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 County of Los Angeles

OCT 30 2019

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15 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
 16 **COUNTY OF LOS ANGELES - CENTRAL DIVISION**

18 JOSE CUEVAS; individually and on behalf
 19 of all others similarly situated,

Plaintiff,

vs.

22 PHILLIPS FRACTOR & COMPANY,
 23 LLC; CSRS; BAKERSFIELD MARKET
 RESEARCH and, DOES 1 through 100,
 24 Inclusive

Defendants.

Case No.: **BC656142**
 - Complaint filed: 03/30/17
 - Assigned to Hon. Amy D. Hogue

[PROPOSED] ORDER**1. CERTIFICATION OF SETTLEMENT CLASS****2. PRELIMINARY APPROVAL OF JOINT STIPULATION OF SETTLEMENT OF CLASS ACTIONS AND;****3. SCHEDULING ORDER**

27 Plaintiff JOSE CUEVAS (the "Representative Plaintiff") individually and on behalf of
 28 the proposed Settlement Class (collectively, "Plaintiffs") has filed a motion asking the Court to

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 LOS ANGELES SUPERIOR COURT
 OCT 28 2019
 I. LOVO

1 certify the Settlement Class and grant preliminary approval of the Joint Stipulation of Settlement
2 and Release of Class Action ("Settlement Agreement") between Plaintiffs and Defendants
3 Phillips Fractor & Company, LLC ("PFC") and California Survey Research Services, Inc.,
4 ("CSRS"). The Settlement Agreement is dated October 11, 2019 and has been entered into by
5 PFC, CSRS and the Representative Plaintiff, on his own behalf and on behalf of the Settlement
6 Class, certified by this Order.

7 The parties have stipulated and the Court has ordered that the Motion may be submitted
8 upon the record and briefs on file and without the need for a hearing. Having considered the
9 Settlement Agreement along with other documents filed in this action, the Court finds good
10 cause for issuing an order certifying the settlement class and preliminarily approving the
11 Settlement Agreement.

12 IT IS HEREBY ORDERED THAT:

13 1. The Court grants the request for preliminary approval of the Settlement Agreement.
14 All defined terms contained in this order shall have the same meaning as set forth in the
15 Settlement Agreement.

16 a. The Court finds that the Settlement Agreement is within the range of what is
17 fair, adequate, and reasonable as set forth in Code of Civil Procedure section 382 and California
18 Rules of Court 3.760 et seq., and applicable law. The Court further finds that the Settlement
19 Agreement appears to be the product of serious, informed, non-collusive negotiations, has no
20 obvious deficiencies, and does not improperly grant preferential treatment to the Representative
21 Plaintiff or to any segments of the Settlement Class.

22 b. The Settlement Agreement is the result of extensive, well-informed, good-faith,
23 and arm's-length negotiations.

24 c. Both class counsel, CSRS's and PFC's counsel are experienced and capable
25 litigators and have assessed the claims' strengths and weaknesses and the benefits of the partial
26 settlement.

27 d. The Settlement Agreement confers a substantial benefit on the Settlement
28 Class, because there is a significant risk to them with continued litigation of this Action.

1 e. The Court preliminarily approves Settlement Amount as the combined total of
2 (i) \$5,000.00 from Defendant CSRS and the remaining limits of a \$1,000,000.00 policy of
3 insurance issued to PFC, after deductions for defense fees and costs paid by the insurer under the
4 policy.

5 2. The Court approves the Settlement Agreement's plan for providing notice to the
6 Settlement Class of the (i) certification of the Settlement Class, (ii) the Settlement Agreement,
7 and (iii) the Fairness and Final Approval hearing. Notice is being provided in a form most likely
8 to reach the Settlement Class under the circumstances and constitutes valid, due, and sufficient
9 notice to the Settlement Class in compliance with the requirements of applicable law, including
10 Code of Civil Procedure section 382 and California Rules of Court 3.760 et seq., the due-process
11 requirements of the United States Constitution and California Constitution, and other applicable
12 law. The Settlement Agreement shall be binding on all Settlement Class Members who do not
13 opt out of the Settlement, regardless of whether they actually receive the Class Notice.

14 3. The Court has reviewed and approves, as to form and content, the Class Notice, which
15 consists of: the Notice of Proposed Class Action Settlement which will include an individualized
16 Notice of Anticipated Settlement Share and Certification of the Settlement Class (attached to the
17 Settlement Agreement as Exhibit B); and the Opt-Out Form (substantially in the form of Exhibit
18 C to the Settlement Agreement). The Class Notice is deemed sufficient to inform the Settlement
19 Class Members of the terms of the Settlement Agreement, their rights, and the process for
20 exercising their rights under the Settlement Agreement, including their rights to object, receive a
21 share of the Net Settlement Amount or exclude themselves, and the date and location of the Final
22 Approval Hearing.

23 4. The Court appoints and designates KCC as the Settlement Administrator. The duties of
24 the Settlement Administrator shall include, reviewing, updating, and verifying the Class Data
25 List, preparing and mailing the Class Notice in English, Spanish, and Tagalog (upon request), to
26 each Settlement Class Member, collecting and verifying the taxpayer identification information
27 associated with the Settlement Class Members. Answering questions about the Settlement, and
28 updating addresses and contact information for Settlement Class Members. All costs and

1 expenses for, or relating in any manner to, the administration of the Settlement, including
2 without limitation the fees of the Settlement Administrator will be paid from and out of the
3 Settlement Amount. The Court directs the Settlement Administrator to notify the Settlement
4 Class in accordance with the procedures set forth in the Settlement Agreement, including mailing
5 the approved Class Notice documents to the Settlement Class Members.

6 5. Except as otherwise indicated in the Settlement Agreement, PFC, CSRS, the Released
7 Parties, and Defense Counsel shall have no responsibility or involvement with regard to
8 administering the Settlement Fund, processing of claims, or distribution of payments to
9 Settlement Class Members. Plaintiffs and their counsel shall communicate with the Settlement
10 Administrator as necessary to achieve compliance with the Settlement approved by the Court.
11 Nor shall PFC, CSRS and the Released Parties have any responsibility or liability for, relating to,
12 or arising from or in connection with the appointment of the Settlement Administrator, any
13 actions or omissions by the Settlement Administrator, its agents, or the agents of Proposed Class
14 Counsel, or any obligation or liability of the Qualified Settlement Fund. Without limitation, PFC,
15 CSRS and the Released Parties are not responsible and shall have no liability in connection with
16 the distribution of any unclaimed funds or any obligation to remit such funds to the State of
17 California, the failure to obtain or report accurate taxpayer information, the failure to withhold,
18 remit, or pay sufficient Taxes, or the calculation and distribution of payments to Settlement Class
19 Members. Settlement Class Members are responsible for and may owe taxes to the extent their
20 obligations have not been fully withheld.

21 6. The Settlement Administrator shall send Settlement Class Members, by first class mail
22 to their last known address (after performing address updates and verifications as appropriate
23 prior to the first mailing), the Class Notice ("First Mailing") within 90 days of entry of this order.
24 Upon receipt of information that a Settlement Class Member did not, in fact, receive the Class
25 Notice in the First Mailing (e.g., by the post office's return to the Settlement Administrator of the
26 First Mailing sent to that individual), the Settlement Administrator shall undertake reasonable
27 efforts to determine the correct address for those Settlement Class Members who did not receive
28 the First Mailing. Then, within 115 days after entry of this order, the Settlement Administrator

1 will execute a second mailing of Class Notice to those Settlement Class Members whose
2 previous Class Notices were undeliverable and for whom the Settlement Administrator has
3 located an alternative address through skip-tracing or other means ("Second Mailing").

4 7. No later than the date of the First Mailing, if the Settlement Administrator deems it a
5 reasonable basis for disseminating Class Notice and collecting forms from the Settlement Class,
6 the Settlement Administrator shall establish and maintain a website, in each of English, Spanish,
7 and Tagalog, the content of which shall be subject to the prior approval by all Parties to the
8 Settlement Agreement (or, if the Parties cannot agree, the approval of the Court). The website (if
9 any) shall include the Class Notice materials and information about how Settlement Class
10 Members can contact the Settlement Administrator.

11 8. Upon reasonable request, the Settlement Administrator shall provide periodic reports
12 to all counsel identifying the efforts taken to provide actual notice to Settlement Class Members,
13 such reports to include without limitation the number of mailings sent out, the number of notices
14 returned undeliverable, the number of persons who have responded to the PSAs, the number of
15 phone calls received, and the efforts taken to identify proper addresses for the Settlement Class
16 Members.

17 9. Settlement Class Members as provided in the Settlement Agreement and Class Notice
18 will be entitled to receive a share of the Net Settlement Fund as set forth in the Plan of
19 Allocation. Settlement Class Members will be bound, by all terms of the Settlement Agreement,
20 including the releases, as well as the terms of the Order and Final Judgment to be entered and
21 will be barred from bringing any action against any of the Released Parties concerning any of the
22 Released Claims.

23 10. As part of the Class Notice documents, Settlement Class Members will be provided
24 their Notice of Anticipated Settlement Share. Whether or not he or she submits an objection to
25 all or part of the Settlement, a Settlement Class Member may dispute his or her Anticipated
26 Settlement Share, or the data used to calculate the Notice of Anticipated Settlement Share, within
27 135 days after entry of this order.
28

1 11. Any Settlement Class Member may choose to opt out and be excluded from the
2 Settlement as provided in the Settlement Agreement and Class Notice by timely submitting an
3 Opt-Out Form. Any person who opts out will not be bound by the Settlement Agreement and
4 will have no right to receive a share of the Settlement or to object to the Settlement Agreement.
5 Settlement Class Members who do not opt out shall be bound by all determinations of the Court,
6 the terms of the Settlement Agreement, and the Final Order and Judgment. The Settlement
7 Administrator shall provide the parties with a list of opt-outs sixty (60) days after the second
8 mailing.

9 12. Pursuant to the Code of Civil Procedure section 382 and California Rules of Court
10 3.760 et seq., and other applicable law, Settlement Class Members may object to the terms of the
11 Settlement Agreement by filing a timely and complete objection with the Court. Those who
12 object may present their objections at the Fairness and Final Approval Hearing in person or by
13 counsel, provided that they include a statement of their intention to appear in the objection that
14 they file with the Court. Settlement Class Members shall be permitted to withdraw their
15 objections in writing by filing a withdrawal statement not later than five business days prior to
16 the Court's Fairness and Final Approval Hearing.

17 13. For the sole purpose of effectuating the Settlement Agreement and with no other
18 effect on this or any other litigation should the Settlement Agreement not ultimately become both
19 effective and final, the Court has found the requirements of Code of Civil Procedure section 382
20 and California Rules of Court 3.760 et seq., and other applicable law satisfied for the proposed
21 Settlement Class. Certification of the Settlement Class pursuant to this order is for settlement
22 purposes only and shall not be construed as an admission by PFC or CSRS that this action is
23 appropriate for class treatment for litigation or any other purposes. Entry of this order is without
24 prejudice to PFC and CSRS's rights to oppose certification of a litigation class in this action
25 should the Settlement Agreement not be finally approved or not become effective. The Court
26 grants Plaintiffs' request to certify the following Settlement Class:

27 [A]ny and all individuals who are or were employed as non-
28 exempt agricultural employees of Cal-Pacific Farm Management,
LP, T&R Bangi's Agricultural Services, Inc., Kern Ag Labor

1 Management, Inc., La Vina Contracting, Inc., or Elite Ag Labor
2 Services, Inc. and performed work at Delano Farms in California
3 between July 17, 2005 and [the date of entry of the Order of
4 Certification and Preliminary Approval in the *Arredondo* Action]
5 who do not opt out, excluding those who worked only as irrigators,
6 tractor drivers, or swamper or only in cold storage. This includes
7 employees, without limitation, who previously opted out of the
8 previously certified class in the *Arredondo* Action. For clarity, the
9 phrase "performed work at Delano Farms in California" as used in
10 this paragraph does not include work performed at premises other
11 than Delano Farms, such as Blanc Vineyards and Red Cedar
12 Vineyards in Paso Robles.

13 14. For purposes of this Settlement only, the Court appoints and designates the
14 Representative Plaintiff to serve as the representative of the Settlement Class.

15 15. For purposes of this Settlement only, the Court appoints and designates the Law
16 Office of Ball & Yorke as counsel for the Settlement Class. Class Counsel is authorized to act on
17 behalf of the Representative Plaintiff and the Settlement Class with respect to all acts required
18 by, or which may be given pursuant to, the Settlement Agreement or such other acts that are
19 reasonably necessary to consummate the Settlement Agreement. Any Settlement Class Member
20 may object to the Settlement Agreement and enter an appearance through his or her own counsel
21 at the Settlement Class Member's own expense.

22 16. The deadline for filing a Motion for Final Approval of the Settlement and all papers
23 in support of the Order and Final Judgment will be 15 days before the Fairness and Final
24 Approval Hearing. The deadline for filing a response to any objections to the Settlement
25 Agreement will also be 15 days before the Fairness and Final Approval Hearing.

26 17. The Court directs the parties to submit a proposed scheduling order, in accordance
27 with the deadlines set forth in the Settlement Agreement, within 10 days of entry of this order.
28 The proposed scheduling order will include a proposed date and time for the Fairness and Final
Approval Hearing to determine all necessary matters concerning the Settlement, including
whether the proposed Settlement Agreement's terms are fair, adequate, and reasonable and
should be finally approved by the Court and whether a judgment should be entered. The Fairness
and Approval Hearing will be held no earlier than 210 days following the entry of this Order and

1 will take place in Department 311 of the Superior Court of the State of California, County of Los
2 Angeles, located at 600 South Commonwealth Ave., Los Angeles, California 90005. The Court
3 will hold a hearing on Class Counsel's Motion for Attorneys' Fees and Costs and the
4 Representative Plaintiff's Enhancement Award at the same time.

5 18. Upon Final Approval, all Settlement Class Members who have not submitted timely
6 Opt-Out Forms will be deemed to have forever released and discharged the Released Parties
7 from the Released Claims. The Representative Plaintiff will be deemed to have forever released
8 and discharged the Released Parties, and the Released Parties will be deemed to have forever
9 released the Representative Plaintiff, from and of not only the Released Claims but any and all
10 claims, known or unknown in this action, as of the date of entry of the Order of Certification and
11 Preliminary Approval. In addition to and in connection with the Released Claims, the
12 Representative Plaintiff and Released Parties each for himself, herself, or itself waives the
13 provisions of California Civil Code § 1542 as set forth and defined in the Settlement Agreement.

14 19. PFC and CSRS will have the absolute right, in the exercise of its sole discretion, to
15 terminate in its entirety the Settlement Agreement *ab initio* in the event that ¼ of 1% or more of
16 the Settlement Class Members submit an Opt-Out Form. If PFC and CSRS so elects, it will
17 notify Class Counsel, and the Court of its election within 195 days after entry of this Order
18 provided it has received the list of Settlement Class Members who have submitted timely opt-out
19 forms from the Settlement Administrator in accordance with Paragraph 80 of the Settlement
20 Agreement. Upon the giving of such notice, the Settlement shall be terminated.

21 20. Any Party to the Settlement Agreement shall have the right to terminate the
22 Settlement as provided in Paragraph 96 therein.

23 21. In the event the Settlement Agreement is terminated or fails to become effective for
24 any reason, the Parties to the Settlement Agreement shall be deemed to have reverted to their
25 respective litigation positions as of the date of execution of the Settlement Agreement and
26 without regard to PFC and CSRS's prior acceptance of the general terms of Plaintiff's settlement
27 proposal on which the Settlement Agreement is based, and shall proceed in all respects as if this
28

1 Preliminary Approval Order, any related orders, and the previous orders of the Court with regard
2 to or relating to the Settlement Agreement had not been entered. In such event:

3 a. The Settlement Agreement shall have no force and effect, no Party shall be
4 bound by any of its terms, and nothing in it may be used against any Party in this or in any other
5 proceeding (except that any Party may enforce the provisions of the Settlement Agreement
6 regarding termination or the effect of such termination);

7 b. No pleading, brief, motion, or other submission to the Court relating to the
8 Settlement (the "Settlement Submissions"), shall constitute an admission of any Party of any
9 kind or shall limit any claim, defense, or argument in any way, whether substantive or
10 procedural; and nothing in any Settlement Submissions may be used against any Party in this or
11 in any other proceeding (except that any Party may enforce the provisions of the Settlement
12 Agreement regarding termination or the effect of such termination);

13 c. PFC and CSRS and the Released Parties shall have no obligation to make any
14 payments;

15 d. This Order of Preliminary Approval and Certification and/or the Final Order
16 and Judgment, or any similar orders and related findings or conclusions, shall be vacated, shall
17 be of no effect whatsoever, and may not be used against any Party in this or in any other
18 proceeding;

19 e. The Cuevas Complaint, the Motion for Certification of the Settlement Class and
20 Preliminary Approval of the Settlement, and any submissions in favor of the Settlement
21 Agreement or the [Proposed] Order and Final Judgment shall all be withdrawn, and the Parties
22 will proceed to litigate this action with respect to the pleadings on file as of the time of execution
23 of the Settlement Agreement;

24 f. The Settlement Agreement and Settlement Submissions, and all negotiations,
25 statements, documents, and proceedings relating thereto, shall be deemed confidential and not
26 subject to disclosure for any purpose in any proceeding; and

27 g. Any portion of the Settlement Amount previously paid or caused to be paid by
28 PFC and CSRS to the Qualified Settlement Fund, together with any interest earned thereon, less

1 any Taxes required to be withheld with respect to such interest, shall be returned in accordance
2 with the provisions of Paragraph 97(d) of the Settlement Agreement.

3 22. Neither the Settlement Agreement nor any provisions contained in the Settlement
4 Agreement, nor any negotiations, statements, or proceedings in connection therewith, nor any
5 action undertaken pursuant thereto shall be construed as, or deemed to be evidence of, an
6 admission or concession on the part of the Plaintiffs, PFC, CSRS and any member of the
7 Settlement Class, or any other person or entity, of any liability or wrongdoing by them, or any of
8 them, or as to the strength or weakness of any claim or defense, and shall not be offered or
9 received in evidence of any action or proceeding (except an action to enforce the Settlement
10 Agreement), or be used in any way as an admission, concession, or evidence of any liability or
11 wrongdoing of any nature.

12 23. A copy of the Settlement Agreement is attached hereto as Exhibit A and
13 incorporated herein, as revised by this Paragraph. After executing the settlement Agreement the
14 Parties discovered certain unintended anomalies in the sequence of events called for under the
15 Agreement. By Stipulation of the Parties, the Settlement Agreement is hereby revised as
16 follows: (1) The first clause of Paragraph 80(d), which originally read "Within 185 days after
17 entry of the [Proposed] Order of Certification and Preliminary Approval," shall be revised to
18 read "Within 60 days of the Second Mailing,"; (2) Paragraph 91 shall be revised to read: "The
19 Parties will file their responses to any Settlement Class Member objections not later than 60 days
20 after such objections are due from Settlement Class Members pursuant to Paragraph 90, provided
21 they are timely received from the Settlement Administrator."

22 24. This Order is intended to carry out, and to be consistent with, the terms of the
23 Settlement Agreement. Except as revised by the preceding Paragraph, to the extent this Order is
24 inconsistent with a term of the Settlement Agreement, the Settlement Agreement shall control.

25 25. The Court orders the following schedule for further proceedings:

Event	Proposed Date	Date Ordered
Order Granting Preliminary Approval ("Order")	November 1, 2019	10/30/19
Settlement Administrator to establish Qualified Settlement	November 11, 2019	11/11/19

1	Fund (10 days after Order, ¶ 74)		
2	Initial Deposit of Funds by Defendants (60 days after Order, ¶¶ 67, 68)	December 31, 2019	12/31/19
3	Settlement Administrator to Mail 1 st Notice to Class Members (90 days after Order, ¶ 78(a))	January 30, 2020	1/30/20
4	Deadline for Opt Outs to be received by Settlement Administrator re: 1 st Notice (45 days after 1 st Notice, ¶ 80)	March 16, 2020	3/16/20
5	Settlement Administrator to Mail 2 nd Notice (115 days after Order, ¶ 78(d))	February 24, 2020	2/24/20
6	Deadline for Opt Outs to be received by Settlement Administrator re: 2 nd Notice (45 days after 2d Notice, ¶ 80)	April 9, 2020	4/9/20
7	Deadline for Settlement Administrator to provide the Parties with a list of Opt Outs from 2 nd Notice of Mailing (60 days after 2d Notice, ¶80(d) as revised)	April 24, 2020	4/24/20
8	Parties Response to list of Opt Outs (20 days after receipt of Opt-outs assuming timely delivered, ¶ 80(e))	May 14, 2020	5/14/20
9	Motion for Final Approval and Motion for Attorneys' Fees & Costs (15 days before hearing, ¶ 93)	June 4, 2020	6/4/20
10	Final Approval Hearing (no less than 210 days after Order, ¶ 92(f))	June 19, 2020 (or thereafter)	6/19/20 at 10:00 a.m.
11	Final Deposit by PFC (60 days of Effective Date of Settlement, ¶¶ 67, 94)	Assuming no appeals, approximately October 19, 2020	
12	Checks Mailed (as soon as practical after Final Deposit and other matters, ¶ 83)	Approximately October 26, 2020	

So ordered.

AMY D. HOGUE, JUDGE

1 IT IS SO ORDERED.

2 Dated: _____

Honorable Amy D. Hogue

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