

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Daniel J. Brown (State Bar #307604)
dbrown@stansburybrownlaw.com
STANSBURY BROWN LAW
2610 1/2 Abbot Kinney Blvd.
Venice, California 90291
Tel. (323) 204-3124

Attorneys for Plaintiff

FILED
TULARE COUNTY SUPERIOR COURT
VISALIA DIVISION

NOV 29 2021
STEPHANIE AMERSON, CLERK
BY: _____

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF TULARE**

MANUEL ALBERTO ALVINO, as an
individual and on behalf of all others similarly
situated,

Plaintiff,

vs.

AGUAYO CONTRACTING, INC., a California
corporation; COSTAMAGNA FARMS, LLC, a
California limited liability company; and DOES 1
through 100,

Defendants.

Case No.: VCU281300

*[Assigned for all purposes to the Hon.
David C. Mathias, Dept. 01]*

**[PROPOSED] FINAL ORDER OF
APPROVAL OF CLASS ACTION
SETTLEMENT AND FINAL
JUDGEMENT**

Date: November 18, 2021
Time: 8:30 a.m.
Dept.: 01

Complaint Filed: November 29, 2019
Trial Date: None Set

35

[Handwritten Signature]
STEPHANIE CAMERON, CLERK

RECEIVED
TULARE COUNTY SUPERIOR COURT
VISALIA DIVISION
OCT 26 2021

1 This matter came on regularly for hearing before this Court on November 18, 2021, at
2 8:30 a.m. pursuant to California Rule of Court 3.769 and this Court's July 22, 2021 Order
3 Granting Preliminary Approval of Settlement ("Preliminary Approval Order"). Having
4 considered the Parties' Stipulation of Settlement (the "Settlement" or "Settlement Agreement")
5 attached as Exhibit B to the Supplemental Declaration of Daniel J. Brown In Support of Plaintiff's
6 Motion for Preliminary Approval of Settlement, filed on June 15, 2021, and the submissions of
7 counsel, and recognizing the sharply disputed factual and legal issues involved in this case, the
8 risks of further prosecution and the benefits to be received by the Class pursuant to the Settlement,
9 the Court hereby makes a final ruling that the proposed Settlement is fair, reasonable, and
10 adequate, and is the product of good faith, arm's-length negotiations between the Parties.

11 Unless otherwise indicated, all terms used in this Order shall have the same meaning as
12 that assigned to them in the Settlement.

13 Good cause appearing thereof, the Court hereby GRANTS Plaintiff's Motion for Final
14 Approval of Class Action Settlement and ORDERS as follows:

15 1. The conditional class certification contained in the Preliminary Approval Order is
16 hereby made final, and the Court thus certifies, for purposes of the Settlement only, a Settlement
17 Class consisting of:

18 All of Defendant Aguayo Contracting, Inc.'s current and former non-exempt
19 employees in California who were subject to the requirements of Wage Order 14
20 and worked at least one shift performing work for Defendants Costamagna Farms,
21 LLC and/or Costamagna Farms 1, and/or E & C Farms, LLC at any time during
22 the period of November 29, 2015, to April 19, 2021.

23 2. Plaintiff Manuel Alberto Alvino is hereby confirmed as Class Representative, and
24 Daniel J. Brown of Stansbury Brown Law is hereby confirmed as Class Counsel.

25 3. Notice was provided to the Settlement Class as set forth in the Settlement, which
26 was preliminarily approved by the Court on July 22, 2021, and the notice process has been
27 completed in conformity with the Court's Order. The Court finds that said notice was the best
28 notice practicable under the circumstances. The Class Notice provided due and adequate notice
of the proceedings and matters set forth herein, informed Class Members of their rights, and fully

1 satisfied the requirements of California Code of Civil Procedure § 1781(e), California Rule of
2 Court 3,769, and due process.

3 4. The Court finds that no Class Member knowingly objected to the Settlement, only
4 one Class Member opted-out of the Settlement, and that the 99.94% participation rate in the
5 Settlement supports final approval. The one individual who opted out is: Erasmo Gutierrez
6 Ramirez.

7 5. The Court hereby approves the settlement as set forth in the Settlement as fair,
8 reasonable, and adequate, and directs the Parties to effectuate the Settlement according to its
9 terms.

10 6. For purposes of settlement only, the Court finds that (a) the members of the
11 Settlement Class are ascertainable and so numerous that joinder of all members is impracticable;
12 (b) there are questions of law or fact common to the Settlement Class, and there is a well-defined
13 community of interest among members of the Settlement Class with respect to the subject matter
14 of the litigation; (c) the claims of the Class Representative are typical of the claims of the members
15 of the Settlement Class; (d) the Class Representative has fairly and adequately protected the
16 interests of the Class Members; (e) a class action is superior to other available methods for an
17 efficient adjudication of this controversy; and (f) Class Counsel are qualified to serve as counsel
18 for the Class Representative and the Settlement Class.

19 7. The Court finds that given the absence of objections, and objections being a
20 prerequisite to appeal, that this Order and Judgment shall be considered final as of the date of
21 notice of entry.

22 8. The Court orders that the Maximum Settlement Amount of One Hundred Thirty
23 Thousand Dollars and Zero Cents (\$400,000.00) shall be deposited with the Settlement
24 Administrator, ILYM Group, Inc. ("ILYM"), as provided in the Settlement.

25 9. Any Settlement funds that remain uncashed after 180 days after they are mailed
26 shall be delivered to the Boys & Girls Club of Tulare County, the designated *cy pres* recipient.

27 10. The Court finds that the Settlement Awards, as provided for in the Settlement, are
28

1 fair, reasonable, and adequate, and orders the Settlement Administrator to distribute the Individual
2 Settlement Awards in conformity with the terms of the Settlement. The Court further orders that
3 if any of the Settlement Class Members are Defendants' current employees and the Settlement
4 Award mailed to those current employees is returned to the Settlement Administrator as being
5 undeliverable, and the Settlement Administrator is unable to locate a valid mailing address, the
6 Settlement Administrator shall arrange with Defendant to have those Settlement Awards
7 delivered to the employees at their place of employment.

8 11. The Court finds that an Enhancement Payment in the amount of \$5,000.00 for
9 Plaintiff Manuel Alberto Alvino is appropriate for his risks undertaken and service to the
10 Settlement Class. The Court finds that this payment is fair, reasonable, and adequate, and orders
11 that the Settlement Administrator make this payment in conformity with the terms of the
12 Settlement.

13 12. The Court finds that attorneys' fees in the amount of \$133,200.00, and actual
14 litigation costs of \$7,046.27 for Class Counsel, are fair, reasonable, and adequate, and orders that
15 the Settlement Administrator distribute these payments to Class Counsel in conformity with the
16 terms of the Settlement.

17 13. The Court finds that a payment to the Labor & Workforce Development Agency
18 ("LWDA") in the amount of \$7,500.00 for the LWDA's share of civil penalties under the Labor
19 Code Private Attorneys General Act is fair, reasonable, and adequate, and orders that the
20 Settlement Administrator make this payment in conformity with the terms of the Settlement.

21 14. The Court orders that the Settlement Administrator shall be paid \$20,865.00 from
22 the Maximum Settlement Amount for all of its work done and to be done until the completion of
23 this matter, and finds that sum appropriate.

24 15. The Court finds and determines that upon satisfaction of all obligations under the
25 Settlement and this Order, all Settlement Class Members will be bound by the Settlement and will
26 have released the Released Claims as set forth in the Settlement.

27 16. Settlement is not an admission by Defendants, nor is this Order and Final
28

1 Judgment a finding of the validity of any allegations or of any wrongdoing by Defendants.
2 Neither this Order and Final Judgment, the Settlement, nor any document referred to herein, nor
3 any action taken to carry out the Settlement, shall be construed or deemed an admission of
4 liability, culpability, or wrongdoing on the part of Defendants.

5 17. As of the date of this Order and Final Judgment, Plaintiff and every member of
6 the Settlement Class (except for Erasmo Gutierrez Ramirez, who timely submitted a Request for
7 Exclusion) shall be deemed to have released and discharged Defendants Aguayo Contracting,
8 Inc., Costamagna Farms, LLC, Costamagna Farms 1, E & C Farms, LLC, and, each of their
9 respective past and present officers, directors, members, shareholders, trustees, owners,
10 principals, employees, agents, representatives, heirs, successors, assigns, and each of their
11 respective successors and predecessors in interest and attorneys (collectively the "Released
12 Parties") for all claims that were pled or could have been pled based on the factual allegations in
13 the FAC, including, but not limited to: (a) minimum wage violations (b) failure to pay all
14 overtime wages; (c) meal period violations; (d) rest period violations; (e) failure to compensate
15 piece-rate employees for non-productive time and rest period time; (f) wage statement violations;
16 (g) failure to timely pay wages following the end of each workweek; (h) waiting time penalties;
17 (i) all claims arising out of unfair business practices under Business & Professions Code § 17200,
18 *et seq.* that could have been premised on the claims that were pled or could have been pled based
19 on the factual allegations in the FAC; and (j) all claims for civil penalties under the PAGA, that
20 could have been premised on the claims that were pled or could have been based on the factual
21 allegations in the FAC (collectively, the "Released Claims"). The period of the Release shall
22 extend to the limits of the Class Period, which is November 29, 2015, through April 19, 2021.

23 Plaintiff and all Settlement Class Members who were employed by Defendant in
24 California at any time from November 29, 2015 through April 19, 2021, will not have the
25 opportunity to opt out or object to the PAGA Amount, as described in section 3(B)(5) of the
26 Settlement, and/or release of PAGA claims set forth in the Settlement. Notwithstanding the
27 paragraphs above nor anything else in the Settlement, Plaintiff's waiver and release in the
28

1 Settlement does not apply to (i) those rights that as a matter of law cannot be waived, including,
2 but not limited to, workers' compensation claims, pending or otherwise; and (ii) rights or claims
3 arising out of this Settlement.

4 18. The releases identified herein shall be null and void should the Settlement not be
5 fully funded.

6 19. This document shall constitute a final judgment pursuant to California Rule of
7 Court 3.769(h) which provides, "If the court approves the settlement agreement after the final
8 approval hearing, the court must make and enter judgment. The judgment must include a
9 provision for the retention of the court's jurisdiction over the parties to enforce the terms of the
10 judgment. The court may not enter an order dismissing the action at the same time as, or after,
11 entry of judgment." Pursuant to section 664.6 of the California Code of Civil Procedure, the
12 Court will retain jurisdiction to enforce the Settlement and this Final Order and Judgment.

13 20. The Settlement Class Members will be provided notice with their Individual
14 Settlement Awards that the Final Order and Judgment is posted on the landing page of the
15 Settlement Administrator's website. A copy of the Final Order and Judgment entered by the Court
16 shall be posted by the Settlement Administrator on the Settlement Administrator's website on the
17 landing page at (<https://ilymgroup.com/>).

18 21. The Settlement Administrator shall file a declaration regarding the disbursement
19 of Settlement funds on or before July 18, 2023, and the date for the Final Report (Nonappearance)
20 Hearing shall be set for July 25, 2023. The declaration shall state the date the checks were mailed,
21 the total number of checks mailed to Settlement Class Members, the average amount of those
22 checks, the number of checks that remain uncashed, the total value of those uncashed checks, the
23 average amount of the uncashed checks, and the nature and date of the disposition of those
24 unclaimed funds.

25 ///

26 ///

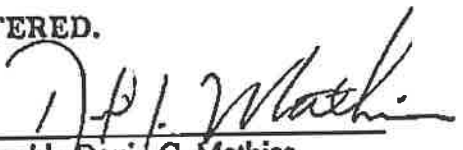
27 ///

28

Per 11/18/21 adopted Tentative Ruling.

1 IT IS SO ORDERED. JUDGMENT IS HEREBY ENTERED.

2 Dated: 11/29, 2021


Honorable David C. Mathias
Judge of the Superior Court

3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28