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and on behalf of all others similarly situated

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

WILLIAM HALL, individually and on behalf
of all others similarly situated,

Plaintiff,

vs.

CULPEPPER & ASSOCIATES SECURITY
SERVICES, INC. a Georgia corporation;
DOES 1 through 25,

Defendants.

Case No.: 20STCV15317

*Assigned to Hon. Daniel J. Buckley
Dept. SSC-1*

**PLAINTIFF'S MOTION FOR
PRELIMINARY APPROVAL OF
CLASS ACTION SETTLEMENT**

Date: March 26, 2021

Time: 10:30 a.m.

Dept.: 1

**[Filed concurrently with Declaration of
Aaron Gundzik, Declaration of ILYM,
Inc. Settlement Administrators and
[Proposed] Order]**

Complaint Filed: April 21, 2020

1 **TO ALL PARTIES AND TO THEIR ATTORNEYS OF RECORD:**

2 **PLEASE TAKE NOTICE** that on March 26, 2021, at 10:30 a.m., in Department 1
3 of the above-entitled Court, located at 312 N Spring St, Los Angeles, CA 90012, Plaintiff
4 William Hall will, and by this Notice of Motion and Motion, hereby does, move for an
5 Order as follows:

6 1. Granting preliminary approval of a class action settlement pursuant to Rules
7 of Court 3.766 and 3.769;

8 2. Provisionally certifying the proposed class for settlement purposes only as an
9 opt-out class action under Section 382 of the Code of Civil Procedure, with the class defined
10 as all non-exempt employees of Defendant who worked as security officers in California
11 during the applicable Class Period (defined as April 21, 2016 through December 7, 2020);

12 3. Appointing Plaintiff William Hall as the class representative for the Class;

13 4. Appointing Aaron C. Gundzik, Rebecca G. Gundzik and Daniel Holzman as
14 Class Counsel for the Class;

15 5. Approving ILYM Group, Inc. (“ILYM”) as the third-party settlement claims
16 administrator;

17 6. Approving the form of the Notice of Proposed Class Action Settlement and
18 Hearing Date for Court Approval to be sent to the Class and authorizing its dissemination;

19 7. Scheduling a subsequent hearing for final approval of the settlement
20 including approval of a service and release award to the class representative, for costs of
21 settlement administration and for attorney fees, costs and expenses to Class Counsel, a
22 payment to the California Labor Workforce Development Agency (“LWDA”) for payment
23 of Private Attorneys General Act (“PAGA”) penalties and settlement of the PAGA claim;
24 and

25 8. Granting such other and further relief as the Court may deem just and proper.

26 Plaintiff’s motion is based on this Notice of Motion and Motion, the concurrently-
27 filed Memorandum of Points and Authorities, the [Proposed] Preliminary Approval Order,
28 the Declaration of the proposed Class Counsel, Aaron C. Gundzik, the Declaration of

1 Stephanie Molina of ILYM Group, Inc., the pleadings and other papers filed in this action,
2 and such further argument or evidence as may be considered at the hearing on the motion.

3 As this Motion will be unopposed, Plaintiff respectfully requests relief from the page
4 limit requirement set by California Rules of Court, Rule 3.1113(d).

5 DATED: January 28, 2021

GUNDZIK GUNDZIK HEEGER LLP

6
7 By: 

Rebecca G. Gundzik
Attorneys for Plaintiff William Hall,
individually and on behalf of all others
similarly situated
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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 This is a wage and hour class action filed by Plaintiff William Hall against
4 Defendant Culpepper & Associates Security Services, Inc. (“Defendant” or “CASS”) on
5 behalf of approximately 67 non-exempt security guards who worked for Defendant in
6 California at any time from April 21, 2016 through December 7, 2020 (the “Class”).
7 Pursuant to the proposed settlement, Class Members will receive an average settlement
8 payment of more than \$2,600.

9 The complaint was filed on April 21, 2020 and the current pleading alleges causes of
10 action against Defendant for: (1) failure to pay overtime; (2) inaccurate wage statements, (3)
11 failure to provide meal and rest breaks; (4) violation of the Business & Professions Code
12 Section 17200; (5) recovery of civil penalties under the California Labor Code Private
13 Attorneys’ General Act (“PAGA”), California Labor Code sections 2698-2699.5; (6)
14 violation of the Fair Labor Standards Act (FLSA); and (7) violation of Federal, State and
15 local sick pay requirements.

16 Defendant denies that it violated California law and denies that it owes Plaintiff and
17 the other employees on whose behalf the lawsuit was filed any additional wages, penalties,
18 or other relief.

19 Plaintiff and Defendant have reached a proposed class action and PAGA settlement
20 whereby Defendant will pay the three hundred twenty thousand dollars (\$320,000.00). As
21 explained below, although Defendant denies that it has any liability whatsoever, this gross
22 settlement value is within the range of Defendant’s potential liability, as estimated by
23 Plaintiff’s Counsel. The settlement is advantageous to Plaintiff and the Class in that it
24 provides them prompt compensation and eliminates the uncertainty and risk of continued
25 litigation against Defendant. The proposed settlement is memorialized in the “Stipulation of
26 Class Action Settlement” (hereafter referred to as the “Settlement Agreement”), a true and
27 correct copy of which is attached as Ex. 1 to the Declaration of Aaron C. Gundzik
28 (“Gundzik Decl.”), ¶ 38.

1 Under the terms of the Settlement Agreement, the proposed Class consists of
2 approximately 69 non-exempt employees who worked as security officers in California for
3 Defendant at any time from April 21, 2016 through December 7, 2020 (the “Settlement
4 Class Period”). Gundzik Decl., ¶ 38, Ex. 1, ¶ II.C, II.I. Pursuant to the terms of the proposed
5 settlement, Defendant will pay a Gross Settlement Amount of \$320,000, plus the employer’s
6 share of any payroll taxes. After proposed deductions, as approved by the Court, the Net
7 Settlement Amount of approximately \$175,319.08 will be available to distribute to
8 settlement Class Members. Gundzik Decl., ¶ 45.

9 Given the comparative strengths and weaknesses of Plaintiff’s claims and
10 Defendant’s defenses, as well as the inherent uncertainties of litigation, this settlement is
11 well within the scope of what is fair, reasonable and adequate for the Class and should be
12 approved by the Court. Accordingly, Plaintiff, on behalf of himself and the Class, now seeks
13 an order:

- 14 • Granting preliminary approval of the settlement as being fair, reasonable and
15 adequate;
- 16 • Provisionally certifying the Class on an opt-out basis and for settlement purposes
17 only, and appointing the Plaintiff as the Class Representative and Aaron C.
18 Gundzik, Rebecca G. Gundzik and Daniel Holzman as Class Counsel;
- 19 • Entering the proposed Preliminary Approval Order, which is filed concurrently
20 herewith, and directing that the Notice of Settlement be mailed to the Settlement
21 Class Members;
- 22 • Appointing ILYM Group, Inc. (“ILYM”) as the Settlement Administrator;
- 23 • Finding that the proposed form and method of the Notice of Proposed Class
24 Action Settlement and Hearing Date for Court Approval (“Notice of Settlement”) constitutes the best notice practicable under the circumstances and complies with
25 the requirements of the Code of Civil Procedure Section 382 and due process;
26 and
27

- Scheduling a final approval hearing approximately 100 days after the preliminary approval hearing to decide, among other things, (i) whether the settlement should be granted final approval; (ii) whether the proposed Order and Final Judgment should be entered; (iii) whether the proposed PAGA settlement, including payment to the LWDA on Plaintiff's PAGA claim should be approved; (iv) the amount of Class Counsel's Attorney's fees and Class Counsel's Costs; (v) the amount of the Class Representative Service and Release Awards; and (vi) approving the proposed fee of the Settlement Administrator.

II. RELEVANT AND KEY FACTS

A. Relevant Facts Showing Settlement is Fair, Adequate and Reasonable

1. Investigation and Discovery

Plaintiff's counsel have been directly involved in all aspects of this case on behalf of Plaintiff. They have extensively investigated Plaintiff's claims, reviewed and analyzed numerous time and pay records for a sample of approximately 15% of the putative class members, reviewed Defendant's handbooks and other policies, conferred with Plaintiff extensively about his employment experiences with Defendant, interviewed other class members and investigated other information about Defendant and its practices. Declaration of Aaron Gundzik ("Gundzik Decl."), ¶¶ 6-9. In connection with the mediation, Plaintiff also received information on the number of class members, total class member work weeks, shift schedules, number of separated employees, number of wage statements issued and average hourly pay rate. Gundzik Decl., ¶ 7. Based on this information, as well as information provided to by Plaintiff, Plaintiff's counsel created an extensive damages model. Gundzik Decl., ¶ 8.

2. Summary of Settlement Negotiations

On October 7, 2020, Plaintiff's counsel, co-counsel Daniel Holzman, Plaintiff William Hall, Defendant and Defendant's counsel, attended a mediation session with well-respected mediator, Lisa Klerman, via Zoom. Plaintiff participated in the mediation via Zoom for the entire day. The case settled after a full day of negotiation pursuant to a

mediator's proposal. The settlement was negotiated at arms' length and was in no sense collusive. Gundzik Decl., ¶ 10.

3. Summary of Class Counsel's Experience

Plaintiff's counsel, Aaron Gundzik, graduated from the University of Southern California Law School in 1987 and has been a member of the California bar since 1987. Gundzik Decl., ¶ 11. He has been involved in the litigation of complex cases, including securities, consumer and wage and hour class actions, and is currently plaintiff's counsel in approximately twenty class and/or representative actions in various stages of litigation. He has served as class counsel in numerous wage and hour class actions that have already settled and successfully represented a class of service technicians at trial and through appeal in *Gonzalez v. Downtown LA Motors, LP*, 215 Cal. App. 4th 36 (2013). Gundzik Decl., ¶¶ 11-14. Many of these cases involve wage and hour issues similar to the legal and factual issues involved in this case. Gundzik Decl., ¶ 14. His partner, Rebecca Gundzik, graduated from the University of Southern California Law School in 1988, has been a member of the California bar since 1988, and was co-counsel at the trial of *Gonzalez v. Downtown LA Motors, LP*, 215 Cal. App. 4th 36 (2013). Gundzik Decl., ¶ 13.

4. Summary of Legal and Factual Basis for Plaintiff's Claims

Defendant CASS employs security guards at approximately 9 locations in California. During the putative class period, there were approximately 69 putative class members. Gundzik Decl., ¶ 16. Plaintiff works as a security officer at two CASS locations in California and has worked there since CASS took over the security contract for those locations in December of 2019. Gundzik Decl., ¶ 17.

Plaintiff contended that during the putative class period, CASS's security guards were required to carry radios or mobile phones during their shifts. Gundzik Decl., ¶ 17. CASS's Standard Operating Procedures also specified that guards are required to "respond to all reports of incidents," "respond to all emergency calls," and remain "on duty during business hours." *Id.* Plaintiff contended that the language in CASS's Security Officer Manual reinforces the requirement that guards remain on call at all times while on their

1 shifts. *Id.* In addition to the fact that breaks were on duty, Plaintiff could find no evidence
2 that any employee had taken a second meal break when they worked more than ten hours in
3 a shift. *Id.*

4 Plaintiff contended that CASS's written policies violated California's meal and
5 rest break requirements in that they required employees to take on-call, therefore on duty,
6 rest breaks. Gundzik Decl., ¶ 18. Plaintiff further contended that that employees could not
7 leave an assigned site for any reason unless directed by authority and that employees could
8 not leave their post until another officer was present because the property/site had to be
9 covered at all times. *Id.* Plaintiff also contended that when CASS acquired its contract with
10 the VA, CASS knew that the VA required guards to be on call at all times, even when on
11 breaks. *Id.*

12 Plaintiff contended that until June of 2020, CASS did not have any written policy
13 whereby employees were informed of their rights to meal and rest breaks or the
14 circumstances under which such breaks would be compliant with California law. Gundzik
15 Decl., ¶ 19. At the end of June 2020, CASS created a new meal and rest break policy
16 whereby guards were instructed to turn in their radios/mobile phones to the VA Police when
17 going on a rest break or meal break. *Id.*

18 Pursuant to the Federal Service Contract Act of 1965, private employees who are
19 working under a contract between their employer and the federal government must be paid a
20 specified "fringe benefit" for each hour that they work. 41 U.S.C. § 6703(2). Gundzik Decl.,
21 ¶ 20. This payment is made in lieu of providing health care and retirement benefits to
22 employees. Plaintiff contended that because CASS did not provide health and welfare
23 benefits to class members, it was required under the Service Contract Act to pay them a set
24 amount for each hour. In 2019, the payment in lieu amount was set at \$4.22 per hour. *Id.*
25 Plaintiff contended that CASS did not include this payment in the regular rate paid to class
26 members for the purpose of calculating their overtime rates of pay. *Id.*

27 CASS denied the allegations on the merits and contended that individualized
28 issues would prevent class certification, such as the differences between the government

1 contracts, meal and rest break practices, staffing, and a myriad of other individualized
2 factors at the various sites.

3 Soon after the action commenced, the parties agreed to mediate this dispute and to
4 an informal exchange of information in lieu of discovery. Gundzik Decl., ¶ 6. Plaintiff's
5 counsel obtained policy documents and time and pay records for approximately 15% of the
6 putative class members. *Id.*

7 **5. Risks, Expenses, Complexity and Duration if Settlement Not**
8 **Approved**

9 After taking into account the sharply disputed factual and legal issues involved in the
10 lawsuit, the risks attending further prosecution, and the substantial benefits to be received
11 pursuant to the compromise and settlement of the action, Plaintiff's counsel concluded that
12 the settlement is in the best interests of the Settlement Class and is fair and reasonable.
13 Gundzik Decl., ¶ 21. They also considered the possibility that the Class would not be
14 certified and factored in the additional delay in recovery for Class members if the settlement
15 were rejected and the case went to trial. *Id.*

16 If the settlement is not approved, Plaintiff would need to move forward with
17 discovery and then move for class certification. Gundzik Decl., ¶ 22. Defendant will oppose
18 certification on the grounds that numerous individualized fact issues allegedly exist. *Id.*
19 Defendant will argue and could succeed in claiming that these individualized issues
20 overwhelm common issues, and/or that the action is not manageable on a class wide basis.
21 *Id.* The result could be that the case would not be certifiable as a class action. *Id.*

22 **6. Risks of Maintaining Class Action Status**

23 Even if Plaintiff proceeded and the Class was certified, significant risks would
24 remain. At trial, Defendant could interpose a successful defense which could either cause the
25 jury to reject Plaintiff's claims or award the Class only a small amount of the unpaid wages
26 and other damages sought. Gundzik Decl., ¶ 23. And, even if the Class ultimately prevailed,
27 Defendant may not at that point have the resources to satisfy a substantial judgment. *Id.* At
28

1 best, Class Members would have to wait years or more before they received any payment
2 from the lawsuit. *Id.*

3 Plaintiff's counsel concluded that the settlement of \$320,000.00 represents a fair and
4 reasonable discount from what Plaintiff's counsel contends is the realistic recovery. Gundzik
5 Decl., ¶ 24. The settlement provides a significant benefit for the Class which would not
6 otherwise have been available unless a settlement was reached. Plaintiff's counsel, who have
7 significant experience litigating these types of claims, are of the opinion that a gross
8 settlement of \$320,000.00 is within the "ballpark" of a fair, reasonable and adequate
9 settlement. *Id.*

10 **7. Information Regarding Strengths, Weaknesses, and Range of**
11 **Value of Each Claim**

12 The First Cause of Action is for failure to pay overtime. Gundzik Decl., ¶ 25. This
13 claim is based on CASS's failure to include the payment in lieu of the fringe benefit due
14 under the Federal Service Contract Act of 1965 in the regular rate of pay used for
15 calculating the rate of pay due for overtime work. *Id.* Based on the documents they
16 reviewed, Plaintiff's counsel estimates that this claim has a limited value of between \$0 and
17 \$4,000. *Id.*

18 The Second Cause of Action is for failure to provide compliant wage statements.
19 Gundzik Decl., ¶ 26. The statute of limitations on such a claim is one year. This claim is
20 based on Plaintiff's allegation that the paychecks issued to class members did not include
21 the correct hourly rates, did not include meal and rest break premiums and did not state all
22 of the hours worked by class members. *Id.* However, Defendant would have argued, perhaps
23 successfully, that these hours did not result in any injury because employees could
24 determine the correct rates from other information included on their wage statements and
25 because of the uncertainty regarding derivative wage statement claims. *Id.* Based upon the
26 number of wage statements issued and the possibility that the Court could find that none of
27 them violated the statute, Plaintiff's counsel concluded that the maximum value of this
28 claim, if the Class prevailed on the claim and was awarded full statutory penalties, is about

1 \$127,600. *Id.* This estimate is based on a one-year limitations period and that damages are
2 \$50 for the first violation per employee and \$100 for each subsequent violation up to a
3 maximum of \$4,000 per employee. *Id.* At the same time, Plaintiff's counsel estimates that
4 this claim has a minimum value of \$0. *Id.*

5 The Third Cause of Action is for failure to provide meal and rest breaks. Gundzik
6 Decl., ¶ 27. This claim was based on Plaintiff's contentions that Defendant should not have
7 been requiring employees to take on-call meal breaks and that it was improper for Defendant
8 to require that rest breaks be taken on-site. *Id.* It was also based on Plaintiff's contention that
9 Defendant did not provide guards with second meal breaks. *Id.* Defendant did not keep
10 records regarding class members' rest breaks, but Plaintiff contended that all rest breaks
11 were non-compliant because guards were required to remain on-site. *Id.* Based upon the
12 records Plaintiff's counsel reviewed, the information they obtained from class members, and
13 the defenses to Class certification, Plaintiff's counsel estimates that the meal break claim has
14 a maximum value of about \$505,000 for non-compliant meal breaks and approximately
15 \$25,000 for missed second meal breaks, using an average hourly rate of \$27.17 (including
16 an hourly fringe benefit rate of \$4.22). *Id.* Because it was unclear to what extent all locations
17 engaged in the same alleged practices and those which Plaintiff contended were non-
18 compliant, and in light of the other issues discussed above, Plaintiff's counsel estimates that
19 the meal break claim has a minimum value of \$0. *Id.* Plaintiff's counsel estimates the
20 maximum value of the rest break claim to be about \$530,000, using an average hourly rate
21 of \$27.17 (including an hourly fringe benefit rate of \$4.22). At the same time, based on the
22 issues discussed above, Plaintiff's counsel estimates that the rest break claim has a minimum
23 value of \$0.

24 The Fourth Cause of Action is for violation of Business & Professions Code section
25 17200, *et. seq.* Gundzik Decl., ¶ 28. The forgoing analysis assumes the longer four-year
26 statute of limitations that is available under the UCL for the meal period violations. This
27 cause of action is derivative of the other claims that have already been analyzed. *Id.*

1 Accordingly, the damages available under this cause of action have already been analyzed or
2 are duplicative of damages discussed above. *Id.*

3 The Fifth Cause of Action is for violations of the Private Attorneys General Act
4 (PAGA). Gundzik Decl., ¶ 29. The PAGA claim is limited in time to one year. *Id.* The
5 strength of the PAGA claim would be impacted by the factors discussed above for the non-
6 PAGA claims. *Id.* Based on recent PAGA decisions, Plaintiff's counsel concluded that even
7 if Plaintiff was successful on this claim through trial, the Court may well have exercised its
8 discretion under PAGA and significantly reduced the penalties. Cal. Labor Code
9 §2699(e)(2). *Id.* In addition, the settlement was primarily directed at recovering wages and
10 unpaid premiums owed to class members and the bulk of the settlement funds were intended
11 to compensate for these wages. *Id.* Based on these factors, Plaintiff's counsel opines that the
12 maximum reasonable value of the PAGA claim is approximately \$430,000 and the
13 minimum value is \$0. *Id.* Plaintiff's counsel therefore concluded that the \$10,000 that the
14 parties allocated to PAGA, \$7,500 of which will be paid to the LWDA, is a reasonable
15 settlement of that claim. *Id.*

16 The Sixth Cause of Action is for violations of the Fair Labor Standards Act (FLSA).
17 Gundzik Decl., ¶ 30. This claim is based upon Plaintiff's contention that Defendant did not
18 pay Class members at the applicable overtime rate for all hours worked. However, the
19 damages incurred for this violation are duplicative of those analyzed with respect to the First
20 Cause of Action. *Id.* Therefore, Plaintiff's counsel did not attribute any additional damages
21 to this claim. *Id.*

22 The Seventh Cause of Action is for violation of Federal, State and local sick pay
23 requirements. Gundzik Decl., ¶ 31. This claim was based on Plaintiff's contention that
24 Defendant did not provide all sick leave required to be provided to Federal contractors. *Id.*
25 However, given the lack of precedent which permits a private cause of action for this
26 violation, Plaintiff's counsel did not attribute any damages to this claim. *Id.*

27 Based upon the forgoing, Plaintiff's counsel determined that this case had a
28 minimum value of \$0 and a maximum estimated value of about \$1,191,000, not including

1 the PAGA penalties. Gundzik Decl., ¶ 32. Based on a Class size of approximately 67, the
2 reasonable estimate of the average amount that Class members could have obtained if
3 Plaintiff prevailed at trial on behalf of the entire Class, if the Class was certified, would be a
4 minimum of \$0 and a maximum of about \$17,776. *Id.* However, the maximum amount is
5 almost never recovered at trial and never in a settlement. *Id.* Settlements, by their nature,
6 must account for the weaknesses in a plaintiff’s case, which are discussed above. Indeed,
7 because Defendant raised a colorable legal or factual defense both on the merits and class
8 certification to each of the claims Plaintiff alleged, it is possible that, after trial, the Class
9 would recover nothing. *Id.*

10 **B. Facts Relevant to Class Certification (Numerosity, Ascertainability and**
11 **Community of Interest)**

12 There are approximately 67 Class Members. Gundzik Decl., ¶ 33. The exact number
13 and identity of Class Members will be provided by Defendant in connection with its duty to
14 provide Class Data to the Settlement Administrator within 10 business days after the Court
15 preliminarily approves the settlement. Gundzik Decl., ¶ 34. And, a community of interest
16 exists, as in the pleading, Plaintiff is claiming the same injuries based upon the same alleged
17 wage and hour policies as are the Class Members. Gundzik Decl., ¶ 35.

18 **C. Facts Relevant to Other Concerns**

19 Defendant has indicated that all of the Class Members can read English. Gundzik
20 Decl., ¶ 36. For that reason, the Notice of Settlement will be printed in English only. *Id.*

21 Gundzik Gundzik Heeger LLP (“GGH”) and Caskey & Holzman. (“CH”) have
22 entered into a written retention agreement with the representative Plaintiff. Gundzik Decl., ¶
23 37, and Ex. 2. GGH and CH have agreed to divide any attorney’s fees awarded in this case,
24 and Plaintiff has consented to the division of fees. *Id.*

25 **III. The Settlement Agreement**

26 **A. Class Definition and Class and Release Period**

27 The Class includes all non-exempt employees of Defendant who worked as security
28 officers in California during the applicable Class Period. Gundzik Decl., ¶¶ 38, 39, Ex. 1, ¶

1 II.C. The Class Period and the Class Release Period are the same, and are the period
2 beginning on April 21, 2016 and ending on December 7, 2020. Gundzik Decl., ¶¶ 38, 40,
3 Ex. 1, ¶¶ II.I.

4 **B. Release of Claims**

5 Members of the Class will provide releases to Defendant and its related entities.
6 Gundzik Decl., ¶¶ 38, 41-42, Ex. 1, ¶¶ II.BB, II.CC, VI. The scope of the release will be
7 disclosed to the Class in the proposed Notice of Settlement. See Gundzik Decl., ¶ 38, Ex. A
8 to Ex. 1. Any member of the Class who does not like the scope of the release (or the
9 Settlement in general) can preserve his or her individual claims by timely submitting a
10 written request to be excluded from the Settlement and Class. The release to be provided by
11 the named Plaintiff will be broader and encompass all claims that he might have against
12 Defendant. Gundzik Decl., ¶¶ 38, 41, Ex. 1, ¶ VII.

13 The Release applicable to the Class Members provides:

14 It is the desire of the Representative Plaintiff, Class Members (except those who
15 exclude themselves from the Settlement), and Defendant to fully, finally, and forever
16 settle, compromise, and discharge the Released Claims. Upon entry of the Final
17 Approval Order and Defendant's payment of the Gross Settlement Amount and
18 Employer's Withholding Share, and except as to such rights or claims as may be
19 created by this Settlement Agreement, the Settlement Class Members, on behalf of
20 themselves, and each of their heirs, representatives, successors, assigns, and
21 attorneys, shall be deemed to have, and by operation of the final judgment shall have,
22 fully released and discharged the Released Parties from any and all Released Claims
23 that accrued during the Class Period.

24 Gundzik Decl., ¶¶ 38, 42, Ex. 1, ¶ VI.

25 The "Released Claims" are defined in the Settlement Agreement as:

26 any and all claims, rights, demands, charges, complaints, causes of action, punitive
27 or statutory damages, penalties, liquidated damages, expenses, attorneys' fees and
28 costs, interest, obligations or liability of any and every kind that were, or could have

1 been, asserted in the Hall Action or are based on or arise out of the facts alleged in
2 any complaint filed in the Hall Action, including without limitation any claims for
3 failure to pay overtime, failure to issue accurate wage statements, failure to provide
4 compliant meal and rest periods, unfair, unlawful or fraudulent business practices
5 under California Business and Professions Code Section 17200, including claims
6 under Labor Code sections 226, 226.7, 510, 512, 1194, 1199, as well as IWC Wage
7 Order No. 4 §§ 3, 11, and 12 based on alleged violations of the foregoing statutes
8 and Wage Order sections; as well as all claims arising under the listed Labor Code
9 statutes based on the primary rights of those statutes; and any claims based on paid
10 sick leave under state federal, or local law.

11 (Gundzik Decl., ¶¶ 38, 42, Ex. 1, ¶ II.BB.

12 The Release applies to all of the Released Parties (Gundzik Decl., ¶¶ 38, 42, Ex. 1, ¶
13 II.CC) and will be effective upon entry of the Final Approval Order and Defendant's
14 payment of the Gross Settlement Amount and Employer's Withholding Share. Gundzik
15 Decl., ¶¶ 38, 42, Ex. 1, ¶ VI. Opt-in and release language regarding the release of the FLSA
16 claim will be printed on a separate FLSA settlement check issued to Settlement Class
17 Members, with the advisement that cashing such check constitutes consent under the FLSA
18 to opt into the collective action and to release all claims under the FLSA. Gundzik Decl., ¶¶
19 38, 42, Ex. 1, ¶ IV.L(8).

20 Within 10 business days following the Court's order granting preliminary approval
21 of the Settlement, Defendant will provide the Settlement Administrator with the Class Data
22 in an electronic format acceptable to the Settlement Administrator. At the same time,
23 Defendant will provide the Class Data, without Class Member names, contact information
24 and social security numbers, to Class Counsel so that it can confirm that the settlement
25 payments are being paid to the correct individuals and in the correct amounts. Gundzik
26 Decl., ¶¶ 38, 44, Ex. 1, ¶ IV.C.

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1 **C. Monetary Terms**

2 Defendant will pay a Gross Settlement Amount of \$320,000.00, plus the employer's
3 share of payroll taxes. After proposed deductions, as approved by the Court, the Net
4 Settlement Amount of approximately \$175,319.08 will be available to distribute to
5 Settlement Class members. Gundzik Decl., ¶ 45.

6 If the Court grants final approval of the Settlement, and except in the case of a
7 federal government shutdown between October 7, 2020 and the date on which payment is
8 due, within no more than twenty (20) days after the Effective Date (which is the date the
9 Court's Final Approval Order and Judgment thereon becomes final, which will occur upon
10 the later of: (i) if there are no objections to the settlement, the date that the Court enters
11 Judgment; (ii) if there is an objection to the settlement and no appeal is filed, the expiration
12 date of the time for the filing or noticing of an appeal from, or other challenge to, the
13 Court's Judgment; (iii) if an appeal is filed, the date affirmance of an appeal of the Judgment
14 becomes final; or (iv) if an appeal is filed, the date of final dismissal of any appeal from the
15 Judgment or the final dismissal of any proceeding on review of any court of appeal decision
16 relating to the Judgment), Defendant will deposit the Gross Settlement Amount and
17 Employer's Withholding Share with the Settlement Administrator. Gundzik Decl., ¶¶ 38, 46,
18 Ex. 1, ¶ IV.N. Within ten (10) days of Defendant's deposit of funds, the Settlement
19 Administrator will pay settlement payments to participating Settlement Class Members, the
20 Court-approved Class Representative Service and Release Award, the Court-approved
21 award for Class Counsel's Attorneys' Fees and Class Counsel's Costs, the PAGA Payment,
22 and the fees of the Settlement Administrator. Gundzik Decl., ¶¶ 38, 46, Ex. 1, ¶¶ IV.L(7),
23 IV.N, IV.O.

24 If the Court grants preliminary approval, at the final approval hearing, in addition to
25 granting final approval to the settlement, the Court will be asked to approve the following
26 deductions from the Defendant's settlement payment of \$320,000.00: (a) Class Counsel's
27 attorneys' fees of \$106,666.66, which is one-third of the gross settlement amount; (b) Class
28 Counsel's actual litigation costs and expenses, not to exceed \$15,000; (c) a Service and

1 Release Award in the amount of \$10,000 to Representative Plaintiff William Hall; (d)
2 \$4,264.26 to the Settlement Administrator for administering the settlement; and (e) \$7,500
3 to the LWDA, which is 75% of the \$10,000 that the Parties have allocated for settlement of
4 Plaintiff's PAGA claims. See Gundzik Decl., ¶¶ 38, 47, Ex. 1, ¶ I; See Declaration of ILYM,
5 ¶ 9. If all requested deductions are approved by the Court, the Net Settlement Amount
6 distributed to Class Members will be \$176,569.08.

7 As compensation for his efforts, the Settlement Agreement provides that a Class
8 Representative Service and Release Award in the amount of \$10,000 will be requested for
9 the representative Plaintiff. Gundzik Decl., ¶ 48. This award is in recognition of the
10 significant time he expended pursuing this action and assisting our efforts with the case, and
11 in recognition of the expanded general releases that he is required to provide, as part of the
12 Settlement. *Id.* As an additional requirement to receiving the proposed Class Representative
13 Service and Release Awards, Plaintiff is required to sign a broad general release which
14 includes a waiver of Section 1542 of the California Civil Code. *Id.*

15 Plaintiff will be supporting the request for attorneys' fees in several ways. Plaintiff's
16 counsel will include actual billing records and will also provide a chart which will specify
17 the number of hours spent on each type of task that was required in connection with the
18 case. Gundzik Decl., ¶ 49. Plaintiff's counsel will be applying the percentage method and
19 supporting it with a loadstar cross-check. *Id.*

20 Defendant's share of Employer's Withholding Taxes will be paid by the Defendant
21 in addition to the Gross Settlement Amount. Gundzik Decl., ¶¶ 38, 50, Ex. 1, ¶ IV.L.6. No
22 amount of the Gross Settlement Amount will revert to Defendant. Gundzik Decl., ¶¶ 38, 51,
23 Ex. 1, ¶ I.

24 The Net Settlement Amount of approximately \$176,569.08 will be distributed to
25 Class Members based on the number of Qualifying Workweeks they worked for Defendant
26 as a Class Member. Gundzik Decl., ¶¶ 38, 50-51, Ex. 1, ¶¶ IV. L.1. Based on a Class size of
27 69, the Settlement Class Members will get, on average, about \$2,558.97. Gundzik Decl., ¶
28 51. Settlement payments will be paid to the Class Members within 10 days of Defendant's

1 deposit of the Gross Settlement Amount with the Settlement Administrator. Gundzik Decl.,
2 ¶ 51. Payment to each Settlement Class Member will be allocated as follows: The non-FLSA
3 payments to Settlement Class Members will be characterized as seventy percent (70%) 1099
4 income and thirty percent (30%) W-2 income. The FLSA payments will be characterized as
5 fifty percent (50%) 1099 income, to be reported on an IRS Form 1099, and fifty percent
6 (50%) as W-2 income, to be reported on a W-2 form. Gundzik Decl., ¶¶ 38, 52, Ex. 1, ¶
7 IV.L(5).

8 **D. Notice Administration**

9 The settlement will be administered by ILYM Group, Inc. (“ILYM” or “Settlement
10 Administrator”). Gundzik Decl., ¶¶ 38, 55, Ex. 1, ¶ II.JJ; Decl. of ILYM, ¶ 9. If the Court
11 grants preliminary approval, within ten (10) business days Defendant will provide the
12 Settlement Administrator with the Class Data. Gundzik Decl., ¶¶ 38, 54, Ex. 1, ¶ IV.C.
13 Within ten days thereafter, the Settlement Administrator will update the Class list, check all
14 addresses against the National Change of Address, and send each Class Member via First-
15 Class United States mail a Notice of Settlement. Gundzik Decl., ¶¶ 38, 55-56, Ex. 1, ¶ IV.C.
16 No submission of a claim form is necessary, and all Class members are eligible to receive a
17 settlement payment except those who comply with the procedure for requesting an
18 exclusion. Gundzik Decl., ¶¶ 38, 56, Ex. 1, ¶¶ I, IV.E, IV.L(3).

19 The proposed form of the notice of settlement to the Class (“Notice of Settlement”)
20 discloses the pendency of this litigation, summarizes the allegations against Defendant,
21 defines the Class, describes the consideration that Defendant will provide in settlement and
22 contains an estimate of each Settlement Class Member’s estimated recovery. Gundzik Decl.,
23 ¶¶ 38, 57, Ex. A to Ex. 1. The notice also describes the claims that will be released and
24 explains the procedures to be used by members of the class to be excluded from or object to
25 the settlement. *Id.* Because this is an opt-out settlement and Class members who do nothing
26 will still receive a settlement payment, the notice provisions agreed to by the parties will
27 adequately serve the stakes of the individual Class Members in receiving the relief provided
28 by the settlement and adequately comply with California Rules of Court, Rule 3.766(e).

1 Gundzik Decl., ¶ 58. The Class Notice also specifies the current social distancing procedures
2 for attendance at hearings and review of court files. Gundzik Decl., ¶¶ 38, 59, Ex. A to Ex.
3 1, pp. 5-6.

4 Class Member settlement checks will be valid for 180 days from issuance. The funds
5 represented by all uncashed settlement checks will be transmitted will be transmitted by the
6 Settlement Administrator to the California State Controller's Office Unclaimed Property
7 Fund. Gundzik Decl., ¶¶ 38, 60, Ex. 1, ¶ IV.P.

8 For any Notice of Settlement that is returned as undeliverable, the Settlement
9 Administrator will perform a utility database search or other skip trace. Gundzik Decl., ¶¶
10 38, 61, Ex. 1, ¶ IV.D. The returned Notices of Settlement will be re-mailed to the new
11 addresses obtained for such Class Members. *Id.* Such searching and re-mailing will be
12 completed within ten (10) calendar days of the date that Notices of Settlement were
13 originally returned as undeliverable. *Id.*

14 The Settlement Administrator will establish a static website for this settlement and
15 will post the settlement agreement, any preliminary approval order and the Final Approval
16 Order and Judgement. Gundzik Decl., ¶¶ 62-63. Additionally, in their individual Notices of
17 Settlement, Class Members will be provided with the phone number and email address for
18 the Settlement Administrator, as well as the website specific to the Settlement. Gundzik
19 Decl., ¶ 38, Ex. A to Ex. 1. If there is a change in the date or location of the Final Approval
20 hearing, the Settlement Administrator will post this information on the website. Gundzik
21 Decl., ¶ 62. Notice of the Final Judgment and Final Approval Order will also be posted on
22 the Settlement Administrator's website. Gundzik Decl., ¶ 63.

23 **E. Responses to Notice**

24 Class members who wish to be excluded from the settlement must submit by mail a
25 written request to be excluded to the Settlement Administrator no later than forty-five (45)
26 days after the Notice of Settlement is mailed by the Settlement Administrator. Gundzik
27 Decl., ¶¶ 38, 64, Ex. 1, ¶¶ II.FF, IV.E; Ex. A to Ex. 1, ¶ 9 (c). Any Class Member wishing to
28 object to the approval of the Settlement must send a written statement of objection to the

Settlement Administrator within the same forty-five day period. Gundzik Decl., ¶¶ 38, 64, Ex. 1 at ¶ IV.H.1; Ex. A to Ex. 1, ¶ 9(d). For Notices of Settlement returned as being undeliverable that are re-mailed to a different address, the Response Deadline will be the earlier of: (1) 45 days after re-mailing, and (2) ten days before the initial date set by the Court for the Final Fairness and Approval Hearing. Gundzik Decl., ¶¶ 38, 65, Ex. 1, ¶ IV.FF.

F. Proposed Schedule of Events

Based on the terms of the Settlement Agreement, the following sets forth the proposed schedule of events to occur with respect to the effectuation of the settlement:

Event	Date
Deadline for Defendant to provide Class data to settlement administrator	within ten (10) business days of preliminary approval
Deadline to mail Notice of Settlement to Class Members	within ten (10) days of receipt of class data from Defendant
Deadline to dispute workdays, opt out of or object to settlement	within forty-five (45) days of mailing or re-mailing of Notice of Settlement
Deadline for settlement administrator to provide counsel with Declaration of Compliance and report regarding notice and exclusion process	5 days prior to deadline for filing motion for final approval
Deadline to file motion for final approval of the settlement and award of attorneys' fees and costs	16 court days before final approval hearing
Hearing on motion for final approval of the settlement, granting of final approval, and entry of judgment	July 2021
Deadline for Defendant to deliver funds to settlement administrator	Within twenty (20) days of the Effective Date, assuming no government shutdown
Deadline for settlement administrator to distribute settlement funds	Within 10 days of Defendant's deposit of the GSA with the Settlement Administrator

1 **IV. ARGUMENT**

2 **A. The Class Should be Certified for Settlement Purposes Only.**

3 The proposed class satisfies the criteria for certification of a settlement class under
4 California law. Section 382 of the Code of Civil Procedure “authorizes class suits in
5 California when the question is one of a common or general interest, of many persons, or
6 when the parties are numerous, and it is impracticable to bring them all before the court.”
7 *Linder v. Thrifty Oil Co.*, 23 Cal. 4th 429, 435 (2000). “To obtain certification, a party must
8 establish the existence of both an ascertainable class and a well-defined community of
9 interest among the class members. *Id.*, at 435, citing *Richmond v. Dart Industries, Inc.*, 29
10 Cal. 3d 462, 470 (1981); also citing *Vasquez v. Superior Court*, 4 Cal. 3d 800, 809 (1971).
11 The community of interest requirement will be met when the following three factors exist:
12 “(1) predominant common questions of law or fact; (2) class representatives with claims or
13 defenses typical of the class; and (3) class representatives who can adequately represent the
14 class.” *Linder v. Thrifty Oil Co.*, 23 Cal. 4th at 435.

15 **1. An Ascertainable Class Exists that can easily be Determined from**
16 **Defendant’s Records.**

17 “An ascertainable class exists when, based upon the class definition, it is possible to
18 give adequate notice to class members or to determine after the litigation has concluded who
19 is barred from re-litigating. (Citation omitted.) The goal in defining the class is to use
20 terminology that will convey sufficient meaning to enable persons hearing it to determine
21 whether they are members of the class plaintiff wishes to represent.” *Marler v. E.M.*
22 *Johansing, LLC*, 199 Cal. App. 4th 1450, 1459-1460 (2011). Thus, a class is generally
23 considered ascertainable when (i) under the class definition the members are clearly
24 identifiable and (ii) the members can be located and notified through a reasonable expenditure
25 of time and money. *See Reyes v. Board of Supervisors*, 196 Cal. App. 3d 1263, 1274-1275
26 (1987). Here, the Class definition is clear. The Class is defined as including “all non-exempt
27 employees of Defendant who worked as security officers in California during the applicable
28

1 Class Period.” Gundzik Decl., ¶ 36, Ex. 1, ¶ II.C, II.I. The Class Period is defined as “the
2 period from April 21, 2016 through December 7, 2020.” Gundzik Decl., ¶ 38, Ex. 1, ¶ II.I.

3 **2. There is a Well-Defined Community of Interest among the Class**
4 **Members.**

5 Plaintiff contends that the community of interest requirement is met with respect to
6 the Class and the claims asserted in the pleading. Common issues regarding Defendant’s
7 treatment of its non-exempt security guards as to meal and rest breaks, its payment of
8 overtime rates of pay, as well as its forms of wage statement and provision of sick pay.
9 Further, the claims of the named Plaintiff are typical of the claims of all Class Members, and
10 he can and does adequately represent the Class. Gundzik Decl., ¶¶ 16-20; 25-31.

11 **3. Common Issues of Law and Fact Predominate over any**
12 **Individual Issues.**

13 To determine whether common issues predominate in a class action matter, “a court
14 must examine the plaintiff’s theory of recovery and assess the nature of the legal and factual
15 disputes *likely to be presented*...As a general rule if the defendant’s liability can be
16 determined by facts common to all members of the class, a class will be certified even if the
17 members must individually prove their damages.” *Benton v. Telecom Network Specialists,*
18 *Inc.*, 220 Cal. App. 4th 701, 716 (2013) (emphasis in original).

19 Here, Plaintiff maintains that common issues exist with respect to Defendant’s
20 policies and practices with respect to the wages, hours, working conditions, and forms of
21 wage statements of its non-exempt employees. Gundzik Decl., ¶¶ 16-20. Plaintiff maintains
22 that the only individualized differences between Class members relate to the amount of
23 compensation each Class member would be entitled to receive. However, it is well-settled
24 that mere differences as to the amount of damages among Class members are not sufficient
25 to prevent certification. *Id.*; *Acree v. General Motors Acceptance Corp.*, 92 Cal. App. 4th
26 385, 387 (2001) (“A class action may be maintained even if each class member must at
27 some point individually show his or her eligibility for recovery or the amount of his or her
28 damages...”)

1 **4. Plaintiff’s Claims are typical of the Claims of the Class.**

2 “To maintain a class action, the representative plaintiff must adequately represent
3 and protect the interests of other members of the class. (Citation omitted.) Therefore, a
4 class representative plaintiff must be situated similarly to the other class members united by
5 a common interest.” *CashCall, Inc. v. Superior Court*, 159 Cal. App. 4th 273, 284 (2008).
6 Thus, the typicality requirement focuses on whether the proposed representative’s claims are
7 typical of the claims of the rest of the class. *Id.*; see *Classen v. Weller*, 145 Cal. App. 3d 27,
8 47 (1983).

9 Here, Plaintiff is seeking relief for the same wage and hour violations as are the rest
10 of the Class members. He seeks to impose liability on Defendant based on the same claims
11 and theories, as well as the same alleged injuries, which apply to the Class as a whole. Thus,
12 the claims of the Representative Plaintiff are typical of the claims of the Class.

13 **5. The Representative Plaintiff and Class Counsel Will Adequately**
14 **Protect the Interests of the Class.**

15 “Adequacy of representation depends on whether the plaintiff’s attorney is qualified to
16 conduct the proposed litigation and the plaintiff’s interests are not antagonistic to the
17 interests of the class.” *McGhee v. Crocker-Citizens Nat. Bank*, 60 Cal. App. 3d 442, 450
18 (1976). Here, the Representative Plaintiff retained attorneys with extensive experience in
19 prosecuting wage and hour class actions. Gundzik Decl., ¶¶ 11-14.

20 Nor is there any conflict between the interests of the Representative Plaintiff and the
21 members of the Class. The Representative Plaintiff and the Class are claiming the same
22 injuries based upon the same alleged wage and hour policies existing while they were
23 employed by Defendant. Gundzik Decl., ¶ 35.

24 **B. Preliminary Approval is Appropriate Because the Settlement is Fair and**
25 **Reasonable.**

26 A trial court should approve a class action settlement agreement if it determines that
27 the agreement is fair, adequate, and reasonable. *Dunk v. Ford Motor Co.*, 48 Cal. App. 4th
28 1794, 1801 (1996). In making this decision, a court “should consider relevant factors, which

1 may include, but are not limited to the strength of the plaintiffs' case, the risk, expense,
2 complexity and duration of further litigation as a class action, the amount offered in
3 settlement, the extent of discovery completed and the stage of the proceedings, the
4 experience and views of counsel, the presence of a governmental participant, and the
5 reaction of class members to the proposed settlement.” *In re Microsoft I-V Cases*, 135 Cal.
6 App. 4th 706, 723 (2006).

7 “At the same time, the trial court should give due regard to what is otherwise a
8 private consensual agreement between the parties.” *Id.* Thus, the Court “limits its inquiry to
9 the extent necessary to reach a reasoned judgment that the agreement is not the product of
10 fraud or overreaching by, or collusion between, the negotiating parties, and that the
11 settlement, taken as a whole, is fair, reasonable and adequate to all concerned.” *In re*
12 *Microsoft I-V Cases*, 135 Cal. App. 4th at 723, citing *Dunk v. Ford Motor Co.*, 48 Cal. App.
13 4th at 1801; also citing *Officers for Justice v. Civil Service Com'n, etc.*, 688 F.2d 615, 625
14 (9th Cir. 1982). Whether the settlement was reached through arms-length negotiations is
15 also a strong factor which weighs in favor of presuming that the settlement is fair and
16 reasonable. *Dunk v. Ford Motor Co.*, 48 Cal. App. 4th at 1801.

17 These factors, as applied to this matter and as set forth below, strongly favor granting
18 preliminary approval of the Settlement Agreement:

19 **The Strength of Plaintiff’s Case.** As set forth in the Section II.A above and the
20 Declaration of Aaron Gundzik, the parties have vigorously advocated the parties’ respective
21 positions in this matter, and Defendant has consistently disputed that it violated California’s
22 wage and hour laws. In fact, Defendant raised a colorable legal or factual defense to each
23 claim Plaintiff has alleged. Gundzik Decl., ¶¶ 25-32.

24 **The Risk, Expense, Complexity and Likely Duration of Further Litigation.** If the
25 settlement is not approved, the Representative Plaintiff would need to move forward with
26 discovery and then move for class certification. Defendant will oppose certification on the
27 grounds that numerous individualized fact issues allegedly exist relating to such matters as
28 the individual working conditions of each employee and the lack of documentary evidence

1 of the alleged violations. It will argue and could succeed in claiming that these
2 individualized issues overwhelm common issues and will also argue that the action is not
3 manageable on a classwide basis. The result could be that the case would not be certifiable
4 as a class action. Gundzik Decl., ¶¶ 21-22.

5 **The Risk of Maintaining Class Action Status Through Trial.** If the settlement is
6 not approved, and the Representative Plaintiff is successful on his motion for certification of
7 the class, the Class would still be faced with significant risks in continuing with the
8 litigation. Defendant could interpose a successful defense which could either cause the jury
9 to reject Plaintiff’s claims or award the Class only a small amount of the unpaid wages and
10 reimbursement amounts due to them. Further, the Court would still retain authority to de-
11 certify the case in the event the trial showed that common issues did not predominate. *See*
12 Cal. Rule of Court 3.764. Gundzik Decl., ¶ 23.

13 **The Amount Offered in Settlement.** In the experience of Class counsel, a gross
14 settlement of \$320,000 for a class of 67 with the claims described above is within the
15 “ballpark” of a fair, reasonable and adequate settlement. Gundzik Decl., ¶ 24. Taking into
16 account the serious risks associated with proceeding— that the case might not be certified as
17 a class action, that Plaintiff might not succeed on the merits at trial or, if Plaintiff succeeds at
18 trial, that the case is reversed on appeal – it becomes apparent that a settlement in this range
19 is fair to the Class.

20 **The Extent of Investigation and Discovery Completed and the Stage of the**
21 **Proceedings.** As set forth in Section II.A above and the Declaration of Aaron Gundzik, the
22 parties have engaged in extensive informal discovery and factual investigation. Gundzik
23 Decl., ¶¶ 6-9, 16-20; 25-32.

24 **The Experience and Views of Counsel.** As set forth in the declaration of Aaron
25 Gundzik, Class Counsel has significant experience in wage and hour class actions. Gundzik
26 Decl., ¶¶ 11-14. Aaron Gundzik and Rebecca Gundzik have practiced law and been
27 members of the California State Bar collectively for over 60 years. *Id.* Based upon their vast
28 experience in the area, when they arrived at a settlement with Defendant, Class Counsel had

1 sufficient information to assess the strengths and weaknesses of the claims against
2 Defendant, and the benefits of the settlement in light of the significant risks of continuing
3 with the litigation.

4 **Whether the Settlement Was Reached Through Arm’s-Length Bargaining or**
5 **was a Product of Fraud or Overreaching.** It is undisputed that the parties negotiated the
6 settlement at arm’s length during a mediation before a well-respected neutral third-party
7 mediator who had significant experience settling wage and hour class action lawsuits.
8 Gundzik Decl., ¶ 10.

9 **C. The Proposed Notice of Settlement Fairly Apprises the Class of the**
10 **Terms of the Settlement and Their Right to Object.**

11 “The principal purpose of notice to the class is the protection of the integrity of the
12 class action process, one of the functions of which is to prevent burdening the courts with
13 multiple claims where one will do.” *Cho v. Seagate Technology Holdings, Inc.*, 177 Cal.
14 App. 4th 734, 745-746 (2009). Thus, an appropriate notice is one which has a reasonable
15 chance of reaching a substantial percentage of the class members. *Cartt v. Superior Court*,
16 50 Cal. App. 3d 960, 974 (1975).

17 The proposed Notice of Settlement addresses these concerns. It identifies the
18 Representative Plaintiff and Defendant, provides a description of the lawsuit, the settlement
19 amounts, the proposed plan of allocation and the attorneys’ fees that Class counsel may
20 receive. The proposed Notice of Settlement provides information as to how to opt out of the
21 Class and be excluded, how to object to the settlement, as well as the date of the final
22 approval hearing. It also describes the Settlement Agreement with sufficient detail to allow
23 Class members to make an informed decision as to whether to accept or object to it. The
24 proposed Notice of Settlement further provides that it will bind all Class members who do
25 not request exclusion. Gundzik Decl., ¶ 38, Ex. A. to Ex. 1 thereto. As such, the proposed
26 Notice of Settlement describes the settlement with enough specificity to allow Class
27 members to make an informed decision as to whether to participate in it. See California Rule
28 of Court 3.766(d). Gundzik Decl., ¶ 38, Ex. 1, ¶ IV.C.

1 Further, the manner of giving notice is to be done in such a way as to maximize its
2 reach. The Notice of Settlement will be sent to members of the Class by First Class regular
3 U.S. mail by the Settlement Administrator. Gundzik Decl., ¶ 38, Ex. 1, ¶ IV.C. Prior to
4 mailing, the Settlement Administrator shall check all addresses on the Database Report
5 against the National Change of Address (NCOA) database. *Id.* The Settlement Administrator
6 will mail the Notice of Settlement to the most current mailing address as identified by
7 reference to the Database Report and/or the NCOA database. *Id.*

8 Pursuant to California Rules of Court, Rule 3.766(e), in determining whether the
9 manner of giving notice is sufficient, a court considers (1) the interests of the class; (2) the
10 type of relief requested; (3) the stake of the individual class members; (4) the cost of
11 notifying class members; (5) the resources of the parties; (6) the possible prejudice to class
12 members who do not receive notice; and (7) the res judicata effect on class members. Here,
13 the interests of the Class members are in receiving notice of the lawsuit and settlement.
14 Class Counsel and Defendant's counsel have conferred and determined that disseminating
15 the Notice of Settlement by mail to the Class Members is the best way to maximize its
16 reach. Gundzik Decl., ¶ 58.

17 Delivering the Notice by mail complies with California Rules of Court, Rule
18 3.766(e) and the purpose of the Notice. An appropriate notice is one which has a reasonable
19 chance of reaching a substantial percentage of the class members. *Cartt v. Superior Court*,
20 50 Cal. App. 3d 960, 974 (1975). Because this is an opt-out settlement and Class members
21 who do nothing will still receive a settlement payment, the notice provisions agreed to by
22 the parties will adequately serve the stakes of the individual Class Members in receiving the
23 relief provided by the settlement.

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1 **V. CONCLUSION**

2 For the foregoing reasons, Plaintiff, on behalf of himself and the Class, respectfully
3 requests that the Court grant preliminary approval of the settlement and set a final approval
4 hearing to take place within approximately 100 days.

5 DATED: January 28, 2021

GUNDZIK GUNDZIK HEEGER LLP

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By: 

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Rebecca G. Gundzik
Attorneys for Plaintiff William Hall,
individually and on behalf of all others
similarly situated

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