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17 Attorneys for Defendant
Westmont Living, Inc.

18 SUPERIOR COURT OF CALIFORNIA

19 COUNTY OF CONTRA COSTA

20 QUAILYN HARRIS, individually, and on
21 behalf of other members of the general public
similarly situated;

22 Plaintiff,

23 v.

24 WESTMONT LIVING, INC., a California
corporation; and DOES 1 through 100,
25 inclusive,

26 Defendants.

Case No.: MSC21-01453

ASSIGNED FOR ALL PURPOSES TO:
Judge Edward G. Weil, Dept. 39

~~[REVISED PROPOSED]~~ ORDER
GRANTING FINAL APPROVAL OF
CLASS ACTION SETTLEMENT AND
ENTERING JUDGMENT THEREON

Date: May 1, 2025
Time: 9:00 a.m.
Dept: 39

Complaint Filed: July 7, 2021
First Amended Complaint Filed: May 24, 2024
Trial Date: Not Set

ORDER GRANTING FINAL APPROVAL AND
ENTERING JUDGMENT THEREON

This matter came on for hearing on May 1, 2025 in Department 39 of the above-captioned court on the unopposed Motion for Final Approval of the Class Action Settlement.

Having considered the Joint Stipulation and Settlement Agreement Of Class Action And PAGA Representative Action Claims (the “Settlement Agreement” or “Settlement”) which is attached as **Exhibit “1”** to the Memorandum filed in Support of the Motion for Final Approval; having granted preliminary approval of the same and conditional certification of the Class for settlement purposes only on January 2, 2025; having entered an Order directing that the Notice Packet be mailed to the Class; having conducted a hearing regarding whether the Settlement should be granted final approval; having considered the submissions filed by the respective Parties; having issued a tentative ruling in connection with the Motion for Final Approval of the Class Action Settlement, which is attached to this Order as **Exhibit A**, and which became the final ruling of the Court and which is hereby incorporated by reference; and good cause appearing therefor; the Court

HEREBY ORDERS, ADJUDGES AND DECREES AS FOLLOWS:

1. The Court has jurisdiction over Plaintiff Quai’lyn Harris (“Plaintiff”), Defendant Westmont Living, Inc. (“Defendant”), and the subject matter of the action.

2. The Court hereby GRANTS final approval of the Settlement upon the terms and conditions set forth in the Settlement Agreement, including the definition of the Class and the Class Period as stated below. The Court finds that the Settlement terms are fair, reasonable, and adequate, pursuant to Section 382 of the California Code of Civil Procedure.

3. The following definitions, as provided in the Settlement, shall apply herein:

A. “**Class**,” “**Class Member(s)**,” and “**Settlement Class**” means all current and former non-exempt employees of Defendant who worked at the Westmont of Brentwood facility as a non-exempt employee at any time from January 10, 2017 to August 29, 2023.

B. “**Class Period**” means the period from January 10, 2017 to August 29,

1 2023.

2 C. **“Covered Claims”** and **“Released Claims”** means any and all claims
3 asserted in the Complaint or any other claims that could have been asserted in the Complaint
4 based on the facts alleged in the Complaint, which the Class and/or any Class Member has
5 ever had, or hereafter may claim to have, for the Class Period. This includes any and all
6 claims during the Class Period concerning violations or damages relating to meal periods,
7 rest periods, pay stubs, off the clock work, late payment of wages, waiting time penalties,
8 unreimbursed business expenses, recordkeeping, record production, claims for violation of
9 the California Labor Code (including Labor Code §§ 201, 202, 203, 204, 226(a), 226.7, 510,
10 512, 1174(d), 1194, 1197, 1198, 2802), claims for violation of all similar provisions or
11 requirements of California law (including the California Code Of Regulations, the California
12 Industrial Welfare Commission Wage Orders, the General Minimum Wage Order, and
13 Business & Professions Code §§ 17200 et seq.), and claims for violations of all similar
14 provisions or requirements of federal law (including the Fair Labor Standards Act). As of
15 the Final Approval Date, each Participating Class Member shall be deemed to have fully,
16 finally, and forever released, relinquished, and discharged the Released Parties from all
17 Released Claims.

18 D. **“PAGA Claims”** means any civil penalties under the Private Attorneys
19 General Act of 2004 arising from the Covered Claims during the PAGA Period.

20 E. **“PAGA Group”** and **“PAGA Group Members”** means all Class
21 Members who worked as non-exempt employees of Defendant at the Westmont of
22 Brentwood facility at any time from November 3, 2019 to August 29, 2023.

23 F. **“PAGA Period”** means the period from November 3, 2019 to August
24 29, 2023.

25 G. **“Participating Class Member”** means any Class Member who does
26 not timely submit a Request for Exclusion.

27 H. **“Released Parties”** means Defendant, all of its affiliates, and each of
28 Defendant’s subsidiaries, owners (including Brentwood Assisted Living, LLC),

1 shareholders, members, agents (including, without limitation, any investment bankers,
2 accountants, insurers, reinsurers, attorneys and any past, present or future officers, directors
3 and employees), predecessors, successors and assigns.

4 I. **“Westmont Of Brentwood facility”** means the retirement community
5 operated by Defendant with an address of 450 John Muir Parkway, Brentwood, CA 94513.

6 4. The Court has determined that the Notice Packet fully and accurately informed
7 all Class Members of the material elements of the Settlement, constituted the best notice
8 practicable under the circumstances, and constituted valid, due and sufficient notice to all
9 Class Members.

10 5. The Court hereby grants final approval of the Settlement as fair, reasonable
11 and adequate.

12 6. The Court approves the non-reversionary settlement amount of \$300,000 (the
13 “Gross Settlement Fund”) established to fund the Settlement as fair, reasonable, and
14 adequate.

15 7. The Court approves the payment for Settlement Administration Costs incurred
16 by ILYM Group, Inc. in the amount of \$12,450 to be paid from the Gross Settlement Fund
17 as provided in the Settlement Agreement.

18 8. The Court approves a Service Award to the Class Representative in the amount
19 of \$10,000, to be paid from the Gross Settlement Fund as provided in the Settlement
20 Agreement.

21 9. The Court approves the payment of \$15,000 to the California Labor &
22 Workforce Development Agency (“LWDA”) to be paid from the Gross Settlement Fund.

23 10. The Court approves the payment of attorneys’ fees to Class Counsel from the
24 Gross Settlement Fund in the total amount of \$105,000, with \$68,250 payable to Scheppach
25 Bauer PC and \$36,750 payable to Lawyers For Justice, P.C.

26 11. The Court approves the payment of costs to Class Counsel from the Gross
27 Settlement Fund in the total amount of \$20,539.24, with \$13,445.87 payable to Scheppach
28 Bauer PC and \$7,093.37 payable to Lawyers For Justice, P.C.

1 12. The Court hereby directs Defendant to fund the Settlement in accordance with
2 the terms of, and by the deadlines supplied in, the Settlement.

3 13. The Court hereby directs the Settlement Administrator to make all
4 disbursements in accordance with the terms of, and by the deadlines supplied in, the
5 Settlement Agreement.

6 14. As set forth in the Settlement Agreement, the Settlement Administrator will
7 prepare and mail settlement checks for each Participating Class Member and PAGA Group
8 Member in the amount of his or her Individual Settlement Payment. The checks will indicate
9 on their face that they are void if not negotiated within one hundred and eighty (180) days
10 of their issuance. In the event a settlement check is returned to the Settlement Administrator
11 with a forwarding address, the settlement check will be forwarded to the forwarding address.
12 In the event a settlement check is returned to the Settlement Administrator without a
13 forwarding address or is otherwise undeliverable, the Settlement Administrator will use
14 reasonable efforts to search for a better address and re-mail the returned check, if possible.
15 If the search does not provide a better address, or the settlement check is ultimately returned
16 without a forwarding address, neither Defendant, Class Counsel nor the Settlement
17 Administrator shall be required to take further action to achieve delivery of the check to the
18 Class Member. If within the 180-day period the Class Member contacts the Settlement
19 Administrator, or if Class Counsel does so on his or her behalf, the settlement check will be
20 reissued and mailed to the address the Class Member (or Class Counsel) provides. Any such
21 reissued settlement checks will indicate on their face that they are void if not negotiated
22 within one hundred and eighty (180) days of their issuance.

23 15. Any monies not able to be delivered to a Class Member after one address
24 follow-up on returned mail and any settlement checks not cashed within one hundred and
25 eighty (180) days of issuance will escheat to the State of California, Unclaimed Property
26 Division, in the name of the corresponding Class Member.

27 16. Any Class Member who submitted a valid and timely Request for Exclusion
28 shall no longer be a Class Member, shall not be bound by the Settlement, shall have no right

1 to object to the Settlement, and shall receive no Class Member Payment. However, if a
2 Class Member who is a PAGA Group Member submitted a valid and timely Request for
3 Exclusion, the PAGA Group Member shall still be bound by the Settlement to the extent it
4 pertains to the PAGA Claims.

5 17. Upon the filing of this Order Granting Final Approval, Class Members who
6 did not timely exclude themselves from the Settlement will be deemed to have released the
7 Released Parties from the Released Claims, as set forth in the Settlement Agreement. Class
8 Members who did not timely object to the Settlement are barred from prosecuting or
9 pursuing any appeal of this Order Granting Final Approval. Upon the filing of this Order
10 Granting Final Approval, PAGA Group Members will be deemed to have released the
11 Released Parties from the PAGA Claims, as set forth in the Settlement Agreement. PAGA
12 Group Members who did not timely object to the Settlement are barred from prosecuting or
13 pursuing any appeal of this Order Granting Final Approval.

14 18. Neither this Order Granting Final Approval nor the Settlement shall constitute
15 an admission by Defendant of any liability or wrongdoing whatsoever, nor is this Order
16 Granting Final Approval a finding of the validity or invalidity of any claims in the action or
17 a finding of wrongdoing by Defendant herein.

18 19. Each Party will bear its own attorneys' fees and costs, except as provided for
19 in the Settlement and this order.

20 20. By signing and filing this Order Granting Final Approval, the Court decrees
21 that the Participating Class Members shall be conclusively deemed to have released and
22 forever discharged the Released Parties from all Released Claims. By signing and filing this
23 Order Granting Final Approval, the Court decrees that the PAGA Group Members shall be
24 conclusively deemed to have released and forever discharged the Released Parties from all
25 PAGA Claims.

26 21. Without affecting the finality of this Order Granting Final Approval in any
27 way, and pursuant to California Rules of Court, Rule 3.768(h), the Court reserves exclusive
28 and continuing jurisdiction over the action for purposes of supervising the implementation,

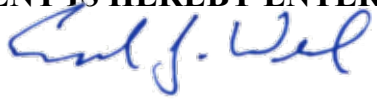
1 enforcement (CCP § 664.6), construction, administration and effectuation of the Settlement.

2 22. The Court hereby sets a compliance hearing on ~~February 11, 2027, at 9:00 a.m.~~
3 in Department 39, at which time the Parties shall apprise the Court of the status of the
4 distribution of the settlement proceeds.

5 23. Notice of this executed Order Granting Final Approval Of Class Action
6 Settlement shall be posted on the Settlement Administrator's website and may be removed
7 following the status conference date set forth above.

8 **IT IS SO ORDERED, AND JUDGMENT IS HEREBY ENTERED.**

9
10 Dated: 6/2/2025



Hon. Edward Weil
Judge of the Superior Court of California

EXHIBIT A

Superior Court of California, Contra Costa County

Department 39
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F. Li
Court Executive Officer

MINUTE ORDER

HARRIS VS. WESTMONT LIVING

MSC21-01453

HEARING DATE: 05/01/2025

PROCEEDINGS: *HEARING ON MOTION IN RE: FINAL APPROVAL

DEPARTMENT 39
JUDICIAL OFFICER: EDWARD G WEIL

CLERK: BROOKE POOL
COURT REPORTER: NOT REPORTED
BAILIFF: KIAN LAVASSANI

JOURNAL ENTRIES:

Appearances:

No appearance by or for either party.

Proceedings:

There being no opposition to the tentative ruling, the tentative ruling becomes the order of the court as follows:

TENTATIVE RULING:

Plaintiff Quai'lyn Harris moves for final approval of her class action and PAGA settlement with defendant Westmont Living, Inc.

A. Background and Settlement Terms

Defendant operates a retirement community in Brentwood. Plaintiff worked there for several years as a server.

The original complaint in this action was filed on July 7, 2021 as a class action. Defendant moved to compel arbitration; the motion was denied but an appeal was filed. A separate PAGA-only action was filed in Riverside County, but the parties agreed to stay it pending the appeal. The parties then proceeded to a successful mediation, after which the parties agreed to the filing of a consolidated amended complaint encompassing both class and PAGA claims. The Riverside action remains stayed and will be dismissed upon completion of this case.

The settlement would create a gross settlement fund of \$300,000. The class representative payment to the plaintiff would be \$10,000. Attorney's fees would be \$105,000 (35% of the settlement). Litigation costs would not exceed \$25,000. The settlement administrator's costs are estimated at \$12,450. PAGA penalties would be \$20,000, resulting in a payment of \$15,000 to the LWDA. The net amount paid directly to the class members would be about \$132,010, not including distribution of PAGA penalties. The fund is non-reversionary. There are an estimated 392 class members. Based on the estimated class size, the average net payment for each class member is approximately \$325. The individual payments will vary considerably, however, because of the allocation formula prorating payments according to the number of weeks worked during the

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relevant time. The number of aggrieved employees for PAGA purposes is smaller, about 247, because the starting date of the relevant period is later.]

The entire settlement amount will be deposited with the settlement administrator in two equal installments. The first will occur within 30 days after the effective date of the settlement, and the second a year later.

The proposed settlement would certify a class of all current and former non-exempt employees employed at Defendants' California facilities between January 10, 2017 and August 29, 2023. For PAGA purposes, the period covered by the settlement is November 3, 2019 to August 29, 2023.

The class members will not be required to file a claim. Class members may object or opt out of the settlement. (Aggrieved employees cannot opt out of the PAGA portion of the settlement.) Funds would be apportioned to class members based on the number of workweeks worked during the class period.

A list of class members will be provided to the settlement administrator within 15 days after preliminary approval. The administrator will use skip tracing as necessary. Various prescribed follow-up steps will be taken with respect to mail that is returned as undeliverable. Settlement checks not cashed within 180 days will be cancelled, and the funds will be directed to the controller's unclaimed property fund.

Since preliminary approval of the settlement was granted, the parties and the settlement administrator have been implementing provisions of the agreement. Notices have been mailed to 432 addresses. 42 notices were returned. Skiptracing found new addresses for 30 of the 42, and were remailed. A total of 12 notice packages have been deemed undeliverable. There have been no objections or opts outs, and the final size of the class is now 431 members. The average payment per class member will be about \$306.

The settlement contains release language covering all claims and causes of action, alleged or which could have reasonably been alleged based on the allegations in the operative pleading, including a number of specified claims. 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 goes 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.)

Formal discovery was undertaken, resulting in the production of substantial documents. The matter settled after arms-length negotiations, which included a session with an experienced mediator.

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. For example, much of

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plaintiff's allegations centers on possible off-the-clock work, including missed or skipped meal breaks and rest breaks. Defendant, however, pointed out that its formal policies prohibit off-the-clock work, and asserted that it would have had no knowledge of employees beginning work before punching in or continuing after punching out. Further, it argued that it was required to make meal and rest breaks available, but not required to ensure that they be taken, so long as no employer policy prevented or discouraged taking such breaks. As to unreimbursed employee expenses (mainly cell phone use), plaintiff would have been called on to show that such expenses were in fact incurred, were reasonably necessary to job performance, and were unreimbursed. Furthermore, the fact-intensive character of such claims would have presented a serious obstacle to class certification.

The potential liability needs to be adjusted for various evidence and risk-based contingencies, including problems of proof. PAGA 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.")) Moreover, recent decisions may make it difficult for PAGA plaintiffs to recover statutory penalties, as opposed to actual missed wages. (See, *e.g.*, *Naranjo v. Spectrum Security Services, Inc.* (2024) 15 Cal.5th 1056.)

Counsel attest that notice of the proposed settlement was transmitted to the LWDA concurrently with the filing of the motion for preliminary approval.

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*, 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. Recently, 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,

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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.)

C. Attorney Fees

Plaintiff seeks 35% 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.) Following typical practice, however, the fee award was not considered at the time of preliminary approval, but as part of final approval.

Counsel have provided a lodestar estimate of \$258,935, based on 353.6 hours at hourly rates of either \$625 or \$850. This yields an implied multiplier of about 0.30. Without necessarily endorsing the hourly rates, it is clear that no adjustment is needed. The attorney's fees are approved.

The litigation costs of \$20,539.24 are reasonable and are approved.

The settlement administrator's costs of \$12,450 are reasonable and are approved.

The requested representative payment of \$10,000 for the plaintiff is reviewed under the criteria discussed in *Clark v. American Residential Services LLC* (2009) 175 Cal.App.4th 785, 804-07. Ms. Harris attests that she has spent about 40 hours working on this matter. She took the risks that are typically associated with being a plaintiff in this kind of matter. She also signed a general release of claims, which is much broader than the release that applies to the class. In her declaration, she attests to incidents of racial harassment at work. Without reviewing the merits of the claims, the references establish that her release encompasses claims with some potential value. The \$10,000 payment is approved.

D. Discussion and Conclusion

The Court finds that the settlement is fair, reasonable, and adequate. The motion for approval is

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granted.

Counsel are directed to prepare an order reflecting this tentative ruling and the other findings in the previously submitted proposed order. The ultimate judgment must provide for a compliance hearing after the settlement has been completely implemented, on a date to be selected in consultation with the Department Clerk. Plaintiffs' counsel are 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: 5/1/2025

BY: _____

B. POOL, DEPUTY CLERK