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SANDOVAL, individually, and on behalf of similarly
situated employees

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF LOS ANGELES-SPRING STREET COURTHOUSE**

CARLOS FIGUEROA, and FELIPE
SANDOVAL, individually, and on behalf of
similarly situated employees,

Plaintiffs,

v.

GLORIA LANCE, INC., and DOES 1 -100,
inclusive,

Defendants.

) Case No. 21STCV14431 [UNLIMITED
) CASE, CLASS ACTION]

) [Assigned to Honorable Carolyn B. Kuhl
) Department: 12]

) **APPLICATION FOR ORDER
) DISMISSING, WITHOUT PREJUDICE,
) THE REPRESENTATIVE CLAIMS
) UNDER PAGA AND DISMISSING WITH
) PREJUDICE PLAINTIFFS REMAINING
) INDIVIDUAL CLAIMS; APPLICATION
) FOR ORDER PERMITTING FILING OF
) SETTLEMENT AGREEMENT UNDER
) SEAL; MEMORANDUM OF POINTS
) AND AUTHORITIES**

**[PROPOSED ORDER SUBMITTED
SEPARATELY AND CONCURRENTLY
HEREWITH]**

Date Filed: April 15, 2021
Trial Date: NONE

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

This is an application for approval of a settlement providing that the remaining PAGA claims be dismissed without prejudice, without any payment for the aggrieved employees claims, and the remaining individual claims of Plaintiffs be dismissed with prejudice. Plaintiffs have entered into a confidential resolution of their individual claims, and hereby also apply for an order permitting the filing of the settlement agreement under seal.

A. Procedural History

Plaintiffs Carlos Figueroa and Felipe Sandoval (collectively “Plaintiffs”) filed a Class Action against Defendant Gloria Lance, Inc. (“Defendant” or “Gloria Lance”) in April of 2021. The claims asserted included individual FEHA theories (stemming from disability and age discrimination) wrongful termination of employment, individual wage and hour claims on behalf of Plaintiffs, and a cause of action under the Private Attorneys General Act (“PAGA”) on behalf of Plaintiffs and aggrieved employees. (Declaration of Stephen M. Harris, “Harris Declaration”, ¶ 3.)

The Parties agreed to mediate and entered into a Standstill and Tolling Agreement on September 13, 2021, which tolled the statute of limitation for the individual claims from the date the lawsuit was filed on April 15, 2021, until March 4, 2022. (*Id.*, ¶ 4.)

Plaintiffs filed an Application Requesting Order Dismissing Uncertified Class Action Lawsuit, And Plaintiffs’ Individual Claims Without Prejudice on September 20, 2021. Plaintiffs basis for dismissing the individual and class claims were: (1) the parties had scheduled a mediation for February 24, 2022, before Marc Feder; (2) Gloria Lance provided arbitration agreements executed by each named Plaintiff to arbitrate all claims; and (3) based on Plaintiffs’ agreements to arbitrate all claims with Gloria Lance, counsel for the parties entered into an agreement providing for tolling of the applicable statute of limitations, until March 4, 2022, dismissal of the class claims and dismissal of the individual claims. The Court dismissed, without prejudice, the uncertified class action lawsuit and Plaintiffs’ individual claims based on “the existence of Plaintiffs agreement to arbitrate, and the tolling agreement between the parties” on September 22, 2021. The PAGA claim remained pending in the superior court. (*Id.*, ¶ 5.)

B. Defendant Encounters Financial Issues Relating to The Closing of Its Business

In March of 2020, Defendant laid off its non-exempt employees. It brought back some employees in April of 2020, but ultimately Defendant announced via a letter that it had made a

1 General Assignment for the Benefit of Creditors (“ABC”) on October 19, 2021. The Parties
2 vacated the scheduled mediation on November 10, 2021. An involuntary petition was filed against
3 Defendant for Chapter 7 bankruptcy on January 12, 2022, but this petition was later dismissed due
4 to the ABC proceeding. (*Id.*, ¶ 6.)

5 **C. Plaintiffs Demand Arbitration of Their Individual Claims Which May Be Covered By**
6 **Defendant’s Insurance Policy**

7 In March of 2022, Plaintiffs made a demand to submit to arbitration all individual claims
8 which were covered by insurance, excluding the PAGA claim, and excluding the wage and hour
9 claims. It was Plaintiffs’ position that their individual wage and hour claims were embraced by the
10 ABC proceeding. On March 8, 2022, Plaintiff raised their individual wage and hour claims in the
11 ABC proceeding. Defendant asserted that the ABC was not a proper venue for the individual wage
12 and hour claims as Plaintiffs are not creditors because they have no judgment and cannot obtain a
13 judgment for such claims outside of arbitration, given the arbitration agreements. We disagreed
14 with this position. (*Id.*, ¶ 7.)

15 **D. Defendant’s Motion To Compel Arbitration Of Individual PAGA Claims**

16 On November 18, 2022, Defendant filed a Motion To Compel Arbitration Of Claimant
17 Carlos Figueroa’s Ninth Cause Of Action For PAGA Violations And To Dismiss Or, In The
18 Alternative, Stay The Proceedings Pending Arbitration. On January 11, 2023, the court granted the
19 motion to compel arbitration of Figueroa’s individual PAGA claim, and stayed Figueroa’s non-
20 individual PAGA claims pending a decision by the California Supreme Court in *Adolph v. Uber*
21 *Technologies*, California Supreme Court Case No. S274671. (*Id.*, ¶ 8.)

22 **E. Resolution of Plaintiffs Individual Claims**

23 **1. Claims Submitted to Arbitration**

24 The individual FEHA, PAGA, and wrongful termination claims proceeded to arbitration
25 before Judge Russell Hom (Ret.) with Judicate West. The Parties completed their first Case
26 Management Conference on October 10, 2022. The Parties attended a private mediation on
27 November 3, 2023, and resolved Plaintiffs individual claims. (*Id.*, ¶ 9.)

28 Gloria Lance did have a policy of insurance providing coverage for the wrongful
termination allegations, and thus Plaintiffs were able to achieve a confidential settlement of the
claims they brought in arbitration due to the existence of these available insurance proceeds.
However, the resolution involved a compromise of highly disputed claims. (Plaintiffs have filed the
settlement agreement conditionally under seal, and requested an order authorizing filing the

1 agreement under seal.) (*Id.*, ¶ 10.)

2 **2. ABC Proceeding**

3 Claims worth \$2,400,000 were made in the ABC proceeding, while the assets available for
4 creditors totaled \$300,000. Thus, Plaintiffs were compelled to accept a modest settlement of their
5 individual wage and hour claims which were brought in the ABC proceeding, with the resolution
6 involving an agreement to accept 12.26% of what was agreed to be a \$100,000 claim. (See, exhibit
7 2.) Since Plaintiffs claims had not been reduced to a judgment, and due to the existence of
8 numerous claims by other creditors, this was the best result which could be achieved regarding
9 Plaintiffs individual wage and hour claims. (*Id.*, ¶ 11.)

10 **F. PAGA Claims**

11 Plaintiffs were unable to obtain any recovery for the PAGA claims on behalf of the
12 aggrieved employees, since Gloria Lance is no longer in business, the ABC proceeding did not
13 provide an available avenue of recovery, and since there was no policy of insurance providing
14 coverage for such claims. Moreover, the resolution of Plaintiffs claims pending in arbitration is
15 contingent on a dismissal of this proceeding. (*Id.*, ¶ 12.)

16 The PAGA period (during February of 2020 to October of 2021) covered a total of 35
17 employees with an average of 17 employees per pay period. Moreover, the PAGA allegations were
18 disputed, with Defendant asserting that its meal and rest period policies were compliant, and
19 denying that Plaintiffs or other employees had worked off the clock. Further, Defendant was able to
20 demonstrate from the personnel file that sick time was not denied, and that Plaintiffs were
21 reimbursed for using their personal vehicles during work hours. (The remaining PAGA claims were
22 derivative.) (*Id.*, ¶ 13.)

23 Prevailing on the PAGA claims thus would have posed serious hurdles. (*Id.*, ¶ 14.)

24 **1. Dismissal of PAGA Claims Without Prejudice**

25 Gloria Lance employees have not been relying on this action to advance their interests,
26 since they have not been notified of its existence, and counsel for Plaintiffs have not communicated
27 with them directly. Moreover, since the dismissal of the PAGA claims is to be without prejudice,
28 aggrieved employees will not be prejudiced due to the dismissal. (*Id.*, ¶ 15.)

2. Dismissal With Prejudice of All Other Claims

Plaintiffs request dismissal with prejudice of the remaining claims in their lawsuit. (*Id.*, ¶
16.)

1 **II. THE SETTLEMENT SHOULD BE APPROVED**

2 **A. California Rules of Court, Rule 3.770**

3 Rule 3.770 (a) states as follows:

4 A dismissal of an entire class action, or of any party or cause of action in a class
5 action, requires court approval. The court may not grant a request to dismiss a class action if
6 the court has entered judgment following final approval of a settlement. Requests for
7 dismissal must be accompanied by a declaration setting forth the facts on which the party
relies. The declaration must clearly state whether consideration, direct or indirect, is being
given for the dismissal and must describe the consideration in detail.

8 Here, the parties have entered into a confidential settlement, the details of which are set
9 forth in the attached exhibit 1, filed conditionally under seal. Ultimately, the parties were able to
10 resolve the claims of the named Plaintiffs based on the terms set forth in the Agreement, attached
11 as exhibit 1 and the separate agreement in the ABC proceeding, attached as exhibit 2. The claims
12 of the individual Plaintiffs are to be dismissed with prejudice, while the PAGA claims are to be
13 dismissed without prejudice. (*Id.*, ¶ 17.)

14 The resolution is a fair means of concluding this matter. (Harris Declaration, ¶¶ 3-18.)

15 The aggrieved employees are not prejudiced by this resolution since they have not been
16 notified of this case and thus are not relying upon it for resolution of their claims. (*Id.*)

17 **A. Dismissal of PAGA Claims**

18 The court must review and approve any settlement of a PAGA case. Cal. Lab. Code § 2699
19 (l)(2). Here, it is appropriate to permit dismissal with prejudice of Plaintiffs claims, based on the
20 settlement, and dismissal without prejudice of the claims on behalf of the aggrieved employees,
21 based on the reasons set forth herein.

22 **THE COURT SHOULD PERMIT THE SETTLEMENT AGREEMENT TO BE FILED**
23 **UNDER SEAL**

24 California Rules of Court, Rule 2.551 (a) and (b) permit a party to bring an application for
25 filing of a record under seal, which the court must approve. Rule 2.551 (b) (4) requires that the
26 record be lodged with the court as part of the application, and thus conditionally filed under seal.
27 Here, the document has been submitted (lodged) under a separate caption as exhibit 1 to the Harris
28 Declaration, and identified as the confidential settlement agreement of the parties. Only the caption

referring to the exhibit has been electronically filed at this time.

The parties' settlement agreement requires that the terms thereof shall be confidential. Thus, there is good cause for the court to permit the Plaintiffs to file the settlement Agreement under seal, or to lodge it, since this is essential to maintain the confidentiality of the agreement. See, California Rule of Court, 3.1202 (c). The court may order that the confidential settlement document be sealed, or alternatively return the lodged document to counsel for Plaintiffs after ruling on this application. Plaintiffs have lodged the document with the court and request that it be filed, if at all, under seal.

III. CONCLUSION

For all the foregoing reasons, Plaintiffs respectfully request that the court approve the dismissal without prejudice of the PAGA claims on behalf of the aggrieved employees, and enter an order dismissing with prejudice Plaintiffs individual claims. The court should also permit the Settlement Agreement to be lodged and returned to Plaintiffs after this Application is ruled on, or filed under seal, to preserve the confidentiality of the parties Agreement.

Dated: February 12, 2024

LAW OFFICES OF STEPHEN M. HARRIS, P.C.

By: /s/ Stephen M. Harris
Stephen M. Harris, Esq.
Attorneys for Plaintiffs CARLOS
FIGUEROA, and FELIPE SANDOVAL,
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situated employees

PROOF OF SERVICE
Figueroa v. Gloria Lance
Case No. 21STCV14431

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 am not a party to the within action. My business address is 6320 Canoga Avenue, Suite 1500, Woodland Hills, California 91367. On February 12, 2024, I caused the foregoing document(s) described as APPLICATION FOR APPROVAL AND REQUEST TO PERMIT SETTLEMENT AGREEMENT TO BE FILED UNDER SEAL to be served on the interested parties in this action as follows:

By placing a true copy thereof enclosed in a sealed envelope(s) addressed as stated on the attached mailing list.

☒ **BY ELECTRONIC SUBMISSION:** I served the above listed document(s) described via CASE ANYWHERE on the designated recipients via electronic transmission through the CASE ANYWHERE web site. CASE ANYWHERE will generate a Notice of Electronic Service (NES) to the serving party and any registered users in the case. The NES will constitute service of the document(s). Registration as a CASE ANYWHERE user constitutes consent to electronic service through the CASE ANYWHERE'S transmission facility.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on February 12, 2024, at Woodland Hills, California.

Stephen M. Harris
(Type or print name)

/s/ Stephen M. Harris
(Signature)

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Figueroa v. Gloria Lance
Case No. 21STCV14431

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