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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 **DECLARATION OF B. JAMES FITZPATRICK IN SUPPORT OF PLAINTIFF'S MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT** Date: July 25, 2025 Time: 8:30 a.m. Dept.: 14 Action Filed: August 11, 2023 Trial Date: None Set

I, B. James Fitzpatrick, declare as follows:

1. I am an attorney duly admitted to practice in the State of California, and the owner of the law firm of Fitzpatrick & Swanston, counsel of record for Plaintiff Erika Perez Paredes ("Plaintiff"). I have personal knowledge of the facts set forth below, and if called to testify, I could and would do so competently.

2. **Case Summary:** 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 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") for various wage and hour violations.

3. 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").

4. 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.

5. 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"). 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").

6. 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.

7. **Litigation History:** 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. This investigation enabled Plaintiff to perform an analysis of the putative class and Defendants' potential liability.

8. Plaintiff also engaged an expert witness (James Toney) to analyze the time and payroll records.

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

10. On February 12, 2025, the Parties attempted a second mediation with the Honorable Peter H. Kirwan (Ret.). As the second mediation proved more fruitful, the Parties agreed to conduct a third mediation session with Judge Kirwan on March 10, 2025.

11. 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.

12. After further negotiations, the Parties entered the proposed class and representative action settlement now presented to the Court for preliminary approval. The settlement terms were memorialized in the Joint Stipulation of Class and PAGA Settlement (the "Stipulation" or "Agreement"). A true and correct copy of the Stipulation is attached herewith as **Exhibit A**.

13. The Notice of Pendency of Class Action and Proposed Settlement ("Class Notice") is attached hereto as **Exhibit B**. The Class Notice will be provided to Class Members in English and Spanish.

14. After reaching the agreement in principle to resolve the class and representative claims, Plaintiff's individual claims were resolved in a separate confidential settlement agreement. If the Court so requests, the Parties agree to provide information regarding the confidential individual settlement for the Court's review.

15. **Summary of the Settlement Terms:** 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.

16. 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.

17. Pursuant to the Stipulation, Defendants represent that Class Members worked no more than 100,000 workweeks during the Class Period. *See* Stipulation ¶ 45. Should the final tally of workweeks exceed 105,000, 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.

18. 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.

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

20. 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.

21. 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**. 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.

22. 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.

23. 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.

24. Neither counsel nor their respective firms have any relationship with the proposed *cy pres* recipient that would create an actual or potential conflict of interest. Defense counsel and I further agree that California Rural Legal Assistance, Inc., satisfies the legislative intent set out in Code of Civil Procedure § 384(a).

25. 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. Each side has apprised the other of their respective factual contentions, legal theories, and defenses, resulting in negotiations taking place between the Parties.

26. Based on their own independent investigation and evaluation, the Parties and their respective counsel are of the opinion that settlement for the consideration and on the terms set forth in the Stipulation is fair, reasonable, and adequate, and is in the best interests of the Class and Defendants in light of all known facts and circumstances and the expenses and risks inherent in litigation.

27. **Potential Statutory and Civil Penalties:** 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.

28. 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).

29. 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.

30. 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. *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 *1 (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").

31. 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). *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).

32. 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. *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.

33. 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.

34. 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.

35. 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. 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.

36. 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.

37. Even assuming Plaintiff ultimately prevails on her PAGA claims, the Court still has discretion to reduce any PAGA penalties. 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."

38. 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. 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.

39. 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.

40. **Attorney Qualification:** I have spent significant time researching and pursuing the claims that have been alleged in this action. From the inception of the case, Class Counsel have zealously represented the interests of the Class. Class Counsel have engaged in significant meet and confer discussions with opposing counsel to obtain informal data and documents and to discuss the merits of the claims on behalf of the Class. This settlement was obtained for the benefit of the Class, as opposed to the individual Class Representative. Based on my review of all the documents and information, and based on my experience in class action litigation, I believe this settlement to be fair, adequate, and reasonable.

41. I am one of the primary attorneys on this matter. My qualifications are as follows: I received my bachelor's degree from the University of California, Santa Barbara and my Juris Doctor degree from the University of Santa Clara School of Law. I have practiced law since 1987. The primary emphasis of my practice is employment litigation. I have represented both employers and employees. Over 15 years ago, my office commenced handling plaintiff class action wage and hour cases. Since then, my office has handled hundreds of wage and hour cases to conclusion and has been class counsel and/or co-counsel in over 100 class actions. My firm currently has wage and hour cases in Alameda County Superior Court, Monterey County Superior Court, Nevada County Superior Court, San Benito County Superior Court, San Bernardino County Superior Court, San Joaquin County Superior Court, Santa Cruz Superior Court, Santa Clara County Superior Court, Ventura County Superior Court, and the United States District Courts for the Eastern and Northern District of California.

42. I do not have a conflict of interest with Plaintiff or the Class Members. My co-counsel and I have and will adequately represent Plaintiff and the Class Members and will pursue this lawsuit to its conclusion.

43. **__Notice of the LWDA:__** In conjunction with the filing of this Motion, my office uploaded the Stipulation and Motion to the Labor and Workforce Development Agency's PAGA filing website. Attached hereto as **Exhibit C** is the confirmation submission.

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 I state that these matters are based upon my own personal knowledge acquired through first-hand observation, except where stated otherwise. This declaration was executed by me on July 2, 2025, in Salinas, California.

/s/ B. James Fitzpatrick

B. James Fitzpatrick

EXHIBIT A

EXHIBIT B

EXHIBIT C