

SUPREME COURT OF THE STATE OF NEW YORK NEW YORK COUNTY

Index Number : 650726/2013

CASTILLO, GENDRI

vs

BNV HOME CARE AGENCY

Sequence Number : 005

OTHER RELIEFS

PART 37INDEX NO. 650726/2013MOTION DATE 10/21/2015MOTION SEQ. NO. 005

AND CLASS-MOTION
Preliminarily
A To APPROVE SETTLEMENT AND FOR OTHER RELIEF

The following papers, numbered 1 to 2, were read on this motion to for To APPROVE SETTLEMENT

Notice of Motion/~~Order to Show Cause~~ — Affidavits — Exhibits _____

No(s). 1

~~Notice of Cross-Motion - Affirmation~~
Answering Affidavits — Exhibits _____

No(s). 2

Replying Affidavits _____

No(s). _____

Upon the foregoing papers, it is ordered that ~~this motion is~~ PLAINTIFFS' MOTION for AN

ORDER of Preliminary Approval of the Stipulation and Agreement of Settlement, DATED SEPTEMBER 30, 2015, BETWEEN PLAINTIFFS AND THE CLASS AND DEFENDANTS, IS GRANTED WITHOUT OPPOSITION AND IN ACCORDANCE WITH THE ATTACHED "ORDER of Preliminary Approval, Approval of the Class Notice, and Scheduling a Final Fairness Hearing," DATED NOVEMBER 2, 2015.

DEFENDANTS CROSS-MOTION for an ORDER APPROVING the establishment of a New York Qualified Settlement Fund in accordance with the PARTIES' SEPTEMBER 30, 2015 STIPULATION AND AGREEMENT of Settlement, is GRANTED WITHOUT OPPOSITION. DEFENDANTS MAY ESTABLISH a New York Qualified Settlement Fund, PURSUANT TO TREASURY REGULATION SECTION 1.468B-1, AND THE TERMS OF THE PARTIES' AFORESAID STIPULATION AND Settlement Agreement.

Dated: 11/2/15

J.S.C.


HON. ARTHUR F. ENGORON

1. CHECK ONE: ☐ CASE DISPOSED ☒ NON-FINAL DISPOSITION
2. CHECK AS APPROPRIATE: MOTION IS: ☒ GRANTED ☐ DENIED ☐ GRANTED IN PART ☐ OTHER
3. CHECK IF APPROPRIATE: ☐ SETTLE ORDER ☐ SUBMIT ORDER
- ☐ DO NOT POST ☐ FIDUCIARY APPOINTMENT ☐ REFERENCE

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE
FOR THE FOLLOWING REASON(S):

At a(an) IAS/Special Term Part 37
of the Supreme Court of the State
of New York, held in and for the
County of New York, at the
Courthouse thereof, located at 80
Centre Street, New York, New York
on the 2 day of NOVEMBER 2015

PRESENT: HON. Arthur Engoron
Justice of the Supreme Court

GENDRI CASTILLO, NILDA BATIZ,
CARINA CASTILLO-BERMUDEZ,
JULIANA LALI, JULIA MEJIA, DARLIN
RIVAS, AND LILIAN SOLANO, on behalf of
themselves and all others similarly situated,

Plaintiffs,

- against -

BNV HOME CARE AGENCY, INC.
ACADEMY CARE GIVERS, INC., BORIS
KUCHER, and RIVA FALIKMAN,

Defendants.

Index No. 650726/2013

**ORDER OF PRELIMINARY APPROVAL,
APPROVAL OF THE CLASS NOTICE, AND
SCHEDULING A FINAL FAIRNESS HEARING**

This matter coming to be heard on Plaintiffs' Motion for Preliminary Approval of Class Action Settlement and Scheduling a Fairness Hearing ("Motion for Preliminary Approval") filed by Plaintiffs Gendri Castillo, Nilda Batiz, Carina Castillo-Bermudez, Juliana Lali, Julia Mejia, Darlin Rivas, and Lilian Solano, individually and on behalf of the Class (as defined below), by and through counsel, requesting that the Court enter an

Order: (1) finding that the Settlement Agreement, dated September 30, 2015, is within the range of fair, reasonable, and adequate, and in the best interest of the Class, (2) approving the plan for dissemination of notice as set forth in the Settlement Agreement; (3) appointing Strategic Claims Services as Notice and Settlement Administrator; and (4) scheduling a Fairness Hearing to consider the final approval of the settlement.

Having reviewed and considered the Settlement Agreement and annexed exhibits, Plaintiffs' Memorandum of Law in Support of Preliminary Approval of Class Action Settlement, and Scheduling of a Final Fairness Hearing, and the Affirmation of Anamaria Segura, dated October 5, 2015, and having heard and considered the arguments of counsel, the Court makes the findings and grants the relief set forth below, preliminarily approving the settlement contained in the Settlement Agreement upon the terms and conditions set forth in this Order. Terms and phrases in this Order shall have the same meaning as defined in the Settlement Agreement.

NOW, THEREFORE, IT IS HEREBY ORDERED:

1. The Court preliminary approves the settlement set forth in the Settlement Agreement as being within the range of fair, reasonable, and adequate and in the best interests of the Class Members, subject to final consideration at the Final Fairness Hearing provided for below.

2. A hearing (the "Final Fairness Hearing") shall be held before this Court on FEBRUARY 19, 2016, at 10 a.m. at Supreme Court of New York, 80 Centre Street, Room 328, New York, NY 10007, to determine: (a) whether the settlement set forth in the Settlement Agreement is fair, reasonable, adequate, and in the best interests of the Settlement Class; (b) whether a Final Judgment and Order with Prejudice, as provided for

in the Settlement Agreement, should be entered granting final approval of the settlement; and (c) whether, and in what amount, attorneys' fees, costs, and expenses, and the Class Representatives incentive payments should be awarded. The Court may adjourn and/or continue the Fairness Settlement Hearing without further notice to Class Members.

3. The Court approves as to form and content the notice to the Class in the form set forth in Exhibit A (Class Notice for Mailing) to the Settlement Agreement. The Court also approves of the plan for dissemination of the notices as set forth in paragraph 43 of the Settlement Agreement.

4. The Court approves and appoints Strategic Claims Services as Notice and Settlement Administrator, as set forth in the Settlement Agreement.

5. The Class Notice shall be mailed within 10 business days of this Order, as set forth in the Settlement Agreement ¶ 43. The Court find that compliance with the plan for dissemination of the notice, as set forth in paragraph 43 of the Settlement Agreement, is the best notice practicable under the circumstances, and constitutes due and sufficient notice of this Order to all persons entitled thereto and is in full compliance with CPLR §§ 904 and 908, and all relevant due process concerns.

Seven (7) DAYS
6. Prior to the Final Fairness Hearing, the parties shall cause to be filed with the Court an appropriate affidavit or declaration with respect to complying with the plan for dissemination of the notice as set forth in the Settlement Agreement.

7. To be excluded from the settlement, a Class Member must sign and timely submit written notice clearly manifesting his or her intent to be excluded from the Settlement Class to the address of the Settlement Administrator as printed in the class notice. The written notice must: (a) set forth the Class Member's full name, current address,

telephone number, last four numbers of the Class Member's social security number, (b) include an unequivocal statement that the Class Member wishes to be excluded from the proposed settlement, and (c) be signed by the Class Member. To be effective, written notice of intention to opt-out must be postmarked by ^{FEBRUARY 5, 2016, A.D.A.S. WITH CL-4} at least fourteen (14) days prior to the date, as set by the Court, for the Final Fairness Hearing. 15

8. All persons falling within the definition of the Settlement Class who do not request to be excluded from the Settlement Class shall be bound by the terms of the Settlement Agreement, the Final Judgment and Order with Prejudice entered thereon, and all Orders entered by the Court in connection with the settlement set forth in the Settlement Agreement. All persons who submit valid and timely notice of their intent to be excluded from the Settlement Class shall neither receive any benefits nor be bound by the terms of the Settlement Agreement.

9. To object to the settlement, a Class Member must timely file a written statement of objection with the Court. The written statement of objection must set forth: (a) the title of the Action and Index No. 650726/2013; (b) the objector's full name, address, telephone number, and the last four digits of the objector's social security number; (c) the dates the objector worked for BNV; (d) all grounds for the objection, accompanied by any legal support or documentary evidence for the objection known to the objector or his or her counsel; (e) the identity of all counsel representing the objector; (f) the identity of all counsel representing the objector who will appear at the Final Fairness Hearing and a copy of the attorneys' fee agreement between the objector and the objector's counsel, as well as between and among the objector's counsel; (g) a statement confirming whether the objector intends to personally appear at the Final Fairness Hearing; and (h) the

objector's signature. To be timely, a written statement of an objection in appropriate form must be filed with the clerk of the court ^{By FEBRUARY 5, 2016, A DATE WHICH IS AT LEAST} fourteen (14) days prior to the date set in the Class Notice for the Final Fairness Hearing, and also served on Class Counsel and counsel for Defendant.

10. All discovery, motions, and pretrial proceedings in this litigation are stayed and suspended until further order of the Court.

11. Pending the final determination of the fairness, reasonableness, and adequacy of the settlement set forth in the Settlement Agreement, no Class Member, either directly, representatively, or in any other capacity, shall institute, commence, or prosecute any of the Released Claims in any action or proceeding in any court or tribunal without an order of the Court.

12. In the event that the Court does not grant final approval of the Settlement Agreement or the settlement set forth in the Settlement Agreement is terminated in accordance with its terms, the parties shall be restored to their respective positions in the litigation, except that all scheduled litigation deadlines shall be reasonably extended so as to avoid prejudice to any parties. In such event, the terms and provisions of the Settlement Agreement shall have no further force and effect with respect to the parties and shall not be used in the litigation or in any other proceeding for any purpose, and any judgment or order entered by the Court in accordance with the terms of the Settlement Agreement shall be treated as vacated, nunc pro tunc.

SO ORDERED



Dated: November 2, 2015.

HON. ARTHUR F. ENGORON