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on behalf of herself and others similarly situated
7

8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9 **FOR THE COUNTY OF FRESNO**

10 VIDALI ALEMAN, an individual on behalf
11 of herself and all others similarly situated,

12 Plaintiff,

13 vs.

14 MOONLIGHT PACKING CORPORATION,
a California corporation; MOONLIGHT
15 PACKING COMPANY, LLC, a California
limited liability company, and DOES 1
16 through 50, inclusive,

17 Defendants.
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Case No.: 20CECG01196

CLASS ACTION

Assigned For All Purposes to
The Honorable Kristi Culver Kapetan

**DECLARATION OF DAVID YEREMIAN
IN SUPPORT OF MOTION FOR
PRELIMINARY APPROVAL OF THE
CLASS ACTION SETTLEMENT**

*[Filed concurrently with Plaintiff's Notice of
Motion and Motion; Memorandum of Points
and Authorities; and [Proposed] Order]*

Date: September 1, 2021
Time: 3:30 p.m.
Dept: 403

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1. I am an attorney licensed and admitted to practice before all courts of the State of California, the United States District Court for the Central, Southern, Eastern, and Northern Districts of California, and the Ninth Circuit Court of Appeals. I am the managing attorney of David Yeremian & Associates, Inc., counsel for Plaintiff Vidali Aleman (“Plaintiff” or “Class Representative”) on behalf of similarly situated employees of Defendant Moonlight Packing Corporation and Moonlight Packing Company LLC (collectively “Defendants”). Class counsel includes my firm, David Yeremian & Associates, Inc. I have personal knowledge of the facts herein and if called as a witness, I could and would competently testify.

QUALIFICATIONS AND ADEQUACY OF CLASS COUNSEL

4. I graduated from UC Berkeley in 1997 and received my law degree and MBA from UCLA in 2001. I am a member of the Los Angeles County Bar Association and the California Employment Lawyers Association. I have been honored as a Super Lawyers Rising Star in 2009, 2010, 2012-2015. I have been named and honored as a Super Lawyer since 2016.

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1 on representing employees, including in wage-and-hour class actions. During my career I have
2 represented employees in over 100 wage-and-hour class action lawsuits as lead or co-lead counsel
3 (including in the Central, Southern, Eastern and Northern Districts of California), and I have
4 obtained six and seven figure settlements against a range of defendants, including Fortune 500
5 companies. These cases have involved the gamut of wage-and-hour claims, including claims for
6 failure to pay minimum wages, unpaid wages and overtime, failure to provide meal breaks,
7 inaccurate pay statements, and failure to pay timely wages - similar to claims at issue in the
8 present matter.

9 6. I am experienced in prosecuting employment matters, particularly class actions. In
10 addition to the present case, I am also class counsel for dozens of other putative wage-and-hour
11 class-action lawsuits pending in various state and federal jurisdictions throughout California.

12 7. My extensive experience in litigating employment wage and hour matters has been
13 integral in identifying legal issues, evaluating the strengths and weaknesses of a case, and
14 generally negotiating fair and reasonable class action settlements. Practice in the narrow field of
15 wage and hour litigation requires skill and knowledge concerning the constantly evolving
16 substantive law (state and federal), as well as the procedural law of class action litigation. In this
17 action, I am fully equipped to use the skills and knowledge I have developed through more than a
18 decade of prosecuting and defending wage and hour class actions to fairly and adequately
19 represent the interests of the Class. Therefore, on the account of my resources, experience, and
20 knowledge, I am well qualified to act as Class Counsel and represent Plaintiff and the putative
21 Class Members in this action.

22 8. In the last several years I have had several contested class cases certified. When
23 necessary we pursue cases on appeal. Owing to my experience, I am well qualified to evaluate the
24 class claims in this action, to evaluate settlement v. trial and defenses raised. I have negotiated
25 over 100 class action settlements, including many involving the same issues presented in this
26 case. A selection of cases wherein I have served as lead or co-lead class counsel includes: *Galavis*
27 *v. Patina Restaurant Group, LLC* (LASC BC375225; class size approx. 10,000; co-lead counsel);
28 *Milford v. ADT Security Services, Inc.* (CACD CV08-2236; class size approx. 2,000; lead

1 counsel); *Carreon v. Wolfgang Puck Catering and Events, LLC* (LASC BC398569; class size
2 approx. 1,400; lead counsel); *Fluke v. RFG Oil, Inc.* (LASC BC403354; class size approx. 1,400;
3 lead counsel); *Urena v. Camachos Restaurant* (LASC BC365913; class size approx. 887; lead
4 counsel); *Smith v. Rio Rancho Pontiac GMC Buick Inc.* (LASC BC391187; class size approx.
5 860; lead counsel); *Callela v. Dolce Group* (LASC BC364711; class size approx. 600; lead
6 counsel); *Vasquez v. The Hollywood Pig n Whistle LP* (LASC BC335075; class size approx. 600;
7 lead counsel); *Goldman v. Aorta Restaurant Operating LP* (LASC BC379688; class size approx.
8 300; lead counsel); *Sink-Crilly v. Centex Homes* (CACD CV09-2476; class size approx. 250; lead
9 counsel); *Utlely v. Cranbrook Partners Inc.* (LASC BC392813; class size approx. 200; lead
10 counsel); *Garcia v. California Credits Group* (LASC BC353213; class size approx. 160; lead
11 counsel); *Afanasyev v. Miller Infiniti, Inc.* (LASC BC350788; class size approx. 160; lead
12 counsel); *Morris v. Gymboree, Inc.* (LASC BC393270; class size approx. 150; lead counsel);
13 *Ortega v. AJC Sandblasting, Inc.* (LASC BC378806; class size approx. 140; lead counsel);
14 *Lulejyan v. Jim Falk Motors of Beverly Hills, Inc.* (LASC BC398459; class size approx. 72; lead
15 counsel); *Rylko v. The Griddle Café, Inc.* (LASC BC386126; class size approx. 70; lead counsel);
16 *Healy v. Siemens IT Solutions and Services, Inc.* (Santa Clara Superior Court 108CV113479;
17 class size approx 60; lead counsel).

18 9. For purposes of this motion, the “Class” or “Class Members” consist of “all current and
19 former non-exempt packing employees who worked for Defendants in California at any time
20 between May 4, 2016 and January 19, 2021.” I do not believe that I have any conflicts of interest
21 with the Class or with the Class Representative. I am not related to the Class Representative. I
22 have not previously represented Defendants in any matter. I respectfully submit that I, and David
23 Yeremian & Associates, Inc. are well suited to act as Class Counsel in this action, and we have
24 and will continue to vigorously represent the interests of the Class Members.

25 **PROCEDURAL HISTORY**

26 10. On May 4, 2020, Plaintiff filed a class action complaint against Defendants alleging
27 eleven causes of action: (1) Failure to Pay Minimum Wages; (2) Failure to Pay Wages and
28 Overtime Under Labor Code § 510; (3) Failure to Pay Reporting Time Pay; (4) Meal Period

1 Liability Under Labor Code § 226(a); (5) Rest-Break Liability Under Labor Code § 226.7; (6)
2 Violation of Labor Code § 226(a); (7) Violation of Labor Code §203; (8) Violation of Labor
3 Code §204; (9) Violation of Labor Code §221; (10) Failure to Keep Required Payroll Records
4 Under Labor Code §§ 1174 and 1174.5; and (11) Violation of Business & Professions Code §
5 17200 *et seq.* Plaintiff alleges Defendants failed to pay minimum wages and overtime for all
6 hours worked, failed to pay for reporting time pay, failed to provide compliant meal and rest
7 breaks, failed to pay premium wages for missed meal and rest breaks, failed to furnish accurate
8 wage statements, failed to timely pay wages including final wages, and failed to maintain
9 accurate records.

10 11. On April 6, 2020, Plaintiff submitted a Private Attorneys General Act (“PAGA”)
11 notice letter to the Labor Workforce Development Agency (“LWDA”) and served Defendants. A
12 true and correct copy of the confirmatory email and the LWDA letter submitted on behalf of
13 Plaintiff is attached hereto as **Exhibit 2**. The LWDA did not express an interest in investigating
14 Plaintiff’s claims within the 65 day period. Therefore, on June 10, 2020, Plaintiff filed a First
15 Amended Complaint adding a cause of action for penalties under the Private Attorneys General
16 Act (“PAGA”).

17 **INVESTIGATION AND DISCOVERY**

18 12. I have participated in all discovery, mediation and negotiations since the inception of
19 Plaintiff’s case. Before filing the lawsuit, Class Counsel investigated and researched the facts and
20 circumstances underlying the pertinent issues and the law applicable thereto. This required
21 thorough discussions and interviews between Class Counsel and Plaintiff, as well as preliminary
22 research into the various legal issues involved in the case. After conducting their initial
23 investigation, Class Counsel determined that Plaintiff’s claims were well-suited for class and
24 representative action adjudication owing to what appeared to be a common course of conduct
25 affecting a similarly situated group of employees.

26 13. After filing the lawsuit, Class Counsel conducted a thorough investigation of the facts
27 and claims giving rise to the action, including: (1) conducting informal and formal discovery, and
28 meeting and conferring with defense counsel about same; (2) reviewing and analyzing time and

1 pay records as well as employment handbooks, Plaintiff's personnel files, relevant policies and
2 other documentation; (3) researching the applicable law and potential defenses; (4) constructing
3 damage models based on interpretations of California law; and (5) reviewing information
4 provided by Defendants at the mediation. The Class enumerated in this action is ascertainable
5 because the Class Members may be readily identified by reference to Defendants' records.
6 Defendants have agreed to share the information from these records with the Settlement
7 Administrator in order to identify and contact the Class Members. I understand there are
8 approximately 1,672 total Class Members.

9 14. Defendants, for their part, vigorously contested liability, the amount of claimed
10 damages, and the propriety of class certification. After Class Counsel analyzed the relevant
11 documents and other gathered data, Class Counsel believed that this case was appropriate for
12 resolution via mediation. Given the high level of risk present for both sides, the parties elected to
13 mediate Plaintiff's claims and explore the possibility of settlement.

14 15. On November 18, 2020, the parties mediated this case with Honorable Howard
15 Broadman (Ret.), a respected and highly experienced mediator in wage and hour class actions.
16 During mediation, Plaintiff and Defendants' counsel discussed all aspects of the case, including
17 the risks of litigation and the risks to both parties of proceeding with a motion for class
18 certification as well as the law relating to unpaid wages, meal periods, rest periods, wage
19 statements, and final pay. As a result of the mediation, the parties agreed to settle the lawsuit
20 according to the terms set forth in the Settlement Agreement. From Class Counsel's review of the
21 facts, strengths, and weaknesses of the case, the risks and delays posed by further litigation, and
22 Class Counsel's own prior litigation experience, Class Counsel believes that the recovery for each
23 class member is fair and reasonable taking into consideration the amounts received in other wage
24 and hour class actions, the risks inherent in litigation of this genre, and the reasonable tailoring of
25 each Class Member's claim to the settlement award he or she will receive. Further, and based on
26 the settlement negotiations, which were extensive and conducted in good faith and at arm's length
27 between attorneys with substantial experience litigating class actions and wage and hour cases,
28 the Settlement Agreement was the product of a non-collusive settlement process in which the

1 parties were forced to make significant compromises in the interest of reaching a full and
2 complete settlement of the lawsuit.

3 **SUMMARY OF SETTLEMENT**

4 16. The parties have executed a Joint Stipulation of Class Action Settlement (“Settlement
5 Agreement” or “Settlement”) attached hereto and incorporated herein as **Exhibit 1**. Defendants
6 have agreed to pay Nine Hundred Thousand Dollars and Zero Cents (\$900,000.00) (“Gross
7 Settlement Amount”) on a non-reversionary basis to settle and release all claims asserted by
8 Plaintiff in the Class Action and PAGA Action on behalf of the proposed Class. (Exh. 1, §13)

9 17. The Settlement Agreement defines the “Class” or “Class Members” as “all current and
10 former non-exempt packing employees who worked for Defendants in California at any time
11 between May 4, 2016 and January 19, 2021” (Exh. 1, §6) However, it does not include any
12 person who submits a timely and valid request for exclusion. (Exh. 1, §6) “Class Period” means
13 the period from May 4, 2016 to January 19, 2021. (Exh. 1, §7)

14 18. The “Net Settlement Amount” shall be the Gross Settlement Amount, less the
15 Attorneys’ Fees and Costs, the Class Representative Enhancement Payment, Settlement
16 Administration Costs, and seventy-five percent (75%) of the LWDA Payment. (Exh. 1, §14)
17 These amounts are detailed as follows:

- 18 • not more than Three Hundred Thousand Dollars and Zero Cents (\$300,000.00) to
19 Class Counsel for attorneys’ fees, and not more than Seventeen Thousand Dollars
20 and Zero Cents (\$17,000.00) in reasonable litigation costs; (Exh. 1, §33);
- 21 • not more than Fourteen Thousand Dollars and Zero Cents (\$14,000.00) for the
22 Settlement Administration Costs; (Exh. 1, §35);
- 23 • not more than Five Thousand Dollars and Zero Cents (\$5,000.00) for a Class
24 Representative Enhancement Payment; and (Exh. 1, §34);
- 25 • Thirty Thousand Dollars and Zero Cents (\$30,000.00) for civil penalties under the
26 PAGA, where 75% (\$22,500.00) will be paid to the LWDA and 25% (\$7,500.00)
27 will be included in the Net Settlement Amount and distributed to Settlement Class
28 Members). (Exh. 1, §36)

1 19. The “Individual Settlement Payment,” which is each Class Member’s share of the Net
2 Settlement Amount, will be calculated and apportioned from the Net Settlement Amount based on
3 the number of workweeks a Class Member worked during the Class Period as a non-exempt
4 employee in California. (Exh. 1, §37)

5 20. Defendants’ corporate payroll tax obligations shall be paid in addition to the Gross
6 Settlement Amount, and none of the Gross Settlement Amount will revert to Defendants. (Exh. 1,
7 §13)

8 21. The settlement amount was a compromise figure, factoring in the inherent risks related
9 to certification, liability and damages. However, taking into account all of the circumstances of
10 the action and the defenses raised by Defendants against certification, liability and damages,
11 Class Counsel believes that the settlement is fair and reasonable.

12 22. Class Members shall each receive a Notice of Class Action Settlement, Opt-out Form,
13 and Objection Form (“Notice Packet”) via regular First Class U.S. Mail, using the most current,
14 known mailing addresses identified in the Class List. (Exh. 1, §41) Before mailing, the
15 Settlement Administrator will perform a search based on the National Change of Address
16 Database for information to update and correct for any known or identifiable address changes.
17 (Exh. 1, §42) If the Notice Packet is returned as non-deliverable on or before the Response
18 Deadline and a new address is obtained by way of a returned Notice Packet, then the Settlement
19 Administrator will promptly forward the original Notice Packet to the updated address via first-
20 class regular U.S. mail, indicating on the original packet the date of such re-mailing. (Exh. 1,
21 §42). The Notice will be in English and will also be translated in Spanish.

22 23. Class Members will have an opportunity to dispute the information provided in their
23 Notice Packet and they must timely produce evidence to support the information is inaccurate.
24 (Exh. 1, §44) The Settlement Administrator shall decide the dispute and may ask Defendants to
25 produce the personnel and payroll files of the Class Member disputing their credited workweeks
26 in order to resolve the dispute. (Exh. 1, §44)

27 24. Class Members wishing to opt-out from the Settlement Agreement must sign and
28 postmark a written Request for Exclusion to the Settlement Administrator within the “Notice

1 Period.” (Exh. 1, §45). The Exclusion Deadline will be forty five (45) calendar days after the date
2 the Notice Packet was mailed. (*Id.*) The delivery date is deemed to be the date the Opt-Out
3 request is deposited in the U.S. Mail as evidenced by the postmark. (*Id.*)

4 25. Class Members will also have the opportunity to object to the Settlement Agreement,
5 by serving a copy of the objection to the Settlement Administrator. (Exh. 1, §48) All objections
6 must be served within forty five (45) calendar days of first mailing of the Notice Packet. (*Id.*)
7 Class Members who do not serve written objections may not object to the settlement by way of
8 appeal. (*Id.*)

9 **THE STRENGTH OF PLAINTIFF’ CASE**
10 **IN LIGHT OF THE SETTLEMENT AMOUNT**

11 26. Because the class consists of numerous employees, it was unlikely that the potential
12 monetary claims of individual Class Members would have proved viable without the class-action
13 mechanism. The Settlement Agreement should be approved in light of two California appellate
14 decisions: *Clark v. American Residential Services LLC* (2009) 175 Cal.App.4th 785 and *Kullar v.*
15 *Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116.

16 27. The strength of the Plaintiff’s case in light of the settlement amount is deemed by
17 courts to be the “most important.” *Clark v. American Residential Services, LLC* (2009) 175
18 Cal.App.4th 785, 799 (citing *Kullar*). Here, Plaintiff alleges that Defendants failed to pay
19 minimum wages and overtime, failed to pay for reporting time pay, failed to provide proper meal
20 breaks or provide premium pay in lieu thereof, failed to provide proper rest breaks or provide
21 premium pay in lieu thereof, failed to provide accurate wage statements, failed to timely pay all
22 wages including upon termination, and failed to maintain accurate records all in violation of
23 California law. Plaintiff seek related violations of California’s Business & Professions Code, and
24 penalties pursuant to Labor Code § 2699 *et seq.* Plaintiff conducted discovery and investigated
25 each of the claims they alleged. Specifically, Defendants produced the following: (a) all versions
26 of Defendants’ employee handbook in effect during the Class Period; (b) all versions of
27 Defendants’ policies and procedures pertaining to minimum wages, overtime, meal breaks, and
28 rest breaks, which were in effect during the Class Period; (c) Plaintiff’s personnel files; (d)

1 Plaintiff's timekeeping and payroll records; (e) a sampling of the timekeeping and payroll
2 records; and (f) information on the class demographics including the total number of Class
3 Members during the Class Period, total number of Class Members during the PAGA Period, total
4 number of current employees, total number of former employees in the relevant time period,
5 average hourly rate of pay, total number of workweeks worked during the Class Period, and the
6 total number of paychecks issued during the relevant time period. The merits of each of these
7 claims will be addressed separately below.

8 28. Based on the data provided, Plaintiff believes that the maximum award the class could
9 have obtained is approximately \$6,018,846. Class Counsel estimated the following maximum
10 exposures: unpaid wage claim at \$1,533,116, meal period claim at \$611,839.26, rest period claim
11 at \$611,839.26, wage statement claim at \$200,350, waiting time penalties at \$2,836,702, and on
12 PAGA, Plaintiff estimated the maximum exposure at \$225,000.

13 29. However, taking into account the difficulties of proof, the Defendants' defenses, and
14 other attendant risks, Plaintiff estimates that the total amount of damages, monetary penalties, or
15 other relief that the class could reasonably expect to be awarded at trial is significantly less than
16 the maximum exposure.

17 30. Plaintiff believes they would be awarded approximately \$2.6 million at trial. Class
18 Counsel estimates they would recover the following amount in damages at trial: unpaid wage
19 claim at \$779,085, meal period claim at \$305,919.13, rest period claim at \$0, wage statement
20 claim at \$100,175, waiting time penalties at \$1,418,351, and on PAGA, Plaintiff estimate they
21 would recover anywhere from \$25,000-50,000.

22 **Minimum Wages and Overtime**

23 31. Plaintiff alleged that Defendants failed to pay Plaintiff and Class Members minimum
24 wages for all hours worked, in violation of minimum wage laws. Plaintiff contended that Class
25 Members were not paid all wages they were owed including for all worked performed and for all
26 overtime hours worked. Plaintiff contended Defendants' unlawfully rounded down the hours
27 Class Members worked because the time punches Class Members were required to input were
28 rounded and reduced to reflect the scheduled work time rather than the actual hours worked.

1 Additionally, Plaintiff contended Class Members were forced into working off the clock due to
2 pre-shift and post-shift work duties performed. Specifically, Plaintiff claimed Class Members had
3 to wait in line to approach the timekeeping system which would take several minutes.

4 Additionally, Plaintiff alleged at the end of each week, Class Members were required to clock out
5 of the timekeeping system and wait in line to receive their paychecks. Moreover, Plaintiff claims
6 that about once or twice a week, the machines Class Members would work on would malfunction
7 and would need immediate maintenance and Class Members were instructed to clock out while
8 the machines were being fixed. Plaintiff also contended Defendants required Class Members to,
9 on occasion, report for a scheduled work day to be told whether work was available for them or
10 not, and when there was no work, Class Members would be sent home after waiting for as many
11 as several hours. On such days, they were not paid required reporting time wages for the hours
12 they waited without receiving their regular hourly rate of pay for them.

13 32. Defendants contended that they paid for all reported hours worked, that Class Members
14 were trained to record all hours worked, and that they paid proper minimum wages. Defendants
15 also maintained that the allegations regarding failure to pay wages for hours worked in excess of
16 eight hours in a day did not constitute a basis for violation of Labor Code § 510. Defendants
17 argued that given their written policies and practices, any unrecorded hours were likely subject to
18 individualized inquiry and unlikely to be certified. Given the difficulty in certifying this claim,
19 Class Counsel had to apply a significant discount to damages based on this theory.

20 33. Based on the above detailed facts, Class Counsel estimated Defendants' exposure on
21 unpaid wages claims to be approximately \$1,533,116 (Plaintiff's expert calculated 30 minutes of
22 unpaid wages due to off the clock work and rounding per shift which is \$1,058,061. Plaintiff's
23 expert also calculated unpaid wages due to reporting time pay at \$25,055). Class Counsel
24 estimates they would be awarded \$754,030 for 15 minutes of rounding and off the clock work per
25 shift and \$25,055 for failure to pay reporting time pay (total \$779,085).

26 **Meal Periods and Rest Breaks**

27 34. Plaintiff alleged that Defendants consistently failed to provide timely and uninterrupted
28 meal breaks to Class Members. *See Brinker Restaurant Corp. v. Super. Ct.* (2012) 53 Cal.4th

1 1004, 1040 (“[T]he wage order’s meal period requirement is satisfied if the employee (1) has at
2 least 30 minutes uninterrupted, (2) is free to leave the premises, and (3) is relieved of all duty for
3 the entire period.”).

4 35. Plaintiff argued that Defendants had a common practice and policy of denying
5 compliant meal periods and that Defendants’ meal policies were facially defective. Specifically,
6 Plaintiff and Class Members were regularly required to work through their meal periods, never
7 being provided the opportunity to take uninterrupted thirty (30) minute meal periods in
8 accordance with California law. Moreover, what meal periods Class Members did receive were
9 provided well after their fifth consecutive hour of work. This practice of providing untimely and
10 late meal periods comports with Defendants’ defective meal period policy (requiring Class
11 Members to take their meal periods after their fifth hour of work) uniformly applicable to all
12 Class Members. For each meal period missed, of less than 30 minutes, or taken late for which the
13 employee was not provided a reasonable opportunity to take a complete and timely meal period,
14 an employer must pay the employee an additional one hour of compensation. Labor Code §
15 226.7. This additional hour of compensation is referred to as “premium pay.” To comply with
16 these laws, every employer must keep, for each employee, accurate time records showing when
17 the employee begins and ends each work period and takes his or her meal periods. *See Wage*
18 *Order 1-2001(7)(A)(3).*

19 36. Defendants disagreed with Class Counsel’s interpretation of the law and facts.
20 Defendants contended that Class Members were given a reasonable opportunity to take their meal
21 periods, and in fact received their meal periods most of the time. Defendants argued they have a
22 high meal period compliance rate.

23 37. Class Counsel estimated Defendants’ maximum total exposure on the meal break claim
24 at approximately \$611,839.26 (106,038 workweeks x .5 (1 meal break violation for every 2
25 weeks) x \$11.54 average hourly pay). Class Counsel estimates they would be awarded
26 \$305,919.63 for the meal break claim. Class Counsel applied a 50% discount on the meal break
27 claim due to the fact that Defendants’ meal break policy was valid. Class Counsel estimates it
28 would recover 50% of the damages on the meal break claim based on its review of the

1 timekeeping and payroll records evidencing that many meal break violations occurred such as
2 Class Members not receiving a second meal break on shifts where they worked for more than 12
3 hours. Therefore, many individualized issues would apply making certification of this claim
4 difficult to achieve.

5 38. The same argument applied to rest breaks. Plaintiff contended that Defendants did not
6 provide Class Members with paid 10-minute rest breaks for every four hours or major fraction
7 thereof. Class Members consistently worked in excess of consecutive four-hour shifts and were
8 entitled to paid rest breaks of not less than ten minutes for each consecutive four hour shift which
9 they were denied. Class Members were required to work through their rest breaks, and through
10 their entire shifts.

11 39. Defendants maintained that they did provide the reasonable opportunity for Class
12 Members to take duty-free rest breaks. Defendants also pointed out that, unlike meal periods, rest
13 breaks need not be recorded and Defendants dispute all allegations that breaks were not received.
14 As these considerations would likely depress the damages *vel non* ultimately awarded, Class
15 Counsel applied significant and appropriate discounts to the rest-break claim.

16 40. Class Counsel estimated Defendants' maximum total exposure on the rest break claim
17 at approximately \$611,839.26 (106,038 workweeks x .5 (1 rest break violation for every 2 weeks)
18 x \$11.54 average hourly pay. Class Counsel estimates they would be awarded \$0 for the rest
19 break claim due to the fact that Defendants' rest break policy was valid, rest breaks need not be
20 recorded and can be waived by the employees, and many individualized issues would apply
21 making certification of this claim difficult to achieve.

22 **Paystub Violations**

23 41. Plaintiff also contended that Defendants failed to provide Class Members with
24 accurate, itemized wage statements in writing as required by California Labor Code § 226(a)
25 because the wage statements failed to accurately account for unpaid wages and overtime due to
26 unlawful rounding and underreporting of hours and off the clock work. Moreover, Plaintiff
27 contended the wage statements failed to accurately account for premium pay for deficiently
28 provided meal and rest breaks which Defendants knew or reasonably should have known were

1 owed to Plaintiff and Class Members. As a direct and proximate cause of Defendants' violation of
2 Labor Code § 226(a), the Class Members suffered injuries, including among other things
3 confusion over whether they received all wages owed them. Pursuant to Labor Code §§ 226(a)
4 and 226(e), employees are entitled to recover the greater of all actual damages or fifty dollars
5 (\$50) for the initial pay period in which a violation occurs and one hundred dollars (\$100) for
6 each violation in a subsequent pay period, not exceeding an aggregate penalty of four thousand
7 dollars (\$4,000). They are also entitled to an award of costs and reasonable attorneys' fees.

8 42. Defendants contended that Plaintiff's claim for further Labor Code § 226(e) penalties
9 would depend in large part on their underlying meal and rest period and wage claims, and thus be
10 subject to the same defenses. Additionally, Defendants argued this claim has little or no value.
11 *See e.g., Naranjo v. Spectrum Security Services, Inc.*, 40 Cal. App. 5th 444 (2019), *rev. granted*
12 *Naranjo v. Spectrum Security Services, Inc.*, No. S258966, 2020 Cal. LEXIS 167 (Jan. 2, 2020)
13 ((noting, for example, that the remedy for a meal period/rest break violation is an extra hour of
14 pay, but that does not transform the remedy into a wage for triggering section 203 waiting time
15 penalties; similar analysis applied in rejecting a derivative claim for paystub penalties); *see also*
16 *Maldonado v. Epsilon Plastics, Inc.*, 22 Cal. App. 5th 1308, 1336-1337 (2018) (wage statements
17 that accurately report wages paid to employees do not violate Labor Code § 226, even if it is later
18 determined that employer did not properly pay all wages due). Defendants further contended that
19 meal break violations, even if established, could not be the predicate for a Labor Code § 226
20 wage statement claims. *See, e.g. Culley v. Lincare Inc.* (E.D. Cal. 2017) 236 F.Supp.3d 1184,
21 1195-96; *Soto v. Motel 6 Operating, L.P.* (2016) 4 Cal.App.5th 385, 392-393 (noting wage
22 statement need only document compensation actually received and the hours used to calculate
23 that compensation). Defendants further contended that Labor Code § 226(e) penalties are not
24 automatic. Rather, the employee must show (1) that he or she "suffered injury" from the
25 employer's failure to provide compliant wage statements, *see Elliot v. Spherion Pacific Work,*
26 *LLC* (2008) 572 F.Supp.2d 1169, 1181 (applying California law) (holding employee was not
27 entitled to penalties because no injury was shown), and (2) Defendants' noncompliance was
28 "knowing and intentional." Finally, because the damages for this cause of action are penalties, the

1 statute of limitations only runs from one year prior to the filing of the original complaint. *See* Cal.
2 Civ. Pro. § 340.

3 43. Class Counsel estimated Defendants' maximum total exposure on the section 226 claim
4 at approximately \$200,350 (\$50/\$100 x 2,250 number of paystubs from May 4, 2019 to
5 November 19, 2020; based on 493 employees). Class Counsel estimates they would be awarded
6 approximately \$100,175 for the wage statement penalties. Class Counsel applied a 50% discount
7 on the wage statement penalties due to the fact that Plaintiff would need to show that she suffered
8 an injury and that Defendants' noncompliance was knowing and intentional. Class Counsel
9 estimates it would recover 50% of the penalties because Plaintiff believes it would prevail on the
10 claim that Class Members are owed unpaid wages due to unlawful rounding and wage statement
11 penalties derive from those claims.

12 **Failure to Pay Final Wages**

13 44. In failing to pay the California Class Members their minimum wages, overtime wages,
14 and premium pay for deficiently provided meal periods and rest breaks, all discussed above,
15 Defendants willfully failed to pay these the California Class Members all wages due and certain
16 at the time of termination or within seventy-two (72) hours of resignation, as required under
17 Labor Code § 203.

18 45. Labor Code § 203 provides that if an employer willfully fails to pay an employee all
19 wages due at termination or within 72 hours of resignation, then that employee's wages shall
20 continue as a penalty until paid for a period of up to thirty (30) days from the date they were due.
21 Because Class Members stopped working for Defendants but again were not paid their full
22 compensation for the reasons discussed above, Class Members did not receive all wages due upon
23 termination of employment.

24 46. Defendants argued that, under Labor Code § 203, employers are only obligated to pay
25 waiting-time penalties if they "willfully" fail to pay wages due and owing at the time of
26 termination or resignation. As Title 8, California Code of Regulations, § 13520 states:

27 A willful failure to pay wages within the meaning of Labor Code Section 203
28 occurs when an employer intentionally fails to pay wages to an employee when

1 those wages are due. However, a good faith dispute that any wages are due will
2 preclude imposition of waiting time penalties under Section 203.

3 A “good faith dispute” that any wages are due occurs when an employer presents
4 a defense, based in law or fact, which, if successful, would preclude any recovery
5 on the part of the employee. The fact that a defense is ultimately unsuccessful will
6 not preclude a finding that a good faith dispute did exist. Defenses presented
7 which, under all the circumstances, are unsupported by any evidence, are
8 unreasonable, or are presented in bad faith, will preclude a finding of a “good
9 faith dispute.”

10 Defendants maintained that because they had viable defenses in both law and fact, especially in
11 light of the *Brinker* holding, that waiting-time penalties could not be awarded and, in any case,
12 such penalties were subject to a three-year limitations period under Labor Code § 203(b).

13 Defendants also argued that there is no liability under Labor Code § 203 for violations of meal
14 and rest break claims alone. *Ling v. P.F. Chang’s China Bistro* (2016) 245 Cal.App.4th 1242;
15 *Kirby v. Immoos Fire Protection, Inc.* (2016) 53 Cal.4th 1244.

16 47. Class Counsel estimated Defendants’ maximum total exposure on the section 203 claim
17 at approximately \$2,836,702 (888 terminated employees from May 4, 2017 to November 19,
18 2020 x 30 days x \$11.54 average rate of pay x 8.8 hours in a work day). Class Counsel estimates
19 they would be awarded approximately \$1,418,351 in waiting time penalties. Class Counsel
20 applied a 50% discount on the waiting time penalties due to the fact that Plaintiff would need to
21 show willfulness can be proved. Class Counsel estimates it would recover 50% of the penalties
22 because Plaintiff believes it would prevail on the claim that Class Members are owed unpaid
23 wages due to unlawful rounding and waiting time penalties derive from those claims.

24 **PAGA Penalties**

25 48. The Labor Code Private Attorneys General Act, Labor Code § 2699 et seq., allows
26 Plaintiff to obtain civil penalties on behalf of herself and other Class Members for Defendants’
27 violation of any provision of the Labor Code enumerated under Labor Code § 2699.5. Where civil
28 penalties are provided in the statute, those civil penalties are recoverable; where no civil penalties
are recoverable, Labor Code § 2699(f) establishes civil penalties of one hundred dollars (\$100)
for each aggrieved employee per pay period for the initial violation and two hundred dollars
(\$200) for each aggrieved employee per pay period for each subsequent violation. Pursuant to

1 Labor Code § 2699(i), seventy-five (75) percent of the penalties recovered must be allocated to
2 the Labor and Workforce Development Agency (LWDA), with the remaining twenty-five (25)
3 percent allocated to the affected employees. The limitations period as for all penalties is one year
4 prior to the filing of the complaint.

5 49. The provisions of the Labor Code potentially triggering PAGA penalties in this case
6 include but are not limited to Labor Code §§ 203, 204, 226(a), 226.2, 226.7, 510, and 1194,
7 Defendants asserted that if PAGA penalties were mandatory, an employer's PAGA liability
8 would be huge because of the possibility of collecting multiple civil penalties for a single
9 violation, and thus such penalties would almost always dwarf the damages available under the
10 causes of action proper. However, PAGA penalties are not mandatory but permissive. Labor
11 Code § 2699(e)(2) states that "a court may award a lesser amount than the maximum civil penalty
12 amount specified by this part if, based on the facts and circumstances of the particular case, to do
13 otherwise would result in an award that is unjust, arbitrary and oppressive, or confiscatory." *See,*
14 *e.g., Lopez v. Friant & Assocs., LLC*, 15 Cal. App. 5th 773, 788 (2017), *rev. denied* (2018),
15 (recognizing court's ability to reduce PAGA penalties). Courts have held that situations similar to
16 the current one (e.g. injuryless violations, technical errors, and substantial compliance) should
17 lead to reductions in penalties. *See Thurman v. Bayshore Transit Management, Inc.*, 203 Cal.
18 App. 4th 1112, 1134-1135 (2012) (holding that reduction was justified when employer
19 "attempted to comply with the law"); *Fleming v. Covdien, Inc.*, No. ED CV10-01487 RGK
20 (OPx), 2011 U.S. Dist. LEXIS 154590 at *8-9 (C.D. Cal. August 12, 2011) (reducing PAGA
21 penalties more than 80% – from \$2.8 million to \$500,000 – when "employees suffered no injury"
22 employers were "not aware" of the violation and "took prompt steps to correct all violations once
23 notified"). Defendants here maintained that it had a strong argument that it would be unjust to
24 award maximum PAGA penalties.

25 50. Furthermore, PAGA penalties are also derivative of each and every other claim, and
26 Defendants therefore argued the PAGA claims would be subject to the same defenses to the
27 underlying claims. Finally, under *Amaral v. Cintas Corp.* (2008) 163 Cal.App.4th 1157, it can be
28 argued that penalties under PAGA could, at best, be awarded only at the rates obtainable for

1 initial violations under the applicable statutes, because Defendants had never been notified of the
2 alleged violations. *Id.* at 1208-1209. Moreover, Section 2699(e)(1) authorizes the Court to
3 exercise the same discretion as the DLSE whether to award civil penalties. *Amaral* 163 Cal. App.
4 4th 1157, 1211-12. Therefore if Labor Commissioner - on whose behalf Plaintiff is prosecuting
5 this action for civil penalties - would not impose civil penalties in a case like this, the Court may
6 not award civil penalties. Moreover, in *Thurman v. Bayshore Transit Mgmt., Inc.* (2012) 203
7 Cal.App.4th 1112, 1136, the Court of Appeal affirmed the trial court's reduction of PAGA civil
8 penalties by 30 percent, finding that awarding the full penalties would have been "unjust" because
9 "...a court may award a lesser amount than the maximum civil penalty amount specified by this
10 part if, based on the facts and circumstances of the particular case, to do otherwise would result in
11 an award that is unjust, arbitrary and oppressive, or confiscatory."

12 51. Class Counsel estimated Defendants' maximum total exposure on the PAGA claim at
13 approximately \$225,000 (\$100 x 2,250 number of paystubs from May 4, 2019 to November 19,
14 2020). However, Class Counsel reasonably estimates they would be awarded a nominal amount
15 of approximately \$25,000-\$50,000 for their PAGA claims. Class Counsel applied discounts in
16 light of the countervailing arguments with regard to the other causes of action, and moreover the
17 Court's power to award "a lesser amount than the maximum civil liability." The parties also
18 considered that the purpose of PAGA is to "achieve maximum compliance with state labor
19 laws,". *Iskanian v. CLS Transp. Los Angeles, LLC* (2014) 59 Cal. 4th 348, 379. This makes the
20 settlement's contemplated PAGA payment of \$30,000 appropriate.

21 **Unfair Business Practices**

22 52. Plaintiff pled this cause of action in order to augment their other causes of action and
23 aid in their prosecution. Business & Professions Code § 17208 extends the statute of limitations
24 on Plaintiff' wage claims, which qualify as unfair business practices, to four years rather than the
25 three years provided by statute.

26 **Summary**

27 53. The foregoing discussion has sought to explain how the settlement amount is adequate
28 in light of the merits of Plaintiff' case. It has done this by explaining the legal basis for each of

1 Plaintiff' causes of action, summarizing the evidence that Class Counsel gathered in support of
2 those causes of action, and relating Defendants' legal and factual arguments that worked to
3 derogate from the strength of Plaintiff' case.

4 54. Class Counsel had to apply appropriate discounts in light of the facts and law as
5 discussed above. In addition, meal period liability exposure is limited by the fact that not all Class
6 Members worked on the same schedule and under the same supervisors, making the certification
7 of all Class Members across all locations less than a certainty. Thus, this settlement, like most
8 others, was the product of compromise. Because of these and other risks, a recovery of
9 \$900,000.00 under the Settlement Agreement is an excellent result. Under the Settlement, each of
10 the approximately 1,672 Class Members will receive on average, assuming they worked
11 throughout the class period, \$323 after expenses.

12 **THE RISK, EXPENSE, AND LIKELY DURATION OF FURTHER LITIGATION,**
13 **AS WELL AS THE RISK OF MAINTAINING CLASS ACTION**
14 **STATUS THROUGH TRIAL**

15 55. The next *Clark/Kullar* factors recognize that settlements take into consideration the
16 risks and expenses posed by further litigation and, in the class-action context, the risk of non-
17 certification. Consequently, it is proper that trial courts should keep these considerations in mind
18 when judging the adequacy of class action settlements.

19 56. Further litigation of this case posed real risks for a number of reasons. First, there were
20 the risks of unfavorable rulings on the merits of the various indeterminate legal issues outlined in
21 the previous section. In that section, it was observed that almost every cause of action was subject
22 to some unique indeterminacy of its own, and that the derivative causes of action were thus
23 subject to a double indeterminacy, both their own and those of the causes of action on which they
24 were based.

25 57. The parties disputed the effect of these and other issues on class certification and
26 decertification. Class Counsel maintained that there were several legal and factual questions at
27 issue in the case that could best be decided on a class wide basis. Class Counsel contended that
28 the same policies and practices applied to all Class Members and therefore common questions

1 obtained and were likely to predominate over individual inquiries. Defendants disputed these
2 contentions and insisted that the *Brinker* decision called into question the certifiability of cases
3 such as this one. Defendants also argued that its policies were compliant with the law, while
4 Plaintiff disputed that the policies were lawful, and argued the lawfulness of such policies would
5 give rise to common questions amenable to certification. Thus the parties had set positions on the
6 propriety of certifiability and liability that did not admit of an easy resolution.

7 58. Finally, it is always preferable to reach a relatively early resolution of a dispute
8 because, in addition to what has already been said, such resolutions save time and money that
9 would otherwise go to litigation. In light of the risk and expense of the lawsuit proceeding to trial
10 there was a need to resolve this matter soon than later. Most cases settle sooner or later. If this
11 case settled after further litigation, the settlement amount would have taken into account the
12 additional costs incurred, and there might have been less available for Class Members after all
13 was said and done. This is not just an abstract contention. The parties were moving into the phase
14 of this litigation where they would have had to depose a number of people such as managers,
15 supervisors, and employees in order to establish liability for trial. Discovery disputes would have
16 been in the offing. The parties were also aware that a class action trial would be a complicated
17 and expensive proceeding, and then there was the likelihood of a long, drawn-out appeals process.
18 In contrast, the settlement provides real benefits for Class Members in the immediate future. The
19 benefits are not insignificant for anyone, especially given the current economic climate.
20 Consequently, the risk and expense of further litigation outweighed any benefit that might have
21 been gained otherwise.

22 **NOTICE TO AND REACTION OF CLASS MEMBERS**
23 **TO THE PROPOSED SETTLEMENT**

24 59. It is premature to address this factor now, at the preliminary approval stage; however,
25 some observations are in order. First, the notification procedure set out in the Settlement
26 Agreement provides the greatest likelihood that each and every Class Member will receive the
27 Notice of Class Action Settlement, Opt-out Form, and Objection Form (“Notice Packet”),
28 attached to the Settlement Agreement as Exhibits A, B, and C. Under the Settlement Agreement,

1 the Settlement Administrator will send the Notice Packet to each Class Member via First Class
2 U.S. mail. (Exh. 1, §41). Before mailing, the Settlement Administrator will perform a search
3 based on the National Change of Address Database for information to update and correct for any
4 known or identifiable address changes. (Exh. 1, §42) If the Notice Packet is returned as non-
5 deliverable on or before the Response Deadline and a new address is obtained by way of a
6 returned Notice Packet, then the Settlement Administrator will promptly forward the original
7 Notice Packet to the updated address via first-class regular U.S. mail, indicating on the original
8 packet the date of such re-mailing. (Exh. 1, §42) Thus, most, if not all, Class Members will likely
9 receive the Notice Packet.

10 60. The Class Notice itself fully apprises Class Members of the nature of the lawsuit, the
11 claims involved, the terms of the settlement, and their options thereunder. They provide for a
12 specific procedure to seek exclusion from the Class, and for lodging objections to the settlement.
13 The efforts taken to ensure that Class Members receive the Notice Packet and are well informed
14 about the settlement augur a favorable response rate.

15 61. All Class Members will benefit because Defendants who has been sued is generally
16 more likely to comply with the law in the future. If a Class Member disputes the number of
17 workweeks stated for that Class Member in the Class Notice, the Class Member must ask the
18 Settlement Administrator to resolve the matter by submitting in writing under penalty of perjury
19 the workweeks that the Class Member claims to have actually worked for Defendants during the
20 Class Period. (Exh. 1, §44). Defendants' records shall have a rebuttable presumption of
21 correctness. After consultation with Class Counsel and Defendants' Counsel, the Class Action
22 Administrator will make a determination of the Class Member's total workweeks during the
23 applicable period. *Id.*

24 **CONCLUSION OF THE CLARK/KULLAR ANALYSIS**

25 62. The foregoing discussion establishes the fairness of the class-action settlement in the
26 instant case. It has done this by analyzing the settlement in light of the appellate decisions in
27 *Clark* and *Kullar*. This analysis has concluded that the settlement is fair, reasonable, and
28 adequate. Class Counsel conducted a thorough investigation of the subject wage-and-hour

1 practices and engaged in non-collusive, arm's-length negotiations in order to reach a settlement.
2 Defendants have agreed to pay fair value to settle Plaintiff' claims given the existence of legal
3 uncertainty, particularly with regard to Plaintiff' claim for failure to provide proper meal periods.
4 From Class Counsel's substantial experience with wage-and-hour class action lawsuits Class
5 Counsel believe that this case could not have settled on better terms under the circumstances.
6 Request therefore is made that the settlement be granted preliminary approval so that those
7 persons whom it was intended to benefit shall be afforded the opportunity to determine its
8 adequacy.

9 **REQUEST FOR ATTORNEYS' FEES**

10 63. Under the Settlement, Class Counsel also requests, without opposition from
11 Defendants, an award of Attorneys Fees and Costs consisting of: (1) no more than Three Hundred
12 Thousand Dollars and Zero Cents (\$300,000.00) in Attorneys' Fees and (2) Seventeen Thousand
13 Dollars and Zero Cents (\$17,000.00) for reimbursement of Class Counsel's costs. (Exh. 1, §33).
14 This request is fair, reasonable, and adequate to compensate Class Counsel for the substantial
15 work they have put into this case and, moreover, the risk they assumed by taking it in the first
16 place. The attorneys' fees award is intended to reimburse Class Counsel for all uncompensated
17 work that they have already done and for all the work they will continue to do in carrying out and
18 overseeing the notification to Class Members, communicating with Class Members regarding
19 their claims, and assisting in the administration of the settlement if it is preliminarily approved.

20 64. My firm took this case on a contingent-fee basis against a business represented by a
21 reputable defense firm. When we take contingent cases, we must pay careful attention to the
22 economics involved or one bad case can destroy years of work. Accordingly, when we take
23 contingency cases, we anticipate that we shall, if successful, receive a fee that exceeds our normal
24 hourly rate; otherwise, the risk is often too great to bear. Even when we work long hours, the
25 number of hours in a day is limited. Because of this, when we take on one particular matter, we
26 are unable to take on other matters. When Class Counsel became involved in this case, we
27 realized the time commitment that it would entail and we were forced to turn down matters that
28 we otherwise should have been able to handle. In sum, this case claimed a significant portion of

1 Class Counsel's time and attention throughout its pendency.

2 65. The requested fee is reasonable for the services provided to Class Members and for the
3 benefits they are to receive. Indeed, even with a modest multiplier under the lodestar theory, *see*
4 *Bihun v. AT&T Information System* (1993) 13 Cal.App.4th 976, 997, Class Counsel's fees would
5 still be justified. Here, lodestar will substantially exceed the requested fees. Class Counsel will
6 more fully brief the Court on its lodestar in the motion for final approval.

7 **ENHANCEMENT TO PLAINTIFF AS THE CLASS REPRESENTATIVE**

8 66. Plaintiff herein is entitled to reasonable service payment for her efforts and initiative in
9 bringing and helping to prosecute this action. Plaintiff spent a considerable amount of time better
10 apprising herself of her rights, deciding whether remedial action should be taken, how it should
11 be taken, searching for attorneys, and finally contacting Class Counsel, who spent many hours
12 with Plaintiff discussing the case and the law. In the end, Plaintiff decided to vindicate not only
13 her own rights but also those of their co-workers by filing a class action lawsuit.

14 67. The courage it took to stand up to Defendants by filing and litigating this action in this
15 way should not be underestimated. By suing Defendant, Plaintiff increased her risk of retaliation
16 by prospective employers. Plaintiff's lawsuit has now required Defendants to expend
17 considerable resources, and Plaintiff justifiably fears the fact that she served as class
18 representative in a wage and hour class action will not be lost on a prospective employer who has
19 to choose between an applicant who has never sued a prior employer and one who has. Plaintiff
20 contends this risk is particularly real in the information age, where employers can, more easily
21 than ever, perform background checks of prospective employees, sometimes with the stroke of a
22 key. It is common for employers to screen employee candidates to determine whether they have
23 ever filed suit, and employee candidates who might be branded "litigious" are likely to be
24 screened out of the process. In fact, an entire industry has developed for providing employers
25 with background information on employee candidates.

26 68. But Plaintiff did not allow her fear of the potential repercussions of being class
27 representative to deter her from acting for the benefit of Class Members. To the contrary, Plaintiff
28 has been intimately involved in this case since its inception. She has devoted a substantial amount

1 of time to helping Class Counsel effectively develop and prosecute this action at every stage of
2 the litigation. Both before and after the filing of this lawsuit, Plaintiff conferred with Class
3 Counsel on numerous occasions to discuss every aspect of their case. Plaintiff provided Class
4 Counsel with information about Defendants and about the industry generally, reviewed
5 documents, identified witnesses, consulted Class Counsel throughout the litigation repeatedly and
6 at length, participated in the mediation process, monitored the progress of the litigation with Class
7 Counsel, and reviewed and signed the Settlement Agreement.

8 69. Plaintiff has spent a significant amount of time with Class Counsel detailing her
9 knowledge of Defendants' practices and helping Class Counsel with the prosecution of this
10 action. She has diligently, adequately, and fairly represented Class Members, and has not placed
11 her interests above any member of the putative class. The payment to Plaintiff is intended to
12 recognize her time and effort on behalf of the Class. The amount requested is fair and appropriate
13 based on her contribution and involvement. For example, Plaintiff instigated the lawsuit by
14 bringing these violations to the attention of Class Counsel. She spent several hours answering
15 questions and providing information to Class Counsel throughout the pendency of this action. She
16 identified witnesses, explained to Class Counsel day to day business practices of Defendants with
17 regard to work schedules and meal breaks, etc. The parties are in agreement that Plaintiff is
18 entitled to an enhancement for her time and effort in this matter. This sort of payment to a class
19 representative has been a common feature of settlements negotiated by Class Counsel and has
20 been routinely approved by trial courts.

21 70. In light of the foregoing, Class Counsel believes that the Class Representative
22 Enhancement payment in the amount of Five Thousand Five Hundred Dollars and Zero Cents
23 (\$5,000.00) is fair and reasonable. This amount is a far cry from the \$50,000 of enhancement
24 awards to the two named plaintiff approved by the trial court in *Clark*. See *Clark, supra*, 175
25 Cal.App.4th at 807. Although Class Counsel appreciate that the Court has a duty to ensure that
26 class representative are not overcompensated at the expense of the class, modest incentive awards
27 in employment class actions, such as the one here, are necessary not only to compensate class
28 representative for the time they spend in the case, but also, and more importantly, to encourage

1 aggrieved employees to challenge questionable employment practices notwithstanding the very
2 real consequences they may face.

3 **CRITERIA SATISFIED FOR CERTIFICATION OF SETTLEMENT CLASS**

4 71. The proposed Classes satisfy the criteria for certification of a settlement class under
5 California law, as embodied in California Code of Civil Procedure § 382. Defendants have agreed
6 to the certification of the class for settlement purposes. In general, courts may take a proposed
7 settlement into account in evaluating the propriety of class certification. *See Dunk v. Ford Motor*
8 *Co.* (1996) 48 Cal.App.4th 1794, 1807 fn. 19. Indeed, a “lesser standard” of scrutiny applies in
9 certifying classes for settlement purposes. *Ibid.* Therefore the Court should take into
10 consideration the fact that the parties have settled their claims and stipulated to certification for
11 settlement purposes when assessing typicality and adequacy.

12 a. Numerosity. The putative classes are so numerous that joinder of all members is
13 impractical. Class Members are “all current and former non-exempt packing employees who
14 worked for Defendants in California at any time between May 4, 2016 and January 19, 2021.”
15 There are approximately 1,672 persons answering to this definition. Thus, there are a sufficient
16 number of Class Members to warrant certifying this as a class action for settlement purposes.

17 b. Ascertainability. The putative classes are defined in a manner that is precise,
18 objective, and ascertainable. The Class Members have already been identified by reference to
19 Defendants’ payroll and personnel records.

20 c. Typicality. A class representative’s claims are typical when they arise from the
21 same event, practice, or course of conduct that gives rise to the claims of other putative class
22 members, and if their claims rest on the same legal theories. The class representative’s claims
23 must be “typical” but not necessarily identical to the claims of other class members. It is
24 sufficient that the representative is similarly situated so that he or she will have the motive to
25 litigate on behalf of all Class Members. *Classen v. Weller* (1983) 145 Cal.App.3d 27, 47; *B.W.I.*
26 *Custom Kitchens v. Owens-Illinois, Inc.* (1987) 191 Cal.App.3d 1341, 1347 (“[I]t has never been
27 the law in California that the class representative must have identical interests with the class
28 members.”). Thus, it is not necessary that the class representative should have personally incurred

1 all of the damages suffered by each of the other class members. *Wershba v. Apple Computer, Inc.*
2 (2001) 91 Cal.App.4th 224, 228.

3 Plaintiff' claims are typical of Class Members' claims because they arose from the same
4 factual basis and are based on the same legal theories. Plaintiff was employed by Defendants
5 during the Class Period subject to the allegedly unlawful meal and rest break policies and pay
6 practices at issue in this litigation. Accordingly, Plaintiff is a member of the class. The central
7 issues of this litigation (whether Defendants failed to pay all wages, whether Defendants failed to
8 provide meal and rest periods etc.), which would arise if this were an individual action brought by
9 Plaintiff, apply to the other Class Members as well, and the answer to these questions would
10 determine Defendants' liability to the entire putative class. Thus, Plaintiff's claims are typical of
11 the claims of the putative class. Accordingly, the typicality requirement is satisfied.

12 d. Adequacy. A class representative must possess the same interest and suffer the
13 same injury as the class members. "To assure 'adequate' representation, the class representative's
14 personal claim must not be inconsistent with the claims of other members of the class." *J.P.*
15 *Morgan & Co., Inc. v. Sup.Ct. (Heliotrope General, Inc.)* (2003) 113 Cal.App.4th 195, 212. Thus,
16 the adequacy requirement is satisfied when the class representative's interests are not antagonistic
17 to those of the class. *McGhee v. Crocker-Citizens Nat. Bank* (1976) 60 Cal.App.3d 442, 451.

18 Plaintiff does not have any conflicts with the class and in fact her interests are aligned
19 with those of the class. Because Plaintiff's claims are identical to those that would be asserted by
20 the unnamed Class Members were they before the Court, Plaintiff has every interest in zealously
21 representing the unnamed class members. Plaintiff has not shrunk from this responsibility.
22 Indeed, Plaintiff has devoted a substantial amount of time and energy to litigating this action and
23 effecting a settlement. Furthermore, as detailed above, Class Counsel are experienced in wage-
24 and-hour litigation, especially class actions, and have zealously represented the interests of the
25 class in litigating this case. *See infra* ¶¶3-9. Accordingly, the adequacy requirement is satisfied.

26 e. Commonality. Common questions of law or fact in this case predominate over
27 individual questions. This action involves, *inter alia*, a determination about Defendants' alleged
28 failure to provide meal and rest periods, failure to pay minimum wages, failure to pay all wages

1 due to allegedly common and unlawful policies, failure to pay final wages when required, failure
2 to provide accurate wage statements, failure to pay employees on a timely basis, and largely
3 derivative claims under the Business & Professions Code and PAGA. Plaintiff contends these
4 practices, including an alleged practice of failing to provide complete meal periods, related meal
5 period policies applicable to the class, and the alleged failure to provide corresponding premium
6 payments, that affected class members in the same way. All class members were employed during
7 the Class Period. Therefore, the operative complaint delineates a common course of conduct
8 applicable to all Class Members. Therefore, based on Class Counsel's investigation, the review of
9 the discovery produced by Defendants, and their discussions with Plaintiff, Plaintiff contends the
10 evidence supports their position that the employment practices and policies of Defendants'
11 business were consistent and uniform.

12 f. Predominance. Individualized issues do not predominate over the issues of law and
13 fact that are common to the class as a whole. The principal issues of controversy are whether
14 Class Members were paid for all hours worked and provided lawful meal breaks. As explained,
15 *supra*, there are common issues of law and fact given that Plaintiff and all Class Members were
16 subjected to the same policies and pay practices during the relevant time period. Plaintiff and
17 Class Members seek meal and rest break premiums, unpaid wages and overtime, and penalties for
18 work performed as non-exempt employees for Defendants. These issues are suitable for common
19 adjudication because all Class Members were subject to the same employment policies and
20 Plaintiff contends the practices applied uniformly to all Class Members.

21 g. Superiority. Class resolution is superior to other available methods for the fair and
22 efficient adjudication of the controversy. There is little interest or incentive for Class Members to
23 individually control the prosecution of separate actions. Although the injury resulting from
24 Defendants' policies and practices are real and significant, the cost of individually litigating each
25 such case against Defendants would easily exceed the value of any relief that could be obtained
26 by any one Class Member individually. If Class Members are forced to litigate their claims
27 individually this would result in about 1,672 individual actions against Defendants. Here, the
28 alternative methods of resolution are individual suits for relatively small amounts. Hence, an

1 individual suit would prove uneconomical for potential plaintiff because litigation costs would
2 dwarf a potential recovery.

3 h. Except for Plaintiff's case before this Court, Plaintiff is unaware of any other
4 actions by Class Members against Defendants asserting similar claims as here. Furthermore,
5 Fresno County is a compelling forum for this action given that Defendants' location is in Fresno
6 County and numerous Class Members work in this County.

7 i. There are no serious manageability difficulties presented by preliminarily
8 approving the case for settlement purposes. As this case will not go to trial if finally approved, all
9 that would remain is settlement administration and responding to possible objectors.

10 72. On March __, 2021, Plaintiff uploaded the Joint Stipulation of Class Action Settlement
11 and the Memorandum of Points and Authorities in Support of Plaintiff's Motion for an Order
12 Preliminarily Approving the Class Action Settlement, Approving Notice of Class Action
13 Settlement, and Setting Hearing for Final Approval. A true and correct copy of the confirmatory
14 email from the LWDA is attached hereto as **Exhibit 3**.

15 73. Pursuant to the Settlement, the parties have agreed that any amounts that remain
16 uncashed and otherwise unclaimed shall be tendered to the Valley Children's Hospital. I am not
17 aware of any relationship between the Valley Children's Hospital and (A) any class representative
18 or other party, (B) any officer, director, or manager of any party, or (C) any attorney or law firm
19 for any party.

20 I declare under penalty of perjury under the laws of the State of California that the
21 foregoing is true and correct.

22 Executed this 15th day of March, at Glendale, California.

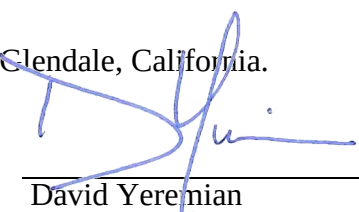
23 
24 _____
25 David Yerman
26
27
28

EXHIBIT 1

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and MOONLIGHT PACKING COMPANY LLC

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF FRESNO

VIDALI ALEMAN, an individual on behalf of
herself and others similarly situated,

Plaintiff,

vs.

MOONLIGHT PACKING CORPORATION,
a California corporation; MOONLIGHT
PACKING COMPANY, LLC, a California
limited liability company; and DOES 1
through 50, inclusive,

Defendants.

Case No.: 20CECG01196

CLASS ACTION

Assigned for All Purposes To:
Hon. Judge Kristi Culver Kapetan
Dept.: CX104

**JOINT STIPULATION OF CLASS ACTION
SETTLEMENT**

Complaint Filed:	May 4, 2020
First Amended Complaint:	June 10, 2020
Trial Date:	January 3, 2022

1 This Joint Stipulation of Class Action Settlement (“Settlement” or “Settlement
2 Agreement”) is made and entered into by and between Plaintiff VIDALI ALEMAN (“Plaintiff” or
3 “Class Representative”), on behalf of herself and all others similarly situated, and Defendants
4 MOONLIGHT PACKING CORPORATION and MOONLIGHT PACKING COMPANY, LLC,
5 (collectively “Defendants”) (collectively with Plaintiff, the “Parties”).

6 DEFINITIONS

7 The following definitions are applicable to this Settlement Agreement.

8 Definitions contained elsewhere in this Settlement Agreement will also be effective:

- 9 1. “Action” means *Vidali Aleman, et al. v. Moonlight Packing Corporation, et al.*,
10 Fresno County Superior Court, Case No. 20CECG01196.
- 11 2. “Aggrieved Employees” means all current and former non-exempt employees
12 who worked for Defendants in California at a time during the PAGA limitations which is at any
13 time between April 6, 2019 and January 19, 2021.
- 14 3. “Attorneys’ Fees and Costs” means attorneys’ fees and costs approved by the
15 Court for Class Counsel’s litigation and resolution of this Action.
- 16 4. “Class Counsel” means David Yeremian & Associates, Inc.
- 17 5. “Class List” means a complete list of all Class Members that Defendants will
18 diligently and in good faith compile from its records and provide to the Settlement
19 Administrator within ten (10) days after Preliminary Approval of this Settlement. The Class
20 List will be formatted in Microsoft Office Excel and will include the following information
21 from Defendants’ records: each Class Member’s full name; last-known mailing address; Social
22 Security number; and dates of employment as a non-exempt employee in California during the
23 Class Period.
- 24 6. “Class Member(s)” or “Settlement Class” means all current and former non-
25 exempt packing employees who worked for Defendants in California at any time between May
26 4, 2016 and January 19, 2021. “Class Members” shall not include any person who submits a
27 timely and valid request for exclusion.
- 28 7. “Class Period” means the period from May 4, 2016 to January 19, 2021.

1 8. “Class Representative Enhancement Payment” means the amount approved by
2 the Court to be paid to Plaintiff in recognition of her contributions to the Action on behalf of
3 Class Members and Aggrieved Employees.

4 9. “Court” means the Superior Court of California, County of Fresno.

5 10. “Defendants” means MOONLIGHT PACKING CORPORATION and
6 MOONLIGHT PACKING COMPANY, LLC.

7 11. “Effective Date” means: (a) the date of entry of the Court’s order granting final
8 approval of the Settlement Agreement and Judgment, if no objections have been filed or if an
9 objection was filed and later withdrawn; or (b) if an objection to the Settlement Agreement is
10 filed, then the date when the time expires to file an appeal of the Court’s grant of Final
11 Approval of the Settlement Agreement; or (c) if an objection is filed, as well as a timely Notice
12 of Appeal of the Court’s grant of Final Approval of the Settlement Agreement, then the date the
13 appeal is finally resolved, with the final approval unaffected.

14 12. “Individual Settlement Payment” means each Class Member’s share of the Net
15 Settlement Amount.

16 13. “Gross Settlement Amount” is the amount of Nine Hundred Thousand Dollars
17 and Zero Cents (\$900,000.00), which is the maximum amount to be paid by Defendants
18 pursuant to this Settlement Agreement. The Gross Settlement Amount includes all Individual
19 Settlement Payments to Class Members, the Class Representative Enhancement Payment to
20 Plaintiff, Attorneys’ Fees and Costs to Class Counsel, the Settlement Administration Costs to
21 the Settlement Administrator and the PAGA Payment as specified in this Agreement.
22 Defendants shall pay the employer’s share of payroll taxes due on the portion of Settlement
23 Payments allocated to wages separately and in addition to the Gross Settlement Amount. The
24 Parties agree that Defendants will have no obligation to pay any amount in connection with this
25 Settlement Agreement apart from the Gross Settlement Amount and the employer’s share of
26 payroll taxes due on the portion of Settlement Payments allocated to wages, and that none of
27 the Gross Settlement Amount will revert to Defendants.

28 14. “Net Settlement Amount” means the Gross Settlement Amount, less the

1 Attorneys' Fees and Costs, Class Representative Enhancement Payments, Settlement
2 Administration Costs, and seventy-five percent (75%) of the PAGA Payment as specified in
3 this Agreement.

4 15. "Objection" means any written objection to this Settlement sent by a Class
5 Member to the Settlement Administrator as specified herein and in the Notice of Settlement.
6 An Objection to Settlement must be sent to the Settlement Administrator within the time
7 limitations set forth in this Stipulation.

8 16. "Notice of Class Action Settlement" means the notice of settlement, attached as
9 **Exhibit A**, to be mailed to all members of the Settlement Class upon Preliminary Approval.

10 17. "Notice Packet" means the Notice of Class Action Settlement attached as
11 **Exhibit A**, the Objection Form attached as **Exhibit B**, and the Request for Exclusion Form
12 attached as **Exhibit C** to be mailed to all members of the Settlement Class upon Preliminary
13 Approval.

14 18. "PAGA" means the California Labor Code Private Attorneys General Act of
15 2004.

16 19. "PAGA Payment" means the payment made hereunder to the California Labor
17 and Workforce Development Agency and the Settlement Class Members for settlement of
18 claims for civil penalties under PAGA.

19 20. "PAGA Period" means the period from April 6, 2019 to January 19, 2021.

20 21. "Parties" means Plaintiff and Defendants collectively.

21 22. "Plaintiff" means VIDALI ALEMAN.

22 23. "Preliminary Approval" means the Court order granting preliminary approval of
23 the Settlement Agreement.

24 24. "Released Claims" means all causes of action and factual or legal theories that
25 were alleged in the operative complaints or that could have been alleged against Defendants
26 based on the facts contained in the operative complaints, including violations of California
27 Labor Code sections 201, 202, 203, 204, 226, 226(a), 226.7, 510, 512, 558, 1174, 1174.5, 1185,
28 1194, 1194.2, 1197, 1199, 2698, and 2699 *et seq.*, California Code of Regulations, Title 8,

1 section 11000 *et seq.*, and California Business & Professions Code §§ 17200 to 17208, and the
2 applicable IWC Wage Orders from the following claims for relief: (a) failure to pay minimum,
3 regular, or hourly wages, (b) failure to pay overtime wages or accurate overtime wages, (c)
4 failure to pay reporting time pay, (d) failure to provide meal breaks and failure to pay premium
5 pay for missed meal breaks, (e) failure to provide rest breaks and failure to pay premium pay
6 for missed rest breaks, (f) failure to provide complete, accurate or properly formatted wage
7 statements, (g) failure to timely pay wages during employment or upon separation, (h) failure to
8 maintain accurate records, (i) unfair business practices that could have been premised on the
9 claims, causes of action or legal theories of relief described above or any of the claims, causes
10 of action or legal theories of relief pleaded in the operative complaint; (j) all claims under the
11 California Labor Code Private Attorneys General Act of 2004 that could have been premised on
12 the claims, causes of action or legal theories described above or any of the claims, causes of
13 action or legal theories of relief pleaded in the operative complaint; (k) any other claims or
14 penalties under the California Labor Code or other wage and hour laws pleaded in the Action;
15 and (l) all damages, penalties, interest and other amounts recoverable under said claims, causes
16 of action or legal theories of relief. The period of the Release shall extend to the limits of the
17 Class Period. The *res judicata* effect of the Judgment will be the same as that of the Release.
18 Defendants shall be entitled to a release of Released Claims which occurred during the Class
19 Period only during such time that the Settlement Class Member was classified as non-exempt,
20 and expressly excluding all other claims for vested benefits, wrongful termination,
21 unemployment insurance, disability, social security, workers' compensation, claims while
22 classified as exempt, and claims outside of the Class Period.

23 25. “Released Parties” means Defendants, and their past, present and/or future,
24 direct and/or indirect officers, directors, shareholder, employees, agents principals, heirs,
25 representatives, accountants, auditors, attorneys, consultants, insurers, and their respective
26 successors; and predecessors in interest, assigns, subsidiaries, affiliates, and parents, if any.

27 26. “Request for Exclusion” means a timely written request by a Class Member to
28 be excluded from the Settlement. The Request for Exclusion must: (i) set forth the name,

1 address, telephone number and last four digits of the Social Security Number of the Class
2 Member requesting exclusion; (ii) be signed by the Class Member; (iii) be returned to the
3 Settlement Administrator; (iv) clearly state that the Class Member does not wish to be included
4 in the Settlement; and (v) be postmarked on or before the Response Deadline.

5 27. “Response Deadline” means the deadline by which Class Members must
6 postmark to the Settlement Administrator Requests for Exclusion or Objections to the
7 Settlement. The Response Deadline will be forty-five (45) calendar days from the initial
8 mailing of the Notice of Class Action Settlement by the Settlement Administrator, unless the
9 45th day falls on a Sunday or Federal holiday, in which case the Response Deadline will be
10 extended to the next day on which the U.S. Postal Service is open.

11 28. “Settlement Administrator” means CPT Group, Inc. or any other third-party
12 class action settlement administrator approved by the Parties and the Court for the purposes of
13 administering this Settlement. The Parties each represent that they do not have a financial
14 interest in the Settlement Administrator or otherwise have a relationship with the Settlement
15 Administrator that could create a conflict of interest.

16 29. “Settlement Administration Costs” includes all costs payable to the Settlement
17 Administrator for administering this Settlement, including, but not limited to, printing,
18 distributing, and tracking notice and other documents for this Settlement, tax reporting,
19 distributing all payments to be made pursuant to this Settlement, and providing necessary
20 reports and declarations, as requested by the Parties. After conference and consultation with the
21 Settlement Administrator, no more than Fourteen Thousand Dollars and Zero Cents
22 (\$14,000.00) will be allocated to Settlement Administration.

23 30. “Workweeks” means the number of calendar weeks that the Class Member
24 worked as a non-exempt employee in California during the Class Period.

25 31. “Workweek Value” means the value of each compensable Workweek, as
26 determined by the formula set forth in herein.

27 **TERMS OF AGREEMENT**

28 Plaintiff, on behalf of herself and the Settlement Class, and Defendants agree as

1 follows:

2 32. Funding of the Gross Settlement Amount. Within 10 business days after the
3 Effective Date, Defendants will deposit the Gross Settlement Amount into a Qualified
4 Settlement Fund, with the Settlement Administrator. The Gross Settlement Amount will be used
5 to pay: (i) Individual Settlement Amounts; (ii) the Class Representative Enhancement Payment
6 to Plaintiff; (iii) Attorneys' Fees and Costs; (iv) the PGA Payment; and the (v) Settlement
7 Administration Costs.

8 33. Attorneys' Fees and Costs. Class Counsel will seek an award of Attorneys' Fees
9 and Costs of not more than Three Hundred Thousand Dollars and Zero Cents (\$300,000.00) in
10 attorney's fees and not more than Seventeen Thousand Dollars and Zero Cents (\$17,000.00) in
11 costs, and Defendants agree not to oppose such application. All Attorneys' Fees and Costs will
12 be paid from the Gross Settlement Amount. Plaintiff and Class Counsel will not have the right
13 to revoke this Settlement in the event the Court fails to approve the amount of Attorneys' Fees
14 and Costs sought by Class Counsel. Any portion of the Attorneys' Fees and Costs not awarded
15 to Class Counsel will be added to the Net Settlement Amount.

16 34. Class Representative Enhancement Payment. Plaintiff will apply to the Court for
17 a Class Representative Enhancement Payment of not more than Five Thousand Dollars and Zero
18 Cents (\$5,000.00) for her effort and work in prosecuting the Action on behalf of Class Members
19 and Aggrieved Employees and Defendants agree not to oppose such application. The Class
20 Representative Enhancement Payment, which will be paid from the Gross Settlement Amount,
21 will be in addition to Plaintiff's right to an Individual Settlement Payment pursuant to the
22 Settlement. Plaintiff will be solely and legally responsible to pay any and all applicable taxes on
23 the payments made pursuant to this paragraph and will hold Defendants harmless from any claim
24 or liability for taxes, penalties, or interest arising as a result of the payments. Plaintiff will not
25 have the right to revoke this Settlement in the event the Court fails to approve the amount sought
26 by Plaintiff as a Class Representative Enhancement Payment. Any portion of the Class
27 Representative Enhancement Payment not awarded to the Class Representative will be added to
28 the Net Settlement Amount.

1 35. Settlement Administration Costs. The Settlement Administrator will be paid for
2 the reasonable costs of administration of the Settlement and distribution of payments. These
3 costs, which will be paid from the Gross Settlement Amount, will include, *inter alia*, the
4 required tax reporting on the Individual Settlement Payments, the issuing of 1099 IRS Forms,
5 preparing and distributing Notices of Class Action Settlement, calculating and distributing all
6 payments to be made pursuant to the Settlement, and providing necessary reports and
7 declarations. Class Counsel obtained a “not to exceed” quote from the Settlement Administrator
8 to complete the administration for Fourteen Thousand Dollars and Zero Cents (\$14,000.00).
9 The Settlement Administrator’s “not to exceed” quote will represent the Settlement
10 Administrator’s agreement that, based on the class size and distributions under the terms of this
11 Settlement, the costs for administration of the terms of this Settlement will not exceed the
12 specified amount. All of the Settlement Administration Costs shall be paid from the Gross
13 Settlement Amount upon completion of all duties required to be performed by the Settlement
14 Administrator under the terms of this Settlement, or as otherwise required by the Court, subject
15 to the “not to exceed” quote from the Settlement Administrator. The Settlement Administrator
16 will set up the Qualified Settlement Fund.

17 36. PAGA Payment. Thirty Thousand Dollars and Zero Cents (\$30,000.00) shall be
18 allocated from the Gross Settlement Amount for settlement of claims for civil penalties under
19 PAGA. The Settlement Administrator shall pay seventy-five percent (75%) of such \$30,000.00
20 PAGA Payment, or \$22,500.00, to the LWDA. Twenty-five (25%) of the \$30,000.00 PAGA
21 Payment, or \$7,500.00, will be included in the Net Settlement Amount and distributed to
22 Settlement Class Members as described in this Agreement. Each Settlement Class Member’s
23 pro rata share of that \$7,500.00 will be part of his or her Individual Settlement Payment.

24 37. Individual Settlement Payment Calculations. Individual Settlement Payments
25 will be calculated and apportioned from the Net Settlement Amount based on the number of
26 Workweeks a Class Member worked during the Class Period as a non-exempt employee in
27 California. Specific calculations of Individual Settlement Payments will be made as follows:

28 34(a). The Settlement Administrator will calculate the total number of

1 Workweeks worked by each Class Member as a non-exempt employee in California during the
2 Class Period and the aggregate total number of Workweeks worked by all Class Members as
3 non-exempt employees in California during the Class Period.

4 34(b). To determine each Class Member's estimated "Individual Settlement
5 Payment," the Settlement Administrator will use the following formula: The Net Settlement
6 Amount will be divided by the aggregate total number of Workweeks, resulting in the
7 Workweek Value. Each Class Member's "Individual Settlement Payment" will be calculated by
8 multiplying each individual Class Member's total number of Workweeks by the Workweek
9 Value.

10 34(c). The entire Net Settlement Amount will be disbursed as Individual
11 Settlement Payments to Class Members. If there are any valid and timely Requests for
12 Exclusion from members of the Settlement Class, the Settlement Administrator shall
13 proportionately increase the Individual Settlement Payment for each Class Member according
14 to the number of Workweeks worked, so that the amount actually distributed to the Settlement
15 Class equals 100% of the Net Settlement Amount.

16 38. No Credit Toward Benefit Plans. The Individual Settlement Payments made to
17 Class Members under this Settlement, as well as any other payments made pursuant to this
18 Settlement, will not be utilized to calculate any additional benefits under any benefit plans to
19 which any Class Members may be eligible, including, but not limited to: (i) profit-sharing
20 plans, (ii) bonus plans, (iii) 401(k) plans, (iv) stock purchase plans, (v) vacation plans, (vi) sick
21 leave plans, (vii) PTO plans, and (viii) any other benefit plan. Rather, it is the Parties' intention
22 that this Settlement Agreement will not affect any rights, contributions, or amounts to which
23 any Class Members may be entitled under any benefit plans.

24 39. Settlement Administration Process. The Parties agree to cooperate in the
25 administration of the settlement and to make all reasonable efforts to control and minimize the
26 costs and expenses incurred in administration of the Settlement.

27 40. Delivery of the Class List. Within ten (10) calendar days of entry of the Court's
28 Order Granting Preliminary Approval, Defendants will provide the Class List to the Settlement

1 Administrator.

2 41. Notice by First-Class U.S. Mail. Within ten (10) days after receiving the Class
3 List from Defendants, the Settlement Administrator will mail a Notice Packet to all Class
4 Members via regular First-Class U.S. Mail, using the most current, known mailing addresses
5 identified in the Class List.

6 42. Confirmation of Contact Information in the Class List and Undeliverable
7 Notices. Prior to mailing, the Settlement Administrator will perform a search based on the
8 National Change of Address Database for information to update and correct for any known or
9 identifiable address changes. Any Notice Packets returned to the Settlement Administrator as
10 non-deliverable on or before the Response Deadline will be sent promptly via regular First-
11 Class U.S. Mail to the forwarding address affixed thereto and the Settlement Administrator will
12 indicate the date of such re-mailing on the Notice Packet. If no forwarding address is provided,
13 the Settlement Administrator will promptly attempt to determine the correct address using an
14 Accurant search/skip-trace and will then perform a single re-mailing.

15 43. Notices of Class Action Settlement. All Class Members will be mailed a Notice
16 Packet in the form attached as Exhibit A, B, and C or as provided by Court order.

17 44. Disputed Information on Notices of Class Action Settlement. Class Members
18 will have an opportunity to dispute the information provided in their Notices of Class Action
19 Settlement. To the extent Class Members dispute their employment dates or the number of
20 Workweeks, Class Members may produce evidence to the Settlement Administrator showing
21 that such information is inaccurate. The Settlement Administrator will advise the Parties of
22 such dispute, allow Defendants five (5) business days to respond with any additional
23 information or records, and then decide the dispute. Defendants' records will be presumed
24 correct, but the Settlement Administrator will evaluate the evidence submitted by the Class
25 Member and Defendants and will make the final decision as to the merits of the dispute.

26 45. Requests for Exclusion. The Notice Packet shall include a Request for
27 Exclusion as attached **Exhibit C**. Any Class Member wishing to opt-out from the Settlement
28 Agreement must sign and postmark a written Request for Exclusion to the Settlement

1 Administrator within the Response Deadline. The postmark date will be the exclusive means to
2 determine whether a Request for Exclusion has been timely submitted. The Parties and their
3 counsel will not solicit or encourage any Class Member, directly or indirectly, to opt out of the
4 Settlement Agreement. More specifically, a Class Member may request to be excluded from the
5 effect of this Agreement, and any payment of amounts under this Agreement by timely mailing
6 a Request for Exclusion letter to the Settlement Administrator stating that the Class Member
7 wants to be excluded from this Action. This letter must include the Class Member's name,
8 address, telephone number, and signature. To be valid and timely, the request to be excluded
9 must be postmarked by the Response Deadline date that will be specified in the Class Notice
10 (no less than forty-five (45) days from the initial mailing of the Class Notice by the Settlement
11 Administrator). A Class Member who properly submits a valid and timely request to be
12 excluded from the Action will not receive any payment of any kind in connection with this
13 Agreement or this Action, will not be bound by or receive any benefit of this Agreement, and
14 will have no standing to object to the Settlement. Class Members who do not timely request
15 exclusion will be bound by the releases herein and receive an individual settlement payment
16 ("Participating Class Members"). A request for exclusion must be mailed to the Settlement
17 Administrator at its address to be provided in the Class Notice, and the Settlement
18 Administrator will promptly transmit the requests for exclusion to counsel for the parties.

19 46. Defective Submissions. If a Class Member's Request for Exclusion is defective
20 as to the requirements listed herein, that Class Member will be given an opportunity to cure the
21 defect(s). The Settlement Administrator will mail the Class Member a cure letter within three
22 (3) business days of receiving the defective submission to advise the Class Member that his or
23 her submission is defective and that the defect must be cured to render the Request for
24 Exclusion valid. The Class Member will have until the later of (i) the Response Deadline or (ii)
25 fifteen (15) calendar days from the date of the cure letter, whichever date is later, to postmark a
26 revised Request for Exclusion. If the revised Request for Exclusion is not postmarked within
27 that period, it will be deemed untimely.

28 47. Settlement Terms Bind All Class Members Who Do Not Opt-Out. Any Class

1 Member who does not affirmatively opt out of the Settlement Agreement by submitting a
2 timely and valid Request for Exclusion will be bound by all of its terms, including those
3 pertaining to the Released Claims, as well as any Judgment that may be entered by the Court if
4 it grants final approval of the Settlement.

5 48. Objection Procedures. The Notice Packet shall include an Objection Form as
6 attached **Exhibit B**. The Notice Packet shall state that Settlement Class Members who wish to
7 object to the Settlement may do so by a written statement of objection (“Notice of Objection”)
8 to be mailed by the Response Deadline to the Settlement Administrator or by appearing at the
9 hearing for Final Approval. The Objection must be signed by the Class Member and contain all
10 information required by this Settlement Agreement. The postmark date of the filing and service
11 will be deemed the exclusive means for determining that the Objection is timely. The Notice of
12 Objection must state: (1) the case name and number; (2) the name of the Settlement Class
13 Member; (3) the address of the Settlement Class Member; (4) the last four digits of the
14 Settlement Class Member’s Social Security number; (4) the basis for the objection; and (5) if
15 the Settlement Class Member intends to appear at the Final Approval/Settlement Fairness
16 Hearing. The Settlement Administrator will promptly provide any Notices of Objection to the
17 parties’ counsel upon receiving them. Class Counsel will include all objections received and
18 Plaintiff’s response(s) with Plaintiff’s motion for final approval of the Settlement. Settlement
19 Class Members may also have a right to have their objections heard at the Final
20 Approval/Settlement Fairness Hearing. Class Counsel will not represent any Class Members
21 with respect to any such Objections to this Settlement, and any Class Members who request
22 exclusion from the Settlement will not have standing to object to it.

23 49. Settlement Administrator Reports. The Settlement Administrator will provide
24 Defendants’ counsel and Class Counsel a weekly report of the number of Class Members who
25 have submitted valid Requests for Exclusion, Objections, and disputes regarding Workweeks
26 calculations. Additionally, the Settlement Administrator will provide to counsel for both Parties
27 any updated reports regarding the administration of the Settlement Agreement as needed or
28 requested.

1 50. Distribution and Timing of Payments. Within 25 days of the Effective Date, and
2 after Defendants has fully funded the Qualified Settlement Fund with the Gross Settlement
3 Amount, the Settlement Administrator will issue payments to: (i) all Class Members who have
4 not submitted a valid and timely Request for Exclusion, including any Class Member whose
5 notice was returned as undeliverable; (ii) Plaintiff; (iii) Class Counsel; and (iv) the LWDA. The
6 Settlement Administrator will also issue a payment to itself for Court-approved services
7 performed in connection with the Settlement. The Settlement Administrator will pay Individual
8 Settlement Payments from the Net Settlement Amount to all Participating Class Members. The
9 Settlement Administrator will do so by sending a check in the appropriate amount to the Class
10 Member at the address indicated in the list of Class Member names and addresses provided by
11 Defendants, or as subsequently determined by the Settlement Administrator to be correct.

12 51. Un-cashed Settlement Checks. Class Members will receive checks for their
13 Individual Settlement Payments. Checks will remain negotiable for 180 days (“Check-Cashing
14 Deadline”). Any check not cashed within 180 calendar days will be void. The money from the
15 uncashed checks shall be distributed by the Settlement Administrator, in accordance with
16 California Code of Civil Procedure section 384. Any amounts from the settlement checks that
17 remain uncashed and otherwise unclaimed shall be tendered to the Valley Children’s Hospital.

18 52. Certification of Completion. Upon completion of administration of the
19 Settlement, the Settlement Administrator will provide a written declaration under oath to certify
20 such completion to the Court and counsel for all Parties.

21 53. Allocation of Individual Settlement Payments. All Individual Settlement
22 Payments will be allocated as follows: (a) one-third as wages and (b) two-thirds as penalties
23 and interests. The Settlement Administrator will be responsible for issuing to claimants a form
24 W-2 for amounts deemed “wages” and an IRS Form 1099 for the portions allocated to
25 penalties.

26 54. Administration of Taxes by the Settlement Administrator. The Settlement
27 Administrator will be responsible for issuing to Plaintiff, Class Members, and Class Counsel
28 tax forms as may be required by law for all amounts paid pursuant to this Settlement. The

1 Settlement Administrator will also be responsible for forwarding all taxes and penalties to the
2 appropriate government authorities as may be required by law.

3 55. Tax Liability. Defendants make no representation as to the tax treatment or
4 legal effect of the payments called for hereunder, and Plaintiff and Class Members are not
5 relying on any statement, representation, or calculation by Defendants or by the Settlement
6 Administrator in this regard. Plaintiff and Class Members understand and agree that they will
7 be solely responsible for the payment of any taxes and penalties assessed on the payments
8 described herein and will defend, indemnify, and hold Defendants free and harmless from and
9 against any claims resulting from treatment of such payments as non-taxable damages.

10 56. Circular 230 Disclaimer. EACH PARTY TO THIS AGREEMENT (FOR
11 PURPOSES OF THIS SECTION, THE “ACKNOWLEDGING PARTY” AND EACH PARTY
12 TO THIS AGREEMENT OTHER THAN THE ACKNOWLEDGING PARTY, AN “OTHER
13 PARTY”) ACKNOWLEDGES AND AGREES THAT (1) NO PROVISION OF THIS
14 AGREEMENT, AND NO WRITTEN COMMUNICATION OR DISCLOSURE BETWEEN
15 OR AMONG THE PARTIES OR THEIR ATTORNEYS AND OTHER ADVISERS, IS OR
16 WAS INTENDED TO BE, NOR WILL ANY SUCH COMMUNICATION OR DISCLOSURE
17 CONSTITUTE OR BE CONSTRUED OR BE RELIED UPON AS, TAX ADVICE WITHIN
18 THE MEANING OF UNITED STATES TREASURY DEPARTMENT CIRCULAR 230 (31
19 CFR PART 10, AS AMENDED); (2) THE ACKNOWLEDGING PARTY (A) HAS RELIED
20 EXCLUSIVELY UPON HIS, HER, OR ITS OWN, INDEPENDENT LEGAL AND TAX
21 COUNSEL FOR ADVICE (INCLUDING TAX ADVICE) IN CONNECTION WITH THIS
22 AGREEMENT, (B) HAS NOT ENTERED INTO THIS AGREEMENT BASED UPON THE
23 RECOMMENDATION OF ANY OTHER PARTY OR ANY ATTORNEY OR ADVISOR TO
24 ANY OTHER PARTY, AND (C) IS NOT ENTITLED TO RELY UPON ANY
25 COMMUNICATION OR DISCLOSURE BY ANY ATTORNEY OR ADVISER TO ANY
26 OTHER PARTY TO AVOID ANY TAX PENALTY THAT MAY BE IMPOSED ON THE
27 ACKNOWLEDGING PARTY; AND (3) NO ATTORNEY OR ADVISER TO ANY OTHER
28 PARTY HAS IMPOSED ANY LIMITATION THAT PROTECTS THE CONFIDENTIALITY

1 OF ANY SUCH ATTORNEY’S OR ADVISER’S TAX STRATEGIES (REGARDLESS OF
2 WHETHER SUCH LIMITATION IS LEGALLY BINDING) UPON DISCLOSURE BY THE
3 ACKNOWLEDGING PARTY OF THE TAX TREATMENT OR TAX STRUCTURE OF ANY
4 TRANSACTION, INCLUDING ANY TRANSACTION CONTEMPLATED BY THIS
5 AGREEMENT.

6 57. No Prior Assignments. The Parties and their counsel represent, covenant, and
7 warrant that they have not directly or indirectly assigned, transferred, encumbered, or purported
8 to assign, transfer, or encumber to any person or entity any portion of any liability, claim,
9 demand, action, cause of action or right herein released and discharged.

10 58. Nullification of Settlement Agreement. In the event that: (i) the Court does not
11 finally approve the Settlement as provided herein; or (ii) the Settlement does not become final
12 for any other reason, then this Settlement Agreement, and any documents generated to bring it
13 into effect, will be null and void. Any order or judgment entered by the Court in furtherance of
14 this Settlement Agreement will likewise be treated as void from the beginning, it will be of no
15 force or effect whatsoever, it will not be referred to or used for any purpose whatsoever, and the
16 negotiation, terms and entry of it shall remain subject to the provisions of California Evidence
17 Code §§ 1119 and 1152.

18 Defendants deny all of the claims and allegations asserted in the Action (as defined
19 herein). Defendants have agreed to resolve this Action via this Stipulation, but to the extent this
20 Stipulation is deemed void or does not take effect, Defendants do not waive, but rather
21 expressly reserves, all rights to challenge all such claims and allegations in the Action upon all
22 procedural and factual grounds, including without limitation the ability to challenge suitability
23 for class treatment or representative adjudication on any grounds or to assert any and all
24 defenses or privileges. The Class Representative and their counsel agree that Defendants retain
25 and reserve these rights. In particular, the Class Representative and their counsel waive and
26 agree not to argue or to present any argument that Defendants would be estopped from
27 contesting class certification because it has entered into this Stipulation.

28 59. Tolerance of Opt-Outs. Defendants retain the right, in the exercise of their sole

1 discretion, to nullify the settlement within thirty (30) days after expiration of the opt out period, if
2 more than one hundred and six (106) Class Members opt out of this settlement.

3 60. Escalator. This settlement is based on Defendants' representation that there are
4 approximately 1,672 Class Members and approximately 52,350 workweeks as of November 18,
5 2020. At the time of preliminary approval, if the number of workweeks increases by more than
6 10% upon confirmation of the workweeks, then there will be a pro rata adjustment to the Gross
7 Settlement Amount which shall automatically increase in proportion to the increased percentage of
8 workweeks.

9 61. Preliminary Approval Hearing. Plaintiff will obtain a hearing before the Court
10 to request the Preliminary Approval of the Settlement Agreement, and the entry of a
11 Preliminary Approval Order for: (i) conditional certification of the Settlement Class for
12 settlement purposes only, (ii) preliminary approval of the proposed Settlement Agreement, (iii)
13 setting a date for a Final Approval/Settlement Fairness Hearing. The Preliminary Approval
14 Order will provide for the Notice of Class Action Settlement to be sent to all Class Members as
15 specified herein. In conjunction with the Preliminary Approval hearing, Plaintiff will submit
16 this Settlement Agreement, which sets forth the terms of this Settlement, and will include the
17 proposed Notice of Class Action Settlement.

18 62. Final Settlement Approval Hearing and Entry of Judgment. Upon expiration of
19 the deadlines to postmark Requests for Exclusion or Objections to the Settlement Agreement,
20 and with the Court's permission, a Final Approval/Settlement Fairness Hearing will be
21 conducted to determine the Final Approval of the Settlement Agreement along with the
22 amounts properly payable for (i) Individual Settlement Payments; (ii) the Class Representative
23 Enhancement Payment; (iii) Attorneys' Fees and Costs; and (iv) all Settlement Administration
24 Costs. The Final Approval/Settlement Fairness Hearing will not be held earlier than thirty (30)
25 days after the Response Deadline. Class Counsel will be responsible for drafting all documents
26 necessary to obtain final approval. Class Counsel will also be responsible for drafting the
27 attorneys' fees and costs application to be heard at the final approval hearing.

28 63. Judgment and Continued Jurisdiction. Upon final approval of the Settlement by

1 the Court or after the Final Approval/Settlement Fairness Hearing, the Parties will present the
2 Judgment to the Court for its approval. After entry of the Judgment, the Court will have
3 continuing jurisdiction solely for purposes of addressing: (i) the interpretation and enforcement
4 of the terms of the Settlement, (ii) Settlement administration matters, and (iii) such post-
5 Judgment matters as may be appropriate under court rules or as set forth in this Settlement
6 Agreement.

7 64. General Release by Plaintiff. In consideration for the consideration set forth in
8 this Agreement, Plaintiff, for herself, their heirs, successors and assigns, does waive, release,
9 acquit and forever discharge the Released Parties, from any and all claims, actions, charges,
10 complaints, grievances and causes of action, of whatever nature, whether known or unknown,
11 which exist or may exist on Plaintiff's behalf as of the date of this Agreement, including but not
12 limited to any and all tort claims, contract claims, wage claims, wrongful termination claims,
13 disability claims, benefit claims, public policy claims, retaliation claims, statutory claims,
14 personal injury claims, emotional distress claims, invasion of privacy claims, defamation
15 claims, fraud claims, quantum meruit claims, and any and all claims arising under any federal,
16 state or other governmental statute, law, regulation or ordinance, including any claims arising
17 under the California Fair Employment and Housing Act (FEHA), the California Labor Code,
18 the Wage Orders of California's Industrial Welfare Commission, other state wage and hour
19 laws, the Americans with Disabilities Act, the Age Discrimination in Employment Act
20 (ADEA), the Employee Retirement Income Security Act, Title VII of the Civil Rights Act of
21 1964, the California Fair Employment and Housing Act, the California Family Rights Act, the
22 Family Medical Leave Act, California's Whistleblower Protection Act, California Business &
23 Professions Code Section 17200 et seq., and any and all claims arising under any federal, state
24 or other governmental statute, law, regulation or ordinance. Plaintiff hereby expressly waive
25 and relinquish any and all claims, rights, or benefits that they may have under California Civil
26 Code § 1542, which provides as follows:

27 **A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS**
28 **THAT THE CREDITOR OR RELEASING PARTY DOES**

1 **NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER**
2 **FAVOR AT THE TIME OF EXECUTING THE RELEASE**
3 **AND THAT, IF KNOWN BY HIM OR HER WOULD HAVE**
4 **MATERIALLY AFFECTED HIS OR HER SETTLEMENT**
5 **WITH THE DEBTOR OR RELEASED PARTY.**

6 Plaintiff may hereafter discover claims or facts in addition to, or different from, those
7 which they now know or believe to exist, but they expressly agree to fully, finally and forever
8 settle and release any and all claims against the Released Parties, known or unknown, suspected
9 or unsuspected, which exist or may exist against Released Parties at the time of execution of
10 this Agreement, including, but not limited to, any and all claims relating to or arising from
11 Plaintiff's employment with Defendants. The Parties further acknowledge, understand and
12 agree that this representation and commitment is essential to the Agreement and that this
13 Agreement would not have been entered into were it not for this representation and
14 commitment.

15 65. Release by All Settlement Class Members. Plaintiff and all Class Members who
16 do not submit a valid and timely Request for Exclusion, on behalf of himself or herself, his or
17 her heirs, descendants, dependents, executors, administrators, assigns, and successors, fully and
18 finally release and discharge the Released Parties from any and all of the Released Claims for
19 the entirety of the Class Period. This waiver and release will be final and binding on the
20 Effective Date and will have every preclusive effect permitted by law. Plaintiff and the
21 Settlement Class Members may hereafter discover facts or legal arguments in addition to or
22 different from those they now know or currently believe to be true with respect to the Released
23 Claims. Regardless, the discovery of new facts or legal arguments shall in no way limit the
24 scope or definition of the Released Claims, and by virtue of this Agreement, Plaintiff and the
25 Settlement Class Members shall be deemed to have, and by operation of the final judgment
26 approved by the Court, shall have, fully, finally, and forever settled and released all of the
27 Released Claims. The parties understand and specifically agree that the scope of the release
28 described in this Paragraph: is a material part of the consideration for this Agreement; was

critical in justifying the agreed upon economic value of this settlement and without it Defendants would not have agreed to the consideration provided; and is narrowly drafted and necessary to ensure that Defendants is obtaining peace of mind regarding the resolution of claims that were or could have been alleged based on the facts, causes of action, and legal theories contained in the operative complaint in the Action.

66. Exhibits Incorporated by Reference. The terms of this Settlement Agreement include the terms set forth in any attached Exhibits, which are incorporated by reference as though fully set forth herein. Any Exhibits to this Settlement Agreement are an integral part of the Settlement.

67. Publicity Agreement. Plaintiff and Class Counsel agree not to disclose or publicize the Settlement, including the fact of the Settlement, its terms or contents, and the negotiations underlying the Settlement, in any manner or form, directly or indirectly, to any person or entity, except potential class members and as shall be contractually required to effectuate the terms of the Settlement. For the avoidance of doubt, this section means Plaintiff and Class Counsel agree not to issue press releases, communicate with, or respond to any media or publication entities, publish information in manner or form, whether printed or electronic, on any medium or otherwise communicate, whether by print, video, recording or any other medium, with any person or entity concerning the Settlement, including the fact of the Settlement, its terms or contents and the negotiations underlying the Settlement, except as shall be contractually required to effectuate the terms of the Settlement.

68. No Unalleged Claims. Except for those claims brought forth under *Vidali Aleman, et al. v. Moonlight Packing Corporation, et al.*, Fresno County Superior Court, Case No. 20CECG01196 to the extent they are not covered under the Released Claims, Plaintiff and Class Counsel represent that they are not currently aware of any: (a) unalleged claims in addition to, or different from, those which are finally and forever settled and released against the Released Parties by this Settlement; and (b) unalleged facts or legal theories upon which any claims or causes of action could be brought against Defendants, except such facts and theories specifically alleged in the operative complaints in this Action. Plaintiff and Plaintiff's

1 Counsel will further represent that, other than the instant Action, they have no current intention
2 of asserting any other claims against Defendants in any judicial or administrative forum.

3 Plaintiff and Plaintiff's Counsel will further represent that they do not currently know of or
4 represent any persons who have expressed any interest in pursuing litigation or seeking any
5 recovery against Defendants. The Parties acknowledge, understand and agree that the
6 representations described in this paragraph are essential to the Settlement Agreement and that
7 this Settlement Agreement would not have been entered into were it not for this representation.

8 69. Entire Agreement. This Settlement Agreement and any attached Exhibits
9 constitute the entirety of the Parties' settlement terms. No other prior or contemporaneous
10 written or oral agreements may be deemed binding on the Parties.

11 70. Amendment or Modification. This Settlement Agreement may be amended or
12 modified only by a written instrument signed by counsel for all Parties or their successors-in-
13 interest.

14 71. Binding on Successors and Assigns. This Settlement Agreement will be binding
15 upon, and inure to the benefit of, the successors or assigns of the Parties hereto, as previously
16 defined.

17 72. California Law Governs. All terms of this Settlement Agreement and Exhibits
18 hereto will be governed by and interpreted according to the laws of the State of California.

19 73. Headings. The headings contained in this Settlement Agreement are for
20 convenience and reference purposes only and will not be given weight in its construction.

21 74. Execution and Counterparts. This Settlement Agreement is subject only to the
22 execution of all Parties. However, the Settlement may be executed in one or more counterparts.
23 All executed counterparts and each of them, including facsimile and scanned copies of the
24 signature page, will be deemed to be one and the same instrument provided that counsel for the
25 Parties will exchange among themselves original signed counterparts.

26 75. Acknowledgement that the Settlement is Fair and Reasonable. The Parties
27 believe this Settlement Agreement is a fair, adequate, and reasonable settlement of the Action
28 and have arrived at this Settlement after arm's-length negotiations and in the context of

1 adversarial litigation, taking into account all relevant factors, present and potential. The Parties
2 further acknowledge that they are each represented by competent counsel and that they have
3 had an opportunity to consult with their counsel regarding the fairness and reasonableness of
4 this Settlement. In addition, the Mediator may execute a declaration supporting the Settlement
5 and the reasonableness of the Settlement and the Court may, in its discretion, contact the
6 Mediator to discuss the Settlement and whether or not the Settlement is objectively fair and
7 reasonable.

8 76. Invalidity of Any Provision. Before declaring any provision of this Settlement
9 Agreement invalid, the Court will first attempt to construe the provision as valid to the fullest
10 extent possible consistent with applicable precedents so as to define all provisions of this
11 Settlement Agreement valid and enforceable.

12 77. Waiver of Certain Appeals. The Parties agree to waive appeals and to stipulate
13 to class certification for purposes of this Settlement only; except, however, that Plaintiff or
14 Class Counsel may appeal any reduction in Attorneys' Fees and Costs below the amount they
15 request from the Court, and either party may appeal any court order that materially alters the
16 Settlement Agreement's terms.

17 78. Non-Admission of Liability. The Parties enter into this Settlement to resolve the
18 dispute that has arisen between them and to avoid the burden, expense, and risk of continued
19 litigation. In entering into this Settlement, Defendants do not admit, and specifically deny, that
20 they violated any federal, state, or local law; violated any regulations or guidelines promulgated
21 pursuant to any statute or any other applicable laws, regulations or legal requirements; breached
22 any contract; violated or breached any duty; engaged in any misrepresentation or deception; or
23 engaged in any other unlawful conduct with respect to its employees. Neither this Settlement,
24 nor any of its terms or provisions, nor any of the negotiations connected with it, will be
25 construed as an admission or concession by Defendants of any such violations or failures to
26 comply with any applicable law. Except as necessary in a proceeding to enforce the terms of
27 this Settlement, this Settlement and its terms and provisions will not be offered or received as
28 evidence in any action or proceeding to establish any liability or admission on the part of

1 Defendants or to establish the existence of any condition constituting a violation of, or a non-
2 compliance with, federal, state, local or other applicable law.

3 The Parties understand and acknowledge that this Settlement Agreement constitutes a
4 compromise and settlement of disputed claims. No action taken by the Parties whether
5 previously or in connection with the negotiations or proceedings connected with the Settlement
6 or this Agreement shall be deemed or construed to be an admission of the truth or falsity of any
7 allegations, claims, or defenses heretofore made, or an acknowledgment or admission by any
8 party of any fact, fault, liability, or wrongdoing of any kind whatsoever.

9 Neither the Settlement, nor any act performed or document executed pursuant to or in
10 furtherance of the Settlement: (a) is or may be deemed to be, or may be used as, an admission
11 of, or evidence of, the validity of any claim made by the Plaintiff or Class Members, or of any
12 wrongdoing or liability of the Released Parties; or (b) is or may be deemed to be, or may be
13 used as, an admission of, or evidence of, any fault or omission of any of the Released Parties, in
14 the Action or in any proceeding in any court, administrative agency or other tribunal; or
15 construed as an admission by Plaintiff regarding the validity of any allegation or claim asserted
16 in this Action or that Plaintiff has waived any allegation or claim asserted in the Action.

17 79. Waiver. No waiver of any condition or covenant contained in this Settlement or
18 failure to exercise a right or remedy by any of the Parties hereto will be considered to imply or
19 constitute a further waiver by such party of the same or any other condition, covenant, right or
20 remedy.

21 80. Enforcement Action. In the event that one or more of the Parties institutes any
22 legal action or other proceeding against any other Party or Parties to enforce the provisions of
23 this Settlement or to declare rights and/or obligations under this Settlement, the successful
24 Party or Parties will be entitled to recover from the unsuccessful Party or Parties reasonable
25 attorneys' fees and costs, including expert witness fees incurred in connection with any
26 enforcement actions.

27 81. Mutual Preparation. The Parties have had a full opportunity to negotiate the
28 terms and conditions of this Settlement. Accordingly, this Settlement will not be construed

1 more strictly against one party than another merely by virtue of the fact that it may have been
2 prepared by counsel for one of the Parties, it being recognized that, because of the arms-length
3 negotiations between the Parties, all Parties have contributed to the preparation of this
4 Settlement.

5 82. Representation By Counsel. The Parties acknowledge that they have been
6 represented by counsel throughout all negotiations that preceded the execution of this
7 Settlement, and that this Settlement has been executed with the consent and advice of counsel.
8 Further, Plaintiff and Class Counsel warrant and represent that there are no liens on the
9 Settlement Agreement.

10 83. All Terms Subject to Final Court Approval. All amounts and procedures
11 described in this Settlement Agreement herein will be subject to final Court approval.

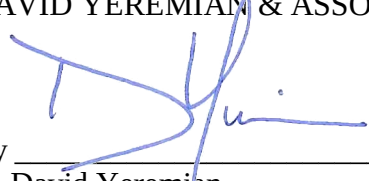
12 84. Cooperation and Execution of Necessary Documents. All Parties will cooperate
13 in good faith and execute all documents to the extent reasonably necessary to effectuate the
14 terms of this Settlement Agreement.

15 85. Binding Agreement. The Parties warrant that they understand and have full
16 authority to enter into this Settlement, and further intend that this Settlement will be fully
17 enforceable and binding on all parties, and agree that it will be admissible and subject to
18 disclosure in any proceeding to enforce its terms, notwithstanding any mediation confidentiality
19 provisions that otherwise might apply under federal or state law.

20 **SO AGREED AND STIPULATED.**

21 DATED: January 19, 2021

22 DAVID YEREMIAN & ASSOCIATES, INC.

23 
24 By _____
25 David Yeremian
26 Natalie Haritoonian
27 Attorneys for Plaintiff VIDALI ALEMAN
28 and all others similarly situated

1 DATED: January __, 2021

BAKER MANOCK & JENSEN, P.C.

2
3 By _____
4 Diane Coderniz
5 Attorneys for Defendants MOONLIGHT
6 PACKING CORPORATION and
7 MOONLIGHT PACKING COMPANY LLC
8

9 DATED: January ¹⁹ __, 2021

10 DocuSigned by:
11 By Vidalia
12 Plaintiff Vidal Aleman
13

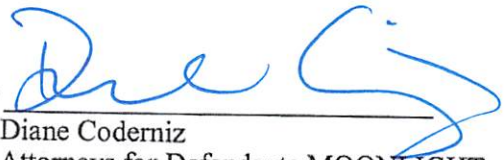
14 DATED: January __, 2021

MOONLIGHT PACKING
CORPORATION and MOONLIGHT
PACKING COMPANY LLC

15
16
17 By _____
18 Name:
19 Title:
20
21
22
23
24
25
26
27
28

1 DATED: January 27, 2021

BAKER MANOCK & JENSEN, P.C.

2
3 By 
4 Diane Coderniz
5 Attorneys for Defendants MOONLIGHT
6 PACKING CORPORATION and
7 MOONLIGHT PACKING COMPANY LLC
8

9 DATED: January __, 2021

10
11 By _____
12 Plaintiff Vidali Aleman
13

14 DATED: January 27, 2021

15 MOONLIGHT PACKING
16 CORPORATION and MOONLIGHT
17 PACKING COMPANY LLC

18 By 
19 Name: Ty TAVLAN
20 Title: VP
21
22
23
24
25
26
27
28

EXHIBIT A

**NOTICE OF PROPOSED CLASS ACTION SETTLEMENT AND
HEARING DATE FOR COURT APPROVAL**

Vidali Aleman, et al. vs. Moonlight Packing Corporation, et al., Case No. 20CECG01196

As a current or former non-exempt employee of Moonlight Packing Corporation and/or Moonlight Packing Company LLC who worked in California, you may be entitled to receive money from a class action settlement.

Admin ID: <<Admin ID>>

<<Name>>

<<Address1>>

<<Address2>>

<<City>>, <<State>> <<Zip Code>>

Please provide current address (if different) here:

*The Fresno County Superior Court has authorized this Class Notice.
This is not a solicitation from a lawyer.*

YOU MAY BE ENTITLED TO RECEIVE MONEY FROM A CLASS ACTION SETTLEMENT IF YOU ARE A CURRENT OR FORMER NON-EXEMPT EMPLOYEE OF MOONLIGHT PACKING CORPORATION OR MOONLIGHT PACKING COMPANY LLC WHO WORKED IN CALIFORNIA FROM MAY 4, 2016 THROUGH JANUARY 19, 2021.

- A proposed settlement of \$900,000.00 (the “Gross Settlement Amount”) will be used to pay claims to: current and former non-exempt packing employees of Moonlight Packing Corporation and Moonlight Packing Company LLC, who worked in California from May 4, 2016 through January 19, 2021 (such periods of time, the “Class Period” and such employees, the “Class Members”).
- The settlement resolves a lawsuit entitled *Vidali Aleman, et al. vs. Moonlight Packing Corporation, et al.*, Case No. 20CECG01196 (the “Lawsuit”) over whether Moonlight Packing Corporation and Moonlight Packing Company LLC properly paid employees for all hours worked, properly paid reporting time pay, provided employees meal and rest periods, and other legal consequences that would follow from not doing so, provided accurate wage statements, paid all wages upon termination, reimbursed employees for necessary business expenses, timely paid all wages, and kept required payroll records. This settlement avoids the costs and risks from continuing the Lawsuit, pays money to persons like you, and releases Moonlight Packing Corporation and Moonlight Packing Company LLC.
- The Court has not made a determination of the validity of the claims in the Lawsuit. Moonlight Packing Corporation and Moonlight Packing Company LLC deny any and all liability arising from any of the claims and contend that at all relevant times it properly compensated all employees and fully complied with all applicable laws.
- Class Members will receive a payment based on the number of workweeks worked, rounded up to the nearest full workweek, during the Class Period.
- **PLEASE READ THIS CLASS NOTICE CAREFULLY. YOUR LEGAL RIGHTS ARE AFFECTED BY IT.**

You worked a total number of <<Work Weeks>> during the Class Period.

Based on your workweeks it is expected that your gross settlement payment before payroll taxes is approximately <<EstISP>>

Each settlement payment will be allocated as follows for tax purposes: one-third as wages, to be reported on an IRS W-2, and which will be reduced for the Class Member's share of taxes and withholdings; and two-thirds as interest, penalties, and liquidated damages, which portion shall be reported on an IRS Form 1099, and which will not be subject to reduction for taxes and withholdings.

YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT

DO NOTHING	If you do not do anything, you will receive a payment and give up your legal rights to pursue claims released by the settlement of the Lawsuit. If the Court grants final approval of the Settlement, the Administrator will mail your check to the address on file for you. You will have 180 days to cash the check. If you do not cash the check, the money will revert to Valley Children's Hospital, but you will still be deemed to have released your claims.
OPT OUT	If you opt out, you will not receive any payment and will retain your legal rights to pursue claims that would otherwise be released by the settlement of the Lawsuit. You may opt out by following the procedures set forth below.
OBJECT TO THE SETTLEMENT	If you do not opt out, you may write to the Settlement Administrator, CPT Group, Inc., about why you do not like the settlement and they will forward your concerns to counsel which will then be provided to the Court. More information on this process is set forth below.
OBJECT TO THE WORKWEEK CALCULATION	If you feel that you worked a different amount of workweeks than identified above, you may object to that calculation by following the procedures set forth below.
ATTEND A HEARING	You have the right to attend a fairness hearing that will be conducted by the Court, but you are not required to attend. Regardless of whether you timely file and serve a written objection, you may ask to speak about your objection at the hearing. You can also send a letter to the Settlement Administrator, CPT Group, Inc., providing notice of your intention to appear and speak at the hearing.

IMPORTANT INFORMATION ABOUT THE PROPOSED SETTLEMENT

1. Why did I get this Class Notice?

You were sent this Class Notice because you have a right to know about the proposed settlement in the Lawsuit and about all of your options before the Court rules on whether to finally approve the settlement. If the Court approves the settlement, and after any objections and appeals are resolved, a "Settlement Administrator" appointed by the Court will make the payments that the settlement allows. This Class Notice explains the Lawsuit, the proposed settlement, your legal rights, and what benefits are available and how to receive them.

The Court in charge of this case is the Fresno County Superior Court. The person who sued is called "Plaintiff" and the organizations they sued are called "Defendants."

2. What is the Lawsuit about?

In the Lawsuit, Vidali Aleman, the Representative Plaintiff, alleged multiple violations of the California Labor Code, the California Business and Professions Code, including causes of action for: (1) Failure to Pay Minimum Wages; (2) Failure to Pay Wages and Overtime Under Labor Code § 510; (3) Failure to Pay Reporting Time Pay; (4) Meal Period Liability Under Labor Code § 226.7; (5) Rest-Break Liability Under Labor Code § 226.7; (6) Violation of Labor Code § 226(a); (7) Violation of Labor Code § 203; (8) Violation of Labor Code § 204; (9) Failure to Keep Required Payroll Records under Labor Code §§ 1174 and 1174.5; (10) Violation of Business & Professions Code § 17200, *et seq.*; and (11) Penalties Pursuant to Labor Code § 2698, *et seq.*

3. Why is there a settlement?

The parties disagree on the probable outcome of the case with respect to liability, damages, and how much money could be recovered if the Representative Plaintiff won at trial. Moonlight Packing Corporation and Moonlight Packing Company LLC believe that the Representative Plaintiff would not prevail if this case went to trial. The Court has not decided in favor of the Representative Plaintiff or Moonlight Packing Corporation and Moonlight Packing Company LLC. There has been no trial in this case. Instead, both sides recognize the risks, expenses, and disruption associated with continued litigation and they have therefore chosen to resolve their differences by entering into a settlement. By doing so, the parties can avoid the cost of a trial, yet Class Members are still entitled to receive payments if they comply with the instructions in this Class Notice. The parties entered into this settlement after arms-length negotiations while using the services of an experienced and neutral mediator. The Representative Plaintiff and Class Counsel believe that the proposed settlement is fair and reasonable and is in the best interest of the Class Members.

4. What is a class action settlement?

The Court must approve the terms of the proposed settlement as fair and reasonable. Once approved, the settlement will affect all Class Members, except those who have properly opted out. This Class Notice explains your legal rights, the terms of the settlement, what you must do to participate, and the amount of money you may receive. Please read this entire Class Notice carefully.

5. What should I do?

You can do nothing, and if you are entitled to a payment you will be paid. Be mindful, however, that if this Class Notice reaches you and the address where you now live is different, you need to contact the Settlement Administrator and provide updated information so that any future correspondence or the settlement check itself reaches you and is not returned as an address unknown.

6. How much will my payment be?

After all fees, costs, and offsets are taken as set forth under Section IV of the parties' Joint Stipulation of Class Settlement (which is available for review), the remainder will be used to pay Class Members a pro-rata payment based on the number of workweeks each Class Member worked during the Class Period.

Under the proposed Settlement, Moonlight Packing Corporation and Moonlight Packing Company LLC will pay \$900,000 to fully and finally resolve all claims in the Action (the "Gross Settlement Amount"). The amount to be distributed to Class Members who do not exclude themselves from the settlement (the "Net Settlement Amount") will be the Gross Settlement Amount, minus the following amounts: (a) Settlement Administration Costs, which shall not exceed \$14,000; (b) enhancement payments to the Plaintiff not to exceed \$5,000 for her work and efforts in prosecuting this case; (c) Class Counsel's attorney's fees not to exceed one-third of the Gross Settlement Amount, or

\$300,000; (d) reimbursement of Class Counsel's actual litigation costs and expenses in an amount not to exceed \$17,000; and (e) payment of \$30,000 to the Labor and Workforce Development Agency for its share of the penalties under the PAGA ("LWDA Payment"). The attorneys' fees, litigation costs and expenses, enhancement payment, Settlement Administration Costs, and LWDA Payment are all subject to Court approval. The Net Settlement Amount will be used to pay Class Members a pro-rata payment based on the number of workweeks each Class Member worked during the Class Period.

If you do not dispute your workweek calculation, and do not opt out of the settlement, you will be bound by the settlement and receive a settlement payment. **In other words, you do not need to take any action to receive a settlement payment.**

7. When would I get my payment?

The Court will hold a hearing on [ENTER DATE AND TIME] to decide whether to approve the proposed settlement. If the Court approves the settlement and anyone objects, there may be appeals. It is always uncertain when these objections and appeals can be resolved, and resolving them can take time. To check on the progress of the settlement, call the Settlement Administrator at 1-XX-XXX-XXXX, or contact Class Counsel (see below for Class Counsel's contact information.). *Please be patient.*

8. What am I releasing?

Upon the Court's final approval of the settlement, and except as to such rights or claims as may be created by the settlement, Plaintiffs and Class Members who have not effectively opted-out of the settlement as described below, fully release Rapid Manufacturing, and their past, present and/or future, direct and/or indirect, officers, directors, shareholder, employees, agents, principals, heirs, representatives, accountants, auditors, attorneys, consultants, insurers, and their respective successors; and predecessors in interest, assigns, subsidiaries, affiliates, and parents if any, without limitation ("Released Parties") of all causes of action and factual or legal theories that were alleged in the operative complaints or that could have been alleged against Defendant based on the facts contained in the operative complaints, including all of the following claims for relief: (a) failure to pay minimum, regular, or hourly wages, (b) failure to pay overtime wages or accurate overtime wages, (c) failure to pay reporting time pay, (d) failure to provide meal breaks and failure to pay premium pay for missed meal breaks, (e) failure to provide rest breaks and failure to pay premium pay for missed rest breaks, (f) failure to provide complete, accurate or properly formatted wage statements, (g) failure to timely pay wages during employment or upon separation, (h) failure to maintain accurate records, (i) unfair business practices that could have been premised on the claims, causes of action or legal theories of relief described above or any of the claims, causes of action or legal theories of relief pleaded in the operative complaint; (j) all claims under the California Labor Code Private Attorneys General Act of 2004 that could have been premised on the claims, causes of action or legal theories described above or any of the claims, causes of action or legal theories of relief pleaded in the operative complaint; (k) any other claims or penalties under the California Labor Code or other wage and hour laws pleaded in the Action; and (l) all damages, penalties, interest and other amounts recoverable under said claims, causes of action or legal theories of relief. The time period covered by this release is May 4, 2016 through January 19, 2021.

9. How can I opt out of this settlement?

You can opt out of this settlement and retain your rights. To do so, you must submit a written, signed request to opt out of the settlement. You will have 45 days from the date of mailing of this Class Notice to do so. Your Opt-Out request must be mailed to the Settlement Administrator, CPT Group, Inc., _____, California _____ and be postmarked no later than [ENTER DATE], or it will not be considered and you will be bound by the settlement.

10. Do I have a lawyer in this case?

The Court has appointed David Yeremian of DAVID YEREMIAN & ASSOCIATES, INC., 535 N. Brand Blvd., Suite 705, Glendale, California 91203, telephone 818.230.8380 to represent you and other Class Members in the Lawsuit. These lawyers are called Class Counsel. They will be compensated from the Total Settlement Amount as discussed in this Class Notice. If you want to be represented by your own lawyer, you may hire one at your own expense.

11. How will the lawyers be paid?

Class Counsel will ask the Court to award them fees up to one-third of the Gross Settlement Amount. Class Counsel will also ask the Court to award them costs incurred in connection with the Lawsuit. The Court may choose to award less than the amount requested by Class Counsel.

12. How do I tell the Court that I do not like the settlement?

You can ask the Court to deny approval by filing an objection. You cannot ask the Court to order a larger settlement; the Court can only approve or deny the settlement. If the Court denies the settlement, no settlement payments will be sent out and the Lawsuit will continue. If that is what you want to happen, you must object.

You may object to the proposed settlement in writing. You may also appear at the Final Approval Hearing, either in person or through your own attorney. If you appear through your own attorney, you are responsible for paying that attorney. All written objections and supporting papers must (a) clearly identify the case name and number (*Vidali Aleman, et al. vs. Moonlight Packing Corporation, et al.*, Case No. 20CECG01196), (b) be submitted to the Settlement Administrator, CPT Group, Inc., _____, California _____, and (c) be filed or postmarked on or before **[ENTER DATE]**.

13. How do I dispute my workweek calculation?

To dispute the number of workweeks with which you have been credited, you must submit evidence to the Settlement Administrator showing that the workweek information is inaccurate. Such evidence must be mailed to the Settlement Administrator at CPT Group, Inc., _____, California _____ and postmarked on or before **[ENTER DATE]**. The Settlement Administrator shall decide the dispute. Moonlight Packing Corporation and Moonlight Packing Company LLC's records will be presumed correct, but the Settlement Administrator will evaluate the evidence submitted and make a final decision on the merits of the dispute.

14. When and where will the Court decide whether to approve the settlement?

The Court will hold a fairness hearing on **[ENTER DATE AND TIME]** at the Fresno County Superior Court, Department 402, 1130 O Street Fresno, California 93721. At this hearing, the Court will consider whether the settlement is fair, reasonable, and adequate. If there are objections and they have been properly lodged, the Court will consider them. The Court will also listen to people who have asked to speak at the hearing. The Court may also decide how much to pay to Class Counsel. At or after the hearing, the Court will decide whether to approve the settlement. We do not know how long this decision will take.

15. Do I have to come to the hearing?

No. Class Counsel will answer any questions that the Court may have. But, you are welcome to come at your own expense. If you sent an objection, you do not have to come to Court to talk about it. As long as you mailed your written objection on time, the Court will consider it. You may also pay your own lawyer to attend, but it is not required.

16. May I speak at the hearing?

You may ask the Court for permission to speak at the fairness hearing. To do so, you must send a letter stating that it is your "Notice of Intention to Appear" in the settlement. Be sure to include your name, address, and telephone number. Your Notice of Intention to Appear must be postmarked no later than **[ENTER DATE]**, and be sent to the Settlement Administrator, CPT Group, Inc., at the address listed above.

17. What happens if I do nothing at all?

You will participate in the settlement and receive payment. You will be bound by the release as set forth herein.

GETTING MORE INFORMATION

This Class Notice summarizes the proposed settlement. You may call or contact Class Counsel or the Settlement Administrator if you would like more information about the case. You may call **1-XXX-XXX-XXXX** or write the Settlement Administrator, CPT Group, Inc., located at _____, California _____.

You can also access the Fresno Superior Court Case Information Portal at <https://publicportal.fresno.courts.ca.gov/FRESNOPORTAL/Home/Dashboard/29>, or by visiting the Clerk's Office at the Fresno County Superior Court, located at 1130 O Street Fresno, California 93721, between 8:30 a.m. and 4:30 p.m., Monday through Friday, excluding Court holidays.

The Settlement Administrator has also setup a website which has links to this Class Notice and other documents related to the proposed settlement, including the Joint Stipulation of Class Settlement. The website is: **[ENTER WEBSITE URL]**.

PLEASE DO NOT TELEPHONE THE COURT OR THE COURT CLERK'S OFFICE TO INQUIRE ABOUT THIS SETTLEMENT OR THE CLAIM PROCESS.

EXHIBIT B

REQUEST FOR EXCLUSION FORM

ALEMAN vs. MOONLIGHT PACKING CORPORATION
Case No. 20CECG01196

TO EXCLUDE YOURSELF FROM THE SETTLEMENT YOU MUST SIGN AND RETURN THIS FORM, POSTMARKED ON OR BEFORE **INSERT DATE, 2021, TO: CPT GROUP, INC. AT **INSERT ADDRESS**].**

IDENTIFYING INFORMATION

Please verify and/or complete any missing identifying information:

[NAME] Former Names (if any):

[ADDRESS LINE 1] _____

[ADDRESS LINE 2] _____

[TELEPHONE NUMBER] _____

THIS FORM IS TO BE USED ONLY IF YOU DO NOT WANT TO PARTICIPATE IN THE PROPOSED SETTLEMENT. IF YOU WANT TO RECEIVE A SETTLEMENT PAYMENT, DO NOT SUBMIT THIS FORM.

[] By checking the box to the left, and signing and completing the below, I agree to the following:

I do not want to participate in the settlement in ALEMAN vs. MOONLIGHT PACKING CORPORATION, Case No. 20CECG01196. I understand by not participating and excluding myself from the settlement, that I will not receive any money from the settlement.

Executed on _____, 2021

Signature: _____

EXHIBIT C

OBJECTION FORM

ALEMAN vs. MOONLIGHT PACKING CORPORATION

Case No. 20CECG01196

TO OBJECT TO THE SETTLEMENT, YOU MUST FILL OUT, SIGN AND RETURN THIS FORM, POSTMARKED ON OR BEFORE INSERT DATE, 2021, TO: CPT GROUP, INC. AT [INSERT ADDRESS].

IDENTIFYING INFORMATION

Please verify and/or complete any missing identifying information:

[NAME] Former Names (if any):

[ADDRESS LINE 1] _____

[ADDRESS LINE 2] _____

THIS FORM IS TO BE USED ONLY IF YOU WANT TO OBJECT TO THE PROPOSED SETTLEMENT.

I object to the settlement for the following reasons:

(Attach additional pages if necessary.)

Signed on _____, 2021

Signature: _____

EXHIBIT 2

**DAVID YEREMIAN
& ASSOCIATES INC**

535 N BRAND BLVD STE 705
GLENDALE CA 91203

818 230 8380
818 230 0308 FAX

DAVID@YEREMIANLAW.COM;
NATALIE@YEREMIANLAW.COM

April 6, 2020

VIA ON-LINE SUBMISSION ONLY TO:

<https://dir.tfaforms.net/128> (copy by certified mail to the below listed defendants)

Moonlight Packing Corporation
George Braunstein, Agent for Service of Process
17719 E. Huntsman
Reedly, California 93654
Certified Mail Tracking Number: 7018 3090 0000 6138 4769

Moonlight Packing Company LLC
James Ty Tavlan, Agent for Service of Process
17719 E. Huntsman
Reedly, California 93654
Certified Mail Tracking Number: 7018 3090 0000 6138 4776

**Re: Labor Code § 2698, *et seq.* Penalties – PAGA Notice Letter
*Vidali Aleman, et al. vs. Moonlight Packing Corporation***

Gentlepersons:

This office represents Plaintiff Vidali Aleman (“Plaintiff”) and other aggrieved employees for, *inter alia*, violations of California Labor Code §§ 201, 202, 203, 204, 226, 226.7, 510, 512, 558, 1174, 1174.5, 1182.12, 1185, 1194, 1194.2, 1197, 1198, 1199, 2698, 2699, *et seq.*, provisions of the Industrial Welfare Commission (IWC) Wage Order(s); and California Business & Professions Code § 17200 *et seq.*

The purpose of this letter is to comply with the Private Attorneys General Act of 2004, pursuant to California Labor Code § 2698 *et. seq.* (“the Act”). Plaintiff wishes to bring a representative action, pursuant to the Act, on behalf of herself and all other similarly situated Aggrieved Employees, and the State of California, against Defendants, Moonlight Packing Corporation, Moonlight Packing Company LLC, and DOES 1 through 50 inclusive (all defendants being referred to herein collectively as “Defendants”).

Relevant Facts

Plaintiff was employed by Defendants as a non-exempt, hourly employee based out of Reedly, California. Aggrieved Employees include all non-exempt hourly employees of Defendants within the state of California from one year prior to the date of this letter and continuing through the present. Plaintiff and Aggrieved Employees are collectively referred to herein as “Aggrieved Employees.” Aggrieved Employees consistently worked at Defendants’ behest and under their

control and subject to their policies and practices without being paid all wages due. Plaintiff is also informed and believes that there are other Aggrieved Employees employed by Defendants as non-exempt employees within the state of California within the statutory time period who suffer or suffered from the same wage and hour violations outlined below.

Defendants had a common policy and/or practice of failing to pay Aggrieved Employees minimum wages for all hours worked. Aggrieved Employees were either not paid by Defendants for all hours worked or were not paid at the appropriate minimum, regular and overtime rates. Plaintiff also contends that Defendants failed to pay Aggrieved Employees all wages due and owing, including by requiring off the clock work, unlawful rounding to their detriment, failing to pay for reporting time pay, failing to provide meal and rest breaks, failing to furnish accurate wage statements, and failing to timely pay wages including final wages, all in violation of various provisions of the California Labor Code and applicable Wage Orders.

During the course of Aggrieved Employees' employment with Defendants, they were not paid all wages they were owed, including for all work performed resulting in off the clock work. Aggrieved Employees were forced into working off the clock due to pre-shift and post-shift work duties performed. Specifically, Aggrieved Employees had to wait in line to approach the timekeeping system which would take several minutes. Additionally, Aggrieved Employees had to clock out of the timekeeping system and wait to receive their paychecks.

Additionally, Defendant required Plaintiff and the Aggrieved Employees to, on occasion, report for a scheduled work day to be told whether work was available for them or not, and when there was no work, Plaintiff and the Aggrieved Employees would be sent home after waiting for as many as several hours. On such days when Defendant required Plaintiff and the Aggrieved Employees to report to work only to be sent home because work was not available, they were not paid required reporting time wages for the hours they waited without receiving their regular hourly rate of pay for them. Additionally, Defendant required Aggrieved Employees to drive to Defendant's facility in Reedley, California to pick up their paycheck. When they were thereafter sent home by Defendants because work was not available on that day, Defendant failed to pay them reporting time pay.

Moreover, Defendants had a consistent policy and practice of unlawfully rounding hours worked to the detriment of Aggrieved Employees. Rather than paying Aggrieved Employees for all hours and minutes they actually worked, Defendants followed a uniform policy and practice of rounding all time entries to the nearest quarter-hour or half-hour (i.e. to the nearest 15-minute or 30-minute time increment). Generally, rounding was to the detriment of Aggrieved Employees, and Plaintiff contends this policy is not neutral and resulted, over time, in the systematic under-compensation of the Aggrieved Employees. Rather than reflecting the actual hours worked by Aggrieved Employees, the time entries were rounded and reduced to reflect the scheduled work time rather than the actual hours worked. These unlawfully rounded time entries were inputted into Defendants' payroll system from which wage statements and payroll checks were created.

By implementing policies, programs, practices, procedures and protocols which resulted in off the clock work and also rounded down the hours worked by Aggrieved Employees, Defendants'

willful actions resulted in the systematic underpayment of wages and overtime pay to Aggrieved Employees

As a result of the above described unlawful rounding, requirements to work off the clock, and the other wage violations they endured at Defendants' hands, Aggrieved Employees were not properly paid all wages earned and all wages owed to them by Defendants, including when working more than ten (10) hours in any one workday or more than six (6) days in any workweek prior to January 1, 2019 and also nine and a half (9.5) hours in any given day and/or more than fifty-five (55) hours in any given week from January 1, 2019. Moreover, the uncompensated time, discussed above, was worked by Aggrieved Employees in excess of 10 hours a day prior to January 1, 2019, and in excess of 9.5 hours a day and/or more than 55 hours in any given week after January 1, 2019, further entitling Aggrieved Employees overtime wages which they were consistently denied, all in violation of Labor Code and applicable Wage Orders.

Additionally, Defendants failed to provide all the legally required unpaid, off-duty meal periods and all the legally required paid, off-duty rest periods to Aggrieved Employees, as required by the applicable Wage Order and Labor Code. Aggrieved Employees were required to perform work as ordered by Defendants for more than five (5) hours during a shift, but were often required to do so without receiving a lawful and timely meal break. In addition to untimely meal periods, Defendants also required Aggrieved Employees to respond to work demands. Defendants placed their needs over Aggrieved Employees' lawful meal and rest breaks. This resulted in Aggrieved Employees often having to work through their scheduled meal and/or rest breaks, or otherwise taking shortened ones, because the demands of the job would not avail them the opportunity to take a lawfully uninterrupted and off duty meal and/or rest break.

On the occasions when Aggrieved Employees worked over 10 hours in a shift, Defendants also failed to provide them with a second, uninterrupted, timely and duty-free meal period. As a result, Defendants' failure to provide Aggrieved Employees with all legally required off-duty, unpaid meal periods and all the legally required off-duty, paid rest periods is and will be evidenced by Defendants' business records, or lack thereof. Defendants also failed to pay Aggrieved Employees "premium pay," i.e. one hour of wages at each Aggrieved Employee's effective hourly rate of pay, including their earned commission, for each meal period or rest break that Defendants failed to provide or deficiently provided.

Therefore, Defendants have regularly required Aggrieved Employees to work shifts in excess of five (5) hours without providing them with uninterrupted meal periods of not less than thirty (30) minutes, and shifts in excess of (10) hours without providing them with second meal periods of not less than thirty minutes; nor did Defendants pay Aggrieved Employees "premium pay," i.e. one hour of wages at each Aggrieved Employee's effective hourly rate of pay, including their earned commission, for each meal period that Defendants failed to provide or deficiently provided.

Aggrieved Employees were also not authorized and permitted to take lawful rest periods, were systematically required by Defendants to work through or during breaks, and were not provided with one (1) hour's wages in lieu thereof. To the extent Aggrieved Employees were able to take rest breaks, they were restricted from leaving the premises. Aggrieved Employees were restricted

in their ability to take their full ten (10) minutes net rest time or were otherwise not provided with duty-free rest periods. Therefore, Defendants have consistently failed to provide Aggrieved Employees with paid rest breaks of not less than ten minutes for every work period of four or more consecutive hours; or major fraction thereof, nor did Defendant pay Aggrieved Employees premium pay for each day on which requisite rest breaks were not provided or were deficiently provided.

Defendants also consistently failed to issue accurate itemized wage statements as required by Labor Code § 226(a). Specifically, the wage statements given to Aggrieved Employees failed to accurately account for unpaid wages and overtime because Defendants had unlawfully rounded time entries to the detriment of the Aggrieved Employees and their actual hours worked were under-reported and also due to off the clock work. Additionally, the wage statements given to Aggrieved Employees failed to accurately account for premium pay for deficiently provided meal periods and rest breaks.

Additionally, Defendants failed to pay Aggrieved Employees all wages owed, as detailed above, at the time of their termination or within seventy-two (72) hours of their resignation, as required under Labor Code § 203. Specifically, Aggrieved Employees were not paid all regular and overtime wages because Defendants failed to pay for all hours worked, required off the clock work, and unlawfully rounded time entries to the detriment of Aggrieved Employees, and failed to pay premium wages owed for unprovided meal periods and rest periods. Defendants' failure to pay said wages within the required time was willful within the meaning of Labor Code § 203.

As addressed above, Aggrieved Employees complain of the following violations committed by Defendants:

Failure to Pay Minimum Wages

Defendants violated the law by failing to pay Aggrieved Employees minimum wages for all hours worked. California Labor Code § 1197, entitled "Pay of Less Than Minimum Wage" states, "[t]he minimum wage for employees fixed by the commission is the minimum wage to be paid to employees, and the payment of a less wage than the minimum so fixed is unlawful." The applicable minimum wages fixed by the commission for work during the relevant period is found in the Wage Orders. Defendants had a common policy and/or practice of failing to pay Aggrieved Employees minimum wages for all hours worked. Aggrieved Employees were required to work off the clock without pay, were subject to unlawful rounding of hours, and underreporting of hours by reflecting changes to timekeeping records to reflect less time worked than was actually worked. Moreover, Defendants failed to pay Aggrieved Employees the minimum wage for all hours worked. Defendants have the ability to pay minimum wages for all time worked and have willfully refused to pay such wages with the intent to secure for Defendants a discount upon this indebtedness with the intent to annoy, harass, oppress, hinder, delay, or defraud Aggrieved Employees.

In light of the forgoing, the Aggrieved Employees seek to recover wages and penalties. Aggrieved Employees are entitled to recover the unpaid minimum wages (including double minimum wages), liquidated damages in an amount equal to the minimum wages unlawfully unpaid, interest thereon and reasonable attorney's fees and costs of suit pursuant to California

Labor Code § 1194(a). Aggrieved employees further request recovery of all unpaid wages, according to proof, interest, statutory costs, as well as the assessment of any statutory penalties against Defendants, in a sum as provided by the California Labor Code and/or other applicable statutes, including pursuant to Labor Code § 558, and the applicable IWC Wage Order, paragraph 4(A)-4(D).

Failure to Pay Wages and Overtime in Violation of Labor Code § 510

Defendants violated the law by failing to pay Aggrieved Employees earned wages and overtime. Aggrieved Employees consistently worked in excess of ten (10) hours in any one workday or more than six (6) days in any workweek prior to January 1, 2019, and also nine and a half (9.5) hours in any given day and/or more than fifty-five (55) hours in any given week from January 1, 2019,. However, Defendants failed to pay Aggrieved Employees for all hours worked and failed to pay overtime compensation at premium overtime rates. Moreover, the uncompensated time, discussed above, was worked by Aggrieved Employees in excess of 10 hours a day prior to January 1, 2019, and in excess of 9.5 hours in any given day and/or more than 55 hours in any given week after January 1, 2019, further entitling Aggrieved Employees overtime wages which they were consistently denied, all in violation of Labor Code § 510 and applicable IWC Wage Order, paragraph 3(A) and 4(B).

In light of the forgoing, Aggrieved Employees seek to recover wages and penalties pursuant to the California Labor Code, including Labor Code §§ 204, 510, 558, and 1194 (and the relevant orders of the Industrial Welfare Commission). Defendants are liable to Aggrieved Employees for the full amount of all their unpaid wages and overtime compensation, with interest, plus their reasonable attorneys' fees and costs, as well as the assessment of any statutory penalties against Defendants, and each of them, and any additional sums as provided by the Labor Code and/or other statutes and Wage Order provisions.

Failure to Pay Reporting Time Pay

The IWC Wage Order requires employers to pay half of the employee's "usual or scheduled day's work," and in no event less than two (2) hours pay on each instance the employer requires an employee to report to work, as set forth fully below:

- (A) Each workday an employee is required to report for work and does report, but is not put to work or is furnished less than half said employee's usual or scheduled day's work, the employee shall be paid for half the usual or scheduled day's work, but in no event for less than two (2) hours nor more than four (4) hours, at the employee's regular rate of pay, which shall not be less than the minimum wage.

As addressed in detail above, Defendants followed a uniform policy of failing to pay reporting time pay on in accordance with the applicable IWC Wage Order requirements. For example, Defendant required Plaintiff and Aggrieved Employees to, on occasion, report for a scheduled work day to be told whether work was available for them or not, and when there was no work, Plaintiff and the Aggrieved Employees would be sent home after waiting for as many as several hours. On such days when Defendant required Plaintiff and the Aggrieved Employees to report to work only to be sent home because work was not available, they were not paid required reporting time wages for the hours they waited without receiving their regular hourly rate of pay

for them. Additionally, Defendant required Aggrieved Employees to drive to Defendant's facility in Reedly, California to pick up their paycheck. When they were thereafter sent home by Defendants because work was not available on that day, Defendant failed to pay them reporting time pay. Accordingly, Defendants are liable for penalties under Labor Code §2699(f)(2) and paragraph 20 of the applicable IWC Wage Orders, and for attorneys' fees and costs pursuant to Labor Code §2699(g)(1).

Meal-Period Liability Under Labor Code § 226.7

Defendants have regularly required Aggrieved Employees to work shifts in excess of five (5) hours without providing them with timely and uninterrupted meal periods of not less than thirty (30) minutes as required under Labor Code §§ 226.7, 512, and applicable Wage Orders. Defendants placed their needs over Aggrieved Employees lawful meal breaks. This resulted in Aggrieved Employees consistently having to work through their scheduled meal breaks because the demands of the job would not avail them the opportunity to take a lawfully uninterrupted and off duty meal break, in violation of the Labor Code and applicable Wage Orders. Thus, Aggrieved Employees did not receive a complaint meal break. On shifts over ten hours, second meal periods were not provided. Defendants also failed to pay Aggrieved Employees "premium pay," i.e. one hour of wages at each Aggrieved Employee's effective regular rate of pay, for each meal period that Defendants failed to provide or deficiently provided. Therefore, pursuant to Labor Code § 226.7, Aggrieved Employees are entitled to damages in an amount equal to one (1) hour of wages at their effective hourly rates of pay for each meal period not provided or deficiently provided, as well as the assessment of any statutory penalties against the Defendants, and each of them, in a sum as provided by the Labor Code, including Labor Code § 558 and other applicable statutes and the applicable IWC Wage Order, paragraph 11.

Rest-Break Liability Under Labor Code § 226.7

Defendants have consistently failed to provide Aggrieved Employees with paid rest breaks of not less than ten (10) minutes for every work period of four (4) or more consecutive hours, as required under Labor Code § 226.7. Defendants placed their needs over Aggrieved Employees' lawful rest breaks. This resulted in Aggrieved Employees consistently having to work through their scheduled rest breaks because the demands of the job would not avail them the opportunity to take a lawfully uninterrupted and off duty rest break. Defendants also failed to pay Aggrieved Employees premium pay for each day on which requisite rest breaks were not provided or were deficiently provided. Therefore, pursuant to Labor Code § 226.7, Aggrieved Employees are entitled to damages in an amount equal to one (1) hour of wages at their effective hourly rates of pay for each meal period not provided or deficiently provided, as well as the assessment of any statutory penalties against the Defendants, and each of them, in a sum as provided by the Labor Code, including Labor Code § 558 and other applicable statutes and the applicable IWC Wage Order, paragraph 12.

Failure to Issue Accurate Wage Statements in Violation of Labor Code § 226

California Labor Code § 226(a) requires an employer to furnish each of his or her employees with an accurate, itemized wage statements in writing. These statements must be appended to the detachable part of the check, draft, voucher, or whatever else serves to pay the employee's wages; or, if wages are paid by cash or personal check, these statements may be given to the employee separately from the payment of wages; in either case the employer must give the

employee these statements twice a month or each time wages are paid. As a direct and proximate cause of Defendants' violation of Labor Code § 226(a), Aggrieved Employees suffered injuries, including among other things confusion over whether they received all wages owed them, the difficulty and expense involved in reconstructing pay records, and forcing them to make mathematical computations to analyze whether the wages paid in fact compensated them correctly for all hours worked.

Defendants failed to provide Aggrieved Employees with accurate itemized wage statements in writing, as required by the Labor Code. In light of these violations, and pursuant to Labor Code §§ 226(a) and 226(e) and the applicable IWC Wage Order, Aggrieved Employees are entitled to recover the greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and one hundred dollars (\$100) for each violation in a subsequent pay period, not exceeding an aggregate penalty of four thousand dollars (\$4,000). They are also entitled to an award of costs and reasonable attorneys' fees.

In addition, Labor Code § 226.3 provides that "[a]ny employer who violates subdivision (a) of Section 226 shall be subject to a civil penalty in the amount of two hundred fifty dollars (\$250) per employee per violation in an initial violation and one thousand dollars (\$1,000) per employee for each violation in a subsequent citation, for which the employer fails to provide the employee a wage deduction statement or fails to keep the required in subdivision (a) of Section 226." To the extent that Labor Code § 226.3 applies, Plaintiff also seeks such penalties on behalf of herself and the Aggrieved Employees.

Failure to Issue Semimonthly Payments in Violation of Labor Code § 204

In failing to pay Aggrieved Employees wages, overtime, premium pay, etc., Defendants failed to timely pay Aggrieved Employees wages on a semimonthly basis as required under Labor Code § 204. Defendants failed to maintain records showing accurate hours worked daily and the wages paid to Aggrieved Employees, as well as the meal and rest periods taken by Aggrieved Employees, as required by Labor Code § 1174 and the applicable IWC wage orders. In light of the forgoing, Plaintiff and Aggrieved Employees seek to recover wages and penalties pursuant to Labor Code § 558.

Failure to Keep Records In Accordance With Labor Code § 1174

Labor Code § 1174 requires employers to keep records showing payroll data and the hours worked daily by and the wages paid to employees. By failing to pay Aggrieved Employees proper wages, overtime, premium pay, etc., all discussed herein, Defendants failed to maintain proper employment records in accordance with Section 1174. In light of the forgoing, Aggrieved Employees seek to recover penalties pursuant to Labor Code §§ 1174.5 and 2699, *et seq.*

Waiting Time Penalties Pursuant to Labor Code § 203

Some Aggrieved Employees, including Plaintiff, no longer work for Defendants; they either resigned or were terminated from Defendants' employ. Based on the forgoing, Defendants have had a consistent policy of failing to pay all wages due and owed to Aggrieved Employees at the time of their termination or within seventy-two (72) hours of their resignation, as required by California under Labor Code § 203. In light of the forgoing, Aggrieved Employees seek to recover wages and penalties pursuant to Labor Code § 558 and further specifically seek penalties

and wages under Labor Code § 203, which provides that an employee's wages shall continue until paid for up to thirty (30) days from the date they were due.

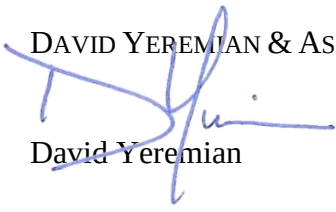
We have been constrained to initially move forward with the filing of a complaint, alleging the causes of action discussed herein, without the PAGA claim. Thus, any action by the LWDA would not resolve the entirety of the case, and the interest of judicial economy will be served by allowing the case to proceed as a cohesive whole.

This letter therefore provides the requisite notice under the Act to the LWDA and Defendants by setting forth the specific provisions of the Labor Code and related provisions Plaintiff alleges have been violated, including the facts and relevant theories alleged against Moonlight Packing Corporation and Moonlight Packing Company LLC. To prevent the violations described herein from occurring, and to remedy past violations, Plaintiff respectfully requests that the LWDA conduct an investigation into Defendants' employment practices in accordance with the Act.

Wherefore we request that you advise us, by certified mail within thirty (60) days of the postmark on this letter, whether you intend to proceed with these claims or whether Aggrieved Employees should include them as a Labor Code § 2698 claim under the Act in a complaint with the Superior Court.

Regards,

DAVID YEREMIAN & ASSOCIATES, INC.



David Yeremian

Cc: Defendants by Certified Mail

EXHIBIT 3