

FILED

SEP 30 2022

NOCONA SOBOLESKI, CLERK OF COURT
SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF KINGS
Darlene Goumas
Darlene Goumas

1 **STANSBURY BROWN LAW, PC**
2 **DANIEL J. BROWN (SBN 307604)**
3 **dbrown@stansburybrownlaw.com**
4 **ETHAN C. SURLS (SBN 327605)**
5 **esurls@stansburybrownlaw.com**
6 **2610 1/2 Abbot Kinney Blvd.**
7 **Venice, CA 90291**
8 **Tel: 323-204-3124**

Attorneys for Plaintiff

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF KINGS

9 **DANIEL MORENO, as an individual and on**
10 **behalf of all others similarly situated,**

11 **Plaintiff,**

12 **vs.**

13 **PETERS FRUIT FARMS, INC., a California**
14 **corporation; and DOES 1 through 100,**
15 **Defendants.**

Case No.: 21C-0196

*[Assigned for all purposes to the Hon.
Valerie R. Chrissakis, Dept. 08]*

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

Date: September 30, 2022
Time: 10:30 a.m.
Dept.: 08

Complaint Filed: June 21, 2021
Trial Date: None Set

1 This matter came on regularly for hearing before this Court on September 30, 2022, at
2 10:30 a.m. pursuant to California Rule of Court 3.769 and this Court's May 4, 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 April 12,
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 individuals who worked for Defendant Peters Fruit Farms, Inc., in California as non-
20 exempt hourly employees at any time during the period of June 21, 2017 through
February 28, 2022.

21 2. Plaintiff Daniel Moreno is hereby confirmed as Class Representative, and Daniel
22 J. Brown and Ethan C. Surls of Stansbury Brown Law, PC are hereby confirmed as Class Counsel.

23 3. Notice was provided to the Settlement Class as set forth in the Settlement, which
24 was preliminarily approved by the Court on May 4, 2022, and the notice process has been
25 completed in conformity with the Court's Order. The Court finds that said notice was the best
26 notice practicable under the circumstances. The Class Notice provided due and adequate notice
27 of the proceedings and matters set forth herein, informed Class Members of their rights, and fully
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1 satisfied the requirements of California Code of Civil Procedure § 1781(e), California Rule of
2 Court 3,769, and due process.

3 4. The Court finds that no Class Member objected to the Settlement, that two (2)
4 individuals opted-out of the Settlement, and that the 99.09% participation rate in the Settlement
5 supports final approval. The two (2) individuals who opted out are: Megan Miller and Benjamin
6 J. Miller.

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

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

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

22 8. The Court orders that the Maximum Settlement Amount of Two Hundred
23 Thousand Dollars (\$200,000.00) shall be deposited with the Settlement Administrator, Phoenix
24 Settlement Administrators ("PSA"), as provided in the Settlement.

25 9. Any Settlement funds that remain uncashed after 180 days after they are mailed
26 shall be transferred by PSA to the Boys & Girls Clubs of Kings County as a *cy pres*.

27 10. The Court finds that the Individual Settlement Awards, as provided for in the
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1 Settlement, are fair, reasonable, and adequate, and orders the Settlement Administrator to
2 distribute the Individual Settlement Awards in conformity with the terms of the Settlement. The
3 Court further orders that any envelope transmitting a Settlement Payment to a Settlement Class
4 Member shall bear the notation, "YOUR CLASS ACTION SETTLEMENT CHECK IS
5 ENCLOSED." The Court further orders that if any of the Settlement Class Members are
6 Defendant's current employees and the Settlement Payment mailed to those current employees is
7 returned to the Settlement Administrator as being undeliverable, and the Settlement Administrator
8 is unable to locate a valid mailing address, the Settlement Administrator shall arrange with
9 Defendant to have those Settlement Payments delivered to the employees at their place of
10 employment. The Court further orders that any settlement distribution check is to be negotiated
11 not more than 180 days from the date of mailing.

12 11. The Court finds that an Enhancement Payment in the amount of \$5,000.00 for
13 Plaintiff Daniel Moreno is appropriate for his risks undertaken and service to the Settlement Class.
14 The Court finds that this payment is fair, reasonable, and adequate, and orders that the Settlement
15 Administrator make this payment in conformity with the terms of the Settlement.

16 12. The Court finds that attorneys' fees in the amount of \$66,000.00 and actual
17 litigation costs of \$8,465.17 for Class Counsel, are fair, reasonable, and adequate, and orders that
18 the Settlement Administrator distribute these payments to Class Counsel in conformity with the
19 terms of the Settlement.

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

24 14. The Court orders that the Settlement Administrator shall be paid \$7,250.00 from
25 the Maximum Settlement Amount for all of its work done and to be done until the completion of
26 this matter, and finds that sum appropriate.

27 15. Pursuant to the terms of Settlement, the employer's share of payroll taxes for the
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1 portion of the Net Settlement Amount allocated to wages shall be paid by Defendant separately,
2 and in addition to, the Maximum Settlement Amount.

3 16. The Court finds and determines that upon satisfaction of all obligations under the
4 Settlement and this Order, all Settlement Class Members will be bound by the Settlement and will
5 have released the Released Claims as set forth in the Settlement.

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

11 18. As of the date of this Order and Final Judgment and the full funding of the
12 Maximum Settlement Amount as called for in the Settlement, Plaintiff and every member of the
13 Settlement Class (except for Megan Miller and Benjamin J. Miller, who timely submitted Request
14 for Exclusion forms) shall be deemed to have released and discharged Defendant, its past, current,
15 and future officers, directors, shareholders, and employees, agents, principals, heirs,
16 representatives, and its respective successors, predecessors in interest, parents subsidiaries,
17 affiliates, and attorneys (collectively the "Released Parties") for all claims based on the facts
18 plead in the operative Complaint, the Second Amended Class and Representative Action
19 Complaint ("SAC"), the PAGA Notice, or the amended PAGA notice, or which could have been
20 plead on the factual allegations in the foregoing documents, that arose during the Class Period,
21 including alleged violations of California Labor Code sections 201, 202, 203, 204, 210, 221, 223,
22 225.5, 226, 226.3, 226.6, 226.7, 510, 512, 516, 558, 1174, 1174.5, 1182.12, 1194, 1194.2, 1197,
23 1197.1, 1198, 2699, 2802 and the applicable wage order arising from (i) minimum wage
24 violations (ii) failure to pay all overtime wages; (iii) rest period violations; (iv) meal period
25 violations; (v) failure to reimburse business expenses (vi) wage statement violations; (vii) waiting
26 time penalties; (viii) unlawful deductions from wages; (ix) failure to provide suitable seating; (x)
27 all claims arising out of unfair business practices under Business & Professions Code § 17200,
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1 *et seq.* that could have been premised on the claims that were pled or could have been pled based
2 on the factual allegations in the SAC, and (xi) all claims for civil penalties under the PAGA, that
3 could have been premised on the claims that were pled or could have been based on the factual
4 allegations in the SAC. (collectively, the “Released Claims”). Released claims also includes a)
5 claims that could have been brought under the Fair Labor Standards Act or similar federal or state
6 governmental agencies regulating wage and hour or labor and employment laws; and b) penalties,
7 interest, costs, and attorneys’ fees; that were pled or could have been based on the factual
8 allegations in the SAC. The period of the Release shall extend to the limits of the Class Period,
9 which is from June 21, 2017 through February 28, 2022.

10 Plaintiff and all Class Members who were employed by Defendant in California at any
11 time from June 21, 2017 through February 28, 2022, will not have the opportunity to opt out or
12 object to the PAGA Settlement Amount, as described in paragraphs 4(B)(5), 5(B)(iii), and
13 10(E)(i) of the Settlement, and/or the Released PAGA Claims set forth in the Settlement.

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

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

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

27 22. The Settlement Administrator shall file a declaration regarding the disbursement
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1 of Settlement funds on or before May 19, 2023, and the date for the Final Report (Nonappearance)
2 Hearing shall be set for May 26, 2023. The declaration shall state the date the checks were mailed,
3 the total number of checks mailed to Settlement Class Members, the average amount of those
4 checks, the number of checks that remain uncashed, the total value of those uncashed checks, the
5 average amount of the uncashed checks, and the nature and date of the disposition of those
6 unclaimed funds.

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

8 Dated: September 30, 2022


HONORABLE MELISSA R. D'MORIAS
Judge of the Superior Court

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PROOF OF SERVICE

STATE OF CALIFORNIA)
)
COUNTY OF LOS ANGELES) ss.

I am employed in the County of Los Angeles, State of California. I am over the age of 18 years and not a party to the within action; my business address is 2610 ½ Abbot Kinney Blvd. Venice, CA 90212

On September 7, 2022, I served the document listed below on the parties in this action as follows:

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

- ☐ (BY MAIL) I placed such envelope on the above date, with postage fully prepaid, for deposit in the U.S. Postal Service at my place of business at Venice, California, following the ordinary business practices of my place of business. I am readily familiar with the business practice at my place of business for collection and processing of correspondence for mail with the U.S. Postal Service. Under that practice, such correspondence is deposited with the U.S. Postal Service the same day it is collected and processed in the ordinary course of business.
- ☐ (BY HAND DELIVERY) I delivered to an authorized courier or driver authorized by _____ to receive documents to be delivered on the same date.
- ☐ (BY FEDERAL EXPRESS) I am readily familiar with the practice of collection and processing of correspondence for overnight delivery and know that the document(s) described herein will be deposited in a box or other facility regularly maintained by Federal Express for overnight delivery.
- X (BY EMAIL) In accordance with California Code of Civil Procedure Section 1010.6 in compliance with the Judicial Council's Appendix I, Emergency Rules Related to Covid-19, Emergency Rule 12, I caused to be transmitted the document(s) described herein via the email address(s) listed on the attached service list.
- X (STATE) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on September 7, 2022, at Redondo Beach, California.


Ethan C. Surls

SERVICE LIST

Michael J. F. Smith, A Professional Corporation
Michael J. F. Smith, Esq.
mjfsmith@mjfsmith.com
John L. Migliazzo, Esq.
jmigliazzo@mjfsmith.com
1391 W. Shaw Ave., Ste. D
Fresno, CA 93711
Tel-(559) 229-3900

Attorneys for Defendant Peters Fruit Farms, Inc.