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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN DIEGO

GLORIA GUINILING, an individual, on
behalf of herself, on behalf of all persons
similarly situated,

Plaintiffs,

v.

ESCONDIDO MEDICAL INVESTORS
LIMITED PARTNERSHIP LIFE CARE
CENTER OF ESCONDIDO, a Limited
Partnership; and DOES 1 through 50,
inclusive,

Defendants.

CASE NO.: **37-2022-00019520-CU-OE-CTL**

**[PROPOSED] FINAL APPROVAL
ORDER AND JUDGMENT**

Hearing Date: January 12, 2024

Hearing Time: 9:00 a/m/

Judge: Hon. Matthew C. Braner

Dept.: 60

Action Filed: May 23, 2022

Trial Date: Not set

1 The motion of Plaintiff Gloria Guiniling (“Plaintiff”) for an order finally approving the
2 class action settlement of this action between Plaintiff and Defendant Escondido Medical Investors
3 Limited Partnership Life Care Center of Escondido (“Defendant”) came on for hearing on January
4 12, 2024 before the Honorable Matthew C. Braner.

5 The motion is GRANTED, as set forth below.

6 **I.**

7 **FINDINGS**

8 Based on the oral and written argument and evidence presented in connection with the
9 motion, the Court makes the following findings:

10 1. All terms used herein shall have the same meaning as defined in the Class Action
11 and PGA Settlement Agreement (the “Agreement”).

12 2. This Court has jurisdiction over the subject matter of this litigation pending before
13 the California Superior Court for the County of San Diego, and over all Parties to this litigation,
14 including the Class.

15 3. Based on a review of the papers submitted by Plaintiff and a review of the
16 applicable law, the Court finds that the Gross Settlement Amount and the terms set forth in the
17 Agreement are fair, reasonable, and adequate.

18 4. The Court further finds that the Settlement was the result of arm’s length
19 negotiations conducted after Class Counsel had adequately investigated the claims and became
20 familiar with the strengths and weaknesses of those claims. In particular, the amount the
21 Settlement, the significant risks relating to certification, liability, and damages issues, and the
22 assistance of an experienced mediator in the settlement process, among other factors, support the
23 Court’s conclusion that the Settlement is fair, reasonable, and adequate.

24 **Preliminary Approval of the Settlement**

25 5. On August 18, 2023, the Court granted preliminary approval of the Agreement. At
26 this same time, the Court approved conditional certification of the Class for settlement purposes
27 only. The Court also approved the form and method of the Class Notice, appointed Plaintiff
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1 Joseph Daguil as the Class Representative, appointed Norman B. Blumenthal, Kyle R.
2 Nordrehaug, Aparajit Bhowmik, Nicholas J. De Blouw, Jeffrey S. Herman, and Sergio J. Puche of
3 Blumenthal Nordrehaug Bhowmik De Blouw LLP as Class Counsel for the Class, and appointed
4 ILYM Group as the Administrator.

5 **Notice to the Class**

6 6. In compliance with the Preliminary Approval Order, the Class Notice was mailed
7 by first class mail to members of the Class at their last known addresses on or about September 19,
8 2023. Mailing of the Class Notice to their last known addresses was the best notice practicable
9 under the circumstances and was reasonably calculated to communicate actual notice of the
10 litigation and the proposed settlement to the Class. The Class Notice given to the Class Members
11 fully and accurately informed the Class Members of all material elements of the proposed
12 Settlement and of their opportunity to object to or comment thereon or to seek exclusion from the
13 Settlement; was valid, due, and sufficient notice to all Class Members; and complied fully with the
14 laws of the State of California, the United States Constitution, due process and other applicable
15 law. The Class Notice fairly and adequately described the Settlement and provided Class
16 Members adequate instructions and a variety of means to obtain additional information.

17 7. The deadline for opting out of the Class or submitting written objections to the
18 Settlement was November 20, 2023, which deadline was extended by 14 days in the event of a re-
19 mailing. There was an adequate interval between notice and the deadline to permit Class
20 Members to choose what to do and act on their decision. A full opportunity has been afforded to
21 the Class Members to participate in this hearing, and all Class Members and other persons wishing
22 to be heard have been heard. Class Members also have had a full and fair opportunity to exclude
23 themselves from the proposed Settlement and Class. Accordingly, the Court determines that all
24 Class Members who did not timely and properly submit a request for exclusion in accordance with
25 the Agreement are bound by the Settlement and this Final Approval Order and Judgment.

1 **Fairness Of Settlement**

2 8. The Agreement is entitled to a presumption of fairness. *Dunk v. Ford Motor Co.*
3 48 Cal.App.4th 1794, 1801 (1996).

4 a. The settlement was reached through arm's-length bargaining between the
5 parties during an all-day mediation before Tripper Ortman, a respected and experienced mediator
6 of wage and hour class actions. There has been no collusion between the parties in reaching the
7 proposed settlement.

8 b. Plaintiff's investigation and discovery have been sufficient to allow the
9 Court and counsel to act intelligently.

10 c. Counsel for both parties are experienced in similar employment class action
11 litigation. All counsel recommended approval of the Agreement.

12 d. There were no objectors and the percentage of requests for exclusion is
13 small. No objections were received. No requests for exclusion were received].

14 9. The consideration to be given to the Class Members under the terms of the
15 Agreement is fair, reasonable and adequate considering the strengths and weaknesses of the claims
16 asserted in this action and is fair, reasonable and adequate compensation for the release of Class
17 Members' claims, given the uncertainties and significant risks of the litigation and the delays
18 which would ensue from continued prosecution of the action.

19 10. The Agreement is approved as fair, adequate and reasonable and in the best
20 interests of the Class Members.

21 **Attorneys' Fees and Costs**

22 11. A Class Counsel Fees Payment award of \$283,333, and Class Counsel Litigation
23 Expenses Payment award of \$22,747.89 are reasonable, in light of the contingent nature of Class
24 Counsel's fee, the hours worked by Class Counsel, and the results achieved by Class Counsel.
25 The requested award has been supported by Class Counsel's lodestar and billing statement.

26 **Class Representative Service Payment**

1 12. The Agreement provides for a Class Representative Service Payment of not more
2 than \$10,000 to the Plaintiff, subject to the Court's approval. The Court finds that the Class
3 Representative Service Payment in the amount of \$10,000 to the Plaintiff is reasonable in light of
4 the risks and burdens undertaken by the Plaintiff in the litigation, for the time and effort in
5 bringing and prosecuting this matter on behalf of the Class, and for the execution of the release.

6 **Administration Expenses Payment**

7 13. The Administrator shall calculate and administer the payment to be made to the
8 Participating Class Members, transmit payment for attorneys' fees and costs to Class Counsel,
9 transmit the Class Representative Service Payment to the Plaintiff, distribute the PAGA Penalties,
10 issue any required tax reporting forms, calculate withholdings and perform the other remaining
11 duties set forth in the Agreement. The Administrator has documented \$10,550 for the
12 Administration Expenses Payment, and this amount is reasonable in light of the work performed
13 by the Administrator.

14 **PAGA Penalties**

15 14. The PAGA Penalties amount of \$50,000 is approved and shall be paid out of the
16 Gross Settlement Amount, 75% of which (\$37,500) shall be allocated and paid to the LWDA and
17 25% of which shall be distributed to the Aggrieved Employees as Individual PAGA Payments.
18 The Administrator will calculate each Individual PAGA Payment by (a) dividing the amount of
19 the Aggrieved Employees' 25% share of PAGA Penalties (\$12,500) by the total number of PAGA
20 Period Pay Periods worked by all Aggrieved Employees during the PAGA Period and (b)
21 multiplying the result by each Aggrieved Employee's PAGA Period Pay Periods. The Aggrieved
22 Employees are all individuals who were employed by Defendant in California and classified as a
23 non-exempt employee at any time during the PAGA Period which is January 7, 2021 through
24 August 16, 2022. All Aggrieved Employees will be sent their Individual PAGA Payment and will
25 be subject to the release of the Released PAGA Claims as set forth below, whether or not they opt
26 out of the Class Settlement.

27 **II.**

1 **ORDERS**

2 Based on the foregoing findings, and good cause appearing, IT IS HEREBY ORDERED:

3 1. The certification of the Class for the purposes of settlement is confirmed. The Class
4 is defined as follows:

5 All individuals who were employed by Defendant in California and classified as a
6 non-exempt employee at any time during the Class Period (May 23, 2018 through
7 August 16, 2022).

8 2. All persons who meet the foregoing definition are members of the Class, except
9 for those individuals who timely submitted a valid request for exclusion (“opt out”) from the
10 Class. There were no individuals who requested exclusion from the Class.

11 3. The Agreement is hereby finally approved as fair, reasonable, adequate, and in the
12 best interest of the Class.

13 4. Class Counsel are awarded Class Counsel Fees Payment in the amount of \$283,333
14 and Class Counsel Litigation Expenses Payment in the amount of \$22,747.89. Class Counsel shall
15 not seek or obtain any other compensation or reimbursement from Defendant, Plaintiff or
16 members of the Class.

17 5. The payment of the Class Representative Service Payment in the amount of
18 \$10,000 to the Plaintiff is approved.

19 6. The payment of \$10,550 to the Administrator as the Administration Expenses
20 Payment is approved.

21 7. The PAGA Penalties are approved and shall be allocated as set forth in the
22 Agreement.

23 8. A Participating Class Member must cash his or her Individual Class Payment check
24 within 180 days after the issuance of the checks. An Aggrieved Employee must cash his or her
25 Individual PAGA Payment check within 180 days after the issuance of the checks. If such checks
26 are not cashed within 120 days after the initial mailing of the checks, the Administrator will also
27 send the affected Participating Class Member and/or Aggrieved a reminder notice informing him
28 or her that unless the check is cashed in the next 60 days, it will expire and become non-

1 negotiable, and offer to replace the check if it was lost or misplaced but not cashed. If the check
2 remains uncashed by the expiration of the 180 period, the funds from such uncashed checks shall
3 be paid to the California State Controller's Unclaimed Property Fund in the name of and for the
4 benefit of the individual who did not cash their check.

5 9. The Agreement and this Settlement are not an admission by Defendant, nor is this
6 Final Approval Order and Judgment a finding, of the validity of any claims in the Action or of any
7 wrongdoing by Defendant or that this Action is appropriate for class treatment (other than for
8 settlement purposes). Neither this Final Approval Order and Judgment, the Agreement, nor any
9 document referred to herein, nor any action taken to carry out the Agreement is, may be construed
10 as, or may be used as an admission by or against Defendant of any fault, wrongdoing or liability
11 whatsoever. The entering into or carrying out of the Agreement, and any negotiations or
12 proceedings related thereto, shall not in any event be construed as, or deemed to be evidence of, an
13 admission or concession with regard to the denials or defenses by Defendant. Notwithstanding
14 these restrictions, Defendant may file in the Action or in any other proceeding this Final Approval
15 Order and Judgment, the Agreement, or any other papers and records on file in the Action as
16 evidence of the Settlement to support a defense of res judicata, collateral estoppel, release, or other
17 theory of claim or issue preclusion or similar defense as to the Released Class Claims and the
18 Released PAGA Claims.

19 10. Notice of entry of this Final Approval Order and Judgment shall be given to all
20 Parties by Class Counsel on behalf of Plaintiff and all Class Members. The Final Approval Order
21 and Judgment shall be posted on Class Counsel's website as set forth in the Class Notice to the
22 Class. It shall not be necessary to send notice of entry of this Final Approval Order and Judgment
23 to individual Class Members.

24 11. If the Agreement does not become final and effective in accordance with the terms
25 of the Agreement, then this Final Approval Order and Judgment, and all orders entered in
26 connection herewith, shall be rendered null and void and shall be vacated, and the Parties shall
27 revert to their respective positions as of before entering into the Agreement, and expressly reserve
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1 their respective rights regarding the prosecution and defense of this Action, including all available
2 defenses and affirmative defenses, and arguments that any claim in the Action could not be
3 certified as a class action and/or managed as a representative action.

4
5 **IT IS HEREBY ORDERED, ADJUDICATED AND DECREED THAT:**

6 1. The Court hereby enters final judgment in this case in accordance with the terms of
7 the Settlement, the Preliminary Approval Order, and this Final Approval Order and Judgment.

8 2. Except as set forth in the Agreement and this Final Approval Order and Judgment,
9 Plaintiff, and all members of the Class, shall take nothing in the Action.

10 3. Pursuant to California Code of Civil Procedure section 664.6, and without affecting
11 the finality of this Judgment in any way, the Court shall retain jurisdiction to construe, interpret,
12 implement and enforce the Agreement, to hear and resolve any contested challenge to a claim for
13 settlement benefits, and to supervise and adjudicate any dispute arising from or in connection with
14 the distribution of settlement benefits.

15 4. The Parties are authorized to agree to and to adopt such amendments, modifications
16 and expansions of the Agreement and all exhibits attached thereto which are consistent with this
17 Final Approval Order and Judgment and do not limit the rights of the Parties or Class Members
18 under the Agreement, subject to Court approval.

19 5. Each party shall bear its own attorneys' fees and costs, except as otherwise
20 provided in the Agreement and in this Final Approval Order and Judgment.

21 6. As of the Effective Date and upon full finding of the Gross Settlement Amount by
22 Defendant, all Participating Class Members, on behalf of themselves and their respective former
23 and present representatives, agents, attorneys, heirs, administrators, successors, and assigns,
24 release Released Parties from the Released Class Claims. The "Released Class Claims" are all
25 claims that were alleged, or reasonably could have been alleged, based facts stated in the
26 Operative Complaint which occurred during the Class Period. Except as expressly set forth in this
27 Agreement, Participating Class Members do not release any other claims, including claims for
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1 vested benefits, wrongful termination, violation of the Fair Employment and Housing Act,
2 unemployment insurance, disability, social security, workers' compensation, and Class claims
3 outside the Class Period. The "Released Parties" are Defendant and each of its former and present
4 directors, officers, shareholders, owners, attorneys, insurers, predecessors, successors, assigns and
5 subsidiaries.

6 7. As of the Effective Date and upon full funding of the Gross Settlement Amount by
7 Defendant, all Aggrieved Employees and the LWDA are deemed to release, on behalf of
8 themselves and their respective former and present representatives, agents, attorneys, heirs,
9 administrators, successors, and assigns, the Released Parties from the Released PAGA Claims.
10 The "Released PAGA Claims" are all claims for PAGA penalties that were alleged, or reasonably
11 could have been alleged, based on the facts stated in the Operative Complaint and the PAGA
12 Notice, which occurred during the PAGA Period. The Released PAGA Claims do not include
13 other PAGA claims, underlying wage and hour claims, claims for vested benefits, violation of the
14 Fair Employment and Housing Act, wrongful termination, discrimination, unemployment
15 insurance, disability, social security and worker's compensation, and PAGA claims outside of the
16 PAGA Period.

17 8. As of the Effective Date and upon full funding of the Gross Settlement Amount by
18 Defendant, Plaintiff and his or her respective former and present spouses, representatives, agents,
19 attorneys, heirs, administrators, successors, and assigns generally, release and discharge Released
20 Parties all claims, transactions, or occurrences that occurred during the Class Period as set forth
21 fully in the Agreement.

22 **LET JUDGMENT BE FORTHWITH ENTERED ACCORDINGLY. IT IS SO ORDERED.**

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24 Dated: _____

25 _____
26 HON. MATTHEW C. BRANER
27 JUDGE, SUPERIOR COURT OF CALIFORNIA
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