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10
11 SUPERIOR COURT OF THE STATE OF CALIFORNIA
12 COUNTY OF LOS ANGELES, CENTRAL DISTRICT

13
14 CALVIN HANSEN, an individual,

15 Plaintiff,

16 vs.

17 GENERAL ELECTRIC INTERNATIONAL,
18 INC., a Delaware Corporation; ABB INC., a
19 Delaware Corporation; LEIF BACKLUND,
20 an individual; and DOES 1 through 50,
inclusive,

21 Defendants.

Case No.: BC713269

Hon. Anthony Mohr
Dept. 96

22 **PLAINTIFF'S UNOPPOSED MOTION
FOR PRELIMINARY APPROVAL**

Hearing Date: May 6, 2020
Hearing Time: 9:15 a.m.
Department: 96

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Complaint Filed: July 9, 2018
SAC Filed: April 13, 2020

Trial Date: None Set

RESID: 650391841439

1 **TO THE COURT, ALL PARTIES, AND TO THEIR COUNSEL OF RECORD:**

2 **PLEASE TAKE NOTICE THAT** on May 6, 2020 at 9:15 a.m., in Department 96 of this
3 Court located at 111 N. Hill Street, Los Angeles, CA 90012, pursuant to Code of Civil Procedure
4 § 382 and California Rules of Court 3.769, Plaintiff Calvin Hansen (“Plaintiff”) will move the
5 Court for an Order granting preliminary approval of the proposed class action settlement between
6 Plaintiff and Defendants General Electric International, Inc. and ABB Inc. (*collectively*
7 “Defendants”).

8 Plaintiff will further move the Court for an Order:

9 1. Preliminarily approving the Proposed Joint Stipulation of Class Action and PAGA
10 Settlement and Release between Plaintiff and Defendants (Agreement) attached hereto as Exhibit
11 1 to the Declaration of Heather Davis;

12 2. Certifying a Class for settlement purposes;

13 3. Appointing Plaintiff Calvin Hansen as the Class Representative for settlement
14 purposes;

15 4. Appointing Heather Davis, Amir Nayebdadash, Cody Payne, and Kim Nguyen of
16 Protection Law Group, LLP as Class Counsel for settlement purposes;

17 5. Approving the proposed Notice of Class Action Settlement (“Notice”) attached to
18 the Agreement to be mailed to the Class;

19 6. Approving the opt-out and objection procedures provided in the Agreement and
20 set forth in the Notice;

21 7. Directing Defendants to furnish the Administrator within forty (40) calendar days
22 after the Court grants preliminary approval of the Settlement the names and last known addresses
23 and telephone numbers of all Class Members, as well as any other information the Administrator
24 may reasonably need to administer this settlement; and
25

26 8. Setting a Final Approval Hearing.

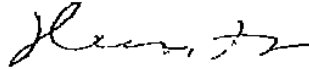
27 The motion is based upon this notice, the attached memorandum of points and authorities,
28 the Declaration of Heather Davis filed concurrently herewith, the pleadings and other records on

1 file with the Court in this matter, and any other further evidence or argument that the Court may
2 properly receive at or before the hearing.

3
4 DATED: April 22, 2020

Respectfully Submitted,

5 **PROTECTION LAW GROUP, LLP**

6 

7 By: _____

8 Heather Davis, Esq.

9 Amir Nayebdadash, Esq.

10 Cody Payne, Esq.

11 Kim N. Nguyen, Esq.

12 Attorneys for Plaintiff

13 CALVIN HANSEN

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiff Calvin Harris (“Plaintiff”) seeks preliminary approval of a class action settlement
4 on behalf of all of Defendants General Electric International, Inc. (“GEII”) and/or ABB Inc.’s
5 (“ABB”) (collectively, “Defendants”) non-exempt, non-union, hourly California employees who
6 worked in GE Power (including business divisions formerly known as Energy Connections and
7 Energy Management) on behalf of all persons employed by Defendants General Electric
8 International, Inc. (“GEII”) and ABB Inc. (“ABB”) (collectively “Defendants”) in California at
9 any time between September 11, 2014 through the date of Preliminary Approval.

10 In summary, the parties’ settlement terms are outlined as follows:

- 11 • Size of the class: 68 individuals
 - 12 • Class Settlement Amount: \$780,000
 - 13 • Estimated Claims Administration: \$15,000
 - 14 • Requested Class Representative Incentive Payment: \$15,000
 - 15 • Requested Attorney’s Fees and Costs: \$273,000 in fees and estimated costs of
16 approximately \$15,000
 - 17 • Penalties pursuant to the Private Attorney General Act in the total amount of
18 \$80,000 with \$60,000 paid to the California Labor and Workforce Development
19 Agency and \$20,000 to be distributed to members of the PAGA Group¹ (PAGA
20 Payment)
 - 21 • A Reserve Fund of \$3,000 for disputed, untimely, and self-identified claims. Any
22 unused amounts of the Reserve Fund will be re-distributed pro-rata to Settlement
23 Class Member
 - 24 • Net Settlement Amount: \$379,000 to be distributed to the class on a pro rata basis.
 - 25 • Average estimated payment to each Class Member: \$5,573.53
- 26
27

28 ¹ All terms from the Settlement Agreement referenced herein are to be construed consistently with their definitions in the Settlement Agreement.

1 Plaintiff requests that the Court grant preliminary approval of the Settlement, conditionally
2 certify the Settlement Class, approve the proposed Settlement Notice, and set a hearing date for
3 final settlement approval among other requested relief.

4 **II. CASE SUMMARY OF FACTUAL AND PROCEDURAL BACKGROUND**

5 Plaintiff Calvin Hansen was employed by Defendant GEII until July 2017 as an NDT
6 Technician. Plaintiff's job duties included, in part, non-restrictive testing, certified welling
7 inspections, API inspections, coating inspections, and welding inspections. Declaration of Heather
8 Davis ("Davis Decl.") ¶ 12. Defendants GEII and ABB provide various services to the energy and
9 utility industry, both in and outside of California. *Id.* at ¶ 13.

10 On July 9, 2018, Plaintiff initiated this matter by filing a complaint ("Complaint") against
11 GEII. Plaintiff's Complaint alleged damages based on the following causes of action: (1)
12 Discrimination Based on Disability in Violation of FEHA; (2) Failure to Accommodate in
13 Violation of FEHA; (3) Failure to Engage in the Interactive Process in Violation of FEHA; (4)
14 Failure to Prevent Discrimination; (5) Wrongful Termination; and (6) Defamation. Davis Decl., ¶
15 14.

16 On September 11, 2018, Plaintiff filed a First Amended Complaint including additional
17 causes of action for: (7) Overtime Violations; (8) Failure to Pay Minimum Wages; (9) Rest Period
18 Violations; (10) Meal Period Violations; (11) Failure to Provide Accurate Itemized Wage
19 Statements; (12) Failure to Timely Pay All Wages Upon Separation of Employment; (13) Unfair
20 Competition; and (14) civil penalties under the Private Attorney General Act, Labor Code § 2698,
21 *et seq.* Davis Decl., ¶ 15.

22 The parties exchanged written discovery requests and engaged in meet and confer
23 discussions related to the same. In response to this discovery, Defendants provided thousands of
24 pages of documents including time sheets and pay stubs. Further, Defendants produced time and
25 payroll data for approximately 20% of the putative class members, as well as copies of paystubs,
26 Defendants' written policies, and other relevant documents. Davis Decl., ¶ 16. After a thorough
27 investigation and analysis of the informal discovery provided by Defendants, the parties attended
28 mediation with Deborah Crandall Saxe, Esq., a neutral and highly respected mediator with

1 extensive experience in complex wage and hour matters. The parties attended mediation with
2 Deborah Saxe on September 17, 2019. *Id.* at ¶¶ 17, 18. Prior to the mediation, the parties engaged
3 in a pre-mediation conference to discuss procedural and substantive matters going into the
4 mediation. Part of that process included the exchange of information in order to have sufficient
5 information to properly evaluate the claims and defenses in the case. At the mediation, Defendants
6 maintained they had substantial defenses to the alleged violations and that they had complied with
7 California wage and hour laws at all times. *Id.* at ¶ 19.

8 During the full day of mediation, the parties exchanged detailed information, engaged
9 extensively with the mediator, and debated their different views and analyses regarding the scope
10 of the alleged violations and the viability of Defendants’ potential defenses. The Parties were close
11 to a resolution at the end of the mediation and continued their negotiations with Ms. Saxe’s
12 assistance. Following these discussions, the Parties agreed to settle the matter on a class-wide
13 basis for \$780,000 and that Defendants would not oppose Plaintiff’s request to seek leave of court
14 to file a Second Amended Complaint asserting class-wide claims solely for purposes of settlement.
15 Davis Decl., ¶ 20. Based on this agreement, Plaintiff sought leave of court and filed the Second
16 Amended Complaint on or about April 13, 2020. *Id.* at ¶ 21. The Parties drafted a long form joint
17 stipulation of settlement and release (“Agreement”) confirming these terms. Plaintiff now moves
18 for preliminary approval of this proposed settlement. *Id.* at ¶ 21.

19 **III. THE SETTLEMENT TERMS**

20 **A. Class Definition:**

21 The Settlement Class is defined as: “all GEII and/or ABB non-exempt, non-union, hourly
22 California employees who worked in GE Power (including business divisions formerly known as
23 Energy Connections and Energy Management) at any time between September 11, 2014, and the
24 Date of Preliminary Approval of this Settlement.” The settlement class consists of approximately
25 **68** individuals. *See* Davis Decl. ¶¶ 22 - 23, Ex. 1, hereafter “Agreement” ¶ 5.

26 **B. Amount of Settlement**

27 Subject to Court approval, Plaintiff and Defendants have agreed to settle the class claims
28 for a Class Settlement Amount of **\$780,000**. *See* Davis Decl. ¶ 24, Agreement, ¶ 53(e).

1 **C. Allocation of the Class Settlement Amount:**

2 The Class Settlement Amount is a Common Fund and therefore, includes all requested
3 costs, fees, and other allocations. The Class Settlement Amount allocations are as follows:

- 4 • Attorney’s Fees in the amount of thirty-five percent of the Class Settlement
5 Amount, equaling \$273,000 and costs of approximately \$15,000. Agreement, ¶
6 53(e)(i).
- 7 • The Claims Administration Fee estimated to be approximately \$15,000.
8 Agreement, ¶¶ 36, 53(e)(v).
- 9 • The Class Representative Enhancement to Plaintiff in the amount of \$15,000.
10 Agreement, ¶ 35, 53(e)(ii).
- 11 • A Reserve Fund of \$3,000 for disputed, untimely, and self-identified claims. Any
12 unused amounts of the Reserve Fund will be re-distributed pro-rata to Settlement
13 Class Member. Agreement, ¶ 35, 53(e)(iv).
- 14 • Payment to the Labor and Workforce Development Agency in the amount of
15 \$60,000 for penalties pursuant to the Private Attorney General Act (PAGA
16 Payment). Agreement, ¶ 17, 53(e)(iii).
- 17 • A payment of \$20,000 to be allocated among members of the PAGA Group based
18 on the number of weeks each member of the PAGA Group worked that qualify
19 them for membership in the PAGA Group. Agreement, ¶ 17, 53(e)(ix).

20 After the above-estimated amounts are deducted from the Class Settlement Amount, the
21 68 potential Settlement Class Members will share in a Net Settlement Amount of approximately
22 \$379,000, which will be distributed on a pro-rata basis. Agreement, ¶ 53(e)(ix). The payment to
23 each Settlement Class Member will vary based on the total Individual Amount Earned, but will
24 provide an average estimated settlement payment of \$5,573.53. Davis Decl. ¶ 26. Payments to the
25 class members shall be allocated between wage and nonwage payments, as follows: one-third
26 (33.3%) wages; two-thirds (66.6%) penalties and interest. Davis Decl. ¶ 28, *see* Agreement, ¶ 60.
27 Employee taxes on wages will be deducted from the wage portion of each Class Member’s
28 settlement amount. Employer side payroll taxes shall be paid separately from and in addition to

1 the Class Settlement Amount. Agreement, ¶ 53(e), 60. Davis Decl. ¶ 28. The proposed Agreement
2 is a non-reversionary, non-claims made settlement. All money from the Net Settlement Amount
3 will be distributed to the class members. No money from the Settlement will revert to the
4 Defendants. Agreement, ¶ 79. Any residue from Settlement Checks remaining uncashed after 90
5 days will be sent to the Controller of the State of California to be held pursuant to the Unclaimed
6 Property Law, California Civil Code Section 1500, et seq. in the name of the Settlement Class
7 Member to whom the uncashed check was addressed, for the benefit of those Class Members who
8 did not cash their checks until such time as they claim their property. Agreement, ¶ 79.

9 **D. Release of Wage and Hour Claims**

10 In exchange for participating in the settlement, Settlement Class Members will release
11 their wage and hour claims against Defendants and all claims under the FLSA; however, the
12 release for the Class Members is narrowly tailored to only release claims based upon the facts
13 alleged in the Second Amended Complaint or to claims that reasonably could have been alleged.
14 *See* Agreement, ¶ 80. The Settlement Class Members shall be deemed to have released the
15 provisions, rights, and benefits relating to the Settlement Class Released Claims pursuant to
16 Section 1542 of the California Civil Code.

17 **IV. STANDARD OF REVIEW FOR PRELIMINARY APPROVAL**

18 The settlement of a class action requires court approval. *See Dunk v. Ford Motor Co.*, 48
19 Cal.App.4th 1794 (1996). California courts look to federal authority for guidance with class action
20 settlements. *See id.* at 1801, n.7 (citations omitted). “In general, questions whether a settlement
21 was fair and reasonable, whether certification of the class was proper, and whether the attorney
22 fee award was proper are matters addressed to the trial court's broad discretion.” *Wershba v. Apple*
23 *Computer, Inc.*, 91 Cal.App.4th 224, 234-35 (2001). Accordingly, a court’s decision to approve a
24 class action settlement may be reversed only upon a strong showing of “clear abuse of discretion.”
25 *See Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1026 (9th Cir. 1998).

26 The review and approval of a proposed class action settlement generally involves a two-
27 step process. *See* Cal. Rule of Court 3.769(c). First, counsel submit the proposed terms of
28 settlement and the Court makes a preliminary assessment of whether the settlement appears to be

1 sufficiently within the range of a fair settlement to justify providing notice of the proposed
2 settlement to class members. In the second step, the Court must conduct an inquiry into whether
3 the proposed settlement is fair, reasonable and adequate. *See Id.*

4 A presumption of fairness exists where: (1) the settlement is reached through arm's length
5 bargaining; (2) investigation and discovery are sufficient to allow counsel and the court to act
6 intelligently; (3) counsel is experienced in similar litigation; and (4) the percentage of objectors is
7 small. *See In re Microsoft I-V Cases*, 135 Cal.App.4th 706, 723 (2006).

8 **V. THE SETTLEMENT IS PRESUMED FAIR**

9 **A. Arm's-Length Bargaining**

10 California courts recognize that “a presumption of fairness exists where . . . [a] settlement
11 is reached through arm's-length bargaining.” *Wershba*, 91 Cal. App. 4th at 245; *see also Clark v.*
12 *Am. Residential Servs. LLC*, 175 Cal. App. 4th 785, 799 (2009). Here, the parties engaged in
13 arms-length, non-collusive negotiations at all times. The parties attended mediation with a neutral
14 and respected mediator after sufficient informal discovery and extensive review and analysis of
15 the claims at issue. The settlement negotiations were arm's length and, although conducted in a
16 professional manner, were adversarial. The parties exchanged detailed information and
17 thoroughly reviewed and considered the arguments made by the other side. With the help of the
18 mediator, who heard and considered the arguments made by both sides, the parties were close to
19 a resolution at the end of the mediation and continued their negotiations with the mediator's
20 assistance to resolve this matter. Plaintiff was willing and prepared to vigorously litigate this
21 dispute including through class certification and trial if unable to reach a favorable settlement.
22 *See Davis Decl.*, ¶ 33. Defendants at all times maintained that they had complied with California
23 wage and hour laws. *Id.*

24 **B. Sufficient Investigation by Experienced Class Counsel**

25 Courts will often assess the status of discovery in determining whether a class action
26 settlement agreement is fair, reasonable, and adequate. *Dunk*, 48 Cal. App. 4th at 1801. There
27 must be sufficient investigation and discovery to allow experienced Class Counsel to act
28 intelligently in negotiating the settlement. *In re Microsoft I-V Cases*, 135 Cal.App.4th 706, 723

1 (2006). As discussed above, the parties engaged in discovery wherein Defendants provided
2 thousands of pages of documents including time sheets and pay stubs. Further, Defendants
3 produced time and payroll data for approximately 20% of the putative class members, as well as
4 copies of paystubs, Defendants’ written policies, and other relevant documents. This allowed
5 Plaintiff to conduct a class-wide assessment and analysis of potential damages. The Parties
6 extensively analyzed these issues and exchanged their analyses so that each side could review and
7 compare the other sides perceived strengths and weakness of their position. Davis Decl., ¶¶16-21;
8 35.

9 The settlement negotiations were conducted by highly capable and experienced counsel.
10 Settlement Class Counsel are respected members of the bar with strong records of vigorous and
11 effective advocacy, and are experienced in complex wage and hour class action litigation. Davis
12 Decl., ¶¶ 2-10. Class Counsel’s experience handling this type of case, and the extensive informal
13 investigation conducted before entering settlement have allowed Plaintiff to enter this agreement
14 aware of the strengths and weaknesses associated with the case and permitted Plaintiff’s counsel
15 to negotiate an informed, reasonable, and intelligent Agreement.

16 **C. The Settlement is Fair and Reasonable in Light of the Parties’ Respective**
17 **Legal Positions and Recovery Risks**

18 A settlement is not judged against what might have been recovered had a plaintiff
19 prevailed at trial, nor does the settlement have to obtain 100% of the damages sought to be fair
20 and reasonable. *Wershba*, 91 Cal. App. 4th at 246, 250. In evaluating the reasonableness of a
21 settlement, a trial court must consider “the strength of Plaintiff’s case, the risk, expense,
22 complexity and likely duration of further litigation, the risk of maintaining class action status
23 through trial, the amount offered in settlement, the extent of discovery completed and the stage of
24 the proceedings, the experience and views of counsel, the presence of a governmental participant,
25 and the reaction of the class members to the proposed settlement.” *Id.*

26 Here, the reasonableness of the Settlement is underscored by the fact that Defendants have
27 legal and factual grounds for defending the action. The Settlement provides a substantial recovery
28 for the class, that may not have otherwise been obtainable. Based on these considerations, the

1 proposed Settlement is a fair, adequate, and reasonable result, and preferable over what would
2 otherwise have been a long and complex proceedings filled with substantial risk, including the
3 risk that the class members would obtain nothing at all. *See* Davis Decl., ¶¶ 30-44.

4 **1. Class Counsel’s Analysis of the Maximum Available Liability and Damages**

5 Plaintiff reviewed and analyzed thousands of pages of time and payroll data from a random
6 20% sampling of the class. Based on the discovery provided, Class Counsel estimated with respect
7 to the principal claims, with all of these claims adjudicated in favor of the Class, that liability is
8 approximately \$3,816,657.67. This estimate is based off an estimated maximum liability of
9 \$1,101,985.20 plus interest for meal period damages, \$1,197,810.00 plus interest for rest period
10 damages, and \$718,686.00 plus interest based on Defendants’ failure to pay overtime and failure
11 to pay all time worked. Waiting time penalties amounted to \$488,160.00 based on approximately
12 32 former employees employed during the class period, and penalties for inaccurate wage
13 statements totaled approximately \$144,000.00 for all employees employed within the class period.

14 Davis Decl., ¶ 35.

15 **2. Class Counsel’s Risk-Based Analysis and Risk-Based Adjustments**

16 Despite this potentially large liability, substantial barriers to a class recovery existed. First,
17 Defendants contended that Plaintiff’s claims are not suitable for class certification because
18 individual issues and affirmative defenses would predominate should this case go to trial. *See*
19 *Brinker v. Rest. Corp. v. Super. Ct.*, 53 Cal.4th 1051 (2012); *Duran v. U.S. Bank Nat. Assn.*, 59
20 Cal.4th 1, 35-36 (2014); *Wal-Mart Stores, Inc. v. Dukes*, 131 S.Ct. 2541, 2551 (2011). While
21 Plaintiff disagrees with Defendants’ predictions, Plaintiff recognizes that such procedures raise
22 difficult management and proof issues and, accordingly, there is a significant risk that the Court
23 may deny class certification. Davis Decl., ¶ 37.

24 For instance, a large portion of Defendants’ overall liability lies in Plaintiff’s meal period
25 claims. These claims have been increasingly difficult to certify in recent years and Defendants’
26 contended its policies were lawful. *See Brinker*, 53 Cal.4th at 1034-35. These claims raise
27 potential issues regarding the necessity of individualized proof with respect to Plaintiff’s meal
28 period claims. Given that records of actual meals taken exist, and Defendants argued that they

1 had a compliant policy and practice, Class Counsel had to consider the risk that the Court would
2 find validity in the individualized proof defense to certification of Plaintiff’s meal period claim.
3 Davis Decl., ¶ 38.

4 Similarly, Plaintiff faced difficulties proving the alleged rest period violations as
5 Defendants were not required to record these breaks. Given the lack of records, Plaintiff faced
6 substantial difficulties obtaining class certification and even if able to demonstrate a uniform
7 policy or practice likely would have had difficulty proving substantial damages with requisite
8 certainty. Davis Decl., ¶ 39.

9 Plaintiff also faced challenges certifying and proving liability for his minimum wage and
10 overtime claims. These claims were largely based on alleged uncompensated off-the-clock work
11 performed by the class members both before and after their shift, as well as potential
12 uncompensated time that was allegedly unpaid due to Defendants’ meal period practices.
13 However, the allegation that this time often went unrecorded and the individualized nature of the
14 damages presented substantial concerns regarding the manageability of the case and the risk the
15 Court could find these issues prevented certification. Davis Decl., ¶ 40.

16 There are also risks associated with Plaintiff’s waiting time penalties and wage statement
17 claims. First, these claims were derivative of Plaintiff’s previous claims and if Plaintiff was unable
18 to prevail on his underlying claims, these claims would also be affected. However, even if Plaintiff
19 prevailed on his underlying claims, he would still be required to demonstrate that Defendants’
20 violations of Labor Code §§ 203 were willful violations, a difficult prospect. *See, e.g., Choate v.*
21 *Celite Corp.*, 215 Cal App. 4th 1460, 1468 (2013) (holding that “an employer’s reasonable, good
22 faith belief that wages are not owed may negate a finding of willfulness.”). Wage statement
23 claims have also seen high and low water marks in their treatment at the appellate level because
24 such claims have an element of discretion attached to them rather than a pure calculation of
25 damages after liability is proven. *Cf., Jaimez v. DAIHOS USA, Inc.*, 181 Cal.App.4th 1286 (2010)
26 *with Price v. Starbucks Corp.*, 192 Cal.App.4th 1136 (2011). These derivative claims were
27 extremely risky and these penalties accounted for more than one million dollars (or one-third) of
28 Plaintiff’s estimated potential damages. Davis Decl., ¶ 41.

1 Finally, Plaintiff also considered Defendants’ potential PAGA Exposure. The Parties
2 agreed during settlement negotiations to allocate \$80,000 of the Settlement towards Plaintiff’s
3 PAGA claims. Eighty thousand dollars is approximately 10.2% of the Class Settlement Amount.
4 This percentage of the settlement is well within the range of PAGA settlements regularly approved
5 in both state and federal court when a lawsuit includes both a class and PAGA action. A settlement
6 that allocates approximately 1% of the total settlement value to resolve PAGA claims is typical
7 of wage-and-hour settlements and PAGA amounts as little as .27% of the Class Settlement amount
8 have been approved. *See Davis Decl.*, ¶ 42.

9 Furthermore, PAGA claims are subject to the same defenses described above as well as
10 defenses unique to PAGA. Plaintiff had to consider that PAGA penalties may not be recovered
11 where they are duplicative of the underlying claims and accordingly cannot be stacked based on
12 the same conduct. *See Thurman v. Bayshore Transit Mgmt., Inc.*, 203 Cal.App.4th 1112, 1131
13 (2012) (imposition of both statutory and civil penalties for same conduct is impermissible double
14 recovery) *See also Smith v. Lux Retail N. Amer., Inc.*, 2013 WL 2932243 at *3 (N.D. Cal. June
15 13, 2013) (declining to stack penalties based on the same conduct). There is also a risk that these
16 penalties would be drastically reduced as unjust, arbitrary, or oppressive and confiscatory even if
17 obtained. *Aguirre v. Genesis Logistics*, 2013 WL 10936035, at *3 (C.D.Cal., 2013) (nothing that
18 the “duplicative effect” of penalties is a factor in favor of “reducing ...the PAGA penalty”)”
19 *Fleming v. Covidien, Inc.*, 2011 WL 756304718, at *4 (C.D.Cal. Aug. 12, 2011) (reducing PAGA
20 penalties by 80%). *See Davis Decl.*, ¶ 42.

21 Therefore, taking into account the risk of not obtaining class certification for the “off-the-
22 clock”, meal period, and rest period claims, reduced Defendants’ estimated liability by 75 percent.
23 Finally, Plaintiff accounted for a further reduction of 25 percent for manageability at trial. Given
24 these attendant risks, the payment of \$780,000.00, which will be distributed amongst Defendants’
25 68 current and former employees, is an excellent result that provides an immediate and certain
26 recovery to the class with significant savings in costs. *Davis Decl.*, ¶ 30-32, 36-44. In light of the
27 parties’ respective legal positions and the risks to potential recovery, Plaintiff maintains that the
28 settlement is fair, adequate, and reasonable.

1 **VI. CERTIFICATION FOR SETTLEMENT PURPOSES IS WARRANTED**

2 Code of Civil Procedure Section 382 provides that three basic requirements must be met
3 in order to sustain any class action: (1) there must be an ascertainable class; (2) there must be a
4 well-defined community of interest in the question of law or fact affecting the parties to be
5 represented; and (3) certification will provide substantial benefits to litigants and the courts, i.e.,
6 proceeding as a class is superior to other methods. *See Dunk*, 48 Cal.App.4th at 1806. Any doubts
7 as to the appropriateness of class treatment must be resolved in favor of certification, subject to
8 later modification. *See Richmond v. Dart Indus. Inc.*, 29 Cal.3d 462, 473-475 (1981). Plaintiff
9 contends that this action, which is primarily based upon Defendants’ wage and hour policies and
10 practices, satisfies the class certification requirements under California *Code of Civil Procedure*
11 section 382. Defendants deny Plaintiff’s allegations but have stipulated to certification of the
12 proposed class solely for settlement purposes and therefore do not oppose this motion.

13 **A. An Ascertainable Class Exists Which Is So Numerous That Joinder Of All**
14 **Members Is Impracticable**

15 Whether an ascertainable class exists turns on three factors: (1) the class definition, (2) the
16 size of the class, and (3) the means of identifying the class members. *See Miller v. Woods*, 148
17 Cal.App.3d 862, 873 (1983). In this case, all three considerations strongly favor class certification.
18 Here, the Settlement Class is defined as “all GEII and/or ABB non-exempt, non-union, hourly
19 California employees who worked in GE Power (including business divisions formerly known as
20 Energy Connections and Energy Management) at any time between September 11, 2014, and the
21 Date of Preliminary Approval of this Settlement.” Davis Decl., ¶ 23.

22 Next, there is no magic number that satisfies the numerosity requirement. Courts in
23 California have certified classes even under fifty. *See e.g., Rose v. City of Haywood*, 126
24 Cal.App.3d 926, 934 (1981) (holding forty-two class members sufficient to satisfy numerosity.)
25 Here, the estimated 68-person class size favors class certification. It is impracticable to bring all
26 these persons before the court, or to resolve their claims individually. *See Davis Decl.*, ¶ 23.

27 Finally, the question whether class members are easily identifiable turns on whether a
28 plaintiff can establish “the existence of an ascertainable class,” not whether the plaintiff can

1 “identify the individual members of such class as a prerequisite to the class suit.” *Daar v. Yellow*
2 *Cab Co.*, 67 Cal.2d 695, 706 (1967). The existence of an ascertainable class in this case can be
3 established through Defendants’ payroll records, and the class definition is sufficiently specific
4 to enable the parties, potential class members and the Court to determine the parameters of the
5 class. *See Clothesrigger, Inc. v. GTE Corp.*, 191 Cal.App.3d 605, 617 (1987) (proposed class
6 defined as all persons nationwide subscribing to telephone service since January 1, 1981, who
7 were charged for long distance calls deemed “plainly” ascertainable).

8 **B. The Class Shares a Well-Defined Community of Interest**

9 The community of interest requirement embodies three factors: (1) predominant questions
10 of law and fact; (2) class representatives with claims or defenses typical of the class; and (3) class
11 representatives who can adequately represent the class. *Dunk*, 48 Cal.App.4th at 1806. Plaintiff
12 easily satisfies all three requirements.

13 The commonality criterion requires the existence of common question of law or fact and
14 is generally established with the issues of predominance and typicality. *See Daar*, 67 Cal.2d at
15 706. What is required is that a common question of fact or law exist which predominates over
16 issues unique to individual Plaintiff. The existence of individual issues or facts—generally present
17 in any case arising from employment—is not a bar to class certification as long as they do not
18 render class litigation unmanageable or predominate over the common issues. *See B.W.I. Custom*
19 *Kitchen v. Owens-Illinois, Inc.*, 191 Cal.App.3d 1341, 1354 (1987).

20 In this action, Plaintiff’s claims present sufficient common issues of law and fact that
21 predominate over individual issues and warrant class certification. Plaintiff alleges that
22 Defendants denied fully compliant meal and rest periods to its non-exempt, hourly employees,
23 required non-exempt hourly employees to perform work off-the-clock, and failed to properly pay
24 Plaintiff and other employees all overtime owed. Plaintiff alleges that these policies and practices
25 mean that Defendants failed to pay minimum wages, failed to pay overtime, failed to pay meal
26 and rest period premium payments, and other related claims. Plaintiff alleges that Defendants’
27 policies and practices were uniform as to all members of the Settlement Class. Thus, class
28 treatment is appropriate.

1 To satisfy the typicality requirement, California law does not require that Plaintiff has
2 claims identical to the other class members. Rather, the test of typicality for a class representative
3 is whether other members have the same or similar injury, whether the action is based on conduct
4 which is not unique to the named plaintiff, and whether other class members have been injured
5 by the same course of conduct. *See Seastrom v. Neways, Inc.*, 149 Cal.App. 4th 1496, 1502 (2007).
6 The typicality requirement for a class representative refers to the nature of the claim or defense
7 of the representative, and not to the specific facts from which it arose or the relief sought. *See id.*
8 Here, Plaintiff alleges that his claims are similar to that of the other class members. All of
9 Plaintiff's claims arise out of the same alleged facts and course of conduct giving rise to the claims
10 of the other class members. Finally, Plaintiff's claims are typical of the other class members
11 because they seek the exact same relief for the alleged violations. Because Plaintiff's claims are
12 based upon the same alleged conduct and business practices as those of the potential class
13 members, the typicality requirement has been satisfied.

14 Finally, the question of adequacy of representation "depends on whether the Plaintiff's
15 attorney qualifies to conduct the proposed litigation in the Plaintiff's interest or not antagonistic
16 to the interests of the class." *McGee v. Bank of Amer.*, 60 Cal.App.3d 442, 450 (1976). Here, these
17 considerations are satisfied. Counsel for Plaintiff include well-regarded and accomplished
18 lawyers who are qualified and experienced in employment-related, class-action litigation. Davis
19 Decl., ¶¶ 2-10. Plaintiff will vigorously, adequately, and fairly represent the interests of the class.
20 Because Plaintiff's claims are typical of other class members and are not based on unique
21 circumstances, there is no antagonism between the interests of the Plaintiff and the class.

22 **C. A Class Action is Superior to a Multiplicity of Litigation**

23 Under the circumstances, proceeding as a class action is a superior means of resolving this
24 dispute, as the class members and the court will derive substantial benefits from the settlement.
25 Class certification would serve as the only means to deter and redress the alleged violations. *See*
26 *Linder v. Thrifty Oil Co.*, 23 Cal.4th 429, 434 (2000) (relevant considerations include the
27 probability that each class member will come forward to prove his or her separate claim and
28 whether the class approach would actually serve to deter and redress the alleged wrongdoing).

1 Furthermore, individual actions arising out of the same operative facts would unduly burden the
2 courts and could result in inconsistent results. These consequences will be avoided through class
3 certification. Therefore, class action proceedings are superior to individual litigation.

4 **VII. THE REQUESTED SERVICE PAYMENT IS REASONABLE**

5 Plaintiffs in class action lawsuits are eligible for reasonable incentive payments as
6 compensation “for the expense or risk they have incurred in conferring a benefit on other members
7 of the class.” *Munoz v. BCI Coca-Cola Bottling Co.*, 186 Cal.App.4th 399, 412 (2010). Plaintiff
8 initiated this litigation and invested substantial time and effort into this lawsuit. Plaintiff requests
9 an enhancement award of \$15,000, which has been agreed to by the Parties. *See* Agreement, ¶
10 53(e)(ii). In light of the average amount expected to be paid for each class member of \$5,573.53,
11 the requested enhancement payment is well within the scope of a reasonable amount. *Id.* The
12 Motion for Final Approval will elaborate on the foregoing and Notice of Plaintiff’s requested
13 award is provided in the notice to the class.

14 **VIII. REQUESTED ATTORNEYS’ FEE AND COSTS**

15 Plaintiff’s counsel requests attorneys’ fees of \$273,000, which is 35% of the common fund,
16 and costs of approximately \$15,000. The requested fees and costs are disclosed to the Class
17 Members in the proposed Notice. Davis Decl., ¶ 45. The custom and practice in class actions is to
18 award approximately one-third of a fund as a fee award. *See Chavez v. Netflix, Inc.*, 162
19 Cal.App.4th 43, 66, n.11 (2008). The inclusion of the maximum requested attorneys’ fees within
20 the Notice satisfies due process concerns. *Laffitte v. Robert Half Int’l Inc.*, 231 Cal.App.4th 860
21 (2014). Defendants do not object to an award of attorneys’ fees in this amount. Agreement, ¶
22 53(e)(i). In the Final Approval moving papers Plaintiff’s Counsel will present sufficient evidence
23 to compare the requested fees with their lodestar. Plaintiff’s Counsel has substantial experience
24 and in complex wage and hour measures and here has obtained an excellent result for the class
25 where there was a serious risk the class could have obtained nothing. This result was by no means
26 guaranteed and was obtained only through class counsel’s substantial experience and expertise.

1 **VI. THE PROPOSED NOTICE PLAN**

2 **A. The Proposed Notice Plan Satisfies Due Process**

3 Notice requirements are set forth in the California Rules of Court. *See* Cal. R. Ct., Rule
4 3.766 (e) and (f). California law vests Courts with broad discretion in fashioning an appropriate
5 notice program. *Cartt v. Super. Ct.*, 50 Cal.App.3d 960, 973-74 (1975). In this matter, the
6 Settlement Class Members will receive direct mailed notice. As the Court of Appeal has explained,
7 “[t]he notice given should have a reasonable chance of reaching a substantial percentage of the
8 Class Members” *Id.* at 974. In this case, notice of the proposed settlement will be provided
9 by direct mailing, and is believed to be the best practicable form of notice. Davis Decl., ¶¶46-49.

10 **B. The Notice is Accurate and Informative**

11 In order to protect the rights of absent class members, the court must provide the best notice
12 practicable of a potential class action settlement. *See Phillips Petroleum Co. v. Shutts*, 472 U.S.
13 797, 811-12 (1985); *Eisen v. Carlisle & Jacquelin*, 417 U.S. 156, 174-75 (1974). The primary
14 purpose of procedural due process is to provide affected parties with the right to be meaningful
15 time and in a meaningful manner. It does not guarantee any particular procedure but rather requires
16 only notice reasonably calculated to apprise interested parties of the pendency of the action
17 affecting their interests and an opportunity to present their objections. *Ryan v. Cal. Interscholastic*
18 *Fed'n - San Diego Section*, 94 Cal.App.4th 1048, 1072 (2001).

19 The proposed Notice of Class Action Settlement, in the form attached as Exhibit A to the
20 Agreement, should be approved for dissemination to the Settlement Class Members. The Notice
21 complies with the standards of fairness, completeness, and neutrality required of a combined
22 settlement-certification class notice. Fed. R. Civ. P. 23(c)(2), (e); 3 Newberg §§ 8:21, 8:39 (4th ed.
23 2002); Manual § 21.312. The Notice will include information regarding the nature of the lawsuit,
24 a summary of the terms of the Settlement, the class definition, information on how to submit a
25 claim, object and opt-out, and the date of the Final Approval Hearing. The Notice will also list
26 each Class Member’s total workweeks and the approximate amount to be paid to the Class
27 Member. The Notice will indicate that the Court has determined only that there is sufficient
28 evidence to suggest that the proposed settlement might be fair, adequate and reasonable, and a

1 final determination of such issues will be made at the final hearing. *See* Agreement Ex. A.

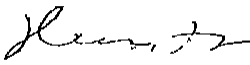
2 **VIII. CONCLUSION**

3 For all of the foregoing reasons, Plaintiff respectfully requests that this Court grant
4 Plaintiff's Motion for Preliminary Approval of Class Action Settlement, certify the settlement
5 class, order the mailing of the proposed Notice attached as Exhibit A to the Agreement, and set a
6 hearing date for the final approval of this Agreement.

7
8 DATED: April 22, 2020

Respectfully Submitted,

9 **PROTECTION LAW GROUP, LLP**

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11 By: 

12 Heather Davis, Esq.
13 Attorneys for Plaintiff CALVIN HANSEN
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Reschedule a Reservation

Reservation

Reservation ID:
650391841439

Reservation Type:
Motion re: (PAGA/Class Approval of Settlement)

Case Number:
BC713269

Case Title:
CALVIN HANSEN VS GENERAL ELECTRIC INTERNATIONAL INC ET AL

Filing Party:
Calvin Hansen (Plaintiff)

Location:
Stanley Mosk Courthouse - Department 96

Date/Time:
February 26th 2020, 9:15AM

Status:
RESERVED

Number of Motions:
1

Motions to Reschedule

Motion re: (PAGA/Class Approval of Settlement)

Reschedule To:

Date: 05/06/2020 9:15 AM

Location: Stanley Mosk Courthouse - Department 96

Fees

Description	Fee	Qty	Amount
Reschedule Fee	20.00	1	20.00
Credit Card Percentage Fee (2.75%)	0.55	1	0.55

Description	Fee	Qty	Amount
TOTAL			\$20.55

Payment

Amount:
\$20.55

Type:
Visa

Account Number:
XXXX1706

Authorization:
06083G

 [Print Receipt](#)

[+ Reserve Another Hearing](#)