

MAR 10 2023

Clerk of the Superior Court
By: R. Cersosimo, Deputy

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Attorneys for Plaintiff

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SAN DIEGO

CECILLE SARMIENTO, an individual, on
behalf of herself and on behalf of all persons
similarly situated,

Plaintiffs,

v.

CADUCEUS HEALTHCARE INC., a
Corporation; and DOES 1 through 50,
Inclusive;

Defendants.

Case No. 37-2021-00002597-CU-OE-CTL

ORDER GRANTING FINAL APPROVAL

Date: March 10, 2023

Time: 10:30 AM

Judge: Richard S. Whitney

Dept.: C-68

1 Plaintiff's motion for an order finally approving the Stipulation of Class and PAGA
2 Action Settlement and Release of Claims ("Agreement") and motion for an award of attorneys'
3 fees, costs, and service awards duly came on for hearing on March 10, 2023, before the above-
4 entitled Court. The JCL Law Firm, APC, and Blumenthal Nordrehaug Bhowmik & De Blouw,
5 LLP, appeared on behalf of Plaintiff CECILLE SARMIENTO ("Plaintiff"). Freeman Mathis &
6 Gary, LLP, appeared on behalf of Defendant CADUCEUS HEALTHCARE, INC. ("Defendant").

7 I.

8 **FINDINGS**

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

11 1. All terms used herein shall have the same meaning as defined in the
12 Agreement.

13 2. This Court has jurisdiction over the subject matter of this litigation pending
14 in the California Superior Court for the County of San Diego ("Court"), Case No. 37-2021-
15 00014044-CU-OE-CTL, entitled *Sarmiento v. Caduceus Healthcare Inc.*, and over all Parties to
16 this litigation, including the Class.

17 **Preliminary Approval of the Settlement**

18 3. On September 13, 2022, the Court granted preliminary approval of a class-
19 wide settlement. At this same time the court approved certification of a provisional settlement
20 class for settlement purposes only. The Court confirms this Order and finally approves the
21 settlement and the certification of the Class.

22 **Notice to the Class**

23 4. In compliance with the Preliminary Approval Order, the Notice Packet was
24 mailed by first class U.S. Mail to the Class Members at their last known addresses on December 8,
25 2022. Mailing of the Notice Packet to their last known addresses was the best notice practicable
26 under the circumstances and was reasonably calculated to communicate actual notice of the
27 litigation and the proposed settlement to the members of the Class Members. The Court finds that
28

1 the Notice Packet provided fully satisfies the requirements of California Rules of Court, rule
2 3.769.

3 5. The Response Deadline for opting out or objecting was February 6, 2023.
4 There was an adequate interval between notice and deadline to permit Class Members to choose
5 what to do and act on their decision. No Class Members objected. No Class Members requested
6 exclusion.

7 **Fairness Of The Settlement**

8 6. The Agreement provides for a Gross Settlement Amount of \$315,000.00.
9 The Agreement is entitled to a presumption of fairness. (*Dunk v. Ford Motor Co.* (1996) 48
10 Cal.App.4th 1794, 1801.)

11 a. The settlement was reached through arms-length bargaining between
12 the parties. There is no evidence of any collusion between the parties in reaching the proposed
13 settlement.

14 b. The Parties' investigation and discovery have been sufficient to
15 allow the Court and counsel to act intelligently.

16 c. Counsel for all parties are experienced in similar employment class
17 action litigation and have previously settled similar class claims on behalf of employees claiming
18 compensation. All counsel recommended approval of the Settlement.

19 d. No objections were received. No requests for exclusion were
20 received.

21 e. The participation rate is high. All Class Members will be
22 participating in the Settlement and will be sent settlement payments.

23 7. The consideration to be given to the Class Members under the terms of the
24 Agreement is fair, reasonable, and adequate considering the strengths and weaknesses of the
25 claims asserted in this Action and is fair, reasonable, and adequate compensation for the release of
26 the Released Class Claims, given the uncertainties and risks of the litigation and the delays which
27 would ensue from continued prosecution of the Action.

1 8. The Agreement is finally approved as fair, adequate, and reasonable and in
2 the best interests of the Settlement Class Members.

3 **PAGA Settlement Payment**

4 9. The Agreement provides for a PAGA Settlement Payment in the amount of
5 \$15,000.00. The Court has reviewed the PAGA Settlement Payment and finds and determines that
6 the PAGA Settlement and the allocation of \$11,250 to LWDA and \$3,750 to the Aggrieved
7 Employees is fair and reasonable and complies with the requirements set forth in *Moniz v. Adecco*
8 *USA, Inc.* (2021) 72 Cal.App.5th 56.

9 **Attorneys' Fees and Litigation Expenses**

10 10. The Agreement provides for a Class Counsel Award in the amount of up to
11 One Hundred Thirteen Thousand, Six Hundred Twenty-Two Dollars and Twenty-Seven Cents
12 (\$113,622.27). Subject to Court approval, the Class Counsel Award consists of attorneys' fees
13 equal to one-third (1/3) of the Gross Settlement Amount, One Hundred Five Thousand Dollars and
14 Zero Cents (\$105,000.00) and reimbursement of costs and expenses in the amount of Eight
15 Thousand, Six Hundred Twenty-Two Dollars and Twenty-Seven Cents (\$8,622.27).

16 11. A Class Counsel Award of One Hundred Thirteen Thousand, Six Hundred
17 Twenty-Two Dollars and Twenty-Seven Cents (\$113,622.27) comprised of attorneys' fees in the
18 amount of One Hundred Five Thousand Dollars and Zero Cents (\$105,000.00) and reimbursement
19 of costs and expenses in the amount of Eight Thousand, Six Hundred Twenty-Two Dollars and
20 Twenty-Seven Cents (\$8,622.27) is reasonable in light of the contingent nature of Class Counsel's
21 fee, the hours worked by Class Counsel, and the results achieved by Class Counsel. The requested
22 attorneys' fee award represents one-third (1/3) of the common fund, which is reasonable and at the
23 low end of the range for fee awards in common fund cases and is supported by Class Counsel's
24 lodestar.

25 **Class Representative Service Award**

26 12. The Agreement provides for a Class Representative Service Award of up to
27 \$7,500 for Plaintiff, Cecille Sarmiento, subject to the Court's approval. The Court finds that the
28

1 amounts of \$7,500 is reasonable in light of the risks and burdens undertaken by the Plaintiff in this
2 class action litigation.

3 **Settlement Administration Costs**

4 13. The Agreement provides for Settlement Administration Costs to be paid in
5 an amount not to exceed \$7,500.00. The Declaration of the Settlement Administrator provides
6 that the actual claims administration expenses were \$7,500.00. The amount of this payment is
7 reasonable in light of the work performed by the Settlement Administrator.

8 **II.**

9 **ORDERS**

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

11 1. The Class is certified for the purposes of settlement only. The Settlement
12 Class is hereby defined to include:

13 All non-exempt employees who are or previously were employed by Defendant in
14 California during the Class Period. The Class Period is defined as the period from
15 January 20, 2017, to September 30, 2021.

16 2. There are 120 members of the Class. Every person in the Class who did not
17 opt out is a Settlement Class Member. After providing Notice to the Class, there are zero opt-outs
18 to the Settlement.

19 3. The Agreement is hereby approved as fair, reasonable, adequate, and in the
20 best interest of the Class. The Parties are ordered to effectuate the Settlement in accordance with
21 this Order and the terms of the Agreement.

22 4. Defendant shall fund the Gross Settlement Amount on the Funding Date. In
23 exchange the Class Members shall release Defendant from the Released Class Claims and the
24 Aggrieved Employees shall release the Released PAGA Claims.

25 a. The Released Class Claims are defined as all class claims, actions,
26 demands, causes of action, suits, debts, obligations, damages, penalties, rights or liabilities, of any
27 nature and description whatsoever, that are asserted in the Action or based on the facts and
28 theories pleaded in the operative complaint on file at the time of final approval, including but not

1 limited to, Labor Code sections 201, 202, 203, 204(a), 210, 218.5, 226, 226.3, 226.7, 510, 512,
2 1194, 1197, 1197.1 and 2802, the applicable IWC Wage Orders and all equivalent claims and
3 causes of action arising under the Fair Labor Standards Act ("FLSA") at 29 U.S.C. § 201 *et seq.*,
4 which occurred during the Class Period, and expressly excluding all other claims, including claims
5 for vested benefits, wrongful termination, unemployment insurance, disability, social security,
6 workers' compensation, and class claims outside of the Class Period.

7 b. The Released PAGA Claims are defined as all claims for penalties
8 under PAGA, arising during the PAGA Period, which were alleged in the operative complaint at
9 the time of final approval by Plaintiff in the Action and Plaintiff's June 18, 2020 notice letter to
10 the LWDA including, Labor Code §§ 201, 202, 203, 204, 210, 226(a), 226.7, 351, 510, 512,
11 558(a)(1)(2), 1194, 1197, 1197.1, 1198, 2802, California Code of Regulations, Title 8, Section
12 11040, Subdivision 5(A)-(B), California Code of Regulations, Title 8, Section 1 1070(14) (Failure
13 to Provide Seating), Violation of the applicable Industrial Welfare Commission Wage Order(s),
14 and is therefore actionable under California Labor Code section 2699.3 and any resulting claim for
15 attorneys' fees and costs under PAGA, which occurred during the PAGA Periods. The PAGA
16 Period means the period of June 18, 2019, until September 30, 2021.

17 5. Class Counsel are awarded a Class Counsel Award in the amount of
18 \$113,622.27 comprised of attorneys' fees in the amount of \$105,000.00 and litigation expenses in
19 the amount of \$8,622.27. Class Counsel shall not seek or obtain any other compensation or
20 reimbursement from Defendant, Plaintiff, or members of the Class.

21 6. The payment of the Class Representative Service Award to the Plaintiff in
22 the amount of \$7,500 is approved.

23 7. The payment of \$7,500.00 to the Settlement Administrator for Settlement
24 Administration Costs is approved.

25 8. The PAGA Settlement of \$20,000 is hereby approved as fair, reasonable,
26 adequate, and adequately protects the interests of the public and the LWDA. Further, the Court
27 finds that Plaintiff and Class Counsel negotiated the PAGA Settlement at arms-length, absent of
28 any fraud or collusion.

1 9. Final Judgment is hereby entered in this action. The Final Judgment shall
2 bind each Settlement Class Member.

3 10. Final Judgment shall also bind Plaintiff, acting on behalf of the State of
4 California and all Aggrieved Employees, pursuant to the California Private Attorneys' General
5 Act ("PAGA").

6 11. The term "Aggrieved Employees" is hereby defined to include all non-
7 exempt employees who are or previously were employed by Defendant in California during the
8 PAGA Period. The PAGA Period means the period of June 18, 2019, until September 30, 2021.

9 12. The Court further finds and determines that Class Counsel satisfied
10 California Labor Code § 2699(l)(2) by giving the LWDA notice of the proposed Settlement of
11 claims arising under the Private Attorney General Act ("PAGA") on May 20, 2022, and again on
12 February 15, 2023.

13 13. The Court orders Class Counsel to comply with California Labor Code §
14 2699(l)(3) by providing the LWDA a copy of this order within ten (10) calendar days of the
15 Court's entry of this Order.

16 14. The Agreement is not an admission by Defendant, nor is this Final
17 Approval Order and Judgment a finding, of the validity of any claims in the Action or of any
18 wrongdoing by Defendant. Neither this Final Approval Order, the Settlement, nor any document
19 referred to herein, nor any action taken to carry out the Settlement is, may be construed as, or may
20 be used as an admission by or against Defendant of any fault, wrongdoing, or liability whatsoever.
21 The entering into or carrying out of the Agreement, and any negotiations or proceedings related
22 thereto, shall not in any event be construed as, or deemed to be evidence of, an admission or
23 concession with regard to the denials or defenses by Defendant and shall not be offered in
24 evidence in any action or proceeding against Defendant in any court, administrative agency or
25 other tribunal for any purpose as an admission whatsoever other than to enforce the provisions of
26 this Final Approval Order and Judgment, the Settlement, or any related agreement or release.
27 Notwithstanding these restrictions, any of the Parties may file in the Action or in any other
28 proceeding this Final Approval Order and Judgment, the Agreement, or any other papers and

1 records on file in the Action as evidence of the Settlement to support a defense of res judicata,
2 collateral estoppel, release, or other theory of claim or issue preclusion or similar defense as to the
3 claims being released by the Settlement.

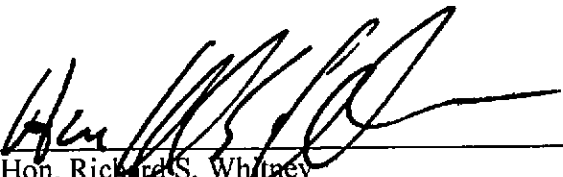
4 15. Notice of entry of this Final Approval Order and Judgment shall be given to
5 Class Counsel on behalf of Plaintiff and all Class Members. It shall not be necessary to send
6 notice of entry of this Final Approval Order and Judgment to individual Class Members and the
7 Final Approval Order and Judgment shall be posted on Settlement Administrator's website as
8 indicated in the Notice Packet.

9 16. After entry of Final Judgment, the Court shall retain jurisdiction to construe,
10 interpret, implement, and enforce the Settlement, to hear and resolve any contested challenge to a
11 claim for settlement benefits, and to supervise and adjudicate any dispute arising from or in
12 connection with the distribution of settlement benefits.

13 If the Settlement does not become final and effective in accordance with the terms of the
14 Settlement, resulting in the return and/or retention of the Gross Settlement Amount to Defendant
15 consistent with the terms of the Settlement, then this Final Approval Order and Judgment, and all
16 orders entered in connection herewith shall be rendered null and void and shall be vacated.

17 **IT IS SO ORDERED.**

18
19 DATED: 3-10-23


Hon. Richard S. Whitney
JUDGE OF THE SUPERIOR COURT