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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF LOS ANGELES

MARIO BRICENO, on behalf of himself,
the State of California, and others similarly
situated and aggrieved,

Plaintiff,

v.

MONOGRAM AEROSPACE
FASTENERS, INC., a Delaware
corporation; TRIMAS CORPORATION, a
Delaware corporation; and DOES 1-100,
inclusive,

Defendants.

Case No.: 22STCV21965

Assigned for All Purposes to:
Christopher K. Lui
Dept. 76

MEMORANDUM IN SUPPORT OF MOTION
FOR PRELIMINARY APPROVAL OF CLASS
ACTION SETTLEMENT

[Filed concurrently with Notice of Motion and
Motion; Declarations of Sepideh Ardestani, Mario
Briceno, and Jodey Lawrence; [Proposed] Order]

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1 **I. INTRODUCTION**

2 Plaintiff Mario Briceno respectfully requests that the Court preliminarily approve the Class
3 Action and PAGA Settlement Agreement and Class Notice (“Agreement”) entered into between
4 Plaintiff and Defendants Monogram Aerospace Fasteners, Inc. and TriMas Corporation
5 (collectively, “Defendants”). The proposed settlement seeks to resolve claims in the above
6 captioned matter in exchange for a non-reversionary \$512,500 Gross Settlement Amount. The
7 approximately 380 member settlement class is comprised of “all current and former non-exempt
8 employees that worked for Defendants in California at any time between April 21, 2020 and
9 September 3, 2023.”

10 The Agreement and Notice distribution plan are the products of adversarial, arm’s-length
11 negotiations by informed counsel and parties, facilitated by an experienced mediator. The settlement
12 is fair, reasonable, and adequate to all. Plaintiff has analyzed the strengths and vulnerabilities of the
13 claims with Defendants’ potential exposure and determined the \$512,500 proposed settlement is
14 well within the range of reasonableness and is in the Class Members’ best interests. The length and
15 risks of trial and perils of litigation that affect the values of the claims were all carefully weighed.
16 In addition, the defenses asserted by Defendants, the uncertainty of class certification, the
17 difficulties of complex litigation, the lengthy process of establishing specific damages and various
18 possible delays and appeals, were also considered by Plaintiff and counsel in negotiating the
19 proposed settlement. Further, the proposed settlement satisfies the criteria for preliminary approval
20 under California Rules of Court, Rule 3.769.

21 Accordingly, Plaintiff seeks: (1) preliminary approval of the settlement; (2) provisional
22 certification of the Class; (3) appointment of Plaintiff as Class Representative; (4) appointment of
23 Crosner Legal, PC as Class Counsel; (5) approval of the Parties’ proposed Notice of Class Action
24 Settlement (“Notice”) and method of notifying the Class Members; (6) a hearing date for Plaintiff’s
25 Motion for Final Approval of Class Action Settlement; and (7) entry of an Order Granting
26 Preliminary Approval of Class Action Settlement.

27 **II. BACKGROUND/LITIGATION HISTORY**

28 Defendant Monogram Aerospace Fasteners manufactures, designs, develops and delivers

1 innovative high-quality aerospace fasteners and products to its customers. It offers a wide array of
2 products including blind bolts, temporary fasteners, collars, and removal tools. Defendant
3 TriMasTriMas Corporationis the parent corporation of Defendant Monogram. TriMas acquired
4 Defendant Monogram in the 1990s. Plaintiff Briceno worked for Monogram worked as a machine
5 operator for Defendants from 2010 through May 2021. His duties included setting up, programming,
6 and operating various machines, including the Nadal, Fanuc and Eubama machines which produced
7 various collars and fasteners. His typical workweek was 5 days a week between 10-12 hours per
8 day. He would regularly work overtime and also alleges he worked off the clock without pay.
9 (Ardestani Decl., ¶ 12.)

10 Plaintiff submitted his PAGA notice letter to the LWDA on April 21, 2021, and timely
11 exhausted all administrative remedies. (Ardestani Decl. ¶ 13; Exh. 4.) Plaintiff did not receive notice
12 from the LWDA that it intended to investigate the alleged violations outlined in his PAGA letter.
13 (Ardestani Decl., ¶ 13.) On July 7, 2022, Plaintiff filed a representative complaint seeking penalties
14 under PAGA for Defendants’ alleged failure to pay all minimum wages, overtime wages, premium
15 wages in lieu of missed and denied meal and rest periods, failure to reimburse business expenses
16 and failure to pay all wages due at separation of employment to Plaintiff and Aggrieved Employees,
17 defined as all current or former non-exempt employees that worked for Defendants in California
18 during the PAGA Period of May 3, 2021 to the present. On July 7, 2022, Plaintiff filed a separate
19 class action complaint on behalf of himself and other Class Members defined as “all current and
20 former non-exempt employees that worked directly or via a staffing agency for Monogram
21 Aerospace Fasteners, Inc. and/or TriMas Corporation in California from April 21, 2020 through the
22 present. Plaintiff based his class claims on the same Labor Code violations alleged in the PAGA
23 complaint.¹ On September 14, 2022, Defendants removed Plaintiff’s class action to the U.S. District
24 Court for the Central District of California, where it remains pending. (Ardestani Decl., ¶¶ 14-15.)

25
26 ¹ Defendants previously settled a wage and hour class and representative action styled *Marcela Lopez v.*
27 *Monogram Aerospace Fasteners, Inc.*, LASC case number STCV17433, with a class period that ended April
28 20, 2020. Accordingly the Class Period in this action begins April 21, 2021.

1 In June 2023, the Parties participated in mediation with Steve Serratore, Esq., a respected
2 wage and hour class and representative action mediator. The mediation lasted a full day and the
3 Parties reached agreement on all major issues and then formally reduced the proposed settlement to
4 the Agreement now before the Court for approval. The Agreement meets the requirements in the
5 LASC Checklist for Preliminary Approval. The Agreement has also been uploaded to the LWDA.
6 (Ardestani Decl., ¶ 16.)

7 In order to fully effectuate the settlement and obtain approval on a global basis, Plaintiff
8 filed an amended complaint in this Action to add class allegations consistent with the pending
9 federal action. Plaintiff filed his first amended complaint (the “FAC”) on July 24, 2023, and the
10 FAC is operative complaint for purposes of settlement. (Ardestani Decl., ¶ 17.)

11 **III. INVESTIGATION**

12 Prior to the mediation, the Parties engaged in initial written discovery, and Defendants
13 provided Plaintiff with extensive informal discovery as well, including Plaintiff’s personnel, time,
14 and payroll records, time and payroll records for a randomly selected sampling of Class Members,
15 wage statement exemplars, Defendants’ employee handbooks, including Defendants’ policies and
16 procedures regarding the payment of wages, the provision of meal and rest breaks, timekeeping
17 policies (including recording hours), issuance of wage statements, and termination wages, as well
18 as information regarding the number of putative Class Members who are current and former
19 employees, the number of PAGA Members, the number of workweeks throughout the Class Period,
20 and the number of pay periods throughout the PAGA Period. From this information, Plaintiff was
21 able to analyze Defendants’ liability for the claims asserted in this case and, with the assistance of
22 Plaintiff’s experts at Berger Consulting Group, the potential exposure and damages. (Ardestani
23 Decl., ¶ 18.)

24 Based on this informal discovery, Plaintiff contends the Class Members were not paid all
25 minimum or overtime wages, not provided with legally compliant meal and rest periods, did not
26 receive compliant wage statements, and did not receive all wages due on separation of employment.
27 In considering the reasonableness of the proposed settlement, Plaintiff considered each of
28 Defendants’ counterarguments, which sharply contested Plaintiff’s claims. Plaintiff’s Counsel

1 weighed the strength of Defendants' arguments, including the risks of prevailing at class
2 certification and on the merits, and determined that the proposed settlement is in the best interests
3 of the Class. Although remaining confident in the strength of their claims, all these factors led
4 Plaintiff to discount the exposure analysis, discussed in detail below. (Ardestani Decl., ¶ 19.)

5 **IV. TERMS OF THE PROPOSED SETTLEMENT**

6 **A. Deductions from the Settlement**

7 The Parties have agreed (subject to the Court's approval) that this action be settled and
8 compromised for the non-reversionary total sum of \$512,500.00 ("Gross Settlement Amount" or
9 "GSA") (Agreement, §§ 1.22, 3.1), which includes: (a) attorney's fees of up to \$170,833.33 (33.33%
10 of the GSA)² to compensate Class Counsel for work already performed and all work remaining to
11 be performed (Agreement, § 3.2.2.); (b) actual litigation expenses not to exceed \$26,000.00³ (*Id.*);
12 (c) a Class Representative Service Payment in an amount not to exceed \$10,000.00 (Agreement,
13 § 3.2.1); (d) Administration Costs to Phoenix Settlement Administrators (the proposed settlement
14 administrator) in an amount not to exceed \$10,000.00 (Agreement, § 3.2.3); and (e) PAGA penalties
15 to the LWDA of \$50,000.00 (which is 75% of the \$37,500.00 PAGA Payment, with the remaining
16 25% or \$12,500.00 to PAGA Members) (Agreement, §§ 3.2.5). Employer-side payroll taxes
17 (including FICA, FUTA, and SDI) will be paid by Defendants separate and apart from the GSA.
18 (Agreement, § 3.1.)

19 **B. Calculation of the Individual Settlement Payments to Class and PAGA** 20 **Members**

21 After all Court-approved deductions from the GSA, it is estimated that \$245,666.67 ("Net
22 Settlement Amount" or "NSA"), less all applicable employee-side taxes, will be distributed to the
23 estimated 380⁴ Class Members, with an average individual settlement amount of around \$646.⁵
24

25 ² The percentage method, with or without a lodestar cross-check, may be used in common fund cases like this one.
26 *Laffitte v. Robert Half Internat., Inc.* (2016) 1 Cal.5th 480, 503. In support of their fee request at Final Approval, Class
27 Counsel will provide the Court with lodestar information to permit the Court to do a lodestar cross-check in connection
28 with Class Counsel's request for attorney's fees.

³ At Final Approval, Class Counsel will provide documentation regarding actual expenses incurred to support Class
Counsel's request for reimbursement of actual expenses.

⁴ This is based on information provided by Defendants in advance of mediation and separately confirmed by Plaintiff.

⁵ \$245,666.67 NSA / 437 Class Members

1 Additionally, it is estimated that the 25% PAGA Payment (\$12,500.00) will be distributed to the
2 estimated 272⁶ PAGA Members, resulting in an average payment of \$46⁷ per PAGA Member.
3 (Ardestani Decl., ¶ 21.) Under no circumstances will any portion of the Settlement revert to
4 Defendants. (Agreement, § 3.1.)

5 Subject to the terms and conditions of the Settlement, Phoenix will calculate and issue
6 Individual Settlement Payments to Participating Class Members based on the following formula:

7 (a) dividing the Net Settlement Amount by the total number of Workweeks
8 worked by all Participating Class Members during the Class Period and (b)
9 multiplying the result by each Participating Class Member's Workweeks
(Agreement, § 3.2.4.)

10 Additionally, Phoenix will calculate and issue payments to PAGA Members based on the
11 following formula:

12 (a) dividing the amount of the Aggrieved Employees' 25% share of PAGA Penalties
13 \$12,500 by the total number of PAGA Pay Periods worked by all Aggrieved Employees
14 during the PAGA Period and (b) multiplying the result by each Aggrieved Employee's
PAGA Pay Periods. (Agreement, § 3.2.5.1).

15 The number of pay periods and weeks worked by each Participating Class Member and
16 PAGA Member will be derived from Defendants' records. (Agreement, § 1.8) Each Class Member's
17 gross settlement award will be apportioned as follows: 20% wages and 80% penalties and interest.
18 (Agreement, §§ 3.2.4.1, 3.2.5.2.). Phoenix will be responsible for issuing Form W-2s for amounts
19 deemed "wages" and Form 1099s for the portions allocated to penalties and interest. (*Id.*)

20 **C. Uncashed Funds to Unclaimed Property Fund**

21 Settlement checks must be cashed or deposited within 180 days after the checks are mailed
22 to them. (Agreement, § 4.3.1.) In the event a settlement check remains uncashed, such uncashed
23 funds shall be transmitted to the State Controller's Office Unclaimed Property Fund in the name of
24 the Participating Class Member and/or PAGA Member for later claim. (Agreement, § 4.3.3.)
25 Because this lawsuit benefits Class Members/PAGA Members who release claims by participating
26 in the lawsuit, the funds representing their settlement payments should remain their property. By
27

28 ⁶ This information is also based on data provided by Defendants in advance of mediation.

⁷ \$12,500 (25% PAGA Payment) / 272 PAGA Members

1 sending the uncashed funds to the Unclaimed Property Fund in the name of the Class
2 Member/PAGA Member, he or she can claim his or her property at a future date convenient to the
3 Class Member. There will be no unpaid residue or unclaimed Class Member funds under California
4 Code of Civil Procedure section 384(a). At Final Approval, Class Counsel will request the Court set
5 a compliance deadline/hearing under Code of Civil Procedure § 384(b), for filing an amended
6 judgment and report with the data required under Section 384. (Ardestani Decl., ¶ 24.)

7 **D. Notice and Extended Response Deadline for Re-Mailed Notices**

8 Within thirty days after entry of the Preliminary Approval Order, Defendants will provide
9 Phoenix with the Class Data, containing each Class Member's first and last name, last known
10 mailing address, Social Security number, total number of weeks worked during the Class Period,
11 and total number of pay periods worked during the PAGA Period. (Agreement, § 4.1.) Phoenix will
12 maintain the Class Data as private and confidential, but Class Counsel will have access to the Class
13 Data so Class Counsel can discharge their fiduciary duties to the Class. (*Id.*)

14 Prior to mailing, Phoenix will perform a search for updated addresses in the National Change
15 of Address Database. (Agreement, § 8.4.2.) Phoenix will use the NCOA and skip traces to attempt
16 to find current addresses for any Notice returned as undeliverable. For any re-mailed Notice,
17 Phoenix will extend the Class Member's Response Deadline by 14 calendar days. (Agreement, §
18 8.4.3-4.) Within fourteen days after receipt of the class data, Phoenix will mail via regular First-
19 Class mail the Notice to all Class Members. (Agreement, § 8.4.2.)

20 The contents of the Notice are consistent with the terms of the Agreement. The Notice
21 informs Class Members how and when to request exclusion from or object to the settlement and of
22 their estimated payment amount which they will automatically receive a settlement payment if they
23 do nothing. The Notice further advises Class Members of the Court's COVID-19 procedures, how
24 to obtain documents filed in the case from the Court, Phoenix or Class Counsel, how to check the
25 Court's website to find out whether the Final Approval hearing date/location has been changed,
26 directs the Class Member to Phoenix's website and the Court's website to find out whether final
27 judgment has been entered. (Ardestani Decl., Exh. 3.)

1 **E. Responses to the Settlement and Deadline Thereon**

2 Class Members will have 60 days from the initial mailing of the Notice to respond to the
3 settlement by submitting a challenge to the number of weeks or pay periods attributed to them,
4 submitting an objection, or requesting to be excluded from the settlement and the consequences of
5 each choice. (Agreement, 1.4.3.) Class Members can object to the settlement in writing via mail or
6 fax by submitting a document with their name, the words “Notice of Objection” or “Formal
7 Objection” and the arguments supporting their objection. Class Members are informed that the Court
8 will hear any from any Class Member who attends the Final Approval Hearing. (Agreement, § 8.7.)

9 Class Members can also submit a written request for exclusion from the settlement by
10 mailing or faxing a written request, including his or her name, address, and phone number, and a
11 statement demonstrating his or her intent to opt out of the settlement. (Agreement, § 8.5.)

12 The Notice also informs the Class Member/PAGA Members that they can dispute the
13 number of weeks/pay periods allotted to them to calculate their settlement payments by contacting
14 Phoenix before the Response Deadline and include any documentation supporting the dispute.
15 Phoenix will investigate the dispute, request additional information from Defendants, and make a
16 final decision as to the number of eligible work weeks/pay periods. (Agreement, § 8.6.)

17 **F. Funding and Distribution of the Settlement**

18 Defendants shall fund the settlement within thirty days after the Effective Date. (Agreement,
19 § 4.2.). Phoenix shall disburse all payments required under this Settlement within 14 calendar days
20 of receipt of the GSA. (Agreement, § 4.3.)

21 **G. Release of Claims**

22 Upon Defendants’ payment funding the GSA, Participating Class Members shall forever
23 release the Released Parties⁸ for the Released Claims for the Class Period. (Agreement, § 6.) The
24 Released Claims are:

25 all claims that were alleged, or reasonably could have been alleged, based on the Class
26 Period facts stated in the Operative Complaint and ascertained in the course of the Action
including any and all claims involving any alleged failure to pay all minimum and

27 ⁸ “Released Parties” means Defendants and each of their past and present corporate affiliates, subsidiaries,
28 divisions, related entities, divested businesses and business units, and the board members, officers,
employees, agents, representatives, insurers and attorneys of any of the same.. (Agreement, § 1.41.)

overtime wages, failure to provide meal and rest periods or compensation in lieu thereof, failure to furnish accurate itemized wage statements, failure to timely pay all wages due upon separation of employment, failure to reimburse business expenses, and any type of derivative UCL claims based on the foregoing, and parallel claims that may be brought under the Fair Labor Standards Act based on the foregoing. Except as set forth in Paragraphs 6.1 and 6.3 of this Agreement, Participating Class Members do not release claims, including claims for vested benefits, wrongful termination, violation of the Fair Employment and Housing Act, unemployment insurance, disability, social security, workers' compensation, or claims based on facts occurring outside the Class Period. (Agreement, § 6.2.)

Likewise, upon Defendants' payment funding the GSA, Plaintiff, the Aggrieved Employees, and the State of California shall forever release the Released Parties for the PAGA Released Claims for the PAGA Period. (Agreement, § 6.) The PAGA Released Claims are:

all claims for any civil penalties recoverable under the California Labor Code, including PAGA, that were alleged, or reasonably could have been alleged, based on the PAGA Period facts stated in the Operative Complaint and the PAGA Notice and ascertained in the course of the Action, including without limitation PAGA claims predicated on violations of California Labor Code §§ 201-203, 204, 210, 216, 221-223, 225.5, 226, 226.3, 226.7, 233-234, 245-248.5, 256, 432, 432.5, 432.7, 510, 512, 515, 558, 558.1, 1024.5, 1174, 1174.5, 1194, 1197, 1197.1, 1198, 1198.3, 1198.5, 1199, 2802, 2810.5 2699, and 2699.3.. (Agreement, § 6.3.)

As discussed below, Plaintiff's Counsel is convinced that the proposed settlement is in the Class Members' best interests based on the negotiations and a detailed knowledge of the issues present in this action. The length and risks of trial and perils of litigation that affect the value of the claims were all carefully weighed. In addition, the affirmative defenses asserted by Defendants, the uncertainty of class certification, the difficulties of complex litigation, the lengthy process of establishing specific damages and various possible delays and appeals were also carefully considered by Plaintiff's Counsel in arriving at the proposed settlement. (Ardestani Decl., ¶ 33.)

H. The Class Representative Service Award Is Justified Given the Risks and Should be Preliminarily Approved

The Agreement provides for a service payment not to exceed \$10,000.00 to Plaintiff. (Agreement, § 3.2.1.) Courts routinely approve service payments, or incentive awards, to compensate named plaintiffs for the services they provide and the risks they incur during class litigation. *In re Cellphone Fee Termination Cases* (2010) 186 Cal. App. 4th 1380, 1393 ("These awards are discretionary...and are intended to compensate class representatives for work done on behalf of the class, to make up for financial or reputational risk undertaken in bringing the action,

1 and, sometimes, to recognize their willingness to act as a private attorney general.”); *Bell v. Farmers*
2 *Ins. Exch.* (2004) 115 Cal. App. 4th 715, 725-26 (upholding service payments to class
3 representatives); Manual § 21.62 n.971 (noting that service payments are warranted).

4 The requested service award is reasonable in light of the benefits Plaintiff conferred upon
5 the entire Class, resulting in a benefit to all Class Members and the State of California, the time
6 spent assisting counsel with the investigation and prosecution of these claims, commitment to
7 responding to discovery, and consenting to the proposed Agreement. Furthermore, by attaching his
8 name to this lawsuit, Plaintiff also took on the reputational risk that future employers would learn
9 of his participation in this case and would unfairly associate them with costly litigation, costing them
10 future employment opportunities. Any future employer could easily perform a simple Google search
11 – an unauthorized simple background check unknown to Plaintiff that can still provide a plethora of
12 information – and conclude that Plaintiff is not worth the risk of hiring given his prior involvement
13 in a lawsuit against a former employer. This is the kind of reputational risk, borne only by Plaintiff
14 and no other Class Member, the incentive award is meant to compensate. Furthermore, in pursuing
15 this action on behalf of the Class, Plaintiff risked a judgment against him for attorney’s fees and
16 costs in the event this matter had been lost. For these reasons, at final approval, Plaintiff will request
17 the Court award him an enhancement payment in an amount that does not exceed \$10,000.
18 (Ardestani Decl., ¶¶ 34; Declaration of Mario Briceno, ¶¶ 2-9.)

19 **IV. ARGUMENT**

20 In deciding whether to approve a proposed class action settlement under Code of Civil
21 Procedure section 382, the Court must find that a proposed settlement is “fair, adequate and
22 reasonable.” *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1801 [quoting *Officers for*
23 *Justice v. Civil Serv. Comm’n* (9th Cir. 1982) 688 F.2d 615, 625, cert. den. (1983) 459 U.S. 1217].
24 A proposed class action settlement is **presumed** fair under the following circumstances: (1) the
25 parties reached settlement after arms-length negotiations; (2) investigation and discovery were
26 sufficient to allow counsel and the court to act intelligently; (3) counsel is experienced in similar
27 litigation; and (4) the percentage of objectors is small. *Id.* at 1802. As the following shows, all of
28 these elements are present here and the Court should grant of preliminary approval.

1 **A. The Settlement was Reached as a Result of Arm’s Length Negotiations**

2 The proposed settlement was reached as a result of arm’s-length negotiations. Though
3 cordial and professional, the settlement negotiations have been, at all times, adversarial and non-
4 collusive in nature. Following mediation, Counsel for the Parties conducted extensive arm’s length
5 settlement negotiations regarding the settlement terms memorialized in the Agreement. (Ardestani
6 Decl., ¶ 35.)

7 While Plaintiff believes in the merits of his case, he also recognizes the inherent risks of
8 litigation and understand the benefit of Class Members receiving significant settlement funds
9 immediately as opposed to risking continued litigation in achieving class certification, the merits of
10 the case before and after trial, the damages awarded and/or an appeal that can take several more
11 years to litigate. (Ardestani Decl., ¶ 36.)

12 **B. The Settlement is the Result of Thorough Investigation and Discovery**

13 The Parties thoroughly investigated and evaluated the factual strengths and weaknesses of
14 their arguments before reaching the proposed settlement, and engaged in sufficient investigation,
15 research and discovery, referenced above, to support the settlement. The proposed settlement was
16 only possible following significant analysis and evaluation of Defendants’ relevant policies and
17 procedures, as well as the data it produced for the putative Class, which permitted Plaintiff’s Counsel
18 and expert to engage in a comprehensive analysis of liability and potential damages to prepare for
19 mediation. (Ardestani Decl., ¶¶ 18, 37.) This litigation has reached the stage where “the Parties
20 certainly have a clear view of the strengths and weaknesses of their cases” sufficient to support the
21 Settlement. *Boyd v. Bechtel Corp.* (N.D. Cal. 1979) 485 F. Supp. 610, 617.

22 **C. Counsel for the Parties are Experienced in Similar Litigation**

23 Counsel for the Parties are particularly experienced in wage and hour employment law, class
24 actions and PAGA actions. Plaintiff’s Counsel has prosecuted numerous cases on behalf of
25 employees for wage and hour violations and thus are experienced and qualified to evaluate the class
26 and PAGA claims, evaluate settlement versus trial on a fully informed basis, and to evaluate the
27 viability of the defenses. This experience informed Plaintiff’s Counsel on the risks and uncertainties
28

1 of further litigation and guided their determination to endorse the proposed settlement.⁹ (Ardestani
2 Decl. ¶¶ 6-11.)

3 **D. The Proposed Settlement is a Reasonable Compromise of Claims**

4 An understanding of the amount in controversy is an important factor into whether the
5 settlement “of the class members’ claims is reasonable in light of the strengths and weaknesses of
6 the claims and the risks of the particular litigation.” *Kullar v. Foot Locker Retail, Inc.* (2008) 168
7 Cal.App.4th 116, 129; *Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles* (2010) 186 Cal.App.4th
8 399, 409. The most important factor in this regard is “the strength of the case for plaintiffs on the
9 merits, balanced against the amount offered in settlement.” *Kullar*, 168 Cal.App.4th at 129.

10 In weighing the strength of Plaintiff’s case, *Kullar* instructs that the court is not to “decide
11 the merits of the case or to substitute its evaluation of the most appropriate settlement for that of the
12 attorneys.” 168 Cal.App.4th at 133. Further, this analysis does not require an explicit statement of
13 the maximum amount the plaintiff class could recover if it prevailed on all its claims, provided there
14 is a record which allows “an understanding of the amount that is in controversy and the realistic
15 range of outcomes of the litigation.” *Munoz*, 186 Cal. App. 4th at 409. Put differently, “as the court
16 does when it approves a settlement as in good faith under Code of Civil Procedure section 877.6,
17 the court must at least satisfy itself that the class settlement is within the ‘ballpark’ of
18 reasonableness.” *Kullar*, 168 Cal. App. 4th at 133 citing *Tech-Bilt v. Woodward-Clyde & Associates*
19 (1985) 38 Cal. 3d 488, 499-500. As shown below, the Parties’ investigation and discovery revealed
20 several reasons to discount claims and agree to this settlement.

21 **E The Settlement is Fair and Reasonable Based on the Strengths of Plaintiff’s**
22 **Case and the Risks and Costs of Further Litigation**

23 The proposed settlement was only possible following significant analysis and evaluation of
24 Defendants’ relevant policies and procedures, as well as the data that Defendants produced for the
25 Class. This permitted Plaintiff’s Counsel to engage in a comprehensive analysis of liability and
26 potential damages. The investigation and informal discovery conducted resulted in Plaintiff’s central

27 ⁹ The final factor mentioned in *Dunk* - the number of objectors - is not determinable until the Notice of Class Action
28 Settlement has been provided to the Class and they have had an opportunity to respond. This information will be
provided to the Court in conjunction with the Motion for Final Approval of Class Action Settlement.

1 theories of liability, which are based on Plaintiff's claims that Defendants failed to provide
2 compliant meal and rest periods, failed to pay all minimum and overtime wages, failed to provide
3 accurate, itemized wage statements and failed to pay all wages due on separation of employment As
4 explained above, Defendants maintain that the discovery produced demonstrates that it would
5 succeed at both class certification and on the merits. (Ardestani Decl., ¶ 38.)

6 Plaintiff believes this case is suitable for certification on the claimed basis that there are
7 company-wide policies that Plaintiff contends violate California law and uniformly affect the Class
8 Members. However, Defendants' counterarguments raise uncertainties with respect to both class
9 certification and success on the merits. As the California Supreme Court emphasized in *Sav-On v.*
10 *Superior Court* (2004) 34 Cal.4th 319 (2004), class certification is always a matter of the trial court's
11 sound discretion, and decisions following *Sav-On* have reached different conclusions with respect
12 to certification of wage and hour claims.¹⁰ While remaining confident in the strengths of his claims,
13 all of these factors led Plaintiff to discount the following maximum potential damage claims.
14 (Ardestani Decl., ¶ 39.)

15 **1. The Settlement Amount is Reasonable**

16 Defendants provided Plaintiff with class-wide data from which Plaintiff's Counsel could
17 extrapolate a damage analysis in preparation of mediation. Prior to mediation, there were a total of
18 approximately 380 Class Members (62 formerly employed in the limitations period), who worked
19 approximately 38,000 work weeks. There are also approximately 272 aggrieved employees and
20 24,800 pay periods within the PAGA Period. (Ardestani Decl., ¶ 40.)

21 On his unpaid wage claims, Plaintiff alleges he and other employees were required to clock
22 in for each shift on one of the four time clocks located on Defendants' premises. Due to the sheer
23 number of employees clocking in each shift, Plaintiff and other employees often stood in line for
24 upwards of 15 minutes before clocking. Even after Defendants added additional time clocks,

25
26 ¹⁰ *E.g., Harris v. Superior Court*, 154 Cal.App.4th 164 (2007) (reversing decertification of class claiming
27 misclassification and ordering summary adjudication in favor of employees), *review granted*, 171 P.3d 545 (2007) (not
28 cited as precedent, but rather for illustrative purposes only); *Walsh v. IKON Solutions, Inc.*, 148 Cal.App.4th 1440
(2007) (affirming decertification of class claiming misclassification); *Aguilar v. Cintas Corp. No. 2*, 144 Cal.App.4th
121 (2006) (reversing denial of certification); *Dunbar v. Albertson's Inc.*, 141 Cal.App.4th 1422 (2006) (affirming
denial of certification).

1 employees still waited in line as dozens of employees were attempting to clock-in for the day at the
2 same time. Plaintiff alleges he and the class members were subject to employer control while
3 waiting to clock in and therefore the time was compensable. *Mendiola v. CPS Security Solutions,*
4 *Inc.*, (2015) 60 Cal. 4th 833 (California law requires employers to pay their employees for all time
5 the employees are at work and subject to the employers' control). (Ardestani Decl., ¶ 43.) On the
6 other hand, Defendant argued there were ample time clock available and accordingly there would
7 be only a few employees in line at any given moment such that any time spent queuing would have
8 been truly minimal. Without taking into consideration any of Defendants' defenses to certification
9 or on the merits, Plaintiff's expert calculated Defendants' maximum exposure for this claim as
10 **\$2,003,000** on the off the clock claim, based on 75 minutes of off the clock work per week per class
11 member. (Ardestani Decl., ¶¶ 41-42.)

12 Plaintiff also contends Defendants failed to provide legally compliant meal and rest breaks.
13 Specifically, Plaintiff contends employees were required to keep up with production demands,
14 which resulted in many missed or non-compliant meal and rest periods as they were required to
15 meet certain expectations on a timely basis. Plaintiff's expert's review of a 25% sampling of time
16 and corresponding wage records provided by Defendants suggested around 14% of the shifts
17 examined had a unique meal period violation for missed, late, and/or short) meal periods. Further,
18 even when Defendants documented and paid for a meal violation, they did so at the incorrect rate
19 of pay, because they failed to pay the premiums at the required "regular rate" of pay. That is,
20 Defendants failed to include various bonuses earned by employees into their respective regular rates
21 of pay when calculating meal period premiums as required under *Ferra v. Lowes Hollywood Hotel,*
22 *LLC*, (2021) 11 Cal.5th 858. This resulted in the underpayment of meal period premium wages. For
23 the same reasons, Defendants also failed to provide compliant rest breaks, as due to the nature of
24 the work, employees could not always simply stop work and take a rest period. Their job required
25 their full attention as they were responsible for four machines at any given time, which machines
26 could easily catch on fire if left unattended. (Ardestani Decl., ¶ 43.)

27 Defendants deny Plaintiff's contentions, claiming they made meal and rest breaks available
28 to Class Members in compliance with California law. Defendants contend their meal and rest break

1 policies are lawful and that Class Members were frequently reminded via training and supervisors,
2 that they were required to take all meal and rest breaks. Defendants also contend that time records
3 and signed declarations demonstrate that Class Members took duty-free, timely meal and rest breaks.
4 Defendants contend their meal and rest break policies and practices comported with the flexibility
5 the *Brinker* court held was integral to California's meal and rest period requirements. Defendants
6 argue that Plaintiff's meal and rest break claims are not susceptible to common proof, as the claims
7 would require individualized inquiry, including whether there was an unlawful companywide
8 policy, whether employees had the opportunity to take meal and rest periods, whether they
9 voluntarily chose to forego their meal and rest periods, and whether Defendants ever prevented them
10 from taking meal and rest periods. Accordingly, Defendants contend these claims are vulnerable to
11 a ruling that class treatment is not appropriate. Finally, Defendants pointed out they paid thousands
12 in meal period premiums, which further corroborates their compliance efforts. (Ardestani Decl. ¶
13 44.) Without taking into consideration any of Defendant's defenses to certification or on the merits,
14 Plaintiff calculated Defendants' maximum exposure for the meal break claims at about **\$20,000** for
15 the underpaid meal premiums and **\$733,333** for missed/non-compliant meal periods. Plaintiff also
16 calculated the rest break claims at about **\$5,494,220** based on a 100% violation rate. (Ardestani
17 Decl., ¶ 45.)

18 On the expense reimbursement claims, Plaintiff alleges he and other employees were
19 required to make and accept calls to their personal cellular phones from their supervisors during
20 working hours. When employees must use their personal cell phones for work, employers are
21 required to reimburse them for such use. *Cochran v. Schwan's Home Services, Inc.* (2014) 228
22 Cal.App.4th 1137, 1144. On the other hand, Defendants argued they provided employees with all
23 equipment necessary to perform their jobs, that there is no conceivable reason an employee would
24 need to use their phone while on the production floor instead of focusing on their jobs, and to the
25 extent any such phone use occurred, it would have been purely for personal convenience and
26 therefore not subject to reimbursement. Without considering any of Defendant's defenses to
27 certification or on the merits, Plaintiff calculated Defendants' maximum exposure for the
28 reimbursement claims as **\$193,000** based on \$20/month per class member. (Ardestani Decl., ¶ 46.)

1 Plaintiff's claims for inaccurate wage statements and waiting time penalties are derivative
2 of the unpaid wage claims. Should those claims fail, Plaintiff's claim for inaccurate wage statements
3 and waiting time penalties would also fail. Defendants also contend they would not be liable for
4 waiting time penalties because a "good faith dispute" exists over the payment of past wages. Cal.
5 Code Regs. Tit. 8 § 13520; *Amaral v. Cintas Corp. No. 2* (2008) 163 Cal.App.4th 1157, 1201.
6 Further, Defendants contend Plaintiff would have to prove that Defendants "willfully" failed to pay
7 Class Members all wages due upon separation of employment. Defendants contend that any failure
8 to pay such wages was not willful. (Ardestani Decl., ¶ 45.) Without taking into consideration any of
9 Defendants' defenses to certification or on the merits, Plaintiff calculated Defendants' maximum
10 exposure for wage statement penalties as **\$1,088,000** and waiting time penalties as **\$486,930** for 62
11 terminated employees within the limitations period. (Ardestani Decl., ¶ 47.)

12 As far as potential PAGA liability, the theoretical civil penalties likely exceed \$12 million
13 should Plaintiff prevail on all claims and establish violations of the multiple Labor Code sections at
14 issue. (Ardestani Decl., ¶ 48.) As with the class claims, Plaintiff discounted the potential PAGA
15 penalties based on Defendants' various defenses on the merits and also accounted for the Court's
16 wide discretion to reduce such penalties, or to decline to award penalties at all. Labor Code §
17 2699(e)(2); *Carrington v. Starbucks Corp.* (2018) 30 Cal.App.5th 504 (trial court awarded penalties
18 of \$5 per pay period after a bench trial, which decision was upheld on appeal); *In re Taco Bell Wage*
19 *and Hour Actions* (E.D. Cal. Apr. 8, 2016) 2016 U.S. Dist. LEXIS 48557 (PAGA penalties denied
20 after trial). Accordingly, the Parties allocated \$40,000 to PAGA penalties.

21 Plaintiff submits this amount is reasonable under the circumstances and in line with
22 comparable settlements in other wage and hour class actions in California. *E.g.*, *Van Kempen v.*
23 *Matheson Tri-Gas, Inc.* (N.D. Cal. Aug. 25, 2017) 2017 U.S. Dist. LEXIS 137182 (granting final
24 approval of \$5,000 PAGA penalty from \$370,000 settlement, or 1.4 percent of total settlement);
25 *Slavkov v. First Water Heater Partners I* (N.D. Cal. July 25, 2017) 2017 U.S. Dist. LEXIS 116303
26 (finding a \$7,500 PAGA payment reasonable when measured against the overall settlement of
27 \$345,000 and the possible weaknesses in plaintiffs' case, or 2.2 percent of total settlement).
28 Additionally, the LWDA has been informed of the terms of the PAGA portion of the settlement,

1 and will be able to weigh in as necessary. *Jennings v. Open Door Mktg. Inc.* (N.D. Cal. Oct. 3,
2 2018) 2018 U.S. Dist. LEXIS 171356, at *27 (approving settlement with PAGA penalties of 0.6%
3 where "[p]laintiffs [have] submitted the settlement agreement to the LWDA, and the LWDA has
4 not objected to the settlement.

5 Thus, Plaintiff and his counsel discounted the value of the class claims consistent with the
6 risks discussed above, and carefully weighed the likelihood of the class receiving substantially
7 greater benefit if the litigation continued. Plaintiff and counsel concluded – in light of these very
8 real and substantial risks – settlement on the proposed terms and without prolonged and costly
9 litigation was in the best interests of the class. The overall \$512,500 recovery represents a significant
10 percentage of Defendants’ potential exposure. Given Defendants’ multi-layered defenses and all
11 other potential risks of continued litigation, a total recovery for the class of \$512,500, which will
12 result in average award of some \$562 per class member, plus additional sums under PAGA, is a
13 significant result within the range of reasonableness considering all potential outcomes, and will
14 provide monetary awards to all Class Members without further delay. [Ardestani Decl., ¶¶ 49-50.]

15 Importantly, the mere fact that a settlement does not provide the same recovery as might be
16 achieved at trial is not a proper indicator of whether the settlement is fair, reasonable, and adequate.
17 Wershba, 91 Cal.App.4th at 246, 250 (“Compromise is inherent and necessary in the settlement
18 process...even if the relief afforded by the proposed settlement is substantially narrower than it
19 would be if the suits were to be successfully litigated, this is no bar to a class settlement because the
20 public interest may indeed be served by a voluntary settlement in which each side gives ground in
21 the interest of avoiding litigation”); 7-Eleven Owners for Fair Franchising v. Southland Corp. (2000)
22 85 Cal.App.4th 1135, 1150 (“The fact that a proposed settlement may amount to only a fraction of
23 the potential recovery does not, in and of itself, mean that the proposed settlement is grossly
24 inadequate and should be disapproved”); White v. Experian Information Solutions, Inc. (C.D. Cal.
25 2011) 803 F.Supp.2d 1086, 1098 (rejecting contention settlement was not fair and reasonable even
26 though it represented 99% discount off the maximum value of the claims); Lane v. Facebook, Inc.
27 (9th Cir. 2012) 696 F.3d 811, 819 (“[T]he question whether a settlement is fundamentally fair . . . is
28 different from the question whether the settlement is perfect in the estimation of the reviewing

1 court"). Importantly as well, the proposed settlement is non-reversionary and will provide
2 immediate benefits to the Class Members without a claims process. White, 803 F.Supp.2d at 1098;
3 c.f., Federal Judicial Center, Managing Class Action Litigation: A Pocket Guide for Judges (3d ed.
4 2010) at 20, available at [http:// www.fjc.gov/sites/default/files/2012/ClassGd3.pdf](http://www.fjc.gov/sites/default/files/2012/ClassGd3.pdf) (reversionary
5 provisions and/or cumbersome claims process may indicate lack of fairness). Plaintiff and his
6 counsel submit the settlement is within the “range of reasonableness,” and is fair and adequate for
7 the Class.

8 **F. Provisional Class Certification Should be Granted**

9 A class action is appropriate when the class is ascertainable and there is “a well-defined
10 community of interest in the questions of law and fact involved affecting the parties to be
11 represented.” Code Civ. Proc. § 382. Class certification requirements under Section 382 follow Rule
12 23 of the Federal Rules of Civil Procedure, and require: numerosity, typicality of the class
13 representatives’ claims, adequacy of representation, predominance of common issues, and
14 superiority. Fed.R.Civ.Pro. 23(b)(3); *Hanlon v. Chrysler Corp.* (9th Cir. 1998) 150 F.3d 1011, 1019.
15 While a court must certify a class for settlement purposes if a class has not already been certified,
16 “it is well established that trial courts should use different standards to determine the propriety of a
17 settlement class, as opposed to a litigation class certification. Specifically, a lesser standard of
18 scrutiny is used for settlement cases.” *Glob. Minerals & Metals Corp. v. Superior Court* (2013) 113
19 Cal.App.4th 836, 859 *citing Dunk*, Cal.App.4th 1794, 1807, n.19; *Wershba v. Apple Computer*
20 (2001) 91 Cal.App.4th 224, 237-38.

21 Here, Plaintiff seeks approval of the following Class for settlement purposes only: “all
22 current and former non-exempt employees that worked for Defendants” during the Class Period of
23 April 21, 2020 through and including September 3, 2023.” (Agreement, § 1.5).

24 **1. The Proposed Class is Sufficiently Numerous and Ascertainable**

25 First, the class is both sufficiently numerous, consisting of approximately 380 individuals,
26 and ascertainable by reference to Defendants’ personnel and payroll records. (Ardestani Decl., ¶
27 51.) “There is no set number required to maintain a class action, and the statutory test is whether a
28 class is so numerous that ‘it is impracticable to bring them all before the court.’” *Hebbard v.*

1 *Colgrove* (1972) 28 Cal. App. 3d 1017, 1030 (noting that there is no set minimum to meet the
2 numerosity prerequisite, but that a class of as few as 28 is acceptable); *Bowles v. Superior Court*
3 (1995) 44 Cal. 2d 574 (upholding a class of ten members); *Rose v. City of Hayward* (1981) 126 Cal.
4 App. 3d 926, 932 (finding that “Class Members are ‘ascertainable’ where they may be readily
5 identified without unreasonable expense or time by reference to official records.”). Thus, the
6 ascertainability requirement is met.

7 **2. The Typicality and Adequacy Requirements Are Met**

8 The typicality requirement is met if the claims of the named representative are typical of
9 those of the Class, though, “they need not be substantially identical.” *Classen v. Weller* (1983) 145
10 Cal.App.3d 27, 46-47. Here, Plaintiff contends his claims are typical of the Class Members’ claims
11 because they arise from the same factual basis and are based on the same legal theories applicable
12 to the Class Members. Plaintiff further contends Defendants’ policies applied to all Class Members
13 and each Class Member is challenging the same policies and practices. As such, the typicality
14 requirement is satisfied for purposes of settlement. (Briceno Decl., ¶¶ 2-3; Ardestani Decl. ¶ 52.)

15 Adequacy requires that the Plaintiff have no interests adverse to the interests of the proposed
16 Class Members and be committed to vigorously prosecuting the case on behalf of the Class. *McGhee*
17 *v. Bank of America* (1976) 70 Cal.App.3d 442, 450-51. Plaintiff has been and will continue to be
18 committed to vigorously prosecuting this case, and he has no conflicts of interest with the Class.
19 (Briceno Decl., ¶¶ 3-7; Ardestani Decl., ¶ 52.)

20 **3. The Commonality Requirement is Met**

21 Next, common questions of law and fact predominate – particularly for purposes of a
22 settlement class – as the Class Members all were subject to the same meal and rest break policies
23 and alleged “de facto” policies resulting in meal period violations, and similarly subject to the same
24 improper time rounding policy. Since the focus of the claims against Defendants concerns the
25 legality of common policies applied uniformly to the entire class, common issues predominate over
26 individualized inquiries concerning liability. For instance, Defendants’ meal and rest break policy
27 is company-wide policy applied equally and consistently to all class members, and this policy is
28 either compliant with California law or it is not. Regardless of that determination, it will decide

1 liability for all class members one way or another. Similarly, whether Defendants properly
2 calculated and paid for meal premiums is another question common to all class members.
3 [Ardestani Decl., ¶ 53.]

4 By now it is well-settled a theory of recovery asserting the existence of a uniform policy
5 violating California law is sufficient to satisfy the requirements for class certification. Jones v.
6 Farmers Ins. Exch. (2013) 221 Cal.App.4th 986, 996 (“Claims alleging that a uniform policy
7 consistently applied to a group of employees is in violation of the wage and hour laws are of the
8 sort routinely, and properly, found suitable for class treatment”); Williams v. Superior Court (2013)
9 221 Cal.App.4th 1353 (“A company-wide practice can sustain a common question of fact or law
10 that supports commonality for class certification”). Lastly, a class action is superior to other means
11 for the fair and efficient adjudication of this controversy. [Ardestani Decl., ¶ 54.]

12 **G. Phoenix Should be Appointed as the Settlement Administrator**

13 The Parties agreed to use Phoenix Settlement Administrators as the Settlement
14 Administrator in this matter. (Agreement, § 1.2). Phoenix is highly qualified and experienced as a
15 settlement administrator, committed to the security of data (having experienced no data breaches at
16 all), carries insurance for the theft of money or data, and has no relationship with Counsel.
17 (Declaration of Jodey Lawrence, ¶¶ 2-15; Exhs. A-B; Ardestani Decl., ¶ 55)

18 **H. Notice to Class Members Complies With California Rule of Court 3.769(f)**

19 California Rule of Court 3.769(f), provides: “If the court has certified the action as a class
20 action, notice of the final approval hearing must be given to class members in the manner specified
21 by the court. The notice must contain an explanation of the proposed settlement and procedures for
22 class members to follow in filing written objections to it and in arranging to appear at the settlement
23 hearing and state any objections to the proposed settlement.” Here, the proposed Notice meets all
24 of these requirements, as it advises Class Members of their rights to participate in the settlement,
25 how to and when to object to or request exclusion from the settlement, and the date, time, and
26 location of the final approval hearing. Class Members need not do anything to receive their *pro rata*
27 share of the settlement. (Ardestani Decl. § 56, Exh. 3.)

28 /////

1 **V. CONCLUSION**

2 Plaintiff respectfully submits that the proposed settlement is in the best interests of the Class
3 Members, as it is fair, adequate, and reasonable. Plaintiff accordingly requests the Court certify the
4 class for settlement purposes, appoint Plaintiff as Class Representatives, appoint Plaintiff's Counsel
5 as Class Counsel, appoint Phoenix Settlement Administrators as Settlement Administrator, approve
6 the method of notice and the Notice to be sent to the Class, preliminarily approve the Settlement
7 Agreement, enter the proposed order filed herewith, and set a Final Approval hearing date.
8

9 Dated: January 31, 2024

CROSNER LEGAL, PC

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