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9
10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
11 **FOR THE COUNTY OF BUTTE**

12 ROBERT LAWSON, on behalf of himself
13 and all "aggrieved employees" pursuant to
Labor Code § 2698 *et seq.*,

14 Plaintiff,

15 v.

16
17 GRAPHIC PACKAGING
INTERNATIONAL, LLC, a Delaware limited
18 liability company, and DOES 1 through 10,
inclusive,

19
20 Defendants.

CASE NO: 20CV01921

*Assigned to the Honorable Stephen E. Benson,
Dept. 6*

CLASS ACTION

**PLAINTIFFS' UNOPPOSED APPLICATION
FOR APPROVAL OF ATTORNEYS' FEES
AND COSTS, CLAIMS ADMINISTRATION
FEES, AND CLASS REPRESENTATIVES'
SERVICE PAYMENTS**

DATE: October 5, 2022

TIME: 9:00 a.m.

DEPT.: 6

Action Filed: September 29, 2020

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16 Attorneys for Plaintiff Marcos Castro and the Class
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1 **PLEASE TAKE NOTICE THAT** on October 5, 2022 at 9:00 a.m., or as soon thereafter as
2 the matter may be heard, in Department 6 of the above-entitled Court, located at 1775 Concord
3 Avenue, Chico, CA 95928, Plaintiffs Robert Lawson, Marty Linebarger and Marcos Castro will and
4 hereby do move unopposed for an Order (1) awarding Class Counsel attorneys' fees in the total
5 amount of \$437,000, (2) awarding Class Counsel litigation costs in the total amount of \$16,359.12,
6 (3) approving service payments in the amount of \$10,000 each to Plaintiffs and Class Representatives
7 Robert Lawson, Marty Linebarger and Marcos Castro and (4) approving claims administration fees
8 of \$20,000. This application is made pursuant to California Rules of Court, Rule 3.769, which
9 requires court approval of the settlement of class actions. This application is unopposed by Defendant
10 Graphic Packaging International, LLC and will be based on the Memorandum of Points and
11 Authorities, the Stipulation of Resolution, the Declarations of Daniel F. Gaines, Alex P. Katofsky,
12 and Larry W. Lee, the Declaration of Nicole Bench of ILYM Group, Inc., the Declaration of Plaintiffs
13 Robert Lawson, Marty Linebarger and Marcos Castro, such evidence or oral argument as may be
14 presented at the hearing, and on the complete records and file herein.¹

15 Dated: September 22, 2022

GAINES & GAINES, APLC

16
17 By: 

DANIEL F. GAINES

ALEX P. KATOFSKY

Attorneys for Plaintiffs Robert Lawson and Marty
Linebarger and Proposed Class Counsel

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28 ¹ This application should not be construed as a waiver of any attorney-client or attorney work-product
privileges.

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11 *Laffitte v. Robert Half Intern. Inc.* (2016) 1 Cal.5th 480, 503..... 11

12 *Lealao v. Beneficial California, Inc.* (2000) 82 Cal.App.4th 19 2, 10

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14 *Quinn v. State of California* (1995) 15 Cal.3d 162..... 8, 9

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiffs Robert Lawson (“Lawson”), Marty Linebarger (“Linebarger”) and Marcos Castro
4 (“Castro”) (together, “Plaintiffs”) move for an award of attorneys’ fees and costs, approval of the
5 claims administrator’s fees, as well as approval of service payments to the Class Representatives in
6 connection with the final approval of the class action settlement of this action. As discussed in the
7 Motion for Final Approval submitted concurrently herewith, Plaintiffs and Defendant Graphic
8 Packaging International, LLC (“Defendant”) (collectively, the “Parties”) have settled the Released
9 Claims on behalf of the Class Members as defined in the parties’ Stipulation of Settlement (the
10 “Settlement” or “Stipulation”) for a settlement package worth \$1,250,000. This class and PAGA
11 action settlement resolves the named Plaintiffs’ and Settlement Class Members’¹ pending Released
12 Claims against Defendant and other released parties.

13 The Parties have agreed upon a settlement class defined as: All persons who are or were
14 employed by Graphic Packaging International, LLC in the State of California as nonexempt
15 employees who were paid wages at any time during the Settlement Period [April 27, 2017 to October
16 25, 2021].

17 The Settlement is “direct distribution” – there is no claims process, and 1,105 participating
18 Class Members will automatically be mailed a settlement check when the Settlement is granted final
19 approval.

20 The Settlement Administrator has calculated pro rata Net Settlement Payments to Class
21 Members from the Net Settlement Amount based on their respective number of Eligible Workweeks
22 in the Class Period. The average settlement share to be paid to the 1,105 participating Class Members
23 is approximately \$594.25; the highest settlement share to be paid is approximately \$970.15.
24 Declaration of Nicole Bench of ILYM Group, Inc. (“ILYM”) (“Bench Decl.”) ¶ 14.

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¹ All capitalized terms are defined in the Stipulation and are incorporated by reference herein.

1 Zero (0) Class Members have requested exclusion from the Settlement, and zero (0) Class
2 Members have submitted an objection to the Settlement. *See id.* ¶¶ 11, 12.

3 The Labor & Workforce Development Agency (“LWDA”) shall be paid \$90,000 (75%) of
4 the \$120,000 total allocated to settle the Class’s claims brought pursuant to Labor Code § 2698 *et*
5 *seq.*, the Private Attorneys General Act of 2004 (“PAGA”), and the remaining 25%, or \$30,000, will
6 be retained in the Net Settlement Amount for distribution to Class Members employed during the
7 PAGA Period. Stip. at ¶ XVI.

8 Because the Settlement achieves outstanding results for the Settlement Class, Plaintiffs
9 respectfully request that the Court approve their request for attorneys’ fees and costs, service
10 payments for serving as the class representatives, and the Settlement Administrator’s fees.

11 Plaintiffs seek the Court’s approval of an attorneys’ fee award of \$437,000, plus the
12 reimbursement of \$16,359.12 in litigation costs. The attorney fee request equals 35% of the
13 Settlement Amount of \$1,250,000. Class Counsel’s request for an award of attorneys’ fees and costs
14 is reasonable and appropriate in light of the outstanding work performed by Class Counsel in the
15 case, the contingent nature of this action, and the results achieved under the Settlement. *Lealao v.*
16 *Beneficial California, Inc.* (2000) 82 Cal.App.4th 19.

17 Plaintiffs also request the Court confirm the amount of the service payment awards agreed to
18 be paid to the named Plaintiffs in the amount of \$10,000 each. The amount proposed to be awarded
19 to the representative Plaintiffs is fair and reasonable. Courts approve incentive awards to plaintiffs
20 when justified and appropriate to compensate plaintiffs for their time, effort, and inconvenience. *See*
21 *e.g., Van Vranken v. Atlantic Richfield Co.* (N.D. Cal. 1995) 901 F. Supp. 294, 299.

22 Finally, Plaintiffs request that the Court approve the payment of \$20,000 to ILYM as
23 compensation for the claims administration services it has and will provide in connection with this
24 settlement. Bench Decl. at ¶ 15.

25 II. STATEMENT OF FACTS

26 A. Background and Procedural History

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1 This settlement encompasses a resolution of three actions against Defendant by Robert
2 Lawson, Marty Linebarger, and Marcos Castro.²

3 On October 17, 2019, proposed Plaintiff Linebarger sent a letter to the LWDA, alleging
4 Defendant violated the California Labor Code and seeking penalties under PAGA. Specifically,
5 Plaintiff Linebarger alleged Defendant failed to pay wages to Defendant's non-exempt California
6 employees, denied employees meal periods and rest periods, failed to reimburse business expenses,
7 failed to provide accurate itemized wage statements, and failed to timely pay wages at the separation
8 of employment. Declaration of Daniel F. Gaines ("Gaines Decl.") at ¶ 9.

9 On July 22, 2020, Plaintiff Lawson sent a letter to the LWDA, alleging Defendant violated
10 the California Labor Code and seeking penalties under PAGA. Specifically, Plaintiff Lawson
11 alleged Defendant failed to pay wages to Defendant's non-union, non-exempt California employees,
12 denied employees meal periods and rest periods, failed to reimburse business expenses, failed to
13 provide accurate itemized wage statements, and failed to timely pay wages at the separation of
14 employment. Gaines Decl. at ¶ 10.

15 On October 29, 2020, Plaintiff Castro sent a letter to the LWDA, alleging Defendant violated
16 the California Labor Code and seeking penalties under PAGA. On August 9, 2021, Plaintiff Castro
17 submitted a supplemental letter to the LWDA alleging additional violations under the California
18 Labor Code. Specifically, Plaintiff Castro alleged Defendant failed to pay minimum and overtime
19 wages to Defendant's non-exempt California employees and failed to provide accurate itemized
20 wage statements. Declaration of Larry W. Lee ("Lee Decl.") at ¶ 2.

21 On January 6, 2020, Plaintiff Linebarger initiated his Action in the Orange County Superior
22 Court by filing a Representative Action Complaint, on behalf of himself and all other aggrieved
23 employees (the "Linebarger Action"). Defendant removed the Linebarger Action to the United
24 States District Court for Central District of California. Plaintiff Linebarger has now dismissed the
25
26

27 ²Mr. Linebarger's and Mr. Castro's actions pending in the United States District Court for the Central
28 District of California were voluntarily dismissed, as Plaintiffs informed the Court in the briefing on
preliminary approval of the Settlement.

1 Linebarger Action in the District Court, subject to a tolling agreement between the parties. Gaines
2 Decl. at ¶ 11.

3 On September 29, 2020, Plaintiff Lawson initiated this Action by filing a Representative
4 Action Complaint for Penalties, pursuant to PAGA, on behalf of himself and all other aggrieved
5 employees (the “Lawson Action”). Gaines Decl. at ¶ 12.

6 On December 2, 2020, Plaintiff Castro initiated his Action in the Orange County Superior
7 Court by filing a Class and Representative Action Complaint, on behalf of himself and all other
8 aggrieved employees (the “Castro Action”). Plaintiff Castro has now dismissed the Castro Action
9 in the District Court, subject to a tolling agreement between the parties. Lee Decl. at ¶ 3.

10 As a condition of the settlement, the parties agreed that Plaintiff will seek to file a First
11 Amended Complaint. The First Amended Complaint, which was filed pursuant to stipulation by the
12 parties, asserts the direct individual, class, and PAGA representative action claims on behalf of
13 Plaintiffs Lawson, Linebarger, and Castro against Defendant which were alleged among all three
14 actions, including for (1) failure to pay all minimum, overtime, and double-time wages (Labor Code
15 §§ 510, 1194, and 1194.2); (2) failure to provide compliant rest periods or compensation in lieu
16 thereof (Labor Code §§ 226.7; IWC Wage Order 4-2001); (3) failure to provide compliant meal
17 periods or compensation in lieu thereof (Labor Code §§ 226.7, 510, 512, and 1194; IWC Wage Order
18 4-2001); (4) knowing and intentional failure to comply with itemized employee wage statement
19 provisions (Labor Code §§ 226(a), (e), (h)); (5) failure to reimburse business expenses (Labor Code
20 § 2802); (6) failure to timely pay wages due at separation of employment (Labor Code §§ 201-203);
21 (7) violation of Business and Professions Code §§ 17200; and (8) penalties pursuant to Labor Code
22 §§ 2699(a) and (f) based on the foregoing alleged claims including for violations of Labor Code §§
23 201, 202, 203, 226(a), 226.3, 226.7, 510, 512, 558, 1194, and 2802 (the “First Amended Complaint”).
24 Gaines Decl. at ¶ 13.

25 **B. Investigation And Settlement Discussions**

26 The settlement resolves the Linebarger Action, the Lawson Action and the Castro Action. In
27 the Linebarger Action, the Lawson Action and the Castro Action, the Named Plaintiffs allege, *inter*
28 *alia*, on behalf of themselves and all others similarly situated, that Defendant violated California

1 state wage and hour laws and the PAGA as a result of Defendant's California wage and hour policies
2 and practices. Specifically, the Named Plaintiffs allege that Defendant failed to pay all regular,
3 minimum, and overtime wages, failed to provide rest periods, failed to provide meal periods, failed
4 to reimburse employees for business related expenses, failed to provide compliant wage statements,
5 and failed to timely pay all wages due at separation of employment. Gaines Decl. at ¶ 14.

6 Class Counsel conducted informal discovery that yielded information and documentation
7 concerning the claims set forth in the Linebarger Action, the Lawson Action and the Castro Action,
8 such as Defendants' policies and procedures regarding the payment of wages, the provision of meal
9 and rest breaks, time keeping policies, including recording hours, issuance of wage statements, and
10 providing all wages at separation, as well as information regarding the number of putative class
11 members and the mix of current versus former employees, the average number of hours worked, the
12 wage rates in effect, and length of employment for the average putative class member. Gaines Decl.
13 at ¶ 15.

14 Named Plaintiffs and Class Counsel have engaged in good faith, arms-length negotiations
15 with Defendant concerning possible resolution of the claims asserted in the Litigation. On June 7,
16 2021, the Parties participated in a mediation before mediator Tripper Ortman which did not yield a
17 settlement. However, following months of subsequent litigation and negotiations, the mediator
18 continued working with the Parties to agree upon terms to resolve the Linebarger Action, the Lawson
19 Action and the Castro Action, subject to finalization of a formal Stipulation for Resolution and
20 approval of the Court. The Parties have now entered into a more detailed, formalized Settlement
21 Agreement. Gaines Decl. at ¶ 16.

22 Class Counsel has conducted an investigation of the law and facts relating to the claims
23 asserted in the Linebarger Action, the Lawson Action and the Castro Action and have concluded,
24 taking into account the sharply contested issues involved, the expense and time necessary to pursue
25 the Litigation through trial and any appeals, the risks and costs of further prosecution of the
26 Linebarger Action, the Lawson Action and the Castro Action, the risk of an adverse outcome, the
27 uncertainties of complex litigation, and the substantial benefits to be received by the Named
28 Plaintiffs and the members of the Settlement Class pursuant to this Agreement, that a settlement with

1 Defendant on the terms and conditions set forth herein is fair, reasonable, adequate, and in the best
2 interests of the Settlement Class. Named Plaintiffs, on their own behalf and on behalf of the
3 Settlement Class, have agreed to settle the Linebarger Action, the Lawson Action and the Castro
4 Action with Defendant on the terms set forth herein. Gaines Decl. at ¶ 17.

5 Defendant has concluded that, because of the substantial expense of defending against the
6 Linebarger Action, the Lawson Action and the Castro Action, the length of time necessary to resolve
7 the issues presented herein, the inconvenience involved, and the concomitant disruption to their
8 business operations, it is in their best interests to accept the terms of this Agreement. Defendant
9 denies each of the allegations and claims asserted against it in the Litigation. However, Defendant
10 nevertheless desires to settle the Linebarger Action, the Lawson Action and the Castro Action for
11 the purpose of avoiding the burden, expense and uncertainty of continuing litigation and for the
12 purpose of putting to rest the controversies engendered by the Linebarger Action, the Lawson Action
13 and the Castro Action. Gaines Decl. at ¶ 18.

14 Based on their own independent investigation and evaluation, Class Counsel are of the
15 opinion that settlement for the consideration and on the terms set forth in this Settlement Agreement
16 is fair, reasonable, and adequate and is in the best interest of the Settlement Class in light of all
17 known facts and circumstances, including the risk of significant delay, the risk the Settlement Class
18 will not be certified by the Court, and the defenses asserted by Defendant. Defendant and its counsel
19 also agree that this settlement is fair and in the best interest of the Settlement Class. Gaines Decl. at
20 ¶ 19.

21 The Parties agree that the Settlement Class described herein may be certified for settlement
22 purposes only and that any motion for approval seeking, *inter alia*, certification of the Settlement
23 Class is for purposes of the settlement only. If for any reason the settlement is not approved, the
24 certification will have no force or effect and will immediately be revoked. The Parties further agree
25 that certification for purposes of the settlement is in no way an admission that class certification is
26 proper under the more stringent standard applied for litigation and that evidence of this limited
27 stipulation for settlement purposes only will not be admissible for any purpose in this or any other
28 proceeding. Gaines Decl. at ¶ 20.

1 **C. Summary of Settlement Terms**

2 **1. Benefits to the Class and the Public**

3 The Settlement provides that (a) the Court may certify the Settlement Class as described in
4 the Stipulation on a provisional, non-mandatory basis for the purposes of this settlement only,
5 conditioned upon the Court granting final approval of the Settlement; and (b) Defendant shall pay
6 the total, non-reversionary sum of \$1,250,000 (the “Settlement Amount”), which will be used to
7 cover all payments of Class Members’ claims, the PAGA Payment to the LWDA and Class Members,
8 administration costs, attorneys’ fees and costs, and the service payment to the named Plaintiffs.

9 The Parties have agreed to a Settlement Class composed of all persons who are or were
10 employed by Graphic Packaging International, LLC in the State of California as non-exempt
11 employees who were paid wages at any time during the Settlement Period [April 27, 2017 to October
12 25, 2021].

13 The Settlement Agreement further provides that Plaintiffs’ counsel may request an award of
14 attorneys’ fees not to exceed \$437,000 (i.e., 35% of the Settlement Amount) and seek reimbursement
15 of litigation costs necessarily incurred in pursuing this Action. It also provides that Plaintiffs will
16 seek, and Defendant will not oppose, a service payment to the named Plaintiff in the amount of
17 \$10,000 each, which also compensates them for a full general release of all claims.

18 The Parties have agreed that ILYM Group, Inc., an experienced and competent settlement
19 administration company, will administer the settlement. Up to \$20,000 has been allocated to
20 compensate ILYM for its work related to the administration.

21 **2. Preliminary Approval, Notice, and the Claims Process**

22 By Order dated June 8, 2022, this Court granted Plaintiffs’ unopposed motion for preliminary
23 approval of the Settlement and provisionally certified the Settlement Class, finding that the
24 Settlement appeared to be within the range of reasonableness of settlements that could ultimately be
25 given final approval. *See Exhibit C.* The Court approved the distribution of the Notice of Proposed
26 Class Action Settlement and set the Final Fairness and Approval Hearing. *Id.*

27 Pursuant to the Court’s Order, on July 18, 2022, ILYM mailed Notice packets containing the
28 notice of the terms of the Settlement — including the terms relating to attorneys’ fees and costs —

1 to 1,105 Class Members. Bench Decl. at ¶ 7, Bench Decl., Ex. A. Class Members were given 45
2 days after the Notice was mailed to opt out or object to the Settlement. As of the date of this motion,
3 1,105 Class Members will be issued their share of the Settlement and they will be paid, on average,
4 approximately \$594.25 each; the highest-paid Class Members will be paid approximately \$970.15.
5 Bench Decl. at ¶ 14. No Class Members have objected to the Settlement and no Class Members
6 have opted out. *Id.* at ¶¶ 11, 12.

7 **D. Compliance with Procedural Requirements of PAGA**

8 On February 2, 2022 and on May 5, 2022, in compliance with Labor Code § 2699(1)(2),
9 Plaintiffs' counsel submitted copies of the Settlement Agreement and preliminary approval papers
10 to the LWDA through its online submission interface. These final approval papers are also being
11 submitted to the LWDA concurrently with their submission to the Court. The LWDA has not
12 objected or otherwise responded to any of the submissions thus far. Gaines Decl. at ¶ 61; Ex. D.

13 **III. ARGUMENT**

14 **A. Class Counsel Request an Award Under the Common Benefit Doctrine**

15 **1. A 35% Fee Award Is Reasonable Here**

16 Class Counsel respectfully requests that this Court approve the fees and costs to be paid in
17 this action. This Application is made pursuant to California Rules of Court, Rule 3.769 which
18 requires court approval of the fees paid through settlement in a class action.

19 Class Counsel seeks attorneys' fees of \$437,000, representing 35% of the settlement
20 consideration under the "common fund" doctrine. Courts have long recognized the "common fund"
21 or "common benefit" doctrine, under which attorneys who create a common fund or benefit for a
22 group of persons may be awarded their fees and costs to be paid out of the fund. *Serrano v. Priest*
23 (*"Serrano III"*) (1977) 20 Cal.3d 25, 34, quoting *D'Amico v. Board of Medical Examiners* (1974)
24 11 Cal.3d 1; *Glendale City Employees' Association v. City of Glendale* (1975) 15 Cal.3d 328, 341
25 fn.19; *Quinn v. State of California* (1995) 15 Cal.3d 162, 167; *see also Boeing Co. v. Van Gemert*
26 (1980) 444 U.S. 472, 478; *Mills v. Electric Auto-Lite Co.* (1970) 396 U.S. 375, 391-392.

27 The California Supreme Court has held that, "when a number of persons are entitled in
28 common to a specific fund, and an action brought by a plaintiff or plaintiffs for the benefit of all

1 results in the creation or preservation of that fund, such plaintiff or plaintiffs may be awarded
2 attorneys' fees out of the fund." *Serrano III*, *supra*, 20 Cal.3d at 34, quoting *D'Amico*, 11 Cal.3d 1;
3 *see also Boeing*, *supra*, 444 U.S. at 478 ("[A] lawyer who recovers a common fund for the benefit
4 of persons other than himself or his client is entitled to a reasonable attorney's fee from the fund as
5 a whole."); *Mills*, *supra*, 396 U.S. at 391-392 (United States Supreme Court endorsing the common
6 fund approach in class actions). California Practice Guide: Civil Trials and Evidence (The Rutter
7 Group) at § 17:172.3 explains the common fund doctrine as follows:

8 Where the lawsuit results in the recovery of a fund or property benefiting
9 others as well as plaintiff (e.g., a class action), the court has inherent
10 equitable power to order plaintiff's attorney fees paid out of the common
11 fund or property [citations]. Such fee spreading assures that all of those
12 benefited by the litigation pay their fair share of obtaining the recovery.

13 The percentage-of-the-fund approach appears to be the preferred method of awarding fees in
14 traditional common fund cases, such as this case. Where the settlement amount is a "certain or easily
15 calculable sum of money," use of the percentage-of-the-fund method is appropriate. *Serrano III*, 20
16 Cal. 3d at 35.

17 In *Glendale City Employees' Association v. City of Glendale* (1975) 15 Cal.3d 328, 341 fn.19,
18 the California Supreme Court upheld an attorneys' fee award based on a percentage of the common
19 benefit obtained in a lawsuit by a city employees' association for retroactive wages:

20 It is not necessary to find this suit a proper class action in order to uphold
21 the portion of the judgment awarding counsel for plaintiffs 25 percent of
22 all retroactive salaries and wages received. That award may be sustained
23 under the rule that a litigant who creates a fund in which others enjoy
24 beneficial rights may require those beneficiaries to pay their fair share
25 of the expense of litigation. (*See Sprague v. Ticonic National Bank* (1939)
26 307 U.S. 161, 159; *Estate of Stauffer* (1959) 53 Cal.2d 124, 132).

27 In *Quinn v. State of California* (1995) 15 Cal.3d 162, 167, the California Supreme Court
28 stated: "[O]ne who expends attorneys' fees in winning a suit which creates a fund from which others
29 derive benefits may require those passive beneficiaries to bear a fair share of the litigation costs."
30 Similarly, in *City and County of San Francisco v. Sweet* (1995) 12 Cal.4th 105, 110-111, the
31 California Supreme Court recognized that the common benefit doctrine has been applied

1 “consistently in California when an action brought by one party creates a fund in which other persons
2 are entitled to share.”

3 Numerous appellate courts have similarly found. *See e.g., Knoff v. City and County of San*
4 *Francisco* (1969) 1 Cal.App.3d 184, 203-204 (court upheld a “contingent percentage” award of
5 attorneys’ fees in a representative action as the proper exercise of the court’s broad equitable powers);
6 *Rider v. County of San Diego* (1992) 11 Cal.App.4th 1410, 1423 (attorneys’ fees and expenses
7 properly awarded from common benefit composed of illegally imposed sales and use tax); *Bank of*
8 *America v. Cory* (1985) 164 Cal.App.3d 66, 89-92 (fees awarded from common benefit created by
9 action compelling state to claim dormant bank accounts); *Parker v. Los Angeles* (1974) 44
10 Cal.App.3d 556, 567-568 (court upheld fee award equal to one-third of the damages to owners of
11 residential property in an inverse condemnation action).

12 Moreover, at least eight federal courts of appeal—the First, Third, Sixth, Seventh, Ninth, Tenth,
13 Eleventh and the D.C. Circuit—have endorsed the “percentage fee” method for determining
14 reasonable attorneys’ fees in common benefit cases. *See e.g., In re Sumitomo Copper Litig.* (S.D.N.Y.
15 1999) 74 F. Supp. 2d 393, 396-398 (describing the overwhelming weight of federal authority in favor
16 of the percentage fee method); *see also, Lealao, supra*, 82 Cal.App.4th at 30-31 (describing same).

17 Attorneys’ fees awards in line with the amount sought here are frequently upheld. *See e.g.,*
18 *In re Activision Sec. Litig.* (9th Cir. 1989) 723 F. Supp. 1373, 1375. The California Supreme Court
19 recently confirmed the validity of this position in the context of a similar wage and hour class action
20 settlement:

21 [U]se of the percentage method to calculate a fee in a common fund case,
22 where the award serves to spread the attorney fee among all the
23 beneficiaries of the fund, does not in itself constitute an abuse of
24 discretion. We join the overwhelming majority of federal and state
25 courts in holding that when class action litigation establishes a monetary
26 fund for the benefit of the class members, and the trial court in its
27 equitable powers awards class counsel a fee out of that fund, the court
28 may determine the amount of a reasonable fee by choosing an
appropriate percentage of the fund created. The recognized advantages
of the percentage method—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 it provides counsel to seek an early settlement and avoid

unnecessarily prolonging the litigation – convince us the percentage method is a valuable tool that should not be denied our trial courts.

Laffitte v. Robert Half Intern. Inc. (2016) 1 Cal.5th 480, 503 (internal citations omitted).

The requested fee falls well within – even below – the percentages awarded in other class action litigation by this Court and numerous California trial courts. As the cases cited above demonstrate, attorneys’ fee awards in the amount sought here are well-established by California law and practice. Accordingly, Class Counsel’s fee request is fair and reasonable and is consistent with the awards in California and the Ninth Circuit. It is also reasonable given the history of this action and the results obtained by Class Counsel.

2. The Circumstances of this Case Support a 35% Fee Award

Given the significant results achieved under the circumstances of this litigation, the requested fee award is reasonable. As discussed in *Sumitomo Copper Litigation*, *supra*, 74 F. Supp. 2d at 396:

No one expects a lawyer whose compensation is contingent on the success of his services to charge, when successful, as little as he would charge a client who in advance of the litigation has agreed to pay for his services, regardless of success. Nor, particularly in complicated cases producing large recoveries, is it just to make a fee depend solely on the reasonable amount of time expended.

In that vein, this Court should consider the contingent nature of this case, the uncertainty of the outcome, the quality of the counsel, and the preclusion from other employment.

a. The Contingent Nature of This Case

From the outset of the case to the present, prosecution of this action has involved significant financial risk for Class Counsel. Class Counsel undertook this matter solely on a contingent basis, with no guarantee of recovery. Class Counsel have placed their own resources at risk to prosecute this action with no guarantee of success. Gaines Decl. at ¶ 71. The risks of this case are apparent in that class certification would likely have been a hard-fought issue, especially given the uncertainty regarding certification of cases such as this. Moreover, even if class certification were granted over Defendant’s opposition, there was no assurance that Plaintiffs would succeed at trial. Despite such challenges, Class Counsel were able to persuade Defendant that it faced significant liability exposure such that it was willing to pay \$1,250,000 to settle the Class Members’ claims.

1 work was available that Class Counsel had to forego to devote the time necessary to pursue this
2 litigation. *See* Gaines Decl. at ¶ 40.

3 **B. No Class Member Objected to the Attorney Fee Award**

4 Counsel's intention to request payment of attorneys' fees was clearly disclosed to each Class
5 Member in the Court-approved Notice of Class Action Settlement. *See* Exhibit C; *see also*, Bench
6 Decl., Ex. A. As of the filing of this brief, there has been not one single objection to the request for
7 attorneys' fees. Bench Decl. at ¶ 12. Clearly, the Class approves of the award of attorneys' fees.
8 Class Counsel request \$437,000 in attorneys' fees – representing 35% of the \$1,250,000 Settlement
9 Amount.

10 **C. Class Counsel's Request for Costs is Reasonable**

11 In the course of this litigation, Class Counsel had to (and will) incur substantial out-of- pocket
12 in the amount of \$16,359.12. *See* Gaines Decl. at ¶ 66, **Exhibit E**; Lee Decl. at ¶ 9, **Exhibit A**.
13 Pursuant to the terms of the Stipulation and the class notice, the cost award sought falls well below
14 the \$20,000 maximum permissible request.

15 As demonstrated in the Gaines and Lee Declarations submitted herewith, the incurred costs
16 included among other things filing fees, photocopy charges, expert analysis charges, mediation
17 expenses, service of process fees, and mailing charges. *See* Gaines Decl. at ¶ 66, **Exhibit E**; Lee
18 Decl. at ¶ 9, **Exhibit A**. Such costs are appropriate for cost reimbursement in these types of cases.
19 *See e.g., In re United Energy Corp. Sec. Litig.* (C.D. Cal. 1989) 1989 WL 7321 1, *6 (quoting
20 *Newberg*, Attorney Fee Awards, § 2.19 (1987)); *see also, In re GNC Shareholder Litigation* (W.D.
21 Pa. 1987) 668 F. Supp. 450, 452.

22 The costs incurred by Class Counsel in this litigation benefited Class Members. In light of
23 the litigation costs that Class Counsel needed to incur to prosecute this action and the positive
24 reaction of Class Members, Plaintiff's cost request is reasonable and should be granted.

25 **D. The Class Representatives' Service Payments are also Reasonable**

26 Plaintiffs seek service payments in the amount of \$10,000 each. Gaines Decl. ¶ 62.

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1 The service payments are intended to recognize the time and efforts that the named Plaintiffs
2 spent on behalf of the Class. Gaines Decl. at ¶¶ 62-64; *see also*, Declarations of Lawson, Linebarger
3 and Castro submitted herewith. It also compensates them for a general release of all claims.

4 When determining whether incentive awards are appropriate, courts consider a variety of
5 non-exclusive factors such as:

6 [T]he actions the plaintiff has taken to protect the interests of the class,
7 the degree to which the class has benefitted from those actions, and the
8 amount of time and effort the plaintiff expended in pursuing the
9 litigation . . . the risk to the class representative in commencing suit, both
10 financial and otherwise, the notoriety and personal difficulties
encountered by the class representative, the duration of the litigation,
and the personal benefit (or lack thereof) enjoyed by the class
representative as a result of the litigation.

11 *Clark v. American Residential Services LLC* (2009)175 Cal.App.4th 785, 804 (internal quotations
12 omitted), *citing* *Cook v. Niedert* (7th Cir. 1998) 142 F.3d 1004, 1016 and *Van Vranken, supra*, 901
13 F.Supp. at 299.

14 As a result of the named Plaintiffs' efforts, Class Members will receive significant monetary
15 settlement payments – approximately \$594.25, on average, per Class Member who participates in
16 the Settlement. The State of California will receive \$90,000, to be put toward education about and
17 enforcement of California's labor laws.

18 In this case, the named Plaintiffs performed the following tasks, among others: (1) assisted
19 Counsel in investigating and substantiating the claims alleged in this action, including multiple
20 interviews with counsel to review facts, documents, and Defendant's policies; (2) assisted in the
21 preparation of the complaint; (3) produced evidentiary documents to Counsel; and (4) assisted in the
22 settlement of this litigation. Gaines Decl. at ¶¶ 62-64; Lee Decl. at ¶ 10. *See generally*, Declaration
23 of Lawson, Linebarger and Castro. Moreover, as with any plaintiff who files a civil action, the
24 named plaintiffs undertook the financial risk that, in the event of a judgment in favor of Defendant
25 in this action, they could have been personally responsible for any attorneys' fees and costs awarded
26 in its favor.

27 The award of service payments to the named plaintiffs is especially warranted in a case like
28 this one. Service payments are necessary to ensure that employees, like Plaintiffs, continue to bring

1 claims like those brought here to enforce the rights of employees. Individuals like the named
2 plaintiffs (and most Class Members) would have little, if any, recourse without the class action
3 device. Most Class Members – like the named plaintiffs – would be fearful of retaliation in response
4 to filing any lawsuit, much less a class action one. Plaintiffs must be commended for pursuing their
5 claims; modest service payments like those sought here are an appropriate means of doing so.

6 The service payments here also compensate Plaintiffs Lawson, Linebarger and Castro for a
7 full general release of all claims, a release which is far broader than that of all other Class Members.

8 Not a single Class member objected to the service payments requested on behalf of the named
9 plaintiffs, who brought this litigation on their behalf and who secured a benefit for them worth
10 \$1,250,000. In light of the work that the named plaintiffs performed on behalf of Class Members,
11 and the Class Members' response to the Settlement, the requested service payments are reasonable
12 and appropriate.

13 **E. Approval of the Fees Incurred by the Claims Administrator**

14 As part of the preliminary approval process, the Court approved the hiring of ILYM as the
15 Claims Administrator. See **Exhibit C**. In preliminarily approving the Stipulation, the Court also
16 tentatively approved a payment of up to \$20,000 to ILYM to perform all of the duties required to
17 administer the Settlement. *Id.* ILYM has performed all of its required duties to date and is
18 committed to completing the claims administration process. *See generally* Declaration of Nicole
19 Bench. ILYM's fees are \$20,000. Bench Decl. at ¶ 15. Plaintiffs request that the Court approve the
20 payment of \$20,000 to ILYM to account for the costs of administration as part of its final order
21 approving the Settlement.

22 **IV. CONCLUSION**

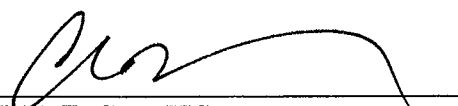
23 For all the foregoing reasons, Plaintiffs request that the Court (1) approve Class Counsel's
24 request of \$437,000 as an award of attorneys' fees, (2) approve the requested award of \$16,359.12
25 in litigation costs to Class Counsel, (3) approve the request of \$10,000 as service payments to each
26 of the named Plaintiffs, and (4) approve payment of \$20,000 in administration costs to ILYM.

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1 Dated: September 22, 2022

GAINES & GAINES, APLC

2
3 By: 

DANIEL F. GAINES

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Linebarger and Proposed Class Counsel