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VENTURA SUPERIOR COURT

10/24/23

VENTURA SUPERIOR COURT

FILED

01/10/2024

Brenda L. McCormick
Executive Officer and Clerk

[Signature]
Cristal Alvarez

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6 Attorneys for Plaintiff Raffi Agopian

7 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
8 **FOR THE COUNTY OF VENTURA**
9

10 RAFFI AGOPIAN, individually, and on behalf
of all others similarly situated,

11 Plaintiff,

12 vs.

13 THOUSAND OAKS POST ACUTE, LLC, a
14 limited liability company; and DOES 1 through
15 10, inclusive,

16 Defendants

Case No.: 56-2022-00570429-CU-OE-VTA

[Hon. Mark S. Borrell, Dept. 40]

**~~PROPOSED~~ ORDER AND JUDGMENT
GRANTING PLAINTIFF'S MOTION TO
APPROVE SETTLEMENT AGREEMENT
AND RELEASE OF PAGA CLAIMS
PURSUANT TO LABOR CODE SECTIONS
2698 ET SEQ.**

Date: January 9, 2023
Time: 8:30 a.m.

Complaint filed: September 26, 2022
Trial date: Not set

*Filed with Notice and Motion to Approve
Settlement and Declaration of Kane Moon*

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**~~PROPOSED~~ ORDER AND JUDGMENT GRANTING PLAINTIFF'S MOTION TO APPROVE
SETTLEMENT OF PAGA CLAIMS**

ORDER

The Court having considered Plaintiff's Notice of Motion and Motion for Approval of PAGA Settlement ("Motion"), the supporting declaration and exhibits thereto, all papers filed and proceedings had herein, and the absence of any written objections received regarding the proposed Settlement, and having reviewed the record in the Action, and good cause appearing,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED AS FOLLOWS:

1. The Court, for purposes of this Final Order and Judgment, refers to all defined terms as set forth in the PAGA Representative Action Settlement Agreement and Release attached as Exhibit "A" to the Declaration of Kane Moon (the "Settlement").

2. The Court finds that it has jurisdiction over the subject matter of the action and over all Parties to the action, including all PAGA Settlement Members;

3. The Court finds that Plaintiff has properly exhausted her administrative remedies to proceed with this action;

4. The Court finds that Plaintiff submitted the Settlement and Motion to Approve Settlement Agreement and Release of PAGA Claims to the California Labor Workforce Development Agency ("LWDA") on August 29, 2023 and October 24, 2023, thereby satisfying the administrative requirements for seeking approval of the Settlement;

5. The Court has considered all relevant factors for determining the fairness of the Settlement and has concluded that all such factors weigh in favor of approving the Settlement. In particular, the Court finds that the Settlement was reached following meaningful discovery conducted by Plaintiff; that the Settlement is the result of serious, informed, adversarial, and arm's-length negotiations between the Parties; and that the terms of the Settlement are in all respects fair, adequate, and reasonable. In so finding, the Court has considered all evidence presented, including evidence regarding the strength of Plaintiff's PAGA claims; the risk, expense, and complexity of the claims presented; the likely duration of further litigation; the amount offered in settlement; the extent of investigation and discovery completed; and the

experience and views of counsel. The Parties have provided the Court with sufficient information about the nature and magnitude of the claims being settled, as well as the impediments to recovery, to make an independent assessment of the reasonableness of the terms to which the Parties have agreed;

6. Accordingly, the Settlement is hereby accepted and approved;

7. Plaintiff and all PAGA Settlement Members shall have, by operation of this Final Order and Judgment, fully, finally, and forever released, relinquished, and discharged the Released Parties from all Released Claims as follows:

“Released Claims” means all claims or causes of action for civil penalties that were, or could have reasonably been asserted based on the facts in Plaintiff’s September 18, 2022 letter to the LWDA or the Operative Complaint, that arose during the PAGA Period, including but not limited to alleged: failure to pay minimum wages, failure to pay overtime compensation, failure to provide meal periods, failure to pay meal premiums, failure to authorize and permit rest breaks, failure to pay rest premiums, failure to indemnify necessary business expenses, failure to pay all earned wages twice per month, failure to maintain accurate payroll records and records of hours worked and meal periods taken or missed, failure to timely pay final wages at termination, failure to timely pay accrued vacation wages at termination, and failure to provide accurate itemized wage statements.

“Released Parties” shall mean Defendant, and all of its current, past, present, and/or future subsidiary companies, affiliates, holding companies, successors, partners, shareholders, insurers, legal representatives, assigns, employees, benefit plan administrators, vendors, officers, directors, attorneys, agents, successors and predecessors in interest, parents, as well as any individual or entity that could be jointly liable with Defendant or any other Released Party.

8. This Judgment shall be binding on all PAGA Settlement Members and the State of California, who are hereby barred by the doctrine of res judicata from re-litigating the Released PAGA Claims that accrued during the PAGA Period.

9. In addition, Plaintiff also releases all claims, whether known or unknown, to the fullest extent permitted by law, against the Released Parties and waives all rights under California Civil Code section 1542, as set forth in the Settlement.

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

11. "PAGA Period" refers to the period of September 26, 2021 through June 13, 2023.

12. The Settlement is not an admission by Defendant as defined below, nor is this Order a finding of the validity of any allegations or of any wrongdoing by Defendant. Neither this Order, the Settlement, nor any document referred to herein, nor any action taken to carry out the Settlement, may be used as an admission of any fault, wrongdoing, omission, concession, or liability whatsoever by or against Defendant.

13. The Settlement Administrator will pay, pursuant to the terms of the Settlement:

- a. Actual administration costs of up to \$3,500.00, payable to the Settlement Administrator Phoenix Class Action Settlement Administrators for the administration of the Settlement;
- b. Attorneys' fees to Plaintiff's Counsel in the amount of \$53,333.33 (33 1/3%);
- c. Reimbursement for actual costs incurred by Plaintiff's Counsel in the amount of \$13,014.91;
- d. The remaining amount of the Gross Settlement Amount, which shall be allocated as set forth in Labor Code § 2699(d), with 75% allocated to the LWDA, and the remaining 25% to the PAGA Settlement Members on a pro-rata basis based on the proportional number of pay periods worked by each PAGA Settlement Member during the PAGA Period, as provided for in the Settlement.

14. The Court finds that these amounts and the distribution formula set forth in the Settlement is fair, adequate, and reasonable, and orders that payment be made to the LWDA

1 and the PAGA Settlement Members per the terms of the Settlement. The Settlement
2 Administrator shall issue an IRS Form 1099 to each PAGA Settlement Member for their
3 Individual Settlement Payment as needed.

4 15. PAGA Settlement Members shall have 180 calendar days to cash their
5 settlement payment checks. If any PAGA Settlement Member's check is not cashed within
6 that period, the settlement payment check will be voided and a stop-payment will be issued.
7 Neither Defendant, Defendant's counsel, Plaintiff, nor PAGA Counsel will have any liability
8 for lost or stolen settlement payment checks, forged signatures on settlement payment checks,
9 unauthorized negotiation of settlement payment checks or failure to timely cash a settlement
10 payment check within the 180 day period. Any unpaid cash residue or unclaimed Aggrieved
11 Employee funds, plus any accrued interest that has not otherwise been distributed pursuant
12 to order of the Court, shall be transmitted to California State Controller's Office for
13 Unclaimed Property in the name of each Aggrieved Employee who failed to cash their
14 Individual PAGA Payment prior to the void date.

15 16. "Effective Date" refers to the date the Court enters an order approving the
16 Settlement

17 17. Defendant shall fund the Gross Settlement Amount no later than 90 days after
18 the Effective Date i.e. the date the Court enters an order approving the Agreement.

19 18. No later than seven (7) days after the Gross Settlement Amount is fully funded,
20 the Settlement Administrator will pay from the Gross Settlement Amount to PAGA Counsel
21 its Court-approved Attorneys' Fees and Costs, the LWDA payment, settlement
22 administration costs, and Aggrieved Employees' recovery.

23 19. The Court hereby confirms Kane Moon, and Enzo Nabiev of Moon Law Group,
24 PC as PAGA Counsel.

25 20. The Court finds that the fees requested by Plaintiff's Counsel of \$53,333.33 (33
26 1/3%) of the total settlement amount is reasonable, and the costs requested of up to \$16,000.00
27 were reasonable and necessary for the prosecution of this action. The Court hereby awards
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1 attorney's fees of \$53,333.33 and costs of \$13,014.91 to Plaintiff's Counsel for their litigation
2 costs. The payment of fees and costs to Plaintiff's Counsel shall be made in accordance with
3 the terms of the Settlement.

4 21. The Court approves Phoenix Class Action Settlement Administration as the
5 Settlement Administrator and approves payment to them in the amount of \$3,500.00.

6 22. The Court approves of the proposed letter attached to the Settlement as Exhibit
7 A as an Exhibit to be sent to PAGA Members along with their respective settlement check.

8 23. This action is dismissed with prejudice.

9 24. Plaintiff shall submit a copy of this Order and Judgment to the LWDA within ten
10 calendar days after entry of the Order and Judgment.

11 25. Without affecting the finality of the Order and Judgment, this Court shall retain
12 jurisdiction, pursuant to California Code of Civil Procedure section 664.6, over this action, the
13 Parties, and the PAGA Settlement Members to the fullest extent necessary to interpret, enforce,
14 and effectuate the terms and intent of the Settlement and this Order and Judgment.

15 26. The Court sets a status conference re: final accounting for 12/9, 2024. At 8:30 am
16 least nine court days prior to the hearing, Plaintiff shall submit a final report including the actual
17 amounts paid to aggrieved employees, the other amounts distributed under the settlement, and
18 the amounts tendered to the Unclaimed Property Division

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20 **IT IS SO ORDERED.**

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22 DATED: 1/9/24

23 
24 HON. MARK S. BORRELL
25 VENTURA COUNTY SUPERIOR COURT
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PROOF OF SERVICE

STATE OF CALIFORNIA)
) ss
COUNTY OF LOS ANGELES)

I am employed in the county of Los Angeles, State of California. I am over the age of 18 and not a party to the action; my business address is 1055 West Seventh Street, Suite 1880, Los Angeles, California 90017. On October 24, 2023, I served the foregoing document described as:

[PROPOSED] ORDER AND JUDGMENT GRANTING PLAINTIFF'S MOTION TO APPROVE SETTLEMENT AGREEMENT AND RELEASE OF PAGA CLAIMS PURSUANT TO LABOR CODE SECTIONS 2698 ET SEQ.

X by placing ___ the original X a true copy thereof enclosed in sealed envelope(s) addressed as follows:

Julie A. Vogelzang
Lisa Hird Chung
Janelle Thornton
SCHOR VOGELZANG & CHUNG LLP
2170 Fourth Avenue
San Diego, California 92101
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Attorneys for Defendant THOUSAND OAKS POST ACUTE, LLC

☒ **BY E-MAIL:** I hereby certify that this document was served from Los Angeles, California, by e-mail delivery on the parties listed herein at their most recent known e-mail address or e-mail of record in this action.

X (State) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on October 24, 2023, at Los Angeles, California.

Karen Castillo

/S/ Karen Castillo

Name

Signature