

**FOSTER v IRBC 2 PROPERTIES, LLC., et al.**

**21CV45573**

**PLAINTIFF'S 3<sup>RD</sup> AMENDED MOTION TO COMPEL FURTHER VERIFIED  
RESPONSES TO REQUESTS FOR ADMISSION**

Plaintiff Larry Foster brings a "Third Amended Motion to Compel Further Responses to Plaintiffs' September 13, 2024 [Request for Admissions]." The motion is opposed.

On or about September 13, 2024, Plaintiff served Requests for Admission ("RFA") to all named Defendants: IRBC 2 Properties LLC, California TD Specialists, Park Tree Investments, LLC, Real Time Resolutions, Inc., FCI Lender Services, Inc., Connie M. Riggsby, Orlon Financial Group, LLC, and Wilmington Saving Fund Society DBA Christiana Trust as Trustee for 2005 Residential Trust 3-2. Defendants provided an omnibus response on March 3, 2025. (RJN, Ex. 2.) Defendants objected to each RFA on various grounds, including that the RFAs were compound and conjunctive as they were directed to numerous Defendants, without any differentiation between them. (See Code Civ. Proc. §2033.060(f).)

On November 25, 2024, Plaintiff moved to compel further responses to RFAs, Request for Production of Documents, and Interrogatories. The Court denied the ruling on the grounds that the motion did not comply with Local Rule 3.3.7, as well as the fact that the motion improperly sought to compel multiple types of discovery. (While the Court commends plaintiff for properly incorporating the 3.3.7 language, there are still significant shortcomings in his motion as detailed below.)

Defendants' Request for Judicial Notice is GRANTED in its entirety.

**I. Legal Standard**

Pursuant to Code Civ. Proc. section 2033.280:

(a) The party to whom the requests for admission are directed waives any objection to the requests, including one based on privilege or on the protection for work product under Chapter 4 (commencing with Section 2018.010). The court, on motion, may relieve that party from this waiver on its determination that both of the following conditions are satisfied:

- 1) The party has subsequently served a response that is in substantial compliance with Sections 2033.210, 2033.220, and 2033.230.
- 2) The party's failure to serve a timely response was the result of mistake, inadvertence, or excusable neglect.

Further, the Court shall deem the facts admitted as truth, unless it finds that the party to whom the RFAs were directed, "has served, before the hearing on the motion, a proposed response to the requests for admission that is in substantial compliance with Section 2033.220." (Code Civ. Proc. § 2033.280(c).)

While discovery in civil litigation is broad, it is not limitless and must be relevant, and not unduly burdensome. (*Calcor Space Facility v. Superior Court* (1997) 53 Cal.App.4<sup>th</sup> 216 223-224.)

## **II. Analysis**

The instant motion fails to comply with California Rule of Court 3.1345 by failing to include a separate statement setting forth the RFA, the response, and the factual and legal reasons why the response is claimed to be inadequate. (See *St. Mary v. Superior Court* (2014) 223 Cal.App.4<sup>th</sup> 762, 778.) The failure to provide a separate statement alone is grounds for the court to deny the motion. (*Ibid.*) Plaintiff did not seek, nor obtain, the Court's approval to ignore this requirement.

In addition, the motion fails to include a declaration of any attempt to meet and confer prior to filing the motion to compel. The declaration that is attached to the motion appears to be a modified version of an earlier declaration, erroneously refers to the motion as one to compel the production of *documents*, and is unsigned and undated, therefore unverified and so inadmissible. Like the motion itself, the declaration is confusing and difficult to follow.

Finally, the Court also has grounds to deny the motion because the Defendants' collective objections were reasonable. Each RFA is directed at multiple Defendants, generally without specifying which Defendant the RFA is directed towards. Additionally, many of the RFAs reference outside documents and matters, making them incomplete and therefore noncompliant with Code of Civil Procedure section 2033.060 (c) and (d). It is unduly burdensome for each Defendant to have to not only refer to outside documents in order to answer the RFAs, but to also ascertain which RFA might be directed to each Defendant. Plaintiff has not provided any response to these valid objections.

### **III. Conclusion**

Plaintiff's motion to compel is **DENIED** on all the foregoing grounds. Plaintiff's motion for sanctions is therefore also **DENIED**.

The Clerk shall provide notice of this Ruling to the parties forthwith. Counsel for Defendants to prepare a formal Order complying with Rule 3.1312 in conformity with this Ruling.

**TRINITY ALPS FARMS, INC. v BARRETT FARMS, LLC**

**24CF14779**

**PLAINTIFF'S MOTION FOR LEAVE TO AMEND COMPLAINT**

This case involves a contract dispute involving an agreement to purchase two 40-ft freezer container units from Defendants by Plaintiff.

Now before the Court is Plaintiff's Motion to File Amended Complaint. Plaintiff seeks to substitute named entities for Does 1-3.

The Motion does not comply with Local Rule 3.3.7. All matters noticed for the Law & Motion calendar shall include the following language in the notice:

3.3.7 Tentative Rulings (Repealed Eff 7/1/06, As amended 1/1/18) All parties appearing on the Law and Motion calendar shall utilize the tentative ruling system. Tentative Rulings are available by 2:00 p.m. on the court day preceding the scheduled hearing and can be accessed either through the court's website or by telephoning 209-754-6285. The tentative ruling shall become the ruling of the court, unless a party desiring to be heard so advises the Court no later than 4:00 p.m. on the court day preceding the hearing including advising that all other sides have been notified of the intention to appear by calling 209-754-6285. Where appearance has been requested or invited by the Court, all argument and evidence is limited pursuant to Local Rule 3.3. All matters noticed for the Law & Motion calendar shall include the following language in the notice:

**Pursuant to Local Rule 3.3.7, the Court will make a tentative ruling on the merits of this matter by 2:00 p.m. the court day before the hearing. The complete text of the tentative ruling may be accessed on the Court's website or by calling 209-754-6285 and listening to the recorded tentative ruling. If you do not call all other parties and the Court by 4:00 p.m. the court day preceding the hearing, no hearing will be held and the tentative ruling shall become the ruling of the court [emphasis in original.]**

Failure to include this language in the notice may be a basis for the Court to deny the motion.

However, in the interest of judicial efficiency, the Court will consider the merits of the motion, particularly as it is unopposed. (Plaintiff is admonished that any future motions must comply with Local Rule 3.3.7 or will be subject to summary denial.)

Leave to amend is liberally allowed. (*Nestle v. Santa Monica* (1972) 6 Cal.3d 920, 939.)

“If the motion to amend is timely made and the granting of the motion will not prejudice the opposing party, it is error to refuse permission to amend and where the refusal also results in a party being deprived of the right to assert a meritorious cause of action or a meritorious defense, it is not only error but an abuse of discretion.” (*Morgan v. Superior Court of Los Angeles County* (1959) 172 Cal.App.2d 527, 539.)

Plaintiff seeks leave to amend the complaint in order to substitute Wildseed LLC, Dashiell Miller, and Michael McClaren for Does 1-3. Pursuant to Code of Civil Procedure section 474, it is proper to use fictitious names in a complaint where the real identity of the defendant is unknown. Plaintiff’s original complaint was filed in on September 30, 2024, and the statute of limitations on the underlying cause of action has not run, and no trial date has been set.

Accordingly, Plaintiff’s motion for leave to file amended complaint is **GRANTED**. The First Amended Complaint attached to the Motion shall be filed by the Court Clerk’s Office.

The Clerk shall provide notice of this Ruling to the parties forthwith. Plaintiff to prepare a formal Order complying with Rule 3.1312 in conformity with this Ruling.

**FERNANDEZ v THE RESOURCE CONNECTION OF  
AMADOR AND CALAVERAS COUNTIES, INC.**

**24CV47263**

**PLAINTIFF'S MOTION FOR ORDER APPROVING CLASS ACTION SETTLEMENT,  
APPROVING NOTICE OF SETTLEMENT,  
& SETTING HEARING FOR FINAL APPROVAL**

Faviola Lizeth Fernandez ("Plaintiff") as the representative plaintiff, filed this class action lawsuit against The Resource Connection of Amador and Calaveras Counties, Inc. and The Resource Connection ("Defendants"). Plaintiff's First Amended Complaint ("FAC") alleges causes of action for wage and hour violations, including failure to pay overtime wages, wage statement violations, waiting time penalties and unfair competition. Plaintiff seeks penalties and damages under the Labor Code, Business and Professional Code, and the Private Attorney General's Act ("PAGA").

Plaintiff reports the matter has settled and moves for preliminary approval of settlement agreement ("Agreement"). (Code Civ. Proc., § 382, Cal. Rules of Court, rule 3.769.) Plaintiff has failed to file a proposed order with the motion as required by Cal Rule of Court 3.769(c). However, in the interest of judicial efficiency and because the motion is unopposed, the Court will consider the substance of the motion.

The Motion does not comply with Local Rule 3.3.7. All matters noticed for the Law & Motion calendar shall include the following language in the notice:

3 3 7 Tentative Rulings (Repealed Eff 7/1/06, As amended 1/1/18) All parties appearing on the Law and Motion calendar shall utilize the tentative ruling system. Tentative Rulings are available by 2:00 p.m. on the court day preceding the scheduled hearing and can be accessed either through the court's website or by telephoning 209-754-6285. The tentative ruling shall become the ruling of the court, unless a party desiring to be heard so advises the Court no later than 4:00 p.m. on the court day preceding the hearing including advising that all other sides have been notified of the intention to appear by calling 209-754-6285. Where appearance has been requested or invited by the Court, all argument and evidence is limited pursuant to Local Rule 3.3. All matters noticed for the Law & Motion calendar shall include the following language in the notice:

**Pursuant to Local Rule 3 3 7, the Court will make a tentative ruling on the merits of this matter by 2:00 p.m. the court day before the hearing. The**

**complete text of the tentative ruling may be accessed on the Court's website or by calling 209-754-6285 and listening to the recorded tentative ruling. If you do not call all other parties and the Court by 4:00 p.m. the court day preceding the hearing, no hearing will be held and the tentative ruling shall become the ruling of the court [emphasis in original.]**

Failure to include this language In the notice may be a basis for the Court to deny the motion.

However, in the interest of judicial efficiency, the Court will consider the merits of the motion, particularly as it is unopposed. (Plaintiff is admonished that any future motions must comply with Local Rule 3.3.7 or will be subject to summary denial.)

## **I. Settlement Approval Process**

There are three stages to the Court's settlement approval process: (1) preliminary approval of the proposed settlement at an informal hearing; (2) notice of the settlement to all affected class members; and (3) final approval after a formal hearing. The current motion is the first stage of the process. The Court may approve settlements reached before or after certification of the class. (*Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 240, disapproved on another ground in *Hernandez v. Restoration Hardware, Inc.* (2018) 4 Cal.5th 260, 269.) Here, the class was not certified prior to the settlement, and Plaintiff seeks class certification at this time. The certification issue is addressed below.

When an action includes PAGA claims, the Court must review and approve the settlement and the proposed settlement shall be submitted to the Labor and Workforce Development Agency (LWDA) at the same time that it is submitted to the Court. (Lab. Code, § 2699, subd. (l)(2).) Plaintiff has provided notice to the LWDA. (Declaration of Natalie Haritonian ("Haritonian Decl.") ¶ 12, Ex. 2.)

## **II. The Proposed Settlement**

The terms of the Agreement provide that Defendant shall pay a Gross Settlement Amount (“GSA”) of \$385,000.00 to be allocated across approximately 223 Class Members on a pro rata basis according to the number of workweeks each Class Member worked during the Class Period. Costs to be deducted from the GSA are: (1) a maximum of up to 1/3 of the GSA (\$128,333.33) attorney’s fees and up to \$20,000 in costs to Plaintiff’s counsel for services rendered; (2) \$6,500 to Apex Class Action, LLC for their fees and costs; (3) an award of up to \$10,000 to the Plaintiff as the class representative; and (4) \$20,000 in PAGA penalties, which will be allocated 75% (\$15,000) to the LWDA, and the remaining 25% (\$5000) added to the fund distributed to class members. (Haritounian Decl., ¶ 19; Ex. 1, §3.2.5.)

After deductions, the Net Settlement Amount (“NSA”) will be \$200,166.67. Plaintiff reports there are approximately 223 Class Members, and the projected average individual payment will be approximately \$897.61 (MPA, p. 1.) Class Members will not need to do anything to participate in the settlement and the gross settlement is non-reversionary. (Haritounian Decl. ¶ 55.)

### **III. Ascertainable Class**

Under California law, the basic requirements to sustain a class action are an ascertainable class, a well-defined community of interest in the questions of law and fact involved, and substantial benefits from certification that render proceeding as a class superior to the alternatives. (Code Civ. Proc. § 382; *Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal.4<sup>th</sup> 1004, 1021.)

The Agreement defines the “Class” as “all persons employed by Defendants in California and classified as a nonexempt, hourly employee who worked for Defendants during the Class Period.” (Agreement §1.5.) The “Class Period” is defined as between February 22, 2020, to January 29, 2025. (Id. §1.12.) Additionally, the “PAGA Pay Period” means “any Pay Period during which an Aggrieved Employee worked for Defendants for at least one day during the PAGA Period.” (Id. § 1.30.) An “Aggrieved Employee” is defined as a person employed by Defendants in California and classified as a non-exempt, hourly employee who worked for Defendants during the PAGA Period.” (Id. §1.4.) Each PAGA Group Member will receive a portion of the \$10,000 allocated as part of PAGA penalties, after deductions to the LWDA.

The Court finds the proposed Settlement Class is ascertainable and satisfies the numerosity requirement, that the action raises common wage and hour questions for class members, and that Plaintiff is an adequate representative of the class. The Court therefore conditionally certifies the proposed Settlement Class.



#### **IV. Reasonableness of the Settlement**

The purpose of preliminarily evaluating class action settlements is to determine whether the proposed settlement is within the “range of reasonableness” for possible approval, and whether it is worthwhile to issue notice to the class and schedule a formal hearing. (Cabraser, Cal. Class Actions and Coordinated Proceedings (2d ed. 2020) ¶ 14.02.) A presumption of fairness applies if there has been arm’s length bargaining, investigation has been sufficient to allow counsel and the court to act intelligently, class counsel is experienced in similar litigation, and the percentage of class members who object to the settlement is small. (Ibid.) “[P]re-certification settlements are routinely approved if found to be fair and reasonable.” (*Wershba v. Apple Computer, Inc.*, *supra*, 91 Cal.App.4th at p. 240.)

Plaintiff’s counsel reports that the parties engaged in an arm’s length mediation on January 10, 2025, before experienced mediator Hon. (retired) Peter Lichtman. (Haritoonian Decl. ¶ 16.) Prior to mediation, the parties engaged in significant informal discovery, which included production of timekeeping data and employment records data. (Id. ¶ 14.) Plaintiff’s counsel, Natalie Haritoonian, has provided a declaration showing she and her firm have investigated and researched the claims in controversy, related documents and evidence, and the asserted defenses. Plaintiff’s law firm is experienced with this type of litigation and had sufficient data to make an informed decision regarding the fairness of the settlement. (*Id.*, ¶¶ 5-8 [setting forth the various experience of Plaintiff’s attorneys].) Based on the firm’s investigation, and balancing the risks and obstacles in the various claims, Ms. Haritoonian concludes that the proposed settlement is a favorable result for the Settlement Class. (Connolly Decl., ¶ 59.) Having reviewed the claims at issue, Plaintiff’s arguments in the memorandum of points and authorities, and the evidence submitted in support of the motion, the Court finds, for purposes of this preliminary approval, that the proposed settlement is fair and reasonable.

#### **V. Notice**

If the court has certified the litigation as a class action, notice must be given to the class members and must contain an explanation of the proposed settlement, and procedures for class members to follow in filing written objections to it and in arranging to appear at the settlement hearing and state any objections to the proposed settlement. (Cal. Rules of Court, rule 3.769(f).) Pursuant to California Rules of Court, rule 3.766(d), if class members are to be given the right to request exclusion from the class, the notice must include the following: (1) A brief explanation of the case, including the basic contentions or denials of the parties; (2) A statement that the court will exclude the member from the class if the member so requests by a specified date; (3) A procedure for the member to follow in requesting exclusion from the class; (4) A statement that the judgment, whether favorable or not, will bind all members who do not request exclusion; and (5) A statement that any member who does not request exclusion may, if the member so desires, enter an appearance through counsel.

Here, the proposed notice provides a background of the litigation and claims, sufficiently defines the class members, and informs them of the settlement and their respective rights. The proposed notice sets forth a breakdown of the settlement amount, including the total gross settlement amount, and the maximum amounts of the proposed deductions (i.e., class counsel's fees; class counsel's costs; settlement administrator's costs; representative plaintiff payment; and PAGA penalties). In addition, the proposed notice sets forth how each class member's payment will be calculated and further explains how class members can opt out of or object to the settlement. (Haritounian Decl., Ex. 1.) Having reviewed the proposed notice, the Court finds that it complies with the California Rules of Court discussed above.

## **VI. Conclusion**

Plaintiff has satisfied the procedural requirements for preliminary approval of a class action settlement, and the settlement amount appears fair and reasonable at this stage. The Court **GRANTS** preliminary approval of the settlement; appointment of Plaintiff as the class representative; appointment of Plaintiff's counsel as class counsel; appointment of Apex Class Action, as the third-party settlement administrator; and the proposed method and form of the notice. The Court also **CONDITIONALLY CERTIFIES** the Settlement Class.

**The Court sets October 3, 2025, at 9:00 a.m. in Department 2 for the final approval hearing.**

The Clerk shall provide notice of this Ruling to the parties forthwith. The Court intends to sign the proposed Order submitted by plaintiff.