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

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

17 *Plaintiffs,*

18 v.

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

21 *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

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION.**

3 This Supplemental Brief submitted in support of Plaintiffs Ann Espinoza and Diana Fontana
4 (“Plaintiffs”) Motion for Preliminary Approval of Action Settlement (“Motion”) in advance of the
5 continued hearing on the Motion scheduled May 26, 2023, is to respond to Court’s Checklist¹ filed
6 on March 13, 2013. This brief is to specifically address the section, entitled *Dunk/Kullar* Analysis:
7 (b), requesting a briefing on why the settlement amount allocated to PAGA is fair, just, and
8 reasonable. *Moniz v. Adecco USA, Inc.* (2021) 72 Cal.App.5th 56 (*Moniz*).

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

15 **II. RELEVANT FACTUAL BACKGROUND.**

16 Plaintiffs seek preliminary approval of a proposed \$750,000.00 non-reversionary, wage, and
17 hour class and PAGA action settlement, which includes a \$30,000.00 allocation to the PAGA claims,
18 with Defendant Cicon Engineering, Inc. (“Defendant,” and together with Plaintiffs, the “Parties”).
19 The Settlement will provide substantial monetary payments to approximately 545 class members and
20 443 aggrieved employees. (Marquez Decl., ¶ 12; Le Decl., ¶ 4.)

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

27
28 ¹ 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 employees² 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 ² 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).

1 2020 to November 7, 2022 for the approximately 443 aggrieved employees. (Marquez Decl., ¶ 13;
2 Le Decl., ¶ 4.) The Settlement includes \$30,000.00 allocated to Plaintiffs’ claims under PAGA, with
3 75% (\$22,500.00) allocated as payment to the LWDA and 25% (\$7,500.00) being paid to the
4 Aggrieved Employees. (Settlement, § 1.34.) Class Counsel believed the \$30,000.00 allocation of
5 the settlement to the PAGA claim was appropriate given counsel’s evaluation of the PAGA claims,
6 the procedural status of the claim, and the fact that the amounts would serve PAGA. (Le Decl., ¶24.)
7 Class Counsel submitted the proposed settlement to the LWDA before filing this Motion for
8 Preliminary Approval. (Marquez Decl., ¶ 13.) Plaintiffs submitted their PAGA notice to Defendant
9 and the LWDA on October 19, 2022 and filed a Second Amended Complaint adding PAGA claim
10 on November 1, 2022. (Marquez Decl., ¶¶ 6,7.) Defendant filed an answer to the Complaint on
11 December 12, 2022. (Marquez Decl., ¶8.)

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

14 **III. LEGAL STANDARD.**

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

22 California law provides some general guidance concerning judicial approval of any
23 settlement. First, public policy generally favors settlement. *Neary v. Regents of University of*
24 *California* (1992) 3 Cal.4th 273. Nonetheless, the court should not approve an agreement contrary
25 to law or public policy. *Bechtel Corp. v. Superior Court* (1973) 33 Cal.App.3d 405, 412; *Timney*
26 *v. Lin* (2003) 106 Cal.App.4th 1121, 1127. Moreover, “[t]he court cannot surrender its duty to see
27 that the judgment to be entered is a just one, nor is the court to act as a mere puppet in the matter.”
28 *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.

