

Justin F. Marquez (SBN 262417)  
[justin@wilshirelawfirm.com](mailto:justin@wilshirelawfirm.com)  
Christina M. Le (SBN 237697)  
[cle@wilshirelawfirm.com](mailto:cle@wilshirelawfirm.com)  
Arsiné Grigoryan (SBN 319517)  
[agrigoryan@wilshirelawfirm.com](mailto:agrigoryan@wilshirelawfirm.com)  
**WILSHIRE LAW FIRM**  
3055 Wilshire Blvd., 12th Floor  
Los Angeles, California 90010  
Telephone: (213) 381-9988  
Facsimile: (213) 381-9989

Attorneys for Plaintiffs

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**SUPERIOR COURT OF THE STATE OF CALIFORNIA  
FOR THE COUNTY OF LOS ANGELES**

ANN ESPINOZA and DIANA FONTANA,  
individually, and on behalf of all others similarly  
situated,

*Plaintiffs,*

v.

CICON ENGINEERING, INC., a corporation,  
and DOES 1 through 10, inclusive,

*Defendants.*

Case No.: 21STCV39385

**CLASS ACTION**

*[Assigned for all purposes to Judge Maren  
Nelson, Dept. 17]*

**PLAINTIFFS' SUPPLEMENTAL BRIEF  
IN SUPPORT OF MOTION FOR  
PRELIMINARY APPROVAL OF CLASS  
ACTION SETTLEMENT**

*[Filed concurrently with Declarations  
Christina M. Le and Settlement  
Administrator, Julie Green, in Support of  
Plaintiffs' Motion for Preliminary Approval  
of Class Action Settlement]*

**CONTINUED PRELIMINARY APPROVAL  
HEARING**

Date: May 26, 2023

Time: 9:00 a.m.

Dept: 17

Complaint filed: October 26, 2021  
SAC filed: November 1, 2022

## MEMORANDUM OF POINTS AND AUTHORITIES

### I. INTRODUCTION.

This Supplemental Brief submitted in support of Plaintiffs Ann Espinoza and Diana Fontana (“Plaintiffs”) Motion for Preliminary Approval of Action Settlement (“Motion”) in advance of the continued hearing on the Motion scheduled May 26, 2023, is to respond to Court’s Checklist<sup>1</sup> filed on March 13, 2013. This brief is to specifically address the section, entitled *Dunk/Kullar* Analysis: (b), requesting a briefing on why the settlement amount allocated to PAGA is fair, just, and reasonable. *Moniz v. Adecco USA, Inc.* (2021) 72 Cal.App.5th 56 (*Moniz*).

As stated herein, given the strengths and weaknesses of Plaintiffs’ PAGA claims as evaluated by experienced counsel, the procedural history, the arms-length negotiation of the Class and PAGA settlements with an experienced mediator, the fact that the LWDA has not objected to the settlement after notice was given, and that the allocated amount in penalties serves the purpose of the PAGA statute, the Court should find that the PAGA settlement amount is fair, just and reasonable under *Moniz*.

### II. RELEVANT FACTUAL BACKGROUND.

Plaintiffs seek preliminary approval of a proposed \$750,000.00 non-reversionary, wage, and hour class and PAGA action settlement, which includes a \$30,000.00 allocation to the PAGA claims, with Defendant Cicon Engineering, Inc. (“Defendant,” and together with Plaintiffs, the “Parties”). The Settlement will provide substantial monetary payments to approximately 545 class members and 443 aggrieved employees. (Marquez Decl., ¶ 12; Le Decl., ¶ 4.)

The claims, including the PAGA claims, were investigated and evaluated by experienced counsel. (Marquez Decl., ¶¶ 9 – 10, 43 - 53.) Based on Plaintiffs’ discovery and investigation, Class Counsel, reached the conclusion that Defendant failed to pay class members for all hours worked, including overtime wages, Defendant had a policy and practice of not providing its employees with California compliant meal and rest periods which it did not pay appropriate premiums for, there was improper rounding by Defendant, and Defendant required its employees to

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<sup>1</sup> See **Exhibit 4** to the Declaration of Christina M. Le filed concurrently with this Supplemental Brief.

1 work “off-the-clock” prior to clocking in for the workday, during meal periods, and after clocking  
2 out for the workday, time which it did not pay for, and Defendant failed to reimburse its employees  
3 for business-related expenses. Defendant denied these claims. (Marquez Decl., ¶8.)

4 After extensive negotiations and discussions regarding the strengths and weaknesses of  
5 Plaintiffs’ claims and Defendant’s defenses, the Parties reached this settlement of both Class and  
6 PAGA claims with the assistance of experienced class action mediator, Steve Cerveris, Esq. on  
7 September 8, 2023. Although cordial and professional, the settlement negotiations in this action  
8 were adversarial and non-collusive in nature. The settlement reached here is the product of  
9 substantial effort by the parties and their counsel. (Marquez Decl., ¶ 11.) The terms of the settlement  
10 are memorialized in the settlement agreement. (Marquez Decl., ¶ 12; Le Decl., ¶ 4.)

11 It should be noted that at the time the mediation took place on September 8, 2023, PAGA  
12 claims were not included in the case yet. However, given the nature of the class claims, the Parties  
13 were also able to negotiate and include a PAGA claim with the Settlement, with the agreement that  
14 Plaintiffs would take the necessary actions to effect the PAGA claim, including providing appropriate  
15 notice to the LWDA and taking the effort to file an amended pleading to add the PAGA claim. (Le  
16 Decl., ¶ 22.)

17 With respect to Plaintiffs’ PAGA claims, at the time of mediation, Plaintiffs evaluated, with  
18 the assistance of a consultant, that \$1,909,400.00 was the maximum liability for PAGA violations  
19 based on approximately 413 aggrieved employees<sup>2</sup> who worked during the PAGA period of May 1,  
20 2020 to September 8, 2023 (the date of the mediation) based on the Court assessing a \$100 penalty  
21 for initial violations for all 17,895 pay periods within the 1-year statute. However, reducing this by  
22 at least 90% would bring us to a more realistic figure of \$190,940.00, considering the difficulty or  
23 proving some of the underlying claims, and the fact that the PAGA claims are discretionary. This  
24 amount may be further reduced based on other issues impacting the PAGA claim. (Le Decl., ¶23.)

25 Thus, the Settlement Agreement includes a PAGA Release for the PAGA Period of May 1,  
26

27 <sup>2</sup> This aggrieved employee number was based on information available to Plaintiffs at the  
28 time the mediation took place (May 1, 2020 to September 8, 2022). It has been confirmed with  
defense counsel that there were 443 aggrieved employees during the relevant PAGA Period (May  
1, 2020 to November 7, 2022).

2020 to November 7, 2022 for the approximately 443 aggrieved employees. (Marquez Decl., ¶ 13; Le Decl., ¶ 4.) The Settlement includes \$30,000.00 allocated to Plaintiffs’ claims under PAGA, with 75% (\$22,500.00) allocated as payment to the LWDA and 25% (\$7,500.00) being paid to the Aggrieved Employees. (Settlement, § 1.34.) Class Counsel believed the \$30,000.00 allocation of the settlement to the PAGA claim was appropriate given counsel’s evaluation of the PAGA claims, the procedural status of the claim, and the fact that the amounts would serve PAGA. (Le Decl., ¶24.) Class Counsel submitted the proposed settlement to the LWDA before filing this Motion for Preliminary Approval. (Marquez Decl., ¶ 13.) Plaintiffs submitted their PAGA notice to Defendant and the LWDA on October 19, 2022 and filed a Second Amended Complaint adding PAGA claim on November 1, 2022. (Marquez Decl., ¶¶ 6,7.) Defendant filed an answer to the Complaint on December 12, 2022. (Marquez Decl., ¶8.)

To date, the LWDA has given no indication that they (1) intend to investigate the alleged claims or (2) that they object to the settlement. (Le Decl., ¶20.)

### **III. LEGAL STANDARD.**

Because this matter also settles PAGA claims, the Court also must consider the criteria that apply under that statute. Recently, the Court of Appeal’s decision in *Moniz*, 72 Cal.App.5th at 56, provided guidance on this issue of the evaluation of a PAGA settlement or allocation. In *Moniz*, the court found that the “fair, reasonable, and adequate” standard applicable to class actions applies to PAGA settlements. *Id.*, at 64. The Court also held that the trial court must assess “the fairness of the settlement’s allocation of civil penalties between the affected aggrieved employees[.]” *Id.*, at 64-65.

California law provides some general guidance concerning judicial approval of any settlement. First, public policy generally favors settlement. *Neary v. Regents of University of California* (1992) 3 Cal.4th 273. Nonetheless, the court should not approve an agreement contrary to law or public policy. *Bechtel Corp. v. Superior Court* (1973) 33 Cal.App.3d 405, 412; *Timney v. Lin* (2003) 106 Cal.App.4th 1121, 1127. Moreover, “[t]he court cannot surrender its duty to see that the judgment to be entered is a just one, nor is the court to act as a mere puppet in the matter.” *California State Auto. Assn. Inter-Ins. Bureau v. Superior Court* (1990) 50 Cal.3d 658, 664. As a

1 result, courts have specifically noted that *Neary* does not always apply, because “[w]here the rights  
2 of the public are implicated, the additional safeguard of judicial review, though more cumbersome  
3 to the settlement process, serves a salutatory purpose.” *Consumer Advocacy Group, Inc. v.*  
4 *Kintetsu Enterprises of America* (2006) 141 Cal.App.4th 46, 63.

5 **IV. THE PAGA ALLOCATION IS FAIR, JUST, AND REASONABLE.**

6 Given the strengths and weaknesses of the Plaintiffs’ PAGA claims as evaluated by  
7 experienced counsel, the procedural history, the arms-length negotiation of the Class and PAGA  
8 settlements with an experienced mediator, the fact that the LWDA has not objected to the settlement,  
9 to date, after notice was given, and that the allocated amount of \$30,000.00 in PAGA penalties serves  
10 the purpose of the PAGA statute, the Court should find that the PAGA settlement allocation is fair,  
11 just and reasonable under *Moniz*.

12 The settlement includes \$30,000.00 allocated to Plaintiffs’ claims under PAGA, with 75%  
13 of which (\$22,500.00) will be paid to the LWDA and 25% (\$7,500.00) being paid to the aggrieved  
14 employees, as stated below from ¶3.2.5 of the Settlement Agreement and Amended Settlement  
15 Agreement, which also specifically explains how the PAGA settlement will be allocated and paid:

16 3.2.5. To the LWDA and Aggrieved Employees: PAGA  
17 Penalties in the amount of \$30,000.00 to be paid from the Gross  
18 Settlement Amount, with 75% (\$22,500.00) allocated to the LWDA  
19 PAGA Payment and 25% (\$7,500.00) allocated to the Individual  
20 PAGA Payments.

21 3.2.5.1. The Administrator will calculate each  
22 Individual PAGA Payment by (a) dividing the amount of the  
23 Aggrieved Employees’ 25% share of PAGA Penalties (\$7,500.00) by  
24 the total number of PAGA Period Pay Periods worked by all  
25 Aggrieved Employees during the PAGA Period and (b) multiplying  
26 the result by each Aggrieved Employee’s PAGA Period Pay Periods.  
27 Aggrieved Employees assume full responsibility and liability for any  
28 taxes owed on their Individual PAGA Payment.

1                   3.2.5.2.       If the Court approves PAGA Penalties of less  
2                   than the amount requested, the Administrator will allocate the  
3                   remainder to the Net Settlement Amount. The Administrator will  
4                   report the Individual PAGA Payments on IRS 1099 Forms.

5           First, the \$30,000.00 PAGA allocation out of the \$750,000.00 is appropriate considering  
6   Class Counsel's evaluation, based on Counsel's investigation, of the potential maximum value of  
7   the claim (\$190,940.00 for the PAGA period leading to mediation), the more reasonable value of  
8   the claim (\$190,940.00 with the 90% discount on the maximum value factoring into account that  
9   such penalties are discretionary and issues with the underlying claims), with further reduction to  
10   consider given that the PAGA were not part of the case at the time the case was mediated. Thus,  
11   the amount of the allocation is appropriate considering these factors. The scope of the PAGA  
12   release is also appropriate, as previously briefed in the Motion, Section 3 (f).

13           The 75% allocation of the PAGA settlement amount to the LWDA, with the remaining 25%  
14   allocation to the aggrieved employees paid under the formula provided in ¶3.2.5 of the Settlement  
15   Agreement and Amended Settlement Agreement, is a fair way to pay the amounts to the aggrieved  
16   employees. Thus, this allocation is fair, just, and reasonable and provides the relief anticipated by  
17   the PAGA statute.

18   **V.   CONCLUSION**

19           For the foregoing reasons and for the reasons previously stated in Plaintiffs' Motion,  
20   Plaintiffs respectfully request that the Court grant preliminary approval of the proposed Settlement  
21   and set a Final Approval Hearing on or about July 11, 2023, which is approximately 120 days after  
22   the preliminary approval hearing, or the first available date thereafter.

23                                   Respectfully submitted,

24   Dated: May 4, 2023

25                                   **WILSHIRE LAW FIRM**

26                                   By: 

27                                   Justin F. Marquez

28                                   Christina M. Le

                                  Arsiné Grigoryan

                                  Attorneys for Plaintiffs

**PROOF OF SERVICE**

*Espinoza, et al. v. Cicon Engineering, Inc., et al.*  
21STCV39385

STATE OF CALIFORNIA            )  
  ) ss  
COUNTY OF LOS ANGELES        )

I, Min Jee Kim, state that I am employed in the aforesaid County, State of California; I am over the age of eighteen years and not a party to the within action; my business address is 3055 Wilshire Blvd., 12<sup>th</sup> Floor, Los Angeles, California 90010. My electronic service address is minjee@wilshirelawfirm.com.

On **May 4, 2023**, I served the foregoing **PLAINTIFFS' SUPPLEMENTAL BRIEF IN SUPPORT OF MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT**, on the interested parties by placing a true copy thereof, enclosed in a sealed envelope by following one of the methods of service as follows:

Eric C. Schwettmann, Esq. (SBN 188784)  
[eschwettmann@brgslaw.com](mailto:eschwettmann@brgslaw.com)  
Matthew B. Golper, Esq. (SBN 275979)  
[mgolper@brgslaw.com](mailto:mgolper@brgslaw.com)  
Olga G. Pena, Esq. (SBN 307927)  
[opena@brgslaw.com](mailto:opena@brgslaw.com)  
**BALLARD ROSENBERG GOLPER & SAVITT, LLP**  
15760 Ventura Boulevard, 18th Floor  
Encino, California 91436  
Telephone: (818) 508-3700  
Facsimile: (818) 506-4827

Attorneys for Defendant, Cicon Engineering, Inc.

(X) **BY ELECTRONIC SERVICE:** Based on a court order or an agreement of the parties to accept electronic service, I caused the documents to be sent to the persons at the electronic service addresses listed above via third-party cloud service **CASEANYWHERE.**

(X) **BY UPLOAD:** I hereby certify that the documents were uploaded by my office to the State of California Labor and Workforce Development Agency Online Filing Site.

I declare under the penalty of perjury under the laws of the State of California, that the foregoing is true and correct.

Executed on May 4, 2023, at Los Angeles, California.

  
\_\_\_\_\_  
Min Jee Kim