

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

PENNY A. SCOTT, *on behalf of herself
and all other similarly-situated employees,*
et al.

Plaintiffs,

v.

BLACKSTONE CONSULTING, INC.,

Defendant.

Case No. 21-cv-1470-MMA (KSC)

**ORDER GRANTING PLAINTIFFS’
UNOPPOSED MOTION FOR
PRELIMINARY APPROVAL OF
CLASS ACTION SETTLEMENT**

[Doc. No. 39]

Pending before the Court is Plaintiffs’ unopposed Motion for Preliminary Approval of Class Action Settlement (the “Motion”). Having considered the Motion and the points and authorities and declarations submitted in support of the Motion, including the Class Action and PAGA Settlement Agreement (collectively, “Agreement” or “Settlement”) and exhibits, and **GOOD CAUSE** appearing, **IT IS HEREBY**

ORDERED that the Motion is **GRANTED**, subject to the following findings and orders:

1. This Order incorporates by reference the definitions in the Agreement, and all terms defined therein shall have the meaning as set forth in the Agreement.
2. The class action settlement set forth in the Agreement, entered into among Plaintiff and Defendant BLACKSTONE CONSULTING, INC. (“Defendant” or “BCI”)

1 (collectively, the “Parties”), is preliminarily approved as it appears to be proper, to fall
2 within the range of reasonableness, to be the product of arm’s-length and informed
3 negotiations, to treat all Class Members fairly, and to be presumptively valid, subject
4 only to any objections that may be raised at or before the final approval hearing. The
5 Court further finds that Class Counsel conducted extensive investigation and research,
6 and that they were able to reasonably evaluate Plaintiffs’ position and the strengths and
7 weaknesses of their claims and the ability to certify them. Plaintiffs have provided the
8 Court with enough information about the nature and magnitude of the claims being
9 settled, as well as the impediments to recovery, to make an independent assessment of the
10 reasonableness of the terms to which the Parties have agreed.

11 3. The Gross Settlement Amount is One Million Dollars and Zero Cents
12 (\$1,000,000.00). It appears to the Court on a preliminary basis that the Gross Settlement
13 Amount and terms are fair, adequate and reasonable as to all potential Class Members
14 when balanced against the probable outcome of further litigation and the significant risks
15 relating to certification, liability, and damages issues. It further appears that investigation
16 and research have been conducted such that counsel for the Parties are able to reasonably
17 evaluate their respective positions. It further appears to the Court that settlement at this
18 time will avoid substantial additional costs by all Parties, as well as avoid the delay and
19 risks that would be presented by the further prosecution of the Action. It further appears
20 that the Settlement has been reached as the result of serious and non-collusive, arms-
21 length negotiations. The Court therefore preliminarily finds that the Settlement is fair,
22 adequate, and reasonable when balanced against the probable outcome of further
23 litigation and the significant risks relating to certification, liability, and damages issues.

24 4. The rights of any potential dissenters to the proposed Settlement are
25 adequately protected in that they may exclude themselves from the Settlement and
26 proceed with any alleged claims they may have against Defendant, or they may object to
27 the Settlement and appear before this Court. However, to do so they must follow the
28 procedures outlined in the Settlement Agreement and Notice of Class Action Settlement.

1 Failure to follow the procedures outlined in the Settlement Agreement and Notice of
2 Class Action Settlement for making objections shall result in waiver and the objector
3 shall be forever foreclosed from challenging any of the terms of the Settlement.

4 5. The Agreement specifies for an attorneys' fees award not to exceed One-
5 Third of the Gross Settlement Amount (or approximately \$333,333.33), an award of
6 litigation expenses incurred, not to exceed \$25,000, and proposed Class Representative
7 Service Payments to the Plaintiffs PENNY A. SCOTT, AHMIR RINGO, TIFFANY
8 LOCKETT, TOCASHEMA WILLIAMS, and KAWANA ANDERSON in an amount not
9 to exceed \$10,000 to each Plaintiff. The Court will not approve the amount of attorneys'
10 fees and costs, nor the amount of any service award, until the Final Approval Hearing.
11 Plaintiffs will be required to present evidence supporting these requests, including
12 lodestar, prior to final approval.

13 6. The Court recognizes that Plaintiffs and Defendant stipulate and agree to
14 certification of a class for settlement purposes only. This stipulation will not be deemed
15 admissible in this or any other proceeding should this Settlement not become final. For
16 settlement purposes only, the Court conditionally certifies the following Class: "all
17 individuals who are or previously were employed by Defendant in California as non-
18 exempt employees working at Kaiser Permanente facilities and hospitals in California at
19 any time during the Class Period." The Class Period means the period from May 21,
20 2017 to April 30, 2023.

21 7. The Court concludes that, for settlement purposes only, the Class meets the
22 requirements for certification under Rule 23 of the Federal Rules of Civil Procedure in
23 that: (a) the Class is ascertainable and so numerous that joinder of all members of the
24 Class is impracticable; (b) common questions of law and fact predominate, and there is a
25 well-defined community of interest amongst the members of the Class with respect to the
26 subject matter of the litigation; (c) the claims of Plaintiffs are typical of the claims of the
27 members of the Class; (d) Plaintiffs can fairly and adequately protect the interests of the
28 members of the Class; (e) a class action is superior to other available methods for the

1 efficient resolution of this controversy; and (f) counsel for the Class is qualified to act as
2 counsel for the Class and the Plaintiffs are adequate representatives of the Class.

3 8. The Court provisionally appoints Plaintiffs as the representatives of the
4 Class. The Court provisionally appoints as Class Counsel for the Class: Isam Khoury,
5 Michael Singer, and Rosemary Khoury of Cohelan Khoury & Singer, Larry W. Lee, Max
6 W. Gavron, and Kwanporn “Mai” Tulyathan of Diversity Law Group, P.C., and Edwin
7 Aiwazian, Arby Aiwazian, and Joanna Ghosh of Lawyers for Justice, PC.

8 9. The Court hereby approves, as to form and content, the Notice of Proposed
9 Settlement of Class Action and Hearing Date for Final Court Approval (“Class Notice”)
10 attached to the Agreement as Exhibit A. The Court finds that the Class Notice appears to
11 fully and accurately inform the Class of all material elements of the proposed Settlement,
12 of the Class Members’ right to be excluded from the Class by submitting a signed
13 Request for Exclusion From Class Action Settlement (attached as Exhibit A to the Class
14 Notice), and of each member’s right and opportunity to object to the Settlement.

15 10. The Court finds that the method selected for communicating the preliminary
16 approval of the Settlement Agreement to Class Members is the best notice practicable
17 under the circumstances, constitutes due and sufficient notice to all persons entitled to
18 notice, and thereby satisfies due process. The form and method of giving notice comply
19 fully with the requirements of Federal Rules of Civil Procedure 23(c)(2)(b) and 23(e) and
20 other applicable law. The Court orders the mailing of the Class Notice by first class mail,
21 pursuant to the terms set forth in the Agreement.

22 11. The Court hereby appoints CPT Group as Settlement Administrator.

23 12. The Court hereby appoints Legal Aid at Work as Cy Pres Recipient.

24 13. No later than 30 court days after the Court enters the Order Granting
25 Preliminary Approval of the Settlement, Defendant will provide to the Settlement
26 Administrator an electronic database containing each Class Member’s Class Data. No
27 later than three (3) business days after receipt of the Class Data, the Settlement
28 Administrator shall notify Class Counsel that the list has been received and state the

1 number of Class Members, PAGA Members, Workweeks, and Pay Periods in the Class
2 Data. No later than 14 calendar days after receiving the Class Data, the Settlement
3 Administrator will mail the Class Notice Packets to all Class Members via first-class
4 regular U.S. Mail using the mailing address information provided by Defendant, unless
5 modified by any updated address information that the Settlement Administrator obtains in
6 the course of administration of the Settlement. No later than three (3) business days after
7 the Settlement Administrator's receipt of any Class Notice returned by the USPS as
8 undelivered, the Settlement Administrator shall re-mail the Class Notice using any
9 forwarding address provided by the USPS. Class Members who wish to exclude
10 themselves (i.e. opt out of) the Class Settlement must send the Settlement Administrator,
11 by fax, email, or mail, a signed written Request for Exclusion no later than 45 calendar
12 days after the Settlement Administrator mails the Class Notice (plus an additional 14
13 calendar days for Class Members whose Class Notice is re-mailed).

14 14. No later than 5 calendar days after the expiration of the deadline for
15 submitting Requests for Exclusion, the Settlement Administrator shall email a list to
16 Class Counsel and Defense Counsel containing the names and other identifying
17 information of Class Members who have timely submitted valid Requests for Exclusion
18 ("Exclusion List"). If the number of valid Requests for Exclusion exceeds 5% of the total
19 of all Class Members, Defendant may, but is not obligated, to elect to withdraw from the
20 Settlement. The Parties agree that, if Defendant withdraws, the Settlement shall be void
21 ab initio, have no force or effect whatsoever, and neither Party will have any further
22 obligation to perform under the Settlement Agreement; provided, however, Defendant
23 will remain responsible for paying all Settlement Administration Expenses incurred to
24 that point. Defendant must notify the Class Counsel and the Court of its election to
25 withdraw not later than 7 court days after the Administrator sends the final Exclusion List
26 to Defense Counsel.

27 15. No later than 14 calendar days before the date by which Plaintiffs are
28 required to file the Motion for Final Approval of the Settlement, the Settlement

1 Administrator will provide to Class Counsel and Defense Counsel a signed declaration
2 suitable for filing in Court attesting to its due diligence and compliance with all of its
3 obligations under this Agreement.

4 16. The Court hereby preliminarily approves the proposed procedure for
5 exclusion from the Settlement. The rights of any potential dissenters to the proposed
6 Settlement are adequately protected in that they may exclude themselves from the
7 Settlement and proceed with any alleged claims they may have against Defendant, or they
8 may object to the Settlement and appear before this Court. However, to do so they must
9 follow the procedures outlined in the Settlement Agreement and Notice of Class Action
10 Settlement. Failure to follow the procedures outlined in the Settlement Agreement and
11 Notice of Class Action Settlement for making objections shall result in waiver and the
12 objector shall be forever foreclosed from challenging any of the terms of the Settlement.

13 17. Any Class Member who has not opted out may object or express the
14 Member's views regarding the Settlement, and may present evidence and file briefs or
15 other papers that may be proper and relevant to the issues to be heard and determined by
16 the Court as provided in the Notice. Class Members will have until the Response
17 Deadline to submit their written objections and/or a notice of intention to appear at the
18 hearing to the Settlement Administrator in accordance with the instructions in the Class
19 Notice. Any Class Member who does not timely and validly file written Objections and a
20 notice of intent to appear shall not be permitted to present his, her, or its Objections at the
21 Final Approval and Fairness Hearing.

22 18. A Final Approval Hearing shall be held before this Court on **December 11,**
23 **2023 at 2:30 p.m. in Courtroom 3C** of the United States District Court, Southern
24 District of California to determine all necessary matters concerning the Settlement,
25 including: whether the proposed settlement of the Action on the terms and conditions
26 provided for in the Agreement is fair, adequate and reasonable and should be finally
27 approved by the Court; whether the Final Approval Order and Judgment should be
28 entered herein; whether the plan of allocation contained in the Agreement should be

1 approved as fair, adequate and reasonable to the Class Members; and to finally approve
 2 attorneys' fees and costs, the service award, and the expenses of the Settlement
 3 Administrator. Plaintiffs' motion for final approval and Plaintiffs' motion for attorneys'
 4 fees, costs and service awards shall both be heard at the Final Approval Hearing. All
 5 papers in support of the motion for final approval and the motion for attorneys' fees,
 6 costs and service awards shall be filed with the Court and served on all counsel no later
 7 than sixteen (16) court days before the hearing.

8 19. An implementation schedule is below:

Event	Date
Defendant to provide class contact information to settlement administrator	September 1, 2023
Settlement administrator to mail the Class Notice to the Class Members	September 15, 2023
Deadline for Class Members to submit disputes, opt out, or object to the settlement	October 30, 2023
Deadline for Plaintiffs to file Motion for Final Approval of Class Action Settlement	November 17, 2023
Hearing on Motion for Final Approval	December 11, 2023

23 20. Neither the Settlement nor any exhibit, document, or instrument delivered
 24 thereunder shall be construed as a concession or admission by Defendant in any way that
 25 the claims asserted have any merit or that this Action was properly brought as a class or
 26 representative action, and shall not be used as evidence of, or used against Defendant as,
 27 an admission or indication in any way, including with respect to any claim of any
 28 liability, wrongdoing, fault or omission by Defendant or with respect to the truth of any

1 allegation asserted by any person. Whether or not the Settlement is finally approved,
2 neither the Settlement, nor any exhibit, document, statement, proceeding or conduct
3 related to the Settlement, nor any reports or accounts thereof, shall in any event be
4 construed as, offered or admitted in evidence as, received as or deemed to be evidence for
5 any purpose adverse to the Defendant, including, but not limited to, evidence of a
6 presumption, concession, indication or admission by Defendant of any liability, fault,
7 wrongdoing, omission, concession or damage.

8 21. In the event the Settlement does not become effective in accordance with the
9 terms of the Settlement Agreement; the Settlement is not finally approved, terminated,
10 canceled or fails to become effective for any reason; any provision of the Settlement
11 Agreement becomes or is deemed illegal, invalid or unenforceable by any court of
12 competent jurisdiction; or the Court requires a material modification of this Agreement
13 (including, but not limited to, the scope of release to be granted by Class Members), this
14 Order and the underlying Agreement shall be rendered null and void and shall be vacated,
15 and the Parties shall revert to their respective positions as of before entering into the
16 Agreement, and expressly reserve their respective rights regarding the prosecution and
17 defense of this Action, including all available defenses and affirmative defenses, and
18 arguments that any claim in the Action could not be certified as a class action and/or
19 managed as a representative action. In such an event, the Court's orders regarding the
20 Settlement, including this Order, shall not be used or referred to in litigation for any
21 purpose. Nothing in this paragraph is intended to alter the terms of the Agreement with
22 respect to the effect of the Agreement if it is not approved.

23 22. If at any time on or before the Final Approval, any state or federal
24 legislation, rule, administrative guidance or change in law, is implemented, enacted
25 and/or interpreted which provides that any of the types of claims being asserted in this
26 action are preempted by federal law and/or have retroactive effect during the applicable
27 Class Period, then Defendant will have the right to rescind and terminate the Settlement
28 without prejudice to its pre-settlement positions and defenses in this action, without any

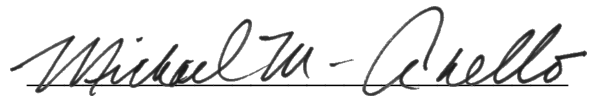
1 financial obligation related to the proposed Settlement set forth therein other than to pay
2 for the costs of administration of the Settlement incurred by the Settlement Administrator
3 through the time of such rescission and termination. Thereupon, the Parties will meet and
4 confer regarding the status of this litigation.

5 23. The Court reserves the right to adjourn or continue the date of the Final
6 Approval Hearing and all dates provided for in the Agreement without further notice to
7 Class Members, and retains jurisdiction to consider all further applications arising out of
8 or connected with the proposed Settlement.

9 24. Pending the Final Approval Hearing, all proceedings in this action other than
10 proceedings necessary to carry out or enforce the terms and conditions of the Agreement
11 and the Order, are stayed and all trial and related pre-trial dates are vacated, subject to
12 further orders of the Court at the Final Approval Hearing.

13 **IT IS SO ORDERED.**

14 Dated: August 1, 2023

15 

16 HON. MICHAEL M. ANELLO
17 United States District Judge
18
19
20
21
22
23
24
25
26
27
28