

FILED

KERN COUNTY SUPERIOR COURT
05/03/2023

BY Urena, Veronica
DEPUTY

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7 *Attorneys for Plaintiff, Jorge Guzman Pimentel*

8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9 **FOR THE COUNTY OF KERN**

11 JORGE GUZMAN PIMENTEL, individually,
and on behalf of all others similarly situated,

12 *Plaintiff,*

13 vs.

14 ASP FARM SERVICES, LLC., a limited
15 liability company; and DOES 1 through 10,
inclusive,

16 *Defendants.*

Case No.: BCV-21-101285

CLASS AND REPRESENTATIVE ACTION

[Honorable J. Eric Bradshaw, Division J]

David Zulfa, vu

**~~PROPOSED~~ ORDER GRANTING
PLAINTIFF'S MOTION FOR
PRELIMINARY APPROVAL OF CLASS
AND PAGA ACTION SETTLEMENT**

*[Filed with Plaintiff's Notice of Motion and
Motion for Preliminary Approval, Declaration
of Kane Moon, and Declaration of Jorge
Guzman Pimentel]*

PRELIMINARY APPROVAL HEARING

Date: May 3, 2023

Time: 8:30 a.m.

Division: J

Complaint Filed: June 7, 2021

Trial Date: Not Set

1 The Court has before it the unopposed Motion for Preliminary Approval of Class and
2 PAGA Action Settlement (“Motion”) of Plaintiff Jorge Guzman Pimentel (“Plaintiff”). Having
3 reviewed the Notice of Motion, Motion, Declaration of Kane Moon, Declaration of Jorge
4 Guzman Pimentel, and Joint Stipulation of Class and PAGA Action Settlement (“Settlement”),
5 and good cause appearing, **THE COURT HEREBY ORDERS AS FOLLOWS:**

6 1. The Settlement, which is attached to the Declaration of Kane Moon in Support
7 of Plaintiff’s Motion for Preliminary Approval of Class and PAGA Action Settlement as
8 Exhibit 1, appears to be fair, adequate and reasonable, and therefore, meets the requirements
9 for preliminary approval. In particular, the Settlement appears to be fair and reasonable in
10 light of the good faith, non-collusive negotiations between the Parties, which resulted in the
11 Settlement; the significant informal discovery, analysis, investigation and research conducted
12 by the Parties, which enabled them to intelligently evaluate, litigate and mediate the alleged
13 claims; the probable outcome of further litigation relating to class certification, liability and
14 damages issues; the substantial costs, delay and risks of further litigation relating to the same;
15 and the risk of potential appeal.

16 2. The Settlement provides that Defendant will pay a Gross Settlement Amount of
17 Four Hundred Sixty-Five Thousand Five Hundred Thirty Dollars and Zero Cents
18 (\$465,530.00), which will cover: (a) Class Settlement Payments, which are to be paid from the
19 Net Settlement Amount; (b) the PAGA Allocation, which is Forty Thousand Dollars and Zero
20 Cents (\$40,000.00), with 75% allocated to the Labor and Workforce Development Agency
21 (i.e., \$30,000.00) and 25% allocated to the PAGA Employees (i.e., \$10,000.00); (c)
22 Settlement Administration Costs, which are estimated to be Six Thousand Four Hundred and
23 Fifty Dollars and Zero Cents (\$6,450.00) at this time; (d) Attorney’s Costs, which are not to
24 exceed Twenty-Five Thousand Dollars and Zero Cents (\$25,000.00); (e) Attorney’s Fees,
25 which are not to exceed One Hundred Fifty-Five Thousand One Hundred Seventy-Six Dollars
26 and Sixty-Seven Cents (\$155,176.67); and (f) the Service Payment, which is not to exceed Ten
27 Thousand Dollars and Zero Cents (\$10,000.00).

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1 3. The Class, which is defined as all current and former non-exempt employees of
2 Defendant in California at any time during the Class Period, is provisionally approved for
3 settlement purposes only. The Class is provisionally certified because it appears to meet the
4 following requirements for certification under California Code of Civil Procedure section 382:
5 (1) there is an ascertainable and numerous Class, such that joinder is impractical; (2) there is a
6 well-defined community of interest in the questions of law and fact involved, such that (a)
7 there are predominant questions of law and fact, (b) the Class Representative’s claims are
8 typical of the Class, and (c) the Class Representative and Class Counsel are adequate to
9 represent the Class; and (3) a class action is superior to other available methods for the fair
10 and efficient adjudication of the controversy. The Court notes that Class Members who do not
11 request exclusion from the Settlement may object thereto and raise their objections at the Final
12 Approval Hearing on the Settlement.

13 4. The PAGA Employee(s) or Aggrieved Employee(s), which are defined as all
14 current and former non-exempt employees of Defendant in California at any time during the
15 PAGA Period.

16 5. The Class Representative, the Class, each Class Member who has not submitted
17 a valid and timely request for exclusion as to all alleged claims other than the PAGA claim,
18 and each PAGA Employee, regardless of whether he or she has requested exclusion from the
19 Settlement of Class claims, will release claims in accordance with the terms of the Settlement
20 upon final approval by the Court of this Settlement and Defendant’s payment of all sums due
21 pursuant to this Settlement, and except as to such rights or claims as may be created by this
22 Settlement. With the exception of the Class Representative, who will be subject to a broader
23 release in accordance with the terms of the Settlement, the Settlement Class Members and
24 PAGA Employees will be subject to the following release terms:

- 25 a. **Released Parties.** “Released Parties” means Defendant and each of their
26 past, present, and future agents, employees, representatives, administrators,
27 officers, directors, members, shareholders, volunteers, attorneys,
28 accountants, insurers, receivers, advisors, consultants, partners,

1 partnerships, parents, divisions, owners, subsidiaries, affiliates or related
2 companies, assigns, successors, heirs, predecessors in interest, joint
3 venturers, trustees, investors, fiduciaries, and commonly controlled
4 corporations, as well as any individual or entity who or which could be
5 jointly liable with Defendant for any of the Released Claims, and all
6 persons or entities acting by, through, under, or in concert with any of
7 them, and Defendant’s counsel of record in the Action. (Settlement, ¶
8 38(a)).

9 b. **Effective Date.** “Effective Date” means the last date to occur of the
10 following: (a) if there are no objections to the Settlement, then the date of
11 final approval by the Court; (b) if there are objections to the Settlement,
12 and if an appeal, review, or writ is not sought from the order granting final
13 approval of the settlement, the thirty-first (31st) day after service of notice
14 of entry of the order; or (c) if an appeal, review, or writ is sought from the
15 order, the day after the order is affirmed or the appeal, review, or writ is
16 dismissed or denied, and the order is no longer subject to judicial review.
17 Prior to the Effective Date, Defendant will not be required to fund this
18 Settlement, in whole or in part, through the claims administrator or any
19 third party. Defendant will fund this Settlement within thirty (30) days of
20 the Effective Date, and the Settlement Administrator will distribute the
21 fund installments within twenty-one (21) days of receipt. (Settlement, ¶
22 28(b)).

23 c. **Released Claims.** “Released Claims” means all claims under state, federal,
24 or local law, whether statutory or common law, arising out of the claims
25 alleged by Plaintiff in the operative complaint, or which could have been
26 alleged by Plaintiff in the operative complaint by reason or in connection
27 with any matter or fact set forth or referred to in the operative complaint.
28 Without limiting the foregoing, the release shall include claims for unpaid

1 wages, failure to pay minimum wages, overtime compensation, straight
2 time compensation, rest and recovery time, non-productive time; failure to
3 provide compliant meal, rest, and/or recovery periods; failure to pay
4 premiums at all or at the correct rate for any violation of meal, rest, and
5 recovery period obligations; failure to provide legally complaint wage
6 statements; failure to timely pay regular and final wages; failure to
7 reimburse business expenses; unfair business practices and unfair
8 competition; failure to pay all hours worked; failure to keep accurate
9 records; liquidated damages; interest; declaratory relief; any and all related
10 penalties, including, but not limited to, recordkeeping penalties, wage
11 statement penalties, minimum wage penalties, meal and rest period
12 penalties, and waiting time penalties; statutory penalties and/or civil
13 penalties; attorneys' fees and costs; liquidated damages; and/or interest
14 associated with any of the foregoing. Such released claims shall include,
15 but are not limited to those claims arising under California Labor Code
16 sections 201, 202, 203, 204, 206, 210, 218, 218.5, 218.6, 221, 223, 224,
17 226 *et seq.*, 226.2, 226.3, 226.7, 246 *et seq.* (related to paid sick leave),
18 510, 512, 558, 558.1, 1174, 1174.5, 1182.12, 1185, 1194 *et seq.*, 1194.2,
19 1197, 1197.1, 1198, 1199, 2800, 2802, and/or those arising under the
20 applicable Industrial Welfare Commission Wage Order(s) (including but
21 not limited to subsections 3, 4, 5, 7, 9, 11, 12, 13, and 18 of the applicable
22 Wage Order(s)); California Business and Professions Code section 17200
23 *et seq.*; the California Civil Code sections 3287, 3289, and 3294;
24 California Code of Civil Procedure section 1021.5; and any claims under
25 the Fair Labor Standards Act (29 U.S. §§201 *et seq.*) arising during the
26 Class Period. (Settlement, ¶ 38(c)(1)).

- 27 d. **Released PAGA Claims.** “Released PAGA Claims” means all claims for
28 penalties and any other available relief pursuant to California Labor Code

1 § 2698 *et. seq.*, alleged in the Operative Complaint, or which could have
2 been alleged by Plaintiff in the Operative Complaint by reason or in
3 connection with any matter or fact set forth or referred to in the Operative
4 Complaint, against Defendant and Released Parties. (Settlement, ¶
5 38(d)(1)).

6 e. **Date Release Becomes Active.** The Released Claims and Released PAGA
7 Claims will be released upon the later of (1) the Effective Date and (2) the
8 satisfaction of Defendant's obligation to provide to the Settlement
9 Administrator a sum in the amount required to satisfy all required
10 payments and distributions pursuant to this Settlement and the Order and
11 Judgment of final approval. Therefore, Settlement Class Members will not
12 release the Released Claims and PAGA Employees will not release the
13 Released PAGA Claims until both the Effective Date of the Settlement has
14 occurred **and** Defendant has paid all amounts owing under the Settlement.
15 (Settlement, ¶ 38(b)).

16 6. For settlement purposes only, the Class Representative appointed for this matter
17 is Plaintiff Jorge Guzman Pimentel. The Service Payment to the Named Plaintiff, which is not
18 to exceed Ten Thousand Dollars and Zero Cents (\$10,000.00), is preliminarily approved.

19 7. For settlement purposes only, Class Counsel appointed for this matter is Moon
20 & Yang, APC. Attorney's Fees, which are not to exceed One Hundred Fifty-Five Thousand
21 One Hundred Seventy-Six Dollars and Sixty-Seven Cents (\$155,176.67), and Attorney's
22 Costs, which are not to exceed Twenty-Five Thousand Dollars and Zero Cents (\$25,000.00),
23 are preliminarily approved.

24 8. For settlement purposes only, the Settlement Administrator appointed for this
25 matter is ILYM Group, Inc. Settlement Administration Costs, which are estimated to be Six
26 Thousand Four Hundred and Fifty Dollars and Zero Cents (\$6,450.00) at this time, are
27 preliminarily approved.

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1 9. For settlement purposes only, the Class Notice is adequate as to form and
 2 content. On a preliminary basis, the plan for distribution of the Class Notice satisfies Due
 3 Process, provides the best notice practicable under the circumstances and shall constitute due
 4 and sufficient notice to all persons entitled thereto. The Class Notice is attached to the
 5 Settlement as Exhibit A.

6 10. A Final Fairness Hearing on the question of whether the Settlement terms,
 7 including the Attorney’s Fees and Costs and Service Payment, should be finally approved as
 8 fair, adequate and reasonable as to the Class Members is hereby set in accordance with the
 9 following Implementation Schedule:

10 Defendant to provide Class database to 11 the Settlement Administrator	Within twenty (20) calendar days from the date of Preliminary Approval by the Court
12 Settlement Administrator to mail the 13 Notice Packets by First Class Mail	Within fourteen (14) calendar days after 14 receipt of the Class database by the Settlement Administrator
15 Response Deadline	Within sixty (60) calendar days after the 16 Settlement Administrator initially mails the Class Notice to Class Members
17 Deadline to file Motion for Final 18 Approval	_____, 2023
19 Final Approval Hearing	_____, 2023 at _____ in 20 Division J

21 11. If any of the dates in the above schedule fall on a weekend, or bank or court
 22 holiday, the time to act shall be extended to the next business day. Pending further order of
 23 this Court, all proceedings in this lawsuit, except those contemplated herein and in the
 24 Settlement, are stayed. To facilitate the administration of the Settlement pending final
 25 approval, the Court hereby enjoins Plaintiff and all Class Members from filing or prosecuting
 26 any claims, suits, or administrative proceedings, including filing claims with the Division of
 27 Labor Standards Enforcement of the California Department of Industrial Relations, regarding
 28

1 claims released by the Settlement, unless and until such Class Members have filed valid
2 Requests for Exclusion with the Settlement Administrator and the time for filing claims with
3 the Settlement Administrator has lapsed.

4 12. The Settlement is preliminarily approved but is not an admission by the
5 Defendant of the validity of any claims in this Class and PAGA action, or of any wrongdoing
6 or violation of law by Defendant. Neither the Settlement nor any related document shall be
7 offered or received in evidence in any civil, criminal, or administrative action or proceeding
8 other than such proceedings as may be necessary to consummate or enforce the Agreement
9 and Settlement. The obligations set forth in the Settlement are deemed part of this Order. The
10 Parties are to carry out the Settlement in accordance with its terms.

11 **IT IS SO ORDERED.**

12
13 DATE: Signed: 5/3/2023 11:43 AM



14 Honorable J. Eric Bradshaw
15 Judge of the Kern Superior Court

16 **David R. Zulfa**

1 **PROOF OF SERVICE**

2 STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

3 I am employed in the county of Los Angeles, State of California. I am over the age of 18
4 and not a party to the within action; my business address is 1055 West Seventh Street, Suite
5 1880, Los Angeles, California 90017. On **April 5, 2023**, I served the foregoing document
6 described as:

7 **[PROPOSED] ORDER GRANTING PLAINTIFF’S MOTION FOR PRELIMINARY**
8 **APPROVAL OF CLASS AND PAGA ACTION SETTLEMENT**

9 X by placing ___ the original X a true copy thereof enclosed in sealed envelope(s)
10 addressed as follows:

11 Ian B. Wieland
12 Charles P. Hamamjian
13 **SAGASER, WATKINS & WIELAND, PC**
14 5260 North Palm Avenue, Suite 400
15 Fresno, California 93704
16 ian@sw2law.com
17 charles@sw2law.com


18 *Attorneys for Defendant ASP Farm Services, LLC*

19 **BY U.S. MAIL:** I deposited such envelope in the mail at Los Angeles, California.
20 The envelope was mailed with postage thereon fully prepaid. I am “readily familiar”
21 with the firm’s practice of collection and processing correspondence for mailing.
22 Under that practice it would be deposited with U.S. postal service on that same day
23 with postage thereon fully prepaid at Los Angeles, California in the ordinary course
24 of business. I am aware that on motion of the party served, service is presumed
25 invalid if postal cancellation date or postage meter date is more than one day after
26 date of deposit for mailing in affidavit.

27 I declare under penalty of perjury under the laws of the State of California that the
28 foregoing is true and correct.

Executed this, **April 5, 2023** at Los Angeles, California.

29 Janelle Jickain
30 Type or Print Name

31 
32 Signature