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Attorneys for Plaintiff
KEVIN BELO

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

KEVIN BELO, Individually and on Behalf of All Others Similarly Situated, and as an Aggrieved Employee,

Plaintiff,

vs.

AIRWAVE COMMUNICATIONS ENTERPRISES, LLC, a California Corporation, AIRWAVE COMMUNICATIONS ENTERPRISES INC., a California Corporation, and DOES 1 through 10,

Defendants.

Case No. 23STCV31094
COMPLEX CASE (CLASS ACTION)

ASSIGNED FOR ALL PURPOSES TO:
Judge: Hon. Samantha Jessner
Dept: SS 07

DECLARATION OF TAYLOR B. GRAHAM IN SUPPORT OF MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT

[Filed concurrently with: Notice of Motion for Preliminary Approval of Class Action Settlement and Memorandum of Points and Authorities in Support Thereof; Declaration of Kevin Belo; and [Proposed] Order]

Date: August 1, 2025
Time: 11:00 a.m.

Complaint Filed: *December 20, 2023*
Trial Date: *None Set*

DECLARATION OF TAYLOR B. GRAHAM

I, Taylor B. Graham, hereby declare as follows:

1. I am an attorney licensed to practice law in the State of California. I am a partner of Pelton Graham LLP ("Pelton Graham"), attorneys of record for Plaintiff Kevin Belo. The facts set forth in this declaration are within my personal knowledge or based on information and belief, and if called as a witness, I could and would testify competently thereto.

2. I submit this declaration in support of Plaintiff's unopposed Motion for Preliminary Approval of Class Action Settlement (the "Motion").

Plaintiff's Counsel's Qualifications

3. I am an active member of the Bar of the State of California, the State of New York, and the State of New Jersey. I have practiced employment law representing employees in class and collective action litigation for approximately thirteen (13) years. During that time period, I have appeared as lead or co-lead counsel in more than 100 employment cases in federal and state courts, including cases which I tried to favorable verdicts before juries, as well as several cases in which I argued appeals before several appellate courts in California and New York.

4. Pelton Graham has substantial experience prosecuting and settling employment class actions, including wage and hour class actions.

5. Since its inception, in or around 2008[1], Pelton Graham has almost exclusively focused on the prosecution of employment and consumer class actions, involving wage and hour claims, and unfair business practices. Currently, we are the attorneys of record in dozens of employment-related putative class actions in both state and federal courts in the State of California and New York, and we are thus familiar with and able to evaluate the strengths and weaknesses of putative class claims and possible defenses to such claims.

6. A few examples of recent results Pelton Graham has achieved for its clients in the last year, include:

a. Pelton Graham represented a certified class of approximately 300 workers in a

[1] Prior to early 2016, when I became a named partner in the firm, the firm was called Pelton & Associates, PC.

wage and hour action seeking unpaid prevailing wages for their work on public works projects, as well as wage notification violations. Following classwide merits and expert discovery, the class was granted summary judgment as to liability, which was upheld on appeal. After a hearing on damages was held in January 2024, the class was awarded a judgment of approximately $44 million.

b. Pelton Graham represented a certified class of workers in a wage and hour litigation with claims for unpaid off-the-clock work, wage statement violations, among other wage violations. After certification of the class and subclass, followed by expert discovery, the litigation settled at mediation in January 2024 for $5 million, and was granted final approval.

c. Pelton Graham represented a certified class of workers in a wage and hour litigation with claims for unpaid prevailing wages for work on public works projects. After obtaining a certified class and conducting classwide merits and expert discovery, the litigation settled at mediation for $6.5 million in March 2024. The settlement is pending preliminary approval.

d. Pelton Graham represented a group of workers in a federal wage and hour litigation for unpaid off-the-clock work and other wage and hour violations. After prevailing on a motion for an FLSA collective action and sending out notice to the collective, the parties engaged in pre-class certification discovery and ultimately agreed to mediation. In April 2024, the litigation settled on a classwide basis for $3 million and is pending final approval.

7. In addition to the few examples listed above, in which Pelton Graham either obtained class action certification in a contested motion or in connection with approval of the settlement, Pelton Graham has also been appointed as class counsel or co-class counsel in the following matters over the last few years, which decisions are available on Lexis and/or Westlaw: *Amigon v. Safeway Constr. Enters., LLC*, No. 20-cv-5222-PK, 2024 WL 5040436, 2024 U.S. Dist. LEXIS 222474 (E.D.N.Y. Dec. 9, 2024); *McMillian v. Out-Look Safety LLC*, Index No. 657577/2019, 2024 N.Y. Misc. LEXIS 459 (Sup. Ct., N.Y. Cty Jan. 28, 2024); *Thomas v. JRCruz Corp.*, Index No.

511297/2020, 2023 N.Y. Misc. LEXIS 1704 (Sup. Ct., Kings Cty, Apr. 12, 2023); *Moses v. Consol. Edison Co. of New York, Inc.*, No. 18-cv-1200-ALC, 2023 U.S. Dist. LEXIS 57096 (S.D.N.Y. Mar. 31, 2023); *Mendez v. MCSS Rest. Corp.*, No. 16-cv-2746, 2022 WL 3704591, 2022 U.S. Dist. LEXIS 154102 (E.D.N.Y. Aug. 26, 2022); *Herbas v. Danella Constr. Of NY, Inc.*, Index No. 651884/2021, 2022 N.Y. Misc. LEXIS 38039 (Sup. Ct., N.Y. Cty, Apr. 12, 2022); *Porter v. MooreGroup Corp.*, No. 17-cv-7405-KAM-VMS, 2021 WL 3524159 (E.D.N.Y. Aug. 11, 2021), among several others.

Background and Procedural History

8. On December 20, 2023, Plaintiff commenced this Action by filing a Complaint alleging causes of action against Defendants for: (1) Failure to Pay Prevailing Wages pursuant to Lab. Code §§ 1720 *et seq*; (2) Failure to Provide Wages When Due pursuant to Lab. Code §§ 201, 202, and 203; and (3) Unfair Competition pursuant to Cal. Business and Professions Code §§ 17200-09. In particular, Plaintiff alleges that Defendants had failed to pay prevailing wages and employee benefits to Plaintiff and other non-exempt employees for their work performing installation, maintenance and repair on communications and electrical systems and facilities, pursuant to contracts or sub-contracts entered into between Defendants with various city governments and municipalities throughout California. Plaintiff also alleges that Defendants failed to pay all wages due upon termination and/or separation from employment. Finally, Plaintiff asserts violation of California's Labor Code and Business Professions Code arising from Defendants' unlawful conduct in carrying out its projects.

9. Pursuant to Labor Code section 2699.3, subdivision (a), on January 9, 2024, Plaintiff provided timely written notice to Defendants and the California Labor and Workforce Development Agency ("LWDA"), giving notice of his intent to pursue a representative action under the Private Attorneys General Act of 2004 (Lab. Code § 2698 *et seq.*) ("PAGA"), on behalf of himself and the State of California, as well as on behalf of a proposed group of aggrieved employees.

10. Pursuant to the Parties' agreement, on March 26, 2024, Plaintiff filed a First Amended Complaint ("FAC" or the "First Amended Complaint"), alleging an additional cause of action against Defendants for: (4) Violations of The Labor Code Private Attorneys General Act of 2004 pursuant to Lab. Code §§ 2698 *et seq*. (PAGA).

11. Defendants filed their Answer to the First Amended Complaint on May 6, 2024, asserting a general denial of each and every allegation contained in Plaintiff's First Amended Complaint. Indeed, Defendants have denied, and continue to deny, any liability and wrongdoing of any kind associated with any of the allegations in the Action, and further deny any failure to comply with the laws identified hereinto. In particular, Defendants deny that the projects on which Plaintiff and field technicians worked were public works projects subject to prevailing wages and therefore deny that Plaintiff and putative class members were owed any such wages and therefore deny that they failed to pay any wages owed upon separation. Finally, Defendants deny that the Action is appropriate for class treatment or representative adjudication for any purpose other than for settlement.

12. Plaintiff and the non-exempt employees are current and former employees of Airwave, who worked as "technicians" performing installation, maintenance and repair services on radios, antennas, and other communications and electrical systems for various cities, counties and municipalities in California. Plaintiff alleges that these projects qualified as Public Works Projects under the California Prevailing Wage Law. Plaintiff worked for Defendants as a technician from approximately June 1, 2021 through approximately November 1, 2023. During his employment with Defendants, Belo alleges he worked for Defendants on publicly funded-projects in the following cities or municipalities in California: Los Angeles City and County, including the Los Angeles Police Department, Riverside, Temecula, San Bernadino, among others. Plaintiff has competently asserted the interests of the Defendants' other non-exempt employees and has no apparent conflicts of interest with the other non-exempt employees.

Settlement Negotiations and Exchange of Discovery

13. Soon after Defendants filed their Answer, the Parties agreed to engage in early settlement negotiations through the informal exchange of classwide information and private mediation. The parties agreed to a stay on formal discovery in order to engage in informal document discovery in preparation for mediation. The parties initially agreed to a mediation to be held on November 14, 2024, which was adjourned at the Parties' request to March 11, 2025, and again to March 28, 2025.

14. In agreeing to participate in mediation, the Parties likewise agreed to engage in an informal exchange of all data and information necessary to evaluate the claims of the potential class members and aggrieved employees, and to calculate the potential damages for the violations alleged in the FAC. In particular, Defendants produced payroll records and timesheets as to the Plaintiff and for the putative class members, which were anonymized with employee IDs. In connection with the exchange of pre-mediation discovery, the Parties engaged in extensive discussions about the respective strengths and weaknesses of their claims and defenses.

15. Prior to mediation, Defendants exchanged paystubs and timesheets for Plaintiff and the putative class. The timesheets consisted mainly of individual payroll records in PDF and handwritten weekly timesheets. Accordingly, Plaintiff spent a substantial number of hours manually entering the payroll information into a usable spreadsheet format, which formed the basis for Plaintiffs' damages calculations later provided to Defendants. In addition, Defendants provided certain contract documents from projects on which Plaintiff and Class Members worked during the Class Period.

16. Likewise, in the exchange of pre-mediation discovery, Plaintiff's counsel exchanged with Defendants' counsel and the mediator their class damages computation, which Plaintiff's counsel created utilizing the class-wide data, information exchanged by the Parties, and the proposed list of public works projects on which Named Plaintiff asserts he worked. Plaintiff exchanged a classwide damages computation that included 48 employee IDs and a total of 4,037 workweeks, for which Plaintiff's counsel calculated the following approximate damages: $2,503,626.61 in unpaid prevailing wages, $40,370.00 in unreimbursed business expenses, $163,085.72 in wait time penalties, and $562,014.56 in prevailing-wage interest. In addition, Plaintiff's counsel calculated $186,900.00 in PAGA penalties, resulting in a total of $3,455,996.90 in estimated classwide damages.

17. Defendants later clarified that certain members of the putative class were assigned multiple employee IDs during the relevant time period, such that the 48 employee IDs represented only 28 individuals, 11 of whom worked as either field technicians or field installers.

18. Plaintiff's unpaid prevailing wage damages ($2,503,626.21 + $562,014.56 in interest)

is by far the largest claim against Defendants in terms of estimated exposure. Class counsel analyzed the time and pay records for Plaintiff Belo, which included lists of projects on which he worked, to determine the estimated percentage of time spent performing field work on alleged public works projects, which percentage was approximately 60%. For purposes of calculating class damages for mediation, class counsel utilized that percentage for all hours worked by class members who worked as field technicians and field installers. Defendants argued, however, that the percentage of work in the field that was even arguably on public works projects was substantially less than 60%. In particular, Defendants argued that the majority of the work performed by Defendants' field workers was subcontracted by a private client, which work Defendants claim was not subject to prevailing wages and which they presented contract documents in support of their position. Defendants argued that the projects that were subject to prevailing wages consisted of less than 15% of the work performed in the field and, furthermore, that the work performed on such projects was not trade work for which prevailing wages should have been paid. Based on these arguments, Class Counsel believes that a 50% discount should be applied to achieve a realistic damages estimate for the unpaid prevailing wage claim, which would therefore total approximately **$1,251,813.10** (plus interest).

19. Plaintiff's damages for Defendants' alleged failure to indemnify and reimburse Plaintiff and class members for necessary business expenses ($40,370.00) is based on Plaintiff's use of his personal cell phone to communicate with Defendants' employees and the purchase of various tools and materials for use in performing his work, the cost of which Plaintiff asserts was not reimbursed by Defendants. Since the exact value of all necessary business expenses Class Members incurred could not be calculated, Class counsel conservatively estimated $10.00 per week in unreimbursed expenses for each of the 28 Class Members. Defendants argue that they maintained a robust and lawful expense reimbursement policy and mechanism whereby employees, including Plaintiff, could and did request reimbursement, when appropriate. Defendants' further argue that those Class Members who worked at Defendants' facilities, rather than in the field, were not using their cellular phones to communicate with Defendants and were also not purchasing any tools or materials, since all such tools and materials were located at the Defendants' facilities. Based on these arguments, Class Counsel believes that a 40% discount should be applied to achieve a realistic

damages estimate for the unpaid prevailing wage claim, which would therefore total approximately **$24,222.00**.

20. The derivative penalties (i.e., waiting time statutory penalties and PAGA penalties) were calculated by taking into account the above claims, defenses, maximum liabilities and discounts, and the number of Class Members who fell within their respective statute of limitations. On this basis, the maximum potential liability of Defendants for waiting time statutory penalties is $163,085.72 and PAGA civil penalties is $186,900.00, for a total of $349,985.72. Defendants nonetheless argued that, in light of their defenses, the discretionary nature of statutory and civil penalties, and the potential Due Process concerns that might arise from a putative award, it would be unrealistic to expect the Court to award the full amount. For purposes of reaching a settlement, Class Counsel believes a 90% discount would result in a more realistic estimate for all derivative penalties, which would therefore total approximately **$34,998.57**.

21. The discounted claims and penalties aggregate to **$1,311,033.68**.

22. On March 28, 2025, the Parties participated in a full-day mediation session with Abe Melamed, Esq., a respected and experienced wage and hour mediator. At the conclusion of the mediation session, and with the aid of the mediator, the Parties were able to reach a settlement in principle. In the weeks following the mediation, the Parties jointly drafted and ultimately executed a Memorandum of Understanding (MOU), memorializing the agreed-to terms of the settlement in writing. From the MOU, the Parties drafted the long-form Class Action and PAGA Settlement Agreement and Class Notice ("Settlement Agreement" or "Agreement"), a fully-executed copy of which is attached hereto as **EXHIBIT 1**.

23. At all times, negotiations were adversarial and contentious, although still professional in nature.

24. Per agreement by the parties for the execution of the Settlement Agreement, on May 30, 2025, Plaintiff filed a Second Amended Complaint ("SAC" or the "Second Amended Complaint"), alleging an additional cause of action against Defendants for: Failure to Indemnify Necessary Business Expenses pursuant to Lab. Code §§ 2802. In addition, on the same day, Plaintiff provided an Amended PAGA Notice to LWDA giving notice of his intent to include amended

representative claims in the Action for civil penalties under PAGA, on behalf of himself and the State of California, as well as on behalf of a proposed group of aggrieved employees. A copy of the Amended PAGA Notice to the LWDA is attached hereto as **EXHIBIT 2**.

25. After the Parties executed the Settlement Agreement, Plaintiff submitted a copy of the Settlement Agreement to the LWDA on June 12, 2025. A copy of the confirmation email from the LWDA concerning the submission of the Settlement Agreement is attached hereto as **EXHIBIT 3**.

Fairness and Adequacy of the Proposed Settlement

26. Given my experience as a class action employment and wage and hour litigator, as outlined above, I believe the proposed Settlement addresses all of the allegations of violations of the Labor Code and PAGA by Defendants and provides adequate monetary relief to Plaintiff and the Class Members.

27. The Settlement Agreement provides for a Gross Settlement Amount of Six hundred twenty-five thousand dollars and zero cents ($625,000.00). (Ex. 1 § 3.31). The Net Settlement Amount is the Gross Settlement Amount less the following amounts, subject to approval by the Court: PAGA Penalties in the amount of $50,000.00, allocated 75% ($37,500.00) to the LWDA and the Individual PAGA Payments, allocated 25% ($12,500.00) to the Aggrieved Employees; the Class Representative Service Payment to Plaintiff Belo in the amount of $5,000.00; Administration Expenses in the not to exceed amount of $10,200.00; Attorneys' fees of one-third (33.33%) of the Gross Settlement Amount, or $208,333.33; and Plaintiff's counsel's reasonable litigation costs, in the amount of $10,364.13. Assuming that the amounts allocated under the Settlement to these payments are awarded by the Court, the Net Settlement Amount that will be available for distribution to the Participating Class Members is currently estimated to be $341,102.54. In my experience, the monetary relief that Plaintiff and the Class will receive for their claims through the Settlement is substantial.

28. Based on Plaintiff's damages computation and associated discounts, *supra* ¶¶ 16-21, the estimated Net Settlement Amount results in approximately 26% of the realistic maximum recovery. Each of the 28 Settlement Class Members is eligible to receive an average net recovery of

approximately $12,182.23, depending on the duration of their employment during the Class Period and their position(s) held with Defendants.

29. If the Settlement is approved, each member of the Settlement Class who does not submit a valid and timely request for exclusion from the Settlement, will be deemed a "Participating Class Member" and will receive their pro-rata share of the Net Settlement Amount.

30. In addition, each non-exempt employee employed by Defendants in California who worked as installers, field installers, technicians, and field technicians during the period from January 9, 2023 to the date of the Court's order granting preliminary approval ("PAGA Period") ("Aggrieved Employees"), will receive their pro-rata portion of 25% of the PAGA Penalties, regardless of whether they are also a Participating Class Member. Given that Plaintiff and the Class Members will receive adequate consideration for their Labor Code claims, I believe this recovery for the PAGA claims is adequate, as Plaintiff did not place much value on these penalties because the Court could have exercised its discretion to reduce these penalties to avoid an oppressive result. *See* Lab. Code § 2699(e)(2).

31. The parties have agreed to retain CPT Group, Inc. as the settlement administrator ("Settlement Administrator"). CPT Group, Inc. has estimated their not to exceed total costs for administering the settlement at $10,200.00, which is to be paid out of the Gross Settlement Amount. A copy of the not to exceed bid is attached hereto as **EXHIBIT 4**. The Settlement Administrator will be responsible for, *inter alia*, mailing the class notice, calculating the Individual Settlement Amounts allocated to the Settlement Class and PAGA Penalty amounts allocated to the Aggrieved Employees, and collecting and processing any Requests for Exclusion, Objections and/or disputes concerning Workweeks or PAGA Periods. If the Settlement is approved, the Settlement Administrator will also be responsible for maintaining the qualified settlement fund and distributing payments from the fund.

32. Any funds remaining from uncashed or cancelled settlement checks after the void date will be distributed by the Settlement Administrator to Legal Aid At Work, whom the parties' chose as the cy pres beneficiary for residual funds ("Cy Pres Beneficiary"). The parties chose Legal Aid At Work because it is a nonprofit organization serving the public interest, by, among other things, partnering "with people to help them understand and assert their workplace rights" and by

"advocat[ing] for employment laws and systems that employer low-paid workers and marginalized communities." (http://legalaidatwork.org).

33. Pursuant to California Code of Civil Procedure section 382.4, the undersigned hereby confirms on behalf of Plaintiff's counsel and Defendants' counsel that neither counsel has any connection to or relationship with Legal Aid At Work.

34. The parties have agreed, consistent with the Court's Omnibus Trailer Bill of 2018, that the Settlement Administrator will not distribute any funds to the Cy Pres Beneficiary until the Court has performed a final accounting, following the distribution of the settlement funds in accordance with Section 4.4 of the Settlement Agreement. (Ex. 1 § 4.4).

35. Both the Settlement Class and Aggrieved Employees will be notified of the proposed Settlement by receiving in the mail the Notice of Class Action Settlement ("Notice"), the form and contents of which the parties agreed-to as part of the long-form Settlement Agreement. (*See* Ex. 1 [Settlement Agreement], Ex. A). In particular, the Notice describes the Settlement, the deadlines and procedures to submit a Request for Exclusion, Objection, and/or Workweek or Pay Period Dispute, and the date and time set for the Final Approval Hearing. The Notice also apprises the Class Members of, *inter alia*, how their Individual Settlement Amount is calculated and the number of Workweeks and Pay Periods credited to them.

The Proposed Class Meets the Requirements for Conditional Certification

36. For settlement purposes only, the Parties have agreed to seek certification of the following class:

> All non-exempt employees who are or were employed by Defendants in California and who worked as installers, field installers, technicians, and field technicians, during the period from December 20, 2019 to the date of the Court's order granting preliminary approval (the "Settlement Class").

37. Based on information provided by Defendants, the Class is estimated to consist of twenty-eight (28) individuals (Ex. 1 § 9). The Class therefore satisfied numerosity.

38. The requirement of commonality is met because this case presents questions that are capable of resolution on a classwide basis. Based on the documents and information obtained through

informal discovery and exchange of information in this case, Plaintiff contends that Class Members were subject to the same or similar operations and employment practices, policies, and procedures during the time period at issue. Plaintiff's claims arise from Defendants' alleged uniform policy of, *inter alia*, failed to indemnify and reimburse the Class Members for necessary business expenses, failing to pay all wages due upon termination and/or separation from employment, and, for field technicians and field installers, failing to pay prevailing rate of per diem wages, including overtime at least at the rate of one and one-half time the basic rate of pay for work performed on the public works projects. Since these claims would rely on common proof for the Class Members, and no individualized questions would predominate over the common questions of fact and law relevant to proving these claims, the commonality requirement is satisfied.

39. The claims of Plaintiff are typical of those of the Class because they raise the very same claims arising from the same type of injury – namely, Plaintiff, like the other hourly, non-exempt employees of Defendants, were not paid reimbursed for necessary business expenses, were not paid all wages owed upon separation, and was not paid prevailing wages for his work on public works projects. The typicality requirement is therefore met.

40. Plaintiff does not have any conflicts with the Class Members, nor does his counsel. In fact, the interest of the Plaintiff and the Class members are aligned. All were allegedly not reimbursed for all necessary business expenses, were not paid all wages owed to them at separation, and, for the field technicians and installers, were not paid prevailing wages for work performed on the alleged public projects. Plaintiff has demonstrated his ability to advocate for the interests of the Class members by initiating this lawsuit and continuing his participation through settlement. Moreover, Pelton Graham has significant experience in the area of complex litigation and employment law. Accordingly, Plaintiff and his counsel have adequately represented the Class thus far and will continue to do so in connection with the proposed Settlement.

41. Finally, a class action device is the superior method of adjudication here. If the Class members proceed on these claims as individuals, their many individual suits would require duplicative discovery and litigation. In contrast, the class action mechanism would efficiently resolve numerous substantially identical claims at the same time while avoiding a waste of judicial resources

and eliminating the possibility of conflicting decisions from repetitious litigation. Plaintiff is unaware of any issues that would render unmanageable the adjudication of Plaintiff's class claims.

42. The undersigned is unaware of any pending lawsuits that would be impacted by the proposed Settlement Agreement.

43. Based on the above, Plaintiff's counsel submits that the Settlement is fair, reasonable, and adequate, and is in the best interest of the Class. Plaintiff's counsel further submits that the Settlement is within an acceptable range of recovery for this type of litigation, given the strengths and weaknesses of the case, the inherent costs and risks of further litigation, and the costs and risks associated with class certification, representative adjudication, trial, and/or appeals.

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

Executed on this 12th day of June, 2025, at San Francisco, California.

Taylor B. Graham