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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF ORANGE

OSCAR CASTILLO RIVAS, on behalf of himself and all others similarly situated, Plaintiff, vs. ORTRONICS, INC., a Connecticut corporation; AGILE STAFFING, INC., a California corporation; and, DOES 1 through 100, inclusive, Defendants.	CASE NO. 30-2022-01287621-CU-OE-CXC Case Assigned for All Purposes to: *The Hon. David A. Hoffer* Dept: CX-105 **PLAINTIFF'S NOTICE OF MOTION AND MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION AND PAGA SETTLEMENT** Hearing Date: August 22, 2025 Time: 10:00 a.m. Reservation No. 74559275 Action Filed: October 24, 2022 Trial Date: None Set

TO THE COURT, ALL PARTIES, AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that pursuant to Rule 3.769 of the California Rules of Court, on August 22, 2025 at 10:00 a.m. in Department CX-105 of the above-entitled Court located at 751 West Santa Ana Blvd., Santa Ana, CA 92701, Plaintiff Oscar Castillo Rivas ("Plaintiff"), individually and on behalf of a proposed settlement class of similarly-situated individuals, will and hereby move this Court for:

1. Preliminary approval of the proposed class settlement of this lawsuit;
2. Pursuant to California Code of Civil Procedure §382, provisional certification of a

settlement class defined as follows: "all non-exempt hourly employees employed by Defendants in the State of California and who worked at an Ortronics' facility in the State of California, at any time during the Class Period." (the "Class"). The "Class Period" is the period between October 24, 2018 through January 18, 2025.

3. Approval of the Aggrieved Employees defined as "all non-exempt hourly employees employed by Defendants in the State of California and who worked at an Ortronics' facility in the State of California during the PAGA Period." (the "Aggrieved Employees"). The "PAGA Period" is the period between March 14, 2022 through January 18, 2025.

4. Preliminary appointment of Plaintiff Oscar Castillo Rivas as the Class Representative;

5. Preliminary appointment of Sam Kim and Yoonis Han of Verum Law Group, APC as Class Counsel;

6. The scheduling of a hearing to consider whether the class settlement should be finally approved and to award an amount for the Service Payment to the Plaintiff, and attorneys' fees and costs to Class Counsel;

7. Appointment of Phoenix Settlement Administrators as the third-party settlement administrator for mailing notices and administering the class settlement if finally approved; and

8. Approval of the proposed Class Notice, and an order that they be disseminated to the proposed settlement class as provided in the Settlement Agreement.

This motion is based on this notice of motion; the attached memorandum of points and authorities; the declarations of Sam Kim, Yoonis Han, Oscar Castillo Rivas, Jodey Lawrence, and all exhibits attached thereto; the pleadings and other papers filed in this action; and on any further oral or documentary evidence or argument presented at the time of hearing.

Date: May 9, 2025

VERUM LAW GROUP, APC

By: ______________________________

Sam Kim
Yoonis Han
Attorneys for Plaintiff Oscar Castillo Rivas
and all other similarly situated persons

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Plaintiff Oscar Castillo Rivas ("Plaintiff") seeks preliminary approval of this proposed class action and PAGA representative action settlement ("Settlement") on behalf of himself and the proposed class of "all non-exempt hourly employees employed by Defendants in the State of California and who worked at an Ortronics' facility in the State of California, at any time during the Class Period." (the "Class" or "Class Members"). See Exhibit A, attached to the Declaration of Sam Kim ("Kim Decl.") ¶ 9, Class Action and PAGA Settlement Agreement ("Settlement" or "Settlement Agreement") ¶ 1.6. The "Class Period" is the period between October 24, 2018 through January 18, 2025. Settlement ¶ 1.13. In addition, Aggrieved Employees are defined as "all non-exempt hourly employees employed by Defendants in the State of California and who worked at an Ortronics' facility in the State of California during the PAGA Period." Settlement ¶ 1.5. The "PAGA Period" is the period between March 14, 2022 through January 18, 2025. Settlement ¶ 1.33. Finally, Defendants are defined as Defendants Ortronics, Inc. ("Ortronics") and Agile Staffing ("Agile") together. Settlement ¶ 1.17.

This non-reversionary Settlement provides for a total payment of $450,000 to a class of approximately 475 Class Members. Settlement ¶¶ 1.23 and 8, respectively. As further defined below, the Net Settlement Amount ("NSA") will be distributed to Participating Class Members based on the total number of workweeks worked during the Class Period. In addition, Defendants will fund the Gross Settlement Amount 14 days after the Effective Date. Settlement ¶ 4.2.

The Settlement is fair and reasonable in light of the risks Plaintiff and Class Members faced regarding class certification, as well as on the merits of the claims asserted. Defendants argued that: 1) the vast majority of Class Members signed arbitration agreements; 2) the companies provided meal and rest break policies (and other wage and hour policies) in English and Spanish; 3) the policies provided employees the ability to request corrections on any errors regarding wage payments; 4) approximately ¼ of Class Members signed meal period waivers; 5) bonus payments were discretionary; 6) profit sharing plans may be excluded from the regular rate calculation pursuant to DLSE Policies § 49.1.2.4(3)(b) and 29 U.S.C. § 207 (e)(3)(b). Kim Decl., ¶ 10.

On November 19, 2024, the Parties attended private mediation with the Michael Loeb, which resulted in the proposed Settlement currently before the Court for preliminary approval. Kim Decl., ¶ 11. Plaintiff's counsel believes this Settlement – negotiated extensively and at arm's length with the assistance of an experienced mediator – is a fair and reasonable resolution of the claims in the Action considering the risks Plaintiff faced were this Action to proceed to trial.

II. <u>FACTUAL AND PROCEDURAL BACKGROUND</u>

A. <u>Factual Background and the Parties' Contentions</u>

Plaintiff was employed by Defendants from approximately November 2021 to April 2022 as a non-exempt "metal shaker." See Declaration of Oscar Castillo Rivas ("Rivas Decl.") ¶ 2.

Plaintiff challenged the wage and hour practices, including: 1) the meal period policy, including the timing of the meal periods and whether meal period premiums were paid according to *Ferra v. Lowes Hollywood Hotel, LLC* (2021) 11 Cal. 5th 858, 878; 2) the wage policy, specifically, whether overtime was paid at the "regular rate of pay," as discussed in *Alvarado v. Dart Container Corp. of California* (2018) 4 Cal. 5th 542, 554; 3) the rest period policy, specifically, whether employees were allowed to leave the premises and whether employees were required to seek permission before doing so; and 4) the derivative claims based on the above alleged violations. Kim Decl., ¶ 12.

Defendants denied liability, contending that: 1) the companies provided employees with meal periods, as required under California law; 2) the companies provided employees with written meal period policies; 3) the companies authorized employees to take 10-minute rest breaks, as required under California law; 4) the companies provided employees with written rest break policies; 5) the companies paid overtime correctly under California law because the bonus payments were discretionary and the profit sharing plan was properly excluded from the "regular rate" calculation. Kim Decl., ¶ 13.

B. <u>Procedural History</u>

On October 24, 2022, Plaintiff filed a proposed class action lawsuit in the Orange County Superior Court against Ortronics alleging: 1) failure to pay all wages; 2) failure to provide meal periods or compensation in lieu thereof; 3) failure to provide rest periods or compensation in lieu thereof; 4) failure to provide accurate itemized wage statements; 5) waiting time penalties; and 6) violation of the Unfair Competition law. (the "Action"). Kim Decl., ¶ 14.

On March 14, 2023, Plaintiff submitted his Labor Code § 2698 *et seq*. notices to the LWDA regarding claims against Ortronics and Agile. See Exhibit B, Kim Decl., ¶ 15; see also Exhibit C, Kim Decl., ¶ 16.

On May 30, 2023, Plaintiff filed a First Amended Complaint ("FAC") adding a claim under the PAGA. Kim Decl., ¶ 17.

On July 20, 2023, Plaintiff served written discovery to Ortronics and Agile, including Request for Production of Documents, Set 1; and Special Interrogatories, Set 1. Kim Decl., 18.

On September 5, 2023, Agile served responses to Request for Production of Documents, Set 1; and Special Interrogatories, Set 1. Kim Decl., ¶ 19.

On September 25, 2023, Ortronics served responses to Request for Production of Documents, Set 1; and Special Interrogatories, Set 1. Kim Decl., ¶ 20.

On May 2, 2024, the Court granted Defendants' Motion to Compel Arbitration and Stay Action. Kim Decl., ¶ 21.

On June 7, 2024, Plaintiff initiated arbitration regarding his individual claims with JAMS. Kim Decl., ¶ 22.

On November 19, 2024, the Parties attended private mediation with the Michael Loeb, which resulted in the proposed Settlement currently before the Court for preliminary approval. Kim Decl., ¶ 11. The Parties continued to negotiate the terms of the long-form settlement agreement, which is now presented to this Court for preliminary approval. See Exhibit A, Kim Decl., ¶ 9, Class Action and PAGA Settlement ("Settlement" or "Settlement Agreement").

Prior to attending mediation, the Parties exchanged the following information: 1) all employee handbooks used by Defendants during the Class Period; 2) all wage and hour policies used by Defendants during the Class Period; 3) an exemplar of all meal period waivers used by Defendants during the Class Period; 4) all bonus policies used by Defendant during the Class Period; 5) all reimbursement polices used by Defendant during the Class Period; 6) 25% sample of time keeping and payroll data for Class Members during the Class Period; and 7) mediation information, including total number of employees during the Class Period, total number of current employees, and workweek information. Kim Decl., ¶ 23. Using the sample time keeping and payroll records, Class Counsel and their expert analyzed the potential exposure for the class. *Id*. In addition, Plaintiff investigated the claims by speaking to Class Members. *Id*.

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

The following summarizes the terms of the Settlement:

• Gross Settlement Amount ("GSA")	$450,000.00
• Court-approved attorneys' fees (1/3):	$150,000.00
• Court-approved verified costs (up to):	$23,000.00
• Court-approved Service Payment:	$7,500.00
• Settlement administration costs:	$10,000.00
• PAGA Penalties:	$25,000.00[1]
Net Settlement Amount:	$234,500.00

Total Class Members = 475 employees.

Total Aggrieved Employees = 110 employees.

Class Period = October 24, 2018 to January 18, 2025.

PAGA Period = March 14, 2022 to January 18, 2025. Kim Decl., ¶ 24.

A. **The Settlement Class and Aggrieved Employees**

For purposes of this Settlement, there shall be a class consisting "all non-exempt hourly employees employed by Defendants in the State of California and who worked at an Ortronics' facility in the State of California, at any time during the Class Period." (the "Class" or "Class Members"). Settlement ¶ 1.6. The "Class Period" is the period between October 24, 2018 through January 18, 2025. Settlement ¶ 1.13.

[1] "PAGA Penalties" means the payment made hereunder to the California Labor and Workforce Development Agency pursuant to PAGA. Twenty Five Thousand Dollars and Zero Cents ($25,000) has been allocated to penalties under PAGA, of which Eighteen Thousand Seven Hundred Fifty Dollars and Zero Cents ($18,750) shall be paid by the Settlement Administrator directly to the LWDA. The remaining Six Thousand Two Hundred Fifty Dollars and Zero Cents ($6,250) shall be shall be distributed to Aggrieved Employees based on the total number of workweeks worked during the PAGA Period. Settlement Agreement ¶¶ 1.25, 1.28 and 1.36.

In addition, Aggrieved Employees are defined as "all non-exempt hourly employees employed by Defendants in the State of California and who worked at an Ortronics' facility in the State of California during the PAGA Period." Settlement ¶ 1.5. The "PAGA Period" is the period between March 14, 2022 through January 18, 2025. Settlement ¶ 1.33.

Finally, Defendants are defined as Defendants Ortronics, Inc. ("Ortronics") and Agile Staffing ("Agile") together. Settlement ¶ 1.17.

B. Released by Participating Class Members Who Are Not Aggrieved Employees

All Participating Class Members, on behalf of themselves and their respective former, present, and future representatives, agents, attorneys, heirs, administrators, successors, and assigns, release Released Parties from all claims that were alleged, or reasonably could be alleged, based on the facts alleged in the Operative Complaint during the Class Period, including but not limited to the failure to pay wages, failure to provide meal periods or compensation in lieu thereof, failure to provide rest breaks or compensation in lieu thereof, failure to provide accurate wage statements, failure to pay wages at separation, unfair competition. Settlement ¶ 5.2. Except as set forth in Section 5.3 of the Settlement, Participating Class Members do not release any other claims, including claims for vested benefits, wrongful termination, violation of the Fair Employment and Housing Act, unemployment insurance, disability, social security, workers' compensation, or claims based on facts occurring outside the Class Period. Id.

The Released Parties are defined as "Defendants and each of their present and former parent companies, subsidiaries, predecessors, successors, related or affiliated companies, and, for each of the foregoing entities, their respective former, present, and future directors, officers, shareholders, owners, members, co-joint venturers, employees, attorneys, insurers, assigns." Settlement ¶ 1.43.

C. Released by All Participating and Non-Participating Class Members Who Are Aggrieved Employees

All Participating and Non-Participating Class Members who are Aggrieved Employees are deemed to release, on behalf of themselves and their respective former, present, and future representatives, agents, attorneys, heirs, administrators, successors, and assigns, the Released Parties from all claims for PAGA penalties that were alleged, or reasonably could have been alleged, based on the facts alleged in Plaintiff's Operative Complaint and Plaintiff's PAGA Notice during the PAGA Period. Settlement ¶ 5.3.

D. Released by Plaintiff

Plaintiff and his respective former, present, and future spouses, representatives, agents, attorneys, heirs, administrators, successors, and assigns generally, release and discharge Released Parties from all claims, transactions, or occurrences that occurred during the Class Period, including, but not limited to: (a) all claims that were, or reasonably could have been, alleged, based on the facts contained, in the Operative Complaint and (b) all PAGA claims that were, or reasonably could have been, alleged based on facts contained in the Operative Complaint, Plaintiff's PAGA Notice, and (c) any other claims that arise from Plaintiff's employment whether asserted or not asserted, whether known or unknown. Settlement ¶ 5.1.

E. The Relief to the Settlement Class and Aggrieved Employees

Defendants will pay a non-reversionary Gross Settlement Amount of $450,000 ("Gross Settlement Amount"). Settlement ¶ 3.1. The Net Settlement Amount is set forth in Section III above. The average settlement share is projected at **$493.68**. See Kim Decl., ¶ 25.

The amount that each Participating Class Member will be eligible to receive under the Settlement will be calculated by (a) dividing the Net Settlement Amount by the total number of Workweeks worked by all Participating Class Members during the Class Period and (b) multiplying the result by each Participating Class Member's Workweeks. ("Individual Class Payments"). Settlement ¶ 3.2.4. For tax purposes, the Individual Class Payments shall be allocated and treated as follows: 1/3 as wages, and 2/3 as penalties and interest. Settlement ¶ 3.2.4.1.

The amount that each Aggrieved Employee will be eligible to receive under the Settlement will be calculated by (a) dividing the amount of the Aggrieved Employees' 25% share of PAGA Penalties $6,250 by the total number of PAGA Period Pay Periods worked by all Aggrieved Employees during the PAGA Period and (b) multiplying the result by each Aggrieved Employee's PAGA Period Pay Periods. Settlement ¶ 3.2.5.1.

F. Attorneys' Fees, Costs and Service Payment

Plaintiff will separately apply for a Class Representative Service Payment at the time of final approval in the amount of $7,500, for his service to Class Members. Settlement ¶ 3.2.1. As will be fully briefed at the time of final approval, Plaintiff's requested Class representative Service Payment is intended to recognize the time and effort that Plaintiff expended on behalf of Class Members, including having the courage to come forward as the class representative, providing factual information and documents to Plaintiff's Counsel, identifying potential witnesses, and to discuss the claims and theories at issue in the litigation. See Kim Decl., ¶ 26; see also Rivas Decl., ¶ 8.

Plaintiff's Counsel will apply for an attorneys' fee award of $150,000, or one third of the Gross Settlement Amount, and up to $23,000 in verified cost reimbursement. Settlement ¶ 3.2.2. Plaintiff submits that the requested attorneys' fee is fair compensation for undertaking risky, and time-consuming litigation on a purely contingent fee basis. In addition, the wage and hour claims asserted provide for payment of reasonable attorneys' fees. See Labor Code § 1194(a).

Both California and federal courts have recognized that an appropriate method for awarding attorneys' fees in class actions is to award a percentage of the "common fund" created as a result of the settlement. *See Wershba v. Apple Computer, Inc*. (2001) 91 Cal.App.4th 224, 254 (recognizing both the "percentage of recovery" and "lodestar/ multiplier" methods). The common fund theory is grounded on the historic power of equity to permit the trustee of a fund for the benefit of others in addition to himself, to recover his costs, including his attorneys' fees, from the fund or property itself or directly from the other parties enjoying the benefit. *See Serrano v. Priest* (1977) 20 Cal. 3d 25, 35 ("*Serrano*") citing *Alyeska Pipeline Co. v. Wilderness Society* (1975) 421 U.S. 240.

Here, Plaintiff seeks attorneys' fees in the amount of $150,000, or one third of the Gross Settlement Amount, under the "common fund" theory. Plaintiff's Counsel's request for fees for one third of the Gross Settlement Amount is within the range of reasonableness. Historically, courts have awarded percentage fees in the range of 20% to 50%. *See* 4 Newberg on Class Actions § 14.6 (4th Ed. 2013) ("No general rule can be articulated on what is a reasonable percentage of a common fund. Usually, 50% of the fund is the upper limit on a reasonable fee award from a common fund in order to assure that the fees do not consume a disproportionate part of the recovery obtained for the class, although somewhat larger percentages are not unprecedented.").

Plaintiff's Counsel submit that their requests for attorneys' fees is reasonable when viewed as an overall percentage of the Settlement in light of the substantial risks and significant work undertaken by Plaintiff's Counsel, the positive results obtained for Class Members, and the efficiency with which the Parties have conducted the litigation.

IV. ARGUMENT

A. Provisional Certification of the Settlement Class Under the Lesser Standard of Scrutiny for Settlement-Only Certification is Appropriate for Purposes of Settlement

California Rule of Court 3.769(d) provides that the Court may make an order approving certification of a provisional settlement class at the preliminary approval stage. It is well-established that trial courts should use a "lesser standard of scrutiny" for determining the propriety of certifying a settlement class, as opposed to a litigation class. *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1807. The reasons include that no trial is anticipated in a settlement class, so the case management issues inherent in determining if the class should be certified need not be confronted; and the trial court's fairness review of the settlement protects the interests of the non-representative class members. *Id.*; *See also Officers for Justice v. Civil Serv. Comm'n* (1982) 688 F.2d 615, 633 ("Th[e] relationship between the certification determination and the merits of the case is further attenuated within the context of the settlement evaluation process . . . . [C]ertification issues raised by class action litigation that is resolved short of a decision on the merits must be viewed in a different light."); *Amchem Prods., Inc. v. Windsor* (1987) 521 U.S. 591, 620 ("Confronted with a request for settlement-only class certification, a district court need not inquire whether the case, if tried, would present intractable management problems . . . for the proposal is that there be no trial."). As discussed below, for the purposes of this settlement only, the parties ask this Court to provisionally certify the settlement class, as defined above, under Cal. Civ. Proc. Code § 382.

1. Numerosity and Ascertainability

Numerosity is met if a proposed class is so large that joinder of all members would be impracticable. Cal. Code Civ. Proc. § 382. A proposed settlement class is ascertainable if the class members can be objectively identified and given notice of the litigation without unreasonable time or expense. *Medrazo v. Honda of N. Hollywood* (2008) 166 Cal.App.4th 89, 101; *see also Sevidal v. Target Corp.* (2010) 189 Cal.App.4th 905. Here, Defendants identified a Class of approximately 475 individuals, who have been identified through their records. Settlement ¶ 8.

2. **Well-Defined Community of Interest**

The community of interest requirement has three essential elements: "(1) predominant questions of law or fact; (2) class representatives with claims or defenses typical of the class; and (3) class representatives who can adequately represent the class." *Linder v. Thrifty Oil Co.* (2008) 23 Cal.4th 429, 435.

3. **Commonality**

To justify certification, the class proponent must show that questions of law or fact common to the class predominate over the questions affecting the individual members. *See Arenas v. El Torito Rests., Inc*. (2010) 183 Cal. App. 4th 723 732 citing *Washington Mut. Bank v. Super. Ct.* (2001) 24 Cal.4th 906, 913. While the Parties dispute whether a class would be appropriate if the litigation were to continue, for the purposes of this Settlement, Plaintiff asserts that Class Members are subject to the same wages and hour policies, including the meal period policies, the rest break policies, the compensation practices and reimbursement policies. Kim Decl., ¶ 27.

4. **Typicality**

Typicality "focuses on whether there exists a relationship between the plaintiff's claims and the claims alleged on behalf of the class." *Newberg*. Again, the Parties dispute whether Plaintiff's claims are typical of the Class for the purposes of any continued litigation of the Action, but for the purposes of this Settlement, Plaintiff asserts that the claims regarding Defendants' wage and hour practices are at the core of the lawsuit. Kim Decl., ¶ 28.

5. **Adequacy of Representation**

The proposed class representative must establish that he or she will adequately represent the proposed class. *See Barboza v. West Coast Digital GSM, Inc.* (2009) 179 Cal.App.4th 540, 546. Specifically, Plaintiff asserts that he is adequate to represent the class because he was employed by Defendants during the Class Period, experienced the same wage and hour practices as other Class Members, understood his duties as the class representative, has been willing (and has) undergone the risk of litigation, and has no conflicts of interest with the other Class Members. See Rivas Decl., ¶¶ 2-7.

Adequacy may be established by the fact that counsel are experienced practitioners. *See Local Joint Exec. Bd. of Culinary/Bartender Trust Fund v. Las Vegas Sands, Inc.* (9th Cir. 2001) 244 F.3d 1152, 1162. Here, Plaintiff alleges, and Defendants do not dispute, for purposes of this Settlement only, that Plaintiff and the Class are represented by counsel with extensive experience in wage-and-hour litigation, including class actions. See Kim Decl. ¶¶ 3-8; see also Declaration of Yoonis Han ("Han Decl.") ¶¶ 3-9.

6. **Superiority**

Plaintiff asserts that Certification of the Class for settlement purposes is superior here because there will be a global resolution of all claims at once, which fosters judicial economy. Class certification is also vastly superior to litigation of numerous individual claims because many of the claims are too small to litigate outside of the class context. See Kim Decl. ¶ 29.

B. <u>Preliminary Approval is Warranted</u>

California Rule of Court 3.769 conditions the settlement of a class action on court approval, which is generally evaluated under the federal standards applicable under Rule 23 of the Federal Rules of Civil Procedure. *See Reed v. United Teachers Los Angeles* (2012) 208 Cal.App.4th 322, 337 (stating that Rule 3.769 requires the trial court to determine "that the settlement is fair, reasonable and adequate to all concerned"); *Hanlon v. Chrysler Corp.* (9th Cir. 1998) 150 F.3d 1011, 1026 ((stating that Rule 23(e) requires the trial court to determine "whether a proposed settlement is fundamentally fair, adequate, and reasonable), (overruled on other grounds by *Castillo v. Bank of America NA* (9th Cir.) 980 F.3d 723, 729).

To be approved, a settlement must be "fair, reasonable and adequate to all concerned." *Reed v. United Teachers Los Angeles* (2012) 208 Cal.App.4th 322, 337. Settlement is the preferred means of dispute resolution, particularly in complex class action litigation. *See In re Syncor ERISA Litig*. (9th Cir. 2008) 516 F.3d 1095, 1101. The Court's role in evaluating a proposed settlement is limited to ensuring that the agreement taken as a whole is fair, and is not the product of fraud or collusion between the negotiating parties. *See, e.g.*, *Hanlon*, *supra*, 150 F.3d at 1027. There is an initial presumption of fairness when the settlement was negotiated at arms' length by class counsel. *See, e.g., Kullar v. Foot Locker Retail, Inc*. (2008) 168 Cal.App.4th 116, 130.

C. <u>Standard for Preliminary Approval</u>

The Court should consider several factors, including: "the strength of Plaintiff's case, the risk, expense, complexity and likely duration of further litigation, the risk of maintaining class action status through trial, the amount offered in settlement, the extent of discovery completed and the stage of the proceedings, [and] the experience and views of counsel." *Dunk v. Ford Motor Co*. (1996) 48 Cal.App.4th 1794, 1801. "The list of factors is not exclusive and the Court is free to engage in a balancing and weighing of the factors depending on the circumstances of each case." *Wershba, supra*, 91 Cal.App.4th at 245. As discussed below, the proposed settlement is fair, adequate and reasonable in light of the overall balance of factors in this case.

D. <u>Strength of Plaintiff's Case</u>

Plaintiff contends that the following represents the strengths of this case: 1) the meal period policy, specifically, the timing of the meal period; 2) the wage claim, specifically, the "regular rate" claim and 3) the derivative claims based on the above alleged violations. Kim Decl., ¶ 30.

E. <u>Risks, Expense, Complexity, and Duration of Litigation</u>

During the pendency of this Action, Defendant argued that 1) the vast majority of Class Members signed arbitration agreements; 2) the companies provided meal and rest break policies (and other wage and hour policies) in English and Spanish; 3) the policies provided employees the ability to request corrections on any errors regarding wage payments; 4) approximately ¼ of Class Members signed meal period waivers; 5) bonus payments were discretionary; 6) profit sharing plans may be excluded from the regular rate calculation pursuant to DLSE Policies § 49.1.2.4(3)(b) and 29 U.S.C. § 207 (e)(3)(b). Kim Decl., ¶ 10.

The second and third factors identified above pose a risk at class certification, specifically: 1) whether employees were afforded an opportunity to take a first or second meal period; and 2) whether employees were authorized to take rest breaks. Kim Decl., ¶ 31.

In addition, to prove the meal break claim, the use of a survey by a qualified statistician would be required and costly. Kim Decl., ¶ 32. Accordingly, all of these factors support preliminary approval of the proposed Settlement.

F. <u>Amount Offered in Settlement given Realistic Value of Claims</u>

This Settlement provides a fair and reasonable monetary recovery for Class Members in the face of disputed claims. With the assistance of their retained expert, based on the sample of time and payroll records, Plaintiff conducted a class-wide analysis of Defendants' potential exposure, and Plaintiff's estimated potential recovery on each claim is as follows:

<u>Failure to Pay All Wage Claim: $12,345.90</u>

The failure to pay all wage claim was based on the allegation that the Defendants did not use the "regular rate" calculation for overtime purposes. Kim Decl., ¶ 33. To estimate the value of this claim, Plaintiff analyzed the sample to calculate the amount of unpaid overtime owed when the employee earned other forms of renumeration in the same pay period (i.e., shift differential, incentive pay and other renumeration paid). *Id*. Based on this calculation, Plaintiff calculated the potential exposure for the overtime claim as follows: $25,971 plus $9,303 for interest = totaling $35,274. Kim Decl., ¶ 34.

However, there was some risk regarding the ability to obtain class certification, including: 1) whether bonus payments were discretionary; 2) whether profit sharing plans may be excluded from the regular rate calculation pursuant to DLSE Policies § 49.1.2.4(3)(b) and 29 U.S.C. § 207 (e)(3)(b). Kim Decl., ¶ 35. There were additional risks at trial, including whether arbitration agreements signed by Class Members would be enforceable (and bar any recovery in the State Court proceedings). *Id*.

Therefore, Plaintiff discounted the wage claim as follows: by 25% for the risk of non-certification, and by an additional 40% (for a total reduction of 65%) to account for the defenses on the merits, to arrive at $12,345.90. Kim Decl., ¶ 36.

<u>Meal Period Claim: $152,379</u>

The meal period claim was based on the theory that Defendants did not provide compliant meal periods, specifically, the timing of the meal period and second meal period. Kim Decl., ¶ 37. To estimate the value of this claim, Plaintiff analyzed sample to determine the meal period premiums owed on short, missed, or late, meal periods during the Class Period (and deducting meal period premiums paid) and arrived at the following potential exposure of $393,867 for meal period violations + $114,063 for interest = $507,930. Kim Decl., ¶ 38.

However, there was a significant risk regarding the ability to obtain class certification on this claim, as well as on the merits, including the argument that: 1) Defendants had an employee handbook that contained a compliant meal break policy under California law; 2) ¼ of employees signed meal period waiver agreements; 3) the reasons why employees took meal periods later in the work day, or not at all, would be individualized inquiries that would predominate. Kim Decl., ¶ 39. There were additional risks at trial, including whether arbitration agreements signed by Class Members would be enforceable (and bar any recovery in the State Court proceedings). *Id*.

Therefore, Plaintiff discounted the meal period claim by 30% for the risk of non-certification, and by an additional 40% (for a total reduction of 70%) to account for the defenses on the merits, to arrive at an estimated exposure of: $152,379. Kim Decl., ¶ 40.

<u>Rest Period Claim: $410,151.60</u>

The rest period claim was based on the theory that employees were not authorized to take rest breaks because of the requirement to remain on the premises and ask for permission to leave. Kim Decl., ¶ 41. To estimate the value of this claim, Plaintiff used a 100% violation rate for each qualifying shift worked during the Class Period and arrived at the following potential exposure: $2,290,723 for rest period premiums + $443,621 for interest = $2,734,344. Kim Decl., ¶ 42 .

However, there was a significant risk regarding the ability to obtain class certification on this claim, as well as on the merits, including: 1) the argument that the Defendants used an employee handbook during the Class Period that complied with California rest period laws; 2) rest periods were authorized; and 3) the reasons employees did not take their rest breaks was not caused by Defendants. Kim Decl., ¶ 43. There were additional risks at trial, including whether arbitration agreements signed by Class Members would be enforceable (and bar any recovery in the State Court proceedings). *Id*.

Therefore, Plaintiff discounted the rest period claim by 45% for the risk of non-certification, and by an additional 40% (for a total reduction of 85%) to account for the defenses on the merits, to arrive at an estimated exposure of: $410,151.60. Kim Decl., ¶ 44.

Itemized Wage Statement Claim: $217,237.50

Plaintiff contends that Class Members did not receive accurate itemized wages statements, as required Labor Code § 226(a) because of the wage claim, and meal and rest break claims. Kim Decl., ¶ 45. Based on Plaintiff's analysis, the maximum potential exposure for this claim is $868,950. *Id*.

However, for the same reasons stated above regarding the overtime claim, meal period claim and rest period claim, Plaintiff discounted the wage statement claim by 35% for a risk of non-certification, and by an additional 40% (for a total reduction of 75%) to account for the defenses on the merits, to arrive at an estimated exposure of $217,237.50. Kim Decl., ¶ 46.

Waiting Time Penalty Claim: $428,529.75

For the reasons set forth above regarding the wage claim and meal and rest break claims, Plaintiff argues that Class Members are owed waiting time penalties. Kim Decl., ¶ 47. Plaintiff's analysis shows that the maximum potential exposure for the waiting time penalty claim is $1,714,119. See Kim Decl., ¶ 48. However, for the same reasons stated above regarding the wage claim and meal and rest break claims, Plaintiff discounted the waiting time claim by 35% for a risk of non-certification, and by an additional 40% (for a total reduction of 75%) to account for the defenses on the merits, to arrive at an estimated exposure of $428,529.75. Kim Decl., ¶ 49.

PAGA Claim: $81,445

The PAGA Claim presented even greater hurdles. Kim Decl., ¶ 50. Based on the total number of pay periods during the PAGA period and alleged Labor Code violations in the Action, Plaintiff calculated the maximum exposure at $2,996,100. *Id*. However, the Court would have discretion to reduce the PAGA award based on whether the amount of the award would be "unjust, arbitrary and oppressive, or confiscatory." *Cal. Lab. Code* § 2699 (e)(2). In this case in particular, Plaintiff's Counsel heavily discounted the PAGA claim based on the risk that Defendants could convince the Court to dramatically reduce the PAGA penalties, because Defendants made efforts to comply with wage and hour laws through its employee handbook and meal period premium payments. *Id*. However, even if the Court did not reduce the award based on discretionary factors, Defendant could argue that the "subsequent violations" under PAGA only start to accrue after employers receive notice through a citation from the Labor Commissioner. *See Amaral v. Cintas*

Corp. No. 2, 163 Cal. App. 4th 1157, 1209 (2008) (holding "[u]ntil the employer has been notified that it is violating a Labor Code provision ... the employer cannot be presumed to be aware that its continuing underpayment of employees is a 'violation' subject to penalties."); *Gunther v. Alaska Airlines, Inc.*, 72 Cal. App. 5th 334 (2021) (following *Amaral* and holding that subsequent violation penalties do not apply unless plaintiff "presents evidence that the Labor Commission or a court notified [the employer] that it was in violation of the Labor Code"). Accordingly, the PAGA penalties would only trigger the initial penalties per pay period.

The court of appeal held that the same "fair and reasonable" standard applies to the approval of PAGA settlements. *Moniz v. Adecco USA, Inc.*, 72 Cal. App. 5th 56, 76 (2021) ("a trial court should evaluate a PAGA settlement to determine whether it is fair, reasonable, and adequate in view of PAGA's purposes to remediate present labor law violations, deter future ones, and to maximize enforcement of state labor laws"). A PAGA settlement should be approved when "a PAGA plaintiff has adequately represented the state's interests, and hence the public interest." *Id.* at 89.

Prior to *Moniz*, the discussion has largely been in the context of PAGA claims brought in conjunction with other non-PAGA class action allegations. *See e.g. Villacres v. ABM Industries, Inc.*, 189 Cal.App.4th 562 (2010) (Finding that a release of "all claims" in class action settlement encompassed claims under the PAGA). Moreover, in the *Nordstrom Commission Cases*, 186 Cal.App.4th 576, 589 (2010), the Court of Appeal held that trial court did not abuse its discretion when it approved a class action settlement that did not allocate any money to the highly disputed PAGA claim. Based on the contested issues in this case, Plaintiff discounted the PAGA exposure by 95%, resulting in an estimated realistic exposure of $149,805. Kim Decl., ¶ 51.

Using these estimated figures for each of the claims described above, Plaintiff calculated Defendants' realistic exposure for all claims at $1,370,448.75. Kim Decl., ¶ 52. The Gross Settlement Amount of $450,000 therefore represents approximately 33.33% of Plaintiff's reasonably forecasted recovery, while avoiding the further expense and risk of proceeding with class certification and trial. *Id*. Preliminary approval is appropriate since this Settlement will provide significant monetary relief to Class Members without the uncertainty, delay and additional expense of further litigation.

G. The Experience and Views of Counsel

Some courts state "[p]arties represented by competent counsel are better positioned than courts to produce a settlement that fairly reflects each party's expected outcome in litigation." *In re Pacific Enterprises Securities Litigation* (9th Cir. 1995) 47 F.3d 373,378. Here, Plaintiff is represented by competent and experienced counsel who possess extensive experience litigating wage and hour class actions and have been appointed as class counsel in numerous cases alleging similar claims. See Kim Decl., ¶¶ 3-8; see also Han Decl., ¶ 3-9. Class Counsel conducted an in-depth review of Defendants' policies and compensation records and drew on their extensive experience in similar cases to assess the strengths and weaknesses of Plaintiff's case. Kim Decl., ¶ 53. Class Counsel analyzed a sample of time and payroll records to estimate potential exposure. *Id*. The Settlement was also reached with the input and assistance of an experienced wage and hour mediator, the Michael Loeb. Kim Decl., ¶ 11. This factor strongly supports preliminary approval. See *Kullar, supra,* 168 Cal.App.4th at 130.

H. The Preliminary Approval Standard is Met

At this stage, the Court can grant preliminary approval of the settlement and direct that notice be given if the proposed settlement: (1) falls within the range of possible approval; (2) appears to be the product of serious, informed and non-collusive negotiations; and (3) has no obvious deficiencies. *See* Manual for Complex Litigation § 30.41 (3rd Ed. 1995); 4 Newberg on Class Actions § 11:24-25 (4th Ed. 2013). For the reasons set forth above, this standard has been met.

This Settlement is also the result of the exchange of substantial information; review of Class Member timekeeping and payroll documents, and statistical information that was analyzed by Class Counsel and their retained expert; arm's-length negotiations by counsel; mediation before an experienced wage and hour mediator; and negotiating the Settlement Agreement. Kim Decl., ¶ 54.

Preliminary approval of the Settlement is also warranted because there are no obvious deficiencies. This Settlement will provide substantial tangible monetary relief to Class Members. Moreover, the amounts proposed for attorneys' fees and costs and the Service Payment to the Plaintiff are all reasonable and appropriate based on the particular facts of this Action. All of these factors support preliminary approval.

Finally, the settlement of PAGA claims reflects the effort to remediate alleged labor law violations, deter future ones, and to maximize enforcement of state labor laws. *Moniz*, 72 Cal. App. 5th at 76.

I. The Court Should Preliminarily Certify the Proposed Settlement Class

A class is "ascertainable" where the members "may be readily identified without unreasonable expense or time by reference to official [or business] records." *See Sevidal v. Target Corp*. (2010) 189 Cal.App.4th 905, 919 (alterations in original). Here, Class Members can be identified from the Defendants' records. Defendants represent that the class consists of approximately 475 Class Members, rendering it impracticable to bring all Class Members before the Court. Settlement ¶ 8. Thus, the proposed Class satisfies the numerosity requirement. *See, e.g., Collins v. Rocha*, 7 Cal.3d 232, 234 (1972) (finding a class of 44 farm workers who worked for the same contractor sufficiently numerous).

The focus in a certification dispute is not on the merits of the case, but rather on what types of questions, "common or individual," are likely to arise in the action. *See Sav-On Drug Store, Inc. v. Super. Ct.* (Rocher) (2004) 34 Cal.4th 319, 327. The typicality requirement is satisfied where the Plaintiff has claims that are typical of those of the rest of the settlement class. *B.W.I. Custom Kitchen v. Owens-Illinois, Inc*. (1987) 191 Cal.App.3d 1341, 1347 (finding typicality satisfied where named Plaintiff purchased the same goods as the putative class in a consumer class action). Here, Plaintiff was impacted by the same alleged wage and hour policies that allegedly injured Class Members. See Rivas Decl., ¶ 5.

The "adequacy of representation" requirement examines conflicts of interest between the plaintiffs and the class(es) they seek to represent. *See Capital People First v. State Dept. of Developmental Servs.* (2007) 155 Cal.App.4th 676, 697. Here, Plaintiff and their counsel will adequately represent the Class as there are no conflicts between the Plaintiff and Class Members and Plaintiff possesses claims that are in line with those of Class Members. *See McGhee v. Bank of Am.* (1976) 60 Cal.App.3d 442, 450 (finding adequacy satisfied where there was no indication that plaintiff's counsel were not qualified and the named plaintiff had no interests antagonistic to those of the proposed class). Plaintiff's counsel also has extensive experience in wage and hour class action litigation. See Kim Decl., ¶ 3-8; Han Decl., ¶ 3-9.

J. <u>The Court Should Order Distribution of the Notice Packet and Set a Final Approval Hearing Date</u>

This Court should order distribution to Class Members of the proposed Notice Packet by First-Class Mail, postage prepaid, and using last known mailing from Defendants. This constitutes the "best notice practicable" under the circumstances because it provides "individual notice to all members who can be identified through reasonable effort." *See Eisen v. Carlisle & Jacquelin* (1974) 417 U.S. 156, 173.

Plaintiff proposes that the Settlement be administered by Phoenix Settlement Administrators, an experienced class action settlement administrator. See Declaration of Jodey Lawrence ¶¶ 3-14. Class Members' addresses are ascertainable through Defendants' records, which Defendants will provide to the settlement administrator no later than 14 days after the Court grants preliminary approval. Settlement § 4.1. The content of the proposed Class Notice satisfies California Rule of Court 3.766(d) because it advises Class Members of the nature of the claims, basic contentions and denials of the parties and the key terms of the Settlement, the uniform 60-day deadline to opt-out or object to the Settlement and the procedure by which to do so, explains the recovery formula and expected recovery amount for each Class Member, and advises them that they will be bound by the terms of the Settlement if they do not request exclusion. See Exhibit A, attached to the Settlement Agreement. The proposed notice also provides Class Members with the final approval hearing date and contact information for Class Counsel, and advises Class Members that they may enter an appearance through counsel if they wish to. *Id*. This manner of giving notice satisfies California Rule of Court 3.766(e) as the most reliable and cost-effective method of reaching Class Members.

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V. CONCLUSION

For the foregoing reasons, Plaintiff respectfully requests that the Court preliminarily approve the proposed Settlement, provisionally certify the Class, and enter the Proposed Order submitted concurrently herewith.

Date: May 9, 2025

VERUM LAW GROUP, APC

By: ____________________________________

Sam Kim
Yoonis Han
Attorneys for Plaintiff Oscar Castillo Rivas
and all other similarly situated persons

PROOF OF SERVICE

CCP §1013a(3)

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles, State of California. I am over the age of eighteen years and not a party to the within action; my business address is 360 N. Pacific Coast Hwy., Suite 1025, El Segundo, California 90245.

On the date below, I served the foregoing document(s), described as **PLAINTIFF'S NOTICE OF MOTION AND MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION AND PAGA SETTLEMENT** on each of the interested parties in this action by placing ☐ the original ☒ a true copy thereof enclosed in sealed envelopes addressed as follows (or as addressed on the attached mailing list):

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☒ **BY E-MAIL**: Based on a court order or an agreement of the parties to accept service by electronic transmission, I caused the documents to be sent to the persons at the electronic notification addresses listed above (or on the attached service list). I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on May 9, 2025, at El Segundo, California.

Manny N. Valdivia

Manny N. Valdivia