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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN BERNARDINO

BRENDA GARCIA, an individual, on behalf
of herself and others similarly situated,

PLAINTIFF,

v.

TITANIUM ALARM, LLC; and DOES 1
thru 50, inclusive,

DEFENDANTS.

CASE NO. CIVDS2013199

[Case Assigned for All Purposes to Hon. David
Cohn in Dept. S-26]

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

*[Filed concurrently with Motion for Approval
of Attorneys' Fees and Costs; Declarations of
Kelsey M. Szamet, Brenda Garcia and Karen
Hernandez, Proposed Order, and Judgment]*

Date: October 3, 2022

Time: 10:00 a.m.

Dept.: S-26

Complaint Filed: May 29, 2020

Trial Date: None Set

TO ALL PARTIES AND TO THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on October 3, 2022 at 10:00 a.m. in Department S-26 of the above-entitled court, Plaintiff BRENDA GARCIA ("Plaintiff") will, and hereby does, move the Court for an Order of Final Approval of the Class Settlement in this case. Plaintiff moves the Court for an order:

1. Granting final approval of the settlement in the case pursuant to the First Amended Class Action Stipulation and Agreement for Class Action Settlement and Release of Claims ("Settlement" or "Agreement"), a copy of which is attached to the concurrently-filed Declaration of Kelsey M. Szamet as Exhibit "1";

2. Affirming Kingsley & Kingsley, APC as Class Counsel;

3. Affirming BRENDA GARCIA as Class Representative and awarding an enhancement award of \$5,000.00;

4. Awarding ILYM Group, Inc. claims administration fees of \$6,000.00 for its services as Settlement Administrator; and,

5. Entering judgment.

This Motion will be made pursuant to Code of Civil Procedure section 382 and California Rule of Court, rule 3.769 on the grounds that the proposed Agreement is fair, adequate, reasonable, and in the best interest of the Class Members and the parties.

The Motion will be based on this Notice of Motion, the attached Memorandum of Points and Authorities, the Declarations of Kelsey M. Szamet, Brenda Garcia, Karen Hernandez, all other papers and records on file in this action, and on such oral and documentary evidence as may be presented at the hearing on this Motion.

DATED: September 8, 2022

KINGSLEY & KINGSLEY, APC

By:

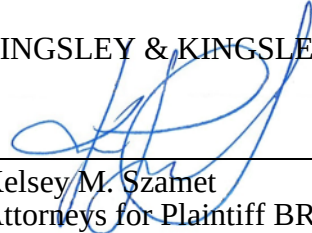

Kelsey M. Szamet
Attorneys for Plaintiff BRENDA GARCIA and the
proposed class

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiff BRENDA GARCIA (“Plaintiff”) submits this Motion for Final Approval of Class
4 Settlement and requests that the Court:

5 1. Grant final approval of the settlement in this case pursuant to the First Amended
6 Class Action Stipulation and Agreement for Class Action Settlement and Release of Claims
7 (“Settlement” or “Agreement”), a copy of which is attached to the concurrently-filed Declaration
8 of Kelsey M. Szamet as Exhibit “1”;

9 2. Award attorneys’ fees and costs as detailed in the concurrently-filed Motion for
10 Attorneys’ Fees and Costs;

11 3. Award ILYM Group, Inc. claims administration fees of \$6,000.00 for its services
12 as Settlement Administrator;

13 4. Affirm named Plaintiff BRENDA GARCIA as Class Representative and award a
14 cumulative Class Representative payment of \$5,000.00; and

15 5. Enter judgment.

16 **II. FACTUAL BACKGROUND**

17 **A. Litigation Overview and Procedural History**

18 On May 29, 2020, Plaintiff filed a Class Action Complaint and provided notice to
19 California’s Labor and Workforce Development Agency (“LWDA”) regarding her intent to file
20 an action seeking civil penalties under PAGA. (Declaration of Kelsey M. Szamet (“Szamet Decl.”)
21 ¶5.) On July 23, 2020, Plaintiff filed a First Amended Complaint (“FAC”), adding the PAGA
22 claim based on the facts previously alleged in the Complaint. (Szamet Decl. ¶6.)

23 The operative Complaint alleges claims for: (1) Failure to Pay Wages and/or Overtime; (2)
24 Failure to Pay Timely Wages; (3) Failure to Pay Wages Upon Termination; (4) Violation of
25 Business and Professions Code; and (5) Penalties Pursuant to the California Labor Code Private
26 Attorneys General Act.

27 ///

28 ///

1 B. The Discovery Process

2 Although the Court stayed formal discovery and the Parties continued the discovery stay
3 pending mediation, the Parties engaged in extensive informal discovery to arrive at the proposed
4 settlement. (Szamet Decl. ¶7.) Defendant informally produced multiple documents and provided
5 other information necessary to evaluate settlement. (Szamet Decl. ¶8.) This includes the Class
6 Representative's personnel file and time and pay records; relevant employee handbooks and
7 written policies; data reflecting the total number of non-exempt employees working for Defendant
8 during the liability period and the total number of former full-time non-exempt employees; the
9 average hourly rate and shift length for non-exempt employees during the liability period; the total
10 number of pay periods at issue during the relevant liability period; and a random sample of time
11 and pay records. (Szamet Decl. ¶9.)

12 Careful review and analysis of this confirmatory discovery confirmed that Plaintiff's
13 Counsel believes the proposed Settlement is adequate, fair, and reasonable, and is appropriate for
14 approval by the Court. (Szamet Decl. ¶10.)

15 Defendant denies any liability or wrongdoing of any kind associated with the claims
16 alleged in the Action, disputes the damages and penalties claimed by Plaintiff, and further contends
17 that, for any purpose other than settlement, Plaintiff's claims are not appropriate for class or
18 representative action treatment. (Szamet Decl. ¶11.) Defendant contends, among other things,
19 that, at all times, it has complied with the California Labor Code, and the Industrial Wage
20 Commission Orders. (*Id.*)

21 Based on their own independent investigation and evaluation, Class Counsel is of the
22 opinion that the Agreement with Defendant is fair, reasonable and adequate, and in the best interest
23 of the settlement classes in light of all known facts and circumstances, including the risk of
24 significant delay, defenses asserted by Defendant, uncertainties regarding a class and
25 representative action trial on the merits, and numerous potential appellate issues. (Szamet Decl.
26 ¶12.) Although Defendant denies any liability, Defendant is agreeing to this Agreement solely to
27 avoid the cost of litigation. (*Id.*) Accordingly, the Parties and their counsel desire to fully, finally,
28 and forever settle, compromise and discharge all disputes and claims arising from or relating to

the Action on the terms set forth here. (*Id.*)

C. Preliminary Approval

On May 31, 2022, the Court issued an Order preliminarily approving the settlement in this case, approving the proposed Class Notice, ordering that the Settlement Administrator send notice to the settlement class, and setting a date for the Final Approval and Fairness Hearing. (Szamet Decl. ¶13.)

III. THE PRELIMINARILY APPROVED SETTLEMENT

A. The Settlement Class

For purposes of Agreement, the settlement class is defined as: “all persons who worked as a non-exempt employee for Defendant Titanium Alarm, LLC in the State of California who worked overtime and received commission earnings in the same pay period in which such overtime was worked at any time during the Class Period.” (Szamet Decl. ¶14; Agreement, Ex. 1 at §A, ¶¶3-4.) The Class Period is May 29, 2016 through August 31, 2021. (Szamet Decl. ¶15; Ex. 1 at §A, ¶4.) Class Members who submit a timely and valid request for exclusion will not be bound by the release provisions of the Settlement and will not be entitled to receive any settlement benefits under the Settlement. (Szamet Decl. ¶16; Agreement, Ex. 1 at §D, ¶5.)

The final settlement class contained 65 individuals. (Szamet Decl. ¶17; Hernandez Decl. ¶13.)

B. Settlement Payments

The Settlement Agreement provides for Defendant to pay a Gross Settlement Amount of \$147,021.01, which includes the sum of the Individual Settlement Payments, the Class Representative service award, the Class Counsel Award, PAGA Payment, and the Settlement Administration Costs. (Szamet Decl. ¶18; Ex. 1 at §C, ¶1.)¹

The Net Settlement Amount is the Gross Settlement Amount, less Class Counsel Award, Class Representative Enhancement, PAGA Payment, and Settlement Administration Costs.

¹ The original settlement amount was \$95,000. However, upon receipt of the Class Data, the settlement administrator confirmed there were 1,252 Pay Periods during the Class Period. (482 work weeks over the 770 pay periods set forth in the settlement agreement). Based on the escalator clause being triggered, Defendant increased the Gross Settlement Amount by \$52,021.01. (Szamet Decl. ¶19; Ex. 1 at §D, ¶7.)

(Szamet Decl. ¶20; Ex. 1 at §C, ¶1.)

Plaintiff now requests final approval of the allocation of the Gross Settlement Amount to determine the Net Settlement Amount for distribution to the settlement class as follows:

Original Gross Settlement Amount:	\$	95,000.00
Pro Rata Increase per Agreement	\$	52,021.01
Updated Gross Settlement Amount	\$	147,021.01
Less Class Representative Enhancement:	\$	5,000.00
Less Class Counsel's Fees:	\$	49,007.00
Less Class Counsel's Costs:	\$	12,000.00
Less PAGA Payment:	\$	7,500.00
		<i>(\$5,625 to the LWDA and \$1,875 to remain in the Net Settlement Amount)</i>
<u>Less Settlement Administrator Costs:</u>	<u>\$</u>	<u>6,000.00</u>
Net Settlement Amount	\$	69,389.01

C. Individual Settlement Payments

The amount of each Participating Class Member's Individual Settlement Payment is an individualized amount that is calculated on a pro rata basis and based upon the number of compensable workweeks worked by the Participating Class Member during the Class Period. (Ex. 1 at §C, ¶6; *see also* Ex. A to the Agreement at pp. 3 [Class Notice].) This individual amount shall be determined according to the settlement payment formula set forth in the Agreement. (*See* Ex. 1 at §C, ¶6; Ex. A to the Agreement at pp.3 [Class Notice].)

Based on these calculations, the average potential recovery is \$1,067.52 per Class Member, with the estimated highest gross payment of \$6,349.32. (Hernandez Decl. ¶14.)

D. Class Notice

The Court approved the proposed Class Notice and directed the mailing of the Notice by first-class mail to Class Members in accordance with the proposed implementation schedule. (Szamet Decl. ¶21) The procedures for giving notice to the Class Members, as set forth in the Agreement and Plaintiff's Motion for Preliminary Approval and approved by the Court, have been fully and properly carried out. (Hernandez Decl. ¶¶3-15.)

To date, ILYM Group, Inc. received zero (0) request to be excluded ("opt-outs") from the proposed Agreement and zero (0) objections. (Hernandez Decl. ¶¶11-12.)

///

1 E. Check Mailed Settlement – No Reversion

2 The Parties agreed to, and the Court preliminary approved, a checks-mailed settlement
3 without the possibility of reversion of settlement funds to Defendant. Under the Agreement, every
4 Class Member will receive a settlement check and Class Members do not need to submit a claim
5 in order to receive a settlement check. Any funds that remain uncashed after 90 days shall be
6 turned over by the Settlement Administrator, with information for each Class Member who failed
7 to timely cash his/her settlement check, to a *cy pres* beneficiary to be selected by the parties to this
8 Agreement and approved by the Court pursuant to the terms of Code of Civil Procedure section
9 384. (Ex. 1 at § C ¶7.)

10 F. The Release

11 The Released Claims are defined as: “any and all claims, rights, demands, liabilities and
12 causes of action under California law that Class Members have had or now have against the
13 Released parties for any acts occurring during the Release Period that were pled in the Complaints
14 or that could have been pled based on the identical factual predicate for the allegations in the
15 Complaints, specifically including any such claims for failure to pay minimum wages, failure to
16 pay overtime wages, failure to provide accurate wage statements, unfair competition, and failure
17 to pay all wages upon termination, and any claims in connection therewith for damages, restitution,
18 interest, penalties, costs and attorneys’ fees.” (Ex. 1 at §E, ¶1.)

19 **IV. THE COURT SHOULD ORDER FINAL APPROVAL OF THE SETTLEMENT**

20 Pursuant to California Code of Civil Procedure § 1781(f), “a class action shall not be
21 dismissed or compromised without the approval of the court, and notice of the proposed dismissal
22 or compromise shall be given to all members of the Class in such manner as the court directs”
23 In deciding whether to grant final approval to a proposed class action settlement under Code of
24 Civil Procedure § 382, the court’s overriding concern is whether the proposed settlement is “fair,
25 adequate, and reasonable.” (*Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1801.)

26 A. The Settlement is Entitled to a Presumption of Fairness

27 “A presumption of fairness exists where: (1) the settlement is reached through arm’s length
28 bargaining; (2) investigation and discovery are sufficient to allow counsel and the court to act

intelligently; (3) counsel is experienced in similar litigation; and (4) the percentage of objectors is small.” (*Dunk, supra*, 48 Cal.App.4th at p. 1802.) The proposed Settlement in the present case meets all of the *Dunk* factors and is therefore entitled to a presumption of fairness.

As to the first *Dunk* factor, this settlement is the result of adversarial, non-collusive, and arm’s-length negotiations overseen by an experienced mediator. All settlement discussions were made by experienced and informed counsel, who believe that this settlement represents a favorable resolution for the Class Members. (Szamet Decl. ¶22.) The settlement negotiations have been, at all times, adversarial and non-collusive, with the aid of a mediator, and no self-dealing or other type of misconduct by either side has taken place. (Szamet Decl. ¶23.)

Second, the Parties engaged in informal discovery that permitted Class Counsel to fairly evaluate the strength of the case and the risks associated with ongoing litigation. This included pay data, the class size, and wage statements issued to the Class Members. (Szamet Decl. ¶24.) Receipt of appropriate discovery allowed Class Counsel to fairly evaluate the exposure and risks associated with each claim alleged in the lawsuit. (Szamet Decl. ¶25.)

Third, Class Counsel have significant experience in cases of this type, including several years prosecuting wage, hour, and working condition violations. (Szamet Decl. ¶26.) Class Counsel is thus qualified to evaluate the class claims and viability of the defenses. Class Counsel believes that the settlement is fair, reasonable, adequate, and in the best interests of the class and that the average recovery for each Class Member of over \$1,000 is substantial, given the risks inherent in litigation and the defenses asserted. (Szamet Decl. ¶27.)

Finally, the fourth *Dunk* factor considers the percentage of objectors. Here, there were no requests to be excluded and no objectors. (Hernandez Decl. ¶¶11-12.) As all of the *Dunk* factors are satisfied, this settlement is entitled to a presumption of fairness.

B. The Court Should Approve This Class Action Settlement Because it Satisfies Each of the *Kullar* Factors

In *Kullar v. Foot Locker Retail, Inc* (2008) 168 Cal.App.4th 116, 128, the court set forth several factors that the Court should analyze in determining whether to approve a class action settlement. These factors include: (1) the strength of plaintiff’s case; (2) the risk, expense,

1 complexity and likely duration of further litigation; (3) the risk of maintaining class action status
2 through trial; (4) the amount offered in settlement; (5) the extent of discovery completed and stage
3 of the proceedings; (6) the experience and views of counsel; (7) the presence of a governmental
4 participant; and (8) the reaction of the class members to the proposed settlement.

5 The proposed settlement satisfies each of these factors. Class Counsel conducted extensive
6 informal discovery before entering into meaningful settlement negotiations in this matter. (*Id* at
7 Szamet Decl. ¶¶7-12) This discovery permitted Class Counsel to fairly evaluate the strength of the
8 case and the risks associated with ongoing litigation. (Szamet Decl. ¶28.) Class Counsel is
9 experienced in handling wage and hour class actions and, after weighing all of the following
10 factors, supports this Agreement. (Szamet Decl. ¶29.)

11 1. The Strength of Plaintiffs' Case

12 a) The Risks Associated with Minimum Wage/Overtime Claim

13 “Under state and federal law, overtime compensation is based on an employee’s ‘regular
14 rate’” of pay. (*Huntington Memorial Hosp. v. Superior Court* (2005) 131 Cal.App.4th 893, 902.)
15 “California Labor Code section 510, subdivision (a) provides, as relevant here, [that] an employee
16 is entitled to overtime pay at one and one-half times the ‘regular rate’ for work in excess of eight
17 hours in one day and twice the ‘regular rate’ for work in excess of 12 hours in one day.” (*Ibid.*)
18 For hourly employees, the regular rate is generally the employee’s straight-time hourly rate.
19 (*Huntington, supra*, 131 Cal.App.4th at p. 905.) However, in any pay period where an hourly
20 employee earns other includable compensation in addition to hourly wages—such as a non-
21 discretionary bonus, commission, or shift differential—her regular rate is computed by dividing
22 the employee’s total compensation in the period in which the other compensation is earned by the
23 total hours worked in that period. (*Marin v. Costco Wholesale Corp.* (2008) 169 Cal.App.4th 804,
24 807.)

25 Plaintiff alleges that she and the Class Members were non-exempt, hourly employees and
26 were not paid overtime pay at the appropriate rate of pay because Defendant failed to blend
27 commission pay into the regular rate of pay for the purposes of calculating the applicable overtime
28 rate during pay periods when the Proposed Class Members worked overtime and also earned

1 commission pay. (Szamet Decl. ¶30.) As a result, Plaintiff alleges that she and the Proposed Class
2 worked on a regular and consistent basis without receiving compensation for all hours worked at
3 the proper rate. (Szamet Decl. ¶31.) Specifically, Plaintiff and the Proposed Class were not paid
4 at the proper overtime rate when they were working more than eight (8) hours in one day or forty
5 (40) hours in one week because Defendant failed to blend commission pay into the regular rate of
6 pay for the purpose of determining the correct overtime rate. (Szamet Decl. ¶32.)

7 Plaintiff felt confident that this claim would be certified based on Defendant's alleged
8 class-wide failure to blend commission pay into the regular rate of pay for the purposes of
9 calculating the applicable overtime rate during pay periods when the Proposed Class Members
10 worked overtime and also earned commission pay. (Szamet Decl. ¶33.) However, Counsel did
11 acknowledge that the underlying amount of underpaid wages was relatively low. (Szamet Decl.
12 ¶34.) Since the allegations relate to a failure to properly blend for the purposes of determining the
13 correct overtime rate, this means that even if Plaintiff were to prevail, the alleged underpayment
14 is generally a matter of a few dollars or even cents per Class Member. (Szamet Decl. ¶35.)

15 b) The Risks Associated with Plaintiff's Failure to Timely Pay Wages
16 Claim

17 Section 204 imposes an obligation of timely payment of wages upon California employers
18 and provides rules for scheduling wage payments. Specifically, for most employees, section 204
19 requires payment of wages twice during a calendar month, and an employer is subject to penalties
20 for violating section 204." *See's Candy Shops, Inc. v. Superior Court*, 210 Cal.App.4th 889, 904
21 (2012) (citing to Labor Code §§ 204(a); 210).

22 Labor Code § 204(a) provides:

23 All wages, other than those mentioned in Section 201, 201.3, 202, 204.1, or 204.2,
24 earned by any person in any employment are due and payable twice during each
25 calendar month, on days designated in advance by the employer as the regular
26 paydays. Labor performed between the 1st and 15th days, inclusive, of any calendar
27 month shall be paid for between the 16th and the 26th day of the month during
28 which the labor was performed, and labor performed between the 16th and the last
day, inclusive, of any calendar month, shall be paid for between the 1st and 10th
day of the following month.

1 Labor Code § 204(d) provides:

2 The requirements of this section shall be deemed satisfied by the payment of wages
3 for weekly, biweekly, or semimonthly payroll if the wages are paid not more than
4 **seven** calendar days following the close of the payroll period (emphasis added).

5 Here, Plaintiff alleged that Defendant's practices are defective in that they fail to timely
6 pay Class Members their wages in accordance with California law. (Szamet Decl. ¶36.) Based
7 upon the allegedly faulty commission practices discussed above, Plaintiff contends that she and
8 Class Members were paid wages well outside the seven-day period prescribed by Labor Code §
9 204. (Szamet Decl. ¶37.) Specifically, Plaintiff maintained that on the face of the wage statement
10 it was clear that Plaintiff and the Proposed Class are issued their wages twelve (12) days after the
11 close of each weekly payroll period in violation of Labor Code § 204. (Szamet Decl. ¶38.)

12 Defendant argued that any error on the timing of payment was the result of a clerical error
13 and that Plaintiff and the Proposed Class were not actually paid wages more than seven days
14 following the close of the pay period. (Szamet Decl. ¶39.) After learning of this potential defense,
15 Counsel further investigated and it seemed that this defense of clerical error was plausible.
16 (Szamet Decl. ¶40.) If Defendant was able to prove that Plaintiff and the Proposed Class were
17 actually timely paid their wages and that itemized wage statements were simply reflecting an
18 incorrect date of pay, then Counsel had to acknowledge that the likelihood of success on this claim
19 was not strong. (Szamet Decl. ¶41.)

20 Based on this acute risk, Counsel believed it was appropriate to significantly discount this
21 claim. (Szamet Decl. ¶42.)

22 c) The Risks Associated with the Waiting Time Penalty Claim

23 This claim alleges that Defendant failed to pay all wages due and owing upon termination
24 or resignation. Labor Code § 203(a) provides:

25 If an employer willfully fails to pay ... any wages of an employee
26 who is discharged or who quits, the wages of the employee shall
27 continue as a penalty from the due date thereof at the same rate until
28 paid or until an action therefor is commenced; but the wages shall
not continue for more than 30 days.

Under Labor Code § 203, a "willful" failure to pay wages ... occurs when an employer
intentionally fails to pay wages to an employee when those wages are due." Cal. Code Regs., tit.

8, § 13520; *see also Diaz v. Grill Concepts Services, Inc.* (2018) 23 Cal.App.5th 859 (“willful” simply means that “the employer intentionally failed or refused to perform an act which was required to be done[.] Willful ... does not necessarily imply anything blameable, or any malice or wrong toward the other party”).

Here, as discussed in detail above, Plaintiff contends that Defendant failed to pay the proper overtime rate of pay for work in excess of eight (8) hours per day and/or any work in excess of forty (40) hours per week as a result of its alleged failure to blend. (Szamet Decl. ¶43.) The risk analysis for the section 203 claim flows from the risk analysis for the underlying wage claims discussed above. (Szamet Decl. ¶44.)

As with the underlying wage claim, Plaintiff is confident about the recovery of these penalties. (Szamet Decl. ¶45.)

d) The Risks Associated with the PAGA Claim

California’s Private Attorneys General Act (“PAGA”), Labor Code § 2698, *et seq.*, permits private litigants to recover civil penalties for violations of the Labor Code. PAGA provides that plaintiffs may recover previously established civil penalties (section 2699(a)) or, if none were established, plaintiffs may recover default penalties provided in section 2699(f) in the amount of \$100 per employee per pay period for the initial violation and \$200 for subsequent violations.

Of course, the risk analysis for PAGA flows from the risk analysis for each underlying alleged Labor Code violation. (Szamet Decl. ¶46.)

Plaintiff discounted the PAGA claim for two main reasons. (Szamet Decl. ¶47.) First, the aggrieved employees’ PAGA claims are derivative of all the foregoing class claims in this matter. (Szamet Decl. ¶48.) As such, arguably the Settlement Class is being compensated for these violations under the proposed Agreement thus any PAGA recovery for these same violations could be construed as duplicative. (Szamet Decl. ¶49.) Second, a court has discretion to award less than the maximum penalty. Labor Code § 2699(e)(2) (“a court may award a lesser amount than the maximum civil penalty amount specified by this part if, based on the facts and circumstances of the particular case, to do otherwise would result in an award that is unjust, arbitrary and oppressive, or confiscatory”). *See e.g., Carrington v. Starbucks Corporation* (2018) 30 Cal.App.5th 504, 241

Cal.Rptr.3d 647, 669 (affirming award of 10% of maximum PAGA penalty). At a minimum, this would be a highly contested issue. (Szamet Decl. ¶50.) The significant uncertainty associated with the PAGA claim required a discount of the claim's settlement value. (Szamet Decl. ¶51.) As such, Plaintiff maintains that the Settlement's contemplated PAGA payment of \$7,500.00 appropriate. (Szamet Decl. ¶52.) See *Nordstrom Commissions Cases*, 186 Cal.App.4th 576, 589 (2010) (affirming settlement allocating \$0 of \$6.4 million settlement to PAGA penalties).

2. The Risk, Expense, Complexity, and Likely Duration of Further Litigation

There is significant expense associated with the class certification process, which the Parties can avoid by entering into the contemplated Agreement now. (Szamet Decl. ¶53.) If the Court did eventually certify various Settlement Classes, trial of a case involving approximately 65 Class Members would require the retention of expensive expert witnesses, the accrual of extensive litigation costs, and a significant time overlay by the parties. (Szamet Decl. ¶54.) Moreover, given the complexity and unsettled nature of the issues in this case it is likely that any outcome at trial would have resulted in a lengthy and costly appeal. (Szamet Decl. ¶55.) An appeal would result in further delay for the Class Members who are waiting for a resolution in this matter. (*Id.*)

3. The Risk of Maintaining Class Action Status through Trial

This case has not been certified to be tried as a class action. (Szamet Decl. ¶56.) While Plaintiff believes there is strong evidence to support certification of several possible subclasses, certification is always hard fought and subject to judicial discretion. Moreover, in class actions, decertification is always a possibility. (*Id.*) In attempting to certify a class, the parties would need to conduct multiple depositions, including of the Class Representative and of several person(s) most knowledgeable regarding Defendant's policies. (*Id.*) There is a risk for both sides as to what these depositions will reveal and whether they will support class certification to the extent expected. (*Id.*)

4. The Amount Offered in Settlement

It was very difficult for the Parties to reach this Settlement. (Szamet Decl. ¶57.) This Settlement is the result of adversarial, non-collusive, and arms-length negotiations. (Szamet Decl. ¶58.) The Parties arrived at it only after extensive investigation and discovery, careful evaluation

1 of the law, risks, and all information substantiating the amount of penalties reasonably likely to be
2 awarded to the class were the trier of fact to find Defendant liable, and the assistance of a highly
3 experienced mediator, Jeffrey Krivis. (*Id.*)

4 a) Plaintiff's Assessment of Defendant's Maximum Exposure

5 Plaintiff assessed full value of the unpaid overtime wages claim, without any discount, at
6 approximately \$11,550.00. (Szamet Decl. ¶59.) This calculation assumed that Class Members
7 had an average amount of \$15 of unpaid wages per pay period based on Defendant's alleged failure
8 to blend commissions and that there was a total of 770 pay periods at issue. (Szamet Decl. ¶60.)

9 As discussed above, during the investigation and exchange of information, Plaintiff learned
10 that Defendant had a strong potential defense to the Labor Code § 204 claim. (Szamet Decl. ¶61.)
11 As a result of learning that Defendant believed it could prove that Plaintiff and the Proposed Class
12 were not paid more than 7 seven days after the close of the pay period and there was a clerical
13 error resulting in the wrong date showing on the itemized wage statements, Counsel did not
14 attribute any value to this claim. (Szamet Decl. ¶62.)

15 Plaintiff valued the Waiting Time Claim, tied to the underlying Wage/Overtime claim, at
16 \$232,560.00. (Szamet Decl. ¶63.)

17 Finally, Plaintiff calculated the value of the PAGA claim at \$202,950.00 for Class
18 Members (using \$100 per pay period). (Szamet Decl. ¶64.) The main risk taken into account with
19 PAGA is the discretionary nature of the penalty award. (Szamet Decl. ¶65.) A judge can award
20 the statutory maximum of \$100 for the initial violation and \$200 thereafter or – in theory – one
21 cent per wage statement. (Szamet Decl. ¶66.) While there is a dearth of available authority, in
22 Plaintiff's view, were she to succeed on any of the underlying Labor Code violations, it is not
23 likely that a Judge would also award a large amount of penalties of top of any damages recovered.
24 (Szamet Decl. ¶67.)

25 Per Plaintiff's assessment, the maximum potential value of all of Plaintiff's and the Class
26 Members' claims was approximately \$447,060.00. (Szamet Decl. ¶68.) However, as a result of
27 the forgoing risks on the merits, Class Counsel believes the Gross Settlement Amount of
28 \$147,021.01 is fair and reasonable. (Szamet Decl. ¶69.)

1 b) Defendant's Financial Status

2 One of the main factors affecting settlement of this action was Defendant's financial status.
3 (Szamet Decl. ¶70.) Defendant is a security company and lacks the financial resources of bigger
4 security companies to pay a sizeable settlement or judgement against it. (Szamet Decl. ¶71.)
5 Moreover, Defendant's business was greatly impacted by the pandemic as a large portion of its
6 sales occur through door to door marketing. (Szamet Decl. ¶72.) Class Counsel worked closely
7 with mediator Jeffrey Krivis, Esq. to verify the information regarding the impact to Defendant's
8 financial status. (Szamet Decl. ¶73.) Class Counsel determined that obtaining a settlement on
9 behalf of the Settlement Class now, as opposed to protracted litigation with the uncertainty of
10 Defendant's ability to pay a sizeable judgment made the most practical sense. (Szamet Decl. ¶74.)

11 5. The Extent of Discovery Completed and Stage of the proceedings

12 As outlined above, Class Counsel conducted a thorough investigation into the facts of the
13 claims alleged. (Szamet Decl. ¶75.) The agreement to settle did not occur until Class Counsel
14 exchanged and possessed sufficient information to make an informed judgement regarding the
15 likelihood of success on the merits and the results that could be obtained through further litigation.
16 (*Id.*)

17 6. The Experience and Views of Counsel

18 Kingsley & Kingsley is very experienced in prosecuting employment litigation, and the
19 firm has focused its practice since 2000 on wage, hour, and working condition violations. (Szamet
20 Decl. ¶¶76-77.) The firm is well versed in class action litigation and has diligently and aggressively
21 pursued this action. (*Ibid.*) Kingsley & Kingsley, APC currently serves as Class Counsel for
22 dozens of pending class action lawsuits in Northern, Central, and Southern California. (*Ibid.*) A
23 list of representative cases that Kingsley & Kingsley, APC has handled is included in the
24 accompanying declaration of Kelsey M. Szamet. (Szamet Decl. ¶¶76-77.) After factoring in the
25 risks explained above, Class Counsel believes that the proposed settlement is fair and reasonable.
26 (Szamet Decl. ¶78.)

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1 7. The Presence of a Governmental Participant

2 There is no governmental participant in this action except arguably the LWDA. (Szamet
3 Decl. ¶79.) The LWDA has been provided copies of all settlement documents as required.
4 (Szamet Decl. ¶80.)

5 8. The Proposed Plan of Allocation Is Fair and Reasonable

6 Plans of allocation are subject to the same standard of review as class action settlements;
7 they must be “fair, adequate and reasonable.” (*See, e.g., Officers for Justice v. Civil Service*
8 *Comm’n* (9th Cir. 1982) 688 F.2d 615, 624–625, 629–630.) Here, the proposed plan of allocation
9 compensates Class Members pro rata basis. (Ex. 1 at §C, ¶6.) This allocation distributes
10 Agreement funds proportionally to each class member’s potential damages and should therefore
11 be approved as fair, adequate, and reasonable. (Szamet Decl. ¶81.)

12 9. The Reaction of the Class Members to the Proposed Settlement

13 To date, there are no requests to be excluded from the proposed Settlement and no
14 objections. (Hernandez Decl. ¶¶11-12.) Such indicates that the reaction of Class Members is
15 extremely positive and weighs in favor of approval.

16 **V. ENHANCEMENT TO PLAINTIFF**

17 Plaintiff’s Counsel request an enhancement of \$5,000.00 to the Class Representative
18 Brenda Garcia for her work on behalf of the Class Members. (Szamet Decl. ¶122.) “Courts
19 routinely approve incentive awards to compensate named plaintiffs for the services they provide
20 and the risks they incurred during the course of the class action litigation.” *Ingram v. The Coca-*
21 *Cola Company*, 200 F.R.D. 685, 694 (N.D. Ga 2001) (internal quotations and citations omitted);
22 *see also Van Vranken v. Atlantic Richfield Co.*, 901 F. Supp. 294, 299 (N.D. Cal. 1995). In *Coca-*
23 *Cola*, the Court approved service awards of \$300,000 to each named plaintiff in recognition of the
24 services they provided to the class by responding to discovery, participating in the mediation
25 process, and taking the risk of stepping forward on behalf of the class. *Coca-Cola*, 200 F.R.D. at
26 694; *see also, e.g. Van Vranken*, 901 F. Supp. at 299 (approving \$50,000 participation award to
27 plaintiffs); *Glass v. UBS Financial Services, Inc.*, Case No. C-06-4068 MMC, 2007 WL 227862,
28 at *17 (N.D. Cal. Jan. 26, 2007) (approving \$25,00 enhancement to each named plaintiff).

Ms. Garcia is an adequate class representative because she has diligently, adequately and fairly represented the settlement class and has not placed her interests above any member of the Class Members. (see Declaration of Brenda Garcia (“Garcia Decl.”) ¶¶3-15.)

Here, Class Counsel requests an enhancement for Ms. Garcia’s valiant effort and time expended in this matter. The time spent by Brenda Garcia is significant and includes researching and retaining competent counsel with expertise in this area; providing information to Class Counsel regarding the nature of the work at Defendant; compiling all relevant employment documents; working closely with Class Counsel to develop the theories of liability and martial relevant evidence; regularly discussing the status of the case with Class Counsel; discussing the case via telephone with many Class Members as needed; being available for a remote, full-day of mediation; and responding promptly to Class Counsel’s communications regarding settlement. (Szamet Decl. ¶123; Garcia Decl. ¶¶5-11.) As set forth in the Agreement, Plaintiff will also be entering into a general release of liability pursuant to Civil Code Section 1542. (Szamet Decl. ¶124; Ex. 1 at § E, ¶2.)

Class Counsel considers this to be a fair and reasonable enhancement. (Szamet Decl. ¶125.) The enhancement takes into consideration the time, effort, and expense incurred by Ms. Garcia in coming forward to litigate this matter on behalf of all Class Members. (Szamet Decl. ¶126.) Additionally, the Class Representative was at risk for paying for Defendant’s legal fees and costs in the event that Defendant prevailed at trial. (Szamet Decl. ¶127.)

VI. SUBMISSION TO THE LABOR AND WORKFORCE DEVELOPMENT AGENCY

As indicated on the Proof of Service, Plaintiff’s Motion for Final Approval of Class Action Settlement (“Motion”) will be concurrently uploaded to the Labor and Workforce Development Agency’s (“LWDA”) website on the date this Motion is filed as required by statute. Proof of submission of Plaintiff’s Motion, all related documents, and copy of the email from the LWDA confirming receipt is attached to the Declaration of Kelsey M. Szamet as Exhibit “6.” (Szamet Decl. ¶132.)

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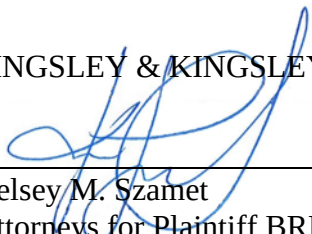
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1 **VII. CONCLUSION**

2 Plaintiff respectfully submits that the proposed Agreement is fair, adequate, reasonable,
3 and in the best interest of the Class Members. Therefore, Plaintiff respectfully requests that the
4 Court (1) grant Final Approval of the Agreement and all of its terms; (2) award attorneys' fees and
5 costs in the amount detailed in the concurrently filed Motion for Attorneys' Fees and Costs; (3)
6 award ILYM Group, Inc. claims administration fees of \$6,000.00; and (4) award the Class
7 Representative an enhancement of \$5,000.00; and (5) enter judgment.

8
9 DATED: September 8, 2022

KINGSLEY & KINGSLEY, APC

10 By: 

11 Kelsey M. Szamet
12 Attorneys for Plaintiff BRENDA GARCIA and the
13 proposed class
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(PROOF OF SERVICE)

[CCP 1013(a)(3)]

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles, State of California. I am over the age of 18 years and not a party to the within action. My business address is 16133 Ventura Boulevard, Suite 1200, Encino, California 91436.

On September 8, 2022, I served all interested parties in this action the following documents described as: **NOTICE OF MOTION AND MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT; MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT THEREOF** by placing a true copy thereof enclosed in a sealed envelope addressed as follows:

John K. Rubiner Michelle T. Harrington Matthew S. Jones jrubiner@fmglaw.com mharrington@fmglaw.com mjones@fmglaw.com Freeman Mathis & Gary, LLP 550 South Hope Street, 22nd Floor Los Angeles, CA 90071-2627	Walter L. Haines admin@uelglaw.com UNITED EMPLOYEES LAW GROUP, PC 4276 Katella Avenue, Suite #301 Los Alamitos, CA 90720
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☐ **(BY MAIL)** I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with U.S. postal service on that same day with postage fully prepaid at Encino, California in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

☒ **BY ELECTRONIC MAIL TRANSMISSION:** I caused the document to be send to the persons at the e-mail address(es) listed on the attached service list. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful. A pdf copy of which was sent via email to the below email address(es).

☒ **BY ELECTRONIC SERVICE:** I caused a true and correct copy thereof to be electronically filed using the Labor and Workforce Development Agency Electronic Filing ("EF") System (<https://dir.tfaforms.net/315>) and service was completed by electronic means by transmittal of the documents referenced herein on the EF System.

☒ **(STATE)** I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on September 8, 2022, at Woodland Hills, California.


Michelle A. Tanzer