

1 Galen T. Shimoda (Cal. State Bar No. 226752)
2 Justin P. Rodriguez (Cal. State Bar No. 278275)
3 **Shimoda & Rodriguez Law, PC**
4 9401 East Stockton Boulevard, Suite 120
Elk Grove, CA 95624
Telephone: (916) 525-0716
Facsimile: (916) 760-3733

5 Attorneys for Plaintiff SARA FRANCO
6 individually and on behalf of similarly situated employees

FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF RIVERSIDE

JUN 03 2022

L. Howell

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8 **SUPERIOR COURT OF CALIFORNIA**
9 **FOR THE COUNTY OF RIVERSIDE**

10
11 SARA FRANCO, individually and on behalf
12 of all other similarly situated employees,

13 Plaintiff,

14 vs.

15 RANCHO FAMILY MEDICAL GROUP,
16 INC., a California Corporation; RANCHO
17 HEALTH MSO, INC., a Delaware
Corporation; and DOES 1 to 100, inclusive,

18 Defendants.
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Case No. CVRI2102264

CLASS ACTION

**[PROPOSED] ORDER GRANTING
PLAINTIFF'S MOTION FOR FINAL
APPROVAL OF CLASS ACTION AND PAGA
SETTLEMENT AND FINAL JUDGMENT**

Date: June 2, 2022

Time: 8:30 a.m.

Dept.: 1

Judge: Hon. Craig Reimer *Reimer*

Filed: May 10, 2021

FAC Filed: July 7, 2021

Trial Date: None Set

1 TO ALL PARTIES AND THEIR RESPECTIVE COUNSEL OF RECORD:

2 The Motion for Final Approval of Class Action and PAGA Settlement ("Motion") in the above
3 referenced case came before this Court, on June 2, 2022, at 8:30 a.m., in Department 1 before the
4 Honorable Craig ~~Reimer~~^{Rienzo}, presiding. This was a further continued hearing from the April 28, 2022,
5 and May 12, 2022 hearings, after the Court identified deficiencies and concerns in the originally
6 submitted motion and supplemental briefings ⁱⁿ its tentative rulings that were to be addressed and
7 corrected. Named Plaintiff Sara Franco ("Plaintiff") filed this putative class action on May 10, 2021.
8 The operative Complaint alleges that Defendants Rancho Family Medical Group, Inc., and Rancho
9 Health MSO, Inc., ("Defendants") violated California law by 1) failing to pay overtime wages; 2)
10 failing to pay minimum wages; 3) failing to provide legally compliant meal periods or pay the
11 appropriate meal period premiums in lieu thereof; 4) failing to provide legally compliant rest periods
12 or pay the appropriate rest period premiums in lieu thereof; 5) failing to provide accurate, itemized
13 wage statements; 6) failing to pay final wages owed in a timely manner; 7) failing to pay
14 reimbursement for all expenses incurred by employees; 8) failing to pay premium wages at the correct
15 regular rate of pay for overtime, paid sick leave, and meal and rest period premiums (*i.e.* including
16 within the regular rate of pay calculation shift differentials, pay stipends, and bonuses); and 9)
17 engaging in unfair competition based on these alleged violations. Plaintiff has also alleged Defendants
18 are liable for a civil penalties under the Private Attorneys General Act ("PAGA") based on these
19 violations. Plaintiff sought attorneys' fees and costs as part of this Action. Defendants denied all of
20 Plaintiff's claims and denied that this case was appropriate for class treatment. No class has been
21 certified. The class settlement was preliminarily approved by this Court on December 15, 2021.

22 The parties have agreed to settle the class and PAGA claims. Defendants will provide
23 monetary consideration in exchange for a release of claims consistent with the terms of the proposed
24 settlement as set forth in the Joint Stipulation Regarding Class Action and PAGA Settlement and
25 Release ("Agreement"), which was submitted as Exhibit A to the Supplemental Declaration of Justin
26 P. Rodriguez In Support of Plaintiff's Motion for Final Approval of Class Action and PAGA
27 Settlement filed on April 28, 2022. Any capitalized terms herein shall have the same meaning as set
28 forth in the Agreement. The Court, having received and considered Plaintiff's Motion for Final

1 Approval of Class Action and PAGA Settlement, the declarations in support, the Agreement, the
2 Notice of Settlement, Request for Exclusion Form, and Objection Form, supplemental briefings and
3 other evidence, HEREBY ORDERS AND MAKES DETERMINATIONS AS FOLLOWS:

4 **1. CERTIFYING A SETTLEMENT CLASS; APPOINTMENT OF CLASS**
5 **REPRESENTATIVE; APPOINTMENT OF CLASS COUNSEL**

6 The Court finds that certification of the following class for settlement purposes only is
7 appropriate under the California Code of Civil Procedure and related case law:

8 All non-exempt employees who have or continue to work for Defendants
9 from May 10, 2017, to November 7, 2021 ("Class Members").

10 The Court recognizes that the foregoing definition is for Class Member identification purposes
11 only and is not intended to capture the claims at issue or limit or alter the released claims under the
12 Agreement. There were eight (8) individuals who timely opted out of the settlement and shall not be
13 considered Class Members, including Peggy Gulserian, Diocelina Acosta, Cheryl Joslin, Nichole
14 Ghandour, Krystle Jocelyn Parnala, Andrea Hubby, Elexus Paylor and Hannah Park. However, these
15 individuals are still Aggrieved Employees under the Agreement as there is no ability to opt out of a
16 PAGA settlement.

17 The Court finds that Class Members meet the ascertainability and numerosity requirements since
18 the Parties can identify with a matter of certainty, based on payroll records, individuals who fall within
19 the definition and the number of Class Members would make joinder impractical. The commonality and
20 predominance requirements are met for settlement purposes since there are questions of law and fact
21 common to Class Members. The common questions of law or fact in this case all stem from Plaintiff's
22 contentions that Defendants caused the violations outlined above by 1) failing to correctly incorporate
23 the value of the non-discretionary remuneration, such as, but not limited to, shift differentials, pay
24 stipends, and bonuses into Class Member's and Aggrieved Employees' regular rate of pay when
25 calculating overtime, double time, meal and rest period premiums, or sick pay; 2) failing to provide
26 meal and rest periods in compliance with California law due to understaffing and workflow issues, or
27 pay premiums in lieu thereof; 3) failing to pay employees for all hours worked due their failure to pay
28 for time employees spent waiting to clock into work; 4) failing to pay reimbursements for business-

1 related cell phone use; and 5) failing to accurately itemize the hours and wages earned on paystubs
2 issued to Class Members and Aggrieved Employees. The PAGA, waiting time penalty, wage statement
3 violation, and unfair competition claims also derive from these violations. Additionally, Class
4 Members seek the same remedies under state law. The typicality requirement for settlement purposes is
5 also satisfied since the claims of the Class Representative are based on the same facts and legal theories
6 as those applicable to the Class Members.

7 The Court also finds that certifying the settlement class is required to avoid each Class Member
8 litigating similar claims individually. This settlement will achieve economies of scale for Class
9 Members with relatively small individual claims and conserve the resources of the judicial system.

10 The Court finds that Plaintiff Sara Franco and Plaintiff's counsel, Galen T. Shimoda and
11 Justin P. Rodriguez of Shimoda & Rodriguez Law, PC, to be adequate representatives of the settlement
12 class. The Court appoints them as Class Representative and Class Counsel, respectively.

13 **2. APPROVING CLASS ACTION AND PAGA SETTLEMENT**

14 The Court has reviewed the Agreement, which was submitted as Exhibit A to the Supplemental
15 Declaration of Justin P. Rodriguez In Support of Plaintiff's Motion for Final Approval of Class Action
16 and PAGA Settlement filed on April 28, 2022. The Court finds that final approval is warranted as the
17 Agreement falls within the range of reasonableness and is fair, reasonable, and adequate for Class
18 Members. The Court also acknowledges that Class Members were able to object to the settlement
19 through the administration process and at a fairness hearing. Only one Objection Form was submitted,
20 but it did not address the Agreement or the settlement. Instead, it addressed paid family leave and
21 unemployment benefits, which are outside the scope of the Agreement and not affected by the settlement
22 in any way. Because the objection did not take issue with the Agreement in general or any specific
23 terms therein, it is overruled. Additionally, only eight (8) Class Members (2% of the class) opted out of
24 the settlement. The lack of objections related to the settlement and low opt out rate provide strong
25 evidence that the Agreement is fair, reasonable, and adequate.

26 Because the Court finds that the Agreement was agreed upon only after extensive investigation
27 and arms-length negotiations, and in an attempt to avoid further delays and costs, the Court gives final
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1 approval to the Agreement and all terms therein as if stated here in full, including the \$650,000 Gross
2 Settlement Amount.

3 The Court also approves of the Fifteen Thousand Dollars (\$15,000) PAGA Payment, which
4 shall be paid from the Gross Settlement Amount, not in addition to the Gross Settlement Amount, to
5 resolve the alleged PAGA claims. Seventy-Five percent (75%) of the PAGA Payment will be paid to the
6 Labor and Workforce Development Agency ("LWDA") and Twenty-Five percent (25%) will be paid to
7 Aggrieved Employees on a pro rata basis as described in the Agreement. The Court finds that the
8 Agreement provides a recovery that creates an effective, substantial deterrent to any potential future
9 non-compliance, furthering the purpose of the Labor Code and LWDA. Furthermore, a substantial
10 reduction of any available PAGA civil penalties awarded at trial would likely take place given that the
11 claims are entirely derivative of Plaintiff's class claims and a full award of civil penalties in addition to
12 recovery on the non-PAGA claims may be deemed unjust, arbitrary and oppressive, or confiscatory.

13 The Court approves of the identified *cy pres* beneficiaries and distribution plan wherein any
14 checks issued to Qualified Claimants and/or Aggrieved Employees that are not cashed by the deadline to
15 do so shall be paid out 50/50 to Capital Pro Bono, Inc., at 1860 Howe Ave #130, Sacramento,
16 California, 95825, and the Center for Workers' Rights at 2741 Fruitridge Road, Suite 5, Sacramento,
17 California, 95820. No portion of the Gross Settlement Amount will revert to Defendants for any reason.

18 The releases and waivers for Class Members who do not opt out of being bound by the
19 Agreement (*i.e.* Qualified Claimant's Released Claims) and Plaintiff's release of the Released PAGA
20 Claims on behalf of herself and the LWDA are also approved by the Court as set forth in the Agreement.

21 A Motion for Attorneys' Fees and Costs, Class Representative Enhancement Payment, and
22 Settlement Administrator Costs was heard concurrently with this Motion. Class Counsel requested
23 \$216,666.67 for attorneys' fees, \$14,642.87 in costs, \$7,500 as a Class Representative Enhancement
24 Payment, and \$8,500 for Settlement Administrator Costs. After review of the Motion for Attorneys'
25 Fees and Costs, Class Representative Enhancement Payment, and Settlement Administrator Costs and
26 supplemental filings in connection therewith, the Court will award \$ 216,666.67 in attorneys
27 fees, \$ 14,142.87 in attorneys costs, \$ 4500⁰⁰ as a Class Representative
28 Enhancement Payment, and \$ 8,484⁰⁰ for Settlement Administrator Costs. The difference

CR
1 between the amounts originally allocated and what the Court has awarded will be added to the Net
2 Settlement Sum for distribution in accordance with the Agreement. ~~The Court's findings regarding~~
3 ~~Plaintiff's Motion for Attorneys' Fees and Costs, Class Representative Enhancement Payment, and~~
4 ~~Settlement Administrator Costs are incorporated by reference as if stated here in full.~~

5 **3. APPROVAL OF THE DISTRIBUTION METHOD OF NOTICE TO THE CLASS,**
6 **INCLUDING THE NOTICE OF SETTLEMENT, REQUEST FOR EXCLUSION FORM,**
7 **AND OBJECTION FORM AND APPOINTMENT OF SETTLEMENT**
8 **ADMINISTRATOR**

8 The Court finds that the Notice of Settlement, Objection Form, and Request for Exclusion Form,
9 which were filed with Plaintiff's Motion as Exhibits A and B to the Declaration of Lindsay Kline filed
10 on April 4, 2022, fairly and adequately advised Class Members of the terms of the Agreement, the rights
11 being waived, their right to opt out, the ability to dispute the number of weeks worked during the Class
12 Period, their pro rata share of the Net Settlement Amount, how to participate in the settlement, how to
13 file documentation in opposition to the settlement, and when to appear at the fairness hearing.

14 The Court further finds that the Notice of Settlement, Request for Exclusion Form, and Objection
15 Form, and distribution of such notice documents by first class mail to each identified Class Member at
16 his or her most recent address based on a National Change of Address database search from the Class
17 Members' last known address and a skip trace on any Class Members who have the Notice of Settlement
18 returned as "undeliverable" or "not at this address" comports with all constitutional requirements,
19 including those of due process as it is the best means practicable for providing actual notice of this case
20 and the Agreement.

21 The Court confirms the appointment of Simpluris, Inc. to act as the Settlement Administrator in
22 this case and carry out the remaining duties of settlement administration as set forth in the Agreement.
23 Any envelope transmitting a settlement distribution to a Class Member shall bear the notation, "YOUR
24 CLASS ACTION SETTLEMENT CHECK IS ENCLOSED." Any envelope transmitting a settlement
25 distribution to an Aggrieved Employee who is not also a Class Member shall bear the notation, "YOUR
26 SETTLEMENT CHECK IS ENCLOSED." The check shall be negotiable for one hundred and twenty
27 (120) calendar days from the date of mailing. The Settlement Administrator shall mail a reminder
28 postcard to any Class Member whose settlement distribution check has not been negotiated within sixty

(60) days after the date of mailing. If any of the Class Members are current employees of Defendants, the distribution mailed to those employees is returned to the Settlement Administrator as undeliverable, and the Settlement Administrator is unable to locate a valid mailing address, then the Settlement Administrator shall arrange with the Defendants to have those distributions delivered to the employees at their place of employment.

4. IMPLEMENTATION SCHEDULE

Accordingly, with good cause shown, the Court hereby approves and orders that the following implementation schedule be adhered to:

Last day for Settlement Administrator to calculate the final Net Settlement Amount, the final Claim Amounts for Qualified Claimants and/or Aggrieved Employees, any applicable taxes thereon, and report the results of these calculations Class Counsel and Defendants' Counsel	Within 7 calendar days after the Final Approval Date
Last day for Defendants to fund settlement	Within 21 calendar days after the Final Approval Date
Last day for Settlement Administrator to deliver payment of Class Counsel's attorney's fees and costs, Enhancement Payments, PAGA Payment, Settlement Administrator Costs, payment to Qualified Claimants, and payment to Aggrieved Employees	With 28 calendar days after the Effective Date
Last day for Qualified Members and Aggrieved Employees to cash settlement checks	120 calendar days after issuance of checks to Qualified Members and Aggrieved Employees
Last day for Settlement Administrator to deliver value of uncashed settlement checks to <i>cy pres</i> beneficiaries	Within 14 calendar days after settlement check cashing deadline
Last day for Settlement Administrator to provide Parties with compliance declaration	Within 21 calendar days after settlement check cashing deadline

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FINAL JUDGMENT

IT IS FURTHER ORDERED that this final approval order is effective as a judgment with each party to bear its own fees and costs outside of what has been ordered herein. Class Counsel shall file a Notice of Entry of Judgment (Judicial Council Form CIV-130) attaching this Order as well as posting the filing online at the following address: <https://www.simpluris.com/case-information>. The Court finds that this will adequately inform Class Members of this Judgment as Class Members were previously instructed through the Notice of Settlement that relevant case documents and settlement documents could be accessed there.

A Final Report (Non-Appearance) Hearing shall be set for February 9, 2023, at 8:30 a.m. in Department 1. At least five Court days prior to this hearing, Class Counsel shall file a declaration that confirms compliance with the Court's order and reports on the information required in paragraph I of the Court's Class Action Case Management Order #1.

This matter is subject to the Court's continuing jurisdiction to monitor and enforce the terms of this Order and the approved Agreement.

IT IS SO ORDERED.

Date: June 2, 2022

By: 
Hon. Craig Reimer