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Attorneys for Plaintiff TRAVIS HUDSON, an individual, on behalf of himself and all others similarly situated and on behalf of the State of California and all similarly-aggrieved employees

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SAN DIEGO

TRAVIS HUDSON, an individual, on behalf of himself and all others similarly situated and on behalf of the State of California and all similarly-aggrieved employees,

Plaintiff,

vs.

GRUMA CORPORATION, a Nevada corporation, d/b/a MISSION FOODS; and DOES 1 through 100, inclusive,

Defendants.

Case No.: 25CU054716C

Assigned for all purposes to:
Hon. Judy S. Bae, Dept. C-62

DECLARATION OF SHAUN MARKLEY IN SUPPORT OF PLAINTIFF'S MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT

Date: October 16, 2026
Time: 9:10 a.m.
Location: Dept. C-62

Complaint Filed: October 10, 2025
Trial Date: Not Set

I, SHAUN MARKLEY, declare:

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

Plaintiff's Counsel's Relevant Background

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

3. Separately, we have tried class actions to verdict. We have also defended class actions, including employment class actions. Our firm members routinely write and speak on employment class action and PAGA litigation, including on behalf of the San Diego County Bar Association, and closely follow legal developments in this area.

4. Some of our firms' other recent class action experience includes litigating *Moyle v. Liberty Mutual* and recovering in 2018 over $30 million in employee benefits against Liberty Mutual, in a class action settlement approved by the United States District Court, Southern District

of California. Also, in 2018 we helped recover over $25 million for consumers against Procter & Gamble for unfair competition and related claims related to their marketing and sale of certain dietary supplements. We also obtained court approval of a class action settlement in *Loera v. Akal*, a California Superior Court case involving wage/hour issues. This case settled after the first phase of trial and the class was ultimately awarded about $10 million in damages.

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

6. Aside from the above, our recent appointments as class counsel include serving as appointed class counsel in several large consumer class actions, including for a class of over 100,000 Californians in *Munguia-Brown, et al. v. Equity Residential, et al.*, Case No. 16-cv-01225 (N.D. Cal.), which we just completed a three week trial in; *Farley v. Lincoln Benefit Life Co.*, Case No. 20-cv-02485-KJM-DB (E.D.Cal.) (over 37,000 class members); *and Milan v. Protective Life Insurance Company,* Case No. 22-cv-1861-AHG (S.D. Cal.) (thousands of class members). I, and my colleagues at N&T, have been found to be adequate class counsel in every case that we have ever sought to be deemed as such – in more than 40 matters.

7. Class counsel's backgrounds demonstrate their ability to effectively litigate class actions and appropriately value their worth. Partner Craig M. Nicholas received his Juris Doctor in 1995 with cum laude honors from the University of Arizona College of Law, where he served as Note & Comment Editor of the Arizona Journal of International and Comparative Law. He completed his undergraduate education at the University of California at San Diego, where he graduated cum laude with a BA in political science in 1992. Mr. Nicholas was a partner at the antitrust and business litigation law firm of Wright & L'Estrange from 2002-2004, recognized by San Diego Magazine as one of the leading antitrust law firms in San Diego, before founding the predecessor to Nicholas & Tomasevic LLP to offer client services on a larger platform. Mr. Nicholas is a former member of the Board of Directors of the William Enright Inn of Court. Mr. Nicholas served as the President of the California Young Lawyers Association for the State Bar of California in 2003-2004 and represented San Diego County in the Association from 2001-2003. Mr. Nicholas

has given seminars on expert witness law in California and civil litigation matters. Mr. Nicholas has been selected by SuperLawyers magazine as one of the Top 50 attorneys in San Diego. The San Diego Attorney Journal honored Mr. Nicholas as Attorney of the Month in June 2012. In 2013, The San Diego Daily Transcript identified Mr. Nicholas as a Top Attorney in Corporate Litigation. In 2009, The San Diego Daily Transcript identified Mr. Nicholas as one of the top 25 corporate litigators in San Diego County.

8. Alex Tomasevic, Esq. was admitted to the California Bar in 2006 after graduating Cum Laude from the University of San Diego School of Law. He has been selected as a Thomson Reuters "Super Lawyer" from 2018-2023 in the field of Class Actions and Mass Torts. Previously, he was recognized as a Thomson Reuters "Rising Star" in the field as well as part of the San Diego Business Journal's "Best of the Bar."

9. I have been practicing since 2013 and am a graduate of The Ohio State University's Moritz College of Law. While at Ohio State, I was an Academic Merit Scholar and received the CALI Award for Excellence in Professional Responsibility. In addition to my contributions to the cases noted throughout this declaration, I've secured several other hard-fought, large class action settlements to recover wages and penalties on behalf of California employees from defendants in the retail, technology, and automotive sectors. I have successfully certified and/or settled many independent contractor misclassification cases. I am also actively litigating several appeals in independent contractor misclassification cases addressing some of the central and evolving issues relevant to these types of workers and the scope of their ability to pursue employment rights. I was recently selected as a 2022 "Rising Star" by SuperLawyers in the area of plaintiff's side employment law.

10. Jordan Belcastro, Esq. is an Associate of N&T's. He has been practicing since 2020 and is a graduate of The Ohio State University's Moritz College of Law. While at Ohio State, Jordan was a Managing Editor on the Ohio State Law Journal. Jordan is experienced in labor and employment law, having successfully advocated for clients in a wide range of matters, including discrimination claims and wage and hour disputes. Prior to joining N&T, Jordan was an Associate with Currier & Hudson APC where he focused on education and labor and employment law while

representing the State's largest public educational institutions. Jordan joined N&T in 2022, where he has contributed towards multiple successful class action settlements primarily in the labor and employment sector.

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

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

Investigation and Discovery Prior to Settlement

13. Gruma makes certain financial information such as Annual Reports publicly available on its website. These documents contained detailed discussion of Gruma's direct-store-delivery (DSD) model, whereby Gruma used independent contractor Delivery Workers to get their product onto grocer's shelves. I obtained and reviewed thousands of pages of relevant information from these filings to assess things like the importance of Delivery Workers to Gruma's DSD system and the various levels of control Gruma exercises over its Delivery Workers to meet its customers' needs.

14. I contacted several members of the putative class and was able to receive relevant information from them including their contracts with Gruma, communications with Gruma's management, and damages information like how many hours those individuals expended in distributing Gruma's goods and expenses incurred. This allowed my firm to assess arbitration and release obligations, changes year-to-year in Defendant's Distributor Agreements, and the control that could be exercised by Defendant through its Distributor Agreements.

15. Prior to mediation, I received current information from Gruma regarding the usual mediation-related data points like: number of putative class members, breakdown of current v. former putative class members, workweeks for the putative class, and other relevant information. Both parties briefed central issues to the case in their mediation briefs and discussed those issues with the mediator at the mediation.

16. I also surveyed damages figures for claims like overtime, expenses, and deductions from various putative class members and others working in similar industries to assess the scope of damages that would not appear in any of Defendant's records like weekly overtime and business expenses incurred.

17. We also had access to information from prior cases filed against the defendant on the same and similar theories of liability including *Dexter's LLC v. Gruma Corp.* (No. 23-CV-212-MMA-AHG). Attached as **Exhibit 2** is a copy of the final approval order in this case which is also available at 2023 WL 8790268.

18. To summarize, I believe I had ample information to draw upon to fully evaluate things like the size of the class and potential damages, the ability to beat arbitration and release agreements, and the ability to certify a class of Distributors. I also drew upon my extensive experience in litigating independent contractor misclassification cases in California.

Procedural History and Settlement Efforts

19. On January 13, 2025, Plaintiff filed a PAGA Notice Letter with the Labor and Workforce Development Agency ("LWDA") outlining the PAGA claims he intended to pursue against Defendant in this matter. The PAGA letter is attached as **Exhibit 3**.

20. On February 11, 2025, Plaintiff filed a class action in Riverside Couty Superior Court, Case No. CVRI2500770, against Defendant seeking to recover various causes of action for employment misclassification attached as **Exhibit 4** ("Original Class Complaint").

21. On April 17, 2025, Defendant answered and removed the Original Class Complaint to the Central District of California, Case Number 5:25-cv-00947-RGK-SHK.

22. After removal of this case to the Central District of California, the Parties were ordered to complete a private mediation session by December 19, 2025.

23. On July 24, 2025, the Parties attended a full-day mediation session with well-respected wage and hour mediator Antonio Piazza. At mediation, Plaintiff informed Defendant that he would be filing a separate PAGA action in state court and he would be amending the Original Class Complaint to add a cause of action for violation of the Cartwright Act. The Parties agreed to the instant settlement terms at mediation, inclusive of the claims set out in the Original Class

Complaint, the PAGA letter, and the Cartwright Act theory of liability. The parties agreed that Plaintiff would file a consolidated Complaint capturing each theory of liability that the mediation resolved. As such, on September 10, 2025, Plaintiff dismissed the Original Class Complaint without prejudice.

The Settlement

24. After agreeing on key terms at the July 2025 mediation, the Parties executed a long-form Class-Action Settlement Agreement and Class Notice attached as **Exhibit 1** ("Settlement"). The proposed notice to go out to the class is attached to the Settlement at Exhibit A.

25. After obtaining bids, Atticus was the most competitive and the Parties selected Atticus to administer the Settlement subject to Court approval. The parties have used this administrator in the past and believe they are competent to handle this type of matter.

Recovery Obtained Versus Maximum Realistic Recovery

26. As noted above, my firm and I have significant experience representing "independent contractors" in misclassification class action litigation involving wage per hour issues. In these cases, the main claims at issue are expense reimbursements and deductions from wages because these claims are not subject to any type of outside sales or other troubling defenses. For example, my firm partially certified a class action in *Fleming v. Matco Tools Corp.*, No. 19-CV-00463-WHO, 2021 WL 673445, at *11 (N.D. Cal. Feb. 21, 2021) but failed to certify some claims subject to the outside sales defense.

27. The Settlement covers approximately 700 class members who signed and/or were signatories to one or more Distributor Agreements with Gruma for the distribution of Gruma's products within California and were not classified as employees at any point between August 1, 2023 through the date of preliminary approval.

28. Defendant will pay a Gross Settlement Amount of $2,300,000.00, or just over $30/workweek based on the data we received from Defendant prior to mediation. This is over $3,280 per class member recovered and class members will "net" over $2,000 after accounting for fees, costs, and other deductions from the gross settlement.

29. Here, based on the documents we obtained that list the normal types of expenses and deductions the putative class incurred as well as information obtained from interviews with putative class members, we know that Delivery Workers drive around in delivery vehicles to transport Gruma's products and incur unreimbursed expenses or deductions from their earnings for mileage (covering vehicle, gas, repairs, insurance, etc.), cell phones/Internet, and fees and deductions for stale and lost product (*e.g.*, shrink). We estimated damages for these categories based on the documents we obtained in this case, similar cases involving similar individuals where the case had progressed to expert reporting that was based on statistically significant response rates and adequate data as follows: mileage $4,875,000; cell/Internet $1,500,000; stale and lost product $3,750,000. This brings maximum recovery on these liability theories to $10,125,000.

30. Based on industry data and our discussions with the plaintiff and other Distributors in the putative class, we estimated 100 miles a week at 65 cents a mile for the roughly 75,000 workweeks in the putative class period. We used $20/week for phone and Internet damages over the same number of weeks. Finally, for deductions, we estimate $50/week in lost and stale product that the Distributors either pay directly or through deductions from pay over the same period.

31. Overtime and meal/rest breaks can be harder to quantify given that different Delivery Workers work different hours, but drawing on similar classes of works' data, we estimate 5 hours of overtime per week and 1.5 meal/rest violations per week. This results in class-wide exposure of $4,687,500 and $2,812,500 respectively.

32. For each figure, we assume a regular rate of $25/hour for the class. This means overtime hours need the additional .5 premium at 5 hours a week, which works out to 75,000 x ($25 x .5) x 5 or $4,687,500. For the meal and rest premiums, we take 1.5 violations x 75,000 x $25 for $2,812,500.

33. Penalty claims for wage statements and waiting time penalties are:

a. Waiting Time Penalties: 150 former class members x 8 hours a day x $25 x 30 days = roughly $900,000.

b. Wage Statement Penalties: $4,000 max x 550 class members = roughly $2,200,000.

c. PAGA: at $100 per workweek over the 25,000 workweeks in the PAGA period at issue, amounts to $2,500,000.

34. Finally, for Cartwright Act purposes, Plaintiff assumes that, absent the alleged vertical restraints on trade, the class could have negotiated a margin 1% higher than what was set by Defendant. A 1% increase in margin pay for Delivery Workers would amount to about $1,100 per year times roughly 550 class members working each year times the 3 year limitations period amounts to $1,815,000.

35. This brings total realistic exposure to approximately $25,000,000. The recovery obtained via this Settlement at $2.30 million is about 9 percent of the maximum exposure Gruma faced.

36. The risks and complexities of further proceedings in this case support accepting the meaningful settlement figure at this stage versus proceeding and possibly obtaining nothing. As noted above, the parties engaged in early, frank discussions regarding the core roadblocks in this case which are the arbitration clauses the class sign as part of the hiring agreements. PAGA would be the lone cause of action remaining should arbitration be enforced leaving total exposure in the case at only $2.5 million The Parties briefed these issues in their respective mediation briefs before attending mediation and settling the case on the best terms possible short of rolling the dice on having no claims at all to pursue or only individual claims in a tougher arbitration setting. While we believe in the merits of this case and our arguments on these though issues, having to overcome these obstacles to even get to a class certification and merits stage carries heavy risk.

37. Furthermore, any change in Defendant's arbitration agreements over the years could have further complicated which class claims could go forward at all, in court or in arbitration, adding further risk.

38. Other risks included whether class certification was possible at all or possible for certain outside sales related claims. While my firm has had good success certifying similar cases, at least in part, we are familiar with the potential pitfalls that varying arbitration and release agreements can create and took that into consideration when assessing settlement value.

39. Furthermore, waiting time and wage statement penalties as well as PAGA penalties all have some form of "good faith," "willful," or discretionary elements to them which further add risk to potential maximum recovery.

Conditional Certification for Settlement Purposes Makes Sense Here

40. To facilitate mediation, Defendant informally provided data to us prior to the mediation session. Per that data, there were approximately 700 Delivery Workers in California during the relevant class period.

41. From the documents we obtained in this case, Plaintiff Hudson received and signed the 2024 version of Gruma's Distributor Agreement and related Arbitration Agreement. We have also had access to and reviewed other relevant Distributor Agreements and Arbitration Agreements used by Gruma over the years. These documents uniformly classify the Delivery Workers as "independent contractors" and seek to compel all claims to arbitration. As such, Plaintiff's claims for wage and hour benefits and related arbitration issues are common and typical of the class.

Miscellaneous

42. The Settlement does not include releases or terms that fall outside the operative complaints.

43. The notice to the class will be provided in both English and Spanish.

44. This is not an opt-in or claims-made settlement nor are there additional requirements placed on the class or counsel by the Settlement to receive payment.

45. There is no fee splitting with any other entity or law firm.

46. There is no injunctive relief called for under the Settlement.

47. Plaintiffs submitted the Settlement and related moving papers to the LWDA prior to filing this motion.

I declare under penalty of perjury under the laws of the State of California and the United States of America that the foregoing is true and correct. Executed on March 11, 2026, in San Diego, California.

By: 

SHAUN MARKLEY
Declarant / Attorneys for Plaintiff

EXHIBIT 1

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d/b/a MISSION FOODS

SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF SAN DIEGO

TRAVIS HUDSON, an individual, on behalf of himself and all others similarly situated,

Plaintiff,

vs.

GRUMA CORPORATION, a Nevada corporation, d/b/a MISSION FOODS; and DOES 1 through 100, inclusive,

Defendants.

Case No. 25CU054716C

JOINT STIPULATION OF CLASS ACTION AND PAGA SETTLEMENT AND RELEASE

Judge: Judy S. Bae

STIPULATION OF CLASS ACTION AND PAGA SETTLEMENT AND RELEASE

IT IS HEREBY STIPULATED, by and between Plaintiff Travis Huson ("Hudson" or "Plaintiff") on the one hand, and Defendant Gruma Corporation ("Defendant"), on the other hand, and subject to the approval of the Court, that the above-captioned Lawsuit is hereby being compromised and settled pursuant to the terms and conditions set forth herein (the "Settlement," "Stipulation," or "Agreement").

1. **DEFINITIONS** Unless otherwise defined herein, initial capitalized terms used in this Agreement shall have the meanings set forth below:

1.1 "Class" or "Class Members" means all individuals or entities during the Class Period that signed and/or were signatories to one or more Distributor Agreement (or similar styled document) with Gruma for the distribution of Products within California, in addition to their owners, proprietors, partners and/or members ("Class Members").

1.2 "Class Counsel" means Alex Tomasevic, Esq., and Shaun Markley, Esq., of Nicholas & Tomasevic, LLP.

1.3 "Class Counsel Award" or "Attorneys' Fees Award" means attorneys' fees for Class Counsel's litigation and resolution of this Lawsuit not to exceed Seven-hundred and sixty-six thousand, six-hundred and sixty-six dollars and seventy cents ($766,666.70), subject to approval by the Court. The Court shall review the requested amount of the Class Counsel Award, and the approved amount shall be paid from the Maximum Settlement Amount. Any portion of the requested Class Counsel Award that is not awarded to Class Counsel shall be a part of the Net Settlement Amount and distributed to Settlement Class Members as provided in this Agreement.

1.4 "Class Counsel Costs" or "Litigation Costs Award" means expenses and costs incurred by Class Counsel for Class Counsel's litigation and resolution of this

Lawsuit not to exceed Twenty-Five Thousand Dollars ($25,000.00) . The Court shall determine the amount of the Class Counsel Costs, and it shall be paid from the Maximum Settlement Amount. Any portion of the requested Class Counsel Costs that is not awarded to Class Counsel shall be a part of the Net Settlement Amount and distributed to Settlement Class Members as provided in this Agreement.

1.5 "Class Information" means information regarding Class Members that Defendant will in good faith compile from its records and provide to the Settlement Administrator. Class Information shall be provided as a password-protected, Microsoft Excel spreadsheet and shall include each Class Member's: (a) individual and/or corporate name; (b) last known address; (c) last known telephone number; (d) Social Security Number and/or Tax Identification Number; (e) start date of Product distribution; (f) end date of Product distribution; and (g) Compensable Gross Sales (as defined below in Paragraph 1.8). Because Social Security Numbers and/or Tax Identification Numbers are included in the Class Information, the Settlement Administrator shall maintain the Class Information in confidence, it shall be transmitted in password-protected file(s), and access shall be limited to those with a need to use the Class Information as part of the administration of the Settlement.

1.6 "Class Period" means the period from August 1, 2023, through and including the Preliminary Approval Date.

1.7 "Class Representative" means Plaintiff Hudson.

1.8 "Compensable Gross Sales" means each Class Member's gross sales to chain stores in California during the Class Period.

1.9 "Court" shall mean the San Diego County Superior Court.

1.10 "Defense Counsel" or "Counsel for Defendant" shall mean Paul Hastings LLP, 515 South Flower Street, 25th Floor, Los Angeles, California 90071, including the attorneys Chris A. Jalian, Esq., and Matthew L. Honig, Esq..

1.11 "Effective Date" or "Final" means the latest of the following dates, as applicable: (i) expiration of all potential appeal periods without a filing of a notice of

appeal of the Final Approval Order and Judgment, (ii) final affirmance of the Final Approval Order and Judgment by an appellate court as a result of any appeal(s), or (iii) final dismissal or denial of all such appeals (including any petitions for review, rehearing, certiorari, etc.) such that the Final Approval Order and Judgment is no longer subject to further judicial review.

1.12 "Enhancement Award" means the amount approved by the Court to be paid to Class Representative in recognition of his effort and time as a Class Representative, and in consideration for his release of all claims against the Released Parties (as defined below in Paragraph 1.299), as further specified in Paragraph 3.14 below.

1.13 "Final Approval Hearing" means the hearing held on the motion for final approval of the Settlement.

1.14 "Final Approval Order and Judgment" means the Court's entry of an order granting final approval of the Settlement and entering judgment in this Lawsuit based thereon, in conformity with the California Code of Civil Procedure.

1.15 "Individual Settlement Payment" means the net amount paid by way of check to each Settlement Class Member. The amount of the Individual Settlement Payment shall be calculated pursuant to Paragraph 3.13.

1.16 "Lawsuit" or "Action" means the class action lawsuit entitled *Travis Hudson, an individual, on behalf of himself and all others similarly situated and on behalf of the State of California and all similarly-aggrieved employees, v. Gruma Corporation, a Nevada corporation, d/b/a Mission Foods; and DOES 1 through 100, inclusive,* now pending in the San Diego County Superior Court and designated as Case No. 25CU054716C.

1.17 "LWDA Payment" means Thirty Two Thousand Five Hundred Dollars ($32,500) allocated to be paid to the California Labor Workforce Development Agency ("LWDA"), subject to approval by the Court, as calculated and described in Paragraph 1.22.

1.18 "Maximum Settlement Amount" means Two Million and Three Hundred Thousand Dollars ($2,300,000).

1.19 "Net Settlement Amount" means the amount of monies available for distribution to Settlement Class Members, which shall be the Maximum Settlement Amount less the Class Counsel Award, Class Counsel Costs, Enhancement Award, Settlement Administration Costs, and LWDA Payment.

1.20 "Notice of Class Action Settlement" or "Class Notice" means the Notice of Class Action Settlement, substantially in the form attached hereto as **Exhibit A**.

1.21 "Operative Complaint" refers to the Class Action Complaint now pending in the San Diego County Superior Court and designated as Case No. 25CU054716C, as identified in Paragraph 1.16 herein.

1.22 "PAGA Payment" means the allocation of Fifty Thousand Dollars ($50,000), payable from the Maximum Settlement Amount, subject to approval by the Court, for penalties under the Private Attorneys General Act ("PAGA"). Per California Labor Code section 2699(i), Thirty-Two Thousand Five Hundred Dollars ($32,500) ("LWDA Payment"), representing 65% of the PAGA Payment, will be paid to the LWDA. The remaining Seventeen Thousand Five Hundred Dollars ($17,500), representing 35% of the PAGA Payment, shall be distributed to PAGA Group Members as part of the Net Settlement Amount as described in Paragraph 3.146.

1.23 "PAGA Released Claims" means any and all individual and representative claims that could have been assessed upon and collected from the Released Parties under California Labor Code section 2698, et seq., including any and all claims for unpaid wages or reimbursement of whatever kind or nature, whether known or unknown, including but not limited to California Labor Code sections 201, 202, 203, 204, 226, 226.2, 226.7, 226.8, 266.8, 510, 512, 515, 558, 1174, 1182.12, 1194, 1197, 1198, 2802, 2699, et seq, and the applicable IWC Wage Orders that arose or accrued between November 19, 2023, and the date the Court grants final approval of the Settlement.

1.24 "Parties" means Plaintiff and Defendant, and "Party" shall mean either Plaintiff or Defendant, respectively.

1.25 "Preliminary Approval" and "Preliminary Approval Date" mean the date the Court enters the Preliminary Approval Order.

1.26 "Preliminary Approval Order" means the Order granting preliminary approval of the Settlement.

1.27 "Product" means products, items and/or goods manufactured by Gruma Corporation, including, without limitation, Mission Foods and Guerrero Mexican Food Product branded products, items and/or goods.

1.28 "Released Claims" means any and all claims that are asserted in the Operative Complaint through the date of the Final Approval Order and Judgment, including, without limitation, statutory, constitutional, contractual, and/or common law claims for any price fixing violations under California or Federal law; any claims under the California Labor Code and applicable Industrial Welfare Commission Orders including but not limited to claims based on Settlement Class Members' alleged misclassification as independent contractors, for unpaid regular and/or overtime wages, meal period premiums, rest period premiums, restitution, expenses, interest, liquidated damages, punitive damages, interest, attorneys' fees, litigation costs, restitution, and/or statutory and civil penalties (including but not limited to penalties for failure to pay wages, underpayment of wages, late payment of wages, failure to provide accurate itemized statements or maintain records, waiting time penalties, and civil penalties (including civil penalties under the Private Attorneys' General Act)), including, but not limited to, claims arising out of the California Cartwright Act commencing with California Business and Professions Code section 16600, California Labor Code sections 201, 202, 203, 204, 226, 226.2, 226.7, 226.8, 266.8, 510, 512, 515, 558, 1174, 1182.12, 1194, 1197, 1198, 2802, 2699, et seq., and applicable IWC Wage Orders, between August 1, 2023, and the date the Court grants

final approval of the Settlement; and any claim under the California Unfair Business Practices Act for related violations.

1.29 "Released Parties" means Gruma Corporation dba Mission Foods, and all of their respective current and former parents, subsidiaries, predecessors and successors, and affiliated entities, and each of their respective officers, directors, employees, partners, shareholders, and agents, and any other successors, assigns, or legal representatives.

1.30 "PAGA Weeks" means any week during which an individual was a PAGA Group Member.

1.31 "PAGA Period" means the period from November 19, 2023 to the date the Court grants final approval of the Settlement.

1.32 "PAGA Group Members" means all individuals or entities during the PAGA Period that signed and/or were signatories to one or more Distributor Agreement (or similarly styled document) with Gruma for the distribution of Products within California, in addition to their owners, proprietors, partners and/or members.

1.33 "Individual PAGA Payment" means the net amount paid by way of check to each PAGA Group Member. The amount of the Individual PAGA Payment shall be calculated pursuant to Paragraph 3.16.

1.34 "Request for Exclusion" means a request to be excluded from the Settlement that is made in conformity with this Agreement, the instructions in the Class Notice, and the Court's orders.

1.35 "Response Deadline" means the date that is sixty (60) calendar days after the Settlement Administrator mails the Class Notice to Class Members and constitutes the last date on which Class Members may: (a) postmark or fax Requests for Exclusion to the Settlement Administrator; or (b) postmark or fax objections to the Settlement to the Settlement Administrator.

1.36 "Settlement Account" means the bank account established by the Settlement Administrator pursuant to the terms of this Stipulation from which all

monies payable under the terms of this Settlement shall be paid, as set forth herein. The Settlement Account is intended to be a "qualified settlement fund" ("Qualified Settlement Fund") within the meaning of Treasury Regulation § 1.468B-1 and the Settlement Administrator, within the meaning of Treasury Regulation § 1.468B-2(k)(3), shall be responsible for filing tax returns for the Maximum Settlement Amount and paying from the Qualified Settlement Fund any taxes owed with respect to the Settlement Account. The Parties hereto agree that the Settlement Account shall be treated as a "qualified settlement fund" from the earliest date possible, and agree to any relation-back election required to treat the Settlement Account as a "qualified settlement fund" from the earliest date possible. Defense Counsel agree to provide promptly to the Settlement Administrator the statement described in Treasury Regulation § 1.468B-3(e). All taxes shall be paid out of the Settlement Account, shall be paid out of the interest earned on the Settlement Account, shall be considered to be a cost of administration of the Settlement, and shall be timely paid by the Settlement Administrator without prior order of the Court, and under no circumstance shall Defendant have any liability related thereto.

1.37 "Settlement Administration Costs" means the amount to be paid to the Settlement Administrator from the Maximum Settlement Amount for the administration of the Settlement. The Settlement Administration Costs amount is presently estimated not to exceed Twenty Thousand Dollars ($20,000). If the Settlement Administration Costs are awarded in an amount less than Twenty Thousand Dollars ($20,000), the unawarded portion shall be a part of the Net Settlement Amount and distributed to Settlement Class Members as provided in this Agreement.

1.38 "Settlement Administrator" means Atticus Administration.

1.39 "Settlement Class Members" or "Settlement Class" means all Class Members who do not submit a valid and timely Request for Exclusion.

2. RECITALS

2.1 Description and Procedural Posture of the Litigation. On January 13, 2025, Plaintiff filed a PAGA Notice Letter with the LWDA. Plaintiff filed a putative class action against Defendant on February 11, 2025 which Defendant removed to the Central District of California on April 17, 2025. The Parties agreed to attend mediation after removal of the putative class action to federal court and before Plaintiff filed a PAGA-only action in state court. The parties participated in a mediation before Mediator Antonio Piazza, Esq. on July 24, 2025. The Lawsuit was resolved at the mediation. The Parties executed a binding and enforceable Memorandum of Agreement ("MOA"), and agreed that a detailed, long-form settlement agreement would be completed shortly thereafter. Plaintiff dismissed the federal action without prejudice on September 10, 2025. The Lawsuit was filed on October 10, 2025, by Plaintiff in the San Diego County Superior Court in the State of California encompassing both class and PAGA claims.

2.2 Certification of the Settlement Class. The Parties stipulate and agree to the certification of this Lawsuit for purposes of this Settlement only. The Parties further agree that certification for settlement purposes under the lenient standard applied to settlements is in no way an admission that class certification is proper under the more stringent standard applied for litigation purposes, and that evidence of this limited stipulation for settlement purposes only will not be deemed admissible in this or any other proceeding. Should the Settlement not become final and effective as herein provided, class certification shall immediately be set aside (subject to further proceedings on motion of any Party to certify or deny certification thereafter). The Parties' willingness to stipulate to class certification as part of the Settlement shall have no bearing on, and shall not be admissible in or considered in connection with, the issue of whether a class should be certified in a non-settlement context in this Lawsuit and shall have no bearing on, and shall not be admissible or considered in connection with, the issue of whether a class should be certified in any other lawsuit.

2.3 Defendant's Reasons for Settlement. Defendant has concluded that any further defense of this litigation would be protracted and expensive for all Parties. Substantial amounts of time, energy, and resources of Defendant have been, and, unless this Settlement is approved, will continue to be, devoted to the defense of the claims asserted by Plaintiff. Defendant has also taken into account the risks of further litigation in reaching its decision to enter into this Settlement. Despite continuing to contend that it is not liable for any of the claims set forth by Plaintiff in the Lawsuit, Defendant has, nonetheless, agreed to settle in the manner and upon the terms set forth in this Agreement to put to rest the claims as set forth in the Lawsuit.

2.4 Class Members' Claims. Plaintiff, on behalf of Class Members, has claimed and continues to claim that the Released Claims have merit and give rise to liability on the part of Defendant. This Agreement is a compromise of disputed claims. Nothing contained in this Agreement (and exhibits/attachments hereto) and no documents referred to herein and no action taken to carry out this Agreement may be construed or used as an admission by or against the Class Members or Class Counsel as to the merits or lack thereof of the claims asserted.

2.5 Defendant's Defenses. Defendant has claimed and continues to claim that the Released Claims have no merit and do not give rise to liability. This Agreement is a compromise of disputed claims. Nothing contained in this Agreement and no documents referred to herein and no action taken to carry out this Agreement may be construed or used as an admission by or against Defendant as to the merits or lack thereof of the claims asserted.

2.6 Maximum Amount Payable by Defendant. Under the terms of this Settlement, the maximum amount payable by Defendant shall not exceed the Maximum Settlement Amount of Two Million and Three Hundred Thousand Dollars ($2,300,000).

2.7 Class Counsel's Representations. Class Counsel represents that they do not represent anyone in connection with a potential claim against the Released Parties

not resolved by this Settlement. This provision is not intended to, and shall not restrict, any individual's right to the counsel of his or her choice, including Plaintiff's counsel.

2.8 Dismissal of the Lawsuit. The parties agree that, upon final approval of the settlement and judgment entered, the Action will be dismissed with prejudice.

3. TERMS OF AGREEMENT

The Parties agree as follows:

3.1 Releases Given by Plaintiff and the Settlement Class.

3.1.1 As To All Settlement Class Members. As of the Effective Date, all Settlement Class Members, including Plaintiff, release the Released Parties from the Released Claims.

3.1.2 Releases Are Binding on Owners and/or Proprietors of Settlement Class Members. As of the Effective Date, the releases given by Settlement Class Members pursuant to this Settlement apply with equal force to each owner, member, partner and/or proprietor of each Settlement Class Member, and will bind them hereto in the same release of Released Claims against the Released Parties.

3.2 Tax Liability. The Parties make no representations as to the tax treatment or legal effect of the payments called for hereunder, and Settlement Class Members are not relying on any statement or representation by the Parties in this regard. Settlement Class Members understand and agree that they will be responsible for the payment of any taxes and penalties assessed on the payments described herein and will hold the Parties free and harmless from and against any claims resulting from the tax treatment of such payments, including the treatment of such payment as not subject to withholding or deduction for payroll and employment taxes.

3.3 No Knowledge of Other Claims. Class Counsel and Plaintiff agree and represent that they are not aware of any class action claim that could have been brought against Defendant by any person or entity, other than the claims that were alleged or could have been alleged in the Lawsuit, or those claims which are included

in Plaintiff's Complaint, or that could have been alleged based on the facts alleged in the Lawsuit or arising out of the circumstances giving rise to the Lawsuit.

3.4 Settlement Approval and Implementation Procedures. As part of this Settlement, the Parties agree to the following procedures for obtaining the Court's preliminary approval of the Settlement, certifying a Class for settlement purposes only, notifying Class Members of the Settlement, obtaining the Court's final approval of the Settlement, and processing the Individual Settlement Payments.

3.4.1 Preliminary Approval and Certification. Plaintiff shall submit this Stipulation to the Court for its preliminary approval as a part of his motion for preliminary approval; Plaintiff will provide his proposed submission to Defense Counsel for their review no later than five (5) business days prior to submission to the Court. Such submission will include this Agreement, the proposed Class Notice, attached hereto as **Exhibit A**, and any motions, memoranda and evidence as may be necessary for the Court to determine that this Agreement is fair, adequate, and reasonable. The Parties agree to request the Court to enter an order approving the certification of a provisional Settlement Class after the preliminary approval hearing in accordance with the California Code of Civil Procedure.

3.4.2 Class Information. No more than fifteen (15) business days after the entry of the Preliminary Approval Order, Defendant shall provide the Settlement Administrator with the Class Information for purposes of mailing the Class Notice to Class Members.

3.4.3 Efforts to Locate Class Members. The Parties agree that locating and contacting Class Members who were former signatories to an agreement with Defendant is an important and material aspect of the Settlement. In this regard, Defendant shall provide relevant Class Information in its possession to the Settlement Administrator. To further the Parties' efforts to locate Class Members, the Parties agree that, upon receipt of the Class Information, the Settlement Administrator will utilize the best practicable means available for purposes of verifying and/or updating

the current address and telephone numbers for all Class Members. The address(es) identified by the Settlement Administrator as the current mailing address shall be presumed to be the best mailing address for each Class Member. The cost of diligently attempting to find the best contact information of the Class Members shall be included in the Settlement Administration Costs, and Defendant shall not, under any circumstances, be required to pay any additional funds for the investigatory duties to be performed by the Settlement Administrator.

3.4.4 Notice By First Class U.S. Mail. No more than fourteen (14) calendar days after the deadline for Gruma to provide Class Information to the Settlement Administrator (set forth in Paragraph 3.4.2) has passed, the Settlement Administrator shall mail copies of the Class Notice to all Class Members by regular First-Class U.S. Mail. It will be conclusively presumed that, if an envelope so mailed has not been returned within thirty (30) calendar days of the mailing, the Class Member received the Class Notice.

3.4.5 Undeliverable Notices. Any Class Notice that is returned to the Settlement Administrator as non-delivered on or before the Response Deadline shall be re-mailed to the forwarding address affixed thereto, if any. If no forwarding address is provided, the Settlement Administrator shall make reasonable efforts to obtain an updated mailing address within five (5) business days of the date of the return of the Class Notice, including, without limitation, conducting one skip-trace. If an updated mailing address is identified, the Settlement Administrator shall resend the Class Notice to the Class Member. Class Members to whom a Class Notice is re-sent after having been returned undeliverable to the Settlement Administrator shall have fourteen (14) calendar days thereafter or until the Response Deadline has expired, whichever is later, to mail or fax the Request for Exclusion or Notice of Objection. A Class Notice that is re-sent shall inform the recipient of this adjusted deadline. The date of the postmark on the Request for Exclusion, either based on the date on the return envelope or the date of the fax stamp, shall be the exclusive means

used to determine whether a Class Member has timely returned his/her/its Request for Exclusion on or before the adjusted deadline. Unless otherwise agreed by the Parties, a Request for Exclusion shall be deemed valid only if it is signed by the Class Member and postmarked or fax stamped on or before the adjusted deadline. If a Class Member's Class Notice is returned to the Settlement Administrator more than once as non-deliverable, then the Settlement Administrator shall not be required to undertake any additional re-mailing of the returned Class Notice.

3.4.6 Compliance with the procedures specified in Paragraphs 3.4.2 through 3.4.5 herein shall constitute due and sufficient notice to Class Members of this Settlement and shall satisfy the requirement of due process. Nothing else shall be required of, or done by, the Parties, Class Counsel, Defense Counsel, and the Settlement Administrator to provide notice of the proposed settlement.

3.5 English and Spanish Versions of the Class Notice. Each Class Member shall receive an English and Spanish version of the Class Notice.

3.6 Disputes. Class Members will have the opportunity, should they disagree with Defendant's records regarding their Compensable Gross Sales as stated on their Class Notice, to dispute this information by submitting a written letter to the Settlement Administrator on or before the Response Deadline, that: (1) contains the name, address, telephone number, last four digits of the Social Security Number or Tax Identification Number, and signature of the Class Member; (2) contains the case name and number of the Lawsuit; (3) clearly indicates that the Class Member seeks to dispute his/her/its Compensable Gross Sales; (4) provides documentation and/or an explanation to show contrary Compensable Gross Sales; and (5) is postmarked or fax-stamped by the Response Deadline and returned to the Settlement Administrator at the specified address or fax telephone number. To the extent any Settlement Class Member disputes any aspect of his or her claim and/or payment, that Settlement Class Member must produce supporting evidence to the settlement administrator. Defendant's records will be presumed determinative.

3.7 Exclusions (Opt Outs). The Class Notice shall state that Class Members who wish to exclude themselves from the Settlement must submit a Request for Exclusion by the Response Deadline. The Request for Exclusion must: (1) contain the name, address, telephone number, last four digits of the Social Security Number or Tax Identification Number, and signature of the Class Member; (2) contain the case name and number of the Lawsuit; (3) clearly indicate that the Class Member seeks to exclude itself, himself, or herself from the Settlement; and (4) be postmarked or fax-stamped on or before the Response Deadline and returned to the Settlement Administrator at the specified address or fax telephone number. The date of the postmark on the Request for Exclusion, either based on the postmark date on the return mailing envelope or date of the fax stamp, shall be the exclusive means used to determine whether a Request for Exclusion has been timely submitted. Unless otherwise agreed by the Parties, a Request for Exclusion shall be deemed valid only if it is signed by the Class Member and postmarked or fax stamped on or before the adjusted deadline. Any Class Member who timely requests to be excluded from the Settlement will not be entitled to any recovery under the Settlement and will not be bound by the terms of the Settlement (except for the release of their PAGA claim) or have any right to object, appeal, or comment thereon. For the avoidance of doubt, any Class Member who exclude themselves from the Class will still receive their share of the PAGA Payment and release the PAGA Released Claims. Class Members who receive a Class Notice but fail to submit a valid and timely Request for Exclusion on or before the Response Deadline shall be bound by all terms of the Settlement and any Final Approval Order and Judgment entered in this Lawsuit if the Settlement is approved by the Court. No later than fourteen (14) calendar days after the Response Deadline, the Settlement Administrator shall provide counsel for the Parties with a complete list of all members of the Class who have timely submitted Requests for Exclusion. At no time shall any of the Parties or their counsel seek to solicit or otherwise encourage members of the Class to submit Requests for Exclusion from the

Settlement. Any Class Member who submits a valid and timely Request for Exclusion shall forfeit his/her/its right to receive an Individual Settlement Payment under this Agreement, the amount of which will be part of the Net Settlement Amount to be distributed to Settlement Class Members as provided in this Agreement.

3.8 Objections. The Class Notice shall state that Settlement Class Members who wish to object to the Settlement must submit a written statement of objection ("Notice of Objection") on or before the Response Deadline, and may do so by mailing or faxing the Notice of Objection to the Settlement Administrator. The date of postmark or fax-stamp shall be deemed the exclusive means for determining that a Notice of Objection was timely submitted. The Notice of Objection must: (1) contain the name, address, telephone number, last four digits of the Social Security Number or Tax Identification Number, and signature of the Class Member; (2) contain the case name and number of the Lawsuit; (3) clearly indicate that the Class Member seeks to object to the settlement; (4) state the legal and factual basis for the objection; (5) state whether the Settlement Class Member intends to appear at the Final Approval Hearing; and (6) be postmarked or fax-stamped on or before the Response Deadline and returned to the Settlement Administrator at the specified address or fax telephone number. The Settlement Administrator shall within five (5) calendar days of receiving an objection provide the Parties with copies of the Notices of Objection. The Settlement Administrator will lodge all objections that it receives, with the Court, by attaching them to its declaration to be filed with the Court in support of the motion for final approval of the Settlement.

3.9 No Solicitation of Objections or Requests for Exclusions. The Parties agree to use their best efforts to carry out the terms of this Settlement. At no time shall any of the Parties or their counsel seek to solicit or otherwise encourage Class Members to submit Requests for Exclusion, objections to the Settlement, or to appeal from the Court's Final Approval Order and Judgment.

3.10 Indemnification. Defendant waives its right to seek to recoup, through a demand for indemnification or otherwise, any portion of the gross settlement fund that Settlement Class Members (who/which do not opt-out of the class action settlement) receive for their release of the Released Claims and/or any attorneys' fees and defense costs incurred by Defendant in connection with this Lawsuit. Defendant does not waive any rights to demand indemnification from any Settlement Class Member (whether or not they/it participate in the Settlement) for any third-party claims made against any of the Released Parties that are not Released Claims.

3.11 Uncashed Checks. If an Individual Settlement Payment check is not cashed or deposited within one hundred eighty (180) days after the date it is mailed to a Settlement Class Member, it will be voided, and those funds will distributed to the nonprofit organization, Feeding America. The Settlement Administrator will undertake amended and/or supplemental tax filings and reporting, required under applicable local, state, and federal tax laws, that are necessitated due to the voiding of Individual Settlement Payment checks.

3.12 Funding and Allocation of Settlement. Defendant is required to fully fund and pay the Maximum Settlement Amount of Two Million and Three Hundred Thousand Dollars ($2,300,000) within twenty one (21) calendar days of the Effective Date. Defendant shall provide the funds for the Settlement to the Settlement Administrator by certified check or by wire transfer. The Settlement Administrator shall deposit the funds in the Settlement Account. Distributions from the Settlement Account shall occur in conformity with the Court's Final Approval Order and Judgment.

3.12.1 No more than seven (7) calendar days after the Settlement is fully funded, the Settlement Administrator will provide the Parties with an accounting of all anticipated payments and awards from the fund. Payments from the fund shall be made for: (1) the Individual Settlement Payments to Settlement Class Members; (2) the Enhancement Award, as specified in this Agreement and approved by the

Court; (3) Class Counsel Award and Class Counsel Costs, as specified in this Agreement and approved by the Court; (4) the Settlement Administration Costs, as specified in this Agreement and approved by the Court; and (5) the LWDA Payment, as specified in this Agreement and approved by the Court.

3.13 Individual Settlement Payments. Individual Settlement Payments shall be mailed by regular First-Class U.S. Mail to Settlement Class Members' last known mailing address within thirty (30) calendar days after the Settlement becomes Final.

3.13.2 Individual Settlement Payments are allocated as nonemployee compensation, penalties, and interest, and shall be reported as "other income" on IRS Form 1099 and its state and local equivalents. The Settlement Administrator shall issue the appropriate tax documents associated with the Individual Settlement Payments, including an IRS Form 1099.

3.13.3 Any checks issued to Settlement Class Members shall remain valid and negotiable for one hundred eighty (180) calendar days from the date of their issuance to Settlement Class Members, and after that time, the total amount of any uncashed checks shall be transmitted pursuant to Paragraph 3.121. By stating a specific date or the number of days after issuance, the checks shall, on their face, indicate the deadline by which they must be negotiated.

3.13.4 No benefit, including but not limited to pension benefits and/or 401(k), shall increase or accrue as a result of any payment made as a result of the Settlement. Except for the Class Representatives' Enhancement Award, Class Members are not eligible to receive any compensation other than an Individual Settlement Payment, as a result of this Settlement.

3.13.5 Each Settlement Class Member's share of the Net Settlement Amount shall be determined as follows: (i) 30% of the Net Settlement Amount will be divided equally among all of the Settlement Class Members; and (ii) the remaining 70% of the Net Settlement Amount will be distributed based on Settlement Class Members' sales in California for their respective routes, as follows: 70% of the Net

Settlement Amount will be divided by the total gross sales by all Settlement Class Members; the resulting figure was the unit value per gross sale dollar. The unit value per gross sale dollar will be multiplied by each Settlement Class Member's Compensable Gross Sales in California from August 1, 2023, to the date the Court grants preliminary approval of the Settlement to yield their pro rata share of the Net Settlement Amount. The net payment of (i) and (ii) above, plus the Individual PAGA Payment as determined in Section 3.16.1 below will be the "Individual Settlement Payment."

3.13.6 Each Settlement Class Member that is an entity together with its respective owners, proprietors, partners, and/or members shall constitute a single Settlement Class Member for Net Settlement Amount distribution; for example, Travis Hudson, together with Jade Marie Distributing, Inc., will constitute a single Settlement Class Member and receive one Individual Settlement Payment solely based on Jade Marie Distributing, Inc's gross sales to stores in California. Settlement Class Members' owners, proprietors, partners, and/or members will not receive Individual Settlement Payments in addition to their respective entities' Individual Settlement Payments.

3.14 Enhancement Award. Defendant agrees not to oppose or object to any application or motion by Plaintiff to be appointed a Class Representative and for a Class Representative Enhancement Award. Class Counsel shall seek a Class Representative Enhancement Award for Class Representative of up to Five Thousand Dollars ($5,000). Any portion of the requested Class Representative Enhancement Award that is not awarded shall be a part of the Net Settlement Amount to be distributed to Settlement Class Members as provided in this Agreement. The Class Representative Enhancement Award is intended to be in recognition of the Class Representative's efforts and time as a Class Representative, and in consideration for the Class Representative's execution of this Stipulation. The Enhancement Award shall be paid to Class Representative from the Maximum Settlement Amount together

with, and in addition to, their Individual Settlement Payments. The Settlement Administrator shall issue an IRS Form 1099-MISC to Class Representative for his Enhancement Award. Class Representative shall be solely and legally responsible to pay any and all applicable taxes on his Enhancement Award, and shall hold harmless Defendant from any claim or liability for taxes, penalties, or interest arising as a result of the Enhancement Award. In the event that the Court awards less than the requested amount of the Enhancement Award, then any portion of the requested amount not awarded to Class Representative shall be included in the Net Settlement Amount before it is distributed as provided in this Agreement. In the event the Court reduces or does not approve the requested Enhancement Award, Class Representative shall not have the right to revoke his agreement to the Settlement, which shall remain legally binding and enforceable on the Parties.

3.15 Class Counsel Award and Costs. Class Counsel will move for attorneys' fees not to exceed Seven-hundred and sixty-six thousand, six-hundred and sixty-six dollars and seventy cents ($766,666.70), and Class Counsel Costs not to exceed Twenty-Five Thousand Dollars ($25,000.00), as supported by declarations from Class Counsel, from the Maximum Settlement Amount. Class Counsel shall be paid any Court-approved fees and costs, including any interest accrued thereon, within thirty (30) calendar days after the Settlement becomes Final. Class Counsel shall be solely and legally responsible to pay all applicable taxes on the payment made pursuant to this Paragraph. The Settlement Administrator shall issue an IRS Form 1099-MISC to Class Counsel for the payments made pursuant to this Paragraph. This Settlement is not contingent upon the Court awarding Class Counsel any particular amount in attorneys' fees and costs. In the event the Court reduces or does not approve the requested Class Counsel Award and/or Class Counsel Costs, the Settlement shall remain legally binding and enforceable on the Parties. Any amount requested by Class Counsel for the Class Counsel Award and/or Class Counsel Costs and not

granted by the Court shall be included in the Net Settlement Amount before it is distributed as provided in this Agreement.

3.16 PAGA Payment. Subject to approval by the Court, the Parties shall allocate a total of Fifty Thousand Dollars ($50,000) for payment of penalties pursuant to PAGA. Per California Labor Code section 2699(i), Thirty-Two Thousand Five Hundred Dollars ($32,500), representing 65% of the PAGA Payment, will be paid to California's Labor Workforce Development Agency from the Maximum Settlement Amount by the Settlement Administrator within fourteen (14) calendar days after the Settlement is fully funded. The remaining Seventeen Thousand Five Hundred Dollars ($17,500), representing 35% of the PAGA Payment, shall be distributed to PAGA Group Members as part of the Net Settlement Amount as described in Paragraph 16.1. It is intended by the Parties that the LWDA Payment shall satisfy the distribution requirements of Cal. Lab. Code § 2698 *et seq*. If the Court awards a greater or lesser amount for the PAGA Payment, then the LWDA Payment shall be adjusted to 65% of the Court-approved amount and any remaining portion shall be part of the Net Settlement Amount and available for distribution to PAGA Group Members as provided in this Agreement.

3.16.1 Allocation of PAGA Payments. The Settlement Administrator will calculate Individual PAGA Payments by (a) dividing $17,500 by the total number of PAGA Weeks associated with all PAGA Group Members and (b) multiplying the result by the number of PAGA Weeks associated with each individual PAGA Group Member.

3.17 Settlement Administration Costs. The Settlement Administrator shall be paid for the costs of administration of the Settlement from the Maximum Settlement Amount. Such costs of administration are estimated not to exceed Twenty Thousand Dollars ($20,000). No fewer than fourteen calendar (14) days prior to the Final Approval Hearing, the Settlement Administrator shall provide the Parties with a statement detailing the costs of administration. The Settlement Administrator, on

Defendant's behalf, shall have the authority and obligation to make payments, credits, and disbursements, including payments and credits in the manner set forth herein, to Settlement Class Members calculated in accordance with the methodology set out in this Agreement and orders of the Court. The Parties agree to cooperate in the settlement administration process and to make all reasonable efforts to control and minimize the cost and expenses incurred in administration of the Settlement. The Parties each represent they do not have any financial interest in the Settlement Administrator or otherwise have a relationship with the Settlement Administrator that could create a conflict of interest. The Settlement Administrator shall be responsible for: processing and mailing payments to Plaintiff, Class Counsel, Settlement Class Members, and California's Labor Workforce Development Agency; printing and mailing the Class Notice to the Class Members as directed by the Court; receiving and reporting the Requests for Exclusion submitted by Class Members; providing declaration(s) as necessary in support of preliminary and/or final approval of this Settlement; providing appropriate tax documents, including IRS Form 1099, as needed; and other tasks as the Parties mutually agree or the Court orders the Settlement Administrator to perform. The Settlement Administrator shall keep the Parties timely apprised of the performance of all Settlement Administrator responsibilities. Any legally mandated tax reports, tax forms, tax filings, or other tax documents required for or as a result of the administration of this Agreement shall be prepared by the Settlement Administrator. Any expenses incurred in connection with such preparation shall be a cost of administration of the Settlement. The Settlement Administrator shall be paid the Settlement Administration Costs within thirty (14) calendar days after the Settlement is fully funded.

3.18 Option to Terminate Settlement. If, after the Response Deadline and before the Final Approval Hearing, the number of individuals who submitted timely and valid Requests for Exclusion from the Settlement exceeds five percent (5%) of all Class Members, Defendant shall have, in its sole discretion, the option to rescind this

Settlement within seven (7) business days of being informed, in writing, of this information, by the Settlement Administrator. If Defendant exercises its option to terminate this Settlement, Defendant shall pay all Settlement Administration Costs incurred up to the date of termination. If the option to terminate this Settlement is exercised by Defendant, Defendant shall exercise it by providing written notice to Class Counsel and the Court.

3.19 Final Approval Hearing. At a reasonable time following the Response Deadline, the Court shall hold the Final Approval Hearing, where objections, if any, may be heard, and the Court shall determine amounts properly payable for (i) the Class Counsel Award and Class Counsel Costs, (ii) the Enhancement Award, (iii) the LWDA Payment, and (iv) the Settlement Administration Costs. Plaintiff will prepare any briefing, declarations and/or other documents required by the Court or the California Code of Civil Procedure in connection with the Final Approval Hearing. Plaintiff will provide any such briefing, declarations and/or other documents to Defense Counsel for their review no later than five (5) business days prior to submission to the Court.

3.20 Entry of Judgment. If the Court approves this Settlement at the Final Approval Hearing, the Parties shall request that the Court enter judgment, with the Court retaining jurisdiction over the Parties to enforce the terms of the judgment, pursuant to the California Code of Civil Procedure.

3.21 Nullification of Settlement Agreement. In the event: (i) the Court does not enter the Preliminary Approval Order as specified herein; (ii) the Court does not grant final approval of the Settlement; (iii) the Court does not enter a Final Approval Order and Judgment; or (iv) the Settlement does not become final for any other reason, this Settlement Agreement shall be null and void and any order or judgment entered by the Court in furtherance of this Settlement shall be treated as void from the beginning. In such a case, the Parties and any funds to be awarded under this Settlement shall be returned to their respective statuses as of the date and time

immediately prior to the execution of this Agreement, and the Parties shall proceed in all respects as if this Agreement had not been executed, except that any fees already incurred by the Settlement Administrator shall be paid by Defendant. In the event an appeal is filed from the Court's Final Approval Order and Judgment, or any other appellate review in this Action is sought, administration of the Settlement shall be stayed pending final resolution of the appeal or other appellate review. Invalidation of any material portion of this Agreement, except for the amounts of the Class Counsel Award, Class Counsel Costs, Enhancement Award, LWDA Payment, and Settlement Administration Costs, which are subject to the Court's approval and their reduction by the Court shall not be grounds for nullification, shall invalidate this Agreement in its entirety unless the Parties agree in writing that the remaining provisions of this Agreement shall nonetheless remain in full force and effect.

3.22 Waiver of Appeals. Provided the Final Approval Order and judgment is consistent with the terms and conditions of this Stipulation, specifically including the Class Counsel Award and Class Counsel Costs, the Parties, their respective counsel, and all Class Members who did not object to the Settlement pursuant to Paragraph 3.8 agree to waive their rights to an appeal relating to this settlement; provided, however, the Class Representatives may appeal any reduction to the Class Counsel Award and Class Counsel Cost.

3.23 No Waiver By Defendant. Defendant maintains that Plaintiff and every Class Member are parties to individual arbitration agreements and indemnification agreements with Defendant that are fully enforceable. Plaintiff denies the same. The parties stipulate and agree that Defendant's willingness and agreement to settle claims of individual Class Members through a class settlement (including, but not limited to, actions necessary to effectuate and approve the settlement) does not in any way waive Defendant's right to enforce its arbitration and/or indemnification agreements, or its right to compel individual arbitrations, in the event the settlement is not approved by the Court.

3.24 No Admission By the Defendant. Defendant denies any and all claims alleged in this Lawsuit and denies all wrongdoing whatsoever. This Agreement is not a concession or admission, and shall not be used against Defendant as an admission or indication with respect to any claim of any fault, concession, or omission by Defendant.

3.25 No "Fund" Under CCP Section 384. The parties agree that this settlement does not create or constitute a fund for purposes of California Code of Civil Procedure section 384.

3.26 Dispute Resolution. Except as otherwise set forth herein, all disputes concerning the interpretation and performance of this Agreement, calculation or payment of settlement claims, or other disputes regarding compliance with this Agreement shall be resolved as follows:

3.26.1 If Plaintiff or Class Counsel, on behalf of Plaintiff or any Settlement Class Members, or Defendant at any time believes that the other Party has breached or acted contrary to the Agreement, that Party shall notify the other Party in writing of the alleged violation.

3.26.2 Upon receiving notice of the alleged violation or dispute, the responding Party shall have ten (10) business days to correct the alleged violation and/or respond to the initiating Party with the reasons why the Party disputes all or part of the allegation.

3.26.3 If the response does not address the alleged violation to the initiating Party's satisfaction, the Parties shall negotiate in good faith for up to ten (10) business days to resolve their differences.

3.26.4 If, thereafter, the Parties still cannot resolve the dispute, the Parties agree to attend a non-binding mediation with Anthony Piazza, Esq., to attempt to resolve the dispute.

3.26.5 If, following the non-binding mediation with Anthony Piazza, Esq., the Parties still have not resolved the dispute, the Court shall enter a final and binding ruling regarding resolving the dispute.

3.27 Exhibits and Headings. The terms of this Agreement include the terms set forth in any attached Exhibits, which are incorporated by this reference as though fully set forth herein. Any Exhibits to this Agreement are an integral part of the Settlement. The descriptive headings of any paragraphs or sections of this Agreement are inserted for convenience of reference only and do not constitute a part of this Agreement.

3.28 Interim Stay of Proceedings. The Parties agree to stay all proceedings in the Lawsuit, subject to necessary compliance with the Court's orders, except such proceedings necessary to implement and complete the Settlement, in abeyance pending the Final Approval Hearing to be conducted by the Court.

3.29 Amendment or Modification. This Agreement may be amended or modified only by a written instrument signed by counsel for all Parties or their successors-in-interest and approved by the Court.

3.30 Entire Agreement. This Agreement and any attached Exhibits constitute the entire Agreement among the Parties, and no oral or written representations, warranties, or inducements have been made to any Party concerning this Agreement or its Exhibits other than the representations, warranties, and covenants contained and memorialized in the Agreement and its Exhibits.

3.31 Authorization to Enter Into Settlement Agreement. Counsel for all Parties warrant and represent they are expressly authorized by the Parties whom they represent to negotiate this Agreement and to take all appropriate actions required or permitted to be taken by such Parties pursuant to this Agreement to effectuate its terms, and to execute any other documents required to effectuate the terms of this Agreement. The Parties and their counsel will cooperate with each other and use their best efforts to effect the implementation of the Settlement. In the event the Parties are unable to reach agreement on the form or content of any document needed to implement the Settlement, or on any supplemental provisions that may become necessary to effectuate the terms of this Settlement, the Parties may seek the assistance of the Court to resolve such disagreement. The persons signing this Agreement on

behalf of Defendant represent and warrant that they are authorized to sign this Agreement on behalf of Defendant. Plaintiff represents and warrants that he is authorized to sign this Agreement and that he has not assigned any claim, or part of a claim, covered by this Settlement to a third party.

3.32 Binding Nature of Agreement. This Agreement shall be binding upon, and inure to the benefit of, the successors, heirs, assigns and third-party beneficiaries of the Parties hereto, as previously defined. To the extent permitted by law, the Class Members who do not opt out of this Settlement shall also be bound by this Agreement and any judgment relating thereto.

3.33 California Law Governs. All terms of this Agreement and the Exhibits hereto shall be governed by and interpreted according to the laws of the State of California.

3.34 This Settlement is Fair, Adequate, and Reasonable. The Parties believe and stipulate that this Settlement is a fair, adequate, and reasonable settlement of this Lawsuit and have arrived at this Settlement after extensive, arms-length, non-collusive negotiations, taking into account all relevant factors, present and potential. In addition, mediator Antonio Piazza, Esq. may, at his discretion, execute a declaration supporting the Settlement, and the Court may, in its discretion, contact Mr. Piazza to discuss the Settlement, and whether the Settlement is fair and reasonable.

3.35 Jurisdiction of the Court. The Parties agree that the Court shall retain jurisdiction with respect to the interpretation, implementation, and enforcement of the terms of this Agreement and all orders and judgments entered in connection therewith, and the Parties and their counsel hereto submit to the jurisdiction of the Court for purposes of interpreting, implementing, and enforcing the settlement embodied in this Agreement and all orders and judgments entered in connection therewith.

3.36 Invalidity of Any Provision. Before declaring any provision of this Agreement invalid, the Court shall first attempt to construe that provision as valid and,

to the fullest extent possible and consistent with applicable precedent, make all provisions of this Agreement valid and enforceable.

3.37 No Right to Terminate Based on Reduction of Class Counsel Award or Class Counsel Costs. The Parties agree that any reduction in the Class Counsel Award and Class Counsel Costs shall not constitute grounds to terminate or void the Settlement or otherwise increase the maximum amount payable by Defendant under this Agreement, which shall not exceed the Maximum Settlement Amount defined herein.

3.38 Cooperation. The Parties agree to cooperate fully with one another to accomplish and implement the terms of this Settlement. Such cooperation shall include, but not be limited to, execution of such other documents and the taking of such other action as may be reasonably necessary to timely fulfill the terms and approval by the Court of this Settlement. The Parties to this Settlement shall use their best efforts, including all efforts contemplated by this Settlement and any other efforts that may become necessary by Court order, or otherwise, to effectuate this Settlement and the terms set forth herein.

3.39 Strict Confidentiality. Plaintiff and his counsel agree that they will not issue any press releases, initiate any contact with the press, respond to any press inquiry, post on any internet websites, or have any communication with the press about the Action and/or the fact, amount or terms of the settlement. Before the date of the filing of the motion for preliminary approval of the settlement, the Plaintiff and Class Counsel will not initiate any contact with Class Members or anyone else about the settlement, except that: (a) Class Counsel, if contacted by a Class Member, may respond that a settlement has been reached and that the details will be communicated in a forthcoming Court-approved notice; and (b) Plaintiff, if contacted by a Class Member, may respond only that the Class Member should contact Class Counsel.

3.40 Notices. Unless otherwise specifically provided, all notices, demands, or other communications in connection with this Agreement shall be: (1) in writing;

(2) deemed given on the third business day after mailing; and (3) sent via United States registered or certified mail, return receipt requested, addressed as follows:

To Plaintiff:	*To Defendant:*
Nicholas & Tomasevic LLP Alex Tomasevic, Esq. Shaun Markley, Esq. 225 Broadway, 19th Floor San Diego, CA 92101	PAUL HASTINGS LLP Chris A. Jalian, Esq. Matthew L. Honig, Esq. 515 South Flower Street, 25th Floor Los Angeles, CA 90071-2228

3.41 Execution by Settlement Class Members. It is agreed that it is impossible or impractical to have each Settlement Class Member execute this Settlement Agreement. The Notice of Settlement will advise all Class Members of the binding nature of the Released Claims as to Settlement Class Members, and such shall have the same force and effect as if each Settlement Class Member executed this Agreement.

3.42 Execution by Plaintiff. Plaintiff, by signing this Stipulation, is bound by the terms herein.

3.43 Interpretation of Agreement. The Parties hereto agree that the terms and conditions of this Stipulation of Settlement are the result of lengthy, intensive, arms-length, non-collusive negotiations and a neutrally facilitated mediation between the Parties, and that this Agreement shall not be construed in favor of or against any of the Parties by reason of their participation in the drafting of this Agreement.

3.44 Counterparts. This Agreement shall become effective upon its execution by all of the undersigned. Plaintiff, Class Counsel, Defendant, and Defense Counsel may execute this Stipulation in counterparts, and execution of counterparts shall have the same force and effect as if each had signed the same instrument. Copies of the executed agreement, including scans or PDF versions, shall be effective for all purposes as though the signatures contained therein were original signatures.

STIPULATED, AGREED, AND ACCEPTED.

PLAINTIFF TRAVIS HUDSON

Print Name: Travis hudson Date: 12/16/25

Signature: Travis Hudson (Dec 16, 2025 09:46:46 PST)

DEFENDANT GRUMA CORPORATION

Print Name: David Salazar Cavazos Date: 12/23/2025

Title: VP Legal

Signature:

APPROVED:

NICHOLAS & TOMASEVIC LLP
Counsel for Plaintiff

Print Name: Shaun Markley, Esq. Date: 12/15/2025

Signature:

PAUL HASTINGS LLP
Counsel for Defendant

Print Name: Chris A. Jalian Date: 12/15/2025

Signature:

EXHIBIT A

<<claimant_id>>

NOTICE OF PROPOSED CLASS ACTION SETTLEMENT

SAN DIEGO COUNTY SUPERIOR COURT
TRAVIS HUDSON. V. GRUMA CORPORATION, CASE NO. 25CU054716C

A court authorized this notice. This is not a solicitation from a lawyer.

ATTENTION: IF YOU ARE OR WERE A SIGNATORY TO AN AGREEMENT WITH GRUMA CORPORATION FOR THE DISTRIBUTION OF GRUMA CORPORATION'S PRODUCT WITHIN CALIFORNIA BETWEEN AUGUST 1, 2023, THROUGH [DATE OF PRELIMINARY APPROVAL], YOU ARE ENTITLED TO A SHARE OF A PROPOSED CLASS ACTION SETTLEMENT.

TO UNDERSTAND YOUR RIGHTS, READ THIS NOTICE CAREFULLY.

- A proposed class action settlement ("the Settlement") has been reached between plaintiff Travis Hudson ("Plaintiff"), on behalf of himself and the below-defined Class (see the response to Question 4 below), and Defendant Gruma Corporation ("Defendant").
- The Settlement resolves a class action lawsuit that included claims that Defendant allegedly violated various wage and hour laws, violated California's antitrust laws (known as the Cartwright Act), and engaged in unlawful business practices. Defendant denies all liability to Class Members, and asserts that it complied with California and Federal law at all times and has entered into the Settlement solely for purposes of resolving this dispute.
- The Settlement provides for settlement payments based in-part on a calculation that takes into account each Class Member's gross sales to chain stores in California for their respective distribution businesses between August 1, 2023 and [DATE OF PRELIMINARY APPROVAL].

YOUR SHARE OF THE SETTLEMENT PROCEEDS IS ESTIMATED TO BE $<<EST_PAYMENT>>.

OVERVIEW OF YOUR LEGAL RIGHTS AND OPTIONS UNDER THE SETTLEMENT	
DO NOTHING	Subject to the Court's final approval of the terms of the Settlement, you will receive a settlement payment at the address where this notice was mailed (unless you timely provide a forwarding address to the Settlement Administrator), in exchange for which you will give up your claims in this case within the scope of the release set forth below.
EXCLUDE YOURSELF	If you submit a Request for Exclusion, which must be postmarked by **60-calendar days after settlement administrator mails class notice**, you will not receive a settlement payment but you will keep your claims against Defendant, except that you cannot opt out of the portion of the settlement releasing claims under California's Private Attorneys General Act.
OBJECT	If you wish to object to the Settlement, you must submit a written objection, and supporting papers, to the Settlement Administrator that is postmarked no later than **60-calendar days after settlement administrator mails class notice**.

- **These rights and options, and how to exercise them, are explained in more detail in this notice.**

- **The Court handling this case still has to decide whether to grant final approval of the Settlement. Settlement payments will only be issued if the Court grants final approval of the Settlement.**

- **Additional information regarding the Settlement is available through the Settlement Administrator or Class Counsel, whose contact information is provided in this notice.**

BASIC INFORMATION

1. Why did I get this notice?

Defendant's records show that you are, or were, a signatory to an agreement with Defendant for the sale and distribution of product, items and/or goods manufactured by Defendant, including, without limitation, Mission Foods and Guerrero Mexican Food Product branded product, items and/or goods ("Product") within California between August 1, 2023 through [DATE OF PRELIMINARY APPROVAL] ("Class Period"). This notice explains the Lawsuit, the Settlement, and your legal rights.

The lawsuit is known as *Travis Hudson v. Gruma Corporation,* and is pending in the San Diego County Superior Court, Case No. 25CU054716C (the "Lawsuit"). Travis Hudson ("Hudson") is referred to as the Plaintiff and Gruma Corporation is called the Defendant.

2. What is the Lawsuit about?

On October 10, 2025, Plaintiff filed a class action complaint alleging that Defendant violated the California Labor Code by misclassifying class members as independent contractors rather than employees, including claims for unpaid wages owed at termination, unpaid minimum and overtime wages, non-compliant meal and rest periods, non-compliant wage statements, unreimbursed business expenses, unlawful deductions, and also included claims that Defendant engaged in unfair business practices and violated the Cartwright Act and Private Attorneys General Act. As a result of the Complaint, Plaintiff alleges he and the members of the Class (defined in response to Question 4 below) are entitled to recover compensatory damages, treble damages, punitive damages, restitution, equitable relief, attorneys' fees, litigation costs, penalties, liquidated damages and interest

Defendant denies that it engaged in any wrongful conduct or that it violated the law in any way. However, both Plaintiff and Defendant believe that the Settlement is fair, adequate, and reasonable, and that it is in the best interest of the members of the Class.

3. Why is this lawsuit a class action?

In a class action, one or more people called the "Plaintiff" sues on behalf of people who have similar alleged claims. All of these people are a "class" or "class members." The Court resolves the issues for all class members, except for those who exclude themselves from the class. On [DATE OF PRELIMINARY APPROVAL], the Honorable Judy S. Bae issued an order conditionally certifying the Class for purposes of settlement only.

4. Who is in the Class?

"Class" or "Class Members" means all persons and/or entities who/that are or were a signatory to an agreement with Defendant for the sale and distribution of Product within California between August 1, 2023 through [DATE OF PRELIMINARY APPROVAL], in addition to their owners, proprietors, partners and/or members.

5. Why is there a Settlement?

After conducting substantial investigation, including review of policies and procedures, sales records, distribution agreements, Class Members' gross sales to chain stores, and arbitration agreements, both sides agreed to the Settlement to avoid the cost and risk of further litigation. The Settlement does not mean that any law was broken. Defendant denies all of the claims asserted in the Lawsuit and denies that it has violated any laws. Plaintiffs and their lawyers maintain that the Settlement is in the best interests of all Class Members.

THE SETTLEMENT BENEFITS—WHAT YOU GET

6. What does the Settlement provide?

Under the terms of the Settlement, Defendant agrees to pay a Maximum Settlement Amount of $2,300,000. Deducted from this Maximum Settlement Amount will be sums approved by the Court for attorneys' fees (not to exceed $766,666.70) and costs (not to exceed $25,000.00) enhancement award payments to Plaintiff Hudson, (not to exceed $5,000.00 total), an LWDA payment to California's Labor Workforce Development Agency (not to exceed $32,500 total), and the fees and expenses of the Settlement Administrator, Atticus Administration, LLC (not to exceed $20,000.00 total), which will result in a maximum amount payable by Defendant for distribution to Class Members who do not opt out (the "Net Settlement Amount").

Individual Settlement Payment Calculation

The Net Settlement Amount will be distributed to Class Members who do not opt out of the settlement ("Settlement Class Members") as follows: (i) 30% of the Net Settlement Amount will be divided equally among all of the Settlement Class Members; (ii) and remaining 70% of the Net Settlement Amount will be distributed based on Settlement Class Members' sales to chain stores in California for their respective distribution businesses, as follows: 70% of the Net Settlement Amount will be divided by the total gross sales to chain stores by all Settlement Class Members; the resulting figure was the unit value per gross sale dollar. The unit value per gross sale dollar will be multiplied by each Settlement Class Member's Compensable Gross Sales to chain stores in California from August 1, 2023 to [the date the Court grants preliminary approval of the Settlement] to yield their pro rata share of the Net Settlement Amount. The net payment of (i) and (ii) above will be the "Individual Settlement Payment."

Each Settlement Class Member that is an entity together with its respective owners, proprietors, partners, and/or members shall constitute a single Settlement Class Member for Net Settlement Amount distribution; for example, Hudson, together with Jade Marie Distributing, Inc., will constitute a single Settlement Class Member and receive one Individual Settlement Payment solely based on Jade Marie Distributing, Inc.'s gross sales to chain stores in California. Settlement Class Member's owners, proprietors, partners, and/or members will not receive Individual Settlement Payments.

To the extent any Class Member disputes Defendant's records regarding their gross sales to chain stores in California, that Class Member, shall submit a letter, with any supporting documentation, to the Settlement Administrator by [**60 calendar days after settlement administrator mails class notice**]. Any such written letter should: (1) contain the name, address, telephone number, last four digits of the Social Security Number or Tax Identification Number, and signature of the Class Member; (2) contain the case name and number of the Lawsuit; (3) clearly indicate that the Class Member seeks to dispute his/her/its Compensable Gross Sales; (4) provide documentation and/or an explanation to show contrary Compensable Gross Sales; and (5) is postmarked or fax-stamped by [**60 calendar days after settlement administrator mails class notice**] and returned to the Settlement Administrator at the specified address or fax telephone number. Defendant's records will be presumed determinative.

Once the settlement becomes Final as defined below, the settlement payments to Settlement Class Members, the enhancement award to the Class Representatives, and the payment to Class Counsel for their awarded attorneys' fees and expenses will be made within 30 calendar days following the date that the Settlement becomes fully funded. "Final" shall mean the latest of the following dates, as applicable: (i) expiration of all potential appeal periods without a filing of a notice of appeal of the final approval order or judgment; or (ii) final affirmance of the final approval order and judgment by an appellate court as a result of any appeal(s), or (iii) final dismissal or denial of all such appeals (including any petitions for review, rehearing, certiorari, etc.) such that the final approval order and judgment is no longer subject to further judicial review.

Following distribution of the Individual Settlement Payments, any uncollected funds remaining will be distributed to a third-party non-profit recipient, Feeding America.

7. What am I giving up in exchange for the settlement benefits?

In exchange for the consideration provided, each member of the Class who does not submit a valid Request for Exclusion (defined in response to Question 10 below) will release Gruma Corporation dba Mission Foods and/or Guerrero Mexican Food Products, and all of their respective current, former, and future parents, subsidiaries, predecessors and successors, and affiliated entities, and each of their respective officers, directors, employees, partners, shareholders, and agents, and any other successors, assigns, or legal representatives (collectively, "Released Parties") from any and all claims that were asserted in the amended class action complaint through the date of final approval order and judgement, including, without limitation, statutory, constitutional, contractual, and/or common law claims for any antitrust violations under California or Federal law, including, but not limited to, vertical price fixing, lost profits, breach of contract, unfair competition, and treble damages; any claims under the California Labor Code and applicable Industrial Welfare Commission Orders including but not limited to claims based on Settlement Class Members' alleged misclassification as independent contractors, for unpaid regular and/or overtime wages, meal period premiums, rest period premiums, restitution, expenses, interest, liquidated damages, punitive damages, interest, attorneys' fees, litigation costs, restitution, and/or statutory and civil penalties (including but not limited to penalties for failure to pay wages, underpayment of wages, late payment of wages, failure to provide accurate itemized statements or maintain records, waiting time penalties, and civil penalties (including civil penalties under the Private Attorneys' General Act)), including, but not limited to, claims arising out of the California Cartwright Act commencing with California Business and Professions Code section 16600, California Labor Code sections 201, 202, 203, 204, 226, 226.2, 226.7, 226.8, 266.8, 510, 512, 515, 558, 1174, 1182.12, 1194, 1197, 1198, 2802, 2699, et seq., and applicable IWC Wage Orders, between August 1, 2023 and the date the Court grants final approval of the Settlement; and any claim under the California Unfair Business Practices Act for related violations. Further, any member of the Class who is covered by Plaintiff's representative action allegations under California's Private Attorneys' General Act, releases, "any and all individual and representative claims that could have been assessed upon and collected from the Released Parties under California Labor Code section 2698, et seq., including any and all claims for unpaid wages or reimbursement of whatever kind or nature, whether known or unknown, including but not limited to California Labor Code sections 201, 202, 203, 204, 226, 226.2, 226.7, 226.8, 266.8, 510, 512, 515, 558, 1174, 1182.12, 1194, 1197, 1198, 2802, 2699, et seq, and the applicable IWC Wage Orders that arose or accrued between November 19, 2023, and the date the Court grants final approval of the Settlement."

The settlement does not preclude Defendant from seeking indemnity against any Class Member for any claim, demand, action or proceeding brought by a Class Member's employee(s) or contractor(s) against Defendant or any of the Released Parties asserting any of the claims released in this Lawsuit.

HOW TO GET A SETTLEMENT PAYMENT

8. How do I get a settlement payment?

Subject to the Court's final approval of the terms of the Settlement, you will automatically be sent a settlement payment at the address where this Notice was mailed (unless you timely provide a forwarding address to the Settlement Administrator) in exchange for which you will give up your claims in this case.

9. When will I get my check?

Checks will be mailed to Settlement Class Members eligible to receive a payment under the Settlement after the Court grants "final approval" of the Settlement. If the Court approves the Settlement after a hearing on [date of final approval hearing] (see "The Court's Final Approval Hearing") below, there may be appeals. If there are any appeals, resolving them could take some time, so please be patient. Please also be advised that you will only have 180 days from the date that the checks are issued to cash them. If you do not cash your check within 180 days of the date of its issuance, your Individual Settlement Payment shall be voided, but you will still have released your claims.

EXCLUDING YOURSELF FROM THE SETTLEMENT

10. How do I ask the Court to exclude me from the Class?

If you do not wish to participate in the Settlement ("opt out"), you must complete and send a timely written request for exclusion ("Request for Exclusion") **no later than [60 calendar days after settlement administrator mails class notice]**. The Request for Exclusion must: (1) contain your name, address, telephone number, last four digits of your Social Security number, and signature; (2) contain the case name and number of the Lawsuit; (3) clearly indicate that you seek to exclude yourself from the Settlement; and (4) be returned to the Settlement Administrator, postmarked or fax-stamped **on or before [60 calendar days after settlement administrator mails class notice],** to:

Hudson v Gruma Corporation Settlement
C/O Atticus Administration
PO Box 64053
Saint Paul, MN 55164
Fax: 1-888-326-6411

Requests for Exclusion that do not include all required information and/or that are not timely submitted will be deemed null, void, and ineffective. Class Members who fail to submit a valid and timely Request for Exclusion on or before the above-specified deadline shall be bound by all terms of the Settlement and any judgment entered in the Lawsuit if the Settlement is approved by the Court.

11. If I exclude myself, can I get anything from the settlement?

No. If you exclude yourself now you will not get anything from the settlement. If you ask to be excluded, you will not get a settlement payment and you will not be bound by the settlement, except that you cannot opt out of the portion of the settlement relating to claims under California's Private Attorneys General Act.

12. If I don't exclude myself, can I sue later for the Released Claims that arose during the Class Period?

No. Unless you exclude yourself or the Court otherwise excludes you, you give up the right to sue Defendant or any other Released Party for the claims asserted in this lawsuit (as explained in Question 7 above). You must exclude yourself from the Class to start or continue your own lawsuit.

THE LAWYERS REPRESENTING YOU

13. Do I have a lawyer in this case?

The Court has appointed the following lawyers to serve as "Class Counsel" for the Class:

Alex Tomasevic, Esq.
Shaun Markley, Esq.
NICHOLAS & TOMASEVIC, LLP
225 Broadway, 19th Floor
San Diego, California 92101
Tel: (619) 325-0492
Fax: (619) 325-0496
atomasevic@nicholaslaw.org
smarkley@nicholaslaw.org

14. How will the costs of the lawsuit and the Settlement be paid?

Subject to court approval, Defendant agrees to pay up to $766,666.70 in attorneys' fees and up to $25,000.00 costs to Class Counsel. The Court may award less than these amounts. If the Court awards less than the amounts requested, the difference will remain in the Net Settlement Amount for distribution.

In addition, and subject to Court approval, Defendant also agrees to pay Plaintiff Hudson up to $5,000.00 total as a

Class Representative Enhancement Award for his participation in this lawsuit and for taking on the risk of litigation. Defendant also agrees to pay the Settlement Administrator's costs and fees associated with administering the Settlement, estimated not to exceed $20,000.00. Such payments will be made from the maximum settlement fund. The Court may award less than these amounts. If lesser amounts are awarded, those amounts will be included in the Net Settlement Amount payable by Defendant and will be available for distribution to Settlement Class Members.

OBJECTING TO THE SETTLEMENT

15. How do I object to the Settlement?

Any Class Member may object to the proposed Settlement, or any portion thereof, by mailing a written objection, and supporting papers, to the Settlement Administrator at the following addresses by regular U.S. Mail postmarked no later than **[60 calendar days after settlement administrator mails class notice]**, or as modified subject to re-mailing**:**

Hudson v Gruma Corporation Settlement
C/O Atticus Administration
PO Box 64053
Saint Paul, MN 55164
Fax: 1-888-326-6411

A written objection must (1) contain the name, address, telephone number, last four digits of the Social Security Number or Tax Identification Number, and signature of the Class Member; (2) contain the case name and number of the Lawsuit; (3) clearly indicate that the Class Member seeks to object to the settlement; (4) state with specificity the legal and factual basis for the objection; (5) state whether the Settlement Class Member intends to appear at the Final Approval Hearing; and; (6) be postmarked or fax-stamped on or before [**60 calendar days after settlement administrator mails class notice**] and returned to the Settlement Administrator at the specified address or fax telephone number. If a Class Member wishes to appear at the Court's Final Approval Hearing and orally present his or her objection to the Court, the objector's written statement should include the objector's statement of intent to appear at the Court's Final Approval Hearing. **Notwithstanding, in the discretion of the Court, any Class Member, or person purporting to object on behalf of any Class Member, may be received or considered by the Court at the Final Approval Hearing, regardless of whether a written notice of objection is filed or delivered to the parties.** Any Class Member who files an objection remains eligible to receive monetary compensation from the Settlement unless he/she/it submits a timely and valid Request for Exclusion. If the Court overrules any objections and grants final approval of the Settlement, any Class Member who submitted an objection but did not submit a timely and valid Request for Exclusion will be bound by the Release set forth in Section 7 above.

16. What's the difference between objecting and asking to be excluded?

Objecting is simply telling the Court you do not like something about the Settlement. If you object, you are still a part of the Class. Excluding yourself is telling the Court that you do not want to be part of the Class.

THE COURT'S FINAL APPROVAL HEARING

The Court will hold a hearing to decide whether to approve the settlement. If you have filed an objection on time you may attend and you may ask to speak, but you don't have to.

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

The Court will hold a "Final Approval Hearing" on [TBD] at the San Diego County Superior Court, located at The **Hall of Justice, THIRD FLOOR, 330 W Broadway, San Diego, CA 92101**. The hearing may be moved to a different date and/or time without additional notice. At this hearing, the Court will consider whether the settlement is fair, reasonable, and adequate. If there are objections, the Court will consider them. The Court will also decide how much to pay Class Counsel. After the hearing, the Court will decide whether to approve the Settlement. We do not know how long these decisions will take.

18. Do I have to come to the hearing?

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

19. May I speak at the hearing?

If a Class Member wishes to appear at the Final Approval Hearing and orally present his or her objection to the Court, the objector's written statement should include the objector's statement of intent to appear at the Final Approval Hearing. Notwithstanding, in the discretion of the Court, any Class Member, or person purporting to object on behalf of any Class Member, may be received or considered by the Court at the Final Approval Hearing, regardless of whether a written notice of objection is filed or delivered to the parties.

IF YOU DO NOTHING

20. What happens if I do nothing at all?

If you do nothing, you will automatically receive a payment from this Settlement as described above and you will be bound by the release of claims, subject to the Court's final approval of the terms of the Settlement.

GETTING MORE INFORMATION

21. How do I get more information?

This notice summarizes the Settlement. You may contact Class Counsel or the Settlement Administrator for more information. The Settlement Administrator may be contacted at the previously-mentioned mailing address and fax telephone number, as well as at the following toll-free telephone number: _____.

Do not contact the Court regarding this Notice or the Settlement.

EXHIBIT 2

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

DEXTER'S LLC, et al.,

Plaintiffs,

v.

GRUMA CORPORATION,

Defendant.

Case No. 23-cv-212-MMA-AHG

ORDER GRANTING MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT; AND

[Doc. No. 12]

GRANTING MOTION FOR ATTORNEY'S FEES, COSTS, AND CLASS REPRESENTATIVE SERVICE AWARD

[Doc. No. 13]

Dexter's LLC, Franco Food Distribution d/b/a Bombins, Gastelum Food LLC, Sophamany Moch, Gerardo Fuente, Sr., Gerardo Fuentes, Jr., Jorge Franco, and Mayte Gastelum (collectively, "Plaintiffs") bring this putative wage and hour class action against Defendant Gruma Corporation ("Defendant"). Plaintiffs move for final approval of a class settlement pursuant to Federal Rule of Civil Procedure 23(e) and for an award of attorneys' fees and costs pursuant to Rule 23(h), as well as a class representative service award. *See* Doc. Nos. 12, 13. Defendant does not oppose Plaintiffs' motions, and the Court preliminarily approved the class settlement. *See* Doc. No. 11. In advance of

the Final Approval Hearing, the Court issued tentative rulings on the motions. *See* Doc. No. 16. On December 11, 2023, the Court held a Final Approval Hearing on these matters pursuant to Federal Rule of Civil Procedure 23(e)(2). *See* Doc. No. 33. For the reasons set forth below, the Court **GRANTS** Plaintiffs' motion for final approval of the class settlement and **GRANTS** Plaintiffs' motion for attorneys' fees, costs, and a class representative award.

BACKGROUND

Defendant is a manufacturer of corn and flour tortillas and other food products and operates out of a tortilla plant in Los Angeles. Doc. No. 12-1 at 7.[1] Plaintiffs are distributors who signed a "Store Door Distributor Agreement" with Defendant. *Id.* As a result, Plaintiffs were responsible for "distributing Defendant's products to third-party retail outlets, stocking the outlet's shelves with Defendant's products, and ensuring that the shelves remain adequately stocked with Defendant's products." *Id.* Generally speaking, Plaintiffs assert that Defendant misclassified them and other similarly situated persons and entities as independent contractors, when they should have been classified as employees. *Id.* at 8.

On January 5, 2022, Plaintiffs filed a PAGA Notice with the California Labor and Workforce Development Agency ("LWDA"). *Id.*; Doc. No. 12-2 ("Cardone Decl.") Ex. 2. On August 12, 2022, the parties participated in a full-day, in-person mediation with "highly-regarded mediator, Antonio Piazza, Esq." *Id.* at 6. The parties reached a settlement at the mediation, which was later memorialized in the Settlement Agreement. *Id.* at 9; *see also* Cardone Decl. Ex. 1 (the "Settlement Agreement").

On February 3, 2023, Plaintiffs filed a putative class action complaint. *See* Doc. No. 1. On February 21, Plaintiffs filed a First Amended Complaint. *See* Doc. No. 3 ("FAC"). Plaintiffs assert the following 12 claims under California law: (1) failure to pay

[1] Citations refers to the pagination assigned by the CM/ECF system unless otherwise indicated.

wages at the time of discharge; (2) failure to pay minimum wages; (3) failure to pay overtime wages; (4–5) failure to prove meal and rest periods; (6) failure to provide itemized wage statements; (7) waiting time penalties; (8) illegal deductions; (9) failure to reimburse expenses; (10) unfair business practices; (11) violation of the Cartwright Act; and (12) violation of the Private Attorneys General Act, Cal. Labor Code § 2698 *et seq.* ("PAGA").

Less than one month after filing the FAC, the parties jointly moved to stay the entire action pending approval of the Settlement Agreement. Doc. Nos. 4, 6.

THE SETTLEMENT AGREEMENT

The Settlement class ("Class") consists of all persons or entities who/that are or were signatories to a distribution agreement with Defendant during the Class Period. Settlement Agreement at 14. The Class Period is from July 1, 2020 through August 1, 2023. *Id.* at 15. There are 729 Class members. Doc. No. 15 ("Hoelscher Decl.") ¶¶ 4–5.

Defendant will pay a total sum of $930,000 (the "Gross Settlement Amount"). *Id.* at 17. The parties have allocated $20,000 of the Gross Settlement Amount as penalties under PAGA ("PAGA Payment"). *Id.* This represents roughly 2% of the Gross Settlement Amount.

As to deductions, the Settlement Agreement provides for the following: (1) Class Counsel Fee Award not to exceed $170,000; (2) Class Counsel Costs Award not to exceed $49,743.84; (3) Class Representative Enhancement Award of $1,000 per Plaintiff, which would total $8,000; (4) Settlement Administration Costs not to exceed $20,000; (5) Translation Provider Costs not to exceed $2,000; and (6) $15,000 of the PAGA penalty to LWDA. *Id.* at 33–36.

However, Plaintiffs move for the following awards: (1) Class Counsel Fees of $170,000; (2) Class Counsel Costs of $49,696.40; (3) Class Representative Enhancement Award of $5,000 in total; (4) Settlement Administration Costs of $13,719; (5) Translation Provider Costs of $651.72; and (6) $15,000 of the PAGA penalty to LWDA. The parties agree that no portion of the Gross Settlement Amount will revert to Defendant. *Id.* After

deductions, the current estimated net settlement amount is $675,932.88 (the "Net Settlement Amount").

The Net Settlement Amount will be distributed as follows: 20% divided equally among all Class Members; the remaining 80% "will be divided by the total gross sales to chain stores by all Settlement Class Members; the resulting figure was the unit value per gross sale dollar. The unit value per gross sale dollar will be multiplied by each Settlement Class Member's Compensable Gross Sales to chain stores in California from July 1, 2020 to the date the Court grants preliminary approval of the Settlement to yield their pro rata share of the Net Settlement Amount." Settlement Agreement at 33. The average payment will be $897.65, the median will be $775.62, and the highest payment will be $4,762.92. Hoelscher Decl. ¶ 7.

The Court has received no objections to the Settlement or oppositions to Plaintiffs' motions.

FINAL APPROVAL OF CLASS SETTLEMENT

A. Legal Standard

> [T]he court's intrusion upon what is otherwise a private consensual agreement negotiated between the parties to a lawsuit must be limited to the extent necessary to reach a reasoned judgment that the agreement is not the product of fraud or overreaching by, or collusion between, the negotiating parties, and that the settlement, taken as a whole, is fair, reasonable and adequate to all concerned.

Officers for Justice v. Civil Serv. Comm'n of City & Cty. of San Francisco, 688 F.2d 615, 625 (9th Cir. 1982).

A court considers several factors in determining whether a Settlement Agreement is "fair, reasonable, and adequate" under Rule 23(e). The Rule provides that a court should consider whether: (1) "the class representatives and class counsel have adequately represented the class"; (2) "the proposal was negotiated at arm's length"; (3) "the relief provided for the class is adequate," taking into consideration the risks associated with

continued litigation, the effectiveness of distributing the proposed relief to the class, the terms of any proposed attorneys' fees, and the underlying settlement agreement; and (4) "the proposal treats class members equitably relative to each other." Fed. R. Civ. P. 23(e)(2).

Judicial policy favors settlement in class actions and other complex litigation where substantial resources can be conserved by avoiding the time, cost, and rigors of formal litigation. *See Class Plaintiffs v. City of Seattle*, 955 F.2d 1268, 1276 (9th Cir. 1992). To that end, the Ninth Circuit has identified additional factors to consider, including: (1) the strength of the 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 settlement amount; (5) the stage of the proceedings; (6) "the experience and views of counsel"; (7) whether there is a "governmental participant"; and (8) "the reaction of the class members to the proposed settlement." *Staton v. Boeing Co.*, 327 F.3d 938, 959 (9th Cir. 2003) (quoting *Molski v. Gleich*, 318 F.3d 937, 953 (9th Cir. 2003), *overruled in part on other grounds by Dukes v. Wal-Mart Stores, Inc.*, 603 F.3d 571 (9th Cir. 2010)).

B. Discussion

The Court proceeds by addressing Rule 23(e)(2)'s "fair, reasonable, and adequate" factors and the related factors noted by the Ninth Circuit.[2]

1. Adequate Representation

Rule 23(e)(2) requires the Court to consider whether "the class representatives and class counsel have adequately represented the class." Fed. R. Civ. P. 23(e)(2)(A). Relatedly, the Court also considers the experience and views of counsel. *See Staton*, 327 F.3d at 959 (quoting *Molski*, 318 F.3d at 953). "'Great weight' is accorded to the recommendation of counsel, who are most closely acquainted with the facts of the

[2] Because of the overlap between the Rule 23(e)(2)'s factors and the Ninth Circuit's additional factors, the Court folds the Ninth Circuit's factors into its analysis of Rule 23(e)(2).

underlying litigation. This is because '[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.'" *Nat'l Rural Telecomm. Coop. v. DIRECTV, Inc.*, 221 F.R.D. 523, 528 (C.D. Cal. 2004) (citation omitted) (first quoting *In re PaineWebber Ltd. Partnerships Litig.*, 171 F.R.D. 104, 125 (S.D.N.Y.); and then quoting *In re Pac. Enterprises Sec. Litig.*, 47 F.3d 373, 378 (9th Cir. 1995)).

Here, Class Counsel includes Bradley A. Lebow, David D. Cardone, and James A. McFaul, all experienced trial attorneys who have extensive experience litigating wage and hour class actions. *See* Cardone Decl. ¶¶ 2, 4–9; Doc. No. 12-3 ("Lebow Decl.") ¶¶ 3–4. Further, Plaintiffs, as representatives of the Class, have been "instrumental" in prosecuting this action and achieving a resolution for the Class by promptly responding to requests for material and information and attending the mediation. Cardone Decl. ¶ 25.

Based upon the sworn declarations and the pertinent other portions of the record, the Court finds that both Plaintiffs and Class Counsel have adequately represented the Settlement Class Members and therefore this factor favors approval of the Settlement Agreement.

2. Arm's Length Negotiation

Rule 23(e)(2) requires the Court to consider whether "the proposal was negotiated at arm's length." Fed. R. Civ. P. 23(e)(2)(B). Courts must ensure settlements are not the product of collusion or other conflicts of interest. *See In re Bluetooth Headset Prod. Liab. Litig.*, 654 F.3d at 947; *Staton*, 327 F.3d at 960. "A settlement following sufficient discovery and genuine arms-length negotiation is presumed fair." *Nat'l Rural Telecomm. Coop.*, 221 F.R.D. at 528. The Ninth Circuit has outlined several circumstances that may indicate collusion:

> (1) "when counsel receive a disproportionate distribution of the settlement, or when the class receives no monetary distribution but class counsel are amply rewarded"; (2) "when the parties negotiate a 'clear sailing' arrangement

> providing for the payment of attorneys' fees separate and apart from class funds"; and (3) "when the parties arrange for fees not awarded to revert to defendants rather than be added to the class fund."

Ferrell v. Buckingham Prop. Mgmt., No. 1:19-cv-00332-LJO-SAB, 2020 WL 291042, at *20 (E.D. Cal. Jan. 21, 2020), *report and recommendation adopted*, 2020 WL 4364647 (E.D. Cal. July 30, 2020) (quoting *In re Bluetooth*, 654 F.3d at 947); *see also In re Hyundai & Kia Fuel Econ. Litig.*, 926 F.3d 539, 569 (9th Cir. 2019).

The parties reached this Settlement after an extensive investigation and attending a full-day mediation with Antonio Piazza, Esq. Class Counsel will not recover an unreasonable portion of the Gross Settlement Amount and no portion of that fund will revert to Defendant. Accordingly, the Court finds that the arm's length negotiations favor approval of the Settlement Agreement. *See, e.g.*, *Nunez v. BAE Sys. San Diego Ship Repair Inc.*, 292 F. Supp. 3d 1018, 1052 (S.D. Cal. 2017) (finding the settlement to have been reached through arms-length negotiations where, among other things, counsel reached the agreement before Mr. Piazza, "a respected third-party mediator"); *see also Cody v. Soulcycle Inc.*, No. CV 15-6457 MWF (JEMx), 2017 U.S. Dist. LEXIS 234741, at *16 (C.D. Cal. June 22, 2017) (finding that the settlement was the product of arms-length negotiations where "the parties utilized experienced mediators to reach the settlement agreement" and engaged in meaningful discovery).

3. Adequate Relief

Rule 23(e)(2) requires the Court to consider whether "the relief provided for the class is adequate" after assessing several factors, such as the risks associated with continued litigation, the effectiveness of proposed relief to the class, the terms of any proposed attorneys' fees, and the underlying settlement agreement. Fed. R. Civ. P. 23(e)(2)(C). To determine whether the relief is adequate and in assessing the other underlying subfactors, "the Court must balance the continuing risks of litigation (including the strengths and weaknesses of Plaintiffs' case), with the benefits afforded to members of the Class, and the immediacy and certainty of a substantial recovery." *Baker*

v. SeaWorld Entm't, Inc., No. 14-cv-02129-MMA-AGS, 2020 WL 4260712, at *6 (S.D. Cal. July 24, 2020). In particular,

> [t]he Court shall consider the vagaries of litigation and compare the significance of immediate recovery by way of the compromise to the mere possibility of relief in the future, after protracted and expensive litigation. In this respect, "[i]t has been held proper to take the bird in hand instead of a prospective flock in the bush."

Nat'l Rural Telecommunications Coop., 221 F.R.D. at 526 (quoting *Oppenlander v. Standard Oil Co. (Indiana)*, 64 F.R.D. 597, 624 (D. Colo. 1974)).

a. Risks of Continued Litigation

"In determining whether to approve a Settlement Agreement, the Court should also consider the expense, complexity and likely duration of further litigation or delay of trial and appeal." *Baker*, 2020 WL 4260712, at *7 (citing Fed. R. Civ. P 23(e)(2)(C)(i)). "Generally, unless the settlement is clearly inadequate, its acceptance and approval are preferable to lengthy and expensive litigation with uncertain results." *In re LinkedIn User Privacy Litig.*, 309 F.R.D. 573, 587 (N.D. Cal. 2015) (quoting *Ching v. Siemens Indus., Inc.*, No. 11-cv-04838-MEJ, 2014 WL 2926210, at *4 (N.D. Cal. June 27, 2014)).

Here, if the parties had not settled, Plaintiffs would have had to spend considerable time and effort litigating formal discovery, class certification, and summary judgment. While Plaintiffs are confident in the merits of their claims, the parties acknowledge that continuing with this litigation would be protracted and expensive for both sides, *see* Settlement Agreement at 23, and that there are uncertainties and risks to proceeding with the action in light of Defendant's position that Plaintiffs signed arbitration agreements excluding class-wide recovery and the evolving legal landscape of misclassification law in California, *see* Doc. No. 12-1 at 18–19. Accordingly, the Court finds that the strength of the case, the costs associated with trial and appeal, the stage of the proceedings, and the risk of maintaining class action status throughout the trial favor approval of the Settlement Agreement.

b. Effectiveness of Proposed Relief Distribution

In determining the effectiveness of distributing the proposed relief to the class and the processing of class claims, the Court should "scrutinize the method of claims processing to ensure that it facilitates filing legitimate claims. A claims processing method should deter or defeat unjustified claims, but the court should be alert to whether the claims process is unduly demanding." Fed. R. Civ. P. 23(e) advisory committee's note to 2018 amendment.

In this case, the Notice of Proposed Class Action Settlement provided as follows:

OVERVIEW OF YOUR LEGAL RIGHTS AND OPTIONS UNDER THE SETTLEMENT	
DO NOTHING	Subject to the Court's final approval of the terms of the Settlement, you will receive a settlement payment (unless you timely provide a forwarding address to the Settlement Administrator) at the address where this notice was mailed, in exchange for which you will give up your claims in this case within the scope of the release set forth below.
EXCLUDE YOURSELF	If you submit a Request for Exclusion, which must be postmarked by **60-calendar days after settlement administrator mails class notice**, you will not receive a settlement payment but you will keep your claims against Defendant.
OBJECT	If you wish to object to the Settlement, you must submit a written objection, and supporting papers, to the Settlement Administrator that is postmarked no later than **60-calendar days after settlement administrator mails class notice**.

Cardone Decl. at 50.

This method of distribution imposes no burden on the Settlement Class Members. Accordingly, the effectiveness of the proposed method of distributing relief to the Class favors approval of the Settlement Agreement.

c. Terms of Proposed Attorney's Fees

In assessing whether the relief for a class is adequate, "[e]xamination of the attorney-fee provisions may also be valuable in assessing the fairness of the proposed settlement." Fed. R. Civ. P. 23(e) advisory committee's note to 2018 amendment. "Ultimately, any award of attorney's fees must be evaluated under Rule 23(h), and no

rigid limits exist for such awards. Nonetheless, the relief actually delivered to the class can be a significant factor in determining the appropriate fee award." *Id.*

This subfactor considers the "terms" of any proposed and agreed upon request for attorney's fees. *See* Fed. R. Civ. P. 23(e)(C)(iii). Here, the Settlement Agreement contains an attorney's fees provision which permits Class Counsel to apply for an attorneys' fees award of up to $170,000, which would be paid from the Gross Settlement Amount. *See* Settlement Agreement at 34. Class Counsel's entitlement to such award is ultimately contingent upon the corresponding motion for attorney's fees and costs, which is addressed in detail below.

The Court must be mindful when determining whether to approve a proposed attorney's fee award in the class action settlement context that "settlement class actions present unique due process concerns for absent class members." *Hanlon*, 150 F.3d at 1026. Accordingly, "the district court has a fiduciary duty to look after the interests of those absent class members." *Allen v. Bedolla*, 787 F.3d 1218, 1223 (9th Cir. 2015).

> [C]ourts should scrutinize pre-class certification settlements because plaintiffs' counsel may collude with the defendant to strike a quick settlement without devoting substantial resources to the case. The potential for collusion reaches its apex pre-class certification because, among other things, (1) the court has not yet approved class counsel, who would owe a fiduciary duty to the class members; and (2) plaintiffs' counsel has not yet devoted substantial time and money to the case, and may be willing to cut a quick deal at the expense of class members' interests.
>
> In contrast, by the time a court has certified a class — the theory goes — the parties have vigorously litigated the dispute, reducing the chance that class counsel will settle on the cheap for a quick buck. By devoting substantial time and resources to the case, class counsel has skin in the game, guaranteeing his or her interest in maximizing the size of the settlement fund. Likewise, because a district court has appointed class counsel who owes a fiduciary duty to the class members, class counsel would be ethically forbidden from sacrificing the class members' interests.

Briseño v. Henderson, 998 F.3d 1014, 1024–25 (9th Cir. 2021) (internal citations omitted).

Here, the parties reached their Settlement prior to class certification. This requires the Court to take on the fiduciary role that would ordinarily fall to Class Counsel. *See Allen*, 787 F.3d at 1223. Upon review, the Court does not find any evidence of collusion but the Settlement Agreement in this case does contain a "clear sailing" provision. *See* Settlement Agreement at 34. However, the parties also agreed that if the Court approves a lesser attorney's fee award, the difference will revert to the Net Settlement Amount and therefore the Settlement Class, *see id.* at 34, thus ameliorating the collusive concerns addressed in *Briseño*.

d. Underlying Settlement Agreement

"It is well-settled law that a proposed settlement may be acceptable even though it amounts to only a fraction of the potential recovery that might be available to the class members at trial." *Rodriguez v. Bumble Bee Foods, LLC*, No. 17-cv-2447-MMA (WVG), 2018 WL 1920256, at *4 (S.D. Cal. Apr. 24, 2018) (brackets omitted) (quoting *Nat'l Rural Telecommunications Coop.*, 221 F.R.D. at 527). That is because a settlement "embodies a compromise; in exchange for the saving of cost and elimination of risk, the parties each give up something they might have won had they proceeded with litigation." *Officers for Justice*, 688 F.2d at 624 (quoting *United States v. Armour & Co.*, 402 U.S. 673, 681 (1971)). Further, the Ninth Circuit has held that the number of class members who object to a proposed settlement is a factor to be considered. *See Mandujano v. Basic Vegetable Prod., Inc.*, 541 F.2d 832, 837 (9th Cir. 1976) (first citing *Bryan v. Pittsburgh Plate Glass Co. (PPG Indus.)*, 494 F.2d 799, 803 (3d Cir. 1974); and then citing *Amalgamated Meat Cutters & Butcher Workmen of N. Am., Local 340 v. Safeway Stores, Inc.*, No. W-3915, 1972 WL 141, at *1 (D. Kan. Feb. 4, 1972)). The absence of a large number of objectors supports the fairness, reasonableness, and adequacy of the settlement. *See In re Austrian & German Bank Holocaust Litig.*, 80 F. Supp. 2d 164, 175 (S.D.N.Y. 2000); *Boyd v. Bechtel Corp.*, 485 F. Supp. 610, 624 (N.D. Cal. 1979).

Here, the Settlement Agreement provides for a Gross Settlement Amount of $930,000 for 729 Class Members and, after deducting various fees and costs, each Class

Member is estimated to recover, on average, $897.65. Hoelscher Decl. ¶ 8. Only eight Class Members timely opted out of the Settlement and no objections to the Settlement terms have been received by either the attorneys, the Settlement Administrator, or the Court. Doc. No. 27-1 at 5; Doc. No. 26-1 at 18. Accordingly, the Court finds that the underlying Settlement Agreement favors approval of the Settlement.

e. Conclusion

Based on the foregoing, the Court finds that on balance, the relief provided for the Class is adequate and favors approval of the Settlement Agreement.

4. Equitable Treatment of Class Members

Rule 23(e)(2) requires the Court to consider whether "the proposal treats class members equitably relative to each other." Fed. R. Civ. P. 23(e)(2)(D). "Matters of concern could include whether the apportionment of relief among class members takes appropriate account of differences among their claims, and whether the scope of the release may affect class members in different ways that bear on the apportionment of relief." Fed. R. Civ. P. 23(e) advisory committee's note to 2018 amendment. In assessing this factor, courts determine whether the settlement unreasonably gives preferential treatment to the class representatives or other class members. *See Ferrell v. Buckingham Prop. Mgmt.*, 2020 WL 291042, at *23 (quoting *In re Tableware Antitrust Litig.*, 484 F. Supp. 2d 1078, 1079 (N.D. Cal. 2007)).

Twenty percent of the Net Settlement Amount will be distributed to the Class equally, the remaining 80% will be distributed pro rata based on sales to stores. Doc. No. 12-1 at 21. This is fair, reasonable, and adequate in light of the underlying harm and the lack of facts indicating certain Class Members suffered a disproportionate injury compared to others. Further, as discussed below, the Court finds that Plaintiffs' requested Class Representative Service Award is reasonable. Accordingly, the general equitable treatment of class members favors approval of the Settlement Agreement.

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C. Conclusion

Upon due consideration of the factors set forth above, the Court finds that the Class Settlement is on balance "fair, reasonable, and adequate" under Rule 23(e)(2) and therefore **GRANTS** Plaintiffs' motion for final approval of the Settlement.

D. PAGA Penalty

Under PAGA, an "aggrieved employee" may bring an action for civil penalties for labor code violations on behalf of himself and other current or former employees. Cal. Lab. Code § 2699(a). A plaintiff suing under PAGA "does so as the proxy or agent of the state's labor law enforcement agencies." *Arias v. Superior Ct.*, 95 Cal. Rptr. 3d 588, 600 (2009). A PAGA plaintiff thus has "the same legal right and interest as state labor law enforcement agencies" and the action "functions as a substitute for an action brought by the government itself"; therefore, "a judgment in that action binds all those, including nonparty aggrieved employees, who would be bound by a judgment in an action brought by the government." *Id.* A plaintiff bringing a representative PAGA action not only owes a duty to their "fellow aggrieved workers," but "also owes responsibility to the public at large; they act, as the statute's name suggests, as a private attorney general." *O'Connor v. Uber Techs., Inc.*, 201 F. Supp. 3d 1110, 1133–34 (N.D. Cal. 2016).

Under PAGA, civil penalties collected are distributed between the aggrieved employees (25%) and the LWDA (75%). Cal. Lab. Code § 2699(i). Any settlement of PAGA claims must be approved by the Court. Cal. Lab. Code § 2699(l)(2). The proposed settlement must also be sent to the agency at the same time that it is submitted to the court. Cal. Lab. Code § 2699(l)(2).

While PAGA requires a trial court to approve a PAGA settlement, district courts have noted there is no governing standard to review PAGA settlements. *Sanchez v. Frito-Lay, Inc.*, No. 1:14cv797-DAD-BAM, 2019 U.S. Dist. LEXIS 170556, at *31 (E.D. Cal. Sept. 30, 2019) (acknowledging the "absence of authority governing the standard of review of PAGA settlements"). "'[N]either the California legislature, nor the California Supreme Court, nor the California Courts of Appeal, nor the [LWDA] has

provided any definitive answer' as to what the appropriate standard is for approval of a PAGA settlement." *Jordan v. NCI Grp., Inc.*, No. EDCV 161701 JVS (SPx), 2018 U.S. Dist. LEXIS 25297, at *5 (C.D. Cal. Jan. 5, 2018) (quoting *Flores v. Starwood Hotels & Resorts Worldwide, Inc.*, 253 F. Supp. 3d 1074, 1075 (C.D. Cal. 2017)). Consequently, some district courts have used the guidance provided by the LWDA in *O'Connor v. Uber Techs., Inc.*, 201 F. Supp. 3d 1110, 1133 (N.D. Cal. 2016). *See Haralson v. U.S. Aviation Servs. Corp.*, 383 F. Supp. 3d 959, 971 (N.D. Cal. 2019); *Sanchez*, 2019 U.S. Dist. LEXIS 170556, at *32. In *O'Connor*, the LWDA commented,

> It is thus important that when a PAGA claim is settled, the relief provided for under the PAGA be genuine and meaningful, consistent with the underlying purpose of the statute to benefit the public and, in the context of a class action, the court evaluate whether the settlement meets the standards of being "fundamentally fair, reasonable, and adequate" with reference to the public policies underlying the PAGA.

O'Connor, 201 F. Supp. 3d at 1133. Based on LWDA's response in *O'Connor*, district courts have applied "a Rule 23-like standard" asking whether the settlement of the PAGA claims is "fundamentally fair, reasonable, and adequate." *Haralson*, 383 F. Supp. 3d at 972.

First, in accordance with the statutory requirements, Plaintiffs submitted the Settlement Agreement to the LWDA. Lebow Decl. ¶ 9. The Court finds it persuasive that the LWDA was permitted to file a response to the proposed Settlement and no comment or objection has been received.

The Settlement Agreement provides for a $20,000 PAGA penalty. Plaintiffs' expert estimated a PAGA penalty range of approximately $28,427,000 to $53,227,000. Doc. No. 20 at 2. Nonetheless, as noted above, the $20,000 PAGA penalty represents roughly 2 percent of the Gross Settlement Amount, which is within the range of penalties approved by courts. *See Magadia v. Wal-Mart Assocs., Inc.*, 384 F. Supp. 3d 1058, 1101 (N.D. Cal. 2019) (collecting cases in which settlements providing for $10,000 in PAGA

penalties were preliminarily or finally approved despite total settlement amounts of $900,000 and $6.9 million); *see also Alcala v. Meyer Logistics, Inc.*, No. CV 17-7211 PSG (AGRx), 2019 U.S. Dist. LEXIS 166879, at *26 (C.D. Cal. June 17, 2019) (collecting cases in which PAGA penalties within the zero to two percent rage were approved by courts). Further, the Settlement Agreement provides that 75% of the PAGA Penalty will be paid to the LWDA and 25% will be paid to the PAGA Class, in accordance with California Labor Code § 2699(i). Therefore, the Court finds that the Settlement Agreement's $20,000 PAGA penalty is reasonable, fundamentally fair, and adequate.

ATTORNEY'S FEES AND COSTS

Plaintiffs also seek an award of attorney's fees and costs. *See* Doc. No. 13. Plaintiffs request fees in the aggregate amount of $170,000, which is 18% of the Gross Settlement Amount, as well as $49,646.40 in litigation costs. *Id.* at 8, 15.

A. Attorney's Fees

1. Legal Standard

Rule 23(h) of the Federal Rules of Civil Procedure provides that, "[i]n 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. P. 23(h). And as mentioned above, in addition to the reasonableness inquiry mandated under Rule 23(h), "district courts must now consider 'the terms of any proposed award of attorney's fees' when determining whether 'the relief provided for the class is adequate'" pursuant to Rule 23(e). *Briseño*, 998 F.3d at 1024 (quoting Fed. R. Civ. P. 23(e)(2)(C)(iii)). Importantly, "whether the attorneys' fees come from a common fund or are otherwise paid, the district court must exercise its inherent authority to assure that the amount and mode of payment of attorneys' fees are fair and proper." *Zucker v. Occidental Petroleum Corp.*, 192 F.3d 1323, 1328 (9th Cir. 1999).

The Court has discretion in a common fund case such as this to choose either the lodestar method or the percentage-of-the-fund method when calculating reasonable

attorneys' fees. *See Vizcaino v. Microsoft Corp.*, 290 F.3d 1043, 1047 (9th Cir. 2002). Under the percentage-of-recovery method, 25% of a common fund is the benchmark for fee awards. *See, e.g.*, *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."). Under the lodestar method, a "lodestar figure is calculated by multiplying the number of hours the prevailing party reasonably expended on the litigation (as supported by adequate documentation) by a reasonable hourly rate for the region and for the experience of the lawyer." *Id.* at 941 (citing *Staton*, 327 F.3d at 965).

Whether the Court awards the benchmark amount or some other rate, the award must be supported "by findings that take into account all of the circumstances of the case." *Vizcaino*, 290 F.3d at 1048. To guard against an unreasonable result, the Ninth Circuit has encouraged district courts to cross-check any calculations done in one method against those of another method. *See id.* at 1050–51.

2. Discussion

As noted above, Plaintiffs on behalf of Class Counsel request $170,000 in fees, or 18% of the Gross Settlement Amount. This amount is less than the Ninth Circuit's "benchmark" for a reasonable fee award under the percentage-of-recovery method. *See, e.g.*, *Espinosa v. Ahearn (In re Hyundai & Kia Fuel Econ. Litig.)*, 926 F.3d 539, 570 (9th Cir. 2019) (noting the 25% benchmark). As discussed below, it is also less than Class Counsel's fees would be if calculated using the lodestar method.

a. Lodestar Calculation

In order to determine the lodestar figure, the Court calculates the number of hours reasonably expended on the litigation and then multiplies that number by a reasonable hourly rate. *See Hensley v. Eckerhart*, 461 U.S. 424, 433 (1983).

The Court first considers whether Class Counsel's hourly rates are reasonable. A reasonable hourly rate is typically based upon the prevailing market rate in the community for "similar work performed by attorneys of comparable skill, experience,

and reputation." *Chalmers v. City of Los Angeles*, 796 F.2d 1205, 1211 (9th Cir. 1986) (citing *Blum v. Stenson*, 465 U.S. 886, 895 n.11 (1984)).

Here, Plaintiffs requests hourly rates ranging from $150 to $500 for paralegals, associates, and partners. In addition to the declarations of counsel, the Court relies on its own knowledge and experience of customary rates concerning reasonable and proper fees, *see Ingram v. Oroudjian*, 647 F.3d 925, 928 (9th Cir. 2011), and considers the relevant *Kerr* factors. *See Davis v. City of San Francisco*, 976 F.2d 1536, 1546 (9th Cir. 1992) (finding that district courts may consider the *Kerr* factors in determining an appropriate market rate). Recently, courts in this District have awarded hourly rates for work performed in civil cases by attorneys with significant experience anywhere in range of $550 per hour to more than $1000 per hour. *See, e.g.*, *Herring Networks, Inc. v. Maddow*, No. 3:19-cv-1713-BAS-AHG, 2021 U.S. Dist. LEXIS 23163, at *21 (S.D. Cal. Feb. 5, 2021) (finding $1150-$1050 to be reasonable rates for partners with more than 30 years of experience from a Top 100 law firm); *Kries v. City of San Diego*, No. 17-cv-1464-GPC-BGS, 2021 U.S. Dist. LEXIS 6826, at *26–27 (S.D. Cal. Jan. 13, 2021) (finding rates of $650 per hour for attorneys with more than 30 years of experience to be reasonable); *Sunbelt Rentals, Inc. v. Dubiel*, No. 20-cv-876-WQH-BGS, 2020 WL 6287462, at *2 (S.D. Cal. Oct. 27, 2020) (finding $405 rate per hour to be a reasonable rate for a partner in a breach of contract action); *Kailikole v. Palomar Cmty. Coll. Dist.*, No. 18-cv-2877-AJB-MSB, 2020 WL 6203097, at *3 (S.D. Cal. Oct. 22, 2020) (finding $550 rate per hour to be a reasonable rate for a partner in an employment action); *Vasquez v. Kraft Heinz Foods Co.*, No. 3:16-CV-2749-WQH-BLM, 2020 WL 1550234, at *1–2, 7 (S.D. Cal. Apr. 1, 2020) (approving of rates between $700 and $725 for attorneys with approximately 30 years of experience and rate of $550 for attorney with 12 years of experience); *San Diego Comic Convention v. Dan Farr Productions*, No. 14cv1865-AJB-JMA, 2019 WL 1599188, at *13–14 (S.D. Cal. Apr. 15, 2019) (finding reasonable the hourly rates of $760 for partners from a Top 100 law firm with 28-29 years of experience), *attorney fees aff'd* by 807 F. App'x 674 (9th Cir. Apr. 20, 2020);

Kikkert v. Berryhill, No. 14cv1725-MMA-JMA, 2018 WL 3617268, at *2 n.1 (S.D. Cal. July 30, 2018) (an unopposed fee motion after a successful social security appeal, finding de facto hourly rate of $943 reasonable, citing other decisions in the district approving rates from $656 to $886). Therefore, the Court finds that Class Counsel's rates are reasonable.

The Court next considers whether Class Counsel's expenditure of 729.4 hours on this case is reasonable. "The fee applicant bears the burden of documenting the appropriate hours expended in the litigation and must submit evidence in support of those hours worked." *Gates v. Deukmejian*, 987 F.2d 1392, 1397 (9th Cir. 1992) (citing *Hensley*, 461 U.S. at 433, 437). A district court "should defer to the winning lawyer's professional judgment as to how much time he was required to spend on the case." *Chaudhry*, 751 F.3d at 1111 (citing *Moreno*, 534 F.3d at 1112). However, the Court "should exclude from [the] initial fee calculation hours that were not 'reasonably expended.'" *Hensley*, 461 U.S. at 434. Hours are not "reasonably expended" if they are "excessive, redundant, or otherwise unnecessary." *Id*.

Class Counsel has provided detailed billing records, which indicate that the hours of work performed on this case were generally reasonable, necessary, and thus compensable. *See* Lebow Decl. Ex 1. Moreover, "[t]he lodestar 'cross-check' need not be as exhaustive as a pure lodestar calculation" because it only "serves as a point of comparison by which to assess the reasonableness of a percentage award." *Fernandez v. Victoria Secret Stores, LLC*, No. CV 06-04149 MMM (SHx), 2008 U.S. Dist. LEXIS 123546, 2008 WL 8150856, at *14 (C.D. Cal. July 21, 2008). Accordingly, "the lodestar can be approximate and still serve its purpose." *Id*. Accordingly, finding the hourly rates identified above and hours expended to be reasonable, the Court agrees with Class Counsel's calculation of the lodestar figure in this case of $316,524.00.

b. Lodestar Crosscheck

This Court has previously acknowledged that "California courts routinely award attorneys' fees of one-third of the common fund." *Espinosa v. Cal. Coll. of San Diego,*

Inc., No. 17cv744-MMA (BLM), 2018 U.S. Dist. LEXIS 60106, at *24 (S.D. Cal. Apr. 9, 2018) (quoting *Beaver v. Tarsadia Hotels*, No. 11-CV-01842-GPC-KSC, 2017 U.S. Dist. LEXIS 160214, 2017 WL 4310707, at *9 (S.D. Cal. Sept. 28, 2017)) (collecting cases). But "[r]egardless of whether the Court uses the percentage approach or the lodestar method, the ultimate inquiry is whether the end result is *reasonable*." *Espinosa*, 2018 U.S. Dist. LEXIS 60106, at *27-28 (emphasis added) (citing *Powers v. Eichen*, 229 F.3d 1249, 1258 (9th Cir. 2000)). "Calculation of the lodestar, which measures the lawyers' investment of time in the litigation, provides a check on the reasonableness of the percentage award. Where such investment is minimal, as in the case of an early settlement, the lodestar calculation may convince a court that a lower percentage is reasonable." *Vizcaino*, 290 F.3d at 1050.

"[A]n appropriate positive or negative multiplier reflect[s] . . . the quality of representation, the benefit obtained for the class, the complexity and novelty of the issues presented, and the risk of nonpayment." *In re Bluetooth*, 654 F.3d at 941–42 (quoting *Hanlon*, 150 F.3d at 1029). Likewise, a "percentage amount can . . . be adjusted upward or downward to account for any unusual circumstances involved in this case." *Paul, Johnson, Alston & Hunt v. Graulty*, 886 F.2d 268, 272 (9th Cir. 1989).

The lodestar crosscheck supports the requested fee award in this case. The requested award of $170,000—18% of the Gross Settlement Amount—is less than the lodestar figure. Accordingly, the Court **GRANTS** Plaintiff's motion for an attorney's fee award of $170,000.

B. Costs

Plaintiffs further request reimbursement of $49,696.40 in actual litigation costs expended by Class Counsel.

1. Legal Standard

Rule 23(h) of the Federal Rules of Civil Procedure provides that, "[i]n 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. P. 23(h). Counsel is

entitled to reimbursement of the out-of-pocket costs they reasonably incurred investigating and prosecuting the case. *See In re Media Vision Tech. Sec. Litig.*, 913 F. Supp. 1362, 1366 (N.D. Cal. 1996) (citing *Mills v. Elec. Auto-Lite Co.*, 396 U.S. 375, 391–92 (1970)); *see also Staton*, 327 F.3d at 974.

2. Discussion

Plaintiff seeks an award of costs totaling $49,696.40 expended by Class Counsel for filing fees, service fees, photocopying costs, postage, mediation fees, and other litigation related expenses. *See* Doc. No. 13-1 at 15–16. The Court finds that upon review, the requested award is reasonable in light of the itemized costs. Costs for service of process are taxable under 28 U.S.C. § 1920 as well as Civil Local Rule 54.1.b.1, which provides that "(c)osts for service of subpoenas are taxable as well as service of summonses and complaints." Filing fees are recoverable under 28 U.S.C. §1920(1). Additionally, the Ninth Circuit has held that an award to a prevailing party "can include reimbursement for out-of-pocket expenses including . . . travel, courier and copying costs." *Grove v. Wells Fargo Fin. Cal., Inc.*, 606 F.3d 577, 580 (9th Cir. 2010). Other recoverable expenses include expenses related to discovery and expenses related to computerized research. *See Harris v. Marhoefer*, 24 F.3d 16, 19–20 (9th Cir. 1994) (noting that "expenses related to discovery" are recoverable); *Trs. Of Constr. Indus. & Laborers' Health & Welfare Trust v. Redland Ins. Co.*, 460 F.3d 1253, 1258-59 (9th Cir. 2006) (holding that "reasonable charges for computerized research may be recovered."); *Hartless v. Clorox Co.*, 273 F.R.D. 630, 646 (S.D. Cal. 2011) (holding that consulting fees as costs were reasonable because the evidence was necessary to negotiate a settlement).

Accordingly, because Class Counsel's out-of-pocket costs were reasonably incurred in litigating this action and were advanced by counsel for the benefit of the Class, the Court **APPROVES** reimbursement of litigation costs in the full amount requested. *See, e.g.*, *Fontes v. Heritage Operating, L.P.*, No. 14-cv-1413-MMA (NLS), 2016 WL 1465158, at *6 (S.D. Cal. Apr. 14, 2016).

CLASS REPRESENTATIVE SERVICE AWARD

Finally, Plaintiffs request a total incentive award of $5,000 for their service as the Class Representatives in this action.

A. Legal Standard

"Incentive awards are payments to class representatives for their service to the class in bringing the lawsuit." *Radcliffe v. Experian Info. Sols. Inc.*, 715 F.3d 1157, 1163 (9th Cir. 2013). "Such awards are discretionary." *Rodriguez v. W. Publ'g Corp.* (*Rodriguez I*), 563 F.3d 948, 958 (9th Cir. 2009). The Ninth Circuit has instructed district courts to "to scrutinize carefully the awards so that they do not undermine the adequacy of the class representatives." *See Radcliffe*, 715 F.3d at 1163. Incentive awards that are disproportionate to the class's recovery risk a conflict of interest between a class representative's interests and the class's interests. *See id.* (quoting *Rodriguez I*, 563 F.3d at 959). This is especially relevant where retainer agreements require class counsel to request an incentive award or where the settlement agreement conditions the award on the class representatives' approval of the settlement. *See id.* at 1163–64. "Where . . . the class representatives face significantly different financial incentives than the rest of the class because of the conditional incentive awards that are built into the structure of the settlement, we cannot say that the representatives are adequate." *Id.* at 1165. Additionally, in evaluating the reasonableness of incentive awards,

> [t]he district court must evaluate their awards individually, using "relevant factors includ[ing] the actions the plaintiff has taken to protect the interests of the class, the degree to which the class has benefitted from those actions, . . . the amount of time and effort the plaintiff expended in pursuing the litigation . . . and reasonabl[e] fear[s of] workplace retaliation."

Staton, 327 F.3d at 977 (quoting *Cook v. Niedert*, 142 F.3d 1004, 1016 (7th Cir. 1998)).

Further, "class members can certainly be repaid from any cost allotment for their substantiated litigation expenses." *Id.* Taken together, courts examine the following factors when scrutinizing incentive awards on an individual basis in class action

settlements: (1) conflicts of interest between the class representative and the class in assessing the terms or disparity of an award, (2) actions taken by the class representative to protect the class's interest, (3) the benefit received by the class based on the class representative's actions, (4) the time and effort expended by the class representative, and (5) the class representative's reasonable fears of workplace retaliation.

B. Discussion

Pursuant to the Settlement Agreement,

> Defendant agrees not to oppose or object to any application or motion by Plaintiffs to be appointed Class Representatives and for a Class Representatives' Enhancement Award. Class Counsel shall seek a Class Representatives' Enhancement Award for Class Representatives of up to One Thousand Dollars ($1,000) each. Defendant agrees not to oppose the motion by Plaintiffs for said Class Representatives' Enhancement Award, so long as the requested Class Representatives' Enhancement Award does not exceed this amount. Any portion of the requested Class Representatives' Enhancement Award that is not awarded shall be a part of the Net Settlement Amount to be distributed to Settlement Class Members as provided in this Agreement. The Class Representatives' Enhancement Award is intended to be in recognition of the Class Representatives' efforts and time as Class Representatives, and in consideration for the Class Representatives' execution of this Stipulation. The Enhancement Award shall be paid to Class Representatives from the Maximum Settlement Amount together with, and in addition to, their Individual Settlement Payments.

Settlement Agreement at 22–23.

Here, there are eight Plaintiffs. However, as counsel explained at the Final Approval Hearing, only the five individual Plaintiffs, not their entities, seek an award. The $5,000 incentive award as requested by Plaintiffs in this case is well within the range of such awards in this Circuit. After reviewing the declarations of both Class Counsel and Plaintiff, the Court agrees that an incentive award is appropriate here in light of the time and effort Plaintiffs expended on this litigation, the benefit obtained for the class, and the risks associated with bringing a class action lawsuit against a former employer. Accordingly, the Court **APPROVES** Plaintiffs' request for a $5,000 incentive award.

CONCLUSION

Based on the foregoing, the Court **GRANTS** Plaintiffs' motion for final approval of the class settlement and **GRANTS** Plaintiffs' motion for attorney's fees, costs, and a class representative enhancement award.

The Court **CERTIFIES** the Settlement Class for the purposes of the Settlement. The Court **APPROVES** the Settlement as fair, reasonable, and adequate pursuant to Federal Rule of Civil Procedure 23(e). The Court **ORDERS** the parties to undertake the obligations set forth in the Settlement Agreement that arise out of this Order.

The Court **AWARDS** attorneys' fees to Class Counsel in the amount of **$170,000** and costs in the amount of **$49,696.40**.

The Court further **AWARDS** to Plaintiffs an incentive payment for work performed as the Class Representatives in the total amount of **$5,000**; $1,000 to each of the following: Sophamany Moch, Gerardo Fuentes, Sr., Gerardo Fuentes, Jr., Jorge Franco, and Mayte Gastelum.

The Court **AWARDS** settlement administration fees and costs to Atticus Administration, LLC in the total amount of **$14,370.72**.

The Court **DIRECTS** the Clerk of Court to enter a separate judgment of dismissal in accordance herewith, *see* Fed. R. Civ. P. 58(a), and to close the case.

Without affecting the finality of this Order, the Court maintains jurisdiction over this matter for purpose of enforcing the Judgment.

IT IS SO ORDERED.

Dated: December 19, 2023

HON. MICHAEL M. ANELLO
United States District Judge

EXHIBIT 3

NICHOLAS & TOMASEVIC LLP

ATTORNEYS AT LAW

Tel: 619-325-0492
Fax: 619-325-0496

225 Broadway, 19th Floor
San Diego, CA 92101

January 23, 2025

VIA ONLINE SUBMISSION

Attn. PAGA Administrator
455 Golden Gate Avenue, 9th Floor
San Francisco, CA 94102

VIA CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Gruma Corporation d/b/a Mission Tortilla
c/o CSC – Lawyers Incorporating Service
2710 Gateway Oaks Drive, Suite 150N
Sacramento, CA 95833

Re: ***Travis Hudson v. Gruma Corporation d/b/a Mission Tortilla***

To Whom It May Concern:

We represent Travis Hudson ("Plaintiff" or "Hudson") in his potential Private Attorney General Act ("PAGA") action pursuant to Labor Code Section 2699, *et seq.* against Gruma Corporation d/b/a Mission Tortilla ("Mission" or "Defendant"). This letter constitutes Plaintiff's written notice of Defendant's Labor Code violations pursuant to Labor Code Section 2699.3 and notice of his intent to recover penalties under PAGA. A copy of this letter is also being sent to Defendant.

Mission is the leading tortilla manufacturer in the world which manufactures a wide variety of authentic Mexican products like tortillas, chips, tostadas, and flatbreads. https://www.missionfoods.com/about-us/. Mission has over 20 manufacturing facilities for its line of products throughout the U.S. and Mexico.

Mission offers direct-store-delivery services to its retail partners which include major grocery chains such as Albertsons, Vons, Pavilions, Walmart, Costco, and others. Mission has over 7,000 drivers visiting over 30,000 retail stores every day throughout the U.S. https://www.mobileframe.com/resources/case-studies/Mission-Foods.pdf.

Mission engages "independent contractors" to carry out the last-mile DSD work within specified geographic territories. Through "Store Door Independent Distributor Agreements" ("DA"), Mission secures to work of a natural individual who must incorporate and agree to service a territory of Mission "eligible customers" with DSD services that Mission has promised to the retail outlets including ordering, delivery, and merchandising of products on retail store shelves. Under the DA, "Distributors" like Plaintiff are responsible for ordering adequate products for their retail customers, complying with customer standards and expectations such as delivery windows, dress codes, and frequency of visits to check on inventory and rotate products, and using Mission's handheld devices and other technologies to order and manage products. Mission's services standards also include using "best efforts" to distribute its products to its customers and to provide "reasonable sales support" such as timely meeting customer demands, stocking the full line of Mission products, rotating product per Mission standards, doing store resets when asked, and setting up displays when required.

Any failure to comply with the DA without cure gives Mission the right to terminate the DA. Mission also has a progressive disciplinary system under which it has the right to terminate for successive failures to satisfy the terms of the DA in given timespans. Mission also sends out "Default Notices" or breach letters where a Distributor falls short of customer service expectations and these failures can also lead to termination.

Where a Distributor falls short of customer expectations or other requirements in the DA, Mission will fulfill those services to ensure that its retail customers are satisfied and that its contractual obligations to the customer are satisfied.

While a Distributor may sell their interest in the DA, Mission tightly regulates this process by ensuring that any purchaser meets its standards, that Mission and the Distributor have no outstanding disputes prior to the sale, and that the purchaser enters the same DA or whatever version Mission is offering at that time.

Distributors are paid for their services often on a per-item sold or "piece rate" basis. *See* Labor Code, § 226.2.

Despite the integral role of Distributors and the control retained and exercised over them, Mission denies any employment relationship with Distributors like Plaintiff. This is willful misclassification under California law. Labor Code Section 226.8.

By refusing to recognize its last-mile delivery and service workers as employees, Defendant cheats these individuals out of protections provided by California labor laws such as minimum wages including non-productive time pay and on-call pay, rest break compensation, overtime pay, reporting time pay, and reimbursement of business expenses.

Piece rate workers like Distributors must be paid separately for the time they are able to take a rest break. Mission does not pay separately for any break time resulting in owed rest break premium pay each shift the worker qualifies for rest breaks under California law.

Furthermore, many of the hours worked by Distributors exceed 8 hours in a day or 40 in a week, yet Mission pays no overtime.

Mission requires Distributors to bear various expenses including but not limited to operating a delivery vehicle (gas, mileage, repairs, insurance, etc.), using a hand-held device that Distributors must lease from Mission, and paying a "warehouse lease" for access to Defendant's facilities to pick up their products for delivery. None of these expenses are reimbursed and many of them are deducted from Distributors' piece rate or commission pay each week. Defendant also requires communication with Distributors while they are on the road which requires a cell phone and an internet and data plan. There is no reimbursement for this necessary expense either.

The obligation to reimburse employees for reasonable and necessary business expenses is set forth in Labor Code section 2802 and applicable Wage Orders. Deductions for mistakes or other non-malicious conduct by employees are prohibited by Labor Code sections 221, 223, and 224 as well as Wage Orders and prevailing California case law. (*See*, *e.g.*, *Kerr's Catering Service v. Department of Industrial Relations* (1962) 57 Cal.2d 319.)

Defendant's misclassification of its Distributors also robs the State of important employee tax revenue and gives Defendant an undue advantage over law-abiding competitors who bear the necessary expenses associated with employing similar workers.

As a further result of its misclassification of workers like Plaintiff, Defendant failed to provide accurate, itemized wage statements showing earnings, hours worked, pay rates, and the like in violation of Labor Code sections 226(a), (e), and 226.3. Defendant also has no meal and rest break policies for its Distributors, who often do not take such breaks and/or are not compensated for these periods. Defendant similarly fails to keep necessary payroll records showing the hours worked daily as required by Labor Code section 1174.

Still further, Defendant fails to pay all wages due upon termination under Labor Code section 203 given its underpayment of wages as stated above.

Pursuant to Labor Code sections 226.2, 1194, 1197, and 1197.1 as well as applicable Wage Orders, Defendant must compensate Plaintiff and similarly situated employees for all hours worked including non-productive time or on-call time when the worker is under the control of the employer.

Meal and rest break obligations along with payment in lieu options are presented in Labor Code sections 226.2, 226.7, and 512, as well as applicable Wage Orders. Mission does not make meal or rest breaks readily available for Distributors nor do they pay premium pay in lieu of such breaks. Mission fails to keep records of any meal periods which creates the rebuttable presumption that no such break was made available or taken.

The obligation to pay all wages when due is presented in Labor Code sections 201, 202, 203, 210, and applicable Wage Orders. The above-mentioned failures to pay wages means

Defendant does not provide all wages when due to Plaintiff and similarly situated employees. Defendant's owners, officers, managers, superintendents, agents, and other persons who have willfully refused to pay these wages or falsely denied the amount or validity of the wages owed to Distributors also violated Labor Code section 216.

Defendant also fails to provide "paid sick days" to its employees in violation of Labor Code section 245 *et seq*. Specifically, Defendant does not accrue paid sick days as required by section 246 or allow employees to use accrued paid sick days after the 90th day of employment.

Defendant's above-mentioned violations, among others, implicate Labor Code sections, including, but not limited to, the following: 200 *et seq.*, 201, 202, 203, 204, 210, 218.5, 218.6, 221, 223, 224, 225.5, 226, 226.2, 226.3, 226.7, 226.8, 400 *et seq.*, 402, 404, 405, 408, 432.5, 450, 510, 512, 558, 1194, 1194.2, 1197, 1197.1, 1198, 2775, 2800, 2802, and 2804.

Accordingly, on behalf of himself and as a representative of Defendant's current and former Distributors classified as independent contractors, Plaintiff respectfully request that the Labor and Workforce Development Agency ("LWDA") initiate an investigation with respect to the aforementioned violations. If the LWDA declines to pursue enforcement, Plaintiff will pursue these claims on behalf of himself and all other current and former similarly aggrieved employees.

Thank you for your consideration of this matter. If you have any questions or comments, please do not hesitate to contact us at any time.

Sincerely,

Shaun Markley

EXHIBIT 4

Electronically FILED by Superior Court of California, County of Riverside on 02/11/2025 12:08 PM
Case Number CVRI2500770 0000119582414 - Jason B. Galkin, Executive Officer/Clerk of the Court By Janelle Blackwell, Clerk

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Attorneys for Plaintiff TRAVIS HUDSON,
on behalf of himself and all others similarly situated

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF RIVERSIDE

TRAVIS HUDSON, an individual, on behalf of himself and all others similarly situated,

Plaintiff,

vs.

GRUMA CORPORATION, a Nevada corporation, d/b/a MISSION FOODS; and DOES 1 through 100, inclusive,

Defendants.

Case No. CVRI2500770

CLASS ACTION COMPLAINT FOR:

(1) FAILURE TO COMPENSATE FOR ALL HOURS WORKED [LAB. CODE, § 1197];

(2) FAILURE TO PAY OVERTIME [LAB. CODE, § 510];

(3) FAILURE TO REIMBURSE EXPENSES [LAB. CODE, § 2802];

(4) UNLAWFUL DEDUCTIONS FROM WAGES [LAB. CODE, § 221-223];

(5) FAILURE TO PROVIDE ACCURATE WAGE STATEMENTS [LAB. CODE, § 226];

(6) FAILURE TO PROVIDE MEAL PERIODS [LAB. CODE, § 226.7];

(7) FAILURE TO PROVIDE REST BREAKS [LAB. CODE, § 226.7];

(8) UNFAIR BUSINESS PRACTICES [BUS. & PROF. CODE, § 17200 ET SEQ.].

DEMAND FOR JURY TRIAL

Travis Hudson ("Plaintiff"), on behalf of himself and all others similarly situated, brings this action against Defendant Gruma Corporation, d/b/a Mission Foods ("Mission"), a Nevada corporation, and DOES 1 through 100, inclusive, and alleges as follows:

I. INTRODUCTION

1. Defendant Mission engages in a deliberate scheme to misclassify its employees, deceiving its workers, competitors, and state and federal governments. By falsely designating thousands of delivery drivers or distributors as "Independent Contractors" (also referred to as "Delivery Workers"), Mission denies them legally mandated benefits and protections, including minimum wages, overtime pay, reimbursement for business expenses, family and medical leave, unemployment insurance, and workplace safety guarantees. This intentional misclassification not only deprives workers of their rights but also reduces tax revenues, weakens state unemployment and workers' compensation funds, and gives Mission an unfair advantage over law-abiding competitors.

2. Plaintiff brings this action on behalf of himself and other similarly situated Delivery Workers in California. He seeks compensation for Defendant's deliberate misclassification of him and his co-workers as "Independent Contractors," including lost wages, unpaid overtime, and other denied labor protections such as unreimbursed business expenses and unlawful deductions.

II. JURISDICTION & VENUE

3. This Court has subject matter jurisdiction to hear this case because the damages resulting from Defendant's conduct exceed the jurisdictional minimum of this Superior Court.

4. Venue is proper pursuant to Code of Civil Procedure, section 395.5, among other sections. The obligation to comply with the Labor Code for the group of workers relevant to this case and the resulting liability for misclassifying and denying Labor Code/Wage Order benefits to those workers arose in this County, among others. Defendant hired many Delivery Workers in Riverside who are misclassified and were denied employment benefits.

III. PARTIES

5. Mr. Hudson is and at all relevant times was a resident of California and this County. He is as a Delivery Worker for Mission.

6. Defendant Gruma Corporation dba Mission Foods ("Mission") is and at all relevant times was a Nevada corporation with a principal business address in Irving, TX. Defendant does business as "Gruma" and "Mission Foods" within the State of California, including this County.

7. Plaintiff does not know the true names and/or capacities, whether individual, partners, or corporate, of the Defendants sued herein as DOES 1 through 100, inclusive, and for that reason sues said Defendants under fictitious names. Plaintiff will seek leave to amend this Complaint when the true names and capacities of these Defendants have been ascertained. Plaintiff is informed and believes and thereon alleges that these Defendants are responsible in whole or in part for Plaintiff's alleged damages.

8. At all times mentioned, Defendants were the agents, alter egos, servants, joint venturers, joint employers, or employees for each other. Defendants acted with the consent of the other Co-Defendants and acted within the course, purpose, and scope of their agency, service, or employment. All conduct was ratified by Defendants, and each of them.

IV. GENERAL ALLEGATIONS

A. Mission Misclassified Distributors as "Independent Contractors" Under California Law.

9. Mission is the leading tortilla manufacturer making and distributing a wide variety of food products like tortillas, chips, tostadas, and flatbreads. https://www.missionfoods.com/about-us/. Mission has over 20 manufacturing facilities for its line of products throughout the U.S. and Mexico.

10. Mission offers direct-store-delivery ("DSD") to its retail customers which include major grocery chains such as Albertsons, Vons, Pavilions, Walmart, Costco, and others.[1] To carry out the delivery and merchandizing obligations owed to its customers, Mission engages thousands of "independent contractors" in California like Plaintiff and the putative class to carry out the last-mile DSD work within specified geographic territories. Mission has over 7,000 Delivery Workers visiting over 30,000 retail stores every day throughout the U.S. Upon information and belief, Mission uses hundreds of Delivery Workers in California alone.

[1] Direct store delivery (DSD) is a logistics strategy that involves delivering products directly from a supplier (Mission in this case) to a retail store, bypassing the retailer's distribution centers.

11. Mission hires contractors, like Plaintiff Hudson, then makes them incorporate and sign "Store Door Independent Distributor Agreements" ("DAs") where they are assigned a set territory of Mission "eligible customers." All Delivery Workers, like Plaintiff, are obligated to provide the DSD services that Mission has promised to the retail outlets including ordering, delivery, and merchandising of products on retail store shelves.

12. Under the DA, Delivery Workers like Plaintiff are responsible for gathering the right number and mix of Mission products for Mission's retail customers, complying with customer standards and expectations negotiated between Mission and the retailer such as delivery windows, dress codes, and frequency of visits to check inventory and rotate products, and using Mission's handheld devices and other technologies to order and manage products. Mission also requires all Delivery Workers to use "best efforts" to distribute its products to its customers and to provide "reasonable sales support" such as timely meeting customer demands, stocking the full line of Mission products, rotating product per Mission's strict standards, doing store resets when asked, and setting up displays when required.

13. Mission requires Delivery Workers to sell Mission products – and only Mission products – to Mission customers- and only Mission customers – at Mission's set prices.

14. Any failure to comply with the DA without cure gives Mission the right to fire the worker. Mission also has a progressive disciplinary system, just like many corporate employers, under which it has the right to terminate for successive failures to satisfy the terms of the DA in given timespans. Mission also sends out "Default Notices" or breach letters where a Delivery Worker falls short of customer service expectations and these failures can also lead to termination.

15. Moreover, where a Delivery Worker falls short of customer expectations or other requirements in the DA, Mission can and will take over the territory to ensure that its retail customers are satisfied and that its contractual obligations to the customer are satisfied.

16. While a Delivery Worker may sell their interest in the DA, Mission tightly regulates this process by ensuring that any purchaser meets its standards, that Mission and the Delivery Worker have no outstanding disputes prior to the sale, and that the purchaser enters the same DA or whatever version Mission is offering at that time.

17. Delivery Workers are a core component of Mission's DSD model. They are also heavily controlled by Mission in carrying out their work. Yet, Mission claims they are not employees and instead "independent contractors."

18. Mission has intentionally misclassified these Delivery Workers, including Plaintiff, as "independent contractors" to increase profits, save on taxes, gain a leg-up on its law-abiding competition and, in general, illegally shift costs of doing business in California to its hard-working delivery employees.

19. Mission's Delivery Workers, including Plaintiff, are legally presumed to be employees. Mission cannot rebut this presumption, as it exercises substantial control over Delivery Workers both through the DAs and in practice. Additionally, Delivery Workers operate within Mission's usual course of business and are essential to its core operations. Furthermore, they are not independently engaged in an established trade, occupation, or business. Instead, Mission compels them to distribute its products to its customers.

B. Mission's Misclassification of Delivery Workers Harms Them In Numerous Ways.

20. By opting to declare its Delivery Workers as Independent Contractors, Mission, in turn, does not pay Delivery Workers sufficient minimum wages. For example, Mission only pays Delivery Workers for their services on a per-items sold, commission, or "piece rate" basis. This means Mission systematically underpays Delivery Workers – or does not pay them at all – for activities not directly related to the sale, such as for driving or other non-productive time. Mission refused to pay Delivery Workers for this work even though the workers remained under the control of Mission at all relevant times. Mission also fails to pay Distributors or Delivery Workers for rest breaks as required by California law.

21. Furthermore, many of the hours worked by Distributors exceed 8 hours in a day or 40 in a week, yet Mission pays no overtime.

22. Mission also fails to provide all required meal and rest breaks or pay extra compensation to Delivery Workers in lieu of providing breaks.

23. Mission also requires Distributors to shoulder various work expenses including but not limited to those related to operating a delivery vehicle (gas, mileage, repairs, insurance, etc.) and using a hand-held device that Distributors must lease from Mission. Mission also deducts a "warehouse lease" fee from worker pay for access to Defendant's facilities to pick up their products for delivery. Mission reimburses none of these expenses to the workers and many of them are illegally deducted from Distributors' piece-rate or commission pay each week. Defendant also requires communication with Distributors while they are on the road which requires a cell phone and an internet and data plan. Mission does not reimburse for this necessary expense either.

24. As a further result of its misclassification of workers like Plaintiff, Defendant failed to provide accurate, itemized wage statements showing earnings, hours worked, pay rates, and the like in violation of Labor Code sections 226(a), (e), and 226.3. Defendant similarly fails to keep necessary payroll records showing the hours worked daily as required by Labor Code section 1174.

25. Still further, Defendant fails to pay all wages due upon termination under Labor Code section 203 given its underpayment of wages as stated above.

26. Defendant also fails to provide "paid sick days" to its employees in violation of Labor Code section 245 *et seq*. Specifically, Defendant does not provide paid sick days as required by section 246 or allow employees to use accrued paid sick days after the 90th day of employment.

V. CLASS ALLEGATIONS

27. Plaintiff brings this lawsuit as a class action on behalf of himself and all other similarly situated members of the Class, defined below. This action satisfies the ascertainability, numerosity, commonality, typicality, adequacy, predominance, and superiority requirements of class actions.

28. Plaintiff seeks to represent the following Class of persons:

> All individuals who personally operated a La Tortilla Factory territory in California and who were not classified as employees (the "Class").

29. This Class does not include Defendants, their officers, and/or their directors; the Judge to whom this case is assigned; or the Judge's immediate family or staff.

30. Plaintiff reserves the right to amend the above Class and to add additional classes and subclasses as appropriate based on investigation, discovery, and the specific theories of liability, among other reasons.

31. **Numerosity.** The potential members of the Class as defined are so numerous that joinder of all the members is impracticable. While the precise number of the members of the Class has not been determined, Plaintiff is informed and believes that there are over one hundred individuals meeting the Class definition. Defendant has data sufficient to identify the members of the Class, namely their list of Distributors maintained internally.

32. **Adequacy of Representation.** The named Plaintiff is fully prepared to take all necessary steps to fairly and adequately represent the interests of the Class defined above. Plaintiff's attorneys are ready, willing, and able to fully and adequately represent the Class and Plaintiff. Plaintiff's attorneys are highly experienced in employment Class action litigation. Plaintiff intends to prosecute this action vigorously.

33. **Common Questions of Law and Fact.** There are predominant common questions and answers of law and fact and a community of interest amongst Plaintiff and the claims of the Class as follows:

a. Whether Defendant misclassified Distributors as "independent contractors" instead of employees (e.g., whether Mission can meet its burden to meet each Prong of California's "ABC test" and/or its "*Borello* test" for employment classification);

b. Whether Defendant failed to reimburse Distributors for reasonable business expenses;

c. Whether Defendant made illegal deductions from Distributor's earnings;

d. Whether Defendant properly provided meal and rest breaks to Distributors;

e. Whether Defendant paid Distributors all wages when due;

f. Whether Defendant failed to properly pay Distributors overtime; and

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g. Whether Defendant engaged in an unlawful, unfair, and/or fraudulent business practice or act in violation of Business and Professions Code, section 17200 *et seq.* as it relates to Distributors.

34. **Typicality.** Plaintiff's claims are typical of the claims of all members of the Class because Defendant applied and continues to apply its illegal classification, pay, and interest practices to all Distributors.

35. **Superiority of a Class Action.** A Class action is superior to other available means for the fair and efficient adjudication of this controversy. Individual joinder of all members of the Class is not practicable, and questions of law and fact common to the Class predominate over questions affecting only individual Class members. Each Class member has been damaged and is entitled to recovery due to Defendants' conduct described in this Complaint. A Class action will allow those similarly situated to litigate their claims in the most efficient and economical manner for the parties and the judiciary. Plaintiff is unaware of any difficulties likely to be encountered in this action that would preclude its maintenance as a Class action.

VI. CAUSES OF ACTION

FIRST CAUSE OF ACTION
Failure to Compensate For All Hours Worked
Lab. Code, § 1197 and Applicable IWC Wage Orders
By Plaintiff individually and on behalf of the Class, against Defendant

36. Plaintiff incorporates by reference each and every allegation contained above.

37. California law requires Defendant to timely compensate all workers, including Plaintiff and all other Delivery Workers, for all hours worked, including nonproductive time, at least at the applicable minimum wage. *See* Labor Code § 1197. This is a separate obligation from paying piece rate compensation.

38. Defendant failed to separately compensate Plaintiff for rest periods, to the extent they were taken, or other nonproductive time as required. Plaintiff and his fellow class members worked many hours without pay including for things like driving, spending time at the warehouses gathering and organizing goods, and on paperwork.

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39. Plaintiff and the Class have thus been damaged by Defendant in an amount to be proven at trial, where they will seek to recover all damages, penalties, interest, costs, and attorneys' fees as appropriate.

SECOND CAUSE OF ACTION
Failure to Pay Overtime
Lab. Code, § 510 and Applicable IWC Wage Orders
By Plaintiff individually and on behalf of the Class, against Defendant

40. Plaintiff incorporates by reference every allegation contained above.

41. Labor Code, section 510 and applicable Wage Orders require overtime pay of at least 1.5 times an employee's regular rate of pay for all hours worked over 8 in a day or 40 in a week.

42. Distributors, including Plaintiff, worked well over 8 hours per day and well over 40 hours per week in line with Defendant's expectations and standards as necessary to complete the work assigned to them. Despite this, Mission paid them no overtime pay in violation of California law.

43. Plaintiff and the Class have thus been damaged by Defendant in an amount to be proven at trial, where they will seek to recover all damages, penalties, interest, costs, and attorneys' fees as appropriate.

THIRD CAUSE OF ACTION
Failure to Reimburse Expenses
Lab. Code, § 2802 and Applicable IWC Wage Orders
By Plaintiff individually and on behalf of the Class, against Defendant

44. Plaintiff incorporates by reference every allegation contained above.

45. California Labor Code, section 2802, and applicable Wage Orders require that employers reimburse employees for business expenses reasonably incurred. Defendant failed to do so.

46. Distributors here necessarily incurred many types of work expenses that Defendant did not reimburse for. These included but are not limited to obtaining a delivery vehicle and the types of costs incurred with vehicle ownership and use like gas, repairs, maintenance, insurance, and the like. Still further, Distributors had to purchase or lease a handheld computer.

47. Plaintiff and the Class incurred and paid these business expenses, and others, while performing necessary work for Defendant. Yet Mission never reimbursed them.

48. Plaintiff and the Class have thus been damaged by Defendant in an amount to be proven at trial, where they will seek to recover all damages, penalties, interest, costs, and attorneys' fees as appropriate.

FOURTH CAUSE OF ACTION
Unlawful Deductions from Wages
Lab. Code, §§ 221-223 and Applicable IWC Wage Orders
By Plaintiff individually and on behalf of the Class, against Defendant

49. Plaintiff incorporates by reference every allegation contained above.

50. Under Labor Code, section 221 it is unlawful for any employer to collect, receive, or deduct from an employee any part of wages theretofore paid by said employer to said employee. This protection extends to deductions for mistakes in employees' work or other non-malicious conduct. The only circumstances under which an employer can make a deduction from an employee's wage are due to cash shortage, breakage, or loss of equipment if the employer can show that the shortage, breakage, or loss was the result of the employee's gross negligence or dishonest or willful act. This exception does not apply here.

51. Despite this, Defendant made and continues to make numerous deductions from the wages of their misclassified Distributors. Defendant, for example, unlawfully deducts money for stale and missing product (shrink) and handheld computer fees, and warehouse fees, among other expenses.

52. Plaintiff and the Class have thus been damaged by Defendant in an amount to be proven at trial, where they will seek to recover all damages, penalties, interest, costs, and attorneys' fees as appropriate.

FIFTH CAUSE OF ACTION
Failure to Provide Accurate Wage Statements
Lab. Code, §§ 226 and 226.3 and Applicable IWC Wage Orders
By Plaintiff individually and on behalf of the Class, against Defendant

53. Plaintiff incorporates by reference every allegation contained above.

54. Per Labor Code Sections 226 and 226.3, employers must regularly furnish all employees with accurate itemized wage statements or "pay stubs." The purpose of these Labor Code sections is to ensure the employees can determine whether they are being paid their wages in

accordance with California law. Under Section 226(h), "[a]n employee may also bring an action for injunctive relief to ensure compliance with this section and is entitled to an award of costs and reasonable attorney's fees."

55. Defendant violated the above statutes by, among other things, failing to provide Distributors, including Plaintiff, with regular statements accurately listing gross and net wages earned and hours worked.

56. Plaintiff and the Class have thus been damaged by Defendant in an amount to be proven at trial, where they will seek to recover all damages, penalties, interest, costs, and attorneys' fees as appropriate.

57. Also, Defendant's violations of section 226, and applicable Wage Orders are ongoing and will continue until and unless this Court enters an injunction barring such violations. Therefore, Plaintiff, on behalf of himself and the Class, also seeks injunctive relief pursuant to Labor Code, section 226, subsections (e) and (g).

SIXTH CAUSE OF ACTION
Failure to Provide Required Meal Periods
Lab. Code § 226.7 and Applicable IWC Wage Orders
By Plaintiff individually and on behalf of the Class, against Defendant

58. Plaintiff incorporates by reference every allegation contained above.

59. Under Labor Code, sections 226.7 and 512, as well as applicable IWC Wage Orders, employers must provide a 30-minute uninterrupted, off-duty meal period for each work shift of more than five hours. Depending on hours worked, a second meal period may be owed as well. Where adequate meal periods are not provided, employees are entitled to one hour's compensation at their regular rate of pay.

60. Defendant has no meal or rest break policies. And in practice, Defendant failed to provide all required and uninterrupted meal periods to Distributors, including Plaintiff, or make any effort to relieve them of all duties during mandatory breaks.

61. Nor did Defendant pay premium wages in lieu of these breaks as required by law.

62. Distributors have not otherwise waived their entitlement to meal breaks.

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63. Plaintiff and the Class have thus been damaged by Defendant in an amount to be proven at trial, where they will seek to recover all damages, penalties, interest, costs, and attorneys' fees as appropriate.

SEVENTH CAUSE OF ACTION
Failure to Provide Required Rest Breaks
Lab. Code, §§ 226.2, 226.7 and Applicable IWC Wage Orders
By Plaintiff individually and on behalf of the Class, against Defendant

64. Plaintiff incorporates by reference every allegation contained above.

65. Pursuant to Labor Code, sections 226.2 and 226.7, as well as applicable IWC Wage Orders, employers must provide a 10-minute uninterrupted, off-duty rest break for each work shift of 3.5 hours or more. Depending on hours worked, a second rest break may be owed. Where workers earn piece rate wages, like earning a flat rate for every product sold at a customer's location, rest breaks must be paid separately from piece rate earnings. During these periods, an employer must relieve the employee of all duties and relinquish all control over how an employee spends his/her time. Where a rest break is not provided or appropriately paid, employees are entitled to one additional hour's compensation at their regular rate of pay.

66. Defendant failed to provide Distributors, including Plaintiff, all required rest breaks or separately pay Distributors or Plaintiff for being forced to forego breaks.

67. Plaintiff and the Class have thus been damaged by Defendant in an amount to be proven at trial, where they will seek to recover all damages, penalties, interest, costs, and attorneys' fees as appropriate.

EIGHTH CAUSE OF ACTION
Unfair Business Practices
Bus. & Prof. Code, § 17200 et seq
By Plaintiff individually and on behalf of the Class, against Defendant.

68. Plaintiff incorporates by reference every allegation contained above.

69. California's Unfair Competition Laws, at Bus. & Prof. Code Sections 17200, *et seq.*, prohibit "any unlawful, unfair, or fraudulent business act or practice." Defendant knowingly and willfully engaged in unlawful practices as described above, which include but are not limited to:

a. Intentionally misclassifying its employee Distributors or Delivery Workers as "independent contractors;"

b. Imposing and failing to reimburse business expenses on Plaintiff and the Class and illegally deducting wages from them in violation of Labor Code, sections 221 and 2802;

c. Failing to pay Distributors for each hour worked;

d. Failing to pay overtime to Distributor employees;

e. Failing to provide adequate meal and rest breaks to Distributors; and

f. Failing to provide accurate pay statements to Distributors in violation of Labor Code, section 226.

70. Defendant intended to, and did, profit from these illegal acts.

71. As a direct and proximate result of the above, Plaintiff and the Class have lost money or property, thereby entitling these individuals to restitution in amounts not yet known, but to be ascertained at trial.

72. Defendant's unlawful acts are ongoing and continue to this day. Plaintiff thus also seeks injunctive relief as against Defendant, including public injunctive relief. Plaintiff seeks such injunctive relief here prohibiting Defendant from continuing its illegal practice of misclassifying Distributors, including Plaintiff, and denying them the benefit of important wage laws, among other things.

73. If Defendant is not enjoined from engaging in the unlawful business practices described above Defendant will continue to engage in the unlawful business practices and Plaintiff, Class members, and the public will be irreparably injured. The exact extent, nature, and amount of such injury is difficult to ascertain or forecast now.

VII. PRAYER FOR RELIEF

Plaintiff prays for judgment against Defendant, as follows:

1. For an order certifying the Class as described herein, appointing Plaintiff as class representative, and his counsel as class counsel;

2. For damages according to proof, where available;

3. For enhanced damages, liquidated damages, and penalties as permitted under prevailing law;

4. For pre-judgment and post-judgment interest where allowable;

5. For costs of suit;

6. For injunctive relief, including public injunctive relief, as described herein;

7. For restitution as described herein;

8. For attorneys' fees per Statute, the common fund doctrine, the Public Benefit doctrine (Cal. Code Civ. Proc. § 1021.5), and all other applicable rules and doctrines; and

9. For such other and further relief as this Court may deem just and proper.

VIII. DEMAND FOR JURY TRIAL

Plaintiff demands a trial by jury on all issues so triable.

Respectfully submitted:

Dated: February 11, 2025

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