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SUPERIOR COURT OF CALIFORNIA
COUNTY OF SACRAMENTO

1 Scott Edward Cole, Esq. (S.B. #160744)
2 Laura Grace Van Note, Esq. (S.B. #310160)
3 Eric S. Fackrell, Esq. (S.B. # 298062)
4 **SCOTT COLE & ASSOCIATES, APC**
5 555 12th Street, Suite 1725
6 Oakland, California 94607
7 Telephone: (510) 891-9800
8 Facsimile: (510) 891-7030
9 Email: scole@scalaw.com
10 Email: lvannote@scalaw.com
11 Email: efackrell@scalaw.com
12 Web: www.scalaw.com

13 Attorneys for Representative Plaintiffs,
14 Aggrieved Employees and the Plaintiff Class

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IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF SACRAMENTO

13 **MAGED HAKEEM, SHERIF HAKEEM**
14 **and BARBARA SANCHEZ, individually,**
15 **and on behalf of all others similarly**
16 **situated,**

17 **Plaintiffs,**

18 **vs.**

19 **UNIVERSAL PROTECTION SERVICE,**
20 **LP and DOES 1 through 100, inclusive,**

21 **Defendants.**

Case No. 34-2019-00270901

CLASS ACTION

PLAINTIFFS' NOTICE OF MOTION AND
MOTION FOR PRELIMINARY APPROVAL
OF CLASS ACTION SETTLEMENT;
MEMORANDUM OF POINTS AND
AUTHORITIES

Date: February 21, 2020

Time: 2:00 p.m.

Dept.: 53

NOTICE OF MOTION

24 **TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD, NOTICE IS**
25 **HEREBY GIVEN** that, at 2:00 p.m. on February 21, 2020, or as soon thereafter as the matter may
26 be heard in Department 53 of the above-entitled Court, located at 813 6th Street, Sacramento,
27 California, 95814, Representative Plaintiffs Maged Hakeem, Sherif Hakeem and Barbara Sanchez,
28

SCOTT COLE & ASSOCIATES, APC
ATTORNEYS AT LAW
555 12th STREET, SUITE 1725
OAKLAND, CA 94607
TEL: (510) 891-9800

BY FAX

1 on behalf of the Plaintiff Class, will and hereby do apply to this Court for an order: (1) granting
2 preliminary approval of the parties' class action settlement agreement, (2) granting conditional
3 certification of the settlement class, (3) appointing class counsel, (4) appointing class
4 representatives, (5) appointing a settlement claims administrator, (6) approving the class notice,
5 and (7) setting a hearing date for final settlement approval.

6 This motion is based upon the accompanying memorandum of points and authorities, the
7 declaration of Scott Edward Cole, Esq. and exhibits thereto, and such other oral argument and
8 documentary evidence as may be presented to the Court at the hearing of this motion.

9
10 Dated: January 23, 2020

SCOTT COLE & ASSOCIATES, APC

11
12 By:

13 Scott Edward Cole, Esq
14 Attorneys for Representative Plaintiffs,
15 Aggrieved Employees and the Plaintiff Class
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SCOTT COLE & ASSOCIATES, APC
ATTORNEYS AT LAW
555 12TH STREET, SUITE 1725
OAKLAND, CA 94607
TEL: (510) 891-9800

SCOTT COLE & ASSOCIATES, APC
ATTORNEYS AT LAW
555 12TH STREET, SUITE 1725
OAKLAND, CA 94607
TEL: (510) 891-9800

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SCOTT COLE & ASSOCIATES, APC
ATTORNEYS AT LAW
555 12TH STREET, SUITE 1725
OAKLAND, CA 94607
TEL: (510) 891-9800

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SCOTT COLE & ASSOCIATES, APC
ATTORNEYS AT LAW
555 12TH STREET, SUITE 1725
OAKLAND, CA 94607
TEL: (510) 891-3800

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SCOTT COLE & ASSOCIATES, APC
ATTORNEYS AT LAW
555 12TH STREET, SUITE 1745
OAKLAND, CA 94607
TEL: (510) 891-9800

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SCOTT COLE & ASSOCIATES, APC
ATTORNEYS AT LAW
555 12TH STREET, SUITE 1725
OAKLAND, CA 94607
TEL: (510) 891-9800

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SCOTT COLE & ASSOCIATES, APC
ATTORNEYS AT LAW
555 12TH STREET, SUITE 1725
OAKLAND, CA 94607
TEL: (510) 891-9800

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SCOTT COLE & ASSOCIATES, APC
ATTORNEYS AT LAW
555 12TH STREET, SUITE 1725
OAKLAND, CA 94607
TEL: (510) 891-9800

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SCOTT COLE & ASSOCIATES, APC
ATTORNEYS AT LAW
555 12TH STREET, SUITE 1725
OAKLAND, CA 94607
TEL: (510) 891-9800

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

This motion seeks preliminary court approval of a \$10 million settlement fund obtained by plaintiffs Sherif Hakeem, Maged Hakeem and Barbara Sanchez (hereinafter “Representative Plaintiffs”) against Universal Protective Services (“Universal” or “Defendant”). While this particular lawsuit was only recently filed in Sacramento County Superior Court, the dispute which led to this extraordinary settlement result traces back to 2017 and, indeed, to years before that—considering class counsel’s long history undertaking litigation against Universal and its various predecessors-in-interest. That history, as detailed below, coupled with plaintiffs’ counsel’s extensive formal and informal discovery efforts, including a social media and surveying campaign, and given its realistic litigation and damages risk analysis, has generated an impressive result which now merits preliminary court approval.¹

II. LITIGATION HISTORY

A. HAKEEM I

On December 8, 2017, Representative Plaintiff Sherif Hakeem filed a class action Complaint in Alameda County Superior Court (“*Hakeem I*”). In that action, plaintiff Hakeem sought individual and class-wide² damages and penalties for (1) unlawful failure to pay wages, (2) failure to provide meal and rest periods, (3) failure to provide accurate itemized wage statements, (4) failure to pay wages upon termination, (5) failure to reimburse for business expenses, and (6) violation of the Unfair Competition Law (Bus. & Prof. Code § 17200). At that time, plaintiff Hakeem was still working for defendant Universal (and, dating back to August 2007, for its

¹ A copy of the fully executed Class Action Settlement Agreement and Release of Claims (“Agreement”) is attached to the accompanying Declaration of Scott Edward Cole, Esq. (“Cole Decl.”) as Exhibit “A.” Unless otherwise noted, all exhibits cited herein are attached to the Cole Decl.

² The class is defined as “all current and former non-exempt employees who worked at any time for Defendant in California from November 22, 2017 to February 1, 2020, excluding any such individuals who opt out of this Settlement.”

SCOTT COLE & ASSOCIATES, APC
ATTORNEYS AT LAW
555 12TH STREET, SUITE 1725
OAKLAND, CA 94607
TEL: (510) 891-9800

1 predecessors, ABM Industries, Inc./ACSS) as a Security Professional (a.k.a. Security Guard) at
2 facilities in Glendale, Hollywood, West Hollywood and Los Angeles, California.³

3 On his own behalf and on behalf of all Universal non-exempt security personnel, plaintiff
4 Sherif Hakeem alleged in *Hakeem I* that he was required to remain “on call” during the totality of
5 his work shifts, leaving him unable to enjoy meal and/or rest breaks. Specifically, he alleged that
6 Defendant’s operational pattern of understaffing, promising its clients that a guard would be
7 available to those clients at all times (i.e., during each respective guard’s shift), and/or failing to
8 provide “rovers” or other supervisory personnel to fill in at those times guards wished to enjoy
9 meal and rest breaks, ran afoul of Wage Order No. 4 and, *inter alia*, Labor Code §§ 226.7 and 512.

10 Even prior to filing the action, plaintiff’s attorneys at Scott Cole & Associates (“SCA”) were armed with an extensive factual understanding of this defendant’s operations and the job
11 duties of putative class members. Indeed, for 12 years prior thereto, SCA had co-prosecuted
12 *Augustus v. ABM Security Services, Inc.*, 2 Cal.5th 257 (2016)⁴ and, altogether, has litigated
13 dozens of security guard class actions over the past two decades⁵—including ones against a
14 number of Universal’s predecessors-in-interest.⁶ Falling back on this experience, SCA launched a
15 pre-filing investigation into Mr. Hakeem’s claims—due diligence upon which SCA concluded that
16 his allegations against Universal were likely shared by remaining members of the putative class.
17

18 After filing the action, the parties engaged in traditional discovery efforts, including the
19 taking of “person most knowledgeable” deposition testimony, testimony of plaintiff Hakeem, the
20 production of documents detailing Defendant’s business operations, common policies and
21 procedures, wage rates and payroll information for over 12 million workdays by putative class
22 members. Adding to that, SCA examined litigation records and settlement documents generated
23 in prior litigation against Universal, including two wage and hour class actions resolved prior to
24

25 ³ Altogether, Sherif Hakeem worked for Universal and/or one of its predecessors from August 2007 to July 2019.

26 ⁴ The *Augustus* litigation culminated in a worker-friendly California Supreme Court opinion setting the standard for security guards’ entitlement to rest breaks.

27 ⁵ Having litigated against dozens of Universal’s competitors and/or predecessors—likely more than any other California firm—SCA is in an excellent position to evaluate the fairness and adequacy of the settlement achieved here.

28 ⁶ Universal acquired ABM security contracts in 2015. *See, e.g.*, <https://www.prnewswire.com/news-releases/universal-protection-service-acquires-abm-security-business-300166264.html>.

SCOTT COLE & ASSOCIATES, APC
ATTORNEYS AT LAW
555 12TH STREET, SUITE 1725
OAKLAND, CA 94607
TEL: (510) 891-9800

1 the commencement of *Hakeem I*.⁷ To be sure, the information available to SCA, coupled with an
2 additional pre-mediation informal⁸ exchange of information between it and Defendant's counsel
3 was voluminous and sufficiently comprehensive to place the parties' attorneys, each of whom are
4 extremely experienced class action litigators, in a position to explore settlement.

5 SCA also engaged the Service Employees International Union ("SEIU") in discussions
6 regarding Universal's operations, including the challenges and details of the union's negotiations
7 therewith. Finally, throughout the course of the *Hakeem I* litigation and, increasingly, as mediation
8 approached, SCA designed an outreach campaign to locate and interview putative class members,
9 a campaign which included the launching of Facebook and Google pay-per click-ads, the geo-
10 targeting of numerous client sites, and the hiring and directing of a canvasser to visit numerous
11 client sites (to secure responses to a survey SCA designed). These efforts, and the extensive
12 number of interviews with putative class members it produced, allowed SCA to obtain survey
13 responses and/or declarations which were ultimately invaluable in determining a fair settlement.

14 In final preparation for mediation, SCA requested (and Defendant produced) information
15 tailored to developing a damages and penalties analysis for each of the primary claims. This
16 analysis was provided to the mediator and Defendant's counsel, along with SCA's mediation brief,
17 and revealed Universal's financial exposure, should the matter proceed to trial.

18 On September 30, 2019, the parties mediated the matter before experienced neutral,
19 Stephen J. Serratore, the same mediator who had helped to resolve the *Janata* litigation, and who
20 was selected specifically for his substantial knowledge of Universal's operations. At mediation,
21 negotiations were intense and arm's length and, while they achieved a resolution in principal of
22 the matter, the parties continued to negotiate various settlement terms over the next four months.
23 This process culminated in the settlement agreement accompanying this motion.

24
25 ⁷ *Janata v. Allied Barton Security Services, LLC* (San Diego Superior Court Case No. 37-2013-00030693-CU-OE-CTL; *Stone v. Universal Protection Services, LP*, (San Diego Superior Court/American Arbitration Association, Case No. 01-15-0002-7497)

26 ⁸ In many class actions, informally-exchanged discovery protects a defendant's proprietary and/or financial
27 information and allows a richer and faster exchange of data calculated to determine the settlement value—often putting
28 the parties in a far better settlement position, so long as plaintiff's counsel knows what to ask for. Indeed, although formal discovery was conducted in *Hakeem I*, it is "not a necessary ticket to the bargaining table." *Linney v. Cellular Alaska P'ship*, 151 F.3d 1234, 1239 (9th Cir. 1998).

SCOTT COLE & ASSOCIATES, APC
ATTORNEYS AT LAW
555 12TH STREET, SUITE 1725
OAKLAND, CA 94607
TEL: (510) 891-3800

1 **B. HAKEEM II**

2 Largely as a result of SCA's outreach campaign to members of the putative class, two
3 additional security professionals (Maged Hakeem⁹ and Barbara Sanchez¹⁰) sought and, post-
4 mediation, secured representation by SCA. While, as discussed above, a settlement had been
5 achieved in principle by that juncture, questions remained as to the "typicality" of original plaintiff
6 Sherif Hakeem regarding his claims under Labor Code § 2802. As such, and anticipating this
7 request for conditional class certification, the parties thereupon agreed to allow the joinder of
8 Maged Hakeem and Barbara Sanchez (both of whom allege viable § 2802 claims). The instant
9 matter (hereinafter referred to as "*Hakeem II*"), filed originally on behalf of plaintiff Maged
10 Hakeem only, was thus amended on January 13, 2020 to add Barbara Sanchez and Sherif Hakeem.
11 At that point, concluding that a more expeditious hearing schedule was likely available in
12 Sacramento County,¹¹ the parties agreed to a Stay of *Hakeem I*. The Alameda County judge, at a
13 CMC on January 14, 2020, entered an Order staying *Hakeem I*, such that the parties could pursue
14 approval of the *Hakeem II* settlement. Finally, in order to support the present settlement, including
15 justification of its terms as within the "range of reasonableness"¹² for settlements of its kind, the
16 parties agreed the discovery exchanged in *Hakeem I* may be utilized here.

17
18 **III. THE SETTLEMENT**

19 **A. THE CLASS**

20 The proposed settlement encompasses a class defined as "all current and former non-
21 exempt employees who worked at any time for Defendant in California from November 22, 2017
22 to February 1, 2020, excluding any such individuals who opt out of this Settlement."
23

24
25 ⁹ Maged Hakeem worked for Universal starting in April 2017, left its employ in July 2019 and worked at all times
therefor as a security professional.

26 ¹⁰ Ms. Sanchez worked for Universal from June 2018 to the present at several locations in the San Francisco area.

27 ¹¹ Oakland-based SCA (which, by virtue of litigating primarily in Alameda County, is keenly aware of the normal
hearing tempo for class settlement approvals there) believed that a far more expeditious settlement approval process
would be achievable by virtue of resolving this dispute through the *Hakeem II* vehicle. SCA believes the benefits of
settlement should not be further diluted by the unnecessary passage of time.

28 ¹² *Clark v. Am. Resid. Servs., LLC*, 175 Cal.App.4th 785, 801 (2009).

SCOTT COLE & ASSOCIATES, APC
ATTORNEYS AT LAW
555 12TH STREET, SUITE 1725
OAKLAND, CA 94607
TEL: (510) 891-9800

1 **B. SETTLEMENT TERMS**

2 Under the proposed non-reversionary¹³ settlement, the claims of all class members shall be
3 settled for \$10 million dollars (\$10,000,000), which is inclusive of all individual settlement awards
4 to class members who do not timely opt out ("Settlement Class Members"), the class representative
5 service awards, the PAGA allocation, SCA's fees and costs, and reimbursement of the claims
6 administrator costs. Agreement ¶¶ 12, 34. The settlement amount shall be allocated as follows:

7 Individual Settlement Awards. The Net Settlement Fund shall be distributed in its entirety
8 to Settlement Class Members. Each Settlement Class Member shall receive his/her respective share
9 thereof, based on his/her number of compensable work weeks worked during the Settlement
10 Period, divided by the total number of compensable work weeks worked by all Settlement Class
11 Members during that period.¹⁴ Defendant shall tender payment of the Gross Settlement Fund to
12 the claims administrator by the Effective Date (i.e., at expiration of the time for appeal of the
13 Court's order granting final approval of the settlement, or the date of final resolution of any timely
14 appeal therefrom).¹⁵ Settlement Class Members' checks will be distributed by the claims
15 administrator no later than 10 business days after the Effective Date.

16 Settlement checks will remain valid for 180 days after the date of issuance. If a Settlement
17 Class Member does not cash his/her settlement check within 180 days, the uncashed funds shall
18 be transmitted in accordance with CCP § 384(b) to Legal Aid at Work in San Francisco, CA.¹⁶

19 Class Representatives' Service Awards. Subject to Court approval, plaintiff Sherif Hakeem
20 shall be paid a service award not to exceed \$5,000 and plaintiffs Maged Hakeem and Barbara
21 Sanchez shall be paid service awards not to exceed \$2,500 apiece for their time, risk and effort in
22 bringing the lawsuit, representing the class, and releasing their claims. Agreement ¶¶ 34, 37. These
23

24 ¹³ This amount is non-reversionary, such that no amount will revert back to the defendant, and the employer's share
25 of payroll taxes shall be funded independently by the company so they do not deplete the settlement proceeds.

26 ¹⁴ Exhibit "A," Agreement ¶ 40

27 ¹⁵ Exhibit "A," Agreement ¶ 34

28 ¹⁶ Exhibit "A," Agreement ¶ 66. CCP § 384(b) requires that cy pres awards go to organizations that "will benefit
the class or similarly situated persons or that promote the law consistent with the objectives and purposes of the
underlying cause of action[.]" Between the claims here and Legal Aid at Work there is a "driving nexus," given that
this organization represents "low-wage workers who are victims of wage violations." *Dennis v. Kellogg Co.*, 697 F.3d
858, 865 (9th Cir. 2012); <https://legalaidatwork.org/cy-pres/>.

SCOTT COLE & ASSOCIATES, APC
ATTORNEYS AT LAW
555 12TH STREET, SUITE 1725
OAKLAND, CA 94607
TEL: (510) 891-9800

1 individuals initiated their actions and devoted considerable time thereto. This included frequent
2 emails and telephone calls with counsel, production of documents and communications
3 surrounding mediation and settlement. Moreover, these individuals risked retaliation (now and in
4 the future) and disruption of their daily work lives because they challenged the status quo of these
5 alleged unlawful labor practices.¹⁷ Finally, the proposed service awards are reasonable given the
6 minimal impact these amounts will have on any Settlement Class Member's level of recovery.

7 Service awards to the lead plaintiffs in class action litigation are commonplace and are
8 "intended to compensate class representatives for work done on behalf of the class, to make up for
9 financial or reputational risk undertaken in bringing the action, and, sometimes, to recognize their
10 willingness to act as a private attorney general."¹⁸ Service awards "are intended to advance public
11 policy by encouraging individuals to come forward and perform their civic duty in protecting the
12 rights of the class and to compensate class representatives for their time, effort and inconvenience
13 ...Federal authority is in accord."¹⁹

14 Without Representative Plaintiffs' courage, the action would never have commenced
15 and/or (in the case of plaintiffs Maged Hakeem and Barbara Sanchez) on such favorable terms.
16 This initiative deserves to be rewarded.²⁰ Finally, the proposed service awards are fair to other
17 Settlement Class Members because, at 0.1% of the Gross Settlement Fund, they will not
18 significantly reduce the settlement funds available to them.

19
20
21
22 ¹⁷ Declarations regarding their entitlement to service awards will be submitted at the time of final approval.

23 ¹⁸ *Cellphone Termination Fee Cases*, 186 Cal.App.4th 1380, 1394 (2010) (approving an incentive award of
24 \$10,000); *see also*, *Bell v. Farmers Ins. Exchange*, 115 Cal.App.4th 715, 725-26 (2004); *Munoz v. BCI Coca-Cola
Bottling Co. of Los Angeles*, 186 Cal.App.4th 399, 412 (2010).

25 ¹⁹ *In re California Indirect Purchases*, 1998 WL 1031494, 11 (Alameda Super. Ct. 1998) (internal citations
26 omitted).

27 ²⁰ *See, e.g., Glass v. UBS Financial Services, Inc., Not Reported in F. Supp. 2d*, 2007 WL 221862 at *17 (N.D. Cal.
28 2007) (approving \$25,000 enhancement awards to four named plaintiffs who "provided a great deal of informal
discovery to Class Counsel,"... "a great deal of insight into the policies and practices of UBS [and] ... additional
relevant detail at the final fairness hearing") (internal citations omitted); *Cook v. Niedert*, 142 F.3d 1004, 1016 (7th
Cir. 1998) (approving \$25,000 incentive payment to representative plaintiff); *Van Vranken v. Atlantic Richfield Co.*,
901 F.Supp. 294, 300 (N.D. Cal. 1995) (approving \$50,000 incentive award); *Augustus v. ABM Security Services,
Inc.*, 2 Cal.5th 257 (2016) (\$50,000 and \$25,000 service awards for the two primary plaintiffs).

SCOTT COLE & ASSOCIATES, APC
ATTORNEYS AT LAW
555 12TH STREET, SUITE 1725
OAKLAND, CA 94607
TEL: (510) 891-9800

Class Counsel's Fees. The settlement provides for an attorneys' fee award of 33 1/3% of the settlement amount, a typical percentage in the resolution of common fund cases.²¹ SCA has devoted numerous hours to and faced significant risk²² in the prosecution of these matters and, more importantly, made an extraordinary fund available to a large number of otherwise-underrepresented, low paid workers.

The "common fund" method, or "percentage-of-the-benefit" analysis, calculates attorneys' fees based on a percentage of the common benefit to the class. *In re Consumer Privacy Cases*, 175 Cal.App.4th 545 (2009); *Serrano v. Priest*, 20 Cal.3d 25 (1977). In cases where a common fund has been created—i.e., where each class member will "receive a mathematically ascertainable payment"²³—California state courts,²⁴ the Ninth Circuit²⁵ and the United States Supreme Court²⁶ agree that awarding attorneys' fees as a percentage of the common fund is the proper method.²⁷

²¹ See, e.g., *Abzug v. Kerkorian*, CA-000981 (L.A. Super. Ct., 1990) (45% fee of \$35 million class action settlement); *Barbosa v. Cargill Meat Solutions Corp.*, 2013 U.S. Dist. LEXIS 93194 (E.D. Cal. 2013) (33% fee award of gross fund); *BCI Overtime Cases*, J.C.C.P. No. 4280 (San Bernardino Super. Ct. 2007) (33 1/3% fee award in wage and hour class action); *Boyd v. Bank of Am. Corp.*, No. SACV 13-0561-DOC, 2014 WL 6473804, at *9 (C.D. Cal. 2014) (33 1/3% fee award in wage and hour class action); *Davis v. The Money Store, Inc.*, Case No. 99AS01716 (Sacramento Super. Ct. 2000) (33 1/3 % fee award); *Haitz v. Meyer, et al.*, No. 572968-3 (Alameda Super. Ct., 1990) (45% fee award); *Ibrahimi v. Walgreen*, (Contra Costa Super. Ct. 2019) Case No. MSC16-02120) (35% fee award in wage and hour class action); *In Re Pac. Enter. Sec. Litig.*, 47 F.3d 373, 378-79 (9th Cir. 1995) (affirming attorneys' fee of 33% of the recovery); *Jones v. Bath & Body Works, Inc.*, No. 2:13-cv-05206-FMO-AJW (C.D. Cal. 2016) (33 1/3% fee award in wage and hour class action); *Mambuki, et al. v. Securitas Security Services USA, Inc.*, Case No. 1-05-CV-047499, J.C.C.P. No. 4460 (Santa Clara Super. Ct. 2009) (33 1/3% fee award in wage and hour class action); *Menchik v. Beverages & More, Inc.*, Case No. RG 05196918 (Alameda Super. Ct. 2006) (33 1/3% fee award); *Michaels Stores Song-Beverly Cases*, JCCP No. 4684 (S.D. Super. Ct., 2014) (33 1/3% fee award); *Morris v. Lifescan, Inc.* 54 Fed.Appx. 663 (9th Cir. 2003) (affirming 33% fee award); *Nordstrom, Inc. Song-Beverly Act Cases*, JCCP No 4651 (L.A. Super. Ct., 2012) (33% fee award); *O'Hara, et al. v. Factory 2-U Stores, Inc.*, Case No. 834123-5 (Alameda Super. Ct. 2002) (33 1/3% fee award in wage and hour class action); *Quintana v. Claire's Boutiques, Inc.*, No. 5:13-cv-00368-PSG (N.D. Cal. 2015), Dkt. No. 88 (awarding attorneys' fees of 33% of fund); *Singer v. Becton Dickinson and Co.*, Case No. 08-CV-821 - IEG (BLM) 2010 U.S. Dist. LEXIS 53416, at *23 (S.D. Cal. 2010) (33 1/3% fee award); *Steiner v. Whittacker Corp.*, CA 000817 (L.A. Super. Ct. 1989) (35% fee award in \$17.75 million class action); *Vasquez v. Coast Valley Roofing, Inc.*, 266 F.R.D. 482 (E.D. Cal. 2010) (33 1/3% award in wage and hour class action).

²² SCA undertook this matter solely on a contingent basis, with no guarantee regarding the potential duration of the litigation or even the ultimate reimbursement of fees or costs.

²³ *Vasquez*, 266 F.R.D. 482 at *491 (E.D. Cal. 2010).

²⁴ See, fn. 21; *Lealao v. Beneficial California*, 82 Cal.App.4th 19 (2000); *Serrano v. Priest*, 20 Cal.3d 25 (1977).

²⁵ *Staten v. Boeing Co.*, 327 F.3d 938, 952 (9th Cir. 2003); *Powers v. Eichen*, 229 F.3d 1249, 1256 (9th Cir. 2000).

²⁶ The United States Supreme Court has always computed common fund fee awards on a percentage of the fund basis. *Boeing Co. v. Van Gemert*, 444 U.S. 472, 100 S.Ct. 745 (1980); *Central Railroad & Banking Co. of Georgia v. Pettus*, 113 U.S. 116, 5 S.Ct. 387 (1885); *Sprague v. Ticonic Nat'l Bank*, 307 U.S. 161, 59 S.Ct. 777 (1939).

²⁷ A lodestar approach (enhanced by a multiplier) can be used as an alternative to the common fund theory when "there is no way to gauge the net value of the settlement or any percentage thereof." *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1029 (9th Cir. 1998).

SCOTT COLE & ASSOCIATES, APC
ATTORNEYS AT LAW
555 12TH STREET, SUITE 1725
OAKLAND, CA 94607
TEL: (510) 891-9800

1 As expressed by the Third Circuit's Task Force on the Selection of Class Counsel,²⁸ in
2 Conte and Newberg's treatise on class actions ("*Newberg*")²⁹ and, *inter alia*, in *Blum v. Stenson*,
3 465 U.S. 886, 900 n.16 (1984), the rationale for this is commonsensical: in common fund cases,
4 fees are not assessed against the unsuccessful litigant (a.k.a. "fee shifting"), but rather, are taken
5 from the fund or damage recovery (a.k.a. "fee spreading"). In contrast to the calculation of a
6 statutory fee, payable by the defendant depending on the extent of success achieved, a common
7 fund is itself the measure of success and represents the benchmark from which a fee will be
8 awarded. 5 *Newberg* § 15.53 at 183. Consequently, the analysis in a common fund case focuses
9 not on the plaintiffs' position as "prevailing parties," but on a showing that the fund conferring a
10 benefit on the class which resulted from their efforts. *Id.*, § 2.06 at 40.³⁰

11 Here, SCA harnessed evidence from all available resources, conducted significant
12 discovery, designed a creative outreach campaign to "fill in the gaps" and, thereupon, used its
13 skills and experience to negotiate an outstanding result for numerous class members. A common
14 fund doctrine award of fees for that work,³¹ risks assumed and results is, thus, appropriate.

15 PAGA Allocation. The settlement also provides for a payment of \$25,000 for a release of
16 PAGA claims, 75% of which will be remitted to the LWDA and 25% of which will remain in the
17
18

19 ²⁸ See, *Third Circuit Task Force on the Selection of Class Counsel* (Final Report, January 2002), available at
20 <https://www.ca3.uscourts.gov/sites/ca3/files/final%20report%20of%20third%20circuit%20task%20force.pdf>
21 (recommending that all fee awards in common fund cases be awarded as a percentage of the fund, but that a lodestar
22 analysis continue to be the applicable method for determining statutory fee shifting awards); *Report of the Third*
23 *Circuit Task Force*, 108 F.R.D. 237, 255 (hardcopy not exhibited here due to length of document).

24 ²⁹ *Newberg on Class Actions* (5th ed. 2017).

25 ³⁰ The common fund doctrine is "based on the commonsense notion that the 'one who expends attorneys' fees in
26 winning a suit which creates a fund from which others derive benefits, may require those passive beneficiaries to bear
27 a fair share of the litigation costs.'" *Consumer Cause, Inc. v. Mrs. Gooch's Natural Food Markets, Inc.*, 127
28 Cal.App.4th 387, 397 (2005) (internal citation omitted); *Boeing Co. v. Van Gemert*, 444 U.S. 472, 478 (1980) ("a
lawyer who recovers a common fund for the benefit of persons other than himself or his client is entitled to a reasonable
attorney's fee from the fund as a whole," and class members who benefit from a lawsuit "without contributing to its
cost are unjustly enriched at the successful litigant's expense.").

³¹ Attorney fee awards in common funds cases are intended to compensate class counsel for work performed both
before and after the date of judgment. In nearly every class action, the efforts during litigation and in pursuing approval
of the settlement are only part of the overall work picture. Post-judgment, class counsel is required to stay in close
contact with the claims administrator to ensure payment of the settlement proceeds, to communicate with class
members, their CPAs, even other attorneys regarding the tax treatment of settlement proceeds, and report compliance
with the terms of the Court's final approval order thereto.

SCOTT COLE & ASSOCIATES, APC
ATTORNEYS AT LAW
555 12TH STREET, SUITE 1725
OAKLAND, CA 94607
TEL: (510) 891-9800

1 Net Settlement Fund.³² The \$25,000 allocation for PAGA penalties is reasonable under the
2 circumstances and consistent with PAGA allocations in similar actions. *See, infra*, Section IV.B.5.

3 Litigation Expenses. Over the course of these past two years, SCA incurred ordinary
4 litigation costs and (just as with regard to the post-settlement efforts ordinarily attendant to class
5 action work), SCA anticipates incurring additional expenses in overseeing the settlement process,
6 making future appearances, ensuring claims administration compliance with this Court's orders,
7 responding to Settlement Class Members, CPAs, etc. Although SCA will submit a detailed cost
8 report with its motion for final approval of the settlement, the Agreement caps such costs at
9 \$30,000. Since the level of such costs are reasonable and served to benefit the class, the Court
10 should approve this capped amount in the Notice.³³ Agreement ¶¶ 3

11 Settlement Administration Costs. The settlement administration costs are not to exceed
12 \$152,000—a very reasonable amount given the size of the class and the work required to send the
13 Notice, process settlement checks, establish a website, and communicate with class members and
14 counsel. SCA requested bids from over one dozen claims administration companies—some of
15 which submitted bids exceeding \$200,000. After considering the quotes returned, SCA re-
16 contacted four of these companies with which this counsel's firm had, in the past, been successful
17 in substantially negotiating down the administration price, even personally meeting with a
18 representative from another. The combination of these efforts was the selection of CPT Group, a
19 well-respected claims administration company which has agreed to cap the price. The settlement
20 administration costs shall be paid from the Gross Settlement Fund. Agreement ¶¶ 12, 34.

21 Employer's Share of Payroll Taxes. Defendant's share of payroll taxes, including, but not
22 limited to FICA and FUTA, shall be paid separately from the Gross Settlement Fund. Agreement
23

24
25 ³² Cal. Labor Code § 2699(i).

26 ³³ *In re United Energy Corp. Sec. Litig., Not Rpt'd in F.Supp.*, 1989 WL 73211, * 6 (C.D. Cal. 1989) (“[a]n attorney
27 who creates or preserves a common fund by judgment or settlement for the benefit of a class is entitled to receive
28 reimbursement of reasonable fees and expenses involved”); 1 Alba Conte, *Attorney Fee Awards* § 2:08 at 50-51 (“The
prevailing view is that expenses are awarded in addition to the fee percentage.”); *Smith v. Krispy Kreme Doughnut
Corp., Not Rpt'd in F.Supp.2d*, 2007 WL 119157, *3 (M.D.N.C. Jan. 10, 2007); *In re Warner Comm. Sec. Litig.*, 618
F.Supp. 735 (S.D.N.Y.1985); *In re GNC Shareholder Litig.: All Actions*, 668 F.Supp. 450, 452 (W.D. Pa. 1987).

SCOTT COLE & ASSOCIATES, APC
ATTORNEYS AT LAW
555 12TH STREET, SUITE 1725
OAKLAND, CA 94607
TEL: (510) 891-9800

1 ¶ 45. While many similar settlements allow the employer taxes to be paid from the Gross
2 Settlement Fund, SCA specifically negotiated against that option.

3 Tax Treatment of Individual Settlement Shares. Settlement Class Members' settlement
4 shares will be allocated as 15% wages and 85% interest and statutory penalties for tax purposes.³⁴
5 This allocation is reasonable given that the majority of the class claims are arguably for penalties
6 (See, e.g., Labor Code §§ 203 and 226), not underlying wages. Obviously, this particular tax
7 treatment provides additional monies to these already low-paid workers.

8 C. THE RELEASE

9 Upon the Effective Date, Settlement Class Members shall release and discharge Defendant
10 from "any and all debts, liabilities, costs, demands, obligations, claims, causes of action, or
11 complaints arising during the Settlement Period that were pled, or which could have been pled
12 based on the same facts as pled [in the Complaint]." For unnamed class members,³⁵ a Civil Code
13 § 1542 release applies, but only to those claims. Agreement ¶68.

14 D. CLASS NOTICE

15 Notice is necessary in order to inform class members of the settlement and their options
16 with regard thereto. Within 15 calendar days of the granting of preliminary approval, Defendant
17 will provide the claims administrator with class members' names, social security numbers, dates
18 of employment, email addresses, and last known addresses, which the claims administrator will
19 verify and update using the National Change of Address ("NCOA") Database. Within five business
20 days of receipt of this class member information from Defendant, the claims administrator will
21 disseminate the Notice by first class mail,³⁶ and will establish a website. To avoid unnecessary
22 confusion, maximize their recoveries, and reduce administrative costs, Settlement Class Members
23 will not be required to file a claim form to receive their portion of the settlement.

24
25
26 ³⁴ Exhibit "A," Agreement ¶ 41.

27 ³⁵ In exchange for their option of receiving service awards, the Representative Plaintiffs agreed to a § 1542 release
of all potential claims (whether pled or not). Exhibit "A," Agreement ¶ 68.

28 ³⁶ Exhibit "A," Agreement ¶ 51.

SCOTT COLE & ASSOCIATES, APC
ATTORNEYS AT LAW
555 12TH STREET, SUITE 1725
OAKLAND, CA 94607
TEL: (510) 891-9800

1 **1. Notice to Class Members**

2 The proposed Notice meets the requirements of CRC Rule 3.766(b).³⁷ The Notice costs
3 will be included in the settlement administration expenses to be paid from the Gross Settlement
4 Fund.³⁸ A notice sent by mail to class members' last known addresses, accompanied by reasonable
5 attempts to locate class members where those notices are returned as undeliverable,³⁹ is sufficient
6 to ensure due process. *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 319 (1950);
7 *Eisen v. Carlisle & Jacquelin*, 417 U.S. 156, 173-76 (1974). Finally, the contents of the Notice
8 soundly comply with CRC Rule 3.766(d) insofar as it provides information on the meaning and
9 nature of the settlement, its key provisions, how payments will be calculated, the amounts of SCA's
10 attorneys' fees and costs, the service awards, the date, time, and place of the final fairness hearing,
11 and the procedures and deadlines for requesting exclusion from and/or objecting to the settlement.

12 **2. Exclusions and Objections**

13 Class members will have 45 calendar days (or 10 calendar days after the date the Notices
14 are re-mailed after having been returned as undeliverable) to opt out or object. Class members who
15 wish to exclude themselves or "opt out" of the settlement must submit a signed, written request
16 therefor to the claims administrator by the response deadline. Agreement ¶56. A class member
17 wishing to *object* must submit a written objection thereto describing why the objector believes the
18 settlement is unfair and whether the objector intends to appear at the final approval hearing.
19 Agreement ¶59. Class members who submit a timely objection will have a right to appear at the
20 final approval hearing to have their objections heard by the Court. The Notice makes clear that the
21 Court can only approve or deny the settlement and cannot change the terms of the settlement.⁴⁰

22
23 **IV. JUDICIAL APPROVAL OF CLASS ACTION SETTLEMENTS**

24 A class action may not be dismissed, compromised, or settled without the approval of the
25 Court. Cal. Civ. Code § 1781(f); California Rules of Court ("CRC") Rule 3.769(a); *see also*, Fed.

26
27 ³⁷ Exhibit "B," Notice of Settlement of Class Action Lawsuit.

28 ³⁸ Exhibit "A," Agreement ¶12.

³⁹ Exhibit "A," Agreement ¶53.

⁴⁰ Exhibit "A," Agreement ¶87.

SCOTT COLE & ASSOCIATES, APC
ATTORNEYS AT LAW
555 12TH STREET, SUITE 1725
OAKLAND, CA 94607
TEL: (510) 891-9800

1 R. Civ. P. 23(e). The commonly accepted procedure calls for: (1) preliminary approval of the
2 proposed settlement at an informal hearing, (2) notice to class members of the proposed settlement
3 and of their rights with respect thereto, and (3) a formal hearing on the fairness of the proposed
4 settlement, at which members of the class may be heard concerning their support for or objection
5 to the settlement, also known as a final approval hearing or “final fairness” hearing. *Manual for*
6 *Complex Litigation* § 21.63 at 447-50 (4th ed. 2004).

7 The Court has discretion to approve a proposed settlement. *Wershba v. Apple Computer,*
8 *Inc.*, 91 Cal.App.4th 224 (2001). Its decision will only be reversed upon a showing there was “a
9 clear abuse of discretion.” *Id.*; *Dunk v. Ford Motor*, 48 Cal.App.4th 1794, 1802 (1996). The policy
10 under California law, however, favors and encourages settlement of class actions. *Ferguson v.*
11 *Lieff, Cabraser, Heimann & Bernstein*, 30 Cal.4th 1037, 1054 (2003) (acknowledging the
12 “overriding public policy favoring settlement of class actions”). The purpose of the Court’s
13 preliminary evaluation of the proposed settlement is to (1) determine whether it is within the “range
14 of possible approval” (4 *Newberg* § 13.13 at 311) and to (2) provisionally certify the proposed
15 settlement class (4 *Newberg* § 13.12 at 305) in order to facilitate dissemination of the Notice—
16 which outlines the key settlement terms—to the class members and appraises them of the date and
17 time of the final approval hearing. *Manual for Complex Litigation* (4th ed. 2004) (“MCL”) § 21.63;
18 CRC Rule 3.769(e). Representative Plaintiffs request the Court take the first step and grant
19 preliminary approval of the settlement.

20 **A. THE SETTLEMENT FALLS WITHIN THE RANGE OF**
21 **REASONABLENESS**

22 At the preliminary approval stage, a proposed settlement is *presumed* to be fair when (1) it
23 is reached through arm’s-length negotiations, (2) the putative class is represented by experienced
24 counsel, and (3) the parties have conducted sufficient investigation or discovery.⁴¹ *Wal-Mart*
25 *Stores, Inc. v. Visa U.S.A. Inc.*, 396 F.3d 96, 116 (2d Cir. 2005).⁴² As previously discussed, this

26 ⁴¹ Cole Decl. ¶¶ 6, 10, 18.

27 ⁴² This Motion occasionally cites federal case law and commentaries thereon which construe authority for
28 conditional class certification and settlement approval in California courts. The California Supreme Court has
authorized and urged California’s trial courts to use federal resources for guidance in considering class issues. *Vasquez*
v. Superior Court, 4 Cal.3d 800, 821 (1971); *Green v. Obledo*, 29 Cal.3d 126, 145-46 (1981).

SCOTT COLE & ASSOCIATES, APC
ATTORNEYS AT LAW
555 12TH STREET, SUITE 1725
OAKLAND, CA 94607
TEL: (510) 891-9800

1 settlement is the result of an arm's-length transaction, reached after months of negotiations
2 following a mediation before an experienced neutral. Moreover, SCA has vast experience in
3 similar litigation--having litigated hundreds of wage and hour class actions.⁴³ Finally, as detailed
4 above, the presence of significant formal and informal discovery produced by Defendant, a class
5 member outreach campaign and worker interviews, not to mention another 15 years of background
6 litigating against this defendant (both directly and against its predecessor corporations), is more
7 than "sufficient investigation" to warrant preliminary approval of this settlement.

8 Second, in determining whether the settlement is *actually* within the range of fairness,
9 courts consider additional factors such as the strength of the plaintiff's case, the risk, expense,
10 complexity and likely duration of further litigation, the risk of maintaining class action status
11 throughout trial, the amount offered in settlement, and the experience and views of counsel.
12 *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1026 (1998); *Kullar v. Foot Locker Retail, Inc.*, 168
13 Cal.App.4th 116 (2008). Each of these factors illustrates the reasonableness of the settlement here.
14 SCA calculated Defendant's potential exposure if all of the class claims were proven at trial but
15 discounted the theoretical maximum recovery to account for inherent risks such as the denial of
16 class certification and the possible success of Defendant's defenses at the liability phase.

17 B. VALUATION OF PRIMARY CLAIMS ALLEGED

18 1. Missed Meal Breaks

19 The allegation that Defendant deprived class members of meal and rest periods was the
20 driving force of this litigation. However, having just negotiated large settlements in
21 *Janata* and *Stone*⁴⁴ (on the heels of issuance of the California Supreme Court's opinion
22 in *Augustus*⁴⁵) Universal had already begun modifying and/or better enforcing its meal and rest
23 break policies by the time *Hakeem I* was filed. Indeed, SCA always conceded and openly
24 acknowledged that improvements to Universal's policies were already underway by 2017 and
25 recognized that the flagrancy and frequency of Universal's violations were less prevalent than they
26

27 ⁴³ Cole Decl. 26-30; Exhibit "C," SCA's Professional Resume.

28 ⁴⁴ See, fn. 7, *supra*.

⁴⁵ *Augustus v. ABM Security Services, Inc.*, 2 Cal.5th 257 (2016).

SCOTT COLE & ASSOCIATES, APC
ATTORNEYS AT LAW
555 12TH STREET, SUITE 1725
OAKLAND, CA 94607
TEL: (510) 891-9800

1 may have been pre-*Janata/Stone*. What's more, Mike Smidt, President of the Northwest Region
2 for Defendant, testified at deposition in *Hakeem I* that, by late 2018 (if not much earlier),
3 Universal's meal and rest period policy was fully compliant with California law, with documents
4 in support thereof. Conversely, Representative Plaintiffs maintained that the violations stemmed
5 more from scheduling practices (versus a *per se* noncompliant policy), whereby many guards were
6 required to remain "on-duty" during their breaks to respond to emergencies or client needs.

7 Despite Representative Plaintiffs' allegations, the arguable lack of a *per se* violative policy
8 presented significant challenges to class certification, as did Defendant's argument that this large
9 class of workers served a variety of sites and possessed varying levels of training and clearance.⁴⁶
10 And, even if the Court certified the class (or a subclass thereof), Defendant would undoubtedly
11 argue it need only make breaks *available* and that it had no obligation to *ensure* that breaks were
12 actually taken. *Brinker Restaurant Corp. v. Superior Court*, 53 Cal.4th 1004 (2012); *White v.*
13 *Starbucks Corp.*, 497 F.Supp.2d 1080 (N.D. Cal. 2007).

14 Nevertheless, based on SCA's interviews with class members, it was determined that the
15 number of missed meal periods could be as high as 7,648,966. Using this information and data
16 provided by Defendant, the liability exposure possible for this claim would be as high as \$100
17 million over the roughly two-year period since December 2017. This liability is further based on
18 an average hourly wage of \$13.20. This recovery number is, of course, based on a variety of
19 assumptions, none of which Defendant has agreed to, and on the assumption that all elements of
20 this claim could be proven (as well as its frequency) at trial.

21 Indeed, perhaps the most questionable assumption is that the 7.6 million meal periods were
22 actually "missed," not to mention represent a "violation" of Labor Code §512. Given that class
23 members rarely made independent records of whether they took complaint breaks, it is likely that
24 many, if not the vast majority, of these missed breaks were, in fact, punch-in/punch-out errors or
25

26 ⁴⁶ While Representative Plaintiffs' position that liability and premium wages due for missed meal and rest periods
27 could be determined using representative sampling, Defendant would certainly attack any proposed methodology and
28 argue the class issues to be unmanageable. What's more, turning to damages, few, if any, records were available which
demonstrated meal or rest period violations, making damages calculations difficult. This quantification, however,
would be Representative Plaintiffs' burden.

SCOTT COLE & ASSOCIATES, APC
ATTORNEYS AT LAW
555 12TH STREET, SUITE 1725
OAKLAND, CA 94607
TEL: (510) 891-9800

1 class member neglect in punching in/out at all. Given the oft-mobile nature of security work, it is
2 very likely that many guards simply took their breaks without first returning to base and/or without
3 notifying management when they left for a break. And, in other situations, it is likely that many
4 class members were afforded the chance for a break but simply elected not to take one for any one
5 of myriad reasons. These challenges—and the paucity of records to demonstrate the violations—
6 reveals that a substantial discount off SCA’s original damages estimate was appropriate.

7 **2. Missed Rest Breaks**

8 As discussed above, the risk of losing class certification, proof of compliant policies and
9 aggressive enforcement measures means SCA was also compelled to deeply discount its rest break
10 damages analysis. Using the same data points enumerated above and based upon its investigation,
11 rest periods could have been missed as many as 11,025,088 times during the claims period,
12 bringing the liability exposure possible therefor to \$145 million. Again, however, none of the
13 assumptions supporting this estimate were conceded by Defendant and, for all the reasons set forth
14 above (e.g., whether these were actually “missed” breaks, a lack of independent record-keeping,
15 likely punch errors and/or neglect by class members), it is suspect if even a substantial percentage
16 of these occurrences could constitute violations of § 226.7. Add to these uncertainties the fact that
17 employers may require workers to stay on-premises during rest periods, and it becomes even more
18 evident why many guards may simply have chosen not to take off-duty rest breaks. Given all this,
19 the resolution achieved represents an excellent result for the class.

20 **3. Waiting Time Penalties**

21 The strongest claims in this case were the meal and rest break claims, neither of which
22 conclusively generates a “wage” to which a Labor Code § 203 claim could be tethered. The
23 California Court of Appeal stated, *arguably in dicta*, that a meal break violation under Labor Code
24 § 226.7 cannot support a “waiting time penalty” under Labor Code § 203. *Ling v. P.F. Chang’s*
25 *China Bistro, Inc.*, 245 Cal.App.4th 1242, 1261 (2016); *Serrano v. Bay Bread LLC*, 2016 Cal.
26 Super. LEXIS 8043 at *22 (June 29, 2016) (no published California case holds contrary to *Ling*);
27 *Kirby v. Imoos Fire Protection, Inc.*, 53 Cal. 4th 1244 (2012) (failure to pay meal and rest period
28

SCOTT COLE & ASSOCIATES, APC
ATTORNEYS AT LAW
555 12TH STREET, SUITE 1725
OAKLAND, CA 94607
TEL: (510) 891-9800

1 premiums cannot trigger waiting time penalties); *but see, In re Autozone, Inc. Wage and Hour*
2 *Litig.*, Case No. 3:10-md-021590CRB, 2016 WL 4208200 at **6-7 (N.D. Cal. Aug. 10, 2016)
3 (meal period payments constitute “wages,” thus, supporting Labor Code §§ 201-203 claims).

4 More recently, the California Supreme Court has granted review⁴⁷ in *Naranjo v. Spectrum*
5 *Security Services, Inc.* (No. S258966) 40 Cal.App.5th 444 (2020 Cal.App. LEXIS 167), to tackle
6 the question of whether a rest break violation supports an additional penalty under Labor Code §
7 203 and/or 226 or if this would constitute “penalties on penalties.” Finally, Defendant would
8 contend that Representative Plaintiffs could not show the requisite “willful[ness]” under § 203.
9 *Willner v. Manpower Inc.*, 35 F.Supp.3d 1116, 1131 (N.D. Cal. 2014); *Amaral v. Cintas Corp. No.*
10 *2*, 163 Cal.App.4th 1157, 1203-04 (2008) (holding the employer did not willfully fail to pay wages
11 under Labor Code § 203 even though the class prevailed on the merits on the underlying claim).

12 Based on a typical eight-hour workday, on records showing that 38,260 class members
13 were “severed” employees, and that their average hourly wage was \$13.20, Defendant’s liability
14 could reach as high as \$120 million for waiting time penalties. Given the state of the law, and that
15 a full eight-hour workday was used to calculate this penalty for all severed workers, the value of
16 this claim was discounted significantly.

17 4. Wage Statement Violations

18 Although some federal court decisions have held break premiums under Labor Code §
19 226.7 can support a wage statement penalty under Labor Code § 226(e), there are no published
20 California state court decisions issuing a similar holding. *Maldonado v. Epsilon Plastics, Inc.*, 22
21 Cal.App.5th 1308, 1337 (2018) (meal and rest claims cannot support a class-wide claim for
22 inaccurate wage statements); *Finder v. Leprino Foods Co.*, No. 1:13-CV-2059 AWI-BAM, 2015
23 U.S. Dist. LEXIS 30652, at *1 (E.D. Cal. March 12, 2015). In light of the California authority
24 explaining that a violation of Labor Code § 226.7 cannot support a § 203 waiting time penalty, the
25 same logic may apply to § 226 wage statement penalties, making those entirely unrecoverable in
26 this litigation. Had this matter not settled, Universal would have certainly argued this, as well as

27
28 ⁴⁷ Should the trial court stay the instant litigation, pending the Supreme Court’s review of *Naranjo*, payments to
class members would be further delayed.

SCOTT COLE & ASSOCIATES, APC
ATTORNEYS AT LAW
555 12TH STREET, SUITE 1725
OAKLAND, CA 94607
TEL: (510) 891-9800

1 contended Representative Plaintiffs cannot establish an “injury” resulting from Universal’s
2 “knowing and intentional failure” to furnish wage statements (i.e., that included premium pay for
3 missed breaks). Cal. Lab. Code § 226(e)(1).

4 Under § 226, class members may recover \$50.00 for the initial violation and \$100.00 for
5 each subsequent violation. Based on data provided by Defendant and subsequent analysis thereof
6 by SCA, class members stood to potentially recover \$270 million if they fully prevailed on these
7 claims at trial. Given the numerous elements Representative Plaintiffs would be required to
8 demonstrate, and anticipating Universal’s “penalties on penalties” argument, SCA’s “reality
9 check” and, thus, significant discount to the potential value of this claim, was appropriate. What’s
10 more, this analysis assumed every single class member was due the § 226 cap of \$4,000—an utterly
11 impossible situation, given the short class period and extraordinary turnover in this workforce.

12 5. PAGA Penalties

13 Representative Plaintiffs also alleged that Defendant’s conduct created liability under the
14 Labor Code Private Attorneys’ General Act (“PAGA”). PAGA claims are extraordinarily difficult
15 to evaluate because there are several obstacles to the actual award of the civil penalty. First, it is
16 arguably unclear whether penalties continue to accrue until the court finds a violation to exist.
17 Second, Labor Code § 2699(e)(1) and (2) give trial courts immense discretion to access or lower
18 the penalty amount.⁴⁸ Indeed, several courts have exercised their broad discretion and have
19 dramatically limited PAGA awards.⁴⁹ Third, defendants routinely argue that, when other statutory
20 penalties have been imposed, additional penalties under PAGA are unjust (e.g., in cases where
21 damages are already “in play” based on underlying wage violation claims, as we have here).

23 ⁴⁸ Sec. Cal. Labor Code § 2699(e)(2). (Courts have discretion to deny or significantly reduce PAGA penalties,
particularly when the prescribed award would be “unjust, arbitrary and oppressive, or confiscatory.”)

24 ⁴⁹ See e.g., *Fleming v. Covidien Inc.*, 2011 WL 7563047, at *3-4 (C.D. Cal. Aug. 12, 2011) (invoking § (e)(2) and
25 reducing PAGA penalty award from \$2.8 million to \$500,000); *Makabi v. Gedalia*, No. BC468146, (L.A. Super. Ct.
26 May 8, 2013) (trial court invoked § (e)(2) and declined to apply any PAGA penalties, despite finding that defendants
violated PAGA); *Amaral v. Cintas Corp. No. 2*, 163 Cal.App.4th 1157 (2008) (approving reduction of penalty amount
27 to one-third of the damages award even though there was “no evidence that Cintas [did] not entertain a good faith
belief that the LWO did not apply to workers in Plaintiffs’ position”); *Thurman v. Bayshore Transit Mgmt.*, 203
28 Cal.App.4th 1112, 1135-36 (2012) (reducing penalty amount by 30% where “defendants took their obligations under
Wage Order No. 9 seriously and attempted to comply with the law”); *Magadia v. Wal-Mart Associates, Inc.*, 384
F.Supp. 1058 (N.D. Cal. 2019).

SCOTT COLE & ASSOCIATES, APC
ATTORNEYS AT LAW
555 12TH STREET, SUITE 1725
OAKLAND, CA 94607
TEL: (510) 891-9800

Thus, while the PAGA calculation herein for approximately 70,000 guards could exceed \$250 million, the likelihood of that sum ever being awarded, or anything even close to it, is extremely slim. Despite this potential recovery, given that PAGA penalties would likely be deemed duplicative of other penalties awardable here, given the extreme “haircuts” many courts are giving to PAGA penalties, and given the presence here of class action allegations (the absence of which often being the reason so-called “Plan B” PAGA penalties are sought to begin with), PAGA penalties were significantly discounted.

6. Summary

In sum, assuming (liability and class certification) success on each of the claims, at the level hoped for by Representative Plaintiffs, the claims⁵⁰ could be as high as:

HIGHEST CLAIM VALUATIONS					
Meal Breaks	Rest Breaks	Waiting Time	Wage Statements	PAGA	TOTAL
~\$100 mil	~\$145 mil	~\$120 mil	~\$270 mil	~\$250 mil	~\$885 mil

However, based on SCA’s interviews with class members including survey responses, reports of roughly one missed meal or rest period per week were prevalent. Taking that anecdotal approach, and giving serious weight to the “penalties on penalties” argument that would foreclose recovery under §§203 and 226, the analysis would look more like this:

REALISTIC CLAIM VALUATIONS					
Meal Breaks	Rest Breaks	Waiting Time	Wage Statements	PAGA	TOTAL
~\$20 mil	~\$29 mil	~\$0 mil	~\$0 mil	~\$10 mil	~\$ 59 mil

Indeed, while, on its face, the total damages and penalties available to class members under either scenario are high, so were the risks and delays inherent in protracted litigation. And further

⁵⁰ Notably, Maged Hakeem and Barbara Sanchez articulated claims for unreimbursed expenses pursuant to Labor Code § 2802 (e.g., occasional cell phone usage). It was estimated that few class members had these claims and that, when existent, the amounts were small. Therefore, only nominal value was attached to this claim.

SCOTT COLE & ASSOCIATES, APC
ATTORNEYS AT LAW
555 12TH STREET, SUITE 1725
OAKLAND, CA 94607
TEL: (510) 891-9800

1 litigation wouldn't necessarily have tipped the scales in favor of either party since (a) significant
2 discovery was already available to them and, as in all litigation, (2) both good and bad facts would
3 inevitably have come to light for each side. What is certain, however, is that Universal would have
4 fought the action very aggressively, thereby delaying the benefits now available through settlement
5 to class members for quite some time.⁵¹ As a result, the extraordinary result of a *non-reversionary*
6 \$10 million fund is more than reasonable when balanced against the risks of continued litigation.

7
8 **C. THE RISK, EXPENSE AND LIKELY DURATION OF FURTHER
LITIGATION SUPPORTS SETTLEMENT**

9 In evaluating for fairness, the Court should weigh the benefits of settlement against the
10 expense and delay involved in achieving an equivalent or even more favorable result at trial. *Young*
11 *v. Katz*, 447 F.2d 431, 433 (5th Cir. 1971); *Kullar*, 168 Cal.App.4th 116 (2008). As California
12 jurists have recognized, there exists "an overriding public policy favoring settlement of class
13 actions." *Ferguson v. Lieff, Cabraser, Heimann & Bernstein*, 30 Cal.4th 1037, 1054 (2003) (citing
14 *Franklin v. Kayrpo Corp.*, 884 F.2d 1222, 1229 (9th Cir. 1989) ("public policy favor[s] the
15 compromise and settlement of disputes")). The alternative to a class action, namely, numerous
16 individual actions, could tax private and judicial resources for years. Given the relatively modest,
17 though not inconsequential, amount of damages Settlement Class Members allegedly incurred, it
18 would be uneconomical even for those with the resources to secure individual legal representation.
19 Here, however, the settlement provides *all* Settlement Class Members, regardless of their means,
20 the opportunity of monetary recovery in a prompt and efficient manner, without the risk of the
21 Court denying class certification and these workers potentially recovering nothing at all.

22 SCA considered that, even if Representative Plaintiffs prevailed on both class certification
23 and liability, the process could be lengthy and costly, potentially including appeals. As with most
24 complex litigation, wage and hour class actions rarely end when the trial court enters a dispositive
25 order or final judgment. Class action defendants may seek a writ of mandate from an order granting
26 class certification. *See*, Cal. Code Civ. Proc. § 904.1; *In re Cipro Cases I and II*, 121 Cal.App.4th

27
28 ⁵¹ Note that *Augustus* was filed in 2005 and not resolved until 2017—*12 years after its inception*.

1 402, 409 (2004). Moreover, the losing party often takes an appeal after disposition of liability
2 and/or damages. Even a successful judicial resolution at the trial court level can be just the
3 beginning of a lengthy, expensive process, stalling payments to class members for years.⁵² This
4 judicial purgatory is compounded by the risk of an adverse appellate ruling, which would remand
5 the action to the trial court for further litigation, possibly with negative precedent.⁵³ As such, the
6 complexity, expense, and delay of continued litigation supports approval of this settlement.

7
8 **V. THE SETTLEMENT MEETS THE STANDARD FOR PROVISIONAL CLASS**
9 **CERTIFICATION**

10 Prior to obtaining class certification, the parties to a class action suit may appropriately
11 negotiate a proposed settlement. *Wershba*, 91 Cal.App.4th at 240. When the class has not been
12 certified prior to settlement—as here—the parties may stipulate that a defined class be conditionally
13 certified for settlement purposes only. *County of Suffolk v. Long Island Lighting Co.*, 710 F. Supp.
14 1422, 1425 (E.D.N.Y. 1989). However, the traditional prerequisites for certification are used to
15 determine whether conditional certification of the proposed class should be granted. *See, Amchem*
16 *Products, Inc. v. Windsor*, 521 U.S. 591, 620 (1997).⁵⁴ This case satisfies these elements for
17 purposes of conditional certification.

18 **A. THE CLASS IS SUFFICIENTLY NUMEROUS**

19 For class certification, CCP § 382 requires the parties be “numerous [and it be]
20 impracticable to bring them all before the court....” *Daar v. Yellow Cab Co.*, 67 Cal.2d 695, 704
21 (1967); *Gay v. Waiters’ & Dairy Lunchmen’s Union*, 489 F.Supp. 282 (N.D. Cal. 1980), *aff’d* 694
22 F.2d 531 (9th Cir. 1982). Here, the class consists of approximately 70,000 employees, which is

23
24 ⁵² Consider, for example, the plight of the employee-class members in *Savaglio v. Wal-Mart Stores, Inc.*, Case No.
25 C-835687 (Alameda Super. Ct.). Following four years of litigation and a four-month jury trial, in 2005, a \$172 million
26 verdict was entered against Wal-Mart on behalf of over 116,000 class members. Those aggrieved employees, however,
27 did not receive any remuneration until 2011, more than five years later.

28 ⁵³ *See, e.g., Chau v. Starbucks Corp.*, 174 Cal.App.4th 688 (2009) (appellate court reversed an \$86 million
restitution award to a certified class of hourly employees).

⁵⁴ A pre-certification settlement may stipulate that a defined class be conditionally certified for settlement purposes.
This enables the defendant to get the benefit of a final judgment binding on all class members without conceding
certification should the court disapprove the settlement. *Weil & Brown*, Cal. Prac. Guide: Civ. Pro. Before Trial (The
Rutter Group 2015) ¶ 14:139, *et seq.*

1 sufficiently numerous. With this workforce size, joinder of all class members would be
2 impracticable and the relatively small value of each individual claim makes it unlikely individual
3 workers would pursue relief absent class certification, diminishing the prospect that joinder is a
4 feasible alternative. Class members can easily be identified through Defendant's records.

5 **B. THE CLASS HAS A WELL-DEFINED COMMUNITY OF INTEREST IN**
6 **QUESTIONS OF LAW AND FACT**

7 The "community of interest" requirement requires: (1) predominant common questions of
8 law or fact, (2) class representatives whose claims or defenses are typical of the class, and (3) class
9 representatives who adequately represent the class. *Brinker*, 53 Cal.4th at 1021.

10 **1. The Class Satisfies the Commonality Element**

11 The first prong of the test (i.e., predominant common questions of law or fact) is met so
12 long as common questions are likely to arise in the action and the theory of recovery is "amenable
13 to class treatment." *Sav-On Drug Stores, Inc. v. Superior Court*, 34 Cal.4th 319, 327 (2004).⁵⁵ The
14 class members' claims in this action stem from Defendant's alleged uniform practice of short-
15 staffing, failing to provide "rovers" to cover for class members during their meal and rest periods,
16 and Defendant's commitment of full-time staffing to its clients. Representative Plaintiffs
17 contended these alleged practices undermined Universal's otherwise compliant break policies.

18 Moreover, arguably, class members' duties did not vary significantly, nor did their actual
19 experiences. During this relatively short class period, Defendant's policies and procedures
20 changed little, and Universal required all class members to adhere to them. Not only do class
21 members thus share common policies on paper, SCA's investigation revealed they were treated as
22 a homogenous group.⁵⁶ Given the uniform nature of class members' job duties, Defendant's
23 policies and procedures, and the fact that working conditions were common, this case is suitable
24

25
26 ⁵⁵ Borrowing from federal authority, FRCP Rule 23 applies a permissive standard to demonstrate common questions
27 of law or fact. *Hanlon*, 150 F.3d at 1011 (9th Cir. 1998) (emphasizing the "minimal" requirements and "permissive"
interpretation of Rule 23(a)(2)). The presence of merely one common issue of law or fact is sufficient. *Haley v.*
Medtronic, Inc., 169 F.R.D. 643, 648 (C.D. Cal. 1996); *Slaven v. BP Am., Inc.*, 190 F.R.D. 649, 655 (C.D. Cal. 2000).

28 ⁵⁶ Cole Decl. ¶ 14.

SCOTT COLE & ASSOCIATES, APC
ATTORNEYS AT LAW
555 12TH STREET, SUITE 1725
OAKLAND, CA 94607
TEL: (510) 891-9800

1 for class treatment. Allowing adjudication of these claims on a class basis would be superior⁵⁷ to
2 letting individual claims from transient, low-income workers, which would be less efficient and
3 lead to a waste of resources and potentially inconsistent results. Indeed, the following common
4 questions of law and fact, among others, flow logically from the practices detailed above:

- 5 • Whether Defendant violated each of the elements of Labor Code §§ 203, 226, 226.7
6 and 512 (the primary claims);
- 7 • Whether failing to pay and record meal and rest period premiums on employees' pay
8 stubs was a violation of Labor Code § 226;
- 9 • Whether a violation of §§ 226.7 and/or 512 supports penalties under §§ 203 and/or 226;
- 10 • To what degree were class members' job duties common;
- 11 • How did Defendant communicate its meal and rest break policies to class members;
- 12 • Whether Defendant provided "rovers" or other supervisory personnel to cover for
13 Security Professionals so they could enjoy meal and rest breaks;
- 14 • How did Defendant schedule Security Professionals, including use of common
15 timekeeping and/or advanced schedules;
- 16 • What duties (including remaining "on call") were Security Professionals expected to
17 perform while, ostensibly, on breaks;
- 18 • Whether Defendant violated Business and Professions Code § 17200, *et seq.* by
19 engaging in unfair, unlawful and/or fraudulent business practices;
- 20 • Whether Defendant's client contracts required class members to remain "on duty" at
21 all times during their respective shifts; and
- 22 • Whether the class is entitled to PAGA penalties, and, if so, in what amount.

23 Given the host of common questions of law and fact, the commonality requirement is
24 satisfied.⁵⁸ *Hanlon*, at 1019-20; *Gutierrez v. Kovacevich "5" Farms*, 2004 WL 3745224, at *5
25 (E.D. Cal. Dec. 2, 2004) (finding commonality satisfied where plaintiffs presented common
26 questions of whether defendants failed to pay plaintiffs for all time worked); *Rainbow Bus*.
27 *Solutions v. Merch. Servs*, 2013 U.S. Dist. LEXIS 179288, *15 (N.D. Cal. 2013) (shared legal

28 ⁵⁷ Even manageability issues will not foreclose certification for settlement purposes. *Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 117 S.Ct. 2231 (1997) ("Confronted with a request for settlement-only class certification, [the] court need not inquire whether the case, if tried, would present intractable manageable problems [citations omitted], for the proposal is that there be no trial.").

⁵⁸ Indeed, these questions may well be appropriate for summary adjudication, as they were in *Augustus*.

SCOTT COLE & ASSOCIATES, APC
ATTORNEYS AT LAW
555 12TH STREET, SUITE 1725
OAKLAND, CA 94607
TEL: (510) 891-9800

1 issues with divergent factual predicates sufficient for class certification); *Tierno v. Rite Aid Corp.*,
2 2006 U.S. Dist. LEXIS 71794 (N.D. Cal. Aug. 31, 2006) (certifying a wage and hour class of retail
3 store managers based on a common evaluation process).

4 Following the California Supreme Court's seminal decision in *Brinker*, courts are routinely
5 certifying these types of claims.⁵⁹ Starting with *Brinker*, California courts have repeatedly affirmed
6 that "a uniform policy, and that policy, measured against wage order requirements, allegedly
7 violated the law—is by its nature a common question eminently suited for class treatment." *Brinker*,
8 53 Cal.4th at 1033 (emphasis added). And, post-*Brinker*, courts are routinely reversing denials of
9 certification when a common policy is the central issue. See, e.g., *Bradley v. Networkers*
10 *International, LLC*, 211 Cal.App.4th 1129 (2012); *Faulkinbury v. Boyd & Associates, Inc.*, 216
11 Cal.App.4th 220 (2013); *Benton v. Telecom Network Specialists, Inc.*, 220 Cal.App.4th 701
12 (2013); *Bluford v. Safeway Stores, Inc.*, 216 Cal.App.4th 864 (2013). The evidence here shows
13 sufficient commonality to justify class treatment for settlement purposes.⁶⁰

14 2. Plaintiffs Satisfy the Typicality Element

15 The second prong (i.e., typicality) is met when the class representatives have claims or
16 defenses typical of the class. *Sav-On*, 34 Cal.4th at 326. Here, typicality is met because the
17 Representative Plaintiffs' claims arise from the same facts and are based on the same legal theories
18 as those applicable to the class as a whole, yet those claims "need not be substantially identical."
19 *Sav-On*, 34 Cal.4th at 326; *Hanlon*, 150 F.3d at 1020. In deciding whether individual variations
20 preclude typicality, the focus should be on the behavior of the defendants. *Day v. NLO*, 851 F.
21 Supp. 869, 884 (S.D. Ohio 1994). The Representative Plaintiffs allege the denial of meal and rest
22 periods, seek to champion precisely those claims for the remaining class members, and worked in
23 the same or similar positions, under the same policies and procedures.

24
25 ⁵⁹ See e.g., *Ghazaryan v. Diva Limousine, Ltd.*, 169 Cal.App.4th 1524, 1538 (2008) (wage and hour claims
26 "routinely proceed as class actions"); *Prince v. CLS Transportation, Inc.*, 118 Cal.App.4th 1320, 1329 (2004); *Estrada*
27 *v. FedEx Ground Package System, Inc.*, 154 Cal.App.4th 1, 14 (2007).

28 ⁶⁰ Particularly in the settlement context, class resolution is superior to other available methods for the fair and
efficient adjudication of the controversy. Indeed, the alternative methods of resolution are individual suits for relatively
small amounts or individual arbitration. These claims "would prove uneconomic for potential plaintiffs" because
"litigation costs would dwarf potential recovery." *Hanlon*, 150 F.3d at 1023.

SCOTT COLE & ASSOCIATES, APC
ATTORNEYS AT LAW
555 17TH STREET, SUITE 1725
OAKLAND, CA 94607
TEL: (510) 891-9800

1 **3. Plaintiffs and Their Counsel Satisfy the Adequacy Requirement**

2 Under the third prong, class members are adequately represented if the named plaintiffs
3 and their counsel (1) do not have conflicts of interest with class members and (2) will prosecute
4 the case vigorously for the class. *Hanlon*, 150 F.3d at 1020.⁶¹ Here, there is no conflict of interest
5 between Representative Plaintiffs (or their attorneys) and the remaining class members. Even if
6 there were such a conflict in a certain instance, any class member may “opt-out” of the class.
7 Finally, SCA has significant experience in wage and hour class action litigation and is routinely
8 appointed class counsel in cases alleging precisely these issues.⁶² Thus, plaintiffs’ counsel and its
9 clients clearly have the motivation and ability to litigate this class action had a fair settlement not
10 been obtained.

11
12 **VI. THE COURT SHOULD APPROVE THE PROPOSED CLASS NOTICE**

13 Adequate notice is critical to court approval of a class settlement. *Hanlon*, 150 F.3d at
14 1025. The threshold requirement concerning the sufficiency of class notice is whether the means
15 employed to distribute the notice is reasonably calculated to apprise the class of the pendency of
16 the action, of the proposed settlement, and of class members’ rights to opt out or object. *Eisen*, 417
17 U.S. at 173-74 (1974). Notice is satisfactory if it “generally describes the terms of the settlement
18 in sufficient detail to alert those with adverse viewpoints to investigate and to come forward and
19 be heard.” *Churchill Vill., L.L.C. v. GE*, 361 F.3d 566, 575 (9th Cir. 2004).

20 As detailed above the Notice is written in simple, straightforward language that, among
21 other things, includes: (1) basic information about the action, (2) a description of the benefits
22 provided by settlement, (3) an explanation of how class members can obtain benefits under the
23 settlement, (4) an explanation of how class members can exercise their right to object to the
24 settlement, (5) an explanation that any claims against Defendants that could have been litigated in
25 this action will be released if the class member does not request exclusion from the settlement, (6)

26
27 ⁶¹ Notably, mere divergence of opinion between the class and its representatives is not sufficient to constitute a
conflict. *In re Mego Fin. Corp. Sec. Litig.*, 213 F.3d 454, 462 (9th Cir. 2000).

28 ⁶² Cole Decl. ¶¶ 26-30; Exhibit “C,” SCA’s Professional Resume.

1 the names of Class Counsel and information regarding the requested attorneys' fees and expenses
2 and Representative Plaintiffs' service awards, (7) the Final Approval Hearing date, (8) an
3 explanation of eligibility for appearing at the Final Approval Hearing, and (9) contact information
4 to obtain additional information. Cole Decl., Ex. B. Since the Notice provides class members with
5 sufficient information to make an informed and intelligent decision about the settlement, it satisfies
6 all due process requirements. *In re Wells Fargo Loan Processor Overtime Pay Litig.*, 2011 WL
7 3352460, at *4 (N.D. Cal. Aug. 2, 2011); *Rodriguez v. West Publ'g Corp.*, 563 F.3d 948, 963 (9th
8 Cir. 2009) (where class notice communicated the essentials of the proposed settlement in a
9 sufficiently balanced, accurate, and informative way, it satisfied due process concerns).

10
11 **VII. A FINAL APPROVAL HEARING SHOULD BE SET**

12 The final step in the settlement approval process is a final fairness hearing at which the
13 Court may hear all evidence and arguments necessary to make its evaluation regarding the
14 settlement. *MCL* § 21.63 at 318. Representative Plaintiffs request the Court set a date for hearing
15 on final approval at a time convenient for the Court, roughly 95 days after preliminary approval.

16
17 **VIII. CONCLUSION**

18 For the reasons set forth above, Representative Plaintiffs respectfully request that the Court
19 (1) grant preliminary settlement approval, (2) approve the content and plan for distribution of the
20 Notice, (3) appoint class counsel, representative plaintiffs and a claims administrator, (4)
21 conditionally certifying the class, and (5) schedule a Final Approval Hearing.

22
23 Dated: January 23, 2020

SCOTT COLE & ASSOCIATES, APC

24
25 By:


26 Scott Edward Cole, Esq
Attorneys for Representative Plaintiffs,
Aggrieved Employees and the Plaintiff Class
27
28

SCOTT COLE & ASSOCIATES, APC
ATTORNEYS AT LAW
355 15TH STREET, SUITE 1725
OAKLAND, CA 94607
TEL: (510) 891-9800

1 Scott Edward Cole, Esq. (S.B. #160744)
2 Laura Grace Van Note, Esq. (S.B. #310160)
3 Eric Fackrell, Esq. (S.B. #298062)
4 **SCOTT COLE & ASSOCIATES, APC**
5 555 12th Street, Suite 1725
6 Oakland, California 94607
7 Telephone: (510) 891-9800
8 Facsimile: (510) 891-7030
9 Email: scole@scalaw.com
10 Email: lvannote@scalaw.com
11 Email: efackrell@scalaw.com
12 Web: www.scalaw.com

13 Attorneys for Representative Plaintiff,
14 Aggrieved Employees and the Plaintiff Class

15
16
17 **IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA**
18 **IN AND FOR THE COUNTY OF SACRAMENTO**

19 **MAGED HAKEEM, SHERIF HAKEEM**
20 **and BARBARA SANCHEZ, individually,**
21 **and on behalf of all others similarly**
22 **situated,**

23 **Plaintiffs,**

24 **vs.**

25 **UNIVERSAL PROTECTION SERVICE,**
26 **LP and DOES 1 through 100, inclusive,**

27 **Defendants.**

Case No. 34-2019-00270901

CLASS ACTION

**[PROPOSED] ORDER GRANTING
PLAINTIFFS' MOTION FOR PRELIMINARY
APPROVAL OF CLASS ACTION
SETTLEMENT**

Date: February 21, 2020

Time: 2:00 p.m.

Dept.: 53

SCOTT COLE & ASSOCIATES, APC
ATTORNEYS AT LAW
555 12TH STREET, SUITE 1725
OAKLAND, CA 94607
TEL: (510) 891-9800

BY FAX



1 This matter, having come before the Superior Court of the State of California, in and for
2 the County of Sacramento, at 2:00 p.m. on February 21, 2020 with Scott Cole & Associates, APC
3 appearing as counsel for Representative Plaintiffs Maged Hakeem, Sherif Hakeem and Barbara
4 Sanchez, individually and on behalf of the Plaintiff Class and Aggrieved Employees, and
5 Martenson, Hasbrouck & Simon LLP appearing as counsel for defendant Universal Protection
6 Service and Does 1 through 100 ("Defendants"). The Court, having carefully considered the briefs,
7 argument of counsel and all matters presented to the Court and good cause appearing, hereby
8 GRANTS Plaintiffs' Motion for Preliminary Approval of Class Action Settlement.

9
10 **IT IS HEREBY ORDERED THAT:**

11 1. The Court preliminarily approves the Settlement Agreement entitled "Allied
12 Universal Security Services Wage and Hour Class Action Settlement Agreement and Release of
13 Claims," including the parties' modifications thereto ("Settlement Agreement"), attached as
14 Exhibit "A" to the Declaration of Scott Cole, Esq. in Support of Plaintiffs' Motion for Preliminary
15 Approval of Modification to Settlement Agreement and Revised Class Notice ("Cole Decl."). This
16 is based on the Court's determination that the Settlement is within the range of possible final
17 approval.

18 2. The Court approves, both as to form and content, the Class Notice, attached to the
19 Cole Decl. as Exhibit "B." The Class Notice shall be provided to class members in the manner set
20 forth in the Settlement Agreement.

21 3. The final approval hearing shall be held on _____ at
22 _____ in Department 53 of this Court, to determine whether the proposed Settlement
23 is fair, adequate, reasonable, and should be granted final approval. At that time, the Court will also
24 consider Plaintiffs' application for attorneys' fees, costs, settlement administration expenses, and
25 service payments to the Class Representatives.

SCOTT COLE & ASSOCIATES, APC
ATTORNEYS AT LAW
555 12TH STREET, SUITE 1725
OAKLAND, CA 94607
TEL: (510) 891-9800

1 **IT IS SO ORDERED.**

2

3 Dated: _____

4

By: _____
Judge of the Superior Court

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