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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF ORANGE

RAFAEL PEREZ, as an individual and on
behalf of all others similarly situated,

Plaintiff,

vs.

KYOCERA SGS PRECISION TOOLS, INC.,
an Ohio corporation; and DOES 1 through
100,

Defendants.

CASE NO. 30-2022-01299232-CU-OE-CXC

*[Assigned for all purposes to the Hon.
Randall J. Sherman, Dept. CX105]*

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

Date: January 19, 2024
Time: 10:00 a.m.
Dept.: CX105
Reservation ID No.: 74112939

Action Filed: December 29, 2022
Trial Date: None Set

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I, MATTHEW K. MOEN, declare as follows:

1. I am a Senior Associate with Haines Law Group, APC, and counsel for the named Plaintiff Rafael Perez (“Plaintiff”) in the above-captioned matter. I am a member in good standing of the bar of the State of California and am admitted to practice in this Court. I have personal knowledge of the facts stated in this declaration and could testify competently to them if called upon to do so.

2. I received a Bachelor of Arts degree from UCLA in 2011, and a Juris Doctor from Loyola Law School, Los Angeles, in 2015. Both before and during law school, I worked for the law firm of Prindle, Amaro, Goetz, Hillyard, Barnes & Reinholtz LLP (now known as Prindle, Goetz, Barnes & Reinholtz LLP), located in Long Beach, California. Both before and during law school, I also worked for Jill McBride Baxter, Certified Sports Agent and Sports Law Attorney.

3. From January 2016 to December 2017, I worked as an associate at Baltodano & Baltodano LLP, a law firm dedicated exclusively to the practice of Plaintiff-side employment law located in San Luis Obispo, California. After the founding partner and senior litigation partner at Baltodano & Baltodano LLP, Justice Hernaldo J. Baltodano, was appointed to the California judiciary in December 2017, the firm dissolved on December 31, 2017. Since January 1, 2018, I have worked as an associate at my current firm, Haines Law Group, APC.

4. During my time with both Baltodano & Baltodano LLP and Haines Law Group, APC, my practice has been solely devoted to litigating plaintiff-side employment related cases in both state and federal court, including wage and hour class actions arising under the California Labor Code and the Fair Labor Standards Act. I am currently staffed on over thirty (30) active wage and hour class actions in which I am integrally involved in all aspects of the litigation. I also supervise the work of several junior attorneys staffed on the same wage and hour class actions.

5. The following is a non-exhaustive list of the recent wage and hour class actions (that have been granted final approval) in which I have been named as Class Counsel: *Morales*

1 *v. Ball Horticultural Co.*, Case No. 16CV-0488, San Luis Obispo County Superior Court,
2 Honorable Linda D. Hurst, presiding (approving an hourly rate of \$375 for work performed in
3 2017 and 2018); *Ruvalcaba Quiroz v. Circle M Contractors, Inc.*, Case No. 30-2016-00885065-
4 CU-OE-CXC, Orange County Superior Court, Honorable William D. Claster, presiding;
5 *Armenta, et al., v. California Friends Homes d/b/a Quaker Gardens*, Case No. 30-2016-
6 00883282-CU-OE-CXC, Orange County Superior Court, Honorable Randall J. Sherman,
7 presiding; *Willie Daniel Myers, Jr. v. Jerome's Furniture Warehouse*, Case No. CIVDS
8 1715069, San Bernardino County Superior Court, Honorable Janet M. Frangie, presiding
9 (approving an hourly rate of \$375 for work performed in 2018 and 2019); *Tina Arellano v.*
10 *Williams Sonoma Stores, Inc.*, Case No. BC693760, Los Angeles County Superior Court,
11 Honorable Daniel J. Buckley, presiding (approving an hourly rate of \$375 for work performed
12 in 2018 and 2019); *William Cuellar v. UMA Enterprises, Inc.*, Case No. BC657146, Los
13 Angeles County Superior Court, Honorable Maren E. Nelson, presiding (approving an hourly
14 rate of \$375 for work performed in 2018 and 2019); *Arturo Delgado v. Spears Manufacturing*
15 *Co.*, Case No. BC709665, Los Angeles County Superior Court, Honorable Maren E. Nelson,
16 presiding (approving an hourly rate of \$400 for work performed in 2018, 2019, and 2020);
17 *Abbygail Hernandez v. WirelessPCS CA, LLC*, Case No. BC721326, Los Angeles County
18 Superior Court, Honorable Carolyn B. Kuhl, presiding; *Lucia Kang, et al., v. Extra Space*
19 *Management, Inc.*, Case No. 30-2018-00997364-CU-OE-CXC, Orange County Superior Court,
20 Honorable William Claster, presiding (approving an hourly rate of \$400 for work performed in
21 2018, 2019, and 2020); *Fishback v. Paragon Framing, Inc.*, Case No. CIVDS1906610, San
22 Bernardino County Superior Court, Honorable David Cohn, presiding (approving an hourly rate
23 of \$400 for work performed in 2019 and 2020); *Francisco Garcia v. Searing Industries, Inc.*,
24 Case No. CIVDS1932477, San Bernardino County Superior Court, Honorable David Cohn,
25 presiding (approving an hourly rate of \$400 for work performed in 2019 and 2020); *David*
26 *Hasler, et al. v. Anheuser-Busch, LLC*, Case No. 19STCV00802, Los Angeles County Superior
27 Court, Honorable Daniel J. Buckley, presiding; *Angel Ochoa v. Fonseca Construction, Inc.*,
28 Case No. CIVDS1928625, San Bernardino County Superior Court, Honorable David Cohn,

1 presiding (approving an hourly rate of \$400 for work performed in 2019 to 2021); *William*
2 *Chang v. Avcorp Composite Fabrication, Inc.*, Case No. BC715159, Los Angeles County
3 Superior Court, Honorable Amy D. Hogue, presiding (approving an hourly rate of \$400 for
4 work performed in 2018 to 2021); *David Alvarado, et al. v. J.G. Boswell Company*, Case No.
5 19STCV19033, Los Angeles County Superior Court, Honorable Daniel J. Buckley, presiding
6 (approving an hourly rate of \$400 for work performed in 2019 to 2021); *Gaudencio Arroyo*
7 *Reynoso, et al. v. Cream of the Crop Ag Service, Inc.*, Case No. VCU278847, Tulare County
8 Superior Court, Honorable Bret D. Hillman, presiding (approving an hourly rate of \$425 for
9 work performed in 2019 to 2022); *Santos Orellana v. Smarte Carte, Inc.*, Case No.
10 20STCV08890, Los Angeles County Superior Court, Honorable Yvette M. Palazuelos,
11 presiding (approving an hourly rate of \$475 for work performed in 2020-2022); *Santiago*
12 *Gutierrez v. M.M.C.L., Inc. dba California Landcare*, Case No. 30-2021-01182371-CU-OE-
13 CXC, Honorable Randall J. Sherman, presiding (approving an hourly rate of \$575 for work
14 performed in 2021-2023); and *Robert Lewis v. IMERYS Filtration Minerals, Inc., et al.*, Case
15 No. 22CV02874, Santa Barbara County Superior Court, Honorable Jed Beebe, presiding
16 (approving an hourly rate of \$575 for work performed in 2021-2023).

17 6. I have also moved to certify, and have received an order certifying, a class action
18 as Class Counsel in the following cases:

- 19 • *Staublein v. Wells Fargo Bank, National Association*, Case No. CIVDS1712267, San
20 Bernardino Superior Court, Honorable David Cohn, presiding (certifying a wage
21 statement class); and
- 22 • *George Gomez v. The Bedrock Company*, Case No. CIVDS1824255, San Bernardino
23 County Superior Court, Honorable David Cohn, presiding (certifying claims for unpaid
24 overtime and minimum wage violations, meal period violations, rest period violations,
25 wage statement violations, and waiting time penalties).

26 7. In every year from 2020 to 2023, Thomson Reuters and Los Angeles Magazine
27 recognized me as a Top Young Attorney in Southern California in the annual Rising Star
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1 Edition of Super Lawyers. This is an honor awarded to no more than two-and-a-half percent
2 (2.5%) of attorneys under the age of forty in Southern California each year.

3 8. As counsel for Plaintiff, I have been closely involved in all aspects of this
4 litigation since its inception, and believe that the proposed Stipulation of Settlement
5 (“Settlement Agreement” or “Settlement”) is a fair and reasonable result for the participating
6 Settlement Class members.

7 9. Defendant Kyocera SGS Precision Tools, Inc. (“Defendant”) operates a
8 manufacturing company that produces metal parts and tools for several industries, including the
9 dental and airline industries. Plaintiff was employed by Defendant (or its predecessor entities,
10 including KPTI) as a non-exempt employee from approximately 1996 to July 2021 in Costa
11 Mesa, California. Plaintiff’s primary job duties consisted of operating a “Cincinnati Machine,”
12 which consists of heavy machinery that cuts metal material used to produce mechanical parts
13 and tools. Like all Settlement Class members, Plaintiff was subject to Defendant’s wage and
14 hour policies and practices.

15 10. On December 29, 2022, Plaintiff filed a class action complaint alleging
16 Defendant failed to: (i) pay all overtime wages owed; (ii) pay all minimum wages owed; (iii)
17 provide all lawful meal periods; (iv) authorize and permit all lawful rest periods; (v) reimburse
18 all necessary business expenses; (vi) timely pay all final wages upon separation; and (vii)
19 comply with California’s Unfair Competition laws. As a material term of the Settlement,
20 Plaintiff sent a letter to the Labor & Workforce Development Agency (“LWDA”), on June 16,
21 2023, alerting them of Defendant’s alleged Labor Code violations and Plaintiff’s intent to seek
22 civil penalties under the Private Attorneys General Act, Labor Code § 2698 *et seq.* (“PAGA”).
23 On September 13, 2023, after exhausting his administrative remedies with the LWDA, Plaintiff
24 filed the operative First Amended Complaint (“FAC”) to include an eighth cause of action for
25 Defendant’s failure to issue accurate and itemized wage statements and a ninth cause of action
26 for civil penalties under PAGA, premised on the same underlying Labor Code violations.
27 Attached hereto as **Exhibit 3** are true and correct copies of Plaintiff’s June 16, 2023 PAGA
28 Notice letter, Plaintiff’s LWDA submission page, and the LWDA’s confirmation of receipt.

1 11. Plaintiff asserts that, throughout the putative class period, Defendant maintained
2 an unlawful rounding practice that resulted in Defendant systematically underpaying Plaintiff
3 and Settlement Class members all earned wages. Specifically, Plaintiff claims Defendant
4 records Plaintiff's and Settlement Class members' clock in and clock out timeclock punches to
5 the minute, but rounds Plaintiff's and Settlement Class members' timekeeping entries in an
6 uneven manner to the employees' detriment, resulting in unpaid minimum and overtime wages.

7 12. In response, Defendant contends that its timekeeping practices are lawful, that
8 employees are paid for all time actually worked in accordance with company policies, and that
9 its timekeeping practice is neutral and operates in an even-handed way, which Defendant asserts
10 is lawful under the court's ruling in *See's Candy Shops, Inc. v. Superior Court*, (2012) 210
11 Cal.App.4th 889. Moreover, Defendant contends that Plaintiff could not certify this claim, as it
12 would require individualized inquiries into each employee on a pay period by pay period basis
13 as to what time an individual actually worked, notwithstanding early or late time punches (e.g.,
14 whether the employee actually started working after their first punch of the day or instead went
15 to the break room for coffee, socialized with coworkers, or otherwise did not work, particularly
16 because some employees were unable to begin working at the shift changeover until the prior
17 shift was complete), whether the employee was overpaid or underpaid based on Defendant's
18 timekeeping practice, and whether Defendant knew that the employee had worked more time
19 than he or she was paid, resulting in an unmanageable series of mini-trials. Finally, because
20 *Camp v. Home Depot U.S.A., Inc.* has been granted review by the California Supreme Court,
21 Defendant asserted that the decision is only persuasive, not binding authority. Plaintiff faces the
22 risk that the Camp holding could be reversed, rendering Plaintiff's reliance on *Camp* misplaced,
23 and Defendant claims that under *See's Candy Shops, Inc. v. Superior Court*, its rounding
24 practice will be found neutral and lawful.

25 13. Plaintiff alleges that Defendant paid Plaintiff and Settlement Class members non-
26 discretionary annual bonuses as an incentive for employees to work efficiently. However,
27 Plaintiff asserts that Defendant failed to include the value of these bonuses when calculating
28 employees' respective regular rates of pay. As a result, Plaintiff alleges that Defendant thereby

1 failed to accurately pay Plaintiff and other non-exempt employees all sick pay and meal and rest
2 period premium wages owed.

3 14. In response, Defendant argues any payments made under its “Bonus Plan” were
4 purely discretionary, as supported by its policy, and therefore are properly excluded from the
5 regular rate of pay. As such, Defendant contends that Plaintiff’s claim will fail on the merits.
6 Further, Defendant asserts that this claim is unmanageable, as it requires individualized
7 inquiries into whether each bonus made by Defendant was discretionary or non-discretionary
8 and into exactly how much money each employee was purportedly owed as a result of
9 Defendant’s alleged regular rate violation, resulting in an unmanageable series of mini-trials.

10 15. Plaintiff asserts that, for a portion of the statutory period, Defendant failed to
11 maintain accurate records of the hours actually worked by Settlement Class members, resulting
12 in unpaid wages. Specifically, Plaintiff alleges that Defendant required Plaintiff and other non-
13 exempt employees to wait in line before their scheduled shifts each workday and undergo
14 COVID-19 related temperature checks prior to being permitted to enter Defendant’s facility.
15 Despite Defendant allegedly requiring Plaintiff and other non-exempt employees to undergo
16 temperature checks, Plaintiff contends he and other non-exempt employees were not paid for
17 this time.

18 16. In response, Defendant maintains it accurately recorded all time worked by its
19 non-exempt employees and has properly paid all wages owed for all hours worked. Defendant
20 argues it did not permit Plaintiff and other non-exempt employees to conduct off-the-clock work
21 and asserts that Plaintiff is unable to provide any class-wide evidence of such an off-the-clock
22 policy/practice. In fact, Defendant alleges it maintained a written policy requiring Plaintiff and
23 other non-exempt employees to record all time they spent undergoing COVID-19 related
24 temperature checks so that they would be paid for all such time. Further, Defendant asserts that
25 this claim fails on its face because the government, not Defendant, forced employees to incur
26 this extra time, and in any event, such a claim is not suitable for class treatment, as it requires
27 individualized inquiries into whether any employee underwent a COVID-19 related temperature
28 check while off-the-clock on any given day, which is made increasingly difficult since off-the-

1 clock time is inherently not recorded, and exactly how much time each employee purportedly
2 worked off-the-clock each day, resulting in an unmanageable series of mini-trials.

3 17. Plaintiff further asserts that Defendant failed to provide the Settlement Class
4 members with all timely duty-free, uninterrupted 30-minute meal periods to which they were
5 entitled. Specifically, Plaintiff claims Defendant required Settlement Class members to clock
6 out prior to the conclusion of their fifth hour of work but to continue working on certain,
7 lengthy work projects so that their time records fraudulently appeared to contain a timely meal
8 period when none was actually provided. Plaintiff also asserts that Defendant failed to provide
9 all second, duty-free, uninterrupted 30-minute meal periods commencing before the end of the
10 tenth hour of work on days in which the Settlement Class members worked more than 10.0
11 hours. Further, Plaintiff asserts Defendant failed to pay all meal period premiums owed during
12 the relevant time period, which is itself a certifiable issue.

13 18. In response, Defendant contends it maintained lawful meal period
14 policies/practices throughout the Class Period. Specifically, Defendant argues that under
15 Brinker, they are only required to “provide” the opportunity to take meal periods, not “ensure”
16 meal periods are timely taken, which Defendant contends it has always done. Therefore,
17 Defendant asserts that if Settlement Class members did not take timely or duty-free first or
18 second meal periods, this was solely the result of employee choice and not reflective of
19 Defendant’s policies and practices. Defendant contends that Plaintiff’s meal period claim is not
20 suited for class certification as individual inquiries would be required to assess whether an
21 employee chose to not take an otherwise provided meal period, whether was an employee ever
22 validly waived a meal period, and whether a premium was paid on each shift in which a meal
23 period was truly not provided, resulting in an unmanageable series of mini-trials.

24 19. Plaintiff further alleges that Defendant failed to authorize and permit the
25 Settlement Class members to take all lawful rest periods to which they were entitled. As with
26 meal periods, Plaintiff asserts that he and the Settlement Class members regularly worked
27 through their scheduled rest periods, as work demands forced them to remain with their work
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equipment at all times. Plaintiff also alleges that Defendant failed to pay rest period premiums for each rest period violation at the Settlement Class members' regular rate of pay.

20. Defendant maintains it authorized and permitted the Settlement Class members to take all lawful rest periods to which they are entitled. To support this position, Defendant produced a facially lawful written rest period policy that Defendant contends was disseminated to all putative Settlement Class members and enforced at all times throughout the putative class period. Further, Defendant asserts that this claim is unmanageable and not suited for class certification, as it requires individualized inquiries into whether each employee was authorized and permitted to take a lawful rest period and on which days, which Defendant argues Plaintiff will be unable to substantiate with any common, documentary evidence, as rest periods are not required to be recorded, resulting in an unmanageable series of mini-trials.

21. Plaintiff further alleges that Defendant failed to reimburse the Settlement Class members for all necessary business expenses incurred, in violation of Labor Code § 2802. Specifically, Plaintiff asserts that Defendant required Plaintiff and other non-exempt employees to purchase and use their own tools for work-related purposes but did not reimburse Plaintiff and other non-exempt employees for their expenses.

22. In response, Defendant argues it maintained a policy to reimburse all reasonable and necessary business expenditures and that, to the extent that any expenses were not reimbursed, it was the result of Defendant's employees failing to submit expense reimbursement requests. Further, Defendant argues that Plaintiff's claim will fail on its merits, as Defendant provided the Settlement Class members with all tools they needed to perform their job duties, and therefore putative Settlement Class members never needed to purchase tools of their own. Defendant also maintains that this claim is not suited for class certification, as it would require a series of mini-trials to determine which employees incurred expenses, if any, whether those expenses were reasonable and necessary, and why the employee had not previously submitted an expense reimbursement request.

23. As a result of Defendant's alleged failure to pay all overtime wages, minimum wages, meal period and rest period premiums, and sick pay wages, Plaintiff asserts that

1 Defendant also failed to issue accurate and itemized wage statements and failed to timely pay all
2 final wages at the time of separation. As a result of these alleged Labor Code violations,
3 Plaintiff also seeks PAGA civil penalties on behalf of all aggrieved employees.

4 24. In response, Defendant argues that Plaintiff's underlying claims will fail and, as
5 a result, the derivative wage statement, waiting time, and PAGA claims will also fail. Defendant
6 also maintains that Plaintiff cannot show that the wage statement violations were "knowing and
7 intentional," or that the putative class members "suffer[ed] injury" as a result of the alleged
8 violations, as required by Labor Code § 226(e) for the imposition of wage statement penalties.
9 Moreover, Defendant maintains that its good faith defenses to Plaintiff's underlying claims
10 would preclude the recovery of waiting time penalties, which are only available for the "willful"
11 failure to pay wages, and that this Court would exercise its discretion to substantially reduce any
12 PAGA penalties awarded. Defendant also contends that Plaintiff's PAGA claim is not
13 manageable the for the same reasons that each of the direct claims is not certifiable.

14 25. In connection with mediation, Defendant provided Plaintiff with electronic
15 timekeeping and payroll records for all the Settlement Class members spanning the entire Class
16 Period, as well as key policy documents and data points. Plaintiff then retained an expert with a
17 Ph.D. in economics to analyze the produced data and create a class-wide exposure model for the
18 claims at issue. On May 18, 2023, the Parties participated in a mediation session with Phillip
19 Cha, Esq., during which the Parties exchanged divergent views on Defendant's liability and
20 exposure valuations, their legal positions, and the likelihood of certification of Plaintiff's claims.
21 At the conclusion of mediation, Mr. Cha made a mediator's proposal that the Parties ultimately
22 accepted. Over the following months, the Parties finalized the terms of the proposed Settlement
23 now before the Court for preliminary approval.

24 26. Attached hereto as **Exhibit 1** is a true and correct copy of the Parties'
25 Stipulation of Settlement. Attached hereto as **Exhibit 2** are true and correct copies of the
26 Notice of Class and Representative Action Settlement, Notice of Individual Settlement
27 Payment and Individual PAGA Payment, and the Request for Exclusion Form (collectively, the
28 "Notice Packet").

1 27. If the Court preliminarily approves this settlement, Defendant will pay a
2 Maximum Settlement Amount (“MSA”) of \$196,500.00. This Settlement is non-reversionary,
3 and Settlement Class members will automatically receive their Individual Settlement Awards
4 unless they affirmatively opt-out.

5 28. Settlement Class members can be easily identified using Defendant’s
6 employment and payroll records. Defendant represents that the Settlement Class consists of
7 approximately 84 individuals, rendering it impracticable to bring all Settlement Class members
8 before the Court. Based on the estimated NSA, average Individual Settlement Payments are
9 projected to be approximately \$964.29, with the lowest possible estimated Individual Settlement
10 Payment of \$7.31 (in the event a Settlement Class member worked only one workweek during
11 the Class Period) and the highest possible estimated Individual Settlement Payment of
12 \$1,769.13 (in the event a Settlement Class member performed worked in every workweek
13 throughout the Class Period).

14 29. At the time of seeking final settlement approval, Plaintiff will apply for a Class
15 Representative Enhancement Payment in the amount of \$5,000 for his service to the Settlement
16 Class and his general release of all claims. Plaintiff’s requested class representative
17 Enhancement Payment is intended to recognize the significant time and effort that he expended
18 on behalf of the Settlement Class, including searching for relevant documents for use in the
19 lawsuit and providing factual information to his attorneys, holding various phone calls with his
20 attorneys to discuss the claims in the lawsuit and Defendant’s practices, assisting his attorneys
21 in preparing for mediation, reviewing and providing input regarding the Settlement in his case,
22 and otherwise assisting his attorneys in moving the case towards resolution, the significant risks
23 Plaintiff undertook by serving as the named plaintiff, and the fact that he agreed to a general
24 release of all claims subject to a waiver of Civil Code § 1542.

25 30. Class Counsel will also apply for an attorneys’ fee award of up to one third of the
26 MSA (currently estimated at \$65,500), and up to \$30,000 in reimbursement for actual litigation
27 costs. Plaintiff submits that the requested fee is fair compensation for undertaking complex,
28 risky, expensive, and time-consuming litigation on a purely contingent fee basis. Class Counsel

has incurred substantial attorneys' fees conducting pre-filing investigation, analyzing Plaintiff's claims, conducting legal research and analysis, reviewing class documents and data produced by Defendant, extensively reviewing and evaluating the produced timekeeping and payroll records with the assistance of a retained expert to build a comprehensive damages model, preparing for and attending mediation, negotiating and drafting the Memorandum of Understanding, long-form Settlement Agreement, and Notice Packet documents, preparing this motion for preliminary approval, and otherwise litigating the case. Class Counsel will also expend future attorney time attending the hearing on this Motion, overseeing the Notice process, drafting the Final Approval Motion and supporting documents, attending the Final Approval hearing, and completing other tasks, such as fielding questions from Settlement Class members.

31. Class Counsel carefully vetted the claims at issue, reviewed Settlement Class member data spanning the entire Class Period and all relevant policy documents, and created a comprehensive damages model for Defendant's liability.

32. Although the Parties engaged in substantial informal discovery and information exchange prior to mediation, the Parties had agreed to refrain from engaging in formal written and deposition discovery until after exhausting their settlement efforts at mediation. Absent settlement, the Parties will be required to expend substantial time and resources conducting extensive formal written and deposition discovery. Moreover, Plaintiff has not yet filed for class certification, and thus, absent settlement, the Parties would face the prospect of appeals in the wake of a disputed class certification ruling and/or an adverse summary judgment ruling. Even if Plaintiff succeeded in certifying one or more classes, the Parties would incur considerably more attorneys' fees and costs through a possible decertification motion, trial, and possible appeal.

33. At the time of the proposed Settlement, Plaintiff had not filed his motion for class certification. Had the Court certified any claims, Plaintiff anticipated that Defendant would seek decertification. There was also a risk that Defendant would engage in a campaign pursuant to *Chindarah v. Pick Up Stix, Inc.*, (2009) 171 Cal.App.4th 796, that could either affect Plaintiff's ability to maintain the numerosity required to proceed as a class action, or

1 significantly reduce the size of the putative class for a fraction of what Settlement Class
2 members are receiving through this Settlement. Therefore, absent the Settlement, there was a
3 serious risk that Plaintiff would be unable to move forward on a class-wide basis.

4 34. Plaintiff's expert's data analysis of Defendant's timekeeping and payroll data
5 revealed that Defendant's rounding practice resulted in the Settlement Class members were
6 underpaid for an aggregate of 3,112.6 recorded hours of work during the putative class period.
7 Therefore, Plaintiff calculated Defendant's maximum potential exposure on this claim at
8 \$64,648 (3,112.6 unpaid hours * \$20.77 approximate average rate of pay).

9 35. Defendant argues that it paid employees for all hours actually worked of which it
10 had knowledge and that its timekeeping practice was neutral, both on its face and in practice,
11 and that such a policy is lawful under *See's Candy*. Moreover, because *Camp v. Home Depot*
12 has been granted review by the California Supreme Court, there is tangible risk that Camp will
13 be overturned, rendering Plaintiff's damages analysis substantially overstated. Plaintiff therefore
14 discounted the maximum potential exposure by 35% for the risk of non-certification and 35%
15 for the risk of being unsuccessful on the merits, to arrive at an estimated exposure of \$27,314.

16 36. Plaintiff's data analysis determined that Settlement Class members worked an
17 aggregate total of 12,935 shifts during the relevant portion of the Class Period in which
18 Defendant implemented its COVID-19 temperature check policy. Plaintiff estimates that
19 Settlement Class members were required to spend approximately 3 minutes per workday
20 undergoing COVID-19 related temperature checks before being able to clock in for their
21 scheduled shifts. Accordingly, Plaintiff calculated Defendant's maximum potential exposure for
22 off-the-clock wage violations at approximately \$13,433 (12,935 shifts * 3 minutes per shift *
23 \$20.77 approximate average rate of pay).

24 37. Defendant, however, maintains that it has properly recorded and paid Settlement
25 Class members for all time worked during the Class Period, and argue that its written policies
26 mandate that Plaintiff and other non-exempt employees undergo COVID-19 related temperature
27 checks after clocking-in for their shifts. Defendant also asserts that any time spent on
28 temperature checks was about 15 seconds per instance, not 3 minutes. Further, Defendant

1 asserts that it is not obligated to pay for this time as all, as the temperature screening was done
2 pursuant to a government mandate. Defendant also asserts this claim is unmanageable, as it
3 requires individualized inquiries into whether or not each individual employee was off-the-clock
4 during the temperature checks each day, resulting in an unmanageable series of mini-trials.
5 Plaintiff discounted the maximum exposure by 65% for the risk of non-certification, and by an
6 additional 45% for risk of losing on the merits, to arrive at an estimated exposure of \$2,586.

7 38. Plaintiff's data analysis determined that Settlement Class members worked an
8 aggregate total of 5,968 shifts in excess of 5.0 hours during the Class Period that contained a
9 facially unlawful first or second meal period, whether by being missed, late and/or short, for
10 which no meal period premiums were paid. Plaintiff's data analysis further revealed that non-
11 exempt employees received a total of 107 meal period premium payments during the Class
12 Period, which Plaintiff asserts were underpaid due to Defendant's failure to incorporate the
13 value of non-discretionary incentive pay when calculating the employees' regular rates of pay.
14 Accordingly, Plaintiff calculated Defendant's liability on this claim at \$118,392 ((5,698 meal
15 period violations * \$20.77 approximate average premium) + \$44.94 regular rate miscalculation).

16 39. Defendant asserts, however, that it maintained a lawful meal period
17 policy/practice at all times during the Class Period and that any failure by an employee to take a
18 lawful meal period was the result of employee choice rather than company policy, requiring
19 individual inquiries into the reasons why each non-compliant meal period was untimely or
20 missed on any given day. Defendant further asserts that all bonus payments made to putative
21 class members were purely discretionary in nature, and therefore were properly excluded from
22 Defendant's regular rate calculations. Given these defenses, Plaintiff discounted the maximum
23 exposure by 45% for the risk of non-certification, and by an additional 45% for risk of losing on
24 the merits, to arrive at an estimated exposure of \$35,814.

25 40. Plaintiff's data analysis revealed that non-exempt employees worked an
26 aggregate total of 52,609 shifts in excess of 3.5 hours during the Class Period. Plaintiff
27 estimates a rest period violation occurred on approximately 10% of work shifts in excess of 3.5
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1 hours. Accordingly, Plaintiff calculated Defendant's maximum potential exposure on this claim
2 at \$195,279 (9,402 rest period violations * \$20.77 approximate average premium).

3 41. But as noted above, Defendant argues it has always authorized and permitted
4 duty-free rest periods in accordance with California law. Further, Defendant asserts that this
5 claim is not amenable to class certification given the individual inquiries required to determine
6 whether and why each employee missed a rest period on any given shift, particularly given that
7 rest periods were not recorded. Given these defenses, Plaintiff discounted the maximum
8 exposure by 65% for the risk of non-certification, and by an additional 45% for risk of losing on
9 the merits, to arrive at an estimated exposure of \$37,591.

10 42. Plaintiff estimates that he and the putative class members spent approximately
11 \$100 each to purchase tools for work purposes. Therefore, Plaintiff calculated Defendant's
12 maximum potential exposure on this claim at \$8,400 (\$100 in expenses * 84 non-exempt
13 employees).

14 43. Defendant maintains that, at all relevant times, it never required its employees to
15 purchase tools. Further, any failure to reimburse was the result of an employee failing to submit
16 an expense reimbursement request. As such, Defendant contends this claim is not certifiable
17 since it would require a series of mini-trials to determine which employees incurred expenses,
18 whether those expenses were reasonable and necessary, and whether Defendant knew about the
19 expense, including why the employee had not previously submitted an expense reimbursement
20 request. Therefore, Plaintiff discounted the maximum potential exposure by 45% for the risk of
21 non-certification and 40% for the risk of being unsuccessful on the merits, to arrive at an
22 estimated exposure of \$2,772.

23 44. According to the key data points provided by Defendant, approximately 37
24 Settlement Class members are eligible for wage statement penalties, and a total of 1,455 wage
25 statements were issued during the relevant period. Plaintiff calculated Defendant's maximum
26 possible wage statement exposure as approximately \$143,650 ((37 initial violations * \$50 per
27 pay period) + (1,418 subsequent pay periods * \$100 per pay period)). However, Defendant
28 raised numerous defenses, including that the alleged violations, if any, were not "knowing and

1 intentional,” and that Plaintiff could not show that the Settlement Class members “suffer[ed]
2 injury” as a result of any alleged violations. Defendant further argued that Plaintiff’s underlying
3 claims would fail, and, therefore, his wholly derivative wage statement claim would also fail.
4 Therefore, Plaintiff discounted the maximum exposure by 35% for the risk of non-certification
5 of the underlying claims and 45% for a risk of being unsuccessful on the merits, including
6 failing to prove the violations were “knowing and intentional,” that the Settlement Class
7 members “suffer[ed] injury,” for an estimated recovery on this claim of \$51,355.

8 45. Based on data provided by Defendant, approximately 48 Settlement Class
9 members separated their employment during the relevant period applicable to this claim. As a
10 result of Defendant’s allegedly unlawful rounding practice, Plaintiff asserts that each of these
11 employees was owed wages that were not paid at the time of their separation. Plaintiff therefore
12 calculated Defendant’s maximum exposure of \$239,270 (48 former employees * average
13 waiting time penalty of \$4,984.80 (\$20.77 approximate average hourly rate * 8 hours * 30
14 days)). Defendant maintains that waiting time penalties are not appropriate because Plaintiff’s
15 claims fail on the merits, and given their good-faith defenses, Plaintiff cannot show that any
16 failure by Defendant to pay all final wages was willful either on a class/representative basis or
17 individually under 8 Cal. Code Regs. § 13520 and recent case law. Thus, Plaintiff discounted
18 this claim by 35% for the risk of non-certification and by an additional 50% for risk of being
19 unsuccessful on the merits or failing to establish willfulness, for an estimated recovery of
20 \$77,763.

21 46. Plaintiff alleges that PAGA civil penalties would be recoverable for each pay
22 period in which he could prove an underlying Labor Code violation. According to Plaintiff’s
23 data analysis, the Settlement Class members worked a combined total of 821 pay periods during
24 the PAGA liability period in which at least one of Plaintiff’s alleged Labor Code violations
25 occurred. Plaintiff therefore calculates Defendant’s maximum PAGA exposure at \$82,100 (821
26 pay periods * \$100 per violation). However, these penalties are exclusively derivative of the
27 underlying violations that Defendant vigorously disputes, both as to certification and the merits.
28 Plaintiff also recognizes that the Court has discretion to substantially reduce any award of

1 PAGA penalties. Therefore, Plaintiff discounted the maximum figure by 90% for risk of the
2 Court reducing penalties, to arrive at an estimated exposure of \$8,210.

3 47. Using these estimated figures, Plaintiff estimated that the potential reasonable
4 recovery for the Settlement Class would be approximately \$243,404. Thus, the proposed
5 recovery to the Settlement Class of \$196,500 represents approximately 80.73% of Plaintiff's
6 reasonably forecasted class-wide recovery, which is well within the range approved by courts as
7 being fair, reasonable and adequate, while also avoiding further expense and risk of proceeding
8 towards class certification and trial. This result is particularly beneficial to the entire class given
9 that Defendant had a viable option of pursuing a *Pick-Up-Stix* approach to defeat numerosity
10 and other requirements, which could have left some class members without any recovery at all.

11 48. Concurrently with the filing of this motion, Plaintiff provided notice of the
12 proposed Settlement, as well as copies of the Motion for Preliminary Approval and all papers
13 filed in support hereof, to the LWDA. Attached hereto as **Exhibit 4** are true and correct copies
14 of Plaintiff's Settlement submission and the LWDA's confirmation of receipt.

15
16 I declare under penalty of perjury under the laws of the United States and the state of
17 California that the foregoing is true and correct. Executed on September 27, 2023, at El
18 Segundo, California.

19 
20 Matthew K. Moen

EXHIBIT 1

STIPULATION OF SETTLEMENT

This Stipulation of Settlement (“Settlement Agreement” or “Settlement”) is reached by and between Plaintiff Rafael Perez (“Plaintiff” or “Class Representative”), as an individual and on behalf of all members of the Settlement Class (defined below), on one hand, and Defendant Kyocera SGS Precision Tools, Inc. (“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, Fletcher W. Schmidt, Matthew K. Moen, and Susan J. Perez of Haines Law Group, APC (collectively, “Class Counsel”). Defendant is represented by Rick Bergstrom and Koree B. Wooley of Jones Day (collectively, “Defense Counsel”).

On December 29, 2022, Plaintiff filed a class action complaint against Defendant in Orange County Superior Court, titled *Rafael Perez v. Kyocera SGS Precision Tools, Inc.*, Case No. 30-2022-01299232-CU-OE-CXC (the “Action”), alleging that Defendant failed to: (i) pay all overtime wages; (ii) pay all minimum wages; (iii) provide all lawful meal periods; (iv) authorize and permit all lawful rest periods; (v) reimburse necessary business expenses; (vi) timely pay all final wages due upon separation from employment; and (vii) comply with California’s Unfair Competition laws.

As a material term of this Settlement, the Parties agree that Plaintiff will submit a letter to the California Labor and Workforce Development Agency (“LWDA”) to exhaust his administrative remedies for a claim pursuant to the Private Attorneys General Act (“PAGA”) (Labor Code § 2698 *et seq.*) based on the underlying Labor Code violations alleged in the Action and Defendant’s alleged failure to issue accurate itemized wage statements (Labor Code § 226 *et seq.*). Following Plaintiff’s exhaustion of his pre-filing requirements, Plaintiff will file a First Amended Complaint (“FAC”) in the Action, adding factual allegations and a cause of action regarding Defendant’s alleged failure to issue accurate itemized wage statements and a claim under the PAGA based on all of the underlying Labor Code violations alleged in the Action and Labor Code § 226 *et seq.* Defendant will stipulate to the filing of such amended complaint for settlement purposes only. The Parties shall file their stipulation for leave to file the FAC within five (5) business days after Plaintiff exhausts his pre-filing requirements under the PAGA. Within five (5) business days after the Court signs an Order granting the Parties’ stipulation to file the FAC, Plaintiff will file the FAC with the Court and submit the FAC to the LWDA.

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

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

All persons who were employed by Defendant or its predecessor Kyocera Precision Tool, Inc. in California and were classified as non-exempt (“California Non-Exempt Employee”) at any time from December 29, 2018, through the date the Court grants preliminary approval of the Settlement or August 17, 2023, whichever occurs sooner (“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, the Parties shall revert to the respective positions they held prior to entering into the Settlement Agreement, and any documents prepared or submitted to the Court relating to the Settlement Agreement shall not have any impact on or be used for any purpose in the Action or any other litigation.

2. **Release by Settlement Class Members and Plaintiff.** Plaintiff, and each Settlement Class member who does not timely opt-out of the settlement, on behalf of themselves, their heirs, spouses, executors, administrators, attorneys, agents, assigns, and any entities or businesses in which any of them have a controlling ownership interest, shall fully and finally release and discharge Defendant, Kyocera Precision Tool, Inc. ("KPTI"), and their respective former and present parents, subsidiaries, affiliated corporations and entities, clients, and vendors and independent contractors through which Defendant conducts business, and each of their respective current, former, and future officers, directors, members, managers, employees, consultants, vendors, independent contractors, clients, partners, shareholders, joint venturers and third-party agents, and any successors, assigns, or legal representatives ("Released Parties") as follows:

- A. All Settlement Class members who do not timely opt out shall fully and finally release and discharge the Released Parties from all applicable California wage and hour claims, rights, demands, liabilities, and causes of action, arising from the claims pled in the Action or that could have been asserted based on the facts alleged in the Action against Defendant, including, but not limited to, claims for: failure to timely pay all wages at termination (California Labor Code §§ 201, 202, 203); failure to timely pay all minimum and overtime wages (California Labor Code §§ 204, 510, 558, 1182.12, 1194, 1194.1, 1194.2, 1197); meal and rest period violations, including with respect to the rate at which premiums are paid (California Labor Code §§ 226.7, 512, 516, 558, and applicable sections of the relevant Order of the Industrial Welfare Commission); failure to provide for or properly pay sick time (California Labor Code §§ 233, 246, 248, 248.5); failure to reimburse all necessary business expenses (California Labor Code §§ 2802, 2804); violation of the IWC California Wage Orders; failure to provide accurate wage statements in violation of California Labor Code § 226; failure to maintain records in violation of California Labor Code § 1174; violations of the PAGA, Labor Code § 2698 *et seq.* based on the foregoing claims or based on failure to timely pay wages during employment (California Labor Code § 210); unfair competition in violation of California Business and Professions Code section 17200 *et seq.*; and any damages, penalties, restitution, disgorgement, interest, costs, or attorneys' fees as a result thereof ("Released Claims"). This release shall run from December 29, 2018, through the date the Court grants preliminary approval of the Settlement or August 17, 2023, whichever occurs sooner.
- B. It is understood and acknowledged that all persons who were employed by Defendant in California and were classified as non-exempt at any time from one year prior to the date of Plaintiff's PAGA notice letter to the LWDA, through the

close of the Class Period (the "PAGA Aggrieved Employees") will be issued a check for their share of the PAGA Amount, as defined below, regardless of whether they submit a timely Request for Exclusion Form. All PAGA Aggrieved Employees shall be deemed to have released and discharged Defendant from all PAGA claims that are based on the Labor Code violations pled in the FAC in the Action or Plaintiff's letter to the LWDA, or which could have been pled in the FAC in the Action based on the factual allegations therein, that arose during the PAGA Period (the "PAGA Released Claims"). This release shall run from one year prior to the date of Plaintiff's PAGA notice letter to the LWDA through the close of the Class Period ("PAGA Period").

- C. This Settlement and the Court's judgment entered thereon shall have res judicata effect precluding Plaintiff and the participating Settlement Class members from initiating any other proceedings regarding the Released Claims.
- D. In light of Plaintiff's Class Representative Enhancement Payment, Plaintiff agrees to a general release, on behalf of Plaintiff, Plaintiff's heirs, spouses, executors, administrators, attorneys, agents, assigns, and any entities or businesses where Plaintiff has a controlling ownership interest, of any and all claims of any nature, known or unknown, contingent or accrued, against all Released Parties, whether in tort, contract, or equity, including, but not limited to, the Released Claims, and any claims arising out of or relating to any work performed by Plaintiff and/or Plaintiff's engagement to perform any work. Plaintiff understands that this release includes unknown claims and that Plaintiff is, as a result, waiving all rights and benefits afforded by California Civil Code Section 1542, which provides as follows:

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.

With full awareness and understanding of the above provisions, Plaintiff waives and relinquishes any and all rights and benefits that he may have under California Civil Code Section 1542, or the law of any other state or jurisdiction, or common law principle, to the same or similar effect, concerning the claims released herein.

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). 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. However, Plaintiff does waive and release Plaintiff's right to any monetary recovery or other personal relief should the EEOC, NLRB, or any other agency enforcing employment laws pursue claims on Plaintiff's behalf.

The "Effective Date" means the latest of: (i) the timely provision of this Settlement Agreement, the Final Order, and any other required items to the LWDA; (ii) if no appeal is filed, the expiration date of the time for the filing or noticing of any appeal from, or other challenge to, the Court's Judgment (this time period shall not be less than 60 calendar days after the Court signs an order granting final approval of the Settlement Agreement and enters judgment thereon); (iii) if an appeal is filed, the date that an appeal is resolved resulting in a court order approving this Settlement.

As part of the Settlement, Plaintiff waives his right to file an appeal and/or a writ or any challenge whatsoever to the Court's final judgment.

3. **Maximum Settlement Amount.** As consideration, Defendant agrees to pay a non-reversionary "Maximum Settlement Amount" of One Hundred Ninety-Six Thousand Five Hundred Dollars and Zero Cents (\$196,500.00) in full and complete settlement of the Action, as follows:

A. The Parties have agreed to engage CPT Group, Inc. as the "Settlement Administrator" to administer this Settlement.

B. Defendant will fund the Maximum Settlement Amount within thirty (30) calendar days after the Effective Date, which shall be deposited with the Settlement Administrator and held in an established Qualified Settlement Fund ("QSF"). Defendant shall not have any obligation to provide any portion of the Maximum Settlement Amount to the Settlement Administrator or any third party prior to this deadline.

C. This is a non-reversionary settlement. The Maximum Settlement Amount includes:

- (1) All payments (including interest) to the Settlement Class members;
- (2) All costs of the Settlement Administrator which are not to exceed \$7,500.00;
- (3) Up to \$5,000.00 for Plaintiff's Class Representative Enhancement Payment in recognition for Plaintiff's contributions to the Action and 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 (1/3) of the Maximum Settlement Amount in Class Counsel's attorneys' fees (currently estimated at \$65,500.00), 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 \$30,000.00. 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) Ten Thousand Dollars and Zero Cents (\$10,000.00) of the Maximum Settlement Amount has been set aside by the Parties as PAGA civil penalties. Per Labor Code § 2699(i), 75% of such penalties, or \$7,500.00, will be payable to the LWDA, and the remaining 25%, or \$2,500.00, will be payable to the PAGA Aggrieved Employees as the “Individual PAGA Amount,” as described below.
- D. Defendants will not oppose the reasonableness of the requests described in Paragraph C(2)-C(5). 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.
- E. **Employer Payroll Taxes.** The Maximum Settlement Amount does not include the employer’s share of payroll taxes, which shall be paid by Defendant separate and apart from, and in addition to, the Maximum Settlement Amount.
- F. **Escalator Clause.** Defendant represents that there were an estimated 11,357 aggregate workweeks worked by approximately 84 Settlement Class members at the time of mediation. If the actual number of aggregate workweeks worked by the Settlement Class members in the Class Period is more than 10% greater than this figure (i.e., if there are 12,493 or more aggregate workweeks worked by the Settlement Class members in the Class Period), Defendant shall have the option of either: (a) proportionally increasing the Maximum Settlement Amount based on the workweeks over and above the 10% estimate; or (b) ending the Class Period on a date that will not result in an increase of more than 10% of the workweeks estimated in the Class Period.
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 Maximum 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 of PAGA civil penalties designated as payable to the LWDA. The remaining amount shall be known as the “Net Settlement Amount.”
- B. From the Net Settlement Amount, the Settlement Administrator will calculate each Settlement Class member’s Individual Settlement Payment based on the following formula:
- i. PAGA Amount: The \$2,500.00 payable to the PAGA Aggrieved Employees as their 25% portion of the PAGA civil penalties shall be designated as the “Individual PAGA Payment.” Each PAGA Aggrieved Employee who was employed by Defendant at any time during the PAGA Period, regardless of whether they timely submit a Request for Exclusion,

shall receive a portion of the Individual PAGA Payment proportionate to the number of workweeks that he or she worked during the PAGA Period compared to the aggregate number of workweeks worked by all PAGA Aggrieved Employees during the PAGA Period.

- ii. Wage Statement Amount: Ten percent (10%) of the Net Settlement Amount shall be designated as the "Wage Statement Amount." Each participating Settlement Class member who was employed by Defendant at any time between December 29, 2021 and the end of the Class Period, shall receive a portion of the Wage Statement Amount proportionate to the number of workweeks that he or she worked during the aforementioned time period, by multiplying the Wage Statement Amount by a fraction, the numerator of which is the Settlement Class member's total workweeks worked during the aforementioned time period, and the denominator of which is the aggregate number of workweeks worked by all participating Settlement Class members during the aforementioned time period.
 - iii. Waiting Time Amount: Fifteen percent (15%) of the Net Settlement Amount shall be designated as the "Waiting Time Amount." The Waiting Time Amount shall be distributed in equal, pro-rata shares to each participating Settlement Class member who separated their employment from Defendant at any time between December 29, 2019 and the end of the Class Period.
 - iv. The remainder of the Net Settlement Amount will be distributed to each participating Settlement Class member based on their proportionate number of workweeks worked during the Class Period, by multiplying the remaining Net Settlement Amount by a fraction, the numerator of which is the 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. Within 10 business days following the full funding of the Maximum Settlement Amount, the Settlement Administrator will calculate and disburse all payments due under the Settlement Agreement, including all Individual Settlement Payment, Individual PAGA Amount, the Attorney Fee Award, the Cost Award, the Class Representative Enhancement, the PAGA Payment, and the Administration Costs. The Individual PAGA Payments paid to PAGA Aggrieved Employees will be issued separately from the remainder of the Individual Settlement Payment, if any. The Settlement Administrator will also mail a check for 75% of the PAGA Payment to the LWDA for settlement of the PAGA claim. As of the Effective Date, Defendants and the Released Parties shall have no liability for the Released Claims or the PAGA Released Claims which are released under this Agreement.
- D. Each Individual Settlement Payment shall be allocated as one-third wages (subject to applicable withholdings), one-third interest (not subject to withholdings), and

one-third Labor Code penalties and/or reimbursement of expenses (not subject to withholdings). Each Individual PAGA Payment payable to the PAGA Aggrieved Employees shall be allocated 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, reimbursement of expenses, and interest. Settlement Class members are responsible for their share of the payroll taxes on portions of the Individual Settlement Payments allocated as unpaid wages, which will be deducted from their Individual Settlement Payments.

- E. Defendant shall fully discharge its obligations to the participating Settlement Class members through the mailing of an Individual Settlement Payment, regardless of whether such checks are actually received and/or negotiated by the recipients. Each member of the Settlement Class who receives an Individual Settlement Payment must cash that check within one hundred eighty (180) days from the date the Settlement Administrator mails it. Any check that is not negotiated within 180 days of mailing to a Settlement Class member shall be transferred to the California State Controller's Office to be held pursuant to the Unclaimed Property Law, California Civil Code § 1500 *et seq.*, in the name of the Settlement Class member to whom the check was issued, until such time that they claim their property. The Parties agree that this disposition results in no "unpaid residue" within the meaning of California Code of Civil Procedure Section 384, as the entire Net Settlement Amount will be paid out to participating Settlement Class members, whether or not they cash their Individual Settlement Payment check. Each PAGA Aggrieved Employee who receives an Individual PAGA Payment must cash that check within one hundred and eighty (180) calendar days from the date the Settlement Administrator mails it. Any funds payable to PAGA Aggrieved Employees whose checks are not cashed within 180 calendar days after mailing will be transferred to the California State Controller's Office to be held pursuant to the Unclaimed Property Law, California Civil Code § 1500 *et seq.*, in the name of the PAGA Aggrieved Employee to whom the check was issued, until such time that he or she claims his or her property.
- F. 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 Maximum Settlement Amount, which is currently estimated to be \$65,500.00. Additionally, Class Counsel will request an award of actual costs and expenses as supported by declaration, in an amount not to exceed \$30,000.00 from the Maximum 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 for the fees and costs award approved by the Court.

6. **Class Representative Enhancement Payment.** Defendant will not object to a request for a Class Representative Enhancement Payment in the amount of \$5,000.00 for Plaintiff's time and risk in prosecuting this case, Plaintiff's service to the Settlement Class, and in exchange for Plaintiff's general release of claims. This award will be in addition to Plaintiff's Individual Settlement Payment as a Settlement Class member, and shall be reported on an IRS Form 1099 issued by the Settlement Administrator.

7. **Settlement Administrator.** Defendant agrees to the appointment of CPT Group, Inc. as Settlement Administrator. Defendant will not object to Plaintiff seeking approval to pay up to \$7,500.00 for the administration services from the Maximum Settlement Amount. The Settlement Administrator shall be responsible for depositing into an account and holding the payment from Defendant comprising the Maximum 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 Maximum Settlement Amount only after Individual Settlement Payments have been mailed to all participating Settlement Class members.

8. **Preliminary Approval.** Within ten (10) business days after Plaintiff's filing of the FAC, 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, Fletcher W. Schmidt, Matthew K. Moen, and Susan J. Perez of Haines Law Group, APC as Class Counsel;
- C. Appointing Plaintiff Rafael Perez as Class Representative for the Settlement Class;
- D. Approving CPT Group, Inc. 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, Notice of Individual Settlement Payment, and the Request for Exclusion Form), and directing the mailing of the same; and
- G. Scheduling a Final Approval hearing.

Plaintiff will provide Defendant with five (5) business days to review Plaintiff's Motion for Preliminary Approval prior to it being filed with the Court.

9. **LWDA Notices.** Class Counsel will provide to the LWDA all required notices and documents to facilitate approval of the Settlement in accordance with the PAGA, including submitting to the LWDA a copy of the proposed settlement at the same time that it is submitted to

the Court; a copy of the Court's judgment; copies of any other orders that award or deny penalties; and a copy of the Complaint.

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

- A. Within 10 business days of the court signing an order preliminarily approving this Settlement Agreement, Defendant will provide the Settlement Administrator with the names, last known addresses, phone numbers, social security numbers, and workweek data for all Settlement Class members during the Class Period.
- 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, as defined below, 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 an additional fourteen (14) calendar days after the Response Deadline to opt-out, object, or dispute their Individual Settlement Payment. Notice Packets that are re-mailed shall inform the recipient of this adjusted deadline.
- D. Requests for Exclusion. Request for Exclusion Forms will be mailed to all Settlement Class members in the Notice Packets. Any Settlement Class member who wishes to opt-out of the Settlement must complete and mail the Request for Exclusion Form to the Settlement Administrator within 45 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 the Request for Exclusion Form by the Response Deadline. The Request for Exclusion Form must: (1)

contain the name, address, telephone number and the last four digits of the Social Security number of the Settlement Class member; (2) be signed by the Settlement Class member; and (3) be postmarked by the Response Deadline and mailed to the Settlement Administrator at the address specified in the Class Notice. Request for Exclusion Forms must be returned to the Settlement Administrator by mail, but an otherwise valid and timely Request for Exclusion Form that is received by the Settlement Administrator will be accepted. If the Request for Exclusion Form does not contain the information listed in (1)-(2), it will not be deemed valid for exclusion from the Settlement, except a Request for Exclusion not containing a 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 Form shall be the exclusive means used to determine whether a Request for Exclusion Form has been timely submitted. Any Settlement Class member who requests to be excluded from the Settlement Class will not be entitled to any recovery under this Settlement Agreement and will not be bound by the terms of the Settlement 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 Judgment. The Parties and their respective counsel each agree that they will not distribute to any Settlement Class member any documents, notices, or information regarding the Action or the settlement other than documents, notices, or information approved by the Court, including but not limited to any documents, notices, or information that would encourage or discourage a Settlement Class member from opting out, unless a specific request is first made to them by the Settlement Class member.
 - iii. Defendant's Right to Rescind. Notwithstanding any other provision of this Settlement Agreement, Defendant shall retain the right, in the exercise of its sole discretion, to nullify the Settlement within thirty (30) days of receiving notice that 10% or more of the Settlement Class members validly opted out of this Settlement. Defendant shall communicate its decision to nullify the Settlement Agreement in writing to the Settlement Administrator and Class Counsel.
 - iv. PAGA Aggrieved Employees. All PAGA Aggrieved Employees shall receive their share of the PAGA Amount and will be deemed to have released the PAGA Released Claims, regardless of whether or not they timely request to be excluded from the Settlement Class.
- E. Objections. Members of the Settlement Class who do not opt-out may object to this Settlement 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, as well as file all such objections with the

Court) within the Response Deadline. Defendant's counsel and Class Counsel shall file any responses to objections no later than the deadline to file the Motion for Final Approval. To be valid, any objection must be postmarked no later than the Response Deadline. Any Settlement Class member who wishes to may appear in person or through their own counsel and raise an objection at the Final Approval Hearing.

- 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 notify the Parties of the dispute within five business days of receipt of the notice of dispute and 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. However, if the Settlement Administrator and the Parties cannot agree on a resolution, the Parties will submit the dispute to the Court for a final determination.
- G. Defendant understands its legal obligation not to retaliate against the Settlement Class members for their participation and/or election to participate in the benefits to be afforded any of them by the Settlement and/or the Action.
- H. Notice of Final Judgment. A notice of the Court's Final Judgment and Order will be posted on the Settlement Administrator's website for the Settlement Class members and PAGA Aggrieved Employees, in compliance with CRC Rule 3.771(b).

11. **Final Approval.** Following preliminary approval and within fifteen (15) business days of 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, confirming the release herein. This judgment will constitute a binding and final resolution of any

and all Released Claims by the participating Settlement Class members who do not timely opt-out of the Settlement.

Plaintiff will provide Defendant with five (5) business days to review Plaintiff's Motion for Final Approval prior to it being filed with the Court

12. **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.

13. **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 or their respective counsel, 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.

14. **Confidentiality.** The Parties agree that this Settlement Agreement is confidential (except for purposes of enforcement) and that neither Party will issue any press release or other public or non-public representation regarding the Settlement, other than as necessary to obtain court approval and effectuate the terms of the Settlement. The Parties and their counsel agree that they will not initiate or have any contact with the press, respond to any press inquiry, or have any communication with the press about the Action. Plaintiff's Counsel will not communicate with other plaintiff's counsel about this Settlement, nor utilize it in any way in their marketing or advertising materials or website. Notwithstanding the above, Plaintiff's Counsel may communicate with Settlement Class members for purposes of the Settlement, subject to the limitations set forth in Section 9.D.ii, above. Nothing herein shall prohibit any of the Parties from disclosing information relating to the Settlement Agreement as required by law.

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:	Fletcher W. Schmidt of Haines Law Group, APC 2155 Campus Drive, Suite 180, El Segundo, CA 90245 fschmidt@haineslawgroup.com
if to Defendant:	Rick Bergstrom of Jones Day 4655 Executive Drive, Suite 1500, San Diego, CA 92121 rjbergstrom@jonesday.com

16. **Jurisdiction of the Superior Court.** The Court shall retain jurisdiction with respect to the interpretation, implementation, and enforcement of the terms of this Agreement and all orders entered in connection therewith, and the Parties and their counsel hereto submit to the jurisdiction

of the Superior Court for purposes of interpreting, implementing, and enforcing the Settlement embodied in this Agreement and all orders in connection therewith.

17. **Invalidity of Any Provision; Severability.** Before declaring any provision of this Agreement invalid, the Parties request that the Court first attempt to construe the provisions valid to the fullest extent possible consistent with applicable precedents, so as to define all provisions of this Agreement valid and enforceable. In the event any provision of this Agreement other than Plaintiff's, Class Members', and the LWDA's release of claims, as set forth herein, is found unenforceable, the unenforceable provision shall be deemed deleted, and the validity and enforceability of the remaining provisions shall not be affected thereby.

18. **Cooperation in Drafting.** The Parties have cooperated in the drafting and preparation of this Agreement. This Agreement will not be construed against any Party on the basis that the Party was the drafter or participated in the drafting.

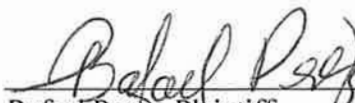
19. **Entire Agreement.** This Settlement Agreement contains the entire agreement between the Parties with respect to the transactions contemplated hereby, and supersedes all negotiations, presentations, warranties, commitments, offers, contracts, and writings prior to the date hereof relating to the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

20. **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.

IN WITNESS THEREOF, the Parties to this Settlement Agreement each acknowledge that they have read the foregoing Settlement Agreement, have had the opportunity to and have in fact consulted with counsel of their own choice before signing this Settlement Agreement, accept and agree to the provisions contained herein, and hereby execute it voluntarily and with full understanding of its consequences.

RAFAEL PEREZ

Dated: 6/22/23



Rafael Perez, Plaintiff

KYOCERA SGS PRECISION TOOLS, INC.

Dated: _____

By: _____
Its: _____

of the Superior Court for purposes of interpreting, implementing, and enforcing the Settlement embodied in this Agreement and all orders in connection therewith.

17. **Invalidity of Any Provision; Severability.** Before declaring any provision of this Agreement invalid, the Parties request that the Court first attempt to construe the provisions valid to the fullest extent possible consistent with applicable precedents, so as to define all provisions of this Agreement valid and enforceable. In the event any provision of this Agreement other than Plaintiff's, Class Members', and the LWDA's release of claims, as set forth herein, is found unenforceable, the unenforceable provision shall be deemed deleted, and the validity and enforceability of the remaining provisions shall not be affected thereby.

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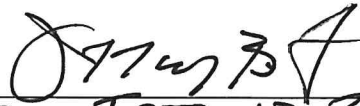
RAFAEL PEREZ

Dated: _____

Rafael Perez, Plaintiff

KYOCERA SGS PRECISION TOOLS, INC.

Dated: 6.21.23


By: JEFFREY B. ZAUCHA
Its: CHIEF FINANCIAL OFFICER

APPROVED AS TO FORM:

Dated: June 26, 2023

HAINES LAW GROUP, APC

By: 

Paul K. Haines
Fletcher W. Schmidt
Matthew K. Moen
Attorneys for Plaintiff

Dated: _____

JONES DAY

By: _____

Rick Bergstrom
Koree B. Wooley
Attorneys for Defendant

APPROVED AS TO FORM:

Dated: _____

HAINES LAW GROUP, APC

By: _____

Paul K. Haines
Fletcher W. Schmidt
Matthew K. Moen
Attorneys for Plaintiff

Dated: June 21, 2023

JONES DAY

By:  _____

Rick Bergstrom
Koree B. Wooley
Attorneys for Defendant

EXHIBIT 2

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF ORANGE

RAFAEL PEREZ, as an individual and on behalf of all
others similarly situated,

Plaintiff,

vs.

KYOCERA SGS PRECISION TOOLS, INC., an Ohio
corporation; and DOES 1 through 100,

Defendants.

Case No. 30-2022-01299232-CU-OE-CXC

**NOTICE OF CLASS AND REPRESENTATIVE
ACTION SETTLEMENT**

To: All persons who were employed by Defendant Kyocera SGS Precision Tools, Inc. (“Defendant”) or its predecessor Kyocera Precision Tools, Inc. in California and were classified as non-exempt at any time from December 29, 2018, through <<PRELIM APPROVAL DATE OR AUGUST 17, 2023, WHICHEVER OCCURS SOONER >>. Collectively, these employees will be referred to as “Settlement Class Members.”

**PLEASE READ THIS NOTICE CAREFULLY
YOUR LEGAL RIGHTS MAY BE AFFECTED WHETHER YOU ACT OR NOT**

Why should you read this notice?

The Court has granted preliminary approval of a proposed settlement (the “Settlement”) of the above-captioned class and representative action (the “Lawsuit”). Your rights may be affected by the Settlement, and it is important that you read this notice carefully. Defined terms in this Notice use the definitions in the parties’ settlement agreement.

You may be entitled to money from this Settlement. Defendant’s records show that you were employed by Defendant as a non-exempt employee in California between December 29, 2018 and <<PRELIM APPROVAL DATE OR AUGUST 17, 2023, WHICHEVER OCCURS SOONER >>. 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 Lawsuit, 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 certain aspects of 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.

What is this case about?

Plaintiff Rafael Perez (“Plaintiff”) brought this lawsuit against Defendant, asserting claims on behalf of all Settlement Class Members. 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.”

In the Lawsuit, Plaintiff alleges that Defendant: (1) failed to pay all overtime wages; (2) failed to pay all minimum wages; (3) failed to provide all lawful meal periods; (4) failed to authorize and permit all lawful rest periods; (5) failed to reimburse all necessary business expenditures; (6) failed to timely pay all final wages; (7) engaged in unfair competition; (8) failed to issue accurate and itemized wage statements; and (9) is liable for civil penalties under the Private Attorneys General Act (“PAGA”).

Defendant denies that it has done anything wrong, and 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 Defendant, 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 business operations, the parties concluded that it is in the interests of Settlement Class Members and in Defendant's best interest to settle the Lawsuit on the terms summarized in this Notice. After Defendant provided substantial relevant information to Class Counsel, the Settlement was reached after mediation and arms'-length negotiations between the parties with the assistance of a neutral mediator.

The Class Representative and Class Counsel support the Settlement. Among the reasons for support are the defenses to liability potentially available to Defendant, the inherent risks of trial on the merits, and the delays and uncertainties associated with ongoing litigation.

If you are still employed by Defendant, your decision about whether to participate in the Settlement will not affect your employment. California law and Defendant's policy strictly prohibit unlawful retaliation. Defendant will not take any adverse employment action against or otherwise target, retaliate, or discriminate against any Settlement Class Member because of his or her decision to either participate or not participate in the Settlement.

Who are the Attorneys?

Attorneys for Plaintiff / Settlement Class Members:	Attorneys for Defendant:
HAINES LAW GROUP, APC Paul K. Haines (SBN 248226) phaines@haineslawgroup.com Fletcher W. Schmidt (SBN 286462) fschmidt@haineslawgroup.com Matthew K. Moen (SBN 305956) mmoen@haineslawgroup.com Susan J. Perez (SBN 329044) sperez@haineslawgroup.com 2155 Campus Drive, Suite 180 El Segundo, California 90245 Tel: (424) 292-2350 Fax: (424) 292-2355 haineslawgroup.com	JONES DAY Rick Bergstrom (State Bar No. 169594) rjbergstrom@jonesday.com Koree Wooley (State Bar No. 294489) kbwooley@jonesday.com 4655 Executive Drive, Suite 1500 San Diego, CA 92121-3134 Telephone: 858.314.1200 Facsimile: 844.345.3178 jonesday.com

What are the terms of the Settlement?

On <<PRELIM APPROVAL DATE>>, the Court preliminarily certified a settlement class – for settlement purposes only – of all persons who were employed by Defendant or its predecessor Kyocera Precision Tools, Inc. (“KPTI”) in California and were classified as non-exempt at any time from December 29, 2018 through <<PRELIM APPROVAL DATE OR AUGUST 17, 2023, WHICHEVER OCCURS SOONER >> (the “Class Period”). Settlement Class Members who do not submit a valid and timely Request for Exclusion Form pursuant to the procedures set forth in this Notice will be bound by the Settlement and will release their claims against Defendant, as described below in the “Release” section. The Court also approved an allocation of the Settlement to Plaintiff's claim pursuant to the Private Attorneys' General Act. Settlement Class Members who are eligible for a portion of the PAGA Payment, as described below, will be bound by the release of the PAGA claim irrespective of whether they submit a Request for Exclusion from the Settlement.

Defendant has agreed to pay \$196,500.00 (the “Maximum Settlement Amount”) to fully resolve all claims in the Lawsuit, including payments to Settlement Class Members, attorneys' fees and expenses, settlement administration costs, payment to the California Labor and Workforce Development Agency (“LWDA”) for its share of PAGA civil penalties, and the Class Representative Enhancement Payment. The following deductions from the Maximum Settlement Amount will be requested by the parties:

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

Attorneys' Fees and Expenses. Class Counsel have been prosecuting the Lawsuit 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 Maximum 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 Maximum Settlement Amount (which is currently estimated to be \$65,500.00) as reasonable compensation for the work Class Counsel performed and will continue to perform in this Lawsuit through Settlement finalization. Class Counsel also will ask for reimbursement of up to \$30,000.00 for verified costs which were incurred by Class Counsel in connection with the Lawsuit.

Class Representative Enhancement Payment. Class Counsel will ask the Court to award \$5,000.00 to Plaintiff as a Class Representative Enhancement Payment. This is meant to compensate Plaintiff for his service and extra work provided on behalf of the Settlement Class Members.

PAGA Payment to the State of California. The parties have agreed to allocate \$10,000.00 of the Maximum Settlement Amount as PAGA civil penalties. Per Labor Code Section 2699(i), 75% of such penalties (\$7,500.00) will be payable to the LWDA for its share of PAGA penalties, and the remaining 25% (\$2,500.00) will be payable to members of the Settlement Class who are eligible for a portion of the PAGA Amount as part of the Net Settlement Amount.

Calculation of Settlement Class Members' Individual Settlement Payments. After deducting the Court-approved amounts above, the balance of the Maximum Settlement Amount will form the Net Settlement Amount, which will be distributed to all Settlement Class Members who do not submit a valid and timely Request for Exclusion (described below). The Net Settlement Amount will be divided as follows:

- (i) PAGA Amount: The \$2,500.00 payable to the PAGA Aggrieved Employees as their 25% portion of the PAGA civil penalties shall be designated as the "PAGA Amount." Each Settlement Class Member who was employed by Defendant between one year prior to the date of Plaintiff's PAGA notice letter to the LWDA through the close of the Class Period (the "PAGA Period"), regardless of whether they timely submit a Request for Exclusion Form, shall receive a portion of the PAGA Amount proportionate to the number of workweeks that he or she worked during the PAGA Period compared to the aggregate number of workweeks worked by all PAGA Aggrieved Employees during the PAGA Period ("Individual PAGA Amount"). The PAGA Amount paid to PAGA Aggrieved Employees will be issued separately from the remainder of the Individual Settlement Payment, if any.
- (ii) Wage Statement Amount: Ten percent (10%) of the Net Settlement Amount shall be designated as the "Wage Statement Amount." Each participating Settlement Class member who was employed by Defendant at any time between December 29, 2021 and the end of the Class Period, shall receive a portion of the Wage Statement Amount proportionate to the number of workweeks that he or she worked during the aforementioned time period, by multiplying the Wage Statement Amount by a fraction, the numerator of which is the Settlement Class member's total workweeks worked during the aforementioned time period, and the denominator of which is the aggregate number of workweeks worked by all participating Settlement Class members during the aforementioned time period.
- (iii) Waiting Time Amount: Fifteen percent (15%) of the Net Settlement Amount shall be designated as the "Waiting Time Amount." The Waiting Time Amount shall be distributed in equal, pro-rata shares to each participating Settlement Class Member who separated their employment from Defendant at any time between December 29, 2019 and the end of the Class Period.
- (iv) The remainder of the Net Settlement Amount will be distributed to each participating Settlement Class Member based on their proportionate number of workweeks worked during the Class Period, by multiplying the remaining Net Settlement Amount by a fraction, the numerator of which is the 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.

Individual Settlement Payments to Settlement Class Members. If the Court grants final approval of the Settlement, Individual Settlement Payments will be mailed to Settlement Class Members who did not submit a valid and timely Request for Exclusion. Each participating Settlement Class Member who receives an Individual Settlement Payment must cash that check within 180 calendar days from the date the Settlement Administrator mails it. Any funds payable to participating Settlement Class Members whose checks are not cashed within 180 calendar days after mailing will be transferred to the California State Controller's Office to be held pursuant to the Unclaimed Property Law, California Civil Code § 1500 *et seq.*, in the name of the Settlement Class Member to whom the check was issued, until such time that he or she claims his or her property.

Individual PAGA Payments to PAGA Aggrieved Employees. If the Court grants final approval of the Settlement, Individual PAGA Payments will be mailed to PAGA Aggrieved Employees. Each PAGA Aggrieved Employee who receives an Individual PAGA Payment must cash that check within 180 calendar days from the date the Settlement Administrator mails it. Any funds payable to PAGA Aggrieved Employees whose checks are not cashed within 180 calendar days after mailing will be transferred to the California State Controller's Office to be held pursuant to the Unclaimed Property Law, California Civil Code § 1500 *et seq.*, in the name of the PAGA Aggrieved Employee to whom the check was issued, until such time that he or she claims his or her property.

Allocation and Taxes. For tax purposes, each Individual Settlement Payment will be allocated as follows: 33.33% wages issued pursuant to an IRS Form W-2, with employee-side payroll withholding taxes withheld; 33.33% Labor Code penalties and/or reimbursement of expenses, issued pursuant to an IRS Form 1099; and 33.33% interest, issued pursuant to an IRS Form 1099. Each Individual PAGA Payment shall be allocated as 100% penalties. Settlement Class Members are responsible for the proper income tax treatment of the Individual Settlement Payments and Individual PAGA Payments. The Settlement Administrator, Defendant 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 Form will, on behalf of themselves, their heirs, spouses, executors, administrators, attorneys, agents, assigns, and any entities or businesses in which any of them have a controlling ownership interest, shall fully and finally release and discharge Defendant, KPTI, and their respective former and present parents, subsidiaries, affiliated corporations and entities, clients, and vendors and independent contractors through which Defendant conducts business, and each of their respective current, former, and future officers, directors, members, managers, employees, consultants, vendors, independent contractors, clients, partners, shareholders, joint venturers and third-party agents, and any successors, assigns, or legal representatives (collectively the "Released Parties") from all applicable California wage and hour claims, rights, demands, liabilities, and causes of action, arising from the claims pled in the Action or that could have been asserted based on the facts alleged in the Action against Defendant, including, but not limited to, claims for: failure to timely pay all wages at termination (California Labor Code §§ 201, 202, 203); failure to timely pay all minimum and overtime wages (California Labor Code §§ 204, 510, 558, 1182.12, 1194, 1194.1, 1194.2, 1197); meal and rest period violations, including with respect to the rate at which premiums are paid (California Labor Code §§ 226.7, 512, 516, 558, and applicable sections of the relevant Order of the Industrial Welfare Commission); failure to provide for or properly pay sick time (California Labor Code §§ 233, 246, 248, 248.5); failure to reimburse all necessary business expenses (California Labor Code §§ 2802, 2804); violation of the IWC California Wage Orders; failure to provide accurate wage statements in violation of California Labor Code § 226; failure to maintain records in violation of California Labor Code § 1174; violations of the PAGA, Labor Code § 2698 *et seq.* based on the foregoing claims or based on failure to timely pay wages during employment (California Labor Code § 210); unfair competition in violation of California Business and Professions Code section 17200 *et seq.*; and any damages, penalties, restitution, disgorgement, interest, costs, or attorneys' fees as a result thereof ("Released Claims"). The period of the Release shall run from December 29, 2018, until **<<PRELIM APPROVAL DATE OR AUGUST 17, 2023, WHICHEVER OCCURS SOONER >>** and become effective on the date upon which the Court signs an order granting final approval of the Settlement Agreement.

It is understood and acknowledged that all PAGA Aggrieved Employees, regardless of whether they opt-out of the Settlement, shall be deemed to have released and discharged Defendant from all PAGA claims that are based on the Labor Code violations pled in the operative First Amended Complaint in the Action or Plaintiff's letter to the LWDA, or which could have been pled in the operative First Amended Complaint in the Action or included in the letter to the LWDA based on the factual allegations therein, that arose during the PAGA Period (the "PAGA Released Claims").

This release shall run from one year prior to the date of Plaintiff's PAGA notice letter to the LWDA through the close of the Class Period.

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 Members, and the entry of Judgment.

How can I claim money from the Settlement?

Do Nothing. If you do nothing, you will be entitled to your Individual Settlement Payment and Individual PAGA Payment, which have been calculated for you based on the formulas set forth above, and as stated in the accompanying Notice of Individual Settlement Payment and Individual PAGA Payment. You also will be bound by the Settlement, including the release of claims stated above.

What other options do I have?

Dispute Information in Notice of Individual Settlement Payment and Individual PAGA Payment. Your payment(s) is (are) based on the proportionate number of workweeks that you worked during the relevant time periods and whether your employment separated during the relevant time period. The information contained in Defendant's records regarding this information, along with your estimated Individual Settlement Payment and estimated Individual PAGA Payment, is listed on the accompanying Notice of Individual Settlement Payment and Individual PAGA Payment. If you disagree with the information in your Notice of Individual Settlement Payment and Individual PAGA Payment, you may submit a dispute, along with any supporting documentation, in accordance with the procedures stated in the Notice of Individual Settlement Payment and Individual PAGA 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. Should a consensus not be reached, any outstanding disputes will be submitted to the Court for a final determination.

Exclude Yourself from the Settlement. If you **do not** wish to take part in the full Settlement, you may exclude yourself by sending to the Settlement Administrator the attached "Request for Exclusion Form" postmarked no later than **<<RESPONSE DEADLINE>>**, with your name, address, telephone number, last four digits of your social security number, and your signature. Please note that you may **not** exclude yourself from the portion of the settlement related to the claim under PAGA.

Send the Request for Exclusion Form directly to the Settlement Administrator at **<<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, and shall be barred from participating in the Settlement, with the exception that all PAGA Aggrieved Employees shall receive a portion of the PAGA Amount, regardless of whether they timely submit a Request for Exclusion from the remainder of the Settlement. **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 may mail a written objection to the Settlement Administrator. Your written objection should include your name, address, last four digits of your social security number, 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, and any legal or factual support for each objection together with any evidence in support of your objection. All objections or other correspondence must state the name and number of the case, which is *Rafael Perez v. Kyocera SGS Precision Tools, Inc.*, Orange County Superior Court, Case No. 30-2022-01299232-CU-OE-CXC. Objections in writing must be postmarked on or before **<<RESPONSE DEADLINE>>**.

You may also appear at the Final Approval Hearing scheduled for <<FINAL APPROVAL HEARING DATE/TIME>> in Department CX105 of the Orange County Superior Court, located at 751 W. Santa Ana Blvd., Santa Ana, California 92701. The location, date, and time of the Final Approval Hearing may be moved without further notice to you. You may contact Class Counsel using the contact information provided above to confirm the address and time of the hearing, if you wish to appear in person. You have the right to appear either in person or through your own attorney at this hearing, whether or not you submit a written objection. 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. **PLEASE REVIEW THE INFORMATION BELOW REGARDING THE IMPACT OF COVID-19 ON YOUR ABILITY TO APPEAR IN PERSON AT THE FINAL APPROVAL HEARING.**

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 CX105 of the Orange County Superior Court, located at 751 W. Santa Ana Blvd., Santa Ana, California 92701. The location, date, and time of the Final Approval Hearing may be moved without further notice to you. You may contact Class Counsel using the contact information provided above to confirm the address and time of the hearing. The Court also will be asked to rule on Class Counsel's request for attorneys' fees and reimbursement of documented costs and expenses, the Enhancement Payment to the Class Representative, the Settlement Administrator's costs, and the amount related to the PAGA civil penalties. **You are not required to attend the Final Approval Hearing. PLEASE REVIEW THE INFORMATION BELOW REGARDING THE IMPACT OF COVID-19 ON YOUR ABILITY TO APPEAR IN PERSON AT THE FINAL APPROVAL HEARING.**

If the Court grants Final Approval of the Settlement, a notice of the court's final judgment and order will be posted on the Settlement Administrator's website, at <<SETTLEMENT ADMINISTRATOR'S WEBSITE>>.

How can I get additional information?

This Notice is only a summary of the Lawsuit and the Settlement. For more information, you may inspect the Court's files and the Settlement Agreement at the Central Justice Center, located at 700 Civic Center Drive West, Santa Ana, California 92701, during regular business hours. You may also contact the Settlement Administrator at <<ADMINISTRATOR CONTACT INFO>>, toll free, or Class Counsel using the contact information listed above for more information. In light of the COVID-19 pandemic, the Orange County Superior Court has implemented certain protocols that may impact your ability to review the Court's files in person. As of the date of this mailing, you may be required to schedule an in-person counter service prior to accessing the Court's files. Current information regarding how to make an appointment, as well as additional rules, regulations, and safety protocols, can be viewed on the Court's website, at www.occourts.org.

PLEASE DO NOT CALL OR WRITE THE CLERK OF THE COURT OR THE JUDGE FOR INFORMATION ABOUT THIS SETTLEMENT OR THE SETTLEMENT PROCESS

Notice Regarding Impact of COVID-19.

In light of the COVID-19 pandemic, the Orange County Superior Court has implemented certain protocols that may impact your ability to review the Court's files in person and/or appear at the Final Approval Hearing in person, should you choose to do so. Current information regarding the Court's COVID-19 rules, regulations, and safety protocols, can be viewed on the Court's website, at www.occourts.org.

Additional information regarding viewing live court proceedings, such as the Final Approval Hearing, or scheduling an in-person counter service appointment can be found here: <https://www.occourts.org/media-relations/CoronaVirusUpdate.html>

REMINDER AS TO TIME LIMITS

The deadline for submitting any Disputes, Requests for Exclusion, or Objections is <<RESPONSE DEADLINE>>.

NOTICE OF INDIVIDUAL SETTLEMENT PAYMENT AND INDIVIDUAL PAGA PAYMENT

RAFAEL PEREZ V. KYOCERA SGS PRECISION TOOLS, INC.,
ORANGE COUNTY SUPERIOR COURT, CASE NO. 30-2022-01299232-CU-OE-CXC

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 information listed in Section III or IV, 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 Individual Settlement Payment:**

According to Defendant's records:

- (a) You worked _____ workweeks during the Class Period;
- (b) You worked _____ workweeks between December 29, 2021 and the end of the Class Period (the Wage Statement Period); and
- (c) Your employment with Defendant <<DID/DID NOT>> end between December 29, 2019 and the end of the Class Period (the Waiting Time Period).

Based on the above, your Individual Settlement Payment is estimated to be \$_____.

(IV) **Information Used to Calculate Your Individual PAGA Payment:**

According to Defendant's records, you worked _____ workweeks between December 29, 2021 and the end of the Class Period (the PAGA Period). Accordingly, **your Individual PAGA Payment is estimated to be \$**_____.

(V) **If you disagree with items (a) - (c) in Section (III) above or the number of workweeks you worked in the PAGA period (section IV), 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 Defendant's records, those records will control unless you are able to provide documentation that establishes that Defendant's records are mistaken. If there is a dispute about whether Defendant's 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 Class Notice that accompanies this Form. Any unresolved disputes will be submitted to the Court for a final determination.

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

Signature: _____ Date: _____

REQUEST FOR EXCLUSION FORM

RAFAEL PEREZ V. KYOCERA SGS PRECISION TOOLS, INC.,
ORANGE COUNTY SUPERIOR COURT, CASE NO. 30-2022-01299232-CU-OE-CXC

IF YOU DO NOT WISH TO BE PART OF THE CLASS ACTION SETTLEMENT, YOU MUST COMPLETE, SIGN AND MAIL THIS FORM, POSTMARKED ON OR BEFORE [RESPONSE DEADLINE], ADDRESSED AS FOLLOWS:

CPT GROUP, INC.
RAFAEL PEREZ V. KYOCERA SGS PRECISION TOOLS, INC.
SETTLEMENT ADMINISTRATOR
<<ADMINISTRATOR CONTACT INFO>>

DO NOT SUBMIT THIS FORM IF YOU WISH TO RECEIVE AN INDIVIDUAL SETTLEMENT PAYMENT UNDER THE SETTLEMENT.

By signing, filling out, and returning this form, I confirm that I do not want to be included in the Settlement of the class claims alleged in the lawsuit entitled *RAFAEL PEREZ V. KYOCERA SGS PRECISION TOOLS, INC.*, ORANGE COUNTY SUPERIOR COURT, CASE NO. 30-2022-01299232-CU-OE-CXC.

I WISH TO BE EXCLUDED FROM THE SETTLEMENT OF THE CLASS CLAIMS IN THE RAFAEL PEREZ V. KYOCERA SGS PRECISION TOOLS, INC., LAWSUIT FILED IN THE ORANGE COUNTY SUPERIOR COURT, CASE NO. 30-2022-01299232-CU-OE-CXC. I UNDERSTAND THAT IF I ASK TO BE EXCLUDED FROM THE SETTLEMENT CLASS, I WILL NOT RECEIVE ANY MONEY FROM THE CLASS SETTLEMENT PORTION OF THIS LAWSUIT. I ALSO UNDERSTAND THAT ELECTING TO EXCLUDE MYSELF FROM THE SETTLEMENT OF THE CLASS CLAIMS DOES NOT IMPACT MY STATUS AS A PAGA AGGRIEVED EMPLOYEE AND THAT THE RELEASE OF MY PAGA CLAIMS IS NOT IMPACTED BY THIS EXCLUSION.

Name

Telephone Number

Address

Date

Signature

Last Four Digits of Social Security Number: ____ _

EXHIBIT 3

HAINES LAW GROUP
EMPLOYMENT ATTORNEYS

June 16, 2023

VIA LWDA WEBSITE

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

Re: *Rafael Perez v. Kyocera SGS Precision Tools, Inc.*

To Whom It May Concern:

Please be advised that this law firm represents Mr. Rafael Perez (“Mr. Perez”) in claims arising from his employment with Kyocera SGS Precision Tools, Inc. and its predecessor, Kyocera Precision Tools, Inc., and Does 1 through 100 (“Defendants”). Mr. Perez is an “aggrieved employee” within the meaning of Labor Code section 2699.3 as to all of the violations alleged herein. *See Huff v. Securitas Security Services USA, Inc.* (2018) 23 Cal.App.5th 745, 754 (“any Labor Code penalties recoverable by state authorities may be recovered in a PAGA action by a person who was employed by the alleged violator and affected by at least *one* of the violations alleged in the complaint.”) (emphasis added). The purpose of this letter is to comply with Labor Code § 2699.3, which requires aggrieved employees to notify their employer and the Labor and Workforce Development Agency (“LWDA”) of the specific provisions of the Labor Code allegedly violated. For purposes of this letter, “aggrieved employees” includes all of Defendants’ non-exempt employees who worked for Defendants in California during the one year immediately preceding the date of this letter through the present.

Defendants operate a manufacturing company that produces metal parts and tools for several industries, including the dental and airline industries. Mr. Perez was employed by Defendants as a non-exempt “Machine Operator” from approximately 1996 to July 2021 in Costa Mesa, California. Mr. Perez’s primary job duties consisted of operating a “Cincinnati Machine,” which consists of heavy machinery that cuts metal material used to produce mechanical parts and tools.

During Mr. Perez’s employment with Defendants, Defendants failed to compensate Mr. Perez and other aggrieved employees for all hours actually worked, resulting in unpaid minimum wages and additional unpaid overtime wages. Specifically, Mr. Perez clocked in to work with a punch card timekeeping system that recorded his clock-in and clock-out times to the minute. However, during the relevant time period, Defendants’ timekeeping system rounded and/or time-shaved Mr. Perez’s hours, which resulted in Mr. Perez not being compensated for all hours actually worked. Defendants regularly, systematically, and impermissibly rounded and/or shaved the time worked by Mr. Perez and other aggrieved

employees in Defendants' favor. This time shaving/rounding practice utilized by Defendants was not-even handed over time and would round and shave in Defendants' favor such that Mr. Perez was routinely underpaid for his time worked. Due to Defendants' timekeeping policies and practices that fail to compensate for all hours worked, Mr. Perez and other aggrieved employees were deprived of all required minimum wages. *See Camp v. Home Depot U.S.A., Inc.* (2022) 84 Cal.App.5th 638, 654 ("[I]f an employer, as in this case, can capture and has captured the exact amount of time an employee has worked during a shift, the employer must pay the employee for "all the time" worked."). Further, on occasions when Mr. Perez worked over eight hours in a day and/or forty hours in a workweek, this process of time-shaving or rounding also deprived him of all overtime wages owed. As such, Mr. Perez and other aggrieved employees were not credited with all hours actually worked and were not paid all minimum and overtime wages earned.

Defendants also failed to pay Mr. Perez and other aggrieved employees for time spent undergoing COVID-19 temperature checks prior to clocking in. During the relevant time period, Defendants mandated that Mr. Perez and other aggrieved employees undergo temperature checks by standing in front of a machine that scanned their body temperature. Mr. Perez and other aggrieved employees clocked in for their shifts after they underwent the temperature scan. As a result, Mr. Perez and other aggrieved employees were not credited with all hours actually worked and were not paid all minimum and overtime wages earned.

Defendants also failed to provide Mr. Perez and other aggrieved employees with all legally-compliant meal periods due to Defendants' unlawful meal period policies/practices that failed to provide timely, duty-free 30-minute first meal periods commencing before the end of the fifth hour of work and a second duty-free, 30-minute meal period when they worked shifts in excess of 10.0 hours. Specifically, Mr. Perez operated a "Cincinnati Machine," that cannot be turned off or left unattended once it initiated a project, which could last up to approximately 3 hours. As a result, Mr. Perez and other aggrieved employees often clocked out for their meal periods to reflect legally complaint meal periods before the fifth hour of work; however, they continued their work duties while clocked out. Moreover, Mr. Perez's supervisor occasionally required Mr. Perez to work on special production orders that cut into his meal and rest periods. As a result of Defendants' policies and practices, Mr. Perez and other aggrieved employees frequently took untimely meal periods or missed their meal periods altogether.

On occasions when Mr. Perez and other aggrieved employees were not provided with all lawful meal periods to which they were entitled, Defendants failed to pay Mr. Perez and other aggrieved employees an additional hour of premium pay at their respective regular rates of pay for each workday in which a meal period violation occurred, as required by Labor Code § 226.7. Specifically, Defendants paid Mr. Perez and other aggrieved employees non-discretionary incentive pay and/or other forms of pay that are not excludable from an employee's "regular rate" of compensation including but not limited to commissions, bonuses, and payments denoted as "BONUS" (hereinafter referred to as "Incentive Pay"). As a result of paying Mr. Perez Incentive Pay, Defendants failed to

properly calculate the regular rate of pay, resulting in unpaid and/or underpaid meal period premiums. Based on the foregoing, Mr. Perez and other aggrieved employees were not compensated for all required meal period premiums.

Defendants failed to authorize and permit Mr. Perez and other aggrieved employees to take all duty-free 10-minute rest periods to which he was legally entitled, due to Defendants' unlawful rest period policies/practices. Although Defendants scheduled first and second rest periods, Mr. Perez often worked through his rest periods due to the immediate nature of his work duties. As mentioned above, Mr. Perez operated a "Cincinnati Machine" that was impossible to turn off once it initiated an operation, which could last hours per project. Moreover, Defendants failed to authorize and permit any third rest periods for shifts in excess of 10.0 hours.

Furthermore, Defendants failed to compensate Mr. Perez and other aggrieved employees with an additional hour of premium pay at their respective regular rates of pay for each workday in which a rest period violation occurred, as required by Labor Code § 226.7, and to the extent that any rest period premiums were ever paid, they were also paid at the incorrect rate due to the failure to properly incorporate the receipt of Incentive Pay. During at least a portion of the relevant time period, Defendants failed to maintain pay codes for the payment of meal and rest period premium payments as required by Labor Code § 226.7.

Defendants also failed to pay Mr. Perez and other aggrieved employees all sick pay wages owed to them. Defendants' policies and practices dictated that sick pay payments be made at an employee's base rate of pay, as opposed to their regular rate of pay. Because Mr. Perez and other aggrieved employees received Incentive Pay that was required to be included in their regular rate of pay, but were not, Mr. Perez and other aggrieved employees have not been paid all sick pay wages owed to them.

During their respective employments with Defendants, Mr. Perez and other aggrieved employees were required to purchase and replace necessary tools required to perform their work duties, including hammers and pliers. Mr. Perez spent approximately \$100.00 on tools during the relevant time period. Despite this, Defendants failed to reimburse Mr. Perez and other aggrieved employees for all necessary business expenses associated with purchasing and replacing their tools in violation of Labor Code § 2802.

As a result of Defendants' failure to pay all overtime wages, minimum wages, meal and rest period premium wages owed, and sick pay wages owed, Defendants also maintained inaccurate payroll records, issued inaccurate wage statements to Mr. Perez and other aggrieved employees, and failed to pay all final wages owed to Mr. Perez and other aggrieved employees upon their respective separations of employment.

Due to the extreme heat and cold experienced inside Defendants' warehouse where Mr. Perez and other aggrieved employees worked, Defendants failed to provide reasonably comfortable temperatures in work areas consistent with industry-wide standards for the

nature of the work performed. Specifically, the “Cincinnati Machines” expelled steam and oils that were prone to creating extreme heat, over 100 degrees Fahrenheit, in the summer, and in the winter, the machines were slow to warm up, creating a cold environment. Defendants’ failure to provide air conditioning during the summer and heating in the winter exacerbated the extreme temperature conditions in the warehouse. As a result, Defendants failed to maintain reasonably comfortable work areas in violation of Wage Order 1, § 15 and California Labor Code § 558(a).

As described above, Defendants committed the following violations of the Labor Code and Industrial Welfare Commission Wage Order No. 1-2001 (“Wage Order 1”):

Overtime Wage Violations

Defendants were required to properly pay Mr. Perez and other aggrieved employees for all overtime hours worked pursuant to California Labor Code § 1194 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 8 hours per work day and/or in excess of 40 hours of work in the workweek. Defendants caused Mr. Perez and other aggrieved employees to work overtime hours but did not compensate Mr. Perez or other aggrieved employees at one and one-half times their regular rate of pay for all such hours.

Minimum Wage Violations

Wage Order 1 § 4 and California Labor Code §§ 1197 and 1182.12 establish the right of employees to be paid minimum wages for all hours worked, in amounts set by state law. California Labor Code § 1198 makes unlawful the employment of an employee under conditions that the IWC prohibits. California Labor Code §§ 1194(a) and 1194.2(a) provide that an employer who has failed to pay its employees the legal minimum wage is liable to pay those employees the unpaid balance of the unpaid wages as well as liquidated damages in an amount equal to the wages due and interest thereon. Defendants failed to conform their pay practices to the requirements of the law. This unlawful conduct includes Defendants’ failure to pay Mr. Perez and other aggrieved employees for all hours worked including, but not limited to, all hours they were subject to the control of Defendants and/or suffered or permitted to work under the California Labor Code and Wage Order 1.

Meal Period Violations

As alleged above, Defendants failed to provide Mr. Perez and other aggrieved employees with all required and compliant meal periods. *See* Labor Code §§ 226.7 and 512; Wage Order 1, § 11. Despite Defendants’ violations, Defendants did not pay an additional hour of premium pay to Mr. Perez and other aggrieved employees at their respective regular rates of pay, in accordance with California Labor Code §§ 226.7 and 512

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Rest Period Violations

Wage Order 1, § 12 and Labor Code §§ 226.7 and 516 establish the right of employees to be provided with a rest period of at least ten (10) minutes for each four (4) hour period worked, or major fraction thereof. As described above, Defendants also failed, and continue to fail, to authorize and permit Mr. Perez and other aggrieved employees to take all required and compliant rest periods. *See* Labor Code §§ 226.7 and 516; Wage Order 1, § 12. As a result, Mr. Perez and similarly aggrieved employees are owed an additional hour of wages at their regular rate of compensation for each workday that all rest periods were not authorized and permitted. *See* Labor Code § 226.7.

Failure to Reimburse Necessary Business Expenses

Defendants failed to reimburse Mr. Perez and other aggrieved employees for necessary work expenses, in violation of Labor Code § 2802. Defendants' policy of not providing reasonable reimbursement for necessary work-related expenses violates Labor Code §§ 2802 and 2804 ("An employer shall indemnify his or his employees for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or his duties, or of his or obedience to the directions of the employer."). Mr. Perez and other aggrieved employees are therefore entitled to reimbursement of such unpaid work expenses.

Wage Statement Violations

Defendants knowingly and intentionally, as a matter of uniform policy and practice, failed to furnish Mr. Perez and other aggrieved employees with complete and accurate itemized wage statements, in violation of Labor Code § 226 *et seq.* Defendants' failures in furnishing Mr. Perez and other aggrieved employees with complete and accurate itemized wage statements resulted in actual injury, as said failures led to, among other things, the non-payment of all overtime and minimum wages as well as meal and rest period premium wages, and deprived them of the information necessary to identify the discrepancies in Defendants' reported data and whether they have been paid all wages earned.

Sick Time Pay Violations

Defendants were required to properly pay Mr. Perez and other aggrieved employees for all vested sick time at their regular rate of compensation pursuant to Labor Code § 246. Defendants compensated Mr. Perez and other aggrieved employees at their base rate of pay but did not compensate Mr. Perez or other aggrieved employees at their regular rate of pay for all such hours.

Excessive Heat and Cold Violations

Wage Order 1, § 15 establishes the right of employees to be provided a work

environment of reasonable comfort consistent with industry-wide standards for the nature of the process and the work performed, and requires employers to employ all feasible means to reduce excessive heat. Labor Code Sections 558 and 1198 make it unlawful for any employer to maintain conditions of work which violate the Wage Order. Defendants have failed to take adequate steps to prevent excessive heat and provide a work environment of reasonable comfort due to the excessive temperatures that are reached inside of its warehouses and trailers, and are liable for civil penalties as a result.

Waiting Time Penalties

Defendants failed to timely pay Mr. Perez and other aggrieved employees all final wages due to them at the time of their separation which includes, among other things, unpaid overtime and minimum wages, and meal and rest period premium wages. Further, Mr. Perez is informed and believes, and based thereon alleges, that as a matter of uniform policy and practice, Defendants continue to fail to pay other aggrieved employees all earned wages at the end of employment in a timely manner pursuant to the requirements of Labor Code §§ 201-203. Defendants' failure to pay all final wages was willful within the meaning of Labor Code § 203. Defendants' willful failure to timely pay Mr. Perez and other aggrieved employees their earned wages upon separation from employment results in a continued payment of wages up to thirty (30) days from the time the wages were due.

As an "aggrieved employee", Mr. Perez will bring a civil action on behalf of himself and other aggrieved employees to recover damages, statutory penalties, and civil penalties (including an amount equal to the unpaid wages) resulting from the wage and hour violations alleged herein. Based on Mr. Perez's own investigation, and on information and belief, Defendants committed and continue to commit the following Labor Code violations:

- a. Defendants violated Labor Code §§ 204, 510, 558, 1194 and 1198 by failing to pay Mr. Perez and other aggrieved employees all overtime compensation earned;
- b. Defendants violated Labor Code §§ 1182.12, 1194, 1194.2, and 1197 by failing to pay Mr. Perez and other aggrieved employees the statutory minimum wage for all hours worked;
- c. Defendants violated Labor Code §§ 226.7, 512, and 558, by failing to provide meal periods as required by law and failing to pay meal period premiums to Mr. Perez and other aggrieved employees at these employees' respective regular rates of compensation for meal period violations;
- d. Defendants violated Labor Code §§ 226.7, 516, and 558 by failing to authorize and permit Mr. Perez and other aggrieved employees to take all lawful rest periods to which they are entitled, and failing to pay rest period premiums to

Mr. Perez and other aggrieved employees at these employees' respective regular rates of compensation for rest period violations;

- e. Defendants violated Labor Code §§ 2802 and 2804 by failing to reimburse Mr. Perez and other aggrieved employees for all work-related expenses incurred;
- f. Defendants violated Labor Code § 226 by failing to furnish Mr. Perez and other aggrieved employees with accurate and compliant itemized wage statements;
- g. Defendants violated Labor Code §§ 233, 246, 248, 248.5 by failing to pay Mr. Perez and other aggrieved employees sick time pay at their regular rate of compensation;
- h. Defendants violated Labor Code §§ 558(a) and 1198 by failing to provide Mr. Perez and other aggrieved employees reasonably comfortable temperatures in work areas consistent with industry-wide standards for the nature of the work performed;
- i. Defendants violated Labor Code §§ 201, 202 and 203 by failing to timely pay all final wages due to Mr. Perez and other aggrieved employees;
- j. Defendants violated Labor Code § 204 by failing to pay Mr. Perez and other aggrieved employees all wages earned at least twice during each calendar month.
- k. Defendants violated Labor Code § 210 by failing to timely pay Mr. Perez and other aggrieved employees all wages during employment.
- l. Defendants violated Labor Code §§ 558 and 1174 by failing to maintain accurate records on behalf of Mr. Perez and aggrieved employees.

Pursuant to Labor Code § 2699.3, please notify us and Defendants 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



Fletcher W. Schmidt

cc: Kyocera SGS Precision Tools, Inc., c/o Rick Bergstrom, Jones Day, counsel for Defendant Kyocera SGS Precision Tools, Inc. (via certified mail)



State of California

Labor and Workforce Development Agency /
Department of Industrial Relations

Private Attorneys General Act (PAGA) – Filing

New PAGA Claim Notice

Your Information (Person Who is Filing)

Your First Name *

Fletcher

Your Last Name *

Schmidt

Firm Name (if any) *

Haines Law Group, APC

(Enter "in pro per" if you are representing yourself)

Your Email Address *

jramirez@haineslawgroup.

Your Street Name, Number and Suite/Apt *

2155 Campus Drive, Suite

Your Mobile Phone Number

Your City *

El Segundo

Your Work Phone Number

4242922350

Your State *

California

Your Zip/Postal Code *

90245

Plaintiff Information

Plaintiff/Aggrieved Employee Name *

Rafael Perez

Plaintiff/Aggrieved Employee Occupation *

Machine Operator

[Add Additional Plaintiffs](#)

Employer Information

Employer Entity Type

Please select...

Employer Name *

Kyocera SGS Precision Tools, Inc.

Maximum 80 Character Limit

Employer Street Name, Number and Suite/Apt *

Employer City *

150 Marc Drive

Cuyahoga Falls

Employer State *

Ohio

Employer Zip/Postal Code *

44223

Employer Industry *

Other

Employer Industry for "Other" *

Manufacturing

Add additional defendants

- ☐ Add any entity other than an individual
- ☐ Add an individual/sole proprietor employer

Notice General Information

Estimated Number of Employees Impacted by Violations *

100

Notice Violations – Check All that Apply *

Child Labor – Specify Ages

- ☐ Child Labor
- ☐ Misclassification Employee Classified as Contractor
- ☐ Misclassification NonExempt Classified as Exempt
- ☒ Minimum Wage
- ☒ Overtime
- ☐ Not paid for all hours worked
- ☒ Not paid wages due on termination
- ☐ Other Unpaid Wages
- ☐ Tips or Gratuities
- ☒ Payment or Reimbursement of Employee Expenses
- ☐ Improper Form of Payment Including NSF Checks
- ☐ Kickbacks
- ☒ Meal and Rest Breaks
- ☐ Sick Leave
- ☐ Lactation Accommodation (Labor Code 1030–1033)
- ☐ Not providing required time off, other
- ☐ Pay Discrimination on basis of sex, (Labor Code 1197.5)
- ☐ No Wage Statements
- ☒ Improper or Incomplete Wage Statements
- ☒ Other Notice or Posting or Recordkeeping
- ☐ Public Works (Labor Code 1720 – 1815)
- ☐ Apprenticeship (Labor Code 3070 – 3098)
- ☐ Occupational Safety and Health (Labor Code 6300 et seq)
- ☐ No Workers' Compensation
- ☐ Licensing, Registration, or Permit
- ☐ Unfair Immigration Activities
- ☐ Agricultural Labor Relations
- ☐ Industrial Homework
- ☐ Retaliation for Protected Status or Activity (Specify)
- ☒ Other

Provide Details of Other Violation *

Failing to pay sick time pay at their regular rate of compensation

Other(Maybe Multiple)

- ☒ Other Violation

Provide Details of Other Violation *

Failing to provide reasonably comfortable temperatures in work areas

Other(Maybe Multiple)

☒ Other Violation

Provide Details of Other Violation *

Failing to timely pay all wages during employment.

PAGA Claim Type – Check All that Apply *

☒ Notice asserts one or more Labor Code violations listed in Labor Code 2699.5– not curable subject to 2699.3(a)

☐ Notice asserts one or more OSHA violations subject to requirements of 2699.3(b)

☒ Includes one or more violations not listed in Labor Code 2699.5 – curable subject to 2699.3(c)

Filing Fee

A filing fee of \$75 is required to file a new PAGA claim notice.

IFP

☐ I wish to claim In Forma Pauperis and am attaching a Confidential Request to Waive Court Fees (Judicial Council Court Form FW-001) or similar form to this submission.

Billing information

Billing First Name *

Paul

Billing Last Name *

Haines

Billing Email *

jramirez@haineslawgroup.

Billing Phone

4242922350

Billing Street Name, Number and Suite/Apt *

2155 Campus Drive, Suite 180

Billing City *

El Segundo

Billing State *

California

Billing Zip/Postal Code *

90245

Credit Card Type *

Visa

Credit Card Number *

4154178575546940

CVV Number *

182

Credit Card Expiration Month *

05

mm

Credit Card Expiration Year *

2024

yyyy

Notice and Other Attachments

PAGA Claim Notice (must be a .pdf) *

2023-06-16 ... LWDA Ltr.pdf

Other Attachment – (if any) (must be a .pdf)

No file chosen

[Add Another Attachment](#)

Should you have questions regarding this online form, please contact PAGAInfo@dir.ca.gov

IMPORTANT NOTICE OF REDACTION RESPONSIBILITY: All filers must redact: Social Security or taxpayer identification numbers; personal addresses, personal telephone numbers, personal email addresses, dates of birth; names of minor children; & financial account numbers. This requirement applies to all documents, including attachments.

☒ I understand that, if I file, I must comply with the redaction rules consistent with this notice.

From: noreply@salesforce.com on behalf of [LWDA DO NOT REPLY](#)
To: [Jonathan Ramirez](#)
Subject: Thank you for submission of your PAGA Case.
Date: Friday, June 16, 2023 12:59:11 PM

6/16/2023

LWDA Case No. LWDA-CM-962535-23
Law Firm : Haines Law Group, APC
Plaintiff Name : Rafael Perez
Employer: Kyocera SGS Precision Tools, Inc.
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

EXHIBIT 4