PARTIES/ATTORNEYS

Plaintiff	Gerardo Martinez and Daysi Gonzalez	MELMED LAW GROUP Laura Supanich Michiko Vartanian
Defendant	Bob Campbell Ranches, Inc. and Surf Packing Inc.	MULLEN & HENZELL L.L.P Rafael Gonzalez Christina M. Behrman

This is a class action. On July 5, 2024, the court deemed the second amended complaint filed alleging the following causes of action based on wage and hour violations: (1) Failure to Pay All Minimum Wages; (2) Failure to Pay All Overtime Wages; (3) Failure to Provide Rest Periods and Pay Missed Rest Period Premiums; (4) Failure to Provide Meal Periods and Pay Missed Meal Period Premiums; (5) Failure to Pay Wages Timely During Employment; (6) Failure to Pay All Wages Earned and Unpaid at Separation; (7) Failure to Indemnify All Necessary Business Expenditures; (8) Failure to Furnish Accurate Itemized Wage Statements; (9) Violations of California's Unfair Competition Law (Bus. & Prof. Code, §§ 17200–17210); and (10) Civil Penalties Under the Private Attorney General Act (Labor Code § 2699 et seq.).

On Calendar

Plaintiff seeks Final Approval of a $181,346.61 class action settlement for approximately 810 current and former employees from June 30, 2017, until August 7, 2024.

Settlement Details

The class is defined as:

> All individuals who are or were employed by Defendants as non-exempt employees in California [from June 30, 2017 through August 7, 2024].
>
> (Second Amended Complaint, ¶ 2.)

There are 810 members of the class. The gross settlement will be paid into a common fund.[1] The fund will be reduced as follows:

Gross Settlement Amount	$181,346.61
Class Counsel Fees	$ 48,333.00
Class Counsel Expenses	$ 9,943.25
PAGA Allocation LWDA	$ 15,000.00[2]
Settlement Administration Costs	$ 9,950.00
Plaintiffs Service Award	$ 15,000 ($7,500 each)
Net Settlement Amount	$ 78,120.03

The amount of the Net Settlement Amount to be paid to each Participating Class Member will be apportioned based on the number of workweeks worked by each of the Participating Class Members. The estimated 810 Class Members will achieve monetary recovery amounting to an average recovery per class member of approximately $96.44 net, and an approximate maximum recovery of $1,526.03. (Melmed Decl. filed 12/11/24, ¶ 6.)

More specifically, "[e]ach Class Participant shall be eligible to receive payment of the Individual Settlement Amount, which is a share of the Net Settlement Amount based on the pro rata number of Workweeks by the Class Members during the Class Period as a proportion of all Workweeks by all Class Members. "Workweeks" shall be determined by adding all hours worked by each Class Participants during the Class Period and dividing them by 40 hours." (Melmed Decl. filed 7/18/24, Exh. A, ¶ 5.3.) The gross settlement amount is non-reversionary. (Melmed Decl. filed 7/18/24, Exh. A, ¶¶ 1.21, 5.1.)

Settlement Discussion

1. General Standards for Approval of a Class Action Settlement

The court preliminarily approved the requests in this motion. (See August 22, 2024 Order Preliminarily Approving Class Action Settlement.) Nevertheless, at the final approval hearing, "the court must conduct an inquiry into the fairness of the proposed settlement." (CRC 3.769(g).) If the court approves the settlement

[1] The Settlement, which was preliminarily approved by the Court on August 7, 2024, contemplated a non-reversionary settlement sum of $145,000.00 for a Class of 500 individuals for 16,000 workweeks. However, the mailing list contained 810 individuals and 23,012 workweeks. Because the number of workweeks exceeded 15% of 16,000, the escalator provision in the Settlement Agreement was triggered and the Gross Settlement Fund was increased to $181,346.61.

[2] The PAGA allocation to aggrieved employees is $5,00.00, which was not deducted from the net settlement amount above.

agreement, it enters judgment accordingly. (CRC 3.769(h).) (See *Luckey v. Superior Court* (2014) 228 Cal.App.4th 81, 93.)

Final approval involves the same factors involved in the preliminary approval process, although the court's scrutiny is more rigorous and thorough. (*Cho v. Seagate Technology Holdings, Inc*. (2009) 177 Cal.App.4th 734, 743; see also *Wershba v. Apple Computer, Inc*. (2001) 91 Cal.App.4th 224, 240.) " 'Due regard,' . . . 'should be given to what is otherwise a private consensual agreement between the parties. The inquiry "must be limited to the extent necessary to reach a reasoned judgment that the agreement is not the product of fraud or overreaching by, or collusion between, the negotiating parties, and that the settlement, taken as a whole, is fair, reasonable and adequate to all concerned." [Citation.]....' " (*7–Eleven Owners* (2000) 85 Cal.App.4th 1135, 1145, quoting from *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1802.) The test is not whether the maximum amount is secured, but whether the settlement is reasonable under all the circumstances. For example, a trial court does not abuse its discretion in approving a settlement when it found that the settlement was achieved at arm's length negotiation, including review of the mediator's declaration; the fact the case was vigorously litigated; plaintiff was represented by experienced counsel; the number of class members who objected or opted out was very small; and plaintiff faced considerable risk in proceeding to trial. (*Cho, supra*, at p. 745.)

As was true for preliminarily approval, the proponents for purposes of final approval have the burden to show the settlement is fair, although a presumption of fairness exists where the settlement is reached through arm's length bargaining; investigation and discovery are sufficient to allow counsel and the court to act intelligently; counsel is experienced in similar litigation; and the percentage of objectors is small. (*Dunk, supra*, at p. 1802.) This is only an initial presumption; a trial court's ultimate approval of a class action settlement will be vacated if the court "is not provided with basic information about the nature and magnitude of the claims in question and the basis for concluding that the consideration being paid for the release of those claims represents a reasonable compromise." In short, the trial court may not determine the adequacy of a class action settlement "without independently satisfying itself that the consideration being received for the release of the class members' claims is reasonable in light of the strengths and weaknesses of the claims and the risks of the particular litigation." (*Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles* (2010) 186 Cal.App.4th 399, 408.)

The court undoubtedly gives considerable weight to the competency and integrity of counsel and the involvement of a neutral mediator in assuring itself that a settlement agreement represents an arm's-length transaction entered without self-dealing or other potential misconduct. While an agreement reached under these circumstances presumably will be fair to all concerned, particularly when few of the affected class members express objections, in the final analysis it is

the court that bears the responsibility to ensure that the recovery represents a reasonable compromise, given the magnitude and apparent merit of the claims being released, discounted by the risks and expenses of attempting to establish and collect on those claims by pursuing the litigation. The court has a fiduciary responsibility as guardians of the rights of the absentee class members when deciding whether to approve a settlement agreement. (*Munoz, supra*, 186 Cal.App.4th at p. 408, fn. 6.)

With these standards in mind, the court must determine whether the final settlement agreement is fair, adequate, and reasonable; whether final certification of the class is appropriate; whether the actual class notice procedures appear sound; whether final approval of the appointment of and fees/costs for attorneys and the settlement administrator is appropriate; and whether any class representative enhancement as preliminarily requested is justified.

2. Is the Class Action Settlement Fair, Adequate and Reasonable?

a. Factors Favoring Presumption of Fairness

As noted, a presumption of fairness exists where the settlement is reached through arm's length bargaining; investigation and discovery are sufficient to allow counsel and the court to act intelligently; counsel is experienced in similar litigation; and the percentage of objectors is small. (*Dunk, supra*, at p. 1802.)

Here, private mediation occurred with Henry Bongiovi on April 26, 2022, which did not resolve the matter. (Melmed Decl. filed 7/18/24, ¶ 10.) They attended a second private mediation on November 1, 2022 with experienced employment law neutral Hon. Louise A. LaMothe (Ret.). (*Id.* at ¶ 14.) The matter did not resolve at mediation, however, the Parties continued settlement negotiations over the next several months and were able to reach a resolution. (*Id.)*

The Parties engaged in informal discovery before the first mediation. (Melmed Decl. filed 7/18/24, ¶ 10.) After the first mediation, plaintiff served formal discovery requests for which responses were ultimately produced. (Melmed Decl. filed 7/18/24, ¶ 11-13.) Further information was exchanged during the second mediation. (Melmed Decl. filed 7/18/24, ¶ 14.) Overall, plaintiffs report having access to "time sheets, wage statements, and relevant employment policies" from which they assembled and analyzed date for calculating damages. (Melmed Decl. filed 7/18/24, ¶ 18.)

Plaintiff's counsel, Jonathan Melmed, demonstrates that he is experienced in wage-and-hour litigation and has successfully represented plaintiffs in numerous class actions. (Melmed Decl. filed 12/11/24, ¶¶ 10-16.)

Finally, the court must consider the reaction of the class members to the proposed settlement. The memorandum of points and authorities details the notice process and concludes that the settlement administrator received zero objections or requests for exclusion. However, the declaration of Declaration of Cassandra Polites of ILYM Group, Inc., which evidences plaintiffs' assertions, *has not been filed*. Until the declaration is filed, this matter cannot be resolved.

The court nevertheless recognizes that, assuming the allegations to be true, these factors favor the presumption of fairness.

b. Strength of the Case

The most important factor is the strength of the case for plaintiffs on the merits, balanced against the amount offered in settlement. While the court "must stop short of the detailed and thorough investigation that it would undertake if it were actually trying the case," it must eschew any rubber stamp approval in favor of an independent evaluation. (*Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles* (2010) 186 Cal.App.4th 399, 407-408 (*Munoz*).) To perform this balance, the trial court must have "a record which allows 'an understanding of the amount that is in controversy and the realistic range of outcomes of the litigation.' " (*Munoz, supra,* at p. 409; see *Clark v. American Residential Services LLC* (2009) 175 Cal.App.4th 785, 801; *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 120.) While an express statement of the maximum amount is not required, there must be a record that is sufficiently developed to allow the court to understand the amount in controversy and the realistic ranges of outcomes of the litigation. (See *Munoz, supra*, 186 Cal.App.4th at p. 409.)

In preliminarily approving the settlement, the court determined the Settlement was a reasonable compromise of the claims at issue. There is no reason to reverse that conclusion here.

3. Certification of Class

Class action certification questions are essentially procedural and involve an assessment of whether there is a common or general interest between numerous people. The burden is on the proponent to show an ascertainable class with a well-defined community interest, meaning predominant commons question of law or fact, class representatives with claims or defenses typical of class, and class representatives who can adequately represent the class. (*Sav-On Drug Stores, Inc. v. Superior Court* (2004) 34 Cal.4th 319, 326.)

The court continues to find there to be a sufficient showing to certify the class for purposes of settlement.

4. Settlement Administrator Fees and Costs

As noted, there is no declaration from an employee of ILYM Group Inc., administrator of this settlement. Plaintiffs report that costs associated with the administration of this matter are $9,950.00. This includes all costs incurred to date, as well as estimated costs involved in completing the settlement distribution.

This is less than the amount preliminarily approved and the court intends to find it reasonable once a declaration in support has been submitted.

6. Class Counsel's Request for Fees and Costs

Counsel asks the court to approve fees of $ 48,333.33 and Class Counsel Expenses of $ 9,943.25.

CRC 3.769(b) requires that any attorney fee agreement, express or implied, that has been entered into with respect to payment of attorney's fees or the submission of an application for the approval of attorney's fees must be set forth in full in any application for approval of the of the settlement that has been certified as a class action. The agreement has *not* been submitted.

On the merits, the attorney fee amount seems appropriate. (See, e.g., *Graham v. DaimlerChrysler Corp.* (2004) 34 Cal.4th 553, 578 [it is well settled that attorney fees under CCP § 1021.5 may be awarded for class action suits benefiting a large number of people]; see also *Clark, supra*, 175 Cal.App.4th at p. 791.) The court has a duty to review and approve attorney's fees, even where the parties agree on the amount. (*Garabedian v. Los Angeles Cellular Telephone Co.* (2004) 118 Cal.App.4th 123, 127-128.) Use of the percentage method in common fund cases is permissible, although there must be evidence that the parties intended the attorney fees would be paid out of any common fund that had been created. That appears to be the case here. Further, the method is permissible when the amount is certain or easily calculable sum, as it is here. (*Dunk v. Ford Motor Co., supra*, at p. 1809.)

This court generally "double checks" the reasonableness of the fees requested under the lodestar method. (See, e.g., *Lafitte v. Robert Half Internat., Inc.* (2016) 1 Cal.5th 480, 504 [no abuse of discretion in court's decision to double check reasonableness of contingency method by looking to lodestar method for determining attorney's fees].) To date, Class Counsel reports having spent 198.7 billable hours on this matter. This works out to a blended billing rate of $243.35/hour. This billing rate is reasonable.

Attorney Melmed has attached an expense report to his declaration as Exhibit B. The costs appear to be reasonable.

Class counsel fees and costs will be approved.

5. Enhancement for Class Representative

Plaintiffs request an enhancement for each plaintiff of $7,500, or $15,000 total. It is established that a named plaintiff is eligible for reasonable incentive payments to compensate him or her for the expense or risk they have incurred in conferring benefit on other members of the class. (*Munoz, supra*, 186 Cal.App.4th at p. 412.) Relevant factors include actions the plaintiff has taken to protect the interests of the class, the degree to which the class had benefited from those actions, the amount of time and effort the plaintiff has expended, the risk to the class representative of commencing suit, the notoriety and personal difficulties encountered by the class representative, the duration of the litigation, and the personal benefit enjoyed by the class representative. (*Clark, supra*, 175 Cal.App.4th at p. 804.) The rationale in the end is to compensate class representatives for the expense or risk they have incurred in conferring a benefit on other members of the class. (*Id.* at p. 806.) Specificity, however, is required. (*Id.* at p. 807; *Cellphone Termination Fee Cases* (2010) 186 Cal.App.4th 1380, 1395 [these "incentive awards" to class representatives must not be disproportionate to the amount of time and energy expended in pursuit of the lawsuit].) Similarly, a PAGA plaintiff who prevails in or settles a case on behalf of the LWDA generally seeks an "incentive" or "service" payment that is paid from the penalties that the defendant must pay to the LWDA. These payments are non-statutory creations of the court similar to the "incentive" or "service" payments that are paid to class representatives. (*Cellphone Termination Fee Cases* (2010) 186 Cal.App.4th 1380, 1393-1395.)

Both named plaintiffs aver as follows: "I provided significant assistance to Plaintiff's Counsel in this case. Among other things, I participated in several lengthy interviews and phone conferences over a period lasting several months, searched for and produced a significant amount of relevant documents, participated in formal discovery, reviewed pleadings in the case, reviewed documents and data provided by Defendants, communicated about the case with Class Members, kept in contact with my attorney regarding the status of the case, and was available during the two all-day mediations." (Martinez Decl., ¶ 7; Gonzalez Decl., ¶ 7.)

Plaintiff Gerardo Martinez estimates he spent "approximately forty (40) hours of [his] time assisting and providing information to my attorneys in the prosecution of this lawsuit and in evaluating the settlement and related documents." (Martinez Decl., ¶ 11.) This works out to $187.50/hour. Plaintiff Gonzalez estimates she spent "approximately thirty (30) hours of [her] time assisting and providing information to my attorneys in the prosecution of this lawsuit and in evaluating the settlement and related documents." (Gonzalez Decl., ¶ 11.) This works out to $250/hour. The declarations are otherwise identical. The

court will determine whether a more specific record of the representative's activities will be required before granting this request.[3]

Case law has expressed great concern when there is a large disparity between an incentive award and the recovery of individual class members. (*Clark, supra*, 175 Cal.App.4th at p. 806, fn. 14, citing *Alberto v. GMRI, Inc*. (2008) 252 F.R.D. 652, 669 [given a proposed $5,000 incentive aware and an average $24.17 recovery (a multiple of just over 20), when there was no evidence demonstrating the quality of plaintiff's representative service; plaintiff should be prepared to present evidence of the named plaintiff's "substantial efforts" as class representative to justify the discrepancy between the award and those of the unnamed plaintiffs"]; see also *Stanton v. Boeing Co*. (9th Cir, 2003) 327 F.3d 938, 975 [condemning a class enhancement of $30,000 when average payout was $1,000, a multiplier of 30]; compare with *Munoz, supra*, 186 Cal.App.4th at p. 412 [noting there that class representatives would receive more than twice as much as the average payment to class members, in contrast to the multipliers of 30 and 44 in *Stanton* and *Clark*, respectively].) Here, the average recovery of each class member is estimated to be approximately $96.44. Thus, plaintiff's requested service fee is a multiple of about 78. Counsel should be prepared to discuss this with the court.

Plaintiffs argue in the memorandum of points and authorities that the requested service award also fall within the range of service awards typically awarded in similar class action cases. In all but one of those cases, however, analogous incentive payments constituted a significantly smaller portion of the overall settlement (smaller than 1%) than the instant proposed $7,500 incentive payment, which constitutes approximately 4% of this total settlement amount. (See e.g. *Bond v. Ferguson Enterprises, Inc.* (ED Cal. 2011) 2011 WL 2648879 (approving $11,250 service award to each of the two class representatives in a wage-hour class action with a gross settlement of $2,250,000 [.5% of gross]); *Ross v. US Bank National Association* (N.D. Cal. 2010) 2010 WL 3833922, at *2 (approving $20,000 enhancement award to Class Representative in California wage-and-hour class action settlement with a $3,500,000 gross settlement [.57% of gross]; *Vasquez v. Coast Valley Roofing, Inc.,* 266 F.R.D. 482, 493 (E.D. Cal. 2010) (approving service awards in the amount of $10,000 each from a $300,000 settlement fund in a wage/hour class action [3.33% of gross]); *West v. Circle K Stores, Inc*. (E.D. Cal. Oct. 19, 2006) 2006 WL 8458679 (approving service fees in the amount of $15,000 from a $5,000,000 settlement fund [.3% of gross]); *Glass v. UBS Fin. Servs.* (N.D. Cal. 2007) 2007 WL 221862 (finding "requested payment of $25,000 to each of the named Plaintiff is appropriate" in wage and hour settlement from a gross settlement of $4,500,000) [.56% of gross]; *Louie v. Kaiser Found. Health Plan, Inc.* (S.D. Cal. 2008) 2008 WL 4473183 (approving "$25,000 incentive award for each Class Representative" in wage an hour settlement from a gross settlement of $5,400,000

[3] The Martinez and Gonzalez declarations both recite activities performed and hours spent, but do not identify how many hours were spent performing each activity.

[.46% of gross]); *Garner v. State Farm Mut. Auto. Ins. Co*. (ND Cal. 2010) 2010 WL 1687832, at *17 n. 8 ("Numerous courts in the Ninth Circuit and elsewhere have approved incentive awards of $20,000 or more where, as here, the class representative has demonstrated a strong commitment to the class" [in a case where the class plaintiff was deposed on two separate occasions].)

Counsel should be prepared to discuss this with the court.

6. General Standards for PAGA Settlement

Procedurally, section 2699, subdivision (l)(2) provides that the "the superior court shall review and approve any civil action filed pursuant to this part. The proposed settlement shall be submitted to the agency at the same time that it is submitted to the court." (See also *Correia v. NB Baker Electric, Inc.* (2019) 32 Cal.App.5th 602, 615.) The proposed settlement was served on the LWDA. (Melmed Decl. filed 12/11/24, ¶ 30, Exh. C.)

On the merits, the court's gatekeeping function in the class action context differs from its role in reviewing PAGA settlements. In class actions, courts have a fiduciary duty to protect the interests of absent class members, whose individual claims for wrongfulness will be discharged. (*Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 129 [court acts as guardian of rights of absentee class members].) A PAGA representative action, however, is "not akin to a class action"; it "is a species of *qui tam* action." When reviewing a PAGA settlement, courts do not consider the value of individuals' claims for damages because a PAGA settlement does not release those claims. (*Kim v. Reins International California, Inc.* (2020) 9 Cal.5th 73 87 [PAGA claims have no individual component]; *ZB, N.A. v. Superior Court* (2019) 8 Cal.5th 175, 197-198 [PAGA damages limited to civil penalties].) "The state's interest in such an action is to enforce its laws, not to recover damages on behalf of a particular individual." (*Huff, supra*, 23 Cal.App.5th at p. 760.) Instead of focusing on fair recovery for individual claims, the goal of PAGA enforcement is to achieve "maximum compliance with state labor laws." (*Huff*, at p. 756.)

That being said, "section 2699, subdivision (l)(2) requires the trial court to review and approve any PAGA settlement," and in so doing, the court "ensur[es] that any negotiated resolution is fair to those affected." (*Williams v. Superior Court* (2017) 3 Cal.5th 531, 549.)

When evaluating the fairness, adequacy, and reasonableness of a PAGA penalty, courts compare the potential penalty amount (its verdict value, as some courts refer to it) with the actual recovery under the settlement. (See *Moniz v. Adecco USA, Inc*. (2021) 72 Cal.App.5th 56, 87, disapproved on other grounds by *Turrieta v. Lyft, Inc*. (August 1, 2024, S271721) ___ Cal.5th ____ [2024 WL 3611975].) There is no express or even baseline percentage of recovery required. Under the express terms of the PAGA, a verdict value is not guaranteed even if the

plaintiff prevails, as courts have discretion to lower the amount of penalties based on the circumstances of a particular case. (Lab. Code § 2699, subd. (e)(2).)

In addition, the court must review the PAGA settlement to ascertain whether the settlement is fair in view of PAGA's purposes and policies. "[A] trial court should evaluate a PAGA settlement to determine whether it is fair, reasonable, and adequate in view of PAGA's purposes to remediate present labor law violations, deter future ones, and to maximize enforcement of state labor laws." (*Moniz v. Adecco USA, Inc*. (2021) 72 Cal.App.5th 56, 77; see *Williams*, *supra,* 3 Cal. 5th at 546 [describing how the Legislature "sought to remediate present violations and deter future ones" by passing PAGA].) Through this review, the trial court "must scrutinize whether, in resolving the action, a PAGA plaintiff has adequately represented the state's interests and hence the public's interest." (*Moniz, supra,* 72 Cal.App.5th at 89.) The court has previously determined the fairness of the PAGA settlement and has no occasion to determine differently.

Tentative Ruling

Attorney Melmed is directed to appear at the hearing to address whether the disparity between the maximum payout to class members and the requested incentive award is reasonable. Plaintiffs are further directed to submit a copy of the fee agreement as well a declaration from the settlement administrator.