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21 UNITED STATES DISTRICT COURT
 22 EASTERN DISTRICT OF CALIFORNIA

23 JESUS PALACIOS, ET AL.,
 24 Plaintiffs,
 25 v.
 26 PENNY NEWMAN GRAIN, INC., ET AL.,
 27 Defendants.

Case No. 1:14-CV-01804-KJM-SAB

**STIPULATION AND ORDER RE
 FURTHER CLASS NOTICE BY
 PUBLICATION**

Judge: Hon. Kimberly J. Mueller

Action Filed: August 11, 2014
 Trial Date: Trial Date Has Not Been Set

1 **STIPULATION**

2 The parties to the above-entitled action, (1) PENNY NEWMAN GRAIN COMPANY,
3 INC. (“Penny Newman”), (2) UNIVERSAL AG SERVICES and JUAN ZAVALA (“Universal
4 Ag”) (collectively “Defendants”), and (2) JESUS PALACIOS, JOSE PALACIOS, ALEJANDRO
5 HERRERA AGUILAR, EDGAR TORRES, and SABAS MEDINA (“Named Plaintiffs”) hereby
6 agree and stipulate as follows:

7 1. On July 6, 2015, the Court issued an Order granting preliminary approval to the
8 parties’ class settlement agreement (“Settlement Agreement”).

9 2. The Settlement Agreement and the July 6, 2015 Order both assumed, based on
10 representations made throughout the settlement process by Universal Ag, that it had employment
11 records showing the addresses of all identified class members. In preparing for the mailing of the
12 notices to class members as provided in the Order and the Settlement Agreement, Universal Ag
13 provided addresses for 62 individuals, but informed the other parties for the first time that it does
14 not have addresses for 18 class members (“Missing Class Members”). Universal Ag also
15 informed the parties that the Missing Class Members are Spanish-speaking and most, if not all, are
16 monolingual Spanish-speakers. All of them worked a fairly short period of time.

17 3. In light of these facts, the parties hereby agree and stipulate that their Settlement
18 Agreement shall be, and hereby is, amended to provide that, in addition to the mailed class notice
19 previously agreed-upon and ordered, notice to the Missing Class Members shall be provided by
20 publication as described below.

21 4. According to the Claims Administrator, *Vida en el Valle* is the largest Spanish
22 newspaper in the Fresno area. According to its website, *Vida en el Valle* is published weekly, with
23 separate editions in five cities: Fresno, Merced, Modesto, Sacramento and Stockton, with
24 circulation throughout 11 counties in California's Central Valley: El Dorado, Fresno, Kings,
25 Madera, Merced, Placer, Sacramento, San Joaquin, Stanislaus, Tulare, and Yolo. The Claims
26 Administrator recommends the use of that newspaper as the most likely to be read by the Missing
27 Class Members or their families and friends. The Claims Administrator has used *Vida en el Valle*
28 in the past as the court-approved method for publishing settlement notices in class action cases

1 involving Spanish-speaking workers in the Central Valley. *Vida en el Valle* publishes once a
2 week, on Wednesdays. Text must be provided no later than the previous Thursday.

3 5. Pursuant to the Court's July 6, 2015 Order, the class notice to class members for
4 whom addresses are known will be mailed on July 20, 2015. The parties hereby stipulate and
5 agree that the full notice will also be published in Spanish, in *Vida en el Valle*, August 5, with a
6 headline in Spanish reading, "*Did you work for Universal Ag at Penny Newman Grain Co.*
7 *between August 11, 2010 and July 6, 2015? If so, please read this Notice.*"

8 6. The cost to publish the full notice is \$5,388. The costs of the publication will be
9 advanced by the Claims Administrator. According to the Claims Administrator, even with this
10 additional cost, the total cost of claims administration will not exceed the amount approved in the
11 Court's July 6, 2015 Order.

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13 IT IS SO STIPULATED.

14 Dated: July 17, 2015

CALIFORNIA RURAL LEGAL ASSISTANCE
FOUNDATION
LAW OFFICE OF JOHN E. HILL

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By: _____ /s/ Della Barnett
Della Barnett
Attorneys for Plaintiffs JESUS PALACIOS, JOSE
PALACIOS, ALEJANDRO HERRERA
AGUILAR, EDGAR TORRES and SABAS
MEDINA

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1 Dated: July 17, 2015

McCORMICK, BARSTOW, SHEPPARD,
WAYTE & CARRUTH LLP

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By: /s/ Christina C. Tillman
David R. McNamara
Christina C. Tillman
Attorneys for Defendant PENNY NEWMAN
GRAIN CO.

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Dated: July 17, 2015

WALTER & WILHELM LAW GROUP

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By: /s/ Paul Bauer
Paul Bauer
Attorneys for Defendants UNIVERSAL AG
SERVICES, INC. and JUAN ZAVALA

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ORDER

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This Court's July 6, 2015 Order granting preliminary approval of the parties' Settlement Agreement in this case requires notice by mailing to all class members. Universal Ag, Inc. has discovered, and recently informed the other parties, that it does not have any address information for 18 class members, all of whom are Spanish-speaking former employees who worked a relatively short period of time. The notice by mail provided in the parties' Settlement Agreement and preliminarily approved by the Court was based on the assumption that addresses for *all* identified class members would be provided by Universal Ag.

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Given these unanticipated facts, and out of concern that notice consistent with due process be provided to the class members whose addresses are unknown, the Court hereby APPROVES the foregoing Stipulation amending the Settlement Agreement and ORDERS that the additional forms of notice to those class members set forth in that Stipulation will be provided. The Court finds that, under the circumstances, notice by publication as provided in the Stipulation will provide the best form of notice to the missing class members. See *Silber v. Mabon*, 18 F.3d 1449, 1454-55 (9th Cir.

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1 1994) (affirming that notice by publication can satisfy due process; actual notice of class settlement
2 not required); see also *Manual for Complex Litigation* 4th §§ 21.31; 21.312 (2004)). Specifically, in
3 addition to the mailing class notice of the proposed settlement to all class members whose addresses
4 are known, notice by publication to the remaining class members will be provided in accordance with
5 the parties' Stipulation. The cost of these additional measures will be advanced by Gilardi & Co. and
6 paid out of the \$30,000 maximum allocated to the costs of claims administration in the Proposed
7 Settlement Agreement and preliminarily approved by the Court in its July 6, 2015 Order.

8 IT IS SO ORDERED.

9 DATED: July 24, 2015.

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13 UNITED STATES DISTRICT JUDGE
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