

MIRZAYAN LAW, APLC
Natalie Mirzayan, Esq. - State Bar No. 272217
26632 Towne Centre Drive, Suite 300
Foothill Ranch, California 92610
Telephone: (949) 285-3550
mirzayanlaw@outlook.com

Attorneys for Plaintiffs
and the Proposed Class

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF ORANGE

DOMINGO MURCHISON, individually and)
on behalf of all current and former similarly)
situated employees in the State of California,)

Plaintiff,)

v.)

MVP EVENT PRODUCTIONS, LLC, a)
California Limited Liability Company dba)
MVP EVENT STAFFING; GREGORY)
FIELDING, an individual; LEGENDS)
HOSPITALITY, LLC, a Delaware Limited)
Liability Company (previously designated by)
the fictitious name of "DOE 1"; and DOES 2)
to 50, inclusive.)

Defendant.)

CASE NO.: 30-2021-01234789-CU-OE-CXC
ASSIGNED FOR ALL PURPOSES TO: HON.
William Claster; Dept.: CX-101

Reservation Number: **74940680**
Date: October 2, 2026
Time: 9:00 a.m.
Dept.: CX-101

REQUEST FOR JUDICIAL NOTICE IN
SUPPORT OF RENEWED MOTION FOR
PRELIMINARY APPROVAL

Complaint Filed: December 6, 2021

1 Pursuant to California Rules of Court, Rules 3.1113(1) and 3.1306(c), and Evidence Code
2 sections 452 and 453, Plaintiff Domingo Murchison (“Plaintiff”) submits this Request for Judicial
3 Notice in support of his Renewed Motion for Preliminary Approval of Class and PAGA Settlement.

4 “Records of any court of this state and any court of record of the United States or of any state
5 of the United States are judicially noticeable. (Evid. Code. § 452(d).) Moreover, under Evidence
6 Code section 452(h), the Court may take judicial notice of “[f]acts and propositions that are not
7 reasonably subject to dispute and are capable of immediate and accurate determination by resort to
8 sources of reasonably indisputable accuracy.” Evid. Code § 452(h). Evidence Code § 453 requires
9 that “the trial court take judicial notice of any matter specified in section 452 if a party requests it
10 and (a) [gives] each adverse party sufficient notice of the request . . . to enable such adverse party to
11 prepare to meet the request; and (b) [f]urnishes the court sufficient information to enable it to take
12 judicial notice of the matter.” See *O’Keefe v. Atascadero Cty. Sanitation District*, 21 Cal. App. 3d
13 719, 728 (1971) (court required to take judicial notice “because respondents requested it, gave
14 appellant sufficient notice of the request and furnished the court with sufficient information to enable
15 it to take judicial notice”). “To analyze the [res judicata or] collateral estoppel effect of [an] earlier
16 judgment . . . , the trial court properly exercise[s] discretion to take judicial notice of the [] pleading[s],
17 settlement agreement, and stipulated judgment of dismissal.” *Shine v. Williams-Sonoma, Inc.*, 23
18 Cal. App. 5th 1070, 1076 (2018) (citing *Frommhamen v. Board of Supervisors*, 197 Cal. App. 3d
19 1292, 1299 (1987) (explaining when reviewing a demurrer based on res judicata, judicial notice may
20 be taken of official acts or records of any court).

21 Plaintiff hereby requests that the Court take judicial notice of the following documents:

- 22 1. May 15, 2023 Class Action and PAGA Settlement Agreement in *Pineda v. Sun Valley*
23 *Packing, L.P.* and Does 1 through 10, U.S. District Court, Eastern District of California, Case No.
24 1:20-cv-00169-ADA-EPG, a true and correct copy of which is attached hereto as Exhibit A;
- 25 2. October 23, 2018 Civil Minutes in *Lawrence Weinstein v. Mortgage Contracting*
26 *Services, LLC*, United States District Court, Central District of California, Case No. EDCV 14-02521
27 JGB (SPx), a true and correct copy of which is attached hereto as Exhibit B;

1 3. June 12, 2020 Order Granting Plaintiffs' Motion for Final Approval of the Class
2 Action Settlement and Granting in Part the Request for Fees, Costs, and Enhancement Payments in
3 *Emmanuel Salgado, et al. v. T-Mobile USA, Inc.*, United States District Court, Eastern District of
4 California, Case No. 1:17-cv-00339-JLT, a true and correct copy of which is attached hereto as
5 Exhibit C;

6 4. August 22, 2023 Notice of Entry of Final Order and Judgment, with the Final Order
7 Approving Class Action and PAGA Settlement and Judgment attached thereto, filed in Jaime
8 *Martinez v. Del Monte Foods, Inc.*, Stanislaus County Superior Court, Case No. CV-21-005893, a
9 true and correct copy of which is attached hereto as Exhibit D;

10 5. March 26, 2026 Final Approval Order in *Gonzalez v. Buccola Landscape Services,*
11 *Inc.*, Orange County Superior Court, Case No. 30-2023-01356654-CU-OE-CXC, a true and correct
12 copy of which is attached hereto as Exhibit E;

13 6. April 17, 2026 Judgment and Order Granting Plaintiff's Motion for Final Approval
14 of Class Action Settlement in *Cano v. 360 Health Plan, Inc.* dba 360 Clinic, Orange County Superior
15 Court, Case No. 30-2022-01257308-CU-OE-CXC (consolidated with Case No. 30-2022-01207028-
16 CU-OE-CXC), following the April 6, 2026 final approval hearing, a true and correct copy of which
17 is attached hereto as Exhibit F.

EXHIBIT A

1 **CLASS ACTION AND PAGA**

2 **SETTLEMENT AGREEMENT**

3 This Class Action and PAGA Settlement Agreement (“Agreement”) is made by and between
4 Plaintiff Leticia Pineda (“Plaintiff”) and Defendants Sun Valley Packing, L.P. and Valle Del Sol Jones,
5 LLC (collectively, “Defendants”). The Agreement refers to Plaintiff and Defendants collectively as
6 “Parties,” or individually as “Party.”

7 **1. DEFINITIONS.**

8 1.1. “Action” means Plaintiff’s lawsuit alleging wage and hour violations against
9 Defendants captioned *Leticia Pineda v. Sun Valley Packing, L.P. and Does 1*
10 *through 10*, U.S. District Court for the Eastern District of California Case No.
11 1:20-cv-00169-ADA-EPG, initiated on October 23, 2019, now pending in
12 arbitration before the Hon. Patrick O’Hara (ret.).

13 1.2. “Administrator” means Phoenix Settlement Administrators, the neutral entity
14 the Parties have agreed to appoint to administer the Settlement.

15 1.3. “Administration Expenses Payment” means the amount the Administrator will
16 be paid from the Gross Settlement Amount to reimburse its reasonable fees and
17 expenses in accordance with the Administrator’s “not to exceed” bid submitted
18 to the Court or Arbitrator in connection with Preliminary Approval of the
19 Settlement.

20 1.4. “Aggrieved Employees” means all current and former non-exempt, hourly-paid
21 employees of Defendants employed in California at any time during the PAGA
22 Period.

23 1.5. “Arbitrator” means the arbitrator to be mutually selected by the Parties to
24 arbitrate the approval of the class and PAGA settlement pursuant to the Parties’
25 arbitration agreement.

26 1.6. “Class” means all California non-exempt employees employed by Defendants
27 during the Class Period.
28

- 1.7. “Class Counsel” means Jeremy F. Bollinger, Dennis F. Moss, Ari E. Moss, and Jorge A. Flores of Moss Bollinger LLP, who are counsel for and acting on behalf of Plaintiff, Class, and Aggrieved Employees.
- 1.8. “Class Counsel Fees Payment” and “Class Counsel Litigation Expenses Payment” mean the amounts allocated to Class Counsel for reimbursement of reasonable attorneys’ fees and expenses, respectively, incurred to prosecute the Action.
- 1.9. “Class Data” means Class Member identifying information in Defendants’ possession including the Class Member’s name, last-known mailing address, Social Security number, number of Class Period Workweeks and PAGA Pay Periods, number of Class Period Workweeks the Class Member worked as a fieldworker, number of Class Period Workweeks the Class Member worked as a packer, and the number of season layoffs the Class Member experienced during the period of October 23, 2016 through January 29, 2023.
- 1.10. “Class Distribution Fund” means the Net Settlement Amount less the amount allocated to the PAGA Penalties.
- 1.11. “Class Member” or “Settlement Class Member” means a member of the Class, as either a Participating Class Member or Non-Participating Class Member (including a Non-Participating Class Member who qualifies as an Aggrieved Employee).
- 1.12. “Class Member Address Search” means the Administrator’s investigation and search for current Class Member mailing addresses using all reasonably available sources, methods and means including, but not limited to, the National Change of Address database, skip traces, and direct contact by the Administrator with Class Members.
- 1.13. “Class Notice” means the COURT APPROVED NOTICE OF CLASS ACTION AND PAGA SETTLEMENT AND HEARING DATE FOR FINAL COURT APPROVAL, to be mailed to Class Members in English and Spanish

in the form, without material variation, attached as **Exhibit A** and incorporated by reference into this Agreement. “PAGA” means the Private Attorneys General Act of 2004, California Labor Code §§ 2698.

1.14. “Class Period” means the period from October 23, 2015 through January 29, 2023.

1.15. “Class Representative” means Leticia Pineda, the named Plaintiff in the operative complaint in the Action seeking Court or Arbitrator approval to serve as a Class Representative.

1.16. “Class Representative Service Payment” means the payment to the Class Representative for initiating the Action and providing services in support of the Action.

1.17. “Court” means the Superior Court of California, County of Tulare or County of Kings, to which the Parties agree to submit the Arbitrator’s orders granting approval of the Settlement and the Arbitrator’s judgement to be confirmed by the Court.

1.18. “Defense Counsel” means Thomas E. Campagne of the Law Firm of Campagne & Campagne.

1.19. “Effective Date” means later of (i) the Judgment of the Court granting final approval of the settlement is final and no longer subject to appeal, if there are objections, or (ii) 20 days after Notice is provided by Plaintiff to Defendants that the Court entered the order on final approval of the settlement, if there are no objections.

1.20. “Final Approval” means the Court’s order granting the request for final approval of the Settlement and that the Court enter judgment and retain jurisdiction with respect to the interpretation, implementation, and enforcement of the terms of this Agreement.

1.21. “Final Approval Hearing” means the Court’s hearing on the Motion for Final Approval of the Settlement.

- 1.22. “Final Judgment” means the Judgment Entered by the Court upon Granting the request for Final Approval of the Settlement and that the Court enter judgment and retain jurisdiction with respect to the interpretation, implementation, and enforcement of the terms of this Agreement.
- 1.23. “Gross Settlement Amount” means Two Million Five Hundred Thousand Dollars (\$2,500,000.00) which is the total amount Defendants agree to pay under the Settlement except as provided in Paragraph 4.3 below. The Gross Settlement Amount will be used to pay Individual Class Payments, Individual PAGA Payments, the LWDA PAGA Payment, Class Counsel Fees, Class Counsel Litigation Expenses, Class Representative Service Payment and the Administrator’s Expenses.
- 1.24. “Individual Class Payment” means the Participating Class Member’s pro rata share of the Net Settlement Amount calculated according to the formula set forth in Paragraph 3.2.4 below.
- 1.25. “Individual PAGA Payment” means the Aggrieved Employee’s pro rata share of 25% of the PAGA Penalties calculated according to the number of pay periods worked during the PAGA Period.
- 1.26. “Judgment” means the Arbitrator’s judgment entered or confirmed by the Court based upon the Final Approval.
- 1.27. “LWDA” means the California Labor and Workforce Development Agency, the agency entitled, under Labor Code section 2699, subd. (i).
- 1.28. “LWDA PAGA Payment” means the 75% of the PAGA Penalties paid to the LWDA under Labor Code section 2699, subd. (i).
- 1.29. “Net Settlement Amount” means the Gross Settlement Amount less proposed Class Counsel Fees Payment, Class Counsel Litigation Expenses, Class Representative Service Payment, Individual PAGA Payments, the LWDA PAGA Payment and Administrator’s Expenses Payment.

- 1.30. “Non-Participating Class Member” means any Class Member who opts out of the Settlement by sending the Administrator a valid and timely Request for Exclusion.
- 1.31. “PAGA Pay Period” means any Pay Period during which an Aggrieved Employee worked for Defendants for at least one day during the PAGA Period.
- 1.32. “PAGA Period” means the period from October 21, 2018 through January 29, 2023.
- 1.33. “PAGA” means the Private Attorneys General Act (Labor Code §§ 2698. et seq.).
- 1.34. “PAGA Notice” means Plaintiff’s July 29, 2020 letter, and September 9, 2022 amended letter to Defendants and the LWDA providing notice pursuant to Labor Code section 2699.3, subd.(a).
- 1.35. “PAGA Penalties” or “PAGA Settlement” means the total PAGA civil penalties to be paid from the Gross Settlement Amount. The PAGA Penalties allocation will be \$50,000.00 of the Gross Settlement amount, 25% (\$12,500.00) of which will be distributed to the Aggrieved Employees and 75% (\$37,500.00) will be distributed to the LWDA in settlement of the PAGA claims.
- 1.36. “Participating Class Member” or “Verified Class Member” means a Class Member who does not submit a valid and timely Request for Exclusion from the Settlement.
- 1.37. “Plaintiff” means Leticia Pineda, the named plaintiff in the Action.
- 1.38. “Preliminary Approval” means the Court’s or Arbitrator’s Order Granting Preliminary Approval of the Settlement.
- 1.39. “Preliminary Approval Order” means the proposed Order Granting Preliminary Approval and Approval of PAGA Settlement.
- 1.40. “Released Class Claims” means the claims being released as described in Paragraph 5.2 below.

- 1.41. “Released PAGA Claims” means the claims being released as described in Paragraph 5.3 below.
- 1.42. “Released Parties” means: Defendants Sun Valley Packing, LP and Valle Del Sol Jones, LLC, their officers, partners, shareholders, directors, agents, employees, members, supervisors, attorneys, accountants, insurers, affiliated companies, and each of them.
- 1.43. “Request for Exclusion” means a Class Member’s valid and timely submission of a written request to be excluded from the Class Settlement signed by the Class Member. Class Members cannot opt out of the PAGA Settlement.
- 1.44. “Response Deadline” means forty-five (45) calendar days from the mailing of the Class Notice within which to complete and postmark a written request for exclusion, for return to the Settlement Administrator.
- 1.45. “Settlement” means the disposition of the Action effected by this Agreement and the Judgment.
- 1.46. “Workweek” means any week during which a Class Member worked for Defendants for at least one day, during the Class Period.

2. RECITALS.

- 2.1. On October 21, 2019, Plaintiff sent a certified letter to the LWDA and Defendants alleging the following violations: (1) for civil penalties under the California Private Attorneys General Act of 2004 (Labor Code § 2698, et seq.) (“PAGA”); (2) failure to pay overtime wages; and (3) failure to pay all wages upon cessation of employment. On October 23, 2019, Plaintiff commenced this Action by filing a class action Complaint in Fresno County Superior Court, Case No.:19CECG03846, alleging the following violations: (1) failure to pay overtime wages; (2) failure to provide meal periods; (3) failure to pay timely wages upon cessation of employment; (4) failure to furnish accurate itemized wage statements; and (5) unfair competition. On December 27, 2019, following the expiration of the 65-day notice period under PAGA, Plaintiff filed the First

1 Amended Complaint alleging the same class action causes of action against
2 Defendants and adding a claim for civil penalties under Labor Code § 2698, et
3 seq. The First Amended Complaint is the operative complaint in the Action (the
4 “Operative Complaint”). Defendants deny the allegations in the Operative
5 Complaint, deny any failure to comply with the laws identified in the Operative
6 Complaint and deny any and all liability for the causes of action alleged.

7 2.2. On January 31, 2020, Defendant removed the Action to the U.S. District Court
8 for the Eastern District of California, Case No. 1:20-cv-00169. Thereafter,
9 Defendant filed a motion to compel arbitration pursuant to an arbitration
10 agreement entered into by the Parties and filed a cross-complaint against
11 Plaintiff and the State of California for injunctive and declaratory relief
12 regarding the unconstitutionality of PAGA. Plaintiff opposed the motion to
13 compel arbitration and filed a motion to dismiss Defendant’s cross-complaint.
14 Nearly two years after the Parties filed their respective motions, the District
15 Court denied Defendant’s motion to compel arbitration and granted Plaintiff’s
16 motion to dismiss the cross-complaint. Defendant appealed the Court’s ruling
17 on arbitration. The Parties stayed the appeal pending this Settlement.

18 2.3. Pursuant to Labor Code section 2699.3, subd.(a), Plaintiff gave timely written
19 notice to Defendants and the LWDA by sending the PAGA Notice.

20 2.4. The Parties participated in two days of mediation on November 8 and 30, 2022,
21 presided over by mediator Hon. Judge Howard Broadman (ret.). At the end of
22 the second day of mediation, Plaintiff made a final settlement offer to
23 Defendants, which was recommended by Judge Broadman. In the weeks
24 following mediation, after further consultation with Judge Broadman,
25 Defendants accepted Plaintiff’s settlement offer, resulting in this Agreement.

26 2.5. Prior to mediation, Defendants provided informal discovery and information
27 that Plaintiff and his counsel needed to evaluate the class and PAGA claims,
28 including Defendants’ a sampling of time cards payroll records of class

1 members, dates of employment for the Class and Aggrieved Employees, and
2 relevant policies, including department-specific information (i.e., fieldworkers
3 vs. packing house workers) for Defendants' operations. Plaintiff's counsel also
4 interviewed a number of class members. Plaintiff's investigation was sufficient
5 to satisfy the criteria for court approval set forth in *Dunk v. Foot Locker Retail,*
6 *Inc.* (1996) 48 Cal. App. 4th 1794, 1801 and *Kullar v. Foot Locker Retail, Inc.*
7 (2008) 168 Cal.App.4th 116, 129-130 ("*Dunk/Kullar*").

8 2.6. The Court has not yet granted class certification. For settlement purposes only,
9 the Parties agree that the Class, as defined in Paragraph 1.6 herein, may be
10 certified in the Action. The Parties are not certifying any PAGA claims. In
11 support of this Agreement, Plaintiff will request that the Court or Arbitrator
12 certify for settlement purposes only the Class as to all non-PAGA claims that
13 have been asserted, which Defendants shall not oppose or object to.

14 3. MONETARY TERMS.

15 3.1. Gross Settlement Amount. Except as otherwise provided by Paragraph 4.3
16 below, Defendants promise to pay Two Million Five Hundred Thousand
17 Dollars (\$2,500,000.00) as the Gross Settlement Amount. The Gross
18 Settlement Amount was agreed to by the Parties based on the estimate that Class
19 Members worked a total of 180,000 Workweeks during the Class Period. If the
20 actual total number of Workweeks is 15% greater than 180,000 workweeks (i.e.,
21 there are more than 27,000 additional Workweeks or 207,000 total
22 Workweeks), then the Gross Settlement Amount shall be increased
23 proportionately for each additional workweek above the 15% buffer (the
24 "Escalation Clause"). (If the Gross Settlement Amount increases pursuant to
25 the Escalation Clause, then the requested Class Counsel Fees Payment which is
26 a percentage of the Gross Settlement Amount, shall also increase
27 proportionately.) In no event shall Defendants be liable for the payment of any
28 amounts exceeding the Gross Settlement Amount described herein with the

exception of the employer's share of payroll taxes. Specifically, all employer payroll taxes owed on the Wage Portions of the Individual Class Payments. Defendants have no obligation to pay the Gross Settlement Amount (or any payroll taxes) prior to the deadline stated in Paragraph 4.3 of this Agreement. The Administrator will disburse the entire Gross Settlement Amount without asking or requiring Participating Class Members or Aggrieved Employees to submit any claim as a condition of payment. None of the Gross Settlement Amount will revert to Defendants.

3.2. Payments from the Gross Settlement Amount. The Administrator will make and deduct the following payments from the Gross Settlement Amount, in the amounts specified by the Court or Arbitrator in the Final Approval Order:

3.2.1. To Plaintiff: Class Representative Service Payment to the Class Representative of not more than Ten Thousand Dollars (\$10,000) (in addition to any Individual Class Payment and any Individual PAGA Payment the Class Representative is entitled to receive as a Participating Class Member). Defendants will not oppose Plaintiff's request for a Class Representative Service Payment that does not exceed this amount. As part of the motion for Class Counsel Fees Payment and Class Litigation Expenses Payment, Plaintiff will seek Court or Arbitrator approval for any Class Representative Service Payments no later than sixteen (16) court days prior to the Final Approval Hearing. If the Court or Arbitrator approves a Class Representative Service Payment less than the amount requested, the Administrator will retain the remainder in the Net Settlement Amount. The Administrator will pay the Class Representative Service Payment using IRS Form 1099. Plaintiff assumes full responsibility and liability for employee taxes owed on the Class Representative Service Payment.

1 3.2.2. To Class Counsel: A Class Counsel Fees Payment of not more than
2 40% of the Gross Settlement Amount, which is currently estimated to
3 be \$1,000,000 and a Class Counsel Litigation Expenses Payment of
4 actual and reasonable litigation expenses. Defendants will not oppose
5 requests for these payments provided that they do not exceed these
6 amounts. Plaintiff and/or Class Counsel will file a motion for Class
7 Counsel Fees Payment and Class Litigation Expenses Payment no later
8 than sixteen (16) court days prior to the Final Approval Hearing. If the
9 Court or Arbitrator approves a Class Counsel Fees Payment and/or a
10 Class Counsel Litigation Expenses Payment less than the amounts
11 requested, the Administrator will allocate the remainder to the Net
12 Settlement Amount. Released Parties shall have no liability to Class
13 Counsel or any other Plaintiff's Counsel arising from any claim to any
14 portion any Class Counsel Fee Payment and/or Class Counsel Litigation
15 Expenses Payment. The Administrator will pay the Class Counsel Fees
16 Payment and Class Counsel Expenses Payment using one or more IRS
17 1099 Forms. Class Counsel assumes full responsibility and liability for
18 taxes owed on the Class Counsel Fees Payment and the Class Counsel
19 Litigation Expenses Payment and holds Defendants harmless, and
20 indemnifies Defendants, from any dispute or controversy regarding any
21 division or sharing of any of these Payments.

22 3.2.3. To the Administrator: An Administrator Expenses Payment not to
23 exceed Thirty-Seven Thousand Five Hundred Dollars (\$37,500) based
24 on 5,718 class members except for a showing of good cause and as
25 approved by the Court or Arbitrator. To the extent the Administration
26 Expenses are less or the Court approves payment less than Thirty-Seven
27 Thousand Five Hundred Dollars (\$37,500), the Administrator will retain
28 the remainder in the Net Settlement Amount.

1 3.2.4. To Each Participating Class Member: Each Participating Class Member
2 will receive an Individual Class Payment from the Class Distribution
3 Fund calculated according to the following formula:

4 3.2.4.1.The Administrator shall add together all Workweeks worked by
5 Class Members during the Class Period (excluding those worked
6 by Non-Participating Class Members) to determine the
7 “Participating Class’s Total Weeks.”

8 3.2.4.2.For each Workweek worked by a Participating Class Member
9 during the Class Period, the Participating Class Member will
10 receive one (1) “Net Settlement Share”.

11 3.2.4.3.Each Participating Class Member who received a bonus will
12 receive an additional five (5) “Net Settlement Shares” to reflect
13 their potential claims arising from failure to factor bonuses into
14 the regular rate of pay for overtime.

15 3.2.4.4.For every Workweek worked by a Participating Class Member
16 during the period of October 23, 2018 through January 29,
17 2023, the Participating Class Member will receive one
18 additional (1) “Net Settlement Share” to reflect their potential
19 claims for inaccurate wage statement penalties.

20 3.2.4.5.For every season a Participating Class Member worked between
21 October 23, 2016 through January 29, 2023, the Participating
22 Class Member will receive an additional five (5) “Net
23 Settlement Shares” to reflect their potential claim for waiting
24 time penalties due to seasonal layoffs.

25 3.2.4.6.The Administrator shall then divide each Participating Class
26 Member’s total Net Settlement Shares by the Participating
27 Class's Total Weeks in order to determine the “Percentage
28 Share” of each Participating Class Member.

1 3.2.4.7. Each Participating Class Member shall be entitled to receive a
2 Settlement Award equal to his or her Percentage Share of the
3 Class Distribution Fund.

4 3.2.4.8. Tax Allocation of Individual Class Payments. Ten percent
5 (10%) of each Participating Class Member's Individual Class
6 Payment will be allocated to settlement of wage claims (the
7 "Wage Portion"). The Wage Portions are subject to tax
8 withholding and will be reported on an IRS W-2 Form. Ninety
9 Percent (90%) of each Participating Class Member's Individual
10 Class Payment will be allocated to settlement of claims for
11 interest and penalties (the "Non-Wage Portion"). The Non-
12 Wage Portions are not subject to wage withholdings and will be
13 reported on IRS 1099 Forms. Participating Class Members
14 expressly assume full responsibility and liability for any
15 employee taxes owed on their Individual Class Payment.
16 Defendants and Released Parties expressly reject any
17 assumption of liability as to Class Members taxes owed on their
18 Individual Class Payment.

19 3.2.4.9. Effect of Non-Participating Class Members on Calculation of
20 Individual Class Payments. Non-Participating Class Members
21 will not receive any Individual Class Payments. The
22 Administrator will retain amounts equal to their Individual Class
23 Payments in the Net Settlement Amount for distribution to
24 Participating Class Members on a pro rata basis according to the
25 formula set forth above.

26 3.2.5. To the LWDA and Aggrieved Employees: PAGA Penalties in the
27 amount of \$50,000.00 of the Net Settlement Amount, with 75%
28

1 allocated to the LWDA PAGA Payment and 25% allocated to the
2 Individual PAGA Payments.

3 3.2.5.1. The Administrator will calculate each Individual PAGA
4 Payment by (a) dividing the Aggrieved Employees' share of the
5 25% of PAGA Penalties by the total number of PAGA Period
6 Pay Periods worked by all Aggrieved Employees during the
7 PAGA Period and (b) multiplying the result by each Aggrieved
8 Employee's PAGA Period Pay Periods. Aggrieved Employees
9 assume full responsibility and liability for any taxes owed on
10 their Individual PAGA Payment.

11 3.2.5.2. If the Court or Arbitrator approves PAGA Penalties of less than
12 the amount requested, the Administrator will allocate the
13 remainder to the Net Settlement Amount. The Administrator
14 will report the Individual PAGA Payments on IRS 1099 Forms.

15 **4. SETTLEMENT FUNDING AND PAYMENTS.**

16 4.1. Class Workweeks and Aggrieved Employee Pay Periods. Based on a review of
17 Defendants' records to date, the Parties reached the Settlement based on the
18 estimate that Class Members worked a total of 180,000 Workweeks during the
19 Class Period.

20 4.2. Class Data. Not later than fourteen (14) calendar days after the Court or
21 Arbitrator grants Preliminary Approval of the Settlement, Defendants will
22 deliver the Class Data to the Administrator, in the form of a Microsoft Excel
23 spreadsheet. To protect Class Members' privacy rights, the Administrator must
24 maintain the Class Data in confidence, use the Class Data only for purposes of
25 this Settlement and for no other purpose, and restrict access to the Class Data
26 to Administrator employees who need access to the Class Data to effect and
27 perform under this Agreement. Defendants have a continuing duty to
28 immediately notify Class Counsel if it discovers that the Class Data omitted

1 class member identifying information and to provide corrected or updated Class
2 Data as soon as reasonably feasible. Without any extension of the deadline by
3 which Defendants must send the Class Data to the Administrator, the Parties
4 and their counsel will expeditiously use best efforts, in good faith, to reconstruct
5 or otherwise resolve any issues related to missing or omitted Class Data.

6 4.3. Funding of Gross Settlement Amount. Defendants shall fully fund the Gross
7 Settlement Amount (which Gross Settlement Amount is inclusive of Class
8 Counsel Fees Payment, the Class Counsel Litigation Expenses Payment, the
9 Class Representative Service Payment, Individual Class Payments, Individual
10 PAGA Payments, Administration Expenses Payment and LWDA PAGA
11 Payment), and also fund the amounts necessary to fully pay Defendants' share
12 of payroll taxes by transmitting the funds to the Administrator no later than
13 fifteen (15) calendar days after the Effective Date.

14 4.4. Payments from the Gross Settlement Amount. Within fifteen (15) calendar
15 days after Defendants fund the Gross Settlement Amount, the Administrator
16 will mail checks for all Individual Class Payments, all Individual PAGA
17 Payments, and the LWDA PAGA Payment. Within twenty (20) calendar days
18 after Defendants fund the Gross Settlement Amount, the Administration will
19 mail checks for the Class Counsel Fees Payment, the Class Counsel Litigation
20 Expenses Payment, and the Class Representative Service Payment.
21 Disbursement of the Class Counsel Fees Payment, the Class Counsel Litigation
22 Expenses Payment and the Class Representative Service Payment shall not
23 precede disbursement of Individual Class Payments and Individual PAGA
24 Payments.

25 4.4.1. The Administrator will issue checks for the Individual Class Payments
26 and/or Individual PAGA Payments and send them to the Class Members
27 via First Class U.S. Mail, postage prepaid. The face of each check shall
28 prominently state the date (not less than 180 days after the date of

mailing) when the check will be voided. The Administrator will cancel all checks not cashed by the void date. The Administrator will send checks for Individual Settlement Payments to all Participating Class Members (including those for whom Class Notice was returned undelivered). The Administrator will send checks for Individual PAGA Payments to all Aggrieved Employees including Non-Participating Class Members who qualify as Aggrieved Employees (including those for whom Class Notice was returned undelivered). The Administrator must send Participating Class Members a single check combining the Individual Class Payment and the Individual PAGA Payment. Before mailing any checks, the Settlement Administrator must update the recipients' mailing addresses using the National Change of Address Database.

4.4.2. The Administrator must conduct a Class Member Address Search via skip tracing for all other Class Members whose checks are returned undelivered without USPS forwarding address. Within seven (7) calendar days of receiving a returned check the Administrator must re-mail checks to the USPS forwarding address provided or to an address ascertained through the Class Member Address Search. The Administrator need not take further steps to deliver checks to Class Members whose re-mailed checks are returned as undelivered. The Administrator shall promptly send a replacement check to any Class Member whose original check was lost or misplaced, requested by the Class Member prior to the void date.

4.4.3. For any Class Member whose Individual Class Payment check or Individual PAGA Payment check is uncashed and cancelled after the void date, the Administrator shall transmit the funds represented by such

checks to the Central California Food Bank pursuant to the California Code of Civil Procedure Section 384.

4.4.4. The payment of Individual Class Payments and Individual PAGA Payments shall not obligate Defendants to confer any additional benefits or make any additional payments to Class Members (such as 401(k) contributions or bonuses) beyond those specified in this Agreement.

5. RELEASES OF CLAIMS: Effective on the date when Defendants fully fund the entire Gross Settlement Amount and funds all employer payroll taxes owed on the Wage Portion of the Individual Class Payments, Plaintiff and Class Members (whether their Individual Class Payment or Individual PAGA Payment is cashed or uncashed) will release claims against all Released Parties as follows:

5.1. Plaintiff's Release. Plaintiff and her respective former and present spouses, representatives, agents, attorneys, heirs, administrators, successors, and assigns generally, release and discharge Released Parties from all claims, transactions, or occurrences that occurred during the Class Period, including, but not limited to: (a) all claims that were, or reasonably could have been, alleged, based on the facts contained, in the Operative Complaint and (b) all Class and PAGA claims that were, or reasonably could have been, alleged based on facts contained in the Operative Complaint, Plaintiff's PAGA Notice ("Plaintiff's Release").

5.1.1. Plaintiff's Waiver of Rights Under California Civil Code Section 1542.

Plaintiff shall be deemed to have, and by operation of the Judgment shall have, expressly waived and relinquished to the fullest extent permitted by law the provisions, rights, and benefits of Section 1542 of the California Civil Code, or any other similar provision under federal or state law that purports to limit the scope of a general release. Plaintiff, for herself, has read Section 1542 of the Civil Code of the State of California, which provides as follows:

1 A GENERAL RELEASE DOES NOT EXTEND TO
2 CLAIMS WHICH THE CREDITOR OR RELEASING
3 PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN
4 HIS OR HER FAVOR AT THE TIME OF EXECUTING
5 THE RELEASE, AND THAT, IF KNOWN BY HIM OR
6 HER, WOULD HAVE MATERIALLY AFFECTED HIS
7 OR HER SETTLEMENT WITH THE DEBTOR OR
8 RELEASED PARTY.

9 5.1.2. Plaintiff understands that Section 1542 gives the right not to release
10 existing claims of which she is not now aware, unless Plaintiff
11 voluntarily chooses to waive this right. Having been so apprised,
12 Plaintiff nevertheless voluntarily waives the rights described in Section
13 1542, and elects to assume all risks for claims that now exist in her
14 favor, known or unknown as of the Effective Date of this Agreement.
15 The release of the claims of Plaintiff as set forth in this Paragraph is a
16 condition precedent to enforcement of the MOU and this Agreement.

17 5.2. Release by Participating Class Members: All Participating Class Members on
18 behalf of themselves and their respective former and present representatives,
19 agents, attorneys, heirs, administrators, successors, and assigns, release
20 Defendants and Released Parties from all claims that were set forth, or
21 reasonably could have been set forth based on the facts alleged in the
22 Operative Complaint, including:

23 5.2.1. All claims under state, federal and local law that were set forth, or
24 reasonably could have been set forth based on the facts alleged in the
25 Operative Complaint as to the Class Members only with regard to those
26 claims for or related to alleged (1) failure to pay proper overtime wages
27 in violation of Labor Code sections 510, 1194, 1197, and 1198, and the
28 applicable IWC Wage Order(s); (2) failure to provide compliant meal
periods and pay missed meal period premiums in violation of Labor
Code sections 226.7 and 512, and the applicable IWC Wage Order(s);
(3) failure to pay all wages due and owing at separation in violation of

1 Labor Code sections 201, 202, and 203; (4) failure to provide complete
2 and accurate wage statements in violation of Labor Code section 226;
3 (5) deceptive, fraudulent, or otherwise unlawful business practices
4 based on the foregoing in violation of California’s Unfair Competition
5 Law (Bus. & Prof. Code, §§ 17200–17210); (6) statutory penalties
6 based on the foregoing pursuant to PAGA (Lab. Code, §§ 2698-2699.6);
7 and (7) all claims for penalties, interest, fees, costs based on the
8 foregoing (the “Released Claims.”) The released parties shall include
9 Sun Valley Packing, LP, Valle Del Sol Jones, LLC, their officers,
10 shareholders, directors, agents, employees, attorneys, and insurers (“the
11 Released Parties”). Any Class Member who opts out of the settlement
12 will still be bound by the release of PAGA claims and will receive a
13 settlement payment for only the PAGA portion of the settlement.
14 Plaintiff agrees not to object to or opt out of the settlement. Except as
15 set forth below in Section 5.3 of this Agreement, Participating Class
16 Members do not release any other claims, including claims for vested
17 benefits, wrongful termination, violation of the Fair Employment and
18 Housing Act, unemployment insurance, disability, social security,
19 workers’ compensation, or claims based on facts occurring outside the
20 Class Period.

21 5.3 Released PAGA Claims: Named Plaintiff, the LWDA, and the Aggrieved
22 Employees on behalf of themselves and their respective former and present
23 representatives, agents, attorneys, heirs, administrators, successors, and assigns,
24 release, discharge, and are forever barred from pursuing against Defendants and the
25 Released Parties any and all claims for civil penalties under PAGA (the California
26 Labor Code Private Attorneys General Act (Cal. Labor Code § 2698 *et seq.*)) for any
27 and all claims set forth, or reasonably could have been set forth based on the facts
28 alleged in the Operative Complaint or PAGA Notice, including: (1) unpaid overtime

wages in violation of Labor Code sections 510, 1194, 1197, and 1198, and the applicable IWC Wage Order(s); (2) failure to provide compliant meal periods and pay missed meal period premiums in violation of Labor Code sections 226.7 and 512, and the applicable IWC Wage Order(s); (3) failure to pay all wages due and owing at separation in violation of Labor Code sections 201, 202, and 203.

6. MOTION FOR PRELIMINARY APPROVAL. The Parties agree to jointly prepare and file a motion for preliminary approval (“Motion for Preliminary Approval”) with Class Counsel preparing an initial draft.

6.1. Plaintiff’s Responsibilities. Plaintiff will prepare and deliver to Defense Counsel all documents necessary for obtaining Preliminary Approval, including: (i) a draft of the notice, and memorandum in support of the Motion for Preliminary Approval that includes an analysis of the Settlement under *Dunk/Kullar* and a request for approval of the PAGA Settlement under Labor Code Section 2699, subd. (f)(2)); (ii) a draft proposed Order Granting Preliminary Approval and Approval of PAGA Settlement; (iii) a draft proposed Class Notice; (iv) a signed declaration from the Administrator attaching its “not to exceed” bid for administering the Settlement and attesting to its willingness to serve; competency; operative procedures for protecting the security of Class Data; amounts of insurance coverage for any data breach, defalcation of funds or other misfeasance; all facts relevant to any actual or potential conflicts of interest with Class Members; and the nature and extent of any financial relationship with Plaintiff, Class Counsel or Defense Counsel; (v) a signed declaration from Plaintiff confirming willingness and competency to serve and disclosing all facts relevant to any actual or potential conflicts of interest with Class Members and/or the Administrator; (v) a signed declaration from each Class Counsel firm attesting to its competency to represent the Class Members; its timely transmission to the LWDA of all necessary PAGA documents (initial notice of violations (Labor Code section 2699.3, subd. (a)), Operative

Complaint (Labor Code section 2699, subd. (1)(1)), this Agreement (Labor Code section 2699, subd. (1)(2)); and (vii) all facts relevant to any actual or potential conflict of interest with Class Members, the Administrator.

6.2. Responsibilities of Counsel. Class Counsel and Defense Counsel agree to work together in good faith expeditiously finalizing and filing the Motion for Preliminary Approval after the full execution of this Agreement; obtaining a prompt hearing date for the Motion for Preliminary Approval; and for appearing in Court or before the Arbitrator to advocate in favor of the Motion for Preliminary Approval. Class Counsel is responsible for delivering the Court's or Arbitrator's Preliminary Approval Order to the Administrator.

6.3. Duty to Cooperate. If the Parties disagree on any aspect of the proposed Motion for Preliminary Approval and/or the supporting declarations and documents, Class Counsel and Defense Counsel will expeditiously work together on behalf of the Parties by meeting in person or by telephone, and in good faith, to resolve the disagreement. If the Court or Arbitrator does not grant Preliminary Approval or conditions Preliminary Approval on any material change to this Agreement, Class Counsel and Defense Counsel will expeditiously work together on behalf of the Parties by meeting in person or by telephone, and in good faith, to modify the Agreement and otherwise satisfy the Court's or Arbitrator's concerns.

7. SETTLEMENT ADMINISTRATION.

7.1. Selection of Administrator. The Parties have jointly selected Phoenix Settlement Administrators to serve as the Administrator and verified that, as a condition of appointment, the Administrator agrees to be bound by this Agreement and to perform, as a fiduciary, all duties specified in this Agreement in exchange for payment of Administration Expenses. The Parties and their Counsel represent that they have no interest or relationship, financial or

otherwise, with the Administrator other than a professional relationship arising out of prior experiences administering settlements.

7.2. Qualified Settlement Fund. The Administrator shall establish a settlement fund that meets the requirements of a Qualified Settlement Fund (“QSF”) under US Treasury Regulation section 468B-1.

7.3. Notice to Class Members.

7.3.1. No later than three (3) business days after receipt of the Class Data, the Administrator shall notify Class Counsel that the list has been received and state the number of Class Members, Aggrieved Employees, Workweeks, and Pay Periods in the Class Data.

7.3.2. Using best efforts to perform as soon as possible, and in no event later than fourteen (14) calendar days after receiving the Class Data, the Administrator will send to all Class Members identified in the Class Data, via first-class United States Postal Service (“USPS”) mail, the Class Notice substantially in the form attached to this Agreement as **Exhibit A**. The first page of the Class Notice shall prominently estimate the dollar amounts of any Individual Class Payment and/or Individual PAGA Payment payable to the Class Member/Aggrieved Employee, and the number of Workweeks and PAGA Pay Periods (if applicable) used to calculate these amounts. Before mailing Class Notices, the Administrator shall update Class Member addresses using the National Change of Address database.

7.3.3. Not later than five (5) business days after the Administrator’s receipt of any Class Notice returned by the USPS as undelivered, the Administrator shall re-mail the Class Notice using any forwarding address provided by the USPS. If the USPS does not provide a forwarding address, the Administrator shall conduct a Class Member Address Search via skip tracing, and re-mail the Class Notice to the most

1 current address obtained. The Administrator has no obligation to make
2 further attempts to locate or send Class Notice to Class Members whose
3 Class Notice is returned by the USPS a second time.

4 7.3.4. If the Administrator, Defendants or Class Counsel is contacted by or
5 otherwise discovers any persons who believe they should have been
6 included in the Class Data and should have received Class Notice, the
7 Parties will expeditiously meet and confer in person or by telephone,
8 and in good faith, in an effort to agree on whether to include them as
9 Class Members. If the Parties agree, such persons will be Class
10 Members entitled to the same rights as other Class Members, and the
11 Administrator will send, via email or overnight delivery, a Class Notice
12 requiring them to exercise options under this Agreement not later than
13 fourteen (14) calendar days after receipt of Class Notice, or the deadline
14 dates in the Class Notice, which ever are later.

15 7.4. Requests for Exclusion (Opt-Outs).

16 7.4.1. Each Class Member shall have forty-five (45) calendar days from the
17 mailing of the Notice within which to complete and postmark a written
18 request for exclusion, for return to the Settlement Administrator. The
19 request need not be in any particular form and will be considered a valid
20 request for exclusion so long as it communicates a clear desire by the
21 Settlement Class Member not to be included in the Settlement and/or
22 Settlement Class, and identifies his/her/their full name and date of birth,
23 and current address along with his/her/their signature. No requests for
24 exclusion shall be accepted if postmarked after the forty-five (45)
25 calendar day period for the filing of exclusions. Class Members are
26 responsible to maintain a photocopy of their request for exclusion,
27 reflecting that it was submitted in a timely manner. Any disputes
28 regarding the timeliness of a request for exclusion or whether a written

1 communication constitutes a valid request that cannot be resolved
2 between the Parties shall be determined by the Court or Arbitrator,
3 whose determination shall be final. A Class Member, who is also an
4 Aggrieved Employee, cannot opt-out of the PAGA component of the
5 Settlement.

6 7.4.2. Any Class Member who validly excludes himself/herself/themselves
7 from this Settlement is a Non-Participating Class Member under this
8 Agreement and shall not be bound by the Class Released Claims and
9 shall not be entitled to any portion of the Net Settlement Amount. Non-
10 Participating Class Members who are Aggrieved Employees are deemed
11 to release the claims identified in Paragraph 5.3 of this Agreement and
12 are eligible for an Individual PAGA Payment, which they cannot
13 exclude themselves from.

14 7.5. Challenges to Calculation of Workweeks. Each Class Member shall have forty-
15 five (45) days after the Administrator mails the Class Notice to challenge the
16 number of Class Workweeks and PAGA Pay Periods (if any) allocated to the
17 Class Member in the Class Notice. The Class Member may challenge the
18 allocation by communicating with the Administrator via fax, email or mail. The
19 Class Member must submit supporting documentation. In the absence of any
20 contrary documentation, the Administrator is entitled to presume that the
21 Workweeks contained in the Class Notice are correct so long as they are
22 consistent with the Class Data. The Administrator's determination of each
23 Class Member's allocation of Workweeks and/or Pay Periods shall be final and
24 not appealable or otherwise susceptible to challenge. The Administrator shall
25 promptly provide copies of all challenges to calculation of Workweeks and/or
26 Pay Periods to Defense Counsel and Class Counsel and the Administrator's
27 determination the challenges.
28

1 7.6. Objections to Settlement.

2 7.6.1. Only Participating Class Members may object to the class action
3 components of the Settlement and/or this Agreement, including
4 contesting the fairness of the Settlement, and/or amounts requested for
5 the Class Counsel Fees Payment, Class Counsel Litigation Expenses
6 Payment and/or Class Representative Service Payment. Class Members
7 cannot object to the Released PAGA Claims or the PAGA component
8 of the Settlement.

9 7.6.2. Participating Class Members may send written objections to the
10 Administrator, by fax, email, or mail. In the alternative, Participating
11 Class Members may appear in Court or at the Arbitration Hearing (or
12 hire an attorney to appear in Court or at the Arbitration Hearing) to
13 present verbal objections at the Final Approval Hearing. A Participating
14 Class Member who elects to send a written objection to the
15 Administrator must do so not later than forty-five (45) days after the
16 Administrator's mailing of the Class Notice

17 7.6.3. Any Class Member who does not affirmatively opt-out of the Settlement
18 by submitting a valid and timely request for exclusion, may object to
19 the approval of class action settlement ("Objecting Class Member").
20 Any Class Member who makes a valid and timely request for exclusion
21 has waived their right to object.

22 7.6.4. Non-Participating Class Members have no right to object to any of the
23 class action components of the Settlement.

24 7.6.5. At no time shall any of the Parties or their counsel seek to solicit or
25 otherwise encourage Class Members to submit written objections to the
26 Settlement or to appeal from the Court's or Arbitrator's Final Approval
27 and Final Judgment. Class Counsel shall not represent any Class
28 Members with respect to any such objections to this Settlement.

1 7.7. Administrator Duties. The Administrator has a duty to perform or observe all
2 tasks to be performed or observed by the Administrator contained in this
3 Agreement or otherwise.

4 7.7.1. Requests for Exclusion (Opt-outs) and Exclusion List. The
5 Administrator will promptly review on a rolling basis Requests for
6 Exclusion to ascertain their validity. Not later than five (5) business
7 days after the expiration of the deadline for submitting Requests for
8 Exclusion, the Administrator shall email a list to Defense Counsel
9 containing (a) the names and other identifying information of Class
10 Members who have timely submitted valid Requests for Exclusion
11 (“Exclusion List”); (b) the names and other identifying information of
12 Class Members who have submitted invalid Requests for Exclusion; (c)
13 copies of all Requests for Exclusion from Settlement submitted
14 (whether valid or invalid). Separately, the Administrator shall email a
15 list to Class Counsel containing (a) the names on the Exclusion List.

16 7.7.2. Weekly Reports. The Administrator must, on a weekly basis, provide
17 written reports to Class Counsel and Defense Counsel that, among other
18 things, tally the number of: Class Notices mailed or re-mailed, Class
19 Notices returned undelivered, Requests for Exclusion (whether valid or
20 invalid) received, objections received, challenges to Workweeks and/or
21 Pay Periods received and/or resolved, and checks mailed for Individual
22 Class Payments and Individual PAGA Payments (“Weekly Report”).
23 The Weekly Reports must include provide the Administrator’s
24 assessment of the validity of Requests for Exclusion and attach copies
25 of all Requests for Exclusion and objections received.

26 7.7.3. Administrator’s Declaration. Not later than fourteen (14) calendar days
27 before the date by which Plaintiff is required to file the Motion for Final
28 Approval of the Settlement, the Administrator will provide to Class

Counsel and Defense Counsel, a signed declaration suitable for filing in Court attesting to its due diligence and compliance with all of its obligations under this Agreement, including, but not limited to, its mailing of Class Notice, the Class Notices returned as undelivered, the re-mailing of Class Notices, attempts to locate Class Members, the total number of Requests for Exclusion from Settlement it received (both valid or invalid), the number of written objections and attach the Exclusion List. The Administrator will supplement its declaration as needed or requested by the Parties and/or the Court. Class Counsel is responsible for filing the Administrator's declaration(s) in Court.

7.7.4. Final Report by Settlement Administrator. Within 10 calendar days after the Administrator disburses all funds in the Gross Settlement Amount, the Administrator will provide Class Counsel and Defense Counsel with a final report detailing its disbursements by employee identification number only of all payments made under this Agreement. At least fifteen (15) calendar days before any deadline set by the Court or Arbitrator, the Administrator will prepare, and submit to Class Counsel and Defense Counsel, a signed declaration suitable for filing in Court or in Arbitration attesting to its disbursement of all payments required under this Agreement. Class Counsel is responsible for filing the Administrator's declaration in Court or in Arbitration.

8. CLASS SIZE ESTIMATES. Based on Defendants' records, Defendants estimate that, as of December 31, 2022 (1) there were 5,718 Class Members; and estimated that Class Members worked approximately 117,151 Workweeks during the Class Period. That amount may change slightly and insignificantly based on the October 23, 2015 through January 29, 2023 Class Period.

9. DEFENDANTS' RIGHT TO WITHDRAW. If ten percent (10%) or more of the Class Members elect to exclude themselves from this Settlement, Defendants will have

1 the sole right, but not the obligation, to void this Settlement within fourteen (14)
2 calendar days after the deadline for Class Members to opt out or object, as set forth in
3 the Class Notice. If Defendants exercise their rights under this Paragraph: (a) this
4 Settlement Agreement and the Settlement shall be terminated and become void and of
5 no effect, except for the obligation of Defendants to pay for any and all expenses
6 incurred in connection with the notice and administration of the Settlement on or before
7 the date on which the Settlement is terminated; (b) any actions take or to be taken in
8 connection with this Settlement Agreement and the Settlement shall become null and
9 void and of no effect; (c) this Settlement Agreement and Settlement and any hearings
10 or proceedings thereunder shall not be referred to or used as evidence for or against any
11 party or Class Member in this or any other action or proceeding; and (d) all pretrial
12 proceedings, including discovery, shall resume 60 calendar days thereafter as if this
13 Settlement had not been submitted for approval.

14 **10. MOTION FOR FINAL APPROVAL.** Not later than sixteen (16) court days before
15 the calendared Final Approval Hearing, Plaintiff will file in Court or in Arbitration, a
16 motion for final approval of the Settlement that include a request for approval of the
17 PAGA settlement under Labor Code section 2699, subd. (l), a Proposed Final Approval
18 Order and a proposed Judgment (collectively “Motion for Final Approval”). Plaintiff
19 shall provide drafts of these documents to Defense Counsel not later than fourteen (14)
20 calendar days prior to filing the Motion for Final Approval. Class Counsel and Defense
21 Counsel will expeditiously meet and confer in person or by telephone, and in good
22 faith, to resolve any disagreements concerning the Motion for Final Approval.

23 10.1. Response to Objections. Each Party retains the right to respond to any objection
24 raised by a Participating Class Member, including the right to file responsive
25 documents in Court or in Arbitration no later than five (5) court days prior to
26 the Final Approval Hearing, or as otherwise ordered or accepted by the Court
27 or Arbitrator.
28

1 10.2. Duty to Cooperate. If the Court or Arbitrator does not grant Final Approval or
2 conditions Final Approval on any material change to the Settlement (including,
3 but not limited to, the scope of release to be granted by Class Members), the
4 Parties will expeditiously work together in good faith to address the Court's or
5 Arbitrator's concerns by revising the Agreement as necessary to obtain Final
6 Approval. The Court's or Arbitrator's decision to award less than the amounts
7 requested for the Class Representative Service Payment, Class Counsel Fees
8 Payment, Class Counsel Litigation Expenses Payment and/or Administrator
9 Expenses Payment shall not constitute a material modification to the Agreement
10 within the meaning of this paragraph.

11 10.3. Continuing Jurisdiction of the Court or Arbitrator. The Parties agree that, after
12 entry of Judgment, the Court or Arbitrator will retain jurisdiction over the
13 Parties, Action, and the Settlement solely for purposes of (i) enforcing this
14 Agreement and/or Judgment, (ii) addressing settlement administration matters,
15 and (iii) addressing such post-Judgment matters as are permitted by law. After
16 the Arbitrator issues is order granting final approval and entering judgment, the
17 Parties will submit the Arbitrator's order and judgment to the Superior Court
18 for the County of Tulare or County of Kings to be confirmed by the Court.

19 10.4. Waiver of Right to Appeal. Provided the Judgment is consistent with the terms
20 and conditions of this Agreement, specifically including the Class Counsel Fees
21 Payment and Class Counsel Litigation Expenses Payment reflected set forth in
22 this Settlement, the Parties, their respective counsel, and all Participating Class
23 Members who did not object to the Settlement as provided in this Agreement,
24 waive all rights to appeal from the Judgment, including all rights to post-
25 judgment and appellate proceedings, the right to file motions to vacate
26 judgment, motions for new trial, extraordinary writs, and appeals. The waiver
27 of appeal does not include any waiver of the right to oppose such motions, writs
28 or appeals. If an objector appeals the Judgment, the Parties' obligations to

perform under this Agreement will be suspended until such time as the appeal is finally resolved and the Judgment becomes final, except as to matters that do not affect the amount of the Net Settlement Amount.

10.5. Appellate Court Orders to Vacate, Reverse, or Materially Modify Judgment. If the reviewing Court vacates, reverses, or modifies the Judgment in a manner that requires a material modification of this Agreement (including, but not limited to, the scope of release to be granted by Class Members), this Agreement shall be null and void. The Parties shall nevertheless expeditiously work together in good faith to address the appellate court's concerns and to obtain Final Approval and entry of Judgment. An appellate decision to vacate, reverse, or modify the Court's award of the Class Representative Service Payment or any payments to Class Counsel shall not constitute a material modification of the Judgment within the meaning of this paragraph, as long as the Gross Settlement Amount remains unchanged.

11. **AMENDED JUDGMENT.** If any amended judgment is required under Code of Civil Procedure section 384, the Parties will work together in good faith to jointly submit a proposed amended judgment.

12. **ADDITIONAL PROVISIONS.**

12.1. No Admission of Liability, Class Certification or Representative Manageability for Other Purposes. This Agreement represents a compromise and settlement of highly disputed claims. Nothing in this Agreement is intended or should be construed as an admission by Defendants that any of the allegations in the Operative Complaint have merit or that Defendants have any liability for any claims asserted; nor should it be intended or construed as an admission by Plaintiff that Defendants' defenses in the Action have merit. The Parties agree that class certification and representative treatment is for purposes of this Settlement only. If, for any reason the Court or Arbitrator does not grant Preliminary Approval, Final Approval or enter Judgment, Defendants reserve

1 the right to contest certification of any class for any reason, and Defendants
2 reserve all available defenses to the claims in the Action, and Plaintiff reserves
3 the right to move for class certification on any grounds available and to contest
4 Defendants' defenses. The Settlement, this Agreement and Parties' willingness
5 to settle the Action will have no bearing on, and will not be admissible in
6 connection with, any litigation (except for proceedings to enforce or effectuate
7 the Settlement and this Agreement).

8 12.2. No Solicitation. The Parties separately agree that they and their respective
9 counsel and employees will not solicit any Class Member to opt out of or object
10 to the Settlement, or appeal from the Judgment, either directly or indirectly,
11 through any means. Nothing in this paragraph shall be construed to restrict
12 Class Counsel's ability to communicate with Class Members in accordance
13 with Class Counsel's ethical obligations owed to Class Members.

14 12.3. Integrated Agreement. Upon execution by all Parties and their counsel, this
15 Agreement together with its attached exhibits shall constitute the entire
16 agreement between the Parties relating to the Settlement, superseding any and
17 all oral representations, warranties, covenants, or inducements made to or by
18 any Party.

19 12.4. Attorney Authorization. Class Counsel and Defense Counsel separately
20 warrant and represent that they are authorized by Plaintiff and Defendants,
21 respectively, to take all appropriate action required or permitted to be taken by
22 such Parties pursuant to this Agreement to effectuate its terms, and to execute
23 any other documents reasonably required to effectuate the terms of this
24 Agreement including any amendments to this Agreement.

25 12.5. Cooperation. The Parties and their counsel will cooperate with each other and
26 use their best efforts, in good faith, to implement the Settlement by, among
27 other things, modifying the Agreement, submitting supplemental evidence and
28 supplementing points and authorities as requested by the Court or Arbitrator.

1 In the event the Parties are unable to agree upon the form or content of any
2 document necessary to implement the Settlement, or on any modification of the
3 Agreement that may become necessary to implement the Settlement, the Parties
4 will seek the assistance of a mediator and/or the Court or Arbitrator for
5 resolution.

6 12.6. No Prior Assignments. The Parties separately represent and warrant that they
7 have not directly or indirectly assigned, transferred, encumbered, or purported
8 to assign, transfer, or encumber to any person or entity and portion of any
9 liability, claim, demand, action, cause of action, or right released and
10 discharged by the Party in this Settlement.

11 12.7. No Tax Advice. Neither Plaintiff, Class Counsel, Defendants nor Defense
12 Counsel are providing any advice regarding taxes or taxability, nor shall
13 anything in this Settlement be relied upon as such within the meaning of United
14 States Treasury Department Circular 230 (31 CFR Part 10, as amended) or
15 otherwise.

16 12.8. Modification of Agreement. This Agreement, and all parts of it, may be
17 amended, modified, changed, or waived only by an express written instrument
18 signed by all Parties or their representatives, and approved by the Court or
19 Arbitrator.

20 12.9. Agreement Binding on Successors. This Agreement will be binding upon, and
21 inure to the benefit of, the successors of each of the Parties.

22 12.10. Applicable Law. All terms and conditions of this Agreement and its exhibits
23 will be governed by and interpreted according to the internal laws of the state
24 of California, without regard to conflict of law principles.

25 12.11. Cooperation in Drafting. The Parties have cooperated in the drafting and
26 preparation of this Agreement. This Agreement will not be construed against
27 any Party on the basis that the Party was the drafter or participated in the
28 drafting.

1 12.12. Confidentiality. To the extent permitted by law, all agreements made, and
2 orders entered during Action and in this Agreement relating to the
3 confidentiality of information shall survive the execution of this Agreement.

4 12.13. Headings. The descriptive heading of any section or paragraph of this
5 Agreement is inserted for convenience of reference only and does not constitute
6 a part of this Agreement.

7 12.14. Calendar Days. Unless otherwise noted, all reference to “days” in this
8 Agreement shall be to calendar days. In the event any date or deadline set forth
9 in this Agreement falls on a weekend or federal legal holiday, such date or
10 deadline shall be on the first business day thereafter.

11 12.15. Notice. All notices, demands or other communications between the Parties in
12 connection with this Agreement will be in writing and deemed to have been
13 duly given as of the fifth business day after mailing by United States mail, or
14 the third business day after sending by email, addressed as follows:

15 To Plaintiff: Jeremy F. Bollinger
16 Moss Bollinger LLP
17 15300 Ventura Blvd., Ste. 207
18 Sherman Oaks, CA 91430
19 jeremy@mossbollinger.com

20 To Thomas E. Campagne
21 Defendants: Law Firm of Campagne & Campagne
22 Airport Office Center
23 1685 N. Helm Avenue
24 Fresno, California 93727
tcampagne@campagnelaw.com

25 12.16. Execution in Counterparts. This Agreement may be executed in one or more
26 counterparts by facsimile, electronically (i.e. DocuSign), or email which for
27 purposes of this Agreement shall be accepted as an original. All executed
28 counterparts and each of them will be deemed to be one and the same instrument

1 if counsel for the Parties will exchange between themselves signed
2 counterparts. Any executed counterpart will be admissible in evidence to prove
3 the existence and contents of this Agreement.

4 12.17. Stay of Litigation. The Parties agree that upon the execution of this Agreement
5 the litigation shall be stayed, except to effectuate the terms of this Agreement.
6 The Parties further agree that upon the signing of this Agreement that pursuant
7 to CCP section 583.330 to extend the date to bring a case to trial under CCP
8 section 583.310 for the entire period of this settlement process.

9
10 **SIGNATURES ON NEXT PAGE**
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

[Signature Page]

IN WITNESS HEREOF, the Parties hereto knowingly and voluntarily executed this Joint Stipulation of Settlement and Release between Plaintiff and Defendants as of the date(s) set forth below:

Dated: 5/15/2023, 2023

DocuSigned by:

 14488E27CA96472...
 LETICIA PINEDA
 Plaintiff and Class Representative

Dated: _____, 2023

 CASEY JONES
 Defendant Sun Valley Packing, L.P.

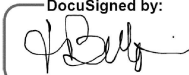
Dated: _____, 2023

 CASEY JONES
 Defendant Valle Del Sol Jones, LLC

APPROVED AS TO FORM AND CONTENT:

Dated: 5/15/2023, 2023

MOSS BOLLINGER, LLP

By: 
 4D110576CE04438...
 Jeremy F. Bollinger
 Dennis F. Moss
 Ari E. Moss
 Jorge A. Flores
 Attorneys for Plaintiff LETICIA PINEDA

Dated: _____, 2023

LAW FIRM OF CAMPAGNE & CAMPAGNE A
 PROF. CORP.

By: _____
 Thomas E. Campagne
 Carter Norfleet
 Attorneys for Defendants Sun Valley Packing, L.P.
 and Valle Del Sol Jones, LLC

[Signature Page]

IN WITNESS HEREOF, the Parties hereto knowingly and voluntarily executed this Joint Stipulation of Settlement and Release between Plaintiff and Defendants as of the date(s) set forth below:

Dated: _____, 2023

LETICIA PINEDA
Plaintiff and Class Representative

Dated: May 25, 2023

CASEY JONES
Defendant Sun Valley Packing, L.P.

Dated: May 25, 2023

CASEY JONES
Defendant Valle Del Sol Jones, LLC

APPROVED AS TO FORM AND CONTENT:

Dated: _____, 2023

MOSS BOLLINGER, LLP

By: _____

Jeremy F. Bollinger
Dennis F. Moss
Ari E. Moss
Jorge A. Flores
Attorneys for Plaintiff LETICIA PINEDA

Dated: 5/25, 2023

LAW FIRM OF CAMPAGNE & CAMPAGNE A
PROF. CORP.

By: Thomas E. Campagne

Thomas E. Campagne
Attorneys for Defendants Sun Valley Packing, L.P.
and Valle Del Sol Jones, LLC

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

EXHIBIT

A

1 **COURT APPROVED NOTICE OF CLASS ACTION AND PAGA SETTLEMENT AND**
2 **HEARING DATE FOR FINAL COURT APPROVAL**

3 *In re Arbitration of Leticia Pineda v. Sun Valley Packing, L.P. et al.*

4 ***The Arbitrator authorized this Notice. Read it carefully!***

5 ***It's not junk mail, spam, an advertisement, or solicitation by a lawyer. You are not being sued.***

6 **You may be eligible to receive money** from an employee class action and PAGA lawsuit
7 (“Action”) against Sun Valley Packing, L.P. and Valle Del Sol Jones, LLC (collectively referred to as
8 “Sun Valley” or “Defendants”) for alleged wage and hour violations. The Action was filed by a former
9 Sun Valley employee, Leticia Pineda (“Plaintiff”), and seeks payment of (1) unpaid overtime wages,
10 meal period premiums, inaccurate wage statement penalties, waiting time penalties on behalf of a class
11 of current and former non-exempt employees of Defendants employed in California at any time from
12 October 23, 2015 through January 29, 2023 (“Class Period”) (“Class Members”); and (2) penalties
13 under the California Private Attorneys General Act (“PAGA”) for all current and former non-exempt,
14 hourly paid employees of Defendants employed in California at any time from October 21, 2018
15 through January 29, 2023 (“PAGA Period”) (“Aggrieved Employees”). Pursuant to the arbitration
16 agreement entered into between Plaintiff and Defendants, the Parties submitted their Settlement
17 Agreement to an Arbitrator for approval and notice to the Class.

18 The proposed Settlement has two main parts: (1) a Class Settlement requiring Defendants to
19 fund Individual Class Payments, and (2) a PAGA Settlement requiring Defendants to fund Individual
20 PAGA Payments and pay penalties to the California Labor and Workforce Development Agency
21 (“LWDA”).

22 Based on Defendants’ records, and the Parties’ current assumptions, your **Individual Class**
23 **Payment is estimated to be \$_____ (less withholding) and your Individual PAGA Payment is**
24 **estimated to be \$_____.** The actual amount you may receive likely will be different and will depend
25 on a number of factors. (If no amount is stated for your Individual PAGA Payment, then according to
26 Defendant’s records you are not eligible for an Individual PAGA Payment under the Settlement
27 because you did not work during the PAGA Period.)

28 The above estimates are based on Defendants’ records showing that **you worked**

1 **workweeks** during the Class Period and **you worked** **workweeks** during the PAGA Period
2 and that **you experienced** **seasonal layoffs**. If you believe that you worked more workweeks
3 during either period, you can submit a challenge by the deadline date. *See* Section 4 of this Notice.

4 The Arbitrator has already preliminarily approved the proposed Settlement and approved this
5 Notice. The Arbitrator has not yet decided whether to grant final approval. Your legal rights are
6 affected whether you act or not act. Read this Notice carefully. You will be deemed to have carefully
7 read and understood it. At the Final Approval Hearing, the Arbitrator will decide whether to finally
8 approve the Settlement and how much of the Settlement will be paid to Plaintiff and Plaintiff's
9 attorneys ("Class Counsel"). The Arbitrator will also decide whether to enter a judgment that requires
10 Defendants to make payments under the Settlement and requires Class Members and Aggrieved
11 Employees to give up their rights to assert certain claims against Defendants.

12 If you worked for Defendants during the Class Period and/or the PAGA Period, you have two
13 basic options under the Settlement:

14 (1) **Do Nothing.** You don't have to do anything to participate in the proposed
15 Settlement and be eligible for an Individual Class Payment and/or an Individual
16 PAGA Payment. If you do nothing, and the Arbitrator approves the Settlement, as
17 a Participating Class Member, though, you will give up your right to assert Class
18 Period wage claims and PAGA Period penalty claims against Howmet.

19 (2) **Opt-Out of the Class Settlement.** You can exclude yourself from the Class
20 Settlement (opt-out) by submitting the written Request for Exclusion or otherwise
21 notifying the Administrator in writing. If you opt-out of the Settlement, you will
22 not receive an Individual Class Payment. You will, however, preserve your right
23 to personally pursue Class Period wage claims against Defendants, and, if you are
24 an Aggrieved Employee, remain eligible for an Individual PAGA Payment and will
25 be subject to the Released PAGA Claims. If you are an Aggrieved Employee, you
26 cannot opt-out of the PAGA portion of the proposed Settlement.

27 **Defendants will not retaliate against you for any actions you take with respect to the**
28 **proposed Settlement.**

SUMMARY OF YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT

You Don't Have to Do Anything to Participate in the Settlement	If you do nothing, you will be a Participating Class Member, eligible for an Individual Class Payment and an Individual PAGA Payment (if any). In exchange, you will give up your right to assert the wage claims against Defendants that are covered by this Settlement ("Released Claims").
You Can Opt-out of the Class Settlement but not the PAGA Settlement The Opt-out Deadline is [redacted]	If you don't want to fully participate in the proposed Settlement, you can opt-out of the Class Settlement by sending the Administrator a written Request for Exclusion. Once excluded, you will be a Non-Participating Class Member and no longer eligible for an Individual Class Payment. Non-Participating Class Members cannot object to any portion of the proposed Settlement. <i>See</i> Section 6 of this Notice. You cannot opt-out of the PAGA portion of the proposed Settlement. Howmet must pay Individual PAGA Payments to all Aggrieved Employees and the Aggrieved Employees must give up their rights to pursue Released PAGA Claims.
Participating Class Members Can Object to the Class Settlement but not the PAGA Settlement Written Objections Must be Submitted by [redacted]	All Class Members who do not opt-out ("Participating Class Members") can object to any aspect of the proposed Settlement. The Court's decision whether to finally approve the Settlement will include a determination of how much will be paid to Class Counsel and Plaintiff who pursued the Action on behalf of the Class. You are not personally responsible for any payments to Class Counsel or Plaintiff, but every dollar paid to Class Counsel and Plaintiff reduces the overall amount paid to Participating Class Members. You can object to the amounts requested by Class Counsel or Plaintiff if you think they are unreasonable. <i>See</i> Section 7 of this Notice.
You Can Participate in the [redacted] Final Approval Hearing	The Final Approval Hearing is scheduled to take place on [redacted] at [redacted] [address]. You don't have to attend but you do have the right to appear (or hire an attorney to appear on your behalf at your own cost), in person, by telephone or by using the Arbitrator's virtual appearance platform. Participating Class Members can verbally object to the Settlement at the Final Approval Hearing. <i>See</i> Section 8 of this Notice.
You Can Challenge the Calculation of Your Workweeks/Pay Periods Written Challenges Must be Submitted by [redacted]	The amount of your Individual Class Payment and PAGA Payment (if any) depend on how many workweeks you worked at least one day during the Class Period and how many Pay Periods you worked at least one day during the PAGA Period, respectively. The number Class Period Workweeks and number of PAGA Period Pay Periods you worked according to Defendants' records is stated on the first page of this Notice. If you disagree with either of these numbers,

you must challenge it by . See Section 4 of this Notice.

1. WHAT IS THE ACTION ABOUT?

Plaintiff is a former Sun Valley employee. The Action accuses Sun Valley of violating California labor laws by failing to pay all overtime wages; failing to provide adequate meal periods and pay all premiums owed; failing to furnish accurate itemized wage statements; failing to pay all wages upon cessation of employment; and unfair competition. Based on the same claims, Plaintiff asserted a claim for civil penalties for the same labor code violations under the California Private Attorneys General Act (Labor Code §§ 2698, et seq.) (“PAGA”). Plaintiff is represented by attorneys in the Action: Jeremy F. Bollinger, Dennis F. Moss, Ari E. Moss, and Jorge A. Flores of Moss Bollinger LLP (“Class Counsel.”)

Defendants deny violating any laws or failing to pay any wages as alleged in the Action and contends it complied with all applicable laws.

2. WHAT DOES IT MEAN THAT THE ACTION HAS SETTLED?

So far, the Court has made no determination whether Defendants or Plaintiff is correct on the merits.

In the meantime, Plaintiff and Defendants hired an experienced, neutral mediator in an effort to resolve the Action by negotiating an to end the case by agreement (settle the case) rather than continuing the expensive and time-consuming process of litigation. The negotiations were successful. By signing a lengthy written settlement agreement (“Agreement”) and agreeing to jointly ask the Arbitrator to enter a judgment ending the Action and enforcing the Agreement, Plaintiff and Defendants have negotiated a proposed Settlement that is subject to the Arbitrator’s Final Approval and confirmation by the Court. Both sides agree the proposed Settlement is a compromise of disputed claims. By agreeing to settle, Defendants do not admit any violations or concede the merit of any claims.

Plaintiff and Class Counsel agree that: (1) Sun Valley has agreed to pay a fair, reasonable and adequate amount considering the strength of the claims and the risks and uncertainties of continued litigation; and (2) Settlement is in the best interests of the Class Members and Aggrieved Employees.

1 The Arbitrator preliminarily approved the proposed Settlement as fair, reasonable and adequate,
2 authorized this Notice, and scheduled a hearing to determine Final Approval.

3 **3. WHAT ARE THE IMPORTANT TERMS OF THE PROPOSED**
4 **SETTLEMENT?**

5 1. Sun Valley Will Pay Two Million Five Hundred Thousand Dollars (\$2,500,000) as the
6 Gross Settlement Amount (“Gross Settlement”). Sun Valley has agreed to deposit the Gross
7 Settlement into an account controlled by the Administrator of the Settlement. The Administrator will
8 use the Gross Settlement to pay the Individual Class Payments, Individual PAGA Payments, the Class
9 Representative Service Payment, Class Counsel Fees Payment, the Class Counsel Litigation Expenses
10 Payment, the Administrator Expenses Payment, and penalties to be paid to the California Labor and
11 Workforce Development Agency (“LWDA”). Assuming the Court grants Final Approval, Defendants
12 will fund the Gross Settlement not more than thirty (30) calendar days after the Judgment entered by
13 the Court becomes final. The Judgment will be final on the date the Court confirms the Arbitrator’s
14 Judgment, or a later date if Participating Class Members object to the proposed Settlement or the
15 Judgment is appealed.

16 2. Court Approved Deductions from Gross Settlement. At the Final Approval Hearing,
17 Plaintiff and/or Class Counsel will ask the Court to approve the following deductions from the Gross
18 Settlement, the amounts of which will be decided by the Court at the Final Approval Hearing:

19 A. Up to \$1,000,000.00 (40% of the Gross Settlement) to Class Counsel for
20 attorneys’ fees (subject to increase if the Gross Settlement increases) and up to
21 \$25,000 for their litigation expenses. To date, Class Counsel have worked and
22 incurred expenses on the Action without payment.

23 B. Up to \$10,000 as a Class Representative Service Payment for filing the Action,
24 working with Class Counsel and representing the Class. A Class Representative
25 Service Payment will be the only monies Plaintiff will receive other than
26 Plaintiff’s Individual Class Payment and any Individual PAGA Payment.

27 C. Up to \$37,500 to the Administrator for services administering the Settlement.
28

1 D. Approximately \$50,000 for PAGA Penalties for PAGA Penalties, allocated
2 75% to the LWDA PAGA Payment and 25% in Individual PAGA Payments to
3 the Aggrieved Employees based on their PAGA Period Pay Periods.

4 Participating Class Members have the right to object to any of these deductions. The Court
5 will consider all objections.

6 3. Net Settlement Distributed to Class Members. After making the above deductions in
7 amounts approved by the Arbitrator, the Administrator will distribute the rest of the Gross Settlement
8 (the “Net Settlement”) by making Individual Class Payments to Participating Class Members based
9 on their Class Period Workweeks.

10 4. Taxes Owed on Payments to Class Members. Plaintiff and Howmet are asking the
11 Court to approve an allocation of 10% of each Individual Class Payment to taxable wages (“Wage
12 Portion”) and 90% to non-economic damages and interest (“Non-Wage Portion.”). The Wage Portion
13 is subject to withholdings and will be reported on IRS W-2 Forms. (Defendants will separately pay
14 employer payroll taxes it owes on the Wage Portion. The Individual PAGA Payments are counted as
15 penalties rather than wages for tax purposes. The Administrator will report the Individual PAGA
16 Payments and the Non-Wage Portions of the Individual Class Payments on IRS 1099 Forms.

17 Although Plaintiff and Defendants have agreed to these allocations and think they are fair,
18 neither side is giving you any advice on whether your Payments are taxable or how much you might
19 owe in taxes. You are responsible for paying all taxes (including penalties and interest on back taxes)
20 on any Payments received from the proposed Settlement. You should consult a tax advisor if you have
21 any questions about the tax consequences of the proposed Settlement.

22 5. Need to Promptly Cash Payment Checks. The front of every check issued for
23 Individual Class Payments and Individual PAGA Payments will show the date when the check expires
24 (the void date). If you don’t cash it by the void date, your check will be automatically cancelled, and
25 the monies will be transmitted to Central California Food Bank.

26 6. Requests for Exclusion from the Class Settlement (Opt-Outs). You will be treated as a
27 Participating Class Member, participating fully in the Class Settlement, unless you notify the
28 Administrator in writing, not later than , that you wish to opt-out. The easiest way to

1 notify the Administrator is to send a written and signed Request for Exclusion by the [REDACTED]
2 Response Deadline. The Request for Exclusion should be a letter from a Class Member or his/her
3 representative setting forth a Class Member's name, present address, telephone number, and a simple
4 statement electing to be excluded from the Settlement. Excluded Class Members (i.e., Non-
5 Participating Class Members) will not receive Individual Class Payments, but will preserve their rights
6 to personally pursue wage and hour claims against Sun Valley. You cannot opt-out of the PAGA
7 portion of the Settlement or the Released PAGA Claims. Class Members who exclude themselves
8 from the Class Settlement (Non-Participating Class Members) remain eligible for Individual PAGA
9 Payments and are required to give up their right to assert PAGA claims against Howmet based on the
10 PAGA Period facts alleged in the Action (the "Released PAGA Claims").

11 7. The Proposed Settlement Will be Void if the Court Denies Final Approval. It is
12 possible the Arbitrator will decline to grant Final Approval of the Settlement or decline enter a
13 Judgment. It is also possible the Arbitrator will enter a Judgment that is reversed on appeal. Plaintiff
14 and Defendants have agreed that, in either case, the Settlement will be void: Sun Valley will not pay
15 any money and Class Members will not release any claims against Sun Valley.

16 8. Administrator. The Court has appointed a neutral company, **Phoenix Settlement**
17 **Administrators** (the "Administrator") to send this Notice, calculate and make payments, and process
18 Class Members' Requests for Exclusion. The Administrator will also decide Class Member
19 Challenges over Workweeks, mail and re-mail settlement checks and tax forms, and perform other
20 tasks necessary to administer the Settlement. The Administrator's contact information is contained in
21 Section 9 of this Notice.

22 9. Participating Class Members' Release. After the Judgment is final and Howmet has
23 fully funded the Gross Settlement and separately paid all employer payroll taxes, Participating Class
24 Members will be legally barred from asserting any of the claims released under the Settlement. This
25 means that unless you opted out by validly excluding yourself from the Class Settlement, you cannot
26 sue, continue to sue, or be part of any other lawsuit against Defendants for wages based on the Class
27 Period facts and PAGA penalties based on PAGA Period facts, as alleged in the Action and resolved
28 by this Settlement.

1 The Participating Class Members will be bound by the following release:

2 All claims under state, federal and local law that were set forth, or reasonably
3 could have been set forth based on the facts alleged in the Operative Complaint
4 as to the Class Members only with regard to those claims for or related to
5 alleged (1) failure to pay proper overtime wages in violation of Labor Code
6 sections 510, 1194, 1197, and 1198, and the applicable IWC Wage Order(s);
7 (2) failure to provide compliant meal periods and pay missed meal period
8 premiums in violation of Labor Code sections 226.7 and 512, and the applicable
9 IWC Wage Order(s); (3) failure to pay all wages due and owing at separation
10 in violation of Labor Code sections 201, 202, and 203; (4) failure to provide
11 complete and accurate wage statements in violation of Labor Code section 226;
12 (5) deceptive, fraudulent, or otherwise unlawful business practices based on the
13 foregoing in violation of California's Unfair Competition Law (Bus. & Prof.
14 Code, §§ 17200–17210); (6) statutory penalties based on the foregoing pursuant
15 to PAGA (Lab. Code, §§ 2698-2699.6); and (7) all claims for penalties, interest,
16 fees, costs based on the foregoing (the "Released Claims.") The released parties
17 shall include Sun Valley Packing, LP, Valle Del Sol Jones, LLC, their officers,
18 shareholders, directors, agents, employees, attorneys, and insurers ("the
19 Released Parties").

20 Aggrieved Employees will be bound by the following release:

21 Aggrieved Employees on behalf of themselves and their respective former and
22 present representatives, agents, attorneys, heirs, administrators, successors, and
23 assigns, release, discharge, and are forever barred from pursuing against
24 Defendants and the Released Parties any and all claims for civil penalties under
25 PAGA (the California Labor Code Private Attorneys General Act (Cal. Labor
26 Code § 2698 et seq.)) for any and all claims set forth, or reasonably could have
27 been set forth based on the facts alleged in the Operative Complaint or PAGA
28 Notice, including: (1) unpaid overtime wages in violation of Labor Code
sections 510, 1194, 1197, and 1198, and the applicable IWC Wage Order(s);
(2) failure to provide compliant meal periods and pay missed meal period
premiums in violation of Labor Code sections 226.7 and 512, and the applicable
IWC Wage Order(s); (3) failure to pay all wages due and owing at separation
in violation of Labor Code sections 201, 202, and 203 ("Released PAGA
Claims").

20 4. HOW WILL THE ADMINISTRATOR CALCULATE MY PAYMENT?

21 1. Individual Class Payments. The Administrator will calculate Individual Class
22 Payments from the Class Distribution Fund calculated according to the following formula: The
23 Administrator shall add together all Workweeks worked by Class Members during the Class Period
24 (excluding those worked by Non-Participating Class Members) to determine the "Participating Class's
25 Total Weeks." For each Workweek worked by a Participating Class Member during the Class Period,
26 the Participating Class Member will receive one (1) "Net Settlement Share". Each Participating Class
27 Member who received a bonus will receive an additional five (5) "Net Settlement Shares" to reflect
28 their potential claims arising from failure to factor bonuses into the regular rate of pay for overtime.

1 For every Workweek worked by a Participating Class Member during the period of October 23, 2018
2 through January 29, 2023, the Participating Class Member will receive one additional (1) “Net
3 Settlement Share” to reflect their potential claims for inaccurate wage statement penalties. For every
4 season a Participating Class Member worked between October 23, 2016 through January 29, 2023,
5 the Participating Class Member will receive an additional five (5) “Net Settlement Shares” to reflect
6 their potential claim for waiting time penalties due to seasonal layoffs. The Administrator shall then
7 divide each Participating Class Member’s total Net Settlement Shares by the Participating Class’s Total
8 Weeks in order to determine the “Percentage Share” of each Participating Class Member. Each
9 Participating Class Member shall be entitled to receive a Settlement Award equal to his or her
10 Percentage Share of the Class Distribution Fund.

11 2. Individual PAGA Payments. The Administrator will calculate Individual PAGA
12 Payments by (a) dividing approximately \$12,500 by the total number of PAGA Pay Periods worked
13 by all Aggrieved Employees and (b) multiplying the result by the number of PAGA Period Pay Periods
14 worked by each individual Aggrieved Employee.

15 3. Workweek/Pay Period Challenges. The number of Class Workweeks you worked
16 during the Class Period and the number of PAGA Pay Periods you worked during the PAGA Period,
17 as recorded in Defendants’ records, are stated in the first page of this Notice. You have until [REDACTED]
18 to challenge the number of Workweeks and/or Pay Periods credited to you. You can submit your
19 challenge by signing and sending a letter to the Administrator via mail, email or fax. Section 9 of this
20 Notice has the Administrator’s contact information. You need to support your challenge by sending
21 copies of pay stubs or other records. The Administrator will accept Defendants’ calculation of
22 Workweeks and/or Pay Periods based on Defendants’ records as accurate unless you send copies of
23 records containing contrary information. You should send copies rather than originals because the
24 documents will not be returned to you. The Administrator will resolve Workweek and/or Pay Period
25 challenges based on your submission and on input from Class Counsel (who will advocate on behalf
26 of Participating Class Members) and Defendants’ Counsel. The Administrator’s decision is final. You
27 can’t appeal or otherwise challenge its final decision.
28

5. HOW WILL I GET PAID?

1. Participating Class Members. The Administrator will send, by U.S. mail, a single check to every Participating Class Member (i.e., every Class Member who doesn't opt-out) including those who also qualify as Aggrieved Employees. The single check will combine the Individual Class Payment and the Individual PAGA Payment. The Released Claims will apply to you whether you cash or don't cash the Individual Class Payment and/or Individual PAGA Payment check(s).

2. Non-Participating Class Members. The Administrator will send, by U.S. mail, a single Individual PAGA Payment check to every Aggrieved Employee who opts out of the Class Settlement (i.e., every Non-Participating Class Member). The PAGA Settlement will apply to you whether you cash or do not cash the Individual PAGA Payment check.

Your check will be sent to the same address as this Notice. If you change your address, be sure to notify the Administrator as soon as possible. Section 9 of this Notice has the Administrator's contact information.

6. HOW DO I OPT-OUT OF THE CLASS SETTLEMENT?

Submit a written and signed letter with your name, present address, telephone number, and a simple statement that you do not want to participate in the Settlement. The Administrator will exclude you based on any writing communicating your request be excluded. Be sure to personally sign your request, identify the Action as *Leticia Pineda v. Sun Valley Packing, L.P., et al.*, and include your identifying information (full name, address, telephone number, approximate dates of employment, and social security number for verification purposes). You must make the request yourself. If someone else makes the request for you, it will not be valid. **The Administrator must be sent your request to be excluded by [REDACTED], or it will be invalid.** Section 9 of the Notice has the Administrator's contact information.

7. HOW DO I OBJECT TO THE SETTLEMENT?

Only Participating Class Members have the right to object to the Settlement. Before deciding whether to object, you may wish to see what Plaintiff and Defendants are asking the Arbitrator to approve. At least sixteen (16) court days before the [INSERT DATE OF FINAL APPROVAL HEARING] Final Approval Hearing, Class Counsel and/or Plaintiff will file with the Arbitrator (1) a

1 Motion for Final Approval that includes, among other things, the reasons why the proposed Settlement
2 is fair, and (2) a Motion for Fees, Litigation Expenses and Service Award stating (i) the amount Class
3 Counsel is requesting for attorneys' fees and litigation expenses; and (ii) the amount Plaintiff is
4 requesting as a Class Representative Service Award. You can view these documents on the
5 Administrator's Website _____ (url) _____.

6 A Participating Class Member who disagrees with any aspect of the Agreement, the Motion
7 for Final Approval and/or Motion for Fees, Litigation Expenses and Service Award may wish to
8 object, for example, that the proposed Settlement is unfair, or that the amounts requested by Class
9 Counsel or Plaintiff are too high or too low. **The deadline for sending written objections to the**
10 **Administrator is _____**. Be sure to tell the Administrator what you object to, why you object,
11 and any facts that support your objection. Make sure you identify the Action **Leticia Pineda v. Sun**
12 **Valley Packing, L.P., et al.,** and include your name, current address, telephone number, and
13 approximate dates of employment for and sign the objection. Section 9 of this Notice has the
14 Administrator's contact information.

15 Alternatively, a Participating Class Member can object by attending the Final Approval
16 Hearing. You (or an attorney of your choice) should be ready to tell the Arbitrator what you object
17 to, why you object, and any facts that support your objection. See Section 8 of this Notice
18 (immediately below) for specifics regarding the Final Approval Hearing.

19 **8. CAN I ATTEND THE FINAL APPROVAL HEARING?**

20 You can, but you don't have to, attend the Final Approval Hearing on _____ at
21 (time), located at _____ [address] _____. At the Hearing, the Arbitrator will decide whether
22 to grant Final Approval of the Settlement and how much of the Gross Settlement will be paid to Class
23 Counsel, Plaintiff, and the Administrator. The Arbitrator will invite comment from objectors, Class
24 Counsel and Defense Counsel before making a decision. You can attend (or hire a lawyer to attend)
25 either personally or virtually via _____.

26 It's possible the Court will reschedule the Final Approval Hearing. You should check the
27 Administrator's website _____ beforehand or contact Class
28 Counsel to verify the date and time of the Final Approval Hearing.

1 **9. HOW CAN I GET MORE INFORMATION?**

2 The Agreement sets forth everything Defendants and Plaintiff have promised to do under the
3 proposed Settlement. The easiest way to read the Agreement, the Judgment or any other Settlement
4 documents is to go to the Administrator’s website at _____(url)_____. You can also telephone the
5 Administrator using the contact information listed below.

6 **DO NOT TELEPHONE THE ARBITRATOR OR SUPERIOR COURT TO OBTAIN**
7 **INFORMATION ABOUT THE SETTLEMENT.**

8 Class Counsel: Jeremy F. Bollinger, Dennis F. Moss, Ari E. Moss, Jorge A. Flores
9 Name of Attorney: Jeremy F. Bollinger
10 Email Address: jeremy@mossbollinger.com
11 Name of Firm: Moss Bollinger LLP
12 Mailing Address: 15300 Ventura Blvd., Ste. 207, Sherman Oaks, California 91403
13 Telephone: (310) 982-2984

14 Settlement Administrator:

15 Name of Company: _____
16 Email Address: _____
17 Mailing Address: _____
18 Telephone: _____
19 Fax Number: _____

20 **10. WHAT IF I LOSE MY SETTLEMENT CHECK?**

21 If you lose or misplace your settlement check before cashing it, the Administrator will
22 replace it as long as you request a replacement before the void date on the face of the original check.

23 **11. WHAT IF I CHANGE MY ADDRESS?**

24 To receive your check, you should immediately notify the Administrator if you move or
25 otherwise change your mailing address.
26
27
28

EXHIBIT B

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
CIVIL MINUTES—GENERAL

Case No. **EDCV 14-02521 JGB (SPx)** Date **October 23, 2018**

Title ***Lawrence Weinstein v. Mortgage Contracting Services, LLC***

Present: The Honorable **JESUS G. BERNAL, UNITED STATES DISTRICT JUDGE**

MAYNOR GALVEZ

Deputy Clerk

Not Reported

Court Reporter

Attorney(s) Present for Plaintiff(s):

None Present

Attorney(s) Present for Defendant(s):

None Present

Proceedings: Order (1) GRANTING Plaintiff's Motion for Attorney Fees (Dkt. No. 85); and (2) GRANTING Plaintiff's Motion for Final Approval of Class Settlement (Dkt. No. 88)

On July 23, 2018, Plaintiff Lawrence Weinstein ("Plaintiff") filed a Motion for Final Approval of Class Settlement. ("MFACS," Dkt. No. 88.) On June 5, 2018, Plaintiff filed a Motion for Attorney Fees. ("MAF," Dkt. No. 85.) These matters are unopposed. The Court held a hearing on these matters on August 20, 2018. Upon consideration of the papers filed in support of these motions, as well as oral arguments presented by the parties, the Court GRANTS Plaintiff's MFACS and GRANTS Plaintiff's MAF.

I. BACKGROUND

On February 4, 2014, Plaintiff filed a complaint in the Superior Court of the County of San Bernardino on behalf of himself and others similarly situated. ("Complaint," Dkt. 6-1.) On December 8, 2014, Defendant Mortgage Contracting Services, LLC ("Defendant" or "MCS") removed this action to this Court. (Dkt. No. 1.) On May 17, 2016, Defendant filed a motion for summary judgment. (Dkt. No. 41.) The Court denied the motion for summary judgment on November 17, 2016. (Dkt. No. 65.) On February 8, 2018, the Court granted preliminary approval of this class action settlement and granted conditional certification of the proposed settlement class. ("Preliminary Approval Order," Dkt. No. 82.) In the Preliminary Approval Order, the Court ordered:

1. The Settlement Agreement is preliminarily approved as fair, reasonable, and adequate for members of the settlement class.
2. The following settlement class is certified for settlement purposes only: All persons who performed residential home inspections in California at the direct or indirect request of Mortgage Contracting Services, LLC at any time from February 4, 2010 through the date the Court grants preliminary approval of the settlement.
3. Dennis Moss, Jeremy Bollinger, and Ari Moss of Moss Bollinger, LLP and Samuel Deskin of Deskin Law Firm are appointed as class counsel for the purposes of settlement only.
4. Plaintiff Lawrence Weintstein is qualified to act as representative of the settlement class and is preliminarily appointed class representative.
5. Phoenix Class Action Administration Solutions is appointed as the settlement administrator.
6. The settlement notice, as set forth in Exhibit 2 to the Settlement Agreement, is approved in form and substance for use in the administration of the Settlement Agreement.
7. Phoenix Class Action Administration Solutions is directed to mail the notice packet to all individuals entitled to receive notice.
8. Settlement class members will have 60 days from the initial mailing of the notice packet to file a claim, opt-out, or file an objection to the Settlement.
9. The final approval hearing will be scheduled for a date to be determined by the parties in Courtroom 1 of the United States District Court for the Central District of California, Eastern Division located at 3470 12th Street, Riverside, California 92501.

(Id. at 17–18.)

II. THE SETTLEMENT AGREEMENT

Plaintiff submitted a copy of the parties' proposed Settlement Agreement as Exhibit A to the Declaration of Dennis F. Moss, Plaintiff's Counsel. ("Settlement Agreement," Dkt. No. 81–1.) The terms of the Settlement Agreement are discussed below.

A. Settlement Class

The settlement class for the purposes of the settlement of this case includes: "all persons who performed residential home inspections in California at the direct or indirect request of MCS ('Inspections') at any time from February 4, 2010 through the date the Court grants preliminary approval of the settlement." ("Settlement Class," Settlement Agreement at 2–3.)

B. Financial Terms

The parties agree Defendant shall pay a maximum gross settlement amount of \$4,000,000.00. (Id. at 16.)

///

1. Settlement Class Members

The claims administrator will calculate individual settlement payments to class members from the adjusted gross settlement based on the following formula. (Id. at 19.)

The Adjusted Gross Fund value shall equal the amount remaining in the gross settlement amount after deducting the Fixed Payments [outlined below]. This shall be a claims-made settlement, with claims being paid to Qualified Claimants from the Adjusted Gross Fund Value. Any payments made to Qualified Claimants shall be made from the Adjusted Gross Fund Value on a claims-made basis only according to the following formula: Adjusted Gross Fund Value divided by the total of the number of inspections performed in California during the class period by MCS to class members, including, but not limited to, all inspections attributed to class members in claim forms, and any additional inspections credited to Qualified Claimants based on information and records submitted during the claims period . . . (“Inspection Payment Rate”) multiplied by the number of inspections performed in California during the class period credited by MCS to the individual class member at issue, less applicable withholdings (“Individual Settlement Payment”). To the extent that less than 55% of the gross fund value is paid as Fixed Payments and/or Individual Settlement Payments, Qualified Claimants submitting valid claims shall be entitled to an increase in their Individual Settlement Payment up to a maximum of 135% of the Individual Settlement Payment to which they would otherwise be entitled (“Increased Individual Payments”); but in no case shall any Increased Individual Payments require payment of more than 55% of the gross fund value. If the Fixed Payments and/or Individual Settlement Payments, taking into account any and all Increased Individual Payments, still equal less than 55% of the Gross Fund Value, the difference between (i) the sum of the Fixed Payments and Individual Settlement Payments (or Increased Individual Payments) and (ii) 55% of the Gross Fund Value (i.e., \$2,200,000.00) shall be the “Residual Amount.” The Residual Amount, if any, shall be distributed to Bet Tzedek, a 501(c)(3) charity (“Cy Pres”) selected by MCS and approved by Plaintiff’s Counsel.

(Id. at 18–19.)

2. Class Representative

The Settlement Agreement provides for an incentive award of up to \$20,000 from the gross settlement amount to the class representative. (Id. at 17.)

3. Private Attorneys General Act (“PAGA”)

The Settlement Agreement allocates \$25,000.00 for satisfaction of any and all claims for penalties under the Private Attorneys General Act (“PAGA”). (Id. at 17.) Seventy-five percent of such amount shall be paid to Labor and Workforce Development Agency (“LWDA”) and

twenty-five percent shall be paid in equal shares to qualified claimants as part of the adjusted gross fund value. (Id.)

4. Settlement Administration Costs

In the Settlement Agreement, Plaintiff estimates both \$30,000 and \$108,484 as administration costs. (Id.) In Dennis Moss's Declaration, he rounds the administration costs to \$108,500.

5. Attorneys' Fees and Costs

Defendant agrees not to oppose Class Counsel's application for fees up to \$1,000,000.00 and costs up to \$30,000. (Settlement Agreement at 16–17.)

C. Release

All settlement class members agree to release their claims as follows:

Upon the Effective Date, all Class Members, including Qualified Claimants and those Class Members who do not return a valid Claim Form and do not return a valid Request for Exclusion within the Claims Period and thus do not receive their Settlement Payment allocation, shall be deemed to have fully, finally and forever released, settled, compromised, relinquished and discharged any and all Released Claims against the Released Parties as set forth in this Joint Stipulation.

(Id. at 32.) The Settlement Agreement defines “released class member claims” as follows:

[T]he claims released by Plaintiff, and each Class Member who do not timely opt out of settlement. Plaintiff, and each Class Member who does not timely opt out of settlement on behalf of themselves, their heirs, spouses, executors, administrators, attorneys, agents, assigns, and any entities or businesses in which any of them have a controlling ownership interest, shall fully and finally release and discharge the Released Parties¹ from, which are all applicable California wage and hour claims, rights, demands, liabilities and causes of action of every nature and description whether known or unknown, arising from or related to the claims litigated in the Weinstein matter or that could have been asserted based on the facts alleged in the Weinstein matter against MCS, including but not limited to claims for: violations of

¹ The Settlement Agreement defines released parties to mean “MCS/Defendant and its former and present parents, subsidiaries, affiliated corporations and entities, clients, and vendors and independent contractors through which MCS conducts business, and each of their respective current, former and future officers, directors, members, managers, employees, consultants, vendors, independent contractors, clients, partners, shareholders, joint venturers and third-party agents, and any successors, assigns, or legal representatives.” (Settlement Agreement at 9.)

California Labor Code §§ 226.7, 226.8, 510, 512, 558, 1197, 2753, or 2802; failure to pay all wages in a timely manner in violation of California Labor Code §§ 200, 201, 202, 203, 204, 210; failure to provide accurate wage statements in violation of California Labor Code § 226; unfair competition; violations of the California Labor Code Private Attorneys General Act, Labor Code § 2698 et seq.; claims under California Business & Professions Code §§ 17000 and 17200, et seq.; and any damages, penalties, restitution, disgorgement, interest or attorneys' fees as a result thereof.

(Id. at 8-9.) The Settlement Agreement contains a release as to all settlement class members, including the class representative, releasing the released parties from any and all released class members claims. (Id. at 14.) As of the effective date,² each class member agrees not to sue or otherwise make a claim against any of the released parties for the released class member claims, as defined above. (Id.)

The Settlement Agreement further provides the release of additional claims and rights by the class representative. It provides:

“Class Representative Released Claims” means claims released by Plaintiff, on behalf of Plaintiff, Plaintiff's heirs, spouses, executors, administrators, attorneys, agents, assigns, and any entities or businesses in which Plaintiff has a controlling ownership interest, which are any and all claims of any nature, known or unknown, contingent or accrued, against all Released Parties, whether in tort, contract or equity, including but not limited to the Released Claims, and any claims arising out of or relating to any Inspections prior to the Final Judgment.

“Class Representative Release of Claims” means a general release, on behalf of Plaintiff, Plaintiff's heirs, spouses, executors, administrators, attorneys, agents, assigns, and any entities or businesses in which Plaintiff has a controlling ownership interest, releasing any and all claims of any nature, known or unknown,

² The Settlement Agreement defines the effective date as the date upon which final approval of the settlement can no longer be appealed by an objector in the event of an objection, or in the absence of any objections (or if all objections are withdrawn with Court approval prior to final approval) the final approval date. If objections are heard by the Court and overruled, and no appeal is taken of the judgment by an objector, then the effective date will be 35 calendar days after the entry of judgment. If any appeal is taken from the Court's overruling of any objections to the settlement, then the effective date will be 10 calendar days after all appeals are withdrawn or after an appellate decision affirming the final approval order and judgment becomes final. However, Defendant shall not be required to fund any portion of the total settlement amount and the claims administrator shall not distribute or pay any monies, unless and until all such appeals have been finally resolved or dismissed with prejudice, and the judgment is final and enforceable. (Settlement Agreement at 4.)

contingent or accrued, against all Released Parties, whether in tort, contract or equity, including but not limited to Released Claims, and any claims arising out of or relating to any Inspections performed by Plaintiff and/or Plaintiff's engagement to perform any inspections.

(Id. at 3, 14–15.)

D. Notice

The Settlement Agreement proposes the following procedure to notify the class members of the Settlement Agreement. (Id. at 27–29.) Within 70 calendar days after the Court entered an Order granting preliminary approval of the settlement, the claims administrator was to send via United States First Class Mail the settlement documents, consisting of the notice of class action settlement (“Notice”), a claim form, a W-9 and W-4 form (collectively, “Notice Packet”). (Id. at 27.) The Notice provides that class members will have 60 calendar days from the date the Notice is mailed to return the claim form with or without challenging the allocation of inspections, return the request for exclusion, or object to the settlement. (Id.) At the same time, the administrator was to email the class members for whom it only has an email address and advise such individuals how to obtain a Notice Packet. (Id. at 27–28.) The costs of this notice procedure is considered part of the administration costs and was paid from the gross settlement amount. (Id. at 28.) In the event that subsequent that the Notice Packet is returned to the claims administrator by the United States Postal Service with a forwarding address for the recipient, the claims administrator was to re-mail the Notice Packet to that address within five business days. (Id.) In the event that the Notice Packet is returned to the claims administrator because the address of the recipient is no longer valid, the claims administrator was to engage in reasonable address search measures in an effort to ascertain the current address of the particular class member in question. (Id.)

E. Performance of the Settlement Agreement

The claims administrator received information for 1,131 class members. (“Kruckenberg Declaration,” Dkt. No. 88-2 ¶ 7.) As of July 23, 2018, the claims administrator received a total of 317 timely claims, which equates to approximately 27.97% of number of class members for whom the claims administrator had contact information. (Id. ¶ 17.) Approximately 38.32% of the net settlement fund has been claimed. (Id.) The claims administrator has not received any requests for exclusion or objections. (Id. ¶¶ 19–20.)

F. Class Action Fairness Act (“CAFA”)

When settlement is reached in certain class action cases, CAFA requires as follows:

Not later than 10 days after a proposed settlement of a class action is filed in court, each defendant that is participating in the proposed settlement shall serve [notice of the proposed settlement]

upon the appropriate State official of each State in which a class member resides and the appropriate Federal official. . . .

28 U.S.C. § 1715(b).

The statute provides detailed requirements for the contents of such a notice. Id. A court is precluded from granting final approval of a class action settlement until the notice requirement is met:

An order giving final approval of a proposed settlement may not be issued earlier than 90 days after the later of the dates on which the appropriate Federal official and the appropriate State official are served with the notice required under [28 U.S.C. § 1715(b)].

28 U.S.C. § 1715(d).

Here, Defendant filed a Notice of Compliance with CAFA's requirements. (Dkt. No. 90.) Defendant states that it provided "notice of the settlement of this action to all appropriate Federal and state officials." (Id.) With that representation, the Court finds that the notice requirements of 28 U.S.C. § 1715 have been satisfied.

III. LEGAL STANDARD

A. Class Action Settlement

Class action settlements must be approved by the Court. See Fed. R. Civ. P. 23(e). Whether to approve a class action settlement is "committed to the sound discretion of the trial judge." Class Plaintiffs v. Seattle, 955 F.2d 1268, 1276 (9th Cir. 1992). A strong judicial policy favors settlement of class actions. See id.

Nevertheless, the Court must examine the settlement as a whole for overall fairness. See Hanlon v. Chrysler Corp., 150 F.3d 1011, 1026 (9th Cir. 1998). Neither district courts nor appellate courts have the power to delete, modify, or substitute provisions in the negotiated settlement agreement. See id. "The settlement must stand or fall in its entirety." Id.

In order to approve the class action settlement herein, the Court must conduct a three-step inquiry. See Adoma v. Univ. of Phoenix, Inc., 913 F. Supp. 2d 964, 972 (E.D. Cal. 2012). First, it assesses whether the parties have met notice requirements under the Class Action Fairness Act. Id. Next, it determines whether the notice requirements of Federal Rule of Civil Procedure 23(c)(2)(B) have been satisfied. Id. Finally, the Court must find that the proposed settlement is fair, reasonable, and adequate under Rule 23(e)(3). Id.

///
///

B. Attorneys' Fees

The procedure for requesting attorneys' fees is set forth in Rule 54(d)(2). While the rule specifies requests shall be made by motion "unless the substantive law governing the action provides for the recovery of . . . fees as an element of damages to be proved at trial," the rule does not itself authorize the awarding of fees. "Rather, [Rule 54(d)(2)] and the accompanying advisory committee comment recognize that there must be another source of authority for such an award . . . [in order to] give[] effect to the 'American Rule' that each party must bear its own attorneys' fees in the absence of a rule, statute or contract authorizing such an award." MRO Commc'ns, Inc. v. AT&T, 197 F.3d 1276, 1281 (9th Cir. 1999).

In class actions, statutory provisions and the common fund exception to the "American Rule" provide the authority for awarding attorneys' fees. See Alba Conte and Herbert B. Newberg, Newberg on Class Actions, § 14.1 (4th ed. 2005) ("Two significant exceptions [to the 'American Rule'] are statutory fee-shifting provisions and the equitable common-fund doctrine"). Rule 23(h) authorizes a court to award "reasonable attorney's fees and nontaxable costs that are authorized by law or by the parties' agreement." Fed. R. Civ. Proc. 23(h). Under normal circumstances, once it is established that a party is entitled to attorneys' fees, "[i]t remains for the district court to determine what fee is 'reasonable.'" Hensley v. Eckerhart, 461 U.S. 424, 433 (1983).

IV. RULE 23 REQUIREMENTS

A. Rule 23(a) and (b)

In its Preliminary Approval Order, the Court certified the Settlement Class in this matter under Rules 23(a) and 23(b)(3). (Preliminary Approval Order at 2–5.) Accordingly, the Court "need not find anew that the settlement class meets the certification requirements of Rule 23(a) and (b)." Adoma, 913 F. Supp. 2d at 974; see also Harris v. Vector Marketing, No. C–08–5198, 2012 WL 381202 at *3 (N.D. Cal. Feb. 6, 2012) ("As a preliminary matter, the Court notes that it previously certified . . . a Rule 23(b)(3) class . . . [and thus] need not analyze whether the requirements for certification have been met and may focus instead on whether the proposed settlement is fair, adequate, and reasonable."); In re Apollo Group Inc. Securities Litigation, Nos. CV 04–2147–PHX–JAT, CV 04–2204–PHX–JAT, CV 04–2334–PHX–JAT, 2012 WL 1378677 at *4 (D. Ariz. Apr. 20, 2012). Here, the Settlement Class has not changed since it was conditionally certified. All the criteria for class certification remain satisfied, and the Court hereby confirms its order certifying the Settlement Class.

B. Rule 23(c)(2) Notice Requirements

Rule 23(c)(2)(B) requires the Court "direct to class members the best notice that is practicable under the circumstances, including individual notice to all members who can be identified through reasonable effort." Fed. R. Civ. P. 23(c)(2)(B). Similarly, Rule 23(e)(1) requires a proposed settlement may only be approved after notice is directed in a reasonable

manner to all class members who would be bound by the agreement. Fed. R. Civ. P. 23(e)(1). In its Preliminary Approval Order, the Court approved the notice sent to Settlement Class members. The claims administrator timely mailed the Notice Packet. (Kruckenberg Declaration ¶¶ 7–10.) The Court therefore finds that notice to the Settlement Class was adequate.

C. Rule 23(e)

Under Rule 23(e), “the claims, issues, or defenses of a certified class may be settled . . . only with the court’s approval.” Fed. R. Civ. P. 23(e). “The primary concern of [Rule 23(e)] is the protection of those class members, including the named plaintiffs, whose rights may not have been given due regard by the negotiating parties.” Officers for Justice v. Civil Serv. Comm’n of City & Cnty. of San Francisco, 688 F.2d 615, 624 (9th Cir. 1982). The Court’s inquiry is procedural in nature. Id. Pursuant to Rule 23(e)(2), “[i]f the proposal would bind class members, the court may approve it only after a hearing and on finding that it is fair, reasonable, and adequate.” Fed. R. Civ. P. 23(e)(2). The Court held a final approval hearing on August 20, 2018. In determining whether a settlement agreement is fair, adequate, and reasonable to all concerned, the Court may consider some or all of the following factors:

- (1) the strength of the plaintiff’s case;
- (2) the risk, expense, complexity, and likely duration of further litigation;
- (3) the risk of maintaining class action status throughout the trial;
- (4) the amount offered in settlement;
- (5) the extent of discovery completed, and the stage of the proceedings;
- (6) the experience and views of counsel;
- (7) the presence of a governmental participant; and
- (8) any opposition by class members.

Linney v. Cellular Alaska P’ship, 151 F.3d 1234, 1242 (9th Cir. 1998). This list of factors is not exclusive and a court may balance and weigh different factors depending on the circumstances of each case. See Torrisi v. Tucson Elec. Power Co., 8 F.3d 1370, 1376 (9th Cir. 1993).

1. Strength of Plaintiff’s Case

The initial fairness factor addresses Plaintiffs’ likelihood of success on the merits. See Rodriguez v. W. Publ’g Corp., 563 F.3d 948, 964–65 (9th Cir. 2009). In determining the probability of Plaintiffs’ success on the merits, there is no “particular formula by which that outcome must be tested.” Id. at 965.

Here, Plaintiff survived Defendant's motion for summary judgment. (Dkt. No. 65.) However, Plaintiff recognizes Defendant has factual defenses which present obstacles to prevailing on a contested class certification motion. (MFACS at 23.) Specifically, Defendant might argue that it did not employ the class members, and that class members' damages claims are not appropriate because they received piecework compensation and often worked for multiple inspection companies simultaneously. (*Id.*)

Given the challenges that could potentially be faced in continued litigation over such issues, the Court finds this factor weighs in favor of approval. See Barbosa v. Cargill Meat Solutions Corp., 1:11-CV-00275-SKO, 2013 WL 3340939, at *12 (E.D. Cal. July 2, 2013) ("Plaintiffs' likelihood of success appears to have been properly accounted for in the settlement amount.")

2. Risk, Expense, Complexity, and Likely Duration of Further Litigation

In assessing the risk, expense, complexity, and likely duration of further litigation, the Court evaluates the time and cost required. "[U]nless the settlement is clearly inadequate, its acceptance and approval are preferable to lengthy and expensive litigation with uncertain results." Nat'l Rural Telecomms. Coop. v. DIRECTV, Inc., 221 F.R.D. 523, 526 (C.D. Cal. 2004) (quoting 3 Newberg on Class Actions § 11:50 (4th ed. 2012)).

Here, without the settlement, the parties would continue litigating the class certification issue as well as the ultimate merits of the case – a long, complex, and expensive process. Therefore, the settlement avoided further protracted and expensive litigation. Accordingly, the Court finds this factor weighs in favor of settlement approval.

3. Risk of Maintaining Class Action Status Throughout the Trial

Because the Court is not aware of any risks to maintaining class-action status throughout trial, this factor is neutral. Barbosa, 2013 WL 3340939 at *13; see also In re Veritas Software Corp. Sec. Litig., No. 03-0283, 2005 WL 3096079, at *5 (N.D. Cal. Nov. 15, 2005) (vacated in part on other grounds, 496 F.3d 962 (9th Cir. 2007)) (favoring neither approval nor disapproval of settlement where the court was "unaware of any risk involved in maintaining class action status"); Vasquez v. Coast Valley Roofing, Inc., 266 F.R.D. 482, 489 (E.D. Cal. 2010) (finding that there were no facts that would defeat class treatment, the factor was considered "neutral" for purposes of final approval of class settlement).

4. Amount Offered in Settlement

Through mediation, Plaintiff projected the following total damages:

- \$3,778,707: Projected unpaid minimum wages
- \$477,936: Unpaid overtime
- \$2,265,075: Unpaid rest break premium pay

- \$6,372,480: Unpaid reimbursements (not including interest)

(MFACS at 28–29.) The above amounts total just under \$13,000,000.00. With interest, the amount would total in excess of \$17,000,000.00. (Id. at 29.) The settlement amount, \$4,000,000.00, is a little less than one-fourth the potential recovery, which, considering the challenges and uncertainties of the case, is fair and adequate. Given the potential defenses Defendants could put forward, including an argument against class certification, the Court finds this amount offered here to be appropriate.

5. Extent of Discovery Completed and Stage of the Proceedings

This factor requires the Court evaluate whether “the parties have sufficient information to make an informed decision about settlement.” Linney, 151 F.3d at 1239.

Plaintiff represents he served and responded to extensive discovery. (MFACS at 8–9.) Defendant propounded on Plaintiff interrogatories, requests for production of documents, and requests for admissions. (Id.) The parties also participated in a mediation session which did not yield an immediate resolution of Plaintiff’s claims against Defendant. (Id. at 10.) Based on the review of the documents produced in this case, written discovery, and the information Defendant provided prior to and after mediation, the parties believe they have enough evidence to evaluate the strength and weaknesses of the case. (Id. at 24.) The Court agrees. Accordingly, this factor favors approval.

6. Experience and Views of Counsel

In considering the adequacy of the terms of a settlement, the trial court is entitled to, and should, rely upon the judgment of experienced counsel for the parties. See DIRECTV, Inc., 221 F.R.D. at 528 (“Great weight is accorded to the recommendation of counsel, who are most closely acquainted with the facts of the underlying litigation[.]”) (internal quotation marks and citations omitted). This reliance is predicated on the fact that “[p]arties represented by competent counsel are better positioned than courts to produce a settlement that fairly reflects each party’s expected outcome in the litigation.” In re Pac. Enters. Sec. Litig., 47 F.3d 373, 378 (9th Cir. 1995).

Class Counsel has extensive experience serving as class counsel in wage and hour litigation actions in federal and state court. (See “Moss Declaration,” Dkt. No. 88-1 ¶ 49.) Class Counsel believe, on balance, the settlement is fair, reasonable, and adequate, representing a good result for the class after handicapping the likely odds of prevailing both on class certification and on the merits. (MFACS at 25.) As a result, the experience and views of Class Counsel also weigh in favor of final approval.

7. Presence of a Governmental Participant

No governmental entity is present in this litigation. Therefore this factor favors approval.

8. Opposition by Class Members

No class member has opposed the settlement. This factor favors approval.

D. Attorneys' Fees and Costs

1. Fees

Class Counsel also requests approval of its request for attorneys' fees. Courts are obliged to ensure the attorneys' fees awarded in a class action settlement are reasonable, even if the parties have already agreed on the amount. In re Bluetooth Headset Prods. Liab. Litig., 654 F.3d 935, 941 (9th Cir. 2011.) "Where a settlement produces a common fund for the benefit of the entire class, courts have discretion to employ either the lodestar method or the percentage-of-recovery method." In re Bluetooth, 654 F.3d at 942. "[C]ourts typically calculate 25% of the fund as the 'benchmark' for a reasonable fee award, providing adequate explanation in the record of any 'special circumstances' justifying a departure." In re Bluetooth, 654 F.3d at 942 (quoting Six (6) Mexican Workers v. Ariz. Citrus Growers, 904 F.2d 1301, 1311 (9th Cir. 1990)).

A court may exercise discretion to award attorneys' fees in a class action settlement by applying either the lodestar method or the percentage-of-the-fund method. Fischel v. Equitable Life Assurance Soc'y of U.S., 307 F.3d 997, 1006 (9th Cir. 2002). The court determines the lodestar amount by multiplying the number of hours reasonably expended on the litigation by a reasonable hourly rate. McGrath v. Cnty. of Nev., 67 F.3d 248, 252 (9th Cir. 1995). The hourly rates used to calculate the lodestar must be "in line with those prevailing in the community for similar services by lawyers of reasonably comparable skill, experience and reputation." Blum v. Stenson, 465 U.S. 886, 895 n.11 (1984). Next, the court must decide whether to adjust the 'presumptively reasonable' lodestar figure based upon the factors listed in Kerr v. Screen Extras Guild, Inc., 526 F.2d 67, 69-70 (9th Cir. 1975), abrogated on other grounds by City of Burlington v. Dague, 505 U.S. 557 (1992), that have not been subsumed in the lodestar calculation, Caudle v. Bristow Optical Co., Inc., 224 F.3d 1014, 1028-29 (9th Cir. 2000).³ Under the percentage-of-the-fund method, an award of twenty-five percent of the gross settlement amount is the "benchmark" for attorneys' fees calculations. Powers v. Eichen, 229 F.3d 1249, 1256-57 (9th Cir. 2000).

³ In Kerr, the Ninth Circuit adopted the 12-factor test articulated in Johnson v. Georgia Highway Express, Inc., 488 F.2d 714 (5th Cir. 1974), which identified the following factors for determining reasonable fees: (1) the time and labor required, (2) the novelty and difficulty of the questions involved, (3) the skill requisite to perform the legal service properly, (4) the preclusion of other employment by the attorney due to acceptance of the case, (5) the customary fee, (6) whether the fee is fixed or contingent, (7) time limitations imposed by the client or the circumstances, (8) the amount involved and the results obtained, (9) the experience, reputation, and ability of the attorneys, (10) the "undesirability" of the case, (11) the nature and length of the professional relationship with the client, and (12) awards in similar cases. Kerr, 526 F.2d at 70.

To determine whether the percentage requested is reasonable, courts may examine several factors, including:

[T]he extent to which class counsel achieved the results for the class, whether the case was risky for class counsel, whether counsel's performance generated benefits beyond the cash settlement fund, the market rate for the particular field of law (in some circumstances), the burden class counsel experienced while litigating the case (e.g., cost, duration, foregoing other work), and whether the case was handled on a contingency basis.

In re Online DVD-Rental Antitrust Litig., 779 F.3d 934, 954-55 (9th Cir. 2015) (internal quotation mark omitted). The Ninth Circuit has allowed courts to award attorney's fees using the percentage method "in lieu of the often more time-consuming task of calculating the lodestar." Bluetooth, 654 F.3d at 942.

Here, Class Counsel seeks 25% (\$1 million) of the general common fund (\$4 million). (MAF at 15.) The Court has considered the results achieved and the risk of litigation (e.g., the pending motion for class certification), as well as the skill required and worked performed to litigate this case. Class Counsel obtained a Settlement that confers a significant benefit to the Class, particularly in light of the risks involved in litigation. The Net Settlement available to the class totals approximately \$2,823,500, or an average settlement share of approximately \$1,568 per class member based on a class size of 1800. (Id. at 16.)

In addition, the Court took into account the contingent nature of the fee and financial burden on counsel as well as awards made in similar cases. These factors, the Court finds, justify an award of 25% or \$1 million in attorneys' fees.

The Court now turns to the lodestar method as a means of cross-checking the 25% award requested. Counsel's work on the case, at this time, amounts to \$468,452 and a total of approximately 663.75 hours. (Id. at 21.) However, Counsel represents that they will have to spend additional time going forward. (Id.) Thus, the requested fee (\$1 million) represents a lodestar multiplier of 2.14. In Vizcaino v. Microsoft Corp., 290 F.3d 1043, 1050-51 (9th Cir. 2002), the Ninth Circuit held the district court did not abuse its discretion when it approved attorney's fees after applying the lodestar method as a cross-check of the percentage method. The attorney's fees resulted in a of 3.65 lodestar multiplier in Vizcaino, which the Ninth Circuit upheld as "appropriate." Id. at 1051.

Here, Plaintiff's Counsel billed at an hourly rate ranging from \$450-\$750. (Moss Declaration ¶ 4.) Dennis Moss billed \$750/hour. Jeremy Bollinger billed \$625/hour. Samuel Deskin billed \$500/hour. Ari Moss billed \$625/hour. Evan Selik billed \$450/hour. The Court, having reviewed the experience of the respective attorneys, finds the amount billed per hour to be reasonable. See Youngevity Int'l, Corp. v. Smith, No. 16-CV-00704-BTM-JLB, 2018 WL 2113238, at *5 (S.D. Cal. May 7, 2018) (citations omitted) ("Courts in this district have held a

range of rates from \$450-750 per hour reasonable for a senior partner in a variety of litigation contexts and specialties.”) For instance, Dennis Moss has been an employment/labor attorney since 1977 and has handled numerous federal and state wage and hour class action cases. (Moss Declaration ¶ 28.) Jeremy Bollinger and Ari Moss are founding partners of Moss Bollinger and both were admitted to the Bar in 2005. (*Id.* ¶¶ 29–30.) Selik has practiced law in California for 10 years. (*Id.* ¶ 31.) As for Sam Deskin, his hourly rate is \$500, but Class Counsel provides no information about his professional background (e.g., when he was admitted to the Bar or how long he has practiced law), and thus the Court cannot determine the reasonableness of his rate. (*See id.* ¶ 32.) Considering the complexity of the case, the risks involved and the length of litigation (the class was removed in 2014), the Court finds this multiplier (2.14) to be appropriate.

2. Costs

“In a certified class action, the court may award reasonable attorney’s fees and nontaxable costs that are authorized by law or by the parties’ agreement.” Fed. R. Civ. Proc. 23(h); *see Trans Container Servs. v. Sec. Forwarders, Inc.*, 752 F.2d 483, 488 (9th Cir. 1985). “Expenses such as reimbursement for travel, meals, lodging, photocopying, long-distance telephone calls, computer legal research, postage, courier service, mediation, exhibits, documents scanning, and visual equipment are typically recoverable.” *Rutti v. Lojack Corp., Inc.*, No. SACV 06–350 DOC (JCx), 2012 WL 3151077, at *12 (C.D. Cal. July 31, 2012).

Class counsel requests \$20,175.40 in costs. (MAF at 24.) Class counsel provides an itemized breakdown of the expenses in this case, which deposition and mediation fees, filing fees, and postage. (Moss Declaration, Exh. C.) All of these expenses are typically recoverable in litigation. *Cf. In re Immune Response Sec. Litig.*, 497 F. Supp. 2d 1166, 1177–78 (S.D. Cal. 2007) (finding similar categories of expenses reasonable in a class action settlement). The Court therefore APPROVES the requested amount for costs.

E. Incentive Awards

The trial court has discretion to award incentives to the class representatives. *See In re Mego Fin. Corp. Sec. Litig.*, 213 F.3d 454, 463 (9th Cir. 2000); *Pelletz*, 592 F. Supp. 2d at 1329. The criteria courts have used in considering the propriety and amount of an incentive award include: (1) the risk to the class representative in commencing a class action, both financial and otherwise; (2) the notoriety and personal difficulties encountered by the class representative; (3) the amount of time and effort invested by the class representative; (4) the duration of the litigation; and (5) the personal benefit, or lack thereof, enjoyed by the class representative. *Van Vranken v. Atl. Richfield Co.*, 901 F. Supp. 294, 299 (N.D. Cal. 1995).

The Settlement Agreement provides for a \$20,000 payment for the named Plaintiff. (Settlement Agreement at 17.) In the Preliminary Approval Order, the Court stated Plaintiff “should be prepared to discuss and justify the disproportionate incentive award.” (Preliminary Approval Order at 16.) In his MAF Plaintiff states he was an active participant throughout the litigation, and that sat for a deposition and analyzed evidence. (MAF at 25.) Plaintiff also states

that the average individual recovery will be between \$1,559.75 and \$2,105.66. (Id.) Despite Plaintiff's arguments, the Court still finds the incentive award excessive. Given the length of this litigation and Plaintiff's extensive involvement, the Court AWARDs \$15,000 to Plaintiff Weinstein. This award represents the high end of the Court's typical incentive awards.

V. CONCLUSION

For the reasons stated above, the Court:

1. GRANTS final approval of the Settlement Agreement;
2. AWARDs Class Counsel attorneys' fees in the amount of \$1,000,000.00
3. AWARDs Class Counsel costs in the amount of \$20,175.40
4. AWARDs \$15,000 to Plaintiff Weinstein
5. ORDERS the payment of \$18,750 to the California Labor and Workforce Development Agency;
6. ORDERS the payment of \$108,484 to the claims administrator; and
7. DISMISSES the Complaint WITH PREJUDICE.

The Court ORDERS such judgment be entered.

IT IS SO ORDERED.

EXHIBIT C

fair, reasonable, and adequate—the request for final approval of the Settlement is **GRANTED**. In addition, Plaintiffs’ request for attorney fees is **GRANTED** in the modified amount of **\$1,600,000.00**; costs are awarded in the amount of **\$40,005.68**; and settlement administration costs are granted in the amount of **\$56,000.00**. Enhancement payments are **GRANTED** in the modified amounts of \$7,500 for Emmanuel Salgado; \$4,000 for David Garcia; and \$1,000 each for Andre Wong and Gael Grob.

BACKGROUND

Plaintiffs were employed as hourly-paid employees by T-Mobile USA, Inc.; T-Mobile US, Inc.; and MetroPCS Communications Inc. (Doc. 50 at 3) Plaintiffs worked in positions such as retail sales associates, mobile experts, sales leads, retail associate managers, and retail store managers. (*Id.* at 4, ¶

4) According to Plaintiffs, their employers engaged in unlawful employment practices and:

- a. Failed to pay overtime wages at the appropriate overtime pay rate;
- b. Failed to pay straight time, minimum, overtime, and/or commission wages for all hours worked in a timely manner;
- c. Failed to provide executed commission agreements;
- d. Failed to provide all legally requisite meal periods;
- e. Failed to authorize and permit all paid rest periods;
- f. Failed to pay meal and/or rest premium wages at the legal pay rate;
- g. Failed to reimburse for all work-related expenses;
- h. Failed to pay all accrued paid time off pay;
- i. Failed to maintain required records;
- j. Failed to timely furnish accurate itemized wage statements;
- k. Derivatively violated Labor Code §203;
- l. Independently violated Labor Code §203;
- m. Incurred penalties pursuant to Labor Code §§2698, et seq.; and
- n. Conducted unfair business practices.

(Doc. 50 at 5-6, ¶ 11) (emphasis omitted).

According to Plaintiffs, putative class members were under the defendants’ control and required to perform tasks without pay. (Doc. 50 at 20, ¶¶ 52-54) For example, Plaintiffs contend they were not compensated for “tasks [such] as responding to GroupMe texts, scheduling, picking up devices, making telephone calls, performing overrides/exchanges, submitting reports, management calls, and/or Small Business Prep.” (*Id.*, ¶ 52) Plaintiffs contend this resulted in payment of “less than the legal minimum wage in the State of California.” (*Id.*, ¶ 53)

In addition, Plaintiffs allege they were not timely paid all wages—including commissions and vacation wages— due to former employees. (See Doc. 50 at 5-6, 37-38) According to Plaintiffs, the defendants had “a consistent and uniform policy, practice and procedure of willfully failing to pay the

1 earned wages of... former employees.” (*Id.* at 36, ¶ 136) For example, they report Emmanuel Salgado
 2 “was terminated on August 10, 2016,” but “was not paid final wages, including final commissions,
 3 until September 30, 2016.” (*Id.* at 38, ¶ 144) Thus, Plaintiffs contend the defendants failed to pay
 4 putative class members “wages due and owing at the time of their termination and/or within seventy-
 5 two (72) hours of their resignation, and failed to pay those sums for up to thirty (30) days thereafter.”
 6 (*Id.* at 37, ¶ 137; *see also id.* at 38, ¶ 145)

7 On February 3, 2017, Salgado filed a complaint on behalf of himself and others similarly
 8 situated for unlawful wage and hour practices against T-Mobile USA, Inc. in Kern County Superior
 9 Court, Case. No. BCV-17-100243. (Doc. 1 at 14) The defendant filed a Notice of Removal on March
 10 8, 2017, thereby initiating the action in this Court. (Doc. 1) Both prior to and following the filing of
 11 the *Salgado* action in Kern County Superior Court, “several related actions were filed in, or removed
 12 to, various other state and federal courts,” including: *Garcia v. T-Mobile USA, Inc.*, filed on May 27,
 13 2016 in Los Angeles Superior Court, Case No. KC068472 (“*Garcia*”); *Grob v. T-Mobile USA, Inc.*,
 14 filed on June 14, 2019, in the Central District of California, Case No. 2:19-cv-06352 (“*Grob*”); and
 15 *Wong v. T-Mobile USA, Inc.*, filed on January 29, 2019, in the San Bernardino County Superior Court,
 16 Case No. CIVDS1902923 (“*Wong*”). (Doc. 47-1 at 8)

17 The parties report that “[d]ue to the number of overlapping claims in *Grob*, *Wong* and *Garcia*,
 18 counsel in those cases agreed that counsel in *Salgado* could attempt to negotiate a global settlement in
 19 all four actions.” (Doc. 47-1 at 8) On November 7, 2019, Plaintiffs filed “a First Amended Complaint
 20 based on or related to the operative pleaded facts in [*Salgado*] and *Grob*, *Wong* and *Garcia* Related
 21 Actions.” (*Id.*; *see also* Doc. 50) Specifically, Plaintiffs allege at T-Mobile: (1) failed to pay overtime
 22 wages at the legal overtime pay rate, (2) failed to pay all wages, (3) failed to provide meal periods, (4)
 23 failed to authorize and permit all paid rest periods, (5) failed to pay premium wages at the legal pay
 24 rate, (6) failed to fully reimburse work expenses, (5) failed to pay paid time off, (8) failed to maintain
 25 required record, (9) failed to timely furnish accurate itemized wage statements, and (10) engaged in
 26 unfair business practices. (*See generally* Doc. 50)

27 On August 22, 2019, the parties participated in a mediation with Jeff Krivis. (Doc. 47-1 at 9)
 28 Though the parties did not reach a settlement on the day of the mediation, they engaged in further

1 negotiations and “entered into an agreement that settled the Action and all of the Related Actions.”
 2 (*Id.*) Thus, Plaintiffs report the claims in *Grob*, *Wong* and *Garcia* “have been accounted for and valued
 3 in [the proposed] settlement.” (*Id.* at 8) Accordingly, Plaintiffs sought conditional certification of the
 4 settlement class and preliminary approval of the settlement terms.

5 The Court granted preliminary approval of the settlement on November 26, 2019. (Doc. 55)
 6 The Court appointed Plaintiffs Emmanuel Salgado, Gael Grob, David Garcia, and Andre Wong as the
 7 Class Representatives. (*Id.* at 21) The Court authorized Plaintiffs’ request for class representative
 8 enhancement payments “in the amount up to the amount of \$15,000 for Emanuel Salgado; \$5,000 for
 9 Gael Grob, \$5,000 for David Garcia, and \$5,000 for Andre Wong.” (*Id.* at 22) In addition, the Court
 10 appointed the following as Class Counsel: Kevin Barnes and Gregg Lander of the Law Offices of
 11 Kevin J. Barnes; Raphael Katri of the Law Offices of Raphael A. Katri; Matthew Matern of Matern
 12 Law Group, PC; Nazo Koulloukian of Koul Law Firm; Sahag Majarian, II of the Law Offices of Sahag
 13 Majarian II; and Dennis Moss and Ari Moss of Moss Bollinger LLP. (*Id.* at 21) Class Counsel were
 14 authorized to and authorized Class Counsel to seek fees that did “not to exceed 30% of the gross
 15 settlement amount and expenses up to \$70,000.” (*Id.* at 22) Finally, the Court appointed Rust
 16 Consulting, Inc., as the Settlement Administrator. (*Id.* at 21-22)

17 On December 6, 2019, the Court approved the Class Notice that conveyed this information to
 18 class members. (Doc. 58 at 5-10, Doc. 59) In addition, the Class Notice informed class members of
 19 the class definition approved by the Court, claims and issues to be resolved, representation by counsel,
 20 how a class member may choose to be excluded from the class, the time and method to opt-out of class
 21 membership, and the binding effect of a class judgment. (*See* Doc. 59)

22 On December 31, 2019, the Settlement Administrator mailed the Class Notice to 7,820 Class
 23 Members. (Doc. 71 at 7, Fringer Decl. ¶ 10) However, in February 2020, the parties “learned that the
 24 data collection efforts identifying the prospective class members and the proper number of work weeks
 25 associated with each class member was flawed.” (Doc. 66 at 1) The parties notified the Court of the
 26 issue, and “agreed that the defendant will retain a third-party IT consultant who will assist in creating
 27 the algorithm needed to correctly gather the data and to verify the accuracy of the data collected.” (*Id.*)
 28 On March 11, 2020, the Settlement Administrator “received a revised mailing list containing Class

Member’s names and corrected employment information.” (Doc. 71 at 7, Fringer Decl., ¶ 11) The Settlement Administrator reviewed the data “and identified 78 individuals who were no longer Class Members.” (*Id.*) A revised Class Notice was mailed via First Class Mail to 8,815 Class Members on April 10, 2020. (*Id.*, ¶ 13) Class Members were informed of their right to “submit an exclusion, objection and/or dispute postmarked by May 25, 2020.” (*Id.*)

Of the Class Notices, 444 were “returned as undeliverable for the first time” to the Settlement Administrator. (Doc. 71 at 8, Fringer Decl. ¶ 15) The Settlement Administrator performed skip traces on the addresses, and identified 385 more current addresses, to which the revised notices were mailed. (*Id.*) However, “49 Revised Class Notices were returned to Rust [Consulting] as undeliverable a second time.” (*Id.*) Thus, the Settlement Administrator reports that “205 Revised Class Notices remain undeliverable.” (*Id.*) The Settlement Administrator did not receive any objections to the settlement, but received two written requests for exclusion, which resulted in 8,813 participating class members. (*Id.*, ¶¶ 18-20)

Plaintiff filed the motion now pending before the Court for final approval of the Settlement on January 15, 2020. (Doc. 62) Following the data errors, Class Counsel filed additional briefing on June 8, 2020. (Doc. 72) Defendant does not oppose the request for approval of the settlement, request for fees and costs, or the class representative enhancements.

SETTLEMENT TERMS¹

The parties “agreed on a settlement of \$8,000,000 on a class wide, common fund basis with no claim form requirement and with no residual to revert to the Defendant.” (Doc. 62-1 at 11; *see also* Doc. 48-1 at 9, Settlement ¶ 33) Defendant agrees to fund the Settlement for a class defined as follows:

[A]ll persons employed by Defendant in California as hourly-paid, non-exempt employees who worked in retail locations, including but not limited to, Retail Sales Managers, Retail Assistant Managers, Retail Sales Associates, and Mobile Experts, or functionally equivalent positions at any time during the Class Period.

(Doc. 48-1 at 3, Settlement ¶ 6) In addition, the Class Period is defined as “the period from February 3,

¹ At the time Plaintiffs filed their motion for preliminary approval of the class settlement, they did not submit a fully executed agreement. (*See* Doc. 47-3 at 25-28) On October 30, 2019, Kevin Barnes filed a supplemental declaration to the motion and attached a fully executed “Joint Stipulation of Class Action Settlement and Release,” including the signatures of all Plaintiff’s counsel and class representatives. (Doc. 48-1) Accordingly, the Court’s citations herein are to the fully executed agreement.

2013, through the date of Preliminary Approval, or November 30, 2019, or the last day of the pay period in which the total number of workweeks of 1,045,295.92 increases by more than 10% (the ‘Workweek Threshold Cutoff Date’), whichever occurs first.” (*Id.*, Settlement ¶ 7)

I. Payment Terms

The settlement fund will cover payments to class members and payments to Plaintiffs for their roles as class representatives. (Doc. 48-1 at 9, Settlement ¶ 33) In addition, the Settlement provides for payments to Class Counsel for attorneys’ fees and expenses, to the Settlement Administrator, and the California Labor & Workforce Development Agency. (*Id.* at 9-11, ¶¶ 33-38) Specifically, the settlement provides for the following payments from the gross settlement amount:

- Plaintiff Emmanuel Salgado will receive \$15,000;
- Plaintiffs David Garcia, Gael Grob, and Andre Wong will receive \$5,000 each;
- Class counsel will receive fees not to exceed \$2,640,000) and litigation expenses not to exceed \$70,000;
- The California Labor and Workforce Development Agency shall receive \$225,000 from the award pursuant to PAGA;
- The Settlement Administrator will receive reasonable costs of administration, which are estimated to be \$56,000.

(Doc. 48-1 at 3-10, Settlement ¶¶ 2, 8, 13-14, 29, 34-37)

After the identified deductions and payments, the remaining funds— the “Net Settlement Amount” — will be distributed to all participating class members. (Doc. 48-1 at 6, Settlement ¶ 15) Shares of the individual settlement payment for each class member will be determined “based upon the number of Workweeks a Class Member worked during the Class Period.” (*Id.* at 11, Settlement ¶ 39) Specifically, the payments will be calculated as follows:

39(a) The Claims Administrator will calculate the total number of Workweeks worked by each Class Member during the Class Period and the aggregate total number of Workweeks worked by all Class Members during the Class Period. Each terminated Class member, the total Workweeks will include six additional workweek credits to compensate for the claim for Waiting Time Penalties.

39(b) To determine each Class Member’s estimated share of the Net Settlement Amount, the Settlement Administrator will use the following formula: The Net Settlement Amount will be divided by the aggregate total number of Workweeks, resulting in the “Workweek Value.”

39(c) Each Class Member’s share of the Net Settlement Amount will be calculated

by multiplying each individual Class Member's total number of Workweeks by the Workweek Value. The Individual Settlement Payment will be reduced by any required deductions for each Class Members as specifically set forth herein, including employee-side tax withholdings or deductions.

39(d) The entire Net Settlement Amount will be disbursed to all Class Members who do not submit timely and valid Requests for Exclusion. If there are any valid and timely Requests for Exclusion, the Settlement Administrator shall proportionately increase each Participating Class Member's share of the Net Settlement Amount according to the number of Workweeks worked, so that the amount actually distributed to the Settlement Class equals 100% of the Net Settlement Amount.

(Doc. 48-1 at 11-12, Settlement ¶ 39) Using this method, the Settlement Administrator reports that the average settlement payment will be approximately \$595.29, and the highest settlement payment will be approximately \$1,629.03. (Doc. 71 at 8, Fringer Decl. ¶ 20)

II. Releases

The Settlement provides that Plaintiff and Class Members, other than those who elect not to participate in the Settlement, shall release Defendant from the claims arising “from February 13, 2013 through the date of Preliminary through the date of Preliminary Approval, the Workweek Threshold Cutoff Date, or November 30, 2019, whichever comes first.” (Doc. 48-1 at 7, ¶ 26) Pursuant to the Settlement, “Released Claims” include:

[A]ll claims, rights, demands, liabilities, and causes of action, arising from, or related to, the claims alleged or which could have been alleged in the proposed First Amended Complaint based on or related to the operative pleaded facts in the Action and Related Actions, including: (i) all claims for unpaid minimum and overtime wages, however asserted or accrued, including but not limited to failing to properly calculate the regular rate for overtime and failing to pay for off-the-clock work (such as the use of GroupMe or other cell phone applications while off-the-clock); (ii) all claims for failure to pay commissions correctly or failure to provide executed commissions agreements; (iii) all claims for failing to provide meal and rest breaks; (iv) all claims for failing to pay meal or rest break premiums or properly calculate the rate for meal and rest break premium pay; (v) all claims for the failing to timely pay wages upon termination; (vi) all claims for the failing to fully reimburse business expenses, including mileage and use of personal cellular phones; (vii) all claims for wage statement violations; (viii) all claims for failing to maintain accurate records; (ix) all claims for failing to accrue and pay “paid time off” and (x) all claims asserted through California Business & Professions Code §§ 17200, et seq. related only to the above Released Claims or as asserted in the applicable PAGA Notices to the LWDA, and California Labor Code §§ 2698, et seq. related only to the above Released Claims or as asserted in the applicable PAGA Notices to the LWDA.

(Doc. 48-1 at 7, Settlement ¶ 24)

In addition, the Settlement provides that Plaintiffs and Participating Class Members waive and relinquish, unknown claims including “any and all actions, suits, claims, demands, rights, liabilities,

and causes of action which specifically relate to the Released Claims that Plaintiffs do not know of or suspect to exist in their favor, which, if known by any of them, might have affected their agreement to the Settlement.” (Doc. 481-1 at 8-9, Settlement ¶ 39) Specifically, the Settlement provides:

With respect to Unknown Claims, as of Final Approval, Plaintiffs and Participating Class Members hereby expressly waive and relinquish, to the fullest extent permitted by law, insofar as the claims arise from, or are related to, the Released Claims, the benefits of section 1542 of the California Civil Code (as well as any and all provisions, rights, and benefits of any similar state or federal law), which states:

A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release, and that, if known by him or her would have materially affected his or her settlement with the debtor or released party.

Thus, if the facts relating to this Settlement are found hereafter to be different from the facts now believed to be true, the Release set forth in this Agreement will remain fully effective. The provisions of this paragraph also apply to the PAGA claims that are released by Class Members who opt-out of the non-PAGA portions of the settlement

(Doc. 48-1 at 8-9, ¶ 31) Thus, the releases by Plaintiffs and the Participating Class Members appear to be the same.

III. Objections and Opt-Out Procedure

Any class member who wished may file objections or elect not to participate in the non-PAGA portion of the Settlement. (See Doc. 48-1 at 14-15, Settlement ¶¶ 50-51) The Notice of Class Action Settlement (“the Notice”) explained the claims that are released as part of the Settlement. (Doc. 58 at 5-10, Doc. 59) In addition, the Notice outlined the procedures for class members to opt out from the class, including the time and methods accepted. (*Id.*) Class members were also informed they had the right to “submit an exclusion, objection and/or dispute postmarked by May 25, 2020.” (See Doc. 71 at 7, Fringer Decl. ¶ 13)

IV. Service of the Class Notice Packets and Responses Received

Amy Fringer, Senior Project Manager for Rust Consulting, reports the notice was mailed via the United States Postal Service on April 10, 2020. (Doc. 71 at 6-7, Fringer Decl. ¶¶ 1, 12-13) Ms. Fringer reports the Settlement Administrator received two written requests for exclusion, leaving 8,813 participating class members. (*Id.* at 8, ¶ 19) She also reports the Settlement Administrator did not receive any objections to the Settlement. (*Id.* at 8, ¶ 18) Likewise, the Court did not receive any objections to the Settlement.

APPROVAL OF A CLASS SETTLEMENT

When parties settle an action prior to class certification, the Court has an obligation to “peruse the proposed compromise to ratify both the propriety of the certification and the fairness of the settlement.” *Staton v. Boeing Co.*, 327 F.3d 938, 952 (9th Cir. 2003). Approval of a class settlement is generally a two-step process. First, the Court must assess whether a class exists. *Id.* (citing *Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 620 (1997)). Second, the Court must “determine whether the proposed settlement is fundamentally fair, adequate, and reasonable.” *Id.* (citing *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1026 (9th Cir. 2003)). The decision to approve or reject a settlement is within the Court’s discretion. *Hanlon*, 150 F.3d at 1026.

I. Class Certification²

Class certification is governed by Rule 23 of the Federal Rules of Civil Procedure, which provides that “[o]ne or more members of a class may sue or be sued as representative parties on behalf of all.” Fed. R. Civ. P. 23(a). Under the terms of the Settlement, the proposed Settlement Class is comprised of “all persons employed by Defendant in California as hourly-paid, non-exempt employees who worked in retail locations, including but not limited to, Retail Sales Managers, Retail Associate Managers, Retail Sales Associates, and Mobile Experts, or functionally equivalent positions at any time during the Class Period.” (Doc. 48-1 at 4, ¶ 6)

Parties seeking class certification bear the burden of demonstrating the elements of Rule 23(a) are satisfied, and “must affirmatively demonstrate . . . compliance with the Rule.” *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 351 (2011); *Doninger v. Pacific Northwest Bell, Inc.*, 563 F.2d 1304, 1308 (9th Cir. 1977). If an action meets the prerequisites of Rule 23(a), the Court must consider whether the class is maintainable under one or more of the three alternatives set forth in Rule 23(b). *Narouz v. Charter Communs., LLC*, 591 F.3d 1261, 1266 (9th Cir. 2010).

A. Rule 23(a) Requirements

The prerequisites of Rule 23(a) “effectively limit the class claims to those fairly encompassed by the named plaintiff’s claims.” *General Telephone Co. of the Southwest v. Falcon*, 457 U.S. 147,

² Because the class was only conditionally certified upon preliminary approval of the Settlement, final certification of the Settlement Class is required.

1 155-56 (1982). Certification of a class is proper if:

2 (1) the class is so numerous that joinder of all members is impracticable; (2) there are
3 questions of law or fact common to the class; (3) the claims or defenses of the
4 representative parties are typical of the claims or defenses of the class; and (4) the
representative parties will fairly and adequately protect the interests of the class.

5 Fed. R. Civ. P. 23(a). These prerequisites are generally referred to as numerosity, commonality,
6 typicality, and adequacy of representation. *Falcon*, 457 U.S. at 156.

7 1. Numerosity

8 A class must be “so numerous that joinder of all members is impracticable.” Fed. R. Civ. P.
9 23(a)(1). This requires the Court to consider “specific facts of each case and imposes no absolute
10 limitations.” *General Telephone Co. v. EEOC*, 446 U.S. 318, 330 (1980). Although there is not a
11 specific numerical threshold, joining more than one hundred plaintiffs is impracticable. *See Immigrant*
12 *Assistance Project of Los Angeles Cnt. Fed’n of Labor v. INS*, 306 F.3d 842, 869 (9th Cir. 2002)
13 (“find[ing] the numerosity requirement . . . satisfied solely on the basis of the number of ascertained
14 class members . . . and listing thirteen cases in which courts certified classes with fewer than 100
15 members”). Here, the Settlement Administrator has identified 8,813 participating class members.
16 (Doc. 71 at 8, Fringer Decl. ¶ 20) Therefore, the numerosity requirement is satisfied.

17 2. Commonality

18 Rule 23(a) requires “questions of law or fact common to the class.” Fed. R. Civ. P. 23(a)(2).
19 Commonality “does not mean merely that [class members] have all suffered a violation of the same
20 pro-vision of law,” but “claims must depend upon a common contention.” *Wal-Mart Stores*, 564 U.S.
21 at 350. Previously, Plaintiffs asserted there are common questions of law and facts in this case, because
22 the class members were subjected to the same policies as employees of Defendant. (Doc. 47-1 at 21-22)
23 According to Plaintiffs, common questions include:

- 24 • Whether Defendants properly included all commissions, bonuses and prizes into
25 the overtime rate as required by California law;
- 26 • Whether Defendants required Class Members to work off the clock, including
27 sending and responding to texts on the GroupMe app, without paying for all hours
28 worked;
- Whether Defendants had a rest period policy that required Class Members to
remain on the premises during their rest break in violation of California law and

1 did not ever pay an additional one hour of wages for the rest period violations;

- 2 • Whether Defendants had a meal and rest period practice that did not allow for meal
3 or rest breaks and did not ever pay an additional one hour of wages for any
4 violations;
- 5 • Whether Defendants failed to reimburse Class Members for all mileage expenses
6 for the use of their personal vehicles and cell phones as required by California law;
- 7 • Whether Defendants failed to accrue and pay “paid time off” as required by
8 California law;
- 9 • Whether Defendants failed to timely pay final wages due to former Class Members
10 and/or pay waiting time penalties pursuant to Labor Code §203;
- 11 • Whether Defendants failed to provide proper wage statements to Class Members
12 pursuant to Labor Code §226(a);
- 13 • Whether Defendants subjected Class Members to Defendant’s unlawful, unfair
14 and/or fraudulent business acts or practices in the form of the violations described
15 above; and
- 16 • Whether Plaintiffs and the Class Members are entitled to injunctive/declaratory
17 relief.

18 (Doc. 62-1 at 14-15) Furthermore, Defendant “agrees that there are sufficient common questions to
19 support creation of a Settlement class.” (Doc. 47-2 at 5) Thus, the Court finds the commonality
20 requirement is satisfied for purposes of settlement.

21 3. Typicality

22 This requirement requires a finding that the “claims or defenses of the representative parties are
23 typical of the claims or defenses of the class.” Fed. R. Civ. P. 23(a)(3). The standards under this rule
24 are permissive, and a claim or defense is not required to be identical, but rather “reasonably
25 coextensive” with those of the absent class members. *Hanlon*, 150 F.3d at 1020. “The test of typicality
26 is whether other members have the same or similar injury, whether the action is based on conduct
27 which is not unique to the named plaintiffs, and whether other class members have been injured by the
28 same course of conduct.” *Hanon v. Dataproducts Corp.*, 976 F.2d 497, 508 (9th Cir. 1992) (internal
quotation marks and citation omitted); *see also Kayes v. Pac. Lumber Co.*, 51 F.3d 1449, 1463 (9th Cir.
1995) (the typicality requirement is satisfied when the named plaintiffs have the same claims as other
members of the class and are not subject to unique defenses).

Plaintiffs alleged they were each employed by Defendants during the relevant period. (Doc. 50

at 4-5, ¶¶ 6-10) Emmanuel Salgado was employed “as an hourly-paid Retail Sales Associate and hourly-paid Retail Associate Manager from approximately November 2010 to August 10, 2016 in Bakersfield, California.” (*Id.* at 4-5, ¶ 6) Gael Grob worked for Defendant “as an hourly-paid Mobile Expert (formerly known as Retail Sales Associate) from approximately May 2015 to April 2019 in Santa Clarita, California.” (*Id.*, ¶ 7) David Garcia was employed “as an hourly paid Retail Sales Associate from approximately February 2008 to November 2015 in Covina, California.” (*Id.*, ¶ 8) Finally, Andre Wong was also employed “as an hourly-paid Mobile Expert (formerly known as Retail Sales Associate) from approximately September 2010 to September 2018 in Montclair, California.” (*Id.*, ¶ 10) According to Plaintiffs, their claims are typical of the class because they “worked under the same policies and procedures and were paid according to the same pay plan for the entire period, as all other putative Class Members/PAGA aggrieved employee.” (Doc. 47-1 at 22-23) Because it is undisputed that Plaintiffs were subjected to the same policies and application procedure as the Settlement Class Members, the typicality requirement is satisfied.

4. Fair and Adequate Representation

Absentee class members must be adequately represented for judgment to be binding upon them. *Hansberry v. Lee*, 311 U.S. 32, 42-43 (1940). Accordingly, this requirement is satisfied if the representative parties “will fairly and adequately protect the interests of the class.” Fed. R. Civ. P. 23(a)(4). “[R]esolution of this issue requires that two questions be addressed: (a) do the named plaintiffs and their counsel have any conflicts of interest with other class members and (b) will the named plaintiffs and their counsel prosecute the action vigorously on behalf of the class?” *In re Mego Fin. Corp. Sec. Litig.*, 213 F.3d 454, 462 (9th Cir. 2000) (citing *Hanlon*, 150 F.3d at 1020).

a. *Class representative*

Previously, Plaintiffs each sought appointment as a class representative, asserting that they “have no claims that are antagonistic to the Class.” (Doc. 47-1 at 23) Also, the parties do not identify any conflicts between Plaintiffs and the putative class members. Thus, the Court finds Plaintiffs will fairly and adequately represent the interests of the class.

b. *Class counsel*

Pursuant to the Settlement terms, Kevin Barnes and Gregg Lander of the Law Offices of Kevin

1 J. Barnes; Raphael Katri of the Law Offices of Raphael A. Katri; Matthew Matern of Matern Law
2 Group, PC; Nazo Koulloukian of Koul Law Firm; Sahag Majarian, II of the Law Offices of Sahag
3 Majarian II; and Dennis Moss and Ari Moss of Moss Bollinger LLP seek appointment as class
4 counsel. (Doc. 48-1 at 3, ¶ 3) In addition, Kevin Barnes and Gregg Lander seek appointment as “Lead
5 Class Counsel” in the action. (*Id.*, ¶ 4)

6 Plaintiffs report that Class Counsel are “very experience and qualified.” (Doc. 47-1 at 23) Mr.
7 Barnes asserts, “The Plaintiffs’ firms advanced as Class Counsel have substantial experience in wage
8 and hour Class action cases and have been approved as Class Counsel in numerous other wage and
9 hour Class actions.” (Doc. 47-2 at 5-6, Barnes Decl. ¶ 6) In addition, Mr. Barnes observes that
10 “Plaintiffs’ attorneys ... have aggressively litigated this matter for almost three years, have engaged in
11 formal discovery including propounding and responding to written interrogatories, the production of
12 documents, several depositions, briefing of the class certification motion and attending a formal all-
13 day mediation.” (*Id.* at 6, ¶ 6)

14 Raphael Katri reports that he is admitted to practice law in the states of California, Texas, and
15 New York, and his “current law practice is devoted almost exclusively to employment law.” (Doc. 47-
16 6 at 3, ¶¶ 2-3) Mr. Katri asserts he has “actively participated in the prosecution and successful
17 settlement of multiple wage and hour class action lawsuits and representative actions, helping to
18 recover millions of dollars on behalf of the respective class members in those cases.” (*Id.*, ¶ 4) He
19 reports that by partnering with the Law Officers of Kevin T. Barnes, “both of [the] firms have and will
20 continue to aggressively and competently represent the named plaintiff and the other aggrieved
21 individuals in this case.” (*Id.* at 4, ¶ 5)

22 Dennis Moss notes that he has been practicing employment and labor law since 1977, during
23 which time he “handled numerous cases in all aspects of employment and labor law, including but not
24 limited to numerous federal and state wage and hour class action cases, National Labor Relations Board
25 proceedings, wrongful discharge litigation, discrimination cases, administrative appeals involving wage
26 and hour and other employment issues, numerous arbitrations, and various other matters involving both
27 traditional labor-law (union/ management law) and employment law issues in the non-union context.”
28 (Doc. 47-7 at 3, Moss Decl. ¶ 3) Mr. Moss stated his “litigation experience has included over twenty-

1 five arguments in various courts of appeal, including the 9th Circuit, Federal Circuit, and the First,
 2 Second, Third, Fourth and Sixth Appellate Districts of the California Courts of Appeal.” (*Id.*) In
 3 addition, Mr. Moss reports he been appointed as “lead counsel in dozens of class actions and collective
 4 actions over the last several years,” in both federal and state court. (*Id.* at 3-4, ¶ 3)

5 Nazo Koulloukian reports he was admitted to the State Bar of California in June 2009 and is “a
 6 current member of the California Employment Lawyers Association (CELA).” (Doc. 47-8 at 3,
 7 Koulloukian Decl. ¶ 3) He also notes that he was “named as one of the Rising Stars for the Super
 8 Lawyers of Southern California during 2016, 2017, and 2018.” (*Id.*) According to Mr. Koulloukian,
 9 his law firm “co-counsels with various other attorneys, all of whom are actively and continuously
 10 practicing in employment litigation, representing almost entirely employee plaintiffs, in both individual
 11 and class actions, in ... Superior Courts throughout the State, in the Court of Appeal, and in various
 12 Federal courts.” (*Id.* at 4, ¶ 4) Mr. Koulloukian reports that “more than half of [his] active caseload
 13 includes wage and hour class action cases.” (*Id.*) Further, he asserts he co-counseled with Sahag
 14 Majarian, II (*id.*), who also seeks appointment as class counsel in this action.

15 Mr. Majarian reports he has been “in private practice primarily representing consumers against
 16 insurance companies and workers against their employers” since 1990.” (Doc. 48-3 at 4, Majarian
 17 Decl. ¶ 3) He indicates that he “devoted a significant portion of my practice to employment law and
 18 class actions, and [has] been appointed co-class counsel for the plaintiffs in no less than 50 wage and
 19 hour class actions.” (*Id.*) Further, Mr. Majarian has “participated in over 150 class action mediations,”
 20 which involved “extensive preparation, development of thorough knowledge of the legal issues related
 21 to certification and liability, and full immersion and participation in the mediation and negotiation
 22 process.” (*Id.* at 5, ¶ 4)

23 Finally, Matthew Matern reports he is “the principal of Matern Law Group, PC,” which is “is a
 24 23- attorney law firm that is actively and continuously practicing in employment litigation, almost
 25 exclusively representing employees in both individual and class actions in both state and federal courts
 26 throughout California.” (Doc. 48-4 at 4, Matern Decl. ¶ 2) He asserts his law firm “is qualified to
 27 handle this litigation because the firm is experienced in litigating Labor Code violations in both
 28 individual and class action cases.” (*Id.*, ¶ 3) Mr. Matern reports he has “been involved in over 100

1 class action settlements, with many of them settling in the seven figure range.” (*Id.* at 5, ¶ 6) In
 2 addition, he notes that he “represented clients in numerous wage and hour class action lawsuits that
 3 settled with per-class-member recoveries in a range similar to the anticipated per-class member
 4 recovery in the instant case.” (*Id.*) According to Mr. Matern, this “work has led [him] to be recognized
 5 as a Southern California Super Lawyer every year since 2009.” (*Id.*, ¶ 9)

6 Defendants did not oppose the requested appointments or assert Plaintiffs’ counsel are
 7 inadequate to represent the interest of the class. Based upon the information provided regarding the
 8 experience of counsel, the Court finds Class Counsel satisfy the adequacy requirement.

9 **B. Certification of a Class under Rule 23(b)(3)**

10 As noted above, once the requirements of Rule 23(a) are satisfied, a class may only be certified
 11 if it is maintainable under Rule 23(b). Fed. R. Civ. P. 23(b); *see also Narouz*, 591 F.3d at 1266. Here,
 12 Plaintiffs assert that certification of the Class is appropriate under Rule 23(b)(3) which requires a
 13 finding that (1) “the questions of law or fact common to class members predominate over any questions
 14 affecting only individual members,” and (2) “a class action is superior to other available methods for
 15 fairly and efficiently adjudicating the controversy.” (*See* Doc. 62-1 at 14-15)

16 1. Predominance

17 The predominance inquiry focuses on “the relationship between the common and individual
 18 issues” and “tests whether proposed classes are sufficiently cohesive to warrant adjudication by
 19 representation.” *Hanlon*, 150 F.3d at 1022 (citing *Amchem Prods.*, 521 U.S. at 623). “[A] central
 20 concern of the Rule 23(b)(3) predominance test is whether ‘adjudication of common issues will help
 21 achieve judicial economy.’” *Vinole v. Countrywide Home Loans*, 571 F.3d 935, 944 (9th Cir. 2009)
 22 (quoting *Zinser v. Accufix Research Inst.*, 253 F.3d 1180, 1189 (9th Cir. 2001)).

23 Plaintiffs contend the predominance requirement is satisfied because “the main issues involve
 24 the legality of Defendant’s compensation plans, meal and rest period policies, payment of meal and rest
 25 period premiums, expense reimbursement plan, and the validity of its wages statements.” (Doc. 47-1 at
 26 21-22) In addition, Plaintiffs assert the common questions identified above are supported by evidence,
 27 including: “Defendants’ policies, payroll records, time records and pay stubs given to all non-exempt
 28 employees.” (Doc. 62-1 at 15)

1 2. Superiority

2 The superiority inquiry requires a determination of “whether objectives of the particular class
3 action procedure will be achieved in the particular case.” *Hanlon*, 150 F.3d at 1023 (citation omitted).
4 This tests whether “class litigation of common issues will reduce litigation costs and promote greater
5 efficiency.” *Valentino v. Carter-Wallace, Inc.*, 97 F.3d 1227, 1234 (9th Cir. 1996). Pursuant to Rule
6 23(b)(3), the Court must consider four non-exclusive factors to determine whether a class is a superior
7 method of adjudication, including (1) the class members’ interest in individual litigation, (2) other
8 pending litigation, (3) the desirability of concentrating the litigation in one forum, and (4) difficulties
9 with the management of the class action.

10 a. *Class members’ interest in individual litigation and other cases*

11 This factor is relevant when class members have suffered sizeable damages or have an
12 emotional stake in the litigation. See *In re N. Dist. of Cal., Dalkon Shield*, 693 F.2d 847, 856 (9th Cir.
13 1982). In this case, only two class members requested exclusion from the Settlement. There has been
14 no other indication that the remaining 8,813 class members had a desire to pursue individual litigation
15 apart from this action. Further, the parties have not identified any other litigation that remains pending
16 related to Plaintiffs’ claims, after the parties agreed to a global settlement that involved the claims
17 presented in *Grob, Wong and Garcia*. Therefore, these factors weigh in favor of class certification.

18 b. *Desirability of concentrating litigation in one forum*

19 Because common issues predominate on Plaintiffs’ class claims, “presentation of the evidence
20 in one consolidated action will reduce unnecessarily duplicative litigation and promote judicial
21 economy.” *Galvan v. KDI Distrib.*, 2011 WL 5116585, at *12 (C.D. Cal. Oct. 25, 2011). Indeed, the
22 benefits of a consolidated action are apparent here, where the parties reached a settlement that
23 included claims that initially were brought in the Los Angeles Superior Court, the Central District of
24 California, and the San Bernardino County Superior Court. (See Doc. 47-1 at 8)

25 c. *Difficulties in managing a class action*

26 The Supreme Court explained that, in general, this factor “encompasses the whole range of
27 practical problems that may render the class format inappropriate for a particular suit.” *Eisen v.*
28 *Carlisle & Jacquelin*, 417 U.S. 156, 164 (1974). Because the parties have reached a settlement

1 agreement, it does not appear there are any problems with managing the action. Therefore, this factor
2 weighs in favor of class certification.

3 3. Conclusion

4 Plaintiffs carry their burden to demonstrate the predominance and superiority requirements of
5 are satisfied, and that the Settlement Class is maintainable under Rule 23(b)(3). Accordingly,
6 Plaintiffs' motion for certification of the Settlement Class is **GRANTED**.

7 **II. Approval of the Settlement Terms**

8 Settlement of a class action requires approval of the Court, which may be granted "only after a
9 hearing and on finding that [the settlement] is fair, reasonable, and adequate." Fed. R. Civ. P. 23(e)(2).
10 Approval is required to ensure settlement is consistent with Plaintiffs' fiduciary obligations to the class.
11 See *Ficalora v. Lockheed Cal. Co.*, 751 F.2d 995, 996 (9th Cir. 1985). The Ninth Circuit identified
12 several factors for the Court to evaluate whether a settlement agreement meets these standards,
13 including:

14 the strength of plaintiff's case; the risk, expense, complexity, and likely duration of
15 further litigation; the risk of maintaining class action status throughout the trial; the
16 amount offered in settlement; the extent of discovery completed, and the stage of the
proceedings; the experience and views of counsel; the presence of a governmental
participant; and the reaction of the class members to the proposed settlement.

17 *Staton*, 327 F.3d at 959 (citation omitted). Further, a court should consider whether settlement is "the
18 product of collusion among the negotiating parties." *In re Mego Fin. Corp. Sec. Litig.*, 213 F.3d at 458
19 (citing *Class Plaintiffs v. Seattle*, 955 F.2d 1268, 1290 (9th Cir. 1992)). Reviewing the settlement
20 terms, "[t]he court need not reach any ultimate conclusions on the contested issues of fact and law
21 which underlie the merits of the dispute." *Class Plaintiffs*, 955 F.2d at 1291(internal quotation marks
22 and citation omitted).

23 **A. Strength of Plaintiffs' case**

24 When measuring the strength of a case, the Court should "evaluate objectively the strengths and
25 weaknesses inherent in the litigation and the impact of those considerations on the parties' decisions to
26 reach these agreements." *Adoma v. Univ. of Phoenix, Inc.*, 913 F. Supp. 2d 964, 975 (E.D. Cal. 2012)
27 (quoting *In re Wash. Pub. Power Supply Sys. Sec. Litig.*, 720 F. Supp 1379, 1388 (D. Az. 1989)).

28 In this action, Plaintiffs raised thirteen causes of action that the factfinder would be required to

1 evaluate on the merits. (*See generally* Doc. 50) The Settlement was reached after the parties “engaged
 2 in formal discovery including propounding and responding to written interrogatories, the production of
 3 documents, several depositions, briefing of the class certification motion and attending a formal all-
 4 day mediation.” (Doc. 62-1 at 20) This allowed the parties to assess the strengths and weaknesses of
 5 the claims presented. (*Id.*) Accordingly, this factor weights in favor of approval of the Settlement.

6 **B. Risks, expenses, complexity, and further litigation**

7 Approval of settlement is “preferable to lengthy and expensive litigation with uncertain
 8 results.” *Nat’l Rural Telecomms. Coop. v. DIRECTV, Inc.*, 221 F.R.D. 523, 529 (C.D. Cal. 2004). If
 9 the proposed settlement is not approved, the parties would have to engage in further litigation,
 10 including the related actions of *Grob, Wong and Garcia*. Plaintiffs assert that in agreeing to settle,

11 Plaintiffs took into account the risks that the Class would be certified, risks related to
 12 proof of their claims, and the strengths and weaknesses of Defendant’s other defenses.
 13 Plaintiffs also took into account the possibility that if a settlement were reached after
 14 additional years of litigation, the great expenses and attorneys’ fees of litigation would
 reduce the amount of funds available to Class Members for settlement. Furthermore,
 Plaintiffs also took into consideration the time delay and financial repercussions of
 liability trials, numerous damages trials, and the possibility of an appeal by Defendant.

15 (Doc. 47-1 at 18-19) The time and expense of continued litigation could outweigh any additional
 16 recovery. As Plaintiffs observes, if this action had settled following additional litigation, fewer funds
 17 may be available to class members in the various actions. (*See id.*) On the other hand, the Settlement
 18 provides for immediate recovery. Due to the risk of the claims of class members, this factor weighs in
 19 favor of final approval.

20 **C. Maintenance of class status through trial**

21 Notably, this Court had not certified a class at the time the parties reached an agreement of the
 22 claims presented. Plaintiff Salgado filed a motion for class certification on January 14, 2019 (Doc. 29),
 23 which T-Mobile USA opposed on March 29, 2019. (Doc. 35) However, the parties requested a
 24 continuance of the hearing on the motion, to a date after the scheduled mediation. (Doc. 43) Thus,
 25 though Defendants have not opposed class certification for settlement purposes, it is clear that class
 26 certification was otherwise contested. Further, Plaintiffs acknowledge that “[a]bsent settlement, there
 27 was a risk that this case would not be certified, would be decertified at the time of trial and or on
 28 appeal.” (Doc. 62-1 at 18) Due to the risk of maintenance of a class in the action—particularly a class

1 encompassing claims from all cases consolidated here— the Court finds this factor weighs in favor of
2 approval of the Settlement.

3 **D. Amount offered in settlement**

4 The Ninth Circuit observed “the very essence of a settlement is compromise, ‘a yielding of
5 absolutes and an abandoning of highest hopes.’” *Officers for Justice v. Civil Serv. Commission*, 688
6 F.2d 615, 624 (9th Cir. 1982) (citation omitted). Thus, when analyzing the amount offered in
7 settlement, the Court should examine “the complete package taken as a whole,” and the amount is “not
8 to be judged against a hypothetical or speculative measure of what *might* have been achieved by the
9 negotiators.” *Id.*, 688 F.2d at 625, 628.

10 The proposed gross settlement amount totals \$8,000,000. (Doc. 48-1 at 5, Settlement ¶13)
11 Moreover, “Defendants changed one of their policies and procedures at issue in this lawsuit by no
12 longer requiring on premise rest breaks,” which Plaintiffs assert “adds substantial value to this
13 settlement.” (Doc. 62-1 at 28) Given the time expended by parties in mediation and the continued
14 negotiations prior to reaching this agreement, it appears the parties agree the monetary amount and
15 policy change reflect a fair compromise as to all of Plaintiffs’ allegations. Indeed, in executed
16 agreement, the parties indicate: “The parties believe this Settlement Agreement is a fair, adequate and
17 reasonable settlement of the Action and Related Actions.” (*Id.* at 20, ¶ 72) Accordingly, the Court
18 finds the amount offered supports final approval of the Settlement.

19 **E. Extent of discovery completed and stage of the proceedings**

20 Plaintiffs report that the parties “engaged in formal discovery including propounding and
21 responding to written interrogatories, the production of documents, several depositions, briefing of the
22 class certification motion and attending a formal all day mediation.” (Doc. 62-1 at 20) Plaintiffs report,
23 “Defendants provided extensive documentation and data related to the claims asserted in this case as
24 well as a number of work weeks, class size and other necessary information for Plaintiffs to create a
25 damages exposure analysis.” (*Id.*) In addition, “Plaintiffs hired an expert economist to prepare for both
26 the class certification motion as well as damage calculations and an exposure analysis for the
27 mediation.” (*Id.*) Consequently, this factor supports approval of the Settlement.

28 ///

F. Views of counsel

In general, “[g]reat weight is accorded to the recommendation of counsel, who are most closely acquainted with the facts of the underlying litigation.” *See Nat’l Rural Telecomms.*, 221 F.R.D. at 528. Here, Class Counsel assert, “[t]his is fair, adequate and reasonable and in the best interests of the Class.” (Doc. 62-1 at 21; *see also* Doc. 62-2 at 8, Barnes Decl. ¶13) Similarly, Defendant indicated in the Settlement that it “is fair, adequate, and reasonable...” (Doc. 48-1 at 10, Settlement ¶ 71) Thus, the views of the parties’ counsel support approval of the Settlement.

G. Reaction of Class Members to the Settlement

“[T]he absence of a large number of objections to a proposed class action settlement raises a strong presumption that the terms of a proposed class action settlement are favorable to the class members.” *Nat’l Rural Telecomms.*, 221 F.R.D. at 529.

Plaintiffs agreed to the terms and executed the Settlement Agreement. (Doc. 48-1 at 25-28) No class members objected to the Settlement, and only two people out of 8,815 individuals requested exclusion from the Class. (Doc. 71 at 2) Given the significant majority of Class Members who reacted favorably to the class by not requesting exclusion or filing objections, this factor weighs in favor of the Settlement.

H. Collusion between negotiating parties

The inquiry of collusion addresses the possibility that the settlement agreement is the result of either “overt misconduct by the negotiators” or improper incentives of class members at the expense of others. *Staton*, 327 F.3d at 960. As the noted above, the parties first utilized an impartial mediator, and continued negotiations after the mediation with Jeff Krivis. (*See* Doc. 62-1 at 111; Doc. 47-1 at 9, 13) Thus, it appears the agreement is the product of non-collusive conduct, and this factor weighs in favor of approval of the Settlement.

IV. Conclusion

The factors set forth by the Ninth Circuit weigh in favor of final approval of the Settlement, which is fair, reasonable, and adequate as required by Rule 23. Therefore, the request for final approval of the Settlement Agreement is **GRANTED**.

///

REQUEST FOR ATTORNEYS' FEES AND COSTS

Attorneys' fees and nontaxable costs "authorized by law or by agreement of the parties" may be awarded pursuant to Rule 23(h). Pursuant to the Settlement, Class counsel may request attorneys' fees "of not more than Two Million Six Hundred Forty Thousand Dollars (\$2,640,000), which represents a third of the gross settlement. (Doc. 48-1, Settlement ¶34) Class Counsel seeks fees totaling \$2,400,000.00 and \$40,005.68 in litigation costs and expenses. (Doc. 62-1 at 12; Doc. 71 at 2)

Under the "common fund" doctrine, attorneys who create a common fund for a class may be awarded their fees and costs from the fund. *Hanlon*, 150 F.3d at 1029; *Boeing Co. v. Van Gemert*, 444 U.S. 472, 478 (1980) ("a lawyer who recovers a common fund for the benefit of persons other than himself or his client is entitled to a reasonable attorney's fee from the fund as a whole"). An award from the common fund "rests on the perception that persons who obtain the benefit of a lawsuit without contributing to its cost are unjustly enriched at the successful litigant's expense," and as such application of the doctrine is appropriate "when each member of a certified class has an undisputed and mathematically ascertainable claim to part of a lump-sum judgment recovered on his behalf." *Boeing Co.*, 444 U.S. at 478. The Settlement applies a distribution formula to determine the amount paid to each class member (see Doc. 48-1 at 11-12, Settlement ¶ 39), and application of the common fund doctrine is appropriate.

I. Legal Standards

"[A] district court must carefully assess the reasonableness of a fee amount spelled out in a class action settlement agreement" to determine whether it is "'fundamentally fair, adequate, and reasonable' Fed.R.Civ.P. 23(e)." *Staton v. Boeing Co.*, 327 F.3d 938, 963 (9th Cir. 2003). To do so, the Court must "carefully assess the reasonableness of a fee amount spelled out in a class action settlement agreement." *Id.*

A court "may not uncritically accept a fee request," but must review the time billed and assess whether it is reasonable in light of the work performed and the context of the case. See *Common Cause v. Jones*, 235 F. Supp. 2d 1076, 1079 (C.D. Cal. 2002); see also *McGrath v. County of Nevada*, 67 F.3d 248, 254 n.5 (9th Cir. 1995) (noting a court may not adopt representations regarding the reasonableness of time expended without independently reviewing the record); *Sealy, Inc. v. Easy Living, Inc.*, 743

1 F.2d 1378, 1385 (9th Cir. 1984) (remanding an action for a thorough inquiry on the fee request where
 2 “the district court engaged in the ‘regrettable practice’ of adopting the findings drafted by the prevailing
 3 party wholesale” and explaining a court should not “accept[] uncritically [the] representations
 4 concerning the time expended”).

5 The party seeking fees bears the burden of establishing that the fees and costs were reasonably
 6 necessary to achieve the results obtained. *See Fischer v. SJB-P.D., Inc.*, 214 F.3d 1115, 1119 (9th
 7 2000). Therefore, a fee applicant must provide records documenting the tasks completed and the
 8 amount of time spent. *Hensley v. Eckerhart*, 461 U.S. 424, 424 (1983); *Welch v. Metropolitan Life Ins.*
 9 *Co.*, 480 F.3d 942, 945-46 (9th Cir. 2007). “Where the documentation of hours is inadequate, the
 10 district court may reduce hours accordingly.” *Hensley*, 461 U.S. at 433.

11 Significantly, when fees are to be paid from a common fund, as here, the relationship between
 12 the class members and class counsel “turns adversarial.” *In re Washington Pub. Power Supply Sys.*
 13 *Sec. Litig.*, 19 F.3d 1291, 1302 (9th Cir. 1994). The Ninth Circuit observed:

14 [A]t the fee-setting stage, plaintiff’s counsel, otherwise a fiduciary for the class, has
 15 become a claimant against the fund created for the benefit of the class. It is obligatory,
 16 therefore, for the trial judge to act with a jealous regard to the rights of those who are
 interested in the fund in determining what a proper fee award is.

17 *Id.* at 1302 (internal quotation marks, citation omitted). As a result, the district court must assume a
 18 fiduciary role for the class members in evaluating the reasonableness of a request for fees from the
 19 common fund. *Id.*; *Rodriguez v. W. Publ’g Corp.*, 563 F.3d 948, 968 (9th Cir. 2009) (“when fees are
 20 to come out of the settlement fund, the district court has a fiduciary role for the class”).

21 The Court may use either a lodestar or percentage calculation to evaluate a fee request. *See*
 22 *Paul, Johnson, Alston & Hunt v. Gaulty*, 886 F.2d 268, 272 (9th Cir. 1989) (holding both a lodestar
 23 and percentage calculations “have [a] place in determining what would be reasonable compensation”).
 24 Whether the Court applies the lodestar or percentage method, the Ninth Circuit requires “fee awards in
 25 common fund cases be reasonable under the circumstances.” *Florida v. Dunne*, 915 F.2d 542, 545 (9th
 26 Cir. 1990); *see also Staton*, 327 F.3d at 964 (court must find the awarded fees are “fundamentally fair,
 27 adequate, and reasonable”).

28 ///

A. Lodestar method

The lodestar method calculates attorney fees by “by multiplying the number of hours reasonably expended by counsel on the particular matter times a reasonable hourly rate.” *Florida*, 915 F.2d at 545 n. 3 (citing *Hensley*, 461 U.S. at 433). The product of this computation, the “lodestar” amount, yields a presumptively reasonable fee. *Gonzalez v. City of Maywood*, 729 F.3d 1196, 1202 (9th Cir. 2013); *Camacho v. Bridgeport Fin., Inc.*, 523 F.3d 973, 978 (9th Cir. 2008). Next, the Court may adjust the lodestar upward or downward using a “multiplier” considering the following factors adopted by the Ninth Circuit in a determination of the reasonable fees:

(1) the time and labor required, (2) the novelty and difficulty of the questions involved, (3) the skill requisite to perform the legal service properly, (4) the preclusion of other employment by the attorney due to acceptance of the case, (5) the customary fee, (6) whether the fee is fixed or contingent, (7) time limitations imposed by the client or the circumstances, (8) the amount involved and the results obtained, (9) the experience, reputation, and ability of the attorneys, (10) the “undesirability” of the case, (11) the nature and length of the professional relationship with the client, and (12) awards in similar cases.

Kerr v. Screen Extras Guild, Inc., 526 F.2d 67, 70 (9th Cir. 1975). However, the Court has since suggested that the fixed or contingent nature of a fee and the “desirability” of a case are no longer relevant factors. *Resurrection Bay Conservation Alliance v. City of Seward*, 640 F.3d 1087, 1095, n.5 (9th Cir. 2011) (citing *Davis v. City of San Francisco*, 976 F.2d 1536, 1546 n.4 (9th Cir. 1992)).

B. Percentage from the common fund

As the name suggests, under this method, “the court makes a fee award on the basis of some percentage of the common fund.” *Florida*, 915 F.2d at 545 n. 3. In the Ninth Circuit, the typical range of acceptable attorneys’ fees is 20% to 30% of the total settlement value, with 25% considered the benchmark. See *Vizcaino v. Microsoft Corp.*, 290 F.3d 1043, 1048-1050 (9th Cir. 2002); see also *In re Bluetooth Headset Prod. Liab. Litig.*, 654 F.3d 935, 942 (9th Cir. 2011) (“courts typically calculate 25% of the fund as the ‘benchmark’ for a reasonable fee award, providing adequate explanation in the record of any ‘special circumstances’ justifying a departure”). The percentage awarded in fees may be adjusted below or above the benchmark, but the Court’s reasons for adjustment must be clear. *Graulity*, 886 F.2d at 272.

When evaluating whether the requested percentage is reasonable, courts may consider a number

of factors, including: (1) the results obtained for the class; (2) the risk undertaken by class counsel, including the complexity of the issues; (3) the length of the professional relationship between class counsel and the plaintiffs; and (5) the market rate, through a lodestar cross-check. *Vizcaino*, 290 F.3d at 1048-1050; *Six Mexican Workers v. Ariz. Citrus Growers*, 904 F.2d 1301, 1311 (9th Cir. 1990).

II. Evaluation of the Fees Requested

Class Counsel request the Court determine the reasonableness of the fee award by using the percentage of the common fund rather than the lodestar method, and award 30% of the common fund. (See Doc. 62-1 at 22) “The district court has discretion to use the lodestar method or the percentage of the fund method in common fund cases.” *Powers v. Eichen*, 229 F.3d 1249, 1256 (9th Cir. 2000) (quoting *In re Coordinated Pretrial Proceedings in Petroleum Prods. Antitrust Litig.*, 109 F.3d 602, 607 (9th Cir. 1997)). Notably, the Court must consider similar factors under either method. See *Kerr*, 526 F.2d at 70; *Vizcaino*, 290 F.3d at 1048-1050. Furthermore, the Court may “appl[y] the lodestar method as a crosscheck” to determine whether the percentage requested is reasonable. *Vizcaino*, 290 F.3d at 1050, n.5.

A. Results obtained for the class

Plaintiffs contend “the degree of success achieved in this case justifies the requested [fees].” (Doc. 62-1 at 31) Courts have recognized that the result achieved for the class is a major factor to be considered in making a fee award. *Hensley*, 461 U.S. at 436; *Wilcox v. City of Reno*, 42 F.3d 550, 554 (9th Cir. 1994). The Ninth Circuit observed that “[e]xceptional results are a relevant circumstance” to an adjustment from the benchmark award. *Vizcaino*, 290 F.3d at 1048.

Plaintiffs report they “estimated that the Defendants’ realistic exposure in this case was approximately \$14,948,523.” (Doc. 62-1 at 18, citing Doc. 47-2, Barnes Decl., ¶¶ 6-11) Thus, Plaintiffs report the settlement “is 53.5% of the total realistic exposure value and provides a definite and significant recovery in light of the risks of further litigation.” (*Id.* at 18-19) On the other hand, it does not appear that fees were included in the estimated exposure, and Class Counsel requests \$2,400,000 from the \$8,000,000 fund. If the requested fees are deducted, this results in a recovery for the class that is approximately 37% of the estimated liability—prior to deductions for costs, Settlement Administration, or the PAGA payment. After the anticipated deductions, “the average settlement is

1 estimated to be approximately \$595.29” and “the maximum settlement payment is estimated to be
2 approximately \$1,629.03.” (Doc. 71 at 8, Fringer Decl. ¶ 20)

3 As a whole, these are fair and acceptable result. However, the anticipated payments for class
4 members are not “exceptional.” *See, e.g., Adoma v. University of Phoenix, Inc.*, 913 F.Supp.2d 964,
5 983 (E.D. Cal. 2012) (finding the recovery of \$2,000 per class member in wage and hour class action
6 was “positive” but “not so exceptional as to ... justify an increase in the 25% benchmark”); *Taylor v.*
7 *TIC - The Industrial Company*, 2018 WL 6131198 at *7 (C.D. Cal. 2018) (declining to depart from the
8 benchmark where the results achieved were not “extraordinary”); *see also McKenzie v. Federal Express*
9 *Corp.*, 2012 WL 2930201 at *8 (C.D. Cal. Jul. 2, 2012) (declining to award fees above the benchmark
10 for a “favorable” recovery that included an \$8.25 million class fund and injunctive relief, because the
11 recovery could “hardly be described as ‘exceptional’ within the meaning of applicable jurisprudence”).
12 Accordingly, this factor does not support the requested upward departure from the benchmark.

13 **B. Risk undertaken by counsel**

14 The risk of costly litigation and trial is an important factor in determining the fee award.
15 *Chemical Bank v. City of Seattle*, 19 F.3d 1297, 1299-1301 (9th Cir. 1994). The Supreme Court
16 explained, “the risk of loss in a particular case is a product of two factors: (1) the legal and factual
17 merits of the claim, and (2) the difficulty of establishing those merits.” *City of Burlington v. Dague*,
18 505 U.S. 557, 562 (1992). As a result, the Ninth Circuit approved a fee award slightly above the
19 benchmark in *Vizcaino* where the case was “extremely risky for class counsel” and the “plaintiffs lost
20 in the district court — once on the merits, once on the class definition — and twice counsel succeeded
21 in reviving their case on appeal.” *Id.*, 290 F.3d at 1048.

22 Class Counsel asserts the requested award above the benchmark is appropriate because “the
23 law[s] on the claims in this case are ever changing in the state and federal appellate courts and the
24 California Supreme Court.” (Doc. 62-1 at 30-31) Class Counsel observes:

25 Every year key appellate decisions are issued on wage and hour claims alleged in this
26 case that impact rounding, meal and rest claims as well as the derivative claims plead
27 here. The legal uncertainty and exposure on wage and hour class action cases make
these cases very litigious, difficult to litigate and very expensive, time consuming and
risky contingent fee cases.

28 (Doc. 62-1 at 31)

1 Notably, every case involves a risk by counsel, and Class Counsel broadly refers to the risks
 2 related to all wage and hour class actions. Class Counsel have not identified any risks undertaken that
 3 are *specific* to this action. (See Doc. 62-1 at 31) Class Counsel fail to show the case was factually
 4 complex or demonstrate extreme risks in pursuing the claims litigated. For example, in *Vizcaino*, the
 5 plaintiffs “lost in the district court—once on the merits, once on the class definition” and the class
 6 counsel twice “succeeded in reviving their case on appeal.” *Id.*, 290 F.3d at 1303. The court found the
 7 pursuit of the case was “extremely risky” given the absence of supporting precedents” and the
 8 challenges faced in the appeals. *Id.* As such, the risks supported an award of fees slightly above the
 9 benchmark. *Id.* at 1048-49. In contrast, Class Counsel did not face such challenges to the merits of
 10 Plaintiffs’ claims.

11 In addition, the Ninth Circuit suggested that the distinction between a contingency arrangement
 12 and a fixed fee arrangement alone does not merit an enhancement from the benchmark. *See In re*
 13 *Bluetooth Headset Prods. Liab. Litig.*, 654 F.3d 935, 942 n.7. (9th Cir. 2011) (“whether the fee was
 14 fixed or contingent” is “no longer valid” as a factor in evaluating reasonable fees) (citation omitted);
 15 *but see In re Online DVD-Rental Antitrust Litigation*, 779 F.3d 934, 954-55 (9th Cir. 2015) (finding the
 16 contingent nature of litigation remains a relevant factor to evaluate a request from the common fund).

17 Even though this case was taken on a contingency basis, Class Counsel do not identify any
 18 evidence that demonstrates they bore an atypical risk such that the Court should award fees above the
 19 benchmark. *Compare with Vizcaino*, 290 F.3d at 1048. Consequently, this factor does not weigh in
 20 favor of a fee award above the benchmark.

21 **C. Complexity of issues and skills required**

22 The complexity of issues and skills required may weigh in favor of a departure from the
 23 benchmark fee award. *See Lopez v. Youngblood*, 2011 U.S. Dist. LEXIS 99289, at *14-15 (E.D. Cal.
 24 Sept. 2, 2011) (in determining whether to award the requested fees totaling 28% of the class fund, the
 25 Court observed the case involved “complex issues of constitutional law in an area where considerable
 26 deference is given to jail officials,” and the action “encompassed two categories of class members”);
 27 *see also Hanlon*, 150 F.3d at 1029 (explaining that after calculating a lodestar, the fee award may be
 28 “adjusted upward or downward to account for several factors including ... the complexity and novelty

1 of the issues presented”); *Couser v. Comenity Bank*, 125 F.Supp.3d 1034, 1049 (S.D. Cal. 2015)
 2 (considering “the complexity of the issues litigated” as a factor in the reduction of the fees to 15% of
 3 the common fund).

4 According to Class Counsel, “The legal issues raised in this case are very difficult due to the
 5 constantly changing law on rounding, meal breaks and rest break.” (Doc. 62-1 at 25) Class Counsel
 6 assert “[t]he complexity of this matter was further complicated by the fact that many Class Members
 7 are current employees of Defendants, who might have been reluctant to participate in Plaintiffs’
 8 investigation due to perceived fear of retribution by the employer.” (*Id.*)

9 On the other hand, Class Counsel have not identified any recent changes to wage and hour law
 10 that complicated the issues raised against Defendants or created novel issues in this action. Class
 11 Counsel do not present any evidence that their investigation—or the prosecution of this matter—was
 12 hampered by reluctant putative class members. Indeed, in seeking class certification prior to the
 13 Settlement, Plaintiffs submitted several declarations from putative class members, including a current
 14 employee. (See Doc. 29-2 at 4; Doc. 29-4 at 59, Covarrubias Decl. ¶ 2) Because Class Counsel do not
 15 identify any evidence to support a finding that the factual and legal issues presented were complex or
 16 required significant skill, the Court is unable to find this factor supports an award of fees above the
 17 benchmark.

18 **D. Length of professional relationships**

19 Class Counsel do not address the length of their professional relationships with the plaintiffs in
 20 their motion for fees or assert that this factor warrants an upward departure from the benchmark. (See
 21 *generally* Doc. 62-1) Due to the lack of information in the brief, the Court has reviewed the
 22 declarations and billing records from counsel to determine the length of the professional relationships.
 23 It appears the professional relationship between Emmanuel Salgado and Raphael Katri began in August
 24 2016, after which the Law Offices of Kevin T. Barnes became co-counsel. (See Doc. 62-3 at 5; see
 25 *also* Doc. 71 at 35) Sahag Majarian II reports that he “was approached by David Garcia in November
 26 of 2015 with potential employment law claims” and Andre Wong contacted him in February 2018
 27 “relative to additional employment law claims he believed he had against Defendant.” (Doc. 62-5 at 5)
 28 Matthew Matern, counsel for Gael Grob, does not provide any information regarding when he began

his representation in his declaration or billing records. (See Doc. 62-6) However, the initial complaint in *Grob T-Mobile USA, Inc.*, was filed on June 14, 2019, in the Central District of California, Case No. 2:19-cv-06352. (Doc. 47-1 at 8)

Thus, the professional relationships between counsel and the named plaintiffs have each lasted for less than five years. The short duration of the professional relationships does not support an award above the benchmark and may warrant an award a downward departure. See *Six Mexican Workers*, 904 F.2d at 1311 (finding “the 25 percent standard award” was appropriate although “the litigation lasted more than 13 years”).

E. Lodestar crosscheck and market rate

Kevin Barnes reports Class Counsel’s total hours worked will be at least 1,036.9 and the collective lodestar will be \$771,897.50. (Doc. 71 at 2, ¶ 5) (emphasis omitted) He reports this includes anticipated time for the final approval hearing, future contact with class members, and future contact with the claims administrator. (*Id.*) In support of the lodestar calculation, Class Counsel provided timesheets for each firm that worked on the action.

In general, when the lodestar is used as a crosscheck for a fee award, the Court is not required to perform an “exhaustive cataloguing and review of counsel’s hours.” See *Schiller*, 2012 WL 2117001 at *20 (citing *In re Rite Aid Corp. Sec. Litig.*, 396 F.3d 294, 306 (3d Cir.2005); *In re Immune Response Sec. Litig.*, 497 F.Supp.2d 1166 (S.D. Cal. 2007)). However, because a cursory review of the provided timesheets indicated many entries for clerical tasks and internal communications between co-counsel, the Court has performed a more detailed review of the records. Also, the lodestar calculation was flawed due to the hourly rates used by Class Counsel.

1. Hourly rates

The fee applicant bears a burden to establish that the requested rates are commensurate “with those prevailing in the community for similar services by lawyers of reasonably comparable skill, experience, and reputation.” *Blum*, 465 U.S. at 895 n.11. The applicant meets this burden by “produc[ing] satisfactory evidence—in addition to the attorney’s own affidavits—that the requested rates are in line with those prevailing in the community for similar services by lawyers of reasonably comparable skill, experience and reputation.” *Blum*, 465 U.S. at 896 n.11; see also *Chaudhry v. City of*

1 *Los Angeles*, 751 F.3d 1096, 1110-11 (9th Cir. 2014) (“Affidavits of the plaintiffs’ attorney[s] and other
 2 attorneys regarding prevailing fees in the community . . . are satisfactory evidence of the prevailing
 3 market rate.”)

4 Class Counsel applied hourly rates ranging from \$595 to \$950 for purposes of calculating their
 5 lodestar. (Doc. 62-1 at 27) According to counsel, these hourly rates are in accord with the prevailing
 6 rates, pointing to hourly rates identified in “[a] survey conducted by The National Law Journal,” which
 7 identified hourly rates for firms located in Orange County, Los Angeles County, San Francisco County
 8 and San Diego County. (*Id.* at 28) Class Counsel refer to the declaration of Richard Pearl from a case
 9 in Los Angeles Superior Court, noting that Mr. Pearl “reviewed the comparable hourly rates of
 10 attorneys in California” and found courts approved hourly rates of \$875 in Alameda County Superior
 11 Court and \$750 in San Francisco County Superior Court. (Doc. 62-1 at 28-29; *see also* Doc. 62-2 at
 12 58-73)

13 a. Relevant community and availability of local counsel

14 Importantly, the Supreme Court explained that attorney fees are to be calculated with “the
 15 prevailing market rates in the relevant community.” *Blum v. Stenson*, 465 U.S. 886, 895-96 and n.11
 16 (1984). In general, the “relevant community” for purposes of determining the prevailing market rate is
 17 the “forum in which the district court sits.” *Camacho*, 523 F.3d at 979. Thus, when a case is in the
 18 Fresno Division of the Eastern District of California, “[t]he Eastern District of California, Fresno
 19 Division, is the appropriate forum to establish the lodestar hourly rate . . .” *See Jadwin v. County of*
 20 *Kern*, 767 F.Supp.2d 1069, 1129 (E.D. Cal. 2011). On the other hand, “rates, other than those of the
 21 forum, may be employed if local counsel was unavailable, either because they are unwilling or unable
 22 to perform because they lack the degree of experience, expertise, or specialization required to handle
 23 properly the case.” *Gates v. Deukmejian*, 987 F.2d 1392, 1405 (9th Cir. 1992).

24 Plaintiffs present no evidence that local counsel was either unwilling or unable to prosecute
 25 their claims in this action. Consequently, there is no support for the proposition that the Court should
 26 apply the hourly rates from outside the local forum—such as those identified from the Central District
 27 and Northern District by the National Law Journal and Mr. Pearl. Thus, the Court must determine
 28 whether the hourly rates requested by counsel are reasonable for the Fresno Division of the Eastern

District.

b. Adjustment of hourly rates

Previously, this Court surveyed hourly rates and determined “courts in the Eastern District of California Fresno Division have approved hourly rates ranging from \$200.00 to \$550.00 per hour.” *Brewer v. leprino Foods Company*, 2019 WL 3202825 at *4 (E.D. Cal. July 15, 2019); *see also Roach v. Tate Publ’g & Enter.*, 2017 WL 5070264 at *9 (E.D. Cal. Nov. 3, 2017) (observing that in 2017, “the current reasonable range of attorneys’ fees for cases litigated in the Eastern District of California’s Fresno Division [was] between \$250 and \$400 per hour”). In general, “the highest rates generally reserved for those attorneys who are regarded as competent and reputable and who possess in excess of 20 years of experience.” *Silvester v. Harris*, 2014 WL 7239371 at *4 (E.D. Cal. Dec. 17, 2014); *see also Freshko Produce Servs. v. Write On Marketing*, 2019 WL 3798491 at *2 (E.D. Cal. Aug. 13, 2019) (finding the requested hourly rate of \$350 for an attorney with more than twenty years of experience was “a reasonable hourly rate within the Fresno Division”).

For attorneys with approximately fifteen years of experience, the hourly rate of \$300 is appropriate. *See Trujillo v. Singh*, 2017 WL 1831941 (E.D. Cal. May 8, 2017). For attorneys with less than ten years of experience,” the hourly rates may range between \$250 and \$325 per hour. *See Cervantes v. Vargas*, 2018 WL 2455615, at *7-8 (E.D. Cal. June 1, 2018) (finding \$275.00 per hour reasonable for attorney with nine years of experience in litigation); *Mora v. Cal West AG Servs.*, 2019 WL 2084725 at *9 (E.D. Cal. May 13, 2019) (awarding the rate of \$250 for a first-year associate and \$325 to an attorney practicing for nine years). With these parameters in mind, the hourly rates for counsel must be adjusted to those of the local forum.

Hours for each of the attorneys who have been admitted to practice for 30 years or more—including Kevin Barnes, Sahag Majarian II, and Dennis Moss—will be calculated at the highest rate of \$550 per hour. The rates for Gregg Lander and Matthew Matern, who have been in practice for more than 20 years, will be adjusted to \$400 per hour. *See Mora*, 2019 U.S. Dist. LEXIS 80520 at *28, 2019 WL 2084725 at *9 (adjusting the hourly rate for attorneys who had between 23 and 27 years—the same durations as Mr. Lander and Mr. Matern—to \$400 per hour to calculate the lodestar), *adopted by* 2019 WL 3760402 (E.D. Cal. Aug. 9, 2019). Further, the rates for Raphael Katri and Joshua Boxer, who

1 have been practicing for 17 to 18 years, will be adjusted to \$350 per hour. *See id.* (awarding the rate of
 2 \$350 to a partner who had been practicing for 20 years). Finally, the rate for Nazo Koulloukian, who
 3 has been practicing for 11 years, the rate is adjusted to \$330 per hour. *See id.* (awarding the rate of \$325
 4 to an attorney in practice for 9 years for purposes of the lodestar crosscheck).

5 Based upon the prior survey of the attorney fees in the Fresno Division and the Court's own
 6 knowledge of prior fee awards, these adjusted hourly rates are reasonable based upon the reported
 7 experiences, skill, and reputations of counsel. *See Brewer*, 2019 WL 3202825 at *4; *Mora*, 2019 WL
 8 2084725 at *9; *see also Ingram v. Oroudjian*, 647 F.3d 925, 928 (9th Cir. 2011) (concluding "the
 9 district court did not abuse its discretion either by relying, in part, on its own knowledge and
 10 experience" to determine reasonable hourly rates).

11 2. Hours expended

12 Representatives from the law firms designated as Plaintiffs' counsel have provided a declaration
 13 including the hours worked in support of the request for attorney fees. Accordingly, the Court has
 14 reviewed the hours reported by each firm to determine whether they are reasonable.

15 a. The Law Offices of Kevin T. Barnes

16 Kevin Barnes reports that his "law office now has a total of 815.6 attorney hours including the
 17 20 hours that [he] expect[s] to spend to prepare for and attend the final approval hearing, contact with
 18 class members, contact with the claims administrator and to ensure that proper claims administration
 19 and distribution occurs to all class members." (Doc. 71 at 2, Barnes Supp. Decl. ¶ 5)

20 The tasks performed by counsel from this firm include investigations into Salgado's claims,
 21 including meetings with class members; drafting Salgado's complaint, a motion to remand, and motion
 22 for class certification; taking depositions; and participation in mediation. (*See generally* Doc. 71 at
 23 19-40) However, the Court's review of the billing records to determine the tasks undertaken by the
 24 law firm revealed the inclusion of clerical tasks, overbilling related to internal communications, and
 25 duplicated work, which should have been omitted from the lodestar calculation.

26 *i. Clerical tasks*

27 The Supreme Court determined that "purely clerical or secretarial tasks should not be billed at a
 28 paralegal or [lawyer's] rate, regardless of who performs them." *Missouri*, 491 U.S. at 288 n.10. Thus,

1 courts have discounted billing entries for “clerical tasks” such as “filing, transcript, and document
 2 organization time.” *Nadarajah v. Holder*, 569 F.3d 906, 921 (9th Cir. 2009); *see also Harris v. L & L*
 3 *Wings, Inc.*, 132 F.3d 978, 985 (4th Cir. 1997) (approving the court’s elimination of hours spent on
 4 secretarial tasks from the fees calculation); *L.H. v. Schwarzenegger*, 645 F. Supp. 2d 888, 899 (E.D.
 5 Cal. 2009) (finding organizing and updating files were clerical tasks, and declining to award fees where
 6 the applicant “tendered no evidence that these are tasks that required the skill of a paralegal”); *Jones v.*
 7 *Metropolitan Life Ins. Co.*, 845 F.Supp.2d 1016, 1027 (N.D. Cal. 2012) (discounting time for “filing or
 8 retrieving electronic court documents or copying”). Because Gregg Lander billed 1.0 hour for clerical
 9 tasks such as calendaring dates, emails regarding electronic filing, and downloading documents (See
 10 e.g. Doc 71 at 19-22), the lodestar should be reduced.

11 *ii. Internal communications and review of co-counsel’s work*

12 As noted above, a fee applicant “should make a good-faith effort to exclude from a fee request
 13 hours that are excessive, redundant, or otherwise unnecessary.” *Hensley*, 461 U.S. at 434. The Ninth
 14 Circuit has “recognized that ‘the participation of more than one attorney does not necessarily constitute
 15 an unnecessary duplication of effort.’” *McGrath v. County of Nevada*, 67 F.3d 248, 256 (1995) (quoting
 16 *Kim v. Fujikawa*, 871 F.2d 1427, 1435 n.9 (9th Cir. 1989)). However, in general, counsel should not
 17 bill for attending the same meetings, internal communications, and communicating with each other, as
 18 such time is unnecessary. *See, e.g., In re Mullins*, 84 F.3d 459, 467 (D.C. Cir. 1996); *Robinson v.*
 19 *Plourde*, 717 F.Supp.2d 1092, 1099 (D. Haw. 2010).

20 This Court previously observed, “many courts have ... reduced fee awards for time spent in
 21 ‘interoffice conferences’ or other internal communications.” *Gauchat-Hargis v. Forest River, Inc.*, 2013
 22 WL 4828594 at *3 (E.D. Cal. Sept. 9, 2013) (citing, e.g., *Mogck v. Unum Life Ins. Co. of Am.*, 289
 23 F.Supp.2d 1181, 1194 (S.D. Cal. 2003) [reducing selected time entries because attorneys “billed an
 24 inordinate amount of time for interoffice conferences”]; *see also Coles v. City of Oakland*, 2007 WL
 25 39304, at *10 (N.D. Cal. Jan. 4, 2007) [“communication between attorneys may indicate unreasonable
 26 overstaffing such that a reduction in hours is appropriate”]). Notably, a review of the billing records
 27 from The Law Offices of Kevin T. Barnes reveals a significant amount of time spent on internal
 28 communications and meetings.

Gregg Lander and Kevin Barnes repeatedly billed time for exchanging emails, drafting internal communications, and attending the same meetings. For example, on August 29, 2016, Mr. Barnes billed 0.2 hour for drafting emails, while Mr. Lander billed 0.1 hour for his review of the email. (Doc. 71 at 19, 35) On July 5, 2017, Mr. Barnes billed for emailing Mr. Landers regarding the issue of remand, and Mr. Lander billed for his review of the email. (*Id.* at 19, 36) On September 10, 2018, Mr. Lander billed 2.2 hours related to exchanging emails with Mr. Barnes regarding training related to calling class members during the firm’s investigation. (*Id.* at 24) On January 6, 2019, Mr. Barnes billed 8.9 hours for writing the “class cert brief, emails, [and] memo re additional written discovery.” (*Id.* at 37) The same date, Mr. Lander billed 1.1 hours related to email exchanges with Mr. Barnes. (*Id.* at 27) Though these are only a few examples of the written communications between Mr. Lander and Mr. Barnes, the billing records from Mr. Lander include more than 250 entries—each billed at a minimum of 0.1 hour—for emails from or to Kevin Barnes. (*See generally* Doc. 71 at 19-35) However, Mr. Barnes has also billed for drafting these emails. (*See id.* at 37-41)

Mr. Barnes also billed for his review of work performed by co-counsel and meetings with Sahag Majarian and Raphael Katri. For example, on March 1, 2019, Mr. Barnes billed 3.2 hours for a meeting with Sahag Majarian regarding his case, exchanging emails, and reviewing the complaint. (Doc. 71 at 37) On July 11, 2019, he billed 0.3 hour for another discussion with Mr. Majarian regarding “his cases,” and the following day billed 3.1 hours for reviewing the *Wong* and *Garcia* complaints, and a telephone call with Mr. Lander. (*Id.* at 38) Mr. Barnes also billed for conferences with Matthew Matern and reviewing the documents Mr. Matern prepared on behalf of Gael Grob. (*Id.*) Again, though the Court declines to identify each of the meetings and email exchanges between co-counsel, many such entries are found in the timesheets of Mr. Lander, which strongly suggests overbilling. *See Gauchat-Hargis*, 2013 WL 4828594 at *3; *Mogck*, 289 F.Supp.2d at 1194; *In re Durosette*, 2012 WL 9123382 at *3 (E.D. Cal. Aug. 23, 2012) (finding a reduction of time appropriate in part due to the amount of time reported for preparation of internal memos).

iii. Overbilling for emails related to electronic filing

Finally, the Court notes that Mr. Lander billed for his receipt of each email generated by the Court’s electronic filing system, including for documents filed by his own firm. From the Court’s

review, 53 entries in the timesheets from Mr. Lander reference such court emails, billed at a minimum of 0.1 hour—though a handful of these entries are block-billed with internal firm communications. (See Doc. 71 at 19-35) Notably, Mr. Lander does not indicate that he reviewed the actual filed documents for which these emails were generated, but only the email from the Court’s electronic filing system. The Court is unable to find all reported time was necessary, as it takes only moments to review a “Notice of Electronic Filing,” and not six minutes per email. See, e.g., *Spectrum Produce Distrib. v. Fresh Mktg*, 2012 WL 2369367 at *8 (D.N.J. June 20, 2012) (finding overbilling where counsel billed “a total of 36 minutes to receive 6 automatically generated messages” from the court’s electronic docket because “such separate billing of each task [was] excessive”).

iv. *Reduction in hours billed*

As noted above, Mr. Barnes included 20 hours in his lodestar calculation for anticipated time to preparation for and attendance at the final approval hearing, and future contact with class members and the Settlement Administrator. (Doc. 71 at 2, Barnes Supp. Decl. ¶ 5) The Court declines to award this time, as the motion is taken under submission and will not be held, and the Court will not speculate as to the time that will be expended by counsel on future tasks. See *Freshko Produce Servs. v. Write On Marketing*, 2019 WL 3798491 at *3 (E.D. Cal. Aug. 13, 2019) (reducing “anticipated fees” from a lodestar calculation where there was “no documentation or explanation regarding time that would be spent enforcing the judgment” and the “declin[ing] to speculate as to the actual time that will be spent”). Thus, the lodestar for Mr. Barnes will be reduced by 20 hours.

Further, given the above concerns related to the inclusion of clerical tasks, the significant amount of time billed for internal communications in the law firm and with co-counsel, and excessive time, the Court exercises its discretion to reduce the hours for Gregg Lander and Kevin Barnes by ten percent for purposes of its lodestar calculation. See *Moreno v. City of Sacramento*, 534 F.3d 1106, 1111 (9th Cir. 2008) (the Court has the authority to impose “a small reduction, no greater than ten percent—a ‘haircut’—based on its exercise of discretion”); see also *Cosby v. Autozone, Inc.*, 2016 U.S. Dist. LEXIS 55051 at *15 (E.D. Cal. Apr. 25, 2016) (reducing the lodestar calculation by ten percent to account for “excessive and unreasonable” time entries).

With these deductions, the lodestar below reflects deductions in the total amount of 31.68

hours for Mr. Lander and 67.88 hours for Mr. Barnes, which includes the 20 hours for anticipated future tasks, and 47.88 hours from the documented time. Thus, the total remaining time to be awarded for The Law Offices of Kevin T. Barnes is 716.04 hours. The Court finds this amount is remaining reasonable for the tasks performed by counsel in this action.

b. Law Offices of Sahag Majarian II

Mr. Majarian reports that he was approached by David Garcia in November 2015 and Andre Wong in February 2018, and as a result, he has “been involved in the handling of this matter” for “the past fifty months.” (Doc. 62-5 at 5, Majarian Decl. ¶ 8) During this time, he “spent a total of 16.30 hours” on the action. (*Id.*, ¶ 9) Tasks performed by Mr. Majarian included meetings with the plaintiffs, reviewing records, reviewing the complaints filed on behalf of Garcia and Wong. (*Id.* at 8-10) Though the reported time also includes drafting emails to co-counsel and meetings with co-counsel, the reported time appears minimal. (*See id.*) The Court finds the 16.3 hours billed by Mr. Majarian was reasonable for the completed tasks, and no deductions will be made to the hours he billed.

c. Koul Law Firm

Nazo Koulloukian reports that he expended 56.0 hours on this action, beginning with the *Wong* action in September 2018. (Doc. 62-7 at 11; *id.* at 15-18) Tasks performed include:

- Conducting numerous interviews with the named Plaintiff;
- review of documents produced by the Plaintiff;
- preparation of multiple drafts of the PAGA notice letter;
- legal research regarding Defendant’s practices;
- preparation and filing of the motion for preliminary approval and order; [and]
- working with Settlement Administrator to ensure compliance with [the] Court’s order on preliminary approval.

(Doc. 62-7 at 9, Koulloukian Decl. ¶ 14) He also reports, “It is estimated that my office will need to expend at least another 2-5 hours to monitor the process leading up to the final approval.” (*Id.*, ¶ 15)

As set forth above, the Court declines to award estimated future time, particularly without evidence to support the estimates. Accordingly, the “estimated... 2-5 hours” will not be included in the lodestar below. Although there are many entries indicating conferences and written communications with Sahag Majarian and co-counsel (*see*, Doc. 62-7 at 15-18), the Court notes that the billing for these communications was minimal by Mr. Majarian. Because the billing for the meetings between co-counsel was not “inordinate,” no deduction is necessary. *See Mogck*, 289 F.Supp.2d at 1194. The

1 Court finds the documented total of 56.0 hours was reasonable by Mr. Koulloukian for the tasks
 2 undertaken in *Wong* and after consolidation with this action, and no deduction will be made to the
 3 lodestar hours for Mr. Koulloukian.

4 d. Law Offices of Raphael A. Katri

5 Mr. Katri reports that his office incurred a total of 52.4 hours as of January 13, 2020, and he
 6 expected “to spend approximately 10 hours to prepare for and/or attend the final settlement hearing,
 7 contact with aggrieved employees requesting case status updates over the next several months, and to
 8 ensure that proper claims administration and distribution occurs to all aggrieved employees.” (Doc.
 9 62-3 at 4, Katri Decl. ¶ 6)

10 Notably, of the documented hours, approximately 8 hours involve discussions with co-counsel,
 11 without including hours for working with co-counsel on various documents. As set forth above,
 12 records from The Law Offices of Kevin T. Barnes also included billing for communications with Mr.
 13 Katri. (See, e.g., Doc. 71 at 19-21, 25, 36) For example, on August 17 and August 30, 2016, Mr. Katri
 14 billed a total of 1.1 hour for two calls with co-counsel, and Mr. Barnes billed for teleconferences with
 15 Mr. Katri on the same days. (Doc. 62-3 at 5; Doc. 71 at 36) However, as set forth above, two
 16 attorneys cannot bill for attending the same meeting or communicating with one another, as such time
 17 is unnecessary. See *In re Mullins*, 84 F.3d at 467; *Robinson*, 717 F.Supp.2d at 1099. Accordingly, the
 18 Court exercises its discretion to reduce the hours billed by Mr. Katri by ten percent due to the
 19 duplication of effort, and to reduce unnecessary time caused by the participation of more than one
 20 attorney in prosecuting the claims of Salgado and the class. See *Moreno*, 534 F.3d at 1111; *Cosby*,
 21 2016 U.S. Dist. LEXIS 55051 at *15. This results in a deduction of 5.24 hours from the lodestar. The
 22 Court finds the remaining 47.16 hours are reasonable in light of the tasks completed by Mr. Katri.

23 e. Dennis Moss

24 Dennis Moss reports that his “law office has a total of 59.3 hours” on this action, beginning in
 25 December 2015. (Doc. 62-4 at 5, Moss Decl. ¶ 5; see also *id.* at 10) The tasks completed by Mr. Moss
 26 include client conferences, research, drafting a complaint, written discovery, deposition preparation,
 27 and mediation discussions. (See *id.* at 10-11) The Court finds the 59.3 hours reported are reasonable
 28 for the tasks completed, and no deductions will be made to the hours billed by Mr. Moss for purposes

1 of calculating the lodestar.

2 f. Matern Law Group

3 Matthew Matern reports that attorneys Matern Law Group spent 27.3 hours on this action.
 4 (Doc. 62-6 at 6, ¶ 10; *see also id.* at 12) This includes 12.5 hours by Mr. Matern and 14.8 hours by
 5 Joshua Boxer. (*Id.*) Significantly, however, the attorneys billed for completing *identical* tasks. (*See*
 6 Doc. 62-6 at 12) Mr. Matern reports that he spent 3.7 hours on “Law & Motion/ Pleadings;” 4.9 hours
 7 on “Attorney-Client Communications/ Research/ Document Review / Correspondence / Meet and
 8 Confer / Internal Communications/ Investigation;” and 3.9 hours on “Settlement Negotiations and
 9 Drafting of Settlement Documents/ Communications.” (*Id.*) In addition, he reports that Mr. Boxer
 10 spent a total of 14.80 hours on the same activities.

11 Significantly, it is well-established that duplicated tasks should not be included in a lodestar
 12 calculation. *See, e.g., Hensley*, 461 U.S. at 434 (indicating a fee applicant “should make a good-faith
 13 effort to exclude from a fee request hours that are ... redundant”); *Moreno*, 534 F.3d at 112 (observing
 14 the Court “may reduce the number of hours awarded because the lawyer performed unnecessarily
 15 duplicative work”); *see also Ramos v. Lamm*, 713 F.2d 546, 554 (10th Cir. 1983) (“If the same task is
 16 performed by more than one lawyer, multiple compensation should be denied”); *see also Makaeff v.*
 17 *Trump Univ., LLC*, 2015 WL 1579000 (S.D. Cal. Apr. 9, 2015) (excluding time for an attorney whose
 18 tasks were “duplicative of other attorneys”). Based on the descriptions provided by counsel related to
 19 the tasks completed, the tasks completed by Mr. Matern and Mr. Boxer were identical on this action.
 20 Thus, the Court will deduct the hours reported by Mr. Boxer—who has less experience than Mr.
 21 Matern—as a duplication.

22 The Court finds the remaining 12.5 hours for Mr. Matern are reasonable in light of the limited
 23 work necessary on behalf of Plaintiff Gael Grob, whose case was filed in June 2019, only months
 24 before the global settlement of the claims was reached. (*See* Doc. 47-1 at 8)

25 3. Lodestar Calculation

26 With the hourly rates and time adjustments set forth above, the lodestar for the time expended in
 27 this action is **\$432,620.00**.

28 ///

COUNSEL	ADJUSTED HOURS	ADJUSTED RATE	LODESTAR
Kevin Barnes	430.92	\$550	\$237,006.00
Gregg Lander	285.12	\$400	\$114,048.00
Raphael Katri	47.16	\$350	\$16,506.00
Dennis Moss	59.3	\$550	\$32,615.00
Sahag Majarian II	16.3	\$550	\$8,965.00
Matthew Matern	12.5	\$400	\$5,000.00
Joshua Boxer	0.0	N/A	N/A
Nazo Koulloukian	56.0	\$330	\$18,480.00
TOTAL			\$432,620.00

III. Amount of Fees to be Awarded

There is a strong presumption that the lodestar is a reasonable fee. *Gonzalez*, 729 F.3d at 1202; *Camacho*, 523 F.3d at 978. As a result, “a multiplier may be used to adjust the lodestar amount upward or downward only in rare and exceptional cases, supported by both specific evidence on the record and detailed findings . . . that the lodestar amount is unreasonably low or unreasonably high.” *Van Gerwen v. Guarantee Mut. Life Co.*, 214 F.3d 1041, 1045 (9th Cir. 2000 (internal punctuation and citations omitted)). Nevertheless, the Ninth Circuit observed that the lodestar is “routinely enhanced . . . to reflect the risk of non-payment in common fund cases.” *In re Washington Pub. Power Supply Sys. Sec. Litig.*, 19 F.3d at 1300.

The requested fees of \$2,400,000.00 would result in a multiplier of approximately 5.55 after the required adjustments to the hourly rates of the local forum and deductions of time expended by Class Counsel. This multiplier exceeds the range typically awarded in the Ninth Circuit. *See Vizcaino*, 290 F.3d at 1051 (“multiples ranging from one to four are frequently awarded in common fund cases when the lodestar method is applied”). Also, Class Counsel faced few risks, did not face complicated factual issues, and were not precluded from other work while prosecuting the claims on Plaintiffs’ behalf. The short duration of the professional relationships and lodestar crosscheck also support a downward adjustment from the benchmark. In light of these factors, a reduction to 20% of the common fund is appropriate. *See Barbosa v. Cargill Meat Solutions Corp.*, 297 F.R.D. 431, 448 (E.D. Cal. 2013) (“[t]he typical range of acceptable attorneys’ fees in the Ninth Circuit is 20 percent to 33.3 percent of the total settlement value”); *see also Six Mexican Workers*, 904 F.2d at 1311 (awarding “the 25 percent

1 standard award” where “the litigation lasted more than 13 years, obtained substantial success, and
 2 involved complicated legal and factual issues”). The reduction to 20% of the common fund—a total of
 3 \$1,600,000.00— results in a multiplier of 3.70, which is within the range accepted by the Ninth
 4 Circuit.³ Accordingly Class Counsel’s request for attorney fees is **GRANTED** in the modified amount
 5 of 20% of the Settlement fund, or **\$1,600,000.00**.

6 **REQUESTS FOR COSTS**

7 **I. Litigation Expenses**

8 In general, reimbursement of taxable costs is governed by 28 U.S.C. § 1920 and Federal Rule
 9 of Civil Procedure 54. Attorneys may recover reasonable expenses that would typically be billed to
 10 paying clients in non-contingency matters. *See Harris v. Marhoefer*, 24 F.3d 16, 19 (9th Cir. 1994).
 11 Previously, this Court found costs “including filing fees, mediator fees ..., ground transportation, copy
 12 charges, computer research, and database expert fees . . . are routinely reimbursed” in class action
 13 cases. *Alvarado v. Nederend*, 2011 WL 1883188 at *10 (E.D. Cal. Jan. May 17, 2011).

14 In granting preliminary approval of the Settlement, the Court authorized Class Counsel to seek
 15 “expenses up to \$70,000.” (Doc. 55 at 22) Class Counsel now request \$40,000.58 in costs. (Doc. 62-1
 16 at 12) Costs incurred include filing fees for the various actions, service of documents, mediation fees,
 17 expert fees, copies, and transportation. (*See, e.g.*, Doc. 62-2 at 33; Doc. 62-6 at 14; Doc. 62-3 at 11).
 18 Because the costs incurred by Class Counsel are routinely reimbursed in class actions, and do not
 19 exceed the amount previously authorized, the request for litigation costs in the amount of \$40,000.58
 20 is **GRANTED**.

21 **II. Costs of Settlement Administration**

22 The Settlement authorizes the Settlement Administrator to receive “reasonable costs of
 23 administration” from the Gross Settlement Amount, which was previously estimated to be \$56,000.
 24 (Doc. 48-1 at 10, Settlement ¶ 36) However, following the preliminary approval, as discussed above,
 25 counsel identified issues with the class member data, which resulted in additional Class Members and
 26 additional work performed by the Settlement Administrator to mail revised Class Notices. (*See* Doc.
 27 71 at 7, Fringer Decl. ¶¶ 8-13) In addition, the Settlement Administrator had to mail letters to 78
 28

³ Notably, the multiplier of 3.70 also is higher than the multiplier requested by Class Counsel. (*See* Doc. 71 at 2)

1 individuals to inform them that “based on the revised data, they [were] not a part of the Settlement and
 2 were inadvertently sent the Notice of Class Action Settlement.” (*Id.* at 8, ¶ 14) Ms. Fringer reports
 3 that following the additional tasks, “[t]he total cost for the administration of this Settlement, including
 4 fees incurred and future costs for the completion of the administration is estimated to be \$79,887.”
 5 (*Id.* at 9, ¶ 21) Nevertheless, Class Counsel requests Settlement Administration costs in the amount of
 6 \$56,000.00 “as expressly stated in the reviewed Class Notice,” and indicates additional funds will not
 7 be taken from the gross settlement fund.

8 Based upon the information provided regarding the tasks completed by the Settlement
 9 Administrator— and the continuing responsibilities with the calculation of the settlement checks,
 10 issuance and mailing of those settlement checks, and any necessary tax reporting on such payments—
 11 the Court finds the requested Settlement Administration costs are reasonable. Therefore, the request
 12 for \$56,000.00 for the Settlement Administrator is **GRANTED**.

13 **CLASS REPRESENTATIVE ENHANCEMENTS**

14 The Settlement provides that Plaintiffs may apply to the District Court for class representative
 15 enhancements to be paid from the gross settlement amount. (Doc. 48-1 at 10, Settlement ¶ 35) In
 16 particular, the parties agreed that the payments be \$15,000 for Emmanuel Salgado and \$5,000 each for
 17 David Garcia, Gael Grob, and Andre Wong. (*Id.*)

18 In the Ninth Circuit, a court has discretion to award a class representative a reasonable incentive
 19 payment. *Staton*, 327 F.3d at 977; *In re Mego Fin. Corp. Sec. Litig.*, 213 F.3d at 463. Incentive
 20 payments for class representatives are not to be given routinely. In *Staton*, the Ninth Circuit observed,

21 Indeed, “[i]f class representatives expect routinely to receive special awards in addition
 22 to their share of the recovery, they may be tempted to accept suboptimal settlements at
 23 the expense of the class members whose interests they are appointed to guard.” *Weseley*
 24 *v. Spear, Leeds & Kellogg*, 711 F. Supp. 713, 720 (E.D.N.Y. 1989); *see also Women’s*
Comm. for Equal Employment Opportunity v. Nat’l Broad. Co., 76 F.R.D. 173, 180
 (S.D.N.Y. 1977) (“[W]hen representative plaintiffs make what amounts to a separate
 peace with defendants, grave problems of collusion are raised.”).

25 *Id.* at 975. In evaluating a request for an enhanced award to a class representative, the Court should
 26 consider all “relevant factors including the actions the plaintiff has taken to protect the interests of the
 27 class, the degree to which the class has benefitted from those actions, . . . the amount of time and effort
 28 the plaintiff expended in pursuing the litigation . . . and reasonable fears of workplace retaliation.” *Id.*

at 977. Further, incentive awards may recognize a plaintiff’s “willingness to act as a private attorney general.” *Rodriguez v. West Publ’g Corp.*, 563 F.3d 948, 958-59 (9th Cir. 2009).

A. Time expended by Plaintiffs

Emmanuel Salgado estimates that he “spent approximately 50 hours on this case,” while David Garcia estimates he “spent more that 23 hours on this case.” (Doc. 62-8 at 4, Salgado Decl. ¶10; Doc. 62-9 at 4, Garcia Decl. ¶ 14) Gael Grob estimates she “spent approximately 5-10 hours performing tasks as a proposed class representative.” (Doc. 63 at 2, ¶ 4) Andre Wong has not provided an estimate of the number of hours he expended as a class representative, reporting only that he “devoted many hours of [his] time to this case.” (Doc. 62-10 at 3, Wong Decl. ¶ 8)

Based upon the information provided, it appears each appointed class representative expended some time related to the action, though the reported amount of time varied. Therefore, this factor weighs in favor of incentive payments to Plaintiffs.

B. Actions taken to benefit the class

The Settlement explains the payments are made to class representatives “in recognition of their efforts and work in prosecuting the Action and Related Actions on behalf of Class Members.” (Doc. 48-1 at 10, Settlement ¶ 35)

Emmanuel Salgado reports that his estimated time included: investigating claims, meeting with his attorneys, “production of documents for discovery,” deposition preparation, having his deposition taken, mediation preparation, and attending the full-day mediation. (Doc. 62-8 at 4, Salgado Decl. ¶ 10) Similarly, David Garcia reports that he reviewed records and complied policies for counsel, met with counsel prior to the filing of his complaint, prepared for a deposition, had his deposition taken, discussions with counsel prior to mediation, and meeting with counsel regarding the settlement. (Doc. 62-9 at 2-3, Garcia Decl. ¶¶ 4-9) According to Andre Wong, he “regularly conferenced with [his] attorneys, before and after the filing of the lawsuit, to discuss the status of the case, to offer [his] input on Defendants’ practices and policies, to provide names of witnesses, to assist in gathering evidence and documents that supported the PAGA claims, to review policy documents and payroll records from Defendant, and to discuss settlement options.” (Doc. 62-3 at 3, Wong Decl. ¶ 7) Finally, Gael Grob reports her “tasks as a proposed class representative, include[ed] searching and providing relevant

documents to [her] attorneys, communicating with [her] attorneys regarding the lawsuit, reviewing the settlement documents and discussing the proposed settlement with [her] attorneys, and reviewing and signing [her] declaration in support of the motion for final approval. (Doc. 63 at 2, Grob Decl. ¶ 4)

Notably, Plaintiffs Salgado and Garcia would have likely submitted to depositions the action was brought on behalf of the class. In addition, all plaintiffs likely would have assisted with discovery if they had filed individual causes of action. On the other hand, by reviewing documents and assisting with discovery, their actions undoubtedly benefitted the class. As a result, this factor weighs in favor of class representative incentive payments.

C. Fears of workplace retaliation

Notably, each class representative is a *former* employee of Defendants. Any fear of future difficulties with employment due to their status as named plaintiffs is speculative at best. Thus, this factor does not support incentive payments to Plaintiffs.

D. Reasonableness of Plaintiffs' request

Considering the actions taken by Plaintiffs and the time expended, incentive awards are appropriate for the class representatives. In determining the amount to be awarded, the Court may consider the time expended by the class representative, the fairness of the hourly rate, and how large the incentive award is compared to the average award class members expect to receive. *See, e.g., Ontiveros v. Zamora*, 2014 WL 5035935 (E.D. Cal. Oct. 8, 2014) (evaluating the hourly rate the named plaintiff would receive to determine whether the incentive award was appropriate); *Rankin v. Am. Greetings, Inc.*, 2011 U.S. Dist. LEXIS 72250, at *5 (E.D. Cal. July 6, 2011) (noting the incentive award requested was “reasonably close to the average per class member amount to be received); *Alvarado*, 2011 WL 1883188 at *10-11 (considering the time and financial risk undertaken by the plaintiff). Here, considering these factors, the awards requested by Plaintiffs are out of proportion to the efforts taken and time expended.

1. Time expended

In *Alvarado*, the Court noted the class representatives “(1) travelled from Bakersfield to Sacramento for mediation sessions (2) assisted Counsel in investigating and substantiating the claims alleged in this action; (3) assisted in the preparation of the complaint in this action; (4) produced

1 evidentiary documents to Counsel; and (5) assisted in the settlement of this litigation.” *Id.*, 2011 WL
 2 1883188 at *11. Also, the Court noted the plaintiffs “undertook the financial risk that, in the event of a
 3 judgment in favor of Defendant in this action, they could have been personally responsible for the costs
 4 awarded in favor of the Defendant.” *Id.* In light of these facts, the Court found an award of \$7,500 for
 5 each plaintiff was appropriate for the time, efforts, and risks undertaken.

6 Likewise, in *Bond*, the Court found incentive payments of \$7,500 were appropriate for the two
 7 named plaintiffs who: “(1) provided significant assistance to Class Counsel; (2) endured lengthy
 8 interviews; (3) provided written declarations; (4) searched for and produced relevant documents; (5)
 9 and prepared and evaluated the case for mediation, which was a full day session requiring very careful
 10 consideration, evaluation and approval of the terms of the Settlement Agreement on behalf of the
 11 Class.” *Bond*, 2011 WL 2648879, at *15. Similarly, the Northern District determined class
 12 representatives failed to justify incentive awards of \$10,000 although the plaintiffs reported “they were
 13 involved with the case by interacting with counsel, participating in conferences, reviewing documents,
 14 and attending the day-long mediation that resulted in the settlement.” *Wade v. Minatta Transport Co.*,
 15 2012 U.S. Dist. LEXIS 12057, at *3 (N.D. Cal. Feb. 1, 2012).

16 In this case, although the actions of Salgado and Garcia are comparable to the plaintiffs in
 17 *Alvarado* and *Bond*, Plaintiffs seeks an award for Salgado that doubles the amount of the incentive
 18 awards approved in the other cases. In addition, the actions of Wong and Grob are minimal—and the
 19 Court lacks any information regarding the specific amount of time expended by Wong.

20 2. Fairness of the hourly rate

21 Recently, this Court criticized a requested award because the award would have compensated
 22 the class representative “at a rate of \$73.80 per hour.” *Ontiveros*, 2014 WL 5035935 at *5-6. The Court
 23 explained that “[i]ncentive awards should be sufficient to compensate class representatives to make up
 24 for financial risk . . . for example, for time they could have spent at their jobs.” *Id.* at *6 (citing
 25 *Rodriguez v. West Publ’g Corp.*, 563 F.3d 948, 958-59 (9th Cir. 2009). The Court found an award of
 26 “\$50 per hour fairly compensate[] the named plaintiff for his time and incorporates an extra incentive to
 27 participate in litigation,” considering that the plaintiff’s hourly flat rate while employed by the
 28 defendant was \$15 per hour. *Id.* at *6; n. 3. Nevertheless, the Court increased the award from \$13,550

(calculated with \$50 per hour for the 271 hours) to \$15,000 because “Mr. Ontiveros relinquished the opportunity to bring several of his own claims.” *Id.* at *6.

With the estimated hours, the requested awards would compensate Salgado at the hourly rate of \$300, Garcia at the rate of approximately \$217 per hour, and Grob between \$500 and \$1,000 per hour. These hourly rates are clearly excessive. Indeed, such an award for Grob would exceed the fee awarded to some attorneys on this action. If the Court were to adopt the hourly rate approved in *Ontiveros*, the incentive awards would be reduced to \$2,500 for Salgado; \$1,150 for Garcia; and between \$250 to \$500 for Grob. The Court is unable to estimate the hourly rate for Wong, as he failed to provide specific information regarding the time expended on his claims or as a class representative.

3. Comparison of the award to those of the Class Members

In *Rankin*, the Court approved an incentive award of \$5,000, where the “[p]laintiff retained counsel, assisted in the litigation, and was an active participant in the full-day mediation.” *Id.*, 2011 U.S. Dist. LEXIS 72250, at *5. The Court found the amount reasonable, in part because “the sum is reasonably close to the average per class member amount to be received.” *Id.* Here, the requested award for Salgado is more than 25 times the average award Class Members will receive; and the requested payments for Garcia, Wong, and Grob are more than 8 times the average Class Member award. (See Doc. 71 at 8, Fringer Decl. ¶ 20) (reporting the expected average award is \$595.29, and the highest settlement share will be approximately \$1,629.03).

E. Amounts to be awarded

Because two of the three factors support an incentive award and Plaintiffs provided assistance to counsel, incentive awards are appropriate. In light of the efforts and time expended by Emmanuel Salgado—including traveling to and attending the full day of mediation, sitting for his deposition, and assistance with discovery, the Court finds an award of \$7,5000 is appropriate. See *Alvarado*, 2011 WL 1883188 at *10 (awarding \$7,500 to the class representatives). For Daniel Garcia, who expended nearly half the time of Salgado as a class representative and had his deposition taken, but did not attend the mediation, the Court finds the award of \$4,000.00 is appropriate. Finally, incentive awards in the amount of \$1,000.00 are appropriate for Andre Wong (who failed to identify any time estimate) and Gael Grob (who expended between 5-10 hours as a class representative), in recognition of their

1 assistance with discovery, and consent to participate in the global settlement of claims. *See, e.g. Tellez*
2 *v. Ulta Salon, Cosmetics & Fragrance, Inc.*, 2020 U.S. Dist. LEXIS 23372*26 (S.D. Cal. Feb. 10,
3 2020) (declining to award incentive payments in the requested amount of \$5,000; and awarding \$1,500
4 to a class representative “spent approximately 10 hours assisting counsel” and \$1,000 to
5 representatives who did not provide an estimate of the time expended on the action).

6 **CONCLUSION AND ORDER**

7 Based upon the foregoing, the Court **ORDERS**:

- 8 1. Plaintiffs’ motion for final approval of the Settlement Agreement is **GRANTED**;
- 9 2. Certification of the Settlement Class is **GRANTED**, and the class is defined follows:
10 [A]ll persons employed by Defendant in California as hourly-paid,
11 non-exempt employees who worked in retail locations, including but
12 not limited to, Retail Sales Managers, Retail Assistant Managers,
13 Retails Sales Associates, and Mobile Experts, or functionally
equivalent positions at any time from February 3, 2013, through the
date of Preliminary Approval.
14 3. Plaintiff’s request for class representative incentive payments is **GRANTED** in the
15 amount of **\$7,500.00** for Emmanuel Salgado; **\$4,000.00** for Daniel Garcia; **\$1,000.00**
16 for Andre Wong; and **\$1,000.00** for Gael Grob;
17 5. Class Counsel’s motion for attorneys’ fees is **GRANTED** in the modified amount of
18 **\$1,600,000.00**, which is 20% of the gross settlement amount;
19 6. Class Counsel’s request for costs in the amount of **\$40,005.68** is **GRANTED**;
20 7. Settlement Administration costs in the amount of **\$56,000.00** are **APPROVED**, to be
21 taken from the settlement fund;
22 8. The California Labor Code Private Attorney General Act payment to the State of
23 California in the amount of \$225,000.00 is **APPROVED**;
24 9. The action be dismissed with prejudice, with each side to bear its own costs and
25 attorneys’ fees except as otherwise provided by the Settlement and ordered by the
26 Court;
27 10. The Clerk of Court is **DIRECTED** to close this action; and
28 11. The Court hereby retains jurisdiction to consider any further applications arising out of

1 or in connection with the Settlement.

2
3 IT IS SO ORDERED.

4 Dated: June 11, 2020

/s/ Jennifer L. Thurston
UNITED STATES MAGISTRATE JUDGE

EXHIBIT D

Jeremy F. Bollinger (SBN 240132)
Dennis F. Moss (SBN 77512)
Ari E. Moss (SBN 238579)
Jorge A. Flores (SBN 333441)
MOSS BOLLINGER LLP
15300 Ventura Blvd., Ste. 207
Sherman Oaks, California 91403
Telephone: (310) 982-2984
Facsimile: (818) 963-5954
jeremy@mossbollinger.com
dennis@mossbollinger.com
ari@mossbollinger.com
anthony@mossbollinger.com

Attorneys for Plaintiff JAIME MARTINEZ

SUPERIOR COURT FOR THE STATE OF CALIFORNIA
COUNTY OF STANISLAUS

JAIME MARTINEZ, an individual, on behalf of
himself and all others similarly situated,

Plaintiff,

vs.

DEL MONTE FOODS, INC. a Delaware
Corporation, and DOES 1-50,

Defendants.

Case No. CV-21-005893

[Assigned for all purposes to The
Honorable Sonny S. Sandhu, Dept. 24]

**NOTICE OF ENTRY OF FINAL
ORDER AND JUDGMENT**

Action Filed: October 28, 2022
Trial Date: None Set

PLEASE TAKE NOTICE that on August 22, 2023, the Court granted final approval of the
class action settlement in the above-captioned matter. Attached hereto as Exhibit A is a true and
correct copy of the Court's order.

Dated: August 22, 2023

MOSS BOLLINGER LLP

By

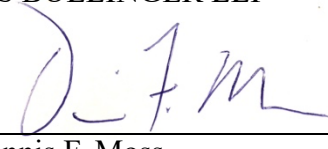
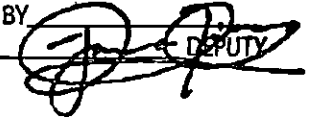

Dennis F. Moss
Attorneys for Plaintiff Jaime Martinez

EXHIBIT A

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

FILED
AUG 22 2023

CLERK OF THE SUPERIOR COURT
COUNTY OF STANISLAUS
BY  DEPUTY

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF STANISLAUS**

JAIME MARTINEZ, an individual, on behalf
of himself and all others similarly situated,

Plaintiff,

vs.

DEL MONTE FOODS, INC., a Delaware
Corporation; and DOES 1 through 50,

Defendant.

Case No.: CV-21-005893

[Assigned for all purposes to Hon. Sonny
S. Sandhu, Dept. 24]

CLASS ACTION

~~PROPOSED~~ FINAL ORDER
APPROVING CLASS ACTION AND
PAGA SETTLEMENT AND
JUDGMENT

Date August 18, 2023
Time: 8:30 a.m.
Dept. 24

1 The above-referenced class action ("Action") having come before the Court on August 18,
2 2023, for a hearing and Final Order Approving Class and PAGA Settlement and Judgment ("Final
3 Order"), consistent with the Court's Preliminary Approval Order ("Preliminary Approval
4 Order"), filed and entered April 3, 2023, and as set forth in the Joint Stipulation of Class Action
5 Settlement, and the Exhibits attached thereto (hereafter collectively, the "Settlement Agreement")
6 in the Action, and due and adequate notice having been given to all Class Members, and PAGA
7 Settlement Members, as required in the Preliminary Approval Order, and the Court having
8 considered all papers filed and proceedings had herein and otherwise being fully informed and
9 good cause appearing therefore,

10 **THE COURT HEREBY ORDERS AS FOLLOWS:**

11 1. For purposes of this Final Order, the Court incorporates by reference the
12 definitions in the Settlement Agreement, and all defined terms herein shall have the same
13 meaning as set forth in the Settlement Agreement.

14 2. Consistent with the definitions in the Settlement Agreement, the term "Class" is
15 defined as all persons who were classified as a seasonal employee by Defendant in California at
16 any time from October 28, 2018 through January 24, 2023. "PAGA Settlement Members" are all
17 persons who were classified as a seasonal employee by Defendant in California at any time
18 during the PAGA Period. "PAGA Period" means the period from October 28, 2020 to January 25,
19 2023. For purposes of the Settlement and this Final Order, "Released Parties" means Defendant
20 and all of its past and present owners, officers, directors, shareholders, employees, agents,
21 assigns, attorneys, insurers, brands and concepts, parent companies, subsidiaries, and affiliates,
22 and their respective predecessors, successors, assigns, and any other individual or entity that
23 could be jointly liable with Defendant, without limitation.

24 3. This Court has jurisdiction over the subject matter of this Action and over all
25 Parties to this Action, including all settlement Class Members and PAGA Settlement Members.

26 4. Distribution of the Notice directed to the settlement Class Members and PAGA
27 Settlement Members as set forth in the Settlement Agreement and the other matters set forth
28 therein has been completed in conformity with the Preliminary Approval Order, including

1 individual notice to all settlement Class Members who could be identified through reasonable
2 effort, and the best notice practicable under the circumstances. The Notice provided due and
3 adequate notice of the proceedings and of the matters set forth therein, including the proposed
4 settlement set forth in the Settlement Agreement, to all persons entitled to such Notice, and the
5 Notice fully satisfied the requirements of due process. All Class Members who did not submit
6 valid opt-outs, PAGA Settlement Members, and Released Claims are covered by and included
7 within the Settlement and this Final Order.

8 5. The Court hereby finds the Settlement was entered into in good faith pursuant to
9 and within the meaning of California Code of Civil Procedure section 877.6. The Court further
10 finds that the Settlement is fair, adequate, and reasonable and that Plaintiff has satisfied the
11 standards and applicable requirements for final approval of this Class Action and PAGA
12 Settlement under California law, including the provisions of California Code of Civil Procedure
13 section 382 and Federal Rule of Civil Procedure 23, approved for use by the California state
14 courts in *Vasquez v. Superior Court* (1971) 4 Cal.3d 800, 821.

15 6. The Court hereby approves the Settlement set forth in the Settlement Agreement,
16 and finds that the Settlement, including the non-reversionary Gross Settlement Amount (which
17 is Two Million Five Hundred Thousand Dollars [\$2,500,00.00]) is, in all respects, fair, adequate
18 and reasonable, and directs the Parties to effectuate the Settlement according to its terms. The
19 Court finds that the Settlement has been reached as a result of intensive, serious and
20 non-collusive arms-length negotiations. The Court further finds that the parties have conducted
21 extensive investigation and research, and counsel for the parties are able to reasonably evaluate
22 their respective positions. The Court also finds that Settlement at this time will avoid additional
23 substantial costs, as well as avoid the delay and risks that would be presented by the further
24 prosecution of the Action. The Court has reviewed the benefits that are being granted as part of
25 the Settlement and recognizes the significant value to the settlement Class Members. The Court
26 also finds that the Class is properly certified as a class for settlement purposes only.

27 7. As of the date of this Final Order, the Class Representative, and each and every
28 settlement Class Member who has not submitted a valid request for exclusion shall be deemed

1 to fully forever, irrevocably and unconditionally release, and discharge Defendant and the
2 Released Parties for the Released Claims as forth in Section V.A-C. of the Settlement
3 Agreement. Likewise, all PAGA Settlement Members shall be deemed to fully and forever,
4 irrevocably and unconditionally release, and discharge the Released Parties from the Released
5 Claims as forth in Section V.A-C. of the Settlement Agreement.

6 8. Neither the Settlement nor any of the terms set forth in the Settlement
7 Agreement is an admission by Defendant, or any of the other Released Parties, nor is this Final
8 Order a finding of the validity of any claims in the Action or of any wrongdoing by Defendant,
9 or any of the other Released Parties. Neither this Final Order, the Settlement Agreement, nor
10 any document referred to herein, nor any action taken to carry out the Settlement Agreement is,
11 may be construed as, or may be used as, an admission by or against Defendant, or any of the
12 other Released Parties, of any fault, wrongdoing or liability whatsoever. The entering into or
13 carrying out of the Settlement Agreement, and any negotiations or proceedings related thereto,
14 shall not in any event be construed as, or deemed to be evidence of, an admission or concession
15 with regard to the denials or defenses by Defendant, or any of the other Released Parties, and
16 shall not be offered in evidence in any action or proceeding in any court, administrative agency
17 or other tribunal for any purpose whatsoever other than to enforce the provisions of this Final
18 Order, the Settlement Agreement, the Released Claims, or any related agreement or release.
19 Notwithstanding these restrictions, any of the Released Parties may file in the Action, or submit
20 in any other proceeding, the Final Order, the Settlement Agreement, and any other papers and
21 records on file in the Action as evidence of the Settlement to support a defense of *res judicata*,
22 *collateral estoppel*, release, or other theory of claim or issue preclusion or similar defense as to
23 the Released Claims.

24 9. The Court hereby enters judgment in the entire Action as of the filing date of this
25 Final Order, pursuant to the terms set forth in the Settlement Agreement. Without affecting the
26 finality of this Final Order in any way, the Court hereby retains continuing jurisdiction over the
27 interpretation, implementation and enforcement of the Settlement and all orders entered in
28 connection therewith pursuant to California Code of Civil Procedure section 664.6.

1 10. The Court finds the settlement payments provided for under the Settlement to be
2 fair and reasonable in light of all of the circumstances. The Court orders the calculations and the
3 payments to be made and administered in accordance with the terms of the Settlement
4 Agreement.

5 11. The Court hereby confirms Jeremy F. Bollinger, Dennis F. Moss, Ari E. Moss
6 and Jorge A. Flores of Moss Bollinger LLP as Class Counsel in the Action.

7 12. Pursuant to the terms of the Settlement, and the authorities, evidence and
8 argument submitted by Class Counsel, the Court hereby awards Class Counsel attorneys' fees in
9 the amount of \$875,000.00, and attorneys' costs in the amount of \$11,385.06 from the Gross
10 Settlement Amount as final payment for and complete satisfaction of any and all attorneys' fees
11 and costs incurred by and/or owed to Class Counsel and any other person or entity related to the
12 Action. The Court further orders that the award of attorneys' fees and costs set forth in this
13 Paragraph shall be administered pursuant to the terms of the Settlement Agreement and
14 transferred and/or made payable to Class Counsel in the Action.

15 13. The Court also hereby approves and orders a service award to Plaintiff and Class
16 Representative Jaime Martinez in the amount of \$15,000.00 from the Gross Settlement Amount.

17 14. The Court also hereby approves and orders payment in the amount of \$15,000
18 from the Gross Settlement Amount for 75% (\$11,250.00) of the PAGA penalties, payable to the
19 California Labor Workforce Development Agency ("LWDA") and 25% (\$3,750.00) of the PAGA
20 penalties payable to the PAGA Settlement Members. The Court finds and determines that the
21 parties have satisfied the requirements of Section 2699(1)(2) of PAGA, by submitting the
22 Settlement Agreement to the LWDA.

23 15. The Court also hereby approves and orders payment from the Gross Settlement
24 Amount for actual Administration Costs incurred by the Settlement Administrator, Phoenix
25 Settlement Administrators, in the amount of \$27,950.00.

26 16. The Court also hereby approves and orders that any monies remaining in the
27 distribution account shall be distributed to California Rural Legal Services pursuant to
28 California Civil Procedure Code § 384, resulting in no "unpaid residue."

17. The Court also hereby finds and orders that the Settlement Agreement is and constitutes a fair, adequate, and reasonable compromise of the Released Claims against Defendant and the Released Parties.

18. Provided the Settlement becomes effective under the terms of the Settlement Agreement, the Court also hereby orders that Defendant will pay the Gross Settlement Amount to the Settlement Administrator within fourteen (14) calendar days of the Effective Date defined in the Settlement Agreement, and that the Settlement Administrator will mail the Court-approved individual settlement payments to Class Members who did not submit valid opt-outs and PAGA Settlement Members, including Plaintiff's Enhancement Award, within ten (10) business days after the Effective Date. Within ten (10) business days after receiving the Gross Settlement Amount, the Settlement Administrator will issue all Court-approved payments to Class Counsel, the LWDA and Settlement Administrator.

19. The Court also hereby finds that there were no objections to the Settlement raised by any person on the record at the hearing on the Final Order.

IT IS SO ORDERED.

Dated: 2/2/23



Judge of the Superior Court, County of Stanislaus
Sonny S. Sandhu

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

PROOF OF SERVICE

MARTINEZ v. DEL MONTE FOODS, INC.
STANISLAUS COUNTY SUPERIOR COURT CASE NO. CV-21-05893

I am over the age of eighteen years and not a party to the within action. My business address is 15300 Ventura Boulevard, Suite 207, Sherman Oaks, CA 91403. On August 22, 2023, I served the document(s) described as:

NOTICE OF ENTRY OF FINAL ORDER AND JUDGMENT

on the interested party(ies) below, using the following means:

Spencer C. Skeen spencer.skeen@ogletree.com

Nikolas T. Djordjevski nikolas.djordjevski@ogletree.com

OGLETREE DEAKINS NASH SMOAK & STEWART, PC

4307 La Jolla Village Drive

San Diego, California 92122

Counsel for Defendant Del Monte Foods, Inc.

☐ **(BY MAIL)** I am "readily familiar" with the firm's practice of collection and processing correspondences for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid at Los Angeles, California in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

☒ **(BY ELECTRONIC SERVICE)** Based on a court order or an agreement of the parties to accept service by e-mail or electronic transmission, I caused the document(s) to be sent to the respective e-mail address(es) of the party(ies) as stated above. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

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

Executed on August 22, 2023 at Sherman Oaks, California.



Lea Garbe

EXHIBIT E

AEQUITAS LEGAL GROUP
A Professional Law Corporation
1156 E. Green Street, Suite 200
Pasadena, California 91106

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF ORANGE – CIVIL COMPLEX CENTER

EVERARDO GONZALEZ, individually, and
on behalf of other members of the general
public similarly situated and on behalf of other
aggrieved employees,

Plaintiff,

vs.

BUCCOLA LANDSCAPE SERVICES, INC.,
a California corporation; and DOES 1 through
100, inclusive,

Defendants.

Case No. 30-2023-01356654-CU-OE-CXC

[Assigned for all purposes to the Honorable
Layne H. Melzer, Dept. CX102]

**~~[PROPOSED]~~ ORDER GRANTING FINAL
APPROVAL OF CLASS ACTION AND
PAGA SETTLEMENT AND JUDGMENT**

[Complaint filed: October 20, 2023]
[FAC filed: March 19, 2024]
[Trial date: None set]

Plaintiff's Unopposed Motion for Final Approval of Class Action and PAGA Settlement and Unopposed Motion for Award of Class Representative Service Payment, Administration Expenses Payment, and Class Counsel Fees and Litigation Expenses Payment (together, the "Motion") came on for hearing before this Court on March 26, 2026 at 2:00 p.m., the Honorable Layne H. Melzer presiding.

Having considered the Second Amended Class Action and PAGA Settlement Agreement and Class Notice ("Settlement Agreement") attached as **Exhibit 2** to the Declaration of Ronald H. Bae in support of Plaintiff's Motion for Final Approval of Class Action and PAGA Settlement (ROA #99), all papers submitted in support of the Motion, oral argument at the hearing, and having reviewed the files and records in this action, and good cause appearing therefor,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED THAT:

1. The Court has jurisdiction over the subject matter of this action and over all parties to the action, including the Class Representative and the Class Members.

2. For purposes of this Order, the Court adopts all defined terms as set forth in the Settlement Agreement.

3. The Court hereby grants the Motion for Final Approval and finds that the settlement is, in all respects, fair, adequate and reasonable, and in the best interests of the Class and each Class Member, based on the following factors:

- a. The strength of Plaintiff's case in relation to the amount offered in settlement;
- b. The risk, expense, complexity, and likely duration of further litigation;
- c. The risk of maintaining class action status through trial;
- d. The extent of discovery completed and the stage of the proceedings;
- e. The experience and views of counsel;
- f. The reaction of the class members to the proposed settlement; and
- g. The fact that the settlement was reached after extensive arm's length negotiation conducted in good faith by the parties with the assistance of an

1 experienced mediator.

2 4. With respect to the Class and for purposes of approving this settlement only, this
3 Court finds that: (a) the members of the Class are ascertainable and so numerous that joinder of
4 all members is impracticable; (b) there are questions of law and fact common to the Class and
5 there is a well-defined community of interest among the Class Members with respect to the
6 subject matter of the litigation; (c) the claims of the Class Representative and the defenses
7 thereto are typical of the claims of the Class Members and the defenses thereto; (d) the Class
8 Representative will fairly and adequately protect the interests of the Class Members; (e) a class
9 action is superior to other available methods for an efficient adjudication of this controversy; and
10 (f) counsel of record for the Class Representative is qualified to serve as counsel for Plaintiff in
11 his individual and representative capacity and for the Class.

12 5. As ruled in the Court's November 4, 2025 order granting preliminary
13 approval, the Class, for settlement purposes only, is defined as follows:

14 All hourly, non-exempt employees who worked for Defendant in California
15 during the Class Period (October 20, 2019 to October 12, 2024).

16 6. Aggrieved Employees are all individuals employed by Defendant as hourly,
17 non-exempt employees in California during the PAGA period (October 19, 2022 to
18 October 12, 2024).

19 7. The Court finds that distribution of the Notice to Class Members in the manner and
20 form required has been completed in accordance with this Court's Order Granting Preliminary
21 Approval and the terms of the Settlement Agreement, constituted the best notice practicable under
22 the circumstances, provided due and adequate notice of the proceedings and the matters herein,
23 including the proposed settlement to all persons entitled to such notice, and fully satisfied the
24 requirements of due process under California law, including under California Rule of Court
25 3.766(d) and (e).

26 8. The Court acknowledges that no Class Members objected to the settlement.

27 9. The Court acknowledges that no Class Members opted out of the settlement.

28 10. The Court acknowledges that no Class Members submitted workweek disputes.

1 11. Neither the settlement, nor any of the terms in the Settlement Agreement,
2 constitute any admission by Defendant, or any other of the Released Parties, of liability to the
3 Class Representative or any Class Member, nor does this Order constitute a finding by the Court
4 of the validity of any of the claims alleged in this action, or of any liability of Defendant or any of
5 the other Released Parties.

6 12. The Court awards a service payment in the amount of \$7,500 to Plaintiff Everardo
7 Gonzalez to compensate him for his service and for signing a general release with a waiver of
8 California Civil Code § 1542. The Court approves the payment of settlement administration costs
9 in the amount of \$8,500 to Phoenix Settlement Administrators (“Phoenix”). The Court awards
10 Class Counsel attorneys’ fees in the amount of \$390,000 (thirty percent of \$1,300,000, which is
11 the Gross Settlement Amount), as well as the costs actually incurred during the litigation in the
12 amount of \$12,086.72. The Class Representative Service Payment, Administration Expenses
13 Payment, Class Counsel Fees Payment, and Class Counsel Expenses Payment shall all be
14 deducted from the Gross Settlement Amount of \$1,300,000.

15 13. The Court finds the proposed settlement of the PAGA claims to be fair, reasonable
16 and adequate and appropriate for approval pursuant to California Labor Code section 2699(l)(2)
17 and, therefore, approves the same. Specifically, the Court finds fair, reasonable and adequate and
18 approves the \$65,000 to be paid in PAGA Penalties from the Gross Settlement Amount, including
19 the LWDA PAGA Payment of \$48,750 (75% of the PAGA Penalties) and the \$16,250 allocated
20 to the Individual PAGA Payments (25% of the PAGA Penalties), and further approves the release
21 of the PAGA claims as set forth in the Settlement Agreement. The PAGA Penalties shall be
22 deducted from the Gross Settlement Amount.

23 14. The Court hereby directs the parties to effectuate the settlement and distribution of
24 the Gross Settlement Amount, including amounts to Participating Class Members and Aggrieved
25 Employees, according to the terms set forth in the Settlement Agreement and this Order.

26 15. As to the unpaid residue or unclaimed or abandoned class member funds that
27 remain in the Settlement Fund Account after 180 days, those funds will be sent to the State of
28 California’s Unclaimed Property Fund in the Participating Class Members’ names.

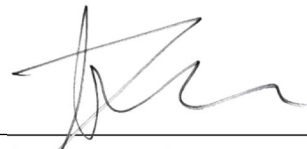
16. The Court shall retain jurisdiction over the Parties to enforce the terms of the Settlement Agreement and any judgment in this action, including all matters arising out of or relating to the implementation of the same, pursuant to California Code of Civil Procedure § 664.6 and California Rules of Court, Rule 3.769(h).

17. The Court orders the following implementation schedule for future proceedings:

a.	Deadline for Defendant to fund the settlement	Fifteen (15) calendar days after the Effective Date
b.	Deadline for the Administrator to mail checks for all Individual Class Payments, Individual PAGA Payments, the LWDA PAGA Payment, the Administration Expenses Payment, the Class Counsel Fees Payment, the Class Counsel Litigation Expenses Payment, and the Class Representative Service Payment	Fourteen (14) calendar days after Defendant funds the settlement
c.	Expiration date of checks for Individual Class Payments and Individual PAGA Payments	One hundred eighty (180) calendar days after the checks are mailed by the Administrator
d.	Deadline for Class Counsel to file Final Accounting Declaration	January 5, 2027
e.	Final Accounting Hearing Date	January 28, 2027 at 2PM

IT IS SO ORDERED.

Dated: May 8, 2026


HONORABLE LAYNE H. MELZER
JUDGE OF THE SUPERIOR COURT OF
THE STATE OF CALIFORNIA

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the county of Los Angeles, State of California. I am over the age of 18, and my business address is 1156 E. Green Street, Suite 200, Pasadena, California 91106.

On May 8, 2026, I served the document described as **[PROPOSED] ORDER GRANTING FINAL APPROVAL OF CLASS ACTION AND PAGA SETTLEMENT AND JUDGMENT** on the following interested parties and/or their counsel in this action by the method(s) noted below:

Ronald W. Novotny
Joshua N. Lange
ATKINSON, ANDELSON, LOYA, RUUD & ROMO
A Professional Law Corporation
12800 Center Court Drive South, Suite 300
Cerritos, California 90703
Telephone: (562) 653-3200
Facsimile: (562) 653-3333
Emails: RNovotny@aalrr.com
Joshua.Lange@aalrr.com

Attorneys for Defendant BUCCOLA LANDSCAPE SERVICES, INC.

- ☐ **(BY FIRST CLASS MAIL):** I caused an envelope containing the above-described document to be deposited in the United States mail at Pasadena, California. The envelope was mailed with postage thereon fully prepaid.
- ☐ **(BY FACSIMILE):** I sent the above-described document via facsimile to the office of the above addressee(s) at the above-noted fax number(s).
- ☐ **(BY EMAIL):** The above-described document was emailed to the above addressee(s)' email address(es) as full and complete service pursuant to California Code of Civil Procedure § 1010.6(a).
- ☒ **(BY ELECTRONIC SERVICE):** I caused the above-described document to be served electronically via One Legal (authorized and court-approved Electronic Filing Service Provider).
- ☐ **(BY PERSONAL SERVICE):** I personally served the above-described document to the above addressee(s) on this day.
- ☒ **(STATE):** I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on May 8, 2026, at Pasadena, California.


SEVANA WENN

EXHIBIT F

1 **WILSHIRE LAW FIRM, PLC**
2 Benjamin H. Haber (SBN 315664)
3 benjamin.haber@wilshirelawfirm.com
4 Daniel J. Kramer (SBN 314625)
5 daniel.kramer@wilshirelawfirm.com
6 Alan Wilcox (SBN 287476)
7 alan.wilcox@wilshirelawfirm.com
8 Lucy Nguyen (SBN 338783)
9 lucy.nguyen.@wilshirelawfirm.com
10 Conor Gomez (SBN 337395)
11 conor.gomez@wilshirelawfirm.com
12 660 S. Figueroa St., Sky Lobby,
13 Los Angeles, CA 90017
14 Telephone: (213) 381-9988
15 Facsimile: (213) 381-9989

16 *Attorneys for Plaintiff*

17 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
18 **FOR THE COUNTY OF ORANGE**

19 CAROL CANO, individually, and on behalf of
20 all others similarly situated,

21 *Plaintiff,*

22 v.

23 360 HEALTH PLAN, INC. DBA 360 CLINIC,
24 a corporation; and DOES 1 through 10,
25 inclusive,

26 *Defendants.*

27 CAROL CANO, on behalf of the State of
28 California and other aggrieved persons,

Plaintiff,

v.

360 HEALTH PLAN, INC. DBA 360 CLINIC,
a corporation; and DOES 1 through 10,
inclusive,

Defendants.

FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF ORANGE

APR 17 2026

DAVID H. YAMASAKI, Clerk of the Court

BY M. NEVAREZ DEPUTY

Case No. Case No.: 30-2022-01257308-CU-
OE-CXC

[Consolidated with Case No. 30-2022-
01270028-CU-OE-CXC]

CLASS & REPRESENTATIVE ACTION

[Assigned for all purposes to: Hon. David A.
Hoffer, Dept. CX-103]

**[REDACTED] JUDGMENT AND ORDER
GRANTING PLAINTIFF'S MOTION FOR
FINAL APPROVAL OF CLASS ACTION
SETTLEMENT**

FINAL APPROVAL HEARING

Date: April 6, 2026

Time: 1:30 p.m.

Dept.: CX-103

Class Complaint filed: April 28, 2022

PAGA Complaint filed: July 14, 2022

Trial date: Not set

1 On or around July 23, 2025, this Court issued an Amended Order Granting Plaintiff's Motion
2 for Preliminary Approval of Class Action Settlement. Plaintiff Carol Cano ("Plaintiff") now seeks
3 an order granting final approval of the Class Action and PAGA Settlement and Class Notice and
4 Addendum ("Settlement" or "Settlement Agreement"). The Settlement Agreement is attached to the
5 Declaration of Benjamin H. Haber in Support of Plaintiff's Motion for Final Approval of Class
6 Action Settlement as **Exhibit 1**.

7 Due and adequate notice having been given to the Class, and the Court having reviewed and
8 considered the Settlement, Plaintiff's Notice of Motion and Motion for Final Approval of Class
9 Action Settlement, the supporting declarations and exhibits thereto, all papers filed and proceedings
10 had herein, and the absence of any written objections received regarding the Settlement, and having
11 reviewed the record in this action, and good cause appearing therefor,

12 **IT IS HEREBY ORDERED, ADJUDGED AND DECREED** that:

13 1. The Court, for purposes of this Order, adopts all defined terms as set forth in the
14 Settlement filed in this case.

15 2. The Court has jurisdiction over all claims asserted in the action, Plaintiff, the
16 Settlement Class Members, and Defendant 360 Health Plan, Inc. dba 360 Clinic ("Defendants," and
17 together with Plaintiff, the "Parties").

18 3. The Court finds that the Settlement Agreement appears to be fair, adequate, and
19 reasonable and therefore meets the requirements for final approval. The Court grants final approval
20 of the Settlement and the Settlement Class based upon the terms set forth in the Settlement
21 Agreement, attached to the Declaration of Benjamin H. Haber in Support of Plaintiff's Motion for
22 Final Approval of Class Action Settlement as **Exhibit 1**.

23 4. The Court finds that the Settlement appears to have been made and entered into in
24 good faith and hereby approves the Settlement subject to the limitations on the requested fees and
25 enhancement as set forth below.

26 5. Upon Defendant fully funding the Settlement as described in this Agreement, all
27 Participating Class Members, on behalf of themselves and their respective former and present
28 representatives, agents, attorneys, heirs, administrators, successors, and assigns, release Released

1 Parties from any and all claims asserted or that could have been asserted based on the facts pled in
2 the operative complaints, including but not limited to, state wage and hour claims for any and all
3 violations of California's Labor Code and Unfair Competition Law based on Defendant's failure to
4 pay for all hours worked (including minimum, straight time, and overtime wages), failure to
5 provide meal periods, failure to authorize and permit rest periods, failure to timely pay final wages
6 at termination, failure to furnish accurate itemized wage statements, and failure to indemnify
7 employees for expenditures based on the alleged Labor Code violations, and all damages, interest,
8 penalties, attorneys' fees, costs, and other amounts recoverable under said causes of action under
9 California law, to the extent permissible, including, but not limited to, the California Labor Code
10 and the applicable Wage Orders. Except as set forth in Section 5.3 of this Agreement, Participating
11 Class Members do not release any other claims, including claims for vested benefits, wrongful
12 termination, violation of the Fair Employment and Housing Act, unemployment insurance,
13 disability, social security, workers' compensation, or claims based on facts occurring outside the
14 Class Period.

15 6. Upon Defendant fully funding the Settlement as described in this Agreement, all
16 Aggrieved Employees, on behalf of themselves and their respective former and present
17 representatives, agents, attorneys, heirs, administrators, successors, and assigns, are deemed to
18 release the Released Parties from any and all claims arising during the PAGA Period that were
19 asserted in the operative complaints for civil penalties under PAGA based on the alleged Labor
20 Code violations, and all damages, interest, penalties, attorneys' fees, costs, and other amounts
21 recoverable under said causes of action under California law, to the extent permissible, including,
22 but not limited to, the California Labor Code and the applicable Wage Orders.

23 7. Upon final approval of the Settlement by the Court, Participating Class Members will
24 release the aforementioned claims against all Released Parties.

25 8. The Parties shall bear their own respective attorneys' fees and costs, except as
26 otherwise provided for in the Settlement and approved by the Court.

27 9. Solely for purposes of effectuating the Settlement, the Court finally certified the
28 following Class – all persons employed by 360 Health in California and classified as an hourly

1 paid or non-exempt employee who worked for 360 Health during the Class Period.

2 10. No Class Member has objected to the terms of the Settlement.

3 11. One Class Member, Chioma Abaekobe, has requested exclusion from the Settlement.

4 12. The Notice provided to the Class conforms with the requirements of California Rules
5 of Court, Rules 3.766 and 3.769, and constitutes the best notice practicable under the circumstances,
6 by providing individual notice to all Class Members who could be identified through reasonable
7 effort, and by providing due and adequate notice of the proceedings and of the matters set forth
8 therein to the Class Members. The Notice fully satisfies the requirements of due process.

9 13. The Court finds the Gross Settlement Amount, the Net Settlement Amount, and the
10 methodology used to calculate and pay each Participating Class Member's Net Settlement Payment
11 are fair and reasonable and authorizes the Settlement Administrator to pay the Net Settlement
12 Payments to the Participating Class Members in accordance with the terms of the Settlement.

13 14. Defendant shall pay a total of \$350,000.00 to resolve this litigation and to separately
14 pay any and all employer payroll taxes owed on the Wage Portions of the individual class payments.

15 15. From the Gross Settlement Amount, \$10,000.00 shall be paid to Plaintiff Carol Cano,
16 for his services as class representative and for her agreement to release claims.

17 16. From the Gross Settlement Amount, \$8,400.00 shall be paid to the Settlement
18 Administrator, Apex Class Action, LLC.

19 17. From the Gross Settlement Amount, \$7,500.00 shall be paid to the Labor &
20 Workforce Development Agency ("LWDA") for it's share of the penalties under the Private
21 Attorneys General Act ("PAGA").

22 18. The Court hereby confirms Benjamin H. Haber, Daniel J. Kramer, Alan Wilcox, and
23 Conor J.D. Gomez of Wilshire Law Firm, PLC as Class Counsel.

24 19. From the Gross Settlement Amount, Class Counsel is awarded \$105,000.00 for their
25 reasonable attorneys' fees and \$14,222.51 for their reasonable costs incurred in the action. The fees
26 and costs shall be distributed to Class Counsel as set forth in the Settlement. The Court finds that the
27 fees are reasonable in light of the benefit provided to the Class.

28 20. The administrator shall transfer any uncashed check funds remaining after the check-

1 cashing deadline (as stated in the Settlement Agreement) to the cy pres recipient, Legal Aid at Work.

2 **21.** Without affecting the finality of this Order in any way, and in accordance with C.C.P.
3 § 664.6, this Court retains continuing jurisdiction over the implementation, interpretation, and
4 enforcement of the Settlement with respect to all Parties to this Action, Class Counsel, Defendant's
5 counsel, and the Administrator.

6 **22.** Plaintiff's Motion for Final Approval of Class Action Settlement is hereby granted
7 and the Court directs that judgment shall be entered in accordance with the terms of this Order.

8 **23.** Notice of this judgment and order shall be posted on the Administrator's website in
9 compliance with California Rules of Court, Rule 3.771(b).

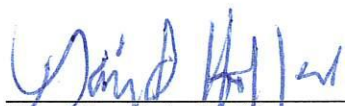
10 **24.** The Court shall hold a Final Report Hearing on January 6, 2027, at 1:30 p.m. in
11 Department CX103.

12 **25.** _____
13 _____
14 _____
15 _____

16
17 **IT IS SO ORDERED.**

18
19 DATE:

4/17/26

20 
21 _____
22 Hon. David A. Hoffer
23 Orange County Superior Court
24
25
26
27
28

PROOF OF SERVICE

Cano v. 360 Health Plan, Inc. dba 360 Clinic, et al.
30-2022-01257308-CU-OE-CXC

STATE OF CALIFORNIA)
) ss
COUNTY OF ORANGE)

I, Pablo Villalobos, state that I am employed in the Los Angeles County, State of California; I am over the age of eighteen years and not a party to the within action; my business address is 660 S. Figueroa St., Sky Lobby, Los Angeles, California 90017. My electronic service address is pablo.villalobos@wilshirelawfirm.com.

On April 6, 2026, I served the foregoing **[PROPOSED] JUDGMENT AND ORDER GRANTING PLAINTIFF'S MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT**, on the interested parties by placing a true copy thereof, enclosed in a sealed envelope by following one of the methods of service as follows:

Eliot F. Krieger (SBN 159647)
ekrieger@skt.law
Lindley Fraley (SBN 223421)
lfraley@skt.law
Min Kim
mkim@skt.law
SKT LAW, P.C.
7755 Center Avenue, Suite 1225
Huntington Beach, California 92647
Telephone: (949) 523-3333
Facsimile: (949) 523-3003
Attorneys for Defendant

(X) **BY E-MAIL:** I hereby certify that this document was served from Los Angeles, California, by e-mail delivery on the parties listed herein at their most recent known email address or e-mail of record in this action.

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

Executed on April 6, 2026, at Los Angeles, California.

/s/ Pablo Villalobos
Pablo Villalobos