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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]

**DECLARATION OF KELSEY M.
SZAMET IN SUPPORT OF PLAINTIFF'S
MOTION FOR PRELIMINARY
APPROVAL OF CLASS ACTION
SETTLEMENT**

*[Filed concurrently with Motion for
Preliminary Approval of Settlement and
[Proposed] Order Thereon]*

Date: November 8, 2021

Time: 10:00 a.m.

Dept.: S-26

Complaint Filed: May 29, 2020

Trial Date: None Set

DECLARATION OF KELSEY M. SZAMET

I, Kelsey M. Szamet, state and declare as follows:

1. I am an attorney admitted before all courts of the State of California and a partner in the law firm of Kingsley & Kingsley, APC, counsel of record for Plaintiff in this action. I am completely familiar with the present litigation, including the pleadings, discovery, and filings submitted in this matter. I make this Declaration from my own personal knowledge, and, if called upon, I could and would competently testify to the following.

2. I graduated cum laude from the University of California, San Diego in 2004 with a degree in Human Development. I graduated from the University of California, Los Angeles School of Law in 2008. I am admitted to practice before the following Courts: United States Supreme Court; United States District Court, Northern, Eastern, Southern and Central of California; all California State Courts.

3. I make this Declaration in support of Plaintiff's Motion for Preliminary Approval of the Class Action Settlement in the above-captioned case.

RELEVANT PROCEDURAL HISTORY

4. On May 29, 2020, Plaintiff filed a Class Action Complaint and provided notice to California’s Labor and Workforce Development Agency (“LWDA”) regarding her intent to file an action seeking civil penalties under PAGA.

5. On July 23, 2020, Plaintiff filed a First Amended Complaint (“FAC”), adding the PAGA claim based on the facts previously alleged in the Complaint.

THE DISCOVERY PROCESS

6. Although the Court stayed formal discovery and the Parties continued the discovery stay pending mediation, the Parties engaged in extensive informal discovery to arrive at the proposed settlement.

7. Defendant informally produced multiple documents and provided other information necessary to evaluate settlement.

8. This includes the Class Representative's personnel file and time and pay records; relevant employee handbooks and written policies; data reflecting the total number of non-exempt

employees working for Defendant during the liability period and the total number of former full-time non-exempt employees; the average hourly rate and shift length for non-exempt employees during the liability period; the total number of pay periods at issue during the relevant liability period; and a random sample of time and pay records.

9. Careful review and analysis of this confirmatory discovery confirmed that Plaintiff's Counsel believes the proposed Settlement is adequate, fair, and reasonable, and is appropriate for approval by the Court.

10. Defendant denies any liability or wrongdoing of any kind associated with the claims alleged in the Action, disputes the damages and penalties claimed by Plaintiff, and further contends that, for any purpose other than settlement, Plaintiff's claims are not appropriate for class or representative action treatment. Defendant contends, among other things, that, at all times, it has complied with the California Labor Code, and the Industrial Wage Commission Orders.

11. Based on their own independent investigation and evaluation, Class Counsel is of the opinion that the Agreement with Defendant is fair, reasonable and adequate, and in the best interest of the settlement classes in light of all known facts and circumstances, including the risk of significant delay, defenses asserted by Defendant, uncertainties regarding a class and representative action trial on the merits, and numerous potential appellate issues. Although Defendant denies any liability, Defendant is agreeing to this Agreement solely to avoid the cost of litigation. Accordingly, the Parties and their counsel desire to fully, finally, and forever settle, compromise and discharge all disputes and claims arising from or relating to the Action on the terms set forth here.

CERTIFICATION FOR SETTLEMENT PURPOSES

12. Plaintiff maintains that the proposed Settlement Class is ascertainable for several reasons: First, Defendant has agreed in the Agreement to provide a class list to the Settlement Administrator containing the name, last known mailing address, last known telephone number, social security number, and number of work weeks worked during the Class Period for all putative class members within fifteen (15) days after issuance of the preliminary approval order.

13. Class Members consist of Defendant's non-exempt employees, and Defendant is

1 required to keep records of its non-exempt employees' names, home addresses, and social security
2 numbers.

3 14. Defendant informally produced Plaintiff's personnel file and pay statements,
4 relevant commission policies, sampling shift data, pay data, and wage statements for Class
5 Members containing class member contact information, which confirms that all Class Member
6 may be readily identified based on Defendant's records.

7 15. Plaintiff is confident she will be able to establish that the proposed Settlement Class
8 is ascertainable and sufficiently numerous.

9 16. Plaintiff argues that there are questions of law and fact common to the proposed
10 Settlement Class that predominate over any questions affecting only individual Class Members.

11 17. These common questions include:

- 12 1) Whether Defendant properly blended commission pay into the regular rate of pay
13 for the purposes of calculating the applicable overtime rate during pay periods when
14 the Proposed Class Members worked overtime and also earned commission pay;
- 15 2) Whether Defendant failed to pay timely wages at the conclusion of the pay period;
- 16 3) Whether Defendant failed to pay compensation due and owing upon termination
17 of employment;
- 18 4) Whether Defendant engaged in unfair competition and business practices; and,
- 19 5) Whether Defendant violated § 2699, et seq. of the Labor Code by engaging in the
20 acts previously alleged.

21 18. Plaintiff's challenge to Defendant's uniform policies and practices involves
22 common factual and legal issues that are amenable to class treatment.

23 19. Plaintiff maintains that the proposed Class Members suffered the same injuries, in
24 the same manner: (1) Class Members were not paid overtime pay at the appropriate rate of pay
25 because Defendant failed to blend commission pay into the regular rate of pay for the purposes of
26 calculating the applicable overtime rate during pay periods when the Proposed Class Members
27 worked overtime and also earned commission pay; (2) Class Members did not receive timely
28 wages; and (3) Class Members were not paid all wages owed upon termination/resignation.

1 20. Plaintiff alleges that Class Members worked in the same capacity for the same
2 employer and were subject to the same employment policies and practices, the questions of fact
3 and claims regarding the status of these employees are the same for each of the Class Members.

4 21. For purposes of settlement, the evidence reviewed by Class Counsel demonstrates
5 that common policies and practices were applied to the proposed Class Members and certification
6 for settlement purposes is appropriate.

7 22. Plaintiff worked as a non-exempt, “hourly employee” for Defendant in Security,
8 earning \$13.50 per hour, plus commissions.

9 23. Plaintiff alleges that she: (1) was not paid overtime pay at the appropriate rate of
10 pay because Defendant failed to blend commission pay into the regular rate of pay for the purposes
11 of calculating the applicable overtime rate during pay periods when the Proposed Class Members
12 worked overtime and also earned commission pay; (2) did not receive timely wages; and (3)
13 worked without being paid all wages due upon separation. She also alleges that she experienced
14 derivative claims for unfair business competition (B&P Code §17200) and Labor Code §2699, et
15 seq.

16 24. Plaintiff also contends that her claims are typical of those of the Settlement Class.

17 25. Plaintiff believes that she is capable of fairly representing and adequately protecting
18 the interests of the proposed Class Members.

19 26. The members of the proposed Settlement Class all worked for Defendant during
20 the relevant time period and incurred the same type of alleged damages with regard to Defendant’s
21 alleged violations of the law.

22 27. Plaintiff has agreed to serve as Class Representative and has retained qualified
23 Counsel who is experienced in prosecuting wage and hour class actions.

24 28. This demonstrates her commitment to bringing about the best possible results for
25 the benefit of the proposed Settlement Class.

26 29. Plaintiff has provided her Counsel with all necessary and pertinent information.

27 30. She has been an active participant in the litigation including identifying and
28 retaining competent Counsel, having frequent contact with Counsel and Class Members, and

1 working closely with Class Counsel to develop the theories of liability.

2 31. Plaintiff has provided her Counsel with all necessary and pertinent information.

3 32. She also was available via Zoom for the full-day mediation in this matter and was
4 informed of and involved in all of the Settlement negotiations.

5 33. Plaintiff believes that she has and will continue to adequately represent the
6 proposed Class Members.

7 34. Plaintiff has provided her Counsel with all necessary and pertinent information.

8 35. The superiority of class treatment is evident here because individual pursuit of class
9 members' claims may not be economically viable.

10 36. The only alternative to certification would be to force over 65 employees to join
11 this action, file individual, uniform actions, or abandon their legal rights altogether.

12 37. Plaintiff maintains that this economic reality would result in a windfall for
13 Defendant if this case were not certified.

14 **THE PROPOSED SETTLEMENT**

15 38. For purposes of Agreement, the settlement class is defined as: "all persons who
16 worked as a non-exempt employee for Defendant Titanium Alarm, LLC in the State of California
17 at any time since May 29, 2016 through August 31, 2021."

18 39. Class Members who submit a timely and valid request for exclusion will not be
19 bound by the release provisions of the Settlement and will not be entitled to receive any settlement
20 benefits under the Settlement.

21 40. The Class Period is May 29, 2016 through the date of preliminary approval.

22 41. As of June 24, 2021 (the date of mediation) and based on documents and other
23 information produced by Defendant, there are approximately 65 Class Members.

24 42. As detailed fully in the Agreement, the Settlement provides for Defendant to pay a
25 Gross Settlement Amount of \$95,000.00, which includes the sum of the Individual Settlement
26 Payments, the Class Representative service award, the Class Counsel Award, PAGA Payment, and
27 the Settlement Administration Costs.

28 43. The Net Settlement Amount is the Gross Settlement Amount, less Class Counsel

Award, Class Representative Enhancement, PAGA Payment, and Settlement Administration Costs.

44. Based on the anticipated number of Settlement Class Members and the anticipated Net Settlement Amount, the average Individual Settlement Payment is approximately \$533.97.

KULLAR ANALYSIS

45. This discovery permitted Class Counsel to fairly evaluate the strength of the case and the risks associated with ongoing litigation.

46. Class Counsel is experienced in handling wage and hour class actions and, after weighing all of the following factors, supports this Agreement.

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

48. Plaintiff alleges that she and the Proposed Class worked on a regular and consistent basis without receiving compensation for all hours worked at the proper rate.

49. Plaintiff and the Proposed Class were not paid at the proper overtime rate when they were working more than eight (8) hours in one day or forty (40) hours in one week because Defendant failed to blend commission pay into the regular rate of pay for the purpose of determining the correct overtime rate.

50. Plaintiff felt confident that this claim would be certified based on Defendant's alleged class-wide failure to blend commission pay into the regular rate of pay for the purposes of calculating the applicable overtime rate during pay periods when the Proposed Class Members worked overtime and also earned commission pay.

51. Counsel did acknowledge that the underlying amount of underpaid wages was relatively low.

52. Since the allegations relate to a failure to properly blend for the purposes of determining the correct overtime rate, this means that even if Plaintiff were to prevail, the alleged

1 underpayment is generally a matter of a few dollars or even cents per Class Member.

2 53. Plaintiff alleged that Defendant's practices are defective in that they fail to timely
3 pay Class Members their wages in accordance with California law.

4 54. Based upon the allegedly faulty commission practices discussed above, Plaintiff
5 contends that she and Class Members were paid wages well outside the seven-day period
6 prescribed by Labor Code § 204.

7 55. Plaintiff maintained that on the face of the wage statement it was clear that Plaintiff
8 and the Proposed Class are issued their wages twelve (12) days after the close of each weekly
9 payroll period in violation of Labor Code § 204.

10 56. Defendant argued that any error on the timing of payment was the result of a clerical
11 error and that Plaintiff and the Proposed Class were not actually paid wages more than seven days
12 following the close of the pay period.

13 57. After learning of this potential defense, Counsel further investigated and it seemed
14 that this defense of clerical error was plausible.

15 58. If Defendant was able to prove that Plaintiff and the Proposed Class were actually
16 timely paid their wages and that itemized wage statements were simply reflecting an incorrect date
17 of pay, then Counsel had to acknowledge that the likelihood of success on this claim was not
18 strong.

19 59. Based on this acute risk, Counsel believed it was appropriate to significantly
20 discount this claim.

21 60. Plaintiff contends that Defendant failed to pay the proper overtime rate of pay for
22 work in excess of eight (8) hours per day and/or any work in excess of forty (40) hours per week
23 as a result of its alleged failure to blend.

24 61. The risk analysis for the section 203 claim flows from the risk analysis for the
25 underlying wage claims discussed above.

26 62. As with the underlying wage claim, Plaintiff is confident about the recovery of
27 these penalties.

28 63. the risk analysis for PAGA flows from the risk analysis for each underlying alleged

1 Labor Code violation.

2 64. Plaintiff discounted the PAGA claim for two main reasons.

3 65. The aggrieved employees' PAGA claims are derivative of all the foregoing class
4 claims in this matter.

5 66. Arguably the Settlement Class is being compensated for these violations under the
6 proposed Agreement thus any PAGA recovery for these same violations could be construed as
7 duplicative.

8 67. A court has discretion to award less than the maximum penalty. Labor Code §
9 2699(e)(2) ("a court may award a lesser amount than the maximum civil penalty amount specified
10 by this part if, based on the facts and circumstances of the particular case, to do otherwise would
11 result in an award that is unjust, arbitrary and oppressive, or confiscatory"). *See e.g., Carrington*
12 *v. Starbucks Corporation* (2018) 30 Cal.App.5th 504, 241 Cal.Rptr.3d 647, 669 (affirming award
13 of 10% of maximum PAGA penalty). At a minimum, this would be a highly contested issue.

14 68. The significant uncertainty associated with the PAGA claim required a discount of
15 the claim's settlement value.

16 69. Plaintiff maintains that the Settlement's contemplated PAGA payment of \$7,500.00
17 appropriate.

18 70. There is significant expense associated with the class certification process, which
19 the Parties can avoid by entering into the contemplated Agreement now.

20 71. If the Court did eventually certify various Settlement Classes, trial of a case
21 involving approximately 65 Class Members would require the retention of expensive expert
22 witnesses, the accrual of extensive litigation costs, and a significant time overlay by the parties.

23 72. Given the complexity and unsettled nature of the issues in this case it is likely that
24 any outcome at trial would have resulted in a lengthy and costly appeal. An appeal would result
25 in further delay for the Class Members who are waiting for a resolution in this matter.

26 73. This case has not been certified to be tried as a class action. While Plaintiff believes
27 there is strong evidence to support certification of several possible subclasses, certification is
28 always hard fought and subject to judicial discretion. Moreover, in class actions, decertification

1 is always a possibility. In attempting to certify a class, the parties would need to conduct multiple
2 depositions, including of the Class Representative and of several person(s) most knowledgeable
3 regarding Defendant's policies. There is a risk for both sides as to what these depositions will
4 reveal and whether they will support class certification to the extent expected.

5 74. It was very difficult for the Parties to reach this Settlement of \$95,000.00.

6 75. This Settlement is the result of adversarial, non-collusive, and arms-length
7 negotiations. The Parties arrived at it only after extensive investigation and discovery, careful
8 evaluation of the law, risks, and all information substantiating the amount of penalties reasonably
9 likely to be awarded to the class were the trier of fact to find Defendant liable, and the assistance
10 of a highly experienced mediator, Jeffrey Krivis.

11 76. Plaintiff assessed full value of the unpaid overtime wages claim, without any
12 discount, at approximately \$11,550.00.

13 77. This calculation assumed that Class Members had an average amount of \$15 of
14 unpaid wages per pay period based on Defendant's alleged failure to blend commissions and that
15 there was a total of 770 pay periods at issue.

16 78. During the investigation and exchange of information, Plaintiff learned that
17 Defendant had a strong potential defense to the Labor Code § 204 claim.

18 79. As a result of learning that Defendant believed it could prove that Plaintiff and the
19 Proposed Class were not paid more than 7 seven days after the close of the pay period and there
20 was a clerical error resulting in the wrong date showing on the itemized wage statements, Counsel
21 did not attribute any value to this claim.

22 80. Plaintiff valued the Waiting Time Claim, tied to the underlying Wage/Overtime
23 claim, at \$232,560.00.

24 81. Plaintiff calculated the value of the PAGA claim at \$202,950.00 for Class Members
25 (using \$100 per pay period).

26 82. The main risk taken into account with PAGA is the discretionary nature of the
27 penalty award.

28 83. A judge can award the statutory maximum of \$100 for the initial violation and \$200

thereafter or – in theory – one cent per wage statement.

84. While there is a dearth of available authority, in Plaintiff's view, were she to succeed on any of the underlying Labor Code violations, it is not likely that a Judge would also award a large amount of penalties of top of any damages recovered.

85. Per Plaintiff's assessment, the maximum potential value of all of Plaintiff's and the Class Members' claims was approximately \$447,060.00.

86. As a result of the forgoing risks on the merits, Class Counsel believes the Gross Settlement Amount of \$95,000.00 is fair and reasonable.

87. One of the main factors affecting settlement of this action was Defendant's financial status.

88. Defendant is a security company and lacks the financial resources of bigger security companies to pay a sizeable settlement or judgement against it.

89. Defendant's business was greatly impacted by the pandemic as a large portion of its sales occur through door to door marketing.

90. Class Counsel worked closely with mediator Jeffrey Krivis to verify the information regarding the impact to Defendant's financial status.

91. Class Counsel determined that obtaining a settlement on behalf of the Settlement Class now, as opposed to protracted litigation with the uncertainty of Defendant's ability to pay a sizeable judgment made the most practical sense.

ATTORNEY COMPETENCE

92. Kingsley & Kingsley is experienced in prosecuting employment litigation, and since 2000 we have focused our practice on wage, hour, and working condition violations. My firm is well versed in class action litigation and has diligently and aggressively pursued this action. Kingsley & Kingsley currently serves as class counsel for several dozens of pending class action lawsuits in Northern, Central, Eastern, and Southern California in both State and Federal Court. Below is a small, but representative sampling of wage and hour cases handled by my firm:

a. *Goodman v. Crystal Ventures, Inc.* (No. BC245561, L.A. Super. Ct.) In January

2002, Hon. Anthony Mohr granted final approval of settlement in the gross amount of \$255,000 and the court approved the attorneys' fee request of 33 1/3%.

b. *Johnston v. The Cheesecake Factory* (No. BC316180, L.A. Super. Ct.) In December 2005, Honorable Rita Miller granted final approval of Settlement in the gross amount of \$4,000,000 and the court granted attorneys' fees request of 30%.

c. *Tumino v. HOB Entertainment* (No. BC327962, L.A. Super. Ct.) In May 2006, the Honorable Conrad R. Aragon granted final approval of Settlement in the gross amount of \$1,000,000 and the court granted attorneys' fees request of 30%.

d. *Ryan v. Hilton Hotels Corporation*, (No. BC364260, L.A. Super. Ct.) In March 2008, the Honorable Mary Thornton House granted final approval of Settlement in the gross amount of \$1,675,000.00 and the court granted attorneys' fees request of 33 1/3%.

e. *Gerritson v. Styles For Less, Inc.*, (No. BC402921, L.A. Super. Ct.) In September 2010, the Hon. Kenneth R. Freeman granted final approval of Settlement in the gross amount of \$2,000,000.00, and the court granted attorneys' fees request of 33.3%.

f. *Lewis v. Collabrus, Inc., et al.*, (No. 109CV-142927, Santa Clara Super. Ct.) In March 2012, the Honorable James P. Kleinberg granted final approval of Settlement in the gross amount of \$2,000,000.00, and the court granted attorneys' fees request of 33.3%.

g. *Hirschinger v. Blue Cross of California*, Los Angeles Superior Court (No. BC402739, L.A. Super. Ct.) In June 2013, the Honorable Lee Smally Edmund granted final approval of Settlement in the gross amount of \$4,700,000.00, and the court granted attorneys' fees request of 38%.

h. *Anderson v. Total Renal Care, Inc.*, (No. BC388335, L.A. Super. Ct.) In January 2014, the Honorable William F. Highberger granted final approval of Settlement in the gross amount of \$1,500,000.00 and the court granted attorneys' fees request of 33.33%.

- i. *Rojas, et al. v. Sunview Vineyards of California, Inc.*, Eastern District (1:09-cv-00705 AWIJLT). This certified class action was approved for final settlement by the Honorable Anthony W. Ishii in October 2015, in the gross amount of \$4,550,000.00, with attorneys' fees approved in the amount of \$1,137,500.00.
- j. *Westbrook v. International Surfacing Systems*, (No. RG10510015, Alameda Super. Ct.) In August 2015, the Hon. Wynne Carvill granted final approval of Settlement in the gross amount of \$995,000.00, and the court granted attorney's fees request of 33.33%.
- k. *Kane et al. v. Valley Slurry Seal*, (No. CV08-2483, Yolo Super. Ct.) In March 2016 after a class trial with a verdict in the class's favor, the Honorable Daniel P. Maguire, awarded Kingsley & Kingsley and co-counsel \$996,232.72 in attorney's fees.
- l. *Aparacio v. Abercrombie & Fitch Stores, Inc.*, (No. BC499281, L.A. Super. Ct.) In June 2016, the Hon. Kenneth Freeman granted final approval of Settlement in the gross amount of \$2,000,000.00, and the court granted attorney's fees request of 33.33%.
- m. *Isaguirre v. Guess?, Inc., Los Angeles Superior Court (BC357631)*. The matter was proposed for final settlement by the Honorable Richard L. Fruin on February 19, 2016, in the gross amount of \$5,250,000.
- n. *Hirschinger v. Blue Cross of California*, Los Angeles Superior Court (BC402739). The matter was approved for final settlement by the Honorable Lee Smally Edmund in June 2013, in the gross amount of \$4,700,000.00, with attorney's fees request of 38%.
- o. *Munoz, et al. v. Giumarra Vineyards Corporation*, United States District Court for the Eastern District of California (Case No.: 1:09-cv-00703 - AWI – JLT). The matter was approved for final settlement by the Honorable Anthony W. Ishii in November 2017, in the gross amount of \$6,100,000.00, plus interest, with attorney's fees benchmark award of \$1,525,000.

1 p. *Pineda, et al. v. Grimmway Enterprises, Inc.*, Kern County Superior Court (BCV-
2 15-101333). The matter was approved for final settlement before the Hon. Stephen
3 D. Schuett, Dept. 10, in January 2018, in the gross amount of \$9,000,000 with
4 attorneys' fees request of 33.33%.

5 93. Kingsley & Kingsley, APC filed its first class certification motion in the year 2000
6 and since that time has been appointed class counsel on dozens of wage and hour class actions that
7 have been approved for class certification. Since 2011, Kingsley & Kingsley, APC has moved for
8 class certification in 15 matters and has successfully obtained class certification in 16 of those
9 cases. A brief sampling of which includes:

10 a. *Lewis v. Collabrus, Inc., Santa Clara County Superior Court (109CV-142927)*,
11 *approved for Class Certification in 2011.*

12 b. *Melendrez v. JK Communications*, No. BC497692, (L.A. Super. Ct., filed
13 December 19, 2012) (court granted contested class certification and appointed
14 Kingsley & Kingsley as class counsel).

15 c. *Amaro, et al v. Gerawan Farming, Inc.*, No. 1:14-cv-00147-DAD-SAB (E.D. Cal.,
16 filed February 3, 2014) (court granted contested class certification and appointed
17 Kingsley & Kingsley as class counsel).

18 d. *Suarez v. Mazatlan, Inc.*, No. 37-2015-00002978-CU-OE-CTL (S.D. Super. Ct.,
19 filed January 27, 2015) (court granted contested class certification and appointed
20 Kingsley & Kingsley as class counsel).

21 e. *Ruiz v. Daniel C. Salas Harvesting, Inc.*, Kings County Superior Court (16 C 0214).
22 contested class certification granted in June 2020.

23 f. *Weldon v. Geo Corrections & Detentions, LLC*, Kern County Superior Court
24 (BCV-16-102833), contested class certification granted in 2018.

25 g. *Patton v. Skyler Electric*, Nevada County Superior Court, (CU17-082544),
26 contested class certification granted in June 2020.

27 h. *Hameister v. Jaco Oil Company*, Kern County Superior Court (BCV-17-102876),
28 contested class certification granted in August 2020.

1 94. Class Counsel is experienced in the handling of wage and hour class actions and
2 supports this Settlement. Based on its analysis, Class Counsel believes that this settlement is fair
3 and reasonable and in the best interest of the Class.

4 95. After factoring in the risks explained above, Class Counsel believes that the
5 proposed settlement is fair and reasonable.

6 96. This allocation distributes Agreement funds proportionally to each class member's
7 potential damages and should therefore be approved as fair, adequate, and reasonable.

8 **SERVICE AWARD TO THE NAMED PLAINTIFF**

9 97. The Class Representative is entitled to an enhancement for her valiant effort and
10 time expended in this matter. The time spent by Brenda Garcia is significant and includes
11 researching and retaining competent counsel with expertise in this area; providing information to
12 Class Counsel regarding the nature of the work at Defendant; compiling all relevant employment
13 documents; working closely with Class Counsel to develop the theories of liability and martial
14 relevant evidence; regularly discussing the status of the case with Class Counsel; discussing the
15 case via telephone with many Class Members as needed; being available for a remote, full-day of
16 mediation; and responding promptly to Class Counsel's communications regarding settlement.

17 98. As set forth in the Agreement, Plaintiff will also be entering into a general release
18 of liability pursuant to Civil Code Section 1542.

19 99. Class Counsel considers this to be a fair and reasonable enhancement. The
20 enhancement takes into consideration the time, effort, and expense incurred by Plaintiff in coming
21 forward to litigate this matter on behalf of all Class Members. Plaintiff will provide a detailed
22 declaration with the Final Approval Motion detailing her participation and further justification for
23 the enhancement.

24 **SUBMISSION TO THE LABOR WORKFORCE DEVELOPMENT AGENCY**

25 100. Proof of submission of Plaintiff's Motion, all related documents, and copy of the
26 email from the LWDA confirming receipt is attached to the Declaration of Kelsey M. Szamet as
27 Exhibit "2."

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102. Attached hereto as Exhibit “2” is a true and correct copy of the proof of submission of Plaintiff’s Motion, all related documents, and copy of the email from the LWDA confirming receipt.

This Declaration was executed this 15th day of October, 2021, in Altadena, California.

Kelsey M. Szamet

EXHIBIT "1"

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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,

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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]

**CLASS ACTION
STIPULATION AND AGREEMENT FOR
CLASS ACTION SETTLEMENT AND
RELEASE OF CLAIMS**

Plaintiff Brenda Garcia (“Plaintiff”) and Defendant Titanium Alarm, LLC (“Defendant”) enter into this Stipulation and Agreement for Class Action Settlement and Release of Claims.

A. DEFINITIONS

1. “Action” means the civil action pending in the Superior Court of the State of California, County of San Bernardino, entitled *Brenda Garcia v. Titanium Alarm, LLC*, Case No. CIVDS2013199.

2. “Class Counsel” means Eric B. Kingsley and Kelsey M. Szamet of Kingsley & Kingsley, APC.

3. “Class Members” means all persons who worked as a non-exempt employee for Defendant Titanium Alarm, LLC in the State of California at any time during the Class Period.

4. “Class Period” or “Release Period” means the period between May 29, 2016 and August 31, 2021 or the date of preliminary approval of the class, whichever is earlier.

5. “Class Representative” and “Plaintiff” means Brenda Garcia.

6. “Court” means the Superior Court of the State of California, County of San Bernardino.

7. The “Effective Date” means the latest of the following: (a) if no Class Member makes an objection to the Settlement, the date the Court grants final approval of the Settlement; (b) if a Class Member objects to the Settlement, the later of: (i) dismissal or withdrawal of the objection by the Class Member; (ii) the date for seeking appellate review of the Court’s final approval of the Settlement has passed without a timely request for review; (iii) a Class Member’s appeal from the Court’s final approval of the Settlement has been voluntarily dismissed; or (iv) the California Court of Appeals or the California Supreme Court has rendered a final judgment on a Class Member’s appeal affirming the Court’s final approval of the Settlement without material modification.

8. “Gross Settlement Amount” means the amount of Ninety-Five Thousand Dollars (\$95,000) to be paid by Defendant pursuant to this Settlement for the following: 1) the cost of settlement administration (estimated to be approximately \$6,000.00); 2) the amount of attorneys’ fees and litigation costs awarded to Class Counsel; 3) the amount of Service Payment awarded to

1 Plaintiff; 4) the amount paid to the Labor and Workforce Development Agency (“LWDA”) for
2 the settlement of Private Attorneys General Act (“PAGA”) claims; and 5) settlement benefits to
3 class members who do not exclude themselves from the Settlement. Defendant shall pay,
4 separately from the Gross Settlement Amount, Defendant’s share of payroll taxes on the portion
5 of settlement benefits allocated to wages.

6 9. “Net Settlement Amount” means the portion of the Gross Settlement Amount
7 remaining after deductions are made for the cost of settlement administration, the amount of
8 attorneys’ fees and litigation costs awarded to Class Counsel, the amount of Service Payment
9 awarded to Plaintiff, and the amount paid to the LWDA for the settlement of PAGA claims.

10 10. “Notice” means the Notice of Class Action Settlement, substantially in the form
11 attached as **Exhibit A**, to be mailed out by the Settlement Administrator to Class Members.

12 11. “Parties” means the Plaintiff and Defendant.

13 12. “Settlement” or “Agreement” means this Stipulation and Agreement for Class
14 Action Settlement and Release of Claims.

15 13. “Settlement Administrator” means ILYM Group, Inc., who will perform the
16 duties of (i) conducting address traces to locate Class Members as necessary; (ii) preparing and
17 mailing the Notice of Class Action Settlement, (iii) tracking requests for exclusion; (iv)
18 responding to Class Member inquiries; (v) distributing all payments required by the Settlement;
19 (vi) tax reporting in connection with the Settlement; (vii) posting notice of the final judgment on
20 its website; and (viii) any other duties necessary for administration of the Settlement.

21 **B. RECITALS**

22 1. Plaintiff filed a putative class action complaint against Defendant on May 29,
23 2020 and then a First Amended Complaint on July 23, 2020 (the “Complaints”). In the Complaint,
24 Plaintiff alleged the following causes of action on behalf of persons who worked as non-exempt
25 employees for Defendant in the State of California: Failure to Pay Wages and/or Overtime;
26 Failure to Pay Timely Wages; Penalties; and Violations of Business and Professions Code.
27 Plaintiff centrally contends that Defendant failed to pay non-exempt employees all the wages
28 owed to them as a result of failing to provide proper bonus hours for overtime claims.

1 4. Defendant expressly denies the allegations in the Complaints and further deny any
2 liability or wrongdoing of any kind arising out of the conduct alleged in the Action. Defendants
3 have concluded that it is desirable to settle this matter on the terms provided in this Agreement to
4 avoid additional expense, inconvenience, and distraction from their business operations.

5 5. Prior to settling this matter, Plaintiff's counsel engaged in a substantial amount of
6 investigation and discovery and obtained from Plaintiff and/or Defendant numerous documents
7 relevant to Plaintiff's claims, including, Plaintiff's payroll records, Plaintiff's earning statements,
8 Plaintiff's time detail records, and Defendants' relevant policies and procedures, as well as
9 redacted information pertaining to a portion of the Class Members. Plaintiff and Defendants
10 agreed to participate in a mediation before experienced mediator Jeffrey Krivis. The mediation
11 was held on June 24, 2021, which, after lengthy negotiations, resulted in a settlement.
12 Subsequent to mediation, the parties engaged in further negotiations regarding the terms of the
13 settlement.

14 6. Prior to and during these negotiations, Plaintiff obtained from Defendants all the
15 information needed to calculate Defendants' potential liability, including the number of class
16 members, the number of shifts worked by class members, and the average hourly wage rate of
17 class members. Plaintiff and Defendant also discussed Defendant's current financial condition
18 and ability to pay any potential judgment.

19 7. Class Counsel have conducted a thorough investigation into the facts of this case,
20 including the review of relevant documents and have thoroughly researched the applicable law
21 and potential defenses. Based on their investigation and evaluation, Class Counsel are of the
22 opinion that the Settlement is fair, reasonable, and adequate, and is in the best interest of the
23 Class Members in light of all known facts and circumstances. Defendant agrees that the
24 Settlement is fair, reasonable and adequate.

25 8. The Parties agree that stipulation to this Agreement is for Settlement purposes
26 only and if, for any reason, the Settlement is not approved, the Agreement will be of no force or
27 effect. In such event, nothing in the Agreement shall be used or construed by or against any
28 party as a determination, admission, or concession of any issue of law or fact in the Actions; and

the Parties do not waive, and instead expressly reserve, their respective rights with respect to the prosecution and defense of this Action as if this Agreement never existed. Defendant expressly reserves its' rights to challenge the propriety of class certification should the Court not approve the Settlement.

C. TERMS OF SETTLEMENT

1. Gross Settlement Amount: Defendant shall pay the Gross Settlement Amount of Ninety-Five Thousand Dollars (\$95,000.00) to pay for the following: 1) the cost of settlement administration; 2) the amount of attorneys' fees and litigation costs awarded to Class Counsel; 3) the amount of Service Payment awarded to Plaintiff; 4) the amount paid to the LWDA for the settlement of PAGA claims; and 5) the settlement benefits to class members who do not exclude themselves from the Settlement. Defendant shall pay, separately from the Gross Settlement Amount, Defendant's share of payroll taxes on the portion of settlement benefits allocated to wages.

2. Attorneys' Fees, Expenses and Costs: Defendant will not oppose Class Counsel's application to the Court for an award of up to one-third (1/3) of the Gross Settlement Amount anticipated to be \$31,666,67) in attorneys' fees and reimbursement of up to Twelve Thousand Dollars (\$12,000) for litigation costs and expenses, to compensate Class Counsel for the work already performed in this case and all work remaining to be performed in documenting the Settlement, securing Court approval of the Settlement, and ensuring that the Settlement is fairly administered and implemented. The Settlement Administrator will issue to Class Counsel a Form 1099 with respect to their award of attorneys' fees and costs.

4. Service Payment to Class Representative: Defendant will not oppose Plaintiff's request to the Court for an award of up to Five Thousand Dollars (\$5,000) for her service as Class Representative ("Service Payment") in addition to any payment she may otherwise receive as a Class Member. The Settlement Administrator will issue to Plaintiff a Form 1099 for her Service Payment.

1 5. PAGA Civil Penalties to the LWDA: Payment shall be made to the LWDA in the
2 amount of \$5,625, which represents 75% of the PAGA claims settlement amount of \$7,500.

3 6. Distribution to Class Members: Each member of the Class who does not submit a
4 timely request for exclusion from the Settlement shall receive a portion of the Net Settlement
5 Amount based on a per rata basis..

6 7. Non-Reversionary; Cy Pres: The settlement is completely non-reversionary and
7 the entire Net Settlement Amount shall be distributed to Class Members who do not exclude
8 themselves from the Settlement. In the event settlement checks issued to Class Members are not
9 cashed or deposited within 90 days after mailing, the checks shall become null and void and any
10 funds remaining from such uncashed checks shall be disbursed by the Settlement Administrator
11 to a *cy pres* beneficiary to be selected by the parties to this Agreement and approved by the Court
12 pursuant to the terms of Code of Civil Procedure section 384.

13 8. Tax Allocation of Class Member Distributions: The Parties agree that the
14 Settlement payments to Class Members will be treated as follows: 20% of the settlement
15 payments shall be allocated to wages and 80% shall be allocated to interest and penalties. The
16 Settlement Administrator shall be responsible for issuing class members a Form W-2 with
17 respect to the portion of settlement benefits allocated to wages and, to the extent required by law,
18 a Form 1099 with respect to the portion of settlement benefits allocated to interest and penalties.

19 9. No Credit Toward Benefit Plans. The payments made to Class Members under
20 this Agreement, the Service Payment made to Plaintiff, as well as any other payments made
21 pursuant to this Agreement, shall not be utilized to calculate any additional benefits under any
22 benefit plans to which Plaintiff or any Class Members may be eligible, including, but not limited
23 to: profit-sharing plans, bonus plans, 401(k) plans, stock purchase plans, vacation plans, sick
24 leave plans, PTO plans, and any other benefit plans. Rather, it is the Parties' intention that this
25 Settlement will not affect any rights, contributions, or amounts to which any Class Members and
26 Plaintiff may be entitled under any benefit plans. The Parties agree that any payments to Class
27 Members, including the Service Payment paid to Plaintiff under the terms of this Agreement do
28 not represent any modification of Class Members' or Plaintiff's previously credited hours of

1 service or other eligibility criteria under any employee pension benefit plan, employee welfare
2 benefit plan, or any other plan or program, sponsored by Defendant. Further, any payments and
3 the Service Payment paid hereunder shall not be considered “compensation” in any year for
4 purposes of determining eligibility for, or benefit accrual within, an employee pension benefit
5 plan, employee welfare benefit plan, or any other plan or program sponsored by Defendant.

6 10. Tax Liability. Defendant, Defendant’s counsel, the Settlement Administrator, and
7 Plaintiff’s counsel make no representation as to the tax treatment or legal effect of the payments
8 called for hereunder, and Plaintiff and the Class Members are not relying on any statement,
9 representation, or calculation by Defendant, Defendant’s counsel, Plaintiff’s counsel, or by the
10 Settlement Administrator in this regard. Plaintiff and the Class Members understand and agree
11 that they will be solely responsible for the payment of any and all taxes and penalties assessed on
12 their respective payments described herein and will defend, indemnify, and hold Defendant,
13 Defendant’s counsel, Plaintiff’s counsel and the Settlement Administrator free and harmless
14 from and against any claims resulting from treatment of such payments as non-taxable
15 penalties/damages.

16 11. Circular 230 Disclaimer. EACH PARTY TO THIS AGREEMENT (FOR
17 PURPOSES OF THIS SECTION, THE “ACKNOWLEDGING PARTY” AND EACH PARTY
18 TO THIS AGREEMENT OTHER THAN THE ACKNOWLEDGING PARTY, AN “OTHER
19 PARTY”) ACKNOWLEDGES AND AGREES THAT (1) NO PROVISION OF THIS
20 AGREEMENT, AND NO WRITTEN COMMUNICATION OR DISCLOSURE BETWEEN OR
21 AMONG THE PARTIES OR THEIR ATTORNEYS AND OTHER ADVISERS, IS OR WAS
22 INTENDED TO BE, NOR SHALL ANY SUCH COMMUNICATION OR DISCLOSURE
23 CONSTITUTE OR BE CONSTRUED OR BE RELIED UPON AS, TAX ADVICE WITHIN
24 THE MEANING OF UNITED STATES TREASURY DEPARTMENT CIRCULAR 230
25 (31 CFR PART 10, AS AMENDED); (2) THE ACKNOWLEDGING PARTY (A) HAS
26 RELIED EXCLUSIVELY UPON HIS OR ITS OWN, INDEPENDENT LEGAL AND TAX
27 COUNSEL FOR ADVICE (INCLUDING TAX ADVICE) IN CONNECTION WITH THIS
28 AGREEMENT, (B) HAS NOT ENTERED INTO THIS AGREEMENT BASED UPON THE

1 RECOMMENDATION OF ANY OTHER PARTY OR ANY ATTORNEY OR ADVISOR TO
2 ANY OTHER PARTY, AND (C) IS NOT ENTITLED TO RELY UPON ANY
3 COMMUNICATION OR DISCLOSURE BY ANY ATTORNEY OR ADVISER TO ANY
4 OTHER PARTY TO AVOID ANY TAX PENALTY THAT MAY BE IMPOSED ON THE
5 ACKNOWLEDGING PARTY; AND (3) NO ATTORNEY OR ADVISER TO ANY OTHER
6 PARTY HAS IMPOSED ANY LIMITATION THAT PROTECTS THE CONFIDENTIALITY
7 OF ANY SUCH ATTORNEY’S OR ADVISER’S TAX STRATEGIES (REGARDLESS OF
8 WHETHER SUCH LIMITATION IS LEGALLY BINDING) UPON DISCLOSURE BY THE
9 ACKNOWLEDGING PARTY OF THE TAX TREATMENT OR TAX STRUCTURE OF ANY
10 TRANSACTION, INCLUDING ANY TRANSACTION CONTEMPLATED BY THIS
11 AGREEMENT.

12 12. Funding and Distribution Dates: Within 30 days after the Effective Date,
13 Defendant shall remit to the Settlement Administrator the amount of \$35,000 needed to initiate
14 all payments required under the Settlement. Every 30 days thereafter, Defendant shall remit to
15 the Settlement Administrator the amount of \$15,000 until the entire amount of the settlement is
16 paid in full by Defendant. The Settlement Administrator shall make all payments required under
17 the Settlement as soon as practicable after receipt of the settlement funds from Defendants (but
18 no later than 10 days after receipt of the settlement funds).

19 **D. NOTICE, EXCLUSION AND OBJECTION PROCEDURES**

20 1. Within fifteen (15) days following the Court’s entry of an Order Granting
21 Preliminary Approval of the Settlement, Defendant shall provide to the Settlement Administrator
22 a database or spreadsheet listing the name, last known home address, social security number,
23 number of work weeks worked during the Class Period for each Class Member (the “Class
24 List”).

25 2. Within ten (10) days after receiving the Class List from Defendant, the Settlement
26 Administrator shall send a Notice to each Class Member in English and Spanish by first class
27 mail in the form attached as **Exhibit A**.

1 3. The Settlement Administrator shall use reasonable standard skip tracing devices
2 as necessary to verify the accuracy of all addresses before the initial mailing date to ensure that
3 the Notice is sent to all Class Members at the addresses most likely to result in immediate receipt
4 of those documents. With respect to any returned Notices, the Settlement Administrator shall
5 use reasonable diligence to obtain a current address and re-mail to such address.

6 4. Class Members shall have sixty (60) days from the initial mailing of the Notice by
7 the Settlement Administrator to request exclusion from the Settlement by submitting a request in
8 writing to be excluded from the Settlement to the Settlement Administrator. If disputes about the
9 validity or timeliness of any request for exclusion arise, the Parties shall meet and confer. If the
10 Parties cannot resolve the dispute, the Court shall make a final and binding determination as to
11 whether the request for exclusion shall be deemed valid.

12 5. Class Members who submit a timely and valid request for exclusion will not be
13 bound by the release provisions of the Settlement and will not be entitled to receive any
14 settlement benefits under the Settlement.

15 6. If more than 5% of the Class Members request exclusion from the Settlement (i.e.,
16 opt out), Defendant at its sole option may abrogate the Settlement, in which case the Settlement
17 shall be null and void. Defendant shall exercise this right within ten (10) days after notification
18 by the Settlement Administrator of the total number of Class Members who submitted a valid
19 request for exclusion. If Defendant abrogates the Settlement pursuant to this paragraph,
20 Defendant shall pay the Settlement Administrator for the costs of settlement administration prior
21 to receiving notice from Defendant about abrogation of the Settlement.

22 7. It was represented to Class Counsel that the Settlement Class is estimated to be 65
23 with 60 of those individuals being former employees with 770 pay periods at issue. Upon receipt
24 of the Class Data, the Settlement Administrator shall confirm to Plaintiff that the Class Data is
25 consistent with these representations. To the extent the number of Settlement Class Members
26 increases beyond 65 by more than 5%, Defendant shall have the option to increase the Gross
27 Settlement Amount by a proportionate amount. For example, if the number of Settlement Class
28 Members increases by 6%, Defendant shall increase the Gross Settlement Amount by 6%. If the

1 increase causes an increase of the cost of Settlement Administration beyond the amount that has
2 been approved by the Court, Defendant shall separately bear the increased cost of Settlement
3 Administration outside of the Gross Settlement Amount. Likewise, if the number of pay periods
4 at issue increases beyond 770 by more than 5%, Defendant shall have the option to increase the
5 Gross Settlement Amount by a proportionate amount. Again, for example, if the number of pay
6 periods increases by 6%, Defendant shall increase the Gross Settlement Amount by 6%. If
7 Defendant fails to increase the Gross Settlement Amount proportionately or remit payment of the
8 increased cost of Settlement Administration, Plaintiff shall have the right to terminate this
9 Agreement and the Parties will be restored to their positions prior to the Settlement and the
10 Settlement shall be null and void.

11 8. Class Members shall have sixty (60) days from the initial mailing of the Notice
12 Packet by the Settlement Administrator to submit any objections to the Settlement and advise of
13 their desire to appear at the Final Fairness Hearing. The Class Notice shall include specific
14 instructions to Class Members for submitting objections, which must be sent in writing to the
15 Settlement Administrator.

16 **E. RELEASE OF CLAIMS**

17 1. Class Members' Released Claims: Each Class Member who does not submit a
18 timely and valid request for exclusion shall, upon the Effective Date, be deemed to have released
19 any and all claims against Defendant and any former and present parent, subsidiary, and
20 affiliated corporations, and their officers, directors, employees, partners, shareholders and agents,
21 and any other successors, assigns, or legal representatives ("Released Parties"), from any and all
22 claims, rights, demands, liabilities and causes of action under California law that Class Members
23 have had or now have against the Released parties for any acts occurring during the Release
24 Period that were pled in the Complaints or that could have been pled based on the identical
25 factual predicate for the allegations in the Complaints, specifically including any such claims for
26 failure to pay minimum wages, failure to pay overtime wages, failure to provide accurate wage
27 statements, unfair competition, and failure to pay all wages upon termination, and any claims in
28 connection therewith for damages, restitution, interest, penalties, costs and attorneys' fees.

1 3. Release by Class Representative: As a condition to obtaining the Service
2 Payment provided for herein, Plaintiff (as well as her spouse, heirs, executors, administrators,
3 trustees, and/or permitted assigns) also agrees to a general release of any and all claims against
4 Released Parties which shall include without limitation any and all claims which in any way
5 relate to his employment with Defendant, under State or Federal law, in tort, common law,
6 statute, contract, or equity, whether pled in the Complaints or not, including but not limited to
7 any claims under the FLSA, Title VII, ADA, FEHA, ADEA, PAGA, the California Labor Code,
8 or any Industrial Welfare Commission Wage Order—now existing or arising in the future, based
9 on any act, omission, event, occurrence, or nonoccurrence from the beginning of time to the date
10 of execution hereof. Plaintiff further expressly waives and relinquishes, to the fullest extent
11 permitted by law, the provisions, rights and benefits of Section 1542 of the California Civil
12 Code, which provides: “**A general release does not extend to claims which the creditor or**
13 **releasing party does not know or suspect to exist in his or her favor at the time of executing**
14 **the release and that, if known by him or her, would have materially affected his or her**
15 **settlement with the debtor or released party.”**

16 **F. COURT APPROVAL**

17 1. Plaintiff shall promptly move the Court for the entry of an Order Granting
18 Preliminary Approval of the Settlement.

19 2. In accordance with the Court’s Order Granting Preliminary Approval of the
20 Settlement, Plaintiff, after the Settlement Administrator has mailed the Notice to Class Members
21 and the time for Class Members to request exclusion from or make an objection to the Settlement
22 has expired, shall move the Court for the entry of an Order Granting Final Approval of the
23 Settlement.

24 3. This Settlement shall not take effect until the Court has entered an order granting
25 final approval of the Settlement and that order has become final after any objections to the
26 Settlement or any appeals from the order granting final approval of the Settlement have been
27 resolved. If for any reason this Settlement is materially modified on appeal, then this Settlement
28 will become null and void and no payment under this Settlement will be made.

1 4. The Parties agree to waive appeals from the Court's order granting final approval
2 of the Settlement with the following exceptions: (1) the Parties may appeal if the Court
3 materially modifies the Settlement; and (2) Plaintiff may appeal if the Court awards attorneys'
4 fees, expenses, costs or a Service Payment in an amount less than requested by Plaintiff. Any
5 appeal with respect to the amount of attorneys' fees, expenses, costs or Service Payment shall
6 not affect the finality of the Settlement in any other regard or delay the payment of settlement
7 benefits to Class Members or the payment of administration costs to the Settlement
8 Administrator.

9 **G. MISCELLANEOUS**

10 1. The respective signatories to the Settlement represent that they are fully
11 authorized to enter into this Settlement and bind the respective Parties to its terms and
12 conditions.

13 2. The Parties agree to cooperate fully with each other to accomplish the terms of
14 this Settlement, including but not limited to, execution of such documents and to take such other
15 action as may reasonably be necessary to implement the terms of the Settlement. The Parties
16 shall use their best efforts, including all efforts contemplated by this Settlement and any other
17 efforts that may become necessary by order of the Court, or otherwise, to effectuate the terms of
18 this Settlement.

19 3. The Parties represent, covenant, and warrant that they have not directly or
20 indirectly, assigned, transferred, encumbered, or purported to assign, transfer or encumber to any
21 person or entity any portion of any liability, claim, demand, action, cause of action or right
22 released and discharged in this Settlement.

23 4. Nothing contained in this Settlement shall be construed or deemed an admission
24 of liability, culpability, negligence, or wrongdoing on the part of Defendant, and Defendant
25 denies any such liability. Each of the Parties has entered into this Settlement with the intention
26 to avoid further disputes and litigation with the attendant inconvenience and expenses. This
27 Settlement is a settlement document and the parties shall not seek to have this Settlement deemed
28 admissible evidence except in an action or proceeding to approve, interpret, or enforce its terms.

5. This Settlement may be executed in counterparts, and when each party has signed at least one such counterpart, each counterpart shall be deemed an original, and, when taken together with other signed counterparts, shall constitute execution of the Settlement, which shall be binding upon and effective as to all Parties.

6. Until the filing of a motion for preliminary approval, the terms of the Settlement shall remain confidential and any remarks about this settlement shall be limited to a statement to the effect that the parties have reached a settlement in principle subject to court approval. This confidentiality clause extends to the parties' use of social media people often use to communicate during their daily lives, such as Twitter, Facebook, My Space, Instagram, blogs and the like. This confidentiality clause, however, shall not operate to restrict the ability of Class Counsel to communicate with any Class Member about the fact or terms of this Settlement.

7. Interim Stay of Proceedings: Upon full execution of this Agreement, the Parties agree that based upon Code of Civil Procedure §583.310 ("the 5 year rule"), the Lawsuit shall be stayed in its entirety except for the proceedings necessary to implement and complete the Settlement.

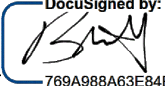
8. Amendment or Modification: This Agreement may be amended or modified only by a written instrument signed by counsel for all Parties or their successors-in-interest.

9. California Law Governs: All terms of this Agreement and the Exhibit hereto shall be governed by and interpreted according to the laws of the State of California.

IT IS SO AGREED.

Plaintiff

Dated: August 10, 2020

DocuSigned by:

769A988A63E84B4...
Brenda Garcia

Defendant

Dated: August __, 2020

Christopher Victor
Chief Operating Officer
Titanium Alarm, LLC

1 5. This Settlement may be executed in counterparts, and when each party has signed
2 at least one such counterpart, each counterpart shall be deemed an original, and, when taken
3 together with other signed counterparts, shall constitute execution of the Settlement, which shall
4 be binding upon and effective as to all Parties.

5 6. Until the filing of a motion for preliminary approval, the terms of the Settlement
6 shall remain confidential and any remarks about this settlement shall be limited to a statement to
7 the effect that the parties have reached a settlement in principle subject to court approval. This
8 confidentiality clause extends to the parties' use of social media people often use to communicate
9 during their daily lives, such as Twitter, Facebook, My Space, Instagram, blogs and the like.
10 This confidentiality clause, however, shall not operate to restrict the ability of Class Counsel to
11 communicate with any Class Member about the fact or terms of this Settlement.

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13 agree that based upon Code of Civil Procedure §583.310 ("the 5 year rule"), the Lawsuit shall be
14 stayed in its entirety except for the proceedings necessary to implement and complete the
15 Settlement.

16 8. Amendment or Modification: This Agreement may be amended or modified only
17 by a written instrument signed by counsel for all Parties or their successors-in-interest.

18 9. California Law Governs: All terms of this Agreement and the Exhibit hereto shall
19 be governed by and interpreted according to the laws of the State of California.

20 **IT IS SO AGREED.**

21 **Plaintiff**

22 Dated: August __, 2020

23 _____
Brenda Garcia

24 **Defendant**

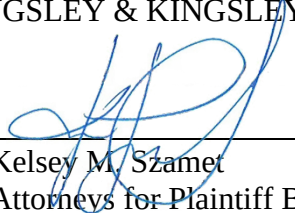
25 Dated: August 13, 2020

26 _____
27 Christopher Victor
28 Chief Operating Officer
Titanium Alarm, LLC

1 **APPROVED AS TO FORM**

2
3 DATED: August 7, 2021

KINGSLEY & KINGSLEY, APC

4
5 By: 

6 Kelsey M. Szamet
7 Attorneys for Plaintiff BRENDA GARCIA and the
8 Proposed Class
9

10 DATED: August 7, 2021

FREEMAN MATHIS & GARY, LLP

11 By: 

12 John K. Rubiner
13 Michelle T. Harrington
14 Matthew S. Jones
15 Attorneys for Defendant
16 TITANIUM ALARM, LLC
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EXHIBIT "A"

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN BERNARDINO

**IF YOU WORKED AS AN HOURLY EMPLOYEE FOR TITANIUM
ALARM, LLC AT ANY TIME BETWEEN MAY 29, 2016 AND AUGUST 31,
2021 YOU MAY OBTAIN PAYMENTS FROM A SETTLEMENT
REACHED IN A PROPOSED CLASS ACTION LAWSUIT**

PLEASE READ THIS NOTICE CAREFULLY. YOUR RIGHTS MAY BE AFFECTED.

This Notice is court approved. This is not a solicitation from an attorney.

YOUR LEGAL RIGHTS AND OPTIONS IN THE SETTLEMENT	
DO NOTHING	Receive compensation but lose rights to sue separately. If you do nothing, you will receive compensation for your claims alleged in this lawsuit. You will also give up your rights to ever sue about any of the claims in this case.
EXCLUDE YOURSELF FROM THE SETTLEMENT	Get no compensation but keep rights to sue separately. If you exclude yourself from the settlement you will not receive any compensation from the settlement, but you will keep your rights to file a separate claim. Please be advised, however, that the time limits for filing a separate claim may have expired.
OBJECT OR COMMENT	Tell the Court why you like or don't like the settlement. You may write to the Court, or you may appear personally or through your own attorney and your own expense, and tell the Court about why you do or do not like the settlement. You must remain a part of the lawsuit to comment or object to the settlement, and you cannot object if you also ask to be excluded.
These rights and options – and the time deadlines for exercising them – are explained further in this Notice.	

This Notice provides important information about a proposed settlement in the class action lawsuit (the “Lawsuit”) brought by Brenda Garcia (“Plaintiff”) against Titanium Alarm, LLC (“Defendant”) called *Brenda Garcia v. Titanium Alarm, LLC*, San Bernardino County Superior Court Case No. CIVDS2013199.

WHY YOU ARE RECEIVING THIS NOTICE:

On <insert date>, the Court preliminarily approved a settlement reached in the Lawsuit (the “Settlement”) on behalf of a settlement class comprised of all persons who worked for Defendant as a non-exempt employee in California at any time between May 29, 2016 and August 31, 2021, (the “Class Period”). There are approximately 65 persons in the settlement class (“Class Members”). You are receiving this notice because Defendant’s records indicate that you worked for Defendant as a non-exempt employee in California during the Class Period and are therefore a Class Member. As a Class Member, you have the right to participate in, object to, or exclude yourself from the Settlement.

ABOUT THE LAWSUIT:

Plaintiff is a former employee of Defendant who has made a variety of claims, on behalf of herself and Class Members, against Defendant, by and through attorneys of record Kingsley & Kingsley, APC (Attorneys for Plaintiff and “Class Counsel”). Plaintiff alleges that Defendant failed to comply with California wage and hour laws. Defendant denies all of Plaintiff’s claims and maintains that it did not violate any California wage and hour laws. Although Defendant denies Plaintiff’s allegations, the parties agreed to settle the Lawsuit. Defendant is not in any way admitting it engaged in any of the acts alleged in the Lawsuit.

THE TERMS OF THE CLASS ACTION SETTLEMENT:

To avoid the costs of litigation, and without admitting any wrongdoing, Defendant had agreed to pay, in exchange for a release of the claims asserted by Plaintiff and Class Members in the Lawsuit, the gross amount of \$95,000.00 (the “Gross Settlement Amount”). Payments from the Gross Settlement Amount will be made for: a) the costs of settlement administration (approximately \$6,000.00.); b) a Service Payment to Plaintiff (up to \$5,000.00); c) attorneys’ fees to Class Counsel (up to \$31,666.67); d) litigation costs to Class Counsel (up to \$12,000.00); e) payment to the California Labor & Workforce Development Agency for an allocation of the settlement of the claims brought pursuant to the Private Attorneys General Act (up to \$5,625.00) and f) settlement payments to Class Members who do not submit an opt out request. It is estimated that after the above deductions, approximately \$34,708.33 (the “Net Settlement Amount”) will remain for payment of settlement benefits to Class Members. Each Class Member’s gross settlement amount will be allocated as follows: 20% shall be deemed wages (subject to legally required wage withholdings and deductions and reported by way of IRS Form W-2) and 80% shall be treated as interest and penalties (reported by way of IRS Form 1099).

It is anticipated that settlement benefits will be made to Class Members no later than January 1, 2023. You have three options: (1) participate in the settlement and receive your share of the settlement benefits; (2) object to the settlement; or (3) request exclusion from the settlement.

(1) IF YOU WISH TO BE A PART OF THE SETTLEMENT AND OBTAIN PAYMENT, YOU ARE NOT REQUIRED TO TAKE ANY FURTHER ACTION.

All Class Members who do not exclude themselves from the settlement will automatically receive payment of their share of settlement benefits. Based on Defendant's records, you worked <insert number of workweeks> workweeks for Defendant during the Class Period, which means that your gross settlement payment (the amount before tax deductions) is estimated to be approximately

<insert \$amount>.

Depending on the Court's Final Approval Order, the gross amount you will receive if the Court grants final approval of the settlement may vary from the above estimated amount. If you participate in the settlement, you will, upon final approval of the settlement, be bound by the release of claims against Defendant described below and lose the right to sue Defendant for any of the claims asserted or that could have been asserted against Defendant in the Lawsuit.

It is your responsibility to keep a current address on file with the Settlement Administrator as it will mail your payment to the address on file for you. If you move, please provide the Settlement Administrator your new address. If you disagree with the number of workweeks stated above, you may submit information to the Settlement Administrator regarding what you believe is the correct number of workweeks you worked for Defendant as a non-exempt employee in California during the Class Period. Any such information, including any supporting documents, must be submitted to the Settlement Administrator by <insert date>. You may communicate with the Settlement Administrator regarding your new address or information regarding what you believe is the correct number of workweeks by telephone 888.250.6810, e-mail claims@ilymgroup.com, or mail to PO Box 2031, Tustin, CA 92681. You may also contact Class Counsel to provide this information.

(2) YOU MAY OBJECT TO THE SETTLEMENT AS LONG AS YOU DO NOT OPT OUT OF THE SETTLEMENT.

As long as you do not exclude yourself from the Settlement, you have the right to object by submitting a written statement with your full name, address, last four digits of your Social Security Number or employment identification number, the case name and number (*Brenda Garcia v. Titanium Alarm, LLC*, San Bernardino County Superior Court Case No. CIVDS2013199), a statement that you object to the Settlement, the legal and factual reasons for the objection, and your signature. The objection must be sent by <insert date> by regular mail to the Settlement Administrator at the following address: <insert address>. You also have the right to appear at the Final Fairness Hearing on <insert date> at <insert time> in Department S-26 at the San Bernardino Superior Court, located at 247 West Third Street, San Bernardino, California 92415. If the Court overrules your objection and grants final approval of the Settlement, you will be bound by the release of claims against Defendant described below and lose the right to sue Defendant for any of the claims asserted or that could have been asserted in the Lawsuit. As long as you do not exclude yourself from the Settlement, you will receive a settlement payment even if you make an unsuccessful objection to the Settlement.

(3) YOU MAY "OPT OUT" OF THE SETTLEMENT AND EXCLUDE YOURSELF FROM THE SETTLEMENT—YOU WILL NOT RECEIVE ANY PAYMENT AND WILL NOT BE SUBJECT TO THE RELEASE OF CLAIMS AND STIPULATED JUDGMENT.

If you wish to exclude yourself from the Settlement, you must submit a written request to the Settlement Administrator on or before <insert date>. To opt out, you must (i) state the case name and number; (ii) state your full name and address; (iii) clearly state that you request to be excluded from the Settlement; (iv) state the last four digits of your social security number or employee identification number; (v) sign the opt out request; and (vi) return the opt out request via first class U.S. mail to the Settlement Administrator (at the address listed in subsection (2)) so that it is postmarked on or before <insert date>.

If you exclude yourself from the Settlement, you will not be entitled to recover any settlement benefits or object to the settlement, but you will retain the right to bring any claims you believe you have against Defendant. If the Court grants final approval of the Settlement, Class Members who do not properly opt out of the class action settlement will be bound by the Settlement, including its release of claims and Judgment. Class Members who

do properly opt out of the class action settlement shall have no further role in this action, and for all purposes they shall be regarded as if they never were a party to this action.

RELEASE OF CLAIMS OF SETTLEMENT CLASS MEMBERS:

Unless you exclude yourself from the Settlement, upon final approval of the Settlement by the Court, you will be deemed to have released any and all claims against Defendant and any former and present parent, subsidiary, and affiliated corporations, and their officers, directors, employees, partners, shareholders and agents, and any other successors, assigns, or legal representatives (“Released Parties”), from any and all claims, rights, demands, liabilities and causes of action under California law that Class Members have had or now have against the Released Party for any acts occurring during the Release Period that were pled in the Complaint or that could have been pled based on the identical factual predicate for the allegations in the Complaint, specifically including any such claims for failure to pay minimum wages, failure to pay overtime wages, failure to provide meal periods, failure to provide rest periods, failure to provide accurate wage statements, unfair competition, and failure to pay all wages upon termination, and any claims in connection therewith for damages, restitution, interest, penalties, costs and attorney’s fees.

THE NEXT STEP:

A Final Fairness Hearing will be held on <insert date> at <insert time> in Department S-26 at the San Bernardino Superior Court, located at 247 West Third Street, San Bernardino, California 92415. **You are not required to attend the hearing, but, as a Class Member, you are welcome to attend. If you submit a timely objection to the Settlement, you have the right to speak at the hearing regarding your objection. You also have the right to retain an attorney, at your own expense, to speak on your behalf. If you do not submit a timely objection, whether you are allowed to speak at the hearing will be decided by the Court.**

HOW TO OBTAIN ADDITIONAL INFORMATION:

This Notice only provides a summary of the Lawsuit and the Settlement. For more information, you may contact the attorneys for the class (Class Counsel) at the address or telephone number listed below, the Settlement Administrator at the address listed below, or access the Court’s records.

Attorneys for Plaintiff can be contacted at:

Kelsey M. Szamet, Esq.
Kingsley & Kingsley, APC
16133 Ventura Blvd., Suite 1200
Encino, California 91436
Tel: (818) 990-8300
Fax: (818) 990-2903

The Settlement Administrator can be contacted at:

ILYM Group, Inc.
Mailing Address – PO Box 2031, Tustin, CA92681
Email address - claims@ilymgroup.com
Toll Free Number – 888.250.6810

You may also review the Court’s file at the San Bernardino County Superior Court, located at 247 West Third Street, San Bernardino, California 92415.

PLEASE DO NOT CONTACT THE COURT ABOUT THIS NOTICE

Any Questions? Call (888) 250-6810

(Proof of Submission to the LWDA)

EXHIBIT "2"

(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 October 15, 2021, I served all interested parties in this action the following documents described as: **DECLARATION OF KELSEY M. SZAMET IN SUPPORT OF PLAINTIFF'S MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT** 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 5500 Bolsa Avenue, Suite 201 Huntington Beach, CA 92649
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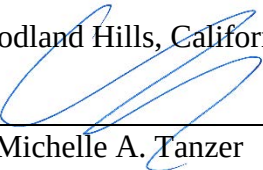
☐ **(BY MAIL)** I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with U.S. postal service on that same day with postage fully prepaid at Encino, California in the ordinary course of business. I am aware 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 October 15, 2021, at Woodland Hills, California.



Michelle A. Tanzer