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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN DIEGO

MARIO MARISCAL JIMENEZ, as an individual and on behalf of all others similarly situated, Plaintiff, vs. SIGNTECH ELECTRICAL ADVERTISING, INC., a California corporation; and DOES 1 through 100, inclusive, Defendants.	Case No. 37-2023-00038995-CU-OE-CTL *[Assigned for all purposes to the Hon. James A. Mangione, Dept. C-75]* **PLAINTIFF'S NOTICE OF MOTION AND MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT; MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT THEREOF** Date: February 28, 2025 Time: 9:00 a.m. Dept.: C-75 Complaint Filed: September 7, 2023 Trial Date: None Set

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

PLEASE TAKE NOTICE that pursuant to Rule 3.769 of the California Rules of Court, on February 28, 2025 at 9:00 a.m. in Department C-75 of the above-entitled Court, located at 330 W. Broadway, San Diego, California 92101, Plaintiff Mario Mariscal Jimenez ("Plaintiff"), individually and on behalf of a class of similarly situated individuals, will and hereby does move this Court for:

1. Preliminary approval of the proposed class settlement of this lawsuit;
2. Pursuant to section 382 of the California Code of Civil Procedure, provisional certification of the following settlement Class defined as follows:

   > All current and former non-exempt employees employed by Defendant Signtech Electrical Advertising, Inc. in the State of California during the Class Period.
   >
   > Class Period means the period from September 7, 2019 to October 24, 2024.

3. Preliminary appointment of Plaintiff Mario Mariscal Jimenez as Class Representative;
4. Preliminary appointment of Scott M. Lidman, Milan Moore, and Tiara Gose-Hardy of Lidman Law, APC and Paul K. Haines of Haines Law Group, APC as Class Counsel;
5. The scheduling of a hearing to consider whether the Settlement should be finally approved and to permit an enhancement award to Plaintiff, Settlement Administration costs, civil penalties payable to the California Labor Workforce Development Agency, and attorneys' fees and costs to Class Counsel;
6. Appointment of Phoenix Settlement Administrators as the third-party Settlement Administrator for mailing notices; and
7. Approval of the proposed Notice of Class Action Settlement which is attached to the Settlement as Exhibit A and an order that it be disseminated to the proposed Class Members as provided in the Settlement Agreement.

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This Motion is based on this notice of motion, the memorandum of points and authorities, the declarations of Scott M. Lidman, Milan Moore, Tiara Gose-Hardy, Paul K. Haines, Plaintiff Mario Mariscal Jimenez, and Jodey Lawrence of Phoenix Settlement Administrators, and the exhibits attached thereto, the pleadings and other papers filed in this action, and on any further oral or documentary evidence or argument presented at the time of hearing.

Dated: December 17, 2024

Respectfully submitted,
LIDMAN LAW, APC

By: Scott M. Lidman

Scott M. Lidman

Attorneys for Plaintiff
MARIO MARISCAL JIMENEZ

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MEMORANDUM OF POINTS AND AUTHORITIES[1]

I. INTRODUCTION

Plaintiff Mario Mariscal Jimenez ("Plaintiff") brought this class and representative action against Defendant Signtech Electrical Advertising, Inc. ("Defendant" or "Signtech") alleging various wage and hour and related violations. Plaintiff's primary allegations are that Defendant: (1) failed to pay all overtime wages owed; (2) failed to provide meal periods; (3) failed to authorize and permit all legally required rest periods; (4) failed to provide accurate, itemized wage statements; (5) failed to pay all wages owed upon termination; (6) engaged in unfair competition; and (7) is liable for civil penalties under the Private Attorneys General Act of 2004 ("PAGA").

Plaintiff now respectfully requests that this Court preliminarily approve this non-reversionary, class action settlement ("Settlement" or "Settlement Agreement"),[2] in which Defendant has agreed to pay a total settlement amount of Six Hundred Fifty Thousand Dollars and Zero Cents ($650,000.00) on behalf of the following settlement Class:

> All current and former non-exempt employees employed by Defendant Signtech Electrical Advertising, Inc. in the state of California during the Class Period.
>
> Class Period means the period from September 7, 2019 to October 24, 2024.

Significantly, Class Members do not need to file a claim to benefit from the Settlement because all Settlement Class Members will automatically receive a payment unless they affirmatively opt-out.

Thus, after deducting administration costs, Plaintiff's service award, attorneys' fees and costs, and payment of PAGA penalties to the California Labor and Workforce Development Agency ("LWDA"), the remaining Net Settlement Amount ("NSA") of approximately $360,333.33 will be paid to all Settlement Class Members who do not timely opt out. There were approximately 244 Settlement Class members as of the last date data is currently available, rendering the estimated average payment

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[1] Given the multiplicity of issues addressed in this Motion, Plaintiff respectfully requests that the Court allow Plaintiff to exceed the 20-page limit set forth in California Rule of Court 3.764(c)(2), and that the Court consider the attached memorandum of points and authorities which is 21 pages in length.

[2] The Joint Stipulation of Class and PAGA Representative Action Settlement and Release ("Settlement") is attached to the Declaration of Scott M. Lidman as Exhibit 2. The proposed Notice of Class Action Settlement is attached to the Settlement as Exhibit A. All defined terms in this motion have the same definitions as used in the Settlement.

to Participating Settlement Class Members to be approximately $1,476.77 as a direct result of this litigation.

This proposed Settlement is well-within the range of possible approval in light of the significant legal and factual obstacles that Plaintiff faced, the risks and costs of further litigation, and the tangible monetary benefits to be received by the Settlement Class. For the reasons discussed herein, Plaintiff respectfully requests that the Court grant preliminary approval of the Settlement.

II. SUMMARY OF THE LITIGATION

A. THE PARTIES

Defendant designs, manufactures, installs, and services signage to corporate customers. *See* Declaration of Scott M. Lidman ("Lidman Decl."), ¶ 10. Plaintiff was employed by Defendant as a non-exempt employee since approximately the year 2017. *See* Declaration of Mario Mariscal Jimenez ("Cruz Decl."), ¶ 2. During his employment, Plaintiff held the position of Polisher/Preparer and was responsible for preparing signs before they were painted and/or decorated. *Id*.

B. BRIEF PROCEDURAL HISTORY

On September 7, 2023, Plaintiff filed a putative class action complaint against Defendant in San Diego County Superior Court. Lidman Decl., ¶ 10. On September 7, 2023, Plaintiff submitted a letter to the California Labor & Workforce Development Agency ("LWDA") and Defendant advising of his intention of filing a PAGA claim based on the Labor Code violations alleged in his operative complaint. *Id*., **Exhibit 1**. On November 13, 2023, Plaintiff filed a First Amended Class Action and Representative Action Complaint. *Id*. The primary allegations are that Defendant: (1) failed to pay all overtime wages owed; (2) failed to provide meal periods; (3) failed to authorize and permit all legally required rest periods; (4) failed to provide accurate, itemized wage statements; (5) failed to pay all wages owed upon termination; (6) engaged in unfair competition; and (7) is liable for civil penalties under the PAGA. *Id*.

Plaintiff will serve the instant Motion and proposed Settlement Agreement on the LWDA on the same date he files this Motion and will submit a supplemental declaration to the Court evidencing the submission. Lidman Decl., ¶ 33.

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III. <u>DUNK/KULLAR ANALYSIS</u>

Settlement is the preferred means of dispute resolution, particularly in complex class action litigation. *See In re Syncor ERISA Litig.* (9th Cir. 2008) 516 F.3d 1095, 1101. The Court's role in evaluating a proposed settlement is limited to ensuring that the agreement taken as a whole is fair. *See e.g.*, *Hanlon*, *supra*, 150 F.3d at 1027. There is an initial presumption of fairness where, as here, the Settlement agreement was negotiated at arm's-length by class counsel and with the assistance of an experienced wage and hour class action mediator. *See e.g. Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 130.

A. INVESTIGATION AND DISCOVERY

After agreeing to participate in private mediation, Defendant informally produced timekeeping and payroll data for the putative class, as well as hundreds of pages of wage and hour policies and other documents and information relevant to the claims alleged. Lidman Decl., ¶ 11. After a detailed review of the payroll and time records for the putative class and other documents and policies produced by Defendant, Class Counsel drew on their extensive experience in similar cases to assess the strengths and weaknesses of Plaintiff's case. *Id*. This informal discovery allowed the parties to assess the merits and value of Plaintiff's claims and Defendant's defenses thereto, if a settlement could not be reached. *Id*.

B. ARMS-LENGTH NEGOTIATIONS

On July 26, 2024, after extensive research and analysis, a full-day mediation was held with Michael Young, Esq., a well-respected and experienced wage and hour class action mediator. Lidman Decl., ¶ 12. During mediation, the parties vigorously debated their opposing legal positions, the likelihood of certification of Plaintiff's claims, and the legal basis for the claims and defenses. *Id*.

Ultimately, the parties agreed in principle on a class-wide resolution. Lidman Decl., ¶ 12. In the months that followed, the parties finalized the terms of settlement and executed the Joint Stipulation of Class and PAGA Representative Action Settlement and Release ("Settlement" or "Settlement Agreement"). *Id*.

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C. THE EXPERIENCE AND VIEWS OF COUNSEL

"Parties represented by competent counsel are better positioned than courts to produce a settlement that fairly reflects each party's expected outcome in litigation." *In re Pacific Enterprises Securities Litigation* (9th Cir. 1995) 47 F.3d 373, 378. Here, Plaintiff is represented by competent, experienced counsel who possess extensive experience prosecuting and defending wage-and-hour class actions, and who have been appointed as class counsel in numerous cases alleging similar claims. *See* Lidman Decl., ¶¶ 2-8; Declaration of Milan Moore ("Moore Decl."), ¶¶ 2-8; Declaration of Tiara Gose-Hardy ("Gose-Hardy Decl."), ¶¶ 2-4; Declaration of Paul K. Haines ("Haines Decl."), ¶¶ 2-8. Class Counsel conducted an in-depth review of Defendant's policies and the timekeeping and payroll records and drew on their extensive experience in similar cases to assess the strengths and weaknesses of Plaintiff's case. Lidman Decl., ¶ 11. The Settlement was also reached with the assistance of an experienced and respected wage and hour class action mediator. Lidman Decl., ¶ 12. This factor strongly supports preliminary approval of the Settlement. *See Kullar*, *supra*, 168 Cal.App.4th at 130.

D. AMOUNT OFFERED IN SETTLEMENT GIVEN REALISTIC VALUE OF CLAIMS

The Settlement provides a fair and reasonable monetary recovery for the Settlement Class in the face of disputed claims. Plaintiff's analysis of the maximum and realistic expected recoveries for each of the theories of liability pled is set forth below:

<u>Defendant Failed to Pay for All Overtime Hours Worked</u>: Plaintiff alleges that he and Class Members were not fully compensated for all of their time worked. Lidman Decl., ¶ 16. Specifically, Plaintiff alleges Defendant miscalculated his and Class Members' regular rate of pay by excluding bonuses when calculating an employee's regular rate for working overtime hours. *Id*. Plaintiff alleges that Defendant's failure to include these payments in the regular rate has resulted in a systematic underpayment of overtime wages to Plaintiff and other non-exempt employees. Accordingly, Plaintiff calculated a total wage underpayment of approximately $234,611. *Id*.

Defendant contends that any bonuses were discretionary and did not need to be accounted for in determining the regular rate of pay for overtime purposes. Lidman Decl., ¶ 17. As such, Defendant alleges it properly compensated Class Members for all of their time worked. *Id*. Defendant further asserts that Plaintiff would be unable to certify an overtime class given the individualized inquiries that would be required. *Id*. In light of these defenses, Plaintiff discounted the maximum exposure by 55% for the risk of non-certification, and an additional 75% to account for Defendants' defenses on the merits, to arrive at an estimated exposure of $26,393.74. *Id*.

Defendant Failed to Provide All Legally Required Meal Periods: Plaintiff alleges that he and Class Members were not provided with all legally-required meal periods, including first meal periods beginning before the end of the fifth hour of work and second meal periods. Lidman Decl., ¶ 18. Plaintiff further alleges that meal periods were often less than thirty minutes due to Defendant's unlawful meal period practices. *Id*. Therefore, Plaintiff calculated Defendants' maximum exposure of the alleged meal period violations at approximately $4,763,485. *Id*.

Defendant counters that it has always provided non-exempt employees with an opportunity to take legally compliant meal periods, and any non-compliant meal periods reflected in employee timekeeping records were solely the result of employee choice, rather than any policy or practice of Defendants. Lidman Decl., ¶ 19. Defendant points out that under *Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal. 4th 1004, they are only required to "provide" the opportunity to take meal periods, not "ensure" meal periods are taken, and that they have always done so. *Id*.; *See Brinker*, *supra*, 53 Cal.4th at 1038 (rejecting "ensure" standard). Finally, Defendant contends Plaintiff's meal period claim is not suited for class certification, since individual inquiries would be required to assess which employees took non-compliant meal periods, how many meal periods were non-compliant or missed, and the reasons why a particular employee took a non-compliant meal period or missed a meal period during a particular shift. *Id*. Accordingly, Plaintiff discounted the maximum exposure by 65% for the risk of non-certification, and an additional 70% to account for Defendant's defenses on the merits to arrive at an estimated exposure of $500,165.93. *Id*.

Defendant Failed to Authorize and Permit All Rest Periods: Plaintiff also alleges Defendant maintained unlawful rest period policies and practices and failed to authorize and permit Plaintiff and other hourly, non-exempt employees take legally compliant rest periods when they worked shifts in excess of 3.5 hours. Lidman Decl., ¶ 20. Specifically, Plaintiff alleges Defendant failed to provide any rest periods on shifts worked in excess of 3.5 hours. *Id*. Based on the records produced in connection with mediation, there were approximately 146,976 shifts over 3.5 hours worked during the relevant time period. *Id*. Accordingly, Plaintiff calculated Defendant's maximum exposure for rest period violations at $6,466,439. *Id*.

Defendant contends it has always maintained and enforced lawful rest period policies and practices, and that Settlement Class Members were authorized and permitted to take all off-duty rest periods in compliance with California law. Lidman Decl., ¶ 21. Further, Defendant argues that Plaintiff's rest period claim is inherently unsuited for class treatment as it requires an individualized inquiry into whether each Settlement Class Member was in fact authorized and permitted to take a compliant rest period, which would devolve into an unmanageable series of mini-trials. *Id*. Defendant further contends that rest breaks are also not recorded, thus making this claim more challenging to certify due to a lack of time records to rely upon as common proof. *Id*. Accordingly, Plaintiff discounted the maximum exposure by 65% for the risk of non-certification, and an additional 60% to account for Defendants' defenses on the merits to arrive at an estimated exposure of $905,301.46. *Id*.

<u>Defendant Issued Inaccurate Itemized Wage Statements</u>: Plaintiff alleges that Defendants issued inaccurate wage statements in violation of Labor Code § 226 as a result of the alleged unpaid overtime wages and meal and rest period premium wages described above. Lidman Decl., ¶ 22. Plaintiff calculated Defendants' maximum exposure for wage statement violations at approximately $764,000 ($50 for the first violation and $100 for each subsequent violation). *Id*.

Defendant argues that its alleged wage statement violations could not be shown to be "knowing and intentional," and that Plaintiff cannot show that he or any other employee "suffer[ed] injury" as a result of the alleged wage statement violations, as required by Lab. Code § 226(e) for imposition of penalties. Lidman Decl., ¶ 23. As such, Plaintiff discounted the calculated exposure by 65% for a risk of non-certification and an additional 80% for a risk of being unsuccessful on the merits, to arrive at an estimated total of $53,480.00. *Id*.

<u>Defendant Is Subject to Waiting Time Penalties</u>: Plaintiff alleges that as a result of failing to pay all overtime wages and all meal and rest period premiums at the end of employment, Defendant is liable for waiting time penalties under Labor Code § 203. Lidman Decl., ¶ 24. Based on Plaintiff's analysis of 88 former employees, Plaintiff calculated Defendants' maximum exposure for waiting time penalties to be approximately $742,131. *Id*.

Defendant asserts it has strong defenses to the waiting time claim because there exist good-faith disputes as to Plaintiff's underlying claims, precluding imposition of penalties. Lidman Decl., ¶ 25; *See also* 8 Cal. Code Regs. § 13520 (a "good faith dispute that any wages are due will preclude imposition of waiting time penalties"); *Kao v. Joy Holiday*, 12 Cal.App.5th 947, 963 (2017) (holding that "good faith dispute" over whether employee was exempt precluded imposition of waiting time penalties over contested wages owed). As such, Plaintiff discounted the calculated exposure by 65% for a risk of non-certification and an additional 80% for a risk of being unsuccessful on the merits, to arrive at an estimated total of $51,949.17. *Id*.

Defendant Is Liable for PAGA Civil Penalties: Plaintiff also seeks civil penalties under the PAGA as a result of the foregoing alleged Labor Code violations. Lidman Decl., ¶ 26. Plaintiff calculated Defendant's maximum exposure at $3,455,400. *Id*.; *see Amaral v. Cintas Corp. No. 2* (2008) 163 Cal.App.4th 1157, 1207 (finding "initial" violation rate applies until employer is notified that it is violating a Labor Code provision).

Defendant argues that Plaintiff's PAGA claim will fail for the same reasons that his underlying claims will fail. Lidman Decl., ¶ 27; *see Price v. Starbucks Corp*. (2011) 192 Cal.App.4th 1136, 1147 ("Because the underlying causes of action fail, the derivative UCL and PAGA claims also fail."). Defendants also maintain that, given their good faith defenses, this Court would exercise its discretion to substantially reduce any PAGA penalties if it were to find Defendant liable for any of Plaintiff's claims. Lidman Decl., ¶ 29; *See* Lab. Code § 2699(e)(2); *Thurman v. Bayshore Transit Mgmt., Inc*. (2012) 203 Cal.App.4th 1112, 1135 (affirming reduction of PAGA penalties); *Fleming v. Covidien Inc*. (C.D. Cal. 2011) Case No. ED CV10-01487 RGK (OPx), 2011 WL 7563047, at *4 (reducing PAGA penalties from $2.8 million to $500,000). Therefore, Plaintiff discounted the maximum exposure figure by 65% for a risk of being unsuccessful on the merits, and an additional 80% to account for the possibility of this Court reducing penalties, to arrive at an estimated exposure of $241,878.00. Lidman Decl., ¶ 27.

E. THE SETTLEMENT IS WITHIN THE RANGE OF POSSIBLE APPROVAL

Using these estimated figures for each of the claims described above, Plaintiff predicted the realistic total recovery for the Settlement Class would be approximately $1,779,168.29. Lidman Decl., ¶ 28. The proposed settlement of $650,000.00 therefore represents approximately 36.5% of the reasonably forecasted recovery for the Settlement Class. *Id*. Preliminary approval is appropriate, as the settlement will provide tangible monetary relief to Settlement Class members and will still provide an estimated average recovery to Settlement Class members of approximately $1,475.

The proposed settlement reflects approximately 36.5% of the estimated recovery the Class could reasonably expect in light of the significant litigation risks, and will provide tangible monetary compensation for hotly disputed claims. Indeed, the percentage of the liability exposure recovered in this case exceeds percentages routinely approved by courts. *See, e.g., Glass v. UBS Finan. Servs.* (N.D. Cal. 2007) Case No. C-06-4068 MMC, 2007 WL 221862, *4 (approving settlement representing 25% to 35% of potential damages); *Dunleavy v. Nadler* (9th Cir. 2000) 213 F.3d 454, 459 (approving settlement representing about one-sixth of potential recovery); *Nat'l Rural Telecomm. Coop. v. DirecTV, Inc.* (C.D. Cal. 2004) 221 F.R.D. 523, 527 ("it is well-settled law that a proposed settlement may be acceptable even though it amounts to only a fraction of the potential recovery that might be available to the Settlement Class members at trial"). Thus, Plaintiff submits that the proposed settlement is within the range of possible approval, such that notice should be provided to the Class so that they can consider the Settlement. The Court will have the opportunity to again assess the reasonableness of the Settlement after the Class has had the opportunity to opt-out or object.

F. RISK, EXPENSES, COMPLEXITY, AND DURATION OF FURTHER LITIGATION

Although the parties engaged in informal discovery, the parties still had significant formal discovery and motion practice to complete in litigation had the matter not settled. Lidman Decl., ¶ 32. Moreover, Plaintiff still had to file for class certification and faced the prospect of appeals in the wake of a disputed class certification ruling for Plaintiff and/or an adverse summary judgment ruling. *Id*. Even if the class and claims sought to be certified by Plaintiff were in fact certified (in whole or in part), the parties would incur considerably more burden and attorneys' fees and costs through a possible decertification motion, dispositive motion, trial, and possible appeal. *Id*. This Settlement avoids those risks and the accompanying expense. Therefore, the Settlement will provide Participating Class Members with a significant payment now, rather than an uncertain potential payment at some point in the future, which could be years from now given the lengthy duration of many class cases and given the possibility of an appeal. Thus, this factor supports preliminary approval.

G. RISK OF MAINTAINING CLASS ACTION STATUS

Plaintiff had not yet filed his motion for class certification and as such, the extent to which Plaintiff's proposed classes were certifiable is somewhat speculative. Absent settlement, there was a risk that there would not be a certified class at the time of trial.

IV. CLASS CERTIFICATION FOR SETTLEMENT PURPOSES

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

As further explained below, the Class satisfies the criteria for certification of a settlement class under California law because: (1) the Class is so numerous that joinder would be impractical; (2) common questions of law and fact predominate over individual questions such that class certification is the most efficient and desirable way to maintain this litigation; (3) Plaintiff's claims are typical of the claims of absent Class Members; and (4) Plaintiff and his counsel will fairly and adequately represent Class Members' interest. *See* Cal. Civ. Proc. § 382.

A. NUMEROSITY IS SATISFIED.

Here, the proposed Class consists of approximately 244 members and is therefore sufficiently numerous as to make joinder impracticable. *See* Lidman Decl., ¶ 14; *See, e.g., Bowles v. Sup. Ct.* (1955) 44 Cal.2d 574 (holding a class representing 10 beneficiaries of a trust sufficiently numerous). Thus, numerosity is satisfied.

Further, a class is "ascertainable" where the members "may be readily identified without unreasonable expense or time by reference to official [or business] records." *See Sevidal v. Target Corp.* (2010) 189 Cal.App.4th 905, 916 (alterations in original). Here, the proposed Class is defined as "all current and former non-exempt employees employed by Defendant Signtech Electrical Advertising, Inc. in the State of California during the Class Period." Lidman Decl., ¶ 14. Class Period means the period from September 7, 2019 to 90 days from the date of the Parties' July 26, 2024 mediation or the date the Court grants preliminary approval of the Settlement, whichever date is earlier. *Id*.

B. COMMONALITY IS SATISFIED.

The focus in a certification dispute is not the merits, but rather on what types of questions, "common or individual," are likely to arise in the action. *See Sav-On Drug Store, Inc. v. Superior Court (Rocher)* (2004) 34 Cal.4th 319, 327.

Here, Class Members' claims arise from Defendant's common, uniform policies and practices that applied to Settlement Class Members during the Class Period. Lidman Decl., ¶ 15. Specifically, Plaintiff alleged that Defendant's common and uniform policies and practices resulted in the following violations: (1) failure to pay all overtime wages owed; (2) failure to provide meal periods; (3) failure to authorize and permit all legally required rest periods; (4) failure to provide accurate, itemized wage statements; (5) failure to pay all wages owed upon termination; (6) engagement in unfair competition; and (7) liability for civil penalties under the PAGA. *Id*. As a result of the common and uniform policies and practices that applied to all Settlement Class members, their claims involve common questions of law and fact, including but not limited to:

1. Whether Defendants paid all overtime wages owed;
2. Whether Defendants provided all legally compliant meal periods;
3. Whether Defendants authorized and permitted all legally required rest periods;
4. Whether Defendants failed to furnish accurate, itemized wage statements;
5. Whether Defendants failed to pay all wages owed upon termination; and
6. Whether Defendants' conduct constituted unlawful and/or unfair business practices.

These alleged practices result in common questions as to the affected Class Members. *See e.g.*, *Benton v. Telecom Network Specialists, Inc.* (2013) 220 Cal.App.4th 701, 726.

C. TYPICALITY IS SATISFIED.

The typicality requirement is satisfied where class representatives have claims that are typical of those of the rest of the class. *B.W.I. Custom Kitchen v. Owens-Illinois, Inc.* (1987) 191 Cal.App.3d 1341, 1347 (finding typicality satisfied where named Plaintiff purchased the same goods as the putative class in a consumer class action).

Here, Plaintiff's claims are typical of those held by the members of the proposed Class. First, Plaintiff was employed by Defendant during the Class Period as a non-exempt employee and was subject to Defendant's wage and hour policies at issue in this case. Cruz Decl., ¶ 2. Second, Plaintiff was allegedly injured by the same challenged policies that allegedly injured the Class as a whole. For example, Plaintiff asserts that he was not paid all overtime wages, was not provided all meal periods, was not authorized and permitted all rest periods, and received inaccurate itemized wage statements (similar to those received by the Class Members). Cruz Decl., ¶¶ 2-5. Given that Defendant's policies and practices applied to all non-exempt employees, Class Members possess a similar interest and have suffered similar alleged injuries as Plaintiff. Accordingly, because Plaintiff's claims and those of the Class all arise from the same conduct, typicality is satisfied.

D. ADEQUACY IS SATISFIED.

The adequacy requirement examines conflicts of interest between named parties and the class(es) they seek to represent. *Capital People First v. State Dept. of Developmental Services* 155 (2007) Cal.App.4th 676, 697.

Here, there are no apparent conflicts of interest between Plaintiff and the Class he seeks to represent. Lidman Decl., ¶ 31; Jimenez Decl., ¶ 11. Indeed, Plaintiff's interests are aligned with those of the Class Members, as they all seek monetary relief under the same facts and legal theories. Additionally, Class Counsel does not have any conflict of interest with the Class. Lidman Decl., ¶ 29; *See McGhee v. Bank of America* (1976) 60 Cal.App.3d 442, 450-51 (adequacy satisfied where there was no indication that Class Counsel were not qualified and the named plaintiff had no interests antagonistic to those of the proposed class). Further, Class Counsel also have extensive experience in wage and hour class action litigation and have vigorously litigated this case. *See* Lidman Decl., ¶¶2-8; Moore Decl., ¶¶ 2-4; Gose-Hardy Decl., ¶¶ 2-4; Haines Decl., ¶¶ 2-8.

V. SETTLEMENT AGREEMENT

A. THE BASICS

1. Class Definition

The proposed Settlement Class is defined as "all current and former non-exempt employees employed by Defendant Signtech Electrical Advertising, Inc. in the State of California during the Class Period." Settlement, ¶ 1.7.

The proposed PAGA Employee group is defined as "Class Members employed during the PAGA Period." Settlement, ¶ 1.24.

2. Class and Release Period

For purposes of this Settlement Agreement, the "Class Period" shall mean the period from September 7, 2019 to October 24, 2024 (*i.e.,* 90 days from the date of the Parties' July 26, 2024 mediation). Settlement, ¶ 1.9.

Additionally, for purposes of this Settlement Agreement, the "PAGA Period" means the period from September 7, 2022 to October 24, 2024. Settlement, ¶ 1.25.

B. RELEASE OF CLAIMS

1. Scope

As of the Effective Date, Plaintiff, Participating Class Members, PAGA Employees and the State of California (acting through Plaintiff as its authorized PAGA representative) release Defendant Signtech Electrical Advertising, Inc., Signtech Holding Company, Inc., and their subsidiaries, affiliates and/or parents, attorneys, and each of their respective successors and predecessors in interest; all of their respective officers, directors, employees, administrators, fiduciaries, trustees, beneficiaries and agents; and each of their past, present and future officers, directors, shareholders, employees, agents, principals, heirs, representatives, accountants, auditors, consultants, insurers, and reinsurers ("Released Parties") from all Class Claims and PAGA Claims for the duration of the Class Period and PAGA Period, respectively. Settlement, ¶ 5.1.

The Class Member Released Claims include all claims from which Participating Class members are fully releasing the Released Parties under the Settlement from September 7, 2019 through the end of the Class Period, including all claims for any debts, liabilities, demands, obligations, guarantees, penalties, damages, interest, attorneys' fees, costs, and/or other amounts or relief recoverable under state, local or federal law that Plaintiff asserted or could have asserted in the Action – on behalf of himself and the putative Class Members – based on the facts alleged in Plaintiff's Complaint and LWDA notice letter, including without limitation Plaintiff's claims for (1) Failure to Pay All Overtime Wages Owed (CA Labor Code §§ 204, 510, 558, 1194, 1198); (2) Failure to Provide Meal Periods (CA Labor Code §§ 226.7, 512, 558); (3) Failure to Authorize and Permit Rest Periods (CA Labor Code §§ 226.7, 516, 558); (4) Failure to Provide Accurate, Itemized Wage Statement (CA Labor Code §§ 226 et seq.); (5) Failure to Pay All Wages Owed Upon Termination (CA Labor Code §§ 201-203); and (6) Unfair Competition (CA Business and Professional Code § 17200 et seq.). Settlement, ¶ 5.1.

The PAGA Released Claims released by PAGA Employees include all PAGA Claims from which Plaintiff, the PAGA Employees, and the State of California are fully releasing Defendant and the Released Parties under the Settlement during the PAGA Period, including any and all claims Plaintiff asserted or could have asserted based on the facts alleged in the Complaint and/or Plaintiff's LWDA letter under PAGA, including for civil penalties, interest, attorneys' fees, costs, and any other relief recoverable under California Labor Code § 2698 et seq. Settlement, ¶ 5.1.

2. Release Effective Date

The Claims and PAGA Claims are released on the Effective Date. Settlement, ¶ 5.1. The "Effective Date" means the date by which the Settlement is finally approved as provided herein and the Court's Final Approval Order becomes binding. Settlement, ¶ 1.15. The Final Approval Order becomes binding and Effective upon the later of: (1) the day after the last day by which a notice of appeal to the California Court of Appeal of the Final Approval Order and/or of an order rejecting any motion to intervene may be timely filed, and non is filed, which the Parties agree will be 65 calendar days after the notice of an order granting final approval of the Settlement is served, provided there have been no appeals filed within that time; (2) if such an appeal is filed, and the appeal is finally resolved and results in affirmation of the Final Approval Order and Settlement, the day after the last date for filing a request for further review of the California Court of Appeals' decision passes and no further review is requested; (3) if further review of the California Cour of Appeal's decision is requested, the day after the request for review is denied with prejudice and/or no further review of the decision can be requested, or (4) if review is accepted, the day after the California Supreme Court affirms the Final Approval Order. *Id*. The Effective Date cannot occur until and unless there is no possibility of an appeal, writ, or further appeal that could potentially prevent the Settlement Agreement from becoming final and binding according to the terms agreed upon by the Parties. *Id*.

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C. MONETARY TERMS OF SETTLEMENT

1. Gross Settlement Amount and Timing of Payment

If the Court approves this Settlement, Defendant will pay a Total Settlement Amount ("TSA") of $650,000.00.[3] Lidman Decl., ¶¶ 13, Exh. 2 (Settlement, ¶ 4.1). Significantly, this Settlement is **non-reversionary**, and no Class Member will have to submit a claim form to receive an Individual Settlement Payment. *Id*. Each Class Member will automatically receive an Individual Settlement Payment unless he or she affirmatively opts out of the Settlement. Settlement, ¶ 7.5.3.

Within fifteen (15) days of the Effective Date, Defendant will provide the Total Settlement Amount to the Settlement Administrator. Settlement, ¶ 10.1.2. "Effective Date" means the date by which the Settlement is finally approved as provided herein and the Court's Final Approval Order becomes binding. Settlement, ¶ 1.15. The Final Approval Order becomes binding and Effective upon the later of: (1) the day after the last day by which a notice of appeal to the California Court of Appeal of the Final Approval Order and/or of an order rejecting any motion to intervene may be timely filed, and non is filed, which the Parties agree will be 65 calendar days after the notice of an order granting final approval of the Settlement is served, provided there have been no appeals filed within that time; (2) if such an appeal is filed, and the appeal is finally resolved and results in affirmation of the Final Approval Order and Settlement, the day after the last date for filing a request for further review of the California Court of Appeals' decision passes and no further review is requested; (3) if further review of the California Cour of Appeal's decision is requested, the day after the request for review is denied with prejudice and/or no further review of the decision can be requested, or (4) if review is accepted, the day after the California Supreme Court affirms the Final Approval Order. *Id*. The Effective Date cannot occur until and unless there is no possibility of an appeal, writ, or further appeal that could potentially

[3] As of September 24, 2024, Defendant's estimate of the number of Compensable Weeks during the Class Period is thirty-two thousand seven hundred thirty-eight (32,738). If the actual number of Compensable Weeks during the Class Period is more than ten percent (10%) greater than this estimate (i.e., if the actual Compensable Weeks during the Class Period is greater than thirty-six thousand eleven (36,011)), then Defendant will have the option to either: (a) proportionally increase the Gross Settlement Amount to pay a pro rata amount for each additional workweek; OR (b) have the Class Period (and Release period) end on the date 36,011 Workweek threshold was reached based on Defendant's records. If this Escalator Clause/Option applies and Defendant elects to have the Class Period end on the date the Workweeks reached 36,011, the Class Period end date as defined above will be adjusted to reflect the appropriate date.. *See* Settlement ¶ 4.2.5.4.

prevent the Settlement Agreement from becoming final and binding according to the terms agreed upon by the Parties. *Id*.

2. Deductions from Settlement Amount

The monetary terms of the Settlement are summarized below:

Total Settlement Amount ("SA"):	**$650,000.00**
Minus Court-approved attorneys' fees (1/3 of the SA):	$216,666.67
Minus Court-approved, verified costs (up to $25,000.00):	$25,000.00
Minus Court-approved Class Representative Service Award:	$10,000.00
Minus Settlement Administration Costs:	$8,000.00
Minus PAGA payment to the LWDA:	$30,000.00
Net Settlement Amount ("NSA"):	**$360,333.33**

After deducting the requested amounts for the Court-approved attorneys' fees and verified costs, Service Award to Plaintiff, Settlement Administrator costs, and the PAGA payment to the LWDA, the Settlement requires Defendant to pay a Net Settlement Amount ("NSA") of at least $360,333.33 to all Class Members who do not timely opt out. Lidman Decl*.*, ¶ 13, Exh. 2. Thus, the average individual payment is estimated to be approximately $1,476.77, as a direct result of this litigation[4]. *Id.*

3. Class Representative Service Award

"[I]ncentive awards are fairly typical in class action cases . . . and are intended to compensate class representatives for work done on behalf of the class [and] to make up for financial or reputational risk undertaken in bringing the action." *In re Cellphone Fee Termination Cases* (2010) 186 Cal.App.4th 1380, 1393-94.

Here, as part of the Settlement, Plaintiff will separately apply for a service award at the time of seeking final approval of the proposed class action settlement in the amount of $10,000.00 for his services to the Class. Lidman Decl., ¶ 31, Exh. 2 (Settlement, ¶ 4.2.3); Cruz Decl., ¶¶ 2-9. As will be fully briefed at the time of final approval, Plaintiff's requested service award is intended to recognize

[4] This is a reasonable estimate of the average payment based on the information currently available, but the exact amount of the average payment to Participating Class Members will depend on a number of factors not yet certain (e.g., the number of opt outs, whether the Court approves less than any of the requested amounts specified in the Settlement, and the final class figures). The average payment should become certain at final approval.

the time and effort Plaintiff expended on behalf of the Settlement Class, including providing substantial factual information and documents to Class Counsel, attending multiple meetings with Class Counsel to discuss the claims and theories at issue in the litigation, as well as the significant risks Plaintiff undertook by agreeing to serve as the named plaintiff in this case, and the fact that Plaintiff has agreed to a general release of all claims subject to a waiver of Civil Code § 1542. *See* Lidman Decl., ¶ 31; Jimenez Decl., ¶¶ 2-9; Settlement ¶ 5.2.

4. Attorneys' Fees and Costs

California courts recognize an appropriate method for awarding attorneys' fees in class actions is to award a percentage of the "common fund" created as a result of a settlement. *See e.g., Laffitte v. Robert Half Int'l, Inc.* (2016) 1 Cal.5th 480, 506 (holding "the percentage of fund method survives in California class action cases"). Class Counsel's request for fees of one-third of the TSA is well within the range of reasonableness, and indeed is considered the typical rate for common fund settlements. Historically, courts have awarded percentage fees in the range of 20% to 50%, depending on the circumstances of the case. *See* 4 Newberg on Class Actions § 14.6 (4th Ed. 2013).

Here, Class Counsel will apply for an attorneys' fees award of one-third of the TSA, which is currently estimated to be $216,666.67, and up to $25,000.00 in verified costs reimbursement. *See* Settlement, ¶ 4.2.1; Lidman Decl., ¶ 29. Plaintiff submits the requested fee is fair compensation for undertaking complex, risky, expensive, and time-consuming litigation on a purely contingent fee basis. *Id*. Further, Plaintiff has provided written approval of the split of attorneys' fees in this action. Lidman Decl., ¶ 30. Class Counsel has incurred substantial attorney fees conducting pre-filing investigation, analyzing Plaintiff's claims, conducting legal research, reviewing approximately hundreds of pages of Defendant's documents and policies, analyzing Class Members' timekeeping data and payroll records, preparing for and attending mediation, negotiating and revising the long-form Settlement, preparing this Motion, and otherwise litigating the case. Lidman Decl., ¶ 29. Class Counsel expect to expend additional attorney time in attending the hearing on this Motion, overseeing the Notice process and fielding questions from Settlement Class members, preparing the final approval papers, and attending the Final Approval hearing. *Id*.

Class Counsel submits that the request for attorneys' fees is reasonable when viewed as an overall percentage of the settlement in light of the substantial risks, significant work undertaken, the extremely positive results obtained for the class, and the efficiency with which the Parties conducted the litigation. Should the Court grant preliminary approval, Class Counsel will seek an award of attorneys' fees and verified litigation costs at the time of seeking final approval of the Settlement, which will include a lodestar analysis.

5. Payroll Taxes

Defendant is to pay employer-side taxes on the wage portion of the Individual Settlement Payments separate from and in addition to the Total Settlement. Settlement ¶ 4.2.5.2.

6. Payment Calculation

According to Defendants, there are approximately 244 total Settlement Class members as of the last date when data is currently available. Lidman Decl., ¶ 14. The Net Settlement Amount shall be allocated to Settlement Class members who worked during the Class Period by multiplying the individual's Total Class Workweeks by the Class Workweek Value. Settlement ¶ 4.2.5.1.a. The value of each Workweek shall be determined by the Settlement Administrator by dividing the Net Distribution Funds (less the 25% of the PAGA Award to be distributed to PAGA Employees) by the total number of Workweeks worked by all Participating Class Members during the Class Period. *Id*.

The calculation for payments to PAGA Employees for their portion of the PAGA Award shall be determined by the Settlement Administrator by dividing the 25% of the PAGA Award allocated for PAGA Employees by the Total PAGA Pay Periods for all PAGA Employees. Settlement ¶ 4.2.5.1.b.

7. Tax Allocation

For purposes of calculating applicable taxes and withholdings, each Settlement Award shall be allocated as follows:

Of the Individual Class Payments:

a. Thirty-Three percent (33%) of each Participating Class Member's Individual Class Payment will be allocated to settlement of wage claims. This is subject to tax withholding and will be reported on an IRS W-2 Form.

b. Sixty-Seven percent (67%) of each Participating Class Member's Individual Class Payment will be allocated to settlement of claims for interest and penalties. This is not subject to wage withholdings and will be reported on IRS 1099 Forms.

Settlement ¶ 4.2.5.2. Participating Class Members assume full responsibility and liability for any payment of taxes and penalties assessed on the payments. *Id*.

8. PAGA Penalty

The parties have agreed to a PAGA award of $40,000.00 and in accordance with California Labor Code section 2699(i), the LWDA will receive 75% of the amount attributable to PAGA penalties – or $30,000.00. Settlement ¶ 4.2.4. This $40,000.00 represents roughly 6% of the $650,000.00 Total Settlement Amount and is above the zero to two percent range for PAGA claims approved by Courts. *See, e.g., In re M.L. Stern Overtime Litig.*, No. CV 07-0118 BTM (JMAx), 2009 WL 995864, at *1 (S.D. Cal. Apr. 13, 2009) (approving PAGA settlement of 2 percent, or $20,000); *Hopson v. Hanesbrands, Inc.*, No. CV 08-0844 EDL, 2008 WL 3385452, at *1 (S.D. Cal. Apr. 13, 2009) (approving a PAGA settlement of 0.3 percent, or $1,500); *Nordstrom Comm'n Cases*, 186 Cal. App. 4th 576, 589 (2010) (approving settlement of wage and hour class action claims and PAGA claims under which no money was allocated to the PAGA claims).

VI. <u>NOTICE ADMINISTRATION</u>

A. SETTLEMENT ADMINISTRATOR

Phoenix Settlement Administrators' ("PSA") fees and expenses are estimated not to exceed $8,000.00. *See* Declaration of Jodey Lawrence in support of Plaintiff's Motion for Preliminary Approval filed concurrently herewith ("Lawrence Decl."), ¶ 16. This request is reasonable in light of the proposed class size of approximately 244 Settlement Class members and the costs and expenses associated with administering the notices and distributing the awards, responding to Class Member questions, and other duties of the Administrator. Additionally, PSA will translate the Notice and mail the Notice in both English and Spanish to Settlement Class members. *Id*.

B. QUALIFICATIONS AND EXPERIENCE OF ADMINISTRATOR

PSA has extensive experience administering class action matters. Lawrence Decl., ¶ 5. PSA has administered complex wage and hour, labor and employment, consumer/product liability, TCPA, FLSA, FACTA, ERISA and PAGA class action matters, through final approval and distribution. *Id*. PSA has developed a system of quality assurance measures, to ensure the highest quality service is provided in our cases and to class members. *Id*.

C. CLASS LIST FROM DEFENDANT

Within 21 calendar days after entry of an order preliminarily approving this Agreement, Defendant will provide the Settlement Administrator with each Class Member's full name, last known address, Social Security number, and workweeks worked by Class Members during the Class Period and pay periods worked by the PAGA Employees during the PAGA Period. Settlement, ¶ 7.1.

D. CLASS LIST UPDATED PRIOR TO INITIAL MAILING

Upon receipt of the Class Data, the Settlement Administrator will conduct a national change of address search for the most current address of all former employee Class Members. Settlement, ¶ 7.2.

E. DEADLINE FOR INITIAL ISSUANCE OF NOTICE TO CLASS MEMBERS

Within 14 calendar days of receipt of the Class Data, the Settlement Administrator shall mail a Notice to each Settlement Class member at his or her last known address or at the updated address found through the national change of address search. Settlement, ¶ 7.2.

F. NOTICE COMPLIES WITH CAL. RULES OF COURT, RULE 3.766(D)

The content of the proposed Notice satisfies California Rule of Court 3.766(d) because it advises Settlement Class members of the nature of the claims, basic contentions and denials of the parties, and the key terms of the Settlement, the 45-day deadline to opt-out or object to the Settlement and the procedures by which to do so, explains the recovery formula and expected recovery amount for each Settlement Class member, provides them the opportunity to contest their total workweeks included in the notice, and advises them that they will be bound by the terms of the Settlement if they do not opt-out. *See* Lidman Decl., Exh. 2 (Settlement, Exh. A). The proposed Notice will also notify Settlement Class members of the final approval hearing date and provides Settlement Class members the contact information for Class Counsel. Settlement, Exh. A. This manner of giving notice satisfies California Rule of Court 3.766(e) as the most reliable and cost-effective method of reaching Settlement Class members.

G. PROCESSING OF PAYMENTS

Within 10 calendar days of Defendant fully funding the Total Settlement Amount, the Settlement Administrator will mail Individual Settlement Payments, less applicable taxes and withholdings, to participating Settlement Class Members. Settlement, ¶ 10.1.3.

H. UNDELIVERABLE NOTICE PACKETS

Any Notices returned to the Settlement Administrator as undelivered on or before the Response Deadline shall be re-mailed to the forwarding address affixed thereto. Settlement, ¶ 7.3. If no forwarding address is provided, the Settlement Administrator shall conduct skip trace, and re-mail the Class Notice to the most current address obtained. *Id*.

VII. RESPONSES TO NOTICE

A. REQUESTS FOR EXCLUSION

Class Members who wish to exclude themselves from the Settlement must submit a written Request for Exclusion to the Settlement Administrator by the Response Deadline (45 days after the mailing of the Notice). Settlement, ¶ 8.2. The Notice of Objection must (1) contain the full name, address, and last four digits of the social security number or the employee number of the person requesting exclusion; (2) be hand signed by the person requesting exclusion, and (3) state in substance: "I wish to exclude myself from the Settlement in the action titled *Mario Jimenez v. Signtech Logistics Services, LLC, et al.,* Case No. 37-2023-00038995-CU-OE-CTL, pending in San Diego County Superior Court. I understand that by requesting to be excluded, I will receive no money from the Class Action Settlement." *Id*.

Any Class Member who requests to be excluded from the settlement but is also a PAGA Employee will continue to be bound by the release of the PAGA Claims because PAGA Employees (*i.e.*, Class Members employed during the PAGA Period) cannot opt out of the PAGA portion of the Settlement. Settlement, ¶ 8.2.

B. RE-MAILED NOTICES

The deadlines for Class Members' written objections, Challenges to Workweeks and/or Pay Periods, and Requests for Exclusion will be extended an additional 14 days beyond the Response Deadline otherwise provided in the Class Notice for all Class Members whose Notice is re-mailed. Settlement, ¶ 7.3.

C. OBJECTION PROCEDURES

Class Members who wish to object to the Settlement must submit a written Notice of Objection to the Settlement Administrator by the Response Deadline (45 days after the mailing of the Notice). Settlement, ¶ 8.2. The Notice of Objection must (1) contain the full name, address, and last four digits of the social security number or the employee number of the Class Member and (2) be hand signed by the Class Member, and should state the case name and number, the basis for the objection, and if the Class member intends to appear at the Final Approval Hearing. *Id*. In the alternative, or in addition to submitting a written objection, Class Members may appear in Court to present verbal objections at the Final Approval Hearing. *Id*.

VIII. DISTRIBUTION OF UNCASHED FUNDS

The Settlement provides Class Members with 180 days from the date the checks are issued to cash said checks, and any funds remaining after 180 days shall be transmitted by the Settlement Administrator to the California State Controller Unclaimed Property Fund. Settlement ¶ 4.2.5. As all settlement funds will be distributed to the Settlement Class members, there will be no residue and it is unnecessary to designate *cy pres* recipients.

IX. CONCLUSION

This Court should set a hearing for final approval of the Settlement on a date appropriately scheduled to follow the deadline by which Class Members must file objections to the Settlement or opt-out. *See* California Rule of Court 3.769.

Therefore, for the foregoing reasons, Plaintiff respectfully requests that the Court preliminarily approve the proposed Settlement, provisionally certify the Class, and enter the Proposed Order Granting Preliminary Approval of Class Action Settlement submitted concurrently herewith.

Dated: December 17, 2024

LIDMAN LAW, APC

By: ______________________

Scott M. Lidman

Attorneys for Plaintiff
MARIO MARISCAL JIMENEZ