

IN BINDING ARBITRATION PURSUANT TO CONTRACT
JUDICATE WEST

TIFFANY NEWBY,

Claimant,

v.

COMMUNITY RESEARCH FOUNDATION,
INC.; and DOES 1 THROUGH 50, inclusive,,

Respondents.

Case No. A286605-62

~~[PROPOSED]~~ FINAL ARBITRATION
AWARD

Assigned for All Purposes to:
Hon. Thomas P. Nugent, Ret.

I.

INTRODUCTION

The above captioned matter is before the undersigned pursuant to the Notice of Intent to Arbitrate Before Judicate West, and Claimant's Complaint in Arbitration for Damages, submitted by Claimant Tiffany Newby ("Newby") dated January 14, 2022, naming Community Research Foundation as respondent ("CRF").

II.

FACTUAL AND PROCEDURAL BACKGROUND

A. Newby's Claims

In her Complaint in Arbitration for damages, dated January 14, 2022 ("Complaint"), Newby asserted the following 15 causes of action against CRF ("Newby Claims"):

- First Cause of Action: failure to provide "Meal Periods" in violation of Labor Code §§ 226.7, 512, and 1198 and IWC Wage Order.
- Second Cause of Action: failure to provide "Rest Periods" in violation of Labor Code §§ 226.7

and 1198 and the IWC Wage Order.

- Third Cause of Action: failure to pay minimum and regular wages in violation of Labor Code §§ 1194, 1197, and 1198 and Applicable IWC Wage Order.

- Fourth Cause of Action: failure to pay all overtime wages in violation of Labor Code §§ 510, 1194, and 1198, and IWC Wage Order.

- Fifth Cause of Action: failure to indemnify necessary business expenses in violation of Labor Code § 2802 and § 2804.

- Sixth Cause of Action: failure to provide accurate itemized wage statements in violation of Labor Code §§ 226, 246, and 1198 and IWC Wage Order.

- Seventh Cause of Action: failure to provide timely wages due upon separation of employment in violations of Labor Code §§ 201, 202, 203.

- Eighth Cause of Action: Labor Code violations alleged in Causes of Actions One through Seven as violations of Business & Professions Code § 17200.

- Ninth Cause of Action: Workplace Harassment [Violation of Cal. Gov. Code §§ 12923 and 12940(j)]

- Tenth Cause of Action: Disability Discrimination [Violation of Cal. Gov. Code § 12940(a)]

- Eleventh Cause of Action: Age Discrimination [Violation of Cal. Gov. Code § 12940(a)]

- Twelfth Cause of Action: Failure to Prevent Harassment and Discrimination [Violation of Cal. Gov. Code § 12940(k)]

- Thirteenth Cause of Action: Retaliation and Wrongful Constructive Termination [Violation of Cal. Gov. Code §§ 12940(h), (m)]

- Fourteenth Cause of Action: Failure to Engage in the Interactive Process or Reasonably Accommodate a Disability [Violation of Cal. Gov. Code § 12940(n)]

- Fifteenth Cause of Action: Wrongful Constructive Termination in Violation of Public Policy.

In her Notice of Intent to Arbitrate, dated January 14, 2022, Newby claimed the amount in controversy was \$1,000,000.

B. CRF's Denial of Newby's Claims and Counter-Claims Against Newby

On February 14, 2022, CRF submitted a response to Newby's Claims, asserting various affirmative defenses and a general denial of Newby's Claims. CRF also submitted its counter-claims in arbitration against Newby as follows:

- CRF's First Cause of Action: Conversion. CRF alleged that "while employed by CRF beginning in or around June 2018, [Newby] was issued certain personal property for use at work, and which was to be returned at the termination of employment. Such property consisted of a Lenovo T470 laptop, and iPhone 6S (No. 356142091400697), and a lockbox, with a total value in excess of \$2,500." CRF alleged Newby failed to return and/or refused to return the property upon Newby's termination, that Newby no longer had a right to possess the property.

- CRF's Second Cause of Action: Breach of Contract. CRF sought to recover damages for the above-mentioned personal property. CRF alleged that "[Newby] entered into a specific contract with CRF concerning the return of CRF property when [Newby] began employment...pursuant to which [Newby]

1 was issued personal property as referenced above for the use in the employment with CRF, and which was
2 to be returned when the employment ended." CRF alleged the written contractual terms were as follows:

3 **Return of Company Property:** All correspondence, memoranda, notes, records, databases, reports, plans, documents, equipment,
4 digitally-stored information or other property received or made by the Employee in connection with employment with the Company,
5 shall be the exclusive property of the Company and must not be removed from Company premises, except as required in the course of
employment. Employee agrees to return and will deliver all such property to the Company on termination of employment or upon
request.

6 ▪ CRF's Second Cause of Action: Breach of Contract (Re Medical Benefit Insurance Coverage):

7 CRF sought to recover CRF's share of invoices for Newby's medical benefit insurance coverage from the
8 time Newby went on alleged non-job protected leave in October 2019.

9 **C. Reassignment of Arbitrator**

10 This matter was initially set to be arbitrated by Hon. Jeffrey B. Barton (Ret.) as selected by the
11 parties through a strike and rank process in February 2022. The matter was assigned to Judge Barton on
12 or about March 2022. No Case Management Conference or any hearing was held with Judge Barton. A
13 Case Management Conference was proposed by Judge Barton to be held in early May 2022, but per
14 Newby's request, through her counsel, the Case Management Conference was postponed and scheduled
15 to be held September 19, 2022.

16 On September 9, 2022, Judicate West informed the parties that Judge Barton is no longer available
17 to arbitrate the matter and gave the parties notice of Judge Barton's decision to recuse himself from the
18 arbitration assignment and that Hon. Thomas P. Nugent (Ret.) will be assigned to the arbitration if the
19 parties do not have a conflict. On October 4, 2022, arbitrator disclosures were released to the parties by
20 the undersigned pursuant to Code of Civil Procedure Section 1281.9. On the same date, the undersigned
21 agreed to serve as arbitrator for the matter. No objections to the arbitrator's appointment were made by
22 any party.

23 On September 15, 2022, while administrative procedures were underway for reassignment of the
24 case to the undersigned, CRF advised Judicate West that: (1) On September 9, 2022, Newby accepted a
25 CRF's Statutory Offer to Compromise Pursuant to Civil Code of Procedure Section 998 ("998 Offer") and
26 enclosed the signed 998 Offer; (2) On August 3, 2022, Newby, through her counsel, agreed to submit her
27 individual PAGA Claims to arbitration; (3) the accepted 998 Offer includes Newby's individual PAGA
28 Claims. Newby's counsel was included in this written communication by CRF's counsel. On September

1 23, 2022, Newby's counsel, Mr. David Lin, advised Judicate West that he has no objection to Judge
2 Nugent's appointment and confirmed that the matter has been settled.

3 On October 27, 2022¹, counsel for CRF advised the undersigned and Newby's counsel that a Case
4 Management Conference (CMC) might not be necessary because Newby accepted the 998 Offer; that on
5 September 26, 2022, the San Diego Superior Court issued an Order (by stipulation of the parties) to submit
6 Newby's individual PAGA claims to arbitration, and enclosed the order. On October 28, 2022, Newby's
7 counsel responded in writing to confirm a 998 settlement was reached, that no CMC was necessary, and
8 that the parties need the undersigned to issue an award according to the settlement reached.

9 On November 3, 2022, the undersigned advised the parties that no CMC was necessary and
10 requested that counsel prepare a proposed arbitration award in conformity with the 998 Offer.

11 The undersigned reviewed the record and the parties' proposed arbitration award, based upon that,
12 the Final Award² is issued as set forth hereinafter.

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27 ¹ At that time, Case Management dates were being proposed by Judicate West to the parties to be held with the undersigned,
but none was ultimately held.

28 ² Counsel requested to review the Final Award before issuance, had the opportunity to review it before issuance, and the
Final Award was issued thereafter.

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III.

FINAL AWARD

The undersigned incorporates Sections I and II above as though fully set forth herein.

On August 11, 2022, CRF made a 998 Offer to Newby. Specifically, CRF made an offer to compromise for CRF to pay Newby the net sum of **\$10,000** (consisting of \$12,500 on Newby's claims minus \$2,500 on CRF's Cross-Claim), inclusive of all costs and attorney's fees associated with the lawsuit, inclusive of any and all damages, penalties, costs and attorney's fees, in full and final settlement of all Claims and Cross-Claims made by Newby and CRF, and inclusive of Newby's individual PAGA claims.

Based upon the foregoing, and pursuant to the Statutory Offer to Compromise, the undersigned finds in favor of Newby and against CRF. Newby is awarded against Respondents in this arbitration the total amount of **\$10,000**, inclusive of any and all costs and attorney's fees.

This Final Award resolves all issues in this arbitration as between the parties to this arbitration.

IT IS SO ORDERED.

Dated: December 22, 2022



Hon. Thomas P. Nugent (Ret.)
Judicate West