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Attorneys for Plaintiffs,
TLALOC MUNOZ, MIGUEL RUIZ,
EDGAR CORONA, and STEVEN SNAVELY

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

TLALOC MUNOZ, an individual;
MIGUEL RUIZ, an individual;
EDGAR CORONA, an individual;
STEVEN SNAVELY, an individual,
on behalf of themselves and all others
similarly situated,

Plaintiffs,

vs.

EARTHGRAINS DISTRIBUTION,
LLC a Delaware limited liability
company; BIMBO BAKERIES USA,
INC., a Delaware corporation; and
DOES 1 through 100, inclusive,

Defendants.

Case No. 3:22-cv-01269-AJB-AHG

**DECLARATION OF SHAUN
MARKLEY IN SUPPORT OF
PLAINTIFFS' UNOPPOSED MOTION
FOR PRELIMINARY APPROVAL OF
CLASS AND PAGA
REPRESENTATIVE ACTION
SETTLEMENT**

Hearing Date: July 16, 2026

Time: 10:00 a.m.

Courtroom: 4A

Judge: Hon. Anthony J. Battaglia

Magistrate: Hon. Allison H. Goddard

Removal Date: August 26, 2022

Trial Date: None Set

1 I, SHAUN MARKLEY, declare:

2 1. I am an attorney at law duly licensed to practice before all the courts of
3 the State of California; the United States District Court for the Southern, Northern,
4 Eastern, and Central Districts of California; and the United States Court of Appeals
5 for the First, Ninth, and Tenth Circuits. I am also admitted before the United States
6 Supreme Court. I am a partner with the law firm Nicholas & Tomasevic, LLP,
7 counsel of record for Plaintiffs. The following facts in this declaration are stated
8 from my personal knowledge, except those facts stated on information and belief,
9 which I believe to be true and correct, and if called upon as a witness, I would testify
10 competently thereto under oath. I submit this declaration in support of Plaintiffs'
11 Motion for Preliminary Approval of Class Action Settlement.

12 2. The Parties executed/memorialized the terms of the settlement in a
13 Stipulation for Class and PAGA Representative Action Settlement. A true and
14 correct copy of the fully executed Settlement is attached hereto as **Exhibit 1**.

15 3. On May 18, 2022, Plaintiffs Munoz, Ruiz, and Corona sent a notice
16 letter to the California Labor & Workforce Development Agency ("LWDA")
17 advising of their intent to pursue a representative action under California's Private
18 Attorneys General Act, Cal. Lab. Code, § 2699 et seq. ("PAGA"). A copy of the
19 LWDA letter is attached as **Exhibit 2**.

20 4. On April 16, 2025, my office also sent an amended PAGA notice letter
21 to Defendants and the LWDA adding Mr. Snavelly to the PAGA claim. A true and
22 correct copy of the amended PAGA notice letter is attached hereto as **Exhibit 3**.

23 5. On January 23, 2026, my office also sent an amended PAGA notice
24 letter to Defendants and the LWDA adding the sick leave claim to the PAGA letter.
25 A true and correct copy of the amended PAGA notice letter is attached hereto as
26 **Exhibit 4**. The LWDA did not respond to any of our submissions.

27
28

A. Litigation History

6. This case involved substantial law and motion work. Defendants challenged the initial Complaint on arbitration grounds and moved to compel individual arbitration. ECF No. 9. Plaintiffs successfully opposed Defendants' motion. ECF Nos. 11, 18. Defendants exercised their right to appeal and stay this case. ECF Nos. 20-22. The Ninth Circuit affirmed the denial of Defendants' challenge. ECF No. 18-1.

7. As discovery was ongoing, Defendants moved for summary judgment as to the former Distributor Plaintiffs, Munoz, Ruiz, and Corona. ECF No. 61. Plaintiffs opposed Defendants' motion and challenged the releases at issue under California law. ECF No. 67. The Court denied Defendants' motion finding Plaintiffs' arguments persuasive. ECF No. 93.

8. The Parties engaged in extensive discovery in this matter. Plaintiffs propounded several rounds of written discovery on Defendants. In turn, Plaintiffs each responded to written discovery propounded by Defendants.

9. Both Parties also issued subpoenas with Defendants targeting the businesses that Plaintiffs formed to enter their Distributor Agreements and Plaintiffs' businesses and employers after their time contracting with Earthgrains, and Plaintiffs targeting Grupo Bimbo S.A.B. de C.V. and its accounting firm. *See* ECF Nos. 87-91 (Hauge Convention letter requests).

10. Plaintiffs searched for and produced thousands of pages of responsive documents. Defendants, too, produced several rounds of documents reaching well into the tens of thousands. While the Parties were generally able to resolve discovery disputes, Judge Goddard informally and formally assisted the Parties on several occasions. *See, e.g.*, ECF Nos. 83, 85.

11. All four named Plaintiffs sat for full day depositions.

12. Plaintiffs noticed and took four depositions, including the depositions of Defendants' Fed. R. Civ. P. Rule 30(b)(6) designees.

1 13. Defendants' class certification related expert was also deposed after
2 issuing a report in this matter.

3 14. After the parties reached agreement on settlement terms, the parties
4 each contacted several settlement administrators to obtain bids for the settlement
5 administration called for under the Settlement. Both parties have used CPT Group
6 in the past and have found them reliable and competent. Their bid was within a few
7 hundred dollars of the others and the parties agreed to use them based on counsels'
8 favorable views of their work.

9 **B. Conditional Class Certification Is Warranted**

10 15. We believe the Plaintiffs are adequate class representatives. We are
11 unaware of any conflicts that our firm or our clients have with the putative class.
12 They are a mix of current IBPs (Snaveley) and former IBPs (Munoz, Corona, Ruiz).
13 Each has diligently pursued this action on behalf of the Class throughout the
14 litigation by, among other things, responding to voluminous written discovery,
15 gathering documents, sitting for deposition, submitting evidence to the Court as part
16 of several motions, and generally staying in contact with counsel to litigate this case
17 over many years.

18 16. The following is a brief description of my and my firm's relevant
19 professional background. N&T's experience includes, but is not limited to,
20 California and federal court certification of class action cases for purposes of trial
21 and for settlement in a variety of contexts, including wage and hour litigation,
22 consumer protection, and ERISA. We have certified many employment and
23 consumer class actions with a special emphasis on worker misclassification cases.
24 In just the past 4 years, my firm and I have successfully certified 3 independent
25 contractor misclassification cases: *Salinas v. Cornwell Quality Tools Company*,
26 Case No. 5:19-cv-02275-FLA-SP (C.D. Cal), *Fleming v. Matco Tools Corp.*, Case
27 No. 19-c-00463-WHO (N.D. Cal.), and *Ludlow v. Flowers Foods, Inc.*, Case No.
28 18-cv-01190-JO-JLB (S.D. Cal.). We also settled several independent contractor

1 cases short of class certification stage rulings and are currently litigating several
2 others. These include *Quinnones v. XPO Logistics, Inc., et al.*, Case No. 23-cv-
3 01301-AB-KS (CD Cal. 2023); *Galindo, et al. v. Snap-On Tools Co.*, Case No.
4 21STCV45419 (Los Angeles Superior Court).

5 17. Separately, we have tried class actions to verdict. We have also
6 defended class actions, including employment class actions.

7 18. Our firm members routinely write and speak on employment class
8 action and PAGA litigation, including on behalf of the San Diego County Bar
9 Association, and closely follow legal developments in this area.

10 19. Some of our firms' other recent class action experience includes
11 litigating *Moyle v. Liberty Mutual* and recovering in 2018 over \$30 million in
12 employee benefits against Liberty Mutual, in a class action settlement approved by
13 the United States District Court, Southern District of California. Also, in 2018 we
14 helped recover over \$25 million for consumers against Procter & Gamble for unfair
15 competition and related claims related to their marketing and sale of certain dietary
16 supplements. We also obtained court approval of a class action settlement in *Loera*
17 *v. Akal*, a California Superior Court case involving wage/hour issues. This case
18 settled after the first phase of trial and the class was ultimately awarded about \$10
19 million in damages.

20 20. We are also experienced, more generally, in the bringing employment
21 class actions against large employers, having brought successful actions against
22 Liberty Mutual Insurance, Verizon, Home Depot, Lowes, Intuit, FedEx, Albertson's,
23 Snap-On, Matco, and Planet Fitness, among others.

24 21. Aside from the above, our recent appointments as class counsel include
25 serving as appointed class counsel in several large consumer class actions, including
26 for a class of over 100,000 Californians in *Munguia-Brown, et al. v. Equity*
27 *Residential, et al.*, Case No. 16-cv-01225 (N.D. Cal.), which we just completed a
28 successful three week trial in. Other large consumer class actions where we were

1 appointed counsel include *Zeff v. Greystar California, Inc.*, Case no. 20-cv-07122-
2 EMC (over 20,000 class members) and *Milan v. Protective Life Insurance Co.*, Case
3 No. 22-cv-01861-AHG (S.D. Cal.) (over 158,000 class members).

4 22. I, and my colleagues at N&T, have been found to be adequate class
5 counsel in every case that we have ever sought to be deemed as such – in more than
6 40 matters. Our backgrounds demonstrate our ability to effectively litigate class
7 actions and appropriately value their worth.

8 23. Partner Craig M. Nicholas received his Juris Doctor in 1995 with cum
9 laude honors from the University of Arizona College of Law, where he served as
10 Note & Comment Editor of the Arizona Journal of International and Comparative
11 Law. He completed his undergraduate education at the University of California at
12 San Diego, where he graduated cum laude with a BA in political science in 1992.
13 Mr. Nicholas was a partner at the antitrust and business litigation law firm of Wright
14 & L'Estrange from 2002-2004, recognized by San Diego Magazine as one of the
15 leading antitrust law firms in San Diego, before founding the predecessor to
16 Nicholas & Tomasevic LLP to offer client services on a larger platform. Mr.
17 Nicholas is a former member of the Board of Directors of the William Enright Inn
18 of Court. Mr. Nicholas served as the President of the California Young Lawyers
19 Association for the State Bar of California in 2003-2004 and represented San Diego
20 County in the Association from 2001-2003. Mr. Nicholas has given seminars on
21 expert witness law in California and civil litigation matters. Mr. Nicholas has been
22 selected by SuperLawyers magazine as one of the Top 50 attorneys in San Diego.
23 The San Diego Attorney Journal honored Mr. Nicholas as Attorney of the Month in
24 June 2012. In 2013, The San Diego Daily Transcript identified Mr. Nicholas as a
25 Top Attorney in Corporate Litigation. In 2009, The San Diego Daily Transcript
26 identified Mr. Nicholas as one of the top 25 corporate litigators in San Diego County.

27 24. Alex Tomasevic, Esq. is also a partner with the firm. He was admitted
28 to the California Bar in 2006 after graduating Cum Laude from the University of

1 San Diego School of Law. He has been selected as a Thomson Reuters “Super
2 Lawyer” from 2018-2023 in the field of Class Actions and Mass Torts. Previously,
3 he was recognized as a Thomson Reuters “Rising Star” in the field as well as part of
4 the San Diego Business Journal’s “Best of the Bar.”

5 25. I have been practicing since 2013 and am a graduate of The Ohio State
6 University’s Moritz College of Law. In addition to my contributions to the cases
7 noted throughout this declaration, I’ve secured several other hard-fought, large class
8 action settlements to recover wages and penalties on behalf of California employees
9 from defendants in the transportation, retail, technology, and automotive sectors. I
10 have successfully certified and/or settled many independent contractor
11 misclassification cases. I am also actively litigating several appeals in independent
12 contractor misclassification cases addressing some of the central and evolving issues
13 relevant to these types of workers and the scope of their ability to pursue
14 employment rights. I was recently selected as a 2022 “Rising Star” by SuperLawyers
15 in the area of plaintiff’s side employment law.

16 26. Jake Schulte, Esq. is a Senior Associate with N&T. He received his J.D.
17 from California Western School of Law in San Diego where he was an Associate
18 Editor on the Law Review and an Appellate Member, where he competed in national
19 competitions. Before joining N&T in 2018, Mr. Schulte worked for a well-known
20 boutique litigation firm in San Diego defending companies in various matters. Since
21 joining N&T, Mr. Schulte has represented numerous Plaintiffs in consumer and
22 employment class actions, and in wage/hour disputes in particular, having helped
23 recover millions for consumers and workers throughout the state.

24 27. Jordan Belcastro, Esq. is an Associate of N&T’s. He has been
25 practicing since 2020 and is a graduate of The Ohio State University’s Moritz
26 College of Law. While at Ohio State, Jordan was a Managing Editor on the Ohio
27 State Law Journal. Jordan is experienced in labor and employment law, having
28 successfully advocated for clients in a wide range of matters, including

1 discrimination claims and wage and hour disputes. Prior to joining N&T, Jordan was
2 an Associate with Currier & Hudson APC where he focused on education and labor
3 and employment law while representing the State's largest public educational
4 institutions. Jordan joined N&T in 2022, where he has contributed towards multiple
5 successful class action settlements primarily in the labor and employment sector.

6 28. Also, and as we have repeatedly demonstrated, the attorneys of N&T
7 have the commitment to see class actions through trial and recovery, including the
8 financial and other resources necessary to adequately and vigorously litigate these
9 types of claims.

10 29. To my knowledge, N&T has no conflicts of interest that would prevent
11 the firm from providing zealous representation of the named Plaintiffs and the class
12 and we believe we have done so.

13 **C. Preliminary Approval Is Appropriate**

14 30. We had ample evidence at the time of settlement to resolve the case. In
15 addition to completing a robust amount of written discovery through the class
16 certification discovery cut off, we also used the Franchise Disclosure Documents
17 issued by Earthgrains each year to identify the IBPs that contracted with Earthgrains
18 over every year in the class period. This allowed us to determine how many IBPs in
19 total contracted with Earthgrains over the various relevant statutory periods, how
20 many were under contract at any given time, how many weeks of work were
21 performed by the IBPs, and related information. We also shared our findings with
22 Defendants prior to mediation to ensure that both parties had the same understanding
23 of the number of IBPs and workweeks so that each side could assess potential
24 damages and penalties at issue.

25 31. In our experienced view, accepting the mediator's proposal of \$17.5
26 million along with the associated terms is a strong result for the class. As noted
27 above, we regularly litigate independent contractor misclassification cases and we
28 closely monitor similar matters to see what settlements or verdicts come down in

1 this area. Given what we know about these other matters, for the amount of weeks
2 worked by the class and the total number of IBPs, this settlement is a favorable
3 recovery compared to other heavily litigated and long-running misclassification
4 cases that settled post-class certification. *See, e.g., Fleming v. Matco Tools Corp., et*
5 *al.*, No. 3:19-cv-00463-WHO (N.D. Cal.) (gross recovery of \$15,846,423 covering
6 272 class members); *Alvarez, et al. v. XPO Logistics Cartage, LLC, et al.*, No. 2:18-
7 cv-03736-RGK-E (N.D. Cal.) (settled for \$20,000,000 for a class of 526 drivers).
8 The Matco Tools and XPO cases were and are considered very successful class
9 recoveries. Taking the settlement amount divided by number of class members,
10 Matco is \$58,344, XPO is \$38,022, and here it is \$60,344 ($\$17,500,000 / 290$).

11 32. The average net payment per Class Member here, after deductions are
12 taken out for attorney's fees, costs, enhancement awards, the PAGA payment, the
13 reserve fund, and settlement administration costs, is roughly \$38,000 ($\$10,995,667$
14 $/ 290$).

15 33. We estimate exposure for the claims driving this litigation as follows:

16 a. For the expense reimbursement and illegal deductions claims, we
17 added up weekly recurring expenses for mileage, insurance,
18 territory payments and interest, technology or handheld device
19 charges, and similar expenses. This amounted to \$510 per week
20 in potential recovery in our estimation. We multiplied this by IBP
21 weeks during the class period and then added one-off expenses
22 by the IBP Class Members for things like territory
23 downpayments and handheld purchases. This amounted to nearly
24 \$39 million in potential damages, with interest roundly \$42.8
25 million.

26 b. For overtime, we assumed 12 hours of overtime per week based
27 on our conversations with Plaintiffs and various other IBPs and
28 then used a premium rate based on earnings of \$25/hour for

1 \$12.50 owed for every hour of overtime worked. This came out
2 to roughly \$10.8 million in overtime damages, with interest
3 nearly \$12 million. Taking the reimbursement, deduction, and
4 overtime claims for unpaid wages, this amounts to nearly \$55
5 million in potential exposure.

6 c. We also calculated penalties as follows: wage statements nearly
7 \$1 million; failure to pay wages at termination roughly \$1.6
8 million; and PAGA penalties around \$6.7 million for a total of
9 slightly more than \$9 million.

10 34. Our view is that obtaining roughly 27% of the realistic exposure in this
11 case (and closer to 32% of the wages recoverable) at this stage is well supported by
12 the risks that lay ahead. While we have obtained class certification in similar matters
13 in the past, this is not always the case in these types of matters. Defendants beat class
14 certification almost 10 years ago in the *Urena* case discussed in the Motion for
15 Preliminary Approval. Assuming Plaintiffs successfully certified the case,
16 Defendants likely would have filed a FRCP Rule 23(f) petition to appeal to the Ninth
17 Circuit and would have moved to decertify the class later in the proceedings.

18 35. Other risks include a potential loss on liability as “employees” under
19 California law. While we strongly believe in the merits of this theory, it is not
20 without risk. Once liability for employment status is established, there is still the
21 issue of proving up damages for the various causes of action at issue. Some of the
22 causes of action like meal and rest claims as well as overtime have exemptions and
23 preemption defenses that may have proved successful and led to no recovery.
24 Additionally, some of the claims for penalties are subject to heightened willful or
25 knowing standards or are otherwise subject to reduction at the discretion of courts.

26 36. Even with partial or total success, these cases take years to litigate
27 through trial and related appeals. This case already lasted a long time mostly due to
28 the appeal of Defendants’ challenge to the initial Complaint and there were potential

1 additional appeals related to class certification and the merits on the horizon. By
2 settling now, the class gets meaningful relief without further delays.

3 37. The proposed allocation is also fair to the Class Members. Dividing up
4 the settlement by weeks worked during the class period is a normal and routinely
5 accepted way to divvy up wage per hour recoveries in class cases. Here 85% of the
6 Net Settlement Amount distributed to the class will be divided up this way meaning
7 those who worked longer and suffered more alleged violations will receive more of
8 the settlement. The remaining 15% of the Net Settlement Amount distributed to the
9 class is divided evenly across the class members. In our view, this is fair because
10 some of the claims at issue do not accrue based on weeks worked. For example,
11 while overtime and some expense reimbursements like gas and maintenance will rise
12 proportionally with weeks worked, other forms of damages will not. Here, all IBPs
13 purchased a territory from Earthgrains or one of its predecessors or affiliates, and
14 incurred up-front costs to accomplish that and to source a delivery vehicle and
15 related equipment to carry out the obligations in their Distribution Agreement.
16 Further still, some forms of damages like those for willful misclassification under
17 Labor Code section 226.8 and failure to pay all wages due upon termination are not
18 work week-based. By allocating a baseline amount to all Class Members, it also
19 ensures they obtain meaningful relief for their claims and we believe this will
20 encourage a larger participation and check-cashing rate so the money reaches the
21 intended targets.

22 38. The Settlement allocates a meaningful, but relatively small amount to
23 the PAGA claim. The class claims for damages were the stronger claims at issue.
24 These have a four year statute of limitations and can be obtained through the Unfair
25 Competition Law's statutory period as restitution of unpaid wages. In independent
26 contractor litigation, the main driver is the unreimbursed expenses and deductions
27 rather than penalties.

28

1 I declare under penalty of perjury under the laws of the State of California and
2 the United States of America that the foregoing is true and correct. Executed on
3 April 22, 2026, in San Diego, California.

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5 By: /s/ Shaun Markley
SHAUN MARKLEY (SBN 291785)

6 Declarant / Attorney for Plaintiffs
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