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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF ORANGE

MONICA GARCIA, individually, and on behalf of all others similarly situated, Plaintiff, v. COMPASSIONATE HEART SENIOR CARE, INC. DBA HOME INSTEAD SENIOR CARE, a California corporation; and DOES 1 through 10, inclusive, Defendants.	Case No. 30-2022-01294409-CU-OE-CXC *Related Case No.* 30-2023-01349739-CU-OE-CXC *Assigned for all purposes to:* *Hon. Layne H. Melzer, Dept. CX-102* **NOTICE OF MOTION AND MOTION FOR FINAL APPROVAL OF CLASS ACTION AND PAGA SETTLEMENT** Date: March 14, 2025 Time: 1:30 p.m. Dept.: CX-102

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TO ALL INTERESTED PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on March 14, 2025 at 1:30 p.m., or as soon thereafter as the matter may be heard in Department CX-102 of the above-entitled Court located at the Civil Complex Center, 751 West Santa Ana Blvd, Santa Ana, California 92701, Plaintiff Monica Garcia ("Plaintiff") will and hereby does move this Court for an Order:

1. Granting final approval of the proposed Class Action and PAGA Settlement Agreement;
2. Awarding Class Counsel attorneys' fees in the amount of $70,391.91 and reimbursement of litigation costs in the amount of $8,740.74;
3. Awarding Plaintiff a Class Representative Service Payment in the amount of $10,000.00;
4. Awarding $7,950.00 to ILYM Group, Inc. for its settlement administration expenses; and
5. Approving allocation of $10,000.00 as civil penalties under the Private Attorneys' General Act of 2004 ("PAGA"), 75% of which ($7,500.00) will be paid to the California Labor and Workforce Development Agency, and 25% of which ($2,500.00) will be distributed to Aggrieved Employees based on the number of pay periods worked during the PAGA Period.

This Motion is based on this Notice of Motion, Memorandum of Points and Authorities, the Declaration of John G. Yslas, the Declaration of Monica Garcia (submitted with Plaintiff's Motion for Preliminary Approval), the Declaration of Amanda Howard, and on all records and documents on file, together with such oral and documentary evidence that may be presented at the hearing on this matter.

Dated: February 26, 2025

WILSHIRE LAW FIRM

By: ______________________
John G. Yslas
Attorneys for Plaintiff Monica Garcia

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I. INTRODUCTION

Plaintiff Monica Garcia ("Plaintiff") seeks final approval of a non-reversionary Gross Settlement Amount of $211,387.13. Declaration of Amanda Howard of ILYM Group, Inc. Regarding Notice and Settlement Administration ("Howard Decl."), ¶ 6. The Class Action and PAGA Settlement Agreement ("Settlement") provides that the deductions will be made from the Gross Settlement Amount:

1. Attorneys' fees in the amount of up to $70,391.91;
2. Litigation costs in the amount of up to $8,740.74;
3. A Class Representative Service Payment of up to $10,000.00;
4. Settlement administration expenses of up to $7,950.00; and
5. Civil penalties in the amount of $10,000.00 for claims under the Private Attorneys' General Act of 2004 ("PAGA"), 75% of which ($7,500.00) will be paid to the California Labor and Workforce Development Agency ("LWDA), and 25% of which ($2,500.00) will be distributed to Aggrieved Employees based on the number of pay periods worked during the PAGA Period. *Id*. at ¶ 15.

After all deductions are made, the Net Settlement Amount will be distributed to 295 Class Members who did not opt out of the Settlement ("Participating Class Members") based on the number of weeks worked during the Class Period. *Id*. at ¶ 16.

The proposed Settlement is a product of diligent efforts, litigation, arm's length negotiations, and informal discovery that resulted in the best possible outcome for the Class. By resolving this matter now, Class Members will receive a guaranteed recovery without risk of nonpayment, delay, or an adverse judgment at trial.

In response to the Class Notice, three (3) of the 298 Class Members have opted out. *Id*. at ¶ 12, Ex. B. There are 295 Participating Class Members that will receive an average settlement payment of $353.57, with the highest payout reaching $2,195.74 and lowest at $6.65. *Id*. at ¶¶ 16, 17. In light of the Class' favorable response, and the facts and law set forth below as well as in the motion for preliminary approval, Plaintiff respectfully requests that the Court now enter an Order: (1) granting final approval of the Settlement; (2) entering final judgment; (3)

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requiring distribution of individual settlement shares to Participating Class Members; and (4) approving payments for attorneys' fees, litigation costs, the Class Representative Enhancement Payment, settlement administration expenses, and civil penalties under PAGA.

II. THE SETTLEMENT MERITS FINAL APPROVAL

In deciding whether to grant final approval of a class action settlement, California courts consider whether the settlement is "fair, adequate, and reasonable." *Dunk v. Ford Motor Co.*, 48 Cal.App.4th 1794, 1801 (1996). In evaluating whether a settlement is fair, adequate, and reasonable, courts evaluate the following factors: (1) the strength of the plaintiff's case; (2) the risk, expense, complexity and duration of further litigation; (3) the risk of maintaining class action status through trial; (4) the amount offered in settlement; (5) the extent of discovery completed and the stage of the proceedings; (6) the experience and views of counsel; (7) the presence of a governmental participant; and (8) the reaction of class members to the proposed settlement. *Id.*

A. A Presumption of Fairness Exists

While the burden is on the proponent to demonstrate that a proposed settlement is fair, adequate, and reasonable, "a presumption of fairness exists where: (1) the settlement is reached through arm's length bargaining; (2) investigation is 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." *Id.* at 1802.

At preliminary approval, Plaintiff presented evidence that this Settlement is entitled to a presumption of fairness because: (1) it was reached through arm's length bargaining with the assistance of an experienced mediator; (2) Plaintiff conducted a thorough investigation through informal discovery and an analysis of Class Members' time and payroll records; and (3) Plaintiff's Counsel is experienced in similar litigation. *See* Declaration of John G. Yslas in Support of Motion for Preliminary Approval of Class Action Settlement ("Yslas MPA Decl."), filed May 20, 2024 at ¶¶ 5-8, 41-51; Supplemental Declaration of John G. Yslas in Support of Motion for Preliminary Approval of Class Action Settlement ("Yslas Supp MPA Decl."), ¶¶ 5, 6. Since then, the final *Dunk* factor has been satisfied; only three (3) of the Class Members have opted out and none have objected. Howard Decl. at ¶¶ 12, 13. Therefore, the Court can confidently conclude that a presumption of fairness exists.

B. The Strength of Plaintiff's Claims, and the Risks, Expense, Complexity, and Likely Duration of Further Litigation as a Class Action Through Trial

Courts are not required to ensure that a settlement maximizes the value of released claims with mathematical precision. "[T]he test is not the maximum amount plaintiffs might have obtained at trial on the complaint, but rather whether the settlement is reasonable under all of the circumstances." *Wershba v. Apple Computer, Inc.* 91 Cal.App.4th 224, 250 (2001), disapproved of on other grounds by *Hernandez v. Restoration Hardware, Inc.*, 4 Cal.5th 260, 269-270 (2018); *see also 7-Eleven Owners for Fair Franchising v. Southland Corp.*, 85 Cal.App.4th 1135, 1150 (2000) ("the merits of the underlying class claims are not a basis for upsetting the settlement of a class action; the operative word is 'settlement.'"). The relevant circumstances include the strengths and weaknesses of plaintiffs' claims and the risks they faced in litigation. *7-Eleven*, 85 Cal.App.4th at 1146.

Here, Plaintiff presented sufficient information at preliminary approval regarding the number of class members and an estimate of the maximum value of each of the claims alleged. *See* Yslas MPA Decl. at ¶¶ 15-29; Yslas Supp MPA Decl. at ¶¶ 7-14. Plaintiff has also described in detail the risks the Class faced in litigation and the strengths and weaknesses of each of the claims. *See id.* Plaintiff noted potential difficulties in obtaining class certification and succeeding on the merits at trial. *See id*. The factual record here is sufficiently developed to allow the Court to independently satisfy itself "that the consideration being received for the release of the class members' claims is reasonable in light of the strengths and weaknesses of the claims and the risks of the particular litigation." *Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles*, 186 Cal.App.4th 399, 410 (2010).

C. The Amount Offered in Settlement

The Settlement provides a $211,387.13 Gross Settlement Amount to be distributed among 295 Class Members who did not opt out. Howard Decl. at ¶¶ 15, 16. The Gross Settlement Amount will be used to pay Class Counsel's attorneys' fees and costs, Plaintiff's

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Class Representative Service Payment, and ILYM Group, Inc. for its administration of the Class Notice and settlement funds. *Id*. at ¶ 15. The Settlement also allocates $10,000.00 from the Gross Settlement Amount to civil penalties under PAGA. *Id*. After all deductions are made, the Net Settlement Amount will be $104,304.48, which will be distributed to Participating Class Members according to the number of weeks they worked for Defendants during the Class Period. *Id*. at ¶ 15.

The Settlement Administrator has calculated a total of 15,676 workweeks for Participating Class Members. *Id*. at ¶ 16. As a result, the average recover for Participating Class Members is $343.57, and the highest payout is $2,195.74. *Id*. at ¶ 17. Weighing the potential value of the class claims against the risk and expense of trial, the Settlement provides sufficient relief in light of the potential risks associated with seeking a class judgment.

D. The Extent of Discovery Completed and the Stage of the Proceedings

Class Counsel sufficiently investigated the alleged claims, applicable law, and potential defenses. Specifically, Class Counsel assessed the value of the claims using data and documents provided by Defendant in informal discovery, which included policy documents and timekeeping and payroll records. *See* Yslas MPA Decl. at ¶¶ 5-6; Yslas Supp MPA Decl. at ¶ 5. Following a complete analysis of this information, the Parties engaged in direct negotiations. Yslas MPA Decl. at ¶¶ 7, 8. After extensive negotiations over several months, the Parties were able to reach an agreement and execute the Settlement. *Id*. at ¶ 8.

E. The Experience and Views of Counsel

Plaintiff is represented by Wilshire Law Firm, PLC. Class Counsel prosecute wage and hour cases, including class and representative actions. Declaration of John G. Yslas in Support of Motion for Final Approval of Class Action and PAGA Settlement ("Yslas MFA Decl.") at ¶¶ 4, 5. Class Counsel has litigated many wage and hour cases and have successfully resolved cases involving similar issues presented in this matter. *Id*. Class Counsel has negotiated a settlement here that they believe is fair, reasonable, and adequate based on their prior experience litigating these types of cases. *Id*. at ¶ 20.

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F. The Presence of a Government Participant

The LWDA is a governmental participant in this Settlement. On February 3, 2023, Plaintiff provided notice to the LWDA of her intention to file a PAGA claim. Yslas MPA Decl. at ¶ 4. The Settlement provides for the payment of $10,000.00 in civil penalties, 75% of which ($7,500.00) will be paid to the LWDA, and 25% of which ($2,500.00) will be paid to Aggrieved Employees based on the number of pay periods worked during the PAGA Period. *See* Howard Decl. at ¶ 15. On April 26, 2024, Plaintiff submitted a copy of the Settlement to the LWDA. *Id*. at ¶ 9, Exhibit 2. The LWDA has not responded to or objected to the Settlement. Yslas MFA Decl. at ¶ 21.

G. The Reaction of Class Members to the Proposed Settlement

Class Members' reaction to the Settlement has been favorable. A court may properly infer that a class action settlement is fair, reasonable, and adequate when few class members object to or opt out it. *Lealo v. Beneficial California, Inc.*, 82 Cal.App.4th 19, 51 (2000).

When the Court granted preliminary approval, it also approved the method of providing notice to Class Members. Following a search of the National Change of Address database, ILYM Group, Inc. mailed the Class Notice to all Class Members on December 2, 2024. Howard Decl. at ¶ 8. The Class Notice informed Class Members of the terms of the Settlement, the amount of their individual settlements and how those amounts were calculated, their right to either participate in the Settlement, opt out of it, object to it, or dispute the amount of their individual settlement payment, the procedures and deadlines to submit an opt out, objection, or dispute, and the date, time, and place of the hearing on Plaintiff's Motion for Final Approval and instructions to be heard at the hearing. *See* Ex. A. Here, in response to the Class Notice, three (3) Class Members opted out, and none objected. *Id*. at ¶¶ 12, 13. Class Members' favorable response to the Settlement further supports final approval.

III. THE REQUESTED FEE AWARD IS REASONABLE AND SHOULD BE APPROVED

There are two primary methods of determining a reasonable attorney fee in the context of class action litigation. *Laffitte v. Robert Half Int'l, Inc.*, 1 Cal.5th 480, 489 (2016). The

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percentage-of-recovery method calculates the fee as a percentage of a common fund recovered on behalf of the class. *Id*. The lodestar method calculates the fee by multiplying the number of hours reasonably expended by counsel by a reasonable hourly rate, which amount then may be adjusted based on other factors. *Id*. In *Laffitte*, the California Supreme Court held that trial courts have the discretion to choose between the two calculation methods. *Id*. at 504. Trial courts also have the discretion to blend the two fee calculation methods, using one method to "cross-check" the reasonableness of the other's result, but a cross-check is not required. *Id*. 506.

A. The Requested Fee Award is Fair and Reasonable Based on the Percentage-of-Recovery Method

The ultimate purpose of the percentage-of-recovery method is to "spread the attorney fee among all the beneficiaries of the fund." *Id*. at 503. The California Supreme Court recognized that the percentage-of-recovery method has many advantages, "including relative ease of calculation, alignment of incentives between counsel and the class, a better approximation of market conditions in a contingency case, and the encouragement is provides counsel to seek an early settlement and avoid unnecessarily prolonging the litigation [citation] . . ." *Id.*

The requested 33.3% fee award is consistent with the average fee award in class actions. *See*, *e.g.*, *Roos v. Honeywell Int'l, Inc.*, 241 Cal.App.4th 1472 (2015) (fee award of 37.5% was not an abuse of discretion), disapproved of on other grounds by *Hernandez v. Restoration Hardware, Inc.*, 4 Cal.5th 260, 287 (2018); *Wren v. RGIS Inventory Specialists*, No. C–06–05778 JCS, 2011 WL 1230826, at *29 (N.D. Cal. Apr. 1, 2011) (approving fee award of 42%); *Singer v. Becton Dickinson and Co.*, No. 08-CV-821-IEG (BLM), 2010 WL 2196104, at *8 (S.D. Cal. 2010) (approving fee award of one-third and noting that the typical fees awarded in wage and hour class action cases ranges from 33.33% to 40%). Therefore, the percentage-of-recovery method should be utilized to approve the requested fee.

B. A Lodestar Cross-Check Confirms the Reasonableness of the Requested Fee

Although *Lafitte* makes clear that a lodestar cross-check is not required, Class Counsel's lodestar supports the reasonableness of the requested fee. The lodestar is determined by multiplying the number of hours reasonably expended by the reasonable hourly rate. *PLCM*

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Group, Inc. v. Drexler, 22 Cal.4th 1084, 1095 (2000). The lodestar figure may then be adjusted, based on consideration of factors specific to the case, in order to fix the fee at the fair market value for the legal services provided." *Id*. The factors that can be considered include "the nature of the litigation, its difficulty, the amount involved, the skill required in its handling, the skill employed, the attention given, the success or failure, and other circumstances in the case." *Melnyk v. Robledo*, 64 Cal.App.3d 618, 623-624 (1976) (citations omitted).

Class Counsel's hourly rates are comparable to those charged by other class action counsel. Yslas MFA Decl. at ¶ 15. The total hours expended on this action were reasonable and in line with comparable cases. *Id*. Class Counsel spent 117.5 hours in prosecuting this action, which were divided among the attorneys working on this case according to skill level. *Id.* at ¶¶ 17, 18. The hours expended by each attorney were reasonable, not duplicative, and reflect the extensive investigation and analysis that was required to achieve this Settlement. *Id*. at ¶ 18.

Multiplying the total hours expended by Class Counsel by their reasonable hourly rates yields a lodestar of $95,830.00. *Id*. at ¶ 17. This lodestar surpasses the requested fee award, resulting in a negative multiplier. *Id*. at ¶ 18.

IV. THE REQUESTED COST AWARD IS REASONABLE AND SHOULD BE APPROVED

The Settlement permits Class Counsel to seek reimbursement of litigation costs in an amount up to $9,000.00. Class Counsel has spent $8,740.74 for litigation costs, such as filing fees, service fees and expert fees. Yslas MFA Decl. at ¶ 19, Ex. 2. Since Class Counsel's actual costs do not exceed the $9,000.00, the remaining $259.26 will revert to the Net Settlement Amount. *Id*. These costs were reasonable and necessary to prosecute this case and obtain the results achieved. *Id*.

V. THE REQUESTED CLASS REPRESENTATIVE SERVICE PAYMENT IS REASONABLE AND SHOULD BE APPROVED

Plaintiff also requests that she be awarded a service payment of $10,000.00 for her role in obtaining the Settlement. In evaluating a service payment, the Court may consider: "(1) the risk, both financial and otherwise, the class representative faced in bringing the suit; (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 received by the class representative as a result of the litigation." *Golba v. Dick's Sporting Goods, Inc.*, 238 Cal.App.4th 1251, 1272 (2015); *Clark v. American Residential Services, LLC*, 175 Cal.App.4th 785, 804 (2009).

Here, Plaintiff has provided a declaration detailing the risk she faced in bringing the suit, the notoriety and personal difficulties she encountered, the amount of time and effort she spent on this litigation, the duration of this litigation, and the personal benefit she will receive as a result of the litigation. *See generally* Declaration of Plaintiff Monica Garcia in Support of Motion for Preliminary Approval of Class Action and PAGA Settlement (submitted on . Plaintiff should be adequately compensated for her role in obtaining in this Settlement.

VI. THE SETTLEMENT ADMINISTRATION COSTS ARE REASONABLE AND SHOULD BE APPROVED

The Parties agreed to hire ILYM Group, Inc. as the Settlement Administrator in this case and the Court approved this choice at preliminary approval. The Settlement Administrator was responsible for updating Class Members' mailing addresses, mailing the Class Notice to each Class Member, responding to Class Member questions, providing weekly status reports, and providing a declaration as to the results of the mailing. *See* Howard Decl. at ¶ 3. Following final approval, ILYM Group, Inc.'s duties will continue in order to calculate and to mail the settlement payments to Class Members, disburse other payments as ordered by the Court, and perform such other duties described in the Settlement (filed on May 20, 2024). *Id*. The requested amount of $7,950.00 for services rendered and to be rendered is therefore fair and reasonable.

VII. CONCLUSION

Based on the foregoing, Class Counsel respectfully requests that the Court grant final approval of the Class Action and PAGA Settlement, approve Class Counsel attorneys' fees in the amount of $70,391.91 and reimbursement of litigation costs in the amount of $8,740.74, the Class Representative Service Payment in the amount of $10,000.00, civil penalties under PAGA in the amount of $10,000.00, and $7,950.00 to ILYM Group, Inc. for its settlement

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administration expenses.

Dated: February 26, 2025

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By: ______________________________
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