

United States District Court
Northern District of California

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

RAUL MAGANA-MUÑOZ, et al.,
Plaintiffs,
v.
WEST COAST BERRY FARMS, LLC, et
al.,
Defendants.

Case No. [5:20-cv-02087-EJD](#)

**ORDER GRANTING PLAINTIFFS’
MOTION FOR COLLECTIVE ACTION
CERTIFICATION; DENYING
DEFENDANTS’ MOTION TO COMPEL
ARBITRATION**

Re: Dkt. Nos. 12, 14, 15

Before the Court is Plaintiffs Raul Magana-Muñoz and Jose Santiago Herrera-Vera’s motion for collective action certification and Defendants West Coast Berry Farms, LLC and Rancho Nuevo Harvesting, Inc.’s motion to compel arbitration. Having considered the Parties’ papers, the Court **GRANTS** Plaintiffs’ motion for collective action certification and **DENIES** Defendants’ motion to compel arbitration.¹

I. BACKGROUND

A. Factual Background

Defendant Rancho Nuevo is a licensed farm labor contractor (“FLC”) that provides agricultural labor in California. Complaint (“Compl.”) ¶¶ 11–12. Defendant Rancho Nuevo uses the agricultural guest worker program (“H-2A Program”) to hire enough workers to meet its clients’ labor needs. Defendant Rancho Nuevo provides labor services to growers of fruits and vegetables in California, including Defendant West Coast Berry Farms, LLC (“West Coast

¹ Pursuant to N.D. Cal. Civ. L.R. 7-1(b), this Court found this motion suitable for consideration without oral argument. See Dkt. 35.

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1 Berry”).

2 The H-2A program is authorized by the Immigration and Nationality Act (“INA”), as
3 amended by the Immigration Reform and Control Act of 1986 (“IRCA”). *See* 8 U.S.C. § 1188.
4 The implementing regulations provide that a nonimmigrant alien worker may not be admitted to
5 fill a particular temporary job unless no qualified U.S. worker is available. 20 C.F.R.
6 § 655.0(a)(1). Further, in order to receive workers under the H- 2A program, employers are
7 required to submit an application describing the conditions of employment including wages,
8 transportation, housing, and work locations, among other things, to the Department of Labor
9 (“DOL”). *See id.* § 655.100.

10 Plaintiffs worked for Defendant Rancho Nuevo (and in turn for Defendant West Coast
11 Berry) as H-2A agricultural guest workers in 2018. Compl. ¶ 10. Plaintiffs first worked under Job
12 Order Number 15830523 in and around the Oxnard, California area (the “Oxnard Job Order”) and
13 harvested berries. *See* Declaration of Martha Godoy in Support of Defendants Petition to Compel
14 Arbitration (“Godoy Decl.”) ¶ 7, Dkt. 14-3; *see also* Compl. ¶ 74. This job ran from
15 approximately April 9, 2018 through June 30, 2018. Godoy Decl. ¶¶ 4–5. After completing the
16 Oxnard Job Order, Plaintiffs transferred to Job Order Number 15964506 and were transported
17 from Oxnard to Monterey County, California (the “Monterey Job Order”), where they also
18 harvested berries. *Id.* ¶ 11; *see also* Compl. ¶ 75. Plaintiffs left the United States on or after
19 October 31, 2018.

20 Defendant Rancho Nuevo allegedly provided workers, including Plaintiffs, with around
21 two hours of onboarding training. Godoy Decl. ¶ 14. However, Plaintiffs training appears to have
22 only lasted about 45 minutes. *See* Affidavit of Raul Magana-Muñoz, Dkt. 24-2 (including a pay-
23 stub that shows *H2A Orientation as lasting .75 of an hour). This onboarding training is
24 conducted in Spanish for Spanish-speaking employees like Plaintiffs. Godoy Decl. ¶ 15. During
25 this training, Plaintiffs signed an arbitration agreement. Defendants maintain that during the
26 onboarding training, employees can ask questions about the arbitration agreements and that

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1 employees can ask questions about the agreements when they meet with an HR team member and
2 turn in their paperwork. *Id.* ¶ 17. Defendants further contend that the HR team does not pressure
3 or otherwise persuade employees to sign the arbitration agreement and employees can take the
4 agreement with them to review later or have it reviewed by an attorney. Godoy Decl. ¶ 16; *see*
5 *also id.* ¶ 18 (“Since the Company was started, we have never had an employee refuse to sign the
6 arbitration agreement. Like Plaintiffs, employees always opt to sign it.”); *see also* Supplemental
7 Declaration of Martha Godoy (“Supp. Godoy Decl.”) ¶ 8, Dkt. 26-1 (“Consistent with [Rancho
8 Nuevo’s] policy and practice, Company supervisor Ernesto Espindola was present to introduce
9 himself and speak to the H-2A workers [about] any questions and concerns.”).

10 On April 13, 2018,² before the period of relevant employment, Plaintiffs signed arbitration
11 agreements and agreed to arbitrate all claims related to their employment. The agreement states:

12 The Company [Rancho Nuevo] utilizes a system of alternative dispute
13 resolution which involves binding arbitration to resolve all disputes which may
14 arise out of the employment context. Because of the mutual benefits (such as
15 reduced expense and increased efficiency) which private binding arbitration can
16 provide both the Company and the employee, employee and the Company both
17 agree that any claim, dispute, and/or controversy that either party may have against
18 one another (including, but not limited to, any claims of discrimination and
19 harassment, whether they be based on the California Fair Employment and Housing
20 Act, Title VII of the Civil Rights Act of 1964, as amended, as well as all other
21 applicable state or federal laws or regulations) which would otherwise require or
22 allow resort to any court or other governmental dispute resolution forum between
23 the employee and the Company (or its owners, directors, officers, managers,
24 employees, agents, and parties affiliated with its employee benefit and health plans)
25 arising from, related to, or having any relationship or connection whatsoever with
26 your seeking employment with, employment by, or other association with the
27 Company, whether based on tort, contract, statutory, or equitable law, or otherwise,
28 (with the sole exception of claims arising under the National Labor Relations Act
which are brought before the National Labor Relations Board, claims for medical
and disability benefits under the California Workers’ Compensation Act, and
Employment Development Department claims) shall be submitted to and
determined exclusively by binding arbitration.

In order to provide for the efficient and timely adjudication of claims, the
arbitrator is prohibited from consolidating the claims of others into one proceeding.

² Plaintiffs’ arbitration agreements are dated April 10, 2018. The agreements were predated. In fact, Plaintiffs signed the agreements on April 13, 2018, consistent with their wage statement. Defendants contend, and Plaintiffs do not dispute, that this was the only portion of the form that was pre-filled. *See* Supp. Godoy Decl. ¶ 5.

1 This means that an arbitrator will hear only your individual claims and does not
2 have the authority to fashion a proceeding as a class or collective action or to award
3 relief to a group of employees in one proceeding, to the maximum extent permitted
4 by law. *Thus, the Company has the right to defeat any attempt by you to file or join
5 other employees in a class, collective or joint action lawsuit or arbitration
6 (collectively "class action claims").*

7 You understand that you will not be disciplined, discharged, or otherwise
8 retaliated against for exercising your rights under § 7 of the National Labor
9 Relations Act, including but not limited to challenging the limitation on a class,
10 collective, or joint action. You understand that nothing in this policy shall be
11 construed so as to preclude you from filing any administrative charge with, or from
12 participating in any investigation of a charge conducted by, any government agency
13 such as the Department of Fair Employment and Housing and/or the Equal
14 Employment Opportunity Commission; however, after you exhaust such
15 administrative process/investigation, you understand that you must pursue any such
16 claims through this binding arbitration procedure.

17

18 However, in addition to requirements imposed by law, any arbitrator herein
19 shall be a retired California Superior Court Judge and shall be subject to
20 disqualification on the same grounds as would apply to a judge of such court. To
21 the extent applicable in civil actions in California courts, the following shall apply
22 and be observed: all rules of pleading (including the right of demurrer), all rules of
23 evidence, all rights to resolution of the dispute by means of motions for summary
24 judgment, judgment on the pleadings, and judgment under California Code of Civil
25 Procedure §631.8. Resolution of the dispute shall be based solely upon the law
26 governing the claims and defenses pleaded, and the arbitrator may not invoke any
27 basis (including, but not limited to, notions of "just cause") other than such
28 controlling law.

The arbitrator shall have the immunity of a judicial officer from civil
liability when acting in the capacity of an arbitrator, which immunity supplements
any other existing immunity. Likewise, all communications during or in connection
with the arbitration proceedings are privileged in accordance with California Civil
Code §47(b). As reasonably required to allow full use and benefit of this policy's
modifications to the Act's procedures, the arbitrator shall extend the times set by
the Act for the giving of notices and setting of hearings. Awards shall include the
arbitrator's written reasoned opinion. If Code of Civil Procedure §1284.2 conflicts
with other substantive statutory provisions or controlling case law, the allocation of
costs and arbitrator fees shall be governed by said statutory provisions or
controlling case law instead of California Code of Civil Procedure §1284.2. Any
arbitration proceeding will move forward under the Federal Arbitration Act (9
U.S.C. §§3-4) even though the claims may also involve or relate to parties who are
not parties to the arbitration and/or claims that are not subject to arbitration: thus,
the court may not refuse to enforce this arbitration policy and may not stay the
arbitration proceeding despite the provisions of California Code of Civil Procedure
§1281.2(c).

The arbitrator, and not any federal, state, or local court or agency, shall have
exclusive authority to resolve any dispute relating to the interpretation,
applicability, enforceability, or formation of the arbitration policy, including

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1 without limitation any claim that this policy is void or voidable. Thus, the
2 Company and Employee voluntarily waive the right to have a court determine the
enforceability and/or scope of this policy.

3 *EMPLOYEE UNDERSTANDS BY BEING EMPLOYED BY THE*
4 *COMPANY, AS A CONDITION OF EMPLOYMENT, THE EMPLOYEE AGREES*
5 *TO THIS BINDING ARBITRATION POLICY, WHICH MEANS THE EMPLOYEE*
6 *AND THE COMPANY BOTH GIVE UP RIGHTS TO TRIAL BY JURY AND*
7 *RIGHTS TO PARTICIPATE IN CLASS ACTION CLAIMS.*

8 Godoy Decl., Ex. A (emphasis added).

9 Defendants allege, and Plaintiffs do not deny, that a copy of this agreement was given to
10 employees in Spanish. *See id.*

11 **B. Procedural History**

12 On March 25, 2020, Plaintiffs filed their putative class action and alleged various wage
13 and hour and breach of contract claims. *See* Compl. ¶¶ 1–3. Plaintiffs allege that Defendants
14 improperly shifted costs to Plaintiffs and failed to pay them (and others similarly situated) the
15 required minimum hourly wage for compensable hours of labor performed in violation of the Fair
16 Labor Standards Act (“FLSA”). *Id.* ¶ 117. Plaintiffs allege that these violations occurred when
17 they (1) traveled from Mexico to the United States and were not reimbursed for their travel and
18 visa expenses, (2) traveled from their employer housing to their worksite, and (3) traveled from
19 their first permanent worksite in the Ventura/Oxnard area to their second and final permanent
20 worksite in Monterey area. *Id.* ¶¶ 49, 52, 60, 75.

21 On May 14, 2020, Plaintiffs filed their motion for collective action certification, which
22 asks the Court to (1) conditionally certify Count I of their Complaint as a collective action under
23 the FLSA, (2) approve the proposed collective action notice, (3) order Defendants to produce the
24 names, last known permanent addresses, passport numbers, email addresses, and WhatsApp
25 account numbers of all potential opt-in plaintiffs to enable the delivery of notice, and (4) provide
26 Plaintiffs’ counsel with five months from the date on which Defendants produce the names and
27 addresses to distribute notice and file consent forms from potential opt-in plaintiffs. Plaintiffs’
28 Motion and Brief in Support of Collective Action Certification (“CA Mot.”) at 2, Dkt. 12.

Plaintiffs also seek conditional certification to represent all individuals who performed work for

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1 Defendants under the 2018 H-2A Job Order.³ *Id.* Defendants filed a brief in opposition. Joint
2 Opposition to Motion for Collective Action Certification (“CA Opp.”), Dkt. 18. On June 11,
3 2020, Plaintiffs filed their Reply. Plaintiffs’ Reply in Support of Motion for Collective Action
4 Certification (“CA Reply”), Dkt. 23.⁴

5 Thereafter, Defendants filed a motion to compel arbitration and motion to dismiss or stay
6 proceedings pending arbitration. Joint Motion for Hearing for Petition to Compel Arbitration
7 (“Arb Mot.”), Dkt. 14.⁵ On June 11, 2020, Plaintiffs filed their opposition to this motion.
8 Opposition/Response re Joint Motion for Hearing for Petition to Compel Arbitration (“Arb
9 Opp.”), Dkt. 24. Defendants then filed a reply. Reply re Joint Motion for Hearing for Petition to
10 Compel Arbitration (“Arb Reply”), Dkt. 26.

11 II. LEGAL STANDARD

12 A. Motion to Compel Arbitration

13 The Federal Arbitration Act (“FAA”) governs the agreement between the Parties. Godoy
14 Decl., Ex. A. Under the FAA, written arbitration agreements “shall be valid, irrevocable, and
15 enforceable, save upon such grounds as exist at law or in equity for the avoidance of any
16 contract.” 9 U.S.C. § 2. The FAA removes the district court’s discretion and mandates that courts
17 direct the parties to “proceed to arbitration on issues as to which an arbitration agreement has been
18 signed.” *Chiron Corp. v. Ortho Diagnostic Sys., Inc.*, 207 F.3d 1126, 1130 (9th Cir. 2000)

19
20 ³ Defendants do not dispute that conditional certification is proper. Because the Court grants
21 Plaintiffs’ motion for certification, it also grants Plaintiffs’ counsel’s request for conditional
22 certification.

23 ⁴ Both Defendants and Plaintiffs filed requests for judicial notice regarding Plaintiffs’ motion for
24 collective action certification. *See* Dkt. 18-2; Dkt. 23-1. Each request asks the Court to take
25 notice of matters of public record. A court may properly take notice of “matters of public record”
26 pursuant to Federal Rule of Evidence 201, to the extent the matters are not subject to reasonable
27 dispute. *Lee v. City of L.A.*, 250 F.3d 668, 689 (9th Cir. 2001). The documents sought to be
28 noticed fit comfortably within this standard. Accordingly, both requests for judicial notice are
GRANTED.

⁵ Defendants thereafter filed a second (and seemingly repetitive) motion to dismiss based on the
arbitration agreements. *See* Dkt. 15. Defendants are directed to Civil Local Rule 7-2, which
instructs parties that they may file **one** document. If Defendants meant to correct Docket 14, they
should have filed an erratum. The Court will thus **TERMINATE** Docket 15 as it is duplicative of
Docket 14.

1 (quoting *Dean Witter Reynolds Inc. v. Byrd*, 470 U.S. 213, 218 (1985)). The FAA establishes a
2 “liberal federal policy favoring arbitration agreements.” *Epic Sys. Corp. v. Lewis*, 138 S. Ct. 1612,
3 1621 (2018). Courts must “rigorously . . . enforce arbitration agreements according to their terms,
4 including terms that specify *with whom* the parties choose to arbitrate their disputes and *the rules*
5 under which the arbitration will be conducted.” *Id.* Any doubts must be resolved in favor of
6 arbitration. *Green Tree Fin. Corp. v. Bazzle*, 539 U.S. 444, 452 (2003).

7 The Court’s role is limited to deciding (1) whether is there a valid agreement to arbitrate
8 and (2) if yes, whether the agreement encompasses the dispute at issue. *Chiron Corp.*, 207 F.3d at
9 1130. If both are answered in the affirmative, the court must compel arbitration. 9 U.S.C. §§ 2–4.

10 **B. Collective Action Certification**

11 The FLSA provides in relevant part that:

12 [a]ny employer who violates the provisions of section 206 or section
13 207 of this title [minimum wage and overtime] shall be liable to the
14 employee or employees affected in the amount of their unpaid
15 minimum wages, or their unpaid overtime compensation, as the case
16 may be, and in an additional equal amount as liquidated
17 damages. . . . An action to recover the liability prescribed . . . may
18 be maintained against any employer (including a public agency) in
any Federal or State court of competent jurisdiction by any one or
more employees for and in behalf of himself or themselves and other
employees similarly situated. No employee shall be a party plaintiff
to any such action unless he gives his consent in writing to become
such a party and such consent is filed in the court in which such
action is brought.

19 29 U.S.C. § 216(b). Thus, under the FLSA, “workers may litigate jointly if they (1) claim a
20 violation of the FLSA, (2) are ‘similarly situated,’ and (3) affirmatively opt in to the joint
21 litigation, in writing.” *Campbell v. City of L.A.*, 903 F.3d 1090, 1100 (9th Cir. 2018).

22 In *Campbell*, the Ninth Circuit provided guidance as to how lower courts should proceed
23 with requests for collective action certification for purposes of the FLSA. *Hernandez v. Dutton*
24 *Ranch Corp.*, 2020 WL 1274908, at *1 (N.D. Cal. Mar. 17, 2020). Certification comes in two
25 stages. The first stage is known as either preliminary or conditional certification and generally
26 occurs at an early stage of litigation. Here, a “court’s analysis is typically focused on a review of

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1 the pleadings but may sometimes be supplemented by declarations or other evidence.” *Campbell*,
2 903 F.3d at 1109. “The level of consideration is ‘lenient’” and “loosely akin to a plausibility
3 standard, commensurate with the stage of the proceedings.” *Id.* The consequence of preliminary
4 certification is simply that a notice is issued to members of the putative collective action. *See id.*
5 at 1101. As the Ninth Circuit has noted, unlike Rule 23 class certification, “[p]reliminary
6 certification in the FLSA context does not ‘produce a class with an independent legal status[] or
7 join additional parties to the action.’” *Id.* (citation omitted). Rather, “[t]he sole consequence’ of
8 a successful motion for preliminary certification is ‘the sending of court-approved written notice’
9 to workers who may wish to join the litigation as individuals.” *Id.* “[P]reliminary certification is
10 ‘neither necessary nor sufficient for the existence of a [collective] action.’” *Id.* (emphasis
11 omitted).

12 **III. DISCUSSION**

13 **A. Arbitration**

14 Plaintiffs first argue that the arbitration agreement is invalid because Defendants did not
15 receive mandatory government approval for the agreement. Arb. Opp. at 9–10.

16 As noted, H-2A employers must offer H-2A workers the same benefits, wages, and
17 working conditions that the employer is offering, intends to offer, or will provide to U.S. workers.
18 20 C.F.R. § 655.122(q); *Id.* § 653.501(b)–(c) (requiring complete terms submitted for State
19 Workforce Agency review). Job offers may not impose on U.S. workers any restrictions or
20 obligations not be imposed on H-2A workers. *Id.* § 655.122(a). The H-2A regulations also
21 provide that “[e]ach job qualification and requirement listed in the job offer must be bona fide and
22 consistent with the normal and accepted qualifications required by employers that do not use H-
23 2A workers in the same or comparable occupations and crops.” *Id.* § 655.122(b).

24 The Job Order is the document that contains the material terms and conditions of
25 employment, which is posted by the State Workforce Agency (“SWA”) on its inter-and intra-state
26 job clearance systems. *Id.* § 655.103. The potential H-2A Employer submits the job offer to both

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1 U.S. and H-2A workers and (therein) describes all the material terms and conditions of
2 employment, including those relating to wages, working conditions, and other benefits. *Id.* This
3 offer must first be submitted to the DOL for approval. *Id.*

4 The Job Offer that Defendants submitted to the DOL did not include the arbitration
5 provision at issue. Plaintiffs argue that this prevents Defendants from asserting the arbitration
6 provision. The Court agrees.⁶

7 The arbitration agreement at issue was a “material term[] and condition[] of [Plaintiffs’]
8 employment.” By signing the arbitration agreement reprinted above, Plaintiffs forfeited certain
9 legal rights, including the right to a trial in a court of law and the right to participate in a class
10 action. Such forfeiture is undoubtedly “material.” Moreover, as demonstrated *by the terms of the*
11 *actual arbitration agreement*, arbitration was a term of employment. *See* Godoy Decl., Ex. A
12 (“[A]s a condition of employment, the employee agrees to this binding arbitration policy”);
13 *cf.* Arb. Mot. at 9 (“The agreement is not mandatory, but rather at the employee’s discretion
14 whether to accept or decline.”). Hence, pursuant to 20 C.F.R. § 655.103, Defendants had a legal
15 obligation to include the arbitration agreement in (1) the job offer provided to H-2A workers and
16 (2) the job order that was posted to the SWA website. Rather than complying with § 655.103(b)’s
17 requirements, Defendants executed a “side” arbitration agreement with Plaintiffs at the orientation.
18 This breached Defendants’ disclosure obligation.

19 “[I]f a statute prescribes the only method in which a valid contract can be made, a contract
20 that fails to follow that method is void.” *Duffens v. Valenti*, 74 Cal. Rptr. 3d 311, 327 (Ct. App.
21 2008). Here, the relevant regulation states that Defendants had to include all material terms of
22 employment in its job offer. Defendants failed to do this. For that reason, the “side” arbitration
23 agreement is void. *See* Cal. Civ. Code § 1667(1) (stating that an unlawful contract is one that is
24 “contrary to an express provision of law”). The arbitration agreement at issue is thus neither valid
25

26
27 ⁶ The Court thus does not reach Plaintiffs’ other invalidity arguments.

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1 nor enforceable and the Court **DENIES** Defendants’ motion to compel arbitration.⁷

2 **B. Collective Action Certification**

3 **1. Preliminary Certification**

4 As noted, the standard for FLSA certification is “lenient.” *Campbell*, 903 F.3d at 1109.
5 Workers may litigate jointly “if they (1) claim a violation of the FLSA,⁸ (2) are ‘similarly
6 situated,’ and (3) affirmatively opt in to the joint litigation, in writing.” *Id.* at 1100. Plaintiffs
7 “may proceed in a collective, to the extent they share a similar issue of law or fact material to the
8 disposition of their FLSA claims.” *Id.* at 1117. This standard is not particularly stringent as “the
9 FLSA not only imposes a lower bar than Rule 23, it imposes a bar lower in some sense even than
10 Rules 20 and 42, which set forth the relatively loose requirements for permissive joinder and
11 consolidation at trial.” *Id.* at 1112; *see also Senne v. Kan. City Royals Baseball Corp.*, 934 F.3d
12 918, 950 (9th Cir. 2019) (“[B]ecause the FLSA is a remedial statute, it must be interpreted
13 broadly.” (quotation marks and citation omitted)).

14 In this case, Plaintiffs have met the lenient standard for preliminary certification. Plaintiffs
15 have alleged, and the declarations in support of the motion reflect, that it was a common practice
16 for Defendant Rancho Nuevo to not compensate field workers for expenses incurred in getting H-
17 2A visas and for other compensable hours of labor. The factual support for these allegations are
18 Plaintiffs’ personal observations (as reflected in their declarations).

19 Defendants argue that (1) more evidence is required and (2) the proposed collective group
20 is not similarly situated. CA at 4–7. The Court disagrees. *Campbell* indicates that a lenient

21 _____
22 ⁷ While the Court does not reach Plaintiffs’ other arguments for invalidity, the Court does note that
23 this case is similar to *Martinez-Gonzalez v. Elkhorn Packing Co., LLC*, 2019 WL 5556593 (N.D.
24 Cal. Oct. 29, 2019). There, the court found, after a bench trial, that the arbitration agreement was
25 void based on economic duress and undue influence. Many facts in that case are similar here—the
26 migrants were not given the agreement before entering the United States, the migrants were not
27 advised about the implications of the agreement, the migrants were not given sufficient time to
28 review the agreement, and the agreement appeared to be a condition of employment. This is
concerning to the Court.

⁸ Defendants do not dispute that Plaintiffs have presented a plausible FLSA violation. Defendants
instead argue that Plaintiffs are not similarly situated with the proposed collective action group.
CA Opp. at 4.

1 standard is applied for preliminary certification. Plaintiffs’ declarations present credible
2 allegations of wage and hour violations. Defendants argue that more declarations are required
3 (and use questionable caselaw as support). Not so. After *Campbell*, it is clear that all Plaintiffs
4 must do is present plausible allegations that the violations were experienced by others. Plaintiffs
5 have met this “low” burden.

6 Defendants next argue that the proposed collective group is not similarly situated to
7 Plaintiffs. Plaintiffs seek to include two different job orders in the collective action group—one
8 group worked in Santa Barbara County and harvested for Eat Sweet and the other worked in San
9 Luis Obispo County and harvested for West Coast Berry. Plaintiffs did not travel with either the
10 Santa Barbara County group or the San Luis Obispo County group. However, Plaintiffs, the Santa
11 Barbara County group, and the San Luis Obispo County group worked for Rancho Nuevo, under
12 common employment circumstances, subject to H-2A job orders, with nearly identical
13 employment titles. *See* Dkt. 1-2. Indeed, Defendant Rancho Nuevo had standardized contracts
14 with its agricultural clients, which included a policy as to how Rancho Nuevo would “reimburse
15 inbound transportation and subsequent expenses.” *See* Ex. A, Dkt. 23-2. Those expenses are what
16 is at issue here—the location of the harvesting does not change the alleged FLSA violations.

17 Hence, while there are individual differences, these differences do not change the
18 allegation that Rancho Nuevo had a “common policy” or “common practice” of not compensating
19 its H-2A workers for (1) expenses incurred in getting H-2A visas, (2) meal periods, and (3) travel
20 time. That Plaintiffs and proposed collective action members worked at different locations, a
21 month apart, and for different growers is irrelevant. Because the allegations and Plaintiffs’
22 declarations indicate that Plaintiffs, and the proposed collective group, were employed by the
23 same entity, at around the same time, in the same job capacity, and subject to the same company-
24 wide policy, they are alike in material aspects of the litigation. Thus, Plaintiffs and the proposed
25 group share similar issues of law and fact and are similarly situated. *See Altamirano-Santiago v.*
26 *Better Produce, Inc.*, 2019 WL 3457325, at *3 (C.D. Cal. July 30, 2019). For this reason, the

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1 Court **GRANTS** Plaintiffs’ motion for preliminary certification.

2 **2. Notice**

3 Because preliminary certification is warranted, notice to the putative collective is proper.
4 The Parties have not yet met and conferred on how notice should be effectuated. Plaintiffs have,
5 however, provided the court with a proposed notice. Defendants oppose (1) the consent form’s
6 caption, (2) the statute of limitations included in the form, and (3) the inclusion of Plaintiffs’
7 counsel’s contact information. Defendant Rancho Nuevo also argues that it cannot post notices at
8 its workforce because it is a “farm labor contractor and does not own or operate worksites.” *CA*
9 *Opp.* at 9. Defendants further argue that notice should be done by a third-party administrator. *Id.*
10 at 11. The Court orders as follows:

- 11 1. Notice shall be sent by a third-party administrator. While Plaintiffs do not agree to this,
12 the Court finds it would be more appropriate for a third-party to distribute the notice.
13 Plaintiffs’ counsel has not explained why it would be preferable for them to oversee
14 distribution of notice. *See Lewis v. Wells Fargo & Co.*, 669 F. Supp. 2d 1124, 1128 (N.D.
15 Cal. 2009); *see also Prentice v. Fund for Pub. Interest Research, Inc.*, 2007 WL 2729187,
16 at *6 (N.D. Cal. Sept. 18, 2007) (“The Court agrees that using a third party is the best way
17 to ensure the neutrality and integrity of the opt-in process.”). Because Defendants seek the
18 third-party administrator, the Court finds it fair for the Parties to split the costs associated
19 with notice.
- 20 2. The Parties shall meet and confer with the third-party administrator to determine the best
21 means to effect notice. Direct mail shall be one form of notice, but the administrator
22 should consider other additional means of notice, including via cell phone (*e.g.*, text),
23 through an application (*e.g.*, WhatsApp), and through social media (*e.g.*, Facebook),
24 particularly because mail notice may not be effective for all members of the putative
25 collective, some of whom are in rural Mexico. *See Roes v. SFBSC Mgmt., LLC*, 944 F.3d
26 1035 (9th Cir. 2018). At this juncture, physically posting the notice at work-sites (*e.g.*,

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1 field locations or bathrooms) does not appear to be necessary, unless other means of notice
2 are not effective. In the interests of privacy, the Court also finds that at this time, there is
3 no need for Defendants to produce passport numbers. If that need changes, Plaintiffs may
4 inform the Court.

- 5 3. The notice shall implicate a three-year statute of limitations rather than a two-year statute
6 of limitations. It is difficult to prejudge willfulness at this early stage in the litigation. *See*
7 *Hernandez*, 2020 WL 1274908, at *3. This ruling does not preclude Defendants from
8 arguing that any collective should be subject to a two-year statute of limitations.
- 9 4. Plaintiffs seek five months to distribute notice to putative collective members. Defendant
10 argues that only three months are necessary. On balance, the Court finds that putative
11 collective members shall be given 4 months to opt in (particularly because some members
12 are in Mexico and there may be more than one round of notice if notice proves ineffective).
- 13 5. The notice shall not include a header referring to the Court, but the text of the notice may
14 indicate that the notice is being issued as part of a case pending before this Court.
- 15 6. The notice shall include contact information for both Plaintiffs' counsel and Defendants'
16 counsel. There must be clear language explaining that Plaintiffs' counsel seeks to
17 represent workers and defense counsel represents Rancho Nuevo and West Berry Farms.
18 However, Plaintiffs' counsel may not include language that solicits a purported party
19 plaintiff to contact counsel for "additional information."
- 20 7. Defendants argue that the scope of the putative collective class is vague as the language in
21 the notice is overbroad as to its scope. The Court agrees; the notice is vague as to what
22 claims are included in the collective and who is included in the collective. The Parties
23 shall meet and confer on this issue as they should now be able to reach an agreement.
- 24 8. Defendants also note that Plaintiffs failed to attach a Spanish translation of the proposed
25 notice. The Parties agree that any class notice will be provided in both Spanish and
26 English. The Parties shall meet and confer as to the adequacy of the English and Spanish

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notices.

9. Plaintiffs are only entitled to names and contact information for H-2A workers employed by Defendant Rancho Nuevo in 2018.

10. The notice need not contain detailed language informing a member about his or her obligations as a litigant (*e.g.*, to be subject to a deposition); however, the notice should contain some language notifying a member that he or she does have an obligation to participate in the case and provide relevant information. The Parties shall meet and confer on this issue.


The Parties shall meet and confer as required above and shall submit a joint proposed notice by **July 21, 2020**. If the parties are unable to agree on any specific issue and/or language, then, in a joint submission, the parties shall identify what the dispute is and then each party shall provide its position on the issue and/or proposed language.

IV. CONCLUSION

For the foregoing reasons, Defendants’ motion to compel arbitration is **DENIED** and Plaintiffs’ motion to certify a collective action certification is **GRANTED**.

IT IS SO ORDERED.

Dated: July 9, 2020


EDWARD J. DAVILA
United States District Judge