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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF ALAMEDA

BOBBY BIRDI, individually, and on behalf
of other members of the general public
similarly situated;

Plaintiff,

v.

FERROTEC (USA) CORPORATION, a
Massachusetts corporation; and DOES 1
through 100, inclusive;

Defendants.

Case No.: 23CV045925
[Consolidated With Case No. 23CV057122]

Assigned for All Purposes to:
Honorable Somnath Raj Chatterjee
Department 16

CLASS ACTION

**NOTICE OF MOTION AND MOTION
FOR PRELIMINARY APPROVAL OF
CLASS ACTION SETTLEMENT,
CONDITIONAL CERTIFICATION,
APPROVAL OF CLASS NOTICE,
SETTING OF FINAL APPROVAL
HEARING DATE; MEMORANDUM OF
POINTS AND AUTHORITIES IN
SUPPORT THEREOF**

[Reservation ID: 938582720409]

[Declaration of Proposed Class Counsel
(Douglas Han); Declaration of Joan Graff;
Declaration of Jodey Lawrence; Declaration
of Daniel M. Bruggebrew; and [Proposed]
Order filed concurrently herewith]

Hearing Date: January 16, 2025
Hearing Time: 2:30 p.m.
Hearing Place: Department 16

Complaint Filed: September 29, 2023
Trial Date: None Set

1 **PLEASE TAKE NOTICE** that on January 16, 2025 at 2:30 p.m., or as soon as the matter
2 may be heard, before the Honorable Somnath Raj Chatterjee in Department 16 of the Alameda
3 County Superior Court located at 1225 Fallon Street, Oakland, California, 94612, Plaintiff Bobby
4 Birdi (“Plaintiff”) will and hereby does move for an order:

- 5 • Granting Preliminary Approval of the proposed class action settlement described
6 herein and as set forth in the Class Action and PAGA Settlement Agreement
7 (“Settlement Agreement,” “Settlement,” or “Agreement”), attached as **Exhibit 2**
8 to the Declaration of Douglas Han, including, and not limited to, the means of
9 allocation and distribution of funds;
- 10 • Conditionally certifying the Class for settlement purposes only;
- 11 • Appointing Plaintiff as the class representative;
- 12 • Appointing Justice Law Corporation as Class Counsel;
- 13 • Approving the Court Approved Notice of Class Action and PAGA Settlement and
14 Hearing Date for Final Court Approval (“Class Notice”) attached as **Exhibit A** to
15 the [Proposed] Order Preliminarily Approving Class Action Settlement and
16 Setting Hearing for Final Approval of Settlement and Settlement Agreement;
- 17 • Directing the mailing of the Class Notice with a postage-paid return envelope to
18 the Class;
- 19 • Approving the deadlines for the notice and settlement administration process;
- 20 • Approving Phoenix Class Action Administration Solutions as the Administrator;
- 21 and
- 22 • Scheduling a hearing to consider whether to grant Final Approval of the Settlement
23 Agreement, at which time the Court will also consider whether to grant Final
24 Approval of the requests for the Class Counsel Fees Payment, Class Counsel
25 Litigation Expenses Payment, Class Representative Service Payment,
26 Administration Expenses Payment, and Private Attorneys General Act of 2004
27 (“PAGA”) Penalties.

1 This motion is based upon the following memorandum of points and authorities;
2 Declaration of Proposed Class Counsel (Douglas Han); Declaration of Joan Graff; Declaration of
3 Jodey Lawrence; Daniel M. Bruggebrew; [Proposed] Order filed concurrently with this motion;
4 pleadings and other records on file with the Court in this matter; and such documentary evidence
5 and oral argument as may be presented at the hearing on this motion.

6
7 Dated: December 12, 2024

JUSTICE LAW CORPORATION

8 By: 
9 Douglas Han
10 *Attorneys for Plaintiff*

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On September 29, 2023, Plaintiff provided written notice to the California Labor and Workforce Development Agency and Defendant. (Han Decl., *supra*, at ¶ 10; Exhibit 3.)

On September 29, 2023, Plaintiff filed a wage-and-hour class action lawsuit in the Superior Court of California, County of Alameda, alleging eight (8) causes of action (Case No. 23CV045925). (Han Decl., *supra*, at ¶ 11.) On December 14, 2023, Plaintiff filed a representative PAGA action in the Superior Court of California, County of Alameda (Case No. 23CV057122). (*Id.* at ¶ 12; Exhibit 4.)

After engaging in discovery, investigations, and negotiations, on September 26, 2024, the Parties participated in an all-day mediation presided over by mediator Lynn Frank and reached an agreement on general settlement terms. (Han Decl., *supra*, at ¶ 13.)

On October 29, 2024, the Court entered a stipulated order consolidating the lawsuits and designating the class action lawsuit as the lead case. (Han Decl., *supra*, at ¶ 14.)

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1 **III. INVESTIGATION/ LITIGATION HISTORY**

2 **a. Discovery, Investigation, and the Parties’ Staunchly Conflicting Positions**

3 After initiating this matter, the Parties engaged in discovery. (Han Decl., *supra*, at ¶ 16.)
4 Plaintiff propounded form interrogatories, special interrogatories, requests for admission, and
5 requests for production of documents. (*Ibid.*) The Parties then met and conferred, agreed to
6 engage in the informal exchange of information, and agreed to remotely attend mediation. (Han
7 Decl., *supra*, at ¶ 16.)

8 Defendant produced documents relating to its policies, practices, and procedures. (Han
9 Decl., *supra*, at ¶ 17.) As part of Defendant’s production, Plaintiff also reviewed a sampling of
10 time and pay records and information relating to the size and scope of the Class and Aggrieved
11 Employees. (*Ibid.*) Putative class members were also located and interviewed to obtain a better
12 understanding of the alleged day-to-day violations. (*Ibid.*)

13 Based upon the information provided by Defendant and interviews with putative class
14 members, Plaintiff contends – and Defendant denies – Defendant: (1) failed to provide employees
15 with legally mandated meal and rest breaks and pay applicable premium wages; (2) failed to pay
16 employees for all hours worked; (3) failed to factor non-discretionary bonuses into regular rate of
17 pay; (4) failed to reimburse employees for necessary business expenses; (5) failed to issue
18 compliant wage statements; and (6) failed to timely pay wages. (Han Decl., *supra*, at ¶¶ 19-26.)

19 **b. The Parties Were Able to Reach an Agreement on Settlement of the Action**

20 **i. The Parties Attended Mediation Which Led to the Settlement**

21 The Parties remotely attended mediation with an experienced wage-and-hour mediator.
22 (Han Decl., *supra*, at ¶ 27.) Under the auspices of the mediator, the Parties reached a tentative
23 settlement, the terms of which were memorialized in the Settlement Agreement the Parties now
24 seek Preliminary Approval of. (*Id.* at ¶ 27; Exhibits 2, 5.)

25 ///

26 ///

27 ///

1 **ii. The Settlement Was Reached as a Result of Arm’s-length Negotiations**

2 The Settlement was reached because of arm’s-length negotiations. (Han Decl., *supra*, at ¶
3 30.) Though cordial and professional, the settlement negotiations have always been adversarial
4 and non-collusive in nature. (*Ibid.*) At the mediation, the Parties’ counsel conducted extensive
5 arm’s-length settlement negotiations until an agreement was reached. (*Ibid.*)

6 Plaintiff and Class Counsel believe in the merits of their respective positions but recognize
7 the expense and length of additional proceedings necessary to continue the litigation. (Han Decl.,
8 *supra*, at ¶ 31.) Plaintiff and Class Counsel also considered the uncertainty and risk of further
9 litigation, potential outcome, and difficulties and delays inherent in such litigation. (*Ibid.*)
10 Plaintiff and Class Counsel believe that the settlement set forth in the Agreement is fair, adequate,
11 and reasonable and is in the Class Members’ best interests. (Han Decl., *supra*, at ¶ 31.)

12 **iii. The Settlement Is the Result of Thorough Investigation and Discovery**

13 The Parties investigated and evaluated the factual strengths and weaknesses of the claims
14 and defenses before reaching the Settlement and engaged in sufficient investigation, research, and
15 discovery. (Han Decl., *supra*, at ¶ 32.) The information produced permitted Class Counsel to
16 engage in a comprehensive analysis of liability and potential damages. (*Ibid.*) This case has
17 reached the stage where the Parties understand “the strength of the case; the reasonableness of the
18 settlement in light of the attendant risks of litigation, and in light of the best possible recovery”
19 sufficient to support the Settlement’s reasonableness, adequacy, and fairness. (Han Decl., *supra*,
20 at ¶ 32; *Boyd v. Bechtel Corp.* (N.D.Cal. 1979) 485 F.Supp. 610, 617.)

21 **c. Terms of the Settlement**

22 **i. Deductions from the Settlement**

23 The Parties agreed that (subject to the Court’s approval) this matter be settled and
24 compromised for the non-reversionary total sum of \$1,266,850 (“Gross Settlement Amount”)
25 which includes the: (1) Class Counsel Fees Payment of up to \$422,283.33 (1/3 of the Gross
26 Settlement Amount); (2) Class Counsel Litigation Expenses Payment of up to \$30,000; (3) Class
27 Representative Service Payment of up to \$10,000; (4) Administration Expenses Payment of up to
28

\$12,000; and (5) PAGA Penalties of up to \$150,000. (Han Decl., *supra*, at ¶ 28.)

ii. Calculation of Settlement Payments

It is estimated that \$642,566.67 (“Net Settlement Amount”) will be distributed to the Participating Class Members, resulting in a gross *average* Individual Class Payment of \$2,570.27. (Han Decl., *supra*, at ¶ 29.)

The Administrator will calculate and disburse the Individual Class Payments using the formula set forth in the Settlement Agreement. (Han Decl., *supra*, at ¶ 27; Exhibit 2, *supra*, at § C(2)(d).) The Administrator will also calculate and disburse Individual PAGA Payments using the formula set forth in the Settlement Agreement. (*Id.* at § C(2)(e).)

iii. The Allocation of 20% to Wages and 80% to Interest and Penalties Is Justified Under the Claims of this Action

Individual Class Payments will be allocated as follows: (1) twenty percent (20%) to the settlement of wage claims; and (2) eighty percent (80%) to the settlement of claims for interest and penalties. (Han Decl., *supra*, at ¶ 27; Exhibit 2, *supra*, at § C(2)(d)(i).)

The allocation of wages, interest, and penalties indicated above was based on the realistic exposure that Plaintiff could expect to receive for meal and rest break premiums and unpaid and underpaid wages if the case went to trial. (Han Decl., *supra*, at ¶ 51.) Plaintiff added the realistic exposure for rest break premiums and meal break premiums (\$84,298.03 + \$28,117.56 = \$112,415.59). (*Ibid.*) Plaintiff then added the \$112,415.59 to the low-end realistic exposure for unpaid wages due to off-the-clock work and underpaid overtimes wages and sick leave due to the regular rate issue (\$112,415.59 + \$281,494.37 + \$100,124.36 = \$494,034.32). (*Ibid.*) The realistic exposure of \$1,159,110.03 that Plaintiff can expect to receive if he were to prevail at trial for meal and rest break premiums, low-end unpaid wages due to off-the-clock work and underpaid overtime wages and sick leave due to the regular rare issue represents about twenty-one percent (20.94%) of the low-end total realistic exposure and PAGA penalties (\$494,034.32 ÷ \$2,359,110 = 0.20941 x 100 = 20.94%). (*Ibid.*) Since this represents twenty percent (20%) of wages,

1 allocating twenty percent (20%) for the settlement of wage claims and eighty percent (80%) for
2 the settlement of claims for interest and penalties is appropriate. (Han Decl., *supra*, at ¶ 51.)

3 **iv. Notice to the Class**

4 The Class Data shall be delivered to the Administrator no later than fourteen (14) calendar
5 days after the Court grants Preliminary Approval of the Settlement. (Han Decl., *supra*, at ¶ 27;
6 Exhibit 2, *supra*, at § G(4)(a).) No later than fourteen (14) calendar days after receiving the Class
7 Data, the Administrator will send the Class Notice with a translation to all Class Members
8 identified in the Class Data via first-class United States Postal Service mail. (*Id.* at § G(4)(c).)

9 **v. Distribution of Funds**

10 The Gross Settlement Amount and subsequent settlement payments to be made will be
11 funded and disbursed in the manner and time set forth in the Settlement Agreement. (Han Decl.,
12 *supra*, at ¶ 27; Exhibit 2, *supra*, at §§ D(2), D(3).)

13 Participating Class Members and Aggrieved Employees must cash in their settlement
14 checks within one hundred eighty (180) calendar days after the date of their mailing. (Han Decl.,
15 *supra*, at ¶ 27; Exhibit 2, *supra*, at §§ D(3)(a), D(3)(c).) Uncashed settlement checks will be
16 canceled after the void date and transmitted to the *cy pres* recipient Legal Aid At Work. (*Ibid.*)
17 The Parties have no connection to or relationship with the *cy pres* recipient Legal Aid At Work
18 that would create the appearance of impropriety. (See Declarations of Douglas Han and Daniel
19 M. Bruggebrew filed concurrently herewith.)

20 **vi. Release of Claims**

21 Effective on the date when Defendant funds the Gross Settlement Amount and all
22 employer's payroll taxes owed on the Wage Portion of the Individual Class Payments, all
23 Participating Class Members, on behalf of themselves and their former and present
24 representatives, agents, attorneys, heirs, administrators, successors, transferees, and assigns,
25 release the Released Parties from the Released Class Claims. (Han Decl., *supra*, at ¶ 27; Exhibit
26 2, *supra*, at § E(2).)

27 ///

Effective on the date when Defendant funds the Gross Settlement Amount and all employer's payroll taxes owed on the Wage Portion of the Individual Class Payments, Plaintiff, as an agent and proxy of the State of California, and State of California itself (including the LWDA) are deemed to release the Released Parties from the Released PAGA Claims. (Han Decl., *supra*, at ¶ 27; Exhibit 2, *supra*, at § E(3).)

Effective on the date when Defendant funds the Gross Settlement Amount and all employer's payroll taxes owed on the Wage Portion of the Individual Class Payments, Plaintiff and his former and present spouses, representatives, agents, attorneys, heirs, administrators, successors, and assigns generally release and discharge the Released Parties as described in the Plaintiff's General Release. (Han Decl., *supra*, at ¶ 27; Exhibit 2, *supra*, at § E(1).) Plaintiff also expressly waives and relinquishes the provisions, rights, and benefits, if any, of section 1542 of the Civil Code. (Han Decl., *supra*, at ¶ 27; Exhibit 2, *supra*, at § E(1)(a).)

Regarding class action releases, “[A] court may release not only those claims alleged in the complaint and before the court, but also claims which ‘could have been alleged by reason of or in connection with any matter or fact set forth or referred to in’ the complaint.”” (*Amaro v. Anaheim Arena Management, LLC* (2021) 69 Cal.App.5th 521, 537.) The scope of the releases in this case are acceptable because they are limited to the scope of the allegations in the operative complaints. Moreover, the released claims are “‘based on the identical factual predicate as that underlying the claims in the settled class action.’” (*Ibid.*) In other words, the released claims do not “‘go beyond the scope of the allegations in the operative complaint’” (*Ibid.*)

d. Counsel for Both Parties Are Experienced in Similar Litigation

The Parties' counsel are experienced in wage-and-hour, employment law and class actions. (Han Decl., *supra*, at ¶¶ 2-7; Exhibit 1.) Class Counsel have prosecuted numerous cases on behalf of employees for Labor Code violations. (*Ibid.*) Class Counsel's experience guided their determination to endorse the Settlement.¹ (*Ibid.*)

¹ The final factor mentioned in *Dunk* – the number of objectors – is not determinable until the Class Notice has been provided to the Class Members, and they have had an opportunity to

1 **IV. ARGUMENT**

2 **a. Class Action Settlements Are Subject to Court Review**

3 Rules of Court, rule 3.769 requires court approval for class action settlements.² “Before
4 final approval, the court must conduct an inquiry into the fairness of the proposed settlement.”
5 (Rules of Court, rule 3.769(g).) Rule 3.769 further requires a noticed motion for preliminary
6 approval of class settlements:

7 (a) A settlement or compromise of an entire class action, or a cause of action in
8 a class action, or as to a party, requires the approval of the court after
9 hearing.

10 (c) . . .
11 Any party to a settlement agreement may serve and file a written notice of
12 motion for preliminary approval of the settlement. The settlement
13 agreement and proposed notice to class members must be filed with the
14 motion, and the proposed order must be lodged with the motion.

15 Courts have discretion to approve settlements that are fair, not collusive, and consider “all
16 the normal perils of litigation as well as the additional uncertainties inherent in complex class
17 actions.” (*In re Beef Industry Antitrust Litigation* (5th Cir. 1979) 607 F.2d 167, 179, cert. den. *sub*
18 *nom. Iowa Beef Processors, Inc. v. Meat Price Investigators Ass’n* (1981) 452 U.S. 905.)

19 **b. The Settlement Is a Reasonable Compromise of Claims**

20 Understanding the sum in controversy is an important factor in if the settlement “of the
21 class members’ claims is reasonable in light of the strengths and weaknesses of the claims and
22 the risks of the particular litigation.” (*Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th
23 116, 129; see also *Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles* (2010) 186 Cal.App.4th
24 399, 409.) The most important factor is “the strength of the case for plaintiffs on the merits,
25 balanced against the amount offered in settlement.” (*Kullar*, at p. 130; *Munoz*, at p. 409.)

26 _____
27 respond. This information will be provided to the Court in conjunction with the Motion for Final
28 Approval of Class Action Settlement.

29 ² The California Supreme Court authorized California’s trial courts to use Federal Rule 23
30 and cases applying it for guidance in considering class issues. (See *Vasquez v. Superior Court*
31 (1971) 4 Cal.3d 800, 821; see *Green v. Obledo* (1981) 29 Cal.3d 126, 145-146.) Where
32 appropriate, the Parties cite Federal Rule 23 and federal case law in addition to California law.

1 *Kullar* instructs the court is not to “decide the merits of the case or to substitute its
2 evaluation of the most appropriate settlement for that of the attorneys.” (*Kullar v. Foot Locker*
3 *Retail, Inc.*, *supra*, 168 Cal.App.4th at p. 133.) *Kullar* does not require an explicit statement of the
4 maximum amount the class could recover if plaintiff prevailed on all his claims, provided there
5 is a record allowing ““an understanding of the amount that is in controversy and the realistic range
6 of outcomes of the litigation.”” (*Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles*, *supra*, 186
7 Cal.App.4th at p. 409.) In other words, “as the court does when it approves a settlement as in
8 good faith under Code of Civil Procedure § 877.6, the court must at least satisfy itself that the
9 class settlement is within the ‘ballpark’ of reasonableness.” (*Kullar*, at p. 133.)

10 **i. The Gross Settlement Amount of \$1,266,850 Is Fair and Reasonable**

11 The Settlement Agreement was only possible following significant investigation and
12 evaluation of the relevant policies and procedures and the data produced for the putative class,
13 permitting Class Counsel to engage in a comprehensive analysis of liability and potential
14 damages. (Han Decl., *supra*, at ¶ 32.)

15 The claims are predicated on the alleged: (1) failure to pay overtime wages; (2) failure to
16 provide meal and rest breaks and pay premium wages; (3) failure to pay minimum wages; (4)
17 failure to timely pay wages; (5) failure to issue compliant wage statements; (6) failure to
18 reimburse business expenses; (7) violation of PAGA; and (8) violation of Business & Professions
19 Code section 17200. (Han Decl., *supra*, at ¶ 33.) Defendant vehemently denies the theories of
20 liability. (*Id.* at ¶ 34.)

21 While Plaintiff believes that the case is suitable for certification, uncertainties with respect
22 to certification are present. (Han Decl., *supra*, at ¶ 35.) As the California Supreme Court ruled in
23 *Sav-On Drug Stores, Inc. v. Superior Court* (2004) 34 Cal.4th 319, class certification is a matter
24 of the trial court’s sound discretion. (*Ibid.*) Decisions following *Sav-On Drug Stores, Inc.* have
25 reached different conclusions concerning certification of wage-and-hour claims.³ (*Ibid.*)

26 ³ (See e.g. *Harris v. Superior Court* (2007) 154 Cal.App.4th 164 [reversing decertification
27 of class claiming misclassification and ordering summary adjudication in favor of employees],
28

1 **ii. The PAGA Penalties of \$150,000 Is Reasonable**

2 The provisions of the Labor Code potentially triggering PAGA penalties include, but are
3 not limited to, Labor Code sections 201, 202, 203, 204, 210, 218.5, 221, 226(a), 226.3, 226.7,
4 246, 432.5, 510, 512(a), 551, 552, 558, 1174(d), 1194, 1197, 1197.1, 1198, 2800, and 2802. (Han
5 Decl., *supra*, at ¶ 44.) Defendant asserted that, regardless of the results of the underlying causes
6 of action, PAGA penalties are not mandatory but permissive and discretionary. (*Ibid.*) Defendant
7 maintained that it had a strong argument that it would be unjust to award maximum PAGA
8 penalties given the law’s unsettled state. (Han Decl., *supra*, at ¶ 44; *Thurman v. Bayshore Transit*
9 *Mgmt.* (2012) 203 Cal.App.4th 1112 [reducing penalties by 30% under this authority].) Without
10 stacking and limited to the initial violation, the PAGA penalties would be limited to **\$16,000**
11 (160employees x \$100 initial violation) on the low-end and **\$96,000** (160 employees x \$100 initial
12 violation x 6 theories of recovery) on the high-end. (Han Decl., *supra*, at ¶¶ 45-48.)

13 Plaintiff also recognized the risk that any PAGA award could be reduced. (Han Decl.,
14 *supra*, at ¶ 49.) Many of the causes of action brought were duplicative of the statutory claims.
15 (*Ibid.*) The maximum penalties for each pay period are likely not justified, and it was arguable
16 that the Court would award the maximum penalties. (*Ibid.*) Thus, allocating \$150,000 to PAGA
17 civil penalties was reasonable given that Defendant is paying an additional \$1,116,850 in the class
18 settlement. (*Ibid.*) When PAGA penalties are negotiated in good faith and “there is no indication
19 that [the] amount was the result of self-interest at the expense of other Class Members,” such
20 amounts are generally considered reasonable.⁴ (*Ibid.*)

21 ///

22 review granted Nov. 28, 2007, (2007) 171 P.3d 545 [not cited as precedent, but rather for
23 illustrative purposes only]; *Walsh v. IKON Office Solutions, Inc.* (2007) 148 Cal.App.4th 1440
24 [affirming decertification of class claiming misclassification]; *Aguilar v. Cintas Corp. No. 2*
25 (2006) 144 Cal.App.4th 121 [reversing denial of certification]; *Dunbar v. Albertson’s Inc.* (2006)
141 Cal.App.4th 1422 [affirming denial of certification].)

26 ⁴ (*Hopson v. Hanesbrands Inc.* (N.D.Cal. Apr. 3, 2009, No. CV-08-00844 EDL) 2009
27 U.S.Dist.LEXIS 33900, at *24; see e.g. *Nordstrom Com. Cases* (2010) 186 Cal.App.4th 576, 579,
“[T]rial court did not abuse its discretion in approving a settlement which does not allocate any
28 damages to the PAGA claims”.)

c. Discount Analysis Justifies the Settlement

Excluding the civil penalties, which could be completely discretionary, the total estimated potential exposure, assuming certification and prevailing at trial, would be about **\$4,205,424,67** on the low-end and **\$4,768,413.42** on the high-end. (Han Decl., *supra*, at ¶ 50.)

Category	Potential Exposure	Certification Risk	Merits Risk	Realistic Exposure
Rest Break Premiums	\$702,483.59	70%	60%	\$84,298.03
Meal Break Premiums	\$175,734.78	60%	60%	\$28,117.56
Overtime/Minimum Wage: Off-the-Clock Work	\$1,125,977.49 to \$1,688,966.24	50%	50%	\$281,494.37 to \$422,241.56
Regular Rate	\$286,069.61	30%	50%	\$100,124.36
Unreimbursed Business Expenses	\$203,180	20%	70%	\$48,763.20
Wage Statement Penalty	\$640,000	40%	40%	\$230,400
Waiting Time Penalty	\$1,071,979.20	40%	40%	\$385,912.51
MAXIMUM TOTAL EXPOSURE	\$4,205,424.67 to \$4,768,413.42⁵			\$1,159,110.03 to \$1,299,857.22⁶

Based on this analysis, the realistic recovery for this case is **\$1,159,110.03** on the low-end and **\$1,299,857.22** on the high-end. (Han Decl., *supra*, at ¶ 59.) The Gross Settlement Amount is about twenty-six percent (26.57%) of the maximum potential exposure and ninety-seven percent (97.46%) of the realistic exposure at trial, which is an excellent settlement. (*Ibid.*)

The only question at preliminary approval is whether the settlement is within the range of possible approval. (*In re General Motors Corp. Engine Interchange Litigation* (7th Cir. 1979) 594 F.2d 1106, 1124; *Acosta v. TransUnion, LLC* (C.D. Cal. 2007) 240 F.R.D. 564, 575.) “The fact that a proposed settlement may only amount to a fraction of the potential recovery does not, in and of itself, mean that the proposed settlement is grossly inadequate and should be disapproved.” (*Detroit v. Grinnell Corp.* (2d Cir. 1974) 495 F.2d 448, 455; see also *Linney v. Cellular Alaska Partnership* (9th Cir. 1998) 151 F.3d 1234, 1242, “[I]t is the very uncertainty of

⁵ (Han Decl., *supra*, at ¶¶ 36-43.)

⁶ (*Id.* at ¶¶ 52-58.)

outcome in litigation and avoidance of wasteful and expensive litigation that induce consensual settlements. The proposed settlement is not to be judged against a hypothetical or speculative measure of what might have been achieved by the negotiators”.) Nevertheless, the Settlement provides significant recovery for the Class Members.

d. Conditional Certification of the Class Is Appropriate

Code of Civil Procedure section 382 “authorizes class actions ‘when the question is one of a common or general interest, of many persons, or when the parties are numerous, and it is impracticable to bring them all before the court.’” (*Sav-On Drug Stores, Inc. v. Superior Court*, *supra*, 34 Cal.4th at p. 326.) The California courts will certify class actions where the plaintiff identifies “both [1] an ascertainable class and [2] a well-defined community of interest among class members.” (*Ibid.*)

The Class is ascertainable and numerous as to make it impracticable to join all Class Members, and there are common questions of law and fact amongst the Class. (Han Decl., *supra*, at ¶ 60.) Plaintiff contends that, as a former hourly-paid, non-exempt employee of Defendant, his claims are typical of the claims of the Class, and Class Counsel will fairly and adequately protect the interests of the Class. (*Ibid.*) Plaintiff also asserts that the prosecution of separate actions by individual Class Members would create the risk of inconsistent or varying adjudications. (*Ibid.*)

i. The Proposed Class Is Ascertainable and Sufficiently Numerous

“Ascertainability is required in order to give notice to putative class members as to whom the judgment in the action will be res judicata.” (*Hicks v. Kaufman & Broad Home Corp.* (2001) 89 Cal.App.4th 908, 914.) “A class is ascertainable if it identifies a group of unnamed plaintiffs by describing a set of common characteristics sufficient to allow a member of that group to identify himself or herself as having a right to recover based on the description.” (*Bartold v. Glendale Federal Bank* (2000) 81 Cal.App.4th 816, 828.) The proposed class must also be sufficiently numerous. (*Linder v. Thrifty Oil Co.* (2000) 23 Cal.4th 429, 435.)

This case involves about two hundred fifty (250) Class Members, and Class Counsel believes that the Class is sufficiently numerous. (Han Decl., *supra*, at ¶ 61; *Ghazaryan v. Diva*

1 *Limousine, Ltd.* (2008) 169 Cal.App.4th 1524, 1531, n.5 [finding a proposed class of “as many as
2 190 current and former employees” is sufficiently numerous].)

3 **ii. The Class Members Share a Well-defined Community of Interest**

4 The community of interest requirement “embodies three factors: (1) predominant common
5 questions of law or fact; (2) class representatives with claims or defenses typical of the class; and
6 (3) class representatives who can adequately represent the class.” (*Sav-On Drug Stores, Inc. v.*
7 *Superior Court, supra*, 34 Cal.4th at p. 326.) “[T]he community of interest requirement for
8 certification *does not mandate that class members have uniform or identical claims.*” (*Capitol*
9 *People First v. Department of Developmental Services* (2007) 155 Cal.App.4th 676, 692
10 (emphasis in original).) Rather, courts focus on the defendant’s internal policies and “pattern and
11 practice . . . in order to assess whether that common behavior toward similarly situated plaintiffs
12 renders class certification appropriate.” (*Ibid.*)

13 **1. Common Issues Predominate**

14 The “common issues” requirement “involves analysis of whether the proponent’s ‘theory
15 of recovery’ is likely to prove compatible with class treatment.” (*Capitol People First v.*
16 *Department of Developmental Services, supra*, 155 Cal.App.4th at p. 690.) Courts determine
17 whether the elements necessary to establish liability are susceptible to common proof, even if the
18 class members must individually prove their damages. (*Brinker Restaurant Corp. v. Superior*
19 *Court* (2012) 53 Cal.4th 1004, 1024). These types of claims are regularly granted class
20 certification when the plaintiff can present evidence of common policies. (See e.g. *Jones v. JGC*
21 *Dallas LLC* (N.D.Tex. Nov. 29, 2012, Civil Action No. 3:11-CV-2743-O) 2012 U.S.Dist.LEXIS
22 185042 [certified collective action involving 190 dancers]; *Espinoza v. Galardi South Enters.*
23 (S.D.Fla. Jan. 11, 2016, No. 14-21244-CIV-GOODMAN) 2016 U.S.Dist.LEXIS 2904 [court
24 certified class of dancers on state law claims].)

25 Plaintiff asserts common issues of fact and law predominate as to each of the claims
26 alleged. (Han Decl., *supra*, at ¶ 62.) Plaintiff contends that all persons employed by Defendant as
27
28

1 same or similar policies, practices, and procedures described in detail above. (Han Decl., *supra*,
2 at ¶ 62.)

3 **2. Plaintiff's Claims Are Typical of the Class Claims**

4 Typical claims rely on legal theories and facts that are substantially like those of other
5 class members. (*Classen v. Weller* (1983) 145 Cal.App.3d 27, 46.)

6 Plaintiff is a former employee of Defendant and alleges that he and the Class Members were
7 employed by the same company and injured by Defendant's common policies, practices, and
8 procedures related to the claims described above. (Han Decl., *supra*, at ¶ 63.) Plaintiff seeks relief
9 for these claims and derivative claims on behalf of all Class Members. (*Ibid.*) Thus, the claims
10 arise from the same employment practices and are based on the same legal theories as those
11 applicable to the Class. (*Ibid.*)

12 **3. Plaintiff Is Adequate to Represent the Class**

13 Plaintiff has proven to be an adequate representative. (Han Decl., *supra*, at ¶ 64.) Plaintiff
14 has conducted himself diligently and responsibly in representing the Class, understands his
15 fiduciary obligations, and actively participated in the prosecution of this case. (*Ibid.*) Plaintiff has
16 no interests adverse to the interests of the Class Members. (*Ibid.*)

17 **4. Class Action Is Superior for the Fair and Efficient** 18 **Adjudication of this Controversy**

19 A class action is superior to other available means for the fair and efficient adjudication
20 of this controversy. Plaintiff contends that the joinder of all Class Members is impractical and
21 that class treatment will permit many similarly situated persons to prosecute their common claims
22 for settlement purposes simultaneously in a single forum without the duplication of effort and
23 expense. Because some Class Members are current employees, Plaintiff believes that the fear of
24 retaliation further supports the superiority of class-wide relief as this fear deters legal redress.

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27 ///

1 **e. The Settlement Is Fair, Reasonable, and Adequate**

2 In deciding to approve a proposed class action settlement under Code of Civil Procedure
3 section 382, the Court must find the proposed settlement is “fair, adequate and reasonable.” (*Dunk*
4 *v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1801.) A proposed class action settlement is
5 presumed fair under the following circumstances: (1) parties reached settlement after arm’s-
6 length negotiations; (2) investigation and discovery were sufficient to allow counsel and the court
7 to act intelligently; (3) counsel is experienced in similar litigation; and (4) percentage of objectors
8 is small. (*Dunk v. Ford Motor Co.*, *supra*, 48 Cal.App.4th at p. 1802.) These elements are present.

9 **f. Notice to Class Members Complies with Rules of Court, Rule 3.769(f)**

10 Rules of Court, rule 3.769(f), provides:

11 If the court has certified the action as a class action, notice of the final approval
12 hearing must be given to class members in the manner specified by the court. The
13 notice must contain an explanation of the proposed settlement and procedures for
14 class members to follow in filing written objections to it and in arranging to appear
15 at the settlement hearing and state any objections to the proposed settlement.

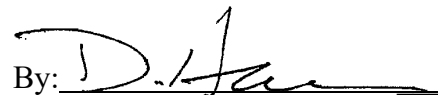
16 The Class Notice meets all these requirements. The Class Notice advises the Class Members of
17 their right to participate in the Settlement; how and when to object to or request exclusion from
18 the Settlement; and the date, time, and location of the Final Approval Hearing.

19 **V. CONCLUSION**

20 Plaintiff submits that the Settlement is in the best interests of the Class as it is fair,
21 adequate, and reasonable. Under the applicable class action criteria and guidelines, the Settlement
22 should be preliminarily approved by the Court, the Class should be conditionally certified for
23 purposes of settlement only, and the Class Notice should be approved.

24 Dated: December 12, 2024

25 **JUSTICE LAW CORPORATION**

26 By: 

27 Douglas Han

28 Attorneys for Plaintiff



Superior Court of Alameda County Public Portal

Make a Reservation

BIRDI vs FERROTEC (USA) CORPORATION

Case Number: 23CV045925 Case Type: Civil Unlimited Category: Other Employment Complaint Case
Date Filed: 2023-09-29 Location: Rene C. Davidson Courthouse - Department 16

Reservation

Case Name: BIRDI vs FERROTEC (USA) CORPORATION	Case Number: 23CV045925
Type: Motion re: (Preliminary Approval of Class Action Settlement)	Status: RESERVED
Filing Party: Bobby Birdi (Plaintiff)	Location: Rene C. Davidson Courthouse - Department 16
Date/Time: 01/16/2025 2:30 PM	Number of Motions: 1
Reservation ID: 938582720409	Confirmation Code: CR-FTW2PKOMDTQNAXIV5

Fees

Description	Fee	Qty	Amount
Motion re: (name extension)	0.00	1	0.00
Court Technology Fee	1.00	1	1.00
TOTAL			\$1.00

Payment

Amount: \$1.00	Type: Visa
Account Number: XXXX4359	Authorization: 04025G
Payment Date: n/a	

[Print Receipt](#)[+ Reserve Another Hearing](#)[View My Reservations](#)

**PROOF OF SERVICE
1013A(3) CCP**

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action. My business address is 751 N. Fair Oaks Avenue, Suite 101, Pasadena, California 91103 and my electronic service address is dmather@justicelawcorp.com.

On December 12, 2024, I served the foregoing document described as

NOTICE OF MOTION AND MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT, CONDITIONAL CERTIFICATION, APPROVAL OF CLASS NOTICE, SETTING OF FINAL APPROVAL HEARING DATE; MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT THEREOF

for the following case: **Birdi v. Ferrotec (USA) Corporation**
LWDA/Court Case No.: **LWDA Case No.: CM-984576-23**
Court Case No.: 23CV045925 [Consolidated with Case No. 23CV057122]
Alameda County Superior Court

on interested parties in this action by electronically submitting as follows:

State of California
Labor & Workforce Development Agency
800 Capitol Mall, MIC-55
Sacramento, California 95814

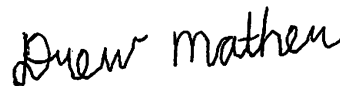
[X] BY ELECTRONIC SUBMISSION

Pursuant to California Senate Bill No. 836, I caused the documents described above to be electronically submitted by and through the procedure stated on the website of the State of California Labor and Workforce Development Agency.

[X] STATE

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

Executed on December 12, 2024, at Pasadena, California.



Drew Mather