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Attorneys for Plaintiff

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF ALAMEDA

TAMIKA R. THOMAS, an individual, on
behalf of herself, and on behalf of all persons
similarly situated,

Plaintiffs,

v.

CENTER FOR ELDER'S INDEPENDENCE,
a California corporation; and DOES 1-50,
Inclusive,

Defendants.

Case No.: 22CV024221

**DECLARATION OF TAMIKA R. THOMAS
IN SUPPORT OF MOTION FOR FINAL
APPROVAL OF CLASS ACTION AND
PAGA SETTLEMENT**

Date: July 2, 2024

Time: 1:30 p.m.

Reservation ID: 513585335821

Judge: Hon. Noel Wise

Dept.: 21

1 I, TAMIKA R. THOMAS, declare as follows:

2 1. I am over the age of eighteen, a California resident, Plaintiff and Proposed Class
3 Representative in the above-entitled matter. I submit this declaration in support of Plaintiff's Motion
4 for Final Approval of Class Action and PAGA Settlement and in support of Motion for Attorneys' Fees
5 and Costs and Service Award. I have personal knowledge of all the facts stated herein. I could and
6 would competently testify under oath to these facts in court if requested to do so.

7 2. I retained Class Counsel in June 2022 and filed the lawsuit in December 2022. I filed the
8 case on behalf of myself and a class of all non-exempt employees who are or previously were employed
9 by Defendant and performed work in California during the period of December 7, 2019 to September
10 20, 2023 (the "Class Period").

11 3. I work for Defendant as a non-exempt employee, paid on an hourly basis, and entitled to
12 legally mandated meal and rest periods, minimum wages, and overtime compensation, in Alameda
13 County, from May of 2007 to approximately October of 2021.

14 4. I filed the case because I believed my rights as an employee were violated by Defendant
15 and also the rights of other employees that worked for Defendant. Among other claims, I believe
16 Defendant failed to pay for all time worked, failed to provide compliant meal and rest periods, failed to
17 pay overtime, meal premiums, and sick pay at the correct regular rate of pay, failed to reimburse for
18 mandatory business expenses, failed to furnish accurate itemized wage statements, and failed to pay all
19 wages when due.

20 5. Before I initiated the case as a plaintiff and Class Representative, I spoke at length with
21 my attorneys. We discussed my work experience and how company policies were applied to me and
22 other employees. I provided the attorneys with documents they requested. We reviewed the documents
23 together and asked and answered many questions regarding my experience working for Defendant, the
24 litigation process, and about class actions generally.

25 6. During these conversations, I learned about my responsibilities as a plaintiff in the lawsuit
26 and as proposed a Class Representative. I understood that pursuing this action as a class action rather
27 than merely seeking my individual claims substantially increased the risk to me. Those risks included
28 the possibility of being held liable for Defendant's attorneys' fees and costs in a complex class action if

1 I lost the case. I also understood that as a Class Representative, I would be under increased scrutiny by
2 the attorneys and the Court because I needed to prove that I was an adequate class representative.
3 Further, I understood that I would lose some autonomy over my individual claims that I could not make
4 decisions for my sole benefit and that I needed to make every litigation decision with the best interests
5 of the Settlement Class in mind.

6 7. I also understood that pursuing this litigation created a very public record of my grievances
7 with Defendant which produced the risk that a future employer could hold it against me that I sued a
8 former employer.

9 8. I also knew that I was making a sacrifice in that I could have pursued my claims only on
10 an individual basis, likely obtaining a recovery greater than the portion of the class settlement I stand to
11 receive from this settlement. My attorneys explained to me that the net settlement value of my individual
12 claims may be greater than my ultimate recovery from the net class settlement amount.

13 9. Notwithstanding these risks and sacrifices, I decided to go through with the case because
14 I believed violations occurred and most employees would not know what their rights are and even if
15 they did, they would be apprehensive to file a lawsuit against their employer for fear of retaliation.

16 10. During the lawsuit I communicated on a regular basis with my attorneys. I reviewed status
17 updates from my attorneys and court filings on a regular basis, and spoke to my attorneys on the phone,
18 because I wanted to keep up with developments in the case which I understood was one of my duties as
19 a class representative.

20 11. **Review and Approval of Settlement:** A mediation was held on September 20, 2023.
21 Even though I could not attend, I was available by telephone to speak with my attorneys and did speak
22 with them regarding the mediation before it took place, as well as during the mediation itself. I also
23 spoke with my attorneys after the mediation and discussed the mediator's proposal which was ultimately
24 accepted. I was very satisfied with the terms of the settlement that was agreed to by the parties. I
25 reviewed and signed the Memorandum of Understanding on September 26, 2023, and when the
26 settlement papers were ready, I again spoke with my attorneys and reviewed the settlement agreement
27 which I signed on November 30, 2023. The Parties subsequently negotiated the terms of the First
28 Amended Stipulation of Settlement of Class and PAGA Action Claims and Release of Claims, which I

1 signed on January 22, 2024. Thereafter, the Parties made another amendment to the Agreement, which
2 is signed on June 4, 2024.

3 **A. Plaintiff's Individual Claims**

4 12. Throughout my employment with Defendant and at the time of my termination, I was
5 treated differently and unfairly by Defendant and its agents, all in retaliation and discrimination against
6 me because of my disability.

7 13. In or around November of 2020, I was diagnosed with severe gastroesophageal reflux
8 disease ("GERD"). GERD is a condition in which the stomach contents move up into the esophagus
9 causing frequent or severe symptoms and, in some cases, damage to the esophagus, pharynx, and/or
10 respiratory tract.

11 14. In or around February of 2020, as a result of my GERD symptoms, I requested, and was
12 granted, an accommodation to work a hybrid schedule, wherein I worked in office during the morning
13 hours. After lunch, I would work the remainder of the day remotely from home when my symptoms of
14 GERD intensified. I worked this hybrid schedule for approximately one and a half years before my
15 termination.

16 15. In or around March of 2021, Defendant informed me that I would be required to return to
17 work in-office. However, I am aware that many of Defendant's other employees were allowed to
18 continue remote work at home, especially those who had contracted Covid-19. As a result, I requested
19 a reasonable accommodation from Defendant and requested that I be allowed to continue working from
20 home, as I had been doing for over a year.

21 16. In or around October of 2021, I was scheduled for a medical procedure for purposes of
22 determining the cause of inflammation I was experiencing at the time. On or around October 4, 2023, I
23 submitted a doctor's note indicating that I was placed on modified activity at work and at home pursuant
24 to my hybrid schedule. Defendant's Benefits Lead, Jeanette Bergmann, did not accept my doctor's note
25 and directed me to obtain another doctor's note. Ms. Bergmann's reason for not accepting my doctor's
26 note was unclear. Nonetheless, on or around October 13, 2021, I submitted another doctor's note, per
27 Ms. Bergmann's request. Again, Ms. Bergmann did not accept my doctor's note and directed me to
28 obtain another doctor's note.

1 17. Despite my confusion regarding the deficiencies of the first two doctor's notes, on October
2 21, 2021, I submitted a third doctor's note indicating that I could return to full capacity pursuant to my
3 hybrid schedule. Despite submitting multiple doctor's notes, Ms. Bergmann would not allow me to
4 return to work.

5 18. I followed up with Ms. Bergmann several times to request information on what exactly I
6 needed to provide to Ms. Bergmann in order to return to work. Ms. Bergmann's instructions were
7 unclear as I felt that I complied with her requests when I submitted the previous three doctor's notes.
8 Following my several attempts to return to work, Ms. Bergmann never allowed me to return to work.

9 19. On or around December 28, 2021, as a direct result of Defendant's discriminatory and
10 retaliatory employment practices, I was sent correspondence regarding job abandonment and voluntary
11 resignation. I was very confused by the correspondence because I attempted to return to work several
12 times in the months leading up to receiving the correspondence.

13 20. On January 24, 2022, I filed a Charge of Discrimination with the California Department
14 of Fair Employment and Housing and received a "right to sue" on November 10, 2022, thereby
15 exhausting my administrative remedies.

16 21. On February 8, 2023, I filed a first amended complaint alleging causes of action for
17 Discrimination on the Basis of Disability in Violation of California Govt. Cod §§ 12940, et seq.; Failure
18 to Reasonably Accommodate in Violation of California Govt. Code §§ 12940, et seq.; Failure to Engage
19 in a Timely, Good Faith Interactive Process in Violation of California Govt. Code §§ 12940, et seq.;
20 Work Environment Harassment; Retaliation in Violation of California Govt. Code §§ 12940, et seq.;
21 and Failure to Prevent Discrimination and Harassment in Violation of California Govt. Code §§ 12940,
22 et seq. ("Plaintiff's Individual Claims").

23 22. Following my resignation, and at the time of mediation, I had been unable to secure
24 comparable employment for over a year, resulting in damages for lost income ranging between \$60,000
25 and \$90,000, unrelated to any of the sums resolved in the class and PAGA settlement. This amount
26 excludes non-economic damages, such as emotional distress damages and punitive damages. Given the
27 amount of the individual settlement, after deduction for attorneys' fees, I believe my individual
28 settlement represents a reasonable compromise for those claims. I intend on dismissing my Individual

1 Claims, with prejudice, following final approval of the Settlement in exchange for my individual
2 settlement.

3 23. I understand I am bound by the terms of the class and PAGA settlement and will receive
4 a distribution from the settlement fund just as every other member of the class for the release of my
5 wage claims. Moreover, the reasonableness of the individual settlement amount is evidence of the
6 absence of conflict for me and my counsel with respect to the class.

7 24. I understand that the Service Award is intended, in part, to compensate me for my release
8 of the Released Class Claims. Additionally, unlike the other Class Members, I also granted Defendant
9 a broad general release and waiver of claims pursuant to California Civil Code section 1542 and released
10 Defendant from all claims whether known or unknown, under federal law or state law (“Plaintiff’s
11 Release”).

12 25. **Participation:** Since I retained Class Counsel approximately twenty-four months ago, I
13 have been actively involved with this class action lawsuit performing the duties described above. While
14 I did not keep formal time records, I was in regular contact with my attorneys, attended hearings,
15 reviewed important court filings, and spent considerable time on the issues presented during the
16 litigation and in the settlement process. I estimate that I spent approximately 20-25 hours working on
17 this case.

18 26. Also, my attorneys explained to me that the settlement process involved a two-step review
19 by the Court to determine whether the settlement was fair before ordering that the settlement be funded
20 and paid. I knew this process also involved notifying all class members of the settlement terms and of
21 their rights to make a claim for their settlement share, to opt out of the settlement or to object to the
22 settlement.

23 27. Ultimately, I believe I did the right thing in pursuing this case on behalf of the class who
24 now stand to receive substantial monetary payments as a result of this case and settlement. I also believe
25 that the requested Service Award in the amount of \$5,000 from the settlement is fair compensation for
26 the (1) the work I performed, (2) the sacrifices made not pursuing this case individually, and (3) the risks
27 I undertook.

28 ///

28. In light of all the time and effort I have spent on this case, the sacrifice I have made, the risks I undertook by suing a former employer, the broad general release, the exposure to being responsible for paying Defendant's costs in the event we did not win the case, and in light of the size of the settlement, I believe the request for \$5,000 as a service award is fair and reasonable.

29. Further, I support my attorneys' application for a payment of Attorneys' Fees and Costs in the amount of \$348,333.33, comprised of \$323,333.33 for attorneys' fees (one-third of the Gross Settlement Amount) and up to \$25,000 for reimbursement of actually incurred litigation expenses.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on 06/06/2024 , at Oakland , California.

By: 
TAMIKA R. THOMAS (Jun 6, 2024 12:55 PM)