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**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

Salvador Ruacho, individually, and on
behalf all others similarly situated, and L.
Luviano, individually,

Plaintiffs,

v.

Multi Cable, Inc., Mousa Golbahar, Time
Warner Cable, Inc., Time Warner Cable
Pacific West LLC, Time Warner Cable
Enterprises LLC, and Does 1 to
100, inclusive,

Defendants.

Case No. 2:15-CV-05592-AB-FFM
*Assigned for all purposes to the
Honorable André Birotte Jr.*

**PLAINTIFF'S NOTICE OF
UNOPPOSED MOTION AND
UNOPPOSED MOTION FOR AN
ORDER (A) GRANTING
PRELIMINARY APPROVAL OF
THE SETTLEMENTS, (B)
CERTIFYING A CLASS FOR
SETTLEMENT PURPOSES, (C)
DIRECTING ISSUANCE OF
NOTICE TO THE CLASS, AND (D)
SCHEDULING A FINAL FAIRNESS
HEARING**

Date: March 23, 2018
Time: 10:00 a.m.
Judge: Hon. André Birotte Jr.
Courtroom: 7B

PLEASE TAKE NOTICE that, on March 23, 2018, at 10:00 a.m. (or a time to be determined by the Court) in Courtroom No. 7B in the above entitled courthouse located at 350 West 1st Street, Los Angeles, California 90012, the Hon. André Birotte Jr. presiding, Plaintiff Salvador Ruacho (“Plaintiff”) will, and hereby does, move for an order (1) preliminarily approving the proposed class-wide settlements of this class action; (2) certifying the settlement class defined below, (3) appointing CPT Group, Inc. as the Class Administrator; (4) approving the form and method for providing class-wide notice; (5) appointing Alan Harris and David Garrett, Harris and Ruble; and Daniel Forouzan and Forouzan Law as settlement class counsel, and Salvador Ruacho as settlement class representative; (6) setting a hearing to determine whether final approval of the settlement should be granted, the settlement class should be certified, class counsel should be appointed, and consider Plaintiffs’ application for attorneys’ fees and expenses.

The Motion will be made and based upon this Notice; the Memorandum of points and authorities; the Declaration of Alan Harris filed herewith; all of the pleadings, papers, and documents contained in the file of the within action; and such further evidence and argument as may be presented at or before the hearing on the Motion.

Respectfully submitted,

Dated: January 18, 2018

HARRIS & RUBLE
FOROUZAN LAW

/s/ Alan Harris

Alan Harris

David Garrett

Daniel Forouzan

Donald Pepperman

Attorneys for Plaintiffs

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Plaintiff alleges that Defendant Multi-Cable Inc. (“MCI”) engaged in a pattern and practice of misclassifying its cable installation technicians (“ITs” or “contractors”) as “independent contractors” in order to avoid paying overtime or offering other employee benefits such as reimbursement of expenses, informational wage statements, or rest and meal breaks. Plaintiff further alleges that these legal violations continued even after MCI began classifying the ITs as employees, rather than independent contractors. Plaintiff also alleges that Defendants Time Warner Cable Inc., Time Warner Cable Pacific West LLC, Time Warner Cable Enterprises LLC (collectively, “TWC” or the “TWC Defendants”) are liable to Plaintiff and the class on a theory that they were vicariously liable for MCI’s purported legal violations. (FAC ¶¶ 4-7, 21, ECF Doc. 50.)

After extensive investigation, formal discovery, expert analysis by both Parties, and the guidance of experienced wage and hour mediator Mark S. Rudy, Esq. Plaintiff Salvador Ruacho (“Plaintiff”) has, subject to approval by this Court, achieved separate settlements of the case with Defendants Multi Cable, Inc. (“MCI”) and Mousa Golbahar (“Golbahar”) (collectively, “MCI Defendants”) (the “MCI Settlement”) and the TWC Defendants (the “TWC Settlement”)(collectively, the “Settlements” or “Settlement Agreements”)¹. The Settlement Agreements also resolve the following state court cases with respect to the Defendants, subject to approval by this Court:

1. *Salvador Ruacho, individually and as a proxy of the State of California v. Multi Cable, Inc. Mousa Golbahar; Time Warner Cable, Inc. Time Warner Cable Pacific West LLC; Time Warner Cable Enterprises LLC* (Case No. BC602993), filed 12/7/2015 in the Superior Court of the State of California, County of Los Angeles (“*Ruacho*”)

¹ Collectively, the MCI Defendants and the TWC Defendants are referred to as “Defendants.”

1 2. *Reynaldo Galvez v. Multi Cable, Inc.* (Case No. BC635968), filed on
2 September 30, 2016, in the Superior Court of the State of California,
3 County of Los Angeles, alleging a single cause of action for failure to
4 provide adequate wage statements (“*Galvez*”).

5 The Settlement Agreements are attached to the Declaration of Alan Harris filed herewith
6 as **Exhibits 1 & 2**. Plaintiffs now seek preliminary approval of the Settlement
7 Agreements, which will resolve this action in its entirety.

8 If approved by the Court, the non-reversionary MCI Settlement will provide for a
9 gross settlement payment of \$450,000 for approximately 290 IT’s, a gross settlement
10 amount of just over \$1,550, each. This gross settlement amount includes payments made
11 to the Settlement Class, payments to the Labor and Workforce Development Agency
12 (“LWDA”) on Plaintiffs’ PAGA claims, settlement administration costs, awards of
13 attorneys’ fees and costs, and a service award to each Plaintiff as set forth below.

14 If approved by the Court, the TWC Settlement will provide for a gross settlement
15 payment of \$1,350,000 for approximately 290 IT’s, a gross settlement amount of just
16 over \$4,650, each. This gross settlement amount includes payments made to the
17 Settlement Class, payments to the LWDA on Plaintiffs’ PAGA claims, awards of
18 attorneys’ fees and costs, and a service award to each Plaintiff as set forth below. The
19 settlement is non-reversionary.

20 Plaintiff requests that the Court grant preliminary approval of the Settlement
21 Agreements, as, when analyzing the strengths and vulnerabilities of the Class’ claims
22 along-side Defendants’ potential liability exposure, the proposed non-reversionary
23 settlements in the total amount of \$1,800,000, which is projected to pay each
24 participating class member an average gross recovery of \$6,207, and an average net
25 recovery of approximately **\$3,713**, less employee taxes for the settlement share of the
26 MCI settlement that is devoted to wages, is fair, reasonable, and adequate.

27 As described herein, the Settlements are fair to the class. The proposed
28 Settlements were reached only after considerable litigation and undertaking of a robust

1 factual and legal investigation into MCI's pay structures, wage and hour policies, and
2 route details, the relationship between the Defendants, and after an all-day, arms-length
3 mediation with prominent California wage and hour mediator, Mark Rudy, followed by
4 additional months of negotiations under the guidance of Mr. Rudy. The settlement takes
5 into consideration the risk that certification may not be maintained or that the TWC
6 Defendants' summary judgment motion may be granted. In addition to factoring in
7 uncertainties with certifying the matter as a class action and the TWC Defendants'
8 dispositive motion, the proposed settlement also takes into account Defendants' defenses,
9 which, if successful, might result in Plaintiff taking nothing for his claims against either
10 the MCI or TWC Defendants, or both.

11 Because the Settlements are fair, reasonable and adequate, Plaintiff respectfully
12 requests that this Court issue an order in the form lodged herewith (also found as Exhibit
13 A to the Settlement Agreement): (1) preliminarily approving the proposed class-wide
14 settlement of this class action, (2) approving the form and method for Class-Notice, (3)
15 appointing Alan Harris and David Garrett, Harris and Ruble; and Daniel Forouzan and
16 Forouzan Law as settlement class counsel, and Salvador Ruacho as settlement class
17 representative and (4) setting a hearing to determine whether final approval of the
18 settlement should be granted, the settlement class should be certified for purposes of the
19 settlement only, class counsel should be appointed, and considering Plaintiff's application
20 for attorneys' fees and expenses.

21 **II. NATURE OF THE CASE**

22 **A. Plaintiff's Claims**

23 Plaintiff alleges that MCI engaged him and hundreds of other ITs, as independent
24 contractors. (*Id.*) Plaintiff further avers that the ITs should have been classified and
25 compensated as employees of MCI. (*Id.*, ¶ 7.) Plaintiff further contends that he and other
26 MCI ITs primarily perform manual labor associated with the installation of cable and
27 telephone services for MCI for customers of the Time Warner Cable Defendants. (FAC ¶
28 21, ECF Doc. 50.) These services include driving to an installation site, installing cable

1 wiring, connecting the wiring to equipment such as modems, televisions, and computers,
2 and troubleshooting and repairing the customer wiring. (Id.) Plaintiff contends that MCI
3 controlled virtually every facet of the ITs' jobs, including the uniforms they wear, the
4 decals on their vehicles, materials they use, and the jobs they perform, including the
5 hours during which those jobs are to be completed and the location at which the services
6 will be provided. (Id.) Plaintiff asserts that ITs typically work more than 40 hours per
7 week and more than eight hours per day; sometimes they work seven days per week at
8 the direction of MCI. (Id., ¶ 23.)

9 Plaintiff further claims that in performing their job duties, ITs were required to
10 purchase and maintain necessary safety equipment and tools; they were not reimbursed
11 by MCI for these expenses. (FAC ¶ 33.) Moreover, ITs allegedly had to drive their own
12 vehicles 50 miles or more per day to and from work sites at their own expense. (FAC ¶
13 34.) In administering these services, Plaintiff and other ITs were not members of any
14 union, nor was their work governed by any collective bargaining agreement. (Id., ¶ 53.)

15 Plaintiff alleges that MCI created uniform policies that systematically violated the
16 California Labor Code. Plaintiff alleges that this system was based on MCI's intentional
17 misclassification of ITs as independent contractors, and MCI's continued Labor Code
18 violations even after MCI classified the ITs as employees. Plaintiff further alleges that
19 MCI's uniform policies and practices allowed MCI to avoid: (a) paying any overtime; (b)
20 providing meal or rest breaks; (c) providing proper wage statements; (d) providing
21 reimbursement of ordinary employee expenses; and (e) complying with the limitations
22 imposed on employers by section 221 of the Code, requiring that employers not deduct
23 business expenses from employee's wages.

24 Defendants deny these allegations in their entirety, deny any liability or wrongdoing
25 of any kind associated with the claims alleged in this action, and further deny that, for any
26 purpose other than settlement, this matter is appropriate for class treatment. Defendants
27 further contend that they have complied at all times with the FLSA and all applicable
28 California laws, including the California Labor Code, the applicable California Wage

Order(s), and the Unfair Competition Law. While the lawsuit does not allege that the TWC Defendants committed any independent violations of California law, the lawsuit does contend that the TWC Defendants are vicariously liable for the MCI Defendants' violations. The TWC Defendants deny any violation of law or basis for including them in any of the Litigations covered by this settlement.

B. Procedural History

The original class action complaint was filed in the Superior Court of the State of California for the County of Los Angeles, Central District alleging the following claims individually, and on behalf of all others similarly situated: (1) failure to pay overtime; (2) failure to pay minimum wage; (3) failure to provide meal periods; (4) failure to provide rest periods; (5) failure to provide itemized wage statements; (6) waiting time penalties; (7) failure to provide indemnification for business expenses; (8) improper deductions from wages; (9) failure to pay overtime and liquidated damages under the Fair Labor Standards Act ("FLSA"); (10) misclassification of employees as independent contractors; (11) unfair competition; (12) Private Attorneys General Act ("PAGA"); and (13) fraud. (See ECF Doc. No. 1-1, Ex. A ("Compl.") at 1.)

Defendants removed the action to this Court on July 23, 2015. (ECF Doc. No. 1 ("Removal").) Plaintiff filed the operative First Amended Complaint ("FAC") on December 18, 2015, alleging the same thirteen causes of action as in the original Complaint, but joining additional defendants, Time Warner Cable Pacific West LLC and Time Warner Cable Enterprises, LLC. (See ECF Doc. 50.) The TWC Defendants and MCI Defendants answered the FAC on January 8, 2016 and January 15, 2016, respectively. (ECF Doc. Nos. 55, 58.) On January 21, 2016, Plaintiff filed a Notice of Pendency of Other Action, advising the Court of the pendency of Ruacho v. Multi Cable Inc., Los Angeles Superior Court Case No. BC602993 ("Ruacho"), which was filed on December 7, 2015. (ECF Doc. No. 59.) On September 30, 2016, Reynaldo Galvez filed his action, Galvez v. Multi Cable, Inc., Case No. BC635968, as a class action against Defendant Multi-Cable, Inc., alleging a violation of California Labor Code §§ 226.

1 On August 19, 2016, Plaintiff filed a Motion for Certification of a Class Action,
2 (Dkt. No. 78), and Motion for Order Granting Certification of a Collective Action, (Dkt.
3 No. 77). On January 3, 2017, this Court conditionally certified a Class that:

4 Includes all persons who (1) entered into a ‘Contract for Cabling Project
5 Services’ with Multi Cable, Inc., and (2) performed cable installation, repair,
6 disconnect and/or similar services in the state of California on behalf of
7 Multi Cable, Inc., Time Warner Cable Inc., Time Warner Cable Pacific West
8 LLC, and/or Time Warner Cable Enterprises LLC between June 23, 2011
9 and June 13, 2015.

10 (Jan. 3, 2017 Order [ECF Doc. 140]). The Class was conditionally certified subject to the
11 satisfactory substitution of an adequate, credible representative plaintiff. (*Id.* at 33-34).
12 On March 24, 2017, this Court granted Plaintiff’s motion to appoint Ruacho as class
13 representative, and ordered Plaintiff to file a Second Amended Complaint (“SAC”) for
14 the limited purpose of substituting Salvador Ruacho as class representative. (ECF Doc.
15 155.) Plaintiff filed the SAC on March 31, 2017. (ECF Doc. 158.) On August 14, 2017,
16 the TWC Defendants filed a motion for summary judgment, contending that the TWC
17 Defendants could not be vicariously liable for MCI’s purported legal violations as a
18 matter of law. (ECF Doc. 175)

19 **C. Mediation**

20 The sharing of information and data together with comprehensive settlement
21 discussions facilitated by experienced wage and hour mediator Mark Rudy, Esq.,
22 concerning the legal strategies and likelihood of each party prevailing enabled the Parties
23 to fully analyze the issues in the case and eventually reach the instant Settlements.

24 Importantly, the Parties engaged in a full-day mediation on July 15, 2016, during
25 which they each aggressively advocated for their respective positions before finally
26 deciding to end the day’s discussions for the time being and resume them at a later date,
27 all with the continued assistance and direction of Mark Rudy. Indeed, the settlements
28 were reached only after the Parties engaged in exhaustive settlement discussions over the

1 course of months (and further discussions involving Mr. Rudy over the next few months).

2 **III. THE PROPOSED SETTLEMENT CLASS SATISFIES THE**
3 **REQUIREMENTS FOR CONDITIONALLY CERTIFYING A**
4 **SETTLEMENT CLASS**

5 When presented with a proposed settlement, a court must first determine whether
6 the proposed settlement class satisfies the requirements for class certification under Rule
7 23. A trial court has wide discretion in certifying a class for settlement purposes under
8 Federal Rule of Civil Procedure 23 and will be reversed “only upon a strong showing
9 that [its] decision was a clear abuse of discretion.” (*Dunleavy v. Nadler*, 213 F.3d 454,
10 461 (9th Cir. 2000) (quoting *Linney v. Cellular Alaska P’ship*, 151 F.3d 1234, 1238 (9th
11 Cir. 1998).)² The “Settlement Class” or “Class Members” are defined as follows:

12 All individuals who worked for MCI performing cable installation, repair,
13 disconnect and/or similar services for customers of the TWC Defendants in
14 the State of California on behalf of MCI, at any time from [], through the
15 date of preliminary approval.

16 The “MCI Settlement Class Period” runs from November 5, 2013 through the date
17 of preliminary approval of this Settlement. (MCI Settlement, ¶ 2.)³ The TWC
18 Settlement Class Period runs from June 23, 2011 through the date of preliminary
19 approval of this settlement. (TWC Settlement, ¶ 2.)

20 Initially, the numerosity requirement is met, as the total number of Class Members
21 is 290. Given that “courts will typically find the numerosity requirement satisfied when a
22

23
24 ² Rule 23(a) contains four certification requirements: The class must be so numerous
25 “that joinder of all members is impracticable,” there must be “questions of law or fact
26 common to the class,” the claims of the representative plaintiffs must be “typical of the
27 claims of the class,” and the class representative must show that he or she “will fairly and
28 adequately protect the interests of the class.” Fed. R. Civ. Proc. 23(a).

³ A class action settlement in the case of *Mawyin v. Multi Cable, Inc.* (Los Angeles Superior Court Case No. BC486526) (“*Mawyin*”) covered the time period from June 23, 2011 through November 5, 2013. TWC was not a party to the Mawyin litigation or settlement.

1 class includes 40 or more members,” (Sibert v. TV Magic, Inc., 2012 U.S. Dist. LEXIS
2 118245, at *4 (C.D. Cal. filed Aug. 21, 2012)), and given that joinder of all 290 Class
3 Members would be impracticable, the Class satisfies the numerosity requirement.

4 Likewise, for settlement purposes, the commonality requirement is met. In this
5 regard, a plaintiff is *not* required to show that there is commonality on *every* factual and
6 legal issue; instead, “for purposes of Rule 23(a)(2) even a single common question will
7 do.” (Wal-Mart Stores, Inc. v. Dukes, 564 U.S. 338, 359 (2011)). Here, Plaintiff
8 contends that MCI engaged in uniform policies and practices that resulted in the
9 aforementioned FLSA and California Labor Code violations, first by misclassifying its
10 ITs as independent contractors, and later by refusing to abide by the requirements of the
11 Labor Code and FLSA even after MCI began classifying its ITs as employees. Plaintiff
12 further contends that the TWC Defendants are vicariously liable for all of MCI’s alleged
13 FLSA and Labor Code violations. Accordingly, Plaintiff contends it has identified
14 “common issues” sufficient to satisfy Rule 23(a)(2) with respect to the proposed
15 Settlement Classes. Defendants dispute that commonality exists, but do not oppose such
16 a finding for purposes of this settlement only.

17 Under Rule 23(a)(3), the claims or defenses of the representative parties must be
18 typical of those of the class. Generally, the test of typicality “is whether other members
19 have the same or similar injury, whether the action is based on conduct which is not
20 unique to the named plaintiffs, and whether other class members have been injured by the
21 same course of conduct.” (Hanon v. Dataproducts Corp., 976 F.2d 497, 508 (9th Cir.
22 1992).) The requirement that the proposed class representative’s claims be typical of the
23 claims of the class does not mean, however, that the claims must be identical. (Hanlon v.
24 Chrysler Corp., 150 F.3d 1011, 1020 (9th Cir. 1998).) Typicality does not require that
25 there be no factual differences between the class representatives and the class members
26 because the generalized nature of the claims asserted determines whether the class
27 representative is typical. (Priest v. Zayre Corp., 118 F.R.D. 552, 55 (D. Mass. 1988).
28

1 Here, Class Representative Salvador Ruacho claims to have suffered the same
2 injury allegedly suffered by other class members as he was member of the class of all
3 individuals who worked for MCI performing cable installation, repair, disconnect and/or
4 similar services for customers of the TWC Defendants in the State of California on behalf
5 of MCI, at any time from June 23, 2011 [or November 5, 2013], through the date of
6 preliminary approval. Thus, Plaintiff contends that he has identical, non-competing, and
7 non-conflicting interests with those of the Class. Ruacho also claims he was treated in
8 similar fashion, was allegedly misclassified and later improperly compensated by MCI
9 after being reclassified as an employee, and treated similarly with respect to provision of
10 compensation, meal and rest breaks and wage statements. (Ruacho Decl. ¶¶2-14, [ECF
11 Doc. 90]). Finally, Ruacho, as with the other Class Members, claims he was not
12 reimbursed for his business expenses and in fact was routinely subject to unlawful wage
13 deductions. (Id.) Indeed, this Court has already found:

14 Plaintiff's claim arises from the same underlying event, practice, or course
15 of conduct as the claims of the absent, putative class members' claims;
16 namely, Defendants' alleged misclassification of ITs as independent
17 contractors rather than employees. This broad misclassification is based on
18 allegedly common, underlying practices and conduct such as (1) conducting
19 trainings for ITs, (2) requiring Plaintiff and other putative class members to
20 wear particular uniforms and orally represent themselves as TWC
21 employees, and (3) administering a training manual that allegedly governed
22 employees and contractors alike.

23 (Jan. 3, 2017 Order [ECF Doc. 140]). Because the proposed Class Representative alleges
24 to have been subject to the same policies and practices as the other Class members, the
25 typicality requirement is met here. Plaintiff Ruacho shares the desire to be paid in full,
26 such that he is committed to pursuing the Class' claims for himself as well as other IT's.
27 (Harris Decl., ¶ 23.) While Defendants dispute that Plaintiff can satisfy the typicality
28 requirement, Defendants do not oppose a finding of typicality for purposes of this

1 settlement only.

2 In addition to the Rule 23(a) requirements, a district court must also find that
3 common issues of law or fact “predominate over any questions affecting only individual
4 members.” Fed. R. Civ. P. 23(b)(3). In addition to the above-described four
5 requirements, Plaintiff contends that the predominance requirement is satisfied in the
6 context of the proposed settlement.⁴ Furthermore, Plaintiff contends that because the
7 “predominance” factor concerns liability, any variation in damages is plainly insufficient
8 to defeat class certification. (Leyva v. Medline Indus., 716 F.3d 510, 514 (9th Cir.
9 2013).)

10 Defendants dispute that predominance exists, but do not oppose such a finding for
11 purposes of this settlement only. Here, the parties’ settlements replace any fact intensive
12 issues concerning liability with the settlement agreement itself (which admits no liability,
13 but creates a non-fact-intensive allocation among class members). As the United States
14 Supreme Court has explained, a settlement class need not be manageable as a *trial* class
15 action in order to be certified as a *settlement-only* class. (Amchem Prods., Inc. v.
16 Windsor, 521 U.S. 491, 619 (1997).) Thus, while the Parties differ as to whether this
17 case would be maintainable as a trial class, it nonetheless can be certified as a settlement
18 class Moreover, the Court already has certified this class for trial. (Jan. 3, 2017 Order
19 [ECF Doc. 140]).

20 Finally, no issues of manageability preclude certification of the Stipulated Class.
21 A court faced with a request for a settlement-only class like this one need not inquire
22 whether the case would present intractable problems of trial management, even though
23 other requirements under Rule 23 must still be satisfied. (*See, e.g.,* Lazarin v. Pro
24 Unlimited, Inc., 2013 WL 3541217, *5 (N.D. Cal. 2013).)

26 ⁴ Rule 23(b) authorizes class certification if a court determines that “questions of law
27 or fact common to the members of the class predominate over any questions affecting
28 only individual members, and that a class action is superior to other available methods for
the fair and efficient adjudication of the controversy.” Fed. R. Civ. Proc. 23(b)(3).

1 **IV. THE PROPOSED SETTLEMENT IS FAIR, REASONABLE, AND**
2 **ADEQUATE AND SHOULD BE PRELIMINARILY APPROVED**

3 **A. The Standard for Preliminary Approval**

4 Settlements of complex class actions prior to trial are strongly favored. (*See*
5 Churchill Village, LLC v. Gen. Elec. Co., 361 F.3d 566, 576 (9th Cir. 2004); In re Pacific
6 Enter. Sec. Litig., 47 F.3d 373, 378 (9th Cir. 1995).) At this preliminary-approval step,
7 the Court must conduct a prima facie review of the relief and notice provided by the
8 Parties' Settlement Agreements to determine whether that notice should be sent to the
9 Settlement Class Members. The preliminary-approval step requires the Court to "make a
10 preliminary determination on the fairness, reasonableness, and adequacy of the settlement
11 terms." (Manual of Complex Litigation §21.632, at 321.) The Court's review is "limited
12 to the extent necessary to reach a reasoned judgment that the agreement is not the product
13 of fraud or overreaching by, or collusion between, the negotiating parties, and that the
14 settlement, taken as a whole, is fair, reasonable and adequate to all concerned." Officers
15 for Justice, 688 F.2d at 625; accord Hanlon, 150 F.3d at 1027.) In making this
16 determination, the Court should evaluate the fairness of the settlement in its entirety.
17 (*See Hanlon*, 150 F.3d at 1026 ("It is the settlement taken as a whole, rather than the
18 individual component parts, that must be examined for overall fairness . . . The settlement
19 must stand or fall in its entirety.").)

20 **B. The Terms of the Proposed MCI Settlement**

21 Pursuant to the terms of the MCI Settlement Agreement, MCI will pay a non-
22 reversionary \$450,000 Gross Settlement Amount as follows:

- 23 A. The First Installment in the sum of Ten Thousand Dollars (\$10,000) shall be
24 paid by the MCI Defendants upon signature of the Joint Stipulation of
25 Settlement between Plaintiff and the MCI Defendants.
- 26 B. The Second Installment in the sum of Twenty Thousand Dollars (\$20,000)
27 shall be paid by the MCI Defendants within ten (10) days of Preliminary
28 Approval of the Settlement.

1 C. The Third Installment of One Hundred Twenty Thousand Dollars
2 (\$120,000) shall be paid within ten (10) days after Final Approval of the
3 Settlement if there are no objectors.

4 D. Thereafter, the balance of Three Hundred Thousand Dollars (\$300,000) will
5 be paid by the MCI Defendants in equal monthly installments of Eight
6 Thousand Three Hundred Thirty-Three Dollars and Thirty-Three Cents
7 (\$8,333.33) over the next thirty-six (36) months beginning on September 1,
8 2018 or 365 days after the Effective Date of the Settlement.

9 (MCI Settlement, ¶38.) MCI has provided collateral as security for the pledged
10 settlement installment payments. (MCI Settlement, ¶ 40.)

11 After deducting estimated amounts for Class Counsel’s proposed Fee (up to
12 \$126,000) and Expenses (up to \$35,000), an approved amount to the Settlement
13 Administrator for Administration Costs (up to \$22,000), proposed Plaintiff Enhancement
14 Payment (\$5,000), and a PAGA payment representing the State of California’s share of
15 civil penalties (\$10,000), the remainder – currently estimated to be \$252,000 – will be
16 paid to MCI Employees who choose not to exclude themselves (i.e. opt-out) from the
17 Class, based upon his or her proportionate share of workweeks worked during the
18 relevant Class Period (“Total Individual Workweeks”) as compared to the Total Class
19 Workweeks. (Settlement, ¶ 34.)

20 The Initial Distribution in the sum of One Hundred and Fifty Thousand Dollars
21 (\$150,000) shall be made within seventy (70) days from the Effective Date of the
22 Settlement. (Settlement, ¶ 39.) A Second Distribution in the total sum of One Hundred
23 and Fifty Thousand Dollars (\$150,000) shall be made within forty-five (45) days of the
24 deposit by the MCI Defendants of monthly installments payments totaling \$150,000.
25 (Settlement, ¶ 40.) A Final Distribution in the sum of One Hundred and Fifty Thousand
26 Dollars (\$150,000) shall be made within forty-five (45) days of the deposit by the MCI
27 Defendants of monthly installments payments totaling \$300,000. (Settlement, ¶ 41.)
28

C. The Terms of the Proposed TWC Settlement

1 The TWC settlement consists of a non-reversionary \$1,350,000 Gross Settlement
2 Amount, an amount that will be funded from MCI monies the TWC Defendants properly
3 withheld from MCI pursuant to MCI's indemnification obligations to TWC and Charter.
4 The Gross Settlement Amount will be allocated as follows:

5 After deducting estimated amounts for Class Counsel's proposed Fee (anticipated
6 to be up to \$450,000) and approved expenses (anticipated to be \$50,000), an approved
7 amount to the Settlement Administrator for Administration Costs (estimated to be
8 \$22,000) which will only be paid in this settlement if the MCI Settlement is not
9 approved,⁵ proposed Plaintiff Enhancement Payments (\$15,000)⁶, and a PAGA payment
10 representing the State of California's share of civil penalties (\$10,000), the remainder –
11 currently estimated to be \$825,000 – will be paid to Class Members who choose not to
12 exclude themselves (*i.e.*, opt-out) from the Class, based upon his or her proportionate
13 share of workweeks worked during the Class Period ("Total Individual Workweeks") as
14 compared to the Total Class Workweeks. (TWC Settlement, ¶ 18.)

15 The settlement amount paid to Plaintiffs and putative class members shall be
16 allocated 100% to non-wages for which form 1099s shall be issued. The class settlement
17 agreement will not contain an indemnification agreement related to the tax treatment of
18 these payments.

19 **D. The Settlement Award Provides Class Members with a Substantial**
20 **Recovery**

21 There are approximately 290 current and former MCI employees employed in
22 California during the Class Period. As detailed above, assuming that the Court approves
23 all contemplated deductions, a total of \$1,077,000 will remain for distribution to the
24

25 ⁵ The Administrative Costs will not be duplicated. This amount is being included in
26 this calculation so that the net share to the Class Members will not be overstated in case
27 the MCI Settlement is not approved. Pursuant to the Settlement Agreements, approval of
28 the MCI Settlement is not dependent on approval of the TWC Settlement, and vice versa.

⁶ The TWC Settlement provides that Plaintiffs Ruacho, Galvez and Luviano will each
receive an Enhancement Payment of up to \$5,000 each.

1 Settlement Class. Settlement Class Members who do not opt-out will receive Settlement
2 Awards from the fund, estimated to average over \$3,700 each.⁷ The Released Claims
3 include any and all claims whether arising at law, in contract, or in equity, and whether
4 for economic damages, non-economic damages, restitution, injunctive relief, penalties, or
5 liquidated damages that are based on the facts alleged in this case, and/or the Ruacho or
6 Galvez Complaints or that arise from or could have been alleged based on the facts
7 alleged in the Complaints.

8 **E. Plaintiffs' Incentive Awards**

9 Under the terms of the Settlement Agreements, Class Counsel may apply for an
10 Enhancement Award for worker efforts in bringing and prosecuting this case. (Harris
11 Decl. ¶ 14.) Any request will be extremely modest and will not meaningfully change the
12 above calculations. According to the Ninth Circuit, “[i]ncentive awards are fairly typical
13 in class action cases” and “are intended to compensate class representatives for work
14 done on behalf of [a] class, to make up for financial or reputational risk undertaken in
15 bringing the action, and, sometimes, to recognize their willingness to act as a private
16 attorney general.” (Rodriguez v. West Publ’g Corp., 563 F.3d 948, 958–59 (9th Cir.
17 2009) (emphasis removed), vacated on other grounds, 688 F.3d 645, 660 (9th Cir. 2012).)
18 Courts should consider “the risk to the class representative in commencing suit, both
19 financial and otherwise,” as well as “the amount of time and effort spent by the class
20 representative” and “the personal benefit (or lack thereof) enjoyed by the class as a result
21 of the litigation.” (Smith v. CRST Van Expedited, Inc., 2013 U.S. Dist. LEXIS 6049, at
22 *16 (S.D. Cal. filed Jan. 14, 2013) (quoting Van Vranken v. Atl. Richfield Co., 901 F.
23 Supp. 294, 299 (N.D. Cal. 1995)) (internal quotations omitted).)

24 Here, all of the factors support approving an award. First, as a direct result of this
25 suit, participating Settlement Class Members will receive an average net recovery of over
26

27 ⁷ The total proposed Net Settlement Amount payable to the Class Members is
28 approximately \$1,077,000 (\$252,000 + \$825,000). Therefore, the net average payment to
each Class Member would be \$3,713. ($\$1,077,000/290=\$3,713$). Harris Decl.), ¶10.

1 \$3,000 each. Second, Plaintiffs Ruacho, Luviano and Galvez have expended
2 considerable time conferring with Class Counsel and their investigators, providing factual
3 background and support, and analyzing data provided by MCI. Notably, these Plaintiffs
4 each submitted to a full day deposition. Finally, each of these Plaintiffs “undertook the
5 financial risk that, in the event of a judgment in favor of [MCI] in this action, [he] could
6 have been personally responsible for any costs awarded in favor of [MCI].” Vasquez v.
7 Coast Valley Roofing, Inc., 266 F.R.D. 482, 491 (E.D. Cal. 2010). Indeed, incentive
8 awards are particularly appropriate in employment class actions, where they help to
9 alleviate the “stigma upon future employment opportunities for having initiated an action
10 against a former employer.” Campbell v. First Investors Corp., 2012 WL 5373423, at *8
11 (S.D. Cal. filed Oct. 29, 2012).

12 The Incentive Awards contemplated in the Settlement Agreement are similar to
13 those awarded in other cases. (See Smith, 2013 U.S. Dist. LEXIS, *17–18.) Assuming
14 that the Court grants Preliminary Approval, Plaintiffs will each submit a request for an
15 Enhancement Award and request that it be approved. Plaintiffs and their counsel are
16 aware of this Court’s views regarding the award of such payments and any requests will
17 be quite modest. Indeed, Plaintiffs understand that the approval of the proposed
18 resolution of the class claims is not contingent on their receipt of any Incentive Award
19 and they may not receive one, at all.

20 **F. Class Counsel’s Fee and Expense Award**

21 Pursuant to the Settlements, Class Counsel may apply for attorney fees and
22 reimbursement of litigation expenses. (Harris Decl. ¶ 11.) The requested fees include all
23 of the work remaining to be performed in documenting the Settlement Agreements,
24 securing Court approval of the Settlements, making certain that the Settlements are fairly
25 administered, and obtaining dismissal of the actions against MCI and TWC. The
26 proposed MCI Settlement Fees and Expense Award will be paid proportionately during
27 each of the three Distributions, along with the other amount payable hereunder. (MCI
28 Settlement, ¶37.) The proposed TWC Settlement Fee and Expense Award will be paid

1 approximately ten (10) business days after final court approval of the Settlement and after
2 all rights to appeal or review are exhausted, or any appeal or review has been resolved in
3 favor of the Settlement. (TWC Settlement, ¶38.) Here, the proposed Fees (\$576,000)
4 and Expense Awards (\$85,000) represent approximately 44% of the estimated
5 \$1,500,000 in attorney fees and costs incurred to date in prosecuting this case.

6 Principles of equity permit fees and costs associated with a common-fund
7 settlement to come from the fund itself. *See, e.g., Boeing Co. v. Van Germet*, 444 U.S.
8 472, 478 (1980) (explaining that the common-fund doctrine “allows a court to . . .
9 assess[] attorney’s fees against the entire fund, thus spreading fees proportionately among
10 those benefited”). This principle extends to the fees and costs of claims administration.
11 *See Staton v. Boeing Co.*, 327 F.3d 938, 975 (9th Cir. 2003) (stating that “[t]he post-
12 settlement cost of providing notice to the class can reasonably be considered a benefit to
13 the class”). Further to these equitable-based holdings, courts approving common-fund
14 settlements routinely permit attorney’s fees and costs, and the fees and costs of claims
15 administration, to be deducted from the common fund. (*See, e.g., Jefferson v. H & M*
16 *Hennes & Mauritz, L.P.*, 2013 U.S. Dist. LEXIS 2875, at *7–10 (C.D. Cal. filed Jan. 7,
17 2013) (in a wage-and-hour settlement, deducting 30% of the common fund for attorney’s
18 fees, as well as additional amounts for litigation expenses and claims-administration
19 costs); *Franco v. Ruiz Food Prods., Inc.*, 2012 U.S. Dist. LEXIS 169057, at *36, 68 (E.D.
20 Cal. filed Nov. 27, 2012) (in a wage-and-hour settlement, awarding 33% in attorney’s
21 fees, an additional amount for litigation costs, and an additional amount for claims-
22 administration costs, all payable from the common fund).)

23 Here, the \$1,800,000 Total Maximum Settlement Amount is a common fund, and
24 all associated fees and costs may therefore be deducted from it. As explained by the
25 Ninth Circuit, a common fund exists “when (1) the class of beneficiaries is sufficiently
26 identifiable, (2) the benefits can be accurately traced, and (3) the fee can be shifted with
27 some exactitude to those benefiting.” (*In re Petition of Hill*, 775 F.2d 1037, 1041 (9th
28 Cir. 1985).) According to the Supreme Court, “the[se] criteria are satisfied when each

1 member of a certified class has an undisputed and mathematically ascertainable claim to
2 part of a lump-sum [amount].” (Boeing Co., 444 U.S. at 479 (1980).) The Total
3 Maximum Settlement Amount is a common fund because, under the Settlement
4 Agreements, each Class Member is entitled to a sum certain computed as a function of
5 the relative number of his or her Work Weeks. Class Counsel and the Settlement
6 Administrator are therefore entitled to have their fees and costs paid from the Total
7 Settlement Amount. In any event, Class Members will be given an opportunity to object
8 to Class Counsel’s request (Harris Decl. Ex. 1, ¶ 17), and the Court will have an
9 opportunity to address the Fee and Expense Award in due course after Class Counsel
10 have filed the necessary motion.

11 **G. Notice to the Class.**

12 Each Class Member will be provided with a Court approved notice describing the
13 settlement in detail, which will include each Putative Class Member’s anticipated share
14 of the settlement, based upon the assumption that the administrative costs, attorneys’ fees
15 and costs, and service awards are approved by the Court as requested (this notice is
16 referred to as the “Class Notice”). The Settlements call for the appointment of a
17 Settlement Administrator to deliver the Class Notice and Claim Form to each Class
18 Member, oversee the claims-submission process, calculate each Class Member’s
19 Settlement Award, and make all the payments under the Settlement Agreements. (Harris
20 Decl. ¶ 18.). (Harris Decl. Ex. 1 ¶ 18.) The Parties have met and conferred regarding a
21 joint recommendation for appointment of a Settlement Administrator in this matter. As
22 part of that process bids were sought, received and reviewed from established providers
23 of the required services. As a result of the process, the Parties jointly recommend that
24 this Court appoint CPT Group as Settlement Administrator. (Harris Decl. ¶ 16.) As
25 noted above, the Administration Costs associated with this process will be deducted from
26 the Total Maximum Settlement Amount. (Harris Decl. ¶ 8.) The Parties presently
27
28

1 anticipate that Costs of administration will not exceed \$22,000. (Harris Decl. ¶ 8.)⁸

2 The Parties' proposed Class Notice (attached as Exhibit A-2 to the Settlement
3 Agreement) includes all of the information required by Federal Rule of Civil Procedure
4 23. Specifically, the proposed Notice describes the nature of the Action, the definition of
5 the Class, and Plaintiffs' claims; explains that Class Members may enter an appearance
6 through an attorney and that the Court will exclude those Members requesting exclusion;
7 and specifies the time requirements and manner of requesting exclusion, as well as the
8 binding effect of a class-wide judgment. (Compare Harris Decl. Ex. 1, A-2 with Fed. R.
9 Civ. Proc. 23(c)(2)(B) (specifying the elements of class notice).) The proposed Notice
10 further explains that Class Members may object and provides the time and place of the
11 Final Approval Hearing; prominently displays the address and telephone number of Class
12 Counsel and the procedure for making inquiries; and provides information regarding the
13 contemplated deductions from the Total Maximum Settlement Amount. (Harris Decl. ¶
14 17.) In addition, the Class Notice describes the procedures for allocating the Net
15 Settlement Sum to Participating Class Members. (Harris Decl. ¶ 17.)

16 The Settlement Administrator will deliver the Class Notices and Claim Forms to
17 Class Members via first-class mail within thirty days of the Court's Order granting
18 Preliminary Approval. (Harris Decl. ¶ 18.) Any Notices returned as undeliverable will
19 then be re-mailed to the forwarding address provided by the U.S. Postal Service or to an
20 address located by the Settlement Administrator using customary skip-tracing methods.
21 (Id.) Class Members will have forty-five days from the date of the initial mailing to
22 submit exclusion requests to the Settlement Administrator. (Id.) Class Members will
23 also be permitted to file objections within the forty-five-day period after the date of the
24 initial mailing. (Id.) These notice procedures constitute the "best notice . . . practicable
25

26 ⁸ Accordingly, as discussed above, after making all contemplated deductions, the Net
27 Settlement Sum expected to be distributed to the class is \$1,077,000. Because the
28 Settlement Awards estimated above (see section III(B)) were based on this Net
Settlement Sum, approving all fees and costs will not change those estimates.

1 under the circumstances.” (Fed. R. Civ. Proc. 23(c)(2)(B); *See, e.g., Monterrubio v. Best*
2 *Buy Stores, L.P.*, 291 F.R.D. 443, 452 (E.D. Cal. filed May 14, 2013) (explaining that
3 “the ‘best notice . . . practicable under the circumstances’” does not mean that “actual
4 notice” must be provided to each class member; that “[n]otice by mail is sufficient to
5 provide due process to known affected parties, so long as the notice is ‘reasonably
6 calculated . . . to apprise interested parties of the pendency of the action’; and that “notice
7 by mail to [c]lass [m]embers’ last known addresses” satisfies this standard) (quoting Fed.
8 R. Civ. Proc. 23(c)(2)(B); *Mullane v. Cent. Hanover Bank & Trust Co.*, 339 U.S. 306,
9 314 (1950)); *Moshogiannis v. Sec. Consultants Group, Inc.*, 2012 U.S. Dist. LEXIS
10 16287, at *20 (N.D. Cal. filed Feb. 8, 2012) (approving a forty-five-day claims window).)

11 **H. Release Provisions and Opting Out**

12 If the Court grants final approval of the Settlements, in exchange for the
13 consideration described above, the released claims are narrow, consistent with the
14 Court’s direction. The claims released by the class are any claims, including:
15 debts, liabilities, demands, obligations, guarantees, costs, expenses,
16 attorneys’ fees, damages, action or causes of action arising from or related to
17 this case under any federal, state or local law or administrative order that
18 were or which could have been plead based on the facts alleged in the
19 operative class action and PAGA complaints filed in the *Luviano, Ruacho*
20 and *Galvez* Cases, whether known or unknown, including all claims under
21 state and federal law relating to payment of compensation, failure to provide
22 meal periods, failure to pay wages, failure to timely pay wages due at
23 termination, failure to reimburse for necessary business expenditures,
24 violation of Business and Professions Code § 17200 et. seq., violation of any
25 IWC Wage Order, any other claims under state, federal or local law arising
26 out of or related to the allegations contained in the Complaints filed in the
27 Staffing Systems Wage and Hour Cases, punitive and/or liquidated damages,
28 related penalties, including but not limited to claims under the Fair Labor

Standards Act; California Labor Code sections 203, 223, 226, 226.7, 510, 512, 1194, 1198 and 2699, and interest, attorneys' fees, and costs, and any other related claims and/or penalties of any nature whatsoever, for the Class Period. By cashing this settlement check, you affirmatively opt in to the settlement in *L. Luviano v. Multi Cable, Inc., et al.*, now pending in the United States District Court for the Central District of California, Case No. 2:15-CV-05592-BRO-FM, and release the MCI Defendants from all claims and/or causes of that were or which could have been plead based on the facts alleged in the *Luviano*, *Ruacho* and *Galvez* Cases, or any of them, whether under federal, state or local law including but not limited to the FLSA, 29 U.S.C. § 201, et seq.” The claims to be released by the Settlement Class Members include all claims and/or causes of action against Defendants that were plead based on the facts alleged in the Action’s FAC, whether under federal, state or local law including but not limited to the FLSA, 29 U.S.C. § 201, et seq.; California Labor Code sections 200, 201, 202, 203, 218.5, 226, 226.7, 510, 512, 1182.8, 1194, 2802, and any applicable administrative orders, whether known or unknown. The release includes Plaintiff’s claims for failure to pay minimum wage, failure to pay overtime wages, failure to provide meal periods and rest breaks, failure to provide accurate wage statements, failure to reimburse business expenses, failure to pay all wages at time of termination, as well as related claims for restitution and other equitable relief under the Business and Professions Code section 17200, claims under the Private Attorney General Act (PAGA), and all claims for liquidated damages, waiting-time penalties, any other related claims and/or penalties related to the claims alleged in the operative *Luviano*, *Ruacho* and *Galvez* complaints (“Released Claims”) . . .

(Harris Decl., Ex. 1, MCI Settlement Agreement, ¶ 23.) In addition to the above-released claims, the TWC Settlement also calls for complete releases of all claims that were or

1 could have been asserted in the Luviano, Ruacho or Galvez litigation, including all
2 claims alleged in the Luviano, Ruacho and Galvez complaints on behalf of the putative
3 class or aggrieved employees during the class period of June 23, 2011 through the date of
4 preliminary approval of this settlement. This release expressly includes California Labor
5 Code Section 2810.3 claims.

6 The scope of these releases is proper. (See Hesse v. Sprint Corp., 598 F.3d 581,
7 590 (9th Cir. 2010) (“A settlement agreement may preclude a party from bringing a
8 related claim in the future ‘even though the claim was not presented and might have been
9 presentable in the class action,’ but only where the released claim is ‘based on the
10 identical factual predicate as that underlying the claims settled in the class action.’”) (quoting Williams v. Boeing Co., 517 F.3d 1120, 1133 (9th Cir. 2008)).) Of course, if a
11 Class Member excludes themselves from the Settlement (i.e. opts-out) pursuant to the
12 procedures outlined in the Class Notice, then he or she will not release any claims that he
13 or she may have against MCI. (See Harris Decl. ¶ 19.)

14
15 **I. The Proposed Settlements Warrant Preliminary Approval as Fair,**
16 **Reasonable and Adequate**

17 Rule 23 states that “[t]he claims . . . of a certified class may be settled . . . only
18 with the Court’s approval.” (Fed. R. Civ. Proc. 23(e).) In evaluating a proposed
19 settlement, courts consider “(1) the strength of the Plaintiffs’ case; (2) the risk, expense,
20 complexity, and likely duration of further litigation; (3) the risk of maintaining class
21 action status throughout the trial; (4) the amount offered in settlement; (5) the extent of
22 discovery completed and the stage of the proceeding; (6) the experience and views of
23 counsel; . . . and [7] the reaction of class members to the proposed settlement.”⁹ (Bolton
24 v. U.S. Nursing Corp., 2013 U.S. Dist. LEXIS 79928, at *12 (N.D. Cal. filed June 6,
25 2013) (citing Hanlon v. Chrysler Corp., 150 F.3d 1011, 1026 (9th Cir. 1998)).) Also
26

27
28 ⁹ Because the last factor cannot be gauged until Class Members have had an opportunity to respond to the Class Notice, it is neutral at the preliminary-approval stage.

relevant is whether “the settlement agreement was reached in arm’s length negotiations,” which “create[s] a presumption that the agreement is fair.” (In re MRV Commc’ns, Inc. Derivative Litig., 2013 U.S. Dist. LEXIS 86295, at *9 (C.D. Cal. filed June 6, 2013) (quoting Linney v. Cellular Alaska P’ship, 1997 U.S. Dist. LEXIS 24300, at *5 (N.D. Cal. filed July 18, 1997)).) Here, each factor weighs in favor of approval.

1. *The Settlement Negotiations Were Conducted at Arm’s Length*

As noted above, on July 15, 2016, the Parties engaged in full-day settlement conference before Mark Rudy, Esq., during which they each aggressively advocated for their respective positions. The Parties’ settlement discussions did not end at the conference, but indeed continued over several months with the aid of Mr. Rudy before the instant Agreement was made. As such, there can be no doubt that the Class Settlement is the result of exhaustive arm’s length discussions.

2. *The Strength of Plaintiff’s Case*

Defendants contend that a number of defenses asserted by the Defendants present serious threats to the claims of Plaintiff and the other Class Members. These include risks to maintenance of class certification, risk of loss on the merits at trial; and risk of appeal. Additionally, the TWC Defendants have filed a motion for summary judgment contending that the TWC Defendants cannot be vicariously liable for MCI’s purported misconduct as a matter of law. Further, even if Plaintiff is successful on the wage-statement and PAGA claims, recent authority holds that statutory damages and civil penalties predicated on the same underlying alleged wrong cannot be “stacked” on top of one another. Smith v. Lux Retail N. Am., Inc., No. C 13-01579 WHA, 2013 WL 2932243, at *4 (N.D. Cal. June 13, 2013) (refusing to “pile one penalty on another for a single substantive wrong” and arguing that “no actual holding in any judicial decision has ever blessed such stacking.”). Accordingly, at the conclusion of a successful trial, Plaintiff may be limited in their recovery to statutory damages and civil penalties for derivative wage-statement violations. Here, of great significance, Defendant MCI’s potential insolvency could also result in no recovery after judgment. (Harris Decl., ¶12)

1 In all, the significant risks of further litigation of this matter – just some of which
2 are addressed above – evidence that the proposed settlement is fair for the putative class.

3 **3. The Likely Duration of Further Litigation**

4 “[U]nless the settlement is clearly inadequate, its acceptance and approval are
5 preferable to lengthy and expensive litigation with uncertain results.” (Nat’l Rural
6 Telcomms. Coop. v. DIRECTV, Inc., 221 F.R.D. 523, 526 (C.D. Cal. 2004) (internal
7 quotations omitted).) Further, Defendant MCI’s potential financial insolvency could
8 result in no recovery for Plaintiff after judgment.

9 **4. The Risk of Maintaining Class-Wide Status Through Trial**

10 Under Rule 23, a “[c]ourt may revisit a prior order granting certification of a class
11 at any time.” (Nigh v. Humphreys Pharmacal, Inc., 2013 U.S. Dist. LEXIS 161215, at
12 *18 (S.D. Cal. filed Oct. 23, 2013).) Here, MCI and/or the TWC Defendants would
13 almost certainly file a motion to decertify the class. As such, this factor too supports
14 preliminary approval. (Nigh, 2013 U.S. Dist. LEXIS 161215 at *19 (explaining that “the
15 parties reached a settlement prior to . . . class certification”; that the defendants “have
16 made it clear that absent settlement, they would ‘vigorously contest class certification’”;
17 and that “this factor [thus] weighs in favor of settlement”).)

18 **5. The Settlement Amount Offered is Fair**

19 As detailed above, the \$1,800,000 common fund will accomplish the payment of
20 over \$1,077,000 to the Class Members. This represents a more than equitable resolution
21 of this case. (Rodriguez v. West Publ’g Corp., 2007 U.S. Dist. LEXIS 74767, at *30
22 (C.D. Cal. filed Sept. 10, 2007) (noting that a settlement representing a fraction of the
23 maximum possible recovery may be “well within a reasonable range”) (quoting In re
24 Warfarin Sodium Antitrust Litig., 212 F.R.D. 231, 257–58 (D. Del. 2002)), *rev’d in part*
25 *on other grounds*, 563 F.3d 948 (9th Cir. 2009).) Consequently, this factor weighs in
26 favor of approval as well.

27 **6. The Extent of Discovery and the Stage of the Proceedings**

28 Prior to mediation, MCI responded to extensive formal and informal discovery

1 requests in this case. In addition, the Parties have engaged in significant law-and-motion
2 practice directed to the merits of Plaintiff's claims. The extensive analysis of Plaintiff's
3 claims in connection with these matters, coupled with the additional data provided to
4 Plaintiff in connection with informal investigation, class certification proceedings and
5 mediation, allowed them "to make an informed decision about settlement." (Williams,
6 2013 U.S. Dist. LEXIS 121307, at *14.) This "weigh[s] heavily in favor of granting . . .
7 approval." (Id., at *15.)

8 **7. *The Experience and Views of Counsel***

9 Class Counsel have substantial experience in prosecuting class actions, including
10 bankruptcy and wage-and-hour matters, and they are of the opinion that the Settlement
11 Agreement represents a good compromise for the Class, given the inherent risks, hazards,
12 and expenses of carrying the Action through trial. (Harris Decl. ¶¶ 20-21.) As the
13 Central District has explained, this weighs strongly in favor of approving the settlement.
14 (See Rodriguez, 2007 U.S. Dist. LEXIS 74767, at *31 ("[T]he trial court is entitled to,
15 and should, rely upon the judgment of experienced counsel for the parties.").)

16 **V. CONCLUSION.**

17 As explained in detail above, this Settlement Class meets the Rule 23 requirements
18 for class certification for purposes of settlement; the proposed settlement fairly resolves
19 the putative Settlement Class Members' claims; and the proposed notice program
20 constitutes the best notice practicable under the circumstances.

21 Consequently, Plaintiff respectfully requests that this Court issue an order in the
22 form lodged herewith: (1) preliminarily approving the proposed class-wide Settlements of
23 this class action; (2) certifying the Settlement Classes; (3) appointing CPT Group, Inc. as
24 the Class Administrator; (4) approving the form and method for providing class-wide
25 notice; (5) appointing Alan Harris and David Garrett, Harris and Ruble; and Daniel
26 Forouzan and Forouzan Law as settlement class counsel, and Salvador Ruacho as
27 settlement class representative; and (6) setting a hearing to determine whether final
28 approval of the settlement should be granted, the settlement class should be certified,

1 class counsel should be appointed, and consider Plaintiffs' application for attorneys' fees
2 and expenses.

3 Respectfully submitted,

4 Dated: January 18, 2018

HARRIS & RUBLE
FOROUZAN LAW

6 /s/ Alan Harris

7 Alan Harris
8 David Garrett
9 Daniel Forouzan
10 Donald Pepperman
11 *Attorneys for Plaintiffs*