

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12

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

13 SABAS ARREDONDO, JOSE CUEVAS,  
14 HILARIO GOMEZ, IRMA LANDEROS, and  
15 ROSALBA LANDEROS individually, and on  
16 behalf of all others similarly situated,

17 Plaintiffs,

18 v.

19 DELANO FARMS COMPANY, a  
20 Washington State Corporation; CAL-  
21 PACIFIC FARM MANAGEMENT, L.P.;  
22 T&R BANGI'S AGRICULTURAL  
23 SERVICES, INC., and DOES 1 through 10,  
24 inclusive,

25 Defendants.

NO. 1:09-cv-01247-MJS

**ORDER OF CERTIFICATION OF  
SETTLEMENT CLASS AND  
PRELIMINARY APPROVAL OF  
JOINT STIPULATION OF  
SETTLEMENT OF CLASS ACTIONS**

The Honorable Michael J. Seng

26 Plaintiffs Sabas Arredondo, Jose Cuevas, Hilario Gomez, Irma Landeros,  
27 Rosalba Landeros, and Isidro Paniagua (collectively the "Representative Plaintiffs" and  
each a "Representative Plaintiff"), on behalf of themselves and the proposed  
Settlement Class, have filed a motion asking the Court to certify the Settlement Class

1 and grant preliminary approval of the Joint Stipulation of Settlement of Class Actions  
2 (“Settlement Agreement”). (See ECF No. 463.) The Settlement Agreement is dated  
3 November 18, 2016 and has been entered into by DELANO FARMS COMPANY  
4 (“Delano Farms”); CAL-PACIFIC FARM MANAGEMENT, L.P., T&R BANGI'S  
5 AGRICULTURAL SERVICES, INC., KERN AG LABOR MANAGEMENT, INC., and  
6 ELITE AG LABOR SERVICES, INC. (collectively, the “Contractors”), and the  
7 Representative Plaintiffs, including Isidro Paniagua, on their own behalf and on behalf  
8 of both the previously certified class in the *Arredondo* Action and the Settlement Class,  
9 certified by this Order.

10 The Motion and Defendants’ Notice of Non-Opposition were filed on November  
11 18, 2016. Pursuant to Local Rule 230(g) the parties have stipulated and the Court has  
12 ordered that the Motion may be submitted upon the record and briefs on file and  
13 without the need for a hearing. Having considered the Settlement Agreement along  
14 with the Motion, the Declaration of Mario Martinez in support of the Motion, and other  
15 documents filed in this action, the Court finds good cause for issuing an order  
16 certifying the settlement class and preliminarily approving the Settlement Agreement.

17 IT IS HEREBY ORDERED THAT:

18 1. The Court grants the request for preliminary approval of the Settlement  
19 Agreement. All defined terms contained in this order shall have the same meaning as  
20 set forth in the Settlement Agreement.

21 a. The Court finds that the Settlement Agreement is within the range  
22 of what is fair, adequate, and reasonable as set forth in Federal Rule of Civil  
23 Procedure 23(e)(2). The Court further finds that the Settlement Agreement appears to  
24 be the product of serious, informed, non-collusive negotiations, has no obvious  
25 deficiencies, and does not improperly grant preferential treatment to the  
26 Representative Plaintiffs or segments of the Settlement Class.

1                   b.       The Settlement Agreement is the result of extensive, well-  
2 informed, good-faith, and arm's-length negotiations. Over the seven-year history of  
3 the *Arredondo* litigation, the parties have participated in mediation sessions with four  
4 different professional mediators and engaged in direct negotiations. In total, the  
5 parties have spent seven days mediating with neutrals. The most recent mediation,  
6 which resulted in the Settlement Agreement, also included negotiations over the  
7 *Paniagua* Action.

8                   c.       Both class counsel and Defendants' counsel are experienced and  
9 capable litigators and have assessed the claims' strengths and weaknesses and the  
10 benefits of settlement. The parties have engaged in lengthy class and merits-based  
11 discovery. This has included more than 160 depositions and the production of more  
12 than 500,000 pages of documents plus the electronic payroll records of the Bangi  
13 defendants from July 2005 through April 2011. While no class has been certified in  
14 *Paniagua*, the parties appear to thoroughly understand its factual predicate by virtue of  
15 having litigated the *Arredondo* Action for the last seven years. Payroll records and  
16 written policies at issue in the *Paniagua* Action were voluntarily provided to Mr.  
17 Paniagua's counsel in advance of the most recent mediation and have informed the  
18 agreement as to the Settlement Amount.

19                   d.       The Settlement Agreement confers a substantial benefit on the  
20 Settlement Class, because there is a significant risk to them of continued litigation of  
21 the *Arredondo* and *Paniagua* Actions.

22                   e.       The Court preliminarily approves the Settlement Amount of  
23 \$6,000,000.00. All payments to the Settlement Class and/or anyone else in  
24 connection with, arising from, relating to, or in consideration of the Settlement  
25 Agreement or the resolution of the *Arredondo* Action or the *Paniagua* Action shall  
26 come from this Settlement Amount. The Net Settlement Amount shall be calculated by  
27

1 subtracting the following from the Settlement Amount: (i) the amount of the  
2 Representative Plaintiffs' Enhancement Awards not to exceed \$7,000 for Sabas  
3 Arredondo, Irma Landeros, Rosalba Landeros, Hilario Gomez, and Jose Cuevas<sup>1</sup> and  
4 \$2,000 for Isidro Paniagua, for a total of \$37,000; (ii) Class Counsel's requested  
5 attorneys' fees of 25% of the Settlement Amount or \$1,500,000; (iii) Class Counsel's  
6 costs in the amount of \$508,176.28; (iv) the estimated \$185,000.00 to be paid to  
7 Kurtzman Carson Consultants ("KCC") and the community-outreach administrator for  
8 their fees and costs in connection with administering and implementing the Settlement  
9 Agreement; (v) any and all Taxes or other payments due in connection with or as a  
10 result of the payments to the Settlement Class Members; and (vi) any other portion of  
11 the Settlement Amount that is not distributed to the Settlement Class pursuant to the  
12 Plan of Allocation. The Court finds that these estimated payments and the method for  
13 calculating the Net Settlement Amount is within the range of what is fair, adequate,  
14 and reasonable and is preliminarily approved by the Court.

15 f. The Court finds on a preliminary basis that the Plan of Allocation  
16 for distributing the Net Settlement Fund to Claiming Class Members is also within the  
17 range of what is fair, adequate, and reasonable and is preliminarily approved by the  
18 Court. Class Counsel's determination that weeks worked in the earlier part of the  
19 class period should be assigned a higher value is proper to account for changes in  
20 practice that appear to have taken place.

21 2. The Court approves the Settlement Agreement's plan for providing notice  
22 of the certification of the Settlement Class, the Settlement Agreement, and the  
23

24 \_\_\_\_\_  
25 <sup>1</sup> As previously reported to the Court and the parties, the enhancement award requested for Plaintiff Jose Cuevas  
26 should have been \$7,000.00, not \$2,000.00. The \$2,000.00 was properly requested for Mr. Isidro Paniagua, who  
27 is a more recent Plaintiff in the *Paniagua* action. This error was brought to the attention of the Court and the  
parties during prior telephonic conferences, and in Plaintiffs' December 13, 2016 status report. (*See* ECF No. 469  
at 2, n.1.)

1 Fairness and Final Approval hearing to the Settlement Class. Notice is being provided  
2 in a form most likely to reach the Settlement Class under the circumstances and  
3 constitutes valid, due, and sufficient notice to the Settlement Class in compliance with  
4 the requirements of applicable law, including Federal Rule of Civil Procedure 23 and  
5 the due-process requirements of the United States Constitution and California  
6 Constitution. The Settlement Agreement shall be binding on all Settlement Class  
7 Members who do not opt out of the Settlement, regardless of whether they actually  
8 receive the Class Notice.

9           3. The Court has reviewed and approves, as to form and content, the Class  
10 Notice, which consists of: the Notice of Proposed Class Action Settlement and  
11 Certification of Settlement Class (attached to the Settlement Agreement as Exhibit B);  
12 the Claim Form, which will include an individualized Notice of Anticipated Settlement  
13 Share (substantially in the form of Exhibit C to the Settlement Agreement but including  
14 the information for each Settlement Class Member); and the Opt-Out Form  
15 (substantially in the form of Exhibit D to the Settlement Agreement). The Class Notice  
16 is deemed sufficient to inform Settlement Class Members of the terms of the  
17 Settlement, their rights, and the process for exercising their rights under the  
18 Settlement Agreement, including their rights to object, receive a share of the Net  
19 Settlement Amount or exclude themselves, and the date and location of the Final  
20 Approval Hearing.

21           4. The Court appoints and designates KCC as the Settlement Administrator  
22 and authorizes Class Counsel, in consultation with KCC, to engage a community-  
23 outreach administrator to assist with notifying Class Members of the settlement,  
24 completing and submitting claim forms, answering questions about the settlement, and  
25 updating addresses and contact information for Class Members. All costs and  
26 expenses for or relating in any manner to the administration of the Settlement,  
27

1 including without limitation the fees of the Settlement Administrator and the  
2 community-outreach administrator, will be paid from and out of the Settlement Amount.  
3 The Court directs the Settlement Administrator to notify the Settlement Class in  
4 accordance with the procedures set forth in the Settlement Agreement, including  
5 mailing the approved Class Notice documents to the Settlement Class Members.

6           5. Except as otherwise indicated in paragraphs 52, 57, 58(b), (c), (f), & (h),  
7 and 64 of the Settlement Agreement, Defendants, the Released Parties, and defense  
8 counsel shall have no responsibility or involvement with regard to administering the  
9 Settlement Fund, processing of claims, or distribution of payments to class members.  
10 Plaintiffs and their counsel shall communicate with the Settlement Administrator as  
11 necessary to achieve compliance with the Settlement approved by the Court, provided  
12 that all communications concerning material matters or requiring the approval of or  
13 notice to Defendants under the Settlement Agreement are copied or otherwise  
14 contemporaneously provided to defense counsel. Nor shall Defendants and the  
15 Released Parties have any responsibility or liability for, relating to, or arising from or in  
16 connection with the appointment of the Settlement Administrator, any actions or  
17 omissions by the Settlement Administrator, its agents, or the agents of Class Counsel,  
18 or any obligation or liability of the Qualified Settlement Fund. Without limitation,  
19 Defendants and the Released Parties are not responsible and shall have no liability in  
20 connection with the distribution of any unclaimed funds or any obligation to remit such  
21 funds to the State of California, the failure to obtain or report accurate taxpayer  
22 information, the failure to withhold, remit, or pay sufficient Taxes, or the calculation and  
23 distribution of payments to Settlement Class Members. Settlement Class Members  
24 are responsible for and may owe taxes to the extent their obligations have not been  
25 fully withheld.  
26  
27

1           6.       The Settlement Administrator shall send Settlement Class Members, by  
2 first-class mail to their last known address (after performing address updates and  
3 verifications as appropriate prior to the first mailing), the Class Notice (“First Mailing”)  
4 within 90 days of entry of this order. Upon receipt of information that a Settlement  
5 Class Member did not in fact receive the Class Notice in the First Mailing (e.g., by the  
6 post office’s return to the Settlement Administrator of the First Mailing sent to that  
7 individual), the Settlement Administrator shall undertake reasonable efforts to  
8 determine the correct address for those Settlement Class Members who did not  
9 receive the First Mailing. Then, within 115 days after entry of this order, the  
10 Settlement Administrator will execute a second mailing of Class Notice to those  
11 Settlement Class Members whose previous Class Notices were undeliverable and for  
12 whom the Settlement Administrator has located an alternative address through skip-  
13 tracing or other means (“Second Mailing”).

14           7.       No later than the date of the First Mailing, if the Settlement Administrator  
15 deems it a reasonable basis for disseminating Class Notice and collecting forms from  
16 the Settlement Class, the Settlement Administrator shall establish and maintain a  
17 website, in each of English, Spanish, and Tagalog, the content of which shall be  
18 subject to the prior approval by all parties (or, if the parties cannot agree, the approval  
19 of the Court). The website (if any) shall include the Class Notice materials (except for  
20 the Claim Form with individualized Notice of Anticipated Settlement Share) and  
21 information about how Settlement Class Members can contact the Settlement  
22 Administrator.

23           8.       No later than the date of the First Mailing, the Settlement Administrator  
24 shall also set up and maintain a toll-free telephone information line, which shall be  
25 staffed by persons able to competently answer questions in English, Spanish, and  
26 Tagalog. The scripts or points to be used in responding to such inquiries shall be  
27

1 subject to the prior approval by all parties (or, if the parties cannot agree, the approval  
2 of the Court).

3 9. The Settlement Administrator shall also establish radio public-service  
4 announcements (PSAs) and place advertisements in English, Spanish, and, to the  
5 extent available, Tagalog language media and/or publications that serve the Delano,  
6 Bakersfield, and Visalia areas and take other steps to publicize the Settlement and to  
7 solicit correct address information from the Settlement Class, modeled on the Class  
8 Notice. The Settlement Administrator shall place such advertisements and  
9 announcements in those media and publications, and at times and frequencies, that it  
10 deems appropriate, following consultation with counsel for Plaintiffs. Class Counsel  
11 shall seek agreement from Defendants' counsel as to the content, placement, and  
12 timing of these PSAs and advertisements. If the parties are unable to agree, they will  
13 promptly seek resolution from the Court through a joint motion setting forth their  
14 respective positions.

15 10. Upon reasonable request, the Settlement Administrator shall provide  
16 periodic reports to all counsel identifying the efforts taken to provide actual notice to  
17 Settlement Class Members, such reports to include without limitation the number of  
18 mailings sent out, the number of notices returned undeliverable, the number of  
19 persons who have responded to the PSAs, the number of phone calls received, and  
20 the efforts taken to identify proper addresses for the Settlement Class Members.

21 11. Only those Settlement Class Members who submit a timely and  
22 complete Claim Form to the Settlement Administrator as provided in the Settlement  
23 Agreement and Class Notice will be entitled to receive a share of the Net Settlement  
24 Fund as set forth in the Plan of Allocation. Settlement Class Members who fail to  
25 submit valid Claim Forms will be bound, together with all Settlement Class Members,  
26 by all terms of the Settlement Agreement, including the releases, as well as the terms  
27



1 of the Order and Final Judgment to be entered and will be barred from bringing any  
2 action against any of the Released Parties concerning any of the Released Claims.

3 12. As part of the Class Notice documents, Settlement Class Members will  
4 be provided with a Claim Form, which includes their Notice of Anticipated Settlement  
5 Share. Whether or not he or she submits an objection to all or part of the Settlement,  
6 a Settlement Class Member may dispute his or her Anticipated Settlement Share, or  
7 the data used to calculate the Notice of Anticipated Settlement Share, within 135 days  
8 after entry of this order.

9 13. Any Settlement Class Member may choose to opt out and be excluded  
10 from the Settlement as provided in the Settlement Agreement and Class Notice by  
11 timely submitting an Opt-Out Form. Any person who opts out will not be bound by the  
12 Settlement Agreement and will have no right to receive a share of the Settlement or to  
13 object to the Settlement Agreement. Settlement Class Members who do not opt out  
14 shall be bound by all determinations of the Court, the terms of the Settlement  
15 Agreement, and the Final Order and Judgment.

16 14. Pursuant to the Federal Rule of Civil Procedure 23(e)(5), Settlement  
17 Class Members may object to the terms of the Settlement Agreement by filing a timely  
18 and complete objection with the Court. Those who object may appear and present  
19 their objections at the Fairness and Final Approval Hearing in person or by counsel,  
20 provided that they include a statement of their intention to appear in the objection that  
21 they file with the Court. Settlement Class Members shall be permitted to withdraw  
22 their objections in writing by filing a withdrawal statement not later than five business  
23 days prior to the Court's Fairness and Final Approval Hearing.

24 15. For the sole purpose of effectuating the Settlement Agreement and with  
25 no other effect on this or any other litigation should the Settlement Agreement not  
26 ultimately become both effective and final, the Court has found the requirements of  
27

1 Federal Rule of Civil Procedure 23(a)(1)–(4) and (b)(3)(A)–(D) satisfied for the  
2 proposed Settlement Class. Certification pursuant to this order shall not be construed  
3 as an admission by Defendants that this action is appropriate for class treatment for  
4 litigation purposes. Entry of this order is without prejudice to Defendants’ rights to  
5 oppose certification of a litigation class in this action should the Settlement Agreement  
6 not be finally approved or not become effective. The Court grants Plaintiffs’ request to  
7 certify the following Settlement Class:  
8

9 [A]ny and all individuals who are or were employed as non-exempt agricultural  
10 employees of Cal-Pacific Farm Management, LP, T&R Bangi’s Agricultural  
11 Services, Inc., Kern Ag Labor Management, Inc., La Vina Contracting, Inc., or  
12 Elite Ag Labor Services, Inc. and performed work at Delano Farms in California  
13 between July 17, 2005 and the date of entry of the Order of Certification and  
14 Preliminary Approval who do not opt out, excluding those who worked only as  
15 irrigators, tractor drivers, or swampers or only in cold storage. This includes  
16 employees, without limitation, who previously opted out of the previously  
17 certified class in the *Arredondo* Action. For clarity, the phrase “performed work  
18 at Delano Farms in California” as used in this paragraph does not include work  
19 performed at premises other than Delano Farms, such as Blanc Vineyards and  
20 Red Cedar Vineyards in Paso Robles.

21 16. The Court appoints and designates the Representative Plaintiffs to  
22 serve as the representatives of the Settlement Class. The Court also appoints Isidro  
23 Paniagua to serve as a representative of the Settlement Class effective upon the filing  
24 of the Amended *Arredondo* Complaint.

25 17. After the material terms of the Settlement Agreement were negotiated  
26 and Plaintiffs filed the motion for preliminary approval on November 18, 2016 (ECF  
27 No. 463), four of the Representative Plaintiffs reportedly expressed to Class Counsel  
that they wanted a greater enhancement award and accordingly did not then sign the  
final Settlement Agreement. Current Class Counsel (defined below in paragraph 19)  
promptly notified the Court and the parties of the situation and conveyed the request of  
these four representatives for a conference with the Court to have their questions

1 addressed. (See ECF No. 469.) The Court was willing to grant the request for a  
2 conference but noted that, in seeking to increase the enhancement award, the four  
3 Representative Plaintiffs were taking a position that was at odds with the interest of the  
4 remaining class members. (ECF No. 470, at 1–2.) The Court further noted that  
5 Current Class Counsel could not continue to represent the four Representative  
6 Plaintiffs who were seeking the higher award and that, if Plaintiffs wanted to address  
7 the Court, they had to execute a substitution of attorney. (*Id.* at 2.) Because the four  
8 Plaintiffs did not agree to substitute out their current attorneys, Current Class Counsel  
9 gave notice of their motion to withdraw, to be heard on January 27, 2017. (ECF No.  
10 475.) The four Representative Plaintiffs seeking the higher enhancement award  
11 appeared at the hearing, where they were able to address their concerns about the  
12 amount of their enhancement awards with the Court and stated that they otherwise  
13 supported the Settlement Agreement. The four Plaintiffs indicated at that hearing that  
14 they would sign the Settlement Agreement as written. The Court noted that, if  
15 Plaintiffs signed the Settlement Agreement, the conflict that appeared to have existed  
16 would have been resolved and gave the four Representative Plaintiffs another week to  
17 consider how they wished to proceed. (ECF No. 476.) The four Representative  
18 Plaintiffs subsequently signed the Settlement Agreement. (See ECF Nos. 477, 478.)  
19 Current Class Counsel accordingly requested to withdraw their pending motion to  
20 withdraw as counsel for the four Representative Plaintiffs, and the Court granted that  
21 request. (See ECF No. 479.)

22  
23 18. The Court finds that any conflict potentially created by the reported  
24 request for higher enhancement awards was not inherent but curable and that it was  
25 cured when the four Representative Plaintiffs voluntarily chose to sign the Settlement  
26 Agreement following the January 27, 2017 hearing. The Court therefore finds that  
27 there is no conflict between these four Representative Plaintiffs and the remainder of

1 the class on that basis; nor does Current Class Counsel have any conflict in continuing  
2 to represent all Representative Plaintiffs and the class. There is no reason to think  
3 that the Representative Plaintiffs will not prosecute the execution of the settlement  
4 vigorously, as they did the underlying litigation.  
5

6 19. The Court appoints and designates Martinez Aguilasocho & Lynch,  
7 APLC; Law Office of Ball & Yorke; and Law Office of Wilcoxon Callahan, LLP  
8 (collectively, "Current Class Counsel") as counsel for the Settlement Class. The Court  
9 finds that notwithstanding the potential conflict addressed above, Current Class  
10 Counsel has been and remains adequate to represent the previously certified  
11 *Arredondo* class as well as the Settlement Class and its Representative Plaintiffs.  
12 When Current Class Counsel reportedly learned that four of the Representative  
13 Plaintiffs might want larger enhancement awards, they promptly brought the issue to  
14 the Court's attention and took steps to resolve it, as was proper, and the perceived  
15 temporary conflict has since been resolved.

16 20. Current Class Counsel is authorized to act on behalf of the  
17 Representative Plaintiffs and Settlement Class with respect to all acts required by, or  
18 which may be given pursuant to, the Settlement Agreement or such other acts that are  
19 reasonably necessary to consummate the proposed Settlement Agreement. Any  
20 Settlement Class Member may object to the Settlement Agreement and enter an  
21 appearance through his or her own counsel at the Settlement Class Member's own  
22 expense.

23 21. No later than 14 days before the deadline for the Settlement Class to file  
24 objections and return Opt-Out and Claim Forms, Class Counsel will file its Motion for  
25 Attorneys' Fees and Costs and Representative Plaintiffs' Enhancement Awards, to be  
26 heard concurrently with the Motion for Final Approval of the Settlement at the Fairness  
27 and Final Approval Hearing.

1           22.    The deadline for filing a Motion for Final Approval of the Settlement and  
2 all papers in support of the Order and Final Judgment will be 15 days before the  
3 Fairness and Final Approval Hearing. The deadline for the filing a response to any  
4 objections to the Settlement Agreement will also be 15 days before the Fairness and  
5 Final Approval Hearing.

6           23.    The Court directs the parties to submit a proposed scheduling order, in  
7 accordance with the deadlines set forth in the Settlement Agreement, within 10 days of  
8 entry of this order. The proposed scheduling order will include a proposed date and  
9 time for the Fairness and Final Approval Hearing to determine all necessary matters  
10 concerning the Settlement, including whether the proposed Settlement Agreement's  
11 terms are fair, adequate, and reasonable and should be finally approved by the Court  
12 and whether a judgment should be entered. The Fairness and Approval Hearing will  
13 be held no earlier than 90 days following the completion of the CAFA Notice and will  
14 take place in Courtroom 6 on the 7th floor at 2500 Tulare Street, Fresno, CA 93721.  
15 The Court will hold a hearing on Class Counsel's Motion for Attorneys' Fees and Costs  
16 and the Representative Plaintiffs' Enhancement Payment at the same time.

17           24.    Upon Final Approval, all Settlement Class Members who have not  
18 submitted timely and complete Opt-Out Forms will be deemed to have forever  
19 released and discharged the Released Parties from the Released Claims. The  
20 Representative Plaintiffs will be deemed to have forever released and discharged the  
21 Released Parties, and the Released Parties will be deemed to have forever released  
22 the Representative Plaintiffs, from and of not only the Released Claims but any and all  
23 claims, known or unknown, as of the date of entry of the Order of Certification and  
24 Preliminary Approval. In addition to and in connection with the Released Claims, the  
25 Representative Plaintiffs and Released Parties each for himself, herself, or itself  
26  
27

1 waives the provisions of California Civil Code § 1542 as set forth and defined in the  
2 Settlement Agreement.

3           25. Each Defendant will have the absolute right, in the exercise of its sole  
4 discretion, to terminate in its entirety the Settlement Agreement *ab initio* in the event  
5 that 1% or more of the Settlement Class Members submit an Opt-Out Form. If any  
6 Defendant so elects, it will notify the other Defendants, Current Class Counsel, and the  
7 Court of its election within 195 days after entry of this order and the Settlement shall  
8 be terminated.

9           26. Any Party to the Settlement Agreement shall have the right to terminate  
10 the Settlement by providing written notice of election to do so (“Termination Notice”) to  
11 all other Parties hereto within 20 days of the date upon which any of the following  
12 conditions may occur:

13           a. The Court declines to enter the Final Order and Judgment in  
14 substantially the form of Exhibit E attached to the Settlement Agreement and granting  
15 entirely the relief requested (provided, however, that the failure to award fees in the  
16 precise amount requested shall not be a basis for terminating the Settlement);

17           b. The Representative Plaintiffs and Current Class Counsel fail to file  
18 the Amended *Arredondo* Complaint in precisely the form of Exhibit A to the Settlement  
19 Agreement;

20           c. The Final Order and Judgment is modified or reversed in any  
21 material respect by the Court or the United States Court of Appeals or the United  
22 States Supreme Court;

23           d. An Alternative Judgment is modified or reversed in any material  
24 respect by the Court or the United States Court of Appeals or the United States  
25 Supreme Court; or  
26  
27

1 e. The Court declines to dismiss the *Paniagua* action with prejudice  
2 and without costs to any party.

3 Before issuing such Termination Notice, however, the parties shall meet and  
4 confer and make reasonable efforts to address changes that might allow a revised  
5 settlement to be reached that would then be submitted for approval.

6 27. In the event the Settlement is terminated or fails to become effective for  
7 any reason, the parties to the Settlement Agreement shall be deemed to have reverted  
8 to their respective litigation positions as of August 24, 2016 and, except as otherwise  
9 expressly provided, the parties shall proceed in all respects as if this Settlement  
10 Agreement and any related orders had not been entered. In such event:

11 a. The Settlement Agreement shall have no force and effect, no  
12 party shall be bound by any of its terms, and nothing in it may be used against any  
13 party in this or in any other proceeding (except that any party may enforce the  
14 provisions of the Settlement Agreement regarding termination or the effect of such  
15 termination);

16 b. No pleading, brief, motion, or other submission to the Court  
17 relating to the Settlement (the "Settlement Submissions"), shall constitute an  
18 admission of any party of any kind or shall limit any claim, defense, or argument in any  
19 way, whether substantive or procedural; and nothing in any Settlement Submission  
20 may be used against any party in this or in any other proceeding (except that any party  
21 may enforce the provisions of the Settlement Agreement regarding termination or the  
22 effect of such termination);

23 c. Defendants shall have no obligation to make any payments;

24 d. This Order of Preliminary Approval and Certification and/or the  
25 Final Order and Judgment, or any similar orders and related findings or conclusions,  
26

1 shall be vacated, shall be of no effect whatsoever, and may not be used against any  
2 party in this or in any other proceeding;

3 e. The Amended *Arredondo* Complaint, the Motion for Certification of  
4 the Settlement Class and Preliminary Approval of the Settlement, and any  
5 submissions in favor of the Settlement or the Order and Final Judgment shall all be  
6 withdrawn, and the Parties will proceed to litigate the *Arredondo* Action and the  
7 *Paniagua* Action with respect to the pleadings on file as of the time of execution of the  
8 Settlement Agreement;

9 f. Any order amending the complaint in the *Arredondo* Action or  
10 certifying a settlement class shall be vacated, shall be of no effect whatsoever, and  
11 may not be used against any party in this or in any other proceeding;

12 g. The Settlement Agreement and Settlement Submissions, and all  
13 negotiations, statements, documents, and proceedings relating thereto, shall be  
14 deemed confidential and not subject to disclosure for any purpose in any proceeding;  
15 and

16 h. Any portion of the Settlement Amount previously paid or caused to  
17 be paid by Defendants, together with any interest earned thereon, less any Taxes due  
18 with respect to such interest, and less the costs of administration and notice actually  
19 incurred, whether paid or not paid, shall be returned within 10 business days to the  
20 Defendants. To the extent that any portion of any payment already made by the  
21 Defendants cannot be returned, Defendants shall receive credit for that payment such  
22 that any judgment or other settlement ultimately obtained by the Plaintiffs or any class  
23 certified in the *Arredondo* Action and/or the *Paniagua* Action shall be reduced by an  
24 identical amount.

25 28. All proceedings in the *Arredondo* Action and in the *Paniagua* Action,  
26 other than such proceedings as may be necessary to carry out the terms and  
27



1 conditions of the Settlement, are hereby stayed and suspended until further order of  
2 this Court. Pending final determination whether the Settlement should be approved,  
3 Plaintiffs, the Settlement Class, and Class Counsel are barred and enjoined from  
4 commencing or prosecuting any action asserting any claims that are or relate in any  
5 way to the Released Claims described in the Settlement Agreement. This stay shall  
6 remain in effect pending further order of the Court.

7  
8 29. Neither the Settlement Agreement nor any provisions contained in the  
9 Settlement Agreement, nor any negotiations, statements, or proceedings in connection  
10 therewith, nor any action undertaken pursuant thereto shall be construed as, or  
11 deemed to be evidence of, an admission or concession on the part of the Plaintiffs, the  
12 Defendants, any member of the Settlement Class, or any other person or entity, of any  
13 liability or wrongdoing by them, or any of them, or as to the strength or weakness of  
14 any claim or defense, and shall not be offered or received in evidence of any action or  
15 proceeding (except an action to enforce the Settlement Agreement), or be used in any  
16 way as an admission, concession, or evidence of any liability or wrongdoing of any  
17 nature.

18 IT IS SO ORDERED.

19  
20 Dated: February 14, 2017

21 /s/ Michael J. Seng  
22 UNITED STATES MAGISTRATE JUDGE  
23  
24  
25  
26  
27