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FILED
San Diego Superior Court

FEB 07 2025

By: S. Christensen, Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN DIEGO

BILLY JAMES PIZARRO, individually, and on
behalf of all others similarly situated,

Plaintiff,

vs.

POMERADO OPERATIONS, LLC, a limited
liability company dba BOULDER CREEK POST
ACUTE; and DOES 1 through 10, inclusive,

Defendants.

Case No.: 37-2023-00012945-CU-OE-CTL

[Assigned to Hon. Judy S. Bae, Dept. C-62]

AMENDED ~~PROPOSED~~ ORDER
GRANTING PLAINTIFF'S MOTION FOR
AN ORDER APPROVING SETTLEMENT
OF CLAIMS BROUGHT PURSUANT TO
THE PRIVATE ATTORNEY GENERAL'S
ACT OF 2004

Date: February 7, 2025
Time: 9:10 a.m.
Courtroom: C-62
Judge: Hon. Judy S. Bae

Action Filed: March 29, 2023
Trial Date: Not Set

Case No.: 37-2023-00012945-CU-OE-CTL

*Pizarro v. Pomerado Operations, LLC dba Boulder
Creek Post Acute*

AMENDED ~~PROPOSED~~ ORDER GRANTING PLAINTIFF'S MOTION FOR AN ORDER APPROVING SETTLEMENT
OF CLAIMS BROUGHT PURSUANT TO THE PRIVATE ATTORNEY GENERAL'S ACT OF 2004

1 **TO ALL PARTIES AND TO THEIR COUNSEL OF RECORD:**

2 Plaintiff BILLY JAMES PIZARRO ("Plaintiff") and defendant POMERADO OPERATIONS,
3 LLC dba BOULDER CREEK POST ACUTE ("Defendant") (Plaintiff and Defendant are the "Parties")
4 have reached terms of settlement of this action alleging a claim for relief pursuant to the Labor Code Private
5 Attorneys General Act of 2004, Labor Code § 2698, *et seq.* ("PAGA").

6 Pursuant to PAGA, Plaintiff, on behalf of the Parties, has filed a motion for approval of the
7 settlement of the claims against Defendant in this action. Specifically, Plaintiff moves for an order:

8 1. Granting approval of the terms of the Agreement pursuant to the Labor Code Private
9 Attorneys General Act of 2004, Labor Code § 2698, *et seq.*, including the amount of the settlement;
10 the amount of distributions to the State and Aggrieved Employees; the amounts allocated to
11 attorney's fees and costs; and, the amount allocated to the settlement administrator; and,

12 2. Directing disbursement of the Gross Settlement Amount pursuant to the terms of the
13 Agreement.

14 On February 7, 2025, Plaintiff's Motion came on for hearing. The PAGA SETTLEMENT
15 AGREEMENT (referred to as the "Agreement," or "Settlement," and attached to the Declaration of H.
16 Scott Leviant as **Exhibit 1**) is conditioned upon the Court's approval. Capitalized terms in this Order have
17 the same meaning as in the Settlement unless indicated otherwise. A summary of the terms of the
18 Settlement is as follows:

19 (a) Aggrieved Employees: All persons employed by Defendant as hourly-paid or non-
20 exempt employees in the State of California who worked for Defendant from March
21 29, 2022 until and including June 18, 2024. (Agreement, ¶¶ 1.4, 1.19.)

22 (b) No Reversion: The Settlement is *non-reversionary*. (Agreement, ¶ 3.1.)

23 (c) Gross Settlement Amount: Defendant agrees to pay the maximum sum of
24 **\$380,000.00** (hereinafter referred to as the "Gross Settlement Amount" or "GSA")
25 for settlement of the PAGA Penalties, which shall be inclusive of Plaintiff's
26 Counsel's attorney's fees and costs, and the settlement administrator's fees and
27 costs, and subject to the escalator clause. (Agreement, ¶¶ 3.1, 3.2, 8.1.)

28 (d) Net Settlement Amount: At least **\$233,583.33** will be available for distribution to

the Aggrieved Employees and the LWDA. Of this amount, the LWDA will receive at least **\$175,187.50** under the Agreement, and Aggrieved Employees will receive at least **\$58,395.83**. (Agreement, ¶¶ 1.15, 3.2.3.)

(e) Attorney's Fees: Plaintiff's Counsel requests an award of attorney's fees in the amount of **\$126,666.67**, subject to the escalator clause, which is one-third of the GSA. (Agreement, ¶¶ 3.2.1, 8.1.)

(f) Litigation Costs: Plaintiff's Counsel seeks reimbursement of litigation costs, that was originally anticipated to be a maximum amount of \$15,000.00. Those actual costs are expected to be \$19,530.74, which is more than the originally anticipated amount. (Agreement, ¶ 3.2.1; Leviant Decl., ¶ 40, and Exh. 2.) However, Plaintiff does not seek reimbursement of costs over the maximum amount permitted under the Settlement Agreement. Therefore, **\$15,000.00** is requested.

(g) Settlement Administration: Payment to Aggrieved Employees and administration will be accomplished through third-party settlement administrator, ILYM Group, Inc., which has agreed to perform Administrator duties for a flat fee not to exceed **\$4,750.00**, which is reasonable, based on all of the services offered. (Agreement, ¶ 3.2.2; Leviant Decl., ¶ 41; Declaration of Lisa Mullins [Decl. of Mullins], ¶ 7.)

(h) Uncashed Checks: Uncashed checks will be cancelled, and the funds will, pursuant to Unclaimed Property laws, be directed to the California State Controller's Office in the name of the Aggrieved Employee who did not cash the check. (Agreement, ¶ 4.4.3.)

(i) Release: In exchange for the above settlement consideration, Defendant shall be entitled to a *limited* release from the LWDA and each and every Aggrieved Employee, including Plaintiff.¹ (Agreement, ¶ 5; Leviant Decl. ¶ 24, Exh. 1.)

(j) Notice to LWDA: The Declaration of H. Scott Leviant confirms that notice was

¹ This comports with settled California Supreme Court authority. *See Arias v. Superior Court*, 46 Cal. 4th 969, 986 (2009) (concluding that "with respect to the recovery of civil penalties, nonparty employees as well as the government are bound by the judgment in an action brought under the act....").

provided to the LWDA and attaches the confirmatory submission documents.
(Leviant Decl., ¶ 45, Exh. 3.)

After reviewing the Settlement and other related documents, and the filings submitted by Plaintiff,

IT IS HEREBY ORDERED AS FOLLOWS:

1. The Court hereby GRANTS approval of the PAGA settlement upon the terms and conditions set forth in the Settlement. The Court finds that the terms of the proposed settlement are reasonable. In granting approval of the settlement the Court has considered the factors identified in *Moniz v. Adecco USA, Inc.*, 72 Cal. App. 5th 56 (2021), *O'Connor v. Uber Technologies*, No. 13-CV-03826-EMC, 2016 WL 4398271 (N.D. Cal. Aug. 18, 2016), *Hanlon v. Chrysler Corp.*, 150 F.3d 1011 (9th Cir. 1998), *Dunk v. Ford Motor Co.*, 48 Cal. App. 4th 1794 (1996), and other authority providing a coherent framework for evaluating this Settlement.

2. The Court hereby identifies the Aggrieved Employees as:

All persons employed by Defendant as hourly-paid or non-exempt employees in the State of California who worked for Defendant from March 29, 2022 until and including June 18, 2024. (Agreement, ¶¶ 1.4, 1.19).

3. The Court hereby finds the Settlement was the product of informed, non-collusive negotiations conducted at arms' length by the Parties. In making these findings, the Court considered Defendant's potential liability, the benefit to the State of California, allocation of settlement proceeds among Aggrieved Employees, and the fact that a settlement represents a compromise of the Parties' respective positions rather than the result of a finding of liability at trial. The Court further finds that the terms of the Settlement have no obvious deficiencies. The Court finds that risks of further prosecution are substantial and include the risks that (1) penalties would be reduced after evaluation of the totality of the circumstances, or (2) no penalties would be awarded for some or all of the alleged violations.

4. The Court hereby approves ILYM Group, Inc. to serve as the Administrator. The Administrator will be paid pursuant to the Agreement's terms for such distribution, in the requested amount of \$4,750.00 out of the Gross Settlement Amount, to effectuate Administration.

5. Pursuant to the Agreement, the amount distributed as penalties under PAGA shall be \$380,000.00, less administration costs, attorney's fees, and costs awarded to Plaintiff's counsel, subject to the escalator clause. After awards, the amount remaining to distribute as penalties is \$233,583.33. The

1 LWDA shall receive 75% of the penalties allocated, which is \$175,187.50. Aggrieved Employees shall
2 receive 25% of the penalties allocated, which is \$58,395.83.

3 6. The Court hereby awards Counsel attorneys' fees in the amount of \$126,666.67, subject to
4 the escalator clause. The Court finds that the attorneys' fees are reasonable compared to amounts routinely
5 approved in similar settlements and as guided by the California Supreme Court's decision concerning the
6 awarding of fees from monetary funds for class members. *Laffitte v. Robert Half Intern. Inc.*, 1 Cal. 5th
7 480, 503 (2016). Counsel proceeded on a contingency basis despite the uncertainty of any fee award.
8 Counsel were necessarily precluded from pursuing other potential sources of fees because of work in
9 connection with this Action. The Court observed that this is not a class action. It is more akin to contingent
10 representation with an additional requirement of Court review due to the qui tam nature of a PAGA claim.
11 Attorneys' fees that are fifty percent of a common fund are typically considered the upper limit, with thirty
12 to forty percent commonly awarded in cases where the settlement is relatively small. *See Van Vranken v.*
13 *Atlantic Richfield Company*, 901 F. Supp. 294 (N.D. Cal. 1995) (stating that most cases where 30-50
14 percent was awarded involved "smaller" settlement funds of under \$10 million). Based on these
15 considerations, including the lodestar cross-check, a fee award of one-third is reasonable.

16 7. The Court hereby awards Counsel litigation costs in the total amount of \$15,000.00.

17 8. Upon entry of this Order, the Parties shall effectuate all terms of the Settlement based on
18 the provisions and timelines set forth in the Agreement.

19 9. Pursuant to the terms of the Settlement, the released persons and entities include:

20 Defendant, and any predecessor, successor, subsidiary, parent, affiliated or related
21 entity, and each of its employees, agents, directors, and/or officers (referred to in the
22 Settlement as the "Released Parties").

23 10. Upon entry of the Order approving this Settlement and the Judgment thereon, PAGA
24 claims are released as follows:

25 Effective on the date when Defendant fully funds the entire Gross Settlement Amount,
26 Plaintiff and PAGA Counsel will release claims against all Released Parties as follows:

27 Release by Aggrieved Employees: All Aggrieved Employees, including Plaintiff, are
28 deemed to release, on behalf of themselves and their respective former and present
representatives, agents, attorneys, heirs, administrators, successors, and assigns, the
Released Parties from all claims for PAGA penalties that were alleged, or reasonably
could have been alleged, in the PAGA Period based on the facts stated in the Operative

Complaint and the PAGA Notice.

Release by PAGA Counsel: PAGA Counsel release, on behalf of their present and former attorneys, employees, agents, successors and assigns, the Released Parties from all claims for PAGA Fees incurred in connection with the Operative Complaint and the PAGA Period facts stated in the Operative Complaint and the PAGA Notice. PAGA Counsel shall receive only the PAGA Counsel Fees Payment approved by the Court as part of this Settlement.

11. The action is DISMISSED WITH PREJUDICE.

12. The Court will enter Final Judgment in accordance with this Order.

13. The Court shall retain jurisdiction with respect to all matters related to the administration and consummation of the Settlement, and any and all claims asserted in, arising out of, or related to the subject matter of the lawsuit, including but not limited to all matters related to the Settlement and the determination of all controversies relating thereto. *Final Accounting hearing set for 11/14/2025 @ 9:10 in Dept. 62.*

IT IS SO ORDERED.

Dated: 2/7/2025


Hon. Judy S. Bae
SAN DIEGO SUPERIOR COURT JUDGE

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PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the State of California, County of Los Angeles. I am over the age of 18 and not a party to the within suit; my business address is 725 S. Figueroa St., 31st Floor, Los Angeles, CA 90017.

On the date indicated below, I served the document described as: **AMENDED [PROPOSED] ORDER GRANTING PLAINTIFF'S MOTION FOR AN ORDER APPROVING SETTLEMENT OF CLAIMS BROUGHT PURSUANT TO THE PRIVATE ATTORNEY GENERAL'S ACT OF 2004** on the interested parties in this action by sending [] the original [or] [✓] a true copy thereof [✓] to interested parties as follows [or] [] as stated on the attached service list:

Shane Criqui, Esq.
Kim L. Kirkpatrick
STRADLING YOCCA CARLSON & RAUTH, LLP
660 Newport Center Drive, Suite 1600
Newport Beach, CA 92660
Telephone: (949) 725-4000
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Attorneys for Defendant

[✓] **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.

I declare under penalty of perjury under the laws of the State of California and the United States that the foregoing is true and correct. Executed this **February 6, 2025** at Los Angeles, California.

Jill Eaton
Type or Print Name

jill eaton
Signature