

ZAKAY LAW GROUP, APLC
Shani O. Zakay (State Bar #277924)
Jackland K. Hom (State Bar #327243)
Julieann Alvarado (State Bar #334727)
Rachel N. Newman (State Bar #350826)
5440 Morehouse Drive, Suite 3600
San Diego, CA 92121
Telephone: (619) 255-9047
Facsimile: (858) 404-9203
shani@zakaylaw.com
jackland@zakaylaw.com
julieann@zakaylaw.com
rachel@zakaylaw.com

JCL LAW FIRM, APC
Jean-Claude Lapuyade (State Bar #248676)
5440 Morehouse Drive, Suite 3600
San Diego, CA 92121
Telephone: (619) 599-8292
Facsimile: (619) 599-8291
jlapuyade@jcl-lawfirm.com

Attorneys for Plaintiff

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2/9/2024

CLERK OF THE SUPERIOR COURT
SAN MATEO COUNTY

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SAN MATEO

EMILY TOLOSA, on behalf of herself and on
behalf of all persons similarly situated,

Plaintiffs,

v.

KENSINGTON REDWOOD CITY LLC, a
Virginia Limited Liability Company;
KENSINGTON SENIOR LIVING, LLC, a
Virginia Limited Liability Company; and
DOES 1-50, Inclusive,

Defendants.

Case No. 21-CIV-03030

~~PROPOSED~~ ^{SG} **ORDER GRANTING FINAL
APPROVAL**

Date: February 8, 2024
Time: 9:00 a.m.
Dept.: 3
Judge: Hon. Susan Greenberg

1 Plaintiff's motion for an order finally approving the Stipulation of Settlement of Class and
2 PAGA Action Claims and Release of Claims ("Agreement") and Motion for Attorneys' Fees,
3 Attorneys' Expenses, and Service Award duly came on for hearing on February 8, 2024 before the
4 above-entitled Court. Zakay Law Group, APLC and the JCL Law Firm, APC appeared on behalf
5 of Plaintiff EMILY TOLOSA ("Plaintiff"). Hanson Bridgett LLP appeared on behalf of Defendant
6 KENSINGTON SENIOR LIVING, LLC (hereinafter "Defendant").

7 **I.**

8 **FINDINGS**

9 Based on the oral and written argument and evidence presented in connection with the
10 motion, the Court makes the following findings:

11 1. All capitalized terms used herein shall have the same meaning as defined in
12 the Agreement.

13 2. This Court has jurisdiction over the subject matter of this litigation pending
14 in the California Superior Court for the County of San Mateo ("Court"), Case No. 21-CV-03030,
15 entitled *Tolosa v. Kensington Redwood City LLC, et al.*, and over all Parties to this litigation,
16 including the Class.

17 **Preliminary Approval of the Settlement**

18 3. On October 2, 2023, the Court granted preliminary approval of a class-wide
19 settlement. At this same time, the court approved certification of a provisional settlement class for
20 settlement purposes only. The Court confirms this Order and finally approves the settlement and
21 the certification of the Class.

22 **Notice to the Class**

23 4. In compliance with the Preliminary Approval Order, the Notice Packet was
24 mailed by first class mail to the Class Members at their last known addresses on October 20, 2023.
25 Mailing of the Notice Packet to their last known addresses was the best notice practicable under the
26 circumstances and was reasonably calculated to communicate actual notice of the litigation and the
27 proposed settlement to the members of the Class Members. The Court finds that the Notice Packet
28 provided fully satisfies the requirements of California Rules of Court, rule 3.769.

1 5. The Response Deadline for opting out or objecting was December 19, 2023.
2 There was an adequate interval between notice and deadline to permit Class Members to choose
3 what to do and act on their decision. One Class Members objected. One Class Member requested
4 exclusion.

5 6. The name of the Class Member who opted out is Falealeaa Matakibau.
6 Approximately 99.68% of the Class Members will be participating in the Settlement and will be
7 sent Individual Settlement Payments.

8 **Fairness Of the Settlement**

9 7. The Agreement provides for a Gross Settlement Amount of \$930,000.00.
10 The Agreement is entitled to a presumption of fairness. (*Dunk v. Ford Motor Co.* (1996) 48
11 Cal.App.4th 1794, 1801.)

12 a. The settlement was reached through arms-length bargaining between
13 the Parties. There is no evidence of any collusion between the Parties in reaching the proposed
14 settlement.

15 b. The Parties' investigation and discovery have been sufficient to allow
16 the Court and counsel to act intelligently.

17 c. Counsel for all parties are experienced in similar employment class
18 action litigation and have previously settled similar class claims on behalf of employees claiming
19 compensation. All counsel recommended approval of the Settlement.

20 d. The percentage of objectors and requests for exclusion is small. One
21 objection was received. One request for exclusion was received.

22 e. The participation rate is high. Approximately 99.68% of Class
23 Members will be participating in the Settlement and will be sent settlement payments.

24 8. The consideration to be given to the Class Members under the terms of the
25 Agreement is fair, reasonable, and adequate considering the strengths and weaknesses of the claims
26 asserted in this Action and is fair, reasonable, and adequate compensation for the release of the
27 Released Class Claims and Released PAGA Claims, given the uncertainties and risks of the
28 litigation and the delays which would ensue from continued prosecution of the Action.

1 9. The Agreement is finally approved as fair, adequate, and reasonable and in
2 the best interests of the Settlement Class Members.

3 **Attorneys' Fees and Attorneys' Expenses**

4 10. The Agreement provides for an award of Attorneys' Fees and Attorneys'
5 Expenses in the amount of up to Three Hundred Forty Thousand Dollars and Zero Cents
6 (\$340,000.00). Subject to Court approval, the Attorneys' Fees and Attorneys' Expenses consist of
7 attorneys' fees equal to one-third (1/3) of the Gross Settlement Amount, or Three Hundred Ten
8 Thousand Dollars and Zero Cents (\$310,000.00) and reimbursement of costs and expenses in the
9 amount of Eighteen Thousand Forty-Five Dollars and Ninety-One Cents (\$18,045.91).

10 11. An award of Attorneys' Fees and Attorneys' Expenses in the amount of Three
11 Hundred Twenty-Eight Thousand Forty-Five Dollars and Ninety-One Cents (\$328,045.91)
12 comprised of attorneys' fees in the amount of Three Hundred Ten Thousand Dollars and Zero Cents
13 (\$310,000.00) and reimbursement of actually incurred costs and expenses in the amount of Eighteen
14 Thousand Forty-Five Dollars and Ninety-One Cents (\$18,045.91) is reasonable in light of the
15 contingent nature of Class Counsel's fee, the hours worked by Class Counsel, and the results
16 achieved by Class Counsel. The requested attorneys' fee award represents 1/3 of the common fund,
17 which is reasonable and at the low end of the range for fee awards in common fund cases and is
18 supported by Class Counsel's lodestar.

19 **Service Awards**

20 12. The Agreement provides for a Service Award of Ten Thousand Dollars and
21 Zero Cents (\$10,000.00) to Plaintiff, subject to the Court's approval. The Court finds that the amount
22 of Five Thousand Dollars and Zero Cents (\$5,000.00) to Plaintiff is reasonable considering the risks
23 and burdens undertaken by the Plaintiff in this class action litigation.

24 **Claims Administration Expenses**

25 13. The Agreement provides for Claims Administration Expenses to be paid in
26 an amount not to exceed \$6,500.00. The Declaration of the Settlement Administrator provides that
27 the actual claims administration expenses were \$6,500.00. The amount of this payment is
28 reasonable in light of the work performed by the Settlement Administrator.

II.
ORDERS

Based on the foregoing findings, and good cause appearing, IT IS HEREBY ORDERED:

1. The Class is certified for the purposes of settlement only. The Settlement Class is hereby defined to include all non-exempt employees who are or previously were employed by Kensington Senior Living, LLC, and who performed work in California (“Class”) from June 2, 2017 through May 1, 2023 (“Class Period”).

2. Every person in the Class who did not submit and timely and validly Request for Exclusion is a Settlement Class Member. The Court finds, based on the declaration of the Settlement Administrator, that one Class Member opted-out of the Settlement. The Class Member who opted out is Falealeaa Matakibau.

3. The Agreement is hereby approved as fair, reasonable, adequate, and in the best interest of the Class. The Parties are ordered to effectuate the Settlement in accordance with this Order and the terms of the Agreement.

4. Class Counsel are awarded Three Hundred Twenty-Eight Thousand Forty-Five Dollars and Ninety-One Cents (\$328,045.91) for the Attorneys’ Fees and Attorneys’ Expenses comprised of one-third of the Gross Settlement Amount, or Three Hundred Ten Thousand Dollars and Zero Cents and litigation expenses in the amount of Eighteen Thousand Forty-Five Dollars and Ninety-One Cents (\$18,045.91). Class Counsel shall not seek or obtain any other compensation or reimbursement from Defendant, Plaintiff, or members of the Class.

5. The payment of the Service Award to Plaintiff in the amount of \$5,000.00 is approved.

6. The payment of \$6,500.00 to the Settlement Administrator for Claims Administration Expenses is approved.

7. The PAGA Payment of \$50,000.00 is hereby approved as fair, reasonable, adequate and adequately protects the interests of the public and the LWDA. Further, the Court finds that Plaintiff and Class Counsel negotiated the PAGA Payment at arms-length, absent of any fraud or collusion.

1 8. Final Judgment is hereby entered in this action. The Final Judgment shall
2 bind each Settlement Class Member. The Final Judgment shall operate as a full release and discharge
3 of Defendant from any and all claims alleged in the Operative Complaint, or which could have been
4 alleged in the Operative Complaint based on the facts alleged, which occurred during the Class
5 Period, and expressly excluding all other claims, including claims for vested benefits, wrongful
6 termination, unemployment insurance, disability, social security, workers' compensation, and class
7 claims outside of the Class Period. To the extent employees are required to "opt-in" to have this
8 release be deemed effective under federal law, the acceptance and negotiation of any settlement
9 check shall be deemed effective for that purpose.

10 9. Final Judgment shall also bind Plaintiff, acting on behalf of the State of
11 California and all PAGA Class Members, pursuant to the California Labor Code Private Attorneys'
12 General Act ("PAGA") and shall release Defendant from any and all PAGA claims for PAGA civil
13 penalties alleged in the Operative Complaint and Plaintiff's PAGA Notice to the LWDA, or that
14 could have reasonably been alleged in the Operative Complaint or Plaintiff's PAGA Notice based
15 on the facts alleged, which occurred during the PAGA Period, and expressly excluding all other
16 claims, including claims for vested benefits, wrongful termination, unemployment insurance,
17 disability, social security, workers' compensation, and PAGA claims outside of the PAGA Period.

18 10. The term "PAGA Class Members" is hereby defined all non-exempt
19 employees who are or previously were employed by Kensington Senior Living, LLC, and who
20 performed work in California during the PAGA Period. The PAGA Period means the period of
21 March 29, 2020 through May 1, 2023.

22 11. The Agreement is not an admission by Defendant, nor is this Final Approval
23 Order and Judgment, a finding of the validity of any claims in the Action or of any wrongdoing by
24 Defendant. Neither this Final Approval Order, the Settlement, nor any document referred to herein,
25 nor any action taken to carry out the Settlement is, may be construed as, or may be used as an
26 admission by or against Defendant of any fault, wrongdoing, or liability whatsoever. The entering
27 into or carrying out of the Agreement, and any negotiations or proceedings related thereto, shall not
28 in any event be construed as, or deemed to be evidence of, an admission or concession with regard

1 to the denials or defenses by Defendant and shall not be offered in evidence in any action or
2 proceeding against Defendant in any court, administrative agency or other tribunal for any purpose
3 as an admission whatsoever other than to enforce the provisions of this Final Approval Order and
4 Judgment, the Settlement, or any related agreement or release. Notwithstanding these restrictions,
5 any of the Parties may file in the Action or in any other proceeding this Final Approval Order and
6 Judgment, the Agreement, or any other papers and records on file in the Action as evidence of the
7 Settlement to support a defense of res judicata, collateral estoppel, release, or other theory of claim
8 or issue preclusion or similar defense as to the claims being released by the Settlement.

9 12. Notice of entry of this Final Approval Order and Judgment shall be given to
10 Class Counsel on behalf of Plaintiff and all Class Members. It shall not be necessary to send notice
11 of entry of this Final Approval Order and Judgment to individual Class Members and the Final
12 Approval Order and Judgment shall be posted on Settlement Administrator's website as indicated
13 in the Notice Packet.

14 13. After entry of Final Judgment, the Court shall retain jurisdiction to construe,
15 interpret, implement, and enforce the Settlement, to hear and resolve any contested challenge to a
16 claim for settlement benefits, and to supervise and adjudicate any dispute arising from or in
17 connection with the distribution of settlement benefits.

18 14. If the Settlement does not become final and effective in accordance with the
19 terms of the Settlement, resulting in the return and/or retention of the Gross Settlement Amount to
20 Defendant consistent with the terms of the Settlement, then this Final Approval Order and Judgment,
21 and all orders entered in connection herewith shall be rendered null and void and shall be vacated.

22 **IT IS SO ORDERED.**

23
24 DATED: 02/09/2024, 2024

Electronically
SIGNED
By /s/ **Greenberg, Susan**

25
26
27 Hon. Susan Greenberg
Judge, Superior Court for the State of California,
28 County of San Mateo