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CHRISTINA FLORES

SUPERIOR COURT FOR THE STATE OF CALIFORNIA

COUNTY OF SAN BERNARDINO – JUSTICE CENTER

CHRISTINA FLORES, an individual,

Plaintiff,

vs.

OSO HOME CARE, INC., RANDY BOHART, and DOES 1 through 25, inclusive,

Defendants.

CASE NO. CIVSB2110068

Assigned for All Purposes to the Hon. David Cohn,

Complex Litigation Program, Dept. S-26

UNLIMITED JURISDICTION

DECLARATION OF PARHAM BARKHORDAR IN SUPPORT OF MOTION FOR AN ORDER APPROVING SETTLEMENT OF CLAIMS BROUGHT PURSUANT TO THE PRIVATE ATTORNEYS GENERAL ACT OF 2004, AWARDING ATTORNEYS' FEES, COSTS, ENHANCEMENT PAYMENT, AND REIMBURSEMENT OF SETTLEMENT ADMINISTRATION EXPENSES, AND DISMISSING ACTION WITH PREJUDICE; MEMORANDUM OF POINTS AND AUTHORITIES

Date: May 6, 2022
Time: 10:00 a.m.
Dept.: S31

Complaint Filed: April 7, 2021

DECLARATION OF PARHAM BARKHORDAR

I, Parham Barkhordar, hereby declare and state as follows:

1. I am an attorney licensed to practice in all the courts of the state of California and am an associate attorney of the law firm Taylor Labor Law, P.C., counsel of record for Plaintiff Christina Flores ("Plaintiff"). I make this Declaration in support of Plaintiff's Motion for an Order Approving Settlement of Claims brought pursuant to the Private Attorneys General Act of 2004, Awarding Attorneys' Fees, Costs, Enhancement Payment, and Reimbursement of Settlement Administration Expenses, and Dismissing Action with Prejudice. All of the information set forth herein is based on my personal and firsthand knowledge and if called and sworn as a witness, I could and would competently testify thereto.

2. I am a 2015 graduate of Pepperdine University Law School. I was admitted to the California State Bar and to the Supreme Court of the State of California in December of 2015, and I am also admitted to the United States District Court, Central and Eastern Districts of California. I am a member of various professional organizations, including the California Employment Lawyers Association (CELA), the California State Bar Association, and the Los Angeles County Bar Association. I have a significant amount of experience in employment as well as wage and hour litigation.

3. On January 13, 2021, pursuant to Labor Code § 2699.3, Plaintiff Christina Flores gave written notice to the Labor and Workforce Development Agency ("LWDA") and by certified mail to Defendant of the specific provisions of the Labor Code alleged to have been violated, including the facts and theories to support the alleged violation. On April 7, 2021 – after the LWDA declined to take action within the statutorily permissible time with respect to Plaintiff's January 13, 2021 letter– Plaintiff filed the action entitled *Christina Flores v. Oso Home Care, Inc. and Randy Bohart, Case No. CIVSB2110068* in the Superior Court of California for the County of San Bernardino, alleging the causes of action as set forth in her January 13, 2021 letter to the LWDA for PAGA penalties premised on violations of Labor Code §§ 201, 202, 203, 204, 206, 207, 215, 216, 226 et seq., 232.5, 1102.5 et seq., and 1194. Attached hereto as **Exhibit A** is a true and correct copy of the operative Complaint.

4. The parties early on in the litigation agreed to explore resolution by scheduling a private mediation with highly esteemed PAGA-savvy mediator, Kelly A. Knight of Judicate West. The parties attended mediation on December 14, 2021, which resulted in an agreement to settle this action.

5. Despite agreement on the basic terms of the settlement, and the execution of a Memorandum of Understanding, the parties continued to discuss the overall structure of the settlement agreement. The settlement, as discussed more fully hereinbelow, was largely based on the parties' interest in diverting funds to the Aggrieved Employees. The parties were in receipt of a fully executed settlement agreement on March 17, 2022. Plaintiff submitted the Settlement Agreement, this Motion, and all supporting documents to the LWDA via online upload on March 17, 2022 concurrently with the filing of this Motion. Attached hereto as **Exhibit B** is a true and correct copy of the fully executed Settlement Agreement.

6. Defendant Oso Home Care, Inc. is a California Corporation, which is a privately owned company founded by owners Randy Bohart and Bonnie Bohart and provides an array of home infusion services to its patients in California.

7. Plaintiff Christina Flores is a former Licensed Vocational Nurse ("LVN") for Oso Home Care and worked for Defendant beginning in or around May 2016 to in or about January 2021. The Aggrieved Employees were employed by Defendant in California between January 13, 2020 through the date the Court enters an Order Granting Final Approval of the Settlement Agreement.

8. Plaintiff alleged and asserted a singular claim under California Private Attorneys General Act ("PAGA") for civil penalties based on the underlying Labor Code violations: Failure to provide prompt payment of wages to employees (Labor Code §§ 201, 202, 203); Failure to pay employees all earned wages (Labor Code §§ 206, 208, 215, 216, 226); Failure to furnish wage and hour statements (Labor Code § 226, 226.3); Failure to Pay Overtime Compensation (Labor Code § 1194); and Retaliation against employees for reporting violations of local, state and/or federal laws, regulations, and/or statutes (Labor Code § 1102.5).

9. Counsel for Plaintiff engaged in targeted, informal discovery of Defendant's alleged Labor Code violations, which specifically targeted evaluating the strength and value of the PAGA claims in preparation for a resolution of this Action.

10. Plaintiff's Counsel obtained and reviewed multiple documents, including (i) Plaintiff's employee file and wage statements, (ii) a random sampling of time and wage records intended and agreed upon by the parties to be representative of the PAGA class, (iii) policy documents relating to the employment of Plaintiff and other aggrieved employees, and (iv) data relating to the number of alleged violations and the value of the recoverable penalties.

11. Based on the information received, as well as through discussions with Defendant's Counsel, Plaintiff's Counsel was able to (i) determine the total number of distinct individuals falling within the definition of "Aggrieved Employee" for the relevant statutory period, (ii) determine the total number of pay periods falling within the relevant PAGA limitations period, and (iii) construct a damage model that calculated the maximum realistic amount of PAGA penalties that could be levied against Defendant within the Release Period. Defendant, however, disputed Plaintiff's claims and disputed both the existence of and extent of liability as alleged by Plaintiff.

12. Defendant contends it acted within the requirements of California law at all times as to all Aggrieved Employees.

13. Furthermore, Defendant maintained that even if the Court did award penalties, the Court could and would substantially reduce the penalties awarded based on the discretionary factors contained in Labor Code § 2699(e)(2) ("In action by an aggrieved employee . . . , a court may award a lesser amount than the maximum civil penalty amount specified by this part if, based on the facts and circumstances of the particular case, to do otherwise would result in an award that is unjust, arbitrary and oppressive, or confiscatory.").

14. While the Parties reached a tentative agreement to resolve their dispute on October 19, 2021, the Parties thereafter spent weeks finalizing the terms of the Settlement.

15. As a result of Defendant's alleged violations of the Labor Code, approximately 100 employees are claimed to have suffered the Labor Code violations alleged during the Release

Period. Defendant's maximum theoretical exposure - without stacking - in this action totals approximately $355,300, computed by multiplying 3,553 aggregate pay periods by $100 each.

16. The total sum available for payment of PAGA penalties shall be calculated by deducting an amount not to exceed $116,666.67 for the payment of Plaintiff's Counsel's fees and $5,500.00 for costs, $5,000 for the payment of Plaintiff's Enhancement Payment, and the costs of administration, not to exceed a reasonable amount [ie. $3,000], from the $350,000 PAGA Fund, yielding approximately $219,833.33. Seventy-five percent (75%) of this amount, or $164,874.99, shall be distributed to the LWDA and the remaining twenty-five percent (25%) of this amount, or $54,958.33, shall be distributed to the Aggrieved Employees.

17. As it relates solely to the PAGA claim (and not Plaintiff's individual claims), Defendant agrees to settle this matter for the payment of Three Hundred and Fifty ($350,000) ("PAGA Fund"), which shall be all inclusive, encompassing (i) all payments to the Labor and Workforce Development Agency and Aggrieved Employees, (ii) any and all costs of third-party administration of the settlement, (iii) Plaintiff's Counsel's attorneys' fees and costs of suit, and (iv) a modest service payment to the named Plaintiff.

18. All non-exempt nurses and pharmacists who worked at least one pay period for Defendant at any time during the Release Period will receive a fixed proportional amount of the Net Settlement Amount per pay period. *See* Settlement Agreement, at § I(2). Although these calculations will not be made until after approval, a rough estimation of the value to the 100 individuals falling within the definition of "Aggrieved Employee" may be gleaned from the fact that an equal division would provide about $550 to each Aggrieved Employee, net of payments to the LWDA, to the Settlement Administrator, attorney's fees, and costs. The LWDA will be paid $164,874.99.

19. Based on these disputes and the range of realistic "litigation outcomes" on the Plaintiff's PAGA claim, the Settlement achieves a significant benefit. As such, this factor weighs very heavily in favor of resolution by way of the compromise set forth in the Settlement.

20. Thus, notwithstanding the existence of issues having the potential to significantly reduce recovery on the PAGA claim, the Settlement not only achieves a recovery that exceeds

typical PAGA awards routinely approved by the courts, it recovers monies for Aggrieved Employees which they otherwise would not receive. As such, this factor balances strongly in favor of approval of the Settlement.

21. This case was taken on a contingency basis with the real risk that my office would receive no compensation whatsoever for our efforts. The potential costs which we can be required to advance in wage and hour class actions like this one are substantial. Furthermore, as described above, my firm has extensive experience in class action and representative litigation, particularly in the employment context, and as detailed herein, the Settlement Class and the State of California reaped significant benefits. The success achieved by the Settlement supports my firm's fee request. Our firm's out of pocket costs were approximately $5,500.00 and included filing fees, mediation fees, photocopy charges, service of process fees, travel expenses, research expenses, and mailing charges.

I declare, under penalty of perjury, under the laws of the State of California, that the foregoing is true and correct. Executed this 17th day of March, 2022 at Pasadena, California.

Parham Barkhordar

Parham Barkhordar