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Attorneys for Plaintiff, the Class, and Aggrieved Employees

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF CONTRA COSTA**

JAMIE KENNEDY, as an individual and
on behalf of all others similarly situated,

Plaintiff,

vs.

UNIVAR SOLUTIONS USA INC., a
Washington corporation; and DOES 1
through 50, inclusive,

Defendants.

Case No.: MSC21-00272

[Assigned for all purposes to the Hon. Edward G.
Weil, Department 39]

**[PROPOSED] AMENDED ORDER
GRANTING PLAINTIFF'S MOTION FOR
PRELIMINARY APPROVAL OF CLASS
ACTION SETTLEMENT**

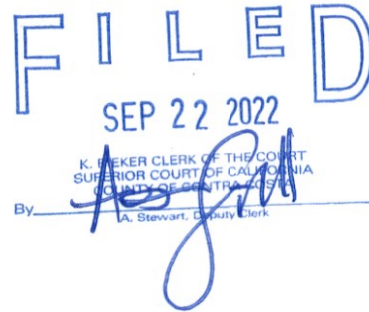
Date: September 15, 2022

Time: 9:00 A.M.

Dept: 39

Complaint Filed: February 16, 2021

Trial Date: Not Set



1 Plaintiff Jamie Kennedy's ("Plaintiff") application for an Order Granting Preliminary
2 Approval of Class Action Settlement was filed with the Court on August 1, 2022, and came
3 before the Court for consideration.

4 **A. BACKGROUND AND SETTLEMENT TERMS**

5 The original complaint was filed on February 16, 2021, raising claims under PAGA and a
6 class action on behalf of non-exempt employees, alleging that defendant violated the Labor Code
7 in various ways, all of which arose from underpayment of sick pay.

8 The settlement would create a gross settlement fund of \$95,000. The class representative
9 payment to the plaintiff would be \$10,000. Counsel's attorney's fees would be \$31,666.67 (one-
10 third of the settlement). Litigation costs are estimated at \$15,000. The settlement administrator
11 (Phoenix) would receive an estimated \$4,500. PAGA penalties would be \$5,000, resulting in a
12 payment of \$3,750 to the LWDA. The net amount paid directly to the class members would be
13 about \$30,083.33. The fund is non-reversionary. There are an estimated 19 class members.
14 Based on the estimated class size, the average net payment for each class member is
15 approximately \$1,583.

16 Defendant will place the maximum settlement amount into an escrow account within 14
17 days after final approval of the settlement.

18 The proposed settlement would certify a class of all current and former non-union, non-
19 exempt, hourly-paid employees of Defendant who worked in California from August 22, 2017
20 through the date of preliminary approval of the settlement, who were paid sick pay wages and
21 non-discretionary incentive wages, including, but not limited to, job premium and/or shift
22 differential wages, in the same workweek[.]

23 The class members will not be required to file a claim. Class members may object or opt
24 out of the settlement. (Aggrieved employees cannot opt out of the PAGA portion of the
25 settlement.) Funds would be apportioned to class members based on the hourly pay rate during
26 the time period in question.

27 Various prescribed follow-up steps will be taken with respect to mail that is returned as
28 undeliverable. Undelivered or uncashed checks will be voided, and will be paid to a *cy pres*

1 beneficiary, Legal Aid at Work.

2 The settlement contains release language covering all “class claims,” which are all claims
3 “that were or could have been alleged based on the facts alleged in the Complaint.” Under recent
4 appellate authority, the limitation to those claims with the “same factual predicate” as those
5 alleged in the complaint is critical. (*Amaro v. Anaheim Arena Mgmt., LLC* (2021) 69 Cal.App.5th
6 521, 537 [“A court cannot release claims that are outside the scope of the allegations of the
7 complaint.” “Put another way, a release of claims that’ go beyond the scope of the allegations in
8 the operative complaint’ is impermissible.” (*Id.*, quoting *Marshall v. Northrop Grumman Corp.*
9 (C.D. Cal.2020) 469 F.Supp.3d 942, 949.)

10 Informal discovery was undertaken, resulting in the production of substantial documents,
11 including sick pay policies. The matter settled after arm’s-length negotiations, which included an
12 all- day session with an experienced mediator on October 20, 2021.

13 Counsel also has provided an analysis of the case, and how the settlement compares to
14 the potential value of the case, after allowing for various risks and contingencies. This included
15 an estimate of class claims at a maximum of about \$150,000, plus another \$7,500 in waiting time
16 penalties. Maximum PAGA penalties are estimated at about \$6,700.

17 The potential liability needs to be adjusted for various evidence and risk based
18 contingencies, including problems of proof. PAGA penalties are difficult to evaluate for a
19 number of reasons: they derive from other violations, they include “stacking” of violations, the
20 law may only allow application of the “initial violation” penalty amount, and the total amount
21 may be reduced in the discretion of the court. (See Labor Code, § 2699(e)(2) [PAGA penalties
22 may be reduced where “based on the facts and circumstances of the particular case, to do
23 otherwise would result in an award that is unjust arbitrary and oppressive, or confiscatory.”])

24 Counsel attests that his office “will provide notice to the Labor and Workforce
25 Development Agency.” (This should be confirmed before the settlement is approved.) On
26 September 15, 2022, counsel submitted supplemental declarations confirming notice was
27 provided.
28

1 **B. LEGAL STANDARDS**

2 The primary determination to be made is whether the proposed settlement is “fair,
3 reasonable, and adequate,” under *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1801,
4 including “the strength of plaintiffs’ case, the risk, expense, complexity and likely duration of
5 further litigation, the risk of maintaining class action status through trial, the amount offered in
6 settlement, the extent of discovery completed and the state of the proceedings, the experience
7 and views of counsel, the presence of a governmental participant, and the reaction ... to the
8 proposed settlement.” (See also *Amaro v. Anaheim Arena Mgmt., LLC, supra*, 69 Cal.App.5th
9 521.)

10 Because this matter also proposes to settle PAGA claims, the Court also must consider
11 the criteria that apply under that statute. Recently, the Court of Appeal’s decision in *Moniz v.*
12 *Adecco USA, Inc.* (2021) 72 Cal.App.5th 56, provided guidance on this issue. In *Moniz*, the court
13 found that the “fair, reasonable, and adequate” standard applicable to class actions applies to
14 PAGA settlements. (*Id.*, at 64.) The Court also held that the trial court must assess “the fairness
15 of the settlement’s allocation of civil penalties between the affected aggrieved employees[.]”
16 (*Id.*, at 64-65.) California law provides some general guidance concerning judicial approval of
17 any settlement. First, public policy generally favors settlement. (*Neary v. Regents of University*
18 *of California* (1992) 3 Cal.4th 273.) Nonetheless, the court should not approve an agreement
19 contrary to law or public policy. (*Bechtel Corp. v. Superior Court* (1973) 33 Cal.App.3d 405,
20 412; *Timney v. Lin* (2003) 106 Cal.App.4th 1121, 1127.) Moreover, “[t]he court cannot surrender
21 its duty to see that the judgment to be entered is a just one, nor is the court to act as a mere
22 puppet in the matter.” (*California State Auto. Assn. Inter-Ins. Bureau v. Superior Court* (1990)
23 50 Cal.3d 658, 664.) As a result, courts have specifically noted that *Neary* does not always apply,
24 because “[w]here the rights of the public are implicated, the additional safeguard of judicial
25 review, though more cumbersome to the settlement process, serves a salutatory purpose.”
26 (*Consumer Advocacy Group, Inc. v. Kintetsu Enterprises of America* (2006) 141 Cal.App.4th 48,
27 63.)
28

1 **C. ATTORNEY FEES**

2 Plaintiff seeks one-third of the total settlement amount as fees, relying on the “common
3 fund” theory. Even a proper common fund-based fee award, however, should be reviewed
4 through a lodestar cross-check. In *Lafitte v. Robert Half International* (2016) 1 Cal.5th 480, 503,
5 the Supreme Court endorsed the use of a lodestar cross-check as a way to determine whether the
6 percentage allocated is reasonable. It stated: “If the multiplier calculated by means of a lodestar
7 cross-check is extraordinarily high or low, the trial court should consider whether the percentage
8 used should be adjusted so as to bring the imputed multiplier within a justifiable range, but the
9 court is not necessarily required to make such an adjustment.” (*Id.*, at 505.) Following typical
10 practice, however, the fee award will not be considered at this time, but only as part of final
11 approval.

12 Similarly, litigation costs and the requested representative payment of \$10,000 for
13 plaintiff will be reviewed at time of final approval. Criteria for evaluation of representative
14 payment requests are discussed in *Clark v. American Residential Services LLC* (2009) 175
15 Cal.App.4th 785, 804-807.

16 **D. DISCUSSION AND CONCLUSION**

17 The proposed settlement is sufficiently fair, reasonable, and adequate to justify
18 preliminary approval.

19 Counsel for Plaintiff Max W. Gavron submitted a supplemental declaration on September
20 15, 2022, attesting that notice of the settlement was served upon the LWDA through its website.
21 Further, Mr. Gavron and his co-counsel submitted declarations attesting no connection or
22 relationship to the proposed *cy pres* beneficiary, Legal Aid at Work.

23 Having considered the Joint Stipulation of Class Action Settlement (“Stipulation” or
24 “Settlement Agreement”) and all other papers filed in this action, the Court HEREBY FINDS
25 AND ORDERS as follows:

26 1. This Court grants preliminary approval of the Settlement Agreement between
27 Plaintiff and Defendant filed herewith. The Settlement Agreement appears to be fair, adequate,
28 and reasonable to the Class.

1 2. The Class Representative and Defendant Univar Solutions USA Inc.
2 ("Defendant") (together, the "Settling Parties"), through their counsel of record, have reached an
3 agreement to settle the class and PAGA claims in the case as set forth in the Settlement
4 Agreement, on behalf of the Class (as defined below and in the Settlement Agreement):

5 all non-union former non-exempt California employees of
6 Defendant who were paid sick pay wages and non-discretionary
7 incentive wages, including, but not limited to, job premium and/or
8 shift differential wages, in the same workweek during their
9 employment and whose employment ended at any time between
 August 22, 2017, and the date of preliminary approval of the
 Settlement (the "Class").

10 3. Should for whatever reason the Settlement Agreement not become Final, the fact
11 that the Parties were willing to stipulate to certification of a class as part of the Settlement
12 Agreement shall have no bearing on, or be admissible in connection with, the case or the issue of
13 whether a class should be certified in a non-settlement context.

14 4. The Court appoints and designates: (a) Plaintiff Jamie Kennedy as the Class
15 Representative and (b) Larry W. Lee and Max W. Gavron of Diversity Law Group, P.C. and
16 William L. Marder of Polaris Law Group as Class Counsel for the Class. Class Counsel is
17 authorized to act on behalf of the Class with respect to all acts or consents required by, or which
18 may be given, pursuant to the Settlement Agreement, and such other acts reasonably necessary to
19 finalize the Settlement Agreement and its terms. Any Class Member may enter an appearance
20 through his or her own counsel at such Class Member's own expense. Any Class Member who
21 does not enter an appearance or appear on his or her own behalf will be represented by Class
22 Counsel.

23 5. The Court hereby approves the terms and conditions provided for in the
24 Settlement Agreement. The Court finds that on a preliminary basis the Settlement Agreement
25 falls within the range of reasonableness of a settlement and appears to be presumptively valid,
26 subject only to any objections that may be raised at the final fairness hearing and final approval
27 by the Court. It appears to the Court on a preliminary basis that the settlement is fair, adequate,
28 and reasonable as to all potential Class Members when balanced against the probable outcome of

1 further litigation relating to liability, class certification, and damages issues. It also appears that
2 investigation and research into the claims, liability, and damages have been conducted so that
3 counsel for the Settling Parties are able to reasonably evaluate their respective positions. It
4 appears to the Court that settlement at this time will avoid substantial additional costs by all
5 Settling Parties, as well as avoid the delay and risks that would be presented by the further
6 prosecution of the Litigation. It also appears that settlement has been reached as a result of
7 intensive, serious, and non-collusive arm's length negotiations.

8 6. The Court hereby approves the following dates:

Description	Date
Class Information to Settlement Administrator	14 calendar days after the Court grants preliminary approval
Class Notice Distribution	14 calendar days after receiving Class Information
Opt Out/Written Objection Deadline	45 calendar days after initial Class Notice distribution
Opt Out/Written Objection Deadline (for re-mailed notices)	15 calendar days extension for re-mailed notices
Final Approval Filing Deadline	16 court days before the Final Approval Hearing
Final Approval Hearing	January 26, 2023, at 9:00 A.M.

17 A final fairness hearing on the question of whether the proposed Settlement Agreement,
18 the allocation of payments to Class Members, attorneys' fees and costs to Class Counsel, the
19 payment to the Settlement Administrator, the payment to the Labor Workforce & Development
20 Agency, and the service payment to the Class Representative should be finally approved as fair,
21 reasonable, and adequate as to the members of the Class is hereby set for January 26, 2023, at
22 9:00 a.m. in this Court. The Motion for Final Approval shall be filed by the Class Representative
23 no later than sixteen (16) court days before the final fairness hearing.

24 7. The Court hereby approves, as to form and content, the Notice of Class Action
25 Settlement ("Class Notice") to be sent to Class Members, which is attached herein as **Exhibit A**.
26 The Court finds that distribution of the Class Notice to Class Members substantially in the
27 manner and form set forth in the Settlement Agreement and this Order meets the requirements of
28 due process and shall constitute due and sufficient notice to all parties entitled thereto.

1 8. The Court appoints and designates Phoenix Settlement Administrators as the
2 Settlement Administrator. The Court hereby directs the Settlement Administrator to provide the
3 approved Class Notice to Class Members using the procedures set forth in the Settlement
4 Agreement.

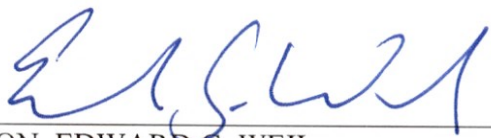
5 9. Any Class Member may choose to opt out of and be excluded from the Settlement
6 as provided in the Settlement Agreement and Class Notice, and by following the instructions for
7 requesting exclusion. Any person who timely and properly opts out of the Settlement will not be
8 bound by the Settlement Agreement or have any right to object, appeal, or comment thereon.
9 Any requests for exclusion must be in writing and signed by each such Class Member opting out
10 and must otherwise comply with the requirements delineated in the Class Notice. Class Members
11 who have not requested exclusion by submitting a valid and timely request by the deadline shall
12 be bound by all determinations of the Court, the Settlement Agreement, and Judgment.

13 10. Any Class Member may object to the Settlement Agreement or express his or her
14 views regarding the Settlement Agreement, and may present evidence and file briefs or other
15 papers that may be proper and relevant to the issues to be heard and determined by the Court as
16 provided in the Class Notice.

17 11. The Court reserves the right to adjourn or continue the date of the Settlement
18 Fairness Hearing and all dates provided for in the Settlement Agreement without further notice to
19 the Class, and retains jurisdiction to consider all further applications arising out of or connected
20 with the Class Settlement Agreement.

21 IT IS SO ORDERED.

22
23 DATED: SEP 22 2022



HON. EDWARD G. WEIL
SUPERIOR COURT OF CALIFORNIA

(Code of Civil Procedure Sections 1013a, 2015.5)

STATE OF CALIFORNIA]
COUNTY OF LOS ANGELES]ss.
]

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action; my business address is 515 S. Figueroa Street, Suite 1250, Los Angeles, California 90071.

On September 21, 2022, I served the following document(s) described as: **[PROPOSED] AMENDED ORDER GRANTING PLAINTIFF'S MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT** on the interested parties in this action as follows:

Connie L. Michaels
Littler Mendelson, P.C.
2049 Century Park East, 5th Floor
Los Angeles, CA 90067

*Attorneys for Defendant Univar
Solutions USA Inc.*

cmichaels@littler.com

Marlene S. Muraco
Littler Mendelson, P.C.
50 W. San Fernando 7th Floor
San Jose, CA 95113

*Attorneys for Defendant Univar
Solutions USA Inc.*

mmuraco@littler.com

 X BY ELECTRONIC SERVICE: Based on a court order I caused the above-entitled document(s) to be served through the Odyssey eFileCA E-Filing System at the website www.california.tylerhost.net, addressed to all parties appearing on the electronic service list for the above-entitled case. The service transmission was reported as complete and a copy of the filing receipt/confirmation will be filed, deposited, or maintained with the original document(s) in this office.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on September 21, 2022, at Los Angeles, California.

Linda Lee

EXHIBIT A

[CLASS MEMBER NAME]

Jamie Kennedy v. Univar Solutions USA Inc.

**Superior Court of the State of California, County of Contra Costa
Case No. MSC21-00272**

If you are a former employee of Univar Solutions USA Inc. ("Univar" or "Defendant"), a class action lawsuit may affect your rights and you may be entitled to benefits under the settlement.

You are not being sued. A court authorized this notice. This is not a solicitation from a lawyer.

**PLEASE READ THIS NOTICE CAREFULLY. IT CONTAINS IMPORTANT
INFORMATION ABOUT YOUR RIGHTS.**

**YOUR ESTIMATED TOTAL SETTLEMENT PAYMENT FROM THIS CLASS ACTION
SETTLEMENT IS \$ [REDACTED].**

This payment is referred to herein as "Total Payment" and may be subject to change.

- This lawsuit involves a class defined as: all non-union former non-exempt California employees of Defendant who were paid sick pay wages and non-discretionary incentive wages, including, but not limited to, job premium and/or shift differential wages, in the same workweek during their employment and whose employment ended at any time between August 22, 2017, and [TBD] ("Class Period").
- You are receiving this Notice because the records reflect that you may be a class member.
- Plaintiff Jamie Kennedy ("Plaintiff") alleges that Defendant failed to pay sick pay at the regular rate of pay that factored in non-discretionary incentive remuneration, including without limitation, job premiums and/or shift differential wages, allegedly resulting in the failure to pay all wages owed at the time of separation of employment.
- There has been a settlement that affects your rights. Although the Court has authorized the Parties to provide this notice of the proposed settlement, the Court has expressed no opinion on the merits of Plaintiff's claims or Univar's defenses.
- You will not be penalized or retaliated against by Univar for participating in this settlement.
- You have several options available to you:

YOUR LEGAL RIGHTS AND OPTIONS IN THIS LAWSUIT

DO NOTHING	If you do nothing in response to this notice, you will receive your Total Payment, which is estimated above. You will also be considered a member of the settlement class and will be deemed to have released the claims made or that could have been made in this lawsuit. To ensure you receive your Total Payment, please notify the Settlement Administrator if your mailing address changes from now until you receive a settlement check. Once the Court grants final approval of the settlement, the Settlement Administrator will mail your check to the address on file for you.
ASK TO BE EXCLUDED FROM THE SETTLEMENT (Deadline: _____, 2022)	If you ask to be excluded from the settlement, you will not receive your Total Payment. Instead, you will receive a Private Attorneys General Act-only payment. You will not be considered a member of the settlement class as to the class action claims brought by Plaintiff and will not have released the Released Claims (defined below). However, you will be considered a member of the PAGA settlement class and will be deemed to have released claims under PAGA, Labor Code § 2698, <i>et seq.</i>, premised on any violation of Labor Code §§ 201, 202, 203, and/or 246. You will also receive a PAGA-only payment that is estimated to be \$[XXXX] for you ("PAGA-Only Payment"). Important: You cannot ask to be excluded from the settlement and still receive your Total Payment. Also, if you do not ask to be excluded, your Total Payment will include your PAGA-Only Payment.
OBJECT TO THE SETTLEMENT (Deadline: _____, 2022)	If you do not like the settlement, you can send a written objection to the Settlement Administrator by the identified deadline. Regardless of how the Court rules on your objection, you will still be considered a member of the settlement class and to have released the claims made or that could have been made in this lawsuit. If the Court approves the settlement, you will still receive your Total Payment even if you have objected.
ATTEND THE FINAL APPROVAL HEARING	You can ask to speak in Court about the fairness of the settlement at the Final Approval Hearing. The Court will hold a Final Approval Hearing to determine whether the settlement is fair, reasonable, and adequate on [DATE], 2022 at [TIME]. More information regarding this hearing is set forth in section 10.

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Your options are explained in this notice.
To opt out or object, you must act by XXXXXX.

1. Why did I get this notice?

A proposed settlement has been reached in a class action lawsuit that was brought on behalf of Univar's non-union former non-exempt employees. You have received this notice because Univar's records indicate that you are a member of the settlement class.

2. What is this lawsuit about?

This lawsuit was filed on February 16, 2021, on behalf of individuals who were employed by Univar as non-union, non-exempt employees in the State of California, during the Class Period. "Class Period" is defined as any time between August 22, 2017, and [TBD]. The operative complaint alleges class and representative PAGA claims against Univar for failing to pay sick pay at the regular rate of pay that resulted in the failure to pay all wages owed at the time of separation of employment in violation of Labor Code section 246, 201, 202, and 203. The complaint also alleges a claim for civil penalties under PAGA for the same underlying violations.

3. Has the Court decided who is right?

No. The Court has made no decision regarding the merits of Plaintiff's allegations or Univar's defenses.

4. Why did this case settle?

The Parties reached a settlement in order to avoid the risk, inconvenience, and expense of further litigation. Plaintiff and her attorneys believe the proposed settlement is fair, adequate, and in the best interest of the class members to whom it applies given the outcome of their investigation, and the consumption of time and resources required in connection with further litigation. Although Univar disputes Plaintiff's claims and asserts that it has complied with all of its legal obligations toward its employees, Defendant has also concluded that further litigation would be expensive and would divert management and employee time.

5. What are the terms of the settlement and how much will I receive?

The Maximum Settlement Amount is \$95,000,000. Under the proposed settlement, the following amounts will be deducted before any payments are made to employees, subject to final approval by the Court:

- Attorneys' fees: \$31,666.67
- Litigation Costs: \$15,000.00
- Settlements Administration Costs: \$4,500.00

- Class Representative Enhancement Payment to Class Representative: \$10,000.00
- PAGA Payment to the Labor and Workforce Development Agency ("LWDA"): \$3,750.00, representing its share of the settlement payment for the PAGA claims made pursuant to Labor Code § 2699.

After these deductions, and to the extent that the Court approves these amounts, approximately \$30,083.33 is estimated to be available for payment to the class members receiving this notice ("Net Settlement Fund"). These amounts may change and are subject to Court approval.

Each class member's Total Settlement Payment shall be determined as follows:

- Individual Settlement Payment: The Net Settlement Fund will be apportioned among Class Members on a pro rata basis, based on a Class Member's individual final hourly rate of pay, divided by the total final hourly rate of pay for all Class Members. (For example, if the sum of all Class Members' final hourly rates of pay is \$475, a Class Member whose final hourly rate of pay was \$32 would receive $32 \div 475 = 6.7\%$ of the Net Settlement Fund.)
- PAGA-Only Payment: PAGA penalties in the amount of \$1,250.00 will be apportioned proportionally among Class Members on a per capita basis.

All settlement payments will be treated as penalties and shall not be subject to withholding of employment taxes and shall be reported by IRS 1099 forms.

According to Univar's records, your hourly rate of pay at the time of separation from employment was .

If you disagree with the above information and would like someone to look into the matter, please follow the procedure below. Based on the above information, your estimated settlement amount is .

6. What if I disagree with information or the pay rate shown above?

If you believe the information in the notice is incorrect regarding your final pay rate, you can provide documentation or explanation to the Settlement Administrator to show contrary information. You can write a letter setting forth the pay rate at the time of separation of employment that you believe is correct. You may attach any relevant documentation in support thereof. You must mail or fax your letter to:

[INSERT SETTLEMENT ADMINISTRATOR CONTACT INFORMATION]

You must submit such information by XXXX. Class Counsel and the Settlement Administrator will work together in good faith and do their best to promptly resolve the dispute based on available records. In the event they are unable to resolve any dispute under this Section, the Settlement Administrator shall review all information, material and documents and make a decision regarding the dispute.

7. What do I have to do to receive a share of the settlement?

If you would like to receive an award under the terms of this settlement, you do not have to do anything. However, it is advisable to confirm your current mailing address with the Settlement Administrator to ensure you receive your settlement share. If you move, you must notify the Settlement Administrator of your new address. You will be covered by the release summarized in Section 8, below.

8. What rights am I giving up?

The claims you will release by doing nothing and participating in the settlement are as follows:

“Released Claims” means all claims that were or could have been alleged based on the facts alleged in the Complaint by the Class, including failing to pay sick pay at the regular rate of pay and for waiting time penalties incurred as a result of Defendant’s alleged failure to pay sick pay at the regular rate of pay, pursuant to Labor Code §§ 201, 202, and 246 that accrued during the period from August 22, 2017, to [INSERT DATE OF PRELIMINARY APPROVAL] and for claims for civil penalties under Labor Code § 2698 *et seq.* (Violation of the Private Attorney General Act) premised on the same facts alleged in the Complaint and Labor Code §§ 201, 202, 203, 246 that accrued during the period from August 10, 2019 through [INSERT DATE OF PRELIMINARY APPROVAL ORDER]. In addition, and in recognition of the fact that an employee can only recover one set of waiting time penalties regardless of how much he or she was underpaid at the time of termination, the Class shall also release any claim for failure to pay waiting time penalties under Labor Code § 203 as to any wages allegedly unpaid at the time of that individual’s separation during the Class Period, irrespective of the nature of the underlying unpaid wages.

Even if you opt-out of the class action settlement, you cannot opt-out of the PAGA portion of this lawsuit and will release claims under PAGA, Labor Code § 2698, *et seq.*, premised on any violation of Labor Code §§ 201, 202, 203, and/or 246.

9. What if I do not wish to be involved?

Anyone not wishing to participate in the settlement may exclude himself or herself (“Request for Exclusion”) by completing, signing, and mailing/faxing a letter indicating that they do not want to participate in the settlement to the Settlement Administrator, [insert name of administrator], at the following address by XXXX.

[INSERT SETTLEMENT ADMINISTRATOR CONTACT INFORMATION]

Your letter must include (1) your name, current address, and telephone number; (2) a statement indicating your request to opt out of or be excluded from the settlement; (3) your signature; and (4) be postmarked or fax stamped on or before XXX.

If your Request for Exclusion is postmarked or fax stamped after XXX, it will be rejected as untimely, and you will be a Participating Class Member and be bound by the settlement terms and

release.

Anyone who submits a timely and valid Request for Exclusion shall not be deemed a Participating Class Member and will not receive an Individual Settlement Payment as part of this settlement. Such individuals will keep any right to sue Univar separately about the claims made in this lawsuit, with the exception of the PAGA claim, which will be released upon court approval of the PAGA Settlement. However, even if you submit a valid Request for Exclusion, you cannot opt-out of the PAGA portion of this lawsuit and will still receive your PAGA-Only Payment and be deemed to have released the PAGA claims being resolved by this settlement.

10. What if I have an objection?

A class member may object to the settlement in writing or in person. Written objections and all supporting briefs or other materials must be submitted to the Settlement Administrator by mail or fax no later than XXXX. The Court will decide on the objections at the Final Approval Hearing. If your objection is overruled at the Final Approval Hearing, you will still be bound by the terms of this settlement and will receive a settlement payment.

For written objections to be valid, you must state your full name, the basis of your objection, and state whether you intend to appear at the Final Approval Hearing. Any class member may make an objection at the Final Approval Hearing with or without submitting any written objection. The Class Member may appear personally or through an attorney, at his or her own expense, at the Final Approval Hearing to present his or her objection directly to the Court. Any attorney who will represent an individual objecting to this Settlement who has not filed a written objection must file a notice of appearance with the Judge and serve Class Counsel and Defense Counsel no later than . The Final Approval and Fairness Hearing will be held in Dept. 39 of the Contra Costa County Superior Court, Wakefield Taylor Courthouse, located at 725 Court Street, Martinez, California 94553 on , 2022, at XXX (Pacific Time).

11. Do I need a lawyer? Who are the lawyers in this case?

You do not need to hire your own lawyer because Class Counsel is working on your behalf. However, if you want your own lawyer, you are free to hire one at your own expense.

The below are Class Counsel:

Larry W. Lee (State Bar No. 228175)
Max W. Gavron (State Bar No. 291697)
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William L. Marder (State Bar No. 170131)
Polaris Law Group
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Hollister, CA 95023
(831) 531-4214
(831) 634-0333 facsimile

12. What happens next in the case?

The Settlement has only been preliminarily approved. The Court will hold a hearing in Dept. 39 of the Contra Costa County Superior Court, Wakefield Taylor Courthouse, located at 725 Court

Street, Martinez, California 94553 on [REDACTED], 2022, at XXX (Pacific Time), to consider any objections and determine whether the settlement should be finally approved as fair, reasonable, and adequate. The Court will also be asked to approve Class Counsel's request for attorneys' fees and costs, Plaintiff's enhancement award, and the costs of settlement administration. At the Final Approval Hearing, the Court will hear all objections, as well as arguments for and against the proposed settlement. You have a right to attend this hearing, but you are not required to do so. You also have the right to hire an attorney to represent you, at your own expense, or to enter an appearance and represent yourself. The hearing may be continued without further notice to you. It is not necessary for you to appear at this hearing.

Hearings before the judge overseeing this case are now being conducted in person. However, remote appearances are still permitted, and are offered with the assistance of a third-party service provider, CourtCall. If that remains the case at the time of the final fairness hearing, class members who wish to appear at the final fairness hearing remotely should contact Class Counsel to arrange an appearance through CourtCall, at least three days before the hearing if possible. Any CourtCall fees for an appearance by an objecting class member shall be paid by Class Counsel.

13. How can I receive more information?

This notice is a summary of the basic terms of the settlement. For further information, you may telephone the [INSERT SETTLEMENT ADMINISTRATOR CONTACT INFORMATION], or Class Counsel (listed above). You may also review the settlement agreement, which is on file with the Clerk of the Contra Costa County Superior Court, 725 Court Street, Martinez, California 94553, and may also be reviewed online at <https://odyportal.cc-courts.org/portal>.

ALL INQUIRIES REGARDING THIS LITIGATION SHOULD BE MADE TO PLAINTIFF'S ATTORNEYS: Larry W. Lee and Max W. Gavron of Diversity Law Group, P.C., 515 S. Figueroa Street, Suite 1250, Los Angeles, CA 90071, Phone: (213) 488-6555; and William L. Marder of Polaris Law Group, 501 San Benito Street, Suite 200, Hollister, CA 95023, Phone: (831) 531-4214.

Please do not telephone the Court, the Office of the Clerk, or Univar's counsel for information regarding this settlement.