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Attorneys for Plaintiff Charles Ross

ELECTRONICALLY FILED
Superior Court of California,
County of San Diego

08/31/2023 at 04:40:00 PM

Clerk of the Superior Court
By Emily Schilawski, Deputy Clerk

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN DIEGO**

CHARLES ROSS, individually, and on behalf
of all others similarly situated,

Plaintiff,

vs.

PACIFIC LIVING PROPERTIES, INC., a
Colorado corporation; and DOES 1 through 10,
inclusive,

Defendants.

Case No.: 37-2021-00040008-CU-OE-CTL

[Assigned for All Purposes to the Honorable
Katherine Bacal, Department C-69]

**REQUEST FOR DISMISSAL OF CLASS
AND REPRESENTATIVE ACTION
WITHOUT PREJUDICE; DECLARATION
OF LILIT TER-ASTVATSATRYAN;
[PROPOSED] ORDER THEREON**

Complaint filed: September 20, 2021
Trial date: Not set

REQUEST FOR DISMISSAL

1. Plaintiff Charles Ross (“Plaintiff”) submits this Request for Dismissal of Class and Representative Action Without Prejudice, pursuant to California Rules of Court 3.770, *et seq.* and based on the following facts:

2. On September 20, 2021, Plaintiff filed a class action complaint against Defendant Pacific Living Properties, Inc. (“Defendant”) (collectively with Plaintiff, the “Parties”) entitled *Charles Ross v. Pacific Living Properties*, with Case Number 37-2021-0004008-CU-OE-CTL, alleging violations of the California Labor Code and Unfair Competition Law, including: (1) failure to pay minimum wages; (2) failure to pay overtime compensation; (3) failure to provide meal periods; (4) failure to authorize and permit rest breaks; (5) failure to indemnify necessary business expenses; (6) failure to timely pay final wages at termination; (7) failure to provide accurate itemized wage statements; and (8) unfair business practices (the “Complaint”).

3. On December 22, 2021, Plaintiff amended the Complaint to add a ninth cause of action for Civil Penalties under the Private Attorneys’ General Act (“PAGA”).

4. Earlier in the litigation, the Parties agreed to participate in a private mediation and scheduled a private mediation with Steve Serratore, Esq. on September 23, 2022. However, in June 2022, Defendant’s counsel advised Plaintiff’s counsel that Defendant’s financial condition prevented it from participating in a meaningful mediation and/or resolving this matter on a class-wide basis. Accordingly, the Parties agreed to cancel the mediation at that time.

5. On July 15, 2022, the Court approved the Parties’ Stipulation and Protective Order. As a result, Defendant produced the various financial records requested by Plaintiff in support of Defendant’s position.

6. On or around early June 2023, Plaintiff’s expert concluded his evaluation of Defendant’s records and confirmed Defendant’s destitute financial condition. After review of Plaintiff’s expert’s opinion and exercise of its due diligence via multiple meet and confer efforts with Defendant’s counsel, Plaintiff’s counsel determined that there was no way to proceed on a class or representative basis, and agreed to seek dismissal of those claims.

1 7. Based on the above, Plaintiff is requesting that Plaintiff's class and representative
2 claims be dismissed without prejudice, and that his individual claims remain.

3 8. The Court has not certified a class and notice of the pendency of a class or PAGA
4 action has not been provided to putative class members or aggrieved employees. Thus, there is no
5 prejudice to the putative class members and aggrieved employees. Moreover, the dismissal of the
6 class and representative claims is without prejudice.

7 9. No consideration, direct or indirect, is being given in exchange for this dismissal of
8 class and representative claims. Specifically, Counsel for Plaintiff is not receiving any
9 consideration, nor is Plaintiff receiving any consideration, in exchange for this dismissal.

10 10. The Parties have engaged in negotiations to settle Plaintiff's individual claims.
11 Thus, Plaintiff is requesting his individual claims remain. Should the Court request, terms of the
12 pending confidential individual settlement agreement could be provided to the Court for in camera
13 review.
14

15 Dated: August 31, 2023

Respectfully submitted,

16 MOON LAW GROUP, PC

17
18 By: 

Kane Moon

Lilit Ter-Astvatsatryan

Linh H. Tran

Attorneys for Plaintiff Charles Ross

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1. I am an attorney at law duly licensed to practice as such before all of the Courts of the State of California and am one of the attorneys of record for Plaintiff. This declaration is made in support of the Request for Dismissal of Class and Representative Action Without Prejudice. I have personal knowledge of the matters set forth herein and could competently testify to the facts described herein.

3. On September 20, 2021, Plaintiff filed a class action complaint against Defendant Pacific Living Properties, Inc. (“Defendant”) (collectively with Plaintiff, the “Parties”) entitled *Charles Ross v. Pacific Living Properties*, with Case Number 37-2021-0004008-CU-OE-CTL, alleging violations of the California Labor Code and Unfair Competition Law, including: (1) failure to pay minimum wages; (2) failure to pay overtime compensation; (3) failure to provide meal periods; (4) failure to authorize and permit rest breaks; (5) failure to indemnify necessary business expenses; (6) failure to timely pay final wages at termination; (7) failure to provide accurate itemized wage statements; and (8) unfair business practices (the “Complaint”).

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6. On July 15, 2022, the Court approved the Parties' Stipulation and Protective Order. As a result, Defendant produced the various financial records requested by Plaintiff in support of Defendant's position.

7. On or around early June 2023, Plaintiff's expert concluded his evaluation of Defendant's records and confirmed Defendant's destitute financial condition. After review of Plaintiff's expert's opinion and exercise of its due diligence via multiple meet and confer efforts with Defendant's counsel, Plaintiff's counsel determined that there was no way to proceed on a class or representative basis, and agreed to seek dismissal of those claims.

8. Based on the above, Plaintiff is requesting that Plaintiff's class and representative claims be dismissed without prejudice, and that his individual claims remain.

9. The Court has not certified a class and notice of the pendency of a class or PAGA action has not been provided to putative class members or aggrieved employees. Thus, there is no prejudice to the putative class members and aggrieved employees. Moreover, the dismissal of the class and representative claims is without prejudice.

10. No consideration, direct or indirect, is being given in exchange for this dismissal of class and representative claims. Specifically, Counsel for Plaintiff is not receiving any consideration, nor is Plaintiff receiving any consideration, in exchange for this dismissal.

11. The Parties have engaged in negotiations to settle Plaintiff's individual claims. Thus, Plaintiff is requesting his individual claims remain. Should the Court request, terms of the pending confidential individual settlement agreement could be provided to the Court for in camera review.

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

Executed this August 31, 2023 at Los Angeles, California.


Lilit Ter-Astvatsatryan

~~PROPOSED~~ ORDER

The Court, having considered Plaintiff's Request for Dismissal of Class and Representative Action Without Prejudice and the Declaration of Lilit Ter-Astvatsatryan, pursuant to California Rules of Court 3.770, *et seq.*, orders that Plaintiff's class and representative claims be dismissed without prejudice while Plaintiff's individual claims remain.

Date: **September 13, 2023**



Honorable Katherine Bacal
Judge of the San Diego Superior Court

1 **PROOF OF SERVICE**

2 **STATE OF CALIFORNIA, COUNTY OF LOS ANGELES**

3 I am employed in the State of California, County of Los Angeles. I am over the age of 18 and not
a party to the within suit; my business address is 1055 W. 7th Street, Suite 1880, Los Angeles, CA 90017.

4 On the date indicated below, I served the document described as: **REQUEST FOR DISMISSAL OF**
5 **CLASS AND REPRESENTATIVE ACTION WITHOUT PREJUDICE; DECLARATION**
6 **OF LILIT TER-ASTVATSATRYAN; [PROPOSED] ORDER THEREON** on the interested
parties in this action by sending [] the original [or] [✓] a true copy thereof [✓] to interested parties as
follows [or] [] as stated on the attached service list:

7
8 Rebecca Wilson, Esq.
Andrea Rosenkranz, Esq.
9 **O'HAGAN MEYER**
3200 Park Center Drive , Suite 700
10 Costa Mesa, California 92626
Telephone: (949) 942-8500
11 Facsimile: (949) 942-8510
arosenkranz@ohaganmeyer.com
12 rwilson@ohaganmeyer.com
vtomlinson@ohaganmeyer.com

13 *Attorneys for Defendant Pacific Living Properties, Inc.,*

14
15 [✓] **BY E-MAIL:** I hereby certify that this document was served from Los Angeles, California,
by e-mail delivery on the parties listed herein at their most recent known e-mail address or e-
16 mail of record in this action.

17 I declare under penalty of perjury under the laws of the State of California that the foregoing is
18 true and correct. Executed this **August 31, 2023** at Los Angeles, California.

19 Karen Castillo
20 Type or Print Name

21 
22 Signature