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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF TULARE**

ARMANDO GASTELUM, individually, and on
behalf of other members of the general public
similarly situated,

Plaintiffs,

vs.

PREMIER TRAILER MANUFACTURING,
INC., a California corporation; and DOES 1
through 25, inclusive,

Defendants.

Case No. VCU300333

Honorable Bret D. Hillman
Department 2

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

Date: April 15, 2025
Time: 8:30 a.m.
Dept.: 2

Complaint Filed: July 27, 2023
FAC Filed: September 27, 2023
Trial Date: Not Set

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

2 **PLEASE TAKE NOTICE THAT** on **April 15, 2025 at 8:30 a.m.** in Department 2 of the
3 above-captioned Court located at County Civic Center, 221 S. Mooney Boulevard, Visalia, California
4 93291, pursuant to California Code of Civil Procedure section 382, Rule 3.769 of the California Rules
5 of Court, and California Labor Code section 2699(1), Plaintiff Armando Gastelum (“Plaintiff”) will
6 and hereby does move the Court for an Order granting final approval of the proposed class action and
7 Labor Code Private Attorneys General Act of 2004, California Labor Code sections 2698, *et seq.*
8 (“PAGA”) settlement between Plaintiff and Defendant Premier Trailer Manufacturing, Inc.
9 (“Defendant”).

10 Plaintiff requests that the Court enter an Order:

- 11 1. Granting final approval of the class action and PAGA settlement;
- 12 2. Approving the settlement as fair, adequate, and reasonable, based upon the terms as set
13 forth in the Court-approved Joint Stipulation of Class Action and PAGA Settlement and Amendment
14 No. 1 to Joint Stipulation of Class Action and PAGA Settlement (together, “Settlement Agreement”
15 or “Settlement”), including payment by Defendant of the Gross Settlement Amount of One Million
16 Three Hundred Thousand Dollars and Zero Cents (\$1,300,000.00) equal to the amounts to pay (1) the
17 Settlement Class Members and PAGA Employees pursuant to the terms of the Settlement; (2) the
18 Court-approved Attorneys’ Fees and Costs; (3) the Court-approved Enhancement Payment; (4) the
19 Court-approved Settlement Administration Costs; and (5) the Court-approved payment to the
20 California Labor and Workforce Development Agency (“LWDA”) pursuant to PAGA;
- 21 3. Approving Class Counsel’s request for Two Hundred Thirty-One Thousand Seventy-
22 Two Dollars and Zero Cents (\$231,072.00) in attorneys’ fees, plus reimbursement of actual costs and
23 expenses in the amount of Sixteen Thousand Nine Hundred Thirty-Seven Dollars and Seven Cents
24 (\$16,937.07);
- 25 4. Approving the Enhancement Payment to Plaintiff in the amount of Five Thousand
26 Hundred Dollars and Zero Cents (\$5,000.00) in recognition of his services to the Class Members;
- 27 5. Approving the Settlement Administration Costs to ILYM Group, Inc. in the amount of
28 Twelve Thousand Nine Hundred Fifty Dollars and Zero Cents (\$12,950.00); and

8. Approving Thirty-Seven Thousand Five Hundred Dollars and Zero Cents (\$37,500.00) to be paid to the LWDA as seventy-five percent (75%) of the Fifty Thousand Dollars and Zero Cents (\$50,000.00) allocated to civil penalties under PAGA.

This Motion is based on the following Memorandum of Points and Authorities, the Settlement Agreement, the Declarations of Class Counsel (Jonathan M. Genish and Miriam L. Schimmel), the Class Representative (Armando Gastelum), and the Settlement Administrator (Nicole Bench 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: March 21, 2025

BLACKSTONE LAW, APC

By: Jonathan M. Genish
Miriam L. Schimmel
 Attorneys for Plaintiff Armando Gastelum
 and the Class

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiff Armando Gastelum (“Plaintiff” or “Class Representative”) seeks final approval of the
4 class action settlement reached with Defendant Premier Trailer Manufacturing, Inc. (“Defendant”).
5 Subject to Court approval, Plaintiff and Defendant (together, the “Parties”) have entered into the Joint
6 Stipulation of Class Action and PAGA Settlement (“Original Agreement”) and Amendment No. 1 to
7 Joint Stipulation of Class Action and PAGA Settlement (“Amendment No. 1”) (together, “Settlement
8 Agreement” or “Settlement”) for a total amount of One Million Three Hundred Thousand Dollars and
9 Zero Cents (\$1,300,000.00) (“Gross Settlement Amount”). (See Declaration of Jonathan M. Genish
10 in Support of Plaintiff’s Motion for Final Approval of Class Action and PAGA Settlement [“Genish
11 Decl.”], ¶¶ 15, 18, & 24, Exhibits 2 & 3).

12 The Court conditionally certified, for settlement purposes only, the Class defined as: “All
13 current and former hourly-paid and/or non-exempt employees who worked for Defendant in the State
14 of California at any time during the Class Period” (“Class” or “Class Members”). (Original
15 Agreement, ¶ 6.b; Genish Decl., ¶ 22). The “Class Period” is defined as the period from July 27, 2019
16 through July 6, 2024. (Original Agreement, ¶ 6.f; Genish Decl., ¶ 22). The “Settlement Class
17 Members” consist of all Class Members who did not submit a timely and valid Request for Exclusion.
18 (Original Agreement, ¶ 6.1l; Genish Decl., ¶ 22). The “PAGA Employees” consist of “all current and
19 former hourly-paid and/or non-exempt employees who worked for Defendant in the State of California
20 at any time during the PAGA Period.” (Original Agreement, ¶ 6.x; Genish Decl., ¶ 22). The “PAGA
21 Period” is defined as the period from July 20, 2022 through July 6, 2024. (Original Agreement, ¶ 6.z;
22 Genish Decl., ¶ 22).

23 As discussed herein, the proposed Settlement satisfies all the criteria for final settlement
24 approval under California law because it is fair, adequate, and reasonable. (Genish Decl., Exhibits 2
25 & 3; See also, *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 129-30; *Dunk v. Ford*
26 *Motor Company* (1996) 48 Cal.App.4th 1794, 180 l). The response of the Class to the Settlement
27 confirms that final settlement approval is appropriate. *There have been no objections to or requests*
28 *to opt-out from the Class Settlement.* (Declaration of Nicole Bench of ILYM Group, Inc. Regarding

1 Notice and Settlement Administration [“Bench Decl.”], ¶¶ 10 & 11).

2 Because the Settlement achieves outstanding results for the Settlement Class Members, the
3 PAGA Employees, and the State of California, Plaintiff respectfully requests, on behalf of the Class
4 and without opposition from Defendant, that the Court approve the Settlement as fair, adequate, and
5 reasonable, and enter judgment in accordance with the Settlement’s terms.

6 II. PROCEDURAL HISTORY AND FACTUAL BACKGROUND

7 Defendant is a trailer manufacturer founded in 1996. Plaintiff was employed by Defendant as
8 an hourly-paid, non-exempt Riveter from approximately April 2022 to approximately August 2022.
9 (Declaration of Plaintiff Armando Gastelum in Support of Motion for Final Approval of Class Action
10 and PAGA Settlement [“Gastelum Decl.”], ¶ 2).

11 On July 20, 2023, Plaintiff provided written notice to the California Labor and Workforce
12 Development Agency (“LWDA”) by online submission and to Defendant by U.S. Certified Mail,
13 pursuant to California Labor Code Section 2699.3, of the specified provisions of the California Labor
14 Code alleged to have been violated by Defendant (“PAGA Letter”). (Genish Decl., ¶ 9).

15 On July 27, 2023, Plaintiff filed a Class Action Complaint for Damages in the action entitled
16 *Armando Gastelum v. Premier Trailer Manufacturing, Inc.*, Tulare County Superior Court Case No.
17 VCU300333 (“Action”), thereby commencing a putative class action against Defendant. (*Id.*, ¶ 10).

18 On September 27, 2023, Plaintiff filed a First Amended Complaint (“Operative Complaint”)
19 in the Action. (*Id.*, ¶ 11). The Operative Complaint alleges ten (10) causes of action for violations of
20 the California Labor Code for failure to pay overtime wages, failure to provide compliant meal periods
21 and premium payments in lieu thereof, failure to provide compliant rest periods and premiums
22 payments in lieu thereof, failure to pay minimum wages, failure to timely pay wages upon termination,
23 failure to timely pay wages during employment, failure to provide accurate wage statements, and
24 failure to reimburse necessary business expenses, for violations of California Business & Professions
25 Code Section 17200, *et seq.* based on the aforementioned California Labor Code violations, and for
26 civil penalties under the Private Attorneys General Act of 2004 pursuant to California Labor Code
27 Section 2698 *et seq.* (“PAGA”) based on the aforementioned California Labor Code violations. (*Ibid.*)

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1 On February 22, 2024, Defendant propounded written formal discovery onto Plaintiff
2 (specifically, Form Interrogatories – General (Set One), Form Interrogatories – Employment Law (Set
3 One), Special Interrogatories (Set One), Request for Admission (Set One), and Request for Production
4 of Documents (Set One)). (*Id.*, ¶ 12).

5 On March 14, 2024, Plaintiff propounded written formal discovery onto Defendant
6 (specifically, Form Interrogatories – General (Set One), Form Interrogatories – Employment Law (Set
7 One), Special Interrogatories (Set One), Requests for Admission (Set One), and Requests for
8 Production of Documents (Set One)), noticed the deposition of Defendant’s Person Most
9 Knowledgeable, and served a proposed Belaire-West notice. (*Id.*, ¶ 13).

10 On May 7, 2024, the Parties participated in a formal mediation conducted by Judge Howard
11 R. Broadman (Ret.) (“Mediator”), a neutral and respected mediator with extensive experience in
12 complex wage and hour matters, and with the assistance of the Mediator’s evaluations, the Parties
13 were able to reach an agreement to resolve this dispute on a class and representative basis. (*Id.*, ¶ 14).
14 The Parties then worked diligently to negotiate and memorialize the terms in a long form settlement
15 agreement. (*Ibid.*).

16 On July 2, 2024, the Parties executed the Original Agreement. (*Id.*, ¶ 15 & Exh. 2).

17 On July 15, 2024, Plaintiff submitted for filing the Motion for Preliminary Approval of Class
18 Action and PAGA Settlement (“Motion for Preliminary Approval”) and supporting documents. (*Id.*,
19 ¶ 16). On July 24, 2024, pursuant to the Clerk’s request, Plaintiff re-submitted for filing the Motion
20 for Preliminary Approval and supporting documents, which were deemed filed on this same date.
21 (*Ibid.*). On August 5, 2024, the Court issued a tentative ruling, which continued the hearing on the
22 Motion for Preliminary Approval to September 10, 2024 at 8:30 a.m. (*Ibid.*).

23 On September 9, 2024, the Court issued a tentative ruling (“September 9, 2024 Tentative
24 Ruling”) in which it raised certain issues and points of inquiry with regards to the Motion for
25 Preliminary Approval. (*Id.*, ¶ 17). On September 11, 2024, the Court entered a Minute Order
26 (“September 11, 2024 Minute Order”), which adopted the September 9, 2024 Tentative Ruling. (*Ibid.*).

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1 To address the certain issues raised in the September 11, 2024 Minute Order, namely to change
2 the Response Deadline from forty-five (45) calendar days to sixty (60) calendar days and the amount
3 of Plaintiff's Enhancement Payment from Ten Thousand Dollars and Zero Cents (\$10,000.00) to Five
4 Thousand Dollars and Zero Cents (\$5,000.00), the Parties met and conferred and executed
5 Amendment No. 1. (*Id.*, ¶ 18 & Exh. 3).

6 On September 23, 2024, Plaintiff filed a Supplemental Declaration of Jonathan M. Genish in
7 Support of Plaintiff's Motion for Preliminary Approval of Class Action and PAGA Settlement to
8 address the issues and points of inquiry in the September 11, 2024 Minute Order. (*Id.*, ¶ 19).

9 On September 30, 2024, the Court issued a tentative ruling ("September 30, 2024 Tentative
10 Ruling") in which it granted the Motion for Preliminary Approval as modified therein. (*Id.*, ¶ 20).

11 On October 1, 2024, counsel for Plaintiff presented oral argument at the hearing on the Motion
12 for Preliminary Approval regarding the September 30, 2024 Tentative Ruling. (*Id.*, ¶ 21).
13 Subsequently, the Court entered an Order ("Preliminary Approval Order"), which adopted the
14 September 30, 2024 Tentative Ruling. (*Id.*, ¶ 21 & Exh. 4).

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

21 **III. SUMMARY OF THE SETTLEMENT TERMS AND PLAN OF DISTRIBUTION**

22 The Parties have agreed to settle the Class and PAGA claims at issue in the Action for a non-
23 reversionary Gross Settlement Amount of One Million Three Hundred Thousand Dollars and Zero
24 Cents (\$1,300,000.00), which is exclusive of employer-side payroll taxes. (Original Agreement, ¶ 6.p;
25 Genish Decl., ¶ 24). The Gross Settlement Amount includes: (1) requested Class Counsel's fees in
26 the amount of Two Hundred Thirty-One Thousand Seventy-Two Dollars and Zero Cents
27 (\$231,072.00); (2) Class Counsel's actual litigation costs and expenses, in the amount of Sixteen
28 Thousand Nine Hundred Thirty-Seven Dollars and Seven Cents (\$16,937.07); (3) Settlement

1 Administration Costs in the amount of Twelve Thousand Nine Hundred Fifty Dollars and Zero Cents
2 (\$12,950.00); (4) Enhancement Payment in the amount of Five Thousand Dollars and Zero Cents
3 (\$5,000.00); and (5) PAGA Amount in the amount of Fifty Thousand Dollars and Zero Cents
4 (\$50,000.00). (Original Agreement, ¶¶ 9, 11, & 12; Amendment No. 1, ¶ B; Genish Decl., ¶ 24). After
5 the above Court-approved amounts are deducted from the Gross Settlement Amount, the Settlement
6 Class Members will share in a Net Settlement Amount currently estimated to be approximately Nine
7 Hundred Eighty-Four Thousand Forty Dollars and Ninety-Three Cents (\$984,040.93). (Original
8 Agreement, ¶ 6.u; Genish Decl., ¶ 24).

9 The Settlement does not require Settlement Class Members to submit claims as a prerequisite
10 to receiving their *pro rata* share of the Net Settlement Amount (“Individual Settlement Share”) nor
11 does it require PAGA Employees to submit claims as a prerequisite to receiving their *pro rata* share
12 of the PAGA Employee Amount (“Individual PAGA Payment”). (Original Agreement, ¶¶ 6.q, 6.s, &
13 34; Genish Decl., ¶ 25). Individual Settlement Shares are calculated by the Settlement Administrator
14 by dividing the Net Settlement Amount by the number of weeks each Settlement Class Member
15 worked for Defendant as an hourly-paid and/or non-exempt employee in California during the Class
16 Period (“Workweeks”) to yield the “Final Workweek Value,” and multiplying each Settlement Class
17 Member’s individual Workweeks by the Final Workweek Value. (Original Agreement, ¶¶ 6.mm &
18 14.b; Genish Decl., ¶ 25). Individual PAGA Payments are calculated by the Settlement Administrator
19 by dividing the PAGA Employee Amount (i.e., 25% of the PAGA Amount) by the number of weeks
20 each PAGA Employee worked for Defendant as an hourly-paid and/or non-exempt employee in
21 California during the PAGA Period (“PAGA Workweeks”) to yield the “PAGA Workweek Value,”
22 and multiplying each PAGA Employee’s individual PAGA Workweeks by the PAGA Workweek
23 Value. (Original Agreement, ¶¶ 6.bb & 15; Genish Decl., ¶ 25).

24 Each Individual Settlement Share will be allocated as fifteen percent (15%) wages and eighty-
25 five percent (85%) penalties, interest, and non-wage damages. (Original Agreement, ¶ 16; Genish
26 Decl., ¶ 27). The portion allocated to wages will be reported on an IRS Form W-2 and the portions
27 allocated to penalties, interest, and non-wage damages will be reported on an IRS Form 1099 (if
28 applicable) by the Settlement Administrator. (Original Agreement, ¶ 16; Genish Decl., ¶ 27). The

1 Settlement Administrator will withhold the employee's share of taxes and withholdings with respect
2 to the wages portion of the Individual Settlement Shares, and issue checks to Settlement Class
3 Members for their net payment of their Individual Settlement Share ("Individual Settlement
4 Payment"). (Original Agreement, ¶ 6.r. & 16; Genish Decl., ¶ 27). The employer's share of taxes and
5 contributions in connection with the wages portion of Individual Settlement Shares will be paid by
6 Defendant separately and in addition to the Gross Settlement Amount. (Original Agreement, ¶ 16;
7 Genish Decl., ¶ 27). Each Individual PAGA Payment will be allocated as one hundred percent (100%)
8 penalties and will be reported on an IRS Form 1099 (if applicable) by the Settlement Administrator.
9 (Original Agreement, ¶ 16; Genish Decl., ¶ 27).

10 Each Individual Settlement Payment and Individual PAGA Payment check will be valid and
11 negotiable for one hundred and eighty (180) calendar days from the date the checks are issued, and
12 thereafter, shall be canceled. (Original Agreement, ¶ 34; Genish Decl., ¶ 28). Any funds associated
13 with such canceled checks will be distributed by the Settlement Administrator to State of California's
14 Unclaimed Property Division in the name of the Settlement Class Member and/or PAGA Employee.
15 (Ibid).

16 Upon the full funding of the Gross Settlement Amount, Plaintiff and all Settlement Class
17 Members will be deemed to have fully, finally, and forever released, settled, compromised,
18 relinquished, and discharged the Released Parties of all Released Class Claims. (Original Agreement,
19 ¶ 35).

20 Upon the full funding of the Gross Settlement Amount, Plaintiff, the State of California with
21 respect to all PAGA Employees, and all PAGA Employees will be deemed to have fully, finally, and
22 forever released, settled, compromised, relinquished, and discharged the Released Parties of all
23 Released PAGA Claims. (*Id.*, ¶ 36).

24 The "Released Class Claims" are any and all claims which were alleged or which could have
25 been alleged based on the factual allegations in the Operative Complaint, arising during the Class
26 Period, which specifically includes claims for Defendant's alleged failure to pay overtime and
27 minimum wages, provide compliant meal and rest periods and associated premium payments, timely
28 pay wages during employment and upon termination, provide accurate wage statements, and

1 reimburse necessary business-related expenses in violation of California Labor Code Sections 201,
2 202, 203, 204, 210, 226(a), 226.7, 510, 512(a), 1194, 1197, 1197.1, 1198, 2800, and 2802, the
3 applicable Industrial Welfare Commission Wage Order, and California Business and Professions Code
4 Sections 17200, *et seq.* (*Id.*, ¶ 6.ee).

5 The “Released PAGA Claims” are any and all claims arising from any of the factual allegations
6 in the Operative Complaint and PAGA Letter, arising during the PAGA Period, for civil penalties
7 under the Private Attorneys General Act of 2004, California Labor Code sections 2698 *et seq.*, which
8 specifically includes claims for Defendant’s alleged failure to pay overtime and minimum wages,
9 provide compliant meal and rest periods and associated premium payments, timely pay wages during
10 employment and upon termination, provide complaint wage statements, maintain complete and
11 accurate payroll records, and reimburse necessary business-related expenses in violation of California
12 Labor Code Sections 201, 202, 203, 204, 210, 226(a), 226.7, 510, 512(a), 1174(d), 1194, 1197, 1197.1,
13 1198, 2800, and 2802, and the applicable Industrial Welfare Commission Wage Order. (*Id.*, ¶ 6.ff).

14 The “Released Parties” are Defendant and its past and present partnerships, corporations,
15 subsidiaries, and administrators, and their respective predecessors, successors, assigns, and
16 shareholders, and all of their past and present officers, directors, members, agents, attorneys,
17 accountants, and insurers, and all of their respective predecessors, successors, heirs, assigns, executors,
18 and administrators thereof. (*Id.*, ¶ 6.gg).

19 Upon the full funding of the Gross Settlement Amount, Plaintiff, individually and on his own
20 behalf, will be deemed to have fully, finally, and forever released, settled, compromised, relinquished,
21 and discharged the Released Parties from any and all claims, debts, liabilities, demands, obligations,
22 guarantees, costs, expenses, attorneys’ fees, damages, or causes of action of any kind or nature
23 whatsoever, known or unknown, suspected or unsuspected, asserted or unasserted, which Plaintiff, at
24 any time of execution of the Original Agreement, had or claimed to have or may have, including but
25 not limited to any and all claims arising out of, relating to, or resulting from his employment and/or
26 separation of employment with the Released Parties, including any claims arising under any federal,
27 state, or local law, statute, ordinance, rule, or regulation or Executive Order relating to employment,
28 including, but in no way limited to, any claim under Title VII of the Civil Rights Act of 1964, as

1 amended, 42 U.S.C. § 1981; the Americans with Disabilities Act; the Family and Medical Leave Act;
2 the Employee Retirement Income Security Act; the California Family Rights Act; the California Fair
3 Employment and Housing Act; all claims for wages or penalties under the Fair Labor Standards Act;
4 all claims for wages or penalties under the California Labor Code; Business and Professions Code
5 sections 17200 *et seq.*; all laws relating to violation of public policy, retaliation, or interference with
6 legal rights; any and all other employment or discrimination laws; whistleblower claims; any tort,
7 fraud, or constitutional claims; and any breach of contract claims or claims of promissory estoppel.
8 (*Id.*, ¶ 37). It is agreed that this is a general release and is to be broadly construed as a release of all
9 claims, provided that, notwithstanding the foregoing, this Paragraph expressly does not include a
10 release of any claims that cannot be released hereunder by law. (*Ibid.*). Plaintiff understands and
11 expressly agrees that the Original Agreement extends to claims that he has against Defendant, of
12 whatever nature and kind, known or unknown, suspected or unsuspected, vested or contingent, past,
13 present, or future, arising from or attributable to an incident or event, occurring in whole or in part, on
14 or before the execution of the Original Agreement. (*Ibid.*). Any and all rights granted under any state
15 or federal law or regulation limiting the effect of the Original Agreement, including the provisions of
16 Section 1542 of the California Civil Code, ARE HEREBY EXPRESSLY WAIVED. (*Ibid.*). Section
17 1542 of the California Civil Code reads as follows:

18 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR
19 RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT
20 THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER,
21 WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR
22 OR RELEASED PARTY. (*Ibid.*).

23 THE SETTLEMENT ADMINISTRATION PROCESS

24 The Court-approved settlement administrator, ILYM Group, Inc. (“ILYM” or “Settlement
25 Administrator”), has taken all necessary steps to effectuate the notice and settlement administration
26 process, as set forth in the Settlement Agreement.

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1 On October 15, 2024, ILYM received the Court approved text for the Class Notice from Class
2 Counsel. (Bench Decl., ¶ 4). ILYM prepared a draft of the formatted Class Notice, which was
3 approved by the Parties' counsel prior to mailing. (Ibid).

4 On October 16, 2024, ILYM received the Class List from counsel for Defendant, which
5 contained the full name, Social Security number, last known mailing address, last known telephone
6 number, and the dates worked for Defendant for each Class Member and PAGA Employee. (*Id.*, ¶ 5).
7 The Class List was uploaded to ILYM's database and checked for duplicates and other possible
8 discrepancies. (Ibid). The Class List contained 1,098 individuals identified as Class Members. (Ibid).

9 As part of the preparation for mailing, all 1,098 names and addresses contained in the Class
10 List were then processed against the National Change of Address ("NCOA") database, maintained by
11 the United States Postal Service ("USPS"), for purposes of updating and confirming the mailing
12 addresses of the Class Members before mailing of the Class Notice. (*Id.*, ¶ 6). The NCOA contains
13 requested change of addresses filed with the USPS. (Ibid). To the extent that an updated address was
14 found in the NCOA database, the updated address was used for the mailing of the Class Notice. (Ibid).
15 To the extent that no updated address was found in the NCOA database, the original address provided
16 by counsel for Defendant was used for the mailing of the Class Notice. (Ibid).

17 On October 30, 2024, a link to ILYM Group's website was set up for Class Members to access
18 relevant court documents. (*Id.*, ¶ 7). The website link is <https://www.ilymgroup.com/cases>. (Ibid).
19 Also, the following telephone number, (888) 250-6810, was included in the Class Notice for Class
20 Members should they have questions or want additional information. (Ibid).

21 On October 30, 2024, the Class Notice was mailed, in both English and Spanish, via U.S First
22 Class Mail, to all 1,098 individuals contained in the Class List. (*Id.*, ¶ 8).

23 158 Class Notices were returned to ILYM as undeliverable. (*Id.*, ¶ 9). Of the 158 Class
24 Notices, none were returned with a forwarding address provided by the USPS. (Ibid). ILYM
25 performed a computerized skip trace on all 158 returned Class Notices that did not have a forwarding
26 address, in an effort to obtain updated addresses for the purpose of re-mailing the Class Notices. (Ibid).
27 As a result of this skip trace, 103 updated addresses were obtained and the Class Notices were promptly
28 re-mailed to those Class Members, via U.S. First Class Mail. (Ibid). A total of 55 Class Notices were

1 deemed undeliverable as no updated address was found notwithstanding the skip tracing. (Ibid).

2 Class Members had sixty (60) calendar days to submit a Request for Exclusion, Notice of
3 Objection, or and/or Workweeks Dispute (“Response Deadline”). (Amendment No. 1, ¶ A). The
4 Response Deadline was December 30, 2024. (Bench Decl., ¶¶ 10-12). The Settlement Administrator
5 did not receive any Requests for Exclusion, Notices of Objection, or Workweeks Disputes. (*Id.*, ¶¶
6 10-12). Additionally, the Response Deadline was extended by fifteen (15) calendar days (i.e., January
7 14, 2025) for Class Members whose Class Notice was re-mailed. (Bench Decl., ¶ 13; Amendment
8 No. 1, ¶ A). ILYM did not receive any response from those Class Members. (Bench Decl., ¶ 13).

9 To date, there are one thousand ninety-eight (1,098) Settlement Class Members, representing
10 100% of the Class. (*Id.*, ¶ 14). The total number of Workweeks worked by all Settlement Class
11 Members during the Class Period is 34,390. (Ibid). Accordingly, the Escalator Clause has not been
12 triggered. (Ibid).

13 The highest Individual Settlement Share is estimated to be \$5,855.64, the average Individual
14 Settlement Share is estimated to be \$689.48, and the lowest Individual Settlement Share is estimated
15 to be \$22.01. (Ibid).¹ These amounts are subject to employee-side taxes and withholdings. (Ibid).

16 To date, there are four hundred twenty-one individuals identified as PAGA Employees. (*Id.*,
17 ¶ 17). The total number of PAGA Workweeks worked by all PAGA Employees during the PAGA
18 Period is 11,276. (Ibid). The highest Individual PAGA Payment is estimated to be \$121.94, the
19 average Individual PAGA Payment is estimated to be \$29.69, and the lowest Individual PAGA
20 Payment is estimated to be \$1.11. (*Id.*, ¶ 16).

21 **IV. COMPLIANCE WITH PROCEDURAL REQUIREMENTS OF PAGA**

22 On July 24, 2024, Class Counsel submitted a copy of the Original Agreement to the LWDA,
23 and on September 23, 2024, Class Counsel submitted a copy of Amendment No. 1 to the LWDA, to
24 the LWDA through its online submission portal in compliance with California Labor Code §
25 2699(1)(2). (Genish Decl., ¶ 29). The LWDA has not objected or otherwise responded to the
26

27 ¹ The actual highest, average, and lowest Individual Settlement Shares will be larger than the amounts stated in the Bench
28 Decl. because the Net Settlement Amount is larger due to Class Counsel’s request for attorneys’ fees in an amount that is
less than \$455,000.00 and request for reimbursement of litigation costs and expenses in an amount that is less than
\$20,000.00 (the difference between the amounts sought and the amounts authorized under the Settlement, i.e., \$226,990.93
will be part of the Net Settlement Amount).

1 submissions. (Ibid).

2 **V. EVALUATION OF SETTLEMENT FOR FINAL APPROVAL**

3 **A. The Legal Standard for Final Approval**

4 Before granting final approval of a class action settlement, the Court must review the
5 settlement for fairness. (Cal. Rules of Court, rule 3.769(g); *Dunk v. Ford Motor Co.* (1996) 48
6 Cal.App.4th 1794, 1801). A court must take into account relevant factors, including, for example, the
7 strength of the plaintiff's case, the risk, expense, complexity and likely duration of further litigation,
8 the amount offered in settlement, the extent of discovery completed and the stage of the proceedings,
9 the experience and views of counsel, and the reaction of the class members to the proposed settlement.
10 (*Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 244-45; *Dunk*, 48 Cal.App.4th at 1801
11 ["The list of factors is not exhaustive and should be tailored to each case"]; *Officers for Justice v. Civil*
12 *Serv. Comm'n* (9th Cir. 1982) 688 F.2d 615, 625). Considering such factors, a presumption of fairness
13 exists where: (1) the settlement is reached through arm's-length bargaining; (2) investigation and
14 discovery are sufficient to allow counsel and the court to act intelligently; (3) counsel is experienced
15 in similar litigation; and (4) the percentage of objectors is small. (*Wershba*, 91 Cal.App.4th at 245;
16 *Dunk*, 48 Cal.App.4th at 1802). "The settlement or fairness hearing is not to be turned into a trial or
17 rehearsal for trial on the merits. [The trial court is not] to reach any ultimate conclusions on the
18 contested issues of fact and law which underlie the merits of the dispute, for it is the very uncertainty
19 of outcome in litigation and avoidance of wasteful and expensive litigation that induce consensual
20 settlements." (*Officers for Justice, supra*, 688 F.2d at 625).

21 **B. The Settlement Should be Finally Approved**

22 California courts recognize that "a presumption of fairness exists where . . . [a] settlement is
23 reached through arm's-length bargaining." (*Wershba*, 91 Cal.App.4th at 245; *see also Clark v. Am.*
24 *Residential Servs. LLC*, 175 Cal.App.4th 785, 799 (2009)). Here, the Parties' settlement negotiations
25 were at all times made at arm's-length and were adversarial. (Genish Decl., ¶ 30). The Parties engaged
26 in extensive formal and informal discovery prior to reaching a settlement at the mediation. (Ibid).

27 ///

28 ///

1 **C. The Settlement is Fair and Reasonable**

2 Courts typically assess the status of discovery in determining whether a class action settlement
3 agreement is fair, reasonable, and adequate. (*Dunk*, 48 Cal.App.4th at 1801). Prior to mediation,
4 Defendant produced a random sampling of putative class members' time and pay records, as well as
5 Defendant's relevant wage and hour policies, and information regarding the total number of putative
6 class members, the number of current versus former employees, the total workweeks worked by the
7 putative class members, and the average rate of pay for the putative class members. (Genish Decl., ¶
8 30). This allowed Class Counsel to conduct an informed assessment and analysis of the strengths and
9 weaknesses of the claims and the potential class-wide damages. (Ibid). Plaintiff's investigation was
10 sufficient to satisfy the criteria for court approval set forth in *Dunk v. Foot Locker Retail, Inc.* (1996)
11 48 Cal.App.4th 1794, 1801 and *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 129-
12 130 ("Dunk/Kullar").

13 Based on the information exchanged, the Parties extensively briefed issues regarding class
14 certification and liability and provided their analyses to the Mediator who helped the Parties debate
15 the strengths and weakness of their respective positions. (Genish Decl., ¶ 31). After a full day of
16 mediation, and with the help of the mediator, the Parties were able to reach an agreement to resolve
17 this dispute on a class and representative basis. (Ibid). Additionally, settlement negotiations were
18 conducted by highly capable and experienced counsel. (Ibid). Plaintiff engaged in additional
19 negotiations in order to finalize the Settlement Agreement presently before the Court. (Ibid). At all
20 times, Plaintiff was willing and prepared to litigate this matter through class certification and trial if
21 the Parties had been unable to reach a favorable resolution. (Ibid). Class Counsel are respected
22 members of the California State Bar with strong records of vigorous and effective advocacy and are
23 experienced in handling complex wage and hour class action litigation. (Genish Decl., ¶¶ 3-8;
24 Declaration of Miriam L. Schimmel ["Schimmel Decl."], ¶¶ 3-10). Accordingly, Class Counsel had
25 sufficient information and experience to act intelligently in negotiating the Settlement.

26 A settlement is not judged against what might have been recovered had a plaintiff prevailed at
27 trial, nor does the settlement have to obtain 100% of the damages sought to be fair and reasonable.
28 (*Wershba*, 91 Cal.App.4th at 246, 250). In evaluating the reasonableness of a settlement, a trial court

1 must consider “the strength of plaintiffs’ case, the risk, expense, complexity and likely duration of
2 further litigation, the risk of maintaining class action status through trial, the amount offered in
3 settlement, the extent of discovery completed and the stage of the proceedings, the experience and
4 views of counsel, the presence of a governmental participant, and the reaction of the class members to
5 the proposed settlement.” (*Kullar v. Foot Locker Retail, Inc.*, 168 Cal.App.4th 116, 128 (2008)).

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

10 Defendant denied and continues to deny any liability and wrongdoing of any kind associated
11 with the claims alleged in the Action, and further denies that class certification is appropriate for any
12 purpose other than the Settlement. (Genish Decl., ¶ 32). Defendant believes that it would ultimately
13 prevail in the Action. (Ibid). Defendant proffered defenses to both certification and to the merits of
14 Plaintiff’s claims. (Ibid). Defendant contended that Plaintiff’s claims are not suitable for class
15 certification because individual issues would predominate should this case go to trial. (Ibid). As with
16 all class actions, these complex cases raise difficult management and proof issues and, accordingly,
17 there is a significant risk that the Court may deny class certification. (Ibid).

18 Class Counsel was aware of Defendant’s defenses and arguments and have also taken into
19 account the uncertainty and risk of the outcome of further litigation, and the difficulties and delays
20 inherent in such litigation, including those involved in class and/or representative adjudication. (*Id.*,
21 ¶ 33). Plaintiff further recognizes the burdens of proof necessary to establish liability for the claims
22 asserted in the Action, Defendant’s defenses, and the difficulties in establishing entitlement to
23 monetary recovery. (Ibid). Plaintiff has also considered the Parties’ settlement discussions, as well
24 as the evaluations of the Mediator, who is experienced and well-regarded in complex labor and
25 employment matters. (Ibid).

26 Class Counsel also recognized that, even if Plaintiff prevailed at class certification, proving the
27 amount of wages due to each Class Member would be an expensive, time-consuming, and extremely
28 uncertain proposition. (*Id.*, ¶ 34). In order to prove liability and damages, Class Counsel will need to

1 request and analyze thousands of pages of documents, obtain the Class Members' contact information,
2 contact them, and obtain declarations at great expense. (Ibid). Obtaining the cooperation of current
3 employees would also be difficult, given the likely reluctance to aid prosecution of a lawsuit against a
4 current employer. (Ibid). On the other hand, Defendant would likely be able to obtain the cooperation
5 of their employees. (Ibid). Moreover, even if Plaintiff prevailed at class certification and trial, possible
6 appeals would substantially delay any recovery by the Class. (Ibid).

7 In light of the Parties' respective legal positions and the risks of continued litigation, the Gross
8 Settlement Amount for resolution of the Class and PAGA claims, is fair, adequate, and reasonable.
9 (*Id.*, ¶ 35).

10 **VI. THE REQUESTED ATTORNEYS' FEES AND COSTS ARE REASONABLE**
11 **AND SHOULD BE APPROVED**

12 Class Counsel seeks Two Hundred Thirty-One Thousand Seventy-Two Dollars and Zero Cents
13 (\$231,072.00) for fees for the time spent litigating this matter and reimbursement of actual costs and
14 expenses totaling \$16,937.07 incurred in the prosecution of the Action. (Genish Decl., ¶ 36 & Exh.
15 5). The requested fees and costs are fair compensation for undertaking complex, risky, expensive, and
16 time-consuming litigation on a contingent fee basis, especially in light of the substantial benefits
17 achieved by Class Counsel for the Class Members. (Ibid). Class Counsel's requested fee award is
18 summarily addressed as follows but is more fully discussed in Plaintiff's Motion for Attorneys' Fees
19 and Costs, Enhancement Payment, and Settlement Administration Costs ("Motion for Attorneys' Fees
20 and Costs") and the Declaration of Miriam L. Schimmel filed concurrently herewith.

21 The effectiveness of Blackstone Law, APC's prosecution of this matter has translated into
22 tangible monetary benefits for the Settlement Class Members as follows: (1) Settlement Class
23 Members will obtain monetary recovery over a relatively short period of time, as opposed to waiting
24 additional years for the same, or potentially worse, result; (2) a guaranteed result that compares
25 favorably with other similar class action settlements of this type, given the strengths and weaknesses
26 of the Action; and (3) significant savings in Class Counsel's fees and/or costs that would have only
27 increased significantly had the Action progressed through trial and/or appeals. (Ibid).

28 ///

1 Class Counsel has litigated this matter for over a year and was prepared to continue litigating
2 this matter through class certification and trial. (Ibid). Plaintiff's Motion for Attorneys' Fees and
3 Costs filed concurrently herewith elaborates on the nature of the legal services provided, the time
4 incurred in performing those services, and Class Counsel's hourly rates. (Ibid). The requested award
5 of fees and costs was included and set forth clearly in the Class Notice provided to the Class Members.
6 (Ibid).

7 **VII. THE REQUESTED ENHANCEMENT PAYMENT TO PLAINTIFF IS**
8 **REASONABLE**

9 As part of the Settlement Agreement, Plaintiff is requesting a reasonable Enhancement
10 Payment in the amount of Five Thousand Dollars and Zero Cents (\$5,000.00) to Plaintiff, which has
11 been approved by the Court. (Genish Decl., ¶ 39). The requested Enhancement Payment is eminently
12 reasonable given the time and effort Plaintiff spent on this matter, and the benefit to the other Class
13 Members as a result of Plaintiff's actions. (Ibid). Enhancement awards in wage and hour cases
14 typically range from \$5,000.00 to \$20,000.00, although some awards are higher. (Ibid). The
15 Declaration of Plaintiff Armando Gastelum submitted herewith details his work and efforts in bringing
16 and litigating this matter through resolution and supports the requested Enhancement Payment. The
17 requested Enhancement Payment was also disclosed in the Class Notice provided to the Class
18 Members. (Ibid).

19 **VIII. THE REQUESTED SETTLEMENT ADMINISTRATION COSTS ARE**
20 **REASONABLE**

21 In Plaintiff's Motion for Preliminary Approval, Plaintiff requested, and the Court approved,
22 Settlement Administration Costs not to exceed Fourteen Thousand Dollars and Zero Cents
23 (\$14,000.00). (Genish Decl., ¶ 40). ILYM's, the approved Settlement Administrator, *actual* costs to
24 administer the Settlement are only Twelve Thousand Nine Hundred Fifty Dollars and Zero Cents
25 (\$12,950.00). (Bench Decl., ¶ 18 & Exh. B). Based thereon, the requested costs should be approved.

26 **IX. THE PROPOSED LWDA ALLOCATION IS REASONABLE**

27 Pursuant to California Labor Code Section 2699(1), the Superior Court shall review and
28 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

1 should be approved. As part of the Settlement, Defendant has agreed to pay Fifty Thousand Dollars
2 and Zero Cents (\$50,000.00) to settle the claims of the PAGA Employees brought pursuant to PAGA,
3 of which the payment of Thirty-Seven Thousand Five Hundred Dollars and Zero Cents (\$37,500.00)
4 (75% of the PAGA Amount) will be paid to the LDWA for education and enforcement purposes.
5 (Genish Decl., ¶ 41).

6 It is extremely common in approved wage and hour class action cases that settle that only a
7 small portion of the total settlement is paid to PAGA penalties “in order to maximize payments to
8 class members.” (*Magadia v. Wal-Mart Assocs.* (N.D. Cal. May 31, 2019, No. 17-CV-00062-LHK)
9 2019 U.S. Dist. LEXIS 91732, *90-91, citing as examples *Ceja-Corona v. CVS Pharm., Inc.* (E.D.
10 Cal. Jan. 14, 2015) 2015 U.S. Dist. LEXIS 5118, 2015 WL 222500, at *2-3 [preliminarily approving
11 \$10,000 in PAGA penalties out of a total settlement amount of \$900,000]; *Thio v. Genji, LLC* (N.D.
12 Cal. 2014) 14 F. Supp. 3d 1324, 1330 [preliminarily approving \$10,000 in PAGA penalties out of a
13 total settlement amount of \$1,250,000]; *Franco v. Ruiz Food Prods.* (E.D. Cal. Nov. 27, 2012) 2012
14 U.S. Dist. LEXIS 169057, 2012 WL 5941801, at *14 [granting final approval of \$10,000 in PAGA
15 penalties out of a total settlement amount of \$2,500,000]; *Garcia v. Gordon Trucking, Inc.* (E.D. Cal.
16 Oct. 31, 2012) 2012 U.S. Dist. LEXIS 160052, 2012 WL 5364575, at *3 [granting final approval of
17 \$10,000 in PAGA penalties out of a total settlement amount of \$3,700,000]; *Chu v. Wells Fargo Invs.,*
18 *LLC* (N.D. Cal. Feb. 16, 2011) 2011 U.S. Dist. LEXIS 15821, 2011 WL 672645, at *1 [granting final
19 approval of \$10,000 in PAGA penalties out of a total settlement amount of \$6,900,000]). Like here,
20 in these approved settlements, the parties generally maximized statutory penalties and minimized
21 PAGA penalties to focus on claims to the class members, the persons who actually suffered the
22 California Labor Code violations. (Genish Decl., ¶ 42).

23 X. THE CLASS RECEIVED THE BEST PRACTICABLE NOTICE

24 California law vests the Court with broad discretion in fashioning an appropriate notice
25 program. (*See* California Civil Code § 1781; *Cartt v. Superior Court* (1975) 50 Cal.App.3d 960, 973-
26 74). To protect the rights of absent class members, the parties must provide class members with the
27 best notice practicable of a potential class action settlement. (*Phillips Petroleum Co. v. Shutts* (1985)
28 472 U.S. 797, 811-12; *Eisen v. Carlisle & Jacquelin* (1974) 417 U.S. 156, 174-76 [individual notice

1 must be sent to all class members who can be identified through reasonable efforts]; *Mullane v. Central*
2 *Hanover Bank & Garretson Company* (1950) 339 U.S. 306, 314 [best practicable notice is that which
3 is "reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of
4 the action and afford them an opportunity to present their objections"]. The content and method of
5 the notice should be designed to apprise the class members of the terms of the proposed settlement
6 and of the class members' rights regarding the settlement. (See *Mullane, supra*, 339 U.S. at 314;
7 *Philadelphia Housing Authority v. American Radiator & Standard Sanitary Corp.* (E.D. Pa. 1970) 323
8 F. Supp. 364, 378).

9 The Class Notice approved by the Court met these requirements: it identified the Parties and
10 described the Action, the Class, the Gross Settlement Amount, the proposed method for distribution
11 of the Gross Settlement Amount, the amounts proposed to be paid as the Enhancement Payment to
12 Plaintiff, the Settlement Administration Costs to the Settlement Administrator, and the Attorneys' Fees
13 and Costs to Class Counsel. (Genish Decl., ¶ 44; see also Bench Decl., Exhibit A thereto). The Class
14 Notice described the proposed Settlement with enough specificity to allow each Class Member to
15 make an informed choice whether to accept and participate in it. (Ibid). It also explained how and
16 when Class Members may object to or opt out of the Class Settlement. (Ibid). Finally, the Class
17 Notice provided the date for the hearing on final approval of the Settlement and informed Class
18 Members how to obtain additional information about the Settlement. (Ibid).

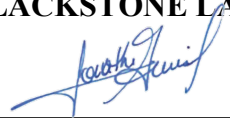
19 XI. CONCLUSION

20 For all of the foregoing reasons, Plaintiff respectfully requests that this Court grant Plaintiff's
21 Motion for Final Approval of Class Action and PAGA Settlement and the relief requested herein.

22 Respectfully submitted,

23 Dated: March 21, 2025

BLACKSTONE LAW, APC

24
25 By: 

26 Jonathan M. Genish
27 Miriam L. Schimmel
28 Attorneys for Plaintiff Armando Gastelum
and the Class