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Attorneys for Plaintiff, JOSEPHINE GILBERT,
 individually and as a proxy for the State of California

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF ORANGE

[UNLIMITED CIVIL—COMPLEX]

JOSEPHINE GILBERT, an individual, and as
 a proxy for the State of California

Plaintiff,

vs.

GENERAL MONITERING SERVICES, INC,
 a corporation; EVELYN SCHUMAN, an
 individual; and DOES 1 through 5, inclusive,

Defendants.

Case No.: 30-2021-01195133-CU-OE-CXC

*Assigned for All Purposes to the Hon. Glenda
 Sanders in Dept. CX-101*

**DECLARATION OF AMBER B. DERHAM
 IN SUPPORT OF PAGA DISMISSAL**

[Filed concurrently with [Proposed] Order To
 Dismiss PAGA Claim]

Complaint Filed: April 13, 2021
 Trial Date: None Set

DECLARATION

I, Amber B. Derham, declare as follows:

1. I am an attorney at law duly licensed to practice before all of the courts of the State of California and Tennessee, and the United States District Court Central, and Northern Districts of California, and am an attorney at the law firm of Gutierrez Derham Law Firm LLP. I am attorney of record for Plaintiff JOSEPHINE GILBERT in the above-entitled lawsuit.

2. All of the matters set forth herein are within my personal knowledge, except those matters that are stated to be upon information and belief. As to such matters, I believe them to be true. If called to testify, I could and would testify truthfully to the matters set forth in this Declaration.

Settlement Agreement of Non-PAGA Claims

1. Attached hereto as **Exhibit A** is a true and correct copy of the Orange County Court Case No. 30-2021-01195133-CU-OE-CXC Settlement Agreement and Release of Certain Claims Without Prejudice to the PAGA Claim (“Settlement Agreement”) fully executed on December 19, 2021, which dictates dismissal of the PAGA Claim without Prejudice.

LWDA Notifications

2. Attached hereto as **Exhibit B** is a true and correct copy of Plaintiff’s October 14, 2020, PAGA Notice to the Labor and Workforce Development Agency (“LWDA”).

3. I submitted a copy of the Settlement Agreement (Exhibit A) to the Labor and Workforce Development Agency through its online submission portal at <https://dir.tfaforms.net/315>. Attached hereto as **Exhibit C** is a true and correct copy of the confirmation email.

4. I submitted a copy of the Request for Dismissal, Proposed Order, and this Declaration to the Labor and Workforce Development Agency through its online submission portal at <https://dir.tfaforms.net/315>. Attached hereto as **Exhibit D** is a true and correct copy of the confirmation email.

Discovery and Investigation

5. The parties engaged in informal discovery and investigation surrounding the claims asserted in Plaintiff’s Complaint. Plaintiff’s claim under PAGA is predicated on violations of Labor Code sections 226 (a) and 2802.

6. During this investigation, it was discovered that Plaintiff’s claim for violation of 226 (a) was in error. This claim was based on Defendant’s failure to include the employee ID number on the wage statements. However, this claim was based on a copying/production error in which the payroll records produced in response to Plaintiff’s Request under Labor Code 226 (c) inadvertently excluded the employee ID. It was determined that the wage statements provided to employees, including Plaintiff, during employment did include an employee ID number.

7. Plaintiff’s claim related to unreimbursed expenses in violation of Labor Code section 2808 is based on allegations that Defendant as the employer required all employees to pay for the cost to obtain an alarm agent license, even though the licensure was not required by statute or ordinance.

8. I engaged in extensive factual and legal analysis and meeting and conferring with my client and Defendant's attorney regarding the claims at issue in this litigation, including the job duties of Defendant's employees and Plaintiff. Plaintiff was informed that during the PAGA period, Defendant had 59 employees. Of the 59 employees, there were 10 different job titles/positions, and each employee would qualify as an "Alarm Agent" pursuant to California Business and Professions Code Section 7590.1:

- 52 Employees in the role of data entry, lead operator, operations, operator and trainee maintain, respond to, and monitor alarm systems pursuant to California Business & Professions Code section 7590.1(b).
- 1 Employee in the role of IT specialist. This individual occasionally installs, maintains, moves, repairs, replaces, or services an alarm system pursuant to California Business & Professions Code § 7590.1(b).
- 6 Employees in the role of human resources, floor supervisor, IT Manager, and Executive, who manage or supervise persons employed by an alarm company pursuant to California Business & Professions Code section 7590.1(b).

9. Based on my investigation, review of the statutes and information gathered, the employees were required by California Business and Professions Code Section 7598.4(a) to obtain an alarm agent license and an employer is not required to reimburse the cost to obtain the license. (DLSE Op. Ltr. (Nov. 17, 1994) at p. 1, fn. omitted.)." See also In re Acknowledgement Cases, 239 Cal. App. 4d 1498, 2015.

No Consideration Is Given in the Settlement Agreement for the Dismissal of the PAGA Claim

10. Plaintiff has agreed to resolve her individual claims in this action for an amount of \$1,000. This allows Plaintiff to recovery damages for her individual claims and attorneys fees to obtain the same.

11. Section 6.2 of the Settlement Agreement (Exhibit A) specifically states:

- No portion of the Settlement Sum is being allocated toward any claim under PAGA;

- The PAGA Claim will be dismissed without prejudice

I declare under penalty of perjury under the laws the State of California that the foregoing is true and correct. Executed this 8th day of February 2022.



Amber Derham

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