

1 AARON C. GUNDZIK (State Bar No. 132137)
2 REBECCA G. GUNDZIK (State Bar No. 138446)
3 GUNDZIK GUNDZIK HEEGER LLP
14011 Ventura Blvd., Suite 206E
4 Sherman Oaks, CA 91423
Telephone: (818) 290-7461
Facsimile: (818) 918-2316

5 MARSHALL A. CASKEY (State Bar No. 65410)
6 DANIEL M. HOLZMAN (State Bar No. 176663)
7 N. CORY BARARI (State Bar No. 295306)
CASKEY & HOLZMAN
24025 Park Sorrento, Ste. 400
8 Calabasas, CA 91302
Telephone: (818) 657-1070
9 Facsimile: (818) 297-1775

10 Attorneys for Plaintiff William Hall, individually
11 and on behalf of all others similarly situated

12 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
13 **FOR THE COUNTY OF LOS ANGELES**

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

15 Plaintiff,

16 vs.

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

19 Defendants.

Case No.: 20STCV15317

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

**DECLARATION OF AARON C.
GUNDZIK IN SUPPORT IOF
PLAINTIFF'S MOTION FOR
PRELIMINARY APPROVAL OF
CLASS ACTION SETTLEMENT**

Date: March 26, 2021

Time: 10:30 a.m.

Dept.: 1

Complaint Filed: April 21, 2020

24 I, Aaron C. Gundzik, declare as follows:

25 1. I am a partner at Gundzik Gundzik Heeger LLP, co-counsel for Plaintiff
26 William Hall. This Declaration is submitted in support of Plaintiff's Motion for Preliminary
27 Approval of Class Action Settlement.
28

2. I am admitted to practice law in the state of California. I have personal knowledge of the matters set forth herein, and, if called as a witness, could competently testify thereto.

3. I am familiar with California law governing wages owed to employees, including but not limited to California Labor Code Sections 1197, 226(a), 510, 226.7, 512(a), 2699, California Business and Profession Codes 17200 *et seq.*, the Fair Labor Standards Act, Federal and State sick pay requirements, and the Wage Orders of the Industrial Welfare Commission.

4. There are no conflicts that would prevent me from serving as Class Counsel in this matter.

Introductory Information

5. Plaintiff William Hall filed his initial complaint against Defendant Culpepper & Associates Security Services, Inc. (“CASS”) on April 21, 2020, filed a First Amended Complaint on July 14, 2020 and pursuant to a stipulation of the parties filed a Second Amended Complaint on November 9, 2020, which asserted causes of action for: (1) failure to pay overtime; (2) inaccurate wage statements, (3) failure to provide meal and rest breaks; (4) violation of the Unfair Practices Act; (5) recovery of civil penalties under the California Labor Code Private Attorneys’ General Act (“PAGA”), California Labor Code sections 2698-2699.5; (6) violation of the Fair Labor Standards Act (FLSA); and (7) violation of Federal and State sick pay requirements.

Dunk/Kullar Analysis

Investigation and Discovery

6. Rebecca Gundzik and I, and our co-counsel Daniel Holzman, have been directly involved in all aspects of this case on behalf of Plaintiff. In that regard, we have extensively investigated Plaintiff's claims against Defendant. After we filed the lawsuit, the parties agreed to mediation and to an informal exchange of information in lieu of discovery. After engaging in extensive negotiations with defense counsel concerning the scope of such informal discovery, we obtained and reviewed and analyzed numerous pay documents,

1 including records and information produced by Defendant, and worked to develop
2 information on potential damages. We also obtained and analyzed all relevant handbooks
3 and other policy documents which impacted the working conditions and pay of the class
4 members. Defendant also produced anonymized time and pay records for a sample of
5 approximately 15% of the proposed class members, including Plaintiff. We reviewed and
6 analyzed these records as well. We have investigated and compiled publicly-available
7 information about Defendant and its businesses and negotiated extensively with Defendant
8 regarding the mediation, its scope, and the information to be exchanged in connection with
9 the mediation.

10 7. Prior to the mediation, Defendant also provided information on the number of
11 class members in each job position, the number of class members, total class member work
12 weeks, the number of employees at each job site and their shifts, the number of separated
13 employees, number of wage statements issued and average hourly pay rate. We also
14 obtained documents from third parties regarding Defendant's contracts with the Veterans'
15 Administration and the requirements to which it was obligated as a result of those contracts.
16 Finally, we were able to interview several class members concerning their experiences
17 working for Defendant.

18 8. I and my litigation team have reviewed and analyzed the records and
19 information produced by Defendant, together with the information provided by our client
20 and information obtained from class member interviews, to provide an extensive damages
21 model which included an estimate of the damages incurred by the Class.

22 9. I and my co-counsel consulted with Plaintiff extensively in order to
23 investigate the facts before filing the Complaint, First Amended Complaint and Second
24 Amended Complaint. We continued to consult with him prior and subsequent to the
25 mediation regarding the forgoing issues. Mr. Hall provided us with numerous details about
26 his experience working for Defendant. And, he spent a full day attending the mediation and
27 responding to questions posed by the mediator.

28 //

1 **Summary of Settlement Negotiations**

2 10. On October 7, 2020, I, Mr. Hall, and our co-counsel, Daniel Holzman, as
3 well as Defendant and Defendant's counsel, attended a mediation session with Lisa
4 Klerman. Ms. Klerman has substantial experience mediating wage and hour class actions
5 like this one. The case settled after a full day of negotiation pursuant to a mediator's
6 proposal. The settlement was negotiated at arms' length and was in no sense collusive.

7 **Summary of Class Counsel's Experience**

8 11. I am a partner at Gundzik Gundzik Heeger LLP, co-counsel for Plaintiff
9 William Hall.

10 12. I graduated from the University of Southern California Law School in 1987
11 and have been a member of the California bar since 1987. Throughout my career I have been
12 involved in the litigation of complex cases, including securities, consumer and wage and
13 hour class actions. Presently, I am plaintiffs' counsel in approximately twenty class and/or
14 representative actions in various stages of litigation. I have served as class counsel in
15 numerous wage and hour class actions that have already settled and successfully represented
16 a class of service technicians at trial and through appeal in *Gonzalez v. Downtown LA*
17 *Motors, LP*, 215 Cal. App. 4th 36 (2013).

18 13. Rebecca Gundzik, who is also a partner at my law firm, has worked with me
19 extensively on this case. Ms. Gundzik graduated from the University of Southern California
20 Law School in 1988 and has been a member of the California bar since 1988. Ms. Gundzik
21 works with me on all of my class action matters and was my co-counsel at the trial of
22 *Gonzalez v. Downtown LA Motors, LP*, 215 Cal. App. 4th 36 (2013).

23 14. I have been appointed as class counsel in the following wage and hour class
24 actions:

25 a. *Gonzalez v. Downtown LA Motors*, 215 Cal. App. 4th 35 (2013)

26 b. *Aboyte v. Sunrise Ford, Inc.*, Los Angeles Superior Court Case No.

27 BC521274

28

- 1 c. *Alshamri v. Ford of Santa Monica, Inc.*, Los Angeles Superior Court Case
2 No. BC529007
- 3 d. *Bromberg v. Fidelity National Information Services*, C.D. Cal. No. 2:15-CV-
4 7930
- 5 e. *Burciaga v. Superior Thread Rolling Company*, Los Angeles Superior Court
6 Case No. BC585143
- 7 f. *Centino v Arrowhead Products Corporation*, Orange County Superior Court
8 Case No. Case No.: 30-2018-00988493
- 9 g. *Cesar-Roden v Yoga Works, Inc.*, Los Angeles Superior Court Case No.
10 BC711991
- 11 h. *Claim Jumper Restaurants Wage and Hour Cases*, JCCP No. 4916
- 12 i. *Cypress Security Wage and Hour Cases*, Los Angeles Superior Court Case
13 No. BC672405 (JCCP NO. 4963)
- 14 j. *Dittmar v. Costco*, S.D. Cal. No. 3-14-CV-1156
- 15 k. *Franco v. Gentry Brothers, Inc.*, Los Angeles Superior Court Case No.
16 BC586571
- 17 l. *Gallegos v. EC Holdings Inc.*, Los Angeles Superior Court Case No.
18 BC616867
- 19 m. *Gonzales v. Manrika, Inc.*, Los Angeles Superior Court Case No. BC570534
- 20 n. *Grieg v. Food on Time, Inc.*, at al., Los Angeles Superior Court Case No.
21 BC684566
- 22 o. *Guillen v Grasshopper House, LLC*, Los Angeles Superior Court Case No.
23 BC685116
- 24 p. *Hamilton v. BlueMercury, Inc.*, Los Angeles Superior Court Case No.
25 BC625829
- 26 q. *Henriquez v. NGU Transport LLC*, Los Angeles County Superior Court No.
27 BC714165
- 28

1 r. *Hernandez v. The Bicycle Casino LP*, Los Angeles Superior Court Case No.
2 BC628414

3 s. *Honeine v. PMB Motorcars, LLC*, Los Angeles Superior Court Case No.
4 BC530827

5 t. *Jimenez v. PPG Industries, Inc.*, Los Angeles Superior Court Case No.
6 BC613324

7 u. *Kaelberer v. Long Beach Eurocars LLC*, Los Angeles Superior Court Case
8 No. BC521275

9 v. *Kuenstle v. Childrens Hospital Los Angeles Medical Group, Inc.*, Los
10 Angeles Superior Court Case No. BC653858

11 w. *Maravilla v. Motion Picture Television Fund*, Los Angeles Superior Court
12 Case No. BC690494

13 x. *Medina v. Kaweah Pump, Inc.*, Tulare County Superior Court No. 265579

14 y. *Mendoza v. Quanta Computer, USA, Inc.*, Alameda County Superior Court
15 No. RG11589781

16 z. *Munoz v. Dependable Highway Express, Inc.*, Los Angeles Superior Court
17 Case No. BC535931

18 aa. *Ortiz v. Roberts Tool Co., Inc.*, Los Angeles Superior Court Case No.
19 BC626244

20 bb. *Poland v. Glen Ivy Hot Springs, Inc.*, Riverside County Superior Court No.
21 RIC1312130

22 cc. *Saavedra v. Cliff View Terrace, Inc.*, Santa Barbara Superior Court Case No.
23 17CV02531

24 dd. *Schneider v. Inner City Education Foundation*, Los Angeles Superior Court
25 Case No. BC617827

26 ee. *Surveillance Security Wage and Hour Cases*, JCCP 4969

27 ff. *Vatralava v. Sears, Roebuck and Co.*, Los Angeles Superior Court Case No.
28 BC515650

1 gg. *Watson v. Aegis Security & Investigations Inc.*, Los Angeles Superior Court
2 Case No. BC695411

3 hh. *Wysocki v. Color Spot Nurseries, Inc.*, San Luis Obispo County Superior
4 Court No. 14CVPO138

5 ii. *Yoo v. South Coast Transportation & Distribution, Inc.*, Los Angeles
6 Superior Court Case No. BC682120

7 jj. *Yoo v NGL Transportation LLC*, Los Angeles Superior Court Case No.
8 BC682160

9 kk. *Mitchiner v. Cox Target Media, Inc.*, Los Angeles County Superior Court
10 Case No. 19STCV00319

11 ll. *Villalobos v. Pedego, Inc.*, Orange County Superior Court Case No. 30-2019-
12 01102461

13 15. Each of the cases listed in Paragraph 14 and the cases still active involve
14 wage and hour issues similar to the legal and factual issues involved in this case.

15 **Summary of the Case- Legal and Factual basis for Each Claim**

16 16. Based upon our investigation, we made the following contentions: CASS
17 employs security guards at approximately 9 locations in California. During the putative class
18 period, there were approximately 69 putative class members.¹

19 17. Plaintiff works as a security guard at two CASS locations in California and
20 has worked there since CASS took over the security contract for those locations in
21 December of 2019. Plaintiff contended that during the putative class period, CASS's
22 security guards were required to carry radios or mobile phones during their shifts. CASS's
23 Standard Operating Procedures also specified that guards are required to "respond to all
24 reports of incidents," "respond to all emergency calls," and remain "on duty during business
25 hours." Plaintiff contended that the language in CASS's Security Officer Manual reinforces
26 the requirement that guards remain on call at all times while on their shifts. In addition to the

27 _____
28 ¹ Immediately prior to filing this motion, Defendant's counsel advised Plaintiff's counsel
that the class size increased from 67 to 69.

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

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

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

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

26 **Risks, Expenses, Complexity and Duration if Settlement Not Approved**

27 21. I, Ms. Gundzik, our co-counsel and our client concluded, after taking into
28 account the sharply disputed factual and legal issues involved in the lawsuit, the risks

1 attending further prosecution, and the substantial benefits to be received pursuant to the
2 compromise and settlement of the action, that the settlement is in the best interests of the
3 Settlement Class and is fair and reasonable. We also considered the possibility that the Class
4 would not be certified and factored in the additional delay in recovery for Class members if
5 the settlement were rejected and the case went to trial.

6 22. If the settlement is not approved, Plaintiff would need to move forward with
7 discovery and then move for class certification. Defendant will oppose certification on the
8 grounds that numerous individualized fact issues allegedly exist. Defendant will argue and
9 could succeed in claiming that these individualized issues overwhelm common issues,
10 and/or that the action is not manageable on a class wide basis. The result could be that the
11 case would not be certifiable as a class action.

12 **Risks of Maintaining Class Action Status**

13 23. Even if we proceeded and the Class is certified, significant risks would
14 remain. At trial Defendant could interpose a successful defense which could either cause the
15 Court to decertify the Class or cause the jury to reject Plaintiff's claims or award the Class
16 only a small amount of the unpaid wages and other damages sought. And, even if the Class
17 ultimately prevailed, Defendant may not at that point have the resources to satisfy a
18 substantial judgment. Moreover, if we did not settle, most of the Class Members would have
19 to wait years or more before they received any payment from the lawsuit.

20 24. After analyzing and weighing the evidence discussed above as well as the
21 legal issues, we concluded that the settlement of \$320,000 represents a fair and reasonable
22 discount from the realistic recovery. We firmly believe that amount is the most that
23 Defendant was willing to pay at this stage of the case and that if we had rejected that
24 amount, we would have been forced to seek class certification and subject the Class to the
25 risk of losing at that stage. The settlement will allow the parties to avoid the expense and
26 time commitments of continued litigation and provides a significant benefit for the Class
27 which would not otherwise have been available unless a settlement was reached. Based on
28

1 my experience, I am of the opinion that a gross settlement of \$320,000 is within the
2 “ballpark” of a fair, reasonable and adequate settlement.

3 **Information Regarding Strengths, Weaknesses, and Range of Value of Each Claim**

4 25. The First Cause of Action is for failure to pay overtime. This claim is based
5 on CASS’s failure to include the payment in lieu of the fringe benefit due under the Federal
6 Service Contract Act of 1965 in the regular rate of pay used for calculating the rate of pay
7 due for overtime work. Based on the documents we reviewed, I estimate that this claim has a
8 limited value of between \$0 and \$4,000.

9 26. The Second Cause of Action is for failure to provide compliant wage
10 statements. The statute of limitations on such a claim is one year. This claim is based on
11 Plaintiff’s contention that the paychecks issued to class members did not include the correct
12 hourly rates, did not include meal and rest break premiums and did not state all of the hours
13 worked by class members. However, Defendant would have argued, perhaps successfully,
14 that these hours did not result in any injury because employees could determine the correct
15 rates from other information included on their wage statements and because of the
16 uncertainty regarding derivative wage statement claims. Based upon the number of wage
17 statements issued and the possibility that the Court could find that none of them violated the
18 statute, I concluded that the maximum value of this claim, if the Class prevailed on the claim
19 and was awarded full statutory penalties, is about \$127,600. This estimate is based on a one-
20 year limitations period and that damages are \$50 for the first violation per employee and
21 \$100 for each subsequent violation up to a maximum of \$4,000 per employee. At the same
22 time, I estimate that this claim has a minimum value of \$0.

23 27. The Third Cause of Action is for failure to provide meal and rest breaks. This
24 claim was based on Plaintiff’s contentions that Defendant should not have been requiring
25 employees to take on-call meal breaks and that it was improper for Defendant to require that
26 rest breaks be taken on-site. It was also based on Plaintiff’s contention that Defendant did
27 not provide guards with second meal breaks. Defendant did not keep records regarding class
28 members’ rest breaks, but Plaintiff contended that all rest breaks were non-compliant

1 because guards were required to remain on-site. Based upon the records we reviewed, the
2 information we obtained from class members, and the defenses to Class certification, I
3 estimate that the meal break claim has a maximum value of about \$505,000 for non-
4 compliant meal breaks and approximately \$25,000 for missed second meal breaks, using an
5 average hourly rate of \$27.17 (including an hourly fringe benefit rate of \$4.22). Because it
6 was unclear to what extent all locations engaged in the same practices and those which
7 Plaintiff contended were non-compliant, and in light of the other issues discussed above, I
8 estimate that the meal break claim has a minimum value of \$0. I estimate the maximum
9 value of the rest break claim to be about \$530,000, using an average hourly rate of \$27.17
10 (including an hourly fringe benefit rate of \$4.22). At the same time, based on the issues
11 discussed above, I estimate that the rest break claim has a minimum value of \$0.

12 28. The Fourth Cause of Action is for violation of Business & Professions Code
13 section 17200, *et. seq.* The forgoing analysis assumes the longer four-year statute of
14 limitations that is available under the UCL for the meal period violations. This cause of
15 action is derivative of the other claims that have already been analyzed. Accordingly, the
16 damages available under this cause of action have already been analyzed or are duplicative
17 of damages discussed above.

18 29. The Fifth Cause of Action is for violations of the Private Attorneys General
19 Act (PAGA). The PAGA claim is limited in time to one year. The strength of the PAGA
20 claim would be impacted by the factors discussed above for the non-PAGA claims. Based
21 on recent PAGA decisions, I concluded that even if Plaintiff was successful on this claim
22 through trial, the Court may well have exercised its discretion under PAGA and significantly
23 reduced the penalties. Cal. Labor Code §2699(e)(2). In addition, the settlement was
24 primarily directed at recovering wages and unpaid premiums owed to class members and the
25 bulk of the settlement funds were intended to compensate for these wages. Based on these
26 factors, I believe that the maximum reasonable value of the PAGA claim is approximately
27 \$430,000 and the minimum value is nothing. I therefore concluded that the \$10,000 that the
28

1 parties allocated to PAGA, \$7,500 of which will be paid to the LWDA, is a reasonable
2 settlement of that claim.

3 30. The Sixth Cause of Action is for violations of the Fair Labor Standards Act
4 (FLSA). This claim is based upon Plaintiff's contention that Defendant did not pay Class
5 members at the applicable overtime rate for all hours worked. However, the damages
6 incurred for this violation are duplicative of those analyzed with respect to the First Cause of
7 Action. Therefore, I did not attribute any additional damages to this claim.

8 31. The Seventh Cause of Action is for violation of Federal, State and local sick
9 pay requirements. This claim was based on Plaintiff's contention that Defendant did not
10 provide all sick leave required to be provided to Federal contractors. However, given the
11 lack of precedent which permits a private cause of action for this violation, I did not attribute
12 any damages to this claim.

13 32. Based upon the forgoing, I determined that this case had a minimum value of
14 \$0 and a maximum estimated value of about \$1,191,000, not including the PAGA penalties.
15 Based on a Class size of approximately 67, the reasonable estimate of the average amount
16 that Class members could have obtained if Plaintiffs prevailed at trial on behalf of the entire
17 Class, if the Class was certified, would be a minimum of \$0 and a maximum of about
18 \$17,776. However, the maximum amount is almost never recovered at trial and never in a
19 settlement. Settlements, by their nature, must account for the weaknesses in a plaintiff's
20 case, which are discussed above. Indeed, because Defendant raised a colorable legal or
21 factual defense to each of the claims Plaintiff alleged, it is possible that, after trial, the Class
22 would recover nothing.

23 **Class Certification Issues**

24 33. Based on the information provided to us by Defendant in connection with our
25 investigation and discovery and in connection with the mediation, there are approximately
26 67 Class Members.

1 34. Class Members will be identified by Defendant in connection with its duty to
2 provide Class Data to the Settlement Administrator within 10 business days after the Court
3 preliminarily approves the settlement.

4 35. A community of interest exists, as in the pleading, Plaintiff is claiming the
5 same injuries based upon the same alleged wage and hour policies as are the Settlement
6 Class Members.

7 **Other Concerns**

8 36. I have conferred with Defendant's counsel, and Defendant has indicated that
9 all of the Class Members can read English. For that reason, the Notice of Settlement will be
10 printed only in English.

11 37. Gundzik Gundzik Heeger LLP ("GGH") and Caskey & Holzman ("CH")
12 have entered into a written retention agreement with the representative Plaintiff. GGH and
13 CH have agreed to divide any attorney's fees awarded in this case. Plaintiff has consented to
14 the division of fees. Attached hereto as **Exhibit 2** is a copy of the Division of Fees
15 Agreement signed by Plaintiff.

16 **The Settlement Agreement**

17 38. The terms of the Settlement have been memorialized in the Stipulation of
18 Class Action Settlement (Settlement Agreement"), which is attached hereto as **Exhibit 1**.

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

20 39. The Class includes all non-exempt employees of Defendant who worked as
21 security officers in California during the applicable Class Period. Ex. 1, ¶ II.C.

22 40. The Class Period and the Class Release Period are the same, and are the
23 period beginning on April 21, 2016 and ending on December 7, 2020. Ex. 1, ¶¶ II.I.

24 **B. Release of Claims**

25 41. In exchange for the consideration agreed to in the Settlement Agreement
26 members of the Class will provide releases to Defendant and its related entities. Ex. 1, ¶¶
27 II.BB, II.CC, VI. The scope of the release will be disclosed to the Class in the proposed
28 Notice of Settlement. See Ex. A to Ex. 1. Any member of the Class who does not like the

1 scope of the release (or the Settlement in general) can preserve his or her individual claims
2 by timely submitting a written request to be excluded from the Settlement and class. The
3 release to be provided by the named Plaintiff will be broader and encompass all claims that
4 they might have against Defendant. Ex. 1, ¶ VII.

5 42. The Release applicable to the Class Members provides:

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

16 Ex. 1, ¶ VI. The "Released Claims" are defined in the Settlement Agreement as:

17 any and all claims, rights, demands, charges, complaints, causes of action, punitive or
18 statutory damages, penalties, liquidated damages, expenses, attorneys' fees and costs,
19 interest, obligations or liability of any and every kind that were, or could have been,
20 asserted in the Hall Action or are based on or arise out of the facts alleged in any
21 complaint filed in the Hall Action, including without limitation any claims for failure
22 to pay overtime, failure to issue accurate wage statements, failure to provide compliant
23 meal and rest periods, unfair, unlawful or fraudulent business practices under
24 California Business and Professions Code Section 17200, including claims under
25 Labor Code sections 226, 226.7, 510, 512, 1194, 1199, as well as IWC Wage Order
26 No. 4 §§ 3, 11, and 12 based on alleged violations of the foregoing statutes and Wage
27 Order sections; as well as all claims arising under the listed Labor Code statutes based
28 on the primary rights of those statutes; and any claims based on paid sick leave under

1 state federal, or local law.

2 The Release applies to all of the Released Parties, who are defined as Defendant and all of its
3 current or former subsidiaries, affiliates, parent corporations, predecessors, insurers, agents,
4 employees, successors, assigns, officers, owners, third-party consultants, staffing agencies
5 (and those staffing agencies' workers), officials, directors, attorneys, personal representatives,
6 executors, and shareholders, including Defendant's pension, profit sharing, savings, health,
7 and other employee benefit plans of any nature, the successors of such plans, and those plans'
8 respective current or former trustees and administrators, agents, employees, and fiduciaries.
9 II.CC. Opt-in and release language regarding the release of the FLSA claim will be printed on
10 a separate FLSA settlement check issued to Settlement Class Members (Class members will
11 be receiving two settlement checks), with the advisement that cashing such check constitutes
12 consent under the FLSA to opt into the collective action and to release all claims under the
13 FLSA. Ex. 1, ¶ IV.L(8).

14 43. The Class Release will be effective upon entry of the Final Approval Order..
15 Ex. 1, ¶ VI.

16 44. Within 10 business days following the Court's order granting preliminary
17 approval of the Settlement, Defendant will provide the Settlement Administrator and at the
18 same time, will provide the Class Data, without Class Member names, contact information
19 and social security numbers, to Class Counsel. This information will remain confidential and
20 will not be disclosed to anyone, except as required to applicable taxing authorities, pursuant
21 to Defendant's express written authorization, by order of the Court, or as otherwise provided
22 for in this Agreement. Because we will be provided anonymized Class Data, we will be able
23 to fulfill our fiduciary duties to the Class to confirm that the settlement payments are being
24 paid to the correct individuals and in the correct amounts. Ex. 1, ¶ IV.C.

25 **C. Monetary Terms**

26 45. Pursuant to the terms of the proposed settlement, Defendant will pay a Gross
27 Settlement Amount of \$320,000, plus the employer's share of withholding taxes. After
28

1 proposed deductions, as approved by the Court, the Net Settlement Amount of
2 approximately \$175,319.08 will be available to distribute to settlement Class members.

3 46. Pursuant to the terms of the Settlement Agreement, if the Court grants final
4 approval of the Settlement, within no more than twenty (20) days of the Effective Date
5 (which is the date the Court's Final Approval Order and Judgment thereon becomes final,
6 which will occur upon the later of: (i) if there are no objections to the settlement, the date
7 that the Court enters Judgment; (ii) if there is an objection to the settlement and no appeal is
8 filed, the expiration date of the time for the filing or noticing of an appeal from, or other
9 challenge to, the Court's Judgment; (iii) if an appeal is filed, the date affirmance of an
10 appeal of the Judgment becomes final; or (iv) if an appeal is filed, the date of final dismissal
11 of any appeal from the Judgment or the final dismissal of any proceeding on review of any
12 court of appeal decision relating to the Judgment), Defendant will deposit the Gross
13 Settlement Amount and employers' withholding share with the Settlement Administrator.
14 Ex. 1, ¶ IV.N. Or, in the event of a federal government shutdown between October 7, 2020
15 and the date on which payment is due, Defendant's payment will be due 120 days after the
16 federal government opens back up and resumes funding of Defendant's invoices. Within ten
17 (10) days of Defendant's deposit of funds, the Settlement Administrator will pay settlement
18 payments to participating Settlement Class Members, the Court-approved Class
19 Representative Service and Release Award, the Court-approved award for Class Counsel's
20 Attorneys' Fees and Class Counsel's Costs, the PAGA Payment, and the fees of the
21 Settlement Administrator. Ex. 1, ¶¶ IV.L(7), IV.N, IV.O.

22 47. The Settlement is conditioned on this Court granting preliminary approval of
23 the Settlement. A [Proposed] Order on Motion for Preliminary Approval of Class Action
24 Settlement ("Preliminary Approval Order") has been filed concurrently with this Motion. If
25 the Court grants preliminary approval, at the final approval hearing, in addition to granting
26 final approval to the settlement, the Court will be asked to approve the following deductions
27 from the Defendant's settlement payment of \$320,000: (a) Class Counsel's attorneys' fees of
28 \$106,666.66; (b) Class Counsel's actual litigation costs and expenses, not to exceed

1 \$15,000; (c) A Service and Release Award in the amount of \$10,000 to Representative
2 Plaintiff William Hall; (d) \$4,264.26 to the Settlement Administrator for administering the
3 settlement; and (e) \$7,500 to the LWDA, which is 75% of the \$10,000 that the Parties have
4 allocated for settlement of Plaintiff's PAGA claims. See Ex. 1, ¶ I; See Declaration of
5 ILYM, ¶ 9.

6 48. As compensation for his efforts, the Settlement Agreement provides that a
7 Class Representative Service and Release Award in the amount of \$10,000 will be requested
8 for the representative Plaintiff. This award is in recognition of the significant time he
9 expended pursuing this action and assisting our efforts with the case, and in recognition of the
10 expanded general releases that he is required to provide, as part of the Settlement. Plaintiff
11 spent a great deal of time consulting with us in order to investigate the facts before we filed
12 the Complaint, First Amended Complaint and Second Amended Complaint, and consulted
13 with us extensively prior and subsequent to the mediation. He provided us with numerous
14 details and documents relating to his experience working for Defendant and missed a full
15 day of work to attend the full-day mediation. He contributed a substantial amount of time
16 meeting with us, reviewing documents, producing documents, attending the mediation,
17 monitoring the progress of the litigation with counsel, and reviewing and signing the
18 Memorandum of Understanding and Settlement Agreement. Plaintiff's presence at the
19 mediation was invaluable, as he was able to provide us a great deal of additional information
20 that was extremely helpful for our negotiations. As an additional requirement to receiving
21 the proposed Class Representative Service and Release Awards, Plaintiff is required to sign
22 a broad general release which includes a waiver of Section 1542 of the California Civil
23 Code.

24 49. We will be supporting our request for attorneys' fees in several ways. We
25 will include our actual billing records and will also provide a chart which will specify the
26 number of hours we spent on each type of task that we were required to do in connection
27 with the case. We will be applying the percentage method and supporting it with a loadstar
28 cross-check. And, if we request a multiplier, we will provide sufficient grounds for the

1 application of the multiplier being requested. We have used this approach in all of the cases
2 listed in Paragraph 14.

3 50. Defendant's share of Employer's Withholding Taxes will be paid by the
4 Defendant in addition to the Gross Settlement Amount. Ex. 1, ¶ IV.L.6.

5 51. No amount of the Gross Settlement Amount will revert to Defendant. Ex. 1, ¶
6 I. The Net Settlement Amount of approximately \$176,569.08 will be distributed to Class
7 Members based on the number of Qualifying Workweeks they worked for Defendant (this
8 amount increased from the amount stated in the Settlement Agreement because the
9 Settlement Administrator advised us that its bid was less than we had indicated). The
10 following formula will be used to calculate the settlement payments to be made to Class
11 Members: (Individual Settlement Class Member's Qualifying Workweeks ÷ All Settlement
12 Class Members' Qualifying Workweeks) x Net Settlement Amount) Ex. 1, ¶¶ IV.L.1. Based
13 on a Class size of 69, the Settlement Class Members will get, on average, about \$2,558.97.
14 Once Defendant provides the Class Data to the Settlement Administrator, we will be able to
15 refine this amount and determine both the average payment to be made to the Class
16 Members and the average payment to be made to the Sub-Class Members. Settlement
17 payments will be paid to the Class Members within 10 days of Defendant's deposit of the
18 Gross Settlement Amount with the Settlement Administrator.

19 52. Payment to each Settlement Class Member will be allocated as follows: The
20 non-FLSA payments to Settlement Class Members will be characterized as seventy percent
21 (70%) 1099 income and thirty percent (30%) W-2 income. The FLSA payments will be
22 characterized as fifty percent (50%) 1099 income, to be reported on an IRS Form 1099, and
23 fifty percent (50%) as W-2 income, to be reported on a W-2 form. Ex. 1, ¶¶ IV.L(5).

24 **D. Notice Administration**

25 53. Under the terms of the proposed settlement, the settlement will be
26 administered by ILYM Group, Inc. ("ILYM" or "Settlement Administrator"). Ex. 1, ¶ II.JJ.
27 The qualifications and experience of the Settlement Administrator are detailed in the
28

1 Declaration of Stephanie Molina on behalf of ILYM submitted concurrently with this
2 Declaration and the Motion.

3 54. If the Court grants preliminary approval of the settlement, within ten (10)
4 business days Defendant will provide the Settlement Administrator with the names, social
5 security numbers, last known addresses, and telephone numbers for each Class Member and
6 the number of weeks that each Class Member worked for Defendant in a Class position
7 during the Class Period. Ex. 1, ¶ IV.C.

8 55. The Settlement Administrator will update the Class list prior to mailing the
9 Notice of Settlement by checking all addresses against the National Change of Address
10 database. Ex. 1, ¶ IV.C.

11 56. Within ten (10) calendar days of receiving the Class Data, the Settlement
12 Administrator will send to each Class Member via First-Class United States mail an English
13 version of the Notice of Settlement to the most recent address known for each Class
14 Member. Ex. 1, ¶ IV.C. No submission of a claim form is necessary, and all Class members
15 are eligible to receive a settlement payment except those who follow the procedure for
16 requesting an exclusion. Ex. 1, ¶¶ I, IV.E, IV.L(3).

17 57. The parties have negotiated a proposed form of the notice of settlement to the
18 class (“Notice of Settlement”), a copy of which is attached as Exhibit A to the Settlement
19 Agreement. The proposed notice discloses the pendency of this litigation, summarizes the
20 allegations against Defendant, defines the Class, describes the consideration that Defendant
21 will provide in settlement along with an estimate of each Settlement Class Member’s
22 estimated recovery. The notice also describes the claims that will be released and explains
23 the procedures to be used by members of the class to be excluded from or object to the
24 settlement.

25 58. My firm has met and conferred with counsel for Defendant and we have
26 determined that disseminating the Notice of Settlement by mail to the Class Members is the
27 best way to maximize its reach. Because this is an opt-out settlement and Class members
28 who do nothing will still receive a settlement payment, the notice provisions agreed to by

1 the parties will adequately serve the stakes of the individual Class Members in receiving the
2 relief provided by the settlement and adequately comply with California Rules of Court,
3 Rule 3.766(e).

4 59. The Class Notice specifies the current social distancing procedures for
5 attendance at hearings and review of court files. See Ex. A to Ex. 1, pp.5-6.

6 60. Payments to Settlement Class Members will be processed by check paid to
7 the order of the individual Class Members. Pursuant to the terms of the Settlement
8 Agreement, Class Member settlement checks will be valid for 180 days from issuance. Class
9 Members who have not cashed their checks within 60 days of issuance will be reminded of
10 the 180 day deadline by the Settlement Administrator. The reminders will be by mail,
11 telephone or email. Class Member checks not cashed within 180 days will be voided and a
12 stop payment order may be placed on the check. In such event, the Settlement nevertheless
13 will be binding upon the Settlement Class Member. The funds represented by all uncashed
14 settlement checks will be transmitted by the Settlement Administrator to the California State
15 Controller's Office Unclaimed Property Fund. Ex. 1, ¶ IV.P.

16 61. For any Notice of Settlement that is returned as undeliverable, the Settlement
17 Administrator will perform a utility database search or other skip trace. The returned Notices
18 of Settlement will be re-mailed to the new addresses obtained for such Class Members. Such
19 searching and re-mailing will be completed within ten (10) calendar days of the date that
20 Notices of Settlement were originally returned as undeliverable. Ex. 1, ¶ IV.D.

21 62. If there is a change in the date or location of the Final Approval hearing, the
22 administrator will post this change on the settlement payment website that it will establish.
23 The settlement website will be located at www.CASSclassactionsettlement.com. There will
24 not be a publication notice, as Class Members will be provided with an individual Notice of
25 Settlement which will include the phone number and email address for the Settlement
26 Administrator, as well as the website specific to the Settlement. Ex. 1, ¶ II(II).

27 63. Notice of the Final Judgment and Final Approval Order will be posted on the
28 Settlement Administrator's website.

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 0
- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 0
- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8

2
3
4
5
6
7
8
9

0
1
2
3
4
5
6

7

8
9
0

23

24

Aaron C. Gundzik