

FILED
Superior Court of California
County of Los Angeles

SEP 16 2020

Sherri R. Carlin, Clerk
Alfredo Morales deputy
ALFREDO MORALES

**SUPERIOR COURT OF CALIFORNIA
COUNTY OF LOS ANGELES**

JOSE CUEVAS; individually and on behalf of
all others similarly situated,

Plaintiff,

vs.

PHILLIPS FRACTOR & COMPANY, LLC;
CSRS; BAKERSFIELD MARKET
RESEARCH and, DOES 1 through 100,
Inclusive

Defendants.

Case No.: BC656142

~~PROPOSED~~ ORDER GRANTING
MOTION FOR FINAL APPROVAL
OF CLASS ACTION SETTLEMENT

Date: September 16, 2020
Time: 11:00 a.m.
Dept.: SSC-7

I. BACKGROUND

Plaintiff sues Defendants for negligent survey work performed in an underlying wage and hour action brought by Plaintiff.

1 On July 17, 2009, Jose Cueveas filed a class action lawsuit in the United States
2 District

3 Court for the Eastern District of California (Case No., CV F 09-1247 LJO DLB)
4 (*Arredondo* Action) against Delano Farms for off-the-clock work and non-reimbursed
5 expenses for the purchase of work tools.

6 The Class hired Defendant Phillips Fractor & Company, LLC ("PFC") to act as
7 consultants and expert witnesses on behalf of the class. William Roberts, Ph.D was the
8 principal expert witness and agent of PFC.

9 In or around September 2015, in order to facilitate the consulting and expert
10 witness services, on the recommendation of Roberts, plaintiffs in the *Arredondo* Action
11 hired defendant California Survey Research Services, Inc. ("CSRS") to execute and
12 administer a door-to-door questionnaire designed by Roberts. CSRS retained defendant
13 Bakersfield Market Research ("BMR") to conduct the field work for the door-to-door
14 questionnaires. Plaintiffs allege that BMR was undercapitalized, understaffed, and
15 under experienced. Plaintiffs contend that neither BMR nor its principals had any
16 significant prior experience with surveys of this kind, and that defendants PFC and
17 CSRS had no reasonable basis upon which to believe that BMR had any such
18 experience.

19 In April and May 2016, the *Arredondo* Action Class Counsel suspected
20 irregularities in the questionnaire data and conducted its own analysis of the
21 questionnaire work.

22 The *Arredondo* Action Class Counsel notified the defendants and the court in
23 the *Arredondo* Action of the suspected fraudulent questionnaire results in May 2016,
24 and then withdrew the Roberts expert report based on their belief that the data had been
25 fraudulently collected and/or fabricated.

1 After withdrawing the Roberts expert witness report, the *Arredondo* Action
2 Class Counsel sought relief from the District Court to modify the scheduling order to
3 permit the plaintiffs in that case to conduct a new survey. The Court denied this relief.
4 Plaintiffs contend that this effectively left the plaintiffs in the *Arredondo* Action
5 without an expert witness and expert witness report for its claims, causing Plaintiffs to
6 have to settle the *Arredondo* action for a much lower sum.

7 In March 2017, Plaintiff filed a complaint against Defendants, Bakersfield
8 Market Research, California Survey Research Services, Inc., and Phillips Fractor &
9 Company, LLC alleging 1) professional negligence; 2) breach of contract; 3)
10 malpractice; and 4) breach of fiduciary duties.

11 Over the course of several months Plaintiff and Defendant, Phillips Fractor &
12 Company, LLC engaged in Settlement negotiations. On or about July 13, 2017, Plaintiff
13 and Defendant Phillips Fractor & Company agreed to resolve this lawsuit for the policy
14 limits (\$1,000,000.00) remaining after defense costs incurred to bring the matter to final
15 judgment on an approved Settlement.

16 On January 9, 2018, Plaintiff Jose Cuevas filed a motion for approval of good
17 faith Settlement with Defendant Phillips Fractor & Company for applicable policy
18 limits. On January 17, 2018, Defendant California Survey Research Services, Inc.,
19 objected to the Settlement motion noting that Plaintiffs failed to provide evidentiary
20 support for its claim that the Settlement for Phillips Fractor & Company's policy limits
21 was made in good faith.

22 On February 13, 2018, the parties engaged in negotiations as to the nature and
23 extent of any discovery necessary to the resolution of Plaintiff's motion for good faith
24 Settlement. The parties agreed in lieu of extensive formal discovery the parties would
25 exchange declarations as to pertinent relevant financial information.

1 On February 15, 2018, Defendant California Survey Research Services, Inc.,
2 submitted a declaration attesting to the fact that at the time of the incident they did not
3 possess an E & insurance policy or a commercial General Liability Policy that would be
4 applicable to the claim made by Plaintiffs.

5 On or about February 20, 2018, Plaintiffs and Defendant California Survey
6 Research Services, Inc., agreed to resolve the lawsuit in the amount of \$5,000.00. The
7 agreement was negotiated at arm's length and was entered into at advice of counsel for
8 each party.

9 On April 6, 2018, having been unable to find or discern any available assets or
10 insurance, Plaintiff filed a dismissal with prejudice on his complaint against Defendant
11 Bakersfield Market Research.

12 On April 18, 2018, the parties finalized the Joint Stipulation of Settlement and
13 Release of Class Action between Plaintiffs and Defendants, California Survey Research
14 Services and Phillips Fractor & Company. The Parties subsequently executed their Joint
15 Stipulation of Settlement and Release of Class Action ("Settlement Agreement"), a
16 signed copy of which is attached to the Declaration of Allen Ball ("Ball Decl.") as
17 Exhibit 1.

18 On August 7, 2018, the Court issued a checklist of items for the parties to
19 address and continued preliminary approval. In response, on November 27, 2018,
20 counsel filed the Amended Settlement Agreement attached to the Amended Declaration
21 of Allen Ball ("Ball Supp. Decl.") as Exhibit 1.

22 On April 24, 2019, the Court issued a second checklist of items for the
23 parties to address and continued preliminary approval. In response, on June 14, 2019,
24 counsel filed a partially executed Amended Settlement Agreement attached to the
25 Second Amended Declaration of Allen Ball ("Ball 2nd Supp. Decl.") as Exhibit 1.

1 On September 12, 2019, counsel filed a fully executed Second Amended
2 Settlement Agreement with the Court.

3 On September 18, 2019, the Court continued preliminary approval and
4 requested further briefing. In response, on October 11, 2019, counsel filed supplemental
5 briefing ("Supp. Brief") and a fully executed Third Amended Settlement Agreement
6 attached to the Supplemental Declaration of Allen Ball ("Ball 3rd Supp. Decl.") as
7 Exhibit D-1.

8 The Court granted preliminary approval of the Amended Settlement Agreement
9 on October 30, 2020. Notice was given to the Class Members as ordered. (See
10 Declaration of Derek Smith ("Smith Decl.") Now before the Court is Plaintiff's
11 motion for final approval of the Settlement Agreement, including for payment of fees,
12 costs, and service awards to the named plaintiffs.

13 For the reasons set forth below the Court grants final approval of the settlement
14 on conditions that counsel disclose the fee split in this matter or provide a copy of the
15 fee splitting agreement to the court.

16 17 **II. THE TERMS OF THE SETTLEMENT**

18 19 **A. SETTLEMENT CLASS DEFINITION**

- 20 • **"Settlement Class Members"** means includes any and all individuals, who do
21 not opt out, who are included in the *Arredondo* Settlement Class certified in the
22 *Arredondo* Action, whether or not they opted out of that class. (Settlement
23 Agreement, ¶30.)
 - 24 ○ **"*Arredondo* Settlement Class"** means the Settlement class certified by
25 the Court in the *Arredondo* Action and defined as any and all individuals

1 who are or were employed as nonexempt agricultural employees of Cal-
2 Pacific Farm Management, LP, T&R Bangi's Agricultural Services, Inc.,
3 Kern Ag Labor Management, Inc., La Vina Contracting, Inc., or Elite Ag
4 Labor Services, Inc. and performed work at Delano Farms in California
5 between July 17, 2005 and the date of entry of the [Proposed] Order of
6 Certification and Preliminary Approval in the *Arredondo* Action who did
7 not opt out, excluding those who worked only as irrigators, tractor
8 drivers, or swampers or only in cold storage. (§10.)

- 9 • **"Class Period"** means the period July 17, 2005 through February 14, 2017.
10 (§10; RJN, Ex. A.)
- 11 • The parties stipulate to class certification for settlement purposes only. (§62.)
- 12 • The number off employees who participated in the Arredondo Settlement Class
13 include 5,758 employees who submitted claims forms, inclusive of 44
14 employees opted out ("Claiming Class Members".) Only Claiming Class
15 Members will recover a portion of the Settlement Amount. (§30)

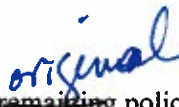
16

17 **B. THE MONETARY TERMS OF SETTLEMENT**

18 The essential monetary terms are as follows:

- 19 • The Settlement Amount ("SA") is **\$1,005,000.00¹ non-reversionary.** (§29, 66.)

20

21 

22 ¹ \$1,005,000.00 is the combined total of (i) \$5,000.00 from Defendant CSRS and (ii) the ~~remaining~~ policy

23 limits of the \$1,000,000 Miscellaneous Professional Liability Insurance Policy Hanover Insurance

24 Company issued to Defendant PFC, Policy No. LHF A134029-03, with effective dates of October 27,

25 2016 through October 27, 2017 (the "Hanover Policy"). The Hanover Policy is a "defense within limits"

policy with claim expenses included within the limit of liability and the remaining policy limits, which

- 1 • The Final Settlement Amount (“FSA”) (after defense fees and costs) is estimated
2 to be \$767,000.² (¶65.a.)
- 3 • The Net Settlement Amount (“NSA”) (\$511,887) is the FSA minus the
4 following:
 - 5 ○ Up to \$191,750 (1/4 of the SA) for attorney fees (¶18.ii);
 - 6 ○ Up to \$7,500 for litigation costs (¶18.iii);
 - 7 ○ Up to \$1,000 for a Service Award to the Class Representative (¶70); and
 - 8 ○ Estimated \$54,863 for Administration Expenses.³ (¶71)
- 9 • **Funding of the Qualified Settlement Fund by Defendants:**
 - 10 ○ Defendant PFC shall deposit not less than \$40,000 into the Qualified
11 Settlement Fund established by the Settlement Administrator within 60
12 days after entry of the [Proposed] Order of Certification and Preliminary
13

14 have been reduced by defense fees and cost paid, and anticipated to be paid, by the insurer under the
15 policy, constitutes the remaining policy limits. (Settlement Agreement, ¶29.)
16

17 ² According to PFC, approximately \$225,000 in defense fees and costs have been paid under the Hanover
18 Policy as of the date of the amended Settlement Agreement. PFC estimates that an additional \$13,000
19 may be paid under the Hanover Policy through the conclusion of this matter. Accordingly, the parties
20 estimate that the Final Settlement Amount is \$767,000. (¶29.)
21

22 ³ Of the \$54,863 in administration costs, \$22,098 are allocated for Class Member legal notification
23 procedures, \$2,180 for telephone support, \$6,634 for forms processing; 9,750 disbursements & tax
24 reporting, \$8,646 for residual disbursement, and \$8,276 for postage. (Settlement Agreement, ¶71.) KCC
25 has provided counsel with an \$2,500 discount. (¶75)

1 Approval. PFC shall deposit the balance of its portion of the Settlement
2 Amount within 60 days of the Effective Date of the Settlement, or earlier
3 at PFC's option. (§67.)

- 4 ○ Defendant CSRS shall deposit \$5,000.00 into the Qualified Settlement
5 Fund established by the Settlement Administrator within 60 days after
6 entry of the [Proposed] Order of Certification a Preliminary Approval.
7 (§68.)

- 8 ○ **Effective Date.** The Effective Date of this Settlement shall be the date on
9 which all the following have occurred: a. Entry by the Court of the
10 [Proposed] Order of Certification a Preliminary Approval in the form
11 attached to the Settlement Agreement as Exhibit F; b. Approval by the
12 Court of the Settlement, following notice to the Settlement Class and the
13 Fairness and Approval Hearing; c. Entry by the Court of the [Proposed]
14 Final Order and Judgment in the form set forth in Exhibit E; and d. The
15 expiration of the later of: (i) any time for appeal or review of such Final
16 Order and Judgment; (ii) if any appeal is filed and not dismissed with
17 prejudice after such Final Order and Judgment is upheld on appeal in all
18 material respects and is no longer subject to review upon appeal or review
19 by writ of certiorari to any Court; or (iii) in the event that the Court enters
20 a final order and judgment in a form other than that provided above
21 ("Alternative Judgment"), and none of the Parties hereto elect to terminate
22 this Settlement, the date on which such Alternative Judgment becomes
23 final and no longer subject to appeal or review by any court or tribunal.
24 (§95.)
25

- Defendants have provided declarations evidencing their respective financial statuses. (See Declaration of Robert W. Jones (“Jones Decl.”); Declaration of Robert Neff (“Neff Decl.”).)
- This is not a claims-made settlement. (§11.)
 - “**Claiming Class Member**” means, any member of the Settlement Class who participated in the Settlement in the Arredondo Action, either by submitting a claim or opting out of the Arredondo Settlement Class, who does not opt out of the Settlement Class. (§11)
- **Plan of Allocation.** Each Claiming Class Member shall be entitled to a share of the Net Settlement Fund determined pursuant to the following Plan of Allocation that was accepted by the Court and adopted in the underlying *Arredondo* Action:
 - The payment made to each Claiming Class Member shall be determined pro rata based on the total number of weeks that each Claiming Class Member performed Class Work relative to the total number of weeks that all Claiming Class Member performed Class Work. Work weeks after April 8, 2012 will be valued at 50% of the value of work weeks occurring prior to April 8, 2012. This is intended to account for changes in the practices of the defendants in the *Arredondo* Action that appear to have taken place, reducing both the likelihood and the frequency of the alleged violations. (§81.a.)
 - Each Claiming Class Member shall be entitled to a payment that is the product of the total amount of the Net Settlement Fund multiplied by the fraction determined by the total number of weeks and weighted according to the formula set forth above that such Claiming Class Member performed Class Work divided by the total number of weeks that all

1 Claiming Class Members collectively performed Class Work.

2 Appropriate tax withholding as required by law shall be deducted from
3 each Claiming Class Member's payment before calculating the net
4 payment. (§81.b.)

- 5 • For purposes of this Plan of Allocation, the term "week" shall be defined
6 as seven consecutive days beginning on Monday and ending on Sunday.

7 If a Settlement Class Member performs any amount of Class Work during
8 a given week, that week shall be counted as a week during which the
9 Settlement Class Member performed Class Work. (§81.c.)

- 10 • **Uncashed Checks:** The Settlement Administrator shall make reasonable efforts
11 to re-notify or re-mail checks to Claiming Class Members who have not cashed
12 their checks within 180 days of the initial mailing of such checks, including
13 additional efforts to obtain a correct address for such Claiming Class Members.
14 (§83.e.) If, upon the expiration of 90 days after re-mailing of undeliverable check
15 or re-notification to Claiming Class Members whose checks remained uncashed,
16 such checks still remain uncashed, the Settlement Administrator shall cause stop-
17 payment notices to be issued against the checks not cashed. The Settlement
18 Administrator will then distribute and deliver the total amount of the uncashed
19 checks to the remaining Claiming Class Members pro rata according to the Plan
20 of Allocation as a supplements payment. (§83.f.)

21 C. TERMS OF RELEASES

22
23 The releases set forth herein shall be effective and binding ^{upon} ~~as of the Effective~~
24 ~~Date, after~~ Defendants ^{fully} fund the Settlement Amount, after which all parties subject
25

1 to these releases shall be enjoined from commencing or prosecuting any claim or action
2 subject to these releases. (Notice, pg. 10.)

- 3 • **Releases by Settlement Class Members.** Effective upon each Defendant's
4 deposit of its respective portion of the Settlement Amount into the Qualified
5 Settlement Fund and provided that no Party terminates this Settlement, each
6 Settlement Class Member and the Representative Plaintiff, and each of his or her
7 predecessors, successors, assigns, heirs, executors, administrators, attorneys, and
8 agents, and any other person acting on his, her, or their behalf, releases each of
9 CSRS, its owners, Affiliates, shareholders, general and limited partners,
10 predecessors, insurers, agents, employees, independent contractors, heirs,
11 executors, successors, transferees, officers, officials, directors, members,
12 managers, attorneys, beneficiaries trustees, personal representatives, or other
13 representatives and each of PFC, its owners Affiliates, shareholders, general and
14 limited partners, predecessors, insurers, agents, employees, independent
15 contractors, heirs, executors, successors, transferees, officers, officials, directors
16 members, managers, attorneys, beneficiaries, trustees, personal representatives,
17 or other representatives (collectively the "Released Parties") of and from any and
18 all claims, actions, rights, demands, charges, debts, liens, obligations, costs,
19 expenses, wages, restitution, compensation, disgorgement, benefit(s) of any type,
20 equitable relief, contract obligations, liquidated damages, statutory damages,
21 damages, penalties of whatever type or description attorney's fees, interest,
22 complaints, causes of action, obligations, or liability of any and every kind,
23 known or unknown, at law or in equity, contingent or otherwise (i) that were
24 asserted or that could have been asserted in the Current Class Action including
25 without limitation in the Complaint, or (ii) that are, were, or could be based on,

1 that arose or could arise out of, or that in any way relate to the same or
2 substantially similar facts, transactions, events, policies, acts, or omissions as
3 alleged in the Current Class Action or otherwise related to Defendant's
4 respective work in the *Arredondo* Action on behalf of the Settlement Class
5 Members, including the Representative Plaintiff (collectively the "Released
6 Claims"). The Released Claims do not include claims that could otherwise be
7 brought by Settlement Class Members against the defendants in the *Arredondo*
8 *Action* or against any other employer of the Settlement Class Members for
9 unpaid wages, or other claims arising out of their employment Subject to the
10 preceding sentence. The Parties agree, and, upon approval of the Settlement, the
11 Court will order that the Released Claims include but are not limited to any and
12 all claims against each and all of the Released Parties as described herein. (§85.)

13 • **Mutual Additional Releases by the Parties and Settlement Class Members:**

14 In addition to the releases set forth in the preceding paragraph, the Parties,
15 including the Settlement Class Members, mutually specifically acknowledge that
16 they each release, each from the other, not only the Released Claims set forth
17 above but any and all claims, arising from and/or related in any way, the same or
18 substantially similar facts, transactions, events, policies, acts, or omissions as
19 alleged in the Current Class Action or otherwise related to Defendant's work in
20 the *Arredondo* Action on behalf of the Settlement Class Members, including the
21 Representative Plaintiff, whether known or unknown, as of the date of entry of
22 the [Proposed] Order of Certification and Preliminary Approval. Such additional
23 releases shall not include claims that could otherwise be brought by Settlement
24 Class Members against the defendants in the *Arredondo* Action or against any
25 other employer of the Settlement Class Members for unpaid wages, or other

claims arising out of their employment. Subject to the preceding sentence, this additional release shall have the effect of resolving all claims which may currently exist between and/or among the Parties. (§86)

- **California Civil Code Section 1542**: In connection with the Released Claims identified in paragraph 85, and with the mutual releases identified in paragraph 86, and with exception of any claims that could otherwise be brought by Settlement Class Members against the defendants in the Arredondo Action or against any other employer of the Settlement Class Members for unpaid wages, or other claims arising out of their employment all parties mutually, including the Settlement Class Members and the named Parties each for himself, herself, or itself waives the provisions of California Civil Code Section 1542. (§88)

III. ANALYSIS OF SETTLEMENT AGREEMENT

“Before final approval, the court must conduct an inquiry into the fairness of the proposed settlement.” Cal. Rules of Court, rule 3.769(g). “If the court approves the settlement agreement after the final approval hearing, the court must make and enter judgment. The judgment must include a provision for the retention of the court's jurisdiction over the parties to enforce the terms of the judgment. The court may not enter an order dismissing the action at the same time as, or after, entry of judgment.” Cal. Rules of Court, rule 3.769(h).

As discussed more fully in the Order conditionally approving the settlement, “[i]n a class action lawsuit, the court undertakes the responsibility to assess fairness in order to prevent fraud, collusion or unfairness to the class, the settlement or dismissal of a class action. The purpose of the requirement [of court review] is the protection of those class members, including the named plaintiffs, whose rights may not have been given due

1 regard by the negotiating parties.” See *Consumer Advocacy Group, Inc. v. Kintetsu*
2 *Enterprises of America* (2006) 141 Cal. App.4th 46, 60 [internal quotation marks
3 omitted]; see also *Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 245
4 (“*Wershba*”), disapproved on another ground in *Hernandez v. Restoration Hardware*
5 (2018) 4 Cal.5th 260 [Court needs to “scrutinize the proposed settlement agreement to the
6 extent necessary to reach a reasoned judgment that the agreement is not the product of
7 fraud or overreaching by, or collusion between, the negotiating parties, and that the
8 settlement, taken as a whole, is fair, reasonable and adequate to all concerned.”] [internal
9 quotation marks omitted].

10 “The burden is on the proponent of the settlement to show that it is fair and
11 reasonable. However ‘a presumption of fairness exists where: (1) the settlement is
12 reached through arm's-length bargaining; (2) investigation and discovery are sufficient to
13 allow counsel and the court to act intelligently; (3) counsel is experienced in similar
14 litigation; and (4) the percentage of objectors is small.’” See *Wershba, supra*, 91
15 Cal.App.4th at pg. 245, citing *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794,
16 1802. Notwithstanding an initial presumption of fairness, “the court should not give
17 rubber-stamp approval.” See *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th
18 116, 130. “Rather, to protect the interests of absent class members, the court must
19 independently and objectively analyze the evidence and circumstances before it in order
20 to determine whether the settlement is in the best interests of those whose claims will be
21 extinguished.” *Ibid.*, citing 4 Newberg on Class Actions (4th ed. 2002) § 11:41, p. 90. In
22 that determination, the court should consider factors such as “the strength of plaintiffs’
23 case, the risk, expense, complexity and likely duration of further litigation, the risk of
24 maintaining class action status through trial, the amount offered in settlement, the extent
25 of discovery completed and stage of the proceedings, the experience and views of

1 counsel, the presence of a governmental participant, and the reaction of the class
2 members to the proposed settlement.” *Id.* at 128. This “list of factors is not exclusive and
3 the court is free to engage in a balancing and weighing of factors depending on the
4 circumstances of each case.” *Wershba, supra*, 91 Cal.App.4th at pg. 245.)

5 **A. A Presumption of Fairness Exists**

6 The Court preliminarily found in its Order of October 31, 2019, that the
7 presumption of fairness should be applied. No facts have come to the Court’s attention
8 that would alter that preliminary conclusion. Accordingly, the settlement is entitled to a
9 presumption of fairness as set forth in the preliminary approval order.

10 **B. The Settlement Is Fair, Adequate, and Reasonable**

11 The settlement was preliminarily found to be fair, adequate and reasonable.

12 The notice process resulted in the following:

13 Number of class members: 5,758

14 Number of notices mailed: 5,758

15 Number of undeliverable notices: 26

16 Number of opt-outs: 26

17 Number of objections: 0

18 Number of participating class members: 5,732

19 (Smith Decl. ¶¶3-13.)

20 The Court finds that the notice was given as directed and conforms to due process
21 requirements. Given the reactions of the Class Members to the proposed settlement and
22 for the reasons set for in the Preliminary Approval order, the settlement is found to be
23 fair, adequate, and reasonable.

24
25 **C. CLASS CERTIFICATION IS PROPER**

1 For the reasons set forth in the preliminary approval order certification of the
2 Class for purposes of settlement is appropriate.

3
4 **D. ATTORNEY FEES AND COSTS**

5 Class Counsel requests **\$191,750** (25%) for attorney fees and **\$7,500** for costs.
6 (Ball Decl. ISO Final Approval, ¶¶41, 54.)

7 Courts have an independent responsibility to review an attorney fee provision and
8 award only what it determines is reasonable. *Garabedian v. Los Angeles Cellular*
9 *Telephone Company* (2004) 118 Cal.App.4th 123, 128. A percentage calculation is
10 permitted in common fund cases. *Laffitte v. Robert Half Int'l, Inc.* (2016) 1 Cal.5th 480,
11 503.

12 In this case, it does not seem that counsel has disclosed information regarding any
13 fee splitting agreement and whether the client has given written approval. (*Mark v.*
14 *Spencer* (2008) 166 Cal.App.4th 219; Rules Prof. Conduct, rule 1.5.1; Cal. Rules of
15 Court, rule 3.769.) Approval herein is contingent on counsel disclosing the fee split in
16 this matter or providing a copy of the fee splitting agreement to the court.

17 In the instant case, fees are sought pursuant to the percentage method. (Motion
18 ISO Fees, pgs. 6-9.) The \$191,750 fee request is 25% of the ~~Gross~~ ^{Final} Settlement Amount

19 Here, the \$266,666.67 fee request represents a reasonable percentage of the total
20 funds paid by Defendant. Further, the notice expressly advised class members of the fee
21 request, and no one objected. (Smith Decl., ¶12 and Exhibit A thereto.) Accordingly, the
22 Court awards fees in the amount of **\$191,750**.

23 Class Counsel requests \$7,500 in costs. This is equal to the \$7,500 cap provided
24 in the settlement agreement (¶18.iii). The amount was disclosed to Class Members in
25 the Notice, and no objections were received. (Smith Decl., ¶12 and Exhibit A thereto.)

1 Class Counsel represent that they have incurred actual costs in the amount of \$9,264.13
2 (\$8,878.25 by the Law Office of Ball & York and \$385.88 by Martinez, Agulasoch &
3 Lynch, A Professional Law Corporation). (Ball Decl. ISO Final Approval, ¶54 and
4 Exhibits 2-3 thereto.) The costs include, but are not limited to case anywhere costs
5 (\$1,128), transcript fees (\$375), filing fees (\$1,435), and service costs (\$3,172). (*Ibid.*)

6 The costs appear to be reasonable and necessary to the litigation, are reasonable
7 in amount, and were not objected to by the class.

8 For all of the foregoing reasons, costs of ^{7,500.00} ~~\$14,877.05~~ are approved.

9 **E. SERVICE AWARDS TO CLASS REPRESENTATIVES**

10 A service (or incentive) fee award to a named class representative must be
11 supported by evidence that quantifies the time and effort expended by the individual and
12 a reasoned explanation of financial or other risks undertaken by the class representative.
13 See *Clark v. American Residential Services LLC* (2009) 175 Cal.App.4th 785, 806-807;
14 see also *Cellphone Termination Cases* (2010) 186 Cal.App.4th 1380, 1394-1395
15 [“Criteria courts may consider in determining whether to make an incentive award
16 include: (1) the risk to the class representative in commencing suit, both financial and
17 otherwise; (2) the notoriety and personal difficulties encountered by the class
18 representative; (3) the amount of time and effort spent by the class representative; (4) the
19 duration of the litigation and; (5) the personal benefit (or lack thereof) enjoyed by the
20 class representative as a result of the litigation. (Citations.)”].

21 Here, the Class Representative requests an enhancement award in the amount of
22 **\$1,000**. (Cuevas Decl., ¶5.)

23 Mr. Cuevas represents that his contributions to this litigation include, but are not
24 limited to “regularly consulting with [counsel]; reviewing documents filed by [counsel]
25

1 and various orders entered by the Court; and discussing the parameters for an appropriate
2 resolution of the case and ultimately agreeing to the Settlement.” (Cuevas Decl., ¶7.)

3 In light of the above-described contributions to this action, and in
4 acknowledgment of the benefits obtained on behalf of the class, a **\$1,000** service award
5 for plaintiff Cuevas is reasonable and approved.

6 **F. SETTLEMENT ADMINISTRATION COSTS**

7 The Settlement Administrator, KCC, requests **\$60,000** in compensation for its
8 work in administering this case. At the time of preliminary approval, costs of
9 settlement administration were estimated at \$54,863. (¶71) Class Members were
10 provided with notice of this amount and did not object. (Smith Decl., ¶12 and Exhibit A
11 thereto.) The increased costs of administration are due to the second notice mailed to
12 class members as a result of the final approval hearing being continued due to the
13 pandemic. (Ball Decl. ISO Final, ¶25.)

14 Accordingly, claims administration costs are approved in the amount of **\$60,000**. 54,863.00

15 **IV. CONCLUSION AND ORDER**

16 Contingent on counsel providing a copy of the fee splitting agreement, the Court
17 hereby:

- 18 (1) Grants class certification for purposes of settlement;
 - 19 (2) Grants final approval of the settlement as fair, adequate, and reasonable;
 - 20 (3) Awards **\$191,750** in attorney fees to Class Counsel;
 - 21 (4) Awards **\$7,500** in litigation costs to Class Counsel;
 - 22 (5) Awards **\$7,500** as a Class Representative Service Award;
 - 23 (6) Awards **\$54,863.00** in claims administration costs to KCC;
- 24
25

1 (7) Orders class counsel to lodge a proposed Judgment, consistent with this ruling
2 and containing the class definition, full release language, and a statement that no
3 class members opted out by 9/16/, 2020;

4 (8) Orders class counsel to provide notice to the class members pursuant to
5 California Rules of Court, rule 3.771(b); and

6 (9) Sets a Non-Appeal Case Review re: Final Report re: Distribution of
7 Settlement Funds for

8 1/15/2020, at 10:00am.

9 Final Report is to be filed by

10 1/8/2020.

11
12
13 Dated: 9-16-2020

14 
15 _____
16 Hon. Amy Hogue

17 Judge of the Superior Court
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