

COHELAN KHOURY & SINGER

Isam C. Khoury (SBN 58759)

ikhoury@ckslaw.com

Michael D. Singer (SBN 115301)

msinger@ckslaw.com

Rosemary C. Khoury (SBN 331307)

rkhoury@ckslaw.com

605 C Street, Suite 200

San Diego, CA 92101

Telephone: (619) 595-3001/Facsimile: (619) 595-3000

Attorneys for PENNY A. SCOTT, on behalf of herself
and other similarly-situated employees

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

PENNY A. SCOTT, on behalf of
herself and other similarly-situated
employees,

Plaintiff,

v.

BLACKSTONE CONSULTING,
INC., a California Corporation; and
DOES 1 Through 10, inclusive,

Defendants.

CASE NO. 21CV1470 MMA (KSC)

CLASS ACTION

**[PROPOSED] ORDER GRANTING
PLAINTIFF'S MOTION FOR
PRELIMINARY APPROVAL OF
CLASS ACTION SETTLEMENT**

Date: July 10, 2023

Time: 2:30 p.m.

Judge: Michael M. Anello

Ctrm.: 3D (3rd Floor)

Complaint filed: May 21, 2021

Removal Date: August 18, 2021

Trial date: Not set

On July 10, 2023, this Court conducted a hearing on Plaintiff PENNY A. SCOTT (“Plaintiff”)’s Motion for Preliminary Approval of Class Action Settlement (the “Motion”). Having considered the Motion and the points and authorities and declarations submitted in support of the Motion, including the Class Action and PAGA Settlement Agreement (collectively, “Agreement” or “Settlement”) and exhibits, and **GOOD CAUSE** appearing, **IT IS HEREBY ORDERED** that the Motion is **GRANTED**, subject to the following findings and orders:

1. This Order incorporates by reference the definitions in the Agreement, and all terms defined therein shall have the meaning as set forth in the Agreement.

2. The class action settlement set forth in the Agreement, entered into among Plaintiffs and Defendant BLACKSTONE CONSULTING, INC. (“Defendant” or “BCI”) (collectively, the Parties), is preliminarily approved as it appears to be proper, to fall within the range of reasonableness, to be the product of arm’s-length and informed negotiations, to treat all Class Members fairly, and to be presumptively valid, subject only to any objections that may be raised at or before the final approval hearing. The Court further finds that Class Counsel conducted extensive investigation and research, and that they were able to reasonably evaluate Plaintiffs’ position and the strengths and weaknesses of their claims and the ability to certify them. Plaintiffs have provided the Court with enough 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.

3. The Gross Settlement Amount is One Million Dollars and Zero Cents (\$1,000,000.00). It appears to the Court on a preliminary basis that the Gross Settlement Amount and terms are fair, adequate and reasonable as to all potential Class Members when balanced against the probable outcome of further

1 litigation and the significant risks relating to certification, liability, and damages
2 issues. It further appears that investigation and research have been conducted
3 such that counsel for the Parties are able to reasonably evaluate their respective
4 positions. It further appears to the Court that settlement at this time will avoid
5 substantial additional costs by all Parties, as well as avoid the delay and risks that
6 would be presented by the further prosecution of the Action. It further appears
7 that the Settlement has been reached as the result of serious and non-collusive,
8 arms-length negotiations. The Court therefore preliminarily finds that the
9 Settlement is fair, adequate, and reasonable when balanced against the probable
10 outcome of further litigation and the significant risks relating to certification,
11 liability, and damages issues.

12 4. The rights of any potential dissenters to the proposed Settlement are
13 adequately protected in that they may exclude themselves from the Settlement
14 and proceed with any alleged claims they may have against Defendant, or they
15 may object to the Settlement and appear before this Court. However, to do so they
16 must follow the procedures outlined in the Settlement Agreement and Notice of
17 Class Action Settlement. Failure to follow the procedures outlined in the
18 Settlement Agreement and Notice of Class Action Settlement for making
19 objections shall result in waiver and the objector shall be forever foreclosed from
20 challenging any of the terms of the Settlement.

21 5. The Agreement specifies for an attorneys' fees award not to exceed
22 One-Third of the Gross Settlement Amount (or approximately \$333,333.33), an
23 award of litigation expenses incurred, not to exceed \$25,000, and proposed Class
24 Representative Service Payments to the Plaintiffs PENNY A. SCOTT, AHMIR
25 RINGO, TIFFANY LOCKETT, TOCASHEMA WILLIAMS, and KAWANA
26 ANDERSON in an amount not to exceed \$10,000 to each Plaintiff. The Court
27 will not approve the amount of attorneys' fees and costs, nor the amount of any
28 service award, until the Final Approval Hearing. Plaintiffs will be required to

1 present evidence supporting these requests, including lodestar, prior to final
2 approval.

3 6. The Court recognizes that Plaintiffs and Defendant stipulate and
4 agree to certification of a class for settlement purposes only. This stipulation will
5 not be deemed admissible in this or any other proceeding should this Settlement
6 not become final. For settlement purposes only, the Court conditionally certifies
7 the following Class: “all individuals who are or previously were employed by
8 Defendant in California as non-exempt employees working at Kaiser Permanente
9 facilities and hospitals in California at any time during the Class Period.” The
10 Class Period means the period from May 21, 2017 to April 30, 2023.

11 7. The Court concludes that, for settlement purposes only, the Class
12 meets the requirements for certification under Rule 23 of the Federal Rules of
13 Civil Procedure in that: (a) the Class is ascertainable and so numerous that joinder
14 of all members of the Class is impracticable; (b) common questions of law and
15 fact predominate, and there is a well-defined community of interest amongst the
16 members of the Class with respect to the subject matter of the litigation; (c) the
17 claims of Plaintiffs are typical of the claims of the members of the Class; (d)
18 Plaintiffs can fairly and adequately protect the interests of the members of the
19 Class; (e) a class action is superior to other available methods for the efficient
20 resolution of this controversy; and (f) counsel for the Class is qualified to act as
21 counsel for the Class and the Plaintiffs are adequate representatives of the Class.

22 8. The Court provisionally appoints Plaintiffs as the representatives of
23 the Class. The Court provisionally appoints as Class Counsel for the Class: Isam
24 Khoury, Michael Singer, and Rosemary Khoury of Cohelan Khoury & Singer,
25 Larry W. Lee, Max W. Gavron, and Kwanporn “Mai” Tulyathan of Diversity
26 Law Group, P.C., and Edwin Aiwazian, Arby Aiwazian, and Joanna Ghosh of
27 Lawyers for Justice, PC.

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1 9. The Court hereby approves, as to form and content, the Notice of
2 Proposed Settlement of Class Action and Hearing Date for Final Court Approval
3 (“Class Notice”) attached to the Agreement as Exhibit A. The Court finds that the
4 Class Notice appears to fully and accurately inform the Class of all material
5 elements of the proposed Settlement, of the Class Members’ right to be excluded
6 from the Class by submitting a signed Request for Exclusion From Class Action
7 Settlement (attached as Exhibit A to the Class Notice), and of each member’s
8 right and opportunity to object to the Settlement.

9 10. The Court finds that the method selected for communicating the
10 preliminary approval of the Settlement Agreement to Class Members is the best
11 notice practicable under the circumstances, constitutes due and sufficient notice to
12 all persons entitled to notice, and thereby satisfies due process. The form and
13 method of giving notice comply fully with the requirements of Federal Rules of
14 Civil Procedure 23(c)(2)(b) and 23(e) and other applicable law. The Court orders
15 the mailing of the Class Notice by first class mail, pursuant to the terms set forth
16 in the Agreement.

17 11. The Court hereby appoints CPT Group as Settlement Administrator.

18 12. The Court hereby appoints Legal Aid at Work as Cy Pres Recipient.

19 13. No later than 30 court days after the Court enters the Order Granting
20 Preliminary Approval of the Settlement, Defendant will provide to the Settlement
21 Administrator an electronic database containing each Class Member’s Class Data.
22 No later than three (3) business days after receipt of the Class Data, the
23 Settlement Administrator shall notify Class Counsel that the list has been received
24 and state the number of Class Members, PAGA Members, Workweeks, and Pay
25 Periods in the Class Data. No later than 14 calendar days after receiving the Class
26 Data, the Settlement Administrator will mail the Class Notice Packets to all Class
27 Members via first-class regular U.S. Mail using the mailing address information
28 provided by Defendant, unless modified by any updated address information that

1 the Settlement Administrator obtains in the course of administration of the
2 Settlement. No later than three (3) business days after the Settlement
3 Administrator's receipt of any Class Notice returned by the USPS as undelivered,
4 the Settlement Administrator shall re-mail the Class Notice using any forwarding
5 address provided by the USPS. Class Members who wish to exclude themselves
6 (i.e. opt out of) the Class Settlement must send the Settlement Administrator, by
7 fax, email, or mail, a signed written Request for Exclusion no later than 45
8 calendar days after the Settlement Administrator mails the Class Notice (plus an
9 additional 14 calendar days for Class Members whose Class Notice is re-mailed).

10 14. No later than 5 calendar days after the expiration of the deadline for
11 submitting Requests for Exclusion, the Settlement Administrator shall email a list
12 to Class Counsel and Defense Counsel containing the names and other identifying
13 information of Class Members who have timely submitted valid Requests for
14 Exclusion ("Exclusion List"). If the number of valid Requests for Exclusion
15 exceeds 5% of the total of all Class Members, Defendant may, but is not
16 obligated, to elect to withdraw from the Settlement. The Parties agree that, if
17 Defendant withdraws, the Settlement shall be void ab initio, have no force or
18 effect whatsoever, and neither Party will have any further obligation to perform
19 under the Settlement Agreement; provided, however, Defendant will remain
20 responsible for paying all Settlement Administration Expenses incurred to that
21 point. Defendant must notify the Class Counsel and the Court of its election to
22 withdraw not later than 7 court days after the Administrator sends the final
23 Exclusion List to Defense Counsel.

24 15. No later than 14 calendar days before the date by which Plaintiffs are
25 required to file the Motion for Final Approval of the Settlement, the Settlement
26 Administrator will provide to Class Counsel and Defense Counsel a signed
27 declaration suitable for filing in Court attesting to its due diligence and
28 compliance with all of its obligations under this Agreement.

1 16. The Court hereby preliminarily approves the proposed procedure for
2 exclusion from the Settlement. The rights of any potential dissenters to the
3 proposed Settlement are adequately protected in that they may exclude
4 themselves from the Settlement and proceed with any alleged claims they may
5 have against Defendant, or they may object to the Settlement and appear before
6 this Court. However, to do so they must follow the procedures outlined in the
7 Settlement Agreement and Notice of Class Action Settlement. Failure to follow
8 the procedures outlined in the Settlement Agreement and Notice of Class Action
9 Settlement for making objections shall result in waiver and the objector shall be
10 forever foreclosed from challenging any of the terms of the Settlement.

11 17. Any Class Member who has not opted out may object or express the
12 Member's views regarding the Settlement, and may present evidence and file
13 briefs or other papers that may be proper and relevant to the issues to be heard
14 and determined by the Court as provided in the Notice. Class Members will have
15 until the Response Deadline to submit their written objections and/or a notice of
16 intention to appear at the hearing to the Settlement Administrator in accordance
17 with the instructions in the Class Notice. Any Class Member who does not timely
18 and validly file written Objections and a notice of intent to appear shall not be
19 permitted to present his, her, or its Objections at the Final Approval and Fairness
20 Hearing.

21 18. A Final Approval Hearing shall be held before this Court on
22 _____ at _____ in Courtroom 3C of the United
23 States District Court, Southern District of California to determine all necessary
24 matters concerning the Settlement, including: whether the proposed settlement of
25 the Action on the terms and conditions provided for in the Agreement is fair,
26 adequate and reasonable and should be finally approved by the Court; whether the
27 Final Approval Order and Judgment should be entered herein; whether the plan of
28 allocation contained in the Agreement should be approved as fair, adequate and

reasonable to the Class Members; and to finally approve attorneys' fees and costs, the service award, and the expenses of the Settlement Administrator. Plaintiffs' motion for final approval and Plaintiffs' motion for attorneys' fees, costs and service awards shall both be heard at the Final Approval Hearing. All papers in support of the motion for final approval and the motion for attorneys' fees, costs and service awards shall be filed with the Court and served on all counsel no later than sixteen (16) court days before the hearing.

19. An implementation schedule is below:

Event	Date
Defendant to provide class contact information to settlement administrator	[30 court days after Order Granting Preliminary Approval]
Settlement administrator to mail the Class Notice to the Class Members	[14 calendar days after receiving the class information from Defendant]
Deadline for Class Members to submit disputes, opt out, or object to the settlement	[45 calendar days after the date of mailing of the Class Notice]
Deadline for Plaintiffs to file Motion for Final Approval of Class Action Settlement	[16 court days before the hearing on Motion for Final Approval]
Hearing on Motion for Final Approval	[to be set by the Court]

20. Neither the Settlement nor any exhibit, document, or instrument delivered thereunder shall be construed as a concession or admission by Defendant in any way that the claims asserted have any merit or that this Action was properly brought as a class or representative action, and shall not be used as evidence of, or used against Defendant as, an admission or indication in any way, including with respect to any claim of any liability, wrongdoing, fault or omission by Defendant or with respect to the truth of any allegation asserted by any person. Whether or not the Settlement is finally approved, neither the Settlement, nor any exhibit, document, statement, proceeding or conduct related to the Settlement, nor any reports or accounts thereof, shall in any event be construed as, offered or

1 admitted in evidence as, received as or deemed to be evidence for any purpose
2 adverse to the Defendant, including, but not limited to, evidence of a
3 presumption, concession, indication or admission by Defendant of any liability,
4 fault, wrongdoing, omission, concession or damage.

5 21. In the event the Settlement does not become effective in accordance
6 with the terms of the Settlement Agreement; the Settlement is not finally
7 approved, terminated, canceled or fails to become effective for any reason; any
8 provision of the Settlement Agreement becomes or is deemed illegal, invalid or
9 unenforceable by any court of competent jurisdiction; or the Court requires a
10 material modification of this Agreement (including, but not limited to, the scope
11 of release to be granted by Class Members), this Order and the underlying
12 Agreement shall be rendered null and void and shall be vacated, and the Parties
13 shall revert to their respective positions as of before entering into the Agreement,
14 and expressly reserve their respective rights regarding the prosecution and
15 defense of this Action, including all available defenses and affirmative defenses,
16 and arguments that any claim in the Action could not be certified as a class action
17 and/or managed as a representative action. In such an event, the Court's orders
18 regarding the Settlement, including this Order, shall not be used or referred to in
19 litigation for any purpose. Nothing in this paragraph is intended to alter the terms
20 of the Agreement with respect to the effect of the Agreement if it is not approved.

21 22. If at any time on or before the Final Approval, any state or federal
22 legislation, rule, administrative guidance or change in law, is implemented,
23 enacted and/or interpreted which provides that any of the types of claims being
24 asserted in this action are preempted by federal law and/or have retroactive effect
25 during the applicable Class Period, then Defendant will have the right to rescind
26 and terminate the Settlement without prejudice to its pre-settlement positions and
27 defenses in this action, without any financial obligation related to the proposed
28 Settlement set forth therein other than to pay for the costs of administration of the

1 Settlement incurred by the Settlement Administrator through the time of such
2 rescission and termination. Thereupon, the Parties will meet and confer regarding
3 the status of this litigation.

4 23. The Court reserves the right to adjourn or continue the date of the
5 Final Approval Hearing and all dates provided for in the Agreement without
6 further notice to Class Members, and retains jurisdiction to consider all further
7 applications arising out of or connected with the proposed Settlement.

8 24. Pending the Final Approval Hearing, all proceedings in this action
9 other than proceedings necessary to carry out or enforce the terms and conditions
10 of the Agreement and the Order, are stayed and all trial and related pre-trial dates
11 are vacated, subject to further orders of the Court at the Final Approval Hearing.

12 **IT IS SO ORDERED.**

13
14 Dated: _____

HON. MICHAEL M. ANELLO
UNITED STATES DISTRICT JUDGE