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16 individually and acting in the interest of other current and former employees,

17 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
18 **COUNTY OF SAN LUIS OBISPO**

19 CIPRIANO PONCE and CARLOS
20 FARIAS, individually and acting in the
21 interest of other current and former
22 employees,

23 Plaintiffs,

24 vs.

25 AGRO-JAL FARMING ENTERPRISES,
26 INC., d/b/a AGRO-JAL FARMING;
27 AGRO-JAL FARMS, INC., a California
28 corporation; PALOMA PACKING, INC., a
California corporation; ABEL
MALDONADO, SR., ABEL
MALDONADO, JR., FRANK
MALDONADO and DOES 1 through 10,
inclusive,

Defendants.

**ELECTRONICALLY
FILED**

3/1/2021 4:16 PM

SAN LUIS OBISPO SUPERIOR COURT
BY *[Signature]* Deputy Clerk

Case No.: 15CV-0373

(Assigned to the Hon. Ginger E. Garrett)

CLASS ACTION

**NOTICE OF UNOPPOSED MOTION AND
MOTION FOR PRELIMINARY
APPROVAL OF CLASS ACTION
SETTLEMENT; MEMORANDUM OF
POINTS AND AUTHORITIES AND
DECLARATION IN SUPPORT THEREOF**

Date: March 25, 2021

Time: 9:00 AM

Dept: 2

PLEASE TAKE NOTICE that on March 25, 2021 at 9:00 a.m., or as soon thereafter as
the matter may be heard, in Department 2 of the San Luis Obispo County Superior Court, located
at 1050 Monterey Street in San Luis Obispo, California 93408, plaintiffs CIPRIANO PONCE
and CARLOS FARIAS (collectively the "Named Plaintiffs"), individually and on behalf of other

1 individuals employed under common circumstances and facts, will jointly move for an order
2 granting preliminary approval of a proposed settlement in the above-captioned class action.

3 In this motion, the Named Plaintiffs seek an order:

- 4 1. Provisionally approving and certifying the settlement class;
- 5 2. Provisionally approving the Named Plaintiffs CIPRIANO PONCE and CARLOS
6 FARIAS as Class/PAGA Representatives;
- 7 3. Provisionally approving Allen K. Hutkin of the Hutkin Law Firm, APC, and
8 James H. Cordes of James H. Cordes and Associates, as class counsel ("Class Counsel") for
9 purposes of this settlement;
- 10 4. Preliminarily approving a settlement of claims under the terms set forth in the
11 Stipulation of Class Action Settlement ("Settlement Agreement");¹
- 12 5. Approving the proposed Class Notice and Opt Out of Class Action Form;²
- 13 6. Approving the method of Notice described in the Settlement Agreement and
14 directing distribution of the proposed Class Notice Form and Opt Out of Class Action Form to
15 the members of the proposed class;
- 16 7. Approving the appointment of CPT Group as Settlement Administrator and
17 preliminarily approving costs of administration for an amount estimated to be approximately
18 \$32,500, to be paid from the Maximum Settlement Fund ("MSF");
- 19 8. Preliminarily approving service payments of Twenty Thousand Dollars
20 (\$20,000.00) each to Named Plaintiffs CIPRIANO PONCE and CARLOS FARIAS, said
21 payments to come from the MSF;
- 22 9. Preliminarily approving payment of reasonable attorneys' fees of forty percent
23 (40%) of the MSF and reimbursement of actual costs and expenses not to exceed Seventy-Five
24 Thousand Dollars (\$75,000.00) to proposed Class Counsel;

25
26 ¹ Attached as Exhibit A to the Declaration of Allen K. Hutkin in Support of the Motion
27 for Preliminary Approval of Class Action Settlement ("Hutkin Decl.") is the Stipulation of Class
28 Action Settlement.

² Attached as Exhibits 1 and 2, respectively, to the Stipulation of Class Action
Settlement which is Exhibit A to the Hutkin Decl.

1 10. Preliminarily approving payment of \$30,000 of the \$40,000 allocated to civil
2 penalties under the Private Attorneys General Act, Labor Code §2699 *et seq.* ("PAGA") to the
3 State of California Labor and Workforce Development Agency ("LWDA") from the MSF; and

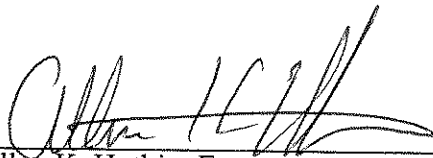
4 11. Setting a schedule for implementation of the terms of the Settlement Agreement,
5 including a date for a hearing for Final Approval of the Class Action Settlement.³

6 The Motion is based upon this Notice of Motion, the Memorandum of Points and
7 Authorities in Support of the Motion and the authorities cited therein, the declaration with
8 exhibits of Allen Hutkin filed herewith, oral argument of counsel, and any other matter that my
9 be submitted at or before the hearing.

10 For the reasons set forth in this Motion and in the Stipulation of Class Action Settlement
11 marked as Exhibit A to the Index of Exhibits, Plaintiffs respectfully request this Court grant the
12 Motion for Preliminary Approval of Class Action Settlement.

13
14 HUTKIN LAW FIRM, APC
15 JAMES H. CORDES AND ASSOCIATES

16
17 DATED: March 1, 2021

18 
19 Allen K. Hutkin, Esq.
20 Attorneys for Plaintiffs CIPRIANO PONCE and
21 CARLOS FARIAS, individually and acting in the
22 interest of other current and former employees
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24
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³ Attached as Exhibit B to the Hutkin Decl. is a schedule with all proposed dates.

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9	5 Newberg on Class Actions (5 th ed. 2018) § 14.03	26
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1 MEMORANDUM OF POINTS AND AUTHORITIES

2 I. INTRODUCTION

3 On behalf of themselves and a class of similarly-situated individuals, plaintiffs
4 CIPRIANO PONCE and CARLOS FARIAS ("Named Plaintiffs") seek this Court's preliminary
5 approval of a class action/PAGA settlement of their claims against Defendants Agro-Jal Farming
6 Enterprises, Inc. (Enterprises), Paloma Packing, Inc., ("Paloma") and Frank Maldonado
7 ("Maldonado"). Hereinafter Enterprises, Paloma, and Maldonado are collectively referred to as
8 "Defendants" unless otherwise noted. Subject to this Court's approval, the Named Plaintiffs have
9 agreed to settle their claims and the claims of proposed settlement Class Members for a
10 non-reversionary, nonclaims-made settlement payment of One Million Two Hundred Thousand
11 Dollars (\$1,200,000), of which \$40,000 are allocated to civil penalties under the Private
12 Attorneys General Act, Labor Code §2699 *et seq.* ("PAGA").⁴ In response to this lawsuit,
13 Defendants also made changes to their pay policies and practices, and it now appears that their
14 business operations conform to the law.

15 As discussed below, the proposed Settlement satisfies all of the criteria for preliminary
16 approval and falls well within the range of final approval. The Settlement provides substantial
17 relief for Class Members, with an estimated average recovery (after deduction of attorneys' fees
18 and expenses) of *approximately \$310.00 per Class Member*.

19 The Settlement is the result of arms-length, non-collusive negotiations between the
20 parties. The Stipulation of Class Action Settlement is attached as Exhibit A to the Hutkin
21 Declaration. The Named Plaintiffs and Class Counsel believe the settlement is a fair result for the
22 Settlement Class in light of all the relevant circumstances.

23 By this motion, the Named Plaintiffs seek preliminary approval of a proposed settlement
24 reached with Defendants, a copy of which is attached as Exhibit A to the accompanying
25 Declaration of Allen K. Hutkin ("Settlement Agreement"). The Named Plaintiffs also seek
26 conditional certification of a proposed Settlement Class under California Rules of Court, rule
27

28 ⁴ Plaintiff CIPRIANO PONCE is the representative PAGA aggrieved employee.

3.769; appointment of the Named Plaintiffs as class/PAGA representatives on all claims, their counsel as Class Counsel on all claims, and CPT as the Settlement Administrator; approval of the proposed form and method of class notice and claims process, and preliminary approval of costs of administration to the Settlement Administrator, service payments to the Named Plaintiffs as class/PAGA representatives, payment of reasonable attorneys' fees and costs to Class Counsel; payment to the State of California Labor and Workforce Development Agency ("LWDA") for civil penalties; and the scheduling of a final approval hearing to be held after the notice and claims process has been completed. Accordingly, the Named Plaintiffs respectfully request that the Court enter the Proposed Order filed concurrently herewith.

II. STATEMENT OF FACTS

A. The Complaint.

The class action Complaint was filed on behalf of the Named Plaintiffs, CIPRIANO PONCE and CARLOS FARIAS, in the San Luis Obispo County Superior Court on July 15, 2015. On September 1, 2015, Plaintiffs filed an Amended Complaint. The Named Plaintiffs allege that, in operating their farming business, Defendants disregarded a number of Labor Code protections, violating the rights of approximately 2,000 workers who performed farm work related to planting, growing, and harvesting and who were paid by Defendant Paloma between July 15, 2011 and March 11, 2021⁵ (called "Harvesters" or the "Class"). This time period is also known as the "class period."

The operative pleading is Plaintiffs' Amended Complaint filed in the San Luis Obispo County Superior Court. The complaint asserts causes of action for: (1) Failure to Pay Minimum Wages; (2) Failure to Pay Overtime Compensation; (3) Failure to Pay Wages Due Upon Discharge; (4) Failure to Reimburse for work related expenses; (5) Failure to Provide Meal Breaks Under California Labor Code; (6) Failure to Authorize and Permit Rest Breaks Under California Labor Code; (7) Failure to Provide Accurate, Itemized Wage Statements; (8) Violation

⁵ The anticipated date for preliminary approval.

1 of California Business & Professions Code section 17200; and (9) Violations of the California
2 Private Attorneys General Act, California Labor Code section 2698 *et seq.*

3 Defendants expressly denied all of the allegations in the Amended Complaint, and deny
4 any wrongdoing of any kind.

5 **B. Background and the Parties' Claims and Defenses.**

6 Plaintiffs seek to represent the following class for purposes of this settlement:

7 *All individuals employed by Defendants as non-exempt employees who*
8 *performed farm work related to harvesting (i.e., cutters, packers, and stackers)*
9 *fruits and/or vegetables and who worked in California between July 15, 2011 and*
10 *March 11, 2021 and were paid by Defendant Paloma (the "Settlement Class").*

11 Plaintiff CIPRIANO PONCE is considered a member of the Settlement Class under the
12 terms of the Settlement.

13 The Named Plaintiffs seek payment of allegedly unpaid wages, penalties, interest,
14 attorneys' fees and costs, and injunctive relief. Defendants made changes to their pay policies
15 and practices following the filing of this lawsuit. (Hutkin Decl. ¶ 10.) At all points during this
16 litigation, Defendants disputed and continue to dispute the Named Plaintiffs' allegations,
17 expressly deny liability for the claims that the Named Plaintiffs have raised or could have raised,
18 and expressly deny that this case should be maintained as a class action.

19 **C. Procedural History and Settlement Negotiations.**

20 This case concerns approximately 2000 non-exempt employees who were paid by Paloma
21 and harvested crops for Paloma, Enterprises, and Maldonado. The class members were paid by
22 Paloma. Enterprises employed the supervisory employees. Maldonado owned and managed
23 Paloma and Enterprises. (Hutkin Decl. ¶ 10.)

24 The case was heavily litigated as this court is aware. It included a motion for summary
25 judgment, numerous discovery conferences and/or motions to compel, a motion to produce class
26 contact information, motion work regarding the content of the Belaire-West Notice, motion to
27 amend the complaint, two motions to certify the class, and a renewed motion to certify the class.
28 (Hutkin Decl. ¶ 12.)

1 On October 17, 2019, Plaintiff Carlos Farias brought his first motion to certify a class
2 including seven subclasses. The court granted in part and denied in part Farias' motion in its
3 Ruling on Motion to Certify Class and Subclasses dated October 31, 2019. Specifically, the
4 Court did not certify a subclass alleging meal period violations. (Hutkin Decl. ¶ 13.)

5 On July 23, 2018, the Parties participated in a full-day mediation with private mediator
6 Mark Rudy. The case did not settle. Mr. Rudy continued until January 23, 2020 to try to assist
7 the parties in reaching resolution through numerous phone calls and emails. Starting in April
8 2020, mediator and MSC judge, Raymond Mattison, conducted numerous mediation and MSC
9 sessions with the parties and counsel. Through his efforts the case finally settled on November 4,
10 2020. (Hutkin Decl. ¶14.) Following the mediation, the parties engaged in extended
11 post-mediation negotiations, culminating in mid-February in the Stipulation of Class Action
12 Settlement, which resolved the parties' disputes over all the remaining settlement terms. The
13 Stipulation of Class Action Settlement is attached as Exhibit A to the Hutkin Declaration. It
14 includes a proposed form of class notice ("Class Notice") (Exhibit "A1") and proposed opt out
15 form for class members to opt out of the settlement (Exhibit "A2"). (Hutkin Decl. ¶ 15.)

16 The settlement negotiations throughout this case were at arms length and, although
17 conducted in a professional manner, adversarial. The Parties went into the numerous mediation
18 and MSC sessions willing to explore the potential for a settlement of the dispute, but each side
19 was also committed and prepared to litigate its position through trial and appeal if a settlement
20 was not reached. The proposed settlement was reached at the end of a process that was neither
21 fraudulent nor collusive. To the contrary, counsel for the Parties advanced their respective
22 positions throughout the settlement negotiations. (Hutkin Decl. ¶ 16.)

23 During and after the mediations and MSCs, Class Counsel vigorously advocated for the
24 benefit of the Class Members. Examples included determining an appropriate allocation of
25 settlement proceeds between those Class Members who were currently employed by Defendants
26 and those no longer employed, since the former employees were potentially entitled to waiting
27 time penalties and had more interest accrual on their unpaid wages due the longer passage of time
28 since their wages were payable, and since Defendants appeared to have remedied the challenged

1 payroll practices in 2017. Avoiding further delay in this nearly five year old case was also an
2 important factor. (Hutkin Decl. ¶ 17.)

3 **III. TERMS OF THE SETTLEMENT**

4 **A. Monetary Relief to Class Members.**

5 The settlement creates a non-reversionary settlement fund of \$1,200,000 (also called the
6 “Maximum Settlement Fund” or “MSF”) on behalf of the Settlement Class Members.

7 (Stipulation ¶ 13) All Settlement Class Members will be eligible to receive a specified share of
8 the settlement fund based upon the formula that takes into account the Compensable Hours that
9 each Settlement Class Member worked for Defendants. (Stipulation ¶¶ 6,7, 20, 41(b)(i))

10 Defendants shall deliver the \$1,200,000 Maximum Settlement Amount to the Settlement
11 Administrator for distribution as follows: (1) \$ 800,000 upon final approval of the settlement by
12 the Court; (2) \$200,000 - one year after funding the initial payment; and (3) \$200,000 two years
13 after funding the initial payment. (Stipulation ¶ 41).

14 **B. Plan of Allocation.**

15 Paragraph 41 of the Stipulation describes the disbursement of settlement proceeds, which
16 is summarized here.

17 Each Named Plaintiff and current employee and former employee will be known as a
18 “Settlement Class Member.” Each Settlement Class Member will be entitled to a share of a Net
19 Settlement Fund based on his or her hours worked during the Class period. Individual settlement
20 payments will be proportionally based on a “Compensable Hours” formula representing
21 Settlement Class Members’ wage rates, compensable work hours, and dates of employment.
22 Each Settlement Class Member will be mailed a check to their last known address which will be
23 valid for six months. A reminder letter will be sent to Class Members whose checks remain
24 uncashed more than 90 days after distribution. The Settlement Administrator shall reissue checks
25 for up to nine months after their date of issuance if a Settlement Class Member has a check
26 which is more than six months old or an uncashed check is lost. After that time, any such
27 unclaimed checks will be split equally among the Mission Hope Cancer Center in Santa Maria,
28 the Arroyo Grande Community Hospital, and French Hospital in San Luis Obispo, California
subject to Court approval. These institutions provide medical care and assistance to local farm

1 workers in the area where the class members work. Any such payment will be made from the
2 final \$200,000 payment.

3 Settlement Class Members who submit a timely request to opt out within 30 days of the
4 mailing will not participate in the settlement and will not be bound by the terms of the proposed
5 settlement or the formal judgment.

6 Each Settlement Class Member will be entitled to two settlement payments, one for
7 interest and penalties and one for alleged unpaid wages. The payment for interest and penalties
8 will be reported in the form of a Form 1099 and the payment for alleged unpaid wages with W-2
9 withholdings.

10 The "Work Hour Distribution" formula will be determined by dividing the Net Settlement
11 Fund by the total number of Compensable Hours attributable to all Settlement Class Members at
12 the close of the Objection/Exclusion Deadline. Work Hours worked before September 25, 2017
13 (the date on which Defendants remedied the vast majority of the wage and hour violations
14 alleged in the Complaint) will be compensated at three times the rate of work hours on or after
15 September 25, 2017. For example, assuming the net settlement fund is \$400,000 and there were
16 10,000 hours attributable to all Settlement Class Members before September 25, 2017, and there
17 were 10,000 work hours attributable to all Settlement Class Members on or after September 25,
18 2017 until present, the Compensable Hours would be 10,000 workweeks times 3 plus 10,000
19 workweeks equals 40,000. The Work Hour Distribution would be \$5 per hour, with the effect
20 that Settlement Class Members who worked before September 25, 2017, would receive \$5 times
21 three (3) for each hour worked before September 25, 2017, and that Settlement Class Members
22 who worked on or after September 25, 2017, would receive \$5 for each hour worked on after
23 September 25, 2017.

24 Each Authorized Claimant will receive, at a minimum, the Work Hour Distribution
25 amount times his or her number of work hours during the class period. Of this amount, thirty-
26 three percent (33%) is attributable to wages and sixty seven percent (67%) is attributable to
27 interest and penalties.
28

1 Within fourteen (14) calendar days after receipt of each payment made by Defendants to
2 the Settlement Fund, the Settlement Administrator shall make Settlement Payments in the
3 following order:

- 4 a. *First*, Administration Costs will be paid to the Settlement Administrator.
- 5 b. *Second*, service awards shall be paid to the Named Plaintiffs.
- 6 c. *Third*, Class Counsel's Attorney's Fees and Costs shall be paid to Class Counsel.
- 7 d. *Thereafter*, the Settlement Payments will be made out to the Settlement Class
8 within fourteen (14) days of each payment made to the Settlement Fund.

9 **C. Additional Payments**

10 **1. Class/ PAGA Service Awards**

11 In recognition of the service of the Class/ PAGA Representatives to the Settlement Class
12 Members and the broader scope of the releases the Class/PAGA Representatives are giving,
13 Class Counsel moves this Court for Class /PAGA Representative Service Awards in the amount
14 of \$20,000 to each Named Plaintiff. (Stipulation ¶ 41(c).)

15 **2. Class Counsel Fee Award**

16 The Named Plaintiffs' counsel move the Court for an award of attorneys' fees not to
17 exceed forty percent (40%) of the Maximum Settlement Fund, or Four Hundred Eighty Thousand
18 Dollars (\$480,000) and actual out-of-pocket costs actually incurred by Class Counsel not to
19 exceed Seventy-Five Thousand Dollars (\$75,000) to be paid out of the Settlement Fund Account.
20 (Stipulation ¶ 41(d))

21 The Fee Award is to compensate proposed Class Counsel for their extensive work already
22 performed, as well as all work remaining to be performed in documenting the settlement,
23 securing Court approval of the settlement, administering the settlement, ensuring that the
24 settlement is fairly administered and implemented, and obtaining dismissal of the Action.

25 **3. The Private Attorneys General Act of 2004 (PAGA)**

26 As required by Labor Code section 2699, subdivision (i), the Parties shall allocate a
27 PAGA payment in the amount of Thirty Thousand Dollars (\$30,000) from the Settlement Fund to
28 the California Labor and Workforce Development Agency under Labor Code section 2698 *et seq.*
under this Settlement, representing seventy-five percent (75%) of the Forty Thousand Dollars

1 (\$40,000) PAGA payment of penalties. The balance of the PAGA payment shall be part of the
2 Net Settlement Fund for distribution to the Authorized Claimants in accordance with the terms
3 set forth herein. (Stipulation ¶ 41(e)).

4 **4. Settlement Administration Costs**

5 Payment to the Settlement Administrator shall not exceed Thirty-Two Thousand Five
6 Hundred Dollars (\$32,500) for the costs of administration. Payment of Settlement Administration
7 Costs shall come from the Settlement Fund Account. (Stipulation ¶ 41(f)).

8 **D. Scope of the Release.**

9 Class Members who do not opt out of the settlement will release the Released Parties
10 from the Released Claims. The Released Parties means Defendants, including Abel Maldonado,
11 Jr., Abel Maldonado, Sr., Agro-Jal Farms, Inc, their affiliates and related entities, including,
12 without limitation, its parents and subsidiaries, predecessors, successors, divisions, joint ventures
13 and assigns, and each of these entities' past or present directors, officers, employees, partners,
14 members, principals, agents, joint employers, insurers, co-insurers, re-insurers, shareholders,
15 attorneys and personal or legal representatives. The Released Claims are defined as all causes of
16 action alleged or that could have been alleged based upon the facts alleged in the operative
17 Amended Complaint, including all of the following claims for relief: (a) failure to pay minimum
18 wages (Cal. Lab. Code §§ 1997, 1994(a), 1994.2 & Wage Order 14-2001); (b) failure to pay
19 overtime wages (Wage Order 14, Cal. Lab. Code §§ 510, 558, 1994, 1194.2, 1997.1, 1998); (c)
20 failure to provide accurate wage statements (Cal. Lab. Code §§ 226, 226.3 and 226.6 *et seq.*); (d)
21 waiting-time penalties (Cal. Lab. Code § 203); (e) failure to provide meal and/or rest periods
22 (Cal. Lab. Code §§ 226.7, 512 and Wage Order No. 14); (f) failure to reimburse for work-related
23 expenses (Lab. Code § 2802); (g) unfair business practices and/or unfair competition (Cal. Bus.
24 & Prof. Code §§ 17200 *et seq.*); (h) civil penalties pursuant to PAGA; (i) any other claims or
25 penalties under the wage and hour laws pleaded in the Action or that could have been pleaded
26 based on the allegations contained in the Action; and (j) all damages, penalties, interest and other
27 amounts recoverable pursuant to (a)-(i) under California law, to the extent permissible, including
28 but not limited to the California Labor Code as to the facts alleged in the Amended Complaint,

1 the applicable Wage Orders as to the facts alleged in the Amended Complaint, and the California
2 Unfair Competition Law. The Released Claims also include all claims under PAGA that could
3 have been premised on the facts and legal theories raised in the Amended Complaint. The
4 Released Claims also include all claims Plaintiffs and Settlement Class Members may have
5 against the Released Parties relating to (i) the payment and allocation of attorneys' fees and costs
6 to Class Counsel pursuant to this Agreement and (ii) the payment of the Service Awards pursuant
7 to this Agreement. The Released Claims exclude all other claims except for those causes of
8 action alleged or that could have been alleged in the operative complaint based upon the facts
9 alleged in the operative amended complaint, and claims outside the Class Period. As of March
10 11, 2021, in exchange for the Maximum Settlement Fund, the Settlement Class Members release
11 the Released Parties from the Released Claims for the Class period.

12 The Individual Plaintiffs will waive any and all Released Claims, as well as generally
13 release and discharge the Released Parties from any and all claims, demands, obligations, causes
14 of action, rights, or liabilities of any kind which have been or could have been asserted against
15 the Released Parties arising out of or relating to the Named Plaintiffs' employment with
16 Defendants or termination thereof and/or any other event, act, occurrence, or omission taking
17 place on or before the Effective Date. The Individual Plaintiffs also waive all rights and benefits
18 afforded by California *Civil Code* section 1542. (Stipulation ¶¶ 36, 36.1).

19 **IV. ARGUMENT**

20 **A. Preliminary Approval of the Settlement Is Appropriate.**

21 **1. *The Standard for Preliminary Approval.***

22 A class action settlement requires Court approval. (See Rules of Court, Rule 3.769.) The
23 decision to approve or reject a proposed settlement is committed to the sound discretion of the
24 Court. (Wershba v. Apple Computer, Inc. (2001) 91 Cal.App.4th 224, 234-235.) However, the
25 law favors the settlement of lawsuits, particularly in class actions and other complex cases where
26 substantial resources can be conserved by avoiding the time, expense, and rigors of protracted
27 litigation. (See In re Microsoft I-V Cases (2006) 135 Cal.App.4th 706, 723; Dunk v. Ford Motor
28 Co. (1996) 48 Cal.App.4th 1794, 1800-1801; 5 Newberg on Class Actions (5th ed. 2018) §13.1.)

1 This motion for preliminary approval is the first in a two-step process for determining
2 whether the Settlement Agreement should ultimately be approved. The purpose of preliminary
3 approval is to make an initial determination as to whether the settlement is within the range of
4 possible approval as fair. If so, the court should order notice of the settlement to the class and
5 schedule a final fairness hearing. (Reed v. United Teachers Los Angeles (2012) 208 Cal.App.4th
6 322, 336.) In determining whether a class action settlement is fair, a trial court "consider[s]
7 factors such as the strength of Plaintiffs' case; the risk, expense, complexity and likely duration of
8 further litigation; the risk of maintaining class action status through trial; the amount offered in
9 settlement; the extent of discovery completed and the stage of the proceedings; the experience
10 and views of counsel; the presence of a governmental participant; and the reaction of the class
11 members to the proposed settlement." (*Id.*; accord Wershba, *supra*, 91 Cal.App.4th at pp.
12 244-245.) "The list of factors is not exclusive and the court is free to engage in a balancing and
13 weighing of the factors depending on the circumstances of each case." (Wershba, at p. 245.)

14 Ultimately, in determining whether a proposed settlement is fair, the inquiry is designed
15 to ensure that "the agreement is not the product of fraud or overreaching by, or collusion
16 between, the negotiating parties, and that the settlement, taken as a whole, is fair, reasonable and
17 adequate to all concerned." (In re Sutter Health Uninsured Pricing Cases (2009) 171 Cal.App.4th
18 495, 505 [citation and internal quotation marks omitted].)

19 **2. The Terms of the Proposed Settlement Are Fair.**

20 The Court's analysis should begin with the presumption that the proposed class settlement
21 is fair. "[A] presumption of fairness exists where: (1) the settlement is reached through
22 arm's-length bargaining; (2) investigation and discovery are sufficient to allow counsel and the
23 court to act intelligently; (3) counsel is experienced in similar litigation" (Dunk v. Ford
24 Motor Co. (1996) 48 Cal.App.4th 1794, 1802; *see also* Wershba, *supra*, 91 Cal.App.4th at p.
25 245.) The Settlement Agreement in this case satisfies all these factors.

26 First, the proposed Settlement Agreement is the result of arm's-length bargaining, reached
27 after a full day of mediation with a private mediator followed by significant follow-up by the
28

mediator. This was followed by months of mediation/MSCs with attorney Ray Mattison, and extensive bilateral discussions between the parties.

Second, the settlement was based on extensive discovery, including payroll records, time records, other employment records, and a number of depositions taken by both sides. This discovery allowed Class Counsel to evaluate the strengths and weaknesses of the case and to calculate the back pay owing to the proposed class with a high degree of confidence. According to those calculations, the

maximum potential recovery for the primary certified claims of unpaid minimum and overtime wages and rest period violations (excluding meal period violations which was not certified, waiting time penalties, PAGA penalties⁶, interest, wage stub violations, or attorney fees and costs), is in the range of \$3,370,000.00. (Hutkin Decl. ¶ 23.) This estimate of the potential recovery is based on the class claims that were certified, and that certification is maintained

⁶ PAGA penalties are possibly eight figures assuming absolutely the best case scenario for the Class. The PAGA penalties have the potential to vary wildly. Plaintiffs alleged about a dozen separate Labor Code predicates which, under PAGA, are generally assessed a penalty of \$100 for the first violation and \$200 for subsequent violations. Although Plaintiffs alleged many separate Labor Code predicates, there were in fact only three fundamental factual theories: unpaid off-the-clock wages, missed breaks, and unpaid expense reimbursement. ((Hutkin Decl. ¶ 24.)

The parties disputed whether one Labor Code predicate or several predicates could apply to one fundamental factual allegation. For example, Plaintiff contended that failure to pay wages implicated penalties under Labor Code §§ 204, 210, 216, and 221. Similarly, the parties disputed whether an “initial violation” occurred at the first pay period, as contended by Plaintiff, or whether there were no “subsequent violations” until there had been adjudication or finding of a violation, as contended by Defendant. Finally, the parties disputed the nature and extent of this court’s ability to, “award a lesser amount than the maximum civil penalty amount specified by this part if, based on the facts and circumstances of the particular case, to do otherwise would result in an award that is unjust, arbitrary and oppressive, or confiscatory” under Labor Code §2699(e)(2). (Hutkin Decl., ¶ 24.)

Plaintiff has agreed to allocated the PAGA portion of the Settlement based on the following factors: (1) the Settlement is a compromise which does not fully reimburse Class Members for all unpaid wages they experienced; (2) the PAGA claim was not a driving factor in the prosecution or settlement of this Class Action; and (3) the actual value of the PAGA claim is highly uncertain at this stage. (Hutkin Decl., ¶ 25.)

Further, the amount is subject to discretionary reduction under Labor Code §2699(e)(2). Under these circumstances, the allocation of \$40,000 to settle Plaintiffs’ representative claims under PAGA (3.3% of the Maximum Settlement Sum) is fair and adequate in all respects, similar to amounts courts have approved in similar settlements, and is more than adequate to achieve the LWDA’s enforcement objectives under PAGA. (Hutkin Decl., ¶ 26.) In the only published California appellate decision that counsel is aware of which provides guidance on how much should be attributed to PAGA, the court allocated nothing to PAGA. (See e.g. Nordstrom Com. Cases (2010) 186 Cal.App.4th 576, 589 (affirming settlement allocating \$0 of \$6.4 million settlement to PAGA penalties).

1 through trial and judgment as the court only conditionally certified certain claims, all defense
2 challenges to potential liability are defeated, and the Named Plaintiffs and the class recover
3 100% on all of their minimum wage, overtime, missed rest break claims and unreimbursed
4 business expense claims. The proposed settlement reached is approximately thirty-six (36%)
5 percent of this amount. (Hutkin Decl. ¶23).

6 Third, class counsel have substantial litigation experience in wage and hour class actions.
7 They are fully familiar with the legal and factual issues in this case, having handled dozens of
8 wage and hour class actions, PAGA representative actions, as well as other types of class action
9 and complex litigation. In their opinion, the settlement is fair and adequate, especially given the
10 current economy and the impact of the pandemic and the uncertainty about whether the other
11 Defendants would be found jointly liable if Defendant Paloma declared bankruptcy. (Hutkin
12 Decl. ¶ 27.)

13 **3. *The Strength of Named Plaintiffs' Case and the Risk, Expense,***
14 ***Complexity and Likely Duration of Further Litigation.***

15 The next consideration in determining the reasonableness of a proposed settlement is an
16 assessment of the strength of Plaintiffs' case, both in terms of the class claims certified and trial
17 on the merits, weighed against the risk, expense, complexity, and likely duration of further
18 litigation. (7-Eleven Owners for Fair Franchising v. Southland Corp. (2000) 85 Cal.App.4th
19 1135, 1146; Dunk, *supra*, 48 Cal.App.4th at p. 1801.)

20 With respect to the certification issue, Plaintiff's motion was granted in part and denied in
21 part. The Court's denial of the motion regarding certifying the meal break claims was especially
22 damaging to this case as it was the Named Plaintiffs' position those claims could easily be
23 proven by Defendants' payroll records and the testimony of Plaintiffs' expert. Proving the claims
24 that were certified was much more difficult to prove and required the testimony of many workers.
25 Obtaining this testimony would have been challenging as many of the workers were absent, were
26 afraid to testify against Defendants or to appear in court for a variety of reasons. (Hutkin Decl. ¶
27 19.)
28

1 Several other issues would have been litigated at trial such as whether each class member
2 took rest breaks, whether they were subjected to other alleged violations, such as unpaid
3 minimum and overtime wages, and the amount each individual class member was owed. There
4 was also the question of whether all Defendants would be found jointly liable with Defendant
5 Paloma as it was Defendants' position that Defendant Paloma employed all the class members
6 yet had few, if any, assets. (Hutkin Decl. ¶ 27.) While the Named Plaintiffs believe they would
7 have prevailed on all these points, their existence demonstrates the risks and complexity of this
8 case and must be considered in assessing the value of a settlement. (Hutkin Decl. ¶28.)

9 In addition to the risks inherent in the litigation, delay would not be in the interest of the
10 class. The trial of this matter likely would have consumed a month and half and required the
11 Named Plaintiffs to advance substantial additional costs. An appeal would have led to further
12 delay, meaning that the case could have lasted for another one to two years. (Hutkin Decl. ¶¶
13 20.)

14 The length of time is always significant in any case, as memories fade and witnesses
15 move from farm to farm or return home. It is especially significant in a case such as this one,
16 which involves low-wage workers in an industry characterized by frequent turnover, where the
17 case has already been pending for over five years. As a practical matter, the longer the case drags
18 on, the more difficult it could be to locate class members to testify at trial and to compensate
19 them for their losses once the case has concluded. Thus, the avoidance of any further delay, as
20 well as the immediate financial needs of these class members, weighs in favor of settlement.
21 (Hutkin Decl. ¶21.)

22 **4. *The Extent of Discovery Completed, Stage of the Proceedings, and***
23 ***Experience and Views of Counsel.***

24 This case has been pending for over five years. Thousands of pages of documents have
25 been produced in discovery and numerous depositions have been taken. The court has ruled on
26 the motion for class certification. Class counsel had sufficient information to assess the scope of
27 the class, the nature of the class claims, and to calculate the damages with precision. (Hutkin
28

Decl.¶ 21) This provided the parties with sufficient information about the relative strengths and weaknesses of each other's positions to negotiate a fair settlement.

B. Conditional Class Certification of All Claims Is Appropriate.

Class actions are statutorily authorized "when the question is one of a common or general interest, of many persons, or when the parties are numerous, and it is impracticable to bring them all before the court" (Code of Civil Procedure §382.) "The certification question is 'essentially a procedural one that does not ask whether an action is legally or factually meritorious.' " (Sav-On, supra, 34 Cal.4th at p. 326.) " '[T]his state has a public policy which encourages the use of the class action device.' " (Id. at p. 340, citation omitted; see Aguilar v. Cintas Corp. No. 2 (2006) 144 Cal.App.4th 121, 132.)

Litigation by class action has long been recognized as a superior method of resolving wage and hour claims in California (see Brinker Restaurant Corp. v. Superior Court (2012) 53 Cal.4th 1004, 1033), including those seeking redress for unpaid overtime wages. The central question in determining whether use of the class mechanism is appropriate is "whether the theory of recovery advanced by the proponents of certification is, as an analytical matter, likely to prove amenable to class treatment." (Sav-On, supra, 34 Cal.4th at p. 327; accord, Duran v. U.S. Bank National Assn. (2014) 59 Cal.4th 1, 28). The Court has broad discretion to certify a class for purposes of settlement. (Dunk, 48 Cal.App.4th at p. 1807 n.19 [holding that certification for a settlement class is subject to a "lesser standard of scrutiny" than for a litigation class].

In this case, the proposed Settlement Class consists of low-wage workers, many of whom no longer work for Defendants and may be difficult to locate, and none of whom have the means to finance an individual lawsuit. Their claims, while significant to them as individuals, are too small to warrant the filing and prosecution of a host of separate actions. In other words, the cost of litigating the individual claims would be prohibitive to class members, and burdensome on the court system. Under these circumstances, class treatment is appropriate because "[i]t is more likely that, absent a class suit, defendant will retain the benefits from its alleged wrongs." (Daar v. Yellow Cab Co. (1967) 67 Cal.2d 695, 715.) For this reason, a class action is superior to other available methods of resolution.

1 **C. Enhancement Awards to the Named Plaintiffs.**

2 The Settlement provides for an enhancement award to each of the Named Plaintiffs in the
3 amount of \$20,000. The total of the enhancements for the Named Plaintiffs is \$40,000, or 3.3%
4 of the total settlement. Under California law, named plaintiffs are generally entitled to a service
5 award for

6 initiating litigation on behalf of absent class members, taking time to prosecute the case, and
7 incurring financial and personal risk. See Clark v. American Residential Services LLC (2009)
8 175
9 Cal. App. 4th 785. Courts acknowledge that active litigants are entitled to be compensated for
10 bearing the risks and time to represent others (Munoz v. BCI Coca-Cola Bottling Co. of Los
11 Angeles (2010) 186 Cal.App.4th 399, 334-35), and " 'incentive awards are fairly typical in class
12 action cases.' " (In re Cellphone Fee Termination Cases (2010) 186 Cal.App.4th 1380, 1393,
13 quoting Rodriguez v. West Publishing Corp. (9th Cir. 2009) 563 F.3d 948, 958; 4 Newberg on
14 Class Actions (4th ed. 2002) § 11:38, p. 81].) These awards " 'are intended to compensate class
15 representatives for work done on behalf of the class, to make up for financial or reputational risk
16 undertaken in bringing the action, and, sometimes, to recognize their willingness to act as a
17 private attorney general.' " (Cellphone Fee Termination Cases, at pp. 1393-1394, quoting
18 Rodriguez, at pp. 958-959.)

19 Service or incentive payments are especially appropriate in employment litigation, where
20 "the plaintiff is often a former or current employee of the defendant, and thus, by lending his
21 name to the litigation, he has, for the benefit of the class as a whole, undertaken the risk of
22 adverse actions by the employer or co-workers." (Frank v. Eastman Kodak Co. (W.D.N.Y. 2005)
23 228 F.R.D. 174, 187.)

24 Numerous courts in California and around the country have approved incentive payments
25 in line with what has been requested here. Ross v. U.S. Bank Nat. Ass'n (N.D. Cal., Sept. 29,
26 2010, No. C07-02951SI) 2010 WL 3833922, at *2 (approving \$20,000 enhancement award to
27 Class Representative in California wage-and-hour class action settlement); Glass, 2007 WL
28 221862 at * 17 ("requested payment of \$25,000 to each of the named plaintiffs is appropriate" in

1 wage and hour settlement); Garner, 2010 WL 1687832, at *17 n.8 (“Numerous courts in the
2 Ninth Circuit and elsewhere have approved Service awards of \$20,000 or more where, as here,
3 the class representative has demonstrated a strong commitment to the class”) (collecting cases);
4 Hasty v. Elec. Arts, Inc., (San
5 Mateo Cnty. Super. Ct. Sept. 22, 2006) Case No. CIV 444821 (approving an award of \$30,000 to
6 the class representative in a wage and hour class action); Meewes v. ICI Dulux Paints, (L.A.
7 Cnty.
8 Super. Ct. Sept. 19, 2003) Case No. BC265880 (approving service awards of \$50,000, \$25,000
9 Courts around the country have approved substantial incentive payments in employment-related
10 class and collective actions. In re Janney Montgomery Scott LLC Financial Consultant Litigation
11 (E.D. Pa. Jul. 16, 2009) 2009 WL 2137224, *12 (approving incentive payments of \$20,000 each
12 to three named plaintiffs).

13 Here, the service awards are justified by the Named Plaintiffs' high level of participation
14 in this lawsuit and the risks they took to pursue the interests of the class. They assisted in the
15 investigation, interviewed and selected counsel, attended many meetings with counsel, gathered
16 wage information for themselves and other class members, contacted other Settlement Class
17 members to seek their participation in the case, prepared for and had their deposition taken, and
18 prepared for and participated in multiple mediations/mandatory settlement conferences. (Hutkin
19 Decl. ¶¶ 29, 30). They also responded to extensive written discovery, and were willing to testify
20 at trial if necessary. (Id.)

21 Moreover, the Named Plaintiffs have undertaken personal risks in serving as the driving
22 force behind this lawsuit. (Hutkin Decl. ¶¶ 31-35.) They are well aware that the proceedings in
23 this case are a matter of public record and the unemployment rate is high and work opportunities
24 are scarce for potential employees labeled as trouble-makers. The Named Plaintiffs were willing
25 to run this risk for the benefit of not only themselves, but their co-workers. Additionally, in
26 exchange for the class action settlement, the Named Plaintiffs agreed to a General Release of all
27 individual claims as well as the “Released Claims” in the Stipulation of Settlement.

1 Accordingly, the requested service awards are fair and reasonable in light of all the
2 circumstances. (Hutkin Decl. ¶36).

3 **D. The Attorneys' Fees Provision Should Be Preliminarily Approved.**

4 In a class action settlement, the amount of attorney's fees requires court approval. (Rules
5 of Court, Rule 3.769, subd. (b).) Under the proposed Settlement Agreement, proposed Class
6 Counsel are applying for an attorney's fee award of \$480,000, or 40% of the Maximum
7 Settlement Amount. To date, Class Counsel have spent over 3,500 billable hours over five years.
8 Assuming Class Counsel only spent 3,500 billable hours, the \$480,000 in attorney's fees
9 requested works out to a billing rate of \$137.14 per hour. Class Counsel will provide more
10 information regarding their requested fees in conjunction with the Motion for Final Approval,
11 along with a more comprehensive discussion of the applicable authorities supporting the
12 requested award. (Hutkin Decl. ¶ 44.) For the present purposes of preliminary approval, the Court
13 should conditionally rule that the amount requested is reasonable.

14 Both California and federal courts have recognized that an appropriate method for
15 awarding attorney's fees in class actions is to award a percentage of the "common fund" created
16 as a result of the settlement. (Laffitte v. Robert Half International Inc. (2016) 1 Cal.5th 480, 503-
17 506; Wershba v. Apple Computer, Inc. (2001) 91 Cal.App.4th 224, 254 (recognizing both the
18 "percentage of recovery" and "lodestar/multiplier" methods).

19 The California Supreme Court held in Laffitte v. Robert Half Int'l Inc. (2016) that in
20 common fund cases, a trial court may award class counsel a fee out of that fund by choosing an
21 appropriate percentage of the fund. A court "may determine the amount of a reasonable fee by
22 choosing an appropriate percentage of the fund created." *Id.* at 503. The trial court has discretion
23 to conduct a lodestar cross-check on a percentage fee or to forgo a lodestar cross-check and use
24 other means to assess the reasonableness of the requested fees. *Id.* at 506.

25 In Quinn v. State of California (1995) 15 Cal.3d 162, 167, the California Supreme Court
26 stated: "[O]ne who expends attorneys' fees in winning a suit which creates a fund from which
27 others derive benefits may require those passive beneficiaries to bear a fair share of the litigation
28 costs." Similarly, in City and County of San Francisco v. Sweet (1995) 12 Cal.4th 105, 110, the

1 California Supreme Court recognized that the common fund doctrine has been applied
2 “consistently in California when an action brought by one party creates a fund in which other
3 persons are entitled to share.” The reasons for applying the common fund doctrine include:
4 “fairness to the successful litigant, who might otherwise receive no benefit because his recovery
5 might be consumed by the expenses; correlative prevention of an unfair advantage to the others
6 who are entitled to share in the fund and who should bear their share of the burden of its
7 recovery; encouragement of the attorney for the successful litigant, who will be more willing to
8 undertake and diligently prosecute proper litigation for the protection or recovery of the fund if
9 he is assured that he will be properly and directly compensated should his efforts be successful.”
10 (Id.)

11 Class counsels’ request for fees of forty percent of the Maximum Settlement Fund is
12 within the range of reasonableness. Historically, courts have awarded percentage fees in the
13 range of 20% to 50%, depending on the circumstances of the case. (Newberg on Class Actions
14 §14.03; In re Activision Securities Litigation (N.D.Cal. 1989) 723 F.Supp. 1373, 1378.)
15 According to Newberg: “No general rule can be articulated on what is a reasonable percentage of
16 a common fund. Usually 50% of the fund is the upper limit on a reasonable fee award from a
17 common fund in order to assure that the fees do not consume a disproportionate part of the
18 recovery obtained for the class, although somewhat larger percentages are not unprecedented.”
19 (Newberg on Class Actions, §14.03.)

20 California courts, including in this County, as well as and courts throughout the United
21 States have routinely awarded attorneys’ fees equal to or higher than 33-1/3 percent of the
22 settlement both before and after class certification. (*See e.g.*, Laffitte, 1 Cal. 5th at 506 (Court
23 affirmed an award of one third (33.33%) of the common fund); Cotchett, Pitre & McCarthy v.
24 Universal Paragon Corp. (2010) 187 Cal. App. 4th 1405, 1421 (contingency fees typically range
25 from 33 to 40 percent of class benefit); Baker v. Tognazzini Family Inc. (San Luis Obispo
26 County Superior Court., Case No. CV110002-2016) (50% of settlement); Barbosa v. Tom &
27 Daves Tire Store, Inc. (San Luis Obispo Superior Court., CV 110620 - 2014) (40% of
28 settlement); Crandall v. U-Haul (LASC, Case No. BC178775) (40% of settlement); Bushnell v.

1 Cremar, Inc. (OCSC Case No. 657778) (38% of settlement); Elliott v. Clothestime (OCSC Case
2 No. 01-CC00333) (40% of settlement); In re Ampicillian Antitrust Litigation (D.D.C. 1981) 28
3 526 F.Supp. 494 (awarding 45% of settlement);

4 Plaintiff's counsel have borne, and continue to bear, the entire risk and cost of litigation
5 associated with this class and representative action on a pure contingency basis. The factual and
6 legal issues posed in this case are evolving and difficult, due in part to open questions before
7 California Court's related to unsettled views concerning PAGA and the use of representative,
8 statistical, custom and practice, and expert testimony in establishing liability as to an entire group
9 of employees in a representative action. (Hutkin Decl, ¶ 42.)

10 Based on Plaintiffs' counsel past experience in class and representative action wage-hour
11 litigation, it is safe to state that Plaintiffs' counsel are very likely to be called upon, after the
12 checks have been sent to class members, to expend substantial amounts of additional time to help
13 employees understand the terms of the proposed settlement and their choices under it. (Hutkin
14 Decl, ¶ 43.)

15 The settlement reached in this case was hard fought and a fair result for Defendants'
16 employees. The Court should approve the requested attorneys' fees and costs, which are justified
17 by the results achieved, the complexity of the issues, the difficulty of the case, and the great risk
18 undertaken by Plaintiffs' counsel. The requested attorneys' fees are not opposed by Defendants,
19 and are well within established guidelines.

20 Here, Class Counsel's lodestar fees, to which they are entitled by statute, far exceed the
21 percentage to be sought from the common fund. (Hutkin Decl. ¶ 44.) This disparity will
22 eventually be significantly higher, given the attorney time necessary to complete the notice,
23 claims, and final approval procedures and the time anticipated in resolving any problems that
24 may arise with the multi-year payment process. (Hutkin Decl. ¶ 43.) The total hours expended
25 by Class Counsel and the calculation of their lodestar fees as of the date of final approval will be
26 detailed in the motion for an award of attorneys' fees and costs which will be submitted with the
27 motion for final approval. Accordingly, the attorneys' fees provided for in the Settlement
28 Agreement are presumptively reasonable and should be preliminarily approved.

1 **E. The Court Should Approve the Proposed Notice.**

2 The Court's order preliminarily approving a class settlement must include the notice to be
3 given to the class. (Rules of Court, Rule 3.769, subd. (e).) Here, the proposed Class Notice
4 attached as Exhibit 1 to the Settlement Agreement satisfies all procedural requisites. (Hutkin
5 Decl. Exh. A1.)

6 "The notice must contain an explanation of the proposed settlement and procedures for
7 class members to follow in filing written objections to it and in arranging to appear at the
8 settlement hearing and state any objections to the proposed settlement." (Rules of Court, Rule
9 3.769, subd. (f).) "The purpose of a class notice in the context of a settlement is to give class
10 members sufficient information to decide whether they should accept the benefits offered, opt out
11 and pursue their own remedies, or object to the settlement. [Citation Omitted] As a general rule,
12 class notice must strike a balance between thoroughness and the need to avoid unduly
13 complicating the content of the notice and confusing class members. Here, again, the trial court
14 has broad discretion." (Wershba, supra, 91 Cal.App.4th at p. 252.)

15 Here, the form and the manner of the Class Notice has been negotiated and agreed upon
16 by all counsel. The Stipulation describes the form and manner of notice at paragraphs 5 and 39.
17 and is summarized below:

18 Once the Court grants preliminary approval of the settlement, Defendants will provide the
19 Settlement Administrator the names, social security numbers, last known mailing addresses for
20 each Class Member and their dates of employment during the Class Period, and such other data
21 sufficient to permit the Settlement Administrator to make the distributional calculations required
22 hereunder.

23 The Settlement Administrator will verify and update the mailing addresses provided by
24 Defendants. Class Members will be mailed a Class Notice. For any Class Notices returned to the
25 Settlement Administrator as non-deliverable, the Settlement Administrator shall make a single
26 attempt to locate the Class Member using the Settlement Administrator's standard procedures for
27 making a second-level mailing effort.

Using the information provided by Defendants, the Settlement Administrator shall send each Class Member the Class Notice in English and Spanish, by first class U.S. mail. (Stipulation ¶¶ 17, 40.)

The notice will inform Class Members of 1) the nature of this action, the Settlement Class, Class Counsel, and the essential terms of the Settlement; 2) the allocation of the Settlement fund, including method by which each Class Member's settlement share will be calculated, including that the requests for the Class Representative Service Awards, Class Counsel attorneys' fees and costs payment, and the Settlement Administration costs that will be deducted from the Maximum Settlement Fund; 3) how to participate in the Settlement; 4) how to comment on, opt-out of, or object to the Settlement; 5) this Court's procedures for final approval of the Settlement; and 6) how to obtain additional information regarding this action and the Settlement.

The Notice is written in plain English and Spanish and is organized and formatted so as to be as clear as possible. The Notice encourages Class Members to contact Class Counsel or the Settlement Administrator with any questions.

The parties agree to retain CPT Group, Inc., to administer the claims proceedings.

V.

PROPOSED SCHEDULING ORDER

The following schedule sets forth a proposed sequence of the relevant dates and deadlines, assuming the Court preliminarily approves the Settlement on or about March 25, 2021:

<u>Event</u>	<u>Agreement Time Limits</u>	<u>Date</u>
Deadline for Defendants to provide Class Member names, SSN's and addresses to Settlement Administrator	Within 11 calendar days of Entry of Preliminary Approval Order	April 5, 2021
Deadline for Defendants to provide Class Member employment date data to Settlement Administrator	Within 11 calendar days of Entry of Preliminary Approval Order	April 15, 2021
Deadline to Mail Notice Packets	Within 21 calendar days	April 15, 2021

Deadline for submission of Opt-Out Requests	Must be postmarked or received by Settlement Administrator within 30 days after Notice Packet is mailed	May 15, 2021
Deadline for comments or objections	Must be postmarked or received by Settlement Administrator within 30 days after Notice Packet is mailed	May 15 2021
Proposed Hearing for Final Approval of Class Action Settlement		June 17, 2021

VI.

CONCLUSION

For the foregoing reasons, the Named Plaintiffs respectfully request that this Court:

1. Preliminary Approval the parties' Settlement;
2. Conditionally certify the proposed Settlement Class or, in the alternative, set a date for hearing based upon the Parties' Stipulated Settlement and Release of Certain Class Action and Individual Claims;
3. Conditionally designate this a class action under the California Rules of Court;
4. Appoint Named Plaintiffs as the Class Representatives for the Settlement Class and preliminarily approve the requested Incentive/Enhancement Awards for the Class Representatives;
5. Appoint the Named Plaintiffs' counsel as Class Counsel for the Settlement Class and preliminarily approve the requested attorneys' fees and costs,
6. Approve the mailing of the proposed Class Notice and Claim Form;

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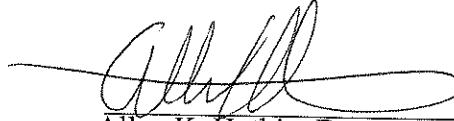
1 7. Appoint CPT Group, Inc., as the Settlement Administrator; and

2 8. Schedule a final approval hearing.

3 individually and on behalf of other individuals employed under common circumstances and facts

4
5 DATED: March 1, 2021

6 Respectfully submitted,

7 

8 Allen K. Hutkin, Esq.
9 Attorney for Plaintiffs
10 CIPRIANO PONCE and CARLOS FARIAS
11 for themselves and others similarly situated
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PROOF OF SERVICE

I am employed by Hutkin Law Firm in the County of San Luis Obispo, State of California. I am over the age of 18 years and not a party to the within action. My address is 1220 Marsh Street, San Luis Obispo, California, 93401. My email address is: jmendoza@hutkinlaw.com. On March 1, 2021, I served the following documents:

NOTICE OF UNOPPOSED MOTION AND MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT; MEMORANDUM OF POINTS AND AUTHORITIES AND DECLARATION IN SUPPORT THEREOF

on the interested parties in this action by placing a true and correct copy thereof enclosed in a sealed envelope (envelope omitted if service by facsimile) addressed as follows:

— **By United States Mail.** I am readily familiar with this business' practice for collection and processing of correspondence for mailing with the United States Postal Service. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service in a sealed envelope with postage fully prepaid. I enclosed the above-referenced document(s) in a sealed envelope or package addressed to the person(s) at the address(es) as set forth below, and following ordinary business practices I placed the package for collection and mailing on the date and at the place of business set forth below.

✓ **By Electronic Service.** Based on a court order or an agreement of the parties to accept service by electronic transmission, I caused the above-reference document(s) to be sent to the person(s) at the electronic address(es) listed below.

Attorneys for Defendants:

(✓) *By Electronic Service*
Eulalio J. Garcia, Esq.
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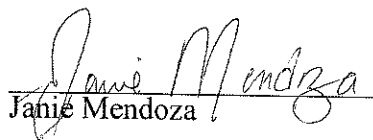
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I declare under penalty of perjury, that the above is true and correct. Executed on March 1, 2021, in San Luis Obispo, California.


Janie Mendoza