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10 IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
11 COUNTY OF YAKIMA

12 JOSE MARTINEZ-CUEVAS and PATRICIA
13 AGUILAR, individually and on behalf of all
14 others similarly situated,

15 Plaintiffs,

16 vs.

17 DERUYTER BROTHERS DAIRY, INC.,

18 Defendants.

No. 16-2-03417-39

**~~PROPOSED~~ ORDER GRANTING
FINAL APPROVAL OF CLASS
ACTION SETTLEMENT**

19 On August 25, 2017, this Court entered the Order Granting Preliminary Approval of
20 Class Action Settlement (the "Preliminary Approval Order"); and

21 Individual notice complying with Civil Rule 23 was sent to the last-known address of
22 each member of the Settlement Class; and

23 A fairness hearing on final approval of the settlement was held before the Court on
24 October 30, 2017; and

25 No objections to the settlement were made by any member of the Settlement Class; and

26 The Court, being advised, finds that good cause exists for entry of the below Order;
now, therefore,

IT IS HEREBY FOUND, ORDERED, ADJUDGED AND DECREED THAT:

1 1. Unless otherwise provided herein, all capitalized terms in this Order shall have
2 the same meaning as set forth in the Settlement Agreement attached as Exhibit A to the
3 Declaration of Marc C. Cote in Support of Plaintiffs' Motion for Preliminary Approval of Class
4 Action Settlement.

5 2. The Court finds that notice to the Settlement Class has been completed in
6 conformity with the Preliminary Approval Order. The Court finds that this notice was the best
7 notice practicable under the circumstances, that it provided due and adequate notice of the
8 proceedings and of the matters set forth therein, and that it fully satisfied all applicable
9 requirements of law and due process.

10 3. The Court finds it has personal and subject matter jurisdiction over all claims
11 asserted in this litigation with respect to all members of the Settlement Class.

12 4. Pursuant to Civil Rule 23, the Court has certified the following Settlement Class
13 for settlement purposes: All individuals who worked as milkers for DeRuyter Brothers Dairy,
14 Inc. between December 8, 2013 and December 31, 2016.

15 5. In connection with this certification, the Court has made the following findings:

16 a. The Settlement Class are so numerous that joinder of all members is
17 impracticable;

18 b. There are questions of law or fact common to the Settlement Class;

19 c. Plaintiffs' claims are typical of the Settlement Class;

20 d. Plaintiffs are capable of fairly and adequately protecting the interests of
21 the Settlement Class Members;

22 e. Common questions of law and fact predominate over questions affecting
23 only individual Settlement Class Members. Accordingly, the Settlement Class is sufficiently
24 cohesive to warrant settlement by representation; and

25 f. Certification of the Settlement Class is superior to other available
26 methods for the fair and efficient adjudication of the claims of the Settlement Class Members.

1 6. The Court has appointed Plaintiffs Jose Martinez-Cuevas and Patricia Aguilar as
2 representatives of the Settlement Class.

3 7. The Court has appointed Marc Cote of Frank Freed Subit & Thomas LLP and
4 Lori Isley and Joe Morrison of Columbia Legal Services as Class Counsel for the Settlement
5 Class.

6 8. No objections to the settlement have been lodged.

7 9. The terms set forth in the settlement, including the total settlement payment of
8 \$600,000, are approved as being fair, adequate, and reasonable in light of the degree of
9 recovery obtained in relation to the risks faced by the Settlement Class. The relief provided to
10 the Settlement Class under the Settlement Agreement for the non-overtime wage, rest break,
11 and meal break claims is appropriate as to the individual members of the Settlement Class and
12 as a whole.

13 10. In *Bowles v. Department of Retirement Systems*, 121 Wn.2d 52, 72, 847 P.2d
14 440 (1993), the Washington Supreme Court held that the “percentage of recovery approach is
15 used in calculating fees” for common fund class action settlements like this one. The
16 benchmark in Washington for an attorney fee award in a common fund settlement is 25 percent
17 of the fund. *Id.* at 72–73. In accordance with *Bowles*, Class Counsel seek a benchmark fee of
18 25 percent of the common fund for the non-overtime claims. The Court finds no “special
19 circumstances” to depart from the benchmark award of 25 percent for this settlement. *See id.* at
20 73. The Court therefore approves the payment of \$150,000 in attorneys’ fees to Class Counsel
21 as fair and reasonable based on the “percentage of recovery” approach. The approved attorney
22 fee award of \$150,000 is 25 percent of the \$600,000 common fund. The 25 percent fee is
23 within the range of reasonableness set forth in *Bowles* and is consistent with fee awards in
24 similar wage and hour class actions. The Court reaches the conclusion that the 25 percent fee
25 award to Class Counsel is reasonable for the non-overtime claims after analyzing (1) the
26 substantial financial recovery for Settlement Class Members for the non-overtime claims; (2)

1 the diligent effort utilized by Class Counsel in litigating the non-overtime claims; (3) Class
2 Counsel's substantial experience in complex litigation and the skill utilized to achieve the
3 settlement; (4) the hurdles to obtaining certification of the Settlement Class for the non-
4 overtime claims, establishing Defendant's liability, and proving damages at trial; (5) the
5 substantial risks Class Counsel took in litigating this case on a contingency basis and paying all
6 costs; (6) the high-quality work Class Counsel performed; and (7) the duration and complexity
7 of the litigation and scope of discovery.

8 11. For common fund settlements, reasonable litigation costs incurred by attorneys
9 for a class are awarded in addition to percentage fee awards. *See Bowles*, 121 Wn.2d at 70.
10 The settlement notices issued to Settlement Class Members in this case indicated that litigation
11 costs were estimated to be \$5,000. Class Counsel seek reimbursement of less than the
12 estimated amount. The Court approves payment of \$3,965 in litigation costs to Class Counsel
13 as fair and reasonable to compensate Class Counsel for the relevant and necessary costs
14 incurred on the non-overtime claims.

15 12. Pursuant to the Settlement Agreement, the Court approves payment up to \$9,500
16 from the common fund to the Settlement Administrator, CPT Group, Inc. The payment of up
17 to \$9,500 in settlement administration expenses from the common fund is fair and reasonable to
18 compensate the Settlement Administrator for its work and costs incurred in administering the
19 settlement. If less than \$9,500 is paid for settlement administration expenses, any remaining
20 amount shall be included in the Net Settlement Fund distributed to Settlement Class Members.

21 13. The Court approves service awards of \$7,500 each for Plaintiffs Jose Martinez-
22 Cuevas and Patricia Aguilar. These awards reasonably compensate Mr. Martinez-Cuevas and
23 Ms. Aguilar for their time and effort in stepping forward to serve as class representatives,
24 assisting in the investigation, participating actively in the litigation, and reviewing and
25 approving the proposed settlement terms after consulting with Class Counsel.

1 14. Each Qualified Class Member shall be entitled to receive a proportional share of
2 the remaining settlement funds as described in Section III.F.5 of the Settlement Agreement
3 after deduction of the amounts awarded for attorneys' fees and costs, the service awards, and
4 the settlement administration expenses.

5 15. No later than the three business days following the entry of this Order,
6 Defendant shall pay the sum of \$600,000, plus the applicable employer's share of payroll taxes
7 (as calculated by the Settlement Administrator), to the Settlement Administrator to establish a
8 Qualified Settlement Fund.

9 16. No later than seven calendar days after the settlement's Effective Date, the
10 Settlement Administrator shall pay to Class Counsel \$150,000 in attorneys' fees and \$3,965 in
11 costs and shall pay the service awards to Plaintiffs as detailed above.

12 17. No later than seven calendar days after the settlement's Effective Date, the
13 Settlement Administrator shall also deliver the Settlement Award checks to Class Counsel in
14 mailing envelopes listing the Settlement Administrator's return address. Class Counsel shall
15 distribute the Settlement Award Checks as described in Section III.J.10 of the Settlement
16 Agreement.

17 18. If a Settlement Award check remains uncashed 90 days after the First
18 Distribution, the Qualified Class Member who has not cashed that check will no longer have
19 any interest in the Settlement Award, and the Settlement Administrator shall promptly request
20 the placement of a stop payment on the check. If the aggregate amount of uncashed checks
21 after the First Distribution (the "residual funds") exceeds \$50,000, those residual funds shall be
22 distributed to Qualified Class Members who cashed their original checks in accordance with
23 the procedures outlined in Section III.J.12 of the Settlement Agreement. The proceeds of any
24 uncashed checks after thirty days following the Second Distribution, or if there is no Second
25 Distribution, shall be distributed as *cy pres*, with 25% to the Legal Foundation of Washington,
26 50% to Columbia Legal Services, and 25% to the Laurel Rubin Farmworker Justice Project.

1 19. Any Qualified Class Member who fails to cash or deposit a Settlement Award
2 check within 90 days of the First Distribution will not receive a share of the Net Settlement
3 Fund but will be bound nevertheless by the terms of the Settlement Agreement.

4 20. All Settlement Class Members, except any who have submitted a timely and
5 valid request for exclusion, are bound by the terms of the Settlement Agreement, including the
6 Release in Section III.B of the Agreement. As of the Effective Date, the Settlement constitutes
7 a full and final settlement and release of all “Qualified Class Member Released Claims” as
8 defined in Section III.B of the Settlement Agreement.

9 21. Under the Settlement Agreement, Plaintiffs and Settlement Class Members do
10 not release any claims for overtime compensation nor any claims challenging the exemption of
11 agricultural workers from overtime protections on constitutional grounds, including claims for
12 costs or attorneys’ fees incurred in prosecuting the overtime exemption challenge. Specifically,
13 Plaintiffs and Class Members do not release the Fifth and Sixth Claims for Relief stated in the
14 December 8, 2016 Class Action Complaint. Those claims remain for adjudication in this
15 Court.

16 22. The Parties and their counsel shall implement and consummate the Settlement
17 Agreement according to its terms and provision, including all payments to be made by
18 Defendant and the Settlement Administrator under the Agreement.

19 23. No Settlement Class Members have excluded themselves from the Settlement
20 Class.

21 24. This Court hereby dismisses with prejudice all “Qualified Class Member
22 Released Claims” as defined by the Settlement Agreement. This dismissal shall be without
23 costs or attorneys’ fees, except as otherwise ordered here, to any Party.

24 25. The dismissal of the Qualified Class Member Released Claims against
25 Defendant is without prejudice to the rights of the Parties to enforce the terms of the Settlement
26

1 Agreement and the rights of Class Counsel to seek the payment of fees and costs as provided
2 for in this Order.

3 26. The Court retains jurisdiction over the Parties, the Qualified Class Members,
4 and the Settlement with respect to the future performance of the terms of the Settlement
5 Agreement, including the administration and enforcement of the Agreement, to ensure that all
6 payments and other actions required by the Settlement are properly carried out. The Court also
7 retains jurisdiction over the Parties for purposes of addressing Plaintiffs' and Class Members'
8 Fifth and Sixth Claims for Relief stated in the December 8, 2016 Class Action Complaint. This
9 Court retains jurisdiction over Plaintiffs' claims for overtime compensation and claims
10 challenging the exemption of agricultural workers from overtime protections on constitutional
11 grounds. The Settlement and this Final Approval Order do not resolve, and Plaintiffs and Class
12 Members do not release, such claims, which remain for adjudication in this Court.

13 Entered this 30th day of October, 2017.
14 Michael G. McCarthy

15 **Judge**

16 YAKIMA COUNTY SUPERIOR COURT JUDGE

17 Presented by:

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