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Attorneys for Plaintiff HAROUTYOUN KIOUDJIAN
on behalf of himself and others similarly situated

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES**

HAROUTYOUN KIOUDJIAN, an
individual, on behalf of himself and others
similarly situated,

Plaintiffs,

vs.

BODY VISION JEWELRY, INC., a
California corporation; and DOES 1 through
50, inclusive,

Defendants.

Case No.: 20STCV13964

CLASS ACTION

Assigned for All Purposes To:

Hon. Ann I. Jones
Department 11, Spring Street Courthouse

**DECLARATION OF DAVID YEREMIAN
IN SUPPORT OF PLAINTIFF'S
UNOPPOSED MOTION FOR
PRELIMINARY APPROVAL OF CLASS
AND PAGA ACTION SETTLEMENT
AGREEMENT AND RELEASE**

*[Filed concurrently with Unopposed Motion;
Memorandum of Points and Authorities;
Declaration of Alvin B. Lindsay; and [Proposed]
Order]*

Date: TBD
Time: TBD
Department 11

Complaint Filed: April 9, 2020
First Amended Complaint: August 4, 2020
Trial Date: None Set

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1. I am an attorney licensed and admitted to practice before all courts of the State of California, the United States District Court for the Central, Southern, Eastern, and Northern Districts of California, and the Ninth Circuit Court of Appeals. I am the managing attorney of David Yeremian & Associates, Inc., counsel for Plaintiff HAROUTYOUN KIOUDJIAN (“Plaintiff”), on behalf of himself and all other similarly situated employees of Defendants BODY VISION JEWELRY, INC. (“BVLA”) and DOE 1, which will be identified as BV & CO for settlement purposes (collectively “Defendants”) (with Plaintiff, “the parties”). I and my firm are referred to herein as Class Counsel. I have personal knowledge of the facts herein and if called as a witness, I could and would competently testify.

2. All of the matters set forth herein are within my personal knowledge, except those matters that are stated to be upon information and belief. As to such matters, I believe them to be true. I have represented Plaintiff and the putative Class since the inception of this matter. I submit this Declaration in support of the Motion for Preliminary Approval, filed by Plaintiff, on behalf of himself and other similarly situated employees of Defendant, and without opposition from Defendant, for preliminary approval of the parties' Class and PAGA Action Settlement Agreement and Release ("Settlement Agreement"), a true and correct copy of which is attached to this Declaration as **Exhibit A**. Also provided for the Court's approval is the Notice of Class and PAGA Action Settlement Agreement and Fairness Hearing ("Class Notice") at **Exhibit 1** to the Settlement.

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1 Employment Lawyers Association. I have been honored as a Super Lawyers Rising Star in 2009,
2 2010, 2012-2015. I have been named honored as a Super Lawyer since 2016.

3 5. I have been practicing law since 2003. Since 2007, I have focused almost
4 exclusively on representing employees, including in wage-and-hour class actions. During my
5 career I have represented employees in over 100 wage-and-hour class action lawsuits as lead or
6 co-lead counsel (including in the Central, Southern, Eastern and Northern Districts of California),
7 and I have obtained six and seven figure settlements against a range of defendants, including
8 Fortune 500 companies. These cases have involved the gamut of wage-and-hour claims, including
9 claims for failure to pay minimum wages, unpaid wages and overtime, failure to provide meal and
10 rest breaks, failure to reimburse necessary business expenses, inaccurate pay statements, failure to
11 pay timely wages—similar to claims at issue in the present matter.

12 6. I am experienced in prosecuting employment matters, particularly class actions. In
13 addition to the present case, I am also class counsel for dozens of other putative wage-and-hour
14 class-action lawsuits pending in various state and federal jurisdictions throughout California.

15 7. My extensive experience in litigating employment wage and hour matters has been
16 integral in identifying legal issues, evaluating the strengths and weaknesses of a case, and
17 generally negotiating fair and reasonable class action settlements. Practice in the narrow field of
18 wage and hour litigation requires skill and knowledge concerning the constantly evolving
19 substantive law (state and federal), as well as the procedural law of class action litigation. In this
20 action, I am fully equipped to use the skills and knowledge I have developed through more than a
21 decade of prosecuting and defending wage and hour class actions to fairly and adequately
22 represent the interests of the Class. Therefore, on the account of my resources, experience, and
23 knowledge, I am well-qualified to act as class counsel and represent Plaintiff and the putative class
24 members in this action.

25 8. In the last several years I have had several contested class cases certified. When
26 necessary we pursue cases on appeal. Owing to my experience, I am well-qualified to evaluate the
27 class claims in this action, to evaluate settlement v. trial and defenses raised. I have negotiated
28 over 100 class action settlements, including many involving the same issues presented in this case.

1 A selection of cases wherein I have served as lead or co-lead class counsel includes: *Galavis v.*
2 *Patina Restaurant Group, LLC* (LASC BC375225; class size approx. 10,000; co-lead counsel);
3 *Milford v. ADT Security Services, Inc.* (CACD CV08-2236; class size approx. 2,000; lead
4 counsel); *Carreon v. Wolfgang Puck Catering and Events, LLC* (LASC BC398569; class size
5 approx. 1,400; lead counsel); *Fluke v. RFG Oil, Inc.* (LASC BC403354; class size approx. 1,400;
6 lead counsel); *Urena v. Camachos Restaurant* (LASC BC365913; class size approx. 887; lead
7 counsel); *Smith v. Rio Rancho Pontiac GMC Buick Inc.* (LASC BC391187; class size approx. 860;
8 lead counsel); *Callela v. Dolce Group* (LASC BC364711; class size approx. 600; lead counsel);
9 *Vasquez v. The Hollywood Pig n Whistle LP* (LASC BC335075; class size approx. 600; lead
10 counsel); *Goldman v. Aorta Restaurant Operating LP* (LASC BC379688; class size approx. 300;
11 lead counsel); *Sink-Crilly v. Centex Homes* (CACD CV09-2476; class size approx. 250; lead
12 counsel); *Utley v. Cranbrook Partners Inc.* (LASC BC392813; class size approx. 200; lead
13 counsel); *Garcia v. California Credits Group* (LASC BC353213; class size approx. 160; lead
14 counsel); *Afanasyev v. Miller Infiniti, Inc.* (LASC BC350788; class size approx. 160; lead
15 counsel); *Morris v. Gymboree, Inc.* (LASC BC393270; class size approx. 150; lead counsel);
16 *Ortega v. AJC Sandblasting, Inc.* (LASC BC378806; class size approx. 140; lead counsel);
17 *Lulejyan v. Jim Falk Motors of Beverly Hills, Inc.* (LASC BC398459; class size approx. 72; lead
18 counsel); *Rylko v. The Griddle Café, Inc.* (LASC BC386126; class size approx. 70; lead counsel);
19 *Healy v. Siemens IT Solutions and Services, Inc.* (Santa Clara Superior Court 108CV113479; class
20 size approx. 60; lead counsel).

21 9. For purposes of this motion, the “Class Members” or “Settlement Class” is defined
22 as “all individuals employed by Defendants at any time during the period of four years prior to the
23 filing of this lawsuit and ending on the date of preliminary approval (“the Class Period”) and who
24 have been employed as non-exempt, hourly employees at Defendants’ facilities within the State of
25 California.” The “Class Period” is **April 9, 2016** through the date that the court grants preliminary
26 approval of the Settlement. (Exhibit A, Settlement, ¶¶ 2, 7). I do not believe that I have any
27 conflicts of interest with the Class or with the Class Representative. I am not related to the Class
28 Representative. I have not previously represented Defendants in any matter. I respectfully submit

1 that I and David Yeremian & Associates, Inc., along with our co-counsel Walter Haines of United
2 Employees Law Group, are well suited to act as Class Counsel in this action, and we have and will
3 continue to vigorously represent the interests of the Class.

4 **PROCEDURAL HISTORY AND BACKGROUND**

5 10. Plaintiff was employed by Defendant Body Vision Jewelry, Inc., also referred to as
6 “BVLA,” as a jeweler making the many and varied jewelry pieces which Defendants sell to
7 customers on-line and through catalogs and studio sales. Plaintiff and the Class members were
8 employed by Defendants in non-exempt, hourly jewelry manufacturing and related and supporting
9 positions, including jewelers, gem handlers and polishers, wax injectors, and stone setters, and
10 those related to packaging and shipping.

11 11. By the PAGA Notice Letter Plaintiff submitted to the LWDA and Defendant
12 BVLA on **April 9, 2020**, Plaintiff satisfied all prerequisites to serve as a representative of the
13 general public to enforce California’s labor laws, including without limitation, the penalty
14 provisions identified under the Private Attorneys General Act, Labor Code § 2698 *et seq.*
15 (“PAGA”). Plaintiff also filed his Class Action Complaint in Los Angeles County Superior Court
16 on **April 9, 2020**, alleging claims for (1) Failure to Pay Minimum Wages; (2) Failure to Pay
17 Wages and Overtime Under Labor Code § 510; (3) Misclassification of Employees Under Labor
18 Code §§ 2750.3 and 226.8; (4) Meal Period Liability Under Labor Code § 226.7; (5) Rest-Break
19 Liability Under Labor Code § 226.7; (6) Violation of Labor Code § 226(a); (7) Violation of Labor
20 Code § 221; (8) Violation of Labor Code § 204; (9) Violation of Labor Code § 203; and (10)
21 Violation of Business & Professions Code § 17200 *et seq.*

22 12. After the parties conferred through counsel and prepared their joint statement, the
23 Court conducted its Initial Case Management Conference on August 4, 2020. The Court
24 determined to leave the stay on service of any discovery in place and to lift the stay on pleadings
25 to permit Plaintiff to file a First Amended Complaint.

26 13. The parties’ counsel then continued to confer to discuss the case and claims, and
27 exchanged their positions regarding the claims and defenses available to them. They then agreed
28 to schedule an early mediation with wage and hour class action mediator, William Kampf, Esq.,

1 and it was set for **September 17, 2020**. The parties' counsel also agreed the parties would proceed
2 with comprehensive informal discovery in advance of the mediation. In their joint statement, the
3 parties informed the Court of these efforts and agreements.

4 14. In light of their agreement to mediate, the Court granted a continuance of the
5 further status conference after setting a deadline for Plaintiff to file the motion for preliminary
6 approval. The Court has since agreed to continue its non-appearance reviews to provide the
7 parties additional time to file the present motion papers, and it is now set for **February 23, 2021**.

8 15. On **August 4, 2020**, after exhaustion of the notice period under the PAGA and after
9 the Court lifted the initial stay on pleadings, Plaintiff filed his First Amended Complaint adding an
10 eleventh cause of action under Labor Code §§ 2698 *et seq.*, the Private Attorneys General Act
11 ("PAGA") for penalties. The Court continued the initial case management conference, and then
12 further continued it at the parties' request to coincide with the hearing on the present motion.

13 16. The parties then completed their mediation with William Kampf, Esq. on
14 **September 17, 2020**, and following a full day's mediation and comprehensive informal discovery
15 exchanged in advance of mediation, the parties were able to arrive at an agreement on the general
16 terms for settling Plaintiff's class-wide and PAGA claims against Defendants. The parties
17 continued negotiation and then accepted a mediator's proposal, and the parties then entered into a
18 Memorandum of Understanding detailing the general terms of their proposed Settlement. (Exhibit
19 A, Settlement, ¶ 36). Those terms were eventually memorialized and refined and expanded upon
20 in the Settlement Agreement now before the Court for preliminary approval.

21 17. In connection with mediation and the parties' Settlement Agreement, informal
22 discovery, and numerous conferences of counsel and correspondence, the parties agreed to
23 stipulate to file a Second Amended Complaint adding BV & CO as a named Defendant. Counsel
24 for the parties will prepare their Stipulation and Plaintiff's counsel will draft the Second Amended
25 Complaint, and will file it with the Court. On February 22, 2021, Plaintiff through counsel also
26 provided the California Labor Workforce & Development Agency ("LWDA") with new or
27 amended PAGA Notice Letter adding BV & CO as an additional defendant employer.

1 18. Class Counsel will be submitting the Settlement Agreement to the LWDA
2 concurrently with the filing of this motion pursuant to Labor Code § 2699(1)(2).

3 19. Plaintiff's operative First Amended Complaint asserts that Defendants'
4 Management exerted pressure and job production demands on Plaintiff and the Class members
5 that required them to work substantially more than these scheduled hours, but Defendants failed to
6 pay them for all their hours worked. Plaintiff has also asserted Defendants failed to pay those
7 additional hours at the required overtime rate. Plaintiff has asserted derivative claims, including
8 that Defendants failed to pay all wages due and owing at termination or resignation, and provided
9 Plaintiff and the Class members with inaccurate wage statements. Plaintiff also alleges that he and
10 the Class were not provided with lawful meal and rest periods, as they were required to remain
11 under Defendants' control and were not provided with the opportunity to take full uninterrupted
12 and duty-free rest periods and meal breaks, as required by the Labor Code and the applicable
13 paragraphs of the IWC Wage Orders.

14 20. Plaintiff has more specifically alleged that Defendants implemented a company-
15 wide timekeeping policy and procedures which required Plaintiff and the Class members to utilize
16 two separate timekeeping systems for recording their hours worked. The first was a computer
17 based program and application which employees logged into and which recorded time punches for
18 work start and end times and for meal period start and end times by mouse clicks. Defendants
19 referred to this as the "Regular Hours" time clock. Even though Defendants scheduled Plaintiff
20 and the Class Members to work as close to eight hour shifts as possible without incurring
21 overtime, he asserted the work demands and production requirements placed upon them by
22 Defendants required substantially more than eight hours of work on most shifts. On such
23 occasions, Defendants required Plaintiff and the Class members to clock out of the Regular Hours
24 clock and clock into a second timekeeping system referred to as the "Overtime Clock." Plaintiff
25 alleged further that Defendants did not pay hours logged in the Overtime Clock at the correct
26 overtime rate. Plaintiff further claims that Defendants would require him and the Class members
27 to work off the clock by not counting all their hours worked or otherwise requiring them to work
28 before clocking in or after clocking out.

1 21. Plaintiff further alleged that the above described off the clock work resulted in
2 Class members incurring overtime hours before they were paid for them. Plaintiff also claims
3 Defendants would compile the hours recorded in the Overtime Clock and unlawfully and untimely
4 pay Plaintiff and the Class members only once monthly for the previous month, and Defendants
5 paid all listed and totaled hours only at the Employee's regular hourly rate without paying any
6 overtime premium. With all this in mind, Plaintiff has also asserted that Defendants misclassified
7 Plaintiff and the Employee Class members as independent contractors exempt from the overtime
8 requirements for a substantial portion of their hours worked during their work shifts, work weeks,
9 and pay periods, in violation of Labor Code §§ 2750.3 and 226.8.

10 22. Plaintiff has also asserted that when received a meal break, it was generally
11 interrupted by work demands, as Class members were required to perform work as ordered by
12 Defendants for more than five hours during a shift, but were often required to do so without
13 receiving a compliant meal break. Plaintiff also claims he would clock out for his meal period and
14 keep working because he did not want to fall behind in all his work due the production
15 requirements Defendants' managers placed upon him and other Class members. Plaintiff asserts he
16 was therefore compelled to bring in snacks to eat at his work area during breaks, and Defendant's
17 managers and management were aware of Plaintiff working off the clock during meal periods.
18 Plaintiff also asserted a similar problem occurred with rest breaks, as production requirements and
19 work demands prevented Plaintiff and the Class members from taking all authorized rest periods,
20 or required them to be untimely or interrupted or on-duty.

21 23. Finally, Plaintiff asserted claims deriving from the above alleged violations,
22 including for failure to provide accurate itemized wage statements and failure to timely pay all
23 wages and pay all wages at termination or separation, and for unfair competition and the above-
24 addressed PAGA claims. Defendants contend, among other things, that it has complied at all times
25 with all applicable laws and assert that Plaintiff and the Class Members were properly
26 compensated for all time worked, and otherwise treated at all times in compliance with all
27 applicable laws. (Exhibit A, Settlement, ¶ 38).

INVESTIGATION AND DISCOVERY

24. Before filing the lawsuit, Class Counsel investigated and researched the facts and circumstances underlying the pertinent issues and the law applicable thereto. This required thorough discussions and interviews between Class Counsel and Plaintiff, as well as preliminary research into the various legal issues involved in the case, after conducting their initial investigation. Class Counsel determined that Plaintiff's claims were well-suited for class action adjudication based on what appeared to be a common course of conduct affecting a similarly situated group of employees. (Exhibit A, Settlement, ¶¶ 35-38).

25. After filing the lawsuit and in advance of the mediation, Class Counsel conducted a thorough investigation of the facts and claims giving rise to the action, including: (1) conducting informal discovery and meeting and conferring with defense counsel about same; (2) reviewing and analyzing time and pay records as well as employment handbooks, Plaintiff's personnel file, relevant policies and other documentation; (3) interviewing class members; (4) researching the applicable law and potential defenses; (5) constructing damage models based on interpretations of California law; and (6) reviewing information provided by Defendants in advance of the mediation. (Exhibit A, Settlement, ¶ 35).

26. The Class enumerated in this action is ascertainable because the Class Members may be readily identified by reference to Defendants' records. Defendants have agreed to share the information from these records with the Settlement Administrator in order to identify and contact the Class members. Defendant's records at the time of the mediation reflected approximately 94 total Class members. This number will be confirmed and may increase following preliminary approval filing when Defendants provide the Class list to the Administrator (i.e. ILYM Group).

27. Defendants vigorously contested liability, the amount of claimed damages, and the propriety of class certification. (Exhibit A, Settlement, ¶ 38). After Class Counsel analyzed the relevant documents and other gathered data, Class Counsel believed that this case was appropriate for resolution *via* mediation. Given the high level of risk present for both sides, the parties elected to mediate Plaintiff's claims and explore the possibility of settlement. (Exhibit A, Settlement, ¶¶ 35, 37, 67).

28. Upon agreeing to schedule mediation, and leading up to their agreement, the parties conducted informal discovery and exchanged details regarding the claims and defenses and the items Plaintiff believed were required to file a motion for class certification or a motion for summary judgment for the PAGA claim and to complete a constructive and meaningful mediation. This data, along with counsel's analysis of it and conclusions drawn from it, also permitted Class counsel to objectively assess the strength and weaknesses of the PAGA and class-wide claims and to value them appropriately and realistically.

29. Defendant's counsel and Plaintiff's counsel worked together to agree on terms for informal discovery in advance of mediation. Plaintiff provided a comprehensive listing of data and items required to which Defendants responded, including by producing all relevant policy related documents and Plaintiff's personnel file and timekeeping and payroll records. Defendants' counsel also provided all the class data points and numbers required to realistically and reasonably value the class and PAGA claims.

30. This data and these documents were provided to Plaintiff's counsel by defense counsel, and the following summarizes the Class-wide data and numbers provided by Defendants which Class Counsel used to calculate potential liability exposure Defendants faced.

Employee Numbers:

- **94** total non-exempt employees
- **67** current employees
- **27** former employees

Work Weeks and Pay Periods and Average Wage Rate

- Work Week Numbers:
 - From April 9, 2019 to present, there are 2,963 workweeks, excluding those during the COVID-19 shutdown.
 - From April 9, 2017 to present, there are 7,011 workweeks, excluding those during the COVID-19 shutdown.
 - From **April 9, 2016** to present, there are **8,403** workweeks, excluding those during the COVID-19 shutdown.
 - Total Work Shifts –
 - Based on 4.5 shifts per workweek on the average and 8,403 workweeks.
 - **37,813** total work shifts estimated based on Defendant's numbers.
- Pay Periods: Biweekly pay periods (generally – see below).
 - From April 9, 2019, to the present, there are **1,514** pay periods, excluding those during the COVID-19 shutdown.
 - One sample PAGA Calc. = 1,514 pay periods x \$100/pp = \$151,400.00
- Average Hourly Wage Rate

- **\$20.70/hr** regular rate
- **\$31.05/hr** overtime rate

31. The following summarizes the key data points and numbers provided that were also used in the potential liability exposure analysis:

Work Week, Pay Periods, Hours of Operation (from Defendant's disclosures or production):

- Payday – Every other week on Friday after 4:00 p.m.
- Work Weeks and Pay Period – Bi-Weekly:
 - From April 9, 2016 to May 30, 2017, class members were paid on a weekly basis (i.e., every Thursday).
 - From May 31, 2017 forward, class members have been paid on a biweekly basis (i.e., every other Friday), except while operations were essentially shuttered due to the COVID-19 pandemic.
- From April 9, 2016 to March 18, 2020, the work week was from Tuesday to Monday.
 - During this time period, putative class members generally worked about 8 hours per day
 - From June 1, 2020 to present, the work week has been from Monday to Sunday.
 - During this time period, putative class members have generally worked 7.5 to 8 hours per day (and without any extra 30 minutes of pay as a work incentive, which ceased March 18, 2020).
 - During the statutory period from April 9, 2016 to the present, the putative class members worked on average 4 to 5 days per week, except while operations were essentially shuttered due to the COVID-19 pandemic.
- Hours of Operation: From April 9, 2016 to March 18, 2020, the hours of operation were generally Monday through Saturday, from 6:00 a.m. to 7:00 p.m.
 - From March 19, 2020 through May 31, 2020, operations were essentially shuttered due to the COVID-19 pandemic (approx. 2.5 months)
 - From June 1, 2020 to present, the hours of operation have been generally Monday through Friday, from 8:00 a.m. to 5:30 p.m.
- Therefore assume **8 hours** for average work shift.
- Therefore assume **4.5 work shifts** per week on the average.
- BVLA also provided the following key numbers for the below calculations:
 - 94 total Class members; 27 former employees
 - 8,403 workweeks in four year liability period
 - 37,813 Total Work Shifts
 - 1,514 biweekly pay periods from April 9, 2019 to the present
 - \$20.70/hr average pay rate

32. On **September 17, 2020**, the parties then completed their mediation with William Kampf, Esq., and after a full day of negotiation entered into a Memorandum of Understanding detailing the general terms of their proposed Settlement. (Exhibit A, Settlement, ¶ 36). Mr. Kampf is a respected and experienced mediator in wage and hour class actions. The mediation took place

1 only after the parties exchanged extensive informal information, documents, and data. During the
2 mediation, the parties discussed all aspects of the case, including the risks of litigation and the
3 risks to both parties of proceeding with a motion for class certification as well as the law relating
4 to meal periods and rest breaks, calculation and payment of regular and overtime rates, and off the
5 clock work. Upon completion of the mediation and formulating the general details of their class-
6 wide settlement, the parties agreed to a Memorandum of Understanding setting forth the material
7 terms of their Settlement, which were later memorialized in the Settlement Agreement now before
8 the Court for preliminary approval.

9 33. From Class Counsel's review of the facts, strengths, and weaknesses of the case, the
10 risks and delays posed by further litigation, and Class Counsel's own prior litigation experience,
11 Class Counsel believes that the recovery for each Class Member is fair and reasonable taking into
12 consideration the amounts received in other wage and hour class actions, the risks inherent in
13 litigation of this genre, and the reasonable tailoring of each class member's claim to the settlement
14 award he or she will receive. Further, and based on the settlement negotiations, which were
15 extensive and conducted in good faith and at arm's length between attorneys with substantial
16 experience litigating class actions and wage and hour cases, the Settlement Agreement was the
17 product of a non-collusive settlement process in which the parties made significant compromises in
18 the interest of reaching a full and complete settlement of the lawsuit.

19 **SUMMARY OF SETTLEMENT**

20 34. The parties have executed their Settlement Agreement attached hereto and
21 incorporated herein as **Exhibit A**. Defendants have agreed to settlement on a non-reversionary
22 basis, such that BVLA will pay the entirety of the agreed upon total settlement amount, referred to
23 as the "Gross Fund Value" and which is Two Hundred and Seventy Five Thousand Dollars
24 (\$275,000.00). The Gross Fund Value includes the Class Counsel Award. Settlement
25 Administration Costs (\$10,000.0 to ILYM Group, Inc.), payment to the Labor and Workforce
26 Development Agency ("LWDA") for the alleged PAGA penalties (i.e. \$7,500.00 out of
27 \$10,000.00 total allocated to PAGA), and the Class Representative Enhancement and Service
28 Award (\$7,500.00). The third-party administrator will also calculate the total amount of wages

1 paid to the settlement class members and will inform the parties of Defendants' share of the
2 payroll taxes, which will also be deducted from the Gross Fund Value. The remaining amount is
3 the Net Settlement Fund, from which the Administrator will pay all individual settlement
4 payments to the Settlement Class Members. (Exhibit A, Settlement, ¶¶ 15, 49(b), 49(f) through
5 49(i)).

6 35. The "Net Fund Value" is the Gross Fund Value (\$275,000.00), less Court-approved
7 Settlement Administration Costs (\$10,000.00), the Class Counsel Award (attorneys' fees not to
8 exceed 33.3% percent of the Gross Fund Value (i.e. \$91,666.67) and reasonable litigation costs
9 not to exceed \$8,000.00), the Class Representative Enhancement Award (\$7,500.00), the 75%
10 portion of the PAGA Penalties payable to the LWDA (i.e. \$7,500.00), and Defendants' share of
11 the payroll taxes. Each Class Member who fails to opt out will be entitled, provisionally, to a
12 share or shares of the Net Fund Value, which will be a fixed proportional amount of the Net Fund
13 Value per workweek. (Exhibit A, Settlement, ¶¶ 18, 49(b), 49(f) through 49(i)). The PAGA
14 allocation from the Gross Fund Value will total \$10,000.00, subject to the Court's final approval,
15 of which 75% of that amount (\$7,500.00) will be paid to the LWDA out of the Gross Fund Value,
16 and the remaining 25% (\$2,500.00) will become part of the Net Fund Value for distribution to
17 Settlement Class Members. (*Id.* at ¶ 49(i)). The remaining sum after all these deductions will
18 represent the Net Fund Value, which will be used to calculate the Individual Settlement Payments
19 that each Settlement Class Member will receive within 30 days after the Effective Date of final
20 approval of the Settlement. (*Id.* at ¶¶ 18, 49).

21 36. The "Class Members" or "Class" is defined as "all individuals employed by
22 Defendants at any time during the period of four years prior to the filing of this lawsuit and ending
23 on the date of preliminary approval ("the Class Period") and who have been employed as non-
24 exempt, hourly employees at Defendants' facilities within the State of California," and the "Class
25 Period" is **April 9, 2016** through the date that the court grants preliminary approval of the
26 Settlement. (Exhibit A, Settlement, ¶¶ 2, 7). The "Settlement Class" or "Settlement Class
27 Members" are all Class Members who have not opted out of the Class by submitting a timely
28 Request for Exclusion. (Exhibit A, Settlement, ¶¶ 32, 47(d)).

1 37. If the Court approves all requested allocations and awards above, the Net Fund
2 Value is estimated to be **\$150,333.33**. For the approximately **94** estimated Settlement Class
3 Members (if no exclusions), the average gross individual settlement payment, using a straight
4 average, is **\$1,599.29**. Any amounts not approved by the Court as a Class Representative Service
5 Award, or Class Counsel Fees and Costs, or Settlement Administration costs or for the PAGA
6 claim will be added back to the Net Fund Value to be distributed to the Settlement Class Members
7 who are Class participants. (Settlement, ¶¶ 4, 49(g)). The parties have selected ILYM Group, Inc.
8 as the Settlement Administrator. (Exhibit A, Settlement, ¶¶ 30, 31, 46, 47, 49(h); *see also* Exhibit
9 1 thereto, Class Notice).

10 38. Calculation of Individual Settlement Payments: Each Class Member who fails to
11 opt out will be entitled, provisionally, to a share or shares of the Net Fund Value, which will be a
12 fixed proportional amount of the Net Fund Value per workweek. Defendants and the Settlement
13 Administrator will calculate the total Compensable Workweeks for all Settlement Class Members.
14 The respective Compensable Workweeks for each Settlement Class Member will be divided by
15 the total Compensable Workweeks for all Settlement Class Members, resulting in the Payment
16 Ratio for each Settlement Class Member. Each Settlement Class Member's Payment Ratio is then
17 multiplied by the Net Settlement Amount to determine his or her Individual Settlement Payment.
18 Workweeks will include only those weeks an employee was actively employed as a non-exempt
19 employee with Defendants during the Class Period. Defendants' payroll records will control, but
20 Class Members will have the right to challenge their number of workweeks. The parties will work
21 together in good faith with the Settlement Administrator to resolve any disputes regarding
22 workweeks. (Exhibit A, Settlement, ¶¶ 49, 49(a)).

23 39. Each Individual Settlement Payment will be allocated 33% to wages and 67% to
24 penalties and pre-judgment interest. The Settlement Administrator will issue an IRS Form 1099 –
25 MISC to each Class Member for 67% of each Individual Settlement Payment, and a form W2 for
26 33% of each Individual Settlement Payment. (Exhibit A, Settlement, ¶ 49(b)). "Effective Date"
27 means the date the Court enters an order granting final approval and enters a Final Judgment, if no
28 objections are filed to the Settlement. If objections are filed and overruled, and no appeal is taken

1 of the final approval order, then the effective date of final approval will be sixty-five (65) days
2 after the trial court enters a Final Judgment. (Exhibit A, Settlement, ¶ 13). Individual Settlement
3 Payments will be paid from the Net Settlement Amount pursuant to the settlement formula above.
4 Individual Settlement Payments will be mailed by the Settlement Administrator within thirty (30)
5 days after the Effective Date of final approval of the Settlement. (Exhibit A, Settlement, ¶ 49).

6 40. Checks issued to Settlement Class Members pursuant to the Settlement Agreement
7 will remain negotiable for One Hundred Eighty (180) days. Any settlement checks that are not
8 claimed or not negotiated within 180 calendar days after the distribution of Individual Settlement
9 Payments to Settlement Class Members will be void and the funds not disbursed as a result, and
10 will instead be paid to the State Controller's Office Unclaimed Property Fund to be held in the
11 name of the Class Member and in accordance with the procedures set forth in Code of Civil
12 Procedure §1520. (Exhibit A, Settlement, ¶ 49(c)). The Parties agree this disposition results in no
13 "unpaid residue" under California Civil Procedure Code § 384(b), as the entire Net Fund Value
14 will be paid to Settlement Class members, whether or not all checks are cashed.

15 41. Released Claims by Settlement Class Members: Aside from those who submit a
16 valid and timely request for exclusion from the settlement, as of the Effective Date, Plaintiff and
17 each member of the Settlement Class releases the Released Parties from any and all claims, debts,
18 liabilities, demands, obligations, guarantees, costs, expenses, attorneys' fees, damages, action or
19 causes of action contingent or accrued for, arising out of the allegations and claims asserted in the
20 Complaint, including without limitation to, any and all claims for alleged unpaid wages (including
21 but not limited to minimum wage, failure to pay overtime, vacation, and final pay upon
22 termination), misclassification leading to unpaid wages and overtime, alleged unpaid meal and rest
23 break premiums, itemized wage statement penalties, waiting time penalties under the California
24 Labor Code, reimbursement of business expenses, and claims for restitution and other equitable
25 relief under Business & Professions Code (including Section 17200 *et seq.*), liquidated damages,
26 punitive damages, or penalties; and any other benefit claimed on account of the allegations
27 asserted in Complaint. This release will apply to all claims arising at any point between **April 9,**
28 **2016** and the date that the court grants preliminary approval of the class action settlement. The

1 “Released Parties” are Defendants and any parent, subsidiary, affiliate, predecessor or successor,
2 and all agents, employees, officers, directors and attorneys thereof. (Exhibit A, Settlement, ¶¶ 26-
3 27).

4 42. Plaintiff will also provide an individual general release and a Section 1542 waiver
5 specific to all his claims rather than just those articulated in the pleadings, as further detailed in the
6 Settlement Agreement. (Exhibit A, Settlement, ¶ 25).

7 43. The settlement amount was a compromise figure, factoring in the inherent risks
8 related to certification, liability and damages. However, considering all of the circumstances of the
9 action and the defenses raised by Defendants against certification, liability and damages, Class
10 Counsel believes that the settlement is fair and reasonable. (Exhibit A, Settlement, ¶¶ 35, 37, 67).
11 Notice of the Settlement Agreement will be provided to the Class Members in the form of the
12 **Class Notice** attached to the Settlement Agreement as **Exhibit 1**. (See Exhibit A, ¶ 47; and
13 Settlement Class Notice at Exhibit 1 thereto). The Class Notice includes a summary of the case
14 and settlement terms and provides Class Members with instructions on how to exclude
15 themselves, dispute the amount of pay periods, and object to the settlement. The Class Notice
16 mailed to all Settlement Class Members will advise each class member of their right to opt-out of
17 the Settlement Agreement by requesting exclusion. Any Settlement Class Member who wishes to
18 opt-out from the Settlement Agreement must submit a Request for Exclusion, in writing to the
19 Settlement Administrator postmarked no later than the Response Deadline, which is forty-five (45)
20 days from the date of mailing of the Class Notice. (Exhibit A, Settlement, ¶¶ 28, 47(d)). The
21 Settlement Agreement and Class Notice provide further details on the procedures for opting out of
22 the Settlement.

23 44. The Notice of Class Settlement will state that Class Members who wish to object to
24 the Settlement must mail to the Settlement Administrator a written statement of objection (“Notice
25 of Objection”) by the Response Deadline. The date of the postmark on the return mailing
26 envelope on the Notice of Objection will be the exclusive means used to determine whether the
27 Objection has been timely submitted. The Settlement Administrator will notify all Parties of any
28 objection within five (5) business days of receipt of the Objection. Plaintiff will file any such

1 Objection(s) with the Court in advance of the Final Approval Hearing. The Notice of Objection
2 must be signed by the Class Member and state: (1) the full name of the Class Member; (2) the
3 dates of employment of the Class Member; (3) the basis for the objection; (4) if the Class Member
4 intends to appear at the final approval hearing; and (5) any legal briefs, papers or memoranda the
5 objecting Class Member proposes to submit to the Court. Class Members who fail to make
6 objections in the manner specified above will be deemed to have waived any objections and will
7 be foreclosed from making any objections (whether by appeal or otherwise) to the Settlement.
8 Class Members who submit a timely Notice of Objection will have a right to appear at the final
9 approval hearing in order to have their objections heard by the Court. (Exhibit A, Settlement, ¶
10 47(e); *see also* Class Notice at Exhibit 1 thereto). The Settlement Agreement and Class Notice
11 provide further details on the procedures for objecting to the Settlement.

12 45. Class Members will have the opportunity, should they disagree with Defendants'
13 records regarding the dates of employment or other information on their Summary of Workweeks
14 and Estimated Payment included in the Class Notice, to provide documentation and/or an
15 explanation to show contrary information by the Response Deadline. If there is a dispute, the
16 Settlement Administrator will consult with the Parties to determine whether an adjustment is
17 warranted. The Settlement Administrator will then determine the eligibility for, and the amounts
18 of, any Individual Settlement Payments under the terms of this Agreement. The Settlement
19 Administrator's determination of the eligibility for and amount of any Individual Settlement
20 Payment will be binding upon the Class Member and the Parties. In the absence of circumstances
21 indicating fraud, manipulation or destruction, Defendants' records will be given a rebuttable
22 presumption of accuracy. (Exhibit A, Settlement, ¶ 47(b); *see also* Class Notice at Exhibit 1).

23 **STRENGTH OF PLAINTIFF'S CASE BASED ON THE SETTLEMENT AMOUNT**

24 46. Because the Class consists of numerous employees, it was unlikely that the
25 potential monetary claims of individual Class members would have proved viable without the
26 class-action mechanism. The Settlement should be approved in light of two California appellate
27 decisions: *Clark v. American Residential Services LLC* (2009) 175 Cal.App.4th 785 and *Kullar v.*
28 *Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116.

1 47. The strength of the plaintiff's case in light of the settlement amount is deemed by
2 courts to be the "most important." *Clark v. American Residential Services, LLC* (2009) 175
3 Cal.App.4th 785, 799 (citing *Kullar*). Here, Plaintiff alleges that Defendants failed to provide
4 proper meal and rest breaks or provide premium pay in lieu thereof, failed to pay all wages and
5 overtime, failed to provide accurate wage statements, failed to pay minimum wages and overtime,
6 and failed to pay all wages upon termination, all in violation of California law. Plaintiff seeks
7 related violations of California's Business & Professions Code, and penalties pursuant to Labor
8 Code § 2698 *et seq.* The merits of each of these claims will be addressed separately below.

9 **Failure to Pay Regular Wages and Overtime**

10 48. Plaintiff alleged that Defendants failed to pay all wages owed to the California
11 Class members by: (1) not paying for off the clock work Defendants required before and after shift
12 times; (2) paying regular hourly rates for hours over eight in a shift or forty in a workweek rather
13 than paying the required overtime premium rate for those hours; and (3) failed to pay all regular
14 and overtime hours worked in a pay period within the requisite time period. California Labor Code
15 § 1197 prohibits "Pay of Less Than Minimum Wage" and states, "[t]he minimum wage for
16 employees fixed by the commission is the minimum wage to be paid to employees, and the
17 payment of a less wage than the minimum so fixed is unlawful." Plaintiff further alleged that when
18 Defendants required off the clock work, Plaintiff and the Class members were not being paid for
19 all hours worked, including the time they were under Defendant's "control," such as when
20 performing pre-shift and post-shift tasks or when responding to work requirements while off the
21 clock. Generally, employees must be paid for the time they are working or are "subject to the
22 control of" an employer. *See, Morillion v. Royal Packing Co.* (2000) 22 Cal.4th 575, 582
23 ("*Morillion*"). Defendants argued that these claims were not suitable for class treatment, they did
24 not require off the clock work, they correctly calculated and paid overtime wages under California
25 law, and provided timely wage statements and pay checks to their employees.

26 49. Plaintiff estimated the Class members endured approximately 5 minutes of off the
27 clock work per work shift, including in the manner described above. From Defendants' numbers,
28 Defendants employed **94** Class members during the Class Period leading up to mediation, and they

1 worked a total of **37,813** work shifts. As addressed above, the average shift length was over 8.0
2 hours, and therefore, off the clock work must be paid at the overtime rate. The regular rate for
3 employees during this period is **\$20.70/hr** according to Defendants. Therefore, the overtime rate
4 would be **\$31.05/hr**. This resulted in the following estimated liability exposure on the wage claims
5 for failure to pay all regular and overtime wages for all hours worked: 37,813 work shifts x 5
6 min/shift x 1 hour/60 min. x \$31.05/hr = **\$97,841.14**. Plaintiff also estimated at least 2 hours of
7 overtime per week that were not paid at the correct overtime rate (i.e. the .5 hour OT premium was
8 not paid). Therefore, with 8,403 workweeks x 2 hours of unpaid overtime, there were 16,806
9 overtime hours that were paid at the regular rate which should have been paid at time and a half
10 (meaning underpayment of \$10.34 per shift, and resulted in the following calculation: 16,806 OT
11 Hours x \$10.34 per hour = **\$173,774.04**. Class counsel therefore estimated total potential liability
12 exposure on the wage claims to be \$97,841.14 + \$173,774.04 = **\$271,615.18**.

13 **Meal Periods and Rest Breaks**

14 50. Plaintiff alleged the California Class Members were required to work through their
15 meal periods, nor were they afforded the opportunity to take uninterrupted meal periods in
16 accordance with Cal. Labor Code § 512. Moreover, Plaintiff alleged that what meal periods the
17 California Class Members did receive were often for less than 30 minutes or were interrupted or
18 otherwise “on duty” due to work requirements and production demands, or were provided after
19 five hours into a work shift or not at all when work shifts extended beyond ten hours, all in
20 violation of Labor Code and applicable Wage Orders. Defendants have denied these claims and
21 contended they provided timely and duty-free meal periods, did not require work during break
22 times, and had valid waiver agreements that applied.

23 51. For each meal period allegedly missed, of less than 30 minutes, or taken late for
24 which the employee was not provided a reasonable opportunity to take a complete and timely meal
25 period, an employer must pay the employee an additional one hour of compensation. Labor Code
26 §226.7. This additional hour of compensation is referred to as “premium pay.” To comply with
27 these laws, every employer must keep, for each employee, accurate time records showing when
28 the employee begins and ends each work period and takes his or her meal periods. Plaintiff argued

Defendants failed to do so, and that they also maintained inaccurate records.

52. Plaintiff alleged that Defendants consistently failed to provide timely and uninterrupted and complete meal breaks to class members by exerting control over them and requiring them to perform work during breaks. Moreover, Plaintiff alleges that what meal periods the California Class Members did receive were often untimely, all in violation of Labor Code and applicable Wage Orders.

53. Defendants maintained that during the relevant period, Defendants regularly provided Plaintiff and other employees opportunities to take compliant meal breaks and that they maintained lawful meal break policies. Defendants also contended that differences in how the facilities were operated by their managers and due to the wide variance in the employee's shift start and shift end times would have led to individualized issues predominating that would have defeated class certification.

54. Using Defendants' numbers, and a conservative 40% violation rate (i.e. a violation on two out of every five shifts), the following calculation for estimated meal period liability resulted: 8,403 work weeks x 2 violations / week x \$20.70/violation = **\$347,884.20**.

55. As for rest periods, Plaintiff alleged Defendants' policy also did not authorize and permit the Class members to take required ten minute rest breaks during their work shift. Plaintiff argued Defendants' policies and practices and job production requirements failed to permit Plaintiff and the Class members to leave Defendants' premises during any rest periods they were able to take. Plaintiff alleged that Class members were and are under Defendants' control when they are required by policy to respond to manager demands at the expense of their breaks, and an employer cannot impose any restraints on employees not inherent in the rest period requirement itself, including preventing them from leaving the premises during breaks. Plaintiff alleged that Defendants have provided either impermissibly restricted or shortened or untimely meal and rest breaks to Plaintiff and the Class members. Defendants refuted these arguments, contending that employees were relieved of all duty during breaks, were not required to work through them to maintain production requirements, and employees were free to leave the facilities during breaks. Therefore, Plaintiff again utilized a 40% violation rate for a violation on two out of every five

1 shifts.

2 56. From the data and numbers provided by Defendant, and using the 40% violation
3 rate for rest periods, a similar calculation results as for the meal periods as follows: 8,403 work
4 weeks x 2 violations / week x \$20.70/violation = **\$347,884.20**.

5 **Inaccurate Wage Statement Violations**

6 57. Under Labor Code § 226(a), Plaintiff and the Class are entitled to recover \$50 for
7 initial violations for inaccurate wage statements and \$100 for subsequent violations, up to a
8 maximum of \$4,000 per employee. Plaintiff alleged Defendants issued wage statements to
9 Plaintiff and the Class members that did not accurately list all hours worked by omitting off the
10 clock work and inaccurately listing applicable hourly rates, including for Defendants' alleged
11 failure to pay for all hours worked or to pay overtime premiums for overtime hours. Plaintiff also
12 argued that Defendants failed to timely pay and provide wage statements to Plaintiff and the Class
13 members by paying certain overtime hours in subsequent pay periods under Labor Code § 204.

14 58. Defendants challenged Plaintiff's claim for Labor Code § 226(e) penalties,
15 including by arguing they were merely derivative of the other claims that lacked merit, and
16 Plaintiff's failure to prove the underlying claims could result in the dismissal of these derivative
17 claims. Defendants also argued that it did not knowingly and intentionally commit these alleged
18 violations. *See, e.g.,* Labor Code § 226(e) (recovery of penalties requires showing there was "a
19 knowing and intentional failure by an employer").

20 59. From Defendants' numbers, the Class members in the one year SOL for Section
21 226 claims worked a total of **1,514** pay periods, and the following calculation resulted: The 226
22 penalty was calculated by first using the number of pay periods in the 1-year SOL (1,514).
23 Defendants argued there were no "subsequent" violations because it was not on notice of the
24 initial violations, and Plaintiff therefore calculated Section 226 exposure by presuming there were
25 no subsequent violations. From there, Plaintiff's calculation was \$50 each wage statement issued,
26 i.e. (1,514 pay periods x \$50/pay period) for a total of **\$75,700.00**.

27 **Failure to Pay Final Wages at Termination or Separation**

28 60. In allegedly failing to pay the Class Members their minimum wages, overtime

1 premium wages, and premium pay for deficiently provided meal periods and rest breaks, all
2 discussed above, Plaintiff alleged that Defendants willfully failed to pay these the California Class
3 Members all wages due and certain at the time of termination or within seventy-two (72) hours of
4 resignation, as required under Labor Code § 203.

5 61. Section 203 further provides that if an employer willfully fails to pay an employee
6 all wages due at termination or within 72 hours of resignation, then that employee's wages will
7 continue as a penalty until paid for a period of up to thirty (30) days from the date they were due.
8 Because class members stopped working for Defendants, but allegedly were not paid their full
9 compensation for the reasons discussed above, Plaintiff alleged that Class members did not
10 receive all wages due upon termination of employment.

11 62. Defendant challenged this claim under Labor Code § 203 with several arguments,
12 including that under Labor Code § 203, employers are only obligated to pay waiting-time penalties
13 if they "willfully" fail to pay wages due and owing at the time of termination or resignation. As
14 Title 8, California Code of Regulations, § 13520 states: "A willful failure to pay wages within the
15 meaning of Labor Code Section 203 occurs when an employer intentionally fails to pay wages to
16 an employee when those wages are due. However, a good faith dispute that any wages are due will
17 preclude imposition of waiting time penalties under Section 203." Defendants argued that good
18 faith disputes and lack of willfulness would excuse any violations. Defendants maintained that
19 because they had viable defenses in both law and fact, waiting-time penalties could not be
20 awarded and, in any case, such penalties were subject to a three-year limitations period under
21 Labor Code § 203(b). Defendants also argued that there is no liability under Labor Code § 203 for
22 violations of meal and rest break requirements alone.

23 63. For the employees who departed from Defendants' employment during the relevant
24 time period, Plaintiff alleged that Defendants have failed to provide all wages due to those
25 employees at the time of their termination or resignation. Therefore, Class Counsel argued
26 waiting-time penalties were triggered and employees are entitled to 30 days of wages at their
27 regular rates of pay. Defendants disclosed 27 total class members whose employment ended in the
28 three-year SOL for Section 203 claims at the time of mediation. Counsel also presumed the Class

members worked 8 hour shifts for calculation purposes. The average regular hourly rate was \$20.70/hr, and the following calculation resulted. The 203 penalty was calculated by multiplying the number of terminated employees in the 3-year SOL by 30 days and by the average daily hours and by the average rate of pay as follows: 27 former employees x 30 days x 8 hours/day x \$20.70/hr = **\$134,136.00**.

PAGA Penalties

64. The Labor Code Private Attorneys General Act, Labor Code § 2698 *et seq.*, allows Plaintiff to obtain civil penalties on behalf of himself and other aggrieved employees for Defendant's violation of any provision of the Labor Code enumerated under Labor Code § 2699.5. Where civil penalties are provided in the statute, those civil penalties are recoverable; where no civil penalties are recoverable, Labor Code § 2699(f) establishes civil penalties of one (\$100) for each aggrieved employee per pay period for the initial violation and two hundred dollars (\$200) for each aggrieved employee per pay period for each subsequent violation. Pursuant to Labor Code § 2699(i), seventy-five (75) percent of the penalties recovered must be allocated to the Labor and Workforce Development Agency (LWDA), with the remaining twenty-five (25) percent allocated to the affected employees. The limitations period as for all penalties is one year prior to the filing of the complaint.

65. The provisions of the Labor Code potentially triggering PAGA penalties in this case include but are not limited to Labor Code §§ 203, 226(a), 226.3, 226.7, 510, and 1194. PAGA penalties are not mandatory, and are instead permissive. Labor Code § 2699(e)(2) states that "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 Thurman v. Bayshore* (2012) 203 Cal. App. 4th 1112 (substantially reducing PAGA penalties by 30% under this provision). *Defendants* contested Plaintiff's claim for PAGA penalties.

66. PAGA penalties are also derivative of each and every other claim, and Defendants argued the PAGA claims would be subject to the same defenses as the underlying claims, and as well as additional equitable defenses, including substantial compliance. Finally, under *Amaral v.*

1 *Cintas Corp.* (2008) 163 Cal.App.4th 1157, Defendants asserted that penalties under PAGA could,
2 at best, be awarded only at the rates obtainable for initial violations under the applicable statutes,
3 because Defendants had never been notified of the alleged violations. *Id.* at 1208-1209. Class
4 counsel therefore calculated a representative PAGA penalty calculation for each type of violation
5 as follows: 1,514 pay periods x \$100/pay period = **\$151,400.00** per violation.

6 67. However, Class Counsel also estimated any PAGA recovery would be substantially
7 reduced, and applied discounts in light of the countervailing arguments with regard to the other
8 causes of action, and the Court's power to award "a lesser amount than the maximum civil
9 liability." The preference of the parties and counsel was to allocate more of the Net Settlement
10 Fund to the employees in the Class so that they would receive greater payments, and such
11 considerations and the policy of preventing double recovery or overly punitive awards, led counsel
12 to suggest a reasonable allocation. The PAGA allocation agreed upon by the parties therefore is
13 **\$10,000.00**, subject to the Court's final approval, of which 75% of that amount (\$7,500.00) will be
14 paid to the LWDA out of the Total Settlement Amount, and the remaining 25% (\$2,500.00) will
15 become part of the Net Settlement Amount for distribution to participating Settlement Class
16 Members. (Exhibit A, Settlement, ¶ 49(i)).

17 **Unfair Business Practices**

18 68. Plaintiff pled this cause of action in order to augment his other causes of action and
19 aid in their prosecution. Business & Professions Code § 17208 extends the statute of limitations on
20 Plaintiff's wage claims, which qualify as unfair business practices, to four years rather than the
21 three years provided by statute.

22 **Summary**

23 69. The foregoing discussion establishes why the settlement amount is adequate in light
24 of the merits of Plaintiff's case. It does so by explaining the legal basis for each of Plaintiff's
25 causes of action, summarizing the evidence that Class Counsel gathered in support of those causes
26 of action, and relating to Defendants' legal and factual arguments that worked to detract from the
27 strength of Plaintiff's case.

1 70. Class Counsel had to apply appropriate discounts in light of the facts and law as
2 discussed above. In addition, meal period liability exposure is limited by the fact that not all class
3 members worked on the same schedule and under the same supervisors making the certification of
4 all class members across all locations less than a certainty. Additionally, the rest break exposure is
5 limited by the fact there are no records of rest breaks taken by class members so all evidence
6 would have to be testimonial. This settlement, like most others, was the product of compromise.

7 71. In light of the above described risks, and those inherent in any contested litigation,
8 a gross recovery of **\$275,000.00** under the Settlement Agreement is an excellent result. If the
9 Court approves all requested allocations and awards above, the Net Fund Value is estimated to be
10 **\$150,333.33**. For the approximately 94 estimated Settlement Class Members (if no exclusions),
11 the average gross individual settlement payment, using a straight average, is **\$1,599.29**.
12 Additionally, by summarizing the potential liability exposure numbers estimated for Plaintiff's
13 main claims as addressed above, Class Counsel estimated **\$1,348,619.58** in potential liability
14 exposure to Defendants for Plaintiff's main claims for damages and penalties.

15 72. The Gross Fund Value of **\$275,000.00** therefore represents a recovery for the Class
16 members of approximately **20.39%** of the total maximum liability exposure (**\$1,348,619.58**)
17 Plaintiff estimated Defendants could face on the main class-wide claims. Plaintiff and Class
18 Counsel submits this is an excellent result in the face of uncertainty and the prospects of protracted
19 and contested litigation through class certification, summary judgment, and trial, and this is
20 especially true in light of the Court closures and operational challenges employers such as
21 Defendants faced in the wake of the present coronavirus pandemic.

22 **THE RISK, EXPENSE, AND LIKELY DURATION OF FURTHER LITIGATION,**
23 **RISK OF MAINTAINING CLASS ACTION STATUS THROUGH TRIAL**

24 73. The next *Clark/Kullar* factors recognize that settlements take into consideration the
25 risks and expenses posed by further litigation and, in the class-action context, the risk of non-
26 certification. Consequently, it is proper that trial courts should keep these considerations in mind
27 when judging the adequacy of class action settlements.

1 74. Further litigation of this case posed real risks for a number of reasons. First, there
2 were the risks of unfavorable rulings on the merits of the various indeterminate legal issues
3 outlined in the previous section. Each of Plaintiff's causes of action was subject to some unique
4 indeterminacy, and the derivative causes of action were doubly indeterminate on their own and
5 based on the claims from which they derive.

6 75. The parties disputed the effect of these and other issues on class certification and
7 decertification. Class Counsel maintained that there were several legal and factual questions at
8 issue in the case that could best be decided on a class wide basis. Plaintiff contended that the same
9 policies and practices applied to all class members and therefore common questions were likely to
10 predominate over individual inquiries, especially regarding off the clock work and meal and rest
11 break claims founded upon a control argument. Defendants disputed these contentions and argued
12 that individualized issues would predominate in the putative class to preclude certification.
13 Defendants also argued that their policies were compliant with the law. Plaintiff disputed that
14 argument, asserting that the lawfulness of such policies give rise to common questions amenable
15 to certification. These disputes weighed in favor of entering into this Settlement.

16 76. Finally, it is always preferable to reach a relatively early resolution of a dispute that
17 saves time and money that would otherwise go towards continuing contested litigation. If this case
18 ended up settling after further litigation, the settlement amount would have to account for the
19 additional costs incurred, and there likely would be less amounts available for Class members
20 when a settlement was finalized. This is not just an abstract contention. The parties were moving
21 into the phase of this litigation where they would have had to depose managers, supervisors, and
22 employees in order to establish class certification and then liability for trial. Continued calling to
23 Class members and gathering of Declarations would have continued in earnest. Potentially, there
24 would have been discovery disputes. The parties were also aware that a class action trial would be
25 a complicated and expensive proceeding, as well as the likelihood of a long, drawn-out appeal
26 process. The settlement provides real and tangible benefits for Class members in the immediate
27 future. In fact, the estimated average recovery for the Settlement Class members in this action is
28 over **\$1,500.00**. The benefits of this Settlement are not insignificant for anyone, especially given

1 the current economic climate. Consequently, the risk and expense of further litigation outweighed
2 the potential benefit that might have otherwise been gained.

3 **NOTICE TO AND REACTION OF CLASS MEMBERS**

4 **TO THE PROPOSED SETTLEMENT**

5 77. It is premature to address this factor now, at the preliminary approval stage, but
6 some observations are in order. First, the notification procedure set out in the Settlement
7 Agreement (at Exhibit A) provides the greatest likelihood that each and every class member will
8 receive the Class Notice (the “Notice”), attached to the Settlement as Exhibit 1. Under the
9 Settlement, the Settlement Administrator (ILYM Group, Inc.) will send the Class Notice to each
10 class member via First Class U.S. mail. (Exhibit A, Settlement, ¶¶ 46-47). If any Notice Packets
11 are returned undeliverable, the Settlement Administrator will forward them to any address
12 appearing on the returned envelope or, if there is no forwarding address, perform a skip trace
13 before mailing them to any addresses thereby identified. (*Id.* at ¶ 47(a)). This is the best and most
14 practicable way to ensure the greatest possible number of class members will receive the Notice.

15 78. The Class Notice itself fully apprises class members of the nature of the lawsuit,
16 the claims involved, the terms of the settlement, and their options thereunder. It provides for a
17 specific procedure to seek exclusion from the Class, and for lodging objections to the settlement or
18 challenging work weeks. (Exhibit A, Settlement, ¶¶ 47(b), 47(d)-(e); Exhibit 1, Class Notice). In
19 the Class Notice, Class members will also receive Class Counsel’s contact information, so they
20 can speak to attorneys conversant with the legal and factual issues involved in this case, as well as
21 the contact information for the Settlement Administrator. The efforts taken to ensure that Class
22 members receive the Class Notice and are well informed about the settlement are reasonable and
23 the best notice practicable under the facts.

24 79. If a class member disputes the number of workweeks stated for that Class member
25 in the Class Notice, the Class member may ask the Settlement Administrator to resolve the matter
26 by submitting the pay periods that the Class member claims to have actually worked for
27 Defendants during the Class Period. (Exhibit A, Settlement, ¶ 47(b)). The Class member is able to
28 submit all supporting documentation he or she has. Defendants’ records will have a rebuttable

1 presumption of correctness. After consultation with Class Counsel and Defendants' Counsel and
2 providing time for a response from them, the Settlement Administrator will make a determination
3 of the class member's individual work weeks during the applicable period, and if the parties do not
4 agree, they can turn to the Court for assistance in resolving any disagreement. (*Id.*).

5 **CONCLUSION AS TO THE CLARK/KULLAR ANALYSIS**

6 80. The foregoing discussion establishes the fairness of the class-action settlement in
7 the instant case, including by analyzing it in light of the *Clark* and *Kullar* decisions. This analysis
8 compels a conclusion that the settlement is fair, reasonable, and adequate. Class Counsel
9 conducted a thorough investigation of the subject wage-and-hour practices and engaged in non-
10 collusive, arm's-length negotiations in order to reach a settlement. Defendants have agreed to pay
11 fair value to settle Plaintiff's claims given the existence of legal uncertainty. From Class Counsel's
12 substantial experience with wage-and-hour class action lawsuits, Class Counsel believes that this
13 case could not have settled on better terms under the circumstances. Request therefore is made that
14 the Settlement be granted preliminary approval so that those persons whom it was intended to
15 benefit will be afforded the opportunity to determine its adequacy for themselves. (Exhibit A,
16 Settlement, ¶¶ 37, 67).

17 **REQUEST FOR ATTORNEYS' FEES**

18 81. Under the Settlement, Class Counsel also requests, without opposition from
19 Defendants, an award of attorneys' fees and costs and expenses incurred in connection with the
20 prosecution of this action, and all of the work remaining to be performed by Class Counsel in
21 documenting the Settlement, securing Court approval of the Settlement, carrying out their duties to
22 see that the Settlement is fairly administered and implemented, and obtaining dismissal of the
23 Lawsuit, in an amount not to exceed 33.3% of the Gross Fund Value (i.e. up to **\$91,666.67**), and
24 for an award of reasonable costs and expenses in an amount not to exceed **\$8,000.00**, subject to
25 approval by the Court. (Exhibit A, Settlement, ¶ 49(g)).

26 82. This request is fair, reasonable, and adequate to compensate Class Counsel for the
27 substantial work they have put into this case and, moreover, the risk they assumed by taking it in
28 the first place. The attorneys' fees award is intended to reimburse Class Counsel for all

1 uncompensated work that they have already done and for all the work they will continue to do in
2 carrying out and overseeing the notification to class members, communicating with class members
3 regarding their claims, and assisting in the administration of the settlement if it is preliminarily
4 approved.

5 83. My firm took this case on a contingent-fee basis against a business represented by a
6 reputable defense firm. When we take contingent cases, we must pay careful attention to the
7 economics involved or one bad case can destroy years of work. Accordingly, when we take
8 contingency cases, we anticipate that we will, if successful, receive a fee that exceeds our normal
9 hourly rate; otherwise, the risk is often too great to bear. Even when we work long hours, the
10 number of hours in a day is limited. Because of this, when we take on one particular matter, we are
11 unable to take on all of the other matters we would otherwise be able to undertake. When Class
12 Counsel became involved in this case, we realized the time commitment that it would entail and
13 we were forced to turn down matters that we otherwise should have been able to handle. In sum,
14 this case claimed a significant portion of Class Counsel's time and attention throughout its
15 pendency.

16 84. The requested fees are reasonable for the services provided to Class Members and
17 for the benefits they are to receive. Indeed, even with a requested multiplier under the lodestar
18 theory, Class Counsel's fees will still be justified. Class Counsel will more fully brief the Court on
19 its lodestar in the motion for final approval, but it is anticipated that no multiplier will be required.
20 My hourly rate, approved before other Courts, has been \$700 per hour starting in 2020. Alvin B.
21 Lindsay is our firm's senior counsel, and his hourly rate has also been \$700 starting in 2020.
22 These rates have now also been approved in several matters. Co-counsel Walter Haines, Esq. is an
23 extremely well-respected wage and hour class action litigator, and has been practicing for many
24 years, and will also provide a supporting declaration in support of final approval and our fees and
25 costs. Our firm attorneys, paralegals, and staff have incurred substantial hours in prosecuting this
26 action, and a modest lodestar multiplier will be fully justified in connection with final approval.
27 With the additional hours we will incur in taking this action through preliminary approval, claims
28 administration, and final approval, and the time invested by other firm employees, an award of full

attorneys' fees requested of **\$91,666.67** is fair and reasonable, subject to further documentation and discussion in connection with final approval.

85. Class Counsel's Costs/Expenses reimbursement request at final approval will not exceed eight thousand dollars (**\$8,000.00**). (Exhibit A, Settlement, ¶ 49(g)). Counsel will provide a detailed invoice of its costs at final approval, and will request only reimbursement of reasonably incurred and documented costs specific to litigating this action. Any amounts not approved by the Court as Attorneys' Fees and Costs will be added back to the Net Fund Value to be distributed to the Class Members who do not opt-out. (Settlement, ¶¶ 4, 49(g)). Through the filing of this motion, Class Counsel has incurred approximately **\$7,500.00** in litigation costs. While Class Counsel will incur additional costs in taking this action through administration, final approval, disbursement, and post-distribution accounting, the total will likely not exceed the **\$8,000.00** requested, but any difference will increase the Net Fund Value and the payments to the Settlement Class Members accordingly.

ENHANCEMENT TO PLAINTIFF AS THE CLASS REPRESENTATIVE

86. Plaintiff herein is entitled to a reasonable service payment for his efforts and initiative in bringing and helping to prosecute this action. Plaintiff spent a considerable amount of time better apprising himself of his rights, deciding whether remedial action should be taken, how it should be taken, searching for attorneys, and finally contacting Class Counsel, who spent many hours with Plaintiff discussing the case and the law. In the end, Plaintiff decided to vindicate not only his own rights but also those of his co-workers by filing a class action lawsuit.

87. Subject to Court approval and in exchange for an individual general release and his efforts in brining and prosecuting the class claims, and in addition to his Individual Settlement Payment as a member of the Settlement Class, Plaintiff will request in connection with final approval and without opposition from Defendants, a Class Representative Enhancement and Service Award of up to **\$7,500.00** (Exhibit A, Settlement, ¶ 49(f)). Plaintiff will also provide a Declaration in support of the motion for final approval of the Settlement and the award of his enhancement in connection the motion for final approval, as will counsel.

1 88. By suing Defendants, Plaintiff increased his risk of retaliation by not only
2 prospective employers, but also from Defendants. Plaintiff's lawsuit has now required Defendants
3 to expend considerable resources and has gained notoriety in the community and amongst
4 Plaintiff's co-workers, and Plaintiff justifiably fears the fact that he served as a class representative
5 in a wage and hour class action will not be lost on a prospective employer who has to choose
6 between an applicant who has never sued a prior employer and one who has. Plaintiff contends
7 this risk is particularly real in the information age, where employers can, more easily than ever,
8 perform background checks of prospective employees, sometimes with the stroke of a key.

9 89. But Plaintiff did not allow his fears of the potential repercussions of being class
10 representative deter him from acting for the benefit of Class Members. To the contrary, Plaintiff
11 has been intimately involved in this case since its inception. He has devoted a substantial amount
12 of time to helping Class Counsel effectively develop and prosecute this action at every stage of the
13 litigation. Both before and after the filing of this lawsuit, Plaintiff conferred with Class Counsel on
14 numerous occasions to discuss every aspect of this case. Plaintiff provided Class Counsel with
15 information about Defendants and about the industry generally, reviewed documents, identified
16 witnesses, responded to many inquiries from fellow Class members about the case and its status,
17 consulted Class Counsel throughout the litigation at length, responded to informal discovery
18 inquiries and produced documents, participated in the mediation process, monitored the progress
19 of the litigation with Class Counsel, and reviewed and signed the Settlement Agreement.

20 90. Plaintiff has spent a significant amount of time with Class Counsel detailing his
21 knowledge of Defendants' practices and helping Class Counsel with the prosecution of this action
22 and the identification of potential witnesses. Class Counsel and Plaintiff submit he has diligently,
23 adequately, and fairly represented the Class Members, and has not placed his interests above any
24 member of the putative Class. The payment to Plaintiff is intended to recognize his time and effort
25 on behalf of the Class. The amount requested is fair and appropriate based on his contribution and
26 involvement. For example, Plaintiff instigated the Lawsuit by bringing these violations to the
27 attention of Class Counsel. He spent several hours answering questions and providing information
28 to Class Counsel throughout the pendency of this action, and answered inquiries from Class

1 members about the case. He identified witnesses, explained to Class Counsel day to day business
2 practices of Defendants with regard to work schedules and off the clock work and overtime
3 payments and meal and rest breaks, etc. The parties agree that Plaintiff is entitled to an
4 enhancement for his time and effort in this matter. This sort of payment to a class representative
5 has been a common feature of settlements negotiated by Class Counsel and has been routinely
6 approved by trial courts. This is especially true when the Plaintiff and Class Representative is also
7 providing a general release broader than that of the Class members.

8 91. In light of the foregoing, Plaintiff and Class Counsel believe that the Representative
9 Enhancement and Service Award in the amount of **\$7,500.00** is fair and reasonable. This amount
10 is a far cry from the \$50,000 of enhancement awards to the two named plaintiffs approved by the
11 trial court in *Clark*. See *Clark, supra*, 175 Cal.App.4th at 807. Although Class Counsel appreciate
12 that the Court has a duty to ensure that class representatives are not overcompensated at the
13 expense of the Class, modest incentive awards in employment class actions, such as the one here,
14 are necessary not only to compensate class representatives for the time they spend in the case, but
15 also, and more importantly, to encourage aggrieved employees to challenge questionable
16 employment practices notwithstanding the very real consequences they may face. The requested
17 enhancement is only 2.7 percent of the Gross Fund Value.

18 **CRITERIA SATISFIED FOR CERTIFICATION OF SETTLEMENT CLASS**

19 92. Plaintiff alleges that the proposed Class satisfy the criteria for certification of a
20 settlement class under California law, as embodied in California Code of Civil Procedure § 382.
21 Defendants have agreed to the conditional certification of the class for settlement purposes only.
22 Defendants do not concede that certification is appropriate outside of this Settlement and preserves
23 all rights to oppose certification if, for any reason, the settlement does not become effective.
24 (Exhibit A, Settlement Agreement, ¶ 42). In general, courts may take a proposed settlement into
25 account in evaluating the propriety of class certification. See *Dunk v. Ford Motor Co.* (1996) 48
26 Cal.App.4th 1794, 1807 fn. 19. Indeed, a “lesser standard” of scrutiny applies in certifying classes
27 for settlement purposes. *Id.* Therefore the Court should take into consideration the fact that the
28 parties have settled their claims and stipulated to certification for settlement purposes when

1 assessing whether the Settlement is fair and reasonable.

2 93. Numerosity. The putative Class is so numerous that joinder of all members is
3 impractical. Class members are all current and former non-exempt employees of Defendants and
4 Defendants' records establish at least 94 Class Members. Thus, there are a sufficient number of
5 Class Members to warrant conditionally certifying these proceedings as a class action for
6 settlement purposes.

7 94. Ascertainability. Plaintiff alleges that the putative Class is defined in a manner that
8 is precise, objective, and ascertainable. The approximately 94 Class Members have already been
9 identified by reference to Defendant's payroll and personnel records.

10 95. Typicality. A class representative's claims are typical when they arise from the
11 same event, practice, or course of conduct that gives rise to the claims of other putative class
12 members, and if their claims rest on the same legal theories. The class representative's claims
13 must be "typical" but not necessarily identical to the claims of other class members. It is sufficient
14 that the representative is similarly situated so that he or she will have the motive to litigate on
15 behalf of all class members. *Classen v. Weller* (1983) 145 Cal.App.3d 27, 47; *B.W.I. Custom*
16 *Kitchens v. Owens-Illinois, Inc.* (1987) 191 Cal.App.3d 1341, 1347 ("[I]t has never been the law in
17 California that the class representative must have identical interests with the class members."). It is
18 unnecessary that class representative has personally incurred all of the damages suffered by each
19 of the other class members. *Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 228.

20 96. Plaintiff alleges that his claims are typical of class members' claims because they
21 arose from the same factual basis and are based on the same legal theories. Plaintiff was employed
22 by Defendants during the Class Period subject to the allegedly unlawful meal and rest policies and
23 pay practices at issue in this litigation. Accordingly, Plaintiff is a member of the Class. The central
24 issues of this litigation (whether Defendants failed to provide meal periods and rest breaks,
25 whether off the clock work was required, whether Defendants paid employees for time under its
26 control or calculated overtime correctly, etc.), which would arise if this were an individual action
27 brought by Plaintiff, apply to the other Class members as well, and the answers to these questions
28 would determine Defendants' liability as to the entire putative Class. Plaintiff alleges that his

1 claims are typical of the claims of the putative Class, and that the typicality requirement is
2 satisfied.

3 97. Adequacy. A class representative must possess the same interest and suffer the
4 same injury as the class members. “To assure ‘adequate’ representation, the class representative’s
5 personal claim must not be inconsistent with the claims of other members of the class.” *J.P.*
6 *Morgan & Co., Inc. v. Sup.Ct. (Heliotrope General, Inc.)* (2003) 113 Cal.App.4th 195, 212. Thus,
7 the adequacy requirement is satisfied when the class representative’s interests are not antagonistic
8 to those of the class. *McGhee v. Crocker-Citizens Nat. Bank* (1976) 60 Cal.App.3d 442, 451.

9 98. Plaintiff has no conflicts with the Class and his interests are aligned with those of
10 the Class. Plaintiff alleges that his claims are identical to those that would be asserted by the
11 unnamed Class Members. Plaintiff alleges that he has every interest in zealously representing the
12 unnamed Class members. Plaintiff has not shrunk from this responsibility. Indeed, Plaintiff has
13 devoted a substantial amount of time and energy to litigating this action and effecting a settlement.
14 Furthermore, as detailed above, Class Counsel are experienced in wage-and-hour litigation,
15 especially class actions, and have zealously represented the interests of the class in litigating this
16 case. *See supra*, ¶¶ 3-9; *see also* Declaration of Alvin B. Lindsay, filed concurrently herewith.
17 Accordingly, the adequacy requirement is satisfied.

18 99. Commonality. Plaintiff alleges that common questions of law or fact in this case
19 predominate over individual questions. This action involves, *inter alia*, a determination about
20 Defendants’ alleged failure to provide meal and rest periods, failure to pay all wages due to
21 allegedly common and unlawful policies, the resulting failure to pay final wages when required,
22 the failure to provide accurate paystubs, and largely derivative claims under the Business &
23 Professions Code and PAGA. Plaintiff contends these practices, including an alleged practice of
24 failing to provide complete meal and rest periods, related meal and rest period policies applicable
25 to the class, an alleged systemic policy of off the clock work, and the alleged failure to provide
26 corresponding premium and overtime payments, that affected Class members in the same way. All
27 Class members were employed during the Class Period. Plaintiff alleges that the operative
28 complaint delineates a common course of conduct applicable to all Class members. Therefore,

1 based on Class Counsel's investigation, the review of the discovery produced by Defendants, and
2 their discussions with Plaintiff, Plaintiff contends the evidence supports his position that the
3 employment practices and policies of Defendants were consistent and uniform.

4 100. Predominance. Plaintiff alleges that individualized issues do not predominate over
5 the issues of law and fact that are common to the Class as a whole. Plaintiff alleges that the
6 principal issues in controversy are whether Class Members were paid for all hours worked and
7 provided meal and rest breaks. As explained, *supra*, Plaintiff alleges there are common issues of
8 law and fact given that Plaintiff and all Class Members were subjected to the same policies and
9 pay practices during the relevant time period. Plaintiff and Class Members seek meal and rest
10 premiums, unpaid wages and overtime, and penalties for work performed as non-exempt
11 employees for Defendants. Plaintiff alleges that these issues are suitable for common adjudication
12 because all Class Members were allegedly subject to the same employment policies and Plaintiff
13 contends the practices applied uniformly to all Class Members.

14 101. Superiority. Plaintiff alleges that class resolution is superior to other available
15 methods for the fair and efficient adjudication of the controversy. Plaintiff alleges that there is
16 little interest or incentive for Class Members to individually control the prosecution of separate
17 actions. Although the alleged injury resulting from Defendants' policies and practices are
18 allegedly real and significant, the cost of individually litigating each such case against Defendants
19 would easily exceed the value of any relief that could be obtained by any one Class member
20 individually. If Class members are forced to litigate their claims individually this would result in
21 almost 90 individual actions against Defendants. Here, the alternative methods of resolution are
22 individual suits for relatively small amounts. Hence, an individual suit would prove uneconomical
23 for potential plaintiffs because litigation costs would dwarf a potential recovery.

24 102. Except for Plaintiff's case before this Court, Plaintiff is unaware of any other
25 actions by Class Members against Defendants asserting similar claims as here. Furthermore, Los
26 Angeles County is an appropriate forum for this action given that Defendants employed and
27 employs certain of the Class members at facilities here.

28

103. Plaintiff alleges that there are no serious manageability difficulties presented by preliminarily approving the case for settlement purposes. As this case will not go to trial if finally approved, all that would remain is claims administration and responding to possible objectors. Class Counsel respectfully submits the Settlement is within the range of reasonableness to justify granting it preliminary approval so the parties can proceed with the sending the Class Notice and administering the Settlement.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed this 23rd day of February 2021, at Glendale, California.

David Yermian

EXHIBIT A

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15 Attorneys for Defendant BODY VISION JEWELRY, INC.

16 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

17 **FOR THE COUNTY OF LOS ANGELES**

18 HAROUTYOUN KIOUDJIAN, an individual,
on behalf of himself and others similarly
19 situated,

20 Plaintiff,

21 vs.

22 BODY VISION JEWELRY, INC., a California
corporation; and DOES 1 through 50, inclusive,

23 Defendants.
24
25
26

Case No.: 20STCV13964

CLASS ACTION

Assigned for All Purposes To:

Judge Ann I. Jones

Dept. 11, Spring Street Courthouse

**CLASS AND PAGA ACTION
SETTLEMENT AGREEMENT AND
RELEASE**

Complaint Filed: April 9, 2020

First Amended Complaint: August 4, 2020

Trial Date: None set.

1 This Class and PAGA Action Settlement Agreement and Release (“Settlement
2 Agreement”) is entered into by and between Plaintiff HAROUTYOUN KIOUDJIAN (hereinafter
3 “Plaintiff”), on behalf of himself and all other similarly situated Settlement Class Members, and
4 Defendants BODY VISION JEWELRY, INC. and DOE 1, which shall be identified as BV & CO
5 (collectively “Defendants”). Subject to the approval of the Court, this Action is hereby being
6 settled pursuant to the terms and conditions set forth in this Settlement Agreement. Plaintiff will
7 file approval documents asking the Court to make and enter judgment, subject to the continuing
8 jurisdiction of the Court as set forth below, and subject to the definitions, recitals, and terms set
9 forth herein which by this reference become an integral part of this Agreement. This Settlement
10 Agreement shall be binding and supplant any and all prior versions of agreements entered into by
11 Plaintiff and Defendants.

12 **DEFINITIONS**

13 1. “Action” means the above captioned action entitled *Kioudjian, et al. v. Body Vision*
14 *Jewelry, Inc., et al.*, Superior Court of the State of California for the County of Los Angeles, Case
15 No. 20STCV13964.

16 2. “Class” or “Class Members” means all individuals employed by Defendants at any
17 time during the period of four years prior to the filing of this lawsuit and ending on the date of
18 preliminary approval (“the Class Period”) and who have been employed as non-exempt, hourly
19 employees at Defendants’ facilities within the State of California.

20 3. “Class Counsel” means David Yeremian & Associates, Inc., and David Yeremian
21 and Alvin B. Lindsay, and United Employees Law Group, PC, and Walter Haines.

22 4. “Class Counsel Award” or “Class Counsel Fees and Costs” means attorneys’ fees
23 for Class Counsel’s litigation and resolution of this Action, and Class Counsel’s expenses and
24 costs incurred in connection with this Action. Class Counsel will request that the Court approve
25 an award of attorneys’ fees in an amount not to exceed 33.3% percent of the Gross Fund Value
26 (i.e. \$91,666.67), as well as actual reasonable litigation costs in an amount not to exceed Eight
27 Thousand Dollars (\$8,000.00) to be confirmed by Plaintiff’s Counsel in connection with final
28 approval. Defendants will not oppose these requests. Class Counsel’s attorneys’ fees and costs

1 will be paid out of the Gross Fund Value. To the extent that the Court approves less than the
2 amount of attorneys' fees or costs that Class Counsel requests, the difference between the
3 requested and awarded amounts will be added to the Net Fund Value for distribution to the
4 Settlement Class.

5 5. "Class Information" means information regarding Class Members that Defendants
6 will in good faith compile from its records and provide to the Settlement Administrator. It shall be
7 formatted as a Microsoft Excel spreadsheet or Microsoft Word Document and shall include: each
8 Class Member's full name; last 4 digits of social security number; last known address; and number
9 of Compensable Workweeks. Defendants will diligently and in good faith compile the Class
10 Information list from its records and provide it to the Settlement Administrator within fourteen
11 (14) calendar days of the Preliminary Approval Date. The Settlement Administrator will then mail
12 the Class Notices to the Class Members by no later than twenty-eight (28) calendar days following
13 the Preliminary Approval Date.

14 6. "Class Member" means each person who is a member of the Class defined above
15 and who is eligible to participate in this Settlement.

16 7. "Class Period" means the period of **April 9, 2016** through the date that the court
17 grants preliminary approval of the class action settlement (i.e., "the Preliminary Approval Date").

18 8. "Class Representative Enhancement and Service Award" means the amount that
19 Class Counsel will request that this Court approve as an enhancement award for distribution to
20 Plaintiff as the named Class Representative for the Settlement Class. Defendants will not oppose
21 this request. The amount of the enhancement award will not exceed Seven Thousand Five
22 Hundred Dollars (\$7,500.00), and will be requested in recognition of Plaintiff's efforts and risks in
23 assisting with the prosecution of the Action and in return for executing a General Release of the
24 Released Claims by Plaintiff. To the extent that the Court approves less than the amount of the
25 enhancement award that Class Counsel requests, the difference between the requested and awarded
26 enhancement will be added to the Net Fund Value for distribution to the Settlement Class.

27 9. "Compensable Workweeks" means a reasonable estimate of weeks worked by
28 Class Members during the Class Period based on Defendants' records and used as a value to

1 calculate Individual Settlement Payments. Workweeks shall include only those weeks an
2 employee was actively employed as a non-exempt employee of Defendants.

3 10. "Complaint" means the First Amended Complaint on file in this Action and the
4 Second Amended Complaint the Parties will stipulate to entry of in connection with this
5 Settlement adding the entity BV & CO. as a named Defendant.

6 11. "Court" means the Superior Court for the County of Los Angeles, State of
7 California.

8 12. "Defendants" means Body Vision Jewelry, Inc. and BV & CO, and their respective
9 past, present, or future parents, subsidiaries, affiliates, predecessors or successors and each of the
10 foregoing entities' respective members, officers, directors, partners, employees, shareholders,
11 agents and any other successors, assigns or legal representatives.

12 13. "Effective Date" means the date the Court enters an order granting final approval
13 and enters a Final Judgment, if no objections are filed to the Settlement. If objections are filed and
14 overruled, and no appeal is taken of the final approval order, then the effective date of final
15 approval will be sixty-five (65) calendar days after the trial court enters a Final Judgment. If an
16 appeal is taken from the Court's overruling of objections to the settlement, then the effective date
17 of will be thirty (30) calendar days after the appeal is withdrawn or after an appellate decision
18 affirming the Final Judgment becomes final. No money will be distributed unless and until the
19 effective date of final approval occurs.

20 14. "Final Judgment" means the Court's Final Judgment to be entered concurrently
21 with the Court's Order granting final approval to the Settlement.

22 15. "Gross Fund Value" means the non-reversionary payment of Two Hundred and
23 Seventy Five Thousand Dollars (\$275,000.00) that Defendants will provide to the Settlement
24 Administrator to fund the settlement of this Action, and includes the Class Counsel Award,
25 Settlement Administration Costs, payment to the Labor and Workforce Development Agency
26 ("LWDA") for the alleged PAGA penalties, and the Class Representative Enhancement and
27 Service Award. The third-party administrator will also calculate the total amount of wages paid to
28 the settlement class members and will inform the parties of Defendants' share of the payroll taxes,

1 which shall also be deducted from the Gross Fund Value. The remaining amount is the Net
2 Settlement Fund, from which the Administrator will pay all individual settlement payments to the
3 Settlement Class Members.

4 16. "Individual Settlement Payment" means the amount payable from the Net
5 Settlement Fund to each Settlement Class Member, less employee portions of state and federal
6 withholding taxes, including FICA, FUTA and SDI contributions and any other applicable payroll
7 deductions required by law as a result of the payment of the amount allocated to such Class
8 Members under the terms of this Settlement.

9 17. "LWDA" means the California Labor and Workforce Development Agency.

10 18. "Net Fund Value" means the Gross Fund Value, less Court-approved Settlement
11 Administration Costs, Attorneys' Fees and Costs, the Class Representative Enhancement Award,
12 the 25% portion of the PAGA Penalties payable to the Settlement Class Members, and
13 Defendants' share of the payroll taxes. Each Class Member who fails to opt out will be entitled,
14 provisionally, to a share or shares of the Net Fund Value, which shall be a fixed proportional
15 amount of the Net Fund Value per workweek.

16 19. "Notice of Class Settlement" or "Class Notice" means the notice, substantially in
17 the form attached as **Exhibit 1**, approved by the Parties and subject to Court approval that the
18 Settlement Administrator will mail to each Class Member explaining the terms of this Settlement
19 Agreement and the settlement process.

20 20. "Parties" means Plaintiff and Defendants, collectively, and "Party" shall mean
21 either Plaintiff or Defendants, individually.

22 21. "Payment Ratio" means the respective Compensable Workweeks for each
23 Settlement Class Member divided by the total Compensable Workweeks for all Settlement Class
24 Members.

25 22. "Plaintiff" means Haroutyoun Kioudjian.

26 23. "Preliminary Approval Date" means the date, if any, upon which the Court issues
27 an Order granting preliminary approval of the Settlement set forth in this Settlement Agreement.

1 24. “Request for Exclusion” refers to a timely letter submitted by a Class Member
2 setting forth the individual’s name, present address, telephone number, and a clear statement by
3 the Class Member electing to be excluded from the Settlement. The letter must be signed and
4 submitted by the Class Member to the Settlement Administrator at the specified address indicated
5 in the Class Notice. A Request for Exclusion must be postmarked on or before the exclusion
6 deadline. The date of the postmark shall be the exclusive means to determine whether a Request
7 for Exclusion has been timely submitted. A Class Member who does not request exclusion from
8 the Settlement shall be deemed a Settlement Class Member and will be bound by all terms of the
9 Settlement, when the Settlement is granted final approval by the Court.

10 25. “Released Claims by Plaintiff” or “the Plaintiff’s Released Claims” means the
11 following: Plaintiff, as the named Class Representative, agrees to further release the Released
12 Parties from any and all claims, demands, rights, liabilities, and/or causes, of any form
13 whatsoever, arising under federal, state or local wage-and-hour laws, rules, or regulations, whether
14 known or unknown, unforeseen, unanticipated, unsuspected or latent, that have been or could have
15 been asserted by Plaintiff, or the heirs, successors and/or assigns of Plaintiff, whether directly,
16 indirectly, representatively, derivatively or in any other capacity, arising at any time prior to the
17 date that the court grants preliminary approval of the class action settlement. This release
18 expressly excludes any workers’ compensation claim that Plaintiff may have.

19 a. As to the Plaintiff’s Released Claims only, Plaintiff expressly waives all rights and
20 benefits under the terms of section 1542 of the California Civil Code. Section 1542 reads
21 as follows: “A general release does not extend to claims that the creditor or releasing party
22 does not know or suspect to exist in his or her favor at the time of executing the release and
23 that, if known by him or her, would have materially affected his or her settlement with the
24 debtor or released party.”

25 b. Notwithstanding the provisions of section 1542, and for the purpose of
26 implementing a full and complete release and discharge of all of their Released Claims,
27 Plaintiff expressly acknowledges that this Settlement is intended to include in its effect,
28 without limitation, all Released Claims which Plaintiff does not know or suspect to exist in

1 his favor at the time of execution hereof, and that the Settlement contemplates the
2 extinguishment of all such Released Claims.

3 26. "Released Claims by Settlement Class Members" means as follows: Aside from
4 those who submit a valid and timely request for exclusion from the settlement, as of the Effective
5 Date, Plaintiff and each member of the Settlement Class releases the Released Parties from any
6 and all claims, debts, liabilities, demands, obligations, guarantees, costs, expenses, attorneys' fees,
7 damages, action or causes of action contingent or accrued for, arising out of the allegations and
8 claims asserted in the Complaint, including without limitation to, any and all claims for alleged
9 unpaid wages (including but not limited to minimum wage, failure to pay overtime, vacation, and
10 final pay upon termination), misclassification leading to unpaid wages and overtime, alleged
11 unpaid meal and rest break premiums, itemized wage statement penalties, waiting time penalties
12 under the California Labor Code or, reimbursement of business expenses, and claims for
13 restitution and other equitable relief under Business & Professions Code (including Section 17200
14 *et seq.*), liquidated damages, punitive damages, or penalties; and any other benefit claimed on
15 account of the allegations asserted in Complaint. This release shall apply to all claims arising at
16 any point between **April 9, 2016** and the date that the court grants preliminary approval of the
17 class action settlement.

18 27. "Released Parties" collectively mean: Defendants and any parent, subsidiary,
19 affiliate, predecessor or successor, and all agents, employees, officers, directors and attorneys
20 thereof.

21 28. "Response Deadline" means the date forty-five (45) calendar days after the
22 Settlement Administrator mails the Class Notice to Class Members and the last date on which
23 Class Members may: (a) submit a Request for Exclusion; (b) submit an objection to the
24 Settlement; or (c) dispute the information contained in the Class Notice.

25 29. "Settlement" means the disposition of the Action pursuant to this Agreement.

26 30. "Settlement Administration Costs" means the amount to be paid to the Settlement
27 Administrator from the Gross Settlement Fund for administration of this Settlement. The
28

1 Settlement Administrator, ILYM Group, Inc., has provided a not to exceed administration
2 quotation of \$10,000.00, and the Settlement Administration Costs will therefore be \$10,000.00.

3 31. "Settlement Administrator" means ILYM Group, Inc. Should a conflict of interest
4 or other issue lead to the disqualification of the selected Settlement Administrator, the Parties will
5 meet and confer as to a suitable replacement.

6 32. "Settlement Class" or "Settlement Class Members" means all Class Members who
7 have not opted out of the Class by submitting a timely Request for Exclusion.

8 33. "Summary of Workweeks and Estimated Payment" is the information that will be
9 included in the Class Notice that is sent to each Class Member that sets forth the number of
10 Compensable Workweeks that Class Member worked as a non-exempt employee for Defendants
11 in California during the Class Period, and the estimated payment he or she will receive.

12 **RECITALS**

13 34. The Action was first commenced by Plaintiff in the Los Angeles County Superior
14 Court on **April 9, 2020** (Case No. 20STCV13964); a first amended complaint was filed on **August**
15 **4, 2020**, which has been the operative complaint on file in this Action. In connection with the
16 Settlement, the Parties will stipulate to filing of a Second Amended Complaint adding BV & CO
17 as a named Defendant. Plaintiff shall file with the California Labor Workforce & Development
18 Agency ("LWDA") a new or amended PAGA claim notice, adding BV & CO, as an additional
19 defendant employer, to his alleged PAGA claims in this action.

20 35. The Parties have conducted significant investigation of the facts and law during the
21 prosecution of this Action. Such discovery and investigation includes but is not limited to the
22 exchange of relevant documents, the agreement to Class numbers, and the production and analysis
23 of detailed time and payroll records for Plaintiff and Class Members and financial records for
24 Defendants. Furthermore, counsel for the Parties have investigated the law as applied to the facts
25 discovered regarding the alleged claims of Plaintiff and the potential defenses thereto.

26 36. The Parties participated in a private mediation session with class action mediator,
27 William Kampf, on **September 17, 2020**. The Parties agreed the general terms for resolution of a
28 proposed class action settlement that would fully resolve this matter, subject to Court approval,

1 and executed a Memorandum of Understanding (“MOU”) to that end. In accordance with their
2 MOU, the Parties stipulated to add BV & CO as a named Defendant, which they will ask the
3 Court to grant. Plaintiff shall file with the California Labor Workforce & Development Agency
4 (“LWDA”) a new or amended PAGA claim notice, adding BV & CO, as an additional defendant
5 employer, to his alleged PAGA claims in this action.

6 37. Benefits of Settlement to Class Members. Plaintiff and Class Counsel recognize
7 the expense and length of continued proceedings necessary to litigate their disputes through trial
8 and through any possible appeals. Plaintiff has also taken into account the uncertainty and risk of
9 the outcome of further litigation, and the difficulties and delays inherent in such litigation.
10 Plaintiff and Class Counsel are also aware of the burdens of proof necessary to establish liability
11 for the claims asserted in the Action, both generally and in response to Defendants’ defenses
12 thereto, and the difficulties in establishing damages for the Settlement Class Members. Plaintiff
13 and Class Counsel have also taken into account Defendants’ agreement to enter into a settlement
14 that confers substantial relief upon the members of the Settlement Class. Based on the foregoing,
15 Plaintiff and Class Counsel have determined that the Settlement set forth in this Settlement
16 Agreement is a fair, adequate, and a reasonable settlement, and is in the best interests of the
17 Settlement Class Members.

18 38. Defendants’ Reasons for Settlement. Defendants have concluded that any further
19 defense of this litigation would be protracted and expensive for all Parties. Substantial amounts of
20 Defendants’ time, energy, and resources have been and, unless this Settlement is completed, will
21 continue to be devoted to the defense of the claims asserted by Plaintiff. Defendants have also
22 taken into account the risks of further litigation in reaching its decision to enter into this
23 Settlement. Even though Defendant continues to contend it is not liable for any of the claims
24 alleged by Plaintiff in this Action, Defendants have agreed, nonetheless, to settle in the manner
25 and upon the terms set forth in this Agreement to put to rest the claims in this Action. As to the
26 Released Claims, Defendants deny and continue to deny each of those claims. Defendants have
27 repeatedly asserted and continue to assert defenses thereto, and have expressly denied and
28

1 continue to deny any wrongdoing or legal liability arising out of any of the facts or conduct
2 alleged in the Action.

3 **STIPULATION AND AGREEMENT**

4 39. NOW THEREFORE, in consideration of the mutual covenants, promises, and
5 agreements set forth herein, the Parties agree, subject to the Court's approval, as follows:

6 40. It is agreed by and among Plaintiff and Defendants that this Settlement shall bind
7 the Class Representative, Settlement Class Members, and Defendants, subject to the terms and
8 conditions hereof. Subject to the Court's approval, Plaintiff and Settlement Class Members
9 release Defendants from the Released Claims by Settlement Class Members for the Class Period,
10 as of the Effective Date.

11 41. Circular 230 Disclaimer. Each Party to this Agreement (for purposes of this
12 section, the "acknowledging party" and each Party to this Agreement other than the
13 acknowledging party, an "other party") acknowledges and agrees that (1) no provision of this
14 Agreement, and no written communication or disclosure between or among the Parties or their
15 attorneys and other advisers, is or was intended to be, nor shall any such communication or
16 disclosure constitute or be construed or be relied upon as, tax advice within the meaning of United
17 States Treasury Department Circular 230 (31 CFR Part 10, as amended); (2) the acknowledging
18 party (a) has relied exclusively upon his, her, or its own, independent legal and tax counsel for
19 advice (including tax advice) in connection with this Agreement, (b) has not entered into this
20 Agreement based upon the recommendation of any other party or any attorney or advisor to any
21 other party, and (c) is not entitled to rely upon any communication or disclosure by any attorney or
22 adviser to any other party to avoid any tax penalty that may be imposed on the acknowledging
23 party; and (3) no attorney or adviser to any other party has imposed any limitation that protects the
24 confidentiality of any such attorney's or adviser's tax strategies (regardless of whether such
25 limitation is legally binding) upon disclosure by the acknowledging party of the tax treatment or
26 tax structure of any transaction, including any transaction contemplated by this Agreement.

27 42. Class Certification. The parties stipulate to class certification for purposes of
28 settlement only. Defendant contends that the facts do not justify class certification under the

1 governing legal standards. The trial court has not ruled on class certification in the underlying
2 litigation. Consequently, a “Settlement Class” has been established for purposes of administration
3 and resolution of this matter only. It is not, and it should not be construed as, any admission of fact
4 or law in this matter or any other matter that class certification is appropriate. If the Court does not
5 grant either preliminary or final approval of this settlement, then the parties revert to their previous
6 positions and Defendants will not stipulate to class certification.

7 43. Preliminary Approval of Settlement. Plaintiff will move the Court to grant
8 preliminary approval of this class action Settlement for settlement purposes only, certifying the
9 Settlement Class for settlement purposes only, and setting a date for a final approval hearing.
10 Both Parties agree to work diligently and cooperatively to have this matter presented to the Court
11 for preliminary approval as efficiently as possible.

12 44. Release of Claims by Plaintiff. Pursuant to this Agreement, Plaintiff releases the
13 “Released Claims by Plaintiff” as of the Effective Date.

14 45. Release of Claims by Settlement Class Members. Pursuant to this Agreement,
15 Settlement Class Members release the “Released Claims by Settlement Class Members” as of the
16 Effective Date.

17 46. Settlement Administration. Defendants will diligently and in good faith compile
18 the Class Information list from its records and provide it to the Settlement Administrator within
19 fourteen (14) calendar days of the Preliminary Approval Date.

20 47. Notice by First Class U.S. Mail. Upon receipt of the Class Information, the
21 Settlement Administrator will perform a search based on the National Change of Address
22 Database to update and correct any known or identifiable address changes. The Settlement
23 Administrator will then mail the Class Notices via regular First Class U.S. Mail to the Class
24 Members by no later than twenty-eight (28) calendar days following the Preliminary Approval
25 Date. The Settlement Administrator shall exercise its best judgment to determine the current
26 mailing address for each Class Member. The address identified by the Settlement Administrator as
27 the current mailing address shall be presumed to be the best mailing address for each Class
28 Member.

1 a. Undeliverable Notices. Any Class Notice returned to the Settlement
2 Administrator as non-delivered on or before the Response Deadline shall be re-mailed to the
3 forwarding address affixed thereto within ten (10) calendar days of determining that a Notice was
4 undeliverable. If no forwarding address is provided, the Settlement Administrator shall promptly
5 attempt to determine a correct address by use of skip-tracing, or other search using the name,
6 address and/or last four digits of the Social Security number of the Class Member involved, and
7 shall then perform a re-mailing, if another mailing address is identified by the Settlement
8 Administrator. Class Members who receive a re-mailed Notice of Class Settlement and Summary
9 Sheet shall have their Response Deadline extended ten (10) calendar days from the original
10 Response Deadline.

11 b. Disputes Regarding Individual Settlement Payments. Class Members will
12 have the opportunity, should they disagree with Defendants' records regarding the dates of
13 employment or other information on their Summary of Workweeks and Estimated Payment
14 included in the Class Notice, to provide documentation and/or an explanation to show contrary
15 information by the Response Deadline. If there is a dispute, the Settlement Administrator will
16 consult with the Parties to determine whether an adjustment is warranted. The Settlement
17 Administrator shall then determine the eligibility for, and the amounts of, any Individual
18 Settlement Payments under the terms of this Agreement. The Settlement Administrator's
19 determination of the eligibility for and amount of any Individual Settlement Payment shall be
20 binding upon the Class Member and the Parties. In the absence of circumstances indicating fraud,
21 manipulation or destruction, Defendants' records will be given a rebuttable presumption of
22 accuracy.

23 c. Disputes Regarding Administration of Settlement. Any disputes not
24 resolved by the Settlement Administrator concerning the administration of the Settlement will be
25 resolved by the Court, under the laws of the State of California. Prior to any such involvement of
26 the Court, counsel for the Parties will confer in good faith to resolve the disputes without the
27 necessity of involving the Court.

1 d. Exclusions. The Notice of Class Settlement shall state that Class Members
2 who wish to exclude themselves from the Settlement must mail to the Settlement Administrator a
3 Request for Exclusion by the Response Deadline. The Request for Exclusion: (1) must contain the
4 name, address, and telephone number of the person requesting exclusion, as well as a clear
5 statement by the Class Member electing to be excluded; (2) must be signed by the Class Member;
6 and (3) must be postmarked by the Response Deadline. The date of the postmark on the return
7 mailing envelope on the Request for Exclusion shall be the exclusive means used to determine
8 whether it has been timely submitted. The Request for Exclusion will be deemed invalid if it does
9 not contain the Class Member's name, address and telephone number, as well as a clear statement
10 by the Class Member electing to be excluded, and the Class Member's signature. Any Class
11 Member who requests to be excluded from the Settlement Class will not be entitled to any
12 recovery under the Settlement and will not be bound by the terms of the Settlement or have any
13 right to object, appeal or comment thereon. Class Members who receive a Notice of Class
14 Settlement but fail to submit a valid and timely Request for Exclusion on or before the Response
15 Deadline shall be bound by all terms of the Settlement and any Final Judgment entered in this
16 Action. The Settlement Administrator shall provide the Parties with regular updates regarding the
17 status of any requests for exclusion.

18 e. Objections. The Notice of Class Settlement shall state that Class Members
19 who wish to object to the Settlement must mail to the Settlement Administrator a written statement
20 of objection ("Notice of Objection") by the Response Deadline. The date of the postmark on the
21 return mailing envelope on the Notice of Objection shall be the exclusive means used to determine
22 whether the Objection has been timely submitted. The Settlement Administrator will notify all
23 Parties of any objection within five (5) business days of receipt of the Objection. Plaintiff will file
24 any such Objection(s) with the Court in advance of the Final Approval Hearing. The Notice of
25 Objection must be signed by the Class Member and state: (1) the full name of the Class Member;
26 (2) the dates of employment of the Class Member; (3) the basis for the objection; (4) if the Class
27 Member intends to appear at the final approval hearing; and (5) any legal briefs, papers or
28 memoranda the objecting Class Member proposes to submit to the Court. Class Members who fail

1 to make objections in the manner specified above shall be deemed to have waived any objections
2 and shall be foreclosed from making any objections (whether by appeal or otherwise) to the
3 Settlement. Class Members who submit a timely Notice of Objection will have a right to appear at
4 the final approval hearing in order to have their objections heard by the Court. At no time shall
5 any of the Parties or their counsel seek to solicit or otherwise encourage Class Members to file or
6 serve written objections to the Settlement or appeal from the Order granting final approval and/or
7 Final Judgment. Class Counsel shall not represent any Class Members with respect to any such
8 Objections.

9 f. The Parties have the right to monitor and review administration of the
10 Settlement to verify that the monies allocated to the Settlement Class are distributed in a correct
11 amount.

12 g. The Parties agree to use their best efforts to carry out the terms of this
13 Settlement. At no time shall any of the Parties or their counsel seek to solicit or otherwise
14 encourage Class Members to submit either written objections to the Settlement or requests for
15 exclusion from the Settlement, or to appeal from the Court's Final Judgment.

16 48. Funding Gross Settlement Fund. This is a non-reversionary Settlement in which
17 Defendants are required to pay the entire Gross Settlement Fund. No portion of the Gross Fund
18 Value will revert to Defendants. Any employer payroll taxes owed as a result of this Settlement
19 Agreement shall be paid from the Gross Settlement Fund. Within thirty (30) calendar days of the
20 Effective Date, Defendants will deposit money, in an amount equal to the Gross Fund Value, to
21 pay (1) the Settlement Class per the terms of the final settlement agreement, and (2) court
22 approved attorneys' fees and costs, administration costs, and the enhancement payment, and (3)
23 PAGA penalties to be paid to the Labor Workforce Development Agency ("LWDA") into an
24 interest-bearing account, through the Settlement Administrator. Any interest accrued will be
25 distributed to the Settlement Class except that if final approval is reversed on appeal, then
26 Defendants are entitled to prompt return of the principal and all interest accrued.

27 49. Allocation of Settlement. Individual Settlement Payments will be paid from the
28 Net Settlement Amount and shall be paid pursuant to the settlement formula set forth herein.

1 Individual Settlement Payments shall be mailed by the Settlement Administrator by regular First
2 Class U.S. Mail to Settlement Class Members' last known mailing address within forty-five (45)
3 calendar days after the Effective Date of the settlement. Each Class Member who fails to opt out
4 will be entitled, provisionally, to a share or shares of the Net Fund Value, which shall be a fixed
5 proportional amount of the Net Fund Value per workweek.

6 a. Defendants and the Settlement Administrator will calculate the total
7 Compensable Workweeks for all Settlement Class Members. The respective Compensable
8 Workweeks for each Settlement Class Member will be divided by the total Compensable
9 Workweeks for all Settlement Class Members, resulting in the Payment Ratio for each Settlement
10 Class Member. Each Settlement Class Member's Payment Ratio is then multiplied by the Net
11 Settlement Amount to determine his or her Individual Settlement Payment. Workweeks shall
12 include only those weeks an employee was actively employed as a non-exempt employee with
13 Defendants during the Class Period. Defendants' payroll records shall control, but Class Members
14 will have the right to challenge their number of workweeks. The parties will work together in good
15 faith with the Settlement Administrator to resolve any disputes regarding workweeks.

16 b. Payments to the class will be allocated 33% wages and 67% interest and
17 penalties. Class members will be responsible for paying any personal income taxes owed on the
18 amounts they receive. The Administrator will issue Form W2s to the Class members for wage
19 payments and Form 1099s for allocated funds to penalties and interest.

20 c. Checks issued to Settlement Class Members pursuant to this Agreement
21 shall remain negotiable for One Hundred Eighty (180) calendar days. Any settlement checks that
22 are not claimed or not negotiated within 180 calendar days after the distribution of Individual
23 Settlement Payments to Settlement Class Members shall be void and the funds not disbursed as a
24 result, and will instead be paid to the State Controller's Office Unclaimed Property Fund to be
25 held in the name of the Class Member and in accordance with the procedures set forth in Code of
26 Civil Procedure section 1520.

1 d. Certification By Settlement Administrator. Upon completion of
2 administration of the distributions, the Settlement Administrator shall provide written certification
3 of such completion to the Court and counsel for all Parties.

4 e. Settlement Awards Do Not Trigger Additional Benefits. All monies
5 received by Settlement Class Members shall be deemed to be income to such Settlement Class
6 Members solely in the year in which such awards actually are received by the Settlement Class
7 Members. It is expressly understood and agreed that the receipt of such Settlement Awards will
8 not entitle any Settlement Class Member to additional compensation or benefits under any
9 company compensation or benefit plan or agreement in place during the period covered by the
10 Settlement, nor will it entitle any Settlement Class Member to any increased pension and/or
11 retirement, or other deferred compensation benefits. It is the intent of this Settlement that any
12 Settlement Awards provided for in this Agreement are the sole payments to be made by
13 Defendants to the Settlement Class Members in connection with this Settlement, and that the
14 Settlement Class Members are not entitled to any new or additional compensation or benefits as a
15 result of having received the Settlement Awards (notwithstanding any contrary language or
16 agreement in any benefit or compensation plan document that might have been in effect during the
17 period covered by this Settlement).

18 f. Class Representative Enhancement and Service Award. Class Counsel will
19 request that the Court approve an enhancement award for distribution to Plaintiff as the named
20 Class Representative for the Settlement Class. Defendants will not oppose this request. The
21 amount of the enhancement award will not exceed Seven Thousand Five Hundred Dollars
22 (\$7,500.00). At the time of execution of the settlement agreement, Plaintiff will sign a full release
23 of all claims against Defendants, i.e. the Released Claims by Plaintiff. Defendants agree not to
24 oppose or object to a Class Representative Enhancement and Service Award of up to \$7,500.00 to
25 Plaintiff, subject to Court approval. The Class Representative Service Award shall be paid to
26 Plaintiff no later than forty-five (45) calendar days following the Effective Date. The Settlement
27 Administrator shall issue an IRS Form 1099 – MISC to Plaintiff in connection with the Class
28 Representative Service Award. Plaintiff shall be solely and legally responsible to pay any and all

1 applicable taxes on his Class Representative Service Award and shall hold harmless Defendants
2 and Class Counsel from any claim or liability for taxes, penalties, or interest arising as a result of
3 the Class Representative Service Awards. Any amount requested by Plaintiff for the Class
4 Representative Enhancement and Service Award not granted by the Court shall return to the Net
5 Fund Value and be distributed as provided in this Agreement.

6 g. Class Counsel Award of Attorneys' Fees and Costs. Class Counsel will
7 request that the Court approve an award of attorneys' fees in an amount not to exceed 33.3%
8 percent of the Gross Fund Value (i.e. \$91,666.67), as well as actual reasonable litigation costs in
9 an amount not to exceed Eight Thousand Dollars (\$8,000.00) to be confirmed by Plaintiff's
10 Counsel in connection with final approval. Defendants will not oppose these requests. Class
11 Counsel's attorneys' fees and costs will be paid out of the Gross Fund Value. To the extent that
12 the Court approves less than the amount of attorneys' fees or costs that Class Counsel requests, the
13 difference between the requested and awarded amounts will be added to the Net Fund Value for
14 distribution to the Settlement Class. Court approved Attorneys' Fees and Costs shall be paid by
15 the Administrator to Class Counsel no later than forty-five (45) calendar days following the
16 Effective Date. Class Counsel shall be solely and legally responsible to pay all applicable taxes on
17 the payment made pursuant to this paragraph. The Settlement Administrator shall issue an IRS
18 Form 1099 – MISC to Class Counsel for the payments made pursuant to this paragraph. This
19 Settlement is not contingent upon the Court awarding Class Counsel any particular amount in
20 attorneys' fees and costs.

21 h. Settlement Administration Costs. The Settlement Administrator shall be
22 paid for the costs of administration of the Settlement from the Gross Fund Value no later than
23 forty-five (45) calendar days following the Effective Date. The costs of administration for the
24 disbursement of the Gross Fund Value shall not exceed \$10,000.00. The Settlement Administrator,
25 on Defendants' behalf, shall have the authority and obligation to make payments, credits and
26 disbursements, including payments and credits in the manner set forth herein, to Settlement Class
27 Members calculated in accordance with the methodology set out in this Agreement and orders of
28 the Court. The Parties agree to cooperate in the Settlement Administration process and to make all

1 reasonable efforts to control and minimize the cost and expenses incurred in administration of the
2 Settlement.

3 1. The Parties each represent they do not have any financial interest in
4 the Settlement Administrator or otherwise have a relationship with the Settlement Administrator
5 that could create a conflict of interest.

6 2. The Settlement Administrator shall be responsible for: processing
7 and mailing payments to Plaintiff, Class Counsel, the LWDA, and Settlement Class Members;
8 performing any translations required for the Class Notice, printing, and mailing the Class Notice
9 and tax forms to Class Members if directed by the Court; receiving and reporting the requests for
10 exclusion and objections submitted by Class Members; providing declaration(s) as necessary in
11 support of preliminary and/or final approval of this Settlement; and other tasks as the Parties
12 mutually agree or the Court orders the Settlement Administrator to perform. The Settlement
13 Administrator shall keep the Parties timely apprised of the performance of all Settlement
14 Administrator responsibilities.

15 i. Payment to the LWDA. The Parties allocate Ten Thousand Dollars
16 (\$10,000.00) to PAGA penalties the Labor Code Private Attorneys General Act of 2004, with 75%
17 of this amount to be paid directly to the LWDA (\$7,500.00) and 25% of this amount (\$2,500.00)
18 to be included in the Net Fund Value and paid to the Settlement Class. This PAGA Payment is
19 made pursuant to Labor Code section 2699(i), and shall also be paid within forty-five (45)
20 calendar days of the Effective Date.

21 j. No person shall have any claim against Defendants, Defendants' Counsel,
22 Plaintiff, Settlement Class Members, Class Counsel, or the Settlement Administrator based on
23 distributions and payments made in accordance with this Agreement.

24 50. Plaintiff and all Settlement Class Members shall be enjoined from filing or
25 prosecuting any other cases, claims, suits or administrative proceedings (including filing claims
26 with the Division of Labor Standards Enforcement of the California Department of Industrial
27 Relations) regarding claims released by the Settlement unless and until such Class Members have
28 served valid and timely Requests for Exclusion with the Settlement Administrator.

1 51. Final Settlement Approval Hearing and Entry of Final Judgment. Upon expiration
2 of the Response Deadline, with the Court's permission, a final approval hearing shall be
3 conducted to determine final approval of the Settlement along with the amount properly payable
4 for: (i) the Class Counsel Award; (ii) the Class Representative Enhancement and Service Award;
5 (iii) payment to the LWDA; and (iv) the Settlement Administration Costs.

6 52. Class Size Differential. Additionally, the parties estimate that there are currently
7 approximately 94 Class Members. If the number of Class members increases by more than 10%
8 (i.e. more than 10 additional Class Members), then Defendants agree to increase the Total
9 Settlement Amount in an amount that is proportional to the increase beyond 10%.

10 53. Nullification of Settlement Agreement. In the event: (i) the Court does not enter
11 the Order for preliminary approval of the Settlement; (ii) the Court does not finally approve the
12 Settlement; (iii) the Court does not enter a Final Judgment as provided herein; or (iv) the
13 Settlement does not become final for any other reason, this Settlement Agreement shall be null
14 and void and any order or judgment entered by the Court in furtherance of this Settlement shall be
15 treated as void from the beginning. All signatories and their counsel must not encourage opt-outs.
16 Counsel for the Class Members and Defendants specifically agree not to solicit opt-outs, directly
17 or indirectly, through any means. Defendants also retain the right, in the exercise of their sole
18 discretion, to nullify the settlement within thirty (30) calendar days after expiration of the opt out
19 period if ten percent (10%) or more of Class Members opt out of this Settlement.

20 54. Notice of Final Judgment. Notice of final judgment will be given to the Class by
21 posting notice to the case website maintained by the Settlement Administrator.

22 55. No Effect on Employee Benefits. Amounts paid to Plaintiff or other Settlement
23 Class Members pursuant to this Agreement shall be deemed not to be pensionable earnings and
24 shall not have any effect on the eligibility for, or calculation of, any of the employee benefits (e.g.,
25 vacations, holiday pay, retirement plans, etc.) of Plaintiff or Settlement Class Members.

26 56. No Admission by Defendants. Defendants deny any and all claims alleged in this
27 Action and deny all wrongdoing whatsoever. This Agreement is not a concession or admission,
28

1 and shall not be used against Defendants as an admission or indication with respect to any claim of
2 any fault, concession, or omission by any Defendant.

3 57. Exhibits and Headings. The terms of this Agreement include the terms set forth in
4 any attached Exhibits, which are incorporated by this reference as though fully set forth herein.
5 Any Exhibits to this Agreement are an integral part of the Settlement. The descriptive headings of
6 any paragraphs or sections of this Agreement are inserted for convenience of reference only and
7 do not constitute a part of this Agreement.

8 58. Interim Stay of Proceedings. The Parties agree to stay all proceedings in the
9 Action, except such proceedings necessary to implement and complete the Settlement, in abeyance
10 pending the Final Approval Hearing to be conducted by the Court.

11 59. Publicity. While the Parties understand that the fact of this settlement will be of
12 public record in the Courts, the Parties also understand that Defendants wish to keep it as
13 confidential as possible. Accordingly, Plaintiff agrees not to publicize this settlement in any way,
14 including but not limited to communications with other class members by text, social media, or
15 otherwise; any representations to the public about this settlement, or his role as Class Plaintiff, or
16 his Enhancement Award. Class Counsel also agrees not to publicize this settlement in any way,
17 including but not limited to naming Defendants on their firms' or individual attorneys' websites,
18 or in any firm or attorney promotional materials, notice of settlement periodicals, or social media
19 posts; and communications about this settlement involving Defendants' name with any media
20 outlet or social media platform. Nothing in this provision shall prevent Class Counsel from
21 communicating with Class Members to effectuate the settlement or from including information
22 about the lawsuit in future applications for attorneys' fees.

23 60. Dispute Resolution. Except as otherwise set forth herein, all disputes concerning
24 the interpretation, calculation or payment of Settlement claims, or other disputes regarding
25 compliance with this Agreement shall be resolved as follows:

26 a. If Plaintiff or Class Counsel, on behalf of Plaintiff or any Settlement Class
27 Member, or Defendants' Counsel, on behalf of Defendants, at any time believe that the other Party
28

1 has breached or acted contrary to the Agreement, that Party shall notify the other Party in writing
2 of the alleged violation.

3 b. Upon receiving notice of the alleged violation or dispute, the responding
4 Party shall have ten (10) calendar days to correct the alleged violation and/or respond to the
5 initiating Party with the reasons why the Party disputes all or part of the allegation.

6 c. If the response does not address the alleged violation to the initiating
7 Party's satisfaction, the Parties shall negotiate in good faith for up to ten (10) calendar days to
8 resolve their differences.

9 d. If Class Counsel and Defendants' Counsel are unable to resolve their
10 differences after twenty (20) calendar days, either Party shall first contact the mediator to try to
11 resolve the dispute. If that proves unsuccessful, the party may file an appropriate motion for
12 enforcement with the Court. The briefing of such motion should be in letter brief form and shall
13 not exceed five (5) single-spaced pages (excluding exhibits).

14 e. Reasonable attorneys' fees and costs for work done in resolving a dispute
15 under this Section may be recovered by any Party that prevails under the standards set forth within
16 the meaning of applicable law.

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

19 62. Entire Agreement. This Agreement and any attached Exhibits constitute the entire
20 Agreement among these Parties, and no oral or written representations, warranties, or inducements
21 have been made to any Party concerning this Agreement or its Exhibits other than the
22 representations, warranties, and covenants contained and memorialized in the Agreement and its
23 Exhibits.

24 63. Authorization to Enter Into Settlement Agreement. Counsel for all Parties warrant
25 and represent they are expressly authorized by the Parties whom they represent to negotiate this
26 Agreement and to take all appropriate actions required or permitted to be taken by such Parties
27 pursuant to this Agreement to effectuate its terms, and to execute any other documents required to
28 effectuate the terms of this Agreement. The Parties and their counsel will cooperate with each

1 other and use their best efforts to effect the implementation of the Settlement. In the event the
2 Parties are unable to reach agreement on the form or content of any document needed to
3 implement the Settlement, or on any supplemental provisions that may become necessary to
4 effectuate the terms of this Settlement, the Parties may seek the assistance of the Court or the
5 mediator to resolve such disagreement. The persons signing this Agreement on behalf of
6 Defendants represent and warrant that they are authorized to sign this Agreement on behalf of
7 Defendants. Plaintiff represents and warrants that he is authorized to sign this Agreement and that
8 he has not assigned any claim, or part of a claim, covered by this Settlement to a third-party.

9 64. Binding on Successors and Assigns. This Agreement shall be binding upon, and
10 inure to the benefit of, the successors or assigns of the Parties hereto, as previously defined.

11 65. California Law Governs. All terms of this Agreement and the Exhibits hereto shall
12 be governed by and interpreted according to the laws of the State of California.

13 66. Counterparts. This Agreement may be executed in one or more counterparts. All
14 executed counterparts and each of them shall be deemed to be one and the same instrument.

15 67. This Settlement Is Fair, Adequate and Reasonable. The Parties believe this
16 Settlement is a fair, adequate, and reasonable settlement of this Action and have arrived at this
17 Settlement after extensive arms-length negotiations, taking into account all relevant factors,
18 present and potential.

19 68. Jurisdiction of the Court. Pursuant to California Code of Civil Procedure section
20 664.6, the Court shall retain jurisdiction with respect to the interpretation, implementation, and
21 enforcement of the terms of this Agreement and all orders and judgments entered in connection
22 therewith, and the Parties and their counsel hereto submit to the jurisdiction of the Court for
23 purposes of interpreting, implementing, and enforcing the settlement embodied in this Agreement
24 and all orders and judgments entered in connection therewith. All terms of this Agreement are
25 subject to approval by the Court.

26 ///

27 ///

28 //

69. Invalidity of Any Provision. Before declaring any provision of this Agreement invalid, the Court shall first attempt to construe the provisions valid to the fullest extent possible consistent with applicable precedents so as to define all provisions of this Agreement valid and enforceable.

February 10, 2021

Date: _____

PLAINTIFF



HAROUTYOUN KHOUDJIAN

DEFENDANT

Date: _____

BODY VISION JEWELRY, INC.

Name: _____

Title: _____

PLAINTIFF'S COUNSEL

DAVID YEREMIAN & ASSOCIATES, INC.

Date: _____

David Yeremian
Alvin B. Lindsay

PLAINTIFF'S COUNSEL

UNITED EMPLOYEES LAW GROUP

Date: _____

Walter Haines

DEFENDANTS' COUNSEL

BENT CARYL & KROLL, LLP

Date: _____

Steven M. Kroll

69. Invalidity of Any Provision. Before declaring any provision of this Agreement invalid, the Court shall first attempt to construe the provisions valid to the fullest extent possible consistent with applicable precedents so as to define all provisions of this Agreement valid and enforceable.

PLAINTIFF

Date: _____

HAROUTYOUN KIOUDJIAN

DEFENDANT

Date: February 22, 2021

Kerry Martin
BODY VISION JEWELRY, INC.

Name: Kerry Martin

Title: CFO

PLAINTIFF'S COUNSEL
DAVID YEREMIAN & ASSOCIATES, INC.

Date: February 10, 2021

[Signature]
David Yeremian
Alvin B. Lindsay

PLAINTIFF'S COUNSEL
UNITED EMPLOYEES LAW GROUP

Date: February 8, 2021

[Signature]
Walter Haines

DEFENDANTS' COUNSEL
BENT CARYL & KROLL, LLP

Date: February 23, 2021

[Signature]
Steven M. Kroll

EXHIBIT 1

[Name/ID#]

TO: All non-exempt current and former employees employed by Body Vision Jewelry, Inc. and BV & CO (“Defendants”) who are working or who worked at Defendants’ facilities in the State of California from April 9, 2016 through _____, 2021.

RE: *Haroutyoun v Body Vision Jewelry, Inc. et al.* (Los Angeles County Superior Court Case No. 20STCV13964)

NOTICE OF CLASS AND PAGA ACTION SETTLEMENT **AGREEMENT AND FAIRNESS HEARING**

THIS NOTICE MAY AFFECT YOUR RIGHTS. PLEASE READ IT CAREFULLY.

YOU ARE HEREBY NOTIFIED THAT A HEARING HAS BEEN SCHEDULED FOR _____, 2021 AT _____ BEFORE THE HONORABLE ANN I. JONES, SUPERIOR COURT JUDGE OF THE STATE OF CALIFORNIA, COUNTY OF LOS ANGELES, TO CONSIDER GRANTING FINAL APPROVAL TO A PROPOSED SETTLEMENT OF CLAIMS THAT HAVE BEEN BROUGHT ON YOUR BEHALF.

This notice summarizes the proposed settlement, which the Court has preliminarily approved. For the precise terms and conditions of the settlement, please see the Settlement Agreement, which is available along with other settlement related documents on the case web-site at http://www.ilymgroup.com/_____. You can receive further information by contacting class counsel (contact information set out in section VII below), by accessing the Court docket in this case at <https://www.lacourt.org/casesummary/ui/index.aspx?casetype=civil>. At the civil Case Access screen, type in Case No. 20STCV13964. PLEASE DO NOT TELEPHONE THE COURT OR THE COURT CLERK’S OFFICE TO INQUIRE ABOUT THE SETTLEMENT PROCESS.

I. INTRODUCTION

On **April 9, 2020**, Plaintiff Haroutyoun Kioudjian (“Plaintiff”), a former employee of Defendants and through Class Counsel David & Yeremian & Associates, Inc., commenced a class action against Defendants for alleged wage and hour violations of the California Labor Code. The operative First Amended Complaint addresses these class-wide allegations and claims against Defendants for (1) Failure to Pay Minimum Wages; (2) Failure to Pay Wages and Overtime Under Labor Code § 510; (3) Misclassification of Employees Under Labor Code §§ 2750.3 and 226.8; (4) Meal Period Liability Under Labor Code § 226.7; (5) Rest-Break Liability Under Labor Code § 226.7; (6) Violation of Labor Code § 226(a); (7) Violation of Labor Code § 221; (8) Violation of Labor Code § 204; (9) Violation of Labor Code § 203; (10) Violation of Business & Professions Code § 17200 *et seq.*; and (11) for penalties under Labor Code §§ 2698 *et seq.*, the Private Attorneys General Act (“PAGA”). A copy of the First Amended Class Action Complaint, or the Second Amended Complaint when it is filed, will be posted on the case web-site at http://www.ilymgroup.com/_____.

Defendants deny all alleged violations, and deny that they owe Plaintiff or any other former or current employees any remedies. The Court has not made a ruling on the merits of the case. A tentative settlement of the case has been reached with Defendants. The settlement applies to all members of the following class: **All individuals employed by Defendants at any time during the period of April 9, 2016 through the date of preliminary approval and who have been employed as non-exempt, hourly employees at Defendants' facilities within the State of California. ("Class Members" or "Settlement Class Members").**

II. THE REASON YOU HAVE RECEIVED THIS NOTICE

You are a Class Member for purposes of the settlement of this case. Your rights will be affected because the current Class Representative, Haroutyoun Kioudjian, and Defendants ("the Parties"), have tentatively settled the lawsuit. Pursuant to that tentative settlement, the Court is considering the entry and final approval of the settlement. On _____, 2021, the Court preliminarily approved the settlement, and authorized mailing of this Notice.

You are hereby notified that:

1. A settlement of the claims of on behalf of Class Members has been proposed by Class Representative Haroutyoun Kioudjian, on the one hand, and Defendants on the other.
2. The proposed settlement was submitted to the Court and received preliminary approval.
3. You and any Class Members have the right to object to the proposed settlement by following the procedures in Part V of this notice, or to opt out of the proposed settlement by following the procedures set forth in Part VI of this notice.
4. A hearing to finally approve the settlement is scheduled for _____, 2021 at _____, at the Los Angeles County Superior Court, Dept. 11, located at 312 North Spring Street, Los Angeles, CA 90012 before the Honorable Ann I. Jones.
5. Due to the COVID-19 pandemic, hearings are currently being conducted remotely with the assistance of a third-party service provider, LACourtConnect. Class members who wish to appear at the final fairness hearing can access the site for making reservations at <https://my.lacourt.org/laccwelcome>. They may also contact class counsel to assist in arranging a telephonic appearance through LACourtConnect, at least three days before the hearing if possible. Any LACourtConnect fees for an appearance by an objecting class member will be paid by class counsel to be reimbursed as requested costs.

If you wish to receive your individual settlement share payment, you do not need to take further action. At the final approval hearing, any Class Member who did not opt out may appear and may object to the proposed settlement. The Court will proceed with ruling on the objection and the objector will receive the appropriate individual settlement share payment.

This notice is not to be understood as an expression of any opinion by the Court as to the merits of any claims or defenses asserted by any party in this lawsuit. This notice is sent for the sole purpose of informing you of the pendency of this lawsuit and the terms of the proposed

settlement so that you may make appropriate decisions. In the event of any conflicts between this notice and the Settlement Agreement, the terms of the Settlement Agreement govern. You may review the Settlement Agreement as posted on the case web-site at: <http://www.ilymgroup.com/>_____.

III. NATURE OF THE LAWSUIT

In this case, Plaintiff's operative Complaint asserts class-wide claims against Defendants for (1) Failure to Pay Minimum Wages; (2) Failure to Pay Wages and Overtime Under Labor Code § 510; (3) Misclassification of Employees Under Labor Code §§ 2750.3 and 226.8; (4) Meal Period Liability Under Labor Code § 226.7; (5) Rest-Break Liability Under Labor Code § 226.7; (6) Violation of Labor Code § 226(a); (7) Violation of Labor Code § 221; (8) Violation of Labor Code § 204; (9) Violation of Labor Code § 203; (10) Violation of Business & Professions Code § 17200 *et seq.*; and (11) for penalties under Labor Code §§ 2698 *et seq.*, the Private Attorneys General Act ("PAGA"). Defendants denied and continue to deny all allegations made by the Plaintiff.

The Plaintiff and Defendants have tentatively settled this lawsuit. The settlement has received preliminary approval of the Court, subject to this Notice being provided to Class Members and final approval by the Court after a public hearing. The proposed settlement terms, including the allocations deducted from the settlement amount, are summarized in the next section.

As a Class Member, you will automatically receive money from the proposed settlement if you do not opt out of it and the Court grants final approval. If the proposed settlement is not approved, then the offer of settlement will be deemed withdrawn, and the case will proceed in Court as if no settlement had ever been made. Again, if you wish to receive payment under the settlement and it is finally approved by the Court, you do not need to take any further actions.

IV. SUMMARY OF RELIEF GRANTED BY THE PROPOSED SETTLEMENT

For purposes of settlement, and without admitting any liability, Defendants have agreed to provide certain relief to Class Members. The following is a summary of that relief:

1. Defendants will pay the Gross Fund Value ("GFV") of Two Hundred and Seventy Five Thousand Dollars (\$275,000.00) less attorneys' fees and costs awarded to Class Counsel, any enhancement awarded to the Class Representative, costs of \$10,000.00 to the appointed Claims Administrator (ILYM Group, Inc.), and payment of \$7,500.00 to the California Labor Workforce and Development Agency (LWDA) out of \$10,000.00 allocated to PAGA penalties. Defendants' share of employee-side payroll taxes will also be deducted from the GFV.
2. Out of the GFV, Defendants will pay reasonable and Court approved attorneys' fees in a maximum amount not to exceed one-third (1/3) of the GFV (i.e. up to \$91,666.67) and actual costs incurred by Class Counsel (not to exceed \$8,000.00). All payments for attorneys' fees and costs will be paid from the GFV, which will reduce any payments made to the Class. Class Counsel will apply to the court for approval of their attorneys' fees and costs at the hearing scheduled for _____, 2021 at _____.

3. Class Representative Haroutyoun Kioudjian will request an enhancement award in the amount of \$7,500.00. The enhancement payment is in recognition of the time and efforts Mr. Kioudjian has expended in this case on behalf of the Class and as addressed in the Settlement.
4. The Claims Administrator (ILYM Group, Inc.) will request Settlement Administration Costs not to exceed \$10,000.00 for administering the settlement.
5. The settlement provides monetary compensation to participating Class Members for unpaid compensation, unpaid premiums, interest thereon, PAGA penalties and other penalties.
6. Any Class Member has the right to object to the proposed settlement by following the procedures set forth in Part V below, or to opt out as set forth in Part VI.
7. In exchange for the payments set for above, the Class Members will provide Defendants with the releases set forth in Section VIII below.

The Net Fund Value (“NFV”) for the Settlement Class will constitute the total sum from which Settlement Class Members will be paid. The NFV is the Gross Fund Value, less Court-approved Settlement Administration Costs, Attorneys’ Fees and Costs, and Class Representative Enhancement Award, and will include the 25% portion of the PAGA Penalties payable to the Settlement Class Members.

Calculation of Individual Settlement Payments: Each Class Member who does not opt out will be entitled, provisionally, to his or her share of the Net Fund Value, which is a fixed proportional amount of the Net Fund Value per workweek. Defendant and the Settlement Administrator will calculate the total Compensable Workweeks for all Settlement Class Members. Each Settlement Class Member’s shares of the Net Fund Value will be calculated by dividing the workweeks for each Settlement Class Member by the total Compensable Workweeks for all Settlement Class Members, resulting in a Payment Ratio, which is then multiplied by the Net Settlement Amount to determine each Settlement Class Member’s Individual Settlement Payment.

Any portions of the above listed proposed allocations from the GFV that are not finally approved by the Court, along with the funds for Class Members who request exclusion, will be added back into the NFV to be distributed under the above calculations.

The Individual Settlement Payments to each Class Member will be allocated as follows: 33% to wages and 67% to penalties and interest. The Settlement Administrator will issue an IRS Form 1099 – MISC to each Class Member for 67% of each Individual Settlement Payment, and a form W2 for 33% of each Individual Settlement Payment.

If the Court grants final approval of the settlement, the Claims Administrator will send your Individual Settlement Payment check within 30 days of the Effective Date, as defined in the Settlement. The Order Granting Final Approval and Judgment as entered will be posted on the case web-site at <http://www.ilymgroup.com/>_____.

Checks issued to Settlement Class Members will remain negotiable for One Hundred Eighty (180) days. Any settlement checks that are not negotiated within 180 calendar days after the distribution of Individual Settlement Payments to Settlement Class Members will be void and the funds not disbursed as a result, and will instead be paid to the State Controller's Office Unclaimed Property Fund to be held for the benefit of those Class Members until such time as they claim their property, as allowed by law.

If you wish to be a participating Class Member and receive payment under the settlement, you do not have to do anything except ensure your address is correct with the Settlement Administrator. If you need more information or have any questions regarding the settlement and the payment you will receive under it for which you cannot find information on the case web-site, you may contact Class Counsel at the address below or you may contact the Claims Administrator at the below contact information and toll-free number:

Kioudjian v Body Vision Jewelry, Inc. Class Action
Settlement Administrator – ILYM Group, Inc.
Address: P.O. Box 2031 Tustin, CA 92781
Telephone: 1-888-250-6810

Please do not contact the Court for information about this settlement. Please also do not contact Defendants' attorneys for information about this settlement, but you may refer to the case web-site at <http://www.ilymgroup.com/>_____or contact Class Counsel for further information.

V. PROCEDURE FOR OBJECTING TO THE SETTLEMENT AGREEMENT

If you are satisfied with the proposed Settlement Agreement, you do not need to appear at the hearing at which the Court will consider final approval of the Settlement Agreement. If you object to the proposed Settlement Agreement, you must take the following steps. Your failure to do so may be deemed a waiver of your objections and may result in a foreclosure of your right to make any objections to the settlement, whether by appeal or otherwise:

Class Members who wish to object to the Settlement have the option of mailing to the Settlement Administrator a written statement of objection ("Notice of Objection") by the Response Deadline of [REDACTED], 2021. The date of the postmark on the return mailing envelope on the Notice of Objection will be determine whether the Objection has been timely submitted. The Notice of Objection should be signed by the Class Member and state: (1) the full name of the Class Member; (2) the dates of employment of the Class Member; (3) the basis for the objection; (4) if the Class Member intends to appear at the final approval hearing; and (5) any legal briefs, papers or memoranda the objecting Class Member proposes to submit to the Court.

The Settlement Administrator will notify all Parties of any objection within five business days of receipt of the Objection. Plaintiff will file any such Objection(s) with the Court in advance of the Final Approval Hearing. The Parties may file a response to any written objection by at least ten court days before the final fairness and approval hearing.

The Court will rule on any objections at the final approval hearing. If it overrules the objections, the Settlement as approved will proceed through funding and distribution with the

objector as a participating Settlement Class Member. You can ask the Court to deny approval by filing an objection. You cannot ask the Court to order a larger settlement; the Court can only approve or deny the settlement. If the Court denies approval, no settlement payments will be sent out and the lawsuit will continue.

You may object to the proposed settlement in writing as detailed above, and you may also appear at the final approval hearing, either in person or through your own attorney, to make an oral objection, even if no written objection has been mailed to the Settlement Administrator. If you appear through your own counsel, you are responsible for paying that attorney. Due to the COVID-19 pandemic, hearings are currently being conducted remotely with the assistance of a third-party service provider, LACourtConnect. Class members who wish to appear at the final fairness hearing should contact class counsel to arrange a telephonic appearance through LACourtConnect at least three days before the hearing if possible. Any associated fees for an appearance by an objecting class member will be paid by class counsel as a litigation expense.

VI. OPT-OUT PROCEDURE (REQUESTING EXCLUSION)

You may exclude yourself from the Settlement by submitting an opt-out notice to the Claims Administrator at the above address no later than forty-five (45) calendar days after the date that the Claims Administrator first mails the Class Notice, which means it must be post-marked by , 2021 (“the Opt-Out Deadline”).

The Request for Exclusion must address this action and: (1) must contain the name, address, and telephone number of the person requesting exclusion, as well as a clear statement by the Class Member electing to be excluded; (2) must be signed by the Class Member; and (3) must be postmarked by the Response Deadline. The date of the postmark on the return mailing envelope on the Request for Exclusion shall be the exclusive means used to determine whether it has been timely submitted. The Request for Exclusion will be deemed invalid if it does not contain the Class Member’s name, address and telephone number, as well as a clear statement by the Class Member electing to be excluded, and the Class Member’s signature.

Any Class Member who requests to be excluded from the Settlement Class will not be entitled to any recovery under the Settlement and will not be bound by the terms of the Settlement or have any right to object, appeal or comment thereon. Class Members who receive a Notice of Class Settlement but fail to submit a valid and timely Request for Exclusion on or before the Response Deadline will be participating Settlement Class Members bound by all terms of the Settlement and the Final Approval Order and Judgment entered in this Action when the Settlement is finally approved.

VII. CLASS COUNSEL

If you have any further questions concerning the proposed Settlement Agreement that cannot be answered by this Notice or the case web-site at <http://www.ilymgroup.com/>_____, you may contact the Class Counsel as follows:

David Yeremian
Alvin B. Lindsay
DAVID YEREMIAN & ASSOCIATES, INC.
535 N. Brand Blvd., Suite 705
Glendale, CA 91203
Telephone: (818) 230-8380
Facsimile: (818) 230-0308

VIII. RELEASES

If you participate in the settlement you will agree to provide the following release of the “Released Claims by Settlement Class Members” to Defendants and the Released Parties (defined to include Defendant, BV & CO, and any parent, subsidiary, affiliate, predecessor or successor, and all agents, employees, officers, directors and attorneys thereof). Aside from those who submit a valid and timely request for exclusion from the settlement, as of the Effective Date, Plaintiff and each member of the Settlement Class releases the Released Parties from any and all claims, debts, liabilities, demands, obligations, guarantees, costs, expenses, attorneys’ fees, damages, action or causes of action contingent or accrued for, arising out of the allegations and claims asserted in the Complaint, including without limitation to, any and all claims for alleged unpaid wages (including but not limited to minimum wage, failure to pay overtime, vacation, and final pay upon termination), misclassification leading to unpaid wages and overtime, alleged unpaid meal and rest break premiums, itemized wage statement penalties, waiting time penalties under the California Labor Code or, reimbursement of business expenses, and claims for restitution and other equitable relief under Business & Professions Code (including Section 17200 *et seq.*), liquidated damages, punitive damages, or penalties; and any other benefit claimed on account of the allegations asserted in Complaint. This release shall apply to all claims arising at any point between April 9, 2016 and the date that the court grants preliminary approval of the class action settlement.

IX. HOW MUCH CAN I EXPECT TO RECEIVE

Your share of the Net Fund Value will be allocated based on the number of workweeks you worked for Defendant during the Class Period. Each Class Member who does not opt out will receive a share of the Net Fund Value, which shall be a fixed proportional amount of the Net Fund Value per workweek. The respective Compensable Workweeks for each Settlement Class Member will be divided by the total Compensable Workweeks for all Settlement Class Members, resulting in the Payment Ratio for each Settlement Class Member. The Payment Ratio is then multiplied by the Net Settlement Amount to determine his or her Individual Settlement Payment. Workweeks will include only those weeks an employee was actively employed as a non-exempt employee with PetVet Care Centers (California), Inc. during the Class Period. Defendant’s payroll records will control, but Class Members will have the right to challenge their number of workweeks.

ESTIMATED INDIVIDUAL SETTLEMENT PAYMENT

Defendants’ records indicate that during the applicable time period, **you worked [REDACTED] Work Weeks** as a non-exempt employee. **Based on the above, your estimated payment under the Settlement is \$ [REDACTED] (“Individual Settlement Payment”).**

This amount is only an estimate. The actual amount of your Individual Settlement Payment may increase or decrease based on several factors, including the final amounts approved by the Court and disputes raised by other Class Members. For example, any settlement funds for Class members who request exclusion, and any allocations to Class Counsel's attorneys' fees or costs, the Class Representative Enhancement, or settlement administration costs which the Court does not finally approve, will increase the Net Settlement Fund and your Individual Settlement Payment accordingly.

Class Members have the opportunity, should they disagree with Defendants' records regarding the dates of employment or other information on their Summary of Workweeks and Estimated Payment included in this Class Notice, to provide documentation and/or an explanation to show contrary information by the Response Deadline. Settlement Class Members will do so by timely sending a written notice to the Settlement Administrator informing the Settlement Administrator of the nature of the dispute and providing any records or documentation supporting the Settlement Class Member's position. The Settlement Administrator will consult with the Parties to determine whether an adjustment is warranted, and will then determine the eligibility for, and the amounts of, any Individual Settlement Payments under the terms of this Agreement. The Settlement Administrator's determination of the eligibility for and amount of any Individual Settlement Payment will be binding upon the Class Member and the Parties. The Settlement Agreement, available on the case web-site, provides further detail on the procedures that will be followed to resolve such disputes.

QUESTIONS

If you have further questions, and if you are unable to resolve your questions through reference to the case web-site at <http://www.ilymgroup.com/>_____, please call or write to Class Counsel or the Settlement Administrator at the telephone numbers and addresses listed above.

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