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on behalf of himself, all others similarly situated,
and on behalf of the general public.

SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF SAN DIEGO

MIGUEL HERNANDEZ, on behalf of
himself, all others similarly situated, and on
behalf of the general public

Plaintiff,

v.

MJ INDUSTRIES, INC.; MJ TANK LINES,
INC., and DOES 1-100, inclusive,

Defendants.

Case No. 37-2017-00003218-CU-OE-CTL

**PLAINTIFF'S MOTION FOR
PRELIMINARY APPROVAL OF CLASS
ACTION SETTLEMENT, CONDITIONAL
CERTIFICATION, APPROVAL OF CLASS
NOTICE, SETTING OF FINAL APPROVAL
HEARING DATE**

Date: July 24, 2020
Time: 9:00 a.m.
Judge: Hon. Ronald L. Styn
Dept.: C-74

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1 **I. INTRODUCTION**

2 Plaintiff Miguel Hernandez (hereinafter “Plaintiff”), on behalf of himself and the
3 approximately 187 member putative class respectfully request that this Court preliminarily approve
4 the proposed Joint Stipulation of Class Action Settlement (hereinafter referred to as the “Joint
5 Stipulation”),¹ entered into between Plaintiff and Defendant MJ INDUSTRIES, INC. dba MJ TANK
6 LINES, INC. (hereinafter referred to collectively as “Defendant” or “MJ”), which seeks to resolve
7 claims raised against Defendant in the above-captioned matter in exchange for a non-reversionary
8 \$150,000 Gross Settlement Amount (“GSA”). The proposed class is comprised of all individuals
9 employed by Defendant as drivers at any time between January 25, 2013, through preliminary
10 approval of the settlement (hereinafter the “Class” and January 25, 2013 through preliminary approval
11 of the settlement is hereinafter referred to as the “Class Period”).

12 It is requested this Court grant preliminary approval, as, when analyzing the strengths and
13 vulnerabilities of the class claims along-side Defendant’s potential liability exposure, this proposed
14 settlement of \$150,000 – which is estimated to pay class members an average settlement share amount
15 estimated at \$349.90² – is within the range of reasonableness. Moreover, the proposed Joint Stipulation
16 satisfies all of the criteria for preliminary approval under California Rule of Court 3.769.

17 As the following sections show, Class Counsel is convinced that the proposed settlement is in
18 the best interest of the class based on the negotiations and a detailed knowledge of the issues present
19 in this action. Class Counsel carefully weighed the length and risks of trial, as well as, the perils of
20 litigation that affect the value of the claims. In addition, the defenses asserted by Defendant, the
21 difficulties of complex litigation, the lengthy process of establishing specific damages, and various
22 possible delays and appeals were also carefully considered by Class Counsel in arriving at the
23 proposed settlement. While Plaintiff believes in the merits of his case, he also recognizes the inherent
24 risks of litigation and understands the benefit of the Class receiving significant settlement funds
25 immediately as opposed to risking continued litigation, particularly in light of Defendant’s motion for
26 summary judgment, the merits of the case before and after trial, the damages awarded, and/or an appeal
that can take several more years to litigate.

27 ¹ The Joint Stipulation is attached to the Declaration of David Mara, Esq. (“Mara Dec.”), as **Exhibit 1**.

28 ² \$63,750 Net Settlement Amount “NSA” / 187 Class Members

1 The Joint Stipulation was the product of non-collusive, arm's-length negotiations at mediation
2 and beyond by informed counsel and Parties. The settlement is fair, reasonable, and adequate to all
3 Accordingly, Plaintiff seeks: (1) preliminary approval of the terms contained in the Joint Stipulation;
4 (2) provisional certification of the Class; (3) appointment of Plaintiff as Class Representative; (4)
5 appointment of the Mara Law Firm, PC as Class Counsel; (5) approval of Plaintiff's and Defendant's
6 (hereinafter collectively the "Parties") proposed Notice of Class Action Settlement³ ("Class Notice")
7 and method of notifying the members of the Class; and (6) a hearing date for final approval.

8 **II. FACTUAL AND PROCEDURAL BACKGROUND**

9 MJ is in the business of transporting hazardous materials, specifically fuel, oil, etc., for its
10 customers. MJ serves its customers in Central and Southern California out of the 5 terminals it operates
11 located in Southern California. In order to carry out its business, MJ hires truck drivers, like Plaintiff,
12 to operate the trucks and transport the materials.

13 Plaintiff filed a putative class action complaint in the San Diego County Superior Court against
14 Defendant on January 25, 2017. Plaintiff's original Complaint alleged the following causes of action:
15 1) failure to pay all straight time wages; 2) failure to pay overtime; 3) failure to provide meal periods;
16 4) failure to authorize and permit rest periods; 5) knowing and intentional failure to comply with
17 itemized employee wage statement provisions; 6) failure to pay all wages due at the time of
18 termination; and 7) violation of the Unfair Competition Law. On July 5, 2017, Defendant answered
19 the complaint generally denying all claims.

20 As part of this contemplated class-wide settlement, the Parties agreed that Plaintiff would
21 amend his complaint to allege violations of the Private Attorneys General Act of 2004 ("PAGA") and
22 stipulated to allow Plaintiff to file a First Amended Complaint on May 26, 2020. Plaintiff's First
23 Amended Complaint was filed on June 17, 2020.

24 **a. Discovery and Investigation**

25 After filing, the Parties engaged in extensive discovery. Plaintiff's discovery requests, coupled
26 with the Parties extensive meet and confer efforts, led to Defendant producing over ten thousand pages
27 of documents. These documents included, but were not limited to, Defendant's meal and rest period

28 ³ The Notice of Class Action Settlement is attached to the Joint Stipulation as **Exhibit A**.

1 policies, employee handbooks, time records and wage records for class members, and additional
2 relevant policies. Additionally, Defendant provided Plaintiff with data that enabled him to fully
3 evaluate class-wide claims and potential exposure. Plaintiff also performed an independent analysis
4 of the case and interviewed numerous class members about their experiences working for Defendant
5 Mara Dec. ¶ 9.

6 On May 3, 2019, Plaintiff filed his Motion for Class Certification. Defendant opposed this
7 motion. The Court held a hearing on Plaintiff's motion on July 12, 2019, and the Court issued an order
8 granting Plaintiff's Motion for Class Certification only as to Plaintiff's meal period and rest period
9 claims. On or around November 6, 2019, Defendant filed its Motion for Summary Judgment arguing
10 that the certified class claims were preempted by the Federal Motor Carrier Safety Administration's
11 ("FMCSA") hours of service regulations and the Pipeline and Hazardous Materials Safety
12 Administration's ("PHMSA") administrative determination that California's meal period rules are
13 preempted. The Parties reached the instant settlement prior to having the motion heard by the Court.
Mara Dec. ¶ 10.

14 **b. The Parties' Conflicting Positions**

15 This entire case hinges on whether Plaintiff's and class members' claims for failure to provide
16 compliant meal and rest periods under California law are preempted by federal law. A September 21,
17 2018 opinion by the Pipeline and Hazardous Materials Safety Administration ("PHMSA") found that
18 California's meal and rest period laws do not apply to drivers of motor vehicles that are transporting
19 hazardous materials. PHMSA opined that "California's meal and rest break requirements create an
20 unnecessary delay in the transportation of hazardous materials and are therefore preempted." Further,
21 on December 28, 2018, the Federal Motor Carrier Safety Administration issued a separate opinion
22 determining that the California meal and rest break provisions are more stringent than the Agency's
23 hours of service regulations, that they have no safety benefits that extend beyond those already
24 provided by the Federal Motor Carrier Safety Regulations, that they are incompatible with the Federal
25 hours of service regulations, and that they cause an unreasonable burden on interstate commerce. Thus,
26 California meal and rest break laws, therefore, are preempted under 49 U.S.C. 31141(c). Mara Dec. ¶
27 11.

1 Plaintiff argues that these opinions cannot and do not apply retroactively, and Defendant is still
2 liable for violating California law for nearly the entirety of the Class Period prior to the issuance of
3 this opinion. Federal agency decisions and opinions, like the FMCSA and PHMSA opinions, are
4 “subject to the presumption of prospectivity that attends true exercises of legislative authority.”
5 *Gutierrez-Brizuela v. Lynch* (10th Cir. 2016) 834 F.3d 1142, 1144. As FMCSA and PHMSA orders
6 are subject to the presumption of prospectivity, there must be express language in the statutory grant
7 of legislative rulemaking authority enabling these administrative agencies to extend their regulations
8 retroactively. Here, the statutes enabling these agencies to issue this legislative regulations, 49 U.S.C.
9 §§ 31141 and 5125, are completely void of any language, evidence, or indication whatsoever that
10 Congress expressly granted these agencies with the power to promulgate retroactive rules, nor do the
11 FMCSA and PHMSA Orders themselves give any indication that they are to be interpreted
12 retroactively. Hence, because agency orders are presumed prospective unless congress expressly
13 conveys the power to promulgate retroactive rules, and congress never expressly granted the power to
14 issue retroactive preemption determinations, the FMCSA and PHMSA opinions are not retroactive.
15 Further, Plaintiff contends that this opinion holds no weight over California Superior Courts, and will
16 ultimately be struck down and/or reversed by the appropriate legislative and judicial bodies. *Mara*
17 Dec. ¶ 12.

17 Defendant contends that the PHMSA and FMCSA opinions are fully enforceable and
18 extinguishes Plaintiff’s and the putative class’ claims for meal and rest period violations in their
19 entirety and not only for purported violations after the opinion was issued. Defendant can point to
20 numerous state and federal decisions enforcing the FMCSA opinion and granting summary judgment
21 as to meal and rest period claims for truck drivers subject to the Federal Hours of Service requirements,
22 to which Plaintiff and class members were undisputedly beholden. Specifically, in cases like *Ayala v.*
23 *U.S Xpress Enterprises, Inc.*, 2019 U.S. Dist. LEXIS 77089, 2019 WL 1986760, at *3 (C.D. Cal. May
24 2, 2019), courts have applied the FMCSA opinion to enter summary judgment on claims like those
25 made here, finding both that “retroactivity” was not at issue because the courts lack authority to enforce
26 the preempted laws, and that any challenge to the opinion must be brought in United States Courts of
27 Appeal. Indeed, these were the very issues raised in Defendant’s Motion for Summary Judgment that

1 was pending prior to the Parties reaching this settlement.

2 Therefore, Plaintiff's arguments, as outlined below, are only relevant if the Court were to find
3 that the PHMSA and FMCSA opinions have no, or only a limited, effect on Plaintiff's case. Because
4 of this, Plaintiff had to take into consideration the possibility that Defendant's position could prevail
5 and had to discount his damage exposure significantly. Mara Dec. ¶ 13.

6 Based upon the discovery and litigation conducted, Plaintiff contends – and Defendant disputes
7 – that class members are always subject to MJ's control and command, including during meal and rest
8 breaks. Plaintiff alleges that MJ has uniform policies which require class members to remain in
9 constant attendance of their trucks and its contents at all times. Because Defendant transports
10 hazardous materials, Plaintiff asserts that under Title 49 of the Code of Federal Regulations, Section
11 397.5(a) (49 CFR 397.5(a)) drivers are required to attend to their trucks at all times throughout the
12 workday, even on meal and rest periods. As a result, employees are not provided with rest periods in
13 which they are free to use the time for their own purposes. Mara Dec. ¶ 14.

14 Plaintiff argues that the cases *Brinker Restaurant Corp. v. Superior Court* ("Brinker"), (2012)
15 53 Cal.4th 1004, and *Augustus v. ABM Security Services, Inc.* ("Augustus"), (2016) 2 Cal. 5th 257,
16 provide that employers are required to relinquish any control over how employees spend their break
17 time, and relieve their employees of all duties. Plaintiff contends that when an employer requires
18 drivers to remain in constant attendance of their truck and trailers during meal and rest periods, that
19 is, when an employer prevents drivers from leaving their trucks unattended due to their containment
20 of hazardous materials to maintain the employer's compliance with 49 CFR 397.5(a), the employer
21 has impermissibly imposed a restraint not inherent in the meal and rest period requirements itself, and
22 places drivers on-duty for meal and rest periods. Under California Labor Code § 226.7(a), "[n]o
23 employer shall require any employee to work during any . . . rest period mandated by an applicable
24 order of the Industrial Welfare Commission." If an employer does not provide a duty-free meal or rest
25 period, i.e., one that is free of employer control, the 226.7 premium is triggered. Mara Dec. ¶ 15.

26 As addressed above, Defendant asserts that Plaintiff's claims for failure to provide meal and
27 rest periods are completely preempted by federal law. Further, Defendant claims that despite this
28 contention, it has, at all times during the Class Period, complied with California law. Defendant

1 contends that drivers have ample time between loads, when the trucks do not contain any hazardous
2 materials, to take duty-free meal and rest periods and are not always required to attend to their trucks
3 throughout the entirety of a shift to comply with 49 CFR 397.5(a). Defendant argues that California
4 law only requires employers to make duty-free meal and rest periods available to employees.
5 Employers are not required to police drivers to take their meal and rest periods. Any choice an
6 employee makes to take a meal or rest period while attending to hazardous materials, rather than the
7 down time in between loads, was solely the choice of each individual driver, not the result of any
8 purported mandate from Defendant.

9 Furthermore, Plaintiff contends that because MJ mandates drivers attend to their trucks and its
10 contents, drivers are not paid wages for all hours worked. Under California law, employees must be
11 paid for all hours worked. Hours worked is defined in Wage Order 9-2001⁴ as “the time during which
12 an employee is subject to the control of an employer, and includes all the time the employee is suffered
13 or permitted to work, whether or not required to do so.” Wage Order 9-2001, Subd. 2(K); *see also*
14 *Mendiola v. CPS Security Solutions, Inc.*, 60 Cal. 4th 833 (2015). Under this standard, “it is only
15 necessary that the worker be subject to the control of the employer in order to be entitled to
16 compensation.” *Morillion v. Royal Packing Co.*, 22 Cal. 4th 575, 584 (2000). Plaintiff asserts that this
17 deprives drivers of wages for all hours worked, specifically during unpaid meal periods). Mara Dec. ¶
18 16.

19 Defendant argues that beyond the limited accusations of Plaintiff, there is no evidence that
20 class members performed *any* work-related tasks for which drivers were not compensated. Defendant
21 further contends that there is no evidence of any kind of uniform practice or policy for drivers to
22 perform work off the clock, and, in fact, Defendant has uniform practices and policies *forbidding* class
23 members from working off the clock. Additionally, Defendant contends that it provided drivers with
24 the option to take on-duty meal periods in order to remain in compliance with the attendance
25 requirements of 49 CFR 397.5(a), for which drivers were *fully compensated* for any and all time
26 worked during their meal periods. Defendant points to the time and wage records for driver class
27 members as further evidence that drivers were paid throughout the entirety of their shifts, with no 30-

⁴ This is the Wage Order that governs the driver class members in this case.

minute deduction for meal periods.

As evidenced above, the Parties took staunchly conflicting positions with respect to Plaintiff's claims.

c. Settlement Negotiations

The Parties participated in a full day mediation with the Jeffrey Krivis on January 22, 2018. The matter did not settle at mediation, but the Parties continued settlement discussions throughout the course of the litigation. In light of the points raised in Defendant's Motion for Summary Judgment, and appreciating the significant risks on both sides, the Parties reached a settlement in principle. The Parties then met and conferred regarding all the terms of the settlement and finalized their agreement in the Joint Stipulation, of which the Parties seek preliminary approval in the instant motion. Mar. Dec. ¶ 17; **Exhibit 1**.

d. Terms of the Proposed Settlement

i. Deductions from the Settlement

The Parties agreed (subject to and contingent upon the Court's approval) that this action be settled and compromised for the non-reversionary total sum of \$150,000 ("Gross Settlement Amount" or "GSA"), which includes, subject to Court approval: (a) attorneys' fees of up to \$50,000 (1/3 of the GSA) to compensate Class Counsel for work already performed and all work remaining to be performed in documenting the settlement, administering the settlement, and securing Court approval; (b) litigation expenses estimated not to exceed \$15,000;⁵ (c) a Class Representative Service Payment to the named class representative, Miguel Hernandez, in a sum not to exceed \$10,000 in consideration for agreeing to a general release of his claims against Defendant that is broader than that of other class members, and in recognition of his efforts in prosecuting the action; (d) claims administration fees and expenses to Simpluris (hereinafter "Simpluris" or the "Settlement Administrator"), estimated not to exceed approximately \$7,500;⁶ and (e) PAGA payment to the LWDA in the amount of \$3,750 (which represents seventy-five percent (75%) of \$5,000 allocated to PAGA).

⁵ These will be tabulated and presented to the Court at final approval. Plaintiff will only seek the amount of actual expenses incurred during the litigation of this case. Should the actual expenses exceed \$15,000, Plaintiff will only seek reimbursement of costs up to \$15,000.

⁶ Simpluris will present to the Court a declaration in conjunction with the final approval motion outlining the costs of the settlement administration process. If the settlement administration costs are lower than the amount allocated in the Joint Stipulation, the difference will be added to the NSA for distribution to Participating Class Members.

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Each Participating Class Member will receive a proportionate share of the Net Settlement Amount that is equal to (i) the number of weeks he or she worked for Defendant in California based on the Class data provided by Defendant, divided by (ii) the total number of weeks worked by all Participating Class Members based on the same Class data, which is then multiplied by the Net Settlement Amount. One day worked in a given week will be credited as a week for purposes of this calculation. Therefore, the value of each Class Member's Individual Settlement Share ties directly to the amount of weeks that he or she worked. (**Exhibit 1** attached to the Mara Dec. at Section III, Paragraph F(1)(a)).

The individual settlement payments will be divided into a “wage portion” to compensate Participating Class Members for alleged unpaid wages and a “non-wage portion” to compensate Participating Class Members for alleged interest and penalties. Participating Class Members’ individual settlement shares will be apportioned as follows: one-third (1/3) wages, one-third (1/3) interest, and one-third (1/3) penalties.

Within seven (7) business days after entry of the Preliminary Approval Order, Defendant will provide to Simpluris an electronic database, which will list for each Class Member: (1) first and last name; (2) last known mailing address; (3) social security number; (4) hire and termination dates; (5) last known email address; and (6) the total number of weeks during which the Class Member performed any actual work during the Class Period as a member of the Class (“Database”). *See*

8

PLAINTIFF'S MOTION FOR PRELIMINARY APPROVAL
OF CLASS ACTION SETTLEMENT

1 Agreement, Section III, paragraph I(3)(a). Within fourteen (14) business days after entry of the
2 Preliminary Approval Order, Simpluris will send to each Class Member, via first class US Mail, the
3 Class Notice. If a Class Notice is returned because of an incorrect address, within five (5) business
4 days from receipt of the returned Notice, the Settlement Administrator will conduct a search for a more
5 current address for the Class Member and re-mail the Class Notice to the Class Member. The
6 Settlement Administrator will use the National Change of Address Database and skip traces to attempt
7 to find the current address. The Settlement Administrator will be responsible for taking reasonable
8 steps to trace the mailing address of any Class Member for whom a Class Notice is returned by U.S.
9 Postal Service as undeliverable. These reasonable steps shall include, at a minimum, the tracking of
10 all undelivered mail; performing address searches for all mail returned without a forwarding address;
11 and promptly re-mailing to Class Members for whom new addresses are found. If the Settlement
12 Administrator is unable to locate a better address, the Class Notice shall be re-mailed to the original
13 address. If the Class Notice is re-mailed, the Settlement Administrator will note for its own records
14 the date and address of each re-mailing.

15 Class Members will have thirty (30) days after the Class Notices are mailed (the “Response
16 Deadline”) to respond by submitting a challenge to the number of workweeks attributed to them,
17 submitting an objection, or requesting to be excluded from the settlement. No later than fourteen (14)
18 calendar days after the Response Deadline or at the request of the Parties, whichever comes first, the
19 Settlement Administrator will provide the Parties with a complete and accurate accounting of the
20 number of Notices mailed to Class Members, the number of Notices returned as undeliverable, the
21 number of Notices re-mailed to Class Members, the number of re-mailed Notices returned as
22 undeliverable, the number of Class Members who objected to the Settlement and copies of their
23 submitted objections, the number of Class Members who returned valid requests for exclusion, and
24 the number of Class Members who returned invalid requests for exclusion. This report can be in the
25 form of a declaration by the Settlement Administrator to be filed with Plaintiff’s motion for final
26 approval. Before the Final Approval Hearing, the Settlement Administrator will supplement its
27 declaration of due diligence if any material changes occur from the date of the filing of its prior
28 declaration.

1 **iv. Funding and Distribution of the Settlement**

2 Defendant shall wire to the Settlement Administrator the GSA in three installments. *See*
3 Agreement, Section III, Paragraph I (11)(a). The First Installment shall be comprised of \$50,000 and
4 shall be funded and wired by Defendant to Simpluris fifteen (15) days after the Effective Final
5 Settlement Date.⁸ The Second Installment shall be comprised of \$50,000 and shall be funded and wired
6 by Defendant to Simpluris no later than ninety (90) days after funding the First Installment. The Third
7 Installment shall be comprised of \$50,000 and shall be funded and wired by Defendant to Simpluris
8 no later than ninety (90) days after funding the Second Installment.

9 The Settlement Administrator will disburse the GSA in two installments. *See* Agreement,
10 Section III, Paragraph I (11)(b). First, within ten (10) days after funding of the Second Installment as
11 described above, Simpluris shall disburse: (1) the Net Settlement Amount to be paid to Participating
12 Class Members (the payment of employee and employer side taxes on the portion of the settlement
13 shares earmarked as wages shall be paid out of the Net Settlement Amount. Thus, the individual
14 settlement shares that are paid out of the Net Settlement Amount shall be reduced by the employee
15 and employer's tax liability for the share); (2) the Cost Award to Class Counsel for attorneys' costs,
16 as approved by the Court; (3) the Class Representative Enhancement Payment paid to the Class
17 Representative, as approved by the Court; (4) the Administration Costs, as approved by the Court; and
18 (5) the PAGA Payment to the LWDA and to Participating Class Members, as approved by the Court.
19 Second, within five (5) days after funding of the Third Installment as described above, the Settlement
20 Administrator shall disburse the Attorney Fee Award to Class Counsel for attorneys' fees, as approved
21 by the Court.

22 Participating Class Members must cash or deposit their Individual Settlement Share checks
23 within 180 days after the checks are mailed to them. In the event a Participating Class Member fails
24 to cash his or her check, after reasonable efforts have been made, any such unclaimed funds shall be

25 ⁸ "Effective Final Settlement Date" will be (a) if no objections to the settlement are filed, the date the Court enters judgment
26 granting final approval of the settlement; (b) if objections to the settlement are filed and overruled, and no appeal is taken,
27 the date the Court enters judgment granting final approval of the settlement ; (c) if objections to the Settlement are filed
and withdrawn, the date the Court enters judgment granting final approval of the Settlement by the Court; or (d) if any
appeal is taken from the Court's overruling of objections to the settlement, then the Effective Final Settlement Date shall
be 20 days after the appeal is withdrawn or after an appellate decision affirming the final approval decision becomes final
and can no longer be appealed.

1 deposited by the Settlement Administrator, to the State Controller's Office – Unclaimed Property Fund
2 in the name of the Participating Class Member. If a Participating Class Member does not cash his or
3 her check, he or she will be able to claim his or her settlement payment from the Unclaimed Property
4 Fund at a future date. *See* Agreement, Section III, Paragraph I (13). The affected Participating Class
5 Member shall be deemed to, nevertheless, be bound to the Agreement.

6 **v. Release of Claims**

7 As of the Effective Final Settlement Date, Participating Class Members will release all known
8 and unknown state law claims that were alleged or that could have been alleged based on the facts of
9 the complaints filed in the matter, including for meal and rest breaks, unpaid wages, including
10 minimum wages, regular wages, overtime and double time wages, wage statement violations;
11 separation pay violations; unfair business practices; failure to timely pay wages; failure to keep
12 accurate payroll records; and PAGA from January 25, 2013, through preliminary approval of the
13 settlement. The release only applies to periods of time when Class Members were members of the
14 Class (i.e., excluding periods of time in an exempt position). The release will be as to the Released
15 Parties.⁹ *See* Agreement, Section I, Paragraph CC-DD.

16 **III. ARGUMENT**

17 **a. Class Action Settlements are Subject to Court Review and Approval Under the**
18 **California Rules of Court**

19 Rule 3.769 requires court approval for class action settlements.¹⁰ “Before final approval, the
20 court must conduct an inquiry into the fairness of the proposed settlement.” (California Rules of Court,
21 Rule 3.769(g).) Rule 3.769 further requires a noticed motion for preliminary approval of class
22 settlements:

- 23 (a) A settlement or compromise of an entire class action, or a cause of action in a
24 class action, or as to a party, requires the approval of the court after hearing.
25 . . .
26 (c) Any party to a settlement agreement may serve and file a written notice of
27 motion for preliminary approval of the settlement. The settlement agreement

28 ⁹ “Released Parties” means Defendant and its past, present and/or future, direct and/or indirect, officers, directors,
members, employees, representatives, administrators, attorneys, agents, parent companies, subsidiaries and affiliated
corporations and entities, consultants, shareholders, joint ventures, predecessors, successors, and/or assigns.

¹⁰ The California Supreme Court also has authorized California's trial courts to use Federal Rule 23 and cases applying it
for guidance in considering class issues. *See Vasquez v. Superior Court* (1971) 4 Cal.3d 800, 821; *Green v. Obledo* (1981)
29 Cal.3d 126, 145-146. Where appropriate, therefore, the Parties cite Federal Rule 23 and federal case law in addition to
California law.

and proposed notice to class members must be filed with the motion, and the proposed order must be lodged with the motion.

Courts act within their discretion in approving settlements that are fair, not collusive, and take into account “all the normal perils of litigation as well as the additional uncertainties inherent in complex class actions.” *In re Beef Industry Antitrust Litigation* (5th Cir. 1979) 607 F. 2d 167, 179, cert. den. sub nom. *Iowa Beef Processors, Inc. v. Meat Price Investigators Ass’n* (1981) 452 U.S. 905.

b. The Settlement is Fair, Reasonable, and Adequate

In deciding whether to approve a proposed class action settlement under Code of Civil Procedure § 382, the Court must find that a proposed settlement is “fair, adequate and reasonable.” *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1801. A proposed class action settlement is **presumed** fair under the following circumstances: (1) the parties reached settlement after arms-length negotiations; (2) investigation and discovery were sufficient to allow counsel and the court to act intelligently; (3) counsel is experienced in similar litigation; and (4) the percentage of objectors is small. *Dunk v. Ford Motor Co.*, *supra*, at 1802. As the following shows, all of these elements – with the exception of the percentage of objectors, which cannot be anticipated at this stage of the litigation – bearing on the fairness of the proposed settlement are present here and the Court’s grant of preliminary approval is therefore requested.

i. The Settlement was Reached as a Result of Arm’s-Length Negotiations

The settlement was reached as a result of arm’s-length negotiations. Though cordial and professional, the settlement negotiations have been, at all times, adversarial and non-collusive in nature. At the mediation and beyond in the litigation that followed, Counsel for the Parties conducted extensive arm’s length settlement negotiations until the settlement was reached. The terms of the settlement are memorialized in the Joint Stipulation which is attached to the Declaration of David Mara, Esq. as **Exhibit 1**.

ii. The Settlement is the Result of Thorough Investigation and Discovery

The Parties thoroughly investigated and evaluated the factual strengths and weaknesses before reaching the proposed settlement, and engaged in sufficient investigation, research and discovery to support the settlement. The settlement was only possible following discovery and evaluation of Defendant’s policies and procedures, as well as the data produced for the putative class, which

permitted Class Counsel to engage in a comprehensive analysis of liability and potential damages. This litigation has reached the stage where “the Parties certainly have a clear view of the strengths and weaknesses of their cases” sufficient to support the settlement. *Boyd v. Bechtel Corp.* (N.D. Cal. 1979) 485 F. Supp. 610, 617.

iii. Counsel for Both Parties are Experienced in Similar Litigation

Both Plaintiff’s Counsel and Defendant’s Counsel are particularly experienced in wage and hour employment law and class actions. Plaintiffs’ Counsel have significant experience in litigating unpaid wages, unprovided meal and rest periods, misclassification, overtime, and expense reimbursement class actions. Plaintiffs’ Counsel have prosecuted numerous wage and hour class action cases on behalf of employees for California *Labor Code* violations and thus are experienced and qualified to evaluate the class claims and to evaluate settlement versus trial on a fully informed basis, and to evaluate the viability of the defenses. Mara Dec. ¶¶ 2-8. Indeed, Mr. Mara of Mara Law Firm, PC, was class counsel in *Hohnbaum et al. v. Brinker Restaurant Corp et al.*, which is the subject case in the landmark decision of *Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal.4th 1004. Mara Dec. ¶ 4. This experience instructed Plaintiff’s Counsel on the risks and uncertainties of further litigation and guided their determination to endorse the proposed settlement.¹¹ Defendant’s Counsel is likewise well respected in defending wage and hour class actions. Accordingly, both Plaintiff’s Counsel and Defendant’s Counsel are experienced in wage and hour class actions.

iv. The Proposed Settlement is a Reasonable Compromise of Claims

An understanding of the amount in controversy is an important factor into whether the settlement “of the class members’ claims is reasonable in light of the strengths and weaknesses of the claims and the risks of the particular litigation.” *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 129; see also *Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles* (2010) 186 Cal.App.4th 399, 409. The most important factor in this regard is “the strength of the case for plaintiffs on the merits, balanced against the amount offered in settlement.” *Id.*

¹¹ The final factor mentioned in *Dunk* – the number of objectors – is not determinable until the Class Notice has been provided to the class and they have had an opportunity to respond. This information will be provided to the Court in conjunction with the final approval motion.

1 In weighing the strength of the plaintiffs' case, *Kullar* instructs that the court is not to "decide
2 the merits of the case or to substitute its evaluation of the most appropriate settlement for that of the
3 attorneys." *Kullar, supra*, 168 Cal.App.4th at 133. Finally, *Kullar* does not require an explicit
4 statement of the maximum amount the plaintiff class could recover if it prevailed on all its claims,
5 provided there is a record which allows "an understanding of the amount that is in controversy and the
6 realistic range of outcomes of the litigation." *Munoz*, 186 Cal.App.4th at 409. Put differently, "as the
7 court does when it approves a settlement as in good faith under *Code of Civil Procedure* § 877.6, the
8 court must at least satisfy itself that the class settlement is within the 'ballpark' of reasonableness."
9 *Kullar, supra*, 168 Cal.App.4th at 133, citing *Tech-Bilt v. Woodward-Clyde & Associates* (1985) 38
10 Cal.3d 488, 499-500. As the following subsections show, the Parties' investigation and discovery
revealed plenty of reasons to discount claims and agree to this settlement.

11 **v. The Settlement is Fair and Reasonable Based on the Strengths of Plaintiff's**
12 **Case and the Risks and Costs of Further Litigation**

13 The proposed settlement was only possible following significant discovery, an evaluation of
14 Defendant's relevant policies and procedures, and Plaintiff's independent investigation. This
15 permitted Class Counsel to engage in a comprehensive analysis of liability and potential damages. The
16 discovery conducted resulted in Plaintiff's central theories of liability, which are predicated on
17 Plaintiff's claims that Defendant failed to provide compliant meal and rest periods to class members.
18 As explained above, Defendant maintains that the controlling law demonstrates that it would succeed
19 at summary judgment or at trial. Perhaps of chief importance are Defendant's counter-arguments
20 asserted in regard to the FMCSA and PHMSA opinions; if Defendant were successful on its
21 arguments, Plaintiff's claims for meal and rest breaks, the core claims of this case, would fail entirely.
22 Given the uncertainty of how the Ninth Circuit will rule and the current trial court decisions being
23 made in support of FMCSA's decisions, a significant discount had to be factor into evaluating class-
wide settlement.

24 **vi. The Settlement Amount of \$150,000 is Reasonable**

25 In addition to being able to discover the strengths and vulnerabilities associated with Plaintiff's
26 claims, Defendant provided Plaintiff with information regarding class members during the Class
27 Period for exposure analysis purposes. Based upon the data provided by Defendant's Counsel, Plaintiff

1 has determined that there are approximately 187 non-exempt, hourly class members who worked
2 approximately 86,260 shifts within the Class Period. The average hourly rate is approximately \$21.50
3 per hour for the Class Period. (Mara Dec. ¶ 18).

4 As discussed above, Plaintiff contends that Defendant has a policy under which class members
5 are not relieved of all duty during meal and rest periods because they are required to maintain constant
6 vigilance over their trucks and its contents throughout the entirety of the meal and rest periods. If
7 Plaintiff were to prevail on this theory of liability, employees would be entitled to a meal and rest
8 period premium for each shift worked. Therefore, the *maximum potential exposure* under this theory
9 of liability would be \$3,709,180 (86,260 shifts x \$21.50 per hour x 2 premiums = \$3,709,180). (Mara
10 Dec. ¶ 19).

11 Plaintiff also asserts that because MJ mandates drivers attend to their trucks and its contents,
12 drivers are not paid wages for all hours worked during their unpaid meal periods. If Plaintiff were to
13 prevail on this theory of liability, each class member would be entitled to thirty minutes of unpaid time
14 per shift. Thus, Defendant's *maximum potential exposure* under Plaintiff's unpaid wages theory of
15 liability is \$927,295 (86,260 shifts x \$21.50 per hour x 30 minutes = \$927,295). (Mara Dec. ¶ 20).

16 Defendant counters Plaintiff's arguments by making legal and factual disputes, either one of
17 which, if successful, would defeat the claim in its entirety. Defendant claims that despite Plaintiff's
18 contention, Defendant has always provided its drivers with meal and rest periods consistent with
19 California law. Defendant contends that drivers are provided the opportunity to take duty-free meal
20 and rest periods between loads, when the trucks do not contain any hazardous materials, and as such,
21 are not always required to attend to their trucks throughout the entirety of a shift to comply with 49
22 CFR 397.5(a). Defendant argues that California law only requires employers to make duty-free meal
23 and rest periods available to employees. Employers are not required to police drivers to take their meal
24 and rest periods. Any choice an employee makes to take a meal or rest period while attending to
25 hazardous materials, rather than the down time in between loads, was solely the choice of each
26 individual driver, not due to any control asserted by Defendant.

27 Further, Defendant makes a strong argument that Plaintiff's meal and rest period claims are
28 completely preempted by Federal law under the FMCSA and PHMSA opinions, as discussed at length

1 above. Though Plaintiff argues it has no bearing on this action as it cannot be applied retroactively,
2 numerous other Superior and District Courts have held the opposite, and completely extinguished all
3 claims for meal and rest periods. If Defendant was to prevail on either of the above positions,
4 Plaintiff's damages for rest breaks would be reduced to zero. Plaintiff's meal and rest period claims
5 account for the greatest portion of Defendant's alleged liability. Plaintiff would then be left for the
6 claim for unpaid wages, which total overall potential exposure pales in comparison to that of Plaintiff's
7 meal and rest period claims, and even then, Defendant contends that, in light of Defendant's evidence
8 to the contrary, Plaintiff would have an uphill battle to show Plaintiff and class members were not paid
9 for the time worked when they took an on duty meal period and/or worked through their meal periods.

10 Plaintiff is also seeking PAGA penalties. PAGA allows the private enforcement of certain
11 California Labor Code sections relating to wage and hour violations. PAGA Section 2699(f)(2)
12 provides for a standard penalty amount where a civil penalty is not otherwise specified by statute:

13 [T]he civil penalty is one hundred dollars (\$100) for each aggrieved employee per pay
14 period for the initial violation and two hundred dollars (\$200) for each aggrieved
15 employee per pay period for each subsequent violation.

16 Plaintiff alleges that Defendant has three (3) chief violations – unlawful meal periods, unlawful rest
17 periods, and failure to pay for time worked – of the Labor Code sections which give rise to PAGA
18 penalties. The statute of limitations for PAGA violations goes back one year; based of the information
19 provided by Defendant, there were approximately 1,092 PAGA periods in the statutory period.
20 Plaintiff calculates Defendant's potential maximum exposure under PAGA as \$327,600¹². Mara Dec.
21 ¶ 21.

22 Plaintiff's PAGA claims are subject to the same risks on the merits as Plaintiff's non-PAGA
23 claims. In addition, Labor Code § 2699, subdivision (e)(2) provides that "[i]n any action by an
24 aggrieved employee seeking recovery of a civil penalty available under subdivision (a) or (f), a court
25 may award a lesser amount than the maximum penalty amount specified by this part if, based on the
26 facts and circumstances of the particular case, to do otherwise would result in an award that is unjust,
27 arbitrary, oppressive, or confiscatory." In *Thurman v. Bayshore Transit Management, Inc.*
28 ("Thurman") (2012) 203 Cal. App. 4th 1112, the court determined that an award of the maximum

¹² 1,092 PAGA periods x \$100 x 3 PAGA violations

1 penalty allowed may be unjust in circumstances outside of when a defendant cannot afford to pay the
2 maximum amount. *Thurman v. Bayshore Transit Management, Inc.* (2012) 203 Cal. App. 4th 1112,
3 1135-1136. The *Thurman* court found that penalties may be reduced when a defendant has taken its
4 obligations to comply with the law seriously. *Id.* Defendant maintains that if the case were to continue
5 in litigation, they would be able to show that they took their obligations to comply with the law
6 seriously. As such, if Plaintiff were able to prevail on the merits of his PAGA claims, it is likely that
7 the Court would reduce the maximum penalty allowed.

8 In addition, as the PAGA violations asserted by Plaintiff are predicated on the same unlawful
9 conduct that Plaintiff bases his other claims, Plaintiff's PAGA claims are subject to the same risks on
10 the merits as Plaintiff's class claims. If Plaintiffs are ultimately unable to prevail on any one of their
11 class claims, their recovery under the PAGA as to that violation would also fail. The likelihood of the
12 Court reducing the PAGA damages awarded to Plaintiff and the aggrieved employees – assuming
13 liability is proven as to each of Plaintiff's claims – is also higher in this case where these same
14 individuals will also be receiving money for the same unlawful conduct under the class claims. *See*
15 *Avila v. Cold Spring Granite Co.* (E.D. Cal. Jan. 12, 2018) Case No. 1:16-cv-001533-AWI-SKO, 2018
16 U.S. Dist. LEXIS 6142 *17 (“Because the PAGA penalties sought are at least partially duplicative of
17 penalties granted by the underlying Labor Code violations, *see, e.g.*, Cal. Lab. Code §§
18 203, 226, 558(a), 1194.2, and because a Court has discretion in whether and in what amount to award
19 PAGA penalties, *see* Cal. Lab. Code § 2699(e)(2), Plaintiff recognizes that the potential PAGA
20 penalties are highly uncertain.”). Therefore, Plaintiff believes that the Court could, and likely would,
21 reduce the PAGA penalties awarded.

22 Thus, not taking into consideration any of its defenses, MJ's total exposure if Plaintiff was
23 successful in his core claims would be approximately \$4,636,475. This maximum potential exposure,
24 however, had to be discounted considerably in light of Defendant's arguments. In addition, Plaintiff
25 also had to consider that, should the Court agree with Plaintiff's position, they may not be awarded
26 the full exposure at trial. In light of Defendant's defenses, supporting evidence, and the current legal
27 landscape, the settlement amount of \$150,000 – with an average settlement share amount estimated at

1 \$349.90– Plaintiff and his counsel believe that this is a reasonable and fair settlement amount. (Mar
2 Dec. ¶ 22).

3 A settlement is not judged **solely** against what might have been recovered, had the plaintiffs
4 prevailed at trial, nor does the settlement have to provide 100% of the damages sought to be fair and
5 reasonable. *Wershba v. Apple Computers, Inc.* (2001) 91 Cal.App.4th 224, 246, 250; *Rebney v. Wells*
6 *Fargo Bank* (1990) 220 Cal.App.3d 1117, 1139; “Compromise is inherent and necessary in the
7 settlement process...even if the relief afforded by the proposed settlement is substantially narrower
8 than it would be if the suits were to be successfully litigated, this is no bar to a class settlement because
9 the public interest may indeed be served by a voluntary settlement in which each side gives ground in
10 the interest of avoiding litigation.” *Wershba, supra*, at 250; *Officers for Justice v. Civil Serv. Comm’n*
11 (9th Cir. 1982) 688 F.2d 615, 628 (“It is well-settled law that a cash settlement amounting to only a
12 fraction of the potential recovery does not...render the settlement inadequate or unfair”).

13 **c. Provisional Class Certification Should be Granted**

14 Under California law, a class action is appropriate when the class is ascertainable and there is
15 “a well-defined community of interest in the questions of law and fact involved affecting the parties
16 to be represented.” California Code of Civil Procedure § 382. State law requirements under California
17 Code of Civil Procedure § 382 for class certification follow federal law according to Rule 23 of the
18 Federal Rules of Civil Procedure: numerosity, typicality of the class representatives’ claims, adequacy
19 of representation, predominance of common issues, and superiority. Federal Rules of Civil Procedure,
20 Rule 23(a); *see also Hanlon v. Chrysler Corp.* (9th Cir. 1998) 150 F.3d 1011, 1019. It should be noted
21 that while a court must certify a class for settlement purposes if a class has not already been certified,
22 “it is well established that trial courts should use different standards to determine the propriety of a
23 settlement class, as opposed to a litigation class certification. Specifically, a lesser standard of scrutiny
24 is used for settlement cases.” *Glob. Minerals & Metals Corp. v. Superior Court* (2013) 113
25 Cal.App.4th 836, 859 *citing Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1807, fn. 19.

26 Plaintiff contends, and Defendant does not dispute for settlement purposes only, each of these
27 elements is present. *See Wershba v. Apple Computer* (2001) 91 Cal. App. 4th 224, 237-38. Plaintiff

1 seeks approval of the following Class for settlement purposes only: All individuals employed by
2 Defendant as drivers at any time between January 25, 2013, through preliminary approval of the
3 settlement.

4 **i. The Proposed Class is Ascertainable**

5 Plaintiff contends that the proposed Class is ascertainable because all of the Class Members
6 have worked for Defendant as employees and have been identified through Defendant's own records,
7 such as employee and payroll files. *See Rose v. City of Hayward* (1981) 126 Cal.App.3d 926,932
8 (finding that "Class Members are 'ascertainable' where they may be readily identified without
9 unreasonable expense or time by reference to official records."); *Sevidal v. Target Corp.* (2010) 189
10 Cal.App.4th 905, 919 ("[c]lass members are 'ascertainable' where they may be readily identified
11 without unreasonable expense or time by reference to official [or business] records."). Thus, the
12 ascertainability requirement is met.

13 **ii. The Proposed Class is Sufficiently Numerous**

14 The numerosity requirement is met if the Class is so large that joinder of all members would
15 be impracticable. *Gay v. Waiters' & Dairy Lunchmen's Union* (N.D. Cal. 1980) 489 F. Supp. 282,
16 *aff'd* (9th Cir. 1982) 694 F.2d 531. "There is no set number required to maintain a class action, and
17 the statutory test is whether a class is so numerous that 'it is impracticable to bring them all before the
18 court.'" *Henderson v. Ready to Roll Transportation, Inc.* (2014) 228 Cal.App.4th 1213, 1223
19 (reversing superior court ruling that nine class members was too few); *Bowles v. Superior Court* (1995)
20 44 Cal.2d 574 (upholding a class of ten members). "The numerosity requirement is more readily met
21 when a class contains employees suing their present employer . . . This is because class members may
22 be unwilling to sue their employer individually out of fear of retaliation." *Romero v. Producers Dairy*
23 *Foods* (E.D. Cal. 2006) 235 F.R.D. 474, 485. As explained by the California Supreme Court, "fear of
24 retaliation for individual suits against an employer is a justification for class certification in the arena
25 of employment litigation, even when it is otherwise questionable that the numerosity requirements
26 were satisfied . . . It needs no argument to show that fear of economic retaliation might often operate
27 to induce aggrieved employees quietly to accept substandard conditions." *Gentry v. Superior Court*

(2007) 42 Cal.4th 443, 460 (citation omitted), overruled on other grounds in *Iskanian v. CLS Transp. Los Angeles, LLC* (2014) 59 Cal.4th 348.

Here, Defendant's records show that the proposed Class had approximately 187 class members prior to settlement. Plaintiff contends that joinder of all Class Members is impracticable and, therefore, a class wide proceeding is preferable. *See Hebbard v. Colgrove* (1972) 28 Cal.App.3d 1017, 1030 (noting that there is no set minimum to meet the numerosity prerequisite, but that a class of as few as 28 is acceptable.) In fact, a class of ten (10) has been certified as a class action. *Id.*, citing *Bowles v. Superior Court* (1995) 44 Cal.2d 574. Several federal cases on this issue have held that classes of over forty (40) individuals are numerous enough to meet the numerosity requirement. *See Ikonen v. Hartz Mountain Corp.* (S.D. Cal. 1988) 122 F.R.D. 258, 262. Accordingly, a Class that is comprised of nearly 187 members is sufficient to satisfy the numerosity requirement.

iii. The Commonality Requirement is Met

The commonality requirement is met if there are questions of law and fact common to the class. *Hanlon, supra*, 150 F.3d at 1019 ("The existence of shared legal issues with divergent factual predicates is sufficient, as it a common core of salient facts coupled with disparate legal remedies within the class."). "Predominance is a comparative concept, and 'the necessity for class members to individually establish eligibility and damages does not mean individual fact questions predominate.'" *Sav-On Drug Stores, Inc. v. Superior Court* (2004) 34 Cal.4th 319, 334. Commonality exists if there is a predominant common legal question regarding how an employer's policies impact its employees. *Ghazaryan v. Diva Limousine, Ltd.*, 169 Cal.App.4th 1524, 1536 (2008) ("[T]he common legal question remains the overall impact of Diva's policies on its drives."). Whether Plaintiff is likely to prevail on his theory of recovery is irrelevant at the certification stage since the question is "essentially a procedural one that does not ask whether an action is legally or factually meritorious." *Linder v. Thrifty Oil Co.* (2003) 23 Cal.4th 429, 439-440.

Here, Plaintiff contends that the proposed Class Members' claims all stem from the same allegedly unlawful policies and practices, which were addressed previously in this motion. Plaintiff seeks the same legal remedies under state law on behalf of himself and all Class Members. As liability

as to all Class Members is predicated on the same policies and practices, which Plaintiff alleges violate California law, the commonality requirement has been satisfied for purposes of settlement.

iv. The Typicality Requirement is Met

The typicality requirement is met if the claims of the named representative are typical of those of the Class, though, “they need not be substantially identical.” *Hanlon, supra*, 150 F.3d at 1020; *Classen v. Weller* (1983) 145 Cal.App.3d 27, 46-47. Plaintiff contends that his claims are typical of the Class Members’ claims because they arise from the same factual basis and are based on the same legal theory as those applicable to the Class Members. *See Wehner v. Syntex Corp.* (N.D. Cal. 1987) 117 F.R.D. 641, 644. Each Class Member is challenging the same policies and practices. Plaintiff alleges that Defendant’s policies applied to all Class Members. Factual differences may exist between Plaintiffs’ and the Class Members so long as the claims arise from the same events or course of conduct and are based on the same legal theories. *Hanlon, supra*, 150 F. 3d at 1020; *see also Wehner, supra*, 117 F.R.D. at 644; *Newberg on Class Actions*, 4th ed. § 3:15, p.335 (“When it is alleged that the same unlawful conduct was directed at or affected both the named plaintiff and the class sought to be represented, the typicality requirement is usually met irrespective of varying fact patterns which underlie individual claims.”) As such, the typicality requirement is satisfied for purposes of settlement.

v. The Adequacy Requirement is Met

The adequacy requirement is met if Plaintiff has no interests adverse to the interests of the proposed Class Members and is committed to vigorously prosecuting the case on behalf of the Class. *Hanlon*, 150 F.3d at 1020; *McGhee v. Bank of America* (1976) 70 Cal.App.3d 442, 450-51. Plaintiff contends those standards are met here. Plaintiff does not have any conflicts of interest with the Class. He has been and continues to be committed to vigorously prosecuting this case. Mara Dec. ¶ 23. If any Class Member wishes to opt-out of the Settlement, he or she may do so. Therefore, there is no conflict of interest between Plaintiff and the Class Members.

d. Notice to Class Members Complies with California Rule of Court 3.769(f)

California Rule of Court 3.769(f), provides:

1 If the court has certified the action as a class action, notice of the final approval hearing
2 must be given to class members in the manner specified by the court. The notice must
3 contain an explanation of the proposed settlement and procedures for class members
to follow in filing written objections to it and in arranging to appear at the settlement
hearing and state any objections to the proposed settlement.

4 The proposed Class Notice meets all of these requirements. The proposed Class Notice advises
5 the Class of their rights to participate in the settlement, how to and when to object to or request
6 exclusion from the settlement, and the date, time, and location of the final approval hearing. The
7 proposed Class Notice is attached as **Exhibit A** to the Joint Stipulation. (See Mara Dec., **Exhibit 1**).

8 **IV. CONCLUSION**

9 Plaintiff respectfully submits that the proposed settlement is in the best interests of the Class
10 and Class Members, as it is fair, adequate, and reasonable, and one that should ultimately be granted
11 final approval. Under the applicable class action criteria and guidelines, the proposed settlement
12 should be preliminarily approved by the Court, the class should be conditionally certified for purposes
13 of settlement only, and the Notice of Class Action Settlement should be approved. Plaintiff further
14 requests that a hearing on Plaintiff's motion for final approval be set on November 13, 2020, or to a
15 date thereafter that is more convenient for the Court.

16
17 Dated: June 17, 2020

MARA LAW FIRM, PC

18
19 

20 David Mara, Esq.
Matthew Crawford, Esq.
21 Attorneys for Plaintiff MIGUEL HERNANDEZ,
22 on behalf of himself and all others similarly situated,
and on behalf of the general public