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Attorneys for Plaintiff
Rachel Palazzi

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

RACHEL PALAZZI

Plaintiff,

v.

BRUCE RANDY AVRIT, JR.,

Defendant.

Case No.: 2:21-cv-01336-WBS-CKD

AMENDED STIPULATED REQUEST TO
DISMISS PURSUANT TO RULE 41 OF THE
FEDERAL RULES OF CIVIL PROCEDURE

*** Amended text noted in bold.**

This Amended Stipulation corrects a typographic error on page 5 in which the amount to be paid to LWDA for PAGA violations was erroneously set at the amount of one of Plaintiff's asserted damage categories, when it should have been 75% of the total PAGA award (75% of \$9,100 is \$6,825.).

1 WHEREAS the Parties in this action have come to an agreement in principle to settle
2 this matter, which is and always has been an individual non-class non-collective matter
3 involving both common law tort claims and wage and hour violations;

4 WHEREAS the Complaint in this matter alleges violations of the U.S. Fair Labor
5 Standards Act and California Labor Code Private Attorney General Act such that court approval
6 is required for any settlement;

7 WHEREAS Plaintiff alleges that she worked for Defendant as an on-premises apartment
8 manager, but was not paid all wages due and was subjected to trespassing and sexual
9 harassment;

10 WHEREAS Defendant denies all allegations;

11 WHEREAS the parties engaged in document and information exchange and participated
12 in an arms-length mediation with Kael Briski and thereafter agreed to settle their disputes in
13 order to further their peace and without admitting or waiving any contentions;

14 WHEREAS the parties executed the settlement agreement provided herewith as
15 Exhibit 1.

16 WHEREAS, in keeping with the settlement agreement:

- 17 (1) Defendant has agreed to pay Plaintiff \$50,000 in two installments. One
18 payment of \$20,000 has already been made. A second payment of \$30,000
19 will be made following two contingencies: (a) the Plaintiff moving out of the
20 subject property, and (b) the Court's approval of the agreement.
- 21 (2) Plaintiff committed to move out of the subject property and has done so.
- 22 (3) The parties agreed not to disparage one another.
- 23 (4) The parties mutually released one another of all claims with a Cal. Civil
24 Code § 1542 waiver.

25 WHEREAS, after the information exchange and mediation, Plaintiff contends through
26 counsel the following in connection with wage and hour violations, which Defendant denies:

- 27 (1) Plaintiff was an employee, not contractor, who worked for Defendant as an
28 on-site property manager. Her work included cleaning the grounds,

collecting rent for about 12 units, and coordinating maintenance.

(2) Plaintiff was paid \$500 per month via a reduction in her rent payable to Defendant.

(3) Plaintiff was entitled to payment of two-thirds of her wages in money pursuant to California Wage Order No. 5, which governs employment in the Public Housekeeping Industry. However, Plaintiff did not receive any money wages, and was instead compensated entirely in reduced rent. Plaintiff should have been paid \$3,330 in money-wages during the course of her employment with Defendant. This sum is arrived at by treating Plaintiff's rent reduction as 2/3 of her total wage (\$750), and calculating the money that should have been added on top of that amount over the course of her 13.32 months of employment. Since she was not paid this amount, she is entitled to liquidated damages of an amount equal to these wages pursuant to the California Labor Code and FLSA. (Cal. Labor Code §1194.2; 29 USC § 216(b).) This claim is valued at \$6,660.

(4) The Parties disagree on how many hours Plaintiff worked. Because no records of work hours were kept and no secondary records such as security key cards or computer logins exist, there is no certain method for establishing the hours worked. However, Plaintiff's counsel notes that the rent reduction alone paid for about 38.5 hours of work per month at \$13/hour, and the parties agree this was a part time job. Counsel for Plaintiff believes the California Labor Law claims fairly addresses any currently-provable violation of the federal minimum wage rules.

(5) Plaintiff contends she worked seven days a week because she performed at least some work every day. Under the California Labor Code, the seventh day of work in a week is overtime. This claim is valued by calculating Plaintiff's weekly wage presuming the rent reduction and money were both paid, and presuming that Plaintiff worked the same amount each day. This is

a method that favors Plaintiff. It results in an estimated total claim value of \$684.

(6) Because Plaintiff was not paid her money-wages when terminated, she is entitled to one month of pay for non-payment of wages at termination. This claim is valued at \$750.

(7) The above contentions ostensibly support an award under the California Private Attorney General Act, which Plaintiff's counsel calculates as follows:

a. Failure to pay minimum wage on 26 paydays, penalized as \$100 for the first occasion and \$250 thereafter (Cal. Labor Code § 1197.1), 75% payable to the State and 25% payable to Plaintiff:

i. Total: \$6,350

ii. State Recovery: \$4,762.50

iii. Plaintiff Recovery: \$1,587.50

b. Failure to pay final wages, penalized as \$100 for an initial violation. (Cal. Labor Code § 558, 1197.1), 75% payable to the State and 25% payable to Plaintiff:

i. Total: \$100

ii. State Recovery: \$75

iii. Plaintiff Recovery: \$25

c. Failure to provide pay subs, penalized as \$50 for an initial violation and \$100 thereafter up to a maximum of \$4,000. (Cal. Labor Code §226(e).) This violation occurred for 26 pay periods, plus once more for what should have been a final paystub, leading to a penalty 75% payable to the State and 25% payable to Plaintiff:

i. Total: \$2,650

ii. State Recovery: \$1,987.50

iii. Plaintiff Recovery: \$662.50

TOTAL PAGA: To State: \$6,825. To Plaintiff: \$2,275.

WHEREAS Plaintiff also contends Defendant sexually harassed her verbally and trespassed by entering her apartment without permission, all of which Defendant denies;

WHEREAS the settlement amount (\$50,000) is almost three times the asserted wage and hour violation amounts (\$8,094 for Labor Code/FLSA contentions and \$9,100 for PAGA);

WHEREAS Plaintiff's counsel notes as a pragmatic matter that Defendant is an individual and non-corporate entity, creating the risk of a pyrrhic victory if the matter is over-litigated for the purpose of generating a large judgment beyond the Defendant's ability to pay;

NOW THEREFORE the parties stipulate to a joint request that the Court enter an order which:

- (1) Approves settlement of this matter;
- (2) Orders that Defendant pay the remaining settlement funds within 21 days pursuant to the settlement agreement;
- (3) Orders Plaintiff's counsel to pay the Labor and Workforce Development Agency of the State of California or its designee **\$6,825**, solely from the above payment in this matter to satisfy the State of California's interest in its portion of the approved PAGA penalties. Plaintiff's counsel to file confirmation of payment in the Docket.
- (4) Orders that this matter will be dismissed with prejudice in 30 days (to allow time for payment) unless the Court otherwise orders.

Respectfully submitted,

Dated: February 16, 2022

CLAYEO C. ARNOLD, APLC

By: /s/ Joshua H. Watson
Joshua H. Watson
Attorneys for Plaintiff
Rachael Palazzi

Dated: February 16, 2022

JEPPSON & GRIFFIN, LLP

By: /s/ Marc C. Guèdenet
Marc C. Guèdenet
Attorneys for Defendant
Bruce Randy Avrit, Jr.

Attestation of Signature

I, Joshua H. Watson, and am admitted to practice before this Court. I have confirmed in writing that Mr. Guèdenet approves filing of this document with his /s/ signature and saved that confirmation to my file in this matter.

Dated February 16, 2022

CLAYEO C. ARNOLD, APLC

By: /s/ Joshua H. Watson
Joshua H. Watson
Attorneys for Plaintiff
Rachael Palazzi