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15 UNITED STATES DISTRICT COURT
16 NORTHERN CALIFORNIA

17 RODRIGO CAMILO, an individual,
18 ALVARO CAMILO, an individual,
19 RICARDO G. SANCHEZ, an individual,
20 JOSE MANUEL LOPEZ, an individual

21 PLAINTIFFS AND PUTATIVE PLAINTIFFS

22 Plaintiffs,

23 vs.

24 Defendants.

25 SERVERO C. OZUNA, an individual, DON
26 VITO OZUNA FOOD CORPORATION, a
27 California corporation
28

Case No. 5:18-CV-02842-VKD

PLAINTIFFS' MEMORANDUM OF POINTS
AND AUTHORITIES IN SUPPORT OF
UNOPPOSED MOTION FOR ORDER
GRANTING FINAL APPROVAL OF CLASS
ACTION SETTLEMENT, ATTORNEYS' FEES,
COSTS AND ENHANCEMENT PAYMENTS

DATE: March 3, 2020
TIME: 10:00 am
COURTROOM: 2 FIFTH FLOOR
Date Action Filed: May 14, 2018

1 I. INTRODUCTION

2 In this class action, Plaintiffs RODRIGO CAMILO, ALVARO CAMILO, RICARDO G.
3 SANCHEZ, and JOSE MANUEL LOPEZ, brought this wage and hour class action against
4 SERVERO C. OZUNA, an individual and DON VITO OZUNA FOOD CORPORATION, a
5 California corporation alleging a total of six causes of action on their behalf and on behalf of
6 all similarly situated current and former employees of Defendants working in their tortilla
7 manufacturing and processing company for (1) Failure To Properly Pay all Wages Under the
8 Fair Labor Standards Act; (2) Failure To Pay All Wages Including California Overtime
9 Wages; (3) Failure to Pay all Wages at the End of Employment; (4) Failure to Provide
10 Accurate California Itemized Employee Wage Statements; (5) Failure to Provide Breaks; (6)
11 Violation of California Business and Profession Code § 17200; The complaint in this action
12 was filed on May 14, 2018. See Camilo v Ozuna 5:18-cv-02842 EFC No. 1

13 While Defendants deny these claims, the parties engaged in arm’s length negotiations
14 and came to the gross settlement amount of \$375,000 as set forth herein: Participating Class
15 Members; enhancement of \$5,000 to be paid to each of the class representatives, RODRIGO
16 CAMILO, ALVARO CAMILO, RICARDO G. SANCHEZ, and JOSE MANUEL LOPEZ, for a
17 total of \$20,000; \$112,500 in attorneys’ fees; costs of \$ 7,276.63 payment of \$15,000 to the third
18 party administrator, CPT Group, (“CPT”). See EFC No. 55 Attachment 1 Ex A-1

19 Plaintiffs’ unopposed motion for Preliminary Approval was granted on October 22,
20 2019. Defendant does not oppose this present motion, and Plaintiff seeks an Order for
21 approval of the settlement, attorneys’ fees, costs, administrator fees, and enhancement
22 payments as set forth herein. EFC No. 59

23 II. PROCEDURAL BACKGROUND

24 The complaint in this action was filed on May 14, 2018. EFC No. 1

25 Thereafter, Class Counsel conducted a thorough investigation into the facts of the
26 Lawsuit, including extensive informal and formal discovery and exchange of information and
27 documents. Although no discovery motions were ultimately required, Class and defense
28

1 counsel engaged in numerous and lengthy meet and confer efforts regarding Defendant's
2 discovery responses and document production. These meet and confer efforts included both
3 written correspondence and telephone conferences. The investigation included review of
4 approximately 5,000 pages of relevant documents, including written policies and procedures,
5 handbooks, time records and payroll records, and a detailed analysis of payroll. Class
6 Counsel further investigated the facts alleged in the Complaint by conducting multiple
7 interviews of Class Members. Moreover, Plaintiffs and many of their witnesses are
8 predominantly Spanish speaking, necessitating the use of a Spanish translator for each
9 meeting with Plaintiffs and witnesses, and also at their depositions, which required more
10 time for each meeting and deposition. See Decl Vickie Boone; EFC No. 40:1,

11 Class counsel spent a significant amount of time examining and analyzing thousands
12 of pages of payroll and timesheet records in order to determine damages and prepare a
13 meaningful mediation brief. Id.

14 Plaintiffs were intricately involved in each aspect of the case, and therefore attended
15 numerous meetings with counsel to prepare their case for mediation, and also attended the
16 full day long mediation. See Decl. Rogilo Camillo, Alvaro Camilo, Jose Manuel Lopez and
17 Ricardo Sanchez.

18 On December 12, 2018, the parties engaged in mediation at ADR Services before the
19 Hon. George Hernandez (Ret.). As stated, Plaintiffs and Defendants all attended that full day
20 mediation. After a full day of mediation, the case settled. Dec. of Vickie Boone Decl. Rogilo
21 Camillo, Alvaro Camilo, Jose Manuel Lopez and Ricardo Sanchez.

22 Since then, class counsel prepared the initial draft of the Stipulation for Settlement,
23 with several discussions thereafter and several drafts going back and forth before the
24 Stipulation was finalized.

25 Additionally, the motion for Preliminary Approval was held and was granted on
26 October 22, 2019, with the instruction that some changes be made to the class notice and
27 claim forms. The Order granting Preliminary Approval See EFC No. 57
28

1 Plaintiffs and Defendant presented the revised notice and claim forms to the Court for
2 approval, and the Court approved the same on 10/21/2019. The Court's Order approving the
3 revised forms EFC No. 61

4 The Court conditionally certified this matter as a collective action under the FLSA, 29
5 U.S.C. § 216(b), under the FLSA as consisting of all

6
7 "individuals who are employed or who have been employed by defendants as nonexempt
8 hourly employees involved in the tortilla and chip manufacturing process from May 14, 2015
9 through March 19, 2019 who allege violations under the FLSA as described in claim one of the
10 Complaint (EFC Nos. 1, 59)."

11 The court preliminarily certified a class pursuant to Rule 23, consisting of all:

12 "individuals who are employed or have been employed by defendants as non-exempt hourly
13 employees involved in the tortilla and chip manufacturing process between May 14, 2014 and
14 March 19, 2019 and who allege violations under California law as described in claims two
15 through seven of the Complaint (EFC Nos. 1, 59)."

16 The court ordered the Plaintiffs to file the Motion for Final Approval before the final
17 statistics regarding class participation will be made available by the claims administrator CPT
18 Group. Thus some arguments in favor of Final Approval will have to wait for until CPT
19 Group produces those statistics.

20 III STATEMENT OF FACTS

21 *The Individual Plaintiffs*

22 The Defendants employed the four named plaintiffs and class representatives, Rodrigo
23 Camilo, Alvaro Camilo, Ricardo G. Sanchez and Jose Manuel Lopez as non-exempt tortilla
24 makers. Defendants employed Plaintiff Rodrigo Camilo from 2010 to March 13, 2017; Alvaro
25 Camilo, from 2010 to July 23, 2017; Jose Manuel; from 2009 to July 23, 2017; and Ricardo
26 Gomez Sanchez, from 2010 to March 8, 2016. The Defendants paid the Plaintiffs an hourly
27 wage. . See Decl. Rogilo Camillo, Alvaro Camilo, Jose Manuel Lopez and Ricardo Sanchez.
28 EFC Nos. 40:1, 42, and 43.

1 The Plaintiffs based their case on the following allegations:

2 Defendants regularly deducted or "shaved" work hours from the Plaintiffs' paychecks
3 in this manner so that the Defendants did not pay the Plaintiffs for all the overtime and
4 regular hours they actually worked for the Defendants. Not only did the Defendants fail to
5 pay overtime when they shaved time from the Plaintiffs time cards but they also failed to
6 minimum wages for the shaved time. For example, the Defendants required they pick up
7 their paychecks on Saturday, their days off. The Plaintiffs accused the Defendants of paying
8 the majority of their overtime hours at the regular rate of pay. The Defendants paid their
9 employees by check and cash. See Decl. Rogilo Camillo, Alvaro Camilo, Jose Manuel Lopez
10 and Ricardo Sanchez. EFC Nos. 40:1, 42, and 43

11 Due to the time shaving, Defendants provided the Plaintiffs with paystubs that did
12 reflect the hours they worked in accurate manner. The paystubs did not include the hours
13 the Defendants shaved from the time cards of the Plaintiffs. Plaintiffs could not look at their
14 time cards and determine whether the Defendants paid them for all their work hours. Id.

15 Defendants deny all allegations. Defendants presented time cards that showed punch
16 in and out times for lunch for most of their employees. Defendant produced time cards that
17 showed he had a convoluted system of payment. The system of payment did result in the
18 Plaintiffs' receipt of much of their wages.

19 *The Class List*

20 When the class list is compared to the Department of Labor records it shows that the
21 Defendants employed approximately 128 potential class members with an average of 25 to 34
22 Class Members working per year. As of March 19, 2019 the Defendants employed
23 approximately 21 non-exempt Class Members according to the Defendant's class list. This
24 leaves approximately 107 former employees as additional potential class members. (This
25 represents a shrinkage in the Defendants' workforce'. See EFC 51.

26 VI THE CLASS MEETS THE REQUIREMENTS OF RULE 23

27 Class certification requires that: (1) the class be so numerous that joinder of all
28

1 members individually is ‘impracticable;’ (2) there are questions of law or fact common to the
2 class; (3) the claims or defenses of the class representative must be typical of the claims or
3 defenses of the class; and (4) the person representing the class must be able fairly and
4 adequately to protect the interests of all members of the class. Fed. R. Civ. P. 23(a); *Staton v.*
5 *Boeing*, 327 F.3d 938, 953 (9th Cir.2003). In addition to meeting the conditions imposed by
6 Rule 23(a), the parties seeking class certification must also show that the action is
7 maintainable under Federal Rule of Civil Procedure 23(b).

8 Numerosity

9 Here, the parties assert that the action is maintainable under Rule 23(b)(3) because
10 questions of law or fact common to class members predominate over any question affecting
11 only individual members, and a class action is superior to other available methods for fairly
12 and efficiently adjudicating the controversy. Fed. R. Civ. P. 23(b); *Hanlon*, 150 F.3d at 1022.

13 Numerosity exists because there are approximately 128 members of the Rule 23 class..
14 “Generally speaking, courts will find that the ‘numerosity’ requirement has been satisfied
15 when the class comprises 40 or more members and will find that it has not been satisfied
16 when the class comprises 21 or fewer.” *Ansari v. New York Univ.* (SD NY 1998) 179 FRD 112, 114
17 (emphasis added); also see *Consolidated Rail Corp. v. Town of Hyde Park* (2nd Cir. 1995) 47
18 F3d 473, 483—numerosity presumed at level of 40 members; *Miri v. Dillon* (ED MI 2013) 292
19 FRD 454, 461—numerosity satisfied where putative class comprised of 150 members. Even the
20 smallest number, 68 class members, fits within the acceptable range of the class size.

21 Commonality

22 Commonality exists in this case. This requirement is met through the existence of a
23 “common contention” that is of such a nature that it is capable of class wide resolution in
24 “one stroke.” *Wal-Mart Stores, Inc. v. Duke* (2011) 564 U.S. 338, 350, 131 S. Ct. 2541, 2541 The
25 Plaintiff has alleged violations of wage and hour law that are capable of class-wide resolution.
26 The Defendants policy towards overtime, rounding time, rest and meal period violations are
27 all capable of class wide resolution.

28 Typicality

1 Typicality exists in this case. The claims of the purported class representative need
2 not be identical to the claims of other class members, but the class representative “must be
3 part of the class and possess the same interest and suffer the same injury as the class
4 members.” *General Tel. Co. of Southwest v. Falcon*, supra, 457 US at 156, 102 S.Ct. at 2370;
5 *Wolin v. Jaguar Land Rover North America, LLC* (9th Cir. 2010) 617 F3d 1168, 1176. All four
6 members of the case worked for the Defendants during the Rule 23 Class period and the
7 FSLA Class period. The Defendants applied the same convoluted method of payment to the
8 Plaintiffs they applied to the Defendants. Their claims are identical to those alleged in the
9 complaint on behalf of the class members.

10 Adequacy of Representation

11 The class members have been adequately represented in this case. None of the named
12 class members have a conflict. The class members have vigorously prosecuted the case, all
13 three participating in the investigation, deposition and mediation of this case. Class counsel
14 has successfully litigated the following Class Actions in Santa Clara County Superior Court
15 *Rosales vs Heavenly Greens* 1-cv-119684; *Lopez vs Logistics Delivery Solutions* 113-cv-249431,
16 *Diaz vs Heavenly Greens* 16-cv295143 and *Cooke vs A is for Apple* 15-cv-279579. Plaintiffs'
17 counsel has prosecuted 178 wage and hour cases in federal court and probably another fifty in
18 state court over the past twelve years

19 V THE SETTLEMENT IS FAIR UNDER RULE 23 AND THE FSLA

20 Fed. R. Civ. Proc. 23(e) requires the district court to determine whether a proposed
21 settlement is fundamentally fair, adequate, and reasonable. The court considers a number of
22 factors in making the fairness determination including: “the strength of the plaintiffs' case;
23 the risk, expense, complexity, and likely duration of further litigation; the risk of maintaining
24 class action status throughout the trial; the amount offered in settlement; the extent of
25 discovery completed and the stage of the proceedings; the experience and views of counsel;
26 the presence of a governmental participant;² and the reaction of the class members to the
27 proposed settlement.” *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1026 (9th Cir. 1998)

28

1 Since some of the argument that supports fairness relies on the statistics. Thus
2 Plaintiffs will reserve some of those argument until the stats are in.

3 Nevertheless Class counsel believes this settlement to be a reasonable compromise of
4 the class claims, and well within the percentile ranges of the total available damages that
5 have been approved in other class settlements. See *In re Omnivision Technologies, Inc.*, 559
6 F.Supp.2d 1036, 1042 (2007) (noting that certainty of recovery in settlement of 6% of
7 maximum potential recovery after reduction for attorney's fees was higher than median
8 percentage for recoveries in shareholder class action settlements, averaging 2.2%-3% from
9 2000 through 2002); *Reed v. 1-800 Contacts, Inc.*, 2014 U.S. Dist. LEXIS 255 (S.D. Cal. 2014)
10 (approving a settlement of \$11.7 million where the maximum range of damages was \$5,000 for
11 each of the alleged 300,000 instances of unlawful recording violations (\$1.5 billion), equaling
12 approximately .78% of the total demand and approximately \$800 per class member);
13 *Dunleavy v. Nadler (In re Mego Fin. Corp. Sec. Litig.)*, 213 F.3d 454, 459 (9th Cir. 2000).

14 Counsel reserves further argument until CPT Group produces the final statistics as
15 they will also influence the fairness of the settlement.

16 17 VI. THE NOTICE GIVEN THE CLASS IS ADEQUATE

18 A class action settlement notice "is satisfactory if it generally describes the terms of the
19 settlement in sufficient detail to alert those with adverse viewpoints to investigate and to
20 come forward and be heard." *Rodriguez v. W. Pub. Corp.*, 563 F.3d 948, 962 (9th Cir.2009)

21 Rule 23(c)(2)(B) contains specific requirements for the notice, namely, that the notice state
22 in clear, concise, plain, and easily understood language:

23 "(i) the nature of the action; (ii) the definition of the class certified; (iii) the class claims,
24 issues, or defenses; (iv) that a class member may enter an appearance through an attorney if
25 the member so desires;
26 (v) that the court will exclude from the class any member who requests exclusion; (vi) the
27 time and manner for requesting exclusion; [and] (vii) the binding effect of a class judgment
28

1 on members under Rule 23(c)(3).” Monterrubio v. Best Buy Stores, L.P., 291 F.R.D. 443, 453
2 (E.D. Cal. 2013).

3 In this case the Notice was mailed to the last known addresses of all class members. A
4 second mailing was conducted after six notices were returned. As if today’s date only one
5 package remains undeliverable. The Notice fulfilled all the requirements of Rule 23 and was
6 written in both Spanish and English.

7 Again counsel reserves further argument until CPT Group issues its final statistics.

8 VII THE SERVICE AWARDS ARE FAIR

9 In this case the Plaintiff’s counsel is requesting service awards for each Plaintiff in the
10 amount of \$5000 per person. Courts routinely approve incentive awards to compensate
11 named plaintiffs for the services they provide and the risks they incurred during the course of
12 the class action litigation Vasquez v. Coast Valley Roofing, Inc., 266 F.R.D. 482, 490 (E.D. Cal.
13 2010)

14 Five thousand dollars seems like an adequate sum considering the Plaintiffs the
15 amount of time the Plaintiffs spent. . See Decl. Rogilo Camillo, Alvaro Camilo, Jose Manuel
16 Lopez and Ricardo Sanchez. EFC Nos. 40:1, 42, and 43

17 CONCLUSION

18 Plaintiff’s counsel respectfully requests the court approve the settlement for final
19 certification.

20 November 29, 2019

21 

22 _____
23 James Dal Bon