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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF ALAMEDA

ROMELLO SHEPPARD, individually and on
behalf of other members of the general public
similarly situated and on behalf of other
aggrieved employees pursuant to the California
Private Attorneys General Act;

Plaintiff,

vs.

GHIRARDELLI CHOCOLATE COMPANY,
a California corporation; and DOES 1 through
100,

Defendants.

Case No.: 22CV020713
Hon. Noel Wise, Dept. 21

Reservation ID No: 213827830452

**PLAINTIFF'S MEMORANDUM OF
POINTS AND AUTHORITIES IN
SUPPORT OF MOTION FOR
PRELIMINARY APPROVAL OF
CLASS ACTION AND PAGA
SETTLEMENT**

**[Filed concurrently with Notice of
Motion and Motion and Declarations
of Joanna Ghosh, Aaron Gundzik,
Romello Sheppard, and Phoenix
Settlement Administrators; [Proposed]
Order]**

**Date: October 8, 2024
Time: 1:30 p.m.
Dept.: 21**

Complaint Filed: October 27, 2022

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 This is a wage and hour putative class action brought by Plaintiff Romello Sheppard
4 (“Plaintiff”) against Defendant Ghirardelli Chocolate Company, Inc. (“Defendant”) on
5 behalf of Defendant’s current and former hourly-paid or non-exempt employees. By way of
6 this Motion, Plaintiff seeks preliminary approval of the non-reversionary Class and
7 Representative Action Settlement Agreement and Release (“Settlement,” “Settlement
8 Agreement,” or “Agreement”), which will resolve this action in its entirety. The key terms
9 of the Agreement are as follows:

- 10 • Size of the Class: approximately 2,427 individuals.
 - 11 • Gross Settlement Amount: Three Million One Hundred Fifty Thousand Dollars and
12 Zero Cents (\$3,150,000.00), exclusive of employer payroll taxes.
 - 13 • Administration Costs: Eighteen Thousand Seven Hundred Fifty Dollars and Zero
14 Cents (\$18,750).
 - 15 • Requested Class Representative Enhancement Award: Ten Thousand Dollars
16 and Zero Cents (\$10,000.00).
 - 17 • Requested Attorneys’ Fees: One Million One Hundred and Two Thousand Five
18 Hundred Dollars and Zero Cents (\$1,102,500.00), which is thirty-five percent (35%) of the
19 Gross Settlement Amount
 - 20 • Requested Litigation Costs: Class Counsel’s Actual and Reasonable costs and
21 expenses, not to exceed Twenty-Five Thousand Dollars and Zero Cents (\$25,000.00).
 - 22 • PAGA Penalties: Three Hundred Fifty Thousand Dollars and Zero Cents
23 (\$350,000.00), 75% of which will be paid to the California Labor and Workforce
24 Development Agency (“LWDA”, with the remaining 25% paid to PAGA Members.
 - 25 • Estimated Net Settlement Amount: One Million Six Hundred Forty Three
26 Thousand Seven Hundred Dollars and Zero Cents (\$1,643,750).
 - 27 • Average Estimated Individual Class Payment: \$677.27
- 28

1 Given the comparative strengths and weaknesses of Plaintiff's claims and
2 Defendant's defenses and potential inability to pay a larger amount, as well as the inherent
3 uncertainties of litigation, this settlement is within the scope of what is fair, reasonable and
4 adequate for the Class and should be approved by the Court. Accordingly, Plaintiff, on
5 behalf of himself and the Class, now seeks an order:

- 6 • Granting preliminary approval of the settlement as being fair, reasonable and
7 adequate;
- 8 • Provisionally certifying the Class on an opt-out basis and for settlement purposes
9 only, and appointing Plaintiff Romello Sheppard as the Class Representatives
10 and Aaron C. Gundzik, Rebecca G. Gundzik, Arby Aiwarzian and Joanna Ghosh
11 as Class Counsel;
- 12 • Entering the proposed Preliminary Approval Order, which is filed concurrently
13 herewith, and directing that the Notice of Settlement be mailed to the Settlement
14 Class Members;
- 15 • Appointing Phoenix Settlement Administrators ("Phoenix") as the Settlement
16 Administrator;
- 17 • Finding that the proposed form and method of the Notice of Proposed Class
18 Action Settlement and Hearing Date for Court Approval ("Notice of Settlement")
19 constitutes the best notice practicable under the circumstances and complies with
20 the requirements of Code of Civil Procedure Section 382 and due process; and
- 21 • Scheduling a final approval hearing approximately 140 days after the preliminary
22 approval hearing to decide, among other things, (i) whether the settlement should
23 be granted final approval; (ii) whether the proposed Order and Final Judgment
24 should be entered; (iii) the amount of Class Counsel's Attorney's fees and Class
25 Counsel's Costs; (iv) the amount of the Class Representative's Service and
26 Release Award; and (v) approving the proposed fee of the Settlement
27 Administrator.

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1 **II. RELEVANT AND KEY FACTS**

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

3 **1. Investigation and Discovery**

4 Plaintiff's counsel have been directly involved in all aspects of this case on behalf of
5 Plaintiff. They have extensively investigated Plaintiff's claims, reviewed and analyzed
6 numerous pay documents, including records and information produced by Defendant, and
7 worked to develop information on potential damages. Declaration of Joanna Ghosh ("Ghosh
8 Decl."), ¶¶ 9-11. They have thoroughly investigated Plaintiff's claims against Defendant.
9 They have engaged in formal and informal discovery and reviewed and analyzed numerous
10 pay documents, as well as voluminous records regarding Defendant's organizational
11 structure, document retention practices, and wage and hour policies and practices. Ghosh
12 Decl., ¶ 10. Based on this information and their investigation, Plaintiff's counsel worked to
13 develop information on potential damages. Ghosh Decl., ¶ 16.

14 In connection with the mediation, Defendant produced time records and pay records
15 for approximately 20% of the class members', in addition to Plaintiff's personnel records
16 and Defendant's handbooks and policies. Ghosh Decl., ¶ 10. Class Counsel interviewed
17 Plaintiff and other putative class members to gather facts and circumstances surrounding
18 Plaintiff and putative class members' employment. *Id.* And, counsel for the Parties also met
19 and conferred on numerous occasions, e.g., to discuss issues relating to the pleadings,
20 motion practice, and discovery and the production of information, documents, and data in
21 the course of litigation and in connection with mediation and settlement negotiations. *Id.*
22 Based on this information, as well as information provided by the Plaintiff, Plaintiff's
23 counsel worked to create an extensive damages model. Ghosh Decl., ¶16. As set forth in the
24 Declarations of counsel, Plaintiff's counsel all have significant litigation experience, having
25 worked for many decades and have handled many wage and hour and representative actions.
26 Ghosh Decl., ¶¶ 2-6; Declaration of Aaron Gundzik ("Gundzik Decl."), ¶¶ 3-4.

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1 **2. Summary of Settlement Negotiations**

2 In February of 2024, Plaintiff’s counsel, as well as Defendant and its mediation
3 counsel, attended a mediation session with well-respected mediator, Jeffrey Krivis. The case
4 settled after a full day of negotiation. Ghosh Decl., ¶ 9.

5 **3. Summary of Legal and Factual Bases for Plaintiff’s Claims and**
6 **Defendant’s Potential Maximum Exposure**

7 During the Class Period, Defendant Ghirardelli Chocolate Company operated a
8 business in California. First Amended Complaint, ¶ 6. Plaintiff Sheppard worked for
9 Defendant as a non-exempt employee. First Amended Complaint, ¶ 7.

10 Plaintiff contended that Defendant required putative class members to perform work
11 before clocking-in and after clocking-out of their scheduled shifts and during meal and rest
12 periods. Ghosh Decl., ¶ 14. Plaintiff alleged that he and putative class members were not
13 paid all wages due to them (regular, minimum, overtime, and double-time wages) as a result
14 of off-the-clock work they were required to perform (including, and not limited to, donning
15 and doffing and health screenings), rounding, and failure to correctly calculate the regular
16 rate of pay. *Id.* Plaintiff alleged that meal and rest periods were regularly interrupted, short,
17 missed, and/or late because Plaintiff and putative class members were required to perform
18 and complete work duties during meal and rest periods. *Id.* Plaintiff further alleged that
19 Defendant failed to properly pay all meal or rest period premiums. *Id.* Additionally, Plaintiff
20 alleged that Defendant incorrectly calculated the regular rate for the purposes of calculating
21 overtime and meal and rest premiums because it failed to include non-discretionary forms of
22 pay, including bonuses and incentives, in its regular rate calculations. *Id.* Plaintiff also
23 contended that Defendant failed to timely pay Plaintiff and putative class members all wages
24 due to them while they were employed by Defendant, within the time period permissible
25 under California law, and all wages due to them upon termination, within the time period
26 permissible under California law, thereby triggering waiting-time penalties under California
27 Labor Code section 203. *Id.* Plaintiff also contended that, based on said violations, the wage
28 statements provided by Defendant and the payroll records kept by Defendant were

1 inaccurate. *Id.* Plaintiff contended that Defendant failed to reimburse Plaintiff and the other
2 putative class members for necessary business expenses, including, but not limited to, the
3 costs associated with the purchase and maintenance of footwear, gloves, work apparel,
4 personal protective equipment, and tools, the use of personal cell phones, and the use of
5 personal vehicles and/or mileage/transportation costs. *Id.* Finally, Plaintiff contended that
6 Defendant failed to pay hourly paid employees for their vested vacation time in
7 contravention of their own written policy and California Labor Code section 227.3. *Id.*

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

9 Plaintiff was in possession of significant information prior to calculating any
10 damages in this case. Ghosh Decl., ¶¶ 10-11. As a result, before entering into the mediation,
11 Plaintiff was able to make a reasonable estimation of Defendant’s potential liability as to
12 each claim that they alleged. Ghosh Decl., ¶¶ 12-19. For these reasons, the settlement now
13 before the Court was reached at a stage where “the parties certainly have a clear view of the
14 strengths and weaknesses of their cases” sufficient to support the settlement. See *Boyd v.*
15 *Bechtel Corp.*, 485 F. Supp. 610, 617 (N.D. Cal. 1979).

16 After taking into account the sharply disputed factual and legal issues involved in the
17 lawsuit, the risks attending further prosecution, and the substantial benefits to be received
18 pursuant to the compromise and settlement of the action, Plaintiff’s counsel concluded that
19 the settlement is in the best interests of the Settlement Class and is fair and reasonable.
20 Ghosh Decl., ¶¶ 11, 18, 25, 28. They also considered the possibility that the Class would not
21 be certified and factored in the additional delay in recovery for Class Members if the
22 settlement were rejected and the case went to trial. Ghosh Decl., ¶¶ 9, 15, 16, 17, 24.

23 If the settlement is not approved, Plaintiff would need to move forward with
24 discovery and then move for class certification. Ghosh Decl., ¶ 16. Defendant would oppose
25 certification on the grounds that its practices, policies, and procedures complied with the law.
26 Class Counsel also considered that Defendant’s collective bargaining agreements (“CBAs”)
27 may have prevented the Court from certifying a portion or all of Plaintiff’s claims. Ghosh
28 Decl., ¶ 15. Plaintiff also faced the risk of the Court finding that individualized issues

predominate, such that the case would not be suitable for class treatment. Ghosh Decl., ¶ 16.
The result could be that the case would not be certified as a class action.

5. Risks of Maintaining Class Action Status

Even if Plaintiff proceeded and the Class was certified, significant risks would remain. At trial Defendant could interpose a successful defense which could either cause the jury to reject Plaintiff's claims or award the Class only a small amount of the unpaid wages and other damages sought. Ghosh Decl., ¶ 15. And, even if the Class ultimately prevailed, Class Members would have to wait years before they received any payment from the lawsuit. Ghosh Decl., ¶ 16.

Plaintiff's counsel concluded that the settlement of \$3,150,000.00, \$350,000 of which will be allocated to Plaintiff's PAGA claim, represents a fair and reasonable discount from the realistic recovery. Ghosh Decl., ¶ 28. The settlement provides a significant benefit for the Class which would not otherwise have been available unless a settlement was reached. Plaintiff's counsel, who have significant experience litigating these types of claims, are of the opinion that a gross settlement of \$3,150,000 is within the ballpark of a fair, reasonable and adequate settlement. Ghosh Decl., ¶ 28; Gundzik Decl., ¶ 12.

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

There are approximately 2,427 Class Members. Ghosh Decl., ¶ 13. The exact number and identity of Class Members will be provided by Defendant in connection with its duty to provide Class Data to the Settlement Administrator within twenty-one (21) days after the Court preliminarily approves the settlement. Ghosh Decl., ¶ 7, Ex. 1, ¶ 52. And, a community of interest exists, as in the pleading, Plaintiff is claiming the same injuries based upon the same alleged wage and hour policies as are the Class Members. Ghosh Decl., ¶ 23.

C. Facts Relevant to Other Concerns

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

1 Spanish. Gundzik Decl., ¶ 13. For that reason, the Notice of Settlement will be printed in
2 English and Spanish. *Id.*

3 **III. The Settlement Agreement**

4 **A. Class and PAGA Member Definition and Release Periods**

5 The Class includes all current and former hourly-paid or non-exempt employees who
6 worked for Defendant within the State of California at any time during the Class Period.
7 Ghosh Decl., ¶ 7; Ex. 1, ¶ 5. The Class Period and the Class Release Period are the same,
8 and are the period from October 27, 2018, through April 19, 2024. Ghosh Decl., ¶ 7; Ex. 1, ¶
9 6.

10 **B. Release of Claims**

11 Members of the Class will provide releases to Defendant and its related entities.
12 Ghosh Decl., ¶ 7, Ex. 1, ¶¶ 34, 48. The scope of the release will be disclosed to the Class in
13 the proposed Notice of Settlement. See Ghosh Decl., ¶ 7, Ex. A to Ex. 1. Any member of the
14 Class who does not like the scope of the release (or the Settlement in general) can preserve
15 his or her individual claims by timely submitting a written request to be excluded from the
16 Settlement and Class. The release to be provided by the named Plaintiff will be broader and
17 encompass all claims that he might have against Defendant. Ghosh Decl., ¶ 7, Ex. 1, ¶ 50.
18 The Release applies to all of the Released Parties. Ghosh Decl., ¶ 7, Ex. 1, ¶¶ 34, 37, 48. The
19 Released Class Claims are defined as:

20 all claims and/or causes of Action under any state, local, or federal law or
21 administrative regulation by Participating Class Members against the Released
22 Parties that were or could have been alleged based on the facts pleaded in the Action,
23 including all class claims stated in the Action alleging violations of California Labor
24 Code sections 201, 202, 203, 204, 210, 218, 226(a), 226 et seq, 226.7, 227.3, 510,
25 512(a), 558, 1174(d), 1194, 1194.2, 1197, 1197.1, 1198, 2800 and 2802, and:
26 (a) All claims for unpaid wages, including claims for minimum, regular,
27 overtime, and double-time wages, the alleged failure to pay for all time worked, the
28 alleged failure to pay for all time worked at correct rates;

- 1 (b) All claims for meal period violations, including claims for short, late, missed,
2 interrupted and/or improperly controlled meal periods, the failure to pay premium
3 wages, the failure to pay premium wages at the correct regular rates, and the failure
4 to properly record meal periods;
- 5 (c) All claims for rest break violations, including claims for short, late, missed,
6 interrupted, and/or improperly controlled rest breaks, the failure to pay premium
7 wages, and the failure to pay premium wages at the correct regular rates;
- 8 (d) All claims for the untimely payment of final wages and associated waiting
9 time penalties under sections 201, 202 and 203 of the California Labor Code;
- 10 (e) All claims for the untimely payment of wages, including minimum, regular,
11 overtime, and premium wages to employees in violation of section 204 of the
12 California Labor Code;
- 13 (f) All claims for improper or inaccurate itemized wage statements, including
14 any alleged violations of California Labor Code Section 226(a)(1)-(9) based on the
15 facts and legal theories contained in the Complaint, including the allegations that
16 sales employees were improperly classified resulting in various wage statement
17 discrepancies, and that wage statements lacked the total number of hours worked and
18 corresponding rates, and including claims for injuries suffered therefrom;
- 19 (g) All claims for the alleged failure to keep accurate records in violation of
20 Section 1174(d) of the California Labor Code;
- 21 (h) All claims for any and all unreimbursed expenses;
- 22 (i) All claims for the failure to accrue, record, notify, and pay accrued vacation
23 and paid time off;
- 24 (j) All claims under the California Business & Professions Code (including
25 Section 17200 et seq.) premised on the facts, claim, and causes of Action alleged in
26 the Action; and
27
28

1 (k) All claims for statutory penalties, liquidated damages, punitive damages,
2 interest, attorneys' fees, litigation and other costs, expenses, restitution, and equitable
3 and declaratory relief based on the allegations in the Complaints.
4 Ghosh Decl., ¶ 7, Ex. 1, ¶ 34. The Release will be effective upon the Effective Date (which
5 is the date of the entry of the Final Approval Order and Judgment, if there are no objections)
6 and Defendant's payment of the Gross Settlement Amount and Employer's Withholding
7 Share. Ghosh Decl., ¶ 7, Ex. 1, ¶ 48.

8 A separate release applies to the LWDA and PAGA Employees. Ghosh Decl., ¶ 7,
9 Ex. 1, ¶ 49. This release also applies to the Released Parties (*Id.*) and will also be effective
10 upon entry of the Effective Date and Defendant's payment of the Gross Settlement Amount
11 and Employer's Withholding Share. Ghosh Decl., ¶ 7, Ex. 1, ¶ 49.

12 Within twenty-one (21) days following the Court's order granting preliminary
13 approval of the Settlement, Defendant will provide the Settlement Administrator with the
14 Class Data and at the same time will provide anonymized Class Data to Class Counsel so
15 that they can confirm that the correct amounts are being paid to the correct individuals.
16 Ghosh Decl., ¶ 7, Ex. 1, ¶ 52. This information will remain confidential and will not be
17 disclosed to anyone, except as required to applicable taxing authorities, pursuant to
18 Defendant's express written authorization, by order of the Court, or as otherwise provided
19 for in this Agreement. *Id.*

20 **C. The Gross Settlement and Monetary Terms**

21 Defendant will pay a Gross Settlement Amount of \$3,150,000.00, plus the
22 employer's share of withholding taxes, to the Settlement Administrator. After proposed
23 deductions, as approved by the Court, the Net Settlement Amount of approximately
24 \$1,643,750 will be available to distribute to settlement Class Members. Ghosh Decl., ¶ 21.

25 **D. Allocation and Funding of the Gross Settlement Amount**

26 If the Court grants final approval of the Settlement, no later than twenty (20)
27 calendar days after the Effective Date Defendant shall deliver the Gross Settlement Amount
28 and Employer's Withholding Share to the administrator. Ghosh Decl., ¶ 7, Ex. 1, ¶ 7. Within

ten (10) calendar days of Defendant's deposit of all funds due, the Settlement Administrator will pay settlement payments to participating Settlement Class Members, the penalties awarded to the PAGA Employees, the Court-approved Class Representative Service and Release Award, the Court-approved award for Class Counsel's Attorneys' Fees and Class Counsel's Costs, the LWDA Payment, and the fees of the Settlement Administrator. Ghosh Decl., ¶ 7, Ex. 1, ¶ 57(c).

If the Court grants preliminary approval, at the final approval hearing, in addition to granting final approval to the settlement, the Court will be asked to approve the following deductions from Defendant's settlement payment of \$3,150,000: (a) Class Counsel's attorneys' fees of 35% of the Total Settlement Amount (\$1,102,500); (b) Class Counsel's actual litigation costs and expenses, not to exceed \$25,000; (c) a Service and Release Award to the Representative Plaintiff Romello Sheppard in the amount of \$10,000; (d) an amount not to exceed \$18,750 to the Settlement Administrator for administering the settlement; (e) an allocation of \$350,000 to Plaintiff's PAGA claims (the "PAGA Amount"), seventy-five percent (75%) of which will be paid to the California Labor and Workforce Development Agency (the "LWDA Payment"), and the remaining twenty-five percent (25%) of which will be distributed to the PAGA Employees. Ghosh Decl., ¶ 7, Ex. 1, ¶¶ 42, 58, 59, 60(a), ; Declaration of Jodey Lawrence, ¶ 9.

As compensation for his efforts, the Settlement Agreement provides that a Class Representative Service and Release Award in the amount of \$10,000 will be requested for the representative Plaintiff, Romello Sheppard. Ghosh Decl., ¶ 27. This award is in recognition of the significant time he expended pursuing this action and assisting efforts with the case, and in recognition of the expanded general release that he is required to provide, as part of the Settlement. *Id.* As an additional requirement to receiving the proposed Class Representative Service and Release Awards, Plaintiff is required to sign a broad general release which includes a waiver of Section 1542 of the California Civil Code. Ghosh Decl., ¶ 7, Ex. 1, ¶ 50.

1 Defendant's share of Employer's Withholding Taxes will be paid by the Defendant
2 in addition to the Gross Settlement Amount. Ghosh Decl., ¶ 7, Ex. 1, ¶ 43. No amount of the
3 Gross Settlement Amount will revert to Defendant. Ghosh Decl., ¶ 7, Ex. 1, ¶ 56(b).

4 The Net Settlement Amount of approximately \$1,102,500 will be distributed to Class
5 Members based on the number of qualifying Workweeks they worked for Defendant. Ghosh
6 Decl., ¶ 7, Ex. 1, ¶ 57. The formula to be used is specified in detail in both the Settlement
7 Agreement attached to the Declaration of Joanna Ghosh and the Notice of Settlement which
8 will be mailed to all of the Class Members. Ghosh Decl., ¶ 7, Ex. 1, ¶ 57, and Ex. A to Ex. 1.
9 Based on a Class size of approximately 2,427 (Ghosh Decl., ¶ 13), the Settlement Class
10 Members will get, on average, about \$677.27. Settlement payments will be paid to the Class
11 Members within 10 days of Defendant's deposit of the Gross Settlement Amount with the
12 Settlement Administrator. Ghosh Decl., ¶ 7, Ex. 1, ¶ 57(c). Payment to each Settlement
13 Class Member will be allocated twenty percent (20%) to wages, to be reported on a W-2
14 form, and eighty percent (80%) to penalties, interest and non-wage damages. Ghosh Decl., ¶
15 7, Ex. 1, ¶ 61(a). The portion allocated to penalties and interest will be reported on an IRS
16 Form 1099. *Id.*

17 **E. Notice Administration**

18 The settlement will be administered by Phoenix Settlement Administrators
19 ("Phoenix" or "Settlement Administrator"). Ghosh Decl., ¶ 7, Ex. 1, ¶ 41; Decl. of Jodey
20 Lawrence, ¶ 9, and Ex. B thereto. Class counsel has no actual or potential conflicts of
21 interest with the third party administrator, Phoenix Settlement Administrators. Gundzik
22 Decl., ¶ 16.

23 If the Court grants preliminary approval, within twenty-one (21) calendar days
24 Defendant will provide the Settlement Administrator with the Class Data. Ghosh Decl., ¶ 7,
25 Ex. 1, ¶ 52. Within ten days thereafter, the Settlement Administrator will update the Class
26 list, check all addresses against the National Change of Address, and send each Class
27 Member via First-Class United States mail English and Spanish versions of the Notice of
28 Settlement. Ghosh Decl., ¶ 7, Ex. 1, ¶ 52(a). No submission of a claim form is necessary,

1 and all Class Members are eligible to receive a settlement payment except those who follow
2 the procedure for requesting an exclusion. Ghosh Decl., ¶ 7, Ex. A to Ex.1.

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

14 Class Member settlement checks will be valid for 180 days from issuance. The funds
15 represented by all uncashed settlement checks will be transmitted by the Settlement
16 Administrator to the California State Controller’s Office Unclaimed Property Division in the
17 name of the Participating Class Member and/or PAGA Member who did not negotiate his or
18 her Individual Settlement Payment or Individual PAGA Payment check. Ghosh Decl., ¶ 7,
19 Ex. 1, ¶ 63(a).

20 For any Notice of Settlement that is returned as undeliverable, the Settlement
21 Administrator will perform a utility database search or other skip trace. Ghosh Decl., ¶ 7,
22 Ex. 1, ¶ 52(b). The returned Notices of Settlement will be re-mailed to the new addresses
23 obtained for such Class Members. *Id.* Such searching and re-mailing will be completed
24 within three (3) business days of the date that Notices of Settlement were originally returned
25 as undeliverable. *Id.*

26 The Settlement Administrator will establish a website for this settlement and will
27 post the settlement agreement and other relevant documents. Lawrence Decl., ¶ 11.
28 Additionally, in their individual Notices of Settlement, Class Members will be provided with

the phone number and email address for the Settlement Administrator, as well as the website specific to the Settlement. Ghosh, Decl., ¶ 7, 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. Lawrence Decl., ¶ 11. Notice of the Final Judgment and Final Approval Order will also be posted on the Settlement Administrator's website. Lawrence Decl., ¶ 11.

F. 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 sixty (60) days after the Notice of Settlement is mailed by the Settlement Administrator. Ghosh Decl., ¶ 7, Ex. 1, ¶ 39; Ex. A to Ex. 1, ¶ 13. 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 sixty day period. Ghosh Decl., ¶ 7, Ex. 1 at ¶ 39; Ex. A to Ex. 1, ¶ 15. For Notices of Settlement returned as being undeliverable that are re-mailed to a different address, the Response Deadline will be extended twenty (20) calendar days from the original response deadline. Ghosh Decl., ¶ 7, Ex. 1, ¶ 52(b).

G. Proposed Schedule of Events

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

Event	Date
Class Counsel shall provide Defendant's Counsel a draft Motion for Preliminary Approval for Defendant's review and input.	5 calendar days in advance of filing
Defendant provides the Class Information to the Administrator	21 calendar days after the Court grants Preliminary Approval
Settlement Administrator to mail Notice of Class Action Settlement	10 calendar days after receipt of the Class Information
Settlement Administrator to re-mail Notice of Class Action Settlement	3 business days after receipt of notice that the Notice of Class Action Settlement was undeliverable.
Response Deadline to the Notice of Class Action Settlement	60 calendar days after mailing

1	New Response Deadline to the Notice of Class Action Settlement for those receiving re-mailed Notices of the Class Action Settlement	20 calendar days from the date of remailing or original Response Deadline
2		
3	Settlement Administrator to provide counsel for the Parties a complete list of all Class Members who timely submitted a Request for Exclusion.	7 calendar days after the Response Deadline
4		
5	Defendant has the option to nullify the Settlement.	10 calendar days after notification by the Settlement Administrator that more than 10% of the Class Members submitted valid Requests for Exclusion.
6		
7	Class Counsel shall provide Defendant's Counsel a draft Motion for Final Approval for Defendant's review and input.	3 business days in advance of filing.
8		
9	Settlement Administrator shall send to Defendant's Counsel the electronic wiring instructions for the Settlement Amount.	7 calendar days after the Effective Date.
10		
11	Defendant shall fund the QSF.	20 calendar days after the Effective Date.
12		
13	Settlement Administrator shall mail Individual Settlement Payments	10 calendar days after Defendant funds the QSF.
14		
15	Settlement Administrator shall mail the LWDA PAGA Payment to the LWDA.	10 calendar days after Defendant funds the QSF.
16		
17	Settlement Administrator shall mail Individual PAGA Payments	10 calendar days after Defendant funds the QSF.
18		
19	Settlement Administrator shall mail the Class Representative Enhancement Awards	10 calendar days after Defendant funds the QSF.
20		
21	Settlement Administrator shall mail the Class Counsel Award	10 calendar days after Defendant funds the QSF.
22		
23	Settlement Administrator shall be paid the Settlement Administrator Costs.	10 calendar days after the Defendant funds the QSF
24		
25	Settlement Administrator shall mail reminder postcards to the Participating Class Members and PAGA Members whose settlement checks were not returned or cashed.	100 calendar days <u>before</u> the Individual Settlement Payments and Individual PAGA Payments expire.
26		
27	Checks for all payments shall be void and the Settlement Administrator will begin the process of depositing any remaining funds with the State of California Unclaimed Property Fund	180 calendar days after the mailing of the Individual Settlement Payments and Individual PAGA Payments
28		

1 **IV. ARGUMENT**

2 **A. The Class Should be Certified for Settlement Purposes.**

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

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

17 “An ascertainable class exists when, based upon the class definition, it is possible to
18 give adequate notice to class members or to determine after the litigation has concluded who
19 is barred from re-litigating. (Citation omitted.) The goal in defining the class is to use
20 terminology that will convey sufficient meaning to enable persons hearing it to determine
21 whether they are members of the class plaintiff wishes to represent.” *Marler v. E.M.*
22 *Johansing, LLC*, 199 Cal. App. 4th 1450, 1459-1460 (2011). Thus, a class is generally
23 considered ascertainable when (i) under the class definition the members are clearly
24 identifiable and (ii) the members can be located and notified through a reasonable
25 expenditure of time and money. *See Reyes v. Board of Supervisors*, 196 Cal. App. 3d 1263,
26 1274-1275 (1987). Here, the Class definition is clear. The Class is defined as including “all
27 current and former hourly-paid or non-exempt employees who worked for Defendant within
28

1 the State of California at any time during the Class Period,” which is the period from
2 October 27, 2018, through April 19, 2024. Ghosh Decl., ¶ 7, Ex. 1, ¶¶ 5, 6.

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

5 Plaintiff contends that the community of interest requirement is met with respect to
6 the Class and the claims asserted in the pleading. Common issues regarding Defendant’s
7 treatment of the Class Members as to meal and rest breaks, unpaid time, unpaid overtime
8 and reimbursement of expenses, the sufficiency of wage statements issued to Class Members
9 and the amounts paid to separated employees at time of separation. Further, the claims of the
10 named Plaintiff are typical of the claims of all Class Members, and they can and do
11 adequately represent the Class. Ghosh Decl., ¶ 23; Declaration of Romello Sheppard
12 (“Sheppard Decl.”), ¶¶ 3-5.

13 **3. Common Issues of Law and Fact Predominate over any**
14 **Individual Issues.**

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

21 Here, Plaintiff maintains that common issues exist with respect to Defendant’s
22 policies and practices with respect to meal and rest breaks, payment for overtime, payment
23 for time all time worked, reimbursement of expenses and payment for amounts due at time
24 of separation. Ghosh Decl., ¶ 23. Plaintiff maintains that the only individualized differences
25 between Class Members relate to the amount of compensation each Class Member would be
26 entitled to receive. However, it is well-settled that mere differences as to the amount of
27 damages among Class Members are not sufficient to prevent certification. *Id.*; *Acree v.*
28 *General Motors Acceptance Corp.*, 92 Cal. App. 4th 385, 387 (2001) (“A class action may

1 be maintained even if each class member must at some point individually show his or her
2 eligibility for recovery or the amount of his or her damages...”)

3
4 **4. Plaintiff’s Claims are typical of the Claims of the Class.**

5 “To maintain a class action, the representative plaintiff must adequately represent
6 and protect the interests of other members of the class. (Citation omitted.) Therefore, a
7 class representative plaintiff must be situated similarly to the other class members united by
8 a common interest.” *CashCall, Inc. v. Superior Court*, 159 Cal. App. 4th 273, 284 (2008).
9 Thus, the typicality requirement focuses on whether the proposed representative’s claims are
10 typical of the claims of the rest of the class. *Id.*; see *Classen v. Weller*, 145 Cal. App. 3d 27,
11 47 (1983).

12 Here, Plaintiff is seeking relief for the same wage and hour violations as are the rest
13 of the Class Members. He seeks to impose liability on Defendant based on the same claims
14 and theories, as well as the same alleged injuries, which apply to the Class as a whole. Thus,
15 the claims of the Representative Plaintiff are typical of the claims of the Class.

16 **5. The Representative Plaintiff and Class Counsel Will Adequately**
17 **Protect the Interests of the Class.**

18 “Adequacy of representation depends on whether the plaintiff’s attorney is qualified to
19 conduct the proposed litigation and the plaintiff’s interests are not antagonistic to the
20 interests of the class.” *McGhee v. Crocker-Citizens Nat. Bank*, 60 Cal. App. 3d 442, 450
21 (1976). Here, the Representative Plaintiff retained attorneys with extensive experience in
22 prosecuting wage and hour class actions. Ghosh Decl., ¶¶ 2-6.

23 Nor is there any conflict between the interests of the Representative Plaintiff and the
24 members of the Class. The Representative Plaintiff and the Class are claiming the same
25 injuries based upon the same alleged wage and hour policies existing while they were
26 employed by Defendant. Ghosh Decl., ¶ 23; Sheppard Decl., ¶¶ 3-5.

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1 **B. Preliminary Approval is Appropriate Because the Settlement is Fair and**
2 **Reasonable.**

3 A trial court should approve a class action settlement agreement if it determines that
4 the agreement is fair, adequate, and reasonable. *Dunk v. Ford Motor Co.*, 48 Cal. App. 4th
5 1794, 1801 (1996). In making this decision, a court “should consider relevant factors, which
6 may include, but are not limited to the strength of the plaintiffs' case, the risk, expense,
7 complexity and duration of further litigation as a class action, the amount offered in
8 settlement, the extent of discovery completed and the stage of the proceedings, the
9 experience and views of counsel, the presence of a governmental participant, and the
10 reaction of class members to the proposed settlement.” *In re Microsoft I-V Cases*, 135 Cal.
11 App. 4th 706, 723 (2006).

12 “At the same time, the trial court should give due regard to what is otherwise a
13 private consensual agreement between the parties.” *Id.* Thus, the Court “limits its inquiry to
14 the extent necessary to reach a reasoned judgment that the agreement is not the product of
15 fraud or overreaching by, or collusion between, the negotiating parties, and that the
16 settlement, taken as a whole, is fair, reasonable and adequate to all concerned.” *In re*
17 *Microsoft I-V Cases*, 135 Cal. App. 4th at 723, citing *Dunk v. Ford Motor Co.*, 48 Cal. App.
18 4th at 1801; also citing *Officers for Justice v. Civil Service Com'n, etc.*, 688 F.2d 615, 625
19 (9th Cir. 1982). Whether the settlement was reached through arms-length negotiations is
20 also a strong factor which weighs in favor of presuming that the settlement is fair and
21 reasonable. *Dunk v. Ford Motor Co.*, 48 Cal. App. 4th at 1801.

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

24 **The Strength of Plaintiff's Case.** As set forth in the Section II above and the
25 Declaration of Joanna Ghosh, the parties have vigorously advocated the parties' respective
26 positions in this matter, and Defendant has consistently disputed that it violated California's
27 wage and hour laws. In fact, Defendant raised a colorable legal or factual defense to each
28 claim Plaintiff has alleged. Ghosh Decl., ¶¶ 15-19.

1 **The Risk, Expense, Complexity and Likely Duration of Further Litigation.** If the
2 settlement is not approved, the Representative Plaintiff would need to move forward with
3 discovery and then move for class certification. Defendant will oppose certification on the
4 grounds that numerous individualized fact issues allegedly exist. They will argue and could
5 succeed in claiming that these individualized issues overwhelm common issues and will also
6 argue that the action is not manageable on a classwide basis. The result could be that the
7 case would not be certifiable as a class action. Ghosh Decl., ¶ 9.

8 **The Risk of Maintaining Class Action Status Through Trial.** If the settlement is
9 not approved, and the Representative Plaintiff is successful on his motion for certification of
10 the class, the Class would still be faced with significant risks in continuing with the
11 litigation. Defendant could interpose a successful defense which could either cause the jury
12 to reject Plaintiff's claims or award the Class only a small amount of the unpaid wages and
13 other amounts due to them. And, even if the Class ultimately prevailed, most of the Class
14 Members would have to wait years or more before they received any payment from the
15 lawsuit. Ghosh Decl., ¶ 9. Further, the Court would still retain authority to de-certify the
16 case in the event the trial showed that common issues did not predominate. *See* Cal. Rule of
17 Court 3.764. *Id.*

18 **The Amount Offered in Settlement.** In the experience of Class counsel, a gross
19 settlement of \$3,150,000 for a class of approximately 2,427, with the claims described
20 above, with \$350,000 allocated to Plaintiff's PAGA claim, is within the ballpark of a fair,
21 reasonable and adequate settlement. Gundzik Decl., ¶ 28. Taking into account the serious
22 risks associated with proceeding— that the case might not be certified as a class action, that
23 Plaintiff might not succeed on the merits at trial, if Plaintiff succeeded at trial, that the case
24 is reversed on appeal, or if Defendant does not have sufficient assets to pay a judgment at a
25 later date – it becomes apparent that a settlement in this range is fair to the Class.

26 **The Extent of Investigation and Discovery Completed and the Stage of the**
27 **Proceedings.** As set forth in Section II.A above and the Declaration of Joanna Ghosh, the
28

1 parties have engaged in extensive informal discovery and factual investigation. Ghosh Decl.,
2 ¶¶ 7-11.

3 **The Experience and Views of Counsel.** As set forth in the declarations of Joanna
4 Ghosh and Aaron Gundzik, Class Counsel has significant experience in wage and hour class
5 actions. Ghosh Decl., ¶¶ 2-6; Gundzik Decl., ¶¶ 3-5. The attorneys at LFJ who were lead
6 counsel on this matter have each practiced law and been members of the California State Bar
7 for nearly 20 years. Ghosh Decl., ¶¶ 2-5. Aaron Gundzik and Rebecca Gundzik have
8 practiced law and been members of the California State Bar collectively for over 60 years.
9 Gundzik Decl., ¶¶ 3-4. Based upon their vast experience in the area, when they arrived at a
10 settlement with Defendant, Class Counsel had sufficient information to assess the strengths
11 and weaknesses of the claims against Defendant, and the benefits of the settlement in light
12 of the significant risks of continuing with the litigation.

13 **Whether the Settlement Was Reached Through Arm’s-Length Bargaining or**
14 **was a Product of Fraud or Overreaching.** It is undisputed that the parties negotiated the
15 settlement at arm’s length during a mediation before a well-respected neutral third-party
16 mediator who has significant experience settling wage and hour class action lawsuits. Ghosh
17 Decl., ¶ 9. The case settled after a full day of negotiation, was negotiated at arms’ length and
18 was in no sense collusive. *Id.*

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

21 “The principal purpose of notice to the class is the protection of the integrity of the
22 class action process, one of the functions of which is to prevent burdening the courts with
23 multiple claims where one will do.” *Cho v. Seagate Technology Holdings, Inc.*, 177 Cal.
24 App. 4th 734, 745-746 (2009). Thus, an appropriate notice is one which has a reasonable
25 chance of reaching a substantial percentage of the class members. *Cartt v. Superior Court*,
26 50 Cal. App. 3d 960, 974 (1975).

27 The proposed Notice of Settlement addresses these concerns. It identifies the
28 Representative Plaintiff and Defendant, provides a description of the lawsuit, the settlement

1 amounts, the proposed plan of allocation and the attorneys' fees that class counsel may
2 receive. The proposed Notice of Settlement provides information as to how to opt out of the
3 Class and be excluded, how to object to the settlement, as well as the date of the final
4 approval hearing. It also describes the Settlement Agreement with sufficient detail to allow
5 Class Members to make an informed decision as to whether to accept or object to it. The
6 proposed Notice of Settlement further provides that it will bind all Class Members who do
7 not request exclusion. Ghosh Decl., ¶ 7, Ex. A. to Ex. 1 thereto. As such, the proposed
8 Notice of Settlement describes the settlement with enough specificity to allow Class
9 Members to make an informed decision as to whether to participate in it. See California
10 Rule of Court 3.766(d).

11 Further, the manner of giving notice is to be done in such a way as to maximize its
12 reach. The Notice of Settlement will be sent to members of the Class by First Class regular
13 U.S. mail by the Settlement Administrator. Ghosh Decl., ¶ 7, Ex. 1, ¶ 52. Prior to mailing,
14 the Settlement Administrator shall check all addresses on the Database Report against the
15 National Change of Address (NCOA) database. *Id.* The Settlement Administrator will mail
16 the Notice of Settlement to the most current mailing address as identified by reference to the
17 Database Report and/or the NCOA database. *Id.*

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

27 Delivering the Notice by mail complies with California Rules of Court, Rule
28 3.766(e) and the purpose of the Notice. An appropriate notice is one which has a reasonable

1 chance of reaching a substantial percentage of the class members. *Cartt v. Superior Court*,
2 50 Cal. App. 3d 960, 974 (1975). Because this is an opt-out settlement and Class Members
3 who do nothing will still receive a settlement payment, the notice provisions agreed to by
4 the parties will adequately serve the stakes of the individual Class Members in receiving the
5 relief provided by the settlement.

6 **V. CONCLUSION**

7 For the foregoing reasons, Plaintiff, on behalf of himself and the Class, respectfully
8 requests that the Court grant preliminary approval of the settlement and set a final approval
9 hearing to take place within approximately 140 days. 22

10 DATED: August 20, 2024

GUNDZIK GUNDZIK HEEGER LLP

11
12 By: 

13 Rebecca G. Gundzik
14 Attorneys for Plaintiff Romello Sheppard,
15 individually and on behalf of all others
16 similarly situated
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