

FILED
San Diego Superior Court

SEP 15 2023

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

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN DIEGO

ROSANIEVES MORAN, SHALIECIA
WILLIAMS, and MARY CANTERBURY,
individually and on behalf of all others
similarly situated,

Plaintiff,

vs.

SHARP HEALTHCARE, a California
Corporation; and DOES 1-50, inclusive,

Defendants.

CASE NO.: 37-2019-00050203-CU-OE-CTL

Consolidated with
Case No. 37-2021-00041988-CU-OE-CTL
Case No. 37-2021-00051867-CU-OE-CTL

~~[REDACTED]~~ **FINAL
APPROVAL ORDER AND JUDGMENT**

Hearing Date: September 15, 2023
Hearing Time: 10:30 a.m.

Judge: Richard S. Whitney
Dept.: C-68

Complaint Filed: September 23, 2019
Trial Date: Not Set

FINAL APPROVAL ORDER AND JUDGMENT

1 The motion of Plaintiffs Rosanieves Moran, Shalecia Williams, and Mary Canterbury
2 (“Plaintiffs”) for an order finally approving the Joint Stipulation of Class Action and Private
3 Attorney General Act (“PAGA”) Settlement and Release (hereinafter “Settlement Agreement”) with Defendant Sharp Healthcare (“Defendant”) and for an award of attorneys’ fees and costs,
4 service awards, and the fees of the Settlement Administrator duly came on for hearing on
5 September 15, 2023 before the Honorable Richard S. Whitney.

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 Settlement
12 Agreement that is attached as Exhibit #1 to the Declaration of Kyle Nordrehaug filed on August
13 21, 2023 [ROA #123].

14 2. This Court has jurisdiction over the subject matter of this litigation pending before
15 the California Superior Court for the County of San Diego, and over all Parties to this litigation,
16 including the Class.

17 3. Based on a review of the papers submitted by Plaintiffs and a review of the
18 applicable law, the Court finds that the Maximum Settlement Amount of Four Million Two
19 Hundred Sixty-Five Thousand Dollars (\$4,265,000) and the terms set forth in the Settlement
20 Agreement are fair, reasonable, and adequate.

21 4. The Court further finds that the Settlement was the result of arm’s length
22 negotiations conducted after Class Counsel had adequately investigated the claims and became
23 familiar with the strengths and weaknesses of those claims. In particular, the amount of the
24 Settlement, the significant risks relating to certification, liability, and damages issues, and the
25 assistance of an experienced mediator in the settlement process, among other factors, support the
26 Court’s conclusion that the Settlement is fair, reasonable, and adequate.

27 **Preliminary Approval of the Settlement**

1 5. On April 11, 2023, the Court granted preliminary approval of the Settlement. At
2 this same time, the Court approved conditional certification of the Class for settlement purposes
3 only.

4 **Notice to the Class**

5 6. In compliance with the Preliminary Approval Order, the Class Notice was mailed
6 by first class mail to members of the Class at their last known addresses on or about May 5, 2023.
7 Mailing of the Class Notice to their last known addresses was the best notice option under the
8 circumstances and was reasonably calculated to communicate actual notice of the litigation and
9 the proposed settlement to the Class. The Class Notice given to the Class Members fully and
10 accurately informed the Class Members of all material elements of the proposed Settlement and of
11 their opportunity to object to or comment thereon or to seek exclusion from the Settlement;
12 constituted valid, due, and sufficient notice to all Class Members; and complied fully with the
13 laws of the State of California, the United States Constitution, due process and other applicable
14 law. The Class Notice fairly and adequately described the Settlement and provided Class
15 Members adequate instructions and a variety of means to obtain additional information.

16 7. The response deadline for opting out of the Class or submitting written objections
17 to the Settlement was June 19, 2023. There was an adequate interval between mailing of the Class
18 Notice and the response deadline to permit Class Members to choose what to do and act on their
19 decision. A full opportunity has been afforded to the Participating Class Members to participate in
20 this hearing, and all Participating Class Members and other persons wishing to be heard have been
21 heard. Class Members also have had a full and fair opportunity to exclude themselves from the
22 proposed Settlement and Class. Accordingly, the Court determines that all Class Members who
23 did not timely and properly submit a request for exclusion are bound by the Settlement and this
24 Final Approval Order and Judgment.

25 **Fairness Of Settlement**

26 8. The Settlement Agreement is entitled to a presumption of fairness. *Dunk v. Ford*
27 *Motor Co.* 48 Cal.App.4th 1794, 1801 (1996); *Moniz v. Adecco USA, Inc.*, 72 Cal.App.5th 56
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1 (2021).

2 a. The settlement was reached through arm's-length bargaining between the
3 parties during an all-day mediation before Lisa Klerman, a respected and experienced mediator of
4 wage and hour class actions. There has been no collusion between the parties in reaching the
5 proposed settlement.

6 b. Plaintiffs' investigation and discovery have been sufficient to allow the
7 Court and counsel to act intelligently.

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

10 d. The percentage of objectors and requests for exclusion is small. No
11 objections were received. Fifteen (15) requests for exclusion were received.

12 e. The participation rate was high. 12,706 Participating Class Members will
13 be mailed a settlement payment, representing 99.88% of the overall Class.

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

19 10. The Settlement Agreement is approved as fair, adequate and reasonable and in the
20 best interests of the Class Members.

21 **Attorneys' Fees and Costs**

22 11. An award of \$1,411,667 for attorneys' fees, representing less than 33.1% of the
23 Maximum Settlement Amount, and \$19,359.32 for litigation costs and expenses, is reasonable, in
24 light of the contingent nature of Class Counsel's fee, the hours worked by Class Counsel, and the
25 results achieved by Class Counsel. The requested award has been supported by Class Counsel's
26 lodestar and billing statement.

27 **Class Representative Service Awards**

1 12. The Settlement Agreement provides for Class Representative Service Awards of
2 not more than \$10,000 each to the Plaintiffs, subject to the Court's approval. The Court finds that
3 Class Representative Service Awards in the amount of \$10,000 each to the named Plaintiffs,
4 which is a total of \$30,000, are reasonable in light of the risks and burdens undertaken by the
5 Plaintiffs in the litigation, for their time and effort in bringing and prosecuting this matter on
6 behalf of the Class, and for their execution of a general release.

7 **Settlement Administration Costs**

8 13. The Settlement Administrator shall calculate and administer the payment to be
9 made to the Participating Class Members, transmit payment for attorneys' fees and costs to Class
10 Counsel, transmit the Class Representative Service Awards to the Plaintiffs, distribute the PAGA
11 Penalties, issue any required tax reporting forms, calculate withholdings and perform the other
12 remaining duties set forth in the Settlement Agreement. The Settlement Administrator has
13 documented \$65,000 in fees and expenses, and this amount is reasonable in light of the work
14 performed by the Settlement Administrator.

15 **PAGA Penalties**

16 14. The Settlement Agreement provides for PAGA Penalties out of the Maximum
17 Settlement Amount equal to \$215,000, which shall be allocated with 75% (\$161,250) allocated to
18 the LWDA and 25% (\$53,750) allocated to the PAGA Employee Fund for Individual PAGA
19 Settlement Shares to be distributed to the PAGA Employees. The Settlement Administrator will
20 calculate each Individual PAGA Settlement Share for each PAGA Employee by multiplying the
21 Pay Period Value by each PAGA Employee's individual pay periods. The PAGA Employees are
22 all current and former non-exempt employees of Defendant, excluding bargaining unit nurses,
23 during the PAGA Period (September 23, 2018 through March 12, 2023). The Court finds the
24 PAGA Penalties, including the settlement's allocation of civil penalties between the affected
25 PAGA Employees, to be fair and reasonable. All PAGA Employees will be sent their share of the
26 PAGA Penalties and will be subject to the release of all Released Claims for PAGA penalties
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1 whether or not they opt out of the Settlement because they cannot opt out of the PAGA portion of
2 the settlement.

3 **II.**

4 **ORDERS**

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

6 15. The certification of the Class for the purposes of settlement is confirmed. The
7 Class is defined as follows:

8 All current and former non-exempt employees of Defendant, excluding bargaining
9 unit nurses, from September 23, 2015 through March 13, 2023.

10 16. All persons who meet the foregoing definition are members of the Class, except for
11 those individuals who filed a valid request for exclusion ("opt out") from the Class. The following
12 individuals requested exclusion: Araceli Vizcarra, Charlene Terry, Cory Despain, Cynthia
13 McGowan, Edwina Selland, Felicia Brann, James Dunker, Jennifer Salaz, Judy Serrano, Kenneth
14 Erickson, Lisa Simpson, Mary Elington, Nancy Coleman, Richard Gaertner, and Sue Liao. To the
15 extent these individuals are covered by the PAGA portion of the Settlement they remain covered
16 by that portion of the Settlement.

17 17. The Settlement is hereby finally approved as fair, reasonable, adequate, and in the
18 best interest of the Class. Defendant shall fully fund the Maximum Settlement Amount, and also
19 fund the amount necessary to fully pay Employer Taxes in accordance with the Settlement
20 Agreement, by transmitting the funds to the Settlement Administrator within thirty (30) business
21 days of the Effective Date.

22 18. Class Counsel are awarded attorneys' fees in the amount of \$1,411,667 and costs in
23 the amount of \$19,359.32. The Class Counsel Fees shall be allocated between Class Counsel as
24 follows: 60% to James Hawkins APLC and 40% to Blumenthal Nordrehaug Bhowmik De Blouw
25 LLP. Class Counsel shall not seek or obtain any other compensation or reimbursement from
26 Defendant, Plaintiffs or members of the Class.

27 19. The payment of the Class Representative Service Awards in the amount of \$10,000
28 each to the named Plaintiffs, which is a total of \$30,000, is approved.

FINAL APPROVAL ORDER AND JUDGMENT

1 20. The payment of \$65,000 to the Settlement Administrator for their fees and
2 expenses is approved.

3 21. The PAGA Penalties in the amount of \$215,000 are approved and shall be allocated
4 in accordance with the Settlement Agreement.

5 22. The Settlement Agreement and this Settlement are not an admission by Defendant,
6 nor is this Final Approval Order and Judgment a finding, of the validity of any claims in the
7 Action or of any wrongdoing by Defendant or that this Action is appropriate for class treatment
8 (other than for settlement purposes). Neither this Final Approval Order and Judgment, the
9 Settlement Agreement, nor any document referred to herein, nor any action taken to carry out the
10 Settlement Agreement is, may be construed as, or may be used as an admission by or against
11 Defendant of any fault, wrongdoing or liability whatsoever. The entering into or carrying out of
12 the Settlement Agreement, and any negotiations or proceedings related thereto, shall not in any
13 event be construed as, or deemed to be evidence of, an admission or concession with regard to the
14 denials or defenses by Defendant. Notwithstanding these restrictions, Defendant may file in the
15 Action or in any other proceeding this Final Approval Order and Judgment, the Settlement
16 Agreement, or any other papers and records on file in the Action as evidence of the Settlement to
17 support a defense of res judicata, collateral estoppel, release, or other theory of claim or issue
18 preclusion or similar defense as to the Released Class Claims and/or the Released PAGA Claims.

19 23. Notice of entry of this Final Approval Order and Judgment shall be given to all
20 Parties by Class Counsel on behalf of Plaintiffs and all Class Members. It shall not be necessary
21 to send notice of entry of this Final Approval Order and Judgment to individual Class Members.

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

3 **IT IS HEREBY ORDERED, ADJUDICATED AND DECREED THAT:**

4 25. Except as set forth in the Settlement Agreement and this Final Approval Order and
5 Judgment, Plaintiffs, and all members of the Class, shall take nothing in the Action.

6 26. Pursuant to California Code of Civil Procedure section 664.6, the Court shall retain
7 jurisdiction to construe, interpret, implement and enforce the Settlement Agreement, to hear and
8 resolve any contested challenge to a claim for settlement benefits, and to supervise and adjudicate
9 any dispute arising from or in connection with the distribution of settlement benefits.

10 27. The Parties are authorized to agree to and to adopt such amendments, modifications
11 and expansions of the Settlement Agreement and all exhibits attached thereto which are consistent
12 with this Final Approval Order and Judgment and as approved by the Court.

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

15 29. Upon the Effective Date, Defendant and the other Released Parties shall be entitled
16 to a release from the Plaintiffs and the Class Members who do not opt out of the Released Claims
17 which occurred during the Class Period, but even for those who opt-out the Released Parties are
18 still entitled to a release of the PAGA claims released through the Settlement. "Released Claims"
19 means all claims for violations of the following Labor Code sections, as well as civil penalties
20 under PAGA, that were actually alleged or that could have been alleged in the Action by, on
21 behalf of the Class Member and the State of California, themselves and the PAGA Employees for
22 the entire Class Period and the entire PAGA Period, as well as any and all wage and hour claims
23 and that were asserted or could have been asserted based on the factual or legal allegations
24 contained in Plaintiffs' PAGA Letters and Plaintiffs Operative Complaint in the consolidated
25 actions, arising at any time during the Class Period or PAGA Period, including: (a) failure to pay
26 wages including overtime and minimum wage for all hours worked; (b) failure to provide meal
27 periods; (c) failure to provide rest periods; (d) failure to timely pay wages at termination; (e)

1 failure to provide accurate wage statements; (f) failure to indemnify for necessary business
2 expenses; (g) unfair business practices (Business and Professions Code section 17200 et seq.); (h)
3 penalties under PAGA for alleged violations of Labor Code sections 201-203, 204, 210, 221, 226,
4 226.3, 226.7, 246, 351, 510, 512, 558, 1194, 1197, 1197.1, 1198, 1198.5, 2699 et. seq., 2802,
5 2804; (i) claims for violation of the provisions of Wage Order 5 regarding alleged unpaid wages
6 (both minimum wage and overtime), failure to provide meal periods, failure to authorize and
7 permit rest breaks, failure to provide seating; (j) claims for the attorney's fees and costs incurred in
8 the prosecution of this Action on behalf of the Class Members and PAGA Employees; (k) any
9 other claims, remedies, penalties, or interest that could have been plead based on the facts alleged
10 in the Complaints filed in the Action; and (l) all claims that Plaintiffs, the Class Members and/or
11 the PAGA Employees may have against the Released Parties relating to: (i) the payment, taxation,
12 and allocation of attorney's fees and costs to Plaintiffs' Counsel pursuant to this Settlement
13 Agreement; and (ii) the payment, taxation, and allocation of Plaintiffs' Payment pursuant to this
14 Settlement Agreement. The release of the Released Claims shall be effective as to the entire
15 PAGA Period and entire Class Period; and expressly excludes all other claims, including claims
16 for vested benefits, wrongful termination, violation of the Fair Employment and Housing Act,
17 unemployment insurance, disability, social security, workers' compensation, and California class
18 claims outside of the Class Period, and PAGA claims outside of the PAGA period. The "Released
19 Parties" are Sharp and its related organizations, and each of their company-sponsored employee
20 benefit plans, and their respective successors and predecessors in interest, all of their respective
21 officers, directors, employees, administrators, fiduciaries, trustees and agents, and each of their
22 past, present and future officers, directors, shareholders, employees, agents, principals, heirs,
23 representatives, accountants, auditors, consultants, and attorneys.

24 30. Upon the Effective Date, Defendant and the Released Parties shall be entitled to a
25 release from the Plaintiffs, the State of California and all PAGA Employees of all Released
26 Claims for PAGA penalties.

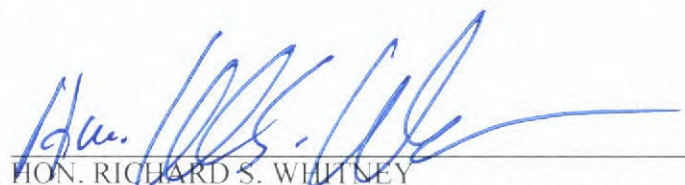
1 31. Plaintiffs Rosanieves Moran and Mary Canterbury understand that they may
2 hereafter discover facts in addition to or different from those Plaintiffs now know or believe to be
3 true with respect to the subject matter of the Released Claims, but upon the Effective Date, shall
4 be deemed to have, and by operation of the contemplated final judgment shall have, fully, finally,
5 and forever settled and released any and all of the Released Claims, as well as any other known or
6 unknown, suspected or unsuspected, contingent or non-contingent claims, which now exist, or
7 heretofore have existed, upon any theory of law or equity now existing, including, but not limited
8 to, alleged retaliation, conduct that is negligent, intentional, with or without malice, or a breach of
9 any duty, law or rule, without regard to the subsequent discovery or existence of such different or
10 additional facts, as set forth fully in the Settlement Agreement. Plaintiff Williams has provided
11 the Released Parties with a Complete and General Release in a separate release agreement.

12 32. Under California Rule of Court 3.769(h), without affecting the finality of this Order
13 and Judgment in any way, the Court retains jurisdiction over: (1) implementation and enforcement
14 of the Settlement Agreement pursuant to further orders of this Court until the final judgment
15 contemplated becomes effective and each and every act agreed to be performed by the parties has
16 been performed under the terms of the Settlement Agreement; (2) any other action necessary to
17 conclude this settlement and to implement the Settlement Agreement; and (3) the enforcement,
18 construction, and interpretation of the Settlement Agreement.

19 33. This document shall constitute a Judgment for purposes of California Rules of
20 Court, Rule 3.769(h).

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

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23 Dated: 9-15-23

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25 HON. RICHARD S. WHITNEY
26 JUDGE, SUPERIOR COURT OF CALIFORNIA
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FINAL APPROVAL ORDER AND JUDGMENT