

Envelope: 14038457

1 Edwin Aiwazian (SBN 232943)
Arby Aiwazian (SBN 269827)
2 Joanna Ghosh (SBN 272479)
LAWYERS for JUSTICE, PC
3 410 West Arden Avenue, Suite 203
Glendale, California 91203
4 Tel: (818) 265-1020 / Fax: (818) 265-1021
5 *Attorneys for Plaintiff and the Class*

FILED
January 12, 2024
Clerk of the Court
Superior Court of CA
County of Santa Clara
19CV352173
By: rwalker

6
7
8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9 **FOR THE COUNTY OF SANTA CLARA**

10 **DARLENE CABUAG**, individually, and on
11 behalf of other members of the general public
similarly situated;

12 **Plaintiff,**

13 **vs.**

14 **WESTGATE PREMIER HEALTHCARE**
15 **SERVICES, INC.**, a California corporation;
16 **AMBERWOOD GARDENS**, an unknown
business entity; and **DOES 1 through 100**,
inclusive,

17 **Defendants.**

Case No.: 19CV352173

Honorable Theodore C. Zayner
Department 19

CLASS ACTION

[REVISED PROPOSED] FINAL
APPROVAL ORDER AND JUDGMENT

Date: January 10, 2024
Time: 2:30 p.m.
Department: 19

Complaint Filed: August 1, 2019
Trial Date: None Set

1 This matter has come before the Honorable Theodore C. Zayner in Department 19 of the
2 above-entitled Court, located at 191 North First Street, San Jose, California 95113, on Plaintiff
3 Darlene Cabuag’s (“Plaintiff”) Motion for Final Approval of Class Action Settlement, Attorneys’
4 Fees and Litigation Costs, and Enhancement Payment (“Motion for Final Approval”). Lawyers *for*
5 Justice, PC appeared on behalf of Plaintiff, and Schor Vogelsang Chung LLP appeared on behalf
6 of Defendant Westgate Premier Healthcare Services Inc. dba Amberwood Gardens Healthcare
7 Center (“Defendant”).

8 On May 18, 2023, the Court entered its order approving the parties’ Stipulation to Amend
9 Class Notice and thereafter, also on May 18, 2023, the Court entered the Order Granting
10 Preliminary Approval of Class Action Settlement (“Preliminary Approval Order”), thereby
11 preliminarily approving the settlement of the above-entitled action (“Action”).

12 On September 21, 2023, Plaintiff filed the Motion for Final Approval, which was set for
13 hearing on October 18, 2023.

14 On October 18, 2023, the Court entered its Minute Order adopting its Tentative Ruling as
15 the Court’s ruling on the Motion for Final Approval. By way of the October 18, 2023 Minute
16 Order, the Court instructed the parties to, *inter alia*, modify the Joint Stipulation of Class Action
17 Settlement to identify a *cy pres* recipient in compliance with California Code of Civil Procedure
18 section 384 in lieu of having funds from uncashed checks transmitted to the Unclaimed Property
19 Division of the California State Controller’s Office.

20 In accordance with the Court’s instructions, and pursuant to section XVIII.J of the Joint
21 Stipulation of Class Action Settlement, the parties and their counsel executed Amendment No. 1
22 to Joint Stipulation of Class Action Settlement, identifying California Court Appointed Special
23 Advocates as the *cy pres* recipient of funds from uncashed checks. (Supplemental Declaration of
24 Edwin Aiwazian in Support of Motion for Final Approval of Class Action Settlement, Attorneys’
25 Fees and Litigation Costs, and Enhancement Payment, Exh. 2)

26 Furthermore, to correct and clarify the settlement funding and disbursement schedule, the
27 parties entered into the Joint Stipulation to Amend Funding and Disbursement Schedule on January
28 5, 2024, which was submitted to the Court on January 5, 2024.

1 Together, the Joint Stipulation of Class Action Settlement, Stipulation to Amend Class
2 Notice, Amendment No. 1 Joint Stipulation of Class Action Settlement, and Joint Stipulation to
3 Amend Funding and Disbursement Schedule are the “Settlement,” “Agreement,” or “Settlement
4 Agreement.”

5 Having reviewed the Settlement Agreement and duly considered the parties’ papers and
6 oral argument, and good cause appearing,

7 **THE COURT HEREBY ORDERS, ADJUDGES, AND DECREES AS FOLLOWS:**

8 1. All terms used herein shall have the same meaning as defined in the Settlement
9 Agreement and the Preliminary Approval Order.

10 2. This Court has jurisdiction over the claims of the Class Members asserted in this
11 proceeding and over all parties to the Action.

12 3. The Court finds that the applicable requirements of California Code of Civil
13 Procedure section 382 and California Rule of Court 3.769, *et seq.* have been satisfied with respect
14 to the Class and the Settlement. The Court hereby makes final its earlier provisional certification
15 of the Class for settlement purposes, as set forth in the Preliminary Approval Order. The Class is
16 hereby defined to include:

17 All current and former hourly-paid or non-exempt employees who worked for
18 Defendant within the State of California at any time during the Class Period
19 (“Class” or “Class Members”).

20 4. The Notice of Class Action Settlement (“Class Notice”) that was provided to the
21 Class Members, fully and accurately informed the Class Members of all material elements of the
22 Settlement and of their opportunity to participate in, object to or comment thereon, or to seek
23 exclusion from, the Settlement; was the best notice practicable under the circumstances; was valid,
24 due, and sufficient notice to all Class Members; and complied fully with the laws of the State of
25 California, the United States Constitution, due process and other applicable law. The Class Notice
26 fairly and adequately described the Settlement and provided the Class Members with adequate
27 instructions and a variety of means to obtain additional information.

28 ///

///

1 5. Pursuant to California law, the Court hereby grants final approval of the Settlement
2 and finds that it is reasonable and adequate, and in the best interests of the Class as a whole. More
3 specifically, the Court finds that the Settlement was reached following meaningful discovery and
4 investigation conducted by Lawyers *for* Justice, PC (“Class Counsel”); that the Settlement is the
5 result of serious, informed, adversarial, and arms-length negotiations between the parties; and that
6 the terms of the Settlement are in all respects fair, adequate, and reasonable. In so finding, the
7 Court has considered all of the evidence presented, including evidence regarding the strength of
8 Plaintiff’s claims; the risk, expense, and complexity of the claims presented; the likely duration of
9 further litigation; the amount offered in the Settlement; the extent of investigation and discovery
10 completed; and the experience and views of Class Counsel. The Court has further considered the
11 absence of objections to and requests for exclusion from the Settlement submitted by Class
12 Members. Accordingly, the Court hereby directs that the Settlement be affected in accordance with
13 the Settlement Agreement and the following terms and conditions.

14 6. A full opportunity has been afforded to the Class Members to participate in the
15 Final Approval Hearing, and all Class Members and other persons wishing to be heard have been
16 heard. The Class Members also have had a full and fair opportunity to exclude themselves from
17 the Settlement. Accordingly, the Court determines that all Class Members who did not submit a
18 timely and valid Request for Exclusion (“Settlement Class Members”) are bound by this Final
19 Approval Order and Judgment.

20 7. The Court finds that payment of Administration Costs in the amount of \$10,000.00
21 is appropriate for the services performed and costs incurred and to be incurred for the notice and
22 settlement administration process. It is hereby ordered that the Settlement Administrator, Phoenix
23 Class Action Administration Solutions, shall issue payment to itself in the amount of \$10,000.00,
24 in accordance with the terms and methodology set forth in Settlement Agreement.

25 8. The Court finds that the Enhancement Payment sought is fair and reasonable for
26 the work performed by Plaintiff on behalf of the Class. It is hereby ordered that the Settlement
27 Administrator issue payment in the amount of \$7,500.00 to Plaintiff Darlene Cabuag for her
28 Enhancement Payment, according to the terms and methodology set forth in the Settlement

1 Agreement.

2 9. The Court finds that the request for attorneys' fees in the amount of \$245,000.00 to
3 slightly higher than a reasonable percentage, considering
4 Class Counsel ~~falls within the range of reasonableness, and the results achieved justify the award~~
5 ~~sought~~. The requested attorneys' fees to Class Counsel are fair, reasonable, and appropriate, and
6 in a slightly lesser amount.
7 are hereby approved. It is hereby ordered that the Settlement Administrator issue payment in the
8 amount of ~~\$245,000.00~~ ^{\$233,333.33} to Class Counsel for attorneys' fees, in accordance with the terms and
9 methodology set forth in the Settlement Agreement.

10 10. The Court finds that reimbursement of litigation costs and expenses in the amount
11 of \$10,926.08 to Class Counsel is reasonable, and hereby approved. It is hereby ordered that the
12 Settlement Administrator issue payment in the amount of \$10,926.08 to Class Counsel for
13 reimbursement of litigation costs and expenses, in accordance with the terms and methodology set
14 forth in the Settlement Agreement.

15 11. The Court hereby enters Judgment by which Settlement Class Members shall be
16 conclusively determined to have given a release of any and all Released Claims against the
17 Released Parties, as set forth in the Settlement Agreement and Class Notice.

18 12. Pursuant to the Settlement Agreement, on or about May 26, 2023, Defendant
19 funded one-third of the Gross Settlement Amount (i.e., the First Installment) into the settlement
20 fund account. (Settlement Agreement, Section XII.B.1; Declaration of Edwin Aiwazian in Support
21 of Motion for Final Approval of Class Action Settlement, Attorneys' Fees and Litigation Costs,
22 and Enhancement Payment, ¶ 9). It is hereby ordered that within thirty (30) calendar days
23 following the date upon which the Court enters the Final Approval Order (i.e., the Second Funding
24 Date), Defendant will make a second deposit of one-third of the Gross Settlement Amount (i.e.,
25 the Second Installment), plus the employer's share of payroll taxes, into the settlement fund
26 account. It is further ordered that within six months after the Second Funding Date (i.e., the Third
27 Funding Date), Defendant shall deposit a third and final payment of one-third of the Gross
28 Settlement Amount (i.e., the Third Installment) into the settlement fund account, in accordance
with the terms and methodology set forth in the Settlement Agreement.


///

1 13. It is hereby ordered that within forty-five (45) calendar days after the Effective
2 Date, payments shall be distributed by the Settlement Administrator in the following order,
3 according to the methodology and terms set forth in the Settlement Agreement: (1) payment to the
4 Plaintiff of the Court-approved Enhancement Payment; (2) the Individual Settlement Payments to
5 the Settlement Class Members, and (3) payment of the Administration Costs to the Settlement
6 Administrator. Within fourteen (14) calendar days after the Third Funding Date, the Settlement
7 Administrator shall distribute payments as follows, according to the methodology and terms set
8 forth in the Settlement Agreement: (1) payment of Court-approved Litigation Costs to Class
9 Counsel; and (2) payment of Court-approved Attorneys' Fees to Class Counsel.

10 14. After entry of this Final Approval Order and Judgment, pursuant to California Rules
11 of Court, Rule 3.769(h), the Court shall retain jurisdiction to construe, interpret, implement, and
12 enforce the Settlement Agreement and this Final Approval Order and Judgment, to hear and
13 resolve any contested challenge to a claim for settlement benefits, and to supervise and adjudicate
14 any dispute arising from or in connection with the distribution of settlement benefits.

15 15. Notice of entry of this Final Approval Order and Judgment shall be given to the
16 Class Members by posting a copy of the Final Approval Order and Judgment on the Settlement
17 Administrator's website for a period of at least sixty (60) calendar days after the date of entry of
18 this Final Approval Order and Judgment. Individualized notice is not required.

19
20 Dated: January 12, 2024



Honorable Theodore C. Zayner
JUDGE OF THE SUPERIOR COURT