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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN BERNARDINO**

NEIL MODINO, RITA ORTIZ, and VALERIE
J. FOWLER, individually, and on behalf of all
others similarly situated,

Plaintiff,

v.

LAUREL AVENUE, LLC DBA TERRACINA
POST ACUTE, a Delaware limited liability
company, and DOES 1 through 10, inclusive,

Defendants.

Case No.: CIVDS2009538
[Consolidated with Case Nos.
CIVDS2023687 and CIVDS2022866]

CLASS ACTION

[Assigned for all purposes to: Hon. Jessica Morgan, Dept. S26]

**[PROPOSED] ORDER GRANTING
PLAINTIFFS' MOTION FOR
PRELIMINARY APPROVAL OF CLASS
ACTION SETTLEMENT**

*[Filed with Notice of Motion and Motion,
Memorandum of Points and Authorities, the
Declaration of Justin F. Marquez,
Declaration of Neil Modino, Declaration of
Rita Ortiz, and Declaration of Valerie J.
Fowler]*

PRELIMINARY APPROVAL HEARING

Date: April 2, 2024
Time: 8:30 a.m.
Dept: S-26

Complaint filed: May 29, 2020
FAC filed: June 15, 2020
SAC filed: February 7, 2024
Trial date: Not set

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10 *Attorneys for Plaintiff Valerie J. Fowler*

1 The Court has before it Plaintiffs Neil Modino, Rita Ortiz, and Valerie J. Fowler
2 (collectively, “Plaintiffs”) Motion for Preliminary Approval of Class Action Settlement.
3 Having reviewed the Motion for Preliminary Approval of Class Action Settlement, the
4 Declaration of Justin F. Marquez, the Class Action and PAGA Settlement Agreement and Class
5 Notice (which is referred to here as the “Settlement Agreement”), and good cause appearing,
6 the Court hereby finds and orders as follows:

7 1. The Court finds on a preliminary basis that the Settlement Agreement appears to
8 be fair, adequate, and reasonable and therefore meets the requirements for preliminary approval.
9 The Court grants preliminary approval of the Settlement and the Settlement Class based upon
10 the terms set forth in the Settlement Agreement between Plaintiffs Neil Modino, Rita Ortiz, and
11 Valerie J. Fowler and Defendant Laurel Avenue, LLC DBA Terracina Post Acute
12 (“Defendant”), attached to the Declaration of Justin F. Marquez in Support of Plaintiff’s Motion
13 for Preliminary Approval of Class Action Settlement as Exhibit 1.

14 2. The Settlement falls within the range of reasonableness of a settlement which
15 could ultimately be given final approval by this Court, and appears to be presumptively valid,
16 subject only to any objections that may be raised at the Final Approval Hearing and final
17 approval by this Court. The Court notes that Defendant have agreed to create a common fund
18 of \$3,000,000.00 to cover (a) settlement payments to class members who do not validly opt out;
19 (b) a \$150,000.00 payment to the State of California, Labor & Workforce Development Agency
20 for its share of the settlement of claims for penalties under the Private Attorneys General Act,
21 with 75% of which (\$112,500.00) will be paid to the LWDA and 25% (\$37,500.00) will be paid
22 to eligible Aggrieved Employees; (c) Class Representative service payment of up to \$10,000.00
23 for each named Plaintiff, Neil Modino, Rita Ortiz, and Valerie J. Fowler; (d) Class Counsel’s
24 attorneys’ fees, not to exceed 33 1/3% of the Gross Settlement Amount (\$1,000,000.00), and up
25 to \$40,000.00 in costs for actual litigation expenses incurred by Class Counsel; and (e)
26 Settlement Administration Costs of up to \$25,000.00.

27 3. The Court preliminarily finds that the terms of the Settlement appear to be within
28 the range of possible approval, pursuant to California Code of Civil Procedure § 382 and

1 applicable law. The Court finds on a preliminary basis that: (1) the settlement amount is fair
2 and reasonable to the class members when balanced against the probable outcome of further
3 litigation relating to class certification, liability and damages issues, and potential appeals; (2)
4 significant informal discovery, investigation, research, and litigation have been conducted such
5 that counsel for the parties at this time are able to reasonably evaluate their respective positions;
6 (3) settlement at this time will avoid substantial costs, delay, and risks that would be presented
7 by the further prosecution of the litigation; and (4) the proposed settlement has been reached as
8 the result of intensive, serious, and non-collusive negotiations between the Parties with the
9 assistance of a well-respected class action mediator. Accordingly, the Court preliminarily finds
10 that the Settlement Agreement was entered into in good faith.

11 4. A final fairness hearing on the question of whether the proposed settlement,
12 attorneys' fees and costs to Class Counsel, payment to the State of California, Labor &
13 Workforce Development Agency for its share of the settlement of claims for penalties under the
14 Private Attorneys General Act, and the class representative's enhancement award should be
15 finally approved as fair, reasonable and adequate as to the members of the class is hereby set in
16 accordance with the Implementation Schedule set forth below.

17 5. The Court provisionally certifies for settlement purposes only the following class
18 (the "Settlement Class"): "all persons who worked for Defendant in California as an hourly-
19 paid or non-exempt employee at any time during the relevant Class Period."

20 6. "Class Period" means the period from May 29, 2016 to July 31, 2023.

21 7. The Court finds, for settlement purposes only, that the Settlement Class meets the
22 requirements for certification under California Code of Civil Procedure § 382 in that: (1) the
23 Settlement Class Members are so numerous that joinder is impractical; (2) there are questions
24 of law and fact that are common, or of general interest, to all Settlement Class Members, which
25 predominate over individual issues; (3) Plaintiffs' claims are typical of the claims of the
26 Settlement Class Members; (4) Plaintiffs and Class Counsel will fairly and adequately protect
27 the interests of the Settlement Class Members; and (5) a class action is superior to other
28 available methods for the fair and efficient adjudication of the controversy.

8. The Court appoints as Class Representatives, for settlement purposes only, Plaintiffs Neil Modino, Rita Ortiz, and Valerie J. Fowler. The Court further preliminarily approves Plaintiff's ability to request an incentive award up to \$10,000.00 to each named Plaintiff.

9. The Court appoints, for settlement purposes only, Justin F. Marquez and Arsiné Grigoryan of Wilshire Law Firm, PLC and David Bibiyan and Vedang J. Patel of Bibiyan Law Group, P.C., as Class Counsel. The Court further preliminarily approves Class Counsel's ability to request attorneys' fees of up to one-third of the Total Settlement Amount (\$1,000,000.00), and costs not to exceed \$40,000.00.

10. The Court appoints ILYM Group, Inc. as the Settlement Administrator with reasonable administration costs estimated not to exceed \$25,000.00.

11. The Court approves, as to form and content the Class Notice, attached to the Settlement Agreement. The Court finds on a preliminary basis that plan for distribution of the Notice to Settlement Class Members satisfies due process, provides the best notice practicable under the circumstances, and shall constitute due and sufficient notice to all persons entitled thereto.

12. The parties are ordered to carry out the Settlement according to the terms of the Settlement Agreement.

13. Any class member who does not timely and validly request exclusion from the settlement may object to the Settlement Agreement.

14. The Court orders the following Implementation Schedule:

Defendants to provide Class List to the Settlement Administrator	14 days after notice of entry of the Court's order granting Motion for Preliminary Approval
Settlement Administrator to mail the Notice Packets	14 days after receipt of the Class List from the Defendant

Response Deadline	60 days after Notice is mailed out by the Settlement Administrator
Deadline to Provide Written Objections, if any	60 days after Notice is mailed out by the Settlement Administrator
Deadline to file Motion for Final Approval, Request for Attorney's Fees and Costs, and Service Award to Plaintiff	16 court days before hearing on Motion for Final Approval, which is _____;
Final Approval Hearing	_____ at _____ a.m./p.m., or first available date thereafter, in Department S-26. The hearing may be continued to another date without further notice to the Class Members.

15. The Court further ORDERS that, pending further order of this Court, all proceedings in this lawsuit, except those contemplated herein and in the settlement, are stayed.

IT IS SO ORDERED.

DATE:

Hon. Jessica Morgan
San Bernardino County Superior Court

PROOF OF SERVICE

Modina v. Laurel Avenue, LLC dba Terracina Post Acute, et al.
CIVDS2009538

STATE OF CALIFORNIA)
) ss
COUNTY OF LOS ANGELES)

I, Dariane Rose, am employed in the county of Los Angeles, State of California. I am over the age of 18 and not a party to this action. My business address is 3055 Wilshire Blvd., 12th Fl., Los Angeles, California 90010. My electronic service address is drose@wilshirelawfirm.com.

On March 8, 2024, I served the foregoing **DECLARATION OF PLAINTIFF RITA ORTIZ**, on the interested parties by placing a true copy thereof, enclosed in a sealed envelope by following one of the methods of service as follows:

Shane Criqui (SBN 259045)
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Kim Kirkpatrick
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CARLSON & RAUTH**
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Attorneys for Defendants

(X) **BY E-MAIL:** I hereby certify that this document was served from Los Angeles, California, by e-mail delivery on the parties listed herein at their most recent known email address or e-mail of record in this action.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed this **March 8, 2024**, at Los Angeles, California.



Dariane Rose