



1 attorney if the member so desires; (v) that the court will exclude from the class any  
2 member who requests exclusion; (vi) the time and manner for requesting exclusion; and  
(vii) the binding effect of a class judgment on members under Rule 23(c)(3).

3 Fed. R. Civ. P. 23(c)(2)(B). A class notice must be “reasonably calculated, under all circumstances, to  
4 apprise interested parties of the pendency of the action and afford them an opportunity to present their  
5 objections.” See *Mullane v. Cent. Hanover Bank & Trust Co.*, 339 U.S. 306, 314 (1950).

## 6 **II. Contents of the Notice**

7 The proposed Class Notice provides information regarding the background of the action and the  
8 claims asserted. (Doc. 125-1.) In addition, the Class Notice explains the options available to those  
9 receiving notice, including the choice to remain in the lawsuit while giving up certain rights, or to opt-  
10 out of the lawsuit and not be a part of the classes. Plaintiffs propose that the Class Notice be mailed  
11 and posted at Giumarra’s facilities. (Doc. 125 at 5-6.)

## 12 **III. Defendant’s Objections to the Proposed Notice**

13 Defendant asserts that the proposed Class Notice and Plaintiff’s proposed order for its approval  
14 “has deficiencies that make it unfair to the defendant.” (Doc. 130 at 2.) Defendant objects to the  
15 proposed notice on the following grounds: (1) “Plaintiffs’ translation of the proposed notice is  
16 defective;” (2) Plaintiffs’ proposed method of exclusion is unfair;” (3) “[a]dministration, data collection  
17 and reporting should be done entirely by a third party vendor;” (4) and posting of the class notice would  
18 be “unnecessary and prejudicial.” (*Id.* at 2-4.)

## 19 **IV. Discussion and Analysis<sup>1</sup>**

### 20 A. Spanish language version of the Class Notice

21 Defendant asserts the proposed Spanish translation has “several significant errors.” (Doc. 130  
22 at 2.) As an example, Defendant observes: “[T]he English version defines the classes in terms of the  
23 ‘failure’ to reimburse workers for tools, or the ‘failure’ to provide timely meal periods. The Spanish  
24 version omits the crucial word ‘failure.’” (*Id.* at 2.) Therefore, Defendant requests that Plaintiffs “be  
25 required to have the Spanish language version approved by Giumarra, or to submit a Spanish version  
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27 <sup>1</sup> In the Objections, Defendant reports the “plaintiffs submitted an amended proposed order.” (Doc. 130 at 1-2.) However,  
28 neither an amended proposed order nor an amended Class Notice were filed with the Court. Therefore, for purposes of this  
discussion, the Court refers to the “Proposed Order re Approval of Class Notice and Notice Plan” filed on October 7, 2013.  
(Doc. 125.)

1 prepared by a court-certified interpreter.” (*Id.*) However, this Court requires a declaration that the  
2 Class Notice was translated by a certified court interpreter and attesting that the translation was an  
3 accurate translation of the Court-approved English version of the Notice. Accordingly, Defendant’s  
4 request is **GRANTED IN PART**, and Plaintiff **SHALL** submit the required declaration along with  
5 their request for final approval of the Class Notice.

6 **B. Mailing and posting of the Class Notice**

7 Plaintiffs assert “the Court should approve of the mailing method for directing notice to all  
8 class members individually.” According to Defendant, “Plaintiffs propose V3 Corporation, which was  
9 approved for this purpose in another case, take charge of the mailing.” (Doc. 130 at 3.) Notably,  
10 however, the request for V3 Corporation to be the Class Notice Administrator was not included in  
11 Plaintiffs’ proposed approval of the Class Notice and Notice Plan. Rather, Plaintiffs asserted simply  
12 that if notice by mailing was approved, they would “obtain a quote that includes standard mail and  
13 first class postage.” (Doc. 125 at 5.) There is no information regarding whether the mailing would be  
14 tracked, what would happen if mail is returned as undeliverable, or how the Court would be informed  
15 of Plaintiffs’ successes—or failures—with providing class members notice. For this reason, Plaintiffs’  
16 proposed Notice Plan is deficient. However, their request for approval by mailing is **GRANTED**.

17 In addition, Plaintiffs request the Court approve “posting the class notice at Giumarra’s  
18 facilities.” (Doc. 125 at 5.) Defendant opposes this request, asserting the posting “is unnecessary and  
19 prejudicial.” (Doc. 130 at 3.) Defendant observes that a posted notice “would of course only reach  
20 current Giumarra employee, and would be entirely useless in notifying class members who might have  
21 worked for Giumarra five or ten years ago, but are no longer employed there.” (*Id.* at 3-4.) Further,  
22 Defendant argues the “current Giumarra employees are the proposed class members least in need of  
23 additional notice,” and the posted notice “would be over-inclusive in that they might also be seen by  
24 employees who are not fieldworkers, and therefore are not members of the class.” (*Id.* at 4.) Finally,  
25 Defendant contends posting the notice could “cause harm to Giumarra’s employment relationships”  
26 because employees not included in either class “are likely to be confused by notices accusing the  
27 company of wage and hour violations.” (*Id.*)

28 Significantly, however, a majority of the putative class members are migrant farmworkers.

1 Though Defendant reports that the last known address for the class members will be provided, this  
2 information may be inaccurate given the migratory lifestyle of employees. Further, both classes  
3 certified by the Court include *present* employees. Posting the Class Notice at Giumarra will increase  
4 the likelihood that current employees who are members of the class receive notice.

5 Pursuant to Rule 23, the Court “must direct to class members the best notice that is practicable  
6 under the circumstances, including individual notice to all members who can be identified through  
7 reasonable effort.” Fed. R. Civ. P. 23(c)(2)(B). Here, both posting and mailing the notice would  
8 provide the best notice. *See, e.g., Romero v. Producers Dairy Foods, Inc.*, 235 F.R.D. 474, 493 (E.D.  
9 Cal. 2006) (finding “first class mail, combined with posting . . . provides the ‘best notice practicable’ to  
10 the potential class”); *Rameriz v. Ghilotti Bros.*, 2013 U.S. Dist. LEXIS 59497, at \*34 (N.D. Cal. Apr.  
11 25, 2013) (although the notice was to be mailed to potential class members, the court also ordered the  
12 defendant to post the class notice in English and Spanish “to ensure that all potential class members are  
13 aware of their rights to join the collective action”). Defendant’s objection to posting is **OVERRULED**.

14 C. Proposed method of exclusion

15 Plaintiffs propose that class members may opt to not be a part of the classes by writing a letter  
16 to Plaintiff’s counsel stating: “I do not want to be part of the Class or have a chance to receive money  
17 or benefits if Plaintiffs win their lawsuit against Giumarra. I request to be excluded from the class  
18 action against Giumarra Vineyards of California, Inc., Case No. 1:09-cv-00703.” (Doc. 125-1 at 5,  
19 emphasis omitted.) Defendant asserts that the letter requirement “is far too great a burden to place on  
20 class members who may not understand the notice to begin with, or take the trouble to read it, and who  
21 may fail to appreciate that inaction would cause them to join a class action against their employer that  
22 they may have no wish to join.” (Doc. 130 at 2.)

23 After this objection was raised, Plaintiffs proposed the use of an “Election to be Excluded” form  
24 that was approved by this Court in a related action, *Rojas v. Marko Zaninovich, Inc.*, Case No. 1:09-cv-  
25 00705-AWI-JLT.<sup>2</sup> (Doc. 131 at 4.) Plaintiffs assert that this proposed method of exclusion is fair,

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27 <sup>2</sup> The Court may take notice of facts that are capable of accurate and ready determination by resort to sources whose  
28 accuracy cannot reasonably be questioned. Fed. R. Evid. 201(b); *United States v. Bernal-Obeso*, 989 F.2d 331, 333 (9th  
Cir. 1993). Court records are sources whose accuracy cannot reasonably be questioned. *Mullis v. United States Bank. Ct.*,  
828 F.2d 1385, 1388 n.9 (9th Cir. 1987); *Valerio v. Boise Cascade Corp.*, 80 F.R.D. 626, 635 n. 1 (N.D. Cal.1978), *aff’d*,

1 because the form would not require class members to draft a document requesting exclusion, and  
2 instead “require[s] that class members simply ‘check off’ a box to exclude them from the class.” (*Id.*)

3 As noted Plaintiffs observe, the use of an “Election to be Excluded” form has been previously  
4 approved. A similar form would be appropriate, especially in light of the fact that the Court has  
5 recognized *Rojas* is related to this action. However, the requirement that a class member check the box  
6 seems to leave room for the possibility that the forms will be completed improperly, e.g, the form is  
7 returned with the box unchecked though otherwise complete, and could, therefore, be deemed not a  
8 valid request for exclusion. Rather than having the class members check the box, class members  
9 should merely have to fill in the date and contact information requested which will be deemed as  
10 adopting the pre-printed language which indicates the employee does not wish to be part of the class,  
11 i.e., “I do not want to be part of the Class.” Accordingly, the “Election to be Excluded” form should be  
12 amended to omit the check-box.

13 D. Collection of the exclusion forms

14 Initially, Plaintiffs proposed that “Plaintiffs’ counsel will collect exclusions and, within 15 days  
15 of the conclusion of the exclusion period, shall report on the mailing and exclusions.” (Doc. 125 at 5.)  
16 Defendant objected that the administration and reporting should be done by a third-party vender  
17 because having Plaintiffs’ counsel collection exclusions would be “unnecessarily cumbersome,  
18 duplicative and untrustworthy.” (Doc. 130 at 3.) Plaintiffs report that this proposal was “an effort to  
19 preserve costs.” (Doc. 131 at 3.)

20 After meeting and conferring regarding Defendant’s objection, “Defendant’s counsel informed  
21 Plaintiffs that he would consider accepting and reporting the exclusions as a solution to his concerns.”  
22 (Doc. 131 at 4.) Accordingly, the parties have resolved Defendant’s objection to the method to be used  
23 for collecting the exclusion forms, and the class members SHALL be directed to send the exclusions to  
24 Defendant’s counsel, who will report the exclusions.

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27 645 F.2d 699 (9th Cir. 1981); *see also Rodic v. Thistledown Racing Club, Inc.*, 615 F.2d 736, 738 (6th Cir. 1980); *Colonial*  
28 *Penn Ins. Co. v. Coil*, 887 F.2d 1236, 1239 (4th Cir. 1989). Because the form referenced by Plaintiffs has not been  
replicated here, the Court takes judicial notice of the “Election to be Excluded” form in *Rojas*, filed on June 25, 2013  
(*Rojas*, Doc. 223 at 9.)

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2 **V. Conclusion and Order**

3 Plaintiff's proposed Class Notice contains much of the information required by Rule 23(c) of  
4 the Federal Rules of Civil Procedure, including the nature of the action, the class definitions approve by  
5 the Court, the claims and issues to be resolved, how a class member may enter appear through an  
6 attorney or chose to be excluded from the class, and the binding effect of a class judgment. However,  
7 Plaintiffs must identify the Class Notice Administrator, and the Class Notice must be revised to include  
8 the amended method for the class members to opt-out and other information in this Order. Accordingly,

9 **IT IS HEREBY ORDERED:**

- 10 1. The proposed Class Notice (Doc. 125-1) is preliminarily **APPROVED**, and Plaintiffs  
11 **SHALL** file a finalized Class Notice with revisions in accordance with this Order for  
12 the Court's approval no later than **November 25, 2013**;
- 13 2. Along with their request for final approval of the finalized Notice, Plaintiffs **SHALL**  
14 file a declaration by the certified court interpreter who translated the Notice into  
15 Spanish, attesting that the translation is accurate;
- 16 3. Defendant **SHALL** provide updated contact information of potential class members in  
17 electronic format to Plaintiffs and the Class Notice Administrator no later than  
18 **December 20, 2013**;
- 19 4. The Class Notice Administrator **SHALL** mail the approved Class Notice no later than  
20 **January 10, 2014**, and track returned or undeliverable mail;
- 21 5. The Class Notice **SHALL** be posted in English and Spanish in locations used by  
22 Giumarra to post information directed to workers no later than **January 10, 2014**;
- 23 6. Class members have forty-five days to request exclusion, commencing **January 10,**  
24 **2014**;
- 25 7. To be valid, exclusions must contain the exact or substantially similar language set  
26 forth in the "Election to be Excluded" form provided in the Class Notice and **SHALL**  
27 be postmarked no later than **February 24, 2014**;

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8. The Class Notice Administrator **SHALL** provide a report under penalty of perjury to Plaintiffs' counsel detailing the mailing processes no later than **March 11, 2014**;
9. Defendants' counsel SHALL provide a report under penalty of perjury to Plaintiffs' counsel identifying all exclusion requests received, as well as copies of any exclusion requests, no later than **March 11, 2014**; and
10. Plaintiffs **SHALL** submit a report detailing the results of the exclusion process to the Court no later than **March 26, 2014**.

IT IS SO ORDERED.

Dated: November 18, 2013

/s/ Jennifer L. Thurston  
UNITED STATES MAGISTRATE JUDGE