

RECEIVED

2021-10-06 14:15:01

Filed

NOV 09 2021

BRANDON E. RILEY, CLERK

By

DEPUTY

Galen T. Shimoda (Cal. State Bar No. 226752)
Justin P. Rodriguez (Cal. State Bar No. 278275)
Jessica L. Hart (Cal. State Bar No. 331411)
Shimoda Law Corp.
9401 East Stockton Boulevard, Suite 120
Elk Grove, CA 95624
Telephone: (916) 525-0716
Facsimile: (916) 760-3733

Attorneys for Plaintiff LINDA HUDSON
individually and on behalf of similarly situated employees

SUPERIOR COURT OF CALIFORNIA
FOR THE COUNTY OF SAN JOAQUIN

LINDA HUDSON, individually and on behalf
of all other similarly situated employees,

Plaintiff,

vs.

STOCKTON NURSING AND REHAB
CENTER, LLC, a California Limited Liability
Company; EDURO HEALTHCARE LLC, a
Delaware Limited Liability Company;
GRANT GARRISON, an individual; and
DOES 1 to 100, inclusive,

Defendants.

Case No. STK-CV-UOE-2020-0008507

**[PROPOSED] ORDER GRANTING
PLAINTIFF'S MOTION FOR FINAL
APPROVAL OF CLASS ACTION AND PAGA
SETTLEMENT**

Date: November 9, 2021

Time: 9:00 a.m.

Dept.: 11B

Judge: Robert T. Waters

Filed: October 7, 2020

FAC Filed: November 6, 2020

Trial Date: None Set

[PPSD] ORDER GRANTING FINAL APPROVAL OF CLASS ACTION AND PAGA SETTLEMENT

1 TO ALL PARTIES AND THEIR RESPECTIVE COUNSEL OF RECORD:

2 The Motion for Final Approval of Class Action and PAGA Settlement ("Motion") in the above
3 referenced case came before this Court, on November 9, 2021, at 9:00 a.m., in Department 11B before
4 Robert T. Waters, presiding. Named Plaintiff Linda Hudson ("Plaintiff") filed this putative class
5 action on October 7, 2020. The operative Complaint alleges that Defendants Stockton Nursing and
6 Rehab Center, LLC, Eduro Healthcare, LLC, and Grant Garrison, ("Defendants") violated California
7 law by 1) Failing to Pay Overtime (Labor Code §§ 510, 1194); 2) Failing to Pay Minimum Wages
8 (Labor Code § 1194); 3) Failing to Provide Meal Periods (Labor Code §§ 512, 226.7); 4) Failing to
9 Provide Rest Periods (Labor Code §§ 226.7); 5) Failing to Provide Accurate Wage Statements (Labor
10 Code § 226); 6) Failing to Provide Reimbursements (Labor Code § 2802); 7) Waiting Time Penalties
11 (Labor Code §§ 201-203); and 8) Unfair Competition (Business & Professions Code § 17200, *et seq.*).
12 Plaintiff has also alleged Defendants are liable for a civil penalties under the Private Attorneys General
13 Act ("PAGA") based on these violations. Plaintiff sought attorneys' fees and costs as part of this
14 Action. Defendants denied all of Plaintiff's claims and denied that this case was appropriate for class
15 treatment. No class has been certified. The class settlement was preliminarily approved by this Court
16 on July 16, 2021.

17 The parties have agreed to settle the class and PAGA claims. Defendants will provide
18 monetary consideration in exchange for a release of claims consistent with the terms of the proposed
19 settlement as set forth in the Joint Stipulation Regarding Class Action and PAGA Settlement and
20 Release ("Agreement"). Any capitalized terms herein shall have the same meaning as set forth in the
21 Agreement. The Court, having received and considered Plaintiff's Motion for Final Approval of Class
22 Action and PAGA Settlement, the declarations in support, the Agreement, the Notice of Class
23 Settlement, and other evidence, HEREBY ORDERS AND MAKES DETERMINATIONS AS
24 FOLLOWS:

25 **1. CERTIFYING A SETTLEMENT CLASS; APPOINTMENT OF CLASS**
26 **REPRESENTATIVES; APPOINTMENT OF CLASS COUNSEL**

27 The Court finds that certification of the following class for settlement purposes only is
28 appropriate under the California Code of Civil Procedure and related case law:

1
2 All non-exempt employees who have or continue to work for Defendants
3 at the Stockton Nursing and Rehab Center from June 1, 2019, to July 16,
4 2021.

5 The Court recognizes that the foregoing definition is for Class Member identification purposes
6 only and is not intended to capture the claims at issue or limit or alter the released claims under the
7 Agreement. A Settlement Class Member shall not include the two (2) individuals who timely opted out
8 of the class settlement as identified in paragraph 13 of the declaration of Norman Alcantara. These
9 individuals shall not be bound by the Agreement or any of the releases or obligations therein except for
10 the releases and covenants regarding to the PAGA claims as set forth in section 1.33, 6.2, and 6.3 of the
11 Agreement as they are still Aggrieved Employees under the Agreement and there is no ability to opt out
12 of a PAGA settlement.

13 The Court finds that Class Members meet the ascertainability and numerosity requirements since
14 the parties can identify with a matter of certainty, based on payroll records, individuals who fall within
15 the definition and the number of Class Members would make joinder impractical. The commonality and
16 predominance requirements are met for settlement purposes since there are questions of law and fact
17 common to Class Members. The common questions of law or fact in this case all stem from Plaintiff's
18 contentions that Defendants caused the violations outlined above by 1) failing to pay overtime and
19 minimum wages due to their failure to pay for off-the-clock work, improper rounding policy, and
20 improper calculations of the Regular Rate of Pay ("RROP"); 2) consistently failing to adequately staff
21 schedules, or otherwise allow Plaintiff and similarly situated employees to take timely and complete
22 meal breaks; 3) consistently failing to adequately staff schedules, or otherwise allow Plaintiff and
23 similarly situated employees to take rest breaks on time or at all; 4) failing to reimburse expenses for
24 work-related cell phone use; 5) failing to maintain accurate records and provide accurate itemized wage
25 statements; and 6) failing to pay wages owed within the legally required time period after an employee's
26 separation. The PAGA, waiting time penalty, wage statement violation, and unfair competition claims
27 also derive from these violations. Additionally, Class Members seek the same remedies under state
28 law. The typicality requirement for settlement purposes is also satisfied since the claims of the Class
Representative is based on the same facts and legal theories as those applicable to the class members.

1 The Court also finds that certifying the settlement class is required to avoid each Class Member
2 from litigating similar claims individually. This settlement will achieve economies of scale for Class
3 Members with relatively small individual claims, conserving the resources of the judicial system. The
4 Court finds that Plaintiff Linda Hudson and Plaintiff's counsel, Galen T. Shimoda and Jessica L. Hart of
5 the Shimoda Law Corp., to be adequate representatives of the settlement class. The Court confirms their
6 appointments as class representative and class counsel, respectively.

7 **2. APPROVING CLASS ACTION AND PAGA SETTLEMENT**

8 The Court has reviewed the preliminary approved Agreement, which was submitted with
9 Plaintiff's Motion as Exhibit A. The Court finds that final approval is warranted as the Agreement falls
10 within the range of reasonableness and is fair, reasonable, and adequate for the class. The Court also
11 acknowledges that Class Members were able to object to the settlement through the administration
12 process and at a fairness hearing. No such objections were made by the class members and only two
13 (2) class members (0.65%) opted out of being bound by the class settlement.

14 Because the Court finds the Parties' settlement to have been agreed upon only after an extensive
15 investigation and arms-length negotiations, and in an attempt to avoid further delays and costs, the
16 Court gives final approval to the Agreement and all terms therein as if stated here in full, including the
17 \$420,000 Gross Settlement Amount.

18 The Court orders that Plaintiff Linda Hudson will receive \$12,500 as a Class Representative
19 Enhancement Payment in addition to any amount Plaintiff may be entitled to under the Agreement's
20 pro rata distribution formula for Plaintiff's time and effort on behalf of Class Members.

21 The Court orders and approves Simpluris, Inc. to act as the Claims Administrator in this case.
22 The Claims Administrator will take its fees out of the settlement proceeds, which are stated by the
23 Administrator to be \$3,500. The difference between the actual cost of the Claims Administrator and
24 the originally allocated \$7,500 will be redistributed to the settlement class on a pro-rata basis.

25 The Court finds that an award of fees under the common fund doctrine is appropriate in this
26 case because there is a sufficiently identifiable class of beneficiaries (*i.e.* Class Members), the benefits
27 can be accurately traced as set forth in the Agreement, Plaintiff and Class Counsel were able to
28 negotiate on behalf of Class Members, and the fee can be shifted with exactitude to those benefiting as

1 the fee request is a specific, lump-sum percentage of the Gross Settlement Amount. *See Paul, Johnson,*
2 *Alston & Hunt v. Grauly*, 886 F.2d 268, 271 (9th Cir. 1989); *Serrano v. Priest*, 20 Cal.3d 25, 34-35
3 (1977); *Laffitte v. Robert Half Internat., Inc.*, 1 Cal.5th 480, 506 (2016). The Court finds the attorneys'
4 fees request of thirty five percent (35%) of the Gross Settlement Amount, *i.e.* \$147,000, to be
5 appropriate compensation for Class Counsel. The attorneys' fees request is within the range that has
6 been approved by other Courts in similar cases and is reasonable in light of the circumstances of this
7 case, the substantial and beneficial results obtained on behalf of Class Members, and the contingent
8 nature of the recovery over the course of this case, which included potential loss at summary judgment,
9 certification, and/or trial proceedings. Additionally, the Court orders that \$11,799.46 of the settlement
10 proceeds will be paid to Class Counsel for reasonable costs incurred in this case. The difference
11 between the actual costs incurred and the originally allocated \$15,000 shall be paid to the Qualified
12 Claimants on a pro-rata basis.

13 The Court approves of the twenty-five thousand dollars (\$25,000) PAGA Payment, which shall
14 be paid from the Gross Settlement Amount, not in addition to the Gross Settlement Amount, to resolve
15 the alleged PAGA claims. Payment to the Labor and Workforce Development Agency shall be in the
16 amount of \$18,750 and the remainder of \$6,250 will be distributed to Aggrieved Employees. The Court
17 also finds that the Agreement provides a recovery that creates an effective substantial deterrent to any
18 potential future non-compliance, furthering the purpose of the Labor Code and LWDA.

19 The Court approves of the identified *cy pres* distribution plan wherein any checks issued to
20 Qualified Claimants and/or Aggrieved Employees that are not cashed by the deadline to do so shall be
21 paid out 50/50 to the SEIU 2015 Disaster Relief Fund and the Center for Workers Rights.

22 The releases and waivers for Aggrieved Employees and for Class Members who did not exclude
23 themselves from this settlement and the releases and waivers by the Class Representative are also
24 approved by the Court, as stated in the Agreement.

25 **3. APPROVAL OF DISTRIBUTION TO THE CLASS, THE NOTICE OF SETTLEMENT,**
26 **OPPORTUNITY TO OPT OUT OF, AND OBJECT TO, THE SETTLEMENT**

27 The Court finds that the Notice of Class Settlement, which was filed with Plaintiff's Motion as
28 Exhibit A to the Declaration of Norman Alcantara, fairly and adequately advises Class Members of the

terms of the preliminarily approved Agreement, the rights being waived, their right to opt out, the ability to dispute the number of workweeks worked during the Class Period, their pro rata share of the Net Settlement Amount, how to participate in the settlement, how to file documentation in opposition to the proposed settlement, and when to appear at the fairness hearing. The Court further finds that the Notice of Settlement and distribution of such notice by first class mail to each identified Class Member at his or her most recent address based on a National Change of Address database search from the Class Members' last known address and a skip trace on any Class Members who have the Notice of Settlement returned as "undeliverable" or "not at this address" comported with all constitutional requirements, including those of due process and provides the best notice practicable under the circumstances.

4. IMPLEMENTATION SCHEDULE

Accordingly, with good cause shown, the Court hereby approves and orders that the following implementation schedule be adhered to:

Last day for Claims Administrator to calculate the final Net Settlement Amount, the final Claim Amounts for Qualified Claimants and/or Aggrieved Employees, any applicable taxes thereon, and report the results of these calculations Class Counsel and Defendants' Counsel	Within 7 calendar days after the Final Approval Date
Last day for Defendants to fund settlement	Within 21 calendar days after the Final Approval Date
Last day for Claims Administrator to deliver payment of Class Counsel's attorney's fees and costs, Enhancement Payments, PAGA Payment, Claims Administrator Costs, payment to Qualified Claimants, and payment to Aggrieved Employees	Within 14 days of Defendants' last day to fund the settlement
Last day for Qualified Members and Aggrieved Employees to cash settlement checks	120 days after issuance of checks to Qualified Members and Aggrieved Employees

1 2 3	Last day for Claims Administrator to deliver value of uncashed settlement checks to <i>cy pres</i> beneficiaries	Within 14 days after settlement check cashing deadline
4 5	Last day for Claims Administrator to provide Parties with compliance declaration	Within 21 days after settlement check cashing deadline

6
7 **IT IS FURTHER ORDERED** that this final approval order is effective as a judgment with each
8 party to bear its own fees and costs outside of what has been ordered herein. This matter is subject to
9 the Court's continuing jurisdiction to monitor and enforce the terms of this order and the approved
10 Agreement pursuant to California Civil Procedure Code section 664.6. The prevailing party in any
11 action to enforce the terms of the Agreement shall be entitled to reasonable attorneys' fees and costs.
12 The Parties agree to meet and confer in good faith to resolve any issue before any such motion for
13 attorney's fees and costs is filed.

14
15 **IT IS SO ORDERED.**

16
17 Date: 11/9/2021

18 By: 
19 Judge of the Superior Court
20 **ROBERT T. WATERS**