

ORIGINAL

FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN BERNARDINO
SAN BERNARDINO DISTRICT

FEB 27 2024

BY Amber M. Gear
AMBER M. GEAR, DEPUTY

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

DANIEL LOPEZ, individually, on a
representative basis, and on behalf of all
others similarly situated;

Plaintiff,

vs.

MARTINEZ CONCRETE, INC., a California
Corporation, ROBERTO MARTINEZ, an
Individual, and DOES 1 through 20,
inclusive;

Defendants.

Case No.: CIVSB2208282
[Assigned to Hon. Joseph Ortiz, Dept S17, for
all purposes]

**[PROPOSED] ORDER GRANTING
FINAL APPROVAL OF SETTLEMENT;
AND ENTRY OF FINAL JUDGMENT**

Complaint filed: April 21, 2022

Plaintiff's Motion for Final Approval of the Settlement (the "Final Approval Motion") as set forth in the Class Action Settlement Agreement and Release of Claims (the "Settlement Agreement") came for hearing in Department S17 of the above-entitled court. The Final Approval Motion was unopposed by Defendants Martinez Concrete, Inc., and Roberto Martinez. Having considered the Final Approval Motion, the Settlement Agreement, the Declarations, and all other materials properly before the Court and having conducted an inquiry pursuant to California Rules of Court, rule 3.769(g), the Court finds that the Settlement Agreement was entered by all parties in good faith, and the Settlement Agreement is approved. Due and

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adequate notice having been given to the Class, and the Court having considered the Settlement Agreement, all papers filed, and proceedings had herein and all oral and written comments received regarding the proposed settlement, and having reviewed the record in this Action, and good cause appearing,

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

1. The Court, for purposes of this Judgment and Order (“Judgment”), refers to all defined terms (i.e., terms with initial capitalization) as set forth in the Settlement Agreement.

2. The Court has jurisdiction over the subject matter over this Action, the Class Representative, the Class Members, and Defendants.

3. The Court finds that the distribution of the Class Notice, as provided for in the Order Granting Preliminary Approval for the Settlement, constituted the best notice practicable under the circumstances to all Class Members and fully met the requirements of California law and due process under the California and United States Constitution. Based on evidence and other material submitted, the actual notice to the class was adequate.

4. The Court finds that the instant Action presented a good faith dispute of the claims alleged, and the Court finds in favor of settlement approval.

5. The Released Class Claims on behalf of the Participating Class Members included:

- a. All claims stated in the Complaint, or that reasonably could have been alleged based upon the factual allegations in the Complaint, including: (a) failure to pay minimum wages, (b) failure to pay overtime wages, (c) failure to provide meal periods, (d) failure to provide rest breaks, (e) failure to failure to timely pay wages upon separation of employment, (f) failure to provide accurate itemized wage statements, (g) unfair and unlawful competition, and (h) all other claims for statutory penalties based on the facts or claims alleged in the Complaint.

1 6. The Released PAGA Claims on behalf of the Aggrieved Employees included:

2 a. all PAGA claims that Plaintiff alleged against the Released Parties, on
3 behalf of the Aggrieved Employees and the State of California, based on
4 the facts alleged or that reasonably could have been alleged based on the
5 factual allegations in the Complaint and in the relevant LWDA notice
6 letter, including all PAGA claims seeking civil penalties premised (a)
7 failure to pay minimum wages, (b) failure to pay overtime wages, (c)
8 failure to provide meal periods, (d) failure to provide rest breaks, (e)
9 failure to failure to timely pay wages each period and upon separation of
10 employment, (f) failure to provide accurate itemized wage statements, (g)
11 failure to maintain employment records, and (h) all other claims for civil
12 penalties recoverable under the Private Attorneys General Act, Labor
13 Code §§ 2698 *et seq.* based on the facts or claims alleged in the
14 Complaint. Under *Robinson v. Southern Counties Oil Co.*, 53 Cal.App.5th
15 476 (2020), the Released PAGA Claims apply to all Aggrieved
16 Employees, regardless of whether they request exclusion from the class.
17 The Released PAGA Claims do not release any Aggrieved Employees'
18 claims for wages or statutory penalties.

19 7. There were no Objections and no Requests for Exclusion to the Settlement. Thus,
20 all Class Members are Participating Class Members who are entitled to payment pursuant to the
21 Settlement and this Judgment. Likewise, all Aggrieved Employees are entitled to a pro rata
22 share of PAGA Penalties.

23 8. The Court approves the Settlement, as set forth in the Settlement Agreement and
24 each of the releases and other terms, as fair, just, reasonable, and adequate as to the Parties. The
25 Parties are directed to perform in accordance with the terms set forth in the Settlement
26 Agreement.

27 9. The Parties are to bear their own costs, except as otherwise provided in the
28 Settlement Agreement.

1 10. For purposes of effectuating this Order and Judgment, this Court has certified the
2 following class: "All current and former nonexempt employees employed by Defendant
3 Martinez Concrete, Inc., in California at any time during the Class Period of April 21, 2018,
4 through September 17, 2023," as defined in the Settlement Agreement. The Court deems this
5 definition sufficient for purposes of California Rules of Court, rule 3.765(a).

6 11. With respect to the Class and for purposes of approving this Settlement, this Court
7 finds and concludes as follows: (a) the Class Members are ascertainable and so numerous that
8 joinder of all members is impracticable; (b) there are questions of law or fact common to the
9 Class Members, and there is a well-defined community of interest among the Class Members
10 with respect to the subject matter of the Action; (c) the claims of the Class Representative are
11 typical of the claims of the Class Members; (d) the Class Representative has fairly and
12 adequately protected the interests of the Class Members; (e) a class action is superior to other
13 available methods for an efficient adjudication of this controversy; and (f) the counsel of record
14 for the Class Representative, i.e., Class Counsel, are qualified to serve as counsel for the Plaintiff
15 in his individual and representative capacity and for the Settlement Class.

16 12. By this Judgment, the Class Representative shall release, relinquish, and
17 discharge, and each of the Participating Class Members shall be deemed to have, and by
18 operation of the Judgment shall have, fully, finally, and forever released, relinquished, and
19 discharged all Released Class Claims, as defined herein and in the Settlement Agreement.

20 13. For purposes of effectuating this Order and Judgment, the release of the Released
21 PAGA Claims, as defined in the Settlement Agreement, shall apply to all Aggrieved Employees
22 which consists of "all current and former nonexempt employees employed by Defendant
23 Martinez Concrete, Inc., in California at any time during the PAGA Period of April 21, 2021,
24 through September 17, 2023."

25 14. Neither the Settlement Agreement nor the Settlement contained therein, nor any
26 act performed or document executed pursuant to or in furtherance of the Settlement Agreement
27 or the Settlement (i) is or may be deemed to be or may be used by the Plaintiff or Participating
28 Class Members as an admission of, or evidence of, the validity of any of the Class Claims, or of

any wrongdoing or liability of Defendants or any of the other Released Parties; or (ii) is or may be deemed to be or may be used by Plaintiff or Participating Class Members as an admission of, or evidence of, any fault or omission of Defendants or any of the other Released Parties in any civil, criminal, or administrative proceeding in any court, administrative agency, or other tribunal. Defendants or any of the other Released Parties may file the Settlement Agreement and/or the Judgment from this Action in any other action that may be brought against it or them in order to support a defense or counterclaim based on principles of *res judicata*, collateral estoppel, release, good faith settlement, judgment bar or reduction, or any theory of claim preclusion or issue preclusion or similar defense or counterclaim.

15. The Escalator Clause in the Settlement Agreement indicates if the total count of 8,000 Workweeks (as contained in the Class Data) increases by more than 10% of this number (*i.e.*, above 8,800 Workweeks), then the Settlement Amount shall increase by \$33.06 for each Workweek above 8,800. Here, the total number of Workweeks was 9,737, which exceeds the cap by 937 Workweeks. Therefore, the Escalator Clause was triggered and the Gross Settlement Amount is increased from \$320,000.00 to \$350,977.22 (an increase of \$30,977.22 which is arrived at by multiplying 937 Workweeks x \$33.06).

16. The updated Gross Settlement Amount to be paid under the Settlement Agreement is \$350,977.22. From this amount, Class Counsel sought an award of attorney's fees of \$116,992.41 (one-third of the Gross Settlement Amount), litigation expenses of \$13,191.19, a Service Award of \$7,500 for the Class Representative Daniel Lopez, \$5,600 to the Settlement Administrator, ILYM Group, \$37,500 to the LWDA for PAGA penalties and \$12,500 to the Aggrieved Employees for PAGA Penalties. Defendant does not oppose these requests. The Court finds that the Settlement Amount is fair, reasonable and adequate, and awards the payments set forth below from the Settlement Amount:

- A. \$116,992.41 to Class Counsel for attorneys' fees;
- B. \$13,191.19 to Class Counsel for costs/expenses;
- C. \$7,500 to Daniel Lopez as a Service Award;
- D. \$5,600 to the Settlement Administrator, ILYM Group;

- 1 E. \$37,500 to the LWDA;
- 2 F. \$12,500 to the Aggrieved Employees on a pro rata basis;
- 3 G. After deducting the foregoing payments from the Settlement Amounts, the
- 4 remainder shall form the Net Settlement Amount payable to the
- 5 Participating Class Members as set forth in the Settlement Agreement and
- 6 as calculated by the Settlement Administrator.

7 17. Defendants Martinez Concrete, Inc., and Roberto Martinez are directed to fund

8 the Gross Settlement Amount, pursuant to the Settlement Agreement and chart below. The

9 Settlement Administrator is directed to calculate the Participating Class Members' Individual

10 Class Payment from the Net Settlement Amount, as well as the payments due to the Aggrieved

11 Employees, and issue all payments within 10 days of receipt in accordance with the Settlement

12 Agreement. Concurrently with mailing the settlement checks to the Participating Class Members

13 and Aggrieved Employees, the Settlement Administrator include a Notice of Entry of Judgment

14 to all Class Members either on a postcard or as a detachable portion of the check, noting the

15 following: "Please be advised that on [DATE] the Superior Court of California for the County

16 of San Bernardino entered Judgment in the case entitled *Lopez v. Martinez Concrete. et al.*, San

17 Bernardino County Superior Court, Case No. CIVSB2208282, on behalf of all current and

18 former nonexempt employees employed by Defendant Martinez Concrete, Inc., in California at

19 any time during the Class Period of April 21, 2018, through September 17, 2023."

20 18. Participating Class Members and Aggrieved Employees shall have 180 days to

21 negotiate their settlement check from the date of issuance by the Settlement Administrator. In

22 the event that a person does not negotiate his/her check within this time period, the check will be

23 canceled, but can be requested to be reissued at any time up until 180 days after the issuance of

24 the final (third) check. Once 180 days passes from the mailing of the check, the value of the

25 unclaimed funds in the Settlement Administrator's account as a result of a failure to timely cash

26 a settlement check(s) shall be issued to the State Controller's Office in the name of the

27 Participating Class Members and/or Aggrieved Employees.

28

1 19. The following dates shall govern for purposes of this implementing this
2 Order/Judgment:

3 February 27, 2024	Final Approval is entered and the Effective Date occurs
4 March 13, 2024 5 (15 days after Effective Date)	Defendant are directed to jointly and severally fund the 6 Gross Settlement Amount and separately pay their share 7 of the employer's tax, as calculated and directed by the 8 Settlement Administrator.
9 March 25, 2024 10 (10 days after receipt of funds)	Settlement Administrator to issue checks to Participating 11 Class Members, Class Representative, Class Counsel, 12 Aggrieved Employees and LWDA.
13 September 21, 2024 14 (180 days after issuance of 15 checks)	Deadline for Participating Class Members and Aggrieved 16 Employees to cash settlement checks.
17 October 15, 2024	Deadline to file Declaration by Settlement Administrator 18 describing: (i) the date the checks were mailed, (ii) the 19 total number of checks mailed to Participating Class 20 Members and Aggrieved Employees, (iii) the number of 21 checks that were uncashed, (iv) the total value of those 22 uncashed checks, and (v) the anticipated date payment 23 will issued to the State Controller.
24 Date: <u>11-22-2024</u> 25 Time: <u>1:30 pm</u>	OSC re: Disbursement Hearing

26 20. This document shall constitute a Judgment for purposes of California Rule of
27 Court 3.769(h). The Court reserves exclusive and continuing jurisdiction over the Action, the
28 Class Representative, the Participating Class Members, Aggrieved Employees, and Defendants
for the purposes of supervising the implementation, enforcement, construction, administration,
and interpretation of the Settlement Agreement and this Judgment.

IT IS SO ORDERED.

Dated: FEB 27 2024



JUDGE OF THE SUPERIOR COURT
JOSEPH T. ORTIZ