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Attorneys for Plaintiffs

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF FRESNO

DANNY L. DRAKE and MARIO PIZANA,
individually and on behalf of all similarly
situated employees, and DANNY DRAKE on
behalf of all other aggrieved employees of
DEFENDANTS in the State of California,

Plaintiffs,

v.

MID VALLEY DISPOSAL, LLC, MID
VALLEY DISPOSAL, INC; and DOES 1
THROUGH 50, inclusive,

Defendants.

Case No.: 16CECG01653

**PLAINTIFF DANNY DRAKE'S NOTICE OF
UNOPPOSED MOTION AND UNOPPOSED
MOTION FOR: (1) PRELIMINARY
APPROVAL OF CLASS ACTION
SETTLEMENT; (2) PROVISIONAL
CERTIFICATION OF THE SETTLEMENT
CLASS; (3) APPROVAL OF CLASS NOTICE
AND NOTICE PLAN; (4) APPOINTMENT OF
CLASS COUNSEL AND CLASS
REPRESENTATIVE; (5) APPOINTMENT OF
CLAIMS ADMINISTRATOR; AND (6)
SETTING A FINAL APPROVAL HEARING**

Date: July 3, 2019
Time: 3:30 p.m.
Judge: Rosemary T. McGuire
Dept.: 403

Complaint Filed: May 20, 2016

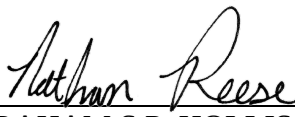
1 **TO ALL PARTIES AND TO THEIR ATTORNEYS OF RECORD:**

2 PLEASE TAKE NOTICE that on July 3, 2019 at 3:30 p.m. in Department 403 of the Superior
3 Court for the County of Fresno, located at 1130 O Street, Fresno, CA 93721, Plaintiff Danny L. Drake,
4 on behalf of himself and the putative class, will and hereby does move the Court for an order: (1)
5 Preliminarily Approving Settlement of Plaintiff Danny Drake's Class Claims; (2) Provisionally
6 Certifying the Settlement Class; (3) Approving the Class Notice and Notice Plan; (4) Appointing Class
7 Representative and Class Counsel; (5) Appointing the Claims Administrator; and (6) Scheduling a Final
8 Approval Hearing.

9 This Motion is unopposed and is supported by the following documents: (1) Plaintiff Danny
10 Drake's Memorandum of Points and Authorities in Support of Plaintiff Danny Drake's Unopposed
11 Motion for Preliminary Approval of Class Action Settlement; (2) Declaration of Graham S.P. Hollis In
12 Support of Plaintiff Danny Drake's Unopposed Motion for Preliminary Approval of Class Action
13 Settlement, and the Exhibits attached thereto; (3) Declaration of Danny Drake in Support of Plaintiff
14 Danny Drake's Unopposed Motion for Preliminary Approval of Class Action Settlement; (4) [Proposed]
15 Order Granting Preliminary Approval; and (5) all records and pleadings filed in this action and such
16 argument and evidence which may be presented at or before the hearing.

17
18 Dated: May 10, 2019

GRAHAMHOLLIS APC

19
20 By: 
21 GRAHAM S.P. HOLLIS
22 VILMARIE CORDERO
23 NATHAN REESE
24 Attorneys for Plaintiffs and Aggrieved Employees
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26
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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF FRESNO

DANNY L. DRAKE and MARIO PIZANA,
individually and on behalf of all similarly
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THROUGH 50, inclusive,

Defendants.

Case No.: 16CECG01653

**MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF PLAINTIFF
DANNY DRAKE'S UNOPPOSED MOTION
FOR: (1) PRELIMINARY APPROVAL OF
CLASS ACTION SETTLEMENT; (2)
PROVISIONAL CERTIFICATION OF THE
SETTLEMENT CLASS; (3) APPROVAL OF
CLASS NOTICE AND NOTICE PLAN; (4)
APPOINTMENT OF CLASS COUNSEL AND
CLASS REPRESENTATIVE; (5)
APPOINTMENT OF CLAIMS
ADMINISTRATOR; AND (6) SETTING A
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I. INTRODUCTION¹

Plaintiff Danny Drake (“Plaintiff”) seeks preliminary approval of a \$150,000 proposed Class Action Settlement (“Settlement”) with Defendants Mid Valley Disposal Inc. and Mid Valley LLC (“Defendants”). Declaration of Graham S.P. Hollis in Support of Plaintiff’s Motion for Preliminary Approval (“Hollis Decl.”) at ¶ 3, Exhibit 1 to Hollis Decl. (“Settlement Agreement” or “SA”), ¶ 1.13. The Settlement, if approved, will provide a significant monetary recovery to the approximately 311 Class Members and aggrieved employees that worked for Defendants as non-exempt employees in California. The Settlement was reached after extensive discovery and investigation by the Parties. Hollis Decl. ¶¶ 32-35; 49-52. The Settlement is strongly supported by experienced counsel, who carefully considered the strength of the claims and Defendants’ potential defenses, as well as the expense, complexity, risks, and likely duration of continued litigation. *Id.* at ¶¶ 106-118. Thus, the proposed Settlement satisfies all of the criteria for preliminary settlement approval under California law.

II. BACKGROUND

A. PLAINTIFF’S CLASS AND PAGA CAUSES OF ACTION

1. Plaintiff’s First Amended Complaint (“FAC”) alleges a total of 7 causes of action for (1) Representative Claims Under the Labor Code Private Attorney General Act (“PAGA”); (2) failure to provide meal periods; (3) failure to provide rest periods; (4) failure to pay minimum and regular wages; (5) failure to pay all overtime wages; (6) failure to maintain accurate records; (7) failure to provide accurate itemized wage statements; (8) failure to timely pay all wages due during employment; (9) failure to indemnify all necessary work expenses; (10) failure to pay all wages due upon separation of employment; and (11) a cause of action for unfair competition under Business & Professions Code §§ 17200, *et seq.* Defendants own and operate waste recycling and waste management company located in California’s Central Valley. Defendants employ employees engaged in waste retrieval duties across several locations in California’s Central Valley. Plaintiff and the Class Members’ duties included, but were not limited to, driving a waste retrieval vehicle on waste retrieval routes assigned by Defendants, picking up waste on the assigned route, and disposing of the waste at the waste yard. Declaration of Danny

¹ This memorandum exceeds the 15-page limit set forth in California Rule of Court 3.1113, but because it seeks class certification as part of the settlement approval process, Plaintiff respectfully requests that the Court consider it under the 20-page limit applicable to an opening memorandum filed in support of class certification under CRC 3.764(c)(2).

Drake (“Drake Decl.”) ¶ 4. Plaintiff alleges that he and Class Members were consistently denied off-duty meal and rest periods, because they were required to stay close to their company truck and monitor it at all times. *Id.* at ¶¶ 6-7. If they were away from their truck for some reason or did not respond to the truck radio, they were further required to be available and correspond with their supervisors on their personal cell phone at all times, including meal and rest periods. Plaintiff and the Class were subject to discipline if they did not answer their supervisors’ calls. *Id.* at ¶ 6.

Plaintiff further alleges that he and the Class were not required to record the start and end times of their meal breaks. *Id.* at ¶8. Instead, Defendants had a policy where 30 minutes was automatically deducted from Plaintiff and Class Members daily hours worked regardless of whether they actually received a meal break for a full 30 minutes. *Id.* at ¶ 8. Therefore, as a result of Defendants’ illegal timekeeping practices, Defendants improperly deducted at least 30-minutes from Plaintiff and the Class’s hours worked for each shift they worked.

Plaintiff also claims that he and Class Members were required to use their personal cell phones in the discharge of their duties. The supervisors of Plaintiff and Class Members would call them on their personal cell phones when they were not able to reach them on their radios. Furthermore, the Class was required to take pictures on their cell phones when they encountered overflowing or broken trash bins and text those pictures to their supervisors. *Id.* at ¶¶ 6, 9.

Plaintiff’s statutory and civil penalties claims are completely contingent on the success of his meal and rest break claims, minimum wage and overtime claims, and reimbursement claims. Hollis Decl. at ¶¶ 53(e); 109.

B. DEFENDANTS STRONGLY DENY PLAINTIFF’S CLASS AND PAGA CLAIMS

Defendants vehemently deny any liability and wrongdoing of any kind associated with the claims alleged in this action and deny that the action is appropriate for class treatment for any purpose other than this Settlement. *Id.* at ¶¶ 36-46. Among other things, Defendants maintain that they properly calculated and paid all minimum, regular, and overtime wages owed and contend that their timekeeping practices did not deprive Plaintiff or any Class Members of minimum, regular, or overtime wages. Hollis Decl. at ¶ 38. Defendants contend their timekeeping practices did not deprive Plaintiff or the putative class of any minimum or overtime wages, and that each putative class member was required to accurately record all

his or her hours worked in Defendants’ timekeeping system for payment of wages, thereby posing an obstacle to class certification. *Id.* at ¶ 40, 42. Defendants also maintain that they comply with all of their meal and rest period obligations under California law, and that Plaintiff and all Class Members were properly provided with the opportunity to take all meal and rest periods to which they were entitled at all times during the Class Period. *Id.* at ¶ 41. Defendants vehemently deny that any class member was required to maintain proximity to their vehicle during their breaks or required to answer radio or telephone calls during their breaks. *Id.* at ¶ 43. There are no written policies requiring class members to answer phone calls or to stay close to their trucks at all times during their shifts. *Id.* at ¶ 44. Defendants vehemently deny that any class member was required receive phone calls on their personal cell phones or text pictures to their supervisors. *Id.* at ¶ 39. Defendants claim that Class Members were provided with cameras that could be used by class members to take pictures, and the use of personal cell phones was not necessary for taking pictures. *Ibid.* With respect to Plaintiff’s claim for waiting time penalties, Defendants alleged that its good-faith belief in the use of its timekeeping and payroll practices precludes the imposition of any waiting time penalties since Plaintiff will not be able to prove that Defendants’ alleged failure to pay all final wages at the time of separation was “willful.” *Id.* at ¶ 45. Finally, Defendants claim that they did not engage in any Labor Code or Wage Order violations and Plaintiff will not be able to demonstrate that Defendants are liable for civil penalties under the Labor Code or statutory penalties under PAGA. *Id.* at ¶ 46.

C. PROCEDURAL HISTORY

Plaintiff filed the Complaint on May 20, 2016, in the Superior Court for the County of Fresno alleging wage and hour individual and class action causes of action on behalf of himself and all other similarly situated non-exempt employees of Defendants who worked in California in performing waste retrieval duties for Defendant from May 18, 2012 to the present. *Id.* at ¶ 14. Plaintiff further sought to bring claims under PAGA on behalf of himself and other aggrieved employees for civil penalties. *Ibid.*

After the complaint was filed and served on Defendants, the parties agreed to participate in private mediation. Hollis Decl. at ¶ 19. On June 8, 2017, the Parties participated in a full day mediation session with Robert J. Kaplan, Esq. (“Kaplan”), who is a well-respected, neutral third-party mediator, well-versed and experienced in wage and hour class actions. The matter did not settle at the mediation. *Id.* at ¶ 24.

///

On July 12, 2017, the parties submitted a joint stipulation to continue the Case Management Conference. The Court then ordered the Case Management Conference to be continued to August 23, 2017. At the Case Management Conference, the court provided dates for a motion for class certification. On April 4, 2018, the parties stipulated to continue the motion for class certification. On April 11, 2018, the Court set a new date for Plaintiff's class certification motion to be heard on April 1, 2019.

On June 19, 2018, Plaintiff Danny Drake filed a motion for leave to file a FAC, in order to add Mario Pizana as an additional class representative and further to dismiss Mid Valley Recycling LLC and Crown Transportation LLC without prejudice. The motion was unopposed, and the FAC was deemed filed by the court on July 12, 2018.

On January 4, 2019, the parties submitted a joint notice of class action and PAGA settlement and stipulation to vacate all court dates. The court granted the parties' requests and vacated all dates on January 9, 2019. The parties finalized and executed the Settlement on March 18, 2019.

III. CLASS AND PAGA ACTION DISCOVERY COMPLETED PRIOR TO SETTLEMENT

The parties have spent significant time and effort exchanging discovery and information relating to all existing causes of action and the related PAGA claims. The parties further engaged in voluminous discovery in this case. *Id.* at ¶¶ 49-52. The parties propounded multiple sets of requests for production, form and special interrogatories, and requests for admissions. *Id.* at ¶ 24. Plaintiff provided responses and supplemental responses to Defendants' requests. He further produced over a thousand pages of documents, including cell phone and text message records. *Id.* at ¶ 120, 130. Defendants produced all personnel files, time and pay records, job description and documents for Plaintiff Danny Drake. *Id.* at ¶ 20, 48. Defendants also produced thousands of pages of documents and spreadsheets consisting of all clock-in and clock out records and their corresponding payroll records for all putative class members. *Id.* at ¶ 20, 25. Defendants further produce all employee handbooks and the meal break and rest break policies and all wage payment policies applicable during the class period. Hollis Decl., ¶ 20, 138. Defendants further produced voluminous copies of route cover sheets used by some putative class members to record the times of their meal periods. *Id.* at ¶ 49. Plaintiff also obtained the contact information for the putative class members after sending a *Belaire West* notice. *Id.* at ¶ 20, 50. Defendants further exchanged relevant information for the putative class members including the total number of putative class members, the number of members

1 of the waiting time penalties subclass, and the average tenure of employment with Defendants. *Id.* at ¶ 20.
2 To date, Defendants have identified approximate 315 putative class members, 147 of which were
3 terminated within 3 years of the filing of the Complaint. *Id.* at 50.

4 Plaintiff's counsel spent significant time and efforts examining the time and pay records for
5 Plaintiff and the class members to determine, among others, the number of shifts worked per pay period,
6 the average number of Class Members working at any given time, Class Members' average regular rates
7 of pay and the average regular rate of pay for overtime purposes. *Id.* at ¶ 21. Plaintiff's Counsel also
8 conducted detailed phone interviews with over 50 Class Members regarding the causes of action alleged
9 in the FAC and how these claims related to Class Members' employment with Defendants during the
10 Class Period. *Id.* at ¶ 52. After undertaking a thorough review of these documents, and interviewing
11 putative class members, Class Counsel prepared a comprehensive synthesis of Defendants' timekeeping
12 and payroll records and complete damages analysis of the potential liability Defendants faced if Plaintiff
13 succeeded on all claims at trial. *Id.* at ¶¶ 21-22, 53-56. The documents, information, and data obtained
14 from Defendants was more than sufficient to analyze the Labor Code violations alleged in the FAC and
15 make an informed decision about the resolution of this case. *Id.* at ¶¶ 21-22, 46, 57-62.

16 In addition to written discovery, the parties have noticed and taken several depositions. Defendants
17 deposed Plaintiff Danny Drake for two full days of testimony. *Id.* at ¶¶ 23, 26, 51. Furthermore,
18 Defendants deposed Plaintiff Danny Drake's wife and Tiffany Wright, a putative class member and
19 percipient witness. *Ibid.* Plaintiff also deposed Defendants' person most knowledgeable on several topics,
20 including Defendants' timekeeping policies and practices, Defendants' meal and rest break policies and
21 practices, and Defendants' reimbursement policies and practices, for one and a half days of deposition
22 testimony. Hollis Decl. ¶¶ 27, 52.

23 **IV. THE SETTLEMENT TERMS**

24 **A. SETTLEMENT CLASS**

25 The Class is defined as: "All current and former non-exempt employees of Defendants who
26 performed waste retrieval duties and to whom Defendants assigned to a waste retrieval route in California
27 during the Class Period and includes all members of the Non-Exempt Class and the Waiting Time
28 Penalties Class, as these terms are defined herein." *Id.* ¶ 3; Exhibit 1 to Hollis Decl., SA at ¶ 1.3. The

Class Period is defined as “May 20, 2012, through the date of Preliminary Approval.” *Id.* at ¶ 1.7.

B. SETTLEMENT AMOUNTS

1. Maximum Settlement Amount: Defendants will pay a sum of \$150,000 in settlement of this litigation. *Id.* at ¶ 1.15. This amount does not include Defendants’ share of all state and federal payroll taxes, which Defendants will pay separately and apart to the Settlement Administrator, and none of the Maximum Settlement Amount will revert to Defendants. *Ibid.*

3. Settlement Administration Costs: The Parties selected CPT Group to serve as Settlement Administrator. The Settlement provides that the Administration costs are not to exceed \$14,500. Hollis Decl. at ¶ 69.

4. Class Representative Service Award: In recognition of his efforts in obtaining the benefits to the Class, Plaintiff will request a Class Representative Service Award of \$10,000. SA at ¶¶ 1.29, 5.1(d).

5. Class Counsel’s Attorney’s Fees and Costs: Class Counsel will request \$50,000 for their reasonable attorney’s fees, as well as reimbursement of reasonable litigation costs actually incurred in the litigation, in an amount not to exceed \$27,000. *Id.* at ¶¶ 1.10, 5.1(e); Hollis Decl. at ¶ 72.

6. PAGA Allocation: \$4,000 of the Settlement will be allocated to the settlement of claims under PAGA, 75% of which will be paid to the LWDA and 25% will be allocated to the Net Settlement Sum and distributed among the participating class members as penalties. Ex. 1, SA at ¶ 1.21.

C. CALCULATION OF INDIVIDUAL SETTLEMENT PAYMENTS

Class Members will not have to submit a claim form in order to participate in the Settlement. SA at ¶ 5.1(b)(1). Relying on the personnel records maintained by Defendants, the Settlement Administrator will calculate the number of Qualifying Workweeks each participating class member worked during the class period. SA at ¶ 1.25, 4.2. The Class Notice will clearly state the number of qualifying workweeks Defendants reported the Class Member worked during the Class Period, and the class member will have a meaningful opportunity to dispute this amount if he or she disagrees. SA at ¶¶ 4.4-4.6, 4.10; Ex. 2 to Hollis Decl., Class Notice at p. 7. The Net Settlement Sum shall be allocated among the Participating Class Members pro-rata based upon their respective number of Qualifying Workweeks. Thus, participating class members shall be allocated a pro-rata share of the Net Settlement Sum based on the ratio of the number of Qualifying Workweeks that he or she worked for Defendants to the total number

of Qualifying Workweeks that all Class Members worked for Defendants. Hollis Decl. at ¶ 76. The Individual Settlement Payments shall be allocated 20% to wages, 40% to interest and 40% to penalties. SA at ¶ 5.1(b)(vi)(1). Class Counsel currently estimates the Net Settlement Sum is approximately **\$45,500**. Hollis Dec. at ¶ 73. According to Defendants’ records, there are approximately 35,789 total Qualifying Workweeks for the entire Class during the Class Period. *Id.* at ¶ 78; Heisdorf Decl. at ¶ 2. Thus, Plaintiff estimates that Qualifying class members will receive approximately **\$2.57** per qualifying workweek. Hollis Dec. at ¶ 78. Plaintiff’s counsel estimates that Class Members’ employment tenure with Defendants averages 113 weeks. *Id.* at ¶ 79. Therefore, if all Class Members worked the same number of Qualifying Workweeks, the estimated amount to be distributed to each Class Member will be approximately **\$290.41**. *Ibid.*

D. PAYMENT OBLIGATION DEADLINE

Defendants shall deposit the full amount of the \$150,000 into a Qualified Settlement Fund (“QSF”) set up by the Settlement Administrator no later than ten (30) business days after the Effective Date—the date of the Final Approval Order, if no objections to the Settlement. SA at ¶ 4.18.

E. DISPOSITION OF UNCLAIMED FUNDS

Participating Class Members shall have 180 days from the date of the mailing of the checks to cash their Settlement check. SA at ¶¶ 1.7, 4.13, 4.18. The settlement is non-reversionary. SA at ¶ 5.1(c). If after 180 days the checks cashed by Class Members total less than 100% of the Net Settlement Fund, the amount remaining of the Net Settlement Fund will be redistributed among those Class Members who cashed the checks sent to them within the 180 days. SA at ¶ 5.1(c). If the costs of redistribution are more than the amount to be redistributed, the amount of any uncashed checks shall go to Central California Legal Services, a nonprofit organization providing civil legal services to the indigent in the Central Valley area. SA at ¶ 5.1(c).

F. LIMITED SCOPE OF THE CLASS RELEASE

Upon Final Approval, all Class Members that do not submit a timely request for exclusion letter, will fully release the Class Released Claims and agree not to sue or otherwise make a claim against any of the Released Parties for the Class Released Claims. SA at ¶ 6.1. The Class Released Claims are limited to the facts alleged in the Complaint and FAC, and are defined as follows:

“1.7 “**Class Released Claims**” means upon Final Approval by the Court of this Stipulation of Settlement, Plaintiff and Class Members compromise, release, resolve, relinquish, and discharge each and all Released Parties from any and all claims alleged in the Action or that could have been brought in the Action, whether brought under state, local law or federal law, including but not limited to the California Labor Code, the California Private Attorneys General Act, Industrial Welfare Commission Wage Orders, and/or contract law that are based on, directly related to, or were or could have been pled based on the factual allegations alleged in the Actions, whether known or unknown, and whether in the nature of wages, overtime, premium pay, statutory penalties, civil penalties, liquidated damages, punitive damages, attorneys' fees, costs, interest, or injunctive relief or other remedies, that exist in their favor through the date of Preliminary Approval. SA at ¶ 1.7.

In addition, Class Members who choose to participate in this Settlement by not opting out and cashing their checks within the 180 calendar days of the mailing, will also be deemed to have opted into the action for purposes of the federal Fair Labor Standards Act, 29 U.S.C. §§ 201 *et seq.* as amended ("FLSA"), and their Released Claims will also include a release of any FLSA claims based on the facts alleged in the Complaint or First Amended Complaint.” SA at ¶ 1.7. The settlement checks mailed to the participating class members will contain the following short release and waiver on the back:

By depositing this check, I acknowledge that I am opting-in, joining, settling and fully releasing and discharging the "Class Released Claims" against the "Released Parties" as described in detail in the Notice of Proposed Class Action Settlement that I received and reviewed. SA at ¶ 4.14

V. PRELIMINARY APPROVAL OF THE SETTLEMENT IS APPROPRIATE

Settlement of a class action requires court approval to prevent fraud, collusion or unfairness to the class. *Dunk v. Ford Motor Co.*, 48 Cal. App. 4th 1794, 1800-1801 (1996). The purpose of the preliminary

1 evaluation of class action settlements is to determine whether the proposed settlement is within the range
2 of possible approval, and whether notice to the class of the settlement terms and conditions and the
3 scheduling of a formal fairness hearing are worthwhile. *Wershba v. Apple Computer, Inc.*, 91 Cal. App.
4 4th 224, 234-35 (2001). To determine whether a class settlement is fair, adequate and reasonable, a court
5 must be provided with “basic information about the nature and magnitude of the claims in question and
6 the basis for concluding that the consideration being paid for the release of those claims represents a
7 reasonable compromise.” *Clark v. American Residential Services LLC*, 175 Cal. App. 4th 785, 799 (2009).
8 The trial court must exercise its discretion through the application of several well-recognized factors when
9 deciding whether a class action settlement is fair. *Id.* at 799. The list of factors, which “is not exhaustive
10 and should be tailored to each case,” includes “the strength of plaintiff’s case, the risk, expense,
11 complexity and likely duration of further litigation, the risk of maintaining class action status through trial,
12 the amount offered in settlement, the extent of discovery completed and the stage of the proceedings, the
13 experience and views of counsel, the presence of a governmental participant, and the reaction of the class
14 members to the proposed settlement.” *Kullar v. Foot Locker Retail, Inc.*, 168 Cal. App. 4th 116, 128
15 (2008) (quoting *Dunk*, 48 Cal. App. 4th at 1801). The most important factor the trial court should consider
16 in determining whether to approve a class action settlement is the strength of the case for plaintiff on the
17 merits, balanced against the amount offered in settlement. *Munoz v. BCI Coca-Cola Bottling Co. of Los*
18 *Angeles*, 186 Cal. App. 4th 399, 407-408 (2010); *Kullar*, 168 Cal. App. 4th at 130.

19 In sum, at the preliminary approval stage, the trial court must determine that the settlement was
20 not the product of fraud, overreaching or collusion, and that the settlement is fair, reasonable and adequate.
21 *Nordstrom Com’n Cases*, 186 Cal. App. 4th 576, 581 (2010). Here, the proposed Settlement is supported
22 by experienced Counsel, extinguishes the risk of continued litigation, provides significant financial
23 recovery to Class Members, and provides a fair and adequate distribution of Settlement proceeds to
24 Participating Class Members. Hollis Decl., ¶¶ 7-13, 57, 106-118.

25 **A. The Settlement is the Result of Arms’ Length Negotiations and Presumptively Fair**

26 California courts recognize that a “presumption of fairness exists where (1) the settlement is
27 reached through arm’s-length bargaining; (2) sufficient investigation allows counsel and the court to act
28 intelligently; (3) counsel is experienced in similar litigation; and (4) the percentage of objectors is small.”

1 *Dunk*, 48 Cal. App. 4th at 1802. “[W]hat transpires in settlement negotiations is highly relevant to the
2 assessment of a proposed settlement’s fairness.” *State v. Levi Strauss & Co.*, 41 Cal. 3d 460, 482 (1986).
3 Courts presume the absence of fraud or collusion in the negotiation of a settlement unless evidence to the
4 contrary is offered. In short, there is a presumption that the negotiations were conducted in good faith.
5 William B. Rubenstein, et al., *Newberg on Class Actions* § 13:45 (5th ed. 2011-2017).

6 Here, the Settlement is the result of extensive, non-collusive negotiations between the Parties,
7 conducted at arm’s length, and informed by substantial factual and legal investigation. Hollis Decl., ¶¶
8 32-34. The Parties initially participated in a full-day mediation with the Robert J. Kaplan, Esq., a well-
9 respected, neutral third-party mediator well-versed and experienced in wage and hour class actions. *Id.* at
10 ¶ 24. After the mediation was unsuccessful, the parties engaged in substantial discovery in order to better
11 investigate the claims and prepare the matter for class certification. *Id.* at ¶¶ 25-30. Roughly 18 months
12 after the parties’ initial mediation and after substantial discovery, the parties then again sought the
13 assistance of Mr. Kaplan to find a resolution to the litigation. *Id.* at ¶ 32. At all times, the parties’
14 negotiations were hard-fought and conducted at arm’s length between attorneys with substantial wage and
15 hour class action experience, which fully informed the Parties of the relative strengths of the claims and
16 the benefits of the proposed Settlement, prompting each side to compromise. Hollis Decl. at ¶ 32.

17 **B. The Settlement Was Reached Only After Substantial Investigation and Discovery**

18 There is a presumption that a proposed settlement is fair and reasonable when there has been
19 sufficient investigation and discovery to permit counsel and the court to act intelligently, and counsel are
20 experienced in similar litigation. *Dunk*, 48 Cal.App.4th at 1802. Here, the Parties conducted a lengthy and
21 thorough investigation into the merits of Plaintiff’s class action claims prior to entering into the Settlement
22 and Class Counsel, in particular, devoted a considerable amount of time and effort to the legal and factual
23 investigation of Plaintiff’s claims. *Id.*, ¶¶ 21-30, 41-49. Class Counsel performed a thorough review of the
24 thousands of documents produced, and invested significant time and effort in factual and legal research
25 regarding the strength of the claims, including multiple in-depth interviews with Plaintiff and the Class
26 Members. *Ibid.*

27 Both parties propounded and responded to multiple sets of written discovery requests, including
28 requests for production of documents, requests for admission, and form and special interrogatories. Hollis

Decl. at ¶ 24. The parties also conducted depositions of Plaintiff Danny Drake, Defendants’ person most knowledgeable on several topics, other putative class members, and other percipient witnesses. Hollis Decl., ¶ 28. The parties met and conferred extensively regarding both the written discovery requests and the extent and scope of the depositions. *Id.* at 24, 30. Furthermore, the parties sought the assistance of the Court to resolve discovery disputes, including submitting multiple requests for pretrial discovery conferences.

Class counsel also prepared a comprehensive mediation brief that outlined the relevant factual and legal issues, contained a detailed analysis of Defendants’ time and payroll records, and presented a complete breakdown of the liability exposure for Defendants if Plaintiff succeeded on each of the claims at trial. *Id.* at ¶¶ 21-23.

Class Counsel’s evaluation of the case is premised on a careful and extensive analysis of the scope and applicability of Defendants’ potential defenses, and a thorough analysis of Class Members’ relevant employment data, including the number of shifts worked per pay period, the average number of Class Members working at any given time, Class Members’ average rates of pay, and the estimated violation rates for the claims. Hollis Decl. at ¶¶ 53-57. Class Counsel believes that the information exchanged in discovery and analyzed is sufficient for the Parties to make an informed decision about a fair resolution of this action. Hollis Decl., ¶¶ 53.

C. Class Counsel is Highly Experienced and Supports Preliminary Approval

Plaintiff and the Class have been represented by well-qualified counsel who have several years of experience in wage and hour class action litigation. Hollis Decl., ¶¶ 7-13, 142; Ex. 4 to Hollis Decl. Courts can properly consider the recommendations of counsel, particularly if, like here, counsel have been involved in litigation, appear to be competent, and have ample experience with this type of litigation, and significant discovery has been completed. *Newberg on Class Actions* § 13:53 (5th ed. 2011-2017). Class Counsel believes the Settlement is fair, adequate, and reasonable, and in the best interest of all Class Members. Hollis Decl., ¶143.

D. The Settlement Provides Substantial Monetary Relief to the Class

Courts must be provided with “basic information about the nature and magnitude of the claims in question and the basis for concluding that the consideration being paid for the release of those claims

represents a reasonable compromise.” *Kullar*, 168 Cal. App. 4th at 133; *Clark*, 175 Cal. App. 4th at 799. A settlement is not judged against what might have been recovered had a plaintiff prevailed at trial, nor does the settlement have to provide 100% of the damages sought to be fair and reasonable. *Wershba*, 91 Cal. App. 4th at 246, 250. Here, the Settlement results in a substantial benefit to all Class Members and the Maximum Settlement Amount of \$150,000 and warrants preliminary approval. Hollis Decl., ¶ 106-118.

1. The Settlement Provides for Reasonable, Fair and Adequate Relief Taking in Consideration the Significant Risks and Expenses of Further Litigation

In reaching this settlement, Class Counsel carefully considered the strength of the case versus the amount offered in settlement, the risk, expense, complexity and likely duration of litigation and of maintaining class certification through trial, the present state of the law as it applies to wage and hour class actions, and the burdens of proof necessary to establish liability against Defendants. *Ibid.* Class Counsel analyzed the merits of the class claims, which presented significant hurdles. *Ibid.* Although Plaintiff maintains his claims are meritorious, Plaintiffs acknowledges that Defendants possessed legitimate defenses to liability in the action. Hollis Decl., ¶ 36-46. As stated above, Defendants maintain that they comply with all of their meal and rest period obligations under California law. *Id.* at ¶ 37. Defendants vehemently deny that any class member were required to be on-duty or answer calls during their meal and rest periods and that, if any class member did so, was voluntarily. *Id.* at ¶ 39. There are no written policies requiring class members to answer phone calls or to stay close to their trucks at all times during their shifts. *Id.* at ¶ 44. Similarly, there are no written policies requiring employees to work through any of their meal or rest periods. *Ibid.* Defendants contend that they required Plaintiff and Class Members to accurately record their hours worked and that if anyone worked overtime, they were properly paid for it. *Id.* at ¶ 40. Defendants point to their time and pay records, which they claim reflect that Plaintiff and Class Members took meal periods, and that they were paid for all of their hours worked, including overtime. *Id.* at ¶ 38. As to the waiting time penalties, Plaintiff would have to succeed in proving not only meal and rest break violations for all former employees, but also that meal premium and rest premium were actually owed and not paid upon termination of employment. Further, Plaintiff will have to show that these meal and rest premiums owed constitute wages owed for purposes of Labor Code section 203,

1 and the current status of the law on this issue is unclear.

2 ///

3 Although the parties had engaged in a significant amount of discovery, the parties are far from
4 completing formal discovery. *Id.* at ¶ 108. Similarly, absent a settlement, the parties would likely spend
5 considerable additional, time, effort, and money on discovery, motion practice and trial. *Id.* at ¶ 108. There
6 would be a significant amount of motion practice including, motion for class certification, motions to
7 decertify the class, cross motions for summary judgment, and motions in limine, among others. *Id.* at ¶
8 113-114. Even if Plaintiff were successful in proving the merits of the class action claims, defendants
9 would likely submit an appeal. *Id.* at ¶ 115. Thus, the parties will have to engage in expensive and
10 protracted appellate practice. *Id.* This settlement avoids all those risks, and the accompanying expense,
11 and instead provides immediate and substantial monetary relief. The Settlement here commits defendants
12 to create a Settlement Fund of \$150,00.00 to compensate class members for their alleged damages, and
13 compensate counsel for their fees and costs in the litigation. *Id.* at ¶¶ 117. In contrast, continued litigation
14 would be costly and time consuming, and appeal from the class certification decision and appeal from any
15 judgment would likely occur.

16 **2. The Amount Offered in Settlement Given the Estimated Value of the Claims**
17 **Similarly Favors Preliminary Approval of the Settlement**

18 The Settlement provides a real and substantial monetary benefit to the approximate 311 Class
19 Members considering the highly disputed nature of the claims. *Id.* at ¶¶ 71, 106, 117. After reviewing the
20 sample records and conducting interviews, Plaintiff calculated the maximum possible exposure for all of
21 the class claims alleged in the FAC, including the PAGA claims. *Id.* ¶¶ 53-57. Specifically, for the meal
22 and rest period claims, Plaintiff assumed a 100% violation rate, for every single class member, for the
23 entire class period. *Id.* at ¶ 56(a)-(b). For the unpaid minimum, regularly, and overtime claims based on
24 the off-the-clock work performed during on-duty meal periods, Plaintiff similarly assumed a 100%
25 violation rate, for a 100% of the class members, during the entire class period, and assume an average of
26 0.50 hours unpaid overtime over for every shift worked longer than five hours. *Id.* at ¶ 56(c). For the
27 unpaid reimbursement of expenses, Plaintiff determined a violation rate of 80% and estimated the cost of
28 unpaid reimbursements for cell phone use to be \$5 per pay period. *Id.* at ¶ 56(d). Plaintiff calculated the

1 corresponding civil penalties under PAGA by assuming 100% liability for the 106 employees at any given
2 time and 78 former employees during the statutory period, on 100% of the 100 pay periods we estimated
3 were within the PAGA period. We calculated the civil penalties under PAGA for the meal and rest break
4 violations and the failure to pay minimum, regular, and overtime wages to be \$9,669,768. *Id.* at ¶ 61.

5 Thus, Plaintiff calculated the total maximum possible exposure in for the class claims to be
6 \$8,672,733. *Id.* at ¶ 57. Plaintiff then discounted the value of the class claims by 40% to account for the
7 likelihood of obtaining and maintaining class certification of Plaintiff's claims through trial, which
8 reduces the value from \$8,686,576 to \$5,203,639. *Id.* at ¶ 58. Plaintiff further discounted the total value
9 of the class claims by 40% to account for Defendants' strong defenses to liability and the chance that
10 Plaintiff will prevail on all the class claims at trial and obtain a 100% of the damages he claims the class
11 suffered, which further reduces the value of the claims to approximately from \$5,211,945 to \$3,122,183.
12 *Id.* at ¶ 59.

13 The \$150,000.00 Settlement (which excludes payroll taxes) negotiated here is reasonable
14 considering the substantial and significant risks that Plaintiff and class members faced in this litigation.
15 Class Counsel's estimate assumed that Plaintiff would prevail in obtaining class certification, be able to
16 establish liability on all claims alleged, and that Plaintiff's estimated damages would be awarded in their
17 entirety. *Id.* at ¶ 57. However, the possibility of recovering such a large amount is remote, particularly in
18 light of the relative strength of Defendants' defenses and the existence of potential variations among Class
19 Members – which would have reduced the overall value of the claims. Defendants again contend that they
20 followed all applicable law and provided Plaintiff and Class Members with all required meal and rest
21 periods and payment of for all hours worked. Again, Defendants rely on their time and pay records, which
22 they claim reflect that Plaintiff and Class Members took all of their meal and rest periods. *Id.* at ¶ 35.
23 Plaintiff also considered that the maximum potential amount of civil penalties recoverable under PAGA
24 of \$9,669,768 would be subject to the Court's discretion to reduce an award in part or completely, and
25 that only 25% of the civil penalties would go to the Class Members.

26 The Settlement Sum of \$150,000 is a fair, adequate and reasonable result for the approximately
27 311 class members given the parties' conflicting evidence, which may have resulted in a jury substantially
28 undercutting the projected value of the claims. It is well established that settlement offers that constitute

only a fraction of the potential recovery do not preclude a court from finding that the settlement offer is fair. *See Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1027 (9th Cir.1998); *Officers of Justice v. Civil Service Com’n of City of and County of San Francisco*, 688 F.2d 615, 628 (N.D. Cal. 1982). Courts have found settlements for substantially less than the plaintiff’s claimed damages were fair and reasonable, especially when taking into account the uncertainties involved in litigation. *See, e.g., In re Mego Fin. Corp. Sec. Litig.*, 213 F.3d454, 458 (9th Cir. 2000) (finding settlement 16% of the potential recovery to be reasonable); *In re Omnivision Techs., Inc.*, 559 F. Supp. 2d 1036, 1042 (N.D. Cal. 2008) (approving settlement that constituted 6% of the maximum potential damages).

Accordingly, the reasonableness of the proposed settlement is underscored by the fact that Defendants have potentially viable grounds for not only challenging their liability, but also Plaintiff’s estimate of the potential value of each claim. *Id.* at ¶¶ 36-46, 53-62; 106-118. By contrast, the Individual Settlement Payments, which Plaintiff currently estimates will average approximately \$290.41, will provide fair and reasonable recovery to the entire Class without further delay. *Id.* at ¶ 79. While the amount paid to Class Members represents a discount on Plaintiff’s estimate of the overall exposure to Defendants, this reduction in the amount of recovery represents a reasonable compromise considering the substantial risks Plaintiff would face. *Id.* at ¶ 62, 107.

3. The Settlement Has No Obvious Deficiencies and Does Not Grant Improper Preferential Treatment to Part of the Class or the Class Representative

The Settlement provides the fairest way to distribute the Settlement proceeds to class members. *Id.* at ¶ 75. Each one of the class members shall be entitled to receive a pro-rata portion of the Net Settlement Sum available for distribution based upon his or her respective number of qualifying work weeks. Hollis Decl. at ¶ 75. The class members who worked more shifts and that have a larger number of qualifying workweeks during the Class Period would be entitled to a larger portion of the Net Settlement Sum than those who worked less and all class members are treated equitably and fairly. *Ibid.*

E. The Penalties Under the PAGA Are Reasonable

Where settlements negotiate a good faith amount for PAGA penalties and “there is no indication that this amount was the result of self-interest at the expense of other” class members, such amounts are generally considered reasonable. *Hopson v. Hanesbrands Inc.*, No. CV-08-0844 EDL, 2009 WL 928133,

1 at *1, 9 (N.D. Cal. Apr. 3, 2009). Courts routinely approve of amounts for PAGA penalties in the range
2 of zero to two percent of the total maximum amount of the Settlement. *See McKenzie v. Fed. Express*
3 *Corp.*, No. CV 10-02420 GAF (PLAx), 2012 WL 12882124, at *5 (C.D. Cal. Jan. 23, 2012)
4 (acknowledging that courts approve PAGA settlements in the range of zero to two percent of the total
5 settlement). Here, the Parties negotiated a good faith amount of \$4,000 for PAGA penalties, which
6 represents 2 2/3% of the Maximum Settlement Amount and 11 3/8% of the Net Settlement Fund. SA at ¶
7 1.21.

8 **F. THE SERVICE AWARD AND THE ATTORNEY'S FEES AND COSTS**

9 **PROVISION FALL WELL WITHIN THE RANGE OF REASONABLENESS**

10 **1. The Service Award to the Class Representatives Is Routinely Awarded**

11 Courts routinely approve service awards to compensate named plaintiffs for the services they
12 provide and the risks they incur during the course of the class litigation. *Bell*, 115 Cal. App. 4th at 726
13 (upholding “service payments” to plaintiffs for their efforts in bringing class case); *see also Manual for*
14 *Complex Litigation (Fourth)*, § 21.62 n.971 (2004) (noting that service awards are warranted). Courts
15 frequently approve awards of \$10,000 or more. *In re Cellphone Fee Termination Cases*, 186 Cal. App.
16 4th 1380, 1393-1395 (2010) (upholding \$10,000 service awards). The factors courts use in determining
17 the amount of an award include: (1) a comparison between the service awards and the range of monetary
18 recovery available to the class; (2) time and effort put into the litigation; (3) whether the litigation will
19 further the public policy underlying the statutory scheme; and (4) risks of retaliation. *See Clark*, 175 Cal.
20 App. 4th at 804-807. Here, all 4 factors support the approval of the \$10,000 service award.

21 Plaintiff’s proposed service award is fair, reasonable, and warranted due to Plaintiff’s extensive
22 involvement and efforts in this litigation. Since the inception of this case in the Fall of 2015, Plaintiff has
23 spent a considerable amount of time being interviewed by counsel and providing counsel with relevant
24 information. Hollis Decl. at ¶ 135; Drake Decl. at ¶ 32. Plaintiff has spent over 100 hours during the past
25 four years in this litigation. For example, Plaintiff has spent hours reviewing extensive documents
26 produced by Defendants, including, but not limited to, his employment file and time and pay records for
27 four years of his employment. *Id.* at ¶ 31. Plaintiff spent considerable amounts of time meeting and
28 conferring with counsel and responding to written discovery. Plaintiff also spent time reviewing and

1 producing extensive documents in response to Defendants’ document requests. Defendants requested all
2 of Plaintiff’s text message during the class period, and Plaintiff spent considerable time searching for and
3 producing hundreds of pages of text messages. *Id.* at 25. In addition, Plaintiff spent several hours meeting
4 and conferring with counsel in preparation to and participating in two full days depositions, totaling almost
5 14 hours of deposition testimony. *Id.* at 22, 26.

6 Plaintiff also had to drive from Fresno to San Francisco to participate in a full day mediation. *Id.*
7 at 24. He further had to drive from Fresno to Sacramento to Defendants’ counsel office to participate in
8 his first full day deposition. *Id.* at 23. Plaintiff has always been readily available and helpful throughout
9 this litigation to assist counsel in preparing this case. *Id.* at 36; Hollis Decl. at ¶ 131.

10 The public policy considerations underlying the statutes Plaintiff seeks to enforce support
11 Plaintiff’s incentive award. A clear public policy favors the enforcement of California minimum wage and
12 overtime laws. *Sav-on Drugs Stores, Inc. v. Superior Court (Rocher)* 34 Cal.4th 319, 340 (2004). The
13 State of California has further recognized the importance of Labor Code enforcement actions in enacting
14 PAGA, which arose out of the state’s inability to enforce violations of the Labor Code due to a lack of
15 resources and insufficient funding to enforce labor laws. *Iskanian v CLS Transportation Los Angeles, LLC*
16 59 Cal.4th 348, 379 (2014). In enacting PAGA, the legislature intended to encourage private parties to
17 pursue Labor Code violations, relieving pressure on overburdened state agencies and achieving maximum
18 compliance with labor laws. *Huff v. Securitas Security Services USA, Inc.* 23 Cal.App.5th 745, 761 (2018).
19 “Given the goal of achieving maximum compliance with state labor laws, it would make little sense to
20 prevent a PAGA plaintiff (who is simply a proxy for state enforcement agencies) from seeking penalties
21 for all the violations an employer committed.” *Id.*, 756. As such, California courts have recognized the
22 importance of incentivizing plaintiffs to bring Labor Code wage and hour enforcement actions.

23 Plaintiff also faced real risks in bringing this lawsuit as well the potential stigma that comes from
24 being a named plaintiff. Drake Decl. at ¶ 14, 29. If Plaintiff was unsuccessful, he risked having to pay
25 Defendants’ the costs of litigation. Hollis Decl. at 14. He also risked his reputation as well as potentially
26 future jobs prospects. Drake Decl. at ¶ 15.

27 Furthermore, under the terms of the Settlement, Plaintiff will execute a general release of claims,
28 which is an expansive release that was not required of other Class Members, who will execute a limited

1 release of claims. The additional consideration provided by Plaintiff justifies a larger settlement amount.

2 Therefore, Plaintiff has undertaken a significant amount of work during the past four years, has
3 taken significant risks in order to bring this class action and pursue recovery for other individuals who
4 may not have undertaken the same responsibilities or risks, and have signed a significantly broader release.
5 Plaintiff effectively, and fairly represented Class Members, and did not place his interests above those of
6 any member of the putative Class. Hollis Decl., ¶ 131; Drake Decl. ¶ 30. Accordingly, the \$10,000 Service
7 Award is reasonable, appropriate, and justified as part of the overall Settlement.

8 **2. The Work Performed by Class Counsel Supports the Fees and Costs**
9 **Requested**

10 Class Counsel has performed a significant amount of work in this class action for nearly four years,
11 including conducting extensive research, investigation and analysis of each potential class and PAGA
12 cause of action, and anticipates in engaging in additional work if this Court approves the Settlement. Hollis
13 Decl. ¶ 120. Class Counsel’s work resulted in the Settlement which provides significant benefits to class
14 members. Our legal system greatly relies on private litigants to enforce substantive provisions of law
15 through class actions, especially Labor Code wage and hour provisions. Therefore, the California Supreme
16 Court has unanimously held “that when class action litigation establishes a monetary fund for the benefit
17 of the class members, and the trial court in its equitable powers awards class counsel a fee out of that fund,
18 the court may determine the amount of a reasonable fee by choosing an appropriate percentage of the fund
19 created.” *Laffitte v. Robert Half International, Inc.*, 1 Cal.5th 480, 503 (2016). The Court further held that
20 although trial courts have discretion to use a lodestar multiplier cross-check or to forgo a lodestar-
21 multiplier cross-check if some other means to evaluate the reasonableness of a requested fee percentage
22 exists, “the percentage method is a valuable tool that should not be denied our trial courts.” *Id.* at 503-
23 506. California courts have awarded common fund fees calculated using a percentage-of-fund method that
24 is not dependent on counsel’s lodestar amount. Pearl, *California Attorney Fee Awards* (CEB 3d ed. 2010)
25 § 5.19 (citing *In re Sutter Health Uninsured Pricing Cases*, 171 Cal. App. 4th 495, 512 (2009); *Bell v.*
26 *Farmers Ins. Exch.*, 115 Cal. App. 4th 715, 726 (2004); *Apple Computer, Inc. v. Superior Court*, 126 Cal.
27 App. 4th 1253, 1270 (2005)). This common fund approach is especially suitable where, as here, a readily
28 ascertainable (indeed, fixed) settlement fund is available. See *Dunk v. Ford Motor Co.*, 48 Cal. App. 4th

1 1794, 1808-09 (1996).

2 ///

3 Here, the proposed Settlement provides that Class Counsel may seek attorney's fees of 33 1/3%
4 of the Settlement, or \$50,000, in addition to reimbursement for the actual litigation costs, in an amount
5 not to exceed \$27,000. Hollis Decl., ¶ 119; Ex. 1, SA at ¶¶ 1.10, 5.1(e). As demonstrated in the Declaration
6 of Graham S.P. Hollis filed herewith, Class Counsel has already performed a significant amount of work
7 litigating this action, including performing extensive legal and factual research, which Class Counsel
8 measured against the relative strength of the claims in order to better identify an appropriate range of
9 settlement figures, exchanged written discovery, conducted and defended depositions, conducted
10 extensive interviews with class members, filed motions, and attended discovery conferences. Hollis Decl.,
11 ¶ 120.

12 To date, Class Counsel's lodestar to date exceeds **\$700,000.00**, and Class Counsel has performed
13 over 1,735 hours of work for the benefit of the Class. *Id.* at ¶ 121. Nonetheless, Class Counsel has agreed
14 to significantly reduce their attorney's fees and only seek a fraction of the value of the work performed to
15 date. The \$50,000 in attorney's fees Class Counsel seeks represents only 7% of the value of the services
16 that Class Counsel has already rendered in this case. In addition, Class Counsel has advanced out-of-
17 pocket litigation costs of over \$42,250. *Id.* at ¶ 128. Nonetheless, Class Counsel has agreed to only recover
18 reasonably incurred costs up to \$27,000. As will be explained further in the attorney fee motion that will
19 be filed along with the final approval motion, the requested fees and costs are extremely reasonable and
20 Defendants do not oppose Class Counsels' request. Class Counsel committed, and continues to commit,
21 significant financial and staffing resources to this case and to the representation of the Class Members. *Id.*
22 at ¶ 117. Class Counsel has diverted many of its resources in order to contend with Defendants' vigorous
23 defense, and undertook this action on a contingency basis, thereby bearing all the costs of this complex,
24 risky, expensive, and time-consuming litigation. *Id.* at ¶ 123-126.

25 The requested fees and costs are fair and reasonable considering Class Counsel is highly
26 experienced in wage and hour matters and class action cases, the excellent result Class Counsel obtained
27 on behalf of the Class, and the risk undertaken in bringing this case on a purely contingency basis,
28 advancing over \$42,250 in litigation costs, and deferring payment for almost two years with no guarantee

1 that any of the fees or costs incurred would ever be recovered. Hollis Decl. ¶ 123; Ex. 4 to Hollis Decl.
2 Accordingly, for purposes of this Motion, and as will be explained in detail in the fee application, the
3 requested fee amount falls well within the range of reasonableness considering that case law supports a
4 fee award as high as 50% on common law settlement funds less than \$10 million. *See e.g. Van Vranken*
5 *v. Atl. Richfield Co.*, 901 F. Supp. 294, 297 (N.D. Cal. 1995) (noting class counsel fee awards of 30-50%
6 are more typical where the common fund is less than \$10 million).

7 **VI. PROVISIONAL CERTIFICATION OF THE CLASS IS APPROPRIATE**

8 Provisional certification is appropriate at the preliminary approval stage where, as here, the Court
9 has not yet certified the class and the requirements for certification are met. *Newberg on Class Actions* §§
10 13:16-13:18 (5th ed. 2011-2017). To certify a settlement class, the Court must find an ascertainable class
11 and be a well-defined community of interest in the questions of law and fact involving the parties
12 represented. *Vasquez v. Superior Court*, 4 Cal.3d 800, 809-811 (1971).

13 **A. There is An Ascertainable and Sufficiently Numerous Class**

14 Here, Class Members are easily identifiable from Defendants' own records. The documents and
15 information exchanged in litigation evidence a class size of approximately 315 Class Members, easily
16 meeting the numerosity requirement. Hollis Decl., ¶ 137.

17 **B. There is a Well-Defined Community of Interest**

18 The community of interest requirement involves three factors: (1) predominant common questions
19 of law or fact; (2) class representatives with claims or defenses typical of the class; and (3) class
20 representatives who can adequately represent the class. *Linder v. Thrifty Oil Co.*, 23 Cal.4th 429, 435
21 (2000). The predominance tests whether proposed classes are sufficiently cohesive to warrant adjudication
22 by representation. *See, e.g., Clothesrigger, Inc. v. GTE Corp.*, 191 Cal. App. 3d 605 (1987); *Lazar v. Hertz*
23 *Corp.*, 143 Cal. App. 3d 128 (1983). Here, common issues of fact and law predominate as to each of the
24 claims alleged by Plaintiff on behalf of the Class because this action concerns Plaintiff's allegations that
25 Defendants' common policies and practices failed to provide Class Members with compliant meal and
26 rest periods; failed to pay Class Members for all hours worked, failed to reimburse Class Members for all
27 necessary business expenses, and failed to timely pay Class Members all wages owed upon separation of
28 their employment and each is united in its proof. Hollis Decl., ¶¶ 15-17, 138; Drake Decl. ¶¶ 6-9. Common

1 issues predominate because the challenged practices apply uniformly to all Class Members and the
2 resolution of these over-arching questions will determine liability for the Class as a whole. To the extent
3 any individual questions exist that concern the amount of wages that were unpaid, these issues go to Class
4 Member damages, not liability, which does not preclude the maintenance of the suit as a class action.
5 *Vasquez*, 4 Cal.3d at 815.

6 **C. Plaintiff's Claims are Typical and the Adequacy Requirement is Met**

7 Here, Plaintiff's claims are typical of the Class because Plaintiff, like all Class Members, were
8 subject to the same allegedly non-compliant policies and procedures, or lack thereof, that were applicable
9 to the entire Class throughout the Class Period. Drake Decl. ¶ 10; Hollis Decl., ¶ 139. Plaintiff is further
10 part of the class he seeks to represent, and he worked a typical number of hours and shifts to those worked
11 by the other class members during the class period. *Ibid*. The adequacy of representation requirement is
12 met by fulfilling two conditions: first, a named plaintiff must be represented by counsel qualified to
13 conduct the pending litigation; second, a named plaintiff's interests cannot be antagonistic to those of the
14 class. *Classen v. Weller*, 145 Cal. App. 3d 27, 46-47 (1983); *McGhee v. Crocker-Citizens Nat. Bank*, 60
15 Cal. App. 3d 442, 450 (1976). Here, both adequacy requirements are met. First, Plaintiff has no conflicts
16 of interest with the Class. Drake Decl. ¶ 17; Hollis Decl. ¶ 140. Plaintiff worked toward a positive
17 resolution of this case, demonstrating his interest in prosecuting this Action and dedication to obtaining
18 the best possible recovery for the Class, and he were involved during the litigation and settlement process.
19 Hollis Decl. at ¶¶ 130-135; Drake Decl. ¶¶ 18-31. In addition, because Plaintiff's interests are co-extensive
20 with those of the Class and Plaintiff seeks relief identical to that of every other Class Member, Plaintiff
21 can and will pursue the interests of all Class Members adequately. Hollis Decl. at ¶ 141. Furthermore,
22 Plaintiff retained counsel with significant experience prosecuting wage and hour class actions. Hollis Decl.
23 at ¶¶ 8-14; Exhibit 4 to Hollis Decl.

24 **VII. THE PROPOSED CLASS NOTICE IS ADEQUATE**

25 California Rules of Court, Rule 3.769(f) requires that class members be provided with notice of
26 the final approval hearing, as well as an explanation of the proposed settlement and objection procedures.
27 Procedural due process does not guarantee any particular procedure but requires notice reasonably
28 calculated to apprise interested parties of the pendency of the action affecting their interests and an

1 opportunity to present their objections. *Ryan v. Cal. Interscholastic Fed’n – San Diego Section*, 94 Cal.
2 App. 4th 1048, 1072 (2001). Notice that meets this standard and is neutrally worded satisfies due process.
3 *Phillips Petroleum Co. v. Shutts*, 472 U.S. 797, 812 (1985).

4 **A. The Notice is Accurate and Informative**

5 Here, the proposed Class Notice provides all the information a reasonable person would need to
6 make a fully informed decision about the Settlement. Hollis Decl., ¶¶ 4, 93-105; Ex. 2 to Hollis Decl. The
7 Class Notice summarizes the lawsuit, including the contentions and denials of the Parties, and the
8 proceedings to date, and explains the terms and conditions of the Settlement in plain language in an
9 informative and coherent manner. *Ibid.* It also fully informs Class Members of their rights and options as
10 Class Members (i.e., to object, to opt out, and/or do nothing to receive their pro rata share of the
11 settlement), as well as explains the consequences of exercising those options. *Ibid.* The Class Notice makes
12 clear that each Class Member will receive a Settlement Payment without the need to submit a claim form,
13 as well as explains the process for Class Members to object to, or opt-out of, the Settlement. *Ibid.* The
14 Class Notice notifies the class members of their reported qualifying workweeks and explains the process
15 to dispute the number of qualifying workweeks reported by Defendants and how to contact the Settlement
16 Administrator. *Ibid.*

17 **B. The Notice Plan Satisfies Due Process**

18 There is no statutory or due process requirement that all class members receive actual notice and
19 as the Court of Appeals has explained, “[t]he notice given should have a reasonable chance of reaching a
20 substantial percentage of the class members.” *Cartt v. Superior Court*, 50 Cal. App. 3d 960, 973-974
21 (1975). The Judicial Council of California’s *Deskbook on the Management of Complex Civil Litigation*
22 (Matthew Bender 2007), §3.74 notes that individual notice by mail is preferred when possible and
23 dissemination of a combined certification/settlement notice is a common and accepted practice. *In re*
24 *Vitamin Cases*, 107 Cal. App. 4th 820, 828-829 (2003). Here, the proposed notice plan is consistent with
25 class notices approved by state and federal courts, and, under the circumstances here, is the best notice
26 practicable and is the method likely to give the best actual notice to the greatest number of class members.
27 Hollis Decl., ¶ 93. Defendants’ records should provide the best-known address available for the majority
28 of the Class, but the Settlement Administrator will nevertheless attempt to locate the best possible mailing

addresses for Class Members. If any Class Notice is returned as undeliverable without a forwarding address the Settlement Administrator will perform one in-depth skip-trace to locate a better mailing address. *Id.* at ¶ 102.

VIII. CONCLUSION

For the foregoing reasons, Plaintiff respectfully request that this Court enter the concurrently filed [Proposed] Order granting preliminary approval of the Class Action Settlement, and approval of the class notice and notice plan.

Dated: May 10, 2019

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