

Lilit Tunyan (SBN 329351)
ltunyan@tunyanlaw.com
Artur Tunyan (SBN 349174)
atunyan@tunyanlaw.com
TUNYAN LAW, APC
535 N. Brand Blvd., Suite 285
Glendale, California 91203
Telephone: (323) 410-5050

Attorneys for Plaintiff SCOTT ALLEN ATHEY

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF RIVERSIDE**

SCOTT ALLEN ATHEY, as an individual and
on behalf of all employees similarly situated,

Plaintiff,

v.

WALKER EVANS ENTERPRISES, a
California Corporation; and DOES 1 through 50,
inclusive,

Defendants

Case No.: CVRI2301534

[Assigned for all purposes to Hon. Harold W.
Hopp, Dept. 1]

**[PROPOSED] AMENDED ORDER
GRANTING PRELIMINARY APPROVAL
OF CLASS AND PAGA REPRESENTATIVE
ACTION SETTLEMENT**

Reservation ID: 412063266999
Date: June 17, 2024
Time: 8:30 a.m.
Courtroom: Dept. 1
Judge: Hon. Harold W. Hopp

Action Filed: March 27, 2023
Trial Date: Not Set

1 **TO ALL PARTIES AND THEIR COUNSEL OF RECORD:**

2 Plaintiff SCOTT ALLEN ATHEY (“Plaintiff”) and Defendant WALKER EVANS
3 ENTERPRISES (“Defendant”) have reached settlement for a putative class and PAGA representative
4 action.

5 Plaintiff has filed a motion for preliminary approval of a class and PAGA representative action
6 settlement of the claims asserted against Defendant in this action, memorialized in the AMENDED
7 JOINT STIPULATION OF CLASS AND PAGA REPRESENTATIVE ACTION SETTLEMENT (*see*
8 Supplemental Declaration of Lilit Tunyan in Support of Plaintiff’s Motion for Preliminary Approval of
9 Class and PAGA Representative Action Settlement [“Tunyan Decl.”], at Exhibit 1) filed on June 6, 2024.

10 After reviewing the Agreement, the Notice process, and other related documents, and having
11 heard the argument of Counsel for respective parties, **IT IS HEREBY ORDERED AS FOLLOWS:**

12 1. The Court preliminarily approves JOINT STIPULATION OF CLASS AND PAGA
13 REPRESENTATIVE ACTION SETTLEMENT (“Agreement” or “Settlement”), attached as
14 “EXHIBIT 1” to the Declaration of Lilit Tunyan in Support of Plaintiff’s Motion for Preliminary
15 Approval of Class and PAGA Action Settlement. The Court preliminarily finds that the terms of the
16 proposed Settlement are fair, reasonable, and adequate, pursuant to California Code of Civil Procedure
17 § 382.

18 2. This Order incorporates by reference the definitions in the Settlement Agreement, and all
19 capitalized terms defined therein shall have the same meaning in this Order as set forth in the Settlement
20 Agreement.

21 3. The Court finds that the Settlement has been reached as a result of intensive, serious and
22 non-collusive arms-length negotiations. The Court further finds that the parties have conducted
23 thorough investigation and research, and the attorneys for the parties are able to reasonably evaluate
24 their respective positions. The Court also finds that settlement at this time will avoid additional
25 substantial costs, as well as avoid the delay and risks that would be presented by the further prosecution
26 of the action. The Court finds that the risks of further prosecution are substantial.

27 4. The parties’ Settlement is granted preliminary approval as it meets the criteria for
28 preliminary settlement approval. The Settlement falls within the range of reasonableness and appears to

be presumptively valid, subject only to any objections that may be raised at the final fairness hearing. The Settlement Class meets the requirements for conditional certification for settlement purposes only under Code of Civil Procedure § 382 in that: (a) the Class is ascertainable and so numerous that joinder of all members of the Class is impracticable; (b) common questions of law and fact predominate, and there is a well-defined community of interest amongst the members of the Class with respect to the subject matter of the litigation; (c) Plaintiff's claims are typical of the claims of the members of the Class; (d) Plaintiff will fairly and adequately protect the interests of the members of the Class; (e) a class action is superior to other available methods for the efficient adjudication of the controversy; and (f) Class Counsel is qualified to act as counsel for Plaintiff in his individual capacity and as the representative of the Class. The Court finds that it is appropriate to notify the members of the proposed settlement Class of the terms of the proposed settlement.

5. The Court preliminarily finds that the Settlement, including the allocations for the Attorneys' Fees and Costs, Service Payment to Plaintiff, LWDA Payment, Settlement Administration Fees, and payments to the Settlement Class Members and PAGA Members provided thereby, appear to be within the range of reasonableness of a settlement that could ultimately be given final approval by this Court. Indeed, the Court has reviewed the monetary recovery that is being granted as part of the Settlement and preliminarily finds that the monetary settlement awards made available to the Class Members and PAGA Members are fair, adequate, and reasonable when balanced against the probable outcome of further litigation relating to certification, liability, and damages issues.

6. The following persons are certified as Class Members solely for the purpose of entering a settlement in this matter:

All individuals employed by Defendant in California and classified as "non-exempt" at any time during the Class Period (the "Class Period" is September 22, 2021 to August 31, 2023). "Settlement Class Members" are those Class Members who do not submit timely exclusion requests to the Settlement Administrator. (Settlement, ¶¶ 3-4.)

7. The PAGA Employee is defined as follows:

All Class Members that worked at any time during the PAGA Period (the "PAGA Period" is March 27, 2022 to August 31, 2023.) All PAGA Employees are "aggrieved employees" as defined pursuant to PAGA. PAGA Employees cannot opt out of the settlement of the PAGA claim. (Settlement, ¶¶ 10-11.)

1 8. Plaintiff SCOTT ALLEN ATHEY is provisionally appointed as the representative of
2 the class (“Class Representative”).

3 9. The Court provisionally appoints Tunyan Law, APC as counsel for the Class (“Class
4 Counsel”). The Court finds Plaintiff’s counsel are adequate, as they are experienced in wage and hour
5 class action litigation and have no conflicts of interest with absent Settlement Class Members, and that
6 they adequately represented the interests of absent class members in the Litigation.

7 10. The Court provisionally appoints ILYM Group, Inc. to act as the Settlement
8 Administrator, pursuant to the terms set forth in the Agreement. ILYM Group, Inc.’s services include
9 translating, printing, distributing, and tracking Notice Packets and other documents for the Settlement,
10 calculating and distributing payments due under the Settlement, issuing of 1099 and W- 2 IRS Forms and
11 all required tax reporting, filings, withholdings, and remittances, providing necessary reports and
12 declarations, and other duties and responsibilities set forth in the Settlement Agreement, and as requested
13 by the Parties.

14 11. Defendant is directed to provide the Settlement Administrator the names and most recent
15 known mailing addresses of Class Members and any other information required in accordance with the
16 Agreement as may be necessary for the Settlement Administrator to independently calculate and review
17 the Workweeks attributed to each Class Member (collectively referred to as the “Class List”), no later
18 than 15 calendar days after entry of this Order. (Settlement, ¶ 32(a).)

19 12. The Court approves, both as to form and content, the Notice of Class Action Settlement
20 (“Class Notice”), Exclusion Form (“Exclusion Form”), and Objection Form (“Objection Form”),
21 attached hereto as “**Exhibit 1,**” “**Exhibit 2,**” and “**Exhibit 3,**” respectively. The Class Notice, Exclusion
22 Form, and Objection Form are collectively referred to as the “Notice Packet.” The Notice Packet shall be
23 provided to Class Members in the manner set forth in the Settlement. The Court finds that the Notice
24 Packet appears to fully and accurately inform the Class Members of all material elements of the
25 Settlement, of Class Members’ right to be excluded from the Class Settlement by submitting a Request
26 for Exclusion, of Class Members’ right to dispute the Workweeks credited to each of them by submitting
27 a Workweeks Dispute, and of each Settlement Class Member’s right and opportunity to object to the
28 Class Settlement by submitting a Notice of Objection to the Settlement Administrator. The Court further

1 finds that distribution of the Notice Packet substantially in the manner and form set forth in the
2 Settlement Agreement and this Order, and that all other dates set forth in the Settlement Agreement and
3 this Order, meet the requirements of due process and shall constitute due and sufficient notice to all
4 persons entitled thereto. The Court further orders the Settlement Administrator to mail the Notice Packet
5 in English and Spanish by First-Class U.S. mail to all Class Members within fifteen (15) calendar days of
6 receipt of the Class Data, pursuant to the terms set forth in the Settlement Agreement.

7 13. Class Members will be bound by the Agreement unless they submit a timely and valid
8 written request to be excluded from the Settlement, postmarked no later than 45 days following mailing
9 of the Notice, or as possibly extended up to 14 additional days. (Settlement, ¶¶ 7, 32(c).) The Settlement
10 Administrator shall send the copies of the exclusion forms to the counsel for Parties.

11 14. The parties' proposed notice plan is constitutionally sound because individual notices
12 will be mailed to all Class Members whose identities are known to the parties, and such notice is the best
13 notice practicable. The parties' proposed Class Notice, attached to the Settlement as Exhibit B, is
14 sufficient to inform Class Members of the terms of the Settlement, their rights under the settlement, their
15 rights to object to the Settlement, their right to receive a payment under the settlement or elect not to
16 participate in the settlement, and the processes for doing so, and the date and location of the final
17 approval hearing and are therefore approved.

18 15. The Court hereby preliminarily approves the proposed procedure, set forth in the
19 Settlement, for seeking exclusion from the Class Settlement. Any Class Member may choose to be
20 excluded from the Class Settlement by submitting an Exclusion Form or written letter indicating a
21 request to be excluded from the Class Settlement (both of which are referred to as a "Request for
22 Exclusion") in conformity with the requirements set forth in the Class Notice, to the Settlement
23 Administrator, postmarked or delivered on or before the date which is forty-five (45) calendar days from
24 the initial mailing of the Notice Packet ("Response Deadline"), or, in the case of a remailed Notice
25 Packet, the Response Deadline will be extended fifteen (15) calendar days from the initial Response
26 Deadline. Any such person who timely and validly chooses to opt out of, and be excluded from, the
27 Class Settlement will not be entitled to an Individual Settlement Payment and will not be bound by the
28 Class Settlement or have any right to object, appeal, or comment thereon. However, all hourly-paid or

1 non-exempt employees of Defendant in California from March 27, 2022 until August 31, 2023 (“PAGA
2 Members”) will be bound to the PAGA Settlement and will still be issued an Individual PAGA Payment,
3 irrespective of whether they submit a Request for Exclusion. See *Arias v. Superior Court* (2009) 46
4 Cal.4th 986. Class Members who have not submitted a valid and timely Request for Exclusion (i.e.,
5 Settlement Class Members) shall be bound by the Settlement Agreement and any final judgment based
6 thereon.

7 16. To object to the Class Settlement, a Settlement Class Member must submit an Objection
8 Form or written objection to the Class Settlement (both of which are referred to as a “Notice of
9 Objection”) to the Settlement Administrator, postmarked or delivered on or before the Response
10 Deadline. The Notice of Objection must be signed and must contain the information that is required, as
11 set forth in the Class Notice, including and not limited to the grounds for the objection. The Settlement
12 Administrator shall send the copies of the objection forms to the counsel for Parties.

13 17. A final approval hearing will be held on **November 15, 2024**, at 8:30a.m., in Department
14 1 of the Riverside County Superior Court, located at 4050 Main Street, Riverside, California 92501, to
15 determine whether the settlement should be granted final approval as fair, reasonable, and adequate as to
16 the Class Members. At that time, the Court will hear all evidence and arguments necessary to evaluate
17 the Settlement. Class Members and their counsel may support or oppose the Settlement, if they so
18 desire, in accordance with the procedures set forth in the Class Notice and this Order. The parties’
19 counsel and Class Members may appear at the final approval hearing remotely via videoconference using
20 Zoom platform.

21 18. Class Counsel shall file a Motion for Final Approval, including any request for an award
22 of Attorneys’ Fees and Costs, Service Payment to Plaintiff and Settlement Administration Fees, not later
23 than October 24, 2024 or 16 court days prior to the final approval hearing. In conjunction with the filing
24 of the final approval motion, a declaration from the Settlement Administrator on the outcome of the
25 notice process and authentication of a copy of every exclusion and objection form received by the
26 Settlement Administrator shall be filed with the Court. At that time, the Parties shall also file responses
27 to any written objections received by the Settlement Administrator by the Response Deadline.
28

1 19. As set forth in the Class Notice, any Class Member may appear at the final approval
2 hearing in person or remotely via video conference or by his or her own attorney and show cause why
3 the Court should not approve the settlement.

4 20. The Settlement is not a concession or admission and shall not be used against Defendant
5 as an admission or indication with respect to any claim of any fault or omission by Defendant. Whether
6 or not the Settlement is finally approved, neither the Settlement, nor any document, statement,
7 proceeding or conduct related to the Settlement, nor any reports or accounts thereof, shall in any event be
8 construed as, offered or admitted into evidence as, received as or deemed to be in evidence for any
9 purpose adverse to the Defendant, including, but not limited to, evidence of a presumption, concession,
10 indication or admission by Defendant of any liability, fault, wrongdoing, omission, concession, or
11 damage, except for legal proceedings concerning the implementation, interpretation, or enforcement of
12 the Settlement.

13 21. In the event the Settlement does not become effective in accordance with the terms of the
14 Settlement Agreement, or the Settlement is not finally approved, or is terminated, cancelled or fails to
15 become effective for any reason, this Order shall be rendered null and void, shall be vacated, and the
16 Parties shall revert back to their respective positions as of before entering into the Settlement Agreement.

17 22. The Court reserves the right to continue the date of the final approval hearing without
18 further notice to Class Members. However, the Settlement Administrator shall give notice to any
19 objecting party of any continuance of the Final Approval Hearing.

20 23. The Court retains jurisdiction to consider all further applications arising out of or in
21 connection with the settlement.

22
23 **IT IS SO ORDERED.**

24
25 Dated: _____

Hon. Harold W. Hopp
RIVERSIDE COUNTY SUPERIOR COURT JUDGE

Exhibit “1”

NOTICE OF PROPOSED CLASS AND PAGA REPRESENTATIVE ACTION SETTLEMENT

Athey v. Walker Evans Enterprises
Riverside County Superior Court Case No. CVRI2301534

A court authorized this Notice. This is not a solicitation by a lawyer. You are not being sued.

IF YOU ARE OR WERE AN HOURLY EMPLOYEE OF WALKER EVANS ENTERPRISES (“DEFENDANT”) WHO WORKED IN CALIFORNIA AT ANY TIME BETWEEN SEPTEMBER 22, 2021 AND AUGUST 31, 2023 (THE “CLASS PERIOD”), THIS PROPOSED CLASS AND PAGA REPRESENTATIVE ACTION SETTLEMENT MAY AFFECT YOUR RIGHTS.

Why should you read this Notice?

A proposed settlement (the “Settlement”) has been reached in a class and PAGA action lawsuit entitled *Athey v. Walker Evans Enterprises*, Riverside County Superior Court Case No. CVRI2301534 (the “Action”). The purpose of this Notice of Proposed Class and Private Attorneys General Act of 2004 (“PAGA”) Representative Action Settlement (“Notice”) is to briefly describe the Action and to inform you of your rights and options in connection with the Action and the proposed Settlement. The proposed Settlement will resolve all claims in the Complaint.

YOUR ESTIMATED PAYMENT FROM THIS SETTLEMENT: Your estimated Individual Settlement Payment is <<**Estimated Payment**>>, which includes your payment from the Class settlement in the estimated amount of <<**Estimated Individual Settlement Class Payment**>> and, because you **[ARE/ARE NOT]** also a member of the PAGA Employee group, your payment from the PAGA settlement in the estimated amount of <<**Estimated Individual PAGA Settlement Payment**>>.

A hearing concerning final approval of the proposed Settlement will be held before Hon. Harold W. Hopp, on <<**FA DATE**>>, at <<**FA TIME**>>, in Department 1 of the Riverside County Superior Court, 4050 Main Street, Riverside, CA 92501, to determine whether the Settlement is fair, adequate and reasonable. As a Settlement Class Member, you are eligible to receive an individual Settlement Payment under the Settlement and will be bound by the release of claims described in this Notice and the Settlement Agreement filed with the Court, unless you timely request to be excluded from the Settlement.

YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT:

DO NOTHING – GET MONEY	If you do nothing, you will be considered a “Settlement Class Member” in the Settlement and will receive settlement benefits as explained more fully below. You will also give up rights to pursue a separate legal action against Defendant for the Released Claims asserted in the Action as explained more fully below.
EXCLUDE YOURSELF FROM THE SETTLEMENT. DEADLINE TO EXCLUDE YOURSELF: <<RESPONSE DEADLINE>>	You have the option to pursue separate legal action against Defendant about the claims in the Action. If you choose to do so, you must exclude yourself, in writing, from the Settlement by completing and submitting the included request to be excluded (“Request for Exclusion Form”). As a result, you will not receive any benefits under the Settlement (other than based on the PAGA Claim). Request for Exclusion forms must be submitted by << RESPONSE DEADLINE >>.
OBJECT TO THE SETTLEMENT. DEADLINE TO SUBMIT WRITTEN OBJECTIONS: <<RESPONSE DEADLINE>>	To object to the Settlement, you may mail a written explanation of why you don’t like the Settlement to the Settlement Administrator by completing and submitting the objection form (“Objection Form”), appear at the Final Approval Hearing, or hire an attorney at your expense to object for you. This option is available only if you do <u>not</u> exclude yourself from the Settlement. Do <u>not</u> submit a Request for Exclusion form if you wish to object. <i>Written</i> objections must be submitted by << RESPONSE DEADLINE >>.

Who is affected by this proposed Settlement?

The Court has certified, for settlement purposes only, the following class (the “Class”):

All hourly employees of Defendant who worked in California during the Class Period (“Class Members”). The “Class Period” is September 22, 2021 to August 31, 2023.

All hourly employees of Defendant who worked in California during the PAGA Period are “aggrieved employees” as defined pursuant to PAGA (“PAGA Employees”). The “PAGA Period” is March 27, 2022 to August 31, 2023.

According to Defendant’s records, you are a member of the Class (“Class Member”). PAGA Employees will automatically receive their *pro rata* share of the \$2,500 allocated from the PAGA Allocation to PAGA Employees, cannot opt-out of the release of PAGA Claims, and will be bound by the release of the PAGA Claims even if they opt-out of the Settlement. Defendant’s records indicate you [ARE/ARE NOT] also a PAGA Employee who worked in the State of California at any time during the PAGA Period of March 27, 2022 through to August 31, 2023.

What is this case about?

In the Action, Plaintiff Scott Allen Athey (“Plaintiff”) alleges on behalf of himself and the Class that Defendant: (1) failed to pay all wages; (2) failed to provide meal periods; (3) failed to authorize and permit rest periods; (4) failed to timely pay all wages at termination; (5) failed to furnish accurate itemized wage statements; (6) failed to indemnify necessary business expenses; (7) violated California’s Unfair Competition Law, California Business and Professions Code § 17200 *et seq.*; and (8) violated provisions of the Labor Code giving rise to civil penalties under the Labor Code Private Attorneys General Act of 2004 [Lab. Code § 2699, *et seq.*] (“PAGA”). Plaintiff seeks among other things, recovery of unpaid wages and meal and rest period premiums, unreimbursed business expenses, restitution, penalties, interest, and attorneys’ fees and costs.

Labor Code Private Attorneys General Act of 2004 [Lab. Code § 2699, *et seq.*] (“PAGA”) claim alleged by Plaintiff allows employees to file a representative action on behalf of themselves, all other aggrieved employees, and the State of California for alleged Labor Code violations to recover civil penalties for the same Labor Code violations (not actual wage damages but civil penalties for California Labor Code violations which could have been sought by the State of California).

Defendant denies all liability and is confident that it has strong legal and factual defenses to these claims, but it recognizes the risks, distractions, and costs associated with litigation. Defendant contends that its conduct is and has been lawful at all times relevant and that Plaintiff’s claims do not meet the requirements for class certification.

This Settlement is a compromise reached after good faith, arm’s length negotiations between Plaintiff and Defendant (the “Parties”), through their attorneys, and is not an admission of liability on the part of Defendant. Both sides agree that this Settlement is fair, adequate and reasonable. Plaintiff also believes this Settlement is in the best interests of all Class Members.

The Court has not ruled on the merits of Plaintiffs’ claims or Defendant’s defenses. The Court has determined only that there is sufficient evidence to suggest that the proposed settlement might be fair, adequate, and reasonable, and that any final determination of those issues will be made at the final hearing.

Who are the attorneys representing the Parties?

The attorneys representing the Parties in the Action are:

Class Counsel

Lilit Tunyan

ltunyan@tunyanlaw.com

Artur Tunyan

atunyan@tunyanlaw.com

TUNYAN LAW, APC

535 N. Brand Blvd., Suite 285

Glendale, California 91203

Defendant’s Counsel

Richard D. Marca

Richard.Marca@varnerbrandt.com

Alisha Maline

Alisha.Maline@varnerbrandt.com

VARNER & BRANDT LLP

3750 University Avenue, Floor 6

Riverside, CA 92501

Telephone: (323) 410-5050

Telephone: (951) 274 -7777

Facsimile: (951) 274- 7770

What are the Settlement terms?

Subject to final Court approval, Defendant will pay \$175,000.00 (the “Gross Settlement Amount”) for: (a) Individual Settlement Payments to Settlement Class Members; (b) the Court-approved Class Representative Service Payment to Plaintiff (\$10,000.00); (c) the Court-approved attorneys’ fees and costs to Class Counsel (“Class Counsel’s Fees and Expenses”) (\$58,333.33 in fees and up to \$22,000.00 in costs to be requested); (d) payment to the Labor and Workforce Development Agency (“LWDA”) for alleged PAGA penalties (the “PAGA Penalty Payment”) (\$10,000.00 allocated to the PAGA settlement); and (e) payment to the Settlement Administrator for settlement administration services (“Administrative Expenses”) (estimated to be no more than \$6,950.00).

Individual Settlement Payments. Class Members who do not timely and properly request to be excluded from the Settlement (the “Settlement Class Members”) will receive a share of the Net Settlement Amount, and Class Members who are also PAGA Employees will receive a share of the \$2,500.00 from the PAGA Settlement allocated to PAGA Employees (the “PAGA Settlement Payment”), regardless of whether the request exclusion from the Settlement (the total payment to a Class Member is their “Individual Settlement Payment”).

The “Net Settlement Amount” will be calculated by deducting from the Gross Settlement Amount the Class Counsel’s Fees and Expenses, the Class Representative Service Payment, the PAGA Penalty Payment, and the Administrative Expenses. Payments by Defendant from the Net Settlement Amount will be included in the Settlement Payments to each Settlement Class Member (the “Settlement Class Payments”) and each PAGA Employee (the “PAGA Settlement Payments”).

The Settlement Class Payment shall be divided among all Settlement Class Members on a *pro rata* basis based upon the total number of work weeks worked by each Settlement Class Member during the Class Period. The portion of the Net Settlement Amount paid to a Settlement Class Member = Net Settlement Amount (minus \$2,500.00 set aside for all PAGA Settlement Payment) × the work weeks worked by a Settlement Class Member ÷ the work weeks worked by all Settlement Class Members.

The PAGA Settlement Payment shall be divided among all PAGA Employees on a *pro rata* basis based upon the total number of pay periods worked by each PAGA Employee during the PAGA Period. The portion of the PAGA Settlement Payment paid to a PAGA Employee = \$2,500.00 × the pay periods worked by a PAGA Employee (during the PAGA Period) ÷ the pay periods worked by all PAGA Employees (during the PAGA Period).

The estimated average Settlement Share is approximately: **[\$[estimated average Settlement Share]**

The estimated highest Settlement Share is approximately: **[\$[estimated average Settlement Share]**

The estimated lowest Settlement Share is approximately: **[\$[estimated average Settlement Share]**

According to Defendant s records:

- From September 22, 2021 to August 31, 2023 (i.e., the Class Period), you are credited as having worked **[]** Workweeks.
- From March 27, 2022 to August 31, 2023 (i.e., the PAGA Period), you are credited as having worked **[]** Pay Periods.

If you wish to dispute the Workweeks credited to you, you must submit a written letter (“Workweeks Dispute”) , which must: (a) contain your full name, current address, current telephone number, last four digits of your Social Security number or employee ID number, and signature; (b) contain the case name and number of the Action (Athey v. Walker Evans Enterprises, Case No. CVRI2301534; (c) contain a clear statement explaining the basis for your dispute; (d) attach any documentation that you have to support the dispute; and (e) be mailed or delivered to the Settlement Administrator, postmarked or delivered on or before **[Response Deadline]** at:

You must produce documentary evidence supporting your contention. Defendant’s records will be presumed correct unless you prove otherwise by credible evidence. The Settlement Administrator and the Parties will

attempt to resolve all work week disputes with you informally. If they cannot resolve your work week dispute with you informally, the dispute will be submitted by the Parties to the Court for final resolution.

Settlement Share and Individual PAGA Payment is based on the number of Workweeks credited to you.

Under the terms of the Settlement, your Settlement Share is estimated to be \$ [REDACTED]. The Settlement Share is subject to reduction for the employees share of taxes and withholdings with respect to the wages portion of the Settlement Share.

Under the terms of the Settlement, your Individual PAGA Payment is estimated to be \$ [REDACTED].

The settlement approval process may take multiple months. Your Settlement Share and Individual PAGA Payment (if applicable) reflected in this Notice is only an estimate. Your actual Settlement Share and Individual PAGA Payment (if applicable) may be higher or lower. Payments will be distributed only after the Court grants final approval of the Settlement, and after the Settlement goes into effect.

For tax reporting purposes, the payments to Class Members will be allocated 20 as wages, 40% as penalties and 40% as interest. All PAGA Settlement Payments will be allocated as 100% penalties. The wage portion of the Individual Settlement Payments shall be subject to the withholding of applicable local, state, and federal taxes, and the Settlement Administrator shall deduct applicable employee-side payroll taxes from the wage portion of the Individual Settlement Payments. The portion of the Individual Settlement Payments allocated as civil penalties and interest shall be classified as other miscellaneous income and reported on IRS Form 1099-MISC if required by governing tax laws. Any taxes owed on that other miscellaneous income will be the responsibility of Class Members receiving those payments. The employer's share of any payroll taxes will be separately paid by Defendant.

All checks for Individual Settlement Payments paid to Class Members will remain valid and negotiable for one hundred eighty (180) days from the date of the checks' issuance and shall thereafter automatically be void if not claimed or negotiated by a Class Member within that time. Any Individual Settlement Payment that is not claimed or negotiated by a Class Member within one hundred eighty (180) days of issuance shall be transmitted to Legal Aid Society of San Bernardino subject to the requirements of California Code of Civil Procedure § 384(b) (the "Cy Pres Recipient") which was selected because its mission is to provide equal access to justice by offering legal education, counsel, and advocacy services for those in need, irrespective of their financial capabilities. In such event, the Settlement Class Members and PAGA Employees shall nevertheless remain bound by the Settlement.

The "Effective Date" of the Settlement will be will be the last to occur of the following: (a) if there are no objections to the settlement, then the date of final approval by the Court; (b) if there are objections to the settlement, and if an appeal, review or writ is not sought from the order granting final approval of the settlement, the 31st day after service of notice of entry of the order; or (c) if an appeal, review or writ is sought from the order, the day after the order is affirmed or the appeal, review or writ is dismissed or denied, and the order is no longer subject to further judicial review. Defendant will fund the settlement account and distribute the Gross Settlement Amount to the Settlement Administrator within twenty-one (21) days of the Effective Date. The Settlement Administrator shall mail the Settlement Payments to the Class Members only AFTER the payment by Defendant of the Gross Settlement Amount.

PLEASE BE PATIENT AND UPDATE THE SETTLEMENT ADMINISTRATOR WITH YOUR NEW ADDRESS IF YOU MOVE AFTER RECEIVING THIS NOTICE OR YOU RECEIVED THIS NOTICE AS FORWARDED MAIL.

None of the Parties or their attorneys make any representations concerning the tax consequences of this Settlement or your participation in it. Class Members should consult with their own tax advisors concerning the tax consequences of the Settlement. Class Counsel is unable to offer advice concerning the state or federal tax consequences of payments to any Class Member.

Class Counsel's Fees and Expenses, the Class Representative Service Payment, Administrative Expenses, the PAGA LWDA Payment. Class Counsel will ask the Court to award attorneys' fees up to \$58,333.33 (one third) of the Gross Settlement Amount and reimbursement of reasonable costs incurred in the Action not to exceed \$22,000. In addition, Class Counsel will ask the Court to authorize Class Representative Service Payment made to Plaintiff in the amount of \$10,000.00, for his efforts in bringing the Action on behalf of the Class and for general release of his known and unknown claims in addition to claims released by each class member. The Parties estimate the cost of administering the Settlement will not exceed \$ 6,950.00. The PAGA Penalty Payment

in the amount of \$7,500.00 will also be made to the LWDA for PAGA penalties, which represents 75% of the \$10,000.00 PAGA Allocation.

What claims are being released by the proposed Settlement?

Upon the final approval by the Court of this Settlement and Defendant's payment of all sums due pursuant to this Settlement, and except as to such rights or claims as may be created by this Settlement, the Class Representative, the Class and each Class Member who has not submitted a valid and timely request for exclusion as to claims other than the PAGA claim, will release claims as follows:

(a) Identity of Released Parties. The released parties are Defendant and its past, present and/or future officers, directors, managers, employees, and agents, including, but not limited to, Walker R. Evans, Phyllis E. Evans, and Randal C. Anderson (collectively "Releasees").

(b) Date Release Becomes Effective. The Released Claims will be released upon the later of (1) the Settlement's Effective Date, or (2) the satisfaction of Defendant's obligation to provide to the Settlement Administrator a sum in the amount required to satisfy all required payments and distributions pursuant to this Settlement and the Order and Judgment of final approval. Class Members will not release the Released Claims or Released PAGA Claims until both the Effective Date of the Settlement has occurred, and Defendant has paid all amounts owing under the Settlement.

(c) Claims Released by Settlement Class Members. Each and every Class Member, on behalf of himself or herself and their successors, assigns, and/or agents, unless he or she has submitted a timely and valid Request for Exclusion (which will not effectuate an opt-out from the release of Released PAGA Claims), hereby releases Releasees from the following claims for the entire Class Period:

1) any and all claims that were either alleged, or that reasonably could have been alleged based on the factual allegations contained in Plaintiff's operative complaint, including, but not limited to, claims pursuant to California Labor Code sections 201, 202, 203, 204, 210, 226, et seq., 226.2, 226.3, 226.7, 510, 512, 1174, et seq., 1175, 1194, 1194.2, 1197, 1197.1, 1198, 2100, 2101, 2102, 2103, 2104, 2109, 2800, 2802, 6310, 6400, 6401, 6401.7, 6402, 6403, 6404, 6409.6, 2698, et seq., 2699, et seq., 2699.3, and the Industrial Welfare Commission Wage Orders, and also any claim for unpaid wages, including under any theory of rounding, unpaid minimum wage, off-the-clock work, meal and rest period violations, waiting time penalties, itemized wage statement penalties, expense reimbursements, wages for unpaid time, other related wages, restitution, disgorgement, civil or statutory penalties, attorneys' fees, and/or costs and all claims under the Private Attorneys General Act of 2004, under the Unfair Competition Law, Business & Professions Code § 17200, et seq., and/or which are alleged in the First Amended Complaint and Plaintiff's administrative exhaustion letter submitted to the LWDA within the Class Period ("Released Claims"),

2) Plaintiff releases all claims for statutory penalties that could have been sought by the Labor Commissioner for the violations identified in Plaintiff's pre-filing letter to the LWDA upon the Effective Date and full funding of the Gross Settlement amount ("Released PAGA Claims"). To the maximum extent permitted by law, the final judgment entered pursuant to this settlement will bind all those who would be bound by a judgment if the action had been brought by the LWDA, including Plaintiff, the LWDA, and all Class Members employed during the Released PAGA Claims Period, whether requesting exclusion from the Settlement or not, with respect to the recovery of civil penalties under the California Private Attorneys General Act, California Labor Code § 2698, et seq. only, against the Released Parties. See *Arias v. Superior Court* (2009) 46 Cal.4th 986.

No PAGA Employee can request exclusion from the settlement of the PAGA Claim. The PAGA Employees are bound by the release of the PAGA Claims regardless of whether they cash their PAGA Payment Check.

What are my options in this matter?

You have two options under this Settlement, each of which is further discussed below. You may: (A) remain in the Class and receive an Individual Settlement Payment; or (B) exclude yourself from the Settlement. If you choose option (A), you may also object to the Settlement, as explained below.

If you remain in the Class, you will be represented at no cost by Class Counsel. Class Counsel, however, will not represent you for purposes of making objections to the Settlement. If you do not exclude yourself from the Settlement, you will be subject to any Judgment that will be entered in the Action, including the release of the Released Claims as described above.

OPTION A. Remain in the Class. If you wish to remain in the Class and be eligible to receive an Individual Settlement Payment, **you do not need to take any action.** By remaining in the Class and receiving settlement monies to resolve your class claims, you consent to the release of the Released Claims as described above.

Any amount paid to Settlement Class Members will not count or be counted for determination of eligibility for, or calculation of, any employee benefits (for example, vacations, holiday pay, retirement plans, non-qualified deferred compensation plans, etc.), or otherwise modify any eligibility criteria under any employee pension benefit plan or employee welfare plan sponsored by Defendant, unless otherwise required by law.

Objecting to the Settlement: If you believe the proposed Settlement is not fair, reasonable, or adequate in any way and you have selected to remain in the Class, you can ask the Court to deny approval of the Settlement by submitting an objection. You can't object to the release of the PAGA Claim or object to the PAGA Settlement Payment. You can't ask the Court to order a larger settlement; the Court can only approve or deny the settlement. If the Court denies approval, no additional settlement payments will be sent out and the Action will continue. If that is what you want to happen, you must object.

You may object to the Settlement in writing or by appearing at the Final Approval Hearing, either in-person or through your attorney. If you appear through your own attorney, you are responsible for paying that attorney. You may appear and orally object regardless of whether you submitted a written objection. Written objections in the Objection Form should be sent to the Settlement Administrator at _____, _____. If you choose not to submit a written objection using the Objection Form, the written objection in any form should contain sufficient information to confirm your identity and the basis of the objection, including: (1) your full name; (2) the grounds for the objection; (3) your signature; (4) the case and number (*Athey v. Walker Evans Enterprises*, Riverside County Superior Court Case No. CVRI2301534); and (5) be postmarked on or before <<**RESPONSE DEADLINE**>> and submitted to the Settlement Administrator at the address listed above. You can also hire an attorney at your own expense to represent you in your objection. The Parties shall file responses to any written objections before the Final Approval Hearing. Regardless of whether you object in writing, the Court may, in its sole discretion, permit you to state any objections you may have at the Final Approval Hearing. **Even if you submit an objection, you will be bound by the terms of the Settlement, including the release of Released Claims as set forth above, unless the Settlement is not finally approved by the Court.** If you submit a written objection and then request exclusion from, and opt out of, the Class Settlement, you would be deemed to have waived your objection.

If you wish to attend the Final Approval Hearing remotely, you can do so via Zoom link provided on the court's website for Department 1 <https://riverside.courts.ca.gov/general-information/remote-appearances/remote-appearance-meeting-numbers>. If you wish to attend the Final Approval Hearing in person, you can attend it at Riverside County Superior Court, Department 1, 4050 Main Street, Riverside, CA 92501.

Regardless of the form, an objection, alone will not satisfy the requirement that a Class Member must formally intervene and become a party of record in the action to appeal a Judgment entered following an Order finally approving this Settlement, as is required under the California Supreme Court decision of *Hernandez v. Restoration Hardware*, 4 Cal. 5th 260 (2018).

OPTION B. Request to Be Excluded from the Class and Receive No Money from the Class Action Portion of the Settlement (PAGA Employees Still Will Receive Their Share of the PAGA Employee Payment). You may not seek exclusion from the PAGA portion of this Settlement. However, if you do not want to be part of the Class Settlement, you must complete and return the included Request for Exclusion form to the Settlement Administrator at _____. In order to be valid, your Request for Exclusion form must be signed and include the last four digits of your social security number or Employee ID (to confirm your identity and make certain that only persons requesting exclusion are removed from the settlement). If you do not have a social security number and do not know your Employee ID, please contact the Settlement Administrator to arrange for an alternate method of confirming your identity.

Your Request for Exclusion form (to remove you from the Class Settlement) must postmarked on or before <<**RESPONSE DEADLINE**>>. If you do not submit a Request for Exclusion form on time (as evidenced by the postmark), your request to be excluded from the Settlement will be rejected, you will be deemed a Settlement Class Member, and you will be bound by the release of Released Claims as described above and all other terms of the Settlement. If you submit a Request for Exclusion form by the deadline to request exclusion, you will have no further role in the Action as it relates to the Class claims. You will not be able to complain to the Court about any aspect of the Class Settlement and any written objection to the Class Settlement would not be considered

valid. **You will not be entitled to any benefit, including money**, as a result of the Action and Settlement, except for any payment you may receive from the PAGA portion of this Settlement.

IMPORTANT: DO NOT SUBMIT A REQUEST FOR EXCLUSION FORM IF YOU WISH TO BE INCLUDED IN THE CLASS SETTLEMENT AND RECEIVE YOUR SHARE OF THE MONEY AVAILABLE TO YOU AS PART OF THE SETTLEMENT.

What is the next step in the approval of the Settlement?

The Court will hold a Final Approval Hearing regarding the fairness, reasonableness and adequacy of the proposed Settlement, the plan of distribution, Class Counsel's Fees and Expenses, the Class Representative Service Payment, the Administrative Expenses, and the PAGA Allocation on <<**FINAL APPROVAL HEARING DATE & TIME**>>, in Department 1 of the Riverside County Superior Court, 4050 Main Street, Riverside, CA 92501. As described above, if you wish to attend the Final Approval Hearing remotely, you can do so via Zoom link provided on the court's website <https://riverside.courts.ca.gov/general-information/remote-appearances/remote-appearance-meeting-numbers>. If you wish to attend the Final Approval Hearing in person, you can attend it at Riverside County Superior Court, Department 1, 4050 Main Street, Riverside, CA 92501. The Final Approval Hearing may be continued without further notice to Class Members. You are not required to attend the Final Approval Hearing to receive an Individual Settlement Payment.

If the Court grants Final Approval of the Settlement, the Order granting Final Approval and entering a Judgment will be posted on a website by the Settlement Administrator for a period of at least 90 days following the entry of that Order in the Court record. That website is: <<**website**>>.

How can I get additional information?

This Notice summarizes the Action and the basic terms of the Settlement. More details are in the Amended Joint Stipulation of Class and PAGA Representative Action Settlement attached to the Declaration of Lilit Tunyan in Support of Plaintiff's Motion for Preliminary Approval which was filed with Court on June 6, 2024. The Joint Stipulation of Class and PAGA Representative Action Settlement and all other records relating to the lawsuit are available for inspection and/or copying at the Civil Records Office of the Riverside County Superior Court. Class Members may be required to make an appointment with the Court to view documents. You may also request a copy of the Settlement Agreement from Class Counsel, at the address listed above.

You may also view documents filed in this case, including the complete Settlement, on the Court's website at: <https://epublic-access.riverside.courts.ca.gov/public-portal/?q=user/login&destination=node/379>. You may need the case number to access and view case documents (CVRI2301534) NOTE: If you choose to access documents online, the Court will charge you a fee for access. Class Counsel can provide you with copies of the settlement documents at no charge.

PLEASE DO NOT CONTACT THE COURT FOR INFORMATION REGARDING THIS SETTLEMENT.

IF YOU HAVE ANY QUESTIONS, YOU MAY CALL THE SETTLEMENT ADMINISTRATOR AT THE FOLLOWING TOLL-FREE NUMBER: **[INSERT].**

Exhibit “2”

REQUEST FOR EXCLUSION FORM

**Superior Court of California for the County of Riverside
*Athey v. Walker Evans Enterprises, Case No. CVRI2301534***

If you want to receive an Individual Settlement Award, you should not fill out this form; you are not required to do anything at this time. This form is to be used only if you want to exclude yourself from the Settlement.

If you exclude yourself from the Settlement: (1) you will not receive any payments or benefits under the Settlement; (2) you will not be able to object to the Settlement; (3) you will not be bound by the class settlement if it is ultimately approved by the Court.

To be excluded from the Settlement, complete this Request for Exclusion Form and mail it to the Settlement Administrator at the address listed below, postmarked no later than **[Response Deadline-45 days following the date of mailing].**

[ILYM GROUP, INC.]

[INSERT INFO]

Request for Exclusion

I hereby certify that I am or was employed by Defendant as a non-exempt, hourly employee in California for some period of time between September 22, 2021 and August 31, 2023.

I have received the Notice of Class Action Settlement (“Notice”) in the Action, and I request to be excluded from the Settlement. I understand that by submitting this Request for Exclusion Form, I will not be bound by the class settlement, including the release of Released Claims, as described in the Notice and in the Settlement Agreement on file with the Court, and I will not receive a payment from the class settlement. I understand that I cannot exclude myself from the Individual PAGA Settlement Payment and that I will still receive a pro-rata share of the PAGA Settlement Amount and will be bound by the release of the PAGA claims regardless of whether I exclude myself from the Individual Settlement Payment.

Full Name: _____

Street Address: _____

City, State, Zip Code: _____

Telephone Number: (____ __) ____ __

Last four digits of your SSN: _____

Signature of Class Member (or Legal Representative): _____

Date: _____

Exhibit “3”

OBJECTION FORM

Superior Court of California for the County of Riverside
***Athey v. Walker Evans Enterprises*, Case No. CVRI2301534**

USE AND RETURN THIS FORM ONLY IF YOU WISH TO OBJECT TO THE CLASS SETTLEMENT.

If you do not wish to object to the Class Settlement, you should NOT fill out this form. You do not need to take any action. If the proposed settlement receives final approval from the Court, the Settlement Administrator will send you a check by U.S. Mail, at the last address the Settlement Administrator has on file for you.

If you wish to object to the Class Settlement, you must state all factual and legal bases for your objection (space is provided below for doing so), attach any documents you are relying on for your objection, indicate whether you are represented by counsel and, if so, provide their contact information, indicate whether you plan to appear at the Final Approval Hearing, write your name, address, and last four digits of your Social Security number, sign on the following page, and return this form by mail or delivery to the Settlement Administrator, at the following mailing address, postmarked or delivered on or before

[RESPONSE DEADLINE--45 days following the date of mailing].

TBD

[INSERT MAILING ADDRESS]

I wish to object to the Class Settlement on the following grounds:

This image shows a single sheet of white paper with horizontal ruling lines. The lines are evenly spaced and run across the width of the page. There are no margins, text, or other markings on the paper.

This image shows a blank sheet of white paper with horizontal ruling lines. The lines are evenly spaced and extend across the width of the page. There are no margins, text, or other markings on the paper.

Are you represented by an attorney? ☐ Yes ☐ No

If yes, please provide your attorney's name and contact information:

Do you plan to appear at the Final Approval Hearing? ☐ Yes ☐ No

Full Name: _____

Street Address: _____

City, State, Zip Code: _____

Telephone Number: (____) _____

Last four digits of your SSN: _____

Signature of Class Member (or Legal Representative): _____

Date: _____

1 **PROOF OF SERVICE**

2 STATE OF CALIFORNIA)
3) ss
4 COUNTY OF LOS ANGELES)

5 I am employed in the county of Los Angeles, State of California. I am over the age of 18
6 and not a party to the within action; my business address is 535 N. Brand Blvd., Suite 285
Glendale, California 91203. On June 6, 2024, I served the foregoing document described as:

7 On the date indicated below, I served the document described as: **[PROPOSED] AMENDED**
8 **ORDER GRANTING PRELIMINARY APPROVAL OF CLASS AND PAGA**
9 **REPRESENTATIVE ACTION SETTLEMENT** on the interested parties in this action by sending a
true copy thereof to interested parties as follows and as stated on the attached service list:

Richard D. Marca

Richard.Marca@varnerbrandt.com

Alisha Maline

Alisha.Maline@varnerbrandt.com

Madison Montgomery

Madison.Montgomery@varnerbrandt.com

Daisy Diaz

Daisy.Diaz@varnerbrandt.com

Christine A. Mitchell

Christine.Mitchell@varnerbrandt.com

VARNER & BRANDT LLP

3750 University Avenue, Floor 6

Riverside, CA 92501

Telephone: (951) 274 -7777

Facsimile: (951) 274- 7770

17 *Attorneys for Defendant Walker Evans Enterprises*

18 [✓] **BY E-MAIL:** I hereby certify that this document was served from Glendale,
19 California, by e-mail delivery on the parties listed herein at their most recent known e-
20 mail address or e-mail of record in this action.

21 [✓] **BY ELECTRONIC SERVICE:** Based on an agreement of the parties to accept electronic
22 service, I caused the documents to be sent to the persons at the electronic service addresses
listed above via electronic mail. I did not receive an error message.

23 I declare under penalty of perjury under the laws of the State of California that the
24 above is true and correct. Executed on June 6, 2024 at Glendale, California.

25 Lilit Tunyan

26 Name



27 Signature