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JOSE LUIS LOPEZ GARCIA, on behalf of himself
and all similarly aggrieved employees

SUPERIOR COURT OF CALIFORNIA

COUNTY OF MONTEREY

JOSE LUIS LOPEZ GARCIA, on behalf of
himself and all similarly aggrieved
employees,

Plaintiff,

v.

SMITH PACKING, INC.; and DOES 1
through 50, inclusive,

Defendants.

Case No. 20CV002559

**[PROPOSED] ORDER GRANTING
PLAINTIFF'S MOTION TO APPROVE
SETTLEMENT AGREEMENT
PURSUANT TO THE PRIVATE
ATTORNEYS GENERAL ACT**

Date: February 10, 2023

Time: 8:30 a.m.

Dept.: 15

Complaint Filed: September 24, 2020

Trial Date: Vacated

1 WHEREAS, Jose Luis Lopez Garcia (“Plaintiff”) has filed a Motion for Approval of
2 PAGA Settlement. The matter came on regularly for hearing. Counsel for Plaintiff and
3 counsel for Defendant Smith Packing, Inc. (“Defendant”) appeared at the hearing. Having
4 considered the papers filed by all parties and the proceedings had and otherwise being fully
5 informed, and recognizing the disputed factual and legal issues involved in this case, the
6 benefits to be received by the State of California and the Aggrieved Employees pursuant to the
7 Settlement Agreement, and the fair, reasonable, and adequate nature of the settlement obtained
8 as a result of good faith arms-length negotiations between the parties,
9 **THE COURT HEREBY MAKES THE FOLLOWING DETERMINATIONS AND**
10 **ORDERS:**

11 1. The Court hereby GRANTS Plaintiff’s motion for approval of the settlement as
12 set forth in the Settlement Agreement under Labor Code § 2699(1)(2). The settlement is hereby
13 fully approved and shall be carried out and effectuated according to the terms of the
14 Settlement Agreement and the terms of this Order.

15 2. The Court finds that the Settlement Agreement and the terms and conditions set
16 forth therein are fair, reasonable, and adequate and in the best interests of the State of
17 California and the Aggrieved Employees. The terms of the Settlement Agreement, and this
18 Order and Judgment, shall be binding on Plaintiff, the State of California, and the Aggrieved
19 Employees, and those terms shall have res judicata, collateral estoppel and other preclusive
20 effect in all pending and future claims, lawsuits or other proceedings maintained by or on
21 behalf of any such persons or entities, to the extent those claims, lawsuits or other proceedings
22 constitute Released Claims as set forth in the Settlement Agreement.

23 3. This Order incorporates by reference the definitions in the Settlement Agreement
24 and all terms defined therein shall have the same meaning in this Order. In accordance with
25 the Settlement Agreement, the “Aggrieved Employees” are defined as: all non-exempt current
26 and former employees employed by Defendant in California at any time from September 24,
27 2019, through the Effective Date. The “Effective Date” is defined as: the date the Court or
28 any Party serves notice of the Court’s order and judgment approving this Settlement. The
“Settlement Period” is defined as: the period from September 24, 2019 (*i.e.*, one year before

1 Plaintiff filed his initial PAGA letter with the Labor and Workforce Development Agency
2 (“LWDA”)) until final approval of this agreement by the Court and the occurrence of the
3 Effective Date.

4 4. Upon the occurrence of the Effective Date the Court hereby orders that Plaintiff,
5 all Aggrieved Employees, and the State of California shall be deemed to have released the
6 “Released Claims” which are defined as follows: “any and all claims against the Released
7 Parties arising during the Settlement Period for civil penalties under PAGA that were asserted
8 or could reasonably have been asserted based on the facts alleged in the Action and/or the
9 PAGA letter submitted by Plaintiff to the LWDA.” “Released Parties” shall mean Defendant,
10 its past and present parents, subsidiaries, predecessors, successors, assigns, owners, officers,
11 directors, employees, agents, trustees, affiliated entities, attorneys or legal representatives,
12 insurers, fiduciaries, beneficiaries, partners, and/or any other entity or individual which could
13 be liable for the acts or omissions of Defendant in relation to the Released Claims. Upon the
14 occurrence of the Effective Date the Court hereby further orders that Plaintiff, all Aggrieved
15 Employees, and the State of California will be forever barred from pursuing against Defendant
16 and the Released Parties any and all claims for PAGA civil penalties under the Labor Code,
17 Wage Orders, and/or other provisions of law alleged or that reasonably could have been
18 alleged to have been violated in the Action with respect to the Aggrieved Employees based on
19 the facts alleged in the Action.

20 5. Upon the occurrence of the Effective Date, the Court also hereby orders that
21 Plaintiff shall be deemed to have released the Plaintiff Released Claims, as defined in the
22 Settlement Agreement.

23 6. The parties are directed to consummate the settlement in accordance with the
24 terms of the Settlement Agreement. Except as expressly provided in the Settlement
25 Agreement, Defendant and the Released Parties shall not have any further liability arising
26 from this action for costs, expenses, interest, attorneys’ fees, or for any other charge, expense,
27 or liability.
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1 7. The Court hereby finds that payment to counsel for Plaintiff of attorneys' fees in
2 the amount of \$33,333.33, and reimbursement to counsel for Plaintiff for litigation costs in the
3 amount of up to \$10,000.00, are fair, reasonable, and adequate, and orders the Settlement
4 Administrator to distribute these amounts from the Maximum Settlement Amount in
5 accordance with the Settlement Agreement.

6 8. The Court finds that payment to the Settlement Administrator in the amount of
7 up to \$15,000.00 for its work performed in administering the settlement is fair, reasonable, and
8 adequate and orders the Settlement Administrator to distribute this amount from the Maximum
9 Settlement Amount in accordance with the Settlement Agreement.

10 9. The Court finds that a payment to Plaintiff in the amount of \$5,000.00 in
11 recognition of Plaintiff's effort and work in prosecuting the Action is fair, reasonable, and
12 adequate and orders the Settlement Administrator to distribute this amount from the Maximum
13 Settlement Amount in accordance with the Settlement Agreement.

14 10. The Court finds that the amounts to be distributed to the LWDA and the
15 Aggrieved Employees, as set forth in the Settlement Agreement, are fair, reasonable, and
16 adequate and orders the Settlement Administrator to make payments to the LWDA and
17 Aggrieved Employees in accordance with the terms of the Settlement Agreement.

18 11. The Court approves, as to form and content, the Notice to Aggrieved Employees
19 submitted by the parties in connection with the motion for approval. The Court appoints
20 Phoenix Settlement Administrators as the third-party settlement administrator for the purposes
21 of administering the settlement. The Court directs the Settlement Administrator to mail
22 individual payments to Aggrieved Employees and the Notice to Aggrieved Employees in
23 accordance with the terms of the Settlement Agreement.

24 12. Upon entry of this Order, the Court hereby enters judgment, with prejudice, for
25 the reasons described above and in accordance with the terms of the Settlement Agreement.
26 Except as otherwise provided in the Settlement Agreement, all parties shall bear their own
27 attorneys' fees, costs, and expenses incurred by them in or arising out of the lawsuit and shall
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1 not seek reimbursement thereof from the Released Parties. Upon entry of this Order the Court
2 permanently enjoins and forever bars Plaintiff, the State of California, and the Aggrieved
3 Employees from instituting or prosecuting any claims against Defendant or the Released
4 Parties that were resolved as part of the Settlement Agreement and/or pursuant to this Order.

5 13. Neither this Order nor the Settlement Agreement (or any other document
6 referred to herein, or any action taken to carry out this Order) is, may be construed as, or may
7 be used as, an admission of liability or fault by Defendant or the Released Parties, or a finding
8 as to the validity of any claims in the Action or of any wrongdoing or violation of law that is
9 otherwise alleged, or could have been alleged, against Defendant or the Released Parties. The
10 Settlement Agreement is not a concession by the Parties and, to the extent permitted by law,
11 neither the Settlement Agreement nor this Order and Judgment, nor any of their terms or
12 provisions, nor any of the negotiations or proceedings connected with them, shall be offered as
13 evidence or received in evidence in any pending or future civil, criminal, or administrative
14 action or proceeding to establish any liability of, or admission by the Released Parties.
15 Notwithstanding the foregoing, nothing in this Order and Judgment shall be interpreted as
16 prohibiting the use of this Order and Judgment in a proceeding to consummate or enforce the
17 Settlement Agreement, or the use of this Order and Judgment to defend against the assertion of
18 claims in any other proceeding, or as otherwise required by law. This Order and Judgment and
19 the Settlement Agreement may be filed in any action by Defendant or the Released Parties to
20 support a defense of res judicata, collateral estoppel, release, waiver, good-faith settlement,
21 judgment bar or reduction, full faith and credit, or any other theory of claim preclusion, issue
22 preclusion or similar defense or counterclaim.

23 14. Plaintiff is directed to submit a copy of this Order and Judgment to the LWDA
24 within 10 days of the date of this Order and Judgment.

25 15. Without affecting the finality of this Order or the Court's entry of Judgment, this
26 Court shall retain jurisdiction with respect to all matters related to the administration and
27 consummation of the Settlement Agreement, and any and all claims, asserted in, arising out of,
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1 or related to the subject matter of the Action, including but not limited to all matters related to
2 the Settlement Agreement and the determination of all controversies relating thereto.

3 **IT IS SO ORDERED.**

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5 Dated: _____

6 Hon. Thomas W. Wills
7 Monterey County Superior Court
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1 **PROOF OF SERVICE**

2 I am employed in the County of Monterey, State of California. I am over the age of 18
3 and not a party to the within action; my business address is FITZPATRICK & SWANSTON,
4 555 S. Main Street, Salinas, California 93901.

5 On the date written below, I served the foregoing document(s), described as
6 **[PROPOSED] ORDER GRANTING PLAINTIFF'S MOTION TO APPROVE
7 SETTLEMENT AGREEMENT PURSUANT TO THE PRIVATE ATTORNEYS
8 GENERAL ACT**

9 on the interested parties in this action as indicated below and by the following means:

10 **Attorneys for Defendant**

11 Brian Daly (SBN: 298731)
12 Mullen & Henzell L.L.P.
13 112 E Victoria St,
14 Santa Barbara, CA 93101
15 Telephone: (805) 966-1501
16 Facsimile (805) 966-9204
17 bdaly@mullenlaw.com

18 xx **(BY ELECTRONIC SERVICE)** Pursuant to CCP § 1010.6 and Cal.
19 Rules of Court, Rule 2.251, I caused the document(s) to be served
20 through the Odyssey eFileCA portal (www.california.tylerhost.net),
21 addressed to the person(s) at the e-mail address(es) listed above. I did
22 not receive within a reasonable time after e-service, any electronic
23 message or other indication that e-service was unsuccessful.

24 I declare under penalty of perjury under the laws of the State of California that the
25 foregoing is true and correct, and that this declaration was executed on November 18, 2022, at
26 Salinas, California.

27 /s/ Josie Favila

28 Josie Favila