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11 **SUPERIOR COURT OF CALIFORNIA**

12 **COUNTY OF RIVERSIDE**

13 * * *

14 ASHLEY MCCORD, individually, and on behalf
of all similarly situated,

15 Plaintiff,

16 vs.

17 DEVELOPMENTAL CLIENT CARE,
18 INDUSTRIES, INC., and DOES 1 through 100,
inclusive,

19 Defendants.
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Case No.: RIC1612928
[Assigned to Hon. Craig Reimer,
Dept. 10]

**DECLARATION OF ZACHARY
CROSNER IN SUPPORT OF
PLAINTIFF'S RENEWED
MOTION TO APPROVE
SETTLEMENT PURSUANT TO THE
PRIVATE ATTORNEY GENERAL
ACT OF 2004**

Hearing Date: February 15, 2019
Time: 8:30 a.m.
Dept.: 05
Reservation#: RES86688

Complaint Filed: October 4, 2016

1 I, Zachary Crosner state and declare:

2 1. I am an attorney licensed to practice before all of the courts of the State of
3 California. I represent the Plaintiff in this action and I am thoroughly familiar with and have
4 personal knowledge of all of the facts set forth herein. I submit this Supplemental Declaration in
5 support of Plaintiff's Motion to Approve Settlement Pursuant to the Private Attorney General Act
6 of 2004 (the "PAGA"). If called as a witness, I could and would competently testify thereto.

7 2. On May 30, 2016, Plaintiff submitted a certified letter to the California Labor
8 Workforce Development Agency (the "LWDA") notifying it of Plaintiff's claims under the PAGA.
9 Thereafter, the LWDA did not assert jurisdiction over Plaintiff's PAGA claims during the 65 day
10 waiting period, so on October 4, 2016, Plaintiff filed a PAGA-only action against Defendant in this
11 Court, alleging claims arising out of Defendant's alleged violations of the Labor Code: (1) Failure
12 to Pay Minimum Wages/Split Shift Wages; (2) Failure to Pay on a Timely Bi-Weekly Basis; (3)
13 Failure to Maintain Accurate Records; (4) Failure to Provide Accurate and Itemized Wage
14 Statements; and (5) other derivative violations of the California Labor Code, as described herein.

15 3. Defendant retained counsel, fully denied the allegations and vigorously defended
16 against them. The Parties agreed to submit the matter to an early mediation in order to resolve the
17 Plaintiff's alleged claims. In preparation for the mediation, the Parties exchanged legal briefs,
18 documents, and information that allowed both sides to calculate the potential damages and evaluate
19 potential risk. During this process, Plaintiff and her counsel analyzed, researched, and investigated
20 the potential issues, including matters related to the calculation of damages, trial, and appellate
21 issues and risks.

22 4. The mediation took place on October 18, 2017, with mediator Jeff Winikow, one of
23 the more experienced class and PAGA action mediators in Southern California. The Parties
24 reached a tentative agreement at mediation, but were required to continue serious arms-length
25 negotiations on the entirety of the terms of settlement thereafter. The Parties initially memorialized
26 the terms of the settlement in a long-form Settlement Agreement on or about December 29, 2017.

27 5. Plaintiff filed a Motion for Approval of the PAGA Settlement and supportive
28 documents thereof on or about February 5, 2018. In its tentative ruling, the Court requested
supplemental briefing in accordance with its Case Management Order, and took issue with certain
terms of the Settlement Agreement. Thereafter, the Parties met and conferred, and agreed to several
revisions of the Settlement Agreement in order to address the Court's concerns. More specifically,
the Parties agreed to: (1) Plaintiff's filing of a First Amended Complaint incorporating her

individual (non-PAGA) wage and hour claims which formed the basis of the PAGA cause of action, and to a release of her non-PAGA claims; (2) clarified that each PAGA Employee's individual share of PAGA penalties payment will be treated as non-wage income and reported by the Settlement Administrator on IRS Form 1099 to the respective PAGA Employee and applicable governmental authorities; (3) limited the release of the PAGA claims to Plaintiff, but have requested the Final Order shall be binding on the PAGA Employees as to the Released Claims, including the PAGA Representative Claims and Labor Code § 558; (4) incorporated the material terms of the Settlement Agreement into the Final Order; and (5) removed any request of the Court for *res judicata* or collateral estoppel effect of the final judgment. Plaintiff also presented supplemental briefing and in its supportive declaration of Zachary Crosner to address the Court's tentative ruling and the relevant portions of its Case Management Order.

6. On May 21, 2018, the Court issued a tentative ruling on Plaintiff's Motion to Approve the PAGA Settlement providing guidance on its position relating to dismissal of the Action (as opposed to a Judgment). The Court also requested supplemental briefing primarily relating to the amount of and estimated exposure of the alleged Labor Code violations, Plaintiff's ability to recover the requested service award, Plaintiff's Counsel's request for reimbursement of costs, and the Settlement Administrator's request for administration fees—which was provided in Plaintiff's Counsel's supplemental declaration filed on June 19, 2018.

7. On June 26, 2018, this Court issued a tentative ruling on Plaintiff's Motion to Approve the PAGA Settlement in light of Plaintiff's Counsel's June 19th supplemental declaration. In its tentative, the Court indicated its approval of a service award to Plaintiff in an amount not to exceed \$3,000 and its approval of Settlement Administration fees not to exceed \$3,300. The Court also requested further briefing on the Plaintiff's Counsel's requested reimbursement of costs, specifically filing fees to be separated from courier fees, and also reiterated its position that the dispositive document following a PAGA settlement is an Order which shall not bind non-party aggrieved employees.

8. In his November 26, 2018 supplemental declaration, Plaintiff's Counsel provided further briefing on its filing fees, adjusting its request for reimbursement accordingly. Counsel for Plaintiff also attached to its supplemental declaration a fully executed revised version of the Settlement Agreement and [Proposed] Order which did not bind the non-party aggrieved employees which reflected the Court's position. Specifically, (1) Paragraph 5 of the [Proposed] Order was revised to state that "Plaintiff Ashley McCord's claim pursuant to Labor Code Section

1 2699, et seq. (PAGA) is dismissed with prejudice as to Plaintiff Ashley McCord and without
2 prejudice to all other Aggrieved Employees,” and (2) the Settlement Agreement removed all
3 language indicating that the Settlement would bind any non-party aggrieved employees, which had
4 previously been incorporated into Paragraph 13 of the settlement agreement.

5 9. The Court’s most recent tentative ruling on November 28, 2018 denied approval of
6 the PAGA Settlement based solely on its request that the [Proposed] Order reflect its approval of
7 Plaintiff’s service award for \$3,000 and informed Plaintiff’s Counsel that it would approve a
8 request for expense reimbursement in an amount of \$6,093.02. On December 12, 2018, Counsel for
9 Plaintiff filed a supplemental declaration informing the Court that the Parties had revised the
10 [Proposed] Order to reflect an amount of \$3,300 for Plaintiff’s service award and an amount of
11 \$6,093.02 for Plaintiff’s Counsel’s request for reimbursement of litigation expenses. Plaintiff’s
12 Counsel also concurrently filed with the Court a revised version of the [Proposed] Order.

13 10. On January 9, 2019, the Court held a status conference relating to Plaintiff’s Motion
14 for Approval wherein Counsel for Plaintiff was instructed by the Court to seek approval of the
15 most recent version of the PAGA Settlement and [Proposed] Order by and through a motion for
16 approval. As such, Plaintiff hereby respectfully submits this Motion for Approval of PAGA
17 Settlement.

18 The settlement provides that Defendant will pay a non-reversionary settlement amount of
19 One Hundred Fifty-One Thousand Dollars One Hundred Thirty-Seven Dollars and Zero Cents
20 (\$151,137.00) (the “Settlement Amount”), inclusive of payments to the LWDA and PAGA
21 Employees, attorneys’ fees and litigation costs¹, Plaintiff’s service award, as well as third party
22 administrator (“Administrator”) costs². After payment of the attorneys’ fees and costs, Plaintiff’s
23 service award and Administrator costs, approximately \$88,364.98 will remain as the estimated
24 net proceeds (the “Net Settlement Amount”). The Net Settlement Amount will then be paid as
25 civil penalties, in satisfaction of the PAGA claims brought in Plaintiff’s Complaint and LWDA
26 Notice. Pursuant to California Labor Code § 2699(i), 75 percent shall be paid to the LWDA
27 (which shall be used to assist in the enforcement of labor laws and education of employers and
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¹ Plaintiff’s Counsel will seek a standard fee of one-third (\$50,379) of the Settlement Amount, and reimbursement of actual litigation costs of \$6,093.02

² The Parties selected Phoenix as the Administrator, and its costs shall not exceed \$3,300.00 to be deducted from the Settlement Amount.

employees about their rights and responsibilities under the Labor Code), and the remaining 25 percent being paid to the PAGA Employees based the number of wage statements each PAGA Employee received during the Statutory Period.

11. The following chart reflects the estimated payments from the Settlement Agreement:

	Total Amount
Settlement Amount	\$151,137.00
Attorneys' Fees (1/3)	\$50,379.00
Litigation Costs	\$6,093.02
Administrator Costs	\$3,300.00
Plaintiff's Service Award	\$3,000.00
Net Settlement Amount	\$88,364.98
Penalties Allocation:	
75% to the LWDA (\$66,273.73)	
25% to the PAGA Employees (\$22,091.25)	
	\$88,364.98
	\$0

12. As such, the LWDA will receive over \$66,000 and the PAGA Employees will receive over \$22,000 from the Net Settlement Amount. Each PAGA Employee's share of the civil penalties will be treated as non-wage income and reported by the Settlement Administrator on IRS Form 1099 to the respective PAGA Employee and applicable governmental authorities. A true and correct copy of the Parties' revised Settlement Agreement is attached to Plaintiff's Motion for Approval as **Exhibit A**.

13. The Parties have agreed to distribute the settlement funds to the LWDA, PAGA Employees, Plaintiff and her counsel within 14 days following the funding of the settlement. The PAGA Employees will have 180 days to cash their checks, and if for any reason a check is uncashed, that share will be forwarded to the CA Department of Industrial Relations Unclaimed Property Division in the name of the employee so that the employee can collect it at a later date.

14. A Notice informing the PAGA Employees of the nature of the payment will be provided with the settlement check. A true and correct copy of the Notice is attached to the Motion for Approval as **Exhibit B**.

15. In accordance with the Court's Case Management Order and tentative rulings, the release in the revised Settlement Agreement and [Proposed] Order narrowly binds the named Plaintiff only for civil penalty claims she brought under Labor Code § 2699 and Labor Code § 558 in the Action, including but not limited to, claims for DCCI's (i) failure to pay split shift premiums;

(ii) failure to timely pay wages after the close of each pay period; (iii) inaccurate wage statements, as a result of unpaid split shift premiums; (iv) failure to pay all outstanding wages at separation, as a result of unpaid split shift premiums; and (v) the alleged violation of, or claims for relief pursuant to, Labor Code sections 201, 202, 203, 204, 210, 226, 226.3, 512, 558, and 1174, as well as California Code of Regulations, Title 8, section 11050(4)(C) and IWC Wage Order 5-2001, Section 4(C) (“Released Claims”). (Settlement Agreement ¶ 40). The release does not bind any other (non-party) aggrieved employees. While Plaintiff is separately releasing any and all claims against Defendant, as part of the resolution of her individual (non-PAGA) claims, the Settlement Agreement and release protects the rights of the aggrieved employees to separately bring their own individual claims should they wish. For these reasons, the Parties contend that the release narrowly applies only to the claims alleged, and only binds the named Plaintiff as to the PAGA claims. A true and correct copy of the Parties’ revised [Proposed] Order is attached to Plaintiff’s Motion for Approval as Exhibit C and is also filed concurrently herewith.

16. Prior to filing this motion, Plaintiff’s Counsel had submitted additional information relating to its filing fees and other expenses upon the Court’s request in its previous tentative rulings. The Court’s most recent tentative ruling on November 28, 2018 informed Plaintiff’s Counsel that it would approve a request for expense reimbursement in an amount of \$6,093.02. On December 12, 2018, Counsel for Plaintiff filed a supplemental declaration informing the Court that the Parties had revised the [Proposed] Order to reflect an amount of \$6,093.02 for Plaintiff’s Counsel’s reimbursement of litigation expenses, which is the amount Counsel now seeks in reimbursement of its litigation costs. These costs include mediation fees, filing fees (not including courier or convenience charges), online research, and other costs which include Attorney Service charges, parking charges, CourtCall charges, and process service fees. (*Id.*) These costs are reasonable and uncontested, and should be approved.

17. In this matter, Plaintiff McCord, at considerable risk to her livelihood, made significant efforts to protect the interests of the state labor agencies and ensure her non-party coworkers were no longer forced to work under unlawful conditions. Plaintiff was critical in identifying potential witnesses to Defendant’s labor code violations and she spent many hours assisting her counsel in providing facts, identifying witnesses, and reviewing documents and fields in order to litigate this case. Plaintiff has never been a PAGA plaintiff in any other matter. As a result of Plaintiff’s efforts, the Defendant has changed their practices to comply with California’s labor laws, benefitting Defendant’s current employees. In addition, the LWDA will receive

1 \$66,273.73 at its 75 percent of the PAGA to educate other California employers to comply with
2 law, benefitting the public at large. In light of the foregoing and upon the Court's own discretion,
3 in its tentative ruling the Court indicated its approval of a service award in an amount of \$3,000,
4 which has been requested in the Parties' revised [Proposed] Order concurrently filed herewith.

5 18. The revised Settlement Agreement and this Motion have been concurrently
6 submitted to the LWDA in accordance with Labor Code § 2699(1)(2). The proof of electronic
7 submission is attached to Plaintiff's Motion for Approval as **Exhibit D**.

8 19. Subject to the Court's approval, the parties stipulated to Phoenix Class Action
9 Administrators ("Phoenix") serving as the Settlement Administrator who will process the
10 settlement payments and provide notice to the Aggrieved Employees. Phoenix is highly
11 experienced in administering class/PAGA settlements. Phoenix provided an all-in proposal to
12 administer the settlement for \$3,300.00. As previously stated, the Court indicated in its tentative
13 ruling that it would approve a settlement administration fee not to exceed \$3,300.00, which is
14 reflected in the Parties' revised [Proposed] Order.

15 20. 51. For the foregoing reasons, Plaintiff respectfully requests that the Court approve
16 the settlement.

17 I declare under penalty of perjury under the laws of the State of California that the foregoing is true
18 and correct. Executed on January 14, 2019, at Los Angeles, California.

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21 Zachary M. Crosner
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