

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
SOUTHERN DIVISION

Civil Action No. 7-23-cv-00004-M-RJ

JACINTO GOMEZ OVANDO and MARIA)
DEL CARMEN PERALTA BAEZA on)
behalf of themselves and all others similarly)
situated,)
)
Plaintiffs,)
)
v.)
)
)
MOUNTAIRE FARMS, INC., and)
MOUNTAIRE FARMS OF NORTH)
CAROLINA, CORP.,)
)
)
Defendants.)

**ORDER GRANTING PLAINTIFFS' UNOPPOSED MOTION FOR PRELIMINARY
APPROVAL OF PROPOSED SETTLEMENT AGREEMENT OF CLASS AND
COLLECTIVE ACTION AND RELEASE OF CLAIMS**

WHEREAS, Named Plaintiffs Jacinto Gomez Ovando and Maria del Carmen Peralta Baeza ("Plaintiffs") and Defendants Mountaire Farms Inc. and Mountaire Farms of North Carolina Corp. ("Defendants" or "Mountaire") have entered into the Settlement Agreement of Class and Collective Action and Release of Claims ("Settlement Agreement"), (*see* DE 136-1), which is intended to resolve claims asserted in this action by Plaintiffs; and

WHEREAS, the Settlement Agreement, together with its exhibits, set forth the terms and conditions for a proposed settlement and dismissal with prejudice of this action against the Defendants;

WHEREAS, Plaintiff has requested that the court enter an Order: (1) preliminarily adjudging the terms of the proposed settlement to be fair, reasonable and adequate, and in the best interests of Plaintiffs,

the Putative FLSA Collective Members, and Rule 23 Settlement Class Members,¹ and directing consummation of its terms and provisions; (2) provisionally certifying the Rule 23 Settlement Class for settlement purposes only; (3) approving, as to form and content, the proposed Notice and notice plan, and authorizing the delivery of the Notice and Claim Form to all Putative FLSA Collective Members and Rule 23 Settlement Class Members by First Class U.S. Mail, and text message and email (to the extent Defendants have personal cell phone and email addresses for Putative FLSA Collective Members and Rule 23 Settlement Class Members), as set forth in Article V, Section C of the Settlement Agreement; (4) appointing Plaintiffs' Counsel as Class Counsel; (5) approving and appointing CPT Group, Inc. ("CPT") as the Settlement Administrator who will administer this settlement and carry out the duties set forth in the Settlement Agreement; (6) setting a seventy-five (75) calendar day deadline (from the date the Notice is postmarked) for Putative FLSA Collective Members and Rule 23 Settlement Class Members to submit a Claim Form, request to exclude themselves or submit objections; and (7) scheduling a Final Approval Hearing for a date no earlier than one hundred (100) calendar days from the date after the filing of Plaintiffs' Unopposed Motion for Preliminary Approval of Proposed Settlement Agreement of Class and Collective Action and Release of Claims ("Motion for Preliminary Approval"), to allow the Parties to comply with the Class Action Fairness Act, 28 U.S.C. § 1715(b) ("CAFA").

WHEREAS, the court has before it, the Motion for Preliminary Approval and papers in support thereof, together with the Settlement Agreement and its Exhibits.

WHEREAS, the court is satisfied that the terms and conditions set forth in the Settlement Agreement were the result of good faith, arm's length settlement negotiations between competent and experienced counsel for Plaintiff and Defendants.

WHEREAS, having reviewed and considered the Settlement Agreement and accompanying

¹ The capitalized terms used in this Order are intended to have the same meaning as they are given in the Settlement Agreement.

Exhibits, (DE 136-1), the Plaintiffs' Motion for Preliminary Approval, the declaration filed in support of the Plaintiffs' Motion for Preliminary Approval, and having considered the arguments of counsel, the court makes the findings and grants the relief set forth below, authorizing notice of the settlement contained in the Settlement Agreement upon the terms and conditions set forth in this Order.

IT IS HEREBY ORDERED AS FOLLOWS:

Preliminary Approval of Proposed Settlement

1. The court has reviewed the terms of the proposed Settlement Agreement, including the plan of allocation and release of claims, as well as the motion papers and declarations of counsel, which describe Class Counsel's legal and factual investigation, and the settlement process. Based on review of those papers, the court concludes that the settlement is fair, reasonable, and adequate, in the best interests of Named Plaintiffs, the Putative FLSA Collective Members, and Rule 23 Settlement Class Members, and the result of extensive, arm's length negotiations among the parties after Class Counsel investigated the claims and became familiar with the strengths and weaknesses of the case. The court finds that the settlement process was non-collusive. Based on the court's review of papers submitted in support of preliminary approval, the Court concludes that the proposed Settlement Agreement provides adequate relief to the Named Plaintiffs, Putative FLSA Collective Members, and Rule 23 Settlement Class Members, and that the release of their respective claims is appropriately tailored to the allegations in the Amended Complaint. The court concludes that the proposed Settlement has no obvious defects and is likely to be approved at the final approval stage, such that giving notice to Putative FLSA Collective Members and Rule 23 Settlement Class Members is justified.

Provisional Certification of FLSA Collective and Rule 23 Settlement Class

2. On the basis of the findings set forth below, the court conditionally certifies the following collective of Putative FLSA Collective Members pursuant to Section 16(b) of the FLSA, for settlement purposes only, in accordance with the terms of the Settlement Agreement:

Any individual employed by Defendants at their North Carolina chicken processing facilities as non-exempt chicken processing employees at any time within the three years prior to the commencement of this Action through December 20, 2024.

3. On the basis of the findings set forth below, the court conditionally certifies the following class of Rule 23 Settlement Class Members pursuant to Fed. R. Civ. P. 23 for settlement purposes only in accordance with the terms of the Settlement Agreement:

Any individual employed by Defendants at their North Carolina chicken processing facilities as non-exempt chicken processing employees at any time within the three years prior to the commencement of this Action through December 20, 2024.²

Appointment of Class Representatives and Class Counsel

4. For the purpose of settlement only, the court further finds that Plaintiffs' Counsel are adequate to serve as Class Counsel and conditionally appoints Gilda A. Hernandez, of the Law Offices of Gilda A. Hernandez, PLLC, as Class Counsel for the Settlement Class. Any Rule 23 Settlement Class Member who does not elect to be excluded and any Participating FLSA Collective Members may, but need not, enter an appearance through his or her own attorney. Rule 23 Settlement Class Members who do not elect to be excluded who do not enter an appearance through their own attorneys will be represented by Class Counsel.

5. For the purposes of settlement only, the court further finds that Named Plaintiffs Gomez and Baeza are adequate class representatives for the Rule 23 Settlement Class Members.

Notice to Putative FLSA Collective Members and Rule 23 Settlement Class Members

6. The court approves as to form and content the Notice and Claim Form, attached as Exhibits to the Settlement Agreement, which is an Exhibit to Plaintiffs' Memorandum of Law in Support of their Motion for Preliminary Approval, respectively (DE 136-2).

² The court and the Parties expressly acknowledge and agree that such individuals (or if such person is incompetent or deceased, the person's legal guardian, executor heir, or successor-in-interest) retain the right to request exclusion from the Settlement during the Claim Period and, if they exercise this right, such individuals will not be bound by the Rule 23 settlement. (*See also infra*).

7. The manner and forms of Notice to be sent to Eligible Settlement Members set forth in the Settlement Agreement are approved and the provisions thereof are incorporated into this Order. Following entry of this Order, the Parties are directed to ensure the Notice and Claim Form is disseminated according to the terms of the Settlement Agreement. (DE 136-1).

Submitting a Claim Form to be a Participating FLSA Collective Member and Claimant

8. Except for Named Plaintiffs Gomez and Baeza, and any Putative FLSA Collective Members who previously submitted a consent to join form in this Action, all Eligible Settlement Members are authorized to receive an Individual Settlement Payment only if they become a Claimant by timely submitting a signed Claim Form to the Settlement Administrator via U.S. Mail so that it is postmarked on or before the date seventy-five (75) calendar days after the date on which the Settlement Administrator first mails the Notice and Claim Form to Eligible Settlement Members, in accordance with the terms of the Settlement Agreement. All Eligible Settlement Members who fail to become Claimants or comply with these requirements shall be forever barred from receiving any settlement payment pursuant to the Settlement set forth in the Settlement Agreement. All Claimants will fully release the FLSA Released Claims and Released Claims, as defined in the Settlement Agreement, and are enjoined from asserting any of the FLSA Released Claims and Released Claims against Defendants.

Requests for Exclusion from the Rule 23 Settlement Class

9. Rule 23 Settlement Members may individually request exclusion from the Rule 23 Settlement Class and the settlement. All written requests by Rule 23 Settlement Members, to exclude themselves from the settlement must be returned by First-Class U.S. Mail to the Settlement Administrator so that it is postmarked no later than seventy-five (75) calendar days after the date on which the Settlement Administrator first mails the Notice and Claim Form to the members of the Eligible Settlement Members. A written request seeking exclusion must expressly state that the Rule 23 Settlement Class Member wishes to be excluded from the Settlement. The request should state at the top of the letter "Request for Exclusion

from Settlement in *Jacinto Gomez Ovando, et al., v. Mountaire Farms, Inc., et al.*, CA No. 7:23-cv-00004-M-RJ,” and should include the name, address, telephone number, and signature of the individual requesting exclusion from the settlement.

10. In the event the settlement receives final approval, any Rule 23 Settlement Class Member who did not properly and timely request exclusion shall be bound by all the terms and provisions of the Settlement Agreement, the final approval order, the final judgment, and the releases set forth therein, and will be deemed to have waived all objections and opposition to the fairness, reasonableness, and adequacy of the settlement, whether or not such person objected to the settlement and whether or not such person made a claim upon, or participated in, the settlement. All Rule 23 Settlement Class Members who do not timely and validly request to be excluded release the Released Claims as defined in the Settlement Agreement and are enjoined from asserting any of the Released Claims against Defendants.

11. All Rule 23 Settlement Class Members who submit valid and timely notices of their intent to be excluded from the Settlement Class: (i) shall not have any rights under the Settlement Agreement; (ii) shall not be entitled to receive a settlement payment; (iii) shall not release the Released Claims set forth in the Settlement Agreement; and (iv) shall not be bound by the Settlement Agreement, any final approval order, or the final judgment.

Objections to the Settlement

12. Consistent with the Settlement Agreement, Rule 23 Settlement Class Members who have not requested exclusion and wish to object to the settlement must file a written objection with the U.S. District Court for the Eastern District of North Carolina setting forth the nature of his or her objection, and the arguments supporting the objection, and serve copies of the objection on Class Counsel and Defendants’ counsel. Any objections must be filed and served with the court no later than seventy-five (75) calendar days after the date on which the Settlement Administrator first mails the Notice and Claim

Form to the Eligible Settlement Members. To the extent that any objection is filed in advance of the Final Approval Hearing, the Parties may file a written response to the objection as time permits. Unless otherwise permitted by the Court, Rule 23 Settlement Class Members shall not be entitled to speak at the Final Approval Hearing unless they have timely filed and served a written objection in accordance with the terms of the Settlement Agreement. Any Rule 23 Settlement Class Member who has properly and timely submitted objections may appear at the Final Approval Hearing, either in person or through a lawyer retained at their own expense. Any Rule 23 Settlement Class Members who fail to file and serve a timely written objection shall be deemed to have waived any objection and shall be foreclosed from objecting to this Settlement.

Approval and Appointment of Settlement Administrator

13. The court approves and appoints CPT Group (“CPT”) to serve as the neutral, third-party Settlement Administrator in accordance with the terms of the Settlement Agreement and this Order. The Court ORDERS and AUTHORIZES CPT to perform the administrative duties specified in the Settlement Agreement, including those in Article V, and shall not undertake any other tasks or duties associated with the settlement except as authorized by the court or in writing signed by all Parties.

14. CPT is ORDERED to regularly report to the Parties, in written form, the substance of the work it performs in this matter pursuant to this Order and the Settlement Agreement in accordance with the terms of § V(A)-(L) of the Settlement Agreement. This shall include informing the Parties of the dates CPT mails, emails, and texts the Notice to Eligible Settlement Members, the number of Claim Forms, objections or exclusion requests received, and when it distributes funds from the QSF.

15. Pursuant to this Order and the Settlement Agreement in accordance with the terms of § V(H) and as soon as practicable following the deadline for returning Claim Forms, and the resolution of any deficient submissions, but before the date of submission of the motion for final approval and the Final Approval Date or Final Approval Hearing, the Settlement Administrator shall provide Class Counsel and

Defense Counsel with a declaration of due diligence and information relating to the Notice and administration process, including skip tracing, website, distribution of Notice via U.S. Mail, text message, and email, and any other details that Defense counsel or Class Counsel may believe is equally important to share with the court. Class Counsel shall file this declaration with the court prior to the Final Approval Hearing.

16. To allow the Parties and the court to evaluate the work performed by CPT in this matter, CPT is also ORDERED to maintain records of all activities associated with its settlement administration duties pursuant to this Order and the Settlement Agreement, including: (i) records reflecting the dates of all mailings to members of the Rule 23 Settlement Class or FLSA Settlement Collective Action; (ii) records reflecting the dates of all materials and inquiries received in connection with the proposed settlement (whether by U.S. Mail, email, and/or text) and communicating such details to Class Counsel; (iii) the original mailing envelope for any returned Notice, any claim forms received, any written requests for exclusion, or any other correspondence received from Eligible Settlement Members; (iv) logs or date-stamped copies showing the dates and times of receipt of claim forms received by fax; and (v) the original copies of any U.S. mail or email communications with any Eligible Settlement Members.

17. The court FURTHER ORDERS that counsel for all Parties have the right to review and approve any documents to be mailed by CPT in connection with the proposed settlement prior to their mailing, and CPT may not mail any such documents without first receiving written approval or direction from the court to send such documents.

18. CPT is FURTHER ORDERED to take reasonable steps to protect the disclosure of any and all personal information concerning Eligible Settlement Members provided to CPT by counsel for the Parties, including but not limited to Eligible Settlement Members' personal information provided pursuant to § V(B) of the Settlement Agreement. This includes maintaining reasonable administrative, physical, and technical controls in order to avoid public disclosure of any such information and to protect the

confidentiality, security, integrity, and availability of such personal data in accordance with the terms of § V(B) of the Settlement Agreement.

19. Finally, CPT is ORDERED to perform whatever additional tasks that are agreed to by all Parties in writing, which are reasonably necessary to effectuate the issuance of the court-authorized Notice, to collect and track the Claim Forms submitted by Eligible Settlement Members, and requests for exclusion from those Rule 23 Settlement Class members who wish to exclude themselves from the proposed settlement, and, if it is later granted final approval, to distribute funds associated with the settlement in accordance with the terms of the Settlement Agreement.

The Final Approval Hearing

20. Pursuant to Rule 23(e) of the Fed. R. Civ. P., the court will hold a hearing to determine whether the proposed settlement and its terms as set forth in the Settlement Agreement, are fair, reasonable and in the best interests of the members of the Settlement Class, and whether a final judgment as to Plaintiffs' claims as provided in the Settlement Agreement should be entered granting final approval of the Settlement (the "Final Approval Hearing").

21. At the Final Approval Hearing, the court shall also determine whether, and in what amount, attorneys' fees, costs, and expenses should be awarded to Class Counsel, and whether, and in what amount, service awards should be made to Named Plaintiffs.

22. The Final Approval Hearing is hereby scheduled to be held before this court on Monday, **November 3, 2025, at 2:00 p.m. in Courtroom 1 of the United States District Court for the Eastern District of North Carolina, Alton Lennon Federal Courthouse, 2 Princess Street, Wilmington, NC 28401.**

23. The date and time of the Final Approval Hearing shall be set forth in the Notice, but the Final Approval Hearing shall be subject to adjournment by the court without further notice to Eligible Settlement Members other than that which may be posted by the court.

24. Only Rule 23 Settlement Class Members who have filed and served timely notices of objection in accordance with the terms of § V(D)(3) of the Settlement Agreement and this Order shall be entitled to be heard at the Final Approval Hearing. Any Rule 23 Settlement Class Member who does not timely file and serve an objection in writing to the Settlement Administrator, within seventy-five (75) calendar days after the mailing date of the Notice, prior to entry of Final Judgment, or to Class Counsel's application for fees, costs, and expenses or to the requested service awards to Named Plaintiffs, in accordance with the procedure set forth in the Notice, the Settlement Agreement, and mandated in this Order, shall be deemed to have waived any such objection by appeal, collateral attack, or otherwise.

Other Provisions

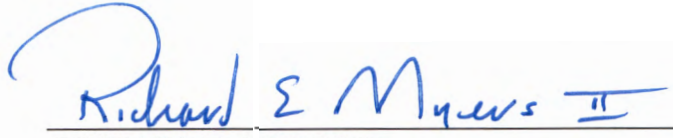
25. Each and every time period and provision of the Settlement Agreement shall be deemed incorporated herein as if expressly set forth and shall have the full force and effect of an Order of this court.

26. The Costs of Administration shall be paid from the Gross Settlement Amount as set forth in § V(K) of the Settlement Agreement.

27. Certification of the Rule 23 Settlement Class and FLSA Settlement Collective Action is a conditional certification for settlement purposes only. If the Settlement Agreement is terminated pursuant to the terms of the Settlement Agreement, or this court does not grant final approval of the Settlement Agreement, or the settlement is not consummated or fails to become effective for any reason whatsoever, the conditional certification of the Rule 23 Settlement Class and FLSA Settlement Collective Action shall automatically be cancelled and shall be void, any collective or class actions certified solely for purposes of the Settlement shall be decertified pursuant to the terms of § III(E) of the Settlement

Agreement, and the Defendants shall have reserved all of their rights to challenge the propriety of an FLSA collective action certification or Rule 23 class action certification for any purpose, including the opposition to any and all Rule 23 class or FLSA collective certification motions in this action, to contest the adequacy of Named Plaintiffs as representatives of the Settlement Classes, and to contest the adequacy of Plaintiffs' counsel as adequate Class Counsel. Additionally, Plaintiffs reserve all of their rights, including the right to continue with the litigation as set forth in the Settlement Agreement, should the Settlement Agreement not be consummated.

SO ORDERED this 19th day of June, 2025.



RICHARD E. MYERS II
CHIEF UNITED STATES DISTRICT JUDGE