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13 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
14 **COUNTY OF MONTEREY**

15 RATI GANDHALE, an individual, on behalf
16 of herself and on behalf of all persons
17 similarly situated,

18 Plaintiffs,

19 v.

20 SELECT REHABILITATION LLC, a Limited
21 Liability Company and DOES 1 through 50,
22 Inclusive,

23 Defendants.

CASE NO.: **20CV002240**
(Consolidated with Case No. 21CV000740)

**[PROPOSED] FINAL APPROVAL
ORDER AND JUDGMENT**

Hearing Date: October 28, 2022
Hearing Time: 8:30 a.m.

Judge: Hon. Carrie M. Panetta
Dept.: 14

Action Filed: August 25, 2020
Trial Date: None Set

1 The motion of Plaintiff Rati Gandhale (“Plaintiff”) for an order finally approving the Class
2 Action Settlement Agreement (“Agreement”) with Defendant Select Rehabilitation, LLC
3 (“Defendant”), and the motion for attorneys’ fees and costs, service payments, and the fees and
4 expenses of the Settlement Administrator, duly came on for hearing on October 28, 2022 before
5 the Honorable Carrie M. Panetta.

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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 terms used herein shall have the same meaning as defined in the Agreement.
- 12 2. This Court has jurisdiction over the subject matter of this litigation pending before
13 the California Superior Court for the County of Monterey, and over all Parties to this litigation,
14 including the Class.
- 15 3. Based on a review of the papers submitted by Plaintiff and a review of the
16 applicable law, the Court finds that the Gross Settlement Amount of One Million Eight Hundred
17 Fifty Thousand Dollars (\$1,850,000) and the terms set forth in the Agreement are fair, reasonable,
18 and adequate.
- 19 4. The Court further finds that the Settlement was the result of arm’s length
20 negotiations conducted after Class Counsel had adequately investigated the claims and became
21 familiar with the strengths and weaknesses of those claims. In particular, the amount the
22 Settlement, the significant risks relating to certification, liability, and damages issues, and the
23 assistance of an experienced mediator in the settlement process, among other factors, support the
24 Court’s conclusion that the Settlement is fair, reasonable, and adequate.

25 **Preliminary Approval of the Settlement**

- 26 5. On June 10, 2022, the Court granted preliminary approval of the Settlement. At
27 this same time, the Court approved conditional certification of the Class for settlement purposes

1 only.

2 **Notice to the Class**

3 6. In compliance with the Preliminary Approval Order, the Class Notice was mailed
4 by first class mail to members of the Class at their last known addresses on or about July 22, 2022.
5 Mailing of the Class Notice to their last known addresses was the best notice option under the
6 circumstances and was reasonably calculated to communicate actual notice of the litigation and
7 the proposed settlement to the Class. The Class Notice given to the Class Members fully and
8 accurately informed the Class Members of all material elements of the proposed Settlement and of
9 their opportunity to object to or comment thereon or to seek exclusion from the Settlement; was
10 valid, due, and sufficient notice to all Class Members; and complied fully with the laws of the
11 State of California, the United States Constitution, due process and other applicable law. The
12 Class Notice fairly and adequately described the Settlement and provided Class Members adequate
13 instructions and a variety of means to obtain additional information.

14 7. The deadline for opting out of the Class or submitting written objections to the
15 Settlement was September 6, 2022, which deadline was extended fifteen (15) days for re-mailed
16 Class Notices. There was an adequate interval between notice and the deadline to permit Class
17 Members to choose what to do and act on their decision. A full opportunity has been afforded to
18 the Class Members to participate in this hearing, and all Class Members and other persons wishing
19 to be heard have been heard. Class Members also have had a full and fair opportunity to exclude
20 themselves from the proposed Settlement and Class. Accordingly, the Court determines that all
21 Class Members who did not timely and properly submit a request for exclusion are bound by the
22 Settlement and this Final Approval Order and Judgment.

23 **Fairness Of Settlement**

24 8. The Agreement is entitled to a presumption of fairness. *Dunk v. Ford Motor Co.*
25 48 Cal.App.4th 1794, 1801 (1996).

26 a. The settlement was reached through arm's-length bargaining between the
27 parties during an all-day mediation before David A. Rotman, a respected and experienced
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1 mediator of wage and hour class actions. There has been no collusion between the parties in
2 reaching the proposed settlement.

3 b. Plaintiff's investigation and discovery have been sufficient to allow the
4 Court and counsel to act intelligently.

5 c. Counsel for both parties are experienced in similar employment class action
6 litigation. All counsel recommended approval of the Agreement.

7 d. The percentage of objectors and requests for exclusion is small. No
8 objections were received. One (1) request for exclusion was received.

9 e. The participation rate was high. 1,700 Class Members will be mailed a
10 settlement payment, representing 99.9% of the overall Class.

11 9. The consideration to be given to the Class Members under the terms of the
12 Agreement is fair, reasonable and adequate considering the strengths and weaknesses of the claims
13 asserted in this action and is fair, reasonable and adequate compensation for the release of Class
14 Members' claims, given the uncertainties and significant risks of the litigation and the delays
15 which would ensue from continued prosecution of the action.

16 10. The Agreement is approved as fair, adequate and reasonable and in the best
17 interests of the Class Members.

18 **Attorneys' Fees and Costs**

19 11. An award of \$616,666 for attorneys' fees, representing one-third (1/3) of the Gross
20 Settlement Amount, and \$20,480.70 for litigation costs and expenses, is reasonable, in light of the
21 contingent nature of Class Counsel's fee, the hours worked by Class Counsel, and the results
22 achieved by Class Counsel. The requested awards have been supported by Class Counsel's
23 lodestar and billing statement.

24 **Class Representative Service Payment**

25 12. The Agreement provides for a Class Representative Service Payment of not more
26 than \$10,000 to the Plaintiff, subject to the Court's approval. The Court finds that a Class
27 Representative Service Payment in the reduced amount of \$8,000 to the Plaintiff is reasonable in
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1 light of the risks and burdens undertaken by the Plaintiff in the litigation, for her time and effort in
2 bringing and prosecuting this matter on behalf of the Class, and for her execution of a general
3 release.

4 **Settlement Administration Expenses**

5 13. The Settlement Administrator shall calculate and administer the payment to be
6 made to the Class Members, transmit payment for attorneys' fees and costs to Class Counsel,
7 transmit the Class Representative Service Payment to the Plaintiff, distribute the PAGA Payment,
8 issue any required tax reporting forms, calculate withholdings and perform the other remaining
9 duties set forth in the Agreement. The Settlement Administrator has documented \$15,000 in fees
10 and expenses, and this amount is reasonable in light of the work performed by the Settlement
11 Administrator.

12 **PAGA Payment**

13 14. The Agreement provides for a PAGA Payment out of the Gross Settlement
14 Amount of \$40,000, which shall be allocated \$30,000 to the LWDA as the LWDA's 75% share of
15 the settlement of civil penalties paid pursuant to the PAGA and \$10,000 to be distributed to the
16 Aggrieved Employees based on a pro-rata basis in proportion to the number of pay periods each
17 Aggrieved Employee worked during the PAGA Period (June 18, 2019 to December 28, 2021).
18 "Aggrieved Employees" mean all individuals who are or previously were employed by Defendant
19 in California in one or more of the following job positions: Cluster Program Manager (OT);
20 Certified Occupational Therapy Assistant; Occupational Therapist; Program Assistant; Program
21 Director—OT; Program Director—PT; Program Manager; Program Manager Backup—COTA;
22 Program Manager Backup—OT; Program Manager Backup—PT; Program Manager Backup—
23 PTA; Program Manager Backup—Rehab Tech; Program Manager Backup—RT; Program
24 Manager Backup—SLP; Program Manager—COTA; Program Manager—OT; Program
25 Manager—PT; Program Manager—PTA; Program Manager—SLP; Physical Therapist; Physical
26 Therapist Assistant; Rehab Technician; Speech Language Pathology; Wellness Coordinator (the
27 "Covered Positions") during the PAGA Period. All Aggrieved Employees will be sent their share
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1 of the PAGA Payment and will be subject to the release of the Released PAGA Claims as set forth
2 below, whether or not they opt out of the Settlement.

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4 **II.**

5 **ORDERS**

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

7 1. The certification of the Class for the purposes of settlement is confirmed. The
8 Class is defined as follows:

9 All individuals who are or previously were employed by Defendant in California in
10 one or more of the Covered Positions during Class Period (August 25, 2016
11 through December 28, 2021). "Covered Positions" are the following job positions:
12 Cluster Program Manager (OT); Certified Occupational Therapy Assistant;
13 Occupational Therapist; Program Assistant; Program Director—OT; Program
14 Director—PT; Program Manager; Program Manager Backup—COTA; Program
15 Manager Backup—OT; Program Manager Backup—PT; Program Manager
16 Backup—PTA; Program Manager Backup—Rehab Tech; Program Manager
17 Backup—RT; Program Manager Backup—SLP; Program Manager—COTA;
18 Program Manager—OT; Program Manager—PT; Program Manager—PTA;
19 Program Manager—SLP; Physical Therapist; Physical Therapist Assistant; Rehab
20 Technician; Speech Language Pathology; Wellness Coordinator.

21 2. All persons who meet the foregoing definition are members of the Class, except for
22 those individuals who filed a valid request for exclusion ("opt out") from the Class. The one (1)
23 Class Member who requested is Lisa Rubi.

24 3. The Agreement is hereby finally approved as fair, reasonable, adequate, and in the
25 best interest of the Class.

26 4. Class Counsel are awarded attorneys' fees in the amount of \$616,666 and costs in
27 the amount of \$20,480.70. Class Counsel shall not seek or obtain any other compensation or
28 reimbursement from Defendant, Plaintiff or members of the Class.

5. The payment of the Class Representative Service Payment in the amount of \$8,000
to the Plaintiff is approved.

6. The payment of \$15,000 to the Settlement Administrator for their fees and
expenses is approved.

1 7. The PAGA Payment of \$40,000 is approved and shall be allocated in accordance
2 with the Agreement.

3 8. The Agreement and this Settlement are not an admission by Defendant, nor is this
4 Final Approval Order and Judgment a finding, of the validity of any claims in the Action or of any
5 wrongdoing by Defendant or that this Action is appropriate for class treatment (other than for
6 settlement purposes). Neither this Final Approval Order and Judgment, the Agreement, nor any
7 document referred to herein, nor any action taken to carry out the Agreement is, may be construed
8 as, or may be used as an admission by or against Defendant of any fault, wrongdoing or liability
9 whatsoever. The entering into or carrying out of the Agreement, and any negotiations or
10 proceedings related thereto, shall not in any event be construed as, or deemed to be evidence of, an
11 admission or concession with regard to the denials or defenses by Defendant. Notwithstanding
12 these restrictions, Defendant may file in the Action or in any other proceeding this Final Approval
13 Order and Judgment, the Agreement, or any other papers and records on file in the Action as
14 evidence of the Settlement to support a defense of res judicata, collateral estoppel, release, or other
15 theory of claim or issue preclusion or similar defense as to the Released Class Claims and/or the
16 Released PAGA Claims.

17 9. Notice of entry of this Final Approval Order and Judgment shall be given to all
18 Parties by Class Counsel on behalf of Plaintiff and all Class Members. The Final Approval Order
19 and Judgment shall be posted on Class Counsel's website as set forth in the Class Notice to the
20 Class. It shall not be necessary to send notice of entry of this Final Approval Order and Judgment
21 to individual Class Members.

22 10. If the Agreement does not become final and effective in accordance with the terms
23 of the Agreement, then this Final Approval Order and Judgment, and all orders entered in
24 connection herewith, shall be rendered null and void and shall be vacated, and the Parties shall
25 revert to their respective positions as of before entering into the Agreement, and expressly reserve
26 their respective rights regarding the prosecution and defense of this Action, including all available
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1 defenses and affirmative defenses, and arguments that any claim in the Action could not be
2 certified as a class action and/or managed as a representative action.

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4 **IT IS HEREBY ORDERED, ADJUDICATED AND DECREED THAT:**

5 1. Except as set forth in the Agreement and this Final Approval Order and Judgment,
6 Plaintiffs, and all members of the Class, shall take nothing in the Action.

7 2. Pursuant to California Code of Civil Procedure section 664.6, the Court shall retain
8 jurisdiction to construe, interpret, implement and enforce the Agreement, to hear and resolve any
9 contested challenge to a claim for settlement benefits, and to supervise and adjudicate any dispute
10 arising from or in connection with the distribution of settlement benefits.

11 3. The Parties are authorized to agree to and to adopt such amendments, modifications
12 and expansions of the Agreement and all exhibits attached thereto which are consistent with this
13 Final Approval Order and Judgment and as approved by the Court.

14 4. Each party shall bear its own attorneys' fees and costs, except as otherwise
15 provided in the Agreement and in this Final Approval Order and Judgment.

16 5. Upon the Effective Date, Released Parties shall receive a release from the
17 Participating Class Members of all class claims pled or which could have been pled based on the
18 factual allegations contained in the operative complaint which occurred during the Class Period
19 including claims for: (a) failure to pay all minimum wages owed; (b) failure to pay overtime
20 wages owed; (c) failure to provide meal periods, or premium pay for non-compliant meal periods;
21 (d) failure to authorize and permit rest periods, or premium pay for non-compliant rest periods; (e)
22 failure to issue accurate, itemized wage statements; (f) failure to timely pay all wages due upon
23 separation of employment; (g) failure to reimburse business expenses; (h) all claims for unfair
24 business practices that could have been premised on the facts, claims, causes of action or legal
25 theories described above ("Released Class Claims"). Claims for vested benefits, wrongful
26 termination, unemployment insurance, disability, social security, workers' compensation, and
27 class claims outside of the Class Period are expressly excluded from being released.

1 6. Upon the Effective Date, Released Parties shall receive a release from the State of
2 California from all PAGA claims for civil penalties under California Labor Code Sections 2698, et
3 seq., predicated on the California Labor Code violations that are asserted in the LWDA Notice for
4 violations of Labor Code sections §§ 201, 202, 203, 204, 210, 226(a), 226.7, 351, 510, 512,
5 558(a)(1)-(2), 1194, 1197, 1197.1, 1198, 2802, California Code of Regulations, Title 8, Section
6 11040, Subdivision 5(A)-(B), California Code of Regulations, Title 8, Section 1 1070(14),
7 Violation of Applicable Industrial Welfare Commission Wage Order(s) (“Released PAGA
8 Claims”). The Released PAGA Claims exclude claims for vested benefits, wrongful termination,
9 unemployment insurance, disability, social security, workers’ compensation, PAGA claims
10 outside of the PAGA Period, and other PAGA claims not asserted in the PAGA Notice. This
11 release of the Released PAGA Claims shall be effective regardless of whether an Aggrieved
12 Employee submitted a request for an exclusion from the Class.

13 7. As of the Effective Date, Plaintiff generally releases and discharges the Released
14 Parties from all of the Plaintiff’s Released Claims as set forth fully in the Agreement.

15 8. All unclaimed funds shall be paid *cy pres* to Children’s Advocacy Institute
16 pursuant to California Code of Civil Procedure section 384

17 **LET JUDGMENT BE FORTHWITH ENTERED ACCORDINGLY. IT IS SO ORDERED.**

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19 Dated: _____

20 _____
21 HON. CARRIE M. PANETTA
22 JUDGE, SUPERIOR COURT OF CALIFORNIA
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