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FILED
Superior Court of California
County of Sacramento
10/07/2024
T. Shaddix, Deputy

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SACRAMENTO**

MARINA MACIEL, individually, and on behalf
of all others similarly situated,

Plaintiff,

vs.

WESTERN HEALTH ADVANTAGE; and
DOES 1 through 10, inclusive,

Defendants

Case No.: 34-2022-00329710

CLASS AND REPRESENTATIVE ACTION

*[Assigned for all purposes to Hon. Jill Talley,
Dept. 23]*

**~~PROPOSED~~ ORDER GRANTING
FINAL APPROVAL OF CLASS AND
PAGA ACTION SETTLEMENT**

*[Filed with Plaintiff's Notice of Motion and
Motion for Final Approval of Class and PAGA
Action Settlement, the Declaration of Kane
Moon, the Declaration of Plaintiff, the
Declaration of Yami Burns, and [Proposed]
Judgment]*

FINAL APPROVAL HEARING:

Date: September 20, 2024

Time: 9:00 a.m.

Dept.: 23

Complaint Filed: November 9, 2022

Trial Date: Not set

~~PROPOSED~~ ORDER

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

On June 7, 2024, the Court entered an Order Granting Plaintiffs' Motion for Preliminary Approval of Class and PAGA Action Settlement, which granted conditional class certification and approval of Class Notice, and set a Final Approval Hearing (the "Preliminary Approval Order"), thereby preliminarily approving a settlement of the above-entitled action (the "Action") that was reached between Plaintiff Marina Maciel ("Plaintiff") and Defendant Western Health Advantage ("Defendant" or "WHA") (together with Plaintiff, the "Parties"), in accordance with the Parties' Joint Stipulation of Class Action Settlement and Release (the "Settlement"). The Settlement was attached as Exhibit 1 to the Declaration of Kane Moon in Support of Plaintiff's Motion for Final Approval of Class and PAGA Action Settlement. The Court now has before it an Order Granting Final Approval of Class and PAGA Action Settlement ("Final Approval Order") to finally approve the Settlement.

Due and adequate notice having been given to Class Members, and the Court having reviewed the Settlement and duly considered Plaintiff's Motion for Final Approval of Class and PAGA Action Settlement, the supporting declarations and exhibits thereto, all other papers filed and proceedings had hereto, the record in this Action, and any oral argument, and good cause appearing, **THE COURT HEREBY ORDERS AND DECREES AS FOLLOWS:**

1. The Court, for purposes of this Final Approval Order, incorporates and refers to all terms and definitions as set forth in the Settlement and confirmed below.

2. Plaintiff's Motion for Final Approval of Class Action Settlement, including a motion for payment of Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment, Class Representative Service Payment, Administration Expenses Payment, and the PAGA Penalties (collectively "Motion for Final Approval"), and whether the Settlement should be finally approved as fair, reasonable, and adequate as to Class Members, came before Department 23 of this Court, the Honorable Jill Talley presiding, on September 20, 2024.

3. The Court finds that the Settlement appears to have been made and entered into in good faith, the terms of which are fair, reasonable, and adequate; was reached following meaningful

1 discovery and investigation conducted by Plaintiff and her counsel of record (“Class Counsel”); is
2 the result of serious, informed, adversarial, and arms-length negotiations between the Parties; and
3 therefore, meets the requirements for final approval. In so finding, the Court has considered all the
4 evidence presented, including evidence regarding the strength of Plaintiffs’ claims; the risk, expense,
5 and complexity of the claims presented; the likely duration of further litigation; the settlement amount
6 offered; the extent of investigation and discovery completed; and the experience and views of Class
7 Counsel. The Court has further considered the absence of any objections to and requests for exclusion
8 from the Settlement. Accordingly, the Court hereby **GRANTS** Plaintiff’s Motion for Final
9 Approval and **ORDERS** Judgment to be entered in accordance with the terms herein (“Final
10 Judgment”).

11 4. The Court certifies, for settlement purposes only, the following Class or Class
12 Members: All non-exempt employees employed by WHA in California during period from
13 November 9, 2018 through May 10, 2024. Excluded from the Class are all persons who submit a
14 valid and timely Request for Exclusion from the class portion of the Settlement.

15 5. The PAGA release component of the Settlement shall bind the State of California and
16 Aggrieved Employees, defined as follows: All non-exempt employees employed by WHA in
17 California during the period from November 4, 2021 through May 10, 2024.

18 6. The deadline to request exclusion from or to submit written objections to the
19 Settlement was August 20, 2024. No Requests for Exclusion and no written objections were received.
20 Notwithstanding the submission of a timely request for exclusion, Class Members are still bound by
21 the settlement and release of the Released PAGA Claims or remedies under the Judgment pursuant
22 to *Arias v. Superior Court* (2009) 46 Cal. 4th 969, as requests to be excluded from the Settlement do
23 not apply to the Released PAGA Claims.

24 7. The Court Approved Notice of Class Action Settlement and Hearing Date for Court
25 Approval (the “Class Notice”), which was attached to the Preliminary Approval Order as Exhibit A
26 and provided to the Class pursuant to the plan for distribution described under the Settlement
27 Agreement, conformed with the requirements of California Rules of Court 3.766 and 3.769, and
28 constituted the best notice practicable under the circumstances, by providing individual and adequate

1 notice of the proceedings and of the matters set forth therein to Class Members. The Class Notice
2 fully satisfied the requirements of due process and provided the Class Members with adequate
3 instructions and a variety of means to obtain additional information.

4 8. The Court finds that a full opportunity has been afforded to Class Members to object
5 to the Settlement and participate in the Final Approval Hearing, and all Class Members and other
6 persons wishing to be heard have been heard and/or had an opportunity to be heard. No written
7 objections were received, and no Class Member appeared at the Final Approval Hearing to present
8 any objections.

9 9. The Court finds that all Class Members have had a full and fair opportunity to exclude
10 themselves from the Settlement, and no Class Member submitted a request for exclusion from the
11 Settlement. Accordingly, the Court determines that all Class Members who did not request exclusion
12 from the Settlement (“Participating Class Members”) are bound by this Final Approval Order and
13 the accompanying Final Judgment.

14 10. Effective on the date when WHA fully funds the entire Gross Settlement Sum and
15 funds all employer payroll taxes owed on the Wage Portion of the Individual Class Payments,
16 Plaintiff, Participating Class Members, and Class Counsel will release claims against all Released
17 Parties as follows (Settlement, ¶ 5.):

18 a. Released Parties. “Released Parties” means Defendant Western Health
19 Advantage, and any of its/their former and present parents/sponsors, subsidiaries, affiliates,
20 insurers, insurance policies, and benefit plans; each of the former and present officers, directors,
21 employees, equity holders (partners, shareholders, holders of membership interests, etc.), agents,
22 representatives, administrators, fiduciaries, and attorneys of the entities and plans described in this
23 sentence; and any other predecessors, successors, transferees, and assigns of each of the persons
24 and entities described in this sentence. (*Id.* at ¶ 1.41.)

25 b. Plaintiff’s General Release. Plaintiff and her respective former and present
26 spouses, representatives, agents, attorneys, heirs, administrators, successors, and assigns
27 generally, release and discharge Released Parties from all claims, demands, damages, liquidated
28 damages, monies, penalties, restitution, injunctive relief, attorneys’ fees, costs, liabilities and/or

1 causes of action of whatever kind or character, whether known or unknown, which Plaintiff ever
2 had, now has, has asserted or may hereafter assert or claim to have against the Released Parties
3 arising out of or relating in any way to any acts, circumstances, facts, transactions, or omissions
4 based on facts occurring up to and including the date Plaintiff signs this Agreement. (*Id.* at ¶
5 5.1.) This release includes but is not limited to any and all claims arising under the (a) Americans
6 with Disabilities Act, as amended; (b) Title VII of the Civil Rights Act of 1964, as amended; (c)
7 the Civil Rights Act of 1991; (d) 42 U.S.C. § 1981, as amended; (e) the Fair Labor Standards
8 Act, as amended and the Portal to Portal Act; (f) the Equal Pay Act; (g) the Employee Retirement
9 Income Security Act, as amended; (h) the Consolidated Omnibus Budget Reconciliation Act; (i)
10 the Rehabilitation Act of 1973; (j) the Family and Medical Leave Act; (k) the Civil Rights Act
11 of 1966; (l) the California Fair Employment and Housing Act; (m) the California Constitution;
12 (n) the California Labor Code; (o) the California Government Code; (p) the California Civil
13 Code; and (q) any and all other federal, state and local statutes, ordinances, regulations, rules and
14 other laws, and any and all claims based on equity, constitutional, statutory, common law or
15 regulatory grounds as well as any other claims based on theories of wrongful or constructive
16 discharge, breach of contract or implied contract, fraud, misrepresentation, promissory estoppel
17 or intentional and/or negligent infliction of emotional distress, or damages under any other
18 federal, state or local statutes, ordinances, regulations, rules or laws, except for such claims that
19 cannot be released by law (“Plaintiff’s General Release”). (*Id.*) Plaintiff’s General Release does
20 not extend to any claims or actions to enforce this Agreement, or to any claims for vested
21 benefits, unemployment benefits, disability benefits, social security benefits, workers’
22 compensation benefits that arose at any time, or based on occurrences outside the Class Period.
23 Plaintiff acknowledges that Plaintiff may discover facts or law different from, or in addition to,
24 the facts or law that Plaintiff now knows or believes to be true but agrees, nonetheless, that
25 Plaintiff’s General Release shall be and remain effective in all respects, notwithstanding such
26 different or additional facts or Plaintiff’s discovery of them. (*Id.*) Nothing in this Agreement,
27 including in the Plaintiff’s General Release, shall be construed to prevent the disclosure of factual
28 information related to any acts of sexual assault, sexual harassment, workplace harassment or

1 discrimination, failure to prevent an act of workplace harassment or discrimination, or act of
2 retaliation against a person for reporting harassment or discrimination related to the Action;
3 prevent Plaintiff from discussing or disclosing information about unlawful acts in the workplace,
4 such as harassment or discrimination or any other conduct they have reason to believe is
5 unlawful; or waives Plaintiff's right to testify in an administrative, legislative, or judicial
6 proceeding concerning alleged criminal conduct or alleged sexual harassment on the part of
7 WHA, or on the part of the agents or employees of WHA, when Plaintiff has been required or
8 requested to attend such a proceeding pursuant to a court order, subpoena, or written request
9 from an administrative agency or the legislature, prevents Plaintiff from communicating with,
10 filing a charge or complaint with, or from participating in an investigation or proceeding
11 conducted by the Equal Employment Opportunity Commission, National Labor Relations Board,
12 the Securities and Exchange Commission, or any other any federal, state or local agency charged
13 with the enforcement of any laws, including providing documents or any other information, or
14 limits Plaintiff from exercising rights under Section 7 of the NLRA to engage in protected,
15 concerted activity with other employees, although by signing this Agreement Plaintiffs are
16 waiving rights to individual relief (including backpay, frontpay, reinstatement or other legal or
17 equitable relief) in any charge, complaint, or lawsuit or other proceeding brought by Plaintiff or
18 on Plaintiff's behalf by any third party, except for any right Plaintiff may have to receive a
19 payment or an award from a government agency (and not WHA) for information provided to the
20 government agency or where otherwise prohibited. (*Id.*)

21 1) Plaintiff's Waiver of Rights Under California Civil Code Section
22 1542. For purposes of Plaintiff's Release, Plaintiff expressly waives and relinquishes the
23 provisions, rights, and benefits, if any, of section 1542 of the California Civil Code, which
24 reads: A general release does not extend to claims that the creditor or releasing party does not
25 know or suspect to exist in his or her favor at the time of executing the release and that, if
26 known by him or her, would have materially affected his or her settlement with the debtor or
27 Released Party. (*Id.* at ¶ 5.1.1.)

28 c. Release by Participating Class Members. All Participating Class Members

(including Plaintiff), on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, release Released Parties from all claims for wages, statutory and civil penalties, damages, liquidated damages, premiums, interest, restitution, injunctive and declaratory relief, fees and costs, that were alleged in the Action, including the Operative Complaint and/or any letters submitted by Plaintiff to the LWDA against WHA in the Action, and/or claims which could have been alleged that reasonably relate to or which reasonably arise out of the same set of operative facts pled therein, whether such claims or forms of relief are known or unknown during the Class Period including, but not limited to all claims asserted in the Action for alleged: (1) failure to pay minimum wages in violation of California Labor Code sections 1182.12, 1194, 1197, 1197.1 and 1198 and the applicable IWC Wage Order; (2) unfair competition in violation of Business and Professions Code section 17200, et seq.; (3) failure to pay overtime compensation in violation of California Labor Code sections 510, 1194, and 1198 et. seq. and the applicable IWC Wage Order; (3) failure to provide required meal periods in violation of California Labor Code sections 226.7, 512, and 1198, and the applicable IWC Wage Order; (4) failure to provide required rest periods in violation of California Labor Code sections 226.7, 512, and 1198 and the applicable IWC Wage Order; (5) failure to provide accurate itemized wage statements in violation of California Labor Code sections 221-224, 226, 1174(d), and 1198; (6) failure to reimburse employees for required expenses in violation of California Labor Code section 2802; (7) failure to provide wages when due in violation of California Labor Code sections 201, 202, 203, 204 and 210; (8) failure to pay wages in violation of California Labor Code section 204; (9) all other statutory and regulatory violations alleged in the Action, and with respect to the statutory and civil penalties claimed in the Action, including penalties under PAGA (Labor Code section 2699 *et seq.*), any source of obligation as a basis for claiming such penalties during the Class Period, including any and all obligations imposed by the applicable Wage Orders. (*Id.* at ¶ 5.2.) The release shall be given full res judicata and collateral estoppel effect upon entry of judgment. (*Id.*) Except as set forth in Section 5.3 of this Agreement, Participating Class Members (except Plaintiff) do not release any other claims, including claims for vested benefits, wrongful termination, violation of the Fair

1 Employment and Housing Act, unemployment insurance, disability, social security, workers'
2 compensation, or claims based on facts occurring outside the Class Period. (*Id.*)

3 d. PAGA Release by Aggrieved Employees and Labor Workforce
4 Development Agency. The Labor Workforce Development Agency, State of California, in
5 addition to all Aggrieved Employees, and Plaintiff as a proxy for the LWDA are deemed to
6 release, on behalf of themselves and their respective former and present representatives, agents,
7 attorneys, heirs, administrators, successors, and assigns, the Released Parties from all claims for
8 civil penalties under the Labor Code pursuant to PAGA that were alleged, or reasonably could
9 have been alleged, based on the facts stated in the Operative Complaint, the Action, and the
10 PAGA Notice, and ascertained in the course of the Action, including, but not limited to all PAGA
11 claims asserted in the Action for alleged: (1) failure to pay minimum wages in violation of
12 California Labor Code sections 1182.12, 1194, 1197, 1197.1 and 1198 and the applicable IWC
13 Wage Order; (2) unfair competition in violation of Business and Professions Code section 17200,
14 et seq.; (3) failure to pay overtime compensation in violation of California Labor Code sections
15 510, 1194, and 1198 et. seq. and the applicable IWC Wage Order; (3) failure to provide required
16 meal periods in violation of California Labor Code sections 226.7, 512, and 1198, and the
17 applicable IWC Wage Order; (4) failure to provide required rest periods in violation of California
18 Labor Code sections 226.7, 512, and 1198 and the applicable IWC Wage Order; (5) failure to
19 provide accurate itemized wage statements in violation of California Labor Code sections 221-
20 224, 226, 1174(d), and 1198; (6) failure to reimburse employees for required expenses in
21 violation of California Labor Code section 2802; (7) failure to provide wages when due in
22 violation of California Labor Code sections 201, 202, 203, 204, and 210; (8) failure to pay wages
23 in violation of California Labor Code section 204; (9) failure to maintain required records in
24 violation of Labor Code sections 226, 1174, and the applicable IWC wage order; and (10)
25 unlawful terms and conditions of employment in violation of Labor Code sections 432.5 and
26 432.6. (*Id.* at ¶ 5.3.) The PAGA release shall be given full res judicata and collateral estoppel
27 effect upon entry of the judgment in this Action so as to bar the LWDA and any other individual
28 or entity from filing or pursuing the Released PAGA Claims against the Released Parties in any

forum. (*Id.*)

11. The Parties shall bear their own respective attorneys' fees and costs, except as otherwise provided for in the Settlement and approved by the Court.

12. The Court finds that the Gross Settlement Sum of \$1,000,000.00 ("GSS"), the Net Settlement Sum, and the methodology used to calculate Individual Class Payments to Participating Class Members and Individual PAGA Payments to Aggrieved Employees are fair and reasonable. The Court thus authorizes the Administrator to pay settlement allocations in accordance with the terms of the Settlement. Defendant shall fully fund the GSS and the amounts necessary to fully pay Defendant's share of payroll taxes by transmitting the funds to the Administrator no later than 30 court days after the Effective Date. Within 14 days after Defendant fully funds the GSS, the Administrator shall mail checks for all Individual Class Payments, Individual PAGA Payments, the LWDA PAGA Payment, the Administration Expenses Payment, the Class Counsel Fees Payment, the Class Counsel Litigation Expenses Payment, and the Class Representative Service Payment.

13. A total amount of \$100,000.00 shall be allocated from the GSS to resolution of claims under the Private Attorneys General Act of 2004 ("PAGA") and distributed as follows: 25% (\$25,000.00) to Aggrieved Employees and 75% (\$75,000.00) to the LWDA. The LWDA's claims for the Released PAGA Claims are hereby extinguished.

14. The Court confirms the appointment of Plaintiff Marina Maciel as the Class Representative, for settlement purposes only. In addition to any recovery that Plaintiff is eligible to receive as a Class Member, the Court approves and orders a service payment to Plaintiff in the amount of \$7,500.00 from the GSS for her role and service as the Class Representative, for the risks and work attendant to that role, and for her general release of claims, both known and unknown, and waiver of section 1542 rights.

15. The Court confirms the appointment of Moon Law Group, PC as Class Counsel, for settlement purposes only. The Court approves and orders the payments to Class Counsel from the GSS in \$333,333.33 for attorneys' fees equal to one-third of the GSS, and \$30,115.59 for reimbursement of actual litigation costs. The Court finds that these amounts are reasonable considering the benefits provided to the Class.

1 16. The Court confirms the appointment of Phoenix Settlement Administrators as the
2 Administrator, who has fulfilled its initial notice and reporting duties. The Court approves and orders
3 the payment to the Administrator in the amount of \$8,750.00 from the GSS for its services and costs
4 of administration.

5 17. Pursuant to California Code of Civil Procedure section 384, following the expiration
6 of the 180-day check-cashing deadline, should there be any uncashed checks, the Settlement
7 Administrator shall transmit those amounts to the California Controller's Unclaimed Property Fund
8 in the name of each Participating Class Member and/or Aggrieved Employee who failed to cash their
9 individual check prior to the void date.

10 18. In accordance with California Rule of Court 3.771(b), notice of this Final Approval
11 Order and the accompanying Final Judgment shall be given to the Class by the Administrator, who
12 will post electronic copies on its website for no less than ninety (90) calendar days following entry
13 hereof.

14 19. This Final Order and the accompanying Final Judgment are intended to be a final
15 disposition of the Action in its entirety and are intended to be immediately appealable.

16 20. The obligations set forth in the Settlement are deemed part of this Final Approval
17 Order and the accompanying Final Judgment, and the Parties are ordered to carry out the Settlement
18 according to its terms and provisions.

19 21. Following entry of this Final Approval Order and the accompanying Final Judgment,
20 and without affecting the finality thereof, pursuant to Code of Civil Procedure section 664.6 and
21 Rules of Court, Rule 3.769(h), the Court shall retain continuing jurisdiction over the Action and the
22 Settlement, until all payments and obligations contemplated by this Settlement have been fully
23 carried out, solely for purposes of (i) enforcing this Settlement, (ii) addressing settlement
24 administration matters, and (iii) addressing such post-Judgment matters may be appropriate under
25 court rules or applicable law.

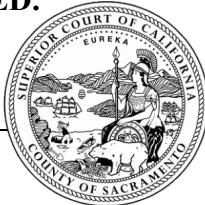
26 22. The Settlement is finally approved but is not an admission by Defendant of the
27 validity of any claims in this Action, or of any wrongdoing by Defendant or of any violation of
28 law. Neither the Settlement nor any related document shall be offered or received in evidence in

1 any civil, criminal, or administrative action or proceeding other than such proceedings as may be
2 necessary to consummate or enforce the Settlement.

3 23. The Court sets a Non-Appearance Case Review Hearing re: Distribution on
4 6/20/25, 2025 at 10:30 a.m./~~p.m.~~ in Department 23. Class Counsel are ordered to file
5 a final report and declaration by the Settlement Administrator regarding settlement distribution no
6 later than ~~five court~~ ^{15 calendar} days prior to the Case Review. No appearance is required at the Case Review
7 if the Administrator's declaration filed prior to the hearing reports that all the distributions under the
8 Settlement Agreement are complete.

9 **IT IS SO ORDERED.**

10
11 DATE: 10/07/2024



Jill Talley

The Honorable Jill Talley
Judge of the Superior Court, Sacramento County