

SEP 10 2024

FINAL RULING RE: MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT

David W. Slayton, Executive Officer/Clerk of Court
By: L. Ennis, Deputy

Jose Baez v. Insua Graphics Incorporated

Case No.: 21STCV25092

Department SSC-9

Hon. Elaine Lu

Hearing Date: September 10, 2024

The Parties' Motion for Final Approval of Class Action Settlement is **GRANTED** as the settlement is fair, adequate, and reasonable.

The essential terms are:

- A. The Maximum Settlement Amount is **\$600,000**, non-reversionary. (¶3)
- B. The Net Settlement Amount ("NSA") is the Maximum Settlement Amount minus the following:
 - o **\$200,000** (33 1/3%) for attorney fees to Class Counsel, Haines Law Group, APC (¶3.E.4);
 - o **\$21,842.07** for attorney costs to Class Counsel (*Ibid.*);
 - o enhancement payment of **\$7,500** to the class representative, Jose Baez (¶3.E.3);
 - o **\$7,350** for settlement administration costs to ILYM Group, Inc. (¶3.E.2); and
 - o **\$15,000** (75% of \$20,000 PAGA penalty) to the LWDA and **\$5,000** (25% of \$20,000 PAGA penalty) to the Aggrieved Employees. (¶3.2.5)
- C. Employer's share of the payroll taxes on the taxable portion of the settlement payments shall be paid separately from the Maximum Settlement Amount by Defendant. (¶3.F)
- D. Plaintiffs' release of Defendants from claims described herein.

Within 14 days, Plaintiff's counsel shall file a proposed Order and Judgment, consistent with this ruling containing all requisite terms, including the class definition, release language, and a statement of the number and identity of class members who requested exclusion.

By **November 15, 2024**, Class Counsel must give notice to the class members pursuant to California Rules of Court, rule 3.771(b) and to the LWDA, if applicable, pursuant to Labor Code §2699(1)(3).

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By **January 14, 2026**, Class Counsel must file a Final Report re: Distribution of the settlement funds.

The Court hereby sets a **Non-Appearance Case Review for January 21, 2026, 8:30 a.m., Department 9.**

BACKGROUND

Plaintiff Jose Baez sues his former employer, Defendant Insua Graphics Incorporated ("Insua Graphics" or "Defendant") for alleged wage and hour violations. Insua Graphics is a commercial printing and packaging company. Plaintiff seeks to represent a class of Defendant's current and former non-exempt employees.

On July 8, 2021, Plaintiff filed a class action complaint against Defendant alleging that Insua Graphics: (i) failed to provide all lawful meal periods; (ii) failed to authorize and permit all legally compliant rest periods; (iii) failed to issue accurate, itemized wage statements; (iv) failed to pay all final wages due upon separation of employment; and (v) engaged in unfair competition in violation of California Business & Professions Code § 17200. On December 16, 2021, Plaintiff filed the operative First Amended Class and Representative Action Complaint ("FAC") adding a cause of action for civil penalties under the Private Attorneys' General Act of 2004, Labor Code Section 2698, et seq.

On September 8, 2022, the parties participated in a full-day mediation with Jeffrey Krivis, Esq., at which the parties accepted the mediator's proposal for class-wide settlement. During the months that followed, the parties finalized the terms of the settlement and executed the long-form *Stipulation of Settlement* ("Settlement Agreement"), a copy of which was filed July 21, 2023.

On December 4, 2023, the Court issued a "checklist" to the parties pertaining to deficiencies in the proposed settlement. In response, the parties filed further briefing, including the revised Settlement Agreement attached to the Declaration of Sean M. Blakely filed March 5, 2024 as Exhibit 1. All references below are to that agreement.

On April 10, 2024, the Court granted preliminary approval of the settlement. Notice was given to the Class Members as ordered (see Declaration of Nathalie Hernandez ("Hernandez Decl.")).

Now before the Court is the Motion for Final Approval of the settlement.

SETTLEMENT CLASS DEFINITION

- For the purposes of the Settlement Agreement only, Plaintiff and Defendant stipulate to certification of the following Settlement Class: All current and former non-exempt employees who worked for Defendant Insua Graphics Incorporated in California from July 8, 2017 until November 1, 2022. (¶1)
- "Class Period" means from **July 8, 2017** until November 1, 2022. (*Ibid.*)
 - Escalator Clause: As of September 8, 2022, Defendant's best estimate of the number of Workweeks during the Class Period was 13,529. If the actual number

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of Workweeks as of the date of mediation is more than 5% greater than this estimate (i.e., if the actual Workweeks during the Class Period, as of the date of mediation, is greater than 14,205.45), then Defendant shall, in its sole discretion, have the option to either: (i) De-escalate the Settlement so that the Class Period and PAGA Period end on the date the Workweeks totals to 14,205.45; or (ii) Permit the Maximum Settlement Amount as defined in Paragraph 3 to be increased on a proportional basis for Workweeks in excess of Thirteen Thousand Five Hundred and Twenty-Nine (13,529). (¶3.G)

- At final approval, the settlement administrator represents that after receiving the class data file, it was determined that the Escalator Clause was triggered as there were more than 14,205.45 workweeks worked during the Class Period. Defendant elected to de-escalate the Settlement so that the Class Period and PAGA Period end on the date the workweeks total 14,205.45, which was **October 30, 2022**. The Notice Packet was updated accordingly prior to the mailing. (Hernandez Decl. ¶5.)
- Additionally, the "PAGA Aggrieved Employees" shall be defined as: All current and former non-exempt employees who worked for Defendant Insua Graphics Incorporated in California from July 21, 2020, until November 1, 2022. (¶1)
- "PAGA Period" means from July 21, 2020, until November 1, 2022. (*Ibid.*)
- The Parties agree that class certification and representative treatment is for purposes of this Settlement only. (¶1)

TERMS OF SETTLEMENT AGREEMENT

The essential terms are as follows:

- The Maximum Settlement Amount is **\$600,000**, non-reversionary. (¶3)
 - Escalator Clause: As of September 8, 2022, Defendant's best estimate of the number of Workweeks during the Class Period was 13,529. If the actual number of Workweeks as of the date of mediation is more than 5% greater than this estimate (i.e., if the actual Workweeks during the Class Period, as of the date of mediation, is greater than 14,205.45), then Defendant shall, in its sole discretion, have the option to either: (i) De-escalate the Settlement so that the Class Period and PAGA Period end on the date the Workweeks totals to 14,205.45; or (ii) Permit the Maximum Settlement Amount as defined in Paragraph 3 to be increased on a proportional basis for Workweeks in excess of Thirteen Thousand Five Hundred and Twenty-Nine (13,529). (¶3.G)
 - At final approval, the settlement administrator represents that after receiving the class data file, it was determined that the Escalator Clause was triggered as there were more than 14,205.45 workweeks worked during the Class Period. Defendant elected to de-escalate the Settlement so that the Class Period and PAGA Period end on the date the workweeks total 14,205.45, which was **October 30, 2022**. The Notice Packet was updated accordingly prior to the mailing. (Hernandez Decl. ¶5.)

- The Net Settlement Amount ("Net" or "NSA") (\$334,500) estimated at preliminary approval is the Maximum Settlement Amount minus the following:
 - Up to \$200,000 (33 1/3%) for attorney fees (§3.E.4);
 - Up to \$30,000 for litigation costs (*Ibid.*);
 - Up to \$7,500 for an Enhancement Award to the Named Plaintiff (§3.E.3);
 - Up to \$8,000 for settlement administration costs (§3.E.2); and
 - Payment of \$20,000 PAGA Penalty (75% or \$15,000 to the LWDA). (§3.E.5)
- Defendant shall pay the employer's share of payroll taxes separately from, and in addition to, the Maximum Settlement Amount. (§3.F)
- There is no claim form requirement. (§4)
- Individual Settlement Payment Calculation: The Settlement Administrator will calculate payments from the NSA based on each Participating Settlement Class member's proportionate Workweeks worked during the Class Period. Specifically, each participating Settlement Class member's payment from the NSA will be calculated by multiplying the NSA by a fraction, the numerator of which is the participating Settlement Class member's number of Workweeks worked during the Class Period, and the denominator of which is the total Workweeks worked by all participating Settlement Class members during the Class Period. (§4.B.i)
 - PAGA Payments: Each Settlement Class member who was employed by Defendant at any time during the PAGA Period (including those who submit a valid and timely Request for Exclusion from the class portion of the settlement) shall receive a portion of the Five Thousand Dollars and Zero Cents (\$5,000.00) of the Maximum Settlement Amount that has been designated as the "PAGA Amount" proportionate to the number of workweeks that he or she worked during the PAGA Period, and which will be calculated by multiplying the PAGA Amount by a fraction, the numerator of which is the Settlement Class member's number of workweeks worked during the PAGA Period, and the denominator of which is the total number of workweeks worked by all Settlement Class members during the PAGA Period (including those who submit a valid and timely Request for Exclusion from the class action settlement). (§4.B.ii)
 - Tax Allocation: For purposes of calculating applicable taxes and withholdings, each Individual Settlement Payment shall be allocated as follows: one-third (1/3) wages, one-third (1/3) penalties, and one-third (1/3) interest. Any payment from the PAGA Amount shall be classified as 100% penalties. (§4.D)
- Response Deadline: "Response Deadline" means sixty (60) calendar days after the date of the initial mailing of the Notice Packets (§9.C) and applies to the submission of Requests for Exclusion (§9.C), written objections (§9.D) and payment disputes (§9.E).
 - Notwithstanding any other provisions of this Agreement, in the event that five percent (5%) or more of the total Settlement Class members exclude themselves and opt out of the settlement, Defendant may, in its sole discretion, unilaterally withdraw from and terminate the settlement no later than five (5) days prior to the date of the Final Approval Hearing. (§9.C.iii)

- **Funding of Settlement:** Defendant shall fund the Maximum Settlement Amount by transmitting the funds into a Qualified Settlement Fund ("QSF"), to be established by the Settlement Administrator, by no later than March 15, 2024. Defendant may elect to pay all or a portion of the Gross Settlement early at no penalty. Defendant shall pay the employer's share of payroll taxes separately from, and in addition to, the Maximum Settlement Amount. The employer's share of payroll taxes shall be paid by Defendant as coordinated with the Settlement Administrator after receipt of the calculation by the Settlement Administrator of the employer's portion of the payroll taxes, but not later than the date the Individual Settlement Awards are mailed by the Settlement Administrator. (¶3.C)
- **Disbursement:** Within five (5) business days of: (i) the Final Effective Date occurring and (ii) Defendant's deposit of the Maximum Settlement Amount, the Settlement Administrator will calculate individual Settlement Payment amounts for all Settlement Class members and provide the same to counsel for review and approval. Within five (5) business days after approval by counsel of the Individual Settlement Payment calculations, the Settlement Administrator will prepare and mail Settlement Payments, less applicable taxes and withholdings, to Settlement Class members. The Settlement Administrator shall simultaneously pay withholdings to the applicable authorities with the necessary reports, submitting copies to Defendant's counsel. The Settlement Administrator shall pay the amounts approved by the Court for Class Counsel's attorneys' fees and costs, Plaintiffs Class Representative Enhancement Award, PAGA payment to the LWDA, and the Settlement administration costs to itself, at the same time it mails Settlement Awards to Settlement Class members. (¶4.C)
- **Uncashed Settlement Checks:** Each member of the Settlement Class who receives a Settlement Payment must cash that check within 180 days from the date the Settlement Administrator mails it. Any funds payable to Settlement Class members whose checks are not cashed within 180 days after mailing shall be distributed to Legal Aid at Work, as a cy pres beneficiary pursuant to Cal. Code Civ. Proc. § 384 (¶4.E) The parties and counsel represent that they have no interest or involvement with Legal Aid at Work. (Blakely Decl. ISO Prelim ¶24; Decl. of Jose Baez ISO Prelim ¶7; Decl. of Katherine Ben Bleyker ISO Prelim ¶4.)
- The settlement administrator will be ILYM Group, Inc. (¶3.A)
- Notice of Final Judgment will be posted on the Settlement Administrator's website. (¶10.C)
- The proposed Settlement Agreement was submitted to the LWDA on March 5, 2024. (Proof of Service filed 3/5/2024.)
- **Release by Settlement Class members and Plaintiff.** Upon the Final Effective Date or the complete funding of the Maximum Settlement Amount, whichever is later, Plaintiff and all Settlement Class members who have not opted out will release and discharge Defendant and each of its parent companies, subsidiaries, related companies, affiliates, dbas, current and former management companies, shareholders, members, agents (including any investment bankers, accountants, insurers, reinsurers, attorneys and any

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past, present or future officers, directors and employees) predecessors, successors, and assigns (collectively, the "Released Parties"), as follows: (¶12)

- Release by Settlement Class members: Settlement Class members who do not opt out will release the Released Parties from liability for all claims, rights, demands, liabilities, causes of action, and legal theories alleged or which could have been alleged or otherwise raised based on the facts alleged in the operative First Amended Class and Representative Action Complaint ("FAC"), including: (1) Labor Code §§ 204, 210, 226.7, 512, 558, and 1198 (meal period violations); (2) Labor Code §§ 226.7, 516, 558, and 1198 (rest period violations); (3) Labor Code § 226, et seq. (wage statement penalties); (4) Labor Code §§ 201-204 (waiting time penalties); and (5) Violation of California Business & Professions Code §§ 17200, et seq. (unfair business practices), and applicable Wage Orders of the Industrial Welfare Commission, including but not limited to Industrial Welfare Commission Wage Order Nos. 1-2001 and 4-2001, and all related claims for attorneys' fees and costs ("Class Member Released Claims"). (¶12.A)
- Release of PAGA Claims: In addition, all Settlement Class members (regardless of whether they opt out) who worked for Defendant at any time from July 21, 2020 through November 1, 2022 (the "PAGA Period") are "Aggrieved Employees" and shall release the Released Parties from liability for all claims for civil penalties under California Labor Code Private Attorneys General Act of 2004 (Cal. Lab. Code § 2698 et seq.) arising during the PAGA Period that were alleged or which could have been alleged or otherwise raised based on the facts alleged in the operative FAC and in Plaintiff's July 21, 2021 Notification Letter to the Labor and Workforce Development Agency ("LWDA"), including but not limited to claims for civil penalties for violations of California Labor Code §§ 201, 202, 203, 204, 210, 226, 226.7, 512, 516, 558, 1174, 1198 and 1199, and applicable Wage Orders of the Industrial Welfare Commission, including but not limited to Industrial Welfare Commission Wage Order Nos. 1-2001 and 4-2001, and all related claims for attorneys' fees and costs ("the PAGA Released Claims"). (¶12.B)
- "Released Parties" means Defendant and each of its parent companies, subsidiaries, related companies, affiliates, dbas, current and former management companies, shareholders, members, agents (including any investment bankers, accountants, insurers, reinsurers, attorneys and any past, present or future officers, directors and employees) predecessors, successors, and assigns. (¶12.B)
- Named Plaintiffs will also provide a general release and CC § 1542 waiver. (¶12.C)

ANALYSIS OF SETTLEMENT AGREEMENT

A. Does a presumption of fairness exist?

The Court preliminarily found in its Order of April 10, 2024 that the presumption of fairness should be applied. No facts have come to the Court's attention that would alter that preliminary conclusion. Accordingly, the settlement is entitled to a presumption of fairness as set forth in the preliminary approval order.

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B. Is the settlement fair, adequate, and reasonable?

The settlement was preliminarily found to be fair, adequate and reasonable. Notice has now been given to the Class.

Reaction of the class members to the proposed settlement.

Number of class members: 123 (Hernandez Decl. ¶5.)
Number of notice packets mailed: 123 (*Id.* at ¶7.)
Number of undeliverable notices: 5 (*Id.* at ¶10.)
Number of opt-outs: 0 (*Id.* at ¶11.)
Number of objections: 0 (*Id.* at ¶12.)
Number of participating class members: 123 (*Id.* at ¶14.)
Average individual payment: \$2,791.12 (*Id.* at ¶15.)
Highest individual payment: \$6,697.82 (*Ibid.*)

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

C. Attorney Fees and Costs

Class Counsel requests an award of \$200,000 in fees and \$21,842.07 in costs. (MFA at 1:14-15.) The Settlement Agreement provides for up to \$200,000 (33 1/3%) of the Maximum Settlement Amount for attorney fees and up to \$30,000 in costs (¶3.E.4).

"Courts recognize two methods for calculating attorney fees in civil class actions: the lodestar/multiplier method and the percentage of recovery method." (*Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 254.) Here, class counsel request attorney fees using the percentage method, as crosschecked by lodestar. (MFA at pp. 11-16.)

In common fund cases, the Court may employ a percentage of the benefit method, as cross-checked against the lodestar. (*Laffitte v. Robert Half Int'l, Inc.* (2016) 1 Cal.5th 480, 503.) The fee request represents one-third of the gross settlement amount, which is the average generally awarded in class actions. (See *In re Consumer Privacy Cases* (2009) 175 Cal.App.4th 545, 558, fn. 13 ["Empirical studies show that, regardless whether the percentage method or the lodestar method is used, fee awards in class actions average around one-third of the recovery."].)

Class Counsel has provided information, summarized below, from which the lodestar may be calculated:

Attorney	Rates	Hours	Totals
Paul K. Haines	\$850	24.7	\$20,995.00
Sean M. Blakely	\$750	62.5	\$46,875.00
Tuvia Korobkin	\$750	55.8	\$41,850.00
Neil M. Larsen	\$650	42.9	\$27,885.00
Alexandra R. McIntosh	\$525	8.6	\$4,515.00
Paralegals	\$175	12.6	\$2,205.00

Totals		207.1	\$144,325.00
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(Declaration of Sean M. Blakely ISO Final ¶19.)

Counsel's percentage-based fee request is higher than the unadjusted lodestar, and would represent application of a multiplier of approximately 1.39x.

Here, the **\$200,000** fee request represents a reasonable percentage of the total funds paid by Defendant. Notice of the fee request was provided to class members in the notice packet, and no one objected. (Hernandez Decl. ¶12, Exhibit A thereto.)

As for costs, Class Counsel is requesting a cost amount of **\$21,842.07**. This is less than the \$30,000 cap estimated at preliminary approval, which was disclosed to Class Members in the Notice and not objected to. (Hernandez Decl. ¶12, Exhibit A thereto.) Counsel's costs include, but are not limited to: Mediation (\$9,000), Expert (\$8,668), and Complex Filing Fee (\$1,633). (Blakely Decl. ISO Final ¶17, Exhibit B.) These costs appear to be reasonable in amount and reasonably necessary to this litigation.

Based on the above, the Court hereby awards **\$200,000** in fees and **\$21,842.07** in costs.

D. Incentive Award

The class representative, Jose Baez, seeks an enhancement payment of **\$7,500** for his contributions to the action. (MFA at 1:18-19.)

In connection with the final fairness hearing, named Plaintiffs must submit declarations attesting to why they should be entitled to an enhancement award in the proposed amount. The named Plaintiffs must explain why they "should be compensated for the expense or risk he has incurred in conferring a benefit on other members of the class." (*Clark v. American Residential Services LLC* (2009) 175 Cal.App.4th 785, 806.) Trial courts should not sanction enhancement awards of thousands of dollars with "nothing more than *pro forma* claims as to 'countless' hours expended, 'potential stigma' and 'potential risk.' Significantly more specificity, in the form of quantification of time and effort expended on the litigation, and in the form of reasoned explanation of financial or other risks incurred by the named plaintiffs, is required in order for the trial court to conclude that an enhancement was 'necessary to induce [the named plaintiff] to participate in the suit . . .'" (*Id.* at 806-807, italics and ellipsis in original.)

Plaintiff represents that his contributions to this litigation include: discussing Defendant's policies and his claims with his counsel, along with litigation strategy, potential witnesses, updates on how the case was proceeding, and ways he could help, providing information and documents to his attorneys to assist them in mediation and settlement negotiations, and reviewing the settlement, other documents from his attorneys, and his own records. He estimates spending 35-40 hours on the case. (Declaration of Jose Baez ISO Final ¶14.)

Based on the above, as well as the benefits obtained on behalf of the class, the Court hereby grants the enhancement payment in the amount of **\$7,500** to Plaintiff.

E. Settlement Administration Costs

The settlement administrator, ILYM Group, Inc., is requesting **\$7,350** for the costs of settlement administration. (Hernandez Decl. ¶17.) This is less than the cost of \$8,000 estimated

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at preliminary approval (¶3.E.2) and disclosed to the Class on the Notice form, to which there were no objections. (Hernandez Decl. ¶12, Exhibit A thereto.) Based on the above, the Court hereby awards administration costs in the requested amount of \$7,350.

THE MOVING PARTY IS ORDERED TO DOWNLOAD THE INSTANT SIGNED ORDER FROM THE COURT'S WEBSITE AND TO GIVE NOTICE TO ALL OTHER PARTIES.

IT IS SO ORDERED.

DATED: September 10, 2024



Elaine Lu
Judge of the Superior Court