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**SUPERIOR COURT OF THE STATE OF CALIFORNIA  
FOR THE COUNTY OF LOS ANGELES**

ALEJANDRO VALDEZ, individually and  
on behalf of others similarly situated, and as  
an aggrieved employee and Private Attorney  
General,

Plaintiff,

vs.

C.H.I AUTOMART, INC., a California  
corporation; and DOES 1 through 50,  
inclusive,

Defendants.

Case No. 21STCV40168

Honorable Lawrence P. Riff  
Department 7

**PLAINTIFF'S MOTION FOR APPROVAL OF  
CLASS COUNSEL FEES PAYMENT, CLASS  
COUNSEL LITIGATION EXPENSES  
PAYMENT, CLASS REPRESENTATIVE  
SERVICE PAYMENT, AND  
ADMINISTRATION EXPENSES PAYMENT**

Date: December 14, 2023  
Time: 10:00 a.m.  
Dept.: 7

Complaint Filed: November 1, 2021  
FAC Filed: January 20, 2022  
Trial Date: None Set

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

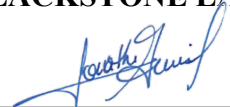
2 **PLEASE TAKE NOTICE THAT** on **December 14, 2023** at **10:00 a.m.** in Department 7 of  
3 the above-captioned Court located at 312 N. Spring Street, Los Angeles, California 90012, Plaintiff  
4 Alejandro Valdez ("Plaintiff") will and hereby does move the Court for an Order (1) awarding Class  
5 Counsel's attorneys' fees in the amount of one-third (1/3) of the Gross Settlement Amount (i.e.,  
6 \$133,333.33); (2) awarding Class Counsel's actual litigation costs and expenses in the amount of  
7 Seventeen Thousand Thirty-Two Dollars and Seventy-Five Cents (\$17,032.75); (3) approving the  
8 Class Representative Service Payment in the amount of Ten Thousand Dollars and Zero Cents  
9 (\$10,000.00) to Plaintiff in recognition of his services to the Class Members; and (4) approving the  
10 Administration Expenses Payment in the amount of Six Thousand Five Hundred Dollars and Zero  
11 Cents (\$6,500.00).

12 This Motion is made pursuant to California Rules of Court, Rule 3.769, which requires court  
13 approval of the settlement of class actions. This Motion is unopposed by Defendant and will be based  
14 on the Memorandum of Points and Authorities, the Joint Stipulation of Class Action and PAGA  
15 Settlement and Release, the Declarations of Jonathan M. Genish and Miriam L. Schimmel, the  
16 Declaration of Cassandra Polites on behalf of the Settlement Administrator, ILYM Group, Inc., the  
17 Declaration of Plaintiff Alejandro Valdez, such evidence or oral argument as may be presented at the  
18 hearing, and on the complete records and file herein.

19 Respectfully submitted,

20 Dated: November 21, 2023

**BLACKSTONE LAW, APC**

21 By:   
22 \_\_\_\_\_

Jonathan M. Genish

Miriam L. Schimmel

23 Attorneys for Plaintiff Alejandro Valdez  
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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 By this unopposed Motion, Plaintiff Alejandro Valdez (“Plaintiff” or “Class Representative”)  
4 moves for an award of the Class Counsel Fees Payment and Class Counsel Litigation Expenses  
5 Payment, approval of the Class Representative Service Payment to Plaintiff as the Class  
6 Representative, and approval of the Administration Expenses Payment to ILYM Group, Inc.  
7 (“Administrator”). As discussed in the Motion for Final Approval of Class Action and PAGA  
8 Settlement submitted concurrently herewith, Plaintiff and Defendant C.H.I. Automart, Inc.  
9 (“Defendant”) (together with Plaintiff, the “Parties”) have settled the Released Class Claims and  
10 Released PAGA Claims as defined in the Parties’ Joint Stipulation of Class Action and PAGA  
11 Settlement and Release (“Settlement Agreement” or “Settlement”) for Four Hundred Thousand  
12 Dollars and Zero Cents (\$400,000.00) (“Gross Settlement Amount”).

13 The Court conditionally certified, for settlement purposes only, the Class defined as: “all  
14 current and former non-exempt or hourly paid employees of Defendant that have worked for  
15 Defendant in the State of California during the Class Period” (Declaration of Jonathan M. Genish in  
16 Support of Plaintiff’s Motion for Final Approval of Class Action and PAGA Settlement [“Genish  
17 Decl.”], ¶ 15). The “Class Period” is defined as September 29, 2020 to December 8, 2022. (Ibid).

18 The Settlement is a “direct distribution,” meaning there is no claims process, and all Class  
19 Members who did not submit a valid and timely Request for Exclusion from the Settlement  
20 (“Participating Class Members”) will automatically be mailed a settlement check from the  
21 Administrator when the Settlement is granted final approval. (Settlement Agreement, ¶¶ 1.2, 1.35, &  
22 3.1).

23 No Class Members have submitted a Request for Exclusion or objection. (Declaration of  
24 Cassandra Polites of ILYM Group, Inc., Regarding Notice and Settlement Administration [“Polites  
25 Decl.”], ¶¶ 10 & 11).

26 The Administrator has calculated each Participating Class Member’s pro rata share of the Net  
27 Settlement Amount (“Individual Class Payment”) based on their total number of weeks each  
28 Participating Class Member worked for Defendant for at least one day during the Class Period

1 (“Workweeks”). (Settlement Agreement, ¶¶ 1.23 & 1.45). There are 126 Participating Class Members  
2 who worked 16,141 Workweeks. (Polites Decl., ¶¶ 5 & 14). The highest gross Individual Class  
3 Payment is approximately \$3,773.73, the average gross Individual Class Payment is approximately  
4 \$1,810.59, and the lowest gross Individual Class Payment is approximately \$14.13. (*Id.*, ¶ 15). These  
5 amounts are subject to employee-side tax and withholdings. (*Ibid.*).

6 The Labor and Workforce Development Agency (“LWDA”) will be paid \$7,500.00, which is  
7 seventy-five percent (75%) of the \$10,000.00 total amount allocated to settle the claims brought  
8 pursuant to Labor Code § 2698 *et seq.*, the Private Attorneys General Act of 2004 (“PAGA”), and the  
9 remaining twenty-five percent (25%), or \$2,500.00, will be distributed to all current and former non-  
10 exempt or hourly paid employees of Defendant that have worked for Defendant in the State of  
11 California during the PAGA Period (“Aggrieved Employees”) on a pro rata basis based on the total  
12 number of pay periods each Aggrieved Employee worked for Defendant for at least one day during  
13 the PAGA Period (“PAGA Pay Periods”). (Settlement Agreement, ¶¶ 1.4 & 1.30). The “PAGA  
14 Period” is defined as September 29, 2020 to December 8, 2022. (*Id.*, ¶ 1.31). There are 119 Aggrieved  
15 Employees who worked 3,593 PAGA Pay Periods. (Polites Decl., ¶ 16). The highest pro rata share  
16 of 25% of the PAGA Penalties (“Individual PAGA Payment”) is approximately \$40.36, the average  
17 Individual PAGA Payment is approximately \$21.01, and the lowest Individual PAGA Payment is  
18 approximately \$0.70.

19 Because the Settlement achieves outstanding results for the Participating Class Members, the  
20 Aggrieved Employees, and the State of California, Plaintiff respectfully requests, on behalf of the  
21 Class and without opposition from Defendant, that the Court approve the Settlement as fair, adequate,  
22 and reasonable, and enter judgment in accordance with the Settlement’s terms.

23 Plaintiff seeks the Court’s approval of an attorneys’ fee award of one-third (1/3) of the Gross  
24 Settlement Amount (i.e., \$133,333.33), plus reimbursement of \$17,032.75 in actual litigation costs  
25 and expenses. Class Counsel’s request for an award of attorneys’ fees and costs is reasonable and  
26 appropriate in light of the outstanding work performed by Class Counsel in the matter, the contingent  
27 nature of this action, and the results achieved under the Settlement. *Lealao v. Beneficial California,*  
28 *Inc.* (2000) 82 Cal.App.4<sup>th</sup> 19.

1 Plaintiff also requests the Court confirm the amount of the Class Representative Service  
2 Payment agreed to be paid to Plaintiff in the amount of \$10,000.00. This amount proposed to be  
3 awarded to Plaintiff is fair and reasonable for the reasons Plaintiff provided in his declaration. (*See*  
4 Declaration of Plaintiff Alejandro Valdez in Support of Plaintiff’s Motion for Final Approval of Class  
5 Action and PAGA Settlement [“Valdez Decl.”] filed concurrently herewith). Courts approve incentive  
6 awards to plaintiffs when justified and appropriate to compensate plaintiffs for their time, effort, and  
7 inconvenience. *See e.g., Van Vranken v. Atlantic Richfield Co.* (N.D. Cal. 1995) 901 F. Supp. 294,  
8 299.

9 Finally, Plaintiff requests that the Court approve the payment of \$6,500.00 to the Administrator  
10 ILYM Group, Inc. (“ILYM”) as compensation for its administration services it has and will provide  
11 in connection with the Settlement. (*See, generally, Polites Decl.*)

## 12 **II. STATEMENT OF FACTS**

### 13 **A. Background and Procedural History**

14 On September 29, 2021, Plaintiff provided notice to the LWDA and Defendant of his intent to  
15 seek civil penalties pursuant to PAGA (“PAGA Notice”). (Genish Decl., ¶ 9). Thereafter, on  
16 November 1, 2021, Plaintiff provided an amended PAGA Notice to the LWDA and Defendant. (Ibid).

17 On November 1, 2021, Plaintiff filed a Class Action Complaint entitled *Alejandro Valdez v.*  
18 *C.H.I Automart, Inc.*, Los Angeles County Superior Court Case No. 21STCV40168 (“Action”),  
19 thereby commencing a putative class action against Defendant. (*Id.*, ¶ 10). On January 20, 2022,  
20 Plaintiff filed a First Amended Class Action and Representative Action Complaint (“Operative  
21 Complaint”) in the Action alleging the following causes of action: (1) Violation of Cal. Labor Code  
22 §§ 510 and 1198 (Unpaid Overtime); (2) Violation of Cal. Labor Code §§ 226.7 and 512(a) (Unpaid  
23 Meal Period Premiums); (3) Violation of Cal. Labor Code § 226.7 (Unpaid Rest Period Premiums);  
24 (4) Violation of Cal. Labor Code §§ 1194, 1197 and 1197.1 (Unpaid Minimum Wages); (5) Violation  
25 of Cal. Labor Code §§ 201, 202 and 203 (Final Wages Not Timely Paid); (6) Violation of Cal. Labor  
26 Code §§ 204 and 210 (Wages Not Timely Paid During Employment); (7) Violation of Cal. Labor Code  
27 § 226(a) (Failure to Provide Accurate Wage Statements); (8) Violation of Cal. Labor Code §§ 2800  
28 and 2802 (Failure to Reimburse Necessary Business Expenses); (9) Violation of Cal. Business &

1 Professions Code § 17200, et seq.; and (10) Violation of Cal. Labor Code § 2699, Private Attorneys  
2 General Act). (Ibid).

3 **B. Investigation, Analysis, and Settlement Discussions**

4 Very shortly after this matter was filed, the Parties met and conferred with respect to the  
5 potential resolution of the Action and agreed to private mediation. (*Id.*, ¶ 11). Initially, mediation was  
6 set for July 22, 2022, but the Parties decided not to proceed with mediation at that time, in part due to  
7 Defendant's position that the majority of employees at issue had signed arbitration agreements that  
8 contained class and PAGA waivers, and in part due to the United States Supreme Court's decision in  
9 the *Viking River* case. (Ibid). The Parties continued to discuss and debate the merits of the case and  
10 ultimately decided to reschedule mediation. (Ibid). Defendant informally produced information,  
11 documents, and a sampling of employees' time and payroll records with respect to the alleged putative  
12 class and PAGA members sufficient to satisfy the criteria for court approval set forth in the *Dunk v.*  
13 *Foot Locker Retail, Inc.* and *Kullar v. Foot Locker Retail, Inc.* cases. (Ibid).

14 After a thorough investigation and analysis of these documents and data, the Parties attended  
15 a formal mediation on January 12, 2023, with Marc J. Feder, Esq., a neutral and respected mediator  
16 with extensive experience in complex wage and hour matters. (*Id.*, ¶ 12). At the mediation, the Parties  
17 engaged in intensive settlement discussions during which they debated their respective positions and  
18 exchanged views regarding the strengths and weaknesses of the alleged claims. (Ibid). The Parties'  
19 settlement negotiations were at all times made at arm's-length and were adversarial. (Ibid). After a  
20 full day of mediation, and with the help of the mediator, the Parties were able to reach an agreement  
21 to resolve this dispute on a class and representative basis. (Ibid). Thereafter, the Parties spent several  
22 weeks negotiating a memorandum of understanding ("MOU") memorializing the key settlement  
23 terms. (Ibid). After further negotiation, an agreed-upon MOU was executed by the Parties as of  
24 February 12, 2023. (Ibid). The Parties then spent many hours drafting and revising the terms into a  
25 long form settlement agreement. (Ibid).

26 After additional discussions and revisions to the settlement agreement, the Parties executed the  
27 Settlement Agreement as of April 26, 2023. (*Id.*, ¶ 13, Exhibit 1 thereto).

28 ///

1           **C.       Preliminary Approval**

2           On August 21, 2023, the Court entered the Order Granting Preliminary Approval of Class  
3 Action and PAGA Settlement (“Preliminary Approval Order”), which granted Plaintiff’s unopposed  
4 motion for preliminary approval of the Settlement and provisionally certified the Class, finding that  
5 the Settlement appeared to be within the range of reasonableness of settlements that could ultimately  
6 be given final approval. (*Id.*, ¶ 14, Exhibit 2 thereto). The Court approved the distribution of the  
7 Court Approved Notice of Class Action Settlement and Hearing Date for Final Court Approval (“Class  
8 Notice”) and set the Final Fairness and Approval Hearing. (*Ibid.*).

9           The Parties agree that the Class described herein may be certified for settlement purposes only  
10 and that any motion for preliminary approval seeking, *inter alia*, certification of the Class is for  
11 purposes of the settlement only. If for any reason the Settlement is not approved, the certification will  
12 have no force or effect and will immediately be revoked. The Parties further agree that certification  
13 for purposes of approving the Settlement Agreement is in no way an admission that class certification  
14 is proper under the more stringent standard applied for litigation and that evidence of this limited  
15 stipulation for settlement purposes only will not be admissible for any purpose in this or any other  
16 proceeding.

17           **D.       Summary of Settlement Terms**

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

19           The Settlement provides that (a) the Court may certify the Class as described in the Settlement  
20 on a provisional, non-mandatory basis for the purposes of the Settlement only, conditioned upon the  
21 Court granting final approval of the Settlement; and (b) Defendant shall pay the total, non-reversionary  
22 Gross Settlement Amount of \$400,000.00, which will be used to cover all payments to Participating  
23 Class Members and Aggrieved Employees, the LWDA PAGA Payment, the Administration  
24 Expenses Payment, the Class Counsel Fees Payment and Class Counsel Litigation Expenses Payment,  
25 and the Class Representative Service Payment. (Settlement Agreement, ¶ 1.22 & 13.1).

26           The Settlement does not require Participating Class Members to submit claims as a prerequisite  
27 to receiving their Individual Class Payment nor does it require Aggrieved Employees to submit claims  
28 are a prerequisite to receiving their Individual PAGA Payment. (Settlement Agreement, ¶ 3.1; Genish

Decl., ¶ 15).

The Gross Settlement Amount does **not** include any employer-side taxes and withholdings, which will be calculated by the Administrator and separately paid for by Defendant. (Settlement Agreement, ¶ 3.1). The Gross Settlement Amount is non-reversionary; no portion of the Gross Settlement Amount will return to Defendant. (Ibid).

The Settlement Agreement further provides that Class Counsel may request an award of attorneys' fees not to exceed one-third (1/3) of the Gross Settlement Amount (i.e., \$133,333.33) and seek reimbursement of reasonable litigation costs and expenses necessarily incurred in pursuing this matter not to exceed \$20,000.00. (*Id.*, ¶ 3.2.2). It also provides that Plaintiff will seek, and Defendant will not oppose, a Class Representative Service Payment to the named Plaintiff in the amount of \$10,000.00. (*Id.*, ¶ 3.2.1).

The Court appointed ILYM, an experienced and competent settlement administration company, to administer the Settlement. (Genish Decl., ¶ 44). ILYM's quote for their work performed in this matter is \$6,500.00. (Ibid).

## **2. Notice Process**

Pursuant to the Preliminary Approval Order, on September 11, 2023, ILYM Group, Inc. mailed Class Notices containing the Court-approved notice of the terms of the Settlement – including the terms relating to the Class Counsel Fees Payment and Class Counsel Litigation Expenses Payment – to 126 Class Members. (Polites Decl., ¶ 7, Exhibit A thereto). Class Members were given sixty (60) calendar days after the Class Notice was mailed to submit any Requests for Exclusion, objections, or disputes to Workweeks and/or PAGA Pay Periods. (*Id.*, ¶¶ 10, 11, & 12). As of the date this Motion was filed, no Participating Class Members have objected to the Settlement, and not one Class Member has opted out of the Settlement and/or disputed their number of Workweeks and/or PAGA Pay Periods. (*Id.*, ¶¶ 10, 11, & 12). The highest gross Individual Class Payment is approximately \$3,773.73, the average gross Individual Class Payment is approximately \$1,810.59, and the lowest gross Individual Class Payment is approximately \$14.13. (*Id.*, ¶ 15). These amounts are subject to employee-side tax and withholdings. (Ibid). The highest Individual PAGA Settlement Payment is approximately \$40.36, the average Individual PAGA Settlement Payment is approximately \$21.01, and the lowest Individual

1 PAGA Settlement Payment is approximately \$0.70. (*Id.*, ¶ 17).

2 **C. Compliance with Procedural Requirements of PAGA**

3 On June 6, 2023, Class Counsel submitted a copy of the Settlement Agreement to the LWDA  
4 through its online submission portal in compliance with Labor Code § 2699(1)(2). (Genish Decl., ¶ 24,  
5 Exhibit 3 thereto). The LWDA has not objected or otherwise responded to the submission. (*Ibid*).

6 **III. ARGUMENT**

7 **A. Class Counsel Requests an Award Under the Common Benefit Doctrine**

8 **1. The Requested One-Third (1/3) Fee Award is Reasonable Here**

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

12 Class Counsel seeks \$133,333.33, representing one-third (1/3) of the Gross Settlement Amount  
13 under the “common fund” doctrine. Courts have long recognized the “common fund” or “common  
14 benefit” doctrine, under which attorneys who create a common fund or benefit for a group of persons  
15 may be awarded their fees and costs to be paid out of the fund. *See Serrano v. Priest* (“*Serrano III*”)  
16 (1977) 20 Cal.3d 25, 34, quoting *D’Amico v. Board of Medical Examiners* (1974) 11 Cal.3d 1;  
17 *Glendale City Employees’ Association v. City of Glendale* (1975) 15 Cal.3d 328, 341 fn.19; *Quinn v.*  
18 *State of California* (1995) 15 Cal.3d 162, 16 7; *see also Boeing Co. v. Van Gernert* (1980) 444 U.S.  
19 472,478; *Mills v. Electric Auto-Lite Co.* (1970) 396 U.S. 375, 391-392.

20 The California Supreme Court has held that, “when a number of persons are entitled in  
21 common to a specific fund, and an action brought by a plaintiff or plaintiffs for the benefit of all results  
22 in the creation or preservation of that fund, such plaintiff or plaintiffs may be awarded attorneys’ fees  
23 out of the fund.” *Serrano III, supra*, 20 Cal.3d at 34, quoting *D’Amico*, 11 Cal.3d 1; *see also Boeing,*  
24 *supra*, 444 U.S. at 478 (“[A] lawyer who recovers a common fund for the benefit of persons other than  
25 himself or his client is entitled to a reasonable attorney’s fee from the fund as a whole.”); *Mills, supra*,  
26 396 U.S. at 391-392 (United States Supreme Court endorsing the common fund approach in class  
27 actions). California Practice Guide: Civil Trials and Evidence (The Rutter Group) at§ 17:172.3  
28 explains the common fund doctrine as follows:

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

4 The percentage-of-the-fund approach appears to be the preferred method of awarding fees in  
5 traditional common fund cases, such as this case. Where the settlement amount is a “certain or easily  
6 calculable sum of money,” use of the percentage-of-the-fund method is appropriate. *Serrano III*, 20 Cal.  
7 3d at 35.

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

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

15 In *Quinn v. State of California* (1995) 15 Cal.3d 162, 167, the California Supreme Court stated:  
16 “[O]ne who expends attorneys’ fees in winning a suit which creates a fund from which others derive  
17 benefits may require those passive beneficiaries to bear a fair share of the litigation costs.” Similarly,  
18 in *City and County of San Francisco v. Sweet* (1995) 12 Cal.4<sup>th</sup> 105, 110-111, the California Supreme  
19 Court recognized that the common benefit doctrine has been applied “consistently in California when  
20 an action brought by one party creates a fund in which other persons are entitled to share.”

21 Numerous appellate courts have similarly found. *See e.g., Knoff v. City and County of San*  
22 *Francisco* (1969) 1 Cal.App.3d 184, 203-204 (court upheld a “contingent percentage” award of  
23 attorneys’ fees in a representative action as the proper exercise of the court’s broad equitable powers);  
24 *Rider v. County of San Diego* (1992) 1 I Cal.App.4<sup>th</sup> 1410, 1423 (attorneys’ fees and expenses properly  
25 awarded from common benefit composed of illegally imposed sales and use tax); *Bank of America v.*  
26 *Cory* (1985) 164 Cal.App.3d 66, 89-92 (fees awarded from common benefit created by action  
27 compelling state to claim dormant bank accounts); *Parker v. Los Angeles* (1974) 44 Cal.App.3d 556,  
28 567-568 (court upheld fee award equal to one-third of the damages to owners of residential property

1 in an inverse condemnation action).

2 Moreover, at least eight federal courts of appeal-the First, Third, Sixth, Seventh, Ninth, Tenth,  
3 and Eleventh and the D.C. Circuit-have endorsed the “percentage fee” method for determining  
4 reasonable attorneys’ fees in common benefit cases. *See e.g., In re Sumitomo Copper Litig.* (S.D.N.Y.  
5 1999) 74 F. Supp. 2d 393, 396-398 (describing the overwhelming weight off federal authority in favor  
6 of the percentage fee method); *see also, Lealao, supra*, 82 Cal.App.4<sup>th</sup> at 30-31 (describing same).

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

11 [U]se of the percentage method to calculate a fee in a common fund case,  
12 where the award serves to spread the attorney fee among all the  
13 beneficiaries of the fund, does not in itself constitute an abuse of  
14 discretion. We join the overwhelming majority of federal and state courts  
15 in holding that when class action litigation establishes a monetary fund  
16 for the benefit of the class members, and the trial court in its equitable  
17 powers awards class counsel a fee out of that fund, the court may  
18 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.

19 *Laffitte v. Robert Half Intern. Inc.* (2016) I Cal.5<sup>th</sup> 480, 503 (internal citations omitted).

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

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1                                   **2. The Circumstances of this Case Support a One-Third (1/3) Fee Award**

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

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

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

12                                   **3. The Contingent Nature of This Matter**

13           From the outset of the Action to the present, prosecution of this matter has involved significant  
14 financial risk for Class Counsel. Class Counsel undertook this matter solely on a contingent basis,  
15 with no guarantee of recovery. Class Counsel has placed its own resources at risk to prosecute this  
16 matter with no guarantee of success. The risks of this case are apparent in that class certification  
17 would likely have been a hard-fought issue, especially given the uncertainty regarding certification of  
18 cases such as this. Moreover, even if class certification were granted over Defendant’s opposition,  
19 there was no assurance that Plaintiff would succeed at trial. (Genish Decl., ¶¶ 29-38). Despite such  
20 challenges, Class Counsel was able to persuade Defendant that it faced significant liability exposure  
21 such that it was willing to pay \$400,000.00 to settle the Class Members’ claims.

22                                   **4. The Experience, Reputation, Ability of Counsel, and Skill in Litigation**

23           Class Counsel has substantial experience in wage-and-hour and other class action litigation,  
24 including litigation involving the legal issues in this matter. (Declaration of Miriam L. Schimmel in  
25 Support of Motion for Approval of Class Counsel Fees Payment, Class Counsel Litigation Expenses  
26 Payment, Class Representative Service Payment, and Administration Expenses Payment [“Schimmel  
27 Decl.”], ¶¶ 4-12; Genish Decl., ¶¶ 3-8). Class Counsel’s skill in developing a factual record and  
28 convincing Defendant of its litigation exposure under California law was essential to achieving the  
Settlement. Through its skill and reputation, Class Counsel was able to obtain a settlement that  
provides an outstanding result for Class Members. (*See generally* Schimmel and Genish Decs.).

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## 5. The Results Achieved

The excellent results achieved by the Settlement support Class Counsel's request for attorneys' fees. Class Members' support for the results achieved by Class Counsel is demonstrated by the absence of any objections to either the Settlement or to Class Counsel's request for fees, both of which were described clearly in the Class Notice. As of the date of this Motion, Participating Class Members will be paid, on average, approximately \$1,810.59 each, which is intended to compensate them for the alleged wage and hour violations they suffered during their employment. (Genish Decl., ¶ 18). This is a significant benefit for the Participating Class Members here as it represents a recovery for highly disputed claims. Equally important is the fact that the State of California will receive \$7,500.00 for enforcement of labor laws and education of employers. (*Id.*, ¶ 45).

Furthermore, the efficiency with which this litigation was conducted and resolved should be rewarded. After preparing and investigating the case prior to filing the Action, Class Counsel strongly litigated and then resolved the case in an efficient manner. The Class Members will directly benefit from the prompt and fair resolution of their claims. They will be receiving a significant award in a relatively short period of time, as opposed to waiting years to recover some undetermined amount if they succeeded at trial, which is an uncertainty in itself.

## 6. Preclusion of Other Employment

As California law recognizes, Class Counsel's commitment to this litigation should not be assessed in a vacuum. *See Serrano, supra*, 20 Cal.3d at 49. A relevant factor in determining attorneys' fees is whether the litigation required Class Counsel to forego other employment. *See id.* Class Counsel had to consider its workload during this litigation when considering taking on additional work that was available, and which Class Counsel had to forego in order to devote the time necessary to pursue this litigation. (Schimmel Decl., ¶ 16).

### B. The Requested Fees Are Also Justified Under the Lodestar Method

Fee calculations under the lodestar method would result in a similar award, demonstrating the fairness of Class Counsel's percentage fee request. Under the lodestar method, a base fee amount is calculated from a compilation of time reasonably spent on the case and the reasonable hourly compensation of the attorney. The base amount is then adjusted by use of a multiplier in light of

1 various factors. *Serrano III*, *supra*, 20 Cal.3d at 48. Class Counsel’s hourly rates are summarized in  
2 the Declaration of Miriam L. Schimmel at ¶¶ 8-13.

3 One difficulty in determining the hourly rate of attorneys of similar skill and experience in the  
4 relevant community is the scarcity of hourly fee-paying clients in class action litigation. (Schimmel  
5 Decl., ¶ 15). As a practical matter, few if any employees or consumers pay attorneys’ fees on an  
6 hourly basis for such extensive litigation, and thus retainer agreements in such cases are based on a  
7 stepped-up contingency fee (with the percentage increasing from one third to forty-five – and  
8 sometimes even fifty percent, which is on par with personal injury contingency fee agreements – if  
9 the case goes to trial). (Ibid). Therefore, there is no customary hourly billing rate for work that is  
10 routinely based on a contingent fee relationship, but the nature of class action work should be strongly  
11 considered by the Court. (Ibid). Wage and hour work presents a specialized and challenging area of  
12 law that is not within the knowledge of many lawyers. (Ibid). This kind of class action work requires  
13 specialized learning and the willingness to take large risks. (Ibid).

14 Class Counsel has spent over 146.20 total hours litigating these claims to date.<sup>1</sup> (*Id.*, ¶ 13).  
15 Class Counsel expects to spend another 10 hours in connection with the final approval process  
16 (including completion of the Motions and supporting documents, preparing for and attending the Final  
17 Fairness and Approval Hearing, and handling any administration issues post-approval). (*Id.*, ¶ 14). In  
18 addition to time spent during litigation, reasonable hours also include the time spent before the Action  
19 was filed, including time spent interviewing the client, investigating the facts and the law, preparing  
20 the initial pleadings, as well as litigating the case. *Webb v. Board of Educ.* (1985) 471 U.S. 234.  
21 Further, the fee award should include fees incurred to establish and defend the attorneys’ fee claim.  
22 *Serrano v. Priest* (1982) 32 Cal .3d 621, 639 (“*Serrano IV*”). Based on the rates of Class Counsel,  
23 the total fees incurred to date are \$136,948.00. (Schimmel Decl., ¶ 13). By the conclusion of this  
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25 <sup>1</sup> In *Martino v. Denevi* (1986) 182 Cal.App.3d 553, 559, the court addressed the issue of what evidence  
26 is required in California to support a fee application. The court held: “Testimony of an attorney as to  
27 the number of hours worked on a particular case is sufficient evidence to support an award of attorney  
28 fees, even in the absence of detailed time records.” *Id.* There is no need to attach the voluminous  
invoices prepared in a case as a basis for an award of fees and costs. *Id.* Through Class Counsel’s  
declarations in support of this application, however, Plaintiff presents a thorough breakdown of the  
hours spent and costs incurred in prosecuting this class action. Pursuant to *Martino, supra*, this  
presentation is sufficient to support the amount requested.

1 matter, the total fees are estimated to be approximately \$147,448.00. (*Id.*, ¶ 14).

2 In cases where a common fund analysis is not used, once the court establishes the lodestar  
3 amount, it should adjust the fee award by a multiplier in order to make an appropriate fee award.  
4 *Serrano III, supra*, 20 Cal.3d at 48. In applying the multiplier, *Newberg on Class Actions* states that  
5 “[m]ultiples ranging from one to four frequently are awarded in common fund cases when the lodestar  
6 method is applied. A large common fund award may warrant an even larger multiplier.” 4 *Newberg*  
7 *on Class Actions* 4th (4th ed. 2002) § 14.6. If the class members paid the fees that the market would  
8 bear, they would pay a fee of anywhere from one-third to forty-five percent of any recovery. Since  
9 this is the market rate, the lodestar calculation should be enhanced to reflect what the class members  
10 would pay on the open market. *Lealao, supra*, 82 Cal.App.4th at 47-48.

11 In *Lealao*, the court held that trial courts should award lodestar fees by examining the  
12 percentage-of-the-benefit and adjusting the lodestar calculation accordingly. *Id.* at 49, 53. The court  
13 indicated that this is an upward adjustment and should be akin to a contingency fee recovery; the court  
14 stated, “[a]n adjustment reflecting the amount of the class recovery is not significantly different from  
15 an adjustment reflecting a percentage of that amount; and California courts have evaluated a lodestar  
16 as a percentage of the benefit.” *Id.* at 46. The *Lealao* method appears particularly appropriate because  
17 class actions generally are contingency fee cases for plaintiffs - and the class action clients do not  
18 expect to pay an hourly fee.

19 The rationale of *Lealao* comports with the purpose of the multiplier. The multiplier is  
20 “primarily to compensate the attorney for the prevailing party at a rate reflecting the risk of  
21 nonpayment in contingency cases.” *Ketchum v. Moses* (2001) 24 Cal.4th 1122, 1138. The *Lealao*  
22 court reasoned:

23 Given the unique reliance of our legal system on private litigants to  
24 enforce substantive provisions of law through class and derivative  
25 actions, attorneys providing the essential enforcement services must be  
26 provided incentives roughly comparable to those negotiated in the  
27 private bargaining that takes place in the legal marketplace, as it will  
28 otherwise be economic for defendants to increase injurious behavior. It  
has therefore been urged (most persistently by Judge Richard Posner)  
that in defining a reasonable fee in such representative actions, the law  
should mimic the market.

In the class action context, that would mean attempting to award the fee  
that informed private bargaining, if it were truly possible, might have

1 reached. The simplest way for the law to duplicate the bargain that  
2 informed parties would reach if agency costs were low is to look to fee  
3 award levels in actions brought by sophisticated private parties under the  
4 same or comparable statutes.

5 *Lealao*, 82 Cal.App.4th at 47-48 (internal citations and quotations omitted). The court added:

6 [T]rial judges need the flexibility *Serrano III* provides, as it enables them  
7 to relate fee awards to the economic realities that determine the efficacy  
8 of the private enforcement contemplated by our civil justice system.

9 Accordingly, we hold that, in cases in which the value of the class  
10 recovery can be monetized with a reasonable degree of certainty and it  
11 is not otherwise inappropriate, a trial court has discretion to adjust the  
12 basic lodestar through the application of a positive or negative multiplier  
13 where necessary to ensure that the fee awarded is within the range of fees  
14 freely negotiated in the legal marketplace in comparable litigation.

15 *Id.* at 49-50.

16 In looking at similar cases, including those set forth above, Class Counsel's requested fee  
17 comports to the market. Based on the reasonable hourly rates suggested by Class Counsel and the  
18 collective hours worked in this matter, the requested fee award is far less than the hours worked and  
19 the fees billed by Class Counsel. Indeed, the requested fee award would represent a negative multiplier  
20 of the current total fee lodestar. In this regard, Class Counsel's fee request is reasonable.

21 **C. No Class Member Objected to the Requested Attorneys' Fee Award**

22 Class Counsel's intention to request the Court's approval for payment of attorneys' fees was  
23 clearly disclosed to each Class Member in the Court-approved Class Notice. (*See Genish Decl.*, ¶ 42;  
24 *See also*, Polites Decl., Exhibit A). As of the filing of this Motion, there has not been a single objection  
25 to the request for attorneys' fees. (Polites Decl., ¶ 11). It is fair to conclude that the Class approves  
26 of/does not take issue with the requested award of attorneys' fees. Based thereon, Class Counsel's  
27 request for \$133,333.33 in attorneys' fees-representing one-third (1/3) of the \$400,000.00 Gross  
28 Settlement Amount should be granted.

**D. Class Counsel's Request for Costs and Expenses Is Reasonable**

Pursuant to the Settlement Agreement, Class Counsel may request reimbursement of  
reasonable costs and expenses not more than Twenty Thousand Dollars and Zero Cents (\$45,000.00).  
(Settlement Agreement, ¶ 3.2.2). Class Counsel seeks reimbursement of \$17,032.75 in costs and  
expenses in this matter, which includes reasonable future costs for filing the Motions. (*Genish Decl.*,  
Exhibit 4). These costs were reasonably incurred in prosecution of this matter.

1           **E.       The Requested Class Representative Service Payment is Also Reasonable**

2           The named Plaintiff should be awarded a Class Representative Service Payment in the amount  
3 of \$5,000.00 for his services as the Class Representative and the risks in connection with that role.  
4 (*Id.*, ¶ 43). Enhancement awards in wage and hour cases typically range from \$5,000.00 to \$20,000.00,  
5 although some awards are higher. (*Ibid*).

6           Often, multiple class representatives receive awards in the above range. (*See e.g., Munoz v.*  
7 *BCI Coca-Cola Bottling Co. of Los Angeles* (2010) 186 Cal.App.4<sup>th</sup> 399, 412 [approving an  
8 enhancement request of \$10,000.00 per named plaintiff in a 188 member class]; *Cook v. Niedert*, 142  
9 F.3d 1004, 1016 (7<sup>th</sup> Cir. 1998); *Thornton v. East Texas Motor Freight*, 497 F.2d 416, 420 (6<sup>th</sup> Cir.  
10 1974) [“We also think there is something to be said for rewarding those drivers who protect and help  
11 to bring rights to a group of employees who have been the victims of discrimination.”]). Here, the  
12 requested Class Representative Service Payment is modest, reasonable, and should be approved.

13           Plaintiff’s actions establish that: (1) he sought to protect the interests of the Class above his  
14 own personal interests; (2) the Participating Class Members will be benefitted from his actions by  
15 receiving a payment without having to do anything; and (3) Plaintiff has put forth a significant amount  
16 of time and effort pursuing the litigation and seeing it through to resolution. (*See, generally, Valdez*  
17 *Decl.; see also Clark v. American Residential Services LLC* (2009) 175 Cal.App.4<sup>th</sup> 785, 804  
18 (discussing the criteria for determining class representative enhancement awards in concluding that a  
19 requested award of \$25,000 for two class representatives was too high).)

20           The requested award for Plaintiff is also reasonable given the financial and personal risk he  
21 took in commencing the Action, and in light of the benefits that his actions have conferred upon the  
22 Class. (*Valdez Decl.*, ¶ 7; *See also Van Vranken v. Atl. Richfield Co.* (N.D.Cal. 1995) 901 F.Supp.  
23 294, 299-300). Additionally, in considering a requested class representative enhancement award,  
24 courts take into consideration a plaintiff’s reasonable fear of retaliation. (*Staton v. Boeing Co.* (9<sup>th</sup>  
25 Cir. 2003) 327 F.3d 938, 977). Here, it is easy to see that a potential future employer could expend  
26 little effort to discover Plaintiff brought the lawsuit – and based thereon, decline to offer Plaintiff  
27 employment.

28       ///

1 In sum, Plaintiff has performed considerable services on behalf of the Class during the  
2 litigation. Class Counsel cannot understate the importance of the role of an employee who is willing  
3 to search out an attorney and step forward to assume the risk of litigation and retaliation in order to  
4 represent a class and put the interests of the class before his or her interests. Plaintiff has understood  
5 that this is a class action where he is serving as the Class Representative and in that role, must pursue  
6 and protect the Class Members' interests above his own. (Valdez Decl., ¶ 10). Plaintiff is the catalyst  
7 to the benefit reached for the Class Members and he has actively protected the Class Members'  
8 interests during the pendency of this matter and will continue to do so even if the case was required to  
9 go to trial. (*Id.*, ¶ 6). Plaintiff spent approximately 30 to 35 hours participating in this matter by  
10 searching for an attorney, communicating with his attorneys on numerous occasions via email, text,  
11 and phone, searching for and producing relevant documents related to his employment, responding to  
12 his attorneys' telephone inquiries, assisting his attorneys with preparation for mediation, attending  
13 mediation, spending time on telephone conferences with counsel to better inform them of the issues  
14 regarding Class Members' work environment and requirements, providing necessary information for  
15 settlement discussions, reviewing the settlement documents, and approving the Settlement on behalf  
16 of all Class Members. (*Id.*, ¶¶ 3-8).

17 Plaintiffs also undertook the significant risks associated with acting as a class representative.  
18 He understood and accepted that he was putting himself at risk to pay costs of litigation if the case  
19 was unsuccessful. (*Id.*, ¶ 7). Plaintiff also understood that that he was at risk of loss of income due to  
20 missing work to fulfill any responsibilities required to participate in litigation. (*Ibid.*). Plaintiff also  
21 put himself at risk for retaliation by future employers who may not approve that he sued his former  
22 employer. (*Id.*, ¶ 12).

23 In contrast, without having to take on any of the risk incurred by Plaintiff or time spent by  
24 Plaintiff in litigating this matter, Participating Class Members will automatically receive a payment  
25 for their claims. It appears that the Participating Class Members recognize this enhancement was  
26 justified because since the time the Class received notice of the requested Class Representative Service  
27 Payment, no one has objected to the request. Thus, the Class Representative Service Payment to  
28 Plaintiff is warranted to compensate him for his time and effort, the fear and stress associated with

1 assuming the responsibility of serving as the Class Representative, and the concrete risks he assumed  
2 as the Class Representative.

3 **F. The Requested Administration Expenses Payment is Reasonable**

4 In Plaintiff's motion for preliminary approval, Plaintiff requested, and the Court approved, an  
5 Administration Expenses Payment not to exceed \$8,000.00. (Genish Decl., ¶ 44). ILYM is the  
6 approved Administrator. (Ibid). It is an experienced class administrator and has adequately performed  
7 the administration tasks required by the Preliminary Approval Order. ILYM's *actual* costs to  
8 administer the Settlement are only \$6,500.00. (Polites Decl., ¶ 18, Exhibit B thereto). Based thereon,  
9 the requested costs should be approved.

10 **IV. CONCLUSION**

11 For all of the foregoing reasons, Plaintiff respectfully requests that this Court approve: (1)  
12 Class Counsel's request of \$133,333.33 as an award of attorneys' fees; (2) the requested litigation cost  
13 award of \$17,032.75; (3) the requested Class Representative Service Payment to Plaintiff in the  
14 amount of \$5,000.00; and (4) the payment of \$6,500.00 in settlement administration costs to ILYM.

15 Respectfully submitted,

16 Dated: November 21, 2023

**BLACKSTONE LAW, APC**

17  
18 By:

  
\_\_\_\_\_  
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