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CARLOS CHACON

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF ORANGE

CARLOS CHACON, as an individual and on
behalf of all others similarly situated,

Plaintiff,

vs.

EXEMPLIS LLC, a California limited liability
company; and DOES 1 through 100, inclusive,

Defendants.

Case No.: 30-2020-01157341-CU-OE-CXC

*[Assigned for All Purposes to Hon. Randall J.
Sherman, CX105]*

**~~AMENDED [PROPOSED]~~ ORDER AND
JUDGMENT GRANTING PLAINTIFF'S
MOTION FOR SETTLEMENT APPROVAL OF
CLAIMS BROUGHT UNDER THE PRIVATE
ATTORNEYS GENERAL ACT AND
REASONABLE ATTORNEYS' FEES, COSTS,
AND ENHANCEMENT AWARD**

Date: September 24, 2021

Time: 10:00 a.m.

Dept.: CX105

Reservation No.: 73578931

Complaint Filed: August 27, 2020

Trial Date: None Set

1 This matter came on regularly for hearing before this Court on September 24, 2021 at 10:00
2 a.m. Having considered the parties' Settlement Agreement ("Settlement"), the documents and
3 evidence presented in support thereof, and recognizing the disputed factual and legal issues involved
4 in this case, the risks of further prosecution, the substantial benefits to be received by the State of
5 California and the Aggrieved Employees pursuant to the Settlement, the fair, reasonable, and
6 adequate nature of the settlement obtained as a result of good faith arm's-length negotiations between
7 the parties, the Court hereby makes a final ruling that the settlement is approved pursuant to Labor
8 Code § 2699(l). Good cause appearing therefor, the Court hereby GRANTS Plaintiff's Motion for
9 Settlement Approval of Claims Brought under the Private Attorneys General Act and Reasonable
10 Attorneys' Fees, Costs, and Enhancement Award and ORDERS as follows:

11 1. The "Aggrieved Employees" shall be defined as:

12 All current and former hourly, non-exempt employees of Defendant Exemplis LLC
13 who worked in California at any time from June 22, 2019 through September 24,
2021.

14 2. The "PAGA Period" means the time period from June 22, 2019 through September
15 24, 2021.

16 3. The Court hereby approves the Settlement as set forth in the Settlement as fair,
17 reasonable, and adequate, and directs the parties to effectuate the Settlement according to the terms
18 of the Settlement.

19 4. The Court orders that Exemplis LLC ("Exemplis" or "Defendant") shall deposit the
20 Gross Settlement Amount of Two Hundred Fifty Thousand Dollars and Zero Cents (\$250,000.00) to
21 the Settlement Administrator within thirty (30) calendar days of the Effective Date, which is the later
22 of (1) the day after the last day by which a notice of appeal of the Approval Order and/or of an order
23 rejecting any motion to intervene may be timely filed, and none is filed; (2) if such an appeal is filed,
24 and the Approval Order is affirmed, the day after the last date for filing a request for further review
25 of the decision passes and no further review is requested; (3) if an appeal is filed and further review
26 of the decision affirming the Approval Order is requested, the day after the request for review is

1 denied with prejudice and/or no further review of the decision can be requested, or (4) if review is
2 accepted, the day after the United States or California Supreme Court affirms the Settlement.

3 5. The Court hereby approves, as to form and content, the Notice of PAGA Settlement
4 and Release of Claims attached to the Settlement as Exhibit A.

5 6. The Court hereby appoints Phoenix Settlement Administrators as Settlement
6 Administrator.

7 7. Within twenty (20) business days of the court signing the approval order, Defendant
8 shall provide the Settlement Administrator with information for Aggrieved Employees. Defendant
9 will in good faith compile from its records a list of Aggrieved Employees that will be in a computer-
10 readable format, such as a Microsoft Excel spreadsheet, and shall include each Aggrieved
11 Employee's full name, last known mailing address, total number of pay periods worked during the
12 PAGA Period or dates of employment, and Social Security number. The list shall also include the
13 sum total of all pay periods worked by Aggrieved Employees during the PAGA Period.

14 8. Within seven (7) business days of receiving the Aggrieved Employees' information
15 from Defendants, the Settlement Administrator will circulate to counsel for all Parties an anonymized
16 spreadsheet containing the Individual Settlement Payments to each Aggrieved Employee and the data
17 used to calculate said payments. The Settlement Administrator shall obtain approval from all counsel
18 for all Parties of the calculations before mailing Individual Settlement Payments.

19 9. Within two (2) business days of the fully funding of the Gross Settlement Amount,
20 Phoenix Settlement Administrators is directed to mail the Individual Settlement Payments and the
21 Notice of Settlement to the Aggrieved Employees. A true and correct copy of the proposed Notice
22 agreed upon by the Parties to be mailed to the Aggrieved Employees is attached hereto as **Exhibit A**.

23 10. The Court finds that attorneys' fees in the total amount of \$83,333.33 (with 46.5% or
24 \$38,750.00 to Haines Law Group, APC, 31% or \$25,833.33 to Lidman Law, APC, and 22.5% or
25 \$18,750.00 to Michael Burgis & Associates, PC) (collectively, "Plaintiff's Counsel"), and
26 reimbursement of litigation costs of \$20,613.31 to Haines Law Group, APC are fair, reasonable, and
27

adequate, and orders that the Settlement Administrator distribute these payments to Plaintiff's Counsel as provided for in the Settlement. Within two (2) business days of the fully funding of the Gross Settlement Amount, Phoenix Settlement Administrators is directed to distribute to Plaintiff's counsel the Court-approved attorneys' fees and costs.

11. The Court orders that the Settlement Administrator shall be paid \$3,750.00 for all of its work done and to be done until the completion of this matter and finds that sum appropriate.

12. The Court finds that enhancement award of \$3,000.00 to Plaintiff Carlos Chacon, is fair and reasonable in recognition of the unique contributions he has made, the risks he undertook on behalf of the Aggrieved Employees and the State of California, and his agreement to a general release and 1542 waiver and orders that the Settlement Administrator distribute this payment to Plaintiff as provided for in the Settlement Agreement. Within two (2) business days of the fully funding of the Gross Settlement Amount, Phoenix Settlement Administrators is directed to distribute to Plaintiff the Court-approved enhancement award.

13. The Court finds that the amount from the Gross Settlement Amount remaining after deductions for: (i) Plaintiff's Counsel's attorneys' fees and costs, (ii) enhancement award to Plaintiff; and (iii) Settlement Administrator fees ("Net Settlement Amount") shall be distributed as follows: 75% shall to be paid to the California Labor and Workforce Development Agency ("LWDA") and 25% to be distributed to the Aggrieved Employees pro rata based on the proportional number of pay periods worked by each Aggrieved Employee during the PAGA Period, as provided for in the Settlement. The Court finds that these amounts and the distribution formula as set forth in the Settlement is fair, adequate, and reasonable, and orders that payment be made to the LWDA and Aggrieved Employees in accordance with the terms of the Settlement.

14. The Court hereby approves the limited scope of the release as set forth in the Settlement. Specifically, following entry of this Order and Final Judgment, in his capacity as a Private Attorney General or "aggrieved employee" acting on behalf of himself, the State of California and all Aggrieved Employees, Plaintiff hereby releases Defendant and its former, present

1 and future owners, parents, subsidiaries, and all of their current, former and future officers, directors,
2 members, managers, employees, consultants, partners, shareholders, joint venturers, agents,
3 successors, assigns, accountants, insurers, or legal representatives (“Released Parties”), from all
4 claims, rights, demands, liabilities and causes of action for civil penalties under the Labor Code
5 Private Attorneys General Act (“PAGA”), Labor Code § 2698 et seq. against the Released Parties as
6 pled, or could have been pled based on the facts alleged, in the operative complaint in the Action,
7 including: (a) failure to pay all minimum wages owed (Labor Code sections 1194, 1194.2, and 1197);
8 (b) failure to pay all overtime wages (Labor Code sections 204, 510, 558, 1194 and 1198); (c) failure
9 to provide meal periods, or premium for non-compliant meal periods (Labor Code sections 226.7,
10 512 and 558); (d) failure to authorize and permit rest periods, or premium pay for non-compliant rest
11 periods (Labor Code sections 226.7, 516 and 558); (e) failure to provide accurate, itemized wage
12 statements (Labor Code section 226), (f) failure to provide all earned wages at least twice during
13 each calendar month (Labor Code section 204), and (g) failure to maintain accurate records (Labor
14 Code section 1174, including any related claims for attorneys’ fees, costs, or interest resulting
15 therefrom (hereinafter, “PAGA Released Claims”).

16 15. Pursuant to the Settlement, and light of his enhancement award described above,
17 Plaintiff personally agrees to release, in addition to the PAGA Released Claims, all claims, whether
18 known or unknown, under federal law or state law, to the fullest extent permitted by law, against the
19 Released Parties. Plaintiff further understands that this release includes unknown claims and that he
20 is, as a result, waiving all rights and benefits afforded by Section 1542 of the California Civil Code,
21 which provides:

22 **A general release does not extend to claims that the creditor or**
23 **releasing party does not know or suspect to exist in his or her favor**
24 **at the time of executing the release and that, if known by him or**
25 **her, would have materially affected his or her settlement with the**
26 **debtor or released party.**

1 16. Upon entry of the Order approving the Settlement and judgment entered thereon, as
2 well as full payment by Defendant of the Gross Settlement Amount, Plaintiff and all Aggrieved
3 Employees may be forever barred as a matter of law from pursuing any and all of the PAGA
4 Released Claims that arose during the PAGA Period against the Released Parties. Without affecting
5 the finality of this Final Order and Judgment in any way, the Court retains jurisdiction to enforce the
6 terms of the Settlement.

7 17. Plaintiff shall file a declaration confirming the final distribution of funds at least 16
8 days prior to the Final Report Hearing, which is set for June 24, 2022 at 10:00 a.m.

9 **IT IS SO ORDERED.**

10 Dated: **September 27, 2021**

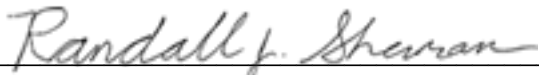

Honorable Randall J. Sherman
Judge of the Superior Court

EXHIBIT A

NOTICE OF PAGA SETTLEMENT AND RELEASE OF CLAIMS

Carlos Chacon v. Exemplis, LLC,
Orange County Superior Court Case No. 30-2020-01157341-CU-OE-CXC

<<Name>>
<<Address>>
<<City>>, <<State>> <<Zip Code>>
XX - XX - ____

I. NOTICE OF PAGA SETTLEMENT

The Orange County Superior Court (the “Court”) has approved a settlement in the above-captioned action filed by Carlos Chacon (“Plaintiff”) on behalf of himself and all other aggrieved employees.

In this lawsuit, Plaintiff is seeking to recover civil penalties for alleged violations of the California Labor Code on behalf of the California Labor and Workforce Development Agency (“LWDA”) and other aggrieved employees under the California Private Attorneys General Act (the “PAGA”). These civil penalties are based on Plaintiff’s allegations that Exemplis, LLC (“Exemplis”): failed to pay all minimum and overtime wages, failed to provide legally compliant meal periods, failed to authorize and permit all legally required rest periods, failed to issue accurate wage statements that included all information required by law, failed to provide all earned wages at least twice during each calendar month and failed to maintain accurate records; and as a result is liable for civil penalties under the PAGA.

The Court has **not** made a determination about the merits of Plaintiff’s claims. This Notice is not to be understood as an expression of any opinion by the Court as to the merits of Plaintiff’s claims.

Exemplis denies Plaintiff’s allegations. It maintains that it was in compliance with the California Labor Code at all times and enters into this Settlement with no admission of liability and solely for the purposes of compromising and settling the action to avoid the cost and operational burden of continued litigation.

You are receiving this Notice because you are in the group of employees referred to as “Aggrieved Employees,” which is defined as: “means all current and former hourly, non-exempt employees of Defendant Exemplis LLC who worked in California at any time from June 22, 2019 through September 24, 2021 (“PAGA Period”).”

II. INDIVIDUAL PAGA PAYMENT

Each individual PAGA payment was calculated on a pro rata basis (i.e., proportional) based on the number of pay periods worked by each Aggrieved Employee in the PAGA Period. Your individual PAGA payment has been calculated at \$[AMOUNT PAID TO THIS EMPLOYEE]. Your payment is enclosed with this Notice.

Please Note: One hundred percent (100%) of your Individual PAGA Payment under this Settlement will be considered penalties, and may be subject to local, state, or federal tax withholdings and will be reported to the IRS and state tax authorities. You should rely on your own tax advisors as to the tax consequences, if any, of your individual PAGA payment. Neither Plaintiff nor Exemplis has made any

representations or warranties regarding the taxation of your Individual PAGA payment. Nothing within this notice or any other communication shall constitute or be construed or relied upon as tax advice within the meaning of United States Treasury Department Circular 230 (31 C.F.R. Part 10, as amended).

III. RELEASE

The Court has approved the Parties' Settlement Agreement ("Settlement"). By operation of the Settlement's terms, all Aggrieved Employees including you will release Exemplis and its former, present and future owners, parents, subsidiaries, and all of their current, former and future officers, directors, members, managers, employees, consultants, partners, shareholders, joint venturers, agents, successors, assigns, accountants, insurers, or legal representatives ("Released Parties") from any and all claims, rights, demands, liabilities and causes of action for civil penalties under the Labor Code Private Attorneys General Act ("PAGA"), Labor Code § 2698 et seq. against the Released Parties based on (as alleged in the letter to the Labor & Workforce Development Agency ("LWDA") June 22, 2020) and as pled, or could have been pled based on the facts alleged, in the operative complaint in the Action, including: (a) failure to pay all minimum wages owed (Labor Code sections 1194, 1194.2, and 1197); (b) failure to pay all overtime wages (Labor Code sections 204, 510, 558, 1194 and 1198); (c) failure to provide meal periods, or premium for non-compliant meal periods (Labor Code sections 226.7, 512 and 558); (d) failure to authorize and permit rest periods, or premium pay for non-compliant rest periods (Labor Code sections 226.7, 516 and 558); (e) failure to provide accurate, itemized wage statements (Labor Code section 226), (f) failure to provide all earned wages at least twice during each calendar month (Labor Code section 204), and (g) failure to maintain accurate records (Labor Code section 1174), including any related claims for attorneys' fees, costs, or interest resulting therefrom. ("PAGA Released Claims").

Upon entry of the Order approving the Settlement, any Aggrieved Employee covered by this Agreement (including you) may be forever barred as a matter of law from proceeding with any of the PAGA Released Claims released by this Settlement. However, no claims for unpaid or underpaid wages have settled, and this settlement is without prejudice to the pursuit on any such claims.

IV. SETTLEMENT ADMINISTRATOR

PLEASE DO NOT CALL THE COURT ABOUT THIS NOTICE.

You may call the Settlement Administrator, Phoenix Class Action Administration Solutions at [ADMINISTRATOR INFO] with any questions.

Settlement checks will be void 180 days after issuance if not deposited or cashed. In such event, the Settlement Administrator shall direct all unclaimed funds to the California State Controller's Office under the unclaimed property laws in the name of the Aggrieved Employee to whom the check was issued. If your check is lost or misplaced, you should contact the Settlement Administrator immediately to request a replacement.