pursuant to California Rules of Court 3.769(h); and the Judgment has become Final, as defined herein below.

K. "Final" means that the Settlement has been finally approved by the Court without material modification and either: (i) if there are no objections on the date the order for final approval

1 is issued; or (ii) if objections are made, and an appeal is filed, the day after the Judgment is affirmed
2 or the appeal, review or writ is dismissed or denied, and the Judgment is no longer subject to further
3 judicial review.

4 L. "Final Approval Hearing" means the hearing to be conducted by the Court to
5 determine whether to finally approve and implement the terms of this Settlement.

6 M. "Judgment" means the judgment entered by the Court after it grants final approval of
7 this Settlement.

8 N. "Maximum Settlement Amount" is the total maximum potential monetary value of
9 the settlement payable by Defendant as provided herein, which is Five Hundred Thousand Dollars
10 (\$500,000.00), subject to the escalation provision set forth in Paragraph III.S. below. The Maximum
11 Settlement Amount is inclusive of all payments to Class Members under the terms of this Settlement,
12 Class Counsel Fees and Expenses (up to one-third of the Maximum Settlement Amount, which, if it
13 is not escalated pursuant to Paragraph III.S., shall be \$166,667 for attorneys' fees and up to and not
14 exceeding \$15,000 for reimbursement of litigation costs and expenses) awarded by the Court, the Class
15 Representative's Incentive Awards approved by the Court (not to exceed \$7,500), Settlement
16 Administration Costs (not to exceed \$5,000), the LWDA Payment defined below, and employee-side
17 taxes. Only employer-side payroll taxes are excluded, which will be paid separate and apart by
18 Defendant from the Maximum Settlement Amount.

19 O. "Net Settlement Amount" means the Maximum Settlement Amount less: Class
20 Counsel Fees and Expenses approved by the Court; any Class Representatives Incentive Award
21 approved by the Court; Settlement Administration Costs approved by the Court; and the LWDA
22 Payment.

23 P. "Participating Class Member(s)" means Class Members who do not submit a timely
24 and valid Request for Exclusion.

25 Q. "Pay Periods" means the total number of weeks worked by Class Member at a Costco
26 Show in California during the Class Period. Defendant represented that there were 860 Pay periods
27 during the Class Period through approximately March 15, 2021. If it is determined that the number of
28 Pay Periods through preliminary approval exceed 903 (860 plus 5% of 860) the Gross Settlement

1 Amount will be increased by the same percentage, as set forth in more detail in Paragraph III.S. of this
2 Agreement.

3 **R.** "Net Pay Period Value" is established by dividing the Net Settlement Amount by all
4 Pay Periods for the Settlement Class Members.

5 **S.** "Preliminary Approval" means the Court's order granting preliminary approval of the
6 Settlement.

7 **T.** "Released Parties" means Defendant and its affiliates, parent, and each of their
8 company-sponsored employee benefit plans, and their respective successors and predecessors in
9 interest, all of their respective officers, directors, employees, administrators, fiduciaries, trustees and
10 agents, and each of their past, present and future officers, directors shareholders, employees, agents,
11 principals, heirs, representatives, attorneys, accountants, auditors, consultants, attorneys, insurers and
12 reinsurers.

13 **U.** "Settlement Administrator" means the third-party administrator appointed by the Court
14 to administer the settlement of this Action under the terms of this Settlement. ILYM Group, Inc. shall
15 serve as the Settlement Administrator, subject to the Court's approval.

16 **V.** "Settlement Administration Costs" means all fees and costs owed to the Settlement
17 Administrator in connection with administering the settlement in this Action under the terms of this
18 Settlement.

19 **W.** "Settlement Share" means each Class Member's pro rata share of the Net Settlement
20 Amount which is determined by converting the Net Settlement Amount into a Net Pay Period Value.
21 The Net Pay Period value will be established by dividing the Net Settlement Amount by all pay periods
22 for the Settlement Class Members from four years before the date of the filing of the First Amended
23 Complaint in this Action through the date of preliminary approval. The Gross Settlement Award for
24 each Settlement Class Member will be determined by multiplying the Net Pay Period Value by each
25 Settlement Class Member's individual pay periods.

26 **II. RECITALS**

27 **A.** On May 29, 2020 Plaintiff filed his initial complaint commencing the Action in the
28 Court. Plaintiff's Counsel sent a letter to the LWDA regarding potential PAGA claims on February

4, 2020. Plaintiff, in the First Amended Complaint ("Operative Complaint"), alleges that Defendant violated California's wage and hour laws with respect to Plaintiff and Class Members by, *inter alia*, failing to properly pay all wages owed including the base rate and overtime, failure to provide legally compliant rest periods or pay a premium in lieu thereof, failure to provide legally compliant meal periods or pay a premium in lieu thereof, unpaid minimum wages and overtime wages due to off-the-clock work or unrecorded work, failure to timely pay regular wages, failure to reimburse business expenses, improper classification as an independent contractor, failing to provide compliant wage statements, failure to timely pay final wages, and thereby also violated California Business & Professions Code section 17200, et seq. and seeks penalties under PAGA.

B. On March 10, 2021 the Settling Parties attended mediation with Deborah Crandall Saxe, a distinguished mediator. After lengthy negotiations during which the Settling Parties, through their counsel, recognized the burdens and risk of continuing with the litigation, the Settling Parties reached an agreement to settle and resolve the Action and Released Claims.

C. The Settlement represents a compromise and settlement of highly disputed claims. Nothing in the Settlement is intended, or may be construed, as an admission by Defendant that any of the claims alleged in the Action have merit, or that Defendant bears any liability to the Class Members on those claims, nor as an admission by the Class Members that Defendant's defenses in the Action have merit.

Based on these Recitals, the Settling Parties hereby agree as follows.

III. SETTLEMENT TERMS AND CONDITIONS

A. **Maximum Settlement Amount.** In order to settle the Action and Released Claims (defined below), Defendant agrees to pay the Maximum Settlement Amount of \$500,000.00, as the same may be escalated pursuant to Paragraph III.S. of this Settlement Agreement. This Maximum Settlement Amount is inclusive of all payments described in Paragraph I.N above. Under no circumstances, other than what is set out in section III.S., shall Defendant be required to pay more than the Maximum Settlement Amount, other than the amount of employer-side payroll taxes owed on the wage portion of the Settlement Shares ("Employer Taxes"). Defendant shall pay the Employer Taxes separately and in addition to the Maximum Settlement Amount.

1 **B. Class Counsel Fees And Expenses.** Defendant and its counsel will not oppose the
2 application to the Court by an award of up to one-third of the Maximum Settlement Amount for
3 attorneys' fees, which currently amounts to \$166,667.00, and up to \$15,000 of the Maximum
4 Settlement Amount for reimbursement of Class Counsel's litigation costs and expenses. Class
5 Members and Class Counsel shall not seek payment of attorneys' fees or reimbursement of costs or
6 expenses except as set forth herein. Defendant (or the Settlement Administrator) will issue an IRS
7 Form 1099 to Class Counsel with respect to the attorneys' fees and costs awarded to them. Defendant
8 agrees not to oppose a motion for attorneys' fees or a bill of costs for the aforementioned amounts,
9 provided that this should not be construed as approval or endorsement by Defendant of the amount
10 sought. Whatever amount of Class Counsel Fees and Expenses that the Court approves shall be paid
11 from the Maximum Settlement Amount. Should the Court approve and award less than the amount
12 provided for herein, the difference shall be included in the Net Settlement Amount.

13 **C. LWDA Payment.** Settling Parties agree that the amount of \$20,000 of the Maximum
14 Settlement Amount is deemed payment for penalties under PAGA ("PAGA Penalties"), of which 75%
15 (\$15,000) will be paid to the Labor and Workforce Development Agency ("LWDA Payment") and the
16 remaining 25% will be included in the Net Settlement Amount for distribution to Participating Class
17 Members.

18 **D. Class Representatives Incentive Award.**

19 1. Plaintiff will request, and Defendant will not oppose, an incentive payment not
20 to exceed \$7,500 for the Class Representative. The Class Representative's Incentive Award is
21 intended as reasonable compensation for the time and effort expended by Plaintiff as Class
22 Representative and in connection with the initiation and maintenance of this Action. The Class
23 Representative's Incentive Award will be paid from the Maximum Settlement Amount, and will be
24 paid in addition to whatever payment Plaintiff is otherwise entitled to as Participating Class Member.
25 The Class Representative's Incentive Award will be reported to the taxing authorities by means of an
26 IRS Form 1099. The amount of the Class Representative's Incentive Award is left to and within the
27 Court's sole discretion. Defendant agrees not to oppose an application for the Class Representative's
28 Incentive Award in the above amount, provided that this should not be construed as approval or

1 endorsement by Defendant of the amount sought. Whatever Class Representative's Incentive Award
2 the Court orders shall be paid from the Maximum Settlement Amount. Should the Court approve and
3 award less than the amount provided for herein, or not at all, the difference shall be included in the
4 Net Settlement Amount. The Settling Parties agree that the approval, and amount, of any incentive
5 award in this Action shall be in the Court's sole discretion and not subject to any appeal by Plaintiff
6 who is the sole recipient of any approved Class Representative's Incentive Award. This Settlement is
7 not contingent on Plaintiff's receipt of any incentive award out of the Maximum Settlement Amount.

8 2. Plaintiff acknowledges and agrees that Defendant and its attorneys have made
9 no representations or warranties regarding the tax consequences of payment of the Class
10 Representative's Incentive Award, and Plaintiff has not relied on any such representations or
11 warranties.

12 **E. Settlement Administration Costs.** The Settling Parties have obtained quotes from
13 third-party administrators based on the estimated class size and distributions under the terms of this
14 Settlement, and based thereon, Settling Parties have selected ILYM Group, Inc. to act as the Settlement
15 Administrator and it is estimated that the fees, expenses, and costs for administration of the terms of
16 this Settlement will not exceed \$5,000.00 ("Settlement Administration Costs"). All of the Settlement
17 Administration Costs shall be paid from the Maximum Settlement Amount upon completion of all
18 duties required to be performed by the Settlement Administrator under the terms of this Settlement, or
19 as otherwise required by the Court, subject to the "not to exceed" quote from the agreed upon
20 Settlement Administrator. Should the Court approve and award less than the amount provided for
21 herein, or not at all, the difference shall be included in the Net Settlement Amount.

22 **F. Settlement Shares to Class Members.**

23 1. Under the Settlement, each Participating Class Member will be entitled to
24 payment of a *pro rata* portion of the Net Settlement Amount (i.e., his or her Settlement Share). The
25 amount that each Class Member will be eligible to receive under the Settlement will be determined by
26 converting the Net Settlement Amount into a Net Pay Period Value. Each Class Member's estimated
27 Settlement Share will be calculated by multiplying his or her individual Pay Periods by the Net Pay
28 Period Value.

2. Each Settlement Share will be apportioned as follows: 20% as wages (the "Wage Component") and 80% for interest, penalties, and other non-wage damages (the "Non-Wage Component"). Each Settlement Share will be subject to reduction for all employee's share of taxes and withholdings and shall be reported by IRS W-2 forms, and the net payment will be referred to as "Individual Settlement Payment(s)." No reductions will be made to Settlement Shares for any taxes or withholding in connection with the Non-Wage Component, and the Non-Wage Component shall be reported by IRS 1099 forms. All Class Members covered by this Settlement agree that they are not relying on any representations regarding the tax allocation or treatment of any amounts paid to them under the terms of this Settlement..

G. Distributions.

1. Within five (5) business days of the Effective Date, the Settlement Administrator will provide Class Counsel and Defendant's Counsel with the account information so that Defendant can wire the Maximum Settlement Amount and the Employer Taxes, and Defendant shall wire said amounts within fifteen (15) business days of receiving the account information.

2. The Settlement Administrator will distribute Individual Settlement Payments to Participating Class Members, the LWDA Payment to the Labor and Workforce Development Agency ("LWDA"), the Court-approved Class Representative's Incentive Award to Plaintiff, and Court-approved Class Counsel Fees and Expenses to Class Counsel, within ten (10) business days of receipt of payment from Defendant pursuant to this Paragraph.

3. Individual Settlement Payment checks issued to Participating Class Members will remain valid for a period of 180 calendar days after they issue, and shall be cancelled thereafter. Uncashed checks will go to the Legal Aid to Work fund to be used to benefit workers in San Bernardino County.

H. Payments To Class Do Not Trigger Additional or Derivative Payments.

It is expressly understood and agreed that the receipt of payments under the Settlement will not entitle Plaintiff or any Class Member to additional or derivative compensation or benefits under any of Defendant's bonus, contest, or other compensation or benefit plan or agreement in place during the period covered by the Settlement, nor will it entitle any Plaintiff or any Class Member to any

1 increased retirement, 401k benefits or matching benefits, or deferred compensation benefits. It is the
2 intent of this Settlement that the payments provided for in this Agreement are the sole payments to be
3 made by Defendant to Plaintiff and Class Members, and that Plaintiff and Class Members are not
4 entitled to any additional or derivative compensation or benefits as a result of having received said
5 payments (notwithstanding any contrary language or agreement in any benefit or compensation plan
6 document that might have been in effect during the period covered by this Settlement).

7 **I. Motion For Preliminary Approval.**

8 1. Class Counsel will file an unopposed motion with the Court (the "Preliminary
9 Approval Motion") seeking an order approving the Settlement; setting a date for the Final Approval
10 Hearing; approving the distribution of the Notice of Class Action Settlement (the "Class Notice") in
11 substantively the form attached hereto as "**Exhibit A**"; and approving the procedures and deadlines
12 for disputing Pay Periods, seeking exclusion from the Settlement, and objecting to the Settlement.
13 Defendant's counsel will not respond or will file a notice of non-opposition to the motion.

14 2. At the hearing on the Preliminary Approval Motion, the Settling Parties will
15 jointly appear, and support the granting of the motion, and submit a proposed order granting
16 preliminary approval of the Settlement, approving the Class Notice, and setting a Final Approval
17 Hearing (the "Proposed Order"). The Proposed Order to be submitted to the Court in substantially the
18 form that is attached hereto as "**Exhibit B**."

19 3. Should the Court, after a reasonable opportunity to cure and remedy any stated
20 deficiencies, ultimately decline to grant preliminary approval of the Settlement as proposed by the
21 Settling Parties, then the Settlement is void for lack of a condition precedent of the Settlement and the
22 Settling Parties will revert to their respective positions.

23 **J. Mailing Of Class Notice To Class Members.**

24 After the Court enters its order granting preliminary approval of the Settlement, all Class
25 Members will be provided with the Class Notice by the Settlement Administrator as follows:

26 1. Within fourteen (14) Calendar days after the Court grants preliminary approval
27 of the Settlement, Defendant will provide to the Settlement Administrator the last-known contact
28 information that it has for the Class Members, including their full name, mailing addresses and

1 telephone numbers, Social Security numbers, and the number of Costco shows worked in California
2 during the Class Period, and such other information that may be necessary to calculate Pay Periods
3 and/or process disputes of Pay Periods ("Class Data List"). The Class Data List will be provided to
4 Class Counsel, and this list will be used for no purpose other than to monitor the administration of the
5 Settlement. All data and information provided to the Settlement Administrator and Class Counsel by
6 way of the Class Data List will be treated as confidential and will not be disclosed to anyone, except
7 as may be required to applicable tax authorities, pursuant to Defendant's express written consent, by
8 order of the Court, or to carry out the reasonable steps described in this Settlement to locate missing
9 Class Members.

10 2. Within ten (10) calendar days after receiving the Class Data List from
11 Defendant, the Settlement Administrator will mail the Class Notice to all identified Class Members
12 via first-class U.S. Mail, using the last known address information provided by Defendant, unless such
13 address is modified by any updated address information that the Settlement Administrator obtains in
14 the course of administration of the Settlement. Prior to completing this mailing, the Settlement
15 Administrator will perform a National Change of Address ("NCOA") search to confirm the validity
16 of and update Class Members' mailing addresses.

17 3. If any Class Notice is returned as undeliverable with a forwarding address
18 within thirty (30) calendar days of the mailing of the Class Notice, the Settlement Administrator shall
19 have five (5) calendar days to re-mail the Class Notice to the forwarding address. If any Class Notice
20 is returned as undeliverable without a forwarding address within thirty (30) calendar days of the
21 mailing of the Class Notice, the Settlement Administrator will have five (5) calendar days from receipt
22 of the returned Class Notice to search for a more current address for the Class Member and to re-mail
23 the Class Notice to the Class Member. This inquiry shall include a skip-trace search. The Settlement
24 Administrator will be responsible for taking all reasonable steps, consistent with its agreed upon job
25 parameters, Court orders and fee, according to the deadlines set forth in this Settlement, to administer
26 the Settlement, including, *inter alia*, to tracking all undelivered mail, performing an address search for
27 all mail returned without a forwarding address, and promptly re-mailing the Class Notice to Class
28 Members as set forth herein. If the Class Notice is re-mailed, the Claims Administrator will note for

1 its own records the date and address of each such re-mailing and so notify Class Counsel and
2 Defendant's Counsel. The obligation to trace and resend returned Class Notices shall cease after two
3 mailings or thirty (30) calendar days after the initial mailing, whichever occurs first. The Response
4 Deadline will be extended to the later of the original Response Deadline or fifteen (15) calendar days
5 after the remailing of a Class Notice in accordance with the Agreement.

6 4. The Settlement Administrator shall provide weekly status reports to counsel for
7 the Settling Parties, including: (a) the number of Class Notices that it has mailed; (b) the number of
8 objections, if any are received; (c) the number of disputes of Compensable Weeks Worked, if any are
9 received; and (c) the number of Requests for Exclusion, if any are received.

10 5. No later than ten (10) business days after the Response Deadline, the Settlement
11 Administrator will provide Class Counsel and Defendant's counsel a declaration for filing with the
12 Court in support of Plaintiff's motion for final approval of the Settlement, setting forth its due diligence
13 and compliance with its obligations under this Settlement.

14 **K. Opt Outs and Objections To Settlement.**

15 Class Members are not required to sign a claim form to participate in the Settlement. Class
16 Members may opt out of the Settlement or submit objections to the Settlement pursuant to the
17 following procedures:

18 1. The Class Notice will provide that Class Members who do not want to
19 participate in the Settlement may exclude themselves by submitting a written request seeking
20 exclusion from the Settlement ("Request for Exclusion") to the Settlement Administrator not later than
21 forty-five (45) calendar days after the date that the Settlement Administrator first mails the Class
22 Notice ("Response Deadline"). A Request for Exclusion must: (a) contain the full name, address, and
23 last four digits of the Social Security number of the person requesting exclusion; (b) be signed by the
24 person requesting to exclusion; (c) reference the Action by its name and case number; and (d) contain
25 a statement clearly indicating that the person submitting the request seeks to be excluded from the
26 Settlement. If the Request for Exclusion does not contain the information listed in (a)-(d) or is not
27 returned to the Settlement Administrator postmarked by the Response Deadline, it will not be deemed
28 timely and valid. The date of the postmark on the return mailing envelope shall be the exclusive means

1 used to determine whether the Request for Exclusion has been timely submitted. Any Class Members
2 who submit a timely and valid Request for Exclusion will not be entitled to any recovery under the
3 Settlement and will not be bound by the terms of the Settlement or have any right to object, appeal, or
4 comment thereon. Class Members who fail to submit a timely and valid Request for Exclusion shall
5 be Class Members bound by all terms of the Settlement and the contemplated Judgment if the
6 Settlement is granted final approval by the Court. No later than five (5) business days after the
7 Response Deadline, the Settlement Administrator shall provide Defendant's Counsel and Class
8 Counsel with a complete list of all Class Members who have submitted timely and valid Requests for
9 Exclusion, including their full name and Social Security number.

10 2. The Class Notice will provide that Participating Class Members (i.e., Class
11 Members who are not seeking to opt out of the Settlement) who wish to object to the Settlement must
12 file with the Court and submit to the Settlement Administrator a written statement objecting to the
13 Settlement not later than the Response Deadline. The written statement of objection must: (a) contain
14 the full name, address, and last four digits of the Social Security number of the Class Member; (b) be
15 signed by the Class Member; (c) reference the Action by its name and case number; (d) contain a
16 statement clearly indicating that the Class Member objects to the Settlement along with his or her
17 grounds for the objection; and (e) indicate whether the Class Member is represented by legal counsel,
18 identify any such legal counsel, and also indicate whether Class Member or his/her counsel intends to
19 appear at the Final Approval Hearing. If a Class Member opts out of the Settlement s/he cannot object
20 to the Settlement.

21 3. A Class Member who does not file and submit an objection in the manner and
22 by the Response Deadline specified above will be deemed to have waived all objections and will be
23 foreclosed from making any objections to the Settlement, whether by appeal or otherwise.

24 4. If a Class Member who has timely filed an objection to the Settlement files a
25 Notice of Appeal of the contemplated Judgment within the time period prescribed by law, Defendant
26 shall not be required to fund any portion of the Maximum Settlement Amount, and the Settlement
27 Administrator shall not distribute or pay any monies until the appeal(s) are finally resolved in favor of
28 the Settlement or dismissed with prejudice.

1 **L. Resolution of Class Member Disputes Over Pay Periods.**

2 1. If a Class Member disputes the number of Pay Periods credited to him or her,
3 which will be stated in the Class Notice, the Class Member must submit a written dispute to the
4 Settlement Administrator, postmarked no later than the Response Deadline. The dispute must: (a)
5 contain the full name, address, and last four digits of the Social Security number of the Class Member;
6 (b) be signed by the Class Member; (c) reference the Action by its name and case number; (d) contain
7 a statement clearly indicating that the Class Member disputes the number of Pay Periods that are
8 credited to him or her and the number of Pay Periods that the Class Member claims should be credited
9 to him or her; and (e) attach supporting documentation, if any, that they may have. If such a dispute
10 arises with respect to a Class Member, the Settlement Administrator will inform Class Counsel and
11 Defendant's Counsel, Defendant will manually review its payroll and personnel records to verify the
12 correct number of Pay Periods for the disputing Class Member, Defendant's records shall have a
13 rebuttable presumption of correctness, and Defendant's Counsel and Class Counsel shall jointly
14 determine how the dispute should be resolved. If they are unable to jointly resolve the dispute, the
15 Settlement Administrator shall present the dispute for resolution by the Court, by way of declaration
16 to be filed in advance of the Final Approval Hearing. The decision on the dispute will be non-
17 appealable.

18 **M. No Solicitation of Objections or Requests for Exclusion.**

19 Neither the Settling Parties nor their respective counsel or management will solicit or otherwise
20 encourage any Class Member, directly or indirectly, to seek exclusion from the Settlement, object to
21 the Settlement, and/or appeal from the Judgment.

22 **N. Additional Briefing and Final Approval.**

23 1. As soon as practicable following the Response Deadline, Plaintiff will move
24 the Court for final approval of the Settlement and for an award of the Class Representatives' Incentive
25 Award and Class Counsel Fees and Expenses, pursuant to and in accordance with the terms of this
26 Settlement, with a memorandum in support of the motion(s), which Defendant agrees it will not oppose
27 so long as the motion(s) are in all respects consistent with the terms of this Settlement.

28 2. Upon final approval of the Settlement by the Court at or after the Final Approval

Hearing, Plaintiff will present a Judgment for the Court's approval and entry, which will provide that the Court will have continuing jurisdiction over the Action and the Settlement solely for purposes of: (i) enforcing this Settlement, (ii) addressing any claims administration matters that may arise; and (iii) addressing such post-Judgment matters as may be appropriate under court rules or applicable law.

O. Options to Terminate Settlement.

1. Any reduction in the Class Counsel Fees and Expenses, and/or any reduction to the requested Class Representatives' Incentive Awards, does not constitute grounds to terminate or void the Settlement.

2. Defendant has the right to cancel the Settlement if more than ten percent (10%) of the Class Members submit timely and valid requests for exclusion from the Settlement as of the Opt-Out deadline. This option to cancel the Settlement must be exercised by Defendant by providing written notice to Class Counsel within thirty (30) days of the Response Deadline. If Defendant exercises the option to terminate the Settlement, then, Defendant shall be responsible for paying all settlement administration costs.

3. Either Settling Party may terminate this Settlement by giving written notice to the other Settling Party (through its counsel) no later than twenty (20) calendar days after receiving notice that one of the following has occurred: (i) the Court declines to enter the Preliminary Approval Order or the Final Approval Order in substantially the form submitted by the Parties; (ii) the Settlement does not become final because of any appellate court action; or (iii) the Court's final approval of the Settlement is reversed or materially modified on appellate review.

4. In the event of termination of this Settlement as provided above, this Settlement will become and shall be considered null and void, and it will have the following effects: (i) the Settling Parties will have no further obligations under the Settlement; (ii) Defendant shall have no obligation to make any payments to any person, party, Class Member or attorney that otherwise would have been owed under this Settlement, except that in case of termination under Paragraph O.2, Defendant will pay the Settlement Administrator's reasonable fees and expenses incurred as of the date that the Settlement is terminated; (iii) in case of termination under Paragraph O.3, Plaintiff will pay 50% and Defendant will pay 50% of the Settlement Administrator's reasonable fees and expenses incurred as

1 of the date that the Settlement is terminated; (iv) the Settlement and all negotiations, statements and
2 proceedings relating thereto shall be without prejudice to the rights of any of the Settling Parties, all
3 of whom shall be restored to their respective positions in the Action prior to the Settlement; and (v)
4 neither this Settlement nor any ancillary documents, actions, statements or filings in furtherance of
5 settlement (including all matters associated with the mediation) shall be admissible or offered into
6 evidence in the Action or any other case or proceeding for any purpose whatsoever.

7 5. Notice of the termination of the Settlement by a Settling Parties must be
8 provided to counsel for the other Settling Party in writing.

9 **P. Dispute Resolution.** Any disputes not resolved by the Settlement Administrator or the
10 Settling Parties will be resolved by the Court. Before any such resort to the Court, counsel for the
11 Settling Parties will confer in good faith in an attempt to resolve the dispute.

12 **Q. Waiver of Right To Appeal.** Named Plaintiff agrees to waive appeals from the
13 reduction in the Class Counsel Fees and Expenses, and/or any reduction to the requested Class
14 Representatives Incentive Awards, which do not constitute grounds to terminate or void the
15 Settlement.

16 **R. Release of Claims.**

17 1. Release of Claims By Participating Class Members. Upon entry of judgment
18 and payment of the Maximum Settlement Amount (as the same may be escalated pursuant to
19 Paragraph III.S. of this Agreement) as well as the Employer's Taxes, and in exchange for the
20 consideration provided by this Settlement, Class Representative and Participating Class Members (i.e.,
21 those Class Members who do not submit a timely and valid request for exclusion from the Settlement),
22 shall have, fully, finally, and forever settled and released Defendant and the Released Parties of all
23 claims for wages, statutory and civil penalties, damages and liquidated damages, interest, fees and
24 costs that were alleged in the First Amended Complaint or that could have been alleged based on the
25 factual allegations therein, during the Class Period, including, but not limited to: (1) claims for failure
26 to pay wages, whether base rate, minimum wage, overtime compensation for all hours worked (Labor
27 Code sections 510, 558 and 1198, Wage Order 7), Minimum Wage Order); (2) rest period premiums
28 (Labor Code section 226.7 and Wage Order 7); (3) meal period premiums (Labor Code sections 512,

226.7 and Wage Order 7); (4) waiting time penalties (violations of Labor Code sections 201-203); (5) wage statement violations (Labor Code section 226); (6) misclassification as a contractor (Labor Code section 226.8); (7) failure to timely pay wages or alleged withholding of wages (Labor Code sections 204, 210, 221 and 223); (8) unpaid expenses (Labor Codes section 2802); and (9) unfair business practices (Business and Professions Code section 17200 to the extent they are based on the Labor Code violations alleged to have been violated in the First Amended Complaint. In addition, for the period of February 4, 2019 through preliminary approval (*i.e.*, the "PAGA Period"), Class Members working during the PAGA Period ("Aggrieved Employees") further release all claims for civil penalties under PAGA arising out of Labor Code sections 210, 226.3, 226.8, 558, 1197.1 and 2699 for alleged violations of California Labor Code sections 201, 202, 203, 204, 221, 222, 223, 226, 226.2, 226.7, 510, 512, 1194, 1194.2, 1197, 1199, 2802, and for any other violations of the Labor Code alleged or that could be alleged based on the factual allegations in the First Amended Complaint. Language will be added to the back of the settlement check that specifically provides that by signing the settlement check the Settlement Class Member is releasing all equivalent claims under the FLSA during the Class Period.

2. Complete And General Release By Class Representative. Class Representative may hereafter discover facts in addition to or different from those he now knows or believes to be true with respect to the subject matter of the Released Claims, but upon the Effective Date, shall be deemed to have, and by operation of the contemplated final judgment shall have, fully, finally, and forever settled and released any and all of the Released Claims, whether known or unknown, suspected or unsuspected, contingent or non-contingent, which now exist, or heretofore have existed, upon any theory of law or equity now existing, including, but not limited to, conduct that is negligent, intentional, with or without malice, or a breach of any duty, law or rule, without regard to the subsequent discovery or existence of such different or additional facts. In exchange for the consideration provided to him under the Settlement, Class Representative shall, waive any and all rights he may have under Civil Code section 1542. Section 1542 reads as follows: "A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release and that, if known by him or her, would have materially

1 affected his or her settlement with the debtor or released party.”

2 **S. Escalation Clause.** Defendant represents that there are no more 860 Pay Periods
3 worked during the Class Period by Class Members. In the event the number of Pay Periods
4 increases by more than 5%, or, in other words, exceeds 903 Pay Periods, then the Maximum
5 Settlement Amount shall be increased proportionally by the Pay Period Value. The Gross Pay
6 Period Value shall be calculated by dividing the Maximum Settlement Amount (\$500,000.00) by
7 860, which amounts to a Gross Pay Period Value of \$581.39. Thus, for example, should there be
8 950 Pay Periods in the Class Period, then the Maximum Settlement shall be increased by \$52,325.58
9 (950 Pay Periods – 860 Pay Periods x \$581.39/Pay Period.)

10 **T. Publicity.** All of the Parties and their counsel agree that they will not proactively
11 contact the media about the case or settlement. If counsel is contacted by the media they can only say
12 that the matter has been resolved to the mutual satisfaction of the parties. This does not prevent Class
13 Counsel from putting information about the settlement on their firm websites so long as the name of
14 Defendant is not mentioned. Further, should the settlement be approved, it does not prevent Class
15 Counsel from listing the case as one where they were approved as class counsel in declarations
16 submitted in other litigation.

17 **U. Fair, Adequate, And Reasonable Settlement.** This Settlement was reached after
18 extensive negotiations. The Settling Parties believe and agree that this Settlement is a fair, adequate,
19 and reasonable resolution of the Action and have arrived at this Settlement in arms-length negotiations,
20 taking into account all relevant factors, present and potential, and will so represent it to the Court.

21 **V. No Admission Of Liability.** Defendant and the Released Parties deny any and all
22 alleged wrongdoing or the violation of any rights of the Class Representatives and/or Class Members.
23 By entering into this Settlement, Defendant does not admit, and in fact specifically disclaims, the
24 violation of any law or regulation. This Settlement is entered into solely for the purpose of
25 compromising highly disputed claims. Nothing in this Settlement is intended or will be construed as
26 an admission of any liability or wrongdoing by Defendant, or as an admission by the Class Members
27 that any of their claims were non-meritorious or that any defense asserted by Defendant was
28 meritorious. This Settlement and the fact that the Settling Parties were willing to settle the Action and

1 have entered into this Settlement will have no bearing on, and will not be admissible in connection
2 with, any litigation, other than as is necessary to enforce the terms of this Settlement.

3 **W. Miscellaneous Terms.**

4 1. Integrated Agreement. After it is signed and delivered by all Settling Parties
5 and their counsel, this Settlement and its exhibits will constitute the entire agreement between the
6 Settling Parties relating to the terms of Settlement, and will supersede any prior or contemporaneous
7 oral representations, warranties, covenants, or inducements made to any Settling Party concerning this
8 Settlement or its exhibits, including the Settlement Terms.

9 2. Execution in Counterparts. This Settlement may be executed in one or more
10 counterparts and by facsimile or PDF version. All executed counterparts, and each of them, will be
11 deemed to be one and the same instrument, provided that counsel for the Settling Parties will exchange
12 between themselves original signed counterparts. Any executed counterpart will be admissible in
13 evidence to prove the existence and contents of this Settlement.

14 3. Modification of Settlement. This Settlement, and any and all parts of it, may
15 be amended, modified, changed, or waived only by an express written instrument signed by all Settling
16 Parties or their successors-in-interest, subject to approval by the Court.

17 4. Settlement Binding on Successors. This Settlement will be binding upon, and
18 inure to the benefit of, the successors of each of the Settling Parties and Participating Class Members.

19 5. Applicable Law. All terms and conditions of this Settlement and its exhibits
20 will be governed by and interpreted according to the laws of the State of California, without giving
21 effect to any conflict of law or choice of law principles.

22 6. Interim Stay of Proceedings. The Parties agree to stay all proceedings in the
23 Action, subject to necessary compliance with the Court's orders, except such proceedings necessary
24 to implement and complete the Settlement, pending the Final Approval Hearing to be conducted by
25 the Court.

26 7. Authorization to Enter Into Settlement Agreement. Counsel for all Settling
27 Parties warrant and represent they are expressly authorized by the Settling Parties whom they represent
28 to negotiate this Agreement and to take all appropriate actions required or permitted to be taken by

1 such Settling Parties pursuant to this Agreement to effectuate its terms, and to execute any other
2 documents required to effectuate the terms of this Agreement. The Settling Parties and their counsel
3 will cooperate with each other and use their best effort to effectuate the implementation of the
4 Settlement. In the event the Settling Parties are unable to reach agreement on the form or content of
5 any document needed to implement the Settlement, or on any supplemental provisions that may
6 become necessary to effectuate the terms of this Settlement, the Settling Parties may seek the
7 assistance of the Court to resolve such disagreement. The persons signing this Agreement on behalf
8 of Defendant represents and warrants that they are authorized to sign this Agreement on behalf of
9 Defendant. The Class Representative represents and warrants that he is authorized to sign this
10 Agreement and that he has not assigned any claim, or part of a claim, covered by this Settlement to a
11 third-party.

12 8. Notices. Unless otherwise specifically provided herein, all notices, demands or
13 other communications given hereunder shall be in writing and shall be deemed to have been duly given
14 as of the third business day after mailing by United States registered or certified mail, return receipt
15 requested, addressed as follows:

16 To Class Counsel:

17 David D. Bibiyan, Esq.
18 BIBIYAN LAW GROUP, P.C.
19 8484 Wilshire Blvd., Suite 500
Beverly Hills, CA 90211

20 To Defendant:

21 Jody A. Landry, Esq.
22 LITTLER MENDELSON, P.C.
23 501 West Broadway, Suite 900
San Diego, California 92101

1 9. Cooperation in Drafting. The Settling Parties have cooperated in the drafting
2 and preparation of this Settlement. This Settlement will not be construed against any Settling Party
3 on the basis that the Settling Party was the drafter or participated in the drafting.

4 **IT IS SO AGREED.**

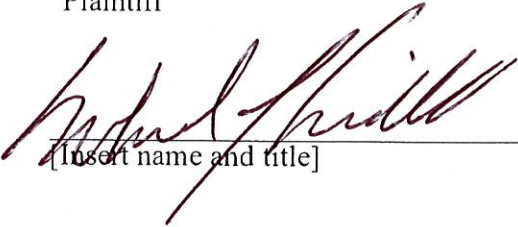
5 Dated: 05/21/2021

Charles Noe
Charles Noe (May 19, 2021 17:35 PDT)

Charles Noe
Plaintiff

7 **For My Pillow, Inc.:**

8 Dated: 5/24/21


[Insert name and title]

10 4840-6782-7429.1 096922-1004

EXHIBIT A

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8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 COUNTY OF SAN BERNARDINO

10 CHARLES NOE, on behalf of himself and
11 all others aggrieved,

12 Plaintiff,

13 v.

14 MY PILLOW, INC., a corporation; and
DOES 1 through 100, inclusive,

15 Defendants.

Case No. CIVDS2011360

ASSIGNED FOR ALL PURPOSES TO
JUDGE DAVID COHN – DEPT. S26

**NOTICE OF PROPOSED CLASS ACTION
SETTLEMENT AND FAIRNESS
HEARING**

Trial Date: None
Complaint Filed: May 29, 2020

16
17 TO: All current and former individuals engaged to demonstrate Defendant's product at Costco
18 stores in California from [four years prior to the filing of the First Amended Complaint in this
Action] through [date of preliminary approval] ("Class Period").

19 **THIS NOTICE MAY AFFECT YOUR RIGHTS.**

20 **PLEASE READ THIS NOTICE CAREFULLY.**

21 YOU ARE HEREBY NOTIFIED THAT A HEARING HAS BEEN SCHEDULED FOR
22 _____, 2021 AT _____ A.M. BEFORE THE HONORABLE DAVID COHN,
23 SUPERIOR COURT JUDGE OF THE STATE OF CALIFORNIA, COUNTY OF SAN
BERNARDINO, TO CONSIDER A PROPOSED SETTLEMENT OF THE CLAIMS THAT HAVE
BEEN BROUGHT ON YOUR BEHALF.

24 **I. INTRODUCTION**

25 On May 29, 2020, Plaintiff Charles Noe filed a lawsuit against defendant My Pillow, Inc.
26 ("Defendant") for penalties under the Private Attorney General Act ("PAGA") seeking penalties for
27 alleged unpaid compensation, failure to provide meal periods and rest breaks, inaccurate wage
statements, failure to reimburse expenses, and other related claims. Thereafter on _____, 2021 an
amended complaint was filed adding class claims similar to the PAGA claims.

28 Class Counsel in this matter is David D. Bibiyan and Jeffrey Klein of Bibiyan Law Group,
P.C.

1 A tentative settlement of the case has been reached with Defendant. The settlement applies to
2 the following settlement class: All current and former individuals engaged to demonstrate Defendant's
3 product at Costco stores in California from [four years prior to the filing of the First Amended
4 Complaint] through [date of preliminary approval].

5 **II. THE REASON YOU HAVE RECEIVED THIS NOTICE**

6 You are a Class Member for purposes of the settlement of this case. Your rights will be
7 affected because the current Class Representative, Charles Noe and Defendant ("the Parties") have
8 tentatively settled the lawsuit. Pursuant to that tentative settlement, the Court is considering the entry
9 and final approval of the settlement. On _____, 2021, the Court preliminarily
10 determined that this lawsuit could be settled against Defendant.

11 You are hereby notified that:

- 12 1. A settlement of the claims on behalf of Class Members has been proposed by Class
13 Representative Charles Noe, on the one hand, and Defendant, on the other.
- 14 2. The proposed Settlement has been submitted to the Court and has received preliminary
15 approval.
- 16 3. You and any Class Member have the right to object to the proposed settlement by following
17 the procedures in Part V of this notice or to opt out of the proposed settlement by following
18 the procedures set forth in Part VI of this notice.
- 19 4. A hearing to finally approve the settlement is scheduled for _____, 2021 in Dept.
20 S26 at the San Bernardino Superior Court, located at 247 West Third Street, San Bernardino,
21 California, 92415, before the Honorable David Cohn.

22 At the Final Approval hearing, any Class Member who did not opt out may appear and object
23 to the proposed settlement if you mailed a timely objection as set forth in Part V, below. You should
24 read that part carefully. Class Members who do not make objections in the manner provided in Part
25 V of this Notice shall be deemed to have waived such objections.

26 This notice is not to be understood as an expression of any opinion by the Court as to the merits
27 of any claims or defenses asserted by any party in these lawsuits. This notice is sent for the sole
28 purpose of informing you of the pendency of this lawsuit and the terms of the proposed settlement so
that you may make appropriate decisions. In the event of any conflicts between this notice and the
Settlement Agreement, the terms of the Settlement Agreement shall govern. You may obtain a copy
of the Settlement Agreement by contacting Class Counsel, who are identified in Part VII below.

29 **III. NATURE OF THE LAWSUIT**

30 In this case, Plaintiff sued Defendant for alleged violations of California's wage and hour laws
31 with respect to Plaintiff and Class Members by, *inter alia*, failure to pay all compensation owed, failure
32 to provide meal periods and rest breaks, inaccurate wage statements, failure to reimburse expenses,
33 and thereby also violated California Business & Professions Code section 17200, *et seq.* and seeks
34 penalties under PAGA, as well as fees and costs. Defendant denied and continues to deny all of the
35 allegations made by Plaintiff.

36 Plaintiff and Defendant have tentatively settled this lawsuit. The Settlement has received
37 preliminary approval of the Court, subject to notice being provided to Class Members and final
38 approval by the Court after a public hearing. This proposed settlement is described in the next section.

As a Class Member, you will receive money from the proposed Settlement if the Court grants final approval and you do not exclude yourself.

IV. SUMMARY OF THE RELIEF GRANTED BY THE PROPOSED SETTLEMENT AGREEMENT

For purposes of settlement, and without admitting any liability, Defendant has agreed to provide certain relief to Class Members. The following is only a summary of the relief contained in the proposed Settlement:

1. Defendant will pay the total sum ("Sum") Five Hundred Thousand Dollars (\$500,000.00).
2. Out of the Sum, Class Counsel will request attorneys' fees in the amount of one-third of the Sum, which currently would amount to \$166,667.

Out of the Sum, Class Counsel will request reimbursement of their actual costs incurred, not to exceed \$15,000.
3. Class Representative Charles Noe will apply for an enhancement payment in the amount of \$7,500 to be paid from the Sum. The enhancement payment is in recognition of the time and efforts he expended in this case on behalf of the Certified Class.
4. Class Counsel will request an amount not to exceed \$5,000 be paid from the Sum to ILYM Group, Inc. for administering the settlement.
5. Class Counsel will request that \$20,000 be allocated to PAGA, of which \$15,000 would be paid to the Labor and Workforce Development Agency (LWDA) and \$5,000 would be paid to Class Members working during the period of February 4, 2019 through preliminary approval (the PAGA Period).
6. Monies paid pursuant to the Settlement are taxable; 20% of the Settlement Amount will be classified as wages and 80% as interest and penalties. Of the 20% classified as wages, employee-side taxes will be taken out of payments to Class Members. Defendant will pay employer-side taxes separate and apart from the Sum on the 20% classified as wages.
7. The Settlement provides monetary compensation to Class Members for unpaid compensation, unpaid premiums, interest thereon, PAGA penalties and other penalties.
8. Any Participating Class Member has the right to object to the proposed settlement by following the procedures set forth in Part V below or to opt out as set forth in Part VI below.
9. In exchange for the payments set for above, the Certified Class Member will provide Defendant with the releases set forth in Section VIII below.

Based upon the equitable formula that has been devised, there will be substantial differences among Class Members as to the amount each individual Participating Class Member will receive in settlement. Your settlement amount is included on the last page of this document.

V. HEARING AND PROCEDURE FOR OBJECTING TO THE SETTLEMENT AGREEMENT

If you are satisfied with the proposed Settlement Agreement, you do not need to appear at the hearing at which the Court will consider final approval of the Settlement Agreement. If you object to

1 the proposed Settlement Agreement, you should take the following steps.

2 A. If you wish to submit a written objection, you MUST mail a request by first class
3 postage to the Settlement Administrator at _____ by (deadline) that contains:
4 (a) your full name, address, and last four digits of your Social Security number; (b) be signed by the
5 by you; (c) reference the Action by its name and case number; (d) contain a statement clearly indicating
6 that you object to the Settlement along with any grounds for the objection; (e) indicate whether you
7 are represented by legal counsel and identify any such legal counsel; and (f) indicate whether you or
8 your counsel intends to appear at the Final Approval Hearing.

9 B. You can ask the Court to deny final approval by filing an objection. You cannot ask
10 the Court to order a larger settlement; the Court can only approve or deny the settlement. If the Court
11 denies approval, no settlement payments will be sent out and the lawsuit will continue. If that is what
12 you want to happen, you must object. You may object to the proposed settlement in writing. You may
13 also appear at the Final Approval Hearing, either in person or through your own attorney. If you appear
14 through your own attorney, you are responsible for paying that attorney.

15 C. If you opt out of the Settlement in the manner set forth in Section VI of this Notice,
16 your objection will be deemed null and void. If the Settlement is approved despite your Objection,
17 you will be bound by the release in Section VIII of this Notice.

18 VI. OPT-OUT PROCEDURE

19 You may exclude yourself by submitting an opt-out notice to the Settlement Administrator at
20 [list address] not later than (date). To be valid, the opt-out notice: (1) must contain your full name,
21 address and last four digits of your social security number; and (2) must be signed by you. The opt-
22 out notice should also state in substance: "*I wish to exclude myself from the class action Settlement in
23 the Noe case and that I understand that by requesting to be excluded from the Settlement, I will receive
24 no money from the Settlement.*" If the Request for Exclusion does not contain the information listed
25 in (1)-(2) or is not postmarked by the date stated above and returned to the Settlement Administrator
26 at the specified address, it will not be deemed a timely and valid request to opt-out of the Settlement.
27 The date of the postmark on the return mailing envelope shall be the exclusive means used to determine
28 whether the opt-out form has been timely submitted. Any Class Members who submit a timely and
valid opt-out notice from the Settlement will not be entitled to any recovery under the Settlement and
will not be bound by the terms of the Settlement or have any right to object, appeal, or comment
thereon. Class Members who fail to submit a timely and valid opt-out request on or before the
Response Deadline shall be Class Members bound by all terms of the Settlement and the Final
Approval Order entered in this Action if the Settlement is approved by the Court.

29 VII. CLASS COUNSEL

30 If you have any questions concerning the proposed Settlement Agreement, or this Notice, you
31 may contact the following Class Counsel:

32 David D. Bibiyan, Esq.
33 Jeffrey Klein, Esq.
34 BIBIYAN LAW GROUP, P.C.
35 8484 Wilshire Blvd., Suite 500
36 Beverly Hills, CA 90211

37 VIII. RELEASES

38 If you participate in the settlement you will agree to provide the following release of claims
against Defendant:

1
2 1. Upon entry of judgment and payment of the Sum and employer-side taxes, Class
3 Representative and Participating Class Members (i.e., those Class Members who do not submit a
4 timely and valid request for exclusion from the Settlement), shall have, fully, finally, and forever
5 settled and released Defendant and the Released Parties of all claims for wages, statutory and civil
6 penalties, damages and liquidated damages, interest, fees and costs that were alleged in the First
7 Amended Complaint or that could have been alleged based on the factual allegations therein, during
8 the Class Period, including, but not limited to: (1) claims for failure to pay wages, whether base rate,
9 minimum wage, overtime compensation for all hours worked (Labor Code sections 510, 558 and
10 1198, Wage Order 7), Minimum Wage Order); (2) rest period premiums (Labor Code section 226.7
11 and Wage Order 7); (3) meal period premiums (Labor Code sections 512, 226.7 and Wage Order 7);
12 (4) waiting time penalties (violations of Labor Code sections 201-203); (5) wage statement violations
13 (Labor Code section 226); (6) misclassification as a contractor (Labor Code section 226.8); (7)
14 failure to timely pay wages or alleged withholding of wages (Labor Code sections 204, 210, 221 and
15 223); (8) unpaid expenses (Labor Codes section 2802); and (9) unfair business practices (Business
16 and Professions Code section 17200 to the extent they are based on the Labor Code violations alleged
17 to have been violated in the First Amended Complaint. In addition, for the period of February 4,
18 2019 through preliminary approval (i.e., the "PAGA Period"), Class Members working during the
19 PAGA Period ("Aggrieved Employees") further release all claims for civil penalties under PAGA
20 arising out of Labor Code sections 210, 226.3, 226.8, 558, 1197.1 and 2699 for alleged violations of
21 California Labor Code sections 201, 202, 203, 204, 221, 222, 223, 226, 226.2, 226.7, 510, 512, 1194,
22 1194.2, 1197, 1199, 2802, and for any other violations of the Labor Code alleged or that could be
23 alleged based on the factual allegations in the First Amended Complaint. In addition, by endorsing
24 and cashing the settlement check the settlement check, you will be deemed to have opted into the
25 action for the purposes of the and thereby waived and released any claims he or she may have under
26 the FLSA.

27
28 2. The "Released Parties" are Defendant and its affiliates, parent, and each of their
company-sponsored employee benefit plans, and their respective successors and predecessors in
interest, all of their respective officers, directors, employees, administrators, fiduciaries, trustees and
agents, and each of their past, present and future officers, directors shareholders, employees, agents,
principals, heirs, representatives, attorneys, accountants, auditors, consultants, attorneys, insurers
and reinsurers.

**PLEASE DO NOT TELEPHONE OR CONTACT THE COURT OR
THE OFFICE OF THE CLERK FOR INFORMATION REGARDING
THIS SETTLEMENT OR THE CLAIM PROCESS.**

This notice summarizes the proposed settlement. For the precise terms and conditions of the
settlement, please see the settlement agreement by accessing the Court docket in this case through the
, or by visiting the office of the Clerk of the Court located at 247 West Third
Street, San Bernardino, California, 92415, Monday through Friday, excluding Court holidays.
Alternatively, the information is posted at the following website maintained by the Administrator:
[insert].

1 EXHIBIT A

2 [name/ID#]

3 Defendant's records indicate that during the applicable time period, you worked ___ weeks at a show
4 in California, meaning you worked ___ Pay Periods. If you disagree with the Pay Period figure as set
5 forth above, you must notify the Settlement Administrator in writing by the deadline of
6 ___, 2021 and attach documentation supporting your dispute. Failure to
7 provide this information and satisfactory supporting documentation of the Pay Periods you believe
8 you worked for Defendant during the applicable time period will result in any claim you submit being
9 based solely on Defendant's records.

8 ESTIMATED CLAIM AMOUNT

9 Based on the above your estimated payment is \$ _____ ("Individual Settlement
10 Amount"). This estimated amount is only an estimate. The actual amount of your Individual
11 Settlement Amount may increase or decrease based on several factors, including the final amounts
12 approved by the Court and disputes raised by other Class Members. As a result you may receive a
13 smaller, or larger, payment.

12 QUESTIONS

13 If you have questions, please call or write to the ILYM Group, Inc. at the telephone number and
14 address shown on page 1 above.

EXHIBIT B

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8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 COUNTY OF SAN BERNARDINO

10 CHARLES NOE, on behalf of himself and
11 all others aggrieved,

12 Plaintiff,

13 v.

14 MY PILLOW, INC., a corporation; and
DOES 1 through 100, inclusive,

15 Defendants.
16
17
18

Case No. CIVDS2011360

ASSIGNED FOR ALL PURPOSES TO
JUDGE DAVID COHN – DEPT. S26

**[PROPOSED] ORDER GRANTING
MOTION FOR PRELIMINARY
APPROVAL**

Date: _____, 2021
Time: 9:00 a.m.
Dept: S26

Complaint Filed: May 29, 2020

19 WHEREAS, this Action is pending before this Court as a putative class action and Private
20 Attorney General Act (“PAGA”) lawsuit brought by Charles Noe the Named Plaintiff (“Plaintiff” or
21 “Named Plaintiff”) against Defendant My Pillow, Inc. (“Defendant”); and

22 WHEREAS, Class Counsel applied to this Court for an order preliminarily approving the
23 settlement of the Action in accordance with the Joint Stipulation of Class Settlement and Release
24 (the “Stipulation” or “Settlement” or “Agreement”), which, together with the exhibits annexed
25 thereto, sets forth the terms and conditions for a proposed Settlement and final resolution of the
26 Action upon the terms and conditions set forth therein; and the Court having read and considered the
27 Stipulation and the exhibits annexed thereto;
28

1 NOW, THEREFORE, IT IS HEREBY ORDERED:

2 1. This Order incorporates by reference the definitions in the Stipulation, and all terms
3 defined therein shall have the same meaning in this Order as set forth in the Stipulation. Per the
4 Parties' Stipulation, the Court hereby conditionally certifies the following Settlement Class: All
5 current and former individuals engaged to demonstrate Defendant's product at Costco stores in
6 California from May 29, 2016 through the date of preliminary approval.

7 2. Upon the Final Order, Participating Class Members who do not opt out of the
8 Settlement will release all claims that were alleged or that could have been alleged based on the facts
9 of Plaintiff's operative complaint as defined in the Stipulation as "Released Claims". The "Released
10 Parties" are Defendant and its affiliates, parent, and each of their company-sponsored employee
11 benefit plans, and their respective successors and predecessors in interest, all of their respective
12 officers, directors, employees, administrators, fiduciaries, trustees and agents, and each of their past,
13 present and future officers, directors shareholders, employees, agents, principals, heirs,
14 representatives, attorneys, accountants, auditors, consultants, attorneys, insurers and reinsurers.

15 3. Should for whatever reason the Settlement not become final, the fact that the Parties
16 were willing to stipulate to class certification as part of the Settlement shall have no bearing on, nor
17 be admissible in connection with, the issue of whether a class should be certified in a non-settlement
18 context.

19 4. Named Plaintiff is hereby appointed and designated, for all purposes, as the
20 representative of the Class, and the following attorney is hereby appointed and designated as counsel
21 for the Named Plaintiff, the Class Representative and the Class: David D. Bibiyan and Jeffrey Klein
22 of the law firm of Bibiyan Law Group, P.C. ("Class Counsel"). Class Counsel is authorized to act on
23 behalf of Class Members with respect to all acts or consents required by, or which may be given
24 pursuant to, the Settlement, and such other acts reasonably necessary to consummate the Settlement.
25 Any Objecting Class Member may enter an appearance through counsel of such Class Member's
26 own choosing and at such Class Member's own expense.

27 5. The Court finds on a preliminary basis that the Settlement appears to be fair,
28 reasonable and adequate, and one that would merit, ultimately, final approval by this Court. The

1 Court has reviewed the Settlement and recognizes the value thereof to the Class Members. The
2 Court finds, on a preliminary basis, that the Settlement is fair, adequate and reasonable as to all Class
3 Members when balanced against the potential outcomes of further litigation relating to liability and
4 damages issues. The Court further finds that the Settlement has been reached as the result of serious
5 and non-collusive, arms-length negotiations by Defendant and Plaintiff (the "Settling Parties").

6 6. A hearing (the "Settlement Hearing") shall be held before this Court, located at 247
7 West Third Street, San Bernardino, California, 92415, on _____, 2021 at _____.m., in
8 Department S26, to determine all necessary matters concerning the Settlement, including: whether
9 the proposed settlement of the Action should be finally approved by the Court; whether a Judgment,
10 as provided in the Stipulation, should be entered herein; whether the plan of allocation contained in
11 the Stipulation should be approved as fair, adequate and reasonable to the Class Members; and to
12 finally approve Class Counsel's Fees Award and Cost Award, the Class Representative's
13 enhancement award, payment to the Labor and Workforce Development Agency and the Settlement
14 Administration Costs.

15 7. The Court hereby approves, as to form and content, the Notice, attached as Exhibit A
16 to the Stipulation. The Court finds that distribution of the Notice, substantially in the manner and
17 form set forth in the Stipulation and this Order, meets the requirements of due process, is the best
18 notice practicable under the circumstances, and will constitute due and sufficient notice to all
19 persons entitled thereto.

20 8. The Court hereby appoints ILYM Group, Inc. as Settlement Administrator and hereby
21 directs the Settlement Administrator to simultaneously mail or cause to be mailed to Class Members
22 the Notice (Exhibit A) by first class mail at their last known address within ten (10) calendar days of
23 receiving a Class List from Defendant.

24 9. Any Class Member (as defined by the Stipulation) may choose to opt out of the
25 Settlement or object to the Settlement as provided in the Notice by following the instructions for
26 requesting exclusion from the Settlement Class or objecting to the settlement. Class Members will
27 have forty-five (45) days from the date of mailing of the Notice in which to postmark objections or a
28 notice of opting out. Prior to the initial mailing, the Settlement Administrator will check all Class

1 Member addresses against the National Change of Address database and shall update any addresses
2 before mailing. The Settlement Administrator will skip trace and re-mail all returned, undelivered
3 mail within five (5) days of receiving notice that a Notice was undeliverable. The obligation to trace
4 and resend returned Class Notices shall cease after two mailings or thirty (30) calendar days after the
5 initial mailing, whichever occurs first. Any written request to opt out must be signed by each such
6 person opting out. All Class Members who do not timely and properly notify the Settlement
7 Administrator of their desire to opt out of the Settlement, shall become bound by all determinations
8 of the Court, the Stipulation and Judgment.

9 10. Any Class Member who did not opt out may appear at the Settlement Hearing and
10 may object or express his/her views regarding the Settlement, and may present evidence and file
11 briefs or other papers that may be proper and relevant to the issues to be heard and determined by the
12 Court as provided in the Notice. However, no Class Member or any other person shall be heard or
13 entitled to object, and no papers or briefs submitted by any such person shall be received or
14 considered by the Court, unless the person making the objection does not submit a request for
15 exclusion (*i.e.*, s/he must not opt out). He or she may also file with the Court and serve on the
16 Settlement Administrator and Counsel for the Settling Parties, not later than forty-five (45) calendar
17 days after the date that the Settlement Administrator first mails the Class Notice, a written statement
18 objecting to the Settlement and setting forth the grounds for the objection. The written statement of
19 objection must indicate whether the Class Member intends to appear and object to the Settlement at
20 the Final Approval Hearing, although the failure to so indicate will not constitute a waiver of the
21 right to appear at the Final Approval Hearing. The Court retains final authority with respect to the
22 consideration and admissibility of any Class Member objections. Counsel for the Parties shall file
23 any response to the objections submitted by objecting Class Members at least five (5) court days
24 before the date of the Final Fairness and Approval Hearing.

25 11. The Settlement is not a concession or admission and shall not be used against
26 Defendant or any of the Released Parties as an admission or indication with respect to any claim of
27 any fault or omission by Defendant or any of the Released Parties. Whether or not the Settlement is
28

1 finally approved, neither the Settlement, nor any document, statement, proceeding or conduct related
2 to the Settlement, nor any reports or accounts thereof, shall in any event be:

3 a. Construed as, offered or admitted in evidence as, received as or deemed to be
4 evidence for any purpose adverse to the Settling or Released Parties, including, but not limited to,
5 evidence of a presumption, concession, indication or admission by any of the Settling or Released
6 Parties of any liability, fault, wrongdoing, omission, concession or damage; or

7 b. Disclosed, referred to, or offered or received in evidence against any of the
8 Settling or Released Parties in any further proceeding in the Action, or in any other civil, criminal or
9 administrative action or proceeding, except for purposes of settling the Action pursuant to the
10 Stipulation.

11 12. As of the date this Order is signed, all dates and deadlines associated with the Action
12 shall be stayed, other than those pertaining to the administration of the Settlement of the Action.

13 13. In the event the Settlement does not become effective in accordance with the terms of
14 the Stipulation, or the Settlement is not finally approved, or is terminated, canceled or fails to
15 become effective for any reason, this Order shall be rendered null and void and shall be vacated and
16 the Parties shall revert to their respective positions as of before entering into the Stipulation.

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

21 Dated: _____

22 JUDGE OF THE SUPERIOR COURT
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