

1 **LAW OFFICE OF SCOTT ERNEST WHEELER**

Scott Ernest Wheeler (SBN 187998)

2 Justin A. Wheeler (SBN 342226)

250 West First Street, Suite 216

3 Claremont, California 91711

Telephone: (909) 621-4988

4 Facsimile: (909) 621-4622

Email: sew@scottwheelerlawoffice.com

5 jaw@scottwheelerlawoffice.com

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

NOV 27 2023

6 *Attorneys for Plaintiff and the Putative Class*

BY Jessica Garcez  
JESSICA GARCEZ, DEPUTY

10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

11 **FOR THE COUNTY OF SAN BERNARDINO**

13 GERARDO MARTINEZ, individually,  
14 and on behalf of all others similarly  
situated,

15 Plaintiff,

16 v.

17 INVAPHARM, INC., a California  
18 corporation; and DOES 1 through 50,  
19 inclusive,

20 Defendants.

CASE NO.: CIVSB2133820

[Hon. Joseph T. Ortiz, Dept. S-17]

~~[PROPOSED]~~ ORDER AND JUDGMENT

1 ~~PROPOSED~~ ORDER AND JUDGMENT

2 The Court has before it Plaintiff's unopposed Motion for Final Approval of Class Action  
3 Settlement.

4 On May 18, 2023, Plaintiff filed a motion for preliminary approval requesting that the Court  
5 preliminarily approve the Settlement Agreement entered into between Plaintiff Gerardo Martinez,  
6 on behalf of himself and the Class ("Plaintiff") and Invapharm, Inc. ("Defendant") (collectively,  
7 "the Parties").

8 On June 13, 2023, the Court issued an order granting preliminary approval. The Court  
9 preliminarily approved that this litigation could be maintained as a class action for settlement  
10 purposes and, therefore, it conditionally certified the following Class (the "Class" or "Settlement  
11 Class") for settlement purposes:

12 All non-exempt employees who were employed by Invapharm, Inc. in  
13 the State of California, at any time from December 10, 2017, through  
14 June 13, 2023.

15 The Court conditionally approved for settlement purposes the PAGA allocation of this  
16 settlement to the California Labor and Workforce Development Agency ("LWDA") and PAGA  
17 Members ("PAGA Member" or "PAGA Members"), for settlement purposes:

18 All non-exempt employees who were employed by Invapharm, Inc. in  
19 the State of California, at any time from October 6, 2020, through  
20 June 13, 2023.

21 The Court appointed, for settlement purposes, the Law Office of Scott Ernest Wheeler as  
22 Class Counsel, Plaintiff as representative for the Class, and Phoenix Settlement Administrators as  
23 the Settlement Administrator.

24 The Court further directed the Parties to provide notice to the Class via U.S Mail to each  
25 Class Members' last known mailing address. The Class Notice was mailed to Class Members in  
26 both English and Spanish, informed them of the material terms of the Settlement, including, *inter*  
27 *alia*, (a) the nature of the case and claims asserted, (b) each Class Member's estimated individual  
28 settlement payment; (c) the payments to Class Counsel for attorneys' fees and costs, payment to the  
Class Representatives as service awards, payment to the Settlement Administrator for settlement

1 administration costs, and payment to the California Labor and Workforce Development Agency for  
2 PAGA penalties; (d) the claims that Class Members release if they do not exclude themselves from  
3 the Settlement, (e) the right of any Class Member to object to the proposed Settlement, and an  
4 explanation of the procedures to exercise that right; (f) the right of any Class Member to exclude  
5 themselves from the proposed Settlement, and an explanation of the procedures to exercise that  
6 right; (g) the right of any Class Member to dispute compensable work weeks and attributable to  
7 them; and (h) the date, time, and location of the Final Approval Hearing which is now before the  
8 Court.

9 The Court, upon Notice having been given in conformance with the Preliminary Approval  
10 Order, and having considered the proposed Settlement, as well as all papers filed, hereby **ORDERS,**  
11 **ADJUDGES, AND DECREES AS FOLLOWS:**

12 1. This Court has jurisdiction over the subject matter of the action and over all Parties  
13 to the action, including all members of the Settlement Class.

14 2. The Settlement Class, defined as “All non-exempt employees who were employed  
15 by Invapharm, Inc., in the State of California, at any time from December 10, 2017, through June  
16 13, 2023”, is certified as a Class for settlement purposes pursuant to California Code of Civil  
17 Procedure § 382 in that: (a) the Class is so numerous that joinder is impractical; (b) there are  
18 questions of law and fact that are common, or of general interest, to the Class, which predominate  
19 over any individual issues; (c) Plaintiff’s claims are typical of the claims of the Class; (d) Plaintiff  
20 and Plaintiff’s counsel will fairly and adequately protect the interests of the Class; and (e) a class  
21 action is superior to other available methods for the fair and efficient adjudication of the controversy.

22 3. There have been no objections and zero requests for exclusion.

23 4. No disputes have been submitted by any Class Members or PAGA Member.

24 5. The Class Notice provided to the Settlement Class conforms with the requirements  
25 of California Code of Civil Procedure § 382, California Rules of Court 3.766 and 3.769, the  
26 California and United States Constitutions, and any other applicable law, and constitutes the best  
27 notice practicable under the circumstances, by providing individual notice to all Class Members  
28 who could be identified through reasonable effort, and by providing due and adequate notice of the

1 proceedings and of the matters set forth therein to the other Class Members. The Class Notice fully  
2 satisfied the requirements of due process.

3         6.         The Court finds the Settlement was entered into in good faith, that the Settlement is  
4 fair, reasonable, and adequate, and that the Settlement satisfies the standards and applicable  
5 requirements for final approval of this class action settlement under California law, including  
6 California Rules of Court, Rule 3.769.

7         7.         Neither the Settlement nor any of the terms set forth in the Settlement Agreement  
8 and Amendment to the Settlement Agreement are admissions by Defendants, or any of the other  
9 Released Parties, of liability on any of the allegations alleged in the action, nor is this Order a finding  
10 of the validity of any claims in the action, or of any wrongdoing by the Defendants, or any of the  
11 other Released Parties.

12         8.         A class action settlement is presumed to be fair if: ““(1) it is reached through arm’s  
13 length bargaining; (2) investigation and discovery are sufficient to allow counsel and the court to  
14 act intelligently; (3) counsel is experienced in similar litigation; and (4) the percentage of objectors  
15 is small.”” *Chavez v. Netflix* (2008) 162 Cal.App.4<sup>th</sup> 43, 52 (quotation omitted). The Court finds that  
16 the Settlement is presumptively fair based on the foregoing factors because it was negotiated based  
17 on sufficient information through arm’s length negotiations, under the auspices of a well-respected  
18 mediator, by counsel experienced in wage and hour class action litigation.

19         9.         Beyond determining whether a settlement is entitled to a presumption of fairness, a  
20 court must further consider factors such as: (1) the strength of plaintiffs’ case; (2) the risk and  
21 expense of further litigation; (3) the risk of maintaining class status through trial; (4) the amount  
22 offered in settlement; (5) the extent of discovery completed; (6) the experience and views of counsel;  
23 (7) the presence of a government participant; and (8) and the reaction of the class members to the  
24 proposed class settlement. *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4<sup>th</sup> 1794, 1801; *In re*  
25 *Microsoft I-V Cases* (2006) 135 Cal.App.4<sup>th</sup> 706, 723. The Court finds that each of these factors  
26 weigh in support final approval.

27         10.         First, the Court recognizes there are real risks to Plaintiff and the Class if they were  
28 to proceed with the litigation.

1           11.     Second, the risk and expense of further litigation supports the reasonableness of the  
2 Settlement. For example, the Court recognizes that Plaintiff's ability to prove damages on a  
3 classwide basis at trial would be an expensive, time-consuming, and uncertain proposition.

4           12.     Third, there are real risks that a Class would not be certified absent this Settlement.

5           13.     Fourth, the Settlement was reached based on extensive investigation and informal  
6 discovery, including thorough expert analysis of pertinent time and payroll data and other records  
7 for the Class.

8           14.     Fifth, Class Counsel, who is experienced in wage and our class action litigation,  
9 endorse the Settlement as fair and reasonable and in the best interest of the Class.

10          15.     Sixth, notice was provided to the California Labor and Workforce Development  
11 Agency ("LWDA") and it has not indicated that it objects to or opposes the Settlement.

12          16.     Finally, the reaction of the Class to the Settlement is positive. There have been no  
13 objections and zero exclusions. There are no work week disputes.

14          17.     In sum, based on consideration of the foregoing factors, and the Court's familiarity  
15 with the litigation, the Court finds that the Settlement is in all respects fair, reasonable, and adequate,  
16 is in the best interest of the Class, and it is hereby finally approved.

17          18.     Upon entry of this Order, compensation to the Settlement Class Members shall be  
18 effected pursuant to the terms of the Settlement Agreement.

19          19.     In addition to any recovery that Plaintiff may receive as a Settlement Class Member  
20 under the Settlement, and in recognition of Plaintiff's efforts on behalf of the Settlement Class, the  
21 Court hereby approves the payment of a Class Representative Service Award in the amount of  
22 \$6,000 to Plaintiff Gerardo Martinez. The Court finds that this amount is appropriate based on the  
23 factors articulated in *Golba v. Dick's Sporting Goods, Inc.* (2015) 238 Cal.App.4th 1251. Among  
24 other things, Plaintiff Gerardo Martinez took on risk, both financial and in terms of future  
25 employment prospects, by agreeing to act as the Class Representative, devoted considerable time  
26 and energy time to this action for the benefit of the Class, agreed to a section 1542 waiver, which  
27 does not apply to the release of Class Members, and achieved an excellent result for the Class.

28          20.     With respect to attorneys' fees, the Court approves the amount of \$167,000 based on

1 a percentage of the recovery method. *See Laffitte v. Robert Half International Inc.* (2016) 1 Cal.5th  
2 480, 503 (“when class action litigation establishes a monetary fund for the benefit of class members,  
3 and the trial court in its equitable powers awards class counsel a fee out of that fund, the court may  
4 determine the amount of a reasonable fee by choosing an appropriate percentage of the fund  
5 created.”). The Gross Settlement Amount represents a true common fund, as Defendants are  
6 obligated to pay this entire amount, and no portion of the Gross Settlement Amount will revert to  
7 Defendants. In addition, the Court finds that \$167,000, which represents one-third of the Gross  
8 Settlement Amount, is reasonable and appropriate. *See In re Consumer Privacy Cases* (2009) 175  
9 Cal.App.4th 545, 558 n.13 (“Empirical studies show that, regardless whether the percentage method  
10 or the lodestar method is used, fee awards in class actions average around one-third of the  
11 recovery.”); *Chavez v. Netflix, Inc.* (2008) 162 Cal.App.4th 43, 66 n.11 (recognizing that fee awards  
12 in class actions average around one-third of the recovery).

13 21. Cross-checking the reasonableness of this amount against Class Counsel’s lodestar  
14 further supports the reasonableness of the attorneys’ fees award. *See Laffitte*, 1 Cal.5th at 506 (trial  
15 courts have “discretion to conduct a lodestar cross-check on a percentage fee.”). Based on Class  
16 Counsel’s lodestar to date of \$169,362.50, which the Court finds is reasonable, an award of  
17 \$167,000 represents an implied negative multiplier.

18 22. The Court also finds that the \$13,244.16 in litigation costs incurred and requested by  
19 Class Counsel were necessary and appropriate.

20 23. Accordingly, the Court approves the payment of attorneys’ fees to Class Counsel in  
21 the amount of \$167,000 and reimbursement of reasonable litigation expenses in the amount of  
22 \$13,244.16.

23 24. The Court approves the payment of settlement administration costs in the amount of  
24 \$8,500 to Phoenix Settlement Administrators.

25 25. The Court approves and orders payment in the amount of \$50,000 allocated as PAGA  
26 penalties (75% or \$37,500 allocated to the LWDA and 25% or \$12,500 allocated to the PAGA  
27 Group Members) which represents a fair and equitable sum for resolution of claims raised pursuant  
28 to California Labor Code section 2698 *et seq.*

1           26.     The Gross Settlement Amount, the Net Settlement Amount, and the methodology  
2 used to calculate and pay each Settlement Class Member’s individual settlement payment are fair  
3 and reasonable, and the Court authorizes the Settlement Administrator to issue individual settlement  
4 payments to each Settlement Class Member pursuant to the terms of the Settlement Agreement.

5           27.     Upon the Effective Date, Plaintiff and all members of the Settlement Class, shall  
6 have, by operation of this Order and the accompanying Judgment, fully, finally, and forever  
7 released, relinquished, and discharged Defendant and Released Parties from all Released Claims as  
8 defined by the terms of the Amended Settlement Agreement.

9           28.     A final accounting status conference regarding the status of settlement administration  
10 shall take place on November 25, 2024, at 8:30 a.m., in Department S-17. The final report from  
11 Phoenix Settlement Administrators Re: Status of Settlement Administration shall be filed at least  
12 ten (10) calendar days prior to the hearing.

13           29.     Plaintiff’s Motion for Final Approval of Class Action Settlement is hereby granted  
14 and the Court directs that a judgment shall be entered in accordance with the terms stated herein.

15           30.     Judgment in this matter is entered in accordance with the terms of the Settlement  
16 Agreement against Defendants in favor of Plaintiff and the Settlement Class.

17           31.     This document shall constitute a Judgment for purposes of California Rule of Court  
18 3.769(h). This Judgment is intended to be a final disposition of the above captioned action in its  
19 entirety, and is intended to be immediately appealable.

20           32.     This Judgment shall be posted online on Phoenix Settlement Administrator’s website  
21 for one-hundred and eighty (180) days.

22           33.     This Court shall retain jurisdiction with respect to all matters related to the  
23 administration and consummation of the Settlement, to enforce the terms of the judgment, and any  
24 and all claims, asserted in, arising out of, or related to the subject matter of the lawsuit, including  
25 but not limited to all matters related to the Settlement and the determination of all controversies  
26 relating thereto, pursuant to Code of Civil Procedure, §664.6 and California Rules of Court, Rule

27           ///

28           ///

1 3.769(h).

2 **IT IS SO ORDERED, ADJUDGED AND DECREED.**

3

4 DATED: 11/27/23



HONORABLE JOSEPH T. ORTIZ  
JUDGE OF THE SUPERIOR COURT

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28