

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

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

Attorneys for Plaintiff Bernabe Parrilla, individually,
on behalf of all others similarly situated

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

BERNABE PARRILLA, individually and on
behalf of all others similarly situated,

Plaintiff,

vs.

MONSTER ENERGY COMPANY, a
Delaware corporation; DOES 1 through 25,

Defendants.

Case No.: 21STCV25855
Assigned to Hon. Elihu M. Berle, SSC-6

**NOTICE OF MOTION AND
MOTION FOR PRELIMINARY
APPROVAL OF CLASS ACTION
AND PAGA SETTLEMENT;
MEMORANDUM OF POINTS AND
AUTHORITIES**

[Filed concurrently with Declarations of
Aaron Gundzik, Daniel Holzman,
Bernabe Parrilla and Jodey Lawrence of
Phoenix Settlement Administrators;
[Proposed] Order]

Date: September 21, 2023

Time: 10:00 a.m.

Dept.: 6

Complaint Filed: July 14, 2021

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

2 **PLEASE TAKE NOTICE** that on September 21, 2023, at 10:00 a.m. in Department
3 6 of the above-entitled Court, located at 312 N. Spring St, Los Angeles, CA 90012, Plaintiff
4 Bernabe Parrilla 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 in the gross
7 amount of \$285,000, pursuant to Rules 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
10 defined as all persons employed by MEC in California and classified as a Field Sales
11 Representative (including Club Field Sales Representative) at any time during the Class
12 Period;

13 3. Appointing Plaintiff Bernabe Parrilla as the class representative for the Class;

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

16 5. Approving Phoenix Settlement Administrators (“Phoenix”) as the third-party
17 settlement administrator;

18 6. Approving the form of the Court Approved Notice of Proposed Class Action
19 Settlement and Hearing Date for Final Court Approval (“Class Notice”) to be sent to the
20 Class and authorizing its dissemination;

21 7. Scheduling a subsequent hearing for final approval of the settlement
22 including approval of a Class Representative Service Payment in an amount not to exceed
23 \$10,000, an Administration Expenses Payment in an amount not to exceed \$5,500, a Class
24 Counsel Litigation Expenses Payment in an amount not to exceed \$25,000, a Class Counsel
25 Fees Payment in an amount not to exceed \$95,000, a related PAGA settlement of \$12,000;
26 and

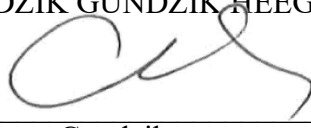
27 8. Granting such other and further relief as the Court may deem just and proper.
28

1 Plaintiff's motion is based on this Notice of Motion and Motion, the attached
2 Memorandum of Points and Authorities, the [Proposed] Preliminary Approval Order, the
3 Declarations of the proposed Class Counsel, Aaron C. Gundzik and Daniel Holzman, the
4 Declaration of the proposed Class Representative, Bernabe Parrilla, the Declaration of Jodey
5 Lawrence of Phoenix Settlement Administrators, the pleadings and other papers filed in this
6 action, and such further argument or evidence as may be considered at the hearing on the
7 motion.

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

10
11 DATED: August 9, 2023

GUNDZIK GUNDZIK HEEGER LLP

12
13 By: 

Aaron Gundzik

14 Attorneys for Plaintiff Bernabe Parrilla,
15 individually and on behalf of all others
16 similarly situated
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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 This is a class action filed by Plaintiff Bernabe Parrilla against his employer
4 Defendant Monster Energy Company (“Defendant” or “MEC”) on behalf of a class
5 consisting of all persons employed by MEC in California and classified as a Field Sales
6 Representative (including Club Field Sales Representative) at any time during the Class
7 Period. Plaintiff’s operative complaint alleges causes of action against Defendant for: (1)
8 failure to pay overtime; (2) failure to provide meal and rest breaks; (3) inaccurate wage
9 statements; (4) failure to pay unpaid wages at separation; (5) violation of the Unfair
10 Practices Act; and (6) recovery of civil penalties under the California Labor Code Private
11 Attorneys’ General Act, Cal. Lab. Code §§ 2698-2699.5 (“PAGA”). No class has been
12 certified by the Court.

13 Defendant denies that it has violated California law and denies that it owes Plaintiff
14 and the other employees on whose behalf the lawsuit was filed any additional wages,
15 penalties, or other relief.

16 Plaintiff and Defendant have reached a proposed settlement of Plaintiff’s Class and
17 PAGA claims whereby Defendant will pay a gross settlement amount of \$285,000. As
18 explained below, although Defendant denies that it has any liability whatsoever, this gross
19 settlement value is within the range of Defendant’s potential liability, as estimated by
20 Plaintiff’s Counsel. The settlement is advantageous to Plaintiff and the Class in that it
21 provides them prompt compensation and eliminates the uncertainty and risk of continued
22 litigation against Defendant. The proposed settlement is memorialized in the “Class Action
23 and PAGA Representative Action Settlement Agreement and Release of Claims”¹ (hereafter
24 referred to as the “Settlement Agreement”), a true and correct copy of which is attached as
25 Ex. 1 to the Declaration of Aaron C. Gundzik (“Gundzik Decl.”), ¶ 37.

26
27 ¹ The parties used the Court’s model form to create the Settlement Agreement. A red-lined
28 comparison of the model form to the parties’ Settlement Agreement is attached to the
Gundzik Declaration as Exhibit 2. Gundzik Decl., ¶ 37.

1 Under the terms of the Settlement Agreement, the proposed Class consists of
2 approximately 75 persons employed by MEC in California and classified as a Field Sales
3 Representative (including Club Field Sales Representative) at any time during the Class
4 Period (“Class”). Gundzik Decl., ¶ 41, Ex. 1, ¶ 1.5. The proposed Class Period is from July
5 14, 2017, to April 4, 2023. (“Class Period”). *Id.*, ¶ 1.12. Pursuant to the terms of the
6 proposed settlement, Defendant will pay a Gross Settlement Amount of \$285,000. After
7 proposed deductions, as approved by the Court, the Net Settlement Amount of
8 approximately \$137,500 will be available to distribute to Participating Class Members,
9 resulting in an average payment of about \$1,833 per class member. Gundzik Decl., ¶¶ 46,
10 52.

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

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

- Scheduling a final approval hearing approximately 150 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) the amount of Class Counsel Fees Payment and Class Counsel Litigation Expenses Payment; (iv) the amount of the Class Representative Service Payment; (v) approving the Administrator’s proposed fee; and (vi) approving the proposed PAGA Penalties and the distribution of 75% of such amount to the LWDA and 25% to the Aggrieved Employees.

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 thoroughly investigated Plaintiff’s claims, reviewed and analyzed records and information produced by Defendant, and worked to develop information on potential damages. Gundzik Decl., ¶¶ 8-11. They engaged in formal discovery and informally exchanged additional information and documents for the mediation. Gundzik Decl., ¶ 8. Among other things, Plaintiff’s counsel has obtained from Defendant, and then reviewed and analyzed policy documents and pay records and other information concerning class member wages and work activities. Plaintiff’s counsel also obtained class member contact information and have interviewed a number of class members. *Id.* In connection with the mediation, Defendant provided information on the number of Class Members and PAGA Aggrieved Employees, total Class Member workweeks, total PAGA Aggrieved Employee pay periods and other data concerning the class. Gundzik Decl., ¶ 9. Plaintiff’s counsel also investigated and compiled publicly available information about Defendant and its business. Gundzik Decl., ¶ 8. Based on this information, as well as information provided by the Plaintiff, Plaintiff’s counsel was able to assess Defendant’s potential liability and prepare an estimate the damages incurred by the Class. Gundzik Decl., ¶ 10.

1 **2. Summary of Settlement Negotiations**

2 On October 20, 2022, Plaintiff Bernabe Parrilla, Plaintiff’s counsel, Defendant and
3 Defendant’s counsel attended a mediation session with well-respected mediator, Gig
4 Kyriacou. Mr. Parrilla participated in the mediation. The case did not settle at the mediation.
5 However, during the subsequent months, the mediator continued to work with the parties
6 and in March 2023 issued a settlement proposal, which was accepted by the parties on April
7 6, 2023. Gundzik Decl., ¶ 12.

8 **3. Summary of Class Counsel’s Experience**

9 Plaintiff’s counsel, Aaron Gundzik, graduated from the University of Southern
10 California Law School in 1987 and has been a member of the California bar since 1987.
11 Gundzik Decl., ¶ 13. He has been involved in the litigation of complex cases, including
12 securities, consumer and wage and hour class actions, and is currently plaintiff’s counsel in
13 approximately ten class and representative actions in various stages of litigation. He has
14 served as class counsel in numerous wage and hour class actions that have already settled
15 and successfully represented a class of service technicians at trial and through appeal in
16 *Gonzalez v. Downtown LA Motors, LP*, 215 Cal. App. 4th 36 (2013). Gundzik Decl., ¶¶ 14,
17 16. Many of these cases involve wage and hour issues similar to the legal and factual issues
18 involved in this case. Gundzik Decl., ¶ 17. His partner, Rebecca Gundzik, graduated from
19 the University of Southern California Law School in 1988, has been a member of the
20 California bar since 1988, and was co-counsel at the trial of *Gonzalez v. Downtown LA*
21 *Motors, LP*, 215 Cal. App. 4th 36 (2013). Gundzik Decl., ¶ 15.

22 **4. Summary of Legal and Factual Bases for Plaintiff’s Claims**

23 Based upon counsel’s investigation and discovery, Plaintiff contends as follows.
24 During the Class Period, Defendant has been in the business of manufacturing and selling
25 beverages in California and elsewhere. Plaintiff was employed by Defendant as a Field Sales
26 Representative and Club Field Sales Representative (collectively “FSR”) from 2016 until
27 about April 2020. Gundzik Decl., ¶ 18; Declaration of Bernabe Parrilla (“Parrilla Decl.”), ¶
28 2.

1 Plaintiff contends that during the Class Period, which begins on July 14, 2017,
2 Defendant incorrectly classified persons employed as FSRs as exempt employees and did
3 not pay overtime premium wages for overtime hours. Gundzik Decl., ¶ 19; Parrilla Decl., ¶¶
4 3-4. In addition, Plaintiff contended that MEC did not provide Class Members with
5 compliant meal periods or rest breaks or provide required premium wages as compensation.
6 In addition, Plaintiff contended that Defendant failed to provide accurate wage statements
7 that reflected the unpaid overtime and other premium wages and failed to pay these unpaid
8 wages when employees separated. *Id.*

9 **5. Risks, Expenses, Complexity and Duration if Settlement Not**
10 **Approved**

11 After taking into account the sharply disputed factual and legal issues involved in the
12 lawsuit, the risks attending further prosecution, and the substantial benefits to be received
13 pursuant to the compromise and settlement of the action, Plaintiff's counsel concluded that
14 the settlement is in the best interests of the Class and is fair and reasonable. Gundzik Decl., ¶
15 23; Declaration of Daniel Holzman ("Holzman Decl."), ¶ 8. They also considered the
16 possibility that the Class would not be certified and factored in the additional delay in
17 recovery for Class members if the settlement were rejected and the case went to trial. *Id.*

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

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

25 Even if Plaintiff proceeded with the case and the Class was certified, significant risks
26 would remain. At trial Defendant could interpose a successful defense which could either
27 cause the jury to reject Plaintiff's claims or award the Class only a small amount of the
28

1 damages sought. Gundzik Decl., ¶ 23. And, even if the Class ultimately prevailed, Class
2 Members would have to wait years before they received any payment from the lawsuit. *Id.*

3 Plaintiff's counsel concluded that the settlement of \$285,000 represents a fair and
4 reasonable discount from the realistic recovery. Gundzik Decl., ¶ 24. The settlement
5 provides a significant benefit for the Class which would not otherwise have been available
6 unless a settlement was reached. Plaintiff's counsel, who have significant experience
7 litigating these types of claims, are of the opinion that a gross settlement of \$285,000 is
8 within the "ballpark" of a fair, reasonable and adequate settlement. *Id.*; Holzman Decl., ¶ 8.

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

11 The First Cause of Action is for failure to pay overtime. This claim was based on
12 Plaintiff's contention that he and other FSRs were wrongly treated as non-exempt outside
13 salespersons and as a result were not paid overtime wages when they worked overtime hours.
14 Gundzik Decl., ¶ 24. The Wage Order defines an outside salesperson as an employee "who
15 customarily and regularly works more than half the working time away from the employer's
16 place of business selling tangible or intangible items or obtaining orders or contracts for
17 products, services or use of facilities." Wage Order 04-2001(2)(M). Plaintiff contended that
18 class members did spend part of their working days selling beverages, but that these sales
19 activities took up less than half of their working time. *Id.* Defendant contended that all or
20 most of class members' working time related to sales and therefore class members were
21 properly classified as outside salespersons. *Id.* Defendant also contended that the class could
22 not be certified on this claim due to a multitude of individual issues concerning how class
23 members spent their workdays. *Id.* Defendant did not require FSRs employees to record
24 their working hours. *Id.* As a result, there are no records of the actual overtime hours worked
25 by class members. Instead, Plaintiff's counsel relied on our employee interviews to estimate
26 that class members worked about five overtime hours per week. *Id.* As of the mediation
27 date, class members had worked 5,958 workweeks during the class period and their salaries
28 translated into an hourly rate of \$27.90. *Id.* Using these data points, counsel estimated the

1 maximum value of this claim to be \$1,246,488. *Id.* (\$27.90 per hour x 1.5 x 5 overtime
2 hours per week x 5,958 workweeks = \$1,246,488.08.) Based upon MEC defenses, including
3 the potential inability to certify a class, the minimum value of this claim is nothing. *Id.*

4 The Second Cause of Action is for failure to provide compliant meal and rest
5 periods. Employers are not required to provide meal periods and rest breaks to outside
6 employees engaged in outside sales. Wage Order 04-2001(1)€. Plaintiff contended that MEC
7 did not provide class members with compliant meal and rest breaks because MEC
8 incorrectly believed that such employees were covered by the outside sales exemption.
9 Gundzik Decl., ¶ 25. Defendant contended that it was not required to provide meal or rest
10 breaks because class members were exempt outside salespersons and, in any case, class
11 members were unsupervised during their workdays and were able to take breaks at any time.
12 *Id.* MEC did not track meal and rest breaks taken by class members. So, the incidence of
13 noncompliant breaks could not be measured precisely. *Id.* Plaintiff's counsel used
14 information from class member interviews to estimate that class members missed two meal
15 breaks and three rest breaks each week. *Id.* Using these estimated data points, counsel
16 estimated that the maximum value of this claim was \$332,397 for meal periods and
17 \$498,595 for rest breaks. *Id.* ((2 meal breaks + 3 rest breaks) x 5,958 workweeks x \$27.90
18 per hour = \$830,992.05.) Considering the defenses discussed above, the minimum value of
19 this claim is nothing. *Id.*

20 The Third Cause of Action is for failure to provide compliant wage statements. The
21 statute of limitations on such a claim is one year. This claim is based on the fact that the
22 wage statements issued to Plaintiff and the class are incorrect in that they do not reflect
23 overtime pay or meal and rest break wage premiums that should have been paid. Gundzik
24 Decl., ¶ 26. The penalties for inaccurate wage statements are \$50 per employee for the first
25 violation and \$100 per employee per violation for all subsequent violations. Penalties per
26 employee are limited to \$4,000. During the relevant limitations period, Defendant issued a
27 total of 1,084 wage statements to about 43 class members. *Id.* Assuming that each wage
28 statement failed to include at least some overtime pay or at least one non-compliant break,

1 counsel estimated the maximum value of this claim to be \$106,250. *Id.* ((1,084 wage
2 statements x \$100 penalty) – (43 employees x \$50) = \$106,250.) At the same time,
3 considering the defenses discussed above, the minimum value of this claim is nothing. *Id.*

4 The Fourth Cause of Action is for failure to pay separated employees all wages due
5 at the time of separation. This claim is based on Defendant’s alleged failure to pay class
6 members amounts due for overtime work and meal or rest period premiums. Gundzik Decl.,
7 ¶ 27. A total of 19 class members terminated during the three-year limitations period. *Id.*
8 Based on this information, Plaintiff’s counsel estimated the maximum value of this claim to
9 be \$151,051. *Id.* (((8 hours x \$27.90 hourly wage) + (1 hour x \$27.90 hourly wage x 1.5)) x
10 30 days x 19 separated class members = \$151,051.43.) In light of the defenses identified
11 above applicable to Plaintiff’s wage claims, the minimum value of this claim is nothing. *Id.*

12 The Fifth Cause of Action is for violation of Business & Professions Code section
13 17200, *et. seq.* The forgoing analysis assumes the longer four-year statute of limitations that
14 is available under the UCL for the overtime and meal and rest period violations. Gundzik
15 Decl., ¶ 28. The value of this claim has been included in the analyses for the First and
16 Second Causes of Action. *Id.*

17 The Sixth Cause of Action is for violations of the Private Attorneys General Act
18 (PAGA). The PAGA claim is limited in time to one year. The strength of the PAGA claim
19 would be impacted by the factors discussed above for the non-PAGA claims. Gundzik Decl.,
20 ¶ 29. Based on recent PAGA decisions, Plaintiff’s counsel concluded that even if Plaintiff
21 was successful on this claim through trial, the Court may well have exercised its discretion
22 under PAGA and significantly reduced the penalties. Cal. Labor Code §2699(2). *Id.* In
23 addition, the settlement was primarily directed at recovering wages and unpaid premiums
24 owed to class members and the bulk of the settlement funds were intended to compensate for
25 these wages. *Id.* Based on these factors, counsel determined that the maximum reasonable
26 value of the PAGA claim is approximately \$300,000, and the minimum value is nothing. *Id.*
27 Counsel therefore concluded that the \$12,000 that the parties allocated to PAGA, \$9,000 of
28 which will be paid to the LWDA, is a reasonable settlement of that claim. *Id.*

1 Based upon the forgoing, the class claims in this case have a minimum value of
2 nothing and the maximum potential recovery is \$2.3 million, not including the PAGA
3 penalties. Gundzik Decl., ¶ 30. A reasonable estimate of the average amount that Class
4 members could have obtained if Plaintiff prevailed at trial on behalf of the entire Class, if
5 the Class was certified, would be a minimum of \$0 and a maximum of about \$30,666. *Id.*
6 However, the maximum amount is almost never recovered at trial and never in a settlement.
7 *Id.* Settlements, by their nature, must account for the weaknesses in a plaintiff’s case, which
8 are discussed above. *Id.* Indeed, because Defendant raised a colorable legal or factual
9 defense to each of the claims Plaintiff alleged, it is possible that, after trial, the Class would
10 recover nothing. *Id.*

11 The PAGA settlement satisfies the criteria in *Moniz v. Adecco USA, Inc.* 72 Cal.
12 App. 5th 56, 77 (2021), because “it is fair, reasonable, and adequate in view of PAGA’s
13 purposes to remediate present labor law violations, deter future ones, and to maximize
14 enforcement of state labor laws.” The settlement allocates \$12,000 to Plaintiff’s PAGA
15 claim. Gundzik Decl., ¶ 31. In conjunction with the class settlement, this settlement will
16 serve to remediate Defendant’s alleged Labor Code violations. *Id.* Given that Defendant will
17 be paying \$285,000 as a result of the alleged violations, the class and PAGA settlement is a
18 large disincentive for Defendant to engage in similar Labor Code violations in the future. *Id.*
19 And, because Defendant is aware that Plaintiff’s counsel has been in contact with class
20 members and aggrieved employees as a result of the litigation and because all class
21 members will receive a Class Notice with counsel’s contact information, those employees
22 will be able to contact Plaintiff’s counsel in the future if Defendant attempts to engage in
23 similar practices. *Id.* These factors—the payment of a large sum and employee notice of
24 violations and potential violations—serve to maximize enforcement of state labor laws. *Id.*
25 Also, unlike in *Moniz*, here there is no unsubstantiated and disproportionate allocation of
26 civil penalties between different groups of employees. *Id.* All aggrieved employees will
27 receive an allocation of PAGA civil penalties based on the number of qualifying weeks that
28 they worked for Defendant. *Id.*

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

3 There are approximately 75 Class Members. Gundzik Decl., ¶ 32. The exact number
4 and identity of Class Members will be provided by Defendant in connection with its duty to
5 provide Class Data to the Administrator within 10 days after the Court preliminarily
6 approves the settlement. Gundzik Decl., ¶ 37, Ex. 1, ¶ 4.8. And, a community of interest
7 exists, as in the pleading, Plaintiff is claiming the same injuries based upon the same alleged
8 wage and hour policies as are the Class Members. Gundzik Decl., ¶ 34; Parrilla Decl., ¶¶ 3-
9 4.

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

11 Plaintiff’s counsel has conferred with Defendant’s counsel, and Defendant has
12 advised that all Class Members are fluent in English because work-related communications
13 are in English. Gundzik Decl., ¶ 35. For that reason, the Class Notice will be printed only in
14 English. *Id.*

15 Gundzik Gundzik Heeger LLP (“GGH”) and Caskey & Holzman have entered into a
16 written retention agreement with the Class Representative and have agreed therein to divide
17 any attorney’s fees awarded in this case. Gundzik Decl., ¶ 36, Ex. 3. Plaintiff has consented
18 to the division of fees. *Id.*

19 **III. The Settlement Agreement**

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

21 The Class consists of all persons employed by Defendant in California during the
22 Class Period as Field Sales Representatives, including Club Field Sales Representatives.
23 Gundzik Decl., ¶ 37, Ex. 1, ¶ 1.5. The Class Period and the class release period both begin
24 on July 14, 2017, and end on April 4, 2023. Gundzik Decl., ¶ 37, Ex. 1, ¶¶ 1.12, 6.9. The
25 Settlement Agreement provides that if the total class member workweeks is more than 110%
26 of 6,516 (which is the number of workweeks reported prior to mediation), Defendant will
27 increase the Gross Settlement Amount by the same percentage that the total workweeks
28 exceed 6,516. Gundzik Decl., ¶ 37, Ex. 1, ¶ 3.9.

1 **B. Release of Claims**

2 Members of the Class, Plaintiff and the Aggrieved Employees will provide releases
3 to Defendant and its related entities. Gundzik Decl., ¶ 37, Ex. 1, ¶ 6. All releases will be
4 effective upon Defendant's payment to the administrator of all funds owed under the
5 Settlement Agreement. Gundzik Decl., ¶ 37, Ex. 1, ¶ 6. The scope of the release will be
6 disclosed to the Class in the proposed Class Notice. See Gundzik Decl., ¶ 37, Ex. 1, pp. 36-
7 45. Any member of the Class who does not like the scope of the release (or the Settlement in
8 general) can preserve his or her individual claims by timely submitting a written request to
9 be excluded from the Settlement and class.

10 The Release applicable to the Class Members provides:

11 All Participating Class Members, on behalf of themselves and their
12 respective former and present representatives, agents, attorneys, heirs,
13 administrators, successors, and assigns, release Released Parties from all
14 claims, causes of action, demands, damages, or liabilities arising at any
15 time during the Class Period that were pled or which could have been pled
16 based on the factual allegations contained in the operative Complaint in
17 the Action, including but not limited to claims for: (i) violation of Labor
18 Code §§ 226.7 and 512; (ii) violation of Labor Code §§ 510 and 1194; (iii)
19 violation of Labor Code §§ 201, 202, 203, and 204; (iv) violation of
20 Labor Code § 226; and (v) violation of Business & Professions Code §§
21 17200, which are premised on the violations described above (collectively,
22 the "Released Claims"). The Released Claims extend to all theories of
23 relief, whether under California law, federal law, state law or common law
24 (including, without limitation, as alleged violations of the California Labor
25 Code, the IWC Wage Orders, applicable regulations, or California's
26 Business and Professions Code §§ 17200). The Released Claims include
27 all types of relief available for the Released Claims, including without
28 limitation any claims for damages, restitution, losses, penalties, fines,

1 liens, attorneys' fees, costs, expenses, debts, interest, injunctive relief,
2 declaratory relief, or liquidated damages. This Settlement shall constitute,
3 and may be pleaded as, a complete and total defense to any Released
4 Claims if raised in the future. Class Members shall not waive section 1542
5 of the California Civil Code. Except as set forth in Section 5.3 of this
6 Agreement, Participating Class Members do not release any other claims,
7 including claims for vested benefits, wrongful termination, violation of the
8 Fair Employment and Housing Act, unemployment insurance, disability,
9 social security, workers' compensation, or claims based on facts occurring
10 outside the Class Period.

11 Gundzik Decl., ¶ 37, Ex. 1, ¶ 6.9.

12 The Release applicable to Aggrieved Employees provides:

13 All Participating and Non-Participating Class Members who are Aggrieved
14 Employees are deemed to release, on behalf of themselves and their respective
15 former and present representatives, agents, attorneys, heirs, administrators,
16 successors, and assigns, the Released Parties from any liability for civil
17 penalties recoverable under PAGA for violations of the following California
18 Labor Code sections: 201, 202, 203, 226(a), 226(b), 226.7, 510 and 512.

19 PAGA Employees shall not waive section 1542 of the California Civil Code.

20 Gundzik Decl., ¶ 37, Ex. 1, ¶ 6.6.

21 The release to be provided by the named Plaintiff will be broader and encompass
22 most claims that he might have against Defendant and will include a waiver of Civil Code
23 section 1542. Gundzik Decl., ¶ 37, Ex. 1, ¶ 6.2.

24 **C. Class Data**

25 Within ten days following the Court's order granting preliminary approval of the
26 Settlement, Defendant will provide the Administrator with the Class Data and at the same
27 time, will provide the Class Data, without Class Member names, contact information or
28 social security numbers, to Class Counsel. Gundzik Decl., ¶ 37, Ex. 1, ¶ 4.8. This

1 information will remain confidential. *Id.* Because Plaintiff’s counsel will be provided
2 anonymized Class Data, they will be able to confirm that the Net Settlement Amount has
3 been divided correctly, based on the data provided by Defendant. Gundzik Decl., ¶ 45.

4 **D. Monetary Terms**

5 Defendant will pay a Gross Settlement Amount of \$285,000 to the Administrator
6 plus the employer’s share of all payroll taxes owed on the wage portion of all individual
7 settlement checks. Gundzik Decl., ¶ 37, Ex. 1, ¶ 3.8. An escalator clause may result in an
8 increase in the Gross Settlement Amount if total Class Workweeks exceed 110% of 6,516.
9 Gundzik Decl., ¶ 37, Ex. 1, ¶ 3.9.

10 After proposed deductions, as approved by the Court, and assuming that the escalator
11 clause does not result in an increase in the Gross Settlement Amount, the Net Settlement
12 Amount will be approximately \$137,500, all of which will be available to distribute to
13 Participating Class Members. Gundzik Decl., ¶ 46.

14 If the Court grants final approval of the Settlement, within no more than 21 calendar
15 days of the Effective Date (which is the date of the Final Approval Order, if no objections
16 are submitted), Defendant will deposit the Gross Settlement Amount with the Administrator.
17 Gundzik Decl., ¶ 37, Ex. 1, ¶¶ 1.18 (“Effective Date”), 4.9. Within ten calendar days of
18 Defendant’s deposit of funds, the Administrator will pay settlement payments to
19 Participating Class Members and Aggrieved Employees, the Court-approved Class
20 Representative Service Payment, the Court-approved Class Counsel Fees Payment and Class
21 Counsel Litigation Expenses Payment, the LWDA PAGA Payment, and the Administration
22 Expenses Payment. Gundzik Decl., ¶ 37, Ex. 1, ¶ 4.10.

23 At the final approval hearing, the Court will be asked to grant final approval to the
24 settlement and approve the following deductions from the Gross Settlement Amount: (a)
25 Class Counsel Fees Payment of \$95,000; (b) Class Counsel Litigation Expenses Payment
26 not to exceed \$25,000; (c) a Class Representative Service Payment of \$10,000; (d)
27 Administration Expenses Payment not to exceed \$5,500; (e) An allocation of \$12,000 to
28 PAGA Penalties, seventy-five percent (75%) of which will be paid to the California Labor

1 and Workforce Development Agency (the “LWDA Payment”), and the remaining twenty-
2 five percent (25%) of which will be distributed to the Aggrieved Employees. Gundzik Decl.,
3 ¶ 37, Ex. 1, ¶¶ 3.3, 3.4, 3.5, 3.7; Declaration of Jodey Lawrence (“Lawrence Decl.”), ¶ 15.

4 The Settlement Agreement provides for up to a \$10,000 Class Representative
5 Service Payment. Gundzik Decl., ¶ 37, Ex. 1, ¶ 3.3. This requested award is in recognition
6 of the significant time that Plaintiff Bernabe Parrilla expended pursuing this action and
7 assisting his attorneys’ efforts with the case, the risks he took in agreeing to file this action
8 and in recognition of the expanded general release that he is required to provide, as part of
9 the Settlement. Gundzik Decl., ¶ 49. Plaintiff is required to provide Defendant with a broad
10 general release which includes a waiver of Section 1542 of the California Civil Code.
11 Gundzik Decl., ¶ 37, Ex. 1, ¶ 6.2.

12 Plaintiff will be supporting the request for attorneys’ fees in several ways. Plaintiff’s
13 counsel will include actual billing records and will also provide a chart which will specify
14 the number of hours spent on each type of task that was required in connection with the
15 case. Gundzik Decl., ¶ 50. Plaintiff’s counsel will be applying the percentage method and
16 supporting it with a lodestar cross-check. *Id.* And, if Plaintiff’s counsel are requesting a
17 multiplier, they will provide sufficient grounds for the application of the multiplier being
18 requested. *Id.*

19 The Net Settlement Amount of approximately \$137,500 will be distributed to
20 Participating Class Members based on the number of Workweeks they worked for
21 Defendant. The following formula will be used to calculate the settlement payments to be
22 made to Participating Class Members: (Net Settlement Amount ÷ All Participating Class
23 Members’ Workweeks) x (Individual Participating Class Member’s Workweeks). Gundzik
24 Decl, ¶ 37, Ex. 1, ¶ 3.6. Based on a Class size of 75, the Participating Class Members will be
25 paid, on average, about \$1,833.33. Individual Class Payments and Individual PAGA
26
27
28

1 Payments will be paid to the Class Members within 10 days of Defendant's deposit of the
2 Gross Settlement Amount with the Administrator. Gundzik Decl., ¶ 37, Ex. 1, ¶ 4.10.

3 Participating Class Member's Individual Class Payments will be allocated as
4 follows: one-third wages and two-thirds as interest and penalties. Gundzik Decl., ¶ 37, Ex. 1,
5 ¶ 3.6.1. The wage portion of each Individual Class Payments shall be subject to wage
6 withholdings and reported on a form W-2. *Id.* The interest and penalty portions will be
7 reported on IRS 1099 Forms. *Id.*

8 \$12,000 of the Net Settlement Amount will be allocated to Plaintiff's PAGA claims
9 (the "PAGA Penalties"), 75% (\$9,000) of which will be paid to the LWDA (the "LWDA
10 PAGA Payment"), and the remaining 25% (\$3,000) of which will be distributed to the
11 Aggrieved Employees based upon the number of PAGA Pay Periods that they worked
12 during the PAGA Period. Gundzik Decl., ¶ 37, Ex. 1, ¶ 3.7. The following formula will be
13 used to calculate the Individual PAGA Payments to be made Aggrieved Employees: $(\$3,000$
14 $\div$ All Aggrieved Employees' PAGA Pay Periods) x Individual Aggrieved Employee's
15 PAGA Pay Periods. Gundzik Decl., ¶ 37, Ex. 1, ¶ 4.13. Participating Class Members who
16 are also Aggrieved Employees may receive their Individual PAGA Payment included in the
17 same checks as their Individual Class Payment. Class Members who exclude themselves
18 from the Class Settlement will still receive their Individual PAGA Payment and such Class
19 Members will still be bound by the Released PAGA Claims, notwithstanding their exclusion
20 from the Class. Gundzik Decl., ¶ 37, Ex. 1, ¶¶ 4.13. Individual PAGA Payments will be
21 treated as penalties and reported on an IRS Form 1099. Gundzik Decl., ¶ 37, Ex. 1, ¶ 3.7.2.

22 **E. Notice Administration**

23 The settlement will be administered by Phoenix Settlement Administrators
24 ("Phoenix" or "Administrator"). Gundzik Decl., ¶ 37, Ex. 1, ¶ 1.2; Lawrence Decl., ¶¶ 12-
25 15. If the Court grants preliminary approval of the settlement, within 10 calendar days
26 Defendant will provide the Administrator with the names, social security numbers, last
27 known addresses for each Class Member and the number of Class Workweeks and PAGA
28 Pay Periods. Gundzik Decl., ¶ 37, Ex. 1, ¶¶ 1.8, 4.8. The Administrator will check all

1 addresses against the National Change of Address database and update the Class list as
2 appropriate. Gundzik Decl., ¶ 37, Ex. 1, ¶ 8.4.2. Within ten days of receiving the Class Data,
3 the Administrator will send to each Class Member's most recent address via First-Class
4 United States mail an English version of the Class Notice. Gundzik Decl., ¶ 37, Ex. 1, ¶
5 8.4.2. No submission of a claim form is necessary, and all Class members are eligible to
6 receive a settlement payment except those who follow the procedure for requesting an
7 exclusion. Gundzik Decl., ¶ 37, Ex. 1, ¶ 3.11.

8 The proposed form of the Class Notice discloses the pendency of this litigation,
9 summarizes the allegations against Defendant, defines the Class, describes the consideration
10 that Defendant will provide in settlement along with an estimate of each Class Member's
11 estimated recovery if they participate in the settlement. Gundzik Decl., ¶ 57, 67, Ex. 1 at pp.
12 36-45. The Class Notice also describes the claims that will be released and explains the
13 procedures to be used by members of the class to be excluded from or object to the
14 settlement. *Id.* Because this is an opt-out settlement and Class Members who do nothing will
15 still receive a settlement payment, the notice provisions agreed to by the parties will
16 adequately serve the interests of the individual Class Members in receiving the relief
17 provided by the settlement and adequately comply with California Rules of Court, Rule
18 3.766(e). Gundzik Decl., ¶ 60.

19 All settlement checks will be valid for 180 days from issuance. The funds
20 represented by all uncashed checks will be transmitted by the Administrator to the California
21 State Controller's Office Unclaimed Property Fund. Gundzik Decl., ¶ 37, Ex. 1, ¶ 4.20.

22 For any Class Notice that is returned as undeliverable, the Administrator will
23 perform a skip trace. Gundzik Decl., ¶ 37, Ex. 1, ¶ 4.18. The returned Class Notices will be
24 re-mailed to the new addresses obtained for such Class Members. *Id.* Such searching and re-
25 mailing will be completed within three business days of the date that Class Notices were
26 originally returned as undeliverable. *Id.*

27 The Administrator will establish a website for this settlement and will post the
28 settlement agreement and other relevant documents. Gundzik Decl., ¶ 37, Ex. 1, ¶ 8.8.1.

1 Additionally, in their individual Class Notices, Class Members will be provided with the
2 phone number and email address for the Administrator, as well as the website specific to the
3 Settlement and instructions on how to access the website. Gundzik Decl., ¶ 37, Ex. 1 at p.
4 45. If there is a change in the date or location of the Final Approval hearing, the
5 Administrator will post this information on the website. Gundzik Decl., ¶ 37, Ex. 1, ¶ 8.8.1.
6 Notice of the Final Judgment and Final Approval Order will also be posted on the
7 Administrator's website. Gundzik Decl., ¶ 37, Ex. 1, ¶ 8.8.1. The posting of the final
8 judgment in this manner is intended to satisfy the requirements of Rule of Court 3.771(b).

9 **F. Responses to Notice**

10 Any member of the Class who wishes to be excluded from the settlement must
11 submit a written request to be excluded to the Administrator, which must be postmarked no
12 later than forty-five (45) days after the Class Notice is mailed by the Administrator. Gundzik
13 Decl., ¶ 37, Ex. 1, ¶¶ 1.44 (Response Deadline); 4.13. Any Class Member wishing to object
14 to the approval of the Settlement must send a written statement of objection to the
15 Administrator no later than forty-five (45) days after the Class Notice is mailed by the
16 Administrator. Gundzik Decl., ¶ 37, Ex. 1 at ¶ 4.14.

17 All Class Notices returned as being undeliverable will be re-mailed within three
18 business days of the date that Class Notices were originally returned as undeliverable.
19 Gundzik Decl., ¶ 37, Ex. 1, ¶ 8.4.3. For Class Notices that are re-mailed to a different
20 address, the 45-day opt-out and objection deadline will be extended by an additional 14
21 calendar days. Gundzik Decl., ¶ 37, Ex. 1, ¶ 8.4.5.

22 **G. Proposed Schedule of Events**

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

25

Event	Date
Deadline for Defendant to provide Class data to Administrator	within 10 calendar days of preliminary approval

27

28

Event	Date
Deadline to mail Class Notice to Class Members	within 10 calendar days of receipt of class data from Defendant
Deadline to challenge Workweeks, opt out of or object to settlement	within forty-five (45) calendar days of mailing Class Notice
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	TBD
Deadline for Defendant to deliver funds to Administrator	Within 21 calendar days after the Effective Date
Deadline for Administrator to distribute settlement funds	within 10 calendar days of Defendant's delivery of funds to Administrator

IV. ARGUMENT

A. The Class Should be Certified for Settlement Purposes.

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

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

3 “An ascertainable class exists when, based upon the class definition, it is possible to
4 give adequate notice to class members or to determine after the litigation has concluded who
5 is barred from re-litigating. (Citation omitted.) The goal in defining the class is to use
6 terminology that will convey sufficient meaning to enable persons hearing it to determine
7 whether they are members of the class plaintiff wishes to represent.” *Marler v. E.M.*
8 *Johansing, LLC*, 199 Cal. App. 4th 1450, 1459-1460 (2011). Thus, a class is generally
9 considered ascertainable when (i) under the class definition the members are clearly
10 identifiable and (ii) the members can be located and notified through a reasonable
11 expenditure of time and money. *See Reyes v. Board of Supervisors*, 196 Cal. App. 3d 1263,
12 1274-1275 (1987). Here, the Class definition is clear. The Class is defined as “all persons
13 employed by Defendant in California during the Class Period as Field Sales Representatives,
14 including Club Field Sales Representatives.” Gundzik Decl., ¶ 37, Ex. 1, ¶ 1.5. The Class
15 Period is defined as the period beginning on July 14, 2017, and ending on April 4, 2023.
16 Gundzik Decl., ¶ 37, Ex. 1, ¶ 1.12.

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

19 The community of interest requirement is met with respect to the Class and the
20 claims asserted in the pleading. There are common issues regarding Defendant’s treatment
21 of these employees as to meal and rest periods. Further, the claims of the named Plaintiff are
22 typical of the claims of all Class Members, and he can and does adequately represent the
23 Class. Gundzik Decl., ¶¶ 18, 19, 38; Declaration of Bernabe Parrilla (“Parrilla Decl.”), ¶¶ 3-
24 10.

25 **3. Common Issues of Law and Fact Predominate over any**
26 **Individual Issues.**

27 To determine whether common issues predominate in a class action matter, “a court
28 must examine the plaintiff’s theory of recovery and assess the nature of the legal and factual

disputes *likely to be presented*...As a general rule if the defendant's liability can be determined by facts common to all members of the class, a class will be certified even if the members must individually prove their damages.” *Benton v. Telecom Network Specialists, Inc.*, 220 Cal. App. 4th 701, 716 (2013) (emphasis in original).

Here, Plaintiff maintains that common issues exist with respect to Defendant’s policies and practices regarding overtime, meal and rest breaks and payment of related wage premiums. Gundzik Decl., ¶¶ 18, 19, 38. Plaintiff maintains that the only individualized differences between Class members relate to the amount of compensation each Class member would be entitled to receive. However, it is well-settled that mere differences as to the amount of damages among Class members are not sufficient to prevent certification. *Id.*; *Acree v. General Motors Acceptance Corp.*, 92 Cal. App. 4th 385, 387 (2001) (“A class action may be maintained even if each class member must at some point individually show his or her eligibility for recovery or the amount of his or her damages...”)

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

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

Here, Plaintiff is seeking relief for the same wage and hour violations as are the rest of the Class Members. Gundzik Decl., ¶ 34; Parrilla Decl., ¶¶ 3-7. He seeks to impose liability on Defendant based on the same claims and theories, as well as the same alleged injuries, which apply to the Class as a whole. Thus, the claims of the Class Representative are typical of the claims of the Class.

1 **5. The Class Representative and Class Counsel Will Adequately**
2 **Protect the Interests of the Class.**

3 “Adequacy of representation depends on whether the plaintiff’s attorney is qualified to
4 conduct the proposed litigation and the plaintiff’s interests are not antagonistic to the
5 interests of the class.” *McGhee v. Crocker-Citizens Nat. Bank*, 60 Cal. App. 3d 442, 450
6 (1976). Here, the Class Representative retained attorneys with extensive experience in
7 prosecuting wage and hour class actions. Gundzik Decl., ¶¶ 14-17; Declaration of Daniel
8 Holzman (“Holzman Decl.”), ¶¶ 2-4.

9 Nor is there any conflict between the interests of the Class Representative and the
10 members of the Class. The Class Representative and the Class are claiming the same injuries
11 based upon the same alleged wage and hour policies existing while they were employed by
12 Defendant. Gundzik Decl., ¶ 34; Parrilla Decl., ¶ 8.

13 **B. Preliminary Approval is Appropriate Because the Settlement is Fair and**
14 **Reasonable.**

15 A trial court should approve a class action settlement agreement if it determines that
16 the agreement is fair, adequate, and reasonable. *Dunk v. Ford Motor Co.*, 48 Cal. App. 4th
17 1794, 1801 (1996). In making this decision, a court “should consider relevant factors, which
18 may include, but are not limited to the strength of the plaintiffs’ case, the risk, expense,
19 complexity and duration of further litigation as a class action, the amount offered in
20 settlement, the extent of discovery completed and the stage of the proceedings, the
21 experience and views of counsel, the presence of a governmental participant, and the
22 reaction of class members to the proposed settlement.” *In re Microsoft I-V Cases*, 135 Cal.
23 App. 4th 706, 723 (2006).

24 “At the same time, the trial court should give due regard to what is otherwise a
25 private consensual agreement between the parties.” *Id.* Thus, the Court “limits its inquiry to
26 the extent necessary to reach a reasoned judgment that the agreement is not the product of
27 fraud or overreaching by, or collusion between, the negotiating parties, and that the
28 settlement, taken as a whole, is fair, reasonable and adequate to all concerned.” *In re*

1 *Microsoft I-V Cases*, 135 Cal. App. 4th at 723, citing *Dunk v. Ford Motor Co.*, 48 Cal. App.
2 4th at 1801; also citing *Officers for Justice v. Civil Service Com'n, etc.*, 688 F.2d 615, 625
3 (9th Cir. 1982). Whether the settlement was reached through arms-length negotiations is
4 also a strong factor which weighs in favor of presuming that the settlement is fair and
5 reasonable. *Dunk v. Ford Motor Co.*, 48 Cal. App. 4th at 1801.

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

8 **The Strength of Plaintiff's Case.** As set forth in the Section II above and the
9 Declaration of Aaron Gundzik, the parties have vigorously advocated the parties' respective
10 positions in this matter, and Defendant have consistently disputed that they violated
11 California's wage and hour laws. In fact, Defendant raised a colorable legal or factual
12 defense to each claim Plaintiff has alleged. Gundzik Decl., ¶¶ 24-29.

13 **The Risk, Expense, Complexity and Likely Duration of Further Litigation.** If the
14 settlement is not approved, the Class Representative would need to move forward with
15 discovery and then move for class certification. Defendant will oppose certification on the
16 grounds that numerous individualized fact issues allegedly exist. Defendant will argue and
17 could succeed in claiming that these individualized issues overwhelm common issues and
18 will also argue that the action is not manageable on a class wide basis. The result could be
19 that the case would not be certifiable as a class action. Gundzik Decl., ¶¶ 20-22.

20 **The Risk of Maintaining Class Action Status Through Trial.** If the settlement is
21 not approved, and the Class Representative is successful on his motion for certification of
22 the class, the Class would still be faced with significant risks in continuing with the
23 litigation. Defendant could interpose a successful defense which could either cause the jury
24 to reject Plaintiff's claims or award the Class only a small amount of the unpaid wages and
25 other amounts due to them. And, even if the Class ultimately prevailed, most of the Class
26 Members would have to wait years or more before they received any payment from the
27 lawsuit. Gundzik Decl., ¶ 22. Further, the Court would still retain authority to de-certify the
28

1 case in the event the trial showed that common issues did not predominate. *See* Cal. Rule of
2 Court 3.764. *Id.*

3 **The Amount Offered in Settlement.** In the experience of Class counsel, a gross
4 settlement of \$285,000 for a class of approximately 75, with the claims described above,
5 with \$12,000 allocated to Plaintiff’s PAGA claim, is within the “ballpark” of a fair,
6 reasonable and adequate settlement. Gundzik Decl., ¶ 23; Holzman Decl., ¶ 8. Taking into
7 account the serious risks associated with proceeding— that the case might not be certified as
8 a class action, that Plaintiff might not succeed on the merits at trial or, if Plaintiff succeed at
9 trial, that the case is reversed on appeal – it becomes apparent that a settlement in this range
10 is fair to the Class.

11 **The Extent of Investigation and Discovery Completed and the Stage of the**
12 **Proceedings.** As set forth in Section II.A above and the Declaration of Aaron Gundzik, the
13 parties have engaged in extensive formal and informal discovery and factual investigation.
14 Gundzik Decl., ¶¶ 8-11.

15 **The Experience and Views of Counsel.** As set forth in the declaration of Aaron
16 Gundzik, Class Counsel has significant experience in wage and hour class actions. Gundzik
17 Decl., ¶¶ 14-17; Holzman Decl., ¶¶ 2-4. Aaron Gundzik and Rebecca Gundzik have
18 practiced law and been members of the California State Bar collectively for over 30 years
19 each. *Id.* Daniel Holzman has been practicing law for more than 25 years. *Id.* Based upon
20 their vast experience in the area, when they arrived at a settlement with Defendant, Class
21 Counsel had sufficient information to assess the strengths and weaknesses of the claims
22 against Defendant, and the benefits of the settlement in light of the significant risks of
23 continuing with the litigation.

24 **Whether the Settlement Was Reached Through Arm’s-Length Bargaining or**
25 **was a Product of Fraud or Overreaching.** It is undisputed that the parties negotiated the
26 settlement at arm’s length following a mediation before a well-respected neutral third-party
27 mediator who had significant experience settling wage and hour class action lawsuits.
28

1 Gundzik Decl., ¶ 12. The settlement was negotiated at arms' length and was in no sense
2 collusive. *Id.*

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

5 "The principal purpose of notice to the class is the protection of the integrity of the
6 class action process, one of the functions of which is to prevent burdening the courts with
7 multiple claims where one will do." *Cho v. Seagate Technology Holdings, Inc.*, 177 Cal.
8 App. 4th 734, 745-746 (2009). Thus, an appropriate notice is one which has a reasonable
9 chance of reaching a substantial percentage of the class members. *Cartt v. Superior Court*,
10 50 Cal. App. 3d 960, 974 (1975).

11 The proposed Class Notice addresses these concerns. It identifies the Class
12 Representative and Defendant, provides a description of the lawsuit, the settlement amounts,
13 the proposed plan of allocation and the attorneys' fees and expense payments that Class
14 counsel may receive. The proposed Class Notice provides information as to how to opt out
15 of the Class and be excluded, how to object to the settlement, as well as the date of the final
16 approval hearing. It also describes the Settlement Agreement with sufficient detail to allow
17 Class Members to make an informed decision as to whether to accept or object to it. The
18 proposed Class Notice further provides that it will bind all Class Members who do not
19 request exclusion. Gundzik Decl., ¶ 37, Ex. 1 at pp. 36-45. As such, the proposed Class
20 Notice describes the settlement with enough specificity to allow Class Members to make an
21 informed decision as to whether to participate in it. See California Rule of Court 3.766(d).

22 Further, the manner of giving notice is to be done in such a way as to maximize its
23 reach. The Class Notice will be sent to members of the Class by First Class regular U.S.
24 mail by the Administrator. Gundzik Decl., ¶ 37, Ex. 1, ¶ 8.4.2. Prior to mailing, the
25 Administrator shall check all addresses against the National Change of Address (NCOA)
26 database. *Id.* The Administrator will mail the Class Notice to the most current mailing
27 address identified through such means. Gundzik Decl., ¶ 37, Ex. 1, ¶ 8.4.2.

1 Pursuant to California Rules of Court, Rule 3.766(e), in determining whether the
2 manner of giving notice is sufficient, a court considers (1) the interests of the class; (2) the
3 type of relief requested; (3) the stake of the individual class members; (4) the cost of
4 notifying class members; (5) the resources of the parties; (6) the possible prejudice to class
5 members who do not receive notice; and (7) the res judicata effect on class members. Here,
6 the interests of the Class members are in receiving notice of the lawsuit and settlement.
7 Class Counsel and Defendant's counsel have conferred and determined that disseminating
8 the Class Notice by mail to the Class Members is the best way to maximize its reach.
9 Gundzik Decl., ¶ 61.

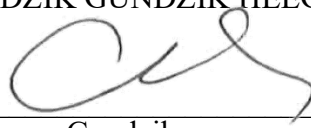
10 Delivering the Notice by mail complies with California Rules of Court, Rule
11 3.766(e) and the purpose of the Notice. An appropriate notice is one which has a reasonable
12 chance of reaching a substantial percentage of the class members. *Cartt v. Superior Court*,
13 50 Cal. App. 3d 960, 974 (1975). Because this is an opt-out settlement and Class Members
14 who do nothing will still receive a settlement payment, the notice provisions agreed to by
15 the parties will adequately serve the interests of the individual Class Members in receiving
16 the relief provided by the settlement.

17 **V. CONCLUSION**

18 For the foregoing reasons, Plaintiff, on behalf of himself and the Class, respectfully
19 requests that the Court grant preliminary approval of the settlement and set a final approval
20 hearing to take place within approximately 150 days.

21 DATED: August 9, 2023

GUNDZIK GUNDZIK HEEGER LLP

22
23 By: 

Aaron Gundzik

24 Attorneys for Plaintiff Bernabe Parrilla,
25 individually and on behalf of all others
26 similarly situated
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