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as an individual and on behalf of all employees similarly situated

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES

DEVON DAVIS, as an individual and on behalf
of all employees similarly situated,

Plaintiff,

v.

BBB-CA, INC., dba BLOCK BY BLOCK, a
California Corporation; and DOES 1 through 50,
inclusive,

Defendants.

Case No.: 24STCV02265

[Assigned for all purposes to Hon. David S.
Cunningham III]

**DECLARATION OF LILIT TUNYAN IN
SUPPORT OF PLAINTIFF'S
APPLICATION TO DISMISS ENTIRE
ACTION AGAINST DEFENDANT
WITHOUT PREJUDICE**

Action Filed: January 29, 2024
Trial Date: Not Set

DECLARATION OF LILIT TUNYAN

I, Lilit Tunyan, declare as follows:

1. I am admitted, in good standing, to practice as an attorney in the State of California, the United States District Courts for the Central, Eastern, Southern and Northern Districts of California. I am the founding partner at the law firm of Tunyan Law, APC. I am a fully qualified, adult resident of the State of California, and, if called as a witness herein, I would testify truthfully to the matters set forth herein. All of the matters set forth herein are within my personal knowledge, except those matters that are stated to be upon information and belief. As to such matters, I believe them to be true. I am one of the attorneys of record for Plaintiff DEVON DAVIS ("Plaintiff")

2. This Declaration is submitted in support of Plaintiff's Application to Dismiss Entire Action Against Defendant BBB-CA, INC., dba BLOCK BY BLOCK ("Defendant") Without Prejudice.

3. This Declaration is filed pursuant to California Rules of Court, Rule 3.770, in support of the request for dismissal of putative class and individual claims against Defendant as well as claim for penalties pursuant to the Labor Code Private Attorneys General Act of 2004 ["PAGA"]). This Declaration is intended to seek dismissal of the entire action without prejudice.

4. On January 29, 2024, Plaintiff filed a class action alleging various wage and hour violations against Defendant. On April 3, 2024, Plaintiff filed his First Amended Complaint adding the representative eighth cause of action under PAGA. After filing the complaint Defendant's counsel notified and provided Plaintiff's counsel with the arbitration agreement signed by Plaintiff waiving Plaintiff's right to pursue claims in court. On May 25, 2024, Defendant filed a motion to compel arbitration of Plaintiff's claims and to stay PAGA representative action ("Motion") which is set for hearing on January 7, 2025. After filing the Motion Defendant's counsel provided a declaration from Defendant's representative stating that from 2020 to the present Defendant required all non-exempt employees to sign the arbitration agreement to be able to submit application to seek employment with Defendant. Therefore, all non-exempt employees of Defendant employed during the class period have signed the arbitration agreement, and Plaintiff is unable to locate another class representative who will be able to replace him to represent the class in this action. Most importantly, after filing the Motion Defendant's counsel provided Plaintiff's counsel with the extract of the executed settlement and release agreement in a case entitled

1 *Garay v. Mydatt Services Inc., dba Block by Block* filed (“*Garay*”) on March 3, 2022, Case No.
2 22CV007899, pending in the Superior Court of the State of California, County of Alameda, which
3 includes a release of PAGA claims based on Labor Code violations overlapping with claims alleged in this
4 action with the release period of December 17, 2020 to March 1, 2024 and which explicitly includes BBB-
5 CA, Inc. dba Block by Block as a released party. Therefore, even though any PAGA representative claim
6 waiver in court is unenforceable under California law, Plaintiff is no longer able to pursue PAGA
7 representative claim in this action since his PAGA claims have been subsumed by the release in *Garay*
8 matter as Plaintiff is unable to opt out from PAGA settlement and was employed during the PAGA release
9 period. Therefore, the Parties have met and conferred regarding the above-mentioned issues and in lieu of
10 engaging in further motion practice and/or arbitrating Plaintiff’s wage-and-hour individual claims with the
11 purpose to preserve the Court’s and the Parties’ resources decided to engage in Plaintiff’s individual
12 claims settlement negotiations and reached a settlement of Plaintiff’s individual claims. As such, Plaintiff
13 now seeks dismissal of class and PAGA claims against Defendant without prejudice and dismissal of
14 Plaintiff’s individual claims with prejudice.

15 5. Plaintiff signed a confidential settlement and release of his individual claims, including a
16 general release of all potential non-wage-and-hour claims, and received an individual settlement payment
17 in consideration for the dismissal of his individual claims with prejudice. Plaintiff has not received any
18 consideration in exchange for the dismissal of the class or PAGA claims in this action without prejudice.
19 No class has been certified.

20 6. No class has been certified and no notice of the pendency of this action has been required
21 to be provided to the putative class members and PAGA aggrieved employees. Therefore, under the first
22 sentence within California Rules of Court, Rule 3.770(c), notice of the dismissal does not need to be
23 provided to the putative class.

24 7. In addition, notice to the putative class of the dismissal without prejudice is not required
25 under the second sentence within Rule 3.770(c) because this dismissal will not prejudice any putative class
26 member or PAGA aggrieved employee. This request for dismissal does not impact PAGA aggrieved
27 employee since there is a PAGA settlement reached in *Garay* matter. It is also my opinion that this
28 dismissal will not prejudice any putative class member or PAGA aggrieved employee because I have also

1 not been contacted by any employee of Defendant asking that I represent that person on claim against
2 Defendant, and I am unaware of any such individuals who are foregoing filing their own claim in reliance
3 on the pendency of this case.

4 8. The request for dismissal has been provided to the LWDA prior to its filing with this
5 Court. Attached hereto as **Exhibit A** is proof of that submission, which I performed.

6
7 I declare under penalty of perjury, under the laws of the State of California, that the foregoing is
8 true and correct. Executed this day of October 2024, at Glendale, California.

9
10 

11 _____
Lilit Tunyan, Declarant