

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

8 GALEN SHIMODA (State Bar No. 226752)
9 SHIMODA & RODRIGUEZ LAW CORP.
10 9401 E. Stockton Blvd., Suite 200
11 Elk Grove, CA 95624
12 Telephone: (916) 525-0716
13 Facsimile: (916) 760-3733

14 Attorneys for Plaintiff Ignacio Mendez, individually
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 SAN JOAQUIN**

19 IGNACIO MENDEZ and ADRIANA
20 RODRIGUEZ, individually and on behalf of
21 all others similarly situated,

22 Plaintiff,

23 vs.

24 WTMG, INC., a California corporation, et al,

25 Defendants.

Case No.: STK-CV-UOE-2021-0009144
Assigned to Hon. George J. Abdallah,
Dept. 10A

**PLAINTIFFS' MEMORANDUM OF
POINTS AND AUTHROTITIES IN
SUPPORT OF MOTION FOR
PRELIMINARY APPROVAL OF
CLASS ACTION AND PAGA
SETTLEMENT**

**[Filed concurrently with Notice of
Motion and Motion and Declarations
of Aaron Gundzik, Galen Shimoda,
Rodrigo E. Guevara, and Phoenix
Settlement Administrators;
[Proposed] Order]**

**Date:
Time:
Dept.: 10A**

Complaint Filed: September 29, 2021

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

TABLE OF CONTENTS

I. INTRODUCTION..... 1

II. RELEVANT AND KEY FACTS 3

 A. Relevant Facts Showing Settlement is Fair, Adequate and Reasonable..... 3

 1. Investigation and Discovery 3

 2. Summary of Settlement Negotiations 4

 3. Summary of Legal and Factual Bases for Plaintiffs’ Claims..... 4

 4. Risks, Expenses, Complexity and Duration if Settlement Not Approved 5

 5. Risks of Maintaining Class Action Status 6

 B. Facts Relevant to Class Certification (Numerosity, Ascertainability and Community of Interest) 6

 C. Facts Relevant to Other Concerns 6

III. The Settlement Agreement 7

 A. Class Definition and Class and Release Period 7

 B. Release of Claims 7

 C. Monetary Terms 8

 D. Notice Administration 10

 E. Responses to Notice..... 12

 F. Proposed Schedule of Events..... 12

IV. ARGUMENT 13

 A. The Class Should be Certified for Settlement Purposes..... 13

 1. An Ascertainable Class Exists that can easily be Determined from Defendant’s Records. 14

 2. There is a Well-Defined Community of Interest among the Class Members. 14

 3. Common Issues of Law and Fact Predominate over any Individual Issues..... 15

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

4. Plaintiffs’ Claims are typical of the Claims of the Class. 15

5. The Representative Plaintiffs and Class Counsel Will Adequately Protect the
Interests of the Class. 16

B. Preliminary Approval is Appropriate Because the Settlement is Fair and
Reasonable. 16

C. The Proposed Notice of Settlement Fairly Apprises the Class of the Terms of the
Settlement and Their Right to Object. 19

V. CONCLUSION 21

TABLE OF AUTHORITIES

California Cases

<i>Acree v. General Motors Acceptance Corp.</i> , 92 Cal. App. 4th 385 (2001).....	15
<i>Benton v. Telecom Network Specialists, Inc.</i> , 220 Cal. App. 4th 701 (2013).....	15
<i>Cartt v. Superior Court</i> , 50 Cal. App. 3d 960 (1975).....	19, 20
<i>CashCall, Inc. v. Superior Court</i> , 159 Cal. App. 4th 273 (2008).....	15
<i>Cho v. Seagate Technology Holdings, Inc.</i> , 177 Cal. App. 4th 734 (2009).....	19
<i>Classen v. Weller</i> , 145 Cal. App. 3d 27 (1983).....	15
<i>Dunk v. Ford Motor Co.</i> , 48 Cal. App. 4th 1794 (1996).....	16, 17
<i>In re Microsoft I-V Cases</i> , 135 Cal. App. 4th 706 (2006).....	16, 17
<i>Linder v. Thrifty Oil Co.</i> , 23 Cal. 4th 429 (2000).....	13
<i>Marler v. E.M. Johansing, LLC</i> , 199 Cal. App. 4th 1450 (2011).....	14
<i>McGhee v. Crocker-Citizens Nat. Bank</i> , 60 Cal. App. 3d 442 (1976).....	16
<i>Reyes v. Board of Supervisors</i> , 196 Cal. App. 3d 1263 (1987).....	14
<i>Richmond v. Dart Industries, Inc.</i> , 29 Cal. 3d 462 (1981).....	13
<i>Vasquez v. Superior Court</i> , 4 Cal. 3d 800 (1971).....	13

Federal Cases

<i>Boyd v. Bechtel Corp.</i> , 485 F. Supp. 610 (N.D. Cal. 1979)	5
---	---

1	<i>Officers for Justice v. Civil Service Com'n, etc.,</i>	
	688 F.2d 615 (9th Cir. 1982).....	17
2	<u>Statutes</u>	
	Cal. Civil Code § 1542.....	10
3	Cal. Code of Civil Procedure § 382	3, 13
4	Private Attorneys General Act	passim
	<u>Rules</u>	
5	Cal. Rule of Court 3.764.	18
6	Cal. Rule of Court 3.766(d).....	19
	Cal. Rule of Court 3.766(e).....	11, 20
7		
8		
9		
10		
11		
12		
13		
14		
15		
16		
17		
18		
19		
20		
21		
22		
23		
24		
25		
26		
27		
28		

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 This putative wage and hour class action was brought by Plaintiffs Ignacio Mendez
4 and Adriana Rodriguez against Defendant WTMG, Inc. (“Defendant” or “WTMG”) on
5 behalf of approximately 1,321 individuals who were employed by Defendant in California
6 as non-exempt employees at any time during the Class Period (September 29, 2017, through
7 January 11, 2024). The settlement that is the subject of Plaintiffs’ Motion resolves class and
8 PAGA claims that were initially filed in two separate cases pending in this Court: *Mendez v.*
9 *WTMG, Inc.*, STK-CV-UOE-2021-9144 (“Mendez”) and *Rodriguez v. WTMG, Inc.*, STK-
10 CV-UOE-2020-1355 (“Rodriguez”). Mendez was filed on September 29, 2021, and
11 Rodriguez was filed on January 28, 2020. Those wage and hour claims are now combined in
12 Plaintiffs’ Second Amended Complaint, filed on March 12, 2024.¹

13 The Second Amended Complaint asserts causes of action against Defendants
14 WTMG, Inc. and its owner Blain J. Bibb. It alleges the following causes of action: (1)
15 failure to pay wages for all work performed; (2) failure to pay overtime; (3) failure to
16 provide compliant meal and rest breaks; (4) inaccurate wage statements; (5) failure to
17 reimburse necessary expenses; (6) failure to pay unpaid wages at separation; (7) unfair
18 business practices; and (8) recovery of civil penalties pursuant to the Private Attorneys
19 General Act, Cal. Lab. Code §§2698-2699.5 (“PAGA”). The proposed settlement is entered
20 into between Plaintiffs and Defendant WTMG, Inc. (“Defendant” or “WTMG”).

21 Plaintiffs and Defendant WTMG have reached a proposed class action settlement
22 whereby WTMG will pay a gross settlement amount of one million five hundred thousand
23 dollars (\$1,500,000). As explained below, although WTMG denies that it has any liability
24 whatsoever, this gross settlement value is within the range of Defendant’s potential liability,
25 as estimated by Plaintiffs’ Counsel. The settlement is advantageous to Plaintiffs and the
26 Class in that it provides them prompt compensation and eliminates the uncertainty and risk
27 of continued litigation against Defendant. The proposed settlement is memorialized in the

28 ¹ Plaintiff Rodriguez has filed a Request for Dismissal of *Rodriguez v. WTMG, Inc.*

1 “Stipulation of Class Action and PAGA Settlement” (hereafter referred to as the “Settlement
2 Agreement”), a true and correct copy of which is attached as Ex. 1 to the Declaration of
3 Aaron C. Gundzik (“Gundzik Decl.”), ¶ 42.

4 Under the terms of the Settlement Agreement, the proposed Class consists of
5 approximately 1,321 individuals who were employed by Defendant in California as non-
6 exempt employees between September 29, 2017, through January 11, 2024 (the “Settlement
7 Class Period”). Gundzik Decl., ¶ 42, Ex. 1, ¶ II.C, II.I. Pursuant to the terms of the proposed
8 settlement, Defendant will pay a Gross Settlement Amount of \$1,500,000, plus the
9 employer’s share of any payroll taxes. After proposed deductions, as approved by the Court,
10 the Net Settlement Amount of approximately \$858,500 will be available to distribute to
11 settlement Class Members (Gundzik Decl., ¶ 53), resulting in an average payment of about
12 \$650 per class member.

13 Given the comparative strengths and weaknesses of Plaintiffs’ claims and
14 Defendant’s defenses and potential inability to pay a larger amount, as well as the inherent
15 uncertainties of litigation, this settlement is within the scope of what is fair, reasonable and
16 adequate for the Class and should be approved by the Court. Accordingly, Plaintiffs, on
17 behalf of themselves and the Class, now seek an order:

- 18 • Granting preliminary approval of the settlement as being fair, reasonable and
19 adequate;
- 20 • Provisionally certifying the Class on an opt-out basis and for settlement purposes
21 only, and appointing Plaintiffs Ignacio Mendez and Adriana Rodriguez as the
22 Class Representatives and Aaron C. Gundzik, Rebecca G. Gundzik, Glaen
23 Shimoda and Rodrigo Guevara as Class Counsel;
- 24 • Entering the proposed Preliminary Approval Order, which is filed concurrently
25 herewith, and directing that the Notice of Settlement be mailed to the Settlement
26 Class Members;
- 27 • Appointing Phoenix Settlement Administrators (“Phoenix”) as the Settlement
28 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 be granted final approval; (ii) whether the proposed Order and Final Judgment should be entered; (iii) the amount of Class Counsel’s Attorney’s fees and Class Counsel’s Costs; (iv) the amount of the Class Representatives’ Service and Release Awards; and (v) approving the proposed fee of the Settlement Administrator.

II. RELEVANT AND KEY FACTS

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

1. Investigation and Discovery

Plaintiffs’ counsel have been directly involved in all aspects of this case on behalf of Plaintiffs. They have extensively investigated Plaintiffs’ claims, reviewed and analyzed numerous pay documents, including records and information produced by Defendant, and worked to develop information on potential damages. Declaration of Aaron Gundzik (“Gundzik Decl.”), ¶¶ 9-12. They have thoroughly investigated Plaintiffs’ claims against WTMG and Blain Bibb. They have engaged in formal and informal discovery and reviewed and analyzed numerous pay documents, including records and information produced by Defendant, and worked to develop information on potential damages. Gundzik Decl., ¶ 9. And, they have interviewed approximately 40 Class Members. Gundzik Decl., ¶ 9. In connection with the mediation, Defendant produced time records and pay records for approximately 50% of the class members’ pay periods, in addition to personnel records, handbooks and policies. Plaintiffs’ counsel investigated and compiled publicly-available information about Defendant and its business and engaged in informal discovery in connection with the mediation. And, they negotiated extensively with Defendant regarding

1 the mediation, its scope, and the information to be exchanged in connection with the
2 mediation. *Id.* As a result of these negotiations, Defendant provided additional information
3 including the number of Class Members and PAGA Employees, total Class Member pay
4 periods, total PAGA Employee pay periods, number of separated Class Members, number of
5 separated PAGA Employees. Gundzik Decl., ¶ 10. Based on this information, as well as
6 information provided by the Plaintiffs, Plaintiffs’ counsel worked with a consultant to create
7 an extensive damages model. Gundzik Decl., ¶11. As set forth in the Declarations of
8 counsel, Aaron Gundzik and his counsel all have significant litigation experience, having
9 worked for many decades and have handled many wage and hour and representative actions.
10 Gundzik Decl., ¶¶ 14-17; Declaration of Galen Shimoda (“Shimoda Decl.”), ¶¶ 6-12;
11 Declaration of Rodrigo Guevara (“Guevara Decl.”), ¶¶ 3-4.

12 **2. Summary of Settlement Negotiations**

13 On January 11, 2024, Plaintiffs’ counsel and their clients, as well as Defendant and
14 its mediation counsel, attended a mediation session with well-respected mediator, Hon.
15 Ronald Sabraw (Ret.) in Walnut Creek, California. The case settled after a full day of
16 negotiation pursuant to a mediator’s proposal. Gundzik Decl., ¶ 13.

17 **3. Summary of Legal and Factual Bases for Plaintiffs’ Claims**

18 During the Class Period, Defendant WTMG Inc., which is owned by Defendant
19 Blain J. Bibb, provided cleaning and janitorial services for commercial buildings and other
20 facilities in California. Gundzik Decl., ¶ 18. Plaintiff Mendez worked as a janitor and in the
21 company’s warehouse. Ms. Rodriguez worked as a janitor and supervisor. *Id.*

22 Plaintiffs contended that due to their work obligations, they did not have sufficient
23 time to take compliant meal and rest breaks. Gundzik Decl., ¶ 19. They further contended
24 that Defendant altered time records so as to limit the amount of overtime paid to an
25 employee or to create a record that compliant meal periods were provided. Gundzik Decl., ¶
26 20. And, they contended that Class Members had to use their personal cell phones to clock
27 in and out for shifts and meals but that Defendant did not generally reimburse employees for
28 these expenses. Gundzik Decl., ¶ 21. Finally, Plaintiffs contended that they and class

1 members were not paid for time spent traveling between assignments or for use of their
2 personal vehicles on these trips. Gundzik Decl., ¶ 22.

3 **4. Risks, Expenses, Complexity and Duration if Settlement Not**
4 **Approved**

5 Plaintiffs were in possession of significant information prior to calculating any
6 damages in this case. Gundzik Decl., ¶¶ 9-12. As a result, before entering into the mediation,
7 Plaintiffs were able to make a reasonable estimation of Defendant’s potential liability as to
8 each claim that they alleged. Gundzik Decl., ¶¶ 27-36. For these reasons, the settlement
9 now before the Court was reached at a stage where “the parties certainly have a clear view
10 of the strengths and weaknesses of their cases” sufficient to support the settlement. See
11 *Boyd v. Bechtel Corp.*, 485 F. Supp. 610, 617 (N.D. Cal. 1979).

12 After taking into account the sharply disputed factual and legal issues involved in the
13 lawsuit, the risks attending further prosecution, and the substantial benefits to be received
14 pursuant to the compromise and settlement of the action, Plaintiffs’ counsel concluded that
15 the settlement is in the best interests of the Settlement Class and is fair and reasonable.
16 Gundzik Decl., ¶¶ 23, 26; Shimoda Decl., ¶ 6; Guevara Decl., ¶ 9. They also considered the
17 possibility that the Class would not be certified and factored in the additional delay in
18 recovery for Class Members if the settlement were rejected and the case went to trial. *Id.*
19 They also considered Defendant’s contention that it did not have sufficient assets to satisfy a
20 larger judgment. *Id.*

21 If the settlement is not approved, Plaintiffs would need to move forward with
22 discovery and then move for class certification. Gundzik Decl., ¶ 24. Defendant would
23 oppose certification on the grounds that numerous individualized fact issues exist. *Id.*
24 Defendant would argue and could succeed in claiming that these individualized issues
25 overwhelm common issues, and/or that the action is not manageable on a class wide basis.
26 *Id.* The result could be that the case would not be certified as a class action. *Id.*

1 **5. Risks of Maintaining Class Action Status**

2 Even if Plaintiffs proceeded and the Class was certified, significant risks would
3 remain. At trial Defendant could interpose a successful defense which could either cause the
4 jury to reject Plaintiffs' claims or award the Class only a small amount of the unpaid wages
5 and other damages sought. Gundzik Decl., ¶ 25. And, even if the Class ultimately prevailed,
6 Class Members would have to wait years before they received any payment from the
7 lawsuit. *Id.*

8 Plaintiffs' counsel concluded that the settlement of \$1,500,000.00, \$50,000 of which
9 will be allocated to Plaintiffs' PAGA claim, represents a fair and reasonable discount from
10 the realistic recovery. Gundzik Decl., ¶ 26. The settlement provides a significant benefit for
11 the Class which would not otherwise have been available unless a settlement was reached.
12 Plaintiffs' counsel, who have significant experience litigating these types of claims, are of
13 the opinion that a gross settlement of \$1,500,000 is within the "ballpark" of a fair,
14 reasonable and adequate settlement. Gundzik Decl., ¶¶ 23, 26; Shimoda Decl., ¶ 6; Guevara
15 Decl., ¶ 9.

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

18 There are approximately 1,321 Class Members. Gundzik Decl., ¶ 37. The exact
19 number and identity of Class Members will be provided by Defendant in connection with its
20 duty to provide Class Data to the Settlement Administrator within ten (10) days after the
21 Court preliminarily approves the settlement. Gundzik Decl., ¶ 38. And, a community of
22 interest exists, as in the pleading, Plaintiffs are claiming the same injuries based upon the
23 same alleged wage and hour policies as are the Class Members. Gundzik Decl., ¶ 39. Class
24 counsel are not aware of any actual or potential conflicts of interest with any of the Class
25 Members. Gundzik Decl., ¶ 4; Shimoda Decl., ¶ 4; Guevara Decl., ¶ 5.

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

27 Plaintiffs counsel have conferred with Defendant's counsel, and Defendant has
28 indicated that some of the Class Members are not proficient in English but are fluent in

Spanish. Gundzik Decl., ¶ 40. For that reason, the Notice of Settlement will be printed in English and Spanish. *Id.*

Gundzik Gundzik Heeger LLP (“GGH”), Shimoda & Rodriguez Law, P.C. (“S&R”) and Abogado, APC (“Abogado”) have entered into a written retention agreement with the representative Plaintiffs. Gundzik Decl., ¶ 41, and Ex. 2. G. GGH, S&R and Abogado have agreed to divide any attorney’s fees awarded in this case. Plaintiffs have consented to the division of fees. *Id.*

Class Counsel are aware of one pending action asserting claims that will be extinguished or adversely affected by the proposed settlement that is the subject of this Motion. That action is also pending in this Court and is titled *Fernandez v. WTMG, Inc.*, STK-CV-UOE-2021-0011084. *Fernandez* was filed in December 2021. It alleges only claims under PAGA. It is expected that the settlement of this action will also resolve the claims asserted in *Fernandez*. Gundzik Decl., ¶ 78.

III. The Settlement Agreement

A. Class Definition and Class and Release Period

The Class includes all individuals who were employed by Defendant WTMG, Inc. in California as non-exempt employees during the Class Period. Gundzik Decl., ¶¶ 42, 43; Ex. 1, ¶ II.C. The Class Period and the Class Release Period are the same, and are the period from September 29, 2017, through January 11, 2024. Gundzik Decl., ¶¶ 42, 44; Ex. 1, ¶ II.I.

B. Release of Claims

Members of the Class will provide releases to Defendant and its 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 Plaintiffs will be broader and encompass all claims that they might have against Defendant. Gundzik Decl., ¶¶ 42, 45, Ex. 1, ¶ VII. Gundzik Decl., ¶¶ 42, 47, Ex. 1, ¶ VI.A.

1 The Release applies to all of the Released Parties Gundzik Decl., ¶¶ 42, 47, Ex. 1, ¶ II.HH.
2 The Released Claims are defined as “all causes of action and factual or legal theories arising
3 during the Class Period that were alleged in the Complaint or arise from facts alleged in the
4 Complaint, including all damages, penalties, interest and other amounts recoverable under
5 said claims, causes of action or legal theories of relief.” Gundzik Decl., ¶¶ 42, 48, Ex. 1, ¶
6 II.GG. The Release will be effective upon entry of the Final Approval Order and Judgment
7 and Defendant’s payment of the Gross Settlement Amount and Employer’s Withholding
8 Share. Gundzik Decl., ¶¶ 42, 49, Ex. 1, ¶ VI.A.

9 A separate release applies to the PAGA Employees Gundzik Decl., ¶¶ 42, 50, Ex. 1,
10 ¶ VI.B. This release also applies to the Released Parties (*Id.*) and will also be effective upon
11 entry of the Final Approval Order and Judgment and Defendant’s payment of the Gross
12 Settlement Amount and Employer’s Withholding Share. Gundzik Decl., ¶¶ 42, 51, Ex. 1, ¶
13 VI.B.

14 Within ten (10) days following the Court’s order granting preliminary approval of
15 the Settlement, Defendant will provide the Settlement Administrator with the Class Data and
16 at the same time will provide anonymized Class Data to Class Counsel so that they can
17 confirm that the correct amounts are being paid to the correct individuals. Gundzik Decl., ¶¶
18 42, 52, Ex. 1, ¶IV.C. This information will remain confidential and will not be disclosed to
19 anyone, except as required to applicable taxing authorities, pursuant to Defendant’s express
20 written authorization, by order of the Court, or as otherwise provided for in this Agreement.
21 *Id.*

22 C. Monetary Terms

23 Defendant will pay a Gross Settlement Amount of \$1,500,000.00, 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 \$858,500 will be available to distribute to settlement Class Members. Gundzik Decl., ¶ 53.

27 If the Court grants final approval of the Settlement, Defendant shall deliver 50% of
28 the Gross Settlement Amount and Employer’s Withholding Share to the administrator within

1 five days and shall deliver the other 50% of the Gross Settlement Amount to the Settlement
2 Administrator within 180 days of the Effective Date (the date of entry of the Court's Final
3 Approval Order if there are no objections to the Settlement). Gundzik Decl., ¶¶ 42, 54, Ex.
4 1, ¶ IV.N. *Id.* Within ten (10) calendar days of Defendant's deposit of all funds due, the
5 Settlement Administrator will pay settlement payments to participating Settlement Class
6 Members, the penalties awarded to the PAGA Employees, the Court-approved Class
7 Representative Service and Release Award, the Court-approved award for Class Counsel's
8 Attorneys' Fees and Class Counsel's Costs, the LWDA Payment, and the fees of the
9 Settlement Administrator. Gundzik Decl., ¶¶ 42, 54, Ex. 1, ¶¶ IV.L(8), IV.O.

10 If the Court grants preliminary approval, at the final approval hearing, in addition to
11 granting final approval to the settlement, the Court will be asked to approve the following
12 deductions from Defendant's settlement payment of \$1,500,000: (a) Class Counsel's
13 attorneys' fees of \$525,000; (b) Class Counsel's actual litigation costs and expenses, not to
14 exceed \$35,000; (c) Service and Release Awards to Representative Plaintiffs Ignacio
15 Mendez and Adriana Rodriguez in an amount totaling \$15,000; (d) an amount not to exceed
16 \$16,500 to the Settlement Administrator for administering the settlement; (e) an allocation
17 of \$50,000 to Plaintiffs' PAGA claims (the "PAGA Amount"), seventy-five percent (75%)
18 of which will be paid to the California Labor and Workforce Development Agency (the
19 "LWDA Payment"), and the remaining twenty-five percent (25%) of which will be
20 distributed to the PAGA Employees. Gundzik Decl., ¶¶ 42, 55, Ex. 1, ¶ I; Declaration of
21 Jodey Lawrence, ¶ 9.

22 As compensation for their efforts, the Settlement Agreement provides that Class
23 Representative Service and Release Awards in an amount totaling \$15,000 will be requested
24 for the representative Plaintiffs, Ignacio Mendez and Adriana Rodriguez. Gundzik Decl., ¶
25 56. This award is in recognition of the significant time they expended pursuing this action and
26 assisting our efforts with the case, and in recognition of the expanded general releases that
27 they are required to provide, as part of the Settlement. *Id.* As an additional requirement to
28 receiving the proposed Class Representative Service and Release Awards, Plaintiffs are

1 required to sign a broad general release which includes a waiver of Section 1542 of the
2 California Civil Code. *Id.*

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

7 The Net Settlement Amount of approximately \$858,500 will be distributed to Class
8 Members based on the number of Qualifying Pay Periods they worked for Defendant.
9 Gundzik Decl., ¶¶ 42, 60, Ex. 1, ¶¶ IV. L(1). The formula to be used is specified in detail in
10 both the Declaration of Aaron Gundzik and the Notice of Settlement which will be mailed to
11 all of the Class Members. Gundzik Decl., ¶¶ 42, 60, and Ex. A to Ex. 1. Based on a Class
12 size of approximately 1,321, the Settlement Class Members will get, on average, about
13 \$650. Gundzik Decl., ¶ 60. Settlement payments will be paid to the Class Members within
14 10 days of Defendant's deposit of the Gross Settlement Amount with the Settlement
15 Administrator. *Id.* Payment to each Settlement Class Member will be allocated one-quarter
16 to wages, to be reported on a W-2 form, one-quarter to penalties, one-quarter to interest and
17 one-quarter to reimbursement of expenses. The portion allocated to penalties and interest
18 will be reported on an IRS Form 1099. Gundzik Decl., ¶¶ 42, 61, Ex. 1, ¶¶ IV.L(6).

19 **D. Notice Administration**

20 The settlement will be administered by Phoenix Settlement Administrators
21 ("Phoenix" or "Settlement Administrator"). Gundzik Decl., ¶¶ 32, 63, Ex. 1, ¶ II.OO; Decl.
22 of Jodey Lawrence, ¶ 9. Class counsel has no actual or potential conflicts of interest with the
23 third party administrator, Phoenix Settlement Administrators. Gundzik Decl., ¶ 77.

24 If the Court grants preliminary approval, within ten (10) calendar days Defendant
25 will provide the Settlement Administrator with the Class Data. Gundzik Decl., ¶¶ 42, 64, Ex.
26 1, ¶ IV.C. Within ten days thereafter, the Settlement Administrator will update the Class list,
27 check all addresses against the National Change of Address, and send each Class Member
28 via First-Class United States mail English and Spanish versions of the Notice of Settlement.

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

4 The proposed form of the notice of settlement to the Class (“Notice of Settlement”)
5 discloses the pendency of this litigation, summarizes the allegations against Defendant,
6 defines the Class, describes the consideration that Defendant will provide in settlement
7 along with an estimate of each Settlement Class Member’s estimated recovery. Gundzik
8 Decl., ¶¶ 42, 67, Ex. A to Ex. 1. The notice also describes the claims that will be released
9 and explains the procedures to be used by members of the Class to be excluded from or
10 object to the settlement. *Id.* Because this is an opt-out settlement and Class Members who do
11 nothing will still receive a settlement payment, the notice provisions agreed to by the parties
12 will adequately serve the interests of the individual Class Members in receiving the relief
13 provided by the settlement and adequately comply with California Rules of Court, Rule
14 3.766(e). Gundzik Decl., ¶ 68.

15 Class Member settlement checks will be valid for 180 days from issuance. The funds
16 represented by all uncashed settlement checks will be transmitted by the Settlement
17 Administrator to the California State Controller’s Office Unclaimed Property Fund. Gundzik
18 Decl., ¶¶ 42, 69, Ex. 1, ¶ IV.P.

19 For any Notice of Settlement that is returned as undeliverable, the Settlement
20 Administrator will perform a utility database search or other skip trace. Gundzik Decl., ¶¶
21 42, 71, Ex. 1, ¶ IV.D. The returned Notices of Settlement will be re-mailed to the new
22 addresses obtained for such Class Members. *Id.* Such searching and re-mailing will be
23 completed within ten (10) calendar days of the date that Notices of Settlement were
24 originally returned as undeliverable. *Id.*

25 The Settlement Administrator will establish a website for this settlement and will
26 post the settlement agreement and other relevant documents. Gundzik Decl., ¶¶ 71-72.
27 Additionally, in their individual Notices of Settlement, Class Members will be provided with
28 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., ¶ 71. Notice of the Final Judgment and Final Approval Order will also be posted on the Settlement Administrator's website. Gundzik Decl., ¶ 72.

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, 73, Ex. 1, ¶¶ II.KK, IV.E; Ex. A to Ex. 1, ¶ 9 (b). 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, 73, 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, 74, Ex. 1, ¶ IV.EE.

F. Proposed Schedule of Events

Pursuant to the Settlement Agreement, the proposed schedule of events is:

Event	Date
Deadline for Defendant to provide Class data to settlement administrator	within ten (10) calendar days of preliminary approval
Deadline to mail Notice of Settlement to Class Members	within ten (10) calendar days of receipt of class data from Defendant
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

Event	Date
Deadline to file motion for final approval of the settlement and award of attorneys' fees and costs	16 court days before final approval hearing
Hearing on motion for final approval of the settlement, granting of final approval, and entry of judgment	TBD
Deadline for Defendant to deliver funds to settlement administrator	Within five (5) calendar days after the Court's Final Approval Order, Defendant shall deliver 50% of the Gross Settlement Amount and Employer's Withholding Share to the QSF; Within 180 days of the Effective Date, Defendant shall deliver the remaining 50% of the Gross Settlement Amount
Deadline for settlement administrator to distribute settlement funds	Within 10 calendar days of receipt of the entire Gross Settlement Amount and Employer's Withholding Share

IV. ARGUMENT

A. The Class Should be Certified for Settlement Purposes.

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

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

3 “An ascertainable class exists when, based upon the class definition, it is possible to
4 give adequate notice to class members or to determine after the litigation has concluded who
5 is barred from re-litigating. (Citation omitted.) The goal in defining the class is to use
6 terminology that will convey sufficient meaning to enable persons hearing it to determine
7 whether they are members of the class plaintiff wishes to represent.” *Marler v. E.M.*
8 *Johansing, LLC*, 199 Cal. App. 4th 1450, 1459-1460 (2011). Thus, a class is generally
9 considered ascertainable when (i) under the class definition the members are clearly
10 identifiable and (ii) the members can be located and notified through a reasonable
11 expenditure of time and money. *See Reyes v. Board of Supervisors*, 196 Cal. App. 3d 1263,
12 1274-1275 (1987). Here, the Class definition is clear. The Class is defined as including “all
13 individuals who were employed by Defendant WTMG, Inc. (“Defendant”) in California as
14 non-exempt employees at any time during the Class Period,” which is the period from
15 September 29, 2017, through January 11, 2024. Gundzik Decl., ¶¶ 42, 43, Ex. 1, ¶¶ II.C.,
16 II.I.

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

19 Plaintiffs contend that the community of interest requirement is met with respect to
20 the Class and the claims asserted in the pleading. Common issues regarding Defendant’s
21 treatment of the Class Members as to meal and rest breaks, unpaid time, unpaid overtime
22 and reimbursement of expenses, the sufficiency of wage statements issued to Class Members
23 and the amounts paid to separated employees at time of separation. Further, the claims of the
24 named Plaintiffs are typical of the claims of all Class Members, and they can and do
25 adequately represent the Class. Gundzik Decl., ¶¶ 18-22; 27-34, 39.
26
27
28

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, Plaintiffs maintain that common issues exist with respect to Defendant’s
10 policies and practices with respect to meal and rest breaks, payment for overtime, payment
11 for time all time worked, reimbursement of expenses and payment for amounts due at time
12 of separation. Gundzik Decl., ¶¶ 27-36. Plaintiffs maintain that the only individualized
13 differences between Class Members relate to the amount of compensation each Class
14 Member would be entitled to receive. However, it is well-settled that mere differences as to
15 the amount of damages among Class Members are not sufficient to prevent certification. *Id.*;
16 *Acree v. General Motors Acceptance Corp.*, 92 Cal. App. 4th 385, 387 (2001) (“A class
17 action may be maintained even if each class member must at some point individually show
18 his or her eligibility for recovery or the amount of his or her damages...”)

19 **4. Plaintiffs’ 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, Plaintiffs are seeking relief for the same wage and hour violations as are the
28 rest of the Class Members. They seek to impose liability on Defendant based on the same

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

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

6 “Adequacy of representation depends on whether the plaintiff’s attorney is qualified to
7 conduct the proposed litigation and the plaintiff’s interests are not antagonistic to the
8 interests of the class.” *McGhee v. Crocker-Citizens Nat. Bank*, 60 Cal. App. 3d 442, 450
9 (1976). Here, the Representative Plaintiffs retained attorneys with extensive experience in
10 prosecuting wage and hour class actions. Gundzik Decl., ¶¶ 14-17; Shimoda Decl., ¶¶ 9-12;
11 Guevara Decl., ¶¶ 3-4.

12 Nor is there any conflict between the interests of the Representative Plaintiffs and the
13 members of the Class. The Representative Plaintiffs and the Class are claiming the same
14 injuries based upon the same alleged wage and hour policies existing while they were
15 employed by Defendant. Gundzik Decl., ¶ 39; Mendez Decl., ¶¶ 1-14; Rodriguez Decl., ¶¶ 1-
16 14.

17 **B. Preliminary Approval is Appropriate Because the Settlement is Fair and**
18 **Reasonable.**

19 A trial court should approve a class action settlement agreement if it determines that
20 the agreement is fair, adequate, and reasonable. *Dunk v. Ford Motor Co.*, 48 Cal. App. 4th
21 1794, 1801 (1996). In making this decision, a court “should consider relevant factors, which
22 may include, but are not limited to the strength of the plaintiffs’ case, the risk, expense,
23 complexity and duration of further litigation as a class action, the amount offered in
24 settlement, the extent of discovery completed and the stage of the proceedings, the
25 experience and views of counsel, the presence of a governmental participant, and the
26 reaction of class members to the proposed settlement.” *In re Microsoft I-V Cases*, 135 Cal.
27 App. 4th 706, 723 (2006).
28

1 “At the same time, the trial court should give due regard to what is otherwise a
2 private consensual agreement between the parties.” *Id.* Thus, the Court “limits its inquiry to
3 the extent necessary to reach a reasoned judgment that the agreement is not the product of
4 fraud or overreaching by, or collusion between, the negotiating parties, and that the
5 settlement, taken as a whole, is fair, reasonable and adequate to all concerned.” *In re*
6 *Microsoft I-V Cases*, 135 Cal. App. 4th at 723, citing *Dunk v. Ford Motor Co.*, 48 Cal. App.
7 4th at 1801; also citing *Officers for Justice v. Civil Service Com'n, etc.*, 688 F.2d 615, 625
8 (9th Cir. 1982). Whether the settlement was reached through arms-length negotiations is
9 also a strong factor which weighs in favor of presuming that the settlement is fair and
10 reasonable. *Dunk v. Ford Motor Co.*, 48 Cal. App. 4th at 1801.

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

13 **The Strength of Plaintiffs’ Case.** As set forth in the Section II above and the
14 Declaration of Aaron Gundzik, the parties have vigorously advocated the parties’ respective
15 positions in this matter, and Defendant has consistently disputed that it violated California’s
16 wage and hour laws. In fact, Defendant raised a colorable legal or factual defense to each
17 claim Plaintiffs have alleged. Gundzik Decl., ¶¶ 27-32.

18 **The Risk, Expense, Complexity and Likely Duration of Further Litigation.** If the
19 settlement is not approved, the Representative Plaintiffs would need to move forward with
20 discovery and then move for class certification. Defendant will oppose certification on the
21 grounds that numerous individualized fact issues allegedly exist. They will argue and could
22 succeed in claiming that these individualized issues overwhelm common issues and will also
23 argue that the action is not manageable on a classwide basis. The result could be that the
24 case would not be certifiable as a class action. Gundzik Decl., ¶¶ 21-22.

25 **The Risk of Maintaining Class Action Status Through Trial.** If the settlement is
26 not approved, and the Representative Plaintiffs are successful on their motion for
27 certification of the class, the Class would still be faced with significant risks in continuing
28 with the litigation. Defendant could interpose a successful defense which could either cause

1 the jury to reject Plaintiffs’ claims or award the Class only a small amount of the unpaid
2 wages and other amounts due to them. And, even if the Class ultimately prevailed, most of
3 the Class Members would have to wait years or more before they received any payment
4 from the lawsuit. Gundzik Decl., ¶ 25. Further, the Court would still retain authority to de-
5 certify the case in the event the trial showed that common issues did not predominate. *See*
6 Cal. Rule of Court 3.764. *Id.*

7 **The Amount Offered in Settlement.** In the experience of Class counsel, a gross
8 settlement of \$1,500,000 for a class of approximately 1,321, with the claims described
9 above, with \$50,000 allocated to Plaintiffs’ PAGA claim, is within the “ballpark” of a fair,
10 reasonable and adequate settlement. Gundzik Decl., ¶ 26; Shimoda Decl., ¶ 8; Guevara
11 Decl., ¶ 9. Taking into account the serious risks associated with proceeding— that the case
12 might not be certified as a class action, that Plaintiffs might not succeed on the merits at
13 trial, if Plaintiffs succeed at trial, that the case is reversed on appeal, or if Defendant does
14 not have sufficient assets to pay a judgment at a later date – it becomes apparent that a
15 settlement in this range is fair to the Class.

16 **The Extent of Investigation and Discovery Completed and the Stage of the**
17 **Proceedings.** As set forth in Section II.A above and the Declaration of Aaron Gundzik, the
18 parties have engaged in extensive formal and informal discovery and factual investigation.
19 Gundzik Decl., ¶¶ 9-12, 18-22, 27-36.

20 **The Experience and Views of Counsel.** As set forth in the declaration of Aaron
21 Gundzik, Class Counsel has significant experience in wage and hour class actions. Gundzik
22 Decl., ¶¶ 14-16; Declaration of Galen Shimoda (“Shimoda Decl.”), ¶¶ 10-12. Aaron
23 Gundzik and Rebecca Gundzik have practiced law and been members of the California State
24 Bar collectively for over 60 years. Gundzik Decl., ¶¶ 14-15. Galen Shimoda has been
25 practicing law for over 20 years. Shimoda Decl., ¶ 12. And Rodrigo Guevara has been
26 practicing law for 14 years. Based upon their vast experience in the area, when they arrived
27 at a settlement with Defendant, Class Counsel had sufficient information to assess the
28

1 strengths and weaknesses of the claims against Defendant, and the benefits of the settlement
2 in light of the significant risks of continuing with the litigation.

3 **Whether the Settlement Was Reached Through Arm's-Length Bargaining or**
4 **was a Product of Fraud or Overreaching.** It is undisputed that the parties negotiated the
5 settlement at arm's length during a mediation before a well-respected neutral third-party
6 mediator who has significant experience settling wage and hour class action lawsuits.
7 Gundzik Decl., ¶ 13. The case settled after a full day of negotiation pursuant to a mediator's
8 proposal. *Id.* The settlement was negotiated at arms' length and was in no sense collusive.

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

11 "The principal purpose of notice to the class is the protection of the integrity of the
12 class action process, one of the functions of which is to prevent burdening the courts with
13 multiple claims where one will do." *Cho v. Seagate Technology Holdings, Inc.*, 177 Cal.
14 App. 4th 734, 745-746 (2009). Thus, an appropriate notice is one which has a reasonable
15 chance of reaching a substantial percentage of the class members. *Cartt v. Superior Court*,
16 50 Cal. App. 3d 960, 974 (1975).

17 The proposed Notice of Settlement addresses these concerns. It identifies the
18 Representative Plaintiffs and Defendant, provides a description of the lawsuit, the settlement
19 amounts, the proposed plan of allocation and the attorneys' fees that class counsel may
20 receive. The proposed Notice of Settlement provides information as to how to opt out of the
21 Class and be excluded, how to object to the settlement, as well as the date of the final
22 approval hearing. It also describes the Settlement Agreement with sufficient detail to allow
23 Class Members to make an informed decision as to whether to accept or object to it. The
24 proposed Notice of Settlement further provides that it will bind all Class Members who do
25 not request exclusion. Gundzik Decl., ¶ 42, Ex. A. to Ex. 1 thereto. As such, the proposed
26 Notice of Settlement describes the settlement with enough specificity to allow Class
27 Members to make an informed decision as to whether to participate in it. See California
28 Rule of Court 3.766(d).

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

8 Pursuant to California Rules of Court, Rule 3.766(e), in determining whether the
9 manner of giving notice is sufficient, a court considers (1) the interests of the class; (2) the
10 type of relief requested; (3) the stake of the individual class members; (4) the cost of
11 notifying class members; (5) the resources of the parties; (6) the possible prejudice to class
12 members who do not receive notice; and (7) the res judicata effect on class members. Here,
13 the interests of the Class Members are in receiving notice of the lawsuit and settlement.
14 Class Counsel and Defendant's counsel have conferred and determined that disseminating
15 the Notice of Settlement by mail to the Class Members is the best way to maximize its
16 reach. Gundzik Decl., ¶ 68.

17 Delivering the Notice by mail complies with California Rules of Court, Rule
18 3.766(e) and the purpose of the Notice. An appropriate notice is one which has a reasonable
19 chance of reaching a substantial percentage of the class members. *Cartt v. Superior Court*,
20 50 Cal. App. 3d 960, 974 (1975). Because this is an opt-out settlement and Class Members
21 who do nothing will still receive a settlement payment, the notice provisions agreed to by
22 the parties will adequately serve the stakes of the individual Class Members in receiving the
23 relief provided by the settlement.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

V. CONCLUSION

For the foregoing reasons, Plaintiffs, on behalf of themselves and the Class, respectfully request that the Court grant preliminary approval of the settlement and set a final approval hearing to take place within approximately 120 days.

DATED: May 10, 2024

GUNDZIK GUNDZIK HEEGER LLP

By: 
Rebecca G. Gundzik
Attorneys for Plaintiffs Ignacio Mendez and
Adriana Rodriguez, individually and on behalf
of all others similarly situated