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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN DIEGO

KATHRYNE MARTINEZ-LOPEZ, et al.,

Plaintiffs,

v.

MEDAMERICA, INC., a Corporation, and
DOES 1 through 50, inclusive,

Defendants.

CASE NO.: **37-2020-00034393-CU-OE-CTL**

**[PROPOSED] FINAL APPROVAL
ORDER AND JUDGMENT**

Hearing Date: December 16, 2022
Hearing Time: 10:30 a.m.

Judge: Hon. Richard S. Whitney
Dept.: 68

Action Filed: September 28, 2020
Trial Date: None Set

1 The motion of Plaintiff Kathryne Martinez-Lopez (“Plaintiff”) for an order finally
2 approving the Class Action Settlement Agreement (“Agreement”) with Defendant MedAmerica,
3 Inc. (“Defendant”), attorneys’ fees and costs, service payment, and the fees and expenses of the
4 Settlement Administrator duly came on for hearing on December 16, 2022 before the Honorable
5 Kenneth S. Whitney.

6 **I.**

7 **FINDINGS**

8 Based on the oral and written argument and evidence presented in connection with the
9 motion, the Court makes the following findings:

- 10 1. All terms used herein shall have the same meaning as defined in the Agreement.
- 11 2. This Court has jurisdiction over the subject matter of this litigation pending before
12 the California Superior Court for the County of San Diego, and over all Parties to this litigation,
13 including the Class.
- 14 3. Based on a review of the papers submitted by Plaintiff and a review of the
15 applicable law, the Court finds that the Gross Settlement Amount of Four Hundred Thousand
16 Dollars (\$400,000) and the terms set forth in the Agreement are fair, reasonable, and adequate.
- 17 4. The Court further finds that the Settlement was the result of arm’s length
18 negotiations conducted after Class Counsel had adequately investigated the claims and became
19 familiar with the strengths and weaknesses of those claims. In particular, the amount of the
20 Settlement, the significant risks relating to certification, liability, and damages issues, and the
21 assistance of an experienced mediator in the settlement process, among other factors, support the
22 Court’s conclusion that the Settlement is fair, reasonable, and adequate.

23 **Preliminary Approval of the Settlement**

- 24 5. On June 23, 2022, the Court granted preliminary approval of the Settlement. At
25 this same time, the Court approved conditional certification of the Class for settlement purposes
26 only.

27 **Notice to the Class**

1 6. In compliance with the Preliminary Approval Order, the Class Notice was mailed
2 by first class mail to members of the Class at their last known addresses on or about August 15,
3 2022. Mailing of the Class Notice to their last known addresses was the best notice option under
4 the circumstances and was reasonably calculated to communicate actual notice of the litigation
5 and the proposed settlement to the Class. The Class Notice given to the Class Members fully and
6 accurately informed the Class Members of all material elements of the proposed Settlement and of
7 their opportunity to object to or comment thereon or to seek exclusion from the Settlement; was
8 valid, due, and sufficient notice to all Class Members; and complied fully with the laws of the
9 State of California, the United States Constitution, due process and other applicable law. The
10 Class Notice fairly and adequately described the Settlement and provided Class Members adequate
11 instructions and a variety of means to obtain additional information.

12 7. The deadline for opting out of the Class or submitting written objections to the
13 Settlement was September 29, 2022. There was an adequate interval between notice and the
14 deadline to permit Class Members to choose what to do and act on their decision. A full
15 opportunity has been afforded to the Class Members to participate in this hearing, and all Class
16 Members and other persons wishing to be heard have been heard. Class Members also have had a
17 full and fair opportunity to exclude themselves from the proposed Settlement and Class.
18 Accordingly, the Court determines that all Class Members who did not timely and properly submit
19 a request for exclusion are bound by the Settlement and this Final Approval Order and Judgment.

20 **Fairness Of Settlement**

21 8. The Agreement is entitled to a presumption of fairness. *Dunk v. Ford Motor Co.*
22 48 Cal.App.4th 1794, 1801 (1996).

23 a. The settlement was reached through arm's-length bargaining between the
24 parties during an all-day mediation before Steven J. Rottman, Esq., a respected mediator of wage
25 and hour representative and class actions. There has been no collusion between the parties in
26 reaching the proposed settlement.

1 b. Plaintiff's investigation and discovery have been sufficient to allow the
2 Court and counsel to act intelligently.

3 c. Counsel for both parties are experienced in similar employment class action
4 litigation. All counsel recommended approval of the Agreement.

5 d. The percentage of objectors and requests for exclusion is small. No
6 objections were received. One (1) request for exclusion was received.

7 e. The participation rate was high. 313 Class Members will be mailed a
8 settlement payment, representing 99.68% of the overall Class.

9 9. The consideration to be given to the Class Members under the terms of the
10 Agreement is fair, reasonable and adequate considering the strengths and weaknesses of the claims
11 asserted in this action and is fair, reasonable and adequate compensation for the release of Class
12 Members' claims, given the uncertainties and significant risks of the litigation and the delays
13 which would ensue from continued prosecution of the action.

14 10. The Agreement is approved as fair, adequate and reasonable and in the best
15 interests of the Class Members.

16 **Attorneys' Fees and Costs**

17 11. An award of \$133,333 for attorneys' fees, representing one-third (1/3) of the Gross
18 Settlement Amount, and \$12,607.23 for litigation costs and expenses, is reasonable, in light of the
19 contingent nature of Class Counsel's fee, the hours worked by Class Counsel, and the results
20 achieved by Class Counsel. The requested awards have been supported by Class Counsel's
21 lodestar and billing statement.

22 **Class Representative Service Payment**

23 12. The Agreement provides for a Class Representative Service Payment of not more
24 than \$10,000 to the Plaintiff, subject to the Court's approval. The Court finds that Class
25 Representative Service Payment in the amount of \$10,000 to the Plaintiff is reasonable in light of
26 the risks and burdens undertaken by the Plaintiff in the litigation, for her time and effort in
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1 bringing and prosecuting this matter on behalf of the Class, and for her execution of a general
2 release.

3 **Settlement Administration Expenses**

4 13. The Settlement Administrator shall calculate and administer the payment to be
5 made to the Class Members, transmit payment for attorneys' fees and costs to Class Counsel,
6 transmit the Class Representative Service Payment to the Plaintiff, distribute the PAGA Payment,
7 generate and issue any required tax reporting forms, calculate withholdings and perform the other
8 remaining duties set forth in the Agreement. The Settlement Administrator has documented
9 \$9,967.38 in fees and expenses, and this amount is reasonable in light of the work performed by
10 the Settlement Administrator.

11 **PAGA Payment**

12 14. The Agreement provides for a PAGA Payment out of the Gross Settlement
13 Amount of \$25,000, which shall be allocated \$18,750 to the LWDA as the LWDA's 75% share of
14 the settlement of civil penalties paid pursuant to the PAGA and \$6,250 to be distributed to the
15 Aggrieved Employees based on their respective pay periods worked during the PAGA Period.
16 The Aggrieved Employees are all individuals who worked for Defendant in California as non-
17 exempt employees at any time during the PAGA Period, which is April 15, 2019 to October 15,
18 2021. The Court finds this PAGA Payment to be reasonable. All Aggrieved Employees will be
19 sent their share of the PAGA Payment and will be subject to the release of the Released PAGA
20 Claims as set forth below, whether or not they opt out of the Settlement (i.e., the Judgment on this
21 Settlement will have res judicata effect as to the Released PAGA Claims in the Settlement
22 Agreement for all Aggrieved Employees and the LWDA regardless of whether they opt-out of the
23 Settlement).

24
25 **II.**

26 **ORDERS**

27 Based on the foregoing findings, and good cause appearing, IT IS HEREBY ORDERED:
28

1 1. The certification of the Class for the purposes of settlement is confirmed. The
2 Class is defined as follows:

3 All current and former non-exempt employees employed by MedAmerica, Inc.,
4 who worked in California at any time during the Class Period (April 15, 2019 to
5 October 15, 2021).

6 2. All persons who meet the foregoing definition are members of the Class or Class
7 Members, except for those individuals who filed a valid request for exclusion (“opt out”) from the
8 Class. There was one (1) request for exclusion, which was submitted by Crystal Webb.

9 3. The Agreement is hereby finally approved as fair, reasonable, adequate, and in the
10 best interest of the Class.

11 4. Class Counsel are awarded attorneys' fees in the amount of \$133,333 and costs in
12 the amount of \$12,607.23. Class Counsel shall not seek or obtain any other compensation or
13 reimbursement from Defendant, Plaintiff or members of the Class.

14 5. The payment of the Class Representative Service Payment in the amount of
15 \$10,000 to the Plaintiff is approved.

16 6. The payment of \$9,967.38 to the Settlement Administrator for their fees and
17 expenses is approved.

18 7. The PAGA Payment of \$25,000 is approved and shall be allocated in accordance
19 with the Agreement.

20 8. The Agreement and this Settlement are not an admission by Defendant, nor is this
21 Final Approval Order and Judgment a finding, of the validity of any claims in the Action or of any
22 wrongdoing by Defendant or that this Action is appropriate for class treatment (other than for
23 settlement purposes). Neither this Final Approval Order and Judgment, the Agreement, nor any
24 document referred to herein, nor any action taken to carry out the Agreement is, may be construed
25 as, or may be used as an admission by or against Defendant of any fault, wrongdoing or liability
26 whatsoever. The entering into or carrying out of the Agreement, and any negotiations or
27 proceedings related thereto, shall not in any event be construed as, or deemed to be evidence of, an
28 admission or concession with regard to the denials or defenses by Defendant. Notwithstanding

1 these restrictions, Defendant may file in the Action or in any other proceeding this Final Approval
2 Order and Judgment, the Agreement, or any other papers and records on file in the Action as
3 evidence of the Settlement to support a defense of res judicata, collateral estoppel, release, or other
4 theory of claim or issue preclusion or similar defense as to the Released Class Claims and/or the
5 Released PAGA Claims.

6 9. Notice of entry of this Final Approval Order and Judgment shall be given to all
7 Parties by Class Counsel on behalf of Plaintiff and all Class Members. The Final Approval Order
8 and Judgment shall be posted on Class Counsel's website as set forth in the Class Notice to the
9 Class. It shall not be necessary to send notice of entry of this Final Approval Order and Judgment
10 to individual Class Members.

11 10. If the Agreement does not become final and effective in accordance with the terms
12 of the Agreement, then this Final Approval Order and Judgment, and all orders entered in
13 connection herewith, shall be rendered null and void and shall be vacated, and the Parties shall
14 revert to their respective positions as of before entering into the Agreement, and expressly reserve
15 their respective rights regarding the prosecution and defense of this Action, including all available
16 defenses and affirmative defenses, and arguments that any claim in the Action could not be
17 certified as a class action and/or managed as a representative action.

18
19 **IT IS HEREBY ORDERED, ADJUDICATED AND DECREED THAT:**

20 1. Except as set forth in the Agreement and this Final Approval Order and Judgment,
21 Plaintiff, and all members of the Class, shall take nothing in the Action.

22 2. Pursuant to California Code of Civil Procedure section 664.6, the Court shall retain
23 jurisdiction to construe, interpret, implement and enforce the Agreement, to hear and resolve any
24 contested challenge to a claim for settlement benefits, and to supervise and adjudicate any dispute
25 arising from or in connection with the distribution of settlement benefits.

26 3. The Parties are authorized, without further approval from the Court, to agree to and
27 to adopt such amendments, modifications and expansions of the Agreement and all exhibits
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1 attached thereto which are consistent with this Final Approval Order and Judgment and as
2 approved by the Court.

3 4. Each party shall bear its own attorneys' fees and costs, except as otherwise
4 provided in the Agreement and in this Final Approval Order and Judgment.

5 5. As of the Effective Date, each Class Member who has not validly opted out has
6 released the "Released Class Claims" against the Defendant and the Released Parties as set forth
7 in the Agreement. "Released Class Claims" means all claims as pled in the First Amended
8 Complaint which will include class claims based on the facts of the operative Complaint
9 including claims for (1) failure to provide meal periods or pay premium wages for missed, denied
10 or unauthorized meal periods; (2) failure to provide rest breaks, or pay premium wages for missed,
11 denied or unauthorized rest periods; (3) failure to pay overtime wages; (4) failure to pay minimum
12 wages, including the prevailing minimum wage, off-the-clock claims, and payment for all hours
13 worked; (5) failure to timely pay wages during employment; (6) failure to pay all wages due to
14 discharged and quitting employees; (7) failure to maintain required records, including failure to
15 keep accurate and complete payroll records; (8) failure to furnish accurate itemized wage
16 statements or provide fully and accurately itemized wage statements; (9) failure to indemnify
17 employees for necessary expenditures incurred in discharge of duties; (10) California Civil Code
18 section 558 penalties and civil penalties pursuant to PAGA; and (11) unfair and unlawful business
19 practices, as well as any known or unknown wage and hour claims that were asserted or could
20 have been asserted based on the factual allegations contained in the operative Complaint as
21 amended. This includes claims for unpaid wages, meal periods and rest breaks and related
22 penalties, expense reimbursements, waiting time penalties, payroll stub violations and claims for
23 civil penalties under Labor Code section 2698 et seq., Labor Code sections 201-204 et seq., 210,
24 226, 226.3, 226.7, 232, 232.5, 351, 432.5, 510, 511, 512, 515, 558, 558.1, 1174, 1174.5, 1194,
25 1197, 1197.1, 1197.5(k), 1198, 1199, 2699.3, 2802, IWC Wage Orders 4-2001 and 7(A)(3), and
26 any other applicable wage orders, California Code of Regulations, Title 8, Section 11040,
27 Subdivision 5(A)-(B) and Title 8, Section 1 1070(14), Business and Professions Code section
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1 17200 et seq., and claims or potential claims for attorneys' fees and costs (i.e., the Judgment on
2 this Settlement will have res judicata effect as to the Released Class Claims for all Class Members
3 who have not validly opted out per the Agreement).

4 6. As of the Effective Date, Defendant and the other Released Parties shall receive a
5 release from the Aggrieved Employees of the Released PAGA Claims as set forth in the
6 Agreement. The "Released PAGA Claims" are any and all PAGA claims for civil penalties
7 premised upon the facts and allegations in the Complaint or First Amended Complaint as well as
8 any and all claims for civil penalties that were asserted or could have been asserted based on the
9 factual allegations contained in the Complaint, First Amended Complaint, or any amended
10 complaints which arose during the PAGA Period. . As of the Effective Date, this Judgment also
11 adjudicates and releases the claims and/or rights of the LWDA to recover civil penalties against
12 the Released Parties on behalf of the Aggrieved Employee for any of the Released PAGA Claims
13 (i.e., the Judgment on this Settlement will have res judicata effect as to those Released PAGA
14 Claims of the LWDA, whether pursued directly by the LWDA or by a representative pursuant to
15 PAGA). The release of the Released PAGA Claims shall be effective as to all Aggrieved
16 Employees and the LWDA, regardless of whether an Aggrieved Employee submitted an Election
17 Not to Participate in Settlement (i.e., the Judgment on this Settlement will have res judicata effect
18 as to the Released PAGA Claims for all Aggrieved Employees and the LWDA, regardless of
19 whether they opt-out of the Settlement).

20 7. As of the Effective Date, Plaintiff generally, releases and discharges Defendant and
21 the Released Parties from all of the Plaintiff's Released Claims as set forth fully in the Agreement.

22 **LET JUDGMENT BE FORTHWITH ENTERED ACCORDINGLY. IT IS SO ORDERED.**

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24 Dated: _____

25 _____
26 HON. RICHARD S. WHITNEY
27 JUDGE, SUPERIOR COURT OF CALIFORNIA
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