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3 UNITED STATES DISTRICT COURT  
4 WESTERN DISTRICT OF WASHINGTON  
5 AT SEATTLE

6 KEVIN PINE, individually and on  
7 behalf of all others similarly situated,

8 Plaintiff,

9 v.

10 A PLACE FOR MOM, INC.,

11 Defendant.

C17-1826 TSZ

MINUTE ORDER

12 The following Minute Order is made by direction of the Court, the Honorable  
13 Thomas S. Zilly, United States District Judge:

14 (1) Plaintiff's unopposed motion for telephonic conference, docket no. 147, is  
15 GRANTED as follows. The Court will conduct a telephonic conference on May 19,  
16 2020, at 10:30 a.m. The Court suggests that not more than two (2) attorneys per side  
17 appear on behalf of the parties and that a representative from KCC Class Action Services  
18 (formerly known as Kurtzman Carson Consultants LLC), the Settlement Administrator  
19 for this matter, also participate. The Court's staff will be in contact with counsel via  
20 email to provide a conference call number and access code. If the date and/or time poses  
21 a scheduling conflict, the lawyers should reply to such email with proposed alternative  
22 dates and/or times.

23 (2) The remaining issues that need to be addressed during the telephonic  
conference are as follows:

(a) One Form of Notice and Distinguishing Between Class Members:  
In response to the Minute Order entered February 12, 2020, docket no. 144, the  
parties have proposed a 13-page notice, attached as Exhibit B to their joint motion  
to approve the proposed class notice program, docket no. 146-2. The notice tells  
recipients that, if they received the notice by U.S. mail, they need not take any  
action to receive a pro rata share of the settlement funds, but if they received the  
notice via email, they must timely submit a claim form to receive a pro rata share  
of the settlement funds. According to the Declaration of Carla A. Peak, docket  
no. 146-3, a Vice President at KCC Class Action Services, defendant will provide

1 the Settlement Administrator with two lists: (i) a list of approximately 56,000  
2 names, phone numbers, and email addresses, which reflects the class members  
3 who will be automatically paid; and (ii) a list of approximately 3.1 million names,  
4 phone numbers, and email addresses, which consists of class members who must  
5 submit claim forms to obtain a share of the settlement proceeds. With regard to  
6 the persons on the first (automatically paid) list, the Settlement Administrator  
7 intends to perform reverse directory searches to obtain postal addresses. The  
8 Settlement Administrator plans to send postcards to each non-duplicative address,  
9 and to follow up by sending notice via email whenever postcards are returned as  
10 undeliverable. The Settlement Administrator has not provided any estimate  
11 concerning the likely rate of success in identifying viable postal addresses or made  
12 clear what type of notice will be sent if a postal address is not available through  
13 the reverse directories. In sum, with respect to the roughly 56,000 class members  
14 who should be automatically paid, some percentage will receive notice via  
15 U.S. mail and the balance will receive notice via email. With respect to the latter  
16 group, the notice incorrectly advises them that they must “opt in” to receive  
17 payment. In addition, with respect this latter group, as well as the class members  
18 on the second (“opt in”) list, the Settlement Administrator has not indicated  
19 whether the notice to be sent via email will have the same content as the postcard  
20 or be in a different format described by the Settlement Administrator as the  
21 “Long-Form Notice.” Exhibit B, identified by the parties as their proposed form  
22 of notice, cannot possibly fit in its entirety on a postcard, and it does not  
23 demarcate any particular portion that is intended to be printed in postcard format.  
The parties’ submission does not make clear whether the class notice program is  
consistent with the Court’s earlier ruling requiring that every class member receive  
the same notice, regardless of how it is distributed.

(b) Anticipated Pro Rata Shares: Subject to further amendments  
required to address the issues identified in Paragraph 1(a), above, the Court  
proposes the following amendments to the language proposed by the parties  
concerning how pro rata shares are estimated (moved text is in green and double-  
underlined, additional text is in red and underlined):

The amount of the final cash payment will depend on the total  
number of Class Members who participate in the Settlement.

Approximately 56,000 Class Members who received Mailed Notice  
will receive payment automatically. The minimum payment for all  
Class Members if every person who received Email Notice submits a  
valid and timely claim form is estimated to be \$1.29. The maximum  
payment if no one submits a valid and timely claim form is  
estimated to be \$71.47. Plaintiffs’ s counsel estimate that  
approximately 2% (or 60,000) persons who received Email Notice  
will submit timely and valid claim forms establishing they are Class  
Members. In that event, all Class Members will receive payment in  
the range of \$34.00.

1 (c) Publication: The parties propose to publish notice of the settlement  
2 in *USA Today* for four consecutive weeks, as well as once in each of the following  
3 elder care publications: *Provider*, *Today's Caregiver*, *McKnight's Long-Term*  
4 *Care News*, and *McKnight's Senior Living*. The Court APPROVES the parties'  
5 publication plan, subject to clarification concerning the contents of the "Summary  
6 Notice" that the Settlement Administrator intends to submit to the various  
7 publishers. *See* Minute Order at ¶ 1(c)(vi) (docket no. 144) (requiring the parties  
8 to submit a proposed form of notice by publication).

9 (d) Cy Pres Recipient: The proposed notice's silence on the subject of a  
10 *cy pres* beneficiary is not consistent with the parties' proposed settlement, and the  
11 parties have not explained what will happen to any unclaimed settlement funds.

12 (e) Final Approval Hearing: In the prior Minute Order, the Court  
13 indicated that it did not anticipate rescheduling the final approval hearing without  
14 notice to class members and that a party or counsel requesting any change would  
15 be required to bear the expense of providing notice. Since entry of the prior  
16 Minute Order, the situation has changed. In light of the outbreak of Coronavirus  
17 Disease 2019 ("COVID-19"), the Court cannot be certain that a final approval  
18 hearing can be conducted on the date or in the manner anticipated at the time it is  
19 scheduled. As a result, the notice to class must include instructions concerning  
20 how individuals may obtain up-to-date information about the status of the final  
21 approval hearing. Information will be available through the Court's website,  
22 [www.wawd.uscourts.gov](http://www.wawd.uscourts.gov), and at [www.wawd.uscourts.gov/APlaceForMom](http://www.wawd.uscourts.gov/APlaceForMom), a  
23 page dedicated to this matter. Links to these sites should be set forth in the notice  
and placed on plaintiff's counsel's website and the website maintained by the  
Settlement Administrator. Class members should be reminded, however, not to  
contact the Court about this matter or the status of the final approval hearing, and  
to direct all questions and/or correspondence to the Settlement Administrator  
and/or plaintiff's counsel.

(f) Dates and Deadlines: Whether September 24, 2020, and/or  
October 1, 2020, are viable dates for the final approval hearing, and whether the  
deadline for submission of claim forms can be after the final approval hearing.

(3) The Clerk is directed to send a copy of this Minute Order to all counsel of  
record.

Dated this 11th day of May, 2020.

William M. McCool  
Clerk

s/Karen Dews  
Deputy Clerk