

Joseph Lavi, Esq. (SBN 209776)  
Vincent C. Granberry, Esq. (SBN 276483)  
**LAVI & EBRAHIMIAN, LLP**  
8889 W. Olympic Blvd., Suite 200  
Beverly Hills, California 90211  
Telephone: (310) 432-0000  
Facsimile: (310) 432-0001

Attorneys for PLAINTIFF DONALD ALVAREZ,  
on behalf of himself and others similarly situated.

**SUPERIOR COURT OF THE STATE OF CALIFORNIA  
FOR THE COUNTY OF LOS ANGELES – CENTRAL DISTRICT**

DONALD ALVAREZ, on behalf of himself  
and others similarly situated,

PLAINTIFF,

vs.

RECOLOGY LOS ANGELES; THF  
HOLDING CO. (formerly known as CROWN  
DISPOSAL COMPANY, INC.); and DOES 1  
to 100, Inclusive,

DEFENDANTS.

Case No.: BC619897

**CLASS ACTION**

*[Assigned for all purposes to the Hon. Ann I.  
Jones, Dept. 308]*

**PLAINTIFF DONALD ALVAREZ'S  
NOTICE OF MOTION AND MOTION FOR  
PRELIMINARY APPROVAL OF CLASS  
ACTION SETTLEMENT WITH  
DEFENDANT RECOLOGY LOS ANGELES;  
MEMORANDUM OF POINTS AND  
AUTHORITIES**

*[Filed concurrently with the Declaration of  
Vincent C. Granberry in support thereof; and  
[Proposed] Order]*

Hearing Information:

Date: TBD

Time: TBD

Dept.: 308

**TO THE HONORABLE COURT, ALL PARTIES, AND TO THEIR RESPECTIVE  
ATTORNEYS OF RECORD:**

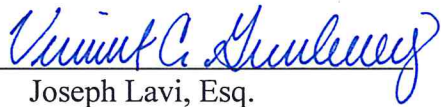
**NOTICE IS HEREBY GIVEN** that on \_\_\_\_\_, 2018 at \_\_\_\_ a.m./p.m., or as  
soon thereafter as the matter can be heard in Department 308 of the Los Angeles Superior Court  
located at 600 South Commonwealth Avenue, Los Angeles, California 90005, Plaintiff DONALD  
ALVAREZ ("Plaintiff") will move for an order granting preliminary approval of the proposed class  
action settlement on the terms and conditions set forth in the Joint Stipulation of Class Action

1 Settlement and Release ("Stipulation") between Plaintiff and Defendant RECOLOGY LOS  
2 ANGELES ("Defendant"), a copy of which is attached to the Declaration of Vincent C. Granberry  
3 ("Granberry Dec.") as **Exhibit "1."** Plaintiff will further move that the Order specifically  
4 encompass the following:

- 5 1. Certify a class for settlement purposes only;
- 6 2. Appoint Plaintiff as Class Representative for settlement purposes only;
- 7 3. Appoint Joseph Lavi, Esq. and Vincent C. Granberry, Esq. of Lavi & Ebrahimiian,  
8 LLP; as Class Counsel;
- 9 4. Approve the Allocation Form in the form attached as **Exhibit "A"** to the Stipulation;
- 10 5. Approve the Notice of Class Action Settlement in the form attached as **Exhibit "B"**  
11 to the Stipulation;
- 12 6. Set a Final Approval and Settlement Fairness Hearing on a date that is approximately  
13 one hundred sixty (160) days after the Court grants preliminary approval of the Settlement.

14  
15 Dated: March 9, 2018

Respectfully submitted,  
**LAVI & EBRAHIMIAN, LLP**

16  
17 By:   
18 Joseph Lavi, Esq.  
19 Vincent C. Granberry, Esq.  
20 Attorneys for PLAINTIFF DONALD  
21 ALVAREZ, on behalf of himself and others  
22 similarly situated  
23  
24  
25  
26  
27  
28

## TABLE OF CONTENTS

|       |                                                                                                                                               |    |
|-------|-----------------------------------------------------------------------------------------------------------------------------------------------|----|
| I.    | INTRODUCTION .....                                                                                                                            | 1  |
| II.   | SUMMARY OF LITIGATION .....                                                                                                                   | 1  |
| A.    | The Parties.....                                                                                                                              | 1  |
| B.    | The Complaint and Allegations .....                                                                                                           | 1  |
| C.    | The Exchange of Detailed Informal Discovery and Legal Analysis By Parties’<br>Counsel and Plaintiff’s Expert Witness .....                    | 3  |
| III.  | THE SETTLEMENT .....                                                                                                                          | 5  |
| IV.   | ANALYSIS.....                                                                                                                                 | 8  |
| A.    | Class Action Settlements Are Subject To Review And Approval Under The<br>California Rules of Court.....                                       | 8  |
| B.    | This Settlement Is Fair, Reasonable, And Adequate.....                                                                                        | 8  |
| 1.    | The settlement is the result of serious, informed, and non-collusive<br>negotiations.....                                                     | 9  |
| 2.    | The extent of the information provided through formal and informal<br>discovery and the stage of the proceedings support the settlement ..... | 10 |
| 3.    | Plaintiff’s counsel are experienced in similar litigation .....                                                                               | 10 |
| 4.    | The settlement is fair and reasonable based on the strengths of<br>Plaintiff’s case and the risks and costs of further litigation.....        | 11 |
| 5.    | The proposed settlement is a reasonable compromise of claims.....                                                                             | 12 |
| V.    | THE COURT SHOULD CERTIFY THE CLASS FOR SETTLEMENT<br>PURPOSES .....                                                                           | 15 |
| VI.   | THE PROPOSED CLASS NOTICE OF SETTLEMENT SHOULD BE<br>APPROVED .....                                                                           | 17 |
| VII.  | THE PROPOSED ATTORNEY FEES AND COSTS ARE REASONABLE.....                                                                                      | 17 |
| VIII. | THE REQUESTED INCENTIVE AWARD IS REASONABLE .....                                                                                             | 20 |
| IX.   | PROPOSED SCHEDULE OF SETTLEMENT PROCEEDINGS.....                                                                                              | 20 |
| X.    | CONCLUSION.....                                                                                                                               | 22 |

## TABLE OF AUTHORITIES

### Pages

#### Cases

|                                                                                                            |        |
|------------------------------------------------------------------------------------------------------------|--------|
| <i>In re Activision Sec. Litig.</i><br>(N.D. Cal 1989)] 723 F. Supp. 1373 .....                            | 19     |
| <i>Apple Computer, Inc. v. Superior Court</i><br>(2005) 126 Cal. App. 4th 1253.....                        | 18     |
| <i>In re Beef Industry Antitrust Litigation</i> (5th Cir. 1979) 607 F.2d 167<br>(1985) 39 Cal.3d 311 ..... | 8      |
| <i>Boyd v. Bechtel Corp.</i><br>(N.D. Cal. 1979) 485 F. Supp. 610 .....                                    | 10, 11 |
| <i>City &amp; County of San Francisco v. Sweet</i><br>(1995) 12 Cal. 4th 105.....                          | 18, 19 |
| <i>Dunk v. Ford Motor Co.</i><br>(1996) 48 Cal.App.4th 1794.....                                           | 9      |
| <i>Ellis v. Naval Air Rework Facility</i><br>(N.D. Cal. 1980) 87 F.R.D. 15 .....                           | 10     |
| <i>Fisher Bros. v. Cambridge Lee Industries, Inc.</i><br>(E.D. Pa. 1985) 630 F.Supp. 482 .....             | 10     |
| <i>Global Minerals &amp; Metals Corp. v. Superior Court</i><br>(2003) 113 Cal.App.4th 836.....             | 16     |
| <i>Hanlon v. Chrysler Corp.</i><br>(9 <sup>th</sup> Cir. 1998) 150 F.3d 1011 .....                         | 9      |
| <i>Iowa Beef Processors, Inc. v. Meat Price Investigators Ass'n</i><br>(1981) 452 U.S. 905 .....           | 8      |
| <i>Kullar v. Foot Locker Retail, Inc.</i><br>(2008) 168 Cal.App.4th 116.....                               | 12     |
| <i>Lealao v. Beneficial California, Inc.</i><br>(2000) 82 Cal. App. 4th 19.....                            | 18, 19 |
| <i>Linney v. Cellular Alaska Partnership</i><br>(9th Cir. 1998) 151 F. 3d 1234.....                        | 11     |
| <i>Mallick v. Superior Court</i><br>(1979) 89 Cal.App.3d 434.....                                          | 8      |

|    |                                                                |              |
|----|----------------------------------------------------------------|--------------|
| 1  | <i>Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles</i>      |              |
| 2  | (2010) 186 Cal.App.4th 399.....                                | 12           |
| 3  | <i>In re Pacific Enters. Sec. Litig.</i>                       |              |
| 4  | (9th Cir. 1995) 47 F.3d 373.....                               | 19           |
| 5  | <i>Quinn v. State</i>                                          |              |
| 6  | (1975) 15 Cal. 3d 162.....                                     | 18, 19       |
| 7  | <i>Rebney v. Wells Fargo Bank</i>                              |              |
| 8  | (1990) 220 Cal.App. 3d 1117.....                               | 11           |
| 9  | <i>7-Eleven Owners for Fair Franchising v. Southland Corp.</i> |              |
| 10 | (2000) 85 Cal.App.4th 1135.....                                | 16           |
| 11 | <i>Wershba v. Apple Computer, Inc.</i>                         |              |
| 12 | (2001) 91 Cal.App.4th 224.....                                 | 8, 9, 11, 12 |

## Statutes and Rules

### California Rules of Court

|                    |      |
|--------------------|------|
| Rule 3.769 .....   | 4, 8 |
| Rule 3.769(d)..... | 15   |
| Rule 3.769(g)..... | 8    |

## Other

### Newberg on Class Actions (4<sup>th</sup> Ed.)

|               |    |
|---------------|----|
| § 11:25 ..... | 8  |
| § 14.6 .....  | 19 |

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiff DONALD ALVAREZ (“Plaintiff”) respectfully submits this memorandum of points  
4 and authorities in support of his motion for preliminary approval of the proposed class action  
5 settlement with Defendant RECOLOGY LOS ANGELES (“Defendant”). Plaintiff seeks entry of a  
6 proposed order granting preliminary approval of the class settlement which: (1) preliminarily  
7 approves the proposed settlement of the class action; (2) approves the form and method for  
8 providing notice and directs that notice be given to members of the settlement class; (3)  
9 preliminarily certifies the settlement class for settlement purpose; and (4) schedules a final approval  
10 hearing date.

11 As consideration for this Settlement, Defendant shall pay a sum equal to Three Hundred Fifty  
12 Thousand Dollars (\$350,000.00) (the “Class Settlement Amount”) to fund the non-reversionary no  
13 claims made settlement of this class action (*see* Stipulation of Class Action Settlement and Release  
14 (“Stipulation”) at p. 3:9-16 attached as **Exhibit “1”** to Declaration of Vincent C. Granberry  
15 (“Granberry Dec.”)). The Class Settlement Amount is inclusive of settlement payments to  
16 participating Class Members, all attorneys’ fees and costs, the service payment to Plaintiff for his  
17 services as class representative, and claims administration as provided by this Settlement. (*Id.*)

18 **II. SUMMARY OF LITIGATION**

19 **A. The Parties**

20 The named Plaintiff worked as an hourly non-exempt driver for Defendant from  
21 approximately March 5, 2015 to December 24, 2015 and seeks to represent all current and former  
22 non-exempt, hourly employees who were employed by Defendant in California with job titles of  
23 Driver, Driver-Relief, Driver Transfer, Driver-Transfer Grandfather, and Helper (herein as the  
24 “Truck Worker Subclass) at any time from March 5, 2015 through August 25, 2017 (hereinafter  
25 “Class” or “Class Members”). (Stipulation, at p. 2:12-14; Granberry Dec. ¶3.)

26 **B. The Complaint and Allegations**

27 On May 9, 2016, a class action Complaint was filed against defendants Recology Los Angeles  
28 (“Recology”) and Crown Tear Off & Disposal, Inc. (“Crown Tear Off”) (Los Angeles Superior

1 Court Case No. BC619897) alleging the following causes of action: failure to pay wages for all time  
2 worked at the minimum wage in violation of Labor Code Sections 1194 and 1197; failure to  
3 authorize or permit meal periods in violation of Labor Code Sections 512 and 226.7; failure to  
4 authorize or permit rest periods in violation of Labor Code Section 226.7; failure to provide  
5 complete an accurate wage statements in violation of Labor Code Section 226; failure to timely pay  
6 all earned wages and final paychecks due at time of separation of employment in violation of Labor  
7 Code Sections 201, 202 and 203; and unfair business practices in violation of Business and  
8 Professions Code Section 17200, et seq. On or about July 1, 2016, Plaintiff filed a First Amended  
9 Complaint (“FAC”) against Recology and Crown Tear Off. The FAC alleged all of the causes of  
10 action alleged in the original Complaint, and added a seventh cause of action for civil penalties  
11 pursuant to the Private Attorney General Act of 2004, Labor Code Section 2698 et seq. (the “PAGA  
12 Claim”). (Granberry Dec. ¶4.)

13 Plaintiff erroneously named Crown Tear Off as a defendant in this action. Therefore, on or  
14 about November 16, 2016, Plaintiff, Recology and THF submitted a stipulation and proposed order  
15 to the Court requesting that the Court dismiss Crown Tear Off from the action, add THF as a  
16 defendant, and grant Plaintiff leave to file a Second Amended Complaint (the “SAC”). On  
17 November 17, 2016, the Court entered an order granting Plaintiff leave to file the SAC, which  
18 named THF as a defendant as to all causes of action alleged in the FAC, except for the failure to  
19 provide complete and accurate wage statements and PAGA cause of action (for the reason that these  
20 claims were barred by the statute of limitations as to THF). (Granberry Dec. ¶5.)

21 Plaintiff subsequently filed a Third Amended Complaint (“TAC”) limiting the complaint  
22 against Recology Los Angeles to its Driver, Driver-Relief, Driver Transfer, Driver-Transfer  
23 Grandfather, and Helper employees (herein as the “Truck Worker Subclass”), but making no other  
24 modifications to the Second Amended Complaint as to Defendant. No Answer or other response to  
25 the Complaint was or will be filed by Defendant in response to this Third Amended Complaint as it  
26 is being filed wholly to effectuate this Settlement. (Granberry Dec. ¶6.)

27 Defendant’s defenses to Plaintiff’s claims were as follows: with regard to Plaintiff’s claim for  
28 failure to pay for all hours worked due to Defendant’s policy, practice, and procedure of

1 automatically deducting 30 minutes from Class Members' daily hours worked for first meal periods  
2 and an additional 30 minutes when Class Members worked over 12.5 hours for second meal periods,  
3 Defendant argued that its practice did not deprive Class Members of wages for this time because  
4 Defendant authorized and permitted, and Class Members took, all legally-required, duty-free first  
5 and second meal periods even if they did not clock out for this time. Regarding Plaintiff's meal  
6 period claims, Defendant argued that they were barred by Labor Code section 512(e) because Plaintiff  
7 was covered by a valid collective bargaining agreement that expressly provided for compliant-meal  
8 periods and provided for final and binding arbitration of disputes. Defendant also contended that, to  
9 the extent Plaintiff could overcome Labor Code section 512(e), his meal period claim failed for the  
10 same reasons that his failure to pay for all hours worked claim failed - Defendant authorized and  
11 permitted, and Class Members took, all legally-required, duty-free first and second meal periods  
12 even if they did not clock out for this time. Defendant also contended that Class Members lawfully  
13 waived second meal periods when working more than ten and up to 12 hours in a shift. Regarding  
14 Plaintiff's claim for failure to authorize or permit all legally-required rest periods, Defendant  
15 contended that it complied with its legal duty to authorize or permit all legally-required rest periods at  
16 legally-compliant times. Defendant argued that the fact that Plaintiff's "Roll Off Driver Logs" only  
17 contained two places to note rest periods even when he worked over 10 hours in a shift was not  
18 conclusive evidence of a failure to authorize or permit rest periods, including third rest periods.  
19 Indeed, Defendant argued, the opposite was true; Class Members were informed of their right to rest  
20 periods by Defendant's managers and postings at Defendant's workplace. In other words,  
21 Defendant maintained, it permitted Class Members to take the rest periods at the proper intervals if  
22 they chose to do so. So, like Plaintiff's meal period claims, Defendant argued that it complied with  
23 its legal duty to authorize or permit rest periods at legally-compliant times and therefore was not  
24 liable for this claim. Based on the foregoing, Defendant contended, at the time Defendant issued  
25 Class Members' paystubs and paid out wages upon separation of employment, Defendant believed,  
26 in good faith, that it was providing accurate wage and hour statements and properly paying all wages  
27 to separating employees. Accordingly, Defendant concluded, Plaintiff would not be able to  
28 establish the willful element of his 203 claims. Importantly, Defendant noted, even assuming

1 Plaintiff was able to prove his failure to pay for all hours worked and meal period claim,  
2 Defendant's exposure was limited by the fact that as on October 29, 2016, it stopped using  
3 automatic-deduction and rounding policies. (Granberry Dec. ¶18.)

4 **C. The Exchange of Detailed Informal Discovery and Legal Analysis by the**  
5 **Parties' Counsel and Plaintiff's Expert Witness**

6 On May 2, 2016, the Parties participated in a full-day mediation session with Mr. Jeffrey  
7 Ross, Esq., a highly experienced and well-regarded class action mediator. As a critical part of  
8 settlement negotiations, the Parties engaged in extensive formal and informal discovery exchange  
9 which included production and review of the entirety of the class data, production and review of all  
10 Defendant's relevant policies and procedures in effect during relevant period, as well as information  
11 regarding class size, average rate of pay, regular hour wage data, Plaintiff's deposition, and  
12 Plaintiff's class counsel's careful and detailed analysis of both the aforementioned data and  
13 Defendant's relevant policies and procedures. The Parties did not reach a settlement at the  
14 mediation and continued their negotiations through the assistance of mediator. Finally, Defendant  
15 and Plaintiff reached a settlement in principle, which ultimately resulted in the terms of the  
16 Stipulation. (Granberry Dec. ¶7.)

17 Counsel for the Parties have investigated the law as applied to the facts discovered regarding  
18 the alleged claims of Plaintiff and potential defenses thereto, and the potential damages claimed by  
19 Plaintiff, and multiple calls and email exchanges between Plaintiff's counsel and Defendant's  
20 counsel and the continued efforts of Mr. Ross. (Granberry Dec. ¶8.)

21 Plaintiff and Class Counsel recognize the expense and length of continued proceedings  
22 necessary to litigate their disputes through trial and through any possible appeals. (Granberry Dec.  
23 ¶¶9-11.) Plaintiff has also taken into account the uncertainty and risk of the outcome of further  
24 litigation, and the difficulties and delays inherent in such litigation. (*Id.*) Plaintiff and Class Counsel  
25 are also aware of the burdens of proof necessary to establish liability for the claims asserted in the  
26 Action, both generally and in response to Defendant's defenses thereto, and the difficulties in  
27 establishing damages for the Class Members. (*Id.*) Plaintiff and Class Counsel have also taken into  
28 account the extensive informal discovery and settlement negotiations conducted. (*Id.*) Based on the

1 foregoing, Plaintiff and Class Counsel have determined that the Settlement set forth in this  
2 Agreement is a fair, adequate and reasonable settlement, and is in the best interests of the Class  
3 Members. (*Id.*)

4 Defendant denies and continues to deny the allegations in the lawsuit. (Stipulation, pp. 8:24-  
5 9:2.) However, Defendant has concluded that any further defense of this litigation would be  
6 protracted and expensive for all Parties. (*Id.*) Substantial amounts of time and resources of  
7 Defendant have been and, unless this Settlement is made, will continue to be devoted to the defense  
8 of the claims asserted by Plaintiff and Class Members. (*Id.*) Despite its contention that it is not  
9 liable for any of the claims set forth by Plaintiff, Defendant has agreed to settle in the manner and  
10 upon the terms set forth in the stipulation of settlement to put to rest the claims as set forth in the  
11 Action. (*Id.*) Defendant claims and continues to claim that Plaintiff's claims have no merit and do  
12 not give rise to liability. (*Id.*) This stipulation of settlement constituted a compromise of disputed  
13 claims and the monies being paid as part of the Settlement are genuinely disputed. (*Id.*)

### 14 **III. THE SETTLEMENT**

15 The settlement contemplates (i) entry of an Order preliminarily approving the settlement and  
16 approving certification of a provisional settlement class, contingent upon final approval of the  
17 settlement; and (ii) entry of an Order granting final approval of the settlement and judgment.

18 Subject to Court approval pursuant to Section 382 of the California Code of Civil Procedure  
19 and Rule 3.769 et seq. of the California Rules of Court, the Parties have agreed to settle the Lawsuit  
20 by agreement upon the terms and conditions and for the consideration set forth in the Stipulation, a  
21 copy of which is attached to the Declaration of Vincent C. Granberry as **Exhibit "1."**

22 A summary of the key terms of the Settlement is as follows:

- 23 1. Class Member(s)" means all current and former non-exempt, hourly employees who  
24 were employed by Defendant in California with job titles of Driver, Driver-Relief,  
25 Driver Transfer, Driver-Transfer Grandfather, and Helper (herein as the "Truck  
26 Worker Subclass) at any time from March 5, 2015 through August 25, 2017  
(Stipulation, p. 2:23-27.)
- 27 2. "Class Settlement Amount" means the maximum settlement amount of Three  
28 Hundred Fifty Thousand Dollars (\$350,000.00), non-reversionary and no claims  
made settlement which includes all Individual Settlement Payments to Participating  
Class Members, the Class Representative Enhancement Payment to Plaintiff,

1 Settlement Administration Costs to the Settlement Administrator, the Labor and  
2 Workforce Development Agency Payment, and the Attorneys' Fees and Costs. This  
3 is the maximum amount Defendant shall cause to be paid pursuant to this Settlement,  
4 except that Defendant will be separately responsible for any employer payroll taxes  
5 required by law, including the employer FICA, FUTA, and SDI contributions. This  
6 is a non-reversionary and no-claims made settlement. (Stipulation, p. 3:9-16.)

7  
8 3. "Net Settlement Amount" means the portion of the Class Settlement Amount  
9 remaining after deduction of the approved Class Representative Enhancement  
10 Payment, Settlement Administration Costs, Labor and Workforce Development  
11 Agency Payment, and the Attorneys' Fees and Costs. (Stipulation, p. 4:21-23.)

12  
13 4. All Individual Settlement Payments will be allocated as follows: 50% to settlement  
14 of wage claims; 25% to settlement of claims for interest (which shall be reported on  
15 an IRS Form 1099 by the Settlement Claims Administrator); and 25% to penalties  
16 (which shall also be reported on an IRS Form 1099 by the Settlement Claims  
17 Administrator). From the portion which is wages shall be withheld the employee's  
18 share of payroll and income taxes and all other applicable deductions or withholding  
19 required by law or expressly authorized by the Class Member. (Stipulation, p. 19:28-  
20 20:6.)

21  
22 5. Each Participating Class Member's share of the Net Settlement Amount shall be  
23 determined as set forth more fully below on the basis of his/her individual number of  
24 workweeks of employment during the Class Period. The Settlement Administrator  
25 will calculate each Participating Class Member's total number of workweeks during  
26 the Class Period ("Individual Adjusted Workweeks") and (ii) the total number of  
27 workweeks for all Participating Class Members during the Class Period ("Total  
28 Adjusted Workweeks"). Each Participating Class Member shall receive a pro rata  
payment based upon his or her workweeks of employment as compared to the total  
workweeks of all Participating Class Members. For purposes of this calculation,  
workweeks in which a Participating Class Member did not record any time worked  
(e.g., on paid time off, a leave of absence, etc.) will not be counted. Workweeks also  
do not include workweeks when Participating Class Member held a job title not  
included within the Truck Worker Subclass as defined above. The amounts allocated  
to Participating Class Members shall include monies that would have been  
distributed to any individual who submits a timely and effective Request for  
Exclusion. Each Participating Class Member's share of the Net Settlement Amount  
will be determined by multiplying the Net Settlement Amount by a fraction the  
numerator of which is the Participating Member's Individual Adjusted Workweeks  
and the denominator is the Total Adjusted Workweeks. (Stipulation, pp. 13:3-18.)

29  
30 6. This is a non-reversionary settlement. All Individual Settlement Payment checks to  
31 Participating Class Members shall be valid for one hundred eighty (180) calendar  
32 days. By not later than ninety (90) days after the checks are mailed to the  
33 Participating Class Members, the Settlement Administrator will contact by postcard  
34 each Participating Class Member who has not cashed his or her settlement check and  
35 remind him or her to do so before the six-month deadline. The Settlement

1 Administrator will inform those individuals that if they fail to cash their settlement  
2 checks by the 180-day deadline, they will not receive any money under the  
3 Settlement, and their settlement proceeds represented by the check will escheat to the  
4 State of California and the cy pres organization. In the event that such payments are  
5 not received and/or negotiated by Authorized Claimants, in accordance with Code of  
6 Civil Procedure section 384, such funds shall be distributed as follows: (a) twenty-  
7 five percent (25%) to the State Treasury for deposit into the Trial Court Improvement  
8 and Modernization Fund established in Government Code section 77209; (b) twenty-  
9 five percent (25%) to the State Treasury for deposit into the Equal Access Fund of  
10 the Judicial Branch to be distributed in accordance with sections 6216 to 6223,  
11 inclusive, of the Business and Professions Code, except that administrative costs  
12 shall not be paid to the State Bar or the Judicial Council from this sum; (c) fifty  
13 percent (50%) to Bet Tzedek's employment rights practice, a nonprofit organization  
14 that provides free legal advice and representation, including direct representation in  
15 individual and class action cases, to low-income residents of Los Angeles County."  
16 (Stipulation, pp. 13:24-14:13.)

- 17 7. Upon the Court's final approval of the Settlement, and except as to such rights or  
18 claims as may be created by the Settlement, the Class Representative and the Class  
19 Members (other than those who submit timely and valid exclusion forms) release  
20 claims for civil and statutory wages, statutory and civil penalties, damages and  
21 liquidated damages, interest, fees and costs under the California Labor Code,  
22 including but not limited to the California Private Attorney General Act, Labor Code  
23 § 2699, et seq., the California Wage Orders of the California Industrial Welfare  
24 Commission, California Business and Professions Code § 17200, et seq., and the Fair  
25 Labor Standards Act arising out of the facts alleged in the Second and Third  
26 Amended Complaints in this action on behalf of the Truck Worker Subclass  
27 Members against the "Released Parties as defined below, from and including March  
28 5, 2015 through and including August 25, 2017 ("Released Claims Period"),  
including, but not limited to all work performed but not paid, claims for meal periods  
worked and not paid including claims for "auto deductions" relating to meal periods,  
meal period premium pay, claims for rest periods not authorized and permitted and  
rest period premium pay, claims for minimum wage or other compensation arising  
from the rounding of time worked, minimum wage, claims for inaccurate wage  
statements, claims for violations of the requirement of Labor Code section 226(a),  
claims for unpaid wages upon separation of employment, and all other claims made  
in the Action, arising out of the allegations of the Second and Third Amended  
Complaints in the Action, or in the course of the proceeding, that were or could have  
been alleged in the pending action based on the facts set forth therein. Unrelated  
claims and claims which by law cannot be released (e.g., workers' compensation,  
disability, unemployment, wrongful termination, claims outside the Class Period, and  
discrimination) are not released. (Stipulation, pp. 5:22-6:11.) "Released Claims  
Period" means the period from March 5, 2015 to August 25, 2017. (Stipulation, p.  
6:12.) "Released Parties" means Defendant and any of its former and present  
parents, subsidiaries, affiliates, divisions, joint venturers, corporations in common  
control, predecessors, successors, and assigns, as well as all past and present officers,  
directors, employees, general and limited partners, shareholders and agents,  
attorneys, insurers, and any other successors, assigns, or legal representatives, if any,

of any of such entities. (Stipulation, pp. 6:13-17.)

8. “Settlement Administrator” means Simpluris, Inc., or any other third-party class action settlement administrator agreed to by the Parties and approved by the Court for the purposes of administering the Settlement. The Parties each represent that they do not have any financial interest in the Settlement Administrator or otherwise have a relationship with the Settlement Administrator that could create a conflict of interest. (Stipulation, at pp. 6:27-7:3.)
9. Defendant agrees not to oppose or impede any application or motion by Class Counsel for attorneys’ fees of not more than One Hundred Sixteen Thousand Six Hundred Sixty Seven Dollars (\$116,667.00), plus the reimbursement of reasonable costs and expenses associated with Class Counsel’s litigation and settlement of the Action not to exceed Ten Thousand Dollars and Zero Cents (\$10,000.00). (Stipulation, pp. 10:8-12.)
11. In exchange for a general release as set forth in Exhibit F to the Settlement Agreement, and in recognition of his effort and work in prosecuting the Action on behalf of Class Members, Defendant agrees not to oppose or impede any application or motion for a Class Representative Enhancement Payment of Seven Thousand Nine Hundred Dollars and Zero Cents (\$7,900.00) to Plaintiff for his services on behalf of the Settlement Class. (Stipulation, p. 11:5-20.)
12. Any Class Member wishing to object to the approval of the Settlement shall inform the Settlement Administrator in writing of his or her intent to object by following the procedure set forth in the Notice of Class Action Settlement within sixty (60) calendar days of mailing of the Notice of Class Action Settlement. Class Members are forever barred from objecting to the Settlement if they do not file and serve written objections within sixty (60) calendar days of the mailing of the Notice of Settlement. The Notice of Objection must be signed by the Class Member and state: (a) the full name of the Class Member; (b) the dates of employment of the Class Member; (c) the last four digits of the Class Member’s Social Security number and/or the Employee ID number; (d) the basis for the objection; and (e) if the Class Member intends to appear at the Final Approval/Settlement Fairness Hearing. Class Members who fail to make objections in the manner specified above shall be deemed to have waived any objections and shall be foreclosed from making any objections (whether by appeal or otherwise) to the Settlement. Class Members who submit a timely Notice of Objection will have a right to appear at the Final Approval/Settlement Fairness Hearing in order to have their objections heard by the Court. Any Class Member who submits a Request for Exclusion shall have no right to object to the Settlement. At no time shall any of the Parties or their counsel seek to solicit or otherwise encourage Class Members to file or serve written objections to the Settlement or appeal from the Order and Final Judgment. Class Counsel shall not represent any Class Members with respect to any such objections. (Stipulation, at pp. 18:28-19:17; ¶ 69.)

13. Any Class Member wishing to opt-out from the Settlement Agreement must sign and postmark a written Request for Exclusion to the Settlement Administrator within the Response Deadline as set forth above. The date of the postmark on the return mailing envelope will be the exclusive means to determine whether a Request for Exclusion has been timely submitted. All Requests for Exclusion will be submitted to the Settlement Administrator, who will certify jointly to Class Counsel and Defendant's Counsel the Requests for Exclusion that were timely submitted. Any Class Member who submits a valid and timely request to be excluded from the Settlement shall no longer be a member of the Settlement Class, shall be barred from participating in the Settlement, shall be barred from objecting to the Settlement, and shall receive no benefit from the Settlement. The written Request for Exclusion must: (1) explicitly and unambiguously state the following statement or similar statement: "I wish to exclude myself from the settlement reached in the matter of Alvarez vs. Recology. I understand by excluding myself, I will not receive any money from the settlement reached in this matter."; (2) contain the name, address, and the last four digits of the Social Security number of the person requesting exclusion; (3) be signed by the Class Member; and (4) be postmarked or fax stamped by the Response Deadline and returned to the Settlement Administrator at the specified address or fax telephone number stated in the Notice Packet. The Request for Exclusion will not be valid if it is not timely submitted, if it is not signed by the Class Member, or if it does not contain the name and address of the Class Member. The date of the postmark on the return mailing envelope or fax stamp on the request for exclusion shall be the exclusive means used to determine whether the Request for Exclusion was timely submitted. Any Class Member who requests to be excluded from the Settlement Class will not be entitled to any recovery under the Settlement and will not be bound by the terms of the Settlement or have any right to object, appeal, or comment thereon. Nothing in this Settlement will constitute or be construed as a waiver of any defense Defendant has asserted or could assert against such a claim. Class Members who fail to submit a valid and timely written request for exclusion on or before the Response Deadline shall be bound by all terms of the Settlement, including the release of claims, and any final judgment entered in this Action regardless of whether he or she has objected to the Settlement if the Settlement is approved by the Court. (Stipulation, pp. 17:15-18:13; ¶ 66.)

#### IV. ANALYSIS

##### A. Class Action Settlements Are Subject To Review And Approval Under The California Rules of Court

Rule 3.769 of the California Rules of Court requires court approval for class action settlements. "Before final approval, the court must conduct an inquiry into the fairness of the proposed settlement." (Cal. Rules of Court, rule 3.769(g).) Courts act within their discretion in approving settlements which are fair, not collusive, and take into account "all the normal perils of litigation as well as the additional uncertainties inherent in complex class actions." (*In re Beef*

1 *Industry Antitrust Litigation* (5th Cir. 1979) 607 F.2d 167, 179, *cert. den. sub nom. Iowa Beef*  
2 *Processors, Inc. v. Meat Price Investigators Ass'n* (1981) 452 U.S. 905.)

3 **B. This Settlement Is Fair, Reasonable, And Adequate**

4 The purpose of the preliminary evaluation of class action settlements is to determine only  
5 whether the proposed settlement is within the *range of reasonableness* and, therefore, whether  
6 notice to the class and the scheduling of a formal fairness hearing are warranted. (*Wershba v. Apple*  
7 *Computer, Inc.* (2001) 91 Cal.App.4th 224, 234-35; Newberg on Class Actions (4<sup>th</sup> Ed.) §11:25.)  
8 Courts have broad powers to determine whether a proposed settlement is fair under the  
9 circumstances of the case. (*Wershba, supra*, 91 Cal.App.4th at 234-35; *Mallick v. Superior Court*  
10 (1979) 89 Cal.App.3d 434, 438.) In evaluating preliminary approval, courts must consider several  
11 relevant factors, including “the strength of the Plaintiff’s case, the risk, expense, complexity and  
12 likely duration of further litigation, the risk of maintaining class action status through trial, the  
13 amount offered in settlement, the extent of discovery completed and the stage of the proceedings,  
14 [and] the experience and views of counsel....” (*Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th  
15 1794, 1801.) “The list of factors is not exclusive and the court is free to engage in a balancing and  
16 weighing of the factors depending on the circumstances of each case.” (*Wershba, supra*, 91  
17 Cal.App.4th at 245.) Furthermore, courts must give “proper deference to the private consensual  
18 decision of the parties” because “the court’s intrusion upon what is otherwise a private consensual  
19 agreement negotiated between the parties to a lawsuit must be limited to the extent necessary to  
20 reach a reasoned judgment that the agreement is not the product of fraud or overreaching by, or  
21 collusion between, the negotiating parties, and that the settlement, taken as a whole, is fair,  
22 reasonable and adequate to all concerned.” (*Hanlon v. Chrysler Corp.* (9<sup>th</sup> Cir. 1998) 150 F.3d 1011,  
23 1027.)

24 A proposed class action settlement is presumed fair under the following circumstances: (1)  
25 the parties reached settlement after arms-length negotiations; (2) investigation and discovery were  
26 sufficient to allow counsel and the court to act intelligently; (3) counsel is experienced in similar  
27 litigation, and (4) the percentage of objections is small. (*Dunk v. Ford Motor Co., supra*, 48  
28

1 Cal.App.4th at 1802.) The Declaration of Class Counsel Vincent C. Granberry demonstrates that  
2 the proposed settlement was the product of serious, informed, and non-collusive negotiations and  
3 demonstrates counsel's extensive experience in both employment law as well as class action  
4 litigation.

5 **1. The Settlement is the result of serious, informed, and non-collusive**  
6 **negotiations**

7 The Settlement was reached as a result of arm's-length negotiations facilitated by a highly  
8 regarded and experienced wage and hour mediator, Mr. Jeffrey Ross, and extensive and careful  
9 analysis by Plaintiff's counsel. (Granberry Dec. ¶¶7-17.) The settlement negotiations have been, at  
10 all times, adversarial and non-collusive in nature. Indeed, the Parties were not able to settle this  
11 matter at mediation. Following the mediation, the Parties engaged in continued good faith, but  
12 occasionally contentious, negotiations coupled with the continued involvement by Mr. Ross were  
13 required to ultimately reach an agreement. While Plaintiff believes in the merits of his case, he also  
14 recognizes the inherent risks of litigation and understands the benefit of the Class receiving  
15 settlement funds immediately as opposed to risking an unfavorable decision on class certification,  
16 summary judgment, at trial and/or the damages awarded, and/or on an appeal that can take several  
17 more years to litigate. (*Id.* at ¶9.)

18 **2. The extent of the information provided through informal discovery and the**  
19 **stage of the proceedings support the Settlement**

20 As described herein, the Parties investigated and evaluated the factual strengths and  
21 weaknesses of this case before reaching the proposed Settlement and engaged in sufficient  
22 investigation and discovery, as referenced above, to support the Settlement. (*Id.*) Accordingly, the  
23 proposed Settlement was reached following probative factual evaluation of Defendant's relevant  
24 policies and procedures; review, compilation, sample time records and pay records; consideration of  
25 the total number of class members; evaluation of Defendant's methods of tracking employees' daily  
26 hours worked, providing meal and rest periods, keeping time and pay records, and providing final  
27 wage pay outs upon separation of employment; Defendant's method of communication regarding the  
28 aforementioned policies; as well as information obtained from Plaintiff. (Granberry Dec. ¶¶7-17.)

1 Thus, the Settlement came only after the case was fully investigated by counsel, as set forth  
2 above. This litigation, therefore, has reached the stage where “the Parties certainly have a clear view  
3 of the strengths and weaknesses of their cases” sufficient to support the Settlement. (*Boyd v. Bechtel*  
4 *Corp.* (N.D. Cal. 1979) 485 F. Supp. 610, 617.)

5 **3. Plaintiff’s counsel are experienced in similar litigation**

6 Experienced counsel, operating at arms-length, have weighed the strengths of the case and  
7 examined all of the issues and risks of litigation and endorse the proposed settlement. The view of  
8 the attorneys actively conducting the litigation “is entitled to significant weight” in deciding whether  
9 to approve the settlement. (*Fisher Bros. v. Cambridge Lee Industries, Inc.* (E.D. Pa. 1985) 630  
10 F.Supp. 482, 488; *Ellis v. Naval Air Rework Facility* (N.D. Cal. 1980) 87 F.R.D. 15, 18, *affd.* 661  
11 F.2d 939 (9th Cir. 1981); *Boyd v. Bechtel Corp.*, *supra*, 485 F.Supp. at 617.)

12 Both Plaintiff’s and Defendant’s counsel are experienced in employment, wage and hour and  
13 class action matters. Lavi & Ebrahimian LLP is a well-regarded firm that handles almost exclusively  
14 employment matters. (Granberry Dec. ¶19.) Joseph Lavi, of Lavi & Ebrahimian, LLP, has been  
15 approved in class counsel in numerous actions and has been named a Southern California Super  
16 Lawyer the area of Plaintiff’s employment litigation - class action from 2011-2018. (*Id.*)  
17 Defendant’s counsel, Rod Fliegel and Alison Hightower of Littler Mendelson, P.C. are also  
18 extremely well-regarded and respected as employment defense counsel. Counsel on both sides  
19 share the view – endorsed by an experienced wage and hour class action mediator – that this is a fair  
20 and reasonable settlement in light of the complexities of the case, the state of the law and  
21 uncertainties of class certification and litigation, and the benefit the settlement confers on the class.  
22 (Granberry Dec. ¶¶17-19.) Given the risks inherent in litigation, in class certification proceedings,  
23 and in the defenses asserted, this settlement is fair, adequate, and reasonable and in the best interests  
24 of the class. (*Id.*)

25 **4. The Settlement is fair and reasonable based on the strengths of Plaintiff’s**  
26 **case and the risks and costs of further litigation**

27 Plaintiff and his counsel have concluded it was reasonable to enter into the proposed  
28

1 Settlement. Defendant has vigorously contested and continues to contest liability for the claims  
2 asserted in the action. Although Defendant believes that class certification would be unlikely on  
3 such claims, it nevertheless agreed to attempt resolution of the case through extensive formal and  
4 informal discovery and mediation to avoid the expense, distraction and uncertainty of protracted  
5 litigation.

6 There are significant legal uncertainties associated with cases such as this as they can be  
7 factually complex and require protracted litigation to resolve. A settlement is not judged solely  
8 against what might have been recovered had plaintiff prevailed at trial, nor does the settlement have  
9 to provide 100% of the damages sought to be fair and reasonable. (*Linney v. Cellular Alaska*  
10 *Partnership* (9th Cir. 1998) 151 F. 3d 1234, 1242; *Wershba*, 91 Cal.App.4th at 246 & 250; *Rebney*  
11 *v. Wells Fargo Bank* (1990) 220 Cal.App. 3d 1117, 1139.) Instead, “[c]ompromise is inherent and  
12 necessary in the settlement process...even if the relief afforded by the proposed settlement is  
13 substantially narrower than it would be if the suits were to be successfully litigated, this is no bar to  
14 a class settlement because the public interest may indeed be served by a voluntary settlement in  
15 which each side gives ground in the interest of avoiding litigation” (*Wershba*, 91 Cal.App.4th at  
16 250.)

## 17 **5. The Proposed Settlement is a Reasonable Compromise of Claims**

18 To evaluate a settlement, the trial court must receive “basic information about the nature  
19 and magnitude of the claims in question and the basis for concluding that the consideration being  
20 paid for the release of those claims represents a reasonable compromise.” (*Kullar v. Foot Locker*  
21 *Retail, Inc.* (2008) 168 Cal.App.4th 116, 133.) However, the record need not contain an explicit  
22 statement of the maximum theoretical recovery:

23  
24 Greenwell misunderstands *Kullar*, apparently interpreting it to require the  
25 record in all cases to contain evidence in the form of an explicit statement of the  
26 maximum amount the plaintiff class could recover if it prevailed on all its  
27 claims—a number which appears nowhere in the record of this case. But *Kullar*  
does not, as Greenwell claims, require any such explicit statement of value; it  
requires a record which allows “an understanding of the amount that is in  
controversy and the realistic ranges of outcomes of the litigation.”

28 (*Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles* (2010) 186 Cal.App.4th 399, 409.)

Based on the formal and informal discovery provided by Defendant, including the entirety of the class data, Defendant employed approximately 33 former and 93 current employees who worked 11,097 workweeks during the class period with an average rate of pay of \$23.26/hour. Analysis of the data also revealed the following:

**From March 5, 2015 to October 29, 2016:**

**Missed 1<sup>st</sup> Meal Periods:**

|                                                     |            |
|-----------------------------------------------------|------------|
| Number of shifts greater than 6 and up to 10 hours: | 12,472     |
| Number of meal breaks recorded:                     | 12,052     |
| Missed 1st meal breaks                              | <b>420</b> |

**Missed 2<sup>nd</sup> Meal Periods:**

|                                                            |               |
|------------------------------------------------------------|---------------|
| Number of shifts greater than 10 and up to 12 hours:       | 7,449         |
| Number of second meal periods during these shifts:         | 51            |
| Missed/waived 2nd meal breaks for shifts 10 to 12 hours:   | <b>27,398</b> |
| Number of shifts greater than 12.1 hours:                  | 5,337         |
| Number of second meal periods during these shifts:         | 3,457         |
| Missed 2nd meal breaks for shifts greater than 12.1 hours: | 1,880         |

**From October 30, 2016 to March 31, 2017 (no auto-deduct or rounding):**

**Missed 1<sup>st</sup> Meal Periods:**

|                                                     |           |
|-----------------------------------------------------|-----------|
| Number of shifts greater than 6 and up to 10 hours: | 2,559     |
| Number of meal breaks:                              | 2,542     |
| Missed 1st meal breaks:                             | <b>17</b> |

**Missed 2<sup>nd</sup> Meal Periods:**

|                                                      |              |
|------------------------------------------------------|--------------|
| Number of shifts greater than 10 and up to 12 hours: | 6,206        |
| Number of second meal periods during these shifts:   | 175          |
| Missed/waived 2nd meal breaks                        | <b>6,031</b> |
| Number of shifts greater than 12.1 hours:            | 877          |
| Number of second meal periods during these shifts:   | 771          |
| Missed 2nd meal breaks                               | <b>106</b>   |

Based on Class Counsel's analysis of the data, the maximum exposure for Plaintiff's claims were as follows (Granberry Dec. ¶11):

With regard to Plaintiff's claim for failure to pay for all hours worked based on Defendant's automatic deduction meal periods of unrecorded meal periods, the maximum that Plaintiff could recover for these claims would amount to approximately \$26,749. [(420 missed first meal periods + 1,880 missed second meal periods from March 5, 2015 to October 29, 2016 =

2,300 violations)/2 because no double recovery = 1,150 violations X \$23.26 = \$26,749.] (Granberry Dec. ¶12.)

With regard to Plaintiff's meal period claim, assuming one meal period violation per workweek, the maximum that Plaintiff could recover for this claim would amount to approximately \$258,116. [11,097 workweeks X 1 violations per workweek X \$23.26/hour average rate of pay = \$258,116.22.] (Granberry Dec. ¶13.)

With regard to Plaintiff's rest period claim, if Plaintiff's argument was correct that, based on the "Roll Off Driver Logs," Defendant never authorized or permitted a third rest period for shifts in excess of 10 hours, then the most that Plaintiff could recover for this claim would amount to approximately \$297,402. [12,786 shifts over 10 or 12 hours X \$23.26/hour average rate of pay = \$297,402.36.] (Granberry Dec. ¶14.)

With regard to Plaintiff wage statement claim, the maximum that Plaintiff could recover would amount to approximately \$372,000. [93 current employees X \$4,000 maximum penalty = \$372,000.] (Granberry Dec. ¶15.)

With regard to Plaintiff's waiting time penalties claim, the maximum that Plaintiff could recover amounted to approximately \$184,219. [33 former employees X 8 hours per work day X \$23.26/hour average rate of pay X 30 days = \$184,219.20.] (Granberry Dec. ¶16.)

As such, Plaintiff's maximum potential recovery in this matter would amount to approximately \$1,138,486. The settlement reached in this matter was \$350,000 or approximately 31% of maximum potential damages. (Granberry Dec. ¶17.)

As mentioned above, however, Defendant's defenses to Plaintiff's claims were as follows: with regard to Plaintiff's claim for failure to pay for all hours worked due to Defendant's policy, practice, and procedure of automatically deducting 30 minutes from Class Members' daily hours worked for first meal periods, Defendant argued that its practice did not deprive Class Members of wages for this time because Defendant authorized and permitted, and Class Members took, all legally-required, duty-free first and second meal periods even if they did not clock out for this time.

Regarding Plaintiff's meal period claims, Defendant argued that they barred by Labor Code section 512(e) because Plaintiff was covered by a valid collective bargaining agreement that expressly

1 provided for compliant-meal periods and provided for final and binding arbitration of disputes.  
2 Defendant also contended that, to the extent Plaintiff could overcome Labor Code section 512(e),  
3 his meal period claim failed for the same reasons that his failure to pay for all hours worked claim  
4 failed - Defendant authorized and permitted, and Class Members took, all legally-required, duty-free  
5 first and second meal periods even if they did not clock out for this time. Class Members also  
6 lawfully waived second meal periods. Regarding Plaintiff's claim for failure to authorize or permit  
7 all legally-required rest periods, Defendant contended that it complied with its legal duty to  
8 authorize or permit all legally-required rest periods at legally-compliant times. Defendant argued  
9 that the fact that Plaintiff's "Roll Off Driver Logs" only contained two places to note rest periods  
10 even when he worked over 10 hours in a shift was not conclusive evidence of a failure to authorize  
11 or permit rest periods, including third rest periods. Indeed, Defendant argued, the opposite was true;  
12 Class Members were informed of their right to rest periods by Defendant's managers, postings at  
13 Defendant's workplace, and in its written handbook distributed to all employees. In other words,  
14 Defendant maintained, it permitted Class Members to take the rest periods at the proper intervals if  
15 they chose to do so. So, like Plaintiff's meal period claims, Defendant argued that it complied with  
16 its legal duty to authorize or permit rest periods at legally-compliant times and therefore was not  
17 liable for this claim. Based on the foregoing, Defendant contended, at the time Defendant issued  
18 Class Members' paystubs and paid out wages upon separation of employment, Defendant believed,  
19 in good faith, that it was providing accurate wage and hour statements and properly paying all wages  
20 to separating employees. Accordingly, Defendant concluded, Plaintiff would not be able to  
21 establish the willful element of his 203 claims. Importantly, Defendant noted, even assuming  
22 Plaintiff was able to prove his failure to pay for all hours worked and meal period claim,  
23 Defendant's exposure was limited by the fact that as on October 29, 2016, it stopped using  
24 automatic-deduction and rounding policies. (Granberry Dec. ¶18.)

25 If the Plaintiff continued litigating this matter, the class members could potentially receive  
26 **nothing** if the court agreed with Defendant's positions. Furthermore, even if the Court agreed with  
27 Plaintiff, Plaintiff still had to prove Defendant acted intentionally and *willfully* in order to receive  
28 the additional penalties under Labor Code Sections 226 and 203.

1 As such, Plaintiff's decision to settle this matter was in the best interest of the Class  
2 Members when the settlement is approximately 31% of the potential maximum recovery.

3 This is a fair and reasonable result. Other substantial benefits also include that it is non-  
4 reversionary, no claims made settlement which distributes the Net Settlement Amount to Class  
5 Members based on the number of workweeks that they worked during the class period. In addition,  
6 in conformity with the Code of Civil Procedure section 384(b) (effective June 27, 2017) any Class  
7 Members that fail to cash their settlement checks within 180 calendar days, will not receive any  
8 money under the Settlement, and their settlement proceeds represented by the check will escheat to  
9 the State of California and the cy pres organization. In the event that such payments are not  
10 received and/or negotiated by Authorized Claimants, in accordance with Code of Civil Procedure  
11 section 384, such funds shall be distributed as follows: (a) twenty-five percent (25%) to the State  
12 Treasury for deposit into the Trial Court Improvement and Modernization Fund established in  
13 Government Code section 77209; (b) twenty-five percent (25%) to the State Treasury for deposit  
14 into the Equal Access Fund of the Judicial Branch to be distributed in accordance with sections  
15 6216 to 6223, inclusive, of the Business and Professions Code, except that administrative costs shall  
16 not be paid to the State Bar or the Judicial Council from this sum; (c) fifty percent (50%) to Bet  
17 Tzedek's employment rights practice, a nonprofit organization that provides free legal advice and  
18 representation, including direct representation in individual and class action cases, to low-income  
19 residents of Los Angeles County. (Stipulation at pp. 13:24-14:13; Granberry Dec. ¶19.)

20 The Class Settlement Amount is reasonable in light of the risks involved in this case—  
21 including the prospect of a potential adverse summary judgment ruling, class certification issues as  
22 well as the uncertainty of class certification, defenses to the case, potential appeal, the elements of  
23 willfulness and/or injury required for certain penalties.

24 Plaintiff's Counsel is convinced that the proposed Settlement is in the best interest of the class  
25 based on the negotiations and a detailed knowledge of the issues present in this action. The  
26 affirmative defenses asserted by Defendant, the prospect of a potential adverse summary judgment  
27 ruling, preemption issues, class certification issues as well as the uncertainty of class certification,  
28 the difficulties of complex litigation, the lengthy process of establishing specific damages and

1 various possible delays and appeals were also carefully considered by Class Counsel in agreeing to  
2 the proposed Settlement. In light of the above, the proposed Settlement is well within the  
3 “ballpark” of reasonableness and should be granted preliminary approval.

#### 4 **V. THE COURT SHOULD CERTIFY THE CLASS FOR SETTLEMENT PURPOSES**

5 The court may make an order approving certification of a provisional settlement class after the  
6 preliminary settlement hearing. (California Rules of Court, Rule 3.769(d).) For settlement purposes,  
7 courts use a less stringent standard for certification of classes. (*Global Minerals & Metals Corp. v.*  
8 *Superior Court* (2003) 113 Cal.App.4th 836, 859.) “The reason for this is that no trial is anticipated  
9 in a settlement class case, so the case management issues inherent in the ascertainable class  
10 determination need not be confronted.” (*Id.*; see also *7-Eleven Owners for Fair Franchising v.*  
11 *Southland Corp.* (2000) 85 Cal. App. 4th 1135, 1161-1162 [affirming certification of class action  
12 for settlement purposes only].) Accordingly, this Court has discretion to certify Plaintiff’s class for  
13 settlement purposes only.

14 The requirements under California Code of Civil Procedure Section 382 are all met for the  
15 purposes of certifying this case for settlement purposes:

16 • Numerosity: The settlement class consists of approximately 126 Class Members.  
17 Thus, the requirement of numerosity is easily met because joinder of 126 individual plaintiffs into a  
18 single case is otherwise impracticable in light of the circumstances of this case.

19 • Typicality: The claims of the class representative are typical of the claims of the class  
20 members as a whole. The named Plaintiff suffered the same alleged violations (e.g. failure to pay  
21 for all hours worked, failure to authorize or permit meal and rest periods or pay meal and rest period  
22 premium wages, failure to provide complete and accurate wage statements, and failure to pay all  
23 wages due upon separation of employment) as the class as a whole did and, thus, the claims of the  
24 named Plaintiff fairly represents the claims of the class as a whole.

25 • Ascertainability: The proposed “Settlement Class” is easily ascertainable based on  
26 Defendant’s own payroll records.  
27  
28

1           •     Adequacy: Plaintiff has proven to be an adequate class representative. He has  
2 conducted himself diligently and responsibly in representing the class in this litigation, he  
3 understands his fiduciary obligations, and he has actively participated in the prosecution of this  
4 case. (Granberry Dec. ¶24.) Plaintiff has spent hours in meetings and conferences with counsel to  
5 get a better understanding of his work environment and requirements. Plaintiff sat for two  
6 depositions, attended the full-day mediation in the matter, and continued to be actively engaged in  
7 the ongoing settlement negotiations following mediation that were ultimately required to finalize  
8 settlement. (*Id.*) Further, Plaintiff does not have any interest that is adverse to the interests of the  
9 other class members. (*Id.*) Moreover, proposed class counsel is adequate to represent the class for  
10 settlement purposes and has been appointed as class counsel before by this Court as well as both  
11 State and Federal Courts. (Granberry Dec. ¶¶20-22.)

12           •     Commonality: Many common issues of law and fact unite the class. The common  
13 questions of law and fact include, but are not limited to:

- 14                   1)     Whether Defendant failed to pay the Class Members for all hours worked;
- 15                   2)     Whether Defendant failed to provide the Class Members meal period  
16                         premium wages for missed meal periods;
- 17                   3)     Whether Defendant failed to provide the Class Members rest period premium  
18                         wages for missed rest periods;
- 19                   4)     Whether Defendant failed to provide the Class Members with complete and  
20                         accurate wage statements;
- 21                   5)     Whether Class Members are entitled to waiting time penalties for  
22                         Defendant's failure to pay all wages upon separation of employment; and
- 23                   6)     Whether Defendant violated Business and Professions Code section 17200.

24           •     Superiority: A class action is superior to other available means for the fair and  
25 efficient adjudication of this controversy. Joinder of all members of the proposed class is  
26 impractical. Class treatment will permit a large number of similarly-situated persons to prosecute  
27 their common claims in a single forum simultaneously for settlement purposes without the  
28 unnecessary duplication of effort and expense that numerous individual actions would engender.

## 26 **VI. THE PROPOSED CLASS NOTICE OF SETTLEMENT SHOULD BE APPROVED**

27           The proposed Allocation Form and Class Notice in the forms attached to the Stipulation as  
28 **Exhibits A and B**, respectively, should be approved for dissemination to the Class Members. These

documents inform the Class of the terms of the Settlement, of their right to receive their proportional share of the Settlement and the manner in which to do so, of their right to request exclusion or to comment upon or object to the Settlement, and of their right to appear in person or by counsel at the final approval hearing and to be heard regarding approval of the Settlement. Adequate periods of time are provided by each of these procedures. Furthermore, the date and time of the Final Approval hearing will be inserted in the Notice and the Allocation Form will identify the information upon which the Class Member's share will be calculated as well as the estimated amount he or she can expect to receive if he or she chooses to participate in the settlement.

#### **VII. THE PROPOSED ATTORNEY FEES AND COSTS ARE REASONABLE**

Plaintiff's Counsel seeks attorneys' fees and costs award of 33 1/3% of the Gross Settlement amount or One Hundred Sixteen Thousand Six Hundred Sixty-Seven Dollars (\$116,667.00) and Class Counsel's costs not to exceed Ten Thousand Dollars (\$10,000), for the time spent litigating this matter as well as expenses incurred in the prosecution of this Lawsuit thus far. Defendant will not object to an award of attorneys' fees and costs in these amounts. The requested fee falls well within the historical range of attorneys' fee awards under the common fund theory, which is generally from 20% to 50%. The requested fee is a fair compensation for undertaking complex, risky, expensive, and time-consuming litigation on a contingent fee basis, especially in light of the substantial benefits achieved by Plaintiff's counsel for the Settlement Class Members. Plaintiff's counsel diligently litigated and investigated this case.

California courts have recognized that an appropriate method for awarding attorney's fees in class actions is to award a percentage of the "common fund" created as a result of the settlement. (*City & County of San Francisco v. Sweet* (1995) 12 Cal. 4th 105, 110-11; *Quinn v. State* (1975) 15 Cal. 3d 162, 168; *see also Apple Computer, Inc. v. Superior Court* (2005) 126 Cal. App. 4th 1253, 1270; *Lealao v. Beneficial California, Inc.* (2000) 82 Cal. App. 4th 19, 26.) The basis of the common fund is fairness to the successful litigant, who might otherwise receive no benefit because his recovery might be consumed by the expenses; correlative prevention of an unfair advantage to others who are entitled to share in the fund and who should bear their share of the burden of its recovery; encouragement of the attorney for the successful litigant, who will be more willing to

1 undertake and diligently prosecute proper litigation for the protection or recovery of the fund if he  
2 is assured that he will be properly and directly compensated should his efforts be successful. (*City*  
3 *& County of San Francisco v. Sweet, supra*, 12 Cal. 4th at 111.) In *Quinn*, the California Supreme  
4 Court stated: “[O]ne who expends attorneys’ fees in winning a suit which creates a fund from  
5 which others derive benefits may require those passive beneficiaries to bear a fair share of the  
6 litigation costs.” (*Quinn v. State, supra*, 15 Cal. 3d at 167.) Similarly, in *Sweet*, the California  
7 Supreme Court recognized that the common fund doctrine has been applied “consistently in  
8 California when an action brought by one party creates a fund in which other persons are entitled to  
9 share.” (*City & County of San Francisco v. Sweet, supra*, 12 Cal. 4th at 110.)

10 Several courts have expressed frustration with the alternative “lodestar” approach for  
11 deciding fee awards, which usually involves wading through voluminous and often indecipherable  
12 time records. (*Lealao, supra*, 82 Cal. App. 4th at 31 n.5 [citing *In re Activision Sec. Litig.* (N.D.  
13 Cal 1989)] 723 F. Supp. 1373, 1375[.]) The percentage approach is preferable to the lodestar  
14 because: (1) it aligns the interests of class counsel and absent class members; (2) it encourages  
15 efficient resolution of the litigation by providing an incentive for early, yet reasonable, settlement;  
16 and (3) it reduces the demands on judicial resources. (*In re Activision Sec. Litig.*, 723 F. Supp. at  
17 1378-79.) The Ninth Circuit now routinely uses the percentage of the common fund approach to  
18 determine the award of attorney’s fees. (*Lealao*, 82 Cal. App. 4th at 30-31; *see e.g., In re Pacific*  
19 *Enters. Sec. Litig.* (9th Cir. 1995) 47 F.3d 373, 378-79 [approving attorney’s fee of 33%.])

20 Plaintiff’s counsel’s request for fees equal to 33 1/3% of the Total Class Action Settlement  
21 Amount is within the range of reasonableness. Historically, courts have awarded percentage fees in  
22 the range of 20% to 50%, depending on the circumstances of the case. (*See In re Activision Sec.*  
23 *Litig., supra*, 723 F. Supp. at 1378.) According to Professor Newberg: “No general rule can be  
24 articulated on what is a reasonable percentage of a common fund...Usually 50 per cent of the fund  
25 is the upper limit on a reasonable fee award from a common fund, in order to assure that fees do not  
26 consume a disproportionate part of the recovery obtained for the class, though somewhat larger  
27 percentages are not unprecedented.” (Newberg, *supra*, §14.6.)

28 Class Counsel have borne, and continue to bear, the entire risk and cost of litigation

1 associated with this class action on a pure contingency basis. The factual and legal issues posed in  
2 this case were highly disputed, and there were also risks as to whether or not a class would be  
3 certified, leaving a large number of putative class members unlikely to receive any recovery.

4 Based on Class Counsel's past experience in class action wage and hour litigation, it is safe  
5 to state that Class Counsel is very likely to be called upon, after the Class Notice and Allocation  
6 Form have been sent, to expend substantial amounts of additional time to help Class Members  
7 understand the terms of the proposed Settlement and to assist Class Members in the preparation and  
8 documentation of their Allocation Form. It is also likely that, even after final approval of the  
9 Settlement has been granted, Class Counsel will be called upon to expend additional amounts of  
10 time in the presentation and resolution of contests and disputes relating to Class Members'  
11 allocation under the terms of the proposed Settlement, as to the amounts of individual claims and  
12 perhaps other individual issues.

13 The Court should preliminarily approve the requested attorney's fees and costs, which are  
14 justified by the results achieved, the complexity of the issues, the difficulty of the case, and the great  
15 risk undertaken by Class Counsel. The requested attorneys' fees and costs will not be opposed by  
16 Defendant and are well within established guidelines. The Class Members will also be notified of  
17 the requested amount and have an opportunity to object to the requested fees.

#### 18 **VIII. THE REQUESTED INCENTIVE AWARD IS REASONABLE**

19 The named Plaintiff is entitled to enhancement awards for his service as class representative  
20 and the risks associated with his role as Class Representative and Named Plaintiff in this Lawsuit.  
21 Plaintiff understands his role as Class Representative, she has protected the interests of Class  
22 Members during the pendency of this matter, and he will continue to do so. (Granberry Dec. ¶23.)  
23 Plaintiff has spent hours in meetings and conferences with counsel to get a better understanding of  
24 his work environment and requirement, sat for two depositions, and participated in a full day  
25 mediation in this matter. (*Id.*) Even after mediation, he continued to be engaged with counsel for  
26 the continued negotiations that it took to ultimately finalize a settlement as well as understanding  
27 and discussing the settlement agreement with his attorneys. (*Id.*) Further, Plaintiff does not have  
28 any interest that is adverse to the interests of the other class members. (*Id.*) Defendant will not

1 oppose the application for an enhancement of \$7,900 for Class Representative of the Gross  
2 Settlement Amount, to Plaintiff for his services to the Settlement Class in this Lawsuit as well as  
3 providing the Defendant with a general release of any and all of his rights and claims against the  
4 Defendant, known and unknown. Class Counsel can attest that Plaintiff devoted a proportionate  
5 amount of time and work assisting counsel in the case, communicating with counsel frequently,  
6 providing documents and information regarding his employer and employment, which led to  
7 increase in the value and ultimate success of the Settlement. (*Id.*)

#### 8 **IX. PROPOSED SCHEDULE OF SETTLEMENT PROCEEDINGS**

9 The Parties propose the following schedule for the fairness hearing and final proceedings:

- 10 1. Within ten (10) calendar days of Preliminary Approval, Defendant will provide  
11 the Class List to the Settlement Administrator. The Class List and any data  
12 Defendant provides to the Settlement Administrator will remain confidential and  
13 will not be disclosed to anyone, except as required to applicable tax authorities,  
14 pursuant to Defendant's express written consent, or by order of the Court.  
15 (Stipulation, p. 15:24-28.)
- 16 2. Within fourteen (14) calendar days after receiving the Class List from  
17 Defendant, the Settlement Administrator will mail a Notice Packet to all Class  
18 Members via regular First-Class U.S. Mail, using the most current, known  
19 mailing addresses identified in the Class List. Each Notice Packet will provide a  
20 Notice of Settlement in the form attached as Exhibit B, in English and Spanish,  
21 stating: (a) information regarding the nature of the Action; (b) a summary of the  
22 Settlement's principal terms; (c) the Settlement Class definition; (d) each Class  
23 Member's estimated Individual Settlement Payment after required deductions  
24 and withholdings and how that amount was calculated; (e) the dates which  
25 comprise the Class Period; (f) instructions on how to submit valid Requests for  
26 Exclusion, or object to the Settlement; (g) the deadlines by which the Class  
27 Member must postmark Requests for Exclusions, or file objections to the  
28 Settlement; (h) the claims to be released, as set forth herein; and (i) the date for  
the Final Approval/Settlement Fairness Hearing. (Stipulation p. 16:13-23.)
3. Any Class Member wishing to object to the approval of the Settlement shall  
inform the Settlement Administrator in writing of his or her intent to object by  
following the procedure set forth in the Notice of Class Action Settlement within  
sixty (60) calendar days of mailing of the Notice of Class Action Settlement.  
Class Members are forever barred from objecting to the Settlement if they do not  
file and serve written objections within sixty (60) calendar days of the mailing of  
the Notice of Settlement. The Notice of Objection must be signed by the Class  
Member and state: (a) the full name of the Class Member; (b) the dates of  
employment of the Class Member; (c) the last four digits of the Class Member's  
Social Security number and/or the Employee ID number; (d) the basis for the

objection; and (e) if the Class Member intends to appear at the Final Approval/Settlement Fairness Hearing. (Stipulation, p. 11:25-12:21.)

4. Any Class Member wishing to opt-out from the Settlement Agreement must sign and postmark a written Request for Exclusion to the Settlement Administrator within the Response Deadline as set forth above. The date of the postmark on the return mailing envelope will be the exclusive means to determine whether a Request for Exclusion has been timely submitted. All Requests for Exclusion will be submitted to the Settlement Administrator, who will certify jointly to Class Counsel and Defendant's Counsel the Requests for Exclusion that were timely submitted. Any Class Member who submits a valid and timely request to be excluded from the Settlement shall no longer be a member of the Settlement Class, shall be barred from participating in the Settlement, shall be barred from objecting to the Settlement, and shall receive no benefit from the Settlement. The written Request for Exclusion must: (1) explicitly and unambiguously state the following statement or similar statement: "I wish to exclude myself from the settlement reached in the matter of Alvarez vs. Recology. I understand by excluding myself, I will not receive any money from the settlement reached in this matter."; (2) contain the name, address, and the last four digits of the Social Security number of the person requesting exclusion; (3) be signed by the Class Member; and (4) be postmarked or fax stamped by the Response Deadline and returned to the Settlement Administrator at the specified address or fax telephone number stated in the Notice Packet. (Stipulation, at pp. 18:28-19:17.)
5. The filing date for the Motion for Final Approval of the Class Action Settlement, and Motion for Final Approval of Plaintiff's attorneys' fees and costs and enhancement payments to the Class Representative will be determined by the Court.
6. The Final Fairness and Approval Hearing date will be determined by Court. The parties request that the Final Fairness and Approval Hearing be set approximately One Hundred Forty Five (145) days following the Court's granting of preliminary approval of the proposed Class Action Settlement. The Parties' respective counsel will bring their calendars to the preliminary approval hearing for purposes of scheduling the Final Fairness and Approval Hearing.

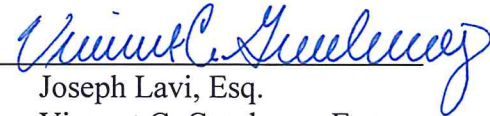
## **X. CONCLUSION**

The proposed class action settlement is fair, adequate, and reasonable. It will result in fair and immediate payment to Class Members; it is non-collusive; and it was achieved as the result of informed, extensive, and arms' length negotiations conducted by counsel for respective parties who are experienced in wage and hour class action litigation. For the foregoing reasons, the parties respectfully request that the Court grant preliminary approval of the proposed Settlement, sign the proposed Order, approve and authorize mailing of the proposed Class Notice of Settlement, and the

1 proposed Allocation Form, and set a date for a final approval hearing.

2  
3 Dated: March 9, 2018

Respectfully submitted,  
**LAVI & EBRAHIMIAN, LLP**

4  
5 By:   
6 Joseph Lavi, Esq.  
7 Vincent C. Granberry, Esq.  
8 Attorneys for PLAINTIFF DONALD  
9 ALVAREZ, on behalf of himself and others  
10 similarly situated  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

2 **PROOF OF SERVICE**  
3 **STATE OF CALIFORNIA, COUNTY OF LOS ANGELES**

4 I am an employee in the County of Los Angeles, State of California. I am over the age of 18  
5 and not a party to the within action; my business address is 8889 W. Olympic Blvd., Beverly Hills,  
6 California 90211. On March 9, 2018, I served the foregoing document, described as:

7 **“PLAINTIFF DONALD ALVAREZ’S NOTICE OF MOTION AND MOTION FOR**  
8 **PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT WITH DEFENDANT**  
9 **RECOLOGY LOS ANGELES; MEMORANDUM OF POINTS AND AUTHORITIES”**

10 **“DECLARATION OF VINCENT C. GRANBERRY IN SUPPORT OF PLAINTIFF**  
11 **DONALD ALVAREZ’S MOTION FOR PRELIMINARY APPROVAL OF CLASS**  
12 **ACTION SETTLEMENT WITH DEFENDANT RECOLOGY LOS ANGELES”**

13 **“[PROPOSED] ORDER”**

14 on all interested parties in this action as follows:

15 ROD M. FLIEGEL, Bar No. 168289  
16 ALISON S. HIGHTOWER, Bar No. 112429  
17 LITTLER MENDELSON, P.C.  
18 333 Bush Street, 34th Floor  
19 San Francisco, CA 94104  
20  
21 Attorneys for Defendant RECOLOGY LOS  
22 ANGELES

Sue M. Bendavid, Esq., SBN 151631  
Nicholas Kanter, Esq., SBN239436  
**LEWITT, HACKMAN, SHAPIRO,**  
**MARSHALL & HARLAN**  
16633 Ventura Boulevard, Eleventh Floor,  
Encino, CA 91436-1865  
Email: sbendavid@lewitthackman.com;  
nkanter@lewitthackman.com

Attorneys for Defendant THF Holding Co.

23 ☐ **(BY MAIL)** As follows: I placed such envelope, with postage thereon prepaid, in the United  
24 States mail at Los Angeles, California. I am "readily familiar" with the firm's practice of  
25 collecting and processing correspondence for mailing. Under that practice, it would be  
26 deposited with the U.S. Postal Service on that same day, with postage thereon fully prepaid,  
27 at Los Angeles, California, in the ordinary course of business. I am aware that, on motion of  
28 the party served, service is presumed invalid if the postal cancellation or postage meter date  
is more than one day after the date of deposit for mailing in this affidavit.

29 ☒ **(BY ELECTRONIC SERVICE)** Pursuant to California Rules of Court Rule 2.251, Code of  
30 Civil Procedure section 1010.6, and the Court Order Authorizing Electronic Service, I sent  
such document via use of CASEANYWHERE

31 ☒ **(STATE)** I declare under penalty of perjury under the laws of the State of California that the  
32 aforementioned service information is true and correct. Executed on March 9, 2018, at  
33 Beverly Hills, California.

34   
35 Vincent C. Granberry