BRADLEY/GROMBACHER, LLP
Marcus J. Bradley, Esq. (SBN 174156)
Kiley L. Grombacher, Esq. (SBN 245960)
Lirit A. King, Esq. (SBN 252521)
31365 Oak Crest Drive, Suite 240
Westlake Village, California 91361
Telephone: (805) 270-7100
Facsimile:(805) 270-7589
mbradley@bradleygrombacher.com
kgrombacher@bradleygrombacher.com
lking@bradleygrombacher.com

LAW OFFICES OF SAHAG MAJARIAN II
Sahag Majarian II, Esq. (SBN 146621)
18250 Ventura Boulevard
Tarzana, California 91356
Telephone: (818) 609-0807
Facsimile: (818) 609-0892
sahagii@aol.com

Attorneys for Plaintiff MARCOS RETANA

ENDORSED
FILED
SUPERIOR COURT
MAY - 8 2020
COLUSA COUNTY
FILED

SUPERIOR COURT FOR THE STATE OF CALIFORNIA

COUNTY OF COLUSA

MARCOS RETANA, an individual, on his own behalf and on behalf of all other aggrieved employees,

Plaintiffs,

v.

ADAMS TRUCKING, INC., a California corporation, and DOES 1 to 10, Inclusive, and DOES 1-100, inclusive,

Defendants.

CASE NO. CV24358

[Assigned for all purposes to Hon. Jeffrey A. Thompson]

NOTICE OF UNOPPOSED MOTION AND MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT; MEMORANDUM OF POINTS AND AUTHORITIES

(Filed Concurrently with Declarations and (Proposed) Order)

DATE: June 9, 2020
TIME: 9:00 a.m.
DEPT: 1

TAX FILE

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on June 9, 2020 at 9:00 a.m., or as soon thereafter as the matter may be heard in Department 1 of the above-entitled court located at 547 Market Street, Colusa, California, Plaintiff Marcos Retana will, and hereby does, move the Court for an order:

1. Granting preliminary approval to the class action settlement achieved in this matter as reflected in the Joint Stipulation of Class Action Settlement and Release ("Settlement Agreement"), a true and correct copy of which is attached to the Declaration of Marcus J. Bradley as Exhibit "A";
2. For settlement purposes, certifying the Settlement Class, pending final approval of the settlement;
3. Preliminarily approving Plaintiff, Marcos Retana ("Plaintiff" or "Class Representative"), as the Class Representative of the Settlement Class;
4. Preliminarily approving Bradley/Grombacher, LLP ("Plaintiff's Counsel" "Class Counsel") as Class Counsel for the Settlement Class;
5. Preliminarily approving ILYM Group as the class administrator ("Administrator" or "Class Administrator") and preliminarily approving the costs of the settlement administration;
6. Approving as to form and ordering that Notice of the Settlement be given to the Settlement Class, a true and correct copy of which is attached as Exhibit "1," as well as the Request for Exclusion, a true and correct copy of which is attached as Exhibit "2" to the Settlement Agreement ";
7. Setting this matter for hearing on final approval, approval of the Class Representative Service Award, and approval of Class Counsel's application for attorney's fees and expenses; and,
8. Granting such other and further relief as the Court deems just and proper.

This Motion is brought pursuant to California *Rules of Court*, Rule 3.769, on the grounds that the settlement reached with the Defendant Adams Trucking, Inc., ("Defendant") is reasonable, fair, and adequate, achieved as the result of informed, arms-length negotiations, and deserving of approval

for the benefit of the Settlement Class Members to whom it pertains.

This Motion shall be based on the Memorandum of Points and Authorities attached hereto, the Declarations of Marcus Bradley, Marcos Retana, and Sean Hartranft filed concurrently herewith, and exhibits thereto filed concurrently with this motion, and the Court's own records, files, notes, and other documents on file in this matter, as well as upon all oral and/or documentary evidence as may be properly presented at the time of the hearing of this matter.

DATED: May 8, 2020

BRADLEY/GROMBACHER, LLP
LAW OFFICES OF SAHAG MAJARIAN, II

By: _____
Marcus J. Bradley, Esq.
Kiley L. Grombacher, Esq.
Lirit A. King, Esq.
Sahag Majarian, II, Esq.

Attorneys for Plaintiff

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases **Pages**

Statutes

Other Authorities

Rules

I. INTRODUCTION

By this Motion, Class Representative, Plaintiff Marcos Retana ("Class Representative" or "Plaintiff") seeks an Order of this Court granting preliminary approval of the settlement reached in this matter by and between the Class Representative, on his own behalf, and on behalf of the Settlement Class Members (defined *infra*). The terms of the non-reversionary settlement are set forth in the Joint Stipulation of Class Action Settlement ("Settlement Agreement"), attached as Exhibit "A" to the Declaration of Marcus J. Bradley ("Bradley Decl."), filed in support of this Motion. This Motion is not opposed by Defendant Adams Trucking, Inc. ("Adams" or "Defendant").

The "Settlement Class Members" is generally defined as "all non-exempt employees who worked for Defendant as Drivers at any time from December 13, 2014 and March 2, 2020 or the date of preliminary approval, whichever is sooner." All participating Settlement Class Members shall be collectively defined as the "Settlement Class". (Declaration of Marcus J. Bradley "Bradley Decl.," Exhibit "A" at ¶28.)

Pursuant to the Settlement Agreement, the Parties request that the Court enter an Order:

1. Preliminarily approving the Settlement Agreement.

2. Approving the forms of the Notice of Class Action Settlement ("Class Notice" attached as Exhibit "A" to the Settlement Agreement), the Exclusion Form (attached as Exhibit "B" to the Settlement Agreement), the Order Granting Preliminary Approval filed currently herewith, and ordering that the Settlement Class Members be given notice of the Settlement and provided with the Class Notice.

3. Preliminarily approving ILYM as the Settlement Class Administrator ("Administrator" or "Settlement Administrator") and preliminarily approving the costs of the administration of the settlement.

4. Scheduling a final approval hearing for a date one-hundred (100) days after Preliminary Approval is granted, or such later date as is available for the Court.

Under the Settlement Agreement, Plaintiff and the Settlement Class Members will share in a $300,000 non-reversionary amount ("Gross Settlement Fund") including:

1. The Net Settlement Amount which means the Gross Settlement Fund, minus all payments to Settlement Class Members, the Class Representative (including the service payment award), Class Counsel, the Administrator as set forth specifically:
2. Attorneys' fees not to exceed one-third (33.33%) ($100,000) of the Gross Settlement Amount ("Attorneys' Fees");
3. Attorneys' costs not to exceed $20,000 of the Gross Settlement Fund ("Attorneys' Costs");
4. Class representative service award to the Class Representative not to exceed $7,500 in total ("Class Representative Service Award");
5. $7,500 payment to the California Labor and Workforce Development Agency under the Private Attorneys General Act of 2004; and
6. All settlement administration fees and costs, including those of the Administrator ("Settlement Administration Fees") not to exceed $8,000;

By this Motion, the Plaintiff requests that the Court take the first step in the approval process - preliminary approval of the settlement. The process for approving settlement, as set forth in California *Rules of Court*, Rule 3.769, is, pertinent part, as follows:

> Any party to a settlement agreement may serve and file a written notice of motion for preliminary approval of the settlement. The settlement agreement and proposed notice to class members must be filed with the motion, and the proposed order must be lodged with the motion. The court may make an order approving or denying certification of a provisional settlement class after the preliminary settlement hearing.[1]

In determining whether preliminary approval is warranted, the Court must decide whether the settlement is within the range of what might be found to be fair, reasonable, and adequate, so that notice of the settlement should be given to class members, and a hearing scheduled to consider final settlement approval. The Court is not required at this point to make a final determination as to the fairness of the settlement.

[1] Cal. Rules of Court, Rule 3.769 (c), (d).

II. SUMMARY OF THE LITIGATION

A. Factual Background

This case is a putative class action alleging violations of California labor laws. Plaintiff was employed by Defendant as a full-time, non-exempt "Driver" from approximately 1998 to April 2018, with Northern California as his main area route. Adams is a multi-faceted transportation company that services the needs of agricultural growers and food manufacturing companies throughout California and in interstate commerce. Adams is headquartered in Arbuckle, California, though it maintains two yards to which Drivers report—Arbuckle, and Woodland. The Company also employs corporate office employees, dispatchers, and warehouse workers. However, only the Company's Drivers are the subject of the present action.

B. Pleadings

On December 13, 2018, Plaintiff provided written notice to the Labor and Workforce Development Agency ("LWDA") and to Defendant under California *Labor Code* §§ 2698-2866 et seq. of violations of the California *Labor Code* including sections 201-203, 221, 223, 226.2, 226.7, 227.3, 512, 11.82,12, 1194, 1194.2, 1197, and 1198. The LWDA subsequently did not respond.

On December 13 2018, Plaintiff filed his Complaint against Defendant in the Superior Court of the State of California for the County of Colusa, filed as Marcos Retana, on behalf of himself and all others similarly situated. Plaintiff alleged causes of action against Defendant for: (1) Failure to Provide Meal Periods; (2) Failure to Provide Rest Periods; (3) Failure to Pay Accrued Time Off; (4) Failure to Timely Furnish Accurate Wage Statements; (5) Waiting Time Penalties; and (6) Unfair Business Practices.

On March 1, 2019, Plaintiff filed a First Amended Complaint ("FAC") including claims for (1) Failure to Provide Meal Periods; (2) Failure to Provide Rest Periods; (3) Failure to Pay Accrued Time Off; (4) Failure to Timely Furnish Accurate Wage Statements; (5) Waiting Time Penalties; (6) Unfair Business Practices; and (7) Violation of California Labor Code §§ 2698 et seq. ("PAGA").

Plaintiff seeks to represent all employees who were or are employed by Defendants in

California as non-exempt 'Drivers' between December 13, 2014 and March 2, 2020 or the date of preliminary approval, whichever is sooner (the "Class Period").

Defendant answered the FAC in April 20, 2019, and generally denied all allegations therein. Defendant maintains that it provided meal and rest periods to its employees as required by California law, and denies that it treated Plaintiff or any other employees unlawfully with respect to their meal and rest periods. Defendant also asserts that its drivers are not subject to California meal and rest period laws due to preemption by federal law and, in any event, drivers executed enforceable on-duty meal period waivers. Defendant further maintains that it paid employees all accrued, unused vacation at the time of termination, and timely paid all final wages. Defendant also provided Plaintiff and all other employees accurate, itemized wage statements in accordance with California law.

C. Discovery and Investigation

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 engaged in written discovery and an informal exchange of documents and information. (Bradley Decl., ¶6.) Specifically, Defendant responded to Plaintiff's Special Interrogatories and Requests for Production of Documents. (*Id.*, ¶6.) Additionally, Defendant provided Plaintiff with the following documents:

- Adams Trucking employee training manual;
- A randomly selected sampling of class member payroll and timekeeping data;
- A spreadsheet showing the employee ID number is with clock in and clock out times and how long each shift was;
- Driver Log Reports;
- Driver On-Duty Meal Period Waivers
- Plaintiff's personnel file; and
- Adams Trucking employee handbook, which contains the Company's meal and rest period policies.

(*Id.*, ¶6.)

This information allowed an accurate assessment of Defendant's liability and damage exposure based on the claims alleged. (*Id.*, ¶6.)

Counsel for the Parties conferred extensively concerning this information, the merits of the Parties' claims and/or defenses, and other issues relevant to reaching a settlement. (*Id.*, ¶7.) 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. (Ibid.)

D. Mediation

The Parties agreed upon and scheduled a mediation with experienced mediator, Tripper Ortman III, a well-regarded mediator who has mediated many wage and hour class actions. (*Id.*, ¶9.) In advance of the mediation, the Parties each prepared detailed mediation statements. (Ibid.)

On December 2, 2019, the Parties participated in a private mediation after they engaged in the discovery detailed above in Section II(B). (*Id.*, ¶10.) As a result, the Parties reached an agreement on all material terms to resolve this Action in its entirety. (*Id.*)

III. SUMMARY OF THE SETTLEMENT

The Plaintiff, the putative class and their counsel, on the one hand, and the Defendant and its counsel, on the other hand, agree that the settlement, reached after a mediated settlement session with an independent and respected wage and hour class action mediator, is fair and equitable to both sides. (*Id.*, ¶11.)

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

A. Settlement Class Members

The proposed Settlement Class Members for settlement purposes only consists of "all non-exempt employees who worked for Defendant as Drivers at any time from December 13, 2014 and March 2, 2020 or the date of preliminary approval, whichever is sooner."

B. Settlement Consideration

1. Gross Settlement Fund

In consideration for this Settlement and a release by the Settlement Class Members, as provided herein, Defendant has agreed to pay $300,000 ("Gross Settlement Fund").

2. Net Settlement Amount

The "Net Settlement Amount" is defined as the Gross Settlement Fund, less all of the following: (1) all costs of settlement administration, estimated at $8,000; (2) attorneys' fees of $100,000; (3) attorneys' costs up to $20,000; (4) the Class Representative Service Award not to exceed $7,500; and (5) payment to LWDA in the amount of $7,500.

3. Individual Settlement Amount

Settlement Class Members shall be entitled to a share of the Net Settlement Amount. Allocation of the entire Net Settlement Amount shall be calculated by multiplying the Workweek Amount[2] by the number of Workweeks worked by an individual Settlement Class Member. (Settlement Agreement, ¶39(b)(1).

Presently, there are estimated to be sixty-five (65) Settlement Class Members (Bradley Decl., ¶20.) Assuming this Court makes no modification, Settlement Class Members shall recover an estimated net average recovery of $2,418.63. Each individual settlement amount will be allocated 33.3% as wages, and 66.7% as penalties and interest.

Attorneys' Fees & Costs.

Defendant will not object to Class Counsel's application for an award of attorneys' fees

[2]The Settlement Administrator shall determine the number of full or partial workweeks worked by all Settlement Class Members based on Defendant's payroll records. "Payment Ratio" means the respective Compensable Workweeks for each Settlement Class Member divided by the total Compensable Workweeks for all Settlement Class Members. This number of full or partial workweeks shall be reduced by the number of workweeks attributable to those Settlement Class Members who have timely and properly submitted a request to the Settlement Administrator for exclusion from the Settlement ("Total Workweeks"). The Net Settlement Amount shall be divided by the Total Workweeks to obtain the "Workweek Amount." (Settlement Agreement, ¶19, 39(b)(i).

in the amount of one-third (33.33%) of the maximum settlement amount (or $100,000) subject to the Court's approval. Class Counsel and Defendant agree that such an award of attorneys' fees is reasonable under the circumstances. (Settlement Agreement, ¶39(d))

The Parties also agree that Class Counsel's reasonable litigation expenses and costs shall be reimbursed not to exceed $20,000. (Ibid.)

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

4. Service Award.

Defendant will not object to Plaintiff's application for a Service Payment Award in the amount of $7,500, for his time and effort in prosecuting this matter and in exchange for a release of the Released Claims and a General Release. (Settlement Agreement, ¶39(c)).

5. Settlement Administration Costs

The Parties have agreed to hire ILYM to administer this settlement, subject to the Court's approval, and the total Administrator's fees and expenses are estimated not to exceed $8,000 and are to be paid out of the Gross Settlement Amount (Settlement Agreement, ¶39(f)).

6. LWDA Payment

The Parties shall allocate LWDA Payment in the amount of $7,500 from the Gross Settlement Fund for the compromise of claims brought under the Private Attorneys General Act of 2004, Cal. Lab. Code § 2698 *et seq.* (Settlement Agreement, ¶39(e)).

C. <u>Release by Settlement Class Members</u>

In exchange for such award, upon final approval by the Court and by operation of the Settlement Agreement's terms, all participating Settlement Class Members who do not submit valid and timely requests for exclusion (opt-out) shall fully release and discharge the Defendant from all claims that have been alleged or that could have been alleged in the operative Complaint based on the allegations, claims, facts and/or legal theories raised by the operative Complaint, as follows:

> "Released Claims" means all known and unknown causes of action that were pleaded, or could have been pleaded, in the operative complaint for the Class Period on the same set of facts, whether for economic damages, non-economic damages, liquidated damages, punitive damages, restitution, penalties, alleged unpaid wages, interest, other monies, or other relief, namely: (a) failure to provide meal periods, (b) failure to provide rest periods, (c) failure to provide compensation for rest and recovery periods and nonproductive time, (d) failure to reimburse for business expenses, (e) failure to timely furnish accurate itemized wage statements, (f) waiting time penalties, (g) unfair competition, (h) any other claims or penalties under the wage and hour laws pleaded in the action; (i) all damages, penalties, interest and other amounts recoverable under said causes of action under California and federal law, to the extent permissible, including but not limited to the California Labor Code, the applicable Wage Orders, California Unfair Competition Law, and Private Attorneys General Act of 2004. The Released Claims exclude claims for discrimination, harassment, wrongful termination, or remedies not addressed herein. The res judicata effect of the Judgment will be the same as that of the Released Claims obtained by this Agreement. The period of the Released Claims will extend from December 13, 2014 and March 2, 2020 or the date of preliminary approval, whichever is sooner.
>
> (Settlement Agreement, ¶21.)

D. Release by Plaintiff

In exchange for his individual service award, and by operation of the Settlement Agreement's terms, Plaintiff, on his own behalf and on behalf of his heirs, beneficiaries, devisees, executors, administrators, trustees, conservators, guardians, personal representatives, successors-in-interest, and assigns, releases the Defendant and certain related parties from all claims, demands, rights, liabilities, and causes of action, known or unknown, including but not limited to the Released Claims, and stipulates and agrees that, upon the Effective Date, Plaintiff will be deemed to have, and by operation of the final judgment will have, expressly waived and relinquished, to the fullest extent permitted by law, the provisions, rights and benefits of Section 1542 of the California Civil Code, or any other similar provision under federal or state law. (Settlement Agreement, ¶35.)

E. Notice Procedure

As noted above, the Parties have selected ILYM to serve as the Administrator. The Parties have agreed on the form of notice to be mailed to the Class ("Class Notice," attached as **Exhibit "1"** to the Settlement Agreement). (Settlement Agreement, ¶38)

1. Settlement Notice Timeline

Timeframe	Event
After Preliminary Approval	Within 14 days, Defendant shall provide to the Settlement Administrator the names, addresses, social security numbers and work week information of all Settlement Class Members during the Class Period.
Within approximately ten (10) days following Preliminary Approval of the Settlement	All Settlement Class Members shall be mailed a Notice Packet by First Class U.S. Mail.
The Response Deadline will be forty-five (45) calendar days from the initial mailing of the Notice Packet by the Settlement Administrator, unless the 45th day falls on a Sunday or U.S. postal holiday, in which case the Response Deadline will be extended to the next day on which the U.S. Postal Service is open.	The deadline by which Settlement Class Members must deliver by first class U.S. Mail, postage prepaid to the Settlement Administrator any Requests for Exclusion, Notices of Objection, or Notices of Dispute.

(Settlement Agreement, ₱24-38.)

2. Details Regarding Dissemination of Notice

The Notice of Settlement, in materially the form attached to the Bradley Declaration as Exhibit "A" and as approved by the Court, shall be sent by the Settlement Administrator to the Settlement Class Members, by first class mail to those addresses provided, within approximately ten (10) days following Preliminary Approval of the Settlement. (Settlement Agreement, ¶38.) The Class Notice shall also be available in Spanish language if requested by Settlement Class Members.

The details set forth in the Class Notice is contained in the Settlement Agreement attached as Exhibit "A" to Bradley Declaration filed concurrently herewith. (*Id.*)

Any Notice Packets returned to the Settlement Administrator as non-deliverable on or before the Response Deadline shall be sent promptly via regular First-Class U.S. Mail to the forwarding address affixed thereto and the Settlement Administrator shall indicate the date of such re-mailing on the Notice Packet. (Settlement Agreement, ¶38a(i).)

If no forwarding address is provided, the Settlement Administrator shall promptly attempt to determine the correct address using a skip-trace, or other search using the name, address and/or Social Security number of the Settlement Class Member involved, and shall then

perform a re-mailing, if another mailing address is identified by the Settlement Administrator. (*Id*.)

F. The Claims, Opt-Out and Objection Process

1. There Is No Claims Process

To participate in the settlement, a Class Member need not take any action. There is no claims process of verification requirements. All members of the settlement class shall receive a settlement check unless he or she opts-out of the settlement.

2. Procedure for Objecting to Settlement

The Notice Packet will state that Settlement Class Members who wish to object to the Settlement must file with the Court and serve on all Parties a written statement of objection ("Notice of Objection") by the Response Deadline. The details of the objection process are contained in Settlement Agreement, ¶38c attached to the Declaration of Bradley as Exhibit "A."

3. Procedure for Opting Out of Settlement

The Notice Packet will state that Settlement Class Members who wish to exclude themselves from the Settlement must submit a Request for Exclusion by the Response Deadline. The details of the Opt-Out process are contained in Settlement Agreement, ¶38b attached to the Declaration of Bradley as Exhibit "A."

IV. PRELIMINARY SETTLEMENT APPROVAL

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

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

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

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

Thus, preliminary approval by the trial court is simply a conditional finding that the settlement appears to be within the range of acceptable settlements. As Professor Newberg comments, "[t]he strength of the findings made by a judge at a preliminary hearing or conference concerning a tentative settlement proposal may vary. The court may find that the settlement proposal contains some merit, is within the range of reasonableness required for a settlement offer or is presumptively valid subject only to any objections that may be raised at a final hearing." (4 William B. Rubenstein, et al., Newberg on Class Actions (5th Ed. 2016) § 11.26.)

In short, the Court need find only that the settlement falls within the range of possible final approval, also described as the "reasonable range." (*See, e.g., North County Contractor's Assn. v. Touchstone Ins. Services.* (1994) 27 Cal.App.4th 1085, 1089-90.) Trial courts have broad discretion to determine whether a class action settlement is fair. (*Kullar v. Foot Locker Retail, Inc*. (2008) 168 Cal.App.4th 116, 128.) The trial court must exercise its discretion through the application of several well-recognized factors when deciding whether a class action settlement is fair. (*Clark v. American Residential Services, LLC* (2009) 175 Cal.App.4th 785, 799 .) The list of factors, which "is not exhaustive and should be tailored to each case," includes "the strength of Plaintiff's case, the risk, expense, complexity and likely duration of further litigation, the risk of maintaining class action status through trial, the amount offered in settlement, the extent of discovery completed and the stage of the 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* (2010) 186 Cal.App.4th 576, 581; *Kullar*, 168 Cal.App.4th at p. 128, quoting *Dunk v. Ford Motor Co*. (1996) 48 Cal.App.4th 1794, 1801.) The most

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

A. The Settlement Agreement Resulted from Arm's-Length Negotiations

The presumption is that a proposed settlement is fair and reasonable when it is the result of arm's-length negotiations. (*See Williams v. Vukovich* (6th Cir.1983) 720 F.2d 909, 922-23 ("The court should defer to the judgment of experienced counsel who has competently evaluated the strength of his proofs"); *In re Excess Value Ins. Coverage Litig.* (S.D.N.Y. July 30, 2004, No. M-21-84RMB) No. M-21-84 (RMB) 2004 U.S. Dist. LEXIS 14822, at *34 ("Where 'the Court finds that the settlement is the product of arm's length negotiations conducted by experienced counsel knowledgeable in complex class litigation, the Settlement will enjoy a presumption of fairness'"); *In re Inter-Op Hip Prosthesis Liab. Litig.* (N.D. Ohio 2001) 204 F.R.D. 359, 380 (granting preliminary settlement approval) ("when a settlement is the result of extensive negotiations by experienced counsel, the Court should presume it is fair"); *see also* 4 Rubenstein, et al., Newberg on Class Actions (5th Ed. 2016) §11.41 at p. 90; Manual For Complex Litig. (4th Ed. 2004), §21.612.)

The proposed settlement here is the product of arm's-length negotiations, assisted by a well-respected and independent mediator for which the Parties prepared by exchanging substantial relevant information and documents.

Counsel for the Parties have investigated the applicable law, as applied to the facts discovered, regarding the alleged claims of Plaintiff and potential defenses thereto, and the damages claimed by Plaintiff. Armed with this extensive body of knowledge and analysis, the

Parties engaged in a full day of mediation with a skilled mediator. At all times, the negotiations leading to the Settlement have been adversarial, non-collusive and at arm's length.

B. The Strength of Plaintiff's Case and Complexities of Further Litigation

Plaintiff believes that the Settlement Class claims in this action are legally meritorious and present a reasonable probability of a favorable determination on behalf of the class. At the same time, there is undeniably significant litigation risk avoided by the proposed Settlement, both at class certification proceedings, at trial, and in the appellate courts.

Liability remains highly contested by Defendant, who denies that it engaged in any violations of the law, and further deny any liability or engagement in wrongdoing of any kind associated with the claims alleged in the Action by the Named Plaintiff or any Class Member. Defendant contends that at all times it complied with all wage-and-hour laws in connection with the employment and/or retention of services of Plaintiff and the Settlement Class Members, including providing meal and rest periods where required and maintaining enforceable on-duty meal period waivers for drivers. Defendant further contends that, even if a Court found that Defendant had committed a technical violation of the Labor Code, equity and fairness in this case would result in the Court exercising its discretion to reduce the amount of civil penalties awarded under the Labor Code and PAGA. Lastly, Defendant asserted as a threshold issue that Plaintiff's claims for violation of California's meal and rest period laws were preempted by the Federal Aviation Administration Authorization Act ("FAAAA"), given that Plaintiff and members of the putative class drove qualified vehicles in interstate commerce.

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

The Parties have also considered the uncertainty and risk of the outcome of further litigation, and the difficulties and delays inherent in such litigation. Plaintiff is also aware of the

burdens of proof necessary to establish liability for the claims asserted in the action, the defenses thereto, the difficulties in establishing damages.

In evaluating the settlement, the Court will seek a reasonable estimate of the nature and amount of recovery that each class member could have obtained if the Plaintiff had prevailed in the litigation. Numerous decisions summarize a trial court's task when considering whether to approve the settlement of a putative class action.

> "The trial court has broad discretion to determine whether the settlement is fair. [Citation.] It should consider relevant factors, such as the strength of plaintiffs' case, the risk, expense, complexity and likely duration of further litigation, the risk of maintaining class action status through trial, the amount offered in settlement, the extent of discovery completed and the stage of the proceedings, the experience and views of counsel, the presence of a governmental participant, and the reaction of the class members to the proposed settlement."

(*Cellphone Fee Termination Cases* (2009) 180 Cal.App.4th 1110, 1117-18, quoting *Dunk v. Ford Motor Co*. (1996) 48 Cal.App.4th 1794, 1801.)

The court's consideration of relevant factors, however, does not transform the settlement approval "into a trial or rehearsal for trial on the merits.'" (*7-Eleven Owners for Fair Franchising v. Southland Corp.* (2000) 85 Cal.App.4th 1135, 1145, quoting *Class Plaintiffs v. City of Seattle* (9th Cir. 1992) 955 F.2d 1268, 1276.) The record need only provide the trial court with an understanding of the amount that is in controversy and the realistic range of outcomes of the litigation.

Because settlements are inherently a compromise, once the parties have provided it with the requisite "basic information," the trial court must only "satisfy itself that the class settlement is within the 'ballpark' of reasonableness." (*Tech-Bilt, Inc. v. Woodward-Clyde & Assoc*. (1985) 38 Cal.3d 488, 499-500.)

Here, in preparation for mediation, Plaintiff calculated Defendant's liability to Settlement Class Members to be in excess of the settlement amount. Plaintiff's valuation assumed that: (1) Plaintiff prevailed in certifying the case; (2) Plaintiff's and Settlement Class Members' on-duty meal period waivers were unenforceable; (3) Plaintiff defeated the threshold issue of FAAAA preemption; (4) prevailed in establishing liability on the merits; and (5) Plaintiff and the

Settlement Class Members were awarded the full amount of all discretionary penalties.

The realistic range of outcomes for this litigation was significantly discounted due to the present state of the law regarding meal and rest break claims and the other claims brought in the Action, Defendant's defenses for each claim (including the enforceable on-duty meal period waiver, and FAAAA preemption), and the likelihood of prevailing on a class certification motion as well as trial and any appeals. Where both sides face significant uncertainty, the attendant risks favor settlement. (*Hanlon v. Chrysler Corp*. (9th Cir. 1998) 150 F.3d 1011,1026.)

***Kullar v. Footlocker* Analysis.**

To allow this Court to make an informed assessment pursuant to *Kullar v. Foot Locker Retail, Inc.* (2008) 18 Cal.App.4th 116, Plaintiff's Counsel provides the following assessment of the case and settlement. Plaintiff's Counsel believes the settlement is a very good one for the Settlement Class Members. In this case, Plaintiff sought unpaid wages and statutory penalties as well as the equitable remedies of declaratory relief, disgorgement, accounting, and restitution. Plaintiff's expert had estimated Defendant's liability to be around $2 million, including penalties and interest. (Bradley Decl. at ¶12.) The settlement before the Court represents approximately 15% of the potential exposure value. This is a reasonable percentage. (*Id.* at ¶12.)

Courts have determined that settlements are, of course, reasonable even where Plaintiffs recover only a portion of their actual losses. (*See Behrens v. Wometco Enters., Inc*. (S.D. Fla. 1988) 118 F.R.D. 534, 542, *aff'd*, (11th Cir. 1990) 899 F.2d 21 "[T]he fact that a proposed settlement amounts to only a fraction of the potential recovery does not mean the settlement is unfair or inadequate."]) Indeed, "[a] settlement can be satisfying even if it amounts to a hundredth or even - a thousandth of a single percent of the potential recovery." (*Id*.; *see also City of Detroit v. Grinnell Corp.* (S.D.N.Y. 1972) 356 F.Supp. 1380, 1386 [a recovery of 3.2% to 3.7% of the amount sought is "well within the ball park"], aff'd in part, rev'd on other grounds, (2d Cir. 1974) 495 F.2d 448; *Martel v. Valderamma* (C.D. Cal. 2015) 2015 U.S. Dist. LEXIS 49830 * 17 [approving a settlement of $75,000 when potential damages were $1.2 million]; *In re Toys R US FACTA Litig.* (C.D. Cal. 2014) 295 F.R.D. 438, 453 [approving settlement with vouchers (not cash) potentially worth a maximum of three percent (3%) if all possible claims were actually

made, or $391.5 million aggregate voucher potential where the class could have recovered $13.05 billion.]) See 4 William B. Rubenstein et al., Newberg on Class Actions (5th ed. 2016) § 13:15 (the range of reasonableness percentage could be as low as 1/100th or 1/1000th of 1%); *Ma v. Covidien Holding, Inc*., (C.D. Cal. Jan. 31, 2014, No. SACV 12-02161-DOC) 2014 WL 360196, at *5 (finding a settlement worth 9.1% of the total value of the action "within the range of reasonableness"); *Balderas v. Massage Envy Franchising, LLC*, (N.D. Cal. July 21, 2014, No. 12-CV-06327 NC) 2014 WL 3610945, at *5 (granting preliminary approval of a net settlement amount representing 5% of the projected maximum recovery at trial); *Glass v. UBS Fin. Servs., Inc*. (N.D. Cal. Jan. 26, 2007, No. C-06-4068 MMC) 2007 WL 221862, at *9, *aff'd*, 331 Fed. Appx. 452 (9th Cir. 2009) (approving a settlement of an action claiming unpaid overtime wages where the settlement amount constituted approximately 25% to 35% of the estimated actual loss to the class).

Below, Plaintiff details the issues necessitation deductions to be taken from the maximum potential value to arrive at the Gross Settlement Fund value:[3]

Meals and Rest Breaks:

The Settlement Class Members are drivers who are generally responsible for driving and delivering from one point to another, in interstate commerce. Their work tasks may include (among others): locating, inspecting, fueling, and maintaining vehicles, verifying loads, planning routes and trips, completing daily logs and shipping documents, completing other paperwork, waiting for customers, waiting on loading and unloading of shipments, and waiting for dispatch.

The meal and rest break claims were heavily discounted in Plaintiff's valuation of the case. Plaintiff's expert calculated damages due to the failure to provide meal breaks in the amount of $657,344, which assumed a 100% violation rate and counted as violations meal

[3] Although Plaintiff's FAC asserted a claim for failure to pay accrued, unused vacation at the time of termination, during discovery (especially Plaintiff's deposition), the Parties discovered that this claim was unique to Plaintiff. Accordingly, the settlement negotiations and the Gross Settlement Fund value itself did not include amounts allocated for vacation wage claims from other Settlement Class Members.

breaks that were "late" or "short" by just one minute. Plaintiff's expert further assumed Plaintiff's and the other Settlement Class Members' on-duty meal period waivers were unenforceable. This 100% violation rate also did not take into account when a driver's daily log might show a break, which Defendant maintained was the driver's meal period.

The rest break claim was estimated to be worth about $711,954, assuming there were at least as many rest break violations as there were meal period violations, but it would have mainly relied on Class Member testimony, making it a riskier claim at class certification and liability stages. Defendant likely would have argued that only a small number of Settlement Class Members actually missed their rest breaks. They would have evidenced Defendant's employee handbook that specifically encourages taking such meal and rest breaks. Certification likely would have required depositions of Settlement Class Members who provided declarations, and Defendant surely would have obtained opposing declarations stating either rest breaks were taken or rest breaks were voluntarily waived.

Further complicating the meal and rest break claims is Defendant's potential argument that this Court lacks jurisdiction to rule on the meal and rest break claims because the Federal Motor Carrier Safety Administration ("FMCSA") has ruled that California's meal and rest break rules are preempted by the FAAAA and FMCSA hours of service ("HOS") regulations. Specifically, on December 21, 2018, the FMCSA found that "California may no longer enforce the [meal and rest break rules] with respect to drivers of property-carrying [commercial motor vehicles] subject to FMCSA's HOS rules."

Penalties:

Plaintiff's Counsel also considered the arguable presence of various penalties, and weighed the potential recoveries against probable defenses. Defendant could argue that Plaintiff could not prove the "willful" prong needed to obtain waiting time penalties under Cal. Lab. Code § 203, or that meal and rest period penalties alone cannot constitute grounds for waiting time penalties in the first instance. Further, Defendant could argue that Plaintiffs could not show that Settlement Class Members suffered an "injury" as a result of wage statement violations, as required by Cal. Lab. Code § 226, or that recent case law precludes wage statement claims of the

type asserted by Plaintiff. *Id.* Although the Class arguably could have seen a payout of approximately $316,514 for waiting time penalties and wage statement penalties, Plaintiff arguably could not recover any waiting time penalties for meal and rest claims. Moreover, Plaintiff would not recover any derivative penalties if he failed to prove the underlying claims

Certification in General:

The great discretion afforded trial courts in electing to grant or deny class certification, and the resultant possibility that this Court would deny certification of any of the proposed classes, resulting in no recovery whatsoever for those unnamed class members further weighed in favor of settlement. Going into mediation, Class Counsel were realistic about cases wherein class certification was denied in meal period and rest breaks cases. (*See, e.g., In re Lamps Plus Overtime Cases* (2012) 209 Cal.App.4th 35; *Washington v. Joe's Crab Shack* (N.D. Cal. 2010) 271 F.R.D. 629 ["individualized inquiry will be required to determine whether any single employee failed to take a meal break because he/she was too busy, and also to determine whether a particular employee signed a waiver based on a decision not to take meal breaks"]. *Hernandez v. Chipotle Mexican Grill, Inc.* (2012) 146 Cal.Rptr.3d 424, 2012 WL 3579567, *10.)

Trial and Manageability Issues:

While Plaintiff was confident in the strength of his claims, as is always the case with a trial, Plaintiff needed to accept that there was a possibility that he would not prevail at trial.

Compromise is inherent and necessary in the settlement process. Thus, even if "the relief afforded by the proposed settlement is substantially narrower than it would be if the suits were to be successfully litigated," this is no bar to a class settlement because "the public interest may indeed be served by a voluntary settlement in which each side gives ground in the interest of avoiding litigation." (*Id*. at p. 250 [quoting *Air Line Stewards, Loc. 550 v. American Airlines, Inc*., (7th Cir.1972) 455 F.2d 101, 109].) The Ninth Circuit observed "the very essence of a settlement is compromise, 'a yielding of absolutes and an abandoning of highest hopes.'" (*Officers for Justice v. Civil Serv. Commission* (9th Cir.1982) 688 F.2d 615, 624 (citation omitted).) Thus, when analyzing the amount offered in settlement, the Court should examine "the complete package taken as a whole," and the amount is "not to be judged against a hypothetical

or speculative measure of what might have been achieved by the negotiators." (*Id.* at pp. 625, 628.)

Given the difficulties Plaintiff and the Settlement Class faced, both in terms of certification and in adjudicating their claims on the merits, the litigation discounts afforded by Plaintiff are reasonable and the settlement is fair, reasonable and adequate.

In the present case, it is clear that the settlement before this Court is the best course of action as it ensures fair, reasonable and adequate redress and recovery for the members of the class. Thus, it was clearly reasonable for Plaintiff to negotiate a smaller certain award rather than seek the full recovery but risk recovering nothing.

C. The Settlement Has No Obvious Deficiencies

This proposed settlement has no obvious deficiencies. The settlement provides no preferential treatment for the Plaintiff or other Settlement Class Members. The Plaintiff will receive distributions from the settlement proceeds calculated in the same manner as the distributions to all other participating Settlement Class Members, plus any Service Payment award approved by the Court.

The proposed Settlement does not place the named Plaintiff's interests ahead of the Settlement Class as a whole. Apart from a reasonable incentive payment for his efforts on behalf of the Settlement Class, typical in class action litigation (and subject to Court approval after notice to the Settlement Class), the named Plaintiff's personal recovery in this action and settlement will be the same as those with whom he shares a common set of facts amongst the Settlement Class. The named Plaintiff has not in any way tried to leverage a class action for some personal agenda or gain.

Plaintiff contends that the proposed Settlement also does not place the Class Counsel's interests ahead of class members' interests. Settlement provisions relating to attorneys' fees and litigation expenses in the action were not negotiated until after an agreement was reached in principal with respect to the direct Settlement Class benefits and the Gross Settlement Fund amount. Further, the Settlement provides only for a maximum permissible amount of the request for and any award of attorneys' fees and litigation expenses. Any award of fees and expenses

remains to be determined by the Court at the time of the fairness hearing and must necessarily be found to be fair and reasonable to the Settlement Class based on applicable law.

Again, each Settlement Class Member has the right to object and be heard regarding the amount of fees and expenses requested. Any amounts not awarded by the Court as fees and expenses will remain in the net settlement fund to be distributed to the class. Class Counsel will file a separate motion for approval of the fee award sought herein, at the time of and in conjunction with the filing of the motion for final approval, should preliminary approval be granted, and a final approval hearing scheduled by the Court.

D. The Class Representative's Payments, Class Counsel Fees Payment, And Class Counsel Litigation Expenses Payment

1. The Service Award Requested by Plaintiff Is Reasonable

As part of the Settlement, Plaintiff will seek a Class Representative Service Award of $7,500 in addition to his share of the Net Settlement Amount, and Class Counsel will seek fees in the amount of 33.33% of the Gross Settlement Fund or $100,000 and reimbursement of litigation costs not to exceed $20,000.

Plaintiff was formerly employed by Defendant. Plaintiff has taken an extraordinary step to challenge his former employer's actions by bringing this action. He did so in the belief that he, and the members of the Settlement Class, were, in fact, entitled to the relief sought in this case. Until this case was filed, no one was pursuing the claims raised in this matter. Plaintiff's actions have resulted in a substantial recovery for the members of the Settlement Class, and the Service award they seek is reasonable.

Plaintiff fully participated in the analysis and planning of this action throughout the pendency of the litigation. (Bradley Decl. at ¶25 Declaration of Marcos Retana "Retana Decl.") at ¶¶ 12-17.) He was kept well informed of the nature and extent of settlement discussions and approved the same. (Ibid.)

The Service Payment sought for Plaintiff is entirely reasonable and represents 0.025 percent of the Gross Settlement Fund. (Bradley Decl. at ¶26.) Absent the actions taken by Plaintiff, none of the Settlement Class Members would have reaped the rewards of this action.

2. The Fees and Costs Requested by Class Counsel Are Reasonable

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

> Any agreement, express or implied, that has been entered into with respect to the 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.

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

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

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

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

has evidenced the obvious risk.

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

As in many cases of this type, Class Counsel seek a fee award for their successful prosecution and resolution of this action, calculated as a percentage of the total value of benefits afforded the Settlement Class Members by the Settlement. (*Serrano v. Priest* (1977) 20 Cal.3d 25, 34 (*Serrano III*); *Boeing Co. v. Van Gemert* (1980) 444 U.S. 472, 478; see also *Vincent v. Hughes Air West, Inc*. (9th Cir. 1977) 557 F.2d 759, 769.) 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 p. 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 p. 1808.) In addition, Class Counsel will present a lodestar plus multiplier analysis of their efforts which will further support the

amount sought.

E. Settlement Administration

Plaintiff seeks the appointment of ILYM as the Claims Administrator. ILYM is a well-established class action administration companies that has served as administrator in hundreds of wage and hour cases throughout the country. (*See* Declaration of Sean Hartranft.) The Administrator has estimated the cost for administrating the claims will not exceed $8,000.

F. The Content and Manner of the Notice to Settlement Class Members Complies with California Rules of Court, Rule 3.766 and Should be Approved.

Class members are entitled to the best practical notice under the circumstances. (*Kass v Young*, (1977) 67 Cal.App.3d 100, 106.) The purpose of the notice is to give class members sufficient information to decide whether they should accept the benefits offered, opt out and pursue their own remedies or object to the settlement. (*Trotsky v Los Angeles Fed Savings & Loan Assn,* (1975) 48 Cal.App.3d 143 151, 52.) The notice must advise class members that they may be excluded from the class if they so request and that they will be bound by the judgment, whether favorable or not, if they do not request exclusion. (*Kass,* 67 Cal.App.3d at 106.) In a case such as this involving a significant number of class members California authorities generally require service of the class notice by mail or similar reliable means (*Chance v Super Ct*., 1962) 58 Cal 2d 275, 290; *Cartt v Super Ct.,* (1975) 50 Cal.App.3d 960, 972.)

As provided in California Rules of Court, 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 "1" to the Settlement Agreement which is attached as Exhibit "A" to the Bradley Decl.). The Notice will be disseminated to all people who fall within the definition of the Settlement 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 as detailed in paragraph 38 (a)(i) of the Settlement Agreement.

With regard to the content of the Notice, the proposed version of which are attached to the Settlement Agreement as Exhibit "1," 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 settlement in sufficient detail to alert those with adverse viewpoints to investigate and to come forward and be heard." (4 Newberg on Class Actions § 8.32 at 8-103.)

In light of the foregoing, the Class Notice is proper and affords the best possible notice under the circumstances presented in this case.

V. THE CLASS SHOULD BE PROVISIONALLY CERTIFIED FOR SETTLEMENT PURPOSES ONLY

A. The California Standard for Class Certification

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

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

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

> The two basic purposes for the Rule 23 certification requirements, as they relate to questions of a nationwide class are: (1) to keep the lawsuit manageable for trial; and (2) to protect the interests of the nonrepresentative members. The first purpose is inapposite in the settlement context, and the second, as it relates to commonality

> of issues, only makes a difference if the nonrepresentative class members would do much better by litigating on their own or in their own jurisdiction. The second category concerns are protected by the trial court's fairness review of the settlement."

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

The very liberal standard expressed in *Dunk* is plainly satisfied here. The requirements for class certification in the settlement context - ascertainability, numerosity, predominance of common questions of law and fact, typicality, and adequacy - are all met. It certainly cannot be said that the class members would do "much better by litigating on their own". (*Dunk*, *supra*, 48 Cal.App.4th at p. 1807, fn. 19.) The Settlement Class should be conditionally certified as requested.

B. The Requirements for Class Certification in the Settlement Context Are Satisfied

1. Ascertainability and Numerosity

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

In this case, the members of the proposed Settlement Class are identifiable from Defendant's own records. The Settlement Class Members are also sufficiently numerous to justify class certification. Defendant has preliminarily identified nearly 135 employees comprising the Settlement Class. The numerosity requirement is satisfied where, as here, it would be impracticable to bring all of the potential class members before the Court. (Cal. Civ. Proc. Code § 382.) Courts have held that the numerosity requirement was satisfied in cases in which there were as few as 28 potential class members. (*Hebbard v. Colgrove* (1972) 28 Cal.App.3d 1017, 1030 [holding that twenty-eight members sufficient to maintain class action];

Occidental land, Inc. v. Superior Court (1976) 18 Cal.3d 355, 364 n.7 [more than 150 members was sufficient to maintain a class action]; 1 Herbert B. Newberg & Alba Conte, Newberg on Class Actions § 3.5 (3d ed. 1992) ["as few as 40 class members should raise a presumption that joinder is impracticable."])

2. Predominance of Common Questions of Law and Fact

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

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

a. Whether Plaintiff and members of the proposed class are subject to and entitled to the benefits of California wage and hour statutes;
b. Whether Defendant failed to pay all wages employees had earned;
c. Whether Defendant maintained accurate records of the hours worked by employees;
d. Whether Defendant had a standard policy of not providing meal and rest breaks to Plaintiff and members of the putative class;
e. Whether Plaintiff and putative class members executed enforceable on-duty meal period waivers;
f. Whether Defendant failed to maintain accurate records of work performed by members of the Class in violation of California Labor Code §1174;Whether

Defendant unlawfully and/or willfully deprived Plaintiff and Settlement Class Members of meal and rest breaks and pay for missed breaks pursuant to California Labor Code §§ 200, 226.7, 512, and 12 CCR § 11040;

g. Whether Plaintiff can maintain a cause of action for violation of Labor Code § 226 based on the alleged failure to pay meal and rest period premiums; and,

h. Whether Defendant's conduct as alleged herein violates the Unfair Business Practices Act of California, *Bus. & Prof. Code* § 17200, *et seq*.

The complex common questions implicated by the facts and law in this case strongly suggest that Settlement Class Members could not do substantially better than this Settlement by litigating individually. (*See Dunk*, *supra*, 48 Cal.App.4th at p. 1807, fn. 19.) 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, Plaintiff's claims are typical of the members of the Plaintiff Class. Plaintiff, like other members of the Settlement Class worked for Defendant in California, was subjected to Defendant's policies and/or practices. Plaintiff's job duties were, and are, typical of those of other Settlement Class Members. Plaintiff signed the same (or substantially similar) on-duty meal period waiver as other Settlement Class Members. Apart from seeking a moderate incentive, common in class litigation, Plaintiff seeks to gain nothing personally from this litigation or settlement which is not made available to the Settlement Class Members. Plaintiff has 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.

4. Adequacy

The requirement that class representatives fairly and adequately represent the class is met by fulfilling two conditions: (a) the named plaintiff must be represented by counsel experienced and qualified to conduct the pending Litigation; and (b) the named plaintiff's interests cannot be antagonistic to those of the potential class members. (*McGhee v. Bank of America* (1976) 60 Cal.App.3d 442, 450.) Class counsel and the class representative meet the adequacy requirement.

Specifically, with regard to proposed class counsel, Bradley/Grombacher LLP, has significant class action, litigation, and trial experience, is competent, and have been competent in representing the putative class. (Bradley Decl. ¶¶27-38.) Further, the Settlement itself speaks to the competence of Class Counsel. Class Counsel has secured a settlement that achieves substantial benefits to the Settlement Class Members, without incurring unnecessary expense or risk of further litigation, trial, and appeals.

Plaintiff and the Settlement Class Members have strong and co-extensive interests in this Litigation because they all worked for Defendant during the relevant time period, allegedly suffered the same alleged injuries from the same alleged course of conduct, and there is no evidence of any conflict of interest between Plaintiff and the Settlement Class Members. Plaintiff has demonstrated his commitment to the Settlement Class by, among other things, retaining experienced counsel, providing counsel with documents and extensively speaking with them to assist in identifying the claims asserted in this case, assisting them in contacting Settlement Class Members and gathering information from them, meaningfully participating in the Mediation process, and exposing himself to the risk of attorneys' fees and costs awards against him if this lawsuit had been unsuccessful. (Retana Decl., ¶21.) Thus, Plaintiff is adequate to serve as Class Representative.

Accordingly, this Court should find that Plaintiff and his counsel are adequate to represent the Settlement Class as required under California *Code of Civil Procedure* § 382.

///

///

///

VI. CONCLUSION

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

1. Granting preliminary approval to the class action settlement achieved in this matter;
2. Certifying the Settlement Class for settlement purposes, pending final approval of the Settlement;
3. Preliminarily approving Plaintiff as the Class Representative of the Settlement Class;
4. Preliminarily approving Bradley/Grombacher, LLP as Class Counsel for the Settlement Class;
5. Preliminarily approving ILYM as the Settlement Administrator and preliminarily approving the costs of the claims settlement;
6. Approving as to form and ordering that notice of the settlement be given to the Settlement Class;
7. Setting this matter for hearing on the issues of final approval, approval of the Class Representative Service Payment, and approval of Class Counsel's application for attorneys' fees and expenses; and,
8. Granting such other and further relief as the Court deems just and proper.

DATED: May 8, 2020

BRADLEY/GROMBACHER, LLP

By: _____
Marcus J. Bradley, Esq.
Kiley L. Grombacher, Esq.
Lirit A. King, Esq.
Sahag Majarian II, Esq.
Attorneys for Plaintiff

PROOF OF SERVICE
STATE OF CALIFORNIA COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action. My business address is 31365 Oak Crest Rd, Suite 240, Westlake Village, CA 91361.

On May 8, 2020, I served the attached document described **NOTICE OF UNOPPOSED MOTION AND MOTION FOR PRELLIMINARY APPROVAL OF CLASS ACTION SETTLEMENT** on all interested parties in said action:

SEE ATTACHED SERVICE LIST

[X] (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 FACSIMILE) I caused such document to be faxed to the persons identified with fax numbers on the attached Mailing List.

[X] (VIA EMAIL) Per the agreement of the parties, I caused such document to be emailed from my email sboucher@bradleygrombacher.com to the designated names listed for email service on the Service List.

[X] (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 May 8, 2020, at Westlake Village, California.

Suzette Boucher

RETANA v. ADAMS TRUCKING, INC.
COLUSA COUNTY SUPERIOR COURT CASE NO. CV24358

Service List

Hanson Bridgett LLP Paul Mello, Esq. 1676 N. California Blvd. Suite 620 Walnut Creek, CA 94596 Tel: (925) 746-8480 Fax: (925) 746-8492 pmello@hansonbridgett.com	Attorney for the Defendant ADAMS TRUCKING, INC.
Hanson Bridgett LLP Jennifer M. Martinez, Esq. 425 Market Street, 26th Floor Walnut Creek, CA 94105 Tel: (925) 746-8480 Fax: (925) 746-8492 jmartinez@hansonbridgett.com	Attorney for Defendant ADAMS TRUCKING, INC.