

NICHOLAS & TOMASEVIC, LLP

Craig M. Nicholas (SBN 178444)
Alex Tomasevic (SBN 245598)
Shaun Markley (SBN 291785)
Jordan Belcastro (SBN 339570)
225 Broadway, 19th Floor
San Diego, California 92101
Tel: (619) 325-0492
Fax: (619) 325-0496
Email: cnicholas@nicholaslaw.org
Email: atomasevic@nicholaslaw.org
Email: smarkley@nicholaslaw.org
Email: jbelcastro@nicholaslaw.org

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

**MEMORANDUM OF POINTS AND
AUTHORITIES 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	<u>TABLE OF CONTENTS</u>	
2	I. <u>INTRODUCTION</u>	1
3	II. <u>FACTS</u>	1
4	A. The Parties.	1
5	B. The Claims and Litigation History.	3
6	1. <i>The Settlement Fully Resolves Hard-Fought</i>	
7	<i>Claims.</i>	3
8	2. <i>Investigation, Lengthy Litigation, and Settlement.</i>	4
9	III. <u>SUMMARY OF SETTLEMENT TERMS</u>	5
10	A. The Settlement Class and Scope.	5
11	B. Monetary Payment and Allocation.	6
12	C. Settlement Notice and Administration.	7
13	IV. <u>LEGAL STANDARD</u>	9
14	V. <u>CONDITIONAL CLASS CERTIFICATION FOR</u>	
15	<u>SETTLEMENT PURPOSES IS APPROPRIATE</u>	9
16	VI. <u>PRELIMINARY APPROVAL OF THE SETTLEMENT IS</u>	
17	<u>APPROPRIATE</u>	13
18	A. Settlement Is the Product of Adequate Representation	
19	Resulting in an Informed, Non-Collusive Negotiation.	14
20	B. The Settlement Provides Very Adequate Relief and	
21	Easily Sits Within the Range of Possible Approval.	15
22	1. <i>Strength of the Case Versus Costs, Risks, and Delay</i>	
23	<i>of Proceeding Further.</i>	15
24	2. <i>The Settlement Distribution Is Equitable and</i>	
25	<i>Effective.</i>	17
26	3. <i>The Attorney's Fees Provision Is in Line with</i>	
27	<i>Settlements in This Circuit.</i>	18
28		

1	C. Additional Considerations Support Approval.	18
2	D. The PAGA Allocation Is Fair and Reasonable.....	19
3	E. The Court Should Approve the Administrative Costs	
4	to CPT.....	20
5	VII. <u>THE COURT SHOULD SET A FINAL APPROVAL</u>	
6	<u>HEARING</u>	20
7	VIII. <u>CONCLUSION</u>	20

TABLE OF AUTHORITIES

CASES

<i>Acosta v. Trans Union, LLC</i> , 243 F.R.D. 377 (C.D. Cal. 2007).....	9
<i>Amchem Prods., Inc. v. Windsor</i> , 117 S.Ct. 2231 (1997).....	12
<i>Bowerman v. Field Asset Services, Inc.</i> , 60 F.4th 459 (9th Cir. 2023)	5
<i>Briseño v. Henderson</i> , 998 F.3d 1014 (9th Cir. 2021)	18
<i>Cabrales v. Bae Sys. San Diego Ship Repair, Inc.</i> , No. 21-CV-02122-AJB-DDL, 2024 WL 4994339 (S.D. Cal. Dec. 5, 2024)	9, 10, 14, 15, 17, 18, 19
<i>Chu v. Wells Fargo Investments, LLC</i> , No. C 05-4526 MHP, 2011 WL 672645 (N.D. Cal. Feb. 16, 2011)	20
<i>Class Plaintiffs v. City of Seattle</i> , 955 F.2d 1268 (9th Cir. 1992)	13
<i>Eddings v. Health Net, Inc.</i> , No. CV 10-1744-JST (RZx), 2013 WL 169895 (C.D. Cal. Jan. 16, 2013)	9
<i>Fleming v. Matco Tools Corp.</i> , No. 19-CV-00463-WHO, 2021 WL 673445 (N.D. Cal. Feb. 21, 2021)	16
<i>Garner v. State Farm Mut. Auto. Ins. Co.</i> , 2010 WL 1687832 (N.D. Cal. Apr. 22, 2010)	14
<i>Graham v. Overland Sols., Inc.</i> , 2012 WL 4009547 (S.D. Cal. Sept. 12, 2012)	14
<i>Grant v. T-Mobile USA, Inc.</i> , No. CV 21-2268-GW-JEMx, 2023 WL 7308311 (C.D. Cal. Oct. 3, 2023)	17

1	<i>Hanlon v. Chrysler Corp.</i> ,	
2	150 F.3d 1011 (9th Cir. 1998)	9, 10, 11, 12, 13
3	<i>Hawkins v. Kroger Co.</i> ,	
4	2021 WL 2780647 (S.D. Cal. July 2, 2021)	13
5	<i>In re Bluetooth Headset Prods. Liab.</i> ,	
6	654 F.3d 935 (9th Cir. 2011)	13, 15, 18
7	<i>In re Immune Response Sec. Litig.</i> ,	
8	497 F. Supp. 2d 1166 (S.D. Cal. 2007)	19
9	<i>In re Mego Fin. Corp. Sec. Litig.</i> ,	
10	213 F.3d 454 (9th Cir. 2000)	16
11	<i>Kim v. Allison</i> ,	
12	8 F.4th 1170 (9th Cir. 2021)	13
13	<i>Laffitte v. Robert Half Int'l Inc.</i> ,	
14	1 Cal. 5th 480 (2016)	18
15	<i>Linney v. Cellular Alaska P'ship</i> ,	
16	151 F.3d 1234 (9th Cir. 1998)	16
17	<i>Ludlow v. Flowers Foods, Inc.</i> ,	
18	No. 18CV1190-JO-JLB,	
19	2022 WL 2441295 (S.D. Cal. July 5, 2022)	11
20	<i>Martinez v. Flower Foods, Inc.</i> ,	
21	2016 WL 10746664 (C.D. Cal. Feb. 1, 2016)	16
22	<i>Mazza v. Am. Honda Motor Co.</i> ,	
23	666 F.3d 581 (9th Cir. 2012)	11
24	<i>Negrete v. Allianz Life Ins. Co. of N. Am.</i> ,	
25	238 F.R.D. 482 (C.D. Cal. 2006)	11
26	<i>Pulaski & Middleman, LLC v. Google, Inc.</i> ,	
27	802 F.3d 979 (9th Cir. 2015)	12
28	<i>Ramirez v. Benito Valley Farms, LLC</i> ,	
	No. 16-CV-04708-LHK,	
	2017 WL 3670794 (N.D. Cal. Aug. 25, 2017)	20

1	<i>Rodriguez v. West Publ'g Corp.</i> ,	
2	563 F.3d 948 (9th Cir. 2009)	14
3	<i>Salas v. Toyota Motor Sales, U.S.A., Inc.</i> ,	
4	No. CV 15-8629 FMO (EX),	
5	2019 WL 1940619 (C.D. Cal. Mar. 27, 2019).....	12
6	<i>Smith v. Cardinal Logistics Mgmt. Corp.</i> ,	
7	No. 07-2104 SC,	
8	2008 WL 4156364 (N.D. Cal. Sept. 5, 2008).....	11
9	<i>Staton v. Boeing Co.</i> ,	
10	327 F.3d 938 (9th Cir. 2003)	9, 10, 14, 15
11	<i>Urena v. Earthgrains Distrib.</i> ,	
12	2017 WL 4786106 (C.D. Cal. 2017)	16
13	<i>Villegas v. J.P. Morgan Chase & Co.</i> ,	
14	2012 WL 5878390 (N.D. Cal. Nov. 21, 2012)	16
15	<i>Wal-Mart Stores, Inc. v. Dukes</i> ,	
16	564 U.S. 338 (2011).....	9, 10, 11
17	STATUTES	
18	Cal. Lab. Code, § 203	16
19	Cal. Lab. Code, § 226	16, 17
20	Cal. Lab. Code, § 510	12
21	Cal. Lab. Code, § 2699	3, 19
22	Cal. Lab. Code, § 2775	12
23	Cal. Lab. Code, § 2802	12
24	RULES	
25	Fed. R. Civ. P. 23	9, 10, 11, 12, 13
26	TREATISES	
27	Newberg & Rubenstein on Class Actions § 4:63	10
28		

I. INTRODUCTION

Plaintiffs Tlaloc Munoz, Miguel Ruiz, Edgar Corona, and Steven Snavely (“Plaintiffs” or “Named Plaintiffs”) seek Preliminary Approval of a Class and PAGA Representative Action Settlement.¹ After nearly 4 years of hard-fought litigation resulting in several key rulings, extensive discovery, and fully briefing class certification, the Parties agreed to settle this hybrid class and representative action for a \$17,500,000 non-reversionary common fund for the benefit of approximately 290 Class Members.

Class Counsel believes the proposed Settlement achieves a strong result and is in the best interests of Class Members, and the Parties believe it should receive Court approval as fair, reasonable, and adequate in all respects. The Settlement is a desirable alternative to the uncertainty, expense, and delay that further litigation would bring. This is particularly true given the complex legal issues involved, some of which would have to be resolved after additional litigation and additional appeals. This case readily meets the bar for preliminary approval considering the value obtained and the risks the Class Members face with proceeding further.

In sum, the Settlement—negotiated at arms-length with an experienced mediator after the motion for class certification was fully briefed and other major issues already decided—is a fair and reasonable resolution of these employment claims. Accordingly, Plaintiffs respectfully request that the Court grant the motion for preliminary approval and enter the Proposed Order.

II. FACTS

A. The Parties.

Defendant Earthgrains Distribution, LLC (“Earthgrains”) is a Delaware limited liability company. Defendant Bimbo Bakeries USA, Inc. (“Bimbo

¹ The Settlement is attached to the Declaration of Shaun Markley (“Markley Decl.”) as Exhibit 1. Unless otherwise defined herein, capitalized terms have the same meaning as set forth in the Settlement.

1 Bakeries”) manufactures baked goods and is the sole member of Earthgrains.²
2 Bimbo Bakeries is a subsidiary of Grupo Bimbo S.A.B. de C.V.

3 Earthgrains sells distribution rights to “Independent Business Partners”
4 (“IBPs”). The IBPs execute contracts with Earthgrains called “Distribution
5 Agreements” to purchase baked goods products from Earthgrains and sell those
6 products to customers in a designated geographic area. Defendants contend that
7 IBPs are properly classified as independent contractors and contractually agreed that
8 they are independent contractors that control their own business operations,
9 including whether the business owner performs any of the obligations under the
10 Distribution Agreement themselves or if they hire workers to do so on behalf of their
11 business. In contrast, Plaintiffs allege that Defendants distribute their products
12 through a Direct Store Delivery (“DSD”) network to retail customers that include
13 major grocery stores such as Vons, Ralphs, and El Super. Plaintiffs contend that
14 Defendants exercise extensive control over the manner and means by which IBPs
15 perform their work and that IBPs carry out work within the usual course of
16 Defendants’ business by delivering and merchandising products on retail customers’
17 shelves. Plaintiffs contend that this makes them employees under California’s ABC
18 test.

19 Plaintiff Tlaloc Munoz, through his business, contracted with Earthgrains
20 from approximately 2014 to 2019. Plaintiff Miguel Ruiz, through his business,
21 contracted with Earthgrains from approximately 2014 to 2019. Plaintiff Edgar
22 Corona did the same through his business from approximately 2017 to January 2022.
23 Finally, Plaintiff Steven Snively, a current IBP, through his business, entered into a
24 contract with Earthgrains in 2013. The Settlement Class consists of approximately
25 290 current and former California IBPs.

26
27
28 ² Plaintiffs use “Defendants” to collectively refer to the two defendants herein.
Plaintiffs and Defendants are referred to together as the “Parties.”

B. The Claims and Litigation History.

1. The Settlement Fully Resolves Hard-Fought Claims.

On May 18, 2022, Plaintiffs Munoz, Ruiz, and Corona sent a notice letter to the California Labor & Workforce Development Agency (“LWDA”) advising of their intent to pursue a representative action under California’s Private Attorneys General Act, Cal. Lab. Code, § 2699 *et seq.* (“PAGA”). *See* Markley Decl., ¶ 3, Ex. 2. Thereafter, they filed this case in San Diego Superior Court on July 27, 2022, after which Defendants removed to this Court. ECF No. 1 at Ex. A.

On May 2, 2025, Plaintiffs amended the complaint to add current IBP Snavelly. ECF No. 52. Snavelly also sent a letter to the LWDA advising that he would join the PAGA action. Markley Decl., ¶ 4, Ex. 3. Other than adding Snavelly, the claims did not change.

On January 26, 2026, consistent with the Settlement, Plaintiffs filed their Second Amended Complaint (“SAC”), which asserts the following ten causes of action against Defendants arising from their alleged misclassification of California IBPs as independent contractors: (1) Failure to reimburse business expenses (Cal. Lab. Code, § 2802); (2) Unlawful deductions from wages (Cal. Lab. Code, §§ 221–223); (3) Failure to provide accurate wage statements (Cal. Lab. Code, § 226); (4) Failure to pay overtime (Cal. Lab. Code, § 510); (5) Failure to provide meal periods (Cal. Lab. Code, § 226.7); (6) Failure to provide rest breaks (Cal. Lab. Code, § 226.7); (7) Failure to pay wages when due upon termination (Cal. Lab. Code, §§ 201–203); (8) Failure to pay sick leave wages (Cal. Lab. Code, §§ 245–259); (9) Unfair business practices (Cal. Bus. & Prof. Code, § 17200 *et seq.*); and (10) Penalties under the Private Attorneys General Act (“PAGA”) (Cal. Lab. Code, §§ 2698 *et seq.*). ECF No. 110. Plaintiffs also advised the LWDA of the addition of the sick leave wage claim being added to the PAGA claim. Markley Decl., ¶ 5, Ex. 4.

2. *Investigation, Lengthy Litigation, and Settlement.*

As this court is well-aware, this case has involved substantial law and motion practice since its inception in 2022, including briefing on various merits issues. *See* ECF Nos. 9, 11, 18, 20-22; Markley Decl., ¶¶ 6-7.

After the appeal-related stay lifted in January 2025, the Parties engaged in extensive discovery in this matter. Plaintiffs propounded several rounds of written discovery on Defendants. Markley Decl., ¶ 8. In turn, Plaintiffs each responded to written discovery propounded by Defendants. *Id.* 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. *Id.* at ¶ 9; and ECF Nos. 87-91 (Hauge Convention letter requests). Plaintiffs searched for and produced thousands of pages of responsive documents. *Id.* at ¶ 10. Defendants, too, produced several rounds of documents reaching well into the tens of thousands. *Id.* 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.

All four named Plaintiffs sat for full day depositions. Markley Decl., ¶ 11. Plaintiffs noticed and took four depositions, including the depositions of Defendants' Fed. R. Civ. P. Rule 30(b)(6) designees. *Id.* at ¶ 12. Defendants' class certification related expert was also deposed after issuing a report in this matter. *Id.* at ¶ 13.

As discovery was ongoing, the parties engaged in substantive briefing on various merits issues, as well. *See* ECF Nos. 61, 67, 93; Markley Decl., ¶¶ 6-7.

Following the close of class certification related discovery, Plaintiffs moved for class certification citing a very robust body of evidence. ECF No. 95. Plaintiffs argued that the central worker classification issue could be resolved with common evidence for the proposed class under Prongs B and A of the ABC test and that the

1 Labor Code causes of action were also subject to common proof. *Id.* Defendants
2 opposed Plaintiffs' motion, highlighting the significant challenges Plaintiffs faced
3 in establishing class-wide liability or damages for their overtime, meal and rest
4 breaks, and expenses and deduction claims, thus defeating predominance and
5 superiority under *Bowerman v. Field Asset Services, Inc.*, 60 F.4th 459 (9th Cir.
6 2023). ECF No. 105. Defendants further argued that Plaintiffs could not prove
7 misclassification for all IBPs with common evidence in light of the individualized
8 issues under both the ABC Test and the common-law multifactor *Borello* test, and
9 compiled evidence detailing the significant ways the IBPs varied across the factors
10 under those respective tests. *Id.* Class certification was fully briefed when the case
11 settled but the Court had yet to issue an opinion. ECF Nos. 105, 106.

12 On November 5, 2025, the Parties participated in a full-day mediation session
13 with Michael Russell, a highly experienced and well-regarded class action mediator.
14 The mediation took place after class certification discovery closed and after
15 Plaintiffs filed their certification motion. Both sides were therefore fully informed
16 of the strengths and weaknesses of their respective positions.

17 The case did not settle at mediation. The Parties continued to negotiate at
18 arms' length and eventually each accepted a mediator's proposal in December 2025.
19 The Parties executed a Memorandum of Understanding on January 14, 2026.
20 Thereafter, the Parties negotiated and finalized the Settlement now before the Court.

21 **III. SUMMARY OF SETTLEMENT TERMS**

22 **A. The Settlement Class and Scope.**

23 The Settlement defines the "Settlement Class" or "Class Members" as:

24 All current and former Independent Business Partners ("IBPs") who
25 contracted with either Defendant, or one of their predecessors,
26 subsidiaries, or affiliates, for sales in sales areas in California, or who
27 were purchasing product in California or selling to customers in
28 California, at any time during the period June 27, 2018 through
February 28, 2026.

1 See Settlement, § 1.42. The “PAGA Members” are similarly defined to include the
2 “Class Members who contracted with either Defendant or one of their predecessors,
3 subsidiaries, or affiliates for sales in sales areas in California or who were purchasing
4 product in California or selling to customers in California for at least one Eligible
5 Pay Period during the PAGA Settlement Period.” *Id.* at § 1.28.

6 The Class Settlement Period runs from June 27, 2018 through February 28,
7 2026. *Id.* at § 1.6. The PAGA Settlement Period runs from May 18, 2021 through
8 February 28, 2026. *Id.* at § 1.30. The Settlement Class consists of approximately 290
9 current and former California IBPs. *Id.* at §3.4.

10 The Settlement Class will release all claims asserted in this Action and/or the
11 LWDA PAGA letters or that could have been asserted based on the same facts at
12 issue. *Id.* at § 1.34. The Released PAGA Claims are similarly defined as all claims
13 for civil penalties under PAGA meeting the above definition. *Id.* at § 1.35.

14 Additionally, Current IBPs (i.e., those who are still operating as IBPs as of the
15 date of preliminary approval) will execute a revised Arbitration Agreement as part
16 of the Settlement. *Id.* at § 5.1. This revised agreement eliminates the substantive
17 issues Plaintiffs raised earlier in the case. ECF No. 11.

18 **B. Monetary Payment and Allocation.**

19 The Gross Settlement Amount is \$17,500,000, which is non-claims-made and
20 entirely non-reversionary. As set forth in Section 3 of the Settlement, the Net
21 Settlement Amount is what remains for distribution to the Settlement Class after the
22 following amounts come out:

- 23 • **Court-approved Attorneys’ Fees:** Up to one-third of the Gross
24 Settlement Amount (approximately \$5,833,333);
- 25 • **Court-approved Costs:** Documented reasonable costs incurred by
26 Class Counsel up to \$45,000;
- 27 • **Enhancement Awards:** \$15,000 to each Named Plaintiff subject to
28 Court approval for a total of \$60,000;

- 1 • **PAGA Payment:** \$350,000 total—75% (\$262,500) to the LWDA and
- 2 25% (\$87,500) to PAGA Members;
- 3 • **Reserve Fund:** \$200,000 to cover any individuals inadvertently
- 4 omitted from the class data; and
- 5 • **Settlement Administration:** Not to exceed \$16,000.

6 Thus, the remaining Net Settlement Amount to be distributed among the
7 Participating Class Members is approximately \$10,995,667 in total, assuming the
8 Court grants the above requests for fees, service awards, PAGA, and settlement
9 administration. Each Participating Class Member will receive an Individual
10 Settlement Payment calculated as follows: (a) a Minimum Payment equal to 15% of
11 the Net Settlement Amount divided equally among all Participating Class Members
12 (roughly \$5,687 per Class Member); plus (b) a Pro Rata Payment equal to 85% of
13 the Net Settlement Amount allocated pro rata based on each individual's Eligible
14 Workweeks (defined as the workweeks that each Class Member contracted either
15 Defendant or one of their predecessors, subsidiaries, or affiliates in California during
16 the Class Settlement Period). The Pro Rata Payment is calculated using the formula:
17 (individual Eligible Workweeks ÷ total Participating Class Member Eligible
18 Workweeks) × 85% of Net Settlement Amount. On average, the Settlement Class
19 will receive a Pro Rata Payment of approximately \$32,225 (varying by number of
20 Eligible Workweeks). Settlement, § 3.5.4. Combining the average Minimum
21 Payment and Pro Rata Payment, the average award for the Class Members will be
22 nearly \$38,000. Markley Decl., ¶ 32.

23 **C. Settlement Notice and Administration.**

24 After obtaining several bids to administer the Settlement, the Parties have
25 agreed to use CPT Group as the Settlement Administrator. CPT Group is an
26 experienced class action settlement administrator who gave a favorable bid. Markley
27 Decl., ¶ 14.

1 Within 14 days of receiving the Class Data from Defendants (which shall be
2 sent to the Settlement Administrator no later than 14 days after the date of the
3 preliminary approval of the settlement), the Settlement Administrator will send the
4 Notice of Settlement to all Class Members by both first-class United States mail and
5 email. Settlement, §§ 4.2.1-4.2.2. The Notice will be provided in both English and
6 Spanish. *Id.* The Settlement Administrator will also establish and maintain a
7 Settlement Administration Website and a toll free number where Class Members
8 may access the Notice, the Settlement Agreement, and other relevant documents as
9 well as have questions answered about the settlement process. *Id.* at § 4.2.3.

10 Current IBPs can sign the Arbitration Agreement electronically via the
11 settlement website or on paper and return it to the administrator. The Parties will
12 work together to obtain signatures from all Current IBPs to ensure they receive their
13 share of the settlement. *Id.*

14 For any notices returned as undeliverable, the Settlement Administrator will
15 perform skip-trace searches and re-mail notices to updated addresses. Class
16 Members will have 45 calendar days from the date of initial mailing to submit a
17 request for exclusion or objection (the “Response Deadline”). For notices that are
18 re-mailed, Class Members will have 55 days from the date of initial mailing, or 14
19 calendar days after the re-mailing, whichever is later. *Id.* at §§ 1.37, 4.2.2,

20 The Settlement Administrator will provide weekly reports to counsel for both
21 Parties regarding the status of the notice process, including the number of notices
22 mailed, notices returned, updated addresses located, opt-outs received, arbitration
23 agreement signatures obtained, and objections received. *Id.* at § 4.6.

24 Defendants retain the right to void the Settlement if 5% or more of Class
25 Members opt out, the Court does not certify the Settlement Class, the Court does not
26 approve the PAGA settlement, or other material adverse conditions occur. *Id.* at §
27 4.7.

1 **IV. LEGAL STANDARD**

2 Court approval of a class action settlement is necessary. Fed. R. Civ. P. 23(e).
3 Where, as here, the settlement is reached prior to class certification, the court
4 “peruse[s] the proposed compromise to ratify both the propriety of the certification
5 and the fairness of the settlement. . . [by] first assess[ing] whether a class exists . . .
6 [and second] determin[ing] whether the proposed settlement is fundamentally fair,
7 adequate, and reasonable.” *Cabrales v. Bae Sys. San Diego Ship Repair, Inc.*, No.
8 21-CV-02122-AJB-DDL, 2024 WL 4994339, at *4 (S.D. Cal. Dec. 5, 2024) (*citing*
9 *Staton v. Boeing Co.*, 327 F.3d 938, 952 (9th Cir. 2003) and *Hanlon v. Chrysler*
10 *Corp.*, 150 F.3d 1011, 1026 (9th Cir. 1998), *overruled on other grounds by Wal-*
11 *Mart Stores, Inc. v. Dukes*, 564 U.S. 338 (2011)) (internal cites omitted). If a class
12 exists and the settlement’s terms are appropriate, the court appoints class counsel
13 and representatives and ensures it is properly administered. *Id.* (citing Fed. R. Civ.
14 P. 23(e)(1)).

15 In evaluating the terms of a proposed settlement, courts look at things like “[1]
16 the proposed settlement appears to be the product of serious, informed, non-collusive
17 negotiations, [2] has no obvious deficiencies, [3] does not improperly grant
18 preferential treatment to class representatives or segments of the class, and [4] falls
19 with[in] the range of possible approval.” *Cabrales*, 2024 WL 4994339 at *5 (*citing*
20 *Eddings v. Health Net, Inc.*, 2013 WL 169895, *2 (C.D. Cal. Jan. 16, 2013)).

21 Following preliminary approval and notice to the class, courts make the final
22 determination regarding whether approval is appropriate at the Final Approval
23 hearing; at this preliminary stage the settlement need only be potentially fair. *Id.*
24 (citing *Acosta v. Trans Union, LLC*, 243 F.R.D. 377, 386 (C.D. Cal. 2007)).

25 **V. CONDITIONAL CLASS CERTIFICATION FOR SETTLEMENT**
26 **PURPOSES IS APPROPRIATE**

27 Plaintiffs set forth below the grounds for which the Court should conditionally
28 certify the Settlement Class for the purpose of the Settlement. The statements set

1 forth in Sections V of VI of this Motion are the view of Plaintiffs only, and while
2 Defendants do not oppose the relief Plaintiffs seek in this motion, they express no
3 agreement as to Plaintiffs' recitation of the law or facts as described in Sections V
4 and VI, and expressly reserve all rights to challenge such assertions in this
5 proceeding in the event that the Court does not issue a final approval of the
6 Settlement, or in any other proceeding.

7 The Court should conditionally certify the following Settlement Class for
8 settlement purposes only pursuant to Federal Rule of Civil Procedure 23(b)(3):

9 All current and former Independent Business Partners ("IBPs") who
10 contracted with either Defendant, or one of their predecessors,
11 subsidiaries, or affiliates, for sales in sales areas in California, or who
12 were purchasing product in California or selling to customers in
13 California, at any time during the Class Settlement Period.

14 Conditional certification of a settlement class is appropriate where the
15 proposed class satisfies the requirements of Rule 23(a) (numerosity, commonality,
16 typicality, and adequacy) and Rule 23(b)(3) (predominance and superiority). *See*
17 *Hanlon*, 150 F.3d at 1019–22; *Staton v. Boeing Co.*, 327 F.3d 938, 952–53 (9th Cir.
18 2003). This is a lower bar than a contested Rule 23 motion because courts are not as
19 concerned with things like manageability concerns. *Cabrales*, 2024 WL 4994339, at
20 *5; 2 Newberg and Rubenstein on Class Actions § 4:63 (6th ed.).

21 The proposed class easily satisfies these requirements.

22 **Numerosity.** The Settlement Class is numerous, consisting of approximately
23 290 current and former California IBPs based on Earthgrains's records. Settlement,
24 § 3.4; Markley Decl., ¶ 30.

25 **Commonality.** Commonality is satisfied by a common question "of such a
26 nature that it is capable of classwide resolution—which means that determination of
27 its truth or falsity will resolve an issue that is central to the validity of each one of
28 the claims in one stroke." *Wal-Mart Stores, Inc. v. Dukes*, 131 S. Ct. 2541, 2551
(2011). One common question here is whether Class Members are Defendants'
employees entitled to overtime, expense reimbursement, and other Labor Code

1 rights. Resolution of this question using common proof (including common
2 agreements and policies) could establish Defendants' liability. *See Mazza v. Am.*
3 *Honda Motor Co.*, 666 F.3d 581, 589 (9th Cir. 2012); *Ludlow v. Flowers Foods,*
4 *Inc.*, No. 18CV1190-JO-JLB, 2022 WL 2441295, at *6 (S.D. Cal. July 5, 2022) (a
5 single significant "question of law or fact" suffices).

6 **Typicality.** Plaintiffs' claims are typical of the claims of the Settlement Class.
7 They are a mix of current or former California IBPs who allege they were classified
8 as independent contractors and, as a result, were denied the protections of California
9 wage-and-hour law. *Smith v. Cardinal Logistics Mgmt. Corp.*, No. 07-2104 SC, 2008
10 WL 4156364, at *5 (N.D. Cal. Sept. 5, 2008) (typicality satisfied where defendant
11 had a corporate practice of classifying delivery drivers as independent contractors).

12 **Adequacy.** Adequacy entails (1) no conflict of interest between the proposed
13 representatives and the proposed class, and (2) qualified, competent counsel. *Hanlon*
14 *v. Chrysler Corp.*, 150 F.3d 1011, 1020 (9th Cir. 1998), *overruled on other grounds*
15 *by Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338 (2011); Fed. R. Civ. P. 23(a)(4).
16 Plaintiffs have no conflicts with the Settlement Class and have diligently pursued
17 this action on behalf of the Class throughout the litigation by, among other things,
18 responding to voluminous written discovery, sitting for deposition, submitting
19 evidence to the Court in several motions, and generally staying in contact with
20 counsel to litigate this case over many years. Markley Decl., ¶ 15. Class Counsel –
21 Nicholas & Tomasevic, LLP – has extensive experience litigating worker
22 misclassification class actions and has vigorously prosecuted this case for nearly
23 four years. Markley Decl., ¶¶ 16-28, 31. Rule 23(a)(4) is satisfied.

24 **Predominance.** Rule 23(b)(3) tests whether "common questions present a
25 significant aspect of the case and they can be resolved for all members of the class
26 in a single adjudication." *Hanlon*, 150 F.3d at 1022. Predominance focuses on
27 liability, not specific amounts of damages. *Negrete v. Allianz Life Ins. Co. of N. Am.*,
28 238 F.R.D. 482, 494 (C.D. Cal. 2006); *Salas v. Toyota Motor Sales, U.S.A., Inc.*, No.

1 CV 15-8629 FMO (EX), 2019 WL 1940619, at *13 (C.D. Cal. Mar. 27, 2019);
2 *Pulaski & Middleman, LLC v. Google, Inc.*, 802 F.3d 979, 989 (9th Cir. 2015)
3 (predominance satisfied even though “damage may not be susceptible of exact proof
4 or may be uncertain, contingent or difficult of ascertainment. . .”).

5 Predominance exists here. There are common, predominate misclassification
6 issues under California’s employment tests namely whether IBPs operate within the
7 usual course of Defendants’ direct-store-delivery business under Prong B and
8 whether Defendants have the right to control them through common contracts,
9 management structures, and store policies under Prong A. *See* Cal. Lab. Code, §
10 2775. This alone warrants certification. Still further, common issues predominate
11 under the theories of recovery once Plaintiffs establish an employment relationship,
12 for example, whether vehicle related expenses and various itemized amounts taken
13 from IBPs’ pay each week are reasonable and necessary business expenses under
14 Labor Code section 2802 and whether they should receive overtime under section
15 510.

16 **Superiority.** Class treatment is superior “whenever the actual interests of the
17 parties can be served best by settling their differences in a single action.” *Hanlon*,
18 150 F.3d at 1022. In evaluating superiority, courts examine: (a) the class members’
19 interests in individually controlling separate actions; (b) preexisting related
20 litigation; (c) the desirability of the forum; and (d) manageability. Fed. R. Civ. P.
21 23(b)(3). These factors support certification. Class Members have little interest in
22 individual control or separate actions (which are available if they opt-out); multiple
23 actions would be costly, inefficient, and could lead to inconsistent results. There is
24 no other litigation involving IBPs in California and the Court is familiar with state
25 wage claims. Further, there is no need for the Court to consider manageability for
26 trial since the Parties are seeking to resolve the case. *Amchem Prods., Inc. v.*
27 *Windsor*, 117 S.Ct. 2231, 2235 (1997).

28 Accordingly, conditional certification is appropriate.

1 The proposed class notice is also appropriate for purposes of Rule 23(c)(2)(B).
2 Sending the notice by mail and email as well as maintaining a settlement website
3 and call in number is the best notice practicable under these circumstances. The
4 proposed Notice of Settlement, attached to the Settlement at Exhibit 2, satisfies all
5 of the subfactors under Rule 23(c)(2)(B). The Court should order issuance of the
6 notice on the timeline proposed under the Settlement as set forth above. *See* Section
7 § III(C), *supra*.

8 **VI. PRELIMINARY APPROVAL OF THE SETTLEMENT IS**
9 **APPROPRIATE**

10 Against the backdrop that there is a strong judicial policy favoring settlement,
11 particularly in complex class action litigation, *Class Plaintiffs v. City of Seattle*, 955
12 F.2d 1268, 1276 (9th Cir. 1992), Rule 23(e) tasks district courts with assessing
13 whether a settlement is “fair, reasonable, and adequate.” *Hanlon*, 150 F.3d at 1026.
14 Under the 2018-revised Rule 23(e) and related case law in this Circuit, courts
15 examine whether a proposed settlement comports with Rule 23(e) under the eight
16 “*Churchill* factors,” which include:

17 (1) the strength of the plaintiff's case; (2) the risk, expense, complexity,
18 and likely duration of further litigation; (3) the risk of maintaining class
19 action status throughout the trial; (4) the amount offered in settlement;
20 (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) the reaction of the class members of
the proposed settlement.

21 *Kim v. Allison*, 8 F.4th 1170, 1178 (9th Cir. 2021) (citing *In re Bluetooth Headset*
22 *Prods. Liab. Litig.*, 654 F.3d 935, 946 (9th Cir. 2011)). The court must also assess
23 whether the settlement is a product of collusion between the parties or a result of a
24 conflict in interest. *Id.* Courts remain mindful that, “[a]t the preliminary approval
25 stage, a full fairness analysis is unnecessary. Closer scrutiny is reserved for the final
26 approval hearing.” *Hawkins v. Kroger Co.*, 2021 WL 2780647, at *3 (S.D. Cal. July
27 2, 2021).

28 The proposed settlement easily satisfies these requirements.

A. Settlement Is the Product of Adequate Representation Resulting in an Informed, Non-Collusive Negotiation.

Plaintiffs are a mix of current and former IBPs who contracted with Earthgrains over various time periods. They have no conflicts with the class. Markley Decl., ¶ 15. While they are requesting typical service awards and will further justify those at the final approval stage, this does not create a conflict. These awards “compensate class representatives for work done on behalf of the class, to make up for financial or reputational risk undertaken in bringing the action, and, sometimes, to recognize their willingness to act as a private attorney general.” *Rodriguez v. West Publ'g Corp.*, 563 F.3d 948, 958–59 (9th Cir. 2009). Here, the request for \$15,000 for each of the four Plaintiffs (totaling \$60,000) amounts to less than 1% of the gross settlement amount (a mere .3%). The requested amounts are in line with and even lower than other service awards granted by this Court and others in similar large recovery cases. *Cabralles*, 2024 WL 4994339 at *11 (approving \$20,000 per plaintiff where it was less than 1% of the gross settlement value and compensated plaintiffs for extensive efforts in a case); *Graham v. Overland Sols., Inc.*, 2012 WL 4009547, at *8 (S.D. Cal. Sept. 12, 2012) (quoting *Staton*, 327 F.3d at 977) (approving service awards of \$25,000 each to the named plaintiffs for their time and effort, the risks they undertook, and the stigma upon future opportunities, and a general release of all claims). *Garner v. State Farm Mut. Auto. Ins. Co.*, 2010 WL 1687832, at *17 (N.D. Cal. Apr. 22, 2010) (similar; collecting cases).

The case was vigorously litigated. As detailed above, this case involved extensive law and motion practice. *See* Section II(B)(2); Markley Decl., ¶¶ 6-13. Furthermore, the parties completed discovery through the class certification discovery cut off and fully briefed the motion for class certification prior to resolving the matter. *Id.* At the time of mediation, both parties had a robust record of evidence and detailed information about the size of the class, amount of weeks the class

1 members each contracted with Earthgrains, and related data needed to evaluate
2 alleged damages. Markley Decl., ¶ 30.

3 Class Counsel also regularly litigates these kinds of matters in addition to
4 other complex class actions. Markley Decl., ¶ 22-28. Based on their experienced
5 views, the Settlement is a good result for the class in light of the strength of the case
6 compared with the risks as detailed below.

7 Furthermore, the settlement was negotiated at arms' length with the assistance
8 of Michael Russell, an experienced mediator. Participation of a neutral mediator in
9 class settlement negotiations weighs in favor of a finding of non-collusiveness. *In re*
10 *Bluetooth Headset Products Liability Litig.*, 654 F.3d at 948; *Cabrales*, 2024 WL
11 4994339 at *12.

12 Finally, the Settlement does not contain any of the red flags for collusive
13 settlements like clear sailing, outsized fee awards compared to class recovery, fees
14 paid separately from a common fund, or reversion to Defendants. *Cabrales*, 2024
15 WL 4994339 at *12 (citing *Staton*, 327 F.3d at 965).

16 **B. The Settlement Provides Very Adequate Relief and Easily Sits**
17 **Within the Range of Possible Approval.**

18 *1. Strength of the Case Versus Costs, Risks, and Delay of*
19 *Proceeding Further.*

20 Plaintiffs very much believe in their case, namely that they are misclassified
21 as independent contractors, entitled to benefits under the Labor Code for the work
22 performed for Defendants. And they obtained a favorable recovery compared to
23 other heavily litigated and long-running misclassification cases that settled post-
24 class certification. *See, e.g., Fleming v. Matco Tools Corp., et al.*, No. 3:19-cv-
25 00463-WHO (N.D. Cal.) (gross recovery of \$15,846,423 covering 272 class
26 members); *Alvarez, et al. v. XPO Logistics Cartage, LLC, et al.*, No. 2:18-cv-03736-
27 RGK-E (N.D. Cal.) (settled for \$20,000,000 for a class of 526 drivers). Here, the
28 \$17,500,000 Gross Settlement Amount – for a class of approximately 290 members

1 – yields an average net payment amount of nearly \$38,000 per Class Member.
2 Markley Decl., ¶ 32.

3 The Settlement also is reasonable in light of the Class Counsel’s estimation of
4 the potential exposure at issue. *See Linney v. Cellular Alaska P’ship*, 151 F.3d 1234,
5 1242 (9th Cir. 1998) (Settlements should be compared to the “best possible
6 recovery” and the “attendant risks of litigation.”). Based on the Plaintiffs’ analysis
7 of the data shared at the time of mediation, and after adjusting for realistic potential
8 penalties and damages, Plaintiffs estimated exposure in this case to be \$64 million.
9 As detailed in the Markley Decl. (at ¶ 33), this consisted of roughly \$55 million in
10 alleged unpaid wages and other damages and \$9 million in penalties. Penalties are
11 often discretionary or subject to heightened standards of proof like willfulness or
12 intent. *See, e.g.*, Cal. Lab. Code, §§ 226.8, 203.

13 This risk-weighted discount between realistic exposure and accepted
14 settlement value is well supported by the range accepted in other approved class
15 actions. *See, e.g., In re Mego Fin. Corp. Sec. Litig.*, 213 F.3d 454, 459 (9th Cir.
16 2000) (finding a recovery of one sixth (16.67%) of the potential recovery adequate
17 in light of the plaintiff’s risks); *Villegas v. J.P. Morgan Chase & Co.*, 2012 WL
18 5878390, at *6 (N.D. Cal. Nov. 21, 2012) (preliminarily approving a settlement
19 representing 15% of the potential recovery).

20 Several risks and delays also lay ahead. As an initial matter, there was a
21 chance the case would not be certified or only certified in part. *See, e.g., Martinez v.*
22 *Flower Foods, Inc.*, 2016 WL 10746664, at *1 (C.D. Cal. Feb. 1, 2016) (bakery
23 delivery drivers denied class certification); *Fleming v. Matco Tools Corp.*, No. 19-
24 CV-00463-WHO, 2021 WL 673445 (N.D. Cal. Feb. 21, 2021) (misclassification
25 claims certified only in part). Indeed, Defendants successfully beat class certification
26 years ago in the same kind of case. *Urena v. Earthgrains Distrib.*, 2017 WL 4786106
27 (C.D. Cal. 2017); Markley Decl., ¶ 34. Assuming Plaintiffs successfully certified the
28

1 case, Defendants likely would have filed a Fed. R. Civ. P. 23(f) petition and would
2 have moved to decertify the class later in the proceedings. Markley Decl., ¶ 34.

3 Further still, Plaintiffs could have lost on the merits of the misclassification
4 inquiry or they could be found to have limited damages based on overtime and meal
5 and rest exemption and preemption theories. Markley Decl., ¶ 35.

6 Finally, as Defendants demonstrated in this case, the prospect of appeals and
7 delays in obtaining recovery were likely given the vigorous litigation at issue. *Id.* at
8 ¶ 36.

9 2. *The Settlement Distribution Is Equitable and Effective.*

10 Under this Rule 23(e) subfactor, courts assess the method of distribution to
11 the class. Workweek distributions are a fair and normal way to divvy up wage and
12 hour settlements. *Grant v. T-Mobile USA, Inc.*, No. CV 21-2268-GW-JEMx, 2023
13 WL 7308311, at *7 (C.D. Cal. Oct. 3, 2023); *Cabrales*, 2024 WL 4994339 at *14.

14 Here, the bulk of the Net Settlement Amount will be divided based on work
15 weeks for the Class Members within the recovery period with 85% of it being
16 divided this way. Settlement, § 3.5.4. The remaining 15% is divided on an even basis
17 among the Class Members. Using a modest portion of the Net Settlement Amount
18 for this purpose is fair because some of the claims at issue do not accrue based on
19 weeks worked. For example, while overtime and some expense reimbursements like
20 gas and maintenance will rise proportionally with weeks worked, other forms of
21 damages will not. Here, all IBPs purchased a territory from Earthgrains and incurred
22 up-front costs in doing that as well as sourcing a delivery vehicle and buying related
23 equipment to carry out the obligations in their Distribution Agreement. Markley
24 Decl., ¶ 37. Further still, some forms of damages like those for willful
25 misclassification under Labor Code section 226.8 and failure to pay all wages due
26 upon termination are not work week-based. *Id.* By allocating a baseline amount to
27 all Class Members, it also ensures they obtain meaningful relief for their claims and
28 should encourage a larger participation and check-cashing rate. *Id.*

1 3. *The Attorney's Fees Provision Is in Line with Settlements in This*
2 *Circuit.*

3 A court may consider the reasonableness of the proposed fee award at the
4 preliminary approval stage as part of its overall assessment of fairness. *In re*
5 *Bluetooth*, 654 F.3d at 941–43.

6 While Class Counsel will select a percent to ask of the Court at the final
7 approval stage and justify that amount in more detail, at this preliminary approval
8 stage, using a percentage of the fund method is the norm and the one-third figure is
9 in line with other settlements approved in this Circuit even though it exceeds the
10 benchmark of 25%. *Cabralles*, 2024 WL 4994339 at *13-14 (*citing In re Bluetooth*,
11 654 F.3d at 942) (“[C]ourts may use either the lodestar method or percentage-of-
12 recovery method to determine the reasonableness of attorney's fees.”). Nothing
13 about the structure of the percentage of the fund method of calculating fees here
14 “shortchanges the class” or suffers from similar issues which raise concerns for
15 courts. *Briseño v. Henderson*, 998 F.3d 1014, 1024 (9th Cir. 2021).

16 The forthcoming fee request reflects the strong result achieved for the class (a
17 \$17,500,000 non-reversionary common fund), the years of hard-fought litigation,
18 including extensive motion and discovery practice, and the considerable risk
19 undertaken by Class Counsel in prosecuting this case on a contingency basis. *See*
20 *Laffitte v. Robert Half Int'l Inc.*, 1 Cal. 5th 480, 503–04 (2016) (factors relevant to
21 fee reasonableness include the risk of the litigation, the quality of the result obtained,
22 and the contingent nature of the fee).

23 The Court should preliminarily approve this amount and allow the Class
24 Members to receive notice and respond.

25 **C. Additional Considerations Support Approval.**

26 In this Circuit, courts also typically consider the experienced views of counsel
27 and the reaction of the class. While the latter is not yet known and will be discussed
28 at final approval, the former supports approval of the Settlement.

1 Where all “Parties are represented by experienced counsel and their mutual
2 desire to adopt the terms of the proposed settlement, while not conclusive, is entitled
3 to great deal of weight.” *Cabrales*, 2024 WL 4994339, at *15 (citing *In re Immune*
4 *Response Sec. Litig.*, 497 F. Supp. 2d 1166, 1174 (S.D. Cal. 2007)).

5 Such is the case here. Class Counsel are experienced class action litigators
6 who regularly litigate these exact type of misclassification claims. Markley Decl., ¶¶
7 22-28. Demonstrating this, they engaged in extensive substantive briefing on various
8 merits and discovery issues and obtained several key rulings on law and motion
9 issues. *See* Section § II(B)(2). Class Counsel believe that accepting this amount at
10 this stage of the case is in the best interest of the class. They remained willing to
11 forego settlement and continue to litigate the case through certification if the right
12 amount was not proposed by the mediator and acceptable to Defendants. Markley
13 Decl., ¶ 31.

14 **D. The PAGA Allocation Is Fair and Reasonable.**

15 PAGA provides³ that 75% of civil penalties recovered under the statute shall
16 be paid to the LWDA and 25% to aggrieved employees. Cal. Lab. Code, § 2699(i).
17 Here, the Settlement allocates \$350,000.00 to the PAGA claims brought by
18 Plaintiffs. Of that amount, \$262,500 will be paid to the LWDA and \$87,500 will be
19 paid to PAGA Members. Settlement at § 3.5.5. Because a settlement of PAGA
20 claims settles claims that could otherwise be brought by the state, the trial court must
21 “review and approve” any settlement of PAGA claims. Cal. Lab. Code, § 2699(l)(2).

22 The amount allocated to PAGA under the Settlement is reasonable. The
23 strongest claims in this case were for unpaid wages and reimbursements as these
24 amounts are not discretionary, as is the case for PAGA penalties. Markley Decl., ¶
25 38; Cal. Lab. Code, § 2699(e). Furthermore, PAGA has only a one-year statute of
26 limitations and the wage claims can go back up to four years under the UCL giving
27

28 ³ This PAGA case was filed before the recent amendments to that statute which
changed these percentages.

1 them much more value. Thus, the bulk of the Settlement goes to Class Members
2 rather than the State via PAGA penalties, but the Parties agreed to contribute a
3 meaningful amount to these penalties. *See, e.g., Chu v. Wells Fargo Investments,*
4 *LLC*, No. C 05-4526 MHP, 2011 WL 672645, at * 1 (N.D. Cal. Feb. 16, 2011)
5 (approving PAGA settlement payment of \$7,500 to the LWDA out of \$6.9 million
6 common-fund settlement); *Ramirez v. Benito Valley Farms, LLC*, No. 16-CV-
7 04708-LHK, 2017 WL 3670794, at *5 (N.D. Cal. Aug. 25, 2017) (settlement of
8 PAGA claim for 4.5% of exposure reasonable).

9 **E. The Court Should Approve the Administrative Costs to CPT.**

10 The Court should appoint CPT Group as the Settlement Administrator and
11 approve the Settlement Administration Costs of \$16,000. Settlement, § 3.5.3. The
12 Parties obtained several bids to administer the settlement. Markley Decl., ¶ 14.
13 CPT's bid was in line with the lowest bids received and lower than many others. *Id.*
14 Counsel for both Parties, who have considerable experience with class
15 administrators, have worked with CPT in the past and find them very competent and
16 a good fit for this case. *Id.* The Court should approve CPT's appointment as well as
17 the related costs.

18 **VII. THE COURT SHOULD SET A FINAL APPROVAL HEARING**

19 Finally, the Court should set a hearing for final approval of the Settlement on
20 a date appropriately scheduled to follow the date by which Class Members must file
21 objections to the Settlement and Plaintiffs' Counsel's request for attorneys' fees,
22 costs, and service awards.

23 **VIII. CONCLUSION**

24 For the foregoing reasons, the Plaintiffs respectfully request that the Court:

- 25 (1) Grant preliminary approval of the proposed Settlement;
26 (2) Conditionally certify the Settlement Class for settlement purposes only
27 pursuant to Rule 23 and appoint Plaintiffs as class representatives;
28 (3) Appoint Nicholas & Tomasevic, LLP as Class Counsel;

- (4) Approve CPT Group as the Settlement Administrator;
- (5) Approve the form, content, and method of distribution of the Notice of Settlement;
- (6) Set a briefing schedule for the motion for final approval, Class Counsel's motion for attorneys' fees and costs, and Named Plaintiffs' motion for Enhancement Awards; and
- (7) Schedule a Final Approval Hearing.

Respectfully submitted,

DATED: April 22, 2026

NICHOLAS & TOMASEVIC, LLP

By: /s/ Shaun Markley
Craig M. Nicholas (SBN 178444)
Alex Tomasevic (SBN 245598)
Shaun Markley (SBN 291785)
Jordan Belcastro (SBN 339570)
225 Broadway, 19th Floor
San Diego, California 92101
Tel: (619) 325-0492
Fax: (619) 325-0496
Email: cnicholas@nicholaslaw.org
Email: atomasevic@nicholaslaw.org
Email: smarkley@nicholaslaw.org
Email: jbelcastro@nicholaslaw.org

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