

FILED  
SUPERIOR COURT  
THURSTON COUNTY, WA

2022 MAY -6 AM 10:01

Linda Myhre Enlow  
Thurston County Clerk

EXPEDITE  
 No hearing set  
 Hearing is set  
Date: May 6, 2022  
Time: 9:00 a.m.  
Judge/Calendar: Hon. Indu Thomas

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON  
IN AND FOR THE COUNTY OF THURSTON

SYLVIA LIANG, MANUEL BRITO, and  
SHAZIA ANWAR, individually and on behalf  
of all those similarly situated,

Plaintiffs,

v.

STATE OF WASHINGTON;  
WASHINGTON STATE DEPARTMENT OF  
SOCIAL AND HEALTH SERVICES, a  
Washington State Agency; CHERYL  
STRANGE, in her official capacity as the  
Secretary of the Washington State Department  
of Social and Health Services,

Defendants.

No. 20-2-02506-34

~~[AMENDED PROPOSED]~~ ORDER  
CERTIFYING SETTLEMENT  
CLASS, GRANTING PRELIMINARY  
APPROVAL OF CLASS ACTION  
SETTLEMENT, AUTHORIZING  
NOTICE, AND SETTING FINAL  
FAIRNESS HEARING

[CLERK'S ACTION REQUIRED]

This matter came before the Court on Plaintiffs' Unopposed Motion for Settlement Class Certification and Preliminary Approval of Class Settlement (Plaintiffs' Motion). In conjunction with Plaintiffs' Motion, Plaintiffs have filed a copy of the Parties' signed Settlement Agreement

~~[AMENDED PROPOSED]~~ ORDER CERTIFYING  
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1 (Settlement Agreement), attached as Exhibit 6 to the Declaration of Jennifer Robbins in support  
2 of Plaintiffs' Motion.

3 WHEREAS, the Court has considered Plaintiffs' Motion, the declarations filed in support  
4 of Plaintiffs' Motion, the Parties' signed Settlement Agreement, and all of the other pleadings,  
5 papers, and filings herein;

6 WHEREAS, as used herein, all terms defined in the Parties' Settlement Agreement shall  
7 have the same meaning here; and

8 WHEREAS, good cause appearing that the Parties' Settlement Agreement is within the  
9 range of reasonableness for final approval,

10 NOW, THEREFORE, IT IS HEREBY ORDERED as follows:

11 1. Pursuant to CR 23(a), (b)(3), and (e) of the Washington Superior Court Civil  
12 Rules, and in conjunction with the Settlement Agreement, the Court hereby certifies this case as  
13 a class action, solely for purposes of implementing the Parties' Settlement Agreement, on behalf  
14 of the following Settlement Class:

15 all current and former IPs who, between March 7, 2014 and February 28, 2021,  
16 contracted with DSHS to provide personal care services for a client whose in-  
17 home care hours were reduced because DSHS, through its agents, coded the client  
18 in a CARE assessment as having a status of "shared benefit" with respect to one  
19 or more instrumental activity of daily living (IADL).

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1 The Settlement Class shall exclude any persons who opt out of the Settlement Class in  
2 accordance with the terms of the Settlement Agreement and Paragraph 13 of this Order.

3 2. The Court finds that, solely for purposes of this Settlement Class, the prerequisites  
4 of CR 23(a) and (b)(3) have been satisfied. Specifically, the Court finds as follows based on the  
5 record currently before the Court and solely for the purposes of certifying a Settlement Class:

6 a. The Settlement Class, which consists of approximately 55,824 persons, is  
7 so numerous that joinder of all members is impracticable.

8 b. There are questions of law and fact common to the Settlement Class,  
9 including, but not limited to whether 1) DSHS violated the MWA by reducing IPs' paid  
10 hours of work based on its determination that the IP or multiple clients in a household  
11 shared in the benefit of the work performed; 2) DSHS violated the MWA by failing to  
12 pay IPs in wages (e.g., legal tender) for personal care tasks, reducing IPs' pay for the  
13 value of the "shared benefit" it deemed IPs get from cleaning a home or cooking a meal;  
14 3) DSHS's wage violations were willful; 4) DSHS violated the duty of good faith and fair  
15 dealing inherent in its contracts with IPs when it retained the discretion to set the quantity  
16 of hours and the types of services for which IPs will be compensated but then reduced  
17 IPs' clients' authorized hours pursuant to the shared benefit rule without reducing the  
18 services the provider was required to perform; and 5) the proper measure of unpaid hours  
19 worked is the number of in-home care hours DSHS did not pay for on account of the  
20 shared benefit rule, as reflected in DSHS's data.

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1 c. The claims of the Plaintiffs are typical of the claims of the  
2 Settlement Class, and the Plaintiffs and Class Counsel will fairly and  
3 adequately protect the interests of the Settlement Class.

4 d. Certification of a Settlement Class under CR 23(b)(3) is appropriate  
5 because questions of law and fact common to all Settlement Class  
6 Members predominate over any questions affecting only individual members,  
7 and a class action is superior to other available means for the fair and  
8 efficient resolution of this controversy. Such common questions of law and  
9 fact include those specified in Paragraph 2(b) above.

10 3. Pursuant to CR 23, Plaintiffs Sylvia Liang, Manuel Brito, and Shazia  
11 Anwar are hereby appointed and designated, for all purposes, as the Class  
12 Representatives of the Settlement Class, and Jennifer L. Robbins, Darin M. Dalmat,  
13 and Sarah E. Derry of the law firm of Barnard Iglitzin & Lavitt are hereby appointed  
14 and designated as Class Counsel for the Settlement Class.

15 4. Class Counsel are authorized to act on behalf of the Settlement Class  
16 with respect to all acts or consents required by or which may be required  
17 pursuant to the Settlement Agreement. The Court approves appointment of JND  
18 Legal Administration as Settlement Administrator with the duties and responsibilities  
19 set forth in the Settlement Agreement.

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1           5.     The Court approves the proposed form and content of the Notice of Settlement  
2 Class Certification and Proposed Class Action Settlement (Class Notice) that is attached as  
3 Exhibit 1 to the Declaration of Jennifer L. Robbins.

4           7.     Consistent with the terms of the Settlement Agreement, the Settlement  
5 Administrator is hereby directed to mail, or cause to be mailed, by first-class mail, a copy of the  
6 Class Notice to each Settlement Class Member no later than fourteen (14) calendar days  
7 following the date of this Order. The Settlement Administrator is directed to run all addresses  
8 provided it by Defendants through the U.S. Postal Service NCOA database to obtain current  
9 address information, and to mail the Class Notice to the Settlement Class members via fist-class  
10 regular U.S. Mail using the most current mailing address information available. Any Notices  
11 returned to the Settlement Administrator with a forwarding address within 45 days after the date  
12 on the Class Notice shall be sent to the forwarding address affixed thereto. If a Notice is returned  
13 from the initial notice mailing without a forwarding address within 45 days after the date on the  
14 Class Notice, the Settlement Administrator shall attempt to locate a more current address in  
15 accordance with the Settlement Agreement.

16           8.     Pursuant to CR 23, the Court hereby finds and concludes that the form and  
17 manner giving notice by mailing a Class Notice to each individual Settlement Class  
18 Member, as required by the Settlement Agreement and by this Order, is the best notice  
19 practicable under the circumstances. Additionally, in accordance with the Settlement  
20 Agreement, the Settlement Administrator and Defendants will post the Class Notice,

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1 translated Class Notice, and opt-out form on their web pages during the opt-out period.  
2 Said notice procedures fully satisfy the requirements of CR 23(c)(2) and CR 23(e) and  
3 the requirements of due process.

4 9. The Court preliminarily approves Class Counsel's request for an attorneys' fee  
5 and costs award of \$1,625,000. This approval is preliminary and is subject to modification and  
6 final approval after consideration of any objections at the time of final settlement approval.

7 10. On September <sup>16</sup> 7, 2022, at 9:00 a.m., or as soon thereafter as may be  
8 scheduled by the Court, a Final Settlement Approval Hearing shall be held before the  
9 Honorable Judge Indu Thomas at the Thurston County Superior Court in Olympia,  
10 Washington, to determine whether the Court should approve the fairness, adequacy, and  
11 reasonableness of the terms and conditions of the Settlement Agreement and whether  
12 the Court should enter the Parties' proposed Final Order.

13 11. Briefing on the Final Settlement Approval Hearing shall be governed by  
14 by the following schedule:

- 15 a) Plaintiffs shall file any final memoranda they may wish to submit in support of  
16 the proposed Settlement Agreement (e.g., their Motion for Final Approval) within  
17 fourteen (14) calendar days after the objection deadline or by August <sup>12</sup> 5, 2022,  
18 whichever is later. These papers shall confirm that the mailing of the Class  
19 Notice was completed in accordance with the requirements of this  
20

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1 Order, and provide information concerning any opt-outs or objections  
2 received as a result of such mailing.

3 b) Oppositions, if any, to Plaintiffs' Motion for Final Approval shall be filed with  
4 the Court and served on the parties' counsel by no later than August <sup>26</sup>19, 2022.

5 c) Replies, if any, in support of Plaintiffs Motion for Final Approval shall be filed  
6 with the Court and served on the parties' counsel, and any counsel for persons  
7 filing oppositions, by no later than <sup>Sept 2</sup>August 26, 2022.

8 12. Any person who is eligible to exclude him or herself from the  
9 Settlement Class under the terms of the Settlement Agreement must do so by following  
10 the instructions for requesting exclusion from the Settlement Class as set forth in  
11 the Class Notice. All requests for exclusion from the Settlement Class must be  
12 mailed to the Settlement Administrator and postmarked no later than 60 calendar days  
13 after the date on the Class Notice, in accordance with the instructions in the Class  
14 Notice and the terms and requirements of the Settlement Agreement, or they shall be  
15 deemed void and ineffective.

16 13. Any Settlement Class Member may enter an appearance through  
17 counsel of such Settlement Class Member's own choosing and at such Settlement  
18 Class Member's own expense. Any Settlement Class Member who does not personally  
19 appear or otherwise enter an appearance at the Final Settlement Approval Hearing shall  
20 be deemed to be represented by Class Counsel in this litigation as provided above.

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1           14. Any Settlement Class Member who has not validly requested exclusion  
2 may submit written objections to the Settlement Agreement by (i) filing with the  
3 Clerk of the Thurston County Superior Court in this matter, and (ii) serving on Class  
4 Counsel and counsel for Defendants, at the addresses provided in the Settlement Notice,  
5 a written statement containing the Settlement Class Member's name, current address,  
6 telephone number, and email address, as well as the substance of their objection(s)  
7 (including any briefs and supporting papers) no later than 60 calendar days after the  
8 date on the Class Notice. Any Settlement Class Member who presents written  
9 objections in the manner prescribed above may also appear personally or through  
10 counsel at the Final Settlement Approval Hearing to express the Settlement Class  
11 Member's views regarding the Settlement Agreement. To the fullest extent allowed by  
12 law, only Settlement Class Members who object to the Settlement Agreement in  
13 accordance with the procedures set forth in this Order shall be permitted to appeal or  
14 otherwise seek review of this Court's decision approving or rejecting the Settlement  
15 Agreement. Failure to follow the procedures for objecting set forth herein shall  
16 constitute a waiver of a Settlement Class Member's right to object to the Settlement  
17 Agreement and shall result in foreclosure from making any objections (by appeal or  
18 otherwise) to the proposed Settlement.

19           15. Pending this Court's ruling on final approval of the Settlement  
20 Agreement, Plaintiffs and all Class Members are enjoined from filing or prosecuting

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1 any claims, suits or administrative proceedings regarding claims released in the  
2 Settlement Agreement, unless and until such Class Members have filed timely and  
3 valid Request for Exclusion forms with the Settlement Administrator.

4 16. The Final Settlement Approval Hearing, and all dates provided for  
5 herein, may, without further notice to the Settlement Class, be continued or adjourned  
6 by order of this Court.

7 17. Consistent with the Settlement Agreement, certification of the Settlement  
8 Class shall not be construed as an admission by the Defendants; dispositive on the issue  
9 of class certification or any other issue in the event the Settlement Agreement is  
10 terminated or rendered void for any reason; or an admission by Defendants that  
11 certification of this class is the likely or necessary outcome if this case were to be fully  
12 litigated; or establish a precedent of any kind in this or other litigation.

13 18. In the event the Settlement Agreement does not become effective  
14 in accordance with the terms of the Settlement Agreement, or the Settlement  
15 Agreement is not finally approved, or the Settlement Agreement is terminated,  
16 canceled, or fails to become effective for any reason, this Order shall be vacated and  
17 rendered null and void, the class shall be decertified, and all claims and defenses  
18 previously asserted by the Parties shall be reinstated and the Court shall enter further  
19 appropriate orders governing the proceedings and establishing a revised case schedule in  
20 this matter.

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IT IS SO ORDERED this 6<sup>th</sup> day of May, 2022.

\_\_\_\_\_  
The Honorable Judge Indu Thomas  
Thurston County Superior Court

PRESENTED BY:

**BARNARD IGLITZIN & LAVITT**

\_\_\_\_\_  
Jennifer L. Robbins, WSBA No. 40861  
Darin M. Dalmat, WSBA No. 51384  
Sarah E. Derry, WSBA No. 47189

*Attorneys for Plaintiffs*

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