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CHERRIE ANN CORNISTA

FILED
 Superior Court of California
 County of Los Angeles
06/16/2021

Sherri R. Carter, Executive Officer / Clerk of Court
 By: R. Mendoza Deputy

IN THE SUPERIOR COURT FOR THE STATE OF CALIFORNIA
 IN AND FOR THE COUNTY OF LOS ANGELES

CHERRIE ANN CORNISTA, an
 individual,

Plaintiff,

vs.

GARDENA CARE HOMES, INC., A
 California Corporation; SMYRNA
 DOJCINOVIC, an individual, and DOES 1
 through 25, inclusive,

Defendants.

CASE NO: 20STCV45102

**[PROPOSED] STIPULATED ORDER
 APPROVING DISMISSAL OF
 PLAINTIFF'S TENTH CAUSE OF
 ACTION FOR LABOR CODE PRIVATE
 ATTORNEYS GENERAL ACT OF 2004,
 WITHOUT PREJUDICE;**

**DECLARATION OF MORRIS NAZARIAN
 IN SUPPORT OF PLAINTIFF'S REQUEST
 FOR DISMISSAL OF PAGA CAUSE OF
 ACTION WITHOUT PREJUDICE;
 [PROPOSED] ORDER APPROVING
 SETTLEMENT OF PAGA CLAIM**

Complaint Filed: November 24, 2020
 Trial Date: Non Yet Set

Pursuant to California Rules of Court, Rule 3.770, The Parties hereto, Plaintiff Cherrie Ann Cornista, ("Plaintiff" or "Cornista"), and Defendants Gardena Care Homes, Inc. and Smyrna Dojcinovic (collectively "Defendants"), by and through their respective counsel of record, hereby stipulate as follows:

**STIPULATED ORDER APPROVING DISMISSAL OF PLAINTIFF'S TENTH CAUSE OF ACTION FOR
 LABOR CODE PRIVATE ATTORNEYS GENERAL ACT OF 2004, WITHOUT PREJUDICE**

1
2 **WHEREAS**, on November 24, 2020, Plaintiff filed a lawsuit against Defendants in Los
3 Angeles County Superior Court, Case No. 20STCV45102 (the “Action”). In the Action, Plaintiff
4 alleged that Plaintiff was misclassified as an independent contractor and was denied protections from
5 the California Labor Code. On that basis, Plaintiff asserted claims for: (1). Intentional
6 Misclassification of Employee; (2). Failure To Pay Wages; (3). Failure To Provide Lawful Meal
7 Breaks; (4). Failure To Provide Lawful Rest Breaks; (5). Failure To Provide Accurate Itemized
8 Statements; (6). Waiting Time Penalties; (7). Violation Of Business And Professions Code §§ 17200
9 Et Seq.; (8). Failure to Produce Records; (9). Failure to Produce Records; and, (10). Labor Code
10 Private Attorneys General Act Of 2004. (See **Declaration of Morris Nazarian ¶ 3; “Nazarian Decl.”**)

11
12 **WHEREAS**, Defendants vigorously deny all of Plaintiff’s allegations, both on factual and
13 legal bases.

14
15 **WHEREAS**, Defendants have: (a) provided documents regarding their employment practices;
16 (b) responded to informal discovery requested by Plaintiff; and (c) provided, informally, additional
17 documents and evidence to encourage the early evaluation of all claims.

18 **WHEREAS**, over the course of several months the Parties engaged in substantial settlement
19 negotiations and discussions, during which they exchanged information and documentation for
20 purposes of analyzing and determining the respective merits of each party’s position regarding the
21 Action.

22
23 **WHEREAS**, during the course of the informal discovery, Plaintiff’s counsel learned that there
24 was less than five (5) potential aggrieved employees. (See **Nazarian Decl ¶¶ 6-7**)

25 **WHEREAS**, the Parties engaged in settlement negotiations primarily through their respective
26 attorneys, who are experienced employment law practitioners.

27 **WHEREAS**, the Parties have reached agreement on the terms of the settlement regarding the
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1 Action. (Attached as Exhibit “A” to the declaration of Morris Nazarian is a true and correct
2 copy of the Settlement Agreement)

3 WHEREAS, Plaintiff and Plaintiff’s counsel concluded, after taking into account the sharply
4 disputed factual and legal issues involved in the Action, the informal discovery conducted to date, the
5 limited number of aggrieved employees, the difficulty of proof with respect to missed rest breaks and
6 overtime claims in light of a lack of documentary evidence and conflicting information, the risks
7 attending further prosecution, and the substantial benefits received and to be received pursuant to the
8 compromise and settlement of the Action, that settlement on the terms herein set forth is in the best
9 interest of all interested parties and beneficiaries.
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11 WHEREAS, Plaintiff and Plaintiff’s counsel have balanced their evaluation of the validity
12 and strength of the asserted claims against the problems of proof, collectability, and the legal standards
13 governing the claims alleged. Based on this evaluation, Plaintiff’s counsel believes that a dismissal
14 of the Plaintiff’s PAGA cause of action, without prejudice, satisfies the public policies of PAGA and
15 is fair to all parties and beneficiaries.
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17 WHEREAS, Defendants and their counsel concluded there were benefits associated with
18 settlement. Although Defendants dispute the various allegations and causes of action in the Action,
19 Defendants took into account the disputed factual and legal issues involved in the Action, the risk
20 attending further defense, the expense, time, and burden of protracted litigation, and the desire to put
21 the controversy to rest, and based on these factors Defendants and their counsel agreed to this
22 settlement without any admission of fault or liability.
23

24 WHEREAS, Plaintiff wishes to dismiss her PAGA cause of action, without Prejudice, against
25 Defendants. A dismissal without prejudice will permit other aggrieved employees to pursue a PAGA
26 cause of action should they desire to do so. In other words, the dismissal of the PAGA cause of action,
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1 without prejudice, shall have no res judicata or collateral estoppel effect on the Labor and Workforce
2 Development Agency ("LWDA") or any potentially aggrieved employee(s) other than Plaintiff. As
3 such, Plaintiff has not derived a personal benefit that could have possibly belonged to other potentially
4 aggrieved employees, or LWDA'S right to bring an action for civil penalties. (See Nazarian Decl ¶¶
5 6-7)
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9 DATED: June 2, 2021

LAW OFFICES OF MORRIS NAZARIAN

11 By: Morris Nazarian
12 Morris Nazarian
13 Attorney for Plaintiff
14 CHERRIE ANN CORNISTA

15 DATED: June 2, 2021

MOTAZ M. GERGES,

17 By: Motaz M. Gerges
18 Motaz M. Gerges,
19 Attorneys for Defendant
20 GARDENA CARE HOMES, INC;
21 SMYRNA DOJCINOVIC
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DECLARATION OF MORRIS NAZARIAN

I, Morris Nazarian, declare as follows:

1. I am the principal with the Law Offices of Morris Nazarian and counsel of record for Plaintiff, Cherrie Ann Cornista. As such, I am fully familiar with the facts, pleadings and history of this matter. The following facts are within my own personal knowledge, except those matters that are stated to be upon information and belief and if called as a witness, I could testify competently to the matters stated herein.

2. I submit this Declaration in support of Plaintiff's Request for Dismissal of the Tenth Cause of Action for Labor Code Private Attorney General Act of 2004 (PAGA), **without prejudice**, against Defendants (a) Gardena Care Homes, Inc. and Smyrna Dojcinovic (collectively "Defendants")

3. This case was filed on November 24, 2020 as an individual action brought by Plaintiff against Defendants alleging the following causes of action: (1). Intentional Misclassification of Employee; (2). Failure To Pay Wages; (3). Failure To Provide Lawful Meal Breaks; (4). Failure To Provide Lawful Rest Breaks; (5). Failure To Provide Accurate Itemized Statements; (6). Waiting Time Penalties; (7). Violation Of Business And Professions Code §§ 17200 Et Seq.; (8). Failure to Produce Records; (9). Failure to Produce Records; and, (10). Labor Code Private Attorneys General Act Of 2004.

4. This declaration only relates to Plaintiff's Tenth cause of action for Labor Code Private Attorneys General Act Of 2004 or PAGA.

5. Plaintiff's counsel is filing the instant declaration to apprise the Court of Plaintiff's intentions to dismiss her 10th Cause of Action for PAGA against Defendants, without prejudice, and in the abundance of caution, to ensure that the interests of other aggrieved employees are not affected by Plaintiff's request for dismissal

6. After Plaintiff's complaint was filed, the parties engaged in informal discovery. During the informal discovery phase, Defendants provided (a) documents regarding their employment practices; and (b) provided additional documents and evidence to encourage the early evaluation of all

1 claims.

2 7. During the course of the informal discovery, Plaintiff's counsel learned that there was
3 less than five (5) potential aggrieved employees.

4 8. Based on the clear and unambiguous statutory language appearing in Labor Code §
5 2699¹, claims brought under PAGA are not subject to class action requirements² and only settlement
6 of PAGA claims require Court approval.³

7 9. Although it is not clear for the reason behind the relaxed standard, it may be that the
8 primary purpose of the PAGA is to provide a procedure for private enforcement of the labor laws,
9 rather than to receive damages or restitution. See *Brown v. Ralph's Grocery Co.* (2011) 197
10 Cal.App.4th 489, 401 ("The purpose of the PAGA is not to recover damages or restitution");
11 *Cunningham v. Leslie's Poolmart, Inc.*, No. CV 13-2122 CAS CWX, 2013 WL 3233211, at *6 (C.D.
12 Cal. June 25, 2013) ("The purpose [of the PAGA] is not to collect damages on behalf of other
13 employees or provide restitution to victims of Labor Code violations."). Indeed, a court does not abuse
14 its discretion by approving a settlement that allocates ZERO dollars of the settlement recovery to
15 PAGA claims. *Nordstrom Commission Cases* (2010) 186 Cal.App.4th 576, 589.

16 10. In *Nordstrom Commission Cases* (2010) 186 Cal.App.4th 576, 589, the court examined
17 a wage and hour case where the employer agreed to pay up to \$6.405 million in cash plus another \$2.5
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19 ¹ Cal. Lab. Code 2699(1)(2): The superior court shall review and approve any *settlement* of any civil action
20 filed pursuant to this part. [Emphasis added.]

21 ² *Arias v. Superior Court* (2009) 46 Cal.4th 969; Also, see, e.g., *Cardenas v. Mclane Foodservices, Inc.* (C.D.
22 Cal., Jan. 31, 2011) SACV 10-473 DOC FFMX, 2011 WL 379413, *3 (a PAGA claim neither purports to be
23 a class action nor intends to accomplish the goals of a class action). The Court in *Arias* specifically stated "[be
24]cause the committee report comments do not refer to class actions, they are insufficient to support the
conclusion that the Legislature intended to impose class action requirements on representative actions brought
under the Labor Code Private Attorneys General Act of 2004." *Id.*

25 ³ The Court in *Arias*, stated that usually, there is no need to construe a provision's words when they are clear
26 and unambiguous and thus not reasonably susceptible of more than one meaning. See also, *Thurman v.*
27 *Bayshore Transit Mgmt., Inc.*, 203 Cal. App. 4th 1112, 1148 (2012), concluding that that if the Legislature
has expressly prescribed the "proper reach" of a statute, the language of the statute controls and no further
analysis is required.

1 million in merchandise vouchers to settle all claims, including the PAGA claims. The trial court
2 approved the settlement that allocated ZERO dollars towards the PAGA claims. On appeal, the
3 appellate court held that the trial court did not abuse its discretion in approving the settlement even
4 though it released PAGA claims without any funds being paid to the LWDA for those claims. The
5 appellate court noted that the trial court acted properly in dismissing a PAGA claim without any
6 consideration paid to the LWDA for those releases. *Id.*

7 11. In *Villacres v. ABM Industries Inc.* (2010) 117 Cal.Rptr.3d 398, the plaintiff brought a
8 complaint against the defendant for only PAGA penalties. Previously, the defendant had been sued in
9 a case that was settled for \$2.5 million and approved by the trial court. On appeal, the court focused
10 on potential res judicata issues involving the PAGA claims. However, in discussing the case, the court
11 stated that a trial court has the discretion to approve a PAGA settlement even if the amount allocated
12 to civil penalties is zero. It stated that it did not matter if “none of the settlement proceeds ... were
13 allocated to PAGA” in the 2.5 million dollar settlement. *Id.*

14 12. Here, the LWDA was given the opportunity to investigate this matter after being
15 provided notice by Plaintiff, but declined to do so.

16 13. In the instant matter, Plaintiff wishes to dismiss her PAGA cause of action, without
17 Prejudice, against Defendants. A dismissal without prejudice will permit other aggrieved employees
18 to pursue a PAGA cause of action should they desire to do so. In other words, the dismissal of the
19 PAGA cause of action, without prejudice, shall have no res judicata or collateral estoppel effect on the
20 Labor and Workforce Development Agency ("LWDA") or any potentially aggrieved employee(s)
21 other than Plaintiff. As such, Plaintiff has not derived a personal benefit that could have possibly
22 belonged to other potentially aggrieved employees, or LWDA'S right to bring an action for civil
23 penalties.

24 14. **Public Policy Encourages Settlement; There Is No Prejudice Here-** This Court
25 should grant the Plaintiff's request to dismiss the PAGA cause of action against Defendants because
26 (1) it comports with the strong public interest favoring settlement, (2) Plaintiff has not received
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1 unreasonable remuneration, and (3) the absent employees interests will not be compromised.
2 “California law favors the settlement of disputes as our high court clarified in *Neary* []. Settlement is
3 efficient; it reduces costs, saves resources, and minimizes court congestion. [] The parties are best
4 positioned to understand their interests and resolve a dispute in a mutually beneficial manner without
5 court intervention into the settlement.” *Consumer Advocacy Group, Inc. v. Kintetsu Enterprises of*
6 *America*, 141 Cal. App. 4th 46, 62-63 (2006) (quoting *v. Regents of University of California*, 3 Cal.4th
7 273, 277-278 (1992)). “[T]here is an overriding public interest in settling and quieting litigation.” *Van*
8 *Bronkhorst v. Safeco Corp.*, 529 F.2d 943, 950 (9th Cir. 1976); and see *Ahern v. Central Pacific*
9 *Freight Lines*, 846 F.2d 47, 48 (9th Cir. 1988). Courts stated that “[d]ue regard should be given to
10 what is otherwise a private consensual agreement between the parties.” *Dunk v. Ford Motor Co.*, 48
11 Cal.App.4th 1794 (1996).

12 15. Plaintiff did not bring her action as a class action⁴; and; hence, did not move for class
13 certification, nor this action been certified as a class action.

14 16. Other aggrieved employee(s) have not relied on this lawsuit to refrain from bringing a
15 separate lawsuit and will have the opportunity to bring their own lawsuit(s) and allege PAGA
16 violations, if any.

17 17. **No Notice To Other Employees Is Required**-This Court need not order the parties to
18 disseminate notice of dismissal because the California Supreme Court has held that class action
19 requirements and notice requirements are not required in a PAGA action. *Arias v. Superior Court*, 46
20 Cal.4th 969, 977 (2009); see also *Baumann v. Chase Inv. Servs. Corp.*, 747 F.3d 1117 (9th Cir.)
21 (PAGA has no notice requirements for unnamed aggrieved employees, nor may such employees opt
22 out of a PAGA action. In a PAGA action, the court does not inquire into the named plaintiff’s and
23 counsel’s ability to fairly and adequately represent unnamed employees.). Accordingly, no notice of
24 this settlement is required to other employees. And again, there will be no prejudice to them.

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27 ⁴ Actions under the Labor Code Private Attorneys General Act of 2004 (PAGA) may be brought as class
actions. Cal.Lab. Code § 2698 et seq. [Emphasis added.]

1 18. Plaintiff has not settled the aggrieved employees' claims for her own individual gain.

2 19. No consideration, direct or indirect, is being given for the dismissal of Plaintiff's PAGA
3 claim. Cal. R. Court 3.770(a).

4 20. As a counsel to the named individual Plaintiff, I have not portrayed to represent
5 potential unnamed representative members, other than acting as a proxy of LWDA, and no other
6 potentially aggrieved employees have advised me that they are relying on this lawsuit to protect their
7 interests.

8 21. The instant Stipulation and [Proposed] Order will be served on the Labor Workforce
9 and Development Agency at the same time it is submitted to the Court in accordance with Labor Code
10 § 2699(1)(2), to the extent applicable, and with Labor Code § 2699(1)(3)⁵

11 22. Pursuant to California Rule of Court 3.770, if deemed applicable by this Court, Plaintiff
12 respectfully requests this Court to permit Plaintiff to dismiss her Tenth cause of action for PAGA,
13 without prejudice, against Defendants. ⁶

14 23. **Attached as Exhibit "A" is a true and correct copy of the Settlement Agreement**

15 I declare under penalty of perjury and under the laws of the State of California that the
16 foregoing statements are true and correct and stated of my own personal knowledge. I have signed this
17 declaration on June 2, 2021, in Los Angeles, California.

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21 *Morris Nazarian*
22 Morris Nazarian

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25 ⁵ Cal. Lab. Code 2699(1)(3) A copy of the superior court's judgment in any civil action filed pursuant to this
26 part and **any other order** in that action that either provides for or denies an award of civil penalties under this
code shall be submitted to the agency within 10 days after entry of the judgment or order. [Emphasis added].

27 ⁶ California Rule of Court 3.770 provides, in relevant part: "The court may grant the request without a
28 hearing." Cal. R. Court 3.770(b).

EXHIBIT “A”

CONFIDENTIAL SETTLEMENT AGREEMENT AND GENERAL RELEASE

This Confidential Settlement Agreement and General Release (the "Agreement") is made and entered into by and between Cherrie Ann Cornista ("Wilson" or "Plaintiff") and Gardena Care Homes, Inc., and Smyrna Dojcinovic (collectively "Gardena Care" or "Defendants"). Plaintiff and Defendants shall sometimes be referred to herein individually as a "Party" and collectively as the "Parties."

RECITALS

- A. WHEREAS, Plaintiff was formerly employed by Defendants.
- B. WHEREAS, Plaintiff filed a Complaint against Defendant in the Los Angeles Superior Court, Case No. 20 STCV45102 (the "Complaint") for Intentional Misclassification Of Employee; Failure To Pay Wages; Failure To Provide Lawful Meal Breaks; Failure To Provide Lawful Rest Breaks; Failure To Provide Accurate Itemized Statements; Waiting Time Penalties; Unfair Competition [§17200]; Failure To Produce Records- Cal. Lab. Code §§1174.5 And 1198.5; and Labor Code Private Attorneys General Act Of 2004. The Complaint is currently pending.
- B. Defendant denies and continues to deny Plaintiffs allegations as set forth in her Complaint; however, Plaintiff and Defendant desire to settle fully and finally the differences between them as to the aforementioned Complaint which arose out of Plaintiffs employment with Defendant.
- D. WHEREAS, by this Agreement, the Parties have settled, fully and finally, all Claims that Plaintiff have or might have against Defendant, up to and including the date of execution hereof.

NOW, THEREFORE, in consideration of the terms, conditions, and promises set forth herein, the Parties agree as follows:

TERMS AND SETTLEMENT

1. **No Admission of Liability.** This Agreement memorializes the compromise of disputed claims. The Parties acknowledge that the execution of this Agreement and the payment of consideration or any other obligation hereunder are not and shall not be construed in any way as an admission of wrongdoing or liability on the part of any of the Parties, or any other person or entity. Defendant denies all allegations of wrongdoing arising out of the employment relationship between the Parties or otherwise. The Parties intend, by this Agreement, merely to avoid the expense, delay, uncertainty, and burden of continued litigation.
2. **Consideration by Defendant.** In consideration for promises made by Plaintiff and contingent on Plaintiffs fulfillment of the conditions of this Agreement and upon the Court's approval of the dismissal of Plaintiff's PAGA Cause of action, without prejudice, Defendants agrees to pay the total sum of FOURTY THOUSAND DOLLARS AND ZERO CENTS (\$40,000) (the "Consideration"). The Consideration shall be paid in installments to Plaintiff, with the first installment paid in the amount of TEN THOUSAND DOLLARS AND ZERO CENTS (\$10,000.00) no later than 10 DAYS after the Court approved dismissal of Plaintiff's PAGA cause of action and upon Plaintiff executing this agreement and then five equal monthly installments in the amount of SIX THOUSAND DOLLARS AND ZERO CENTS (\$6,000.00). Said payments shall be made payable to

"Law Office of Morris Nazarian - Client Trust Account." The second through sixth installment payments shall be due no later than the 20th of the month.

3. Payment Default And Right To Cure. If any payment is not received by Plaintiff's counsel on the due date, then Plaintiff is required to give Defendant written notice to cure the default by sending such notice by fax, email, or personal service on Defendant's counsel.

If default is not cured within seven (7) days of said notice with receipt by Plaintiff's counsel of the delayed payment on the seventh (7th) day, Plaintiff may thereafter apply to the Court Ex Parte to enforce the terms of the Settlement Agreement for the sum of FORTY THOUSAND DOLLARS AND ZERO CENTS (\$40,000.00), plus attorneys' fees and costs to bring said motion and enforce the Settlement Agreement, less credit for payments made to date from said Defendant. Interest shall accrue on such judgment, at the legal rate from the date of filing of the Judgment. Plaintiff may thereafter enforce such judgment in any manner available under the law.

4. Dismissal with Prejudice. After the Court grants approval of the PAGA Settlement and no later than 5 days after Defendants have tendered the final initial installment payment, Plaintiff will provide defense counsel with a fully executed Request for Dismissal with prejudice of the entirety of the Complaint. Defense counsel shall file the executed Request for Dismissal with the clerk of the Los Angeles Superior Court.

5. PAGA Claims. The Parties are executing a second settlement agreement and general release of all claims relative to the PAGA claim which will be submitted to the Los Angeles Superior Court for court approval of the settlement as required by PAGA.

5.1 Obligations Take Effect Upon Court's Approval of the PAGA Settlement: The Parties respective obligations due under this Agreement shall not take effect until the Court issues an Order approving the PAGA Settlement. Therefore, this Confidential Settlement shall be expressly conditional upon the Parties obtaining Court approval of the PAGA Settlement within the same Action. Should the Court not approve the PAGA dismissal, the Parties shall work jointly to remedy the Settlement Agreement such that the PAGA Claim is also dismissed with prejudice. Should the Parties be unable to obtain both the Court's (and/or the LWDA's) approval, this Settlement Agreement will be null and void.

6. C.C.P. 664.6: This settlement is enforceable in the Superior Court of Los Angeles County pursuant to California Code of Civil Procedure Section 664.6. The parties hereby stipulate that the Court, upon motion, may enter judgment pursuant to the terms of the settlement. The parties further stipulate that the court retains jurisdiction for the purposes of enforcing the settlement and entering judgment. The prevailing party to recover their attorneys' fees and costs.

7. General Release.

7.1 In exchange for the Consideration set forth in this Agreement, Plaintiff along with her respective heirs, spouses, administrators, executors, attorneys, successors in interest, and/or assigns, covenants to, and hereby forever releases and discharges Defendant, and each of its respective predecessors, successors, divisions, owners, parents, subsidiaries, affiliated and/or related entities, and each of its directors, officers, partners, members, managers, shareholders, supervisors, consultants, independent contractors, professional employer organizations, employees, volunteers, representatives, insurers, clients, attorneys, and agents (collectively "Defendant Releasees") from any and all causes of action, obligations, costs, expenses, damages,

claims, liabilities, and benefits (including attorneys' fees and costs), of whatever character, in law or in equity, known or unknown, suspected or unsuspected, matured or unmatured, of any kind whatsoever, now existing or arising in the future, based on any act, omission, event, occurrence, or nonoccurrence from the beginning of time to the Effective Date, including but not limited to any claims or causes of action arising out of Plaintiff's employment with Defendant and/or any relationship with, or between, Plaintiff and Defendant (the "Released Claims").

Without limitation, the Released Claims herein include, but are not limited to, claims arising under Title VII of the Civil Rights Act of 1964, as amended, the Civil Rights Act of 1866, the Civil Rights Act of 1991, the Americans with Disabilities Act, the California Family Rights Act, the Family and Medical Leave Act, the Federal Age Discrimination in Employment Act of 1967 (ADEA), 29 U.S.C. § 621 et seq. and any analogous local or state law or statute, including without limitation the California Fair Employment and Housing Act, the Employees Retirement Income Security Act, the Worker Adjustment and Retraining Notification Act, the Older Worker Benefit Protection Act, any actual or potential claim that any Defendant Releasee violated any promise or agreement, either express or implied with Plaintiff, any actual or potential claim arising from any alleged violation by any of the Defendant Releasees of any federal, state or local statutes; any actual or potential claim that the termination of employment with any Defendant Releasee was illegal or in violation of the public policy of California or the United States; any actual or potential claim under the California Constitution, the California Labor Code, the California Government Code, the Industrial Welfare Commission Wage Orders, or the Fair Labor Standards Act; any actual or potential claim for economic damages, employment discrimination, harassment of any kind or nature, breach of fiduciary duty, fraud, invasion of privacy, misrepresentation, defamation, slander, intentional and/or negligent infliction of emotional distress, intentional and/or negligent misrepresentation, wrongful termination, breach of contract, breach of the covenant of good faith and fair dealing, unpaid wages, severance pay, separation pay, relocation expenses, overtime pay, meal breaks, rest breaks, sick leave, holiday pay, vacation pay, expense reimbursement, loss of future earnings, life insurance, health and medical insurance, or any other fringe benefit, including any claim under California Labor Code Section 132a; and/or any actual or potential claim for attorneys' fees, costs, expert witness fees, court costs, disbursements and/or the like, any claims based on legal restrictions on Defendant's right to terminate, not to hire or promote Plaintiff, or to change the compensation of Plaintiff.

7.2 Nothing in Section 7.1 above releases any obligation created by this Agreement.

7.3 Each Party fully understands that if the facts in respect to which this Settlement Agreement and Release are executed are found hereafter to be different from facts now believed to be true, that this Settlement Agreement and Release will remain effective. Each party expressly accepts and assumes the risk of such possible difference and agrees that this Settlement Agreement and Release shall remain effective, notwithstanding such differences.

7.4 General Release of Unknown Claims. For the purpose of implementing a full and complete release and discharge, Plaintiff expressly acknowledges that the releases given in this Agreement are intended to include in their effect, without limitation, all claims that she did not know or suspect at the time of execution hereof, regardless of whether the knowledge of such claims, or the facts upon which they might be based would materially have affected the settlement of this matter, and that the consideration given under this Agreement is also for the

release of those claims and contemplates the extinguishment of any such claims. In furtherance of this Agreement, Plaintiff waives any rights provided by California *Civil Code* Section 1542, which states:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.

7.5 Plaintiff and Defendants hereby agree that the Released Claims and the General Release of Unknown Claims shall not apply to Social Security Disability Insurance (SSDI) payments

8. Successors. This Agreement shall be binding upon the Parties, and their heirs, representatives, executors, administrators, successors, insurers, and assigns, and shall inure to the benefit of each and all of the Defendant Releasees, and to their heirs, representatives, executors, administrators, successors, and assignees.

9. No Re-Employment. In consideration of the promises made by Defendant in this Agreement, Plaintiff promises that she will not seek or accept future employment from Defendant. Plaintiff further agrees that she will not accept assignment with any Defendant Releasee as an independent contractor, subcontractor, or consultant, or through any contract service, account, client, agency or registry. The Parties agree that Defendant does not have any obligation to employ or to continue to employ Plaintiff and may refuse to do so without any recourse. If Plaintiff seeks or obtains such employment after the Effective Date, this Agreement shall constitute sufficient cause for refusal to hire and/or for the termination of any such employment.

10. Confidentiality. In further consideration of the promises made by the Parties in this Agreement, Plaintiff promises that she will keep the amount of this settlement, the terms and contents of this Agreement, and the negotiations leading thereto, completely confidential, and that she will not publicize or disclose (directly or indirectly) such information to any person, organization or entity, including but not limited to current or former co-employees of Defendant. Plaintiff may disclose such information to her immediate family members, attorneys, and tax advisors, provided that they each agree to keep this information confidential, or otherwise as required by law, and in so doing, Plaintiff assumes the legal responsibility for breach of this Confidentiality provision in the event any such individuals fail to keep this information confidential. Plaintiff shall not publicize or disclose the fact of the Complaint or any allegations, causes of action, or claims asserted therein (directly or indirectly) to any person, organization, or entity. Plaintiff further agrees that if asked about the dispute by other persons, she shall state only that "the matter was resolved" and that she is barred from disclosing its terms. Plaintiff agrees that she will not cause to be published, including in any legal newspaper, verdict settlement publication, or on any social media, the existence of this settlement. By signing this Confidential Settlement Agreement and Release of All Claims, Plaintiff expressly warrants that she has taken no action and made no disclosure that would constitute a violation of this confidentiality provision. In the event Plaintiff is subpoenaed to testify as a witness and inquiry is made about any information that is subject to the terms of this Confidential Settlement Agreement and General Release, Plaintiff must advise that the terms of this settlement are Confidential and refuse to disclose the information covered by this Confidential Settlement Agreement and General Release absent a Court Order, and notify all Defendant within three days, through its attorney of record, of any attempt to compel a breach of this Confidential Settlement Agreement and General Release.

11. Non-Disparagement/Neutral Reference. The Parties agree not to disparage each other or their past or present partners, officers, owners, directors, employees or agents to anyone, including without limitation any current or former employees, customers, or business contacts of Defendant, or in the media. If any verification of prior employment is requested concerning Plaintiff, the Defendant and its Human Resources Dept. shall only affirm that Plaintiff had been employed with Defendant, her dates of employment, and confirm Plaintiff's position with Defendant.

12. Breach. In addition to any other rights the Parties have under this Agreement, in the event of a breach by any Party of any of the terms of this Agreement, any Party shall be entitled, if it shall so elect, to institute legal proceedings to obtain damages for any such breach, or to enforce the specific performance of this Agreement by the breaching Party and to enjoin the breaching Party from any further violation of this Agreement and to exercise such remedies cumulatively or in conjunction with all other rights and remedies provided by law. The Parties acknowledge, however, that the remedies at law for any such breach may be inadequate and that a Party shall be entitled to injunctive relief in the event of any breach. If a Party prevails in a proceeding for damages or injunctive relief, a Party, in addition to other relief, shall be entitled to reasonable attorneys' fees, costs, and the expenses of litigation incurred in securing the relief granted by the Court. It is acknowledged and agreed by the Parties that the provisions of Sections 9 and 10 are essential to this Agreement, and that a breach of these provisions shall constitute a material breach of this Agreement. It is further acknowledged that it would be difficult to ascertain the damages resulting from a breach of the confidentiality provisions set forth in Section 10 or the non-disparagement provision in Section 11, and therefore the Parties agree that the sum of One Thousand Dollars (\$1,000.00) shall be presumed to be and be affixed as the amount of damages that would be suffered as a result of each breach of Sections 9 or 10. Accordingly, in the event that a Party breaches the provisions set forth in Sections 9 or 10, a Party found in breach shall pay liquidated damages in the amount of One-Thousand Dollars (\$1,000.00) for each occurrence, which amount may be recoverable in a proceeding to enforce this Agreement, in addition to any other remedies provided by law. The liquidated damages are in addition to, and not in abrogation of, any other rights or remedies a Party may have.

13. No Attorneys' Fees and Costs. Except for attorney's fees which are specifically set forth in this Agreement, the Parties agree that they shall bear their own respective costs and fees, including attorneys' fees, in connection with the Complaint.

14. Agreement is Voluntary. All Parties acknowledge and agree that they:

14.1 Have had a reasonable amount of time within which to consider the settlement terms memorialized in this Agreement before agreeing to them;

14.2 Have carefully read and fully understand all of the provisions of this Agreement;

14.3 Plaintiff is, through this Agreement, releasing any and all claims she has or may have against any Defendant Releasees;

14.4 Knowingly and voluntarily agree to all of the terms set forth in this Agreement;

14.5 Knowingly and voluntarily intend to be legally bound by the same; and

14.6 Were represented by, and consulted with, an attorney prior to agreeing to the terms of this Agreement.

15. No Representations. The Parties acknowledge that, except as expressly set forth herein, no representation of any kind or character has been made to induce the execution of this Agreement.

16. Ownership of Claims. Plaintiff represents that she has not transferred or assigned, or purported to transfer or assign, to any person or entity, any claim described in this Agreement. Plaintiff further agrees to indemnify and hold harmless each Defendant Releasee from and against any and all claims based upon, arising out of, or in any way connected with any such actual or purported transfer or assignment.

17. Age Discrimination In Employment Act: In accordance with the Older Worker's Benefit Protection Act of 1990, Plaintiff is aware of the following with respect to claims under the Age Discrimination in Employment Act (ADEA): (1) she has the right to consult with an attorney before signing this AGREEMENT and, to the extent so desired, have done so; (2) that she has twenty-one (21) days to review and consider this AGREEMENT and the release of any ADEA claim, and she may use as much as this 21-day period as she wishes prior to signing; (3) for a period of seven (7) days following the execution of this AGREEMENT, that she revoke this AGREEMENT as to any claim under ADEA and it shall not become effective or enforceable with respect to the claims under ADEA until the revocation period has expired; (4) this AGREEMENT shall become effective as to any ADEA claim eight (8) days after it is signed. Thereafter, Plaintiff understands that she cannot revoke her waiver of any ADEA claim and that it will be binding upon her and (5) she understands that in the event that she revokes her release/waiver of any age discrimination claims, Defendants shall have the unilateral right to terminate this entire AGREEMENT, and in the event of such termination, Plaintiff understands and agrees that neither she nor her attorney shall be entitled to receive any monies described herein.

18. Miscellaneous.

18.1 The language of all parts in this Agreement shall be construed as a whole, according to its fair meaning.

18.2 Should any provision in this Agreement be declared or determined to be illegal or invalid, the validity of the remaining parts, terms, or provisions shall not be affected thereby, and the illegal or invalid part, term, or provision shall be deemed not to be part of this Agreement, and all remaining provisions shall remain valid and enforceable.

18.3 This Agreement sets forth the entire agreement between the Parties and fully supersedes any and all prior agreements and understandings between the Parties pertaining to the subject matter of this Agreement. Any modifications in this Agreement must be in writing and signed by the Parties.

18.4 This Agreement is deemed to have been drafted jointly by the Parties. Any uncertainty or ambiguity shall not be construed for or against any Party since all Parties have participated in the negotiation and drafting of this Agreement.

19. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Furthermore, signatures delivered via facsimile or electronic transmission shall have the same force, validity and effect as the originals thereof.

20. Interpretation. This Agreement, and any ambiguities or uncertainties herein, shall be equally and fairly interpreted, and construed, without reference to the identity of the Party drafting this document, upon the express understanding and agreement that the Parties participated equally in the negotiation and preparation of this Agreement, or have had equal opportunity to do so. Accordingly, the Parties, and each of them, expressly waive the benefits of California Civil Code Section 1654, and any successor or amended statute.

21. Governing Law and Venue. This Agreement shall in all respects be interpreted, enforced and governed by and under the laws of the State of California, regardless of the conflicts of laws rules of any individual state. In addition, any action brought to enforce the provisions of this Agreement shall be commenced, prosecuted, and defended exclusively in the Superior Court of the State of California, County of Los Angeles.

22. Captions And Headings. The section headings, captions, and titles used in this Agreement are intended solely for convenience of reference and shall not in any manner amplify, limit, modify or otherwise be used in the interpretation of any of the provisions hereof.

Dated: 5/31/2021

PLAINTIFF


Cherrie Ann Cornista

Dated: 5/20/21

DEFENDANT
Gardena Care Homes, Inc


By: Authorized Agent

Dated: 5/20/21

DEFENDANT


Smyrna Dojcinovic

1
2 Morris Nazarian (SBN 230275)
3 **LAW OFFICES OF MORRIS NAZARIAN**
4 1875 Century Park East, Suite 1790
5 Los Angeles, California 90067
6 Telephone: (310) 284-7333
7 Facsimile: (310) 284-7332

8
9
10 Attorney for Plaintiff
11 **CHERRIE ANN CORNISTA**

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IN THE SUPERIOR COURT FOR THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF LOS ANGELES

CHERRIE ANN CORNISTA, an
individual,

Plaintiff,

vs.

GARDENA CARE HOMES, INC., A
California Corporation; SMYRNA
DOJCINOVIC, an individual, and DOES 1
through 25, inclusive,

Defendants.

CASE NO: 20STCV45102

**[PROPOSED] ORDER RE PLAINTIFF'S
REQUEST FOR DISMISSAL OF PAGA
CAUSE OF ACTION WITHOUT
PREJUDICE**

Complaint Filed: November 24, 2020
Trial Date: Non Yet Set

[PROPOSED] ORDER

Pursuant to California Rules of Court, Rule 3.770, the parties proposed Stipulation and the
Declaration of Morris Nazarian, and Good Cause Appearing, IT IS HEREBY ORDERED that:

10.

**STIPULATED ORDER APPROVING DISMISSAL OF PLAINTIFF'S TENTH CAUSE OF ACTION FOR
LABOR CODE PRIVATE ATTORNEYS GENERAL ACT OF 2004, WITHOUT PREJUDICE**

1 1. Plaintiff's Tenth Cause of Action, arising under the Private Attorney General Act Of
2 2004, PAGA Claims, is dismissed without prejudice only as to Defendants, the LWDA and other
3 potentially Aggrieved Employees; and,

4 2. The Order and the dismissal of Plaintiff's Tenth Cause of Action, PAGA Claims, shall
5 have no res judicata or collateral estoppel effect on the LWDA or any Aggrieved Employees of
6 Defendants.

7
8 **IT IS SO ORDERED.**

9
10 DATED: 06/16/2021
11 _____



Stephen I. Goorvitch

Stephen I. Goorvitch / Judge

Los Angeles Superior Court Judge

PROOF OF SERVICE

STATE OF CALIFORNIA }
COUNTY OF LOS ANGELES }

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action; my business address is: 1875 Century Park East, Suite 1790, Los Angeles, California 90067.

On June 8, 2021, I caused the foregoing documents

[PROPOSED] STIPULATED ORDER APPROVING DISMISSAL OF PLAINTIFF'S TENTH CAUSE OF ACTION FOR LABOR CODE PRIVATE ATTORNEYS GENERAL ACT OF 2004, WITHOUT PREJUDICE;

DECLARATION OF MORRIS NAZARIAN IN SUPPORT OF PLAINTIFF'S REQUEST FOR DISMISSAL OF PAGA CAUSE OF ACTION WITHOUT PREJUDICE;

[PROPOSED] ORDER APPROVING SETTLEMENT OF PAGA CLAIM

to be served on interested parties in this action by placing ___ the original X a true copy thereof enclosed in a sealed envelope addressed to the below-listed addressee(s):

Motaz M. Gerges,
Attorney at Law
18543 Devonshire St. #448
Northridge, CA 91324
(818) 943-0707
Fax (818) 401-0711
motazgerges@gmail.com

[X] BY EMAIL OR ELECTRONIC TRANSMISSION: Pursuant to CCP § 1010.6, I caused the document(s) to be sent to the person(s) at the E-Mail address(es) listed below. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

[X] BY MAIL, I placed a true copy thereof enclosed in a sealed envelope to the above-listed addressee(s). I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. postal service on that same day with postage herein fully prepaid at Los Angeles, California in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

[X] (State) I declare under penalty of perjury of the laws of the State of California that the foregoing is true and correct.

[] (Federal) I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

Executed on June 8, 2021, at Los Angeles, California.

Morris Nazarian

Morris Nazarian