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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

JOSE MACIEL and ELVIS BONILLA,
*on behalf of themselves and all others
similarly situated, and as “aggrieved
employees” on behalf of other “aggrieved
employees” under the Private Attorneys
General Act of 2004,*

Plaintiffs,

v.

BAR 20 DAIRY, LLC, *a California
limited liability company*; and DOES 1
through 50, *inclusive,*

Defendants.

No. 1:17-cv-00902-DAD-SKO

ORDER GRANTING PLAINTIFFS’ MOTION
FOR PRELIMINARY APPROVAL OF
CLASS ACTION SETTLEMENT

(Doc. No. 54)

INTRODUCTION

On August 28, 2020, the court conditionally granted plaintiffs’ second motion for preliminary approval of class action settlement. (Doc. Nos. 54, 60.) Therein, the court directed the parties to submit to the court a revised settlement reflecting the changes directed within thirty days. (Doc. No. 60 at 34.) On September 28, 2020, attorney Kelsey M. Szamet submitted a declaration in response to the court’s order issued on August 28, 2020. (Doc. No. 61.) Attached to the Szamet Declaration is the parties’ Fifth Amended Settlement Agreement (Doc. No. 62-1 (“the Settlement”)), as well as other exhibits demonstrating the parties’ incorporation of the

1 changes in the proposed settlement as directed by the court’s order conditionally granting
2 plaintiffs’ motion (*see* Doc. Nos. 61-2–61-8). For the reasons set forth below, the court will now
3 fully grant plaintiffs’ motion for preliminary approval of class action settlement.

4 **BACKGROUND**

5 Defendant Bar 20 Dairy, LLC (hereinafter “Bar 20”) is a dairy farming business based in
6 Kerman, California. (Doc. No. 54-1 at 14.) Defendant employed plaintiffs Jose Maciel and Elvis
7 Bonilla as “milkers,” whose responsibilities included milking cows, monitoring the health
8 conditions of cows, maintaining and cleaning corrals, cleaning the farm, inseminating cows,
9 delivering calves, and assisting in defendant’s veterinary clinic. (*Id.*)

10 The detailed procedural history of this action was described in a previous order and will
11 not be reprised below. (*See* Doc. No. 34.) As relevant here, this action now proceeds on
12 plaintiffs’ fifth amended complaint, which alleges eight causes of action under California’s Labor
13 Code, Unfair Competition Law, and Private Attorneys General Act (“PAGA”), in addition to the
14 federal Fair Labor Standards Act (“FLSA”). (*See* Doc. No. 44.) On April 7, 2020, following the
15 court’s rejection of the parties’ Third Amended Settlement Agreement, plaintiffs renewed their
16 motion for preliminary approval of class action settlement based on the parties’ Fourth Amended
17 Settlement Agreement. (Doc. No. 54). On August 28, 2020, the court conditionally granted the
18 motion subject to additional changes being made to the Fourth Amended Settlement as described
19 in the court’s order. (Doc. No. 60.) On September 28, 2020, plaintiffs filed the Szamet
20 Declaration and several exhibits in response to the court’s order conditionally granting plaintiffs’
21 motion. (Doc. No. 61.)

22 The Fifth Amended Settlement now proposed by the parties corrects the deficiencies
23 identified by the court in its previous order conditionally granting preliminary approval. (*See*
24 Doc. No. 60.) For example: (1) the Settlement now redistributes unclaimed funds in a second,
25 pro rata payout to the Class Members who claimed their awards after the first distribution of
26 funds (Doc. No. 61 at ¶ 6); the class notice has been revised to include details pertaining to this
27 second distribution of funds and with a Spanish translation (*id.* at ¶¶ 12–15); and the
28 implementation schedule was revised to reflect the re-mailing response deadline for undeliverable

1 notices, the second distribution of funds, and the removal of the final approval hearing date for
2 the court to provide a new date for that hearing (*id.* at ¶ 21).

3 **LEGAL STANDARDS**

4 The court recited the relevant legal standards for preliminary approval of Federal Rule of
5 Civil Procedure 23 class and FLSA collection action settlements in its order of August 28, 2020.
6 (*See* Doc. No. 60 at 5–10.) The court incorporates those standards by reference here and
7 throughout this order.

8 **LEGAL ANALYSIS**

9 **A. Preliminary Class Certification**

10 As the court determined in its previous order conditionally granting preliminary approval,
11 plaintiffs’ showings with respect to numerosity, commonality, typicality, and adequacy of
12 representation are adequate to meet the requirements of Rule 23(a). (Doc. No. 60 at 12–16); *see*
13 *also Lozano v. AT&T Wireless Services, Inc.*, 504 F.3d 718, 730 (9th Cir. 2007). The court also
14 determined that Rule 23(b)(3)’s predominance and superiority requirements are met here. (Doc.
15 No. 60 at 16–18); *see also Ellis v. Costco Wholesale Corp.*, 657 F.3d 970, 981 (9th Cir. 2011).
16 The court reaffirms these findings because the parties’ Fourth and Fifth Settlement Agreements
17 are identical with respect to class certification. (*See* Doc. No. 61-2.) Accordingly, the court
18 grants preliminary certification of the proposed class under Federal Rule of Civil Procedure 23.

19 **B. Conditional Certification of FLSA Collective Action**

20 In its previous order, the court found that conditional certification of this FLSA collective
21 is appropriate. (Doc. No. 60 at 18.) The court also reaffirms this finding, again because the
22 Fourth and Fifth Settlement Agreements are identical with respect to FLSA collective action
23 certification. (*See* Doc. No. 61-2.) Accordingly, the court grants conditional certification of the
24 FLSA collective action.

25 **C. Preliminary Settlement Approval**

26 1. The PAGA Component

27 The court recited the relevant legal standards for reviewing a proposed settlement under
28 PAGA in its order issued on August 28, 2020. (*See* Doc. No. 60 at 19.) The court incorporates

1 those standards by reference here and throughout this order. In its previous order, the court noted
2 that the parties had failed to submit proof of the submission of their Fourth Amended Settlement
3 Agreement to the LWDA. (*Id.*) Here, attached to the Szamet Declaration is plaintiffs' proof of
4 submission of the Fifth Amended Settlement to the LWDA for its review. (Doc. No. 61-8.)
5 Because of the current lack of objection from the LWDA, despite notice of the Fifth Amended
6 Settlement being provided to it, *Chamberlain v. Baker Hughes, a GE Co., LLC*, No. 1:19-cv-
7 000831-DAD-JLT, 2020 WL 4350207, at *5 (E.D. Cal. July 29, 2020), the court will proceed to
8 address the fairness, reasonableness, and adequacy of the PAGA penalties under that agreement
9 below.

10 2. The FLSA Component

11 The court determined in its previous order that a bona fide dispute as to defendants FLSA
12 liability exists between the parties in this case. (Doc. No. 60 at 19–20.) The reaffirms that
13 finding, again because the Fourth and Fifth Settlement Agreements are identical with respect to
14 the existence of a bona fide dispute regarding defendant's FLSA liability. (*See* Doc. No. 61-2.)
15 Accordingly, the court will also evaluate the fairness of the proposed settlement as to the FLSA
16 claims.

17 3. Procedural Fairness

18 In its previous order, the court concluded based on representations by the parties that the
19 parties' negotiations constituted genuine, informed, and arm's-length bargaining. (Doc. No. 60 at
20 20–21.) The court reaffirms that finding because the Fourth and Fifth Settlement Agreements are
21 identical with respect to procedural fairness.

22 4. Substantive Fairness

23 a. *Adequacy of the Settlement Amount*

24 The court recited the relevant legal standards for reviewing a proposed settlement award's
25 fairness in its order issued on August 28, 2020. (*See id.* at 21.) The court incorporates those
26 standards by reference here and throughout this order. The parties in this case have agreed to a
27 \$450,000.00 Gross Settlement. (Doc. No. 62-1 at 12.) When the court conditionally granted
28 preliminary approval of the Settlement, the Net Settlement Amount was calculated to be

1 \$249,750.00 and the amount that the average Class Member could expect to receive under the
2 Settlement was \$840.90. (Doc. No. 60 at 22–23.) Because the Fifth Amended Settlement
3 Agreement includes a Settlement Administrator bid that has increased by \$3,800.00, the new Net
4 Settlement Amount is \$245,950.00. (See Doc. No. 62-1 at 12.) Accordingly, the average Class
5 Member can now expect to receive approximately \$828.00 under the Settlement. (*Id.*) Although
6 the court noted in its order conditionally granting preliminary approval that the recovery rate was
7 at the low end of the range of percentage recoveries to be found reasonable (*id.* at 22), the court
8 does not find the new Net Settlement Amount’s slight deviation to be significant. Moreover, the
9 court has previously also determined that the low recovery rate did not justify the quick
10 redistribution of unclaimed funds to a *cy-près* beneficiary and thus directed the parties to
11 restructure the Settlement so that any unclaimed funds will be redistributed in a second, pro rata
12 payout to the Class Members who claimed their awards after the first distribution of funds. (Doc.
13 No. 60 at 21–23.) The Settlement now reflects this change. (See Doc. No. 62-1 at 30.)
14 Accordingly, the court approves the Settlement amount reflected in the proposed Fifth Amended
15 Settlement Agreement.

16 b. *PAGA Penalties*

17 The court concluded in its previous order that the proposed settlement of plaintiff’s PAGA
18 claims is fair, reasonable, and adequate in light of the PAGA’s public policy goals. (Doc. No. 60
19 at 24–25.) The court reaffirms that finding because in this regard as well, the Fourth and Fifth
20 Settlement Agreements are identical with respect to the PAGA penalties.

21 c. *Attorneys’ Fees*

22 In its previous order, the court noted that it was not fully persuaded that plaintiffs’
23 \$150,000.00 attorneys’ fee request amount—equivalent to 33.33 percent of the Gross Settlement
24 Amount—was reasonable, particularly in light of the low recovery rate and the repeated failure of
25 the parties to craft a satisfactory settlement agreement. (*Id.* at 27.) Nonetheless, the court
26 concluded that, for the purposes of preliminary approval, it would accept the justifications
27 provided by plaintiffs’ counsel for a measured departure from the 25 percent benchmark to the
28 requested amount. (*Id.*) The court reaffirms that finding. However, the court again reminds

1 counsel that it will carefully re-examine the award of attorneys' fees and conduct a final lodestar
2 cross-check at the final approval stage. The court expects plaintiffs' counsel to provide all of the
3 requisite billing records and calculations underlying its assertion that the lodestar calculation
4 exceeds one third of the Gross Settlement Amount, as well as an accurate and complete
5 accounting for the requested \$25,000.00 in costs to be presented for the court's review at the final
6 approval stage. (*See id.*)

7 d. *Incentive Payment*

8 The court determined in its previous order that while the proposed \$15,000.00 incentive
9 award may be disproportionately high given the possible disparity with the Settlement's average
10 and/or median award to the putative class and collective members, the court would preliminarily
11 approve the incentive award in the amount sought. (*Id.* at 27–29.) The court reaffirms that
12 finding here. Nonetheless, plaintiffs are reminded that they must demonstrate at the final
13 approval stage that the requested awards are fully justified and are commensurate with, and do
14 not inappropriately dwarf, the awards received by the Class Members.

15 e. *Release of Claims*

16 In its previous order, the court concluded that the Released Claims appropriately track the
17 claims at issue in this case and that the terms governing their release are consistent with
18 applicable caselaw. (*Id.* at 29.) The court reaffirms that finding because the Fourth and Fifth
19 Settlement Agreements are identical with respect to the release of claims.

20 **D. Proposed Class Notice and Administration**

21 The court recited the relevant legal standards for determining the adequacy of a proposed
22 settlement's notice in its order issued on August 28, 2020. (*See* Doc. No. 60 at 30–31.) The court
23 incorporates those standards by reference here and throughout this order. The parties have made
24 the changes to the notice as directed in the court's order conditionally granting preliminary
25 approval. First, the court directed the parties to revise the Class Notice to include both English
26 and Spanish versions, because it is likely that many of the Class Claimants may face difficulties
27 in understanding a Class Notice provided to them only in English. (*Id.* at 31.) Accordingly, the
28 parties have provided a revised Class Notice in the Spanish language. (*See* Doc. No. 61-7.)

1 Second, there was a discrepancy in the Class Notice as to the expected Settlement Administration
2 cost. The Class Notice now explains that Settlement Administration costs will not exceed
3 \$10,300.00, which the Szamet Declaration details and the court will discuss below. Third and
4 finally, the parties were directed to revise the Class Notice to include details regarding the second
5 distribution of funds ordered by the court in the event that any Class Members decide to opt-out
6 or otherwise fail to deposit their settlement checks. The parties have made that revision.¹ (*See*
7 Doc. Nos. 61-6, 61-7.) Accordingly, the court now approves the proposed Class Notice.

8 **E. Settlement Administrator and Settlement Administration Costs**

9 In its previous order, the court appointed Simpluris as the Settlement Administrator.
10 (Doc. No. 60 at 31–32.) At the time the parties filed their proposed Fourth Amended Settlement,
11 the estimated cost of administering that settlement was \$6,500.00. (*Id.* at 32.) The parties have
12 now submitted two Settlement Administration cost bids in connection with their Fifth Amended
13 Settlement: one with and one without the inclusion of costs for the second redistribution of
14 unclaimed funds. (*See* Doc. Nos. 61-3, 61-4.) The modified bid, which includes the cost of the
15 second redistribution, is \$10,300.00. (*See* Doc. No. 61-3.) The Szamet Declaration also notes
16 that even absent the second distribution, the passage of time since the filing of the Fourth
17 Amended Settlement has resulted in Settlement Administration costs increasing to \$7,450. (Doc.
18 No. 61 at ¶ 11; *see also* Doc. No. 61-4.) The court finds that the \$10,300.00 estimate in the
19 modified bid is proportionally consistent with other settlements approved by this court. *See, e.g.,*
20 *CoreCivic of Tennessee*, 2020 WL 1475991, at *14 (administration costs of \$15,000.00 for a \$3.2
21 million settlement); *Dakota Med., Inc. v. RehabCare Grp., Inc.*, No. 1:14-cv-02081-DAD-BAM,
22 2017 WL 1398816, at *5 (E.D. Cal. Apr. 19, 2017) (administration costs of \$94,000.00 for a \$25
23 million settlement); *Aguilar*, 2017 WL 117789, at *7 (administration costs of \$45,000.00 for a

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26 ¹ The court notes that both of the most recent versions of the class notice presented to the court
27 by the parties erroneously direct the class members to review the Fourth Amended Joint
28 Stipulation of Class Action Settlement and Release for further details, when class members
should be directed to the current version, which is the Fifth Amended Joint Stipulation. The
parties are directed to correct this error in the latest notice before it is sent out.

1 \$4.5 million settlement). Accordingly, the court reaffirms its appointment of Simpluris as the
2 Settlement Administrator.

3 **F. Implementation Schedule**

4 Plaintiff has submitted the following implementation schedule:

5

Event	Date
6 Deadline for defendant to provide Simpluris with a list of Class Members (“Class List”)	No later than fourteen (14) days after entry of Preliminary Approval Order
8 Deadline for Simpluris to send the Initial Mailing to each Class Member	No later than fourteen (14) days after receipt of the Class List
10 Deadline to file any Objections, Opt-Out Request, or Pay Period Disputes	No later than forty-five (45) days after the Initial Mailing (the “Response Deadline”)
12 Deadline for Simpluris to perform skip trace and re-mail any undeliverable Class Notices(s) returned before the Response Deadline	No later than five (5) days after the Response Deadline
14 Deadline to respond to any re-mailed Class Notices(s)	No later than fourteen (14) days after the Class Notice was re-mailed
16 Deadline to compile and submit to the Parties a report of 1) the number of Class Members who opted out and 2) the final individual settlement amounts due to each Class Claimant	No later than seven (7) days prior to the Final Approval Hearing
18 Deadline for recipients to cash their settlement checks	One-hundred-twenty days (120) after the date of mailing or remailing, recipients will receive a letter noting that the check will be cancelled within thirty (30) days if not cashed
21 Deadline for Simpluris to complete second distribution to recipients who previously cashed first round of settlement checks	One hundred-fifty days (150) after the date of mailing or remailing, whichever is later, of the settlement checks and the reminder letter
23 Deadline for the <i>cy-près</i> beneficiary to receive funds	No later than forty-five (45) days after the mailing of second round settlement checks
24 Final Approval Hearing ²	April 12, 2021

25 (See Doc. No. 61-9 at 8–9.)

26 ² The parties’ Fifth Amended Settlement Agreement erroneously states that the final approval
27 hearing will be heard in the Fresno County Superior Court. However, the class notice approved
28 by this court correctly states that the final fairness hearing will be before the undersigned in the
Fresno courthouse of the U.S. District Court for the Eastern District of California. The parties are
directed to correct this language in their Fifth Amended Settlement Agreement.

1 In its previous order conditionally granting preliminary approval, the court identified
2 several deficiencies relating to the parties' originally proposed implementation schedule. First, it
3 was unclear what deadline applied to the sending out of new Claim Notices after any Initial
4 Mailings are returned as undeliverable, and what deadline applied to any responses submitted in
5 response to those re-mailed Claim Notices. (Doc. No. 60 at 33.) Second, the original
6 implementation schedule did not reflect the second distribution of funds ordered by the court.
7 Finally, the final approval hearing date requested by the parties in the original implementation
8 schedule had already passed. The proposed implementation schedule pending before the court
9 corrects all of these deficiencies. Accordingly, the court will approve the parties' implementation
10 schedule.

11 CONCLUSION

12 For the reasons explained above:

- 13 1. Plaintiffs' motion for preliminary approval of class action settlement (Doc. No. 54)
14 is granted;
- 15 2. The proposed class and FLSA collective are certified for settlement purposes;
- 16 3. Plaintiffs' counsel, David G. Spivak of The Spivak Law Firm and Eric B. Kingsley
17 of Kingsley & Kingsley, APC, are appointed as class counsel for settlement
18 purposes;
- 19 4. The named plaintiffs, Jose Maciel and Elvis Bonilla, are appointed as class
20 representatives for settlement purposes;
- 21 5. Simpluris is approved as the settlement claims administrator;
- 22 6. The proposed notice and claim forms are approved in accordance with Federal
23 Rule of Civil Procedure 23 and 29 U.S.C. § 216(b);
- 24 7. The proposed settlement is approved on a preliminary basis in the manner detailed
25 above;

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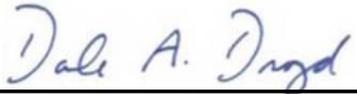
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- 8. The hearing for final approval of the proposed settlement is set for April 12, 2021 at 1:30 pm before the undersigned in Courtroom 5, with the motion for final approval of class action settlement to be filed at least 28 days in advance of the final approval hearing, in accordance with Local Rule 230(b); and
- 9. The settlement implementation schedule set forth above is adopted.

IT IS SO ORDERED.

Dated: October 13, 2020


UNITED STATES DISTRICT JUDGE