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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SACRAMENTO

LARRY NORELL GOOSBY, individually, and on behalf of all others similarly situated, Plaintiff, v. CIMINOCARE, INC., a California Corporation; and DOES 1 through 10, inclusive, Defendants.	Case No. 34-2022-00329033 *Assigned for all purposes to:* *Hon. Lauri A. Damrell, Dept. 22* **NOTICE OF MOTION AND MOTION FOR FINAL APPROVAL OF CLASS ACTION AND PAGA SETTLEMENT** Date: March 14, 2025 Time: 9:00 a.m. Dept.: 22

TO ALL INTERESTED PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on March 14, 2025 at 9:00 a.m., or as soon thereafter as the matter may be heard in Department 22 of the above-entitled Court located at the Gorden D. Schaber Sacramento County Courthouse, 720 Ninth Street, Sacramento, California 95814, Plaintiff Larry Norell Goosby ("Plaintiff") will and hereby does move this Court for an Order:

1. Granting final approval of the proposed Class Action and PAGA Settlement Agreement;

2. Awarding Class Counsel attorneys' fees in the amount of $213,542.67 and reimbursement of litigation costs in the amount of $19,799.42;

3. Awarding Plaintiff a Class Representative Service Payment in the amount of $15,000.00;

4. Awarding $15,000.00 to ILYM Group, Inc. for its settlement administration expenses; and

5. Approving allocation of $30,000.00 as civil penalties under the Private Attorneys' General Act of 2004 ("PAGA"), 75% of which ($22,500.00) will be paid to the California Labor and Workforce Development Agency, and 25% of which ($7,500.00) will be distributed to Aggrieved Employees based on the number of pay periods worked during the PAGA Period.

This Motion is based on this Notice of Motion and Memorandum of Points and Authorities, the Declaration of John G. Yslas, the Declaration of Larry Norell Goosby, the Declaration of Nick Castro, and on all records and documents on file, together with such oral and documentary evidence that may be presented at the hearing on this matter.

Dated: February 20, 2025

WILSHIRE LAW FIRM

By: ______________________
John G. Yslas
Attorneys for Plaintiff Larry Norell Goosby

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I. INTRODUCTION

Plaintiff Larry Norell Goosby ("Plaintiff") seeks final approval of a non-reversionary Gross Settlement Amount of $640,628.00.[1] Castro Decl., ¶ 13. The Class Action and PAGA Settlement Agreement ("Settlement") provides that the following deductions will be made from the Gross Settlement Amount:

1. Attorneys' fees in the amount of up to $213,542.67 (*id.*);
2. Litigation costs in the amount of up to $19,799.42 (*id.*);
3. A Class Representative Service Payment of up to $15,000.00 (*id.*);
4. Settlement administration expenses of up to $15,000.00 (*id.*); and
5. Civil penalties in the amount of $30,000.00 for claims under the Private Attorneys' General Act of 2004 ("PAGA"), 75% of which ($22,500.00) will be paid to the California Labor and Workforce Development Agency ("LWDA), and 25% of which ($7,500.00) will be distributed to Aggrieved Employees based on the number of pay periods worked during the PAGA Period. *Id*.

After all deductions are made, the Net Settlement Amount will be distributed to 1,530 Class Members who did not opt out of the Settlement ("Participating Class Members") based on the number of weeks worked during the Class Period. *Id*.

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

In response to the Class Notice, only one of the 1,531 Class Members has opted out. *Id*. at ¶ 11. The Participating Class Members will receive an average settlement payment of $226.98, with the highest payout reaching $2,938.31 and lowest at $7.15. *Id*. at ¶ 13. In light of the Class's favorable response, and the facts and law set forth below as well as in the motion for preliminary approval, Plaintiff respectfully requests that the Court now enter an Order: (1)

[1] The Escalator Clause was triggered in this case, thereby increasing the GSA to $640,628.00. Declaration of Nick Castro of ILYM, Inc. in Support of MFA ("Castrol Decl."), ¶ 13.

granting final approval of the Settlement; (2) entering final judgment; (3) requiring distribution of individual settlement shares to Participating Class Members; and (4) approving payments for attorneys' fees, litigation costs, the Class Representative Enhancement Payment, settlement administration expenses, and civil penalties under PAGA.

II. THE SETTLEMENT MERITS FINAL APPROVAL

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

A. A Presumption of Fairness Exists

While the burden is on the proponent to demonstrate that a proposed settlement is fair, adequate, and reasonable, "a presumption of fairness exists where: (1) the settlement is reached through arm's length bargaining; (2) investigation is sufficient to allow counsel and the court to act intelligently; (3) counsel is experienced in similar litigation; and (4) the percentage of objectors is small." *Id.* at 1802.

At preliminary approval, Plaintiff presented evidence that this Settlement is entitled to a presumption of fairness because: (1) it was reached through arm's length bargaining with the assistance of an experienced mediator; (2) Plaintiff conducted a thorough investigation through informal discovery and an analysis of Class Members' time and payroll records; and (3) Plaintiff's Counsel is experienced in similar litigation. *See* Declaration of John G. Yslas in Support of Motion for Preliminary Approval of Class Action Settlement ("Yslas MPA Decl."), filed June 5, 2024 at ¶¶ 5-6, 15-28, 39-40. Since then, the final *Dunk* factor has been satisfied; only one of the Class Members opted out and none have objected. *See* Castro Decl., at ¶¶ 11,

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12. Therefore, the Court can confidently conclude that a presumption of fairness exists.

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

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

Here, Plaintiff presented sufficient information at preliminary approval regarding the number of class members and an estimate of the maximum value of each of the claims alleged. *See* Yslas MPA Decl. at ¶¶ 15-28. Plaintiff has also described in detail the risks the Class faced in litigation and the strengths and weaknesses of each of the claims. *See id.* Plaintiff noted potential difficulties in obtaining class certification and succeeding on the merits at trial. *See id*. The factual record here is sufficiently developed to allow the Court to independently satisfy itself "that the consideration being received for the release of the class members' claims is reasonable in light of the strengths and weaknesses of the claims and the risks of the particular litigation." *Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles*, 186 Cal.App.4th 399, 410 (2010).

C. The Amount Offered in Settlement

The Settlement provides a $640,628.00 Gross Settlement Amount to be distributed among 1530 Class Members who did not opt out. Castro Decl. at ¶ 13. The Gross Settlement Amount will be used to pay Class Counsel's attorneys' fees and costs, Plaintiff's Class Representative Service Payment, and ILYM Group, Inc. for its administration of the Class

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Notice and settlement funds. *Id*. The Settlement also allocates $30,000.00 from the Gross Settlement Amount to civil penalties under PAGA. *Id*. After all deductions are made, the Net Settlement Amount will be $347,285.91, which will be distributed to Participating Class Members according to the number of weeks they worked for Defendant during the Class Period. *Id*. Based on these calculations, the Participating Class Members will receive an estimated average gross payment of $226.98, with the estimated highest gross payment being $2,938.31, and the estimated lowest gross payment being $7.15. *Id*.

Weighing the potential value of the class claims against the risk and expense of trial, the Settlement provides sufficient relief in light of the potential risks associated with seeking a class judgment.

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

Class Counsel sufficiently investigated the alleged claims, applicable law, and potential defenses. Specifically, Class Counsel assessed the value of the claims using data and documents provided by Defendant in informal discovery, which included policy documents and timekeeping and payroll records. *See* Yslas MPA Decl. at ¶¶ 5-6. Following a complete analysis of this information, the Parties attended mediation on March 25, 2024 with an experienced mediator. *Id*. at ¶ 7. The Parties were able to reach an agreement at mediation and spent the next several months negotiating the terms of the Settlement. *Id*. at ¶ 8.

E. The Experience and Views of Counsel

Plaintiff is represented by Wilshire Law Firm, PLC. Class Counsel prosecute wage and hour cases, including class and representative actions. Declaration of John G. Yslas in Support of Motion for Final Approval of Class Action and PAGA Settlement ("Yslas MFA Decl.") at ¶¶ 3-5. Class Counsel has litigated many wage and hour cases and have successfully resolved cases involving similar issues presented in this matter. *Id*. at ¶ 5. Class Counsel has negotiated a settlement here that they believe is fair, reasonable, and adequate based on their prior experience litigating these types of cases. *Id*. at ¶ 19.

F. The Presence of a Government Participant

The LWDA is a governmental participant in this Settlement. On July 6, 2023, Plaintiff

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provided notice to the LWDA of her intention to file a PAGA claim. Yslas MPA Decl. at ¶ 4. The Settlement provides for the payment of $30,000.00 in civil penalties, 75% of which ($22,500.00) will be paid to the LWDA, and 25% of which ($7,500.00) will be paid to Aggrieved Employees based on the number of pay periods worked during the PAGA Period. *See* Castro Decl. at ¶ 13. On August 13, 2024, Plaintiff submitted a copy of the Settlement to the LWDA. Declaration of Jeffrey C. Bils in Support of Plaintiff's Motion for Preliminary Approval of Class Action Settlement, ¶ 4, Exhibit C. The LWDA has not responded to or objected to the Settlement. Yslas MFA Decl. at ¶ 20.

G. The Reaction of Class Members to the Proposed Settlement

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

When the Court granted preliminary approval, it also approved the method of providing notice to Class Members. Following a search of the National Change of Address database, ILYM Group, Inc. mailed the Class Notice to all Class Members on October 1, 2024. Castro Decl. at ¶ 7. The Class Notice informed Class Members of the terms of the Settlement, the amount of their individual settlements and how those amounts were calculated, their right to either participate in the Settlement, opt out of it, object to it, or dispute the amount of their individual settlement payment, the procedures and deadlines to submit an opt out, objection, or dispute, and the date, time, and place of the hearing on Plaintiff's Motion for Final Approval and instructions to be heard at the hearing. *See id*. at ¶ 7, Exhibit A. Here, in response to the Class Notice, only one Class Members opted out, and none objected. *Id*. at ¶¶ 11, 12. Class Members' favorable response to the Settlement further supports final approval.

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

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

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

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

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

The requested 35% fee award is consistent with the average fee award in class actions. *See*, *e.g.*, *Roos v. Honeywell Int'l, Inc.*, 241 Cal.App.4th 1472 (2015) (fee award of 37.5% was not an abuse of discretion), disapproved of on other grounds by *Hernandez v. Restoration Hardware, Inc.*, 4 Cal.5th 260, 287 (2018); *Wren v. RGIS Inventory Specialists*, No. C–06–05778 JCS, 2011 WL 1230826, at *29 (N.D. Cal. Apr. 1, 2011) (approving fee award of 42%); *Singer v. Becton Dickinson and Co.*, No. 08-CV-821-IEG (BLM), 2010 WL 2196104, *8 (S.D. Cal. 2010 June 1, 2010) (approving fee award of one-third and noting that the typical fees awarded in wage and hour class action cases ranges from 33.33% to 40%). Therefore, the percentage-of-recovery method should be utilized to approve the requested fee.

B. A Lodestar Cross-Check with a Modest Multiplier Confirms the Reasonableness of the Requested Fee.

Although *Lafitte* makes clear that a lodestar cross-check is not required, Class Counsel's lodestar supports the reasonableness of the requested fee. *Laffitte*, 1 Cal.5th at 506. The lodestar is determined by multiplying the number of hours reasonably expended by the reasonable hourly

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rate. *PLCM Group, Inc. v. Drexler*, 22 Cal.4th 1084, 1095 (2000). Here, Class Counsel worked 149.6 hours litigating this case, yielding a lodestar of $109,480.00. Yslas MFA Decl. at ¶ 16.

"The lodestar figure may then be adjusted, based on consideration of factors specific to the case, in order to fix the fee at the fair market value for the legal services provided." *Id*. In doing so, Courts utilize "multipliers" to account for the risk of taking on cases where there is no guarantee of recovery, uncertainties as the amount that will be recovered, uncertainty as to the cost of litigating the case (both in effort and expenses), and uncertainty about how much time will pass before the recovery is obtained. *Ketchum v. Moses*, 24 Cal.4th 1122, 1132-33, 1138 (2001); *see also Serrano v. Priest,* 20 Cal. 3d 25, 48-49 (1977)(approving the adjustment of the lodestar figure based on factors specific to the case to ensure fair market value for legal services provided on a contingency basis). Application of that rule is particularly appropriate where the case is brought to redress important rights of vulnerable persons. *Ketchum*, 24 Cal.4th at 1133.

Generally, "[m]ultipliers can range from 2 to 4 or even higher." *Wershba v. Apple Computers, Inc.*, 91 Cal.App.4th at p. 255 (2001); *see also Sutter Health Uninsured Pricing Cases*, 171 Cal. App. 4th 495, 512 (2009)(applying a 2.52 multiplier on a cross-check in an antitrust class action); *Chavez v. Netflix, Inc.,* 162 Cal. App. 4^{th}, 60 (2008)(applying a 2.5 multiplier on a lodestar cross-check); *Vizcaino v. Microsoft Corp.*, 290 F.3d 1043, 1051 n.6 (9th Cir. 2002)("most" common fund cases apply a multiplier of 1.0-4.0); *Laffitte v. Robert Half Int'l*, 231 Cal. App. 4th 860, 881-82 (2004)(affirming a 2.13 multiplier after finding that "2 to 4" is a reasonable range for multipliers on a cross-check). Here, the application of a modest 1.95 multiplier supports Class Counsels' fee request of $233,310.00.

The risk factors present in this case favor the application of a 1.95 multiplier. To begin, Class Counsel has singularly assumed the risk and costs of litigation purely on a contingency basis. Yslas MFA Decl., ¶ 17. And, while Plaintiff is confident in the merits of his claims, a legitimate controversy exists as to each cause of action posing an actual risk that Plaintiff may not succeed at class certification and/or trial. *Id*.; *see* Yslas MPA Decl., ¶¶ 15-28. Any of these obstacles could have prevented recovery completely, meaning Class Counsel would have been

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left with no compensation for all the time and money invested in litigating this case. Yslas MFA Decl., ¶ 17. Despite these risks, Class Counsel took this case on a contingency basis so that Class Members (a particularly vulnerable group of hourly paid workers) could be compensated for their unpaid wages. *Id*. Consequently, Class Counsel was precluded from focusing on, or taking on, other cases which could have resulted in a larger, and less risky, monetary gain. *Id*.

Moreover, Class Counsel's hourly rates are comparable to those charged by other class action counsel, and the total hours expended on this action were reasonable and in line with comparable cases. Yslas MFA Decl. at ¶ 15. Class Counsel spent 149.6 hours in prosecuting this action, divided among the attorneys working on this case according to skill level. *Id.* at ¶ 16. The hours expended by each attorney were not duplicative and reflect the extensive investigation and analysis that was required to achieve this Settlement. *Id*.

Considered against the risks of continued litigation, and the importance of advocating for employment rights and a speedy recovery, the relief provided under the Settlement represents a very strong result for the Class. Class Counsel's fee request is fair and reasonable and should be approved.

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

The Settlement permits Class Counsel to seek reimbursement of litigation costs in an amount up to $22,500.00. However, Class Counsel is only seeking reimbursement for actual costs in the amount of $19,799.42. *Id*. at ¶ 18. As such, the remaining $2,700.58 has been added back into the Net Settlement Amount to be distributed to Participating Class Members. Castro Decl., ¶ 13. These costs were reasonable and necessary to prosecute this case and obtain the results achieved. Yslas MFA Decl., ¶ 18.

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

Plaintiff also requests that he be awarded a service payment of $15,000.00 for his role in obtaining the Settlement. In evaluating a service payment, the Court may consider: "(1) the risk, both financial and otherwise, the class representative faced in bringing the suit; (2) the

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notoriety and personal difficulties encountered by the class representative; (3) the amount of time and effort spent by the class representative; (4) the duration of the litigation; and (5) the personal benefit received by the class representative as a result of the litigation." *Golba v. Dick's Sporting Goods, Inc.*, 238 Cal.App.4th 1251, 1272 (2015); *Clark v. American Residential Services, LLC*, 175 Cal.App.4th 785, 804 (2009).

Here, Plaintiff has provided a declaration detailing the risk he faced in bringing the suit, the notoriety and personal difficulties he encountered, the amount of time and effort he spent on this litigation, the duration of this litigation, and the personal benefit he will receive as a result of the litigation. *See generally* Declaration of Plaintiff Larry Norell Goosby in Support of Motion for Preliminary Approval of Class Action and PAGA Settlement (submitted on June 5, 2024).[2] Plaintiff should be adequately compensated for his role in obtaining this Settlement.

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

The Parties agreed to hire ILYM Group, Inc. as the Settlement Administrator in this case and the Court approved this choice at preliminary approval. The Settlement Administrator was responsible for updating Class Members' mailing addresses, mailing the Class Notice to each Class Member, responding to Class Member questions, providing weekly status reports, and providing a declaration as to the results of the mailing. *See* Castro Decl. at ¶¶ 3, 14. Following final approval, ILYM Group, Inc.'s duties will continue in order to calculate and to mail the settlement payments to Class Members, disburse other payments as ordered by the Court, and perform such other duties described in the Settlement. *Id*. The requested amount of $15,000.00 for services rendered and to be rendered is therefore fair and reasonable.

VII. CONCLUSION

Based on the foregoing, Class Counsel respectfully requests that the Court grant final approval of the Class Action and PAGA Settlement, approve Class Counsel attorneys' fees in the amount of $213,542.67 and reimbursement of litigation costs in the amount of $19,799.42,

[2] Also attached as Exhibit 2 to the Yslas MFA Decl.

the Class Representative Service Payment in the amount of $15,000.00, civil penalties under PAGA in the amount of $30,000.00, and $15,000.00 to ILYM Group, Inc. for its settlement administration expenses.

Dated: February 20, 2025

WILSHIRE LAW FIRM

By: ______________________
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