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

OSMAN VENTURA, as an individual and on
behalf of all others similarly situated,

Plaintiff,

vs.

KAY & JAMES, INC., a California
corporation, dba J & S MACHINE WORKS;
and DOES 1 through 100,

Defendants.

Case No. 19STCV25743

*[Assigned for all purposes to the
Hon. Stuart M. Rice, Dept. SSC-1]*

**DECLARATION OF PAUL K.
HAINES IN SUPPORT OF
PLAINTIFF'S MOTION FOR
PRELIMINARY APPROVAL OF
CLASS ACTION SETTLEMENT**

Date: January 9, 2023

Time: 10:30 a.m.

Dept.: SSC-1

Action Filed: July 24, 2019

Trial Date: None Set

1 I, PAUL K. HAINES, declare as follows:

2 1. I am a shareholder and principal of Haines Law Group, APC, and counsel for the
3 named Plaintiff Osman Ventura (“Plaintiff”) and the proposed Settlement Class in the above-
4 captioned matter. I am a member in good standing of the bar of the State of California and am
5 admitted to practice in this Court. I have personal knowledge of the facts stated in this declaration
6 and could testify competently to them if called upon to do so.

7 2. I am a 2006 graduate of Pepperdine University School of Law, where I graduated
8 cum laude. During law school, I worked as a law clerk for the appellate firm of Horvitz & Levy,
9 located in Encino, California. I also spent a semester in law school working as an extern for the
10 Honorable Edward Rafeedie, District Judge for the United States District Court for the Central
11 District of California.

12 3. Since graduating from law school, my practice has focused almost exclusively on
13 employment litigation. In September 2007, I began working as an associate attorney at the
14 international law firm of Littler Mendelson P.C., at its Los Angeles office, which according to its
15 website is the “largest U.S.-based law firm exclusively devoted to representing management in
16 every aspect of labor and employment law.” While at Littler Mendelson, I was primarily staffed
17 on wage and hour class actions venued in both state and federal courts, and I also worked on a
18 number of single and multi-plaintiff wage and hour matters as well.

19 4. During my employment at Littler Mendelson, I played a significant role in the
20 class actions that I was staffed on, as I was often the only associate staffed on such cases. In
21 particular, I received a wide-array of wage and hour class action experience performing the
22 following types of tasks: drafting demurrers, motions to strike and/or dismiss; removing actions
23 from state court to federal court; drafting and responding to written discovery; drafting and
24 opposing discovery related motions; arguing discovery related motions; drafting motions to
25 consolidate related matters; interviewing putative class members and obtaining declarations in
26 connection with class certification; drafting oppositions to motions for class certification; drafting
27 motions for decertification following class certification; conducting exposure analyses to assess
28 the strengths and weaknesses of asserted claims, the likelihood of prevailing at class certification

1 and potential damages resulting from such claims; drafting mediation briefs; serving as the
2 primary contact to in-house counsel; deposing named plaintiffs and putative class members;
3 deposing retained expert witnesses; and defending the depositions of corporate witnesses. In
4 short, I played an integral role in all aspects of litigation from the inception of a matter through
5 and beyond class certification. I also supervised the work of several junior attorneys who were
6 staffed on the same wage and hour class actions.

7 5. In June 2011, I voluntarily resigned from Littler Mendelson in order to accept an
8 associate attorney position with the international law firm of Morgan, Lewis & Bockius LLP, at
9 its Los Angeles office, where I began working in July 2011. During my employment at Morgan,
10 Lewis & Bockius LLP, I worked exclusively on the defense of wage and hour class and collective
11 actions. For the vast majority of these cases, I was the only associate staffed on the matter, and I
12 performed the same job duties as described in the immediately preceding paragraph. In addition
13 to working on wage and hour class actions, I also worked on a number of “hybrid” actions
14 asserting nationwide wage and hour claims under the Fair Labor Standards Act (“FLSA”), as well
15 as California-specific claims under Rule 23 of the Rules of Civil Procedure.

16 6. In July 2012, I transitioned into litigating wage and hour class actions from the
17 Plaintiff’s side, first as a Partner with the law firm of Boren, Osher & Luftman, LLP, and since
18 February 2016, as a Shareholder of the Haines Law Group, APC. Currently, over ninety percent
19 (90%) of my practice is dedicated exclusively to the prosecution of wage and hour class actions,
20 and I am currently responsible for prosecuting over fifty (50) wage and hour class actions filed in
21 both State and Federal courts throughout California. I have been appointed as Class Counsel in
22 over one hundred (100) wage and hour class action settlements in state and federal courts within
23 California. A few examples of the matters in which I have been appointed as Class Counsel, all
24 of which have been granted final approval, include the following: *Sanchez v. Res-Care, Inc.*, Case
25 No. BC526175, California Superior Court, County of Los Angeles, Hon. John Shepard Wiley,
26 Jr., presiding; *Prado v. Warehouse Demo Services, Inc.*, Case No. CV14-3170 JFW (Ex), United
27 States District Court, Central District of California, Hon. John F. Walter presiding; *Tesla Motors*
28 *Wage and Hour Litigation*, JCCP 4792, California Superior Court, Santa Clara County, Hon.

Peter H. Kirwan presiding; *Bower v. Cycle Gear, Inc.*, Case No. CV14-2712 HSG, United States District Court, Northern District of California, Hon. Haywood S. Gilliam, Jr. presiding; *Longstreth v. PAQ, Inc., dba Food 4 Less*, Case No. 15CV-0206, California Superior Court, County of San Luis Obispo, Hon. Charles S. Crandall presiding; *Nunez v. CompuCom Systems, Inc.*, Case No. BC618385, California Superior Court, County of Los Angeles, Hon. John Shepard Wiley, Jr. presiding; *Mansilla v. Haeco Americas Line Services, LLC, et al*, Case No. BC615310, Superior Court of California, County of Los Angeles, Hon. Elihu M. Berle presiding; *Leverage, et al v. Traeger Pellet Grills, LLC, et al*, Case No. 4:16-cv-00784-KAW, United States District Court, Northern District of California, Hon. Kandis A. Westmore presiding.

7. I have also moved to certify and have received an order certifying a class action and/or conditionally certifying a collective action, in the following cases:

- *Medeiros v. Vortex Financial Management Inc.*, Case No. 30-2013-00644741-CU-OE-CXC, California Superior Court, County of Orange, Honorable Judge Gail A. Andler, presiding (certifying a class of employees who were misclassified as independent contractors);
- *Javine v. San Luis Ambulance Service, Inc.*, Case No. CV13-07480 BRO (SSx), United States District Court, Central District of California, Honorable Judge Beverly Reid O’Connell, presiding (conditionally certifying an unpaid FLSA overtime wage class);
- *Prado v. Warehouse Demo Services, Inc.*, Case No. CV14-3170 JFW (Ex), United States District Court, Central District of California, Honorable Judge John F. Walter, presiding (certifying a rest period violation class and conditionally certifying an FLSA unpaid overtime wage class);
- *Bower v. Cycle Gear, Inc.*, Case No. CV14-2712 HSG, United States District Court, Northern District of California, Honorable Judge Haywood S. Gilliam, Jr., presiding (conditionally certifying an unpaid FLSA overtime wage class);
- *Vega v. Weatherford U.S., Limited Partnership*, Case No. CV14-1790-JLT, United States District Court, Eastern District of California, Honorable Jennifer L. Thurston, presiding (conditionally certifying an unpaid FLSA overtime wage class);

- 1 • *Galvan v. AMVAC Chemical Corporation*, Case No. 30-2014-00716103-CU-OE-CXC,
2 California Superior Court, County of Orange, Honorable Judge William Claster, presiding
3 (certifying unpaid overtime wage class and waiting time penalty class);
- 4 • *Camacho v. Residential Fire Systems, Inc.*, Case No. 30-2015-775372-CU-OE-CXC,
5 California Superior Court, County of Orange, Honorable Glenda Sanders, presiding
6 (certifying piece rate pay plan classes, expense reimbursement class, wage statement
7 class, and waiting time penalties class);
- 8 • *Ontiveros v. Safelite Fulfillment, Inc., et al*, Case No. CV 15-7118-DMG (RAOx), United
9 States District Court, Central District of California, Honorable Dolly M. Gee presiding
10 (certifying six classes of employees for rest period violations, wage statement violations,
11 meal period violations, and overtime and double-time violations);
- 12 • *Vazquez, et al v. Kraft Heinz Foods Company*, Case No. 16-cv-2749-WQH-BLM, United
13 States District Court, Southern District of California, Honorable William Q. Hayes
14 presiding (certifying six classes of employees for unpaid wages, meal period violations,
15 wage statement violations, and waiting time penalties);
- 16 • *Caudle, et al. v. Sprint/United Management Company, et al.* Case No. C 17-06874-WHA,
17 United States District Court, Northern District of California, Honorable William H. Alsup
18 presiding (certifying three classes of employees for unlawful wage deduction violations,
19 wage statement violations, and waiting time violations);
- 20 • *Staublein v. Wells Fargo Bank*, No. CIVDS1712267, San Bernardino County Superior
21 Court, Honorable David S. Cohn presiding (certifying wage statement class);
- 22 • *Perez v. Sunbelt Rentals, Inc.* Case No. 37-2018-00026405-CU-OE-CTL, California
23 Superior Court, County of San Diego, Honorable Eddie C. Sturgeon presiding (certifying
24 class of employees for wage statement violations); and
- 25 • *Bowlin-Burdick, et al v. Life Care Centers of America, Inc.*, Case No. BC657139, Los
26 Angeles County Superior Court, Honorable Maren E. Nelson presiding (certifying four
27 classes for meal period violations, rest period violations, wage statement violations, and
28 waiting time penalties).

1 8. In 2015, 2016, and 2017, Thomson Reuters recognized me as a Top Young
2 Attorney in Southern California in the annual Rising Stars Edition of Super Lawyer. This is an
3 honor awarded to no more than two-and-a-half percent of attorneys under the age of forty in
4 Southern California each year. In 2018, 2019, 2020, and 2021, Thomson Reuters recognized me
5 as a “Super Lawyer” in the annual Super Lawyer magazine, an honor awarded to no more than
6 five percent of all attorneys in Southern California each year.

7 9. As counsel for Plaintiff and the proposed Settlement Class, I have been intimately
8 involved in every aspect of this case from its inception through the present, and I believe that the
9 proposed Settlement is an excellent result for the Settlement Class.

10 10. The proposed Stipulation of Settlement (“Settlement” or “Settlement Agreement”)
11 is attached hereto as **Exhibit 1**. The proposed Class Notice and Notice of Estimated Individual
12 Settlement Payment are attached to the Settlement as **Exhibits A, and B**, respectively.

13 11. In business since 1981 and based in Sylmar, California, Defendant Kay & James,
14 Inc., dba J&S Machine Works (“Kay & James”) manufactures industrial machinery and
15 equipment, primarily for the airline industry. Plaintiff was employed by Kay & James as a non-
16 exempt employee from approximately June 2007 until approximately April 11, 2018.

17 12. On July 24, 2019, Plaintiff filed the instant action against Kay & James, alleging
18 claims for failure to pay overtime and minimum wages, failure to provide meal periods, failure to
19 authorize and permit rest periods, failure to issue accurate itemized wage statements, failure to
20 timely pay all final wages, failure to pay all wages at the agreed-upon rate, and unfair competition.
21 As part of the Settlement, the Parties stipulated to the filing of a First Amended Class and
22 Representative Action Complaint (“FAC”) which adds a cause of action for civil penalties under
23 the PAGA. On December 12, 2022, Plaintiff filed the FAC. Attached hereto as **Exhibit 2** is a true
24 and correct copy of Plaintiff’s correspondence to the Labor & Workforce Development Agency
25 (“LWDA”).

26 13. The Parties engaged in significant formal and informal discovery in this Action.
27 Plaintiff propounded multiple sets of written discovery seeking, among other items, class contact
28 information, timekeeping and payroll records for putative class members, and Kay & James’

1 written wage and hour policies. The Parties completed a *Belaire-West* opt-out notice process and
2 Plaintiff was provided with the contact information for those putative class members who did not
3 opt-out of the *Belaire-West* process. Thereafter, Plaintiff interviewed Settlement Class members
4 regarding their work experiences with Kay & James. Plaintiff also responded to Kay & James’
5 written discovery, including interrogatories and requests for documents. On September 10, 2021,
6 the Parties attended a mediation with William E. Klatte, Esq., however, the Parties were unable
7 to reach a settlement and the Parties continued their class certification discovery.

8 14. While conducting formal discovery, the Parties agreed to attend a second
9 mediation session. In connection with this second mediation, Kay & James produced timekeeping
10 and payroll data for 25% of employees during the Class Period, its written policies in effect during
11 the Class Period, as well as relevant data points including the number of non-exempt employees
12 employed during the Class Period and the number of workweeks worked during the Class Period.
13 Plaintiff conducted a comprehensive analysis and extrapolation of the timekeeping and payroll
14 data to calculate Kay & James’ potential exposure for each of Plaintiff’s claims. This discovery
15 allowed the Parties to assess the merits and value of Plaintiff’s claims, the chances of certification
16 of Plaintiff’s claims, and Kay & James’ potential defenses.

17 15. On May 17, 2022, the Parties attended a full-day mediation with Jeffrey A. Ross,
18 Esq, an experienced wage and hour class action mediator. During mediation, the Parties
19 vigorously debated their legal positions, the likelihood of certification of Plaintiff’s claims, and
20 the legal bases for the claims and defenses. At the conclusion of the mediation, Mr. Ross issued
21 a mediator’s proposal for a class-wide settlement, which was ultimately accepted by the Parties.
22 During the months that followed, the Parties negotiated and finalized the long-form Settlement
23 now before the Court.

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16. The monetary terms of the Settlement are summarized below:

• Gross Settlement Amount (“GSA”):	\$1,250,000.00
• Minus Court-approved attorneys’ fees (one-third):	\$416,666.66
• Minus Court-approved verified costs (up to):	\$35,000.00
• Minus Court-approved Enhancement Payment:	\$7,500.00
• Minus Amount Set Aside as PAGA penalties:	\$50,000.00
• <u>Minus estimated settlement administration costs:</u>	<u>\$7,500.00</u>
Net Settlement Amount (“NSA”):	\$733,333.34
PLUS 25% of PAGA penalties (“PAGA Amount”):	\$12,500.00
Total Amount Paid to Settlement Class:	\$745.833.34

17. According to Kay & James, there are approximately 158 Settlement Class members. Thus, the average Individual Settlement Payment from the NSA is estimated to be approximately \$4,641.35. Further, Kay & James represents that there are approximately 105 employees who fall within the PAGA Period. Therefore, the average PAGA share is estimated to be approximately \$119.05.

18. As described in the accompanying Motion for Preliminary Approval of Class Action Settlement, Plaintiff contends that Kay & James underpaid Settlement Class members up until November 2019 due to its allegedly unlawful rounding policies/practices. Plaintiff alleges that Kay & James’ rounding policies/practices were not even handed and resulted in a systematic underpayment to Settlement Class members. Based on Plaintiff’s review of employee timekeeping and payroll records, Plaintiff contends that Kay & James’ rounding policies/practices resulted in approximately 10,507 net hours of unpaid wages. Because employees generally worked shifts of 8.0 hours or more, Plaintiff contends these unpaid wages need to be paid at an overtime rate of pay. Based upon the average rate of pay of \$21.66 during the Class Period, Plaintiff estimates that Kay & James’ maximum exposure for this claim is approximately \$341,372 (10,507 unpaid hrs. * \$21.66 * 1.5 (overtime premium)). However, Kay & James argues that its rounding practices were lawful, since it was both neutral on its face and resulted, over time, in employees being paid for all hours worked. Kay & James also contends that multiple Courts of Appeal have found rounding mechanisms to be lawful under similar circumstances. Kay & James further argues that just because an employee is clocked in does not mean they are *working*. Moreover, Kay & James asserts the amount of unpaid time per shift is *de minimis* and

1 thus non-compensable. Lastly, Kay & James contends this claim was not certifiable, since its
2 rounding policy is facially neutral and some employees were *overpaid* due to rounding, and
3 individualized inquiries would be necessary as to whether employees were in fact underpaid or
4 overpaid for each workday in question (including whether they were actually working when they
5 were clocked in), resulting in an unmanageable series of mini-trials. Based on these defenses,
6 Plaintiff discounted the maximum exposure by 25% to account for the risk of non-certification,
7 and an additional 25% to account for Kay & James' defenses on the merits, to arrive at an
8 estimated exposure of approximately \$192,022.

9 19. Plaintiff alleges that from July 24, 2015 until approximately December 31, 2019,
10 Kay & James maintained a policy of not paying daily overtime, and only paid overtime for work
11 in excess of forty (40) hours a week. Based on Plaintiff's analysis of employee timekeeping and
12 payroll records, Plaintiff contends Kay & James underpaid employees approximately 1.0 hour of
13 daily overtime per pay period, and there were approximately 4,592 pay periods between July 24,
14 2015 and December 31, 2019. Thus, Plaintiff estimates Kay & James' maximum exposure for
15 this claim at approximately \$49,731 (4,592 pay periods * 1 hr * 21.66/hr * 0.5 OT premium).
16 However, Kay & James contends that it paid all overtime due in accordance with California law.
17 Kay & James further argues that Settlement Class members did not work extensive overtime, and
18 therefore, any unpaid overtime was relatively modest. Accordingly, Plaintiff discounted the
19 maximum exposure by 10% to account for the risk of non-certification, and an additional 10% to
20 account for Kay & James' defenses on the merits and/or failing to recover the full amount of
21 unpaid wages, to arrive at an estimated exposure of approximately \$40,283.

22 20. Plaintiff alleges that Kay & James routinely provided non-compliant first meal
23 periods to its non-exempt employees. Specifically, Plaintiff alleges that from July 24, 2015 until
24 December 2019, Kay & James automatically deducted a 30-minute meal period on all shifts
25 regardless of whether meal periods were actually taken. From December 2019 and onward, Kay
26 & James began to record its meal periods, however, Plaintiff maintains that Kay & James
27 nonetheless often failed to provide meal periods until after the completion of five hours of work.
28 Based on Plaintiff's review and extrapolation of employee timekeeping data, Plaintiff estimated

1 approximately 70,942 shifts reflected a non-compliant first meal period (i.e., late, short, or missed
2 first meal period(s)). Thus, assuming each non-compliant meal period in the timekeeping records
3 represents a violation, Plaintiff estimates Kay & James' maximum exposure for this claim at
4 approximately \$1,536,603 (70,942 first meal period violations * 21.66 average premium).
5 However, Kay & James contends that it maintained compliant written meal period policies
6 throughout the Class Period, and provided legally-compliant meal periods in line with those
7 policies. Kay & James also argues that under *Brinker*, it was only required to "provide" the
8 opportunity to take meal periods, not "ensure" meal periods are taken. Kay & James also argues
9 that any short, missed, or late first meal periods were the result of lawful employee waiver or
10 choice, thereby precluding liability. Kay & James also argues individualized inquiries would be
11 needed to determine why each meal period was taken late or short or missed by each employee,
12 making certification of the meal period claim unlikely. In light of these defenses, Plaintiff
13 discounted the maximum amount by 50% for risk of non-certification and an additional 50% for
14 risk of being unsuccessful on the merits or failure to recover the full amount sought, to arrive at
15 an estimated realistic exposure of approximately \$384,151.

16 21. Plaintiff further alleges that Kay & James failed to provide second meal periods
17 on shifts over 10.0 hours. Based on Plaintiff's analysis of employee timekeeping data, there were
18 approximately 42,868 non-compliant second meal periods. Plaintiff therefore estimated a
19 maximum total exposure for this claim at approximately \$928,520 (42,868 non-compliant second
20 meal periods * \$21.66 average premium). However, Kay & James contends Plaintiff's second
21 meal period exposure is heavily inflated as Plaintiff already seeks a meal period premium for first
22 meal periods on an overwhelmingly majority of shifts in excess of 10.0 hours. Additionally, Kay
23 & James argues that second meal periods may lawfully be waived on shifts of more than 10.0
24 hours but less than 12.0 hours per Labor Code § 512, and that employees regularly did so. Kay &
25 James also argues individualized inquiries would be needed to determine why each second meal
26 period was taken late or short or missed by each employee, and whether there was a valid waiver,
27 making certification of the meal period claim unlikely. In light of these defenses, Plaintiff
28 discounted the maximum amount by 75% for risk of non-certification and an additional 80% for

1 risk of being unsuccessful on the merits or having exposure reduced to Kay & James' waiver
2 arguments, to arrive at an estimated realistic exposure of approximately \$46,426.

3 22. Plaintiff alleges that Kay & James failed to authorize and permit all legally-
4 compliant off-duty rest periods. Specifically, Plaintiff alleges that Kay & James failed to authorize
5 and permit third rest periods for shifts of at least ten (10) hours. Based on Plaintiff's analysis of
6 employee timekeeping records, there were approximately 42,868 shifts of 10 hours or more
7 worked by Settlement Class members during the Class Period. Thus, assuming a 100% violation
8 rate for those shifts, Plaintiff estimated the maximum potential exposure for this claim at
9 approximately \$928,520 (42,868 rest period violations * \$21.66 average premium). However,
10 Kay & James argues that it has always maintained and enforced lawful rest period policies and
11 practices during the Class Period. Kay & James also maintains that any failure to take rest periods
12 was the result of employee choice, and that it is not required to police rest periods. Finally, Kay
13 & James argues that Plaintiff's rest period claim is not amenable to class treatment, since
14 individual inquiries would be required to determine which employees failed to take rest periods
15 and the reasons why each employee failed to take rest period(s) on a particular shift. These
16 manageability concerns are especially present with respect to rest period claims, Kay & James
17 argues, given that rest periods are not recorded. In light of these defenses, Plaintiff discounted the
18 maximum amount by 50% to account for the risk of non-certification, and an additional 55% for
19 risk of being unsuccessful on the merits or failure to recover the full amount sought, to arrive at
20 an estimated realistic exposure of approximately \$208,917.

21 23. As a result of these alleged wage and hour violations, Plaintiff asserts that Kay &
22 James failed to comply with its wage statement obligations, in violation of Labor Code § 226.
23 Plaintiff's analysis reflected that there were approximately 5,064 pay periods worked by
24 Settlement Class members, and 105 unique employees, within the one-year liability window
25 under Labor Code §226. In calculating Kay & James' exposure, Plaintiff assumed he could
26 recover the "initial" \$50 penalty and a "subsequent" \$100 penalty for each violation thereafter,
27 with a cap of \$4,000 per employee under Labor Code §226(e). Plaintiff's analysis reflected that
28 the \$50/\$100 penalty calculation for "initial" and "subsequent" violations exceeds the maximum

1 of \$4,000 per employee, and therefore, Plaintiff estimated Kay & James' maximum wage
2 statement exposure at approximately \$420,000 (105 employees * \$4,000 cap per employee) in
3 potential penalties. Kay & James contends that any alleged wage statement violations could not
4 be shown to be "knowing and intentional," particularly given its good-faith defenses; that Plaintiff
5 cannot show he or other employees "suffer[ed] injury" due to alleged wage statement violations,
6 as required by Lab. Code § 226(e); and that wage statements always accurately reflected amounts
7 paid to employees. In light of these defenses, Plaintiff discounted the maximum exposure by 25%
8 for risk of non-certification, and by an additional 40% for risks on the merits, for an estimated
9 realistic exposure of approximately \$189,000.

10 24. As a result of Kay & James' failure to pay all wages and all meal and rest period
11 premiums, Plaintiff alleges that Kay & James is liable for waiting time penalties. Based on the
12 data produced by Kay & James, there are approximately 116 Settlement Class members who
13 separated their employment from Kay & James at any time after July 24, 2016 and are therefore
14 eligible for waiting time penalties. Plaintiff estimated an average waiting time penalty of
15 approximately \$5,198 (\$21.66/hr * 8 hrs * 30 days), and calculated Kay & James' maximum
16 waiting time penalty exposure at approximately \$602,968 (116 former employees * \$5,198
17 average waiting time penalty). However, Kay & James asserts it has strong, good-faith defenses
18 to Plaintiff's underlying claims and thus, even if Plaintiff were able to recover on his underlying
19 claims, he would not be able to recover waiting time penalties, which are only available for the
20 "willful" failure to pay wages. Moreover, Plaintiff would need to overcome Kay & James'
21 defenses, both as to class certification and as to the merits, to his underlying claims. Based on
22 these defenses, Plaintiff discounted Kay & James' maximum exposure by 25% for risk of non-
23 certification, and by an additional 40% for risk of being unsuccessful on the merits or failure to
24 recover the full amount sought, to arrive at an estimated total of approximately \$271,336.

25 25. Plaintiff seeks civil penalties under the PAGA, based on the aforementioned
26 claims. Plaintiff estimated a maximum PAGA exposure of \$265,800 (2,658 pay periods during
27 PAGA Period * \$100 "initial" violation rate). However, these penalties derive from Plaintiff's
28 underlying claims, each of which Kay & James vigorously disputes. The PAGA also grants trial

1 courts discretion to reduce PAGA civil penalties (Lab. Code § 2699(e)(2)), and Kay & James
2 argued the Court would reduce penalties significantly given its good-faith defenses. Thus,
3 Plaintiff discounted the maximum figure by 50% for risk of losing on the merits and/or not
4 recovering a PAGA penalty for each and every pay period, and by an additional 55% for risk of
5 the Court reducing penalties, to arrive at a realistic exposure of approximately \$59,805.

6 26. Using these figures, Plaintiff estimated the realistic total recovery for the
7 Settlement Class would be approximately \$1,391,940. Thus, the proposed \$1,250,000 GSA
8 represents approximately 89.8% of Plaintiff's reasonably forecasted recovery.

9 27. At final approval, my office will request an attorneys' fees award of one-third of
10 the GSA, and up to \$35,000 in verified litigation costs. My office has incurred substantial
11 attorneys' fees in, among other things, conducting pre-filing investigation; legal research;
12 analyzing Plaintiff's claims; analyzing employee timekeeping and payroll records and other data
13 and documents; propounding and responding to formal discovery and meeting and conferring
14 with counsel regarding the same; interviewing Settlement Class members regarding their work
15 experiences at Kay & James; engaging in informal discovery; developing a damages analysis and
16 drafting a comprehensive mediation brief; preparing for and attending two mediations;
17 negotiating the Settlement; preparing this Motion; and otherwise prosecuting this case. I also
18 anticipate that my office will incur additional fees in appearing at the hearing on this Motion,
19 supervising the Notice process, and preparing the Final Approval motion and appearing at the
20 Final Approval Hearing.

21 28. Although the Parties engaged in significant formal and informal discovery in
22 advance of mediation, the Parties still had substantial discovery to complete in formal litigation
23 had the matter not settled, which would have required the expenditure of substantial time and
24 resources by all parties. Even if Plaintiff obtained class certification, the Parties would incur
25 considerable attorneys' fees and costs through a possible decertification motion, trial, and possible
26 appeal. The Settlement avoids those risks and the accompanying delay and expense, and thus, this
27 factor supports preliminary approval.

28 29. Plaintiff will apply for a Class Representative Enhancement Payment at final

1 approval in the amount of \$7,500 for his services to the Settlement Class. As will be fully briefed
2 at final approval, the requested Enhancement Payment is intended to recognize the substantial
3 time and effort Plaintiff expended on behalf of the Settlement Class, including providing
4 documents to counsel, responding to formal discovery and producing responsive documents,
5 attending meetings with counsel to discuss the claims and theories at issue in the litigation, and
6 otherwise actively participating in the prosecution of his claims.

7 30. I am not aware of any conflict between myself or any member of my firm, Haines
8 Law Group, APC, and any member of the Settlement Class. Nor am I aware of any conflict
9 between Plaintiff and any member of the Settlement Class.

10 31. Under the proposed Settlement in this case, uncashed funds will be sent to *cy pres*
11 recipient CASA, Court Appointed Special Advocates for Children. Neither I nor any attorney at
12 my law firm have any personal and/or financial interest and/or connection with CASA.

13 I declare under penalty of perjury under the laws of the State of California that the
14 foregoing is true and correct. Executed on December 14, 2022, at El Segundo, California.

15 

16 _____
Paul K. Haines

EXHIBIT 1

STIPULATION OF SETTLEMENT

This Stipulation of Settlement (“Settlement Agreement”) is reached by and between Plaintiff Osman Ventura (“Plaintiff” or “Class Representative”), individually and on behalf of all members of the Settlement Class (defined below), on one hand, and Kay & James, Inc. dba J&S Machine Works (“Defendant”), on the other hand. Plaintiff and Defendant are referred to herein collectively as the “Parties.” Plaintiff and the Settlement Class are represented by Paul K. Haines, Sean M. Blakely, and Jaime Castaneda of Haines Law Group, APC (collectively, “Class Counsel”). Defendant is represented by Ian G. Robertson of Littler Mendelson P.C.

On July 24, 2019, Plaintiff filed a class action complaint against Defendant in Los Angeles County Superior Court titled *Osman Ventura v. Kay & James, Inc.*, Los Angeles Superior Court Case No. 19STCV25743 (the “Action”). As part of the Settlement, the Parties stipulate to the filing of a First Amended Class and Representative Action Complaint (“FAC”) which adds a cause of action for civil penalties under the Private Attorneys General Act (“PAGA”). The FAC alleges that Defendant: (i) failed to pay all overtime wages; (ii) failed to pay all minimum wages; (iii) failed to provide all lawful meal periods; (iv) failed to provide all lawful rest periods; (v) failed to issue accurate, itemized wage statements; (vi) failed to pay all final wages due upon separation of employment; (vii) failed to pay all wages at the agreed-upon rate; (viii) failed to comply with unfair competition laws; and (ix) is liable for civil penalties under the PAGA.

Given the uncertainty of litigation, Plaintiff and Defendant wish to settle both individually and on behalf of the Settlement Class. Accordingly, Plaintiff and Defendant agree as follows:

1. **Settlement Class and PAGA Aggrieved Employees Defined.** For the purposes of this Settlement Agreement only, Plaintiff and Defendant stipulate to the certification of the following Settlement Class:

All current and former non-exempt employees who worked for Defendant in California from July 24, 2015 through July 16, 2022 (the “Class Period”).

The Parties agree that certification for purposes of settlement is not an admission that class certification is proper under Section 382 of the Code of Civil Procedure. If for any reason this Settlement Agreement is not approved or is terminated, in whole or in part, this conditional agreement to class certification will be inadmissible and will have no effect in this matter or in any claims brought on the same or similar allegations, and the Parties shall revert to the respective positions they held prior to entering into the Settlement Agreement.

Additionally, the “PAGA Aggrieved Employees” shall be defined as:

All current and former non-exempt employees who worked for Defendant in California from July 23, 2020 to July 16, 2022 (the “PAGA Period”).

2. **Release by Settlement Class Members, PAGA Aggrieved Employees, and Plaintiff.** Upon the Effective Date and the settlement being fully funded, Plaintiff and every member of the Settlement Class (except those who opt out) will release and discharge Defendant and all of its past and present parent companies, affiliates, controlling persons, subsidiaries, directors, officers,

shareholders and investors, agents, attorneys, employees, and benefit plans sponsored by any such entities (collectively the “Released Parties”), as follows:

- A. Release by Settlement Class Members. Settlement Class members not filing a timely exclusion shall be deemed to have released the following claims for the Class Period: Any and all causes of action, claims, rights, or statutory damages, penalties, liabilities, expenses, and losses under California law that were alleged in the operative complaint in the Action or that could have been alleged in the operative complaint in the Action, arising during the Class Period, including but not limited to the causes of action asserted in Plaintiff’s operative Complaint: (1) failure to pay overtime wages; (2) minimum wage violations; (3) meal period violations; (4) rest period violations; (5) wage statement violations; (6) waiting time penalties; (7) failure to pay all wages at the agreed-upon rate; and (8) unfair competition (“Released Claims”). This release shall run from July 24, 2015 through July 16, 2022.
- B. Released PAGA Claims. In addition, all Settlement Class members (whether or not they opt out as members of the Settlement Class) who worked for Defendant in California at any point during the PAGA Period shall release any right or claim for civil penalties pursuant to the Private Attorneys General Act of 2004, California Labor Code § 2698, *et seq.* (“PAGA”), based on the alleged failures set forth in Plaintiff’s PAGA notice to the LWDA and in the operative Complaint, during the PAGA Period (“PAGA Released Claims”). As part of this settlement, the parties will stipulate to Plaintiff’s filing of an amended complaint in the Action that adds a cause of action for PAGA civil penalties based on the same theories of liability and Labor Code violations alleged in the operative Complaint. Plaintiff agrees to file an LWDA letter encompassing these claims in advance of that amendment, to the extent Plaintiff’s prior LWDA letter did not already encompass these claims.
- C. In light of Plaintiff’s Class Representative Enhancement Payment, Plaintiff has agreed to release, as an individual and in addition to the Released Claims described above, all claims, whether known or unknown, under federal law or state law against Defendant. Plaintiff understands that this release includes unknown claims and that Plaintiff is, as a result, waiving all rights and benefits afforded by Section 1542 of the California Civil Code, which provides:

A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release and that, if known by him or her, would have materially affected his or her settlement with the debtor or released party.

Nothing contained herein shall constitute a release of any rights or claims that cannot be waived as a matter of law (including but not limited to claims arising under workers’ compensation laws and unemployment insurance). Nor shall anything contained herein be construed to exclude the filing of an administrative charge or complaint with the Equal Employment Opportunity Commission or

National Labor Relations Board, or participation in an administrative investigation or proceeding.

3. **Gross Settlement Amount.** As consideration, Defendant agrees to pay a non-reversionary “Gross Settlement Amount” of One Million Two Hundred Fifty Thousand Dollars and Zero Cents (\$1,250,000.00) in full and complete settlement of the Action, as follows:

- A. The Parties have agreed to engage Phoenix Settlement Administrators as the “Settlement Administrator” to administer this Settlement.
- B. The “Effective Date” of the settlement agreement shall be the day after both of the following have occurred: (i) final approval of the settlement is granted by the Court, and (ii) Judgment approving the settlement becomes Final. “Final” shall mean: (i) if there are no objections to the settlement, then the date that the Order Granting Final Approval is entered and judgment is entered thereon; (ii) if an objection is made to the settlement which is overruled but no appeal is filed, the expiration date of the time for filing or noticing any appeal of the Judgment; (iii) if there is an appeal of the Court’s Judgment, the date the Judgment is affirmed on appeal, the date of dismissal of such appeal, or the expiration of the time to file a petition for writ of certiorari to the California Supreme Court or the United States Supreme Court; or (iv) if a petition for writ of certiorari is filed, the date of denial of the petition for writ of certiorari, or the date of Judgment is affirmed pursuant to such petition.
- C. Defendant shall fund the GSA by August 15, 2022 by depositing the GSA in an escrow account established by the Settlement Administrator. Defendant shall pay the employer’s share of payroll taxes separately from, and in addition to, the GSA, subsequent to final approval by the Court.
- D. This is a non-reversionary settlement. The Gross Settlement Amount includes:
 - (1) All payments (including interest) to the Settlement Class members;
 - (2) All costs of the Settlement Administrator which are anticipated to be no greater than Seven Thousand Five Hundred Dollars and Zero Cents (\$7,500.00);
 - (3) Up to Seven Thousand Five Hundred Dollars and Zero Cents (\$7,500.00) for Plaintiff’s Class Representative Enhancement Payment in recognition of Plaintiff’s contributions to the Action and Plaintiff’s service to the Settlement Class. In the event that the Court reduces or does not approve the requested Class Representative Enhancement Payment, Plaintiff shall not have the right to revoke the Settlement Agreement for that reason, and the Settlement will remain binding;
 - (4) Up to one-third of the Gross Settlement Amount in Class Counsel’s attorneys’ fees (currently estimated at \$416,666.66), plus actual costs and expenses incurred by Class Counsel related to the Action as supported by declaration, which are currently estimated to be no greater than Thirty-Five

Thousand Dollars and Zero Cents (\$35,000.00). In the event that the Court reduces or does not approve the requested Class Counsel attorneys' fees or costs, Class Counsel shall not have the right to revoke the Settlement Agreement based on that reason, and the Settlement will remain binding; and

- (5) Fifty Thousand Dollars and Zero Cents (\$50,000.00) of the Gross Settlement Amount has been set aside by the Parties as PAGA civil penalties. Per Labor Code § 2699(i), 75% of such penalties, or Thirty-Seven Thousand Five Hundred Dollars and Zero Cents (\$37,500.00), will be payable to the California Labor & Workforce Development Agency ("LWDA"), and the remaining 25%, or Twelve Thousand Five Hundred Dollars and Zero Cents (\$12,500.00), will be payable to the Settlement Class members as the "PAGA Amount," as described below.

- E. Any reduction by the Court of these requests will revert to the Net Settlement Amount for distribution to the Settlement Class members who do not opt-out.
- F. Escalator Clause. Defendant estimates based on its records and extrapolations thereof that there are approximately 19,683 workweeks ("Affected Workweeks") worked by Settlement Class members in California from July 24, 2015 through the May 17, 2022 mediation date in this case ("Escalator Clause Period"). If the actual number of Affected Work Weeks during the Escalator Clause Period is determined to be more than 7.5% greater than this number (i.e., if there are more than 21,159 Affected Workweeks during the Escalator Clause Period), Defendant shall increase the GSA in proportion to the increase in Affected Workweeks in excess of 7.5% (e.g., if the number of Affected Workweeks during the Escalator Clause Period is 10% greater than 19,683, Defendant will increase the GSA by 2.5%).
- G. Employer Payroll Taxes. The Gross Settlement Amount does not include Employer Payroll Taxes, which shall be paid by Defendant separate and apart, and in addition to, the Gross Settlement Amount, subject to final approval by the Court.

4. **Payments to the Settlement Class.** Settlement Class members are not required to submit a claim form to receive a payment ("Individual Settlement Payment") from the Settlement. Individual Settlement Payments will be determined and paid as follows:

- A. The Settlement Administrator shall first deduct from the Gross Settlement Amount the amounts approved by the Court for Class Counsel's attorneys' fees, Class Counsel's costs and expenses, the Class Representative Enhancement Payment, the Settlement Administrator's fees and expenses for administration, and the amount designated as PAGA civil penalties. The remaining amount shall be known as the "Net Settlement Amount."
- B. Payments from the Net Settlement Amount. From the Net Settlement Amount, the Settlement Administrator will calculate each Settlement Class member's Individual Settlement Payment based on the following formula: the Net Settlement Amount

will be distributed to all participating Settlement Class members based on each participating Settlement Class member's proportionate number of workweeks worked during the Class Period, and which shall be calculated by multiplying the Net Settlement Amount by a fraction, the numerator of which is the participating Settlement Class member's total workweeks worked during the Class Period, and the denominator of which is the total number of workweeks worked by all participating Settlement Class members during the Class Period.

- C. Payments from the PAGA Amount. In addition to the Net Settlement Amount, each Settlement Class member (regardless of whether they opt-out) who was employed by Defendant at any time during the PAGA Period, which is July 23, 2020 through July 16, 2022, shall receive a portion of the Twelve Thousand Five Hundred Dollars and Zero Cents (\$12,500.00) of the Gross Settlement Amount that has been designated as the "PAGA Amount," proportionate to the number of pay periods that he or she worked during the PAGA Period, and which shall be calculated by multiplying the PAGA Amount by a fraction, the numerator of which is the Settlement Class member's number of pay periods worked during the PAGA Period, and the denominator of which is the total number of pay periods worked by all Settlement Class members during the PAGA Period. Settlement Class members whose Settlement Award includes payments from both the Net Settlement Amount and the PAGA Amount shall receive one (1) settlement check.
- D. Calculation of Settlement Awards. Within five (5) Court days of the Effective Date, the Settlement Administrator will calculate Individual Settlement Awards, as well as the amount of the employer's share of payroll taxes due on the wage portion of the Individual Settlement Awards, and provide the same to counsel for review and approval.
- E. Payment of Settlement Awards. Within twenty-one (21) calendar days of both: (i) the Effective Date occurring; and (ii) Defendant's deposit of the Gross Settlement Amount and employer-side taxes, and after approval by counsel of the Settlement Award calculations, the Settlement Administrator will prepare and mail Settlement Awards, less applicable taxes and withholdings, to Settlement Class members. The Settlement Administrator shall simultaneously pay the withholdings to the applicable authorities with the necessary reports, submitting copies to Defendant's counsel. The Settlement Administrator shall pay the amounts approved by the Court for Class Counsel's attorneys' fees and costs, settlement administration costs, Plaintiff's Class Representative Enhancement Payment, and PAGA payment to the LWDA at the same time it mails Settlement Awards to Settlement Class members.
- F. For tax purposes, each Individual Settlement Payment shall be allocated as follows: any payment made from the Net Settlement Amount shall be allocated as 20% wages, 40% penalties, and 40% interest. Any payment from the PAGA Amount shall be designated as 100% penalties. The Settlement Administrator will be responsible for issuing to participating Settlement Class members an IRS Form W-2 (for amounts paid as wages) and an IRS Form 1099 (for amounts paid as

penalties and interest). The Settlement Administrator shall be responsible for calculating and withholding all employee-share employment taxes and other legally required withholdings from each Individual Settlement Payment. Notwithstanding the treatment of the payments to each Settlement Class member above, none of the payments called for by this Settlement Agreement, including the wage portion, are to be treated as earnings, wages, pay or compensation for any purpose of any applicable benefit or retirement plan, unless required by such plans.

- G. Each member of the Settlement Class who receives a Settlement Award must cash that check within 180 days from the date the Settlement Administrator mails it. Any funds payable to Settlement Class members whose checks are not cashed within 180 days after mailing shall be placed in a *cy pres* fund and awarded to CASA, Court Appointed Special Advocates for Children (<https://www.californiacasa.org>), a non-profit organization dedicated to helping children and youth in the foster care system.
- H. Neither Plaintiff nor Defendant shall bear any liability for lost or stolen checks, forged signatures on checks, or unauthorized negotiation of checks. Unless responsible by its own acts of omission or commission, the same is true for the Settlement Administrator.

5. **Attorneys' Fees and Costs.** Defendant will not object to Class Counsel's request for a total award of attorneys' fees of up to one-third of the Gross Settlement Amount, which is currently estimated to be Four Hundred Sixteen Thousand Six Hundred Sixty-Six Dollars and Sixty-Six Cents (\$416,666.66). Additionally, Class Counsel will request an award of actual costs and expenses as supported by declaration, in an amount not to exceed Thirty-Five Thousand Dollars and Zero Cents (\$35,000.00) from the Gross Settlement Amount. These amounts will cover any and all work performed and any and all costs incurred in connection with this litigation, including without limitation: all work performed and all costs incurred to date; and all work to be performed and costs to be incurred in connection with obtaining the Court's approval of this Settlement Agreement, including any objections raised and any appeals necessitated by those objections. Class Counsel will be issued an IRS Form 1099 by the Settlement Administrator when the Settlement Administrator pays the fee award approved by the Court.

6. **Class Representative Enhancement Payment.** Defendant will not object to a request for a Class Representative Enhancement Payment of Seven Thousand Five Hundred Dollars and Zero Cents (\$7,500.00) to Plaintiff for his time and risk in prosecuting this case and Plaintiff's services to the Settlement Class. This payment will be in addition to Plaintiff's respective Settlement Award as a Settlement Class member, and shall be reported on an IRS Form 1099 issued by the Settlement Administrator. Even in the event that the Court reduces or does not approve the requested Enhancement Payment, Plaintiff shall not have the right to revoke this Settlement, and it will remain binding.

7. **Settlement Administrator.** Defendant will not object to the appointment of Phoenix Settlement Administrators as Settlement Administrator. Defendant will not object to Plaintiff seeking approval to pay up to Seven Thousand Five Hundred Dollars and Zero Cents (\$7,500.00) for the administration services from the Gross Settlement Amount. The Settlement Administrator

shall be responsible for depositing into an account and holding the various payments from Defendant comprising the Gross Settlement Amount, sending Notice Packets in English and Spanish to the Settlement Class members, calculating Individual Settlement Payments and preparing all checks and mailings, and other duties as described in this Settlement Agreement. The Settlement Administrator shall be authorized to pay itself from the Gross Settlement Amount only after Individual Settlement Payments have been mailed to all participating Settlement Class members. The Settlement Administrator shall also give notice of final judgment by posting the Final Judgment to its website.

8. **Preliminary Approval.** Within a reasonable time after execution of this Settlement Agreement by the Parties, Plaintiff shall apply to the Court for the entry of an Order:

- A. Conditionally certifying the Settlement Class for settlement purposes only;
- B. Appointing Paul K. Haines, Sean M. Blakely, and Jaime Castaneda of Haines Law Group, APC as Class Counsel;
- C. Appointing Plaintiff Osman Ventura as Class Representative for the Settlement Class;
- D. Approving Phoenix Settlement Administrators as Settlement Administrator;
- E. Preliminarily approving this Settlement Agreement and its terms as fair, reasonable, and adequate;
- F. Approving the form and content of the Notice Packet (which is comprised of the Class Notice and Notice of Individual Settlement Payment, and is attached hereto as Exhibits A and B, respectively), and directing the mailing of the same in English and Spanish; and
- G. Scheduling a Final Approval hearing.

9. **Notice to Settlement Class.** Following preliminary approval, the Settlement Class shall be notified as follows:

- A. Within thirty (30) days after the Court formally orders preliminary approval of the Parties' settlement agreement, Defendant will provide to the Settlement Administrator, based on its records, a class list containing names, social security numbers, last-known addresses, hire dates, termination dates, number of workweeks worked in California during the Class Period as a non-exempt employee, and number of pay periods worked in California during the PAGA Period as a non-exempt employee to facilitate the administration of the settlement.
- B. Within ten (10) business days from receipt of this information, the Settlement Administrator shall (i) run the names of all Settlement Class members through the National Change of Address ("NCOA") database to determine any updated addresses for Settlement Class members; (ii) update the address of any Settlement Class member for whom an updated address was found through the NCOA search;

(iii) calculate the estimated Individual Settlement Payment for each Settlement Class member; and (iv) mail a Notice Packet to each Settlement Class member at his or her last known address or at the updated address found through the NCOA search, and retain proof of mailing.

C. Any Notice Packets returned to the Settlement Administrator as non-delivered on or before the Response Deadline shall be re-mailed to the forwarding address affixed thereto. If no forwarding address is provided, the Settlement Administrator shall make reasonable efforts, including utilizing a “skip trace,” to obtain an updated mailing address within five (5) business days of receiving the returned Notice Packet. If an updated mailing address is identified, the Settlement Administrator shall resend the Notice Packet to the Settlement Class member immediately, and in any event within five (5) business days of obtaining the updated address. The address identified by the Settlement Administrator as the current mailing address shall be presumed to be the best mailing address for each Settlement Class member. Settlement Class members to whom Notice Packets are re-mailed after having been returned as undeliverable to the Settlement Administrator shall have fourteen (14) calendar days from the date of re-mailing, or until the Response Deadline has expired, whichever is later, to mail a Request for Exclusion, objection, or dispute. Notice Packets that are re-mailed shall inform the recipient of this adjusted deadline. Efforts to locate updated addresses for returned notices shall continue up to the Response Deadline. Nothing else shall be required of, or done by, the Parties, Class Counsel, or Defendant’s Counsel to provide notice of the proposed settlement.

D. Requests for Exclusion. Any Settlement Class member who wishes to opt-out of the Settlement must complete and mail a Request for Exclusion (defined below) to the Settlement Administrator within sixty (60) calendar days of the date of the initial mailing of the Notice Packets (the “Response Deadline”).

i. The Notice Packet shall state that Settlement Class members who wish to exclude themselves from the Settlement must submit a Request for Exclusion by the Response Deadline. The Request for Exclusion must: (1) contain the name, address, telephone number and the last four digits of the Social Security number of the Settlement Class member; (2) contain a statement that the Settlement Class member wishes to be excluded from the Settlement; (3) be manually signed by the Settlement Class member; and (4) be postmarked by the Response Deadline and mailed to the Settlement Administrator at the address specified in the Class Notice. If the Request for Exclusion does not contain the information listed in (1)-(3), it will not be deemed valid for exclusion from the Settlement, except a Request for Exclusion not containing a Settlement Class member’s telephone number and/or last four digits of the Social Security number will be deemed valid. The date of the postmark on the Request for Exclusion shall be the exclusive means used to determine whether a Request for Exclusion has been timely submitted. Any Settlement Class member who

validly requests to be excluded from the Settlement Class will not be entitled to any recovery under this Settlement Agreement (except for any amount due to him or her from the PAGA Amount, if applicable) and will not be bound by the terms of the Settlement (except for the PAGA release, if applicable) or have any right to object, appeal or comment thereon.

- ii. At no time will the Parties or their counsel seek to solicit or otherwise encourage any Settlement Class member to object to the Settlement or opt-out of the Settlement Class, or encourage any Settlement Class member to appeal from the final judgment.

- E. Objections. Members of the Settlement Class who do not request exclusion may object to this Agreement as explained in the Class Notice by filing a written objection with the Settlement Administrator (who shall serve all objections as received on Class Counsel and Defendant's counsel, who shall then promptly file all such objections with the Court). Defendant's counsel and Class Counsel shall file any responses to objections no later than the deadline to file the Motion for Final Approval, unless an objection is filed within ten (10) days of the Motion for Final Approval filing deadline, in which case Defendant's counsel and Class Counsel shall have ten (10) days to respond. To be valid, any objection should: (1) contain the objecting Settlement Class member's full name and current address, as well as contact information for any attorney representing the objecting Settlement Class member for purposes of the objection; (2) include all objections and the factual and legal bases for same; (3) include any and all supporting papers, briefs, written evidence, declarations, and/or other evidence; and (4) be postmarked no later than the Response Deadline. Any Settlement Class member who wishes to may also appear in person or through their own counsel and raise an objection at the Final Approval Hearing. Any Settlement Class member who timely submits both an Objection and a Request for Exclusion will have the Request for Exclusion deemed valid and the Objection deemed invalid.
- F. Notice of Individual Settlement Payment / Disputes. Each Notice Packet mailed to a Settlement Class member shall disclose the amount of the Settlement Class member's estimated Individual Settlement Payment as well as all of the information that was used to calculate the Individual Settlement Payment. Settlement Class members will have the opportunity, should they disagree with Defendant's records regarding the information stated in the Notice of Individual Settlement Payment, to provide documentation and/or an explanation to show contrary information. Any such dispute, including any supporting documentation, must be mailed to the Settlement Administrator and postmarked by the Response Deadline. If there is a dispute, the Settlement Administrator will consult with the Parties to determine whether an adjustment is warranted. The Settlement Administrator shall determine the eligibility for, and the amounts of, any Individual Settlement Payments under the terms of this Settlement Agreement.

10. **Final Approval.** Following preliminary approval and the close of the period for filing requests for exclusion, objections, or disputes under this Settlement Agreement, Plaintiff shall apply to the Court for entry of an Order:

- A. Granting final approval to the Settlement Agreement and adjudging its terms to be fair, reasonable, and adequate;
- B. Approving Plaintiff's and Class Counsel's application for attorneys' fees and costs, Class Representative Enhancement Payment, settlement administration costs, and payment to the LWDA for its share of civil penalties under PAGA; and
- C. Entering judgment pursuant to California Rule of Court 3.769. Said judgment shall be posted on the Settlement Administrator's website.

11. **Non-Admission of Liability.** Nothing in this Settlement Agreement shall operate or be construed as an admission of any liability or that class certification is appropriate in any context other than this Settlement. Each of the Parties has entered into this Settlement Agreement to avoid the burden and expense of further litigation. Pursuant to California Evidence Code Section 1152, this Settlement Agreement is inadmissible in any proceeding, except a proceeding to approve, interpret, or enforce this Settlement Agreement. If Final Approval does not occur, the Parties agree that this Settlement Agreement is void, but remains protected by California Evidence Code Section 1152.

12. **Waiver and Amendment.** The Parties may not waive, amend, or modify any provision of this Settlement Agreement except by a written agreement signed by all of the Parties, and subject to any necessary Court approval. A waiver or amendment of any provision of this Settlement Agreement will not constitute a waiver of any other provision.

13. **Cooperation.** The Parties agree to work cooperatively, diligently and in good faith to ensure that all necessary documents are timely filed.

14. **Nondisclosure and Nonpublication.** Class Counsel shall not publicize the settlement on its website or in advertising/marketing materials, other than filing documents with the Court. Plaintiff and Class Counsel agree that they will not issue any press released or initiate any contact with the media about the fact, amount, or terms of the settlement. If Plaintiff or Class Counsel receive an inquiry about the settlement from the media, they may respond only after motion for preliminary approval has been filed and only by confirming the accurate terms of the settlement. Nothing in this provision shall prevent Defendant from making any required disclosure. Nothing shall prevent Class Counsel from including a general description of the settlement on their website (such as "\$1.25 million settlement against aerospace manufacturer"), without the mention of the names of the Parties or the case number. Nor shall anything in this settlement prevent Class Counsel from referring to this case in a declaration establishing qualification as class counsel in future cases.

15. **Notices.** All notices, demands, and other communications to be provided concerning this Settlement Agreement shall be in writing and delivered by receipted delivery and by e-mail at the addresses set forth below, or such other addresses as either Party may designate in writing from time to time:

if to Plaintiff: Paul K. Haines of Haines Law Group, APC
2155 Campus Drive, Suite 180, El Segundo, CA 90245
phaines@haineslawgroup.com

if to Defendant: Ian G. Robertson of Littler Mendelson, P.C.
18565 Jamboree Rd., Suite 800, Irvine, California 92612
irobertson@littler.com

16. **Entire Agreement.** This Settlement Agreement contains the entire agreement between the Parties with respect to the transactions contemplated hereby, and supersedes all negotiations, presentations, warranties, commitments, offers, contracts, and writings prior to the date hereof relating to the subject matters hereof.

17. **Counterparts.** This Settlement Agreement may be executed by one or more of the Parties on any number of separate counterparts and delivered electronically, and all of said counterparts taken together shall be deemed to constitute one and the same instrument.

18. **Enforcement and Continuing Jurisdiction of the Court.** To the extent consistent with class action procedure, this Settlement Agreement shall be enforceable by the Court pursuant to California Code of Civil Procedure section 664.6. The Court shall retain continuing jurisdiction over this Action and over all Parties and Settlement Class members, to the fullest extent to enforce and effectuate the terms and intent of this Settlement Agreement, and to adjudicate any claimed breaches of this Settlement Agreement. The Court may award reasonable attorneys' fees and costs to the prevailing party in any motion or action taken based on an alleged violation of any material term of this Settlement Agreement.

19. **Disputes.** Any dispute between the Parties as to the remaining terms of the settlement agreement shall initially be presented to the mediator, Jeffrey A. Ross, for a non-binding attempt at a resolution. If they cannot be resolved informally, they shall be presented to the Court for final resolution.

DATED: DEFENDANT KAY & JAMES, INC.

By: _____
Name: _____
Title: _____

DATED: Dec 8, 2022 PLAINTIFF OSMAN VENTURA

By: Osman Ventura
Osman Ventura (Dec 8, 2022 02:16 PST)
Plaintiff and Settlement Class Representative

if to Plaintiff: Paul K. Haines of Haines Law Group, APC
2155 Campus Drive, Suite 180, El Segundo, CA 90245
phaines@haineslawgroup.com

if to Defendant: Ian G. Robertson of Littler Mendelson, P.C.
18565 Jamboree Rd., Suite 800, Irvine, California 92612
irobertson@littler.com

16. **Entire Agreement.** This Settlement Agreement contains the entire agreement between the Parties with respect to the transactions contemplated hereby, and supersedes all negotiations, presentations, warranties, commitments, offers, contracts, and writings prior to the date hereof relating to the subject matters hereof.

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DATED: December 8, 2022

DEFENDANT KAY & JAMES, INC.

By: 
Name: Grace Chan
Title: VP Operations

DATED:

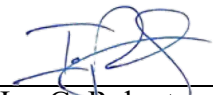
PLAINTIFF OSMAN VENTURA

By: _____
Plaintiff and Settlement Class Representative

APPROVED AS TO FORM:

DATED: December 8, 2022

LITTLER MENDELSON, P.C.

By: 

Ian G. Robertson
Attorneys for Defendant

DATED: Dec 8, 2022

HAINES LAW GROUP, APC

By: 

Paul K. Haines
Attorneys for Plaintiff

EXHIBIT A

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF LOS ANGELES

OSMAN VENTURA, as an individual and on behalf of
all others similarly situated,

Plaintiff,

vs.

KAY & JAMES, INC., a California corporation, dba J
& S MACHINE WORKS; and DOES 1 through 100,

Defendants.

Case No. 19STCV25743

**NOTICE OF PENDENCY OF CLASS
ACTION AND PROPOSED SETTLEMENT**

To: All current and former non-exempt employees who worked for Defendant Kay & James, Inc. dba J & S Machine Works ("Kay & James") in California from July 24, 2015 through July 16, 2022. Collectively, these employees will be referred to as "Settlement Class members."

**PLEASE READ THIS NOTICE CAREFULLY
THIS NOTICE IS BEING SENT IN ENGLISH AND SPANISH
YOUR LEGAL RIGHTS MAY BE AFFECTED WHETHER YOU ACT OR NOT**

Why should you read this notice?

The Los Angeles County Superior Court has granted preliminary approval of a proposed settlement (the "Settlement") in the case of *Osman Ventura v. Kay & James, Inc.*, Los Angeles Superior Court Case No. 19STCV25743 (the "Action"). Because your rights may be affected by the Settlement, it is important that you read this notice carefully.

You may be entitled to money from this Settlement. Kay & James' records show that you were employed by Kay & James as a non-exempt employee in the State of California between July 24, 2015 and July 16, 2022 (the "Class Period"), and therefore are part of the proposed "Settlement Class." The Court ordered that this Notice be sent to you because you may be entitled to money under the Settlement and because the Settlement affects your legal rights.

The purpose of this notice is to provide you with a brief description of the Action, to inform you of the terms of the Settlement, to describe your rights in connection with the Settlement, and to explain what steps you may take to participate in, object to, or exclude yourself from the Settlement. If you do not exclude yourself from the Settlement and the Court finally approves the Settlement, you will be bound by the terms of the Settlement and any final judgment. If final judgment is entered in this case, it will be posted to the Settlement Administrator's website, www.phoenixclassaction.com.

YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT:	
DO NOTHING	You do not have to do anything in response to this notice. If you do nothing, you will automatically receive a settlement payment if the Court grants final approval of the settlement, and you will be bound by the release provisions in the Settlement Agreement.
OPT-OUT	You may opt out of the settlement by submitting a Request for Exclusion (described below). If you opt out, you may not object to the settlement, you shall not receive a payment from the class portion of the Settlement, and you will not be bound by the class release provisions in the Settlement Agreement. Any Request for Exclusion must be submitted by <<RESPONSE DEADLINE>> .
OBJECT	You may object to the settlement by submitting a written objection and/or appearing at the Final Approval Hearing. Any written objections must be submitted by <<<RESPONSE DEADLINE>>> .

YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT:	
FINAL APPROVAL HEARING	The Final Approval Hearing will be held on [DATE/TIME] in Department 1 of the Los Angeles Superior Court, located at 312 North Spring Street, Los Angeles, CA 90012. The Final Approval Hearing may be postponed without further notice to the Settlement Class.

What is this case about?

Plaintiff Osman Ventura (“Plaintiff”) brought this Action against Kay & James, seeking to assert claims on behalf of a class of current and former non-exempt employees who worked for Kay & James in California at any time from July 24, 2015 to July 16, 2022. Plaintiff is known as the “Class Representative,” and his attorneys, who also represent the interests of all Settlement Class members, are known as “Class Counsel.”

The Action alleges that Kay & James failed to pay Settlement Class members for all earned minimum and overtime wages, and failed to provide all required meal and rest periods to Settlement Class members. The Action also alleges that Kay & James failed to provide Settlement Class Members with accurate and complete wage statements, failed to timely pay all final wages at the time of separation of employment, failed to pay all wages at the agreed-upon rate, and as a result of the foregoing alleged violations, engaged in unfair business practices, and is liable for civil penalties under the Labor Code Private Attorneys General Act (“PAGA”).

Kay & James denies that it has done anything wrong. Kay & James denies that it owes Settlement Class members any wages, restitution, penalties, or other damages. Accordingly, the Settlement constitutes a compromise of disputed claims and should not be construed as an admission of liability on the part of Kay & James, which expressly denies all liability.

The Court has not ruled on the merits of Plaintiff’s claims. However, to avoid additional expense, inconvenience, and interference with its business operations, Kay & James has concluded that it is in its best interests and the interests of Settlement Class members to settle the Action on the terms summarized in this Notice. After Kay & James provided relevant information to Class Counsel, the Settlement was reached after mediation and arm’s-length negotiations between the parties.

The Class Representative and Class Counsel support the Settlement. Among the reasons for support are the defenses to liability potentially available to Kay & James, the risk of denial of class certification, the inherent risks of trial on the merits, and the delays and uncertainties associated with litigation.

If you are still employed by Kay & James, your decision about whether to participate in the Settlement will not affect your employment. California law and Kay & James’ policy strictly prohibit unlawful retaliation. Kay & James will not take any adverse employment action against or otherwise retaliate, or discriminate, against any Settlement Class member because of the Settlement Class member’s decision to either participate or not participate in the Settlement.

Who are the Attorneys?

Attorneys for the Plaintiff/Settlement Class members:	Attorneys for Defendant Kay & James:
HAINES LAW GROUP, APC Paul K. Haines phaines@haineslawgroup.com Sean M. Blakely sblakely@haineslawgroup.com Jaime Castaneda jcastaneda@haineslawgroup.com 2155 Campus Drive, Suite 180 El Segundo, California 90245 Tel: (424) 292-2350 Fax: (424) 292-2355 haineslawgroup.com	LITTLER MENDELSON P.C. Ian G. Robertson irobertson@littler.com 18565 Jamboree Rd., Suite 800 Irvine, California 92612 Tel: (949) 705-3072 Fax: (949) 724-1201 littler.com

What are the terms of the Settlement?

On <<PRELIM APPROVAL DATE>>, the Court preliminarily certified a class, for settlement purposes only, of all current and former non-exempt employees who worked for Kay & James in California between July 24, 2015 and July 16, 2022. Settlement Class members who do not opt out of the Settlement pursuant to the procedures set forth in this Notice will be bound by the Settlement and will release their claims against Kay & James as described below.

Kay & James has agreed to pay \$1,250,000.00 (the “Gross Settlement Amount”) to fully resolve all claims in the Action, including payments to Settlement Class members, attorneys’ fees and expenses, Settlement Administration costs, PAGA civil penalties, and the Class Representative’s Enhancement Payment.

The following deductions from the Gross Settlement Amount will be requested by the parties:

Attorneys’ Fees and Expenses. Class Counsel have been prosecuting the Action on behalf of the Settlement Class members on a contingency fee basis (that is, without being paid any money to date) and have been paying all litigation costs and expenses. The Court will determine the actual amount awarded to Class Counsel as attorneys’ fees, which will be paid from the Gross Settlement Amount. Settlement Class members are not personally responsible for any of Class Counsel’s attorneys’ fees or expenses. Class Counsel will ask for fees of up to one-third of the Gross Settlement Amount, which is estimated to be \$416,666.66, as reasonable compensation for the work Class Counsel performed and will continue to perform in this Action through Settlement finalization. Class Counsel also will ask for reimbursement of up to \$35,000.00 for verified costs Class Counsel incurred in connection with the Action.

Settlement Administration Costs. The Court has approved Phoenix Settlement Administrators to act as the “Settlement Administrator,” who is sending this Notice to you and will perform many other duties relating to the Settlement. The Court has approved setting aside up to \$7,500.00 from the Gross Settlement Amount to pay the Settlement Administration costs.

Class Representative’s Enhancement Payment. Class Counsel will ask the Court to award a Class Representative enhancement payment in the amount of \$7,500.00 to the Class Representative. This payment is to compensate the Class Representative for his service and extra work provided on behalf of the Settlement Class members.

PAGA Civil Penalties. The Parties have agreed to allocate \$50,000.00 of the Gross Settlement Amount towards the settlement of the PAGA claims alleged in the Action. Pursuant to the requirement of the PAGA, 75% of that amount, or \$37,500.00, will be paid to the State of California Labor & Workforce Development Agency (“LWDA”). The remaining \$12,500.00 will be designated as the “PAGA Amount” and will be allocated to Settlement Class members as described below.

Calculation of Settlement Class Members’ Individual Settlement Payments. After deducting the Court-approved amounts above, the balance of the Gross Settlement Amount will form the Net Settlement Amount (“NSA”), which will be distributed to all Settlement Class members who do not submit a valid and timely Request for Exclusion from the Settlement. The NSA is estimated to be approximately \$ [REDACTED]. Together with the \$12,500.00 PAGA Amount, the total amount to be distributed to Settlement Class members is estimated to be \$ [REDACTED]. The NSA will be distributed to Settlement Class members as follows:

- (i) the Net Settlement Amount will be distributed to all participating Settlement Class members based on each participating Settlement Class member’s proportionate number of workweeks worked during the Class Period, and which shall be calculated by multiplying the Net Settlement Amount by a fraction, the numerator of which is the participating Settlement Class member’s total workweeks worked during the Class Period, and the denominator of which is the total number of workweeks worked by all participating Settlement Class members during the Class Period.
- (ii) In addition to the NSA, \$12,500.00 of the Gross Settlement Amount has been designated as the “PAGA Amount” as described above, and will be allocated to all Settlement Class members (including those who exclude themselves from the class action settlement) who were employed by Kay & James in California

at any time between July 23, 2020 and July 16, 2022 (the “PAGA Period”), in proportion to the number of pay periods that each Settlement Class member worked for Kay & James during that time period.

Payments to Settlement Class Members. If the Court grants final approval of the Settlement, individual Settlement Payments will be mailed to all Settlement Class members who did not submit a valid and timely Request for Exclusion from the Settlement.

Allocation and Taxes. For tax purposes, each Individual Settlement Payment will be treated as follows: all amounts from the PAGA Amount will be treated as 100% penalties, and all amounts from the NSA will be treated 20% as “wages,” for which an IRS form W-2 will be issued; 40% as penalties for which an IRS form 1099 will be issued; and 40% as interest for which an IRS form 1099 will be issued. Settlement Class members are responsible for the proper income tax treatment of the Individual Settlement Payments. The Settlement Administrator, Kay & James and its counsel, and Class Counsel cannot provide tax advice. Accordingly, Settlement Class members should consult with their tax advisors concerning the tax consequences and treatment of payments they receive under the Settlement.

Release. If the Court approves the Settlement, each Settlement Class member who has not submitted a timely and valid Request for Exclusion, will release and discharge Kay & James and all of its past and present parent companies, affiliates, controlling persons, subsidiaries, directors, officers, shareholders and investors, agents, attorneys, employees, and benefit plans sponsored by any such entities (collectively the “Released Parties”) from: Any and all causes of action, claims, rights, or statutory damages, penalties, liabilities, expenses, and losses under California law that were alleged in the operative complaint in the Action or that could have been alleged in the operative complaint in the Action, arising during the Class Period, including but not limited to the causes of action asserted in Plaintiff’s operative Complaint: (1) failure to pay overtime wages; (2) minimum wage violations; (3) meal period violations; (4) rest period violations; (5) wage statement violations; (6) waiting time penalties; (7) failure to pay all wages at the agreed-upon rate; and (8) unfair competition (“Released Claims”). This release shall run from July 24, 2015 through July 16, 2022.

In addition, all Settlement Class members (whether or not they opt out) who worked for Kay & James in California at any point during the PAGA Period will release any right or claim for civil penalties pursuant to the Private Attorneys General Act of 2004, California Labor Code § 2698, *et seq.* (“PAGA”), based on the alleged failures set forth in Plaintiff’s PAGA notice to the LWDA and in the operative Complaint, during the PAGA Period (“PAGA Released Claims”).

Conditions of Settlement. The Settlement is conditioned upon the Court entering an order at or following the Final Approval Hearing finally approving the Settlement as fair, reasonable, adequate and in the best interests of the Settlement Class, and the entry of Judgment.

How can I claim money from the Settlement?

Do Nothing. You do not need to do anything if you want to receive payment from and participate in the Settlement. If you do nothing, you will be entitled to your share of the Settlement based on the number of workweeks you worked during the Class Period, and the proportionate number of pay periods you worked during the PAGA Period, as stated in the accompanying Notice of Estimated Individual Settlement Payment. You also will be bound by the Settlement, including the release of claims stated above.

Check Cashing Deadline and Uncashed Checks. If you are issued a Settlement Payment, you will have one hundred eighty (180) calendar days after your check is mailed by the Settlement Administrator to cash it. If you do not cash your check within 180 days after mailing, the check will become void, and the funds associated with such voided check will be distributed to the designated *cy pres* recipient, CASA, Court Appointed Special Advocates for Children.

What other options do I have?

Dispute Information in Notice of Estimated Settlement Payment. Your estimated Individual Settlement Payment has been calculated and is included in the enclosed Notice of Estimated Individual Settlement Payment. As stated above, your estimated individual Settlement Payment is based on the proportionate number of workweeks you worked during the Class Period, and the proportionate number of pay periods you worked during the PAGA Period. The information contained in Kay & James’ records regarding each of these factors, along with your estimated Individual Settlement Payment, is listed on the accompanying Notice of Estimated Individual Settlement Payment. If you disagree with the information in your

Notice of Estimated Individual Settlement Payment, you may submit a dispute, along with any supporting documentation, in accordance with the procedures stated in the Notice of Estimated Individual Settlement Payment. Any disputes, along with supporting documentation, must be postmarked no later than <<RESPONSE DEADLINE>>. **DO NOT SEND ORIGINALS; DOCUMENTATION SENT TO THE SETTLEMENT ADMINISTRATOR WILL NOT BE RETURNED OR PRESERVED.**

The Parties and the Settlement Administrator will evaluate the evidence submitted and discuss in good faith how to resolve any disputes submitted by Settlement Class members. The Settlement Administrator's decision regarding any dispute will be final.

Exclude Yourself from the Settlement. If you **do not** wish to take part in the Settlement, you may exclude yourself by sending to the Settlement Administrator a written Request for Exclusion no later than <<RESPONSE DEADLINE>>, with your name, address, telephone number, last four digits of your social security number, and your signature.

Send the Request for Exclusion directly to the Settlement Administrator at <<INSERT ADMINISTRATOR CONTACT INFO>>. Any person who submits a timely Request for Exclusion from the Settlement shall, upon receipt by the Settlement Administrator, no longer be a Settlement Class member, shall be barred from participating in any portion of the class action Settlement, and shall receive no benefits from the class action Settlement. However, all Settlement Class members who worked for Kay & James during the PAGA Period, including those who opt out, will be bound by the PAGA portion of the Settlement and will receive a portion from the PAGA Amount. **Do not submit both a Dispute and a Request for Exclusion.** If you do, the Request for Exclusion will be invalid, you will be included in the Settlement Class, and you will be bound by the terms of the Settlement.

Objecting to the Settlement. You also have the right to object to the terms of the Settlement. However, if the Court rejects your objection, you will still be bound by the terms of the Settlement. If you wish to object to the Settlement, or any portion of it, you should mail a written objection to the Settlement Administrator at <<INSERT ADMINISTRATOR CONTACT INFO>>. Your written objection should include your name, address, as well as contact information for any attorney representing you regarding your objection, the case name and number, each specific reason in support of your objection, any legal or factual support for each objection, and any and all supporting papers, briefs, written evidence, declarations, and/or other evidence. Objections should be in writing and must be postmarked on or before <<RESPONSE DEADLINE>>. Notwithstanding the foregoing, you do not need to object in writing to be heard at the Final Approval Hearing. **Do not submit both an Objection and a Request for Exclusion.** If you do, the Request for Exclusion (if otherwise valid) will be deemed controlling, you will be excluded from the Settlement Class, and your Objection will be disregarded.

You may also appear at the Final Approval Hearing scheduled for <<FINAL APPROVAL HEARING DATE/TIME>> in Department 1 of the Los Angeles County Superior Court, located at 312 N. Spring Street, Los Angeles, California 90012. You have the right to appear either in person or through your own attorney at this hearing. Any attorney who intends to represent an individual objecting to the Settlement must file a notice of appearance with the Court and serve counsel for all parties on or before <<RESPONSE DEADLINE>>. All objections or other correspondence must state the name and number of the case, which is *Osman Ventura v. Kay & James, Inc.*, Los Angeles Superior Court Case No. 19STCV25743.

If you object to the Settlement, you will remain a member of the Settlement Class, and if the Court approves the Settlement, you will be bound by the terms of the Settlement in the same way as Settlement Class members who do not object.

What is the next step?

The Court will hold a Final Approval Hearing on the adequacy, reasonableness, and fairness of the Settlement on <<FINAL APPROVAL HEARING DATE/TIME>>, in Department 1 of the Los Angeles County Superior Court, located at 312 N. Spring Street, Los Angeles, California 90012. The Court also will be asked to rule on Class Counsel's request for attorneys' fees and reimbursement of documented costs and expenses, settlement administration costs, and the Enhancement Payment to the Class Representative. The Final Approval Hearing may be postponed without further notice to the Settlement Class. You may contact Class Counsel using the contact information provided above to confirm the address and time of the hearing. Any Settlement Class member who wishes to attend the Final Approval Hearing may do so by appearing remotely through LA CourtConnect (for a fee unless a fee waiver has been obtained). You can find more information regarding LA CourtConnect at the Court's website: www.lacourt.org. **You are not required to attend the Final Approval Hearing, although any Settlement Class member is welcome to attend the hearing at their own expense.**

How can I get additional information?

This Notice is only a summary of the Action and the Settlement. For more information, you may inspect the Court's files and the Settlement Agreement at the Office of the Clerk of the Los Angeles County Superior Court, located at 312 N. Spring Street, Los Angeles, California 90012, during regular court hours. Any Settlement Class member who wishes to review the Court's files should make an appointment with the Office of the Clerk. You may also contact Class Counsel using the contact information listed above for more information.

PLEASE DO NOT CALL OR WRITE THE COURT, KAY & JAMES, OR ITS ATTORNEYS FOR INFORMATION ABOUT THIS SETTLEMENT OR THE SETTLEMENT PROCESS

REMINDER AS TO TIME LIMITS

The deadline for submitting any Disputes, Requests for Exclusion, or Objections is <<RESPONSE DEADLINE>>. These deadlines will be strictly enforced.

BY ORDER OF THE COURT ENTERED ON <<PRELIM APPROVAL DATE>>.

EXHIBIT B

NOTICE OF ESTIMATED INDIVIDUAL SETTLEMENT PAYMENT

OSMAN VENTURA v. KAY & JAMES, INC.
LOS ANGELES COUNTY SUPERIOR COURT CASE NO. 19STCV25743

Please complete, sign, date and return this Form to <<ADMINISTRATOR CONTACT INFO>> **ONLY IF** (1) your personal contact information has changed, and/or (2) you wish to dispute any of the items listed in Section (III), below. It is your responsibility to keep a current address on file with the Settlement Administrator.

(I) Please type or print your name:

(First, Middle, Last)

(II) Please type or print the following identifying information if your contact information has changed:

Former Names (if any)

New Street Address

City

State

Zip Code

(III) Information Used to Calculate Your Settlement Payment:

According to Kay & James, Inc.'s ("Kay & James") records:

(a) you worked [REDACTED] workweeks for Kay & James in California between July 24, 2015 and July 16, 2022;
and

(b) you worked [REDACTED] pay periods for Kay & James in California between July 23, 2020 and July 16, 2022.

Based on the above, your Settlement Payment is estimated at \$ [REDACTED].

(IV) If you disagree with items (a) and/or (b) in Section (III) above, please explain why in the space provided below and include copies of any supporting evidence or documentation with this Form:

If you dispute the above information from Kay & James' records, Kay & James' records will control unless you are able to provide documentation that establishes otherwise and that Kay & James' records are inaccurate. If there is a dispute about whether Kay & James' information or yours is accurate, and the dispute cannot be resolved informally, the dispute will be resolved by the Parties and the Settlement Administrator as described in the "Notice of Pendency of Class Action and Proposed Settlement" that accompanies this Form.

**ANY DISPUTES, ALONG WITH ANY SUPPORTING DOCUMENTATION, MUST BE POSTMARKED
NO LATER THAN <<RESPONSE DEADLINE>>.**

EXHIBIT 2

HAINES LAW GROUP
EMPLOYMENT ATTORNEYS

July 23, 2021

VIA LWDA WEBSITE

Labor and Workforce Development Agency
Attn. PAGA Administrator
1515 Clay Street, Ste. 801
Oakland, CA 94612

Re: *Osman Ventura v. Kay & James, Inc., et al.*

To Whom It May Concern:

Please be advised that this law firm represents Osman Ventura (“Mr. Ventura”) in claims arising from his employment with Kay & James, Inc., a California corporation, dba J & S Machine Works, and Does 1 through 100 (collectively, “Kay & James”). Mr. Ventura is an “Aggrieved Employee” as defined by Labor Code Section 2698 *et seq.*, due to Kay & James’ numerous violations of the Labor Code as set forth below. The purpose of this letter is to comply with Labor Code Section 2699.3, which requires aggrieved employees to notify their employer and the Labor & Workforce Development Agency (“LWDA”) of the specific provisions of the Labor Code allegedly violated. The “Aggrieved Employees” whom Mr. Ventura seeks to represent are all current and former non-exempt employees of Kay & James who performed work for Kay & James in the State of California during the one year immediately preceding the date of this letter through the present.

Kay & James employed Mr. Ventura as a non-exempt employee from approximately June 2007 to April 11, 2018. During Mr. Ventura’s employment, Kay & James utilized a timekeeping system which failed to compensate Mr. Ventura and other Aggrieved Employees for all hours actually worked, whether by rounding, time-shaving, or otherwise. Specifically, Kay & James only paid its non-exempt employees in thirty-minute increments, and maintained an express written policy that says “J&S pays in 30-minute increments... we do not tolerate tardiness.” This same policy states, “Do not punch in before 6:45 in the morning unless authorized,” and further, “anytime you are on the clock, you should be working.” Another written policy of Kay & James expressly states: “I understand that the attendance system will not recognize any time worked after my scheduled shift without a manual override, which can only be administered after written and signed approval.” As a result, Kay & James regularly, systematically, and impermissibly rounded and/or shaved the hours worked by Mr. Ventura and other Aggrieved Employees in Kay & James’ favor, such that the rounding and/or time-shaving practice utilized by Kay & James was not even-handed over time and would round and shave in Kay & James’ favor, such that Kay & James routinely underpaid Mr. Ventura for his time worked. Due to Kay & James’ timekeeping policies and/or practices that fail to compensate for all hours worked, Mr. Ventura and other Aggrieved Employees have been

deprived of all required minimum and overtime wages. Further, Kay & James automatically deducted 30 minutes of time for purported meal periods, irrespective of whether or not a full 30-minute meal period was provided, which also contributes to additional unpaid wages, as Mr. Ventura and other non-exempt employees were not compensated for all required minimum, regular, and overtime wages.

Kay & James also failed to pay Mr. Ventura and other Aggrieved Employees daily overtime, because Kay & James maintained a policy of not paying overtime unless employees worked over 40 hours in a week. Specifically, Kay & James' written policy states, "Overtime pay is 1.5 times the regular pay. Overtime begins after a total of 40 weekly regular worked hours." As a result of this policy, Kay & James failed to pay Mr. Ventura and other Aggrieved Employees daily overtime owed pursuant to California law.

Kay & James also failed to authorize and permit Mr. Ventura and other Aggrieved Employees to take all legally compliant meal periods due to Kay & James' meal period policies/practices which routinely failed to provide Mr. Ventura and other Aggrieved Employees with a duty-free, uninterrupted 30-minute meal period commencing before the end of the fifth hour of work. Additionally, Mr. Ventura and other Aggrieved Employees were often provided with a meal period that was less than 30 minutes in duration, but Kay & James nevertheless deduct a full 30 minutes from their timekeeping records. In the event that a legally compliant meal period was not in fact provided, Mr. Ventura and other Aggrieved Employees were not paid the meal period premium required by Labor Code § 226.7. Further, upon information and belief, during at least a portion of the relevant time period, Kay & James has failed to maintain any pay code or other mechanism for the payment of rest period premiums when they failed to provide Mr. Ventura and other Aggrieved Employees with legally-compliant meal periods.

Kay & James also failed to authorize and permit Mr. Ventura and other Aggrieved Employees all required rest periods, because Kay & James' written policy is to provide only two rest periods per day, irrespective of shift length, despite the fact that Mr. Ventura and other Aggrieved Employees occasionally work shifts in excess of 10.0 hours. Further, upon information and belief, during at least a portion of the relevant time period, Kay & James failed to maintain any payroll code or other mechanism for the payment of rest period premiums when they failed to provide Mr. Ventura and other Aggrieved Employees with legally-compliant rest periods.

As a result of Kay & James' failure to pay all minimum, regular, and overtime wages, as well as rest period premiums, Kay & James maintained inaccurate payroll records and issued inaccurate wage statements to Mr. Ventura and other Aggrieved Employees.

As a further result of Kay & James' failure to pay all minimum, regular and overtime wages and meal and rest period premiums, Kay & James failed to timely pay Aggrieved Employees all wages owed at the time of their respective separations from employment.

Mr. Ventura is informed and believes that Kay & James continues to commit the violations described herein. As described above, Kay & James committed, and continues to commit, the following violations of the Labor Code and Industrial Welfare Commission Wage Order No. 1 ("Wage Order 1"):

Overtime Violations

Kay & James is required to compensate non-exempt employees, including Mr. Ventura and other Aggrieved Employees, for all overtime hours worked pursuant to Labor Code §§ 204, 510, 558, 1194, 1198, and Wage Order 1. Wage Order 1, § 3 requires an employer to pay an employee "one and one-half (1½) times the employee's regular rate of pay" for work in excess of eight (8) hours per workday or over 40 hours in a workweek, and for the first eight (8) hours on the seventh (7th) day of work. Wage Order 1, § 3 also requires an employer to pay an employee double the employee's regular rate of pay for work in excess of 12 hours on any workday and for work in excess of eight hours on the seventh consecutive day of work in the workweek.

As alleged above, Kay & James caused Mr. Ventura and other Aggrieved Employees to work overtime hours but did not compensate them at one and one-half times (or two times, in the case of double time) their respective regular rates of pay for such hours.

Minimum Wage Violations

Kay & James was, and is, required to pay Mr. Ventura and other Aggrieved Employees an hourly rate at least equal to the minimum wage for each hour worked. *See* Labor Code §§ 1182.12, 1194, 1194.2, 1197, 1198, and Wage Order 1, § 4. As alleged above, Kay & James maintained, and continues to maintain, timekeeping policies/practices and pay policies/practices that have regularly, systematically, and impermissibly failed to compensate Mr. Ventura and other Aggrieved Employees at least the minimum wage for all hours worked. As a result of these policies/practices, Mr. Ventura and other aggrieved employees have been, and continue to be, deprived of all required minimum wages.

Meal Period Violations

As alleged above, Kay & James failed to provide Mr. Ventura and other Aggrieved Employees with all required and compliant meal periods, due to Kay & James' meal period policies/practices which routinely failed to provide Mr. Ventura and other Aggrieved Employees with a duty-free, uninterrupted 30-minute meal period commencing before the end of the fifth hour of work. In addition, Mr. Ventura and other Aggrieved Employees were often provided with a meal period that was less than 30 minutes in duration. *See* Labor Code §§ 226.7 and 512; Wage Order 1, § 11. As a result, Mr. Ventura and other Aggrieved employees are owed an additional hour of wages at their regular rate of compensation for each workday they experienced a meal period violation. *See* Labor Code § 226.7 ("If an employer fails to provide an employee a meal or rest or recovery period in accordance with

... [an] order of the Industrial Welfare Commission ... the employer shall pay the employee one additional hour of pay at the employee's regular rate of compensation for each workday that the meal or rest or recovery period is not provided.”).

Rest Period Violations

As further alleged above, Kay & James also failed to authorize and permit Mr. Ventura and other Aggrieved Employees to take all required rest periods, as required under Labor Code §§ 226.7 and 516 and Wage Order 1, § 12. As a result, Mr. Ventura and other Aggrieved Employees are owed an additional hour of wages at their regular rate of compensation for each workday that they were not authorized and permitted to take all legally required rest periods. *See* Labor Code § 226.7 (“If an employer fails to provide an employee a meal period or rest period in accordance with an applicable order of the Industrial Welfare Commission, the employer shall pay the employee one additional hour of pay at the employee's regular rate of compensation for each workday that the meal or rest period is not provided.”); Wage Order 1, § 12.

Wage Statement Violations

Kay & James has at all times been required to furnish Mr. Ventura and other Aggrieved Employees with accurate and itemized wage statements that included, among other requirements, all hours worked, all hours worked at each hourly rate, and all gross and net wages earned. *See* Labor Code § 226(a). As a result of Kay & James' failure to pay all required wages, including minimum wages, overtime wages, and meal and rest period premium wages, and failure to record all hours worked, Kay & James maintained inaccurate payroll records and issued inaccurate wage statements to Mr. Ventura and other Aggrieved Employees in violation of Labor Code § 226. Kay & James' failure to comply with its wage statement obligations was knowing and intentional, and Mr. Ventura and other Aggrieved Employees have suffered injury as a result.

Waiting Time Penalties

Labor Code §§ 201 and 202 require that employees receive all of their final wages at the time of their separation of employment. As a result of the aforementioned failure to pay required wages, including minimum wages, overtime wages, and meal and rest period premium wages, Kay & James failed to timely pay Aggrieved Employees all of their final wages at the time of separation, which included all earned minimum wages, overtime wages, and meal and rest period premium wages. Pursuant to Labor Code § 203, Kay & James' failure to pay all final wages due to Aggrieved Employees was willful and, consequently, entitles Aggrieved Employees to waiting time penalties equal to one day of wages at their standard hourly rate for each day Kay & James failed to pay their final wages after their separation, up to a maximum of thirty days.

Failure to Pay all Wages at the Agreed-Upon Rate

Finally, Kay & James failed to pay Mr. Ventura and other Aggrieved Employees all wages owed at the rate agreed upon, as Mr. Ventura and other Aggrieved Employees were not compensated for all time worked due to Kay & James policy and practice of automatically deducting time for purported meal periods. *See* Labor Code §§ 204, 221-223. Specifically, Kay & James required Mr. Ventura and other Aggrieved Employees to remain under Kay & James' control and perform work without paying them, which resulted in Mr. Ventura and other Aggrieved Employees earning less than the agreed-upon rate for all work performed.

As an "Aggrieved Employee," Mr. Ventura will initiate a civil action on behalf of himself and other Aggrieved Employees to recover civil penalties resulting from the wage and hour violations alleged herein. Based on Mr. Ventura's own investigation, and on information and belief, Kay & James committed and continues to commit the following Labor Code violations:

- a. Kay & James has violated Labor Code §§ 204, 510, 558, 1194, and 1198 by failing to pay Mr. Ventura and other Aggrieved Employees all overtime and/or double-time compensation earned;
- b. Kay & James has violated Labor Code §§ 558, 1182.12, 1194, 1194.2, 1197, and 1198 by failing to pay Mr. Ventura and other Aggrieved Employees at least the statutory minimum wage for all hours worked;
- c. Kay & James violated Labor Code §§ 226.7, 512, 558, and 1198 by failing to provide meal periods as required by law and failing to pay meal period premiums to Mr. Ventura and other Aggrieved Employees at these employees' respective regular rates of compensation for meal period violations;
- d. Kay & James has violated Labor Code §§ 226.7, 516, 558, and 1198 by failing to authorize and permit Mr. Ventura and other Aggrieved Employees to take all of their statutorily-mandated, duty-free rest periods and failing to pay rest period premiums to Mr. Ventura and other Aggrieved Employees at these employees' respective regular rates of compensation for rest period violations;
- e. Kay & James has violated Labor Code § 226 by failing to furnish Mr. Ventura and other Aggrieved Employees with accurate and complete itemized wage statements;
- f. Kay & James has violated Labor Code §§ 201-203 by failing to timely pay all final wages due to Mr. Ventura and Aggrieved Employees upon their separation of employment;

- g. Kay & James has violated Labor Code §§ 204 and 221-223 by requiring Mr. Ventura and other Aggrieved Employees to remain under Kay & James' control and perform work without being paid, thereby resulting in Mr. Ventura and other Aggrieved Employees earning less than the agreed rate for their work; and
- h. Kay & James violated Labor Code § 1174 by failing to maintain accurate records on behalf of Mr. Ventura and other Aggrieved Employees.

Pursuant to Labor Code Section § 2699.3, please notify my office and Kay & James if the LWDA intends to investigate these alleged violations of the Labor Code. Please contact me should you require additional information.

Very truly yours,
HAINES LAW GROUP, APC



Paul K. Haines

cc: Kay & James, Inc., a California corporation, dba J & S Machine Works (via certified mail)

PROOF OF ACCEPTANCE (ELECTRONIC)

PRODUCED DATE: 07/24/2021

HAINES LAW GROUP:

The following is information for Certified Mail™/RRE item number:

9214 8901 9403 8345 3525 14

Our records indicate that this item was accepted by the USPS at:

SHIPMENT RECEIVED ACCEPTANCE PENDING EL SEGUNDO,CA 90245 07/23/2021

ORIGINAL INTENDED RECIPIENT:

KAY & JAMES INC
C/O: GRACE CHAN
14062 BALBOA BLVD
SYLMAR CA 91342-1005

Jackie Hernandez

From: noreply@salesforce.com on behalf of LWDA DO NOT REPLY
<lwdadonotreply@dir.ca.gov>
Sent: Friday, July 23, 2021 1:11 PM
To: Jackie Hernandez
Subject: Thank you for submission of your PAGA Case.

7/23/2021

LWDA Case No. LWDA-CM-839038-21
Law Firm : Haines Law Group, APC
Plaintiff Name : Osman Ventura
Employer: Kay & James, Inc. dba J & S Machine Works Filing Fee : \$75.00 IFP Claimed : No

Item submitted: Initial PAGA Notice

Thank you for your submission to the Labor and Workforce Development Agency. Please make a note of the LWDA Case No. above as you may need this number for future reference when filing any subsequent documents for this Case.

If you have questions or concerns regarding this submission or your case, please send an email to pagainfo@dir.ca.gov.

DIR PAGA Unit on behalf of
Labor and Workforce Development Agency

Website: http://labor.ca.gov/Private_Attorneys_General_Act.htm