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Attorneys for Plaintiff, LUCY MORENO, an individual and on behalf of all others
similarly situated and/or aggrieved,

FILED
Superior Court of California
County of Los Angeles

11/15/2022

Sherri R. Carter, Executive Officer / Clerk of Court

By: L. MGreené Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES – SPRING STREET COURTHOUSE

LUCY MORENO, an individual and on behalf
of all others similarly situated and/or
aggrieved,

Plaintiffs,

v.

SANTA PAULA POST ACUTE, LLC, a
California limited liability company; VISTA
COVE CARE CENTER AT SANTA PAULA,
INC., a California corporation; DOV E.
JACOBS, an individual; FLOYD RHOADES,
an individual; and DOES 1 through 100,
inclusive,

Defendants.

CASE NO.: 21STCV12533

[Assigned for all purposes to the Hon. Carolyn
B. Kuhl, Dept. SS-12]

**[PROPOSED] ORDER GRANTING
PRELIMINARY APPROVAL OF CLASS
AND REPRESENTATIVE ACTION
SETTLEMENT AND PROVISIONAL
CLASS CERTIFICATION FOR
SETTLEMENT PURPOSES ONLY**

**[Lodged concurrently with Motion for
Preliminary Approval]**

HEARING INFORMATION:

DATE: October 4, 2022
TIME: 10:30 a.m.
DEPT: SS-12

1 This Court, having considered the Motion of plaintiff Lucy Moreno (“Plaintiff” or “Ms.
2 Moreno”) for Preliminary Approval of Class and Representative Action Settlement and Provisional
3 Class Certification for Settlement Purposes Only (“Motion for Preliminary Approval”), the
4 Declarations of David D. Bibiyan and Jasmin K. Gill, the Joint Stipulation Re: Class Action and
5 Representative Action Settlement (the “Settlement Agreement”), the Notice of Proposed Class
6 Action Settlement (“Class Notice”), and other documents submitted in support of the Motion for
7 Preliminary Approval, hereby **ORDERS, ADJUDGES AND DECREES THAT:**

8 1. The definitions set out in the Settlement Agreement are incorporated by reference
9 into this Order; all terms defined therein shall have the same meaning in this Order.

10 2. The Court certifies the following settlement class for the purpose of settlement only:
11 all current and former non-exempt, hourly-paid employees who worked at any time for Santa Paula
12 Post Acute, LLC (“Defendant” or “Santa Paula”) from July 26, 2018 through: (i) May 24, 2022; or
13 (ii) on the date that the number of Workweeks worked by Class Members during the Class Period
14 reaches 30,800 if Defendant elects to shorten the Class Period pursuant to Paragraph 17 of the
15 Settlement Agreement (“Class Period”) in California (“Class Members”).

16 3. The Court preliminarily appoints named plaintiff Ms. Moreno as a Class
17 Representative, and David D. Bibiyan of Bibiyan Law Group, P.C. as well as Jasmin K. Gill of J.
18 Gill Law Group, P.C. as Class Counsel.

19 4. The Court preliminarily approves the proposed class settlement upon the terms and
20 conditions set forth in the Settlement Agreement. The Court finds, on a preliminary basis, that the
21 settlement appears to be within the range of reasonableness of settlement that could ultimately be
22 given final approval by the Court. It appears to the Court on a preliminary basis that the settlement
23 amount is fair, adequate and reasonable as to all potential Class Members when balanced against
24 the probable outcome of further litigation relating to liability and damages issues. It further appears
25 that extensive and costly investigation and research has been conducted such that counsel for the
26 parties at this time are reasonably able to evaluate their respective positions. It further appears to
27 the Court that the settlement at this time will avoid substantial additional costs by all parties, as well
28

1 as the delay and risks that would be presented by the further prosecution of the Action. It further
2 appears that the settlement has been reached as the result of intensive, non-collusive, arms-length
3 negotiations utilizing an experienced neutral third party.

4 5. The Court approves, as to form and content, the Class Notice that has been submitted
5 herewith.

6 6. The Court directs the mailing of the Class Notice by first-class regular U.S. Mail to
7 Class Members in accordance with the procedures set forth in the Settlement Agreement. The Court
8 finds that the dissemination of the Class Notice set forth in the Settlement Agreement complies with
9 the requirements of law, and appears to be the best notice practicable under the circumstances.

10 7. The Court hereby preliminarily approves the definition and disposition of the Gross
11 Settlement Amount of \$400,000.00, which is inclusive of attorneys' fees up to 35% the Gross
12 Settlement Amount (or \$140,000.00 if the Gross Settlement Amount is not escalated pursuant to
13 Paragraph 8 below), in addition to actual costs not to exceed \$25,000; an enhancement award of
14 \$7,500.00 for Plaintiff; costs of settlement administration of no more than \$9,500; and PAGA
15 penalties in the amount of \$20,000.00, of which \$15,000 (75%) will be paid to the LWDA and
16 \$5,000.00 (25%) will be paid to Aggrieved Employees. The Gross Settlement Amount expressly
17 excludes Employer Taxes, which will be paid separately and apart by Defendant on the wages
18 portion of the Settlement Amount.

19 8. Defendant represents that there are no more than 28,000 Workweeks worked by
20 Class Members between July 26, 2018 through the end of the Class Period. In the event the number
21 of Workweeks in the Class Period is 10% more than 28,000 Workweeks for the Class Period, then
22 Defendant may elect to: (1) shorten the Class Period to end on a date prior to May 24, 2022, when
23 30,800 Workweeks have been reached; or (2) increase the Gross Settlement Amount proportionally
24 over the 10% increase in the number of Workweeks worked during the Class Period. If Defendant
25 elects to increase the Gross Settlement Amount proportionally over the 10% increase, for example,
26 if the number of Workweeks worked by Class Members during the Class Period exceeds 28,000 by
27 11% (i.e., the number of Workweeks worked by Class Members is 31,080) the Gross Settlement
28 Amount will increase by 1% from \$400,000 to \$404,000. Likewise, if the number of Workweeks

1 worked by Class Members during the Class Period exceeds 28,000 by 12% (i.e., the number of
2 Workweeks worked by Class Members is 31,360), the Gross Settlement Amount will increase by
3 2% from \$400,000 to \$408,000. For the purposes of this calculation, the percentage, if any, by
4 which the actual Workweeks worked by Class Members during the Class Period exceeds 28,000
5 shall be rounded to the nearest one one-hundredth of one percent.

6 9. The Court appoints Phoenix Settlement Administrators (“Phoenix”) as the
7 Settlement Administrator, and approves payment of administrative costs, not to exceed ~~\$9,500.00~~^{AFFID €€€},
8 out of the Gross Settlement Amount for services to be rendered by Phoenix on behalf of the class.

9 10. The Court directs Defendant to, within ten (10) calendar days of the date of this
10 Order, provide the Settlement Administrator with the “Class List” for Settlement Class Members
11 providing the following information for each Settlement Class Member: (1) name, last known
12 address(es) and last known telephone number(s) currently in Defendants’ possession, custody, or
13 control; (2) Social Security Number(s) in Defendants’ possession, custody, or control; and (3) the
14 hire dates, re-hire dates (if applicable) and termination or resignation dates (if applicable) for each
15 Settlement Class Member, which shall be made available to Class Counsel upon request. The
16 Settlement Administrator shall perform an address search using the United States Postal Service
17 National Change of Address (“NCOA”) database and update the addresses contained on the Class
18 List with the newly-found addresses, if any.

19 11. Within seven (7) calendar days of receiving the Class List from Defendant, the
20 Settlement Administrator shall mail the Class Notice in English and Spanish to the Class Members
21 via first-class regular U.S. Mail using the most current mailing address information available. The
22 Settlement Administrator shall maintain a Class List with continuously updated contact information
23 for the Class Members and maintain a list with names and all addresses to which notice was given,
24 and digital copies of all the Settlement Administrator’s records evidencing the giving of notice to
25 any Settlement Class Member, for at least four (4) years from the Final Approval Date.

26 12. If a Class Notice from the initial notice mailing is returned as undeliverable, the
27 Settlement Administrator will attempt to obtain a current address for the Settlement Class Member
28 to whom the returned Class Notice had been mailed, within five (5) calendar days of receipt of the

1 returned Class Notice, by: (1) contacting the Settlement Class Member by phone, if possible, and
2 (2) undertaking skip tracing. If the Settlement Administrator is successful in obtaining a new
3 address, it will promptly re-mail the Class Notice to the Settlement Class Member. Further, any
4 Class Notices that are returned to the Settlement Administrator with a forwarding address before the
5 Response Deadline shall be promptly re-mailed to the forwarding address affixed thereto. Class
6 Members who are re-mailed a Class Notice shall have an additional fifteen (15) calendar days from
7 the re-mailing, or forty-five (45) days from the date of the initial mailing, whichever is later, in
8 which to postmark a Request for Exclusion, written objection or to dispute their attributed workweek
9 count in the Class Period and/or PAGA Period.

10 13. The deadline for filing objections to any of the terms of the settlement shall be forty-
11 five (45) days from the date of mailing of the Class Notice (as the same may be extended in the
12 event of the re-mailing of a Class Notice). Any Class Member who wishes to object to the settlement
13 must mail a written objection to the Settlement Administrator, who will email a copy of the objection
14 forthwith to Class Counsel and Defendant's counsel and attach each objection, if any, to the
15 declaration that Class Counsel files with the Court in support of the Motion for Final Approval.
16 The objection should set forth in writing: (1) the objector's name; (2) the objector's address; (3) the
17 last four digits of the Objector's social security number; (4) the objector's signature; (5) a statement
18 of whether the objector plans to appear at the Final Approval Hearing; and (6) the reason(s) for the
19 objection, along with whatever legal authority, if any, the objector asserts supports the objection.
20 Any Class Member who fails to make his or her objection in the manner provided for in this Order
21 may still be heard at the Final Approval Hearing.

22 14. Any Class Member may request exclusion from (*i.e.*, "opt out" of) the Settlement by
23 mailing a written request to be excluded from the Settlement ("Request for Exclusion") to the
24 Settlement Administrator, postmarked on or before the Response Deadline. To be valid, a Request
25 for Exclusion must include the Class Member's name, social security number and signature and the
26 following statement or something to its effect: "Please exclude me from the Settlement Class in the
27 *Lucy Moreno v. Santa Paula Post Acute, LLC, et al.* matter" or a statement of similar meaning
28 standing for the proposition that the Class Member does not wish to participate in the Settlement.

1 The Settlement Administrator shall immediately provide copies of all Requests for Exclusion to
2 Class Counsel and Defendant's Counsel and shall report the Requests for Exclusions that it receives,
3 to the Court, in its declaration to be provided in advance of the Final Approval Hearing. Any
4 Settlement Class Member who requests exclusion using this procedure will not be entitled to receive
5 any payment from the Settlement and will not be bound by the Settlement Agreement or have any
6 right to object to, appeal, or comment on the Settlement. Any Settlement Class Member who does
7 not opt out of the Settlement by submitting a timely and valid Request for Exclusion will be bound
8 by all terms of the Settlement, including those pertaining to the Released Claims, as well as any
9 Judgment that may be entered by the Court if Final Approval of the Settlement is granted.

10 15. If a Settlement Class Member objects to the Settlement, the Settlement Class
11 Member will remain a member of the Settlement Class and, if the Court approves the Settlement,
12 the Settlement Class Member will be bound by the terms of the Settlement in the same way and to
13 the same extent as a Class Member who does not object. A Class Member cannot both opt out and
14 object to the Settlement. If a Class Member both objects and opts out of the Settlement, the objection
15 will be overruled and void and the opt-out will control. Class Members who worked during the
16 PAGA Period that submit a valid Request for Exclusion will still be deemed Aggrieved Employees,
17 will still receive their Individual PAGA Payment, and will be bound by the release encompassed in
18 the PAGA Released Claims as defined in the Settlement Agreement.

19 16. No later than seven (7) calendar days from the Response Deadline, the Settlement
20 Administrator shall prepare and submit to Class Counsel and Defendant's Counsel a declaration
21 attesting to the completion of the notice process as set forth in the Settlement Agreement, including
22 an explanation of the number of attempts to obtain valid mailing addresses for, and re-sending of,
23 any returned Class Notices, as well as the identities, number of, and copies of all Requests for
24 Exclusion and objections and comments received by the Settlement Administrator.

25 17. Participating Class Members will receive an Individual Settlement Payment. All
26 Aggrieved Employees, regardless of whether they submit a valid Request for Exclusion or not, will
27 receive their Individual PAGA Payment. Individual Settlement Payment checks and Individual
28 PAGA Payment checks shall remain valid and negotiable for one hundred and eighty (180) calendar

1 days after the date of their issuance. Within seven (7) calendar days after expiration of the 180-day
2 period, checks for such payments shall be canceled and funds associated with such checks shall be
3 considered unpaid, unclaimed or abandoned cash residue pursuant to Code of Civil Procedure
4 section 384 (“Unpaid Residue”). The Unpaid Residue plus accrued interest, if any, as provided in
5 Code of Civil Procedure section 384, shall be transmitted as follows: to Legal Aid at Work, 180
6 Montgomery St., Suite 600, San Francisco California 94104 for use in the County of Los Angeles,
7 State of California.

8 18. All papers filed in support of final approval, including supporting documents for
9 attorneys’ fees and costs, shall be filed by _____, 2022.

10 19. A final approval hearing shall be held with the Court on November 15, 2022 at
11 _____ a.m./p.m. in Department SS-12, (Spring Street Courthouse) of the above-entitled Court to
12 determine: (1) whether the proposed settlement is fair, reasonable, and adequate and should be
13 finally approved by the Court; (2) the amount of attorneys’ fees and costs to award Class Counsel;
14 (3) the amount of incentive award to the Class Representative; (4) the amount to be paid to the
15 Settlement Administrator; and (5) the amount to be apportioned to PAGA and/or paid to the LWDA.

16 20. Except as set forth in the Settlement Agreement, in the event the settlement does not
17 become effective in accordance with the terms of the Settlement, or the settlement is not finally
18 approved or approval is reversed on appeal, or is terminated, or otherwise fails to be enforceable,
19 Plaintiff will not be deemed to have waived, limited or affected in any way any claims, rights or
20 remedies, or defenses in the Action or the PAGA Notice, Defendant will not be deemed to have
21 waived, limited, or affected in any way any of its objections or defenses in the Action and the PAGA
22 Notice, and the parties shall revert to their respective positions in this Action prior to the entry of
23 the Settlement Agreement.

24 **IT IS SO ORDERED.**

25 Dated: 11/15/2022
26 _____, 2022



Carolyn B. Kuhl

Carolyn B. Kuhl / Judge
Judge of the Superior Court