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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SACRAMENTO

TOBY LANZARIN, individually, and on behalf of other members of the general public similarly situated, and ANTHONY MIXON, individually, and on behalf of other members of the general public similarly situated and on behalf of aggrieved employees pursuant to the California Private Attorneys General Act,

Plaintiffs,

vs.

BUILDING MATERIAL DISTRIBUTORS, INC., a California corporation; and DOES 1 through 25, inclusive,

Defendants.

Case No. 34-2022-00330343-CU-OE-GDS

Honorable Jill H. Talley
Department 23

NOTICE OF MOTION AND MOTION FOR FINAL APPROVAL OF CLASS ACTION AND PAGA SETTLEMENT, ATTORNEYS' FEES AND COSTS, ENHANCEMENT PAYMENTS, AND SETTLEMENT ADMINISTRATION COSTS; MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT THEREOF

Date:	October 10, 2025
Time:	9:00 a.m.
Dept:	23
Complaint Filed:	November 23, 2022
FAC Filed:	February 4, 2025
Trial Date:	Not Set

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE THAT on **October 10, 2025 at 9:00 a.m.** in Department 23 of the above-captioned Court located at Gordon D. Schaber Sacramento County Courthouse, 720 Ninth Street, Sacramento, California 95814, pursuant to California Code of Civil Procedure section 382, Rule 3.769 of the California Rules of Court, and California Labor Code section 2699(l), Toby Lanzarin and Anthony Mixon (together, "Plaintiffs") will and hereby do move the Court for an Order granting final approval of the proposed class action and Labor Code Private Attorneys General Act of 2004, California Labor Code sections 2698, *et seq*. ("PAGA") settlement between Plaintiffs and Defendant Building Material Distributors, Inc. ("Defendant").

Plaintiffs request that the Court enter an Order:

1. Granting final approval of the class action and PAGA settlement;

2. Approving the settlement as fair, adequate, and reasonable, based upon the terms as set forth in the Court-approved Joint Stipulation of Class Action and PAGA Settlement ("Settlement Agreement" or "Settlement"), including payment by Defendant of the Gross Settlement Amount of One Million Seven Hundred Fifty Thousand Dollars and Zero Cents ($1,750,000.00) equal to the amounts to pay (1) the Settlement Class Members and PAGA Employees pursuant to the terms of the Settlement; (2) the Court-approved Attorneys' Fees and Costs; (3) the Court-approved Enhancement Payments; (4) the Court-approved Settlement Administration Costs; and (5) the Court-approved payment to the California Labor and Workforce Development Agency ("LWDA") pursuant to PAGA;

3. Approving Class Counsel's request for one-third (1/3) of the Gross Settlement Amount, i.e., Five Hundred Eighty-Three Thousand Three Hundred Thirty-Three Dollars and Thirty-Three Cents ($583,333.33) in attorneys' fees, plus reimbursement of actual costs and expenses in the amount of Sixteen Thousand Six Hundred Seventy-Nine Dollars and Five Cents ($16,679.05);

4. Approving the Enhancement Payments to Plaintiffs in the amounts of Ten Thousand Dollars ($10,000.00) each (total, $20,000.00) in recognition of their services to the Class Members;

5. Approving the Settlement Administration Costs to ILYM Group, Inc. in the amount of Eight Thousand Nine Hundred Fifty Dollars and Zero Cents ($8,950.00); and

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8. Approving One Hundred Fifty Thousand Dollars and Zero Cents ($150,000.00) to be paid to the LWDA as seventy-five percent (75%) of the Two Hundred Thousand Dollars and Zero Cents ($200,000.00) allocated to civil penalties under PAGA.

This Motion is made pursuant to Rule 3.769 and Rule 3.1113(e) of the California Rules of Court, which require approval by the Court of a class action settlement and permit the Court to extend the page limit for memoranda.

This Motion is based on the following Memorandum of Points and Authorities, the Settlement Agreement, the Declarations of Class Counsel (Alexandra Rose), the Class Representatives (Toby Lanzarin and Anthony Mixon), and the Settlement Administrator (Cassandra Polites on behalf of ILYM Group, Inc.), the pleadings and other records on file with the Court in this matter, and such evidence or oral argument as may be presented at the hearing on this Motion.

Respectfully submitted,

Dated: September 17, 2025

BLACKSTONE LAW, APC

By: ______________________________
Alexandra Rose

Attorneys for Plaintiffs Toby Lanzarin and Anthony Mixon and the Class

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Plaintiffs Toby Lanzarin ("Plaintiff Lanzarin") and Anthony Mixon ("Plaintiff Mixon") (together, "Plaintiffs" or "Class Representatives") seek final approval of the class action settlement reached with Defendant Building Material Distributors, Inc. ("Defendant"). Subject to Court approval, Plaintiffs and Defendant (collectively, the "Parties") have settled the Released Class Claims and Released PAGA Claims as defined in the Joint Stipulation of Class Action and PAGA Settlement ("Settlement Agreement" or "Settlement") for a total amount of One Million Seven Hundred Fifty Thousand Dollars and Zero Cents ($1,750,000.00) ("Gross Settlement Amount"). (*See* Declaration of Alexandra Rose in Support of Plaintiffs' Motion for Final Approval of Class Action and PAGA Settlement, Attorneys' Fees and Costs, Enhancement Payments, and Settlement Administration Costs ["Rose Decl."], ¶ 13, Exh. 1).

The Court conditionally certified, for settlement purposes only, the Class defined as: "All current and former hourly-paid and/or non-exempt employees who worked for Defendant in the State of California at any time during the Class Period" ("Class" or "Class Members"). (Settlement Agreement, ¶ 9.b; Rose Decl., ¶ 11). The "Class Period" is defined as the period from November 23, 2018 through May 7, 2024. (Settlement Agreement, ¶ 9.f; Rose Decl., ¶ 11). The "Settlement Class Members" consist of all Class Members who did not submit a timely and valid Request for Exclusion. (Settlement Agreement, ¶ 9.mm; Rose Decl., ¶ 11). The "PAGA Employees" consist of "all current and former hourly-paid and/or non-exempt employees who worked for Defendant in the State of California at any time during the PAGA Period." (Settlement Agreement, ¶ 9.y; Rose Decl., ¶ 11). The "PAGA Period" is defined as the period from May 30, 2022 through May 7, 2024. (Settlement Agreement, ¶ 9.aa; Rose Decl., ¶ 11).

As discussed herein, the proposed Settlement satisfies all the criteria for final settlement approval under California law because it is fair, adequate, and reasonable. (Rose Decl., Exh. 1; *See also, Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 129-30; *Dunk v. Ford Motor Company* (1996) 48 Cal.App.4th 1794, 180 l). The response of the Class to the Settlement confirms that final settlement approval is appropriate. *There have been no objections to and no requests to opt-*

out from the Class Settlement. (Declaration of Cassandra Polites of ILYM Group, Inc. Regarding Notice and Settlement Administration ["Polities Decl."], ¶¶ 9 and 10).

Because the Settlement achieves outstanding results for the Settlement Class Members, the PAGA Employees, and the State of California, Plaintiffs respectfully request, on behalf of the Class and without opposition from Defendant, that the Court approve the Settlement as fair, adequate, and reasonable, and enter judgment in accordance with the Settlement's terms.

Plaintiffs seek the Court's approval of an attorneys' fee award of one-third (1/3) of the Gross Settlement Amount, equaling Five Hundred Eighty-Three Thousand Three Hundred Thirty-Three Dollars and Thirty-Three Cents ($583,333.33), plus reimbursement of actual litigation costs and expenses in the amount of Sixteen Thousand Six Hundred Seventy-Nine Dollars and Five Cents ($16,679.05) (together, "Attorneys' Fees and Costs"). Class Counsel's request for an award of the Attorneys' Fees and Costs is reasonable and appropriate in light of the outstanding work performed by Class Counsel in the matter, the contingent nature of this action, and the results achieved under the Settlement. (*See Lealao v. Beneficial California, Inc.* (2000) 82 Cal.App.4th 19).

Plaintiffs also request the Court's approval of the amounts to be paid to Plaintiffs in the amounts of Ten Thousand Dollars and Zero Cents ($10,000.00) each (total, $20,000.00) ("Enhancement Payments") for their services on behalf of the Class. These amounts proposed to be awarded to Plaintiffs are fair and reasonable for the reasons Plaintiffs provided in their declarations. (*See* Declaration of Plaintiff Toby Lanzarin in Support of Motion for Final Approval of Class Action and PAGA Settlement, Attorneys' Fees and Costs, Enhancement Payments, and Settlement Administration Costs ["Lanzarin Decl."] and Declaration of Plaintiff Anthony Mixon in Support of Motion for Final Approval of Class Action and PAGA Settlement, Attorneys' Fees and Costs, Enhancement Payments, and Settlement Administration Costs ["Mixon Decl."] filed concurrently herewith). Courts approve incentive awards to plaintiffs when justified and appropriate to compensate plaintiffs for their time, effort, and inconvenience. (*See e.g., Van Vranken v. Atlantic Riclifield Co.* (N.D. Cal. 1995) 901 F. Supp. 294, 299).

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Finally, Plaintiffs request that the Court approve the payment of Eight Thousand Nine Hundred Fifty Dollars and Zero Cents ($8,950.00) ("Settlement Administration Costs") to ILYM Group, Inc. ("ILYM" or "Settlement Administrator") as compensation for its administration services it has and will provide in connection with the Settlement. (*See, generally*, Polites Decl.).

In order to efficiently present the Court with adequate information to determine whether to grant final approval of the Settlement and award the Attorneys' Fees and Costs, Enhancement Payments, and Settlement Administration Costs, Plaintiffs also move for an order permitting the filing of this single consolidated memorandum, although it exceeds the page limit established by California Rules of Court, Rule 3.1113(d), instead of filing several separate motions.

II. PROCEDURAL HISTORY AND FACTUAL BACKGROUND

Defendant is a building solutions company, which focuses on supplying lumber yards, dealers, home centers, and hardware stores with building products. Plaintiff Lanzarin was employed by Defendant as an hourly-paid, non-exempt employee from approximately October 2019 to approximately July 2020. (Lanzarin Decl., ¶ 2). Plaintiff Mixon was employed by Defendant as an hourly-paid, non-exempt employee from approximately October 2021 to approximately January 2023. (Mixon Decl., ¶ 2).

On November 23, 2022, Plaintiff Lanzarin filed a Class Action Complaint for Damages in the action entitled *Toby Lanzarin v. Building Material Distributors, Inc.*, Sacramento County Superior Court Case No. 34-2022-00330343-CU-OE-GDS ("Action"), thereby commencing a putative class action against Defendant. (Rose Decl., ¶ 2).

On March 29, 2023, Plaintiff Lanzarin propounded written formal discovery onto Defendant (specifically, Special Interrogatories (Set One), Form Interrogatories – General (Set One), and Requests for Production of Document (Set One)), noticed the deposition of Defendant's Person Most Qualified, and served a proposed *Belaire-West* notice. (*Id.*, ¶ 3).

On May 30, 2023, Plaintiff Mixon provided written notice to the California Labor and Workforce Development Agency ("LWDA") by online submission and to Defendant by U.S. Certified Mail, pursuant to California Labor Code Section 2699.3, of the specified provisions of the California Labor Code alleged to have been violated by Defendant ("PAGA Letter"). (*Id.*, ¶ 4).

On August 4, 2023, Plaintiff Mixon filed a Complaint for Enforcement Action under the Private Attorneys General Act, Cal. Labor Code §§ 2698 Et Seq. in the action entitled *Anthony Mixon v. Building Material Distributors, Inc.*, Sacramento County Superior Court Case No. 23CV006163 ("*Mixon* PAGA Action"). (*Id.*, ¶ 5).

On March 6, 2024 and March 8, 2024, the Parties participated in a formal mediation conducted by Brandon McKelvey, Esq. ("Mediator"), a neutral and respected mediator with extensive experience in complex wage and hour matters, and with the assistance of the Mediator, the Parties were able to reach an agreement to resolve this dispute on a class and representative basis. (*Id.*, ¶ 6).

On January 17, 2025, the Parties executed the Settlement Agreement. (*Id.*, ¶ 7).

On February 4, 2025, Plaintiffs filed a First Amended Class and Representative Action Complaint ("Operative Complaint") in the Action. (*Id.*, ¶ 8). The Operative Complaint alleges eleven (11) causes of action for violations of the California Labor Code for: (1) failure to pay overtime wages, specifically including but not limited to theories involving off-the-clock, regular rate, and failure to pay wages; (2) failure to pay minimum wages, specifically including but not limited to off-the-clock work; (3) failure to provide compliant meal periods and premium payments in lieu thereof, specifically including but not limited to failure to provide compliant meal periods and failure to pay meal premiums at the regular rate of pay; (4) failure to provide compliant rest periods and premiums in lieu thereof, specifically including but not limited to failure to provide compliant rest periods and failure to pay rest break premiums at the regular rate of pay; (5) failure to provide accurate itemized wage statements; (6) failure to timely pay wages upon termination, (7) failure to reimburse necessary business expenses; (8) violations of California Business & Professions Code Section 17200, *et seq*. based on the aforementioned California Labor Code violations; (9) civil penalties under California Labor Code Private Attorneys General Act of 2004 ("PAGA") based on the aforementioned California Labor Code violations; (10) violation of the Fair Labor Standards Act ("FLSA") for failure to pay overtime wages; and (11) violation of the FLSA for the failure to pay minimum wages. (Ibid).

On February 6, 2025, the Mixon PAGA Action was dismissed without prejudice. (*Id.*, ¶ 9).

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On February 28, 2025, Plaintiffs filed a Motion for Preliminary Approval of Class Action and PAGA Settlement ("Motion for Preliminary Approval") and supporting documents. (*Id.*, ¶ 10). On May 20, 2025, the Court entered the Order Granting Preliminary Approval of Class Action and PAGA Settlement ("Preliminary Approval Order"), thereby preliminary approving the terms of the Settlement Agreement, the Notice of Class Action Settlement ("Class Notice"), and the proposed administration procedures and associated deadlines. (*Id.*, ¶ 10 and Exh. 2).

The Parties agree that the Class described herein may be certified for settlement purposes only. If for any reason the Settlement is not approved, the certification will have no force or effect and will immediately be revoked. The Parties further agree that certification for purposes of approving the Settlement Agreement is in no way an admission that class certification is proper under the more stringent standard applied for litigation and that evidence of this limited stipulation for settlement purposes only will not be admissible for any purpose in this or any other proceeding.

III. SUMMARY OF THE SETTLEMENT TERMS AND PLAN OF DISTRIBUTION

The Parties have agreed to settle the Class and PAGA claims at issue in the Operative Complaint for a non-reversionary Gross Settlement Amount of One Million Seven Hundred Fifty Thousand Dollars and Zero Cents ($1,750,000.00), which is exclusive of employer-side payroll taxes. (Settlement Agreement, ¶ 9.q; Rose Decl., ¶ 13). The Gross Settlement Amount includes: (1) Class Counsel's fees in the amount of one-third (1/3) of the Gross Settlement Amount, equaling Five Hundred Eighty-Three Thousand Three Hundred Thirty-Three Dollars and Thirty-Three Cents ($583,333.33); (2) Class Counsel's actual litigation costs and expenses, in the amount of Sixteen Thousand Six Hundred Seventy-Nine Dollars and Five Cents ($16,679.05); (3) Settlement Administration Costs in the amount Eight Thousand Nine Hundred Fifty Dollars and Zero Cents ($8,950.00); (4) Enhancement Payments in the amounts of Ten Thousand Dollars and Zero Cents ($10,000.00) each (total, $20,000.00); and (5) PAGA Amount in the amount of Two Hundred Thousand Dollars and Zero Cents ($200,000.00). (Settlement Agreement, ¶¶ 9.q, 12, 13, 14, and 15); Rose Decl., ¶ 13). After the above Court-approved amounts are deducted from the Gross Settlement Amount, the Settlement Class Members will share in a Net Settlement Amount of approximately Nine

Hundred Twenty-One Thousand Thirty-Seven Dollars and Sixty-Two Cents ($921,037.62). (Settlement Agreement, ¶ 9.v; Rose Decl., ¶ 13).

The Settlement does not require Settlement Class Members to submit claims as a prerequisite to receiving their *pro rata* share of the Net Settlement Amount ("Individual Settlement Share") nor does it require PAGA Employees to submit claims as a prerequisite to receiving their *pro rata* share of twenty-five percent (25%) of the PAGA Amount ("Individual PAGA Payment"). (Settlement Agreement, ¶¶ 9.r, 9.t, and 37; Rose Decl., ¶ 14). Individual Settlement Shares are calculated by the Settlement Administrator by dividing the Net Settlement Amount by the total number of Workweeks worked by all Settlement Class Members during the Class Period and multiplying the result by each Settlement Class Member's Workweeks worked during the Class Period. (Settlement Agreement, ¶ 17.b; Rose Decl., ¶ 14). Individual PAGA Payments are calculated by the Settlement Administrator by dividing the amount of the PAGA Employees' 25% share of the PAGA Amount ($50,000.00) by the total number of PAGA Pay Periods worked by all PAGA Employees during the PAGA Period and multiplying the result by each PAGA Employee's PAGA Pay Periods worked during the PAGA Period. (Settlement Agreement, ¶ 18; Rose Decl., ¶ 14)

Each Individual Settlement Share will be allocated as twenty percent (20%) wages and eighty percent (80%) penalties, interest, and non-wage damages. (Settlement Agreement, ¶ 19; Rose Decl., ¶ 16). The portion allocated to wages will be reported on an IRS Form W-2 and the portions allocated to penalties, interest, and non-wage damages will be reported on an IRS Form 1099 (if applicable) by the Settlement Administrator. (Settlement Agreement, ¶ 19; Rose Decl., ¶ 16). The Settlement Administrator will withhold the employee's share of taxes and withholdings with respect to the Wage Portion of the Individual Settlement Shares, and issue checks to Settlement Class Members for their net payment of their Individual Settlement Share ("Individual Settlement Payment"). (Settlement Agreement, ¶¶ 9.s and 19; Rose Decl., ¶ 16). Defendant will separately pay any and all employer payroll taxes owed on the wages portion of the Individual Settlement Shares. (Settlement Agreement, ¶ 19; Rose Decl., ¶ 16). Each Individual PAGA Payment will be allocated as one hundred percent (100%) penalties and will be reported on an IRS Form 1099 (if applicable) by the Settlement Administrator. (Settlement Agreement, ¶ 19; Rose Decl., ¶ 16).

Each Individual Settlement Payment and Individual PAGA Payment check will be valid and negotiable for one hundred and eighty (180) calendar days from the date the checks are issued, and thereafter, shall be canceled. (Settlement Agreement, ¶ 37; Rose Decl., ¶ 17). Any funds associated with such canceled checks will be distributed by the Settlement Administrator to the State of California's Unclaimed Property Division in the name of the Settlement Class Member and/or PAGA Employee at issue. (Settlement Agreement, ¶ 37; Rose Decl., ¶ 17).

Upon the full funding of the Gross Settlement Amount, Plaintiffs and all Settlement Class Members will be deemed to have fully, finally, and forever released, settled, compromised, relinquished, and discharged the Released Parties of any and all claims, debts, liabilities, demands, obligations, guarantees, costs, expenses, attorneys' fees, damages, or causes of action which were pleaded or that could have been pleaded based on the same or similar factual allegations as those alleged in the Operative Complaint, arising during the Class Period, under any federal, state, or local law, and shall specifically include but are not limited to claims for Defendant's alleged failure to pay overtime and minimum wages (including, but not limited to, payment of minimum wages and overtime wages at the regular rate of pay for off-the-clock work during meal periods), provide compliant meal and rest periods and associated premium payments, timely pay wages upon termination, provide accurate wage statements, and reimburse necessary business-related expenses (including, but not limited to, the purchase of work pants, steel-toe boots, safety gloves, and the usage of personal cell phones for work-related purposes) in violation of California Labor Code Sections 201, 202, 203, 210, 226(a), 226.7, 510, 512, 558, 1174, 1194, 1197, 1197.1, 1198, 2800, and 2802, and the applicable Industrial Welfare Commission Wage Order, and all claims for attorneys' fees and costs and statutory interest in connection therewith, California Business and Professions Code Sections 17200, *et seq*., Fair Labor Standards Act 29 U.S.C. Section 206, Fair Labor Standards Act 29 U.S.C. Section 207, and any claims for injunctive relief, declaratory relief, restitution, Federal Labor Standards Act, fraudulent business practices, or punitive damages alleged or which could have been alleged under the facts, allegations, and/or claims pleaded in the Operative Complaint (collectively, "Released Class Claims"), except that only those Settlement Class Members who cash or deposit their Individual Settlement Payment check shall be deemed to opt-in to the settlement and release of the Released

Class Claims that arise under the FLSA. (Settlement Agreement, ¶¶ 9.ff and 38).

Upon the full funding of the Gross Settlement Amount, Plaintiffs, the State of California with respect to all PAGA Employees, and all PAGA Employees will be deemed to have fully, finally, and forever released, settled, compromised, relinquished, and discharged the Released Parties of any and all claims pleaded or that could have been pleaded based on the same or similar factual allegations as those alleged in the Operative Complaint and/or PAGA Letter, arising during the PAGA Period, for civil penalties under the Private Attorneys General Act of 2004, California Labor Code Sections 2698 *et seq*., including all claims for attorneys' fees and costs related thereto, for Defendant's alleged failure to pay overtime and minimum wages, provide compliant meal and rest periods and associated premium payments, timely pay wages during employment and upon termination, provide complaint wage statements, maintain complete and accurate payroll records, and reimburse necessary business-related expenses in violation of California Labor Code Sections 201, 202, 203, 204, 210, 218.5, 226(a), 226.3, 226.7, 510, 512(a), 558, 1174(d), 1174.5, 1194, 1197, 1197.1, 1198, 2699(g)(1), 2800, and 2802, and the applicable Industrial Welfare Commission Wage Order (collectively, "Released PAGA Claims"). (Settlement Agreement, ¶¶ 9.gg and 39).

Upon the full funding of the Gross Settlement Amount, Plaintiffs, individually and on their own behalf, will be deemed to have fully, finally, and forever released, settled, compromised, relinquished, and discharged the Released Parties from any and all claims, debts, liabilities, demands, obligations, guarantees, costs, expenses, attorneys' fees, damages, or causes of action of any kind or nature whatsoever, known or unknown, suspected or unsuspected, asserted or unasserted, which Plaintiffs, at any time of execution of the Settlement Agreement, had or claimed to have or may have, including but not limited to any and all claims arising out of, relating to, or resulting from their employment and/or separation of employment with the Released Parties, including any claims arising under any federal, state, or local law, statute, ordinance, rule, or regulation or Executive Order relating to employment, including, but in no way limited to, any claim under Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 1981; the Americans with Disabilities Act; the Family and Medical Leave Act; the Employee Retirement Income Security Act; the California Family Rights Act; the California Fair Employment and Housing Act; all claims for wages or penalties under the Fair Labor

Standards Act; all claims for wages or penalties under the California Labor Code; Business and Professions Code sections 17200 *et seq.*; all laws relating to violation of public policy, retaliation, or interference with legal rights; any and all other employment or discrimination laws; whistleblower claims; any tort, fraud, or constitutional claims; and any breach of contract claims or claims of promissory estoppel. It is agreed that this is a general release and is to be broadly construed as a release of all claims, provided that, notwithstanding the foregoing, this Paragraph expressly does not include a release of any claims that cannot be released hereunder by law. Plaintiffs understand and expressly agree that the Settlement Agreement extends to claims that they have against Defendant, of whatever nature and kind, known or unknown, suspected or unsuspected, vested or contingent, past, present, or future, arising from or attributable to an incident or event, occurring in whole or in part, on or before the execution of the Settlement Agreement. Any and all rights granted under any state or federal law or regulation limiting the effect of the Settlement Agreement, including the provisions of Section 1542 of the California Civil Code, ARE HEREBY EXPRESSLY WAIVED. Section 1542 of the California Civil Code reads as follows: A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY. Plaintiffs understand that Section 1542 gives the right not to release existing claims of which they are not now aware, unless Plaintiffs voluntarily choose to waive this right. Having been so apprised, Plaintiffs nevertheless voluntarily waive the rights described in Section 1542, and elect to assume all risks for claims that now exist in their favor, known or unknown. (*Id.*, ¶ 40)

The "Released Parties" means Defendant and its past and present direct or indirect parents, subsidiaries, predecessors, successors, and affiliates as well as each of their past and present officers, directors, employees, partners, members, shareholders and agents, attorneys, insurers, reinsurers, and any individual or entity which could be jointly liable with Defendant. (*Id.*, ¶ 9.hh).

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IV. THE SETTLEMENT ADMINISTRATION PROCESS

ILYM has taken all necessary steps to effectuate the notice and settlement administration process, as set forth in the Preliminary Approval Order.

On May 9, 2025, ILYM received the Court approved text for the Class Notice from Class Counsel. (Polites Decl., ¶ 4).

On May 27, 2025, ILYM received the class data file from Defendant's counsel, which contained the full name, Social Security number, last known mailing address, and the dates worked for Defendant for each Class Member and PAGA Employee (collectively, "Class List"). (*Id*., ¶ 5). The Class List was uploaded to ILYM's database and checked for duplicates and other possible discrepancies. (Ibid). The Class List contained 397 individuals identified as Class Members who worked a total of 40,221 Workweeks during the Class Period and 227 individuals identified as PAGA Members who worked 6,837 PAGA Pay Periods during the PAGA Period. (*Id*., ¶ 5 and 15).

As part of the preparation for mailing, all 397 names and addresses contained in the Class List were then processed against the National Change of Address ("NCOA") database, maintained by the United States Postal Service ("USPS"), for purposes of updating and confirming the mailing addresses of the Class Members before mailing of the Class Notice. (*Id*., ¶ 6). The NCOA contains requested change of addresses filed with the USPS. (Ibid). To the extent that an updated address was found in the NCOA database, the updated address was used for the mailing of the Class Notice. (Ibid). To the extent that no updated address was found in the NCOA database, the original address provided by Defendant's counsel was used for the mailing of the Class Notice. (Ibid).

On June 24, 205, the Class Notice was mailed, in English and Spanish, via U.S. First Class Mail, to all 397 individuals contained in the Class List. (*Id*., ¶ 7). 38 Class Notices were returned to ILYM of which 8 were returned with a forwarding address. (*Id*., ¶ 8). ILYM performed a computerized skip trace on the 30 returned Class Notices that did not have a forwarding address, in an effort to obtain an updated address for the purpose of re-mailing the Class Notice. (Ibid). As a result of this skip trace, 21 updated addresses were obtained and the Class Notice was promptly re-mailed to those Class Members, via U.S First Class Mail. (Ibid). A total of 9 Class Notices have been deemed undeliverable as no updated address was found notwithstanding the skip tracing. (Ibid).

Class Members had sixty (60) calendar days after the Settlement Administrator mailed the Class Notices to submit a Request for Exclusion, Notice of Objection, and/or Dispute ("Response Deadline"). (Settlement Agreement, ¶ 9.jj). The Response Deadline was August 23, 2025. (Polites Decl., ¶¶ 9-11). The Settlement Administrator did not receive any Requests for Exclusion, Notice of Objections, and/or Disputes. (Ibid).

The estimated average gross Individual Settlement Share is $2,316.67, the estimated highest gross Individual Settlement Share is $6,494.11, and the estimated lowest gross Individual Settlement Share is $22.87; the estimated average Individual PAGA Payment is $220.26, the estimated highest Individual PAGA Payment is $482.67, and the estimated lowest Individual PAGA Payment is $7.31. (*Id*., ¶¶ 14 and 16).[1]

V. COMPLIANCE WITH PROCEDURAL REQUIREMENTS OF PAGA

On February 24, 2025, Class Counsel submitted a copy of the Settlement Agreement to the LWDA through its online submission portal in compliance with California Labor Code § 2699(l)(2). (Rose Decl., ¶ 18). The LWDA has not objected or otherwise responded to the submissions. (Ibid).

VI. EVALUATION OF SETTLEMENT FOR FINAL APPROVAL

A. The Legal Standard for Final Approval

Before granting final approval of a class action settlement, the Court must review the settlement for fairness. (Cal. Rules of Court, rule 3.769(g); *Dunk v. Ford Motor Co*. (1996) 48 Cal.App.4th 1794, 1801). A court must take into account relevant factors, including, for example, the strength of the plaintiff's case, the risk, expense, complexity and likely duration of further litigation, the amount offered in settlement, the extent of discovery completed and the stage of the proceedings, the experience and views of counsel, and the reaction of the class members to the proposed settlement. (*Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 244-45; *Dunk*, 48 Cal.App.4th at 1801 ["The list of factors is not exhaustive and should be tailored to each case"]; *Officers for Justice v. Civil Serv. Comm'n* (9th Cir. 1982) 688 F.2d 615, 625). Considering such factors, a presumption of fairness exists where: (1) the settlement is reached through arm's-length bargaining; (2) investigation and

[1] The actual average, highest, and lowest Individual Settlement Shares will be larger than the amounts stated in the Rose Decl. because the Net Settlement Amount is larger due to Class Counsel's request for reimbursement of litigation costs and expenses in an amount that is less than $18,000.00 (the difference between the amount sought and the amount authorized under the Settlement, i.e., $1,320.95 will be part of the Net Settlement Amount).

discovery are 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. (*Wershba*, 91 Cal.App.4th at 245; *Dunk*, 48 Cal.App.4th at 1802). "The settlement or fairness hearing is not to be turned into a trial or rehearsal for trial on the merits. [The trial court is not] to reach any ultimate conclusions on the contested issues of fact and law which underlie the merits of the dispute, for it is the very uncertainty of outcome in litigation and avoidance of wasteful and expensive litigation that induce consensual settlements." (*Officers for Justice*, *supra*, 688 F.2d at 625).

B. The Settlement Should be Finally Approved

California courts recognize that "a presumption of fairness exists where . . . [a] settlement is reached through arm's-length bargaining." (*Wershba*, 91 Cal.App.4th at 245; *see also Clark v. Am. Residential Servs. LLC*, 175 Cal.App.4th 785, 799 (2009)). Here, the Parties' settlement negotiations were at all times made at arm's-length and were adversarial. (Rose Decl., ¶ 19). The Parties engaged in extensive informal discovery prior to reaching a settlement. (*Id*., ¶ 20).

C. The Settlement is Fair and Reasonable

Courts typically assess the status of discovery in determining whether a class action settlement agreement is fair, reasonable, and adequate. (*Dunk*, 48 Cal.App.4th at 1801). Prior to mediation, Defendant produced a random sampling of putative class members' time and pay records as well as Defendant's relevant wage and hour policies, and information regarding the total number of putative class members, the number of current versus former employees, the total workweeks worked by the putative class members, and the average rate of pay for the putative class members. (Rose Decl., ¶ 20). This allowed Class Counsel to conduct an informed assessment and analysis of the strengths and weaknesses of the claims and the potential class-wide damages. (Ibid). Plaintiffs' investigation was sufficient to satisfy the criteria for court approval set forth in *Dunk v. Foot Locker Retail, Inc.* (1996) 48 Cal.App.4th 1794, 1801 and *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 129-130 ("Dunk/Kullar").

Based on the information exchanged, the Parties extensively briefed issues regarding class certification and liability and provided their analyses to the Mediator who helped the Parties debate the strengths and weakness of their respective positions. (Rose Decl., ¶ 21). At all times, Plaintiffs were willing and prepared to litigate this matter through class certification and trial if the Parties had been unable to reach a favorable resolution. (Ibid). Additionally, settlement negotiations were conducted by highly capable and experienced counsel. (Ibid). Class Counsel are respected members of the California State Bar with strong records of vigorous and effective advocacy and are experienced in handling complex wage and hour class action litigation. (Ibid). Accordingly, Class Counsel had sufficient information and experience to act intelligently in negotiating the Settlement.

A settlement is not judged against what might have been recovered had a plaintiff prevailed at trial, nor does the settlement have to obtain 100% of the damages sought to be fair and reasonable. (*Wershba*, 91 Cal.App.4th at 246, 250). In evaluating the reasonableness of a settlement, a trial court must consider "the strength of plaintiffs' case, the risk, expense, complexity and likely duration of further litigation, the risk of maintaining class action status through trial, the amount offered in settlement, the extent of discovery completed and the stage of the proceedings, the experience and views of counsel, the presence of a governmental participant, and the reaction of the class members to the proposed settlement." (*Kullar v. Foot Locker Retail, Inc.*, 168 Cal.App.4th 116, 128 (2008)).

Here, the reasonableness of the Settlement is underscored by the fact that Defendant has legal and factual grounds for defending the Action. Based upon Class Counsel's experience litigating similar complex matters, Plaintiffs reasonably expected a vigorous and lengthy defense to both class certification and the merits of the Action absent a settlement.

Class Counsel are aware of Defendant's defenses and arguments and have also taken into account the uncertainty and risk of the outcome of further litigation, and the difficulties and delays inherent in such litigation, including those involved in class and/or representative adjudication. (Rose Decl., ¶ 23). Plaintiffs further recognize the burdens of proof necessary to establish liability for the claims asserted in the Action, Defendant's defenses, and the difficulties in establishing entitlement to monetary recovery. (Ibid). Plaintiffs have also considered the Parties' settlement discussions, as well as the evaluations of the Mediator, who is experienced and well-regarded in complex labor and employment matters. (Ibid).

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Defendant denied and continues to deny any liability and wrongdoing of any kind associated with the claims alleged in the Action, and further denies that class certification is appropriate for any purpose other than the Settlement. (*Id*., ¶ 24). Defendant believes that it would ultimately prevail in the Action. (Ibid). Defendant proffered defenses to both certification and to the merits of Plaintiffs' claims. (Ibid). Defendant contended that Plaintiffs' claims are not suitable for class certification because individual issues would predominate should this case go to trial. (Ibid). As with all class actions, these complex cases raise difficult management and proof issues and, accordingly, there is a significant risk that the Court may deny class certification. (Ibid).

Class Counsel also recognized that, even if Plaintiffs prevailed at class certification, proving the amount of wages due to each Class Member would be an expensive, time-consuming, and extremely uncertain proposition. (*Id*., ¶ 25). In order to prove liability and damages, Class Counsel would need to request and analyze thousands of pages of documents, obtain the Class Members' contact information, contact them, and obtain declarations at great expense. (Ibid). Obtaining the cooperation of current employees would also be difficult, given the likely reluctance to aid prosecution of a lawsuit against a current employer. (Ibid). On the other hand, Defendant would likely be able to obtain the cooperation of its employees. (Ibid). Moreover, even if Plaintiffs prevailed at class certification and trial, possible appeals would substantially delay any recovery by the Class. (Ibid).

In light of the Parties' respective legal positions and the risks of continued litigation, the Gross Settlement Amount for resolution of the Class and PAGA claims, is fair, adequate, and reasonable. (*Id*., ¶ 26).

VII. THE REQUESTED ATTORNEYS' FEES AND COSTS ARE REASONABLE AND SHOULD BE APPROVED

Class Counsel seeks one-third (1/3) of the Gross Settlement Amount (i.e., $583,333.33) for fees for the time spent litigating this matter and reimbursement of actual costs and expenses totaling Sixteen Thousand Six Hundred Seventy-Nine Dollars and Five Cents ($16,679.05) incurred in the prosecution of the Action. (Rose Decl., ¶ 27). The requested fees and costs are fair compensation for undertaking complex, risky, expensive, and time-consuming litigation on a contingent fee basis, especially in light of the substantial benefits achieved by Class Counsel for the Class Members. (Ibid).

A. Plaintiffs' Fee Request of One-Third (1/3) of the Gross Settlement Amount is Proper Under the Common Fund Doctrine

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

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

> Where the lawsuit results in the recovery of a fund or property benefiting others as well as plaintiff (e.g., a class action), the court has inherent 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.

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

In *Laffitte v. Robert Half Int'l Inc.* (2016) 1 Cal.5th 480, a wage and hour class action wherein class counsel obtained a $19 million non-reversionary settlement on behalf of the class, the California Supreme Court approved the use of the percentage of fund or common fund method to award one-third of the settlement amount or $6,333,333.33 to class counsel for attorneys' fees. The Court stated:

> Whatever doubts may have been created by Serrano III, supra, 20 Cal.3d 25, [], or the Court of Appeal cases that followed, we clarify today that use of the percentage method to calculate a fee in a common fund case, where the award serves to spread the attorney fee among all the beneficiaries of the fund, does not in itself constitute an abuse of discretion. We join the overwhelming majority of federal and state courts in holding that when class action litigation established a monetary fund for the benefit of the class members, and the trial court in its equitable powers awards class counsel a fee out of that fund, the court 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*, 1 Cal.5th at 503).

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

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

The Supreme Court noted that several courts have expressed frustration with the alternative "lodestar" approach for deciding fee awards, which usually involves wading through voluminous and often indecipherable time records. (*Laffitte*, 1 Cal.5th at 503; *see Lealao v. Beneficial California, Inc.*

(2000) 82 Cal.App.4th 19, 31 n.5 citing *In re Activision Sec. Litig.* (N.D. Cal 1989) 723 F. Supp. 1373, 1375). The percentage approach is preferable to the lodestar because: (1) it aligns the interests of class counsel and absent class members; (2) it encourages efficient resolution of the litigation by providing an incentive for early, yet reasonable, settlement; and (3) it reduces the demands on judicial resources. (*In re Activision Sec. Litig.*, 723 F. Supp. at 1378-79). The Ninth Circuit now routinely uses the percentage of the common fund approach to determine the award of attorney's fees. (*Lealao*, 82 Cal.App.4th at 30-31; *see e.g., In re Pac. Enters. Sec. Litig.* (9th Cir. 1995) 47 F.3d 373, 378-79 (approving attorney's fee of 33%)).

A fee of one-third (1/3) of the Gross Settlement Amount (i.e., $583,333.33) is easily within the range of reasonableness. Historically, courts have awarded percentage fees in the range of 20% to 50%, depending on the circumstances of the case. (*See In re Activision Sec. Litig.*, 723 F. Supp. at 1378). According to Professor Newberg: "No general rule can be articulated on what is a reasonable percentage of a common fund…Usually 50 per cent of the fund is the upper limit on a reasonable fee award from a common fund, in order to assure that fees do not consume a disproportionate part of the recovery obtained for the class, though somewhat larger percentages are not unprecedented." (Newberg on Class Actions (4th Ed.), § 14.6). Class Counsel's requested fee is reasonable and falls well within the historical range of attorney's fee awards under the common fund theory. Based on Class Counsel's showing of reasonableness, the Court should approve the requested fees pursuant to the common fund approach.

B. The Circumstances of this Case Support a One-Third (1/3) 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.

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C. The Contingent Nature of This Matter

From the outset of the Action to the present, prosecution of this matter 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 has placed its own resources at risk to prosecute this matter with no guarantee of success. The risks of this matter 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. (Rose Decl., ¶¶ 22-25). Despite such challenges, Class Counsel was able to persuade Defendant that it faced significant liability exposure such that it was willing to pay $1,750,000.00 to settle the Class Members' claims.

D. The Experience, Reputation, Ability of Counsel, and Skill in Litigation

Class Counsel has substantial experience in wage-and-hour and other class action litigation, including litigation involving the legal issues in this matter. (Rose Decl., ¶ 30. Class Counsel's skill in developing a factual record and 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* Rose Decl.).

E. 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 Class 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, Settlement Class Members will be paid, on average, approximately $2,316.67 each, which is intended to compensate them for the alleged wage and hour violations they suffered during their employment. (Rose Decl., ¶ 15). This is a significant benefit for the Settlement Class Members here as it represents a recovery for highly disputed claims. Equally important is the fact that the State of California will receive $150,000.00 for enforcement of labor laws and education of employers. (*Id*., ¶ 37).

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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.

F. 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 ibid*). 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. (Rose Decl., ¶ 29).

G. 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 various factors. (*Serrano 111, supra,* 20 Cal.3d at 48). Class Counsel's hourly rates are summarized in the Rose Decl. at ¶¶ 30-31.

One difficulty in determining the hourly rate of attorneys of similar skill and experience in the relevant community is the scarcity of hourly fee-paying clients in class action litigation. (Rose Decl., ¶ 31). As a practical matter, few if any employees or consumers pay attorneys' fees on an hourly basis for such extensive litigation, and thus retainer agreements in such cases are based on a stepped-up contingency fee (with the percentage increasing from one third to forty-five – and sometimes even fifty percent, which is on par with personal injury contingency fee agreements – if the case goes to trial). (Ibid). Therefore, there is no customary hourly billing rate for work that is routinely based on a contingent fee relationship, but the nature of class action work should be strongly considered by the

Court. (Ibid). Wage and hour work presents a specialized and challenging area of law that is not within the knowledge of many lawyers. (Ibid). This kind of class action work requires specialized learning and the willingness to take large risks. (Ibid).

Class Counsel has spent approximately 334.80 total hours litigating these claims to date.[2] (Rose Decl., ¶ 31). Class Counsel expects to spend another 10 hours in connection with the final approval process (including preparing for and attending the Final Approval Hearing, and managing the Settlement through its conclusion, including anticipated communications with defense counsel, the Settlement Administrator, our clients, and Class Members). (*Id.*, ¶ 32). In addition to time spent during litigation, reasonable hours also include the time spent before the Action was filed, including time spent interviewing the clients, investigating the facts and the law, preparing the initial pleadings, as well as litigating the case. (*Webb v. Board of Educ.* (1985) 471 U.S. 234). Further, the fee award should include fees incurred to establish and defend the attorneys' fee claim. (*Serrano v. Priest* (1982) 32 Cal .3d 621, 639 ("*Serrano IV*")). Based on the rates of Class Counsel, the total fees incurred to date are $305,070. (Rose Decl., ¶ 31). By the conclusion of this matter, the total fees are estimated to be approximately $315,570. (*Id.*, ¶ 32).

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

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[2] In *Martino v. Denevi* (1986) 182 Cal.App.3d 553, 559, the court addressed the issue of what evidence is required in California to support a fee application. The court held: "Testimony of an attorney as to the number of hours worked on a particular case is sufficient evidence to support an award of attorney 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 declaration 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.

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

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

> Given the unique reliance of our legal system on private litigants to enforce substantive provisions of law through class and derivative actions, attorneys providing the essential enforcement services must be provided incentives roughly comparable to those negotiated in the private bargaining that takes place in the legal marketplace, as it will 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 reached. The simplest way for the law to duplicate the bargain that informed parties would reach if agency costs were low is to look to fee award levels in actions brought by sophisticated private parties under the same or comparable statutes.

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

> [T]rial judges need the flexibility *Serrano III* provides, as it enables them to relate fee awards to the economic realities that determine the efficacy of the private enforcement contemplated by our civil justice system.
> Accordingly, we hold that, in cases in which the value of the class recovery can be monetized with a reasonable degree of certainty and it is not otherwise inappropriate, a trial court has discretion to adjust the basic lodestar through the application of a positive or negative multiplier where necessary to ensure that the fee awarded is within the range of fees freely negotiated in the legal marketplace in comparable litigation.

(*Id.* at 49-50).

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In looking at similar cases, including those set forth above, Class Counsel's requested fee comports to the market. Based on the reasonable hourly rates suggested by Class Counsel and the collective hours worked in this matter, the requested fee award would represent a modest multiplier of 1.92 over the current total fee lodestar. In this regard, Class Counsel's fee request is reasonable.

H. No Class Member Objected to the Requested Attorneys' Fee Award

Class Counsel's intention to request the Court's approval for payment of attorneys' fees was clearly disclosed to each Class Member in the Court-approved Class Notice. (Rose Decl., ¶ 34; *See also,* Polites Decl., Exh. A). As of the filing of this Motion, there has not been a single objection to the request for attorneys' fees. (Polites Decl., ¶ 10). It is fair to conclude that the Class approves of/does not take issue with the requested award of attorneys' fees. Based thereon, Class Counsel's request for one-third (1/3) of the Gross Settlement Amount, equaling Five Hundred Eighty-Three Thousand Three Hundred Thirty-Three Dollars and Thirty-Three Cents ($583,333.33), should be granted.

I. Plaintiffs' Cost Request is Reasonable

Class Counsel seeks reimbursement of a total amount of Sixteen Thousand Six Hundred Seventy-Nine Dollars and Five Cents ($16,679.05) in costs and expenses in this matter, which includes reasonable future costs for filing the Motion. (Rose Decl., ¶ 33 and Exh. 4). All costs and expenses were reasonably incurred in prosecution of this matter.

VIII. THE REQUESTED ENHANCEMENT PAYMENTS TO PLAINTIFFS ARE REASONABLE

The named Plaintiffs should be awarded Enhancement Payments in the amounts of Ten Thousand Dollars and Zero Cents ($10,000.00) each (total, $20,000.00) for their services as the Class Representative and the risks in connection with that role. (Rose Decl., ¶ 35). Enhancement awards in wage and hour cases typically range from $5,000.00 to $20,000.00, although some awards are higher. (Ibid). Often, multiple class representatives receive awards in the above range. (*See e.g.*, *Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles* (2010) 186 Cal.App.4th 399, 412 [approving an enhancement request of $10,000.00 per named plaintiff in a 188 member class]; *Cook v. Niedert*, 142 F.3d 1004, 1016 (7th Cir. 1998); *Thornton v. East Texas Motor Freight*, 497 F.2d 416, 420 (6th Cir. 1974) ["We also think there is something to be said for rewarding those drivers who protect and help to bring rights to a group of employees who have been the victims of discrimination."]). Here, the requested Enhancement Payments are modest, reasonable, and should be approved.

Plaintiffs' actions establish that: (1) they sought to protect the interests of the Class above their own personal interests; (2) the Settlement Class Members will be benefitted from their actions by receiving a payment without having to do anything; and (3) Plaintiffs have put forth a significant amount of time and effort pursuing the litigation and seeing it through to resolution. (*See*, generally, Lanzarin Decl. and Mixon Decl.; *see also Clark v. American Residential Services LLC* (2009) 175 Cal.App.4th 785, 804 (discussing the criteria for determining class representative enhancement awards in concluding that a requested award of $25,000 for two class representatives was too high)).

The requested award for Plaintiffs are also reasonable given the financial and personal risk they took in commencing the Action, and in light of the benefits that their actions have conferred upon the Class. (Lanzarin Decl., ¶ 7; Mixon Decl., ¶ 8; *See also Van Vranken v. Atl. Richfield Co.* (N.D.Cal. 1995) 901 F.Supp. 294, 299-300). Additionally, in considering a requested class representative enhancement award, courts take into consideration a plaintiff's reasonable fear of retaliation. (*Staton v. Boeing Co*. (9th Cir. 2003) 327 F.3d 938, 977). Here, it is easy to see that a potential future employer could expend little effort to discover Plaintiffs brought the lawsuit – and based thereon, decline to offer Plaintiffs employment.

In sum, Plaintiffs have performed considerable services on behalf of the Class during the litigation. (*See*, generally, Lanzarin Decl. and Mixon Decl.). Class Counsel cannot understate the importance of the role of an employee who is willing to search out an attorney and step forward to assume the risk of litigation and retaliation in order to represent a class and put the interests of the class before their own interests. Plaintiffs have understood that this is a class action where they are serving as the Class Representatives and must protect the Class Members' interests. (Lanzarin Decl., ¶ 10; Mixon Decl. ¶ 11). Plaintiffs were the catalyst to the benefit reached for the Class Members, and have actively protected the Class Members' interests during the pendency of this matter and will continue to do so even if the case was required to go to trial. (Ibid). Plaintiffs spent numerous hours participating in this matter by searching for an attorney, communicating with their attorneys on numerous occasions, searching for and producing relevant documents related to their employment, responding to their attorneys' inquiries, reviewing the settlement documents, and approving the Settlement on behalf of all Class Members. (*See*, generally, Lanzarin Decl. and Mixon Decl.).

In contrast, without having to take on any of the risk incurred by Plaintiffs or time spent by Plaintiffs in litigating this matter, Settlement Class Members will automatically be issued a payment for their claims. It appears that the Settlement Class Members recognize these enhancement were justified because since the time the Class received notice of the requested Enhancement Payments, no one has objected to the request. Thus, the Enhancement Payments to Plaintiffs are warranted to compensate them for their time and effort, the fear and stress associated with assuming the responsibility of serving as the Class Representatives, and the concrete risks they assumed as the Class Representatives.

IX. THE REQUESTED SETTLEMENT ADMINISTRATION COSTS ARE REASONABLE

In Plaintiffs' Motion for Preliminary Approval, Plaintiffs requested, and the Court approved, Settlement Administration Costs not to exceed Eleven Thousand Dollars and Zero Cents ($11,000.00). (Rose Decl., ¶ 36). ILYM Group, Inc. is the approved Settlement Administrator. (Ibid). It is an experienced class administrator and has adequately performed the administration tasks required by the Preliminary Approval Order. ILYM's *actual* costs to administer the Settlement are only Eight Thousand Nine Hundred Fifty Dollars and Zero Cents ($8,950.00). (Polites Decl., ¶ 17 and Exh. B). Based thereon, the requested costs should be approved.

X. THE PROPOSED LWDA ALLOCATION IS REASONABLE

Pursuant to California Labor Code Section 2699(1), the Superior Court shall review and approve the settlement of penalties sought under that California Labor Code Section. (Cal. Lab. Code § 2699(1)). For all of the reasons stated above, the Settlement is fair, reasonable, and adequate, and should be approved. As part of the Settlement, Defendant has agreed to pay Two Hundred Thousand Dollars and Zero Cents ($200,000.00) to settle the claims of the PAGA Employees brought pursuant to PAGA, of which the payment of One Hundred Fifty Thousand Dollars and Zero Cents ($150,000.00) (75% of the PAGA Amount) will be paid to the LDWA for education and enforcement purposes. (Rose Decl., ¶ 37).

It is extremely common in approved wage and hour class action cases that settle that only a small portion of the total settlement is paid to PAGA penalties "in order to maximize payments to class members." (*Magadia v. Wal-Mart Assocs*. (N.D. Cal. May 31, 2019, No. 17-CV-00062-LHK) 2019 U.S. Dist. LEXIS 91732, *90-91, citing as examples *Ceja-Corona v. CVS Pharm., Inc*. (E.D. Cal. Jan. 14, 2015) 2015 U.S. Dist. LEXIS 5118, 2015 WL 222500, at *2-3 [preliminarily approving $10,000 in PAGA penalties out of a total settlement amount of $900,000]; *Thio v. Genji, LLC* (N.D. Cal. 2014) 14 F. Supp. 3d 1324, 1330 [preliminarily approving $10,000 in PAGA penalties out of a total settlement amount of $1,250,000]; *Franco v. Ruiz Food Prods*. (E.D. Cal. Nov. 27, 2012) 2012 U.S. Dist. LEXIS 169057, 2012 WL 5941801, at *14 [granting final approval of $10,000 in PAGA penalties out of a total settlement amount of $2,500,000]; *Garcia v. Gordon Trucking, Inc.* (E.D. Cal. Oct. 31, 2012) 2012 U.S. Dist. LEXIS 160052, 2012 WL 5364575, at *3 [granting final approval of $10,000 in PAGA penalties out of a total settlement amount of $3,700,000]; *Chu v. Wells Fargo Invs., LLC* (N.D. Cal. Feb. 16, 2011) 2011 U.S. Dist. LEXIS 15821, 2011 WL 672645, at *1 [granting final approval of $10,000 in PAGA penalties out of a total settlement amount of $6,900,000]). Like here, in these approved settlements, the parties generally maximized statutory penalties and minimized PAGA penalties to focus on claims to the class members, the persons who actually suffered the California Labor Code violations. (Rose Decl., ¶ 38).

XI. THE CLASS RECEIVED THE BEST PRACTICABLE NOTICE

California law vests the Court with broad discretion in fashioning an appropriate notice program. (*See* California Civil Code § 1781; *Cartt v. Superior Court* (1975) 50 Cal.App.3d 960, 973-74). To protect the rights of absent class members, the parties must provide class members with the best notice practicable of a potential class action settlement. (*Phillips Petroleum Co. v. Shutts* (1985) 472 U.S. 797, 811-12; *Eisen v. Carlisle & Jacquelin* (1974) 417 U.S. 156, 174-76 [individual notice must be sent to all class members who can be identified through reasonable efforts]; *Mullane v. Central Hanover Bank & Garretson Company* (1950) 339 U.S. 306, 314 [best practicable notice is that which is "reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections"]). The content and method of the notice should be designed to apprise the class members of the terms of the proposed settlement and of the class members' rights regarding the settlement. (*See Mullane*, *supra*, 339 U.S. at 314; *Philadelphia Housing Authority v. American Radiator & Standard Sanitary Corp.* (E.D. Pa. 1970) 323 F. Supp. 364, 378).

The Class Notice approved by the Court met these requirements: it identified the Parties and described the Action, the Class, the Gross Settlement Amount, the proposed method for distribution of the Gross Settlement Amount, the amounts proposed to be paid as the Enhancement Payments to Plaintiffs, the Settlement Administration Costs to the Settlement Administrator, and the Attorneys' Fees and Costs to Class Counsel. (Rose Decl., ¶ 39; *see also* Polites Decl., Exh. A thereto). The Class Notice described the proposed Settlement with enough specificity to allow each Class Member to make an informed choice whether to accept and participate in it. (Ibid). It also explained how and when Class Members may object to or opt out of the Class Settlement. (Ibid). Finally, the Class Notice provided the date for the hearing on final approval of the Settlement and informed Class Members how to obtain additional information about the Settlement. (Ibid).

XII. CONCLUSION

For all of the foregoing reasons, Plaintiffs respectfully request that this Court grant Plaintiffs' Motion for Final Approval of Class Action and PAGA Settlement, and approve: (1) the requested attorneys' fees to Class Counsel of $583,333.33; (2) the requested reimbursement of actual costs and expenses to Class Counsel of $16,679.05; (3) the requested Enhancement Payments to Plaintiffs of $10,000.00 each (total, $20,000.00); and (4) the requested Settlement Administration Costs to the Settlement Administrator of $8,950.00; and permit the filing of a memorandum that exceeds the page limit.

Respectfully submitted,

Dated: September 17, 2025

BLACKSTONE LAW, APC

By: ______________________________
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