

**Adolphe v Incare Home Health Care Group LLC**

2021 NY Slip Op 31443(U)

April 23, 2021

Supreme Court, Kings County

Docket Number: 506865/2018

Judge: Debra Silber

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF KINGS

FRIDANE ADOLPHE, individually and on behalf of all other persons similarly situated who were employed by INCARE HOME HEALTH CARE GROUP LLC and/or AGELESS HOME HEALTH CARE LLC, along with other entities affiliated or controlled by INCARE HOME HEALTH CARE GROUP LLC and/or AGELESS HOME HEALTH CARE LLC,

Index No.: 506865/2018

**DECISION / ORDER**

**MS #6**

Plaintiffs,

-against-

INCARE HOME HEALTH CARE GROUP LLC and AGELESS HOME HEALTH CARE LLC and/or any other related entities,

Defendants.

**ORDER GRANTING PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT, CONDITIONAL CERTIFICATION OF THE SETTLEMENT CLASS, APPOINTMENT OF PLAINTIFFS' COUNSEL AS CLASS COUNSEL, APPROVAL OF THE PROPOSED NOTICE OF CLASS ACTION SETTLEMENT AND THE CLAIM FORM AND RELEASE**

**WHEREAS**, this matter came before the Court on Plaintiffs' <sup>4/22/21</sup> *unopposed* Motion for Preliminary Approval of Class Action Settlement, Conditional Certification of the Settlement Class, Appointment of Plaintiffs' Counsel as Class Counsel, and Approval of Plaintiffs' Proposed Notice of Class Action Settlement and the Claim Form and Release ("Motion for Preliminary Approval"); and;

**WHEREAS**, the Court has reviewed the Affirmation of LaDonna M. Lusher, Esq., ("Lusher Affirmation") with exhibits, and all other papers submitted in connection with the Motion for Preliminary Approval;

**IT IS HEREBY ORDERED AS FOLLOWS:**

**I. Preliminary Approval of the Settlement Agreement**

1. The Court grants preliminary approval of the settlement memorialized in the Settlement Agreement and Release ("Settlement Agreement"), attached as Exhibit A to the Lusher Affirmation dated February 18, 2021.

2. The terms and conditions of the Settlement Agreement were the result of good faith, arms-length settlement negotiations between experienced counsel, with the assistance of experienced mediator Martin F. Scheinman, Esq., and the parties have met all necessary conditions for preliminary approval to resolve this lawsuit.

## II. Conditional Certification of the Class

3. The Court conditionally certifies the following class under CPLR §§ 901 and 902 for settlement purposes only:

All individuals who worked as a provider of home health care services as home health aides or personal care aids (i.e. providers of personal care and assistance to Defendant's clients) who were employed by Defendant Incare Home Health Care Group LLC at any time from July 22, 2013 through and including August 29, 2018, but did not remain employed after August 29, 2018. For allocation purposes the "Class" shall be comprised of "Live-in HHA" and "Hourly HHA" Class Members. Live-in HHAs are defined as Class Members who were assigned to 24-hour shifts during the Relevant Period. Hourly HHAs are defined as all remaining Class Members other than Live-in HHAs, who were never assigned to a 24-hour shift during the Relevant Period. A Class Member may be categorized as both a "Live-in HHA" and an "Hourly HHA."

4. CPLR § 901 (a) (1) is satisfied because the class of approximately 1954 individuals is so numerous that joinder of all members, whether otherwise required or permitted, is impracticable.

5. CPLR § 901 (a) (2) is satisfied because there are questions of law or fact common to the class which predominate over any questions affecting only individual members.

6. CPLR § 901 (a) (3) is satisfied because the claims of the representative party is typical of the claims or defenses of the class.

7. CPLR § 901 (a) (4) is satisfied because the representative parties will fairly and adequately protect the interests of the class.

8. CPLR § 901 (a) (5) is satisfied because in this wage and hour action a class action is superior to other available methods for the fair and efficient adjudication of the controversy.

**III. Appointment of Plaintiffs' Counsel as Class Counsel**

9. The Court appoints Plaintiffs' Counsel, Virginia & Ambinder, LLP as Class Counsel because they satisfy all of the requirements of CPLR § 901 (a) (4).

10. *It appears that* ~~In particular~~, Virginia & Ambinder, LLP did substantial work in identifying, investigating, and preliminarily settling Named Plaintiff's and Class Members' claims. Additionally, Virginia & Ambinder, LLP ~~and Naydenskiy Law Firm, LLC~~ have extensive experience litigating and settling wage and hour class and collective action cases of this type.

**IV. Notice and Claim Form**

11. The Court approves the form of the Notice of Class Action Settlement ("Notice") and Claim Form attached as Exhibits B and C to the Lusher Affirmation, respectively, and directs their publication to Class Members in accordance with the terms of the Settlement Agreement and this Order.

12. The contents of the Notice and Claim Form fully comply with due process and CPLR §908.

13. The Notice is found to be the best practicable means of providing adequate notice under the circumstances and shall constitute due and sufficient notice of the proposed settlement and the fairness hearing to all persons affected by the settlement in full compliance with the notice requirements of CPLR §§ 904 and 908.

**V. Class Action Settlement Procedure**

14. The following dates shall govern the schedule in this action:

Within ten (10) days of the signing of this Agreement.	Class Counsel shall file the unopposed Motion for Preliminary Approval.
Within ten (10) days after the filing of the Motion for Preliminary Approval.	Parties shall engage the Settlement Claims Administrator.

Within ten (10) days of the signing of the Preliminary Approval Order.	Defendant will provide the Settlement Claims Administrator with the Class Member mailing list as set forth in this Agreement ("Class List").
Within thirty (30) days after receipt of the Class Member Mailing List.	Mailing of Notice of Class Action Settlement and Claim Form.
Sixty (60) days after date of first mailing of Class Notice.	Last day for Class Members to submit written objections to the Settlement.
Sixty (60) days after date of first mailing of Class Notice.	Last day for Class Members to file Request for Exclusions from the Settlement.
Sixty (60) days after date of first mailing of Class Notice.	Last day for Class Members to submit a Valid Claim Form ("Bar Date")
Fifteen (15) days after Bar Date.	Claims Administrator shall certify jointly to Plaintiffs' Counsel and to Defense Counsel the following: (a) a list of all Objectors; (b) a list of all opt-outs, (c) a list of all Authorized Claimants who timely submitted Claim Forms during the Claim Period, and (d) a list of all Authorized Claimants who submitted late or otherwise defective Claim Forms.
Ten (10) days before the Final Settlement Hearing.	Class Counsel shall file any objections with the Court.
Ten (10) days before the Final Settlement Hearing.	Last day for Plaintiff to file and serve papers in support of final settlement approval with the Court.
No earlier than [140] days after Preliminary Approval Order Signed	Fairness Hearing. <b>September 23, 2021</b>
Thirty (30) days after the Final Order approving this Agreement is signed.	Final Effective Date

Within seven (7) days after the Final Effective Date.	Defendant shall fund the Qualified Settlement Fund with the proceeds of the Net Settlement Fund by wire transfer.
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It is so Ordered this 23 day of April, 2021.



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Hon. Debra Silber, J.S.C.

HON. DEBRA SILBER  
JSC