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6 individually and on behalf of similarly situated employees

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8 **SUPERIOR COURT OF CALIFORNIA**

9 **FOR THE COUNTY OF YUBA**

10 RAFAEL GUEVARA SANCHEZ,
11 individually and on behalf of all other
12 similarly situated employees,

13 Plaintiff,

14 vs.

15 DANNA FARMS INC., a California
16 Corporation; and DOES 1 to 100, inclusive,

17 Defendants.
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Case No. CVCV21-01213

CLASS ACTION

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

Date: November 20, 2023

Time: 10:00 a.m.

Dept.: 4

Judge: Hon. Stephen W. Berrier

Filed: December 22, 2021

FAC Filed: May 11, 2022

Trial Date: None Set

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 November 20, 2023, at 10:00 a.m., in Department 4
4 before the Honorable Stephen W. Berrier, presiding. Named Plaintiff Rafael Guevara Sanchez
5 (“Plaintiff”) filed this putative class action on December 22, 2021. The operative Complaint alleges
6 that Defendant Danna Farms Inc. (“Defendant”) violated California law by 1) failing to pay overtime
7 wages, 2) failing to pay minimum wages, 3) failing to provide meal periods or pay premiums in lieu
8 thereof, 4) failing to provide rest periods or pay premiums in lieu thereof, 5) failing to provide accurate
9 wage statements, 6) failing to timely pay all final wages, 7) failing to reimburse expenses for incurred
10 expenses, and 8) engaging in unfair competition. Plaintiff has also alleged Defendant is liable for a
11 civil penalties under the Private Attorneys General Act (“PAGA”) based on these violations. Plaintiff
12 sought attorneys’ fees and costs as part of this Action. Defendant denied all of Plaintiff’s claims and
13 denied that this case was appropriate for class treatment. No class has been certified.

14 The parties have agreed to settle the class and PAGA claims. Defendant will provide monetary
15 consideration in exchange for a release of claims consistent with the terms of the proposed settlement
16 as set forth in the Joint Stipulation Regarding Class Action and PAGA Settlement and Release
17 (“Agreement” or “Settlement”). Any capitalized terms herein shall have the same meaning as set forth
18 in the Agreement. The Court, having received and considered Plaintiff’s Motion for Preliminary
19 Approval of Class Action and PAGA Settlement, the declarations in support, the Agreement, the
20 proposed Notice of Settlement, and other evidence, HEREBY ORDERS AND MAKES
21 DETERMINATIONS AS FOLLOWS:

22 **I. PRELIMINARILY CERTIFYING A SETTLEMENT CLASS; APPOINTMENT OF**
23 **CLASS REPRESENTATIVES; APPOINTMENT OF CLASS COUNSEL**

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

26 All non-exempt employees who have or continue to work for Defendants
27 in California from December 22, 2017, up to either (1) the Preliminary
28 Approval Date, or (2) sixty (60) days after the Agreement is fully
executed, whichever is earlier.

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

4 The Court finds that Class Members meet the ascertainability and numerosity requirements since
5 the parties can identify with a matter of certainty, based on payroll records, individuals who fall within
6 the definition and the number of Class Members would make joinder impractical. The commonality and
7 predominance requirements are met for settlement purposes since there are questions of law and fact
8 common to Class Members. The common questions of law or fact in this case all stem from Plaintiff's
9 contentions that Defendant caused the violations outlined above by 1) failing to pay Plaintiff and Class
10 Members all minimum wages and overtime wages due to managers and supervisors making
11 unauthorized reduction to the hours that Plaintiff and Class Members worked, 2) failing to pay all daily
12 and/or weekly overtime in accordance with the schedule outlined in Wage Order 14 for employers with
13 26 or more employees, 3) failing to authorize and permit Plaintiff and Class Members to take all meal
14 and rest periods owed to them, 4) failing to authorize and permit Plaintiff and Class Members to take
15 their first meal period before the completion of the fifth hour worked or take a second meal period or
16 third rest period when they worked over ten (10) or twelve (12) hours in a day, and 5) failing to
17 reimburse Plaintiff and Class Members for using their cell phones, vehicles and tools and equipment for
18 work purposes. The PAGA, waiting time penalty, wage statement violation, and unfair competition
19 claims also derive from these violations. Additionally, Class Members seek the same remedies under
20 state law. The typicality requirement for settlement purposes is also satisfied since the claims of the
21 Class Representative is based on the same facts and legal theories as those applicable to the class
22 members.

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

27 The Court finds that Plaintiff Rafael Guevara Sanchez and Plaintiff's counsel, Galen T. Shimoda,
28 Justin P. Rodriguez, and Renald Konini of Shimoda & Rodriguez Law, PC, to be adequate

representatives of the settlement class. The Court appoints them as Class Representative and Class Counsel, respectively.

II. PRELIMINARILY APPROVING CLASS ACTION AND PAGA SETTLEMENT

The Court has reviewed the Agreement, which was submitted with Plaintiff's 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 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 \$275,000 Gross Settlement Amount.

The Court approves of CPT Group acting as the Settlement Administrator in this case and hereby appoints them to fulfill those duties as outlined in the Agreement.

On a preliminary and conditional basis, the Court approves of the amounts allocated under the Agreement for attorney's fees and costs (35% of the Gross Settlement Amount and \$10,000, respectively), for an Enhancement Payment to the Class Representative (\$15,000), and for Settlement Administrator Costs (\$15,000). The Court finds that an award of fees under the common fund doctrine may be appropriate in this case because there is a sufficiently identifiable class of beneficiaries (*i.e.* Class Members), the benefits that Plaintiff and Class Counsel were able to negotiate on behalf of Class Members can be accurately traced as set forth in the Agreement, and the fee can be shifted with exactitude to those benefiting as the fee request is a specific, lump-sum percentage of the Gross Settlement Amount. *See Laffitte v. Robert Half Internat., Inc.*, 1 Cal.5th 480, 506 (2016); *Paul, Johnson, Alston & Hunt v. Graulity*, 886 F.2d 268, 271 (9th Cir. 1989); *Boeing Co. v. Van Gemert*, 444 U.S. 472, 477-478 (1980) ("A lawyer who recovers a common fund for the benefit of persons other than . . . her client is entitled to a reasonable attorney's fee from the fund as a whole."). The amounts allocated under the Agreement for attorney's fees and costs, for an Enhancement Payment to the Class

1 Representative, and Settlement Administrator Costs shall be included in the Notice of Settlement to
2 enable Class Members to review and comment thereon. The Court will consider the reaction of Class
3 Members when evaluating the reasonableness of the requested amounts at final approval. *See In re*
4 *Heritage Bond Litig.*, 2005 U.S. Dist. LEXIS 13555, 71 (C.D. Cal. 2005) (“the absence of objections or
5 disapproval by class members to class counsel’s fee request further supports finding the fee request
6 reasonable”). Plaintiff and Class Counsel are directed to provide information in connection with the
7 motion for final approval that will enable the Court to assess the appropriateness of any requested fee
8 percentage, to perform a lodestar cross check of the requested fee percentage, and to quantify the
9 amount of time spent by Plaintiff on this case and any further risks and/or burdens incurred as a result of
10 acting as Class Representative. Class Counsel is also directed to provide an updated declaration and
11 itemization regarding actual litigation costs incurred. The Settlement Administrator shall also submit a
12 declaration attesting to Settlement Administrator Costs incurred. The Court will review these amounts
13 and allocations in connection with the final approval hearing. To the extent the Court ultimately awards
14 less than the amounts allocated under the Agreement for attorney’s fees and costs, for an Enhancement
15 Payment to the Class Representative, and/or Settlement Administrator Costs, the difference between the
16 amounts awarded and the amounts requested shall be added to the Net Settlement Amount for
17 distribution to Participating Class Members pro rata as set forth in the Agreement.

18 The Court approves of the Twenty Thousand Dollars (\$20,000) PAGA Payment, which shall be
19 paid from the Gross Settlement Amount, not in addition to the Gross Settlement Amount, to resolve the
20 alleged PAGA claims. Seventy-Five percent (75%) of the PAGA Payment will be paid to the Labor and
21 Workforce Development Agency (“LWDA”) and Twenty-Five percent (25%) will be paid to Aggrieved
22 Employees on a pro rata basis as described in the Agreement. The Court also finds that the Agreement
23 provides a recovery that creates an effective, substantial deterrent to any potential future non-
24 compliance, furthering the purpose of the Labor Code and LWDA.

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

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

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

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

The Court also finds that because there is a strong interest in providing Class Members the opportunity to participate in the settlement, along with the Parties' efforts to minimize any intrusion to privacy rights, the sharing of available employment information, including social security numbers, is not a serious intrusion on their privacy rights. Hence, the Court orders Defendant to provide first and last name, last known mailing address, social security number, and hire and termination dates, total number of workweeks during which the Class Member performed any actual work to the Settlement Administrator only, and not to Plaintiff 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 15 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 7 calendar days after the Settlement Administrators' receipt of Class Members' information from Defendant
Last day for Class Members to opt-out, submit disputes, submit objections, and submit data requests	45 calendar days after mailing of Notice of Settlement or within 10 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 7 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 3 calendar days after the Effective Date
Last day for Defendant to fund settlement	Within 30 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 Aggrieved Employees	Within 7 calendar days after Defendant has funded the settlement

Last day for Participating Class Members and Aggrieved Employees to cash settlement checks	180 calendar days after issuance of checks to Participating Class Members and Aggrieved 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 Plaintiff's Motion and sets final approval hearing on the proposed date of March 18, 2024, at 10:00 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