

1 B. James Fitzpatrick (SBN: 129056)
Charles Swanston (SBN: 181882)
2 Laura L. Franklin (SBN: 282642)
FITZPATRICK & SWANSTON
3 555 S. Main Street
Salinas, CA 93901
4 Telephone: (831) 755-1311
Facsimile: (831) 755-1319
5

Larry W. Lee (SBN: 228175)
6 Howard L. Magee (SBN: 185199)
Mai Tulyathan (SBN: 316704)
7 DIVERSITY LAW GROUP, P.C.
8 515 South Figueroa Street, Suite 1250
Los Angeles, California 90071
9 Telephone: (213) 488-6555
Facsimile (213) 488-6554
10

Attorneys for Plaintiff,
11 KARYN MONDO, on behalf of herself
and all similarly aggrieved employees
12

13 **SUPERIOR COURT OF CALIFORNIA**

14 **COUNTY OF MONTEREY**

15 KARYN MONDO, on behalf of herself
and all similarly aggrieved employees,

16 Plaintiff,

17 v.

18 THE PAPE' GROUP, INC.; PAPE'
19 MATERIAL HANDLING, INC.; and DOES
1 through 50, inclusive,

20 Defendants.
21

Case No. 20CV001665

**DECLARATION OF B. JAMES
FITZPATRICK IN SUPPORT OF
PLAINTIFF'S MOTION TO APPROVE
SETTLEMENT AGREEMENT
PURSUANT TO THE PRIVATE
ATTORNEYS GENERAL ACT**

22 Complaint Filed:

June 16, 2020

23 I, B. James Fitzpatrick, declare as follows:

24 1. I am an attorney at law, duly licensed to practice before all Courts in the State of
25 California. I am a partner in the firm of Fitzpatrick & Swanston, counsel of record for Plaintiff
26 Karyn Mondo ("Plaintiff").

27 2. I have worked on this case from its inception through the present. I am familiar
28 with all aspects of this case and all tasks undertaken by the various members of this firm in

1 litigating this case. As set forth in the attached summary of tasks performed in this litigation, my
2 office and the Diversity Law Group office devoted significant time and advanced significant
3 costs in prosecuting this matter.

4 3. Counsels' application for an award of attorneys' fees in the amount of \$* and
5 reimbursement of litigation costs in the amount of \$* is reasonable and fair. These amounts are
6 well within what is reasonable and customary in both wage and hour settlements in general and
7 is based on the skill displayed by Counsel, the effort and resources invested in this case by
8 Counsel, the factual and legal complexities of this case, the importance of the interests which are
9 the subject of this litigation, the risks undertaken by Counsel, and the degree of success achieved
10 by Counsel.

11 4. I am the attorney primarily responsible for work performed in this litigation. I
12 have been assisted by attorney Laura L. Franklin and several paralegals in my office. As a result
13 of my firm's diligence in pursuing the factual and legal issues presented by this case, we were
14 able to realistically asses the Class Members' claims, evaluate their damages, and Defendant's
15 exposure. All work performed by our office is done on a contingency basis. Our firm has
16 received no compensation for our time invested or expenses incurred in litigating this case. We
17 have prosecuted this litigation up to this point, taking the risk that we ultimately would be faced
18 with not receiving any compensation for our work. Since the start of this case over three years
19 ago, through the conclusion of this matter, my office will have invested * hours on this case,
20 which includes anticipated future time attending the hearing, responding to inquiries from the
21 employees, preparing reports to the court and any other issues that may arise during the
22 settlement payout period. Attached hereto as **Exhibit A** is a detailed summary of tasks and hours
23 spent by this firm in litigating this case.

24 5. I strongly believe that Plaintiff can prevail at trial. However, after taking into
25 account sharply disputed factual and legal issues involved in this litigation, the risks attending
26 further prosecution, including the still-developing law under PAGA, and the substantial benefits
27 to be received pursuant to the compromise and settlement of the litigation, I have concluded that
28 settlement on the terms set forth in the Settlement Agreement is appropriate and in the best

1 interests of Plaintiff and the Aggrieved Employees.

2 6. The number of hours expended and anticipated by my firm to achieve the results
3 in this case was reasonable, and we worked skillfully and efficiently. Although Counsel requests
4 that the Court award attorneys' fees based on the common fund method, if the Court were to
5 cross-check the percentage award with a lodestar multiplier analysis, Counsel's attorneys' fee
6 request of \$* is reasonable.

7 7. I received my bachelor's degree from the University of California, Santa Barbara
8 and my Juris Doctor degree from the University of Santa Clara School of Law. I have practiced
9 law since 1987. Laura L. Franklin received her bachelor's degree from the University of
10 California, Riverside and she received her Juris Doctor degree from Monterey College of Law.
11 Mrs. Franklin has practiced employment law and litigation since 2012. The primary emphasis of
12 our practice is employment litigation representing both employers and employees. For the last
13 20 years, my office has primarily represented employees in wage and hour cases. Since then my
14 office has handled hundreds of individual wage and hour cases to conclusion and have been lead
15 class counsel and/or co-counsel in over 100 class actions. Attached hereto as **Exhibit B** is a list
16 of class actions in which we have served as lead counsel or co-counsel and where we sought
17 class certification by way of a settlement or a class certification motion. I have been involved in
18 the day to day handling of each of the listed class actions or have taken a supervisory role into
19 the day to day handling of such matters.

20 8. The hourly rate for attorneys in this firm is \$550.00 and the hourly rate for
21 paralegals is \$185.00. Having represented both employees and employers in the course of my
22 practice, I am familiar with the contingent fee market throughout Northern California, where I
23 primarily practice law, and in other areas of the state in which my firm regularly litigates. In
24 light of our experience and my knowledge of the market, I believe that the hourly rates charged
25 by my firm, and previously approved by this Court, are fair and reasonable and less than those
26 charged by my colleagues in other areas of California and the national market for prosecuting
27 class actions. As such, Counsel requests that the Court grant an hourly rate of \$550.00 for work
28 done on this matter by attorneys in my office and \$185.00 per hour for paralegal work.

9. To date my firm has advanced \$8,476.90 in litigation costs as follows:

<u>Description</u>	<u>Amount</u>
Court Filings	1,481.66
CourtCall	282.00
Courier	60.64
Process Service	127.60
Labor & Workforce Development Agency	75.00
Mediation Fee	6,450.00

10. All costs were reasonable and necessary to the effective prosecution of this matter. Class Counsel advanced costs with no guarantee that any of the costs advanced would be recovered. *Berkeley Cement, Inc. v. Regents of the University of California*, (2019) 30 Cal. App. 5th 1133, explains that mediation-related expenses are recoverable under the circumstances of this case.

I declare under penalty of perjury under the laws of the state of California that the foregoing is true and correct and if called as a witness I could and would competently testify to each of the matters stated herein, and that the matters stated herein are based upon my personal knowledge acquired through first-hand observation, except where the matters stated are opinions or beliefs, and as to all such opinions and/or beliefs, I do in fact believe them to be true. This declaration was executed by me on August 2, 2021, in Salinas, California.

/s/ B. James Fitzpatrick
B. James Fitzpatrick

EXHIBIT A

TASKS AND HOURS

The tasks referenced below involved work by attorneys and paralegals. The amount of time spent by each is detailed below.

I. INVESTIGATION

Task

- Meetings/telephonic conferences with client regarding her employment and alleged violations;
- Review of documents provided by client;
- Prepare and serve request for personnel file;
- Prepare PAGA notice; serve same
- Review personnel file;
- Numerous intra-office meetings/conferences regarding planning, results and details of investigations;
- State/Federal court search;
- Research regarding the entities to be named in the complaint;
- Legal research regarding IWC Wage Orders; and
- Legal research regarding claims that would be alleged in the Complaint.

Attorney Hours: 14

Paralegal Hours: 3.5

II. PLEADINGS

Task

- Prepare and file Complaint, Civil Cover Sheet, Summons;
- Receive and review Notice of Judicial Assignment and CMC
- File and serve Proof of Service;
- Receive and review Answer;
- Prepare, file and serve Stipulation for leave to file FAC;
- File and serve FAC;
- Receive and review answer to FAC;

Attorney Hours: 5

Paralegal Hours: .75

III. CASE MANAGEMENT CONFERENCES

Task

- Prepare, file and serve CMC statement; prepare for and attend 10/20/20 CMC;
- Receive and review 10/20/20 Minute Order; calendar deadlines
- Prepare, file and serve Stipulation to Continue 2/2/21 CMC;
- Receive and review 2/2/21 Minute Order; calendar deadlines
- Prepare, file and serve CMC statement; prepare for and attend 4/20/21 CMC; and
- Receive and review 4/20/21 Minute Order; calendar deadlines
- Prepare, file and serve CMC statement; prepare for and attend 6/22/21 CMC;
- Receive and review 6/22/21 Minute Order; calendar deadlines
- Receive and review 6/24/21 Order to Show Cause; calendar deadlines

Attorney Hours: 6

Paralegal Hours: 1

IV. DISCOVERY & DOCUMENT ANALYSIS

Task

- Receive and review Defendant's Form Interrogatories – General, Set 1;
- Receive and review Defendant's Form Interrogatories – Employment Law, Set 1;
- Receive and review Defendant's Special Interrogatories, Set 1;
- Receive and review Defendant's Request for Production of Documents, Set 1;
- Prepare draft discovery responses;
- Meet with Plaintiff to review draft discovery responses;
- Receive and review informal document production;
- Multiple with defense counsel; and
- Numerous intra-office meetings/conferences regarding the documents.

Attorney Hours: 75

Paralegal Hours: 12

V. MEDIATION

Task

- Multiple follow up meetings with client to prepare for mediation;
- Multiple communications with defense counsel regarding mediation and the informal production of documents;
- Further analysis and revision of damage models calculating damages, interest and penalties;
- Follow up intra-office meetings/conferences regarding claims, damages, and settlement;
- Finalize and serve mediation brief;
- Prepare for and attend mediation.

Attorney Hours: 25

Paralegal Hours: 4

VI. MATTERS RELATING TO MOTION TO APPROVE PAGA SETTLEMENT

Task

- Prepare stipulation for settlement;
- Multiple meetings/conferences with defense counsel regarding the stipulation for settlement;
- Prepare multiple drafts of motion;
- Prepare PAGA notice materials;
- Finalize the settlement stipulation;
- Meet with Plaintiff to review the settlement stipulation;
- Prepare final draft of motion;
- File and serve motion;
- Preparation for and attendance of hearing;
- Anticipated multiple communications with Plaintiff and PAGA members regarding the PAGA payment.

Attorney Hours: 30

Paralegal Hours: 5.5

Total Attorney Hours = 155

Total Paralegal Hours = 26.75

EXHIBIT B

FITZPATRICK & SWANSTON
CLASS/REPRESENTATIVE ACTIONS

1. *Anguiano v. Mann Packing Co., Inc.*, Monterey County Superior Court Case No. 19CV001178
2. *Aquino v. NJ Properties, Inc.*, Monterey County Superior Court Case No. 19CV001522
3. *Arce v. Vintage Senior Management, Inc.*, Monterey County Superior Court Case No. M102563
4. *Areyano v. Tacaza, Inc.*, Fresno County Superior Court Case No. 10CECG03994
5. *Ascencion v. Staples Energy Services, Inc.*, Monterey County Superior Court Case No. 17CV003929
6. *Avila v. Cuevas Tires, Inc.*, Monterey County Superior Court Case No. 19CV001885
7. *Baker v. California Forensic Medical Group, Incorporated*, Monterey County Superior Court Case No. 17CV003723
8. *Ball v. Hersha Hospitality Management, L.P.*, Monterey County Superior Court Case No. 20CV003200
9. *Barbosa v. Kelly Services, Inc.*, Monterey County Superior Court Case No. M133109
10. *Barrios v. Christopher Ranch, LLC*, Santa Clara County Superior Court Case No. 112CV233772
11. *Bautista v. Carmel Valley Manor*, Monterey County Superior Court Case No. M122739
12. *Bautista v. La Princesa Market, Inc. #1*, Monterey County Superior Court Case No. 17CV004445
13. *Bernal v. Davita, Inc.*, USDC, Northern District of California Case No. 5:12-CV-03255-LHK
14. *Bonilla v. James V. Salas, Inc.*, Monterey County Superior Court Case No. 18CV001678
15. *Bueno v. Little Caesars of Santa Cruz, Inc.*, Monterey County Superior Court Case No. M117267
16. *Canseco v. Full Steam Staffing LLC*, Monterey County Superior Court Case Case No. M129251
17. *Castillo v. Elyxir Distributing, LLC*, Santa Cruz County Superior Court Case No. CV177119
18. *Castro v. Emeritus*, Monterey County Superior Court Case No. M118861
19. *Ceja v. Taylor Farms Retail, Inc.*, Monterey County Superior Court Case No. M116475
20. *Chavez v. Oceano Packing Company, LLC*, Monterey County Superior Court Case No. 15CV000018
21. *Chico v. Mi Pueblo*, Monterey County Superior Court Case No. M114983
22. *Clavijo v. Manpower, Inc./California Peninsula*, Monterey County Superior Court Case No. M126646
23. *Cortez v. TR Monterey Management, LLC*, Monterey County Superior Court Case No. 17CV002223
24. *Coyt v. Nelson Staffing, Inc.*, San Benito County Superior Court Case No. CU-14-00130
25. *Cruz v. Gianna's Inc.*, Monterey County Superior Court Case No. M115703
26. *Cruz v. Ocean Queen USA, Inc.* Monterey County Superior Court Case No. 17CV004392

FITZPATRICK & SWANSTON
CLASS/REPRESENTATIVE ACTIONS

27. *De La Torre v. National Security Guard*, Monterey County Superior Court Case No. M122792
28. *Deras v. Merchants Building Maintenance Company*, Monterey County Superior Court Case No. M112362
29. *Echavarria v. A.S.S.E.T. Private Security*, Monterey County Superior Court Case No. 19CV001407
30. *Escalante v. Mi Pueblo San Jose, Inc.*, Santa Cruz County Superior Court Case No. CV170586
31. *Esparza v. Pandori Electronics USA, Inc* Monterey County Superior Court Case No. M117241
32. *Estrada v. Salyer American*, USDC, Northern District of California Case No. 09-CV-05618 LHK
33. *Fernandez v. Driscoll Strawberry Associates, Inc.*, Monterey County Superior Court Case No. M124551
34. *Flores v. Full Steam Staffing LLC*, Monterey County Superior Court Case No. M129277
35. *Flores v. GreenGate Fresh LLLP*, Monterey County Superior Court Case No. M114982
36. *Fuapau v. Lhoist North America of Arizona, Inc.*, USDC, Northern District of California Case No. 20-cv-04404 VKD
37. *Garcia v. Monterey Signature Hotels, LLC*, Monterey County Superior Court Case No. M123573
38. *Goodwin v. Cowles California Media Company*, Monterey County Superior Court Case No. M117831
39. *Guerrero v. Chualar Harvesting, Inc.* Monterey County Superior Court Case No. M129075
40. *Gutierrez v. Fireclay Tile, Inc.*, Santa Cruz County Superior Court Case No. 18CV02840
41. *Guyenn v. Magna Legal Services*, Monterey County Superior Court Case No. 19CV001474
42. *Hernandez v. Archon Hospitality*, Monterey County Superior Court Case No. M100610
43. *Hernandez v. Clinica de Salud del Valle de Salinas*, Monterey County Superior Court Case No. M118707
44. *Herrera v. FMG Farm Contractor, Inc.*, Monterey County Superior Court Case No. 19CV000993
45. *Isquierdo v. W.G. Hall, LLC dba @Work Personnel Services, Inc.*, USDC Case No. 5:15-CV-00335 BLF
46. *Jimenez v. Ameri-Kleen*, Monterey County Superior Court Case No. M114430
47. *Jimenez v. Sambrailo Packaging*, Monterey County Superior Court Case No. 20CV003281
48. *Juarez v. Malta Enterprises dba Laurel Inn Motel*, Monterey County Superior Court Case No. M129346
49. *LeFurge v. Tacaza, Inc.* Fresno County Superior Court Case No. 10 CE CG 04433
50. *Lopez v. Motel 6 Operating, L.P.*, Ventura County Superior Court Case No. 56-2020-00542312-CU-OE-VTA
51. *Lopez v. Nutricion Fundamental, Inc.*, Monterey County Superior Court Case No. M112351
52. *Lopez v. Progress Financial*, Monterey County Superior Court Case No. M115703

FITZPATRICK & SWANSTON
CLASS/REPRESENTATIVE ACTIONS

53. *Lopez v. Springfield Farms*, Monterey County Superior Court Case No. M122067
54. *Macaraig v. Alliance Shippers, Inc.*, Monterey County Superior Court Case No. 20CV001346
55. *Macias v. Cypress Healthcare Partners, LLC*, Monterey County Superior Court Case No. 21CV000056
56. *Maravilla v. GreenGate Fresh, LLLP*, Monterey County Superior Court, Case No. 21CV001258
57. *Marquez v. P&D Food Services, LLC*, Monterey County Superior Court Case No. 18CV001679
58. *Martinez v. Harmony Foods Corporation*, Santa Cruz County Superior Court Case No. CV177053
59. *Mata v. Manpower, Inc.*, USDC, Northern District of California, Case No. 5:14-CV-03787-LHK
60. *Mendez v. Earthbound Farms Holding I, LLC*, San Benito County Superior Court Case No. CU-13-00011
61. *Mendoza v. National Vision Inc.*, Monterey County Superior Court Case No. 18CV004327
62. *Mendoza v. Planned Parenthood Mar Monte, Inc.*, Santa Clara Superior Court Case No. 18CV329544
63. *Michel v. La Princesa Market #14, Inc.*, Santa Cruz County Superior Court Case No. CV175999
64. *Montejano v. Fox Factory Inc.*, Santa Cruz County Superior Court Case No. CV175560
65. *Montoya v. Full Steam Staffing LLC*, Monterey County Superior Court Case No. 128639
66. *Mora v. Robert Mann Packaging, Inc.* Monterey County Superior Court Case No. M125128
67. *Mosqueda v. Sansei Gardens, Inc.*, Monterey County Superior Court Case No. 21CV000325
68. *Murray v. Granite Wellness Centers*, Nevada County Superior Court Case No. CU20-084680
69. *Ochoa v. The Complete Logistics Company*, Santa Clara County Superior Court Case No. 111CV200180
70. *Ortiz v. Gurries Property Management, Inc.* Monterey County Superior Court Case No. M121091
71. *Ortiz v. Ortega Berry Farms, LLC*, Monterey County Superior Court Case No. 20CV000694
72. *Pantoja v. RAMCO Enterprises, L.P.*, Monterey County Superior Court Case No. M126835
73. *Pantoja v. National Custom Packing, Inc.*, Monterey County Superior Court Case No. M125340
74. *Pineda v. Ippolito International, L.P.* Monterey County Superior Court Case No. 20CV001851
75. *Polanco v. Salinas Valley Imaging, LLC*, Monterey County Superior Court Case No. 15CV000800
76. *Ponce v. Acosta*, Monterey County Superior Court Case No. 18CV001237
77. *Powell v. Walmart, Inc.*, USDC, Southern District of California Case No. 20-CV-02412-BEN-LL
78. *Quezada v. Sonora Packing Company, Inc.*, Monterey County Superior Court Case No. M123892

FITZPATRICK & SWANSTON
CLASS/REPRESENTATIVE ACTIONS

79. *Ramirez v. Manpower, Inc.* USDC Case No. C-13-02880 EJD
80. *Ramirez v. Manpower, Inc./California Peninsula*, USDC Case No. C-13-03238 EJD
81. *Reyes v. Randstad US, LLC*, Monterey County Superior Court Case No. 20CV000160
82. *Rico v. Full Steam Staffing LLC*, Monterey County Superior Court Case No. M129278
83. *Rico v. Manpower, Inc./California Peninsula*, Monterey County Superior Court Case No. M129042
84. *Rico v. T.W.D.C. Industries Corp. dba Vision Recycling*, Monterey County Superior Court Case No. M132307
85. *Rivera v. Laser Devices, Inc.*, Monterey County Superior Court Case No. M116176
86. *Robledo v. Randstad US, L.P.*, Monterey County Superior Court Case No. M130588
87. *Robledo v. Randstad US, L.P.*, USDC, Case No. 5:17-CV-01003-BLF
88. *Rodriguez v. Westmont Living, Inc.* Santa Clara County Superior Court Case No. 115CV279290
89. *Romero v. Custom House Hotel, L.P.*, Monterey County Superior Court Case No. M128440
90. *Romero v. Noble House Monterey, LLC*, Monterey County Superior Court Case No. M132275
91. *Rosales v. Santa Fe Mercados, Inc.* Santa Cruz County Superior Court Case No. CV166615
92. *Ruiz v. Monterey Mushrooms, Inc.*, Monterey County Superior Court Case No. 15CV000023
93. *Salgado v. River Ranch Fresh Foods, LLC*, Monterey County Superior Court Case No. M115475
94. *Sanchez v. Keurig Green Mountain, Inc.* Monterey County Superior Court Case No. M132626
95. *Silva v. Foothill Packing, Inc.*, Monterey County Superior Court Case No. M127426
96. *Talavera v. Full Steam Staffing, LLC*, Santa Clara County Superior Court Case No. 114CV267357
97. *Tovar v. Windsor Convalescent and Rehabilitation Center of Salinas*, Monterey County Superior Court Case No. 19CV000354
98. *Trevino v. Acosta, Inc.* USDC, Case No. 5:17-CV-06529-NC
99. *Trevino v. Acosta, Inc.*, Monterey County Superior Court Case No. 17CV004624
100. *Valadez v. Jal Berry Farms, LLC*, Monterey County Superior Court Case No. M127425
101. *Valdez v. Max Hoseit Management Company*, Monterey County Superior Court Case No. M127656
102. *Valdovinos v. KS Industries, L.P.*, Monterey County Superior Court Case No. 19CV003304
103. *Vargas v. Valley Harvest, LLC*, San Benito Superior Court Case No. CU-21-00140
104. *Vargas v. Vasvision Berry Farms, LLC*, Monterey County Superior Court Case No. M126647

FITZPATRICK & SWANSTON
CLASS/REPRESENTATIVE ACTIONS

- 105. *Vega v. Elkhorn Packing, Co., LLC*, Monterey County Superior Court Case No. M121202
- 106. *Weinmann v. Balance Staffing*, Santa Cruz County Superior Court Case No. CV180848
- 107. *Weinmann v. Infinity Staffing*, San Benito County Superior Court Case No. CU-15-00007