

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
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION**

BRIAN SMITH, JACQUELINE
MOONEY, ANGELA BAKANAS, and
MATTHEW COLÓN, individually and on
behalf of all others similarly situated,

Plaintiffs,

v.

VCA, INC., and THE PLAN COMMITTEE
FOR THE VCA, INC. SALARY SAVINGS
PLAN, and JOHN AND JANE DOES 1-50,

Defendants.

Case No. CV 21-9140-GW-AGR_x

Hon. George H. Wu

**ORDER GRANTING
PRELIMINARY APPROVAL OF
CLASS ACTION SETTLEMENT,
PRELIMINARILY CERTIFYING A
CLASS FOR SETTLEMENT
PURPOSES, APPROVING FORM
AND MANNER OF SETTLEMENT
NOTICE, PRELIMINARILY
APPROVING PLAN OF
ALLOCATION, AND SCHEDULING
A FINAL APPROVAL HEARING**

1 This Action involves claims for alleged violations of the Employee Retirement
2 Income Security Act of 1974, 29 U.S.C. § 1001, *et seq.* (“ERISA”), with respect to the
3 VCA Inc. Salary Savings Plan (“Plan”).¹ The terms of the Settlement are set out in the
4 Settlement Agreement, fully executed as of January 30, 2023, by counsel on behalf of the
5 Class Representatives, all Class Members, and Defendants, respectively.

6 Pursuant to the Class Representatives’ Motion for Preliminary Approval of Class
7 Action Settlement filed on January 31, 2023, the Court preliminarily considered the
8 Settlement to determine, among other things, whether the Settlement is sufficient to
9 warrant the issuance of notice to members of the proposed Settlement Class. Upon
10 reviewing the Settlement Agreement and the matter having come before the Court at the
11 February 16, 2023 hearing, due notice having been given and the Court having been fully
12 advised in the premises, it is hereby **ORDERED, ADJUDGED, AND DECREED** as
13 follows:

14 1. **Preliminary Certification of the Settlement Class.** In accordance with the
15 Settlement Agreement, and pursuant to Rules 23(a) and (b)(1) of the Federal Rules of
16 Civil Procedure, this Court hereby conditionally certifies the following class (“Settlement
17 Class”):

18 All persons who participated in the Plan at any time during the period from
19 November 22, 2015 through July 24, 2020, including any Beneficiary of a
20 deceased Person who participated in the Plan at any time during the Class
21 Period, and any Alternate Payee of a Person subject to a QDRO who
22 participated in the Plan at any time during the period from November 22,
23 2015 through July 24, 2020. Excluded from the Settlement Class are
24 Defendants and their Beneficiaries, any Plan fiduciaries, and the Judges
25 assigned to this case.

26
27
28 ¹ All capitalized terms not otherwise defined in this Order shall have the same
meaning as ascribed to them in the Settlement Agreement.

1 2. Pursuant to the Settlement Agreement, and for settlement purposes only, the
2 Court preliminarily finds that:

3 (a) as required by Fed. R. Civ. P. 23(a)(1), the Settlement Class is
4 ascertainable from records kept with respect to the Plan and from
5 other objective criteria, and the Settlement Class is so numerous that
6 joinder of all members is impracticable;

7 (b) as required by Fed. R. Civ. P. 23(a)(2), there are one or more
8 questions of law and/or fact common to the Settlement Class;

9 (c) as required by Fed. R. Civ. P. 23(a)(3), the claims of the Class
10 Representatives are typical of the claims of the Settlement Class that
11 the Class Representatives seek to certify;

12 (d) as required by Fed. R. Civ. P. 23(a)(4), the Class Representatives will
13 fairly and adequately protect the interests of the Settlement Class in
14 that: (i) the interests of the Class Representatives and the nature of the
15 alleged claims are consistent with those of the Settlement Class
16 members; and (ii) there appear to be no conflicts between or among
17 the Class Representatives and the Settlement Class;

18 (e) as required by Fed. R. Civ. P. 23(b)(1), the prosecution of separate
19 actions by individual members of the Settlement Class would create a
20 risk of: (i) inconsistent or varying adjudications as to individual
21 Settlement Class members that would establish incompatible
22 standards of conduct for the parties opposing the claims asserted in
23 this Action; or (ii) adjudications as to individual Settlement Class
24 members that, as a practical matter, would be dispositive of the
25 interests of the other members not parties to the individual
26 adjudications, or substantially impair or impede the ability of such
27 persons to protect their interests; and
28

1 (f) as required by Fed. R. Civ. P. 23(g), Class Counsel are capable of
2 fairly and adequately representing the interests of the Settlement
3 Class, and that Class Counsel: (i) have done appropriate work
4 identifying or investigating potential claims in the Action; (ii) are
5 experienced in handling class actions; and (iii) have committed the
6 necessary resources to represent the Settlement Class.

7 3. The Court preliminarily appoints the Class Representatives Brian Smith,
8 Jacqueline Mooney, Angela Bakanas, and Matthew Colón as Class Representatives for
9 the Settlement Class and Robert Ahdoot and Andrew W. Ferich of Ahdoot & Wolfson,
10 PC and Michael L. Robert and Erich P. Schork of Roberts Law Firm U.S., P.C., as Class
11 Counsel for the Settlement Class.

12 4. **Preliminary Approval of Proposed Settlement** – The Settlement
13 Agreement is hereby preliminarily approved as fair, reasonable, and adequate. This Court
14 preliminarily finds that:

- 15 a) The Settlement was negotiated vigorously and at arm’s-length by Defense
16 Counsel, on the one hand, and the Class Representatives and Class Counsel
17 on behalf of the Settlement Class, on the other hand;
- 18 b) Class Representatives and Class Counsel had sufficient information to
19 evaluate the settlement value of the Action and have concluded that the
20 Settlement is fair, reasonable, and adequate;
- 21 c) If the Settlement had not been achieved, Defendants, Class Representatives,
22 and the Settlement Class faced the expense, risk, and uncertainty of
23 protracted litigation;
- 24 d) The amount of the Settlement—one million five hundred thousand dollars
25 (\$1,500,000.00)—is fair, reasonable, and adequate, taking into account the
26 costs, risks, and delay of litigation, trial, and appeal. The method of
27 distributing the Class Settlement Amount is efficient, relying on Defendants’
28 records and requiring no filing of claims. The Settlement terms related to

1 attorneys' fees do not raise any questions concerning fairness of the
2 Settlement, and there are no agreements, apart from the Settlement, required
3 to be considered under Fed. R. Civ. P. 23(e)(2)(C)(iv). The Class Settlement
4 Amount is within the range of settlement values obtained in similar cases;

5 e) At all times, the Class Representatives and Class Counsel have acted
6 independently of the Defendants and in the interest of the Settlement Class;
7 and

8 f) The proposed Plan of Allocation is fair, reasonable, and adequate.

9 5. **Establishment of Qualified Settlement Fund** – A common fund is agreed
10 to by the Settling Parties in the Settlement Agreement and is hereby established and shall
11 be known as the “Settlement Fund.” The Settlement Fund shall be a “qualified settlement
12 fund” within the meaning of Treasury Regulations § 1.468-1(a) promulgated under
13 Section 468B of the Internal Revenue Code. The Settlement Fund shall be funded and
14 administered in accordance with the terms of the Settlement. Defendants shall have no
15 withholding, reporting or tax reporting responsibilities with regard to the Settlement Fund
16 or its distribution, except as otherwise specifically identified in the Settlement. Moreover,
17 Defendants shall have no liability, obligation, or responsibility for administration of the
18 Settlement Fund or the disbursement of any monies from the Settlement Fund except for:
19 (1) their obligation to cause the Gross Settlement Amount to be paid; and (2) their
20 agreement to cooperate in providing information that is necessary for settlement
21 administration set forth in the Settlement Agreement. The Settlement Administrator may
22 make disbursements out of the Settlement Fund only in accordance with this Order or any
23 additional Orders issued by the Court. The Settlement Fund shall expire after the
24 Settlement Administrator distributes all of the assets of the Settlement Fund in accordance
25 with the Settlement Agreement, provided, however, that the Settlement Fund shall not
26 terminate until its liability for any and all government fees, fines, taxes, charges and
27 excises of any kind, including income taxes, and any interest, penalties or additions to
28 such amounts, are, in the Settlement Administrator’s sole discretion, finally determined

1 and all such amounts have been paid by the Settlement Fund. The Court and the
2 Settlement Administrator recognize that there will be tax payments, withholding and
3 reporting requirements in connection with the administration of the Settlement Fund. The
4 Settlement Administrator shall, in accordance with the Settlement Agreement, determine,
5 withhold, and pay over to the appropriate taxing authorities any taxes due with respect to
6 any distribution from the Settlement Fund and shall make and file with the appropriate
7 taxing authorities any reports or returns due with respect to any distributions from the
8 Settlement Fund. The Settlement Administrator also shall determine and pay any income
9 taxes owing with respect to the income earned by the Settlement Fund. Additionally, the
10 Settlement Administrator shall file returns and reports with the appropriate taxing
11 authorities with respect to the payment and withholding of taxes. The Settlement
12 Administrator, in its discretion, may request expedited review and decision by the IRS or
13 the applicable state or local taxing authorities, with regard to the correctness of the returns
14 filed for the Settlement Fund and shall establish reserves to assure the availability of
15 sufficient funds to meet the obligations of the Settlement Fund itself and the Settlement
16 Administrator as fiduciaries of the Settlement Fund. Reserves may be established for
17 taxes on the Settlement Fund income or on distributions. The Settlement Administrator
18 shall have all the necessary powers, and take all necessary ministerial steps, to effectuate
19 the terms of the Settlement Agreement, including the payment of all distributions. Such
20 powers include investing, allocating and distributing the Settlement Fund, and in general
21 supervising the administration of the Settlement Agreement in accordance with its terms
22 and this Order. The Settlement Administrator shall keep detailed and accurate accounts
23 of all investments, receipts, disbursements, and other transactions of the Settlement Fund.
24 All accounts, books and records relating to the Settlement Fund shall be open for
25 reasonable inspection by such persons or entities as the Court orders. Included in the
26 Settlement Administrator's records shall be complete information regarding actions taken
27 with respect to the award of any payments to any person; the nature and status of any
28 payment from the Settlement Fund and other information which the Settlement

1 Administrator considers relevant to showing that the Settlement Fund is being
2 administered, and awards are being made, in accordance with the purposes of the
3 Settlement Agreement, this Order, and any future orders that the Court may find it
4 necessary to issue.

5 6. **Final Approval Hearing** – A hearing is scheduled for **Monday, June 26,**
6 **2023, at 8:30 a.m.** [at least 120 days after preliminary approval] to make a final
7 determination concerning, among other things:

- 8 • Any objections from Class Members to the Settlement or any aspects of it.
- 9 • Whether the Settlement merits final approval as fair, reasonable, and
10 adequate;
- 11 • Whether the Action should be dismissed with prejudice pursuant to the terms
12 of the Settlement;
- 13 • Whether Class Counsel adequately represented the Settlement Class for
14 purposes of entering into and implementing the Settlement;
- 15 • Whether the proposed Plan of Allocation should be granted final approval;
16 and
- 17 • Whether Class Counsel’s application(s) for Attorneys’ Fees and Costs and
18 Class Representative Service Payments are fair and reasonable, and should
19 be approved.

20 7. **Settlement Notice** – The Court approves the form of Settlement Notice
21 attached as Exhibit A to the Settlement Agreement. The Court finds that such form of
22 notice fairly and adequately: (a) describes the terms and effects of the Settlement
23 Agreement, the Settlement, and the Plan of Allocation; (b) notifies the Settlement Class
24 that Class Counsel will seek attorneys’ fees and litigation costs from the Settlement Fund,
25 payment of the costs of administering the Settlement out of the Settlement Fund, and
26 Service Payments for the Class Representatives for their service in such capacity; (c)
27 gives notice to the Settlement Class of the time and place of the Final Approval Hearing;
28

1 and (d) describes how the recipients of the Settlement Notice may object to any of the
2 relief requested.

3 8. **Settlement Administrator** – The Court hereby approves the appointment
4 of Analytics Consulting LLC as the Settlement Administrator for the Settlement. The
5 Court directs that the Settlement Administrator shall:

- 6 • By no later than **March 24, 2023** (thirty days after entry of this Order), cause
7 the Settlement Notice, with such non-substantive modifications thereto as
8 may be agreed upon by the Parties, to be provided by first-class mail, postage
9 prepaid, to the last known address of each member of the Settlement Class
10 who can be identified through reasonable effort. Prior to mailing the
11 Settlement Notice, Analytics Consulting LLC shall conduct an advanced
12 address research (via skip-trace databases) in order to identify current
13 mailing address information for the Settlement Class members.
14 Additionally, Analytics Consulting LLC must update the Settlement Class
15 member address information using data from the National Change of
16 Address (“NCOA”) database. After mailing the Settlement Notice,
17 Analytics Consulting LLC shall use commercially reasonable efforts to
18 locate any Class Member whose Settlement Notice is returned and re-send
19 such documents one additional time.
- 20 • By no later than **March 24, 2023** (thirty days after entry of this Order), cause
21 the Settlement Notice to be sent by email to any email addresses on file for
22 the Settlement Class members as of the date of this Preliminary Approval
23 Order.
- 24 • By no later than **March 24, 2023** (thirty days after entry of this Order), cause
25 the Settlement Notice to be published on the Settlement website identified
26 in the Settlement Notice, www.VCAERISAsettlement.com, which will also
27 host and make available copies of all Settlement-related documents,
28 including the Settlement Agreement.

- The Court finds that the contents of the Settlement Notice and the process described herein and in the Settlement are the best notice practicable under the circumstances, and satisfy the requirements of Rule 23(c) and Due Process.

9. **Motion for Attorneys’ Fees and Costs and Class Representative Service Payments** – Any petition by Class Counsel for attorneys’ fees, litigation costs, and Class Representative Service Payments, and all briefs in support thereof, shall be filed no later than **April 28, 2023** (twenty-eight days before the date for filing Objections specified in this Order).

10. **Briefs in Support of Final Approval of the Settlement** – Briefs and other documents in support of final approval of the Settlement shall be filed no later than **April 26, 2023** (thirty days before the date for filing objections specified in this Order).

11. **Objections to Settlement** – Any member of the Settlement Class or authorized recipient of any CAFA Notice may file an objection to the fairness, reasonableness, or adequacy of the Settlement, to any term of the Settlement Agreement, to the Plan of Allocation, to the proposed award of attorneys’ fees and litigation costs, to the payment of costs of administering the Settlement out of the Settlement Fund, or to the request for Class Representative Service Payments.

All written objections and supporting papers must clearly (a) identify the case name and number; (b) state the Class Member’s full name, current mailing address, and telephone number; (c) contain a statement by the Class Member that he or she believes themselves to be a member of the Settlement Class and include proof that the Class Member is a member of the Settlement Class (e.g., copy of the Settlement Notice); (d) identify the specific factual and legal grounds for the objection; (e) identify whether the objection is an objection to the Settlement in part or in whole; (f) state whether the objection applies only to the objector, a subset of the Settlement Class, or the entire Settlement Class; (g) identify all counsel representing the Class Member, if any; (h) include a list, including

1 case name, court, and docket number, of all other cases in which the objector and/or the
2 objector's counsel has filed an objection to any proposed class action settlement in the
3 past three (3) years; (i) include all documents or writings that the Class Member desires
4 the Court to consider; (j) contain a statement regarding whether the Class Member (or
5 counsel of his or her choosing) intends to appear at the Final Approval Hearing; and (k)
6 contain the signature of the Class Member or the Class Member's duly authorized
7 attorney or representative. All objections must be submitted to the Court either by mailing
8 them to the Clerk of the Court, First Street U.S. Courthouse, 350 W 1st Street, Suite 4311,
9 Los Angeles, CA 90012-4565, or by filing them with the United States District Court for
10 the Central District of California. The objection must refer prominently to this case name:
11 *Smith, et al. v. VCA Inc., et al.*, No. 2:21-cv-09140-GW-AGR (C.D. Cal.). All objections
12 must be filed or postmarked on or before the objection deadline, as established in the
13 Preliminary Approval Order.

14 To be filed validly, the objector or his or her counsel (if any) must file the
15 objection(s) and supporting materials with the Court and provide a copy of the
16 objection(s) and supporting materials to Class Counsel and Defense Counsel at the email
17 or mailing addresses in the Settlement Notice no later than **May 26, 2023** (thirty days
18 before the date of the Fairness Approval Hearing specified in this Order).

19 If an objector hires an attorney to represent him or her for the purposes of making
20 an objection pursuant to this paragraph, the attorney must also file a notice of appearance
21 with the Court no later than **June 12, 2023** (fourteen days before the date of the Final
22 Approval Hearing specified in this Order).

23 Any Class Member who does not make their objections in the manner and by the
24 date set forth in this paragraph 11, shall be deemed to have waived any objections and
25 shall be forever barred from raising such objections in this or any other action or
26 proceeding, absent further order of the Court.

1 Any responses to objections shall be filed with the Court no later than **June 19,**
2 **2023** (seven days before the date of the Final Approval Hearing specified in this Order).
3 There shall be no reply briefs.

4 12. Any additional briefs the Parties may wish to file in support of the Settlement
5 shall be filed no later than **June 19, 2023** (seven days before the date of the Final
6 Approval Hearing specified in this Order).

7 13. **Appearance at Final Approval Hearing** – Any objector who files a timely,
8 written objection in accordance with paragraph 11 above may also appear at the Final
9 Approval Hearing either in person or through qualified counsel retained at the objector’s
10 expense. Objectors or their attorneys intending to appear at the Fairness Approval
11 Hearing must file a notice of intention to appear (and, if applicable, the name, address,
12 and telephone number of the objector’s attorney) with the Court by no later than **June 12,**
13 **2023** (fourteen days before the date of Final Approval Hearing specified in this Order).
14 Any objectors, or their counsel, who do not timely file a notice of intention to appear in
15 accordance with this paragraph shall not be permitted to speak at the Final Approval
16 Hearing, except for good cause shown.

17 14. **Notice Expenses** – The expenses of printing, mailing, and publishing the
18 Settlement Notice required herein shall be paid exclusively from the Qualified Settlement
19 Fund.

20 15. **Parallel Proceedings** – Pending final determination of whether the
21 Settlement Agreement should be approved, the Class Representatives, every Class
22 Member, and the Plan are prohibited and enjoined from directly, through representatives,
23 or in any other capacity, commencing any action or proceeding in any court or tribunal
24 asserting any of the Released Claims against the Released Parties, including Defendants.

25 16. **Class Action Fairness Act Notice** – The form of notice under the Class
26 Action Fairness Act of 2005 (“CAFA”) submitted as Exhibit E to the Settlement
27 Agreement complies with the requirements of CAFA and will, upon mailing, discharge
28 Defendants’ obligations pursuant to CAFA.

