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SUPERIOR COURT OF CALIFORNIA

COUNTY OF SANTA BARBARA-COOK DIVISION

JOHN HILL, an individual; MARK GRAY, an
individual, on behalf of themselves and all others
similarly situated,

Plaintiffs,

v.

PACIFIC PETROLEUM CALIFORNIA, INC.,
and DOES 1-100, inclusive,

Defendants.

CASE NO. 15CV03056

[Complaint filed September 16, 2015]
[Assigned to Hon. James F. Rigali, Dept. SM-
2]

CLASS ACTION

**PLAINTIFFS' MEMORANDUM OF
POINTS AND AUTHORITIES IN
SUPPORT MOTION FOR PRELIMINARY
APPROVAL OF CLASS ACTION
SETTLEMENT**

*(Filed Concurrently with Notice of Motion
and Motion; Declarations of Marcus J.
Bradley, Christine Adams, David Pourati,
John Hill and Mark Gray)*

DATE: April 4, 2017
TIME: 8:30 a.m.
DEPT: SM 2

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TABLE OF CONTENTS

I. INTRODUCTION AND SUMMARY OF ARGUMENT	1
II. SUMMARY OF THE LITIGATION	2
A. Procedural History & Summary of Claims	2
B. Discovery and Investigation	3
C. Settlement Discussions	3
III. SUMMARY OF THE SETTLEMENT	4
A. Settlement Class	4
B. Settlement Amount	4
1. Gross Settlement Sum	4
2. Class Member Payout Fund.	4
3. Individual Settlement Amount.	5
4. Attorney's Fees & Costs.	5
5. Enhancement Awards	5
6. Claims Administration Costs	5
7. Payments to the California Labor and Workforce Development Agency ("LWDA")	5
C. Calculation of Participating Class Member's Awards	6
D. Release by Class Members	6
E. Notice Procedure	7
F. The Claims, Opt-Out and Objection Process	8
1. Workweek Disputes	8
2. Objections to the Settlement	8
3. Opting-Out	9

1	IV. PRELIMINARY SETTLEMENT APPROVAL	9
2	A. The Joint Stipulation Resulted from Arm's-length	
3	Negotiations	11
4	B. The Strength of Plaintiffs Case and Complexities of	
5	Further Litigation	12
6	C. The Settlement Has No Obvious Deficiencies	13
7	V. CLASS CERTIFICATION IS APPROPRIATE	14
8	A. Standard for Pre-Certification Settlements	15
9	B. The Requirements For Class Certification In The	
10	Settlement Context Are Satisfied	16
11	1. Ascertainability and Numerosity.	16
12	2. Predominance of Common Questions of Law and Fact.	16
13	3. Typicality.	18
14	4. Adequacy	18
15	VI. THE CLASS REPRESENTATIVES' PAYMENTS, CLASS COUNSEL FEES PAYMENT,	
16	AND CLASS COUNSEL LITIGATION EXPENSES PAYMENT	18
17	VII. CLAIMS ADMINISTRATION	21
18	VIII. CONCLUSION	22
19		
20		
21		
22		
23		
24		
25		
26		
27		
28		

TABLE OF AUTHORITIES

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Bartold v. Glendale Fed. Bank

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175 Cal. App. 4th 785 (2009) 10

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(2007) 42 Cal.4th 443 14, 15

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(2001) 24 Cal. 4th 1122 20

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168 Cal. App. 4th 116 (2008) 10

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186 Cal. App. 4th 576 (2010) 10

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27 Cal. App. 4th 1085 (1994) 10

1	<i>Reyes v. Bd. of Supervisors</i>	
2	(1987) 196 Cal.App.3d 1263	16
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9		
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11	<i>Amchem Prods., Inc. v. Windsor</i>	
12	(1987) 521 U.S. 591	15
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4	(6th Cir.1983) 720 F.2d 909	11
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6	California <i>Business and Professional Code</i> §17200, et seq	17
7	California <i>Rules of Court</i> , Rule 3.769	2
8	California <i>Rules of Court</i> , Rule 3.769	
9	California <i>Rules of Court</i> , Rule 3.769(e)	21
10	California <i>Labor Code</i> §§201	17
11	California <i>Labor Code</i> §§203	17
12	California <i>Labor Code</i> §226	17
13	<u>FEDERAL STATUTES AND RULES</u>	
14	Federal Rules of Civil Procedure, Rule 23(e)	9
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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION AND SUMMARY OF ARGUMENT**

3 By this joint motion, Plaintiffs John Hill and Mark Gray (collectively "Plaintiffs") seek an
4 Order of this Court granting preliminary approval of the settlement reached in this matter by and
5 between the Class Representatives, on their own behalf, and on behalf of the Class Members, and
6 Defendant Pacific Petroleum California, Inc. ("Pacific Petroleum" or "Defendant") (jointly hereafter
7 "Parties").

8 The terms of the non-reversion settlement are set forth in the Stipulation for Class Action
9 Settlement ("Settlement Agreement"), attached as **Exhibit 1** to the Declaration of Marcus J. Bradley
10 ("Bradley Decl."), filed in support of this Motion. The proposed Settlement Class, the definition of
11 which is set forth more particularly below, is generally defined as: "All employees who were or are
12 employed by Defendant Pacific Petroleum California, Inc. as non-exempt employees from September
13 16, 2011 through and including the date that a Court Order preliminary approving this Settlement is
14 entered."

15 Pursuant to the Settlement, Plaintiffs request that the Court enter an Order:

16 1. Preliminarily approving the Settlement. The terms of the Parties' agreement are set
17 forth in a Stipulation for Class Action Settlement, which is attached as **Exhibit 1** to the Bradley Decl.

18 2. Attached to the Bradley Decl. is: **Exhibit "2"** the Notice of Proposed Class Action
19 Settlement; **Exhibit "3"** the Claim Form; and **Exhibit "4"** the Request for Exclusion of Class Action
20 Settlement.

21 3. Appointing CPT Group, Inc., as the Settlement Administrator.

22 4. Scheduling a final approval hearing for a date 120 days after Preliminary Approval is
23 granted, or such later date as is available for the Court.

24 Under the Settlement, Plaintiffs and the Class Members will share in a \$250,000 non-reversion
25 Maximum Settlement Fund including:

26 (1) The Net Settlement Fund which means the Maximum Settlement Amount, minus
27 Attorneys' Fees, Litigation Costs, Class Representative Payments, Claims Administration Fees, and
28 PAGA Payment;

- 1 (2) Attorneys' fees of 33 1/3% of the Maximum Settlement Amount ("Attorneys' Fees");
- 2 (3) Litigation costs not to exceed \$10,000.00 ("Litigation Costs");
- 3 (4) Class representative enhancement payments to Named Plaintiffs, John Hill and Mark
- 4 Gray of \$7,500 for a total of \$15,000 ("Class Representative Payments");
- 5 (5) All settlement administration fees and costs, including those of the Claims
- 6 Administrator ("Claims Administration Fees") not to exceed \$12,500.00; and
- 7 (6) Payment for any and all penalties under the California Private Attorneys General Act
- 8 of 2004 ("PAGA") in the amount of \$5,000 ("PAGA Payment"), of which (25%) \$1,250 of the PAGA
- 9 Payment is to Class Members and (75%) \$3,750 is to the California Labor Workforce Development
- 10 Agency ("LWDA").

11 By this motion, the Plaintiffs request that the Court take the first step in the approval process -

12 preliminary approval of the settlement. The process for approving settlement, as set forth in Cal. Rules

13 of Court, Rule 3.769, is as follows:

14 (c) Any party to a settlement agreement may serve and file a written notice of motion

15 for preliminary approval of the settlement. The settlement agreement and proposed

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

17 lodged with the motion.

18 (d) The court may make an order approving or denying certification of a provisional

19 settlement class after the preliminary settlement hearing.

20 In determining whether preliminary approval is warranted, the issue before the Court is whether

21 the settlement is within the range of what might be found to be fair, reasonable, and adequate, so that

22 notice of the settlement should be given to class members, and a hearing scheduled to consider final

23 settlement approval. The Court is not required at this point to make a final determination as to the

24 fairness of the settlement.

25 **II. SUMMARY OF THE LITIGATION**

26 **A. Procedural History & Summary of Claims**

27 On September 16, 2015, Plaintiffs, on behalf of themselves and all others similarly situated,

28 filed a civil complaint against Pacific Petroleum in the Superior Court for the State of California,

County of Santa Barbara-Cook Division, entitled *John Hill v. Pacific Petroleum California, Inc.*, Case No. 15CV03056. Subsequently, on April 20, 2016, Plaintiffs filed a First Amended Complaint alleging the following causes of action: (1) Failure to Pay Wages at Agreed Rate, (2) Failure to Pay Overtime Compensation, (3) Failure to Allow and Pay for Meal and Rest Periods, (4) Failure to Provide Proper Wage Statements, (5) Failure to Pay Compensation at the Time of Termination, (6) Failure to Reimburse Expenses, (7) Violation of California Business and Professions Code §17200, and (8) Unfair Business Practices. Class Representatives also seek recovery of penalties under the Private Attorneys General Act (“PAGA”).

B. Discovery and Investigation

In an effort to obtain the necessary information to evaluate whether it would be possible to resolve this action on behalf of the putative class, without further protracted litigation, the Parties conducted extensive discovery. Indeed, the Parties each took their obligations in discovery extremely seriously and worked diligently to provide one another with sufficient information and documentation so as to be adequately informed prior to mediation. During the course of litigation, the parties engaged in substantial written discovery and additional investigations, including but not limited to multiple sets of written discovery, production of approximately 8,000 documents plus access to electronic data and three days of depositions of named Plaintiffs. Plaintiffs’ counsel expended significant time and resources reviewing such documents which included documents relating to Defendant’s compensation policies and procedures, time data, employee handbooks, and other corporate policies and procedures relevant to the issues. Plaintiffs retained an expert who culled through and analyzed such data which permitted Plaintiffs to fully evaluate the claims in the litigation.

C. Settlement Discussions

After the above comprehensive discovery had been completed, the Parties engaged in lengthy settlement discussions in an attempt to resolve the case informally before any additional protracted litigation. Specifically, the Settling Parties engaged in an intensive discussion regarding their evaluation of the matter and the relevant legal arguments, including a discussion of potential damages. Accordingly, the Settling Parties agreed to resolve this matter on October 24, 2016 and enter into this Joint Stipulation and Agreement to Settle the Class Action.

1 **III. SUMMARY OF THE SETTLEMENT**

2 Recognizing the critical opportunity to resolve the matter for the benefit of both the putative
3 class and the Defendant, the settlement negotiations which ensued were non-collusive, adversarial,
4 and at arm's length, as required for appropriate class action settlements. The Plaintiffs, the class and
5 its counsel, on the one hand, and the Defendant and its counsel, on the other hand, agree that the
6 settlement is fair and equitable to both sides.

7 As noted above, the terms of the settlement are set forth in the Joint Stipulation of Settlement,
8 which is filed herewith and incorporated herein by reference, and include the following principal
9 terms:

10 **A. Settlement Class**

11 Is defined to mean "All employees who were or are employed by Defendant Pacific Petroleum
12 California, Inc. as non-exempt employees from September 16, 2011 through and including the date
13 that a Court Order preliminary approving this Settlement is entered."

14 **B. Settlement Amount**

15 ***1. Gross Settlement Sum***

16 Plaintiffs and the Class Members will share in a \$250,000 non-reversion Maximum Settlement
17 Fund. Defendant's share of payroll taxes (e.g. UI, ETT, Social Security and Medicare taxes) is not
18 included in the \$250,000 sum and must be paid by Defendant in addition to the Gross Settlement Sum.

19 ***2. Class Member Payout Fund.***

20 The Class Member Payout Fund which means the gross amount that Defendant will pay (subject
21 to the occurrence of the Effective Date) to all Participating Class Members is calculated by subtracting
22 all of the following from the Gross Settlement Sum: Attorneys' Fees, Litigation Costs, Class
23 Representative Payments, Reserve Fund, Claims Administration Fees, Payroll Taxes, and PAGA
24 Payment and is currently estimated to be approximately \$125,416.67¹.

25
26
27 ¹ Settling Parties acknowledge that this figure may change depending on the actual amount of claims administration fees,
28 award of attorneys' fees, litigation costs and enhancement award.

1 Individual Settlement Amount.

2 “Individual Settlement Amount” shall mean the total gross amount due to an individual
3 Participating Class Member, inclusive of pre- and post-judgment interest, penalties, and wages
4 (allocated 70% to interest and penalties and 30% to wages), which shall be calculated by multiplying
5 the Class Member Payout Fund by a fraction, the numerator of which is the total number of
6 Workweeks the Participating Class Member worked during the Class Period and the denominator of
7 which is the total number of Workweeks in the Class Period worked by all Participating Class
8 Members.

9 ***3. Attorney’s Fees & Costs.***

10 Defendant will not object to Class Counsel's application for an award of attorneys' fees in the
11 amount of thirty-three and one-third percent (33-1/3%) of the maximum settlement amount (or
12 \$83,333.33) subject to the Court's approval. Class Counsel and Defendant agree that such an award
13 of attorneys' fees is reasonable under the circumstances.

14 The Parties also agree that Class Counsel’s reasonable litigation expenses and costs shall be
15 reimbursed. These costs will be detailed in the final fairness hearing motions but shall not exceed
16 \$10,000.00.

17 Class Counsel's attorneys' fees and litigation expenses and costs awarded by the Court shall be
18 paid out of the Settlement Amount.

19 ***4. Enhancement Awards***

20 Defendant will not object to Plaintiffs’ application for an Enhancement Award in the amount
21 of \$15,000 to be split equally out of the Settlement Amount to Plaintiffs.

22 ***5. Claims Administration Costs***

23 The Parties have agreed to hire CPT Group Inc., to administer this settlement, and the total
24 Settlement Administrator's fees and expenses are estimated not to exceed \$12,500.00 and are to be
25 paid out of the Settlement Amount.

26 ***6. Payments to the California Labor and Workforce Development Agency (“LWDA”)***

27 The maximum total gross amount Defendant will pay (subject to the occurrence of the Effective
28 Date) to the LWDA for settlement of claims under California *Labor Code* § 2698, et seq. which shall

1 be \$3,750, representing seventy-five percent (75%) of the \$5,000 Private Attorney General Act civil
2 penalties.

3 **C. Calculation of Participating Class Member's Awards**

4 The Claims Administrator shall compute the Individual Settlement Amount for the Participating
5 Class Members by multiplying the Class Member Payout Fund by a fraction, the numerator of which
6 is the total number of Workweeks the Participating Class Member worked during the Class Period
7 and the denominator of which is the total number of Workweeks in the Class Period worked by all
8 Participating Class Members.

9 **D. Release by Class Members**

10 In exchange for such award, Participating Class Members (and those who do not timely opt-
11 out) shall provide a narrowly tailored release claims as follows:

12 "Released Claims" means claims or causes of action that are raised in the Complaint, the First
13 Amended Complaint, or that could have been raised in any of the complaints based on the facts alleged
14 in this action, including but not limited to : (1) failure to pay wages; (2) failure to pay overtime
15 compensation; (3) failure to allow and pay for meal and rest periods; (4) failure to provide proper
16 wage statements; (5) failure to pay compensation at termination; (6) failure to reimburse expenses; (7)
17 incorporated or related claims asserted through California Business and Professions Code 17200; (8)
18 incorporated or related claims asserted through PAGA; and any and all other claims for lost wages
19 and/or wage and hour violations or penalties related to lost wages and/or wage and hour violations; as
20 well as interest, actual damages, liquidated damages, punitive damages, costs, attorneys' fees,
21 injunctive relief, or accounting (including penalties based upon the Industrial Welfare Commission
22 Wage Orders and/or under California Labor Code); The Settlement Class Members acknowledge that
23 all rights under California Civil Code section 1542 are hereby waived by them with respect to the
24 Released Claims that they may have against the Released Parties. Section 1542 provides:

25
26 **A general release does not extend to claims which the creditor does not know**
27 **or suspect to exist in his or her favor at the time of executing the release, which**
28

1 **if known by him or her must have materially affected his or her settlement**
2 **with the debtor.**

3 The release does not extend to any claims not alleged in the operative Complaint and
4 specifically excludes claims for workers' compensation, personal injuries, unemployment insurance,
5 state disability compensation, claims under the Employment Retirement Income Security Act of 1974,
6 previously vested benefits under any Employer-sponsored benefits plan, wrongful termination,
7 discrimination, retaliation, and harassment including but not limited to those arising under the Age
8 Discrimination In Employment Act, the California Fair Employment and Housing Act, Title VII of
9 the Federal Civil Rights Act of 1964, and/or Federal Civil Rights Act of 1991, or any similar state or
10 federal laws, the California Family Rights Act, the Federal Family Medical Leave Act, the California
11 Pregnancy Leave Law, or similar state or federal laws, the Federal Equal Pay Act of 1963, violations
12 of the Americans with Disabilities Act of 1990 or violations of any other state or federal law, rule or
13 regulation concerning discrimination, retaliation and/or harassment.²

14 **E. Notice Procedure**

15 As noted above, the Parties have selected CPT Group, Inc. to serve as the Claims Administrator.

16 The Parties have agreed on the forms of notice to be mailed to the Class and which are the
17 Notice of Proposed Class Action Settlement ("Class Notice," attached as Exhibit 2 to the Joint
18 Stipulation), the Verification Form (attached as Exhibit 3 to the Joint Stipulation), the Opt-Out Form
19 (attached as Exhibit 4 to the Joint Stipulation) - and are collectively referred to as the "Notice Packet."

20 Within fifteen (15) days of approval by this Court, Defendant shall prepare a list, in an
21 electronically usable format, for the Claims Administrator containing for each Class Member, to the
22 extent Defendant has such information, the following: the first, last and middle name; last known
23 address; social security number; and dates of employment as a non-exempt employee (whether the
24 Class Member is an active or former employee). Based thereon, the Claims Administrator will
25 facilitate the mailing of the Class Notice to all Class Members, no later than thirty (30) calendar days
26

27 ² In consideration for the service award and as an inducement for Defendant to enter into this Stipulation, Plaintiffs'
28 Released Claims (and only the Class Representatives) additionally include a California *Civil Code* § 1542 waiver (with limited exceptions).

1 after the Preliminary Approval Date. The Class Notices shall be mailed via first class mail through the
2 United States Postal Service, postage pre-paid. Each Class Notice shall include, as an attached form,
3 a pre-printed Claim Form and Exclusion Form in English.

4 **The Claims, Opt-Out and Objection Process**

5 Class Members need not submit any paperwork to receive monies pursuant to this settlement.
6 All members of the class shall be considered “participating Class Members” unless they affirmatively
7 opt-out of the settlement.
8

9 ***1. Workweek Disputes***

10 If a Class Member disagrees with the dates worked as an employee set forth on his or her
11 Verification Form, he or she must submit documentation with the Verification Form that supports his
12 or her belief that he or she worked different dates during the Class Period as a non-exempt employee
13 in the section provided on the Verification Form. The Claims Administrator will review the
14 documentation and make a determination based upon the submitted documentation as to the validity
15 of the Class Member’s claim. If the Claims Administrator needs further information from Defendant
16 concerning the Class Member’s claim, the Claims Administrator will notify Defendant and Class
17 Counsel and request the needed information. Defendant’s records will be presumed determinative if
18 there is a dispute over the dates of employment that the Class Member worked in the Class Period as
19 a non-exempt employee, unless the Class Member has submitted valid and compelling documentation
20 to support his or her claim to different work dates than the number shown on the Verification Form.
21 The Claims Administrator shall resolve all disputes by applying the above standard, and the decision
22 of the Claims Administrator on any disputed claims shall be final.

23 ***2. Objections to the Settlement***

24 Class Members who do not opt-out may object to the settlement by serving written objections
25 on the Claims Administrator no later than the Objection Deadline. The Claims Administrator will
26 email/fax or mail the written objections forthwith to Class Counsel and counsel for Defendant. Class
27 Counsel will lodge and/or file the objection with the Court.
28

1 The written objection must be signed by the Class Member and dated, and additionally state the
2 Class Member's name, dates of employment as a non-exempt employee of Defendant, the case name
3 and number (*John Hill, et. al v. Pacific Petroleum*, Santa Barbara County Superior Court, Case No.
4 15CV03056), and all legal and factual bases for the objection. If any objecting Class Member wishes
5 to speak at the Settlement Hearing, that Class Member's written objection should include a request to
6 speak at the Settlement Hearing. The Settling Parties will request that the Court determine whether
7 Class Members who submit timely objections will be permitted to speak. The Class Notice will advise
8 Class Members of this option.

9 **3.Opting-Out**

10 Class Members may elect to opt out of the settlement and, thus, exclude themselves from the
11 entire Litigation and the Settlement Class they are a member of. Class Members who wish to exercise
12 this option must send to the Claims Administrator a signed and completed Exclusion Form, which
13 must be postmarked on or before the Exclusion Response Deadline.

14 If a proper Exclusion Form is not received by the Claims Administrator from a Class Member
15 on or before the Exclusion Deadline, then that Class Member will be deemed to have forever waived
16 his or her right to opt out of the Settlement Class.

17 **IV. PRELIMINARY SETTLEMENT APPROVAL**

18 As a matter of public policy, settlement is a strongly favored method for resolving disputes.
19 See *Util. Reform Project v. Bonneville Power Admin.* (9th Cir. 1989) 869 F.2d 437, 443. This is
20 especially true in complex class actions such as the one before the Court. See *Officers for Justice v.*
21 *Civil Serv. Comm'n* (9th Cir. 1982) 688 F.2d 615, 625; *Wilkerson v. Martin Marietta Corp.* (D. Colo.,
22 1997) 171 F.R.D. 273, 284.

23 Any class settlement must be reviewed and approved by the Court. *California Rules of Court*,
24 *Rule 3.769*; *Federal Rules of Civil Procedure*, Rule 23(e). This is done in two steps: (1) early
25 (preliminary) review by the court and (2) final review after notice has been distributed to the class
26 members for their comments or objections. The Manual for Complex Litigation (Third) succinctly
27 describes the scope of the preliminary approval inquiry as follows:
28

1 Approval of class action settlements involves a two-step process. First, counsel submits
2 the proposed terms of settlement and the court makes a preliminary fairness evaluation.
3 If the preliminary evaluation of the proposed settlement does not disclose grounds to
4 doubt its fairness or other obvious deficiencies, such as unduly preferential treatment
5 of class representatives or of segments of the class, or excessive compensation for
6 attorneys, and appears to fall within the range of possible approval, the court should
7 direct that notice...be given to the class members of a formal fairness hearing, at which
8 arguments and evidence may be presented in support of and in opposition to the
9 settlement.

10 (Manual for Complex Litigation (Third), § 30.41.)

11 Thus, preliminary approval by the trial court is simply a conditional finding that the settlement
12 appears to be within the range of acceptable settlements. As Professor Newberg comments, “[t]he
13 strength of the findings made by a judge at a preliminary hearing or conference concerning a tentative
14 settlement proposal may vary. The court may find that the settlement proposal contains some merit, is
15 within the range of reasonableness required for a settlement offer, or is presumptively valid subject
16 only to any objections that may be raised at a final hearing.” (4 Alba Conte & Herbert B. Newberg,
17 Newberg on Class Actions, § 11.26 (4th Ed. 2002).)

18 For preliminary approval, the Court need find only that the settlement falls within the range of
19 possible final approval, also described as the “reasonable range.” See e.g. *North County Contractor's*
20 *Assn. v. Touchstone Ins. Services.*, 27 Cal. App. 4th 1085, 1089-90 (1994). Trial courts have broad
21 discretion to determine whether a class action settlement is fair. *Kullar v. Foot Locker Retail, Inc.*,
22 168 Cal. App. 4th 116, 128 (2008). The trial court must exercise its discretion through the application
23 of several well-recognized factors when deciding whether a class action settlement is fair. *Clark v.*
24 *American Residential Services, LLC*, 175 Cal. App. 4th 785, 799 (2009). The list of factors, which “is
25 not exhaustive and should be tailored to each case,” includes “the strength of plaintiffs' case, the risk,
26 expense, complexity and likely duration of further litigation, the risk of maintaining class action status
27 through trial, the amount offered in settlement, the extent of discovery completed and the stage of the
28 proceedings, the experience and views of counsel, the presence of a governmental participant, and the
reaction of the class members to the proposed settlement.” *Nordstrom Com. Cases*, 186 Cal. App. 4th
576, 581 (2010); *Kullar*, 168 Cal. App. 4th at 128, quoting *Dunk v. Ford Motor Co.*, 48 Cal. App. 4th
1794, 1801 (1996). The most important factor the trial court should consider in determining whether

1 to approve a class action settlement is the strength of the case for plaintiff on the merits, balanced
2 against the amount offered in settlement. *Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles*, 186
3 Cal. App. 4th 399, 408 (2010); *Kullar*, 168 Cal. App. 4th 116 at 130. In sum, at the preliminary
4 approval stage, the trial court must determine that the settlement was not the product of fraud,
5 overreaching or collusion, and that the settlement is fair, reasonable and adequate. *Nordstrom*, 186
6 Cal. App. 4th. at 581. In order to elicit the class members' "reaction ... to the proposed settlement,"
7 they must first receive notice of the proposed resolution. The preliminary approval process allows
8 that to happen.

9 **A. The Joint Stipulation Resulted from Arm's-length Negotiations**

10 There is an initial presumption that a proposed settlement is fair and reasonable when it is the
11 result of arm's-length negotiations. See *Williams v. Vukovich* (6th Cir.1983) 720 F.2d 909, 922-923
12 ("The court should defer to the judgment of experienced counsel who has competently evaluated the
13 strength of his proofs"); *In re Excess Value Ins. Coverage Litig.*, No. M-21-84 (RMB) 2004 U.S. Dist.
14 LEXIS 14822, at *34 (S.D.N.Y. July 30, 2004) ("Where 'the Court finds that the settlement is the
15 product of arm's length negotiations conducted by experienced counsel knowledgeable in complex
16 class litigation, the Settlement will enjoy a presumption of fairness'"); *In re Inter-Op Hip Prosthesis*
17 *Liab. Litig.* (N.D. Ohio 2001) 204 F.R.D. 359, 380 (granting preliminary settlement approval) ("when
18 a settlement is the result of extensive negotiations by experienced counsel, the Court should presume
19 it is fair"); see also 2 Herbert Newberg & Alba Conte, *Newberg on Class Actions* §11.41 at p. 90 (4th
20 Ed. 2002); *Manual For Complex Litig.* (4th Ed. 2004), §21.612.

21 The proposed settlement here is the product of hours of arm's-length negotiations, not only at
22 the Mediation, but over the course of several weeks. In addition, the parties reached the Settlement
23 only after an extensive exchange of information. Specifically:

- 24 • Plaintiffs' counsel obtained a significant amount of information, including computerized
25 employment history data, documents relating to Defendant's compensation policies and
26 procedures, time punch data, employee handbooks, and other corporate policies and
27 procedures relevant to the issues underlying this case;
- 28 • The Parties engaged in substantial written discovery and additional investigations, separate

1 sets of written discovery, production of approximately 8,000 documents plus electronic data
2 and three days of depositions of named Plaintiffs;

- 3 • Extensive conferences between representatives of the parties;
- 4 • Conferences between Plaintiffs' counsel and an expert; and
- 5 • Plaintiffs' counsel calculated potential damages in consultation with an expert.

6 Counsel for the parties have investigated the applicable law, as applied to the facts discovered,
7 regarding the alleged claims of Plaintiffs and potential defenses thereto, and the damages claimed by
8 Plaintiffs. Armed with this extensive body of knowledge and analysis, the Parties engaged
9 negotiations until ultimately agreeing to the terms reflected in this Settlement Agreement. At all times,
10 the negotiations leading to the Settlement have been adversarial, non-collusive and at arm's length.
11 Issues that were considered include, but were not limited to, the following:

- 12 • Were the proposed class members denied proper meal and rest periods (e.g. late, short, etc.)?
- 13 • What was/is a reasonable estimate of the amount of meal period premium pay due to
- 14 members of the class?
- 15 • Would Plaintiff be able to obtain class certification in light of the anticipated defenses to be
- 16 raised by the Defendant?

17 **B. The Strength of Plaintiffs Case and Complexities of Further Litigation**

18 Plaintiffs believe that the Settlement Class claims in this action are legally meritorious, and
19 present a reasonable probability of a favorable determination on behalf of the class, as is amply borne
20 out by the very significant amount offered in settlement. At the same time, there is undeniably
21 significant litigation risk avoided by the proposed Settlement, both at class certification proceedings,
22 at trial, and in the appellate courts.

23 Plaintiffs contend that Defendant instituted a plan, pursuant to which Defendant (1) unlawfully
24 and willfully discouraged or deprived Plaintiffs and Class members of meal and rest breaks, and failed
25 to pay for breaks which were missed, short or late; (2) unlawfully and willfully failed to furnish
26 Plaintiffs and the Plaintiffs Class accurate itemized statements as required by the Labor Code upon
27 payment of wages, and (3) unlawfully and willfully failed to pay wages when due upon discharge or
28 resignation. Liability remains highly contested by Defendant which denies that it engaged in any

1 violations of the law in connection with its wage-and-hour practices, and further denies that it has any
2 liability or engaged in wrongdoing of any kind associated with the claims alleged in the Action by the
3 Named Plaintiffs or any Class Member. Defendant contends that it at all times complied with all
4 California wage-and-hour laws in connection with the employment and/or retention of services of
5 Named Plaintiffs and the Class Members.

6 Plaintiffs' counsel understood and appreciated the defenses and position of Defendant, but
7 believed Plaintiffs would ultimately succeed in the action. In light of the strongly divergent views,
8 the parties, with the assistance of the mediator, were able to negotiate a fair settlement, taking into
9 account the costs and risks of continued litigation. The negotiations were at all times conducted
10 professionally and at arm's length, and have produced a result that the Parties believe to be in their
11 respective best interests.

12 The Parties have also taken into account the uncertainty and risk of the outcome of further
13 litigation, and the difficulties and delays inherent in such litigation. Plaintiffs are also aware of the
14 burdens of proof necessary to establish liability for the claims asserted in the action, the defenses
15 thereto, the difficulties in establishing damages.

16 **C. The Settlement Has No Obvious Deficiencies**

17 This proposed settlement has no obvious deficiencies. The settlement provides no preferential
18 treatment for the Plaintiffs or other settlement class members. The Plaintiffs will receive distributions
19 from the settlement proceeds calculated in the same manner as the distributions to all other Class
20 Members, plus any incentive awards approved by the Court.

21 The proposed Settlement does not place the named Plaintiffs' interests ahead of the class as a
22 whole. Apart from a reasonable incentive payment for their efforts on behalf of the class, typical in
23 class action litigation (and subject to Court approval after notice to the Settlement Class), the named
24 Plaintiffs' personal recovery in this action and settlement will be the same as those with whom they
25 share a common set of facts amongst the Settlement Class. The named Plaintiffs have not in any way
26 tried to leverage a class action for some personal agenda or gain. (Bradley Decl., at ¶11; Hill Decl. at
27 ¶ 6; Gray Decl. at ¶6.)

1 The proposed Settlement also does not place the attorneys' interests ahead of class members'
2 interests. Settlement provisions relating to attorneys' fees and litigation expenses in the action were
3 not negotiated until after an agreement was reached in principal with respect to the direct class
4 settlement benefits and the gross settlement fund amount. (Bradley Decl., at ¶12.) Further, the
5 Settlement provides only for a maximum permissible amount of the request for and any award of
6 attorneys' fees and litigation expenses. Any award of fees and expenses remains to be determined by
7 the Court at the time of the fairness hearing, and must necessarily be found to be fair and reasonable
8 to the Settlement Class based on applicable law. Again, each Settlement Class member has the right
9 to object and be heard regarding the amount of fees and expenses requested. Any amounts not awarded
10 by the Court as fees and expenses will remain in the net settlement fund to be distributed to the class.
11 Counsel will file a separate motion for approval of the fee award sought herein, at the time of and in
12 conjunction with the filing of the motion for final approval, should preliminary approval be granted,
13 and a final approval hearing scheduled by the Court.

14 **V. CLASS CERTIFICATION IS APPROPRIATE**

15 As part of their negotiations, the Parties have stipulated to class certification for the purposes
16 of settlement. Should this court fail to approve the Parties' settlement, Defendant has reserved the
17 right to challenge class certification.

18 California has a very strong public policy favoring the use of class actions to resolve claims
19 asserting violations of wages under its strict labor laws. The Supreme Court decision in *Gentry v.*
20 *Superior Court* (2007) 42 Cal.4th 443 addressed the issue of a class arbitration waiver clause in an
21 employment agreement in relation to a Plaintiff seeking overtime compensation. The following quote
22 relates directly to a discussion of overtime claims, and is clearly applicable to the claims raised herein:

23 Given these risks and economic realities, class actions play an important function in
24 enforcing overtime laws by permitting employees who are subject to the same unlawful
25 payment practices a relatively inexpensive way to resolve their disputes. We have
26 acknowledged as much in a case involving overtime litigation similar to that at issue
27 in the present case. "By establishing a technique whereby the claims of many
28 individuals can be resolved at the same time, the class suit both eliminates the
possibility of repetitious litigation and provides small claimants with a method of
obtaining redress for claims which would otherwise be too small to warrant individual
litigation." *Sav-On Drug Stores, ...* 34 Cal.4th [319] at p. 340...

1 Gentry, supra, at 794. (Accord, *Bell vs. Farmers Ins. Exchange, supra.*)

2 **A. Standard for Pre-Certification Settlements**

3 “[P]re-certification settlements are routinely approved if found to be fair and reasonable.”
4 (*Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 244; accord *Dunk v. Ford Motor Co.*
5 (1996) 48 Cal.App.4th 1794, 1803 (although the settlement was reached before any “adversary
6 certification,” the court was satisfied that it was “fair, adequate and reasonable.”); see also *In re*
7 *Baldwin-United Corp.* (S.D.N.Y. 1984) 105 F.R.D. 475, 478 (“many courts have employed this
8 practice in the name of judicial efficiency in order to facilitate apparently beneficial settlement
9 proposals.”).)

10 “The strength of the findings made by a judge at a preliminary hearing or conference concerning
11 a tentative settlement proposal ... may be set out in conditional orders granting tentative approval to
12 the various items submitted to the court. Three basic rulings are often conditionally entered at this
13 preliminary hearing. These conditional rulings may approve a temporary Settlement Class, the
14 proposed settlement, and the class counsel's application for fees and expenses.” (4 Newberg on Class
15 Actions, at § 11.26.)

16 The standard for class certification in the settlement context is a significantly lower threshold
17 than in a contested proceeding or a trial context:

18 The two basic purposes for the Rule 23 certification requirements, as they relate to
19 questions of a nationwide class are: (1) to keep the lawsuit manageable for trial; and
20 (2) to protect the interests of the nonrepresentative members. The first purpose is
21 inapposite in the settlement context, and the second, as it relates to commonality of
22 issues, only makes a difference if the nonrepresentative class members would do much
23 better by litigating on their own or in their own jurisdiction. The second category
24 concerns are protected by the trial court's fairness review of the settlement.”

25 (*Dunk*, supra, 48 Cal.App.4th at p. 1807, fn. 19 (emphasis added).) The reason for this is that
26 no trial is anticipated in the settlement context, so any case management issues inherent in determining
27 if the class should be certified need not be confronted. (*Amchem Prods., Inc. v. Windsor* (1987) 521
28 U.S. 591, 620.)

29 The very liberal standard expressed in *Dunk* is plainly satisfied here. The requirements for class
30 certification in the settlement context - ascertainability, numerosity, predominance of common

1 questions of law and fact, typicality, and adequacy - are all met. It certainly cannot be said that the
2 class members would do “much better by litigating on their own”. (*Dunk, supra*, 48 Cal.App.4th at p.
3 1807, fn. 19.) The Settlement Class should be conditionally certified as requested.

4 **B. The Requirements For Class Certification In The Settlement Context Are**
5 **Satisfied**

6 ***1. Ascertainability and Numerosity.***

7 The proposed Settlement Class is ascertainable and sufficiently numerous. A “class is
8 ascertainable if it identifies a group of unnamed plaintiffs by describing a set of common
9 characteristics sufficient to allow a member of that group to identify himself or herself as having a
10 right to recover based on the description.” (*Bartold v. Glendale Fed. Bank* (2000) 81 Cal.App.4th 816,
11 828.) The class definition, the size of the class and the means for identifying the members of the class
12 determine whether the class is ascertainable. (*Reyes v. Bd. of Supervisors* (1987) 196 Cal.App.3d 1263,
13 1274.)

14 In this case, the members of the proposed Settlement Class are identifiable from Defendant’s
15 own records. The Settlement Class members are also sufficiently numerous to justify class
16 certification. Pacific Petroleum has preliminarily identified more than 506 employees comprising the
17 Settlement Class.

18 ***2. Predominance of Common Questions of Law and Fact.***

19 The interrelated commonality and predominance requirements are satisfied if common issues
20 predominate. At its heart, this is a procedural inquiry asking “whether... the issues which may be
21 jointly tried, when compared with those requiring separate adjudication, are so numerous or
22 substantial that the maintenance of a class action would be advantageous to the judicial process and
23 to the litigants.” (*Sav-On Drug Stores, Inc. v. Superior Court* (2004) 34 Cal.4th 319, 326 (citing
24 *Collins v. Rocha* (1972) 7 Cal.3d 232, 238).) Further, in the lower threshold of the settlement context,
25 “commonality of issues only makes a difference if the non-representative class members would do
26 much better by litigating on their own.” (*Dunk, supra*, 48 Cal.App.4th at p. 1807, fn. 19.)
27
28

1 The Settlement Class members' claims here all stem from a common set of circumstances and
2 occurrences. Indeed, among the questions of law and fact that are relevant to the adjudication of class
3 members' claims are as follows:

4 a. Whether Plaintiffs and members of the proposed class are subject to and entitled
5 to the benefits of California wage and hour statutes;

6 b. Whether Defendant had a standard policy and practice of requiring class
7 members to perform job duties "off-the-clock;"

8 c. Whether Defendant had a standard policy and practice of denying Plaintiffs and
9 members of the Plaintiff Class proper meal and rest breaks, and whether they were compensated for
10 such missed meal and rest breaks;

11 d. Whether Defendant maintained accurate records of the hours worked by
12 employees;

13 e. Whether Defendant had a standard policy and practice of failing to provide
14 Plaintiffs and members of the Plaintiff Class with true and accurate wage statements upon payment of
15 wages, in violation of California *Labor Code* §226;

16 f. Whether Defendant had a standard policy and practice of failing to promptly
17 pay compensation owing to Plaintiffs and members of the Terminated Sub-Class upon termination of
18 their employment, in violation of California *Labor Code* §§201-203;

19 g. Whether Plaintiffs and members of the Plaintiff Class sustained damages, and
20 if so, the proper measure of such damages, as well as interest, penalties, costs, attorneys' fees, and
21 equitable relief; and

22 h. Whether Defendant's conduct as alleged herein violates the California Unfair
23 Competition Law (Bus. & Prof. Code §17200, et seq.). The absence of any known competing
24 claims by the Settlement Class members (on an individual or class basis) and the complex common
25 questions implicated by the facts and law in this case, strongly suggest that Settlement Class members
26 could not do substantially better than this Settlement by litigating individually. (Bradley Decl., at ¶17;
27 see *Dunk*, supra, 48 Cal.App.4th at p. 1807, fn. 19.)
28

Commonality and predominance requirements for certification, particularly in the less intensive context of a Settlement Class, are therefore satisfied.

3. Typicality.

Typicality means merely that the class representative is similarly situated to the members of the class, not that his claims are identical. (*Classen v. Weller* (1983) 145 Cal.App.3d 27, 45-46.) It suffices if the class representative's claims arise from the same event or course of conduct that gives rise to the class claims, and are premised upon the same legal theories. (Id.)

In this case, Plaintiffs' claims are typical of the members of the Plaintiff Class. Plaintiffs, like other members of the Class working for Defendant in California, were subjected to Defendant's policies and/or practices. Plaintiffs' job duties were, and are, typical of those of other Class members. Apart from seeking a moderate incentive, common in class litigation, Plaintiffs seek to gain nothing personally from this litigation or settlement which is not made available to the Settlement Class members. Plaintiffs have at all times been willing and able to aggressively and competently assert the interests of the Settlement Class members, and, but for this Settlement, would continue to do so.

Adequacy

"Adequacy of representation depends on whether the plaintiff's attorney is qualified to conduct the proposed litigation and the plaintiff's interests are not antagonistic to the interests of the class." (*McGee v. Bank of Am.* (1976) 60 Cal.App.3d 442, 487.) Plaintiffs' counsel are experienced class action litigators, with particular experience in litigating similar wage and hour class cases. (Bradley Decl., ¶¶17,18.) The proposed class representatives, John Hill and Mark Gray, have at all times been willing and able to aggressively and competently assert the interests of the Settlement Class members. (Bradley Decl., at ¶11; Hill Decl. at ¶5; Gray Decl. at ¶5.) Adequacy of representation is exists here.

VI. THE CLASS REPRESENTATIVES' PAYMENTS, CLASS COUNSEL FEES PAYMENT, AND CLASS COUNSEL LITIGATION EXPENSES PAYMENT

As part of the Settlement, Plaintiffs will seek a combined class representative enhancement payment of \$15,000 in addition to their share of the NSF, and Class Counsel will seek fees in the amount of 33-1/3% of the Gross Settlement Fund and reimbursement of litigation costs not to exceed \$10,000.

1 Plaintiffs were formerly employed by Defendant. Plaintiffs have taken an extraordinary step to
2 challenge their former employer's actions by bringing this action. They did so in the belief that they,
3 and the members of the Class, were, in fact, entitled to the relief sought in this case. Until this case
4 was filed, no one was pursuing the claims raised in this matter. Plaintiffs' actions have resulted in a
5 substantial recovery for the members of the Class, and the enhancement award they seek is reasonable.

6 Plaintiffs fully participated in the analysis and planning of this action throughout the pendency
7 of the litigation. (Bradley Decl., at ¶15; Hill Decl. at ¶8; Gray Decl. at ¶8.) They also responded to
8 written discovery, were kept well informed of the nature and extent of settlement discussions, and
9 approved the same. *Id.*

10 The enhancements sought for Plaintiffs are entirely reasonable and represent 0.6 percent of the
11 Gross Settlement Fund. Absent the actions taken by Plaintiffs, none of the Class Members would have
12 reaped the rewards of this action.

13 As for the fees to be awarded to Class Counsel, Rule 3.769(b) of the California Rules of Court
14 provides, in pertinent part:

15 Any agreement, express or implied, that has been entered into with respect to the
16 payment of attorney's fees ... must be set forth in full in any application for of the ...
settlement of an action that has been certified as a class action.

17 The proposed Class Notice provides Class Members with information as to the amount of
18 attorneys' fees and litigation-expense reimbursement that will be sought in this matter. Although Class
19 Counsel will provide further argument at the time they file their motion for the award of fees and
20 expenses in connection with the final approval hearing, the following is a brief statement of the law
21 concerning the same:

22 As noted, *supra*, the Settlement provides for Class Counsel to apply to the Court for an award
23 of fees 33-1/3% of the Gross Settlement Fund, plus reimbursement of their litigation expenses. The
24 percentage award is commensurate with (1) the risk Class Counsel took in commencing this action,
25 (2) the time, effort and expense dedicated to the case, (3) the skill and determination they have shown,
26 (4) the results they have achieved throughout the litigation, (5) the value of the Settlement which they
27 have achieved for Class Members, and (6) the other cases they have turned down in order to devote
28 their time and efforts to this matter.

1 California encourages attorneys to take the risks of time and money necessary to vindicate the
2 public interest. To fulfill this policy, California law provides that attorneys' fees awards should be
3 equivalent to fees paid in the legal marketplace to compensate for the result achieved and risk incurred.
4 See *Lealao v. Beneficial Cal., Inc.* (2000) 82 Cal.App.4th 19. Accordingly, Class Counsel's request is
5 based on marketplace standards. In *Lealao*, the First Appellate District held that when an action leads
6 to a recovery that can be "monetized" with a reasonable degree of certainty, the trial court should
7 "ensure that the fee awarded is within the range of fees freely negotiated in the legal marketplace in
8 comparable litigation." *Id.* at 50.

9 The obvious risk, at the time this case was commenced, was that the theory of recovery raised
10 by Plaintiffs and their counsel would prove to be invalid, or that a class would be difficult to certify.
11 Given the protracted appellate review set forth in detail above, the course of this litigation has
12 evidenced the obvious risk.

13 The governing principles, as well as a survey of attorneys' fees jurisprudence (both in California
14 and throughout the country), are set out in *Lealao*. As *Lealao* notes, trial courts have "wide latitude"
15 in assessing the value of attorneys' fees and their decisions will "not be disturbed on appeal absent a
16 manifest abuse of discretion." 82 Cal. App. 4th at 41. Indeed, it is long settled that the "experienced
17 trial judge is the best judge of the value of professional services rendered in his court" *Ketchum v.*
18 *Moses* (2001) 24 Cal. 4th 1122, 1132. As the court in *Lealao* explained, in determining an attorney
19 fee request, courts should strive to award fees equivalent to those "freely negotiated in the legal
20 marketplace in comparable litigation." 82 Cal. App. 4th at 50. "If courts were to ask what fee structure
21 an informed, sophisticated client would use to compensate his attorney when close monitoring is not
22 feasible, they would at least have focused on the correct question." *Id.* at 48. As *Lealao* recognizes,
23 fee awards that are too small will "chill the private enforcement essential to the vindication of many
24 legal rights and obstruct the representative actions that often relieve the courts of the need to separately
25 adjudicate numerous claims." *Id.* at 53. Finally, an attorneys' fees motion should not turn into "a
26 second major litigation." *Id.* at 31 (citing *Hensley v. Eckerhart*, 461 U.S. 424, 437 (1983)).

27 As in many cases of this type, Class Counsel seek a fee award for their successful prosecution
28 and resolution of this action, calculated as a percentage of the total value of benefits afforded the Class

Members by the Settlement. *Serrano v. Priest* (1977) 20 Cal. 3d 25, 34 (*Serrano III*); *Boeing Co. v. Van Gemert*, 444 U.S. 472, 478 (1980); see also *Vincent v. Hughes Air West, Inc.*, 557 F.2d 759, 769 (9th Cir. 1977). The purpose of this equitable doctrine is not only to avoid unjust enrichment of counsel but also to spread litigation costs proportionally among all the beneficiaries so that the active beneficiary does not bear the entire burden alone. 557 F.2d at 769. Where the amount of a settlement is a "certain easily calculable sum of money," California courts may calculate attorney fees as a reasonable percentage of the settlement created. Weil and Brown, California Practice Guide: Civil Procedure Before Trial, ch. 14, § 14:145; *Dunk v. Ford Motor Co.*, 48 Cal. App. 4th at 1808. In addition, Class Counsel will present a lodestar plus multiplier analysis of their efforts which will further support the amount sought.

VII. CLAIMS ADMINISTRATION

Plaintiffs seek the appointment of CPT Group, Inc. as the Claims/Class Administrator. CPT is one of the most experienced class action administration companies in the country and has acted as claims administrator in hundreds of wage and hour cases throughout the country. The Claims Administrator has estimated the cost for administering the claims at \$12,500.00 for approximately 506 class members.

A. The Proposed Notice is Adequate

As provided in Rule 3.769(e):

If the court grants preliminary approval, its order must include the time, date, and place of the final approval hearing; the notice to be given to the class; and any other matters deemed necessary for the proper conduct of a settlement hearing.

Here, the parties have negotiated the form of a notice ("Class Notice," attached as Exhibit 2 to the Bradley Decl.). The Notice will be disseminated to all people who fall within the definition of the Class and whose names and addresses have already been identified from Defendant's records. In addition, Notice Packets returned as undeliverable will be subjected to a further follow up and re-mailing procedure.

With regard to the content of the Notice, the proposed version of which are attached to the Joint Stipulation as Exhibit 2, meets all requisite levels for appropriately providing full disclosure and information to the class members. "Notice is satisfactory if it generally describes the terms of the

1 settlement in sufficient detail to alert those with adverse viewpoints to investigate and to come forward
2 and be heard." 2 Newberg, Newberg on Class Actions § 8.32 at 8-103.

3 **VIII. CONCLUSION**

4 Based upon the foregoing, the parties respectfully request this Court to issue an Order:

- 5 1. Certifying a Settlement Class;
- 6 2. Granting preliminary approval of the Settlement;
- 7 3. Granting approval of John Hill and Mark Gray as class representatives;
- 8 4. Granting approval of Bradley/Grombacher LLP, the Law Office of David Pourati and
9 the Law Office of Christine Adams as class counsel;
- 10 5. Granting approval of the form and method of class notice;
- 11 6. Granting approval of CPT Group as claims administrator;
- 12 7. Setting a date for the Final Fairness Hearing; and,
- 13 8. Granting such other and further relief as the Court deems just and proper.

14
15 DATED: February 27, 2017

BRADLEY GROMBACHER, LLP
ADAMS LAW
LAW OFFICE OF DAVID POURATI, APC
LAW OFFICES OF LOUIS BENOWITZ

16
17
18 By: 

Marcus. J. Bradley, Esq.
Kiley Lynn Grombacher, Esq.
Christine M. Adams, Esq.
David Pourati, Esq.
Attorney for Plaintiff

PROOF OF SERVICE

STATE OF CALIFORNIA)
COUNTY OF VENTURA)

I am employed in the County of Ventura, State of California. I am over the age of eighteen and not a party to the within action; my business address 2815 Townsgate Road, Suite 130, Westlake Village, California 91361.

On **February 27, 2017**, I served the foregoing documents described as **PLAINTIFFS' MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT** on all interested parties in this action as follows: **SEE ATTACHED SERVICE LIST**

☒ **(VIA US MAIL)** I caused such envelope(s) to be deposited in the mail at Westlake Village, California with postage thereon fully prepaid. I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. It is deposited with the U.S. Postal Service on that same day in the ordinary course of business. I am aware that on motion of party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

☐ **(VIA OVERNIGHT DELIVERY)** I caused to have served such document(s) by placing a true copy thereof, enclosed in a sealed envelope or package designated by _____ addressed as follows and delivered it to an authorized receiving station authorized by _____ to receive documents with delivery fees by our office.

☐ **(VIA FACSIMILE TRANSMISSION)** From Fax No. _____ to the fax numbers listed on the attached service list. The facsimile machine I used complied with Rule 2033(3) and no error was reported by the machine.

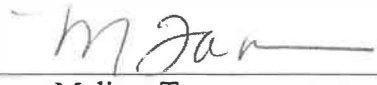
☐ **(VIA PERSONAL SERVICE)** I delivered such envelope(s) by hand to the offices of the addressee(s).

☐ **(VIA E-MAIL)** I caused to have such documents sent by electronic service [Fed. Rule Civ. Proc. Rule 5(b)(2)(a)] by electronically mailing a true and correct copy through _____ electronic mail system to the e-mail address(s) set forth below, or as stated on the attached service list per agreement in accordance with Federal Rules of Civil Procedure rule 5(b).

☒ **(STATE)** I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

☐ **(FEDERAL)** I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

Executed on February 27, 2017 at Westlake Village, California.



Melissa Tamura

John Hill v. Pacific Petroleum California, Inc.
Santa Barbara County Superior Court Case No. 15CV03056

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