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**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

PRODUCE PAY, INC.,

Plaintiff,

v.

FVF DISTRIBUTORS INC., et al.,

Defendants.

Case No. 20-cv-517-MMA (BGS)

**ORDER GRANTING IN PART AND
DENYING IN PART PLAINTIFF’S
MOTION FOR JUDGMENT**

[Doc. No. 62]

On September 13, 2021, Plaintiff Produce Pay, Inc. (“Plaintiff”) filed a motion for judgment pursuant to California Code of Civil Procedure § 664.6. The motion is unopposed to date. For the reasons set forth below, the Court **GRANTS IN PART** and **DENIES IN PART** Plaintiff’s motion.

I. BACKGROUND

This case has an unusual history, factually and procedurally. On March 19, 2020, Plaintiff filed a Complaint against FVF Distributors Inc. (“FVF”), Veg-Fresh Farms, LLC, Mark C. Widder, Robert L. Whitney, Jr., Lawrence D. Cancellieri, Randy J. Cancellieri, Adam T. Cancellieri, and F. David Avila (“Mr. Avila”) pursuant to the Perishable Agricultural Commodities Act, 7 U.S.C. §§ 499a *et seq.* (“PACA”). Doc. No. 1 (“Compl.”). Generally speaking, the case arises from the alleged failure to pay Plaintiff for the receipt of produce. *See, e.g.*, Compl. ¶ 10. On June 6, 2020, FVF and

1 Mr. Avila filed answers to the Complaint. Doc. Nos. 26, 27. Thereafter, Veg-Fresh
2 Farms, LLC, Mark C. Widder, Robert L. Whitney, Jr., Lawrence, D. Cancellieri, Jr.,
3 Randy J. Cancellieri, and Adam T. Cancellieri were dismissed from the case via
4 stipulation. Doc. No. 32. As such, the case proceeded solely against FVF and Mr. Avila
5 (collectively, “Defendants”). It appears that Mr. Avila was the sole controlling officer of
6 FVF. *See, e.g.*, Doc. No. 63-1 ¶ 6.

7 On October 14, 2020, the parties participated in an Early Neutral Evaluation
8 conference before United States Magistrate Judge Ruth Bermudez Montenegro¹ wherein
9 the case settled. *See* Doc. No. 43. Thereafter, the parties executed a settlement
10 agreement. Doc. No. 62-3 (the “Settlement Agreement” or “SA”). However, issues soon
11 arose relating to Defendants’ ability to perform under the Settlement Agreement. On
12 November 6, 2020, the parties informed Judge Montenegro that the Settlement “fell
13 through.” Doc. No. 46. Namely, Defendants did not make the first \$5,000 installment
14 payment. *See* Doc. No. 48-1 at 3. Consequently, Plaintiff filed a motion to enforce the
15 Settlement Agreement and for entry of judgment, Doc. No. 48, which the Court granted
16 in part, finding that the parties knowingly and voluntarily entered into a valid and binding
17 contract under California law, Doc. No. 56 at 2.² The Court, however, declined to enter
18 judgment at that time. *Id.* The Court stated:

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20 The issue of the Settlement Agreement’s validity and enforceability is distinct
21 from Defendants’ alleged breach and Plaintiff’s entitlement to judgment. The

22
23 ¹ Judge Montenegro was the assigned Magistrate Judge during all relevant times, and the present motion
24 for judgment was referred to her for report and recommendation. On March 22, 2022, the United States
25 Senate confirmed Judge Montenegro’s nomination to serve as a United States District Court Judge. *See*
26 News Release, U.S. Cts. for the Ninth Cir., Ruth Bermudez Montenegro to Serve as U.S. District Judge
27 for Southern District of California (Mar. 22, 2022), [https://cdn.ca9.uscourts.gov/datastore/ce9/2022/
Montenegro_Ruth_Bermudez_CAS_Confirmed.pdf](https://cdn.ca9.uscourts.gov/datastore/ce9/2022/Montenegro_Ruth_Bermudez_CAS_Confirmed.pdf). As such, on March 31, 2022, the case was
28 transferred to Magistrate Judge Skomal. *See* Doc. No. 83. Due to the undersigned’s familiarity with the
complicated history of the case, the Court withdraws the referral and instead addresses the merits of the
motion without report and recommendation.

² Citations to electronically filed documents refer to the pagination assigned by the CM/ECF system.

1 latter has not been sufficiently briefed. Further, even assuming Plaintiff
2 demonstrated that Defendants breached the Settlement Agreement, Plaintiff
3 does not explain how such a breach entitles it to immediate judgment for the
4 full amount under either the terms of the Settlement Agreement or California
5 law. Moreover, it appears that Defendants have until July 13, 2021 to tender
6 full payment. *See* Doc. No. 48-2 at 16. And if Defendants do so, the terms set
7 forth in paragraph 7 of the Settlement Agreement seem to indicate that the
8 parties will stipulate to dismissal of the action in lieu of seeking entry of
9 judgment. *See id.* at 17.

10 *Id.* at 2–3.

11 Thereafter, the parties, through their attorneys, discussed entering into a stipulated
12 judgment. *See* Doc. No. 62-2 (“Kane Decl.”) ¶ 6. On August 10, 2021, Plaintiff sent
13 Defendants a draft Stipulated Judgment. Kane Decl. ¶ 7. However, on August 17, 2021,
14 Defendants’ attorney, Mr. John F. Lenderman, advised Plaintiff that Mr. Avila had
15 contracted COVID-19 and was admitted to a local hospital. Kane Decl. ¶ 8.
16 Consequently, Mr. Avila did not sign the Stipulated Judgment. On or about August 30,
17 2021, Mr. Avila passed away. Kane Decl. ¶ 14; Doc. No. 63-1 ¶ 2.

18 On September 13, 2021, Plaintiff filed the instant motion for judgment. Doc.
19 No. 62. Two days later, Mr. Lederman filed a motion to withdraw as counsel of record
20 for Defendants. Doc. No. 63. Attached to his motion, Mr. Lenderman offered a
21 declaration, informing the Court of Mr. Avila’s passing. Doc. No. 63-1. The Court
22 issued an interim order on the motion to withdraw, directing Mr. Lenderman to properly
23 serve his motion on his clients pursuant to Civil Local Rule 83.3.f.3.a–b and to file a
24 supplemental declaration demonstrating good cause to withdraw. Doc. No. 64 at 2. On
25 that same day, Judge Montenegro directed Plaintiff to provide a status report regarding its
26 intent to substitute parties under Federal Rule of Civil Procedure 25(a).³ Doc. No. 65.

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28 ³ Unless otherwise noted, all “Rule” references are to the Federal Rules of Civil Procedure.

1 “The construction and enforcement of settlement agreements are governed by
2 principles of local law which apply to interpretation of contracts generally.” *United*
3 *Commercial Ins. Serv., Inc. v. Paymaster Corp.*, 962 F.2d 853, 856 (9th Cir. 1992)
4 (*quoting Jeff D. v. Andrus*, 899 F.2d 753, 759 (9th. Cir. 1989)). State law applies even
5 when the underlying litigation is based on federal law. *Id.*; *see also Harrop v. West.*
6 *Airlines, Inc.*, 550 F.2d 1143, 1145 (9th Cir. 1977) (applying California law). Courts
7 construe settlement agreements in favor of enforcement. *Jeff D.*, 899 F.2d at 759 (“The
8 authority of a trial court to enter a judgment enforcing a settlement agreement has as its
9 foundation the policy favoring the amicable adjustment of disputes and the concomitant
10 avoidance of costly and time consuming litigation.”).

11 The Settlement Agreement was entered into in California, Doc. No. 62-1 at 10, and
12 calls for the application of California law, SA ¶ 16. Plaintiff moves for the entry of
13 judgment pursuant to California Code of Civil Procedure § 664.6,⁴ which governs the
14 enforcement of settlement agreements and entry of judgment pursuant thereto. It
15 provides:

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17 If parties to pending litigation stipulate, in a writing signed by the parties
18 outside of the presence of the court or orally before the court, for settlement
19 of the case, or part thereof, the court, upon motion, may enter judgment
20 pursuant to the terms of the settlement. If requested by the parties, the court
21 may retain jurisdiction over the parties to enforce the settlement until
22 performance in full of the terms of the settlement.

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25 Cal. Civ. Proc. Code § 664.6(a).⁵

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28 ⁴ Unless otherwise noted, all statutory references are to the California Code of Civil Procedure.

⁵ Effective January 1, 2021, section 664.6 now includes additional subsections, including (b) which states that “a writing is signed by a party” if it is signed by the party, their attorney, or the party’s agent if they are an insurer. Cal. Civ. Proc. Code § 664.6(b)(1)–(2). This amendment was neither in effect at the time the parties executed the Settlement Agreement nor is it relevant.

1 Here, the Settlement Agreement was executed while this litigation was pending.
2 The parties did not dismiss the action upon the Settlement Agreement’s execution and
3 instead elected to postpone joint dismissal until after complete performance under the
4 Settlement Agreement. SA ¶ 7. Moreover, the Settlement Agreement expressly provides
5 that the Court shall retain jurisdiction over both the case and the Settlement Agreement
6 until complete performance. SA ¶¶ 3, 15.

7 The Settlement Agreement is signed by Benjamin M. Kahrl on behalf of Plaintiff
8 as Vice President, as well as Mr. Avila individually and on behalf of FVF as President.
9 SA at 5. Plaintiff seeks the entry of judgment in the total amount of \$47,947.50. Due to
10 the changes of the parties to this action since Plaintiff filed its motion, the Court
11 addresses section 664.6 as it pertains to each relevant person.

12 **A. Judgment Against FVF**

13 The Court previously found that FVF entered into a valid and binding contract
14 under California law. Doc. No. 56. The evidence reveals that the Settlement Agreement
15 contains all material terms and that both Plaintiff and FVF intended to be bound by its
16 terms. Moreover, the Settlement Agreement was signed by FVF—a corporation—
17 personally through Mr. Avila. It is also undisputed that FVF breached the Settlement
18 Agreement by not making any of the installments and by not tendering the full settlement
19 amount by July 13, 2021. Kane Decl. ¶ 12. Therefore, the Court finds that Plaintiff is
20 entitled to the entry of judgment against FVF pursuant to the terms of the Settlement
21 Agreement under California Code of Civil Procedure § 664.6.

22 The Settlement Agreement provides that FVF will be jointly and severally liable
23 for the Settlement Amount, which is \$40,000.⁶ SA ¶¶ 1–2. Therefore, the Court finds
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27 ⁶ Plaintiff appears to request judgment in the principal amount of \$42,500. *See* Doc. No. 62-1 at 13.
28 This seems to be a reference to the proposed Stipulated Judgment. *See* Doc. No. 62-3 at 16. However,
it is undisputed that the Stipulated Judgment was never executed.

1 that FVF is subject to judgment in the principal amount of \$40,000 under the Settlement
2 Agreement and **GRANTS** Plaintiff’s motion in that respect.

3 The Settlement Agreement also provides that the prevailing party “shall recover his
4 or her reasonable attorneys’ fees and costs” “in the event that any litigation arises
5 between the parties regarding the enforcement or interpretation of this Agreement.” SA
6 ¶ 17. The Court finds that Mr. Kane’s efforts, outlined below, are covered under
7 Paragraph 17 as litigation arising from the enforcement of the Settlement Agreement.
8 Accordingly, Plaintiff is entitled to attorney’s fees under the Settlement Agreement and
9 California law. *See* Cal. Civ. Code § 1717.

10 Plaintiff requests attorneys’ fees in the amount of \$5,692.50. Doc. No. 62-1 at 13.
11 According to Plaintiff, it incurred \$1,260 in fees related to the Settlement Disposition
12 Conferences with Judge Montenegro, \$945 drafting the stipulated judgment and pursuing
13 its execution, \$2,812.50 preparing the present motion, and an anticipated \$675 to prepare
14 a reply. Kane Decl. ¶¶ 21–24. In total, Plaintiff’s attorney Mr. Patrick J. Kane
15 anticipated spending a total 25.3 hours seeking to enforce the Settlement Agreement and
16 proceeding to judgment, at an hourly rate of \$225. Kane Decl. ¶ 25.

17 No oppositions or replies were filed and therefore the Court subtracts the
18 anticipated \$675 from the amount of fees sought. As to the remaining 22.3 hours and
19 \$5,017.50 in fees, the Court finds that both Mr. Kane’s hourly rate and hours expended
20 are reasonable. *See Hensley v. Eckerhart*, 461 U.S. 424, 433 (1983) (explaining the
21 lodestar method). Accordingly, the Court **GRANTS** Plaintiff’s request for attorneys’
22 fees and awards \$5,017.50 to Plaintiff.

23 **B. Judgment Against Mr. Avila**

24 Plaintiff’s motion seeks the entry of judgment against “the FVF Defendants”—
25 FVF and Mr. Avila. Doc. No. 62-1 at 1. However, Mr. Avila is deceased and no longer a
26 party to this action. Despite the fact that Mr. Avila passed away prior to filing its motion,
27 Plaintiff does not address the Court’s authority to enter judgment against him. Nor has
28

1 Plaintiff amended its motion, or withdrawn the request and refiled, since Ms. Barraza's
2 substitution.

3 The Court cannot enter judgment against a decedent. *See, e.g., Johnson*
4 *v. Simonelli*, 282 Cal. Rptr. 205, 206 n.1 (Ct. App. 1991), *overruled on other grounds by*
5 *ITT Small Bus. Fin. Corp. v. Niles*, 36 Cal. Rptr. 2d 552, 556, (1994). Such a judgment is
6 either void or voidable. *See Grappo v. McMills*, 240 Cal. Rptr. 3d 164 (Ct. App. 2017).
7 This appears to be common sense. *See LN Mgmt., LLC v. JPMorgan Chase Bank, N.A.*,
8 957 F.3d 943, 946 n.1 (9th Cir. 2020) (describing decedents as “judgment-proof
9 defendants”). And certainly, it is at least one reason behind Rule 25(a). *See Gilmore*
10 *v. Lockard*, 936 F.3d 857, 866 (9th Cir. 2019) (stating that the purpose of Rule 25(a) is
11 “to preserve parties’ rights and causes of action when a party dies”). Moreover, due to
12 the Rule 25(a) substitution, Mr. Avila is no longer a party to the action and thus the Court
13 cannot enter judgment against him. *See La Jolla Spa MD, Inc. v. Avidas Pharm., LLC*,
14 No. 17-cv-1124-MMA (WVG), 2019 U.S. Dist. LEXIS 228606, at *1 n.1 (S.D. Cal. Mar.
15 9, 2019) (declining to enter judgment against an attorney who “is not a party before the
16 Court”); *see also Saleh v. Titan Corp.*, 353 F. Supp. 2d 1087, 1092 (S.D. Cal. 2004)
17 (explaining in the context of a request for injunction that the court cannot issue an order
18 against a non-party). Accordingly, the Court **DENIES** Plaintiff’s motion to enter
19 judgment against Mr. Avila.

20 **C. Judgment Against Ms. Barraza**

21 Plaintiff does not expressly ask the Court to enter judgment against Ms. Barraza, as
22 she was not a party to this litigation when the motion was filed. Nonetheless, Plaintiff
23 presumably sought her substitution to obtain judgment against her in lieu of Mr. Avila
24 and, at the Court’s direction, Plaintiff served her with its motion. Doc. No. 82.

25 In its motion and supporting papers, Plaintiff repeatedly states that if proof of death
26 is provided or proper suggestion of death is filed with the Court, “it is willing to discuss
27 withdrawing and/or amending the instant Motion after Avila’s successor-in-interest is
28 identified.” Doc. No. 62-1 at 9. The Court agrees that none of Mr. Lenderman’s filings

1 with the Court likely amounted to a proper suggestion of death under Rule 25(a). *See*
2 Doc. No. 78 at 4. However, Plaintiff has identified Ms. Barraza as Mr. Avila’s
3 successor-in-interest. *See* Doc. No. 75 at 10 (arguing “[h]ere, it is clear that Barraza is
4 the successor-in-interest to Avila, the likely legal representative of his estate, and is
5 furthermore personally liable for the debts of Avila”). It was on this basis that Plaintiff
6 successfully substituted her into this action. *See* Doc. No. 78. Nonetheless, Plaintiff has
7 neither withdrawn nor amended the motion as promised and therefore the issue of Rule
8 25(a)’s effect on the enforcement of a settlement agreement under section 664.6 has not
9 been briefed.

10 There is no question that upon substitution, Ms. Barraza stepped into Mr. Avila’s
11 shoes. *See Hilao v. Est. of Marcos*, 103 F.3d 762, 766 (9th Cir. 1996). However,
12 Plaintiff has not provided, nor can the Court find any, authority for the proposition that
13 substitution under Rule 25(a) binds a non-signatory to a previously executed settlement
14 agreement.

15 The Court looks to the history and language of section 664.6 for guidance. A
16 review of section 664.6 reveals that Plaintiff’s request for judgment against Ms. Barraza
17 fails for two reasons: first, the signature requirement, Cal. Civ. Proc. Code § 664.6(a) (“in
18 a writing *signed by the parties*”); and second, that the entry of judgment is discretionary,
19 *id.* (“the court, upon motion, *may* enter judgment”).

20 Prior to section 664.6’s enactment, a party seeking to enforce a settlement
21 agreement had to file a new action alleging breach of contract and seeking either contract
22 damages or specific performance of the settlement terms, or alternatively had to
23 supplement the pleadings in a pending case. *Weddington Prods., Inc. v. Flick*, 71 Cal.
24 Rptr. 2d 265, 275–76 (Ct. App. 1998). Section 664.6 was enacted to provide a summary
25 procedure for specifically enforcing a settlement contract without the need for a new
26 lawsuit. *Id.* To be enforceable pursuant to the summary procedures of section 664.6, a
27 settlement agreement must either be entered into orally before a court or must be in
28 writing and must signed by the parties. *Id.* at 276. “The reason for the party-signature

1 requirement is that settlement is such a serious step that it requires the client’s knowledge
2 and express consent.” *Id.* (internal quotation marks and citations omitted).

3 The California courts that have considered the signature requirement, prior to the
4 amendment mentioned in footnote 5, have unanimously held that only parties who
5 personally sign a settlement agreement may be subject to enforcement and judgment
6 under section 664.6. *See Levy v. Superior Court*, 41 Cal. Rptr. 2d 878 (1995);
7 *Weddington Prods.*, 71 Cal. Rptr. 2d at 276 (holding that no settlement can be enforced
8 against a party pursuant to section 664.6 unless it can be found that the party “expressly
9 consented in writing to the material terms of that settlement”). However, none of the
10 cases interpreting or applying section 664.6 considered whether a substituted party may
11 be bound by their predecessor’s signature.

12 The Court finds the case of *Cortez v. Kenneally*, 51 Cal. Rptr. 2d 671 (Ct. App.
13 1996), instructive. In *Cortez*, the Court of Appeal reversed the trial court’s enforcement
14 of a settlement agreement pursuant to section 664.6 against a non-signatory. *Id.* at 675.
15 *Cortez* involved a medical malpractice action that was initiated against a doctor, his
16 professional corporation, and two other companies. *Id.* at 672. “At some point” the
17 doctor’s wife was added as a defendant; in addition to being the wife of the doctor, she
18 was also the Chief Operating Officer of one of the defendant companies. *Id.* Ultimately,
19 the Court of Appeal found that enforcement of the settlement agreement against her was
20 not authorized under section 664.6 because she had no role in the settlement discussions,
21 was not present at the hearing, did not learn of it until after its execution, and never
22 signed the agreement. *Id.* at 673. Of note is that the wife was represented by the same
23 attorney as her husband and the other defendants. *Id.* Nonetheless, the Court of Appeal
24 held that section 664.6 could not be used as a vehicle to bind the wife to an agreement
25 she did not sign. *Id.* at 675. A similar conclusion was reached in *Williams v. Saunders*,
26 64 Cal. Rptr. 2d 571 (Ct. App. 1997), wherein the Court of Appeal, citing *Levy*, found
27 that the signature of a spouse and codefendant is insufficient to demonstrate assent to
28 settlement terms for purposes of section 664.6. *Williams*, 64 Cal. Rptr. 2d at 574.

1 Similar to the wives in *Cortez* and *Williams*, Ms. Barraza was not a party to the
2 action during the settlement efforts, was not present at the ENEs or Settlement
3 Disposition Conferences, did not participate in settlement talks, and never signed the
4 Settlement Agreement. Although she is now a defendant in Mr. Avila's stead and as such
5 may defend herself in this action, she cannot be bound to a contract she did not sign.

6 Moreover, both *Cortez* and *Williams* involved spouses who, in addition to
7 potentially having independent liability, may have been exposed to their spouse's debts
8 under the settlements after death. Neither of these facts apparently impacted the Court of
9 Appeal's analysis. Similarly, Ms. Barraza's substitution and the fact that she may be
10 liable for Mr. Avila's debts, including under the Settlement Agreement, does not change
11 the Court's analysis of the writing requirement.

12 Further, the basic California contract law principle that a contract (other than one
13 for personal services) survives death supports this conclusion. *Walgren v. Dolan*, 276
14 Cal. Rptr. 554, 559 (Ct. App. 1990). Mr. Avila, although now deceased, is still jointly
15 and severally liable under the Settlement Agreement and Plaintiff may pursue alternate
16 avenues to recover from his estate or those liable on his debts. As many California courts
17 have indicated, Plaintiff is not without recourse because section 664.6's statutory
18 procedure is not exclusive; it is merely an expeditious alternative. *See Nicholson*
19 *v. Barab*, 285 Cal. Rptr. 441 (Ct. App. 1991).

20 In sum, section 664.6 is a summary procedure available to enforce settlement
21 agreements when certain prerequisites are satisfied. *See Robertson v. Chen*, 52 Cal. Rptr.
22 2d 264 (Ct. App. 1996). One of those prerequisites is that the party against whom it is to
23 be enforced personally signed the agreement. *See Elyaoudayan v. Hoffman*, 129 Cal.
24 Rptr. 2d 41, 48 (Ct. App. 2003) (explaining that section 664.6's requirement of a "writing
25 signed by the parties" must be read to apply to all parties bringing the section 664.6
26 motion and against whom the motion is directed). It is undisputed that Ms. Barraza did
27 not sign the Settlement Agreement. Ms. Barraza's status as Mr. Avila's wife and as his
28 successor-in-interest does not abrogate or otherwise satisfy section 664.6's signature

1 requirement. *See Wackeen v. Malis*, 118 Cal. Rptr. 2d 502, 505 (Ct. App. 2002) (holding
2 that for a written settlement to be enforceable under section 664.6, “it must be made by
3 the parties, not by their attorneys, spouses or other such agents”). Nor does the fact that
4 after the Settlement Agreement’s execution she was found to be a proper party for
5 substitution under Rule 25(a). For this reason, the Court finds that the entry of judgment
6 against Ms. Barraza is not appropriate.

7 Moreover, section 664.6 is discretionary. Thus, to the extent the Court is permitted
8 to enter judgment against Ms. Barraza, it declines to do so. If the purpose of Rule 25(a)
9 is to preserve a plaintiff’s rights and claims after a party dies, *see Gilmore*, 936 F.3d at
10 866, then it follows that Rule 25(a) substitution, as it pertains to a defendant, is a
11 mechanism to ensure that a party who may be ultimately liable as a succeeding debtor to
12 those rights and claims has an opportunity to defend himself. Here, Ms. Barraza has had
13 no opportunity to defend herself against the litigation—while she may have had an
14 opportunity to oppose the present motion, the case ended in principle prior to her
15 substitution. Moreover, section 664.6 is a “summary procedure” and there is simply
16 nothing summary about Plaintiff’s request as it pertains to Ms. Barraza. The Court
17 understands that Plaintiff does not intend to “take advantage of the current unfortunate
18 situation.” Doc. No. 62-1 at 9. Nonetheless, the complicated facts of this case do not call
19 for the invocation of the summary procedure of section 664.6; the Court will not, on
20 balance, exercise its discretion and allow Rule 25(a) in conjunction with section 664.6 to
21 be used as a collection vehicle against widows. Accordingly, the Court **DENIES**
22 Plaintiff’s motion on this basis.

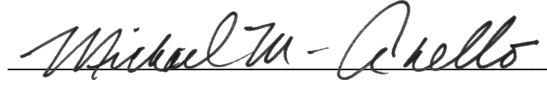
23 **III. CONCLUSION**

24 For the foregoing reasons, the Court **GRANTS IN PART** and **DENIES IN PART**
25 Plaintiff’s motion. The Court **GRANTS IN PART** Plaintiff’s motion as it pertains to
26 Defendant FVF as well as Plaintiff’s request for attorney’s fees. The Court **DENIES** the
27 remainder of Plaintiff’s motion.
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1 The Court **DIRECTS** the Clerk of Court to enter judgment against FVF in the
2 amount of \$45,017.50 pursuant to the Settlement Agreement and this Order and close this
3 case.

4 **IT IS SO ORDERED.**

5 Dated: May 3, 2022

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7 HON. MICHAEL M. ANELLO
8 United States District Judge
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