

FILED
Superior Court of California
County of Los Angeles

DEC 08 2020

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**SUPERIOR COURT OF CALIFORNIA
COUNTY OF LOS ANGELES**

JORDAN A. SEPER and JIWAN CHHINA
on behalf of themselves and others similarly
situated.

Plaintiff,

vs.

VITAS HEALTHCARE CORPORATION
OF CALIFORNIA, a Delaware corporation;
VITAS HEALTHCARE CORP OF CA, a
business entity | unknown; VITAS
HEALTH SERVICES OF CALIFORNIA,
INC., a California corporation; and DOES 1
to 100, Inclusive,

Defendants.

Case No.: BC642857

**ORDER GRANTING
MOTION FOR FINAL APPROVAL
OF CLASS ACTION SETTLEMENT ON
CONDITIONS**

Date: December 8, 2020

Time: 11:00 a.m.

Dept.: SSC-7

I. BACKGROUND

This is a wage and hour class action. Defendants are end-of-life hospice care providers. On September 26, 2016, Plaintiff Jordan Seper filed suit against Defendants in the Superior Court of the State of California, County of San Francisco (Case No. CGC-16-554500), which was transferred to the County of Los Angeles (Case No. BC642857) on behalf of a class of all non-exempt hourly employees for wage and hour claims.

On September 27, 2016, Plaintiff Jiwan Chhina filed suit against Defendants in the Superior Court of the State of California, County of San Diego (Case No. 37-2016-00033978-CU-OE-CTL) on behalf of a class of all non-exempt hourly employees for wage and hour claims.

Subsequently, on May 21, 2018, Seper and Chhina filed a consolidated First Amended Complaint against Defendants in the Superior Court of the State of California, County of Los Angeles in which Seper's suit was pending (Case No. BC642857) for failure to pay wages for all times worked at the minimum wage rate, failure to provide meal periods, failure to authorize or permit rest periods, failure to indemnify employees for necessary expenditures, failure to provide complete and accurate wage statements, and failure to timely pay all earned wages due at the time of separation of employment, and claims under the UCL and PAGA.

As a result, Chhina dismissed his suit against Defendants in the Superior Court of the State of California, County of San Diego (Case No. 37-2016-00033978-CU-OE-CTL).

Ultimately, the parties reached the proposed settlement, a signed copy of which is attached to the Declaration of Jordan Bello ("Bello Decl. ISO Prelim") as Exhibit 1.

On December 4, 2019, the Court issued a checklist of items for the parties to address and continued preliminary approval. In response, on January 13, 2020, counsel

1 filed Further Briefing (“Supp. Brief ISO Prelim”), the Declaration of Zachary Crosner
2 (“Crosner Decl. ISO Prelim”), and a fully executed Amended Settlement Agreement
3 attached to the Declaration of Jordan Bello (“Bello Supp. Decl. ISO Prelim”) as Exhibit
4 1.

5 The settlement was preliminarily approved on January 28, 2020. Notice was given
6 to the Class Members as ordered. (Declaration of Chris Lawless (“Lawless Decl.”).) Now
7 before the Court is Plaintiff’s motion for final approval of the Settlement Agreement,
8 including for payment of fees, costs, and a service award to the named plaintiff. For the
9 reasons set forth below the Court grants final approval of the settlement on condition that
10 the releases become effective upon payment of the Class Settlement Amount.

11 12 **II. THE TERMS OF THE SETTLEMENT**

13 14 **A. SETTLEMENT CLASS DEFINITION**

15 “Class Member” or “Settlement Class Member” means all individuals alleged in
16 Paragraph 39 of the Litigation who, after discovery, have been re-defined as all
17 individuals who are or previously were employed by Defendants in the State of
18 California as hourly non-exempt clinical field employees, including Registered Nurses
19 (“RNs”), Licensed Vocational Nurses/Licensed Practical Nurses (“LVNs or LPNs”),
20 Home Health Aides (“HHAs”), Patient Care Liaisons (“PCLs”), and Social Workers at
21 any time since September 26, 2012 to May 15, 2019 and have not submitted an Opt-Out
22 Letter. (Settlement Agreement, ¶1.6.)

23 “Settlement Class Period” means the period of time from September 26, 2012 to
24 May 15, 2019 which is the period of time applicable to the claims being released. (¶1.28.)

- 25
- There are 3,778 Class Members. (Lawless Decl., ¶9.)

- The parties stipulate to class certification for settlement purposes only. (¶3.2.)

B. THE MONETARY TERMS OF SETTLEMENT

The essential terms are as follows:

- The Class Settlement Amount (“CSA”) is **\$5,750,000**. (¶1.7.) This includes payment of a PAGA penalty of \$10,000 to be paid 75% to the Labor Workforce Development Agency (“LWDA”) (\$7,500) and 25% to the Aggrieved Employees (2,500). (¶4.10.)
- The Net Settlement Fund (“Net”) (**\$3,736,334**) is the CSA less:
 - Up to **\$1,916,666** (1/3) for attorney fees (¶4.4);
 - Fee Split: Lavi & Ebrahimian, LLP and Crosner Legal, L.P. will divide the attorney’s fees 50- 50 and each Plaintiff has consented in writing to the approval. (Bello Decl., ¶32)
 - Up to **\$25,000** for attorney costs (4.4);
 - Up to **\$30,000** for a Service Award to the Class Representatives (\$15,000 each) (¶4.3);
 - Estimated **\$32,000** for settlement administration costs. (¶4.5.)
- Employer-side payroll taxes will be paid by Defendant. (¶1.7.)
- Assuming the Court approves all maximum requested deductions, approximately \$3,736,334 will be available for automatic distribution to participating class members. Assuming full participation, the average settlement share will be approximately \$988.97. ($\$3,736,334 \text{ Net} \div 3,778 \text{ class members} = \988.97). In addition, each class member will receive a portion of the PAGA penalty, estimated to be \$0.66 per class member. ($\$2,500 \text{ 25\% of } \$10,000 \text{ PAGA penalty} \div 3,778 \text{ class members} = \0.66).

- 1 • There is no Claim Requirement. (§4.2.)
- 2 • The settlement is non reversionary. (§1.7.)
- 3 • Individual Settlement Share Calculation: Except for those potential Settlement
- 4 Class Members who Opt-Out from the Settlement, all members of the Settlement
- 5 Class shall be assigned a respective individual Settlement Amount which will be
- 6 calculated by dividing the Net Settlement Amount among all Settlement Class
- 7 Members based on all Settlement Class Members' number of workweeks worked
- 8 during the applicable Class Period, as follows: The Claims Administrator will
- 9 calculate each Settlement Class Member's pro rata share of the Net Settlement
- 10 Amount by dividing the total number of weeks actually worked by each
- 11 Settlement Class Member during the Class Period by the total workweeks worked
- 12 by all Settlement Class Members during the Class Period while employed by one
- 13 or both Defendants. The workweeks for Class Members who Opt-Out will be
- 14 excluded from the total workweeks amount when calculating Class Members' pro
- 15 rata shares. (§4.2.)
- 16 • Tax withholdings: 20% as wages, 40% as interest, and 40% as penalties. (§4.6)
- 17 • Uncashed Settlement Payment Checks: Checks issued to the Settlement Class
- 18 Members pursuant to this Agreement shall remain negotiable for a period of one
- 19 hundred eighty (180) days from the date of mailing by the Claims Administrator.
- 20 Thereafter, the checks shall become null and void, and any monies remaining in
- 21 the distribution account shall be distributed to the Controller of the State of
- 22 California to be held pursuant to the Unclaimed Property Law, California Civil
- 23 Code § 1500 et seq., for the benefit of those Settlement Class members who did
- 24 not cash their checks until such time that they claim their property. (§4.11)
- 25

- Payment of CSA to be made by Defendants on: Within 60 days of the Settlement Effective Date. (§6.5.)

B. TERMS OF RELEASES

- Subject to final approval by the Court of the Settlement and upon the Settlement Effective Date, Named Plaintiffs and Settlement Class Members, other than those who submit timely and valid Opt-Out Letters (collectively, “Releasing Settlement Class Members”), will be deemed to have, and by operation of the Order of Final Approval will have, expressly and irrevocably released, acquitted, and forever discharged Defendants and all of their parents, subsidiaries, predecessors, successors, affiliates, and related entities, and their respective shareholders, owners, officers, directors, employees, administrators, fiduciaries, trustees, agents, partners, attorneys, insurers, and benefit plans administrators, and their respective predecessors, successors, and assigns (collectively referred to as the “Released Parties”) from any and all claims, rights, penalties, demands, damages, debts, accounts, duties, costs (other than those costs required to be paid pursuant to this Settlement Agreement), liens, charges, complaints, causes of action, obligations, liabilities, or causes of action of any nature or description, including any such claims, whether known or unknown, that were alleged in the Class Action Complaint or which could have been alleged based upon the facts set forth in the Class Action Complaint (“Released Claims”), including but not limited to claims under California Labor Code sections for 1) failure to provide minimum and regular wages, 2) failure to provide overtime wages, 3) failure to provide any and all meal breaks, 4) failure to provide any and all rest breaks, 5) failure to indemnify for necessary expenditures, including cell phone and

1 mileage reimbursements, 6) failure to provide accurate itemized wage
2 statements, 7) failure to timely pay unpaid wages upon separation of
3 employment, 8) violation of the applicable Business and Professions Code
4 sections 17200-17208, et seq. for unfair business practices as to said claims, 9)
5 civil penalties brought under the Labor Code Private Attorneys General Act of
6 2004 (Labor Code Section 2698 et seq.), and claims for declaratory relief,
7 accounting, injunctive relief, and any other benefit claimed on account of the
8 facts and claims which are alleged or reasonably could have been alleged based
9 on the facts and claims asserted in the Complaint filed in this Litigation. The
10 Releasing Settlement Class Members will be deemed to have specifically
11 acknowledged that this Release reflects a compromise of disputed claims. (§7.1.)

- 12 ○ With regard to the Released Claims, the Releasing Settlement Class
13 Members also waive and release all claims for attorneys' fees and costs
14 incurred by Releasing Settlement Class Members or by Class Counsel in
15 connection with the Litigation and the Settlement of the Litigation.

16 (§7.1.1.)

- 17 ○ "Released Claims" means the claims, rights, penalties, demands,
18 damages, debts, accounts, duties, costs (other than those costs required to
19 be paid pursuant to this Agreement), liens, charges, complaints, causes of
20 action, obligations, or liabilities that are set forth herein and released,
21 acquitted and discharged pursuant to this Agreement. (§1.22.)

- 22 ○ "Released Parties" means Defendants and all of their parents,
23 subsidiaries, predecessors, successors, affiliates, and related entities, and
24 their respective shareholders, owners, officers, directors, employees,
25 administrators, fiduciaries, trustees, agents, partners, attorneys, insurers,

1 and benefit plans administrators, and their respective predecessors,
2 successors, and assigns. (§1.23.)

- 3 • The named Plaintiff will also provide a general release and a waiver of the
4 protections of Cal. Civ. Code §1542. (§7.1.1.1.)
- 5 • The releases are effective as of final approval and the effective date. (§7.1.)

7 **III. ANALYSIS OF SETTLEMENT AGREEMENT**

8 “Before final approval, the court must conduct an inquiry into the fairness of the
9 proposed settlement.” Cal. Rules of Court, rule 3.769(g). “If the court approves the
10 settlement agreement after the final approval hearing, the court must make and enter
11 judgment. The judgment must include a provision for the retention of the court's
12 jurisdiction over the parties to enforce the terms of the judgment. The court may not
13 enter an order dismissing the action at the same time as, or after, entry of judgment.”
14 Cal. Rules of Court, rule 3.769(h).

15 As discussed more fully in the Order conditionally approving the settlement, “[i]n
16 a class action lawsuit, the court undertakes the responsibility to assess fairness in order to
17 prevent fraud, collusion or unfairness to the class, the settlement or dismissal of a class
18 action. The purpose of the requirement [of court review] is the protection of those class
19 members, including the named plaintiffs, whose rights may not have been given due
20 regard by the negotiating parties.” See *Consumer Advocacy Group, Inc. v. Kintetsu*
21 *Enterprises of America* (2006) 141 Cal. App.4th 46, 60 [internal quotation marks
22 omitted]; see also *Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 245
23 (“*Wershba*”), disapproved on another ground in *Hernandez v. Restoration Hardware*
24 (2018) 4 Cal.5th 260 [Court needs to “scrutinize the proposed settlement agreement to the
25 extent necessary to reach a reasoned judgment that the agreement is not the product of

1 fraud or overreaching by, or collusion between, the negotiating parties, and that the
2 settlement, taken as a whole, is fair, reasonable and adequate to all concerned.”] [internal
3 quotation marks omitted].

4 “The burden is on the proponent of the settlement to show that it is fair and
5 reasonable. However ‘a presumption of fairness exists where: (1) the settlement is
6 reached through arm's-length bargaining; (2) investigation and discovery are sufficient to
7 allow counsel and the court to act intelligently; (3) counsel is experienced in similar
8 litigation; and (4) the percentage of objectors is small.’” See *Wershba, supra*, 91
9 Cal.App.4th at pg. 245, citing *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794,
10 1802. Notwithstanding an initial presumption of fairness, “the court should not give
11 rubber-stamp approval.” See *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th
12 116, 130. “Rather, to protect the interests of absent class members, the court must
13 independently and objectively analyze the evidence and circumstances before it in order
14 to determine whether the settlement is in the best interests of those whose claims will be
15 extinguished.” *Ibid.*, citing 4 Newberg on Class Actions (4th ed. 2002) § 11:41, p. 90. In
16 that determination, the court should consider factors such as “the strength of plaintiffs’
17 case, the risk, expense, complexity and likely duration of further litigation, the risk of
18 maintaining class action status through trial, the amount offered in settlement, the extent
19 of discovery completed and stage of the proceedings, the experience and views of
20 counsel, the presence of a governmental participant, and the reaction of the class
21 members to the proposed settlement.” *Id.* at 128. This “list of factors is not exclusive and
22 the court is free to engage in a balancing and weighing of factors depending on the
23 circumstances of each case.” *Wershba, supra*, 91 Cal.App.4th at pg. 245.

24 **A. A Presumption of Fairness Exists**
25

1 The Court preliminarily found in its Order of January 28, 2020 that the
2 presumption of fairness should be applied. No facts have come to the Court's attention
3 that would alter that preliminary conclusion. Accordingly, the settlement is entitled to a
4 presumption of fairness as set forth in the preliminary approval order.

5 **B. The Settlement Is Fair, Adequate, and Reasonable**

6 The settlement was preliminarily found to be fair, adequate, and reasonable.
7 Notice has now been given to the Class and the LWDA. The notice process resulted in
8 the following:

9	Number of class members:	3,778
10	Number of notices mailed:	3,778
11	Number of undeliverable notices:	8
12	Number of opt-outs:	4
13	Number of objections:	0
14	Number of participating class members:	3,774

15 (Lawless Decl., ¶¶9-15.)
16

17 The Court finds that the notice was given as directed and conforms to due process
18 requirements. Given the reactions of the Class Members and the LWDA to the proposed
19 settlement and for the reasons set forth in the Preliminary Approval order, the settlement is
20 found to be fair, adequate, and reasonable.

21
22 **C. CLASS CERTIFICATION IS PROPER**

23 For the reasons set forth in the preliminary approval order certification of the
24 Class for purposes of settlement is appropriate.
25

1 **D. ATTORNEY FEES AND COSTS**

2 Class Counsel requests **\$1,916,666** (1/3) for attorney fees and **\$18,189.97** for
3 costs. (Crosner Decl. ISO Final, ¶¶12, 38; Bello Decl. ISO Final, ¶¶41-47.)

4 Courts have an independent responsibility to review an attorney fee provision and
5 award only what it determines is reasonable. *Garabedian v. Los Angeles Cellular*
6 *Telephone Company* (2004) 118 Cal.App.4th 123, 128. A percentage calculation is
7 permitted in common fund cases. *Laffitte v. Robert Half Int'l, Inc.* (2016) 1 Cal.5th 480,
8 503.

9 In the instant case, fees are sought pursuant to the percentage method. (Crosner
10 Decl. ISO Final, ¶¶12; Bello Decl. ISO Final, ¶¶41-46.) The \$1,916,666 fee request is 1/3
11 of the Class Settlement Amount.

12 Here, the \$1,916,666 fee request represents a reasonable percentage of the total
13 funds paid by Defendant. Further, the notice expressly advised class members of the fee
14 request, and no one objected. (Lawless Decl., ¶12, Exh. A.) Accordingly, the Court
15 awards fees in the amount of **\$1,916,666**.

16 Class Counsel requests \$18,189.97 in costs. This is less than the \$25,000 cap
17 provided in the settlement agreement. (¶4.4.) The amount was disclosed to Class
18 Members in the Notice, and no objections were received. (Lawless Decl., ¶12, Exh. A.)
19 Costs include: Filing Fees (\$1,435), Expert Analysis (\$7,875), and Mediation Fees
20 (\$3,666.67). (Crosner Decl. ISO Final, ¶38, Exh. 2; Bello Decl. ISO Final, ¶47, Exh. 3.)

21 The costs appear to be reasonable and necessary to the litigation, are reasonable
22 in amount, and were not objected to by the class.

23 For all of the foregoing reasons, costs of **\$18,189.97** are approved.

24
25 **E. SERVICE AWARD TO CLASS REPRESENTATIVE**

1 A service (or incentive) fee award to a named class representative must be
2 supported by evidence that quantifies the time and effort expended by the individual and
3 a reasoned explanation of financial or other risks undertaken by the class representative.
4 See *Clark v. American Residential Services LLC* (2009) 175 Cal.App.4th 785, 806-807;
5 see also *Cellphone Termination Cases* (2010) 186 Cal.App.4th 1380, 1394-1395
6 [“Criteria courts may consider in determining whether to make an incentive award
7 include: (1) the risk to the class representative in commencing suit, both financial and
8 otherwise; (2) the notoriety and personal difficulties encountered by the class
9 representative; (3) the amount of time and effort spent by the class representative; (4) the
10 duration of the litigation and; (5) the personal benefit (or lack thereof) enjoyed by the
11 class representative as a result of the litigation. (Citations.)”].

12 Here, the Class Representative requests an enhancement award totaling **\$30,000**
13 (\$15,000 each). (Declaration of Jiwan Chhina (“Chhina Decl.”), ¶19; Bello Decl. ISO
14 Final, ¶48.) Plaintiff Chhina urges that an award is appropriate for the following reasons:
15 Plaintiff dedicated numerous hours to lawsuit activities including, but not limited to
16 communicating with counsel to stay informed of ongoing developments in the case and
17 to discuss the proposed settlement ultimately negotiated, searching for and providing
18 documents and other materials relating to his work experience, responding to requests
19 for information relating to his work experience, preparing for mediation and
20 participating by phone, and reviewing filings and key documents including drafts of the
21 complaint and the settlement agreement.. (Chhina Decl., ¶11.) In total, Plaintiff Chhina
22 estimates he spent approximately 42.5-56.5 hours on this litigation. (*Id.* at ¶¶ 12-16.)
23 Plaintiff Seper urges that an award is appropriate for the following reasons: Plaintiff
24 sought counsel, searched for and produced work related documents, communicated with
25 counsel, traveled to and attended the full day mediation, and reviewed, discussed, and

1 signed the settlement agreement and its addendum. (Declaration of Jordan Seper (“Seper
2 Decl.”), ¶4.) In total, Plaintiff Seper estimates he spent approximately 40-50 hours on
3 this litigation. (*Ibid.*)

4 In light of the above-described contributions to this action, and in
5 acknowledgment of the benefits obtained on behalf of the class, a **\$10,000** (\$5,000 each)
6 service award is reasonable and approved.

8 **F. SETTLEMENT ADMINISTRATION COSTS**

9 The Settlement Administrator, CPT Group, Inc., requests **\$32,000** in
10 compensation for its work in administering this case. (Lawless Decl., ¶16.) The total
11 administration costs were \$41,175.05, but \$32,000.00 of the \$41,175.05 will be deducted
12 from the gross settlement amount and the remaining, \$9,175.05 are associated with the
13 additional mailing and will be paid separately by Defendant. (*Ibid.*) At the time of
14 preliminary approval, costs of settlement administration were estimated at **\$32,000**.
15 (¶4.2.) Class Members were provided with notice of this amount and did not object.
16 (Lawless Decl., ¶12, Exh. A.)

17 Accordingly, claims administration costs are approved in the amount of **\$32,000**.

19 **IV. CONCLUSION AND ORDER**

20 The Court hereby:

- 21 (1) Grants class certification for purposes of settlement;
- 22 (2) Grants final approval of the settlement as fair, adequate, and reasonable;
- 23 (3) Awards **\$1,916,666** in attorney fees to Class Counsel;
- 24 (4) Awards **\$18,189.97** in litigation costs to Class Counsel;
- 25 (5) Approves payment of \$7,500 (75% of \$10,000 PAGA penalty) to the LWDA;

1 (6) Awards **\$10,000** (\$5,000 each) as a Class Representative Service Award to
2 Jordan Seper and Jiwan Chhina;

3 (7) Awards **\$32,000** in claims administration costs to Rust Consulting, Inc.;

4 (8) Orders class counsel to lodge a proposed Judgment, consistent with this ruling
5 and containing the class definition and full release language, and the names of
6 the class member(s) who opted out by

7 _____, 2020;

8 (9) Orders class counsel to provide notice to the class members pursuant to
9 California Rules of Court, rule 3.771(b) and to the LWDA pursuant to Labor
10 Code §2699 (1)(3);

11 (10) Orders class counsel to provide notice to the class members pursuant to
12 California Rules of Court, rule 3.771(b); and

13 (11) Sets a Non-Appeal Case Review re: Final Report re: Distribution of
14 Settlement Funds for

15 _____ 9/8/2021, at 10:00 am

16 Final Report is to be filed by

17 _____ 9/1/2021.

18
19
20 Dated:

12/8/2020

21 _____
22 Amy D. Hogue

23 Judge of the Superior Court
24
25