

United States District Court
Northern District of California

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

RAUL MAGANA-MUNOZ, et al.,
Plaintiffs,
v.
WEST COAST BERRY FARMS, LLC, et
al.,
Defendants.

Case No. 5:20-cv-02087-EJD

**ORDER GRANTING PRELIMINARY
APPROVAL OF CLASS ACTION
SETTLEMENT**

Re: ECF No. 103

On October 12 and October 19, 2023, the Court held hearings on the unopposed motion for conditional certification of a settlement class in this action; preliminary approval of the parties’ proposed class action settlement; approval of the Class Notice packet; appointing Class Representatives, Class Counsel and the proposed Settlement Administrator; and setting a date for the hearing on final approval of the settlement. ECF No. 103 (“Mot.”).

Having considered the motion briefing, the arguments of counsel, the relevant law, the terms of the settlement agreement and the class notice, as well as the record in this case, and based on the reasons and terms set forth herein, the Court GRANTS the motion for preliminary approval of class action settlement. The final hearing on the settlement’s fairness (“Fairness Hearing”) is scheduled for February 8, 2024, at 9:00 a.m.

I. BACKGROUND

Plaintiffs Raul Magana-Munoz and Jose Santiago Herrera-Vera filed the putative class action complaint on March 25, 2020, against Defendants West Coast Berry Farms, LLC, Rancho Nuevo Harvesting, Inc., and Rancho Harvest, Inc. (added per FAC), alleging violations of the Fair Labor

Standards Act (“FLSA”), several California Labor Cod provisions, the UCL, and breach of contract. ECF Nos. 1 (“Compl.”); 79 (“FAC”). Plaintiffs alleged that their Defendant employers failed to record all compensable time, such as their time spent traveling and waiting.

The parties reached a settlement prior to class certification, following substantial discovery and motion practice, months of settlement negotiations, and three private mediation sessions with Judge Bonnie Sabraw.

II. TERMS OF THE SETTLEMENT AGREEMENT

Under the terms of the Settlement Agreement, Defendants will pay a non-reversionary amount of \$825,000 into a common settlement fund, without admitting liability. This amount includes attorneys’ fees and costs, the costs of class settlement administration, the class representative’s service award, but does not include payroll taxes on the portion of the settlement payments deemed wages.

A. Attorneys’ Fees and Costs

Under the Settlement Agreement, Plaintiff’s counsel agreed to seek up to \$206,250 in attorneys’ fees and no more than \$25,500 in litigation costs. The common settlement fund also includes settlement administration costs and up to \$7,500 to be paid to each named Plaintiff as a service award.

B. Class Relief

After deductions from the common fund for fees, costs, and service incentive awards, approximately \$556,250 will remain to be distributed among the participating class members. Class members will be paid according to whether they filed an FLSA consent to sue; how many periods of contractual employment worked during the Class Period; and the number of workweeks worked under the terms of the H-2A job orders. Dividing this amount across 307 participating class members yields an average net recovery of approximately \$1,811.89 per class member. The Agreement provides that no amount will revert to Defendants. The Agreement also obligates Defendants to implement and enforce various employment practices for 18 months after final approval of the settlement, which includes timekeeping and expense reimbursement reforms.

1 **C. Cy Pres/Remainder**

2 The Settlement Agreement provides that when checks mailed to participating class members
3 are not redeemed or deposited within 240 days, the funds shall be redistributed among Class
4 Members who have received payment, provided there are sufficient funds to provide payment to
5 Class Members and cover the cost of redistribution. If funds are insufficient for redistribution, any
6 remaining funds shall be paid by the Settlement Administrator evenly between the two *cy pres*
7 recipients: Food Share, Inc. (Oxnard, California) and Food Bank for Monterey County (Salinas,
8 California).

9 **III. PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT**

10 **A. Legal Standard**

11 A court may approve a proposed class action settlement of a class only “after a hearing and
12 on finding that it is fair, reasonable, and adequate,” and that it meets the requirements for class
13 certification. Fed. R. Civ. P. 23(e)(2). In reviewing the proposed settlement, a court need not
14 address whether the settlement is ideal or the best outcome, but only whether the settlement is fair,
15 free of collusion, and consistent with plaintiff’s fiduciary obligations to the class. *See Hanlon v.*
16 *Chrysler Corp.*, 150 F.3d 1011, 1026 (9th Cir. 1998). The *Hanlon* court identified the following
17 factors relevant to assessing a settlement proposal: (1) the strength of the plaintiff’s case; (2) the risk,
18 expense, complexity, and likely duration of further litigation; (3) the risk of maintaining class action
19 status throughout the trial; (4) the amount offered in settlement; (5) the extent of discovery
20 completed and the stage of the proceeding; (6) the experience and views of counsel; (7) the presence
21 of a government participant; and (8) the reaction of class members to the proposed settlement. *Id.* at
22 1026 (citation omitted); *see Churchill Vill., L.L.C. v. Gen. Elec.*, 361 F.3d 566, 575 (9th Cir. 2004).

23 Settlements that occur before formal class certification also “require a higher standard of
24 fairness.” *In re Mego Fin. Corp. Sec. Litig.*, 213 F.3d 454, 458 (9th Cir. 2000). In reviewing such
25 settlements, in addition to considering the above factors, a court also must ensure that “the
26 settlement is not the product of collusion among the negotiating parties.” *In re Bluetooth Headset*
27 *Prods. Liab. Litig.*, 654 F.3d 935, 946-47 (9th Cir. 2011).

1 **B. Class Definition and Basis for Conditional Certification**

2 The Settlement Agreement, filed as ECF No. 103-4, defines “Class Members” as:

3 [T]he 307 persons that worked for Defendants under the terms of the job orders
4 identified below as agricultural workers during the express time period of the
5 particular job order and within the overall time period of April 25, 2018 to
6 November 30, 2018.

7 (the “Settlement Class”). The proposed class is substantially the same as the one alleged in the
8 complaint, with the additional specification of the precise number of class members.

9 The Court finds that, for purposes of settlement, Plaintiffs have satisfied the requirements of
10 Rule 23(a) as well as the requirements for certification under one or more subsections of Rule 23(b).
11 With respect to numerosity under Rule 23(a)(1), the Settlement Class includes 307 members, making
12 it so numerous that joinder of all members is impracticable.

13 Rule 23(a)(2) commonality requires “questions of fact or law common to the class,” though
14 all questions of fact and law need not be in common. *Hanlon*, 150 F.3d at 1026. The focus of this
15 action—whether Defendants’ wage and hour practices conformed with the federal minimum wage,
16 the H-2A Contract, the California Labor Code, and the applicable California Wage Order—is
17 common to all class members.

18 Rule 23(a)(3) requires that the plaintiff show that “the claims or defenses of the
19 representative parties are typical of the claims or defenses of the class.” Plaintiffs and members of
20 the Settlement Class were all workers for Defendants under the H-2A program and under identical
21 employment contracts, making Plaintiffs’ claims typical of class members.

22 With respect to Rule 23(a)(4), the Court finds the representative parties and class counsel
23 have fairly and adequately represented the interests of the Class. No conflicts of interest appear as
24 between Plaintiffs and the members of the Settlement Class. Class Counsel have demonstrated that
25 they are experienced class litigators and therefore adequate to represent the Settlement Class as well.

26 The Settlement Class further satisfies Rule 23(b)(3) in that common issues predominate and
27 “a class action is superior to other available methods for fairly and efficiently adjudicating” the
28 claims here. Members of the class here will recover approximately \$2,687.30 in average gross

1 recover, which is an average of \$1,811.89 in net recovery after required deductions.

2 Based on the foregoing, the proposed class is conditionally certified under Rule 23(c).

3 **C. Settlement Agreement Appears Fair and Reasonable**

4 The consent judgment filed at ECF No. 103-4 (“Settlement Agreement”) is granted
5 preliminary approval pursuant to Rule 23(e)(2). Based upon the information before the Court, the
6 Settlement Agreement falls within the range of possible approval as fair, adequate and reasonable,
7 and there is a sufficient basis for notifying the Class and for setting a Final Approval Hearing.

8 As to the *Hanlon* factors, the Court finds that they indicate the settlement here is fair and
9 reasonable. Proceeding to trial would have been costly; recovery was not guaranteed; and there
10 was the possibility of protracted appeals. Even if Plaintiffs prevailed, the best-case recovery after
11 trial was less than the amount offered in settlement. The settlement occurred only after substantial
12 litigation and discovery, including motions to compel arbitration, for FLSA collective action
13 certification, as well as several discovery disputes before Judge van Keulen. Counsel for both
14 parties are also highly experienced in class actions involving migrant workers. Moreover, the
15 record does not indicate any collusion or self-dealing, as evidenced by the substantial discovery
16 motion practice and multiple mediations it took to reach the Settlement. *See In re Bluetooth*, 654
17 F.3d at 946-47.

18 The Settlement Agreement appears to have been the product of protracted arm’s length and
19 informed negotiations, including three mediation sessions with retired Judge Sabraw. The relief
20 provided for the Class appears to be adequate, taking into account: (i) the costs, risks, and delay of
21 trial and appeal; (ii) the effectiveness of any proposed method of distributing relief to the class,
22 including the method of processing class-member claims; (iii) the terms of any proposed award of
23 attorney’s fees, including timing of payment; and (iv) any agreements required to be identified under
24 Rule 23(e)(3), of which there are none. In addition to an average net recovery of \$1811, the
25 Settlement also appears to provide significant non-monetary benefits for Class Members currently
26 employed by Defendants—as well as individuals who may be employed by Defendants in future
27 seasons—due to Defendants’ agreement to undertake additional employment requirements.

1 Moreover, the Settlement Agreement appears to treat Class Members equitably relative to
2 each other. The funds will be distributed first for Class Members' unreimbursed expenses before
3 distributing an amount based on the number of weeks they worked during the Class Period.

4 Based on the foregoing, the Court conditionally certifies the class and provisionally
5 appoints Santos Gomez and Dawson Morton as Class Counsel and Plaintiffs Raul Magana-Munoz
6 and Jose Santiago Herrera-Vera as Class Representatives.

7 **IV. PLAN OF NOTICE, ALLOCATION, AND ADMINISTRATION**

8 **A. Notice Plan**

9 A court must "direct notice [of a proposed class settlement] in a reasonable manner to all
10 class members who would be bound by the proposal." Fed. R. Civ. P. 23(e)(1). "The class must be
11 notified of a proposed settlement in a manner that does not systematically leave any group without
12 notice." *Officers for Justice v. Civil Serv. Comm'n*, 688 F.2d 615, 624 (9th Cir. 1982). Adequate
13 notice requires: (i) the best notice practicable; (ii) reasonably calculated, under the circumstances, to
14 apprise the Class members of the proposed settlement and of their right to object or to exclude
15 themselves as provided in the settlement agreement; (iii) reasonable and constitute due, adequate,
16 and sufficient notice to all persons entitled to receive notice; and (iv) meet all applicable
17 requirements of due process and any other applicable requirements under federal law. *Phillips*
18 *Petroleum Co. v. Shutts*, 472 U.S. 797, 812 (1985). Due process requires "notice reasonably
19 calculated, under all the circumstances, to apprise interested parties of the pendency of the action
20 and afford them an opportunity to present their objections." *Mullane v. Cent. Hanover Bank & Tr.*
21 *Co.*, 339 U.S. 306, 314 (1950).

22 The parties' proposed notice plan appears to be constitutionally sound in Plaintiffs have
23 made a sufficient showing that it is: (i) the best notice practicable; (ii) reasonably calculated, under
24 the circumstances, to apprise the Class members of the proposed settlement and of their right to
25 object or to exclude themselves as provided in the settlement agreement; (iii) reasonable and
26 constitute due, adequate, and sufficient notice to all persons entitled to receive notice; and (iv)

1 meet all applicable requirements of due process and any other applicable requirements under
2 federal law.

3 The Court approves the form of the Notice of Class Action Settlement, filed as ECF No.
4 114-1. After the parties modified the original notice form upon the Court’s invitation, this Notice
5 is sufficient to inform Class Members of the terms of the Settlement Agreement, their rights under
6 the Settlement Agreement, their rights to object to or comment on the Settlement Agreement, their
7 right to receive a payment or opt out of the Settlement Agreement, the process for doing so, and
8 the date and location of the Fairness and Final Approval hearing. The forms of plan of notice are
9 therefore APPROVED.

10 **B. Plan of Allocation**

11 The Court preliminarily approves the proposed plan of allocation set forth in the Motion
12 and the class notice.

13 Class members will receive a Settlement Share unless they submit a valid and timely Opt-
14 Out Form not later than sixty (60) days after the preliminary approval of the settlement. Class
15 Members residing in Mexico, however, will be required to contact the Settlement Administrator
16 by sending a message by email or phone call to provide their payment information.

17 **C. Settlement Administrator**

18 Atticus Administration is appointed to act as the Settlement Administrator, pursuant to the
19 terms set forth in the Settlement Agreement.

20 Within fifteen (15) days of this Order, Defendants shall provide the Settlement
21 Administrator the Class List, as described in the Settlement Agreement. Within ten (10) days of
22 its receipt of the Class List and no later than twenty-five (25) days after the date of this Order
23 (“Notice Date”), the Settlement Administrator shall distribute the Class Notice according to the
24 notice plan described in the Settlement Agreement and substantially in the form approved herein.
25 Proof of distribution of the Class Notice shall be filed by the parties in conjunction with the
26 motion for final approval.

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1 **D. Exclusion/Opt-Out**

2 Any Class Member shall have the right to be excluded from the Class by mailing a request
3 for exclusion to the Settlement Administrator no later than 60 days after the Notice Date.
4 Requests for exclusion must be in writing and set forth the name and address of the person who
5 wishes to be excluded, and must be signed by the class member seeking exclusion. No later than
6 fourteen (14) days before the Fairness Hearing, Class Counsel shall file with the Court a list of all
7 persons or entities who have timely requested exclusion from the Class as provided in the
8 Settlement Agreement.

9 Any Class Member who does not request exclusion from the settlement class as provided
10 above shall be bound by the terms and provisions of the Settlement Agreement upon its final
11 approval, including but not limited to the releases, waivers, and covenants described in the
12 Settlement Agreement, whether or not such person or entity objected to the Settlement Agreement
13 and whether or not such person or entity makes a claim upon the settlement funds.

14 **E. Objections**

15 Any Class Member who has not submitted a timely request for exclusion from the
16 Settlement Agreement shall have the right to object to the Settlement Agreement, the plan of
17 allocation, Class Counsel’s motion for attorneys’ fees, and Class Representative awards by
18 mailing to the Settlement Administrator a written objection and stating whether they intend to
19 appear at the Fairness Hearing, as set forth in the Class Notice, no later than 60 days after the
20 Notice Date. Failure to submit a timely written objection will preclude consideration of the Class
21 Member’s later objection at the time of the Fairness Hearing.

22 **F. Attorneys’ Fees and Class Representative Awards**

23 Plaintiffs and their counsel shall file their motion for attorneys’ fees and for Class
24 Representative awards no later than 21 days after the Notice Date. Each settlement class member
25 shall have the right to object to the motions for attorneys’ fees and Class Representative awards by
26 filing a written objection with the Court no later than 60 days after the Notice Date, as stated in the
27 above paragraph.

1 Plaintiffs shall file a reply brief responding to any timely objection no later than fourteen
2 (14) days after the deadline to submit objections.

3 **G. Fairness and Final Approval Hearing**

4 All briefs, memoranda, and papers in support of final approval of the settlement shall be
5 filed no later than 21 days after the Notice Date.

6 The Court will conduct a Fairness and Final Approval Hearing on Thursday, February 8,
7 2024, at 9:00 a.m., to determine whether the Settlement Agreement should be granted final
8 approval as fair, reasonable, and adequate as to the Class. The Court will hear all evidence and
9 argument necessary to evaluate the Settlement Agreement and will consider Class Counsel's
10 motion for attorneys' fees and for Class Representative awards.

11 Class members may appear, by counsel or on their own behalf, to be heard in support of or
12 opposition to the Settlement Agreement and Class Counsel's motion for attorneys' fees and Class
13 Representative awards by filing a Notice of Intention to Appear no later than 10 days before the
14 Fairness Hearing.

15 The Court reserves the right to continue the date of the final Fairness Hearing without
16 further notice to Class members. The Court also retains jurisdiction to consider all further
17 applications arising out of or in connection with the Settlement.

18 **H. Post-Distribution Accounting**

19 If final approval is granted, the parties will be required to file a Post-Distribution
20 Accounting in accordance with this District's Procedural Guidance for Class Action Settlements
21 and at a date set by the Court at the time of the final approval hearing. Counsel should prepare
22 accordingly.

23 **V. CONCLUSION**

24 Based on the foregoing, the Court GRANTS the motion for preliminary approval of the
25 class settlement. The following schedule and deadlines shall apply to this case:

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United States District Court
Northern District of California

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Event	Date
Deadline for Defendants to Provide Class List to Settlement Administrator	November 3, 2023
Deadline for Settlement Administrator to Send Class Notices	November 13, 2023
Deadline for Class Counsel to File Motion for Fees and Costs and Class Representative Awards	December 4, 2023
Deadline to File Motion for Final Approval	December 4, 2023
Deadline (Postmarked) to Submit Objection or Request for Exclusion	January 12, 2024
Deadline for Class Counsel and Settlement Administrator to Submit Supplemental Statements (<i>e.g.</i> , regarding status of notice program, objections, opt-outs)	January 25, 2024
Fairness and Final Approval Hearing	February 8, 2024, 9:00 a.m. NOTE: Subject to change without further notice to the Class.

IT IS SO ORDERED.

Dated: October 20, 2023



EDWARD J. DAVILA
United States District Judge