

UNITED STATES DISTRICT COURT, DISTRICT OF IDAHO, BOISE DIVISION

DORINDA J. THOMPSON, on behalf of
herself and all others similarly situated,

Plaintiff,

vs.

COMMUNITY CONNECTIONS
INCORPORATED, an Idaho corporation,

Defendant.

Case No.2:19-cv-0300-BRW

CIVIL

STIPULATED COLLECTIVE ACTION
AND CLASS ACTION SETTLEMENT
AGREEMENT

I. Introduction. This Collective and Class Action Settlement Agreement is entered into by Dorinda J. Thompson (the "Named Plaintiff") on behalf of herself and as representative of the "Class Members" as defined herein, on the one hand, and the Defendant, Community Connections Incorporated, an Idaho Corporation ("CCI"), on the other hand, in the currently pending action, and subject to the approval of the U.S. District Court.

II. Procedural History. The Action was filed by Plaintiff in Idaho District Court on May 10, 2019 alleging miscalculation of overtime pay as a violation of the Fair Labor Standards Act (FLSA), and unlawful payroll deductions as a violation of Idaho wage statutes. Upon CCI's request, the matter was removed to U.S. District Court on August 2, 2019. CCI also requested a change of venue which was objected to by Plaintiff, and was ultimately denied. (Doc. No. 20) CCI answered the Plaintiff's Complaint on August 6, 2019 (Doc. No. 6).

During the course of litigation the parties attempted to engage in informal discovery without success. The parties exchanged numerous letters, conferred about a discovery plan and litigation deadlines on two occasions, and exchanged discovery which included the production of voluminous CCI payroll records.

In October 2019, unknown to Plaintiff, CCI sent form letters to approximately 90 currently or former employees with settlement checks attached. On November 26, 2019 new counsel for CCI substituted into this action, with a formal Notice of Substitution filed with the Court on December 4, 2019. (Doc. No. 22) Plaintiff and new Defense counsel worked well to get new Defense counsel updated on the history of the case, and to agree on an Amended Stipulated Litigation and Discovery Plan, which was filed on January 15, 2020. (Doc. No. 23)

On February 4, 2020, Plaintiff filed a Motion to Prohibit Contact with Putative Class Members and For Corrective Action with supporting declarations and exhibits regarding the settlement checks and waivers that were sent to putative class members in October 2019. (Doc. Nos. 26 and 27) On February 28, 2020, the Court ruled that Defendant was not prevented from communicating with potential class members, but that a more explicit letter should be sent to the

class members. (Doc. No. 30)

On April 15, 2020, Plaintiff filed a Motion to: (1) Proceed with Collective Action; (2) Equitably toll the Statute of Limitations; and (3) Certify Class Action. (Doc. No. 31) The parties thereafter engaged in settlement discussions. Following extensive negotiations, the parties entered into this Stipulated Collective Action and Class Action Settlement Agreement ("Settlement"), subject to this Court's approval, which resolves the litigation in full, including Plaintiff's collective action claims, class action claims, class representative fees, and attorney fees.

III. Definition of the Class. Although the Court has not yet certified this lawsuit as a collective action or class action, The Parties agree to settle this lawsuit as a collective/class action and agree to define the class as:

All prior and current hourly employees of CCI from March 8, 2018 until October 31, 2018, who either 1) were improperly paid overtime wages, or 2) had improper deductions taken from their wages.

IV. Investigation in the Collective and Class Action. The Parties have conducted significant investigation of the facts and law during the prosecution of this Action. Such investigation has included the exchange of information pursuant to formal discovery, review of voluminous documents consisting of payroll records, interviews of potential witnesses, and numerous meetings and conferences between representatives of the Parties. Counsel for the Parties have further analyzed, investigated and evaluated the law as applied to the facts that have been discovered regarding the claims, damages and defenses.

After investigation, analysis and evaluation, counsel for Plaintiffs, Winston & Cashatt, Lawyers ("Class Counsel") recognize the defenses and legal position of CCI, but believe Plaintiffs would ultimately succeed. CCI on the other hand, believes Plaintiffs were properly paid all wages due and owing, and that they did not take unlawful deductions from such pay.

V. Benefits of Settlement to Class Members. Named Plaintiffs and Class Counsel recognize the expense of continued litigation and the likelihood that the Action, if not settled now, will be prolonged and will delay any relief to the Class. Named Plaintiff and Class Counsel have also taken into account the uncertainty and risk of the outcome of further litigation, and the difficulties and delays inherent in such litigation. Named Plaintiff and Class Counsel are also aware of the burdens of proof necessary to establish liability for the claims asserted in the Action, to defeat CCI's defenses thereto, and the potential expenses associated with establishing damages for each individual Class Member if required by the Court. Plaintiffs and Class Counsel engaged in extensive analysis of the payroll records, and engaged in settlement negotiations during the entirety of the litigation. Based on the foregoing, Named Plaintiff and Class Counsel have determined that the Settlement set forth in this Agreement is a fair, adequate and reasonable settlement, and is in the best interest of all the Class Members.

VI. CCI's Reasons for Settlement. CCI has concluded that any further defense of this litigation would be protracted and expensive for all Parties. Substantial amounts of time, energy and resources of CCI have been and, unless this Settlement is made, will continue to be devoted

to the defense of the claims asserted by Plaintiffs. CCI has, therefore, agreed to settle in the manner and upon the terms set forth in this Agreement to put to rest the Claims as set forth in the lawsuit.

VII. CCI Denials of Wrongdoing. CCI has denied and continues to deny each of the claims and contentions alleged by Plaintiffs in the Action. Neither this Agreement, nor any document referred to or contemplated herein, nor any action taken to carry out this Agreement, is, may be construed as, or may be used as an admission, concession, or indication by or against CCI of any fault, wrongdoing or liability whatsoever.

VIII. Plaintiffs' Claims. Plaintiffs have claimed and continue to claim that the Released Claims (as defined below) have merit and give rise to liability on the part of CCI. Neither this Agreement nor any documents referred to herein, or any action taken to carry out this Agreement is, or may be construed as, or may be used as an admission by or against the Plaintiffs or Class Counsel as to the merits of the claims asserted, except as to the Released Claims of the Class Members.

NOW, THEREFORE, IT IS HEREBY STIPULATED, by and among the Named Plaintiff on behalf of the Class on the one hand, and CCI on the other hand, and subject to the approval of the Court, that the Collective and Class Action is hereby being compromised and settled pursuant to the terms and conditions set forth in this Agreement, and that upon the

Effective Date (as defined below) the Class Action shall be dismissed with prejudice, subject to the recitals set forth herein which by this reference become an integral part of this Agreement and subject to the following terms and conditions:

1. "Effective Date". As used in this Settlement, "Effective Date" means the date by which this Settlement is finally approved as provided herein and the Court's Settlement Order, and Final Judgment ("Final Judgment" or "Judgment") become final. For purposes of this paragraph, the Court's Final Judgment "becomes final" upon the latter of:

- (a) if no appeal is filed, the expiration date of the time for the filing or noticing of any appeal from the Court's Final Judgment;
- (b) the expiration of the time for the filing of a petition for review of the Final Judgment, and if review be granted, the date of final affirmance of the Final Judgment following review pursuant to that grant;
- (c) the expiration of the time for the filing of a petition for a writ of *certiorari* to review the Final Judgment and, if *certiorari* be granted, the date of final affirmance of the Final Judgment following review pursuant to that grant; or
- (d) the date of final dismissal of any appeal from the Final Judgment or the final dismissal of any proceeding on review or *certiorari* to review the Final Judgment, whichever occurs later.

In the event the Court approves the Settlement Order and Final Judgment, Named Plaintiff and CCI agree to not file any appeal, petition for review, or writ of certiorari, nor to encourage or

solicit any Class Member or any other individual or entity to file any appeal, petition for review, or writ of certiorari

2. Release As To All Class Members. As of the Effective Date, the Class Members, including the Named Plaintiff, release CCI, its past or present officers, directors, shareholders, employees, agents, principals, heirs, representatives, accountants, auditors, consultants, and its and their respective successors and predecessors in interest, subsidiaries, affiliates, parents and attorneys (the "Released Parties"), from the "Released Claims." For purposes of this Agreement, the "Released Claims" are defined as:

- (a) any facts, transactions, events, policies, occurrences, acts, disclosures, statements, omissions or failures to act, which are or could have been the basis of claims that CCI did not comply with all federal and/or state wage and hour laws relating to the calculation of overtime and payroll deductions; and/or
- (b) all causes of action asserted in the Collective and Class Action.

The Class Members agree not to sue or otherwise make a claim against any of the Released Parties that is in any way related to the Released Claims and conduct that occurred on or before October 31, 2018. The Class Members may hereafter discover facts in addition to or different from those they now known or believe to be true with respect to the causes of action asserted in the Collective and Class Action but, upon the Effective Date, shall be deemed to have, and by operation of the Final Judgment shall have, fully, finally, and forever settled and released any and all causes of action asserted in the Collective and Class Action, whether known or unknown,

suspected or unsuspected, contingent or non-contingent, which now exist, or heretofore have existed relating to the calculation of overtime and deductions from wages while working at CCI prior to October 31, 2018.

3. Settlement Fund. The Settlement Fund is in the amount of \$70,954.10 and shall consist of three categories.

- (a) the Settlement Award in the amount of \$5,954.10 to be paid to the Class Members for general damages;
- (b) the Incentive Award of \$7,000.00 to be paid to the Named Plaintiff for her time and efforts acting as Class Representative; and
- (c) the Fees Award, consisting of Class Counsel's attorney fees, costs and expenses in the amount of \$58,000.00 to be paid to Class Counsel.

4. Plan of Allocation for Payment to Settlement Class Members. CCI performed a full audit of their payroll records and has determined the amount that each class member is due. Class Counsel has reviewed CCI's calculations, and finds them to be adequate.

5. Procedure for Class Administration. As part of this Settlement, the Parties agree to the following procedures for obtaining preliminary Court approval of the Settlement, notifying Class Members, obtaining final Court approval of the Settlement, Final Order, Dismissal, and processing and administering the settlement payments:

(a) The Parties will request preliminary approval of the Settlement from the Court, including the Notices to be sent to the Class Members.

(b) If preliminarily approved, prior and/or current employees who received, cashed or negotiated a settlement check in October 2019 have been determined to have received the settlement amounts to which they are entitled. These class members will be sent Notice (Exhibit B attached to the Memo in Support of Settlement), which states that the parties have reached a settlement and that records indicate that they received, cashed or negotiated a settlement check and are hereby deemed to have opted-in to the Collective or Class action, and that they are considered to have been fully paid all settlement funds to which they are entitled. Such Notice shall provide the opportunity for them to object to the settlement. CCI shall be solely responsible for the preparing, printing and mailing of the Notice by First Class regular US mail. Any Notice that is returned as undeliverable shall be skip traced by a 3rd party vendor, with a new Notice being sent by CCI within five days of the return of the original Notice.

(c) If preliminarily approved, prior and/or current employees who were sent, but did not cash or negotiate a settlement check in October 2019 will receive Notice (Exhibit C attached to the Memo in Support of Settlement), which states that the parties have reached a settlement, identifies the amount they will receive, and allows them the opportunity to object in a timely manner. CCI shall be solely responsible for the preparing, printing and mailing of the Notice by First Class regular US mail. Any Notice that is returned as undeliverable shall be skip traced by a 3rd party vendor, with a new Notice being sent by CCI within five days of the return of the original Notice.

(d) A Final Settlement approval hearing will be conducted. Class members wishing to object to the settlement shall provide written notice of their intention to appear at the Final Settlement Hearing and object, together with copies of all papers and briefs proposed to be considered by the Court at the Final Settlement Hearing. A Class Member's notice of objection must be filed with the Court and served on all counsel for the parties 5 days prior to the date of the Final Settlement Hearing. The parties agree not to solicit or otherwise encourage Class Members to submit written objections to the Settlement, or appeal from the Court's Final Judgment. At the Final Settlement hearing, the parties shall present the Final Judgment to the Court for its approval and entry.

(e) If a Final Judgment is entered by the Court, the parties shall wait for the appeal period to run.

(f) Once the appeal period has run, CCI shall,

- (i) within 3 business days, send the settlement checks to those Class Members identified in section (c) above. Those settlement checks shall be negotiable for a period of 60 days. Any check that is returned as undeliverable will require a skip trace to be done by a third party, and the check to be resent within five business days of the return of the check.
- (ii) provide payment to Class Representative, Dorinda Thompson, payment of \$7,000 for her class representative fee in the form of a cashier's check;
- (iii) provide payment in the amount of \$43,000 for attorney fees and costs, in the form of a cashier's check made payable to Winston & Cashatt, Lawyers. The

remainder of the attorney fees shall be paid in monthly installments of \$1,000.00, to be paid no later than the 1st day of every month following the payment of the initial \$43,000.

(g) CCI shall keep Class Counsel apprised of all distributions. Upon completion of administration of the Settlement, CCI shall provide a written report and certification of such completion to Class Counsel and to the Court. The parties will cooperate in entering into a Dismissal of the case.

6. Nullification of Settlement Agreement. In the event (i) the Court does not enter the Preliminary Order, (ii) the Court does not finally approve the Settlement, (iii) the Court does not enter a Final Judgment which becomes final as a result of the occurrence of the Effective Date, or (iv) the Settlement does not become final for any other reason, this Settlement Agreement shall be null and void and any order or judgment entered by the Court in furtherance of this Settlement shall be treated as void *ab initio* and subject to the provision of ER 408.

In such a case, the Parties and any funds to be awarded under this Settlement shall be immediately returned to CCI and the parties returned to their respective statuses as of the date and time immediately prior to the execution of this Agreement, and the Parties shall proceed in all respects as if this Settlement Agreement had not been executed. In the event an appeal is filed from the Superior Court's Final Judgment, or any other appellate review is sought prior to the Effective Date, administration of the Settlement shall be stayed pending final resolution of the appeal or other appellate review.

7. General Damages. The Settlement Award payments shall be paid as wages through the usual payroll process, and will have all applicable deductions and taxes paid, and shall be reported on an IRS form W2 which will be provided to each class member by CCI.

8. Hold Harmless. No person shall have any claim against the Named Plaintiff, Plaintiffs, the Class, Class Counsel, or CCI based on distributions and payments made in accordance with this Agreement.

9. Residue. Should there be any residue of the Settlement Award (for example because some Class Members cannot be located or fail to timely cash their checks), then the Parties agree the CCI shall remit the payment to the Idaho Department of Labor as unclaimed funds.

10. Incentive Award. Both parties will request the court allow an award ("Incentive Award") to the Named Plaintiff for her time and services acting as Class Representative during this litigation, in the amount of \$7,000.00.

11. Fee Award. As part of the Preliminary Approval of the Settlement, Winston & Cashatt ("Class Counsel") will apply to the Court for an award of attorneys' fees and costs ("Fees Award") in the amount of \$58,000.00. CCI agrees and stipulates that the Fee Award is fair and reasonable for the nature and quality of the work performed by Winston & Cashatt on behalf of

the Class over the course of a year of litigation, and further agrees not to oppose Class Counsel's application for these fees.

12. Interest on Late Payments. If CCI fails to pay any amounts due under this Agreement within the times allowed, then CCI will be obligated to pay 12% interest on the past due amounts, running from the due date(s) for the past due amounts, in addition to any other remedies available to Plaintiffs to enforce the terms of the Settlement Agreement.

13. Tax Responsibility. Each Class Member shall be solely responsible for the payment of any additional federal, state, and/or local taxes on the payment he or she receives, and shall defend, hold harmless, and indemnify CCI, the Named Plaintiffs, and Class Counsel from any claims arising from his or her receipt of any settlement payments. CCI, the Named Plaintiffs, and Class Counsel make no representations to the Class as to the taxability of any portions of the Settlement Award, and the Parties agree that CCI, the Named Plaintiffs, and Class Counsel have made no such representations.

14. No Admission by the Released Parties. CCI and the Released Parties deny any and all claims alleged in the Collective and Class Action and deny any wrongdoing whatsoever. This Agreement is not a concession or admission, and shall not be used against CCI or any of the Released Parties as an admission or indication with respect to any claim or any fault, concession, or omission by CCI or any of the Released Parties. Whether or not the Settlement

is finally approved, neither the Settlement, nor any document, statement, proceeding, or conduct related to this Agreement, nor any reports or accounts thereof, shall in any event be:

- (a) Construed as offered or admitted in evidence as, received, or deemed to be evidence for any purpose adverse to the Released Parties, including, but not limited to, evidence of a presumption, concession, indication, or admission by any of the Released Parties of any liability, fault, wrongdoing, omission, concession, or damages; or,
- (b) Disclosed, referred to, or offered or received in evidence against any of the Released Parties in any further proceeding in this Collective and Class Action, or any other civil, criminal, or administration action or proceeding except for purposes of settling this Collective and Class Action pursuant to this Agreement.

15. Headings. The descriptive headings of any paragraphs or sections of this Agreement are inserted for convenience of reference only and do not constitute a part of this Agreement.

16. Interim Stay of Proceedings. The Parties agree to hold all proceedings in the Collective and Class Action, except such proceedings necessary to implement and complete the Settlement, in abeyance pending the Settlement Hearing to be conducted by the Superior Court.

17. Amendment or Modification. This Agreement may be amended or modified only by a written instrument signed by counsel for all Parties or their successors-in-interest, and approved

by the Court.

18. Entire Agreement. This Agreement and any attached Exhibits constitute the entire agreement among these Parties, and no oral or written representations, warranties or inducements have been made to any Party concerning this Agreement or its Exhibits other than the representations, warranties and covenants contained and memorialized in such documents.

19. Authorization to Enter Into Settlement Agreement. Counsel for all Parties warrant and represent they are expressly authorized by the Parties whom they represent to negotiate this Agreement and to take all appropriate action required or permitted to be taken by such Parties pursuant to this Agreement to effectuate its terms, and to execute any other documents required to effectuate the terms of this Agreement. The Parties and their counsel will cooperate with each other and use their best efforts to effect the implementation of the Settlement. In the event the Parties are unable to reach agreement on the form or content of any document needed to implement the Settlement, or on any supplemental provisions that may become necessary to effectuate the terms of this Settlement, the Parties may seek the assistance of the Court to resolve such disagreement.

20. Binding on Successors and Assigns. This Agreement shall be binding upon, and inure to the benefit of, the successors or assigns of the Parties hereto, as previously defined.

21. Governing Law. All terms of this Agreement and the Exhibits hereto shall be governed by and interpreted according to the laws of the State of Idaho.

22. Counterparts. This Agreement may be executed in one or more counterparts. All executed counterparts and each of them shall be deemed to be one and the same instrument provided that counsel for the Parties to this Agreement shall exchange among themselves original signed counterparts.

23. This Settlement is Fair, Adequate and Reasonable. The Parties believe this Settlement is a fair, adequate and reasonable settlement of this Collective and Class Action and have arrived at this Settlement in arms-length negotiations, taking into account all relevant factors, present and potential.

24. Jurisdiction of the Court. The Court shall retain jurisdiction with respect to the interpretation, implementation and enforcement of the terms of this Agreement and all orders and judgments entered in connection therewith, and the parties and their counsel hereto submit to the jurisdiction of the Court for purposes of interpreting, implementing and enforcing the settlement embodied in this Agreement and all orders and judgments entered in connection therewith.

25. Cooperation and Drafting. Each of the parties has cooperated in the drafting and preparation of this Agreement. Hence, in any construction made to this Agreement, the same shall not be construed against any of the parties.

26. Invalidity of Any Provision. Before declaring any provision of this Agreement invalid, the Court shall first attempt to construe the provisions valid to the fullest extent possible consistent with applicable precedents so as to make all provisions of this Agreement valid and enforceable.

Date: June 19, 2020

/s/ Kammi Mencke Smith
Kammi Mencke Smith, ISB # 7834
Attorney for Plaintiffs
WINSTON & CASHATT, LAWYERS

Date: June 19, 2020

/s/ Peter Erbland
Peter Erbland, ISB # 2456
Attorney for Defendant
LAKE CITY LAW

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 19th day of June, 2020, the foregoing was electronically filed with the Clerk of the Court using the CM/ECF system, which sent a Notice of Electronic Filing to the following person:

Peter C. Erbland
perbland@lclattorneys.com

/s/ Abigail Evans
Paralegal