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

GUADALUPE GUARISTA, individually, on
behalf of all others similarly situated, and on
behalf of the State of California and other
aggrieved persons; and TENISHA
KATHERINE HOWARD and JENNIFER
LOPEZ-TRIGUEROS, individually, and on
behalf of all others similarly situated,

Plaintiffs,

v.

UROLOGIC INSTITUTE OF THE HIGH
DESERT, INC., a corporation, and DOES 1
through 10, inclusive,

Defendants.

Case No.: CIVSB2125029

[*Consolidated with Case No. CIVSB213340*]

CLASS & REPRESENTATIVE ACTION

[*Assigned to: Hon. Christian Towns, Dept.
S-26*]

**PLAINTIFFS' NOTICE OF MOTION AND
MOTION FOR FINAL APPROVAL OF
CLASS ACTION SETTLEMENT;
MEMORANDUM OF POINTS AND
AUTHORITIES**

FINAL APPROVAL HEARING

Date: June 2, 2025

Time: 8:30 a.m.

Dept.: S-26

Complaint filed: August 27, 2021

FAC filed: August 27, 2024

Trial date: Not set

NOTICE OF MOTION AND MOTION

TO ALL PARTIES AND THEIR COUNSEL OF RECORD:

PLEASE TAKE NOTICE that on June 2, 2025 at 8:30 a.m., in Department S-26 of the San Bernardino County Superior Court, located at 247 West Third Street, San Bernardino, CA 92415, Plaintiffs Guadalupe Guarista, Tenisha Katherine Howard, and Jennifer Lopez-Trigueros (collectively, “Plaintiffs”) will, and hereby do, move for an order as follows:

1. Certifying the Class for settlement purposes;
2. Approving the settlement as fair and reasonable and finding that class members were given notice of the settlement, and advised of their rights to participate in the settlement, object to the settlement, or exclude themselves from the settlement, in a reasonable manner;
3. Appointing Plaintiffs Guadalupe Guarista, Tenisha Katherine Howard, and Jennifer Lopez-Trigueros as Class Representatives for settlement purposes, and approving Class Representative Service Awards of \$5,000.00 to Plaintiff Guadalupe Guarista; and \$1,000.00 each to Plaintiffs Tenisha Katherine Howard and Jennifer Lopez-Trigueros;
4. Appointing Plaintiffs’ Counsel, Arrash T. Fattahi of Wilshire Law Firm, PLC as Class Counsel for settlement purposes, and approving payment of \$66,666.67 in attorneys’ fees, which is 33 1/3% of the Gross Settlement Amount;
5. Approving costs in the amount of \$20,000.00 for litigating this action to Class Counsel;
6. Approving payment of administrative expenses to ILYM Group, Inc. as the Settlement Administrator in the amount of \$6,550.00;
7. Directing that the clerk of the Court to enter the Court’s order as a final judgment; and,
8. Without affecting the finality of the final judgment, reserving continuing jurisdiction over the Parties for the purposes of implementing, enforcing and/or administering the Settlement or enforcing the terms of the judgment.

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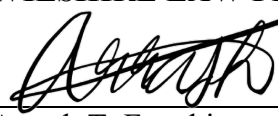
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1 This Motion will be based on the accompanying Memorandum of Points and Authorities,
2 the accompanying declarations, and such oral argument as may be heard by the Court, and all
3 other papers on file in this action.

4
5 Dated: May 22, 2025

Respectfully submitted,

6 **WILSHIRE LAW FIRM, PLC**

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8 By: 

Arrash T. Fattahi

9 Attorneys for Plaintiffs
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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Plaintiffs Guadalupe Guarista, Tenisha Katherine Howard, and Jennifer Lopez-Trigueros (collectively, “Plaintiffs”) seek final approval of a proposed \$200,000.00 non-reversionary, wage and hour class action settlement with Defendant Urologic Institute of High Desert, Inc. (“Defendant,” and together with Plaintiffs, the “Parties”). The Settlement will provide substantial monetary payments to approximately 153 class members. And, as set forth more fully below, the proposed Settlement satisfies all the criteria for settlement approval under California law.

The proposed settlement satisfies all the criteria for settlement approval under California law. A presumption of fairness exists as the Settlement was reached through extensive, mediated arm’s-length negotiations, sufficient investigation and discovery, which allowed Class Counsel to act intelligently, and Class Counsel is experienced in similar wage and hour litigation. Upon the Court’s approval of the settlement, participating class members will receive an *average estimated individual net settlement payment of approximately \$586.82*, with the *highest individual net settlement payment to be paid of approximately \$2,402.53*. (Declaration of Nick Castro of ILYM Group, Inc. in Support of Motion for Final Approval of Class Action Settlement [“Castro Decl.”], ¶ 13.) As of the filing of this Motion for Final Approval of Class Action Settlement (the “Motion”), there were **no objections to the settlement and no requests for exclusion**. (*Id.* at ¶¶ 11-12.) Thus, the proposed Settlement is fair, reasonable, and adequate and is in the best interests of the Settlement Class Members.

Final approval of the settlement is warranted as it satisfies all the criteria for approval under California law. As demonstrated in the Motion for Preliminary Approval of Class Action Settlement, the proposed Settlement provides excellent benefits to the class, particularly considering the complexities and risks of the case. Accordingly, Plaintiffs request that the Court grant final approval of the proposed Settlement.

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II. SUMMARY OF THE LITIGATION AND SETTLEMENT

A. Plaintiffs' Claims

This is a wage and hour class and Private Attorneys General Act ("PAGA") representative action. Plaintiffs and the putative class members worked in California as hourly-paid or non-exempt employees for Defendant during the class period. Defendant operated a medical practice group located in Southern California that specialized in urology. (Declaration of Arrash T. Fattahi in Support of Plaintiffs' Motion for Final Approval of Class Action Settlement ["Fattahi Decl."], ¶ 2.)

Plaintiffs allege that Defendant's payroll, timekeeping, and wage and hour policies and practices resulted in Labor Code violations. Plaintiffs allege that Defendant failed to pay for all hours worked. Plaintiffs further allege that Defendant failed to provide employees with legally compliant meal and rest periods and Defendant failed to reimburse business expenses. Based on these allegations, Plaintiffs assert related claims for failure to provide accurate wage statements, failure to pay all final wages at termination, unfair business practices, and civil penalties under PAGA. (*Id.* at ¶ 3.)

On August 27, 2021, Plaintiff Guarista filed a putative wage and hour class action complaint against Defendant for: (1) failure to pay minimum and straight time wages; (2) failure to pay overtime wages; (3) failure to provide meal periods; (4) failure to authorize and permit rest periods; (5) failure to timely pay final wages at termination; (6) failure to provide accurate itemized wage statements; and (7) unfair business practices. Prior to the filing of the class action complaint, on August 26, 2021, Plaintiff Guarista sent a notice to Defendant and the California Labor & Workforce Development Agency ("LWDA") alleging similar wage and hour violations pursuant to the PAGA. On November 30, 2021, Plaintiff Guarista separately filed a PAGA-only action against Defendant in the San Bernardino County Superior Court (Case No. CIVSB2133340). On July 8, 2022, the Class and PAGA actions were consolidated with the Class Action being designated as the lead case. Plaintiff Guarista's First Amended Consolidated Class & Representative Complaint, which combined the Class and PAGA Actions into one complaint, added Plaintiffs Tenisha Katherine Howard and Jennifer Lopez-Trigueros as class

representatives, and added a cause of action for Defendant’s failure to reimburse for necessary business expenditures, was deemed effective on July 24, 2024. (Fattahi Decl., ¶ 4.)

B. Discovery and Investigation

Following the filing of the initial complaint, the Parties exchanged documents and information before mediating this action. Defendant produced timekeeping and payroll records for a sample of the class members and demographic data for the class. Defendant also provided documentation regarding its written wage and hour policies throughout the class period. Following the unsuccessful mediation in July 2022, the Parties engaged in formal discovery, including written discovery, Plaintiff Guarista’s deposition, and multiple PMK (“Person(s) Most Knowledge”) depositions. (*Id.* at ¶ 5.)

After reviewing documents regarding Defendant’s wage and hour policies and practices, analyzing Defendant’s timekeeping and payroll records, and engaging in formal discovery to uncover additional facts regarding the matter, Class Counsel was able to evaluate the probability of class certification, success on the merits, and Defendant’s maximum monetary exposure for all claims. (*Id.* at ¶ 6.) Class Counsel also investigated the applicable law regarding the claims and defenses asserted in the litigation. (*Id.*) Class Counsel reviewed these records and prepared a damage analysis assessing Defendant’s potential liability prior to mediation. (*Id.*) Thus, Plaintiffs and their counsel were able to act intelligently and effectively in negotiating the proposed Settlement.

C. Settlement Negotiations and Agreement

On July 27, 2022, the Parties participated in private mediation with experienced class action mediator, Hon. Steve Denton (Ret.) (*Id.* at ¶ 7.) The settlement negotiations were at arm’s length and, although conducted in a professional manner, were adversarial. The Parties went into the mediation willing to explore the potential for a settlement of the dispute, but each side was also prepared to litigate their position through trial and appeal if a settlement had not been reached. (*Id.*) The Parties were unable to resolve the matter at the end of the July 2022 mediation and opted to engage in formal discovery. (*Id.*) After engaging in formal discovery and having extensive negotiations and discussions regarding the strengths and weaknesses of

Plaintiffs’ claims and Defendant’s defenses, the Parties ultimately reached a settlement, the material terms of which are encompassed within the Settlement Agreement. (*Id.* at ¶ 7, Ex. 1 [Class Action and PAGA Settlement Agreement and Class Notice].)

Class Counsel has conducted a thorough investigation into the facts of this case. Based on the foregoing discovery and their own independent investigation and evaluation, Class Counsel is of the opinion that the Settlement is fair, reasonable, and adequate and is in the best interests of the Settlement Class Members in light of all known facts and circumstances, the risk of significant delay, the defenses that could be asserted by Defendant both to certification and on the merits, trial risk, and appellate risk. (*Id.* at ¶ 9.)

D. Preliminary Approval and Overwhelming Support for the Settlement

The Court granted Plaintiffs’ Motion for Preliminary Approval of Class Action Settlement on December 19, 2024. (Fattahi Decl., ¶ 10.) The deadline for class members to opt out or object to the Settlement was March 25, 2025. (*Id.*) The reaction of the Class to the settlement has been overwhelmingly positive. Indeed, as of the filing of this Motion, no Class Member has opted out of the settlement and no Class Member has objected to the settlement. (*Id.*)

E. Key Terms of the Proposed Settlement

Under the Settlement Agreement, Defendant will pay \$200,000.00 to resolve this litigation. The key terms include:

1. Class Definition: For settlement purposes only, the Parties agree to the certification of a class pursuant to California Code of Civil Procedure § 382 defined as: “a person employed by Defendant in California and classified as non-exempt who worked for Defendant during the Class Period.” (Settlement, § 1.5.)
2. Class Period: “means the period from August 27, 2017 to the October 27, 2022...” (Settlement, § 1.11.)
3. Participating Class Member: “means a Class Member who does not submit a valid and timely Request for Exclusion from the Settlement.” (Settlement, § 1.34.)
4. Gross Settlement Amount: “means \$200,000.00 which is the maximum and total

amount Defendant agrees to pay under the Settlement except as provided in Paragraph 9 below. The Gross Settlement Amount will be used to pay Individual Class Payments, Individual PAGA Payments, the LWDA PAGA Payment, Class Counsel Fees, Class Counsel Expenses, Class Representative Service Payment and the Administrator’s Expenses.” (Settlement, § 1.21.)

5. Uncashed Checks: Any settlement checks remaining uncashed after one hundred and eighty (180) days shall be transmitted to the State Controller’s Office. (Settlement, § 4.4.3.; December 19, 2024 Order Granting Preliminary Approval, § 11.)
6. Release by Participating Class Members: “Plaintiffs and all Participating Class Members release and forever discharge, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, Released Parties, to the fullest extent permitted by law, from all claims alleged in any pleading in the Action and the Operative Complaint in the Action and all claims that reasonably could have been alleged based on the facts and/or theories pled in the Operative Complaint including claims for unfair competition predicated on claims for failure to pay minimum and straight time wages, failure to pay overtime wages, failure to provide meal periods, failure to provide rest periods, failure to timely pay final wages at termination, failure to provide accurate wage statements, failure to reimburse business expenses, and regular rate violations with respect to overtime, double time, meal and rest period premiums, and sick pay that accrued during the Class Period; and labor code violations for failure to pay minimum and straight time wages, failure to pay overtime wages, failure to provide meal periods, failure to provide rest periods, failure to timely pay final wages at termination, failure to provide accurate wage statements, and failure to reimburse business expenses, and regular rate violations with respect to overtime, double time, meal and rest period premiums, and sick pay that accrued during the Class Period. The released claims include, but are not limited

to, claims for wages, statutory penalties, civil penalties, damages, liquidated damages, or any other relief brought under state or federal law, the California Labor Code, the Fair Labor Standards Act, California Business and Professions Code sections 17200 *et seq*, and/or any applicable Industrial Welfare Commission Wage Order; attorneys’ fees and costs; and interest that accrued during the Class Period. The release expressly excludes claims for any alleged vested benefits, wrongful termination, unemployment insurance, disability benefits, social security, and workers’ compensation.” (Settlement, § 5.2.)

7. Release by Aggrieved Employees: “Plaintiffs, all Class Members who are Aggrieved Employees, and the State of California release and forever discharge, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, the Released Parties from any and all claims asserted, or which could have been asserted, in the Action, arising during the PAGA Period for civil penalties under California Labor Code section 2698, *et seq*. as well as any interest, fees, and costs available under PAGA, based on or reasonably arising out of the facts and circumstances contained in any pleading in the Action, the PAGA Notice, and the Operative Complaint, and all claims that could have been alleged based on the factual allegations contained collectively therein, including, but not limited to, claims for failure to pay minimum and straight time wages, failure to pay overtime wages, failure to provide meal periods, failure to provide rest periods, failure to pay all earned wages twice per month, failure to maintain accurate records of hours worked, failure to timely pay final wages at termination, failure to provide accurate wage statements, and failure to reimburse business expenses, and regular rate violations with respect to overtime, double time, meal and rest period premiums, and sick pay that accrued during the and for violations of Labor Code sections 201-204, 204.1, 210, 226, 226.3, 226.7, 510, 1173, 1174, 1174(d), 1174.5, 1182, 1182.12, 1185, 1194, 1194.2, 1197, 1197.1, 1198, 2802, and the applicable Industrial Welfare Commission Wage Orders in

conformity with Labor Code section 2699.3. Nothing in this paragraph shall be construed to be a release of any individual claims against Defendant by any Aggrieved Employees not a party to this Action.” (Settlement, § 5.3)

8. No Reversion: None of the Gross Settlement Amount will revert to Defendant. (Settlement, § 3.1.)
9. PAGA Allocation: The settlement includes \$10,000.00 allocated to Plaintiffs’ claims under PAGA, with 75% of which (\$7,500.00) being paid to the LWDA and 25% (\$2,500.00) being paid to the Individual PAGA Payments. (Settlement, § 3.2.5.) Class Counsel submitted the proposed settlement to the LWDA before filing the Motion for Preliminary Approval. (Declaration of Justin F. Marquez in Support of Plaintiffs’ Motion for Preliminary Approval of Class Action Settlement, ¶ 9.)
10. Net Settlement Amount: “means the Gross Settlement Amount, less the following payments in the amounts approved by the Court: Individual PAGA Payments, the LWDA PAGA Payment, Class Representatives Service Payments, Class Counsel Fees Payment, Class Litigation Expenses Payment, and the Administration Expenses Payment. The remainder is to be paid to Participating Class Members as Individual Class Payments.” (Settlement, § 1.27.)
11. Individual Class Payment: means “the Participating Class Member’s pro rata share of the Net Settlement Amount calculated according to the number of Workweeks worked during the Class Period.” (Settlement, § 1.22.)
12. Tax Allocation: 50% of each Participating Class Member’s Individual Class Payment will be allocated to the settlement of wage claims and 50% will be allocated to settlement of claims for interest and penalties. (Settlement, § 3.2.4.1.)
13. Class Representative Service Payments: “Class Representative Service Payments to Plaintiff Guadalupe Guarista in the amount of \$5,000.00, and Class Representative Service Payments to Tenisha Katherine Howard and Jennifer Lopez-Trigueros in the amount of \$1,000.00 (in addition to any Individual Class Payments and any Individual PAGA Payments the Class Representative are entitled to receive as Participating

Class Members).” (Settlement, § 3.2.1.)

14. Class Counsel Fees and Costs: “A Class Counsel Fees Payment of not more than 33.333333%, which is currently estimated to be \$66,666.67 and a Class Counsel Litigation Expenses Payment of not more than \$20,000.00.” (Settlement, § 3.2.2.)

15. Notice of Proposed Class Action Settlement: The Notice sets forth in plain terms, a statement of the case, the terms of the Settlement Agreement, the approximate amount of attorneys’ fees, costs, and service awards being sought, and an explanation of how the settlement allocations are calculated. (Settlement, Ex. A, Class Notice.) Class Members were notified by first-class mail of the settlement. (Castro Decl., ¶ 7.) ILYM Group, Inc., the proposed Settlement Administrator, undertook its best efforts to ensure that the notice was provided to the current addresses of class members, including conducting a national change of address search and re-mailing the notice to updated addresses. (*See generally, id.*)

III. THE SETTLEMENT MERITS FINAL APPROVAL

The law favors the settlement of lawsuits, particularly in class actions and other complex cases. (*See e.g., Neary v. Regents of Univ. of California* (1992) 3 Cal.4th 272, 277-81.) Factors to be considered in evaluating a class action settlement include “the strength of plaintiffs’ case, the risk, expense, complexity and likely duration of further litigation, the risk of maintaining class action status through proceedings, the experience and views of counsel, the presence of a government participant, and the reaction of the class members to the proposed settlement.” (*Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 128.) A presumption that a settlement is fair and reasonable exists where, as here, the following four factors are present: “(1) the settlement is reached through arm’s length bargaining; (2) investigation and discovery are sufficient to allow counsel and the court to act intelligently; (3) counsel is experienced in similar litigation; and (4) the percentage of objectors is small.” (*Wershba v. Apple Computers, Inc.* (2001) 91 Cal.App.4th 224, 245.)

Whether a class action settlement should be approved is a question committed to the trial court’s broad discretion. (*Id.* at pp. 234-35.) In exercising its discretion, the Court should give

1 “[d]ue regard ...to what is otherwise a private consensual agreement between the parties.” (*Dunk*
2 *v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1801.) “The inquiry ‘must be limited to the extent
3 necessary to reach a reasoned judgment that the agreement is not the product of fraud or
4 overreaching by, or collusion between, the negotiating parties, and that the settlement, taken as a
5 whole, is fair, reasonable and adequate to all concerned.” (*Id.* [internal citations omitted].)

6 **A. The Settlement Reflects a Reasonable Compromise**

7 A settlement is not judged against what the plaintiff might recover had he or she prevailed
8 at trial, nor does the settlement have to provide 100% of the damages sought to be fair and
9 reasonable. (*Wershba, supra*, 91 Cal.App.4th at pp. 246, 250 [“Compromise is inherent and
10 necessary in the settlement process...even if the relief afforded by the proposed settlement is
11 substantially narrower than it would be if the suits were to be successfully litigated, this is no bar
12 to a class settlement because the public interest may indeed be served by a voluntary settlement in
13 which each side gives ground in the interest of avoiding litigation.”].)

14 The settlement obviates the significant risk that this Court may deny certification of all or
15 some of Plaintiffs’ claims. (Fattahi Decl., ¶ 9.) While Plaintiffs are confident in the merits of their
16 claims, a legitimate controversy exists as to each cause of action. (*Id.*) Plaintiffs also recognize
17 that proving the amount of wages due to each class member would be an expensive, time-
18 consuming, and uncertain proposition. (*Id.*) Furthermore, even if Plaintiffs obtained certification
19 of all or some of the claims, continued litigation would be expensive, involving a trial and possible
20 appeals, and would substantially delay and reduce any recovery by the class. (*Id.*)

21 Because of the proposed Settlement, class members will receive timely, guaranteed relief
22 and will avoid the risk of an unfavorable judgment. When considering the risks of litigation, the
23 uncertainties involved in achieving class certification, the burdens of proof necessary to establish
24 liability, the probability of appeal of a favorable judgment, it is clear that the settlement amount of
25 \$200,000.00 is within the “ballpark” of reasonableness, and settlement approval is appropriate.

26 ***Indeed, each Settlement Class Member is eligible to receive an average benefit of approximately***
27 ***\$586.82, and the highest estimated net payout is expected to be approximately \$2,402.53.*** (Castro
28 Decl., ¶ 13.)

1 **B. The Settlement was Reached After Arms-Length Negotiations Following**
2 **Formal and Informal Discovery**

3 The Settlement was reached following one day of mediation and extensive formal
4 discovery. (Fattahi Decl., ¶ 7.) The settlement negotiations were at arm's length and, although
5 conducted in a professional manner, were adversarial. (*Id.*) The Parties went into the mediation
6 willing to explore the potential for a settlement of the dispute, but each side was also prepared to
7 litigate their or its position through trial and appeal if a settlement had not been reached. (*Id.*)
8 After engaging in formal discovery and having extensive negotiations and discussions regarding
9 the strengths and weaknesses of Plaintiffs' claims and Defendant's defenses, the Parties
10 ultimately reached an agreement.

11 Prior to reaching this settlement, Class Counsel conducted both informal and formal
12 discovery concerning the claims set forth in the litigation. Defendant produced timekeeping and
13 payroll records for a sample of class members, demographic data for the class, and documentation
14 regarding its written wage and hour policies throughout the class period. Following the
15 unsuccessful mediation in July 2022, the Parties engaged in formal discovery, including written
16 discovery, Plaintiff Guarista's deposition, and multiple PMK depositions. (*Id.* at ¶¶ 5-6.) In
17 conjunction with their extensive factual investigation, Class Counsel investigated the applicable
18 law regarding the claims and defenses asserted in the litigation. (*Id.*) Thus, Plaintiffs and their
19 counsel were able to act intelligently and effectively in negotiating the proposed Settlement. (*Id.*)

20 **C. Plaintiffs' Counsel Has Substantial Class Action Experience**

21 Class Counsel also has considerable experience and has demonstrated competence with
22 litigating wage and hour class actions. (*Id.* at ¶¶ 26-37.) Class Counsel has substantial experience
23 in all facets of litigation in state and federal court, including discovery, law and motion, trial,
24 appeals, arbitration and mediation. Class Counsel has litigated numerous class actions on behalf
25 of plaintiffs and have been lead counsel or otherwise exercised significant case handling
26 responsibilities in numerous cases resulting in millions of dollars in class action settlements. (*Id.*)

27 Based on Class Counsel's experience as employment and class action attorneys, Class
28 Counsel is eminently qualified to evaluate the strength of Plaintiffs' claims, the strength of

Defendant’s defenses against certification, the strength of Defendant’s defenses on the merits, and the fairness of the Settlement. Their opinion that final approval of the Settlement would be in the best interests of class members in light of the significant risks of litigation is entitled to great weight. (*See Kullar, supra*, 168 Cal.App.4th at p. 129 [“The court undoubtedly should give considerable weight to the competency and integrity of counsel and the involvement of a neutral mediator in assuring itself that a settlement agreement represents an arms’ length transaction entered without self-dealing or other potential misconduct”].)

D. There Are No Objections to the Settlement

No class member has objected to the Settlement, and no class member has requested exclusion from the Settlement. (Castro Decl., ¶¶ 11-12.) The overwhelmingly positive response of the class strongly supports final approval of the Settlement. (*See, e.g., In re Lifelock, Inc. Marketing and Sales Practices Litigation* (D. Ariz. 2010) 2010 WL 3715138, *6 [relatively few objections and requests for exclusion support approval].)

Factors to be considered in evaluating a class action settlement include “the reaction of the class members to the proposed settlement.” (*Kullar, supra*, 168 Cal.App.4th at p. 128.) The reaction here has been overwhelmingly positive. Courts have approved class action settlements in lesser circumstances. (*See, e.g., Hughes v. Microsoft Corp.* (W.D.Wash. 2001) 2001 U.S. Dist. LEXIS 5976, 2001 WL 34089697, *8 [court found that the “class members overwhelmingly support[ed] the settlement” where there were over 37,000 notices sent out, 2,745 class members participated in the settlement, “only nine objections were submitted”, and there were 86 timely opt-outs and over 20 additional defective or untimely opt-outs, “these indicia of the approval of the class of the terms of the settlement support a finding of fairness under Rule 23”], *citing Hanlon v. Chrysler Corp.* (9th Cir.1998) 150 F.3d 1011, 1027 [despite vigorous objections and appeal by objectors, the “fact that the overwhelming majority of the class willingly approved the offer and stayed in the class presents at least some objective positive commentary as to its fairness,” and the court did not abuse its discretion in approving settlement].)

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1 **IV. THE COURT SHOULD AWARD PLAINTIFFS THE REQUESTED AMOUNTS OF**
2 **FEES, COSTS AND ENHANCEMENT PAYMENTS.**

3 Under the Settlement, subject to the Court's approval, Defendant has agreed to pay Class
4 Counsel reasonable attorneys' fees in the amount of \$66,666.67, which is 33 1/3% of the Gross
5 Settlement Amount, costs up to \$20,000.00 for litigating this action, and enhancement awards of
6 \$5,000.00 to Plaintiff Guadalupe Guarista and \$1,000.00 each to Plaintiffs Tenisha Katherine
7 Howard and Jennifer Lopez-Trigueros. Defendant has also agreed that they would not oppose an
8 application for these payments addressed above, and no class member has objected to these
9 amounts.

10 In common fund cases like this one, the primary method California courts use for
11 calculating attorneys' fees is the percentage of the common fund method, which may be followed
12 by a lodestar cross-check. In *Laffitte v. Robert Half Int'l Inc.* (2016) 1 Cal.5th 480, the California
13 Supreme Court affirmed an award of 33 1/3% of a \$19 million wage and hour class action
14 settlement with a 2.03 to 2.13 multiplier. (*Id.* at p. 506.) In doing so, the California Supreme Court
15 explained:

16 As to the incentives a lodestar cross-check might create for class counsel, we
17 emphasize the lodestar calculation, when used in this manner, ***does not override***
18 ***the trial court's primary determination of the fee as a percentage of the common***
19 ***fund and thus does not impose an absolute maximum or minimum on the***
20 ***potential fee award.*** If the multiplier calculated by means of a lodestar cross-
21 check is extraordinarily high or low, the trial court should consider whether the
22 percentage used should be adjusted so as to bring the imputed multiplier within a
23 justifiable range, but the court is not necessarily required to make such an
24 adjustment. Courts using the percentage method have generally weighed the time
25 counsel spent on the case as an important factor in choosing a reasonable
26 percentage to apply.

27 (*Id.* at p. 505, emphasis added; *see also Beaver v. Tarsadia Hotels* (S.D. Cal. Sept. 28, 2017) 2017
28 WL 4310707, at *9 [applying *Laffitte* standard to fee request for 33 1/3% of common fund].)

29 **A. A Fee Award Based on One-Third of the Common Fund is Standard**

30 According to a leading treatise on class actions, "[n]o general rule can be articulated on
31 what is a reasonable percentage of a common fund. Usually 50% of the fund is the upper limit on
32 a reasonable fee award from a common fund in order to assure that the fees do not consume a

disproportionate part of the recovery obtained for the class, although somewhat larger percentages are not unprecedented.” (*See Conte & Newberg, Newberg on Class Actions* (3rd Ed.) § 14.03.) Attorneys’ fees at fifty percent of the fund are typically considered the upper limit, with ***thirty to forty percent*** commonly awarded in cases where the settlement is relatively small. (*Id.*; *see also Van Vranken v. Atlantic Richfield Company* (N.D. Cal. 1995) 901 F. Supp. 294 [stating that most cases where 30-50% was awarded involved “smaller” settlement funds of under \$10 million].)

The settled-for 33 1/3% fee award is consistent with the average fee award in class actions. Indeed, the custom and practice in class actions is to award approximately one-third of a fund as a fee award. (*See Chavez v. Netflix, Inc.* (2008) 162 Cal.App.4th 43, 66, n.11 [“Empirical studies show that, regardless whether the percentage method or the lodestar method is used, fee awards in class actions average around one-third of the recovery.”].) Thus, Plaintiffs’ fee request is in line with the prevailing guidelines established in California case law and academic literature and is consistent with awards in California. Accordingly, the Court should approve the attorneys’ fees requested herein.

B. While the Lodestar Method is Not Necessary in Common Fund Cases, Courts May Perform a Cross-Check to Award Fees.

Although California supports the common fund doctrine, the lodestar method can be used to cross-check fee awards. “It may be appropriate in some cases, assuming the class benefit can be monetized with a reasonable degree of certainty, to “cross-check” or adjust the lodestar in comparison to a percentage of the common fund to ensure that the fee awarded is reasonable and within the range of fees freely negotiated in the legal marketplace in comparable litigation.” (*In re Consumer Privacy Cases* (2009) 175 Cal.App.4th 545, 557.)

Applying the lodestar method requires a two-step process. The first step is to multiply the number of hours reasonably expended by a reasonable hourly rate. The second step is to apply a multiplier to the lodestar to take into account various factors. “The purpose of such adjustment is to fix a fee at the fair market value for the particular action. In effect, the court determines, retrospectively, whether the litigation involved a contingent risk or required extraordinary legal skill justifying augmentation of the unadorned lodestar in order to approximate the fair market rate

1 for such services.” (*Id.* at pp. 556-57.) “Under certain circumstances, a lodestar calculation may
2 be enhanced on the basis of a percentage-of-the-benefit analysis.” (*Id.* at p. 557.)

3 Detailed timesheets are not necessary to a lodestar cross-check. “The law is clear ... that
4 an award of attorney fees may be based on counsel’s declarations, without production of detailed
5 time records.” (*Raining Data Corp. v. Barrenechea* (2009) 175 Cal.App.4th 1363, 1375.) As the
6 California Supreme Court explained in *Laffitte*:

7 With regard to expenditure of judicial resources, we note that trial courts
8 conducting lodestar cross-checks have generally not been required to closely
9 scrutinize each claimed attorney-hour, but have instead used information on
10 attorney time spent to “focus on the general question of whether the fee award
11 appropriately reflects the degree of time and effort expended by the attorneys.”
12 (5 Newberg on Class Actions, *supra*, § 15:86, p. 331; *see, e.g., Goldberger v.*
13 *Integrated Resources, Inc.*, *supra*, 209 F.3d at p. 50 [2d Cir.; “where used as a
14 mere cross-check, the hours documented by counsel need not be exhaustively
15 scrutinized by the district court”]; *In re Prudential Ins. Co. America Sales*
16 *Practice Litigation Agent Actions* (3d Cir.1998) 148 F.3d 283, 342 [agreeing with
17 district court that “detailed time summaries were unnecessary where, as here, it
18 was merely using the lodestar calculation to double check its fee award.”];
19 *Barbosa v. Cargill Meat Solutions Corp.* (E.D.Cal.2013) 297 F.R.D. 431, 451
20 [“Where the lodestar method is used as a cross-check to the percentage method,
21 it can be performed with a less exhaustive cataloguing and review of counsel’s
22 hours.”].)

23 (*Laffitte, supra*, 1 Cal.5th at p. 505.)

24 Class Counsel’s lodestar is at least \$73,150 based on approximately 116 hours of work
25 performed thus far. (Fattahi Decl., ¶¶ 17-18.) Accordingly, the requested fee of \$66,666.67 is
26 reasonable and fair as it is based on an approximate multiplier of 0.91; Class Counsel has spent
27 more time and resources on this case relative to its anticipated recovery. To be sure, trial courts
28 have substantial discretion in adjusting the lodestar to account for various factors. (*See Lealao v.*
Beneficial California, Inc. (2000) 82 Cal.App.4th 19, 26, 39-45; *see also Serrano v. Priest* (1977)
20 Cal.3d 25, 49.) In addition, it has been held that “[m]ultipliers can range from 2 to 4 or even
higher.” (*See Wershba, supra*, 91 Cal.App.4th at p. 255; *see also Van Vranken, supra*, 901 F.
Supp. At p. 298 “[m]ultipliers in the 3-4 range are common in lodestar awards for lengthy and
complex class action litigation.”). Similar multipliers have been found to be reasonable for Class
Counsel. (*See, e.g., Moreno v. Pretium Packaging, L.L.C.* (C.D. Cal. Aug. 6, 2021) No. 8:19-cv-
02500-SB, 2021 WL 3673845, *3 [finding Wilshire Law Firm, PLC’s multiplier of 2.57 reasonable

“in light of the contingent nature of recovery, the complexity of the issues, and the result obtained”].)

1. Class Counsel’s Rates Have Been Approved by Several Courts.

Class Counsel provides a declaration to support their lodestar hourly rates. “Affidavits of the plaintiffs’ attorney and other attorneys regarding prevailing fees in the community, and rate determinations in other cases, particularly those setting a rate for the plaintiffs’ attorney, are satisfactory evidence of the prevailing market rate.” (*United Steelworkers of America v. Phelps Dodge Corp.* (9th Cir. 1990) 896 F.2d 403, 407.) Class Counsel has received final approval of their hourly rates in other wage and hour class action settlements.

C. Costs Are Reasonable.

As of the date of filing this Motion, Class Counsel has incurred around \$34,892.41 in costs, and they anticipate incurring additional costs up to the time the Court enters a judgment in this action and schedules a hearing on distribution. (Fattahi Decl., ¶ 25.) Class Counsel here has requested a maximum reimbursement of up to \$20,000.00 in costs as limited by the Settlement Agreement. Notably, Defendant has agreed that it will not oppose any cost award request up to \$20,000.00. The categories of costs are set forth in the accompanying Declaration of Arrash T. Fattahi, and these costs are easily seen to be both reasonable and necessary, particularly for the reason that Class Counsel’s actual costs exceed its anticipated costs recovery through this Settlement.

Counsel can recover “out-of-pocket expenses that ‘would normally be charged to a fee paying client’” including costs for “service of summons and complaint, service of trial subpoenas, fee for defense expert at deposition, postage, investigator, copying costs, hotel bills, meals, messenger service and employment record reproduction.” (*Harris v. Marhoefer* (9th Cir. 1994) 24 F.3d 16, 19.) Such costs are properly recoverable on motions for settlement approval. (*See Nunez v. BAE Sys. San Diego Ship Repair Inc.* (S.D. Cal. 2017) 292 F. Supp. 3d 1018, 1057; *Rutti v. Lojack Corp.* (C.D. Cal. July 31, 2012) No. CV 06–00350 DOC, 2012 WL 3151077, at *12 [“Expenses such as reimbursement for travel, meals, lodging, photocopying, long-distance telephone calls, computer legal research, postage, courier service, mediation,

exhibits, documents scanning, and visual equipment are typically recoverable.”].)

D. The Enhancement Payments to the Plaintiffs are Reasonable.

Named plaintiffs in class action lawsuits “are eligible for reasonable incentive payments to compensate them for the expense or risk they have incurred in conferring a benefit on other members of the class.” (*Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles* (2010) 186 Cal.App.4th 399, 412.) Courts routinely grant approval of class action settlement agreements containing enhancements for the class representatives, which are necessary to provide incentive to represent the class, and are appropriate given the benefit the class representatives help to bring about for the class. (*See Rodriguez v. W. Publ'g Corp.* (9th Cir. 2009) 563 F.3d 948, 958-59.) The California Supreme Court has also noted that “retaliation against employees for asserting statutory rights under the Labor Code is widespread,” despite anti-retaliation statutes designed to protect employees. (*Gentry v. Super. Ct.* (2007) 42 Cal.4th 443, 460-61.) Plaintiffs should therefore be rewarded for assuming the risk of retaliation for the sake of class members. (*See Frank v. Eastman Kodak Co.* (W.D.N.Y. 2005) 228 F.R.D. 174, 187.)

Under the settlement agreement, subject to the Court’s approval, Defendant agreed to pay Plaintiff Enhancements in the amount of \$5,000.00 to Plaintiff Guadalupe Guarista and \$1,000.00 each to Plaintiffs Tenisha Katherine Howard and Jennifer Lopez-Trigueros. These amounts are also in exchange for Plaintiffs’ general releases of all claims against Defendant.

When compared with the amounts awarded in typical class action cases, the amounts requested here are particularly reasonable. Indeed, a **2006** study examining the average incentive award given to class action plaintiffs from **1993 to 2002** found that the “average award per class representative was \$15,992 and the median award per class representative was \$4,357.” (Theodore Eisenberg & Jeffrey P. Miller, “Incentive Awards to Class Action Plaintiffs: An Empirical Study”, 53 UCLA L. Rev. 1303, 1308 (2006).) Courts routinely approve a \$10,000 enhancement award for plaintiffs represented by Class Counsel. (*See, e.g., Moreno, supra*, 2021 WL 3673845 at *3 [“The Court concludes a \$10,000 incentive award is appropriate.”]; *Suarez v. Bank of America, N.A.* (N.D. Cal. Jan. 11, 2024), No. 18-cv-01202-LB, 2024 WL150721, *4 [“The court approves awards of \$10,000 for each class representative.”].)

“Since without a named plaintiff there can be no class action, such compensation as may be necessary to induce him to participate in the suit.” (*Clark v. Am. Residential Services LLC* (2009) 175 Cal.App.4th 785, 804.) “[T]he rationale for making enhancement or incentive awards to named plaintiffs is that they should be compensated for the expense or risk they have incurred in conferring a benefit on other members of the class.” (*Id.* at p. 806.) “An incentive award is appropriate ‘if it is necessary to induce an individual to participate in the suit.’” (*Cellphone Term. Fee Cases* (2010) 186 Cal.App.4th 1380, 1394, *quoting Clark*, 175 Cal.App.4th at p. 804.) The “criteria courts may consider in determining whether to make an incentive award include: (1) the risk to the class representative in commencing suit, both financial and otherwise; (2) the notoriety and personal difficulties encountered by the class representative; (3) the amount of time and effort spent by the class representative; (4) the duration of the litigation; and (5) the personal benefit (or lack thereof) enjoyed by the class representative as a result of the litigation.” (*Id.* at pp. 1394–95.)

E. Administration Expenses Should be Approved.

ILYM Group, Inc., the Settlement Administrator, estimates that it will incur a total of \$6,550.00 in costs associated with the administration of this Settlement. (Castro Decl., ¶ 14.) These expenses are reasonable.

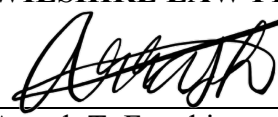
V. CONCLUSION

For the foregoing reasons, Plaintiffs respectfully request that the Court grant final approval of the proposed settlement.

Dated: May 22, 2025

Respectfully submitted,

WILSHIRE LAW FIRM, PLC

By: 

Arrash T. Fattahi

Attorneys for Plaintiffs

Guarista, et al. v. Urologic Institute of The High Desert, Inc., et al.
CIVSB2125029

I, Ashley Narinyans, state that I am employed in the aforesaid County, State of California; I am over the age of eighteen years and not a party to the within action; my business address is 3055 Wilshire Blvd., 12th Floor, Los Angeles, California 90010. My electronic service address is ashley.narinyans@wilshirelawfirm.com.

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