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**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA**

ERIC FELIX, an individual, on behalf of
himself and others similarly situated,

Plaintiff,

v.

WM. BOLTHOUSE FARMS, INC.,

Defendant.

) Case No.: 1:19-cv-00312-AWI-JLT
)
) ORDER ADOPTING THE FINDINGS AND
) RECOMMENDATIONS, GRANTING
) PLAINTIFF’S MOTION FOR FINAL APPROVAL
) OF THE CLASS SETTLEMENT, GRANTING IN
) PART PLAINTIFF’S MOTION FOR
) ATTORNEYS’ FEES, COSTS, AND CLASS
) REPRESENTATIVE INCENTIVE PAYMENT
) (Doc. 40)
)
) ORDER DISMISSING THE ACTION AND
) DIRECTING THE CLERK TO CLOSE THE CASE
)
)

Plaintiff Eric Felix seeks final approval of a class action settlement reached with Defendant WM. Bolthouse Farms, Inc. (Doc. 36.) In addition, Plaintiff seeks an award of attorneys’ fees and costs from the Settlement fund; a class representative enhancement; and costs for settlement administration. (Doc. 36-1.) Defendant does not oppose these requests, and no objections were filed by class members.

The Court granted preliminary approval of the settlement on January 7, 2020. (Doc. 29.) On May 4, 2020, the Court issued a Findings and Recommendation (“F&R”) to grant Plaintiff’s motion for final approval of the class settlement and to grant in part Plaintiff’s motion for attorneys’ fees and costs and class representative incentive payment, providing the parties fourteen days to file any

1 objections to the recommendation. (Doc. 40.) In addition, the parties were “advised that their failure to
2 file objections within the specified time may waive the right to appeal the District Court’s order.”
3 (Doc. 40 at 31, citing Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991); Wilkerson v. Wheeler, 772 F.3d
4 834, 834 (9th Cir. 2014)). To date, no objections have been filed and the time period for doing so has
5 expired.

6 In accordance with the provisions of 28 U.S.C. § 636 (b)(1)(C) and Britt v. Simi Valley United
7 School Dist., 708 F.2d 452, 454 (9th Cir. 1983), this Court conducted a *de novo* review of the case.
8 Having carefully reviewed the file, the Court finds the F&R are generally supported by the record and
9 proper analysis.

10 However, there is one part of the F&R’s analysis that Court will respectfully decline to adopt.
11 The F&R relied on prevailing rates for attorneys in the Sacramento Division of the Eastern District of
12 California as part of the evaluation of an attorney’s fee award. This was improper. The applicable
13 hourly rates for an attorney’s fee award are the prevailing rates for the forum in which the court sits.
14 Chaudhry v. City of L.A., 751 F.3d 1095, 1110 (9th Cir. 2016). This Court sits in the Fresno Division
15 of the Eastern District of California. The prevailing rates outside of the Fresno Division, including the
16 prevailing rates for the Sacramento Division, are generally irrelevant. Estate of Casillas v. City of
17 Fresno, 2020 U.S. Dist. LEXIS 31299, *23-*24 (E.D. Cal. Feb. 21, 2020); Jadwin v. County of Kern,
18 767 F.Supp.2d 1069, 1125 (E.D. Cal. 211). Subject to some exceptions, in the Fresno Division,
19 attorneys with twenty or more years of experience generally are awarded between \$325 and \$400 per
20 hour, attorneys with ten to twenty years of experience are awarded between \$250 and \$350, attorneys
21 with five to ten years of experience are generally awarded between \$200 and \$300 per hour, and
22 attorneys with less the five years of experience are generally awarded between \$150 and \$200 per
23 hour. See Christofferson v. All Pure Serv. of Central Cal., Inc., 2020 U.S. Dist. LEXIS 105133, *72-
24 *75 (E.D. Cal. June 16, 2020); Estate of Casillas, 2020 U.S. Dist. LEXIS 31299 at *28-*31. The
25 Court will apply this range to the attorneys’ fees requested.

26 As the F&R notes, the Plaintiff’s firm successfully specializes in labor and wage related class
27 actions and has been practicing in this area of law for twenty years. Eric Kingsley is the managing
28 partner of the Plaintiff’ firm and has been practicing law since 1996. Justin Aufderhar graduated from

1 law school in 2016 and is an associate attorney. Jessica L. Adlouni graduated from law school in 2019
2 and is an associate attorney at Plaintiff's firm. Finally, Kelsey Szamet has been practicing law since
3 2008 and appears to be an associate at Plaintiff's firm. Ms. Szamet has done the most work on this
4 case. After consideration, the Court finds that the following rates are appropriate and consistent with
5 the prevailing rates in Fresno: Eric Kingsley - \$400 per hour, Kelsey Szamet - \$300, Justin Aufderhar
6 - \$190, Jessica Adlouni - \$150. The Court will not adjust the hours claimed. So applying these rates,
7 the fees for Mr. Kingsley total \$2,560 (\$400 x 6.4), the fees for Ms. Szamet total \$12,540 (\$300 x
8 41.8), the fees for Mr. Aufderhar total \$4,199 (\$190 x 22.1), the fees for Ms. Adlouni total \$2,565
9 (\$150 x 17.1). The lodestar figure for attorneys' fees is \$21,864.00.

10 The F&R calculated a fee award of \$26,395 using Sacramento hourly rates. However, the
11 F&R recognized that this amount is below the Ninth Circuit's approved benchmark, 25% of the total
12 settlement. The F&R found that an appropriate fee award would be an award at the 25% benchmark
13 and recommended a total fee award of \$29,568.75. The F&R's recommendation of an award based on
14 the 25% benchmark is appropriate. Therefore, while the Court respectfully declines to adopt the
15 lodestar figure of the F&R, the Court will adopt the ultimate recommendation and award attorneys'
16 fees in the amount of \$29,568.75.

17 Otherwise, the Court adopts all other aspects of the F&R.

18 Accordingly, IT IS HEREBY ORDERED that:

- 19 1. The Findings and Recommendations dated May 4, 2020 (Doc. 40) are ADOPTED
20 consistent with the above analysis;
- 21 2. Plaintiff's motion for final approval of the Settlement Agreement is GRANTED;
- 22 3. Plaintiff's request for certification of the Settlement Class is GRANTED and defined as:

23 All applicants in the United States who filled out WM.
24 BOLTHOUSE FARMS, INC.'s standard 'Consent to Request
25 Consumer Report & Investigative Consumer Report
26 Information' form as administered by Sterling Infosystems Inc.
27 during the Class Period.

- 28 4. Class Counsel's motion for attorneys' fees is GRANTED in the amount of \$29,568.75,
which is 25% of the gross settlement amount;

- 1 5. Class Counsel's request for costs is GRANTED in the amount of \$931.11;
- 2 6. The request for fees for the Settlement Administrator JND Legal Administration is
- 3 GRANTED in the amount of \$18,500.00;
- 4 7. Plaintiff's request for class representative incentive payment is GRANTED in the
- 5 modified amount of \$1,500.00;
- 6 8. The action is DISMISSED WITH PREJUDICE with each side to bear its own costs and
- 7 attorneys' fees, except as otherwise provided by the Settlement and ordered by the
- 8 Court;
- 9 9. The Clerk of Court shall CLOSE this case; and
- 10 10. The Court RETAINS jurisdiction to consider any further applications arising out of or in
- 11 connection with the Settlement.

12
13 IT IS SO ORDERED.

14 Dated: July 7, 2020



SENIOR DISTRICT JUDGE