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FILED
January 12, 2024
Clerk of the Court
Superior Court of CA
County of Santa Clara

19CV352173

By: rwalker

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SANTA CLARA**

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

Plaintiff,

vs.

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

Defendants.

Case No.: 19CV352173

Honorable Theodore C. Zayner
Department 19

CLASS ACTION

**JOINT STIPULATION TO AMEND
FUNDING AND DISBURSEMENT
SCHEDULE; [~~PROPOSED~~] ORDER
THEREON**

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

1 Plaintiff Darlene Cabuag (“Plaintiff”) and Defendant Westgate Premier Healthcare
2 Services, Inc. dba Amberwood Gardens Healthcare Center (“Defendant”) (collectively, the
3 “Parties”), by and through their respective counsel of record, hereby stipulate as follows:

4 **WHEREAS**, on August 1, 2019, Plaintiff commenced the putative wage-and-hour class
5 action entitled *Darlene Cabaug v. Westgate Premier Healthcare Services Inc.*, Santa Clara
6 County Superior Court, Case No. 19CV352173 (“Action”);

7 **WHEREAS**, on August 26, 2022, Plaintiff and Defendant executed the Joint Stipulation
8 of Class Action Settlement, setting forth the terms for a class action settlement (Declaration of
9 Ovsanna Takvoryan in Support of Motion for Preliminary Approval of Class Action Settlement,
10 Exh. 1);

11 **WHEREAS**, on May 18, 2023, the Court entered its order approving the parties’
12 Stipulation to Amend Class Notice and thereafter, also on May 18, 2023, the Court entered the
13 Order Granting Preliminary Approval of Class Action Settlement (“Preliminary Approval
14 Order”), thereby preliminarily approving the settlement of the above-entitled action (“Action”);

15 **WHEREAS**, the settlement contemplates and provides for an installment funding
16 schedule whereby Defendant will fund the Gross Settlement Amount of \$700,000.00 by way of
17 three installments;

18 **WHEREAS**, pursuant to the Section XII.B.1 of the Joint Stipulation of Class Action
19 Settlement, on or about May 26, 2023, Defendant funded one-third of the Gross Settlement
20 Amount, i.e., Two Hundred Thousand Three Hundred Thirty-Three Dollars and Thirty-Three
21 Cents (\$233,333.33) (the “First Installment”), into an interest-bearing Qualified Settlement Fund
22 (“QSF”) established by the Settlement Administrator for administration of the Settlement;

23 **WHEREAS**, on September 21, 2023, Plaintiff filed her Motion for Final Approval of
24 Class Action Settlement, Attorneys’ Fees and Litigation Costs, and Enhancement Payment
25 (“Motion for Final Approval”) and supporting documents, including the [Proposed] Final
26 Approval Order and Judgment (“Proposed Final Approval Order”);

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1 **WHEREAS**, on October 18, 2023, the Court entered its Minute Order (“October 18,
2 2023 Minute Order”) requesting supplemental papers in support of the Motion for Final
3 Approval and continuing the hearing on Plaintiff’s Motion for Final Approval to January 10,
4 2024, at 1:30 p.m.;

5 **WHEREAS**, in accordance with the Court’s instructions (contained in the October 18,
6 2023 Minute Order), and pursuant to section XVIII.J of the Joint Stipulation of Class Action
7 Settlement, the parties and their counsel executed Amendment No. 1 Joint Stipulation of Class
8 Action Settlement, identifying California Court Appointed Special Advocates as the *cy pres*
9 recipient of funds from uncashed checks (Supplemental Declaration of Edwin Aiwazian in
10 Support of Motion for Final Approval of Class Action Settlement, Attorneys’ Fees and Litigation
11 Costs, and Enhancement Payment, Exh. 2);

12 **WHEREAS**, pursuant to Section XII.B.1 of the Joint Stipulation of Class Action
13 Settlement, ***Defendant is to make a second deposit of one-third of the Gross Settlement***
14 ***Amount*** (i.e., \$233,333.33), plus the employer’s share of payroll taxes (together, the “Second
15 Installment”), ***within thirty (30) calendar days following the date upon which the Court enters***
16 ***the Final Approval Order;***

17 **WHEREAS**, Section XII.B.2.i of the Joint Stipulation of Class Action Settlement
18 provides that the ***Settlement Administrator shall distribute payment*** of the Court-approved
19 Enhancement Payment to Plaintiff (currently estimated to be the amount of \$7,500.00, subject to
20 Court approval), the Individual Settlement Payments to the Settlement Class Members (currently
21 estimated to total approximately \$426,573.92, subject to the Court approval), and Administration
22 Costs to the Settlement Administrator (currently estimated to be in the amount of \$10,000.00,
23 subject to Court approval), for a combined total of approximately \$444,073.92, ***within twenty***
24 ***(20) calendar days after the “Effective Date,” as defined in the Settlement Agreement;***

25 **WHEREAS**, pursuant to Section I.I of the Joint Stipulation of Class Action Settlement,
26 the “Effective Date” is the later of: (a) if no timely objections are filed or if all objections are
27 withdrawn, the date upon which the Court enters the Final Approval Order; (b) if an objection is
28 filed and not withdrawn, the date for filing an appeal and no such appeal being filed; (c) if any

1 timely appeals are filed, the date of the resolution (or withdrawal) of any such appeal in a way
2 that does not alter the terms of the Settlement;

3 **WHEREAS**, because it is contemplated that there will be no objections to the Settlement
4 (in which event the Effective Date will be the date upon which the Court enters the Final
5 Approval Order), it would appear that based on the terms of the Joint Stipulation of Class Action
6 Settlement, the Settlement Administrator’s deadline to distribute the Enhancement Award to
7 Plaintiff, the Individual Settlement Payments to Settlement Class Members, and Administration
8 Costs to the Settlement Administrator would occur before Defendant’s deadline to fund the
9 Second Installment (although the funds from the Second Installment are necessary in order to be
10 able to distribute the referenced payments);

11 **WHEREAS**, prior to Defendant’s funding of the Second Installment, the QSF will have
12 insufficient funds to complete the distribution of payments of the Court-approved Enhancement
13 Payment to Plaintiff, Individual Settlement Payments to the Settlement Class Members, and
14 Administration Costs to the Settlement Administrator;

15 **THEREFORE**, subject to the Court’s approval, **THE PARTIES HEREBY**
16 **STIPULATE** to an order by the Court as follows:

- 17 1. The Joint Stipulation of Class Action Settlement, Stipulation to Amend Class Notice,
18 Amendment No. 1 Joint Stipulation of Class Action Settlement, and Joint Stipulation
19 to Amend Funding and Disbursement Schedule are the “Settlement,” “Agreement,” or
20 “Settlement Agreement.”
- 21 2. Section XII.B.2.i of the Settlement Agreement is modified to provide as follows:

22 Within forty-five (45) calendar days after the Effective Date, any
23 available QSF funds shall be distributed by the Settlement Administrator
24 in the following order: (1) payment to Plaintiff of the Court-approved
25 Enhancement Payment; (2) the Individual Settlement Payments to the
26 Settlement Class Members, and (3) payment of the Settlement
27 Administration Costs to the Settlement Administrator. Any funds
28 remaining after this distribution shall be retained in the QSF to be
 distributed in accordance with Section XII.B.2.ii.

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3. The [Revised Proposed] Final Approval Order and Judgment submitted to the Court shall reflect the slight modification of the timing of distribution of the Individual Settlement Payments, and after entry of said order and judgment, a copy shall be posted on the Settlement Administrator’s website for a period of at least sixty (60) calendar days after the date of entry of the order and judgment. No further notice shall be required to be provided to the Class regarding the slight modification of the timing of distribution of the Individual Settlement Payments.

IT IS SO STIPULATED.

Dated: January 5, 2024

LAWYERS for JUSTICE, PC

By: 

Joanna Ghosh
Attorneys for Plaintiff

Dated: January 5, 2024

SCHOR VOGELZANG & CHUNG LLP

By: /s/ Lisa Hird Hung

Julie A. Vogelzang
Lisa Hird Chung
Janelle R. Thornton
Attorneys for Defendant

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[PROPOSED] ORDER

The Court, having reviewed the Parties’ Joint Stipulation to Amend Funding and Disbursement Schedule (“Stipulation”), orders as follows:


1. The Parties’ Stipulation is approved.
2. Section XII.B.2.i of the Settlement Agreement is modified to provide as follows:

Within forty-five (45) calendar days after the Effective Date, any available QSF funds shall be distributed by the Settlement Administrator in the following order: (1) payment to Plaintiff of the Court-approved Enhancement Payment; (2) the Individual Settlement Payments to the Settlement Class Members, and (3) payment of the Settlement Administration Costs to the Settlement Administrator. Any funds remaining after this distribution shall be retained in the QSF to be distributed in accordance with Section XII.B.2.ii.

3. The [Revised Proposed] Final Approval Order and Judgment submitted to the Court shall reflect the slight modification of the timing of distribution of the Individual Settlement Payments, and after entry of said order and judgment, a copy shall be posted on the Settlement Administrator’s website for a period of at least sixty (60) calendar days after the date of entry of the order and judgment. No further notice shall be required to be provided to the Class regarding the slight modification of the timing of distribution of the Individual Settlement Payments.

IT IS SO ORDERED.

Dated: January 12, 2024



Honorable Theodore C. Zayner
Judge of the Superior Court