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9

10 **UNITED STATES DISTRICT COURT**
 11 **EASTERN DISTRICT OF CALIFORNIA**

12 IRMA BARBOSA and CECILIA MATA, on
 13 behalf of themselves and those similarly
 14 situated,

15 Plaintiffs

16 vs.

17 DELTA PACKING COMPANY OF LODI,
 18 INC. AKA "DELTA FRESH"; SALINAS
 FARM LABOR CONTRACTOR, INC.;
 19 ERNIE COSTAMAGNA, an individual,
 ANNAMARIE COSTAMAGNA, an
 20 individual, and DOES 1-20

21 Defendants.

Case No. 20-cv-01096-TLN-KJN

**STIPULATION AND ORDER TO
 MODIFY INITIAL PRETRIAL
 SCHEDULING ORDER**

Trial Date: Not Set

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2 This stipulation (“Stipulation”) is made between Plaintiffs Irma Barbosa and Cecilia
3 Mata, on behalf of themselves and those similarly situated, and Defendants Delta Packing
4 Company of Lodi, Inc. also known as “Delta Fresh,” Salinas Farm Labor Contractor, Inc., Ernie
5 Costamagna, and Annamarie Costamagna (hereinafter collectively, “Parties”), based on the
6 following:

7 **RECITALS**

8 1. Plaintiffs filed their Class Action and FLSA Complaint against Defendants on May
9 29, 2020. Three days later, on June 1, 2020, the Court issued an Initial Pretrial Scheduling Order
10 pursuant to Rule 16 of the Federal Rules of Civil Procedure. Dkt. No. 3. The Parties believed that
11 the dates proposed in the Initial Scheduling Order would later be modified during a Status
12 Conference held on a date to be set by the Court.

13 2. On July 16, 2020, the Parties discussed the anticipated Status Conference and
14 determined that Counsel for Defendants Delta Packing Company of Lodi, Inc. aka “Delta Fresh,”
15 Ernie Costamagna, and Annamarie Costamagna would draft the Joint Status Conference Report
16 after the date for a Status Conference was set by the Court. The Joint Status Conference Report
17 was not drafted by Counsel for the Defendant because the Status Conference was not set by the
18 Court. However, this communication evidences the Parties’ shared understanding that a Status
19 Conference would occur.

20 3. On November 2, 2020, the Parties met and conferred pursuant to FRCP Rule 26(f)
21 and agreed that postponing Initial Disclosures would allow the Parties to avoid potentially
22 unnecessary litigation costs. On November 10, 2020, the Parties filed a Joint Stipulation and
23 Order to Continue Time for Initial Disclosures continuing the deadline for Initial Disclosures
24 until ninety (90) days following the original November 16, 2020 deadline. Dkt. No. 13. 4. On
25 February 12, 2021, Plaintiffs filed their Initial Disclosures. On February 16, 2021, Defendants
26 filed their Initial Disclosures.

27 4. At the 26(f) meet and confer on November 2, 2020, the Parties did not stipulate to the
28 continuation of other due dates because they anticipated doing so at a Status Conference.
29 However, the Parties have not attended a Joint Status Conference and therefore have not
30 modified any other deadlines. For this reason, all due dates in effect, aside from the deadline for
31 the Initial Disclosures, are those set forth in the Initial Pretrial Scheduling Order.

1 5. The Initial Pretrial Scheduling Order states that “All discovery, with the exception of
2 expert discovery, shall be completed no later than two hundred forty (240) days from the date
3 upon which the last answer may be filed with the Court pursuant to the Federal Rules of Civil
4 Procedure.” Defendants consented to Plaintiffs’ request to waive service of summons pursuant to
5 Federal Rule of Civil Procedure 4. The date upon which the last answer could be filed with the
6 Court was determined to be June 25, 2020.

7 6. According to the Initial Scheduling Order, all discovery is to be completed by April
8 21, 2021. However, the deadline for the Initial Disclosures was extended and the Initial
9 Disclosures from the Parties were not filed until February 12, 2021 by Plaintiffs, and February
10 16, 2021 by Defendants. The Initial Disclosures were made by Parties just sixty-six (66) days
11 ago and the Parties cannot reasonably be expected to complete all discovery in the short amount
12 of time following Initial Disclosures.

13 7. There is good cause to modify the Initial Scheduling Order because it will allow the
14 Parties to complete discovery and the Court to decide the case on the merits. The Parties could
15 not begin the process of discovery until after the 26(f) meet and confer on November 2, 2020.
16 Discovery between June 25, 2020 and November 2, 2020 was falsely recognized in the Initial
17 Scheduling Order, despite the fact that this time was not actually being available to the Parties to
18 engage in discovery. All Parties were under the same reasonable impression that deadlines were
19 to be modified at a Status Conference after the creation of the Initial Scheduling Order. If the
20 stipulation to modify the Initial Scheduling Order is denied, the Parties will suffer severe
21 prejudice.

22 **STIPULATION**

23 NOW THEREFORE, the Parties hereby agree and stipulate that, subject to the Court’s
24 order, the Initial Pretrial Scheduling Order to be modified as follows:

- 25 (a) The Parties must complete all class discovery by April 21, 2022;
26 (b) The Parties designate in writing and file with the Court the name, address, and area of
27 expertise of each expert they proposed to tender at trial not later than sixty (60) days
28 after the close of discovery on April 21, 2022;
(c) The Parties must file for Class Certification by July 21, 2022; and
(d) Deadline to complete merits discovery and trial shall be set after the Court’s order on
Plaintiffs’ Motion for Class Certification.

SO STIPULATED.

Dated: April 23, 2021

Respectfully submitted,

By: /s/ Hector R. Martinez

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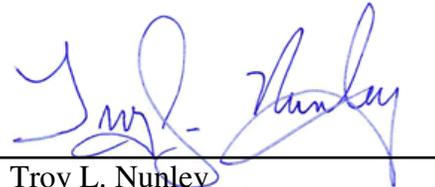
ORDER

After consideration of the Stipulation, the Court's file in this action, and good cause appearing to modify the Initial Pretrial Scheduling Order (Dkt. No. 3), the Court modifies its Initial Pretrial Scheduling Order as follows:

- (a) The Parties must complete all class discovery by April 21, 2022.
- (b) The Parties must designate in writing and file with the Court the name, address, and area of expertise of each expert they proposed to tender at trial not later than sixty (60) days after the close of discovery on April 21, 2022.
- (c) The Parties must file for Class Certification by July 21, 2022.
- (d) The Parties' Deadline to complete merits discovery and trial shall be set after the Court's order on Plaintiffs' Motion for Class Certification.

IT IS SO ORDERED.

Dated: April 26, 2021


Troy L. Nunley
United States District Judge