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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

SARAH STONEHOCKER, on behalf of herself
and all others similarly situated

Plaintiff,

v.

KINDRED HEALTHCARE OPERATING, LLC
and DOES 1-25,

Defendants.

Case No.: 4:19-cv-02494-YGR

**[PROPOSED] ORDER GRANTING
PRELIMINARY APPROVAL OF CLASS
ACTION SETTLEMENT AND ORDER
APPROVING PAGA SETTLEMENT**

Date: November 10, 2020
Time: 2:00 p.m.
Judge: Hon. Yvonne Gonzalez Rogers
Dept.: Courtroom 1, Fourth Floor

Complaint Filed: February 14, 2019
(San Francisco Superior Court)

1 Plaintiff has filed a Motion for Preliminary Approval of the Class Action Settlement and
2 Approval of the PAGA Settlement reached with Defendants Kindred Healthcare Operating, LLC,
3 Kindred Rehab Services, LLC, Kindred Rehab Services, Inc., RehabCare Group East, LLC,
4 RehabCare Group East, Inc., American VitalCare, LLC, and RehabCare Group Of California,
5 LLC. The Court has carefully considered the Joint Stipulation and Class and Representative
6 Action Settlement Agreement and Release ("Settlement Agreement") together with all exhibits
7 thereto, all the filings related to the Settlement, the arguments of counsel, and the record in this
8 case. The Court hereby gives its preliminary approval of the Class Settlement and its approval of
9 the PAGA Settlement; finds that the Settlement and Settlement Agreement are sufficiently fair,
10 reasonable and adequate to allow dissemination of notice of the Settlement to the Class Members
11 and PAGA Releasees and to hold a final approval hearing on the Class Settlement; orders the
12 Class Notice be sent to the Class Members and PAGA Releasees in accordance with the
13 Settlement Agreement and this Order; and schedules a final approval hearing to determine
14 whether the proposed Class Settlement is fair, adequate and reasonable.

15 **IT IS HEREBY ORDERED THAT:**

- 16 1. The Settlement Agreement attached as Exhibit 1 to the Declaration of Matthew D. Carlson
17 in Support of Plaintiff's Motion for Preliminary Approval of Class Action Settlement and
18 Approval of PAGA Settlement is hereby incorporated by reference in this Order, and all
19 capitalized terms or phrases used in this Order that are not defined herein shall have the
20 same meaning as in the Settlement Agreement.
- 21 2. The Court finds that the terms of the Class Settlement preliminarily appears to be fair,
22 reasonable, and adequate, and within the range of possible approval and sufficient to
23 warrant providing notice to the Class, when balanced against the probable outcome of
24 further litigation, given the risks relating to liability and damages. It further appears that
25 investigation and research has been conducted such that counsel for the Parties are
26 reasonably able to evaluate their respective positions. It further appears to the Court that
27 the Settlement will avoid substantial additional costs by all parties, as well as the delay
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1 and risks that would be presented by the further prosecution of the Action, and that it will
2 provide substantial benefits to the Class going forward. It appears that the Settlement has
3 been reached as a result of intensive, arm's-length negotiations utilizing an experienced
4 third-party neutral mediator.

- 5 3. The Court certifies, for settlement purposes only, the following Class: "All persons who
6 are or were employed by one or more Defendants as non-exempt Skilled Clinicians to
7 work at a skilled nursing facility in California at any time from February 14, 2015 through
8 September 1, 2020." The term "Skilled Clinicians" means all individuals who have held
9 one or more positions included in the job title list in Exhibit A of the Settlement
10 Agreement.
- 11 4. For settlement purposes only, the Court appoints Plaintiff Sarah Stonehocker as
12 representative of Class.
- 13 5. For settlement purposes only, the Court designates as Class Counsel Matthew D. Carlson
14 of the Law Office of Matthew D. Carlson. The Court preliminarily finds that, based on
15 the work Class Counsel has done identifying, investigating, and prosecuting the claims in
16 this action; Class Counsel's experience in handling class actions and claims; Class
17 Counsel's knowledge of the applicable law; and the resources Class Counsel has and will
18 commit to representing the class, that Class Counsel has represented and will represent the
19 interests of the Class fairly and adequately.
- 20 6. Simpluris, Inc. is appointed as the Settlement Administrator and shall administer the
21 Settlement in accordance with the terms and conditions of this Order and the Settlement
22 Agreement.
- 23 7. The Court hereby conditionally certifies the proposed Class and conditionally finds that,
24 solely for the purposes of approving this Class Settlement and for no other purpose and
25 with no other effect on this litigation, the proposed Class meets the requirement for
26 certification under Rule 23(a) of the Federal Rules of Civil Procedure including that: (a)
27 the proposed Class is sufficiently numerous so that joinder of all members is
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impracticable; (b) there are questions of law or fact common to the proposed Class; (c) the Named Plaintiff's claims are typical of the claims of the proposed Settlement Class; (d) the Named Plaintiff and her Counsel will fairly and adequately protect the interests of the proposed Class. Additionally, the Court finds that, solely for the purposes of approving this Settlement and for no other purpose and with no other effect on this litigation, the proposed Class meets the requirement for certification under Rule 23(b)(3) of the Federal Rules of Civil Procedure including that: (a) questions of law or fact common to proposed Class Members predominate over any questions affecting individual members of the proposed Class; and (b) a class action is superior to other available methods for fairly and efficiently adjudicating the controversy.

8. The Court hereby grants approval of the PAGA Settlement, including the settlement and release of the PAGA Claims, as defined in the Settlement Agreement, and the payment of One Hundred Thirty Thousand Dollars (\$130,000) from the Gross Settlement Fund to resolve the PAGA Claims ("PAGA Payment"). Ninety-Seven Thousand Five Hundred Dollars (\$97,500.00), which is seventy-five percent (75%) of the PAGA Payment, shall be paid to the LWDA. The remaining Thirty-Two Thousand Five Hundred Dollars (\$32,500.00), which is twenty-five percent (25%) of the PAGA Payment, shall be distributed to the PAGA Releasees, based on the number of PAGA Pay Periods worked by a PAGA Releasee, as a fraction of the total PAGA Pay Periods worked by all PAGA Releasees. PAGA Releasees will not have the opportunity to opt out of, or object to the PAGA Payment and settlement and release of the PAGA Claims. The payment to the LWDA and the PAGA Releasees shall be made in accordance with the Settlement Agreement.

9. Subject to paragraph 18 of this Order and the terms of the Settlement Agreement, all PAGA Claims are hereby dismissed with prejudice as to Plaintiff and all PAGA Releasees. Subject to paragraph 18 of this Order and the terms of the Settlement Agreement, the claims in this Action and the PAGA Claims of each PAGA Releasee

1 against Defendants, and against any and all of the Released Parties as defined in the
 2 Settlement Agreement, are fully, finally, and forever released, relinquished and discharged
 3 pursuant to the terms of the Settlement Agreement. Subject to paragraph 18 of this Order
 4 and the terms of the Settlement Agreement, all PAGA Releasees are permanently enjoined
 5 from pursuing or seeking to reopen, any of the PAGA Claims, as defined in the Settlement
 6 Agreement to the maximum extent permitted by law

7 10. The Court hereby approves, as to form and content, the Notice of PAGA and Class Action
 8 Settlement in substantially the form attached as Exhibit C to the Settlement Agreement.
 9 The Court finds that the distribution of the Class Notice in accordance with the Settlement
 10 Agreement meets the requirements of due process and is the best notice practicable under
 11 the circumstances and shall constitute due and sufficient notice to all persons entitled
 12 thereto.

13 11. The Court approves the procedures set forth in the Settlement Agreement and the Class
 14 Notice for exclusions from and objections to the Class Settlement.

15 12. Any Class Members who wish to opt out from the Class Settlement must do so within 45
 16 days of the Mailing Date and in accordance with the terms of the Agreement.

17 13. Any Class Members who wish to object to the Class Settlement must do so within 45 days
 18 of the Mailing Date, or appear at the Final Approval Hearing, in accordance with the
 19 terms of the Agreement.

20 14. A Plaintiff Class Member and/or PAGA Releasee may seek to challenge his or her
 21 estimated Individual Settlement Payment amount and PAGA Payment Check amount set
 22 forth in his or her Class Notice. Any PAGA Releasee and/or Class Members who wish to
 23 make such challenge must do so within 45 days of the Mailing Date and in accordance
 24 with the terms of the Agreement.

25 15. The Court directs that a final approval hearing be scheduled for _____, at
 26 _____ (the "Fairness Hearing" or "Final Approval Hearing") to assist the Court in
 27 determining whether the Class Settlement is fair, reasonable and adequate; whether
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Judgment should be entered in this Action; whether Class Counsel's application for fees and expenses should be approved; and whether Class Counsel's request for a Service Award to the Named Plaintiff should be approved. Plaintiff shall file a Motion for Attorney's Fees, Costs, and Class Representative Service Award no later than _____. Plaintiff shall file a Motion for Final Approval of Class Action Settlement no later than _____.

16. The Court hereby preliminarily approves the Class Settlement, including the plan of allocation of the Class portion of the Gross Settlement Fund as described in the Settlement.
17. Neither the Settlement, nor any exhibit, document or instrument delivered thereunder shall be construed or interpreted as or deemed to be evidence of an admission or concession by Released Parties (a) of any liability or wrongdoing by Released Parties, (b) of the appropriateness of certifying a class for purposes of litigation, (c) that Plaintiff's claims may properly be prosecuted on a class or representative basis, (d) that any arbitration agreement maintained by Released Parties is unenforceable, or (e) of the truth of any allegations asserted by Plaintiff, members of the Class, PAGA Releasees, or any other person. The Settlement and this Preliminary Approval Order and Order Approving PAGA Settlement shall have no impact on the validity or enforceability of the Dispute Resolution Agreements entered by the Class Members, and the settlement shall not prejudice Defendants or the Released Parties from seeking to enforce such Dispute Resolution Agreements.
18. If the Class Settlement is not finally approved, or the Effective Date does not occur, or the Settlement is terminated under its terms, then: (a) the Settlement shall be without force and effect upon the rights of the Parties hereto, and none of its terms shall be effective or enforceable; (b) the Parties shall be deemed to have reverted nunc pro tunc to their respective status as of the day immediately before the Parties entered into the Settlement Agreement, with the Parties to meet and confer regarding any discovery or case

management deadlines that were pending at the time the Parties stayed litigation to; (c) Defendant and/or Released Parties shall not be obligated to pay any amount of the Gross Settlement Fund and shall be refunded any amounts paid pursuant to the Agreement but not yet spent or disbursed; (d) all Orders entered in connection with the Settlement, including the certification of the Class, shall be vacated without prejudice to any Party's position on the issue of class certification, or any other issue, in this Action or any other action, and the Parties shall be restored to their litigation positions existing on the date of execution of Settlement Agreement; and (e) the Parties shall proceed in all respects as if the Settlement Agreement and related documentation and orders had not been executed, and without prejudice in any way from the negotiation or fact of the Settlement or the terms of the Settlement Agreement. In such an event, this Court's orders regarding the Settlement, including this Preliminary Approval Order and Order Approving PAGA Settlement, shall not be used or referred to in litigation, or any arbitration or other civil or administrative proceeding, for any purpose. Nothing in the foregoing paragraph is intended to alter the terms of the Settlement Agreement with respect to the effect of the Settlement Agreement if it is not approved.

19. The Court directs that the following deadlines are established by this Preliminary Approval Order and Order Approving PAGA Settlement:

- a. Class Notice to be mailed by regular United States Mail to members of the Class and PAGA Releasees: no later than _____.
- b. Plaintiff's Motion for Attorney's Fees, Costs, and Class Representative Service Award to be filed: no later than _____.
- c. Plaintiff's Motion for Final Approval of Class Action Settlement to be filed: no later than _____.
- d. Opt-Out Deadline: shall be mailed to the Settlement Administrator and postmarked within the Notice Period. Any Class Member may seek exclusion from the Settlement, except the PAGA portion of the settlement as provided in the

Settlement Agreement. Requests for exclusion that do not comply with this paragraph and the requirements set forth in the Settlement Agreement and Class Notice shall not be effective.

e. Objection Deadline: shall be filed with the Court and either filed or postmarked within the Notice Period. Objections must state the specific grounds on which they are being made and include all supporting facts. If an objector intends to appear at the Final Approval Hearing, either in person or through an attorney, the objector must file and serve with the objection a notice of intention to appear at the Final Approval Hearing. Objections that do not comply with this requirement and the requirements set forth in the Settlement Agreement and Class Notice shall not be considered.

f. Challenge to the estimated Individual Settlement Payment and PAGA Payment Check amounts: shall be mailed to the Settlement Administrator and postmarked within the Notice Period. Challenges that do not comply with this paragraph and the requirements set forth in the Settlement Agreement and Class Notice shall not be effective.

g. Fairness Hearing: shall be held on _____ at ____ in Courtroom 1 of this Court.

20. Pending further order of this Court, all proceedings in this matter other than those contemplated herein and in the Settlement Agreement are stayed.

21. This Court reserves the right to adjourn or continue the Fairness Hearing from time to time without further notice to Class Members.

IT IS SO ORDERED.

Date: _____

HON. YVONNE GONZALEZ ROGERS
District Court Judge