

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF RIVERSIDE

DANIEL LARA DIAZ and GLENN FITE,
individually, on a representative basis, and on
behalf of all others similarly situated;

Plaintiffs,

vs.

SHAMROCK FOODS CO., an Arizona
Corporation; and DOES 1 through 20,
inclusive;

Defendants.

Case No.: RIC 2004126
*[Assigned to Hon. Judge Craig Riemer, Dept
1, for all purposes]*

**~~PROPOSED~~ ORDER APPROVING
SETTLEMENT PURSUANT TO THE
PRIVATE ATTORNEYS GENERAL ACT
AND JUDGMENT OF DISMISSAL
WITH PREJUDICE ENTERED
THEREON**

Hearing

Date: September 14, 2022
Time: 8:30 a.m.
Dept.: 1

Complaint filed: October 20, 2020

The Motion to Approve the Third Amendment to the PAGA Representative Action Settlement Agreement and Release of PAGA Claims (the “Settlement” or “Settlement Agreement”) between Plaintiffs Daniel Lara Diaz and Glenn Fite and Defendant Shamrock Foods Company (“Defendant” or “Shamrock”) came before this Court on for a hearing in accordance with Labor Code § 2699(1)(2) of the Private Attorneys General Act of 2004 (“PAGA”). A true and correct copy of the Third Amendment to the PAGA Representative Action Settlement Agreement and Release of PAGA Claims is attached as Exhibit “A” to the

1 Supplemental Declaration of Brian Mankin, Esq., in Support of the Motion to Approve
2 Settlement Pursuant to the Private Attorneys General Act of 2004, which was filed on
3 September 6, 2022.

4 Plaintiffs' First Amended Complaint and LWDA notice letters sought civil penalties
5 against the Released Parties for the "Released Claims" on behalf of the State of California and
6 all current and former non-exempt employees employed by Defendant in California at any
7 time during the period of October 2, 2019 through March 5, 2022 (the "Aggrieved
8 Employees"). The "Released Parties" mean "Defendant, together with its officers, directors,
9 employees, to the fullest extent permitted by law." The "Released Claims" are defined in the
10 Settlement Agreement, as follows:

11 "Released Claims" or "PAGA Claims" means any and all claims
12 for civil penalties that Plaintiffs have alleged against Defendant,
13 on behalf of the State of California, based on the facts stated in
14 the First Amended Complaint, including all PAGA claims
15 seeking civil penalties premised upon (a) failure to pay minimum
16 or contractual wages; (b) failure to pay overtime wages, (c)
17 failure to provide compliant meal periods; (d) failure to provide
18 compliant rest periods; (e) failure to timely pay wages each
19 payroll period; (f) failure to timely pay final wages; and (g)
20 failure to provide accurate itemized wage statements, only to the
21 extent these claims are stated in the LWDA notice letters sent on
22 September 18, 2020 and October 2, 2020. More specifically,
23 these claims include violations of California Labor Code sections
24 200, 201, 202, 203, 204, 208, 221, 222, 223, 226, 226.2, 226.3,
25 226.7, 256, 510, 512, 558, 1194, 1194.2, 1197, 1197.1, and
26 1198); the applicable Industrial Welfare Commission Wage
27 Orders Sections 3(A), 4, 7, 9, 11 and 12.

28 The Court, having considered the Settlement, including proposed PAGA penalties,
embodied in the Settlement Agreement (attached to the Supplement Declaration of Brian
Mankin as Exhibit "A") between Plaintiffs and Defendant, pursuant to Labor Code §
2699(1)(2), having considered the papers filed in support of the application for court approval
and the arguments of counsel, and good cause appearing, HEREBY ORDERS THE
FOLLOWING:

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1 1. In a settlement of a PAGA action brought by an aggrieved employee, the Court
2 “shall review and approve any settlement of any civil action filed pursuant to this part.” Cal.
3 Lab. Code § 2699(1)(2).

4 2. The Court finds that the instant Action presented a good faith dispute of the
5 Released Claims as defined in the Settlement Agreement, and the Court finds in favor of
6 Settlement Approval and the Settlement Approval Order is hereby entered resolving all claims
7 set forth in Plaintiffs’ LWDA notice letters to the extent they are alleged in the First Amended
8 Complaint and pursuant to the terms of the Settlement Agreement, and entering the Judgment
9 of Dismissal with Prejudice.

10 3. The Court approves the Settlement of the above-captioned action, as set forth
11 in the Settlement Agreement and each of the releases and other terms, as fair, just, reasonable,
12 and adequate. The Parties are directed to comply with the terms set forth in the Settlement
13 Agreement, including that Defendant is directed to make payments in accordance with the
14 Settlement Agreement, by and through the Settlement Administrator.

15 4. By this Order and Judgment of Dismissal with Prejudice, Plaintiffs release,
16 relinquish, and discharge all Released Claims on behalf of themselves and the State of
17 California, as defined in the Settlement Agreement. The Parties are to bear their own costs,
18 except as otherwise provided in the Settlement Agreement.

19 5. In accordance with the Settlement Agreement, Defendant agreed to pay
20 \$470,000 (the “Settlement Amount”), inclusive of payments to the LWDA and Aggrieved
21 Employees (as defined in the Settlement Agreement), attorneys’ fees and litigation costs, and
22 Settlement Administrator costs. As part of the Settlement, Plaintiffs’ Counsel sought an
23 award of attorney’s fees of \$156,666.66, actual litigation expenses of \$17,764.39, and \$9,300
24 to the Settlement Administrator, Phoenix Class Action Administrators. Defendant does not
25 oppose these requests. The Court finds that the Settlement Amount is fair, reasonable and
26 adequate, and approves each of these payments set from the Settlement Amount, and directs
27 Defendant and Settlement Administrator to make the following payments from the Settlement
28 Amount within 15 days of the Effective Date:

- a. \$156,666.66 in attorneys' fees which shall be allocated equally between Lauby Mankin Lauby LLP and Mallison & Martinez;
- b. \$17,764.39 in litigation costs, which shall be allocated as \$11,905.51 to Lauby Mankin Lauby LLP and \$5,858.88 to Mallison & Martinez; and
- c. \$9,300 to Phoenix Class Action Administrators for administration costs.

6. After deducting the foregoing payments, the remainder of approximately \$286,268.95 shall form the PAGA Award, which will then be allocated pursuant to Labor Code § 2699(i) with 75 percent (\$214,701.71) being paid to the LWDA, and the remaining 25 percent (\$71,567.24) paid to the Aggrieved Employees on a pro rata basis, as set forth in the Settlement Agreement. The Court approves these payments and directs the Settlement Administrator to issue checks to the LWDA and Aggrieved Employees, as set forth in the Settlement Agreement. The Court approves the proposed notice to Aggrieved Employees and orders that the Settlement Administrator mail the Notice of PAGA Settlement and Payment to the Aggrieved Employees with the settlement check (attached hereto as Exhibit "A").

7. The Court approves the handling of unclaimed funds set forth in the Settlement Agreement, specifically that any unclaimed funds in the Settlement Administrator's account as a result of a failure to timely cash a settlement check shall be deemed void, and any unclaimed funds in the QSF as a result of the failure to cash Individual Settlement Payment checks shall be transmitted by the Settlement Administrator to the Labor and Workforce Development Agency, in accordance with the statutory objectives of PAGA, within twenty-one (21) calendar days of the date those checks became void.

8. As to the Released Claims, this order and the resulting judgment are intended to have preclusive effect, under the doctrine of res judicata and collateral estoppel, and bind Plaintiffs, the State of California and Aggrieved Employees, to the extent permitted by applicable law. See *Arias v. Superior Court*, 46 Cal.4th 969 (2009).

9. The Action and the Released Claims alleged therein are Ordered dismissed with prejudice as to Plaintiffs and the underlying claims for relief for the PAGA Release Period of October 2, 2019 through March 5, 2022.

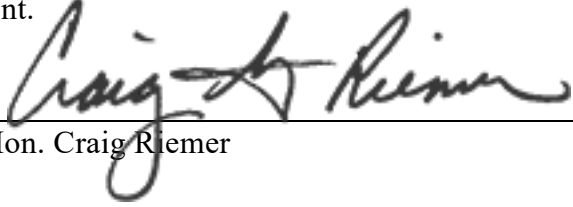
10. The Settlement is not an admission of wrongdoing or violation by Defendant or any of the other Released Parties, nor is this Judgment a finding of the validity of any claims in the Action or of any wrongdoing by Defendant or any of the other Released Parties. Neither this Settlement Approval Order, the Settlement, or the Judgment of Dismissal nor any document referred to herein, nor any action taken to carry out the Settlement is intended by the Parties to be construed as, or be used by Plaintiffs or the LWDA as an admission by or against Defendant or any of the other Released Parties of any fault, wrongdoing or liability whatsoever. The entering into or carrying out of the Settlement, and any negotiations or proceedings related thereto, shall not in any event be used by Plaintiffs or the LWDA as evidence of, an admission or concession with regard to the denials or defenses by Defendant or any of the other Released Parties and shall not be offered in evidence by Plaintiffs or the LWDA against Defendant or any of the Released Parties in any action or proceeding in any court, administrative agency or other tribunal for any purpose whatsoever other than to enforce the provisions of this Order, the Settlement, the Judgment of Dismissal, or any related agreement or release. Notwithstanding these restrictions, any of the Released Parties may file in the Action, or in any other proceeding, this Order, the Settlement, the Judgment of Dismissal, or any other papers and records on file in the Action as evidence of the Settlement and to support a defense of res judicata, collateral estoppel, release, waiver or other theory of claim preclusion, issue preclusion or similar defense as to any of the Released Claims.

JUDGMENT

11. Pursuant to California Labor Code section 2698, *et seq.*, the Court hereby enters judgment of dismissal of the Action, thereby dismissing the Action with prejudice, for the reasons set forth above, and upon the terms set forth in the Settlement Agreement. The dismissal does not extend to or otherwise affect the ability of an Aggrieved Employee to bring individual (non-PAGA), non-representative claims against Defendant for alleged violations of the Labor Code Without in any way affecting the finality of this Settlement Approval Order granting final judgment, this Court hereby retains exclusive and continuing jurisdiction over the Action as to all matters relating to: (a) the implementation, enforcement, construction and

1 interpretation of the terms of the Settlement and this Order of Judgment of Dismissal; (b)
2 Settlement administration matters; and (c) such post-judgment matters as may be appropriate
3 under Court rules or as set forth in the Settlement.

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5 Dated: 09/16/2022


Hon. Craig Riemer

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7 The Court schedules a final accounting hearing on 5-17-23 at 8:30 A.M. No later than
8 5-10-23, the administrator shall file a declaration describing the distributions made
and the amount and disposition of any unclaimed settlement funds.

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EXHIBIT “A”

1 [SETTLEMENT ADMINISTRATOR LETTERHEAD]

2 Mailing Date

3 NOTICE OF SETTLEMENT

4 [SETTLEMENT ADMIN INFO]

5 Re: DANIEL LARA DIAZ AND GLENN FITE v. SHAMROCK FOODS CO. AND DOES 1-20;
6 Superior Court for the State of California for the County of Riverside, Case No. RIC2004126

7 Dear [Aggrieved Employee Name]:

8 A settlement was reached between the Plaintiffs Daniel Lara Diaz and Glen Fite ("Plaintiffs") and
9 Defendant Shamrock Foods Company in the matter of DANIEL LARA DIAZ AND GLENN FITE v.
10 SHAMROCK FOODS CO. AND DOES 1-20; Superior Court for the State of California for the County
11 of Riverside, Case No. RIC2004126. On XXXX XX, 2022, the Superior Court of California for the
12 County of Riverside issued an Order approving the settlement of claims brought by Plaintiffs under
the Labor Code Private Attorneys General Act of 2004 ("PAGA") for penalties arising from an alleged
wage and hour violations. Shamrock Foods Company ("Shamrock") denies any liability or
wrongdoing.

13 Shamrock maintains that it was in compliance with the California Labor Code and has entered into
14 this settlement with no admission of liability and solely for the purposes of compromising and settling
15 the action to avoid the cost and operational burden of continued litigation. The Court has not ruled on
the merit of Plaintiffs' claims or Shamrock's defenses.

16 After accounting for the Court approved deductions from the settlement amount for such things as
17 attorney's fees and costs, administration of the settlement, and payment to Plaintiffs for their work in
18 bringing these lawsuits, the remainder of the settlement allocated to PAGA penalties is \$286,268.95.
19 Of the remainder amount, the State of California will receive payment of \$214,701.71 (75% of the
20 penalties approved by the Court) and the eligible employees (described below) will each receive a pro-
rata share of the remaining \$71,567.24 (25% of the penalties approved by the Court). Please note that
California law requires that 75% of the net settlement proceeds for claims brought under PAGA be
paid to the State of California.

21 Individuals eligible to receive money under the Settlement include Plaintiffs and all persons who were
22 employed as non-exempt employees by Shamrock Foods Company ("Shamrock") in California for
23 one or more pay periods at any time from October 2, 2019 through March 5, 2022 ("Eligible
24 Employees"). The enclosed check represents your pro-rata share of the penalties and is based on a
25 formula that took into account the total number of your workweeks worked in relation to the number
of workweeks worked by all Eligible Employees during the time period from October 2, 2019 through
March 5, 2022.

26 The "Released Claims" as defined in the Court's Final Order and Judgment are defined as follows:
27 Any and all claims for civil penalties that Plaintiffs have alleged against Defendant, on behalf of the
28 State of California, based on the facts stated in the First Amended Complaint, including all PAGA
claims seeking civil penalties premised upon (a) failure to pay minimum or contractual wages; (b)
failure to pay overtime wages, (c) failure to provide compliant meal periods; (d) failure to provide

1 compliant rest periods; (e) failure to timely pay wages each payroll period; (f) failure to timely pay
2 final wages; and (g) failure to provide accurate itemized wage statements, only to the extent these
3 claims are stated in the LWDA notice letters sent on September 18, 2020 and October 2, 2020. More
4 specifically, these claims include violations of California Labor Code sections 200, 201, 202, 203,
5 204, 208, 221, 222, 223, 226, 226.2, 226.3, 226.7, 256, 510, 512, 558, 1194, 1194.2, 1197, 1197.1,
6 and 1198); the applicable Industrial Welfare Commission Wage Orders Sections 3(A), 4, 7, 9, 11 and
7 12.” Notably, the settlement does not extend to or otherwise affect the ability of an Aggrieved Employee to
8 bring individual, non-representative claims against Shamrock for alleged violations of the Labor Code, if
9 any exist.
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12 Your enclosed check is valid for 180 days from the date of issuance. After that date you cannot cash
13 the check and it will be null and void. Funds attributable to such uncashed checks will be sent to the
14 LWDA.
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16 If you have any questions concerning this Settlement, please contact [Settlement administrator].
17 [contact information]
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