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Attorneys for Plaintiff, ADRIANA HUERTA and
MARIA SANCHEZ on behalf of themselves and all others similarly situated

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

ADRIANA HUERTA and MARIA
SANCHEZ on behalf of themselves and all
others similarly situated

Plaintiffs,

vs.

PRO-TECH DESIGN &
MANUFACTURING, INC. a California
corporation, and DOES 1 through 50,
inclusive,

Defendants.

Case No. 19STCV36380
Assigned For All Purposes To:
Judge: Lawrence P. Riff
Dept.: 7

**PLAINTIFFS' NOTICE OF MOTION
AND MOTION FOR PRELIMINARY
APPROVAL OF CLASS ACTION AND
PAGA SETTLEMENT; [PROPOSED]
ORDER**

[Declarations of James Hawkins, Phillip Song,
Adriana Huerta, Maria Sanchez and Estephany
Avalos Concurrently Filed Herewith]

Date: June 15, 2023
Time: 10:00 a.m.
Dept.: 7

PLEASE TAKE NOTICE THAT on June 15, 2023. in Department 7 of the above-
entitled court located at 312 N. Spring Street, Los Angeles, California 90012, Plaintiffs Adriana

1 Huerta, Maria Sanchez and Estephany Avalos ("Plaintiffs") will and hereby do move the Court
2 for an Order (1) provisionally certifying the Class for Settlement purposes only; (2) provisionally
3 approving James Hawkins, Isandra Fernandez and Lance Dacre of James Hawkins, APLC, and
4 Joseph Lavi of Lavi & Ebrahimian as counsel for Plaintiffs and the Class Members in this matter,
5 (3) provisionally approving Adriana Huerta, Maria Sanchez and Estephany Avalos as the Class
6 Representatives; (4) approving Simpluris, Inc. as the Settlement Administrator; (5) preliminarily
7 approving the class action settlement; and (6) approving and directing distribution of the Court
8 Approved Notice of Class Action Settlement and Hearing Date for Final Approval.

9 This Motion is made pursuant to Rule 3.769 of the California *Rules of Court*, which
10 provides for court approval of the settlement of a purported class action and allows the Court to
11 preliminarily certify a class for settlement purposes. The basis for this Motion is that the
12 proposed Settlement is fair, adequate, and reasonable and the procedures proposed by the Parties
13 are adequate to ensure the opportunity of Class Members to participate in, opt out of, or object to
14 the Settlement.

15 This Motion will be based on the Memorandum of Points and Authorities included herein,
16 the Declarations of James R. Hawkins Phillip Song, Adriana Huerta, Maria Sanchez and
17 Estephany Avalos filed concurrently herewith the Class and PAGA Settlement Agreement
18 attached to the Declaration of James R. Hawkins as Exhibit A, and upon the oral arguments of
19 counsel (should there be any) and upon the complete records and file herein.

21 **DATED: April 14, 2023**

JAMES HAWKINS APLC

22
23 By: 
24 James R. Hawkins
25 Isandra Y. Fernandez
26 Lance Dacre
27 Kacey E. Cook
28 Attorneys for Plaintiffs
Adriana Huerta and Maria Sanchez

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiff Adriana Huerta filed a wage an hour class action on behalf of herself and all
4 others similarly situated, and subsequently added Maria Sanchez as a second named Plaintiff in
5 that same lawsuit. Separately and thereafter, Plaintiff Estephany Avalos filed her own wage and
6 hour class action. Both lawsuits are against the same Defendant, Pro Tech Design &
7 Manufacturing. The lawsuits seek recovery of alleged unpaid wages, premium wages and
8 penalties pursuant to California Labor Code, California Industrial Welfare Commission (“IWC”)
9 Wage Orders, Bus. & Prof. Code § 17200 and PAGA. The action further seeks an award of
10 attorneys’ fees, interest and costs. Pro Tech denies the claims alleged and disputes any liability
11 for the damages sought.

12 Subject to Court approval, the Parties have reached a settlement of the claims asserted on
13 behalf of the class and representative PAGA group in this Lawsuit for a total of Nine Hundred
14 Twenty Eight Thousand Nine Hundred Eighteen Dollars and Thirty Three Cents \$928,918.33
15 (hereinafter “Gross Settlement Amount” or “GSA”), which includes Individual Class Payments,
16 Individual PAGA Payments, the Labor and Workforce Development Agency PAGA Payment,
17 Class Counsel Fees, Class Counsel Expenses, Class Representative Service Payments and the
18 Administrator’s Expenses.(the “Action”) **This is a cash settlement.** Every Class Member who
19 does not opt- out of the Settlement will automatically be mailed an individual settlement payment.
20 However, every Class Member who is also within the PAGA group will be mailed their
21 respective individual class payment associated with the PAGA penalty portion of the settlement
22 amount regardless of opt-out status. There is no claims filing process, and Class Members do not
23 have to file a claim to be mailed a payment.

24 As discussed more thoroughly below, the proposed Settlement satisfies all of the criteria
25 for preliminary settlement approval under California law and falls well within the range of proper
26 approval. As such, Plaintiffs move this Court to: (i) provisionally certify the proposed Class; (ii)
27 provisionally approve James Hawkins, Isandra Fernandez and Lance Dacre of James Hawkins
28 APLC, and Joseph Lavi of Lavi & Ebrahimian as class counsel for Plaintiffs and the Class in this

1 matter; (iii) provisionally approve named Plaintiffs Adriana Huerta, Maria Sanchez and
2 Estephany Avalos as the class representatives; (iv) appoint Simpluris, Inc. as the settlement
3 administrator; (v) grant preliminary approval of the Class Action and PAGA Settlement
4 Agreement (hereinafter “Settlement Agreement”); (vi) direct distribution of the Court Approved
5 Notice of Class Action Settlement and Hearing Date for Final Approval on the terms and
6 conditions set forth in the Settlement Agreement; and (vii) schedule a final approval hearing.

7 **II. FACTUAL BACKGROUND**

8 On October 5, 2020, Plaintiff Adriana Huerta initiated this action in the Superior Court for
9 the County of Los Angeles on behalf of herself and all others similarly situated, styled *Huerta et*
10 *al. v. Pro Tech Design & Manufacturing*, Case No. 19STCV36380. The Complaint asserts causes
11 of action for; (1) failure to pay lawful wages including overtime wages; (2) failure to provide
12 lawful meal periods or compensation in lieu thereof; (3) failure to provide lawful rest periods or
13 compensation in lieu thereof; (4) failure to pay timely wages; (5) knowing and intentional failure
14 to comply with itemized employee wage statement provisions and; (6) violations of the unfair
15 competition law (Bus. & Prof. Code § 17200 *et seq.*) (the “Huerta Class and PAGA Action” or
16 “Huerta Action”). (See Declaration of James R. Hawkins “Hawkins Decl.” ¶ 2.)

17 On February 3, 2020, Adriana Huerta and Maria Sanchez filed a First Amended
18 Complaint, adding Maria Sanchez as a named Plaintiff. On that same date, Maria Sanchez
19 provided notice to the Labor and Workforce Development Agency (“LWDA”) of Plaintiffs’
20 intent to pursue Defendant for all civil penalties arising from Defendant’s alleged failure to, inter
21 alia, pay all wages earned including failure to provide proper rest periods and meal breaks, failure
22 to provide accurate wage statements to Plaintiffs and other similarly situated aggrieved
23 employees (Hawkins Decl. ¶ 3). On March 18, 2022, Plaintiffs filed a Second Amended
24 Complaint, which included one additional cause of action for violations of the Private Attorney
25 General Act (Labor Code § 2699 *et seq.*) (“PAGA”). (Hawkins Decl., ¶ 4.)

26 On September 7, 2021, Estephany Avalos initiated her wage and hour class action in the
27 Superior Court for the County of Los Angeles entitled *Avalos v. Pro Tech Design &*
28 *Manufacturing* Case No. 21STCV32967 (“Avalos Class Action”). On November 12, 2021,

1 Estephany Avalos initiated a separate action under the Private Attorneys General Act, *Avalos v.*
2 *Pro Tech Design & Manufacturing* Case No. 21STCV41807 (“Avalos PAGA Action”) (“Huerta
3 Class and PAGA Action”, “Avalos Class Action” and “Avalos PAGA Action” are referred to
4 collectively herein as the “Action(s)”).

5 Plaintiffs bring these Actions pursuant to Labor Code 200, 201, 202, 203, 204, 221, 226,
6 226.7, 510, 512, 1194, 1198 2698, 2802 and California Code of Regulations, Title 8, section
7 11010 *et seq.* seeking unpaid lawful wages, unpaid rest and meal period compensation, penalties
8 and other equitable relief, and reasonable attorneys’ fees and costs. Pursuant to Business and
9 Professions Code sections 17200 through 17208, Plaintiffs also seek restitution for unpaid wages,
10 as well as civil penalties pursuant to PAGA based on the alleged violations of the aforementioned
11 Labor Code sections.

12 Throughout this litigation, Defendant has denied Plaintiffs’ allegations and raised defenses
13 to their claims, individually and on a representative basis. (Hawkins Decl. ¶ 5.) Defendant
14 maintains that its employment policies and practices meet the requirements of the Labor Code
15 and applicable Wage Orders. (*Id.*) To date, no motion for class certification has been filed, no
16 class has been certified and the Court has not made any findings that Pro Tech engaged in any
17 wrongdoing or in violation of any state law, rule or regulation, with respect to the issues
18 presented in the litigation. (Hawkins Decl. ¶ 6.)

19 Through formal and informal discovery, Plaintiffs and Pro Tech have exchanged
20 extensive documents and information related to the claims asserted (Hawkins Decl. ¶ 7.)
21 Defendant has produced thousands of pages of information, including timecard records and wage
22 reports of putative Class Members. (*Id.*) Defendant also provided Plaintiffs with class data and
23 random samples of time records, wage statements, information regarding the number of non-
24 exempt employees during the relevant time period. (Hawkins Decl. ¶ 8.)

25 After conducting formal and informal discovery, exchanging relevant information and
26 engaging in numerous discussions regarding the claims alleged, on February 23, 2022, the
27 Plaintiffs in the Huerta Action and Defendant participated in a private mediation with Hon.
28 Ronald Sabraw (Ret.), an experienced wage and hour class action mediator. (Hawkins Decl. ¶ 9.)

1 During the course of the mediation, they exchanged further information and documentation
2 concerning Plaintiffs' claims and Pro Tech's defenses thereto, and aggressively advocated for
3 their respective positions; however, they did not reach a settlement (*Id.*)

4 After the mediation, the parties continued in settlement negotiations, with the assistance
5 of the mediator. (Hawkins Decl. ¶ 10.) On June 13, 2022, the Plaintiffs in the Huerta Action and
6 Defendant attended a second mediation which also did not result in a settlement at the conclusion
7 of the mediation (*Id.*) However, the parties continued to engage in settlement discussions with the
8 assistance of the mediation and, after several months, reached a settlement in principle of this
9 Action. (*Id.*) Thereafter, the Parties exchanged multiple drafts of the proposed settlement
10 agreement and class notice documents and engaged in communications regarding the settlement
11 terms (*Id.*) The final terms and provisions of the settlement agreement were approved and
12 executed by all the parties on or about February 7, 2023. (Hawkins Decl. ¶ 11; Exhibit A-
13 Settlement Agreement.)

14 Based on their own respective independent investigations and evaluations and after taking
15 into account the sharply disputed factual and legal issues involved in this matter, the risks
16 attending further prosecution in light of certification issues faced due to the *Brinker Rest. Corp. v.*
17 *Super. Ct.*, (2012) 53 Cal. 4th 1004 ("*Brinker*") decision, the discovery and investigation
18 conducted to date, Plaintiffs and their counsel are of the opinion that settlement for the
19 consideration and on the terms set forth in the Settlement Agreement is fair, reasonable and
20 adequate and is in the best interests of the named Plaintiffs and Class Members. (Hawkins Decl. ¶
21 12.)

22 **III. SUMMARY OF SETTLEMENT TERMS**

23 **A. Class Members**

24 "Class Member" or "Settlement Class Member" means a member of the Class, as either a
25 Participating Class Member or Non-Participating Class Member (including a Non-Participating
26 Class Member who qualifies as an Aggrieved Employee) from October 10, 2015 to September
27 12, 2022 (the "Class Period") (Settlement Agreement, p.1-2 ¶ 1.9, 1.12.) "Class" means all
28 persons employed by Pro Tech in California and classified as non-exempt who worked for Pro

1 Tech during the Class Period. (Settlement Agreement, p. 1, ¶ 1.5.)

2 **B. Allocation of the Gross Settlement Amount**

3 1. The total maximum amount of settlement is Nine Hundred Twenty-Eight
4 Thousand Nine Hundred Eighteen Dollars and Thirty-Three Cents \$928,918.33 (the “Gross
5 Settlement Amount”) (Settlement Agreement, p. 2, ¶ 1.22.) The Gross Settlement Amount is
6 based on \$890,000 new money to be paid by Defendant plus \$38,919.33 already paid in
7 settlement to 41 present employees and 30 former employees. (*Id.*) The Gross Settlement
8 Amount will be used to pay Individual Class Payments, Individual PAGA Payments, the LWDA
9 PAGA Payment, Class Counsel Fees, Class Counsel Expenses, Class Representative Service
10 Payments and the Administrator’s Expenses. (*Id.*)

11 2. Subject to Court approval, Counsel shall be paid a Class Counsel Fees Payment of
12 not more than \$309,636.34 and a Class Counsel Litigation Expenses Payment of not more than
13 \$25,000. (Settlement Agreement, p. 5, ¶ 3.2.2.)

14 3. Subject to Court approval, Class Representatives shall be paid Service Payments
15 of not more than \$7,500 each (in addition to any Individual Class Payment and any Individual
16 PAGA Payment the Class Representatives are entitled to receive as a Participating Class
17 Member). (Settlement Agreement, p. 5, ¶ 3.2.1.)

18 4. Subject to Court approval, the Settlement Administrator shall be paid an
19 Administrator Expenses Payment not to exceed \$10,000 except for a showing of good cause and
20 as approved by the Court. To the extent the Administration Expenses are less or the Court
21 approves payment less than \$10,000, the Administrator will retain the remainder in the Net
22 Settlement Amount (Settlement Agreement, p.5, ¶ 3.2.3.)

23 5. Subject to Court approval, the total amount of PAGA civil penalties to be paid
24 from the Gross Settlement Amount is \$100,000, of which 25% (\$25,000.00) will be allocated to
25 the Aggrieved Employees and 75% (\$75,000.00) to LWDA (the “LWDA PAGA Payment”) in
26 settlement of PAGA claims. (Settlement Agreement, p.3, ¶ 1.34; p. 6, ¶ 3.2.5.)

27 6. Subject to Court approval, the Net Settlement Amount (“NSA”) means the Gross
28 Settlement Amount, less the following payments in the amounts approved by the Court:

1 Individual PAGA Payments, the LWDA PAGA Payment, Class Representative Service
2 Payments, Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment, and the
3 Settlement Administration Expenses Payment. The remainder is to be paid to Participating Class
4 Members as Individual Class Payments (Settlement Agreement, p. 3, ¶ 1.28.)

5 7. Subject to Court approval, 33% of each Participating Class Member's Individual
6 Class Payment shall be allocated to settlement of wage claims (the "Wage Portion"). The Wage
7 Portion is subject to IRS Form W-2 reporting and applicable taxes/withholdings. 67% of each
8 Participating Class Member's Individual Class Payment shall be allocated to settlement of claims
9 for interest and penalties (the "Non-Wage Portion") for which an IRS Form 1099 will be issued.
10 (Settlement Agreement, p. 5-6, ¶ 3.2.4.1.)

11 8. Employer's share of payroll taxes will be paid separately by Defendant (Settlement
12 Agreement. (Settlement Agreement p. 6, ¶ 4.3.)

13 Here, there are approximately 269 Class Members and 178 Aggrieved Employees.
14 (Settlement Agreement, p. 6, ¶ 4.1.) The NSA subject to Court approval, is \$461,782.00. The
15 estimated average net recovery for the Class Members will be approximately \$1,716.66
16 ($\$461,782 \div 269$ Class Members) and the average Individual PAGA Payment will be \$140.45
17 (25% of the \$100,00 in PAGA Penalties allocated to Aggrieved Employees; $\$25,000 \div 178$
18 Aggrieved Employees) (Settlement Agreement, p. 6 ¶ 4.1.) These average net recovery amounts
19 are significantly more than other wage and hour class action settlements approved by California
20 state and federal courts. *See, e.g., Ressler v. Federated Department Stores, Inc.*, Case No.
21 BC335018 (L.A. County Super. Ct.) (average net recovery of approximately \$90); *Doty v. Costco*
22 *Wholesale Corp.*, Case No. CV05-3241 FMC-JWJx (C.D. Cal.) (average net recovery of
23 approximately \$65); *Sorenson v. Defendants, Inc.*, Case No. 2:06-CV-02674-JAM-DAD (E.D.
24 Cal.) (average net recovery of approximately \$60); *Lim v. Victoria's Secret Stores, Inc.*, Case No.
25 04CC00213 (Orange County Super. Ct.) (average net recovery of approximately \$35); *Gomez v.*
26 *Amadeus Salon, Inc.*, Case No. BC392297 (L.A. Super. Ct.) (average net recovery of
27 approximately \$20); and *Jones v. Bath & Body Works, Inc.*, No. 2:13-cv-05206-FMO-AJW (C.D.
28 Cal.) (average net recovery of approximately \$50).

1 **C. Released Claims Summary**

2 Effective on the date when Pro Tech fully funds the entire Gross Settlement Amount and
3 funds all employer payroll taxes owed on the Wage Portion of the Individual Class Payments,
4 Plaintiffs, Class Members, and Aggrieved Employees will release claims against all Released
5 Parties as set forth below. (Settlement Agreement, p. 7, ¶ 5.) Here, “Released Parties” means Pro
6 Tech and each of its former and present directors, officers, shareholders, owners, attorneys,
7 insurers, predecessors, successors, and assigns (Settlement Agreement, p. 3, ¶ 1.41.)

8 1) **Plaintiffs’ Release**

9 Plaintiffs and their respective former and present spouses, representatives, agents,
10 attorneys, heirs, administrators, successors, and assigns generally, release and discharge Released
11 Parties from all claims, transactions, or occurrences that occurred during the Class Period,
12 including, but not limited to: (a) all claims that were, or reasonably could have been, alleged
13 based on the facts contained in the Operative Complaint and (b) all PAGA claims that were, or
14 reasonably could have been, alleged based on facts contained in the Operative Complaint,
15 Plaintiffs’ PAGA Notice, or ascertained during the Action and released under 6.2 of the
16 Settlement Agreement. (“Plaintiffs’ Release.”) Plaintiffs’ Release does not extend to any claims
17 or actions to enforce the Settlement Agreement, or to any claims for vested benefits,
18 unemployment benefits, disability benefits, social security benefits, workers’ compensation
19 benefits that arose at any time, or based on occurrences outside the Class Period. Plaintiffs
20 acknowledge that Plaintiffs may discover facts or law different from, or in addition to, the facts or
21 law that Plaintiffs now know or believe to be true but agree, nonetheless, that Plaintiffs’ Release
22 shall be and remain effective in all respects, notwithstanding such different or additional facts or
23 Plaintiffs’ discovery of them. (Settlement Agreement, p.7, ¶ 5.1.)

24 2) **Release by Participating Class Members**

25 All Participating Class Members, on behalf of themselves and their respective former and
26 present representatives, agents, attorneys, heirs, administrators, successors, and assigns, release
27 Released Parties from (i) all claims that were alleged, or reasonably could have been alleged,
28 based on the Class Period facts stated in the Operative Complaint and ascertained in the course of

1 the Action including, (a) any and all claims involving any alleged failure to pay minimum wage;
2 (b) any and all claims involving any alleged failure to provide meal periods or compensation in
3 lieu thereof; (c) any and all claims involving any alleged failure to provide rest periods or
4 compensation in lieu thereof; (d) any and all claims involving any alleged failure to pay timely
5 wages; (e) any and all claims involving any alleged failure to reimburse employee expenses; (f)
6 any and all claims involving any alleged failure to provide accurate, itemized wage statements;
7 and (g) any and all claims involving any alleged violations of the business and professions code §
8 17200 *et seq.* Except as set forth in Section 5.3 of the Settlement Agreement, Participating Class
9 Members do not release any other claims, including claims for vested benefits, wrongful
10 termination, violation of the Fair Employment and Housing Act, unemployment insurance,
11 disability, social security, workers' compensation, or claims based on facts occurring outside the
12 Class Period (Settlement Agreement, p. 8, ¶ 5.2.)

13 3) Release by Aggrieved Employees

14 All Participating and Non-Participating Class Members (i.e. Class Members who validly
15 opt out of the Settlement (Settlement Agreement, p. 3, ¶1.29)) who are Aggrieved Employees are
16 deemed to release, on behalf of themselves and their respective former and present
17 representatives, agents, attorneys, heirs, administrators, successors, and assigns, the Released
18 Parties from all claims for PAGA penalties that were alleged, or reasonably could have been
19 alleged, based on the PAGA Period facts stated in the Operative Complaint, and the PAGA
20 Notice including (a) any and all claims involving any alleged failure to pay minimum wage; (b)
21 any and all claims involving any alleged failure to provide meal periods or compensation in lieu
22 thereof; (c) any and all claims involving any alleged failure to provide rest periods or
23 compensation in lieu thereof; (d) any and all claims involving any alleged failure to pay timely
24 wages; (e) any and all claims involving any alleged failure to reimburse employee expenses; and
25 (f) any and all claims involving any alleged failure to provide accurate, itemized wage statements
26 (Settlement Agreement, p. 8, ¶ 5.3.)
27
28

1 **D. Notice Procedure**

2 Subject to Court approval of the Settlement, Pro Tech will deliver the Class Data to the
3 Administrator not later than thirty (30) days after Preliminary Approval. (Settlement Agreement,
4 p. 6, ¶ 4.2.) No later than fourteen (14) days after the Effective Date, Defendant shall fully fund
5 the Gross Settlement Amount, and also fund the amounts necessary to fully pay Pro Tech's share
6 of payroll taxes by transmitting the funds to the Administrator. (Settlement Agreement, p. 6, ¶
7 4.3.)

8 Using best efforts to perform as soon as possible, and in no event later than 14 days after
9 receiving the Class Data, the Administrator will send to all Class Members identified in the Class
10 Data, via first-class United States Postal Service ("USPS") mail, the Class Notice with Spanish
11 translation, if applicable, in the form attached to the Settlement Agreement as Exhibit A. The first
12 page of the Class Notice shall prominently estimate the dollar amounts of any Individual Class
13 Payment and/or Individual PAGA Payment payable to the Class Member, and the number of
14 Workweeks and PAGA Pay Periods (if applicable) used to calculate these amounts. Before
15 mailing Class Notices, the Administrator shall update Class Member addresses using the National
16 Change of Address database (Settlement Agreement, p.10 ¶ 7.4.2).

17 The Notice that is mailed out to Class Members shall be the Court-Approved Notice of
18 Class Action Settlement and Hearing Date for Final Court Approval (Exhibit A to the Settlement
19 Agreement). No later than three (3) business days after receipt of the Class Data, the
20 Administrator shall notify Class Counsel that the list has been received and state the number of
21 Class Members, PAGA Members, Workweeks, and PAGA Pay Periods in the Class Data
22 (Settlement Agreement, p.9, ¶ 7.4.1.)

23 Every Class Member who does not submit a timely and valid Request for Exclusion is
24 deemed to be a Participating Class Member under the Settlement Agreement, entitled to all
25 benefits and bound by all terms and conditions of the Settlement, including the Participating Class
26 Members' Releases under Paragraphs 6.2 and 6.3 of the Settlement Agreement, regardless
27 whether the Participating Class Member actually receives the Class Notice or objects to the
28 Settlement (Settlement Agreement, pp. 10,11, ¶ 7.5.3.)

1 Not later than 3 business days after the Administrator’s receipt of any Class Notice
2 returned by the USPS as undelivered, the Administrator shall re-mail the Class Notice using any
3 forwarding address provided by the USPS. If the USPS does not provide a forwarding address,
4 the Administrator shall conduct a Class Member Address Search, and re-mail the Class Notice to
5 the most current address obtained. The Administrator has no obligation to make further attempts
6 to locate or send Class Notice to Class Members whose Class Notice is returned by the USPS a
7 second time. (Settlement Agreement, p. 10, ¶ 7.4.3.)

8 **IV. CALIFORNIA RULES OF COURT § 3.769 APPROVAL PROCESS**

9 A class action may not be dismissed, compromised or settled without approval of the
10 Court. (*Wershba v. Apple Computer, Inc.*, (2001) 91 Cal. App. 4th 224, 240; Cal. Rules of Court,
11 Rule 3.769.) The approval or rejection of the proposed settlement is committed to this Court’s
12 sound discretion. (*Wershba*, 91 Cal. App. 4th at 234-235.) A court’s decision to approve a class
13 action settlement may be reversed only upon a strong showing of “clear abuse of discretion.”
14 (*Class Plaintiffs v. City of Seattle*, (9th Cir. 1992) 955 F.2d 1268, 1276.) The purpose of the
15 court’s preliminary evaluation of the proposed settlement is to determine whether it is within the
16 “range of reasonableness” and thus, whether the notice to the class is appropriate. (NEWBERG,
17 §11.25 at 11-36-37.)

18 According to this procedure, Plaintiffs request this Court to provisionally certify the
19 proposed class for settlement purposes – conditional upon final approval of the settlement. The
20 practical purpose of provisional class certification is to facilitate distribution to all Class Members
21 of notice of the terms of the proposed Settlement and the date and time of the final approving
22 hearing. Additionally, Plaintiffs request this Court to preliminarily approve the Settlement as fair,
23 adequate and reasonable as set forth below.

24 **V. PRELIMINARY APPROVAL OF SETTLEMENT IS APPROPRIATE**

25 The law favors settlement, particularly in class actions and other complex cases in which
26 substantial resources can be conserved by avoiding the time, cost and rigors of formal litigation.
27 (*City of Seattle* 955 F.2d at 1276; *Potter v. Pacific Coast Lumber Company*, (1951) 37 Cal. 2d.
28 592, 602-603.; 4 NEWBERG § 11.41.) To grant preliminary approval of this class action

1 settlement, the Court need find only that the settlement falls within the “range of reasonableness.”
2 (*North County Contractor’s Ass. Inc. v. Touchstone Ins. Svcs.*, (1994) 27 Cal. App. 4th 1085,
3 1089-1090.) In determining whether a class settlement is fair, adequate and reasonable, courts
4 must consider the following relevant factors: the strength of the plaintiff’s case, the risk, expense,
5 complexity and likely duration of further litigation, the risk of maintaining class action status
6 through trial, the amount of offered settlement, the extent of discovery completed and the range of
7 the proceedings, and the experience and views of counsel. (*Dunk v. Ford Motor Co.*, (1996) 48
8 Cal. App. 4th 1794, 1801; *Clark v. American Residential Services, LLC*, (2009) 175 Cal. App.
9 4th. 785,799.) The list of factors is not exclusive and the court is free to engage in a balancing and
10 weighing of the factors depending on the circumstances of each case.” (*Clark*, 175 Cal. App. 4th
11 at 799; *Wershba*, 91 Cal. App. 4th at 245.)

12 Furthermore, courts must give “proper deference to the private consensual decision of the
13 parties,” since “the court’s intrusion upon what is otherwise a private consensual agreement
14 negotiated between the parties to a lawsuit must be limited to the extent necessary to reach a
15 reasoned judgment that the agreement is not the product of fraud or overreaching by, or collusion
16 between, the negotiating parties, and that the settlement, taken as a whole, is fair, reasonable and
17 adequate to all concerned.” (*Hanlon v. Chrysler Corp.*, (9th Cir. 1998), 150 F.3d 1011, 1027.)

18 **A. The Terms of the Proposed Settlement are Fair**

19 A preliminary review of the terms of the Settlement Agreement provides no reason to
20 doubt its fairness. A presumption of fairness exists where: 1) the settlement is reached through
21 arms-length negotiations; 2) investigation and discovery are sufficient to allow counsel and the
22 court to act intelligently; 3) counsel is experienced in similar litigation; and 4) the percentage of
23 objectors is small. (*Dunk v. Ford Motor Co.*, *supra*, at 1802.) The first three of these factors apply
24 at the preliminary approval stage; the percentage of objectors is determinable only at the final
25 approval stage.

1 1. The Settlement Was Reached Through Extensive Arm's Length Bargaining and
2 Based on the Recommendation Proposed by the Mediator

3 As already discussed herein, the Parties have conducted themselves in informed, good
4 faith arm's-length negotiations after exchanging extensive information about the claims and
5 defenses of this lawsuit and engaging in pre-mediation and post mediation discussions aimed at
6 settling their dispute. In attempts to settle this lawsuit, the Parties participated in a full day
7 mediation with mediator Hon. Ronald Sabraw (Ret.) (Hawkins Decl., ¶ 9.) In sum, armed with all
8 of the relevant information and with the help of an experienced mediator, counsel for the parties
9 participated in lengthy, serious and informed negotiations which has resulted in the proposed
10 Settlement Agreement that is now placed before this Court.

11 2. Investigation and Discovery Were Sufficient For the Parties to Evaluate the Risks
12 Intelligently

13 Plaintiffs conducted significant investigation of the facts and law both before and after the
14 Action was filed. Plaintiffs' counsel reviewed voluminous supporting documents provided by
15 Defendant through discovery and in exchanges of information in preparation for mediation.
16 (Hawkins Decl., ¶¶ 6-9.)

17 3. Plaintiffs' Counsel is Experienced in Similar Litigation

18 Moreover, counsel for Plaintiffs has represented, mediated and settled other employee
19 class actions in wage and hour litigation and have knowledge of the strengths and weaknesses of
20 the claims against Pro Tech and the benefits of the proposed Settlement under the circumstances
21 of the case (Hawkins Decl., ¶ 13,-16., Declaration of Phillip Song, Esq., filed concurrently
22 herewith.)

23 **B. The Settlement Provides for Reasonable Compensation to Class Members**

24 In seeking approval, a settling party must provide sufficient information to "enable the
25 court to make an independent assessment of the adequacy of the settlement terms." *Kullar v.*
26 *Foot Locker Retail, Inc.*, 168 Cal. App. 4th 116, 131-32 (2008). However, "[i]t is well-settled law
27 that a cash settlement amounting to only a fraction of the potential recovery will not per se render
28 the settlement inadequate or unfair." See *Officers for Justice v. Civil Serv. Comm'n of City & Cty.*

1 of San Francisco, 688 F.2d 615, 628 (9th Cir. 1982). “The proposed settlement is not to be judged
2 against a hypothetical or speculative measure of what might have been achieved by the
3 negotiators.” *Id.* at 625. “Estimates of a fair settlement figure are tempered by factors such as the
4 risk of losing at trial, the expense of litigating the case, and the expected delay in recovery (often
5 measured in years).” *In re Toys R Us-Delaware, Inc.-- Fair & Accurate Credit Transactions Act*
6 *(FACTA) Litig.*, 295 F.R.D. 438, 453 (C.D. Cal. 2014). In other words, in valuing the claims
7 within a realistic range of outcomes, the settling plaintiff should discount the value of the settled
8 claims for risks such as changes in the law, the probability of success, and other factors.

9 Settling parties are not, however, required to partake in a hypothetical accounting
10 exercise: “**Kullar does not ... require any such explicit statement of [maximum] value;** it
11 requires a record which allows ‘an understanding of the amount that is in controversy and the
12 realistic range of outcomes of the litigation.” *Munoz v. BCI Coca-Cola Bottling Co.*, (2010), 186
13 Cal. App. 4th 399, 409-10 (citing *Kullar*, 168 Cal. App. 4th at 120 (emphasis added). Overall,
14 “the most important factor” in determining “whether a settlement is fair and reasonable” is the
15 “strength of the case for plaintiffs on the merits, balanced against the amount offered in the
16 settlement.” *Id.* at 409 n.6 (quoting *Kullar*, 168 Cal. App. 4th at 130). As discussed further
17 below, the recovery of \$450,000 for the Settlement Class and PAGA aggrieved employees is well
18 within the range of reasonableness and undeniably fair, adequate and reasonable considering the
19 risks and hurdles of continued litigation.

20 Based on documents and information produced by Defendants in formal discovery, in
21 preparation for mediation and during settlement negotiations and taking into account the nature of
22 the claim and Defendant’s defenses thereto, Plaintiffs’ counsel estimated the maximum potential
23 liability as follows:

24 a. Failure to Pay Lawful Wages for All Hours Worked

25 Plaintiffs’ claim for failure to pay wages for all hours worked is based on allegations that
26 they and Class Members were required to clock in prior to the official start of their shift and
27 complete certain tasks for which they did not receive compensation. Plaintiffs further allege that
28 Defendant unlawfully rounded time clock punches to the detriment of its non-exempt employees.

1 Specifically, during the liability period, Pro Tech implemented a bell system in which bell rings
2 to indicate the start of the shift, meal and rest breaks and end of shift. Plaintiffs and Class
3 Members are required to clock in an estimated ten (10) minutes before the start of their shifts and
4 be ready to work by the start of first bell. (Hawkins Decl., ¶ 18(a).) Plaintiffs further allege that
5 Defendant implemented a timekeeping policy and practice which rounded their clock in time to
6 reflect the official start of the shift. Plaintiffs contend that due to Defendant's time clock rounding
7 policy, they and Class Members were not paid for the time spent under the direction and control
8 of Defendant and working "off the clock" prior to the official start of their shift; thus resulting in
9 a failure by Defendant to pay all lawful wages owed. (*Id.*)

10 Defendant adamantly disputes Plaintiffs' allegations that employees were required to
11 perform any work "off the clock" prior to the start of their shifts and claimed that Plaintiffs lacked
12 evidence of any "off the clock" work. Defendant also asserts that this claim would be difficult to
13 certify given the predominance of the individualized inquiry as to the whether, and to what extent,
14 each Class Member performed work "off the clock." (*Id.*) Defendant further disputes Plaintiffs'
15 time clock rounding claim and assert that it's time clock rounding policy is fair and neutral and
16 thus lawful under California law.

17 From the records provided, and based on Defendant's representation, Plaintiffs understood
18 the average hourly rate of pay to be approximately \$14.00. During the Class Period, Class
19 Members worked a collective total of approximately 33,833 workweeks and 142,099 shifts¹. Out
20 of this total approximate workweek amount, there is an estimated 106,000 shifts are over eight (8)
21 hours. Plaintiffs calculated the estimated, potential maximum value for the failure to pay lawful
22 wages claim based on an allocated 10 minutes of underpaid overtime per shift as \$2,355,227 (\$21
23 hourly overtime rate x 16 x 106,000 = \$356,150. Taking into consideration the nature of the claim
24 and Defendant's defenses thereto including the inability to establish the violation with respect to
25 all of the Class Members, this claim was valued in the 40% to 30% violation rate and thus
26 between an estimated maximum of \$142,460 and \$106,845 for purposes of settlement.

27 ¹ The workweeks and work shifts amounts include those pertaining to the 41 current and 30 former class members to
28 whom Defendant paid individual settlement amounts after this law suit was filed. (Hawkins Decl, 18(a); Settlement
Agreement, p. 2, ¶ 1.22)

1 b. Meal Period Claim

2 The meal period violation claim is based primarily on allegations that Pro Tech failed to
3 provide an uninterrupted thirty (30) minute meal break by the end of the fifth hour and failed to
4 pay putative Class Members, one hour of pay at their regular rate of compensation for each
5 workday that a meal period was not lawfully provided. Specifically, due requirements,
6 Defendant's policies and practices, Plaintiffs allege that they and Class Members routinely
7 worked in excess of five hours without being provided a compliant thirty-minute meal break.
8 (Hawkins Decl., ¶ 18(b).) By way of example, the aforementioned bell system Pro Tech used to
9 signal the start and end of the meal break. Plaintiffs allege that when the bell rang signaling the
10 start of the meal period, they and Class Members stopped working and walked towards the on-site
11 break room. Plaintiffs and Class Members, who worked in the clean room and had to don gear,
12 had to also doff the same gear when the meal break bell rang and then walk towards the break
13 room. When the bell rang signaling the end of the 30-minute meal period, employees were
14 already making their way back to their work areas. Plaintiffs allege that, due to the time that it
15 took to walk to and from the break room, including the time it took to doff the protective gear for
16 the clean room employees, they and Class Members were provided meal break that were less than
17 thirty minutes during each of their shifts (*Id.*)

18 Nonetheless, Defendant automatically deducted 30 minutes from the Plaintiffs and Class
19 Members' compensable time during their work shifts. In sum, Plaintiffs allege that Pro-Tech is
20 liable for failing to provide compliant meal periods to Plaintiffs and Class Members and for
21 failing to pay one (1) hour of the employee's regular rate of compensation in lieu thereof (*Id.*)

22 Defendant denies Plaintiffs' allegations and maintains that they and Class Members were
23 provided with the opportunity to take full, 30-minute meal periods to which they were entitled as
24 per compliant company policies. Further, Defendant adamantly disputes the propriety of
25 certification in this case. Defendant's position is that, under the holding in *Brinker* and other state
26 and federal decisions, Defendant fulfilled its legal obligations to non-exempt employees by
27 providing them with timely and proper meal periods. The maximum estimated liability for the
28 meal break claim, based on a 100% violation is \$1,883,952 (134,568 shifts x \$14.00) = \$) which

1 assumes a meal break violation during every meal break eligible work shift. However, taking into
2 consideration the nature of the claim, Defendant's defenses and certification issues faced due to
3 *Brinker*, for purposes of settlement, the meal break claim was valued between and estimated
4 maximum of \$565,185.6 (30%) and \$376,790 (20%). (*Id.*)

5 c. Rest Period Claim

6 The rest period violation claim is primarily based on allegations that, as with the meal
7 breaks, during the liability period, Defendant used the bell system to signal the start and end of
8 the ten minute rest periods for Plaintiffs and Class Members. Due to the time it took to walk to
9 the break room and back, especially for the employees who were required to doff the gear prior to
10 leaving on the rest break, Plaintiffs and Class Members were not provided a net 10 minute rest
11 break. As such, Plaintiffs and Class Members were not authorized or permitted to take a
12 minimum ten (10) minute rest period for every four hours or major fraction thereof, and were not
13 compensated one (1) hour of pay at their regular rate of compensation for each workday that a
14 lawful rest period was not provided, in violation of California labor laws, regulations, and IWC
15 Wage Orders (Hawkins Decl., ¶ 18(c).)

16 Pro Tech disputes Plaintiffs' rest break claim and contends that Class Members were
17 allowed to take ten minute rest periods and that the bell system did not preclude non-exempt
18 employees from taking compliant rest breaks. The maximum estimated liability for the rest break
19 claim, based on a 100% violation is \$1,989,386 (142,099 shifts x \$14.00) which assumes a rest
20 break violation during every work shift. Taking into consideration the nature of the claim,
21 Defendant's defenses and certification issues faced due to *Brinker*, for purposes of settlement,
22 the rest break claim was valued between an estimated maximum of \$198,938.6 (10%) and \$0 (*Id.*)

23 d. Failure to Timely Pay Wages

24 With respect to Lab. Code §203 claim, there were an estimated total of 89 former Class
25 Members to whom this claim applied. (Hawkins Decl., ¶ 18(d).) The estimated maximum
26 potential liability was determined to be \$307,022 based on the following: The estimated average
27 daily pay rate of \$112.00 for Class Members x 30 days= \$3,3601 x 89 Class Members = \$299,040
28 (Hawkins Decl., ¶ 18(d).)

1 Defendant once again defends that no unpaid wages are owed as Defendant did not fail to
2 pay the correct wages. Defendant further contends that its actions were not willful as required for
3 penalties to issue and that, thus, waiting time penalties cannot be awarded. For purposes of
4 settlement negotiations, said claim was valued between \$119,616 (40%) and \$89,712 20(30%)
5 (*Id.*)

6 e. Failure to Provide Accurate Itemized Wage Statements

7 Plaintiffs contend that Class Members are entitled to recover penalties for Defendant's
8 alleged failure to issue compliant wage statements under Lab. Code § 226 (e) for the derivative
9 impact of the failure to pay all wages owed in connection with alleged unpaid wages, failure to
10 pay meal period premiums, and failure to pay rest period premiums. Under Lab. Code § 226 (e),
11 an employee suffering "injury as a result of a knowing and intentional failure by an employer" to
12 provide accurate wage statements is entitled to \$50 for the initial violation and \$100 for each
13 subsequent violation up to \$4,000. (Hawkins Decl. ¶ 18 (e).)

14 Per information provided by Defendant, Plaintiffs believe there were 127 Class
15 Members working during the relevant time period. Thus, if a calculation is performed using
16 the maximum exposure permitted per Class Member under Labor Code section 226 (e), this
17 amounts to a maximum exposure for Defendant of \$508,000 (127 Class Members x \$4,000
18 penalties). However, some of the Class Members working during the relevant time period
19 may have worked for only one pay period during the relevant time period and some may have
20 worked for tens of pay periods. (*Id.*)

21 Furthermore, Defendant contends that the wage statements issued to the employees fully
22 complied with Lab. Code § 226. Defendant states that because it believes no wages are unpaid
23 that, thus, there can be no derivative penalties. However, Plaintiffs understand the risks inherent
24 in this claim should the underlying claims not be certified or not succeed on the merits, the
25 potential that a Court finds no injury occurred. As such, given the nature of this claim and taking
26 into account Defendant's defenses, and other attendant risks, for purposes of settlement
27 negotiations, Plaintiffs valued this claim between an estimated maximum of \$152,400 (30%) and
28 \$101,600 (20%) (*Id.*).

1 f. Bus. & Prof. Code § 17200 Claim

2 The only remedies available under the unfair competition law (“UCL”) Business and
3 Professions Code Section 17200 et seq. are restitution and injunction, as opposed to damages
4 *Clark v. Superior Court*, (2010) 50 Cal. 4th 605, 610. The UCL provides that “[t]he court may
5 make such orders or judgments ... as may be necessary to restore to any person in interest any
6 money or property, real or personal, which may have been acquired by means of such unfair
7 competition.” (Bus. & Prof. Code, § 17203.) Restitution under the UCL includes “earned wages.”
8 *Cortez v. Purolator Air Filtration Prods. Co.*, (2000) 23 Cal. 4th 163, 177-78 (Hawkins Decl., ¶
9 18(f).)

10 Restitution under the UCL is not available for all violations of the Labor Code. See
11 *Pineda v. Bank of Am., N.A.*, (2010) 50 Cal. 4th 1389, 1401-02. In *Pineda*, the California
12 Supreme Court held Labor Code § 203 is “not designed to compensate employees for work
13 performed [but] it is intended to encourage employers to pay final wages on time, and to punish
14 employers who fail to do so.” *Id.* Like Labor Code section 203, section 226 for wage statement
15 violations is also intended to “punish” the employer and is not an action brought to recover
16 wages. See *Gomez v. Jacobo Farm Labor Contractor, Inc.*, (2019) 334 FRD. 234, 267-268 (*Id.*)

17 Here, Plaintiffs’ UCL claim is solely premised on the failure to pay lawful wages and
18 premium wages claims discussed above. Class Counsel assigned a zero dollar value to the UCL
19 claim because it does not provide any additional value in this Action other than to increase the
20 statute of limitations to four years for the underlying claims. Those claims are valued and
21 analyzed above based on the four year statute of limitations provided by the UCL. However, the
22 UCL claim in and of itself does not provide any additional damages. Therefore, there is no
23 additional or separate monetary value that this statute provides based on the facts of this Action
24 (*Id.*)

25 g. Expense Reimbursement Claim Lab. Code § 2802

26 Although Plaintiffs Huerta and Sanchez do not allege a claim under Lab. Code § 2802,
27 Plaintiff Avalos brought a claim for expense reimbursement, based on allegations that she and
28 other Class Members were required to use their personal cell phones, and purchase their own

1 tools in the execution of their job duties without reimbursement ((Hawkins Decl., ¶ 18(g).)
2 Declaration of Phillip Song ¶ 5.)

3 Defendant disputes this allegation and contends that Class Members were not required to
4 use their personal phones and that it is against Defendant's policies and practices to do so.
5 Defendant further contends that Class Members were never required to purchase any equipment
6 in the performance of their job duties. After further review and analysis, Plaintiff Avalos has
7 determined that said claim is not viable on a class wide basis given the predominance of the
8 individualized inquiry as to the whether and to what extent each class member used their personal
9 phones and/or purchased any tools in the performance of their job duties. For example, Plaintiff
10 Huerta and Sanchez did not have to use their personal phones or purchase any tools in the
11 performance of their job duties. As such, this claim was provided a value of \$0 for purposes of
12 settlement (*Id.*)

13 h. Lab. Code § 2699 (PAGA Claim)

14 Plaintiffs' claims under PAGA are primarily predicated on or derivative of the rest and
15 meal break claims. The estimate maximum PAGA penalty was calculated as \$913,200. This
16 figure attributes a \$100 penalty to each of the estimated 9,132 pay periods in scope during the
17 PAGA period. The figure also assumes that there is a 100% violation rate during the PAGA
18 period, such that every single pay period in question involved at least one Labor Code violation,
19 despite disputes regarding Defendant's liability. (Hawkins Decl., ¶ 18(f).) However, PAGA
20 claims under the facts and circumstance of this case may result in no award or at best a very
21 minimal award by the trial court. See specifically §2699(e)(2) which states in its pertinent part:

22 "... a court may award a lesser amount than the maximum civil penalty amount
23 specified by this part if, based on the facts and circumstances of the particular case, to do
24 otherwise would result in an award that is unjust, arbitrary and oppressive, or confiscatory."

25 For instance, in *Fleming v. Covidien*, 2011 U.S. Dist. LEXIS 154590 (C.D. Cal. 2011), a
26 federal court reduced PAGA penalties from \$2,800,000 to \$500,000, a reduction of 82.2%,
27 because the court found maximum penalties "unjust" because the employees had suffered no
28 injuries. Some trial courts have actually awarded no civil penalties, even when Labor Code

1 violations are established. *See Makabi v. Gedalia*, 2016 Cal. App. Unpub. 1489, *5 7 (2nd Dist.
2 Ct. of App. Mar. 6, 2016) (no PAGA penalties were awarded by the Los Angeles County
3 Superior Court) (unpublished decision); *In re Taco Bell Wage & Hour Actions*, 2016 U.S. Dist.
4 LEXIS 48557, *40 43 (E.D. Cal. Apr. 6, 2016) (PAGA penalties denied after trial).

5 In order to recover any PAGA penalties, Plaintiffs would be required at trial to prove each
6 of the underlying Labor Code violations. *See Cardenas v. McLane Foodservice, Inc.*, 2011 U.S.
7 Dist. LEXIS 13126, *10 (C.D. Cal. 2011) ("Given the statutory language [of PAGA], a plaintiff
8 cannot recover on behalf of individuals whom the plaintiff has not proven suffered a violation of
9 the Labor Code by the defendant."). Here, Plaintiffs would need to prove that each PAGA
10 Aggrieved Employee suffered all violations for each pay period the employee worked. As
11 discussed herein, the nature of the PAGA based claims (i.e. rest break, meal period, wage
12 statement, failure to pay all wages owed and to timely pay wages) and Defendant's asserted
13 defenses thereto present a risk that some or all of the PAGA penalties sought may not be
14 awarded. Given the nature of these claims, as analyzed above, Class Counsel believes it to be
15 likely that if there would be any award it would be a minimal amount. Therefore, the amount of
16 \$100,000 (which has been reserved for the PAGA claim) is both fair and reasonable (*Id*)

17 Through their counsel, Plaintiffs took into consideration the significant risks that class
18 certification could be denied on the central claim, or that a merits decision on the central claim
19 would not favor the Class. Plaintiffs have considered the expense and length of continued
20 proceedings necessary to continue the Action against Pro Tech through trial and any possible
21 appeals. Plaintiffs are also aware of the burdens of proof necessary to establish liability for the
22 claims asserted in the Action, Pro Tech's defenses thereto, and the difficulties in establishing
23 Plaintiffs' damages. (Hawkins Decl., ¶ 19.)

24 The proposed Settlement requires Defendant to pay each Class Member who does not opt
25 out a portion of the Net Settlement Amount as specifically set forth in the Settlement Agreement.
26 (Hawkins Decl., ¶ 20.) The amount to be paid to the Class is undoubtedly fair, adequate and
27 reasonable especially in light of the significant risk to Plaintiffs and Class Members in continuing
28 with the litigation and not prevailing on class certification or at trial. (*Id.*)

1 For all the foregoing reasons, the proposed Settlement Agreement is fair, adequate and
2 reasonable, and is in the best interests of the Class Members.

3 **C. The Class Representative Payment and Class Counsel Fees Are Reasonable**
4 **and Should be Awarded**

5 The Settlement Agreement provides for an award to be paid to the Class Representatives.
6 The primary purpose is to provide Plaintiffs Adriana Huerta, Maria Sanchez and Estephany
7 Avalos an enhancement payment, taking into consideration the risks, time, effort and expenses
8 incurred by them in coming forward to provide invaluable information and negotiate and litigate
9 this matter on behalf of all Class Members. (Hawkins Decl., ¶ 21.) Plaintiffs have actively
10 participated in this litigation by providing significant supporting documents and information and
11 assisting counsel in developing information necessary to litigate and settle this case which has
12 resulted in a favorable settlement for the putative Class Members. (*Id.*) Thus, the payment of
13 \$7,500.00 each to the Class Representatives represents a small portion of the aggregate settlement
14 amount and should be awarded.

15 Further, as will be discussed in more detail in Plaintiffs' motion for final approval of the
16 Settlement, class counsel fees in the amount of \$309,636.34 is reasonable within California's
17 standard benchmark and well within the range customarily approved by the California courts in
18 comparable class actions.

19 **VI. PROVISIONAL CLASS CERTIFICATION IS APPROPRIATE**

20 In addition to such terms as class definition, settlement amounts and payment procedures,
21 the Settlement Agreement reached between the Parties contains a provision to which the Parties
22 stipulate to the Court's provisional certification of the Class, but do so for the purposes of this
23 settlement only. Plaintiffs now requests this Court to provisionally certify the Class.

24 It is well established that trial courts should use a lower standard for determining the
25 propriety of certifying a settlement class, as opposed to a litigation class. (*Dunk v. Ford Motor*
26 *Co.*, (1996) 48 Cal.App.4th at 1794, 1807, fn. 19.) Under California law, a class action is
27 appropriate when the Class is ascertainable and there is a "well defined community of interest in
28 the questions of law and fact affecting the parties to be represented." (Code Civ. Proc., §382;

1 *Dunk*, 48 Cal. App. 4th at 1806.) State law requirements under *California Code of Civil*
2 *Procedure* section 382 for class certification largely mirrors *Federal Rules of Civil Procedure*
3 Rule 23 – namely, numerosity and typicality of the class representative’s claims, adequacy of
4 representation, predominance of common issues and superiority. As discussed below, although
5 Defendant adamantly disputed and continues to dispute Plaintiffs’ ability to certify a litigation
6 class, all of the requirements of certification for settlement purposes are met for the proposed
7 settlement Class.

8 **A. The Proposed Class is Ascertainable**

9 Here, the proposed class is ascertainable because all of the Class Members are/were
10 employed directly by Pro Tech and received their compensation directly from Pro Tech. The
11 Class Members have been identified through Defendant’s employee and personnel files. (See
12 *Rose v. City of Hayward* (1981) 126 Cal. App. 3d 926, 932 [“Class Members are ‘ascertainable’
13 where they may be readily identified without unreasonable expense or time by reference to
14 official records”].)

15 **B. Numerosity of the Class is Sufficient**

16 If the class is sufficiently large that joinder of all members is impractical or that individual
17 joinder is impractical, the numerosity requirement is met. (*Hebberd v. Colgrove* (1972) 28
18 Cal.App.3d 1017, 1030.) Here, the proposed class consists of approximately 269 members,
19 consisting of current and former employees of Defendant. Therefore, joinder of individual claims
20 would be impractical and the numerosity requirement is met.

21 **C. There are Common Questions of Law and Fact to the Class**

22 Commonality is met if there are common questions of fact and law to the class. (*Hanlon v.*
23 *Chrysler Corp.* 150 F.3d at 1019 [“The existence of shared legal issues with divergent legal
24 factual predicates is sufficient, as is a common core of salient facts coupled with disparate legal
25 remedies within the class”].) Here, Plaintiffs allege that the proposed Class Members’ claims all
26 stem from the same alleged conduct. Specifically, Plaintiffs allege that Pro Tech violated
27 California wage and hour law by (1) failure to pay lawful wages including overtime wages; (2)
28 failure to provide lawful meal periods or compensation in lieu thereof; (3) failure to provide rest

1 periods or compensation in lieu thereof; (4) knowing and intentional failure to comply with
2 itemized employee wage statement provisions (5) failure to timely pay wages (6) failure to
3 reimburse for employee expenses, and; (7) violations of the unfair competition law. Plaintiffs
4 seek recovery of all alleged wages, premium wages, penalties and interest pursuant to the
5 California Labor Code, the California Industrial Welfare Commission (“IWC”) Wage Orders,
6 Bus. & Prof. Code § 17200 *et seq.*, and PAGA. Although Defendant disagrees with Plaintiffs’
7 contentions for purposes of certifying a litigation class, for purposes of a settlement class, these
8 circumstances create questions of law and fact common to all proposed Class Members.

9 **D. The Typicality Requirement is Met**

10 The typicality requirement is met if the claims of the named Class Representatives are
11 typical of those of the class, though “they need not be substantially identical.” (*Hanlon* 150 F.3d
12 at 1020.) Factual differences may exist between the Class and the Class Representative(s) so long
13 as the claims arise from the same events or course of conduct and are based on the same legal
14 theories. (*Id.*) Here, the claims of the Class Representatives are typical of the other Class
15 Members because they arise from the same factual basis and are based on the same legal theories
16 as those applicable to all Class Members. (*Wherner v. Syntex* (N.D. Cal. 1987) 117 F.R.D. 641,
17 644.) Thus, for purposes of a settlement class, the typicality requirement is met.

18 **E. The Adequacy Requirement is Met**

19 If the named representative and his or her counsel have no interests adverse to the interest
20 of the proposed Class Members and are committed to vigorously prosecuting the case on behalf
21 of the class, then the adequacy requirement is met. (*McGhee v. Bank of America*, (1976) 60 Cal.
22 App. 3d 442,450.) Here, under the proposed settlement, the Class Representatives will receive a
23 reasonable award for their time and efforts assisting counsel with factual issues surrounding the
24 case and risk incurred in bringing this action on behalf of the Class Members. Other than this
25 specific payment, all Class Members will receive a percentage of the Net Settlement Amount
26 based on his or her respective number of covered work weeks. Therefore, no “settlement
27 allocation” questions are raised. (*Hanlon* 150 F.3d at 1020.)
28

Any Class Member who submits a valid and timely Request for Exclusion is a Non-Participating Class Member and shall not receive an Individual Class Payment or have the right to object to the class action components of the Settlement. (Settlement Agreement, p. 11, ¶ 7.5.4). As a result, there is no conflict of interest between the Class Representatives and the Class Members. Additionally, the Class Representatives and their counsel have been committed to prosecuting this action on behalf of the Class.

F. Common Issues Predominate and Class-wide Settlement is Superior to Other Available Methods of Resolution

Class certification is authorized where common questions of law and fact predominate over individual questions and where class-wide treatment of a dispute is superior to individual litigation. (*Richmond v. Dart Industries, Inc.*, (1981) 29 Cal.3d 462, 469.) The test is whether the proposed class is sufficiently cohesive to warrant adjudication by representation. (*Hanlon, supra*, at p. 1022.) Plaintiffs contend that the proposed Class in this case is sufficiently cohesive, since all Class Members share a “common nucleus of facts and potential legal remedies.” Specifically, all of the Class Members and the Class Representatives seek compensation for alleged unpaid wages, premium wages for failure to provide compliant meal and rest breaks, as well as penalties and interest for the allegations described herein; common questions about compensation or lack thereof for worked performed by Class Members predominate over individual questions, and the Class Members’ potential legal remedies are identical. (*Id.*) Although Defendant disagrees with Plaintiffs’ contentions, it has agreed the Class may be certified for settlement purposes only.

Additionally, particularly in the settlement context, class resolution is superior to other methods for the fair and efficient adjudication of the controversy. (*Hanlon*, 150 F. 3d at p. 1023; *Dunk, supra*, 45 Cal. App. 4th at p. 1087.) The superiority requirement involves a “comparative evaluation of alternative mechanisms of dispute resolution.” (*Hanlon, supra*, at p. 1023.) Here, the alternative methods of resolution are a plethora of individual claims from potentially over 674 plaintiffs. The class action device can thus conserve judicial resources by avoiding the waste and delay of repetitive proceedings and prevent inconsistent adjudication of similar issues and claims. (*Sav-On Drug Stores, Inc. v Superior Court* (2004) 34 Cal. 4th 319, 340; *Bell v Farmers*

1 *Ins. Exchange* (2004) 115 Cal.App.4th 715, 741.) Therefore, settlement on a class-wide basis is
2 superior.

3 **VII. THE PROPOSED CLASS NOTICE IS APPROPRIATE**

4 The Class Notice is attached as Exhibit A to the Settlement Agreement. The Class Notice
5 provides the requisite, pertinent information to Class Members and the options available to them.
6 Should a Class Member wish to exclude themselves from the Settlement, they can send a request
7 for exclusion to the settlement administrator. Should a Class Member wish to object to the
8 Settlement, they can object as described in the Notice. If a Class Member does nothing in
9 response to the Notice, the Class Member will be mailed an individual settlement payment.

10 **A. The Class Notice Satisfies Due Process**

11 California statutory and case law vests the Court with broad authority to fashion an
12 appropriate notice process. (Cal. Rules of Court 3.760 *et seq.*) A proposed method of notice of a
13 proposed settlement is fair, adequate and reasonable if it has “a reasonable chance of reaching a
14 substantial percentage of the Class Members. (*Cartt v. Superior Court*, (1975) 50 Cal. App. 3d
15 960, 974.) The Notice plan described herein entails mailing the Notice to all known and
16 reasonably ascertainable Class Members based on Defendant’s payroll records and provides for a
17 reasonable chance of reaching a significant percentage of Class Members. (See section III (D)
18 herein.) Further, such individual notice by first class mail is routinely approved as consistent with
19 due process. (See, *e.g.*, MANUAL at §§21.311, 21.312; Wright & Miller, Fed. Practice &
20 Procedure §1797.6 [“Of course, notice by mail to all of the identified Class Members . . . will
21 suffice.”] (citing cases).) The Notice is consistent with the class certification notices approved by
22 numerous state and federal courts and is the best notice practicable under circumstances of this
23 case.

24 **B. The Proposed Class Notice is Accurate and Informative**

25 Not only is the manner of the proposed notice proper, so too is the content of the said
26 notice. The proposed notice provides information on the meaning and the nature of the proposed
27 settlement, the terms and provisions of the settlement, the relief the settlement will provide the
28 Class Members, the application of Plaintiffs’ counsel for reimbursement of costs and attorneys’

1 fees from the settlement amount, the date, the time and place of the Final Fairness and Approval
2 Hearing, and the procedure and deadlines for opting out of the Settlement or for submitting
3 comments and objections. (Cal. Rule of Court 3.769(f).)

4 The Notice also fulfills the requirement of neutrality in class notices. (2 NEWBERG
5 §8.39.) It summarizes the proceedings to date and the terms and conditions of the settlement in an
6 informative and coherent manner, in compliance with the MANUAL’S statement, “the notice
7 should be accurate, objective, and understandable to Class Members.....” (MANUAL at §30.21.)
8 The Notice clearly states the settlement does not constitute an admission of liability by Pro Tech
9 and recognizes the Court has not ruled on the merits. It also states the final settlement approval
10 decision has yet to be made. Accordingly, the Notice complies with the standards of fairness,
11 completeness and neutrality required of a settlement class notice disseminated under the authority
12 of the Court. (F.R.C.P. 23(c)(2).)

13 Moreover, the Notice comports with CA Rules of Court, Rule 3.766(d). As per Rule
14 3.766, the contents of the Notice providing for an opt out procedure for the Class Members must
15 include the following:

- 16 (1) A brief explanation of the case, including the basic contentions or denials of
17 the parties;
- 18 (2) A statement that the Court will exclude the member from the class if the
19 member so requests by a specified date;
- 20 (3) A procedure for the member to follow in requesting exclusion from the class;
- 21 (4) A statement that the judgment, whether favorable or not, will bind all members
22 who do not request exclusion; and
- 23 (5) A statement that any member who does not request exclusion may, if the
24 member so desires, enter an appearance through counsel.

25 The Class Notice contains the information required under Rule 3.766(d). (See Ex. A
26 attached to Settlement Agreement.)
27
28

1 **VIII. CONCLUSION**

2 Based on the foregoing, Plaintiffs respectfully request that the Court enter the Proposed
3 Order Granting Preliminary Approval submitted concurrently herewith, and thus:

4 1. Grant preliminary approval of the Settlement Agreement, and certify the
5 Settlement Class for the purposes of settlement only;

6 2. Confirm named Plaintiffs Adriana Huerta, Maria Sanchez and Estephany Avalos
7 as the Class Representatives, and James R. Hawkins, Isandra Fernandez and Lance Dacre of
8 James Hawkins APLC, and Joseph Lavi of Lavi & Ebrahimian as Class Counsel;

9 3. Approve and appoint Simpluris, Inc. as Settlement Administrator;

10 4. Enter an Order preliminarily approving the proposed settlement and approving the
11 Notice; and
12

13 5. Schedule the Final Approval Hearing Date on _____, 2023; (to be
14 determined by the Court at the hearing for preliminary approval of settlement.

15
16 Respectfully submitted,

17 Dated: April 14, 2023

JAMES HAWKINS, APLC

18 

19 James R. Hawkins, Esq.

20 Isandra Y. Fernandez, Esq.

21 Lance Dacre, Esq.

22 Kacey E. Cook, Esq.

23 Attorneys for Plaintiffs

24 Adriana Huerta and Maria Sanchez
25
26
27
28