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Attorneys for Plaintiff CLAUDIA NUNEZ PORCAYO

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF LOS ANGELES

CLAUDIA NUNEZ PORCAYO, individually
and on behalf of all persons similarly situated

Plaintiffs,

vs.

THE WHOLE CHILD – MENTAL HEALTH
& HOUSING SERVICES, a California
Corporation; and Does 1 through 50, Inclusive,

Defendants.

Case No. 21STCV25160

**DECLARATION OF CLAUDIA NUNEZ
PORCAYO IN SUPPORT OF MOTION FOR
FINAL APPROVAL OF CLASS ACTION
AND PAGA SETTLEMENT**

Date: January 9, 2023

Time: 9:00 a.m.

Judge: Hon. Maren E. Nelson

Dept.: 17

1 I, CLAUDIA NUNEZ PORCAYO, declare as follows:

2 1. I am over the age of eighteen, a California resident, Plaintiff and Proposed Class
3 Representative in the above-entitled matter. I submit this declaration in support of Plaintiff's Motion
4 for Final Approval of Class Action and PAGA Settlement and in support of Plaintiff's Motion for
5 attorneys' fees, costs, and service awards. I have personal knowledge of all the facts stated herein. I
6 could and would competently testify under oath to these facts in court if requested to do so.

7 2. I retained Class Counsel in February of 2021 and filed the lawsuit in July 2021. I filed
8 the case on behalf of myself and a class of individuals who are or previously were employed by
9 Defendant in California and classified as non-exempt employees at any time during the period between
10 July 8, 2017 to May 1, 2022.

11 3. I work for Defendant as a non-exempt employee, paid on an hourly basis, eligible to earn
12 certain non-discretionary compensation, and entitled to legally mandated meal and rest periods,
13 minimum wages, and overtime compensation, in Los Angeles County, City of Cerritos, since October
14 of 2020.

15 4. I filed the case because I believed my rights as an employee were violated by Defendant
16 and also the rights of other employees that worked for Defendant. Among other claims, I believe
17 Defendant failed to provide compliant meal and rest periods, failed to accurately calculate the regular
18 rate for purposes of overtime compensation, failed to pay for all hours worked, and failed to reimburse
19 mandatory business expenses.

20 5. Before I initiated the case as a plaintiff and Class Representative, I spoke at length with
21 my attorneys. We discussed my work experience and how company policies were applied to me and
22 other employees. I provided the attorneys with documents they requested. We reviewed the documents
23 together and asked and answered many questions regarding my experience working for Defendant, the
24 litigation process, and about class actions generally.

25 6. During these conversations, I learned about my responsibilities as a plaintiff in the lawsuit
26 and as proposed a Class Representative. I understood that pursuing this action as a class action rather
27 than merely seeking my individual claims substantially increased the risk to me. Those risks included
28 the possibility of being held liable for Defendant's attorneys' fees and costs in a complex class action if

1 I lost the case. I also understood that as a Class Representative, I would be under increased scrutiny by
2 the attorneys and the Court because I needed to prove that I was an adequate class representative.
3 Further, I understood that I would lose some autonomy over my individual claims that I could not make
4 decisions for my sole benefit and that I needed to make every litigation decision with the best interests
5 of the Settlement Class in mind.

6 7. I also understood that the pursuing this litigation created a very public record of my
7 grievances with Defendant which produced the risk that a future employer could hold it against me that
8 I sued a former employer.

9 8. I also knew that I was making a sacrifice in that I could have pursued my claims only on
10 an individual basis, likely obtaining a recovery greater than the portion of the class settlement I stand to
11 receive from this settlement. My attorneys explained to me that the net settlement value of my individual
12 claims may be greater than my ultimate recovery from the net class settlement amount.

13 9. Notwithstanding these risks and sacrifices, I decided to go through with the case because
14 I believed violations occurred and most employees would not know what their rights are and even if
15 they did, they would be apprehensive to file a lawsuit against their employer for fear of retaliation.

16 10. During the lawsuit I communicated on a regular basis with my attorneys. I reviewed status
17 updates from my attorneys and court filings on a regular basis, and spoke to my attorneys on the phone,
18 because I wanted to keep up with developments in the case which I understood was one of my duties as
19 a class representative.

20 11. **Review and Approval of Settlement:** A mediation was held on March 15, 2022. Even
21 though I could not attend, I was available by telephone to speak with my attorneys and did speak with
22 them regarding the mediation before it took place, as well as during the mediation itself. I also spoke
23 with my attorneys after the mediation and discussed the mediator's proposal which was ultimately
24 accepted. I was very satisfied with the terms of the settlement that was agreed to by the parties. I
25 reviewed and signed the Memorandum of Understanding on March 16, 2022, and when the settlement
26 papers were ready, I again spoke with my attorneys and reviewed the settlement agreement which I
27 signed on July 1, 2022. After signing the settlement agreement, the parties subsequently negotiated an
28 amendment to the settlement agreement, which I signed on August 25, 2022. The parties made an

1 addendum to the settlement agreement after the escalator clause was triggered, which I signed on
2 September 16, 2022. Shortly thereafter, the Parties learned that the Gross Settlement Amount increased
3 again by operation of the escalator clause and made another addendum to the settlement, which I signed
4 on October 10, 2022.

5 12. **Broad General Release:** I understand that the Class Representative Service Award is
6 intended, in part, to compensate me for my release of the Released Class Claims. Additionally, unlike
7 the other Class Members, I also granted Defendant a broad general release and waiver of claims pursuant
8 to California Civil Code section 1542 and released Defendant from any and all claims, whether known
9 or unknown, which exist or may exist on her behalf as of the date of this Agreement, including but not
10 limited to any and all tort claims, contract claims, wage claims, wrongful termination claims, disability
11 claims, benefit claims, public policy claims, retaliation claims, statutory claims, personal injury claims,
12 emotional distress claims, invasion of privacy claims, defamation claims, fraud claims, quantum meruit
13 claims, and any and all claims arising under any federal, state or other governmental statute, law,
14 regulation or ordinance, including, but not limited to claims for violation of the Fair Labor Standards
15 Act, the California Labor Code, the Wage Orders of California's Industrial Welfare Commission, other
16 state wage and hour laws, the Americans with Disabilities Act, the Age Discrimination in Employment
17 Act (ADEA), the Employee Retirement Income Security Act, Title VII of the Civil Rights Act of 1964,
18 the California Fair Employment and Housing Act, the California Family Rights Act, the Family Medical
19 Leave Act, California's Whistleblower Protection Act, California Business & Professions Code Section
20 17200 et seq., and any and all claims arising under any federal, state or other governmental statute, law,
21 regulation or ordinance.

22 13. **Participation:** Since I retained Class Counsel approximately twenty-two months ago, I
23 have been actively involved with this class action lawsuit performing the duties described above. While
24 I did not keep formal time records, I was in regular contact with my attorneys, attended hearings,
25 reviewed important court filings, and spent considerable time on the issues presented during the
26 litigation and in the settlement process. I estimate that I spent approximately 15 hours working on this
27 case.
28

14. Also, my attorneys explained to me that the settlement process involved a two-step review by the Court to determine whether the settlement was fair before ordering that the settlement be funded and paid. I knew this process also involved notifying all class members of the settlement terms and of their rights to make a claim for their settlement share, to opt out of the settlement or to object to the settlement.

15. Ultimately, I believe I did the right thing in pursuing this case on behalf of the class who now stand to receive substantial monetary payments as a result of this case and settlement. I also believe that the requested Class Representative Service Award in the amount of \$10,000 from the settlement is fair compensation for the (1) the broad general release I executed, (2) the work I performed, (3) the sacrifices made not pursuing this case individually, and (4) the risks I undertook.

16. In light of all the time and effort I have spent on this case, the sacrifice I have made, the risks I undertook by suing a former employer, the exposure to being responsible for paying Defendants' costs in the event we did not win the case, and in light of the size of the settlement, I believe the request for \$10,000 as a service award is fair and reasonable.

17. Further, I support my attorneys' application for a Class Counsel Award in the amount of \$83,636.00, comprised of \$68,636.00 for attorneys' fees (one-third of the Gross Settlement Amount) and up to \$15,000 for reimbursement of actually incurred litigation expenses.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on Dec 13, 2022, at CN, California.

Claudia Nuñez
By: Claudia Nuñez (Dec 13, 2022 11:18 PST)
CLAUDIA NUNEZ PORCAYO