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13 Attorneys for Plaintiff, ANNICA B. BOWEN,
14 a.k.a. ANNICA PALACIO, individually,
15 and on behalf of similarly situated employees

16
17 UNITED STATES DISTRICT COURT
18 EASTERN DISTRICT OF CALIFORNIA
19

20 ANNICA B. BOWEN, a.k.a. ANNICA
21 PALACIO, individually, and on behalf
22 of similarly situated employees,

23 Plaintiff,

24 vs.

25 WILLOW SPRINGS MANAGEMENT
26 CA, LLC, a Delaware Limited Liability
27 Company, California HCJ EE Group,
28 LLC, California Senior Living EE
Group, LLC, Folsom Investors, L.P.
dba, Empire Ranch Alzheimer's Special
Care Center, , and DOES 1 -100,
inclusive,

Defendants.

CASE NO. 2:20-CV-02318-KJN

Date: 12-5-23
Time 9:00 a.m.
Courtroom: 25

**DECLARATION OF STEPHEN M.
HARRIS SUPPORTING FINAL
APPROVAL OF CLASS ACTION
SETTLEMENT, AND FOR AWARD
OF ATTORNEYS' FEES, COSTS,
REPRESENTATIVE
ENHANCEMENT. AND FEES OF
CLAIMS ADMINISTRATOR**

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I, Stephen M. Harris, hereby declare as follows:

1. I am the president and sole shareholder of the law offices of Stephen M. Harris, P.C., and I am admitted to practice law in the United States District Court of the Eastern District of California and in the State of California. I am one of the attorneys of record for Plaintiff Annica Bowen a.k.a. Annica Palacio (“Representative Plaintiff” or “Palacio”) in the above-entitled action. I have personal knowledge of the matters set forth herein, except as to those matters stated on information and belief, and as to those matters, I believe them to be true. If called upon as a witness to testify upon the matters stated herein, I would be competent to do so.

2. I make this declaration in support of the motion for final approval of the class action settlement and the motion for approval of class counsel's attorneys' fees and costs, the class representative enhancement to the named Plaintiff and the fees of the claims administrator, Simpluris.

3. Attached hereto as exhibits 1 and 2, respectively, are true and correct copies of the Class Action Settlement Agreement and Release and the declaration of Jennifer Beliveau, the representative of the claims administrator. Ms. Beliveau attaches as exhibit A to her declaration a copy of a sample class notice transmitted to the class.

4. Attached hereto as exhibit 3 is a true and correct copy of the declaration of Plaintiff, previously filed with the court. Attached hereto as exhibit 4 is a true and correct copy of the declaration of Louis Benowitz, previously filed with this court. Attached hereto as exhibit 5 is a copy of this court's preliminary approval order.

5. The parties conducted a mediation of this matter before David Phillips, Esq., in June of 2021, and the parties agreed to resolve the matter at that time. The parties fully executed a Memorandum of Understanding in July of 2021. Thereafter,

1 the parties negotiated a formal Class Action Settlement Agreement and Class
2 Notice. The Agreement was ultimately entered into by all parties in December of
3 2021.

4 6. The three care centers where the wage and hour violations, asserted in this
5 Action, are alleged to have occurred are: (1) Empire Ranch Alzheimer's Special
6 Care Center is located in Folsom, California; (2) Willow Springs Alzheimer's
7 Special Care Center located in Redding, California; and (3) Blossom Grove
8 Alzheimer's Special Care Center located in Redlands, California. The first amended
9 complaint names the following defendants: Willow Springs Management CA, LLC,
10 a Delaware Limited Liability Company, California HCJ EE Group, LLC, California
11 Senior Living EE Group, LLC, and Folsom Investors, L.P. dba, Empire Ranch
12 Alzheimer's Special Care Center. These entities operated the facilities located at
13 Willow Springs Alzheimer's Special Care Center (California HCJ EE Group LLC,
14 by way of a contract with JEA Senior Living); The Blossom Grove Alzheimer's
15 Special Care Center (California HCJ EE Group LLC, pursuant to a contract with
16 JEA Senior Living); And Empire Ranch Alzheimer's Special Care Center
17 (California Senior Living EE Group LLC, by way of a contract with JEA Senior
18 Living). The above named entities also employed the members of the putative class.

19 7. Frontier Management, LLC (an entity unrelated to defendants) took over
20 management of the facilities as follows: Willow Springs on or around October 2,
21 2020, Blossom Grove on or around September 1, 2020, and Empire Ranch on or
22 around July, 2021.

23 8. Plaintiff conducted a pre-filing and post-filing investigation, including, but
24 not limited to, serving written discovery, reviewing defendants responses and
25 supplemental responses, reviewing approximately 400 documents produced by
26 defendant, and conducting interviews of class members. The documents produced
27 included the policies of the facilities as well as the underlying agreements relating to
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1 operation thereof and what entities employed class members. Plaintiff's personnel
2 file was also reviewed. The parties participated in a mediation before respected
3 mediator David Phillips in June of 2021, and during the mediation further discussed
4 the litigation and the underlying factual background, before agreeing to the terms of
5 an MOU, and before negotiating the formal Agreement.

6 9. The proposed settlement class consists of 607 putative class members,
7 with 323 of the class members being former employees. However, since Frontier
8 Management has taken over all the facilities as of July of 2021, it is reasonable to
9 assume all 607 putative class members are former employees. The existence of an
10 ascertainable class can be established through Defendants' payroll records, and the
11 class definition is sufficiently specific for the parameters of the class to be
12 determined. Accordingly, the class is both sufficiently numerous and ascertainable.
13 The total number of work weeks which class members worked is approximately
14 12,609.90. Moreover, there are 310 PAGA Members who worked 5,247.08 eligible
15 workweeks.

16 10. I have notified the State of California, Labor and Workforce Development
17 Agency, of the PAGA notice, the lawsuit, the first amended complaint, and the
18 settlement agreement. I have also notified PAGA of the court preliminary approval
19 order and this motion.

20 11. The named defendants no longer operate the residential care facilities, thus
21 negating any claim of ongoing violations. Their lack of any ongoing interest in the
22 facilities also raises potential collectability problems arising if Plaintiff did obtain a
23 judgment in favor of the class.

24 12. The defendants produced their policy manuals, and these manuals are
25 substantially facially compliant, including meal and rest break policies. However,
26 the policies do not address whether employees are free to leave the premises during
27 their rest breaks, and whether or not communication devices must at all times be in
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1 the possession of class members. Thus, this aspect to the rest break policy does not
2 negate the existence of potentially unlawful denial of rest breaks. Accordingly,
3 whether defendants policies require rest periods on site, and whether communication
4 devices must be maintained at all times by class members, remain issues in the case.
5 However, these issues also potentially could be individual rather than class wide,
6 since there are three different facilities, the facilities are not all operated by the same
7 entities, and because the issue of whether class members were denied rest breaks can
8 vary among the individual employees.

9 13. There are substantial risks of further litigation given the complex issues
10 that could defeat class certification, the need to receive a favorable verdict capable
11 of withstanding a potential appeal, and since there is a question about whether a
12 judgment can be collected now that defendants are no longer the employers of class
13 members.

14 14. Our best estimate of available class damages is based on a damage model
15 addressing meal and rest break violations (the primary violation at issue). This
16 involves multiplying the total number of work weeks (here 12,609,90) by the
17 average hourly rate of class members (Plaintiff was paid \$12.00 an hour) and
18 assuming three violations a week. In those circumstances, the total class damages,
19 based on missed breaks, are \$453,924.00. We did not include meal periods in this
20 analysis since the policy manuals produced by defendants permit the caregivers to
21 leave the premises during their meal periods.

22 15. We have been unable to substantiate in our investigation that hours were
23 rounded such that class members were denied wages.

24 16. Also, at the time of the settlement, the case law was very uncertain
25 regarding whether the statutory penalty of 30 days wages, and wage statement
26 penalties, are available remedies for break violations. Subsequently, the California
27 Supreme Court ruled such penalties were available. The penalty under Labor Code
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1 Section 203, expands the potential relief in this case since the Section 203 penalty
2 would be worth approximately \$930,000. (This is based on 30 days wages payable
3 to 323 former employees, at the rate of \$12.00 an hour.) But, since Frontier
4 Management has taken over the operations of the facilities, the number of former
5 employees could reasonably equate to the number of the putative class, which is
6 607. In those circumstances, the value of the statutory penalty of 30 days wages
7 would be \$1,748,160. However, there are serious issues about whether these
8 penalties could ever be collected since the defendants no longer operate the facilities
9 and due to the other defenses they would raise as to liability.

10 17. The total number of payroll periods during the period of time covered by
11 the PAGA claim is approximately 5,247.08. Dividing the average number of
12 employees per payroll period during 2019 to 2021, we arrive at the number of
13 approximately 56. Assuming that there was one violation for each payroll period,
14 with each violation calculated at \$100.00, the total potential penalty is \$160,600.00.

15 18. The PAGA allocation here is reasonable since it is based on a settlement
16 where liability is disputed and is a reasonable percentage of the total settlement
17 amount. The court also has discretion to award a lesser amount than the maximum
18 civil penalty allowed under PAGA. Cal. Lab. Code § 2699(e) (2). The court's
19 discretion regarding penalties is reflected by awards on some representative cases.
20 *Carrington v. Starbucks Corp.* (2018) 30 Cal.App.5th 504, 529 [imposing penalty of
21 \$5.00 per initial violation]; *Enomgbang v. Target Corp.*, Alameda County Superior
22 Court Case No.: RG17853948 (\$9,000,000 settlement; 1,939,006 pay periods;
23 \$4.66/pay period); *Ramos v. Home Depot*, Alameda County Superior Court Case
24 No.: RG15797737 (\$2,600,00 settlement; 486,000 pay periods; \$5.34 per pay
25 period). If the PAGA penalty is calculated in this case by applying the sum of \$6.00
26 per payroll period, then the total penalty would be \$9,636.00.

27 19. A true and correct copy of a detailed break-down of my office's hours and
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1 costs is attached hereto as exhibit 6. I recorded contemporaneously the time entries
2 on the attached exhibit 6, as well as the entries relating to costs incurred. I recorded
3 the time entries and costs on a computer program designed for this purpose, which I
4 obtained from a vendor known as Abacus. As of October 30, 2023, I have spent
5 approximately 123.60 hours and incurred \$7,108.50 in costs. I anticipate spending
6 approximately 25 hours of additional time on this matter after the date of this
7 declaration and incurring additional costs. The costs incurred by Smith & Benowitz
8 are \$3,225.00, as established in the motion papers, and the total costs incurred to
9 date are \$10,333.50.

10 20. After thorough research, investigation, and evaluation of the claims, the
11 parties engaged in arm's length, good faith settlement negotiations. Counsel for
12 Defendants and Plaintiff's counsel participated in lengthy, serious, and informed
13 negotiations, before the Settlement that is now placed before this Court for final
14 approval was reached. Based on the negotiations and a detailed knowledge of the
15 issues present in this action, I am convinced that this settlement is in the best
16 interests of the Class Members.

17 21. I have balanced the terms of the proposed settlement, including both the
18 benefits conferred to the Plaintiff and Class Members by the settlement, against the
19 probability of obtaining class certification, liability and the range of recovery issues
20 at trial. The risks of trial and other normal perils of litigation, including the defenses
21 asserted by Defendants, difficulties of complex litigation, including the fact that
22 Plaintiff's motion for certification would have been vigorously contested, lengthy
23 process of establishing specific damages, potential threats to collection of any
24 judgment, and various possible delays and appeals were also carefully considered by
25 class counsel in agreeing to the proposed settlement.

26 22. Since the settlement is fair, reasonable and in the best interests of class
27 members, it should be approved.
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1 23. Counsel obtained a result for the class members, assuming a substantial
2 risk in litigating this action on a contingency fee basis, while incurring costs without
3 the guarantee of payment for its litigation efforts. This declaration, and the Laffey
4 Matrix, supports a rate for my time of over \$900.00 an hour. A true and correct copy
5 of the Laffey Matrix is attached as exhibit 7. Using the rate of \$750.00 an hour, my
6 lodestar is \$92,700. As set forth in the Benowitz Declaration, my co-counsel's
7 lodestar is \$15,000. The total of attorneys' fees agreed to in the settlement is
8 \$41,666. The total lodestar of Plaintiff's counsel exceeds this sum. Counsel for
9 Plaintiff agreed as part of the legal services agreement with Plaintiff that they will
10 divide any award of attorneys' fees, with each firm to receive 50% of such an
11 award. I submit that this is a reasonable agreement and thus the court should award
12 the fees agreed upon in the Agreement, and award the total costs incurred to date of
13 \$10,333.50.

14 24. My rate is also comparable to those approved for other plaintiff's firms.
15 See, e.g., *Orde Ridgeway v. Wal-Mart Stores Inc.* (N.D. Cal. 2017) 269 F.Supp.3d
16 975, 985 (discussing cases approving hourly rates of \$800.00 for attorneys admitted
17 in 1996, \$875.00 for attorneys admitted for 22 years, \$895.00 for attorneys admitted
18 in 1985, and rates for partners in the range of \$490.00 to \$950.00); *Caldera v.*
19 *Department of Corrections and Rehabilitation*, 48 Cal.App.5th 601, 607-608 (2020)
20 (declaration supporting rates of 750 to 875 an hour in Southern California);
21 *Chambers v. Whirlpool Corporation* (C.D. Cal. 2016) 214 F.Supp.3d 877, 899
22 (noting standard partner rates range from \$490 to \$975; *Minor v. Christie's, Inc.*,
23 2011 WL 902235, at **7-8 (N.D. Cal. 2011) (approving partner rates of \$700 and
24 \$600 an hour).)

25 25. The above information establishes that the hourly rate which I contend
26 applies to my services in this case, \$800.00 to \$900.00 per hour, is reasonable, and
27 that the fee in this case is far below those rates. Moreover, fee awards I have
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1 received in other cases, and my experience outlined below, also establishes that this
2 is the case. In Clark v. First Union, Case No. BC281734, referred to below, the case
3 was transferred to Multi-District litigation pending in federal district court in Santa
4 Ana. Ultimately, a fee award was entered in 2009 and I was paid for my services at
5 the rate of close to \$600.00 per hour. In 2010, in a case known as Marsikyan v.
6 Mercedes Benz, USA, the district court granted a fee award which found that the
7 reasonable hourly rate for my services was \$595 an hour. In the Herremans case,
8 referred to below, a fee award was entered in 2016 where the court accepted the
9 value of my services at \$725.00 an hour. In the Bacon v. County of Los Angeles
10 case, also referred to below, the trial court entered a fee award in 2011 which
11 included my services at the blended rate for all attorneys of \$547 an hour. The trial
12 court also granted a multiplier of 2.0 on the lodestar calculated at \$547 an hour.
13 Further, in McGimpsey v. St. Joseph's, referred to below, the court accepted
14 my rate as \$825.00 an hour.

15 26. I understand that the court expressed concerns in the preliminary approval
16 order about the rate for services in the Eastern District. I have addressed those
17 concerns by providing in the memorandum case authority discussing rates in the
18 Eastern District. However, even at those lower rates, our lodestar considerably
19 exceeds the proposed fee herein.

20 27. I am experienced in class actions, and PAGA claims, including wage and
21 hour matters, consumer matters, and other class actions. These actions include the
22 following:

23 a. *Bacon v. County of Los Angeles*, Case No. BS058574; the
24 settlement of this case (filed in August of 1999) for up to 45 million dollars was
25 approved by the County Board of Supervisors after Plaintiffs succeeded in reversing
26 denial of class certification on appeal and prevailed in their individual test cases;
27 final approval of this settlement was granted in August of 2011;

- 1 b. *Schneider v. First Union*, Case No. BC282338, class action
2 litigation concerning Financial Advisors promissory note bonuses;
- 3 c. *Clark v. First Union*, Case No. BC281734 (case asserting
4 Financial Advisors were misclassified as exempt which was removed to federal
5 court and then settled (with final approval occurring in October of 2009) along with
6 other related litigation for 39 million dollars; *see*, related court of appeal opinion,
7 *Clark v. First Union*, 153 Cal.App.4th 1595 (2007));
- 8 d. *Arfat v. Déjà vu*, Case Number BC367362, wage and hour
9 case which was certified as a class action;
- 10 e. *Hills v. Déjà vu*, Case Number BC385610, class action on
11 behalf of dancers employed by Déjà vu which was certified as a class action in June
12 of 2010;
- 13 f. *Cazares v. Pacific Shore and Cazares v. Household Finance*,
14 Case Nos. CV04-2548 DSF (SSx) and CV 04 6887 DSF (SSx), consolidated
15 consumer class actions involving, *inter alia*, Unfair Competition claims;
- 16 g. *Banks v. GMAC*, Case No. CV 04-02477 LGB (AJWx)
17 [involving similar claims to those of *Cazares*];
- 18 h. *Pacific Shore Funding v. Lozo*, 138 Cal.App.4th 1342 (2006)
19 [litigation related to *Cazares* which resulted in a published court of appeal decision];
- 20 i. *Marsikyan v. Mercedes*, Case Number CV08-04876 AHM
21 (JTLx), a consumer class action case which settled on a nationwide basis and which
22 was finally approved in May of 2010;
- 23 j. *Alvarado v. X-Ray, Inc.*, Case Number, BC387836, wage and
24 hour case which was certified as a class;
- 25 k. *Bruce v. Harley Davidson, Inc.*, Case Number CV09-6588
26 CAS(RZx) [consumer class action litigation relating to defects in Harley-Davidson
27 motorcycles];
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1 l. *Perez v. Lewis, Marenstein*, Case Number, BC391313, wage
2 and hour case on behalf of a class of 60 employees which settled for \$750,000;
3 m. *Lewis v. The Gamekeeper, LLC*, Case Number BC307823
4 [wage and hour class action resolved for \$970,000];
5 n. *Smith v. Oceanview Wireless, LLC*, BC388475 [wage and hour
6 class action relating to wage deductions];
7 o. *Poulson v. Dailey News, NO. CV 04-5254 JSL (Ex)*[unfair
8 competition claims premised on Fair Debt Collection Practices Act];
9 p. *Poulson v. Orkin* [similar to *Poulson v. Dailey News*];
10 q. *Poulson v. Time, Inc., BC 298697* [similar to *Poulson v.*
11 *Dailey News*].
12 r. *Narouz v. Charter*, CV06-02914 DMG (MANx), assigned to
13 the Hon. Dolly Gee, who granted final approval of class action settlement after
14 successful appeal of denial of approval of settlement (see, *Narouz v. Charter*, 591
15 F.3d 1261 (9th Cir. 2010);
16 s. *Trauth v. Spearmint Rhino*, and *Omlor v. Spearmint Rhino*,
17 related class action litigation against Spearmint Rhino. The district court granted
18 final approval to this approximately \$12,000,000 settlement (also containing
19 injunctive relief provisions) in November of 2012;
20 t. *Vadura v. Paddy Murphy's*, Orange county superior court
21 case. The court granted final approval of a \$700,000 class action settlement on
22 behalf of approximately 400 exotic dancers. This settlement also required the
23 defendant to reclassify its employees, cease imposing financial penalties upon them,
24 and refrain from continuing to charge them stage fees; and
25 u. *Doushkess v. Ruchel Enterprises*, BC436794, was a case
26 seeking relocation benefits on behalf of elderly residents of the Pasadena Manor.
27 The \$300,000 settlement of this case was granted final approval in October of 2012
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1 by the Honorable John Shepard Wiley, Jr.;

2 v. *Eisen v. Porsche*, CV11-9405 CAS (FFMx), involving
3 nationwide settlement of claims on behalf of owners/lessors of certain Porsche
4 vehicles with engines containing a claimed defective Intermediate Shaft which can
5 fail, requiring repair of engine damage or engine replacement. The honorable
6 Christina Snyder granted Plaintiff's motion for final approval on January 30, 2014.
7 The value of this settlement is estimated to be approximately \$6,000,000;

8 w. *Munoz v. Chipotle*, BC447232, Class Action relating to
9 employee wage deductions for the cost of Shoes for Crews slip resistant shoes;

10 x. *Lewings v. Chipotle*, BC496628, Class Action involving
11 Chipotle imposing workers compensation costs on employees, with California court
12 of appeal reversing, in July of 2015, trial court order granting summary judgment.

13 y. *Herremans v. BMW*, Case No. CV14-2363 MMM(PJWx). The
14 nationwide settlement of this case was granted final approval in November of 2016.
15 Expert testimony established that the value of the settlement was \$4,584,765.34 to
16 \$6,728,768.83;

17 z. *Ababa v. Promise Case No.:* BC566121, Consolidated with
18 McGimpsey: BC575044; Cheney: BC579739; and Starks: BC581617, wage and
19 hour case which has been resolved for \$5,000,000.00 (with final approval motion
20 granted in November of 2017);

21 aa. *Martinez v. Petaluma*, wage and hour class action. The
22 \$500,000.00 class action settlement in *Martinez* was finally approved in December
23 of 2018;

24 bb. *McGimpsey v. St. Joseph*, \$1,750,000 wage and hour class
25 action filed in Orange County, 30-2015-00775790-CU-OE-CXC with settlement
26 finally approval in April of 2019;
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1 cc. *Myers v. BMW* 3:16-cv-00412-WHO, consumer class action
2 which was finally approved in April of 2019;

3 dd. *Albright v. Loma Linda*, NO. CIVDS1818361, wage and hour
4 class action which received final approval in October of 2019;

5 ee. *Fuentes v. Ria* 30-2020-01127988-CU-OE-CXC, PAGA
6 settlement approved by the orange county superior court in December of 2021.

7 I declare under penalty of perjury under the laws of the United States and the
8 State of California that the foregoing is true and correct and that this declaration was
9 executed on October 30, 2023 in Woodland Hills, California.

10 /s/ Stephen M. Harris

11 Stephen M. Harris
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