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COUNTY OF KING'S COUNTY
06/29/2023
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JUL 25 2023

NOCONA SOBOLSKY, CLERK OF COURT
SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF KING'S
[Signature]
DEPUTY
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7 Attorneys for Plaintiff LUIS ORLANDO ORELLANA GARCIA, as an individual and on
8 behalf of all similarly situated employees.

9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
10 **THE COUNTY OF KINGS**

11
12 LUIS ORLANDO ORELLANA GARCIA,
on behalf of himself and all others similarly
13 aggrieved employees,
Plaintiff,

14 v.

15 PHILLIP VERWEY DBA PHILIP
16 VERWEY FARMS, a California Limited
Liability Company; PHILIP VERWEY, an
17 individual; SHELLEY VERWEY DBA
PHILIP VERWEY DAIRY, a California
18 Limited Liability Company; SHELLEY
VERWEY, an individual; PHILIP
19 VERWEY DAIRY INC., a California
Limited Liability Company, and DOES 1-
20 50, Inclusive,
21 Defendants.

CASE NO.: 21C-0411

*Assigned for all purposes to the
Honorable Randy Edwards Dept. 2*

**[PROPOSED] ORDER GRANTING
PRELIMINARY APPROVAL OF CLASS
AND REPRESENTATIVE ACTION
SETTLEMENT AND PROVISIONAL
CLASS CERTIFICATION FOR
SETTLEMENT PURPOSES ONLY**

**[LODGED CONCURRENTLY WITH
MOTION FOR PRELIMINARY
APPROVAL]**

DATE: July 25, 2023
TIME: 10:30AM
DEPT: 2

Complaint Filed: December 23, 2021
Trial Date: Not Currently Set

1 This Court, having considered the Motion of Plaintiff Luis Orlando Orellana Garcia
2 (“Plaintiff”) for Preliminary Approval of Class and Representative Action Settlement and
3 Provisional Class Certification for Settlement Purposes Only (“Motion for Preliminary
4 Approval”), the Declarations of Justin Lo, the Amended Joint Stipulation of Class Action
5 Settlement and Release of Claims (the “Settlement Agreement”), the Notice of Proposed Class
6 Action Settlement (“Class Notice”), and other documents submitted in support of the Motion for
7 Preliminary Approval, hereby **ORDERS, AND JUDGES AND DECREES THAT:**

8 1. The definitions set out in the Settlement Agreement are incorporated by reference
9 into this Order, all terms defined therein shall have the-same meaning in this Order.

10 2. The Court certifies the following settlement class for the purpose of settlement only:
11 all current and former non-exempt, hourly-paid employees who worked for defendant Phillip
12 Verwey Farms and Philip Verwey Dairy, Inc. (collectively, “Defendants”) (Plaintiff and
13 Defendants are the “Parties”) from December 23, 2018, through February 11, 2023 (“Class
14 Period”) in California (“Class Members”).

15 3. The Court preliminarily appoints Plaintiff, Luis Orlando Orellana Garcia, as Class
16 Representative, and Justin Lo of Work Lawyers PC as Class Counsel.

17 4. The Court preliminarily approves the proposed class settlement upon the terms and
18 conditions set forth in the Settlement Agreement. The Court finds, on a preliminary basis, that
19 the settlement appears to be within the range of reasonableness of settlement that could ultimately
20 be given final approval by the Court. It appears to the Court on a preliminary basis that the
21 settlement amount is fair, adequate, and reasonable as to all potential Class Members when
22 balanced against the probable outcome of further litigation relating to liability and damages
23 issues. It further appears that extensive and costly investigation and research has been conducted
24 such that counsel for the Parties at this time are reasonably able to evaluate their respective
25 positions. It further appears to the Court that the settlement at this time will avoid substantial
26 additional costs by all parties, as the delay and risks that would be presented by the further
27 prosecution of the Actions. It further appears that the settlement has been reached as the result of

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1 intensive, non-collusive, arms-length negotiations utilizing an experienced neutral third party.

2 5. The Court approves, as to form and content, the Class Notice that has been submitted
3 herewith.

4 6. The Court directs the mailing of the Class Notice by first-class mail to Class Members in
5 accordance with the procedures set forth in the Settlement Agreement. The Court finds that the
6 dissemination of the Class Notice set forth in the Settlement Agreement complies with the
7 requirements of law and appears to be the best notice practicable under the circumstances.

8 7. The Court hereby preliminarily approves the definition and disposition of the Gross
9 Settlement Amount of \$625,000.00, which is inclusive of attorneys' fees up to one-third of the
10 Gross Settlement Amount which, unless escalated as set forth herein, amounts to \$208,333.33;
11 in addition to actual costs up of to \$20,000, according to proof; an enhancement award of
12 \$10,000.00 for Class Representative Luis Orlando Orellana Garcia; costs of settlement
13 administration not to exceed \$9,000.00; and PAGA penalties in the amount of \$50,000.00, of
14 which \$37,500.00 (75%) will be paid to the LWDA and \$12,500.00 (25%) will be paid to
15 Aggrieved Employees (i.e., Class Members working in non-exempt, hourly-paid roles during the
16 PAGA Period whether or not they opt out). The PAGA Period means the period from December
17 23, 2020, through February 11, 2023. The Gross Settlement Amount expressly excludes
18 Employer Taxes, which will be paid separately and apart by Defendant on the wages portion of
19 the Settlement Amount.

20 8. Defendants represents that as of December 6, 2022, the number of workweeks worked by
21 Settlement Class Members during the Class Period is approximately 27,268. If it is determined
22 that the workweeks through February 11, 2023, exceeds 29,995 (27,268 plus 10% of 27,268),
23 then Defendants shall have the option of either (i) increasing the Maximum Settlement Amount
24 by an amount determined by the following formula: $([\text{Actual Number of Workweeks} - 29,995] \div 29,995) \times \text{Maximum Settlement Amount}$; or (ii) changing the end date of the Class Period (and
25 PAGA Period) to a date for which there are no more than 29,995 workweeks.
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1 9. The Court deems Phoenix Settlement Administrators ("Phoenix"), the Settlement
2 Administrator, and approves payment of administrative costs, not to exceed \$9,000.00, out of the
3 Gross Settlement Amount for services to be rendered by Phoenix Settlement Administrators on
4 behalf of the class.

5 10. The Court directs Defendants to, within twenty one (21) calendar days of the date of this
6 Order, provide the Settlement Administrator with the "Class List" for Class Members containing
7 (i) each Class Member's first and last name, (ii) last known mailing address, (iii) the Class
8 Member's Social Security number or Tax ID, (iv) the Class Member's total number of Individual
9 Workweeks, and (v) the Class/PAGA Group Members' total number of Individual Pay Periods,
10 if applicable. Upon receipt of the Class List, the Settlement Administrator shall perform a search
11 on the National Change of Address database to update the Settlement Class Members' addresses.

12 11. Within seven (7) calendar days of receiving the Class List from Defendants, the Settlement
13 Administrator shall mail the Class Notice in English and Spanish to the Class Members via first-
14 class regular U.S. Mail. The Settlement Administrator shall exercise its best judgment to
15 determine the current mailing address for each Settlement Class Member. The address identified
16 by the Settlement Administrator as the current mailing address shall be presumed to be the best
17 mailing address for each Settlement Class Member.

18 12. If a Class Notice from the initial notice mailing is returned as undeliverable, the Settlement
19 Administrator will attempt one (1) skip trace to obtain a current address for the Class Member to
20 whom the returned Class Notice had been mailed, within five (5) business days of receipt of the
21 Settlement Administrator receiving notice that the respective Class Notice was undeliverable. If
22 the Settlement Administrator is successful in obtaining a new address, it will promptly re-mail
23 the Class Notice to the Class Member.

24 13. The Response Deadline for requesting exclusion, objecting, or disputing the workweeks
25 attributed to a Class Member shall be forty-five (45) calendar days from mailing of the Class
26 Notice, or, if a Class Member has their Class Notice re-mailed to them, fourteen (14) calendar
27 days from the re-mailing, whichever is later. The date of postmark on the return envelope shall
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1 be the exclusive means to determine if a response is timely.

2 14. Exclusion Requests may be submitted to the Settlement Administrator via U.S. Mail only.
3 Class Members must complete, sign, date, and timely return an Exclusion Request to the Settlement
4 Administrator to exclude themselves from the Settlement, setting forth their (i) name, (ii) address,
5 and (iii) the following statement or a similar statement: "I wish to exclude myself from the settlement
6 reached in the matter of *Garcia v. Philip Verwey Farms, et al.* I understand that by excluding myself,
7 I will not receive any money from the Class settlement reached in this matter." A Class Member who
8 does not complete and submit a valid and timely Exclusion Request in the manner and by the
9 conclusion of the Exclusion Period will remain a Participating Class Member and, if the Court
10 approves the Settlement, will be bound by all terms and conditions of the Settlement and by the
11 Judgment. A Class Member who timely submits a valid Exclusion Request will not participate in, or
12 be bound by, the Settlement of the Judgment and will not receive any payment pursuant to the
13 Settlement except for a payment from the portion of the PAGA Payment to the PAGA Group if the
14 Class Member is a PAGA Group Member, and will not be bound by the terms of the Settlement,
15 except for the release of the PAGA Group Released Claims if the Class Member is a PAGA Group
16 Member, and will not have any right to object, appeal, or comment thereon. To be valid, Exclusion
17 Requests must be completed in full, signed, and returned to the Settlement Administrator before the
18 expiration of the Exclusion Period. Non-Participating Class Members will not be permitted to file
19 objections to the Settlement and/or appear at the Final Approval Hearing to voice any objections to
20 the Settlement. Members of the PAGA Group cannot seek to exclude themselves from the Settlement
21 of the PAGA claim, but retain all rights to exclude themselves from the Class Settlement as delineated
22 herein. The Settlement Administrator will provide Class Counsel, Defense Counsel, and the Superior
23 Court with only the names of the Non-Participating Class Members.

24 15. Only Class Members who do not opt out of the Settlement (i.e., Participating Class
25 Members) may object regarding the Settlement. The deadline for filing objections to any of the
26 terms of the settlement shall be by the Response Deadline. The written objection must state the
27 Class Member's (i) name, (ii) address, and (iii) the dates of the Class Member's employment with
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1 Defendants. The written objection must state the basis for each objection in clear and concise terms.
2 The written objection shall also state whether the Class Member intends to appear and object at the
3 Final Approval Hearing. A Class Member who does not serve a written objection in the manner and
4 by the deadline specified may appear at the Final Approval Hearing to state their objection to the
5 Settlement. If a Class Member fails to submit a written objection or to appear at the Final Approval
6 hearing to make an oral objection, the Class Member will be deemed to have waived all objections
7 and will be foreclosed from making any objections – whether by appeal or otherwise – to the
8 Settlement. Within five (5) calendar days of receiving a Notice of Objection from a Settlement
9 Class Member, the Settlement Administrator shall forward the notice of objection to Class
10 Counsel and Defendant's Counsel. Class Counsel thereafter will lodge the Settlement Class
11 Member's Notice of Objection with the Court.

12 16. The Settlement Administrator shall determine the eligibility for and amounts of any
13 Individual Settlement Payments due under the terms of the Settlement, except for any disputes
14 brought to the Court's attention. The Settlement Administrator's determination of the eligibility
15 for and amount of any Individual Settlement Payment and/or Individual PAGA Payment shall be
16 binding upon the Class Member and the Parties. However, Class Members may dispute the
17 accuracy of the number of workweeks attributed to the Class Member in the Class Notice. Class
18 Members must notify the Settlement Administrator no later than the Response Deadline if the
19 Settlement Class Member disputes the accuracy of the number of workweeks worked as set forth
20 on his or her Class Notice. If there is a dispute, the Settlement Administrator will consult with
21 the Parties to determine whether an adjustment is warranted. If the Parties are unable to reach an
22 agreement as to the amount of the adjustment or if an adjustment is warranted, then each side
23 will submit a three (3) page brief to the Court, outlining each side's respective position and have
24 the Court decide the outstanding issue. The Court's determination of the eligibility for and amount
25 of any Individual Settlement Payment shall be binding upon the Class Member and the Parties.

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27 19. All papers filed in support of final approval, including supporting documents for
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1 attorneys' fees and costs, shall be filed by January 8, ²⁰²⁴2023.

2 20. A final approval hearing shall be held with the Court on
3 February 6, ²⁰²⁴2023 at 8:15 a.m./~~p.m.~~ in Department 2 of
4 the above-entitled Court to determine: (1) whether the proposed settlement is fair, reasonable,
5 and adequate and should be finally approved by the Court; (2) the amount of attorneys' fees and
6 costs to award Class Counsel; (3) the amount of incentive award to the Class Representatives;
7 (4) the amount to be paid to the Settlement Administrator; and (5) the amount to be apportioned
8 to PAGA, paid to the LWDA, and paid to Aggrieved Employees.

9 21. In the event the settlement does not become effective in accordance with the terms of the
10 Settlement, or the settlement is not finally approved, or is terminated, cancelled or fails to become
11 effective for any reason, this Order shall be rendered null and void and shall be vacated, and the
12 parties shall revert to their respective positions as of the entry of the Settlement Agreement.

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15 **IT IS SO ORDERED.**

16 Dated: 7/25/23

[Signature]
17 HON. RANDY EDWARDS
18 JUDGE OF THE SUPERIOR COURT

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