

R. Rex Parris (SBN 96567)
Kitty K. Szeto (SBN 258136)
John M. Bickford (SBN 280929)
PARRIS LAW FIRM
43364 10th Street West
Lancaster, California 93534
Telephone: (661) 949-2595
Facsimile: (661) 949-7524

Attorneys for Plaintiff Landon Fulmer, Jr.,
Putative Subclass No. 1, and the Aggrieved Employees

Douglas Han (SBN 232858)
Shunt Tatavos-Gharajeh (SBN 272164)
Daniel J. Park (SBN 274973)
JUSTICE LAW CORPORATION
411 N. Central Avenue, Suite 500
Glendale, California 91203
Telephone: (818) 230-7502
Facsimile: (818) 230-7259

Attorneys for Plaintiff Anthony Massey,
Putative Subclass No. 2, and the Aggrieved Employees

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

LANDON FULMER, JR. and MICHAEL
OLESON; individually, and on behalf of other
members of the general public similarly situated,
and on behalf of aggrieved employees pursuant
to the Private Attorneys General Act ("PAGA");

Plaintiff,

v.

GOLDEN STATE DRILLING, INC., a
California Corporation and Does 1 through 100,
inclusive,

Defendants.

AND ALL RELATED CASES

Case No.: S-1500-CV-279707
Consolidated
Related Case Nos.: S-1500-CV-281013
S-1500-CV-281000
BCV-16-100108

[Assigned for all purposes to the Honorable
Stephen D. Schuett, Dept. 10]

CLASS ACTION

**PLAINTIFFS' NOTICE OF MOTION AND
MOTION FOR PRELIMINARY
APPROVAL OF CLASS ACTION
SETTLEMENT, CERTIFICATION FOR
SETTLEMENT, APPROVAL OF CLASS
NOTICE, SETTING OF FINAL
APPROVAL HEARING DATE;
MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT THEREOF**

Reservation No.: 32850

Date: September 25, 2018
Time: 8:30 a.m.
Dept.: 10

Fulmer Complaint Filed: June 25, 2013

1 **PLEASE TAKE NOTICE** that on September 25, 2018 at 8:30 a.m., or as soon thereafter as
2 Plaintiffs Landon Fulmer, Jr., Anthony Massey, and Fidel Betancourt (“Plaintiffs”) may be heard in
3 Department 10 of the above-entitled Court, they will move for an order:

- 4 • Granting preliminary approval of the proposed class action settlement described herein
5 and as set forth in the parties’ Stipulation and Agreement of Compromise and
6 Settlement (hereinafter “Settlement Agreement,” “Settlement” or “Stipulation”),
7 attached as “**EXHIBIT 1**” to the Declaration of Douglas Han;
- 8 • Conditionally certifying the proposed Class for settlement purposes only;
- 9 • Appointing Plaintiffs as the Class Representatives;
- 10 • Appointing Justice Law Corporation as Class Counsel;
- 11 • Appointing Parris Law Firm as Class Counsel;
- 12 • Approving the proposed Notice of Settlement of Class Action (“Notice”) attached as
13 “**EXHIBIT A1**” to the Settlement Agreement;
- 14 • Approving the proposed Notice of Settlement of Class Action (“Notice”) attached as
15 “**EXHIBIT A2**” to the Settlement Agreement;
- 16 • Directing the mailing of the Class Notice to the proposed Class;
- 17 • Approving the proposed deadlines for the proposed Class;
- 18 • Approving Phoenix Settlement Administrator as the Settlement Administrator;
- 19 • Preliminarily approving the request for attorneys’ fees and costs as sought herein, as
20 well as the service payments to the Class Representatives; and
- 21 • Scheduling a hearing to consider final approval of the settlement, at which final
22 approval hearing the Court would also consider entry of a proposed final judgment;
23 Class Counsel’s application for an award of attorneys’ fees and reimbursement of
24 costs and expenses; and the service payments to the Class Representatives.

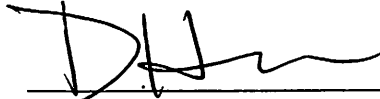
26 ///

27 ///

1 This motion is based on the following memorandum of points and authorities; the Declaration
2 of Counsels for Plaintiffs (Douglas Han and John Bickford) in support thereof; and the [Proposed]
3 Order lodged together with this motion, as well as upon the pleadings and other records on file with
4 the Court in this matter, and upon such documentary evidence and oral argument as may be presented
5 at the hearing on this motion.

6 Dated: August 29, 2018

JUSTICE LAW CORPORATION

7 
8

Douglas Han, Esq.

Attorney(s) for Plaintiffs and the Class

TABLE OF CONTENTS

INTRODUCTION.....	1
FACTUAL AND PROCEDURAL BACKGROUND.....	2
A. Factual and procedural background leading to settlement of all claims.....	2
1. Pleadings.....	2
2. Discovery and Investigation.....	3
3. Class Certification.....	4
4. Trial Preparation.....	5
5. Settlement.....	5
B. Summary of the Settlement.....	4
1. Terms of the Proposed Settlement.....	4
2. Calculation of the Settlement Awards to Class Members.....	5
3. Notice to the Settlement Class.....	6
4. Distribution of Funds.....	6
5. Release of Claims.....	7
ARGUMENT.....	8
I. CLASS ACTION SETTLEMENTS ARE SUBJECT TO COURT REVIEW.....	8
II. THE SETTLEMENT IS FAIR, ADEQUATE, AND REASONABLE.....	9
A. The Settlement was reached as a result of arm's-length negotiations.....	9
B. The Settlement is the result of thorough investigation and discovery.....	9
1. Counsel for both Parties are experienced in similar litigation.....	10
2. The Proposed Settlement is a reasonable compromise of claims.....	10
a. The Settlement is fair and reasonable given maximum potential recovery and accompanying risks of continued litigation.....	11
b. Costs and risks of continued litigation.....	11
c. Non-admission of liability by Defendant.....	12
d. The Settlement is within the range of reasonableness.....	12

///

C. The Notice to Class Members is compliant.....	13
III. THE REQUESTED ENHANCEMENTS ARE REASONABLE.....	14
CONCLUSION.....	16

TABLE OF AUTHORITIES

Cases

<i>Balderas v. Massage Envy Franchising, LLC.</i>	
(N.D.Cal. July 21, 2014) 2014 WL 3610945, at *5	13
<i>Bogosian v. Gulf Oil Corp.</i>	
(E.D. PA 1985) 621 F. Supp. 27, 32	14
<i>Boyd v. Bechtel Corp.</i>	
(N.D. Cal. 1979) 485 F. Supp. 610	9, 11
<i>Cook v. Niedert</i>	
(7 th Cir. 1998) 142 F.3d 1004, 1015	14
<i>Dunk v. Ford Motor Co.</i>	
(1996) 48 Cal.App.4th 1794	9
<i>Enterprise Energy Corp. v. Columbia Gas Transportation Corp.</i>	
(S.D. Ohio 1991) 137 F.R.D. 240, 250-251	14
<i>Glass v. UBS Financial Services, Inc.</i>	
(N.D.Cal. Jan. 26, 2007) 2007 WL 221862, at *9, affd. (9 th Cir. 2009) 331 Fed. Appx. 452	13
<i>Green v. Obledo</i>	
(1981) 29 Cal.3d 126	8
<i>In re Beef Industry Antitrust Litigation</i>	
(5 th Cir. 1979) 607 F. 2d 167.....	8
<i>In re Dunn & Bradstreet Credit Servs. Customer Litigation</i>	
(S.D. Ohio 1990) 130 F.R.D. 366, 377	14
<i>In re General Motors Corp.</i>	
(3d Cir. 1995) 55 F.3d 768, 806.....	11
<i>Iowa Beef Processors, Inc. v. Meat Price Investigators Ass’n</i>	
(1981) 452 U.S. 905	8
<i>Kullar v. Foot Locker Retail, Inc.</i>	
(2008) 168 Cal.App.4th 116	10
<i>Low v. Trump University, LLC</i>	
(9 th Cir. 2017) 881 F.3d 111.....	6
<i>Ma v. Covidien Holding, Inc.</i> (C.D.Cal. Jan. 31 2014) 2014 WL 360196 at 5*	13

1	<i>Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles</i>	
2	(2010) 186 Cal.App.4th 399	10
3	<i>National Rural Telecommunications Cooperative v. DIRECTV, Inc.</i>	
4	(C.D.Cal. 2004) 221 F.R.D. 523, 526	12
5	<i>Officers of Justice v. Civil Service Com'n of City and County of San Francisco</i>	
6	(1982) 688 F.2d 615, 625	11
7	<i>Roberts v. Texaco</i>	
8	(S.D.N.Y Sept. 11, 1997) 979 F.Supp. 185, 201	14, 15
9	<i>Sullivan v. DB Investments, Inc.</i>	
10	(3 rd Cir. 2011) 667 F.3d 273, 325	13
11	<i>Tech-Bilt v. Woodward-Clyde & Associates</i>	
12	(1985) 38 Cal.3d 488	10
13	<i>Van Vranken v. Atlantic Richfield Co.</i>	
14	(N.D.Cal. 1995) 901 F.Supp. 294, 299-300	14
15	<i>Vasquez v. Superior Court</i>	
16	(1971) 4 Cal.3d 800	8
17	<i>Young v. Katz</i>	
18	(5th Cir. 1971) 447 F.2d 431, 433-434	12
19	Other Authority	
20	William B. Rubenstein et al., Newberg on Class Actions § 13:15 (5th ed. 2016)	13
21	Rules	
22	California Rules of Court, Rule 3.769(g).....	8
23		
24		
25		
26		
27		
28		

INTRODUCTION

This motion seeks preliminary approval of a non-reversionary \$6,750,000 proposed wage and hour class action settlement by Plaintiffs Landon Fulmer, Jr., Anthony Massey, and Fidel Betancourt (“Plaintiffs”) on behalf of themselves and all current or former California-based hourly paid or non-exempt Drillers, Safety Captains, Motormen, Piperackers, and Trainees, or employees with substantially similar job duties, who worked for Golden State Drilling within the State of California at any time from June 27, 2009 through the date of entry of the Preliminary Approval Order. Should preliminary approval be granted on April 3, 2018, this would mark the end of the class period. At the time of this filing, Defendant estimates that there are approximately eight hundred and forty-five (845) individuals that would be included in this settlement.

It is requested this Court grant preliminary approval, as, when analyzing the strengths and vulnerabilities of the class claims along-side Defendant’s potential liability exposure, and financial condition, this proposed settlement of \$6,750,000—with an average settlement share amount estimated at \$4,570.41¹—is within the “ballpark” of reasonableness.

As demonstrated below, Class Counsel is convinced that the proposed Settlement is in the best interests of the class based on the negotiations and a detailed knowledge of the issues present in this action. The length and risks of trial and perils of litigation that affect the value of the claims were all carefully weighed. In addition, the defenses asserted by Defendant, particularly, the uncertainty of a jury trial, the lengthy process of establishing specific damages, various possible delays and appeals, Defendant’s current financial condition, and the impact a large judgment would have on Defendant’s business were also carefully considered by Class Counsel in arriving at the proposed settlement.

///

///

///

¹ \$3,862,000 (Net Settlement Fund) / 845 (Class Members) = \$4,570.41.

1 **FACTUAL AND PROCEDURAL BACKGROUND**

2 **A. Factual and procedural background leading to settlement of all claims.**

3 Golden State Drilling is an oil field contractor that provides well drilling services throughout
4 California and is headquartered in Bakersfield, California. This case involves all current or former
5 California-based hourly paid or non-exempt Drillers, Safety Captains, Derrickmen, Motormen,
6 Piperackers, and Trainees, or employees with substantially similar job duties, who worked for Golden
7 State within the State of California. Plaintiffs allege that at all times during the class period, Golden
8 State Drilling's non-exempt employees (Drillers, Safety Captains, Derrickmen, Piperackers, and
9 Trainees) work and/or worked on an hourly basis. (Declaration of Douglas Han "Han Decl." at ¶ 4.)

10 **1. Pleadings.**

11 Plaintiff Landon Fulmer, Jr., a former non-exempt employee for Defendant, filed a class action
12 and representative PAGA complaint in Kern County Superior Court on July 25, 2013 against Golden
13 State Drilling alleging wage and hour violations on behalf of all current and former non-exempt
14 employees who worked for Golden State Drilling in the four years preceding the complaint. The
15 complaint alleged causes of action for failure to pay all wages worked, failure to pay overtime,
16 knowing and intentional failure to itemize wage statements, and failure to pay all wages due at time of
17 termination. (Han Decl. at ¶ 5.) On October 27, 2014, Plaintiff filed a First Amended Complaint to
18 allege a cause of action for failure to reimburse business expenses. (*Id.*) After the Court denied
19 Plaintiff's motion to certify as a class action without prejudice, Plaintiff sought leave to amend the
20 complaint to subclass the putative class members into two classes and add Driller Michael Oleson² as
21 an additional class representative for the Driller subclass. (*Id.* at ¶ 6.) On August 9, 2016, Plaintiffs
22 filed a Second Amended Complaint. (*Id.*)

23 ///

24 ///

25 ///

26
27
28 ² Michael Oleson was later replaced by Anthony Massey as the Class Representative for the subclass of Drillers when the case was certified as a class action.

January 6, 2014, Plaintiff Fidel Betancourt filed a declaratory relief complaint in response to Defendant's attempt to obtain individual settlements from Class Members. The Betancourt matter has been consolidated with this instant matter. The Betancourt matter has been rendered moot by litigation developments in the Fulmer matter and therefore likewise being resolved and will be dismissed as a result of this Settlement. Plaintiff Betancourt will be deemed as an additional Class Representative for Settlement purposes. (*Id.* at ¶ 7.)

2. Discovery and investigation.

The Parties engaged in the discovery necessary for class-certification, and progressed through significant merits-based discovery necessary for trial, which following the Court's order granting class certification, was scheduled to commence in May 2018. (Han Decl. at ¶ 8; Declaration of John Bickford "Bickford Decl. at ¶ 2.)

The Parties expended an extensive amount of time and resources. Plaintiffs propounded five sets of special interrogatories, four sets of request for production of documents, one set of request for admissions, and one set of form interrogatories. This yielded over 100,000 pages of documents and data that Plaintiffs analyzed through their retained experts for purposes of class certification, damages, and trial preparation. Plaintiffs' counsel conducted and defended 66 depositions in locations across California including Defendant's PMQ witnesses, experts, and class member and employee declarants, which required the preparation and service of numerous subpoenas. (Han Decl. at ¶ 9).

The discovery process necessitated numerous meet and confer conferences with Defense counsel, resulting in numerous motions to compel further responses and *ex parte* applications. In fact, at the time of the mediation in this matter, the Parties had completed all pre-trial motions and paperwork. In short, Plaintiffs had sufficient information to assess the risks, merits and damages prior to Settlement. (Han Decl. at ¶ 10.)

///

///

///

1 **3. Class certification.**

2 The Court certified this case on all causes of action and both subclasses on as a class action on
3 July 13, 2017, including

4 First Cause of Action for violation of Labor Code sections 510, 1194, and 1198;
5 Second and Third Causes of Action for violation of Labor Code sections 226.7 and
6 512(a); Sixth Cause of Action for violation of Labor Code sections 2800 and 2802; and
7 the Fourth, Fifth, and Eighth Causes of Action for violation of Labor Code sections
8 201, 202, 203, 226(a) and Business and Professions Code section 17200.

9 (Han Decl. at ¶ 11.)

10 Subsequent to certification, the Parties disseminated the Class Notice allowing individuals to
11 opt-out of the certified classes. On October 18, 2017, the Class Notice was given to 714 potential
12 class members. Only five (5) people opted out, resulting in a class of 709 people. (Han Decl. at 12.)

13 **4. Trial preparation.**

14 In addition to the merits-based discovery discussed above, Plaintiffs retained a survey expert, a
15 damages expert, and industrial organizational expert to prove both liability and damages. At the time
16 of mediation, the survey work and damages analysis were complete. Additionally, Plaintiffs' counsel
17 spent a significant amount of time taking depositions of randomly selected class members and
18 speaking with Class Members to secure and prepare trial witnesses. (Han Decl. at 13.)

19 **5. Settlement.**

20 On the eve of the trial date, the Parties participated in mediation as a last minute attempt to
21 reach a settlement. The Parties participated in an all-day mediation session with Paul Grossman of
22 Paul Hastings, LLP, a renowned employment lawyer, on May 4, 2018. The all-day negotiations
23 resulted in a mediator's proposal that was accepted by the Parties. (Han Decl. at ¶ 14.)

24 **B. Summary of the Settlement.**

25 **1. Terms of the proposed settlement.**

26 The Parties have agreed (subject to and contingent upon the Court's approval) that this action
27 be settled and compromised for the non-reversionary total sum of \$6,750,000 ("Gross Settlement
28 Fund" or "GSF") which includes, subject to Court approval: (a) attorneys' fees of up to \$2,362,500
29 (35% of the GSF) to compensate Class Counsel for work already performed and all work remaining to
30 be performed in documenting the settlement, administering the settlement, and securing Court

1 approval; (b) all reasonable costs not to exceed \$400,000;³ (c) a Class Representative Enhancement
2 Payment to the named class representatives, in the amount of Fifty Thousand Dollars (\$50,000.00) for
3 Plaintiff Fulmer, and Twenty-five Thousand Dollars each (\$25,000.00) for Plaintiffs Massey and
4 Betancourt, for initiating and prosecuting the class action complaint, serving as Class Representatives,
5 work performed, and risks undertaken for the payment of attorneys' fees and costs in the event they
6 had been unsuccessful; (d) claims administration fees and expenses to Phoenix Settlement
7 Administrators ("Phoenix"), estimated at approximately \$18,000; (e) LWDA payment of \$7,500
8 (which is 75% of \$10,000 allocated to Plaintiffs' claims under PAGA); and (f) the employer's share of
9 Payroll Taxes. (Han Decl. at ¶ 15.)

10 **2. Calculation of the Settlement Awards to Class Members.**

11 After all Court-approved deductions from the GSF, it is estimated that \$3,952,000 ("Net
12 Settlement Fund" or "NSF"), less all applicable employee and employer taxes, will be distributed to
13 Class Members—with an average settlement share estimated at \$4,676.92. Subject to the terms and
14 conditions of the Settlement, the Claims Administrator will calculate and issue Individual Settlement
15 Shares based on the following formula:

16 Each Eligible Class Member's Settlement Award will be calculated by multiplying the
17 fraction x/y by the Net Settlement Fund, where "x" equals the total number of shifts in
18 which the particular Eligible Class Member worked during the Class Period, and "y"
equals the total number of shifts in which all Class Members worked.

19 The precise number of compensable shifts per Class Member will not be known until Defendant has
20 tabulated them, following preliminary approval. Under no circumstances will any portion of the
21 \$6,750,000 settlement revert to Defendant. (Han Decl. at ¶ 16.)

22 ///

23
24
25 ³ The actual amount of litigation costs will be provided to the Court in conjunction with
26 Plaintiffs' motion for final approval. At that time, Plaintiffs will ask the Court to approve the amount
27 of these costs. If Plaintiffs' actual costs exceed \$400,000 Plaintiffs will only seek reimbursement in
28 the amount of \$400,000. If Plaintiffs' actual costs are lower than \$400,000, Plaintiffs will seek
reimbursement of their actual litigation costs and the difference shall become part of the Net
Settlement Fund and be available for distribution to Eligible Class Members. (Han Decl. at ¶ 17.)

1 **3. Notice to the Settlement Class.**

2 The Settlement contemplates two versions of notices. The first version will be mailed via first
3 class mail to all members of the Settlement Class who worked for Defendant at anytime after July 13,
4 2017. (Exhibit A1.) The second version will be mailed to all other members of the Settlement Class.
5 (Exhibit A2.) The first version will allow Settlement Class Members to opt-out of the Settlement; the
6 second version does not allow Settlement Class Members to opt-out. Settlement Class Members who
7 elected not to opt-out of the earlier Class Notice are not entitled to a second chance to opt-out. (*See*
8 *Low v. Trump University, LLC* (9th Cir. 2017) 881 F.3d 111.) The Settlement Class who worked for
9 Defendant at anytime after July 31, 2017 will have an option to opt-out of the Class Action. (Han
10 Decl. at ¶ 18.)

11 Within fourteen (14) days after entry of the preliminary approval order, Defendant shall deliver
12 to the Claims Administrator an electronic database for purposes of mailing Class Notices to Settlement
13 Class members. Within twenty-one (21) days after entry of the preliminary approval order, Phoenix
14 shall mail copies of the Class Notice to all Settlement Class Members via regular First Class U.S.
15 Mail. The Notice advises the Class of their rights to participate in the settlement and how to and when
16 to object or request exclusion from the settlement (if applicable). Class Members are not required to
17 submit a claim form to receive payment. (Han Decl. at ¶ 19.) The proposed Notices are attached as
18 Exhibits A1 and A2 to the Joint Stipulation, which is Exhibit 1 to the Declaration of Douglas Han.

19 **4. Distribution of funds.**

20 The Gross Settlement Fund will be funded in three equal installment payments. (Han Decl. at
21 20; See Implementation Schedule attached Exhibit B to the Joint Stipulation.) The first payment will
22 be due within 30 days after the Effective Date. The second payment will be due within 395 days after
23 the Effective Date. The final and the third payment will be due within 760 days after the Effective
24 Date. (*Ibid.*)

25 Phoenix shall pay the Individual Settlement Shares, Class Representative
26 Enhancement/General Release Payments, Class Counsel Fees and Expenses, PAGA payment, and
27 Claims Administrator Costs within twenty (20) calendar days after Effective Final Settlement Date.
28 (Han Decl. at ¶ 21.)

1 Any checks issued to Eligible Class Members shall remain valid and negotiable for one
2 hundred and eighty (180) days from the date of their issuance. If any checks remain uncashed or not
3 deposited within two hundred (200) calendar days after mailing, Phoenix will pay the amount of the
4 Individual Settlement Share to the Department of Industrial Relations Unclaimed Wages Fund in
5 accordance with California Unclaimed Property Law so that the Eligible Class Member will have his
6 or her Individual Settlement Share available to him or her per the applicable claim procedure to
7 request that money from the State of California. (Han Decl. at ¶ 22.)

8 **5. Release of claims.**

9 In exchange for a Settlement Award, Eligible Class Members are informed that, by accepting
10 the award, they are releasing all claims and causes of action for wages, premium payments, economic
11 damages, non-economic damages, restitution, penalties, or liquidated damages against the Released
12 Parties by the Eligible Class Members or successors or assigns of any of them (whether directly,
13 indirectly, representatively, derivatively, or in any other capacity) arising out of any claim under
14 California law during the Settlement Period based upon the allegations in the Complaint, or which
15 could have been alleged in the Complaint based upon the factual allegations therein, including but not
16 limited to the following: (a) any claim under California law, including claims for violation of Labor
17 Code Sections 226.7 and 512, based on the failure to provide meal periods and rest breaks and the
18 failure to provide premiums for missed meal periods and rest breaks; (b) any claim under California
19 law, including claims for violation of Labor Code Sections 510 and 1194, based on the failure to pay
20 minimum wages and overtime wages; (c) any claim under California law, including claims for
21 violation of Labor Code Section 203, based on the failure to fully and timely pay wages upon
22 termination or within required time thereof; (d) any claim under California law, including claims for
23 violation of Labor Code Section 226, based on the failure to provide accurate itemized wage
24 statements; (e) any claim under California law, including claims for violation of Labor Code Section
25 2802, based on the failure to provide reimbursement for business expenses; (f) any claim for penalties
26 provided in the California Labor Code that are associated with the claims and factual allegations as the
27 above items (a)–(f); (g) any claim for penalties associated with Labor Code Section 2698 *et seq.*
28 (“PAGA”) arising from the claims and factual allegations as the above items (a)–(f) including

1 California Labor Code Sections 203, 226, 226.7, 510, 512, 1194, 2802; and (h) any claim under
2 California law based on a violation of Business & Professions Code Section 17200, *et seq.* for
3 restitution from the same factual allegations as above in items (a)–(f). Eligible Class Members’
4 Settled Claims only applies during the time period when Settlement Class Members worked as non-
5 exempt employees. (Han Decl. ¶ 23).

6 ARGUMENT

7 **I. CLASS ACTION SETTLEMENTS ARE SUBJECT TO COURT REVIEW.**

8 Rule 3.769 requires court approval for class action settlements.⁴ “Before final approval, the
9 court must conduct an inquiry into the fairness of the proposed settlement.” (California Rules of
10 Court, Rule 3.769, subd. (g).) Rule 3.769 further requires a noticed motion for preliminary approval
11 of class settlements:

12 (a) A settlement or compromise of an entire class action, or a cause of action in a
13 class action, or as to a party, requires the approval of the court after hearing.

14 (c) Any party to a settlement agreement may serve and file a written notice of
15 motion for preliminary approval of the settlement. The settlement agreement
16 and proposed notice to class members must be filed with the motion, and the
17 proposed order must be lodged with the motion.

18 Courts use discretion to approve settlements that are fair, non-collusive, and take into account
19 “all the normal perils of litigation as well as the additional uncertainties inherent in complex class
20 actions.” (*In re Beef Industry Antitrust Litigation* (5th Cir. 1979) 607 F.2d 167, 179; *Iowa Beef*
21 *Processors, Inc. v. Meat Price Investigators Ass’n.* (1981) 452 U.S. 905.)

22 ///

23 ///

24 ///

25
26
27 ⁴ The California Supreme Court also has authorized California’s trial courts to use Federal Rule 23 and cases
28 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.

1 **II. THE SETTLEMENT IS FAIR, ADEQUATE, AND REASONABLE.**

2 In deciding whether to approve a proposed class action settlement, the Court must find that a
3 proposed settlement is “fair, adequate and reasonable.” (*Dunk v. Ford Motor Co.* (1996) 48
4 Cal.App.4th 1794, 1801.) A proposed class action settlement is presumed fair under the following
5 circumstances: (1) the parties reached settlement after arms-length negotiations; (2) investigation and
6 discovery were sufficient to allow counsel and the court to act intelligently; (3) counsel is experienced
7 in similar litigation; and (4) the percentage of objectors is small. (*Dunk v. Ford Motor Co.*, *supra*, at
8 1802.) As shown below, all of these elements are satisfied.

9 **A. The Settlement was reached as a result of arm’s-length negotiations.**

10 The Settlement negotiation resulted from years of intense litigation leading right up to the eve
11 of a class action trial. The settlement negotiations have been, at all times, adversarial and non-
12 collusive in nature. At the mediation, Counsel for the Parties conducted extensive arm’s length
13 settlement negotiations until a mediator’s proposal was offered and accepted. The terms of the
14 Settlement are memorialized in the Joint Stipulation. (Han Decl. at ¶ 24, Exh. 1).

15 Plaintiffs believe in the merits of their case, but also recognize the inherent risks of trial and
16 understand the benefit of the Class receiving settlement funds immediately as opposed to risking trial,
17 the damages awarded, an appeal that can take years to litigate, and the potential of bankruptcy. (Han
18 Decl. at ¶ 25).

19 **B. The Settlement is the result of thorough investigation and discovery**

20 The Parties thoroughly investigated and evaluated the factual strengths and weaknesses before
21 reaching the proposed settlement, and engaged in sufficient investigation, research and discovery to
22 support the settlement. Plaintiffs conducted enough discovery to obtain certification and prepare for
23 trial. Class Counsel had sufficient information to engage in a comprehensive analysis of liability and
24 potential damages. This litigation has reached the stage where “the Parties certainly have a clear view
25 of the strengths and weaknesses of their cases” sufficient to support the Settlement. (*Boyd v. Bechtel*
26 *Corp.* (N.D.Cal. 1979) 485 F.Supp. 610, 617.)

27 ///

28 ///

1 **1. Counsel for both Parties are experienced in similar litigation.**

2 Both Plaintiffs’ and Defendant’s counsel are particularly experienced in wage and hour
3 employment law and class actions. Plaintiffs’ counsel has significant experience in litigating unpaid
4 wages, unprovided meal period, and unprovided rest period class actions. (Han Decl. at ¶¶ 2–3;
5 Bickford Decl. at ¶ 3; Exhibit A). Plaintiffs’ counsel has prosecuted numerous cases on behalf of
6 employees for California Labor Code violations and thus are experienced and qualified to evaluate the
7 class claims and to evaluate settlement versus trial on a fully informed basis, and to evaluate the
8 viability of the defenses. This experience instructed Plaintiffs’ counsel on the risks and uncertainties
9 of further litigation and guided their determination to endorse the proposed settlement.⁵ (Han Decl. at
10 ¶ 2–3; Bickford Decl. at ¶ 3).

11 **2. The Proposed Settlement is a reasonable compromise of claims.**

12 An understanding of the amount in controversy is an important factor into whether the
13 settlement “of the class members’ claims is reasonable in light of the strengths and weaknesses of the
14 claims and the risks of the particular litigation.” (*Kullar v. Foot Locker Retail, Inc.* (2008) 168
15 Cal.App.4th 116, 129 (*Kullar*); see also *Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles* (2010)
16 186 Cal.App.4th 399, 409 (*Munoz*).) The most important factor in this regard is “the strength of the
17 case for plaintiffs on the merits, balanced against the amount offered in settlement.” (*Id.*)

18 *Kullar* instructs that the court is not to “decide the merits of the case or to substitute its
19 evaluation of the most appropriate settlement for that of the attorneys.” (*Kullar, supra*, 168
20 Cal.App.4th at 133.) An explicit statement of the maximum amount the plaintiff class could recover if
21 it prevailed on all its claims is not required, provided there is a record which allows “an understanding
22 of the amount that is in controversy and the realistic range of outcomes of the litigation.” (*Munoz,*
23 *supra*, 186 Cal.App.4th at 409.) Put differently, “the court must at least satisfy itself that the class
24 settlement is within the ‘ballpark’ of reasonableness.” (*Kullar, supra*, 168 Cal.App.4th at 133, citing
25 *Tech-Bilt v. Woodward-Clyde & Associates* (1985) 38 Cal.3d 488, 499–500.)

26 ⁵ The final factor mentioned in *Dunk*—the number of objectors—is not determinable until the
27 Notice of Class Action Settlement has been provided to the Class and they have had an opportunity to
28 respond. This information will be provided to the Court in conjunction with the Motion for Final
Approval of Class Action Settlement.

1 As the following subsections show, the Parties' investigation and discovery revealed a number
2 of reasons to discount claims and agree to this settlement.

3 **a. The Settlement is fair and reasonable given maximum potential**
4 **recovery and accompanying risks of continued litigation.**

5 To assess the fairness, adequacy, and reasonableness of a class action settlement, the Court
6 must weigh the immediacy and certainty of substantial settlement proceeds against the risks inherent
7 in continued litigation. (See *In re General Motors Corp.* (3d Cir. 1995) 55 F.3d 768, 806 ["[P]resent
8 value of the damages plaintiffs would likely recover if successful, appropriately discounted for the risk
9 of not prevailing, should be compared with the amount of the proposed settlement."]; see also *Girsh v.*
10 *Jepson* (3d Cir. 1975) 521 F.2d 153, 157; *Boyd v. Bechtel Corp.* (N.D.Cal. 1979) 485 F.Supp. 610,
11 616–617.)

12 Plaintiffs' meal period, rest period, and minimum/overtime wage claims were premised upon
13 the following theories: (1) Plaintiffs alleged Defendant implemented an unofficial policy of pressuring
14 its employees to refrain from taking meal and rest breaks; and (2) Plaintiff alleged Defendant
15 implemented an unofficial policy of requiring employees to work off the clock for preliminary and
16 postliminary work. (Han Decl. at ¶ 26.)

17 Based upon the survey results and damages analysis prepared for trial, the mid-point of
18 damages for unpaid overtime valued at \$10,264,724. (See Han Decl. at ¶ 27; Ex. 2 [Summary of Class
19 Wide Damages prepared for Trial by Dr. Brian Krigler].) Meal period premiums were valued at
20 \$8,872,900. Rest period premiums were valued at \$4,387,958. (*Ibid.*) Unreimbursed business
21 expenses were valued at \$2,138,223. (*Ibid.*) Waiting time penalties were valued at \$ 2,458,338.
22 Wage statement penalties were valued at \$1,579,850. (*Ibid.*) The total estimated exposure, if
23 Plaintiffs were to prevail on all claims, was \$29,702,003 (this figure excludes interest and potential
24 PAGA penalties).

25 **b. Costs and risks of continued litigation.**

26 Another factor considered by courts in approving a settlement is the complexity, expense, and
27 likely duration of the litigation. (*Officers of Justice v. Civil Service Com'n of City and County of San*
28 *Francisco* (1982) 688 F.2d 615, 625; *Girsh, supra*, 521 F.2d at 157.) In applying this factor, the Court

1 must weigh the benefits of the Settlement against the expense and delay involved in achieving an
2 equivalent or more favorable result at trial. (*Young v. Katz* (5th Cir. 1971) 447 F.2d 431, 433–434.)
3 The Settlement provides fair and prompt relief to all Class Members in lieu of lengthy continued
4 litigation. The Parties were on the eve of trial which was estimated to take 15 to 20 days. At trial,
5 there exists the regular risk that the trier of fact will not find that the high range of damages is
6 warranted, but may award a lower amount of damages. (Han Decl. at ¶ 28.)

7 Further, after a decision favoring the Class, Defendant would have the right to appeal. Given
8 the realities of appellate practice, this process places ultimate relief several years away. The immediate
9 and substantial recovery now, versus a years-long appeal process regarding various potential issues, is
10 a significant factor to be considered. (See *National Rural Telecommunications Cooperative v.*
11 *DIRECTV, Inc.* (C.D.Cal. 2004) 221 F.R.D. 523, 526 [“Avoiding such a trial and the subsequent
12 appeals in this complex case strongly militates in favor of settlement rather than further protracted and
13 uncertain litigation.”].)

14 Moreover, based on the past, present and future financial information provided, any judgment
15 close to the mid-point of exposure at trial may have bankrupt Defendant. Defendant is not a multi-
16 national company. It is a family owned local business with limited revenue which is fixed on the price
17 of oil. Any significant judgment may have closed the company, or potentially left the current
18 employees who are Settlement Class Members without a job. (Han Decl. at ¶ 29.)

19 **c. Non-admission of liability by Defendant.**

20 Plaintiffs understand that Defendant denies any liability or wrongdoing of any kind associated
21 with the claims alleged in this lawsuit, and further denies that, for any purpose other than that of
22 settling this lawsuit, this action is appropriate for class treatment. Defendant maintains, among other
23 things, that they have complied at all times with California wage and hour laws. This denial increases
24 the likelihood of protracted litigation. (Han Decl. at ¶ 30.)

25 **d. The Settlement is within the range of reasonableness.**

26 The exposure estimated by Plaintiffs is \$29,702,003. The Gross Settlement Fund in the
27 amount of \$6,750,000 thus accounts for approximately 22.7% of the estimated exposure. (Han Decl. at
28 ¶ 27.) Plaintiffs respectfully submit this is well within the range of reasonableness. (See, e.g.,

1 *William B. Rubenstein et al., Newberg on Class Actions* § 13:15 (5th ed. 2016) [the range of
2 reasonableness percentage could be as low as 1/100th or 1/1000th of 1%]; *Ma v. Covidien Holding,*
3 *Inc.* (C.D.Cal. Jan. 31 2014) 2014 WL 360196 at *5 [finding a settlement worth 9.1% of the total
4 value of the action “within the range of reasonableness”]; *Balderas v. Massage Envy Franchising,*
5 *LLC.* (N.D.Cal. July 21, 2014) 2014 WL 3610945, at *5 [granting preliminary approval of a net
6 settlement amount representing 5% of the projected maximum recovery at trial]; *Glass v. UBS*
7 *Financial Services, Inc.* (N.D.Cal. Jan. 26, 2007) 2007 WL 221862, at *9, *affd.* (9th Cir. 2009) 331
8 Fed. Appx. 452 [approving a settlement of an action claiming unpaid overtime wages where the
9 settlement amount constituted approximately 25% to 35% of the estimated actual loss to the class]; see
10 also *Sullivan v. DB Investments, Inc.* (3rd Cir. 2011) 667 F.3d 273, 325 [holding courts are not
11 required “to assess the fairness of a settlement in light of the potential for trebled damages.”].)
12 Further, in light of Defendant’s contention it would most likely file bankruptcy if there was a
13 judgment close to the estimated exposure, and Defendant’s denial of liability, the Court should
14 discount the total value of the claims to account for the risks and costs of continued litigation.
15 Accordingly, the total exposure based on Defendant’s anticipated defenses may be anywhere from
16 zero and \$29,702,003.

17 **C. The Notice to Class Members is compliant.**

18 California Rule of Court, No. 3.769, subdivision (f) provides:

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

24 The proposed Notice meets all of these requirements. It advises the Class of their rights to
25 participate in the Settlement, how to and when to object to or request exclusion (if applicable) from
26 the Settlement, and the date, time, and location of the final approval hearing. (*See* Han Decl., Ex. 1 to
27 Exs. A1 and A2.)

28 ///

///

1 **III. THE REQUESTED ENHANCEMENTS ARE REASONABLE.**

2 Pursuant to the terms of the Settlement, Defendant agreed not to oppose an enhancement
3 payment to the Class Representatives of \$50,000 to Plaintiff Fulmer and \$25,000 each to Plaintiffs
4 Massy and Betancourt. Incentive awards for representative plaintiffs are both proper and routine.
5 (*Enterprise Energy Corp. v. Columbia Gas Transportation Corp.* (S.D. Ohio 1991) 137 F.R.D. 240,
6 250–251 [awarding a \$50,000 incentive award to each plaintiff]; *In re Dunn & Bradstreet Credit*
7 *Servs. Customer Litigation* (S.D. Ohio 1990) 130 F.R.D. 366, 377 [awarding between \$35,000 and
8 \$55,000 to each plaintiff].) Because a named plaintiff is an essential ingredient of any class action, an
9 incentive award is appropriate to induce individuals to step forward and assume the burdens and
10 obligations of representing the class. In deciding the amount of an enhancement award, relevant
11 factors include the actions the plaintiff has taken to protect the interests of the class, the degree to
12 which the class has benefited from those actions, and the amount of time and effort the plaintiff
13 expended in pursuing the litigation. (See *Cook v. Niedert* (7th Cir. 1998) 142 F.3d 1004, 1015; *Van*
14 *Vranken v. Atlantic Richfield Co.* (N.D.Cal. 1995) 901 F.Supp. 294, 299–300; *Bogosian v. Gulf Oil*
15 *Corp.* (E.D. PA 1985) 621 F.Supp. 27, 32.)

16 Particularly in employment class actions, such as discrimination or wage claims, named
17 plaintiffs should be entitled to an enhancement award as an incentive to take the risks associated with
18 pursuing employment claims on behalf of other employees. An award is justified where the plaintiff
19 is a “present or past employee whose present position or employment credentials or recommendation
20 may be at risk by reason of having prosecuted the suit, who therefore lends his or her name and efforts
21 to the prosecution of litigation at some personal peril.” (*Roberts v. Texaco* (S.D.N.Y 1997) 979
22 F.Supp. 185, 201.)

23 The amounts sought by Plaintiffs are warranted in this case. Mr. Fulmer was actively involved
24 in this case during the entire litigation. He spent time searching for documents, contacting Class
25 Counsel to discuss the status of the case approximately once every two weeks, preparing and
26 appearing for deposition, and speaking with co-workers regarding the case. Mr. Fulmer has been the
27 name and face for this litigation from the outset. Hundreds of people know he started this case and
28 that his actions achieved this settlement. Many of those people have called him or texted him

1 regarding the status of the case. (Han Decl. at ¶ 31.) Mr. Betancourt also played a pivotal role in this
2 litigation. When Defendant engaged in unlawful settlement, he stepped forward to bring an additional
3 lawsuit to declare those settlements invalid. It was Mr. Betancourt's role that ultimately allowed
4 hundreds of current and former individuals to participate in the lawsuit and this settlement. (Han
5 Decl. at ¶ 32.) Mr. Massey stepped up to serve as an additional representative when the original
6 Driller representative—Michael Oleson—dropped out due to financial pressures stemming from his
7 employers relationship with Defendant. Facing potential adverse actions and retaliation, Mr. Massey
8 volunteered to be the representative for the drillers and brought a wealth of knowledge from his years
9 working as a Driller for Defendant. (Han Decl. at ¶ 33.)

10 In addition, Plaintiffs ran the risk of not prevailing in this matter and thereby facing a cost bill
11 and the possibility of payment of attorney's fees to Defendant. This is a real risk that Plaintiffs
12 assumed at their own expense alone for the benefit of the Class—a risk that the other members of the
13 Class did not have to face in order to get the benefits of this Settlement. Plaintiffs put their name on a
14 public record at the risk of possible future adverse employment consequences by future or potential
15 employers who might choose to not hire them because they took the lead in this lawsuit. (Han Decl. at
16 ¶ 34.) This was a significant risk that they have borne for the class who will reap the benefits of this
17 case without having to face this risk personally themselves. (See *Roberts v. Texaco* (S.D.N.Y. Sept.
18 11, 1997) 979 F. Supp. 185, 201.) This also should be considered in the award of the Enhancement
19 Payment.

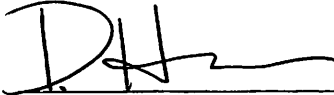
20 Finally, and as mentioned previously, as part of the Settlement, Plaintiffs were required to
21 provide Defendant with a broader release, something that the class members did not have to surrender
22 in order to receive the benefits under this Settlement. The amount of \$50,000 to Mr. Fulmer and
23 \$25,000 each to Mr. Betancourt and Mr. Massey as the class representative are extremely reasonable
24 given the risks that they took on and bore for the class and the benefits they conveyed on them. The
25 total amount of enhancement payment sought is only 1.4% of the Gross Settlement Fund, an
26 extremely reasonable amount considering their role in obtaining relief for the entire Settlement Class.
27 (Han Decl. at ¶ 35.) Based on the foregoing, Plaintiffs request that the Court preliminarily approve
28 the enhancement payments.

1 **CONCLUSION**

2 Plaintiffs respectfully submit that the proposed settlement is in the best interests of the class, as
3 it is fair, adequate, and reasonable, and one that should ultimately be granted final approval. Under
4 the applicable class action criteria and guidelines, the proposed settlement should be preliminarily
5 approved by the Court, the class should be conditionally certified for purposes of settlement only, and
6 the Notice of Class Action Settlement should be approved.

7
8 Dated: August 29, 2018

JUSTICE LAW CORPORATION

9 

10 Douglas Han, Esq.

11 *Attorney(s) for Plaintiffs and the Class*

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

On September 10, 2018, I served the foregoing document described as

for the following case: **Fulmer v. Golden State Drilling, Inc.,**
 LWDA/Court Case No.: **LWDA-CM-289883-17**
S-1500-CV-279707
Kern County Superior Court

**State of California
Labor & Workforce Development Agency
800 Capitol Mall, MIC-55
Sacramento, California 95814**

Pursuant to California Senate Bill No. 836, I caused the documents described above to be electronically submitted by and through the procedure stated on the website of the State of California Labor and Workforce Development Agency.

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


Janet Yan