

JUN 01 2022

BY 
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Attorneys for Plaintiff Gregory Martinez

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN BERNARDINO**

GREGORY MARTINEZ, individually, and on
behalf of all others similarly situated,

Plaintiff,

vs.

WESTERN PACIFIC CRANE & EQUIPMENT,
LLC, a limited liability corporation; and DOES 1
through 10, inclusive,

Defendants.

Case No.: CIV-DS2014290

*Assigned for All Purposes to the Honorable
David Cohn, Dept S-26*

**[PROPOSED] ORDER AND JUDGMENT
GRANTING PLAINTIFF'S MOTION
FOR FINAL APPROVAL OF CLASS
ACTION SETTLEMENT**

*[Filed with the Memorandum of Points and
Authorities, Declaration of Kane Moon, and
Declaration of Madely Nava on behalf of the
settlement administrator, and Declaration of
Gregory Martinez]*

FINAL APPROVAL HEARING

Date: June 1, 2022

Time: 10 a.m.

Dept.: S-26

1 On January 19, 2022, this Court issued an Order Granting Preliminary Approval of
2 Class Action Settlement. Plaintiff Gregory Martinez now seeks an order granting final
3 approval of the Class Action Settlement (collectively the "Settlement"), attached to the
4 Declaration of Kane Moon in Support of Plaintiff's Motion for Final Approval of Class Action
5 Settlement as Exhibit 1.

6 Due and adequate notice having been given to the Settlement Class Members, as
7 defined below, and the Court having considered Plaintiff's Notice of Motion and Motion for
8 Final Approval of Class Action Settlement ("Motion"), the supporting declarations and
9 exhibits thereto, all papers filed and proceedings had herein, and the absence of any written
10 objections received regarding the proposed settlement, and having reviewed the record in the
11 Action, and good cause appearing,

12 IT IS HEREBY ORDERED, ADJUDGED AND DECREED AS FOLLOWS:

13 The Court, for purposes of this Final Order and Judgment, refers to all defined terms as
14 set forth in the Settlement.

15 The Court has jurisdiction over all claims asserted in the Action, Plaintiff, the
16 Settlement Class Members, and Defendant Western Pacific Cane & Equipment, LLC,
17 ("Defendant").

18 The Court finds that the Settlement appears to have been made and entered into in
19 good faith and hereby approves the settlement subject to the limitations on the requested fees
20 and enhancements as set forth below.

21 Plaintiff and all Settlement Class Members, shall have, by operation of this Final Order
22 and Judgment, fully, finally, and forever released, relinquished, and discharged Defendants
23 from all Released Claims as stated in the Settlement and reproduced here:

24 The Parties shall bear their own respective attorneys' fees and costs, except as
25 otherwise provided for in the Settlement and approved by the Court.

26 Solely for purposes of effectuating the settlement, the Court finally certified the
27 following Class: All current and former non-exempt employees of Defendant who worked for
28 Defendant in California at any time from July 17, 2016 through October 15, 2021.

1 No Class Members have objected to the terms of the Settlement. No Class Members
2 have requested exclusion from the Settlement.

3 Class Members make the following release:

4
5 **Identity of Released Parties.** The released parties are Defendant, and each of
6 its former and present direct and/or indirect owners, dba's, affiliates, parents,
7 subsidiaries, co-employers, brother and sister corporations, divisions, related
8 companies, successors and predecessors, and current and former employees,
9 officers, directors, shareholders, members, owners, trustees, attorneys,
10 fiduciaries, beneficiaries, subrogees, executors, partners, privies, agents,
11 employees, servants, insurers, representatives, administrators, employee benefit
12 plans, and assigns of said entities (collectively "Releasees").

13 **Date Release Becomes Active.** The Released Claims and Released PAGA
14 Claims will be released upon the later of (1) the Settlement's Effective Date, or
15 (2) the satisfaction of Defendant's obligation to provide to the Settlement
16 Administrator a sum in the amount required to satisfy all required payments and
17 distributions pursuant to this Settlement and the Order and Judgment of final
18 approval. Class Members will not release the Released Claims or Released
19 PAGA Claims until both the Effective Date of the Settlement has occurred, and
20 Defendant has paid all amounts owing under the Settlement.

21 **Claims Released by Settlement Class Members.** Each and every Class Member, on behalf of
22 himself or herself and his or her heirs and assigns, unless he or she has submitted a timely and
23 valid Request for Exclusion (which will not effectuate an opt-out from the release of Released
24 PAGA Claims), hereby releases Releasees from the following claims for the entire Class Period.

- 25 1) any and all claims stated in the First Amended Complaint, or that could
26 have been stated based on the facts alleged therein, including but not
27 limited to all wage and hour claims (including all claims under the
28 California Labor Code) for unpaid wages, minimum wage, overtime, off-
the-clock work, meal periods, rest periods, wage statement violations,
interest, civil or statutory penalties, and attorneys' fees and costs, waiting
time penalties, expense reimbursements, withholding from wages and the
related provisions of the Labor Code including but limited to Labor Code
§§ 201-204, 210, 216, 218.6, 226, 226.2, 226.3, 226.7, 510, 512, 512.5,
558, 1174, 1194, 1194.2, 1197, 1198, 2699, derivative claims under
California Business & Professions Code §§ 17200 et seq., and all claims

1 under the governing Industrial Welfare Commission Wage Order
2 ("Released Claims");

3 (b) **Claims Released by the Class, Including PAGA Employees.** All Class
4 Members, including all PAGA Employees, release the Released PAGA Claims,
5 regardless of whether they have requested exclusion from the Settlement as to
6 Class claims.

7 The Notice provided to the Class conforms with the requirements of California Rules
8 of Court 3.766 and 3.769, and constitutes the best notice practicable under the circumstances,
9 by providing individual notice to all Class Members who could be identified through
10 reasonable effort, and by providing due and adequate notice of the proceedings and of the
11 matters set forth therein to the Class Members. The Notice fully satisfies the requirements of
12 due process.

13 The Court finds the Gross Settlement Fund, the Net Settlement Fund, and the
14 methodology used to calculate and pay each Settlement Class Member's Allocation Amount
15 are fair and reasonable, and authorizes the Settlement Administrator to pay the Settlement
16 Shares to the Settlement Class Members in accordance with the terms of the Settlement.

17 Defendant shall pay the total of \$300,000.00 to resolve this litigation. Defendant will
18 fund the settlement account fourteen (14) days after the Effective Date. The Settlement
19 Administrator shall cause the Settlement Payments to be mailed to the Class Members within
20 fourteen (14) calendar days of the receipt of funding. Thereafter, Settlement Allocation
21 Amounts shall be distributed to Settlement Class Members shall be effected pursuant to the
22 terms of the Settlement.

23 From the Gross Fund Value, \$22,500.00 shall be paid to the California Labor and
24 Workforce Development Agency, representing 75% of the penalties awarded under the terms
25 of the Settlement and Amendment pursuant to the Labor Code Private Attorneys General Act
26 of 2004, California Labor Code section 2698, et seq.

27 The Court hereby approves an incentive payment in the amount of \$7,500.00 to
28 Gregory Martinez for his service as class representative and for his agreement to release

1 claims.

2 The Court hereby confirms Kane Moon, Allen Feghali, Enzo Nabiev, Jacquelyne
3 VanEmmerik of Moon & Yang, APC as Class Counsel.

4 From the Gross Settlement Fund, Class Counsel is awarded \$100,000.00 for their
5 reasonable attorneys' fees and \$10,467.31 for their reasonable costs incurred in the Action.
6 The fees and costs shall be distributed to Class Counsel as set forth in the Settlement. The
7 Court finds that the fees are reasonable in light of the benefit provided to the Class.

8 The Court approves Settlement Administration Costs in the amount of \$5,990.00. Such
9 costs shall be paid from the Gross Settlement Fund to ILYM Group, Inc.

10 The Parties are ordered to have notice of this Order and Judgment sent to all Class
11 Members in accordance with CRC 3.771 (b) along with settlement payments issued via first
12 class mail to all participating Class Members at their last known addresses, and to the LWDA
13 pursuant to Labor Code § 2699(1)(3);

14 This Judgment is intended to be a final disposition of the above captioned action in its
15 entirety and is intended to be immediately appealable.

16 This Court shall retain jurisdiction with respect to all matters related to the
17 administration and consummation of the Settlement, and any and all claims, asserted in,
18 arising out of, or related to the subject matter of the lawsuit, including but not limited to all
19 matters related to the Settlement and the determination of all controversies relating thereto.

20 Plaintiff's Motion for Final Approval of Class Action Settlement is hereby granted, and
21 the Court directs that Judgment shall be entered in accordance with the terms of this Order.

22 The Court sets a ~~Non-Appealance~~ Hearing (Case Review) Re: Distribution on
23 6/1, 202~~2~~³ at 9:00 in Department S26. Class Counsel is ordered to file a final
24 report and declaration regarding distribution no later than 5 days before noon. Class Counsel is further
25 ordered to submit an amended judgment with respect to the amount of uncashed checks to the
26 State of California's Unclaimed Property Fund in the names of the Settlement Class members
27 who failed to cash their checks.
28

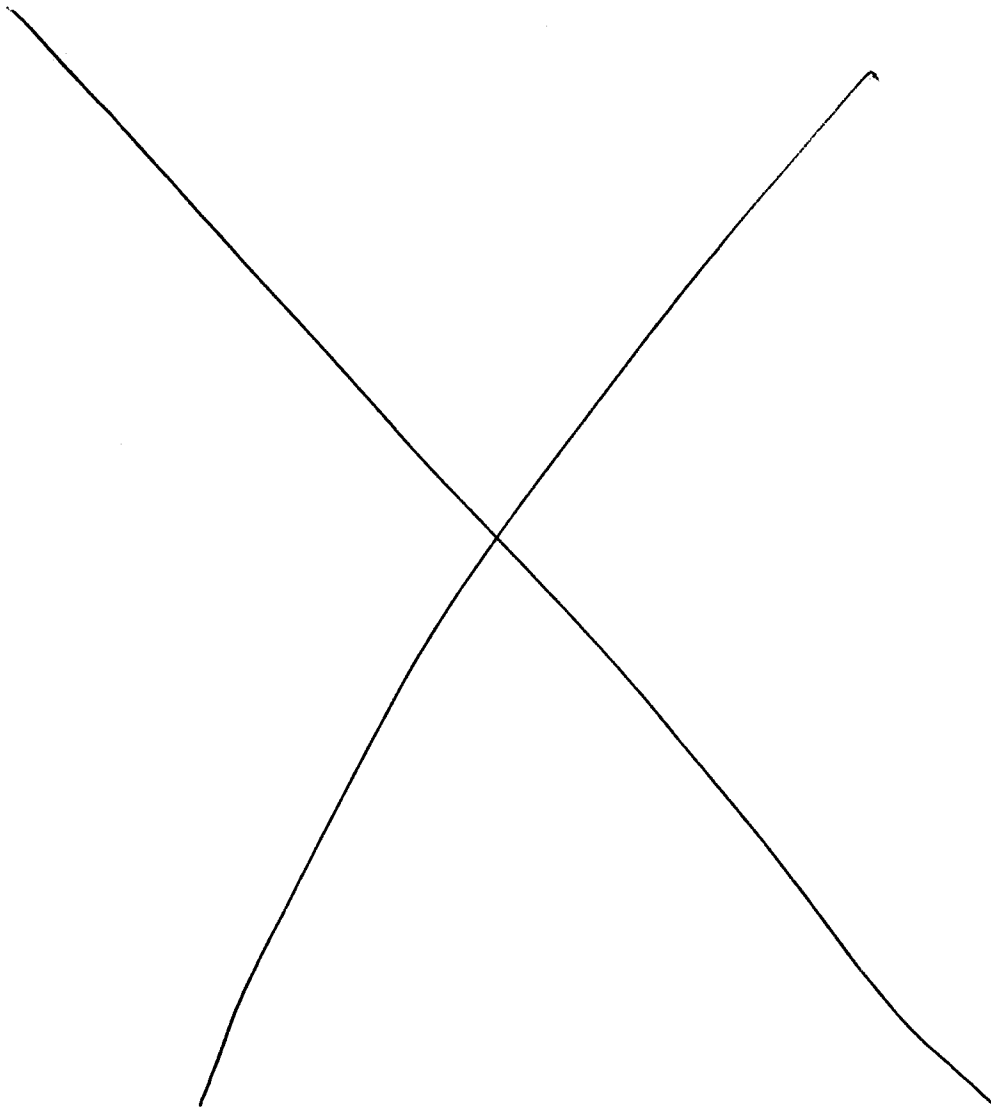
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IT IS SO ADJUDGED.

DATE: 6/1/22



Hon. David Cohn



1 **PROOF OF SERVICE**

2 STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

3 I am employed in the county of Los Angeles, State of California. I am over the age of 18 and not
4 a party to the within action; my business address is 1055 W. Seventh St., Suite 1880, Los
Angeles, California 90017. On **April 25, 2022** I served the foregoing document described as:

5 **[PROPOSED] ORDER AND JUDGMENT GRANTING PLAINTIFF'S MOTION FOR**
6 **FINAL APPROVAL OF CLASS ACTION SETTLEMENT**

7 X by placing ___ the original X a true copy thereof enclosed in sealed envelope(s)
addressed as follows:

8 Eric S. Oto (State Bar No. 130245)
9 **Law Offices of Eric S. Oto**
10 1111 South Grand Avenue, Suite 517
Los Angeles, California 90015
Telephone: (213) 749-7540
Facsimile: (213) 607-1363
E-mail: eso@otoesq.com

11 Attorneys for Defendant Western Pacific Crane & Equipment, LLC

12 ☒ **BY U.S. MAIL:** I deposited such envelope in the mail at Los Angeles, California. The
13 envelope was mailed with postage thereon fully prepaid. I am "readily familiar" with the
14 firm's practice of collection and processing correspondence for mailing. Under that practice
15 it would be deposited with U.S. postal service on that same day with postage thereon fully
16 prepaid at Los Angeles, California in the ordinary course of business. I am aware that on
motion of the party served, service is presumed invalid if postal cancellation date or postage
meter date is more than one day after date of deposit for mailing in affidavit.

17 I declare under penalty of perjury under the laws of the State of California that the
foregoing is true and correct.

18 Executed this **April 25, 2022** at Los Angeles, California.

19
20 Janelle Jickain
21 Type or Print Name

22 /s/ Janelle Jickain
23 Signature