

1 Galen T. Shimoda (Cal. State Bar No. 226752)
2 Justin P. Rodriguez (Cal. State Bar No. 278275)
3 Brittany V. Berzin (Cal. State Bar No. 325121)
4 **Shimoda Law Corp.**
5 9401 East Stockton Boulevard, Suite 120
6 Elk Grove, CA 95624
7 Telephone: (916) 525-0716
8 Facsimile: (916) 760-3733

9 Attorneys for Plaintiff KIMBERLY WEBB
10 individually and on behalf of similarly situated employees

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SUPERIOR COURT OF CALIFORNIA
FOR THE COUNTY OF SOLANO

KIMBERLY WEBB, individually and on
behalf of all other similarly situated
employees,

Plaintiff,

vs.

PROFESSIONAL HEALTHCARE AT
HOME, LLC, a California Limited Liability
Company; and DOES 1 to 100, inclusive,

Defendants.

Case No. FCS055317

**Assigned For All Purposes to Hon. Christine A.
Carringer**

CLASS ACTION

**~~PROPOSED~~ ORDER GRANTING
PLAINTIFF'S MOTION FOR
PRELIMINARY APPROVAL OF CLASS
ACTION AND PAGA SETTLEMENT**

Date: January 5, 2022

Time: 8:30 a.m.

Dept.: 12

Judge: Hon. Christine A. Carringer

Filed: August 27, 2020

FAC Filed: January 11, 2021

SAC Filed: July 26, 2021

TAC Filed: October 28, 2021

Trial Date: None Set

FILED/ENDORSED
Clerk of the Superior Court

JAN 12 2022

By 
DEPUTY CLERK

1 TO ALL PARTIES AND THEIR RESPECTIVE COUNSEL OF RECORD:

2 The Motion for Preliminary Approval of Class Action and PAGA Settlement ("Motion") in the
3 above referenced case came before this Court, on January 5, 2022 at 8:30 a.m., in Department 12
4 before the Honorable Christine A. Carringer presiding. Named Plaintiff Kimberly Webb ("Plaintiff")
5 filed this putative class action on August 27, 2020. The operative Complaint alleges that Defendant
6 Professional Healthcare At Home, LLC ("Defendant") violated California law by failing to include its
7 address on paystubs issued to Class Members who opted to receive paper copies of their paystubs.
8 Plaintiff has also alleged Defendant is liable for a civil penalties under the Private Attorneys General
9 Act ("PAGA") based on these violations. Plaintiff sought attorneys' fees and costs as part of this
10 Action. Defendant denied all of Plaintiff's claims and denied that this case was appropriate for class
11 treatment. No class has been certified.

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

20 **1. PRELIMINARILY CERTIFYING A SETTLEMENT CLASS; APPOINTMENT OF**
21 **CLASS REPRESENTATIVES; APPOINTMENT OF CLASS COUNSEL**

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

24 All individuals who have worked, or continue to work, for Defendant in
25 California and received hard copies of their paystubs from April 20, 2018
to November 20, 2021.

26 The Court recognizes that the foregoing definition is for Class Member identification purposes only and
27 is not intended to capture the claims at issue or limit or alter the released claims under the Agreement.
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1 The Court finds that Class Members meet the ascertainability and numerosity requirements since
2 the parties can identify with a matter of certainty, based on payroll records, individuals who fall within
3 the definition and the number of Class Members would make joinder impractical. The commonality and
4 predominance requirements are met for settlement purposes since there are questions of law and fact
5 common to Class Members. The common questions of law or fact in this case all stem from Plaintiff's
6 contentions that Defendant failed to include its address on paper copies of paystubs issued to Class
7 Members. The PAGA claim also derives from this violation. Additionally, Class Members seek the
8 same remedies under state law. The typicality requirement for settlement purposes is also satisfied since
9 the claims of the Class Representative is based on the same facts and legal theories as those applicable to
10 the class members.

11 The Court also finds that preliminarily and conditionally certifying the settlement class is
12 required to avoid each Class Member from litigating similar claims individually. This settlement will
13 achieve economies of scale for Class Members with relatively small individual claims and conserve the
14 resources of the judicial system.

15 The Court finds that Plaintiff Kimberly Webb and Plaintiff's counsel, Galen T. Shimoda,
16 Justin P. Rodriguez, and Brittany V. Berzin of the Shimoda Law Corp., to be adequate representatives of
17 the settlement class. The Court appoints them as class representative and class counsel, respectively.

18 **2. PRELIMINARILY APPROVING CLASS ACTION AND PAGA SETTLEMENT**

19 The Court has reviewed the Agreement, which was submitted with Plaintiff's Motion as Exhibit
20 A. The Court finds on a preliminary basis that the Agreement falls within the range of reasonableness of
21 a settlement, which could ultimately be given final approval by this Court. The Court also
22 acknowledges that Class Members may object to the settlement at a fairness hearing approved by this
23 Court or opt-out of being bound by the preliminarily approved Agreement.

24 Because the Court finds the Parties' settlement to have been agreed upon only after an extensive
25 investigation and arms-length negotiations, and in an attempt to avoid further delays and costs, the Court
26 preliminarily approves the Agreement and all terms therein as if stated here in full, including the
27 \$55,500 Gross Settlement Amount.
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1 The Court orders that Plaintiff Kimberly Webb will receive \$5,500 as a Class Representative
2 Enhancement Payment in addition to any amount Plaintiff may be entitled to under the Agreement's pro
3 rata distribution formula for Plaintiff's time and effort on behalf of Class Members.

4 The Court orders and approves Simpluris, Inc. to act as the Claims Administrator in this case.
5 The Claims Administrator will take its fees out of the Gross Settlement Amount, which are not to exceed
6 \$10,000. Any difference between the actual cost of the Claims Administrator and the approved payment
7 will be redistributed to Qualified Claimants on a pro-rata basis.

8 The Court finds that an award of fees under the common fund doctrine is appropriate in this case
9 because there is a sufficiently identifiable class of beneficiaries (*i.e.* Class Members), the benefits can be
10 accurately traced as set forth in the Agreement, Plaintiff and Class Counsel were able to negotiate on
11 behalf of Class Members, and the fee can be shifted with exactitude to those benefiting as the fee request
12 is a specific, lump-sum percentage of the Gross Settlement Amount. *See Paul, Johnson, Alston & Hunt*
13 *v. Grauly*, 886 F.2d 268, 271 (9th Cir. 1989); *Serrano v. Priest*, 20 Cal.3d 25, 34-35 (1977); *Laffitte v.*
14 *Robert Half Internat., Inc.*, 1 Cal.5th 480, 506 (2016). The Court finds the attorneys' fees request of
15 thirty-five percent (35%) of the Gross Settlement Amount, *i.e.*, \$19,425, to be appropriate compensation
16 for Class Counsel. The attorneys' fees request is within the range that has been approved by other
17 Courts in similar cases and is reasonable in light of the circumstances of this case, the substantial and
18 beneficial results obtained on behalf of Class Members, and the contingent nature of the recovery over
19 the course of this case, which included potential loss at summary judgment, certification, and/or trial
20 proceedings. Additionally, the Court orders that up to \$10,000 of the settlement proceeds will be paid to
21 Class Counsel for reasonable costs incurred in this case. Any difference between the actual costs
22 incurred and the \$10,000 shall be paid to the Qualified Claimants on a pro-rata basis.

23 The Court approves of the Five Thousand Dollars (\$5,000) PAGA Payment, which shall be paid
24 from the Gross Settlement Amount, not in addition to the Gross Settlement Amount, to resolve the
25 alleged PAGA claims. Seventy-Five percent (75%) of the PAGA Payment will be paid to the Labor and
26 Workforce Development Agency ("LWDA") and Twenty-Five percent (25%) will be paid to Aggrieved
27 Employees on a pro rata basis as described in the Agreement. The Court also finds that the Agreement
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1 provides a recovery that creates an effective substantial deterrent to any potential future non-compliance,
2 furthering the purpose of the Labor Code and LWDA.

3 The Court approves of the identified *cy pres* distribution plan wherein any checks issued to
4 Qualified Claimants and/or Aggrieved Employees that are not cashed by the deadline to do so shall be
5 paid out to Capital Pro Bono, Inc.

6 The releases and waivers for Class Members who do not opt out of being bound by the
7 Agreement (*i.e.*, Qualified Claimants), Aggrieved Employees, and the Class Representative are also
8 approved by the Court as set forth in the Agreement.

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

11 The Court finds that the proposed Notice of Settlement, which was submitted with Plaintiff's
12 Motion as Exhibit F, fairly and adequately advises Class Members of the terms of the Agreement, the
13 rights being waived, their right to opt out, the ability to dispute the number payment dates in which they
14 received physical hard copy paystubs, their pro rata share of the Net Settlement Amount, how to
15 participate in the settlement, how to file documentation in opposition to the proposed settlement, and
16 when to appear at the fairness hearing to be conducted on the date set forth below. The Court further
17 finds that the Notice of Settlement and proposed distribution of such notice by first class mail to each
18 identified Class Member at his or her most recent address based on a National Change of Address
19 database search from the Class Members' last known address and a skip trace on any Class Members
20 who have the Notice of Settlement returned as "undeliverable" or "not at this address" comports with all
21 constitutional requirements, including those of due process.

22 The Court also finds that because there is a strong interest in providing Class Members the
23 opportunity to participate in the settlement, along with the Parties' efforts to minimize any intrusion to
24 privacy rights, the sharing of employment information, including social security numbers, is not a
25 serious intrusion on their privacy rights. Hence, the Court orders Defendant to provide first and last
26 name, last known mailing address, social security number, total number of payment dates for which
27 Class Member and/or Aggrieved Employees received hard paper copies of their paystubs during the
28 Class Period and/or PAGA Claim Period, respectively, to the Claims Administrator only, and not to

1 Plaintiff or Class Counsel, in order to process this settlement as contemplated within the Agreement and
2 approved by this Order. The Claims Administrator shall only use this information for settlement
3 purposes identified herein, and this information shall be kept confidential, not be shared with any third-
4 party, and used only to administer the settlement.

5 **4. IMPLEMENTATION SCHEDULE**

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

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9 Last day for Defendant to provide Claims Administrator with Class Member information	Within 14 calendar days after the Preliminary Approval Date
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11 Last day for Claims Administrator to complete NCOA search, update Class Member mailing information, and mail Notice of Settlement	Within 14 calendar days after the Claims Administrators' receipt of Class Members' information from Defendant
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13 Last day for Class Members to opt-out, submit disputes, submit objections, and submit data requests	45 calendar days after mailing of Notice of Settlement or within 10 days after Notice of Settlement is re-mailed, whichever is later
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16 Last day for Claims Administrator to provide Parties with signed declaration reporting on settlement administration statistics	Within 21 calendar days after end of the Notice Period
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19 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 Defendant's Counsel	Within 7 days after the Final Approval Date
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23 Last day for Defendant to fund settlement	Within 21 calendar days after the Effective Date or (b) 21 calendar days after Defendant is emailed wiring instructions from the third-party administrator, which is last
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1 2 3 4	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 7 calendar days after the Gross Settlement Amount is wired to the settlement administrator
5 6 7	Last day for Qualified Members and Aggrieved Employees to cash settlement checks	120 days after issuance of checks to Qualified Members and Aggrieved Employees
8 9 10	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
11 12	Last day for Claims Administrator to provide Parties with compliance declaration	Within 21 days after settlement check cashing deadline

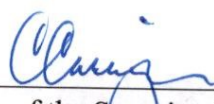
FINAL APPROVAL AND HEARING

The Court hereby grants Plaintiff's Motion and sets final approval hearing on the proposed date of May 4, 2022 at 8:30 a.m., with briefs and supporting documentation to be submitted according to the California Code of Civil Procedure, in this Department. Class Members who object in a timely manner, and in the manner set forth in the Agreement, may appear and present such objections at the fairness hearing in person or by counsel.

If for any reason the Court does not grant final approval of the Agreement, all evidence and proceedings held in connection therewith shall be without prejudice to the status quo and rights of the parties to the litigation, including all challenges to personal jurisdiction and to class certification for any purpose other than approving a settlement class. The parties will revert to their respective positions as if no settlement had been reached at all.

IT IS SO ORDERED.

Date: 1/5/2022

By: 
Judge of the Superior Court