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MARIA CONCEPCION PEREZ and LEEYDI FLORES on behalf of themselves and all similarly aggrieved employees

SUPERIOR COURT OF CALIFORNIA

COUNTY OF MONTEREY

MARIA CONCEPCION PEREZ on behalf of herself and all similarly aggrieved employees, Plaintiff, v. GOODWILL CENTRAL COAST; and DOES 1 through 50, inclusive, Defendants.	Case No. 24CV001833 **DECLARATION OF B. JAMES FITZPATRICK IN SUPPORT OF PLAINTIFF'S MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT** Complaint Filed: May 3, 2024

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 Plaintiffs Maria Concepcion Perez and Leeydi Flores ("Plaintiffs"). 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:** Plaintiffs Maria Concepion Perez ("Plaintiff Perez") and Leeydi Flores ("Plaintiff Flores") (collectively "Plaintiffs") bring class claims against Defendant Goodwill Central Coast ("Defendant") under the California Labor Code (Plaintiff and Defendant shall be jointly referred to as the "Parties"). Additionally, Plaintiff Perez brings a representative Private Attorneys General Act ("PAGA") claim against Defendant. Specifically, Plaintiffs allege that Defendant failed to pay all wages 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, Plaintiffs assert class claims against Defendant for these violations. Plaintiff Perez also asserts PAGA claims against Defendant for these violations. Defendant denies each, every, and all of the allegations of the operative Complaint and contends that its employment practices comply with the Labor Code.

3. In addition to these class and PAGA claims, Plaintiff Perez also asserted individual claims against Defendants for violations of the Fair Employment and Housing Act ("FEHA") and wrongful termination. After the Parties reached the class and PAGA settlement agreement in principle, the Parties settled Plaintiff Perez'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 Perez's individual FEHA claims.

4. 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 Defendant, including, but not limited to, review of class data and time and pay records for members of the Class. Thereafter, the Parties were ultimately able to reach the current settlement after private mediation.

I. Litigation History

5. **Plaintiff Perez's PAGA Notice**: On January 25, 2024, Plaintiff Perez filed a written notice with the California Labor & Workforce Development Agency ("LWDA") pursuant to Labor Code section 2699.3, alleging that Defendant violated Labor Code sections 201, 202, 203, 204, 216, 218, 223, 226, 226.7, 510, 512, 558, 1194, 1197, 1198, 1199, 2802, and 2699, and Industrial Welfare Commission Wage Order No. 4-2001. Attached hereto as **Exhibit A** is a true and correct copy of Plaintiff Perez's January 25, 2024 Notice to the LWDA.

6. **The Class, Representative, and Individual Action Complaint**: On May 3, 2024, Plaintiff Perez filed a Class and Representative Complaint against Defendant. The original complaint alleged individual and representative PAGA claims predicated on Defendant's failure to pay for all hours worked, failure to provide lawful meal and rest periods or premium pay in lieu thereof, failure to reimburse for work-related expenses, failure to timely pay final wages, and failure to furnish accurate wage statements as required by law.

7. On April 29, 2025, Plaintiff Perez filed a First Amended Complaint ("FAC") adding FEHA claims for sexual harassment, disability discrimination, retaliation, and wrongful termination.

8. **The Parties' Discovery and Mediation Efforts:** Following the filing of the FAC, the Parties engaged in informal discovery and data analysis. Defendant produced a 40 percent randomized sample of time-keeping and payroll data for the putative class.

9. Plaintiff retained an expert economist to analyze the data. Plaintiffs' expert calculated Defendant's potential class and PAGA exposure at approximately ~$29 million, based primarily on unpaid and underpaid meal- and rest-period premiums, regular-rate miscalculations on overtime and sick pay, and unreimbursed cell-phone expenses incurred

when employees were required to clock in and out using personal devices.

10. On August 13, 2025, the Parties participated in a mediation session with Judge Brian C. Walsh (Ret.). Defendant's expert economists also attended the mediation.

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. Thereafter, the Parties entered the proposed class and representative action settlement now presented to the Court for preliminary approval.

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

13. **The Second Amended Complaint:** Plaintiff Perez seeks leave to file a Second Amended Complaint ("SAC") in this Action for the purpose of adding Leeydi Flores as an additional named plaintiff and representative. Defendant agrees and does not oppose Plaintiff's request to file a SAC.

14. The proposed SAC continues to allege class and representative PAGA claims based on Defendant's practices of: (1) failing to provide compliant meal periods, in violation of Labor Code §§ 226.7 and 1198; (2) failing to provide rest periods, in violation of Labor Code §§ 226.7 and 1198; (3) failing to pay all regular and overtime wages due, in violation of Labor Code §§ 1194 and 1198; (4) failing to provide accurate itemized wage statements, in violation of Labor Code §§ 226, 1174, and 1175; (5) failing to timely pay all wages upon separation, in violation of Labor Code §§ 201, 202, and 203; (6) failing to reimburse for all necessary business expenses, in violation of Labor Code §§ 2802; and (7) engaging in unfair business practices, in violation of Business & Professions Code § 17200 et seq.

15. 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. Accordingly, the Parties desire to settle, compromise, and discharge all disputes and claims arising from or relating to the afore-referenced claims.

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

II. Potential Statutory and Civil Penalties

17. **Class Evaluation**: Based on the class data provided by Defendant, Plaintiffs estimated that Defendant would face potential maximum liability of up to approximately $16,652,856.08 for the class claims, if Plaintiffs were successful in all of their claims and obtained certification. Plaintiffs calculated this amount based on the following approximate breakdowns for each class claim:

- $441,405.48 for meal period premiums;
- $3,238,113.98 for rest period premiums;
- $220,118.28 for regular-rate underpayments on overtime and sick pay;
- $901,661.54 for expense reimbursements;
- $9,257,356.80 for waiting-time penalties; and
- $2,594,200.00 for wage-statement penalties.

18. Applying a realistic, risk-adjusted recovery of approximately $5,632,305.28, which totals the adjusted amounts shown below and represents 33.8 % of the maximum exposure ($5,632,305.28 ÷ $16,652,856.08 = 0.338 = 33.8%). The applied reductions and resulting figures are as follows:

- Meal period premiums: 50 % → $220,702.74;
- Rest period premiums: 40 % → $1,295,245.59;
- Regular-rate underpayments: 50 % → $110,059.14;
- Expense reimbursements: 50 % → $450,830.77;
- Waiting-time penalties: 30 % → $2,777,207.04; and
- Wage-statement penalties: 30 % → $778,260.00.

19. These reductions reflect the elevated decertification and merits risks for meal- and rest-break claims and the strong "good-faith" and "knowing and intentional" defenses applicable to Labor Code §§ 203 and 226.

20. Each of Plaintiffs' putative class claims faced unique challenges from Defendant. With regard to the underlying California Labor Code claims, Defendant would have argued that the waiting time penalties, which comprise a significant portion of the estimated damages, are subject to a complete defense. Defendant would have argued that a

good faith dispute exists as to whether the allegedly underpaid wages were due to Plaintiff and the Class's individual choices, considering Defendant's legally compliant respective policies. In this regard, Defendant argued that it had legally compliant policies. If Defendant were successful on its good faith defense, the Court may not have awarded waiting time penalties at all, reducing the exposure.

21. Similarly, on the wage statement claim, Plaintiffs would face the additional burden of demonstrating that any alleged omission of information from the wage statements was a "knowing and intentional failure" by Defendant to comply with Labor Code § 226(a).

22. In addition, Defendant would have argued that Plaintiffs could not demonstrate an underlying violation of the Labor Code to support their meal and rest period claims. Defendant would have argued that its 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.

23. Although Plaintiffs believe that the Class can be certified, Plaintiffs also believe in the fairness of the settlement that is based on factoring in the uncertainty and risks to Plaintiffs 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.

24. **PAGA Evaluation:** Based on the PAGA data provided by Defendant, Counsel estimated the maximum exposure of civil penalties under PAGA to be approximately $13,163,000.00. This estimate assumes a 100% violation rate without discounting for potentially losing on any of the causes of action, and assumes a penalty of each separate violation occurring during the same pay period, as follows:

- $785,200.00 for meal period violations;
- $3,155,000.00 for rest period violations;
- $82,000.00 for regular-rate underpayments on overtime sick pay;
- $82,000.00 for expense reimbursements;
- $54,300.00 for waiting-time penalties; and
- $8,922,500.00 for wage statement penalties.

25. Recognizing the Court's broad discretion to reduce penalties under Labor Code § 2699(e)(2), Plaintiff Perez applies a 75% reduction. Accordingly, the realistic, risk-adjusted

PAGA exposure is $3,290,750.00, representing 25% of the $13,163,000.00 maximum ($13,163,000.00 × 0.25 = $3,290,750.00).

26. Although Plaintiff Perez believes in the merits of the alleged claims and maintains that there is no reason for reducing PAGA penalties, Plaintiff Perez is aware that Defendant 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 Perez 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 Perez's PAGA penalties, along with other attendant risks, even if Plaintiff Perez was to prevail at trial. *Id.*

27. Given the risks, disputed liability, limited scope of viable PAGA claims, and potential reductions by the Court, the $42,000.00 allocation is fair and adequate under the circumstances, representing approximately 1.3% of the realistic, risk-adjusted exposure of $3,290,750.00.

III. Summary of the Settlement Terms

28. **<u>Estimated Payment to Class Members:</u>** Based thereon, and based on 2,460 Class Members, each Participating Class Member may recover $5.60 per workweek [NSA ÷ 151,500 Workweeks]. Assuming each Participating Class Member worked on average 61.6 workweeks [151,500 Workweeks ÷ 2460 Class Members], the raw average payout is $344.75. 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.

29. **<u>Estimated Payment to PAGA Members:</u>** The Stipulation also provides that $42,000.00 of the Gross Settlement Amount will be allocated to the PAGA Penalties Fund. Pursuant to the PAGA, twenty-five percent (25%), or Ten Thousand Five Hundred Dollars and 00/100 Cents ($10,500.00), of the PAGA Penalties Fund shall be disbursed to PAGA Members.

30. **Cy Pres Recipient**: 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: Homeless Garden Project (Santa Cruz, CA 95060).

31. I do not have any relationship with the proposed cy pres recipient, Homeless Garden Project, that would create an actual or potential conflict of interest. The Parties further agree that the proposed cy pres satisfies the legislative intent set out in Code of Civil Procedure § 384(a), in that the organization helps to promote justice for all Californians.

32. **Notice to Class Members:** As set forth in the Notice of Pendency of Class Action and Proposed Settlement ("Class Notice"), 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 to the Settlement Agreement. 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. Furthermore, the Parties have agreed that the Class Notice will be provided in English and Spanish.

33. **Class Representatives' Claims are Typical of the Class:** Plaintiffs contend that they were subjected to the same policy and practice as other Class Members and that their claims are typical to those of the Class.

34. **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.

35. 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.

36. I do not have a conflict of interest with Plaintiffs or the Class Members. I have and will adequately represent Plaintiffs and the Class Members and will pursue this lawsuit to its conclusion.

37. **Notice of the LWDA:** As required by California Labor Code § 2699(s)(2), the proposed settlement has been submitted to the Labor and Workforce Development at the same time as the filing of this Motion.

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 October 9, 2025, in Salinas, California.

/s/ B. James Fitzpatrick

B. James Fitzpatrick

PROOF OF SERVICE

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

On the date written below, I served the foregoing document(s), described as **DECLARATION OF B. JAMES FITZPATRICK IN SUPPORT OF PLAINTIFFS' MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT** on the interested parties in this action as indicated below and by the following means:

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

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on October 9, 2025, at Salinas, California.

/s/ Josie Favila
____
Josie Favila