

1 DAVID YEREMIAN & ASSOCIATES, INC.  
David Yeremian (SBN 226337)  
2 [david@yeremianlaw.com](mailto:david@yeremianlaw.com)  
Alvin B. Lindsay (SBN 220236)  
3 [alvin@yeremianlaw.com](mailto:alvin@yeremianlaw.com)  
535 N. Brand Blvd., Suite 705  
4 Glendale, California 91203  
Telephone: (818) 230-8380  
5 Facsimile: (818) 230-0308

6 UNITED EMPLOYEES LAW GROUP, PC  
Walter Haines (SBN 71075)  
7 [whaines@uelg.com](mailto:whaines@uelg.com)  
5500 Bolsa Ave., Suite 201  
8 Huntington Beach, CA 92649  
Telephone: (310) 652-2242

9 Attorneys for Plaintiff ERASMO SANCHEZ,  
10 on behalf of himself and the Settlement Class

Electronically Filed  
12/5/2019 11:09 AM  
Superior Court of California  
County of Stanislaus  
Clerk of the Court  
By: Christine Zulim, Deputy

11 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
12 **FOR THE COUNTY OF STANISLAUS**

13 ERASMO SANCHEZ, an individual, on  
behalf of himself and others similarly  
14 situated,

15 Plaintiff,

16 vs.

17 PACIFIC SOUTHWEST CONTAINER,  
INC., a California company; and DOES 1  
18 through 50, inclusive,

19 Defendants.

Case No.: 2028679

CLASS ACTION

Assigned for All Purposes To:  
Hon. Marie Sovey Silveira  
Dept.: 21

**[PROPOSED] REVISED ORDER  
GRANTING PLAINTIFF'S UNOPPOSED  
MOTION FOR FINAL APPROVAL OF  
JOINT STIPULATION OF CLASS  
ACTION SETTLEMENT AND RELEASE  
OF CLAIMS**

*Following Hearing on:*

Date: November 19, 2019  
Time: 8:30 a.m.  
Location: Dept. 21, 801 10<sup>th</sup> Street, 6<sup>th</sup> Floor,  
Modesto, California 95354

Original Complaint Filed: January 23, 2018  
First Amended Complaint: June 4, 2018  
Trial Date: None set.

1 **ORDER**

2 On **November 19, 2019** at 8:30 a.m. in Department 21 of the above entitled Court, located  
3 at 801 10th Street, 4th Floor, Modesto, California 95354, Plaintiff’s unopposed motion for final  
4 approval of the parties’ Joint Stipulation of Class Action Settlement and Release of Claims (“Final  
5 Approval Motion”) came before the Court for hearing. The motion followed successful  
6 completion of settlement administration following entry of the Court’s Order granting preliminary  
7 approval to the Settlement on **July 23, 2019**. The Court granted preliminary approval following  
8 the application of Plaintiff ERASMO SANCHEZ (“Plaintiff”), on behalf of himself and all others  
9 similarly situated current and former employees of Defendant PACIFIC SOUTHWEST  
10 CONTAINER, INC. (“Defendant”) (collectively, “the parties”), for preliminary approval of the  
11 Settlement set forth in the parties’ Joint Stipulation of Class Action Settlement and Release of  
12 Claims (“Settlement” or “Settlement Agreement” or “Stipulation”). A copy of the Settlement  
13 Agreement was provided at Exhibit A to the Declaration of Class Counsel in support of the Final  
14 Approval Motion. Full and adequate notice having been given to the Class as required in the  
15 Court’s Preliminary Approval Order, and the Court having considered all papers filed and  
16 proceedings held herein and otherwise being fully informed in the premises and good cause  
17 appearing:

18 **NOW, THEREFORE, IT IS HEREBY ORDERED THAT:**

- 19 1. This Order incorporates by reference the definitions in the Stipulation, and all terms  
20 used, but not defined herein, shall have the same meanings as in the Stipulation.
- 21 2. This Court has jurisdiction over the subject matter of the Action and over all parties  
22 to the Action, including all Class Members.
- 23 3. The Motion for final approval is granted. The Court approves the settlement as fair,  
24 reasonable and adequate. The Court makes the following awards and approves the following  
25 payments:
- 26 a. \$766,666.67 in attorneys’ fees and \$12,925.69 (out of \$20,000 allocated) in costs  
27 incurred to Class Counsel;
- 28

1           b.       \$7,500.00 as a Representative Enhancement Award to Plaintiff Erasmo Sanchez as  
2 the Class Representative; and

3           c.       \$20,000.00 in costs to the settlement administrator, ILYM Group, Inc.

4           4.       In accordance with the Settlement and the terms set forth in this order, this Order  
5 shall not be deemed a judgment in favor of Class members or any them and shall not constitute an  
6 obligation for direct compensation of any one or any number of the Class members, but rather it  
7 simply approves and undertakes to monitor the execution of the settlement between the Parties.  
8 Except for the payment due under the Stipulation, the parties are each to bear their own costs and  
9 attorneys' fees. The Court approves the Stipulation and Defendant and the Released Parties are  
10 discharged from all Released Claims in accordance with the terms of the Stipulation.

11          5.       In this wage and hour class action lawsuit, Plaintiff sues Defendants for a variety of  
12 Labor Code violations. The operative complaint alleges that Defendant failed to pay minimum  
13 wages and overtime, failed to provide meal and rest breaks, failed to provide accurate wage  
14 statements, failed to pay final wages when due, committed unfair business practices under  
15 California's Unfair Competition Law ("UCL"), and violated the Private Attorneys General Act of  
16 2004 ("PAGA"), all in violation of California law. The operative complaint seeks recovery of  
17 unpaid minimum wages and overtime, premium pay for improper meal and rest breaks, penalties  
18 for improper wage statements, waiting time penalties, restitution under the UCL, penalties under  
19 Labor Code § 2699 *et seq.*, prejudgment interest, post-judgment interest, and attorneys' fees and  
20 costs.

21          6.       The parties settled this matter at mediation and thereafter sought and obtained  
22 preliminary approval of the class action settlement on **July 23, 2019**. Defendant made and makes  
23 no admission of liability and none shall be inferred from the Stipulation or entry of judgment.  
24 Neither this order nor the Stipulation shall be used or submitted into evidence in any proceeding or  
25 action, except for the sole purpose of enforcing the terms hereof.

26          7.       In California, the notice to class members must have "a reasonable chance of  
27 reaching a substantial percentage of the class members." *Wershba v. Apple Computer, Inc.* (2001)  
28 91 Cal.App.4th 224, 251. Importantly, however, the plaintiff need not demonstrate that each

1 member of the class received notice. As long as the notice had a “reasonable chance” of reaching a  
2 substantial percentage of class members, it should be found effective.

3 8. As reported in the concurrently filed Declaration from the Settlement  
4 Administrator, ILYM Group received the class data file and listing from Defendant’s counsel on  
5 **August 1, 2019**. (See Declaration of Farrah Ghaffarirafi of ILYM Group, Inc. in support of Final  
6 Approval (“Ghaffarirafi Decl.”), at ¶ 5). On **August 27, 2019**, the Notice Packet was finalized and  
7 mailed to the **6,855** individual Class members. (*Id.* at ¶ 7; *see also* Exhibit A thereto for Class  
8 Notice as mailed). No Class members objected to the Settlement, and only four requested  
9 exclusion from it, thus resulting in **6,851** Participating Class Members and a 99.94% participation  
10 rate (*id.* at ¶¶ 7, 10-14), and ultimately only 76 Notices were undeliverable following an address  
11 search by ILYM Group. (*Id.* at ¶ 9). Plaintiff now seeks final approval of the Settlement. Based on  
12 the foregoing, the Court finds that the notice provided to Class members conforms to due process  
13 requirements.

14 9. It is the duty of the Court, before finally approving the settlement, to conduct an  
15 inquiry in the fairness of the proposed settlement. The trial court has broad discretion in  
16 determining whether the settlement is fair. In exercising that discretion, it normally considers the  
17 following factors: strength of the plaintiff’s case; the risk, expense, complexity and likely duration  
18 of further litigation; the risk of maintaining class action status through trial; amount offered in  
19 settlement; extent of discovery completed and stage of the proceedings; experience and views of  
20 counsel; presence of a governmental participant; and reaction of the class members to the  
21 proposed class settlement. *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1801; *In Re*  
22 *Microsoft I-V Cases* (2006) 135 Cal.App.4th 706, 723. This list is not exclusive and the Court is  
23 free to balance and weigh the factors depending on the circumstances of the case. *Wershba v.*  
24 *Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 244-245.

25 10. The proponent bears the burden of proof to show the settlement is fair, adequate  
26 and reasonable. *7-Eleven Owners for Fair Franchising v. Southland Corp.* (2000) 85 Cal.App.4th  
27 1135, 1165-1166; *Wershba, supra*, 91 Cal.App.4th at 245. There is a presumption that a proposed  
28 settlement is fair and reasonable when it is the result of arms’-length negotiations. 2 Herbert

1 Newburg & Albert Conte, Newburg on Class Actions §11.41 at 11-88 (3d ed. 1992); Manual for  
2 Complex Litigation (Third) §30.42.

3 11. The Gross Settlement Amount of **\$2.3 million** represents a recovery for the Class  
4 members of approximately **23.9%** of the total maximum liability exposure Plaintiff estimated  
5 Defendant could face on the class-wide claims. (Yeremian Decl. re: Final Approval, ¶ 13). With  
6 no objectors and only 4 exclusions, the **6,851** Participating Class members will receive an  
7 estimated average gross payment of **\$211.40**, with the estimated highest gross payment being  
8 **\$1,721.48**, and the estimated lowest gross payment being \$6.02. (Ghaffarirafi Decl., ¶¶ 10-11, 14).  
9 The Court finds these numbers to be within the range of reasonableness deserving of final  
10 approval.

11 12. Had this case not settled, there would have been additional risks and expenses  
12 associated with continuing to litigate. Procedural hurdles (e.g., motion practice and appeals) are  
13 also likely to prolong the litigation as well as any recovery by the class members.

14 13. There is always a risk of decertification. *Weinstat v. Dentsply Intern., Inc.* (2010)  
15 180 Cal.App.4th 1213, 1226 (“Our Supreme Court has recognized that trial courts should retain  
16 some flexibility in conducting class actions, which means, under suitable circumstances,  
17 entertaining successive motions on certification if the court subsequently discovers that the  
18 propriety of a class action is not appropriate.”)

19 14. As part of the Court’s analysis of this factor, the Court should take into  
20 consideration the admonition in *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116,  
21 133. In *Kullar*, objectors to a class settlement argued the trial court erred in finding the terms of  
22 the settlement to be fair, reasonable, and adequate without any evidence of the amount to which  
23 class members would be entitled if they prevailed in the litigation, and without any basis to  
24 evaluate the reasonableness of the agreed recovery. The Court of Appeal agreed with the objectors  
25 that the trial court bore the ultimate responsibility to ensure the reasonableness of the settlement  
26 terms. Although many factors had to be considered in making that determination, and a trial court  
27 was not required to decide the ultimate merits of class members’ claims before approving a  
28 proposed settlement, an informed evaluation could not be made without an understanding of the

1 amount in controversy and the realistic range of outcomes of the litigation.

2 15. Defendant has agreed to settle for the non-reversionary amount of **\$2.3 million**,  
3 with no additional sums being due from Defendant for damages, costs, attorneys' fees,  
4 contributions, reimbursements or for any other reason, save for the employer's share of payroll  
5 taxes, which will be paid by Defendant separately from the Settlement funds.

6 16. Class Counsel conducted an investigation that included informal discovery,  
7 reviewed time records, interviewed class members, reviewed Plaintiff's documents, and formed  
8 damage models based on all of these. The parties also mediated this case with Tripper Ortman,  
9 Esq., a respected and highly experienced mediator in wage and hour class actions. In connection  
10 with mediation and through discussions with counsel for Defendant, Class Counsel also discussed  
11 all aspects of the case, including the risks of litigation and the risks to both parties of proceeding  
12 with a motion for class certification as well as the law relating to meal and rest periods. (Yeremian  
13 Declaration re Final Approval, ¶¶ 9-14, 30-31).

14 17. Class Counsel has experience with wage and hour class litigation. (Yeremian  
15 Declaration re: Preliminary Approval, ¶¶ 3-9; Lindsay Decl. re: Final Approval, ¶¶ 7-19). Class  
16 Counsel is of the opinion that this settlement is in the best interest of the class provides substantial  
17 benefit to class members.

18 18. The class reacted very positively with a 99.94% participation rate and no Class  
19 Members objecting. (Ghaffarirafi Decl., ¶¶ 10-12).

20 19. On balance, this is a fair settlement that satisfies the *Dunk* factors, such that final  
21 approval is warranted.

22 20. Class Counsel requested attorneys' fees of \$766,666.67. The Court employs the  
23 lodestar method in awarding fees, as opposed to a "percentage of the common fund" method. This  
24 amount would reflect the actual work performed, plus a multiplier (if applicable) to recognize  
25 counsel's efforts. In common fund cases, the Court may employ a percentage of the benefit  
26 method, as cross-checked against the lodestar. *Laffitte v. Robert Half Int'l., Inc.* (2016) 1 Cal.5<sup>th</sup>  
27 480, 503.

28

1           21.     Here, fees are sought pursuant to the percentage method. The determination of what  
2 constitutes an appropriate percentage “is somewhat elastic and depends largely on the facts of a  
3 given case, but certain factors are commonly considered. Specifically, the court may address the  
4 percentage likely to have been negotiated between private parties in a similar case, percentages  
5 applied in other class actions, the quality of class counsel, and the size of the award.” *In re Ikon*  
6 *Office Solutions, Inc., Securities Litigation* (E.D. Pa. 2000) 194 F.R.D. 166, 193.

7           22.     These factors favor the **\$766,666.67** award. As for the first factor, private  
8 contingency fee agreements are routinely 30% to 40% of the recovery. (*In re Ikon*, 194 F.R.D. at  
9 194.) As for the second factor, “most fees appear to fall in the range of nineteen to forty-five  
10 percent.” (*Id.*) As for the third factor, Class Counsel has experience in class actions, including  
11 wage and hour cases. Most importantly, Class Counsel achieved good results for the class as  
12 evidenced by the class members’ reaction to the settlement. As for the fourth factor, Class Counsel  
13 negotiated a \$2.3 million gross settlement. Applying the lodestar cross-check, Class Counsel states  
14 that members of his firm have spent at least 541 hours on this case and Walter Haines has invested  
15 33.90 hours. (Yeremian Declaration, ¶¶ 22-28; Lindsay Decl., ¶¶ 7-8, Exhibit A; Haines Decl., ¶  
16 7). At Counsel’s hourly rates of \$685, \$674 and \$650 per hour and paralegal rate of \$100 per hour,  
17 the lodestar is calculated at 574.90 hours and \$379,082.50 in fees. (Yeremian Declaration, ¶ 23).  
18 The hourly rates appear to be reasonable for attorneys with their respective years of experience  
19 (*id.*), and the hours spent are reasonable for this case. It appears that Class Counsel utilized skill in  
20 litigating this case, and by all accounts, have good reputations in the legal community; at the very  
21 least, there is no evidence before the Court to indicate that the attorneys have negative reputations  
22 in the legal community. It also appears that Class Counsel spent appreciable time on the case,  
23 which time could have been spent on other meritorious fee-generating cases. Based on the  
24 \$379,082.50 lodestar, the fee request of \$766,666.67 translates into a multiplier of 2.02. As the fee  
25 request is based on a reasonable percentage of the settlement fund and is supported by the lodestar  
26 calculation with a reasonable multiplier, and because the Class was provided with notice of the fee  
27 request and did not object, the Court awards Class Counsel fees in the amount requested of  
28 \$766,666.67.

1           23.     Class Counsel also requests costs in the amount of \$12,925.69. (Yeremian  
2 Declaration, ¶ 38, and Exhibit H thereto), which is less than the \$20,000.00 allocated to Costs  
3 under the Settlement. Any funds not awarded to fees and costs will be returned to the Net  
4 Settlement Fund for distribution to the participating Class members. Class Counsel’s actual costs,  
5 totaling approximately \$12,925.69 consist of filing fees, mediation fees, court appearances,  
6 copying, filing and service fees. These costs appear reasonable and necessary to the conduct of the  
7 litigation. Further, as with the fee requests, the maximum cost request was disclosed to class  
8 members and deemed unobjectionable. For these reasons, the cost request is granted in the amount  
9 of \$12,925.69, and the unawarded costs from the original allocation will remain included in the  
10 Net Settlement Fund for distribution to the participating Class members.

11           24.     Claims administrator ILYM Group, Inc. requests administration costs of  
12 \$20,000.00. (Ghaffarirafi Decl., ¶17). Based upon the work performed and yet to be performed,  
13 and the fact that the class was provided notice of the initial requested claims administration  
14 expenses and none objected, the request for administration costs of \$20,000.00 is granted.

15           25.     The Court approves an allocation to the PAGA claim penalties totaling \$50,000.00.  
16 This includes a payment of \$37,500.00 to the LWDA, and the remaining \$12,500.00 will remain  
17 in the Net Settlement Fund for distribution to the participating Class members.

18           26.     Finally, Class Counsel seeks a class representative enhancement and service award  
19 payment of \$7,500.00 to the class representative. The Court considers the following factors,  
20 among others, in determining whether to pay an incentive or enhancement award to a class  
21 representative: whether an incentive was necessary to induce the class representative to participate  
22 in the case; actions, if any, taken by the class representative to protect the interests of the class; the  
23 degree to which the class benefited from those actions; the amount of time and effort the class  
24 representative expended in pursuing the litigation; the risk to the class representative in  
25 commencing suit, both financial and otherwise; the notoriety and personal difficulties encountered  
26 by the class representative; the duration of the litigation; and the personal benefit (or lack thereof)  
27 enjoyed by the class representative as a result of the litigation. California Practice Guide, Civil  
28 Procedure Before Trial, ¶14:146.10 (The Rutter Group 2012) (citing *Clark v American Residential*



1 *Services, LLC* (2009) 175 Cal.App.4th 785, 804; *Bell v. Farmers Ins. Exch.* (2004) 115  
2 Cal.App.4th 715, 726; *In re Cellphone Fee Termination Cases* (2010) 186 Cal.App.4th 1380,  
3 1394; *Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles* (2010) 186 Cal.App.4th 399, 412.  
4 Plaintiff devoted approximately 85 hours to this litigation. (Sanchez Declaration re: Final  
5 Approval, ¶¶ 8-10). He assisted his attorneys by having multiple conferences with them and by  
6 providing documents, was deposed, completed comprehensive written discovery, and helped Class  
7 Counsel prepare for mediation. (*Id.*). Plaintiff freely chose to champion the rights of the class and  
8 accepted the risks associated with acting as a class representative. (*Id.* at ¶¶ 10-15). The Court  
9 grants a Representative Award of \$7,500.00 to Plaintiff, as Plaintiff spent significant time on this  
10 litigation, Plaintiff's actions benefitted the class, and Plaintiff accepted the risks and notoriety that  
11 are associated with acting as a class representative.

12         27. All Parties, including each and all Class members, are bound by this Final  
13 Approval Order and by the Stipulation. All Class Members shall be deemed to have entered into  
14 the Stipulation and the releases provided therein. Defendant shall have no obligation to pay any  
15 sums in excess of the \$2.3 million settlement payment set forth in the Stipulation (save and except  
16 for the additional employer payroll taxes associated therewith). Other than as provided in the  
17 Stipulation, Defendant shall have no obligation after entry of judgment to pay any sum to any  
18 person, whether for costs, attorneys' fees, class member reimbursement or contribution, as a result  
19 of entry of judgment.

20         28. The Court previously conditionally certified the Action as a class action for  
21 Settlement purposes under California Code of Civil Procedure § 382. The Class is defined as  
22 follows:

23         a. "Settlement Class Members:" as: "All persons who, during the Class Period  
24 (January 23, 2014 through July 16, 2019), have previously been or currently are employed by PSC  
25 and Pacific Southwest Container, LLC, whether directly or through an employment agency or a  
26 professional services organization, in California as a non-exempt, hourly employee."

27         b. "Class Period:" is defined as January 23, 2014 through July 16, 2019.  
28

1           29.     Excluded from the Class would have been those persons who validly requested  
2 exclusion in accordance with the requirements set forth in the Preliminary Approval Order, and  
3 there were only four requests for exclusions.

4           30.     The certified Class continues to meet all the requirements of California Code of  
5 Civil Procedure section 382, as already found, and for the reasons set forth in the Court's  
6 Preliminary Approval Order.

7           31.     Plaintiff Erasmo Sanchez is the Court-appointed Class Representative for the Class.

8           32.     David Yeremian and Alvin B. Lindsay of the law firm David Yeremian &  
9 Associates, Inc., are the Court-appointed Class Counsel.

10          33.     Upon the Effective Date (as defined in the Stipulation), all Released Claims of each  
11 and every member of the Classes are and shall be deemed to be conclusively released as against  
12 the Releasees. All persons and entities who are in the Classes are hereby forever barred and  
13 enjoined from commencing, prosecuting or continuing, either directly or indirectly, against the  
14 Releasees, in this or any other jurisdiction or forum, any and all Released Claims (as defined in the  
15 Stipulation).

16          34.     Without affecting the finality of this Order in any way, this Court hereby retains  
17 continuing jurisdiction over: (a) implementation of the Stipulation and any award or distribution of  
18 the Net Settlement Amount, including interest earned thereon; (b) disposition of the Net  
19 Settlement Amount; (c) hearing and determining applications for attorney fees and expenses in the  
20 Action; and (d) all parties hereto for the purpose of construing, enforcing, and administrating the  
21 Stipulation and the Settlement therein.

22          35.     In accordance with the provisions of Code Civ. Proc. §384, the Court orders the  
23 parties to submit a joint written report to the Court on or before May 19, 2020 as to the total  
24 amount that was actually paid to the class members pursuant to the subject settlement. The Court  
25 shall then amend the judgment to direct that the sum of the unpaid funds be submitted to the State  
26 Controller Unclaimed Property Fund for claiming by such class members pursuant to California's  
27 unclaimed property laws

28

1           36.     The Court further orders that Notice of the Court's Order Granting Final Approval  
2 and Judgment shall be posted on the Settlement Administrator's website for a period of at least  
3 ninety (90) days. (Civ. Code §1781(g); Cal. Rules of Ct., rule 3.771(b).)

4           37.     There is no just reason for delay in the entry of judgment approving the Class  
5 Settlement and immediate entry by the Clerk of the Court is expressly directed.

6 **IT IS SO ORDERED.**

7

8 DATED: Dec. 3, 2019



Honorable Marie Sovey Silveira  
Judge of the Superior Court

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28