

08/02/2023

David W. Slayton, Executive Officer / Clerk of Court

FINAL RULINGS/ORDERS RE: MOTION FOR PRELIMINARY APPROVAL OF
CLASS ACTION SETTLEMENT

R. Araiga Deputy

Danny Carmona, et al. v. Certified Alloy Products, Inc., et al.,
Case No.: 21STCV03308

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

The essential terms are:

- A. The Gross Settlement Amount ("GSA") is \$1,000,000.
- B. The Net Settlement Amount is the GSA minus the following:

Up to \$333,333 (33.33%) for attorney fees (¶4.7.) [Fee Split: 55% to Lavi & Ebrahimian, LLP and 45% to the Law Offices of Sahag Majarian II. (2nd Supp. Brief 2: 17-25.)]

Up to \$20,000 for litigation costs (Ibid.);

Up to \$9,900 for a Service Payment to the Named Plaintiff (¶4.8.);

Up to \$11,500 for settlement administration costs (¶4.9.);

\$37,500 (75% of \$50,000 PAGA penalty) to the LWDA. (¶4.6.)

C. Defendants will pay their share of taxes separate from the GSA. (¶4.4.)

D. Plaintiffs release of Defendants from claims described herein.

The Parties' Motion for Final Approval of Class Action Settlement must be filed by **February 5, 2024**. The parties are ordered to contact the Clerk in Department 9 to obtain a hearing date for their motion.

The Parties' Motion for Final Approval of Class Action Settlement must include a concurrently lodged [Proposed] Judgment containing among other things, the class definition, full release language, and names of the any class members who opted out; and the parties must email the [Proposed] Judgment in Word format to Dept. 9 staff at sscdept9@lacourt.org.

**Non-Appearance Case Review is set for February 13, 2024,
8:30 a.m., Department 9.**

I.
BACKGROUND

This is a wage and hour class action. Defendant Certified Alloy Products, Inc.¹ ("CAPI" or "Defendant") is located in Long Beach, California, and is a leading manufacturer of high performance vacuum-refined superalloys for use in aerospace and industrial gas turbine engines, among other demanding applications. In 2001, CAPI was acquired by Doncasters plc, a European based corporation, which is a leading international engineering group that manufactures precision components and assemblies for aerospace, industrial gas turbines, and other markets.

On January 26, 2021, Plaintiff Danny Carmona filed the Class Action complaint, Case No. 21STCV03308, in which he alleged (1) Failure to Pay Wages For All Hours Worked At Minimum Wage in Violation of Labor Code Sections 1194 and 1197, (2) Failure to Pay Overtime Wages for Daily Overtime Worked In Violation Of Labor Code Section 510 and 1194, (3) Failure to Pay Reporting Time Pay In Violation of Labor Code Sections 1194, 1197, and 1198, (4) Failure to Authorize or Permit Meal Periods In Violation of Labor Code Sections 512 and 226.7, (5) Failure to Authorize or Permit Rest Periods in Violation of Labor Code Section 226.7, (6) Failure to Timely Pay Earned Wages During Employment in Violation of Labor Code Section 204, (7) Failure to Provide Complete and Accurate Wage Statements in Violation of Labor Code Section 226, (8) Failure to Timely Pay All Earned Wages and Final Paychecks Due at Time of Separation of Employment in Violation of Labor Code Sections 201, 202, and 203, and (9) Unfair Business Practices, in Violation of Business and Professions Code Sections 17200, et seq. ("Class Complaint").

On April 8, 2021, Plaintiff filed the PAGA Action complaint, Case No. 21STCV13416, in which he alleged the following causes of action: (1) Civil Penalties Pursuant to the Private Attorney's General Act of 2004 ("PAGA"), Labor Code Section 2698, et seq. for allegations violations of Labor Code Sections 201, 202, 203, 204, 226, 226.3, 226.7, 510, 512, 558

¹ CAPI was erroneously sued as two different entities in the Lawsuits. There is no standalone entity by the name of "Doncasters Certified Alloy Products, Inc.," nor has there ever been an entity that has operated under that name.

1194, 1197, 1198, 1198.5, 2698, et seq. and the IWC Wages Orders, which includes allegations of (a) Failure to pay wages for all hours worked at the legal minimum wage, (b) Failure to pay wages for overtime hours worked at the overtime rate of pay, (c) Failure to provide reporting time pay, (d) Failure to pay wages to hourly non-exempt employees for workdays that Defendants failed to provide legally required and compliant meal periods, (e) Failure to pay wages to hourly non-exempt employees for workdays that Defendants failed to provide legally required and compliant rest periods, (f) Failure to timely pay earned wages during employment, (g) Failure to provide complete and accurate wage statements, and (h) Failure to pay employees all wages due at time of termination/resignation ("PAGA Complaint").

On or about July 1, 2021, to keep litigation costs to a minimum, the Parties agreed to attend mediation with mediator Jeff Ross. The Parties further agreed to engage in an informal exchange of documents and to stay both the Class Action and PAGA Action until April 12, 2022.

Counsel represent that prior to the mediation, Defendants provided Plaintiff with informal discovery exchange which included the following: (1) a 20% random and representative sampling of electronic time and pay data for the putative class members and alleged aggrieved employees; (2) the total number of current and former putative class members and aggrieved employees who worked during the relevant time periods; (3) the number of former putative class members and aggrieved employees that ended their employment with Defendant during the relevant time periods; (4) the total number of workweeks at issue during the relevant time periods; (5) the total number of pay periods at issue during the relevant time periods; (6) the number of shifts over 5 hours, 6 hours, and 10 hours worked by putative class members and aggrieved employees; (7) the average hourly rate for the putative class members; (8) copies of CAPI's employee handbooks used during the class period; (9) Defendant's timekeeping policies, including policies regarding checking-in and checking-out, attendance and tardiness, employee schedules, payment of wages, and meal period and rest break policies; (10) IWC Wage Orders posted at all CAPI sites; (11) photos of all California and federal postings; (12) payroll calendars; and (13) other relevant information, including Plaintiff's personnel file, wage statements, and time records.

On March 22, 2022, the Parties attended a full day mediation session with Jeff Ross, an experienced wage and hour class action and PAGA-action mediator where the Parties reached

an agreement to settle all of the claims alleged in Plaintiff's PAGA Complaint and the Class Complaint. Between March 23, 2022, and March 25, 2022, the Parties continued negotiations, and with the assistance by Jeff Ross, entered into a Memorandum of Understanding ("MOU").

On June 3, 2022, Plaintiff filed a First Amended Complaint which added Plaintiff's PAGA claim to the pending Class Action as part of the terms of the Settlement.

A partially executed copy of the Settlement Agreement was filed with the Court on August 30, 2022 attached to the Declaration Of Melissa Huether ("Huether Decl."), as Exhibit 1. On February 7, 2023, the court issued a checklist of items for counsel to address and continued preliminary approval. On response, on March 1, 2023, counsel provided supplemental briefing.

On March 14, 2023, the court issued a checklist of items for counsel to address and continued preliminary approval. On response, on July 12, 2023, counsel provided further supplemental briefing (2nd Supp. Brief") with a fully executed Amended Settlement Agreement attached thereto as Exhibit 2.

Now before the Court is Plaintiff's motion for preliminary approval of the settlement agreement.

II.

SETTLEMENT AGREEMENT

A. Definitions.

"Class" or "Class Members": all current and former hourly-paid or nonexempt employees employed by CAPI within the State of California at any time during the Settlement Period. Any Class Member who does not opt out or submit a Request for Exclusion is a "Settlement Class Member" and shall be bound by the terms of the Agreement. (§2.01.)

"Settlement Period": January 26, 2017, through and including May 31, 2022. (§2.44.)

"PAGA Releasee": an individual who was employed by Defendant within the State of California at any time as a non-exempt or hourly-paid employee during the PAGA Settlement Period. (§2.26.)

"PAGA Settlement Period": January 26, 2020, through and including May 31, 2022. (¶2.28.)

The parties stipulate to certification for settlement purposes only. (¶4.11.)

B. Terms of Settlement Agreement

The essential terms are:

- The Gross Settlement Amount ("GSA") is \$1,000,000, non-reversionary. (¶4.4.)
- The Net Settlement Amount ("Net") (\$587,767) is the GSA minus the following:
 - Up to \$333,333 (33.33%) for attorney fees (¶4.7.);
- Fee Split: 55% to Lavi & Ebrahimian, LLP and 45% to the Law Offices of Sahag Majarian II. (2nd Supp. Brief 2: 17-25.)
 - Up to \$20,000 for litigation costs (Ibid.);
 - Up to \$9,900 for a Service Payment to the Named Plaintiff (¶4.8.);
 - Up to \$11,500 for settlement administration costs (¶4.9.);and
 - Payment of \$37,500 (75% of \$50,000 PAGA penalty) to the LWDA. (¶4.6.)
- Defendants will pay their share of taxes separate from the GSA. (¶4.4.)
- Funding of Settlement: Within twenty-one (21) business days after the Effective Date, Defendant shall pay the settlement sum of \$1,000,000.00 and the amount that the Settlement Administrator advises is due for Employer Taxes. (¶7.1.)
- There is no claim form requirement. (Notice, pg. 8.)
- Individual Settlement Payment Calculation: Settlement Class Members will receive a pro rata share of the Net Settlement Amount, based on their respective number of Workweeks at Issue in the Settlement Period as compared to the total Workweeks of all Settlement Class Members in the Settlement Period. (¶4.5.1.a.)
 - Tax Allocation: 33.33% as wages and 33.33% penalties and 33.33% as interest. (¶4.10.)
- PAGA Payments The remaining 25% of the \$50,000.00 PAGA Payment, which amounts to \$12,500.00, shall be distributed pro rata to all PAGA Releasees, based on the number of PAGA Pay Periods worked by a PAGA Releasee, as a fraction of the total PAGA Pay Periods worked of all PAGA Releasees. There are approximately 2,600 PAGA Pay Periods. (¶4.6.)
 - Tax Allocation 100% penalties. (Ibid.)

- “Notice Period” or “Response Deadline” refers to a date that is forty-five (45) calendar days from the date that the Class Notice is mailed to Class Members and the deadline by which Class Members’ Requests for Exclusion, disputes regarding Weeks at Issue credited to them, and/or Objections must be postmarked in order to be timely. An Objection or Request for Exclusion must be mailed to the Settlement Administrator with a postmark dated during the Notice Period for it to be considered. Similarly, a written notice disputing the number of Workweeks at Issue must be returned to the Settlement Administrator with a postmark dated during the Notice Period for the Class Member to raise a valid dispute regarding the number of Workweeks at Issue used to determine his or her Individual Settlement Payment. This deadline will be extended by 10 calendar days for those Class Members who have their notices re-mailed. (§2.21.)
 - o Defendant shall retain the right, in the exercise of its sole discretion, to nullify the Settlement if Class Members representing more than an aggregate total of 5% of the Class Members opt out of the Settlement. (§12.1.)
- Uncashed Settlement Checks: Settlement Class Members shall have one hundred eighty (180) calendar days from the date of mailing of their Individual Settlement Payment check to cash their Individual Settlement Payment check. The Settlement Administrator shall mail a check cashing reminder postcard to those Settlement Class Members who have not negotiated their Individual Settlement Payment checks within ninety (90) days of mailing. Any failure of a Settlement Class Member to deposit a check shall not affect the enforceability of the release of all Released Class Claims, as the Parties jointly agree that valid consideration for same is the offer of monetary consideration by means of the offer of settlement and mailing of settlement checks. In the event that any Individual Settlement Payment checks are not deposited, cashed, or otherwise negotiated within the 180-day period, shall be void. Any funds not distributed after the expiration of the Individual Settlement Payment checks shall escheat to the State of California Controller’s Office to be held in the name of the Settlement Class Member who is the payee of the check. (§4.5.1.b.)
- The settlement administrator will be CPT Group. (§2.41.)
- The proposed settlement was submitted to the LWDA on August 30, 2022. (Huether Decl., Exhibit 2.)
- Participating class members and the named Plaintiff will release certain claims against Defendants. (See further discussion below)

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III.
DISCUSSION

A. Does a Presumption of Fairness Exist?

1. Was the settlement reached through arm's-length bargaining? Yes. On March 22, 2022, the Parties attended a full day mediation session with Jeff Ross, where the Parties reached an agreement. (Settlement Agreement, ¶1.08.)

2. Were investigation and discovery sufficient to allow counsel and the court to act intelligently? Yes. Counsel represent that prior to the mediation, Defendants provided Plaintiff with informal discovery exchange which included the following: (1) a 20% random and representative sampling of electronic time and pay data for the putative class members and alleged aggrieved employees; (2) the total number of current and former putative class members and aggrieved employees who worked during the relevant time periods; (3) the number of former putative class members and aggrieved employees that ended their employment with Defendant during the relevant time periods; (4) the total number of workweeks at issue during the relevant time periods; (5) the total number of pay periods at issue during the relevant time periods; (6) the number of shifts over 5 hours, 6 hours, and 10 hours worked by putative class members and aggrieved employees; (7) the average hourly rate for the putative class members; (8) copies of CAPI's employee handbooks used during the class period; (9) Defendant's timekeeping policies, including policies regarding checking-in and checking-out, attendance and tardiness, employee schedules, payment of wages, and meal period and rest break policies; (10) IWC Wage Orders posted at all CAPI sites; (11) photos of all California and federal postings; (12) payroll calendars; and (13) other relevant information, including Plaintiff's personnel file, wage statements, and time records. (Huether Decl., ¶32).

3. Is counsel experienced in similar litigation? Yes. Class Counsel is experienced in class action litigation, including wage and hour class actions. (Id. at ¶¶ 30-31; Declaration of Sahag Majarian II.)

4. What percentage of the class has objected? This cannot be determined until the fairness hearing. (See Weil & Brown, Cal. Practice Guide: Civil Procedure Before Trial (The

Rutter Group 2014) ¶ 14:139.18, [“Should the court receive objections to the proposed settlement, it will consider and either sustain or overrule them at the fairness hearing.”].)

The Court concludes that the settlement is entitled to a presumption of fairness.

B. Is the Settlement Fair, Adequate, and Reasonable?

1. Strength of Plaintiff’s case. “The most important factor is the strength of the case for plaintiff on the merits, balanced against the amount offered in settlement.” (Kullar v. Foot Locker Retail, Inc. (2008) 168 Cal.App.4th 116, 130.)

Class Counsel has provided information, summarized below, regarding the factual basis for, and estimated maximum exposure for each of the claims alleged.

Claims	Maximum Exposure	Realistic Exposure
Unpaid Wages	\$730,578.49	\$365,289.24
Reporting Time	\$33,389.84	\$33,389.84
Meal Breaks	\$2,213,874.20	\$531,329.81
Rest Period Violations	\$2,213,874.20	\$332,081.13
Timely Wages	\$41,800.00	\$41,800.00
Wage Statement Violations	\$836,000.00	\$146,300.00
Waiting Time	\$651,821.00	\$260,728.40
PAGA	\$535,700.00	\$535,700.00
TOTAL	\$7,257,037.73	\$2,246,618.42

(Huether Decl. ¶¶12-29.)

2. Risk, expense, complexity and likely duration of further litigation. Given the nature of the class claims, the case is likely to be expensive and lengthy to try. Procedural hurdles (e.g., motion practice and appeals) are also likely to prolong the litigation as well as any recovery by the class members.

3. Risk of maintaining class action status through trial. Even if a class is certified, there is always a risk of decertification. (See Weinstat v. Dentsply Intern., Inc. (2010) 180 Cal.App.4th 1213, 1226 (“Our Supreme Court has recognized that trial courts should retain some flexibility in conducting class actions, which means, under suitable circumstances, entertaining successive motions on certification if the court subsequently discovers that the propriety of a class action is not appropriate.”).)

4. Amount offered in settlement. Plaintiff's counsel obtained a \$1,000,000 non-reversionary settlement. The \$1,000,000 settlement amount constitutes approximately 13.78% to 44.51% of Defendant's maximum and realistic exposure, respectively. Given the uncertain outcomes, the settlement appears to be within the "ballpark of reasonableness."

The \$1,000,000 settlement amount, if reduced by the requested deductions, will leave \$587,767 to be divided among approximately 209 class members. The resulting payments will average \$2,812.28 per class member. [$\$587,767 / 209 = \$2,812.28$]

5. Extent of discovery completed and stage of the proceedings. As indicated above, at the time of the settlement, Class Counsel had conducted sufficient discovery.

6. Experience and views of counsel. The settlement was negotiated and endorsed by Class Counsel who, as indicated above, is experienced in class action litigation, including wage and hour class actions.

7. Presence of a governmental participant. This factor is not applicable here.

8. Reaction of the class members to the proposed settlement. The class members' reactions will not be known until they receive notice and are afforded an opportunity to object, opt-out and/or submit claim forms. This factor becomes relevant during the fairness hearing.

The Court concludes that the settlement can be preliminarily deemed fair, adequate, and reasonable.

C. Scope of the Release.

Upon Defendant's deposit of the Gross Settlement Amount with the Settlement Administrator, Plaintiff and all other Settlement Class Members, on behalf of themselves, as well as on behalf of all of their agents, heirs, beneficiaries, devisees, legatees, grantees, transferees, executors, administrators, trustees, conservators, guardians, estates, personal representatives, successors-in-interest, and assigns, fully and forever release, acquit, and discharge the Released Parties from all Released Class Claims. Upon Defendant's deposit of the Gross Settlement Amount with the Settlement Administrator, Plaintiff, the State of California and all other PAGA Releasees, on behalf

of themselves, as well as on behalf of all of their agents, heirs, beneficiaries, devisees, legatees, grantees, transferees, executors, administrators, trustees, conservators, guardians, estates, personal representatives, successors-in-interest, and assigns, fully and forever release, acquit, and discharge the Released Parties from all Released PAGA Claims. (§8.1.)

Settlement Class Member will be deemed to have released, waived, and discharged the Released Parties from his or her Released Class Claims as defined in the Settlement. Each Settlement Class Member further covenants and agrees that, since each Settlement Class Member is settling disputed claims, a Settlement Class Member will not accept, recover, or receive any overtime compensation, back pay, liquidated damages, exemplary damages, punitive damages, penalties, interest, attorneys' fees and costs, other damages, or any other form of relief based on any Released Class Claims settled in the Lawsuits, or in connection with any other individual, class, collective, representative, administrative, or arbitral proceeding pursued by any individual, class, or federal, state or local governmental agency against the Released Parties for Released Claims during the Settlement Period as they are based on the Released Claims. The Parties agree that when the Final Approval Order and Judgment is entered, Defendant has the res judicata effect of the Judgment on all Settlement Class Members. Settlement Class Members further acknowledge and agree that they cannot pursue any Released Class Claims settled as part of this Settlement. If involuntarily joined in any lawsuits against Released Parties regarding claims released under the Released Class Claims, Settlement Class Members agree to waive their rights to any recovery that may result from such lawsuits or proceedings, and not to pursue claims on their own behalf. (§8.2.)

Settlement Class Release: Each Settlement Class Member who been issued a settlement check for their Individual Settlement Payment shall hereby knowingly, voluntarily and completely release the Released Parties, as defined in this Settlement, from/for all the Released Class Claims they have against the Released Parties during the Settlement Period. Settlement Class members are bound by the Settlement regardless of whether they cash their Individual Settlement Payment. (§8.2.1.)

"Released Class Claims" means all claims, charges, complaints, liens, demands, causes of action, obligations, damages and liabilities, known or unknown, suspected or unsuspected, relating to the allegations that were asserted, or

could have been asserted, based on the facts alleged in the Complaints. Settlement Class Members shall release all Released Class Claims that accrued during the Settlement Period as to the Released Parties upon Defendant's funding of the GSA, as set forth herein. The scope of the Released Class Claims by each Settlement Class Member is meant to be as broad as possible, under the law and includes all claims that are asserted or could have been asserted based on the same factual predicate alleged in the Complaints. Such allegations include assertions that Plaintiff or Class Members were not properly or timely compensated for all hours worked, and were subject to wage and hour law violations, regardless of whether such claims arise under California law, common law, local law, or federal law, or any statute, ordinance, regulation, or applicable wage and hour law.

The Released Class Claims include, but are not limited to, the causes of actions alleged in the Complaints, which are asserted as follows: (1) Failure to Pay Wages For All Hours Worked At Minimum Wage in Violation of Labor Code Sections 1194 and 1197, (2) Failure to Pay Overtime Wages for Daily Overtime Worked In Violation Of Labor Code Section 510 and 1194, (3) Failure to Pay Reporting Time Pay In Violation of Labor Code Sections 1194, 1197, and 1198, (4) Failure to Authorize or Permit Meal Periods In Violation of Labor Code Sections 512 and 226.7, (5) Failure to Authorize or Permit Rest Periods in Violation of Labor Code Section 226.7, (6) Failure to Timely Pay Earned Wages During Employment in Violation of Labor Code Section 204, (7) Failure to Provide Complete and Accurate Wage Statements in Violation of Labor Code Section 226, (8) Failure to Timely Pay All Earned Wages and Final Paychecks Due at Time of Separation of Employment in Violation of Labor Code Sections 201, 202, and 203, and (9) Unfair Business Practices, in Violation of Business and Professions Code Sections 17200, et seq. The Released Class Claims also include, but are not limited to, all applicable claims under the California Industrial Welfare Commission Wage Orders, California Labor Codes (including but not limited to California Labor Code Sections 201-204, 210, 226, 226.3, 226.7, 510, 512, 558, 1174, 1174.5, 1182.12, 1194, 1194.2, 1197, 1198, et seq.), applicable and California Code of Regulations, the California Business and Professions Code §§ 17200 et seq., the federal Fair Labor Standards Act ("FLSA"), and all other applicable wage and hour laws.

Based on the same factual predicate alleged in the Complaints, the release of the foregoing Released Class Claims

extends to all claims whether the claim is, was or could have been alleged as a separate claim, cause of action, or, lawsuit, whether under California law, common law, local law, or federal law, or any statute, ordinance, regulation, or other applicable wage and hour law (this includes, but is not limited to, any claim based on the same factual predicate for: miscalculated wages; failure to pay the regular rate of pay, double time pay, or premium pay; failure to reimburse business expenditure; improper deductions; a failure to properly pay vacation or sick pay; late payment of wages; improper frequency of pay; improper rounding of time records; failure to maintain records; failure to keep accurate and complete payroll records; and other such claims). The Released Class Claims encompass all types of relief available for the foregoing claims, including, without limitation, any claims for damages, restitution, losses, penalties, fines, liens, attorneys' fees, costs, expenses, debts, interest, willful exemplary damage, injunctive relief, declaratory relief, or liquidated damages. Notwithstanding the foregoing, nothing in this Agreement releases any claims that may not be released as a matter of law. (§2.36.)

Upon the Court's approval of the PAGA Payment and this release of the Released PAGA Claims, Plaintiff and the PAGA Releasees and all persons purporting to act on the PAGA Releasees' behalf or purporting to assert a claim under or through them, hereby do and shall be deemed to have fully, finally, and forever released, settled, compromised, relinquished and discharged any and all of the Released Parties of and from any and all Released PAGA Claims. The PAGA Releasees will be issued a check for their share of the PAGA Payment and will not have the opportunity to opt out of, or object to, the PAGA Payment and release of the PAGA Claims set forth in this Paragraph. The PAGA Releasees are bound by the release of the Released PAGA Claims regardless of whether they cash their PAGA Payment Check. (§8.2.3.)

"Released PAGA Claims" PAGA Releasees shall release all Released PAGA Claims that accrued during the PAGA Settlement Period as to the Released Parties upon Defendant's funding of the GSA, as set forth herein. The scope of the Released PAGA Claims by each PAGA Releasee includes all claims that are asserted or could have been asserted based on the same factual predicate alleged in the LWDA Notice and Operative Complaint. The Released PAGA Claims include, but are not limited to: (1) Civil Penalties Pursuant to the Private Attorney's General Act of 2004 ("PAGA"), Labor Code Section 2698, et seq. which includes penalties for (a) Failure to pay wages for all hours

worked at the legal minimum wage, (b) Failure to pay wages for overtime hours worked at the overtime rate of pay, (c) Failure to provide reporting time pay, (d) Failure to pay wages to hourly non-exempt employees for workdays that Defendants failed to provide legally required and compliant meal periods, (e) Failure to pay wages to hourly nonexempt employees for workdays that Defendants failed to provide legally required and compliant rest periods, (f) Failure to timely pay earned wages during employment, (g) Failure to provide complete and accurate wage statements, and (h) Failure to pay employees all wages due at time of termination/resignation, and all other claims asserted in the Complaints and the LWDA Letter. The Released PAGA Claims include all applicable claims under the California Industrial Welfare Commission Wage Orders, California Labor Codes (specific to claims under the California Labor Code Sections 2698-2699.5, et seq.), and California Code of Regulations that could be brought under or are subject to the PAGA. (¶2.37.)

"Released Parties" means CAPI, and any of CAPI's predecessors and successors in interest, current or former parent companies, subsidiaries, affiliates, assigns, trustees, guarantors, fiduciaries, and present and former owners. The Released Parties also include, but are not limited to, companies acquiring any or all of CAPI's assets or capital stock, Defendant's past or present customers, clients, contractors, vendors, and divisions, and any other individual or entity which could be jointly liable with Defendant for the Released Class Claims and Released PAGA Claims, including but not limited to Doncasters Group Ltd; Doncasters Superalloys of Long Beach; Doncasters plc; Doncasters, Inc.; Doncasters US Fabrications, Inc.; and any other related Doncasters entity. The Released Parties also include, but are not limited to, the current or former officers, directors, shareholders, managers, agents, attorneys, representatives, accountants, administrators, employees, insurers, beneficiaries, reinsurers, or carriers of any of the foregoing persons or entities. (¶2.38.)

Named Plaintiff will also provide a general release and CC § 1542 waiver. (¶8.2.2; ¶8.3.)

D. May Conditional Class Certification Be Granted?

A detailed analysis of the elements required for class certification is not required, but it is advisable to review each element when a class is being conditionally certified (Amchem Products, Inc. v. Windsor (1997) 521 U.S. 620, 622-627.) The trial court can appropriately utilize a different standard

to determine the propriety of a settlement class as opposed to a litigation class certification. Specifically, a lesser standard of scrutiny is used for settlement cases. (Dunk at 1807, fn 19.) Finally, the Court is under no "ironclad requirement" to conduct an evidentiary hearing to consider whether the prerequisites for class certification have been satisfied. (Wershba v. Apple Computer, Inc. (2001) 91 Cal.App.4th 224, 240, disapproved on another ground in Hernandez v. Restoration Hardware, Inc. (2018) 4 Cal.5th 260.)

1. Numerosity. There are approximately 209 class members. (Motion, 23:3-5.) This element is met.

2. Ascertainability. The proposed class is defined above. The class definition is "precise, objective and presently ascertainable." (Sevidal v. Target Corp. (2010) 189 Cal.App.4th 905, 919.) A class is ascertainable, as would support certification under statute governing class actions generally, when it is defined in terms of objective characteristics and common transactional facts that make the ultimate identification of class members possible when that identification becomes necessary." (Noel v. Thrifty Payless, Inc. (2019) 7 Cal.5th 955, 961.) All Class Members are identifiable through a review of Defendant's employment records. (Motion, 23:13-14).

3. Community of interest. "The community of interest requirement involves three factors: '(1) predominant common questions of law or fact; (2) class representatives with claims or defenses typical of the class; and (3) class representatives who can adequately represent the class.'" (Linder v. Thrifty Oil Co. (2000) 23 Cal.4th 429, 435.)

Regarding commonality, Plaintiff contends that common questions of law and fact include but are not limited to: (1) Whether Defendant failed to pay minimum and overtime wages; (2) Whether Defendant failed to pay reporting time pay; (3) Whether Defendant failed to provide the Class Members meal and rest periods and premium wages for missed meal and rest periods; (4) Whether Defendant failed to pay timely wages to Class Members; (5) Whether Defendant failed to provide the Class Members complete and accurate wage statements; (6) Whether Class Members are entitled to waiting time penalties for Defendant's failure to pay all wages upon separation of employment; and (7) Whether Defendant violated Business and Professions Code section 17200. (Motion, 23:25-24:6.)

As to typicality, Counsel contend that the named Plaintiff suffered the same alleged violations as the class as a whole did and, thus, the claims of the named Plaintiff fairly represents the claims of the class as a whole. (Motion, 23:6-12.)

As to adequacy, Plaintiff represents that he was informed of the risks of serving as class representative, participated in the litigation, and does not have conflicts of interest with the class. (Motion, 23:15-22; Declaration of Danny Carmona.)

4. Adequacy of class counsel. As indicated above, Class Counsel has shown experience in class action litigation, including wage and hour class actions.

5. Superiority. Given the small size of the individual claims, a class action appears to be superior to separate actions by the class members.

The Court finds that the class may be conditionally certified because the prerequisites of class certification have been satisfied.

E. Is the Notice Proper?

1. Content of class notice. The proposed notice is attached to the Amended Settlement Agreement. Its content appears to be acceptable. It includes information such as: a summary of the litigation; the nature of the settlement; the terms of the settlement agreement; attorney fees and costs; enhancement awards; the procedures and deadlines for participating in, opting out of, or objecting to, the settlement; the consequences of participating in, opting out of, or objecting to, the settlement; and the date, time, and place of the final approval hearing.

2. Method of class notice. Within twenty-one (21) calendar days following the date on which the Court enters the Preliminary Approval Order or approves the Class Notice, Defendant shall provide the following information to the Settlement Administrator for all Class Members and PAGA Releasees: (a) full names, last known mailing addresses, social security number, and last known telephone numbers (if known); (b) the start date and end of employment date for each Class Member that worked as a non-exempt or hourly-paid employee for Defendant during the applicable Settlement Period; (c) the number of Workweeks at Issue in the Settlement Period; (d) the total number of PAGA Pay Periods worked by each PAGA Releasee;

and (e) any additional agreed-upon information necessary to perform payout calculations or identify Class Members or PAGA Releasees as provided in this Agreement ("Class List"). (§5.2.)

Within fifteen (15) calendar days after receiving the Class List, the Settlement Administrator shall disseminate the Class Notice to all the Class Members and PAGA Releasees by U.S. Mail at the addresses identified through the process described above. Prior to the mailing of the Class Notice, the Settlement Administrator shall access the National Change of Address ("NCOA") Database for more recent mailing addresses for each Class Member and update the addresses on file in the Class List accordingly. Notice that is returned by the postal service with a forwarding address, the Settlement Administrator, will within 3 business day of receipt of the returned notice, remail the notice to the forwarding address. As to any Class Notices that are returned as undeliverable, or where the NCOA Database indicates that the last known address of any Class Member is invalid or otherwise undeliverable, the Settlement Administrator will perform a skip trace procedure and re-mail all returned, undelivered mail within 3 business days of the date on which the Settlement Administrator is informed that a Class Notice is undeliverable, or an address is otherwise invalid. (§5.3.1.)

Notice of Final Judgment will be posted on the Settlement Administrator's website. (Notice, pg. 3.)

3. Cost of class notice. As indicated above, settlement administration costs are estimated to be \$11,500. Prior to the time of the final fairness hearing, the claims administrator must submit a declaration attesting to the total costs incurred and anticipated to be incurred to finalize the settlement for approval by the Court.

F. Attorney Fees and Costs

CRC rule 3.769(b) states: "Any agreement, express or implied, that has been entered into with respect to the payment of attorney fees or the submission of an application for the approval of attorney fees must be set forth in full in any application for approval of the dismissal or settlement of an action that has been certified as a class action."

Ultimately, the award of attorney fees is made by the court at the fairness hearing, using the lodestar method with a multiplier, if appropriate. (PLCM Group, Inc. v. Drexler (2000) 22 Cal.4th 1084, 1095-1096; Ramos v. Countrywide Home Loans,

Inc. (2000) 82 Cal.App.4th 615, 625-626; Ketchum III v. Moses (2000) 24 Cal.4th 1122, 1132-1136.) Despite any agreement by the parties to the contrary, "the court ha[s] an independent right and responsibility to review the attorney fee provision of the settlement agreement and award only so much as it determined reasonable." (Garabedian v. Los Angeles Cellular Telephone Company (2004) 118 Cal.App.4th 123, 128.)

The question of whether Class Counsel is entitled to \$333,333 (33.33%) in attorney fees and up to \$20,000 in costs will be addressed at the final fairness hearing when class counsel brings a noticed motion for attorney fees. Class counsel must provide the court with billing information so that it can properly apply the lodestar method, and must indicate what multiplier (if applicable) is being sought as to each counsel.

There is a fee split: 55% to Lavi & Ebrahimian, LLP and 45% to the Law Offices of Sahag Majarian II. (2nd Supp. Brief 2: 17-25.).

Class Counsel should also be prepared to justify the costs sought by detailing how they were incurred.

G. Incentive Award to Class Representative

The named Plaintiff Danny Carmona will request a service award of \$9,900. (§4.8.)

In connection with the final fairness hearing, the named Plaintiff must submit a declaration attesting to why he should be entitled to an enhancement award in the proposed amount. The named Plaintiff must explain why he "should be compensated for the expense or risk she 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.)

The Court will decide the issue of the enhancement award at the time of final approval.

IV.
CONCLUSION

Based upon the foregoing, the Court orders that:

1) The Parties' Motion for Preliminary Approval of class action settlement is GRANTED as the settlement is fair, adequate, and reasonable.

2) The essential terms are:

A. The Gross Settlement Amount ("GSA") is \$1,000,000.

B. The Net Settlement Amount is the GSA minus the following:

Up to \$333,333 (33.33%) for attorney fees (¶4.7.) [Fee Split: 55% to Lavi & Ebrahimian, LLP and 45% to the Law Offices of Sahag Majarian II. (2nd Supp. Brief 2: 17-25.)]

Up to \$20,000 for litigation costs (Ibid.);

Up to \$9,900 for a Service Payment to the Named Plaintiff (¶4.8.);

Up to \$11,500 for settlement administration costs (¶4.9.);

\$37,500 (75% of \$50,000 PAGA penalty) to the LWDA. (¶4.6.)

C. Defendants will pay their share of taxes separate from the GSA. (¶4.4.)

D. Plaintiffs release of Defendants from claims described herein.

3) The Parties' Motion for Final Approval of Class Action Settlement must be filed by February 5, 2024. The parties are ordered to contact the Clerk in Department 9 to obtain a hearing date for their motion.

4) The Parties' Motion for Final Approval of Class Action Settlement must include a concurrently lodged [Proposed] Judgment containing among other things, the class definition, full release language, and names of the any class members who opted out; and the parties must email the [Proposed] Judgment in Word format to Dept. 9 staff at sscdept9@lacourt.org.

5) Non-Appearance Case Review is set for February 13, 2024, 8:30 a.m., Department 9.

CLERK TO GIVE NOTICE TO MOVING PARTY. THE MOVING PARTY TO GIVE NOTICE TO ALL OTHER PARTIES.

IT IS SO ORDERED.

DATED: August 2, 2023



Yvette M. Palazuelos

YVETTE M. PALAZUELOS
JUDGE OF THE SUPERIOR COURT
Yvette M. Palazuelos / Judge