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individually and on behalf of similarly situated employees

**SUPERIOR COURT OF CALIFORNIA
FOR THE COUNTY OF SAN JOAQUIN**

ANA ARMAS, individually and on behalf of
all other similarly situated employees,

Plaintiff,

vs.

VIENNA CONVALESCENT HOSPITAL,
INC., a California Corporation; and DOES 1 to
100, inclusive,

Defendants.

Case No. STK-CV-UOE-2023-0003403

*Assigned for All Purposes to Hon. Blanca A.
Banuelos, Department 10B*

[PROPOSED] ORDER GRANTING
PLAINTIFF'S MOTION TO APPROVE
PRIVATE ATTORNEYS GENERAL ACT
SETTLEMENT

Date: OCT 20 2023
Time: 9:00 a.m.
Dept.: 10B
Judge: Hon. Blanca A. Banuelos

Filed: April 6, 2023
Trial Date: None Set

[PROPOSED] ORDER GRANTING MOTION FOR APPROVAL OF PAGA SETTLEMENT

FILE BY FAX

SEP 18 2023

1 TO ALL PARTIES AND THEIR RESPECTIVE COUNSEL OF RECORD:

2 The Motion to Approve Private Attorneys General Act Settlement ("Motion") in the above
3 referenced case came before this Court, on 10·20·23 at 9:00 a.m., in Department 10B before the
4 Honorable Blanca A. Bañuelos, presiding. Plaintiff Ana Armas ("Plaintiff") filed this Private Attorneys
5 General Act ("PAGA") action on April 6, 2023. The operative Complaint alleges that Vienna
6 Convalescent Hospital, Inc. ("Defendant") violated California law by failing to pay overtime wages,
7 failing to provide meal periods or pay premiums in lieu thereof, failing to provide rest periods or pay
8 premium in lieu thereof, failing to provide accurate wage statements, failing to pay final wages, and
9 failing to provide paid sick leave. The Complaint further alleges that Defendant engaged in unfair
10 competition and further alleges that Defendant is also liable for civil penalties under the PAGA as a
11 result of the alleged violations. Defendant has denied all of Plaintiff's allegations. Plaintiff sought
12 attorneys' fees and costs as part of this Action.

13 The parties have agreed to a settlement of the PAGA claims. Defendant will provide monetary
14 consideration in exchange for a release of claims and dismissal consistent with the terms of the PAGA
15 Settlement ("Agreement" or "Settlement"). Any capitalized terms herein shall have the same meaning
16 as set forth in the Agreement. The Court, having received and considered Plaintiff's Motion, the
17 declarations in support, the Agreement, the Notice of Settlement, and other evidence, HEREBY
18 ORDERS AND MAKES DETERMINATIONS AS FOLLOWS:

19 **I. SCOPE OF INDIVIDUALS WITHIN THE PAGA SETTLEMENT – AGGRIEVED**
20 **EMPLOYEES**

21 The Court finds that Plaintiff has exhausted all administrative remedies required to bring the
22 PAGA claims asserted in this litigation. Plaintiff is authorized to act on behalf of the Labor and
23 Workforce Development Agency ("LWDA") with respect to the PAGA claims being released under the
24 Agreement. The Court finds the scope of individuals subject to the terms and conditions of the
25 Agreement, its releases, and all rights and obligations thereunder include the following:
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27
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1 All nonexempt employees who have or continue to work for Defendant in
2 California from January 26, 2022, up to either (1) the Approval Date, or
3 (2) sixty (60) days after the Agreement is fully executed, whichever is
4 earlier, and who were paid any type of nondiscretionary remuneration in
5 addition to their base hourly rate, including, but not limited to,
6 performance bonuses, shift differentials, or other types of bonuses.

7 The Court recognizes that the foregoing definition is for Aggrieved Employee identification
8 purposes only and is not intended to capture the claims at issue or limit or alter the released claims under
9 the Agreement.

10 **II. APPROVING THE AGREEMENT**

11 The Court has reviewed the Agreement, which was submitted with Plaintiff's Motion as Exhibit
12 A. The Court finds that the Agreement is fair, reasonable, and adequate, and, therefore, is approved as
13 required under California Labor Code sections 2698 *et seq.* Based on the potential amount of penalties
14 at issue, the risk of loss on the merits, the risk of being able to prove violations in each pay period as to
15 each individual as required by statute for damages purposes, and the Court's statutorily authorized
16 discretion to reduce penalties, the Agreement represents a substantial recovery for Aggrieved Employees
17 and the LWDA to further the LWDA's purpose in enforcing the California Labor Code. The Court also
18 finds that the Agreement provides a recovery that creates an effective, substantial deterrent to any
19 potential future non-compliance, furthering the purpose of the California Labor Code and LWDA.

20 The Court approves of the PAGA penalty allocations set forth in the Agreement wherein 75% of
21 the Net Settlement Amount will be paid to the LWDA and 25% of the Net Settlement Amount will be
22 paid to Aggrieved Employees as civil penalties pursuant to California Labor Code section 2699(i).

23 Additionally, because the Court finds the Parties' settlement to have been agreed upon only after
24 extensive and costly investigation, arms-length negotiations, and in an attempt to avoid further delays
25 and costs, the Court approves the Agreement and terms stated therein, which is incorporated by
26 reference in its entirety, as if stated here in full, including the \$50,000 Gross Settlement Amount.

27 The Court finds that an award of fees under the common fund doctrine is appropriate in this case
28 because there is a sufficiently identifiable class of beneficiaries (*i.e.* Aggrieved employees and the
LWDA), the benefits can be accurately traced as set forth in the Agreement, Plaintiff and Plaintiff's
Counsel were able to negotiate on behalf of Aggrieved employees and the LWDA, and the fee can be
shifted with exactitude to those benefiting as the fee request is a specific, lump-sum percentage of the

1 Gross Settlement Amount. *See Paul, Johnson, Alston & Hunt v. Grauly*, 886 F.2d 268, 271 (9th Cir.
2 1989); *Serrano v. Priest*, 20 Cal.3d 25, 34-35 (1977); *Laffitte v. Robert Half Internat., Inc.*, 1 Cal.5th
3 480, 506 (2016). The Court finds the attorneys' fees request of thirty-five (35%) of the Gross
4 Settlement Amount, *i.e.* \$17,500, to be appropriate compensation for Plaintiff's Counsel. The attorneys'
5 fees request is within the range of percentages that have been approved by other Courts in similar cases
6 and is reasonable in light of the circumstances of this case, the substantial and beneficial results obtained
7 on behalf of Aggrieved Employees and the LWDA, and the contingent nature of the recovery over the
8 course of this case, which included potential loss at summary judgment and/or trial proceedings.
9 Additionally, the Court orders that \$2,806.71 of the Gross Settlement Amount will be paid to Plaintiff's
10 Counsel for reasonable costs incurred in this case.

11 The Court orders and approves ILYM Group, Inc. to act as the Settlement Administrator in this
12 case. The Settlement Administrator will take its fees out of the Gross Settlement Amount, which are not
13 to exceed \$3,850.00. Any difference between the actual Settlement Administrator Costs and the
14 approved amount will be added to the Net Settlement Amount for distribution between the LWDA and
15 Aggrieved Employees consistent with the allocations and formulas set forth in the Agreement.

16 The Court orders that Plaintiff will receive an Enhancement Payment of \$5,000 from the Gross
17 Settlement Amount for her work on behalf of the Aggrieved Employees and the LWDA and in exchange
18 for her general release of all her individual claims in addition to any amount Plaintiff may be entitled to
19 under the Agreement's pro rata distribution formula.

20 The Court approves of the identified *cy pres* distribution plan wherein any checks issued to
21 Aggrieved Employees that are not cashed by the deadline to do so shall be donated equally, *i.e.* 50/50, to
22 Capital Pro Bono, Inc., and the Center for Workers' Rights. *See In re Microsoft I-V Cases*, 135
23 Cal.App.4th 706, 718 (2006). No portion of the Gross Settlement Amount will revert to Defendant for
24 any reason.

25 The releases and waivers for Plaintiff and the Aggrieved Employees are also approved by the
26 Court as set forth in the Agreement.

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1 **III. APPROVAL OF THE NOTICE OF SETTLEMENT**

2 The Court finds that the Notice of Settlement, which was submitted with Plaintiff's Motion as
3 Exhibit E, fairly and adequately advised Aggrieved Employees about the Agreement and its effect. The
4 Court further finds that the Notice of Settlement and distribution of such notice by first class mail to
5 each identified Aggrieved Employees at his or her most recent address based on a National Change of
6 Address database search from the Aggrieved Employees' last known address and a skip trace on any
7 Aggrieved Employees who have their notice returned as "undeliverable" or "not at this address"
8 comported with all constitutional requirements, including those of due process.

9 The Court also finds that because there is a strong interest in providing Aggrieved Employees the
10 opportunity to recover under the Agreement, along with the parties' efforts to minimize any intrusion to
11 privacy rights, the sharing of employment information, including social security numbers, is not a
12 serious intrusion on their privacy rights. Hence, the Court orders Defendant to provide first and last
13 name, last known mailing address, social security number, and hire and termination dates for pay period
14 calculations to the Settlement Administrator only, and not to Plaintiff or Plaintiff's Counsel, in order to
15 process this settlement as contemplated within the Agreement and approved by this Order. The
16 Settlement Administrator shall only use this information for settlement purposes identified herein, and
17 this information shall be kept confidential, not be shared with any third-party, and used only to
18 administer the settlement.

19 **IV. IMPLEMENTATION SCHEDULE**

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

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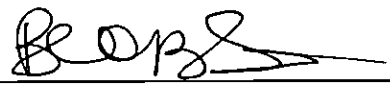
23 Last day for Defendant to provide Settlement 24 Administrator with Aggrieved Employee 25 information	Within 14 calendar days after the Effective Date
26 Last day for Settlement Administrator to calculate 27 and report to the Parties the Net Settlement 28 Amount, PAGA Payment, and Individual Settlement Amounts for Aggrieved Employees	Within 7 calendar days after receiving Aggrieved Employee information

Last day for Defendant to fund Gross Settlement Amount	Within 14 calendar days after the Settlement Administrator calculates and reports to the Parties the Net Settlement Amount, PAGA Payment, and Individual Settlement Amounts for Aggrieved Employees
Last day for Settlement Administrator to complete NCOA search, update Aggrieved Employee mailing information, and complete mailing	Within 7 calendar days after Defendant has funded the settlement
Last day for Settlement Administrator to deliver payment of Plaintiff's Counsel's attorney's fees and costs, PAGA Payment, Settlement Administrator Costs, and payment to Aggrieved Employees	Within 7 calendar days after Defendant has funded the settlement
Last day for Aggrieved Employees to cash settlement checks	180 calendar days after issuance of checks to Aggrieved Employees
Last day for Settlement 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 Settlement Administrator to provide Parties with compliance declaration	Within 21 calendar days after settlement check cashing deadline

IT IS FURTHER ORDERED that this action be dismissed with prejudice with each party to bear its own fees and costs outside of what has been ordered herein. This matter is subject to the Court's continuing jurisdiction to monitor and enforce the terms of this order and the approved Agreement pursuant to California Civil Procedure Code section 664.6.

IT IS SO ORDERED.

Date: 10/20/23

By: 

Judge of the Superior Court

BLANCA A. BAÑUELOS