

<b>SUPERIOR COURT OF CALIFORNIA - COUNTY OF FRESNO Civil Department - Non-Limited</b>	Entered by:
TITLE OF CASE: <b>Fidelmar Diaz, JR vs. Nale Farms / COMPLEX / CLASS ACTION</b>	
<b>LAW AND MOTION MINUTE ORDER</b>	Case Number: <b>23CECG03930</b>

Hearing Date: **October 10, 2024**                      Hearing Type: **Motion - Prelim Approval Class Settlement**  
Department: **403**    Judge: **Jon M Skiles**  
Court Clerk: **J. Xiong**                                      Reporter: **Not Reported**

<b>Appearing Parties:</b>	
Plaintiff: <b>Not Present</b>	Defendant: <b>Not Present</b>
Counsel:	Counsel:

Off Calendar

**Set for March 18, 2025 at 3:30 PM in Department 403 for Motion – Final Approval Class Settlement.**

Submitted on points and authorities with/without argument.     Matter is argued and submitted.

Upon filing of points and authorities.

Motion is granted     in part and denied in part.     Motion is denied     with/without prejudice.

Taken under advisement

Demurrer     overruled     sustained with \_\_\_ days to     answer     amend

**Tentative ruling becomes the order of the court. No further order is necessary.**

**Pursuant to CRC 3.1312(a) and CCP section 1019.5(a), no further order is necessary. The minute order adopting the tentative ruling serves as the order of the court.**

**Service by the clerk will constitute notice of the order.**

**See attached copy of the Tentative Ruling.**

Judgment debtor \_\_\_ sworn and examined.

Judgment debtor \_\_\_ failed to appear.  
Bench warrant issued in the amount of \$ \_\_\_

**JUDGMENT:**

Money damages     Default     Other \_\_\_ entered in the amount of:  
Principal \$\_\_\_ Interest \$\_\_\_ Costs \$\_\_\_ Attorney fees \$\_\_\_ Total \$\_\_\_  
 Claim of exemption     granted     denied. Court orders withholdings modified to \$\_\_\_ per \_\_\_

**FURTHER, COURT ORDERS:**

Monies held by levying officer to be     released to judgment creditor.     returned to judgment debtor.  
 \$\_\_\_ to be released to judgment creditor and balance returned to judgment debtor.  
 Levying Officer, County of \_\_\_, notified.     Writ to issue  
 Notice to be filed within 15 days.     Restitution of Premises  
 Other: \_\_\_

(37)

**Tentative Ruling**

Re: **Fidelmar Diaz, JR v. Nale Farms**  
Superior Court Case No. 23CECG03930

Hearing Date: October 10, 2024 (Dept. 403)

Motion: By Plaintiff for Preliminary Class Settlement Approval

**Tentative Ruling:**

To grant.

The motion for final approval and for an award of fees and costs will be heard on Tuesday, March 18, 2025 at 3:30 p.m. in Department 403. Papers for such motions need to be filed and served no later than February 19, 2025.

**Explanation:**

**1. Class Certification**

Settlements preceding class certification are scrutinized more carefully to make sure that absent class members' rights are adequately protected, although there is less scrutiny of manageability issues. (*Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 240; see *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1803, fn. 9.) The trial court has a "fiduciary responsibility" as the guardian of the absentee class members' rights to decide whether to approve a settlement of a class action. (*Luckey v. Superior Court* (2014) 228 Cal.App.4th 81, 95.)

A precertification settlement may stipulate that a defined class be conditionally certified for settlement purposes. The court may make an order approving or denying certification of a provisional settlement class after the preliminary settlement hearing. (Cal. Rules of Court, rule 3.769(d).) Before the court may approve the settlement, however, the settlement class must satisfy the normal prerequisites for a class action. (*Amchem Products, Inc. v. Windsor* (1997) 521 US 591, 625-627.)

"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.)

Plaintiffs bear the burden of establishing the propriety of class treatment with admissible evidence. (*Richmond v. Dart Industries, Inc.* (1981) 29 Cal.3d 462, 470 [trial court's ruling on certification supported by substantial evidence generally not disturbed

on appeal]; *Lockheed Martin Corp. v. Superior Court* (2003) 29 Cal.4th 1096, 1107-1108 [plaintiff's burden to produce substantial evidence].)

Plaintiff submits evidence of a class of 180 class members and PAGA group members who are employees identifiable through defendants' business and personnel records, and in fact they have already been identified. (Brown Decl., ¶ 12.) The numerosity and ascertainability criteria are satisfied.

Under the community of interest requirement, the class representative must be able to represent the class adequately. (*Caro v. Procter & Gamble* (1993) 18 Cal.App.4th 644, 669.) "[I]t has never been the law in California that the class representative must have identical interests with the class members . . . The focus of the typicality requirement entails inquiry as to whether the plaintiff's individual circumstances are markedly different or whether the legal theory upon which the claims are based differ from that upon which the claims of the other class members will be based." (*Classen v. Weller* (1983) 145 Cal.App.3d 27, 46.)

Usually, in wage and hour class actions or PAGA class claims, the distinctive feature that permits class certification is that the employees have the same job title or perform similar jobs, and the employer treats all in that discrete group in the same allegedly unlawful fashion. In *Brinker Restaurant v. Superior Court* (2012) 53 Cal.4th 1004, 1017, "no evidence of common policies or means of proof was supplied, and the trial court therefore erred in certifying a subclass."

Common questions in this class include whether defendants failed to timely pay all wages owed for all hours worked, their meal period policies, and their failure to reimburse business expenses. Plaintiff's counsel evaluated these claims by reviewing common evidence such as defendants' uniform employment policy and procedure documents. The motion is supported by a declaration from plaintiff showing that each cause of action is premised on the application of policies applied to non-exempt hourly employees causing plaintiff to experience Labor Code violations, including missed meal periods, the failure to be paid all wages, failure to receive accurate wage statements, etc.

The adequacy of representation component of the community of interest requirement for class certification comes into play when the party opposing certification brings forth evidence indicating widespread antagonism to the class suit. "The adequacy inquiry ... serves to uncover conflicts of interest between named parties and the class they seek to represent.' [Citation.] '... To assure "adequate" representation, the class representative's personal claim must not be inconsistent with the claims of other members of the class. [Citation.]' [Citation.]" (*J.P. Morgan & Co., Inc. v. Superior Court* (2003) 113 Cal.App.4th 195, 212.) Here, plaintiff has provided his declaration indicating he performed general farm labor and that other class members were likewise performing general farm labor. (Diaz Decl., ¶ 2.)

"[T]he adequacy inquiry should focus on the abilities of the class representative's counsel and the existence of conflicts between the representative and other class members." (*Caro v. Procter & Gamble Co.* (1993) 18 Cal.App.4th 644, 669.) Counsel has

substantial class action experience, and the declaration from plaintiff does not indicate any conflicting interests with the class. (Brown Decl. ¶¶ 2-5; Diaz Decl., ¶¶ 2-9.)

The class may be certified for settlement purposes.

## **2. Settlement Approval**

"[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." (*Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 129.) "[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 p. 130.)

Plaintiff's counsel provides a valuation of the class claims, which arise from the application of four policies in the workplace that ultimately resulted in Labor Code violations: unpaid off-the-clock wages, failure to pay overtime rates, meal break violations, and failure to reimburse business expenses. The failure to pay those wages is the basis of the violations alleging non-compliant pay statements, untimely paychecks, and untimely final paychecks. Plaintiff initially estimated the claims to be worth approximately \$310,940. (Brown Decl., ¶ 29.) Plaintiff's counsel made estimates regarding the value of the claims by estimating the hours, shifts or class members for a violation-specific time period and applying the average hourly rate. The underlying information came from the data provided by defendant and the class representative. (*Id.* at ¶¶ 9-10.) An expert has reviewed the data and determined that the sampling size and methodology were appropriate and reliable for demonstrating damages for the class. (*Id.* at ¶ 10 and Ex. E.) There is a sufficient explanation to support the figures as calculated in Brown's declaration.

Counsel's analysis supports a finding that the risks, costs, and uncertainties of taking the case to trial weigh in favor of settling the action for \$204,000 as opposed to the potential maximum recovery of approximately \$310,940. (See Brown Decl., ¶¶ 14-29.) Plaintiff also offers evidence regarding the views and experience of counsel who states that he believes that the settlement is fair and reasonable based on his experience with class litigation. (Brown Decl., ¶¶ 2-6.) Plaintiff also points out that the settlement was reached after arm's length mediation, and that counsel conducted informal pre-mediation data production and engaged the services of an expert to assess the data. These factors weigh in favor of finding that the settlement is fair, adequate, and reasonable.



<p style="text-align: center;"><b>SUPERIOR COURT OF CALIFORNIA - COUNTY OF FRESNO</b>  Civil Department, Central Division  1130 "O" Street  Fresno, California 93724-0002  (559) 457-2000</p>	<p style="text-align: center;"><i>FOR COURT USE ONLY</i></p>
<p>TITLE OF CASE:  <b>Fidelmar Diaz, JR vs. Nale Farms / COMPLEX / CLASS ACTION</b></p>	
<p style="text-align: center;"><b>CLERK'S CERTIFICATE OF MAILING</b></p>	<p>CASE NUMBER:  <b>23CECG03930</b></p>

I certify that I am not a party to this cause and that a true copy of the:

**[Minute Order and Tentative Ruling]**

was placed in a sealed envelope and placed for collection and mailing on the date and at the place shown below following our ordinary business practice. I am readily familiar with this court's practice for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service with postage fully prepaid.

Place of mailing: **Fresno, California 93724-0002**

On Date: **10/11/2024**

Clerk, by \_\_\_\_\_



Deputy

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Clerk's Certificate of Mailing Additional Address Page Attached