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Attorneys for Plaintiff and the Class

SUPERIOR COURT OF CALIFORNIA

COUNTY OF MONTEREY

NATALIA G. CRUZ, on behalf of herself
and all similarly aggrieved employees,

Plaintiff,

v.

VASVISION BERRY FARMS, LLC; and
DOES 1 through 50, inclusive,

Defendants.

Case No. 22CV001734

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

Date: November 3, 2023
Time: 8:30 a.m.
Dept: 15

Complaint Filed: June 17, 2022
Trial Date: None

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

2 1. I am an attorney duly licensed to practice before all courts in the State of
3 California, and I am a partner in the law firm of Fitzpatrick & Swanston, counsel of record for
4 Plaintiff Natalia G. Cruz ("Plaintiff").

5 2. I am familiar with all aspects of this case and all tasks undertaken by the various
6 members of this firm in litigating this case. I have spent significant time researching and
7 pursuing the claims that have been alleged in this action.

8 3. Counsel's application for an award of attorneys' fees in the amount of
9 \$129,166.66 and reimbursement of litigation costs in an amount up to \$15,000.00 is
10 reasonable and fair. These amounts are well within what is reasonable and customary in both
11 wage and hour settlements and class action settlements in general and is based on the skill
12 displayed by Class Counsel, the effort and resources invested in this case by Counsel, the
13 factual and legal complexities of this case, the importance of the interests which are the subject
14 of this litigation, the risks undertaken by Counsel, and the degree of success achieved by
15 Counsel.

16 4. Without reiterating the Parties' showing that the Settlement Agreement and the
17 negotiation process that led up to it was fair and adequate, as set forth in detail in the Motion
18 for Preliminary Approval of Class Action Settlement, this Settlement Agreement was the
19 product of negotiation between highly able and experienced attorneys on both sides who
20 possessed the relevant data and extensive legal research which they had carefully analyzed.

21 5. Based on Counsel's independent investigations and evaluations, I am of the
22 opinion that settlement is fair, reasonable, and adequate and is in the best interest of the
23 employees and Defendant in light of all known facts and circumstances and the expenses and
24 risks inherent in litigation.

25 6. I am familiar with most aspects of this case and tasks undertaken by the various
26 members of this firm in litigating this case. I have been assisted by attorney Laura Franklin
27 and several paralegals in my office. As a result of my firm's diligence in pursuing the factual
28 and legal issues presented by this case, we were able to realistically assess the employees'

1 claims, evaluate their damages, and Defendant's exposure. All work performed by our office
2 is done on a contingency basis. Our firm has received no compensation for our time invested
3 or expenses incurred in litigating this case. We have prosecuted this litigation up to this point,
4 taking the risk that we ultimately would be faced with not receiving any compensation for our
5 work. Since the start of this case, counsel conducted extensive factual investigation before
6 reaching a settlement. My office will have invested 190.55 hours on this case, which includes
7 anticipated future time attending the hearing, responding to inquiries from the employees,
8 preparing reports to the court, and any other issues that may arise during the settlement payout
9 period. Attached hereto as **Exhibit A** is a detailed summary of tasks and hours spent by this
10 firm in litigating this case.

11 7. The hourly rate for attorneys in this firm is \$800.00 and the hourly rate for
12 paralegals is \$185.00. Since at least 2020, I have been approved at hourly rates of \$750.00
13 and \$800.00 per hour by various Courts, in several matters, including, in the matters entitled:
14 *Jose Antonio Ortiz Arrellano v. Rocha Brothers Farms, LLC*, Santa Cruz County Superior
15 Court, Case No. 21CV01286; *Sione Fuapau v. LHOIST North America of Arizona, Inc.*,
16 United States District Court, Northern District of California, Case No. 20-CV-04404-VKD;
17 *Sandra Lopez v. Motel 6 Operating, L.P.*, Ventura County Superior Court Case No. 56-2020-
18 00542312-CU-OE-VTA; *Christina Mendoza v. Planned Parenthood Mar Monte, Inc.*, Santa
19 Clara Superior Court, Case No. 18CV329544; *Javier Mendoza v. National Vision, Inc.*, United
20 States District Court, Northern District of California, Case No. 19-CV-01485-SVK; *Valarie*
21 *Murray v. Granite Wellness Centers*, Nevada County Superior Court, Case No. CU20-084680;
22 and *Nicolas Serafica v. HGST, Inc.*, Santa Clara County Superior Court Case No.
23 21CV386574.

24 8. In this motion, I request a reduced hourly rate of \$595.00. Accordingly, the total
25 lodestar for my firm's hours will be approximately \$78,540.00 based on an hourly rate of
26 \$595.00 per hour [132 hours x \$595.00].

27 9. Having represented both employees and employers during my practice, I am
28 familiar with the contingent fee market throughout Northern California, where I primarily

1 practice law, and in other areas of the state in which my firm regularly litigates. Considering
2 our experience and my knowledge of the market, I believe that the hourly rates charged by my
3 firm, and previously approved by this Court, are fair and reasonable and less than those
4 charged by my colleagues in other areas of California and the national market for prosecuting
5 class and representative actions.

6 10. Counsel risked not only a great deal of time, but also significant expense to
7 ensure the successful litigation of this action on behalf of all employees. In addition to the
8 supporting documentation and legal authority presented in Plaintiff's moving papers,
9 Plaintiff's counsel submits that the attorneys' fees proposed are not just fair and reasonable;
10 they are necessary in order to incentivize attorneys to take on the risk of time and expense
11 associated with class and representative actions. Indeed, many times counsel expend
12 enormous amounts of work and out of pocket costs in the interest of aggrieved employees
13 and/or the State of California, only to end up without any recovery whatsoever. For example,
14 Plaintiff's counsel expended significant time and expenses in a wage/hour class and PAGA
15 action, only to have the District Court grant summary judgment in its entirety against Plaintiff.
16 See *Guynn-Neupane*, 2021 WL 4481661 (N.D. Cal. Sep. 30, 2021). There are actual risks that
17 Plaintiff requests this Court take into account when considering the requested attorneys' fees,
18 including any multiplier to be accounted into Plaintiff's lodestar.

19 11. To date, my firm has incurred \$4,745.58 in litigation costs. The costs are all
20 litigation-related costs. All costs were reasonable and necessary to the effective prosecution of
21 this matter. Counsel advanced costs without guarantee that any of the advanced costs would be
22 recovered. *Berkeley Cement, Inc. v. Regents of the University of California*, (2019) 30 Cal.
23 App. 5th 1133, explains that mediation-related expenses are recoverable under the
24 circumstances of this case. Attached hereto as **Exhibit B** is a copy of the costs my firm has
25 incurred in connection with prosecution of this lawsuit.

26 12. Qualifications: I received my bachelor's degree from the University of
27 California, Santa Barbara and my Juris Doctor degree from the University of Santa Clara
28 School of Law. I have practiced law since 1987. The primary emphasis of my practice is

1 employment litigation. I have represented both employers and employees. Approximately 15
2 years ago, my office commenced handling plaintiff class and representative action wage and
3 hour cases. Since then, my office has handled hundreds of wage and hour cases to conclusion
4 and has been class counsel and/or co-counsel in over 100 class and/or representative actions.
5 Currently, we have multiple ongoing wage and hour class and representative actions in
6 Alameda County Superior Court, Monterey County Superior Court, Nevada County Superior
7 Court, Santa Clara Superior Court, San Benito Superior Court, Santa Cruz Superior Court,
8 Ventura County Superior Court, and the United States District Court, Northern District of
9 California..

10 13. I do not have a conflict of interest with Plaintiff or the employees. Plaintiff's
11 Counsel have and will zealously represent Plaintiff and the employees and pursue this lawsuit
12 to its conclusion.

13 14. Neither counsel nor their respective firms have any relationship with the
14 proposed *cy pres* recipient that would create an actual or potential conflict of interest.
15 Plaintiff's counsel and defense counsel further agree that the Watsonville Law Center satisfies
16 the legislative intent set out in Code of Civil Procedure § 384(a), in that the organization helps
17 further the purposes of the underlying action and promotes justice for all Californians.

18 I declare under penalty of perjury under the laws of the State of California that the
19 foregoing is true and correct and if called as a witness I could and would competently testify to
20 each of the matters stated herein, and I state that these matters are based upon my own
21 personal knowledge acquired through first-hand observation, except where stated otherwise.
22 This declaration was executed by me on October 10, 2023, in Salinas, California.

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24 
25 B. James Fitzpatrick
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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 with client regarding her employment and alleged violations;
- Meetings with other employees regarding their employment and alleged violations
- Review of documents provided by client and current/former employees;
- Prepare and serve request for personnel file;
- Prepare and serve LWDA notice;
- Review personnel file;
- Numerous intra-office meetings regarding planning, results and details of investigations;
- Court research for other lawsuits against defendant;
- Research regarding the entities to be named in the Superior Court complaint;
- Legal research regarding IWC Wage Orders; and
- Legal research regarding claims;

Attorney Hours: 30

Paralegal Hours: 15

II. PLEADINGS

Task

- Prepare and file Complaint, Civil Cover Sheet, Summons;
- Prepare and file Proof of Service of Summons;
- Receive and review Answer;

Attorney Hours: 5

Paralegal Hours: 0.75

III. CASE MANAGEMENT CONFERENCES

Task

- Prepare, file and serve CMC statement; prepare for and attend 11/15/22 CMC;
- Prepare, file and serve CMC statement; prepare for and attend 1/24/23 CMC;
- Prepare, file and serve CMC statement; prepare for and attend 2/21/23 CMC;
- Prepare, file and serve CMC statement; prepare for and attend 6/27/23 CMC;

Attorney Hours: 2

Paralegal Hours: 0.3

IV. DISCOVERY/DEPOSITIONS/DOCUMENT ANALYSIS

Task

- Numerous intra-office meetings/conferences;
- Receive and review mediation data ;

Attorney Hours: 40

Paralegal Hours: 25

V. MEDIATION

Task

- Multiple follow up meetings with client and current/former employees to prepare for mediation;
- Multiple communications with defense counsel regarding mediation;
- Legal research;
- 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; and
- Prepare for and attend mediation session

Attorney Hours: 40

Paralegal Hours: 12

VI. 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: 15

Paralegal Hours: 5.5

Total Attorney Hours: 132

Total Paralegal Hours: 58.55

Total Hours: 190.55

EXHIBIT B

Cost/Expense Detail

Date	Code	Check #	Type	Units	Amount	Description	Date Billed	Amount Billed
C0071 Gracida Cruz, Natalia								
600 Gracida Cruz v. Labor & Employment								
9/14/21	02	60156	Exp.		13.92	Delivery Service Acct No.: 79430		
6/17/22	102		Cost		1,478.06	Odyssey Efile - Complaint		
9/16/22	102		Cost		3.60	Odyssey Efile		
6/21/23	15	1219	Exp.		3,250.00	Fenton & Keller Mediation Fee		
Matter Total					4,745.58			.00
Client Total					4,745.58			.00
Report Total:								
Total					4,745.58			.00

Types: Unbilled Costs, Unbilled Expenses, Billed Costs, Billed Expenses

Selection criteria: Client: C0071 Matter: 600

Sorted by: Client Number / Matter Number