

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA**

MARGARITA ROSALES, et al.,)	Case Nos.: 1:09-cv-00707-AWI-JLT
Plaintiffs,)	
v.)	FINDINGS AND RECOMMENDATIONS
)	GRANTING FINAL APPROVAL OF CLASS
EL RANCHO FARMS, et al.,)	SETTLEMENT (Doc. 184)
Defendants.)	
)	FINDINGS AND RECOMMENDATIONS
ANGEL LOPEZ CRUZ, et al.,)	GRANTING IN PART PLAINTIFFS' MOTION
Plaintiffs,)	FOR ATTORNEY FEES (Doc. 185)
v.)	
EL RANCHO FARMS, et al.,)	
Defendants.)	
)	

22 Plaintiffs Margarita Rosales and Angelica Rosales¹ seek final preliminary approval of a class
23 settlement reached with El Rancho Farms and Garza Contracting Inc. (Doc. 184) In addition, Plaintiffs
24 seek an award of attorneys' fees and costs, claims administration costs, and class representative
25 enhancement payments from the settlement fund. (Doc. 185)

26 Because Plaintiffs carry their burden to demonstrate certification of the Settlement Class is

27 _____
28 ¹ The true and correct name of "Angelica Rosales" is "Maria Lorena Corza Alvarado," though she is known as
"Lorena Corza." Ms. Corza reports she used the name of her daughter, "Angelica Rosales," while working at El Rancho.
(Doc. 35-7 at 3). Therefore, the Court will refer to plaintiff "Angelica Rosales" as "Lorena Corza."

1 appropriate under Rule 23 of the Federal Rules of Civil Procedure and that the settlement terms are fair,
2 reasonable, and adequate, the Court recommends that Plaintiffs' request for final approval of the
3 Settlement be **GRANTED**. In addition, the Court recommends that Plaintiff's request for attorney fees
4 be **GRANTED** in the modified amount of \$690,089.65; costs be awarded in the amount of \$36,620.54;
5 and Plaintiffs' request for enhancement payments be **GRANTED** in the modified amount of \$7,500 for
6 Margarita Rosales and Lorena Corza, and \$4,000 for Angel Lopez Cruz and Angelica Alvarez.

7 **BACKGROUND**

8 On March 5, 2004, Arnaldo Lara, Mario Laveaga, Mirna Diaz, Paula Leon, and Raul Diaz,
9 individually and acting for the interests of the general public, ("Lara Plaintiffs") initiated an action in
10 the Kern County Superior Court against Rogelio Casimiro, doing business as Golden Grain Farm
11 Labor.² On September 12, 2005, the Lara Plaintiffs filed a second amended complaint and identified
12 other employers of agricultural farm workers as defendants, including El Rancho Farms; Stevco, Inc.;
13 Lucich Family Farms; and Castlerock Farming and Transport, Inc.

14 On November 9, 2005, Plaintiffs' counsel initiated an action against table grape growers based
15 in Kern County, including D.M. Camp & Sons; Marko Zaninovich, Inc.; Sunview Vineyards of
16 California, Inc.; and Giumarra Vineyards Corporation.³ (*Doe v. D.M. Camp & Sons*, Case No. 1:05-
17 cv-1417-AWI-SMS, Doc. 2) At the time the complaint was filed, the plaintiffs were unnamed former
18 and current employees of the defendants. (*See id.*) On December 6, 2005, the plaintiffs filed a First
19 Amended Complaint, identifying additional defendants, including El Rancho Farms. (*Doe*, Doc. 9)
20 The Court acknowledged the *Doe* matter was related to several other cases initiated against grape
21 growers. *See Doe v. D.M. Camp & Sons*, 624 F.Supp.2d 1153 (E.D. Cal. 2008).

22 Defendants in *Doe*, including El Rancho Farms, filed motions to dismiss, which were granted
23

24 ² The Court may take notice of facts that are capable of accurate and ready determination by resort to sources
25 whose accuracy cannot reasonably be questioned. Fed. R. Evid. 201(b); *United States v. Bernal-Obeso*, 989 F.2d 331, 333
26 (9th Cir. 1993). The record of a court proceeding is a source whose accuracy cannot reasonably be questioned, and judicial
27 notice may be taken of court records. *Mullis v. United States Bank. Ct.*, 828 F.2d 1385, 1388 n.9 (9th Cir. 1987); *Valerio v.*
Boise Cascade Corp., 80 F.R.D. 626, 635 n.1 (N.D. Cal. 1978), *aff'd* 645 F.2d 699 (9th Cir. 1981); *see also Colonial Penn*
Ins. Co. v. Coil, 887 F.2d 1236m 1239 (4th Cir. 1989); *Rodic v. Thistledown Racing Club, Inc.*, 615 F.2d 736, 738 (6th Cir.
1980). Therefore, judicial notice is taken of the original Complaint and the Second Amended Complaint filed in *Lara v.*
Casimiro, case number S-1500-CV-252445-SPC. In addition, judicial notice is taken of the state court's docket of the
Lara action, available at <http://www.kern.courts.ca/gov>.

28 ³ For the reasons set forth above in Footnote 2, judicial notice is taken of the Court's docket in *Doe v. D.M. Camp*
& *Sons*, Case No. 1:05-cv-01417-AWI-SMS.

1 by the Court on March 31, 2008. (*Doe*, Docs. 81, 168) In addition, the Court granted motions to sever
2 the action, and the Court ordered the plaintiffs to file amended pleadings against each defendant. (*Id.*)
3 On May 29, 2008, “Angelica Rosales” and Margarita Rosales were identified as plaintiffs in the Third
4 Amended Complaint against El Rancho Farms. (*Doe*, Doc. 173) On March 31, 2009, the Court
5 ordered Plaintiffs to re-file in a new action within twenty days to finalize severance. (*Doe*, Doc. 241)

6 On April 20, 2009, Plaintiffs filed their complaint against El Rancho Farms, alleging: violations
7 of the Agricultural Workers Protection Act, 29 U.S.C. § 1801; failure to pay wages; failure to pay
8 reporting time wages; failure to provide meal and rest periods; failure to pay wages of terminated or
9 resigned employees; knowing and intentional failure to comply with itemized employee wage statement
10 provisions; penalties under Labor Code § 2699, *et seq.*; breach of contract; and violation of unfair
11 competition law. (Doc. 1) Plaintiffs brought the action “on behalf of Plaintiffs and members of the
12 Plaintiff Class comprising all non-exempt agricultural, packing shed, and storage cooler employees
13 employed, or formerly employed, by each of the Defendants within the State of California.” (*Id.* at 4)

14 In compliance with the Court’s deadline for seeking class certification, Rosales and Corza filed
15 a motion on September 9, 2011. (Doc. 33) Rosales and Corza sought certification of classes for unpaid
16 rest breaks, untimely rest and meal breaks, off-the-clock work, and tool reimbursement. Each class
17 included “fieldworkers employed or jointly employed by El Rancho.” (*Id.*) However, Rosales and
18 Corza failed to show El Rancho was a joint employer of the fieldworkers, as required by the class
19 definitions. Further, they failed to demonstrate they worked a pure piece rate basis, and the Court
20 found Rosales and Corza lacked standing to represent the unpaid rest break class. Finally, conflicting
21 evidence defeated certification of the remaining classes. The recommendations were adopted in full on
22 January 31, 2012, and the motion for class certification was denied. (Doc. 56)

23 Rosales and Corza filed a motion for reconsideration based upon additional evidence, seeking to
24 demonstrate El Rancho and Garza Contracting were joint employers. (Doc. 60) Plaintiffs “abandoned
25 the allegations of rest break violations to focus on the meal schedule” and abandoned claims of workers
26 employed at El Rancho by farm labor contractors other than Garza. (Doc. 95 at 5) On July 6, 2012, the
27 Court found the evidence presented by Plaintiffs was not new, and “[r]econsideration of the issues
28 based upon new evidence is not warranted.” (Doc. 95 at 4) Further, the Court affirmed its prior order

1 denying certification of classes based unpaid rest breaks, untimely rest and meal breaks, off-the-clock
2 work, and tool reimbursement. (*Id.* at 9) However, the Court granted Plaintiffs leave “to file a second
3 motion for class certification with respect to meal periods of Garza employees who worked at El
4 Rancho facilities.” (*Id.*) Accordingly, Rosales and Corza filed a second motion for class certification on
5 July 26, 2012. (Doc. 96)

6 The Court found the requirements of Rule 23 of the Federal Rules of Civil Procedure were
7 satisfied, and recommended a class be certified for only for the meal break claim. (Doc. 106) These
8 recommendations were adopted in full, and the class defined as: “All employees of Garza Contracting,
9 Inc. who worked at El Rancho Farms facilities from 11/9/2001 through 12/31/2008 and who were
10 provided a 12:00 noon meal break on shifts starting before 7:00 a.m.” (Doc. 112) Rosales and Corza
11 were appointed as class representatives, and the law firm of Mallison & Martinez was appointed as
12 Class Counsel. (*Id.* at 6)

13 Following the Court’s determination that Rosales and Corza lacked standing to represent a class
14 for rest break violations, Angel Lopez Cruz and Angelica Alvarez initiated an action against El Rancho
15 Farms and Garza for failure to provide rest periods on November 28, 2012. (Case No. 1:12-cv-1934-
16 AWI-JLT (“Cruz”) Doc. 1) In addition, Cruz and Alvarez asserted El Rancho and Garza were liable
17 for violations of the Agricultural Workers Protection Act, failure to pay wages, failure to pay wages of
18 terminated or resigned employees, knowing and intentional failure to comply with itemized employee
19 wage statement provisions; penalties under Labor Code § 2699, and violation of unfair competition
20 law—similar to the claims presented by Rosales and Corza. (*See id.*) El Rancho and Garza filed
21 motions to dismiss, arguing the action was duplicative in nature and “an attempt by plaintiffs to certify
22 a subclass that was previously denied certification.” (*See Cruz*, Doc. 13 at 2) Although the motions
23 were taken under submission, the Court did not have the opportunity to issue a ruling.

24 On June 20, 2014, the parties filed a Notice of Settlement, reporting they “participated in a
25 private mediation session on June 11, 2014 with a private mediator, David Rudy,” and were “in the
26 final stages of negotiating a Proposed Settlement Agreement.” (Doc. 159 at 1-2) Given the similarities
27 between the claims presented in *Rosales v. El Rancho Farms* (Case No. 1:09-cv-00707-AWI-JLT) and
28 *Cruz v. El Rancho Farms* (Case No. 1:12-cv-1934-AWI-JLT), the parties mediated the actions together.

1 (Doc. 161 at 4)

2 The Court granted preliminary approval of the proposed settlement on November 26, 2014.
3 (Doc. 173) The Settlement Class was defined as: “all persons who have been employed or jointly
4 employed by Garza Contracting at El Rancho Farms facilities between November 9, 2001 and June 11,
5 2014.” (Doc. 165 at 16; Settlement § I.D) In addition, Margarita Rosales, Lorena Corza, Angel Lopez
6 Cruz, and Angelica Alvarez were appointed the Class Representatives, and authorized to seek
7 enhancement payments up to \$10,000 for their representation of the class. (Doc. 173 at 22) Stan
8 Mallison and Hector Martinez were appointed as Class Counsel, and authorized to seek fees that did
9 not “exceed 33 1/3% of the gross settlement amount” and “costs up to \$50,000.” (*Id.*) Gilardi and Co.,
10 LLC was appointed the Settlement Administrator. (*Id.*) On December 8, 2014, the Court approved the
11 Class Notice Packet that conveyed this information to class members. (Doc. 177)

12 On January 9, 2015, the parties requested a sixty-day extension of time to prepare the class data
13 and provide it to the Settlement Administrator. (Doc. 178) The Court approved an extension of time,
14 and directed Plaintiff to prepare and file an amended notice to the class. (Doc. 179) However, in April
15 2015, the parties informed the Court that the estimated number of class members increased from 3,000
16 to approximately 6,900. (Doc. 182 at 3) Therefore, the parties requested a further extension of the
17 deadlines related to the class notice, which was granted. (Doc. 183)

18 On April 20, 2015, the Settlement Administrator mailed the Class Notice Packet to class
19 members. (Doc. 184-3 at 2, McGill Decl. ¶ 3) The Postal Service returned 1,224 of the packets to the
20 Settlement Administrator. (*Id.*, ¶ 5) Gilardi sought new addresses and re-served 552 of the Notice
21 Packets, of which 70 were again returned as undeliverable. (*Id.*) As of July 10, 2015, the Settlement
22 Administrator “received 992 timely claim forms and 48 late claim forms.” (Doc. 198-1 at 2, McGill
23 Supp. Decl. ¶ 3) No objections were filed with the Court or mailed to the Settlement Administrator.
24 (Doc. 184-3 at 4, McGill Decl. ¶ 14)

25 Plaintiffs filed the motion for final approval of the class settlement terms on June 19, 2015.
26 (Doc. 184) In addition, Plaintiffs filed their motion for attorneys’ fees costs, and class representative
27 enhancement payments on June 26, 2015. (Doc. 185) Defendants filed an opposition to the Settlement
28 on July 2, 2015, asserting uncashed checks should be distributed to cy pres beneficiaries of Defendants’

1 choosing, rather than Plaintiff's choice. (Doc. 195) Plaintiffs filed a brief in reply on July 13, 2015.⁴
2 (Doc. 199)

3 **THE PROPOSED SETTLEMENT**

4 Pursuant to the proposed settlement ("the Settlement"), the parties agree to a gross settlement
5 totaling \$2,300,000. (Doc. 184-1 at 7; Doc. 166-1 at 3, Settlement § I.S) El Rancho and Garza agree to
6 fund the Settlement for a class including "all persons who have been employed or jointly employed by
7 Garza Contracting at El Rancho Farms facilities between November 9, 2001 and June 11, 2014." (Doc.
8 166-1 at 1; Settlement § I.D) Defendants agreed to fund the Settlement no later than January 31, 2015.
9 (Doc. 166-1 at 13, Settlement § III.I.6)

10 **I. Payment Terms**

11 The gross settlement fund will cover payments to class members with additional compensation
12 to the Class Representatives. (Doc. 166-1 at 5-6, Settlement § III.B) Further, the Settlement provides
13 for payments to Class Counsel for attorneys' fees and expenses, to the Settlement Administrator, and
14 the California Labor & Workforce Development Agency. (*Id.*) Specifically, the Settlement provides
15 for the following payments from the gross settlement amount:

- 16 • The Class Representatives will receive up to \$10,000 each;
- 17 • Class counsel will receive no more than \$766,667 for attorneys' fees, which equals
18 33.33% of the gross settlement amount, and \$50,000 for expenses;
- 19 • The California Labor and Workforce Development Agency shall receive \$30,000
20 from the award pursuant to PAGA; and
- 21 • The Settlement Administrator will receive compensation for its fees and expenses.

22 (Doc. 166-1 at 5-6, Settlement § III.B) After these payments have been made, the remaining money
23 ("Net Settlement Amount") will be distributed as settlement shares to Class Members. (*Id.*)

24 To receive a settlement share from the Net Settlement Amount, a class member must submit a
25

26
27 ⁴ Plaintiffs' reply brief was untimely. Pursuant to Local Rule 203(d), a party may file a reply "[n]ot less than
28 seven (7) days preceding the date of hearing." Seemingly, counsel is unaware of the lateness of Plaintiffs' response given
they offer absolutely no explanation for the late filing, do not seek leave for the filing of the late reply and do not, even,
argue that the late filing should be considered.

1 timely and valid claim form.⁵ According to Plaintiff’s preferred methodology, settlement shares will
2 be calculated based upon:

3 (a) that Claimant’s total pay periods (or if necessary, the number of Months of
4 Employment) during the Class Period (b) divided by the aggregate number of pay
5 periods (or if necessary, the number of Months of Employment) of all Participating
6 Class Members (all class member claims) during the Class Period (with the division
rounded to four decimal places) (c) multiplied by the value of the Net Settlement
Amount.

7 (Doc. 166-1 at 7, Settlement § III.F.1) Under Defendant’s proposal, a claimant’s total pay period is
8 divided by the total number of pay periods placed at issue in the complaint and then multiplied by the
9 Net Settlement Amount. (Doc. 166-1 at 7, Settlement § III.G.1) Consequently, under Plaintiff’s
10 methodology the exact amount each Class Member would receive depends upon the aggregate number
11 of pay periods worked by all of those who submitted timely and valid claim forms. Under
12 Defendants’ proposal, the amount each claimant would receive depends entirely on the number of pay
13 periods the member worked. For the reasons set forth below, the Court recommends Plaintiff’s
14 methodology be adopted.

15 **II. Releases**

16 The Settlement provides that Rosales, Corza, Cruz, and Alvarez (collectively, “Plaintiffs”) and
17 Class Members, other than those who elect not to participate in the Settlement, at the time final
18 judgment is entered, shall release Defendants El Rancho and Garza from the claims arising in the class
19 period. Specifically, the release for class members provides:

20 As of the date of the Judgment, all Participating Class Members hereby fully and
21 finally release Defendants, and their partners, owners, subsidiaries, employees,
22 officers, directors, agents, attorneys, stockholders, fiduciaries, other service providers,
23 and assigns, from any and all claims, known and unknown, for or related to all claims
24 based on or arising from the allegations that they were or are improperly compensated
25 under federal, California, or local law (the “Class’s Released Claims”). The Class’s
26 Released Claims are limited to the time period November 9, 2001 to June 11, 2014 for
claims for alleged unpaid wages, overtime compensation, missed meal-period and rest-
break wages or penalties, and interest; related penalties, recordkeeping penalties, pay-
stub penalties, minimum-wage penalties, missed meal-period and rest-break penalties,
and waiting-time penalties; and costs and attorneys’ fees and expenses. The Class
Member’s Released Claims include all claims arising from or related to the matters
alleged in the Actions, or that could have been alleged in the Actions.

27
28 ⁵ Although Plaintiffs reported Defendants did not agree upon the proposed claim procedure, El Rancho reported it
did “not prefer the direct delivery of checks over a claims procedure, or vice versa.” (Doc. 171-1 at 4)

1 (Doc. 166-1 at 15, Settlement § III.J.2) The release for Plaintiffs encompasses more claims than the
2 release of Class Members, because Plaintiffs release any claims that could have arisen during the
3 course of their employment with Defendants. (*Id.*, Settlement § III.J.1) Specifically, Plaintiffs’
4 release provides:

5 As of the date of the Judgment, Plaintiffs and their Counsel hereby fully and finally
6 release Defendants, and their partners, owners, subsidiaries, employees, officers,
7 directors, agents, attorneys, stockholders, fiduciaries, other service providers, and
8 assigns, from any and all claims, known and unknown, including but not limited to
9 claims arising from or related to their employment or claimed employment with
10 Defendants, their compensation while employed as Defendants’ employee, under
11 federal, state and/or local law, statute, ordinance, regulation, common law, or other
12 source of law (the “Plaintiffs’ Released Claims”). The Plaintiffs’ Released Claims
13 include, but are not limited to, all claims arising from or related to the matters alleged,
or that could have been alleged in the Actions. The Plaintiffs’ Released Claims include
all such claims covering the time period November 9, 2001 to June 11, 2014 for
unpaid wages, including overtime compensation, missed meal-period and rest-break
wages, and interest; penalties, including but not limited to, recordkeeping penalties,
pay-stub penalties, minimum-wage penalties, missed meal-period and rest-break
penalties, and waiting-time penalties; and attorneys’ fees and expenses. The Plaintiffs’
Released Claims include all claims arising from or related to the matters alleged in the
Actions, or that could have been alleged in the Actions.

14 (*Id.*, emphasis added) Thus, claims released by Plaintiffs, but not Class Members, include any claims
15 arising under the Americans with Disabilities Act, Title VII of the Civil Rights Act of 1964, 42 U.S.C.
16 § 1981, and the Employee Retirement Income Security Act.

17 **III. Service of the Notice Packets and Responses Received**

18 The Court ordered the Settlement Administrator to mail the Class Notice Packet to the class
19 members no later than April 20, 2015. (*See* Doc. 183 at 3) The Class Notice Packet—including the
20 Class Notice, Claim Form and Exclusion Request Form—explained the nature of the action, the class
21 definition approved by the Court, the claims and issues to be resolved, the deadlines applicable to Class
22 Members, and the binding effect of a class judgment. Each class member received an estimate of his or
23 her settlement based upon the months of employment. (*See generally* Doc. 180) In addition, the Class
24 Notice Packet explained individuals may object to the settlement or elect to be excluded from the class,
25 and the time and method to file objections or return the Exclusion Request Form to the Settlement
26 Administrator. (*See id.* at 8-9)

27 According to Maggie McGill, an employee of Gilardi & Co. LLC, the Class Notice Packets
28 were “printed in both English and Spanish and mailed to the 6,692” Class Members on April 20, 2015.

1 (Doc. 184-3 at 2, McGill Decl. ¶ 3) Ms. McGill reports that the United States Postal Service returned
2 1,224 Notice Packets as “undeliverable” to the Settlement Administrator. (*Id.*, ¶ 5) Gilardi performed
3 address searches and found updated mailing addresses for 552 class members, who were re-served with
4 the Notice Packet. (*Id.*) However, “70 were returned once again as undeliverable.” (*Id.*)

5 Following service of the Class Notice Packet, the Settlement Administrator “received 992
6 timely claim forms and 50 late claim forms.”⁶ (Doc. 200 at 2, McGill Supp. Decl. ¶ 3) Although the
7 Settlement Administrator received 70 requests for exclusion, “37 Class Members concurrently
8 submitted a Claim Form.” (Doc. 184-3 at 4, McGill Decl. ¶ 13) Ms. McGill reports Gilardi contacted
9 the class members who returned both a claim form and a request for exclusion “to determine their
10 intent,” and counsel agreed that these would be considered valid claims. (Doc. 200 at 3, ¶ 8) No
11 objections were received by the Settlement Administrator. (Doc. 184-3 at 4, McGill Decl. ¶ 14)

12 **IV. Method of Settlement Share Distribution and the Cy Pres Beneficiary**

13 Generally, parties should have a plan for distributing unclaimed funds because many class
14 action settlements result in unclaimed funds. *Six Mexican Workers v. Arizona Citrus Growers*, 904 F.2d
15 1301, 1305 (9th Cir. 1990). The options for such distribution include cy pres distribution, escheat to
16 the government, and reversion to the defendants. *Id.*, 904 F.2d at 1307. Here, Plaintiffs and
17 Defendants have agreed that a cy pres recipient should be designated for funds under the Settlement,
18 but again seek the Court’s intervention related to their disputes concerning the identity of the
19 beneficiary, and what funds should be directed to the cy pres beneficiary. Previously, the Court
20 determined it would be appropriate for both uncashed and unclaimed funds to go to the cy pres
21 beneficiary. (Doc. 173 at 10) The Court opined a pro rata distribution, as proposed by Plaintiffs, was
22 impractical because the described method would require the Settlement Administrator “to calculate
23 each claimant’s share of the unclaimed funds and uncashed checks, and send a second payment to each
24 of the class members.” (*Id.*)

25 In seeking final approval of the Settlement, Plaintiffs renew their request that the funds be
26 distributed on a pro rata basis to the class members who have made valid claims. (Doc. 184-1 at 12)

27
28 ⁶ The parties have agreed to deem the untimely Claim Forms that were postmarked after the deadline as valid.
(Doc. 198)

1 Plaintiffs explain the entire net settlement would be distributed to Class Members, which would require
2 “only one distribution with all funds added in one check.” (*Id.* at 13) Plaintiffs contend this method
3 “ensures that a high percentage of net settlement funds actually go to the Class.” (*Id.*) Finally,
4 Plaintiffs contend that the funds from uncashed checks should go to the California Rural Legal
5 Assistance. (*Id.* at 15-18)

6 On the other hand, Defendants oppose distribution on a pro rata basis, asserting that method of
7 distribution is not preferable to the cy pres beneficiary receiving all unclaimed funds. (Doc. 195 at 4-6)
8 According to Defendants, distribution of the funds to the Class Members on a pro rata basis “would
9 result in a windfall to the relatively low number of members making claims in this action.” (*Id.* at 6)
10 Defendants explain, “The participating class members comprise just less than 15% of the total class. If
11 the settlement covers nearly all of the wage claims, then participating class members have been made
12 nearly whole by receiving their calculated distribution.” (*Id.*) Further, Defendants assert that “a pro
13 rata distribution is not the ‘next best thing’ for the approximately 5,700 silent class members,” either
14 directly or indirectly.” (*Id.*) Finally, Defendants argue they should be permitted to select the cy pres
15 beneficiary, subject to the Court’s approval, because “it is the recollection of counsel for both El
16 Rancho Farms and for Garza Contracting that plaintiffs agreed to permit defendants to select the cy
17 pres beneficiary, just as plaintiffs did in *Rodriguez* and *Morales*,” where the plaintiffs were represented
18 by the same class counsel. (*Id.* at 7) Therefore, Defendants urge the Court to find both unclaimed and
19 uncashed funds should go to the Boys and Girls Club of Kern County. (*Id.* at 8)

20 **A. Distribution Method**

21 The Ninth Circuit has determined a cy pres award must qualify as “the next best distribution” to
22 giving the funds directly to class members. *Dennis v. Kellogg Co.*, 697 F.3d 858, 865 (9th Cir. 2012)
23 (citing *Six Mexican Workers*, 904 F.2d at 1308). The designation of a cy pres beneficiary is appropriate
24 to ensure class members do not receive a windfall while silent class members do not receive any
25 compensation. *Hartless v. Clorox Co.*, 273 F.R.D 630, 642 (S.D. Cal. 2011) (“distribution to claimants
26 on a pro rata basis is inappropriate if it would result in a windfall to those claimants”); *see also State of*
27 *California v. Levi-Strauss*, 41 Cal.3d 460, 474-78 (1986) (noting direct distribution may be a problem
28 because non-claiming class members receive no compensation at all, while other class members can

1 receive a windfall, and the failure to allocate funds to a cy pres beneficiary would “cripple” the
2 compensatory function of the private class action).

3 Here, Defendants assert: “If the settlement covers nearly all of the wage claims, then
4 participating class members have been made nearly whole by receiving their calculated distribution.
5 Redistribution of 85 % of the silent members’ shares would result in a windfall to the relatively low
6 number of members making claims in this action.” (Doc. 195 at 6) On the other hand, it is not clear
7 that the proposed settlement, in fact, covers all of the wage and hour violations raised by the *Rosales*
8 and *Cruz* plaintiffs, such that the claimants have been made nearly whole. Mr. Mallison reported that at
9 the time the parties engaged in mediation, Class Counsel estimated the value of the claims to be
10 “between 3,000,000 and 5,000,000 [dollars],” excluding attorneys’ fees.⁷ (Doc. 184-2 at 14, Mallison
11 Decl. ¶ 36) The net settlement to be distributed to Class Members has been estimated to be \$1,356,633.
12 (Doc. 199-5 at 2, McGill Decl. ¶ 2) Thus, there is no real evidence of a windfall.

13 Notably, it was only after this Court granted preliminary approval of the Settlement that the
14 parties determined there were approximately 3,000 more class members than previously identified.
15 (Doc. 182 at 3) As a result, the case-value estimates made by the parties for mediation purposes were
16 likely to be a significant underestimate—and potentially only half the value of the claims presented in
17 both *Rosales* and *Cruz*. Because there is insufficient evidence to support a determination that Class
18 Members who submitted claim forms will receive a windfall, the proposed pro rata distribution is
19 appropriate for unclaimed funds. Thus, the Court recommends the pro rata distribution occur as
20 recommended by Plaintiffs.

21 **B. Propriety of the Proposed Cy Pres Beneficiaries**

22 Defendants assert, “The identity of the cy pres recipient was an important term to El Rancho
23 Farms.” (Doc. 195 at 4) Previously, Defendants’ counsel reported it was “the reason that El Rancho
24 agreed to such a large settlement amount. (Doc. 171-1 at 2, Estrada Decl. ¶ 6) Plaintiffs dispute this
25 and argue that the execution of the settlement agreement which excludes this provision belies this
26 claim. Indeed, the willingness of both sides to proceed in the settlement process without assurance that

27 ⁷ According to Ms. Estrada, counsel for El Rancho, she estimated the value of Plaintiffs’ claims to be
28 approximately \$1.2 million. (Doc. 195 at 7) However, she acknowledged at the hearing that this estimate did not include
the value of the claims against Garza Contracting.

1 their proposed beneficiary would be selected, undercuts that this determination was material to
2 settlement. In any event, the parties agree that the Court should select the beneficiary.

3 The Ninth Circuit has determined any proposed cy pres recipient should be “tethered to the
4 nature of the lawsuit and the interest of the silent class members.” *Nachshin v. AOL, LLC*, 663 F.3d
5 1034, 1039 (9th Cir. 2011). In other words, the Ninth Circuit “require[s] that there be a driving nexus
6 between the plaintiff class and the cy pres beneficiaries.” *Dennis v. Kellogg Co.*, 697 F.3d 858, 865
7 (9th Cir. 2012) (citing *Nachshin*, 663 F.3d at 1038). The Court explained that without such tethering,
8 the distribution of funds “may create the appearance of impropriety” by catering “to the whims and self
9 interests of the parties, their counsel, or the court.” *Nachshin*, 663 F.3d at 1038. Therefore, a cy pres
10 award should not benefit a group that is “too remote from the plaintiff class.” *Six Mexican Workers*,
11 904 F.2d at 1308.

12 The Ninth Circuit directs courts to consider whether awards to the proposed cy pres beneficiary
13 would “(1) address the objectives of the underlying statutes, (2) target the plaintiff class, or (3) provide
14 reasonable certainty that any member will be benefitted.” *Nachshin*, 663 F.3d at 1040. Further, the
15 Court must consider whether the cy pres distribution is appropriate given the “size and geographic
16 diversity” of the class members. *Id.* at 1040-41 (citing, e.g., *In re Airline Ticket Comm'n Antitrust*
17 *Litig.*, 307 F.3d 679, 683 (8th Cir. 2002); *Houck on Behalf of U.S. v. Folding Carton Admin. Comm.*,
18 881 F.2d 494, 502 (7th Cir. 1989)).

19 Notably, the Ninth Circuit has determined also that issues related to the identity of a cy pres
20 beneficiary are not generally ripe until there are funds that remain undistributed. *See Rodriguez v. West*
21 *Publ'g Corp.*, 563 F.3d 948, 966 (9th Cir. 2009) (finding cy pres distribution “becomes ripe only if
22 entire settlement fund is not distributed to class members” and declining to determine propriety of cy
23 pres at that time). The Court explained that where a cy pres distribution is contingent on the outcome
24 of the claims process for a cash distribution, issues regarding the identification of recipients “will not
25 be ripe until it is determined that available cash remains in th[e] fund after the claims process has
26 concluded.” *Dennis v. Kellogg Co.*, 697 F.3d 858, 865 (9th Cir. 2012). If the pro rata distribution
27 recommended above is adopted by the Court, it is unlikely there will be any remaining funds once the
28

1 distribution occurs. Therefore, the matter continues not to be ripe for decision.⁸

2 APPROVAL OF A CLASS SETTLEMENT

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

11 I. Certification of a Settlement Class⁹

12 Class certification is governed by Rule 23 of the Federal Rules of Civil Procedure, which
13 provides that “[o]ne or more members of a class may sue or be sued as representative parties on behalf
14 of all.” Fed. R. Civ. P. 23(a). Parties seeking class certification bear the burden of demonstrating the

15 ⁸ Though not deciding the issue, the Court is concerned that designating the CRLA as the cy pres beneficiary
16 could create the appearance of impropriety because time sheets submitted by Plaintiff’s counsel indicate that the CRLA
17 attorneys actually worked on this case. (Doc. 188-1 at 33, 36, 37) Such a designation could raise the specter of a quid pro
quo arrangement and Class Counsel has cited no legal authority to the contrary.

18 In addition, Class Counsel has an ongoing relationship with the CRLA. Mr. Mallison, Hector Martinez and
19 Marco Palau, all were employed by the CRLA in the past. (Doc. 188 at 2, 7-8, Mallison Decl. ¶¶ 4, 11-12) Further, the
20 CRLA and the Mallison & Martinez firm continue to act as co-counsel on other litigation (*See id.* at 4, Mallison Decl. ¶
21 6(h)) and, as described above, continue to work in tandem as demonstrated by this litigation. This ongoing entanglement is
22 further demonstrated by the fact that Class Counsel has solicited the involvement of the CRLA in the cy pres beneficiary
selection process. (Doc 199-1 at 3-4, ¶ 10) Indeed, Class Counsel represents that the CRLA claims that if the group is not
designated as the beneficiary, the CRLA will appeal. Class Counsel fails to explain how such an appeal—which risks
delay of the payment to the class (Doc. 166-1 at 13-14, Settlement § III.I.7)—further the interest of the class members.
Likewise, given this threat, seemingly the CRLA’s interests conflict with the Class Members’ interest in a timely
completion of the settlement.

23 Notably, the Court errs in designating a cy pres beneficiary which raise the concerns outlined here. *See, e.g.*,
24 *Weeks v. Kellogg, Co.*, 2011 WL 6531116 at *19-20, n.102 (C.D. Cal. Nov. 23, 2011) (observing that “[c]ourts are wary of
25 distributing cy pres funds to organizations that have a close relationship with class counsel given the appearance of a
26 conflict of interest,” and finding a proposed beneficiary was improper due to “its preexisting relationship with certain of
27 plaintiffs’ counsel”); *In re Linerboard Antitrust Litigation*, 2008 WL 4542669, *5 (E.D. Pa. Oct. 3, 2008) (“The Court
28 agrees that PILCOP is a well respected public legal services organization in the Philadelphia area and, in general, is a
deserving recipient of cy pres funds. However, because an attorney formerly associated with this case currently serves in a
lead role at PILCOP, the Court does not deem it appropriate to direct any of the cy pres distribution to PILCOP”); *see also*
American Law Institute, Principles of the Law of Aggregate Litigation § 3.07 (“A cy pres remedy should not be ordered if
the court or any party has any significant prior affiliation with the intended recipient that would raise substantial questions
about whether the selection of the recipient was made on the merits”).

⁹ Because the class was only conditionally certified upon preliminary approval of the Settlement, final
certification of the Settlement Class is required.

1 elements of Rule 23(a) are satisfied, and “must affirmatively demonstrate . . . compliance with the
2 Rule.” *Wal-Mart Stores, Inc. v. Dukes*, 131 S. Ct. 2541, 2551 (2011); *Doninger v. Pacific Northwest*
3 *Bell, Inc.*, 563 F.2d 1304, 1308 (9th Cir. 1977). If an action meets the prerequisites of Rule 23(a), the
4 Court must consider whether the class is maintainable under one or more of the three alternatives set
5 forth in Rule 23(b). *Narouz v. Charter Communs., LLC*, 591 F.3d 1261, 1266 (9th Cir. 2010).

6 Here, Plaintiffs assert the Court should certify a settlement class that includes “all persons who
7 have been employed or jointly employed by farm labor contractor Garza Contracting Inc. at El Rancho
8 Farms facilities between November 9, 2001 and June 11, 2014.” (Doc. 166-1 at 1, Settlement § I.D)
9 According to Plaintiffs, “Every requirement of Rule 23 is satisfied with respect to this proposed
10 settlement class.” (Doc. 184-1 at 28)

11 **A. Rule 23(a) Requirements**

12 The prerequisites of Rule 23(a) “effectively limit the class claims to those fairly encompassed
13 by the named plaintiff’s claims.” *General Telephone Co. of the Southwest. v. Falcon*, 457 U.S. 147,
14 155-56 (1982). Certification of a class is proper if:

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

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

20 1. Numerosity

21 A class must be “so numerous that joinder of all members is impracticable.” Fed. R. Civ. P.
22 23(a)(1). This requires the Court to consider “specific facts of each case and imposes no absolute
23 limitations.” *General Telephone Co. v. EEOC*, 446 U.S. 318, 330 (1980). Although there is not a
24 specific numerical threshold, joining more than one hundred plaintiffs is impracticable. *See Immigrant*
25 *Assistance Project of Los Angeles Cnt. Fed’n of Labor v. INS*, 306 F.3d 842, 869 (9th Cir. 2002)
26 (“find[ing] the numerosity requirement . . . satisfied solely on the basis of the number of ascertained
27 class members . . . and listing thirteen cases in which courts certified classes with fewer than 100
28 members”). Here, the parties have identified more than 6,000 Class Members. (Doc. 184-1 at 28)

1 Therefore, the numerosity requirement is satisfied.

2 2. Commonality

3 Rule 23(a) requires “questions of law or fact common to the class.” Fed. R. Civ. P. 23(a)(2).
4 Commonality “does not mean merely that [class members] have all suffered a violation of the same
5 pro-vision of law,” but “claims must depend upon a common contention.” *Wal-Mart Stores*, 131 S.
6 Ct. at 2551. In this case, Plaintiffs assert common issues include “minimum wage, overtime, and rest
7 and meal period violations.” (*See* Doc. 184-1 at 29) Defendants do not dispute that the requirements
8 of Rule 23 are satisfied. Accordingly, the Court finds the commonality requirement is satisfied for
9 purposes of settlement.

10 3. Typicality

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

21 Here, Plaintiffs report that “[e]ach of the Class Representatives has claims similar and typical of
22 the rest of the Class since they suffered similar injuries and have the same interest in redressing them.”
23 (Doc. 184-1 at 29) Because Plaintiffs and the putative class members were subject to the same policies
24 and practices at El Rancho Farms, the typicality requirement is satisfied.

25 4. Fair and Adequate Representation

26 Absentee class members must be adequately represented for judgment to be binding upon them.
27 *Hansberry v. Lee*, 311 U.S. 32, 42-43 (1940). Accordingly, representative parties must “fairly and
28 adequately protect the interests of the class.” Fed. R. Civ. P. 23(a)(4). “[R]esolution of this issue

1 requires that two questions be addressed: (a) do the named plaintiffs and their counsel have any
2 conflicts of interest with other class members and (b) will the named plaintiffs and their counsel
3 prosecute the action vigorously on behalf of the class?” *In re Mego Fin. Corp. Sec. Litig.*, 213 F.3d
4 454, 462 (9th Cir. 2000) (citing *Hanlon*, 150 F.3d at 1020).

5 *a. Class counsel*

6 As the Court noted previously, Stan Mallison and Hector Martinez have experience litigating
7 wage and hour class action cases and serving as class counsel. (*See* Doc. 173 at 13, citing Doc. 166 at
8 5-7) Further, Mr. Mallison reports there are no known “personal affiliation[s] or family relationship[s]
9 with the Plaintiffs and proposed Class Representatives.” (Doc. 184-2 at 9, Mallison Decl. ¶ 17) Thus,
10 Class Counsel satisfy the adequacy requirement.

11 *b. Class representatives*

12 All named plaintiffs seek appointment as class representatives of the Settlement Class. (Doc.
13 184 at 2) Further, the parties have not identified any conflicts between Plaintiffs and Class Members.
14 Because it appears the interests of the named plaintiffs are aligned with those of the class—to maximize
15 their recovery— Plaintiffs will fairly and adequately represent the interests of the Settlement Class.

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

17 As noted above, once the requirements of Rule 23(a) are satisfied, a class may only be certified
18 if it is maintainable under Rule 23(b). Fed. R. Civ. P. 23(b); *see also Narouz*, 591 F.3d at 1266.
19 Plaintiffs assert class certification is appropriate under Rule 23(b)(3), which requires a finding that (1)
20 “the questions of law or fact common to class members predominate over any questions affecting only
21 individual members,” and (2) “a class action is superior to other available methods for fairly and
22 efficiently adjudicating the controversy.” These requirements are generally called the “predominance”
23 and “superiority” requirements. *See Hanlon*, 150 F.3d at 1022-23; *see also Wal-Mart Stores*, 131 S. Ct.
24 at 2559 (“(b)(3) requires the judge to make findings about predominance and superiority before
25 allowing the class”).

26 1. Predominance

27 The predominance inquiry focuses on “the relationship between the common and individual
28 issues” and “tests whether proposed classes are sufficiently cohesive to warrant adjudication by

1 representation.” *Hanlon*, 150 F.3d at 1022 (citing *Amchem Prods.*, 521 U.S. at 623). The Ninth Circuit
2 explained, “[A] central concern of the Rule 23(b)(3) predominance test is whether ‘adjudication of
3 common issues will help achieve judicial economy.’” *Vinole v. Countrywide Home Loans, Inc.*, 571
4 F.3d 935, 944 (9th Cir. 2009) (quoting *Zinser v. Accufix Research Inst., Inc.*, 253 F.3d 1180, 1189 (9th
5 Cir. 2001)). In this case, Plaintiffs argue the predominance requirement is satisfied because “the issues
6 of Defendant’s [sic] alleged failure to pay Class Members minimum wage, overtime, and rest and meal
7 period violations create common issues that predominate over individual questions.” (Doc. 184-1 at
8 29) Accordingly, for settlement purposes only, the Court finds the predominance factor is satisfied.

9 2. Superiority

10 The superiority inquiry requires a determination of “whether objectives of the particular class
11 action procedure will be achieved in the particular case.” *Hanlon*, 150 F.3d at 1023 (citation omitted).
12 This tests whether “class litigation of common issues will reduce litigation costs and promote greater
13 efficiency.” *Valentino v. Carter-Wallace, Inc.*, 97 F.3d 1227, 1234 (9th Cir. 1996). Pursuant to Rule
14 23(b)(3), the Court must consider four non-exclusive factors to determine whether a class is a superior
15 method of adjudication, including (1) the class members’ interest in individual litigation, (2) other
16 pending litigation, (3) the desirability of concentrating the litigation in one forum, and (4) difficulties
17 with the management of the class action.

18 *a. Class members’ interest in individual litigation*

19 This factor is relevant when class members have suffered sizeable damages or have an
20 emotional stake in the litigation. *See In re N. Dist. of Cal., Dalkon Shield, Etc.*, 693 F.2d 847, 856 (9th
21 Cir. 1982)). Here, the Settlement Administrator received 70 requests for exclusion.¹⁰ (Doc. 184-3 at 4,
22 McGill Decl. ¶ 13) Importantly, there is no evidence that the class members who seek exclusion from
23 the class are interested in pursuing their own actions. Therefore, this factor does not weigh against
24 class certification.

25 *b. Other pending litigation*

26 The parties have not identified any other pending litigation for wage and hour violations
27

28 ¹⁰ As noted above, 37 Class Members who returned a request to be excluded from the Settlement Class also
submitted a Claim Form. (Doc. 184-3 at 4, McGill Decl. ¶ 13)

1 against El Rancho Farms and Garza Contracting. As a result, this factor weighs in favor of certifying
2 the Settlement Class.

3 *c. Desirability of concentrating litigation in one forum*

4 Because common issues predominate on Plaintiffs' class claims, "presentation of the evidence
5 in one consolidated action will reduce unnecessarily duplicative litigation and promote judicial
6 economy." *Galvan v. KDI Distrib.*, 2011 U.S. Dist. LEXIS 127602, at *37 (C.D. Cal. Oct. 25, 2011).
7 Moreover, because the parties have resolved the claims presented in both cases through the settlement,
8 this factor does not weigh against class certification.

9 *d. Difficulties in managing a class action*

10 The Supreme Court explained that, in general, this factor "encompasses the whole range of
11 practical problems that may render the class format inappropriate for a particular suit." *Eisen v.*
12 *Carlisle & Jacquelin*, 417 U.S. 156, 164 (1974). However, because the parties have reached a
13 settlement agreement and the class has received notice of the claims in issue, it does not appear there
14 are any problems with managing the action. Therefore, this factor weighs in favor of class certification.

15 Because the factors set forth in Rule 23(b) weigh in favor of certification, the Settlement Class
16 is maintainable under Rule 23(b)(3). Accordingly, it is recommended that Plaintiffs' request to certify
17 the Settlement Class be **GRANTED**.

18 **II. Evaluation of the Settlement Terms**

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

24 the strength of plaintiff's case; the risk, expense, complexity, and likely duration of
25 further litigation; the risk of maintaining class action status throughout the trial; the
26 amount offered in settlement; the extent of discovery completed, and the stage of the
proceedings;¹¹ the experience and views of counsel; the presence of a governmental
participant;¹¹ and the reaction of the class members to the proposed settlement.

27
28 ¹¹ Because there is not a government participant in this action—only a government beneficiary of the settlement—
this factor does not weigh in the Court's analysis.

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

7 **A. Strength of Plaintiffs’ Cases**

8 When evaluating the strength of a case, the Court should “evaluate objectively the strengths and
9 weaknesses inherent in the litigation and the impact of those considerations on the parties’ decisions to
10 reach these agreements.” *Adoma v. Univ. of Phoenix, Inc.*, 913 F. Supp. 2d 964, 975 (E.D. Cal. 2012)
11 (quoting *In re Wash. Pub. Power Supply Sys. Sec. Litig.*, 720 F.Supp 1379, 1388 (D. Az. 1989)).
12 However, the Court does not “reach any ultimate conclusions on the merits of the dispute.” *Officers for*
13 *Justice v. Civil Serv. Commission*, 688 F.2d 615, 625 (9th Cir. 1982).

14 In this action, there are several disputed claims the fact-finder would be required to determine.
15 Plaintiffs would face a significant risk of success if both actions were to proceed, and assert:

16 Although Plaintiffs believe strongly in the underlying merits of their case, wage and
17 hour cases on behalf of low wage agricultural workers can difficult to prove on a class
18 basis especially given the changing and uncertain legal environment. Further, there are
clear uncertainties surrounding Plaintiffs’ ability to prove their claims given the
unpredictability of a lengthy and complex jury trial.

19 (Doc. 184-1 at 23) Further, although the Court did not rule on the motions to dismiss filed in *Cruz*,
20 Defendants argued the claims presented by Cruz and Alvarez were duplicative in nature. (*See Cruz*,
21 Doc. 13 at 2) Given the uncertainties of the merits of *both* actions, this factor weighs in favor of
22 approving of the Settlement.

23 **B. Risk, Expense, Complexity, and Likely Duration of Further Litigation**

24 Approval of settlement is “preferable to lengthy and expensive litigation with uncertain
25 results.” *Nat’l Rural Telecomms. Coop. v. DIRECTV, Inc.*, 221 F.R.D. 523, 529 (C.D. Cal. 2004). If
26 the Settlement were to be rejected, the parties would have to engage in further litigation, including
27 discovery and seeking class certification in *Cruz*. The time and expense of continued litigation could
28 outweigh any additional recovery. In addition, as Plaintiffs previously acknowledged, “legal

1 developments could seriously diminish the value of [their] claims.” (Doc. 165 at 15) On the other
2 hand, the proposed settlement provides for immediate recovery for the class, which includes
3 individuals who may have been excluded in the class previously certified by the Court. Thus, this
4 factor weighs in favor of approval of the Settlement.

5 **C. Maintenance of Class Status throughout the Trial**

6 There is a substantial risk a class may not have been certified in *Cruz*, particularly if the Court
7 were to determine, as Defendants argued, that the action was merely “an attempt by plaintiffs to certify
8 a subclass that was previously denied certification.” (*See Cruz*, Doc. 13 at 2) Due to the risk to the
9 claims of class members, this factor supports preliminary approval of the Settlement.

10 **D. Amount Offered in Settlement**

11 The Ninth Circuit observed “the very essence of a settlement is compromise, ‘a yielding of
12 absolutes and an abandoning of highest hopes.’” *Officers for Justice*, 688 F.2d at 624 (citation
13 omitted). Thus, when analyzing the amount offered in settlement, the Court should examine “the
14 complete package taken as a whole,” and the amount is “not to be judged against a hypothetical or
15 speculative measure of what *might* have been achieved by the negotiators.” *Id.*, 688 F.2d at 625, 628.

16 Here, the proposed gross settlement amount is \$2,300,000, of which an estimated \$1,356,633
17 would be available to Class Members.¹² (Doc. 166-1 at 3, Settlement § I.S; Doc. 199-5 at 2, McGill
18 Decl. ¶ 2) Mr. Mallison reports that “Plaintiffs estimate[d] the value of class wage claims to be
19 between 3,000,000 and 5,000,000 [dollars] excluding substantial attorneys’ fees, should Plaintiffs
20 prevail completely on a class-wide basis at trial.” (Doc. 184-2 at 14, Mallison Decl. ¶ 36)

21 Notably, however, “[t]he fact that a proposed settlement may only amount to a fraction of the
22 potential recovery does not, in and of itself, mean that the proposed settlement is grossly inadequate
23 and should be disapproved.” *Linney v. Cellular Alaska Partnership*, 151 F.3d 1234, 1242 (9th Cir.
24 1998). Rather, as noted by the Ninth Circuit, “parties, counsel, mediators, and district judges naturally
25 arrive at a reasonable range for settlement by considering the likelihood of a plaintiffs’ or defense
26 verdict, the potential recovery, and the chances of obtaining it, discounted to present value.” *Rodriguez*

27
28 ¹² This assumes the maximum award of attorney fees and class representative enhancements under the Settlement.
(Doc. 199-5 at 2, McGill Decl. re Distribution ¶ 2)

1 *v. West Publishing Corp.*, 563 F.3d 948, 965 (9th Cir. 2009). Based upon the parties’ agreement that
2 this amount provides adequate compensation for the class claims against El Rancho Farms and Garza
3 Contracting, Inc., the Court finds the amount offered supports approval of the class settlement.

4 **E. Extent of Discovery Completed and Stage of the Proceedings**

5 The Court is “more likely to approve a settlement if most of the discovery is completed because
6 it suggests that the parties arrived at a compromise based on a full understanding of the legal and
7 factual issues surrounding the case.” *Adoma*, 913 F. Supp. 2d at 977 (quoting *DIRECTV, Inc.*, 221
8 F.R.D. at 528).

9 Here, El Rancho began litigating the claims presented by “Doe” plaintiffs in 2005, and
10 “Angelica Rosales” and Margarita Rosales were identified as plaintiffs in 2008. Garza and its
11 employees were involved in discovery from the *Rosales* action prior to the filing of *Cruz*. In the course
12 of litigation, the parties have produced and reviewed “thousands of documents including payroll and
13 timekeeping information.” (Doc. 184-1 at 25) Given the amount of discovery conducted by the parties
14 and the number of years that have passed since Plaintiffs’ counsel filed the First Amended Complaint in
15 *Doe* identifying El Rancho Farms as a defendant, it appears that the parties made informed decisions
16 regarding the merits of their claims and defenses. Thus, the settlement agreement “is presumed fair,”
17 and this factor supports final approval of the settlement. *See Adoma*, 913 F. Supp.2d at 977.

18 **F. Experience and Views of Counsel**

19 According to Mr. Mallison, “the class settlement with Defendants for \$2,300,000, is reasonable
20 and adequate and is in the best interest of the putative class members, including Defendants’ current
21 and former workers, in light of all known facts and circumstances...” (Doc. 184-2 at 17, Mallison
22 Decl. ¶ 46) Similarly, Defendants agree that the Settlement “reflects a fair, reasonable, and adequate
23 settlement of the Actions.” (Doc. 166-1 at 18, Settlement § III.L.10) Given counsels’ experience and
24 familiarity with the facts, their recommendation that the settlement be approved is entitled to significant
25 weight. *Nat’l Rural Telecomms.*, 221 F.R.D. at 528 (“Great weight is accorded to the recommendation
26 of counsel, who are most closely acquainted with the facts of the underlying litigation”); *see also*
27 *Barbosa v. Cargill Meat Solutions Corp.*, 297 F.R.D. 431, 447 (E.D. Cal. 2013) (“In considering the
28

1 adequacy of the terms of a settlement, the trial court is entitled to, and should, rely upon the judgment
2 of experienced counsel for the parties.”) Consequently, this factor supports approval of the Settlement.

3 **G. Reaction of Class Members to the Proposed Settlement**

4 The reaction of the class has been primarily positive. The Class Representatives report they
5 “are strongly in support of the settlement.” (Doc. 184-1 at 27; *see also* Doc. 190 at 3, Cruz Decl. ¶ 7;
6 Doc. 191 at 3, Corza Decl. ¶ 8; Doc. 198 at 3, Alvarez Decl. ¶ 7; Doc. 193 at 3, Rosales Decl. ¶ 8)
7 Further, the Settlement Administrator received only 70 requests for exclusion (Doc. 184-3 at 4, McGill
8 Decl. ¶ 13), and no objections were received by either the Settlement Administrator or the Court.

9 Significantly, “the absence of a large number of objections to a proposed class action settlement
10 raises a strong presumption that the terms of a proposed class action settlement are favorable to the
11 class members.” *Nat’l Rural Telecomms.*, 221 F.R.D. at 529. Because the number of requests for
12 exclusion and objections received are vastly outweighed by the remaining class members who have
13 indicated their consent to the terms of settlement, this factor weighs in favor the settlement.

14 **H. Collusion between Negotiating Parties**

15 The inquiry of collusion addresses the possibility that the settlement agreement is the result of
16 either “overt misconduct by the negotiators” or improper incentives of class members at the expense of
17 others. *Staton*, 327 F.3d at 960. Plaintiffs assert, “[T]he Settlement was reached after extensive
18 discovery, certification of late meal period class, years of motion practice, and extensive arms-length
19 negotiations during numerous mediation sessions with Robert Coviello and Dave Rudy.” (Doc. 184-1
20 at 27) Because the parties utilized private mediators, Plaintiffs conclude “the procedure by which the
21 Settlement was arrived” supports approval of the Settlement. (*Id.*) Notably, the Ninth Circuit has
22 determined the “presence of a neutral mediator [is] a factor weighing in favor of a finding of non-
23 collusiveness.” *In re Bluetooth Headset Products Liab. Litig.*, 654 F.3d 935, 946 (9th Cir. 2011).
24 Because there is no indication the agreement was the product of collusive conduct, this factor weighs
25 in favor of approval of the Settlement.

26 ///

27 **III. Conclusion**

28

1 The factors set forth by the Ninth Circuit weigh in favor of final approval of the Settlement,
2 which appears to be is fair, reasonable, and adequate as required by Rule 23. Therefore, the Court
3 recommends that Plaintiffs’ motion for final approval of the Settlement Agreement be **GRANTED**.

4 **REQUEST FOR ATTORNEYS’ FEES AND COSTS**

5 Attorneys’ fees and nontaxable costs “authorized by law or by agreement of the parties” may be
6 awarded pursuant to Rule 23(h). Under the settlement, Class counsel may request attorneys’ fees that
7 total “no[] more than 33.33% (\$766,667) of the Gross Settlement Amount. (Doc. 166-1 at 5, Settlement
8 § III.A.2) Class Counsel are also authorized under the Settlement to seek litigation expenses that are
9 “not more than \$50,000.” (*Id.*) Here, Class Counsel requests the maximum of fees and costs permitted
10 under the Settlement. (Doc. 185 at 1) In support of these requests, a representative from each law firm
11 representing Plaintiffs filed a declaration setting forth the hours worked and hourly rates sought, as well
12 as the firm’s expenses. (Docs. 186-188)

13 **I. Legal Standards**

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

19 A court “may not uncritically accept a fee request,” but must review the time billed and assess
20 whether it is reasonable in light of the work performed and the context of the case. *See Common Cause*
21 *v. Jones*, 235 F. Supp. 2d 1076, 1079 (C.D. Cal. 2002); *see also McGrath v. County of Nevada*, 67 F.3d
22 248, 254 n.5 (9th Cir. 1995) (noting a court may not adopt representations regarding the reasonableness
23 of time expended without independently reviewing the record); *Sealy, Inc. v. Easy Living, Inc.*, 743
24 F.2d 1378, 1385 (9th Cir. 1984) (remanding an action for a thorough inquiry on the fee request where
25 “the district court engaged in the ‘regrettable practice’ of adopting the findings drafted by the prevailing
26 party wholesale” and explaining a court should not “accept[] uncritically [the] representations
27 concerning the time expended”).

28 The party seeking fees bears the burden of establishing that the fees and costs were reasonably

1 necessary to achieve the results obtained. *See Fischer v. SJB-P.D., Inc.*, 214 F.3d 1115, 1119 (9th
2 2000). Therefore, a fee applicant must provide time records documenting the tasks completed and the
3 amount of time spent. *Hensley v. Eckerhart*, 461 U.S. 424, 424 (1983); *Welch v. Metropolitan Life Ins.*
4 *Co.*, 480 F.3d 942, 945-46 (9th Cir. 2007). “Where the documentation of hours is inadequate, the
5 district court may reduce hours accordingly.” *Hensley*, 461 U.S. at 433.

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

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

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

17 The Ninth Circuit determined both a lodestar and percentage of the common fund calculation
18 “have [a] place in determining what would be reasonable compensation for creating a common fund.”
19 *Paul, Johnson, Alston & Hunt v. Grawlty*, 886 F.2d 268, 272 (9th Cir. 1989). Whether the Court
20 applies the lodestar or percentage method, the Ninth Circuit requires “fee awards in common fund
21 cases be reasonable under the circumstances.” *Florida v. Dunne*, 915 F.2d 542, 545 (9th Cir. 1990);
22 *see also Staton*, 327 F.3d at 964 (fees must be “fundamentally fair, adequate, and reasonable”).

23 **A. Lodestar Method**

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

1 Ninth Circuit in a determination of the reasonable fees:

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

10 *Kerr v. Screen Extras Guild, Inc.*, 526 F.2d 67, 70 (9th Cir. 1975). However, the Court has since
11 determined that the fixed or contingent nature of a fee and the “desirability” of a case are no longer
12 relevant factors. *Resurrection Bay Conservation Alliance v. City of Seward*, 640 F.3d 1087, 1095, n.5
13 (9th Cir. 2011) (citing *Davis v. City of San Francisco*, 976 F.2d 1536, 1546 n.4 (9th Cir. 1992)).

14 **B. Percentage from the common fund**

15 As the name suggests, under the “common fund” method, attorneys who create a common fund
16 for a class may be awarded their fees and costs from the fund. *Hanlon*, 150 F.3d at 1029; *Boeing Co. v.*
17 *Van Gemert*, 444 U.S. 472, 478 (1980) (“a lawyer who recovers a common fund for the benefit of
18 persons other than himself or his client is entitled to a reasonable attorney’s fee from the fund as a
19 whole”). An award from the common fund “rests on the perception that persons who obtain the benefit
20 of a lawsuit without contributing to its cost are unjustly enriched at the successful litigant’s expense,”
21 and as such application of the doctrine is appropriate “when each member of a certified class has an
22 undisputed and mathematically ascertainable claim to part of a lump-sum judgment recovered on his
23 behalf.” *Boeing Co.*, 444 U.S. at 478.

24 In the Ninth Circuit, the typical range of acceptable attorneys’ fees is 20% to 30% of the total
25 settlement value, with 25% considered the benchmark. See *Vizcaino v. Microsoft Corp.*, 290 F.3d
26 1043, 1047 (9th Cir. 2002); *Hanlon*, 150 F.3d at 1029 (observing “[t]his circuit has established 25 %
27 of the common fund as a benchmark award for attorney fees”); *In re Pacific Enterprises Securities*
28 *Litigation*, 47 F.3d 373, 379 (9th Cir. 1995) (“Twenty-five percent is the ‘benchmark’ that district
courts should award in common fund cases”). The percentage may be adjusted below or above the
benchmark, but the Court’s reasons for adjustment must be clear. *Paul, Johnson, Alston & Hunt v.*
Graulty, 886 F.2d 268, 272 (9th Cir. 1989).

1 To assess whether the percentage requested is reasonable, courts may consider a number of
2 factors, including “the extent to which class counsel achieved exceptional results for the class, whether
3 the case was risky for class counsel, whether counsel’s performance generated benefits beyond the
4 cash settlement fund, the market rate for the particular field of law (in some circumstances), the
5 burdens class counsel experienced while litigating the case (e.g., cost, duration, foregoing other work),
6 and whether the case was handled on a contingency basis.” *In re Online DVD-Rental Antitrust*
7 *Litigation*, 779 F.3d 934, 954-55 (9th Cir. 2015) (internal quotation marks omitted).

8 **II. Evaluation of the Fees Requested**

9 “The district court has discretion to use the lodestar method or the percentage of the fund
10 method in common fund cases.” *Powers v. Eichen*, 229 F.3d 1249, 1256 (9th Cir. 2000) (quoting *In re*
11 *Coordinated Pretrial Proceedings in Petroleum Prods. Antitrust Litig.*, 109 F.3d 602, 607 (9th Cir.
12 1997)). Notably, the Court must consider similar factors under either method. *See Kerr*, 526 F.2d at
13 70; *In re Online DVD-Rental Antitrust Litigation*, 779 F.3d at 954-55. Further, the Court may “appl[y]
14 the lodestar method as a crosscheck” to determine whether the percentage requested is reasonable.
15 *Vizcaino*, 290 F.3d at 1050, n.5.

16 **A. Results obtained for the class**

17 Courts have recognized consistently that the result achieved is a major factor to be considered in
18 making a fee award. *Hensley*, 461 U.S. at 436; *Wilcox v. City of Reno*, 42 F.3d 550, 554 (9th Cir.
19 1994). Class Counsel assert they “recovered \$2,300,000.00 on behalf of the class, that the class
20 members would likely not have recovered independent of this action.” (Doc. 189 at 11) Of this, the
21 claims administrator estimates that \$1,356,633 from the common fund will be distributed to Class
22 Members. (Doc. 199-5 at 2, McGill Decl. ¶ 2) As noted above, Mr. Mallison reports that “Plaintiffs
23 estimate[d] the value of class wage claims to be between 3,000,000 and 5,000,000 [dollars] excluding
24 substantial attorneys’ fees, should Plaintiffs prevail completely on a class-wide basis at trial.” (Doc.
25 184-2 at 14, Mallison Decl. ¶ 36) While the settlement amount when compared to the lower value is an
26 exceptional result, if the case value was closer to the upper end, the result is merely average. On the
27 other hand, at the hearing, Class Counsel admitted that the case value was determined at the time of the
28 mediation at which time Counsel believed that there were only 3,000 potential claimants. (Doc. 182 at

1 3) During the claims process, this number doubled to about 6,000. This suggests that the case value
2 was significantly underestimated.¹³ Thus, the Court has been provided insufficient information for it to
3 determine that an exceptional recovery for the class has occurred and, therefore, cannot recommend an
4 upward departure from the benchmark. *See Vizcaino*, 290 F.3d at 1048 (observing “[e]xceptional
5 results are a relevant circumstance” to an adjustment from the benchmark).

6 **B. Risk undertaken by counsel**

7 The risk of costly litigation and trial is an important factor in determining the fee award.
8 *Chemical Bank v. City of Seattle*, 19 F.3d 1297, 1299-1301 (9th Cir. 1994). The Supreme Court
9 explained, “the risk of loss in a particular case is a product of two factors: (1) the legal and factual
10 merits of the claim, and (2) the difficulty of establishing those merits.” *City of Burlington v. Dague*,
11 505 U.S. 557, 562 (1992). As a result, the Ninth Circuit approved an award slightly above the
12 benchmark in *Vizcaino* where the case was “extremely risky for class counsel” and the “plaintiffs lost in
13 the district court – once on the merits, once on the class definition – and twice counsel succeeded in
14 reviving their case on appeal.” *Id.*, 290 F.3d at 1048.

15 Class Counsel assert the request of 33 1/3 % is justified, in part, because the case was taken
16 “without any guarantee that they would ever obtain any compensation at all, as the representation [was]
17 being handled solely on a contingency fee basis.” (Doc. 189 at 12) In addition, Class Counsel contend
18 they faced risks related to the merits of the case, because the action was filed when “wage and
19 hour law in California was uncertain.” (*Id.*, citing *Brinker Rest. Corp. v. Superior Court*, 53 Cal. 4th
20 1004 (2012)). Further, Class Counsel assert:

21 [U]ntil recently (*See Bluford v. Safeway Stores, Inc.*, 216 Cal. App. 4th 864 (2013)) the
22 legal theory that employers are required to pay piece rate workers a separate payment
23 for the rest breaks was largely untested. Plaintiffs [sic] counsel was on the vanguard of
24 this legal theory (*See Ontiveros v. Zamora*, 2009 WL 425962 at *4 (E.D. Cal. 2009)).
25 This legal theory is a critical part of the *Cruz* allegations. Thus, the risk associated with
26 litigating class actions during the uncertainty of wage and hour law prior to *Brinker*,
27 plus the presence of still novel legal claims in *Cruz*, weigh in favor of a departure from
28 the Ninth Circuit 25% bench in awarding attorneys’ fees.
(Doc. 189 at 12)

¹³At the hearing Class Counsel argued there would be no windfall to the claimants if a pro rata distribution method was adopted despite that this nearly tripled the average recovery. In doing so, implicitly, Counsel admitted this amount did not exceed that which would make each claimant whole. Notably, had a larger number of claims been submitted—only about 15% of those eligible to make claims did so (Doc. 184-1 at 7)—the average recovery could have been dismal.

1 Significantly the Ninth Circuit has suggested the distinction between a contingency arrangement
2 and a fixed fee arrangement alone does not merit an enhancement from the benchmark. *See In re*
3 *Bluetooth Headset Prods. Liab. Litig.*, 654 F.3d 935, 942 n.7. (9th Cir. 2011) (observing “whether the
4 fee was fixed or contingent” is “no longer valid” as a factor in evaluating reasonable fees); *but see In re*
5 *Online DVD-Rental Antitrust Litigation*, 779 F.3d at 954-55 (finding the contingent nature of litigation
6 remains a relevant factor to evaluate a request from the common fund). Further, although Mr. Mallison
7 asserts his firm “would not have agreed to represent plaintiffs in this case other than on a contingency
8 fee basis unless it would have been confident that it would be awarded a contingency fee approximately
9 1/3rd of the potential recovery if we were successful in our efforts” (Doc. 188 at 20-21, Mallison Decl.
10 ¶55), Mr. Martinez previously admitted that “[t]he firm chose the proposed class representatives” in
11 this action. (Doc. 35 at 7, Martinez Decl. ¶19) Moreover, he fails to explain why he presumed at the
12 onset of this case that a one-third award would be likely made by the Court or to detail upon what
13 authorities he relied when deciding to pursue this case—notably, doing so without clients.

14 On the other hand, as Class Counsel observes, the California Supreme Court clarified the labor
15 laws related to rest and meal periods in *Brinker*. In a related action, where the plaintiffs also raised
16 meal and rest break violations, the Court observed the facts were straightforward, but “Plaintiffs’
17 counsel faced significant risk on the legal merits.” *Morales v. Stevco*, 2013 WL 1222058 at *3 (E.D.
18 Cal. Mar. 25, 2013). Accordingly, this factor weighs slightly in favor of a departure from the
19 benchmark fee award. *See id.* (awarding 30% of the common fund as attorney fees).

20 **C. Skills of counsel and quality of work**

21 The complexity of issues and skills required may weigh in favor of a departure from the
22 benchmark fee award. *See, e.g., Lopez v. Youngblood*, 2011 WL 10483569 at *5-6 (E.D. Cal. Sept. 2,
23 2011) (in determining whether to award the requested fees totaling 28% of the class fund, the Court
24 observed the case involved “complex issues of constitutional law in an area where considerable
25 deference is given to jail officials,” and the action “encompassed two categories of class members”);
26 *see also In re Heritage Bond Litig.*, 2005 WL 1594403 at *14 (C.D. Cal. June 10, 2005) (“Some courts
27 have recognized that the novelty, difficulty and complexity of the issues involved are significant factors
28 in determining a fee award”).

1 Here, Class Counsel assert their skills and the quality of work support an award greater than the
2 benchmark in this action. (Doc. 189 at 12) According to Class Counsel, they “showed great skill,
3 thoroughness, and conscientiousness in investigating and developing the claims, liability theories, and
4 estimated possible recoveries in the Litigation.” (*Id.*) Specifically, they report:

5 Class Counsel and their staff interview dozens of workers and collected twenty-three (23)
6 declarations from El Rancho and Garza fieldworkers in support of the Motion for Class
7 Certification. [Citation.] Plaintiffs’ counsel also took three depositions and defended two
depositions in this case. [Citation.] Plaintiffs’ counsel reviewed thousands of pages of
time keeping records.

8 (Doc. 189 at 13)

9 On the other hand, a review of the record indicates that the effectiveness of Class Counsel’s
10 work was not stellar. Initially, Plaintiffs sought certification of four classes: (1) the unpaid rest break
11 class, (2) the untimely rest and meal break class, (3) the off-the-clock work class, and (4) the tools
12 reimbursement class. (Doc. 37 at 2, 6-11) Despite the fact that Class Counsel selected the plaintiffs in
13 this action, the Court determined Lorena Corza and Margarita Rosales lacked standing to represent
14 claims for unpaid rest breaks. (Doc. 52 at 29-31; Doc. 56 at 12-13) The Court denied Plaintiffs’
15 request to add a named plaintiff who could represent such claims given the fact that the litigation had
16 been pending for more than five years and there was no *right* to substitute a proper class
17 representative.¹⁴ (Doc. 56 at 31, citing *Moreno v. Autozone, Inc.* 410 Fed. Appx. 24, 25 (9th Cir. 2010);
18 *Lierboe v. State Farm Mut. Ins. Co.*, 350 F.3d 1018, 1022 (9th Cir. 2003)) Further, the Court declined
19 to certify the other proposed classes due to evidentiary failures, including the failure to show common
20 policies among the farm labor contractors (such as Garza) who employed laborers at El Rancho. (Doc.
21 52 at 31-39; Doc. 56 at 13-16)

22 Class Counsel filed a motion for reconsideration “based [upon] clear error and manifest
23 injustice” and proposed narrowing the definitions of the classes to individuals employed only by Garza
24 rather than all farm labor contractors. (Doc. 189 at 13) Class Counsel requested reconsideration, in
25 part, “based on new evidence.” (Doc. 95 at 3) However, the Court found the evidence to which
26

27 ¹⁴ Class Counsel has not explained how the fact that two named plaintiffs lacked standing escaped their notice
28 until after the Court raised the issue when considering the initial motion for class certification. Indeed, the *Cruz* matter
was filed only after the Court ruled that Plaintiffs would not be permitted to add another class representative who had
standing to represent the unpaid rest break claims.

1 Plaintiffs referred was *not* new, and should have been presented in support of the motion to file class
2 certification. (*Id.* at 4) Further, the Court upheld its prior ruling denying the motion for class
3 certification, but granted Plaintiffs leave to file a second motion for class certification with a narrowed
4 class definition. (Doc. 95 at 9) Clearly, a more thorough review of the evidence should have occurred
5 before Plaintiffs filed their motion for class certification such that a proper class definition could have
6 been proposed and the lack of standing by Ms. Corza and Ms. Rosales could have been determined.

7 Moreover, when this action was initiated in 2005, many of the lead attorneys had been
8 practicing for less than 10 years, demonstrating that exceptional skill and experience was not needed to
9 pursue this litigation. Because the Court does not find this matter required exceptional skills and Class
10 Counsel displayed skills and work quality consistent with those of attorneys with comparable
11 experience, this factor supports an award equal to the Ninth Circuit benchmark.

12 **D. Length of professional relationship**

13 Class Counsel do not address the length of the professional relationships with their clients as a
14 factor supporting the fees requested. (*See* Doc. 189 at 10-16) “Angelica Rosales” was identified in the
15 *Lara* action as a plaintiff in the Second Amended Complaint filed on September 12, 2005. Margarita
16 Rosales was not identified as a plaintiff until on May 29, 2008, with the filing of a Third Amended
17 Complaint against El Rancho Farms. (*Doe*, Doc. 173) Despite the fact that Class Counsel have
18 expended nearly ten years representing these plaintiffs, the Ninth Circuit has determined the 25 percent
19 standard award” where “the litigation lasted more than 13 years.” *See Six Mexican Workers v. Ariz.*
20 *Citrus Growers*, 904 F.2d 1301, 1311 (finding “the 25 percent standard award” was appropriate
21 although “the litigation lasted more than 13 years”). Therefore, this factor does not weigh in favor of
22 departure from the benchmark.

23 **E. Awards in similar cases**

24 Notably, as discussed above, 25% of a common fund is “benchmark award for attorney fees” in
25 the Ninth Circuit. *Hanlon*, 150 F.3d at 1029; *see also Vizcaino*, 290 F.3d at 1047 (9th Cir. 2002).
26 Previously, this Court observed that “[t]he typical range of acceptable attorneys’ fees in the Ninth
27 Circuit is 20 percent to 33.3 percent of the total settlement value.” *Barbosa v. Cargill Meat Solutions*
28 *Corp.*, 297 F.R.D. 431, 448 (E.D. Cal. 2013). Thus, the amount requested by Class Counsel is at the

1 highest end of the award spectrum. *See id.*

2 Class Counsel assert that “courts within this District have awarded Class Counsel fee awards of
3 33.3% to Class Counsel Mallison & Martinez in similar wage and hour class actions, including: *Benitez*
4 *v. Wilbur*, E.D. Cal. Case No. 08-1122 LJO GSA (33^{1/3}% award). *Alvarado et al. v. Rex Nederend*,
5 E.D. Cal. Case No. 1:08-cv-01099 OWW DLB (33^{1/3}% award); *Vasquez v. Coast Valley Roofing, Inc.*,
6 E.D. Cal. Case No. 1:07-cv-00227 (33^{1/3}% award); *Chavez et al. v. Petrissans et al.*, E.D. Cal., 1:08-cv-
7 00122 (33^{1/3}% award).” (Doc. 189 at 14-15) However, Class Counsel failed to provide *any* analysis
8 regarding how they believe these cases are similar to the matter pending; indeed, they are not.

9 For example, in *Benitez*, the Court did not conduct an analysis regarding the reasonableness of
10 the attorney fees or address the number of hours expended by counsel to represent the class of
11 approximately 100 workers. (*See Benitez*, Case No. 1:08-1122-LJO-GSA, Docs. 39, 49 and 52) The
12 Court approved a settlement of \$400,000 and awarded class counsel \$133,333 in fees. (*See Benitez*,
13 Doc. 52) Notably, class counsel had reported that 70 class members presented claim forms, and the
14 estimated average payment to class members was nearly \$3,000 per claimant. (*Benitez*, Doc. 49 at 9)
15 Similarly, in *Alvarado*, there were “approximately 150 class members,” and the estimated average
16 settlement share was \$2,000. (*Alvarado*, Case No. 1:08-1099-OWW-MJS, Doc. 73 at 6, 10) In
17 *Chavez*, counsel reported the average settlement share was \$3,750 (*Chavez*, Case. No. 1:08-00122-
18 LJO-GSA, Doc. 83 at 10) and in *Vasquez* the average share was “approximately \$2600 per claimant.”
19 (*Vasquez*, Case. No. 1:07-cv-00227-OWW-GSA, Doc. 72 at 16) These settlement shares are
20 significantly greater than the results achieved in the matter now before the Court.

21 Class Counsel acknowledge they have not received 33^{1/3}% in similar cases and the Court
22 “awarded Class Counsel attorneys’ fees of 30% of the net settlements in class action cases on behalf of
23 fieldworkers employed in the table-grape industry.”¹⁵ (Doc. 189 at 14, citing *Rodriguez v. D.M. Camp*
24 *& Sons*, Case No. 1:09-cv-00700 and *Morales v. Stevco*, Case No. 1:09-cv-00704) However, Class
25 Counsel argue *Rodriguez* and *Morales* “are distinguishable in a number of ways” that support a higher
26 fee award. (*Id.* at 15) For example, Class Counsel assert, “neither *Rodriguez* nor *Morales* persuaded
27

28 ¹⁵ Presumably, Class Counsel refers to the *gross* settlement amounts as the fees were deducted from the common
fund prior to distribution of the remaining funds to the class members.

1 the Court to certify a class,” and neither case entailed “extensive law and motion practice.”¹⁶ (*Id.*)

2 On the other hand, the results obtained in the *Rodriguez* and *Morales* settlements were much
3 more beneficial to the class members than the estimated awards for class members in this action. In
4 *Morales*, the average award for class members was “over \$4,300” for each class member. *Morales*,
5 2013 WL 1222058 at *2 (E.D. Cal. Mar. 25, 2013). The Court found this was “a significant recovery”
6 that weighed in favor of a higher award. *Id.* Similarly, in *Rodriguez*, the average award was
7 approximately \$2,200 award per worker, and “the highest award [was] estimated to be approximately
8 \$17,300.” *Rodriguez*, 2013 WL 2146927 at *13 (E.D. Cal. May 15, 2013). The Court determined such
9 results were significant and weighed in favor of an award higher than the benchmark. *See Morales*,
10 2013 WL 1222058 at *2; *Rodriguez*, 2013 WL 2146927 at *13. In contrast, here, the estimated average
11 settlement share with a pro rata distribution is \$1,336.58. (Doc. 199-5 at 2, McGill Decl. ¶ 3) Given
12 the disparity in the results achieved, the Court does not find this compares favorably to *Morales* and
13 *Rodriguez* to support the reward requested.

14 **F. Lodestar Crosscheck and Market Rate**

15 Class Counsel provided a list of each legal professional who worked on *Rosales* and *Cruz*, and
16 report they worked at total of 2,617.89 hours. (Doc. 188 at 21-24) According to Class Counsel, this
17 results in a lodestar calculation of \$1,414,414.31. (*See id.* at 24) Generally, when the lodestar is used as
18 a cross-check for a fee award, the Court is not required to perform an “exhaustive cataloguing and
19 review of counsel’s hours.” *See Schiller*, 2012 WL 2117001 at *20 (citing *In re Rite Aid Corp. Sec.*
20 *Litig.*, 396 F.3d 294, 306 (3d Cir. 2005); *In re Immune Response Sec. Litig.*, 497 F.Supp.2d 1166 (S.D.
21 Cal. 2007)). However, because a cursory review of the records revealed significant flaws related to the
22 lodestar calculation—including hours not related to this litigation, overbilling and clerical tasks—the
23 Court has performed a detailed review of the records.

24 **1. Hourly rate**

25 As an initial matter, the Supreme Court has determined that attorneys’ fees should be calculated
26 according to the “prevailing market rates in the relevant community.” *Blum v. Stenson*, 465 U.S. 886,

27
28 ¹⁶ Although Class Counsel may imply otherwise, the plaintiffs did not file motions for class certification in *Rodriguez* and *Morales*.

1 895 (1984). In general, the “relevant community” for purposes of determining the prevailing market
2 rate, is the “forum in which the district court sits.” *Camacho v. Bridgeport Fin., Inc.*, 523 F.3d 973,
3 979 (9th Cir. 2008). Thus, when a case is filed in the Fresno Division of the Eastern District of
4 California, “[t]he Eastern District of California, Fresno Division, is the appropriate forum to establish
5 the lodestar hourly rate.” *See Jadwin v. County of Kern*, 767 F.Supp.2d 1069, 1129 (E.D. Cal. 2011).
6 However, “rates, other than those of the forum, may be employed if local counsel was unavailable,
7 either because they are unwilling or unable to perform because they lack the degree of experience,
8 expertise, or specialization required to handle properly the case.” *Gates v. Deukmejian*, 987 F.2d 1392,
9 1405 (9th Cir. 1992).

10 Here, Class Counsel argues that the out-of-district hourly rates from the San Francisco Bay area
11 and Central District, which they used to calculate the lodestar, should be applied in this action. (Doc.
12 189 at 16) According to Class Counsel, “the fact that Class Counsel has been involved in 16 of the 18
13 Agricultural Workers Protection Act (29 U.S.C. § 1801 *et seq.*) cases filed within the last ten years
14 highly suggests that counsel located within the district is incapable or unwilling to take these contingent
15 farm worker class actions because they do not have the requisite experience.” (*Id.*) Significantly,
16 however, several of attorneys who represented plaintiffs in related action are employed in Bakersfield,
17 California, which lies within the Fresno Division of the Eastern District. *See Rojas v. Sunview*, Case
18 No. 1:09-cv-00705-AWI-JLT.¹⁷ Further, Class Counsel report the California Rural Legal Assistance
19 has “filed lawsuits on behalf of 250 Central Valley farmworkers in matters involving AWPAs and/or
20 California wage and hour matters and filed administrative complaints or otherwise privately negotiated
21 matters for 1,250 Central Valley farmworkers.” (Doc. 184-1 at 17) Because other lawyers are clearly
22 available and willing to represent farmworkers and prosecute wage and hour class actions, Class
23 Counsel have not met their burden to show hourly rates other than those of the Fresno Division should
24 have been used for purposes of calculating the lodestar. *See Camacho*, 523 F.3d at 979; *Gates*, 987
25 F.2d at 1405. Accordingly, the hourly rates must be adjusted to be consistent with attorneys in the
26 Fresno Division of the Eastern District.

27
28 ¹⁷ For the reasons set forth in Footnote 2, the Court takes judicial notice of the Court’s docket in *Rojas v. Sunview*,
Case No. 1:09-cv-00705-AWI-JLT.

1 a. Attorneys

2 The hourly rates sought by counsel range from \$295 to \$825. (See Doc. 188 at 21-23) For
3 example, Stan Mallison and Hector Martinez seek hourly rates of \$650. (*Id.*) Previously, this Court
4 has declined to calculate the lodestar with the requested hourly rate of \$650 for Mr. Mallison and Mr.
5 Martinez. *Ontiveros v. Zamora*, 303 F.R.D. at 356, 373-74 (E.D. Cal. 2014). The Court noted that the
6 hourly rates were “high for even the most experienced attorneys in the Eastern District.” *Id.* at 374
7 (citing *Johnson v. Allied Trailer Supply*, 2014 WL 1334006, at *5 (E.D. Cal. Apr. 3, 2014); *Joe Hand*
8 *Prom., Inc. v. Albright*, 2013 WL 4094403, at *2 (E.D. Cal. Aug. 13, 2013)). Consequently, the Court
9 calculated the lodestar with using \$400 as the hourly rate for partners at Mallison & Martinez and \$175
10 as the rate for associates. *Id.* Although *Ontiveros* was filed in the Sacramento Division of the Eastern
11 District, it demonstrates the hourly rates requested here do not align with those in the Eastern District.

12 More recently, this Court has reviewed the billing rates for the Fresno Division and concluded
13 that “hourly rates generally accepted in the Fresno Division for competent experienced attorneys [are]
14 between \$250 and \$380, with the highest rates generally reserved for those attorneys who are regarded
15 as competent and reputable and who possess in excess of 20 years of experience.” *Silvester v. Harris*,
16 2014 WL 7239371 at *4 (E.D. Cal. Dec. 2014). For attorneys with “less than ten years of experience
17 ... the accepted range is between \$175 and \$300 per hour.” *Id.* (citing *Willis v. City of Fresno*, 2014
18 WL 3563310 (E.D. Cal. July 17, 2014); *Gordillo v. Ford Motor Co.*, 2014 WL 2801243 (E.D. Cal. June
19 19, 2014)). With these parameters in mind, the hourly rates for counsel must be adjusted to calculate
20 the lodestar.

21 Hours for each of the attorneys who have been in practice 20 years or more—including David
22 Rosenfeld, William Sokol, Chris Raisner, Emily Rich, Suzanne Murphy, Jeff Westerman, and Elizabeth
23 Lin—will be calculated at the rate of \$380 per hour. For attorneys who have been in practice between
24 15 and 20 years—including Stan Mallison, Hector Martinez, Sabrina Kim, and Nicole Duckett—the
25 hourly rate is adjusted to \$350 per hour. Further, for attorneys who have been in practice between 10
26 and 15 years—including Alegria de la Cruz, Linelle Mogado, and Manjari Chawla—the rate is adjusted
27 to \$300 per hour. The hours worked by attorneys who have been admitted to practice between 5 and 10
28 years—including Joseph Sutton, Jessica Juarez, Kerianne Steele, and Marco Palau —the lodestar will

1 be calculated at a rate of \$225 per hour. Finally, for attorneys who have been in practice for less than
2 five years, the rate is adjusted to \$175 per hour. Based upon the prior survey of the attorney fees in the
3 Fresno Division and the Court's own knowledge, these hourly rates are reasonable. *See Silvester*, 2014
4 WL 7239371 at *4; *see also Ingram v. Oroudjian*, 647 F.3d 925, 928 (9th Cir. 2011) (concluding "the
5 district court did not abuse its discretion either by relying, in part, on its own knowledge and
6 experience" to determine reasonable hourly rates).

7 b. Non-attorney staff

8 Class Counsel calculated their lodestar using hourly rates ranging from \$95 to \$325 for non-
9 attorney staff. (See Doc. 188 at 21-23) Generally, paralegal rates within the Fresno Division of the
10 Eastern District range between \$75 to approximately \$150.00. *See Moreau v. Daily Independent*, 2013
11 WL 796621 at *3 (E.D. Cal. Mar. 1, 2013) (observing that "\$75 for paralegals [is] reasonable for
12 litigation performed in this district"); *Spence v. Wells Fargo Bank, N.A.*, 2012 WL 844713 at *5 (E.D.
13 Cal., Mar. 12, 2012) (approving "paralegal or other support rates" of \$125.00, \$145.00 and \$155.00);
14 *Silvester* 2014 WL 7239371 at *4 ("The current reasonable hourly rate for paralegal work in the Fresno
15 Division ranges from \$75 to \$150, depending on experience.")

16 Here, Class Counsel request hourly rates of \$95 per hour for Joel Salas, Mirella Lopez, and
17 Dyvienne Martinez. (See Doc. 188 at 22) Because these rates are within the range generally awarded
18 in the Fresno Division, no adjustment is required. The hourly rate of \$150 is appropriate for Eleanor
19 Natwick, Judy Castillo, Teresa Oviedo, and Aaron Nathan, who have all been working as legal
20 assistants or paralegals for more than twelve years. (Doc. 186 at 6-7, Rich Decl. ¶¶ 15-18) Because
21 Michelle Grisat was a paralegal for only one year (*see id.*, ¶ 14), her hourly rate will be adjusted to \$75.
22 Finally, Class Counsel offer no support that higher hourly rates are appropriate for Hector Hernandez,
23 Jan Spring, or Deborah Vanore. Given the lack of information regarding their experience, the Court
24 adjusts their hourly rates to \$100 per hour. *See Willis*, 2014 WL 3563310 at *14 (setting the hourly rate
25 for a paralegal at \$100 where the plaintiffs did "not offer[] any reason" to support a rate "set at the
26 highest level in this district"). Accordingly, the hourly rate for these individuals is adjusted to \$100 to
27 be in line with the rates in the Fresno Division.

28 **2. Hours expended**

1 A representative from each of the law firms designated as Plaintiffs' counsel has provided a
2 declaration including the hours worked in support of the request for attorney fees. Accordingly, the
3 Court has reviewed the hours reported by each firm to determine whether they are reasonable.

4 a. Mallison & Martinez

5 Stan Mallison reports that his law firm worked 2,049.80 hours in the course of this action since
6 2005. (Doc. 188 at 21-22, Mallison Decl. ¶ 57) However, this total includes work related to several
7 other cases and claims against other grape growers.

8 i. *Work related to other claims*

9 The total hours reported by Mallison & Martinez includes work performed on the *Lara* action in
10 the state court action. Significantly, the *Lara* plaintiffs did not identify El Rancho as a defendant until
11 the filing of their Second Amended Complaint on September 12, 2005, and El Rancho did not respond
12 to the allegations in the state court. Despite this, Mallison & Martinez seeks an award for a fraction of
13 the hours for work completed in *Lara* beginning in April 2005, including preparing for and attending
14 case management conferences; investigating claims against other defendants in *Lara* such as Golden
15 Grain, Giumarra, Lucich Farms, and Castlerock; reviewing responses to discovery; and settlement
16 discussions with Castlerock. (*See, e.g.*, Doc. 188-1 at 2, 15, 24, 37, 86-88) In addition, Mallison &
17 Martinez include work related to responding to demurrers in *Lara*, performing legal research, and
18 preparing responses to the demurrers by the defendants. (Doc. 188-1 at 25, 77, 80) Because these tasks
19 did not relate to the claims against El Rancho and Garza, the time related thereto should not be awarded
20 from the class settlement fund. *See Gauchat-Hargis v. Forest River, Inc.*, 2013 U.S. Dist. LEXIS
21 128508 at *11 (E.D. Cal. Sept. 9, 2013) (“Time spent on tasks that are not relevant to the case at issue
22 should be eliminated from the lodestar analysis.”) This results in a deduction of **38.44 hours**.¹⁸

23 Mallison & Martinez also report time related to work on the bankruptcy proceeding filed by
24 Rogelio Casimiro, doing business as Golden Grain, and the related adversary proceedings initiated by
25
26
27

28 ¹⁸ This total includes 3.59 hours for Hector Martinez, 33.35 hours for Stan Mallison, and 1.5 hours for Alegria De La Cruz.

1 the *Lara* plaintiffs in the bankruptcy court.¹⁹ For example, several individuals report contacting
 2 Casimiro/Golden Grain employees and conducting interviews:

3	4/19/2006	Martinez, H.	Telephone Calls to Lara, Paula, Mario re Casimiro Facts	0.42
4	5/30/2006	Mallison	Preparation and attendance at Bnkruptcy [sic] deposition; meeting with investigator and co-counsel; defendanse [sic] counsel; trustee and deponents	2.00
5	6/6/2006	Hernandez	Case discussion about declaration of workers that work for Rogelio Casimiro; Revise and comment on declaration	0.17
6	7/15/2006	Martinez, D.	Telephone Call to former Golden Grain workers to schedule appointments	0.67
7	7/15/2006	Martinez, H.	Contact Former workers from Employee list provided by Casimiro	0.67
8	7/16/2006	Martinez, D.	Telephone Call to former Golden Grain workers re case update and scheduling for appointment	1.38
9	7/17/2006	Martinez, D.	Telephone Call to former Golden Grain workers to make initial contact and schedule appointments	1.37
10	7/17/2006	Martinez, H.	Telephone Call to Golden Grain former employer; explained status of case; scheduled appoitments [sic]; discussions...	1.00
11	7/18/2006	Martinez, D.	Telephone Call to former GG workers to conduct initial contact and schedule interviews	0.95
12	7/18/2006	Martinez, H.	Contacting class members re GG violations; explanation [sic] of case status' scheduled appointments.	0.67
13	7/19/2006	Martinez, D.	Telephone Call to former GG workers to provide[] update and schedule appts in Bakersfield	0.65
14	7/19/2006	Martinez, H.	Contact former GG workers and explaining status of case; scheduled appointments	0.50
15	7/20/2006	Martinez, D.	Telephone Call to former GG workers to update and schedule appts in Bakersfield	0.65
16	7/20/2006	Martinez, D.	Prepare for trip to Bakersfield; Travel	0.85
17	7/20/2006	Mallison	Factual investigation and Preparation for [travel] to Bakersfield; database work	0.71
18	7/20/2006	Martinez, H.	Supervise DM and advise regarding calls to GG former workers	0.33
19	7/20/2006	Martinez, H.	Prepare for trip to Bakersfield; Travel time	0.83
20	7/21/2006	Mallison	Prep; travel to' attendance at witness interviews	1.83
21	7/21/2006	Martinez, H.	Meeting with witnesses and clients to obtain declarations	1.83
22	7/22/2006	Mallison	Preparation for; attendance at interviews of witnesses in [Bakersfield]	2.00
23	7/22/2006	Martinez, H.	Meeting with former Casimiro workers; Telephone Call to witnesses; review documents from Sara. Travel	1.83
24	8/2/2006	Martinez, H.	Telephone Call to Golden Grain [w]itnesses regarding meeting in Arvin to obtain declarations	0.50
25	8/3/2006	Martinez, H.	T/Cs to Golden Grain former workers to advise of meeting in Arvin on Sunday	0.33
26	12/13/2006	Mallison	Review of settlement documents for GG case; declaration of Hector Martinez for appointment as lead counsel	0.29

27 ¹⁹ On October 12, 2005, Casimiro filed Chapter 13 bankruptcy in the United States Bankruptcy Court, Eastern District of California, Case No. 05-19558-B-13. In January 2006, the *Lara* Plaintiffs initiated Adversary Proceeding No. 05-01401 in the Bankruptcy Court, and sought withdrawal of reference from the Bankruptcy Court. (Case No. 1:06-cv-0028-AWI, Doc. 1-4 at 2.) Plaintiffs again sought withdrawal of reference in August 2007, *In re Rogelio A. Casimiro, et al.*, Case No. 1:07-cv-01218-AWI.

1
2 (Doc. 188-1 at 12-13, 65, 68) Significantly, there is no evidence that the claims against Golden Grain
3 were intertwined with the claims against El Rancho Farms or Garza Contracting. Because Class
4 Counsel fail to explain how the discovery related to the bankruptcy proceedings was relevant here, or
5 how the evidence gathered against Golden Grain was used to support Plaintiffs' claims in *Rosales* and
6 *Cruz*, the tasks related to the adversarial proceedings and class certification in the Bankruptcy Court
7 should not be compensated here. This results in a total deduction of **22.43 hours**.

8 *ii. Work related to Valenzuela, Case No. 1:05-cv-01600-AWI-SMS*

9 On December 16, 2005, Santos Valenzuela, Trinidad Ruiz, Marta Rincon De Diaz, Ramon
10 Cervantes Perales, and Hugo Perez Rios filed a class action complaint against Giumarra Vineyards.²⁰
11 On December 21, 2005, Plaintiffs' counsel filed a motion to consolidate the action with *Doe*. (*See*
12 *Valenzuela*, Doc. 5) Stan Mallison and Hector Martinez report they had conferences related to
13 *Valenzuela* and prepared documents related to consolidation of the claims with *Doe*. (Doc. 188-1 at 22-
14 23, 75-77) Because the claims brought by the *Valenzuela* plaintiffs related only to their employment by
15 Giumarra Vineyards (*see Valenzuela*, Doc. 1), the work completed in that action was not related to the
16 class claims here and should not be compensated. Thus, the lodestar is reduced by **9.63 hours**.²¹

17 b. Weinberg, Roger & Rosenfeld

18 Emily Rich, a shareholder with the law firm of Weinberg, Roger & Rosenfeld, reports that "the
19 firm expended 1557.23 hours in attorney and paralegal time" prior to the severance of *Doe*, and seek
20 1/6 of this time, or 259.54 hours. (Doc. 186 at 8, Rich Decl. ¶ 21) In addition, Ms. Rich reports they
21 spent 62.15 hours on *Rosales* after the *Doe* action was severed into six separate actions. (*Id.*, ¶ 22)

22 *i. Work related to claims against other grape growers*

23 Importantly, it is clear that many tasks reported prior to the severance of *Doe* into six separate
24 cases relate to the claims of individuals who were not employed at El Rancho Farms. For example,
25 Chris Raisner recorded having several telephone conferences with attorneys who represented Giumarra
26

27 ²⁰ Because the accuracy of the court's docket cannot reasonably be questioned, the Court takes judicial notice of
28 the docket and documents filed in *Valenzuela v. Giumarra Vineyards Corporation*, Case No. 1:05-cv-1600-AWI-SMS.
See Mullis, 828 F.2d at 1388 n.9.

²¹ This includes 6.72 hours for Stan Mallison and 2.91 for Hector Martinez.

1 Vineyards, Stevco, and DM Camp & Sons. (*See, e.g.*, Doc. 186-2 at 8-9) Mr. Raisner also noted he
2 drafted three letters to the Workforce Development Agency “re DM Camp & Sons, Marko Zaninovich,
3 Inc.; and Sunview Vineyards of California.” (*Id.* at 11) Mr. Raisner and Ms. Rich worked on the
4 proposed consolidation and appointment as lead counsel in *Valenzuela*—which, as discussed above,
5 only raised claims against Giumarra Vineyards—with *Doe*. (*Id.* at 6-7) Further, the timesheets include
6 investigations regarding other grape growers: Linelle Mogado interviewed Sunview and DM Camp
7 workers while Kerianne Steele “[i]nterviewed putative class members and collected declarations from
8 them re Casimiro’s violations of labor code.” (*See id.* at 12, 15, 22)

9 In total, the attorneys at Weinberg, Roger & Rosenfeld worked 236 hours on actions that clearly
10 did not relate to claims of individuals who were not employed at El Rancho Farms. As such, even 1/6
11 the time for these tasks should not be included in the lodestar calculation. *See Gauchat-Hargis*, 2013
12 U.S. Dist. LEXIS 128508 at *11 (“Time spent on tasks that are not relevant to the case at issue should
13 be eliminated from the lodestar analysis.”) Thus, the lodestar will be reduced by **39.2 hours**.²²

14 *ii. Clerical tasks*

15 Notably, Class Counsel’s lodestar calculation included time for clerical tasks performed by
16 Eleanor Natwick such as filing; “[d]ocument organization;” and downloading, printing, and saving
17 documents from PACER. (*See, e.g.*, Doc. 186-2 at 20-21, 23-25) Similarly, Linelle Mogado reported
18 she assisted with “filing, preparation and scanning exhibits,” and showed an assistant “how to compile
19 information and enter data.” (*Id.* at 23, 25) Given the clerical nature of these tasks, the time expended
20 should be deducted from the lodestar calculation. *See Missouri*, 491 U.S. at 288 n. 10; *Nadarajah*, 569
21 F.3d at 921. Because Class Counsel seeks 1/6 of the time and Ms. Natwick and Ms. Mogado recorded
22 31.75 hours in clerical tasks, this results in a deduction of **5.29 hours**.²³

23 *c. Milberg, LLP*

24 Milberg, LLP also represented the plaintiffs in the *Doe* action and seeks an award of 1/6 of the
25 time related to that phase of the litigation. David Azar submitted a declaration on behalf of Milberg
26 LLP, reporting: “The total number of hours expended on this litigation by [the] firm is 222.95 hours.

27 _____
28 ²² This total includes deductions of 22.58 hours for Chris Raiser, 12.33 hours for Emily Rich, 2.96 hours for
Linelle Mogado, and 1.33 hours for Kerianne Steele.

²³ This total includes deductions of 1.58 hours for Linelle Mogado and 3.71 hours for Eleanor Natwick.

1 The total lodestar for [the] firm is \$113,015.68 consisting of \$89,310.43 for attorneys' time and
2 \$23,705.25 for professional time." (Doc. 187 at 2, ¶ 6)

3 *i. Work related to claims against other grape growers*

4 Milberg LLP also erroneously included several tasks related to other defendants from *Lara* and
5 *Doe*, such as Castlerock. For example, Nicole Duckett reports time for preparing a joint status report
6 related to the claims against Stevco. (Doc. 187-1 at 8) In addition, Ms. Duckett noted she spent time
7 related to: "CastleRock: Email Hector Gonzalez; Call to Hector Gonzales; research mediators." (*Id.* at
8 9) Similarly, Sabrina Kim reports time for a conference with Ms. Duckett regarding "Castlerock
9 mediation and status and next steps in litigation; tele/conf. with J. Westerman re: same." (*Id.*) Ms. Kim
10 also indicates she spent time reviewing a stipulation regarding "lead structure in Giumarra and
11 SunView." (*Id.* at 7) In total, the attorneys report 23.75 on tasks that clearly relate to claims against
12 other defendants in *Doe* and *Lara*, which should not be included in the lodestar calculation. *See*
13 *Gauchat-Hargis*, 2013 U.S. Dist. LEXIS 128508 at *11. Because Milberg LLP seeks 1/6 of the time
14 related to these actions, the lodestar will be reduced by **3.96 hours**.²⁴

15 *ii. Clerical tasks*

16 The lodestar calculation by Mr. Azar includes 50.62 hours of work by document clerks, Jessica
17 Ortiz and Ray Velazquez. (Doc. 187-1 at 1) Ms. Ortiz and Mr. Valazquez were responsible for
18 docketing documents, copying, printing and "monitoring" the case. (*See id.* at 9-14) Given the
19 clerical nature of these tasks, the time attributed to a "document clerk" should not be included in the
20 lodestar calculation. *See Missouri*, 491 U.S. at 288 n. 10; *Nadarajah*, 569 F.3d at 921. This results in
21 the deduction of **50.62 hours**.

22 In addition, many of the tasks performed by Cecille Chaffins were clerical in nature. For
23 example, Ms. Chaffins reported prepared courtesy copies of documents, retrieved documents from
24 PACER, calendared deadlines, and "organize[d] working files." (*See Doc.* 187-1 at 3-9) In total, Ms.
25 Chaffins spent 31.2 hours on tasks that are clerical in nature. Because Milberg seeks 1/6 of the time,
26 this results in a deduction of **5.2 hours**.

27
28 ²⁴ This includes deductions of 1.21 hours for Sabrina Kim, 0.08 hours for Jeff Westerman, and 2.67 hours for Nicole Duckett.

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

iii. *Quarter-hour billing*

Notably, the minimum time recorded at Milberg LLP was 0.25 hours, which is a practice that has been criticized because it inflates the time billed. *Welch v. Metro Life Ins. Co.*, 480 F.3d 942, 949 (9th Cir. 2007) (affirming a reduction after finding the billing practice inflated the time recorded); *Robinson v. Plourde*, 717 F. Supp. 2d 1092, 1100-01 (D. Haw. 2010) (applying a 20% reduction for billing in quarter-hour increments); *Prudential Ins. Co. v. Am. v. Remington*, 2014 U.S. Dist. LEXIS 9209 at *9 (E.D. Cal. Jan. 24, 2014) (also applying a 20% reduction where counsel billed in 15 minute-increments).

In *Welch*, the district court “imposed a 20 percent across-the-board reduction on [the] requested hours” because the law firm “billed in quarter-hour increments.” *Id.*, 480 F.3d at 948. The district concluded the “practice of billing by the quarter-hour resulted in a request for excessive hours . . . because counsel billed a minimum of 15 minutes for numerous phone calls and e-mails that likely took a fraction of the time.” *Id.* The Ninth Circuit also reviewed the time sheets, and noted: “Our own review of the time sheet confirms that it is replete with quarter-hour or half-hour charges for the drafting of letters, telephone calls and intraoffice conferences.” *Id.* Therefore, the reduction for quarter-hour billing was affirmed. *Id.*

Here, counsel and their staff billed 15 minutes on several occasions for reading brief minute orders from the Court, reviewing emails, and checking deadlines (*See, e.g.*, Doc. 187-1 at 2, 9, 5 11) In *Remington*, this Court noted that “15-minute billing for reading the three-sentence Minute Order, which should have been read in 30 seconds or less time, obviously inflated the time spent performing that task, and causes concern that other unverifiable tasks likely took a fraction of the time billed to complete.” *Prudential Ins. Co. v. Am. v. Remington*, 2014 U.S. Dist. LEXIS 9209 at *9. Similarly, Mr. Westerman’s billing 15 minutes for reading a minute order suggests that the reported time *was* inflated significantly by the quarter-hour billing minimum on other tasks such as reviewing emails, leaving a telephone message, and conferences with co-counsel. *See id; Welch*, 480 F.3d at 948-49. Therefore, the remaining time reported by counsel is reduced by 20% for purposes of the lodestar calculation.

3. Lodestar Calculation

With the rates and time adjustments set forth above, the lodestar in this action is **\$690,089.65**:

LAW FIRM	LEGAL PROFESSIONAL	ADJUSTED HOURS	RATE	LODESTAR
Mallison & Martinez (\$556,891.85)	Stan Mallison	553.61	\$350	193,763.50
	Hector Martinez	357.45	\$350	125,107.50
	Marco Palau	337.62	\$225	75,964.50
	Joseph Sutton	670.40	\$225	150,840.00
	Alegria de la Cruz	13.00	\$300	3,900.00
	Eric Trabucco	14.20	\$175	2,485.00
	Hector Hernandez	0.85	\$100	85.00
	Jan Spring	10.25	\$100	1,025.00
	Jessica Juarez	12.60	\$225	2,835.00
	Joel Salas	0.50	\$95	47.50
	Mirella Lopez	6.50	\$95	617.50
	Deborah Vanore	2.33	\$95	221.35
	Dyviene Martinez	0.00	n/a	0.00
Weinburg, Roger & Rosenfeld (\$91,092.60)	David Rosenfeld	3.28	\$380	1,246.40
	Bill Sokol	1.29	\$380	490.20
	Chris Raisner	71.6	\$380	27,208.00
	Emily Rich	83.9	\$380	31,882.00
	Linelle Mogado	71.54	\$300	21,462.00
	Majari Chawla	5.17	\$300	1,551.00
	Kerianne Steele	16.88	\$225	3,798.00
	Suzanne Murphy	1.75	\$380	665.00
	Michelle Grisat	6.38	\$75	478.50
	Eleanor Natwick	10.58	\$150	1,587.00
	Teresa Oviedo	3.08	\$150	462.00
	Judy Castillo	1.50	\$150	225.00
	Aaron Nathan	0.25	\$150	37.50
Milberg, LLP (\$42,105.20)	Sabrina Kim	22.71	\$350	7,948.50
	Jeff Westerman	2.97	\$380	1,128.60
	Nicole Duckett	75.73	\$350	26,505.50
	Elizabeth Lin	12.77	\$380	4,852.60
	Cecille Chaffins	16.7	\$100	1,670.00
	“Document Clerks”	0.00	n/a	0.00
TOTAL				\$690,089.65

Significantly, there is a strong presumption that the lodestar is a reasonable fee. *Gonzalez*, 729 F.3d at 1202; *Camacho*, 523 F.3d at 978. The benchmark award of 25% of the common fund amounts to \$575,000—which is less than the lodestar as calculated above. However, the lodestar above is significantly less than the fees requested by Class Counsel. As a result, the lodestar cross-check

1 supports a request slightly above the benchmark, but not the amount sought by class counsel.

2 **III. Fees to be Awarded**

3 Weighing the factors set forth by the Ninth Circuit in *In re Online DVD-Rental Antitrust*
4 *Litigation*, a slight upward departure from the benchmark appears appropriate in this action. Despite
5 the fact that Class Counsel displayed less than exemplary work and exerted dozens of hours re-
6 litigating issues related to class certification, Class Counsel succeeded on the second motion to certify a
7 class and defeated motion for decertification. Further, the lodestar-cross check supports an upward
8 departure from the benchmark. *See Vizcaino* 290 F.3d at 1048; *Gonzalez*, 729 F.3d at 1202.
9 Accordingly, it is recommended that Class Counsel’s request for attorney fees be **GRANTED** in the
10 modified \$690,089.65, which is approximately 30% of the gross settlement fund.

11 **REQUESTS FOR COSTS**

12 **I. Litigation Expenses**

13 Reimbursement of taxable costs is governed by 28 U.S.C. § 1920 and Federal Rule of Civil
14 Procedure 54. Attorneys may recover reasonable expenses that would typically be billed to paying
15 clients in non-contingency matters. *See Harris v. Marhoefer*, 24 F.3d 16, 19 (9th Cir. 1994). Here, the
16 Settlement authorized Class Counsel to seek up to \$50,000 for expenses. (Doc. 166-1 at 5, § III.B)
17 Plaintiffs’ counsel report their actual costs totaled \$36,620.54, and seek reimbursement of these funds.
18 (Doc. 189 at 11) Class Counsel assert:

19 Here, the costs incurred are reasonable for a document-intensive wage and hour case
20 and as such Class Counsel should be reimbursed. Mallison Decl. ¶¶58, 59. Plaintiffs
21 propounded document requests demanding all of the critical payroll and timekeeping
22 information at issue in this case and the names and contact information for
23 Defendant’s former and current employees. Mallison Decl. ¶¶34-36. Defendants’
24 timekeeping system is paper-based consisting of a database for payroll and paper time
25 records. *Id.* This required Class Counsel to meticulously review a vast quantity of
26 paper time keeping and payroll records in order to properly analyze and negotiate a
27 settlement in this case. *Id.* In addition, Class Counsel necessarily incurred significant
28 costs related to taking depositions in this litigation. *Id.* Class counsel also incurred
significant costs related to the production, duplication, and photocopying of the
extensive paper record. *Id.* at ¶40.

26 (Doc. 189 at 19)

27 Previously, this Court noted cost “including filing fees, mediator fees ..., ground transportation,
28 copy charges, computer research, and database expert fees ... are routinely reimbursed in these types of

1 cases.” *Alvarado*, 2011 U.S. Dist. LEXIS 52793, at *27-28. A review of the cost lists provided by
2 Class Counsel demonstrates the costs incurred are reasonable. Accordingly, the Court recommends the
3 request for costs in the amount of \$36,620.54 be **GRANTED**.

4 **II. Costs of Settlement Administration**

5 The Settlement authorizes the reimbursement of “reasonable fees and expenses” for the
6 Settlement Administrator (Doc. 166-1 at 6, Settlement § III.B) Originally, Gilardi estimated the cost
7 of administration would be approximately \$30,000. (Doc. 165 at 5) Now, Gilardi seeks an award of
8 \$57,500 for performing the duties required under the terms of the Settlement. (Doc. 200 at 3)

9 Notably, when Gilardi made an estimate for its fees and expenses related to this action, the
10 estimate was based upon a class size of 3,000. (Doc. 166-5 at 1) It was only after the Court granted
11 preliminary approval of the Settlement and appoint Gilardi as the Settlement Administrator, that the
12 class expanded from “approximately 3,000 Class Members” to more than 6,000 Class Members. (*See*
13 Doc. 184-1 at 28.) Due to the additional time spent on the class data and significant increase in the
14 number of Class Members, as well as the work related to processing late claims that the parties
15 stipulated will be deemed timely, Gilardi seeks an award of fees greater than previously requested.
16 (*See* Doc. 184-3 at 4, ¶ 16; Doc. 198-1 at 2, ¶ 4) Specifically, Ms. McGill reports that the costs for
17 administration have increased to \$75,054. (Doc. 200 at 6) Despite the actual costs of the settlement
18 administration, Gilardi requests an award of \$57,500. (*Id.* at 3, McGill Decl. ¶ 10)

19 Previously, this Court has awarded \$25,000 for settlement administration in a wage and hour
20 case involving approximately 170 potential class members. *See Vasquez v. Coast Valley Roofing*, 266
21 F.R.D. 482, 483-84 (E.D. Cal. 2010). Given that this class involves more than thirty times the number
22 of class members in *Vasquez*, the Court finds the increased administrative expenses are reasonable,
23 and recommends an award of \$57,500 for the settlement administration be **GRANTED**.²⁵

24 **PLAINTIFFS’ REQUEST FOR AN INCENTIVE AWARD**

25 The settlement provides that Plaintiffs may apply to the District Court for a class representative
26

27 ²⁵ Class Counsel indicated that they were neutral on the amount of the award to the Claims Administrator but
28 argued that Gilardi should be given the opportunity to file a declaration that would explain its higher costs. However,
Gilardi had already done so. Ms. McGill’s declaration details that the actual cost for the services rendered was \$75,000 but
Gilardi offered a discount in the amount of \$17,554.07 reducing the total to \$57,500. (Doc. 200 at 3, 5-6.)

1 enhancement up to \$10,000, to be paid from the gross settlement amount. (Doc. 166-1 at 5, Settlement
2 § III.B) Here, Plaintiffs request awards of \$10,000 for the *Rosales* plaintiffs and \$7,500 for the *Cruz*
3 plaintiffs. (Doc. 189 at 20)

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

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

11 *Id.* at 975. In evaluating a request for an enhanced award to a class representative, the Court should
12 consider all “relevant factors including the actions the plaintiff has taken to protect the interests of the
13 class, the degree to which the class has benefitted from those actions, . . . the amount of time and effort
14 the plaintiff expended in pursuing the litigation . . . and reasonable fears of workplace retaliation.” *Id.*
15 at 977. Further, incentive awards may recognize a plaintiff’s “willingness to act as a private attorney
16 general.” *Rodriguez v. West Publ’g Corp.*, 563 F.3d 948, 958-59 (9th Cir. 2009).

17 **A. Actions taken to benefit the class**

18 The class representatives report they assisted counsel with a wide-range of tasks. Both Ms.
19 Corza and Ms. Rosales had their depositions taken. (Doc. 191 at 3, Corza Decl. ¶ 6; Doc. 193 at 3,
20 Rosales Decl. ¶ 6) Angel Lopez Cruz and Angelica Alvarez became involved in the litigation when
21 they gave declarations in support of class certification in *Rosales*. (Doc. 190 at 2, Cruz Decl. ¶ 3; Doc.
22 192 at 2, Alvarez Decl. ¶ 3) Further, each of the plaintiffs report they assisted with discovery,
23 provided documents to the attorneys, and reviewed documents produced by El Rancho and Garza.
24 (Doc. 190 at 3, Cruz Decl. ¶ 5; Doc. 191 at 3, Corza Decl. ¶ 5; Doc. 192 at 3, Alvarez Decl. ¶ 5; Doc.
25 193 at 3, Rosales Decl. ¶ 5).

26 Notably, Plaintiffs would have likely submitted to depositions and assisted with discovery
27 whether the action was brought on behalf of the class. On the other hand, Plaintiffs sacrificed any
28 additional claims that they may have had against the Defendants whether they were related to the

1 claims raised in the case or not as a condition of the settlement. Thus, the actions taken by Plaintiffs
2 weigh in favor of an incentive payment.

3 **B. Time expended by Plaintiffs**

4 The *Rosales* plaintiffs estimate they spent between 91 and 96 hours related to this action by
5 providing assistance with discovery, submitting to depositions, attending two of the mediation sessions
6 in person, and being available by phone for the third mediation. (Doc. 191 at 3, Corza Decl. ¶¶5-7;
7 Doc. 193 at 3, Rosales Decl. ¶¶ 5-7) In contrast, Mr. Cruz estimates he spent 12 hours on actions
8 related to the litigation, including reviewing documents and being available by phone for the final
9 mediation session. (Doc. 190 at 3, Cruz Decl. ¶¶ 5-6) Ms. Alvarez attended the final mediation
10 session in person, and estimates she spent 31 hours on tasks related to this litigation. (Doc. 192 at 3,
11 Alvarez Decl. ¶¶ 5-6) Therefore, this factor weighs in favor of incentive payments to both the *Rosales*
12 and *Cruz* plaintiffs.

13 **C. Fears of workplace retaliation**

14 Ms. Rosales reports that when the “Doe” action was filed, she was “afraid that if [she]
15 participated in the lawsuit [she] might be blacklisted and never get another agricultural job.” (Doc. 193
16 at 2, ¶ 3) Similarly, Ms. Corza and Ms. Alvarez report they feared being unable to find work if they
17 participated in the lawsuit. (Doc. 191 at 2, Corza Decl. ¶ 3; Doc. 192 at 2, Alvarez Decl. ¶ 3) Mr. Cruz
18 asserts that after he became a named plaintiff, he was “harassed by [his] supervisor at El Rancho . . .
19 and chose to quit rather than keep working.” (Doc. 190 at 2, Cruz Decl. ¶ 3) Thus, this factor supports
20 incentive payments to Plaintiffs.

21 **D. Reasonableness of Plaintiff’s request**

22 Considering the actions taken by Plaintiffs, an incentive award is appropriate. In determining
23 the amount to be awarded, the Court may consider the time expended by the class representative, the
24 fairness of the hourly rate, and how large the incentive award is compared to the average award class
25 members expect to receive. *See, e.g., Ontiveros*, 303 F.R.D. at 366 (evaluating the hourly rate the
26 plaintiff would receive to determine whether the award was appropriate); *Rankin v. Am. Greetings, Inc.*,
27 2011 U.S. Dist. LEXIS 72250, at *5 (E.D. Cal. July 6, 2011) (observing that the incentive award
28 requested was “reasonably close to the average per class member amount to be received); *Alvarado*,

1 2011 WL 1883188 at *10-11 (considering the time and financial risk undertaken by the plaintiff).

2 1. Time expended

3 In *Alvarado*, the Court noted the class representatives “(1) travelled from Bakersfield to
4 Sacramento for mediation sessions (2) assisted Counsel in investigating and substantiating the claims
5 alleged in this action; (3) assisted in the preparation of the complaint in this action; (4) produced
6 evidentiary documents to Counsel; and (5) assisted in the settlement of this litigation.” *Id.*, 2011 WL
7 1883188 at *11. Further, the Court noted the plaintiffs “undertook the financial risk that, in the event
8 of a judgment in favor of Defendant in this action, they could have been personally responsible for the
9 costs awarded in favor of the Defendant.” *Id.* In light of these facts, the Court found an award of
10 \$7,500 for each plaintiff was appropriate for the time, efforts, and risks undertaken.

11 Here, the *Rosales* plaintiffs seek an award equal exceeding the incentive awards approved in
12 *Alvarado*. However, because the actions taken by the *Rosales* are similar to those by the plaintiff in
13 *Alvarado*, this factor supports authorizing an enhancement of \$7,500 to the *Rosales* plaintiffs.

14 2. Fairness of the hourly rate

15 Recently, this Court criticized a requested award of \$20,000 where the plaintiff estimated “he
16 spent 271 hours on his duties as class representative over a period of six years,” because the award
17 would have compensated the class representative “at a rate of \$73.80 per hour.” *Ontiveros*, 303 F.R.D.
18 at 366. The Court explained that “[i]ncentive awards should be sufficient to compensate class
19 representatives to make up for financial risk . . . for example, for time they could have spent at their
20 jobs.” *Id.* at (citing *Rodriguez v. West Publ’g Corp.*, 563 F.3d 948, 958-59 (9th Cir. 2009)).

21 Here, the *Rosales* Plaintiffs estimate they spent between 91 hours and 96 hours on this action.
22 Thus, the requested award of \$10,000 would compensate the plaintiffs at rates ranging from \$104.17 to
23 \$109.89 per hour. The *Cruz* plaintiffs estimate they spent between 12 and 31 hours on this action,
24 which would provide compensation to Angel Cruz at the rate of \$625 per hour and Anglica Alvarez
25 would receive a rate of \$208 per hour. Because these rates are excessive, this factor supports an
26 enhancement lower than that requested. *See Ontiveros*, 303 F.R.D. at 366.

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

28 In *Rankin*, the Court approved an incentive award of \$5,000, where the “[p]laintiff retained

1 counsel, assisted in the litigation, and was an active participant in the full-day mediation.” *Id.*, 2011
2 U.S. Dist. LEXIS 72250, at *5. The Court found the amount reasonable, in part because “the sum is
3 reasonably close to the average per class member amount to be received.” *Id.*

4 Here, the estimated average settlement share is \$1,336.58. (Doc. 199-5 at 2, McGill Decl. ¶ 3)
5 Thus, the *Rosales* plaintiffs request enhancement payments that are nearly \$8,300 more than the
6 average, while the *Cruz* plaintiffs request enhancements more than \$6,000 than the average. Thus, this
7 factor favors lower enhancements for both the *Rosales* and *Cruz* plaintiffs.

8 **E. Amount to be awarded**

9 Given that the hourly rates sought by the class representatives are excessive, and that the
10 enhancements sought are significantly out of proportion to the average awards anticipated by class
11 members, the Court finds the requested incentives are inappropriate. However, Plaintiffs clearly
12 expended efforts on behalf of the class. As such, the Court finds an incentive award is appropriate, and
13 recommends the request be **GRANTED** in the modified amount of \$7,500 for the *Rosales* plaintiffs
14 and \$4,000 for the *Cruz* plaintiffs.

15 **FINDINGS AND RECOMMENDATIONS**

16 Based upon the foregoing, the Court finds the proposed class settlement is fair, adequate, and
17 reasonable, and the factors set forth by the Ninth Circuit weigh in favor of final approval of the
18 settlement agreement. *See* Fed. R. Civ. P. 23(e)(2); *Staton*, 327 F.3d at 959.

19 Accordingly, **IT IS HEREBY RECOMMENDED:**

- 20 1. Plaintiff’s motion for final approval of the Settlement Agreement be **GRANTED**;
21 2. Plaintiffs’ request for certification of the Settlement Class be **GRANTED** and defined
22 as follows:

23 All persons who have been employed or jointly employed by Garza
24 Contracting at El Rancho Farms facilities between November 9, 2001
and June 11, 2014.

- 25 3. The unclaimed fund be distributed on a pro rata basis to Class Members who filed
26 claims on or before July 17, 2015 as follows:

27 The Settlement Share for each Claimant will be based on (a) that
28 Claimant's total pay periods (or if necessary, the number of Months of
Employment) during the Class Period (b) divided by the aggregate
number of pay periods (or if necessary, the number of Months of

1 Employment) of all Participating Class Members (all class member
2 claims) during the Class Period (with the division rounded to four
3 decimal places) (c) multiplied by the value of the Net Settlement
Amount;

- 4 4. Plaintiffs' request for class representative incentive payments be **GRANTED** in the
5 amount of \$7,500 for the *Rosales* plaintiffs and \$4,000 for the *Cruz* plaintiffs
- 6 5. Class Counsel's motion for attorneys' fees is **GRANTED** in the modified amount of
7 **\$690,089.65**, which is approximately 30% of the gross settlement amount;
- 8 6. Class Counsel's request for costs of \$36,620.54 be **GRANTED**;
- 9 7. The request for fees for the Settlement Administrator in the amount of \$57,500 be
10 **GRANTED**; and
- 11 8. The California Labor Code Private Attorney General Act payment to the State of
12 California in the amount of \$30,000 be **APPROVED**;
- 13 9. The action be dismissed with prejudice, with each side to bear its own costs and
14 attorneys' fees except as otherwise provided by the Settlement and ordered by the
15 Court; and
- 16 10. The Court retain jurisdiction to consider any further applications arising out of or in
17 connection with the Settlement.

18 These Findings and Recommendations are submitted to the United States District Judge
19 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1)(B) and Rule 304 of the Local
20 Rules of Practice for the United States District Court, Eastern District of California. Within 14 days
21 after being served with these Findings and Recommendations, any party may file written objections
22 with the Court. Such a document should be captioned "Objections to Magistrate Judge's Findings and
23 Recommendations."

24 ///

25 ///

26 ///

27 ///

28 ///

