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

OSCAR IRUEGAS, an individual, on behalf
of himself and others similarly situated,

PLAINTIFF,

v.

BALD EAGLE SECURITY SERVICES,
INC.; and DOES 1 thru 50, inclusive,

DEFENDANTS.

CASE NO. 37-2023-00030158-CU-OE-CTL

[Case Assigned for All Purposes to Hon. Blaine
K. Bowman in Dept. C-74]

**NOTICE OF MOTION AND MOTION FOR
FINAL APPROVAL OF CLASS ACTION
SETTLEMENT; MEMORANDUM OF
POINTS AND AUTHORITIES IN
SUPPORT THEREOF**

*[Filed concurrently with Motion for Approval
of Attorneys' Fees and Costs; Declarations of
Eric B. Kingsley, Oscar Iruegas and Makenna
Snow, Proposed Order and Judgment]*

Date: April 25, 2025

Time: 8:30 AM

Dept.: C-74

Complaint Filed: July 18, 2023

FAC Filed: September 25, 2023

Trial Date: None Set

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

2 PLEASE TAKE NOTICE that on April 25, 2025 at 8:30 AM in Department C-74 of the
3 above-entitled court, Plaintiff Oscar Iruegas (“Plaintiff”) will, and hereby does, move the Court
4 for an Order of Final Approval of the Class Settlement in this case. Plaintiff moves the Court for
5 an order:

6 1. Granting final approval of the settlement in the case pursuant to the Class Action
7 and PAGA Settlement Agreement (“Agreement”), a copy of which is attached to the concurrently-
8 filed Declaration of Eric B. Kingsley as Exhibit “1”;

9 2. Affirming Kingsley Szamet Employment Lawyers, previously known as Kingsley
10 Szamet & Ly, and Abramson Labor Group, as Class Counsel;

11 3. Affirming Oscar Iruegas as Class Representative and awarding an enhancement
12 award of \$5,000.00;

13 4. Awarding ILYM Group, Inc. claims administration fees of \$9,950.00 for its
14 services as Administrator; and,

15 5. Entering judgment.

16 This Motion will be made pursuant to Code of Civil Procedure section 382 and California
17 Rule of Court, rule 3.769 on the grounds that the proposed Agreement is fair, adequate,
18 reasonable, and in the best interest of the Settlement Class Members and the parties.

19 The Motion will be based on this Notice of Motion, the attached Memorandum of Points
20 and Authorities, the Declarations of Eric B. Kingsley, Oscar Iruegas, Makenna Snow, all other
21 papers and records on file in this action, and on such oral and documentary evidence as may be
22 presented at the hearing on this Motion.

23 DATED: April 3, 2025

KINGSLEY SZAMET EMPLOYMENT
LAWYERS

24
25 By:



26 Eric B. Kingsley
27 Attorneys for Plaintiff OSCAR IRUEGAS and the
28 proposed class

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiff Oscar Iruegas (“Plaintiff”) submits this Motion for Final Approval of Class
4 Settlement and requests that the Court:

5 1. Grant final approval of the settlement in this case pursuant to the Class Action and
6 PAGA Settlement Agreement (“Agreement”), a copy of which is attached to the concurrently-filed
7 Declaration of Eric B. Kingsley as Exhibit “1”;

8 2. Award attorneys’ fees and costs as detailed in the concurrently-filed Motion for
9 Attorneys’ Fees and Costs;

10 3. Award ILYM Group, Inc. claims administration fees of \$9,950.00 for its services
11 as Administrator;

12 4. Affirm named Plaintiff Oscar Iruegas as Class Representative and award a
13 cumulative Class Representative payment of \$5,000.00; and

14 5. Enter judgment.

15 **II. FACTUAL BACKGROUND**

16 **A. Litigation Overview and Procedural History of the Iruegas Action**

17 On July 18, 2023, Plaintiff filed a putative Class Action Complaint for damages against
18 Bald Eagle Security Services, Inc. Defendant in the San Diego County Superior Court, Case No.
19 37-2023-00030158-CU-OE-CTL, entitled *OSCAR IRUEGAS an individual, on behalf of himself*
20 *and others similarly situated v. BALD EAGLE SECURITY SERVICES, INC.*; and Does 1 thru 50,
21 inclusive. (“Action”). (Declaration of Eric B. Kingsley (“Kingsley Decl.”) ¶5.) He alleged causes
22 of action for: (1) Failure to Provide Meal Breaks Pursuant to Labor Code §§ 226.7 and 512; (2)
23 Failure to Provide Rest Breaks Pursuant to Labor Code § 226.7; (3) Failure to Reimburse Expenses
24 Pursuant to Labor Code § 2802; (4) Waiting Time Penalties Pursuant to Labor Code § 203; and
25 (5) Violation of Business & Professions Code § 17200. (Kingsley Decl. ¶6.) On July 18, 2023, in
26 compliance with Labor Code § 2699.3(a)(1), written notice was provided via online filing to the
27 LWDA, setting forth the facts and theories of the violations alleged against Defendant. (Kingsley
28 Decl. ¶7.)

1 Plaintiff initially brought this class action on behalf of himself and:

2 All persons who are employed or have been employed as a non- exempt employee
3 by BALD EAGLE SECURITY SERVICES, INC., in the State of California since
4 four (4) years prior to the filing of this action to the present. (“Proposed Class”)

(Kingsley Decl. ¶8.)

5 However, in August 2023, Defendant notified Plaintiff of a prior class action, *Diaz v. Bald*
6 *Eagle Security Services Inc.*, Case No. 37-2018-00009703-CU-OR-CTL (San Diego Sup. Ct.),
7 which overlapped with Plaintiff’s action. After learning of the *Diaz* action, Plaintiff agreed to
8 redefine the class definition to encompass only non-exempt security guards from January 1, 2021
9 to the present. (Kingsley Decl. ¶9.)

10 On September 25, 2023, Plaintiff filed a First Amended Complaint, adding an additional
11 claim for civil penalties pursuant to Labor Code section 2699, et seq. (“PAGA”) based upon the
12 same alleged Labor Code violations at issue in the complaint in addition to a meal record keeping
13 violation. Plaintiff also redefined the class as:

14 All persons who are employed or have been employed as a non- exempt security
15 guard by BALD EAGLE SECURITY SERVICES, INC., in the State of California
16 since January 1, 2021 to the present. (“Proposed Class”)

(Kingsley Decl. ¶10.)

17 Defendant informally produced pay records for mediation. The Parties have not engaged
18 in formal discovery and focused their efforts on resolving this case through early mediation.
19 (Kingsley Decl. ¶11.)

20 B. Prior Class Action: *Diaz v. Bald Eagle Security Services, Inc.*

21 The *Diaz* action settled in 2020 after the court granted certification on a rest break claim.
22 The *Diaz* Action alleged meal and rest break claims, an overtime claim, a waiting time penalties
23 claim, a wage statement claim, and derivative UCL and PAGA claims. The class definition
24 encompassed security guards from February 23, 2014, to December 31, 2020. The *Diaz*
25 settlement agreement released the claims alleged in the *Diaz* complaint through to the court’s
26 final approval order, which was on July 8, 2022. (Kingsley Decl. ¶12.)

27 Defendant informally produced documents from the *Diaz* matter in preparation for
28 mediation, and Plaintiff reviewed them. (Kingsley Decl. ¶13.) In Plaintiff’s view, the *Diaz* action

1 impacts the alleged meal/rest break claims and waiting time penalties claim. (*Id.*) The Diaz
2 action did not allege a claim under Labor Code section 2802, and as such, Plaintiff argued at
3 mediation that this time period for this claim dates back 4 years from July 18, 2023 (the date
4 Plaintiff filed his complaint). (*Id.*)

5 C. The Parties' Contentions

6 Defendant denies any liability or wrongdoing of any kind associated with the claims
7 alleged in the Action, disputes the damages and penalties claimed by Plaintiff, and further
8 contends that, for any purpose other than settlement, Plaintiff's claims are not appropriate for
9 class or representative action treatment. (Kingsley Decl. ¶14.) Defendant contends, among other
10 things, that, at all times, it has complied with the California Labor Code, and the Industrial Wage
11 Commission Orders. (*Id.*)

12 Based on their own independent investigation and evaluation, Class Counsel is of the
13 opinion that the Agreement with Defendant is fair, reasonable and adequate, and in the best
14 interest of the settlement classes in light of all known facts and circumstances, including the risk
15 of significant delay, defenses asserted by Defendant, uncertainties regarding a class and
16 representative action trial on the merits, and numerous potential appellate issues. (Kingsley Decl.
17 ¶15.) Although Defendant denies any liability, Defendant is agreeing to this Agreement solely to
18 avoid the cost of litigation. (*Id.*)

19 Accordingly, the Parties and their counsel desire to fully, finally, and forever settle,
20 compromise and discharge all disputes and claims arising from or relating to the Action on the
21 terms set forth here. (*Id.*)

22 D. Preliminary Approval

23 On November 1, 2024, the Court issued an Order preliminarily approving the settlement in
24 this case, approving the proposed Class Notice, ordering that the Administrator send notice to the
25 Class, and setting a date for the Final Approval and Fairness Hearing. (Kingsley Decl. ¶16.)

26 **III. THE PRELIMINARILY APPROVED SETTLEMENT**

27 A. The Settlement Class

28 For purposes of Agreement, the settlement Class is defined as: "All persons who are

employed or have been employed as a non-exempt security guard by Defendant in the State of California during the Class Period.” (“Class”, “Class Members” or “Settlement Class Members”). (Kingsley Decl. ¶17; Agreement, Ex. 1 at § 1, ¶1.5.)

The Class Period is January 1, 2021 to May 23, 2024. (Kingsley Decl. ¶18; Ex. 1 at § 1, ¶1.13.) As of April 23, 2024 (the date of mediation), and based on documents and other information produced by Defendant, there are approximately 452 Class Members. (Kingsley Decl. ¶19; Ex. 1 at §9.)

The final Class contained 471 individuals. (Snow Decl. ¶5.)

B. Aggrieved Employees

For purposes of Agreement, the Aggrieved Employees are defined as: “All persons who are employees or have been employed as an hourly employee by Defendant in the State of California during the PAGA Period.” (“Aggrieved Employees”). (Kingsley Decl. ¶20; Agreement, Ex. 1 at § 1, ¶1.4.)

The PAGA Period is January 1, 2021 to May 23, 2024. (Kingsley Decl. ¶21; Ex. 1 at § 1, ¶1.13.) As of April 23, 2024 (the date of mediation), and based on documents and other information produced by Defendant, there are approximately 294 Aggrieved Employees. (Kingsley Decl. ¶22; Ex. 1 at § 9.)

C. Settlement Payments

As detailed fully in the Agreement, the Settlement provides for Defendant to pay a Gross Settlement Amount of \$160,000.00, which includes the sum of the Individual Class Payments, the Class Representative service award, the LWDA PAGA Payment, the Individual PAGA payments, the Class Counsel Award, and the Settlement Administration Costs. (Kingsley Decl. ¶23; Ex. 1 at § 3, ¶3.1.) Plaintiff now requests final approval of the allocation of the Gross Settlement Amount to determine the Net Settlement Amount for distribution to the Class as follows:

Gross Settlement Amount:	\$	160,000.00
Less Class Counsel’s Fees:	\$	53,333.33
Less Class Counsel’s Costs:	\$	11,171.09 ¹

¹ The Agreement provided for counsel to receive cost reimbursement up to \$12,000.00. However, counsel’s final costs come to \$10,851.09, which includes the anticipated cost of \$320 for filing the instant motions. (Kingsley Decl. ¶24, Ex. 5). The extra \$828.91 will remain in the

Less Administrator Costs:	\$	9,950.00
Less PAGA Payment:	\$	7,500.00
		(\$5,625.00 to the LWDA; \$1,875.00 to remain in the Net Settlement Amount)
Less Class Representative Enhancement:	\$	<u>5,000.00</u>
Net Settlement Amount:	\$	73,045.58

D. Individual Settlement Payments

The amount of each Participating Class Member's Individual Class Payment is an individualized amount that is based on the number of Workweeks worked by each Participating Class Member during the Class Period in proportion to the aggregate number of Workweeks worked by all Participating Class Members in the Class Period. (Ex. 1 at § 1, ¶1.26; *see also* Ex. A to the Agreement at pp.7 [Class Notice].) This individual amount shall be determined by (a) dividing the Net Settlement Amount by the total number of Workweeks worked by all Participating Class Members during the Class Period and (b) multiplying the result by each Participating Class Member's Workweeks during the Class Period. according to the settlement payment formula set forth in the Agreement. (See Ex. 1 at § 3, ¶3.2.4; *Id.* at Ex. A to the Agreement [Class Notice].) The Agreement provides for a specific and detailed Workweek dispute process. (See Ex. 1 at § 8, ¶8.6.)

The amount of each Aggrieved Employees' Individual PAGA Payment is an individualized amount that is based on the number of PAGA Pay Periods worked by each individual Aggrieved Employee during the PAGA Period in proportion to the aggregate number of PAGA Pay Periods worked by all Aggrieved Employees in the PAGA Period. (Ex. 1 at § 1, ¶27; *see also* Ex. A to the Agreement at pp.7 [Class Notice].)

Based on these calculations, the average potential recovery is \$153.33 per Settlement Class Member. (Snow Decl. ¶17.)

E. Class Notice

The Court approved the proposed Class Notice, and directed the mailing of the Notice by first-class mail to Settlement Class Members in accordance with the proposed implementation net settlement fund, causing the net distribution to the Class Members to be slightly higher than the \$72,216.67 contemplated in the settlement agreement (*Id.*, Ex. 1 at ¶3.2.2)

1 schedule. (Kingsley Decl. ¶25) The procedures for giving notice to the Settlement Class Members,
2 as set forth in the Agreement and Plaintiffs’ Motion for Preliminary Approval and approved by
3 the Court, have been fully and properly carried out. (Snow Decl. ¶7.)

4 To date, ILYM Group, Inc. received zero (0) requests to be excluded (“opt-outs”) from
5 the proposed Agreement and zero (0) objections. (Snow Decl. ¶¶11-12.)

6 F. Check Mailed Settlement – No Reversion

7 The Parties agreed to, and the Court preliminary approved, a checks-mailed settlement
8 without the possibility of reversion of settlement funds to Defendant. Under the Agreement, every
9 Settlement Class Member will receive a settlement check and Settlement Class Members do not
10 need to submit a claim in order to receive a settlement check. Any funds that remain uncashed
11 after 180 days shall be turned over by the Administrator, with information for each Settlement
12 Class Member who failed to timely cash his/her settlement check, to the San Diego County Bar
13 Foundation. (Ex. 1 at § 4, ¶4.4.3.)

14 **IV. THE COURT SHOULD ORDER FINAL APPROVAL OF THE SETTLEMENT**

15 Pursuant to California Code of Civil Procedure § 1781(f), “a class action shall not be
16 dismissed or compromised without the approval of the court, and notice of the proposed dismissal
17 or compromise shall be given to all members of the Class in such manner as the court directs”
18 In deciding whether to grant final approval to a proposed class action settlement under Code of
19 Civil Procedure § 382, the court’s overriding concern is whether the proposed settlement is “fair,
20 adequate, and reasonable.” (*Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1801.)

21 A. The Settlement is Entitled to a Presumption of Fairness

22 “A presumption of fairness exists where: (1) the settlement is reached through arm’s length
23 bargaining; (2) investigation and discovery are sufficient to allow counsel and the court to act
24 intelligently; (3) counsel is experienced in similar litigation; and (4) the percentage of objectors is
25 small.” (*Dunk, supra*, 48 Cal.App.4th at p. 1802.) The proposed Settlement in the present case
26 meets all of the *Dunk* factors and is therefore entitled to a presumption of fairness.

27 As to the first *Dunk* factor, this settlement is the result of adversarial, non-collusive, and
28 arm’s-length negotiations overseen by an experienced mediator. All settlement discussions were

made by experienced and informed counsel, who believe that this settlement represents a favorable resolution for the Settlement Class Members. (Kingsley Decl. ¶26.) The settlement negotiations have been, at all times, adversarial and non-collusive, with the aid of a mediator, and no self-dealing or other type of misconduct by either side has taken place. (Kingsley Decl. ¶27.)

Second, the Parties engaged in extensive informal discovery that permitted Class Counsel to fairly evaluate the strength of the case and the risks associated with ongoing litigation. In addition, Defendant produced additional data and documents informally for purposes of mediation. (Kingsley Decl. ¶28.) Receipt of appropriate discovery allowed Class Counsel to fairly evaluate the exposure and risks associated with each claim alleged in the lawsuit. (Kingsley Decl. ¶29.)

Third, Class Counsel have significant experience in cases of this type, including several years prosecuting wage, hour, and working condition violations. (Kingsley Decl. ¶30.) Class Counsel is thus qualified to evaluate the class claims and viability of the defenses. Class Counsel believes that the settlement is fair, reasonable, adequate, and in the best interests of the class and that the average recovery for each Settlement Class Member of over \$153.33 is substantial, given the risks inherent in litigation and the defenses asserted. (Kingsley Decl. ¶31.)

Finally, the fourth *Dunk* factor considers the percentage of objectors. Here, there were zero (0) requests to be excluded and no objectors. (Snow Decl. ¶¶11-12.) As all of the *Dunk* factors are satisfied, this settlement is entitled to a presumption of fairness.

B. The Court Should Approve This Class Action Settlement Because it Satisfies Each of the *Kullar* Factors

In *Kullar v. Foot Locker Retail, Inc* (2008) 168 Cal.App.4th 116, 128, the court set forth several factors that the Court should analyze in determining whether to approve a class action settlement. These factors include: (1) the strength of plaintiff's case; (2) the risk, expense, complexity and likely 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 stage of the proceedings; (6) the experience and views of counsel; (7) the presence of a governmental participant; and (8) the reaction of the class members to the proposed settlement.

The proposed settlement satisfies each of these factors. (Kingsley Decl. ¶32.) Class

Counsel conducted extensive informal discovery before entering into meaningful settlement negotiations in this matter. (*Id* at Kingsley Decl. ¶12.) This discovery permitted Class Counsel to fairly evaluate the strength of the case and the risks associated with ongoing litigation. (Kingsley Decl. ¶34.) Class Counsel is experienced in handling wage and hour class actions and, after weighing all of the following factors, supports this Agreement. (Kingsley Decl. ¶35.)

1. The Strength of Plaintiffs' Case

a) The Risks Associated with the Meal Break Claims

Under California Labor Code section 512 and IWC Wage Order No. 4, no employer shall employ any person for a work period of more than five hours without providing a meal period of not less than thirty minutes. The first meal period must be permitted to commence no later than after five hours of work, or the start of the sixth hour of work (5.0 hours on the clock). (*Brinker Rest. Corp. v. Superior Court* (2012) 53 Cal.4th 1004, 1049.) The second meal period must be permitted to commence no later than after ten hours of work, or the start of the eleventh hour of work (10.0 hours on the clock). (*Ibid.*) The California Supreme Court succinctly described Section 512's mandate: "Employers must afford employees uninterrupted half-hour periods in which they are relieved of any duty or employer control and are free to come and go as they please." (*Brinker Rest. Corp. v. Superior Court* (2012) 53 Cal.4th 1004, 1037.) Defendant must pay an additional hour at the employee's regular rate of compensation for each workday the employer failed to provide a lawful meal period to each employee. (See Lab. Code, § 226.7, subd. (c).)

Here, Defendant allegedly required Plaintiff and the Proposed Class to take on-duty meal/rest breaks or miss their meal/rest periods entirely. (Kingsley Decl. ¶36.) Plaintiff contends that he was the only security guard on the premises he was assigned for each shift, thus no one was there to relieve him for meal or rest breaks. (Kingsley Decl. ¶37.) Defendant allegedly told Plaintiff that either a supervisor or another employee would come to relieve him for his meal and rest breaks, but no one ever came. (Kingsley Decl. ¶38.) Plaintiff sustains that he could not leave his post at all to take a meal or rest break, to get food, or even to use the restroom. (Kingsley Decl. ¶39.) If Plaintiff was able to bring lunch to his shift, he would eat his meals on-duty because no one was around to relieve him of his duties. (Kingsley Decl. ¶40.) Plaintiff further alleges that this

1 was Defendant's practice throughout his employment. (*Id.*)

2 However, prior to and at mediation, Defendant vigorously argued that all security guards
3 signed an on-duty meal break waiver at the time of hire. (Kingsley Decl. ¶41.) As such, there is a
4 great risk to Plaintiff's meal break claim if many proposed Class Members did indeed sign valid
5 on-duty meal break waivers. (Kingsley Decl. ¶42.) Nonetheless, Defendant acknowledged that
6 Plaintiff's personnel file does not contain such a meal break waiver. (Kingsley Decl. ¶43.) As such,
7 Plaintiff would still argue that many proposed Class Members actually did not sign meal break
8 waivers. (Kingsley Decl. ¶44.) However, Plaintiff has to acknowledge that Defendant's contention
9 that meal break waivers are commonly signed by most Class Members poses a significant risk to
10 his meal periods claim. (Kingsley Decl. ¶45.)

11 b) The Risks Associated with the Rest Periods Claim

12 Under IWC Wage Order No. 4, every employer shall authorize and permit all employees
13 to take rest periods. Employees are entitled to a paid ten-minute rest break for every four hours
14 worked, or major fraction thereof. (Cal. Code Regs., tit. 8, § 11040, subd. 11(A).)

15 The *Brinker* court clarified what steps an employer must take to make rest breaks available
16 to its employees:

17 An employer is required to authorize and permit the amount of rest break
18 time called for under the wage order for its industry. If it does not—if, for
19 example, it adopts a uniform policy authorizing and permitting only one rest
20 break for employees working a seven-hour shift when two are required—it
 has violated the wage order and is liable. No issue of waiver ever arises for
 a rest break that was required by law but never authorized; if a break is not
 authorized, an employee has no opportunity to decline to take it.

21 (*Ibid.*)

22 Labor Code section 226.7, subdivision (c), also requires an employer to pay an additional
23 hour of compensation for each workday the employer fails to provide a rest period according to
24 law.

25 Here, the same circumstances that give rise to the meal periods claim give rise to the rest
26 periods claim. (Kingsley Decl. ¶46.) As the only security guard on the premises, Plaintiff alleges
27 that he was not permitted to take rest periods because no one came to relieve him. (Kingsley Decl.
28 ¶47.) Plaintiff acknowledges that because rest periods are not typically recorded in time records.

1 As such, there is an inherent risk to Plaintiff’s ability to prove the rest periods claim. (Kingsley
2 Decl. ¶48.) However, Defendant maintains that security guards’ activity during their shifts are
3 recorded in detail using company-provided tablets/cell phones through the use of an app called
4 SilverTrac. (Kingsley Decl. ¶49.) Plaintiff would argue that this is sufficient to show whether rest
5 periods were truly provided based on the detailed reports that Defendant required be submitted
6 through SilverTrac. (Kingsley Decl. ¶50.) On the contrary, Defendant would argue that these
7 records would show that rest breaks were provided to the proposed Class Members, regardless of
8 whether another employee came to relieve them for a rest break. (Kingsley Decl. ¶51.) As such,
9 Plaintiff acknowledges there are significant risks in litigating the rest periods claim. (Kingsley
10 Decl. ¶52.)

11 c) The Risks Associated with the Reimbursement Claim

12 Labor Code section 2802 provides that an employer must “indemnify his or her employee
13 for all necessary expenditures or losses incurred by the employee in direct consequence of the
14 discharge of his or her duties” (Lab. Code, § 2802, subd. (a).)

15 Plaintiff alleges that Defendant failed to reimburse Plaintiff and the Proposed Class
16 members the cost of using their personal cell phones for business related purposes. (Kingsley
17 Decl. ¶53.) Specifically, Defendant allegedly required that Plaintiff and the Proposed Class
18 members be available by personal cell phone and answer/use their cell phones for work
19 purposes. (Kingsley Decl. ¶54.) Plaintiff also alleges that he used an app to clock in and out for
20 each of his shifts. (Kingsley Decl. ¶55.) Plaintiff further alleges that Defendant texted Plaintiff
21 and the Proposed Class about their work schedules to their personal cell phones, and Plaintiff
22 would respond to confirm. (Kingsley Decl. ¶56.) Moreover, Plaintiff alleges that Defendant
23 would also text him instructions throughout his shifts and would ask for updates and reports.
24 (Kingsley Decl. ¶57.) Plaintiff produced numerous documents showing alleged text messages
25 from Defendant sent to his personal cell phone. (Kingsley Decl. ¶58.) These personal cell phones
26 were not provided by Defendant, nor did Defendant reimburse Plaintiff and the Proposed Class
27 for this use. (Kingsley Decl. ¶59.)
28

1 However, Defendant would staunchly argue that there was no need for Plaintiff and the
2 Proposed Class to use their personal cell phones because it provided company tablets/cell phones
3 for business use. (Kingsley Decl. ¶60.) Defendant would further argue that any texts sent to
4 employees' cell phones were de minimis such that it would not give rise to a failure to reimburse
5 claim, and that even if the business use of Plaintiff's personal cell phone was more substantial,
6 that such an inquiry is individualized and uncommon to the class. (Kingsley Decl. ¶61.)

7 As such, Plaintiff acknowledges there are also significant risks to the reimbursement
8 claim.

9 d) The Risks Associated with the Waiting Time Penalty Claim

10 Under Labor Code section 203, if an employer fails to provide wages at the time of an
11 employee's termination or within seventy-two (72) hours of resignation, then the employee's
12 wages shall continue as a penalty for up to thirty (30) days. (Labor Code § 203.) Section 203
13 reflects a public policy that favors the full and prompt payment of earned wages. (See, e.g.,
14 *Barnhill v. Robert Saunders & Co.* (1981) 125 Cal.App.3d 1, 7; *Mamika v. Barca* (1998) 68
15 Cal.App.4th 487, 492.) "The failure to pay is willful if the employer 'knows what [it] is doing
16 [and] intends to do what [it] is doing', and does not also require proof that the employer acted with
17 "a deliberate evil purpose to defraud work[ers] of wages which the employer knows to be due.'" (See
18 *Diaz v. Grill Concepts Services, Inc.* (2018) 23 Cal.App.5th 859, 868.)

19 Here, Plaintiff and numerous Proposed Class members are no longer employed by
20 Defendant. Due to Defendant's alleged failure to pay all wages and meal and rest period premiums
21 as detailed above, Defendant also failed to pay all wages owed and due upon their termination
22 and/or resignation. (Kingsley Decl. ¶62.) Plaintiff alleges that Defendant's actions were willful, as
23 they have intentionally failed or refused to perform an act which was required to be done. (See
24 *Amaral v. Cintas Corp. No. 2* (2008) 163 Cal.App.4th 1157, 1201.) However, Defendant would
25 argue that any failure to pay wages was not willful, and that it is Plaintiff's burden to meet the high
26 standard of willfulness. (Kingsley Decl. ¶63.)

27 As such, there are significant risks to the waiting time penalties claim.

28 e) The Risks Associated with the PAGA Claim

1 California's Private Attorneys General Act ("PAGA"), Labor Code § 2698, *et seq.*, permits
2 private litigants to recover civil penalties for violations of the Labor Code. PAGA provides that
3 plaintiffs may recover previously established civil penalties (section 2699(a)) or, if none were
4 established, plaintiffs may recover default penalties provided in section 2699(f) in the amount of
5 \$100 per employee per pay period for the initial violation and \$200 for subsequent violations.

6 The Parties discounted the PAGA claim for multiple reasons. First, the aggrieved
7 employees' PAGA claims are derivative of all the foregoing class claims. Second, a court has
8 discretion to award less than the maximum penalty. Labor Code § 2699(e)(2) ("a court may award
9 a lesser amount than the maximum civil penalty amount specified by this part if, based on the facts
10 and circumstances of the particular case, to do otherwise would result in an award that is unjust,
11 arbitrary and oppressive, or confiscatory"). *See e.g., Carrington v. Starbucks Corporation* (2018)
12 30 Cal.App.5th 504, 241 Cal.Rptr.3d 647, 669 (affirming award of 10% of maximum PAGA
13 penalty). Finally, the settlement Class is compensated for these violations in the proposed
14 Agreement, and thus any PAGA recovery for these same violations would be duplicative. As such,
15 the Agreement's contemplated PAGA payment of \$7,500.00 is appropriate. (Kingsley Decl. ¶64.)
16 *See Nordstrom Commissions Cases*, 186 Cal.App.4th 576, 589 (2010) (affirming settlement
17 allocating \$0 of \$6.4 million settlement to PAGA penalties).

18 An additional and important issue to consider when evaluating the risks associated with a
19 representative PAGA claim are the recent amendments to the statute. (Kingsley Decl. ¶65.) On
20 July 1, 2024, Governor Newsom signed AB 2288 and SB 92 which reformed PAGA's penalty
21 structure as well as its standing requirements.² (Kingsley Decl. ¶66.) Specifically, the new
22 legislation caps penalties imposed on employers who quickly cure the Labor Code violations after
23 receiving a PAGA notice, and also requires that the representative plaintiff personally experience
24 the alleged Labor Code violations brought in the action. (Kingsley Decl. ¶67.) While this new
25 legislation is not retroactive, courts may still take these reforms into consideration when
26 adjudicating a PAGA action at trial. (Kingsley Decl. ¶68.) As such, there is substantial risk in
27 litigating Plaintiff's PAGA claim.

28 ² <https://www.gov.ca.gov/2024/07/01/governor-newsom-signs-paga-reform/>

1 2. The Risk, Expense, Complexity, and Likely Duration of Further Litigation

2 There is significant expense associated with the class certification process, which the
3 Parties can avoid by entering into the contemplated Agreement now. (Kingsley Decl. ¶69.) If the
4 Court did eventually certify a meal, rest, reimbursement, or wage statement class, trial of a case
5 involving approximately 452 Class Members would require the retention of expensive expert
6 witnesses, the accrual of extensive litigation costs, and a significant time overlay by the parties.
7 (Kingsley Decl. ¶70.) Moreover, given the complexity and unsettled nature of the issues in this
8 case it is likely that any outcome at trial would have resulted in a lengthy and costly appeal.
9 (Kingsley Decl. ¶71.) An appeal would result in further delay for the Class Members who are
10 waiting for a resolution in this matter. (*Id.*)

11 3. The Risk of Maintaining Class Action Status through Trial

12 This case has not been certified to be tried as a class action. (Kingsley Decl. ¶72.) While
13 Plaintiff believes there is strong evidence to support certification of several possible subclasses
14 (especially a reimbursement subclass), certification is always hard fought and subject to judicial
15 discretion. Moreover, in class actions, decertification is always a possibility. (*Id.*) In attempting to
16 certify a class, the parties would need to conduct multiple depositions, including of the Class
17 Representative and of several person(s) most knowledgeable regarding Defendant's meal and rest
18 policies. (*Id.*) There is a risk for both sides as to what these depositions will reveal and whether
19 they will support class certification to the extent expected. (*Id.*)

20 4. The Amount Offered in Settlement

21 It was very difficult for the Parties to reach this Settlement of \$160,000.00. (Kingsley Decl.
22 ¶73.) This Settlement is the result of adversarial, non-collusive, and arms-length negotiations.
23 (Kingsley Decl. ¶74.) The Parties retained Honorable Leo Papas (Ret.) to mediate the claims as a
24 neutral third-party. (Kingsley Decl. ¶75.) The Parties arrived at this settlement after extensive
25 investigation and discovery, careful evaluation of the law, risks, and all information substantiating
26 the amount of penalties reasonably likely to be awarded to the class were the trier of fact to find
27 Defendant liable, and the assistance of an experienced mediator, Hon. Leo Papas. (*Id.*)

28 Plaintiff worked with a third-party expert to analyze the potential damages in this matter.

1 (Kingsley Decl. ¶76.).

2 a) Plaintiff's Assessment of Defendant's Maximum Exposure

3 Working with the damages expert, Plaintiff assessed the full value of the Meal Period
4 claim, without any discount, at approximately \$123,680 in damages through to the date of
5 mediation. (Kingsley Decl. ¶77.) This amount was calculated by using 16,446 workweeks to
6 estimate approximately 77,296 shifts. (Kingsley Decl. ¶78.) Plaintiff assumed a 10% violation rate,
7 amounting to approximately 7,730 meal break violations. (Kingsley Decl. ¶79.) Given that
8 Defendant argued that Class Members largely signed valid meal break waivers, and if Defendant
9 was successful in its argument, then the actual violation rate could be much lower than 10%.
10 (Kingsley Decl. ¶80.) As such, Plaintiff determined that accepting a discount of the full amount
11 was appropriate. (Kingsley Decl. ¶81.)

12 The full value of the Rest Period claim, without any discount, was assessed at
13 approximately \$123,680 in damages and interest through to the date of mediation. (Kingsley Decl.
14 ¶82.) This amount was also calculated by using 16,446 workweeks to estimate approximately
15 77,296 shifts. (Kingsley Decl. ¶83.) Again, Plaintiff assumed a 10% violation rate, amounting to
16 approximately 7,730 rest break violations. (Kingsley Decl. ¶84.) Again, because Defendant's time
17 records do not record rest breaks, the actual violation rate will be difficult to determine, and
18 Defendant will likely argue that its written policies provided for complaint rest breaks and even if
19 security guards are single-staffed, there is enough idle time for employees to take their rest periods.
20 (Kingsley Decl. ¶85.) Thus, the actual rest break violation may actually be lower than 10% and
21 dramatically reduce Defendant's exposure. (Kingsley Decl. ¶86.) For these reasons, Plaintiff
22 determined that accepting a discount of the full amount was appropriate. (Kingsley Decl. ¶87.)

23 With regard to the Reimbursement Claim analysis, Plaintiff believed that it was reasonable
24 to value the potential reimbursement at \$10 per month, per employee, for reimbursement of
25 personal cell phone usage. (Kingsley Decl. ¶88.) This brought the potential exposure for this claim
26 to \$41,115. (Kingsley Decl. ¶89.) This amount is calculated by dividing the number of workweeks
27 by 4 to approximate the number of months, then multiplied by \$10 per month: 16,446 workweeks
28 / 4 weeks = approximately 4,111.50 months x \$10 per month. However, Plaintiff acknowledges

1 that Defendant provided company tablets/cell phones to security guards and thus any failure to
2 reimburse is an individualized inquiry, not a class-wide one. (Kingsley Decl. ¶90.) If Defendant
3 can prove that it provided tablets to all Class Members, this would also dramatically reduce
4 Defendant's exposure on this claim if not zero it out altogether. (Kingsley Decl. ¶91.) Taking this
5 into account, Plaintiff determined that accepting a discount of the full amount was appropriate.
6 (Kingsley Decl. ¶92.)

7 Plaintiff determined the maximum potential value of the Waiting Time Claim to be
8 \$1,297,920. (Kingsley Decl. ¶93.) Considering the derivate nature of Labor Code §203 and the
9 dispute over whether class members were owed any wages due to unpaid meal or rest premiums,
10 Plaintiff determined that accepting a discount on this claim was appropriate. (Kingsley Decl. ¶94.)

11 Plaintiff determined the maximum potential value of the Wage Statement claim to be
12 \$885,350. (Kingsley Decl. ¶95.) In the data, there were 267 employees and 8,987 wage statements
13 issued during the relevant liability period for Labor Code § 226(a). (Kingsley Decl. ¶96.) Again,
14 given the derivative nature of a Labor Code § 226(a) claim, the number of wage statements actually
15 containing a 226(a) violation may be very low. (Kingsley Decl. ¶97.)

16 Finally, Plaintiff calculated the value of the PAGA claim at \$1,489,650 for Class Members
17 (using \$100 per pay period). (Kingsley Decl. ¶98.) This is amount is comprised of \$89,900 in
18 PAGA penalties for meal periods, \$89,900 in PAGA penalties for rest periods, \$411,150 in PAGA
19 penalties for failure to reimburse necessary business expenses, and \$898,700 in PAGA penalties
20 for 226(a) violations. While there is no caselaw available yet on this issue, a court could
21 conceivably "stack" per pay period violations as Plaintiff has done above, and the recent
22 amendment to the PAGA statute now expressly permits a court to stack penalties if it so chooses.
23 (Kingsley Decl. ¶99.) Nonetheless, the main risk taken into account with PAGA is the
24 discretionary nature of the penalty award. (*Id.*) For example, if a court were to decide not to "stack"
25 the PAGA penalties for multiple violations arising from the same conduct or omission, then the
26 maximum exposure would actually be approximately \$89,870 (\$100 per pay period x 8,987 PAGA
27 pay periods). (Kingsley Decl. ¶100.) From there, the court could reduce the penalty amount per
28 pay period. (Kingsley Decl. ¶101.)

1 A judge can award the statutory maximum of \$100 for the initial violation and \$200
2 thereafter or – in theory – one cent per wage statement. (Kingsley Decl. ¶102.) Labor Code section
3 2699(e)(2) states that “a court may award a lesser amount than the maximum civil penalty amount
4 specified by this part if, based on the facts and circumstances of the particular case, to do otherwise
5 would result in an award that is unjust, arbitrary and oppressive, or confiscatory.” (*See Fleming v.*
6 *Covidien Inc.* (C.D. Cal., Aug. 12, 2011, No (OPX)), 2011 WL 7563047 [court awarded \$18 per
7 wage statement, reflecting 18% of the potential exposure]; *Carrington v. Starbucks Corp.* (2018)
8 30 Cal. App. 5th 504, 529 [awarding 10% of maximum civil penalty for meal break claims in light
9 of Starbucks’ “good faith attempts” to comply and because the violations were minimal].) Thus,
10 Class Counsel also considered the possibility of an outcome similar to the outcome in *Carrington*,
11 where the court awarded a small fraction of the maximum civil penalty because of Starbucks’
12 “good faith attempts” to comply with the Labor Code and minimal violations. (Kingsley Decl.
13 ¶103.)

14 Here, Defendant would likely argue that in light of the *Diaz* Class Settlement, it has made
15 good faith attempts to comply with the Labor Code thereafter to avoid future wage and hour
16 violations, and that the actual meal and rest break violations are much less than even Plaintiff’s
17 10% assumption. (Kingsley Decl. ¶104.) The assumptions made for the derivative claims for
18 waiting time penalties and wage statement penalties would significantly decrease as well.
19 (Kingsley Decl. ¶105.) Additionally, while there is a dearth of available authority, in Plaintiff’s
20 view, were he to succeed on any of the underlying Labor Code violations, it is not likely that a
21 Judge would also award a large amount of penalties of top of any damages recovered. (Kingsley
22 Decl. ¶106.) For example, it is very possible that a court could disallow “stacking” and also reduce
23 Plaintiff’s PAGA claim to 10% of the maximum exposure of a single stack. Thus, Plaintiff
24 determined that accepting a substantial discount on the PAGA penalties was reasonable.

25 Per Plaintiff’s assessment, the maximum potential value of all of Plaintiff’s and the Class
26 Members’ claims was approximately \$3,990,049. (Kingsley Decl. ¶107.) However, as a result of
27 the significant risks on the merits, and the impact of the prior *Diaz* Class Settlement, Class Counsel
28 believes the Gross Settlement Amount of \$160,000.00 is fair and reasonable under these

1 circumstances. (Kingsley Decl. ¶108.)

2 b) Impact of the Prior *Diaz* Class Settlement

3 One of the main factors affecting settlement of this action was the prior class action
4 settlement in the *Diaz* matter. (Kingsley Decl. ¶109.) Defendant maintained that it has legally
5 compliant policies in place and consistently enforces its lawful policies. Class Counsel worked
6 closely with Judge Papas (who also mediated the *Diaz* matter) to verify the information and
7 representation made by Defendant regarding its policies, practices, and defenses to potential
8 liability. (Kingsley Decl. ¶110.) Class Counsel determined that obtaining a settlement on behalf of
9 the Settlement Class now, as opposed to protracted litigation with the uncertainty of Defendant's
10 ability to pay made the most practical sense. (Kingsley Decl. ¶111.)

11 5. The Extent of Discovery Completed and Stage of the proceedings

12 As outlined above, Class Counsel conducted a thorough investigation into the facts of the
13 claims alleged. (Kingsley Decl. ¶112.) The agreement to settle did not occur until Class Counsel
14 exchanged and possessed sufficient information to make an informed judgement regarding the
15 likelihood of success on the merits and the results that could be obtained through further litigation.
16 (*Id.*)

17 6. The Experience and Views of Counsel

18 Kingsley Szamet Employment Lawyers, previously known as Kingsley Szamet & Ly is
19 very experienced in prosecuting employment litigation, and the firm has focused its practice since
20 2000 on wage, hour, and working condition violations. (Kingsley Decl. ¶¶113-115.) The firm is
21 well versed in class action litigation and has diligently and aggressively pursued this action. (*Ibid.*)
22 Kingsley Szamet Employment Lawyers currently serves as Class Counsel for dozens of pending
23 class action lawsuits in Northern, Central, and Southern California. (*Ibid.*) A list of representative
24 cases that Kingsley Szamet Employment Lawyers has handled is included in the accompanying
25 declaration of Eric B. Kingsley. (Kingsley Decl. ¶¶113-114.) After factoring in the risks explained
26 above, Class Counsel believes that the proposed settlement is fair and reasonable. (Kingsley Decl.
27 ¶115.)
28

1 7. The Presence of a Governmental Participant

2 There is no governmental participant in this action. (Kingsley Decl. ¶116.)

3 8. The Proposed Plan of Allocation Is Fair and Reasonable

4 Plans of allocation are subject to the same standard of review as class action settlements;
5 they must be “fair, adequate and reasonable.” (See, e.g., *Officers for Justice v. Civil Service*
6 *Comm’n* (9th Cir. 1982) 688 F.2d 615, 624–625, 629–630.) Here, the proposed plan of allocation
7 compensates Class Members pro rata based on the number of Workweeks worked by each
8 Participating Class Member during the Class Period. The lump sum payment to each Class
9 Member not excluding him/ herself will be determined on an individualized basis by (a) dividing
10 the Net Settlement Amount by the total number of Workweeks worked by all Participating Class
11 Members during the Class Period and (b) multiplying the result by each Participating Class
12 Member’s Workweeks during the Class Period. (Ex. 1 at §3, ¶3.2.4.) This allocation distributes
13 Agreement funds proportionally to each class member’s potential damages and should therefore
14 be approved as fair, adequate, and reasonable. (Kingsley Decl. ¶117.)

15 9. The Reaction of the Class Members to the Proposed Settlement

16 To date, there are zero (0) requests to be excluded from the proposed Agreement and zero
17 (0) objections. (Snow Decl. ¶¶11-12.) Such indicates that the reaction of Settlement Class
18 Members on the whole is positive and weighs in favor of approval.

19 **V. ENHANCEMENT TO PLAINTIFF**

20 Plaintiff’s Counsel request an enhancement of \$5,000.00 to the Class Representative Oscar
21 Iruegas for his work on behalf of the Class. (Kingsley Decl. ¶161.) “Courts routinely approve
22 incentive awards to compensate named plaintiffs for the services they provide and the risks they
23 incurred during the course of the class action litigation.” *Ingram v. The Coca-Cola Company*, 200
24 F.R.D. 685, 694 (N.D. Ga 2001) (internal quotations and citations omitted); *see also Van Vranken*
25 *v. Atlantic Richfield Co.*, 901 F. Supp. 294, 299 (N.D. Cal. 1995). In *Coca-Cola*, the Court
26 approved service awards of \$300,000 to each named plaintiff in recognition of the services they
27 provided to the class by responding to discovery, participating in the mediation process, and taking
28 the risk of stepping forward on behalf of the class. *Coca-Cola*, 200 F.R.D. at 694; *see also, e.g.*

1 *Van Vranken*, 901 F. Supp. at 299 (approving \$50,000 participation award to plaintiffs); *Glass v.*
2 *UBS Financial Services, Inc.*, Case No. C-06-4068 MMC, 2007 WL 227862, at *17 (N.D. Cal.
3 Jan. 26, 2007) (approving \$25,00 enhancement to each named plaintiff).

4 Mr. Iruegas is an adequate class representative because he has diligently, adequately and
5 fairly represented the Class and has not placed his interests above any member of the Class. (*see*
6 Declaration of Oscar Iruegas (“Iruegas Decl.”) ¶¶6-12.)

7 Here, Class Counsel requests an enhancement for Mr. Iruegas’ valiant effort and time
8 expended in this matter. The time spent by Oscar Iruegas is significant and includes researching
9 and retaining competent counsel; providing information to Class Counsel regarding the nature of
10 the work at Defendant; compiling relevant documents; working closely with Class Counsel to
11 develop the theories of liability and martial relevant evidence; regularly discussing the status of
12 the case with Class Counsel; discussing the case via telephone with many Class Members; making
13 himself available for a full-day of mediation; and responding promptly to Class Counsel’s
14 communications regarding settlement.. (Kingsley Decl. ¶162; Iruegas Decl. ¶¶6-9.) As set forth
15 in the Agreement, Plaintiff will also be entering into a general release of liability pursuant to Civil
16 Code Section 1542. (Kingsley Decl. ¶163; Ex. 1 at § 6, ¶6.1.1.)

17 Class Counsel considers this to be a fair and reasonable enhancement. (Kingsley Decl.
18 ¶164.) The enhancement takes into consideration the time, effort, and expense incurred by Mr.
19 Iruegas in coming forward to litigate this matter on behalf of all Settlement Class Members.
20 (Kingsley Decl. ¶165.) Additionally, the Class Representative was at risk for paying for
21 Defendant’s legal fees and costs in the event that Defendant prevailed at trial. (Kingsley Decl.
22 ¶166.)

23 **VI. SUBMISSION TO THE LABOR AND WORKFORCE DEVELOPMENT AGENCY**

24 As indicated on the Proof of Service, Plaintiff’s Motion for Final Approval of Class Action
25 Settlement (“Motion”) will be concurrently uploaded to the Labor and Workforce Development
26 Agency’s (“LWDA”) website on the date this Motion is filed as required by statute. Proof of
27 submission of Plaintiff’s Motion, all related documents, and copy of the email from the LWDA
28 confirming receipt is attached to the Declaration of Eric B. Kingsley as Exhibit “6.” (Kingsley

Decl. ¶171.)

VII. CONCLUSION

Plaintiff respectfully submits that the proposed Agreement is fair, adequate, reasonable, and in the best interest of the Settlement Class Members. Therefore, Plaintiff respectfully requests that the Court (1) grant Final Approval of the Agreement and all of its terms; (2) award attorneys' fees and costs in the amount detailed in the concurrently filed Motion for Attorneys' Fees and Costs; (3) award ILYM Group, Inc. claims administration fees of \$9,950.00; and (4) award the Class Representative an enhancement of \$5,000.00; and (5) enter judgment.

DATED: April 3, 2025

KINGSLEY SZAMET EMPLOYMENT
LAWYERS

By: 

Eric B. Kingsley
Attorneys for Plaintiff OSCAR IRUEGAS and the
proposed class

(PROOF OF SERVICE)
[CCP 1013(a)(3)]
STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles, State of California. I am over the age of 18 years and not a party to the within action. My business address is 16133 Ventura Boulevard, Suite 1200, Encino, California 91436.

On April 3, 2025, I served all interested parties in this action the following documents described as: **NOTICE OF MOTION AND MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT; MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT THEREOF** by placing a true copy thereof enclosed in a sealed envelope addressed as follows:

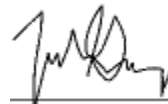
FERRIS & BRITTON A Professional Corporation Elyssa K. Kulas Scott H. Toothacre Michael R. Weinstein Debra L. Barker 501 West Broadway, Suite 1450 San Diego, California 92101 ekulas@ferrisbritton.com stoothacre@ferrisbritton.com mweinstein@ferrisbritton.com dbarker@ferrisbritton.com Attorneys for Defendant	ABRAMSON LABOR GROUP WILLIAM ZEV ABRAMSON Wza@abramsonlabor.com 11846 Ventura Blvd., Suite 100 Studio City, CA 91604 Attorneys for Plaintiff
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[XX] BY ELECTRONIC SERVICE: I caused a true and correct copy thereof to be electronically filed using the Labor and Workforce Development Agency Electronic Filing ("EF") System (<https://dir.tfaforms.net/271>) and service was completed by electronic means by transmittal of the documents referenced herein on the EF System.

[XX] BY ELECTRONIC MAIL TRANSMISSION: I caused the document to be send to the persons at the e-mail address(es) listed on the attached service list. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful. A pdf copy of which was sent via email to the below email address(es).

[XX] (STATE) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on April 3, 2025, at Los Angeles, California.



Taylor Gregg