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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. Hilman
Department 2

**NOTICE OF MOTION AND MOTION FOR APPROVAL OF ATTORNEYS' FEES AND COSTS, ENHANCEMENT PAYMENT, AND SETTLEMENT ADMINISTRATION COSTS**

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

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

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

**PLEASE TAKE NOTICE THAT** on **April 15, 2025 at 8:30 a.m.** in Department 2 of the above-captioned Court located at County Civic Center, 221 S. Mooney Boulevard, Visalia, California 93291, Plaintiff Armando Gastelum ("Plaintiff") will and hereby does move the Court for an Order (1) awarding Class Counsel's attorneys' fees in the amount of Two Hundred Thirty-One Thousand Seventy-Two Dollars and Zero Cents ($231,072.00); (2) awarding Class Counsel's actual litigation costs and expenses in the amount of Sixteen Thousand Nine Hundred Thirty-Seven Dollars and Seven Cents ($16,937.07); (3) approving the Enhancement Payment in the amount of Five Thousand Dollars and Zero Cents ($5,000.00) to Plaintiff in recognition of his services to the Class; and (4) approving the Settlement Administration Costs in the amount of Twelve Thousand Nine Hundred Fifty Dollars and Zero Cents ($12,950.00).

This Motion is made pursuant to California Rules of Court, Rule 3.769, which requires court approval of the settlement of class actions. This Motion will be based on the Memorandum of Points and Authorities, the Joint Stipulation of Class Action and PAGA Settlement and Amendment No. 1 to Joint Stipulation of Class Action and PAGA Settlement, the Declarations of Class Counsel (Jonathan M. Genish and Miriam L. Schimmel), 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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## MEMORANDUM OF POINTS AND AUTHORITIES

### I. INTRODUCTION

Plaintiff Armando Gastelum ("Plaintiff" or "Class Representative") moves for an award of the Attorneys' Fees and Costs to Class Counsel, approval of the Enhancement Payment to Plaintiff as the Class Representative, and approval of the Settlement Administration Costs to ILYM Group, Inc. ("ILYM" or "Settlement Administrator"). As discussed in the Motion for Final Approval of Class Action and PAGA Settlement submitted concurrently herewith, Plaintiff and Defendant Premier Trailer Manufacturing, Inc. ("Defendant") (together with Plaintiff, the "Parties") have entered into the Joint Stipulation of Class Action and PAGA Settlement ("Original Agreement") and Amendment No. 1 to Joint Stipulation of Class Action and PAGA Settlement ("Amendment No. 1") (together, "Settlement Agreement" or "Settlement") for a total amount of One Million Three Hundred Thousand Dollars and Zero Cents ($1,300,000.00) ("Gross Settlement Amount"). (*See* Declaration of Jonathan M. Genish in Support of Plaintiff's Motion for Final Approval of Class Action and PAGA Settlement ["Genish Decl."], ¶ 15 & 18, Exhibits 2 & 3 thereto).

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"). (Original Agreement, ¶ 6.b; Genish Decl., ¶ 22). The "Class Period" is defined as the period from July 27, 2019 through July 6, 2024. (Original Agreement, ¶ 6.f; Genish Decl., ¶ 22). The "Settlement Class Members" consist of all Class Members who did not submit a timely and valid Request for Exclusion. (Original Agreement, ¶ 6.ll; Genish Decl., ¶ 22). 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." (Original Agreement, ¶ 6.x; Genish Decl., ¶ 22). The "PAGA Period" is defined as the period from July 20, 2022 through July 6, 2024. (Original Agreement, ¶ 6.z; Genish Decl., ¶ 22).

*There have been no objections to or requests to opt-out from* the Class Settlement. (Declaration of Nicole Bench of ILYM Group, Inc. Regarding Notice and Settlement Administration ["Bench Decl."], ¶¶ 10 & 11).

Because the Settlement achieves outstanding results for the Settlement Class Members, the PAGA Employees, and the State of California, Plaintiff respectfully requests, 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.

Plaintiff seeks the Court's approval of an attorneys' fee award of Two Hundred Thirty-One Thousand Seventy-Two Dollars and Zero Cents ($231,072.00), plus reimbursement of $16,937.07 in actual litigation costs and expenses. Class Counsel's request for an award of 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. *Lealao v. Beneficial California, Inc.* (2000) 82 Cal.App.4th 19.

Plaintiff also requests the Court confirm the amount of the Enhancement Payment agreed to be paid to Plaintiff in the amount of Five Thousand Dollars and Zero Cents ($5,000.00). This amount proposed to be awarded to Plaintiff is fair and reasonable for the reasons Plaintiff provided in his declaration. (*See* Declaration of Plaintiff Armando Gastelum in Support of Motion for Final Approval of Class Action and PAGA Settlement ["Gastelum 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).

Finally, Plaintiff requests that the Court approve the payment of Twelve Thousand Nine Hundred Fifty Dollars and Zero Cents ($12,950.00) to the Settlement Administrator as compensation for its administration services it has and will provide in connection with the Settlement. (*See, generally,* Bench Decl.).

## II. PROCEDURAL HISTORY AND FACTUAL BACKGROUND

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

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On July 20, 2023, Plaintiff 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"). (Genish Decl., ¶ 9).

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

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

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

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

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

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

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

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

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

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

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

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

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 Action for a non-reversionary Gross Settlement Amount of One Million Three Hundred Thousand Dollars and Zero Cents ($1,300,000.00), which is exclusive of employer-side payroll taxes. (Original Agreement, ¶ 6.p; Genish Decl., ¶ 24). The Gross Settlement Amount includes: (1) requested Class Counsel's fees in the amount of Two Hundred Thirty-One Thousand Seventy-Two Dollars and Zero Cents ($231,072.00); (2) Class Counsel's actual litigation costs and expenses, in the amount of Sixteen Thousand Nine Hundred Thirty-Seven Dollars and Seven Cents ($16,937.07); (3) Settlement Administration Costs in the amount of Twelve Thousand Nine Hundred Fifty Dollars and Zero Cents ($12,950.00); (4) Enhancement Payment in the amount of Five Thousand Dollars and Zero Cents ($5,000.00); and (5) PAGA Amount in the amount of Fifty Thousand Dollars and Zero Cents ($50,000.00). (Original Agreement, ¶¶ 9, 11, & 12; Amendment No. 1, ¶ B; Genish Decl., ¶ 24). 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 Eighty-Four Thousand Forty Dollars and Ninety-Three Cents ($984,040.93). (Original Agreement, ¶ 6.u; Genish Decl., ¶ 24).

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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 the PAGA Employee Amount ("Individual PAGA Payment"). (Original Agreement, ¶¶ 6.q, 6.s, & 34; Genish Decl., ¶ 25). Individual Settlement Shares are calculated by the Settlement Administrator by dividing the Net Settlement Amount by the number of weeks each Settlement Class Member worked for Defendant as an hourly-paid and/or non-exempt employee in California during the Class Period ("Workweeks") to yield the "Final Workweek Value," and multiplying each Settlement Class Member's individual Workweeks by the Final Workweek Value. (Original Agreement, ¶¶ 6.mm & 14.b; Genish Decl., ¶ 25). Individual PAGA Payments are calculated by the Settlement Administrator by dividing the PAGA Employee Amount (i.e., 25% of the PAGA Amount) by the number of weeks each PAGA Employee worked for Defendant as an hourly-paid and/or non-exempt employee in California during the PAGA Period ("PAGA Workweeks") to yield the "PAGA Workweek Value," and multiplying each PAGA Employee's individual PAGA Workweeks by the PAGA Workweek Value. (Original Agreement, ¶¶ 6.bb & 15; Genish Decl., ¶ 25).

## IV. THE SETTLEMENT ADMINISTRATION PROCESS

The Court-approved Settlement Administrator has taken all necessary steps to effectuate the notice and settlement administration process, as set forth in the Settlement Agreement.

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

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

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As part of the preparation for mailing, all 1,098 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 counsel for Defendant was used for the mailing of the Class Notice. (Ibid).

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

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

158 Class Notices were returned to ILYM as undeliverable. (*Id*., ¶ 9). Of the 158 Class Notices, none were returned with a forwarding address provided by the USPS. (Ibid). ILYM performed a computerized skip trace on all 158 returned Class Notices that did not have a forwarding address, in an effort to obtain updated addresses for the purpose of re-mailing the Class Notices. (Ibid). As a result of this skip trace, 103 updated addresses were obtained and the Class Notices were promptly re-mailed to those Class Members, via U.S. First Class Mail. (Ibid). A total of 55 Class Notices were deemed undeliverable as no updated address was found notwithstanding the skip tracing. (Ibid).

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

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

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

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

## V. COMPLIANCE WITH PROCEDURAL REQUIREMENTS OF PAGA

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

## VI. ARGUMENT

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

#### 1. The Requested Fee Award is Reasonable Here

In its Preliminary Approval Order, the Court preliminarily approved One Hundred Ninety-Seven Thousand One Hundred Forty-Two Dollars and Zero Cents ($197,142.00) in attorneys' fees and stated it would consider any additional hours expended between the motion for preliminary approval and final approval as to the calculation of the lodestar. Class Counsel respectfully requests that this Court approve the amount of attorneys' fees requested in this matter. This Motion is made pursuant to

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[1] The actual highest, average, and lowest Individual Settlement Shares will be larger than the amounts stated in the Bench 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).

California Rules of Court, Rule 3.769 which requires court approval of the fees paid through settlement in a class action.

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

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

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)).

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

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

> [U]se 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 establishes 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 v. Robert Half Intern. Inc.* (2016) I Cal.5th 480, 503 (internal citations omitted)).

The requested fee falls well within – even below – the percentages awarded in other class action litigation by this Court and numerous California trial courts. (*Rodriguez v. Surf Thru, Inc.*, Tulare County Superior Court Case No. VCU280787, this Court approved thirty-five percent (35%) of the settlement fund; *Hernandez v. New Image Pool Interiors, Inc.*, Tulare County Superior Court Case No. VCU293400, this Court approved thirty-five percent (35%) of the settlement fund). As the cases cited above demonstrate, attorneys' fee awards in the amount sought here are well-established by California law and practice. Accordingly, Class Counsel's fee request is fair and reasonable and is consistent with the awards in California and the Ninth Circuit. It is also reasonable given the history of this matter and the results obtained by Class Counsel.

**2. The Circumstances of this Case Support the 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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### 3. 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 Plaintiff would succeed at trial. (Genish Decl., ¶¶ 32-34). Despite such challenges, Class Counsel was able to persuade Defendant that it faced significant liability exposure such that it was willing to pay $1,300,00.00 to settle the Class Members' claims.

### 4. 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. (Declaration of Miriam L. Schimmel in Support of Motion for Approval of Attorneys' Fees and Costs, Enhancement Payment, and Settlement Administration Costs ["Schimmel Decl."], ¶¶ 3-10; Genish Decl., ¶¶ 3-8). 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* Schimmel Decl.).

### 5. The Results Achieved

The excellent results achieved by the Settlement support Class Counsel's request for attorneys' fees. Class Members' support for the results achieved by Class Counsel is demonstrated by the absence of any objections to either the 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 $689.48 each, which is intended to compensate them for the alleged wage and hour violations they suffered during their employment. (Genish Decl., ¶ 26). 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

$37,500.00 for enforcement of labor laws and education of employers. (*Id*., ¶ 41).

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

**6. Preclusion of Other Employment**

As California law recognizes, Class Counsel's commitment to this litigation should not be assessed in a vacuum. (*See Serrano, supra,* 20 Cal.3d at 49). A relevant factor in determining attorneys' fees is whether the litigation required Class Counsel to forego other employment. (*See 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. (Schimmel Decl., ¶ 13).

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

Fee calculations under the lodestar method would result in a similar award, demonstrating the fairness of Class Counsel's percentage fee request. Under the lodestar method, a base fee amount is calculated from a compilation of time reasonably spent on the case and the reasonable hourly compensation of the attorney. The base amount is then adjusted by use of a multiplier in light of various factors. (*Serrano 111, supra,* 20 Cal.3d at 48). The Court-approved hourly rates of Class Counsel are summarized in the Declaration of Miriam L. Schimmel at ¶ 11.

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. (Schimmel Decl., ¶ 1). 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 200.10 total hours litigating these claims to date.[2] (Schimmel Decl., ¶ 11). In addition to time spent during litigation, reasonable hours also include the time spent before the Action was filed, including time spent interviewing the client, 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 $154,048. (Schimmel Decl., ¶ 11).

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).

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;

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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 declarations in support of this application, however, Plaintiff presents a thorough breakdown of the hours spent and costs incurred in prosecuting this class action. Pursuant to *Martino, supra,* this presentation is sufficient to support the amount requested.

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).

In looking at similar cases, including those set forth above, Class Counsel's requested fee comports to the market. Although in its Preliminary Approval Order, the Court expressed that it permits a maximum lodestar multiplier of 1.5 in these kinds of cases, far greater multipliers have been awarded in similar cases, and the total amount of fees sought by Class Counsel is also reasonable compared to fees awarded in similar cases. Courts routinely enhance lodestar amounts based on multipliers that "range from 2 to 4 or even higher." (*Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 255; see also, e.g., *Chavez v. Netflix, Inc*. (2008) 162 Cal.App.4th 43, 66 (approving multiplier of 2.5); *Vizcaino*, 290 F.3d at 1051 (approving multiplier of 3.65); *Wal-Mart Stores, Inc. v. Visa U.S.A., Inc.* (2d Cir. 2005) 396 F.3d 96, 123 (approving multiplier of 3.5); *Craft v. County of San Bernardino* (C.D. Cal. 2006) 624 F.Supp.2d 1113, 1125 (awarding multiplier of 5.2 and referring to other cases with cross-check multipliers ranging from 4.5 to 19.6)). Therefore, application of a multiplier is warranted. Using a multiplier of 1.5 over the current total fee lodestar, the enhanced lodestar equals to Two Hundred Thirty-One Thousand Seventy-Two Dollars and Zero Cents ($231,072.00).

**C. No Class Member Objected to the 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. (*See Genish Decl.,* ¶ 43; *See also,* Bench Decl., Exhibit A). As of the filing of this Motion, there has not been a single objection to the request for attorneys' fees in an amount not to exceed what is provided for in the Settlement Agreement. (Bench Decl., ¶ 11). It is fair to conclude that the Class approves of/does not take issue with a requested award of attorneys' fees. Based thereon, Class Counsel's request for Two Hundred Thirty-One Thousand Seventy-Two Dollars and Zero Cents ($231,072.00) in attorneys' fees should be granted.

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

Pursuant to the Settlement Agreement, Class Counsel may request reimbursement of reasonable costs and expenses not more than Twenty Thousand Dollars and Zero Cents ($20,000.00). (Original Agreement, ¶ 9). Class Counsel seeks reimbursement of Sixteen Thousand Nine Hundred Thirty-Seven Dollars and Seven Cents ($16,937.07) in costs and expenses in this matter, which includes reasonable future costs for filing the Motions. (Genish Decl., Exh. 5). These costs were reasonably incurred in prosecution of this matter.

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### E. The Requested Enhancement Payment is Also Reasonable

The named Plaintiff should be awarded an Enhancement Payment in the amount of Five Thousand Dollars and Zero Cents ($5,0.00) for his services as the Class Representative and the risks in connection with that role. (Genish Decl., ¶ 39). 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 Payment is modest, reasonable, and should be approved.

Plaintiff's actions establish that: (1) he sought to protect the interests of the Class above his own personal interests; (2) the Settlement Class Members will be benefitted from his actions by receiving a payment without having to do anything; and (3) Plaintiff has put forth a significant amount of time and effort pursuing the litigation and seeing it through to resolution. (*See*, generally, Gastelum 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 Plaintiff is also reasonable given the financial and personal risk he took in commencing the Action, and in light of the benefits that his actions have conferred upon the Class. (Gastelum Decl., ¶ 7; *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 Plaintiff brought the lawsuit – and based thereon, decline to offer Plaintiff employment.

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In sum, Plaintiff has performed considerable services on behalf of the Class during the litigation. (*See*, generally, Gastelum 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 his or her interests. Plaintiff has understood that this is a class action where he is serving as the Cass Representative and must protect the Class Members' interests. (Gastelum Decl., ¶ 10). Plaintiff was the catalyst to the benefit reached for the Class Members, and has 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). Plaintiff spent numerous hours participating in this matter by searching for an attorney, communicating with his attorneys on numerous occasions, searching for and producing relevant documents related to his employment, responding to his attorneys' telephone inquiries, reviewing the settlement documents, and approving the Settlement on behalf of all Class Members. (*See*, generally, Gastelum Decl.).

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

**F. The Requested Settlement Administration Costs Are Reasonable**

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

## VII. CONCLUSION

For all of the foregoing reasons, Plaintiff respectfully requests that this Court approve: (1) Class Counsel's request of $231,072.00 as an award of attorneys' fees; (2) the requested litigation cost award of $16,937.07; (3) the requested Enhancement Payment to Plaintiff in the amount of $5,000.00; and (4) the payment of $12,950.00 in Settlement Administration Costs to ILYM.

Respectfully submitted,

Dated: March 21, 2025

**BLACKSTONE LAW, APC**

By: ______________________________
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