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9 Attorneys for Plaintiffs, JEREMIAH VILLARREAL,
10 and RICARDO GASCA, on behalf of themselves, all
11 others similarly situated, and on behalf of the general public.

12 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
13 **IN AND FOR THE COUNTY OF FRESNO**

14 JEREMIAH VILLARREAL and RICARDO
15 GASCA, on behalf of themselves, all others
16 similarly situated, and on behalf of the
17 general public,

18 Plaintiff,

19 v.

20 WILDWOOD EXPRESS; and DOES 1-100,
21 inclusive,

22 Defendants.

Case No. 18CECG00417

**NOTICE OF ENTRY OF ORDER
GRANTING PRELIMINARY
APPROVAL OF CLASS ACTION
SETTLEMENT**

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TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

NOTICE IS HEREBY GIVEN that on March 9, 2021, the Court issued an Order Granting Preliminary Approval of Class Action Settlement. A true and correct copy of the Court's Tentative Ruling dated March 5, 2021, which was uncontested and adopted as the order of the Court, is attached hereto as Exhibit 1.

Dated: March 9, 2021

MARA LAW FIRM, PC



David Mara, Esq.
Jill Vecchi, Esq.
Matthew Crawford, Esq.

Attorneys for Plaintiffs JEREMIAH VILLARREAL
and RICARDO GASCA, on behalf of themselves,
all others similarly situated, and on behalf of the
general public

Exhibit 1

(19)

Tentative Ruling

Re: **Villarreal v. Wildwood Express**
Superior Court Case No. 18CECG00417

Hearing Date: March 9, 2021 (Dept. 501)

Motion: by parties for class certification and preliminary approval of settlement

Tentative Ruling:

To grant and sign the order submitted, striking the first sentence of paragraph 4 and all of paragraph 13, with the understanding that the language in the settlement providing for an increased gross settlement amount (last paragraph of page 7) under specified circumstances controls over any language fixing the settlement amount at \$390,000.

The Final Settlement Approval hearing is set at 3:30 p.m. on July 8, 2021. Papers shall be filed no later than June 23, 2021.

Explanation:

1. Class Certification Standards

An agreement of the parties is not sufficient to establish a class for settlement purposes. There must be an independent assessment by a neutral court of evidence showing that a class action is proper. (*Luckey v. Superior Court* (2014) 228 Cal. App. 4th 81 (rev. denied); See also Newberg, Newberg on Class Actions (T.R. Westlaw, 2017) Section 7:3: "The parties' representation of an uncontested motion for class certification does not relieve the Court of the duty of determining whether certification is appropriate.")

The case so requiring is *Amchem Prods., Inc. v. Windsor* (1997) 521 U.S. 591, 620 ("Amchem"): "Confronted with a request for settlement-only class certification, a district court need not inquire whether the case, if tried, would present intractable management problems [citation omitted] for the proposal is that there will be no trial. But other specifications of the rule--those designed to protect absentees by blocking unwarranted or overbroad class definitions--demand undiluted, even heightened, attention in the settlement context."

"Class certification requires proof (1) of a sufficiently numerous, ascertainable class, (2) of a well-defined **community of interest**, and (3) that certification will provide substantial benefits to litigants and the courts, i.e., that proceeding as a class is superior to other methods. In turn, the **community of interest** requirement embodies three factors: (1) predominant common questions of law or fact; (2) class representatives with claims or defenses typical of the class; and (3) class representatives who can adequately represent the class."

(*In re Tobacco II Cases* (2009) 46 Cal. 4th 298, 313.)

Plaintiff bears the burden of establishing the propriety of class treatment with admissible evidence. (*Richmond v. Dart Industries, Inc.* (1981) 29 Cal. 3d 462, 470; *Lockhead Martin Corp. v. Superior Court* (2003) 29 Cal. 4th 1096, 1106; *Soderstedt v. CBIZ Southern California, LLC* (2011) 197 Cal. App. 4th 133, 144.) “As a general rule, if defendant's liability can be determined by facts common to all members of the class, a class will be certified even if the members must individually prove their damages.” (*Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal. 4th 1004, 1022.) Handbooks and manuals or other written evidence of employer policies are commonly used to determine employer practices, typicality, and possible predominant issues of fact and law. (*Moore v. Ulta Salon, Cosmetics & Fragrance, Inc.* (C.D. Cal. 2015) 311 F.R.D. 590, 595 and 603; *Clausnitzer v. Federal Exp. Corp.* (S.D. Fla. 2008) 248 F.R.D. 647, 649 and 656; *Butler v. DirectSAT USA, LLC* (D. Md. 2014) 47 F. Supp. 3d 300, 308; *Romulus v. CVS Pharmacy, Inc.* (D. Mass. 2017) 321 F.R.D. 464, 469; *Williams v. Sweet Home Healthcare, LLC* (E.D. Pa. 2018) 325 F.R.D. 113, 127.)

The filings for this motion provide the necessary admissible evidence in the form of verified discovery responses, deposition testimony and documents produced by defendants, as well as sworn statements by each class representative authenticating sample wage statement and drivers' logs from their own employment, and attesting to the circumstances under which they worked. There are ample materials showing defendant's policies on the issues raised by the pleadings, and the class is limited to employees who had the same job during a specific time span. The adequacy of counsel is also demonstrated.

2. Settlement

“When, as here, a class settlement is negotiated prior to formal class certification, there is an increased risk that the named plaintiffs and class counsel will breach the fiduciary obligations they owe to the absent class members. As a result, such agreements must withstand an even higher level of scrutiny for evidence of collusion or other conflicts of interest than is ordinarily required under Rule 23(e) before securing the court's approval as fair.” (*Koby v. ARS National Services, Inc.* (9th Cir. 2017) 846 F. 3d 1071, 1079.) See also *Kullar v. Foot Locker Retail, Inc.*, *supra*, 168 Cal. App. 4th 116, 129:

“[I]n the final analysis it is the Court that bears the responsibility to ensure that the recovery represents a reasonable compromise, given the magnitude and apparent merit of the claims being released, discounted by the risks and expenses of attempting to establish and collect on those claims by pursuing litigation. The court has a fiduciary responsibility as guardians of the rights of the absentee class members when deciding whether to approve a settlement agreement . . . The courts are supposed to be the guardians of the class.”

“[T]o protect the interests of absent class members, the court must independently and objectively analyze the evidence and circumstances before it in order to determine whether the settlement is in the best interests of those whose claims will be extinguished . . . [therefore] the factual record must be before the . . . court must be sufficiently developed.” (*Id.* at 130.) “Factors that the trial court should consider in evaluating the reasonableness of a class action settlement agreement include the strength of plaintiffs' case, the risk, expense, complexity and likely duration of further litigation, the risk of maintaining class action status through trial, the amount offered in settlement, the extent of discovery completed and stage of the proceedings,

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13 **IN AND FOR THE COUNTY OF FRESNO**

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15 RICARDO GASCA, on behalf of
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18 Plaintiff,

19 v.

20 WILDWOOD EXPRESS; and DOES 1-
21 100;

22 Defendants.

Case No. 18CECG00417

Proof of Service

Complaint Filed: Jan. 13, 2017
Trial Date: None Set

1 *Case Name:* **Jeremiah Villarreal & Ricardo Gasca v. Wildwood Express**
2 *Court:* **Fresno Superior Court**
3 *Case Number:* **18CECG00417**
4 *LWDA Number:* **LWDA-CM-694123-19**

5 **PROOF OF SERVICE**

6 STATE OF CALIFORNIA, COUNTY OF SAN DIEGO

7 I am employed in the County of: San Diego, State of California.

8 I am over the age of 18 and not a party to the within action; my business address is:
9 2650 Camino Del Rio N., Suite 205, San Diego, CA 92108

10 On March 9, 2021, I served the foregoing document(s) described as:

11 **NOTICE OF ENTRY OF ORDER GRANTING PRELIMINARY APPROVAL OF**
12 **CLASS ACTION SETTLEMENT**


13 On interested parties in this action addressed as follows:

14 Michelle R. Ferber
15 Johnathan R Babione
16 **Ferber Law, PC**
17 2603 Camino Ramon, Suite 385
18 San Ramon, CA 94583

19 **[XX] (BY UNITED STATES MAIL)** On March 9, 2021, I enclosed the documents in a sealed
20 envelope or package addressed to the persons at the addresses named above and
21 deposited the sealed envelope with the United States Postal Service, with the postage
22 fully prepaid.

23 **[XX] (DECLARATION)** I declare under penalty of perjury under the laws of the State of
24 California that the above is true and correct.

25 Dated: March 9, 2021

26 
27 Mathew Adame