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THE HONORABLE JAMES M. TRIPLET
Department 2

Noted for Consideration: Friday, January 30, 2015, 1:30 p.m.

FILED With Oral Argument

JAN 30 2015

SPOKANE COUNTY CLERK

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
COUNTY OF SPOKANE

CHARLOTTE NEWELL, individually and on
behalf of others similarly situated,

Plaintiff,

v.

HCOW CONSULTING, INC. d/b/a HOME
CARE OF WASHINGTON, INC., a
Washington corporation; DON GROSS, an
individual; JAMES KENNEY and JOELYNE
KENNEY and the marital community
comprised thereof; and JOSEPH MAYO IV
and JANET MAYO,

Defendants.

CONSOLIDATED NO. 08-2-01810-0

~~PROPOSED~~ ORDER OF FINAL
SETTLEMENT APPROVAL AND
DISMISSAL WITH PREJUDICE

(Clerk's Action Required)

SHERON McKENNA, APRILL PETERSEN,
and AMANDA WRIGHT, individually and
on behalf of others similarly situated,

Plaintiffs,

v.

HOME CARE OF WASHINGTON, INC., a
Washington corporation; and DON GROSS,
an individual,

Defendants.

NO. 06-2-00585-1

~~PROPOSED~~ ORDER OF FINAL SETTLEMENT
APPROVAL AND DISMISSAL WITH PREJUDICE - 1
CONSOLIDATED CASE NO. 08-2-01810-0

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1 DON GROSS, an individual,
2 Third-Party Plaintiff,

3 v.

4 JOSEPH MAYO, IV and JANET MAYO,
5 and the marital community comprised
6 thereof; JAMES KENNEY and JOELYNE
7 KENNEY, and the marital community
8 comprised thereof; and HCOW
CONSULTING, INC., a Washington
corporation doing business as/formerly known
as HOME CARE OF WASHINGTON, INC.,

9 Third-Party Defendants.

10
11 WHEREAS, on November 18, 2014, this Court entered its Order Granting Preliminary
12 Approval of Class Action Settlement Agreement (Dkt. Sub No. 863) (the "Preliminary
13 Approval Order"); and

14 WHEREAS, individual notice complying with CR 23 was sent to the last-known
15 address of each reasonably identifiable member of the Class; and

16 WHEREAS, a fairness hearing on final approval of the settlement was held before the
17 Court on January 30, 2015; and

18 WHEREAS, no objections to the settlement were made by any member of the Class;
19 and

20 WHEREAS, the Court, being advised, finds that good cause exists for entry of the
21 below Order; now, therefore,

22 IT IS HEREBY FOUND, ORDERED, ADJUDGED, AND DECREED THAT:

23 1. Unless otherwise provided herein, all capitalized terms in this Order shall have
24 the same meaning as set forth in the Settlement Agreement attached as Exhibit 1 to the
25 Declaration of Jennifer Rust Murray in Support of Plaintiffs' Unopposed Motion for
26 Preliminary Approval of Class Action Settlement (Dkt. Sub No. 859).

1 2. The Court finds that notice to the Settlement Class has been completed in
2 conformity with the Preliminary Approval Order. The Court finds that this notice was the best
3 notice practicable under the circumstances, that it provided due and adequate notice of the
4 proceedings and of the matters set forth therein, and that it fully satisfied all applicable
5 requirements of law and due process.

6 3. The Court finds it has personal and subject matter jurisdiction over all claims
7 asserted in this litigation with respect to all members of the Class.

8 4. Pursuant to Civil Rule 23(c), the Court certifies for settlement purposes only the
9 following Class:

10 All persons who performed services as “home care aides,” “home
11 health aides,” and “live-in home care aides” for Defendants in the
12 state of Washington between February 6, 2003 and March 31,
13 2009 and (1) were not paid one-and-one-half times their regular
14 rate of pay for hours that they worked over 40 hours per week
15 between February 6, 2003 and December 31, 2004 and that were
16 recorded in Defendants’ payroll database; and/or (2) were not
17 paid for the time they spent driving between the clients that they
served in a single workday; and/or (3) worked off the clock
between July 3, 2005 through March 31, 2009, to the extent that
these persons do not timely opt out of the Class after being given
the opportunity to do so.¹

18 In connection with this certification, the Court makes the following findings:

- 19 a. The Class is so numerous that joinder of all members is impracticable;
- 20 b. There are questions of law or fact common to the Class for purposes of
21 determining whether this settlement should be approved;
- 22 c. Plaintiffs’ claims are typical of the claims being resolved through the
23 proposed settlement;

24
25 _____
26 ¹ The Class includes a “Subclass” of all current and former employees of HCOW who signed
27 Compromise and Release Agreements with HCOW and were paid less than they were owed
under Washington law.

1 d. Plaintiffs are capable of fairly and adequately protecting the interests of
2 the Class members in connection with the proposed settlement;

3 e. For purposes of determining whether the settlement is fair, reasonable
4 and adequate, common questions of law and fact predominate over questions affecting only
5 individual Class members. Accordingly, the Class is sufficiently cohesive to warrant
6 settlement by representation; and

7 f. For purposes of settlement, certification of the Class is superior to other
8 available methods for the fair and efficient settlement of the claims of the Class members.

9 5. The Court has appointed Plaintiffs Sheron McKenna, Charlotte Newell, Aprill
10 Petersen, and Amanda Wright as representatives for the Class.

11 6. The Court has appointed Jennifer Rust Murray and Beth E. Terrell of Terrell
12 Marshall Daut & Willie PLLC and Jeffry Finer of the Law Offices of Jeffry K. Finer, as Class
13 Counsel.

14 7. The settlement of this action on the terms set forth in the Settlement Agreement
15 is approved as being fair, adequate, and reasonable in light of the degree of recovery obtained
16 in relation to the risks faced by the Class in litigating the claims. The Class is properly certified
17 as a class as part of this settlement. The relief provided to the Class under the Settlement
18 Agreement is appropriate as to the individual members of the Class and as a whole.

19 8. The Court approves a payment of \$300,000 Class Counsel as fair and reasonable
20 based on the lodestar method, which courts use to determine the reasonableness of fees in
21 statutory fee shifting cases. Class Counsel has devoted over 5,800 hours to this litigation. This
22 time is reasonable in light of the factual and legal issues involved in prosecuting this action and
23 the staunch defense that Defendants lodged. Applying Class Counsel's regular hourly rates,
24 Class Counsel's total lodestar is \$1,327,321. The \$300,000 that Class Counsel request
25 represents only 22.6% of their total lodestar and reflects an hourly rate of less than \$52.00,
26 which is well below Class Counsel's regular hourly rates. Thus, the requested fee is
27 reasonable.

1 9. The Court also approves \$11,700 for settlement administration expenses, and a
2 payment of \$13,300 to be used to pay employer-side taxes.

3 10. The Court approves as reasonable payments of \$3,000 to each Class
4 representative for their service (\$12,000 total) to compensate them for the work they performed
5 on behalf of the Settlement Class. These payments are in addition to the share of the settlement
6 that each Class representative is entitled to receive under the terms of the Settlement
7 Agreement.

8 11. ~~Not less~~ ^{No later} than 30 calendar days after the settlement's Effective Date, the
9 Settlement Administrator shall disburse a Settlement Award from the appropriate (pre-2006 or
10 post-2006) Class Fund to each Class member who has submitted a timely claim.

11 12. ~~Not less~~ ^{No later} than 30 calendar days after the settlement's Effective Date, the
12 Settlement Administrator shall disburse from the Settlement Proceeds \$300,000 in fees and
13 costs to Class Counsel.

14 13. ~~Not less~~ ^{No later} than 30 calendar days after the settlement's Effective Date, the
15 Settlement Administrator shall disburse from the Settlement Proceeds \$11,700 in notice and
16 claims administration costs to Class Counsel.

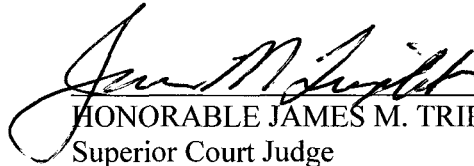
17 14. ~~Not less~~ ^{No later} than 30 calendar days after the settlement's Effective Date, the
18 Settlement Administrator shall disburse from the Settlement Proceeds \$13,300 to Dahl
19 Administration LLC to pay employer-side payroll taxes.

20 15. All Class members are bound by the terms of the Settlement Agreement. As of
21 the settlement's Effective Date, all Class members shall be deemed to have released all claims
22 arising out of or concerning any allegations of: unpaid overtime, unpaid drive time, "off-the-
23 clock" work, or any assertion(s) of rights relating to any of the preceding or any other claim
24 under federal, state or local wage/hour laws up to that Effective Date. This Release specifically
25 includes any claims for wages, penalties, interest, fees, costs, attorneys' fees and all other
26 claims and allegations made in this Case, or that could have been made in this Case or in any
27 other forum, action or proceeding. The claims released by this Agreement include all claims

1 alleging failure to pay any Class Members for all time worked, including but not limited to
2 failure to pay employees fully for drive time and off-the-clock work and failure to pay overtime
3 at a rate of at least time and one-half the employee's regular rate of pay for all hours worked in
4 excess of 40 hours per week regardless of whether these claims arise under any applicable state,
5 federal or local law (e.g., RCW Chapters 49.46, 49.52 and regulations promulgated thereunder
6 or analogous provisions of federal law).

7 16. This Court hereby dismisses this action with prejudice as to all Class members
8 except those who have timely and properly excluded themselves from the Class. The dismissal
9 of the claims against Defendants is without prejudice to the rights of the Parties to enforce the
10 terms of the Settlement Agreement and the rights of Class Counsel to seek the payment of fees
11 and costs provided for in the Settlement Agreement. Without affecting the finality of this
12 Order, or the judgment to be entered pursuant hereto, in any way, the Court retains jurisdiction
13 over the claims against Defendants for purposes of resolving any disputes that may arise under
14 the Settlement Agreement.

15 DONE IN OPEN COURT this 30, day of January, 2015.

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19 HONORABLE JAMES M. TRIPLET
20 Superior Court Judge
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1 Presented by:

2 TERRELL MARSHALL DAUDT & WILLIE PLLC

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5 By:

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17 Attorneys for Plaintiffs

18
19 *Copy received,*
20 *notice of pro se dismissal waived*
21 *Carl Ous-Moore 12779*
22 *attorney for Defendant Gross*

23 Copy Received:

24 *[Signature]*
25 *Attorney for HCOW, WSBA # 35624*
26
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