

FILED

JUN 13 2022

SUPERIOR COURT OF CALIFORNIA
COUNTY OF SUTTER
CLERK OF THE COURT
By [Signature] Deputy

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individually and on behalf of similarly situated employees

**SUPERIOR COURT OF CALIFORNIA
FOR THE COUNTY OF SUTTER**

RITA ELSALAYMEH, individually and on
behalf of all other similarly situated
employees,

Plaintiff,

vs.

TRI-COUNTY RESPITE CARE SERVICE, a
California Corporation; JOY M. SCOTT, an
Individual; and DOES 1 to 100, inclusive,

Defendants.

Case No. CVCS21-0000579

CLASS ACTION

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

Date: June 13, 2022

Time: 9:00 a.m.

Dept.: 1

Judge: Hon. Perry Parker

Filed: April 7, 2021

FAC Filed: June 8, 2021

Trial Date: None Set

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

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1 within the range of reasonableness and if fair, reasonable, and adequate for Class Members. The Court
2 also acknowledges that Class Members were able to object to the settlement through the administration
3 process and at a fairness hearing. Only one individual opted out of the settlement and zero Class
4 Members objected to the settlement in any way.

5 Because the Court finds the Parties' settlement to have been agreed upon only after an extensive
6 investigation and arms-length negotiations, and in an attempt to avoid further delays and costs, the Court
7 gives final approval to the Agreement and all terms therein as if stated here in full, including the
8 \$300,000 Gross Settlement Amount.

9 The Court orders that Plaintiff Rita Elsalaymeh will receive \$15,000 as a Class Representative
10 Enhancement Payment in addition to any amount Plaintiff may be entitled to under the Agreement's pro
11 rata distribution formula for Plaintiff's time and effort on behalf of Class Members.

12 The Court orders and approves Simpluris, Inc., to act as the Claims Administrator in this case.
13 The Claims Administrator will take its fees out of the Gross Settlement Amount, which are \$5,000.00.
14 The difference between the actual cost of the Claims Administrator and originally allocated \$7,500 will
15 be redistributed to Qualified Claimants on a pro-rata basis.

16 The Court finds that an award of fees under the common fund doctrine is appropriate in this case
17 because there is a sufficiently identifiable class of beneficiaries (*i.e.* Class Members), the benefits can be
18 accurately traced as set forth in the Agreement, Plaintiff and Class Counsel were able to negotiate on
19 behalf of Class Members, and the fee can be shifted with exactitude to those benefiting as the fee request
20 is a specific, lump-sum percentage of the Gross Settlement Amount. *See Paul, Johnson, Alston & Hunt*
21 *v. Gaulty*, 886 F.2d 268, 271 (9th Cir. 1989); *Serrano v. Priest*, 20 Cal.3d 25, 34-35 (1977); *Laffitte v.*
22 *Robert Half Internat., Inc.*, 1 Cal.5th 480, 506 (2016). The Court finds the attorneys' fees request of
23 thirty five percent (35%) of the Gross Settlement Amount, *i.e.* \$105,000, to be appropriate compensation
24 for Class Counsel. The attorneys' fees request is within the range that has been approved by other
25 Courts in similar cases and is reasonable in light of the circumstances of this case, the substantial and
26 beneficial results obtained on behalf of Class Members, and the contingent nature of the recovery over
27 the course of this case, which included potential loss at summary judgment, certification, and/or trial
28 proceedings. Additionally, the Court orders that \$12,084.73 of the settlement proceeds will be paid to

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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 June 13, 2022, at 9:00 a.m., in Department 1 before the
4 Honorable Perry Parker, presiding. Named Plaintiff Rita Elsalaymeh ("Plaintiff") filed this putative
5 class action on April 7, 2021. The operative Complaint alleges that Defendants Tri-County Respite
6 Care Service, and Joy M. Scott, ("Defendants") violated California law by 1) failing to pay overtime
7 wages; 2) failing to pay minimum wages; 3) committing rest and meal period violations; 4)
8 committing wage statement violations; 5) waiting time penalties; 6) failing to reimburse expenses; and
9 7) engaging in unfair competition. Plaintiff has also alleged Defendants are liable for civil penalties
10 under the Private Attorneys General Act ("PAGA") based on these violations. Plaintiff sought
11 attorneys' fees and costs as part of this Action. Defendants denied all of Plaintiff's claims and denied
12 that this case was appropriate for class treatment. No class has been certified. The class settlement
13 was preliminarily approved by this Court on February 14, 2022.

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

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

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

25 All non-exempt employees who have or continue to work for Defendants
26 in California from April 7, 2017, to November 29, 2021

27 The Court recognizes that the foregoing definition is for Class Member identification purposes
28 only and is not intended to capture the claims at issue or limit or alter the released claims under the

1 Agreement. A Class Member shall not include Allison A. Gregory, who timely opted out of the class
2 settlement as identified in paragraph 11 of the declaration of Lindsay Kline. This individual shall not be
3 bound by the Agreement or any of the releases or obligations therein except for the releases and
4 covenants regarding to the PAGA claims as set forth in section 1.33 and 6.2 as she is still an Aggrieved
5 Employee under the Agreement and there is no ability to opt out of a PAGA settlement.

6 The Court finds that Class Members meet the ascertainability and numerosity requirements since
7 the parties can identify with a matter of certainty, based on payroll records, individuals who fall within
8 the definition and the number of Class Members would make joinder impractical. The commonality and
9 predominance requirements are met for settlement purposes since there are questions of law and fact
10 common to Class Members. The common questions of law or fact in this case all stem from Plaintiff's
11 contentions that Defendants caused the violations outlined above by 1) failing to pay employees earned
12 overtime wages; 2) failing to pay all minimum wages owed due to Defendants' rounding policy and
13 required off the clock work; 3) failing to provide duty-free meal and rest periods and pay premiums in
14 lieu thereof; 4) failing to pay sufficient reimbursement for work-related cell phone use; 5) failing to
15 accurately itemize the hours and wages earned on paystubs issued to class members. The PAGA,
16 waiting time penalty, wage statement violation, and unfair competition claims also derive from these
17 violations. Additionally, Class Members seek the same remedies under state law. The typicality
18 requirement for settlement purposes is also satisfied since the claims of the Class Representative is
19 based on the same facts and legal theories as those applicable to the class members.

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

23 The Court finds that Plaintiff Rita Elsalaymeh and Plaintiff's counsel, Galen T. Shimoda and
24 Justin P. Rodriguez of Shimoda & Rodriguez Law, PC, to be adequate representatives of the settlement
25 class. The Court confirms their appointment as class representative and class counsel, respectively.

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

27 The Court has reviewed the preliminarily approved Agreement, which was submitted with
28 Plaintiff's Motion as Exhibit A. The Court finds that final approval is warranted as the Agreement falls

1 Class Counsel for reasonable costs incurred in this case. Any difference between the actual costs
2 incurred and the \$15,000 originally allocated shall be paid to the Qualified Claimants on a pro-rata basis.

3 The Court approves of the ten thousand dollars (\$10,000) PAGA Payment, which shall be paid
4 from the Gross Settlement Amount, not in addition to the Gross Settlement Amount, to resolve the
5 alleged PAGA claims. Seventy-Five percent (75%) of the PAGA Payment will be paid to the Labor and
6 Workforce Development Agency ("LWDA") and Twenty-Five percent (25%) will be paid to Aggrieved
7 Employees on a pro rata basis as described in the Agreement. The Court also finds that the Agreement
8 provides a recovery that creates an effective substantial deterrent to any potential future non-compliance,
9 furthering the purpose of the Labor Code and LWDA.

10 The Court approves of the identified *cy pres* distribution plan wherein any checks issued to
11 Qualified Claimants and/or Aggrieved Employees that are not cashed by the deadline to do so shall be
12 paid out 50/50 to Capital Pro Bono, Inc., and the Center for Workers Rights.

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

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

18 The Court finds that the Notice of Settlement, which was submitted with Plaintiff's Motion as
19 Exhibit A to the declaration of Lindsay Kline, fairly and adequately advised Class Members of the terms
20 of the preliminarily approved Agreement, the rights being waived, their right to opt out, the ability to
21 dispute the number of workweeks worked during the Class Period, their pro rata share of the Net
22 Settlement Amount, how to participate in the settlement, how to file documentation in opposition to the
23 proposed settlement, and when to appear at the fairness hearing. The Court further finds that the Notice
24 of Settlement and distribution of such notice by first class mail to each identified Class Member at his or
25 her most recent address based on a National Change of Address database search from the Class
26 Members' last known address and a skip trace on any Class Members who have the Notice of Settlement
27 returned as "undeliverable" or "not at this address" comported with all constitutional requirements,
28 including those of due process.

1 **4. IMPLEMENTATION SCHEDULE**

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

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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 to the LWDA, Claims Administrator Costs, payment to Qualified Claimants, and payment to Aggrieved Employees	Within 14 calendar days after Defendants' last day to fund the settlement
Last day for Qualified Members and Aggrieved Employees to cash settlement checks	120 calendar days after issuance of checks to Qualified Members and Aggrieved Employees
Last day for Claims Administrator to deliver value of uncashed settlement checks to <i>cy pres</i> beneficiaries	Within 14 calendar days after settlement check cashing deadline
Last day for Claims Administrator to provide Parties with compliance declaration	Within 21 calendar days after settlement check cashing deadline

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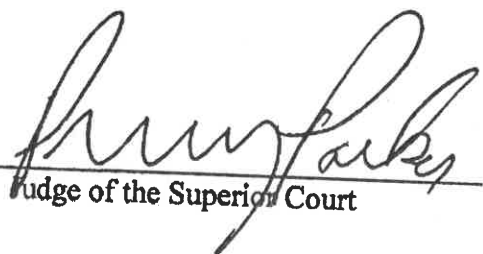
27 IT IS FURTHER ORDERED that this final approval order is effective as a judgment with each
28 party to bear its own fees and costs outside of what has been ordered herein. This matter is subject to

1 the Court's continuing jurisdiction to monitor and enforce the terms of this order and the approved
2 Agreement.

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IT IS SO ORDERED.

Date: 6-13-22

By: 
Judge of the Superior Court

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