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21 UNITED STATES DISTRICT COURT FOR THE
22 EASTERN DISTRICT OF CALIFORNIA

23 ROSALIE CUEVAS, ADOLFO GOMEZ-
24 MORENO, REYNALDO TOLANO, and
25 AGUSTIN AMBRIZ, on behalf of themselves
26 and all others similarly situated,

27 Plaintiff(s),

28 v.

29 DIAS & FRAGOSO, INC., a California
30 Corporation; D & F AGRICULTURAL
31 ENTERPRISES, INC., a California
32 Corporation; GABRIEL M. DIAS; and JOHN
33 L. FRAGOSO

34 Defendant(s).

Case No.: 1:17-cv-00357-LJO-BAM

**ORDER GRANTING STIPULATION
CONCERNING DISCOVERY, STAY OF
ACTION, MEDIATION AND SETTING
NEW SCHEDULING CONFERENCE**

New Date: November 28, 2017
Time: 9:00 a.m.
Courtroom: 8 (BAM)

ORDER

The Parties to this action, Plaintiffs ROSALIE CUEVAS, ADOLFO GOMEZ-MORENO, REYNALDO TOLANO, and AGUSTIN AMBRIZ (hereinafter referred to at times as “Plaintiffs”) and Defendants DIAS & FRAGOSO, INC., D & F AGRICULTURAL ENTERPRISES, INC., GABRIEL M. DIAS, and JOHN L. FRAGOSO (hereinafter referred to at times as “Defendants”), filed a Stipulation Concerning Discovery, Stay of Action and Mediation (“Stipulation”) concurrently herewith.

According to the Stipulation, the Parties have scheduled a private mediation for October 26, 2017. To facilitate the mediation and to reduce legal expenses pending the mediation, the Parties, subject to the terms and conditions of this Order, jointly move for an order requiring (1) an agreed-upon method of giving notice to the proposed class prior to disclosure of the documents and information; (2) certain restrictions on Defendants’ ability to communicate, directly or indirectly, with members of the proposed class concerning the release or settlement of any claim alleged in the Complaint pending the outcome of the mediation; and (3) a stay of all other litigation in this case, including but not limited to discovery.

Based on the Stipulation, and GOOD CAUSE APPEARING, it is hereby ORDERED as follows:

1. Subject to the conditions set forth in this Order, this matter is STAYED until November 27, 2017. The Parties shall advise the Court as to the status of this matter within thirty days of completion of the mediation on October 26, 2017. If the matter is resolved, the Parties will provide the Court with a further date or time at which the Parties will submit a joint stipulation of settlement to the Court.

2. The form of Notice to the putative class proposed by the parties and attached as Exhibit B (“Notice”) to the parties stipulation is hereby APPROVED on the basis that it will be in both English and a Spanish translation. The Court finds that the form and method of notice proposed by the parties and set forth in this Order will provide reasonable notice to members of the putative class regarding their potential privacy rights in the production of documents and other

1 information required by this Order, and a reasonable opportunity to opt out of disclosure of the
2 information pursuant to this Order.

3 3. KCC Class Action Services, LLC (“KCC”) is authorized to implement the notice
4 process set forth below. Except as provided herein, KCC is to maintain the identity and contact
5 information of all individuals provided to them and not disclose it to anyone except upon further
6 order of the Court. The Parties are to share equally (50/50) the costs charged by KCC.

7 4. The Joint Scheduling Conference is CONTINUED to November 28, 2017 at 9:00
8 a.m. before United States Magistrate Judge Barbara A. McAuliffe.

9 5. As soon as possible, but no later than ten (10) calendar days of the date of this
10 Order, KCC will be sent by Defendants a complete list of the individuals with contact information
11 comprising the putative class. Within five (5) calendar days thereafter, KCC will send, by first
12 class U.S. mail, postage prepaid, a copy of the Notice to all persons on the list provided by
13 Defendants.

14 6. As part of its duties, KCC shall take all steps as are reasonably necessary to ensure
15 the individuals receive the Notice, including conducting a National Change of Address search
16 before mailing the notice and conduct address searches on all returned, undelivered mail and re-
17 mailing the notices for whom further addresses are found.

18 7. KCC shall make available a toll-free telephone number for individuals to contact
19 them if they have any questions regarding the Notice. Without disclosing the identity of the
20 individual, KCC will agree to notify all counsel by email of the question or questions within 24
21 hours of such contact. The parties agree that if they cannot agree on the response to the
22 individual’s question, that the parties will submit the dispute to the Court for guidance or
23 determination. The parties agree to request that the Court consider these requests on an expedited
24 basis using a letter no more than two pages that summarizes the issue or issues and the parties’
25 positions. If the Court is willing, the parties request that the Court permit these requests to be sent
26 by email to the Court, to be subsequently followed by a public filing of the submission to the
27 Court. While this process is ongoing, the time limit for notice, opt-out, and document production
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1 described herein will continue unabated. However, no information regarding any individual with
2 an unresolved inquiry will be released to Plaintiffs until the inquiry has been resolved pursuant to
3 this paragraph.

4 8. After thirty-one (31) calendar days from the mailing of the notice, KCC shall notify
5 all parties of the names of the persons who have not opted out and requested that contact
6 information and documents pertaining to them not be released.

7 9. The Court finds that the Notice process is sufficient to constitute due diligence such
8 that any undeliverable notice shall be treated as though the particular individual did not opt-out of
9 the disclosure. The Court finds that the information sought is not particularly sensitive and is
10 potentially beneficial to the putative class members, thus the Notice requirements ordered herein
11 and the additional safeguard of the Protective Order mitigate any concerns about disclosing
12 otherwise confidential information of putative class members, best serve the interests of justice
13 and that nothing more is required under the circumstances. (See *Mullane v. Central Hanover Bank*
14 *& Trust Co.* (1950) 339 U.S. 306, 314; *Eisen v. Carlisle & Jacquelin* (1974) 417 U.S. 156, 173.)

15 10. Subject to the terms and conditions of the Stipulation and this Order, Defendants
16 agree to provide to Plaintiffs' counsel, on or before August 14, 2017, but in no event later than
17 nine weeks prior to the mediation date, complete, legible, bates stamped copies of the following
18 documents and data, in electronic form wherever possible, and/or in hard copy when requested,
19 the following documents for each Potential Class Member:

- 20 a. All payroll records for each Potential Class Member;
- 21 b. All records of hours worked by each Potential Class Member.

22 Additionally, on or before July 28, 2017, Defendants will provide:

- 23 a. All employee handbooks and policies, of any kind or description, and all
24 draft versions thereof, in existence at any time within the past five (5) years.

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1 11. During the period of the stay, Defendants agree not to communicate, directly or
2 indirectly, with any person within the Plaintiffs' proposed class definition in Paragraph 26 of their
3 Complaint, concerning the release or settlement of any claim alleged in the Complaint, unless and
4 if one of the persons within the Plaintiffs' proposed class definition makes a demand or files a
5 legal action in court or makes a claim with a government agency in which case Defendants reserve
6 any and all rights to negotiate a release or settlement of any and all claims.

7 12. Nothing in this Order or the Protective Order, is intended to create, expand, limit or
8 waive any of the Parties' rights, defenses or remedies at law or equity. The Parties reserve all
9 rights available to them under the law, including all statutes and constitutions.

10 13. If a party or KCC believes in good faith that he, she or it needs additional time to
11 perform one of the matters specified above, the party or KCC may notify the parties of that need
12 and set forth the additional time or times needed. The parties will meet and confer telephonically
13 in an effort to resolve the issue and to agree on adjusted dates, partial interim compliance,
14 continuance of the stay, and/or a postponement of the mediation.

15 14. If the matter resolves at the mediation, the parties will advise the Court within 30
16 calendar days thereafter that the matter has been resolved and provide the Court with a further date
17 or time at which the parties will submit a joint stipulation of settlement to the Court, and the
18 Scheduling Conference set for November 28, 2017 will be taken off calendar. If the matter does
19 not resolve, the parties will advise the Court within five calendar days, the Scheduling Conference
20 set for November 28, 2017 will proceed, and the parties will comply with this Court's Order
21 Setting Mandatory Scheduling Conference filed March 10, 2017 or any subsequent order of this
22 Court.

23 15. The Court hereby equitably tolls the statute of limitations for any individual who
24 opts into any collective action under the Fair Labor Standards Act in this case which is approved
25 by the Court after the mediation. The tolling requested will equal the number of days from August
26 13, 2017 until sixty (60) days after any order by the Court granting conditional certification,
27 should the mediation fail to resolve the case.

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16. A ruling on the proposed Stipulated Protective Order attached as Exhibit A (“Protective Order”) is held in ABEYANCE. On or before June 16, 2017, the parties shall file the Stipulated Protective Order, attached as Exhibit A to the Stipulation, as a separate entry in the docket for purposes of clarifying the record.

IT IS SO ORDERED.

Dated: June 13, 2017

/s/ Barbara A. McAuliffe
UNITED STATES MAGISTRATE JUDGE

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