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FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN BERNARDINO
SAN BERNARDINO DISTRICT

JUL 3 2018

BY Melissa White
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Attorneys for Plaintiff, AMIR MCNEELY, an individual, on behalf of himself, and on behalf of all others similarly situated,

SUPERIOR COURT OF CALIFORNIA

COUNTY OF SAN BERNARDINO – SAN BERNARDINO JUSTICE CENTER

11 AMIR MCNEELY, an individual, on
12 behalf of himself, and on behalf of all
13 persons similarly situated,

Plaintiff,

vs.

15 DELUXE AUTO CARRIERS, INC., a
16 California Corporation; EXCEL AUTO
17 TRANSPORT, INC., and Does 1 through
18 50, Inclusive,

Defendants.

Case No.: CIVDS 1602931

CLASS ACTION

Assigned for All Purposes to:

Honorable Thomas Garza

Dept. S-27

**NOTICE OF MOTION AND UNOPPOSED
MOTION FOR PRELIMINARY APPROVAL
OF CLASS ACTION SETTLEMENT**

[Concurrently filed with Declarations of Amir McNeely, Richard E. Quintilone, II, Esq., George A. Aloupas, Esq.; and [Proposed] Order]

Date: August 1, 2018

Time: 8:30 a.m.

Dept.: S-27

Complaint Filed: March 1, 2016

FAC Filed: April 14, 2016

Trial Date: None set

BY FAX

1 **TO ALL INTERESTED PARTIES AND THEIR RESPECTIVE ATTORNEYS OF**
2 **RECORD: PLEASE TAKE NOTICE** that on **August 1, 2018, at 8:30 a.m.** before this Court,
3 located at **247 W 3rd St, San Bernardino, CA 92415**, Plaintiff AMIR MCNEELY (“Plaintiff”), will
4 move and hereby do move the Court pursuant to California Rules of Court Rule 3.769(c), for an entry of
5 an Order:

6 1. Preliminarily approving the **Seven Hundred and Fifteen Thousand Dollars and Zero Cents**
7 **(\$715,000.00)**. Settlement as set forth in the parties’ Joint Stipulation of Settlement and Release (the
8 “Settlement Agreement”), which is attached as **Exhibit “A”** to the Declaration of Class Counsel,
9 Richard E. Quintilone II, Esq., filed herewith;

10 2. Conditionally certifying a Settlement Class in the Settlement Agreement;

11 3. Appointing Plaintiff as the Class Representative and Plaintiff’s counsel as Class Counsel;

12 4. Approving the Notice to the Class as set forth in the Settlement Agreement; and

13 5. Setting a hearing for final approval of the Settlement.

14 This Motion is made on the grounds that after good-faith, arm’s length negotiations, the parties
15 have agreed upon the Settlement which is fair, reasonable, and adequate and in the best interests of the
16 Class and all parties.

17 This Motion is based on this Notice of Motion, the accompanying Memorandum of Points and
18 Authorities, the Declarations of Plaintiff Amir McNeely, and Class Counsel Richard E. Quintilone II,
19 Esq., and George A. Aloupas, Esq., submitted with this Motion, the Court’s record of this action, all
20 matters of which the Court may take notice, and such oral or documentary evidence as the Court may
21 receive at or before the hearing on the Motion.

22
23 Dated: July 2, 2018

QUINTILONE & ASSOCIATES

24
25 By: _____



26 RICHARD E. QUINTILONE II,
27 GEORGE A. ALOUPAS
28 Attorney for Plaintiff, AMIR MCNEELY, an
individual, on behalf of himself, and on
behalf of all others similarly situated

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **1. INTRODUCTION**

3 Plaintiff Class Representative Amir McNeely (“Plaintiff”), without opposition from Defendants
4 Deluxe Auto Carriers, Inc. (“Deluxe”) and Excel Auto Transport, Inc., (“Excel”) (collectively
5 “Defendants”) respectfully seeks preliminary approval of a proposed wage and hour class action
6 settlement arising from Defendants’ alleged failure to pay for all hours worked and failure to pay
7 overtime to its employees employed with Defendants in the State of California. A copy of the parties’
8 Joint Stipulation of Settlement and Release (“**Settlement Agreement**”) proposing resolution of this
9 class action is provided at **Exhibit “A”** to the concurrently filed Declaration of lead Class Counsel
10 Richard E. Quintilone, II in Support Motion for Plaintiff’s Unopposed Motion for Preliminary
11 Approval of Settlement (hereinafter, “**Quintilone Decl.**”). Defendants generally and specifically deny
12 all such allegations. Defendants entered into the Settlement Agreement for the express purpose of
13 avoiding the burden, expense and risk of continuing litigation. (See **Exhibit “A”** at ¶ 88.)

14 The proposed class period runs from **March 1, 2012** through either the date of **preliminary**
15 **approval** of the Class settlement. (“Class Period”). (**Quintilone Decl.**, ¶ 9). The action was filed by
16 Plaintiff on **March 1, 2016**, on behalf of themselves and the approximately **220** current and former
17 California-based non-exempt employees (“Settlement Class or “Settlement Class Members”) with the
18 following definition: “all current and former truck drivers who are/were employed by Defendants
19 in the State of California from **March 1, 2012**, through the Court’s Preliminary Approval of this
20 Settlement.” (**Quintilone Decl.** ¶ 9; **Exh. “A”**, **Settlement** ¶ 5).

21 Following extensive discovery, the parties participated in a full-day mediation session on
22 **February 21, 2017** with **Michael D. Young, Esq.**, a highly-regarded mediator of wage and hour
23 claims and class actions. (**Quintilone Decl.** ¶ 17). After over a year of continuous negotiations
24 facilitated by the mediator, the parties came to an agreement on the general Settlement terms. Counsel
25 then worked to finalize and execute the Settlement Agreement now before the Court for approval as
26 quickly as possible for the Court’s earliest hearing date. (**Quintilone Decl.** ¶ 18).

27 Subject to Court approval, the parties agreed to a maximum and all-inclusive Maximum
28 Settlement Amount to be paid by the Defendants of **Seven Hundred and Fifteen Thousand Dollars**

1 **and Zero Cents (\$715,000.00). (Quintilone Decl. ¶ 19).** The “Net Settlement Fund” remaining after
2 deductions from the Settlement Sum for administration costs, attorneys’ fees and costs, the Service
3 Award to Plaintiff, and the payment to the California Labor Workforce Development Agency
4 (“LWDA”) for the PAGA claim, which is estimated to be approximately **\$434,050.00**, will be available
5 to pay Individual Settlement Payments to the Settlement Class Members. **(Quintilone Decl. ¶¶ 20-22).**
6 All payments made to Settlement Class Members will be made on a **non-reversionary basis**, meaning
7 the Net Settlement Amount shall be distributed in its entirety to those Class Members and there is no
8 need to fill out a claim form. **(Quintilone Decl. ¶ 22, Exhibit A, ¶ 7).** Since there are approximately
9 **220** Class Members, their average payment will be approximately **\$1,972.95**, but could fluctuate
10 upward depending on workweeks worked and other factors. **(Quintilone Decl. ¶ 48).** For the reasons
11 set forth in detail below, this is an outstanding result for the Class and merits preliminary approval.

12 **2. FACTUAL BACKGROUND, DISCOVERY AND MEDIATION**

13 **A. Background Facts**

14 Plaintiff Amir McNeely worked for Defendants as a truck driver from **December 23, 2014**
15 through **July 24, 2015**, when he resigned. **(Quintilone Decl. ¶ 8).** See concurrently filed
16 Declaration of Amir McNeely (“**McNeely Decl.**”), ¶ 9; **(Quintilone Decl. ¶ 8).** Plaintiff filed this
17 putative class action on **March 1, 2016** in the San Bernardino County Superior Court. Plaintiff then
18 filed the operative First Amended Complaint (“FAC”) on **April 14, 2016**, alleging and seeking
19 recovery for: (1) failure to pay minimum wages in violation of California Labor Code §§ 1194, 1197,
20 and 1197.1; (2) failure to provide accurate itemized wages statements in violation of California Labor
21 Code § 226; (3) failure to pay wages due in violation of California Labor Code §§ 201-203; (4) failure
22 to reimburse employees for required expenses in violation of California Labor Code § 2802; (5) Unfair
23 Competition in violation of Business & Professions Code § 17200, et seq. and (6) violations of the
24 Private Attorneys General Act (PAGA) Labor Code § 2699. **(Quintilone Decl. ¶ 6).**

25 On **July 17, 2015**, Plaintiff Arees Khaterian (“Khaterian”) filed a prior Class Action Complaint
26 against Defendants, also in San Bernardino County, entitled Arees Khaterian, et al. v. Deluxe Auto
27 Carriers, Inc., Case No. CIVDS1510115 (“the Khaterian Action”). The case was assigned for all
28 purposes to the Honorable Donald Alvarez, Department S23. Khaterian’s Complaint alleges the

1 following 12 causes of action: (1) Misclassification of Employees under Labor Code § 515; (2)
2 Misclassification of Employees in Violation of Labor Code § 226.8; (3) Failure to Pay Minimum
3 Wages; (4) Failure to Pay Wages and Overtime Under Labor Code § 510; (5) Meal-Period Liability
4 Under Labor Code § 226.7; (6) Rest-Break Liability Under Labor Code § 226.7; (7) Reimbursement of
5 Necessary Expenditures Under Labor Code § 2802; (8) Violation of Labor Code § 221; (9) Violation
6 of Labor Code § 226(a); (10) Violation of Labor Code § 203; (11) Violation of Business & Professions
7 Code § 17200 et seq.; and (12) Penalties Pursuant to Labor Code § 2699. In the Khaterian Action, the
8 Class was defined as “individuals employed by Defendants at any time within four (4) years of the
9 filing of this lawsuit within the State of California.” (**Quintilone Decl. ¶ 7**). Khaterian’s counsel and
10 Defendants’ counsel have stipulated to dismiss the class claims in the Khaterian action on or around
11 **April 19, 2018. (Id.)**.

12 Plaintiff’s job duties while serving as a full-time company driver for Defendants included
13 picking up and delivering truck-loads of automobiles to various dealerships and locations throughout
14 California. Plaintiff alleges he and other similarly situated drivers were paid by piece-rate only and
15 were not paid minimum wages for all hours worked, including nonproduction work time for
16 performing job duties such loading and unloading vehicles and pre and post trip inspections of
17 Defendants’ trucks, time spent waiting for loads and traveling with empty loads, and time spent at
18 Defendants’ mandatory meetings. Plaintiff further alleges Defendants also failed to reimburse and
19 indemnify Plaintiff and the other Class Members under California Labor Code § 2802 for required
20 business expenses, including costs related to the use of their personal cell phones. See (Quintilone
21 **Decl. ¶¶ 10, 35-37; McNeely Decl., ¶ 10)**. Defendants generally and specifically deny all such
22 allegations. Defendants entered into the Settlement Agreement for the express purpose of avoiding the
23 burden, expense and risk of continuing litigation. (See Exhibit “A,” Joint Stipulation of Settlement and
24 Release. (See **Exhibit “A” at ¶ 88**).

25 Plaintiff alleges that the work Plaintiff and the Class were required to perform included long
26 days, ranging from 11 to 16 hours or more, at least five work days per week and one Saturday per
27 month. Plaintiff further alleges that, while they were required to work no more than 14 hours per day
28 under Department of Transportation requirements, Plaintiff has testified that he worked over this hour’s

1 limitation practically every day and was compelled to do so by the daily pick-ups and deliveries he was
2 required to complete by Defendants. Plaintiff also testified that he was told he could not exceed 14
3 hours of work per day, so he would not record those additional hours worked on the daily Log Book
4 entries because it was unlawful if he exceeded 14 hours. See (Quintilone Decl. ¶¶ 10, 35-37;
5 **McNeely Decl., ¶ 10)**. Defendants generally and specifically deny all such allegations. Defendants
6 entered into the Settlement Agreement for the express purpose of avoiding the burden, expense and risk
7 of continuing litigation. (See **Exhibit “A” at ¶ 88**).

8 Plaintiff further alleges that while their job duties primarily entailed substantial driving time,
9 Plaintiff and the Class were also required to perform demanding manual labor required for loading and
10 unloading vehicles throughout their work shifts. Plaintiff further alleges that he and the Class were not
11 paid for this time, and Defendants also failed to correctly record and pay for all time worked, including,
12 but not limited to, time spent during pre and post trip inspections of Defendants’ trucks, time spent
13 waiting for loads, and time spent at the mandatory driver meetings they were required to attend every
14 couple of months. As they were paid only on a piece rate basis, and were required to remain “on duty”
15 throughout their 10-to-16-hour work shift. See (Quintilone Decl. ¶¶ 11, 35-37; McNeely Decl., ¶ 10).
16 Defendants generally and specifically deny all such allegations. Defendants entered into the Settlement
17 Agreement for the express purpose of avoiding the burden, expense and risk of continuing litigation.
18 (See **Exhibit “A” at ¶ 88**).

19 In addition to this unpaid time, Plaintiff further alleges that drivers were also not paid for the
20 time spent waiting for loads or loading and unloading vehicles, or for performing pre and post-driving
21 inspections and filling out paperwork, or for company-wide meetings they were required to attend.
22 Plaintiff further alleges that there were meetings when Defendants wanted to communicate information
23 to all drivers or for training purposes, for example when the new paperless system was started. There
24 were at least five of these meetings, lasting anywhere from 1.5 to 2 hours, and Plaintiff and the Class
25 were not paid for this time or for the time it took to travel to and from the office in Mira Loma for the
26 meetings. **(Quintilone Decl. ¶ 12)**. Defendants generally and specifically deny all such allegations.
27 Defendants entered into the Settlement Agreement for the express purpose of avoiding the burden,
28 expense and risk of continuing litigation. (See **Exhibit “A” at ¶ 88**).

1 **B. Discovery, Investigation of Facts, and Mediation**

2 **1. Discovery and Investigation**

3 Substantial discovery has been conducted and undertaken in this action. (**Quintilone Decl. ¶**
4 **12**). On **July 6, 2016**, Plaintiff served a full set of written discovery on Defendants, including Form
5 Interrogatories, Requests for Production, Requests for Admission, and Special Interrogatories. On
6 **September 2, 2016**, following agreed upon extensions, we received Defendants' responses to
7 Plaintiff's Requests for Production and Special Interrogatories. On **September 22, 2016**, we received
8 Defendants' responses to Plaintiff's Requests for Admission and Form Interrogatories – General and
9 Employment. The parties have entered into a Protective Order to govern discovery. (**Id.**)

10 Informal production proceeded with Defendants' production on **January 4, 2017** of Class Lists
11 for both the company drivers and the owner-operators. The company driver list included 227
12 employees. For the purposes of settlement, a figure of 220 non-exempt employee Class Members
13 were used. (**Quintilone Decl. ¶ 13**). On **January 19, 2017**, Defendants then produced limited payroll
14 and timekeeping data for 10 selected company drivers and 10 selected owner-operators for Plaintiff's
15 counsel to analyze. The production for these employees includes Wage Statements that are followed
16 by a document called Outside Carrier Summary Report for Selected Vehicles by Load for Selected
17 Lines for the corresponding dates. These are followed by documents, all from **September 2016**,
18 entitled Driver's Daily Log. (**Quintilone Decl. ¶ 13**).

19 Defendants deposed Plaintiff on **February 12, 2017**. (**Quintilone Decl. ¶ 14; McNeely Decl.**
20 **¶ 15**). The exchange of the information, and the analysis of that information allowed the parties to
21 meaningfully assess the viability of Plaintiff's claims and Defendants' affirmative defenses and to
22 realistically evaluate the probability of class certification in order to participate in an informed,
23 productive mediation. (**Id.**) Plaintiff's counsel analyzed Defendants' data and calculated a potential
24 liability exposure analysis, which further support approval of the proposed class Settlement. (**Id.**).

25 **2. Mediation with Michael D. Young, Esq.**

26 In preparation for the parties' mediation, the parties' counsel also conducted multiple pre-
27 mediation conferences to address the pertinent class numbers and production data and to address the
28 potential liability model calculations and how Plaintiff's counsel arrived at them. (**Quintilone Decl., ¶**

17). After preparing detailed mediation briefs, the parties' and counsel attended mediation with Michael D. Young, Esq. on **February 21, 2017. (Id.)**

After a full day of mediation, the parties were not able to settle. It took over a year of intense negotiations between the parties, with the mediator facilitating, to come up with the present settlement. The settlement represents balance between the Defendants' contention that they are not liable for the asserted claims, and that class certification is unwarranted coupled with its desire to avoid expenses of protracted litigation on the one hand, and the possibility of liability for only segments of the putative class on the other. (**Quintilone Decl., ¶ 18**).

3. The Valuation of the Claims and Negotiated Considerations

The Settlement negotiations at mediation were intensive and at arm's length and centered around the main alleged underlying claims for alleged failure to pay wages, including not compensating Plaintiff and the Class for the proper amount of overtime pay based on Defendants piece rate payment policy, and for failure to reimburse necessary expenses under Labor Code § 2802. Plaintiff has also presented derivative claims under Labor Code § 203, Labor Code § 226, Labor Code §§ 2698, et seq. ("PAGA") and for unfair competition which flow from the underlying violations. (**Quintilone Decl., ¶ 19**). While Plaintiff is confident in the viability of these claims, he and Class Counsel have recognized that proving the violations and off the clock work in the face of facially lawful policies would require compilation of testimony through declarations and depositions, along with the use of survey evidence vetted through expert discovery. (**Id.**) Such evidence gathering is time-intensive and costly, and the Settlement reflects this evidentiary reality as well as a conclusion that a reasonable settlement would be preferable to protracted litigation. (**Id.**) Defendants contended they implemented written policies that complied with the Labor Code requirements and maintained its practices were also compliant. (**Quintilone Decl., ¶ 34**). Defendants vigorously contested liability, maintaining that resolution of these Plaintiff's claims would require individualized analysis of each alleged instance of off-the-clock work, and piece rate compensation of each pay period. (**Id.**) Defendants therefore maintained that because individual issues would predominate over common facts, certification would be inappropriate. (**Id.**)

1 Based on the discovery documents received throughout the course of this litigation, Plaintiff's
2 counsel was able to conduct calculations of the damages for the alleged unlawful policies that
3 Defendants' implemented. (**Quintilone Decl., ¶ 39**). Plaintiff testified that his wage statements and
4 Settlement Sheets always underpaid him for the loads that he completed. Regarding Defendants'
5 failure to pay the piece rates owed, assuming 220 Class Members with an average number of
6 workweeks of 35 per truck driver Class Member, we estimate this amounted to approximately **\$50.00**
7 per pay period or **\$25.00** per work week, conservatively, for the Class, the calculation is as follows:
8 **\$25.00 per work week x 220 truck driver employees x 35 work weeks/employee = \$192,500.00.**

9 Similar calculations were used to determine Defendants' nonproduction piece rate pay liability
10 exposure per Labor Code § 226.2(a)(1). (**Quintilone Decl., ¶ 40**). Between the substantial time
11 loading and unloading vehicles, completing vehicle inspection reports, driving with empty loads, and
12 the mandatory meetings drivers were required to attend, all without pay, it is reasonable to estimate an
13 average of at least **2 hours of other nonproduction time per week**. The calculation follows: 2
14 hrs./wk. x \$30.00/hr. x 35 weeks/driver = **\$2,100 per driver** x 220 drivers = **\$462,000.00** in
15 estimated in other nonproductive time payments. (**Id.**)

16 Under Section 226, Plaintiff and the Class are entitled to recover up to a maximum of \$4,000
17 per employee for inaccurate wage statements. The wage statements issued by Defendants were replete
18 with violations. We conservatively estimate 100 out of the 220 total Class Members would have
19 received the maximum allowed under the statute. With this in mind, the calculation is as follows:
20 \$4,000 per employee x 100 employees = **\$400,000.00**. (**Id.**). Plaintiff and the Class Members who
21 were separated during the liability period are entitled to receive 30 days of wages under Section 203 for
22 the Defendants' failure to pay all wages owed at termination. Using the wage rate of \$30.00/hr. and 30
23 days at 14 hours per day, and estimating 100 employees were separated during the liability period, the
24 following calculation applies: \$30.00/hr. x 30 days x 14 hrs./day x 100 employees =
25 **\$1,260,000.00**. The total liability on this claim is estimated at **\$2,314,500.00**. (**Id.**).

26 The Settlement Sum of **\$715,000.00** represents approximately **30.9%** of the potential liability
27 exposure Plaintiff estimated Defendants faced if Plaintiff was successful in providing maximum liability
28

1 on his underlying class claims. (**Quintilone Decl., ¶ 42**). Plaintiff, through his counsel and with the
2 assistance of a well-respected mediator, have determined that this is an excellent result for the Class. (**Id.**)

3 **3. THE PROPOSED SETTLEMENT, TERMS, AND NOTICE**

4 The detailed terms of the Settlement are embodied in the Settlement Agreement, attached at
5 **Exhibit “A”** to the **Quintilone Decl.** The Maximum Settlement Amount that Defendants will pay into
6 a Qualified Settlement Fund under the Settlement Agreement is limited to a total amount of
7 **\$715,000.00**. (**Quintilone Decl. ¶ 20; Exhibit “A”, ¶ 7**). In addition to the amounts to be paid, the
8 proposed settlement provides for a payment from the Maximum Settlement Amount of proposed
9 attorneys’ fees of up to **\$235,950.00** (33.33%), litigation costs of up to **\$10,000.00** (**Quintilone Decl., ¶**
10 **21; Exhibit “A”, ¶ 6**), a class representative enhancement, or “Service Award” of **\$10,000.00** to the
11 **Representative Plaintiff** (**Exhibit “A”, ¶ 3**), a **\$7,500.00** PAGA penalty payment to the LWDA (75%
12 of the allocated PAGA penalties) (**Exhibit “A”, ¶ 20**), and claims administration expenses up to
13 **\$15,000.00**. (**Exhibit “A”, ¶ 32**). Defendants’ and the Settlement Class Members’ share of payroll
14 taxes related to the Settlement Class Members’ Individual Payment Amounts, including employer
15 FICA or FUTA taxes, will also be deducted from the Maximum Settlement Amount. (**Quintilone**
16 **Decl., ¶ 22; Exhibit “A”, ¶ 67**). The “Net Settlement Amount” remaining if the Court approves the
17 above deductions from the Settlement Sum, is estimated to be approximately **\$434,050.00**, which is the
18 amount that will be available to pay the Settlement Class Members’ Individual Payment Amounts.
19 (**Quintilone Decl., ¶ 23; Exhibit “A” ¶ 16**).

20 All payments made to Settlement Class Members will be made on a **non-reversionary basis**
21 meaning the Net Settlement Amount shall be distributed in its entirety to those Class Members with no
22 need to submit Claim Forms. (**Quintilone Decl., ¶ 23; Exhibit A, ¶ 7**).

23 To calculate the Settlement Class Members’ Individual Payments, the Settlement Administrator
24 will use the following formula: Individual Settlement Payment = (Net Settlement Amount ÷ Number of
25 Total Work Weeks worked by all Participating Class Members from **March 1, 2012** through
26 Preliminary Approval) × Number of total Work Weeks worked by the Participating Class Member
27 from **March 1, 2012** through Preliminary Approval. (**Quintilone Decl., ¶ 24; Exhibit “A”, ¶ 50**).

1 One third (33.33%) of each Settlement Class Member's Individual Payment Amount will
2 represent wages which will be subject to IRS withholding; one third (33.33%) will represent statutory
3 and civil penalties including the Settlement Class Member's portion of the PAGA penalties; and the
4 remaining one third (33.33%) will represent interest. (**Quintilone Decl., ¶ 25; Exhibit "A", ¶ 67**).
5 That portion of each Settlement Class Member's Individual Payment Amount representing wages will
6 be subject to normal employment tax withholdings (e.g., withholdings for state and federal income tax,
7 employee FICA tax, California SDI, etc.) with the Settlement Administrator remitting all such
8 employment tax withholdings directly to the pertinent state and federal taxing authorities. The portion
9 dedicated to interest and penalties will be reported on a Form 1099. (**Id.**)

10 If a Settlement Class Member fails to cash his or her settlement check within 180 days after the
11 date it is mailed to him or her, those funds will be addressed pursuant to applicable law. For example,
12 for a Settlement Class Member with a California residence address based on last, best available
13 information, any uncashed check shall escheat to the California Department of Industrial Relations
14 Unpaid Wages Fund in the name of the authorized Non-Responsive Settlement Class Member.
15 (**Quintilone Decl., ¶ 26; Exhibit "A", ¶ 64**).

16 The Release is narrowly tailored to the subject matter alleged in the litigation. (**Quintilone**
17 **Decl., ¶ 27**). In exchange for his payments under the Settlement, Plaintiff has agreed to a general
18 release and the Settlement Class Members who do not request exclusion will be deemed to have
19 released the claims as described in the Settlement, which are limited to those claims encompassed
20 under the operative Complaint or which could have been asserted at any time in the litigation based on
21 the subject matter alleged in the litigation. (**Id.; Exhibit A, ¶ 72**). The full terms of the Release are
22 addressed for the parties and Court in the Settlement Agreement (see id. at **Exhibit "A", ¶¶ 72(a) –**
23 **(c)**), and for the Class Members in the Class Notice at **Exhibit "A"** to the Settlement.

24 The proposed Notice Package for sending to the Settlement Class Members (at **Exhibits A and**
25 **B** of the Settlement) include the Class Notice, and Request for Exclusion Form. The Settlement
26 Approval and Implementation Procedures are addressed at **paragraphs 53-58** of the Settlement
27 Agreement. See also (**Quintilone Decl., ¶¶ 28**). The Settlement Administrator will mail the Notice
28 Packet to all Settlement Class Members within ten **(10) calendar days** of receiving the Class List from

Defendants. (Id.; **Exhibit “A”, ¶ 55**). If the Class Notice is determined to be undeliverable within fifteen **(15) calendar days** after the date of initial mailing, the Settlement Administrator shall perform one (1) skip-trace procedure the Settlement Administrator is informed that the Notice Packet was returned as undeliverable. (Id.; **Exhibit “A”, ¶ 56**). If the procedure reveals a new address, the Settlement Administrator shall promptly re-mail the Notice Packet. (**Id.**)

A Settlement Class Member has **thirty (30) calendar days** after the date of initial mailing to request exclusion from the Class. (**Quintilone Decl., ¶ 29; Exhibit “A”, ¶ 30** to Settlement. Settlement Class Members who want to object to the Settlement must also do so within **thirty (30) calendar days** of Notice Packet mailing by following the procedures in the Class Notice and must also inform the Court and parties of any intent to appear at the Final Approval Hearing. (**Id.**; **Exhibit “A”, ¶ 30**).

The Class Notice (**Exhibit “A”, Settlement Agreement**) apprises the Class Members of their rights under the settlement and provides adequate information as to the amount of attorneys’ fees and costs that will be requested, the amount of the enhancement that will be requested for Mr. McNeely, as well as their right to object to or opt out of the settlement. See also, (**Quintilone Decl., ¶ 29; Exhibit “A”, ¶ 57**).

Class Counsel is convinced that this settlement is in the best interest of the class based on the pre-mediation investigation and discovery, a detailed knowledge of the issues present in this action, and a full day of mediation facilitated by an experienced and knowledgeable mediator. (**Quintilone Decl., ¶¶ 30-31**). Class Counsel also carefully considered the risks of trial and other normal perils of litigation, the status of the law dealing with wage and hour cases at class certification, the defenses and affirmative defenses asserted by Defendants, the difficulties of complex litigation, the lengthy process of establishing specific damages, and various possible delays and appeals. (**Id.**)

4. PROCEDURES FOR PRELIMINARY SETTLEMENT APPROVAL

Plaintiff has addressed the procedures that will be followed for providing the notice to the Settlement Class Members and conducting the Settlement Administration above. The parties have also proposed a detailed proposed schedule, drawn from the Settlement Agreement, for taking the action from preliminary approval through administration and final approval in the concurrently provided [Proposed] Order granting this unopposed Motion. California Rules of Court, Rule 3.769 requires

1 court approval for class action settlements. “Before final approval, the court must conduct an inquiry
2 into the fairness of the proposed settlement.” California Rules of Court, Rule 3.769(g). In deciding
3 whether to approve a proposed class action settlement under California Code of Civil Procedure § 382
4 and the California Rules of Court, the Court must find that a proposed settlement is “fair, adequate and
5 reasonable.” *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1801 (quoting *Officers for Justice*
6 *v. Civil Serv. Comm’n.* (9th Cir. 1982) 688 F.2d 615, 625, cert. denied (1983) 459 U.S. 1217). The trial
7 court considers all relevant factors, such as “the strength of plaintiff’s case, the risk, expense,
8 complexity and likely duration of further litigation, the risk of maintaining class action status through
9 trial, the amount offered in settlement, the extent of discovery completed and the stage of the
10 proceedings, the experience and views of counsel, the presence of a governmental participant, and the
11 reaction of the class members to the proposed settlement.” *Id.* The Court’s primary function is to
12 determine that the settlement is not the product of fraud, overreaching, or collusion, and taken as a
13 whole, is fair, reasonable and adequate to all concerned.

14 A proposed class action settlement is *presumed fair* when: (1) the parties reached settlement
15 after arm’s-length negotiations; (2) investigation and discovery were sufficient to allow counsel and the
16 court to act intelligently; (3) counsel is experienced in similar litigation, and (4) the percentage of
17 objectors is small. *Dunk, supra*, 48 Cal.App.4th at 1802. Where there is no extrinsic evidence of fraud
18 or collusion, the Court should assume that settlement negotiations were conducted in good faith.

19 Courts act within their discretion in approving settlements which are fair, not collusive, and
20 take into account “all the normal perils of litigation as well as the additional uncertainties inherent in
21 complex class actions.” *In re Beef Industry Antitrust Litigation* (5th Cir. 1979) 607 F. 2d 167, 179 *cert.*
22 *den. sub nom, Iowa Beef Processors, Inc. v. Meat Price Investigators Ass’n*, 452 U.S. 905 (1981).
23 Where a settlement is reached on terms agreeable to all parties, a court should disapprove of the
24 settlement “only with considerable circumspection.” *Jamison v. Butcher & Sherrerd* (E. D. Pa. 1975)
25 68 F.R.D. 479, 481. Plaintiff submits that the proposed settlement meets all of these standards.

26 **5. THE PROPOSED SETTLEMENT MEETS THE STANDARDS FOR APPROVAL**

27 Applying the above factors, it is evident the proposed settlement provides a benefit to the class
28 and is fair, reasonable, and adequate. (**Quintilone Decl., ¶¶ 30-46**).

1 **A. The Settlement is the Result of Serious, Informed, Non-Collusive Negotiations**

2 The proposed settlement was reached as a result of arm's length negotiations. Though cordial
3 and professional, the negotiations have been, at all times, adversarial and non-collusive in nature.
4 (**Quintilone Decl. ¶ 31**). While Plaintiff believes in the merits of his case, they also recognized the
5 inherent risks of litigation and understand the benefit of the Settlement Class receiving settlement funds
6 immediately as opposed to risking an unfavorable decision on class certification, on the merits of the
7 case at trial, and/or on an appeal that can take several more years to litigate. (**Id.**).

8 **B. The Parties Engaged In Extensive Discovery And Investigation**

9 As discussed above, the Parties engaged in substantial discovery including among other
10 things, the review, analysis of relevant documents (both payroll records and time records),
11 personnel file, Defendants' policies and procedures and other data related to the Class before the
12 Settlement was reached to allow the Parties to fully evaluate the class claims and Defendants' defenses.
13 (**Quintilone Decl., ¶¶ 12-16; Exhibit "A", ¶ 43**). In this litigation, "the parties certainly have a clear
14 view of the strengths and weaknesses of their cases" sufficient to support the settlement. *Boyd v.*
15 *Bechtel Corp.* (N.D. Cal. 1979) 485 F. Supp. 610, 617.

16 **C. Class Counsel are Experienced Class Action and Employment Attorneys**

17 Experienced counsel, operating at arm's length, have weighed the strengths of the case and
18 examined all of the issues and risks of litigation and endorse the proposed settlement. The view of the
19 attorneys actively conducting the litigation "is entitled to significant weight." *Fisher Bros. v.*
20 *Cambridge Lee Industries, Inc.* (E.D. Pa. 1985) 630 F. Supp. 482, 488; *Ellis v. Naval Air Rework*
21 *Facility* (N.D. Cal. 1980) 87 F.R.D. 15, 18, aff'd, 661 F.2d 939 (9th Cir. 1981); *Boyd v. Bechtel Corp.*,
22 *supra*, 485 F. Supp. at 616-17.

23 Plaintiff's counsel is particularly experienced in employment law and wage and hour class
24 actions. (**Quintilone Decl., ¶¶ 4-5, 52-56**). They are experienced and qualified to evaluate the class
25 claims, to evaluate settlement versus trial on a fully informed basis, and to evaluate the viability of the
26 defenses. (**Id.**) Defendants were represented by Sean Brew of Roberts and Kehagiaras, LLP who
27 is well-respected and experienced in defending these types of claims. All counsel share the view
28

1 that this is a fair and reasonable settlement in light of the complexities of the case and uncertainties of
2 class certification and litigation and is an excellent result for the members of the settlement class. (**Id.**)

3 **D. The Presence of a Governmental Participant**

4 There is no active governmental participant in this settlement. On **March 8, 2016**, Plaintiff
5 notified the LWDA of his claims as part of his obligations under the California Private Attorneys'
6 General Act of 2004 ("PAGA"). (**Quintilone Decl., ¶ 16; Exhibit "A" ¶ 34**). The LWDA then
7 responded and indicated it did not intend to investigate the claims. As set forth in the Settlement
8 Agreement, the Settlement calls for the payment of **\$7,500.00** in PAGA penalties to the LWDA, which
9 the Claims Administrator will make after final approval of the settlement. (**Id.**; **Exhibit "A", ¶¶ 20, 49**).
10 Plaintiff's counsel will be submitting the Settlement Agreement to the LWDA concurrently with the
11 filing of this motion pursuant to Labor Code § 2699(l)(2).

12 **E. The Settlement is Fair and Reasonable in Light of the Strength of Plaintiff's Case**
13 **and the Risks and Cost of Further Litigation**

14 Plaintiff and Class Counsel believe the settlement represents balance between the value of early
15 settlement and the cost of protracted litigation and is fair and reasonable for the Class. (**Quintilone**
16 **Decl., ¶ 20; McNeely Decl., ¶¶ 3, 14**). There are significant legal uncertainties associated with wage
17 and hour cases, and in cases such as this one, such claims can be factually complex and require
18 protracted litigation to resolve. Plaintiff believes that his case was suitable for certification, as there
19 were company-wide policies and practices that affected the employees which could be established
20 using representative testimony and company documents and would not require separate mini-trials on
21 liability. (**Quintilone Decl., ¶¶ 33, 35-37**).

22 Defendants contended they implemented written policies that complied with the Labor Code
23 requirements and maintained its practices were similarly compliant. Defendants vigorously contested
24 liability, maintaining that resolution of Plaintiff's claims would require individualized analysis of each
25 alleged instance of off-the-clock work, calculation of the regular rate of pay, and each instance of a
26 failure to reimburse, which would preclude certification. (**Quintilone Decl., ¶ 34**). Thus, while
27 Plaintiff believes and continues to believe this is a strong case for certification, there is risk and
28 significant expense associated with class certification proceedings. Legal uncertainties are also present.

1 Even with the California Supreme Court decision in *Sav-On v. Superior Court*, 34 Cal.4th 319 (2004)
2 affirming public policy in favor of the class action vehicle in the wage and hour context, certification is
3 always a matter of the Court's trial management discretion. The policy under California law in favor of
4 settlement in class actions and other complex cases appropriately applies in this case.

5 **F. The Amount Offered in Settlement and Method of Allocation are Fair**

6 In light of the uncertainties and risks of certification and litigation, the parties agreed to a
7 compromise settlement of **\$715,000.00**. (**Quintilone Decl., ¶ 20; Exhibit "A" ¶ 7**). Once the claims
8 administration costs, attorneys' fees and costs, PAGA penalty payment, and the Class Representatives
9 enhancements are subtracted, the average payment to the Settlement Class Members will be
10 approximately **\$1,972.95**, and some will receive significantly more than that. (**Quintilone Decl., ¶ 48**).
11 These are real and substantial payments as opposed to the largely speculative awards that may or may
12 not be otherwise obtained based on the hazards of litigation should Settlement approval be denied.

13 The settlement is always a compromised figure, and the parties here took into account
14 substantial risks that some of the class would not be certified, or that other defenses might succeed. The
15 fairness of the settlement is apparent from risks of denial of certification or of decertification. For
16 example, *Amaral v. Cintas Corporation No. 2* (2008) 163 Cal.App.4th 1157 diminished Plaintiff's
17 ability to certify and prevail on claims for penalties under Labor Code § 203 or Labor Code § 226
18 without a "willful" or "knowing" violation.

19 Even in light of what it believes are strong defenses to this action, Defendants has agreed to a
20 Settlement amount that will provide substantial benefits to all Settlement Class Members. Defendants
21 have agreed to pay **\$715,000.00** to settle this action, **\$434,050.00** of which will be distributed in its
22 entirety. (**Quintilone Decl., ¶¶ 20-23**). If the Settlement Class Member's address is incorrect, the
23 Administrator will perform a skip trace and take other active measures to locate updated addresses for
24 returned notice packets. (**Exhibit "A" ¶ 56**). There are no unpaid residual payments and the parties
25 therefore do not believe that Code of Civil Procedure § 384 applies.

26 To calculate the Settlement Class Members' Individual Payments, the Settlement Administrator
27 will use the following formula: Individual Settlement Payment = (Net Settlement Amount ÷ Number of
28 Total Work Weeks worked by all Participating Class Members from **March 1, 2012** through

1 Preliminary Approval) × Number of total Work Weeks worked by the Participating Class Member
2 from **March 1, 2012** through Preliminary Approval. (**Quintilone Decl., ¶ 24, Exhibit “A” ¶ 50**).
3 Basing the size of the award on Settlement Class Member’s compensable hours during the Class Period
4 ensures that those Settlement Class Members with more valuable potential claims receive more money.
5 All Settlement Class Members will enjoy benefits based on the same formula; and none are singled out
6 for special treatment (other than Plaintiff class representative enhancement payments). (**Id.**)

7 **G. A Balance of Risk Factors and Kullar Analysis Support Approval**

8 In deciding whether to approve the settlement, the Court must balance these risk factors against
9 an “understanding of the amount in controversy and the realistic range of outcomes of the litigation.”
10 *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 130, 133; *Munoz v. BCI Coca-Cola*
11 *Bottling Co. of Los Angeles* (2010) 186 Cal.App.4th 399, 408-09. The court “must stop short of the
12 detailed and thorough investigation that it would undertake if it were actually trying the case” *Id.*
13 As discussed below and in Class Counsel’s Declaration, there is a sufficient basis for determining the
14 fairness and adequacy of this agreement. Not only is the settlement an adequate one, it is actually quite
15 good for the Settlement Class Members, who are receiving a recovery as if the case proceeded to trial,
16 while avoiding all of the risk and uncertainty that hangs over an uncertified class as it makes its way
17 through the class action process in an uncertain financial and legal environment.

18 The main class claims at issue are for the alleged failure to pay wages including overtime
19 wages, for off-the-clock work and uncompensated piece rate nonproductive time, all to the detriment of
20 the Class Members. Plaintiff has also presented derivative claims under Labor Code § 203, Labor
21 Code § 226, Labor Code §§ 2698, et seq. (“PAGA”) and for unfair competition which flow from the
22 underlying violations. (**Quintilone Decl., ¶¶ 35-37**). Defendants contested the claims and their
23 appropriateness for class treatment. (*Id.* at ¶ 34).

24 The number of violations during the class period and liability within it are of course a matter of
25 dispute. In this case, Counsel spent numerous hours to calculate reasonable estimates of the number of
26 total compensable work weeks, the number of overtime hours owed, and average hourly straight time
27 rate and overtime rate for the Class. (**Quintilone Decl., ¶ 33**). Plaintiff’s counsel then took the data
28 acquired and numbers provided to arrive at conservative estimates of the average hourly pay rates, the

1 work weeks and pay periods worked, the number of full time equivalent employees, and the like.
2 (**Quintilone Decl. ¶ 38**). Plaintiff's counsel then calculated potential liability exposure for Defendants
3 at **\$2,314,500.00** for the unpaid wages claims and derivative claims. (**Quintilone Decl., ¶¶ 38-42**).
4 The Maximum Settlement Amount of **\$715,000.00** thus represents approximately **30.9%** of the
5 potential liability exposure Plaintiff estimated Defendants faced if Plaintiff was successful in providing
6 maximum liability on his main and underlying class claims. (*Id.* at ¶ 42).

7 The Settlement Sum of **\$715,000.00** is also reasonable despite the further liability that could
8 arise. For example, the Court may decrease any derivative violation liability to whatever extent the
9 underlying violations also created liability, and the calculations of liability exposure by Class Counsel
10 were based on some favorable assumptions. Plaintiff also recognizes that the award of penalties is a
11 matter of discretion for the Court, and that a full award of such penalties could be viewed as
12 "oppressive" under Labor Code § 2699(e)(2). The fact remains there was a very real prospect that
13 nothing would be recovered if litigation continued and class certification was ultimately denied.

14 At the same time, further litigation would require the expenditure of significant time and
15 financial resources, and there is always the possibility of adverse developments in the law and the
16 likelihood of extended battles in both the trial court and the courts of appeal. Settlement is a prudent
17 compromise that benefits Settlement Class Members promptly and eliminates such concern. Plaintiff's
18 counsel believes that the costs alone that would be required to complete class certification discovery,
19 depositions, and motion practice, and those necessary to prepare for trial, would likely have exceeded
20 **\$50,000.00**, plus another **\$25,000.00** in expert witness fees. (**Quintilone Decl., ¶ 46**). Plaintiff's
21 counsel believes that the trial of this action could have taken more than a month, and the likely appeal,
22 regardless of which side prevailed on the various causes of action, could have dragged on into **2020** or
23 later. (*Id.*) Approval of the Settlement at this stage in the litigation will permit the parties to allocate
24 resources and funds to the Settlement and will result in less deduction from settlement funds that can in
25 turn be provided to the Settlement Class. (*Id.*)

26 As courts have observed, "simply because a settlement may amount to only a fraction of the
27 potential recovery does not in itself render it unfair or inadequate. Compromise is the very nature of
28 settlement." *Boyd v. Bechtel Corp.* (C.D. Cal. 1979) 485 F.Supp. 610. In this case, Plaintiff considers

1 the settlement to be significantly more than a “fraction,” particularly considering the various potential
2 complications, dangers and pitfalls that proceeding would entail.

3 Indeed, “[t]he determination whether a settlement is reasonable does not involve the use of a
4 ‘mathematical equation yielding a particularized sum.’ *Frank v. Eastman Kodak Co.*, (W.D.N.Y. 2005)
5 228 F.R.D. 174, 186, quoting *In re Michael Milken and Assoc. Sec. Litig.* (S.D.N.Y. 1993) 150 F.R.D.
6 57, 66. Courts recognize that there is an inherent “range of reasonableness” in determining whether to
7 approve settlement “which recognizes the uncertainties of law and fact in any particular case and the
8 concomitant risks and costs necessarily inherent in taking any litigation to completion.” *Id.* at 188,
9 quoting *Newman v. Stein* (2d Cir. 1972) 464 F.2d 689, 693, *cert denied* 409 U.S. 1039. Counsel submits
10 this Settlement is within the range of reasonableness.

11 Courts also recognize that the reasonableness of a settlement is not dependent upon it
12 approaching the potential recovery Plaintiff might receive if successful at trial. *See In re Omnivision*
13 *Tech., Inc.* (N.D. Cal. Jan. 9, 2008) 559 F. Supp. 2d 1036, 1041; *see also Nat’l Rural Telecomm. Coop.*
14 *v. Directv, Inc.* (C.D. Cal. 2004) 221 F.R.D. 523, 527 (“well settled law that a proposed settlement may
15 be acceptable even though it amounts to only a fraction of the potential recovery”); *Officers for Justice*
16 *v. Civil Serv. Comm.* (9th Cir. 1982) 688 F.2d 615, 628 (it is “the complete package, taken as a whole
17 rather than the individual component parts, that must be examined for overall fairness”).

18 Finally, the value of settlement at this stage of litigation had to be balanced against the costs and
19 risks of class certification, motions for summary judgment/adjudication, and trial, and any possible
20 appeals afterwards. Based on the numerous risks in continuing with litigation, which are detailed above,
21 Plaintiff in this action elected to obtain an award for the Class that they believe to be of significant value
22 when compared to the valuation of any single claim or recovering nothing at all. The amount accepted
23 is fair and reasonable. *See Omnivision*, 559 F.Supp. 2d at 1041.

24 **H. The Requested Fees are Appropriate, and Class Counsel Will Submit Detailed**
25 **Support for the Fee Request Prior to Final Approval.**

26 Along with the Motion for Final Approval, Class Counsel will request attorneys’ fees not to
27 exceed **\$235,950.00** (1/3 of the total settlement fund). (**Quintilone Decl., ¶ 47**). Litigation expenses
28 allocated from the Settlement Fund are not to exceed **\$10,000.00**, and counsel has addressed costs

1 incurred thus far. (**Id.**) The fees requested will be justified by Class Counsel prior to final approval
2 based on the work performed and the results achieved for the Class and are further addressed by Class
3 Counsel in his declaration, including addressing counsel's lodestar and cost summary to date. (**Id.** at ¶¶
4 **47-58, Exhibit "B" [Cost invoice] and Exhibit "C" [Attorney Fee chart demonstrating reasonable**
5 **hourly rates]**).

6 The California Supreme Court has held that "when an attorney fee is awarded out of a common
7 fund preserved or recovered by means of litigation, the award is not per se unreasonable merely
8 because it is calculated as a percentage of the common fund." *Laffitte v. Robert Half International Inc.*,
9 (2016) 1 Cal.5th 480, 503. ("The recognized advantages of the percentage method – including relative
10 ease of calculation, alignment of incentives between counsel and the class, a better approximation of
11 market conditions in a contingency case, and the encouragement it provides counsel to seek an early
12 settlement and avoid unnecessarily prolonging the litigation – convince us the percentage method is a
13 valuable tool that should not be denied our trial courts.") This is consistent with decisions in California
14 courts where attorneys' fees equaling one-third or more of the potential value of the common fund is
15 routinely awarded. *See Chavez v. Netflix, Inc.*, 162 Cal.App.4th 43, 66 n.11 (2008) ("Empirical studies
16 show that, regardless whether the percentage method or the lodestar method is used, fee awards in class
17 actions average around one-third of the recovery."). Theodore Eisenberg & Geoffrey P. Miller,
18 Attorney Fees in Class Action Settlements: An Empirical Study, J. of Empirical Legal Studies, Vol. 1,
19 Issue 1, 27-78, March 2004, at 35 (independent studies of class action litigation nationwide have come
20 to a similar conclusion that a one-third fee is consistent with market rates).

21 **I. The Class Representative Enhancement Is Reasonable.**

22 The Settlement Agreement provides that Plaintiff's Counsel will move the Court for Service
23 Award or class representative enhancement for Mr. McNeely in the amount of up to **\$10,000.00**.
24 (**Quintilone Decl., ¶ 59**). Plaintiff served as a liaison between Class Members and Plaintiff's Counsel.
25 Plaintiff assisted Class Counsel with investigation and evaluation of the class claims, including
26 producing documents and attending multiple telephonic and in-person meetings at counsel's office,
27 assisting in drafting discovery requests, and locating potential witnesses, and underwent depositions.
28 He participated in the mediation and communicated with Plaintiff's counsel during the process of

1 negotiating and documenting the settlement. (**Id.**) Plaintiff provided a detailed description of the time
2 and effort they put into this case, as well as the risks he undertook in being the named plaintiff and class
3 representative in the litigation, in his concurrently filed Declaration. See generally, (**McNeely Decl.**).

4 Typical enhancement awards in wage and hour cases range from approximately **\$5,000** to
5 **\$40,000**, although some awards are higher. Here the requested service award in the amount of
6 **\$10,000.00** is modest and reasonable under the circumstances and in light of the excellent results he
7 achieved for his fellow Class Members. Plaintiff therefore requests that his enhancement be approved
8 by the Court. (**Quintilone Decl.**, ¶¶ 59-60; **McNeely Decl.**, ¶¶ 4-17).

9 **6. PROVISIONAL CERTIFICATION OF THE CLASS IS APPROPRIATE**

10 Certification is appropriate when the party seeking certification has demonstrated the existence
11 of an ascertainable class and a well-defined community of interest among the class members. *Daar v.*
12 *Yellow Cab Co.* (1967) 67 Cal.2d 695, 704; see Code of Civil Procedure § 382. This state has a “public
13 policy which encourages the use of the class action device.” *Richmond v. Dart Industries, Inc.* (1981)
14 29 Cal.3d 462, 470. Class actions are “an essential tool for protection...against exploitative business
15 practices.” *State of California v. Levi Strauss & Co.* (1986) 41 Cal.3d 460, 471. California courts are
16 bound by a legislative mandate to avoid unnecessary procedural barriers to prosecution of class action
17 lawsuits. *Union Carbide Corp. v. Superior Court* (1984) 36 Cal.3d 15, 21-22. This policy is so strong
18 that any doubts as to the appropriateness of class treatment must be **resolved in favor of certification**.
19 *Richmond*, 29 Cal.3d at 473-475. Plaintiff contends, and Defendants do not dispute for settlement
20 purposes only, that all of the elements are met here. Defendants do not concede that certification is
21 appropriate outside of this Settlement and preserves all rights to oppose certification if, for any reason,
22 the settlement does not become effective.

23 **A. The Proposed Class is Ascertainable**

24 Plaintiff seeks to represent the Settlement Class identified in the Notice. The allegations in
25 Plaintiff’s operative Complaint relating to Defendants’ actions and conduct alone provide sufficient
26 common questions of law and fact to support class certification. Plaintiff has contended that the
27 pleadings and discovery have established numerous common questions of fact and law, and along with
28 Defendants’ employment records, precisely and objectively identify Settlement Class Members so that

1 each may receive individual notice of this action. “Class members are ‘ascertainable’ where they may be
2 readily identified without reasonable expense or time by reference to official records.” *Rose v. City of*
3 *Hayward* (1981) 126 Cal.App.3d 926, 932. Defendants’ records will satisfy this requirement.

4 **B. Common Issues of Law and Fact Predominate**

5 The existence of a community of interest turns on whether common question of law and fact are
6 sufficiently pervasive to permit adjudication in a class action rather than in a multiplicity of separate
7 mini-trials. This requirement is satisfied if (1) there are predominant questions of law or fact common
8 to the class, (2) the plaintiff’s claims are typical of those of the class, and (3) the plaintiff is an adequate
9 representative. *Richmond* 29 Cal.3d at 462. The adequacy issue also encompasses questions concerning
10 the competency of counsel in litigating class claims. The “common questions” requirement asks
11 “whether, given an ascertainable class, the issues which may be jointly tried, when compared with those
12 requiring separate adjudication, are so numerous or substantial that the maintenance of class action
13 would be advantageous to the judicial process and the litigants.” *Collins v. Rocha* (1972) 7 Cal.3d 232,
14 238. Predominance does not require that each and every issue in the case be identical for each and
15 every class member. *Collins* 7 Cal.App. 3d 741, 753-54.

16 Defendants’ **220 non-exempt employees** comprising the Settlement Class Members of this
17 litigation are ascertained and Plaintiff has asserted the Labor Code violations by Defendants are clear.
18 Discovery has established common issues predominate, as the alleged violations, including whether
19 Settlement Class Members were paid all overtime, and whether there was off the clock work arise from
20 common policies and practices that uniformly applied to all Settlement Class Members. *Stephens v.*
21 *Montgomery Ward* (1987) 193 Cal.App.3d 411, 420-21 (finding predominance of common issues
22 where company exercised centralized control over its employees and its practices “manifests
23 themselves in same general fashion through 29 California Stores”). Here, the predominant questions of
24 law and fact are whether Defendants violated the Labor Code and Business & Professions Code as set
25 forth in the operative Complaint. These questions will determine liability for the class as a whole.
26 Plaintiff contends this case is well suited for class treatment, as it involves narrow, well-defined issues,
27 a pre-defined group of employees, uniform pay policies, and company-wide practices. The fact that
28 the parties have stipulated to conditional class certification for the purposes of Settlement approval and

1 Defendants does not oppose this Motion further supports a finding that common questions sufficiently
2 predominate to support preliminary approval of the parties' Settlement Agreement.

3 **C. Plaintiff's Claims are Typical of Those of the Putative Class**

4 To satisfy the typicality requirement, California law does not require that the class
5 representative possess claims "identical" to other types of employees; it merely requires that a
6 named plaintiff's interest in the action be "significantly similar" to that of the other class
7 members. *See Daniels v. Centennial Group, Inc.* (1993) 16 Cal.App.4th 467, 473. A
8 representative plaintiff's claim is typical if it arises from the same event, practice or course of
9 conduct that gives rise to the claims of other class members, and if his or her claims are based on
10 the same legal theory. *Classen* at 46. Thus, to be "typical," Plaintiff must have suffered the same
11 common injury as other members of the class. *Id.* As non-exempt employees working for
12 Defendants, Plaintiff's claims are typical of those of the other Class Members. His claims as
13 alleged in the operative Complaint have formed the framework and foundation for similar alleged
14 violations as to other Class Members, and Plaintiff's claims are typical.

15
16 **D. Plaintiff and Counsel Will Fairly and Adequately Represent the Class**

17 "Adequacy of representation depends on whether the plaintiff's attorney is qualified to conduct
18 the proposed litigation and the plaintiff's interests are not antagonistic to the interests of the class."
19 *McGhee v. Bank of America* (1976) 60 Cal.App.3d 442, 450. Both requirements are met here.
20 Plaintiff's counsel are experienced Plaintiff's Class Action and Employment lawyers. Class Counsel
21 undertook this putative class action on a contingency basis and has advanced the Class Members'
22 interests faithfully in the conduct of this litigation. Class Counsel and Plaintiff have and will continue to
23 vigorously, adequately and fairly represent the interests of the Settlement Class Members. Indeed,
24 Plaintiff has already demonstrated his commitment to the prosecution of this action by (1) participating
25 in numerous and lengthy phone conferences and meetings with class counsel relating to this matter, (2)
26 educating class counsel regarding the operations of Defendants, the working conditions and the policies
27 and practices of Defendants at issue, (3) helping with witness location and information gathering, and
28 (4) reviewing documents produced by Defendants. (**Quintilone Decl., ¶¶ 59-60; McNeely Decl. ¶¶ 4-**

17). Additionally, Plaintiff does not have any conflicts with the Class. Plaintiff and each member of the Settlement Class have a strong interest in establishing liability.

E. The Class is so Numerous that Joinder Would Be Impracticable

The proposed Settlement Class consists of approximately 220 current and former employees. It is sufficiently numerous that it would be impracticable to individually bring them all before this Court. *Rose v. City of Haywood* 126 Cal.App.3d at 934 (finding that as few as 30-40 class members satisfies the numerosity); *Hebbard v. Colgrove* (1972) 28 Cal.App.3d 1017, 1030 (as few as 28 appropriate).

F. Class Treatment is the Superior Method of Adjudication

The California Supreme Court has counseled that class treatment is superior to a number of individual trials:

“By establishing a technique whereby, the claims of many 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.’ [Citations omitted]. Many of the issues likely to be most vigorously contested in this dispute, as noted, are common ones. Absent class treatment, each individual plaintiff would present in separate, duplicative proceedings the same or essentially the same arguments and evidence, including expert testimony. The result would be a multiplicity of trials conducted at enormous expense to both the judicial system and the litigants. ‘It would be neither efficient nor fair to anyone, including defendants, to force multiple trials to hear the same evidence and decide the same issues.’” *Sav-On*, 34 Cal.4th at 340.

Litigating 220 individual cases or a PAGA only trial cannot be superior to one class action settlement. The superior and more practical approach, in view of the litigation realities facing Plaintiff and the Settlement Class Members in advancing this action through class certification, summary judgment, and trial, is to approve the parties’ reasonable Settlement.

7. CONCLUSION

Based on the foregoing, Plaintiff respectfully submits that the proposed Settlement is fair, adequate and reasonable, and that it is in the best interests of the Plaintiff and the putative Settlement Class Members. Under the applicable class action criteria and guidelines, Plaintiff therefore requests that the Court enter the concurrently provided [Proposed] Order preliminarily approving the proposed Settlement, conditionally certifying the Class for purposes of settlement only, approving the Class

1 Notice and other Notice Packet documents to be mailed to the Settlement Class, and setting the final
2 approval hearing as requested.

3
4 Dated: July 2, 2018

QUINTILONE & ASSOCIATES

5 

6 By: _____

7 RICHARD E. QUINTILONE II,
8 GEORGE A. ALOUPAS

9 Attorney for Plaintiff, AMIR MCNEELY, an
10 individual, on behalf of himself, and on
11 behalf of all others similarly situated
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1 **PROOF OF SERVICE**

2 I, the undersigned, declare as follows:

3 I am a citizen of the United States, over the age of 18 years, and not a party to the within action. I am an
4 employee of or agent for Quintilone & Associates, whose business address is 22974 El Toro Rd., Suite 100,
Lake Forest, CA 92630-4961.

5 On **July 2, 2018**, I served the foregoing document(s):

6 **NOTICE OF MOTION AND UNOPPOSED MOTION FOR PRELIMINARY APPROVAL OF**
7 **CLASS ACTION SETTLEMENT**

8 on the following parties in this action addressed as follows:

9 **SEE ATTACHED SERVICE LIST**

10 _____ **(BY MAIL)** I caused a true copy of each document, placed in a sealed envelope with postage fully
11 paid, to be placed in the United States mail at Lake Forest, California. I am "readily familiar"
12 with this firm's business practice for collection and processing of mail, that in the ordinary course
of business said document(s) would be deposited with the U.S. Postal Service on that same day. I
understand that the service shall be presumed invalid if the postal cancellation date or postage
meter date on the envelope is more than one day after the date of deposit for mailing contained on
this affidavit.

13 _____ **(BY PERSONAL SERVICE)** I delivered each such document by hand to each addressee above.

14 _____ **(BY OVERNIGHT DELIVERY)** I caused a true copy of each document, placed in a sealed
15 envelope with delivery fees provided for, to be deposited in a box regularly maintained by Federal
Express or Overnight Express. I am readily familiar with this firm's practice for collection and
16 processing of documents for overnight delivery and know that in the ordinary course of
Quintilone & Associates' business practice the document(s) described above will be deposited in a
box or other facility regularly maintained by Federal Express or Overnight Express or delivered to
17 a courier or driver authorized by Federal Express or Overnight Express to receive documents on
the same date it is placed at Quintilone & Associates for collection.

18 _____ **(BY FACSIMILE)** By use of facsimile machine number 949.458.9679, I served a copy of the
19 within document(s) on the above interested parties at the facsimile numbers listed above. The
transmission was reported as complete and without error. The transmission report was properly
issued by the transmitting facsimile machine.

20 _____ **(BY ELECTRONIC SERVICE)** I delivered each such document by electronic means pursuant to
21 California Civil Code, Code of Civil Procedure, the Local Rules and/or FRCP § 5(b)(2), et seq.

22 Executed on **July 2, 2018** at Lake Forest, California.

23 _____ **(FEDERAL)** I declare under penalty of perjury that the above is true and correct.

24 _____ **(STATE)** I declare under penalty of perjury that the above is true and correct.

25 

26 _____
27 GEORGE A. ALOUPAS
28

SERVICE LIST

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