

SCANNED

Kane Moon (SBN 249834)
Allen Feghali (SBN 301080)
Jacquelyne VanEmmerik (SBN 339338)
MOON LAW GROUP, P.C.
1055 West Seventh Street, Suite 1880
Los Angeles, California 90017
Telephone: (213) 232-3128
Facsimile: (213) 232-3125
E-mail: kmoon@moonlawgroup.com
E-mail: afeghali@moonlawgroup.com
E-mail: jvanemmerik@moonlawgroup.com

*Attorneys for Plaintiffs,
Kimberly Caro and Brenda Leslie*

FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN BERNARDINO
SAN BERNARDINO DISTRICT

NOV 15 2023

BY *Victoria Sanchez*
VICTORIA SANCHEZ, DEPUTY

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

KIMBERLY CARO, individually, and on behalf
of all others similarly situated, and BRENDA
LESLIE, individually, and on behalf of all others
similarly situated,

Plaintiffs,

vs.

KINDRED HEALTHCARE OPERATING, LLC,
a Delaware corporation; THC – ORANGE
COUNTY, LLC, a limited liability company;
KND DEVELOPMENT 53, LLC; and DOES 1
through 10, inclusive,

Defendants.

Case No.: CIVDS2022513

[Honorable Jessica Morgan, Department S-26]

**AMENDED [~~PROPOSED~~] ORDER AND
JUDGMENT GRANTING PLAINTIFFS'
MOTION FOR FINAL APPROVAL OF
CLASS AND REPRESENTATIVE ACTION
SETTLEMENT**

*[Filed with Plaintiffs' Notice of Motion and
Motion for Final Approval, Declaration of Kane
Moon, Declaration of Plaintiff Kimberly Caro,
Declaration of Plaintiff Brenda Leslie, and
Declaration of Mary Butler]*

FINAL APPROVAL HEARING

Date: November 15, 2023

Time: 9:00 AM

Department: S-26

Complaint Filed: October 13, 2020

Trial Date: Not Set

1 The Court issued an Order Granting Plaintiffs Kimberly Caro and Brenda Leslie's Motion for
2 Preliminary Approval of Class and Representative Action Settlement on June 7, 2023. Plaintiffs
3 Kimberly Caro and Brenda Leslie ("Plaintiffs") now seek an Order and Judgment Granting Final
4 Approval of the same Settlement Agreement of Class Action and Representative Action Claims
5 ("Settlement") between Plaintiffs and Defendants Kindred Healthcare Operating, LLC, THC –
6 Orange County, LLC, and KND Development 53, LLC ("Defendants"), attached to the Declaration
7 of Kane Moon in Support of Plaintiffs' Motion for Final Approval of Class and Representative
8 Action Settlement as **Exhibit 1**.

9 The Court, having considered Plaintiffs' Notice of Motion and Motion for Final Approval of
10 Class and Representative Action Settlement ("Motion"), the supporting Declarations and Exhibits
11 therein, the records and files in this Action, and the absence of any written objections to the
12 Settlement; and good cause appearing, **HEREBY ORDERS, ADJUDGES, AND DECREES AS**
13 **FOLLOWS:**

14 The Court, for purposes of this Final Order and Judgment, refers to all defined terms as set
15 forth in the Settlement.

16 The Court has jurisdiction over all claims asserted in this Action, Plaintiffs, all Qualified
17 Class Members, all PAGA Employees, and Defendants.

18 The Settlement appears to have been made and entered into in good faith and is hereby
19 approved, subject to any limitations on the requested fees and payments as set forth below.

20 For purposes of effectuating the Settlement, the following Settlement Classes are hereby
21 certified:

22 All current and former hourly non-exempt employees who worked for Defendant Kindred
23 Healthcare Operating, LLC and Defendant THC - Orange County, LLC in California as an
24 hourly, non-exempt employee at any time at any time from August 1, 2016 to June 7, 2023,
25 or to an earlier date at Defendants' option (the "*Caro* Class Period"), except for Defendant
26 THC-Orange County, LLC's employees who released their claims as part of the finally
27 adjudged settlement in *Michael Kirby, et al., v. Kindred Healthcare Operating, LLC, et al.*,
28 which was pending in San Bernardino Superior Court, Case No. CIVDS1708958 and who
only worked prior to January 11, 2021; and

All current and former hourly non-exempt employees who worked for Defendant Kindred
Healthcare Operating, LLC and Defendant KND 53 Development, LLC in California as an
25 hourly, non-exempt employee at any time at any time from February 23, 2017 to June 7,
2023, or to an earlier date at Defendants' option. *Settlement*, ¶¶ 7, 31.

1 The Parties shall bear their own respective attorneys' fees and costs, except as provided for in
2 the Settlement and approved by the Court.

3 No Class Members have objected to the terms of the Settlement, and four Class Members
4 have requested exclusion from the Settlement. *Supplemental Declaration of Mary Butler* ("Butler
5 Decl."), ¶¶ 12, 13.

6 Plaintiff, all Qualified Class Members, and all PAGA Employees shall have, by operation of
7 this Final Order and Judgment, fully, finally and forever released, relinquished, and discharged all
8 Released Parties from all Released Claims and Released PAGA Claims upon Final Approval and
9 Defendant's payment of all sums due pursuant to the Settlement, and except as to such rights or
10 claims as may be created by the Settlement, as stated in the Settlement and reproduced here:

- 11 1. **"Released Parties"** means Defendants and any of their past, present and future direct
12 or indirect parents, subsidiaries, predecessors, successors and affiliates, including but
13 not limited to Scion Health, Kindred Healthcare, LLC, Kindred Healthcare, Inc.,
14 Kindred Healthcare Operating, LLC, Kindred Healthcare Operating, Inc., KND
15 Development 53, LLC, THC-Orange County, Inc., and THC-Orange County, LLC as
16 well as each of their past, present and future officers, directors, employees, partners,
17 members, shareholders and agents, attorneys, insurers, reinsurers, and any individual or
18 entity who could be jointly liable with Defendants for any of the Released Claims.
19 *Settlement*, ¶ 46.
- 20 2. **"Released Claims"** means the claims alleged in the Lawsuits and set forth in the
21 Operative Complaint, specifically, (1) Failure to pay minimum and regular rate wages;
22 (2) Failure to pay overtime compensation; (3) Failure to provide meal periods or
23 provide premiums in lieu thereof; (4) Failure to provide rest periods or provide
24 premiums in lieu thereof; (5) Failure to pay timely wages at termination; (6) Failure to
25 provide accurate itemized wage statements; (7) Violation of Business and Professions
26 Code § 17200, *et seq.*; (8) Failure to reimburse for necessary business expenses; (9)
27 Failure to pay wages due as agreed upon under statute or contract; and (10) Violation of
28 the California Private Attorneys General Act of 2004 (Labor Code §§ 2698, *et seq.*),

1 and those claims predicated on the same or similar facts and/or claims alleged in the
2 Lawsuits and/or any PAGA letter sent to the LWDA by Named Plaintiffs in or prior to
3 the Lawsuits, as well as any claims that could have been pled which arise from the
4 same or similar facts concerning the Named Plaintiffs or the putative class, and claims
5 for interest, penalties (including but not limited to waiting time penalties), as well as
6 any claims under the California Labor Code and California Industrial Welfare
7 Commission Wage Orders (specifically for violations of Labor Code sections 201,
8 201.3, 201.5, 201.6, 201.9, 202, 202, 203, 204, 204.1, 204.2, 205.5, 206.5, 210, 221,
9 222, 223, 225.5, 226, 226.3, 226.7, 227.3, 245, 245.8, 246, 248.5, 510, 512, 558, 1174,
10 1174.5, 1182.12, 1194, 1194.2, 1197 *et seq.*, 1197.1, 1198, 1199, 2699, 2802, and
11 applicable IWC Wage Orders, and California Code of Regulations, Title 8, section
12 11000 *et seq.*; or which could have been alleged under the same or similar facts,
13 allegations and/or claims pleaded in the Lawsuits; any claims for injunctive relief,
14 declaratory relief, restitution, alleged or which could have been alleged under the facts,
15 allegations and/or claims pleaded in the complaints filed as part of the Lawsuits; and
16 any and all other claims under California common law, the federal law, and the
17 California Business and Professions Code alleged in or that could have been alleged
18 under the same or similar facts, allegations and/or claims pleaded in the Lawsuits and
19 based on the alleged Labor Code violations. *Settlement*, ¶ 90(a).

20 a. **Released Claims Do Not Include:** The Released Claims shall not include the
21 claims previously released by Settlement Class Members who are also members
22 of the previously settled and adjudged *Kirby* Class Action Lawsuit for the
23 period between August 1, 2016 and January 11, 2021. Accordingly, claims of
24 the members of the class in the *Kirby* Class Action Lawsuit pertaining to (a)
25 failure to pay minimum and overtime wages, (b) failure to provide compliant
26 meal and rest periods, (c) failure to reimburse business expenses, (d) derivative
27 waiting time penalties, (e) derivative wage statement penalties, and (f) PAGA
28 penalties between August 1, 2016 and January 11, 2021, which have already

1 been released as a result of the *Kirby* Class Action Lawsuit, shall not be
2 included in Qualified Class Members' release of Released Claims in this
3 Action. *Settlement*, ¶ 90(b).

- 4 3. **“Released PAGA Claims”** means any and all claims for violation of the California
5 Private Attorneys General Act of 2004 (Labor Code § 2698 *et seq.*), (“PAGA Claims”) as
6 alleged in the Operative Complaint, attached hereto as **Exhibit A**, which includes
7 those alleged in the PAGA letter(s) sent to the LWDA by Named Plaintiffs that arose at
8 any time during the *Caro* PAGA Period and/or *Leslie* PAGA Period. *Settlement*, ¶ 91.
- 9 4. **“Effective Date”** means the date the Settlement becomes effective, which is when all
10 of the following events have occurred (“Effective Date”): (i) this Settlement Agreement
11 has been executed by Plaintiffs, Defendants, Class Counsel, and Defendants’ Counsel;
12 (ii) the Court entered a Preliminary Approval Order; (iii) the Class Notice has been sent
13 to the Settlement Class Members, providing them notice and opportunity to object to
14 the Settlement, and notice and opportunity to opt out of the Settlement; (iv) notice of
15 this Settlement has been sent to the LWDA; (v) the Court has held a Final Approval
16 Hearing and entered a Final Approval Order and Final Judgment; and (vi) the later of
17 the following events: five (5) court days after the period for filing any appeal, writ, or
18 other appellate proceeding opposing the Final Approval Order or Final Judgment has
19 elapsed without any appeal, writ, or other appellate proceeding having been filed (i.e.,
20 65 days from the date the Court enters Final Approval Order and Final Judgment); or, if
21 any appeal, writ, or other appellate proceeding opposing the Final Approval Order or
22 Final Judgment has been filed within that timeframe, then five (5) court days after any
23 appeal, writ, or other appellate proceedings opposing the Settlement has finally and
24 conclusively dismissed with no right to pursue further remedies or relief.. *Settlement*, ¶
25 66.

1 The Gross Settlement Amount, Net Settlement Amount, and methodology used to calculate
2 and pay the Individual Settlement and PAGA Payments are fair and reasonable. The Settlement
3 Administrator is authorized to pay the Individual Settlement and PAGA Payments to the Qualified
4 Class Members and PAGA Members in accordance with the terms of the Settlement.

5 Defendant shall pay a total of \$2,400,000.00 to resolve the Action. *Butler Decl.*, ¶ 15.
6 Defendant will fund the settlement account within ten (10) calendar days of the Effective Date.
7 *Settlement*, ¶ 70(a). The Settlement Administrator will distribute the fund installments ten (10)
8 calendar days after the Gross Settlement Amount has been deposited by Defendant. *Settlement*, ¶
9 70(b).

10 From the Gross Settlement Amount, a PAGA Payment of \$150,000.00 shall be divided
11 among the California Labor and Workforce Development Agency ("LWDA") and PAGA
12 Employees. The LWDA shall receive 75% of the PAGA Payment, or \$112,500.00, and the PAGA
13 Employees shall receive 25% of the PAGA Payment, or \$37,500.00, pursuant to the Private
14 Attorneys General Act of 2004, *California Labor Code* sections 2698, et seq. *Settlement*, ¶¶ 38-41.
15 *Butler Decl.*, ¶ 15.

16 From the Gross Settlement Amount, a Class Representative Enhancement Award in the
17 amount of \$10,000.00 shall be paid to Plaintiff Kimberly Caro; and a Class Representative
18 Enhancement Award in the amount of \$10,000.00 shall be paid to Plaintiff Brenda Leslie for their
19 efforts and risks in bringing and resolving the Action and general release of claims. *Settlement*, ¶¶ 18,
20 92; *Butler Decl.*, ¶ 15. Kimberly Caro and Brenda Leslie are hereby confirmed as Class
21 Representatives.

22 From the Gross Settlement Amount, a Class Counsel Fee Award in the amount of
23 \$800,000.00, and a Class Counsel Cost Award in the amount of \$34,456.84 shall be paid to Class
24 Counsel for their reasonable fees and actual costs incurred in furtherance of the Action. *Settlement*, ¶¶
25 11, 12; *Butler Decl.*, ¶ 15; *Declaration of Kane Moon*, Exhs. 6 and 7. The fees and costs shall be
26 distributed to Class Counsel as set forth in the Settlement. The Court finds that the fees are
27 reasonable in light of the benefit provided to the Settlement Classes. Moon Law Group, P.C. is
28 hereby confirmed as Class Counsel.

1 From the Gross Settlement Amount, Settlement Administration Costs in the amount of
2 \$27,424.00 shall be paid to the designated Settlement Administrator, Simpluris, Inc. *Settlement*, ¶ 47;
3 *Butler Decl.*, ¶ 15.

4 The Notice provided to the Settlement Classes conforms with the requirements of *California*
5 *Rules of Court* rules 3.766 and 3.769, and constitutes the best notice practicable under the
6 circumstances, providing individual notice to all Settlement Class Members who could be identified
7 through reasonable effort and due and adequate notice of the proceedings and matters set forth
8 therein to the Settlement Class Members. The Notice fully satisfies the requirements of Due Process.

9 The Parties are ordered to have notice of this Final Order and Judgment sent to all Qualified
10 Class Members and PAGA Employees in accordance with *California Rules of Court* section
11 3.771(b), along with the Individual Settlement and PAGA Payments issued via First Class U.S. Mail
12 to their last known addresses and to the LWDA, pursuant to *California Labor Code* section 2699(1).
13 The Settlement Administrator shall, within two hundred (200) calendar days after the checks are
14 initially mailed, cancel the uncashed or undeposited checks and deliver all funds associated with the
15 uncashed or undeposited Individual Settlement Payment checks and Individual PAGA Employee
16 Payment checks to the State of California's State Controller Unclaimed Property Fund with an
17 identification of the amount of unclaimed funds attributable to each Settlement Class Member and
18 PAGA Employee. *Settlement*, ¶ 77(b).

19 The Court shall retain jurisdiction with respect to all matters related to the administration and
20 consummation of the Settlement and any and all claims asserted in, arising out of, or related to the
21 subject matter of the Action, including, but not limited to, all matters related to the Settlement and the
22 determination of all controversies relating thereto.

23 Plaintiffs' Motion for Final Approval of Class and PAGA Action Settlement is hereby
24 granted, and the Court directs that Judgment shall be entered in accordance with the terms of this
25 Order. This Judgment is intended to be a final disposition of the Action in its entirety and is intended
26 to be immediately appealable.

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The Court sets a Non-Appearance Hearing (Case Review) Re: Distribution on
Sept. 4, 2024 at 8:30 AM in Department S-26. Class Counsel is ordered to file a
final report and declaration regarding distribution no later than 10 DAYS PRIOR TO HEARING.

IT IS SO ORDERED.

DATE: 11/15/23



Honorable Jessica Morgan, Judge of the Superior Court of
California for the County of San Bernardino

1 **PROOF OF SERVICE**

2 STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

3 I am employed in the county of Los Angeles, State of California. I am over the age of 18 and
4 not a party to the within action; my business address is 1055 West Seventh Street, Suite 1880, Los
Angeles, California 90017. On **November 14, 2023**, I served the foregoing document described as:

5 **AMENDED [PROPOSED] ORDER AND JUDGMENT GRANTING PLAINTIFFS'**
6 **MOTION FOR FINAL APPROVAL OF CLASS AND REPRESENTATIVE ACTION**
7 **SETTLEMENT**

8 X by E-mailing ___ the original X a true copy to the following:

9 **Littler Mendelson, P.C.**

Jyoti Mittal, Esq. (jmittal@littler.com)
2049 Century Park East, Fifth Floor
Los Angeles, CA 90067
Phone: (310) 553-0308
Fax: (310) 553-5583

12 **Littler Mendelson, P.C.**

13 James Payer, Esq. (jpayer@littler.com)
Elizabeth Staggs Wilson, Esq. (estaggs-wilson@littler.com)
14 Veronica Zamago, Esq. (vzamago@littler.com)
633 West Fifth Street, 63rd Floor
15 Los Angeles, CA 90071
16 Phone: (213) 443-4300
Fax: (213) 443-4299

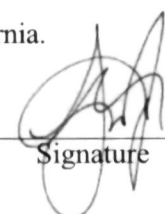
17 *Attorney for Defendant Kindred Healthcare Operating, LLC; THC-Orange County, LLC*

18
19 ☒ **BY ELECTRONIC SERVICE:** Based on a court order or an agreement of the parties
20 to accept electronic service, I caused the documents to be sent to the persons at the
electronic service addresses listed above via third-party cloud service
21 **CASEANYWHERE..**

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

23 Executed this, **November 14, 2023** at Los Angeles, California.

24
25 Janelle Jickain
Type or Print Name

26
27
28

Signature