

Stebner and Associates, A Professional
Law Corporation
Attn: Stebner, Kathryn A.
870 Market Street
Suite 1212
San Francisco, CA 94102 _____

HAHN LOESER & PARKS LLP
Attn: Wright, Gabe P.
One America Plaza
600 W. Broadway, Ste. 1500
San Diego, CA 92101

Superior Court of California, County of Alameda
Rene C. Davidson Alameda County Courthouse

<p>Lollock <p style="text-align: center;">Plaintiff/Petitioner(s)</p><p style="text-align: center;">VS.</p><p>Oakmont Senior Living, LLC <p style="text-align: center;">Defendant/Respondent(s) (Abbreviated Title)</p></p></p>	<p style="text-align: center;">No. <u>RG17875110</u></p> <p style="text-align: center;">Order</p> <p style="text-align: center;">Motion for Attorney Fees Granted</p>
---	---

The Motion for Attorney Fees was set for hearing on 01/20/2021 at 03:00 PM in Department 19 before the Honorable Stephen Kaus. The Tentative Ruling was published and has not been contested.

IT IS HEREBY ORDERED THAT:

The tentative ruling is affirmed as follows: Plaintiff Donald Lollock et al's ("Plaintiffs") unopposed Motions for (1) Final Approval of Class Action Settlement and (2) Award of Attorneys' Fees, Costs and Service Awards (the "Motions") **GRANTED** as set forth below.

IF ANY PARTY WISHES TO CONTEST THIS TENTATIVE RULING, NO LATER than 4:00 p.m. on Tuesday, January 19, 2021 contesting party must email dept.19@alameda.courts.ca.gov and provide notice to all counsel of the intent to contest the tentative order.

Any requested hearing will most likely be conducted using the Blue Jeans Network, password # 5102676935. If a hearing is requested, the Court will advise the parties of the manner in which the hearing will be conducted in advance of the hearing.

If not timely contested, and the tentative ruling will become the final order of the Court.

Plaintiffs' First Amended Complaint alleges claims for violations of the Consumers Legal Remedies Act (Cal. Civ. Code § 1750 et seq.), Bus. & Prof. Code § 17200 unfair business practices and Financial Elder Abuse (Wel. & Inst. Code § 15610.30 in connection with defendants' alleged failure to provide the staffing levels at defendants' senior assisted living facilities as represented by defendants.

The case settled for \$9,000,000, plus injunctive relief, which Plaintiffs' counsel estimates to increase the total value of the settlement as \$9,066,402. (See Moving Kennedy Dec.; Moving Stebner Dec. ¶¶ 26) The estimated size of the class is 6,972. (See Supp. Skey Dec. ¶ 3.) The Settlement Agreement states that attorneys' fees will be up to one-third of the settlement amount, including the estimated value of the injunctive relief, plus costs of suit in an amount not to exceed \$450,000. (Moving Stebner Dec. ¶ 21.) In the pending Motion for Attorneys' Fees, etc., Plaintiffs' counsel actually requests a fees award of \$3.5 million and actual costs of suit of \$328,745.70.

The Settlement Agreement calls for a total of \$30,000 for class service awards to the five named Plaintiffs, administration costs "not to exceed" \$65,000, and also a reserve of \$25,000 for late claims. (Ibid.) However, administrator CPT Group, Inc. on 9/14/2020 increased its settlement administration cost bid to \$75,000, which Plaintiffs' counsel proposes either be added to litigation expense reimbursement or deducted from the attorneys' fee award. (Id. at ¶ 29.) The Court elects to deduct the

\$10,000 overage from the Attorneys' Fees Award discussed below.

The Settlement Agreement further provides that approximately 3,674 settlement class members who did not pay a "Community Fee" will receive only a Settlement Award of \$100 each, for a total of \$367,400. (Id. at ¶ 23.b.) Thus, according to the Moving MPA and the Stebner Dec., after the above-listed expenses, the remaining approximately 3,301 settlement class members who paid a "Community Fee," in amounts between \$3,944.07 and \$100, would receive \$ 5,066,254.30, which would result in each of the 3,301 class members who paid "Community Fees" receiving reimbursement of approximately 37% of the total Community Fee each such class member paid. (Id. at ¶ 26.)

The Court notes that the parties have previously revised the Settlement Agreement to provide a definition of the "Community Fees" referenced therein at new ¶ 1.8.

Settlement negotiations involved three days of mediation with retired judges George Hernandez and Richard Silver, which ultimately resulted in a settlement. The court gives "considerable weight to the competency and integrity of counsel and the involvement of a neutral mediator in [concluding] that [the] settlement agreement represents an arm's length transaction entered without self-dealing or other potential misconduct." (Kullar v. Foot Locker Retail, Inc. (2008) 168 Cal.App.4th 116, 129.) (See also In re Sutter Health Uninsured Pricing Cases (2009) 171 Cal.App.4th 495, 504.)

The Court has previously found acceptable the proposed 60-day period to submit a Request for Exclusion or a written Objection to the Settlement Agreement. (See Settlement Agreement at new ¶¶ 1.18-1.19.) The Court has also previously noted and approved of the plan to distribute the settlement funds with no claims process.

The Court notes that the Class Notice was appropriately revised to expressly state that even if Class members fail to timely submit a written objection by the applicable date, they may nevertheless appear at the hearing set for Final Approval of this Class Action Settlement to convey orally to the Court any objections or concerns they have with the proposed Settlement, provided that they provide advance notice to the Court and Plaintiffs' counsel pursuant to CRC Rule 1.1308(a)(1) of their intent to appear at the Final Approval hearing. The Moving Skey Declaration declares that approximately 16,500 copies of the Notice were mailed to the 6,975 resident Settlement Class members, that as of 10/26/2020 approximately 950 of the mailed Notices were deemed undeliverable after attempted skip tracing, that 38 Settlement Class Members had opted out of the settlement as of 10/26/2020 (although the deadline for Settlement Class Members to opt out is 11/13/2020, and that no Settlement Class Members submitted objections to the settlement as of 10/26/2020.

However, Plaintiffs filed a Supplemental Skey Declaration dated 1/12/2021, which states that the number of undelivered notices was actually 976 and that 77 opt-outs were received by Settlement Class members, seven of which are disputed by the parties as to their validity, and that there were no objections.

The Court has reviewed the parties' 1/11/2021 Joint Statement and ORDERS as follows. With the respect to the six "deficient" Opt Outs received from purported representatives of Settlement Class Members Luthera Moorman, Walter Baumbach, Tula Bailey, Randall Leben, Ruth Lee and Alice Sasso, the Administrator shall send by regular U.S. Mail no later than Friday February 5, 2021 a letter to each individual purporting to represent these Settlement Class Members advising that they have until Friday, March 5, 2021 to submit evidence supporting their respective claims to be authorized to opt out of the Settlement on behalf of each Settlement Class Member and advising as to the types of documents that will constitute sufficient evidence of representative capacity. If no evidence of representative capacity is submitted to the Administrator post-marked on or before 3/5/2021, the respective opt outs shall be disallowed and the respective Settlement Class Members will participate in the Settlement.

The Court further ORDERS that Settlement Class Member Linda Anderson's opt out shall be deemed effective and acceptable even though submitted three days after the 11/13/2020 deadline, in light of the fact that her submission was otherwise complete and she is assumably a resident of one of Defendant's assisted living facilities.

The proposed definition of "Settlement Class" at new § 1.28 of the Settlement Agreement ("Plaintiffs and all other persons who resided at one of the Oakmont Senior Living Branded California assisted living facilities at any time from September 13, 2013 through and including December 16, 2019 ...") has

previously been revised as requested by the Court and has previously been deemed acceptable for settlement purposes.

The motion for preliminary approval made an adequate analysis required by *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, because it provides a reasonable estimate of the number of Class members, the total estimated possible recovery and some explanation why the settlement was reasonable in light thereof. (See *Moving Stebner Dec.* at ¶¶ 21-38; *Moving Kennedy Dec.*) Although the revised release at new ¶ 1.23 of the Settlement Agreement is broader than the language suggested by the Court, the Court has previously determined that it is appropriately limited to the claims that were or could have been made arising out of claims, causes of action, legal theories, legal authorities or facts alleged in Plaintiff's operative Complaint. The release of claims by the class must be limited by the "identical factual predicate rule." (*Hesse v. Sprint Corp.* (9th Cir. 2010) 598 F.3d 581, 590.) (See also *Hendricks v. Starkist Co* (N.D. Cal. 2016) 2016 WL 692739 at * 2-4 [Denying motion for final approval of class settlement because scope of release overbroad].) The Settlement Agreement provides that unclaimed funds will be distributed to Cy Pres beneficiary Groceries for Seniors, which appears to be an appropriate Cy Pres beneficiary pursuant to CCP § 384(a).

Plaintiffs' Counsel request an award of attorneys' fees in the amount of \$3,500,000 and actual costs of suit totaling \$328,745.70. The Court cannot award attorneys' fees without reviewing information about counsel's hourly rate and the amount of time Plaintiffs' legal counsel spent on the case. This is the law even if the parties have agreed that Defendants will not oppose the motion for fees. (*Robbins v. Alibrandi* (2005) 127 Cal. App. 4th 438, 450-451.)

When using the percentage of recovery approach, the court's benchmark for fees is 30% of a total fund. (*Laffitte v. Robert Half Internat. Inc.* (2016) 1 Cal.5th 480, 495; *Schulz v. Jeppesen Sanderson, Inc.* (2018) 27 Cal.App.5th 1167, 1175; *Consumer Privacy Cases* (2009) 175 Cal.App.4th 545, 557 fn 13; *Chavez v. Netflix, Inc.* (2008) 162 Cal.App.4th 43, 66 fn 11.) When cross-checking with the lodestar/multiplier, the court will evaluate the lodestar based on reasonable fees that would have been charged at hourly rates and then apply a multiplier. The multiplier includes contingent fee risk and other factors.

Plaintiffs' counsel presents evidence in the form seven declarations that Plaintiffs' counsel worked a total of 4,139.3 hours on the case since 2017 and that the total lodestar for the legal work performed is \$2,993,553. (See *Moving MPA* at p. 11:7-22 and citations to declarations at fn. 3.) Thus, Plaintiffs' counsel's request of a \$3,500,000 represents a multiplier of approximately 1.17, 38.9% of the settlement amount and 19.4% of the total value of the settlement calculated by Plaintiffs including the value of the injunctive relief.

The Court AWARDs Plaintiffs' counsel attorneys' fees in the total amount of \$3,490,000, the amount requested by Plaintiffs' counsel less the \$10,000 overage for administration fees described above. The Court AWARDs Plaintiffs' actual costs of suit in the amount of \$328,745.70. Although Plaintiffs' counsel has provided relatively little evidence regarding the specific legal work performed or the specific costs of suit, the fees and costs requests appear reasonable in light of the length of time the litigation was pending, the terms of the Settlement Agreement and the results achieved.

The Court APPROVES administration costs to CPT Group, Inc. in the amount of \$75,000.

The Court AWARDs the following service awards requested by Plaintiffs:

- (1) \$5,000 to Donald Lollock, by and through his Guardian ad Litem, Kathleen Lollock;
- (2) \$7,500 to the Estate of Abdulwafi Khan;
- (3) \$5,000 to Frank Pearson;
- (4) \$7,500 to Jo Ella Nashadka, by and through her Guardian ad Litem, Lance Anderson; and
- (5) \$5,000 to Jane Burton-Whitaker.

The respective declarations of Kathleen Lollock, Zareen Khan, Charmaine Pearson, William Ray and Lance Anderson adequately describe their specific actions and the amount to time each of them committed to the prosecution of the case. (*Clark v. American Residential Services LLC* (2009) 175 Cal.App.4th 785, 804-807.) Further, the requested service awards appear reasonable in light of the size of the settlement.

The Court ORDERS that 10% of any fee award be kept in the administrator's trust fund until the completion of the distribution process and Court approval of a final accounting.

Plaintiffs are requested to request from the Clerk of Dept. 19 a date for the compliance hearing to be set for a date after the completion of the distribution process and the expiration of the time to cash checks for counsel for plaintiff and the Administrator to comply with CCP § 384 and to submit a summary accounting how the funds have been distributed to the class members and the status of any unresolved issues. If the distribution is completed, the Court will at that time release any hold-back of attorney fees.

Counsel are reminded that courtesy copies must be identical to documents filed or lodged with the Clerk of the Court (Local Rule 3.30(c) and must comply with the requirements of CRC Rule 3.1110(e) and (f). Failure to submit papers conforming to the Local Rules and the California Rules of Court in the future may result in the motion being denied or continued until compliant courtesy copies are provided.

Dated: 01/20/2021

 Facsimile

Judge Stephen Kaus

SHORT TITLE:

Lollock VS Oakmont Senior Living, LLC

CASE NUMBER:

RG17875110

ADDITIONAL ADDRESSEES

Schneider Wallace Cottrell Konecky, LLP

Attn: Wallace, Guy B.

2000 Powell Street, Suite 1400

Emeryville, CA 94608_____

Denton US LLP

Attn: Healey, Christopher J

4655 Executive Drive

Suite 700

San Diego, CA 92121_____

Law Offices of Michael D. Thamer

Attn: Thamer, Michael D

12444 South Highway 3

P.O.Box 1568

Callahan, CA 96014-1568

THE ARNS LAW FIRM

Attn: Arns, Robert S

515 Folsom Street

3rd Floor

San Francisco, CA 94105

Janssen, Malloy, Needham, Morrison,

Reinholtsen & Crowley, LLP

Attn: Needham, W. Timothy

730 Fifth St.

P.O. Drawer 1288

Eureka, CA 95501

Marks, Balette, Giessel & Young,
P.L.L.C.
Attn: Marks, David T.
7521 Westview Drive
Houston, TX 77055