

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Matthew J. Matern (CSB #159798)
Mikael H. Stahle (CSB #182599)
MATERN LAW GROUP, PC
1230 Rosecrans Avenue, Suite 200
Manhattan Beach, CA 90266
Telephone: (310) 531-1900
Facsimile: (310) 531-1901
mmatern@maternlawgroup.com
mstahle@maternlawgroup.com

Attorneys for Plaintiff
LAURA DELGADO individually,
and on behalf of others similarly
situated

FILED
FEB 08 2024
CLERK OF THE COURT
SUPERIOR COURT OF CALIFORNIA
COUNTY OF CONTRA COSTA
By: *Neeraj*

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF CONTRA COSTA**

LAURA DELGADO, individually, and on
behalf of others similarly situated

Plaintiff,

vs.

ORINDA CARE CENTER, LLC, a California
limited liability company and DOES 1 through
50, inclusive,

Defendants.

Case No. C20-02646

[Assigned for all Purposes to the Honorable
Charles S. Treat, Dept. 12]

**~~PROPOSED~~ ORDER GRANTING
PLAINTIFF'S MOTION FOR FINAL
APPROVAL OF CLASS ACTION
SETTLEMENT**

Date: January 4, 2024
Time: 9:00 a.m.
Dept.: 12

Action Filed: December 29, 2020
Trial Date: None set

1 On October 19, 2022, the Court issued an order granting preliminary approval of the
2 proposed class action Settlement between Plaintiff Laura Delgado (“Plaintiff”), individually and
3 on behalf of others similarly situated, and Defendant Orinda Care Center, LLC (“Defendant”)
4 (collectively, “the Parties”).

5 Due and adequate notice having been given to the Class, as defined below, and the Court,
6 having carefully considered Plaintiff’s unopposed Motion for Final Approval of Class Action
7 Settlement (the “Motion”), the supporting declarations and exhibits thereto, and all submissions
8 and other documents filed in this action, and good cause appearing, hereby GRANTS the Motion.

9 IT IS HEREBY ORDERED, ADJUDGED AND DECREED AS FOLLOWS:

10 1. The Court adopts all defined terms as set forth in the Joint Stipulation of Class and
11 Representative Action Settlement and Release (“Stipulation”) filed in this action. A copy of the
12 Stipulation, attached as Exhibit 1 to the November 15, 2023 Declaration of Mikael H. Stahle in
13 support of the Motion, is made a part of this Order.

14 2. The Court has jurisdiction over all claims asserted in this action, Plaintiff, the
15 Settlement Class Members, and Defendant.

16 3. The Court finds that the Settlement was made and entered into in good faith and
17 hereby approves the Settlement as fair, adequate, and reasonable to all Settlement Class
18 Members.

19 4. Solely for purposes of effectuating this Settlement, this Court has certified a class
20 defined as:

21 All current and former non-exempt employees who were
22 employed by Defendant in California from October 19,
23 2019 through January 19, 2022. (the “Settlement Class”).
(Stipulation, ¶¶ 5, 27).

24 5. The Notice provided to the Settlement Class conforms with the requirements of
25 California Code of Civil Procedure section 382, California Civil Code section 1781, California
26 Rules of Court 3.766 and 3.769, the California and United States Constitutions, and any other
27 applicable law and constitutes the best notice practicable under the circumstances, by providing
28 individual notice to all persons in the Settlement Class who could be identified through

1 reasonable effort and by providing due and adequate notice of the proceedings and of the matters
2 set forth therein to all other persons in the Settlement Class. The Class Notice informed the Class
3 Members of the Settlement terms, the existence of their rights to submit a Request for Exclusion,
4 their rights to comment on or object to the Settlement, and their rights to appear at the Final
5 Approval Hearing and be heard regarding approval of the Settlement. Adequate periods of time to
6 respond and to act were provided by each of these procedures. The Notice therefore fully satisfied
7 the requirements of due process.

8 6. The Court finds that one (1) Class Member has submitted a valid request for
9 exclusion from the Settlement.

10 7. The Court finds that no (0) Class Members have objected to the Settlement.

11 8. The Court finds that the Settlement Amount and the methodology used to calculate
12 and pay each Settlement Class Member's Individual Settlement Payment are fair, adequate, and
13 reasonable and authorizes the Claims Administrator to pay the Individual Settlement Payments to
14 the 188 Settlement Class Members in accordance with the terms of the Settlement.

15 9. The following release applies to all Settlement Class Members:

16 Upon the Effective Date (defined in Paragraph 9 of the Stipulation), Plaintiff and all
17 Participating Settlement Class Members, will waive and release all claims, rights, demands,
18 damages, liabilities and causes of action, whether known or unknown, contingent or vested, in
19 law or in equity, arising at any time during the Class Period for unpaid wages or other
20 compensation, and/or related penalties, interest, costs, attorneys' fees, punitive damages, and/or
21 injunctive or other equitable remedies, allegedly owed or available, against Defendant and their
22 respective former, current and future parent companies, subsidiaries, affiliates, shareholders,
23 Members, agents (including, without limitation, any investment bankers, accountants, insurers,
24 reinsurers, attorneys and any past, present or future officers, directors and employees)
25 predecessors, successors, and assigns, allegedly owed or available, arising out of, or related to the
26 claims, allegations and operative facts asserted in the operative complaint, including that
27 Defendant: (1) failed to provide a required full, timely and uninterrupted meal periods; (2) failed
28 to provide a required full, timely and uninterrupted rest periods; (3) failed to pay all earned wages

1 and/or overtime payments (4) failed to keep accurate payroll records and/or failed to provide
2 accurate wage statements; (5) failed to pay earned an unpaid wages upon ending of employment;
3 and/or (6) in engaging in any or all of the aforementioned conduct, violated, or is liable under the
4 California Labor Code, including, but not limited to, sections 201, 202, 203, 204, 218.5, 218.6,
5 221, 226, 226.3, 226.6, 226.7, 450, 510, 512, 558, 1174, 1174.5, 1175, 1194, 1194.2, 1197, 1198,
6 2802, 2698 et seq., Cal. Code tit. 5 section 11050 (California Wage Order 5-2001), California
7 Business & Professions Code section 17200 et seq., and/or California Code of Civil Procedure
8 section 1021. The incentive payment to Plaintiff and any other payments herein are expressly
9 contingent upon her execution of a release of all claims under California Civil Code § 1542 and
10 any and all wage related claims, known or unknown, contingent or accrued. Stipulation ¶¶9, 42.

11 10. In addition to the above release, Plaintiff has signed a general release of claims.
12 Stipulation, ¶¶44-45. Lastly, all PAGA Group Members who worked during the PAGA Period
13 will release all PAGA claims during the PAGA Period. Stipulation, ¶43.

14 With respect to the General Release, Named Plaintiff stipulates and agrees that, upon the
15 Effective Date, Named Plaintiff shall be deemed to have expressly waived and relinquished, to
16 the fullest extent permitted by law, the provisions, rights and benefits of California Civil Code
17 § 1542, or any other similar provision under federal or state law, which provides:

18 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS
19 THAT THE CREDITOR OR RELEASING PARTY DOES NOT
20 KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT
21 THE TIME OF EXECUTING THE RELEASE AND THAT, IF
22 KNOWN BY HIM OR HER WOULD HAVE MATERIALLY
23 AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR
24 OR RELEASED PARTY.

23 Accordingly, if the facts relating in any manner to this Agreement are found hereafter to be other
24 than or different from the facts now believed to be true, the release of claims contained herein
25 shall be effective as to all unknown claims.

26 11. The Parties shall bear their own respective attorneys' fees and costs, except as to
27 the attorneys' fees and costs to Class Counsel awarded below in Paragraph 15 and as otherwise
28 provided for in the Settlement and approved by the Court.

1 12. Upon entry of this Order, compensation to the Settlement Class Members shall be
2 effected pursuant to the terms of the Settlement.

3 13. A total of \$40,000.00 from the Settlement Amount shall be allocated to penalties
4 under the Labor Code Private Attorneys General Act of 2004, California Labor Code section
5 2698, *et seq.*, of which \$30,000.00 shall be paid by the Claims Administrator directly to the
6 California Labor and Workforce Development Agency (“LWDA”). The remaining \$10,000.00
7 shall be distributed to the PAGA Group in addition to any Net Settlement Payment allocated to
8 them.

9 14. The Court hereby approves the payment of \$7,500.00 Plaintiff as a Service Award
10 for her services as Class Representative. The Court finds that this amount is fair and reasonable in
11 light of Plaintiff’s contributions to this litigation, the risks she undertook in being named Plaintiff
12 and for executing a general release of their claims against Defendant. The payment of the Service
13 Awards shall be made in accordance with the terms of the Settlement.

14 15. From the Settlement Amount, Class Counsel is awarded \$80,000.00 for their
15 reasonable attorneys’ fees and \$16,000.00 for their costs incurred in this action. The Court finds
16 that the amount of attorneys’ fees requested is reasonable in light of the relevant factors and that
17 Class Counsel’s costs are also reasonable. The payment of fees and costs to Class Counsel shall
18 be made in accordance with the terms of the Settlement.

19 16. The Court approves Settlement Administration Expenses in the amount of
20 \$8,500.00. Such costs shall be paid from the Settlement Amount to CPT Group, Inc.

21 17. Defendant’s employer payroll taxes will be paid separately by Defendant.

22 18. In accordance with the terms of the Stipulation, Defendant shall fund the
23 Settlement Amount of \$400,000.00 within fourteen (14) days of the Date of Final Approval. On
24 or before the tenth (10th) calendar day after the Effective Date, the Settlement Administrator shall
25 mail out the checks to the Settlement Class Members in accordance with the Stipulation and make
26 all of the other payments to Class Counsel, the Class Representatives, and the LWDA, as required
27 by the Stipulation.

1 19. The Court shall retain jurisdiction with respect to the interpretation,
2 implementation, and enforcement of the terms of the Settlement, and all orders and judgments
3 entered in connection therewith.

4 20. The Court’s tentative ruling and findings, set forth in **Exhibit A** hereto, are
5 incorporated herein.

6 21. If the Settlement does not become final and effective in accordance with the terms
7 of the Stipulation, then this Order, and all orders entered in connection herewith, shall be
8 rendered null and void and shall be vacated.

9
10 **IT IS SO ORDERED.**

11 DATED: FEB 07 2024
12

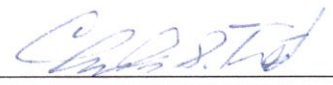

13 _____
14 HON. CHARLES S. TREAT
15 JUDGE OF THE SUPERIOR COURT

EXHIBIT A

Superior Court of California, Contra Costa County

Department 12
925-608-1000
www.cc-courts.org



K. Bieker
Court Executive Officer

MINUTE ORDER	
DELGADO VS ORINDA CARE CENTER	MSC20-02646
HEARING DATE: 01/04/2024	
PROCEEDINGS: *HEARING ON MOTION IN RE: FINAL APPROVAL OF CLASS ACTION SETTLEMENT	
DEPARTMENT 12 JUDICIAL OFFICER: CHARLES S TREAT	CLERK: DENESE JOHNSON COURT REPORTER: NOT REPORTED
<u>JOURNAL ENTRIES:</u>	
<p>No appearance either party.</p> <p>There being no opposition to the tentative ruling, the tentative ruling becomes the order of the court as follows:</p> <p>Plaintiff Laura Delgado moves for final approval of her class action and PAGA settlement with defendant Orinda Care Center, LLC. She also moves for approval of her attorney’s fees, litigation costs, administration costs, and representative payment.</p> <p>Preliminary approval of this settlement was granted on August 31, 2022. This case has had a rocky logistical history since then. The parties missed their originally scheduled date for final approval in February 2023. The notice to the class was sent, but it was discovered that it had been sent to an overbroad list including salaried employees. This required a stipulation to send out corrective notices. The parties then found themselves in a Catch-22 where they couldn’t send the notices until they had a hearing date for final approval, but they couldn’t file a motion for final approval until the notices had been sent. The problem was resolved when the parties, by ex parte stipulation, obtained the present hearing date, enabling them to file this motion in time to be heard now.</p> <p>Since preliminary approval was granted, the administrator mailed notices to 239 persons thought to be class members. After correction of the class identification, there turn out to be 189 class members (significantly more than the 140 estimated at preliminary approval). Only one notice to a class member remained non-deliverable after follow-up. No objections have been received, and only one class member has opted out.</p> <p>The motion is granted, with modifications.</p> <p style="text-align: center;">A. Background and Settlement Terms</p> <p>Defendant operates a residential assisted living care facility for older adults. Plaintiff was employed there as a certified nurse’s assistant from April 2019 to September 2020.</p> <p>The original complaint was filed December 29, 2020, raising claims under PAGA and a class action on behalf of non-exempt employees, alleging that defendant violated the Labor Code in various ways, including unpaid overtime, unpaid minimum wage, non-compliant meal and rest periods,</p>	

Superior Court of California, Contra Costa County

Department 12
925-608-1000
www.cc-courts.org



K. Bieker
Court Executive Officer

failure to, maintain required records, failure to reimburse employee expenses, waiting time, and wage statement claims. On March 19, 2021, the court signed a stipulated order dismissing plaintiff's class allegations without prejudice. A First Amended Complaint was represented to have been filed with the preliminary approval motion, raising additional claims, and reinstating the class claims. In fact, however, the FAC was not filed until after the preliminary approval hearing.

The settlement will create a gross settlement fund of \$400,000. The class representative payment to the plaintiff will be \$7,500. Counsel's attorney's fees are proposed be \$133,320 (one-third of the settlement). Litigation costs are requested in the amount of \$27,012. The settlement administrator (CPT Group) will receive \$8,500. PAGA penalties will be \$40,000, resulting in a payment of \$30,000 to the LWDA. The fund is non-reversionary. There are 188 participating class members. Based on the estimated class size, the average net payment for each class member is approximately \$1,412, including distribution of PAGA penalties.

Defendant will fund the settlement within 14 days after final approval of the settlement. The proposed settlement will certify a class of "all persons who are or were employed by Defendant as non-exempt employees in the State of California at any time during the Class period." (Stipulation, Par. 27.) The PAGA period is the same.

The class members will not be required to file a claim. Funds will be apportioned to class members based on the number of workweeks worked by the individual employee during the relevant time period.

Various prescribed follow-up steps will be taken with respect to mail that is returned as undeliverable. Undelivered or uncashed checks will be voided and the funds provided to the State Controller's Unclaimed Property Fund.

The settlement contains release language covering all claims "arising out of, or related to the claims, allegations and operative facts asserted in the operative complaint. (Stipulation, Par. 42.) Under recent appellate authority, the limitation to those claims with the "same factual predicate" as those alleged in the complaint is critical. (*Amaro v. Anaheim Arena Mgmt., LLC* (2021) 69 Cal.App.5th 521, 537 ["A court cannot release claims that are outside the scope of the allegations of the complaint." "Put another way, a release of claims that' go beyond the scope of the allegations in the operative complaint' is impermissible." *Id.*, quoting *Marshall v. Northrop Grumman Corp.* (C.D. Cal.2020) 469 F.Supp.3d 942, 949.)

Informal discovery was undertaken, resulting in the production of substantial documents, including payroll records and written work policies, which were analyzed by counsel and a retained consultant. The matter settled after arms-length negotiations, which included an all-day session with an experienced mediator on October 21, 2021.

Counsel also has provided an analysis of the case, and how the settlement compares to the potential value of the case, after allowing for various risks and contingencies. This included an estimate of class claims at a maximum of about \$4.4 million. Maximum PAGA penalties are

Superior Court of California, Contra Costa County

Department 12
925-608-1000
www.cc-courts.org



K. Bieker
Court Executive Officer

estimated at about \$3.5 million.

Counsel analyzed the minimum wage claims, off-the-clock claims, meal period claims, rest period claims, business expense claims, reporting time claims, wage statement claims, and waiting time penalty claims. The potential liability needs to be adjusted for various evidence and risk-based contingencies, including problems of proofs. Counsel also analyzed claims for PAGA penalties, but such penalties are difficult to evaluate for a number of reasons: they derive from other violations, they include "stacking" of violations, the law may only allow application of the "initial violation" penalty amount, and the total amount may be reduced in the discretion of the court. (See Labor Code, § 2699(e)(2) [PAGA penalties may be reduced where "based on the facts and circumstances of the particular case, to do otherwise would result in an award that is unjust arbitrary and oppressive, or confiscatory."])

The LWDA was notified of the settlement.

B. Legal Standards

The primary determination to be made is whether the proposed settlement is "fair, reasonable, and adequate," under *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1801, including "the strength of plaintiffs' case, the risk, expense, complexity and likely duration of further litigation, the risk of maintaining class action status through trial, the amount offered in settlement, the extent of discovery completed and the state of the proceedings, the experience and views of counsel, the presence of a governmental participant, and the reaction ... to the proposed settlement." (See also *Amaro v. Anaheim Arena Mgmt., LLC*, 69 Cal.App.5th 521.)

Because this matter also proposes to settle PAGA claims, the Court also must consider the criteria that apply under that statute. The Court of Appeal's decision in *Moniz v. Adecco USA, Inc.* (2021) 72 Cal.App.5th 56, provided guidance on this issue. In *Moniz*, the court found that the "fair, reasonable, and adequate" standard applicable to class actions applies to PAGA settlements. (*Id.*, at 64.) The court also held that the trial court must assess "the fairness of the settlement's allocation of civil penalties between the affected aggrieved employees." (*Id.* at 64-65.)

California law provides some general guidance concerning judicial approval of any settlement. First, public policy generally favors settlement. (*Neary v. Regents of University of California* (1992) 3 Cal.4th 273.) Nonetheless, the court should not approve an agreement contrary to law or public policy. (*Bechtel Corp. v. Superior Court* (1973) 33 Cal.App.3d 405, 412; *Timney v. Lin* (2003) 106 Cal.App.4th 1121, 1127.) Moreover, "the court cannot surrender its duty to see that the judgment to be entered is a just one, nor is the court to act as a mere puppet in the matter." (*California State Auto. Assn. Inter-Ins. Bureau v. Superior Court* (1990) 50 Cal.3d 658, 664.) As a result, courts have specifically noted that *Neary* does not always apply, because "where the rights of the public are implicated, the additional safeguard of judicial review, though more cumbersome to the settlement process, serves a salutary purpose." (*Consumer Advocacy Group, Inc. v. Kintetsu Enterprises of America* (2006) 141 Cal.App.4th 48, 63.)

Superior Court of California, Contra Costa County

Department 12
925-608-1000
www.cc-courts.org



K. Bieker
Court Executive Officer

C. Attorney Fees and Other Costs

Plaintiffs seek one-third, or \$133,320, of the total settlement amount as fees, relying on the "common fund" theory. Even a proper common fund-based fee award, however, should be reviewed through a lodestar cross-check. In *Lafitte v. Robert Half International* (2016) 1 Cal.5th 480, 503, the Supreme Court endorsed the use of a lodestar cross-check as a way to determine whether the percentage allocated is reasonable. It stated: "If the multiplier calculated by means of a lodestar cross-check is extraordinarily high or low, the trial court should consider whether the percentage used should be adjusted so as to bring the imputed multiplier within a justifiable range, but the court is not necessarily required to make such an adjustment." (*Id.*, at 505.)

Accordingly, plaintiffs have provided information concerning the lodestar fee amount. They estimate the lodestar at \$103,560, representing an implied multiplier of 1.29. They based this amount on a total of 105 hours. The hours worked are reasonable, and the implied multiplier is not out of line. However, the lodestar appears to be significantly inflated by excessive claimed hourly rates.

The Court is reducing the attorney's fee award to \$80,000. This case has taken way too long to get to final approval – nearly a year and a half. The delay is due in large part to counsel's startling screw-up in sending the notice to a greatly overbroad group, requiring a corrective mailing. (And this is after counsel substantially underestimated the class size as only 140 in the preliminary approval.) The Court is also poorly impressed by the evidently overstated hourly rate claims; the double-charged "client advance" in its originally requested litigation costs; and its poorly explained increase since preliminary approval in litigation costs. Counsel have not earned a conventional one-third; the Court views this award as generous.

The requested representative payment of \$7,500 for the named plaintiff was deferred until this final approval motion. Criteria for evaluation of such requests are discussed in *Clark v. American Residential Services LLC* (2009) 175 Cal.App.4th 785, 804-07. Plaintiff has provided a declaration in support of her request. She points out that she executed a broader release than the class as a whole, but does not identify any particular claims of value that she may have. She also risks damage to her reputation and more difficulty in obtaining employment. The representative payment is approved.

Litigation costs were originally requested in the amount of \$27,012. This included an unexplained line item for \$8,900 for "client advance". After the Court inquired in its prior tentative ruling, counsel confirmed the Court's surmise that this was a loan to the client in anticipation of the representative payment. As counsel now concedes, however, that is a double count, seeking to dock the class's net recovery twice for the same dollars in representative payment – not to mention that the advance exceeds the representative payment substantially.

With that improper amount dropped out, the amount now sought for litigation expenses is \$18,112. The preliminary approval papers and order, however, estimated these costs at \$16,000. No explanation is offered for the increase. Unusually, it does not appear that the settlement

Superior Court of California, Contra Costa County

Department 12
925-608-1000
www.cc-courts.org



K. Bieker
Court Executive Officer

agreement included any cap on award of these costs. The request also includes costs not yet incurred as of filing, which is not typical for motions of this kind. The Court disapproves the costs request in the amount now sought, and will hold plaintiffs' counsel to their original \$16,000 estimate. The itemization does appear to include legitimate expenses adding up to that much.

The settlement administrator's costs of \$8,500 are reasonable and are approved. The Court approves defendant's volunteering to bear the costs of the supplemental notice.

D. Discussion and Conclusion

The moving papers sufficiently establish that the proposed settlement, as modified by the Court, is fair, reasonable, and adequate to justify final approval. The allocation of PAGA penalties among the aggrieved employees (based on pay periods) is reasonable.

The motion is granted.

Counsel are directed to prepare an order reflecting this entire tentative ruling and the other findings in the previously submitted proposed order and a separate judgment.

The ultimate judgment must provide for a compliance hearing after the settlement has been completely implemented, to be determined in consultation with the Department's clerk by phone. Plaintiffs' counsel IS to submit a compliance statement one week before the compliance hearing date. Five percent of the attorney's fees are to be withheld by the claims administrator pending satisfactory compliance as found by the Court.

DATED: 1/4/2024

BY: _____

D. JOHNSON, DEPUTY CLERK

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

PROOF OF SERVICE

I am employed in the County of Los Angeles, State of California. I am over the age of eighteen (18) years and not a party to the within action. My business address is 1230 Rosecrans Avenue, Suite 200, Manhattan Beach, California 90266.

On February 5, 2024, I served the document described as:

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

By e-mail or electronic transmission. I caused the documents to be sent to the person at the e-mail addresses listed below. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

Joseph R. Lordan, Esq. Sumy Kim, Esq. O'HAGAN MEYER PLLC One Embarcadero, Suite 2100 San Francisco, CA 94111 Tel: (628) 626-6906 Email: JLordan@OhaganMeyer.com SKim@OhaganMeyer.com	Attorneys for Defendant ORINDA CARE CENTER, LLC
---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	----------------------------------------------------

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on February 5, 2024 at Willimantic, Connecticut.

Alex Phornprapha
Alex Phornprapha