



**FILED**  
Superior Court of California  
County of Los Angeles

**FEB 22 2021**

Herri R. Carpio, Clerk  
*Alfredo Morales* deputy  
ALFREDO MORALES

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

CARLOS OLMOS PEREZ, an individual,  
on behalf of himself and all other similarly  
situated individuals,

Plaintiff,

v.

THE ROMAN CATHOLIC ARCHBISHOP  
OF LOS ANGELES, a California  
corporation, and DOES 1 through 25,  
inclusive,

Defendants.

Case No.: BC714164

~~PROPOSED~~ ORDER GRANTING  
MOTION FOR FINAL APPROVAL  
OF CLASS ACTION SETTLEMENT

Date: February 22, 2021  
Time: 11: 00 a.m.  
Dept.: SSC-7

1 **I. BACKGROUND**

2 Plaintiff Carlos Olmos Perez sues his former employer, Defendant The Roman  
3 Catholic Archbishop of Los Angeles, for alleged wage and hour violations. Plaintiff  
4 seeks to represent a class of Defendant’s current and former non-exempt, hourly  
5 employees who worked at Defendant’s cemetery locations in the State of California as a  
6 cemetery grounds worker, or similar job titles or job duties, at any time from July 18,  
7 2014 to the date of preliminary approval.

8 Plaintiff filed his initial class action complaint in the Los Angeles Superior Court  
9 on July 18, 2018. Plaintiff’s Operative First Amended Complaint (“FAC”) filed on  
10 August 22, 2019, asserts the following causes of action: (1) failure to pay wages and  
11 overtime compensation; (2) failure to pay minimum wage; (3) rest break liability under  
12 Labor Code section 226.7; (4) failure to timely pay wages due at termination or  
13 resignation; (5) failure to provide accurate itemized employee wage statements; (6)  
14 violations of Business & Professions Code section 17200, et seq.; (7) failure to provide  
15 meal periods; (8) failure to reimburse for business expenses; and (8) penalties under the  
16 Private Attorneys General Act (“PAGA”).

17 Following informal discovery and investigation, the Parties participated in a  
18 mediation before the Honorable Peter D. Lichtman (Ret.) on July 16, 2019. The Parties  
19 accepted Judge Lichtman’s mediator’s proposal, resulting in an agreement in principle  
20 to settle this matter. The Parties subsequently executed a long-form *Class Action*  
21 *Settlement and Release* (“Settlement Agreement”), a fully executed copy of which was  
22 filed with the Court.

23 After Plaintiff filed supplemental briefing to address deficiencies with the  
24 motion, the settlement was preliminarily approved on September 14, 2020. Notice was  
25 given to the Class Members as ordered (see Declaration of Taylor Mitzner). Now

1 before the Court is Plaintiff's motion for final approval of the Settlement Agreement,  
2 including for payment of fees, costs, and a service award to the named plaintiff. For the  
3 reasons set forth below the Court grants final approval of the settlement.

4  
5 **II. THE TERMS OF THE SETTLEMENT**

6  
7 **A. SETTLEMENT CLASS DEFINITION**

8 Settlement Class or Settlement Class Member(s). For settlement purposes only,  
9 the Parties agree to the certification of a class pursuant to California Code of Civil  
10 Procedure section 382, and define the "Settlement Class" or "Settlement Class  
11 Members" as: "All current and former non-exempt, hourly employees of Defendant  
12 who worked as grounds workers at Defendant's cemetery locations in the State of  
13 California, including in the positions of cemetery groundswokers, backhoe or heavy  
14 equipment operators, quick trim operators, vault placement operators, grounds  
15 specialists, cemeteries development crew members, mausoleum specialists, mechanics,  
16 cemetery grounds leads and supervisors, and any other non-exempt cemetery grounds  
17 position, at any time from July 18, 2014 to the date of preliminary approval."

18 (Settlement Agreement ¶I.V)

19 "Class Period" means the period from July 18, 2014, and continuing through the  
20 date of preliminary approval. (¶I.W)

21  
22 **B. THE MONETARY TERMS OF SETTLEMENT**

23 The essential monetary terms are as follows:  
24  
25

- 1 • The Gross Settlement Amount (“GSA”) is **\$1,300,000**. (¶I.T) This includes  
2 payment of a PAGA penalty of **\$20,000** to be paid 75% to the LWDA (\$15,000)  
3 and 25% to the Aggrieved Employees (\$5,000) (¶I.K);
- 4 • The Net Settlement Amount (“Net”) (**\$812,416.67**) is the GSA less:
  - 5 ○ Up to **\$433,333.33** (33 1/3%) for attorney fees (¶XIII);
  - 6 ○ Up to **\$20,000** for attorney costs (*Ibid.*);
  - 7 ○ Up to **\$5,000** for a service award to the class representative (¶XIV); and
  - 8 ○ Estimated **\$9,250** for settlement administration costs (¶I.S).
- 9 • Employer-side payroll taxes will be paid by Defendant. (¶I.J)
- 10 • Assuming the Court approves all maximum requested deductions, approximately  
11 \$821,657.83 will be available for automatic distribution to participating class  
12 members. Assuming full participation, the average settlement share will be  
13 approximately \$2,966.27. ( $\$821,657.83 \text{ Net} \div 277 \text{ participating class members}$   
14  $= \$2,966.27$ ). In addition, each class member will receive a portion of the  
15 PAGA penalty, estimated to be \$18.05 per class member. ( $\$5,000 \text{ or } 25\% \text{ of}$   
16  $\$20,000 \text{ PAGA penalty} \div 277 \text{ class members} = \$18.05$ )
- 17 • There is no Claim Requirement. (¶X.A)
- 18 • The settlement is not reversionary. (¶I.T)
- 19 • Individual Settlement Share Calculation: The Settlement Award for each  
20 Settlement Class Member who does not submit a timely and valid Request for  
21 Exclusion will be determined by dividing the Net Settlement Amount by the  
22 total number of Eligible Work Weeks worked during the Settlement Period by  
23 all Settlement Class Members who do not submit a timely and valid Request for  
24 Exclusion (the per work week value) and then multiplying the per work week  
25 value by the number of Eligible Work Weeks for each individual Settlement

1 Class Member who does not submit a timely and valid Request for Exclusion,  
2 less any applicable withholdings. (¶X.A)

- 3 • Tax withholdings: Payments will allocated 20% as wages and 80% as penalties  
4 and interest. (¶XV)
- 5 • Uncashed Settlement Payment Checks: Any checks issued to Settlement Class  
6 Members shall remain valid and negotiable for 180 days from the date of their  
7 issuance and shall thereafter be automatically cancelled if not cashed by the  
8 Settlement Class Member within that time. The aggregate amount of funds  
9 associated with checks canceled after 180 days of their issuance, plus any  
10 interest that has accrued thereon and has not otherwise been distributed, shall be  
11 transmitted to Justice Gap Fund of the State Bar of California, a nonprofit  
12 organization, pursuant to California Code of Civil Procedure section 384. Before  
13 any amount is distributed to the Justice Gap Fund, Class Counsel shall first file a  
14 report with the Court detailing the amounts distributed by the Settlement  
15 Administrator. Moreover, Class Counsel shall file a request with the Court to  
16 amend the final judgment in order to provide for the payment of the residual  
17 funds, along with any accrued interest, to the Justice Gap Fund.
  - 18 ○ However, if more than \$10,000 remains in the settlement fund after the  
19 expiration of the 180-day check cancellation period, the Settlement  
20 Administrator shall do another distribution to those Settlement Class  
21 Members who negotiated their checks from the initial distribution.  
22 Defendant shall not be liable for any additional amount due to this  
23 subsequent distribution. If the Settlement Administrator initiates a  
24 subsequent distribution, any additional costs of administration shall be  
25 paid entirely by monies remaining in the settlement fund. It is estimated

1 that the administration costs of a subsequent distribution will be  
2 approximately \$1,647.50. Additionally, if any additional Employer Taxes  
3 are due for any reason whatsoever as a result of the subsequent  
4 distribution (although unlikely), such Employer Taxes shall also be paid  
5 entirely by monies remaining in the settlement fund. (¶X.D)

- 6 • Payment of GSA to be made by Defendant within 15 business days of the  
7 Effective Date (¶X.B), defined as either: (a) the date 60 days after the entry of  
8 the Final Judgment and Order Approving Settlement, if no motions for  
9 reconsideration and no appeals or other efforts to obtain review have been filed,  
10 or (b) in the event that a motion for reconsideration, an appeal or other effort to  
11 obtain review of the Final Judgment and Order Approving Settlement, the date  
12 60 days after such reconsideration, appeal or review has been finally concluded  
13 and is no longer subject to review, whether by appeal, petition for rehearing,  
14 petition for review or otherwise. (¶I.H)

15  
16 **C. TERMS OF RELEASES**

- 17 • Class members will release: All claims, debts, liabilities, demands, obligations,  
18 damages, and actions or causes of action of any kind that arose before the date of  
19 preliminary approval and were alleged in the Complaint, or that could have been  
20 alleged based on the facts alleged in the Complaint, including any claims that  
21 have been or could have been alleged against the Released Parties, or any of  
22 them, arising out of the claims or the facts alleged in the Complaint, and  
23 including claims under California Labor Code sections 200, 201, 202, 203, 204,  
24 216, 218.5, 218.6, 226, 226.7, 510, 512, 558, 1174, 1174.5, 1194, 1194.2, 1197,  
25 1199, 2698 et seq., and 2802, and the Wage Orders promulgated thereunder,

1 including (without limitation) Cal. Code Regs., title 8. § 11040; California  
2 Business & Cal. Professions Code section 17200 et seq.; and California Code of  
3 Civil Procedure section 1021.5 (“Released Claims”). Expressly excluded from  
4 the Released Claims are (a) claims for wages in Workers’ Compensation and  
5 Unemployment Insurance benefits cases, and (b) claims for benefits under the  
6 Employee Retirement Income Security Act of 1974 (ERISA). (§I.O)

- 7 • “Released Parties” means Defendant, its present, former or future parents,  
8 subsidiaries, affiliates, divisions, corporations in common control, predecessors,  
9 successors and assigns, and any and all persons acting by, through, under or in  
10 concert with any of them, including all individual members, priests, brothers, or  
11 other religious or clergy, and each of their respective present, past or future  
12 officers, directors, employees, former employees, partners (both general and  
13 limited), shareholders, agents, attorneys, insurers, re-insurers and any other  
14 successors, assigns or legal representatives, and any other individual or entity  
15 which could be liable for any of the Released Claims. (§I.P)
- 16 • The Settlement Class Members who do not timely opt out shall thereupon be  
17 barred from suing or otherwise making a claim against any of the Released  
18 Parties for any of the Released Claims arising during the Settlement Class Period  
19 and shall be forever barred from filing any actions, claims, complaints or  
20 proceedings regarding the Released Claims with the California Division of  
21 Labor Standards Enforcement or the United States Department of Labor Wage  
22 and Hour Division, or from initiating any other proceedings against the Released  
23 Parties regarding the Released Claims. Their release, waiver and relinquishment  
24 of the Released Claims shall preclude them from participating in any judgment  
25

1 or settlement of claims that are the subject of the Released Claims in any other  
2 class, collective, or representative action. (¶VI.A)

- 3 • The named Plaintiff will also provide a general release and a waiver of the  
4 protections of Cal. Civ. Code §1542. (¶VI.B)
- 5 • The releases are effective fifteen days after the Effective Date, and once  
6 Defendant fully funds the Settlement Amount. (¶VI.A)

### 7 8 **III. ANALYSIS OF SETTLEMENT AGREEMENT**

9 “Before final approval, the court must conduct an inquiry into the fairness of the  
10 proposed settlement.” Cal. Rules of Court, rule 3.769(g). “If the court approves the  
11 settlement agreement after the final approval hearing, the court must make and enter  
12 judgment. The judgment must include a provision for the retention of the court's  
13 jurisdiction over the parties to enforce the terms of the judgment. The court may not  
14 enter an order dismissing the action at the same time as, or after, entry of judgment.”  
15 Cal. Rules of Court, rule 3.769(h).

16 As discussed more fully in the Order conditionally approving the settlement, “[i]n  
17 a class action lawsuit, the court undertakes the responsibility to assess fairness in order to  
18 prevent fraud, collusion or unfairness to the class, the settlement or dismissal of a class  
19 action. The purpose of the requirement [of court review] is the protection of those class  
20 members, including the named plaintiffs, whose rights may not have been given due  
21 regard by the negotiating parties.” See *Consumer Advocacy Group, Inc. v. Kintetsu*  
22 *Enterprises of America* (2006) 141 Cal. App.4th 46, 60 [internal quotation marks  
23 omitted]; see also *Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 245  
24 (“*Wershba*”), disapproved on another ground in *Hernandez v. Restoration Hardware*  
25 (2018) 4 Cal.5th 260 [Court needs to “scrutinize the proposed settlement agreement to the



1 extent necessary to reach a reasoned judgment that the agreement is not the product of  
2 fraud or overreaching by, or collusion between, the negotiating parties, and that the  
3 settlement, taken as a whole, is fair, reasonable and adequate to all concerned.” [internal  
4 quotation marks omitted].

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

1           **A.     A PRESUMPTION OF FAIRNESS EXISTS**

2           The Court preliminarily found in its Order of September 14, 2020 that the  
3 presumption of fairness should be applied. No facts have come to the Court’s attention  
4 that would alter that preliminary conclusion. Accordingly, the settlement is entitled to a  
5 presumption of fairness as set forth in the preliminary approval order.

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

7           The settlement was preliminarily found to be fair, adequate and reasonable.  
8 Notice has now been given to the Class and the LWDA. The notice process resulted in  
9 the following:

- 10                 Number of class members: 277
- 11                 Number of notices mailed: 277
- 12                 Number of undeliverable notices: 3
- 13                 Number of opt-outs: 0
- 14                 Number of objections: 0
- 15                 Number of participating class members: 277

16 (Declaration of Taylor Mitzner ¶¶ 3-10.)

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

21           **C.     CLASS CERTIFICATION IS PROPER**

22           For the reasons set forth in the preliminary approval order certification of the  
23 Class for purposes of settlement is appropriate.

24 //  
25 //

1           **D.     ATTORNEY FEES AND COSTS**

2           Class Counsel requests **\$433,333** (33 1/3%) for attorney fees and **\$10,759.17** for  
3 costs. (Motion for Attorneys' Fees at 5:3-4, 11:12-14.)

4           Courts have an independent responsibility to review an attorney fee provision and  
5 award only what it determines is reasonable. *Garabedian v. Los Angeles Cellular*  
6 *Telephone Company* (2004) 118 Cal.App.4th 123, 128. A percentage calculation is  
7 permitted in common fund cases. *Laffitte v. Robert Half Int'l, Inc.* (2016) 1 Cal.5th 480,  
8 503.

9           In the instant case, fees are sought pursuant to the percentage method. (Motion for  
10 Attorneys' Fees at pgs. 2-6.) The \$433,333 fee request is 33 1/3% of the Gross Settlement  
11 Amount.

12           Here, the \$433,333 fee request represents a reasonable percentage of the total  
13 funds paid by Defendant. Further, the notice expressly advised class members of the fee  
14 request, and no one objected. (Mitzner Decl. ¶9, Exhibit A.) Accordingly, the Court  
15 awards fees in the amount of **\$433,333**.

16           Fee Split: Class Counsel have agreed to the following fee split: 66.6% to  
17 Boyamian Law, Inc. and 33.3% to the Law Offices of Thomas W. Falvey. (Boyamian  
18 Decl. ISO Prelim ¶30.)

19           Class Counsel requests **\$10,759.17** in costs. This is less than the \$20,000 cap  
20 provided in the settlement agreement (¶XIII). The amount was disclosed to Class  
21 Members in the Notice, and no objections were received. (Mitzner Decl. ¶9, Exhibit A.)  
22 Costs include: JAMS Mediation (\$5,450), Berger Consulting Group, LLC (\$2,875), and  
23 LASC Filing Fee (\$1,450). (Boyamian Decl. ISO Final, Exhibit 1.)

24           The costs appear to be reasonable and necessary to the litigation, are reasonable  
25 in amount, and were not objected to by the class.

1 For all of the foregoing reasons, costs of **\$10,759.17** are approved.

2 **E. SERVICE AWARD TO CLASS REPRESENTATIVE**

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

14 Here, the Class Representative requests an enhancement award totaling **\$5,000**.  
15 (Motion for Attorneys’ Fees at 12:8.) He urges that an award is appropriate for the  
16 following reasons: Plaintiff Perez worked for Defendant from 1994 to approximately  
17 January 11, 2018. (Declaration of Carlos Olmos Perez ¶2.) He represents that he  
18 contributed to this action by being interviewed by his lawyers regarding Defendant’s  
19 working conditions, providing his employment documents for his lawyers, helping to  
20 identify potential witnesses and class members, reviewing his pay stubs and work  
21 schedules to reconstruct his hours spent working for Defendant, responding to his  
22 lawyers’ communications, being available during the mediation, and reviewing the  
23 Settlement Agreement, spending over 25 total hours on the case. (*Id.* at ¶6.)

1 In light of the above-described contributions to this action, and in  
2 acknowledgment of the benefits obtained on behalf of the class, a **\$5,000** service award  
3 is reasonable and approved.

4 **F. SETTLEMENT ADMINISTRATION COSTS**

5 The Settlement Administrator, Phoenix Settlement Administrators (“PSA”),  
6 requests **\$9,250** in compensation for its work in administrating this case. (Mitzner Decl.  
7 ¶13.) At the time of preliminary approval, costs of settlement administration were  
8 estimated at \$9,250. (¶I.S.) Class Members were provided with notice of this amount and  
9 did not object. (Mitzner Decl. ¶9, Exhibit A.)

10 Accordingly, settlement administration costs are approved in the amount of  
11 **\$9,250.**

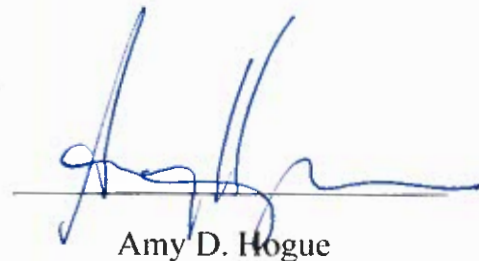
12  
13 **IV. CONCLUSION AND ORDER**

14 The Court hereby:

- 15 (1) Grants class certification for purposes of settlement;  
16 (2) Grants final approval of the settlement as fair, adequate, and reasonable;  
17 (3) Awards **\$433,333** in attorney fees to Class Counsel, Boyamian Law, Inc. and  
18 Law Offices of Thomas W. Falvey;  
19 (4) Awards **\$10,759.17** in litigation costs to Class Counsel;  
20 (5) Approves payment of **\$15,000** (75% of \$20,000 PAGA penalty) to the LWDA;  
21 (6) Awards **\$5,000** as a Class Representative Service Award to Plaintiff Carlos  
22 Olmos Perez;  
23 (7) Awards **\$9,250** in settlement administration costs to Phoenix Settlement  
24 Administrators;  
25

- 1 (8) Orders class counsel to lodge a proposed Judgment, consistent with this ruling  
2 and containing the class definition, full release language, and a statement that no  
3 class members opted out by Feb. 27, 2021;
- 4 (9) Orders class counsel to provide notice to the class members pursuant to  
5 California Rules of Court, rule 3.771(b) and to the LWDA pursuant to Labor  
6 Code §2699 (1)(3); and
- 7 (10) Sets a Non-Appearance Case Review re: Final Report re: Distribution of  
8 Settlement Funds for December 13, <sup>2021</sup> at 10:00 a.m. Final Report is to be filed by  
9 December 6, 2021. If there is unpaid residue or unclaimed or abandoned class  
10 member funds and/or interest thereon to be distributed to Justice Gap Fund,  
11 Plaintiff's counsel shall also submit an Amended Judgment pursuant to Cal.  
12 Code of Civ. Pro. § 384 and give notice of the Judicial Council of California  
13 upon entry of the Amended Judgment, when entered, pursuant to Cal. Code of  
14 Civ. Pro. §384.5.

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16  
17 Dated: 2/22/21

18   
19 Amy D. Hogue

20 Judge of the Superior Court  
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