

11317974

FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF ORANGE
CENTRAL JUSTICE CENTER

JUN 17 2024

DAVID H. YAMASAKI, Clerk of the Court

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF ORANGE – CIVIL COMPLEX CENTER
By: _____ DEPUTY
[CLASS-PAGA ACTION]

TROY FERRER, individually, and on behalf of
all others similarly situated;

Plaintiffs

vs.

EASTER SEALS SOUTHERN CALIFORNIA,
INC., a California corporation; and DOES 1
through 25, inclusive;

Defendants

CASE: 30-2016-00842944-CU-OE-CXC
CLASS-PAGA ACTION
JUDGE: Hon. Lon Hurwitz
DEPT: CX-103

~~PROPOSED~~ **ORDER GRANTING
MOTION FOR PRELIMINARY
APPROVAL OF CLASS-PAGA ACTION
SETTLEMENT AND SETTING FINAL
APPROVAL HEARING
[Related to ROA 518]**

COMPLAINT: March 25, 2016
DATE: May 31, 2024
TIME: 1:30 p.m.
DEPT: CX103
TRIAL: September 30, 2024

ORDER

On May 31, 2024, Plaintiff TROY FERRER’S (“Plaintiff” and/or putative “Class-PAGA Representative”) Motion for Preliminary Approval of the Class-PAGA Action Settlement (“Motion”) came on for hearing in Department CX-103 of the Superior Court of California, County of Orange, Civil Complex Center.

Upon a thorough review of the Motion For Preliminary Approval Of Class-PAGA Action Settlement, Memorandum of Points and Authorities, the respective original and supplemental declarations filed in support thereof, the Court’s file in this matter, the Amended Class-PAGA Action Settlement Agreement, as well as the amended Notice of Class-PAGA Action Settlement, and Request For Exclusion Form attached collectively hereto as Exhibits “2” and “4”, respectively, to the Supplemental Declaration of Class-PAGA Counsel, Robert W. Skripko, Jr. (ROA 535), the records and documents on file with the Court herein, the application of controlling case precedent and applicable statutory authority, the Court finds on a preliminary basis that:

1 A. The proposed Settlement, the terms and conditions of which are set forth in the
2 Amended Class-PAGA Action Settlement Agreement attached as Exhibit "1" to the Supplemental
3 Declaration of Class-PAGA Counsel, Robert W. Skripko, Jr. (ROA 535) (the "Settlement
4 Agreement") entered into by and between Plaintiff, TROY FERRER, individually and on behalf of
5 his fellow putative Class Members and Aggrieved Employees (defined below), and Defendant
6 EASTER SEALS SOUTHERN CALIFORNIA, INC. ("Defendant" or "ESSC") (Ex. "1" to the
7 Declaration of proposed Class-PAGA Counsel, Robert W. Skripko, Jr.) in this Action, is within the
8 range of reasonableness, and the Court will likely be able to approve it and enter judgment on it.
9 The proposed Settlement is sufficient to warrant sending notice thereof to the Settlement Class
10 Members. The procedures for establishing and administering the benefits provided by the proposed
11 Settlement, and for notice to Settlement Class Members, as set forth in the Settlement Agreement,
12 satisfy all constitutional and statutory requirements, including all due process requirements and the
13 California Rules of Court.

14 B. The Court finds and determines that it will likely be able to certify the Settlement
15 Class for purposes of judgment on the settlement proposal because: (i) the number of individuals in
16 the proposed Settlement Class is so numerous that joinder would be impractical; (ii) there is a
17 commonality of interests between the Class-PAGA Representative and the members of the
18 Settlement Class; (iii) there are questions of law and fact that are common to the Settlement Class,
19 and the common questions related to the settlement predominate over individual questions; (iv) the
20 Class-PAGA Representative's claims are typical of the claims of absent members of the Settlement
21 Class; and (v) the Class-PAGA Representative and Class-PAGA Counsel will continue to fairly
22 and adequately represent the interests of the un-named members of the proposed Settlement Class.

23 C. The Court has reviewed the proposed Notice for the Settlement Class, as well as the
24 methods proposed for distribution thereof, and has determined that the parties will employ forms
25 and methods of notice that constitute: (a) the best notice practicable under the circumstances; (b)
26 are reasonably calculated to apprise class members of the terms and conditions of the proposed
27 settlement and of their right to participate in it, object to, or opt-out of, the Settlement; (c) are
28 reasonable and constitute due, adequate, and sufficient notice to all persons entitled to receive

1 notice; and (d) meet all constitutional and statutory requirements, including all due process
2 requirements and the California Rules of Court.

3 **ACCORDINGLY, IT IS HEREBY ORDERED THAT:**

4 1. Plaintiff's Motion for Preliminary Approval of Class-PAGA Action Settlement is
5 **GRANTED**. Accordingly, the Court hereby preliminarily approves the Settlement.

6 2. **Class-PAGA Action Settlement:** The terms and conditions of the proposed
7 Settlement, as set forth in the Amended Settlement Agreement, are preliminarily approved, as the
8 terms and conditions of the settlement thereof are found to be fair, adequate, and reasonable.

9 3. **Class Definition:** The following class is conditionally certified for settlement
10 purposes only: All non-exempt individuals who worked for ESSC in California as a Job Coach,
11 Life Coach, Life Skills Coach, Life Skills Coach I or 1, Life Skills Coach II or 2, and/or Life Skills
12 Coach Floater, during the Class Period between March 25, 2012, through March 31, 2023 ("Class
13 Period").

14 4. **Class Representative.** For purposes of the Settlement only, the Court preliminarily
15 finds and determines that Plaintiff will continue to fairly and adequately represent the interests of
16 the Settlement Class in enforcing their rights in the action and appoints him as Class-PAGA
17 Representative of both the Class Members and Aggrieved Employees. The Court preliminarily
18 finds that he is similarly situated to the unnamed Settlement Class Members and therefore typical
19 of the Settlement Class, and that he will continue to be an adequate Class-PAGA Representative.
20 The Court preliminarily approves the payment of \$10,000 as a Service Award to Plaintiff Troy
21 Ferrer, with payment coming out of the Gross Settlement Fund.

22 5. **Class Counsel.** The Court preliminary finds that Robert W. Skripko, Jr. of Law
23 Office of Robert W. Skripko, Jr., PC, and Arash N. Alizadeh, of the Alizadeh Employees Law,
24 Prof. Corp. have, and will continue to, diligently prosecute this action, and will effectively
25 represent the interest of the Settlement Class in this Class-PAGA Action, in general, and this
26 Settlement, in particular. The Court authorizes Class- PAGA Counsel to enter into the Settlement
27 on behalf of the Class-PAGA Representative and the Settlement Class, and to bind them all to the
28 duties and obligations contained therein, subject to final approval by the Court of the Settlement.

1 The Court preliminarily approves the application for payment to Class-PAGA Counsel of
2 reasonable attorneys' fees of up to thirty-five percent of the Gross Settlement Fund, and reasonable
3 costs and expenses up to thirty thousand dollars, with payment coming out of the Gross Settlement
4 Fund.

5 6. **Administration.** CPT Group, Inc. ("CPT") is appointed to act as the Administrator
6 pursuant to the terms of the Settlement Agreement, under the supervision of Class-PAGA Counsel,
7 and in accordance with the Settlement Agreement. CPT is ordered to carry out the Settlement
8 according to the terms of the Settlement Agreement and in conformity with this Order, including
9 disseminating the Notice, and processing the Settlement, in accordance with the Settlement
10 Agreement. The Administrator shall post the operative Complaint, Settlement Agreement, Class
11 Notice, and Orders for Preliminary Approval and Final Approval on its website for the entire
12 duration of its administration of this action. Based upon the cost estimate submitted by CPT, the
13 Court preliminarily approves administration costs in the amount of \$17,250, to be deducted from
14 the Gross Settlement Amount. In connection with the prospective Motion for Final Approval, the
15 Administrator shall file a verified declaration which provides a copy of its invoice and attests
16 administration of the settlement.

17 7. **Class Notice.** The Parties' proposed notice plan is hereby approved as the best
18 notice practicable. The proposed Notice of Class-PAGA Action Settlement, Notice of Settlement
19 Award, and Request For Exclusion Form, (collectively the "Notice"), is sufficient to inform the
20 Class Members and Aggrieved Employees of the terms of the Settlement Agreement, their rights to
21 receive monetary payments under the Settlement Agreement, their right to exclude themselves
22 from the Settlement and their right to lodge objections to the Settlement. The Court finds the notice
23 requirements of Rules of Court, rules 3.766(d) and 3.769(f) are satisfied, and that the Class Notice
24 adequately advises Class Members and Aggrieved Employees of their rights under the Settlement.

25 8. The form and content of the proposed Notice of Class-PAGA Action Settlement
26 ("Notice of Class-PAGA Action Settlement") and Request for Exclusion form, attached as Exhibits
27 "A" and "B", respectively, to the Class-PAGA Action Settlement Agreement (Ex. "1" to the
28 Declaration of Class-PAGA Counsel, Robert W. Skripko, Jr.) are hereby approved.

1 9. The Parties and/or Administrator are hereby authorized to amend the Notice as
2 necessary to add dates, correct errors, correct any typographical errors that may be discovered in
3 the Class Notice and make clarification, to the extent some are found or needed, so as to improve
4 the accuracy and/or clarity of the information provided to Settlement Class Members, so long as
5 the modifications do not materially alter the substance of the Notice.

6 10. Defendant is hereby ordered to provide to the Administrator a list of all Settlement
7 Class Members (the "Class List") in accordance with the Class-PAGA Action Settlement
8 Agreement. This Class List shall identify the name, social security number, employee identification
9 number, as
10 well as the last known home address, telephone number, and email address, the number of
11 Workweeks worked by the Class Member during the Class Period and, where applicable, number
12 of Pay Periods worked by the Class Member during the PAGA Period. (collectively, the "Class
13 Data").

14 11. The Court finds that the provision of the foregoing information by ESSC to the
15 Administrator is necessary so that reasonable notice can be given to the class, as required by state
16 and federal constitutional provisions and due process, and so the Administrator can verify
17 membership in the Settlement Class. The Court further finds and orders that compliance with this
18 Order by ESSC will not and does not violate any federal, state, or local constitution, statute, rule,
19 regulation, or policy purporting to limit the disclosure of personally identifiable information.

20 12. Within the time prescribed in the Settlement Agreement, the Administrator shall
21 mail the Notice of Class-PAGA Action Settlement and Opt-Out form by First-Class United States
22 mail, postage prepaid, to the last known address of each Settlement Class Member, or, in the case
23 of Settlement Class Members known to be deceased, to the legal representative of the estate. Prior
24 to mailing, the Administrator will perform a search based on the National Change of Address
25 Database for information to update and correct any known or identifiable address changes. It will
26 be conclusively presumed that the Class Member received the Notice if the Notice has not been
27 returned within 30 days of mailing. If a new address is obtained by way for said Settlement Class
28 Member, then the Administrator will promptly forward the original Notice to the updated address

1 via first-class regular U.S. mail, indicating on the original packet the date of such re-mailing within
2 3 business days of receipt (the "Second Mailing"). If a Notice is returned without a forwarding
3 address, the Administrator shall endeavor to obtain an updated mailing address by performing a
4 skip trace. If the Notice is returned without a forwarding address and the Class Member is currently
5 employed by Defendant, the Administrator shall contact the Class Member directly to obtain an
6 updated mailing address.

7 13. **Workweek – Pay Period Disclosure:** Each Notice will list the total workweeks
8 worked by the individual Class Member during the Class Period and, where applicable, Pay
9 Periods worked by the Aggrieved Employee during the PAGA Period. To the extent a Class
10 Member disputes the information listed on his or her Notice, the Class Member may produce
11 evidence to the Administrator showing the number of weeks and/or pay periods the Class Member
12 contends to have
13 worked during the Class/PAGA Periods. If there is a dispute, the Administrator will consult with
14 the Parties to determine whether an adjustment is warranted. The Administrator shall determine
15 the eligibility for, and the amounts of, any Individual Class Payments and, where applicable, the
16 Individual PAGA Payments, under the terms of the Settlement Agreement. In the absence of any
17 contrary documentation, the Administrator is entitled to presume that the Workweeks and PAGA
18 Pay Periods contained in the Class Notice are correct so long as they are consistent with the Class
19 Data and PAGA Data. Absent good cause found by the Court, the Administrator's determination of
20 each Class Member's allocation of Workweeks and/or Pay Periods shall be final and not appealable
21 or otherwise susceptible to challenge. The Administrator shall promptly provide copies of all
22 challenges to calculation of Workweeks and/or Pay Periods to Defense Counsel and Class Counsel
23 and the Administrator's determination to the challenges.

24 14. **Exclusion From The Settlement.** Any Settlement Class Member may request
25 exclusion from the Settlement Class by submitting the Request For Exclusion Form. Any such
26 request must be made in accordance with the terms set forth in the Notice and will be timely only if
27 postmarked no later than 60 days after the date of mailing of the Notice by the Administrator or 45
28 calendar days from the date the Notice was re-mailed to respond, whichever is later, or if otherwise

1 agreed by the Parties, by and through Class-PAGA Counsel and Defense Counsel, in writing. An
2 Aggrieved Employee may not opt-out of the settlement of the Private Attorneys General Act claim.
3 All members of the Settlement Class who do not submit a timely, valid Request for Exclusion,
4 however, will be bound by the Agreement and the prospective Judgment entered herein.

5
6 15. **Objections To The Settlement.** Any Settlement Class Member wishing to object to
7 the approval of the Settlement shall inform the Administrator in writing of his or her intent to
8 object by following the procedure set forth in the Notice no more than 60 calendar days after the
9 date of mailing of the Notice by the Administrator, or, in the event of a Second Mailing, 45 days
10 after the re-mailing, whichever is later, or such number of days as the Court shall specify, before
11 the date of the Final Fairness and Approval Hearing. The objection must include the following: (a)
12 state the name and case number of this matter (b) identify the objecting Settlement Class Member's
13 name, address, and telephone number; (c) provide all arguments, citations, and evidence supporting
14 the
15 objection; (d) state whether the objector intends to appear at the hearing, with or without counsel; I
16 identify, by name and case number, any other proposed class action settlement to which the
17 objecting Settlement Class Member submitted an objection and whether such objection was
18 submitted on the objecting Settlement Class Member's behalf or on behalf of a represented third
19 party. By submitting such objection, the objecting Settlement Class Member will be deemed to
20 have opted into the settlement and will be a Participating Settlement Class Member.

21 16. All objections and/or requests for exclusion must be post-marked in accordance
22 with the Settlement Agreement.

23 17. All reasonable expenses incurred in identifying and notifying Settlement Class
24 Members, as well as administering the Settlement, shall be paid in accordance with the terms set
25 forth in the Settlement Agreement.

26 18. The Court preliminarily approves Section 5 of the Settlement Agreement in which
27 the Released Parties are released from the Released Claims (as that term is defined in Section 5,
28 paragraph 5.2 of the Settlement Agreement) by Plaintiff and all Participating Settlement Class

1 Members. Further, the Court preliminarily approves Section 5 of the Settlement Agreement in
2 which the Released Parties are released from the Released PAGA Claims (as that term is defined in
3 Section 5, paragraph 5.3 of the Settlement Agreement) by Plaintiff and all Aggrieved Employees.

4 19. Neither the Agreement or any of its terms or provisions, nor any of the negotiations
5 or proceedings connected with the Settlement, whether or not consummated, shall be construed as
6 an admission or concession of any kind by any of the Parties. Neither the Agreement or any of its
7 terms or provisions, nor any of the negotiations or proceedings connected with the Settlement, may
8 be offered against any of the Parties as evidence of, or construed as or deemed to be evidence of,
9 any presumption, concession or admission by any of the Parties regarding any issue whatsoever
10 including: (a) whether it was appropriate for class certification; (b) the validity of any allegation or
11 claim that was, could have been or will be asserted against Defendant; (c) liability, negligence,
12 fault, or wrongdoing of any kind; and (d) the existence or scope of any damages.

13 20. The Court hereby retains exclusive and continuing jurisdiction over the Parties and
14 the Settlement Class Members to consider all further motions and applications arising out of, or
15 connected with, the Settlement Agreement or related settlement matters. The Court may approve
16 the Settlement with such modifications as may be agreed to by the Parties, if appropriate, without
17 further notice to the Settlement Class. The Court shall also retain jurisdiction with respect to the
18 implementation and enforcement of the terms of the Settlement Agreement. All Parties hereto
19 submit to the jurisdiction of the Court for purposes of implementing and enforcing the Settlement
20 embodied in the Settlement Agreement.

21 21. All Participating Class Members shall be bound by all determinations and
22 judgments of the Court in the Action concerning the Settlement and related matters, whether
23 favorable or unfavorable to the Settlement Class.

24 22. All proceedings in this action shall be stayed until further order of the Court, except
25 for proceedings that may be necessary to implement this Preliminary Approval Order, the
26 Settlement Agreement, its Exhibits, or to comply with or effectuate the terms and conditions of the
27 Settlement.

28

1 23. Counsel for the Parties are hereby authorized to utilize all reasonable procedures in
2 connection with the administration of the Settlement that are not materially inconsistent with either
3 this Order and/or the terms of the Settlement Agreement.

4 24. The Court will conduct a Final Approval Hearing on October 11, 2024, at 1:30 p.m.,
5 in Department CX-103 of the Orange County Superior Court – Civil Complex Center, located at
6 751 W. Santa Ana Blvd., Santa Ana, CA 92701, to determine: (a) whether the proposed Settlement
7 is fair, reasonable, and adequate and should be finally approved by the Court; (b) the amount of
8 attorneys' fees and costs to award to Class-PAGA Counsel; (c) the amount of Service Award to the
9 Class Representative; (d) the amount of consideration provided to Plaintiff associated with his
10 provision of a general release, and waiver of Civil Code §1542, as to ESSC and the Released
11 Parties, as defined in the Settlement Agreement; (e) the amount of fees to be awarded to CPT in
12 consideration of their administration of the Settlement. Associated therewith, the Administrator
13 shall provide a copy of its invoice with an affidavit regarding administration of the Settlement at
14 the Final Approval Hearing; and (f) the amount of the PAGA Payment from which 75% is
15 allocated to the Labor Workforce Development Agency and 25% to the Aggrieved Employees.

16 25. Briefs/Motion in Support of Final Approval of the Class-PAGA Action Settlement
17 shall be filed in accordance with C.C.P. §1005.

18 26. The Court reserves the right to continue the date of the Final Approval Hearing
19 without further notice to Settlement Class Members.

20 27. The Court retains jurisdiction to consider all further applications arising out of or in
21 connection with the Settlement.

22 28. In the event the Settlement is not finally approved, or otherwise does not become
23 effective in accordance with the terms of the Settlement Agreement, this Order shall be rendered
24 null and void, as well as vacated, and the Parties shall revert to their respective positions as of
25 before entering into the proposed Settlement.

26 29. The Court hereby further Orders: _____

IT IS SO ORDERED.



Judge of the Orange County Superior Court

DATE: JUN 17 2024