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SUPERIOR COURT OF CALIFORNIA

COUNTY OF MONTEREY

ERIKA PEREZ PAREDES, on behalf of herself and all similarly aggrieved employees, Plaintiff, v. CONSTANT STAFFING, LLC; DEL MONTE FRESH PRODUCE N.A., INC.; MANN PACKING CO., INC.; and DOES 1 through 50, inclusive, Defendants.	Case No. 23CV002616 (Assigned to the Honorable Carrie M. Panetta, Dept. 14) **PLAINTIFF'S NOTICE OF MOTION AND MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT; AND MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT** Date: July 25, 2025 Time: 8:30 a.m. Dept.: 14 Action Filed: August 11, 2023 Trial Date: None Set

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on July 25, 2025, at 8:30 a.m., or as soon thereafter as the matter may be heard, before the Honorable Carrie M. Panetta, judge presiding, in Department 14 of the above referenced Court, located at 1200 Aguajito Road, Monterey, California 93940, Plaintiff Erika Perez Paredes ("Plaintiff") will and hereby moves this Court for the following relief with respect to the Joint Stipulation of Class and PAGA Settlement ("Stipulation" or "Agreement") entered into by Plaintiff and Defendants Constant Staffing, LLC, Del Monte Fresh Produce N.A., Inc., and Mann Packing Co., Inc. (together, "Defendants") (Plaintiff and Defendants shall collectively be referred to as the "Parties"):

1. That the Court approve the Stipulation referenced above;

2. That the Court certify the following Class for settlement purposes: (1) all current and former non-exempt unionized employees that were employed directly by Mann in California at any time between August 11, 2019 through preliminary approval, excluding the period of time covered and released by the prior settlement in *Anguiano v. Mann Packing Co., Inc.*, Monterey County Superior Court Case No. 19CV001178, for the individuals covered by that prior settlement, and (2) all current and former non-exempt employees of Constant that were assigned to work at Mann or Del Monte in California at any time during the Class Period (the "Class");

3. That Plaintiff Erika Perez Paredes be appointed as the Class Representative and B. James Fitzpatrick and Alison L. Baker of Fitzpatrick & Swanston and Larry W. Lee, Max W. Gavron, and Mai Tulyathan of Diversity Law Group, P.C. be appointed as Class Counsel;

4. That the Court preliminarily approve the Stipulation and the Gross Settlement Amount in the amount of One Million Two Hundred Fifty Thousand Dollars ($1,250,000.00);

5. That the Court finds on a preliminary basis that the Stipulation appears to be within the range of reasonableness of a settlement, including the PAGA allocation, the Class Representative incentive payment, attorneys' fees and costs, settlement administration costs, and the allocation of payments to Class Members, that could ultimately be given final approval by this Court;

6. That the Court approve the mailing of the proposed Notice of Pendency of Class

Action and Proposed Settlement ("Class Notice") to be sent to Class Members;

7. That the Court appoint Phoenix Settlement Administrators as the Settlement Administrator; and

8. That the Court schedule the matter for a Final Fairness and Final Approval hearing.

This Motion is made pursuant to Rule 3.769 of the California Rules of Court, which provides for court approval of the settlement of a purported class action and allows the Court to preliminarily certify a class for settlement purposes.

The basis for this Motion, filed without any opposition from Defendants, is that the proposed settlement is fair, adequate, and reasonable, and the procedures proposed by the Parties are adequate to ensure the opportunity of Class Members to participate in, opt-out of, or object to the settlement.

This Motion will be based on the attached Memorandum of Points and Authorities, the Stipulation and the proposed Class Notice, and the supporting Declarations of B. James Fitzpatrick, Alison L. Baker, Larry W. Lee, Max W. Gavron, Mai Tulyathan, and Plaintiff Erika Perez Paredes, upon the oral arguments of counsel (should there be any), and on the complete records and file herein.

Dated: July 2, 2025

FITZPATRICK & SWANSTON
DIVERSITY LAW GROUP, P.C.

By: /s/ B. James Fitzpatrick
B. James Fitzpatrick
Alison L. Baker
Larry W. Lee
Max W. Gavron
Kwanporn "Mai" Tulyathan
Attorneys for Plaintiff and the Class

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Plaintiff Erika Perez Paredes ("Plaintiff") brings class and representative Private Attorneys General Act ("PAGA") claims against Defendants Constant Staffing, LLC ("Constant"), Del Monte Fresh Produce N.A., Inc. ("Del Monte"), and Mann Packing Co., Inc.'s ("Mann Packing") (collectively with Constant and Del Monte, "Defendants") under the California Labor Code (Plaintiff and Defendants shall be jointly referred to as the "Parties"). Specifically, Plaintiff alleges that Defendants failed to pay all wages owed, including minimum, regular, overtime wages, and reporting time pay, in violation of Labor Code §§ 201-204, 216, 218, 510, 558, 1174, 1194, and 1198; failed to provide off-duty meal and rest breaks and pay premiums for missed meal and rest breaks in violation of Labor Code §§ 226.7, 512, and 1198; failed to timely pay all wages at separation of employment in violation of Labor Code §§ 201-203; failed to reimburse work-related expenses in violation of Labor Code § 2802; and failed to provide accurate wage statements and keep accurate records in violation of Labor Code §§ 226, 1174 and 1175. Based on these violations, Plaintiff asserts class claims against Defendants for these violations. Plaintiff also asserts PAGA claims against Constant for these violations. Defendants deny each, every, and all of the allegations of the operative Complaint and contend that their employment practices comply with the Labor Code.

In addition to these class and PAGA claims, Plaintiff has also asserted individual claims against Defendants for violations of the Fair Employment and Housing Act ("FEHA") and wrongful termination. The Parties have settled Plaintiff's individual claims separately, under a separate confidential settlement agreement from the Stipulation. For purposes of this Motion, the Settlement is solely limited to the class and PAGA claims, and does not pertain to Plaintiff's individual FEHA claims.

Prior to the settlement of this action, the Parties thoroughly investigated the facts relating to the class and PAGA claims alleged in the operative Complaint against Defendants, including, but not limited to, review of class data and time and pay records for members of the Class. Thereafter, the Parties commenced settlement negotiations through multiple mediation sessions.

The Parties were ultimately able to reach the current settlement after three sessions of private mediation.

The terms of the Settlement Agreement provide that Defendants pay a Gross Settlement Amount of One Million Two Hundred Fifty Thousand Dollars ($1,250,000.00) to resolve the class and PAGA claims. Significantly, this entire amount is non-reversionary, such that no monies will revert to Defendants. The Parties believe that this amount is fair, adequate, and reasonable, especially given the risks and uncertainty of class certification and the merits of this case. Further, no claim forms are required. The following represents the key terms of the Settlement:

- Gross Settlement Amount of $1,250,000.00;
- Estimated Class of 3,327 individuals;
- Class Representative Enhancement Payment of up to $5,000.00;
- Class Counsel’s attorneys’ fees of up to $416,666.67;
- Class Counsel’s costs of up to $50,000.00;
- Settlement Administration Costs of up to $26,950.00;
- Total PAGA allocation of $50,000.00, of which 75%, or $37,500.00, shall be paid to the Labor & Workforce Development Agency (“LWDA”), and 25%, or $12,500.00, shall be paid to PAGA Group Members; and
- A Net Settlement Amount of approximately $701,383.33.

The Parties and their respective counsel believe that the Settlement for the consideration and on the terms set forth in the Settlement Agreement is fair, reasonable, and adequate, in light of all known circumstances and the expenses and risks inherent in litigation. Although Plaintiff and her counsel are certain that they can prevail on class certification, as well as on the merits, they recognize the inherent risks in drawn-out litigation and the specific risks that a class might not be certified and/or that Plaintiff could fail to establish liability.

Therefore, the Parties respectfully request that the Court grant this Motion for Preliminary Approval of Class Action Settlement.

II. PROCEDURAL HISTORY

On August 11, 2023, Plaintiff filed a class action complaint in the Superior Court of California, County of Monterey on behalf of herself and all similarly situated employees against

Defendants for various wage and hour violations. Declaration of B. James Fitzpatrick ("Fitzpatrick Decl.") at ¶ 2. On December 4, 2023, Plaintiff amended her complaint to add representative claims for violation of the Private Attorneys General Act ("PAGA") and individual claims for violation of the Fair Employment Housing Act ("FEHA"). *Id*. at ¶ 3.

On March 21, 2024, Plaintiff filed a Second Amended Complaint, to clarify the class definitions and PAGA allegations, and add claims for failure to pay wages and failure to reimburse work-related expenses. *Id*. at ¶ 4.

On April 29, 2025, Plaintiff filed a Third Amended Complaint to add a class of employees of Mann Packing Co., Inc. The Third Amended Complaint is the operative Complaint ("Complaint"). *Id*. at ¶ 5. The operative Complaint alleges the following class and PAGA claims: (1) failure to provide meal periods or compensation in violation of Labor Code §§ 226.7, 512, and 1198; (2) failure to provide rest periods or compensation in violation of Labor Code §§ 226.7 and 1198; (3) failure to pay minimum, regular, and overtime wages and reporting time pay in violation of Labor Code §§ 201-204, 510, 558, 1174, 1194, and 1198; (4) failure to provide accurate itemized wage statements in violation of Labor Code §§ 226, 1174, and 1175; (5) failure to pay all wages upon separation of employment in violation of Labor Code §§ 201, 202, and 203; (6) failure to reimburse work-related expenses in violation of Labor Code § 2802; (7) violation of Labor Code § 2698, *et seq.*; and (8) unfair business practices in violation of Business & Professions Code § 17200, *et seq.* ("UCL"). *Id.*

Plaintiff's class and PAGA claims are predicated upon the following allegations. Plaintiff's meal break claims are based on shortened, missed, and late meal breaks. Plaintiff also brings rest break claims for failure to provide off-duty rest breaks, as Defendants required the employees to remain on work premises throughout the entirety of the rest breaks. Plaintiff also alleges that employees were required to call in and/or respond to texts prior to work shifts to report to work and to determine whether they would actually need to report to work. Whenever employees reported to work by calling in, but were not permitted to work or were permitted to work for less than half of the scheduled shift, Defendants failed to pay Plaintiff and Class Members reporting time pay. Plaintiff also brings off-the-clock and expense reimbursement claims associated with this call-in practice. Plaintiff also alleges that Defendants failed to reimburse employees for the cost of using personal cellphones for work calls and text messages. In addition, Plaintiff alleges that employees were required to undergo temperature checks that were conducted off-the-clock, prior to their shift start time. Lastly, Plaintiff brings derivative wage statement and waiting time penalties based on the above practices. *Id*. at ¶ 6. Defendants deny any liability or wrongdoing of any kind whatsoever associated with the class and PAGA claims in the Action. *See* Ex. A ¶ 35 to Fitzpatrick Decl.

Since the initiation of the lawsuit, the Parties have engaged in formal and informal discovery. Plaintiff has reviewed Defendants' production of relevant policies and practices, class data, and a 20% sample of time and pay records of class members. Fitzpatrick Decl. at ¶ 7. This investigation enabled Plaintiff to perform an analysis of the putative class and Defendants' potential liability. *Id*. Plaintiff also engaged an expert witness to analyze the time and payroll records. *Id*. at ¶ 8.

On August 19, 2024, the Parties engaged in private mediation with experienced wage and hour neutral David A. Rotman, Esq. *Id*. at ¶ 9. Despite a full day of arm's-length negotiations, the Parties were unable to reach an agreement. Litigation in the action continued. *Id*.

On February 12, 2025, the Parties attempted a second mediation with the Honorable Peter H. Kirwan (Ret.). *Id*. at ¶ 10. As the second mediation proved more fruitful, the Parties agreed to conduct a third mediation session with Judge Kirwan on March 10, 2025. *Id*. After thorough investigation and evaluation of the facts and claims, the Parties reached an agreement in principle and entered into a memorandum of understanding following the third mediation session. *Id*. at ¶ 11. After further negotiations, the Parties entered the proposed class and representative action settlement now presented to the Court for preliminary approval, a true and correct copy of which is attached as Exhibit A to the Declaration of B. James Fitzpatrick. *Id*. at ¶ 12. After reaching the agreement in principle to resolve the class and representative claims, Plaintiff's individual FEHA claims were resolved in a separate confidential settlement agreement. *Id*. at ¶ 14. If the Court so requests, the Parties agree to provide information regarding the confidential individual settlement for the Court's review. *Id*.

The Parties recognize the risk, expense, and delay in continuing litigation with the class and representative claims, and believe the settlement to be fair, reasonable, and adequate. Fitzpatrick Decl. at ¶ 25. Accordingly, the Parties desire to settle, compromise, and discharge all disputes and claims arising from or relating to the afore-referenced claims.

III. DISCUSSION

Any settlement of a class action lawsuit must be reviewed and approved by the Court. This is done in two steps: (1) an early (preliminary) review by the trial court, and (2) a final review after notice has been distributed to the class members for their comment or objections. The *Manual for Complex Litigation, Third § 30.41 (Fed. Jud. Ctr. 1995)* states:

> Approval of class action settlements involves a two-step process. First, counsel submits the proposed terms of settlement and the court makes a preliminary fairness evaluation. If the preliminary evaluation of the proposed settlement does not disclose grounds to doubt its fairness or other obvious deficiencies, such as unduly preferential treatment of class representatives or of segments of the class, or excessive compensation for attorneys, and appears to fall within the range of possible approval, the court should direct that notice…be given to the class members of a formal fairness hearing, at which arguments and evidence may be presented in support of and in opposition to the settlement.

(Fed. Jud. Ctr., 3rd ed. 1995)

Thus, the preliminary approval by the trial court is simply a conditional finding that the settlement appears to be within the range of acceptable settlements. As Professor Newberg comments, "[t]he strength of the findings made by a judge at a preliminary hearing or conference concerning a tentative settlement proposal may vary. The court may find that the settlement proposal contains some merit, is within the range of reasonableness required for a settlement offer, or is presumptively valid subject only to any objections that may be raised at a final hearing." Alba Conte and Herbert B. Newberg, Newberg on Class Actions (4th ed. 2002) vol. 4, § 11.26.

The procedures for the parties' submission of a proposed settlement for preliminary approval by the court also are discussed in *4 Newberg on Class Actions*:

> When the parties to an action reach a monetary settlement, they will

> usually prepare and execute a joint stipulation of settlement, which is submitted to the court for preliminary approval. The stipulation should set forth the central terms of the agreement, including but not limited to, the amount of settlement, form of payment, manner of determining the effective date of settlement and any recapture clause.

Id. § 11.24.

Here, the Parties have reached such an agreement and have submitted to this Court in connection with this Motion a copy of the Stipulation fully setting forth the agreement reached by the Parties. The Stipulation sets forth all terms of the agreement reached by the Parties, which include, among other things, the method for calculating the Class Members' individual portions of the Gross Settlement Amount (or Individual Settlement Payments).

A. Proposed Class Definition

The current settlement is being settled on behalf of (1) all current and former non-exempt unionized employees that were employed directly by Mann in California at any time between August 11, 2019 through preliminary approval, excluding the period of time covered and released by the prior settlement in *Anguiano v. Mann Packing Co., Inc.*, Monterey County Superior Court Case No. 19CV001178, for the individuals covered by that prior settlement, and (2) all current and former non-exempt employees of Constant that were assigned to work at Mann or Del Monte in California at any time during the Class Period" (the "Class"). *See* Stipulation ¶ 4.

The Class Period is defined as the period commencing on August 11, 2019, and ending on the date when preliminary approval is granted by the Court. *See* Stipulation ¶ 7. The escalator clause provides Defendants with the option of either proportionally increasing the Gross Settlement Amount based on the total number of workweeks above a 5% increase over the current estimate or truncating the Class Period so that the number of workweeks does not increase above 105,000 workweeks. Stipulation ¶ 45. Pursuant to the Stipulation, Defendants represent that Class Members worked no more than 100,000 workweeks during the Class Period. *See* Stipulation ¶ 45.

B. Settlement Terms and Evaluation

Courts presume the absence of fraud or collusion in the negotiation of settlement unless evidence to the contrary is offered. *Priddy v. Edelman*, 883 F.2d 438, 447 (6th Cir. 1989); *Mars Steel Corp. v. Continental Illinois Nat'l Bank & Trust Co*., 834 F.2d 677, 682 (7th Cir. 1987); *In re Chicken Antitrust Litig*., 560 F. Supp. 957, 962 (N.D. Ga. 1980). Courts do not substitute their judgment for that of the proponents, particularly where, as here, settlement has been reached with the participation of experienced counsel familiar with the litigation. *Nat'l Rural Telecomms. Coop. v. DIRECTV, Inc*., 221 F.R.D. 523, 528 (C.D. Cal. 2004); *Hammon v. Barry*, 752 F. Supp. 1087 (D.D.C. 1990); *Steinberg v. Carey*, 470 F. Supp. 471 (S.D.N.Y. 1979); *In re Armored Car Antitrust Litig*., 472 F. Supp. 1357 (N.D. Ga. 1979); *Sommers v. Abraham Lincoln Federal Sav. & Loan Ass'n*, 79 F.R.D. 571 (E.D. Pa. 1978).

While the recommendations of counsel proposing the settlement are not conclusive, the court can properly take them into account, particularly where, as here, they have been involved in informal discovery and negotiations for some period of time, appear to be competent, have experience with this type of litigation, and have exchanged substantial evidence from the opposing party. *See Newberg on Class Actions*, *supra* § 11.47; *Nat'l Rural Telecomms. Coop*., 221 F.R.D. at 528 ("[s]o long as the integrity of the arm's length negotiation process is preserved, however, a strong initial presumption of fairness attaches to the proposed settlement…[citations] and 'great weight' is accorded to the recommendations of counsel, who are most closely acquainted with the facts of the underlying litigation").

Here, both Plaintiff's and Defendants' counsel have a great deal of experience in wage and hour class action litigation. Plaintiff's counsel have been approved as class counsel in a number of wage and hour class actions and have extensive litigation experience. Fitzpatrick Decl. at ¶ 41; Declaration of Alison L. Baker ("Baker Decl.") at ¶ 8; Declaration of Larry W. Lee ("Lee Decl.") at ¶ 9; Declaration of Max W. Gavron ("Gavron Decl.") at ¶ 10; Declaration of Mai Tulyathan ("Tulyathan Decl.") at ¶¶ 13-14. Each side has apprised the other of their respective factual contentions, legal theories, and defenses, resulting in negotiations taking place between the Parties. Fitzpatrick Decl. at ¶ 25.

Based on the class data provided by Defendants, Plaintiff estimated that Defendants would face potential maximum liability of up to approximately $14.4 million for Plaintiff's class claims, if Plaintiff was successful in all of her claims and obtained certification. Fitzpatrick Decl. at ¶ 27. Plaintiff calculated this amount based on the following approximate breakdowns for each class claim:

- $1,316,174.53 for meal period violations (calculated based on expert review of time and payroll records; assumes 66.2% violation rate based on expert analysis);
- $2,213,124.26 for rest period violations (calculated based on 212,800 shifts x average hourly rate of $15.71; assumes 66.2% violation rate);
- $870,453.46 for unpaid wages for off-the-clock temperature checks and call-in reporting time (calculated based on 10 minutes of off-the-clock time and average hourly rate of $15.71);
- $8,875,521.60 in waiting time penalties (calculated based on 2,354 formers employees x (8 hours x average hourly rate of $15.71 x 30 days); and
- $1,162,450.00 in wage statement 226(e) penalties (taking into account $4,000 cap).

See Fitzpatrick Decl. at ¶ 28.

Each of Plaintiff's putative class claims faced unique challenges from Defendants. As a threshold matter, Defendants Del Monte and Mann Packing maintain that they did not employ or jointly employ Plaintiff or any of the employees of Constant Staffing during their employment with Constant and, therefore, have no liability for the alleged claims brought by Plaintiff and such putative class members. *Id*. at ¶ 29. With regard to the underlying California Labor Code claims, Defendants would have argued that the waiting time penalties, which comprise a significant portion of the estimated damages, are subject to a complete defense. Defendants would have argued that a good faith dispute exists as to whether the allegedly underpaid wages were due to Plaintiff and the Class considering Defendants' legally compliant respective policies. In this regard, Defendants argued that they each had legally compliant policies. If Defendants were successful on their good faith defense, the Court may not have awarded waiting time penalties at all, reducing the exposure by approximately half a million dollars. *Id*. at ¶ 30; *Hill v.*

Walmart, Inc., 32 F.4th 811 (9th Cir. 2022) (upholding good faith defense because defendant reasonably believed wages were not due and owing at time of separation of employment); *Chavez v. Converse, Inc.,* 2020 WL 1233919, at *l (N.D. Cal. 2020) (holding that an employer's failure to pay is not willful where there is uncertainty in the law or a "good faith mistaken belief that wages are not owed").

Similarly, on Plaintiff's wage statement claim, Plaintiff would face the additional burden of demonstrating that any alleged omission of information from the wage statements was a "knowing and intentional failure" by each Defendant to comply with Labor Code § 226(a). Fitzpatrick Decl. at ¶ 31; *see Harris v. Vector Mktg. Corp*., 656 F. Supp. 2d 1128, 1145-46 (N.D. Cal. 2009) (granting summary judgment in favor of employer and finding its conduct was not "knowing and intentional"). Defendants also would have argued that penalties under Section 226 are subject to a similar "good faith" defense as articulated above in the context of Plaintiff's claims for waiting time penalties. *See, e.g., Apodaca v. Costco Wholesale Corp.*, 2014 WL 2533427, at *3 (C.D. Cal. June 5, 2014) ("Where an employer has a good faith belief that it is not in violation of Section 226, any violation is not knowing and intentional."); *Wright v. Adventures Rolling Cross Country, Inc.*, 2013 WL 1758815, at *9 (N.D. Cal. Apr. 24, 2013) (same); *Ricaldai v. U.S. Investigations Servs.*, LLC, 878 F. Supp. 2d 1038, 1047 (N.D. Cal. 2012) (same); *Dalton v. Lee Publ'ns, Inc.*, 2011 WL 1045107, at *5 (S.D. Cal. Mar. 22, 2011) (same).

In addition, Defendants would have argued that Plaintiff could not demonstrate an underlying violation of the Labor Code to support her meal and rest period claims. Fitzpatrick Decl. at ¶ 32; *see Brinker Rest. Corp. v. Superior Ct.*, 53 Cal. 4th 1004, 1040, 273 P.3d 513, 537 (2012) ("On the other hand, the employer is not obligated to police meal breaks and ensure no work thereafter is performed."). Defendants would have argued that their legally compliant respective written policies satisfied *Brinker* and that any failure to take a legally compliant meal or rest period by employees was the result of individual choice and thus not capable of class resolution.

Significantly, Defendants also contended that they each maintained and implemented their own compliant no call-in policy and practice, and that their respective employees were provided with more than sufficient notice of their shifts. Furthermore, Defendants contend that they each ended temperature checks as of 2021, which would limit their respective liability on that claim, if any. Fitzpatrick Decl. at ¶ 33.

Although Plaintiff believes that the Class can be certified, Plaintiff also believes in the fairness of the settlement that is based on factoring in the uncertainty and risks to Plaintiff involved in not prevailing on one or more of the causes of action or theories alleged in the operative Complaint, the possibility of non-certification, and the potential for appeals. Fitzpatrick Decl. ¶ 34. These risks on class certification are compounded by the California Supreme Court's holding in *Duran v. U.S. Bank Nat'l Ass'n*, 59 Cal. 4th 1 (2014). There, the plaintiffs obtained class certification and subsequently prevailed at trial after eight years of litigation, but the judgment and the certification ruling were reversed by the California Supreme Court after an additional five years of litigation. The case was remanded to superior court where class certification was denied and plaintiffs' subsequent appeal also was denied.

With respect to potential liability of Plaintiff's PAGA claims, Plaintiff estimated that Defendants could face civil penalties of up to at least $12.6 million if Plaintiff were successful at trial on all claims. Fitzpatrick Decl. at ¶ 35. This amount was calculated based on a $100 penalty per violation, and assumes that the Court would not "stack" PAGA penalties for distinct violations of the Labor Code. *Id*. If the Court awarded successive penalties for multiple violations, the award could be higher. However, courts are hesitant to award a higher PAGA penalty for "subsequent" violations where there is no prior citation by the Labor Commissioner, which renders the evaluation of the potential PAGA penalties without "stacking" reasonable. *C.f. Bernstein v. Virgin Am., Inc*., 3 F.4th 1127, 1144 (9th Cir. 2021) ("Virgin was not notified by the Labor Commissioner or any court that it was subject to the California Labor Code until the district court partially granted Plaintiffs' motion for summary judgment. On this basis, we reverse the district court's holding that Virgin is subject to heightened penalties for any labor code violation that occurred prior to that point.”). While *Bernstein* addresses whether the higher subsequent penalty should be applied, defendants often argue that this decision supports their position that the court should not award multiple penalties for different predicate violations of the Labor Code during the same pay period. Accordingly, evaluating the settlement compared to a potential penalty of $100 per pay period is fair, adequate, and reasonable.

However, even assuming Plaintiff ultimately prevails on her PAGA claims, the Court still has discretion to reduce any PAGA penalties. Fitzpatrick Decl. at ¶ 37. Pursuant to Labor Code § 2699(e)(2), the Court can decline to award PAGA penalties where “if, based on the facts and circumstances of the particular case, to do otherwise, would result in an award that is unjust, arbitrary and oppressive, or confiscatory.” Indeed, as shown in the Court of Appeal’s decision in *Carrington v. Starbucks Corp.*, 30 Cal. App. 5th 504 (2018), while the plaintiff prevailed on his PAGA claim upon trial, the trial court reduced the maximum PAGA penalty amount by 90%, citing the employer’s good faith attempt at complying with the law. *Id*. at p. 517. Upon review, the Court of Appeal found such a reduction to be proper. *Id*. at p. 539.

Although Plaintiff believes in the merits of the alleged claims and maintains that there is no reason for reducing PAGA penalties, Plaintiff is aware that Defendants may raise defenses to the claims and further with respect to the reduction of PAGA penalties and that they could be persuasive to the Court. Fitzpatrick Decl. at ¶ 38. Thus, even if Plaintiff were to successfully prove her claims at trial, there is a possibility that the Court may only award a small percentage of PAGA penalties, as the Court has discretion to do so. The Gross Settlement Amount was premised with this risk in mind, associated with the possibility of the Court significantly reducing Plaintiff’s PAGA penalties, along with other attendant risks, even if Plaintiff was to prevail at trial. *Id.*

Thus, the settlement for each Class Member is fair, reasonable, and adequate, given the inherent risks of litigation, including the substantial risks relative to class certification and the costs of pursuing such litigation. The settlement is the result of extensive arm’s-length negotiations between the Parties and their counsel and was facilitated by an experienced and neutral mediator. Fitzpatrick Decl. at ¶ 39.

Despite the asserted fairness of the settlement terms, as set forth in the Notice of Pendency of Class Action and Proposed Settlement ("Class Notice") [1], should any Class Member wish to pursue his or her own case for the claims being released herein, each Class Member has the right to submit a Request for Exclusion (*i.e.*, opt-out) from the settlement. *See* Class Notice, attached as Exhibit B to Fitzpatrick Decl. Moreover, as set forth in the Class Notice, Class Members are advised of their right to attend the final approval hearing and/or object to any of the terms contained in the Stipulation. *Id*.

1. Amount and Manner of Distribution of the Compensation to be Provided to Class Members Including the Amount, or an Estimate, of What Each Class Member Will Receive

The Stipulation provides for One Million Two Hundred Fifty Thousand Dollars ($1,250,000.00) as the total Gross Settlement Amount. *See* Stipulation ¶ 43. The Net Settlement Amount (calculated after deduction of Attorneys' Fees (up to $416,666.67), Attorneys' Costs (up to $50,000.00), Class Representative Incentive Payment (up to $5,000.00), payment of PAGA penalties to the LWDA and PAGA Group Members (up to $50,000.00), and Settlement Administration Costs (up to $26,950.00)) is estimated to be approximately $701,383.33. *See* Stipulation ¶¶ 16, 19, 49, 50, 51. Each Class Member who does not opt-out of the settlement ("Participating Class Member") will be awarded a portion of the Net Settlement Amount on a *pro-rata* basis, based upon the number of workweeks he or she worked at Mann or Del Monte in California during the Class Period. *See* Stipulation ¶¶ 21, 47.

Based thereon, and based on the estimated number of individuals in the Class, on a raw average, each Participating Class Member potentially may recover approximately $210.82. Fitzpatrick Decl. at ¶ 21. The amount actually paid to each Participating Class Member will increase or decrease depending on the actual number of workweeks he or she worked during the Class Period. *Id*.

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[1] The Class Notice will be provided to Class Members in English and Spanish. Fitzpatrick Decl. at ¶ 13.

The Stipulation also provides for Twelve Thousand Five Hundred Dollars ($12,500.00) to be distributed to "PAGA Group Members" in settlement of their claims for civil penalties under PAGA. Stipulation ¶ 19. The "PAGA Group Members" are defined as "all current and former non-exempt employees of Constant that were assigned to work at Mann or Del Monte in California at any time from July 26, 2022, through the date of preliminary approval" ("PAGA Group Members"). *Id*. ¶ 18. The PAGA Period runs from "July 26, 2022, through the date of preliminary approval." *Id*. ¶ 20.

Finally, the terms of the settlement provide that funds from any checks that have not been cashed within 180 days of issuance shall be paid to the designated *cy pres* recipient: California Rural Legal Assistance, Inc., a non-profit organization that provides free civil legal services to low-income residents of California's rural counties. *See* Stipulation ¶ 47.f. Class Counsel does not have any conflicts of interest with this designated recipient. Fitzpatrick Decl. at ¶ 24; Baker Decl. at ¶ 12; Lee Decl. at ¶ 10; Gavron Decl. at ¶ 14; Tulyathan Decl. at ¶ 16.

2. Whether, and Under What Circumstances, Amounts Available for Payment in Settlement Might Not Be Paid to Class Members or Might Revert to the Defendants

None of the settlement funds will revert to Defendants. *See* Stipulation ¶ 43.

3. Scope of the Release of Class Members' Claims

As a condition of participating in this settlement and upon payment of the Gross Settlement Amount, Participating Class Members shall release:

> [A]ny and all claims or causes of action alleged or that could have reasonably been alleged in the operative complaint based on or arising from the facts and theories alleged in the Action through the Class Period, as it relates to work performed at Mann's and Del Monte's facilities in California, including but not limited to claims under Cal. Labor Code §§ 201-204, 216, 218, 218.5, 221, 223, 225.5, 226, 226.7, 233, 510, 512, 558, 1174, 1175, 1194, 1197, 1198, 1199, 2802, the applicable IWC Wage Order, and the Cal. & Prof Bus. Code § 17200 *et seq*., based on failure to provide meal periods, failure to provide rest periods, failure to pay premiums including with respect to the rate at which such premiums are paid, failure to pay minimum, regular, and overtime wages including with respect to the rate at which such wages are paid, failure to pay reporting time pay, failure to provide accurate itemized wage

> statements, failure to pay wages upon termination, and failure to reimburse for business expenses.

See Stipulation ¶¶ 24, 68.

Additionally, upon payment of the Gross Settlement Amount, PAGA Group Members will release the following claims:

> [A]ll claims that accrued during the PAGA Period that were alleged in Plaintiff's PAGA notice to the LWDA, as well as claims that could have been pled arising out of the same operative facts, for civil penalties under the California Private Attorneys' General Act predicated on violations of Cal. Labor Code §§ 201-204, 216, 218, 218.5, 218.6, 221, 223, 225.5, 226, 226.7, 233, 510, 512, 558, 1174, 1175, 1194, 1197, 1198, 1199, and 2802, and the applicable IWC Wage Order.

Stipulation ¶¶ 25, 69.

Given that the above class and PAGA releases are tailored only to the claims and allegations that are pled in the operative Complaint and Plaintiff's PAGA Notice or that could have been pled arising out of the same operative facts, the releases are appropriately limited.

4. Tax Treatment of Settlement Amounts

The Parties have agreed that ninety percent (90%) of the Individual Settlement Payments to Class Members shall be classified as interest and penalties and the remaining ten percent (10%) shall be classified as wages. Stipulation ¶ 47.c. Any payment to PAGA Group Members shall be classified as one hundred percent (100%) penalties. *Id.* ¶ 47.d.

5. Affirmative Obligations to be Undertaken by Class Members or Class Counsel and the Reasons for Any Such Obligations

As stated above, Class Members do not need to do anything should they wish to receive their share of the settlement funds. Class Members will not be required to make a submission to participate in the settlement. This substantially decreases the amount of burden each Class Member must bear in order to receive their settlement payment. If a Class Member does not wish to take part in this settlement and be bound by the Released Claims, the Class Member must submit a Request for Exclusion. *See* Stipulation ¶¶ 26, 61.

C. Notice to Class Members

Should the Court grant the instant Motion, Mann Packing and Del Monte will produce a Microsoft Excel spreadsheet consisting of the names, last known home addresses, Social Security numbers, and total number of workweeks worked by each Class Member as a W2 employee of Mann Packing during the Class Period. Separately, Constant will produce a Microsoft Excel spreadsheet consisting of the names, last known home addresses, Social Security numbers, and total number of workweeks of each Class Member as a W2 employee of Constant assigned to a Mann Packing or Del Monte facility in California during the Class Period. Constant will also produce the names, last known home addresses, Social Security numbers, and total number of workweeks worked by each PAGA Group Member during the PAGA Period. Collectively, this information (the "Class List") will be provided to the Settlement Administrator within twenty (20) calendar days of preliminary approval. Stipulation ¶ 55.

Upon receipt of the information and prior to mailing the Class Notice to Class Members, the Settlement Administrator shall perform a search based on the National Change of Address Database for information to update and correct for any known or identifiable address changes. *Id.* ¶ 57. Within ten (10) calendar days of receipt of the Class List from Defendants, the Settlement Administrator will mail the Class Notice to Class Members. *Id*. Any Class Notice returned to the Settlement Administrator as non-deliverable on or before the opt-out deadline shall be sent via regular first-class U.S. mail to the forwarding address affixed thereto. *Id*. If no forwarding address is provided, the Settlement Administrator shall perform an advanced skip trace to locate the most current address and resend the Class Notice within five (5) calendar days. *Id*. As set forth in the Class Notice, Class Members will be allowed to opt out of the settlement by a certain deadline, or object to the settlement. Stipulation, Ex. A.

D. Typicality and Adequacy of Representation

1. Class Representative's Claims are Typical of the Class

The commonality requirement is met when there are questions of law and fact common to the class. *See Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1019 (1998) ("The existence of shared legal issues with divergent legal factual predicates is sufficient, as is a common core of salient facts couple with disparate legal remedies within the class"). Commonality requires only that some common legal or factual questions exist; the plaintiffs need not show that all issues in the litigation are identical. *See Richmond v. Dart Industries, Inc.*, 29 Cal. 3d 462, 473 (1981). Defendant's conduct is central to the commonality inquiry. *See City of San Jose v. Superior Court*, 12 Cal. 3d 447, 460 (1974); *Vasquez v. Superior Court*, 4 Cal. 3d 800, 812-13 (1971). Where the employer's conduct is uniformly directed at a class of employees, as it is here, the class wide impact of the defendant's policies satisfies the commonality requirement. *See Stephens v. Montgomery Ward & Co.*, 193 Cal. App. 3d 411, 421 (1987).

Plaintiff alleges that Defendants, as a matter of their respective corporate policies, practices, or procedures violated the Labor Code by failing to pay for all wages owed, including time spent calling in to work and/or undergoing temperature checks, failing to provide off-duty meal and rest breaks and pay premiums for missed meal and rest breaks, failing to timely pay all wages when due and upon separation of employment, failing to reimburse work-related expenses, and failing to provide accurate wage statements and keep accurate records. Declaration of Erika Perez Paredes ("Paredes Decl.") ¶¶ 2-8. Plaintiff contends that she was subjected to the same policy and practice as other Class Members and that her claims are typical to those of the Class.

Moreover, Plaintiff does not have any interests adverse to the Class, nor have any such issues been raised or presented. Paredes Decl. ¶ 9. Plaintiff has taken all necessary steps to represent the interests of the Class, and by providing information and documents to Plaintiff's counsel. *Id.* at ¶ 10. For such reasons, Plaintiff has adequately represented the Class Members and will continue to do so.

2. Class Counsel Have Adequately Represented the Class and Have Experience with Wage and Hour Class Actions

From the inception of the case, Class Counsel have zealously represented the interests of the class. The settlement was obtained for the benefit of the Class, as opposed to the individual Class Representative. Further, Class Counsel have been approved as class counsel on a number of prior cases, have litigated numerous other class action cases, and are competent to represent the class. Fitzpatrick Decl. ¶¶ 41; Baker Decl. ¶¶ 8; Lee Decl. ¶ 9; Gavron Decl. ¶ 10; Tulyathan Decl. ¶¶ 13-14.

E. Costs and Fees

1. Attorneys' Fees and Costs

California state and federal courts have recognized that an appropriate method for determining award of attorneys' fees is based on a percentage of the total value of benefits to class members by the settlement. *Wershba v. Apple Computer, Inc*., 91 Cal. App. 4th 224, 254 (2001); *Serrano v. Priest*, 20 Cal. 3d 25, 34 (1977); *Boeing Co. v. Van Gemert*, 444 U.S. 472, 478 (1980); *Vincent v. Hughes Air West, Inc*., 557 F.2d 759, 769 (9th Cir. 1997). The purpose of this equitable doctrine is to avoid unjust enrichment of counsel and to "spread litigation costs proportionally among all the beneficiaries so that the active beneficiary does not bear the entire burden alone." *Vincent*, 557 F.2d at 769.

The Common Fund doctrine is predicated on the principle of preventing unjust enrichment. When a litigant's efforts create or preserve a fund from which others derive benefits, she may require the passive beneficiaries to compensate those who created the fund. Both California state and federal courts have embraced this doctrine. *Serrano*, 20 Cal. 3d at 35; *Vincent*, 557 F.2d at 769. Similarly, in *City and County of San Francisco v. Sweet*, 12 Cal. 4th 105, 110 (1995), the California Supreme Court recognized that the common fund doctrine has been applied "consistently in California when an action brought by one party creates a fund in which other persons are entitled to share." The reasons for applying the common fund doctrine include: "fairness to the successful litigant, who might otherwise receive no benefit because his recovery might be consumed by the expenses; correlative prevention of an unfair advantage to the others who are entitled to share in the fund and who should bear their share of the burden of its recovery; encouragement of the attorney for the successful litigant who will be more willing to undertake and diligently prosecute proper litigation for the protection or recovery of the fund if he is assured that he will be properly and directly compensated should his efforts be successful." *Id*.

Indeed, most recently, the California Supreme Court has also now held that the award of attorneys' fees in common fund wage and hour class action settlements should start with the percentage method. *See Laffitte v. Robert Half Int'l*, 1 Cal. 5th 480, 503 (2016) ("We join the overwhelming majority of federal and state courts in holding that when class action litigation establishes a monetary fund for the benefit of the class members, and the trial court in its equitable powers awards class counsel a fee out of that fund, the court may determine the amount of a reasonable fee by choosing an appropriate percentage of the fund created").

The California Supreme Court in *Laffitte* affirmed a fee award representing 33 1/3 percent of the fund. *Laffitte*, 1 Cal. 5th at 506. And this was based on a lodestar amount that required a multiplier of 2.13. *Id*. at 487. As the Court held, only when the multiplier is "extraordinarily high or low [should] the trial court [] consider whether the percentage method should be adjusted so as to bring the imputed multiplier within a justifiable range." *Id*. at 505.

The Parties have agreed to a payment of a maximum of one-third of the Gross Settlement Amount, or $416,666.67, for payment to Class Counsel as attorneys' fees. Stipulation ¶ 50. The Parties have agreed to a payment of the foregoing attorneys' fees and, thus, this payment should be presumed to be fair. Further, the Parties have agreed to reimbursement of Class Counsel's litigation costs up to $50,000.00. *Id*. Class Counsel have, at their own risk, expended costs, for example, to file this instant action, effectuate service of process, pay mediation fees, and pay other litigation-related costs. Based on the foregoing, the Court should preliminarily approve the attorneys' fees and costs being requested by the Parties.

F. Proposed Payment to the Class Representative

Class Representative Erika Perez Paredes requests an incentive payment of $5,000.00. Stipulation ¶ 51. The Class Representative met and conferred with Class Counsel on a number of occasions to discuss the case, searched for and provided documents and information to Class Counsel, reviewed the pleadings including her PAGA letter, the complaints, and the Stipulation. As part of her duties as the Class Representative, Plaintiff provided invaluable information, evidence, and documents that resulted in this settlement. Paredes Decl. at ¶¶ 10-11. In addition to the invaluable services that she provided, Plaintiff also took a significant risk, both professionally and monetarily, in acting as the Class Representative and seeking benefits on behalf of the Class. Because the claims alleged by the Class Representative involved the payment of costs to the prevailing party, Plaintiff could have possibly faced paying the costs of Defendants, had she not prevailed in this action.

Moreover, given that future employers are much less likely to hire individuals who have filed suit against their prior employer, particularly cases of this nature, Plaintiff may face prejudice in the future from other potential employers. Plaintiff took this risk upon herself and the whole Class benefited from these risks taken by Plaintiff. Class Members did not have to file individual lawsuits and bear the risks of payment of costs if they did not prevail, nor did they have to face the potential for retaliation and not getting future employment had they filed a public lawsuit.

G. Settlement Administration Costs

The Parties have agreed to an estimated payment of $26,950.00 to the Settlement Administrator, Phoenix Settlement Administrators, to send notices and administer this settlement, which shall be paid out of the Gross Settlement Amount. Stipulation ¶ 49. Phoenix Settlement Administrators is a well-recognized class action settlement administrator. The Parties believe that the administration fee is reasonable and should be approved.

IV. CONCLUSION AND ACTION REQUESTED AS PART OF THE MOTION FOR PRELIMINARY APPROVAL

Here, the proposed settlement is fair, adequate, and reasonable. It will result in both substantial monetary benefits to Class Members; it is non-collusive; and it was achieved as the result of informed, extensive, and arm’s length negotiations conducted by counsel for the respective parties who are experienced in wage and hour class action litigation. For the foregoing reasons, Plaintiff respectfully requests that the Court grant preliminary approval of the proposed settlement, sign the proposed Order, approve and authorize mailing of the proposed Class Notice, and set a date for a final approval hearing.

Dated: July 2, 2025

FITZPATRICK & SWANSTON
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