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SUPERIOR COURT OF CALIFORNIA
COUNTY OF SANTA CLARA

16CV299769

Case No.: ~~19CV299769~~

MARTIN CHAVEZ, individually and on behalf
of others similarly situated,

Plaintiff,

vs.

GEORGE CHIALA FARMS, INC.; and DOES
1 thru 50, inclusive,

Defendants.

**ORDER AFTER HEARING ON
MARCH 23, 2018**

**Motion by Plaintiff Martin Chavez for
Preliminary Approval of Class Action
Settlement**

The above-entitled matter came on regularly for hearing on Friday, March 23, 2018 at 9:00 a.m. in Department 1 (Complex Civil Litigation), the Honorable Brian C. Walsh presiding. The Court reviewed and considered the written submission of all parties and issued a tentative ruling on March 22, 2018. No party contested the tentative ruling and no party appeared; therefore, the Court orders that the tentative ruling be adopted and incorporated herein as the Order of the Court, as follows:

This is a putative wage and hour class action by employees of defendant George Chiala Farms, Inc. Before the Court is plaintiff's unopposed motion for preliminary approval of a class settlement.

1 I. Factual and Procedural Background

2 Defendant produces and processes fruits and vegetables throughout California, operating
3 out of the cities of Morgan Hill and Hollister. Plaintiff alleges that he and other putative class
4 members are hourly employees who were not properly compensated for overtime at the
5 appropriate rate of pay because defendant failed to include shift premiums in the regular rate of
6 pay used to calculate overtime. (First Amended Complaint (“FAC”), ¶¶ 21, 23.) In addition,
7 defendant did not provide a second meal period or third rest period for employees who worked
8 over ten hours in a day. (*Id.* at ¶¶ 24-25.) Defendant also failed to provide wage statements
9 reflecting required information and willfully failed to pay wages owed at the end of class
10 members’ employment. (*Id.* at ¶¶ 26-27.)

11 Based on these allegations, plaintiff asserts claims for (1) failure to pay wages and/or
12 overtime, (2) failure to provide meal periods, (3) failure to allow rest periods, (4) failure to
13 provide accurate itemized wage statements, (5) waiting time penalties, (6) unfair competition,
14 and (7) penalties under the Private Attorneys General Act (“PAGA”).

15 The parties have reached a settlement. Plaintiff now moves for an order preliminarily
16 approving the settlement, provisionally certifying the settlement class, approving the form and
17 method for providing notice to the class, and scheduling a final fairness hearing.

18
19 II. Legal Standard for Approving a Class Action Settlement

20 Generally, “questions whether a settlement was fair and reasonable, whether notice to the
21 class was adequate, whether certification of the class was proper, and whether the attorney fee
22 award was proper are matters addressed to the trial court’s broad discretion.” (*Wershba v. Apple*
23 *Computer, Inc.* (2001) 91 Cal.App.4th 224, 234-235, citing *Dunk v. Ford Motor Co.* (1996) 48
24 Cal.App.4th 1794.)

25
26 In determining whether a class settlement is fair, adequate and reasonable, the
27 trial court should consider relevant factors, such as the strength of plaintiffs’ case,
28 the risk, expense, complexity and likely duration of further litigation, the risk of
maintaining class action status through trial, the amount offered in settlement, the
extent of discovery completed and the stage of the proceedings, the experience

1 and views of counsel, the presence of a governmental participant, and the reaction
2 of the class members to the proposed settlement.

3 (*Wershba v. Apple Computer, Inc.*, *supra*, 91 Cal.App.4th at pp. 244-245, internal citations and
4 quotations omitted.)

5 The list of factors is not exclusive and the court is free to engage in a balancing and
6 weighing of factors depending on the circumstances of each case. (*Wershba v. Apple Computer,*
7 *Inc.*, *supra*, 91 Cal.App.4th at p. 245.) The court must examine the “proposed settlement
8 agreement to the extent necessary to reach a reasoned judgment that the agreement is not the
9 product of fraud or overreaching by, or collusion between, the negotiating parties, and that the
10 settlement, taken as a whole, is fair, reasonable and adequate to all concerned.” (*Ibid.*, quoting
11 *Dunk v. Ford Motor Co.*, *supra*, 48 Cal.App.4th at p. 1801, internal quotation marks omitted.)

12
13 The burden is on the proponent of the settlement to show that it is fair and
14 reasonable. However “a presumption of fairness exists where: (1) the settlement
15 is reached through arm’s-length bargaining; (2) investigation and discovery are
16 sufficient to allow counsel and the court to act intelligently; (3) counsel is
17 experienced in similar litigation; and (4) the percentage of objectors is small.”

18 (*Wershba v. Apple Computer, Inc.*, *supra*, 91 Cal.App.4th at p. 245, citing *Dunk v. Ford Motor*
19 *Co.*, *supra*, 48 Cal.App.4th at p. 1802.) The presumption does not permit the Court to “give
20 rubber-stamp approval” to a settlement; in all cases, it must “independently and objectively
21 analyze the evidence and circumstances before it in order to determine whether the settlement is
22 in the best interests of those whose claims will be extinguished,” based on a sufficiently
23 developed factual record. (*Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 130.)

24 III. Settlement Process

25 According to a declaration by plaintiff’s counsel, the parties engaged in informal
26 discovery to arrive at the proposed settlement. Plaintiff received data for a sample of
27 approximately 60 class members and analyzed this data to create a damage model with the
28 assistance of a retained expert. The parties then participated in a mediation with Lisa Klerman,
Esq. While the case did not settle at mediation, they continued to negotiate with the mediator’s

1 assistance and eventually reached a settlement by way of a mediator's proposal in August of
2 2017. The non-reversionary settlement of \$1,030,000 will be funded in two payments of
3 \$515,000, with the first payment to occur no later than 30 days following the entry of judgment
4 herein and the second payment to occur no later than 12 months later.

5 6 IV. Provisions of the Settlement

7 The settlement includes a \$11,250 payment to the California Labor and Workforce
8 Development Agency associated with plaintiff's PAGA claim (seventy-five percent of the
9 \$15,000 allocated to PAGA penalties). Attorney fees of up to \$343,333.33 (one-third of the
10 gross settlement), litigation costs not to exceed \$15,000, and administration costs estimated at
11 \$17,000 will also be paid from the gross settlement. The named plaintiff will seek an
12 enhancement award of \$7,500. Defendants will pay their share of any payroll taxes separately,
13 without reducing the settlement fund.

14 The net settlement, estimated at \$635,916.70, will be distributed to class members pro
15 rata based on the number of weeks worked by each class member during the class period.
16 Distribution (as well as the payment of attorney fees and expenses) will occur within 14 days of
17 defendant's second settlement payment. Class members will not be required to submit a claim to
18 receive their payments. Checks uncashed after 180 days will be voided and the associated funds
19 will be paid 25 percent to the Trial Court Improvement and Modernization Fund, 25 percent to
20 the Equal Access Fund of the Judicial Branch, and 50 percent to Bet Tzedek Legal Services. By
21 the Court's calculation, the average settlement payment will be \$605.63, given the 1,050
22 estimated class members.

23 Class members who do not opt out of the settlement will release all claims "which were
24 raised, or could have been raised, based upon ... the facts, circumstances," etc. that were or
25 might have been asserted in the operative complaint "and which arise from the facts,
26 circumstances, or legal theories alleged in the operative Complaint ...," including but not limited
27 to specified wage and hour and related claims.
28

1 V. Fairness of the Settlement

2 At mediation, plaintiff estimated the undiscounted value of the case to be approximately
3 \$8,241,784.38, but saw the realistic value at closer to \$3 million based on the following analysis.

4 Plaintiff concluded that defendant failed to include pay premiums of \$0.35 per hour for
5 night shifts and \$1.00 per hour for handling hot peppers in class members' pay rates for
6 calculating overtime, and valued this claim at \$26,642.05. The second meal period claim was
7 valued at \$151,576.09 for settlement purposes, excluding shifts between 10 and 12 hours (which
8 would have brought the total value of the claim to \$400,488.83) based on defendant's practice of
9 obtaining oral waivers for these shifts. Plaintiff's rest period claim was based on the theory that
10 employees were not allowed to leave the premises during their breaks, but defendant argued that
11 its factory was several miles from any restaurants or gas stations and it provided the class with
12 food trucks and a designated break area for meal and rest periods. The full value of this claim
13 was \$2,752,125.61, but a substantial discount was applied given the merits risk associated with
14 it.

15 The full value of the waiting time claim was \$1,906,524, but this claim was also
16 substantially discounted. Plaintiff concluded that the waiting time claim had the most risk due to
17 uncertainty over whether failure to pay meal and rest period penalties would support a waiting
18 time claim, along with the need to establish willful violations in support of this claim. The
19 derivative wage statement claim was valued at \$539,830.36. The PAGA claim, which was also
20 derivative of the other claims, had a full value of \$1,854,000 but was valued at \$15,000 for
21 settlement purposes given the risks associated with the other claims and the Court's discretion to
22 award reduced penalties.

23 Counsel believes that the settlement is fair and reasonable to the class. At the Court's
24 direction, counsel submitted a declaration substantiating the need for the settlement to be funded
25 in two payments and the propriety of issuing only one round of payments to class members after
26 the settlement is fully funded. Having reviewed counsel's supplemental declaration, the Court is
27 satisfied that this approach is appropriate and justified. Based on the analysis above, the Court
28 finds that the settlement is fair and reasonable to the class.

1 Prior to final approval, plaintiff shall provide a declaration detailing his participation in
2 the case supporting the stipulated incentive payment. The Court also has an independent right
3 and responsibility to review the requested attorney fees and award only so much as it determines
4 to be reasonable. (See *Garabedian v. Los Angeles Cellular Telephone Co.* (2004) 118
5 Cal.App.4th 123, 127-128.) While 1/3 of the common fund for attorney fees is generally
6 considered reasonable, counsel should submit lodestar information prior to the final approval
7 hearing in this matter so the Court can compare the lodestar information with the requested fees.
8 (See *Laffitte v. Robert Half Intern. Inc.* (2016) 1 Cal.5th 480, 504 [trial courts have discretion to
9 double-check the reasonableness of a percentage fee through a lodestar calculation].)

10 11 VI. Proposed Settlement Class

12 Plaintiff requests that the following settlement class be provisionally certified:

13 All current and former non-exempt hourly employees who were employed by
14 Defendant in California during the Class Period.

15 16 A. Legal Standard for Certifying a Class for Settlement Purposes

17 Rule 3.769(d) of the California Rules of Court states that “[t]he court may make an order
18 approving or denying certification of a provisional settlement class after [a] preliminary
19 settlement hearing.” California Code of Civil Procedure Section 382 authorizes certification of a
20 class “when the question is one of a common or general interest, of many persons, or when the
21 parties are numerous, and it is impracticable to bring them all before the court” As
22 interpreted by the California Supreme Court, Section 382 requires the plaintiff to demonstrate by
23 a preponderance of the evidence (1) an ascertainable class and (2) a well-defined community of
24 interest among the class members. (*Sav-On Drug Stores, Inc. v. Superior Court (Rocher)* (2004)
25 34 Cal.4th 319, 326, 332.)

26 The “community-of-interest” requirement encompasses three factors: (1) predominant
27 questions of law or fact, (2) class representatives with claims or defenses typical of the class, and
28 (3) class representatives who can adequately represent the class. (*Ibid.*) “Other relevant
considerations include the probability that each class member will come forward ultimately to

1 prove his or her separate claim to a portion of the total recovery and whether the class approach
2 would actually serve to deter and redress alleged wrongdoing.” (*Linder v. Thrifty Oil Co.* (2000)
3 23 Cal.4th 429, 435.) The plaintiff has the burden of establishing that class treatment will yield
4 “substantial benefits” to both “the litigants and to the court.” (*Blue Chip Stamps v. Superior*
5 *Court (Botney)* (1976) 18 Cal.3d 381, 385.)

6 In the settlement context, “the court’s evaluation of the certification issues is somewhat
7 different from its consideration of certification issues when the class action has not yet settled.”
8 (*Luckey v. Superior Court (Cotton On USA, Inc.)* (2014) 228 Cal.App.4th 81, 93.) As no trial is
9 anticipated in the settlement-only context, the case management issues inherent in the
10 ascertainable class determination need not be confronted, and the court’s review is more lenient
11 in this respect. (*Id.* at pp. 93-94.) However, considerations designed to protect absentees by
12 blocking unwarranted or overbroad class definitions require heightened scrutiny in the
13 settlement-only class context, since the court will lack the usual opportunity to adjust the class as
14 proceedings unfold. (*Id.* at p. 94.)

15 B. Ascertainable Class

16 “The trial court must determine whether the class is ascertainable by examining (1) the
17 class definition, (2) the size of the class and (3) the means of identifying class members.”
18 (*Miller v. Woods* (1983) 148 Cal.App.3d 862, 873.) “Class members are ‘ascertainable’ where
19 they may be readily identified without unreasonable expense or time by reference to official
20 records.” (*Rose v. City of Hayward* (1981) 126 Cal.App.3d 926, 932.)

21 Here, the estimated 1,050 class members are easily identified based on defendant’s
22 records, and the class definition is clear. The Court consequently finds that the class is numerous
23 and ascertainable.

24 C. Community of Interest

25 With respect to the first community of interest factor, “[i]n order to determine whether
26 common questions of fact predominate the trial court must examine the issues framed by the
27 pleadings and the law applicable to the causes of action alleged.” (*Hicks v. Kaufman & Broad*
28

1 *Home Corp.* (2001) 89 Cal.App.4th 908, 916.) The court must also give due weight to any
2 evidence of a conflict of interest among the proposed class members. (See *J.P. Morgan & Co.,*
3 *Inc. v. Superior Court (Heliotrope General, Inc.)* (2003) 113 Cal.App.4th 195, 215.) The
4 ultimate question is whether the issues which may be jointly tried, when compared with those
5 requiring separate adjudication, are so numerous or substantial that the maintenance of a class
6 action would be advantageous to the judicial process and to the litigants. (*Lockheed Martin*
7 *Corp. v. Superior Court, supra*, 29 Cal.4th at pp. 1104-1105.) "As a general rule if the
8 defendant's liability can be determined by facts common to all members of the class, a class will
9 be certified even if the members must individually prove their damages." (*Hicks v. Kaufman &*
10 *Broad Home Corp., supra*, 89 Cal.App.4th at p. 916.)

11
12 Here, common legal and factual issues predominate. Plaintiff's claims all arise from
13 defendant's wage and hour practices applied to the similarly-situated class members.

14
15 As to the second factor,

16 The typicality requirement is meant to ensure that the class representative is able
17 to adequately represent the class and focus on common issues. It is only when a
18 defense unique to the class representative will be a major focus of the litigation,
19 or when the class representative's interests are antagonistic to or in conflict with
20 the objectives of those she purports to represent that denial of class certification is
21 appropriate. But even then, the court should determine if it would be feasible to
22 divide the class into subclasses to eliminate the conflict and allow the class action
23 to be maintained.

24 (*Medraza v. Honda of North Hollywood* (2008) 166 Cal. App. 4th 89, 99, internal citations,
25 brackets, and quotation marks omitted.)

26 Like other members of the class, plaintiff was employed by defendant and alleges that he
27 did not receive required meal and rest breaks and overtime pay. The anticipated defenses are not
28 unique to plaintiff, and there is no indication that plaintiff's interests are otherwise in conflict
with those of the class.

1 Finally, adequacy of representation “depends on whether the plaintiff’s attorney is
2 qualified to conduct the proposed litigation and the plaintiff’s interests are not antagonistic to the
3 interests of the class.” (*McGhee v. Bank of America* (1976) 60 Cal.App.3d 442, 450.) The class
4 representative does not necessarily have to incur all of the damages suffered by each different
5 class member in order to provide adequate representation to the class. (*Wershba v. Apple*
6 *Computer, Inc.* (2001) 91 Cal.App.4th 224, 238.) “Differences in individual class members’
7 proof of damages [are] not fatal to class certification. Only a conflict that goes to the very
8 subject matter of the litigation will defeat a party’s claim of representative status.” (*Ibid.*,
9 internal citations and quotation marks omitted.)

10 Plaintiff has the same interest in maintaining this action as any class member would have.
11 Further, he has hired experienced counsel. Plaintiff has sufficiently demonstrated adequacy of
12 representation.

13 D. Substantial Benefits of Class Certification

14 “[A] class action should not be certified unless substantial benefits accrue both to
15 litigants and the courts. . . .” (*Basurco v. 21st Century Ins.* (2003) 108 Cal.App.4th 110, 120,
16 internal quotation marks omitted.) The question is whether a class action would be superior to
17 individual lawsuits. (*Ibid.*) “Thus, even if questions of law or fact predominate, the lack of
18 superiority provides an alternative ground to deny class certification.” (*Ibid.*) Generally, “a
19 class action is proper where it provides small claimants with a method of obtaining redress and
20 when numerous parties suffer injury of insufficient size to warrant individual action.” (*Id.* at pp.
21 120-121, internal quotation marks omitted.)

22 Here, there are an estimated 1,050 members of the proposed class. It would be inefficient
23 for the Court to hear and decide the same issues separately and repeatedly for each class
24 member. Further, it would be cost prohibitive for each class member to file suit individually, as
25 each member would have the potential for little to no monetary recovery. It is clear that a class
26 action provides substantial benefits both to the litigants and the Court in this case.

27 In sum, plaintiff has demonstrated that this action is appropriate for class treatment.
28

1 VII. Notice

2 The content of a class notice is subject to court approval. (Cal. Rules of Court, rule
3 3.769(f).) “The notice must contain an explanation of the proposed settlement and procedures
4 for class members to follow in filing written objections to it and in arranging to appear at the
5 settlement hearing and state any objections to the proposed settlement.” (*Ibid.*) In determining
6 the manner of the notice, the court must consider: “(1) The interests of the class; (2) The type of
7 relief requested; (3) The stake of the individual class members; (4) The cost of notifying class
8 members; (5) The resources of the parties; (6) The possible prejudice to class members who do
9 not receive notice; and (7) The res judicata effect on class members.” (Cal. Rules of Court, rule
10 3.766(e).)

11 Here, the notice describes the lawsuit, explains the settlement, and instructs class
12 members that they may opt out of the settlement or object. The gross settlement amount and
13 estimated deductions are provided, and each class member’s estimated payment and eligible pay
14 periods are stated. Class members are told how to dispute their eligible pay periods and are
15 granted 45 days to request exclusion from the class or submit a written objection.

16 At the Court’s direction, plaintiff modified the originally-submitted notice to state that
17 class members may appear at the final fairness hearing to make an oral objection without
18 submitting a written objection. In addition, the notice was reformatted to highlight the estimates
19 of class members’ eligible workweeks and settlement payments by displaying this information in
20 bold within a box set off from the rest of the text on the first page of the notice. This box also
21 explains the timing of the settlement distributions and that final distributions will likely not be
22 made for over a year following final approval of the settlement, and instructs class members to
23 keep their contact information updated for this reason. Plaintiff confirmed that the notice will be
24 translated into Spanish and updated the notice to identify the correct settlement administrator and
25 estimated administrative fees. With these modifications, the notice is approved.

26 Turning to the notice procedure, the administrator will mail the notice packet within 35
27 days of preliminary approval, after updating class members’ addresses using the Lexis Database
28 and National Change of Address systems. Any notice packets returned as undeliverable will be

1 re-mailed within 3 days to any forwarding address or promptly to any updated address located
2 through a search of the LexisNexis Accurint system.

3 These notice procedures are appropriate and are approved. Prior to final approval, but
4 after the last date to opt out or object, plaintiff shall file a declaration by the administrator
5 addressing the notice process and administrative costs—including the actual costs incurred prior
6 to final approval and a specific estimate of remaining future costs.

7
8 VIII. Conclusion and Order

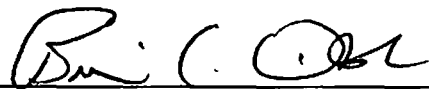
9 Plaintiff's motion for preliminary approval is GRANTED. The final approval hearing
10 shall take place on July 6, 2018 at 9:00 a.m. in Dept. 1.

11 The following class is provisionally certified for settlement purposes:

12 All current and former non-exempt hourly employees who were employed by
13 Defendant in California during the Class Period.

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15 IT IS SO ORDERED.

16 Dated: 3-23-18

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18 Honorable Brian C. Walsh
19 Judge of the Superior Court
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