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15 and on behalf of all others similarly situated
16 and as a representative of aggrieved employees

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

19 JAVIER SANTIAGO, individually and on
20 behalf of all others similarly situated,

21 Plaintiff,

22 vs.

23 UNIVAR SOLUTIONS INC., a Delaware
24 corporation; UNIVAR SOLUTIONS USA,
25 INC., a Washington corporation; and
26 DOES 1 through 25,

27 Defendants.

Case No.: 21STCV25600
Assigned for all purposes to Hon.
Stuart M. Rice, SSC-1

**PLAINTIFF'S NOTICE OF
MOTION AND MOTION FOR
PRELIMINARY APPROVAL OF
CLASS ACTION SETTLEMENT;
MEMORANDUM OF POINTS
AND AUTHORITIES**

**[Filed concurrently with
Declarations of Aaron Gundzik,
Galen Shimoda, Javier Santiago
and Phoenix Settlement
Administrators; [Proposed] Order]**

**Date: July 11, 2022
Time: 10:30 a.m.
Dept.: 1**

Complaint Filed: July 14, 2021

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

2 **PLEASE TAKE NOTICE** that on July 11, 2022, at 10:30 a.m. in Department 1 of
3 the above-entitled Court, located at 312 N. Spring St, Los Angeles, CA 90012, Plaintiff
4 Javier Santiago will, and by this Notice of Motion and Motion, hereby does, move for an
5 Order as follows:

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

8 2. Provisionally certifying the proposed class for settlement purposes only as an
9 opt-out class action under Section 382 of the Code of Civil Procedure, with the Class
10 defined as all individuals who were employed by Defendants in California as non-exempt
11 employees during the Class Period (from July 14, 2017, through June 22, 2022);

12 3. Appointing Plaintiff Javier Santiago as the class representative for the Class;

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

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

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

19 7. Scheduling a subsequent hearing for final approval of the settlement
20 including approval of service and release award to the class representative not exceeding ten
21 thousand dollars (\$10,000.00), for costs of settlement administration not exceeding ten
22 thousand dollars (\$10,000), for costs and expenses to Class Counsel not exceeding twenty-
23 five thousand dollars (\$25,000.00), and for an award of attorneys’ fees to Class Counsel in
24 an amount not exceeding \$916,666.66; and

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

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

1 Declaration of the proposed Class Representative, Javier Santiago, the Declaration of Jodey
2 Lawrence of Phoenix Settlement Administrators, the pleadings and other papers filed in this
3 action, and such further argument or evidence as may be considered at the hearing on the
4 motion.

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

7 DATED: May 25, 2022

GUNDZIK GUNDZIK HEEGER LLP

8
9 By: 

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

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 This is a putative wage and hour class action filed by Plaintiff Javier Santiago
4 against Defendants Univar Solutions, Inc. and Univar Solutions USA, Inc. (“Defendants” or
5 collectively “Univar”) on behalf of approximately 549 individuals who have worked as non-
6 exempt employees for Defendants in California during the Class Period (from July 14, 2017,
7 through June 22, 2022) (the “Class”). The complaint was filed on July 13, 2021 and the
8 current pleading alleges causes of action against Defendants for: (1) failure to pay wages;
9 (2) failure to pay overtime; (3) failure to provide meal and rest breaks; (4) inaccurate wage
10 statements; (5) failure to reimburse necessary expenditures; (6) violation of the Unfair
11 Practices Act; (7) failure to pay unpaid wages at separation; (8) failure to provide copies of
12 wage records; and (9) recovery of civil penalties under the California Labor Code Private
13 Attorneys’ General Act (“PAGA”).

14 Defendants deny that they have violated California law and deny that they owe
15 Plaintiff and the other employees on whose behalf the lawsuit was filed any additional
16 wages, penalties, or other relief. No class has yet been certified by the Court.

17 Plaintiff and Defendants have reached a proposed class action settlement whereby
18 Defendants will pay a gross settlement amount of two million seven hundred fifty thousand
19 dollars (\$2,750,000.00). As explained below, although Defendants deny that they have any
20 liability whatsoever, this gross settlement value is within the range of Defendants’ potential
21 liability, as estimated by Plaintiff’s Counsel. The settlement is advantageous to Plaintiff and
22 the Class in that it provides them prompt compensation and eliminates the uncertainty and
23 risk of continued litigation against Defendants. The proposed settlement is memorialized in
24 the “Stipulation of Class Action and PAGA Settlement” (hereafter referred to as the
25 “Settlement Agreement”), a true and correct copy of which is attached as Ex. 1 to the
26 Declaration of Aaron C. Gundzik (“Gundzik Decl.”), ¶ 42.

27 Under the terms of the Settlement Agreement, the proposed Class consists of
28 approximately 549 non-exempt employees who worked for Defendants between July 14,

2017 and June 22, 2021 (the “Settlement Class Period”). Gundzik Decl., ¶ 42, Ex. 1, ¶ II.C, II.I. Pursuant to the terms of the proposed settlement, Defendants will pay a Gross Settlement Amount of \$2,750,000, plus the employer’s share of any payroll taxes. After proposed deductions, as approved by the Court, the Net Settlement Amount of approximately \$1,688,334 will be available to distribute to settlement Class Members. Gundzik Decl., ¶ 53, resulting in an average payment of about \$3,075 per class member.

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

- Granting preliminary approval of the settlement as being fair, reasonable and adequate;
- Provisionally certifying the Class on an opt-out basis and for settlement purposes only, and appointing Plaintiff Javier Santiago as the Class Representative and Aaron C. Gundzik, Rebecca G. Gundzik and Galen Shimoda as Class Counsel;
- Entering the proposed Preliminary Approval Order, which is filed concurrently herewith, and directing that the Notice of Settlement be mailed to the Settlement Class Members;
- Appointing Phoenix Settlement Administrators (“Phoenix”) as the Settlement Administrator;
- Finding that the proposed form and method of the Notice of Proposed Class Action Settlement and Hearing Date for Court Approval (“Notice of Settlement”) constitutes the best notice practicable under the circumstances and complies with the requirements of Code of Civil Procedure Section 382 and due process; and
- Scheduling a final approval hearing approximately 120 days after the preliminary approval hearing to decide, among other things, (i) whether the settlement should

1 be granted final approval; (ii) whether the proposed Order and Final Judgment
2 should be entered; (iii) the amount of Class Counsel’s Attorney’s fees and Class
3 Counsel’s Costs; (iv) the amount of the Class Representative’s Service and
4 Release Awards; and (v) approving the proposed fee of the Settlement
5 Administrator.

6 **II. RELEVANT AND KEY FACTS**

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

8 **1. Investigation and Discovery**

9 Plaintiff’s counsel have been directly involved in all aspects of this case on behalf of
10 Plaintiff. They have extensively investigated Plaintiff’s claims, reviewed and analyzed
11 numerous pay documents, including records and information produced by Defendants, and
12 worked to develop information on potential damages. Declaration of Aaron Gundzik
13 (“Gundzik Decl.”), ¶¶ 8-11. They have thoroughly investigated Plaintiff’s claims against
14 Defendants. They have engaged in informal discovery and reviewed and analyzed numerous
15 pay documents, including records and information produced by Defendants, and worked to
16 develop information on potential damages with their consultant. Gundzik Decl., ¶ 8. In
17 connection with the mediation, Defendants produced anonymized time and pay records for
18 approximately 20% of the proposed class members, including Plaintiff, and PAGA
19 Aggrieved Employees. *Id.* Plaintiff’s counsel investigated and compiled publicly-available
20 information about Defendants and their businesses and engaged in informal discovery in
21 connection with the mediation. And they negotiated extensively with Defendants regarding
22 the mediation, its scope, and the information to be exchanged in connection with the
23 mediation. *Id.*

24 Plaintiff’s counsel also met and conferred extensively with Defendants’ counsel
25 regarding the scope and type of additional documents and information Plaintiff was seeking
26 in advance of both the mediation. As a result of these negotiations, Defendants provided
27 additional information including, the number of Class Members and PAGA Aggrieved
28 Employees, total Class Member work weeks, total PAGA Aggrieved Employee work weeks,

1 number of separated Class Members, number of separated PAGA Aggrieved Employees,
2 number of wage statements issued to both the Class Members and the PAGA Aggrieved
3 Employees, average hourly pay rates, number of meal break waivers, and the number of
4 class members in each position and at each of Defendant's locations. Gundzik Decl., ¶ 9.
5 Based on this information, as well as information provided by the Plaintiff, Plaintiff's
6 counsel created an extensive damages model. Gundzik Decl., ¶ 10.

7 **2. Summary of Settlement Negotiations**

8 On March 22, Plaintiff's counsel, co-counsel Galen Shimoda, their client Javier
9 Santiago, Defendants and Defendants' counsel attended a mediation session with well-
10 respected mediator, Gig Kyriacou, via Zoom. Plaintiff participated in the mediation via
11 Zoom and was available to answer questions for the entire day. The case settled after a full
12 day of negotiation pursuant to a mediator's proposal. Gundzik Decl., ¶ 12.

13 **3. Summary of Class Counsel's Experience**

14 Plaintiff's counsel, Aaron Gundzik, graduated from the University of Southern
15 California Law School in 1987 and has been a member of the California bar since 1987.
16 Gundzik Decl., ¶ 13. He has been involved in the litigation of complex cases, including
17 securities, consumer and wage and hour class actions, and is currently plaintiff's counsel in
18 approximately fifteen class and representative actions in various stages of litigation. He has
19 served as class counsel in numerous wage and hour class actions that have already settled
20 and successfully represented a class of service technicians at trial and through appeal in
21 *Gonzalez v. Downtown LA Motors, LP*, 215 Cal. App. 4th 36 (2013). Gundzik Decl., ¶¶ 13,
22 15-16. Many of these cases involve wage and hour issues similar to the legal and factual
23 issues involved in this case. Gundzik Decl., ¶ 16. His partner, Rebecca Gundzik, graduated
24 from the University of Southern California Law School in 1988, has been a member of the
25 California bar since 1988, and was co-counsel at the trial of *Gonzalez v. Downtown LA*
26 *Motors, LP*, 215 Cal. App. 4th 36 (2013). Gundzik Decl., ¶ 14.

27 //

28 //

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

2 During the Class Period Defendants have operated, among other things, a chemical
3 sales and distribution business in California. Gundzik Decl., ¶ 17. Plaintiff worked at
4 Defendants’ Fairfield, California location from 2019 until April 2021 as a materials handler
5 and lead foreman. *Id.*

6 Plaintiff alleged that during the time that he worked for Univar, he was regularly
7 denied compliant meal and rest breaks and did not receive second meal breaks when he
8 worked shifts that were over 10 hours (and was therefore entitled to a second meal break for
9 each of these shifts). Gundzik Decl., ¶ 18. He further alleged that when he was paid a meal
10 premium payment, these payments understated his regular rate of pay. *Id.* He also alleged
11 that he was underpaid for his overtime work because Univar did not include all of his
12 compensation in calculating his overtime rate, but instead incorrectly utilized only his hourly
13 rate without including bonuses and other compensation paid to him. *Id.* And, he alleged that
14 he was not reimbursed for his mileage expenses. *Id.* Plaintiff also contended that he had too
15 much work to do during his shift that he was expected to complete and therefore could not
16 always take rest breaks. Gundzik Decl., ¶ 20. Finally, Plaintiff contended that the rounding
17 system employed by Univar was invalid. Gundzik Decl., ¶ 18.

18 Although many of the class members are covered by a collective bargaining
19 agreement (“CBA”), one of which provides for one hour meal periods, Plaintiff contended
20 that none of the CBAs alter the timing of the break or make any attempt to deprive
21 employees of their legally-required meal breaks. Gundzik Decl., ¶ 19.

22 Pre-litigation, Plaintiff requested his time, pay and personnel records from
23 Defendants but did not receive them. Gundzik Decl., ¶ 21.

24 The sample time and pay records produced by Defendants reflected many thousands
25 of hours that were underpaid due to Defendants’ rounding system which was part of their
26 time-keeping process. Gundzik Decl., ¶ 26. These records also evidenced that employees
27 were often denied compliant meal breaks. Gundzik Decl., ¶ 28.

1 **5. Risks, Expenses, Complexity and Duration if Settlement Not**
2 **Approved**

3 After taking into account the sharply disputed factual and legal issues involved in the
4 lawsuit, the risks attending further prosecution, and the substantial benefits to be received
5 pursuant to the compromise and settlement of the action, Plaintiff's counsel concluded that
6 the settlement is in the best interests of the Settlement Class and is fair and reasonable.
7 Gundzik Decl., ¶ 25. They also considered the possibility that the Class would not be
8 certified and factored in the additional delay in recovery for Class members if the settlement
9 were rejected and the case went to trial. *Id.*

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

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

17 Even if Plaintiff proceeded and the Class was certified, significant risks would
18 remain. At trial Defendants could interpose a successful defense which could either cause
19 the jury to reject Plaintiff's claims or award the Class only a small amount of the unpaid
20 wages and other damages sought. Gundzik Decl., ¶ 24. And, even if the Class ultimately
21 prevailed, Class Members would have to wait years before they received any payment from
22 the lawsuit. *Id.*

23 Plaintiff's counsel concluded that the settlement of \$2,750,000.00 represents a fair
24 and reasonable discount from the realistic recovery. Gundzik Decl., ¶ 25. The settlement
25 provides a significant benefit for the Class which would not otherwise have been available
26 unless a settlement was reached. Plaintiff's counsel, who have significant experience
27 litigating these types of claims, are of the opinion that a gross settlement of \$2,750,000 is
28 within the "ballpark" of a fair, reasonable and adequate settlement. *Id.*

1 **7. Information Regarding Strengths, Weaknesses, and Range of**
2 **Value of Each Claim**

3 The First Cause of Action is for failure to pay for all hours worked. This claim was
4 based on information provided by Plaintiff that he was required to work at times that he was
5 not clocked in as well as on the impact of Univar's rounding system. Gundzik Decl., ¶ 26.
6 Based on the sample records, Plaintiff's counsel calculated that due to Univar's rounding
7 timekeeping system, class members were not paid for nearly 6,000 hours that they worked.
8 *Id.* Based on the time and wage records they reviewed, Plaintiff's counsel estimates that
9 class members, on average, worked a total of about 177,000 shifts in which they were
10 underpaid due to rounding. *Id.* Plaintiff's counsel therefore determined that the maximum
11 amount of this claim is \$260,000. Because of the lack of documentary evidence for a portion
12 of this amount and the possibility that Defendants could successfully contend that their
13 rounding system was balanced and resulted in overpayments as well as underpayments, that
14 there are manageability issues, and that there are individualized issues as to the employees
15 who are covered by a CBA, Plaintiff's counsel determined that the minimum value of this
16 claim is \$0. *Id.*

17 The Second Cause of Action is for failure to pay overtime. This claim was based on
18 Defendants' policy of using employees' hourly rate instead of their regular rate of pay in
19 calculating employee overtime rates. Gundzik Decl., ¶ 27. Class Members who received
20 bonuses suffered a violation of Labor Code section 510 because their overtime
21 compensation was not paid at one and one half (or two times) the applicable regular rate of
22 pay, as the regular rate does not include bonuses paid to them. *Id.* Based on the pay data
23 produced by Univar, Plaintiff's counsel determined that the maximum value of this claim is
24 about \$150,000. *Id.* However, because Defendants could successfully contend that there are
25 manageability issues and individualized issues as to the employees who are covered by a
26 CBA, Plaintiff's counsel determined that the minimum value of this claim is \$0. *Id.*

1 The Third Cause of Action is for failure to provide compliant meal and rest periods.
2 Based on the sample time and pay records, Plaintiff's counsel determined that employees
3 were frequently denied compliant meal breaks and that a significant percentage of the meal
4 breaks were not compliant. Gundzik Decl., ¶ 28. Plaintiff's counsel also determined that
5 Univar's timekeeping system which uses rounding is facially invalid pursuant to *Donohue v*
6 *AMN Services, LLC*, 11 Cal. 5th 58 (2021). *Id.* As to rest breaks, Univar did not keep track of
7 them, but Plaintiff and others reported that they regularly missed breaks due to the press of
8 work or because they were interrupted while on break. Based on Univar's records, Plaintiff's
9 counsel estimated that class members did not have a compliant meal period two times per
10 week. *Id.* Based on interviews of Plaintiff and others, Plaintiff's counsel estimated that class
11 members did not have a compliant rest break once per week. Plaintiff's counsel therefore
12 determined that the maximum value of the meal break claim is \$4.2 million and that the
13 maximum value of the rest break claim is \$2.1 million, for a total of \$6.3 million. *Id.*
14 However, because of the lack of documentary evidence regarding rest break violations and
15 the possibility that Defendants could successfully contend that these were individualized
16 incidents which did not support a class award, Plaintiff's counsel determined that the
17 minimum value of this claim is \$0. *Id.*

18 The Fourth Cause of Action is for failure to provide compliant wage statements. The
19 statute of limitations on such a claim is one year. This claim is based on the fact that the
20 wage statements issued to Plaintiff and the class are incorrect in that they do not accurately
21 state the actual "hourly rates in effect." Gundzik Decl., ¶ 29. Additionally, the wage
22 statements do not accurately state the total hours worked by employees because Defendants
23 did not include all of the unpaid hours worked and do not reflect meal and rest break wage
24 premiums that should have been paid. *Id.* However, the ability to state a derivative claim for
25 wage statement penalties is uncertain, as the Second District ruled in *Naranjo v Spectrum*
26 *Services, Inc.*, 40 Cal.App.5th 444 (2019) that actions to recover unpaid meal period
27 premiums under Labor Code section 226.7 do not entitle employees to derivative wage
28 statement penalties. While the court of appeal decision in *Naranjo* was just overturned by

1 the California Supreme Court, *see Naranjo v. Spectrum Security Services, Inc.*, 2022 Cal.
2 LEXIS 2878 (May 23, 2022), the Supreme Court’s decision was entered approximately two
3 months after the mediation. *Id.* The penalties for inaccurate wage statements are \$50 per
4 employee for the first violation and \$100 per employee per violation for all subsequent
5 violations. Penalties per employee are limited to \$4,000. During the relevant limitations
6 period, Defendants issued wage statements to 387 class members. Based upon the number of
7 wage statements issued to each employee and applying the \$50/\$100 penalty rates and
8 \$4,000 cap, Plaintiff’s counsel estimates that the maximum value of this claim is \$1.3
9 million. *Id.* At the same time, Plaintiff’s counsel estimates that this claim has a minimum
10 value of \$0. *Id.*

11 The Fifth Cause of Action is for failure to reimburse employees for all necessary
12 expenditures. Upon further investigation into this claim, Plaintiff’s counsel determined that
13 there was little evidence to support that there existed a class wide failure to reimburse.
14 Gundzik Decl., ¶ 30. Plaintiff’s counsel therefore did not allocate any monetary value to this
15 claim. *Id.*

16 The Sixth Cause of Action is for violation of Business & Professions Code section
17 17200, *et. seq.* The forgoing analysis assumes the longer four-year statute of limitations that
18 is available under the UCL for the meal period violations. Gundzik Decl., ¶ 31. This cause
19 of action is derivative of the other claims that have already been analyzed. Accordingly, the
20 damages available under this cause of action have already been analyzed or are duplicative
21 of the damages discussed. *Id.*

22 The Seventh Cause of Action is for failure to pay separated employees all wages due
23 at the time of separation. Gundzik Decl., ¶ 32. This claim is based on Defendants’ alleged
24 failure to pay Class Members all wages due when they separated, as their final pay did not
25 include amounts due for meal or rest period premiums, unpaid time or for all of their
26 overtime work. Because there are 173 putative class members who were furloughed or
27 separated for other reasons during the relevant statutory period, Plaintiff’s counsel estimated
28 that that the maximum value of this claim is approximately \$1.5 million. *Id.* However, in

1 light of the concerns identified above, and others, the minimum value of this claim is also
2 estimated to be \$0. *Id.*

3 The Eighth Cause of Action is for failure to provide employee records. Gundzik
4 Decl., ¶ 33. This claim is based on Defendants' failure to produce Plaintiff's records in
5 response to a timely request for them. *Id.* However, upon further investigation Plaintiff's
6 counsel determined that this was an isolated incident that only impacted Plaintiff and
7 therefore did not assign any monetary value to this claim. *Id.*

8 The Ninth Cause of Action is for violations of the Private Attorneys General Act
9 (PAGA). The PAGA claim is limited in time to one year. The strength of the PAGA claim
10 would be impacted by the factors discussed above for the non-PAGA claims. Gundzik Decl.,
11 ¶ 34. Based on recent PAGA decisions, Plaintiff's counsel concluded that even if Plaintiff
12 was successful on this claim through trial, the Court may well have exercised its discretion
13 under PAGA and significantly reduced the penalties. Cal. Labor Code §2699(e)(2). *Id.* In
14 addition, the settlement was primarily directed at recovering wages and unpaid premiums
15 owed to class members and the bulk of the settlement funds were intended to compensate for
16 these wages. *Id.* Based on these factors, Plaintiff's counsel is of the opinion that the
17 maximum reasonable value of the PAGA claim is approximately \$3 million, and the
18 minimum value is nothing. *Id.* Plaintiff's counsel therefore concluded that the \$100,000 that
19 the parties allocated to PAGA, \$75,000 of which will be paid to the LWDA, is a reasonable
20 settlement of that claim. *Id.*

21 Based upon the forgoing, Plaintiff's counsel determined that the class claims in this
22 case had a minimum value of \$0 and a maximum estimated value of about \$9.5 million, not
23 including the PAGA penalties. Gundzik Decl., ¶ 35. Based on a Class size of approximately
24 549, the reasonable estimate of the average amount that Class members could have obtained
25 if Plaintiff prevailed at trial on behalf of the entire Class, if the Class was certified, would be
26 a minimum of \$0 and a maximum of about \$16,900. *Id.* However, the maximum amount is
27 almost never recovered at trial and never in a settlement. Settlements, by their nature, must
28 account for the weaknesses in a plaintiff's case, which are discussed above. *Id.* Indeed,

1 because Defendants raised a colorable legal or factual defense to each of the claims Plaintiff
2 alleged, it is possible that, after trial, the Class would recover nothing. *Id.*

3 Plaintiff's counsel also concluded that the PAGA settlement satisfies the criteria in
4 *Moniz v. Adecco USA, Inc.*, 72 Cal. App. 5th 56, 77 (2021), because "it is fair, reasonable,
5 and adequate in view of PAGA's purposes to remediate present labor law violations, deter
6 future ones, and to maximize enforcement of state labor laws." Gundzik Decl., ¶ 36. Here,
7 \$100,000 is allocated to Plaintiff's PAGA claim, which is approximately 4% of the Gross
8 Settlement Amount. *Id.* In conjunction with the class settlement, pursuant to which class
9 members will each receive, on average, \$3,075, not including the PAGA payment, this
10 settlement will serve to remediate Defendants' labor law violations. *Id.* Given that
11 Defendants will be paying \$2,750,000 as a result of the alleged violations, the class and
12 PAGA settlement is a large disincentive for Defendants to engage in similar Labor Code
13 violations in the future. *Id.* And, because Defendants are well aware that Plaintiff's counsel
14 have spoken with class members and aggrieved employees as a result of the litigation and
15 because all class members will receive a notice of settlement with our contact information,
16 those employees will know to contact Plaintiff's counsel in the future if Defendants attempt
17 to engage in similar practices. *Id.* These factors—the payment of a large sum and employee
18 notice of violations and potential violations—serve to maximize enforcement of state labor
19 laws. *Id.* Also, unlike in *Moniz*, here there is no unsubstantiated and disproportionate
20 allocation of civil penalties between different groups of employees. All aggrieved
21 employees will receive an allocation of PAGA civil penalties based on the number of
22 qualifying workweeks that they worked for Defendants. *Id.*

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

25 There are approximately 549 Class Members. Gundzik Decl., ¶ 37. The exact
26 number and identity of Class Members will be provided by Defendants in connection with
27 its duty to provide Class Data to the Settlement Administrator within twenty-eight (28) days
28 after the Court preliminarily approves the settlement. Gundzik Decl., ¶ 38. And, a

community of interest exists, as in the pleading, Plaintiff is claiming the same injuries based upon the same alleged wage and hour policies as are the Class Members. Gundzik Decl., ¶ 39.

C. Facts Relevant to Other Concerns

Plaintiff's counsel have conferred with Defendants' counsel, and Defendants have indicated that some of the Class Members may not be fluent in English. Gundzik Decl., ¶ 40. For that reason, the Notice of Settlement will be printed in English and Spanish. *Id.*

Gundzik Gundzik Heeger LLP ("GGH") and Shimoda Law Corp. ("Shimoda Law") have entered into a written retention agreement with the representative Plaintiffs. Gundzik Decl., ¶ 41, and Ex. 2. GGH and Shimoda Law have agreed to divide any attorney's fees awarded in this case, and Plaintiff has consented to the division of fees. *Id.*

III. The Settlement Agreement

A. Class Definition and Class and Release Period

The Class includes all individuals who were employed by Defendants in California as non-exempt employees during the Class Period. Gundzik Decl., ¶¶ 32, 43; Ex. 1, ¶ II.C. The Class Period and the Class Release Period are the same, and are the period beginning on July 14, 2017, and ending on June 22, 2022. Gundzik Decl., ¶¶ 42, 44; Ex. 1, ¶ II.I.

B. Release of Claims

Members of the Class will provide releases to Defendants and their related entities. Gundzik Decl., ¶¶ 42, 45, Ex. 1, ¶¶ II.GG, II.HH, VI. The scope of the release will be disclosed to the Class in the proposed Notice of Settlement. See Gundzik Decl., ¶ 45, Ex. A to Ex. 1. Any member of the Class who does not like the scope of the release (or the Settlement in general) can preserve his or her individual claims by timely submitting a written request to be excluded from the Settlement and class. The release to be provided by the named Plaintiff will be broader and encompass all claims that he might have against Defendants. Gundzik Decl., ¶¶ 42, 45, Ex. 1, ¶ VII.

The Release applicable to the Class Members provides:

It is the desire of the Representative Plaintiff, Class Members (except those who

1 exclude themselves from the Settlement), and Defendants to fully, finally, and forever
2 settle, compromise, and discharge the Released Claims. Upon entry of the Final
3 Approval Order and Judgment and Defendants' payment of the Gross Settlement
4 Amount and Employer's Withholding Share, and except as to such rights or claims as
5 may be created by this Settlement Agreement, the Settlement Class Members, on
6 behalf of themselves, and each of their heirs, representatives, successors, assigns, and
7 attorneys, shall be deemed to have, and by operation of the final judgment shall have,
8 fully released and discharged the Released Parties from any and all Released Claims
9 that accrued during the Class Period.

10 Gundzik Decl., ¶¶ 42, 47, Ex. 1, ¶ VI.A. The Release applies to all of the Released Parties,
11 who are defined as:

12 Defendants and their past, present and/or future officers, directors, members,
13 managers, employees, agents, representatives, attorneys, insurers, partners, investors,
14 shareholders, administrators, parent companies, subsidiaries, affiliates, divisions,
15 predecessors, successors, assigns, and joint venturers, but only as to the Released
16 Claims and PAGA Released Claims.

17 Gundzik Decl., ¶¶ 42, 47, Ex. 1, ¶ II.HH. The Released Claims include:

18 all causes of action and factual or legal theories arising during the Class Period that
19 were alleged in the Complaint or could have been alleged based on the facts alleged
20 in the Complaint, including all damages, penalties, interest and other amounts
21 recoverable under said claims, causes of action or legal theories of relief. Class
22 Members shall not waive section 1542 of the California Civil Code.

23 Gundzik Decl., ¶¶ 42, 48, Ex. 1, ¶ II.GG. The Release will be effective upon entry of the
24 Final Approval Order and Judgment and Defendants' payment of the Gross Settlement
25 Amount and Employer's Withholding Share. Gundzik Decl., ¶¶ 42, 49, Ex. 1, ¶ VI.A.

26 The Release applicable to PAGA Employees provides:

27 Regardless of whether they submitted a valid Request for Exclusion, all PAGA
28 Employees shall fully, finally, and forever settle, compromise, and discharge the

1 PAGA Released Claims. Upon entry of the Final Approval Order and Judgment and
2 Defendants' payment of the Gross Settlement Amount, and except as to such rights
3 or claims as may be created by this Settlement Agreement, all PAGA Employees, on
4 behalf of themselves, and each of their heirs, representatives, successors, assigns,
5 and attorneys, shall be deemed to have, and by operation of the final judgment shall
6 have, fully released and discharged the Released Parties from any and all PAGA
7 Released Claims arising during the PAGA Period.

8 Gundzik Decl., ¶¶ 42, 50, Ex. 1, ¶ VI.B. This release also applies to the Released Parties. *Id.*
9 The PAGA Release will be effective upon entry of the Final Approval Order and Judgment
10 and Defendants' payment of the Gross Settlement Amount and Employer's Withholding
11 Share. Gundzik Decl., ¶¶ 42, 51, Ex. 1, ¶ VI.B.

12 Within twenty-eight (28) days following the Court's order granting preliminary
13 approval of the Settlement, Defendants will provide the Settlement Administrator with the
14 Class Data and at the same time, will provide the Class Data, without Class Member names,
15 contact information or social security numbers, to Class Counsel. Gundzik Decl., ¶¶ 42, 52,
16 Ex. 1, ¶ IV.C. This information will remain confidential and will not be disclosed to anyone,
17 except as required to applicable taxing authorities, pursuant to Defendants' express written
18 authorization, by order of the Court, or as otherwise provided for in this Agreement. *Id.*
19 Because Plaintiff's counsel will be provided anonymized Class Data, they will be able to
20 confirm that the settlement payments are being paid to the correct individuals and in the
21 correct amounts. Gundzik Decl., ¶¶ 42, 52, Ex. 1, ¶ IV.C.

22 **C. Monetary Terms**

23 Defendants will pay a Gross Settlement Amount of \$2,750,000.00, plus the
24 employer's share of withholding taxes, to the Settlement Administrator. After proposed
25 deductions, as approved by the Court, the Net Settlement Amount of approximately
26 \$1,688,334 will be available to distribute to settlement Class members. Gundzik Decl., ¶ 53.

27 If the Court grants final approval of the Settlement, no more than fourteen (14)
28 calendar days of the Effective Date (which is the date of entry of the Court's Final Approval

Order if there are no objections to the Settlement), Defendants will deposit the Gross Settlement Amount and employers' withholding share with the Settlement Administrator. Gundzik Decl., ¶¶ 42, 54, Ex. 1, ¶ IV.N. Within ten (10) days of Defendant's deposit of funds, the Settlement Administrator will pay settlement payments to participating Settlement Class Members, the Court-approved Class Representative Service and Release Award, the Court-approved award for Class Counsel's Attorneys' Fees and Class Counsel's Costs, the PAGA Payment, and the fees of the Settlement Administrator. Gundzik Decl., ¶¶ 42, 54, Ex. 1, ¶¶ IV.L(8), IV.O.

If the Court grants preliminary approval, at the final approval hearing, in addition to granting final approval to the settlement, the Court will be asked to approve the following deductions from Defendants' settlement payment of \$2,750,000: (a) Class Counsel's attorneys' fees of \$916,666; (b) Class Counsel's actual litigation costs and expenses, not to exceed \$25,000; (c) a Service and Release Award in the amount of \$10,000 to Representative Plaintiff Javier Santiago; (d) \$10,000 to the Settlement Administrator for administering the settlement; and (e) \$75,000 to the LWDA, which is 75% of the \$100,000 that the Parties have allocated for settlement of Plaintiff's PAGA claims. Gundzik Decl., ¶¶ 42, 55, Ex. 1, ¶ I; Declaration of Jodey Lawrence, ¶ 9.

As compensation for his efforts, the Settlement Agreement provides that a Class Representative Service and Release Award in the amount of \$10,000 will be requested for the representative Plaintiff, Javier Santiago. Gundzik Decl., ¶ 56. This award is in recognition of the significant time he expended pursuing this action and assisting our efforts with the case, and in recognition of the expanded general release that he is required to provide, as part of the Settlement. *Id.* As an additional requirement to receiving the proposed Class Representative Service and Release Award, Plaintiff is required to sign a broad general release which includes a waiver of Section 1542 of the California Civil Code. *Id.*

Plaintiff will be supporting the request for attorneys' fees in several ways. Plaintiff's counsel will include actual billing records and will also provide a chart which will specify the number of hours spent on each type of task that was required in connection with the

1 case. Gundzik Decl., ¶ 57. Plaintiff's counsel will be applying the percentage method and
2 supporting it with a lodestar cross-check. *Id.* And, if Plaintiff's counsel are requesting a
3 multiplier, they will provide sufficient grounds for the application of the multiplier being
4 requested. *Id.*

5 Defendants' share of Employer's Withholding Taxes will be paid by the Defendants
6 in addition to the Gross Settlement Amount. Gundzik Decl., ¶¶ 42, 58, Ex. 1, ¶ IV.L(7). No
7 amount of the Gross Settlement Amount will revert to Defendants. Gundzik Decl., ¶¶ 42, 59,
8 Ex. 1, ¶¶ I.

9 The Net Settlement Amount of approximately \$1,688,334 will be distributed to Class
10 Members based on the number of Qualifying Workweeks they worked for Defendants.
11 Gundzik Decl., ¶¶ 42, 60, Ex. 1, ¶¶ IV. L(1). The formula to be used is specified in detail in
12 both the Declaration of Aaron Gundzik and the Notice of Settlement which will be mailed to
13 all of the Class Members. Gundzik Decl., ¶¶ 42, 60, and Ex. A to Ex. 1. Based on a Class
14 size of approximately 549, the Settlement Class Members will get, on average, about
15 \$3,075. Gundzik Decl., ¶ 60. Settlement payments will be paid to the Class Members within
16 10 days of Defendants' deposit of the Gross Settlement Amount with the Settlement
17 Administrator. *Id.* Payment to each Settlement Class Member will be allocated one-third to
18 wages, to be reported on a W-2 form. One-third will be attributed to interest and
19 reimbursements and one-third to penalties, both of which will be reported on an IRS Form
20 1099. Gundzik Decl., ¶¶ 42, 61, Ex. 1, ¶¶ IV.L(6).

21 **D. Notice Administration**

22 The settlement will be administered by Phoenix Settlement Administrators
23 ("Phoenix" or "Settlement Administrator"). Gundzik Decl., ¶¶ 32, 63, Ex. 1, ¶ II.OO; Decl.
24 of Jodey Lawrence, ¶ 9. If the Court grants preliminary approval, within twenty-eight (28)
25 calendar days Defendants will provide the Settlement Administrator with the Class Data.
26 Gundzik Decl., ¶¶ 42, 64, Ex. 1, ¶ IV.C. Within ten days thereafter, the Settlement
27 Administrator will update the Class list, check all addresses against the National Change of
28 Address, and send each Class Member via First-Class United States mail an English and

1 Spanish version of the Notice of Settlement. Gundzik Decl., ¶¶ 42, 65-66, Ex. 1, ¶ IV.C. No
2 submission of a claim form is necessary, and all Class members are eligible to receive a
3 settlement payment except those who follow the procedure for requesting an exclusion.
4 Gundzik Decl., ¶¶ 42, 66, Ex. 1, ¶¶ I, IV.E, IV.L(4).

5 The proposed form of the notice of settlement to the class (“Notice of Settlement”)
6 discloses the pendency of this litigation, summarizes the allegations against Defendant,
7 defines the Class, describes the consideration that Defendants will provide in settlement
8 along with an estimate of each Settlement Class Member’s estimated recovery. Gundzik
9 Decl., ¶¶ 42, 67, Ex. A to Ex. 1. The notice also describes the claims that will be released
10 and explains the procedures to be used by members of the class to be excluded from or
11 object to the settlement. *Id.* Because this is an opt-out settlement and Class members who do
12 nothing will still receive a settlement payment, the notice provisions agreed to by the parties
13 will adequately serve the interests of the individual Class Members in receiving the relief
14 provided by the settlement and adequately comply with California Rules of Court, Rule
15 3.766(e). Gundzik Decl., ¶ 66. The Class Notice also specifies the current social distancing
16 procedures for attendance at hearings and review of court files. Gundzik Decl., ¶¶ 42, 69,
17 Ex. A to Ex. 1, p. 6.

18 Class Member settlement checks will be valid for 180 days from issuance. The funds
19 represented by all uncashed settlement checks will be transmitted by the Settlement
20 Administrator to the California State Controller’s Office Unclaimed Property Fund. Gundzik
21 Decl., ¶¶ 42, 70, Ex. 1, ¶ IV.P.

22 For any Notice of Settlement that is returned as undeliverable, the Settlement
23 Administrator will perform a utility database search or other skip trace. Gundzik Decl., ¶¶
24 42, 71, Ex. 1, ¶ IV.D. The returned Notices of Settlement will be re-mailed to the new
25 addresses obtained for such Class Members. *Id.* Such searching and re-mailing will be
26 completed within ten (10) calendar days of the date that Notices of Settlement were
27 originally returned as undeliverable. *Id.*

The Settlement Administrator will establish a website for this settlement and will post the settlement agreement and other relevant documents. Gundzik Decl., ¶¶ 72-73. Additionally, in their individual Notices of Settlement, Class Members will be provided with the phone number and email address for the Settlement Administrator, as well as the website specific to the Settlement. Gundzik Decl., ¶ 42, Ex. A to Ex. 1. If there is a change in the date or location of the Final Approval hearing, the Settlement Administrator will post this information on the website. Gundzik Decl., ¶ 72. Notice of the Final Judgment and Final Approval Order will also be posted on the Settlement Administrator's website. Gundzik Decl., ¶ 73.

E. Responses to Notice

Class members who wish to be excluded from the settlement must submit by mail a written request to be excluded to the Settlement Administrator no later than forty-five (45) days after the Notice of Settlement is mailed by the Settlement Administrator. Gundzik Decl., ¶¶ 42, 74, Ex. 1, ¶¶ II.KK, IV.E; Ex. A to Ex. 1, ¶ 9 (c). Any Class Member wishing to object to the approval of the Settlement must send a written statement of objection to the Settlement Administrator within the same forty-five day period. Gundzik Decl., ¶¶ 42, 74, Ex. 1 at ¶ IV.H.1; Ex. A to Ex. 1, ¶ 9(c). For Notices of Settlement returned as being undeliverable that are re-mailed to a different address, the Response Deadline will be the earlier of: (1) 45 days after re-mailing, and (2) ten days before the initial date set by the Court for the Final Fairness and Approval Hearing. Gundzik Decl., ¶¶ 42, 75, Ex. 1, ¶ IV.EE.

F. Proposed Schedule of Events

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

Event	Date
Deadline for Defendants to provide Class data to settlement administrator	within twenty-eight (28) calendar days of preliminary approval

Event	Date
Deadline to mail Notice of Settlement to Class Members	within ten (10) calendar days of receipt of class data from Defendants
Deadline to dispute workdays, opt out of or object to settlement	within forty-five (45) calendar days of mailing or re-mailing of Notice of Settlement
Deadline for settlement administrator to provide counsel with Declaration of Compliance and report regarding notice and exclusion process	5 days prior to deadline for filing motion for final approval
Deadline to file motion for final approval of the settlement and award of attorneys' fees and costs	16 court days before final approval hearing
Hearing on motion for final approval of the settlement, granting of final approval, and entry of judgment	TBD
Deadline for Defendants to deliver funds to settlement administrator	Within fourteen (14) calendar days after the Effective Date
Deadline for settlement administrator to distribute settlement funds	within 10 calendar days of Effective Date

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

1 defenses typical of the class; and (3) class representatives who can adequately represent the
2 class.” *Linder v. Thrifty Oil Co.*, 23 Cal. 4th at 435.

3 **1. An Ascertainable Class Exists that can easily be Determined from**
4 **Defendants’ Records.**

5 “An ascertainable class exists when, based upon the class definition, it is possible to
6 give adequate notice to class members or to determine after the litigation has concluded who
7 is barred from re-litigating. (Citation omitted.) The goal in defining the class is to use
8 terminology that will convey sufficient meaning to enable persons hearing it to determine
9 whether they are members of the class plaintiff wishes to represent.” *Marler v. E.M.*
10 *Johansing, LLC*, 199 Cal. App. 4th 1450, 1459-1460 (2011). Thus, a class is generally
11 considered ascertainable when (i) under the class definition the members are clearly
12 identifiable and (ii) the members can be located and notified through a reasonable
13 expenditure of time and money. *See Reyes v. Board of Supervisors*, 196 Cal. App. 3d 1263,
14 1274-1275 (1987). Here, the Class definition is clear. The Class is defined as including “all
15 individuals who were employed by Defendants in California as non-exempt employees
16 during the Class Period.” Gundzik Decl., ¶¶ 42, 43, Ex. 1, ¶ II.C. The Class Period is defined
17 as the period beginning on July 14, 2017 and ending on June 22, 2022. Gundzik Decl., ¶ 42,
18 Ex. 1, ¶ II.I.

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

21 Plaintiff contends that the community of interest requirement is met with respect to
22 the Class and the claims asserted in the pleading. Common issues regarding Defendants’
23 treatment of their non-exempt employees as to meal and rest breaks, unpaid time and unpaid
24 overtime, the sufficiency of wage statements and amounts paid to separated employees at
25 time of separation. Further, the claims of the named Plaintiff are typical of the claims of all
26 Class Members, and he can and does adequately represent the Class. Gundzik Decl., ¶¶ 17-
27 20; 26-32, 39; Declaration of Javier Santiago (“Santiago Decl.”), ¶¶ 2-10.

1 **3. Common Issues of Law and Fact Predominate over any**
2 **Individual Issues.**

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

9 Here, Plaintiff maintains that common issues exist with respect to Defendants’
10 policies and practices with respect to their timekeeping methods, meal and rest breaks,
11 payment for overtime, payment for time worked when not clocked in, and payment for
12 amounts due at time of separation. Gundzik Decl., ¶¶ 26-32. Plaintiff maintains that the only
13 individualized differences between Class members relate to the amount of compensation
14 each Class member would be entitled to receive. However, it is well-settled that mere
15 differences as to the amount of damages among Class members are not sufficient to prevent
16 certification. *Id.*; *Acree v. General Motors Acceptance Corp.*, 92 Cal. App. 4th 385, 387
17 (2001) (“A class action may be maintained even if each class member must at some point
18 individually show his or her eligibility for recovery or the amount of his or her damages...”)

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

20 “To maintain a class action, the representative plaintiff must adequately represent
21 and protect the interests of other members of the class. (Citation omitted.) Therefore, a
22 class representative plaintiff must be situated similarly to the other class members united by
23 a common interest.” *CashCall, Inc. v. Superior Court*, 159 Cal. App. 4th 273, 284 (2008).
24 Thus, the typicality requirement focuses on whether the proposed representative’s claims are
25 typical of the claims of the rest of the class. *Id.*; *see Classen v. Weller*, 145 Cal. App. 3d 27,
26 47 (1983).

27 Here, Plaintiff is seeking relief for the same wage and hour violations as are the rest
28 of the Class members. He seeks to impose liability on Defendants based on the same claims

1 and theories, as well as the same alleged injuries, which apply to the Class as a whole. Thus,
2 the claims of the Representative Plaintiff are typical of the claims of the Class.

3 **5. The Representative Plaintiff and Class Counsel Will Adequately**
4 **Protect the Interests of the Class.**

5 “Adequacy of representation depends on whether the plaintiff’s attorney is qualified to
6 conduct the proposed litigation and the plaintiff’s interests are not antagonistic to the
7 interests of the class.” *McGhee v. Crocker-Citizens Nat. Bank*, 60 Cal. App. 3d 442, 450
8 (1976). Here, the Representative Plaintiff retained attorneys with extensive experience in
9 prosecuting wage and hour class actions. Gundzik Decl., ¶¶ 13-16.

10 Nor is there any conflict between the interests of the Representative Plaintiff and the
11 members of the Class. The Representative Plaintiff and the Class are claiming the same
12 injuries based upon the same alleged wage and hour policies existing while they were
13 employed by Defendant. Gundzik Decl., ¶ 39.

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

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

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

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

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

9 **The Strength of Plaintiff’s Case.** As set forth in the Section II above and the
10 Declaration of Aaron Gundzik, the parties have vigorously advocated the parties’ respective
11 positions in this matter, and Defendants have consistently disputed that they violated
12 California’s wage and hour laws. In fact, Defendants raised a colorable legal or factual
13 defense to each claim Plaintiff has alleged. Gundzik Decl., ¶¶ 26-32.

14 **The Risk, Expense, Complexity and Likely Duration of Further Litigation.** If the
15 settlement is not approved, the Representative Plaintiff would need to move forward with
16 discovery and then move for class certification. Defendants will oppose certification on the
17 grounds that numerous individualized fact issues allegedly exist. It will argue and could
18 succeed in claiming that these individualized issues overwhelm common issues and will also
19 argue that the action is not manageable on a classwide basis. The result could be that the
20 case would not be certifiable as a class action. Gundzik Decl., ¶¶ 23-24.

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

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 \$2,750,000 for a class of approximately 549, with the claims described above,
5 with \$100,000 allocated to Plaintiff’s PAGA claim, is within the “ballpark” of a fair,
6 reasonable and adequate settlement. Gundzik Decl., ¶ 25. Taking into account the serious
7 risks associated with proceeding— that the case might not be certified as a class action, that
8 Plaintiff might not succeed on the merits at trial or, if Plaintiff succeed at trial, that the case
9 is reversed on appeal – it becomes apparent that a settlement in this range is fair to the Class.

10 **The Extent of Investigation and Discovery Completed and the Stage of the**
11 **Proceedings.** As set forth in Section II.A above and the Declaration of Aaron Gundzik, the
12 parties have engaged in extensive informal discovery and factual investigation. Gundzik
13 Decl., ¶¶ 8-11, 17-21, 26-32.

14 **The Experience and Views of Counsel.** As set forth in the declaration of Aaron
15 Gundzik, Class Counsel has significant experience in wage and hour class actions. Gundzik
16 Decl., ¶¶ 13-16; Declaration of Galen Shimoda (“Shimoda Decl.”), ¶¶ 10-14. Aaron
17 Gundzik and Rebecca Gundzik have practiced law and been members of the California State
18 Bar collectively for over 60 years. *Id.* Galen Shimoda has been practicing law for nearly 20
19 years. Based upon their vast experience in the area, when they arrived at a settlement with
20 Defendants, Class Counsel had sufficient information to assess the strengths and weaknesses
21 of the claims against Defendants, and the benefits of the settlement in light of the significant
22 risks of continuing with the litigation.

23 **Whether the Settlement Was Reached Through Arm’s-Length Bargaining or**
24 **was a Product of Fraud or Overreaching.** It is undisputed that the parties negotiated the
25 settlement at arm’s length during a mediation before a well-respected neutral third-party
26 mediator who had significant experience settling wage and hour class action lawsuits.
27 Gundzik Decl., ¶ 12. The case settled after a full day of negotiation pursuant to a mediator’s
28 proposal. *Id.* The settlement was negotiated at arms’ length and was in no sense collusive.

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

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

9 The proposed Notice of Settlement addresses these concerns. It identifies the
10 Representative Plaintiff and Defendants, provides a description of the lawsuit, the settlement
11 amounts, the proposed plan of allocation and the attorneys’ fees that Class counsel may
12 receive. The proposed Notice of Settlement provides information as to how to opt out of the
13 Class and be excluded, how to object to the settlement, as well as the date of the final
14 approval hearing. It also describes the Settlement Agreement with sufficient detail to allow
15 Class members to make an informed decision as to whether to accept or object to it. The
16 proposed Notice of Settlement further provides that it will bind all Class members who do
17 not request exclusion. Gundzik Decl., ¶ 42, Ex. A. to Ex. 1 thereto. As such, the proposed
18 Notice of Settlement describes the settlement with enough specificity to allow Class
19 members to make an informed decision as to whether to participate in it. See California Rule
20 of Court 3.766(d).

21 Further, the manner of giving notice is to be done in such a way as to maximize its
22 reach. The Notice of Settlement will be sent to members of the Class by First Class regular
23 U.S. mail by the Settlement Administrator. Gundzik Decl., ¶ 42, Ex. 1, ¶ IV.C. Prior to
24 mailing, the Settlement Administrator shall check all addresses on the Database Report
25 against the National Change of Address (NCOA) database. *Id.* The Settlement Administrator
26 will mail the Notice of Settlement to the most current mailing address as identified by
27 reference to the Database Report and/or the NCOA database. *Id.*

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 Defendants' counsel have conferred and determined that disseminating
8 the Notice of Settlement by mail to the Class Members is the best way to maximize its
9 reach. Gundzik Decl., ¶ 68.

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 stakes of the individual Class Members in receiving the
16 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 100 days.

21 DATED: May 25, 2022

GUNDZIK GUNDZIK HEEGER LLP

22
23 By: 

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