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8
9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
10 **COUNTY OF LOS ANGELES**

11
12 MARIO BRICENO, on behalf of himself,
the State of California, and others similarly
13 situated and aggrieved,

14 Plaintiff,

15 v.
16

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

20 Defendants.
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Case No.: 22STCV21965

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

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

Date: December 2, 2024
Time: 8:30 a.m.
Dept.: 76

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1 **I. INTRODUCTION**

2 Plaintiff and Class Representative Mario Briceno seeks final approval of a non-
3 reversionary class action settlement resolving wage and hour claims on behalf of 382
4 individuals who worked for Defendants Monogram Aerospace Fasteners and TriMas Corporation
5 (collectively, “Defendants”) as current and former non-exempt, hourly employees in California
6 during the Class Period of April 21, 2020 through and including September 3, 2023. The
7 proposed \$512,500 total settlement provides about \$255,983 in cash payments to the Class,
8 with an average award of about \$670, plus additional amounts payable under PAGA. The
9 remaining balance will cover a modest service award to Plaintiff, settlement administration
10 costs, civil penalties to the state, and reasonable attorney’s fees and costs. The parties and
11 their counsel finalized the settlement after extensive and difficult arms-length negotiations
12 overseen by an experienced and highly-regarded mediator. The Court conditionally
13 certified the Class and preliminarily approved the settlement on June 3, 2024. Since then, the
14 Court-approved notice form was mailed to the Class Members on July 17, 2024, and they
15 have reacted very favorably to the settlement. As of the date of this motion, no class
16 members opted out of the settlement, and there are no objections.

17 Further, Class Counsel secured an excellent settlement with Defendants after
18 some two years of investigation, litigation, and settlement negotiation and
19 administration, all without any compensation for services rendered or costs expended.
20 The class notice duly informs the class members that Class Counsel would request
21 attorney’s fees not to exceed 33.33% of the Gross Settlement Amount, or \$170,833.33,
22 along with reimbursement of no more than \$26,000 for actual costs incurred litigating
23 this matter. As of the filing of this motion, *not one Class Member objected* to the
24 proposed fee award. Consistent with the Settlement and notice, Plaintiff now respectfully
25 requests the Court award Class Counsel’s fees in the amount of \$170,833.33 and costs in
26 the amount of \$15,683.40, as described in the Declaration of Sepideh Ardestani
27 (“Ardestani Decl.”) filed herewith. The requested attorney’s fees are well within the
28 range of reasonableness, especially considering the complex and risky nature of this

1 litigation, the contingent risk assumed, and the two-plus year delay in payment and, when
2 subjected to a lodestar crosscheck, result in fee request that is less than the unadorned
3 lodestar.

4 Accordingly, on behalf of himself and the Settlement Class, Plaintiff respectfully
5 requests the Court grant this motion, give full and final approval to the settlement, grant Class
6 Counsel's request for attorney's fees and costs, and enter judgment accordingly.

7 **II. BACKGROUND/LITIGATION HISTORY**

8 Defendant Monogram Aerospace Fasteners manufactures, designs, develops and delivers
9 innovative high-quality aerospace fasteners and products to its customers. It offers a wide array of
10 products including blind bolts, temporary fasteners, collars, and removal tools. Defendant TriMas
11 Corporation manufactures various products for the aerospace and industrial markets. It has
12 approximately 3,500 employees in 13 countries. It acquired Defendant Monogram in the 1990s.
13 Plaintiff Briceno worked as a machine operator for Monogram from 2010 through May 2021.
14 (Ardestani Decl., ¶ 2.)

15 Plaintiff submitted his PAGA notice letter to the LWDA on April 21, 2021, and timely
16 exhausted all administrative remedies. On July 7, 2022, Plaintiff filed a representative complaint
17 seeking penalties under PAGA for Defendants' alleged failure to pay all minimum wages, overtime
18 wages, premium wages in lieu of missed and denied meal and rest periods, failure to reimburse
19 business expenses and failure to pay all wages due at separation of employment to Plaintiff and
20 Aggrieved Employees, defined as all current or former non-exempt employees that worked for
21 Defendants in California during the PAGA Period of May 3, 2021 to the present. On July 7, 2022,
22 Plaintiff also filed a separate class action complaint on behalf of himself and other Class Members
23 defined as "all current and former non-exempt employees that worked either directly or via a staffing
24 agency for [Monogram Aerospace Fasteners, Inc. and/or TriMas Corporation] in California at any
25 time from April 21, 2020 to the present." Plaintiff based his class claims on the same Labor Code
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1 violations alleged in the PAGA complaint.¹ On September 14, 2022, Defendants removed Plaintiff's
2 class action to the U.S. District Court for the Central District of California, where it remains pending.
3 (Ardestani Decl., ¶¶ 3-5.)

4 Thereafter, the Parties initiated discovery and later, after engaging in meet and confer
5 discussions regarding discovery, potential law and motion, and the merits of the case, ultimately
6 agreed to attempt mediation. They then engaged in significant informal discovery to facilitate an
7 exchange of information necessary to engage in a meaningful mediation. In July 2023, the Parties
8 participated in mediation with Steve Serratore, Esq., a respected wage and hour class action mediator
9 and, after a full day of mediation, reached the proposed settlement. In order to fully effectuate the
10 settlement and obtain approval on a global basis, Plaintiff filed an amended complaint in this Action
11 to add class allegations consistent with the pending federal action. Plaintiff filed his first amended
12 complaint on July 24, 2023, and the FAC is operative complaint for purposes of settlement.
13 (Ardestani Decl., ¶¶ 6-8.) This Court preliminarily approved the settlement on June 3, 2024.

14 Class notices were mailed to class members on July 17, 2024, with a 60-day window
15 (to September 16, 2024) for class members to opt out of or object to the proposed settlement.
16 (Declaration of Lluvia Islas ("Islas Decl."), ¶¶ 5, 8-10.)

17 **III. TERMS OF THE PROPOSED SETTLEMENT**

18 Under the settlement Defendants will pay \$512,500 into a common fund, the Gross
19 Settlement Amount ("GSA"). Attorney's fees of up to \$170,833.33 (33.33% of the GSA), litigation
20 costs of up to \$26,000 (only \$15,683.40 is requested), a representative enhancement of no more
21 than \$10,000 to Plaintiff, settlement administration costs of \$10,000, and \$50,000.00 for PAGA
22 civil penalties (of which \$37,500 will go to the California Labor & Workforce Development Agency
23 ("LWDA") for the State's share of civil penalties and \$12,500 will go to eligible Aggrieved
24 Employees), all will be paid from the GSA. The remainder of around \$255,983 will be allocated
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, 2020.

1 pro rata to the Class Members based on their weeks worked during the Class Period. No portion of
2 the GSA will revert to Defendants. (Ardestani Decl., ¶ 9.)

3 **A. Certification of the Settlement Class**

4 The Court conditionally certified a settlement class defined to include “all current and
5 former non-exempt, hourly employees in California employed by Defendants during the Class
6 Period of April 21, 2020 to September 3, 2023. The Settlement Administrator ultimately mailed
7 class notices to 382 individuals identified as members of the Class and for whom address
8 information was available. (Islas Decl., ¶ 5.) Nothing has changed to require
9 reconsideration of the Court’s certification of the Settlement Class.

10 **B. The Benefit Conferred on the Settlement Class**

11 As noted, the settlement obligates Defendants to pay \$512,500 to resolve the Settlement
12 Class’s claims, inclusive of attorney’s fees and costs. At least \$255,983 from the GSA will be
13 distributed to the Participating Class Members. This is a cash settlement that does not require
14 Participating Class Members to submit a claim form to receive their settlement share.
15 Participating Class Members will receive their settlement checks automatically via First Class
16 U.S. Mail. Twenty percent of each settlement share will be allocated to wages and the remaining
17 eighty percent will be allocated to non-wage premiums, penalties, and interest, which allocation is
18 consistent with Defendants’ potential liability as discussed below. Defendants will pay any and all
19 applicable employer-side payroll taxes separately and in addition to the GSA. Subject to the
20 Court’s approval, any amounts not claimed (because a class member does not cash their settlement
21 check) will be forwarded to the California State Controller’s Unclaimed Property Fund.
22 (Ardestani Decl., ¶ 10.)

23 Each Participating Class Member will receive a share of the Net Settlement Amount based
24 on his or her total weeks worked in California as a non-exempt employee during the Class Period.
25 Thus, each Class Member’s Individual Settlement Payment will be calculated using criteria
26 typically used in determining appropriate amounts of unpaid wages, unpaid premium wages for
27 missed meal and rest breaks, unreimbursed expenses, and potential statutory penalties under
28 applicable law. These methods are intended to ensure each Class Member receives a settlement

1 award corresponding to the relative value of their potential claims. The proposed allocation
2 provides a reasonable way to compensate Class Members based on the amount of time they
3 worked for Defendants and the amount unpaid wages, etc. (Ardestani Decl., ¶ 11.)

4 The average award to the Participating Class Members will be approximately \$670 with a
5 maximum award of over \$1,146, while the average PAGA award will be about \$40. (Islas Decl.,
6 ¶¶ 13-14.)

7 **C. Settlement Administration**

8 Phoenix Settlement Administrators, as the Court-approved Settlement Administrator,
9 mailed the Notice Packet to the Class members after making all reasonable effort to ascertain
10 the best mailing address, including running each address through the National Change of
11 Address database and "skip-tracing" any Notice Packets returned as undeliverable. (Islas
12 Decl., ¶¶ 3-7.) The Class Notice, previously approved by the Court, duly informed Class
13 Members of the settlement terms, including the estimated relief each Class Member will
14 receive, the amounts to be requested for attorney's fees and the class representative
15 enhancement awards, and the right to opt out of or object to the settlement. (Islas Decl., ¶ 5,
16 Exh. A.) Phoenix mailed 382 Notice Packets on July 17, 2024. (Islas Decl., ¶ 5.) As of the
17 filing of this motion, 4 Notice Packets were deemed undeliverable, for a 98.9% success rate.
18 (Islas Decl., ¶ 7.) The response window for opting out, objecting to the settlement, or
19 submitting a dispute, expired on September 16, 2024. (Islas Decl., ¶¶ 8-10.) As of the filing
20 of this motion, Phoenix has received zero requests for exclusion, zero objections to the
21 settlement, and no disputes have been submitted regarding the information used to calculate
22 class member settlement shares. (Islas Decl., ¶¶ 8-10.)

23 **D. Release of Claims**

24 All Participating Class Members will release Defendants from all claims alleged in the
25 operative complaint, or that could have been brought based on the factual allegations in the
26 operative complaint during the Class Period, including all PAGA claims. The release is limited to
27 the claims that were actually pleaded or could have been pleaded based on the alleged facts in the
28 operative complaint. (Ardestani Decl., ¶ 12.)

1 **E. PAGA and Notice to the LWDA**

2 As noted, the Parties allocated \$50,000 from the GSA to resolution of Plaintiff's claims
3 under PAGA, and respectfully request that the Court approve that amount as fair, reasonable and
4 adequate, and consistent with PAGA's underlying purposes. Under PAGA, \$37,500 of this
5 amount will be paid to the LWDA as the state's share of the civil penalties, and the remainder
6 of \$12,500 will be distributed to the 312 Aggrieved Employees eligible to receive a PAGA
7 payment. [Islas Decl., ¶ 14.] As required by Labor Code section 2699(l)(2), Plaintiff notified the
8 LWDA of the settlement and the final approval hearing via its online portal. (Ardestani Decl.,
9 ¶ 13; Exh. 1.)

10 **IV. ARGUMENT**

11 **A. Standards For Approval**

12 The law favors settlement, particularly in class actions where substantial resources can
13 be conserved by avoiding the time, cost, and rigors of formal litigation. H. Newberg & A.
14 Conte, 4 *Newberg on Class Actions* (4th ed. 2002), § 11.41; *Class Plaintiffs v. City of Seattle*
15 (9th Cir. 1992) 955 F.2d 1268, 1276, *cert. denied*, 506 U.S. 953; *Van Bronkhorst v. Safeco*
16 *Corp.* (9th Cir. 1976) 529 F.2d 943,950; *Potter v. Pacific Coast Lumber Co.* (1951) 37 Cal.2d
17 592, 602. Nevertheless, to make certain the rights of absent parties are not unjustly
18 compromised, the settlement of a class action requires court approval. Cal. Rule of Court
19 3.769; *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1801; *Wershba v. Apple*
20 *Computer* (2001) 91 Cal.App.4th 224, 245. The purpose of that judicial review is to protect
21 against fraud or collusion, and to ensure fairness to absent class members. *Dunk*, 48
22 Cal.App.4th at 1800-01; Newberg, at §§ 11.22, et seq. Review is accomplished through a
23 two-step process intended to determine whether, under the totality of circumstances, the
24 settlement is fair, reasonable and adequate. *Dunk*, 48 Cal.App.4th at 1801; *Wershba*, 91
25 Cal.App.4th at 245.

26 On a motion for final approval, the trial court is charged with determining whether, in
27 light of the total circumstances of the action and the response of the class members to the
28 proposed settlement, the settlement is fair, reasonable, and adequate. *Dunk*, 48 Cal.App.4th at

1 1801-02; *Wershba*, 91 Cal.App.4th at 244-45. The court has broad discretion in making that
2 determination and may consider a number of relevant factors, including: the strength of
3 plaintiff's case; the likelihood of potential recovery; the risk, expense and likely duration of
4 further litigation; the amount offered in settlement; the extent of discovery and stage of the
5 proceedings; the experience and opinion of counsel; and the reaction of class members to the
6 settlement. *Id.* In light of the strong judicial policy favoring the settlement of class actions,
7 courts generally apply a presumption of fairness to a proposed class action settlement when:
8 (1) the settlement is reached through arm's-length bargaining; (2) investigation and discovery
9 are sufficient to allow counsel and the court to act intelligently; (3) counsel is experienced in
10 similar litigation; and (4) the percentage of objectors is small. *Dunk*, 48 Cal.App.4th at 1802;
11 *Wershba*, 91 Cal.App.4th at 245.

12 **B. The Proposed Settlement Merits Final Approval**

13 The proposed settlement of this action warrants final approval under the standards
14 summarized above. The settlement is fair, reasonable and adequate, and represents a
15 favorable resolution of highly disputed claims. Further, the settlement was overwhelmingly
16 approved by the class members as there are no objections and no class member has requested
17 exclusion.

18 **1. The Settlement Is the Product of Arm's-Length, Informed Negotiations**

19 The settlement is not the result of fraud or collusion. Rather, the proposed settlement
20 was reached following arm's-length negotiations presided over by the Hon. Steven Denton
21 (Ret.), a highly respected and well-known mediator with extensive experience mediating wage
22 and hour class actions. [Ardestani Decl., ¶7.] Moreover, Plaintiff and her counsel were well-
23 informed about the facts and the law, and counsel Zachary M. Crosner, Jamie K. Serb, and
24 Sepideh Ardestani have years of litigation experience, including litigating wage and hour class
25 actions. Plaintiff's counsel are well-qualified to evaluate the risks and benefits of pursuing further
26 litigation or settling the matter. [Ardestani Decl., ¶¶ 29-33.] Defendants likewise were represented
27 by highly-qualified and experienced defense counsel. Both sides advocated vigorously for their
28 clients and nothing was "left on the table."

1 **2. The Class Reacted Favorably to the Settlement**

2 The settlement was well-received by the class. As of the filing of this motion, no
3 objections have been filed, and no Class Member has requested exclusion out of 382
4 settlement class members. [Islas Decl., ¶¶ 8-9.] As many courts recognize, class member reaction
5 to the settlement is one of the most important factors to consider in determining if final approval
6 should be granted. *Mandujano v. Basic Vegetable Prods., Inc.*, 541 F.2d 832, 837 (9th Cir. 1976);
7 *see also In re: American Bank Note Holographics*, 127 F.Supp.2d 418, 425 (S.D.N.Y. 2001) (“It is
8 well-settled that the reaction of the class to the settlement is perhaps the most significant factor to
9 be weighed in considering its adequacy”) (internal quotation marks omitted).

10 **3. The Settlement Is Fair and Reasonable Considering the Benefits**
11 **Conferred, the Case Value, and Significant Litigation Risks**

12 The proposed settlement involves a substantial sum of money that, when distributed,
13 will confer meaningful monetary benefits on the Class members. As described above, each
14 individual award will be based on an allocation consistent with the nature of the claims asserted
15 and will fairly and equitably allocate the available funds in relation to the degree of damage
16 each Class member incurred. While class members who worked for only a short period of time
17 will receive relatively small sums, those with longer tenures and who worked more hours and
18 shifts throughout the class period will receive appropriately larger awards.

19 Prior to settlement, the parties engaged in formal and informal discovery to facilitate
20 settlement discussions. Thus, Plaintiff reviewed documents and information regarding Defendants’
21 payroll practices, pay stubs and time records for class members, applicable compensation plans,
22 meal and rest break policies, etc., and information from Defendants regarding class size and
23 breakdown, work weeks/pay periods, rates of pay, and other information used to formulate a
24 damages model. Plaintiff then had that information analyzed by a consulting expert to assist in
25 determining potential violation rates and other data used to formulate a damages model. Plaintiff’s
26 counsel are confident they obtained sufficient information to understand the law and facts of this
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1 case and make an informed decision regarding the proposed settlement and whether it is fair and
2 reasonable. (Ardestani Decl., ¶ 6.)

3 On his unpaid wage claims, Plaintiff alleges he and other employees were required to clock
4 in for each shift on one of the four time clocks located on Defendants' premises. Due to the sheer
5 number of employees clocking in each shift, Plaintiff and other employees often stood in line for
6 upwards of 15 minutes before clocking. Even after Defendants added additional time clocks,
7 employees still waited in line as dozens of employees were attempting to clock-in for the day at the
8 same time. Plaintiff alleges he and the class members were subject to employer control while
9 waiting to clock in and therefore the time was compensable. *Mendiola v. CPS Security Solutions,*
10 *Inc.*, (2015) 60 Cal. 4th 833 (California law requires employers to pay their employees for all time
11 the employees are at work and subject to the employers' control). On the other hand, Defendants
12 argued there were ample time clock available and accordingly there would be only a few employees
13 in line at any given moment such that any time spent queuing would have been truly minimal.
14 Without taking into consideration any of Defendants' defenses to certification or on the merits,
15 Plaintiff's expert calculated Defendants' maximum exposure for this claim as **\$2,003,000** on the off
16 the clock claim, based on 75 minutes of off the clock work per week per class member. (Ardestani
17 Decl., ¶¶ 15-16.)

18 Plaintiff also contends Defendants failed to provide legally compliant meal and rest breaks.
19 Specifically, Plaintiff contends employees were required to keep up with production demands,
20 which resulted in many missed or non-compliant meal and rest periods as they were required to
21 meet certain expectations on a timely basis. Plaintiff's expert's review of a 25% sampling of time
22 and corresponding wage records provided by Defendants suggested around 14% of the shifts
23 examined had a unique meal period violation for missed, late, and/or short meal periods. Further,
24 even when Defendants documented and paid for a meal violation, they did so at the incorrect rate
25 of pay, Defendants failed to pay the premiums at the required "regular rate" of pay, as they failed to
26 include various bonuses earned by employees into their respective regular rates of pay when
27 calculating meal period premiums as required under *Ferra v. Lowes Hollywood Hotel, LLC*, (2021)
28 11 Cal.5th 858. This resulted in the underpayment of meal period premium wages. For the same

1 reasons, Defendants also failed to provide compliant rest breaks, as due to the nature of the work,
2 employees could not always simply stop work and take a rest period. Their job required their full
3 attention as they were responsible for four machines at any given time, which machines could easily
4 catch on fire if left unattended. (Ardestani Decl., ¶ 17.)

5 Defendants deny Plaintiff's contentions, claiming they made meal and rest breaks available
6 to Class Members in compliance with California law. Defendants contend their meal and rest break
7 policies are lawful and that Class Members were frequently reminded via training and supervisors,
8 that they were required to take all meal and rest breaks. Defendants also contend that time records
9 and signed declarations demonstrate that Class Members took duty-free, timely meal and rest breaks.
10 Defendants contend their meal and rest break policies and practices comported with the flexibility
11 the *Brinker* court held was integral to California's meal and rest period requirements. Defendants
12 argue that Plaintiff's meal and rest break claims are not susceptible to common proof, as the claims
13 would require individualized inquiry, including whether there was an unlawful companywide
14 policy, whether employees had the opportunity to take meal and rest periods, whether they
15 voluntarily chose to forego their meal and rest periods, and whether Defendants ever prevented them
16 from taking meal and rest periods. Accordingly, Defendants contend these claims are vulnerable to
17 a ruling that class treatment is not appropriate. Finally, Defendants pointed out they paid thousands
18 in meal period premiums, which further corroborates their compliance efforts. Without taking into
19 consideration any of Defendants' defenses to certification or on the merits, Plaintiff calculated
20 Defendants' maximum exposure for the meal break claims at about **\$20,000** for the underpaid meal
21 premiums and **\$733,333** for missed/non-compliant meal periods. They calculated the rest break
22 claims at about **\$5,494,220** based on a 100% violation rate. (Ardestani Decl., ¶ 18.)

23 On the expense reimbursement claims, Plaintiff alleges he and other employees were
24 required to make and accept calls to their personal cellular phones from their supervisors during
25 working hours. When employees must use their personal cell phones for work, employers are
26 required to reimburse them for such use. *Cochran v. Schwan's Home Services, Inc.* (2014) 228
27 Cal.App.4th 1137, 1144. On the other hand, Defendants argued they provided employees with all
28 equipment necessary to perform their jobs, that there is no conceivable reason an employee would

1 need to use their phone while on the production floor instead of focusing on their jobs, and to the
2 extent any such phone use occurred, it would have been purely for personal convenience and
3 therefore not subject to reimbursement. Without considering any of Defendants' defenses to
4 certification or on the merits, Plaintiff calculated Defendants' maximum exposure for the
5 reimbursement claims as **\$193,000** based on \$20/month per class member. (Ardestani Decl., ¶ 10.)

6 Plaintiff's claims for inaccurate wage statements and waiting time penalties are derivative
7 of the unpaid wage claims. Should those claims fail, Plaintiff's claim for inaccurate wage statements
8 and waiting time penalties would also fail. Defendants also contend they would not be liable for
9 waiting time penalties because a "good faith dispute" exists over the payment of past wages. Cal.
10 Code Regs. Tit. 8 § 13520; *Amaral v. Cintas Corp. No. 2* (2008) 163 Cal.App.4th 1157, 1201.
11 Further, Defendants contend Plaintiff would have to prove that Defendants "willfully" failed to pay
12 Class Members all wages due upon separation of employment. Defendants contend that any failure
13 to pay such wages was not willful. (Ardestani Decl., ¶ 45.) Without taking into consideration any of
14 Defendants' defenses to certification or on the merits, Plaintiff calculated Defendants' maximum
15 exposure for wage statement penalties as **\$1,088,000** and waiting time penalties as **\$486,930** for 62
16 terminated employees within the limitations period. (Ardestani Decl., ¶ 20.)

17 As far as potential PAGA liability, the theoretical civil penalties likely exceed \$12 million
18 should Plaintiff prevail on all claims and establish violations of the multiple Labor Code sections at
19 issue. (Ardestani Decl., ¶ 21.) As with the class claims, Plaintiff discounted the potential PAGA
20 penalties based on Defendants' various defenses on the merits and also accounted for the Court's
21 wide discretion to reduce such penalties, or to decline to award penalties at all. Labor Code §
22 2699(e)(2); *Carrington v. Starbucks Corp.* (2018) 30 Cal.App.5th 504 (trial court awarded penalties
23 of \$5 per pay period after a bench trial, which decision was upheld on appeal); *In re Taco Bell Wage*
24 *and Hour Actions* (E.D. Cal. Apr. 8, 2016) 2016 U.S. Dist. LEXIS 48557 (PAGA penalties denied
25 after trial). Accordingly, the Parties allocated \$50,000 to PAGA penalties.

26 Plaintiff submits this amount is reasonable under the circumstances and in line with
27 comparable settlements in other wage and hour class actions in California. *E.g.*, *Van Kempen v.*
28 *Matheson Tri-Gas, Inc.* (N.D. Cal. Aug. 25, 2017) 2017 U.S. Dist. LEXIS 137182 (granting final

1 approval of \$5,000 PAGA penalty from \$370,000 settlement, or 1.4 percent of total settlement);
2 *Slavkov v. First Water Heater Partners I* (N.D. Cal. July 25, 2017) 2017 U.S. Dist. LEXIS 116303
3 (finding a \$7,500 PAGA payment reasonable when measured against the overall settlement of
4 \$345,000 and the possible weaknesses in plaintiffs' case, or 2.2 percent of total settlement).
5 Additionally, the LWDA has been informed of the terms of the PAGA portion of the settlement,
6 and will be able to weigh in as necessary. *Jennings v. Open Door Mktg. Inc.* (N.D. Cal. Oct. 3,
7 2018) 2018 U.S. Dist. LEXIS 171356, at *27 (approving settlement with PAGA penalties of 0.6%
8 where "[p]laintiffs [have] submitted the settlement agreement to the LWDA, and the LWDA has
9 not objected to the settlement.

10 Thus, Plaintiff and his counsel discounted the value of the class claims consistent with the
11 risks discussed above, and carefully weighed the likelihood of the class receiving substantially
12 greater benefit if the litigation continued. Plaintiff and his counsel concluded – in light of these
13 very real and substantial risks – settlement on the proposed terms and without prolonged and costly
14 litigation was in the best interests of the class. The overall \$512,500 recovery represents a significant
15 percentage of Defendants' potential exposure. Given Defendants' multi-layered defenses and all
16 other potential risks of continued litigation, a total recovery for the class of \$512,500, which will
17 result in average award of some \$670 per class member, plus additional sums under PAGA, is a
18 significant result within the range of reasonableness considering all potential outcomes, and will
19 provide monetary awards to all Class Members without further delay. (Ardestani Decl., ¶¶ 22-24.)

20 Importantly, the mere fact that a settlement does not provide the same recovery as might be
21 achieved at trial is not a proper indicator of whether the settlement is fair, reasonable, and adequate.
22 Wershba, 91 Cal.App.4th at 246, 250 ("Compromise is inherent and necessary in the settlement
23 process...even if the relief afforded by the proposed settlement is substantially narrower than it
24 would be if the suits were to be successfully litigated, this is no bar to a class settlement because the
25 public interest may indeed be served by a voluntary settlement in which each side gives ground in
26 the interest of avoiding litigation"); 7-Eleven Owners for Fair Franchising v. Southland Corp. (2000)
27 85 Cal.App.4th 1135, 1150 ("The fact that a proposed settlement may amount to only a fraction of
28 the potential recovery does not, in and of itself, mean that the proposed settlement is grossly

1 inadequate and should be disapproved”); White v. Experian Information Solutions, Inc. (C.D. Cal.
2 2011) 803 F.Supp.2d 1086, 1098 (rejecting contention settlement was not fair and reasonable even
3 though it represented 99% discount off the maximum value of the claims); Lane v. Facebook, Inc.
4 (9th Cir. 2012) 696 F.3d 811, 819 (“[T]he question whether a settlement is fundamentally fair . . . is
5 different from the question whether the settlement is perfect in the estimation of the reviewing
6 court”). Importantly as well, the proposed settlement is non-reversionary and will provide
7 immediate benefits to the Class Members without a claims process. White, 803 F.Supp.2d at 1098;
8 c.f., Federal Judicial Center, *Managing Class Action Litigation: A Pocket Guide for Judges* (3d ed.
9 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
10 provisions and/or cumbersome claims process may indicate lack of fairness). Plaintiff and his
11 counsel submit the settlement is within the “range of reasonableness,” and is fair and adequate for
12 the Class.

13 **V. PLAINTIFF’S ENHANCEMENT AWARD**

14 Pursuant to the terms of the settlement, Plaintiff seeks a modest incentive award of
15 \$10,000 for his service in bringing these claims on behalf of the Class. The request is reasonable
16 given the risks he undertook on behalf of the Class Members. By contacting and retaining
17 counsel to pursue these claims, Plaintiff helped make this settlement possible for the absent
18 Class Members, while shouldering the risk of being liable for Defendants’ litigation costs.
19 Plaintiff also exposed himself to unwanted notoriety related to filing a public lawsuit
20 (discoverable even through a simple google search) for the benefit of other employees, placing
21 himself at risk of discrimination by future prospective employers. As set forth in more detail in
22 his declaration submitted at preliminary approval, among taking many other actions assisting in
23 the successful litigation of this case, Plaintiff provided substantial factual information and
24 documents to counsel, attended numerous meetings/phone conferences with counsel to discuss
25 the case, and kept abreast of all significant developments. (Declaration of Mario Briceno, ¶¶ 2-9
26 (filed with the preliminary approval motion; Ardestani Decl., ¶ 25.) Finally, there are no class
27 member objections submitted with respect to the amounts Plaintiff proposes to receive. (Islas
28 Decl., ¶ 9.) Accordingly, the requested enhancement payment to Plaintiff is appropriate and

1 justified as part of the settlement. Staton v. Boeing (9th Cir. 2003) 327 F.3d 938, 977 (collecting
2 cases awarding class representatives service and incentive payments ranging from \$2,000 to
3 \$25,000).

4 **VI. SETTLEMENT ADMINISTRATION COSTS**

5 The settlement provides for a payment to Phoenix from the GSA for its services as the
6 Settlement Administrator. As set forth in the Declaration of Lluvia Islas, Phoenix has performed
7 and will continue to perform its required duties through final distribution of the settlement funds,
8 and incurred \$10,000.00 in fees and expenses. (Islas Decl., ¶ 15; Exh. B.) Accordingly, Plaintiff
9 respectfully requests the Court approve payment of \$10,000 to Phoenix from the GSA. (Ardestani
10 Decl., ¶ 26.)

11 **VII. ATTORNEY'S FEES AND COSTS**

12 **A. The Attorney's Fees Requested Are Fair and Reasonable and Should Be**
13 **Approved**

14 This Court has discretion over the amount of attorneys' fees awarded and court
15 approval is required for Class Counsel's fees. Cal. Rule of Court 3.769; *Levy v. Toyota Motor*
16 *Sales, U.S.A.* (1992) 4 Cal.App.4th 807, 813; *Lealao v. Beneficial Cal., Inc.* (2000) 82
17 Cal.App.4th 19. In defining a reasonable fee, the Court should attempt to mimic the
18 marketplace for cases involving significant contingent risk, such as this one. *Deposit*
19 *Guaranty Nat'l Bank, Jackson, Miss. v. Roper* (1980) 445 U.S. 326, 338, *rehg. den.* 446 U.S.
20 947; *Lealao*, 82 Cal.App.4th at 49-50 (court should attempt "to award the fee that informed
21 private bargaining, if it were truly possible, might have reached" in determining a reasonable
22 fee, and a fee award should approximate a "range of fees freely negotiated in comparable
23 litigation"). Here, Class Counsel's request for attorney's fees and costs is reasonable and
24 justified by the work performed, the benefits obtained, and the contingent risk assumed.

25 As addressed in detail above, at the time the parties reached the tentative settlement
26 success for Plaintiff and the putative class was far from certain. Plaintiff faced a real risk that
27 some or all the claims would not be certified for class treatment, as Monogram had strong
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1 arguments that its compensation policies were legal and properly compensated the class
2 members. Even if Plaintiff certified some or all of the claims and ultimately prevailed on the
3 merits, it undoubtedly would have taken several years to realize any recovery while they
4 pursued class certification, trial, and an almost certain appeal. (Ardestani Decl., ¶¶ 15-24.)

5 Nonetheless, Plaintiff succeeded and expeditiously obtained the relief he set out to
6 obtain, and the settlement provides substantial cash payments to Class Members, with an
7 average award of about \$670, and with a maximum award of over \$1,100. Importantly as
8 well, the Class Members have been overwhelmingly supportive of the Settlement – as of the
9 filing of this motion, there are no objections to the settlement and zero individuals have opted
10 out. (Islas Decl., ¶¶ 8-9.)

11 **B. The Requested Fee Award Is Reasonable and Appropriate**

12 The United States Supreme Court has ruled the parties to a class action properly may
13 negotiate not only the settlement of the action itself but also the payment of attorney's fees.
14 *Evans v. Jeff D.* (1986) 475 U.S. 717, 734-35, 738, fn. 30.) In *Hensley v. Eckerhart* (1983)
15 461 U.S. 424, 437, the Supreme Court explained that negotiated, agreed-upon attorney's fee
16 provisions are the ideal towards which the parties should strive: "A request for attorney's fees
17 should not result in a second major litigation. Ideally, of course, litigants will settle the
18 amount of a fee." The United States Supreme Court has reemphasized this policy and further
19 stressed trial courts have "a responsibility to encourage agreement" on fees. Blum v. Stenson
20 (1984) 465 U.S. 886, 902 n.19.

21 As part of the Settlement, Defendants agreed not to object to an award of no more than
22 33.33% of the GSA for attorney's fees, or \$170,833.33, and up to \$26,000 in reimbursement
23 for litigation costs and expenses (only \$15,683.40 is requested). Such a fee is commensurate
24 with what the market would provide for similar services and the Court therefore can most
25 certainly enforce the agreement. As California's Court of Appeal has instructed:

26 Given the unique reliance of our legal system on private litigants to enforce substantive
27 provisions of law through class and derivative actions, attorneys providing the essential
28 enforcement services must be provided incentives roughly comparable to those negotiated

1 in the private bargaining that takes place in the legal marketplace, as it will otherwise be
2 economic for defendants to increase injurious behavior.

3 *Lealao*, 82 Cal.App.4th at 47.

4 Here, the parties did not negotiate the inclusion of attorney's fees until after extensive
5 arms-length bargaining regarding relief to the Class was completed. (Ardestani Decl.,
6 ¶ 27.) The requested fee and cost award was a product of these arms-length negotiations and
7 fairly reflects the marketplace value of the services rendered by Class Counsel in this case. As
8 a result, the fee agreed to by the parties should be approved.

9 **B. Class Counsel's Fees are Justified When Calculated as a Percentage of the**
10 **Common Fund**

11 In approving fee applications, courts typically apply either a percentage-of-recovery
12 method or the lodestar method. *Laffitte v. Robert Half Int'l., Inc.* (2016) 1 Cal.5th 480, 489;
13 *Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 254, *disapproved on other*
14 *grounds, Hernandez v. Restoration Hardware, Inc.* (2018) 4 Cal.5th 260. The California
15 Supreme Court recently recognized the advantages and equities of calculating attorney's fees
16 using the percentage-of-the-common-fund method in another wage-and-hour case:

17 The recognized advantages of the percentage method-including relative ease of
18 calculation, alignment of incentives between counsel and the class, a better
19 approximation of market conditions in a contingency case, and the encouragement it
20 provides counsel to seek an early settlement and avoid unnecessarily prolonging the
21 litigation convince us the percentage method is a valuable tool that should not be
22 denied our trial courts.

23 *Laffitte*, 1 Cal.5th at 503 (citations omitted).

24 Indeed, both California and federal courts have long recognized an appropriate method
25 for determining the award of attorney's fees is based on a percentage of the total value of
26 benefits afforded to class members by the settlement. *Serrano v. Priest* (1977) 20 Cal.3d 25,
27 34; *Boeing Co. v. Van Gernert* (1980) 444 U.S. 472, 478; *Vincent v. Hughes Air West, Inc.*
28 (9th Cir. 1977) 557 F.2d 759, 769. Awarding a fee based on a percentage of the common fund
recovered operates to "spread litigation costs proportionately among all the beneficiaries so
that the active beneficiary does not bear the entire burden alone." *Vincent*, 557 F.2d at 769.

1 In determining a reasonable common fund fee award, courts should also consider the
2 fact that fees serve as an economic incentive for lawyers to bring class action litigation to
3 achieve increased access to the judicial system for meritorious claims and to enhance
4 deterrents to wrongdoing. Conte, *Attorney Fee Awards* (2d ed. 1993) § 104. Without
5 prosecution on a contingent basis and use of the class action mechanism, the courthouse door
6 would effectively be closed to most class members due to the relatively small size of their
7 individual claims in relation to the enormous time and cost associated with class action
8 litigation.

9 Here, Class Counsel seek a fee award for their successful prosecution and resolution of
10 this action of no more than 33.33% of the total amount recovered by the Class via the lawsuit,
11 or \$170,833.33. The percentage requested is justified for the reasons set forth further below,
12 and comports with fee awards calculated on a percentage-of-the-benefit basis. Indeed, review
13 of class action settlements shows that courts have historically awarded fees in the range of 20
14 to 50 percent, depending upon the circumstances of the case. *In re Warner Communications*
15 *Sec. Litig.* (S.D.N.Y. 1985) 618 F.Supp. 735, 749-50 (concluding that percentage fees in
16 common fund cases range from 20 to 50 percent); Newberg, *Newberg on Class Actions* (3d
17 ed.) § 14.03, pp. 13-14 ("Usually 50% of the fund is the upper limit on a reasonable fee award
18 from a common fund in order to assure that the fees do not consume a disproportionate part of
19 the recovery obtained for the class, although somewhat larger percentages are not
20 unprecedented.").

21 **D. A Lodestar Cross-Check Also Supports Class Counsel's Fee Request**

22 To ensure the fairness of an attorney's fee award, courts frequently conduct a lodestar
23 cross check of counsel's fees. "A lodestar cross-check thus provides a mechanism for bringing
24 an objective measure of the work performed into the calculation of a reasonable attorney fee."
25 *Laffitte*, 1 Cal.5th at 504. Here, Class Counsel spent 239.5 hours of time on this matter,
26 resulting in a modest and very reasonable lodestar of \$176,355.00.

27 As is fully detailed in the Ardestani Declaration, Class Counsel's efforts included: (1)
28 extensive pre-lawsuit investigation of the claims of Plaintiff and the putative class, including legal

1 research, research into similar claims and claims against other employers in the same industry, and
2 attempts to locate and contact other Monogram and TriMas employees; (2) drafting a PAGA
3 notice letter; (3) drafting the initial complaint and related documents; (4) case management,
4 including communications with defense counsel, meeting and conferring/preparing case
5 management statements, etc.; (5) drafting a first amended complaint; (6) propounding initial
6 written discovery, (7) lengthy discussions with defense counsel regarding settlement/mediation
7 and informal discovery needed for meaningful settlement discussions; (8) engaging in substantial
8 informal discovery, including propounding informal discovery “requests” and reviewing
9 documents and other information produced; (9) drafting a mediation brief and accompanying
10 damages model after review and analysis of Defendants’ informal discovery production; (10)
11 attending an all-day mediation; (11) negotiating and drafting the settlement agreement and related
12 documents; (12) drafting the motion for preliminary approval, and attending the hearing; (13)
13 administration of the settlement, including communications with the Settlement Administrator and
14 settlement class members; (14) drafting the motion for final approval and motion for attorney’s
15 fees, and attending the final approval hearing; and (15) extensive communications with the
16 Plaintiff regarding case status, case investigation and document review, mediation, and settlement
17 terms. Additionally, Class Counsel will incur additional time following final approval to, inter
18 alia, respond to class member inquiries, work with the Settlement Administrator on the
19 distribution of settlement funds, and on the compliance hearing. (Ardestani Decl., ¶ 28, Exh. 2.)

20 In pursuing this matter, Class Counsel incurred total attorney’s fees of \$176,355.00,
21 based on 239.5 attorney hours. The lodestar is based on an eminently reasonable number of
22 hours worked to litigate this matter to a successful conclusion, and the requested attorney hourly
23 rates are reasonable and comport with hourly rates charged by other attorneys with similar
24 experience in this practice area in California. (Ardestani Decl., ¶¶ 28-41.) On a lodestar basis, the
25 fee request of \$170,833.33 results in a base lodestar that is larger than the actual fee request
26 on a percentage of the recovery basis and accordingly there is no request for a lodestar
27 enhancement. (Ardestani Decl., ¶¶ 40-41.) Class Counsel submits this fact effectively
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operates to show that the percentage fee request is reasonable considering it less than the actual value of the services rendered when valued via traditional hourly billing.

E. The Award is Supported By 1) the Results Achieved; 2) the Risk, 3) the Skill Required, 4) the Contingent Nature of the Fee and 5) Awards in Similar Cases

What has now emerged in most fee award decisions is the recognition that fee determinations in both common fund and statutory fee situations are incapable of mathematical precision because of the intangible factors that must be resolved in the court's discretion based on the circumstances of each particular case. Conte, § 207, p. 44. In determining an appropriate fee in a common fund case, a Court must decide, based on the unique posture of each case, what percentage of the common fund would most reasonably compensate Class Counsel given the nature of the litigation and the performance of counsel. *Paul, Johnson, Alston & Hunt v. Graulity* (9th Cir. 1989 886 F.2d 268, 272) (the benchmark percentage fee may be adjusted to account for the circumstances involved in a case).

Courts apply a five-part test in calculating a reasonable percentage fee in common fund cases: (1) the results achieved; (2) the risk of litigation; (3) the skill required and the quality of work; (4) the contingent nature of the fee and the financial burden carried by the plaintiffs; and (5) awards made in similar cases. *Laffitte*, 1 Cal.5th at 489.

1. The Results Achieved.

Class Counsel obtained an excellent result in this case for the Class Members. The Settlement provides real monetary benefits to the Class Members, and the Settlement is particularly advantageous to the Class Member because the proceeds will be distributed shortly as opposed to waiting additional years for a similar, or possibly, less favorable result. Considering many individual claims would be very modest and would not be cost-effective to pursue successfully, the Settlement provided them with fair compensation for their claims. Moreover, the absence of any objection to either the Settlement or the attorney's fee request bolsters the excellent results. Indeed, the approval of the Class is overwhelming as indicated by the fact that not only one class member opted out. Additionally, the settlement amounts to a substantial percentage of the maximum value of the amount the Class might have obtained if

1 it had tried the case and recovered on all theories seeking recovery of wages and penalties.
2 "It is well-settled law that a cash settlement amounting to only a fraction of the potential
3 recovery does not per se render the settlement inadequate or unfair." *In re Omnivision Techs.,*
4 *Inc.*, 559 (N.D. Cal. 2008) F.Supp.2d 1036, 1042.

5 **2. Class Counsel Bore Considerable Risk.**

6 At the time of filing the complaint, Class Counsel recognized that they would have to
7 expend a substantial amount of time and advance significant costs to prosecute a statewide
8 class action suit with no guarantee of compensation or reimbursement, in the hope of
9 prevailing against a sophisticated company represented by first-rate attorneys. Despite
10 their belief in the validity of Plaintiff's claims, they also knew they faced substantial risks
11 of class certification and the ability to prove class-wide and individual damages. In light of
12 the highly uncertain nature of this suit, Class Counsel also bore the risk that Defendants
13 would dig in and attempt to bury their small firms in work. Given the small size of Class
14 Counsel's firm, not receiving any compensation for several years while simultaneously
15 advancing litigation costs posed considerable risk and difficulty. (Ardestani Decl., ¶¶ 42-43.)

16 **3. The Skill Required and the Quality of Work.**

17 Practice in the narrow area of wage and hour litigation requires skill, knowledge and
18 experience. The issues presented in this case required more than just a general appreciation of
19 wage and hour law and class action procedure. This Settlement was possible only because
20 Plaintiff and the putative class had a realistic chance of prevailing on their claims despite
21 Defendants' contrary arguments, and that the case would be pursued through class
22 certification and trial if necessary. In successfully navigating these hurdles, Class
23 Counsel displayed appropriate skill while pursuing a risky and difficult case.

24 **4. The Contingent Nature of the Fee and Risk Assumed**

25 There is a substantial difference between the risk assumed by attorneys being paid
26 by the hour and attorneys working on a contingent fee basis. The attorney being paid by
27 the hour can go to the bank with his fee. *Powers v. Eichen* (9th Cir. 2000) 229 F.3d 1249,
28 1256. The attorney working on a contingent basis can only log hours while working

1 without pay towards a result that will hopefully entitle him to a market fee considering
2 the risk and other factors of the undertaking. *Id.* at 1257. Otherwise, the contingent fee
3 attorney receives nothing. *Id.* In this case, Class Counsel subjected themselves to this
4 risk in this all or nothing contingent fee case wherein the necessity and financial burden
5 of private enforcement makes the requested award appropriate.

6 Counsel retained on a contingency fee basis, whether in private matters or in class
7 action litigation, is entitled to a premium beyond their standard, hourly, non-contingent
8 fee schedule to compensate for both the contingent risk assumed and the delay in
9 payment. The simple fact is that despite the most vigorous and competent of efforts,
10 success is never guaranteed. *McKittrick v. Gardner* (4th Cir. 1967) 378 F.2d 872, 875.
11 Indeed, if counsel is not adequately compensated for the risks inherent in difficult class
12 actions, competent attorneys will be discouraged from prosecuting similar cases. *Ketchum*
13 *v. Moses* (2001) 24 Cal.4th 1122, 1132-33; *Cazares v. Saenz* (1989) 208 Cal.App.3d 279,
14 287.

15 Here, the contingent fee practices of Plaintiff's counsel simply do not accommodate
16 the investment of unnecessary time in a case, and the adverse resolution of any one of several
17 difficult issues present in this matter could have doomed the entire effort. As discussed, the
18 attorney's fees in this case were not only contingent but fairly risky, and there was always a
19 palpable chance Plaintiff's counsel would receive nothing for any number of reasons.
20 (Ardestani Decl., ¶¶ 42-43.) Accordingly, the contingent nature of the fee and the financial
21 burdens on Class Counsel and Plaintiff also support the fee requested.

22 5. Awards in Other Cases

23 As discussed, the attorney's fees requested by Class Counsel are within the range of
24 fees awarded in comparable cases, as cross-checked against the lodestar method in light of the
25 contingent risk assumed, the delay in payment, the result achieved, and the overall quality of
26 the representation.

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1 **F. Class Counsel’s Costs and Expenses are Reasonable**

2 Plaintiff’s counsel also request reimbursement of actual out-of-pocket expenses incurred to
3 prosecute this action. These expenses were incidental and necessary to the effective representation
4 of the employees, and Plaintiff’s counsel is permitted to recover litigation costs and expenses
5 under the common fund doctrine and the Settlement Agreement. *Serrano*, 20 Cal.3d at 35
6 (common fund doctrine permits recovery of fees and costs from the fund); *Rider v. County of San*
7 *Diego* (1992) 11 Cal.App.4th 1410, 1424 n.6 (costs are recoverable from the common fund “[o]f
8 necessity, and for precisely the same reasons discussed above with respect to the recovery of
9 attorneys’ fees by ... [Plaintiff’s] attorneys”). Plaintiff’s counsel also is entitled to recover “those
10 out-of-pocket expenses that would normally be charged to a fee-paying client.” *Harris v.*
11 *Marhoefer* (9th Cir. 1994) 24 F.3d 16, 19.

12 As explained in the Ardestani Declaration, Class Counsel incurred a total of
13 \$15,683.40 in expenses incurred in connection with this litigation. These expenses
14 include the amounts paid for court filing fees, Case Anywhere charges, service of
15 process, expert fees, postage, and mediation fees, all of which are costs normally billed to
16 and paid by the client. These costs were reasonably incurred in the prosecution of this
17 matter and it is respectfully requested that the Court authorized they be reimbursed in
18 full. (Ardestani Decl., ¶¶ 44-45.)

19 **VIII. CONCLUSION**

20 For all the foregoing reasons, Plaintiff respectfully requests that the Court grant this motion
21 and grant final approval of the proposed class action settlement and approve the payment of PAGA
22 penalties to the State. Plaintiff further requests the Court approve payment of the Settlement
23 Administrator’s fees and expenses, approve the requested class representative enhancement
24 payment, approve the award of attorney’s fees and costs as requested, and enter judgment in this

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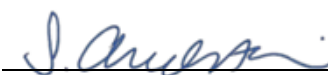
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1 action. Finally, Plaintiff requests the Court set a non-appearance case review regarding settlement
2 compliance for December 1, 2025, or a later date convenient for the Court.

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Dated: November 1, 2024

CROSNER LEGAL, PC

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