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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF ALAMEDA

HUNG PHAM, individually and on behalf of all others similarly situated, Plaintiff, v. WOOD TECH, INC., JUAN D. FIGUEROA, HERBERT G. VEGA, and DOES 2 through 10, inclusive, Defendants.	Case No. 22CV011080 ASSIGNED FOR ALL PURPOSES TO JUDGE BRAD SELIGMAN DEPARTMENT 23 **PLAINTIFF'S MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF <u>UNOPPOSED</u> MOTION FOR PRELIMINARY APPROVAL** Date: August 1, 2023 Time: 3:00 P.M. Complaint Filed: May 10, 2022 Trial Date: Not Set **Reservation #: 526692042237**

TABLE OF CONTENTS

TABLE OF AUTHORITIES

California Cases

Federal Cases

I. INTRODUCTION

Plaintiff Hung Pham hereby requests that the Court grant preliminary approval of a proposed $2 million, non-reversionary, class action settlement of the wage and hour and PAGA claims asserted in this case. The Court should grant the motion because the settlement, which will bring substantial monetary payments to 155 class members, is fair, adequate, and reasonable. The settlement was reached after arm's-length negotiations and achieves an excellent result given the risks inherent in the claims, including Wood Tech's threatened bankruptcy. The Court, therefore, should preliminarily approve the settlement, approve the class notice and proposed notice plan, appoint Phoenix Settlement Administrators ("Phoenix") as the settlement administrator, and set a hearing for final approval.

II. FACTUAL AND PROCEDURAL BACKGROUND

Plaintiff filed a class action complaint against Defendants Wood Tech, Inc. and its owner, Juan D. Figueroa, on May 10, 2022. (Valerian Decl., ¶ 4.) The complaint alleges that Wood Tech failed to provide class members with proper meal and rest periods, failed to pay for all hours worked, failed to pay overtime, failed to provide accurate wage statements, and failed to pay all wages due at termination. Plaintiff amended his complaint on December 15, 2022, to assert claims for civil penalties pursuant to the California Private Attorney General Act ("PAGA") and to add Wood Tech's controller, Herbert G. Vega, as a DOE defendant. (*Ibid*.)

In response to the lawsuit, Wood Tech, Inc. changed its meal and rest period claims in June 2022. (Valerian Decl., ¶ 11.) Wood Tech, Inc. also paid out previously unpaid overtime in November/December 2022. (*Ibid*.)

The Court certified a class on March 6, 2023, consisting of "[a]ll persons who are employed or have been employed as an hourly employee by Wood Tech, Inc. in the State of California from May 10, 2018, until the date of distribution of class notice." (Valerian Decl., ¶11.) The Court appointed Valerian Law, P.C. as class counsel and Hung Pham as class representative. (*Ibid*.) Notice was provided to 156 individuals on April 4, 2024. (*Ibid*.) One person opted out. (*Ibid*.)

The parties mediated the case on November 14, 2022, and May 24, 2023, with the Honorable James Lambden (Ret.). (Valerian Decl., ¶ 13.) The parties reached substantial agreement on a

settlement at the second mediation and thereafter reduced their agreement to a writing that is attached to the Valerian Declaration as Exhibit 1. (*Ibid*.)

III. SUMMARY OF SETTLEMENT TERMS

A. CLASS CONSTITUENCY

The Court previously certified a class in this case. Everyone who did not opt out will participate in the Settlement (the "Class Members"). (Settlement Agreement ("SA"), ¶ 1.13.)

B. AGGRIEVED EMPLOYEES

The Settlement includes civil penalties that will be allocated 75% to the LWDA and 25% to the set of all persons who are employed or have been employed as an hourly employee by Wood Tech, Inc. in the State of California from May 10, 2021, through April 4, 2023 (the "Aggrieved Employees"). (SA, ¶¶ 1.5, 1.36.)

C. MONETARY TERMS

The Settlement establishes a gross fund of $2,000,000. (SA, ¶ 3.1.) This fund is provisionally allocated subject to Court approval as follows: $100,000 in civil penalties, up to 33% of the fund to attorneys' fees, class counsel expenses up to $18,000, a class representative award up to $10,000, and administration costs up to $10,500. (SA, ¶¶ 81-84.) After the foregoing items are paid, an estimated $1,201,500 will remain. (Valerian Decl., ¶ 22) This amount will then be proportionately distributed to Class Members based on the number of weeks worked without a claim form. (SA, ¶¶ 3.5(e), 4.3.) Class Counsel estimates that class members will receive an average of around $7,900, with a maximum distribution of upwards of $21,000. (Valerian Decl., ¶ 22.)

D. SCOPE OF RELEASES

The Settlement provides for the following releases to the Released Parties:

- Plaintiff will provide the Released Parties a general release of any and all claims, whether known or unknown, that he has or may have against the Released Parties, or any of them, which arose on or prior to the date of the Court's preliminary approval of the Settlement, including without limitation any and all claims related to or arising from his employment with Wood Tech, and any and all state and federal wage and hour claims against the Released Parties, or any of them, that are alleged or could have been alleged based on the allegations in the operative complaint, including any PAGA penalties based on the allegations in the operative complaint, but not including any claims for workers' compensation benefits, along with a waiver of the protections of Civil Code Section 1542 regarding the released claims. (SA, ¶ 5.1.)

- Each Class Member will provide the Released Parties on the Release Effective Date with a release of any and all claims, whether known or unknown, suspected or not suspected to exist, against the Released Parties, or any of them, arising out of the allegations of the First Amended Complaint on file in the Action during the Class Period, including but not limited to claims for straight time and overtime wages, meal and rest period violations, meal period premiums, rest period premiums, waiting time penalties, and accurate and complete wage statements, or arising under Labor Code §§ 201, 202, 203, 226, 226.7, 510, 512, 516, 558.1, 1194, 1194.2, 1198, 1199 or Sections 11 and 12 of Wage Order 1-2001, or under California Business and Professions Code § 17200, et seq. for violations of the above-cited Labor Code sections as well as Section 1174 and claims for attorney's fees and costs associated with any of the above claims. Participating Class Members do not release any other claims, including claims for vested benefits, wrongful termination, violation of the Fair Employment and Housing Act, unemployment insurance, disability, social security, workers' compensation or claims based on facts occurring outside the Class Period. (SA, ¶ 5.2.)

- Each Aggrieved Employee will provide the Released Parties on the Release Effective Date with a release of any and all claims, whether known or unknown, suspected or not suspected to exist, against the Released Parties, or any of them, for civil penalties pursuant to the Labor Code Private Attorneys General Act arising out of the allegations of the First Amended Complaint on file in the Action during the PAGA Period, including but not limited to claims for straight time and overtime wages, meal and rest period violations, meal period premiums, rest period premiums, waiting time penalties, and accurate and complete wage statements, or arising under Labor Code §§ 201, 202, 203, 226, 226.7, 510, 512, 516, 558.1, 1194, 1194.2, 1198, 1199 or Sections 11 and 12 of Wage Order 1-2001, or Section 1174 and claims for attorney's fees and costs associated with any of the above claims. (SA, ¶ 5.3.)

The Settlement Agreement defines "Released Parties" to mean Defendant Wood Tech, Inc., its shareholders, directors, officers, employees, supervisors, managers, agents and attorneys, and Defendants Figueroa and Vega and their respective spouses. (SA, ¶ 1.39.)

E. NOTICE PROCESS AND PROCEDURES

The Settlement appoints Phoenix Settlement Administrators as the settlement administrator. (SA, ¶ 7.1.) Phoenix previously administered the curative notice and class notice and maintains the most current contact information for class members. (Valerian Decl., ¶ 24.)

The Settlement obligates Defendants to provide Phoenix the name, last-known mailing address, social security number, number of workweeks worked, and number of pay periods worked for each Class Member and Aggrieved Employee within 15 days after preliminary approval ("Class and Aggrieved Employee Data"). (SA, ¶ 4.1.) Phoenix will thereafter send Class Members the class notice with Spanish translation via first-class mail within 14 days. (*Id*., at ¶ 7.4(b).) Phoenix will update the employee addresses using the National Change of Address database before mailing the notice. (*Ibid*.)

Both the proposed one-page notice and long-form notice are based on templates developed by the Impact Fund's Class Notice Project. (Valerian Decl., ¶ 26.) The one-page notice includes the workweek data upon which their settlement allocation will be based and directs the recipient to the settlement website that will be established by Phoenix with a link and scannable QR code for the recipient to obtain more information about the settlement. (SA, Ex. A.)

The notice also advises Class Members that they can object to the settlement or contest the data reported in Defendants' data. Class Members will have 45 days to submit their objection to Phoenix. (SA, Ex. A.)

Notices that are returned as undeliverable with a forwarding address will be re-mailed within three business days. (SA, ¶ 7.4(c).) Phoenix will skip-trace notices returned without a forwarding address. Class Members receiving a re-mailed notice will have an additional 14 days to object. (*Ibid*.)

Objections will be sent to Phoenix, who will in turn forward them to Class Counsel within five days after the time to object has expired. (SA, ¶¶ 7.6, 8.1.) Class Counsel will submit the objections along with their motion for final approval. (SA, ¶ 8.1.)

F. UNCASHED CHECKS

None of the gross settlement fund reverts to Defendants. (SA, ¶ 3.4.) Checks that are not cashed after 180 days will be redistributed in equal shares to those who cashed their checks provided that the remaining balance exceeds $3,300. (*Id*., at ¶ 4.3(c).) If not, the balance—as well as any balance after redistribution—will be paid to Centro Legal de la Raza, an Oakland, California-based nonprofit organization that provides legal aid to low-income, working families, whose mission includes enforcing worker protections through litigation and policy advocacy, furthering the interests of California employees and remedying wage theft and other labor issues. (*Ibid*.; Valerian Decl., ¶ 28.) Redistributed checks will be valid for 45 days. (SA, ¶ 4.3(c).) Phoenix shall deduct its cost to redistribute the uncashed checks from the balance that remains after the initial round. (*Ibid*.) It is expected that these costs will be less than $2,000. (Valerian Decl., ¶ 25.)

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G. PAYMENT OF ATTORNEYS' FEES AND EXPENSES

Plaintiff will file a motion for an award of attorneys' fees in the amount of 33% of the Gross Settlement Amount and costs of no more than $18,000 no later than 16 court days prior to the final approval hearing set by the Court. (SA, ¶ 3.5(b).) Phoenix will withhold 10% of the awarded fees in an interest-bearing account, maintained by Phoenix, pending the submission and approval of a final compliance status report after completion of the distribution process. (SA, ¶ 4.3(e).)

H. TAX TREATMENT

The civil penalties paid to each Aggrieved Employee will be reported on an IRS 1099 Form. (SA, ¶ 3.5(d).) The class members' settlement payments will be allocated 70% to wage claims, 25% to interest and liquidated damages, and 5% to statutory penalties. (*Id*., at ¶ 3.5(f).) This fairly tracks the proportion of these components in the damage model Plaintiff developed for the mediation. (Valerian Decl., ¶ 23.) The wage portions will be subject to tax withholding and will be reported on an IRS W-2 form. (SA, ¶ 3.5(f).) The non-wage portions will not be subject to tax withholding and will be reported on IRS 1099 Forms. (*Ibid*.) Defendants will separately pay the employer's share of the taxes owed on the wage portions. (SA, ¶ 3.1.)

I. IMPACT ON OTHER PENDING LITIGATION

Plaintiff and Class Counsel are unaware of any overlapping class actions or other cases asserting claims like those asserted in the present case. (Valerian Decl., ¶ 9.) Thus, they do not anticipate that this case will extinguish the claims in any currently pending cases. (*Ibid.*)

IV. ARGUMENT

There are two steps to approving a class action settlement in California. (Cal. Rules of Court, rule 3.769; *Cellphone Termination Fee Cases* (2009) 180 Cal.App.4th 1110, 1118.) "[T]he purpose of the first step is to determine whether the proposed settlement and plan of distribution are within the range of possible approval and whether notice to the settlement class of its terms and conditions, and the scheduling of a final approval hearing, will be worthwhile." (Newberg on Class Actions, Class Actions in State Courts, Preliminary Approval (4th ed. 2002) § 13:64.) The court's task at the preliminary approval stage, then, is simply to determine whether the settlement falls "within the range of possible approval." (*In re Wells Fargo & Co.* (N.D. Cal. 2020) 445 F.Supp.3d 508, 517.) In

this connection, "a presumption of fairness exists where: (1) the settlement is reached through arm's-length bargaining; (2) investigation and discovery are sufficient to allow counsel and the court to act intelligently; (3) counsel is experienced in similar litigation; and (4) the percentage of objectors is small." (*Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1802; accord Newberg on Class Actions, *supra,* § 11.41, pp. 11-91.) "If the proposed settlement appears to be the product of serious, informed, non-collusive negotiations, has no obvious deficiencies, does not improperly grant preferential treatment to class representatives or segments of the class, and falls within the range of possible approval, then the court should direct that the notice be given to the class members of a formal fairness hearing." (Manual for Complex Litigation, Second (1985) § 30.44.) This standard is easily met in the present case. Moreover, the proposed notice here is clear and more than adequate. (*Cellphone Termination Fee Cases*, *supra*, 180 Cal.App.4th at p. 1118; accord Cal. Rules of Court, rule 3.769(f).) The Court, therefore, should grant the motion.

A. THE PRESUMPTION OF FAIRNESS APPLIES

As noted above, a presumption of fairness exists where a settlement is reached through arm's-length negotiation that was adequately informed and where there is no evidence of fraud or collusion. Such a presumption applies here.

1. <u>The Settlement Was Reached Through Arm's-Length Negotiations</u>

The settlement in this case was reached between experienced counsel through hard-fought negotiations overseen by the Honorable James Lambden (Ret.). The negotiations took two mediation sessions and the parties agreed on a term sheet only after two more weeks of negotiation (Valerian Decl., ¶¶ 13-16.) The settlement, therefore, is the result of arm's-length negotiation. (*Gong-Chun v. Aetna Inc.* (E.D. Cal., July 12, 2012, No. 1:09-CV-01995-SKO) 2012 WL 2872788, at *12 [settlement reached through efforts of counsel with the assistance of a mediator was the result of arm's-length negotiation]; accord *Kelley v. City of San Diego* (S.D. Cal., Feb. 8, 2021, No. 19-CV-622-GPC-BGS) 2021 WL 424290, at *7 [settlement resulted from arm's-length negotiation where the parties conducted several telephonic and in-person settlement conferences with settlement judge]; see also Newberg on Class Actions, *supra*, § 13:14.)

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2. The Negotiations Were Adequately Informed

Plaintiff engaged in extensive formal discovery prior to settling the case. To wit, Plaintiff propounded three sets of requests for production, one set of requests for admissions (seven requests excluding requests to admit the genuineness of documents), two sets of special interrogatories directed at Wood Tech, Inc. and two sets directed at Defendant Juan D. Figueroa, as well as form interrogatories. (Valerian Decl., ¶ 6.) Class Counsel also reviewed over 300 pages of documents produced, including time punch and payroll data, and took the depositions of Wood Tech's corporate representatives on a variety of topics, including their *Pick-Up Stix* campaign seeking to obtain pre-certification releases, as well as the deposition of co-defendant Herbert G. Vega. (*Ibid*.)

This discovery—along with substantial class member outreach—enabled Class Counsel to prepare a detailed mediation brief and devise a damages model for the case. (Valerian Decl., ¶ 8.) Key evidence for estimating damages included wage rates, employment dates, punch data. (*Ibid*.) Where there were gaps, Class Counsel made reasonable assumptions. (*Ibid*.) Negotiations spanned six months during which the parties continued to litigate the case, with Plaintiff voiding class member releases and certifying the class. (Valerian Decl., ¶ 16.) Plaintiff had even prepared motions for summary adjudication should the mediation fail. (*Ibid*.)

Finally, Class Counsel secured substantial financial documentation from Defendant Wood Tech pursuant to a nondisclosure agreement before proceeding to a second mediation. (Valerian Decl., ¶ 14). Class Counsel also independently investigated Defendants' assets. (*Ibid*.)

The negotiations, therefore, were fully informed. (See *Foster v. Adams and Assocs., Inc.* (N.D. Cal., Feb. 11, 2022, No. 18-CV-02723-JSC) 2022 WL 425559, at *6 [Plaintiff was "'armed with sufficient information about the case' to broker a fair settlement" where parties engaged in extensive discovery and litigated case through class certification].)

3. The Settlement Does Not Improperly Grant Preferential Treatment

There was no collusion in settling this case. The settlement is non-reversionary. (SA, ¶ 3.4.) Negotiations were overseen by an experienced mediator, which "confirms that the settlement is non-collusive." (*Satchel v. Federal Express Corp.* (N.D. Cal., Apr. 13, 2007, No. 03-cv-2878-SI) 2007 WL 1114010, at *4; *Bower v. Cycle Gear, Inc.* (N.D. Cal., Aug. 23, 2016, No. 14-cv-02712-HSG)

2016 WL 4439875, at *5["[T]he parties reached their settlement after two full-day mediation sessions before impartial and experienced mediators, which strongly suggests the absence of collusion or bad faith by the parties or counsel."].) Moreover, the proportional allocation of the net settlement fund according to the number of weeks worked guarantees fair and equitable treatment between class members. (*Hudson v. Libre Tech. Inc.* (S.D. Cal., May 13, 2020, No. 3:18-CV-1371-GPC-KSC) 2020 WL 2467060), at *9 ["the Settlement does not improperly discriminate between any segments of the Settlement Class as the Settlement Class Members are entitled to the same relief from the same formula"]; *Mejia v. Walgreen Co.* (E.D. Cal., Nov. 24, 2020, No. 2:19-CV-00218 WBS AC) 2020 WL 6887749, at *11 [no discrimination where relief is proportionately based on compensable workweeks].)

4. Class Counsel Support the Settlement

Class Counsel has extensive experience litigating wage and hour class actions and recommend approval. (Valerian Decl., ¶ 37.) Such a recommendation weighs in favor of approval. (*Cabiness v. Educ. Fin. Solutions, LLC* (N.D. Cal., Mar. 26, 2019, No. 16-cv-01109-JST) 2019 WL 1369929, at *6; *Acosta v. Frito-Lay, Inc*. (N.D. Cal., May 4, 2018, No.15-cv-02128-JSC) 2018 WL 2088278, at *9; see also *In re Omnivision Techs., Inc.* (N.D. Cal. 2008) 559 F.Supp.2d 1036, 1043 ["The recommendations of plaintiffs' counsel should be given a presumption of reasonableness."].)

B. THE COURT NEED NOT RECONSIDER CLASS CERTIFICATION

The Court has already certified a class in this case. The only concern for the Court, then, "is whether the proposed settlement calls for any change in the class certified, or of the claims, defenses, or issues regarding which certification was granted." (*Senne v. Kansas City Royals Baseball Corp.* (N.D. Cal., Mar. 29, 2023, No. 14-CV-00608 JCS) 2023 WL 2699972, at *5 [quoting Fed. R. Civ. P. 23 Advisory Committee's Note to 2018 Amendment]; *Benjamin v. Dept. of Public Welfare of the Commonwealth of Pa.* (M.D. Pa. 2011) 807 F.Supp.2d 201, 206 ["As noted above, the class was properly certified in September 2009, so the Court need not make a certification determination as it would with a settlement class."].)

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Nothing has changed to warrant reconsidering the Court's March 6, 2023, order. Membership in the class has been fixed, and Wood Tech changed its practices prior to class certification. (Valerian Decl., ¶ 11.) There are no new claims and no continuing claims requiring certification.

C. THE SETTLEMENT FALLS WITHIN THE RANGE OF APPROVAL

A settlement is not required to meet a minimum dollar or percentage threshold to be deemed adequate. (See *7-Eleven Owners for Fair Franchising v. Southland Corp.* (2000) 85 Cal.App.4th 1135, 1150.) Rather, the adequacy of a settlement is evaluated considering litigation uncertainties and class expectations. (See *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1801.) Both favor the adequacy of the settlement in this case. "In most situations, unless the settlement is clearly inadequate, its acceptance and approval are preferable to lengthy and expensive litigation with uncertain results." (*National Rural Telecomms. Co-op. v. DIRECTV, Inc.* (C.D. Cal. 2004) 221 F.R.D. 523, 526; Newberg on Class Actions, *supra*, § 11:50.)

1. The Settlement Is Fair and Reasonable Considering the Strengths and Weaknesses of the Claims and Risks of Continued Litigation

Plaintiff estimated before the first mediation that the best-case scenario would yield a $6.3 million recovery. (Valerian Decl., ¶ 16.) Plaintiff remains confident that he would prevail at trial if the case were litigated. Plaintiff nevertheless recognizes that there are considerable risks. Chief among the risks is that Wood Tech would declare bankruptcy. (*Id*., at ¶ 17.) Throughout the case, defense counsel asserted that bankruptcy would result if the matter proceeded to trial. (*Ibid*.) There were also novel issues of law regarding the timing of meal and rest periods as well as the ability of employees to request alternate schedules. (*Ibid*.) There was also the risk of prolonged litigation and delayed justice. (*Ibid*.) Had the case not settled, difficult and costly battles would have followed, including dispositive motions, additional discovery—especially about Mr. Figueroa's personal liability that was vigorously disputed—retention of experts to formulate a damages model for trial, taking and defending fact and expert depositions, and trial. (*Id*., at ¶¶ 18-19.) There was also a possibility that Plaintiff would recover nothing for the class. (*Ibid*.)

The settlement, on the other hand, provides a gross average recovery of $7,900 per class member. This compares favorably to other class action settlements involving similar claims.

(Valerian Decl., ¶ 22.) In this context, "the tangible, immediate benefits of . . . [s]ettlement outweigh continued litigation and the uncertainty of a trial." (*Ebarle v. Lifelock, Inc.* (N.D. Cal., Jan. 20, 2016) 2016 WL 234364, at *8; *In re Linkedin User Privacy Litig.* (N.D. Cal. 2015) 309 F.R.D. 573, 587 ["Immediate receipt of money through settlement, even if lower than what could potentially be achieved through ultimate success on the merits, has value to a class, especially when compared to risky and costly continued litigation."].)

2. The Proposed Award of Attorneys' Fees and Costs Is Reasonable

Class Counsel will apply to the Court for reasonable attorney's fees up to 33% of the Gross Settlement Amount and actual costs of up to $18,000.[1] (SA, at ¶ 3.5(b).) Such an award is consistent with California law. (*Laffitte v. Robert Half International, Inc.* (2016) 1 Cal.5th 480, 503.) It is also eminently reasonable given that empirical studies show that fee awards in class actions average around one-third of the recovery. (*In re Consumer Privacy Cases* (2009) 175 Cal.App.4th 545, 558.)

Even if the benchmark were lower, an upwards departure from the benchmark would still be appropriate in the present case given the excellent results achieved, which include a change in employer practice, the skill and quality of class counsel's work, and the risk that class counsel undertook. (*Vizcaino v. Microsoft Corp.* (9th Cir. 2002) 290 F.3d 1043, 1048–1049 ["[e]xceptional results," "risk," conferring "non-monetary benefits," and "forgo[ing] significant other work" justify upward adjustment].) For now, it suffices that the proposed fee and expense award is within the range of approval. (*Cicero v. DIRECTV, Inc.* (C.D. Cal., July 27, 2010, No. EDCV 07-1182) 2010 WL 2991486, at *6 ["a review of California cases in other districts reveals that courts usually award attorneys' fees in the 30-40% range in wage and hour class actions that result in recovery of a common fund under $10 million"]; accord *Craft v. County of San Bernardino* (C.D. Cal. 2008) 624 F.Supp.2d 1113, 1127 ["Cases of under $10 Million will often result in result in fees above 25%."].)

3. The Proposed Service Award Is Fair, Adequate, and Reasonable

Service awards "are intended to compensate class representatives for work done on behalf of the class, to make up for financial or reputational risk undertaken in bringing the action, and,

[1] Actual costs are currently $17,084.28, with a current lodestar of approximately $517,000.

sometimes, to recognize their willingness to act as a private attorney general." (*Rodriguez v. West Publishing Corp.* (9th Cir. 2009) 563 F.3d 948, 958–959.) "[A] class representative is entitled to some compensation for the expense he or she incurred on behalf of the class lest individuals find insufficient inducement to lend their names and services to the class action." (*Oracle Securities Litigation* (N.D. Cal., June 18, 1994, No. C-90-0931), 1994 WL 502054, at *1.) Courts routinely approve service awards that are much larger. (*Van Vranken v. Atlantic Richfield Co.* (N.D. Cal. 1995) 901 F.Supp. 294 [approving $50,000 award]; *West v. Circle K Stores, Inc.* (E.D. Cal., Oct. 20, 2006, No. CIVS040438WBSGGH) 2006 WL 8458679, at *7–8 [approving $15,000 award].)

In the present case, $10,000 is reasonable given Plaintiff's efforts in this case and the risks he undertook on behalf of the Class. Plaintiff advanced the interests of the Class by regularly meeting with counsel in person and over the telephone, gathering documents, assisting counsel in identifying potential claims and in preparing for the mediation, working on declarations, communicating with class members, and taking on the risk of being required to pay Defendants' costs if this action had been unsuccessful. Plaintiff also took the risk of facing intrusive discovery and disclosure to future employers that he sued his former employer. Finally, the proposed service award is reasonable given that the average amount of Class Members' individual settlement payments is approximately $7,900. (Valerian Decl., ¶ 23.) Plaintiff has asserted one non-class wage claim and is providing Defendants with a much broader general release than other Class Members. The proposed award represents only 0.5 percent of the total settlement and will not materially reduce Class Member awards. The requested award, therefore, is manifestly reasonable. (*De La Torre v. CashCall, Inc.* (N.D. Cal., Nov. 17, 2017, No. 08-CV-03174-MEJ) 2017 WL 5524718, at *14 ["$10,000 service award falls within the range of service awards"].)

D. THE PROPOSED NOTICE PLAN IS ADEQUATE

A notice of a class action settlement is adequate if the notice "contain[s] an explanation of the proposed settlement and procedures for class members to follow in filing written objections to it and in arranging to appear at the settlement hearing and state any objections to the proposed settlement." (Cal. Rules of Court, rule 3.769(f); *Cellphone Termination Fee Cases*, *supra*, 186 Cal.App.4th at p. 1390.) "The notice given to the class must fairly apprise the class members of the

terms of the proposed compromise and of the options open to dissenting class members." (*Trotsky v. Los Angeles Fed. Sav. Loan Assn.* (1975) 48 Cal.App.3d 134, 151-52.) "The purpose of a class notice in the context of a settlement is to give class members sufficient information to decide whether they should accept the benefits offered . . . or object to the settlement. (*Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 252.) "As a general rule, class notice must strike a balance between thoroughness and the need to avoid unduly complicating the content of the notice and confusing class members." (*Ibid*.) "[T]he trial court has virtually complete discretion as to the manner of giving notice to class members." (*7-Eleven*, *supra,* 85 Cal.App.4th at p. 1164 [internal quotation omitted].)

The proposed notice in the present case satisfies this standard. As noted above, notice will be sent to Class Members via first-class mail that will direct them to obtain more information from a website where Class Members will be able to review a long form notice as well as the settlement agreement, this motion, and the operative complaint. Both short and long form notices explain what the settlement is about, who is a class member, how payments will be calculated, and the actions that a class member can take. The long form further explains how to object to the settlement, contest the workweek allocation, and how counsel will be paid. Such a plan is more than adequate.[2]

E. THE ALLOCATION OF THE SETTLEMENT FUND TO CIVIL PENALTIES IS CONSISTENT WITH PAGA'S PURPOSE

"Where PAGA claims are settled in the same agreement with the underlying Labor Code claims, courts have . . . looked to the interplay of the two recoveries to determine whether PAGA's purposes have been served." (*Haralson v. U.S. Aviation Services Corp.* (N.D. Cal. 2019) 383

[2] There is no need to provide Class Members a second opportunity to opt-out of the class. (*Officers for Justice v. Civil Serv. Comm'n* (9th Cir. 1982) 688 F.2d 615, 635 ["Nevertheless, we have found no authority of any kind suggesting that due process requires that members of a Rule 23(b)(3) class be given a second chance to opt out. We think it does not."]; *Low v. Trump Univ., LLC* (9th Cir. 2018) 881 F.3d 1111, 1121-22.) Nor is there a need to provide aggrieved employees with notice. (*Arias v. Super. Ct.* (2009) 46 Cal.4th 969, 984; accord *Baumann v. Chase Inv. Services Corp.* (9th Cir. 2014) 747 F.3d 1117, 1122 ["PAGA has no notice requirements for unnamed aggrieved employees, nor may such employees opt out of a PAGA actvnion."]; see also *Ochoa-Hernandez v. Cjaders Foods, Inc.* (N.D. Cal., Apr. 2, 2010, No. C 08-2073 MHP) 2010 WL 1340777, at *5 ["Unnamed employees need not be given notice of the PAGA claim, nor do they have the ability to opt-out of the representative PAGA claim."].)

F.Supp.3d 959, 972; *O'Connor v. Uber Technologies, Inc.* (N.D. Cal. 2016) 201 F.Supp.3d 1110, 1134-35 [apply sliding scale and concluding that "if the settlement for the . . . class is robust, the purposes of PAGA may be concurrently fulfilled"].) A court must also consider whether it would exercise discretion under Labor Code section 2699, subdivision (e)(2), to reduce the amount of PAGA penalties were those claims to be litigated through judgment. (*Haralson, supra*, at p. 973.)

In the present case, the proposed settlement provides class members and aggrieved employees substantial and robust relief. The settlement a whole, then, fulfills PAGA's underlying policy objectives.[3] (*Loreto v. General Dynamics Information Technology, Inc.* (S.D. Cal., May 7, 2021, No. 319CV01366GPCMSB) 2021 WL 1839989, at *15 ["[t]he public policies underlying PAGA are also likely met here, because the settlement more broadly provides a 'robust; remedy for possible violations of the California Labor Code by requiring Defendant to pay about a quarter of its maximum potential exposure on the class claims"].) Moreover, the allocation of $100,000 to civil penalties—five percent of the gross settlement—far exceeds allocations that courts have approved elsewhere. (See *Magadia v. Wal-Mart Associates, Inc.* (N.D. Cal. 2019) 384 F.Supp.3d 1058, 1101 [collecting cases approving PAGA penalties between 0.14% to 1.11% of the gross settlement fund]; accord *Cavazos v. Salas Concrete, Inc.* (E.D. Cal., July 25, 2022, No. 119CV00062DADEPG) 2022 WL 2918361, at *7 [penalties amounting to 2.3% of gross settlement "is consistent with other PAGA settlements approved by this court"].) Finally, it is likely that the Court would have exercised its discretion to reduce the penalties were the claims litigated through judgment given Wood Tech's financial position. (See Lab. Code, § 2699, subd. (e)(2) [discretion to reduce assessment where it would otherwise be "unjust, arbitrary and oppressive, or confiscatory"]; see also *Rodriguez v. RCO Reforesting, Inc.* (E.D. Cal., Jan. 25, 2019, No. 2:16-CV-2523 WBS DMC) 2019 WL 331159, at *4 [settlement penalty amount is not "unjust, arbitrary and oppressive, or confiscatory" where parties "took into consideration defendants' weak financial condition and ensured that the payment terms were structured so that defendants would not have to file for

[3] Plaintiff has fulfilled the administrative requirements to bring PAGA claims. (Valerian Decl. ¶ 36.)

bankruptcy"].) The allocation of $100,000 to civil penalties, then, is fair and adequate, and consistent with PAGA's purposes.

V. THE COURT SHOULD SET A HEARING DATE FOR FINAL APPROVAL

Provided that the Court grants this motion and approves the settlement, the soonest the Court could be able to hear motion for final approval would be December 12, 2023. Plaintiff will file the motion for final approval no later than December 5, 2023, with the motion for fees and costs filed no later than November 20, 2023.

VI. CONCLUSION

For the foregoing reasons, Plaintiff respectfully request that the Court preliminarily approve the proposed settlement in this case and order that the notice attached to the settlement and the proposed order hereto be sent to class members as set forth in the proposed order.

Respectfully submitted,

Dated: July 6, 2023

By:_____

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