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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
FINAL 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: February 6, 2023
Time: 10:30 a.m.
Dept.: 1**

Complaint Filed: July 13, 2021

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

2 **PLEASE TAKE NOTICE** that on February 6, 2023, at 10:30 a.m. in Department 1
3 of the above-entitled Court, located at 312 N. Spring St, Los Angeles, CA 90012, Plaintiff
4 Javier Santiago will, and by this Notice of Motion and Motion, hereby does, move for an
5 Order as follows:

6 1. Granting final approval of a class action and Private Attorneys' General Act
7 ("PAGA") settlement in the gross amount of two million seven hundred fifty thousand
8 dollars (\$2,750,000);

9 2. Approving a service and release payment in the amount of \$10,000 to the
10 named plaintiff, Javier Santiago;

11 3. Approving of the payment of settlement administration costs of \$10,000 to
12 the third-party settlement administrator, Phoenix Class Action Settlement Administrators
13 ("Phoenix" or "Settlement Administrator");

14 4. Approving of a payment to the California Labor Workforce Development
15 Agency ("LWDA") in the amount of \$75,000, which is 75% of the \$100,000 amount
16 allocated to settle the PAGA claims, with the other 25% (\$25,000) being distributed to the
17 PAGA employees;

18 5. Approving the payment of attorneys' fees of \$916,666, which is one-third of
19 the gross settlement amount, and costs and expenses of \$15,150.35 to Class Counsel; and

20 6. Entering final judgment implementing the release of participating Class
21 Members' claims.

22 Plaintiff's motion is made pursuant to California Rule of Court 3.769 and is based on
23 this Notice of Motion and Motion and Memorandum of Points and Authorities submitted
24 herewith, the [Proposed] Final Approval order and [Proposed] Judgment, the Declaration of
25 Class Counsel Aaron C. Gundzik, the Declaration of Class Counsel Galen Shimoda, the
26 Declaration of named Plaintiff Javier Santiago, the Declaration of Jarrod Salinas, on behalf
27 of the Settlement Administrator, Phoenix, the pleadings and other papers filed in this action,
28 and such further argument or evidence as may be considered at the hearing on the motion.

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

DATED: January 6, 2023

GUNDZIK GUNDZIK HEEGER LLP

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 On August 26, 2022, this Court granted preliminary approval to the wage and hour
4 class and Private Attorneys' General Act ("PAGA") action settlement of two million seven
5 hundred fifty thousand dollars (\$2,750,000) that is the subject of this Motion. In doing so,
6 the Court preliminarily concluded that the proposed settlement is fair and reasonable,
7 preliminarily appointed the named Plaintiff as the Class Representative, and preliminarily
8 appointed Aaron C. Gundzik of Gundzik Gundzik Heeger LLP and Galen Shimoda of
9 Shimoda & Rodriguez Law Corp., PC ("Shimoda Law") as Class Counsel. As ordered,
10 notice of the proposed settlement has been distributed to all 569 Class Members.¹
11 Declaration of Jarrod Salinas ("Salinas Decl."), ¶¶ 8-9. No class members have opted out of
12 the settlement, and no objections have been received. Salinas Decl., ¶¶ 11-12.

13 As this Court is aware, this is a putative wage and hour class action filed by Plaintiff
14 Javier Santiago against Defendants Univar Solutions, Inc. and Univar Solutions USA, Inc.
15 ("Defendants" or collectively "Univar") on behalf of approximately 569 individuals who
16 have worked as non-exempt employees for Defendants in California during the Class Period
17 (from July 13, 2017, through June 22, 2022) (the "Class"). Generally, the terms of the
18 parties' settlement require Defendants to pay the sum of \$2,750,000. By this Motion,
19 Plaintiff seeks approval for the distribution of these funds to the Class, less a service and
20 release payment to the named Plaintiff, attorneys' fees and costs, a payment to the LWDA, a
21 payment to the aggrieved employees and settlement administration expenses. If this Motion
22 is granted in full, approximately 569 Class Members will receive a settlement payment
23 resulting in individual gross payments to Class Members ranging between \$21.94 and
24 \$5,725.17, and the average settlement payment will be in the amount of approximately
25 \$2,967. Salinas Decl., ¶ 17.

26
27 ¹ Upon receipt of the Class Data from Defendants, Plaintiff learned that the class size is 569
28 instead of 549, as reported to the Court in Plaintiff's Motion for Preliminary Approval.

1 Nothing material concerning the proposed settlement has changed since the Court's
2 preliminary approval order. The Court should grant final approval.

3 **II. FACTUAL BACKGROUND**

4 **A. Plaintiff's Factual Allegations**

5 As discussed in Plaintiff's Motion for Preliminary Approval, based upon their
6 investigation, Plaintiff made the following allegations:

7 During the Class Period Defendants have operated, among other things, a chemical
8 sales and distribution business in California. Declaration of Aaron Gundzik ("Gundzik
9 Decl."), ¶ 12. Plaintiff worked at Defendants' Fairfield, California location from 2019 until
10 April 2021 as a materials handler and lead foreman. *Id.*

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

23 Although many of the class members are covered by a collective bargaining
24 agreement ("CBA"), one of which provides for one hour meal periods, Plaintiff contended
25 that none of the CBAs alter the timing of the break or make any attempt to deprive
26 employees of their legally-required meal breaks. Gundzik Decl., ¶ 14.

27 Pre-litigation, Plaintiff requested his time, pay and personnel records from
28 Defendants but did not receive them. Gundzik Decl., ¶ 16.

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

5 **B. Procedural History and Investigation and Discovery Prior to Settlement**

6 Plaintiff Javier Santiago filed his initial complaint against Defendants on July 13,
7 2021. Gundzik Decl., ¶ 5. On August 12, 2021, Univar removed the case to Federal District
8 Court. Gundzik Decl., ¶ 6. Although Plaintiff advised Defendants of his intention to seek a
9 remand, Defendants agreed to an early mediation before a remand motion was filed. *Id.* The
10 District Court refused to stay the matter pending the mediation, and after the parties
11 eventually agreed to stipulate to remand the case to this Court. *Id.* On October 12, 2021, the
12 District Court ordered the case remanded and on November 2, 2021, this Court received the
13 Remand Order and transmittal of the case file. *Id.*

14 Subsequent to the remand, on December 1, 2021 Plaintiff filed his First Amended
15 Complaint, which asserted causes of action for: (1) failure to pay wages; (2) failure to pay
16 overtime; (3) failure to provide meal and rest breaks; (4) inaccurate wage statements; (5)
17 failure to reimburse necessary expenditures; (6) violation of the Unfair Practices Act; (7)
18 failure to pay unpaid wages at separation; (8) failure to provide copies of wage records; and
19 (9) recovery of civil penalties under PAGA. Gundzik Decl., ¶ 7.

20 On March 22, 2022, Plaintiff's counsel, co-counsel Galen Shimoda, their client
21 Javier Santiago, Defendants and Defendants' counsel attended a mediation session with
22 well-respected mediator, Gig Kyriacou, via Zoom. Gundzik Decl., ¶17. Plaintiff participated
23 in the mediation via Zoom and was available to answer questions for the entire day. The
24 case settled after a full day of negotiation pursuant to a mediator's proposal. *Id.*

25 In connection with the mediation and discovery engaged in while the action was
26 pending in Federal Court, Plaintiff's counsel reviewed and analyzed numerous pay
27 documents, including records and information produced by Defendants, and worked to
28 develop information on potential damages. Gundzik Decl., ¶¶ 8-11. They have thoroughly

1 investigated Plaintiff's claims against Defendants. *Id.* They have engaged in informal
2 discovery and reviewed and analyzed numerous pay documents, including records and
3 information produced by Defendants, and worked to develop information on potential
4 damages with their consultant. *Id.* In connection with the mediation, Defendants produced
5 anonymized time and pay records for approximately 20% of the proposed Class Members,
6 including Plaintiff, and PAGA Aggrieved Employees. Gundzik Decl., ¶ 8. Plaintiff's
7 counsel investigated and compiled publicly-available information about Defendants and
8 their businesses and engaged in informal discovery in connection with the mediation. *Id.*
9 And they negotiated extensively with Defendants regarding the mediation, its scope, and the
10 information to be exchanged in connection with the mediation. Gundzik Decl., ¶ 9.

11 As a result of these negotiations, Defendants provided additional information
12 including, the number of Class Members and PAGA Aggrieved Employees, total Class
13 Member work weeks, total PAGA Aggrieved Employee work weeks, number of separated
14 Class Members, number of separated PAGA Aggrieved Employees, number of wage
15 statements issued to both the Class Members and the PAGA Aggrieved Employees, average
16 hourly pay rates, and the number of class members in each position and at each of
17 Defendants' locations. Gundzik Decl., ¶ 9. Based on this information, as well as information
18 provided by the Plaintiff, Plaintiff's counsel worked with their consultant to create an
19 extensive damages model. Gundzik Decl., ¶ 10.

20 **C. Plaintiff's Counsel's Estimate of Potential Recovery**

21 The First Cause of Action is for failure to pay for all hours worked. This claim was
22 based on information provided by Plaintiff that he was required to work at times that he was
23 not clocked in as well as on the impact of Univar's rounding system. Gundzik Decl., ¶ 24.
24 Based on the sample records, Plaintiff's counsel calculated that due to Univar's rounding
25 timekeeping system, class members were not paid for nearly 6,000 hours that they worked.
26 *Id.* Based on the time and wage records they reviewed, Plaintiff's counsel estimates that
27 class members, on average, worked a total of about 177,000 shifts in which they were
28 underpaid due to rounding. *Id.* Plaintiff's counsel therefore determined that the maximum

1 amount of this claim is \$260,000. Because of the lack of documentary evidence for a portion
2 of this amount and the possibility that Defendants could successfully contend that their
3 rounding system was balanced and resulted in overpayments as well as underpayments, that
4 there are manageability issues, and that there are individualized issues as to the employees
5 who are covered by a CBA, Plaintiff's counsel determined that the minimum value of this
6 claim is \$0. *Id.*

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

17 The Third Cause of Action is for failure to provide compliant meal and rest periods.
18 Based on the sample time and pay records, Plaintiff's counsel determined that employees
19 were frequently denied compliant meal breaks and that a significant percentage of the meal
20 breaks were not compliant. Gundzik Decl., ¶ 26. Plaintiff's counsel also determined that
21 Univar's timekeeping system which uses rounding is facially invalid pursuant to *Donohue v*
22 *AMN Services, LLC*, 11 Cal. 5th 58 (2021). *Id.* As to rest breaks, Univar did not keep track of
23 them, but Plaintiff and others reported that they regularly missed breaks due to the press of
24 work or because they were interrupted while on break. Based on Univar's records, Plaintiff's
25 counsel estimated that class members did not have a compliant meal period two times per
26 week. *Id.* Based on interviews of Plaintiff and others, Plaintiff's counsel estimated that class
27 members did not have a compliant rest break once per week. Plaintiff's counsel therefore
28 determined that the maximum value of the meal break claim is \$4.2 million and that the

1 maximum value of the rest break claim is \$2.1 million, for a total of \$6.3 million. *Id.*

2 However, because of the lack of documentary evidence regarding rest break violations and
3 the possibility that Defendants could successfully contend that these were individualized
4 incidents which did not support a class award, Plaintiff's counsel determined that the
5 minimum value of this claim is \$0. *Id.*

6 The Fourth Cause of Action is for failure to provide compliant wage statements. The
7 statute of limitations on such a claim is one year. This claim is based on the fact that the
8 wage statements issued to Plaintiff and the class are incorrect in that they do not accurately
9 state the actual "hourly rates in effect." Gundzik Decl., ¶ 27. Additionally, the wage
10 statements do not accurately state the total hours worked by employees because Defendants
11 did not include all of the unpaid hours worked and do not reflect meal and rest break wage
12 premiums that should have been paid. *Id.* However, at the time of the mediation in March of
13 2022, the ability to state a derivative claim for wage statement penalties was uncertain. The
14 Second District had ruled in *Naranjo v Spectrum Services, Inc.*, 40 Cal.App.5th 444 (2019)
15 that actions to recover unpaid meal period premiums under Labor Code section 226.7 do not
16 entitle employees to derivative wage statement penalties, and the California Supreme Court
17 did not reverse the appellate court's decision until May of 2022. While the Court of
18 Appeal's decision in *Naranjo* was overturned by the California Supreme Court in May, *see*
19 *Naranjo v. Spectrum Security Services, Inc.*, 2022 Cal. LEXIS 2878 (May 23, 2022), the
20 Supreme Court's decision was entered approximately two months after the mediation. *Id.*
21 The penalties for inaccurate wage statements are \$50 per employee for the first violation and
22 \$100 per employee per violation for all subsequent violations. Penalties per employee are
23 limited to \$4,000. During the relevant limitations period, Defendants issued wage statements
24 to 387 class members. Based upon the number of wage statements issued to each employee
25 and applying the \$50/\$100 penalty rates and \$4,000 cap, Plaintiff's counsel estimates that
26 the maximum value of this claim is \$1.3 million. *Id.* At the same time, Plaintiff's counsel
27 estimates that this claim has a minimum value of \$0. *Id.*

1 The Fifth Cause of Action is for failure to reimburse employees for all necessary
2 expenditures. Upon further investigation into this claim, Plaintiff's counsel determined that
3 there was little evidence to support that there existed a class wide failure to reimburse.
4 Gundzik Decl., ¶ 28. Plaintiff's counsel therefore did not allocate any monetary value to this
5 claim. *Id.*

6 The Sixth Cause of Action is for violation of Business & Professions Code section
7 17200, *et. seq.* The forgoing analysis assumes the longer four-year statute of limitations that
8 is available under the UCL for the meal period violations. Gundzik Decl., ¶ 29. This cause
9 of action is derivative of the other claims that have already been analyzed. Accordingly, the
10 damages available under this cause of action have already been analyzed or are duplicative
11 of the damages discussed. *Id.*

12 The Seventh Cause of Action is for failure to pay separated employees all wages due
13 at the time of separation. Gundzik Decl., ¶ 30. This claim is based on Defendants' alleged
14 failure to pay Class Members all wages due when they separated, as their final pay did not
15 include amounts due for meal or rest period premiums, unpaid time or for all of their
16 overtime work. Because there are 173 putative class members who were furloughed or
17 separated for other reasons during the relevant statutory period, Plaintiff's counsel estimated
18 that that the maximum value of this claim is approximately \$1.5 million. *Id.* However, in
19 light of the concerns identified above, and others, the minimum value of this claim is also
20 estimated to be \$0. *Id.*

21 The Eighth Cause of Action is for failure to provide employee records. Gundzik
22 Decl., ¶ 31. This claim is based on Defendants' failure to produce Plaintiff's records in
23 response to a timely request for them. *Id.* However, upon further investigation Plaintiff's
24 counsel determined that this was an isolated incident that only impacted Plaintiff and
25 therefore did not assign any monetary value to this claim. *Id.*

26 The Ninth Cause of Action is for violations of the Private Attorneys General Act
27 (PAGA). The PAGA claim is limited in time to one year. The strength of the PAGA claim
28 would be impacted by the factors discussed above for the non-PAGA claims. Gundzik Decl.,

¶ 32. Based on recent PAGA decisions, Plaintiff's counsel concluded that even if Plaintiff was successful on this claim through trial, the Court may well have exercised its discretion under PAGA and significantly reduced the penalties. Cal. Labor Code §2699(e)(2). *Id.* In addition, the settlement was primarily directed at recovering wages and unpaid premiums owed to class members and the bulk of the settlement funds were intended to compensate for these wages. *Id.* Based on these factors, Plaintiff's counsel is of the opinion that the maximum reasonable value of the PAGA claim is approximately \$3 million, and the minimum value is nothing. *Id.* Plaintiff's counsel therefore concluded that the \$100,000 that the parties allocated to PAGA, \$75,000 of which will be paid to the LWDA, is a reasonable settlement of that claim. *Id.*

Based upon the forgoing, Plaintiff's counsel determined that the class claims in this case had a minimum value of \$0 and a maximum estimated value of about \$9.5 million, not including the PAGA penalties. Gundzik Decl., ¶ 33. Based on a Class size of approximately 569, the reasonable estimate of the average amount that Class members could have obtained if Plaintiff prevailed at trial on behalf of the entire Class, if the Class was certified, would be a minimum of \$0 and a maximum of about \$16,696. *Id.* However, the maximum amount is almost never recovered at trial and never in a settlement. Settlements, by their nature, must account for the weaknesses in a plaintiff's case, which are discussed above. *Id.* Indeed, because Defendants raised a colorable legal or factual defense to each of the claims Plaintiff alleged, it is possible that, after trial, the Class would recover nothing. *Id.*

Plaintiff's counsel also concluded that the PAGA settlement satisfies the criteria in *Moniz v. Adecco USA, Inc.*, 72 Cal. App. 5th 56, 77 (2021), because "it is fair, reasonable, and adequate in view of PAGA's purposes to remediate present labor law violations, deter future ones, and to maximize enforcement of state labor laws." Gundzik Decl., ¶ 34. Here, \$100,000 is allocated to Plaintiff's PAGA claim, which is approximately 4% of the Gross Settlement Amount. *Id.* In conjunction with the class settlement, pursuant to which class members will each receive, on average, \$2,967, not including the PAGA payment, this settlement will serve to remediate Defendants' labor law violations. *Id.* Given that

1 Defendants will be paying \$2,750,000 as a result of the alleged violations, the class and
2 PAGA settlement is a large disincentive for Defendants to engage in similar Labor Code
3 violations in the future. *Id.* And, because Defendants are well aware that Plaintiff’s counsel
4 have spoken with class members and aggrieved employees as a result of the litigation and
5 because all Class Members will receive a notice of settlement with our contact information,
6 those employees will know to contact Plaintiff’s counsel in the future if Defendants attempt
7 to engage in similar practices. *Id.* These factors—the payment of a large sum and employee
8 notice of violations and potential violations—serve to maximize enforcement of state labor
9 laws. *Id.* Also, unlike in *Moniz*, here there is no unsubstantiated and disproportionate
10 allocation of civil penalties between different groups of employees. All aggrieved
11 employees will receive an allocation of PAGA civil penalties based on the number of
12 qualifying workweeks that they worked for Defendants. *Id.*

13 **D. The Settlement Negotiations**

14 On March 22, 2022, Plaintiff’s counsel, co-counsel Galen Shimoda, their client
15 Javier Santiago, Defendants and Defendants’ counsel attended a mediation session with
16 well-respected mediator, Gig Kyriacou, via Zoom. Plaintiff participated in the mediation via
17 Zoom and was available to answer questions for the entire day. The case settled after a full
18 day of negotiation pursuant to a mediator’s proposal. Gundzik Decl., ¶ 17.

19 The terms of the Settlement were memorialized in the Stipulation of Class Action
20 Settlement, which was thereafter amended by the parties’ First Amended Stipulation of
21 Class Action and PAGA Settlement (“Settlement Agreement”). Gundzik Decl., ¶ 21, and Ex.
22 1 thereto. Among other things, the settlement requires Defendants to pay \$2,750,000, plus
23 the employer’s share of withholding taxes, in full settlement of the action. Gundzik Decl., ¶¶
24 21-22, and Ex. 1 thereto. The settlement was negotiated at arms’ length and was in no sense
25 collusive. Gundzik Decl., ¶ 17.

26 Plaintiff and Plaintiff’s counsel have concluded, after taking into account the sharply
27 disputed factual and legal issues involved in the lawsuit, the risks attending further
28 prosecution, and the substantial benefits to be received pursuant to the compromise and

1 settlement of the action, that the settlement is in the best interests of Plaintiff and the Class
2 and is fair and reasonable. Gundzik Decl., ¶¶ 33-37. Plaintiff and Plaintiff's counsel also
3 considered the possibility that the Class would not be certified, that even if certified Plaintiff
4 might not prevail at trial, as well as the additional delay in recovery for Class Members if
5 the settlement were rejected and the case went to trial. Gundzik Decl., ¶¶ 36-37.

6 **E. The Representative Plaintiff's Involvement and Release**

7 Both before and after deciding to become class representatives and take on the
8 lawsuit, Plaintiff Javier Santiago met with and engaged in lengthy conversations with Class
9 Counsel about all aspects of the case, his employment, and his job and job duties for
10 Defendants. Declaration of Javier Santiago ("Santiago Decl."), ¶ 15. He was prompt and
11 responsive, and spoke with Class Counsel's office many times regarding the case, the
12 mediation and the settlement. Santiago Decl., ¶¶ 15-16. He identified relevant witnesses to
13 Class Counsel and provided Class Counsel with relevant documents. *Id.* He spoke with other
14 employees regarding their treatment while employed by Defendants and provided this
15 information to Class Counsel. *Id.* He was proactive and requested regular updates from
16 Class Counsel and inquired as to how class actions worked so he could understand the
17 process. *Id.*

18 To assist Class Counsel, Plaintiff reviewed and collected all of his documents in
19 connection with his employment for Defendants. Santiago Decl., ¶ 16. He spent a great deal
20 of time assisting Class Counsel identifying witnesses, consulting with Class Counsel in
21 advance of the mediation, and he missed a full day of work to attend and participate in the
22 mediation. *Id.* And he had several meetings with Class Counsel to discuss the proposed
23 settlement, the initial settlement agreement and the amended settlement agreement. *Id.* In all,
24 Plaintiff in excess of 80 hours on the lawsuit. *Id.*

25 Filing the lawsuit posed risks for Mr. Santiago. Santiago Decl., ¶ 13. He understood
26 that if the class action was unsuccessful, he could be responsible for Defendants' litigation
27 costs, which could have been substantial. *Id.* He was concerned by the attention a publicly-
28 filed lawsuit, and especially a class action, would attract, as his name would be associated

1 with a lawsuit that he has filed against a former employer. *Id.* He was aware that it is
2 possible and relatively easy to perform background checks of publicly-filed documents on
3 the internet, and was concerned that future prospective employers might find out that he had
4 sued Univar, which could hurt his future job prospects. *Id.*

5 In addition, the settlement agreement required Mr. Santiago to sign a broad general
6 release which is broader than the release that will bind other Class Members and requires
7 him to waive Section 1542 of the California Civil Code. Gundzik Decl., ¶¶ 21-23, 82, Ex. 1,
8 ¶ VII.

9 **F. The Preliminarily-Approved Settlement**

10 On August 26, 2022, the Court granted preliminary approval to the settlement of this
11 matter. See Gundzik Decl., ¶ 40, Ex. 2. The terms of the settlement are more specifically set
12 forth in the parties' Settlement Agreement. Gundzik Decl., ¶ 21, Ex. 1.

13 The provisionally-certified settlement class is defined as "all individuals who were
14 employed by Defendants in California as non-exempt employees during the Class Period
15 (July 13, 2017, through June 22, 2022)." Gundzik Decl., ¶ 21, and Ex. 1, ¶¶ II.C, I. There are
16 569 Class members. Salinas Decl., ¶ 6.

17 The Settlement Agreement provides that Defendants will pay a gross settlement
18 amount of \$2,750,000 ("Gross Settlement Amount"), plus the Employer's Withholding
19 Share. Gundzik Decl., ¶ 21, Ex. 1, ¶ I. Defendants are required to deliver the Gross
20 Settlement Amount to Phoenix within fourteen (14) court days after the Effective Date
21 (which is the date of entry of the order of the Final Approval Order if no objection is filed).
22 Gundzik Decl., ¶ 21, Ex. 1, ¶¶ II.N, IV.N.

23 **G. Notice of Preliminary Settlement Provided to the Settlement Class and** 24 **the Claims Process**

25 Pursuant to the time-table established in the Settlement Agreement and previously
26 approved by this Court, Phoenix mailed the Notice of Proposed Class Action Settlement
27 ("Notice of Settlement") to 569 Class Members on October 27, 2022. Salinas Decl., ¶ 8. As
28 a result of this mailing, Phoenix has provided all of the Class Members with a notice of the

1 settlement which calculates the approximate value of their settlement payment and
2 information on how to opt out of and object to the proposed settlement. Salinas Decl., ¶¶ 7-
3 9.

- 4 ➤ On or about October 17, 2022, Phoenix received from Defendants complete
5 information including the names, last known addresses, applicable employment
6 information and Social Security numbers for 569 class members.

7 Salinas Decl., ¶ 6.

- 8 ➤ On October 18, 2022, Phoenix completed a National Change of Address (NCOA)
9 search for new addresses.

10 Salinas Decl., ¶ 7.

- 11 ➤ On October 27, 2022, the Notices of Settlement were mailed to the 569 Class
12 Members at the most recent addresses available to Phoenix. The notices provided
13 information about the action, the proposed settlement and instructions on how to
14 opt out, object, or obtain further information. The notices advised Class Members
15 that any objections or opt outs had to be postmarked within 45 days of the notice
16 date.

17 Salinas Decl., ¶ 8, and Ex. A thereto.

- 18 ➤ Subsequent to these mailings, three were returned after the initial mailing, all of
19 those were re-mailed, and one was determined to be undeliverable.

20 Salinas Decl., ¶¶ 8-10, and Ex. A thereto.

- 21 ➤ Phoenix has not received any opt-out requests or objections. Class Counsel has
22 not received any opt-out requests or objections to the proposed settlement.

23 Salinas Decl., ¶¶ 11-12; Gundzik Decl., ¶ 44.

- 24 ➤ There are no outstanding disputes regarding the settlement.

25 Salinas Decl., ¶ 13.
26
27
28

1 **H. Proposed Distributions from Gross Settlement Amount**

2 Based upon the Settlement Agreement and this Court’s preliminary approval order,
3 Plaintiff proposes that within ten (10) days of the receipt of the Gross Settlement Amount
4 from Defendants, the Gross Settlement Amount be disbursed as follows:

- 5 • Settlement administration costs, in the amount of \$10,000, to Phoenix;
- 6 • A service and release payment in the amount of \$10,000 to Plaintiff Javier
7 Santiago;
- 8 • An allocation of \$100,000 to Plaintiff’s PAGA claims (the “PAGA
9 Amount”), \$75,000 of which will be paid to the California Labor and
10 Workforce Development Agency, and the remaining \$25,000 of which will
11 be distributed to the PAGA Employees.
- 12 • Class Counsel’s attorneys’ fees, in the amount of \$916,666, which is one-
13 third of the gross settlement amount;
- 14 • Class counsel’s costs of \$15,150.35;
- 15 • The remainder of the gross settlement amount (the “Net Settlement
16 Amount”), in the amount of approximately \$1,698,184, will be distributed to
17 Class Members based on the formula contained in the Settlement Agreement
18 (which is based on the number of Qualifying Workweeks that they were
19 employed by Defendants during the Class period).

20 Gundzik Decl., ¶ 21, Ex. 1, ¶ IV.L.1.

21 **I. Determination of Settlement Payments to Individual Class Members and**
22 **PAGA Employees**

23 The Settlement Agreement provides that all payments to Class Members shall be
24 made by the Settlement Administrator, based on the number of Qualifying Workweeks that
25 each Class Member worked during the Class Period. Gundzik Decl., ¶ 21, and Ex. 1, ¶
26 IV.L.1.

1 ➤ Phoenix determined each Settlement Class Member's individual Workweek
2 Number by adding the total number of Qualifying Workweeks in which he or she
3 was employed in a Class Member position by Defendants during the Class Period.

4 Salinas Decl., ¶ 15.

5 ➤ Phoenix then determined the total of all of the Individual Workweek Numbers of
6 all the Settlement Class Members (the "Aggregate Workweek Number.") Each
7 Class Member's "Payout Ratio" was determined by dividing his or her Individual
8 Workweek Number by the Aggregate Workweek Number. The "Total Potential
9 Settlement Award" for each Class Member was then calculated by multiplying the
10 Payout Ratio by the Net Settlement Amount, which was indicated on the Notice of
11 Settlement. The amount of the individual settlement payment was then indicated
12 on each Class Member's Notice.

13 Salinas Decl., ¶ 15.

14 ➤ Based on these calculations, Phoenix determined the estimated amount of the
15 class settlement payment due to each Class Member. The approximate range of
16 class settlement pay-outs is expected to be between \$21.94 and \$5,725.17 (prior
17 to any tax withholdings), with an average payment of \$2,967.20.

18 Salinas Decl., ¶ 17.

19 The Settlement Agreement also provides that all payments to PAGA Employees
20 shall be made by the Settlement Administrator, based on the number of Qualifying
21 Workweeks that each PAGA Employee worked during the PAGA Period. Those payments
22 were calculated as follows:

23 (Individual PAGA Employee's Qualifying Workweeks during PAGA Period ÷ All
24 PAGA Employees' Qualifying Workweeks during PAGA Period) x \$5,000

25 Salinas Decl., ¶ 16.

26 ➤ Based on these calculations, Phoenix determined the estimated amount of the
27 PAGA settlement payment due to each PAGA Employee. The approximate range
28 of PAGA settlement pay-outs is expected to be between \$1.52 and \$83.85.

1 Salinas Decl., ¶ 17.

- 2 ➤ The payments to Settlement Class Members will be characterized as one-third
3 wages, to be reported as W-2 income, one-third interest and one-third penalties,
4 both of which will be reported on an IRS Form 1099. Shares of the PAGA
5 Employee Portion shall be exclusively 1099 income.

6 Salinas Decl., ¶ 17.

7 **J. Proposed Release of Defendants by Class Members**

8 If the Court gives final approval to the proposed settlement, the Settlement
9 Agreement provides that the Court shall enter a final approval Order (“Final Approval
10 Order”) and a judgment implementing the release of the released claims as described in the
11 Settlement Agreement. Gundzik Decl., ¶ 21, Ex. 1, ¶ VI.I. As part of the Final Approval
12 Order and judgment, Class Members who do not opt out will be deemed to have released the
13 specific Released Claims. Gundzik Decl., ¶ 21, Ex. 1, ¶ VI. The release applicable to the
14 Class Members provides:

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

25 Gundzik Decl., ¶¶ 21, 41, fn. 2; Ex. 1, ¶ VI.

26 The Settlement defines “Released Claims” as:

27 means all causes of action and factual or legal theories arising during the
28 Class Period that were alleged in the Complaint or could have been
alleged based on the facts alleged in the Complaint, including all damages,
penalties, interest and other amounts recoverable under said claims, causes
of action or legal theories of relief. Class Members shall not waive section
1542 of the California Civil Code. Provided, however, that the forgoing
release does not include any claims arising during periods in which a Class
Member was employed by Nexeo Solutions, Inc

Gundzik Decl., ¶¶ 21, 41, fn. 2, Ex. 1, ¶ II.GG. This release does not include any claims that are outside of the scope of the facts alleged in the operative pleadings and does not include the PAGA Released Claims. *Id.*

The Settlement defines the “PAGA Released Claims” as:

claims, causes of action, and primary rights that were or could have been asserted under PAGA based on Labor Code violations alleged in the PAGA Notices, which are violations of California Labor Code sections 201, 202, 203, 226, 226.3, 226.7, 246, 248.5, 256, 510, 512, 558, 2802 and 2810.5, and Industrial Welfare Commission Wage Order section 9(A). Provided, however, that the forgoing release does not include any claims arising during periods in which an Aggrieved Employee was employed by Nexeo Solutions, Inc.

Gundzik Decl., ¶¶ 21, 41, fn. 2, Ex. 1, ¶ II.BB.

The Settlement Agreement defines “Released Parties” as:

Defendants and their past, present and/or future officers, directors, members, managers, employees, agents, representatives, attorneys, insurers, partners, investors, shareholders, administrators, parent companies, subsidiaries, affiliates, divisions, predecessors, successors, assigns, and joint venturers, but only as to the Released Claims and PAGA Released Claims. Provided, however, that Released Parties does not include Nexeo Solutions, Inc.

Gundzik Decl., ¶¶ 21, 41, fn. 2, Ex. 1, ¶ II.HH.

The Settlement Agreement does not constitute an admission of the merits of any claim by Plaintiff or the Class or address any defense of Defendants. Gundzik Decl., ¶ 21, Ex. 1, ¶ V.A.

III. THE COURT SHOULD GIVE FINAL APPROVAL TO THE SETTLEMENT.

The law favors settlement, particularly in class actions and other complex cases in which substantial resources can be conserved by avoiding the time, cost and rigors of formal litigation. *Potter v Pacific Coast Lumber Company*, 37 Cal.2d. 592, 602-603 (1951); *Class Plaintiffs v. Seattle*, 955 F.2d 1268, 1276 (9th Cir. 1991). When faced with a motion for final approval of a class action settlement under Code of Civil Procedure § 382, the appropriate inquiry is whether the settlement is “fair, adequate, and reasonable.” *See Wershba v. Apple Computer, Inc.*, 91 Cal.App.4th 224, 244-245 (2001); *Dunk v. Ford Motor Co.*, 48 Cal.App.4th 1794, 1801 (1996). If so, the settlement should be approved. *Id.* And, “a presumption of fairness exists where: (1) the settlement is reached through arm's-length

1 bargaining; (2) investigation and discovery are sufficient to allow counsel and the court to
2 act intelligently; (3) counsel is experienced in similar litigation; and (4) the percentage of
3 objectors is small.” *Dunk v Ford Motor Co.*, 48 Cal.App.4th 1794, 1802 (1996).

4 **A. Nothing Has Occurred in the Interim That Should Affect This Court's**
5 **Preliminary Findings.**

6 Before granting preliminary approval of a class and PAGA action settlement, this
7 Court was required to find—and did find—that there is sufficient evidence that the proposed
8 settlement would be fair, reasonable, and adequate, and not a product of fraud, overreaching,
9 or collusion. See Gundzik Decl., ¶ 40, Ex. 2; Cal. Rules of Court, Rule 3.769 (g); Cal. Civ.
10 Proc. § 382; *Dunk v. Ford Motor Co.*, 48 Cal. App. 4th at 1801. In order to preliminarily
11 determine that the proposed settlement was fair, reasonable, and adequate, and thus
12 appropriate for preliminary approval, the Court was required to find that the following three
13 factors were satisfied: (1) the parties reached settlement after arms-length negotiations;
14 (2) counsel conducted sufficient investigation and discovery to allow themselves and the
15 court to act intelligently; and (3) counsel is experienced in similar litigation. *Id.* at 1802. *See*
16 *also 7-Eleven Owners for Fair Franchising v. Southland Corp.*, 85 Cal. App. 4th 1135, 1146
17 (2000). In applying this determination for the purpose of granting final approval, as
18 discussed below, although not determinative, the Court may also consider the percentage of
19 objectors in determining whether a presumption of fairness exists. *Id.*

20 All of these considerations are satisfied here. The parties conducted significant
21 formal and informal discovery and investigation and participated in a full-day mediation,
22 and thereafter continued to negotiate before arriving at the Settlement Agreement which is
23 the subject of this motion. Gundzik Decl., ¶¶ 8-21, 24-41. Moreover, not one Class Member
24 has opted out or objected to the settlement. Salinas Decl., ¶¶ 12-13.

25 **B. The Settlement Resulted from Non-Collusive, Arms-Length Negotiations.**

26 There was no collusion between the parties in this case. After discovery and
27 exchange of information and voluminous pages of documents, the parties engaged in
28 mediation with a well-respected and highly knowledgeable wage and hour mediator, Gig

1 Kyriacou. Gundzik Decl., ¶¶ 8-21. The involvement of a neutral third-party mediator is a
2 factor that favors approval and evidences the presumptive fairness of the arms-length
3 negotiations. Indeed, the California Court of Appeal in *Kullar v. Foot Locker Retail, Inc.*
4 expressed that courts should give considerable weight to the competency and integrity of
5 counsel and the involvement of a neutral mediator in assuring themselves that a settlement
6 agreement represents an arms-length transaction entered without self-dealing or other
7 potential misconduct. *Kullar v. Foot Locker Retail, Inc.*, 168 Cal.App.4th 116, 129 (2008).

8 **C. The Settlement is Supported by Substantial Investigative and Discovery**
9 **Efforts.**

10 As set forth in the Declaration of Aaron Gundzik, Class Counsel engaged in
11 substantial investigation and discovery. This investigation included (1) preparing pleadings
12 and other documents filed with the Court and in Federal Court, (2) drafting comprehensive
13 formal discovery while the case was pending in Federal Court, (3) extensively investigating
14 Plaintiff's claims under both Federal and California law, (4) investigating the scope of
15 evidence in connection with Defendants' Notice of Removal, (5) extensively investigating
16 whether Plaintiff had sufficient grounds for remand, (6) determining the evidence needed to
17 proceed towards certification in Federal Court, (7) negotiating extensively with Defendants
18 regarding the venue for the case and the Federal Rule 26 report, (8) engaging in informal
19 discovery and reviewing and analyzing numerous pay documents, including records and
20 information produced by Defendants, (9) reviewing and analyzing numerous collective
21 bargaining agreements that covered different groups of Class Members, (10) reviewing and
22 analyzing anonymized time and pay records for approximately 20% of the proposed Class
23 Members, including Plaintiff, as well as records for the PAGA Aggrieved Employees, (11)
24 investigating and compiling publicly available information about Defendants and their
25 businesses, (12) negotiating extensively with Defendants regarding the mediation, its scope,
26 and the information to be exchanged in connection with the mediation, (13) working to
27 develop information on potential damages, (14) preparing for and engaging in the mediation,
28 (15) negotiating with Defendants and the mediator after the day-long mediation, (16)

1 arriving at a settlement and then negotiating and drafting the initial long-form settlement
2 stipulations and amended settlement agreements, (17) drafting the motion for preliminary
3 approval of the settlement and related documents, (18) drafting supplemental declarations in
4 support of the motion for preliminary approval, and (19) drafting the motion for final
5 approval and related documents. Gundzik Decl., ¶¶ 51-63, 66-67, and Ex. 3.

6 Class Counsel's analysis enabled them to pinpoint the relevant issues and claims and
7 to assess potential liability and damages. These efforts resulted in the parties having a clear
8 view of the strengths and weaknesses of their respective cases and achieving a resolution on
9 favorable terms. Gundzik Decl., ¶¶ 8-11, 24-34.

10 **D. As Previously Found by this Court, Class Counsel is Experienced in**
11 **Similar Litigation.**

12 The endorsement of qualified and well-informed counsel of the settlement as fair is
13 entitled to significant weight. See *Dunk v. Ford Motor Co.*, 48 Cal. App. 4th at 1802; *Ellis v.*
14 *Naval Air Rework Facility*, 87 F.R.D. 15, 18 (N.D. Cal. 1980). As discussed in the motion
15 for preliminary approval papers and the declarations supporting both that motion and the
16 instant motion, Class Counsel have represented, litigated, mediated and settled many other
17 employee class actions in wage and hour litigation and has knowledge of the strengths and
18 weaknesses of the claims against Defendants and the benefits of the proposed settlement
19 under the circumstances of the case. Gundzik Decl., ¶¶ 46-49. Class Counsel helped develop
20 the law regarding an employee's right to be separately paid for their nonproductive time,
21 which is one of the bases for Labor Code section 226.2. Gundzik Decl., ¶ 46. Class Counsel
22 believes that the settlement is fair, adequate, reasonable and in the best interests of the Class
23 as a whole. Gundzik Decl., ¶ 37.

24 **E. The Class Members' Positive Reaction to the Settlement Favors Final**
25 **Approval.**

26 The reaction of the Class to proposed settlement to date has been extremely positive.
27 Not one of the Class Members has opted out of or objected to the proposed settlement,
28 which is a 100% participation rate. Salinas Decl., ¶¶ 11-12.

1 Although a court may appropriately infer that a class action settlement is fair,
2 adequate, and reasonable even when a significant percentage of class members object to it
3 (*See Boyd v Betchel Corp.*, 485 F. Supp. 610, 624 (C. D. Cal 1976); *see also Reed v.*
4 *General Motors*, 703 F.2d 170, 174 (5th Cir. 1983)), the fact that none have opted out of or
5 objected provides much stronger grounds for granting final approval. In this action, the
6 Court should construe the lack of opt outs or objections as a further indication of Class
7 Members' support for the settlement as being fair, adequate, and reasonable.

8 **F. The Proposed Service and Release Payment to the Named Plaintiff is**
9 **Reasonable and Should be Approved.**

10 The Settlement Agreement provides for a service and release payment in the amount
11 of \$10,000 to class representative Javier Santiago. The purpose of this payment is to provide
12 additional compensation to Plaintiff for the time and effort that he put into the litigation and
13 the settlement of this matter, as well as the risks he undertook by agreeing to sue his former
14 employer.

15 “In determining whether to make an incentive award, the court may consider (1) the
16 risk, both financial and otherwise, the class representative faced in bringing the suit; (2) the
17 notoriety and personal difficulties encountered by the class representative; (3) the amount of
18 time and effort spent by the class representative; (4) the duration of the litigation; and (5) the
19 personal benefit received by the class representative as a result of the litigation.” *Golba v.*
20 *Dick's Sporting Goods, Inc.*, 238 Cal. App. 4th 1251, 1272 (2015). Additional factors to be
21 considered include “the actions the plaintiff has taken to protect the interests of the class, the
22 degree to which the class has benefitted from those actions, and the amount of time and
23 effort the plaintiff expended in pursuing the litigation.” *Clark v. American Residential*
24 *Services LLC*, 175 Cal. App. 4th 785, 804 (2009).

25 The factors enunciated in both *Golba* and *Clark* favor the approval of the requested
26 service and release payment to Plaintiff. He undertook significant risks in getting involved
27 in the lawsuit, knowing that it could impact his future employment prospects. Santiago
28 Decl., ¶ 13. He understood that if the class action was unsuccessful, he could be responsible

1 for Defendants' litigation costs, which could have been substantial. *Id.* He was concerned by
2 the attention of a publicly-filed lawsuit, and especially a class action, would attract, as his
3 name would be associated with a lawsuit that he had brought against his former employer.
4 He was reasonably concerned about the notoriety that would attend his involvement, as he
5 knew that it is possible and relatively easy to perform background checks of publicly-filed
6 documents on the internet and was concerned that prospective employers might find out that
7 he had sued Defendants. *Id.*

8 Plaintiff spent a significant amount of time on the lawsuit. He had telephone and
9 Zoom conferences with Class Counsel regarding the case and the mediation. Santiago Decl.,
10 ¶¶ 15-16. And, he had conferences to discuss the proposed settlement with Class Counsel,
11 and to discuss the two versions of the Settlement Agreement and related motions. *Id.*

12 To assist Class Counsel, Mr. Santiago reviewed and collected all of his documents in
13 connection with his employment for Defendants. Santiago Decl., ¶ 16. And he spent a great
14 deal of time assisting Class Counsel identifying witnesses, consulting with Class Counsel in
15 advance of the mediation, and he missed a full day of work to attend and participate in the
16 mediation. *Id.* In all, Plaintiff spent in excess of 80 hours on the lawsuit. *Id.*

17 Had he been unwilling to step up, none of the Class Members would have received
18 any amounts whatsoever. By agreeing to serve as the class representative, Mr. Santiago has
19 taken significant action to protect the interests of the Class, and the Class has significantly
20 benefitted from those actions. *Clark v. American Residential Services LLC*, 175 Cal. App.
21 4th at 804. Although he could have filed a claim with the Department of Labor and possibly
22 received more money, instead of acting in his own self-interest he got involved in this
23 lawsuit to protect the interests of the Class.

24 The additional payment proposed for the named Plaintiff is also intended to
25 compensate him for the broader release that Defendants have demanded of him. While all
26 other Class Members will only be releasing the Released Claims, Plaintiff will also be
27 releasing any and all known or unknown claims that he might have against Defendants.
28 Gundzik Decl., ¶ 21, Ex. 1, ¶ VII.

1 Awarding larger amounts to class representatives is permissible and is often
2 approved by the courts. See, e.g., *Bell v Farmers Ins. Exchange*, 115 Cal.App.4th 715, 726
3 (2004) (upholding “service payments” to named plaintiffs for their efforts in bringing class
4 case). As explained by the court in the *Cellphone Termination Fee Cases*, incentive awards
5 are “intended to compensate class representatives for work done on behalf of the class, to
6 make up for financial or reputational risk undertaken in bringing the action, and, sometimes,
7 to recognize their willingness to act as a private attorney general.” *Cellphone Termination*
8 *Fee Cases*, 186 Cal.App.4th 1380, 1393-1394 (2010).

9 “Incentive awards are fairly typical in class action cases.” *Rodriguez v. West*
10 *Publication Corp.*, 563 F.3d 948, 958 (9th Cir. 2009) (citing 4 Newberg on Class Actions
11 (4th ed. 2002) § 11:38, p. 81); Eisenberg & Miller, Incentive Awards to Class Action
12 Plaintiff: An Empirical Study (2006) 53 UCLA L.Rev. 1303. “Since without a named
13 plaintiff there can be no class action, such compensation as may be necessary to induce him
14 to participate in the suit could be thought the equivalent of the lawyers' nonlegal but
15 essential case-specific expenses, such as long-distance phone calls, which are reimbursable.”
16 *Clark v. American Residential Services LLC*, 175 Cal.App.4th at 804 (fn. omitted), citing
17 *Matter of Continental Illinois Securities Litigation*, 962 F.2d 566, 571 (7th Cir. 1992).
18 Compared to the Net Settlement Amount of \$1,698,184, (after deducting the proposed
19 \$10,000 service and release payment), the requested amount of \$10,000 each will not
20 appreciably diminish the amount available for distribution to the Settlement Class Members.

21 The additional payment to the named Plaintiff also takes into account the additional
22 risks that he incurred in acting on behalf of the Class. These risks included the potential of a
23 judgment against him if this case had been unsuccessful, as class representatives are deemed
24 the losing party that is liable for the prevailing party’s costs. *Earley v. Superior Court*, 79
25 Cal.App.4th 1420, 1433-1434 (2000). Taking that risk here resulted in substantial benefit to
26 the Class. Plaintiff also took the very real risk that this lawsuit would have a negative impact
27 on his future employment opportunities. Santiago Decl., ¶ 13; see, e.g., *Staton v. Boeing*,
28 327 F.3d 938, 977 (9th Cir 2003) (fear of workplace retaliation is one justification behind

1 reasonable class representative incentive payments).

2 If Plaintiff had not come forward, or had not agreed to take on the risks of stepping
3 up and taking on the class action, Plaintiff may have recovered compensation for himself,
4 but no compensation would have been received by 569 current and former employees who
5 will be receiving an average of \$2,967 as a result of the settlement. Because Plaintiff has
6 advanced California's public policy goal of enforcing wage and hour laws (*See Sav-On*
7 *Drug Stores, Inc. v. Super.Ct.*, 34 Cal.4th 319, 340 (2004)), the Court should approve of the
8 proposed service and release payments to the Representative Plaintiff.

9 **G. The Court Should Approve the Request for Class Counsel's Fees.**

10 Subject to Court approval, the settlement amount of \$2,750,000 includes Class
11 Counsel's attorneys' fees of \$916,666. Gundzik Decl., ¶¶ 21, 45, Ex. 1, ¶ I.B, II.E, IV.Q;
12 Declaration of Galen Shimoda ("Shimoda Decl."), ¶¶ 6-9. It is well-settled that
13 representative plaintiffs and class members are entitled to recover their attorneys' fees and
14 costs in wage and hour class action disputes. California Labor Code § 218.5; Cal. Code Civ.
15 Proc. § 1021.5(a); *Earley v. Super. Ct.*, 79 Cal. App. 4th at 1420.

16 A fee award is justified when benefits are obtained for the class irrespective of
17 whether there is a final judgment in its favor, such as when those benefits are the result of a
18 settlement. *See Westside Cmty. for Indep. Living, Inc. v. Obledo*, 33 Cal.3d 348, 352-353
19 (1983). "Courts recognize two methods for calculating attorney fees in civil class actions:
20 the lodestar/multiplier method and the percentage of recovery method." *Wershba v. Apple*
21 *Computer, Inc.*, 91 Cal.App.4th 224, 254 (2001); *See Lealao v. Beneficial California, Inc.*,
22 82 Cal.App.4th 19, 27 (2000). In California, both methods are proper, although courts often
23 use a lodestar-multiplier method as a check against the reasonableness of a percentage fee
24 award. *See, e.g., Serrano v. Priest (Serrano III)*, 20 Cal.3d 25, 48-49, at fn. 23 (1977);
25 *People ex rel. Dept. of Transportation v. Yuki*, 31 Cal.App.4th 1754, 1769-1772 (1995);
26 *Salton Bay Marina, Inc. v. Imperial Irrigation Dist.*, 172 Cal.App.3d 914, 954 (1985).

1 **1. Class Counsel’s Requested Fee Award is Within California’s**
2 **Benchmark Awards and Thus Reasonable Under the Percentage of**
3 **The Benefit or Common Fund Method.**

4 In *Laffitte v. Robert Half Internat., Inc.*, 1 Cal. 5th 480, 503 (2016), the California
5 Supreme Court approved the use of “percentage of the benefit” attorney fee awards in class
6 actions. “[W]hen class action litigation establishes a monetary fund for the benefit of the
7 class members, and the trial court in its equitable powers awards class counsel a fee out of
8 that fund, the court may determine the amount of a reasonable fee by choosing an
9 appropriate percentage of the fund created.” The *Laffitte* court explained that “[t]he
10 percentage method ‘is easy to calculate; it establishes reasonable expectations on the part of
11 plaintiffs’ attorneys as to their expected recovery; and it encourages early settlement, which
12 avoids protracted litigation.” 1 Cal. 5th at 490 (quoting *Rawlings v. Prudential-Bache*
13 *Properties, Inc.*, 9 F.3d 513, 516 (6th Cir. 1993). Pursuant to the “percentage of the benefit”
14 doctrine, “a litigant or lawyer who recovers a common fund for the benefit of persons other
15 than himself or his client is entitled to a reasonable attorney’s fee from the fund as a whole.”
16 *Boeing Co. v. Van Gemert*, 444 U.S. 472, 478 (1980). “The ultimate goal ... is the award of a
17 reasonable fee to compensate counsel for their efforts, irrespective of the method of
18 calculation. It is not an abuse of discretion to choose one method over another as long as the
19 method chosen is applied consistently using percentage figures that accurately reflect the
20 marketplace.” *Consumer Privacy Cases*, 175 Cal.App.4th 545, 557-558 (2009).

21 Class Counsel’s request for one-third of the monetary fund recovered is California’s
22 standard benchmark and well within the range customarily approved by the California
23 courts in comparable class actions and other class actions, as well as the standard
24 contingency contracts negotiated by plaintiffs and their counsel. “Empirical studies also
25 show that regardless [of] whether the percentage method or the lodestar method is used, fee
26 awards in class actions average around one-third of the recovery.” *See e.g., Chavez v.*
27 *Netflix, Inc.*, 162 Cal.App.4th 43, 66, at fn. 11 (2008); *In re California Indirect Purchases*
28 (October 22, 1998) WL 1031494 at * 9; *Romero v. Producers Dairy Food, Inc.*, WL

1 3492841 at * 4 (E.D. Cal. Nov. 14, 2007), quoting Newberg on Class Actions § 14.6 (4th
2 ed.2007) (“fee awards in class actions average around one-third of the recovery.”); *See also*
3 T. Cohelan, *On California Class Actions* (2016), § 10.5 at 481 (“nearly all common fund
4 awards fall into the neighborhood of 30%.”)

5 Class Counsel seek \$916,666, which is one third of the \$2,750,000 Gross Settlement
6 Amount. This request is reasonable and justified considering the superb settlement secured
7 for the Class Members. It is also consistent with both the Settlement Agreement (See
8 Gundzik Decl., ¶ 21, Ex. 1, ¶¶ I, IV.Q) and the engagement agreements the named Plaintiff
9 entered into with Class Counsel. In those agreements, Plaintiff agreed that Class Counsel
10 would be paid the greater of 1) one-third of all amounts obtained or received in the lawsuit,
11 or 2) the hours worked multiplied by the hourly rates of the attorneys working on the case,
12 plus any additional multiplier awarded by the Court. Gundzik Decl., ¶ 76.

13 Thus, as per the Settlement Agreement, Plaintiff respectfully requests that this Court
14 award Class Counsel’s requested attorneys’ fees.

15 **2. Class Counsel’s Requested Fees Are Reasonable Under the**
16 **Lodestar/Multiplier Method.**

17 Under the lodestar/multiplier method of determining an attorneys’ fee award, “the
18 lodestar is calculated by multiplying the reasonable hours expended by a reasonable hourly
19 rate. The court may then enhance the lodestar with a multiplier, if appropriate.” *Wershba v.*
20 *Apple Computer, Inc.*, 91 Cal.App.4th at 254; *Rebney v. Wells Fargo Bank*, 232 Cal.App.3d
21 1344, 1347 (1991). “California case law permits fee awards in the absence of detailed time
22 sheets.” *Wershba v. Apple Computer, Inc.*, 91 Cal.App.4th at 254, *citing Sommers v. Erb*, 2
23 Cal.App.4th 1644, 1651 (1992). And, “[m]ultipliers can range from 2 to 4 or even higher.”
24 *Wershba v. Apple Computer, Inc.*, 91 Cal.App.4th at 254, *citing Coalition for L.A. County*
25 *Planning etc. Interest v. Board of Supervisors*, 76 Cal.App.3d 241, 251 (1977); *accord, In re*
26 *Lugo* 164 Cal.App.4th 1522, 1546 (2008).

27 California courts often increase the base lodestar with a multiplier after considering:
28 (1) the continuing obligation of plaintiff’s counsel to devote time and effort to the litigation;

(2) the extent to which the litigation precluded other employment by the attorneys; (3) the contingent nature of the fee agreement, both from the point of view of eventual success on the merits and securing an award; (4) the experience, reputation, and ability of the attorneys who performed the services, and the skill they displayed in litigation, (5) the amount involved and the results obtained on behalf of the class by plaintiffs' counsel, and (6) the reaction of the class members. *Serrano v. Priest*, 20 Cal.3d at 49; *Dunk v. Ford Motor Co.*, 48 Cal.App.4th at 1810, at n.21. However, no rigid formula applies, and each factor should be considered "where appropriate." *See Dept. of Transp. v. Yuki*, 31 Cal.App.4th at 1771; *see also, Serrano v. Priest*, 20 Cal.3d at 49.

Here, the base loadstar is dependent on the time spent by Class Counsel and the reasonable hourly compensation for Aaron Gundzik, Rebecca Gundzik and Galen Shimoda. Class Counsel's hourly rates of \$825 (Aaron Gundzik and Rebecca Gundzik), and \$800 (Galen Shimoda) for this matter are reasonable based upon their qualifications and experience. Gundzik Decl., ¶¶ 46-49; 72-75; Shimoda Decl., ¶¶ 1-9. Both Aaron Gundzik and Rebecca Gundzik have been practicing law in Southern California for over 30 years, and Mr. Shimoda has been practicing for 19 years. Gundzik Decl., ¶¶ 46-47; Shimoda Decl., ¶¶ 2-3. Aaron Gundzik worked for many years at and was an equity partner of the international law firm formerly known as LeBoeuf, Lamb, Greene & MacRae, and has been involved in the litigation of complex cases throughout his career. Gundzik Decl., ¶ 46. Rebecca Gundzik also worked at well-respected law firms and handled complex litigation matters for many years. Gundzik Decl., ¶47. Aaron Gundzik has served as Class Counsel on many wage and hour class action matters, and he and Rebecca Gundzik tried and prevailed on appeal in *Gonzalez v. Downtown LA Motors, LP*, 215 Cal. App. 4th 36 (2013), which helped establish the law regarding an employee's right to be paid for all time under an employer's control. ¶¶ 46-47. Mr. Shimoda also has significant experience with wage and hour class actions. Shimoda Decl., ¶¶ 2-5.

Class Counsel's rates for this case are consistent with prevailing market rates. Gundzik Decl., ¶¶ 72-75. In *Xu v. Yamanaka*, No. 13-CV-3240 YGR, 2014 WL 3840105, at

1 *4 (N.D. Cal. Aug. 1, 2014), the court discussed the range of rates at the country's largest
2 firms, based on the National Law Journal, which is provided in the Gundzik Declaration and
3 which demonstrates that the average rates for commercial work at large firms are
4 considerably above the rates being requested (as of 2012, hourly rates for partners at top
5 firms ranged between \$927 and \$1040). Gundzik Decl., ¶ 75. These rates are also in line
6 with hourly rates approved by other courts and the 2020 Class Action Hourly Rate Survey
7 conducted by the National Association of Legal Fee Analysis (NALFA) and those reported
8 by the National Law Journal's sampling of billing rates for partners in the Southern
9 California area. Gundzik Decl., ¶¶ 73-74, and Ex. 4. The NALFA survey shows that the
10 average hourly rate for partners who have more than 20 years of experience ranges between
11 \$801-\$900 for plaintiff's attorneys. Gundzik Decl., ¶ 73, and Ex. 4.

12 Class Counsel will expend over 662 hours prosecuting this case. This work included
13 extensively interviewing Plaintiff, investigating and researching his potential claims,
14 investigating Defendants Univar Solutions Inc. and Univar Solutions USA and the nature
15 and status of other cases filed against Defendants, drafting the Complaint and amended
16 pleadings and status conference reports. When Defendants removed the case to Federal
17 Court, Plaintiff's counsel had to expend a great deal of time to the matter, as the Federal
18 Court judge assigned to the case, Hon. Mark Scarsi, requires that motions for class
19 certification be filed no later than 4 months after the Initial Scheduling Conference. During
20 the two months that the case was pending in Federal Court, Plaintiff's counsel worked
21 extensively on the case so that they would be prepared to file a motion for class certification.
22 Gundzik Decl., ¶¶ 66-67, and Ex. 3.

23 While the case was pending in Federal Court, Class Counsel (1) reviewed and
24 carefully analyzed Judge Scarsi's extensive Standing Order and Order Setting Scheduling,
25 (2) drafted the Rule 26f Report, engaged in numerous communications with opposing
26 counsel regarding the Rule 26f Report, revised the report several times and engaged in the
27 Rule 26f Conference, (3) drafted initial disclosures, (4) drafted interrogatories and requests
28 for production of documents, and (5) drafted a *Belaire-West* notice and stipulation. Gundzik

Decl., ¶ 54. At the same time, they met and conferred with Defense counsel regarding the possibility of mediating the case, agreed to use Mr. Kyriacou as a mediator, and negotiated and prepared a Stipulation to Stay the case pending the mediation. Gundzik Decl., ¶ 55. They also advised Defense counsel of Plaintiff's intention to file a Motion to Remand. Gundzik Decl., ¶ 55. Judge Scarsi denied the parties' Stipulation to Stay pending mediation, and the parties then filed the Joint Rule 26f Report and the District Court scheduled January 31, 2022, as the last day for Plaintiff to file his class certification motion. Gundzik Decl., ¶ 56.

Because of the impending deadline for class certification, Class Counsel researched numerous cases regarding the most recent remand standards and remand factual scenarios and spent a great deal of time preparing a motion to remand the case. Gundzik Decl., ¶ 57. And, they started preparing a motion for class certification. Gundzik Decl., ¶ 58. To do so, they researched Judge Scarsi's past opinions extensively, and researched recent Federal Court opinions which decided class certification motions on claims for improper rounding of time, failure to pay for all time worked, failure to pay overtime at the correct "regular rate," failure to include the correct rate on wage statements, failure to pay meal and rest break premiums, and failure to pay all amounts due at separation. *Id.* Class Counsel strategized about the most viable claims under Federal standards and began to outline and draft the motion, even before they had documents or discovery responses, in order to be certain that they would be able to timely file the class certification motion. *Id.*

After the case was remanded, Class Counsel negotiated with Defense counsel regarding informal discovery needed for the mediation, learned that many of the putative Class Members were covered by several different collective bargaining agreements ("CBAs"), and reviewed all of the CBAs their impact on the validity of Plaintiff's claims. Gundzik Decl., ¶ 61. Class Counsel reviewed and analyzed the time and pay records produced for a sample of 20% of the Class and worked with their consultant to develop a detailed damages assessment, prepared a mediation brief and prepared for the mediation, drafted and negotiated a Memorandum of Understanding, drafted and negotiated the

1 Stipulation of Class Action Settlement and amended settlement stipulation, conferred with
2 settlement administrators, prepared the Motion for Preliminary Approval, supplemental
3 briefing and supporting declarations, and preparing the Motion for Final Approval of Class
4 Action Settlement and supporting declarations. Gundzik Decl., ¶¶ 62-64, 66, and Ex. 3
5 thereto; Shimoda Decl., ¶¶ 7-9.

6 These efforts required a significant amount of time and labor. Through December
7 22, 2022, Class Counsel collectively worked 662.8 hours on the case (556.80 hours incurred
8 and 25 hours to be incurred by GGH, and 81 hours incurred by Shimoda Law). Gundzik
9 Decl., ¶¶ 66-67, and Ex. 3 thereto; Shimoda Decl., ¶¶ 7-8. At Class Counsel’s hourly rates,
10 this equates to \$544,785 in fees. *Id.*²

11 The *Serrano* factors applied to this figure justify a multiplier of 1.68, which would
12 permit an award of \$916,666, which is one-third of the Gross Settlement Amount.

13 **a. The Lawsuit Involved Novel and Complex Legal and Factual**
14 **Issues.**

15 This case raised a number of complex and contested issues such as the impact of
16 Defendants’ purchase of the company which originally employed Plaintiff, Defendants’
17 liability for its rounding of employee time, our ability to remand the case to this Court based
18 on the evidence included in Defendants’ Notice of Removal, how the recent “regular rate”
19 cases impacted Defendants’ liability for failure to pay overtime, and how Defendants’
20 Collective Bargaining Agreements impacted their liability for violations of the California
21 Labor Code. Gundzik Decl., ¶ 77. Class Counsel had to research and analyze these and other
22 issues presented in this case. Because of their experience trying and pursuing wage and hour
23 class action lawsuits, they were able to recognize these types of violations and look for and
24

25
26 ² This sum includes an additional 25 hours which Class Counsel estimates will be expended
27 finalizing this Motion and the related declarations, preparing for and attending the hearing
28 on the Motion, working with the settlement administrator and Defendants to implement the
settlement, fielding calls and conferring with Class Members, and reporting to the Court on
such activities. Gundzik Decl., ¶ 67.

1 analogize recent cases and other authorities to support their contention that Defendants’
2 practices did not comply with the legal requirements. *Id.*

3 The case was also factually complex. Gundzik Decl., ¶ 78. The volume of time and
4 pay records analyzed, as well as the public filings regarding Defendants and the numerous
5 Collective Bargaining Agreements involved, made the case complex. Using the sample data,
6 Class Counsel determined that not only did Defendants’ time keeping system violate the
7 precedent in *Donohue v AMN Services, LLC*, 11 Cal. 5th 58, but it also rounded employees’
8 time in Defendants’ favor. *Id.* Class Counsel also spent a great deal of time analyzing all of
9 the Collective Bargaining Agreements and the provisions relevant to the claims Plaintiff
10 alleged in order to establish grounds for disputing that those agreements prevented Plaintiff
11 from asserting his claims. *Id.*

12 **b. Class Counsel Displayed Skill in Presenting the Issues.**

13 Class Counsel’s past experience gave them knowledge as to the timekeeping
14 methods in manufacturing industry and how to find additional sources of evidence. Gundzik
15 Decl., ¶ 79. They were able to do so because of their creative approach in the seeking,
16 sampling and review of records, as well as their proactive approach to proceeding with the
17 case in Federal Court. *Id.*

18 Class Counsel also had to be creative in their approach to settlement. Gundzik Decl.,
19 ¶ 80. They were well-aware of the value of the case and relied upon their extensive review
20 of class member records and the damages assessment they created based on that
21 investigation. *Id.* And, they risked the possibility of not arriving at a settlement and
22 Defendants not being able to pay a judgment, as the settlement was reached only after a
23 lengthy full-day mediation. *Id.*

24 Class Counsel had to come up with creative approaches to litigating the case, the
25 appeal, and ultimately, negotiating and crafting the initial and amended Settlement
26 Agreement. Gundzik Decl., ¶ 81. By means of their approach and hard work, Class Counsel
27 were able to obtain a very successful outcome for the Class. As a result of the settlement, if
28

1 approved, 569 people will be receiving a settlement payment in an average amount of
2 \$2,967.20. Salinas Decl., ¶ 17.

3 **c. The Litigation Precluded Other Employment.**

4 Despite the risks presented by Defendants' various arguments and defenses, Class
5 Counsel invested substantial time and expense in the lawsuit, with no guarantee of
6 compensation or reimbursement. Gundzik Decl., ¶¶ 69-70. That investment precluded them
7 from spending time on other matters so that Class Counsel could devote attention to this
8 case. *Id.* Class Counsel took this case on a contingent-fee basis against a large business
9 represented by a reputable defense firm. Class Counsel are all small firms with few
10 attorneys and staff. *Id.*

11 **d. The Contingent Nature of the Fee Award**

12 Class Counsel agreed to work on this case on a contingency basis. If they had not
13 successfully settled the case, they would not have earned any fees or recouped the
14 substantial litigation expenses that they incurred. Gundzik Decl., ¶ 68, and Ex. 3 thereto.
15 The courts have recognized that higher attorneys' fees are justified in contingency matters
16 because of the contingent nature of their recovery. *See Ketchum v. Moses*, 24 Cal.4th 1122,
17 1132 (2001).

18 Class action contingency cases are inherently risky. Upon retention, class counsel
19 makes a commitment to litigate the case through trial. These types of cases can take years,
20 hundreds of hours of work and cost an enormous amount of money—risks which are
21 unknown upon retention. Here, there were significant risks because a settlement of the type
22 Class Counsel achieved was by no means a forgone conclusion at the time Class Counsel
23 agreed initiate the lawsuit.

24 To date, Class Counsel has not received any compensation and has expended
25 significant litigation costs on behalf of the Class. The risks involved, coupled with the
26 contingency basis of this case, further support Class Counsel's request for attorneys' fees
27 and costs.

1 **e. Experience, Reputation, and Ability of Plaintiff's Counsel**

2 As set forth above and in the Declarations of Aaron Gundzik and Galen Shimoda,
3 Class Counsel's skill and experience in litigating wage and hour class actions and
4 employment matters, in state and federal forums, contributed to the results obtained on
5 behalf of the putative Class Members. They have significant experience litigating wage and
6 hour class actions, have significant experience working at well-respected law firms, and
7 have been practicing law for many decades. Gundzik Decl., ¶¶ 46-48; Shimoda Decl., ¶¶ 2-
8 5.

9 **f. Results Obtained on Behalf of the Class**

10 An award of attorneys' fees should reflect the successful outcome of the case.
11 *Hensley v Eckerhart*, 461 U.S. 424, 440 (1983), abrogated in part as stated in *McKee v.*
12 *Comm'r of Soc. Sec.*, 2008 U.S. Dist. LEXIS 86793 (M.D. Fla. 2008), superseded by statute
13 as stated in *Laube v. Allen*, 506 F. Supp. 2d 969 (M.D. Ala. 2007). As already discussed
14 herein and in the Motion for Preliminary Approval, this case involves numerous and
15 difficult issues requiring a highly technical analysis and largely precluding a clear-cut
16 outcome as to liability. There also were significant issues regarding Defendants' ultimate
17 liability, as Defendants consistently denied that they violated California's wage and hour
18 laws. In fact, Defendants raised a colorable legal or factual defense to each claim Plaintiff
19 alleged. Gundzik Decl., ¶ 33.

20 Nevertheless, despite these obstacles, Class Counsel obtained significant financial
21 compensation for the Class Members. Defendants will pay a gross settlement amount of
22 \$2,750,000. Gundzik Decl., ¶ 21, Ex. 1, at ¶ I. After payment of attorneys' fees and costs,
23 claims administration, and the service and release payment, the remainder of the Net
24 Settlement Amount that will be paid out to Class Members will be approximately of
25 \$1,698,184. Gundzik Decl., ¶ 22. Despite the complexity of the case, Class Counsel have,
26 through the investment of substantial effort, and the resources of their law firm, been able to
27 secure an outstanding settlement on behalf of the Class Members.
28

1 **g. Reaction of Putative Class Members**

2 As already discussed herein, the reaction of the Class Members has been very
3 positive. Specifically, none of the Class Members objected to Class Counsel's request for
4 attorneys' fees, which also provide compelling evidence that the request is fair, adequate
5 and reasonable. Salinas Decl., ¶ 12.

6 In sum, based on the six factors discussed above, Class Counsel's requested fees
7 should be awarded.

8 **H. Class Counsel's Requested Costs are Reasonable.**

9 The settlement provides for repayment of Class Counsel's actual and reasonable
10 costs of litigation in an amount not to exceed \$25,000. Gundzik Decl., ¶ 21, Ex. 1, ¶¶ I.C,
11 II.F, IV.Q. Class Counsel incurred reasonable litigation costs in bringing this matter to a
12 resolution before trial. The total out-of-pocket costs incurred and to be incurred by Class
13 Counsel in this litigation are \$15,150.35. Gundzik Decl., ¶ 68, and Ex. 3; Shimoda Decl., ¶
14 10, and Ex. 1. Class Counsel are therefore seeking an award of their costs in the amount of
15 \$15,150.35.

16 **I. The Settlement Administrator's Requested Expenses are Reasonable.**

17 Plaintiff retained a neutral third-party administrator, Phoenix, to administer the
18 notice and claims process. Phoenix's duties included and include, among other things: (a)
19 printing and mailing the Notice of Settlement to all Class Members; (b) locating updated
20 addresses for class members; (c) receiving other communications about the settlement; (d)
21 preparing weekly reports notifying the parties of the number of class members who filed
22 objections or requests for exclusion; and (e) notifying the parties of the number of class
23 members who filed untimely or deficient requests for exclusion, and taking steps to cure the
24 deficiencies. Salinas Decl., ¶ 3. Phoenix will be charging \$10,000 to perform this work,
25 which is the amount it estimated in connection with the Motion for Preliminary Approval.
26 Salinas Decl., ¶ 18. Because this amount is reasonable in light of the administrator's
27 significant duties, it should be approved.

28 //

1 **IV. CONCLUSION**

2 For the foregoing reasons, Plaintiff, on behalf of himself and the Class, respectfully
3 requests that the Court grant final approval of the settlement, award a service and release
4 payment to the named Plaintiff in the amount of \$10,000, approve of the payment to the
5 LWDA in the amount of \$75,000 and \$25,000 to the PAGA Employees, award attorneys'
6 fees in the amount of \$916,666 and Class Counsel's costs in the amount of \$15,150.35, and
7 award the Settlement Administrator its fees in the amount of \$10,000, all of which will be
8 paid from the Gross Settlement Amount.

9

10 DATED: January 6, 2023

GUNDZIK GUNDZIK HEEGER LLP

11
12 By: 

13 Rebecca G. Gundzik
14 Attorneys for Plaintiff Javier Santiago,
15 individually and on behalf of all others
16 similarly situated
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PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles, State of California. I am over the age of eighteen (18) and not a party to the within action. My business address is 14011 Ventura Blvd., Suite 206E, Sherman Oaks, CA 91423.

On January 6, 2023, I served the following document described as

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

on the interested parties in this action:

(X) by serving () the original (X) true copies thereof as follows:

Please see attached service list

() BY MAIL I caused such envelope to be deposited in the mail at Los Angeles, California. The envelope was mailed with postage thereon fully prepaid. I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. It is deposited with U.S. postal service on that same day in the ordinary course of business. I am aware that on motion of party served, service is presumed invalid if postal cancellation date or postage meter date is more than one (1) day after date of deposit for mailing in affidavit.	() BY FACSIMILE TRANSMISSION I caused said document(s) to be transmitted by facsimile transmission to the name(s) and facsimile telephone number(s) of the person(s) named on the attached service list. The facsimile machine telephone number of the sending facsimile machine was (818) 918-2316. A transmission report was issued by the sending facsimile machine confirming that the transmission was completed without error. A true and correct copy of said transmission report is attached hereto.
() BY OVERNIGHT DELIVERY Said document was placed in an envelope designated by the express service center and placed for collection in a box regularly maintained by said carrier with whom we have a direct billing account, to be delivered to the office of the addressee listed above on the next business day.	(XX) BY ELECTRONIC TRANSMISSION I caused the above-described document to be electronically served to the names and email addresses listed on the Service List attached hereto.

(X) STATE I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

() FEDERAL I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

(X) EXECUTED on January 6, 2023, at Sherman Oaks, California.



Nicole Salazar

Case Anywhere Electronic Service List

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Case Info: **21STCV25600, Los Angeles Superior Court**

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