

**FILED**  
LOS ANGELES SUPERIOR COURT

OCT 11 2022

SHERRI R. CARTER, EXECUTIVE OFFICER/CLERK  
BY Nancy Navarro Deputy  
NANCY NAVARRO

**SUPERIOR COURT OF CALIFORNIA  
COUNTY OF LOS ANGELES**

MATTHEW VALDEZ, individually, and on  
behalf of other members of the general  
public similarly situated,

Plaintiff,

v.

GEARY PACIFIC CORPORATION, a  
California corporation; and DOES 1 through  
100, inclusive,

Defendants.

Case No.: 18STCV04381

ORDER GRANTING  
MOTION FOR FINAL APPROVAL  
OF CLASS ACTION SETTLEMENT,  
SETTING FEES and COSTS, AND  
SETTING INCENTIVE AWARDS

**I. BACKGROUND**

Plaintiffs Matthew Valdez, Christian Baldenegro, and Juan Tapia sue their  
former employer, Defendants Geary Pacific Corporation and Geary Pacific Supply  
(collectively, "Defendant" or "Defendants") for alleged wage and hour violations.

Defendants operate as a wholesaler distributor of heating and cooling products,

1 supplies, equipment, and support with headquarters in Anaheim, California. Plaintiffs  
2 seek to represent a class of Defendants' current and former non-exempt employees.

3 On November 8, 2018, Plaintiff Valdez filed a class action complaint alleging a  
4 cause of action for violation of California Business & Professions Code §§ 17200, et seq.  
5 (the "*Valdez Action*"). On February 13, 2020, Plaintiff Tapia filed a complaint for  
6 Enforcement Under the Private Attorneys General Act ("PAGA") against Defendants in  
7 Orange County Superior Court entitled *Tapia v. Geary Pacific Corporation, et al.*, Case  
8 No. 30-2020-01131246-CU-OE-CXC (the "*Tapia Action*").

9 On February 13, 2020, the parties participated in a full-day mediation conducted  
10 by Eve Wagner, Esq. With the aid of the mediator's evaluation, the parties ultimately  
11 finalized the *Class Action and PAGA Settlement Agreement* ("Settlement Agreement"), a  
12 copy of which was filed with the Court. This mediation contemplated the filing of a First  
13 Amended Complaint (FAC), which plaintiffs filed over eighteen months later, on  
14 September 29, 2021.

15 The FAC added Plaintiffs Tapia and Baldenegro to the action. The FAC alleges  
16 causes of action for: (1) unpaid overtime (Labor Code §§ 510, 1198); (2) unpaid meal  
17 period premiums (Labor Code §§ 226.7, 512(a)); (3) unpaid rest period premiums (Labor  
18 Code § 226.7); (4) unpaid minimum wages (Labor Code §§ 1194, 1197, 1197.1); (5) final  
19 wages not timely paid (Labor Code §§ 201, 202); (6) wages not timely paid during  
20 employment (Labor Code § 204); (7) non-compliant wage statements (Labor Code §  
21 226(a)); (8) failure to keep requisite payroll records (Labor Code § 1174(d)); (9)  
22 unreimbursed business expenses (Labor Code §§ 2800, 2802); (10) violation of Business  
23 & Professions Code §§ 17200, et seq.; (11) violation of Labor Code § 2698, et seq.; (12)  
24 declaratory relief; (13) unpaid overtime under the Fair Labor Standards Act (29 U.S.C. §  
25 207) ("FLSA"); and (14) unpaid minimum wages under the FLSA (29 U.S.C. § 206).

1 Plaintiffs' papers in support of preliminary approval were rejected on multiple  
2 occasions. On October 19, 2020, the Court issued a "checklist" to the parties pertaining  
3 to deficiencies in Plaintiffs' motion for preliminary approval and the Settlement  
4 Agreement, to which the parties filed supplemental briefing, including an Amended  
5 Settlement Agreement. The Court issued a second checklist on June 1, 2021, raising  
6 additional concerns. In response, the parties filed further briefing on September 28,  
7 2021, including a Second Amended Settlement Agreement. The parties submitted  
8 additional supplemental material on November 1, 2021 to address remaining issues  
9 raised by the Court.

10 The settlement was preliminarily approved on November 9, 2021. Notice was  
11 given to the Class Members as ordered (see Declaration of Nathalie Hernandez). Ms.  
12 Hernandez testifies that the number of workweeks ultimately involved in the settlement  
13 class exceeded that estimated and that Defendants therefore exercised its option under  
14 the Second Amended Settlement Agreement to terminate the class as of February 3,  
15 2021.

16 Plaintiffs' motion for final approval of the Settlement Agreement, including for  
17 payment of fees, costs, and a service award to the named plaintiffs came on for hearing  
18 on August 9, 2022. The Court noted various issues with the showing made.  
19 Supplemental papers were filed September 27, 2022 and October 20, 2022 by way of  
20 supplemental declarations of Edwin Aiwazian. For the reasons set forth below, the  
21 Court grants final approval of the settlement, sets attorneys' fees and costs, and sets  
22 incentive awards.

23 //

24 //

25 //

1 **II. THE TERMS OF THE SETTLEMENT**

2  
3 **A. SETTLEMENT CLASS DEFINITION**

4 “Class” or “Class Members” mean all current and former hourly-paid and/or  
5 non-exempt individuals employed by Defendants in California during any portion of the  
6 Class Period. (Settlement Agreement ¶1.17)

7 “Class Period” means the time from November 8, 2014 through February 3,  
8 2021. (¶1.16; as modified by escalator clause at ¶9.3)

9 “Settlement Class” or “Participating Class Members” mean Class Members who  
10 have not timely and validly requested exclusion from the Settlement. (¶1.18)

11 “PAGA Employees” means Plaintiffs and all Class Members employed by  
12 Defendants at any time during the PAGA Period. (¶1.26)

13 “PAGA Period” means the time from November 20, 2018 through February 3,  
14 2021. (¶1.27; as modified by escalator clause at ¶9.3)

15  
16 **B. THE MONETARY TERMS OF SETTLEMENT**

17 The essential monetary terms are as follows:

- 18 • The Maximum Settlement Amount is **\$650,000** (¶1.8). This includes payment of  
19 a PAGA penalty of **\$50,000** to be paid 75% to the LWDA (\$37,250) and 25% to  
20 PAGA Employees (\$12,500) (¶1.25).
  - 21 ○ As of the date of the Parties’ February 13, 2020 mediation, 120 Class  
22 Members had already settled and released their claims against Defendants  
23 as part of their individual settlement program and received a portion of  
24 the Prior Release Payments. The Maximum Settlement Amount is  
25 inclusive of the Prior Release Payments already paid to Class Members.

1 Thus, Defendant's outstanding payment obligation under the Maximum  
2 Settlement Amount is **\$561,000**, and Defendant shall have no obligation  
3 to pay a greater amount than \$561,000, aside from its employer's share of  
4 taxes on funds allocated as wages herein. (¶9.1) The Maximum  
5 Settlement Amount includes any and all interest accruals and no  
6 additional interest shall be due under any circumstances. (¶10)

- 7 ○ Escalator Clause. It was estimated for purposes of mediation that there  
8 were approximately 16,331 Workweeks for the period November 8, 2014  
9 to February 13, 2020. This number would be expected to increase  
10 proportionately for the passage of time between that date and the time of  
11 Preliminary Approval Order. If the Workweeks as of Preliminary  
12 Approval Order exceeds the referenced Workweeks by more than 15%  
13 (i.e., exceeds 18,781 workweeks), the Maximum Settlement Amount will  
14 be increased on a *pro rata* basis according to the number of additional  
15 Workweeks. In the alternative, Defendants shall have the option of ending  
16 the Class Period on the date that is one day before the date the total  
17 number of Workweeks hit the 18,781 cap. (¶9.3)
- 18 ○ At final approval, Class Counsel and the Settlement Administrator  
19 indicate that the escalator clause was triggered, and Defendants executed  
20 their option to end the Class Period on the date before the date the total  
21 number of Workweeks hit the 18,781 cap. Accordingly, the Class Period  
22 was modified to end at February 3, 2021. (See MFA at p. 1, fn 1; Decl. of  
23 Nathalie Hernandez ¶5.) The Settlement Administrator issued a  
24 Correction Notice to the Class informing them of the revised Class Period  
25 and PAGA Period definitions. (Hernandez Decl. ¶8.)

- 1 • The Net Settlement Amount (“Net”) (**\$190,970**) is the Maximum Settlement  
2 Amount less:
  - 3 ○ **\$89,030** that Defendant has already paid to Class Members in exchange  
4 for releases as part of their individual settlement program related to the  
5 Actions (“Prior Release Credit”) (¶1.23; see also Joint Stipulation to  
6 Modify Preliminary Approval Order filed 4/6/2022);
  - 7 ○ Up to **\$247,000** (38%) for attorneys’ fees (¶9.7);
  - 8 ○ Up to **\$40,000** for attorney costs (*Ibid.*)
  - 9 ○ Up to **\$25,000** total for service awards to the proposed class  
10 representatives (\$10,000 to Plaintiff Valdez, \$7,500 each to Plaintiffs  
11 Baldenegro and Tapia) (¶9.5); and
  - 12 ○ Up to **\$8,000** for settlement administration costs (Amendment No. 1 to  
13 Second Amended Class Action and PAGA Settlement Agreement ¶9.8).
- 14 • Employer-side payroll taxes will be paid separately from, and in addition to, the  
15 Maximum Settlement Amount. (¶11.2)
- 16 • Assuming the Court approves all maximum requested deductions, approximately  
17 \$213,110.89 will be available for distribution to participating class members.  
18 The average settlement share will be approximately \$1,268.51. ( $\$213,110.89$   
19  $\text{Net} \div 168 \text{ class members} = \$1,268.51$ ). In addition, each PAGA Employee will  
20 receive a portion of the PAGA penalty (\$12,500 or 25% of \$50,000 PAGA  
21 penalty).
- 22 • There is no Claim Requirement (Notice pg. 1).
- 23 • The settlement is not reversionary (¶7.4).
- 24 • Payment Calculation: Each Participating Class Member's payment (i.e., an  
25 Individual Settlement Payment) will be determined as follows: (¶9.4)

- 1           ○ Defendants will provide the Settlement Administrator with the number of  
2           Workweeks credited to each Class Member. The Settlement  
3           Administrator will then calculate the total number of Workweeks worked  
4           by all Participating Class Members ("Total Workweeks"). (§9.4.i)
- 5           ○ The Settlement Administrator will (1) divide each Participating Class  
6           Member's respective Workweeks by the Total Workweeks, and (2)  
7           multiply the resulting figure by the Net Settlement Amount to yield each  
8           Participating Class Member's "Initial Share". (§9.4.ii)
- 9           ○ The Initial Share of any Participating Class Member who received a Prior  
10          Release Payment ("Previously Paid Participating Class Member") will be  
11          reduced by the amount of his or her Prior Release Payment to yield his or  
12          her Individual Settlement Payment. If the Prior Release Payment exceeds  
13          the Initial Share, his or her Individual Settlement Payment will be equal to  
14          zero. In no case will the amount subtracted for a Prior Release Payment  
15          exceed the individual Participating Class Member's Initial Share. The  
16          Initial Share of any Participating Class member who did not receive a  
17          Prior Release Payment ("Unpaid Participating Class Member") will  
18          remain unchanged. (§9.4.iii)
- 19          ○ The total amount by which the Initial Shares of all Previously Paid  
20          Participating Class Members are reduced by Prior Release Payments  
21          ("Share Redistribution") will be redistributed to all Unpaid Participating  
22          Class Members on a pro rata basis. Each Unpaid Participating Class  
23          Member's portion of the Share Redistribution will be added to his or her  
24          respective Initial Share to yield his or her Individual Settlement Payment.  
25          (§9.4.iv)

- All Participating Class Member’s Individual Settlement Payment will be reduced by employee's share of payroll tax deductions for each Participating Class Member. (§9.4.v)
- PAGA Payment Calculation: \$12,500, or 25% of the \$50,000 PAGA Penalties, will be distributed to PAGA Employees on a pro rata basis as follows: (§9.6)
  - Defendants will provide the Settlement Administrator with the number of PAGA Workweeks credited to each PAGA Employee. The Settlement Administrator will then calculate the total number of PAGA Workweeks worked by all PAGA Employees (“Total PAGA Workweeks”). (§9.6.i)
  - The Settlement Administrator will (1) divide each PAGA Employees respective PAGA Workweeks by the Total PAGA Workweeks, and (2) multiply the resulting figure by the PAGA Employee Amount to yield each PAGA Employee’s Individual PAGA Payment. (§9.6.ii)
- Tax Withholdings: Each Individual Settlement Payment will be allocated as follows: 25% as wages, 75% as penalties, any other non-taxable items, and interest. All Individual PAGA Payments will be allocated as 100% penalties and interest. (§11.2)
- Uncashed Settlement Payment Checks: Participating Class Members and PAGA Employees will have one hundred and eighty (180) calendar days from the date on which Individual Settlement Payment and/or Individual PAGA Payment checks are issued, to cash or deposit the Individual Settlement Payment and/or Individual PAGA checks. For any check not cashed, deposited, or otherwise negotiated within the 180-day period, the Settlement Administrator will transmit over the amount represented by the check to the State Controller, with the identity of the Participating Class Member and/or PAGA Employee to whom the



1 funds belong, to be held for the Participating Class Member and/or PAGA  
2 Employee per California Unclaimed Property Law. (§7.4)

- 3 • Funding and Distribution of the Settlement. Within fifteen (15) calendar days  
4 after the Effective Date, Defendants shall provide the Settlement Administrator  
5 with sufficient funds to make all the payments required under this Settlement  
6 (i.e., the Maximum Settlement Amount less the Prior Release Credit plus  
7 employer's share of payroll taxes). (§9.9) Within fifteen (15) calendar days after  
8 receipt of the Maximum Settlement Amount (less the Prior Release Payment)  
9 from Defendant, the Settlement Administrator shall make the Individual  
10 Settlement Payments to Participating Class Members. (§9.10)

11  
12 **C. TERMS OF RELEASES**

- 13 • Participating Class Members will release: All claims presented directly in the  
14 operative complaint in the *Valdez* Action or based on the facts alleged in the  
15 operative complaint in the *Valdez* Action, as amended, including and not limited  
16 to, all claims for unpaid wages, including, failure to pay minimum wages,  
17 straight time compensation, overtime compensation, double-time compensation,  
18 and interest; the calculation of the regular rate of pay; all claims for wages  
19 related to alleged illegal time rounding; missed meal period and rest-period  
20 wages; all claims for unpaid reimbursements; all claims for payment for all  
21 hours worked, including off-the-clock work; all claims for non-compliant wage  
22 statements; all claims for failure to keep accurate records; all claims for unfair  
23 business practices related to the Released Claims; all claims for declaratory  
24 relief; all claims for penalties, including recordkeeping penalties, wage statement  
25 penalties, minimum-wage penalties, and waiting-time penalties; and all claims

1 for attorneys' fees and costs; all claims arising under: California Labor Code  
2 sections 200, 201, 201.1, 201.3, 201.5, 202, 203, 204, 205.5, 206, 210, 216, 218,  
3 218.5, 218.6, 221, 222, 222.5, 223, 224, 225, 225.5, 226, 226.3, 226.7, 226.8,  
4 227.3, 256, 450, 510, 511, 512, 516, 550, 551, 552, 558, 1174, 1174.5, 1182.12,  
5 1194, 1194.2, 1197, 1197.1, 1197.2, 1198, 2800, 2802, 2698 et seq., and 2699 et  
6 seq.); the Wage Orders of the California Industrial Welfare Commission; the  
7 California Private Attorneys General Act of 2004 ("PAGA"); California  
8 Business and Professions Code section 17200, et seq.; the FLSA, 29 U.S.C. §  
9 201 et seq.; and federal common law which arose during the Class Period  
10 ("Released Claims"). (¶6.1)

- 11 • The Participating Class Members who endorse their settlement checks waive and  
12 release any claims under the Fair Labor Standards Act, 29 U.S.C. § 201 et seq.  
13 ("FLSA") arising during the Class Period and reasonably related to any or all of  
14 the aforementioned claims. This release excludes the release of claims not  
15 permitted by law. (¶6.1)
- 16 • Release and Waiver of Claims by PAGA Employees: As of the funding of the  
17 Maximum Settlement Amount, as set forth in ¶9.10, all PAGA Employees will  
18 be deemed to have fully, finally, and forever released, settled, compromised,  
19 relinquished, and discharged the Released Parties of all PAGA Released Claims  
20 he or she may have had. All PAGA Employees will be bound to the settlement  
21 and release of the PAGA Released Claims based on claims asserted in the PAGA  
22 Letters and will receive their Individual PAGA Payment irrespective of whether  
23 they submit a Request for Exclusion. (¶6.4)
- 24 • "PAGA Released Claims" means any and all Released Claims presented directly  
25 in the PAGA Letters based on the facts alleged in the operative complaint in the

1 Valdez Action, as amended, arising during the PAGA Period, that may be  
2 asserted under the Private Attorneys General Act of 2004, codified in California  
3 Labor Code § 2698, *et seq.* (¶1.29)

- 4 • “PAGA Letters” refers to the written notices provided by Plaintiffs Baldenegro  
5 and Tapia provided to the LWDA of their intent to seek civil penalties and all  
6 other available remedies under PAGA for Defendants’ alleged violations of  
7 Labor Code §§ 201-204, 226(a), 226.7, 510, 512(a), 551, 552, 1174(d), 1194,  
8 1197, 1197.1, 1198, 2800, and 2802 and IWC Wage Orders including *inter alia*,  
9 Wage Orders 4-2001, 7-2001, 9-2001, and 16-2001. (¶1.24)
- 10 • “Released Parties” means: Defendants and each of their past, present and future  
11 agents, employees, servants, officers, directors, partners, trustees,  
12 representatives, shareholders, stockholders, attorneys, parents, subsidiaries,  
13 equity sponsors, related companies/corporations and/or partnerships, divisions,  
14 assigns, predecessors, successors, insurers, consultants, joint venturers, joint  
15 employers, affiliates, alter-egos, and affiliated organizations, and all of its  
16 respective past, present and future employees, directors, officers, agents,  
17 attorneys, stockholders, fiduciaries, parents, subsidiaries, and assigns. (¶6.1)
- 18 • Named Plaintiffs will additionally provide a general release and §1542 waiver.  
19 (¶6.2)
- 20 • The releases are effective upon Defendants fully funding the Maximum  
21 Settlement Amount and by operation of the Final Approval Order. (¶6.1) The  
22 settlement will be funded within fifteen (15) calendar days after the Effective  
23 Date. (¶9.9)

24 //

25 //

1 **III. ANALYSIS OF SETTLEMENT AGREEMENT**

2 “Before final approval, the court must conduct an inquiry into the fairness of the  
3 proposed settlement.” Cal. Rules of Court, rule 3.769(g). “If the court approves the  
4 settlement agreement after the final approval hearing, the court must make and enter  
5 judgment. The judgment must include a provision for the retention of the court’s  
6 jurisdiction over the parties to enforce the terms of the judgment. The court may not  
7 enter an order dismissing the action at the same time as, or after, entry of judgment.”  
8 Cal. Rules of Court, rule 3.769(h).

9 As discussed more fully in the Order conditionally approving the settlement, “[i]n  
10 a class action lawsuit, the court undertakes the responsibility to assess fairness in order to  
11 prevent fraud, collusion or unfairness to the class, the settlement or dismissal of a class  
12 action. The purpose of the requirement [of court review] is the protection of those class  
13 members, including the named plaintiffs, whose rights may not have been given due  
14 regard by the negotiating parties.” See *Consumer Advocacy Group, Inc. v. Kintetsu*  
15 *Enterprises of America* (2006) 141 Cal. App.4th 46, 60 [internal quotation marks  
16 omitted]; see also *Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 245  
17 (“*Wershba*”), disapproved on another ground in *Hernandez v. Restoration Hardware*  
18 (2018) 4 Cal.5th 260 [Court needs to “scrutinize the proposed settlement agreement to the  
19 extent necessary to reach a reasoned judgment that the agreement is not the product of  
20 fraud or overreaching by, or collusion between, the negotiating parties, and that the  
21 settlement, taken as a whole, is fair, reasonable and adequate to all concerned.”] [internal  
22 quotation marks omitted].

23 “The burden is on the proponent of the settlement to show that it is fair and  
24 reasonable. However ‘a presumption of fairness exists where: (1) the settlement is  
25 reached through arm's-length bargaining; (2) investigation and discovery are sufficient to

1 allow counsel and the court to act intelligently; (3) counsel is experienced in similar  
2 litigation; and (4) the percentage of objectors is small.” See *Wershba, supra*, 91  
3 Cal.App.4th at pg. 245, citing *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794,  
4 1802. Notwithstanding an initial presumption of fairness, “the court should not give  
5 rubber-stamp approval.” See *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th  
6 116, 130. “Rather, to protect the interests of absent class members, the court must  
7 independently and objectively analyze the evidence and circumstances before it in order  
8 to determine whether the settlement is in the best interests of those whose claims will be  
9 extinguished.” *Ibid.*, citing 4 Newberg on Class Actions (4th ed. 2002) § 11:41, p. 90. In  
10 that determination, the court should consider factors such as “the strength of plaintiffs’  
11 case, the risk, expense, complexity and likely duration of further litigation, the risk of  
12 maintaining class action status through trial, the amount offered in settlement, the extent  
13 of discovery completed and stage of the proceedings, the experience and views of  
14 counsel, the presence of a governmental participant, and the reaction of the class  
15 members to the proposed settlement.” *Id.* at 128. This “list of factors is not exclusive and  
16 the court is free to engage in a balancing and weighing of factors depending on the  
17 circumstances of each case.” *Wershba, supra*, 91 Cal.App.4th at pg. 245.)

18 **A. A PRESUMPTION OF FAIRNESS EXISTS**

19 The Court preliminarily found in its Order of November 9, 2021 that the  
20 presumption of fairness should be applied. No facts have come to the Court’s attention  
21 that would alter that preliminary conclusion. Accordingly, the settlement is entitled to a  
22 presumption of fairness as set forth in the preliminary approval order.

23 //

24 //

1           **B.     THE SETTLEMENT IS FAIR, ADEQUATE, AND REASONABLE**

2           The settlement was preliminarily found to be fair, adequate and reasonable.

3           Notice has now been given to the Class and the LWDA. The notice process resulted in  
4           the following:

5                     Number of class members: 168

6                     Number of notices mailed: 168

7                     Number of undeliverable notices: 4

8                     Number of opt-outs: 0

9                     Number of objections: 0

10                    Number of participating class members: **168**

11           (Declaration of Nathalie Hernandez (“Hernandez Decl.”) ¶¶ 5-14.)

12           The Court finds that the notice was given as directed and conforms to due process  
13           requirements. Given the reactions of the Class Members and the LWDA to the proposed  
14           settlement and for the reasons set for in the Preliminary Approval order, the settlement is  
15           found to be fair, adequate, and reasonable.

16           **C.     CLASS CERTIFICATION IS PROPER**

17           For the reasons set forth in the preliminary approval order, certification of the  
18           Class for purposes of settlement is appropriate.

19           **D.     ATTORNEY FEES AND COSTS**

20           Class Counsel requests **\$247,000** (38%) for attorney fees and **\$17,859.11** for costs.  
21           (MFA at 22:3-7, 31:12-13.)

22           Courts have an independent responsibility to review an attorney fee provision and  
23           award only what it determines is reasonable. (*Garabedian v. Los Angeles Cellular*  
24           *Telephone Company* (2004) 118 Cal.App.4th 123, 128.) In determining the appropriate  
25           amount of a fee award, courts may use the lodestar method, applying a multiplier where

1 appropriate. (*PLCM Group, Inc. v. Drexler* (2000) 22 Cal.4th 1084, 1095-96.)

2 Alternatively, a percentage calculation is permitted in common fund cases. (*Laffitte v.*  
3 *Robert Half Int'l, Inc.* (2016) 1 Cal.5th 480, 503.)

4 A lodestar is calculated by multiplying the number of hours reasonably expended  
5 by the reasonably hourly rate. *PLCM Group, Inc. v. Drexler* (2000) 22 Cal.4th 1084,  
6 1095-1096 (*PLCM*). “Generally, ‘[t]he lodestar is calculated using the reasonable rate  
7 for comparable legal services in *the local community* for noncontingent litigation of the  
8 same type, multiplied by the reasonable number of hours spent on the case.’ ”

9 *Environmental Protection Information Center v. Dept. of Forestry & Fire Protection*  
10 (2010) 190 Cal.App.4th 217, 248, quoting *Nichols v. City of Taft* (2007) 155  
11 Cal.App.4th 1233, 1242-1243.

12 As to the reasonableness of the rate and hours charged, trial courts consider  
13 factors such as “the nature of the litigation, its difficulty, the amount involved, the skill  
14 required in its handling, the skill employed, the attention given, the success or failure,  
15 and other circumstances.” *PLCM, supra*, 22 Cal.4th at p. 1096. “The evidence should  
16 allow the court to consider whether the case was overstaffed, how much time the  
17 attorneys spent on particular claims, and whether the hours were reasonably expended.”  
18 *Christian Research Institute v. Alnor* (2008) 165 Cal.App.4th 1315, 1320.

19 In the instant case, fees are sought pursuant to the percentage method, as  
20 crosschecked by the lodestar. (MFA at pp. 18-31.) The notice expressly advised class  
21 members of the fee request, and no one objected. (Hernandez Decl. ¶13, Exhibit A  
22 thereto.)

23 Class Counsel represents that they worked a total of 664.10 hours. (Aiwazian  
24 Supp. Decl. ISO Final ¶5. It is represented that this is a lodestar of \$464,872.50.

25

1 The hearing on this matter was August 9, 2022. The Court noted that the  
2 Declaration of Aiwazian in support of the motion lacked clarity as to which information  
3 in it was provided on information and belief and which was based on the declarant's  
4 personal knowledge. In addition, the motion lacked information necessary to do a proper  
5 lodestar crosscheck. An opportunity was given for the filing of a revised declaration,  
6 which was filed September 27, 2022.

7 The Supplemental Declaration of Aiwazian filed September 27, 2022 does not  
8 provide information sufficient to conduct a lodestar analysis. There is no showing that the  
9 proposed hourly rates sought to be charged are consistent with those charged by other  
10 attorneys in the Los Angeles area of similar training and experience doing wage and hour  
11 class action work. Further, the matter appears to be overstaffed, with 22 attorneys  
12 assistants having worked on the case (See Aiwazian Supp. Dec. ¶ 5). Some of the work  
13 said to be done does not appear to have been necessary or is duplicative. Without  
14 specific detail as to why the tasks undertaken were reasonably necessary there can be no  
15 meaningful lodestar cross check.

16 Nonetheless, a percentage award is appropriate. The \$247,000 fee request is 38%  
17 of the Gross Settlement Amount, which is a higher percentage than the average fee award  
18 in class actions and in excess of that usually awarded in uncontested wage and hour  
19 actions such as this, in which no formal discovery was conducted.

20 The determination of what constitutes an appropriate percentage "is somewhat  
21 elastic and depends largely on the facts of a given case, but certain factors are commonly  
22 considered. Specifically, the court may address the percentage likely to have been  
23 negotiated between private parties in a similar case, percentages applied in other class  
24 actions, the quality of class counsel, and the size of the award." *In re Ikon Office*  
25 *Solutions, Inc., Securities Litigation* (E.D. Pa. 2000) 194 F.R.D. 166, 193. In wage and



1 hour cases in California the range of fee awards before trial is usually between 25% and  
2 33 1/3% “[F]ee awards in class actions average around one-third of the recovery”  
3 regardless of “whether the percentage method or the lodestar method is used.” (*Chavez*  
4 *v. Netflix, Inc.* (2008) 162 Cal.App.4th 43, 66, fn. 11; *Amaro v. Anaheim Arena*  
5 *Management, LLC* (2021) 69 Cal.App.5th 521, 545 (25.9% fee in contested wage and  
6 hour class action); See also *In re Consumer Privacy Cases* (2009) 175 Cal.App.4th 545,  
7 558, fn. 13 [noting that whether the percentage method or the lodestar method is used, fee  
8 awards average around one-third of the recovery, and that 25% is the benchmark].) Fees  
9 in excess of 33 1/3% may be appropriate in cases where counsel have done extraordinary  
10 work or suffer a delay in payment due to circumstances beyond their control.

11 There is nothing to suggest this case involved novel legal issues, or particularly  
12 difficult facts. Plaintiffs’ counsel is experienced in wage and hour cases and should have  
13 the capability to prosecute same efficiently. They have not indicated they took any risk in  
14 excess of that normally taken in any other contingent fee case of this type.

15 A review of the file shows that the pleading was challenged and that plaintiffs  
16 were required to respond to that motion. Formal discovery was served but there were no  
17 discovery disputes. The defendant is alleged to have engaged in an effort to secure  
18 individual settlements from employees in September 2019 and Plaintiffs’ counsel did  
19 investigate that conduct and considered bringing a declaratory relief action on behalf of  
20 plaintiff Baldenegro. The issue was discussed in mediation. (Supp. Aiwazian Dec. ¶¶ 2,  
21 7-13).

22 There also has been an extraordinary delay in approving this settlement. What the  
23 record shows is that within six months of having settled the pleadings (answer filed  
24 October 11, 2019), the matter was settled in principle. See Status Report of March 13,  
25 2020.

1           Some delay in approving the settlement is attributable to the fact that from March  
2 20, 2020 to approximately July 1, 2020 the matter could not be heard due to the COVID  
3 restrictions imposed on the court countywide. Some is also attributable to clarifying  
4 caselaw. However, much of the delay in approving the settlement was occasioned  
5 because Plaintiffs' counsel failed to submit a settlement that could be preliminarily  
6 approved, delayed in advising the Court that notice was not timely sent, and failed to  
7 submit proper papers for final approval. This necessitated multiple continuances and  
8 court appearances.

9           The preliminary approval hearing was originally scheduled for October 21, 2020.  
10 Deficiencies in the papers were noted in a "checklist" served October 19, 2020. Plaintiffs  
11 were given a new hearing date of January 19, 2021. Plaintiffs' papers were not timely  
12 filed. The matter was required to be continued to June 2, 2021.

13           Further deficiencies were identified by checklist issued June 1, 2021 and the matter  
14 was continued to October 18, 2021.

15           Plaintiffs' counsel was advised at hearing on October 18, 2021 that declarations  
16 must be presented on personal knowledge. Declarations on information and belief have  
17 no evidentiary value. See *City of Santa Cruz v. Municipal Court* (1989) 49 Cal. 3d 74,  
18 87-89; *Goodman v. Citizens Life & Casualty Ins. Co.* (1967) 253 Cal. App. 2d 807. A  
19 further opportunity was provided to file supplemental papers, which were received  
20 November 1, 2021. Preliminary approval was granted November 9, 2021 with a final  
21 approval hearing scheduled for April 20, 2022. Notice was to be mailed by December  
22 19, 2021.

23           On March 21, 2022 the Court was advised that notice had not been sent as ordered  
24 because there was a discrepancy between the amount of the Prior Release Payments set forth  
25 in the Settlement Agreements (\$89,000) and that which was actually paid (\$89,030). See

1 Stipulation and Order lodged March 21, 2022. Counsel do not explain the lengthy delay in  
2 seeking an Order modifying the Preliminary Approval Order to reflect this discrepancy.

3 This necessitated that the final approval date be continued. The matter was  
4 recalendared for August 9, 2022.

5 Notwithstanding the Court's direction on October 18, 2021, the Declaration of  
6 Aiwazian filed in support of this motion on July 18, 2022 states that the facts contained  
7 therein are within the declarant's personal knowledge *or* based on information and belief.  
8 (Aiwazian Dec. ISO Final Approval ¶1). The need for information based on personal  
9 knowledge was reiterated at the hearing on final approval on August 9, 2022 and the  
10 Court conveyed that the declaration of counsel in support of the motion contained no  
11 admissible evidence. Plaintiffs' counsel was given an opportunity to file an amended  
12 declaration based on personal knowledge. An amended declaration was filed on  
13 September 27, 2022 but did not address costs. Counsel was given yet further time to file  
14 the necessary declaration, which occurred October 10, 2022.

15 Fees are set at 33 1/3% or \$216,666.67, which is reasonable given the work  
16 undertaken balanced against the delay to the class in receiving payment.

17 Class Counsel requests \$17,859.11 in costs. (Aiwazian Supp. Decl. ISO Final ¶6,  
18 Exhibit A thereto.) This is less than the \$40,000 cap provided in the settlement  
19 agreement (¶9.7). The amount was disclosed to Class Members in the Notice, and no  
20 objections were received. (Hernandez Decl. ¶13, Exhibit A thereto.) The costs were  
21 necessarily incurred.

22  
23 **E. SERVICE AWARDS TO CLASS REPRESENTATIVES**

24 A service (or incentive) fee award to a named class representative must be  
25 supported by evidence that quantifies the time and effort expended by the individual and

1 a reasoned explanation of financial or other risks undertaken by the class representative.  
2 See *Clark v. American Residential Services LLC* (2009) 175 Cal.App.4th 785, 806-807;  
3 see also *Cellphone Termination Cases* (2010) 186 Cal.App.4th 1380, 1394-1395  
4 [“Criteria courts may consider in determining whether to make an incentive award  
5 include: (1) the risk to the class representative in commencing suit, both financial and  
6 otherwise; (2) the notoriety and personal difficulties encountered by the class  
7 representative; (3) the amount of time and effort spent by the class representative; (4) the  
8 duration of the litigation and; (5) the personal benefit (or lack thereof) enjoyed by the  
9 class representative as a result of the litigation. (Citations.)”].

10 The Settlement provides for Class Representative Payments in the amounts of  
11 **\$10,000** to Plaintiff Matthew Valdez, and **\$7,500 each** to Plaintiffs Juan Tapia and  
12 Christian Baldenegro. (MFA at 32:5-7.) In nearly identical declarations they urge that  
13 the awards are appropriate for the following reasons:

14 Plaintiff Valdez represents that his contributions to the action include: meeting  
15 with his attorneys, gathering documents concerning his employment and reviewing them  
16 with his attorneys, being available to answer his attorneys’ questions, identifying  
17 potential witnesses, providing his attorneys with documents and information concerning  
18 the case, describing Defendants’ policies, practices and procedures, reviewing  
19 Defendants’ discovery requests and providing documents and responses, and reviewing  
20 settlement documents. He estimates spending approximately 39 hours on the litigation.  
21 (Declaration of Matthew Valdez ISO Final ¶¶ 3-5.)

22 Plaintiff Tapia represents that his contributions to the action include: meeting  
23 with his attorneys, providing documents concerning his employment and reviewing them  
24 with his attorneys, being available to answer his attorneys’ questions, identifying  
25 potential witnesses, describing Defendants’ policies, practices and procedures, and

1 reviewing settlement documents. He estimates spending approximately 31 hours on the  
2 litigation. (Declaration of Juan Tapia ISO Final ¶¶ 3-5.)

3 Similarly, Plaintiff Baldenegro represents that his contributions to the action  
4 include: meeting with his attorneys, providing documents concerning his employment  
5 and reviewing them with his attorneys, being available to answer his attorneys'  
6 questions, identifying potential witnesses, describing Defendants' policies, practices and  
7 procedures, and reviewing settlement documents. He estimates spending approximately  
8 33 hours on the litigation. (Declaration of Christian Baldenegro ISO Final ¶¶ 3-5.)

9 All of the named plaintiffs are giving a general release but none shows that he has  
10 any claims of value that are being released. Nor do plaintiffs show that they have taken  
11 on any risk in serving as class representative beyond that ordinarily incurred by any  
12 plaintiff. The amounts sought are well in excess of the average payment to class  
13 members, which is said to be \$1,136.73 (Hernandez Dec. ISO Final Approval ¶ 15).

14 While plaintiff Valdez may have spent slightly more time on this action than his  
15 co-plaintiffs there is no showing that his actions increased the award to the class in any  
16 measurable way. In light of the above-described contributions to this action, and in  
17 acknowledgment of the benefits obtained on behalf of the class, a **\$5,000** service award  
18 to each Plaintiff is reasonable and approved.

19  
20 **F. SETTLEMENT ADMINISTRATION COSTS**

21 The Settlement Administrator, ILYM Group, Inc., requests **\$8,000** in  
22 compensation for its work in administrating this case. (Hernandez Decl. ¶16.) At the  
23 time of preliminary approval, costs of settlement administration were estimated at  
24 **\$8,000**. (Amendment No. 1 to Second Amended Class Action and PAGA Settlement  
25

1 Agreement ¶9.8.) Class Members were provided with notice of this amount and did not  
2 object. (Hernandez Decl. ¶13, Exhibit A thereto.)

3 Accordingly, settlement administration costs are approved in the amount of  
4 **\$8,000.**

5  
6  
7 **IV. CONCLUSION AND ORDER**

8 The Court hereby:

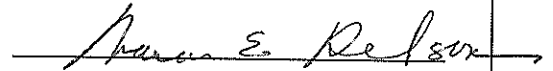
- 9 (1) Grants class certification for purposes of settlement;
- 10 (2) Grants final approval of the settlement as fair, adequate, and reasonable;
- 11 (3) Awards **\$216,666.67** in attorney fees and **\$ 17,859.11** to Class Counsel, Lawyers  
12 for Justice, PC;
- 13 (4) Approves payment of **\$37,500** (75% of \$50,000 PAGA penalty) to the LWDA;
- 14 (5) Awards **\$5,000 each** as Class Representative Service Awards to Matthew  
15 Valdez, Juan Tapia and Christian Baldenegro;
- 16 (6) Awards **\$8,000** in settlement administration costs to ILYM Group, Inc.;
- 17 (7) Orders class counsel to lodge a proposed Judgment, consistent with this ruling  
18 and containing the class definition, full release language, and a statement that no  
19 class members opted out by October <sup>Fi</sup>~~10~~, 2022;
- 20 (8) Orders class counsel to provide notice to the class members pursuant to  
21 California Rules of Court, rule 3.771(b) and to the LWDA pursuant to Labor  
22 Code §2699 (1)(3); and

23 //

24 //

1 (9) Sets a Non-Appearance Case Review re: Final Report re: Distribution of  
2 Settlement Funds for R}^A/C/G/H, at 1 K/A/E. Final Report is to be  
3 filed by R}^A/I/G/H.

4  
5  
6 Dated: 10/11/2022



MAREN E. NELSON

Judge of the Superior Court