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**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA**

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

Plaintiffs,

vs.

DIAS & FRAGOSO, INC., a California Corporation; D & F AGRICULTURAL ENTERPRISES, INC., a California Corporation; GABRIEL M. DIAS; and JOHN L. FRAGOSO,

Defendants.

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

ORDER GRANTING MOTION FOR PRELIMINARY APPROVAL OF CLASS AND COLLECTIVE ACTION SETTLEMENT
(Doc. 45)

Judge: Hon. Barbara A. McAuliffe

The above-captioned matter came on for hearing before the Court on June 7, 2019 on Plaintiffs’ Motion for Preliminary Approval of Class and Collective Action Settlement (“the Preliminary Approval Motion”). Upon review and consideration of the Settlement, the motion and supplemental papers and the exhibits thereto, the Court finds that there is sufficient basis for (1) granting preliminary approval of the Settlement; (2) provisionally certifying the class for settlement purposes only; (3) appointing Plaintiffs’ counsel as Class Counsel and appointing the

1 named Plaintiffs to represent the Settlement Class; (4) approving the Class Action, FLSA Notice,
2 and Dispute Form, and the procedures in the Settlement for employees to exclude themselves from
3 the Settlement Class and to object to the Settlement; (5) directing that notice be disseminated
4 pursuant to the terms of the Settlement; (6) staying all non-settlement related proceedings in the
5 Action pending final approval of the Settlement; and (7) setting a final hearing (the “Fairness
6 Hearing”) at which time the Court will consider whether to grant (a) final approval of the
7 Settlement; (b) the service awards to the named Plaintiffs, and the amount of the awards; and
8 (c) Class Counsel’s application for attorney fees and costs, and the amount of fees and costs.

9 IT IS HEREBY ORDERED, ADJUDGED, AND DECREED THAT:

10 1. This Action is provisionally certified as a class action, for the purposes of settlement
11 only, under Federal Rule of Civil Procedure 23 (for the California claims). The Rule 23(a)
12 requirements of numerosity, commonality, typicality and adequacy of representation have been
13 satisfied. Fed. R. Civ. P. 23(a)(1)-(4). Further, questions of law or fact common to class members
14 predominate over any questions affecting only individual members, and a class action is superior to
15 other available methods for fairly and efficiently adjudicating the controversy. Fed. R. Civ. P.
16 23(b.) The Court previously conditionally certified the collective action under 29 U.S.C. § 201 *et*
17 *seq.* (for the FLSA claim).

18 2. The Settlement Class is defined as “all persons who are or were employed in
19 California by Defendants as non-exempt (i) mechanics, (ii) maintenance workers, (iii) farm
20 equipment operators, (iv) truck drivers, and (v) weighers at any point during the Class Period
21 (March 10, 2013 to the date of the preliminary approval order) and who do not properly and timely
22 opt out of the Settlement Class by having requested exclusion.”

23 3. Certification of the Settlement Class shall be solely for the purposes of settlement
24 and without prejudice to the Parties in the event the Settlement is not finally approved by this Court
25 or otherwise does not take effect.

26 4. The Court preliminarily approves the Settlement as fair, reasonable, and adequate,
27 entered into in good faith, free of collusion, and within the range of possible judicial approval.

1 Further, as to the FLSA collective action, the Settlement is a fair and reasonable resolution of a
2 bona fide dispute.

3 5. The Court appoints the following attorneys as Class Counsel:

4 John E. Hill, State Bar No. 45338
5 Enrique Martinez, State Bar No. 206884
6 Law Offices of John E. Hill
7 333 Hegenberger Road, Ste. 500
8 Oakland, CA 94621
9 Telephone: (510) 588-1000
10 Facsimile: (510) 632-1445
11 Email: enriquemartinez@hill-law-offices.com

12 6. The Court appoints the named Plaintiffs—Rosalie Cuevas, Adolfo Gomez-Moreno,
13 Reynaldo Tolano, and Agustin Ambriz—as class representatives.

14 7. The Court appoints CPT Group Class Action Administrators to serve as the
15 settlement administrator and to carry out all duties and responsibilities of the Claims Administrator
16 as specified in the Settlement.

17 8. The Court approves the method of disseminating notice to the Settlement Class and
18 members of the FLSA collective action in Spanish and English, as set forth in the Settlement. The
19 Court finds that the proposed forms are reasonably clear and should be reasonably understandable
20 to the Settlement Class and members of the FLSA collective action. The Court finds that the
21 proposed form and method of notice provided in the Settlement constitutes the best notice
22 practicable under the circumstances, and will provide valid, due, and sufficient notice to the
23 Settlement Class in full compliance with the requirements of applicable law, including Rule 23 and
24 the Due Process Clause of the United States Constitution, and is the only notice of the Settlement
25 that is required.

26 9. Not later than five (5) days from the date of this Order, Defendants' counsel shall
27 provide to the Claims Administrator and Class Counsel a list of all members of the Settlement Class
28 and members who timely opted into the FLSA collective action, their last known addresses,
telephone numbers, and the last four digits of their social security or individual taxpayer

1 identification numbers. Class Counsel shall supplement this information with any more recent
2 contact information available for members of the Settlement Class and the FLSA collective action.
3 The Claims Administrator shall be responsible for preparing, printing, and mailing to members of
4 the Settlement Class and the FLSA collective action the Class Notice, the FLSA Notice (if
5 applicable), and Dispute Form. A Spanish language translation (prepared by the Claims
6 Administrator) of all materials mailed to members of the Settlement Class and the FLSA collective
7 action by the Claims Administrator shall be included as a part of the same mailing.

8 10. No later than fourteen (14) days from the date of this Order, the Claims
9 Administrator shall send a copy of the Class Notice, the FLSA Notice (if applicable), and Dispute
10 Form to members of the Settlement Class and the FLSA collective action via First Class regular
11 U.S. mail, postage prepaid, using the most current mailing address information available. The date
12 of the original mailing will be the Notice Date. For any Class Notice or FLSA Notice returned to
13 the Claims Administrator as non-deliverable within forty-five (45) days of the Notice Date, the
14 Claims Administrator shall make prompt and reasonable efforts to locate the person involved, using
15 appropriate search methods. If new address information is obtained, the Claims Administrator shall
16 promptly re-mail the Class Notice and Dispute Form, and FLSA Notice (if applicable), to the
17 addressee via First Class regular U.S. mail, postage prepaid, using the new address. If the Claims
18 Administrator is unable to obtain new address information with regard to any Notice returned as
19 non-deliverable within thirty (30) days following the Notice Date, or if a Notice is returned as non-
20 deliverable more than forty-five (45) days following the original mailing date, the Claims
21 Administrator shall be deemed to have satisfied its obligation to provide the Class Notice and the
22 FLSA Notice to the affected member of the Settlement Class and FLSA collective action through
23 the original mailing. In the event the procedures in this paragraph are followed and the intended
24 recipient of the Class Notice does not receive the Class Notice, the intended recipient shall
25 nevertheless remain a member of the Settlement Class and shall be bound by all the terms of this
26 Settlement and the Order and Final Judgment.

1 11. Those members of the Settlement Class who wish to opt out of the settlement must
2 send an opt-out letter (Request for Exclusion) to the Claims Administrator. Such letter must be
3 received by the Claims Administrator or postmarked no later than sixty (60) days from the Notice
4 Date.

5 12. If the Settlement is finally approved and becomes effective, any Settlement Class
6 member who does not send a timely and valid written statement opting out of the Settlement shall
7 be a Settlement Class Member and shall be bound by all subsequent proceedings, orders, and
8 judgments in this Action, including, but not limited to, the release of claims as provided in the
9 Settlement.

10 13. Those members of the Settlement Class who wish to object to the Settlement must
11 mail to the Claims Administrator a written statement objecting to the Settlement. Such written
12 statement must be mailed to the Claims Administrator no later than sixty (60) days from the Notice
13 Date. The Claims Administrator will file any objections with the Court. No member of the
14 Settlement Class shall be entitled to be heard at the Settlement Fairness Hearing (whether
15 individually or through separate counsel) or to object to this Settlement, and no written objections
16 or briefs submitted by any member of the Settlement Class shall be received or considered by the
17 Court at the Settlement Fairness Hearing, unless the written statement objecting to the Settlement is
18 mailed to the Claims Administrator no later than sixty (60) days from the Notice Date. Members of
19 the Settlement Class who fail to mail timely written objections in the manner specified above shall
20 be deemed to have waived any objections and shall be foreclosed from making any objection
21 (whether by appeal or otherwise) to the Settlement.

22 14. Any Settlement Class member who submits a timely and valid written objection
23 (“Objector”) may appear at the Fairness Hearing, either in person or through personal counsel hired
24 at the Objector’s own expense. Any Settlement Class member who does not submit a timely and
25 valid objection shall be deemed to have waived all objections to the Settlement and shall forever be
26 foreclosed from making any objection to (a) the fairness, adequacy, or reasonableness of the
27 Settlement; (b) any Final order and Final Judgment entered approving it; (c) Class Counsel’s
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1 application for attorney fees and costs; or (d) any request for services awards for the class
2 representatives.

3 15. The Court will hold a final Fairness Hearing on **September 24, 2019 at 10:00 a.m.**
4 **in Courtroom 8 (BAM) before Magistrate Judge Barbara A. McAuliffe** to determine whether
5 the Settlement should be finally approved as fair, reasonable, and adequate to the Settlement Class,
6 whether Final Judgment should be entered dismissing the Action with prejudice, and whether Class
7 Counsel's application for an award of attorney fees and costs pursuant to the Settlement should be
8 approved.

9 16. The Parties shall file any motions in support of final approval of the Settlement no
10 later than September 4, 2019. Class Counsel shall file their fee application no later than September
11 4, 2019.

12 17. The Parties shall file any responses to any Objectors, and any supplemental papers in
13 support of final approval or Class Counsel's fee application by no later than September 11, 2019.

14 18. At no time shall any of the Parties or their counsel seek, solicit or otherwise
15 encourage, directly or indirectly, members of the Settlement Class or members of the FLSA
16 collective action to submit written objections to the settlement, to opt out, or to appeal from the
17 Order and Final Judgment.

18 19. The date of the Fairness Hearing as provided in this Order and related deadlines may
19 be rescheduled by the Court upon notice to the Parties.

20 20. This Order shall become null and void and shall be without prejudice to the rights of
21 the Parties, all of whom shall be restored to their respective positions existing immediately before
22 the Court entered this Order, if: (a) the Settlement is not finally approved by the Court, or does not
23 become final, pursuant to the terms of the Settlement; or (b) the Settlement does not become
24 effective pursuant to the terms of the Settlement for any other reason.

25 21. Pending the final determination of whether the Settlement should be approved, all
26 proceedings in this Action, except as may be necessary to implement the Settlement or to comply
27 with the terms of the Settlement, are hereby stayed.

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22. The following chart summarizes the dates and deadlines set by this Order:

Last day for Defendants to provide Claims Administrator and Class Counsel with information pertaining to Members of the Settlement Class and FLSA Collective Action Notice Date	No later than five (5) days of the date of this Order.
Deadline to opt-out/request exclusion	No later than fourteen (14) days from the date of this Order.
Deadline to object	Sixty (60) days from Notice Date.
Deadline to dispute Settlement Payment	Sixty (60) days from Notice Date.
Last Day for Parties to file any motions in support of final approval of the Settlement, including Class Counsel’s motion for attorney fees and costs, and class representative service awards	September 4, 2019
Fairness hearing	September 24, 2019

IT IS SO ORDERED.

Dated: June 18, 2019

/s/ Barbara A. McAuliffe
UNITED STATES MAGISTRATE JUDGE