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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA AT FRESNO

SABAS ARREDONDO, JOSE CUEVAS, HILARIO GOMEZ, IRMA LANDEROS, and ROSALBA LANDEROS individually, and on behalf of all others similarly situated,
Plaintiffs,
v.
DELANO FARMS COMPANY, a Washington State Corporation; CAL-PACIFIC FARM MANAGEMENT, L.P.; T&R BANGI'S AGRICULTURAL SERVICES, INC., and DOES 1 through 10, inclusive,
Defendants.

NO. 1:09-cv-01247-MJS

PLAINTIFFS' MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION FOR FINAL APPROVAL OF SETTLEMENT OF CLASS ACTIONS

The Honorable Michael J. Seng

Date: September 22, 2017
Time: 10:30 a.m.
Ctrm: 6

Trial Date: None set

I. INTRODUCTION

The Court preliminarily approved the proposed Settlement reached by the parties in this Action, certified the Settlement Class, and approved the parties' proposed notice program. (ECF No. 484.) Notice was disseminated to the Settlement Class as directed by the Court. Following this notice, 43 members of the Settlement Class submitted solely the opt-out form, while an additional 179 Settlement Class members submitted both the opt-out form and a settlement claim form, for a total of 222 opt out forms submitted as of August 28, 2017. ((Declaration of Derek Smith ISO Motion for Final Approval ("Smith Dec."), ¶ 17) No one has objected to the settlement. (Smith Dec., ¶ 18) A total of 5,815 claims for class member compensation have been received and processed by KCC, representing approximately 38.22% of the total adjusted work weeks worked by the Settlement Class and approximately 16.13% of the Settlement Class itself. (Smith Dec., ¶ 16)

The settlement comes after more than seven years of hard-fought litigation and discovery. It is the product of extensive arm's-length negotiations between the parties and their experienced and informed counsel, with the assistance of four well-respected mediators. It provides a good and immediate recovery for the Settlement Class and avoids the risks, expenses, and uncertainty of continued litigation, especially in light of Plaintiffs' inability to rely on expert testimony relying on a validly conducted survey. The named representatives support the settlement, as do class counsel.

For these reasons, the Plaintiffs respectfully request that the Court conduct a final review of the Settlement; approve the Settlement as fair, reasonable, and adequate; and enter the Parties' proposed Final Order and Judgment.

II. FACTUAL AND PROCEDURAL BACKGROUND

A. Certification of *Arredondo* Class

Plaintiffs initiated the *Arredondo* action on July 17, 2009. Plaintiffs moved for class certification following class discovery. The Court granted the motion on April 19, 2011. (ECF

No. 85) In its certification order, the Court found that Rule 23(a)'s requirements were satisfied with respect to the following class definition:

> All non-exempt agricultural employees of Delano Farms Company, Cal-Pacific Farm Management, L.P., and T&R Bangi's Agricultural Services, Inc. who performed field work at Delano Farms in California from four (4) years prior to the filing of this action to the present, excluding irrigators, tractor drivers, swampers and workers employed only in cold storage.

To address concerns about predominance, ascertainability, and/or manageability, the Court divided this class into subclasses corresponding to the various claims alleged. The Court charged Plaintiffs with devising a manageable trial plan for "demonstrating which employees fall within which subclass." (*Id*. 24:3–4.)

B. Post-Certification Mediation, Discovery, and Joint-Employer Trial

In September of 2011, the parties participated in mediation with the Honorable Edward A. Infante of JAMS in San Francisco. They were unable to reach a settlement. On January 11, 2013, the parties participated in a further mediation with John Bates of JAMS in San Francisco. They were unable to reach a settlement. (ECF No. 501-1, at 16:15-20).

Following the second mediation, the Court held a bench trial after which it ruled that, under applicable case law, Delano Farms was a joint employer of the *Arredondo* class. (ECF No. 259 (Feb. 5, 2013 Memorandum of Decision)). That decision remains interlocutory, and Defendants have not yet had an opportunity to appeal it.

C. Motion to Decertify

Following the joint-employer trial, Defendants moved to decertify the *Arredondo* class and to require Plaintiffs to submit a trial plan.

The Court granted the motion to decertify in part, decertifying two of the subclasses, but left the other two subclasses—and the class definition—intact. (ECF No. 310.) The Court acknowledged the concerns raised by Defendants about devising a manageable trial plan that

would identify the members of each subclass and reiterated that Plaintiffs would be required to do this eventually. (*Id*. at 84:5–9.)

D. Third Mediation Session

While the motion to decertify was pending, the parties returned to mediation for a third time. This third round of mediation was carried out over three days between late June 21 and mid-August 2013. David Rudy of Judicate West was the mediator. Though they came close, the parties did not reach a settlement. (ECF No. 501-1, at 17:9-13).

E. Trial Plan and Related Discovery

Following resolution of Defendants' motions to decertify and to require Plaintiffs to present a trial plan, the *Arredondo* litigation focused on the development of a trial plan.

Toward that end, Defendants conducted a pilot study between the fall of 2014 and the spring of 2015. That study comprised another 73 depositions of class members, after which Defendants concluded that the inadequate response rate made it infeasible to continue the study and compromised the randomness of the sampling. (ECF No. 372, at 6:14−8:7.) Defendants argued that the testimony revealed too much variability of experience, distributed in unpredictable ways, to allow for the case to be tried based on meaningful or reliable sampling. (*Id*. 8:14−20.) Defendants argued that the limited information that was collected did not support a hypothesis that subpopulations of the class might exist that would support the use of stratified random sampling to make liability determinations on a subpopulation basis. (*Id.* at 8:9−13.) Plaintiffs dispute these conclusions.

Meanwhile, Plaintiffs planned to present expert testimony based on sampling and statistical evidence to meet their burden at trial. The testimony was to be based on the results of a mailed written survey. The Court initially set a September 25, 2015 deadline for Plaintiffs to complete their survey. (ECF No. 377.) On October 5, 2015, Plaintiffs filed a motion to modify the scheduling order because the mail survey had failed due to a very poor response rate. (ECF No. 393-4.) Plaintiffs proposed conducting the same survey, but this time to be administered by direct in-person interview ("door-to-door").

Before the Court could rule on Plaintiffs' request for more time to conduct the in-person survey, the November 2015 deadline for them to submit a trial plan and expert disclosures arrived. In the event they were not allowed additional time, Plaintiffs filed an alternative trial plan in November 2015, which did not have the benefit of the survey and expert testimony Plaintiffs intended to develop. (ECF No. 404.)

The Court eventually granted Plaintiffs' motion for a continuance to conduct their in-person survey. (ECF No. 407.) Plaintiffs conducted that survey and submitted a trial plan and expert disclosures based on the survey results on the new deadline of February 22, 2016. But on May 24, 2016, Plaintiffs withdrew the expert disclosures following discovery that revealed that the underlying survey data had been falsified by the third-party that conducted the door-to-door survey and that the party responsible for overseeing the survey, California Survey Research Services (CSRS), had failed in its quality-control oversight of the survey.

In order to conduct a survey that was not based on fraud, Plaintiffs filed another motion to modify the scheduling order, requesting new deadlines for completing another survey, filing a new trial plan, and making new expert disclosures. (ECF No. 429.) The Court denied the motion by order dated July 22, 2016. (ECF No. 449.) As further clarified by the Court's August 11, 2016 minute order (ECF No. 453), the Court ordered that Plaintiffs' alternative trial plan filed in November 2015 was the only operative plan and that Plaintiffs were precluded from presenting additional trial plans, disclosing experts, or conducting a survey.

F. The *Paniagua* Litigation

On June 22, 2015, Plaintiffs filed a motion for leave to file an amended complaint in the *Arredondo* litigation. The amended complaint would have added claims based on new allegations that Defendants had failed to adequately compensate workers for rest periods. (ECF Nos. 373 & 373-1.) The Court denied the motion. (*See* ECF. No. 397.) That order remains interlocutory, and Plaintiffs have not had an opportunity to appeal it.

On June 23, 2016, class counsel in the *Arredondo* action filed a complaint on behalf of Isidro Paniagua and a putative class of piece-rate workers, asserting rest-break claims similar to

those that Plaintiffs had attempted to add to the *Arredondo* complaint when they sought leave to amend that complaint. (*Paniagua et al. v. Delano Farms, et al*., Case No. 1:16-cv-00907-MJS, ECF No. 2.) The *Paniagua* putative class would have included "[a]ll agricultural employees who are or have been employed, and who have worked one or more shifts as non-exempt hourly and/or piece rate workers" for the *Arredondo* Defendants in the State of California in the previous four years. (*Id*. ¶ 27.)

In addition to the *Arredondo* defendants, the *Paniagua* complaint included as defendants Kern Ag Labor Management, Inc. and La Vina Contracting, Inc., two labor contractors who have or had some ownership in common with Cal-Pacific Farm Management, L.P. and/or T&R Bangi's Agricultural Services, Inc. ("Bangi").

The putative *Paniagua* class includes members of the certified *Arredondo* class to the extent that the *Arredondo* class members performed non-exempt hourly and/or piece-rate work during the *Paniagua* class period (which would begin June 23, 2012).

On August 12, 2016, Defendants voluntarily provided payroll records and other documents requested by Plaintiffs' counsel relating to the work performed by putative class members in *Paniagua*, in order to assess the potential liability from the allegations in the complaint. The records produced confirmed the following:

- The number of workers who performed straight piece-rate work for the *Paniagua* contractors at Delano Farms appeared relatively small.
- For at least some of the *Paniagua* class period (but not the entire *Arredondo* class period), piece-rate workers were separately compensated for rest breaks.
- Defendants maintained a written rest-break policy, which they claim authorized and permitted workers to take rest breaks during the class period, and Defendants maintain that daily time sheets prepared by crew foremen indicated that breaks were taken during the 2016 season. Plaintiffs dispute this.

- Starting in 2016, Elite Ag Labor Services, Inc. (a contractor not named in the *Paniagua* complaint but a party to the Settlement) replaced the Bangi entities as a Delano Farms piece-rate labor provider.

On August 16, 2016, all of the *Paniagua* Defendants but La Vina Contracting, Inc. ("La Vina") filed answers to the complaint. (Case No. 1:16-cv-00907-MJS, ECF Nos. 20 & 21.)[1] The answers asserted numerous defenses, including the safe-harbor provisions of California Labor Code Section 226.2(b), which allow employers to make retroactive rest-break payments and provides an affirmative defense to any claim for wages, damages, or penalties based on a failure to pay for rest breaks on or before December 31, 2015.[2]

III. OVERVIEW AND EXECUTION OF SETTLEMENT TO DATE

A. Preliminary Settlement Approval and Certification of Settlement Class

On November 18, 2016, Plaintiffs filed their Motion for Certification of Settlement Class and Preliminary Approval of Joint Stipulation of Settlement of Class Actions and the Declaration of Mario Martinez in support. (ECF Nos. 463 & 463-1.) On February 15, 2017, the Court certified the Settlement Class,[3] preliminarily approved the Settlement, and ordered that class notice be disseminated pursuant to the parties' proposed notice program. (ECF No. 484.)

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[1] By stipulation and order, the parties who had appeared in the *Paniagua* action consented to the dismissal of La Vina from the *Paniagua* action in order to effectuate this settlement. (Case No. 1:16-cv-00907-MSJ, ECF No. 32.) On November 21, 2016, at the request of the parties, the Court entered an order reassigning the *Paniagua* action to U.S. Magistrate Judge Michael J. Seng. (*Id.*, ECF No. 33.)

[2] Labor Code § 226.2(g)(3) provides that employers do not have an affirmative defense if "employees were not advised of their right to take rest or recovery breaks, that rest and recovery breaks were not made available, or that employees were discouraged or otherwise prevented from taking such breaks." Plaintiff Paniagua asserted Defendants did not "advise[] [employees] of their right to take rest or recovery breaks, that rest and recovery breaks were not made available, or that employees were discouraged or otherwise prevented from taking such breaks."

[3] The certified Settlement Class is defined as follows: "any and all individuals who are or were employed as non-exempt agricultural employees of Cal-Pacific Farm Management, LP, T&R Bangi's Agricultural Services, Inc., Kern Ag Labor Management, Inc., La Vina Contracting, Inc., or Elite Ag Labor Services, Inc. and performed work at Delano Farms in California between July 17, 2005 and the date of entry of the Order of Certification and Preliminary Approval who do not opt out, excluding those who worked only as irrigators, tractor drivers, or swampers or only in cold storage. This includes employees, without limitation, who previously opted out of the previously certified class in the *Arredondo* Action." For clarity, the phrase "performed work at Delano Farms in California" does not include work at Blanc Vineyards or at Red Cedar Vineyards in Paso Robles, and only includes agricultural work performed for Delano Farms Co.

As set forth in the Settlement preliminarily approved by the Court, and to effectuate the Settlement, the parties stipulated that Plaintiffs file an amendment to the *Arredondo* complaint to encompass the *Paniagua* claims. (ECF No. 465.) Plaintiffs received leave to amend by Court order (ECF No. 482) and filed their First Amended Class Action Complaint for Damages (ECF No. 485).

B. Establishment of a Qualified Settlement Fund

Under the Settlement, the Defendants agree to pay a total of $6,000,000.00 (the "Settlement Amount") by depositing the funds into a Qualified Settlement Fund ("QSF"). On March 3, 2017, the court-appointed Settlement Administrator, Kurtzman Carson Consultants, Inc. ("KCC") established a QSF pursuant to paragraph 54 of the Settlement. (Smith Dec., ¶ 3.) On March 7, 2017, KCC confirmed that Defendants deposited $700,000, or 8.4% of the Settlement Amount into the QSF pursuant to paragraph 48 of the Settlement. (*Id.*) Under the Settlement, Defendants are to deposit the remaining Settlement Amount within 30 days of the Effective Date of the Settlement, or earlier at Defendants' option.

C. Identification of Settlement Class Members

Members of the Settlement Class were identified by the electronic payroll records of the Contractors (Cal-Pacific Farm Management, LP, T&R Bangi's Agricultural Services, Inc., and Elite Ag Labor Services, Inc.), which provided last-known contact information to KCC on March 31, 2017. (Smith Dec., ¶ 4.) The Class List provided to KCC identified 36. 054 class members. (*Id.*)

On February 24, 2017, counsel for Delano Farms issued a subpoena to La Vina requesting "payroll or other records sufficient to identify each person employed by La Vina…who performed work at or for Delano Farms Company between July 17, 2005 and February 15, 2017" and the date, amount, and type of work performed.[4] (Declaration of Mario

[4] Paragraph 56(b) of the Settlement provides that "Delano Farms will attempt to obtain the information necessary to complete the Class Data List for work performed by those Settlement Class Members employed by La Vina Contracting, Inc." and that if necessary, "Defendants will work with Current Class Counsel and the Court to obtain this information, including, for example, by issuing a subpoena."

Martinez ISO Motion for Final Approval (Martinez Dec.) ¶ 13 & Ex. 1.) Delano Farms did not receive information indicating any additional Class Work being performed by employees of La Vina Contracting, Inc. (*See* Smith Dec., ¶ 5.)

D. The Court Approved Notice Program Was Diligently Executed

The parties and KCC have fully executed procedures for giving notice to the settlement class, as set forth in the Settlement and ordered in the Court's February 15, 2017 Preliminary Approval Order. (Martinez Dec. ¶ 7; Smith Dec. ¶ 6.)

1. First and Second Mailings of Class Notice Documents

After delivery of the Class Data List to KCC, KCC employed skip tracing to identify the best mailing addresses for the Settlement Class Members. (Smith Dec. ¶ 8.) KCC also used the formula set forth in the Settlement Agreement to calculate each Class Member's Anticipated Settlement Shares and provided that calculation in each Class Member's Claim Form.[5] (*Id.*, ¶ *7.*) KCC prepared notice packets for each individual on the Class Data List with an address. (*Id.*) The packets included the Notice of Proposed Class Action Settlement, Claim Form, and Opt-Out Form as approved by the Court ("Class Notice Documents"). (*Id.*; ECF Nos. 484 & 492 (approving the Class Notice Documents).)

KCC completed the first mailing on May 19, 2017. (Smith Dec. ¶ 8; ECF No. 492 (extending deadline for first mailing).) The first mailing went to 35,797 individuals. (Smith Dec. ¶ 8) By June 9, 2017, KCC received 6,845 class notice packets, which were returned by the United States Postal Service as undeliverable. (*Id.*) After completing additional skip tracing, KCC was able to obtain new addresses and re-mail 3,729 of the undeliverable packets by June 9 and the remaining 281 by June 15. (*Id.*) Ultimately, 5,239 of the 35,797 class notice packets remained undeliverable. (*Id.*) Given that the Settlement Class dates back to 2005 and that many Settlement Class members are difficult to locate given the migratory and seasonal

[5] The Plan of Allocation at ¶ 63 of the Settlement calculates settlement payments pro rata based on the number of weeks each Claiming Class Member performed Class Work as compared to the total number of weeks that all Claiming Class Members performed Class Work. Work weeks after April 8, 2012 will be valued at 50% of the value of work weeks occurring prior to April 8, 2012. This is intended to account for changes in practices that appear to have taken place, reducing both the likelihood and the frequency of the alleged violations.

nature of their work, the fact that over 85% of the notice packets were not returned as undeliverable is far better than expected. (Martinez Dec. ¶ 13.)[6] The additional notice efforts described below also help to ensure that those who were unreachable by mail could receive notification by other means.

2. Settlement Website, Email and Toll-Free Number

KCC has also established a Settlement website (http://www.delanofarmsacuerdo.com/) in English and Spanish, with a notice in Tagalog about how to obtain more information. (Smith Dec. ¶ 9.) The website provides instructions to class members, key case documents, and the Class Notice Documents. (*Id.*) The website also provides a link with instructions on contacting KCC by mail, email, and through a toll-free number. (*Id.*) The Class Notice Documents that were mailed to Settlement Class Members also provided the Settlement website address, KCC's email address, the toll-free number, as well as instructions for reaching KCC by mail. (*Id*. at ¶ 7 and 9.)

KCC's toll-free telephone information line has been staffed by persons able to competently answer questions in English, Spanish, and Tagalog. (Smith Dec. ¶ 10.) KCC's staff follow talking points, approved by the parties, to respond to inquiries. (*Id.*) KCC has followed the same talking points when responding to inquiries received by email and mail. To date, KCC has received 749 calls and less than 20 emails. (*Id.*)

3. Media Notice

Pursuant to paragraph 58(d) of the Settlement, KCC caused radio announcements to be made from June 19, 2017 until July 14, 2017. (Smith Dec. ¶ 11; ECF No. 498 (extending deadline for radio announcements). The radio announcement, thirty seconds in length, aired on ten different radio stations for a total of 545 spots. (Smith Dec. ¶ 11) KCC selected a mix of English and Spanish-speaking radio stations in the Fresno-Bakersfield-Visalia area to ensure the best chance of reaching Class Members. (*Id.*)

[6] That only 6% of packets mailed were returned as undeliverable is particularly remarkable in light of the response rate reported by Defendants with respect to their Pilot Study, and the response rate for Plaintiffs' mail survey. See ECF. No. 372.

KCC also caused notice of the settlement to be printed in local publications most likely to reach the Settlement Class Members including the Bakersfield Californian on May 19, 2017; El Popular on May 26, 2017; and Vida en el Valle on May 31, 2017. (*Id.* at ¶ 12.)

4. Community Outreach Meetings

As authorized by the Court, Class Counsel also retained a community-outreach administrator to assist with notifying Class Members of the settlement, completing and submitting claim forms, answering questions about the settlement, and updating addresses and contact information for Class Members. (Declaration of Erika Navarrete ISO of Plaintiffs' Motion for Final Approval (Navarrete Dec.) ¶ 3-10; Martinez Dec. ¶ 8; ECF No. 484 (Order approving engagement of administrator).) In coordination with KCC, the community-outreach administrator advertised for and hosted 5 meetings in Delano, California. (Navarrete Dec. ¶ 7; Martinez Dec. ¶ 8.) The community-outreach administrator also utilized its proprietary database of worker contacts to notify numerous workers of the meetings through a text-messaging program, and made numerous calls to workers to notify them about meetings, used its social media to publicize the settlement and class member rights, and otherwise publicized the existence of the settlement and opportunity to claim money from it. (Navarette Dec. ¶ 7 & 8) Class counsel and the claims administrator observed a significant jump in the claims forms being submitted once the community-outreach administrator became involved. (Martinez Dec. ¶ 9). Approximately 250 workers attended the meetings and 150 class members who attended submitted claim forms at the meetings with assistance from KCC, the community outreach administrator, and Class Counsel's staff. (Navarrete Dec. ¶ 7).

5. Payroll Notice

In an effort to maximize the number of Settlement Class Members receiving notice, and with the approval of Plaintiffs and their counsel, defendant Elite Ag (the new Bangi contractor) disseminated a one-page notice, in Spanish and English, to its employees working at Delano

Farms alerting them to the existence of the Settlement.[7] (Declaration of Greg Durbin ISO Motion for Final Approval ¶ 2 & 3, & Exs. 1 & 2.) Current Class Counsel reviewed and expressly approved the contents of both the English and the Spanish versions of the notice in advance. (*Id*. ¶ 4.) The notices were enclosed in workers' paychecks on May 25, June 29, July 13, 20 and 27, and August 3 and 10, 2017, and included the amended date for submitting claims and objections in the later notices. (*Id*. ¶ 3.)

E. Class Action Fairness Act Notice

Defendants provided notice of this Settlement to federal and state officials as set forth in 28 U.S.C. § 1715 in November of 2016. (Declaration of Sarah Gohmann Bigelow ISO Motion for Final Approval ¶ 2 & Ex. 1.) Defendants mailed a supplemented CAFA notice on June 22, 2017 (*id*. ¶ 3 & Ex. 2), more than 90 days before the September 22, 2017 Fairness and Final Approval Hearing, as required by 28 U.S.C. § 1715(d). Other than acknowledgements of receipt, the Defendants have not received any response to their CAFA notice. (*Id*. ¶ 4.)

F. The Class Has Had a Positive Response

The deadline to opt-out, file a claim, and/or object was August 18, 2017, as extended by the Court's minute order on July 24, 2017. (ECF No. 500). KCC has received 5,815 claim forms, all of which were timely. (Smith Dec. ¶ 16.). This constitutes 16.13% of class. (*Id.*). The claims filed account for 38.22% of the total work weeks worked by the Settlement Class. (*Id.*).

As set forth in paragraph 59 of the Settlement, Settlement Class Members had an opportunity to challenge their Anticipated Settlement Share. KCC received 21 such challenges. (Smith Dec. ¶ 13.) Based on its review of the challenges, KCC approved 8 and denied 13. (*Id.*). Letters notifying the 21 challengers of KCC's determinations were mailed on August 8, 2017.[8] (*Id.*).

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[7] Currently, Elite Ag is the only defendant that provides farm labor contracting services to Delano Farms Company.

[8] The deadline for KCC to mail a determination of challenges to Anticipated Settlement Shares was July 25, 2017. (ECF No. 488.) KCC did not notify counsel that it had received any challenges until August 2, 2017. The July 25 deadline was intended to ensure that Settlement Class Members would receive notice of KCC's determination

KCC has received claim forms from 275 people who have self-identified as Settlement Class Members. (*Id.* at ¶ 15.). KCC is scrutinizing the claims to determine which claims appear on the original class list and which claims do not. For claims KCC determines did not appear on the original class list, it is KCC's recommendation, owing to the difficulties inherent in the provision of the Class Data List and class members' lack of ability to prove their eligibility, that the claims be accepted with the average number of workweeks Determined. (*Id.* at ¶ 15).

KCC has received 222 opt-out forms, as of August 28, 2017. (*Id.* at ¶ 17). Of the 222 Settlement Class members who submitted opt-out forms, 179 have also submitted claim forms and just 43 submitted solely the opt-out form. (*Id.* at ¶ 17). KCC has followed up by phone on a rolling basis, and will provide a list to identify all of the opt-outs when it finishes processing all forms and finalizes follow up with those who submitted both the opt-out and the claims forms. (*Id.* at ¶ 17), No objections have been filed with the Court or received by KCC. (*Id.* at ¶ 18).

The claims rate of 16.13% of Settlement Class Members, and 38.22% of Settlement Class work weeks, is well within -- and beyond -- the range of rates for claims where there has been approval of claims-based class action settlements. In *Pollard v. Remington Arms Co., LLC*, 2017 WL 991071, at *7 (W.D. Mo. Mar. 14, 2017), the court approved the settlement even though the claim rate was just .29% (though in that case it was possible that the claim rate could improve as the claim filing period did not end until 18 months after final approval of the settlement). The court was concerned about the low claim rate, but it found that the settlement should be approved because the court had adequately "scrutinized the method of notice, the content of the notice, and the reach of the notice" and the court was left to presume that class members had simply chosen not to participate. In *Pollard*, the court noted that "[c]ourts around the country have approved settlements where the claims rate was less than one percent." *Id.* at

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before having to decide whether to file a claim or opt out on August 4. Because the deadline for claims/opt-outs/objections was extended from August 4 to August 18, counsel determined that KCC should mail its determinations by August 8 and that counsel would seek retroactive approval by the Court. In KCC's determinations, Settlement Class Members were notified that they had until August 18 to make a claim, opt out, or object.

*13 (collecting cases including *LaGarde v. Support.com, Inc.*, 2013 WL 1283325, at *2–10 (N.D. Cal. Mar. 26, 2013) (approving class action settlement with a claims rate 0.17% and noting 92% of the class members received notice via email)). Many other courts have approved claim rates in the single digits. *Id.* (collecting cases including *In re Online DVD–Rental Antitrust Litig.*, 779 F.3d 934, 944–45 (9th Cir. 2015)(approving thirty-five million member settlement where less than four percent of class members filed claims). Over 5,800 claims, representing nearly 40% of the total adjusted work weeks, is in some respects surprising giving the mobility of the migrant farmworker class, the length of litigation, the poor response of the mail survey, and the difficulty in locating workers for Defendants' pilot study. Given that class notice procedures were properly employed and that this has resulted in a significant number of farmworkers making claims, approval is warranted.

G. Settlement Amount and Plan for Distribution

After the Settlement is given final approval, payments will be distributed to all those who have submitted valid claims, with none of it reverting to Defendants. In addition to payments to the members of the Settlement Class, the Settlement Amount will be used to pay class counsel's awarded fees and costs, enhancement payments to class representatives, taxes and any other payments due in connection with payments to the Settlement Class Members, and all administration costs. (Settlement ¶ 47.).

1. Calculation of the Net Settlement Fund

The Net Settlement Fund is the portion of the Settlement Amount that will be distributed to Settlement Class Members who submit claims, after subtracting the categories below from the Settlement Amount. (Settlement ¶ 17.). The parties estimate approximately $3,813,007.72 will be paid to class members who submit claim forms. (Martinez Dec., ¶ 10). From this amount, the Settlement Administrator will deduct approximately $300,000.00 in employer taxes and withholdings to be paid on behalf of class members. (Smith Dec. ¶ 20). Accordingly, the Net Settlement Fund will be approximately $3,513,007.72.

a. Attorneys' Fees and Costs

Current Class Counsel has requested an award of attorneys' fees in the amount of $1,500,000 and costs of $508,176.28.[9] (ECF No. 501.) Former class counsel have given notice of additional fee claims, which Plaintiffs have moved to strike. (ECF No. 503.). Defendants have agreed not to oppose a request reimbursement of actual costs and for attorneys' fees not exceeding 33% of the Settlement Amount—provided that the fees and costs satisfy and compensate each and all Class Counsel and the Final Order and Judgment extinguishes all claims for attorneys' fees, costs, and expenses. (Settlement ¶ 49(c).

Current Class Counsel's request for fees and costs seeks fees of 25% of the Settlement Amount, plus actual costs. Provided that the Court either (a) grants Plaintiffs' motion to strike the fee claims of prior counsel or (b) orders a separate process for allocating the fees awarded (whether 25% or a higher amount not exceeding 33%), the Court should enter a Final Order and Judgment extinguishing all claims and potential claims for attorneys' fees, costs, and expenses of and by any and all Class Counsel and anyone else.

b. Administration Costs

The estimated amount to be paid to KCC is their bid of $158,816, and $20,000 for the community-outreach administrator for their work to administer the Settlement, including the Administrator's fees and all expenses and costs, for a total cost of $178,816.[10] (Martinez Dec. ¶ 10; Navarrete Dec. ¶ 9). In the event that these costs are less than $178,816, the difference will be distributed to the participating members of the Settlement Class as a supplemental payment.

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[9] Former class counsel have also submitted claims for fees, which Current Class Counsel has opposed in a Motion to Strike. See ECF No. 503. Delano Farms Company also intends to file a response to Current Class Counsel's Motion for Fees by the September 8 opposition deadline.

[10] In Smith Dec. ¶ 21, Derek Smith of KCC estimates KCC's total costs of the Settlement Administration to reach about $185,000, over $26,000 more than the original estimate cited in Plaintiffs' Motion for Preliminary Approval of Settlement, (ECF No. 463-1 Dec. of Mario Martinez ISO Plaintiffs' Motion for Certification Of Settlement Class And Preliminary Approval Of Joint Stipulation Of Settlement Of Class Actions, & Exhibit 2 at ECF 463-1, p. 179). Class Counsel needs to confer with KCC regarding the revised estimate to determine whether the increased estimate of costs is warranted. Class Counsel currently requests approval for the previously submitted estimate of $158,816.00 for KCC's administration of the Class Settlement, plus $20,000 for the community outreach coordinator.

c. Reserve and Taxes

As set forth in paragraph 65(b) of the Settlement, KCC will establish a reserve sufficient to cover all taxes, withholdings, or other payments due from the QSF in connection with the payments to Settlement Class Members. The amount of taxes or other payments due will depend on the claim forms submitted by the Settlement Class Members and participating class members. Based on the participation of 5,815 Class Members, the reserve amount that will be necessary to cover all taxes or other payments is estimated to be approximately $300,000. In the event that the amount reserved is more than the taxes or other payments due, the difference will be distributed to the participating members of the Settlement Class as a supplemental payment. (Smith Dec. ¶ 20).

d. Enhancement Awards

The Court has preliminary approved awards of $7,000 each to the five *Arredondo* class representatives and an award of $2,000 for Mr. Paniagua. Through this motion, Class Counsel is seeking final approval of at a minimum, this amount for these awards. The awards are within the realm of reasonable awards for class representatives and the class representatives have expended a significant amount of their time in support of this class action. (*See,* Declaration of Sabas Arredondo ISO Plaintiffs' Motion for Final Approval ¶ 4-6 & 8; Declaration of Hilario Gomez ISO Plaintiffs' Motion for Final Approval ¶ 4-6 & 8; Declaration of Irma Landeros ISO Plaintiffs' Motion for Final Approval ¶ 4-6 & 8;Declaration of Rosalba Landeros ISO Plaintiffs' Motion for Final Approval ¶ 4-6 & 8; Declaration of Jose Cuevas ISO Plaintiffs' Motion for Final Approval ¶ 4-6 & 8; Declaration of Isidro Paniagua ISO Plaintiffs' Motion for Final Approval ¶ 4-7.) Plaintiffs are also requesting that the Court consider not only the hours expended by the Class Representatives, but the risk that they undertook in being named Plaintiffs, the harassment they suffered, and the possibility of being blacklisted from employment in the future as a basis for a request for an award of $15,000.00 each of the named Plaintiffs except Mr. Paniagua, who joined the action in 2016. (Arredondo Dec. ¶ 7; Gomez Dec. ¶ 7; I. Landeros Dec. ¶ 7; R. Landeros Dec. ¶ 7; Cuevas Dec. ¶ 7).

2. Plan for Distributing the Net Settlement Fund

After final approval, each Settlement Class member who has submitted a timely Claim Form will be entitled to a share of the Net Settlement Fund as determined by the Plan of Allocation. (Settlement ¶ 63). This will reduce the number of checks issued and sent that go unclaimed and ensure instead that the money that would have gone unclaimed is distributed to Settlement Class Members who made claims and can be located.

H. Scope of Release

The Representative Plaintiffs and Settlement Class Members release each of the Released Parties from claims:

> (i) that were asserted or could have been asserted in the *Arredondo* Action or the *Paniagua* Action, including without limitation in the Amended *Arredondo* Complaint, or (ii) that are, were, or could be based on, that arose or could arise out of, or that in any way relate to the same or substantially similar facts, transactions, events, policies, acts, or omissions as alleged in either action including in the Amended *Arredondo* Complaint (collectively the "Released Claims.") For clarity, the Parties agree and, upon approval of the Settlement, the Court will order that the Released Claims include but are not limited to any and all claims against each and all of the Released Parties for or relating to allegedly unpaid wages, unreimbursed tool expenses, failure to pay for rest or recovery periods or other nonproductive time, failure to make rest, recovery, or meal periods available, failure to relieve Settlement Class Members of all duties during meal periods, discouraging, preventing, or otherwise hindering employees from taking rest, recovery, or meal periods, the provision of inaccurate

> wage statements, and/or incomplete or inaccurate record-keeping, from July 17, 2005 until the date of the Court's entry of Order of Certification and Preliminary Approval.

(Settlement ¶ 68). In addition to the specific Released Claims, the Representative Plaintiffs and the Released Parties are also providing mutual general releases of "any and all claims, known or unknown, as of the date of entry of the Order of Certification and Preliminary Approval." (Settlement ¶ 69).

IV. THE COURT SHOULD GRANT FINAL APPROVAL OF THE SETTLEMENT

"The Ninth Circuit maintains a 'strong judicial policy' that favors the settlement of class actions." *Reyes v. CVS Pharmacy, Inc.*, 2016 WL 3549260, at *2 (E.D. Cal. June 29, 2016) (citing *Class Plaintiffs v. City of Seattle*, 955 F.2d 1268, 1276 (9th Cir. 1992). Federal Rule of Civil Procedure 23(e)(2) requires that the settlement of a certified class action be fair, adequate, and reasonable. Whether to approve a class action settlement is "committed to the sound discretion of the trial judge." *Class Plaintiffs v. Seattle*, 955 F.2d 1268, 1276 (9th Cir.1992) (internal citations and quotation marks omitted). This discretion is to be exercised "in light of the strong judicial policy that favors settlements, particularly where complex class action litigation is concerned," because settlements minimize potentially substantial litigation expenses for both sides and conserves judicial resources. *Linney v. Cellular Alaska P'ship*, 151 F. 3d 1234, 1238 (9th Cir. 1998) (internal citations and quotation marks omitted).

After a hearing, a court may approve a class action settlement that it finds to be "fair, reasonable, and adequate." Fed. R. Civ. P. 23(e)(2). A settlement is fair, adequate, and reasonable, and merits approval when "the interests of the class are better served by the settlement than by further litigation." David F. Herr, Annotated Manual For Complex Litigation § 21.61 at 373 (2017).

The Ninth Circuit has established a list of factors to consider when assessing whether a proposed settlement is fair, reasonable and adequate: (1) the strength of Plaintiffs' case; (2) the

risk, expense, complexity, and likely duration of further litigation; (3) the risk of maintaining class action status through trial; (4) the amount offered in settlement; (5) the extent of discovery completed and the stage of the proceedings; (6) the experience and views of counsel; (7) the presence of government participants; and (8) the reaction of the class members to the proposed settlement. *In re Online DVD-Rental Antitrust Litig.*, 779 F.3d 934, 944 (9th Cir. 2015) (applying "*Churchill* factors"). "Not all of these factors will apply to every class action settlement. Under certain circumstances, one factor alone may prove determinative in finding sufficient grounds for court approval." *Nat'l Rural Telecommunications Coop. v. DIRECTV, Inc.*, 221 F.R.D. 523, 525–26 (C.D. Cal. 2004).

A. The Strength of Plaintiffs' Case and Risk, Expense, Complexity, and Likely Duration of Continued Litigation

Litigation is inherently risky. "[U]nless the settlement is clearly inadequate, its acceptance and approval are preferable to lengthy and expensive litigation with uncertain results." *Nat'l Rural Telecommunications Coop.*, 221 F.R.D. at 526 (quoting 4 A. Conte & H. Newberg, Newberg On Class Actions, § 11:50, at 155 (4th ed.2002). "The court need not 'reach any ultimate conclusions on the contested issues of fact and law which underlie the merits of the dispute, for it is the very uncertainty of outcome in litigation and avoidance of wasteful and expensive litigation that induce consensual settlements.'" *Class Plaintiffs v. City of Seattle*, 955 F.2d at 1291 (quoting *Officers for Justice v. Civil Serv. Comm'n of San Francisco,* 688 F.2d 615, 625 (9th Cir.1982)).

The Settlement confers a substantial benefit on the *Arredondo* and *Paniagua* classes because continued litigation presents significant risks to Plaintiffs. Furthermore, the Settlement provides for an immediate recovery for class members and avoids a lengthy, complex trail with an uncertain outcome.

Plaintiffs' attempts to conduct a survey and develop a statistical analysis to prove their claims have been unsuccessful due to fraud in the collection of the door-to-door survey, in addition to the Court's refusal to modify the scheduling order to allow Plaintiffs further

opportunity to conduct a new survey and make expert disclosures based on accurately collected data. While respectfully and strongly disagreeing with the Court's decisions, Plaintiffs recognize that the only trial plan that the Court will consider is the November 2015 alternative trial plan, which does not have the support of a survey or expert. Plaintiffs understand that proceeding without a survey or an expert poses significant risk to a possible recovery for the *Arredondo* class and have considered those risks in agreeing to the settlement, and have explained those risks to the Class Representatives.

As for the *Paniagua* Action, Plaintiffs are aware that the "safe harbor" in California Labor Code Section 226.2 could provide Defendants with a defense to claims that Defendants failed to separately compensate for rest and recovery periods or other nonproductive time.[11] Application of the safe harbor would substantially reduce the recovery for the rest period class. Moreover, a review of payroll records shows that since at least 2016, piece-rate workers were separately compensated for their breaks. In any event, given what appears to be the small size of the putative class in *Paniagua* and the relatively few days they engaged in piece-rate work for Defendants, liability in the *Paniagua* case would be modest in comparison to the *Arredondo* liability.

Given these risks, the $6 million Settlement Amount provides a fair and substantial benefit to the Settlement Class. *See*, *e.g.*, *Reyes*, 2016 WL 3549260, at *7 (E.D. Cal. June 29, 2016) (noting that "approval of a class settlement is appropriate when there are significant barriers plaintiffs must overcome in making their case") (internal citations and quotation marks omitted). Settlement Class Members will receive their share of this amount based on their completed claim form, without the burden of proving their claims individually or facing the defenses their claims may raise. Because many Settlement Class Members have small claims relative to the entire class claims, such claims would not have been economically feasible to

[11] Section 226.2(b) provides employers with an affirmative defense to claims based on the failure to compensate for rest and recovery periods and other nonproductive time for time periods prior to and including December 31, 2015.

pursue through individual suits.[12] Even if feasible, individual suits would have entailed substantial risk. And the Settlement allows the Settlement Class to recover for the entire 11+ years of the Class Period without regard to the statute of limitations and without having to address the safe-harbor and other defenses asserted by Defendants. Assuming the net settlement fund amount of $3,513,007.72, and approximately 5,800 claims (claiming nearly 40% of the work weeks worked by the Settlement Class), each class member who has claimed will receive an average of about $650.00 – of course those with longer work histories will receive more, and those with shorter work histories will receive less.

B. The Risk of Maintaining Class Action Status throughout the Trial

Defendants have already successfully decertified two of the subclasses. (ECF No. 310). Plaintiffs recognize that, if this litigation were to proceed, Defendants would continue to aggressively challenge the manageability and ascertainability of the class. While Plaintiffs believe that they could defeat subsequent decertification challenges, they recognize the risk that the class may not maintain its status through trial.

C. The Amount Offered in the Settlement is Fair and Reasonable

The Ninth Circuit has always "put a good deal of stock in the product of an arms-length, non-collusive, negotiated resolution … and ha[s] never prescribed a particular formula by which that outcome must be tested." *Rodriguez v. W. Publ'g Corp.*, 563 F.3d 948, 965 (9th Cir. 2009). "[I]n reality" courts "naturally arrive at a reasonable range for settlement by considering the likelihood of plaintiffs' or defense verdict, the potential recovery, and the chances of obtaining it, discounted to present value." *Id.* "The proposed settlement is not to be judged against a hypothetical or speculative measure of what might have been achieved by the negotiators." *Officers for Justice*, 688 F.2d at 625.

Accordingly, the fact that more might have been available as a result of statutory damages as penalties is not determinative of the settlement's fairness. *Nat'l Rural*

[12] Conversely, Settlement Class Members who believe they have economically significant claims, strong proof of their claims, and face only weak defenses, are free to opt out of the Settlement Class and pursue their claims individually.

Telecommunications Coop., 221 F.R.D. at 527 ("it is well settled law that a proposed settlement may be acceptable even though it amounts to only a fraction of the potential recovery that might be available to the class members at trial."); *Rodriguez*, 563 F.3d at 964−965 (finding no abuse of discretion where court did not take into account treble damages in antitrust action and even considering the trebling effect, the settlement amount still represented roughly 10% of the class's estimate of trebled damages.).

Here, Plaintiffs believe that the $6,000,000 recovered is a strong settlement for the class given the substantial risks associated with continued litigation. Plaintiffs' counsel conservatively estimates the value of the wage and tool claims without the penalties would be in the $3 million to $5 million range. (ECF No. 501-1, ¶ 46, Martinez Dec. ISO Motion for Attorneys' Fees and Costs).[13] While penalties had the potential to increase a damage award, Plaintiffs faced a risk that the *Arredondo* case would never proceed to trial given Plaintiffs' withdrawal of their expert disclosures and the Court's order limiting Plaintiffs to their November 2015 alternative trial plan. (*Id.*). Furthermore the maximum liability figure assumes every class member worked off the clock and purchased tools, while Plaintiffs recognize that at least a small number of workers claim this did not happen.

Under the Settlement, all class members who have submitted timely and valid claims will be sent payments. To the extent funds remain in the Settlement Fund (*e.g.*, due to uncashed checks), a secondary distribution will be made. None of the Settlement Fund will revert to Defendants. The Net Settlement Fund to be distributed to Claiming Class Members will be $3,813,007.72.[14]

Based on the 5,815 claims submitted, the average pay-out to each Claiming Class Member will be about $650. (Martinez Dec. ¶ 11). On average, KCC estimates that each

[13] Because of the relatively small size of the *Paniagua* class and the shorter class period, Plaintiffs estimate that Defendants' liability if the *Paniagua* case were tried would be modest compared to the *Arredondo* liability. (*Id*. at ¶ 53) Plaintiffs also recognize the real risk that these damages may not be recovered given that the "safe harbor" in California Labor Code Section 226.2 could provide Defendants with a defense to claims that Defendants failed to separately compensate for rest and recovery periods or other nonproductive time. (*Id.*)

[14] This number includes the $320,000 to be withheld for taxes.

Settlement Class Member performed 27.34 weeks of Class Work, which means that each Claiming Class Member will receive approximately $21.70 per adjusted work week. (Smith Dec. ¶ 19.) To put this figure into context, during the class period, the California minimum wage has ranged from $6.75 to $10.50 per hour.[15] Given that Plaintiffs have argued that the average class member worked approximately 10-20 minutes off-the-clock per day, a claim Defendants dispute. Based on Plaintiffs' allegations, a Settlement Class Members' individual claims would thus be valued at between $1.12 and $3.50 per day. Plaintiffs also acknowledge variability in the frequency and amount of reimbursable tool expenses claimed but believe that an average $40 to $90 represents a fair estimate. (Martinez Dec., ¶ 12.) At KCC's estimate of $21.70 compensation per adjusted work week – including tools claims, the settlement provides an excellent recovery. (Smith Dec. ¶ 19; Martinez Dec. ¶ 11-12.) Thus, Claiming Class Members will receive the full value, or almost the full value of their wage and tool claims.[16]

D. The Extent of Discovery Completed and Stage of the Proceedings

Parties must have enough information to make an informed decision about the strength of the settlement. *Nat'l Rural Telecommunications Coop*., 221 F.R.D. at 527. Where discovery is nearly completed, "it suggests that the parties arrived at a compromise based on a full understanding of the legal and factual issues surrounding the case."' *Id*. (quoting 5 *Moore's Federal Practice,* § 23.85[2][e] (Matthew Bender 3d ed.); *see also Rodriguez*, 563 F.3d at 967 ("A settlement following sufficient discovery and genuine arms-length negotiation is presumed fair."); *Rodriguez v. Kraft Foods Grp., Inc.*, 2016 WL 5844378, at *8 (E.D. Cal. Oct. 5, 2016) (internal citations and quotation marks omitted); 4 W. Rubenstein, A. Conte & H. Newberg, Newberg On Class Actions, § 13:50 at 467 (5th ed. 2015) (where discovery is extensive, "a court may assume that the parties have a good understanding of the strength and weaknesses of their respective cases and hence that the settlement's value is based upon such adequate

[15] Though the hourly rate paid by the Bangi Defendants to Settlement Class members often exceeded minimum wage, the prevailing minimum wage provides an accurate basis for comparison.

[16] While Plaintiffs have also claimed Cal. Labor Code §203 and §226 penalties in this litigation, they acknowledge the added challenge of demonstrating the required means rea on the part of each defendant.

information" and that the parties have "litigated the case in an adversarial manner" and thus the settlement was arms-length).

Here, the parties reached a settlement only after years of thorough factual investigation and discovery. This litigation is in its advanced stages, the parties having completed discovery regarding class certification, joint employer status, and the trial plan and were close to trial on this matter.[17] This discovery has included more than 160 depositions and the production of more than 500,000 pages of documents plus the electronic payroll records of the Bangi defendants for the certified class period. As a result, the facts are well understood and Plaintiffs and their counsel have sufficient information to make an informed decision about the Settlement.

E. The Experience and Views of Counsel

Class Counsels' judgment that the Settlement Agreement is fair and reasonable is entitled to "great weight." *Vega v. Weatherford U.S., Ltd. P'ship*, 2016 WL 7116731, at *9 (E.D. Cal. Dec. 7, 2016). Competent counsel is "better positioned than courts to produce a settlement that fairly reflects each party's expected outcome in the litigation" and "the trial judge, absent fraud, collusion, or the like, should be hesitant to substitute its own judgment for that of counsel." *Nat'l Rural Telecommunications Coop.*, 221 F.R.D. at 528 (internal citations and quotation marks omitted).

Class Counsel has had extensive experience handling class-action litigation in both state and federal courts and has expertise in the governing wage-and-hour laws for agricultural workers. (ECF No. 501-1, ¶ 4-13, Martinez Dec. ISO Motion for Attorneys' Fees and Costs). After completing a full and thorough investigation of Plaintiffs' claims and researching the applicable law, Class Counsel has determined that the Settlement is fair, reasonable, and

[17] While the Court has not certified the *Paniagua* class, the factual contexts of the *Paniagua* claims are well understood as a result of having litigated the *Arredondo* Action for more than seven years. Both *Paniagua* and *Arredondo* involve wage-and-hour claims for agricultural field work performed under the employ of the Contractors at Delano Farms, and Plaintiffs believe that most members of the *Arredondo* class also are members of the putative *Paniagua* class. Moreover, Defendants produced the specific payroll records and written policies at issue in the *Paniagua* Action to Plaintiffs' counsel in advance of the most recent mediation.

adequate. In reaching this determination, Class Counsel took into account similar class action cases that have been litigated and settled. (ECF No. 463). Class Counsel also considered the value of the class's claims versus the amount recovered in settlement and the risk associated with continued litigation including decertification. (ECF No. 501, p. 21:2-21; ECF No. 501-1, ¶ 45, Martinez Dec. ISO Motion for Attorneys' Fees and Costs). In light of these factors, Class Counsel has concluded that this settlement is a good result for the class and is fair, adequate, and reasonable.

F. The Presence of a Governmental Participant

While there are no government participants in this action, federal and state officials have been provided with CAFA notice and have not made any objections after having had the opportunity to review the Settlement.

G. The Reaction of the Class Members to the Settlement

The reaction of the class, specifically "the quality and quantity of any objections and the quantity of class members who opt out," is an important factor to consider in determining whether to approve a class action. 4 W. Rubenstein, A. Conte & H. Newberg, Newberg On Class Actions, § 13:54 at 479 (5th ed. 2015). Courts generally interpret the receipt of a relatively small number of objectors and opt-outs as a signal that the class members generally support the settlement and it is adequate. *See*, *e.g.*, *Rodriguez*, 2016 WL 5844378, at *9 (noting that the "absence of a large number of objections to a proposed settlement raises a strong presumption that the terms of the agreement are favorable to the class"; *Nat'l Rural Telecommunications Coop.*, 221 F.R.D. at 529 (noting that the absence of any objections weighs in favor of approval).

As described above, the reaction of the Settlement Class has been positive. Of the 36,054 Settlement Class Members, approximately 5,815 (16.13%) have filed claims, a rate well above what has been considered acceptable in other cases and which itself indicates that the notice procedures were adequate. (See supra Part III.F.) Not a single Settlement Class Member has objected to the Settlement (Smith Dec. ¶ 18), and just 43 (0.11%) have

conclusively opted out, with 179 (0.49%) having submitted both opt-outs and claims forms. (*Id.* at ¶ 17).

H. The Settlement was the Product of Arm's-Length Negotiations

The eight factors considered when determining whether to approve a settlement are not necessarily exhaustive. *Officers for Justice*, 688 F.2d at 625. The Court should consider that the Settlement here is the result of extensive, well-informed, good-faith, and arm's-length negotiations. Both class counsel and Defendants' counsel are experienced and capable litigators and have accurately assessed the claims' strengths and weaknesses and the benefits of the Settlement. Over the seven-year history of the *Arredondo* litigation, the parties have participated in mediation sessions with four different professional mediators, as well as engaging in direct negotiations. *Vega*, 2016 WL 7116731 at *9 (quoting *In re Bluetooth*, 654 F.3d at 946) (internal citation and quotation marks omitted) (noting that the Ninth Circuit has determined the "presence of a neutral mediator [is] a factor weighing in favor of a finding of non-collusiveness."). In total, the parties have spent seven days mediating with neutrals, and many more days negotiating directly with each other.

The most recent mediation with Mr. Antonio Piazza also included negotiation—and settlement—of the *Paniagua* Action. Ordinarily a settlement agreement negotiated before class certification merits a higher level of scrutiny to ensure the settlement is free from collusion. *In re Online DVD-Rental Antitrust Litig.*, 779 F.3d 934, 944 n. 6 (9th Cir. 2015) (citing to *Bluetooth Headset Prods. Liab. Litig.,* 654 F.3d 935, 946 (9th Cir.2011)).[18] Here, the long litigation history in the *Arredondo* litigation, the discovery obtained there, the hard-fought negotiation of that case, and comparative size and value of the two cases should dispel any notion that somehow the *Paniagua* settlement was collusive when the simultaneous settlement of the *Arredondo* case was not.

[18] In *In re Online DVD-Rental Antitrust Litig*., the Ninth Circuit "assume[d], without deciding, that the heightened scrutiny required in *In re Bluetooth*" does not apply where plaintiff sought certification of a settlement class and a litigation class had been certified before the settlement agreement was reached. 779 F.3d at 944, n. 6. In any event, settlement of the *Arredondo* action meets *Bluetooth*'s heightened scrutiny for the same reasons as *Paniagua*.

In any event, there are no "'signs that class counsel have allowed pursuit of their own self-interests and that of certain class members to infect the negotiation.'" *Reyes*, 2016 WL 3549260 at *10 (quoting *Bluetooth*, 654 F.3d at 946). If present, such signs might include:" (1) a disproportionate distribution of the settlement fund to counsel; (2) negotiation of a 'clear sailing' arrangement for payment of attorney's fees separate and apart from class funds; and (3) an arrangement for funds not awarded to revert to defendant." (*Id*.)

Here, to the contrary, Current Class Counsel has requested $1,500,000 in fees which equals only 25 percent of the $6 million settlement.[19] (ECF No. 501). These fees are not disproportionate to the overall settlement, are within the Ninth Circuit's "benchmark" of 25% of the recovery obtained, and are well below the lodestar hours for class counsel. (*See* ECF No. 501, p.9:1-23, citing *Knight v. Red Door Saloons Inc.* 2009 WL 248367 (N.D. Cal. 2009); *See also*, *Bluetooth*, 654 F.3d at 942). Nor is there an arrangement for funds not awarded to revert to defendant.

As part of the settlement, Defendants have agreed not to oppose Plaintiff's motion for attorneys' fees provided that it does not request fees in excess of 33% of the Settlement Amount. (Settlement ¶ 49(c).). While clear-sailing agreements can require additional scrutiny, they do not necessarily indicate collusion and are not generally prohibited. Indeed, the Ninth Circuit has distinguished between clear-sailing provisions in settlements where the attorneys' fees are to come out of the settlement fund (as here) versus being paid by defendants in addition to the settlement fund. *Rodriguez,* 563 F.3d at 961 n. 5. The former "does not signal the possibility of collusion because, by agreeing to a sum certain, [the defendants] were acting consistently with their own interests in minimizing liability." *Id.*; *see also Reyes*, 2016 WL 3549260, at *10 (where attorneys' fees will be paid from the settlement fund, concerns about clear-sailing provisions are ameliorated).

[19] Former Class Counsel has also requested fees. Current Class Counsel contends that Former Class Counsel is not entitled to any fees and intends to oppose Former Class Counsel's request.

Furthermore, in *Shames v. Hertz Corp*., the court found that the fact that the "parties also agreed that the class settlement would not hinge on whether they could successfully negotiate a fee amount" weighed in favor of finding there had been no collusion because "the parties took the risk that they would not be able to successfully negotiate a resolution of the attorneys' fees issue and the matter would be decided by the Court without their guidance." 2012 WL 5392159, at *13 (S.D. Cal. Nov. 5, 2012). Similarly, this Settlement provides that "[i]n the event that the Court does not approve the award of attorneys' fees and/or costs requested by any of Class Counsel, or the Court awards attorneys' fees and costs in an amount less than that requested by Class Counsel, such ruling or award shall not be a basis for rendering the Settlement void or unenforceable in any respect." (Settlement ¶ 49(f)).

V. THE COURT SHOULD GRANT THE REQUESTED INCENTIVE AWARDS

"Courts routinely approve incentive awards to compensate named plaintiffs for the services they provide and the risks they incurred during the course of the class action litigation." *Ingram v. The Coca-Cola Company*, 200 F.R.D. 685, 694 (N.D. Ga. 2001) (internal quotations and citations omitted); *see also Van Vranken v. Atlantic Richfield Co.*, 901 F. Supp. 294, 299 (N.D. Cal. 1995); *Vega v. Weatherford U.S., Ltd. P'ship*, 2016 WL 7116731, at *18 (E.D. Cal. Dec. 7, 2016). In *Coca-Cola*, the Court approved service awards of $300,000 to each named plaintiff in recognition of the services they provided to the class by responding to discovery, participating in the mediation process, and taking the risk of stepping forward on behalf of the class. *Coca-Cola*, 200 F.R.D. at 694; *see also, e.g., Van Vranken*, 901 F. Supp. at 299 (approving $50,000 participation award to plaintiffs); *Glass v. UBS Financial Services, Inc.*, Case No. C-06-4068 MMC, 2007 WL 221862, at *17 (N.D. Cal. Jan. 26, 2007) (approving $25,000 enhancement to each named plaintiff).

Named Plaintiffs Sabas Arredondo, Hilario Gomez, Rosalba Landeros, Irma Landeros, Jose Cuevas and Isidro Paniagua have actively participated in this litigation. (*See* Arredondo Dec. ¶ 4-6; Gomez Dec. ¶ 4-6; I. Landeros Dec. ¶ 4-6; R. Landeros Dec. ¶ 4-6; Cuevas Dec. ¶ 4-6; Paniagua Dec. ¶ 4-7).

All of the aforementioned Plaintiffs spent considerable time reviewing records, assisting Class Counsel, and, other than Mr. Paniagua, responding to discovery, attending mediations and having their depositions taken. (*See* Arredondo Dec. ¶ 4-6; Gomez Dec. ¶ 4-6; I. Landeros Dec. ¶ 4-6; R. Landeros Dec. ¶ 4-6; Cuevas Dec. ¶ 4-6). All of the named Plaintiffs took a significant risk, suffered harassment and ridicule, and have risked future employment. (*See* Arredondo Dec. ¶ 7; Gomez Dec. ¶ 7; I. Landeros Dec. ¶ 7; R. Landeros Dec. ¶ 7; Cuevas Dec. ¶ 7). As farmworkers and a vulnerable segment of the population, the named Plaintiffs have found it difficult to find other employment, and may suffer blacklisting because of their participation in this case (with some already experiencing it). (*See* Arredondo Dec. ¶ 7; Gomez Dec. ¶ 7; I. Landeros Dec. ¶ 7; R. Landeros Dec. ¶ 7; Cuevas Dec. ¶ 7). In addition, the commitment of the Arredondo Plaintiffs to assist with organizing meetings, ensuring workers attend meetings with Class Counsel, distributing flyers, and making phone calls, all have been invaluable in ensuring Class Counsel had access to a large number of workers for purposes of prosecuting the litigation and defending it against Defendants' motions and attacks. (*See* Arredondo Dec. ¶ 4-6; Gomez Dec. ¶ 4-6; I. Landeros Dec. ¶ 4-6; R. Landeros Dec. ¶ 4-6; Cuevas Dec. ¶ 4-6; Paniagua Dec. ¶ 4-7). In total the six active Plaintiffs submitting declarations attesting to their involvement in this case estimate the following hours expended (including travel time):

- Sabas Arredondo, 352 hours;
- Hilario Gomez, 335.5 hours;
- Rosalba Landeros, 319 hours;
- Irma Landeros, 309 hours;
- Jose Cuevas, 257 hours
- Isidro Paniagua, 60 hours

(*See* Arredondo Dec. ¶ 4; Gomez Dec. ¶ 4; I. Landeros Dec. ¶ 4; R. Landeros Dec. ¶ 4; Cuevas Dec. ¶ 4; Paniagua Dec. ¶ 4).

The Court has preliminary approved awards of $7,000 each to the five *Arredondo* class representatives and an award of $2,000 for Mr. Paniagua. Plaintiffs and Class Counsel are requesting that the Court approve an award of $15,000 each to the *Arredondo* Plaintiffs and $2,000 to Mr. Paniagua. Such an enhancement payment for their work on behalf of the class, the risk they undertook, and commitment to the case over an eight-year period is reasonable under the circumstances

VI. THE COURT SHOULD GRANT THE REQUESTED ADMINISTRATION COSTS

The costs of administering the settlement are necessary costs that are routinely awarded by courts. "Courts regularly award administrative costs associated with providing notice to the class." (*Reyes*, 2016 WL 524762, at *9).

After vetting bids from numerous settlement administrators, Class Counsel selected Kurtzman Carson Consultants ("KCC"), with a bid $158,816, to act as the Settlement Administrator. (ECF No. 463-1, ¶ 79, Dec. of Mario Martinez ISO Plaintiffs' Motion for Certification Of Settlement Class And Preliminary Approval Of Joint Stipulation Of Settlement Of Class Actions). In consultation with KCC and pursuant to the terms of the Settlement Agreement and Preliminary Approval Order, Class Counsel also contracted contract with the United Farm Workers of America, to serve as a community-outreach administrator in the Delano area to assist with in person claim form filing, person meetings regarding the settlement, publicity about the settlement, and assisting with questions and procedures regarding class members rights. (Martinez Dec. ¶ 8). Class Counsel and KCC observed the positive effect of UFW involvement in hosting meetings and publicizing the settlement. (Smith Dec. ¶ 14; Martinez Dec. ¶ 8-9). Class Counsel noted a significant increase in claims submitted after the community meetings at The Forty Acres and UFW community outreach. (Martinez Dec. ¶ 9). The estimated amount to be paid to the Settlement Administrator and the community-outreach administrator for their work to administer the Settlement, including the Administrator's fees and all expenses and costs, is $178,816, that is, $158,816 to the Settlement

Administrator, and $20,000 to the community outreach administrator. In the event that the total costs are less than $178, 816.00, the difference will be distributed to the participating members of the Settlement Class as a supplemental payment.

VII. THE COURT'S CERTIFICATION OF THE SETTLEMENT CLASS SHOULD BECOME FINAL

Through its Order of Certification of Settlement Class and Preliminary Approval of the Joint Stipulation of Settlement, the Court has already ordered the certification of the Settlement Class. (ECF No. 484). Plaintiffs request that the Court incorporate by reference its prior determination into its Final Order and Judgment, filed herewith.

VIII. CONCLUSION

Having demonstrated that final approval of this Settlement is appropriate, Plaintiffs respectfully requests that following the Fairness Hearing on September 22, 2017, the Court (1) grant final approval of the proposed Settlement Agreement and certification of the Settlement Class, and (2) enter the Parties' proposed Final Order (previously filed at ECF No. 463-1; amended version submitted herewith); grant Plaintiffs' Request for Fees and Costs (ECF No. 501) payable to current Class Counsel only; and grant the award of administration costs requested herein; grant the enhancement payments of $15,000.00 each to the Arredondo Plaintiffs, and $2,000.00 to Mr. Paniagua; and make any other order necessary to effectuate the Final Order.

//

Date: August 29, 2017

MARTINEZ AGUILASOCHO & LYNCH, APLC

BALL & YORKE

WILCOXEN & CALLAHAM

__/s/ Mario Martinez___
Mario Martinez
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