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

PAUL SCHWARTZENBERGER, ANTHONY
 PEREZ, individually, and on behalf of other
 members of the general public similarly situated,

Plaintiffs,

vs.

BERGER STEEL CORPORATION, a California
 corporation; and DOES 1 through 100, inclusive,

Defendants.

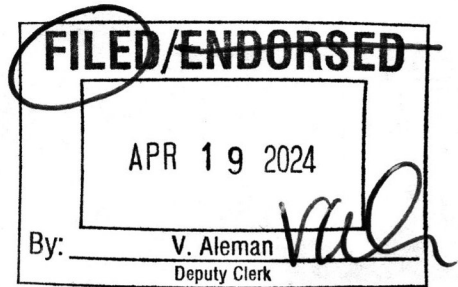
Case No.: 34-2022-00319703-CU-OE-GDS

*Assigned for all purposes to the Honorable Lauri
 Damrell, Dept. 22*

**~~PROPOSED~~ FINAL APPROVAL ORDER
 AND JUDGMENT**

Date: April 19, 2024
 Time: 9:00 a.m.
 Dept.: 22

Complaint Filed: May 10, 2022
 FAC Filed: June 8, 2022
 SAC Filed: October 10, 2023
 Trial Date: Not Set



1 Plaintiffs Paul Schwartzenberger and Anthony Perez's unopposed Motion for Final
2 Approval of Class Action and PAGA Settlement ("Motion") in the above-captioned matter came
3 for hearing on April 19, 2024, before the Honorable Lauri Damrell in Department 22 of the above-
4 entitled Court located at 720 9th Street, Sacramento, California 95184.

5 On November 14, 2023, the Court entered an Order Granting Preliminary Approval of
6 Class Action and PAGA Settlement ("Preliminary Approval Order"), thereby preliminarily
7 approving the settlement of the above-entitled action in accordance with the Joint Stipulation of
8 Class Action and PAGA Settlement (hereinafter, "Agreement" or "Settlement") which, together
9 with the exhibits thereto, set forth the terms and conditions for settlement of this Action.

10 Due and adequate notice having been given to all Class Members as required in the
11 Preliminary Approval Order, and the Court having considered the Agreement, Plaintiffs' Motion
12 and all documents submitted in support thereof, all papers filed and proceedings had herein, and
13 otherwise being fully informed and good cause appearing therefore, **IT IS HEREBY
ORDERED, ADJUDGED AND DECREED AS FOLLOWS:**

14 1. Pursuant to California law, this Court hereby grants final approval of the
15 Agreement. The Agreement is hereby deemed incorporated into this Final Order and Judgment.
16 All terms used herein shall have the same meaning as defined in the Agreement.

17 2. This Court has jurisdiction over the subject matter of this Action and over all
18 Parties to this Action, including all Class Members.

19 3. The Court finds that the requirements of California Code of Civil Procedure
20 section 382 and Rule 3.769 of the California Rules of Court have been satisfied with respect to
21 the Class and the Settlement. The Court hereby makes its earlier provisional certification of the
22 Class for settlement purposes, as set forth in the Preliminary Approval Order, final. The Class is
23 hereby defined to include:

24 All current and former hourly-paid, non-exempt employees of Defendant Berger
25 Steel Corporation who were employed by Defendant Berger Steel Corporation in
26 the State of California at any time during the period commencing on May 10, 2018,
27 and ending on October 27, 2023.

28 4. The Court hereby confirms S. Emi Minne and Jill J. Parker of Parker & Minne,

1 LLP and Edwin Aiwasian, Arby Aiwasian, Joanna Ghosh, and Vartan Madoyan of Lawyers for
2 Justice, PC as Class Counsel in the Action.

3 5. The Court concludes that distribution of the Notice directed to the Class Members
4 as set forth in the Agreement and the other matters set forth therein has been completed in
5 conformity with the Preliminary Approval Order and constituted the best notice practicable under
6 the circumstances. The Court concludes that the Administrator, ILYM Group, Inc., took all
7 reasonable and necessary steps to locate and notify each Class Member of the Agreement, as
8 required in the Preliminary Approval Order. The notice given to the Class fully and accurately
9 informed the Class of all material elements of the Settlement and their opportunity to object or
10 comment thereon; was the best notice practicable under the circumstances; was valid, due and
11 sufficient notice to all Class Members; and complied fully with the laws of the State of California,
12 Federal Rules of Civil Procedure, the United States Constitution, due process, and other
13 applicable law. The notice fairly and adequately described the Settlement and provided Class
14 Members adequate instructions and a variety of means to obtain additional information.

15 6. The Court hereby finds the Agreement was entered into in good faith pursuant to
16 and within the meaning of California Code of Civil Procedure section 877.6. For the reasons set
17 forth in the Preliminary Approval Order, and in the proceedings at the Final Approval hearing,
18 which are adopted and incorporated herein by reference, the Court further finds that Plaintiffs
19 have satisfied the standards and applicable requirements for final approval of this class action
20 settlement under California law, including the provisions of California Code of Civil Procedure
21 section 382 and Federal Rule of Civil Procedure 23, approved for use by the California state
22 courts in *Vasquez v. Superior Court*, 4 Cal.3d 800, 821 (1971).

23 7. The Court finds that the Settlement is, in all respects, fair, adequate and
24 reasonable, and in the best interests of the Class as a whole. More specifically, the Court finds
25 that the Settlement was reached following meaningful informal discovery and investigation by
26 Class Counsel; that the Settlement is the product of intensive, serious and non-collusive arms-
27 length negotiations between the parties; and that the terms of the Settlement are in all respects
28 fair, adequate, and reasonable. In so finding, the Court has considered all of the evidence

1 presented, including evidencing regarding the strength of Plaintiff's claims, Defendant's potential
2 exposure; the risk, expense, complexity, and delay associated with further litigation; the risk of
3 maintaining Plaintiff's claims through class certification, trial, and appeals; the amount offered
4 in the Settlement and the benefit provided to Class Members; the extent of investigation and
5 informal discovery completed; the experience and views of Class Counsel; and the absence of
6 objections to the Settlement, as well as other relevant factors. Accordingly, the Court hereby
7 directs that the Settlement be affected in accordance with the Agreement and the terms and
8 conditions set forth in this Judgment.

9 8. A full opportunity has been afforded to Class Members to participate in this
10 hearing, and all persons wishing to be heard have been heard. Accordingly, the Court determines
11 that all Class Members who did not timely and properly request exclusion from the Settlement
12 ("Participating Class Members") are bound by the Settlement and by this Judgment.

13 9. The Court hereby finds that there have been zero (0) objections to the Agreement.
14 The deadline for Class Members to submit written objections to the Agreement was January 22,
15 2024. The Court also finds that there were zero (0) objections at the hearing on Final Approval.

16 10. The Court hereby finds that zero (0) Class Members have requested to be excluded
17 from the settlement. The deadline for Class Members to request to be excluded from the
18 Agreement was January 22, 2024. Accordingly, 329 Participating Class Members are bound by
19 this Judgment.

20 11. Upon entry of this Judgment and remittance of the Gross Settlement Amount and
21 all applicable employer-side payroll taxes by Defendant to the Administrator, Participating Class
22 Members, shall fully release and discharge Released Parties from all claims, rights, demands,
23 liabilities and causes of action that are alleged, or reasonably could have been alleged based on
24 the factual allegations and claims asserted in the Action arising during the Class Period, including
25 the following claims: (1) Violation of California Labor Code §§ 510 and 1198 (Unpaid Overtime);
26 (2) Violation of California Labor Code §§ 226.7 and 512(a) (Unpaid Meal Period Premiums); (3)
27 Violation of California Labor Code § 226.7 (Unpaid Rest Period Premiums); (4) Violation of
28 California Labor Code §§ 1194, 1197, and 11971. (Unpaid Minimum Wages); (5) Violation of

1 California Labor Code §§ 201 and 202 (Final Wages Not Timely Paid); (6) Violation of California
2 Labor Code § 204 (Wages Not Timely Paid During Employment); (7) Violation of California
3 Labor Code § 226(a) (Non-Compliant Wage Statements); (8) Violation of California Labor Code
4 § 1174(d) (Failure to Keep Requisite Payroll Records); (9) Violation of California Labor Code
5 §§ 2800 and 2802 (Unreimbursed Business Expenses); and (10) Violation of California Business
6 & Professions Code §§ 17200, et seq. based on violations of Labor Code sections 201, 202, 203,
7 204, 226(a), 226.7, 510, 512(a), 1174(d), 1194, 1197, 1197.1, 2800, and 2802.

8 12. Upon entry of this Judgment and remittance of the Gross Settlement Amount by
9 Defendant to the Administrator, all PAGA Members, the LWDA, and the State of California shall
10 fully release and discharge the Released Parties from any and all claims for the recovery for civil
11 penalties, attorneys' fees and costs permissible under PAGA which Plaintiffs, the LWDA, the
12 State of California, and/or the PAGA Members had, or may claim to have, against Released
13 Parties, arising out of the violations alleged in the Complaint or the PAGA Notice during the
14 PAGA Period, including failure to pay overtime compensation, failure to pay minimum wages,
15 failure to provide compliant meal and rest breaks, failure to pay meal and rest period premiums,
16 failure to pay all wages owed at discharge or resignation; failure to timely pay wages during
17 employment; failure to provide complete and accurate wage statements; failure to keep complete
18 and accurate payroll records; failure to reimburse necessary business-related expenses; and
19 violations of Labor Code sections 201, 202, 203, 204, 226(a), 226.3, 226.7, 510, 512(a), 1174(d),
20 1194, 1197, 1197.1, 1198, 2698, *et seq.*, 2800, and 2802 and the Industrial Welfare Commission
21 Orders.

22 13. Upon entry of this Judgment and remittance of the Gross Settlement Amount by
23 Defendant to the Administrator, in consideration for their Class Representative Enhancement
24 Payment, Plaintiffs Paul Schwarzenberger and Anthony Perez, for themselves only, also fully
25 releases the Released Parties from any and all Released Claims and also generally release and
26 discharge the Released Parties from any and all claims, demands, obligations, causes of action,
27 rights, or liabilities of any kind which have been or could have been asserted against the Released
28 Parties arising out of or relating to their employment by Defendant, including but not limited to

1 claims for wages, restitution, or penalties. This release specifically includes any and all claims,
2 demands, obligations and/or causes of action for damages, restitution, penalties, interest, and
3 attorneys' fees and costs (except as provided by the Agreement) relating to or in any way
4 connected with the matters referred to herein, whether or not known or suspected to exist, and
5 whether or not specifically or particularly described herein. Plaintiffs Paul Schwarzenberger and
6 Anthony Perez have expressly waived all rights and benefits afforded by California Civil Code
7 Section 1542, which provides:

8 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE
9 CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO
10 EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE
11 RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE
12 MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE
13 DEBTOR OR RELEASED PARTY.

14 This release specifically excludes any claims Plaintiffs Paul Schwarzenberger and Anthony
15 Perez have or may have that are not waivable by law, including claims for unemployment
16 insurance, disability, social security, and workers compensation (with the exception of claims
17 arising pursuant to California Labor Code Sections 132(a) and 4553), and the right to receive
18 benefits under any retirement plan.

19 14. The Court finds the settlement payments provided for under the Agreement to be
20 fair and reasonable in light of all of the circumstances.

21 15. The Gross Settlement Amount provided by the Agreement was based on
22 Defendant's representation that Class Members worked a total of 15,796 Workweeks during the
23 Class Period ("Certified Workweek Amount"). The Court hereby finds that the total number of
24 Workweeks worked by Class Members during the Class Period exceeded the Certified Workweek
25 Amount by 1,642.80, and therefore triggered the Agreement's escalator clause. The Court finds
26 that, pursuant to the terms of the Agreement, the Gross Settlement Agreement has increased by
27 .40% to \$753,000.76.

28 16. Pursuant to the terms of the Agreement, the Court orders Defendant to fund the

1 Gross Settlement Amount of \$753,000.76 within fourteen (14) calendar days after of the date of
2 entry of this Judgment to provide payments for Individual Class Member Payments, Individual
3 PAGA Payments, the Class Representative Enhancement Payments, Class Counsel's Fees and
4 Costs, Settlement Administration Costs, and PAGA Penalties to the LWDA. The Court further
5 orders Defendant to separately pay any and all employer payroll taxes owed on the wage portion
6 of the Individual Class Payments. Defendant shall fund and the Settlement Administrator shall
7 distribute these amounts in accordance with the terms of the Agreement.

8 17. Pursuant to the terms of the Agreement, and the authorities, evidence and argument
9 submitted by Class Counsel, the Court hereby awards Class Counsel attorneys' fees in the
10 amount of \$263,550.27, and awards reimbursement of costs and expenses incurred by Class
11 Counsel in the amount of \$23,020.75 from the Gross Settlement Amount. The award of
12 attorneys' fees and costs is the final payment for and complete satisfaction of any and all
13 attorneys' fees and costs incurred by and/or owed to Class Counsel and any other person or entity
14 related to the Action. The Court further orders that the award of attorneys' fees and costs set
15 forth in this Paragraph shall be administered pursuant to the terms of the Agreement. Any
16 allocation of attorneys' fees and costs between and among Class Counsel shall be made by the
17 Administrator pursuant to the separate and independent agreement between Class Counsel.

18 18. The Court hereby approves and orders Class Representative Enhancement
19 Payments of \$7,500.00 to Plaintiff Paul Schwartzenberger and \$7,500.00 to Plaintiff Anthony
20 Perez from the Gross Settlement Amount in accordance with the terms of the Agreement.

21 19. The Court find that the settlement of the Released PAGA Claims for \$37,500.00,
22 which is designated and allocated as penalties under the California Labor Code Private Attorneys
23 General Act of 2004, is fair, reasonable, and appropriate, and is hereby approved. The Court
24 further approves allocation and payment of the PAGA Penalties as follows: \$28,125.00 (75% of
25 \$37,500.00) to the California Labor Workforce Development Agency, and \$9,375.00 (25% of
26 \$37,500.00) to PAGA Members on a *pro rata* basis as set forth in the Agreement. 100% of the
27 amounts distributed to PAGA Members as penalties under PAGA shall be reported on an IRS
28 Form-1099.

1 20. The Court also hereby approves and orders payment from the Gross Settlement
2 Amount for actual settlement administration expenses incurred by the Administrator, ILYM
3 Group, Inc., in the amount of \$8,800.00.

4 21. The Court hereby approves and orders payment of Individual Class Payments from
5 the Net Settlement Amount to the Participating Class Members on a *pro rata* basis as set forth
6 in the Agreement.

7 22. The Court also hereby approves and orders that any checks distributed from the
8 Gross Settlement Amount yet remaining un-cashed after one hundred and eighty (180) calendar
9 days after being issued shall be void. All uncashed settlement checks shall be transferred to the
10 Controller of the State of California to be held pursuant to the Unclaimed Property Law,
11 California Civil Code § 1500, *et seq.* for the benefit of the Class Member or Aggrieved Employee
12 who did not cash their checks until such time that they claim their property, or the property is
13 otherwise disposed of pursuant to the Unclaimed Property Law.

14 23. Provided the Settlement becomes effective under the terms of the Agreement, the
15 Court also hereby orders that the Administrator distribute the Individual Class Member
16 Payments, Individual PAGA Payments, the Class Representative Enhancement Payment, Class
17 Counsel's Fees and Costs payment, Settlement Administration Costs payment, and PAGA
18 Penalties to the LWDA within fourteen (14) calendar days of receipt of the Gross Settlement
19 Amount.

20 24. Without affecting the finality of this Judgment, the Court shall retain continuing
21 jurisdiction over this Action and the Parties, including all Class Members, and over all matters
22 pertaining to the implementation and enforcement of the terms of the Agreement pursuant to
23 California Rule of Court 3.769(h) and California Code of Civil Procedure section 664.6. Except
24 as provided to the contrary herein, any disputes or controversies arising with or with respect to
25 the interpretation, enforcement, or implementation of the Agreement shall be presented to the
26 Court for resolution.

27 25. A post-approval final accounting hearing shall be held on
28 December 13, 2024 at 10:30 a.m. p.m. in Department 22 of

LAURI A. DAMRELL

1 the above-entitled court located at 720 9th Street, Sacramento, California 95184. Class Counsel
2 shall submit a final compliance status report by no later than

3 November 27, 2024.

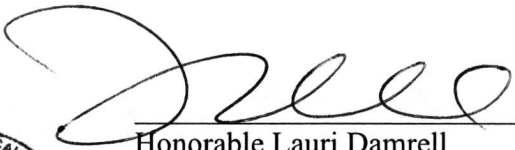
4 26. Notice of this Order and Judgment shall be posted by the Administrator, ILYM
5 Group, Inc., on its website for a period of at least sixty (60) days.

6 27. Plaintiffs shall file and serve formal Notice of Entry of Judgment with the
7 California Labor and Workforce Development Agency (LWDA).

8 **IT IS SO ORDERED. LET JUDGMENT BE ENTERED ACCORDINGLY.**

9
10 Dated: 4/12/21



11 
12 Honorable Lauri Damrell
13 Judge of the Superior Court

14 LAURI A. DAMRELL
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