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Attorneys for Plaintiff

7 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

8 **FOR THE COUNTY OF TULARE**

9 MARIA DEL CARMEN ESPINOZA, an
10 individual,

11 Plaintiff,

12 vs.

13 JUAN C. GUTIERREZ dba J.C. GUTIERREZ
14 LABOR SERVICE, an individual; VISALIA
15 CITRUS PACKING GROUP INC., a California
16 corporation; VCPG LAND, LLC, a California
17 Limited Liability Company; and DOES 1 through
18 100,

Defendants.

Case No.: VCU286326

[Assigned for all purposes to Dept. 07]

**[PROPOSED] FINAL ORDER OF
APPROVAL OF CLASS ACTION
SETTLEMENT AND FINAL
JUDGMENT**

Date: March 14, 2023
Time: 8:30 a.m.
Dept.: 07

Complaint Filed: March 3, 2021
Trial Date: None Set

1 This matter came on regularly for hearing before this Court on March 14, 2023, at 8:30
2 a.m. pursuant to California Rule of Court 3.769 and this Court's September 13, 2022 Order
3 Granting Preliminary Approval of Class Action Settlement ("Preliminary Approval Order").
4 Having considered the Parties' Stipulation of Class Action Settlement (the "Settlement" or
5 "Settlement Agreement") attached as Exhibit A to the Declaration of Daniel J. Brown in Support
6 of Plaintiff's Motion for Preliminary Approval of Class Action Settlement, filed on August 19,
7 2022, and the submissions of counsel, and recognizing the sharply disputed factual and legal
8 issues involved in this case, the risks of further prosecution and the benefits to be received by the
9 Class pursuant to the Settlement, the Court hereby makes a final ruling that the proposed
10 Settlement is fair, reasonable, and adequate, and is the product of good faith, arm's-length
11 negotiations between the Parties.

12 Unless otherwise indicated, all terms used in this Order shall have the same meaning as
13 that assigned to them in the Settlement.

14 Good cause appearing thereof, the Court hereby GRANTS Plaintiff's Motion for Final
15 Approval of Class Action Settlement and ORDERS as follows:

16 1. The conditional class certification contained in the Preliminary Approval Order is
17 hereby made final, and the Court thus certifies, for purposes of the Settlement only, a Settlement
18 Class consisting of:

19 All current and former non-exempt employees of Defendant Juan C. Gutierrez dba J.C.
20 Gutierrez Labor Service in California who were subject to Wage Order 14 and worked at
21 least one day performing work for Defendant Visalia Citrus Packing Group, Inc., at any
22 time during the period of March 23, 2017, to April 18, 2022.

22 2. Plaintiff Maria Del Carmen Espinoza is hereby confirmed as Class Representative,
23 and Daniel J. Brown of Stansbury Brown Law, PC and Reuben Nathan of Nathan and Associates,
24 APC are hereby confirmed as Class Counsel.

25 3. Notice was provided to the Settlement Class as set forth in the Settlement which
26 was preliminarily approved by the Court on September 9, 2022, and this Court's December 7,
27 2022 Order granting the Parties Joint Stipulation to Continue Final Compliance Notice & Related
28 Deadlines, and the notice process has been completed in conformity with the Court's Orders. The

1 Court finds that said notice was the best notice practicable under the circumstances. The Class
2 Notice provided due and adequate notice of the proceedings and matters set forth herein, informed
3 Class Members of their rights, and fully satisfied the requirements of California Code of Civil
4 Procedure § 1781(e), California Rule of Court 3,769, and due process.

5 4. The Court finds that no Class Member who received the Class Notice objected to
6 the Settlement and only one individual opt-ed out of the settlement, and that the 99.95%
7 participation rate in the Settlement supports final approval.

8 5. The Court hereby approves the settlement as set forth in the Settlement as fair,
9 reasonable, and adequate, and directs the Parties to effectuate the Settlement according to its
10 terms.

11 6. For purposes of settlement only, the Court finds that (a) the members of the
12 Settlement Class are ascertainable and so numerous that joinder of all members is impracticable;
13 (b) there are questions of law or fact common to the Settlement Class, and there is a well-defined
14 community of interest among members of the Settlement Class with respect to the subject matter
15 of the litigation; (c) the claims of the Class Representative are typical of the claims of the members
16 of the Settlement Class; (d) the Class Representative has fairly and adequately protected the
17 interests of the Class Members; (e) a class action is superior to other available methods for an
18 efficient adjudication of this controversy; and (f) Class Counsel are qualified to serve as counsel
19 for the Class Representative and the Settlement Class.

20 7. The Court finds that given the absence of objections, and objections being a
21 prerequisite to appeal, that this Order and Judgment shall be considered final as of the date of
22 notice of entry.

23 8. The Court orders that the Maximum Settlement Amount of Four Hundred Fifteen
24 Thousand Dollars and Zero Cents (\$415,000.00) shall be deposited with the Settlement
25 Administrator, Phoenix Settlement Administrators (“PSA”), as provided in the Settlement.

26 9. Any Settlement funds that remain uncashed after 180 days after they are mailed
27 shall not be reissued and will escheat to the non-profit organization Central Valley Teen
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Challenge, which provides drug prevention and rehabilitation services in the California Central Valley as the designated *cy pres* recipient.

10. The Court finds that the Individual Settlement Awards, as provided for in the Settlement, are fair, reasonable, and adequate, and orders the Settlement Administrator to distribute the Individual Settlement Awards in conformity with the terms of the Settlement. The Court further orders that any envelope transmitting a Settlement Award to a Settlement Class Member shall bear the notation, “YOUR CLASS ACTION SETTLEMENT CHECK IS ENCLOSED.”

11. The Court finds that an Enhancement Payment in the amount of \$5,000.00 for Plaintiff Maria Del Carmen Espinoza is appropriate for her risks undertaken and service to the Settlement Class. The Court finds that this payment is fair, reasonable, and adequate, and orders that the Settlement Administrator make this payment in conformity with the terms of the Settlement.

12. The Court finds that attorneys’ fees in the amount of \$138,000.00 and actual litigation costs of \$9,612.37 are fair, reasonable, and adequate, and orders that the Settlement Administrator distribute these payments in conformity with the terms of the Settlement.

13. The Court finds that a payment to the Labor & Workforce Development Agency (“LWDA”) in the amount of \$3,750.00 for the LWDA’s share of civil penalties under the Labor Code Private Attorneys General Act is fair, reasonable, and adequate, and orders that the Settlement Administrator make this payment in conformity with the terms of the Settlement.

14. The Court orders that the Settlement Administrator shall be paid \$17,500.00 from the Maximum Settlement Amount for all of its work done and to be done until the completion of this matter, and finds that sum appropriate.

15. Pursuant to the terms of Settlement, the employer’s share of payroll taxes for the portion of the Net Settlement Fund allocated to wages shall be paid by Defendant Juan C. Gutierrez dba J.C. Gutierrez Labor Service separately, and in addition to, the Maximum Settlement Amount.

1 16. The Court finds and determines that upon satisfaction of all obligations under the
2 Settlement and this Order, all Settlement Class Members, except those who have validly opted-
3 out of the Settlement, will be bound by the Settlement and will have released the Released Claims
4 as set forth in the Settlement.

5 17. Settlement is not an admission by Defendants, nor is this Order and Final
6 Judgment a finding of the validity of any allegations or of any wrongdoing by Defendants.
7 Neither this Order and Final Judgment, the Settlement, nor any document referred to herein, nor
8 any action taken to carry out the Settlement, shall be construed or deemed an admission of
9 liability, culpability, or wrongdoing on the part of Defendants.

10 18. As of the date of this Order and Final Judgment and the full funding of the
11 Maximum Settlement Amount as called for in the Settlement, Plaintiff and every member of the
12 Settlement Class (except those who have validly opt-out) shall be deemed to fully release and
13 discharge Defendants, their past and present officers, directors, shareholders, employees, agents,
14 principals, heirs, representatives, and their respective successors and predecessors in interest,
15 subsidiaries, affiliates, parents, and attorneys (the “Released Parties”) for all claims that were
16 pled or could have been pled based on the factual allegations and class definition in the operative
17 Second Amended Class and Representative Action Complaint (“SAC”) for work performed by
18 Defendant Juan C. Gutierrez dba J.C. Gutierrez Labor Service for Defendant Visalia Citrus
19 Packing Group, Inc., including: (a) minimum wage violations (b) failure to pay all overtime
20 wages; (c) meal period violations; (d) rest period violations; (e) wage statement violations; (f)
21 waiting time penalties; (g) all claims arising out of unfair business practices under Business &
22 Professions Code § 17200, *et seq.* that could have been premised on the claims that were pled or
23 could have been pled based on the factual allegations in the SAC (collectively, the “Released
24 Claims”). For members of the Settlement Class who do not validly opt out, the release period
25 shall run from March 23, 2017, through April 18, 2022 (“Class Period”). Specifically excluded
26 from this release are any claims any individual might otherwise have in the putative wage and
27 hour class action entitled *Juvenal Gaona Vargas v. Cal-Citrus Labor Service, Inc., et al.*, Case
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No. VCU282013 (“*Vargas* Action”). The *Vargas* action does not assert or contemplate any claims as to Defendant J.C. Gutierrez Labor Service.

19. Plaintiff and all Class Members who were employed by Defendants in California at any time from March 23, 2020 through April 18, 2022 (“PAGA Period”) (“Aggrieved Employees”), will fully release and discharge the Released Parties from all claims for civil penalties under the PAGA, that could have been premised on the claims that were pled or could have been pled based on the factual allegations in the SAC, which arose during the PAGA Period.

20. Notwithstanding the paragraphs above nor anything else in the Settlement, Plaintiff’s waiver and release in the Settlement does not apply to (i) those rights that as a matter of law cannot be waived, including, but not limited to, workers’ compensation claims, pending or otherwise; and (ii) rights or claims arising out of this Settlement.

21. The releases identified herein shall be null and void should the Settlement not be fully funded.

22. This document shall constitute a final judgment pursuant to California Rule of Court 3.769(h) which provides, “If the court approves the settlement agreement after the final approval hearing, the court must make and enter judgment. The judgment must include a provision for the retention of the court’s jurisdiction over the parties to enforce the terms of the judgment. The court may not enter an order dismissing the action at the same time as, or after, entry of judgment.” Pursuant to section 664.6 of the California Code of Civil Procedure, the Court will retain jurisdiction to enforce the Settlement, this Final Order and Judgment.

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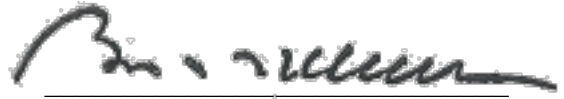
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1 23. The Settlement Administrator shall file a declaration regarding the disbursement
2 of Settlement funds on or before November 7, 2023, and the date for the Final Report
3 (Nonappearance) Hearing shall be set for November 14, 2023. The declaration shall state the date
4 the checks were mailed, the total number of checks mailed to Settlement Class Members, the
5 total value of those uncashed checks, and the nature and date of the disposition of those unclaimed
6 funds.

7 **IT IS SO ORDERED. JUDGMENT IS HEREBY ENTERED.**

8 Dated: March 14, 2023



Judge of the Superior Court