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individually and on behalf of similarly situated employees

[additional parties continued on next page]

SUPERIOR COURT OF CALIFORNIA
FOR THE COUNTY OF SAN JOAQUIN

ELIZABET SANCHEZ and GRISELDA
RAMIREZ, individually and on behalf of all
other similarly situated employees,

Plaintiffs,

vs.

PACIFIC COAST PRODUCERS, a California
Corporation; and DOES 1 to 100, inclusive,

Defendants.

Case No. STK-CV-UOE-2021-11106

*Assigned for All Purposes to Hon. Robert T.
Waters, Department 11B*

CLASS ACTION

**[PROPOSED] ORDER GRANTING
PLAINTIFFS' MOTION FOR
PRELIMINARY APPROVAL OF CLASS
ACTION AND PAGA SETTLEMENT**

Date: _____

Time: 9:00 a.m.

Dept.: 11B

Judge: Hon. Robert T. Waters

Filed: December 7, 2021

FAC Filed: February 14, 2022

SAC Filed: March 29, 2023

TAC File: September 19, 2023

Trial Date: None Set

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16 individually and on behalf of similarly situated employees

1 TO ALL PARTIES AND THEIR RESPECTIVE COUNSEL OF RECORD:

2 The Motion for Preliminary Approval of Class Action and PAGA Settlement (“Motion”) in the
3 above referenced case came before this Court, on the date noted above, in Department 11B before the
4 Honorable Robert T. Waters, presiding. Through tremendous effort by all involved, the parties were
5 able to come to a global resolution. Named Plaintiffs Elizabet Sanchez and Griselda Ramirez
6 (“Plaintiffs”) have filed a Third Amended Complaint in this case that consolidates two lawsuits into a
7 single proceeding into to allow a single, streamlined review by the Court of the fairness and adequacy
8 of a global class action and Private Attorneys General Act (“PAGA”) settlement. The two lawsuits
9 include the following: (1) *Sanchez v. Pacific Coast Producers*, San Joaquin County Superior Court,
10 Case No. STK-CV-UOE-2021-11106, filed December 7, 2021, (“*Sanchez Action*”); and (2) *Ramirez v.*
11 *Pacific Coast Producers*, San Joaquin County Superior Court, Case No. STK-CV-UOE-2022-
12 0010664, filed November 18, 2022. (“*Ramirez Action*”). The operative Complaint alleges that
13 Defendant Pacific Coast Producers (“Defendant”) violated California law by 1) failing to pay overtime
14 wages, 2) failing to pay minimum wages, 3) failing to provide meal periods, 4) failing to provide rest
15 periods, 5) failing to provide accurate wage statements, 6) failing to timely pay all final wages, 7)
16 failing to reimburse employees for incurred expenses, 8) failure to pay all wages, 9) unlawful
17 deductions, 10) violation of California’s Quota Laws, and 11) by engaging in unfair competition.
18 Plaintiffs have also alleged Defendant is liable for civil penalties under the Private Attorneys General
19 Act (“PAGA”) based on these violations. Plaintiffs sought attorneys’ fees and costs as part of this
20 Action. Defendant denied all of Plaintiffs’ claims and denied that this case was appropriate for class
21 treatment. No class has been certified.

22 The parties have agreed to settle the class and PAGA claims. Defendant will provide monetary
23 consideration in exchange for a release of claims consistent with the terms of the proposed settlement
24 as set forth in the Joint Stipulation Regarding Class Action and PAGA Settlement and Release
25 (“Agreement” or “Settlement”). Any capitalized terms herein shall have the same meaning as set forth
26 in the Agreement.

27 The Court, having received and considered Plaintiffs’ Motion for Preliminary Approval of
28 Class Action and PAGA Settlement, the declarations in support, the Agreement, the proposed Notice

1 of Settlement, and other evidence, HEREBY ORDERS AND MAKES DETERMINATIONS AS
2 FOLLOWS:

3 **I. PRELIMINARILY CERTIFYING A SETTLEMENT CLASS; APPOINTMENT OF**
4 **CLASS REPRESENTATIVES; APPOINTMENT OF CLASS COUNSEL**

5 The Court finds that certification of the following class for settlement purposes only is
6 appropriate under the California Code of Civil Procedure and related case law:

7 All current and former non-exempt, California, hourly paid employees of
8 Defendant at any time from December 7, 2017, through the End Date.

9 The Court recognizes that the foregoing definition is for Settlement Class Member identification
10 purposes only and is not intended to capture the claims at issue or limit or alter the released claims under
11 the Agreement.

12 The Court finds that Settlement Class Members meet the ascertainability and numerosity
13 requirements since the parties can identify with a matter of certainty, based on payroll records,
14 individuals who fall within the definition and the number of Settlement Class Members would make
15 joinder impractical. The commonality and predominance requirements are met for settlement purposes
16 since there are questions of law and fact common to Settlement Class Members. The common questions
17 of law or fact in this case all stem from Plaintiffs' contentions that Defendant caused the violations
18 outlined above by 1) failing to properly incorporate the value of nondiscretionary bonuses into
19 Plaintiff's and Settlement Class Members' regular rates of pay for the purpose of calculating overtime
20 wages, meal and rest period premiums, and paid sick time, 2) failing to provide meal periods in
21 compliance with California law due to rounding and/or failing to relieve employees of all duties, 3)
22 failing to provide rest periods in compliance with California law, 4) failing to pay employees for all
23 hours worked due to rounding and clock in procedures, 5) failing to maintain accurate records of
24 Plaintiff' and Settlement Class Members' hours worked, 6) failing to pay reimbursements for work-
25 related cell phone use, 7) imposing systematic quota and production demands on Plaintiffs and
26 Settlement Class Members which violated the rights of employees pursuant to Labor Code sections 2100
27 *et seq.*, such as Plaintiffs' and Settlement Class Members' rights to lawful meal periods, rest periods,
28 bathroom breaks, and exposing them to safety hazards, 8) failing to pay putative Settlement Class

Members for the time waiting before being able to clock in for their shifts, 9) unlawfully deducting wages from Plaintiffs and Settlement Class Members by regularly directing them to return to work during their meal periods while clocked out for their meal periods, and 10) failing to accurately itemize the hours and wages earned on paystubs issued to Settlement Class Members. The PAGA, waiting time penalty, wage statement violation, and unfair competition claims also derive from these violations. Additionally, Settlement Class Members seek the same remedies under state law. The typicality requirement for settlement purposes is also satisfied since the claims of the Class Representatives are based on the same facts and legal theories as those applicable to the Settlement Class Members.

The Court also finds that preliminarily and conditionally certifying the settlement class is required to avoid each Settlement Class Member from litigating similar claims individually. This Settlement will achieve economies of scale for Settlement Class Members with relatively small individual claims and conserve the resources of the judicial system.

The Court finds that Plaintiffs Elizabet Sanchez and Griselda Ramirez and Plaintiffs' counsel, Galen T. Shimoda, Justin P. Rodriguez, Renald Konini of Shimoda & Rodriguez Law, PC, Daniel J. Hyun of Law Office of Daniel J. Hyun, and Jose R. Garay of Jose Garay, APLC, to be adequate representatives of the settlement class. The Court appoints them as Class Representatives and Class Counsel, respectively.

II. PRELIMINARILY APPROVING CLASS ACTION AND PAGA SETTLEMENT

The Court has reviewed the Agreement, which was submitted with Plaintiffs' Motion as Exhibit A. The Court finds, on a preliminary and conditional basis, that the Settlement is fair, reasonable, and adequate and falls within the range of reasonableness of a settlement that could ultimately be given final approval by this Court. The Court finds the Settlement was agreed upon only after extensive investigation, litigation, and arms-length negotiations by counsel experienced in complex litigation, who took reasonable steps and measures to weigh the potential value of the disputed claims against the risks of continued litigation. The Court also acknowledges that Settlement Class Members may present any objections to the Settlement at a fairness hearing approved by this Court or opt-out of being bound by the preliminarily approved Agreement. The Court preliminarily approves the Agreement and all terms therein as if stated here in full, including the \$2,053,000.00 Gross Settlement Amount.

1 The Court approves of Apex Class Action, LLC. acting as the Settlement Administrator in this
2 case and hereby appoints them to fulfill those duties as outlined in the Agreement.

3 The Court finds that an award of fees under the common fund doctrine is appropriate in this case
4 because there is a sufficiently identifiable class of beneficiaries (*i.e.* Settlement Class Members), the
5 benefits that Plaintiffs and Class Counsel were able to negotiate on behalf of Settlement Class Members
6 can be accurately traced as set forth in the Agreement, and the fee can be shifted with exactitude to those
7 benefiting as the fee request is a specific, lump-sum percentage of the Gross Settlement Amount. *See*
8 *Laffitte v. Robert Half Internat., Inc.*, 1 Cal.5th 480, 506 (2016); *Paul, Johnson, Alston & Hunt v.*
9 *Grauly*, 886 F.2d 268, 271 (9th Cir. 1989); *Boeing Co. v. Van Gemert*, 444 U.S. 472, 477-478 (1980)
10 (“A lawyer who recovers a common fund for the benefit of persons other than . . . her client is entitled to
11 a reasonable attorney’s fee from the fund as a whole.”). The Court finds the attorneys’ fees request of
12 thirty-five percent (35%) of the Gross Settlement Amount, *i.e.* \$718,550, to be appropriate compensation
13 for Settlement Class Counsel. The attorneys’ fees request is within the range that has been approved by
14 other Courts in similar cases and is reasonable in light of the circumstances of this case, the substantial
15 and beneficial results obtained on behalf of Settlement Class Members, and the contingent nature of the
16 recovery over the course of this case, which included potential loss at summary judgment, certification,
17 and/or trial proceedings. Additionally, the Court orders that up to \$30,000 of the settlement proceeds
18 will be paid to Class Counsel for reasonable costs incurred in this case. Any difference between the
19 actual costs incurred and the \$30,000 shall be paid to the Participating Class Members on a pro-rata
20 basis.

21 The Court approves of the One Hundred Thousand Dollars (\$100,000) PAGA Payment, which
22 shall be paid from the Gross Settlement Amount, not in addition to the Gross Settlement Amount, to
23 resolve the alleged PAGA claims. Seventy-Five percent (75%) of the PAGA Payment will be paid to
24 the Labor and Workforce Development Agency (“LWDA”) and Twenty-Five percent (25%) will be paid
25 to Aggrieved Employees on a pro rata basis as described in the Agreement. The Court also finds that the
26 Agreement provides a recovery that creates an effective, substantial deterrent to any potential future
27 non-compliance, furthering the purpose of the Labor Code and LWDA.

1 The Court approves of the identified *cy pres* beneficiaries and distribution plan wherein any
2 checks issued to Participating Class Members and/or Aggrieved Employees that are not cashed by the
3 deadline to do so shall be donated equally, *i.e.* 50/50, to Capital Pro Bono, Inc., and the Center for
4 Workers' Rights. *See In re Microsoft I-V Cases*, 135 Cal.App.4th 706, 718 (2006). No portion of the
5 Gross Settlement Amount will revert to Defendant for any reason.

6 The releases and waivers for Settlement Class Members who do not opt out of being bound by
7 the Agreement (*i.e.* Participating Class Members), PAGA Employees, and the Class Representatives are
8 also approved by the Court as set forth in the Agreement.

9 **III. APPROVAL OF THE DISTRIBUTION METHOD OF NOTICE TO THE CLASS,**
10 **INCLUDING THE NOTICE OF SETTLEMENT**

11 The Court finds that the proposed Notice of Settlement, which was submitted with Plaintiffs'
12 Motion as Exhibit F, fairly and adequately advises Settlement Class Members of the terms of the
13 Agreement, the rights being waived, their right to opt out, the ability to dispute the number of
14 workweeks worked during the Class Period, their pro rata share of the Net Settlement Amount, how to
15 participate in the settlement, how to file documentation in opposition to the proposed settlement, and
16 when to appear at the fairness hearing to be conducted on the date set forth below. The Court further
17 finds that the Notice of Settlement and proposed distribution of such notice by first class mail to each
18 identified Class Member at his or her most recent address based on a National Change of Address
19 database search from the Settlement Class Members' last known address and a skip trace on any
20 Settlement Class Members who have the Notice of Settlement returned as "undeliverable" or "not at this
21 address" comports with all constitutional requirements, including those of due process.

22 The Court also finds that because there is a strong interest in providing Settlement Class
23 Members the opportunity to participate in the settlement, along with the Parties' efforts to minimize any
24 intrusion to privacy rights, the sharing of employment information, including social security numbers, is
25 not a serious intrusion on their privacy rights. Hence, the Court orders Defendant to provide first and
26 last name, last known mailing address, social security number, and hire and termination dates, total
27 number of workweeks during which the Settlement Class Member performed any actual work to the
28 Settlement Administrator only, and not to Plaintiffs or Class Counsel, in order to process this settlement

as contemplated within the Agreement and approved by this Order. The Settlement Administrator shall only use this information for the purposes identified in the Agreement and shall keep this information confidential consistent with the terms of the Agreement.

IV. IMPLEMENTATION SCHEDULE

Accordingly, with good cause shown, the Court hereby approves and orders that the following implementation schedule be adhered to:

Last day for Defendant to provide Settlement Administrator with Class Member and Aggrieved Employee information	Within 60 calendar days after the Preliminary Approval Date
Last day for Settlement Administrator to complete NCOA search, update Class Member and Aggrieved Employee mailing information, and mail Notice of Settlement	Within 21 calendar days after the Settlement Administrators' receipt of Settlement Class Members' information from Defendant
Last day for Settlement Class Members to opt-out, submit disputes, submit objections, and submit data requests	45 calendar days after mailing of Notice of Settlement or within 15 calendar days after Notice of Settlement is re-mailed, whichever is later
Last day for Settlement Administrator to provide Parties with signed declaration reporting on settlement administration statistics	Within 21 calendar days after end of the Notice Period
Last day for Settlement Administrator to calculate the final Net Settlement Amount, the final Individual Settlement Amounts to Participating Class Members and/or Aggrieved Employees, any applicable taxes thereon, and report the results of these calculations to Class Counsel and Defendant's Counsel	Within 21 calendar days after the Final Approval Date
Last day for Defendant to fund settlement	Within 10 calendar days after the Effective Date

Last day for Settlement Administrator to deliver payment of Class Counsel's attorney's fees and costs, Enhancement Payments, PAGA Payment, Settlement Administrator Costs, payment to Participating Class Members, and payment to PAGA Employees	Within 14 calendar days after Defendant has funded the settlement
Last day for Participating Class Members and PAGA Employees to cash settlement checks	180 calendar days after issuance of checks to Participating Class Members and PAGA Employees
Last day for Settlement Administrator to deliver value of uncashed settlement checks to <i>cy pres</i> beneficiaries	Within 14 calendar days after settlement check cashing deadline
Last day for Settlement Administrator to provide Parties with compliance declaration	Within 21 calendar days after settlement check cashing deadline

FINAL APPROVAL AND HEARING

The Court hereby grants Plaintiffs' Motion and sets final approval hearing on the proposed date of August 22, 2024, at 9:00 a.m., with briefs and supporting documentation to be submitted according to the California Code of Civil Procedure, in this Department. Participating Class Members who object in a timely manner as set forth in the Agreement, may appear and present such objections at the fairness hearing in person or by counsel.

If for any reason the Court does not grant final approval of the Agreement, all evidence and proceedings held in connection therewith shall be without prejudice to the status quo and rights of the parties to the litigation, including all challenges to personal jurisdiction and to class certification for any purpose other than approving a settlement class. The parties will revert to their respective positions as if no settlement had been reached at all.

IT IS SO ORDERED.

Date: _____

By: _____

Judge of the Superior Court