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04/18/2024
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JULIENNE DE SANTOS, DEPUTY

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FILED
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COUNTY OF KINGS
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JULIENNE DE SANTOS, DEPUTY

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF KINGS

ANDRE SERNA, BRIAN FRANCO,
VINCENT DUARTE, and VICTOR
NARANJO, individuals, on behalf of
themselves and on behalf of all persons
similarly situated,

Plaintiffs,

v.

NICHOLS PISTACHIO, a California
Corporation; and DOES 1 through 50,
inclusive,

Defendants.

CASE NO.: 21C-0080

~~PROPOSED~~ PRELIMINARY
APPROVAL ORDER

Hearing Date: April 23, 2024 _____
Hearing Time: 8:15 a.m.

Judge: Hon. Valeria Chrissakis
Dept.: 8

Action Filed: March 18, 2021
Trial Date: Not set

1 This matter, having come before the Honorable Valerie Chrissakis of the Superior Court of
2 the State of California, in and for the County Kings, on April 23, 2024, for the motion by Plaintiffs
3 Andre Serna, Brian Franco, Victor Naranjo, and Vincente Duarte ("Plaintiffs") for preliminary
4 approval of the class settlement with Defendant Nichols Pistachio ("Defendant"). The Court,
5 having considered the briefs, argument of counsel and all matters presented to the Court and good
6 cause appearing, hereby GRANTS Plaintiffs' Motion for Preliminary Approval of Class Action
7 Settlement.

8 **IT IS HEREBY ORDERED:**

9 1. The Court preliminarily approves the Class Action and PAGA Settlement
10 Agreement ("Agreement") submitted as Exhibit #1 to the Declaration of Kyle Nordrehaug in
11 Support of Plaintiffs' Motion for Preliminary Approval of Class Action Settlement. This is based
12 on the Court's determination that the Settlement set forth in the Agreement is within the range of
13 possible final approval, pursuant to the provisions of section 382 of the California Code of Civil
14 Procedure and California Rules of Court, rule 3.769.

15 2. This Order incorporates by reference the definitions in the Agreement, and all
16 terms defined therein shall have the same meaning in this Order as set forth in the Agreement.

17 3. The Gross Settlement Amount is One Million Two Hundred Fifty Thousand
18 Dollars (\$1,250,000). It appears to the Court on a preliminary basis that the settlement amount
19 and terms are fair, adequate and reasonable as to all potential Class Members when balanced
20 against the probable outcome of further litigation and the significant risks relating to certification,
21 liability and damages issues. It further appears that investigation and research have been
22 conducted such that counsel for the Parties are able to reasonably evaluate their respective
23 positions. It further appears to the Court that settlement at this time will avoid substantial
24 additional costs by all Parties, as well as avoid the delay and risks that would be presented by the
25 further prosecution of the Action. It further appears that the Agreement has been reached as the
26 result of serious and non-collusive, arms-length negotiations. The Court therefore preliminarily
27 finds that the Settlement is fair, adequate, and reasonable when balanced against the probable
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1 outcome of further litigation and the significant risks relating to certification, liability, and
2 damages issues.

3 4. The Agreement specifies for an attorneys' fees award not to exceed one-third of the
4 Gross Settlement Amount, an award of litigation expenses incurred, not to exceed \$55,000, and
5 proposed Class Representative Service Payments to the Plaintiffs in an amount not to exceed
6 \$12,500 each. The Court will not approve the amount of attorneys' fees and costs, nor the amount
7 of any service award, until the Final Approval Hearing. Plaintiffs will be required to present
8 evidence supporting these requests prior to final approval.

9 5. The Court recognizes that Plaintiffs and Defendants stipulate and agree to
10 certification of a class for settlement purposes only. This stipulation will not be deemed
11 admissible in this or any other proceeding should this Settlement not become final. For settlement
12 purposes only, the Court conditionally certifies the following Class: "all individuals who are or
13 previously were employed by Defendant in the State of California and who were classified as non-
14 exempt employees at any time during the Class Period." The Class Period is from March 18, 2017
15 to April 23, 2024.

16 6. The Court concludes that, for settlement purposes only, the Class meets the
17 requirements for certification under section 382 of the California Code of Civil Procedure in that:
18 (a) the Class is ascertainable and so numerous that joinder of all members of the Class is
19 impracticable; (b) common questions of law and fact predominate, and there is a well-defined
20 community of interest amongst the members of the Class with respect to the subject matter of the
21 litigation; (c) the claims of the Plaintiffs are typical of the claims of the members of the Class;
22 (d) the Plaintiffs can fairly and adequately protect the interests of the members of the Class; (e) a
23 class action is superior to other available methods for the efficient resolution of this controversy;
24 and (f) Plaintiffs' counsel is qualified to act as Class Counsel and the Plaintiffs are adequate
25 representatives of the Class.

26 7. The Court provisionally appoints Plaintiffs Andre Serna, Brian Franco, Victor
27 Naranjo, and Vincente Duarte as the representatives of the Class. The Court provisionally
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1 appoints Norman B. Blumenthal, Kyle R. Nordrehaug, and Aparajit Bhowmik of Blumenthal
2 Nordrehaug Bhowmik De Blouw LLP as Class Counsel for the Class.

3 8. The Court hereby approves, as to form and content, the Court Approved Notice of
4 Proposed Settlement of Class Action and Hearing Date for Final Court Approval ("Class Notice"),
5 as revised and submitted as Exhibit A to the Agreement. The Court finds that the Class Notice
6 appears to fully and accurately inform the Class of all material elements of the proposed
7 Settlement, of the Class Members' right to be excluded from the Class by submitting a written opt-
8 out request, and of each Class Member's right and opportunity to object to the Settlement. The
9 Court further finds that the distribution of the Class Notice substantially in the manner and form
10 set forth in the Agreement and this Order meets the requirements of due process, is the best notice
11 practicable under the circumstances, and shall constitute due and sufficient notice to all persons
12 entitled thereto. The Court orders the mailing of the Class Notice by first class mail, pursuant to
13 the terms set forth in the Agreement. If a Class Notice Packet is returned because of an incorrect
14 address, the Administrator will promptly search for a more current address for the Class Member
15 and re-mail the Class Notice Packet to the Class Member no later than seven (7) business days
16 after the receipt of the undelivered Class Notice.

17 9. The Court hereby appoints Apex Class Action as Administrator. No later than
18 fifteen (15) calendar days after issuance of this Order, Defendant shall provide the Administrator
19 with an electronic spreadsheet with the Class Data. This information will otherwise remain
20 confidential and will not be disclosed to anyone, except as required to applicable taxing
21 authorities, to carry out the procedures in the Agreement, or pursuant to Defendant's express
22 written authorization or by order of the Court. The Administrator will perform address updates
23 and verifications as necessary prior to the mailing of the Class Notice. Using best efforts to mail it
24 as soon as possible, and in no event later than fourteen (14) calendar days after receiving the Class
25 Data, the Administrator will mail the Class Notice to all Class Members via first-class U.S. Mail.

26 10. The Court hereby preliminarily approves the proposed procedure for exclusion
27 from the Settlement. Any Class Member may individually choose to opt-out of and be excluded
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1 from the Class as provided in the Class Notice by following the instructions set forth in the Class
2 Notice. All requests for exclusion must be sent to the Administrator and postmarked by no later
3 than the Response Deadline, which is sixty (60) calendar days after the Administrator initially
4 mails the Class Notice Packets to the Class Members. If the Class Notice Packet is re-mailed, this
5 Response Deadline will be extended an additional fourteen (14) calendar days. Any person who
6 chooses to opt-out of and be excluded from the Class will not be entitled to any recovery under the
7 Settlement and will not be bound by the Settlement or have any right to object, appeal or comment
8 thereon. Aggrieved Employees shall be sent their Individual PAGA Payment and will be subject to
9 the release of the Released PAGA Claims regardless of whether they opt-out of the Class. Class
10 Members who have not requested exclusion shall be bound by all determinations of the Court, the
11 Agreement, and the Judgment. A request for exclusion applies only to the individual submitting
12 the request for exclusion, and any attempt to effect an opt-out on behalf of any other individual or
13 individuals (including a group, class, or subclass of individuals) is not permitted and will be
14 deemed invalid.

15 11. Any Class Member who has not opted-out may appear at the Final Approval
16 Hearing and may object or express the Member's views regarding the Settlement and may present
17 evidence and file briefs or other papers that may be proper and relevant to the issues to be heard
18 and determined by the Court as provided in the Class Notice. Class Members will have until the
19 Response Deadline set forth in the Class Notice to submit their written objections to the
20 Administrator in accordance with the instructions in the Class Notice. If the Class Notice is re-
21 mailed, the Response Deadline will be extended an additional fourteen (14) calendar days.
22 Alternatively, Class Members may appear at the Final Approval Hearing to make an oral
23 objection.

24 12. A Final Approval Hearing shall be held before this Court on September 10, 2024 at
25 8:15 a.m. in Department 8 of the Kings County Superior Court to determine all necessary matters
26 concerning the Settlement, including: whether the proposed settlement of the Action on the terms
27 and conditions provided for in the Agreement is fair, adequate and reasonable and should be
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1 finally approved by the Court; whether the Final Approval Order and Judgment should be entered
2 herein; whether the plan of allocation contained in the Agreement should be approved as fair,
3 adequate and reasonable to the Class Members; and to finally approve attorneys' fees and costs,
4 the service awards, and the expenses of the Administrator. The motion for final approval and for
5 attorneys' fees, costs and service awards shall be filed with the Court and served on all counsel no
6 later than sixteen (16) court days before the hearing and shall be heard at the Final Approval
7 Hearing.

8 13. Neither the Settlement nor any exhibit, document, or instrument delivered
9 thereunder shall be construed as a concession or admission by Defendant in any way that the
10 claims asserted have any merit or that this Action was properly brought as a class or representative
11 action, and shall not be used as evidence of, or used against Defendant as, an admission or
12 indication in any way, including with respect to any claim of any liability, wrongdoing, fault or
13 omission by Defendant or with respect to the truth of any allegation asserted by any person.
14 Whether or not the Settlement is finally approved, neither the Agreement, nor any exhibit,
15 document, statement, proceeding or conduct related to the Settlement or Agreement, nor any
16 reports or accounts thereof, shall in any event be construed as, offered or admitted in evidence as,
17 received as or deemed to be evidence for any purpose adverse to the Defendant, including, but not
18 limited to, evidence of a presumption, concession, indication or admission by Defendant of any
19 liability, fault, wrongdoing, omission, concession or damage.

20 14. In the event the Settlement does not become effective in accordance with the terms
21 of the Agreement, or the Settlement is not finally approved, or is terminated, canceled or fails to
22 become effective for any reason, this Order shall be rendered null and void and shall be vacated,
23 and the Parties shall revert to their respective positions as of before entering into the Agreement,
24 and expressly reserve their respective rights regarding the prosecution and defense of this Action,
25 including all available defenses and affirmative defenses, and arguments that any claim in the
26 Action could not be certified as a class action and/or managed as a representative action. In such
27 an event, the Court's orders regarding the Settlement, including this Order, shall not be used or
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1 referred to in litigation for any purpose. Nothing in this Paragraph 14 is intended to alter the terms
2 of the Agreement with respect to the effect of the Agreement if the Settlement it is not approved.

3 15. The Court reserves the right to adjourn or continue the date of the Final Approval
4 Hearing and all dates provided for in the Agreement without further notice to Class Members and
5 retains jurisdiction to consider all further applications arising out of or connected with the
6 proposed Settlement.

7 16. The Action is stayed and all trial and related pre-trial dates are vacated, subject to
8 further orders of the Court at the Final Approval Hearing.

9 **IT IS SO ORDERED.**

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11 Dated: 4/23/24


12 HON. VALERIE CHRISSAKIS
13 JUDGE, SUPERIOR COURT OF CALIFORNIA
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IN THE SUPERIOR COURT OF CALIFORNIA
COUNTY OF KINGS
1640 Kings County Drive
Hanford, CA 93230

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APR 24 2024

NOCONA SOBOLESKI, CLERK OF COURT
SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF KINGS

DEPUTY


JULIENNE DESANTOS

Andre Serna,
Plaintiff / Petitioner,
vs.
**Nichols Pistachio, a California
Corporation,**
Defendant / Respondent.

Case No. 21C-0080

Certificate of Mailing

I hereby declare under penalty of perjury that I am employed by the Kings County Superior Court, over the age of 18 and not a party to this action.

On April 24, 2024, I served the following, Preliminary Approval Order, by enclosing a true copy in a sealed envelope, and deposited at my place of business for collection and mailing with United States Mail at Hanford, California, following our ordinary business practices with which I am readily familiar addressed as follows:

Norman B. Blumenthal
Blumenthal Nordrehaug Bhowmik De Blouw
LLP
2255 Calle Clara
La Jolla, CA 92037

Date: April 24, 2024

Nocona Soboleski, Court Executive Officer

By: **JULIENNE DESANTOS**

Deputy Court Clerk, Julienne De Santos