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15 Attorneys for Plaintiff and the Class

16 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
17 **FOR THE COUNTY OF CONTRA COSTA**

18 RENATO FARIAS, individually and on behalf
19 of all others similarly situated,

20 Plaintiff,

21 vs.

22 JOHN MUIR HEALTH, a Corporation; and
23 DOES 1 through 50, inclusive,

24 Defendants.

Case No. C20-02454

*Assigned for All Purposes to Honorable
Edward G. Weil in Department 39*

**ORDER GRANTING PLAINTIFF'S
MOTION FOR PRELIMINARY
APPROVAL OF CLASS ACTION
SETTLEMENT**

Date: May 5, 2022

Time: 9:00 a.m.

Dept.: 39

1 Plaintiff Renato Farias moves for preliminary approval of his class action and PAGA
2 settlement with defendant John Muir Health.

3 **A. Background and Settlement Terms**

4 The original complaint was filed December 3, 2020, raising claims under PAGA and a
5 class action on behalf of non-exempt employees alleging that defendant violated the Labor Code
6 in various ways, primarily focused on the allegation that defendant paid sick leave at the base
7 rate of pay instead of the regular rate of pay.

8 The settlement would create a gross settlement fund of \$3,250,000. The class
9 representative payment to plaintiff would be \$10,000. Counsel's attorney's fees would be
10 \$1,083,333.33 (one-third of the settlement). Litigation costs would not exceed \$30,000. The
11 settlement administrator (Phoenix) would cap its costs at \$43,000. PAGA penalties would be
12 \$162,500, resulting in a payment of \$121,875 to the LWDA. The fund is non-reversionary.

13 The proposed settlement would certify a class of employees of defendant and related
14 entities" who: (a) were employed by JMH during the PAGA Period (May 23, 2019 through and
15 including November 8, 2021); and/or (b) received paid sick leave pay (PSL) or PTO-Sick pay
16 during the Class Period (June 8, 2016 through and including November 8, 2021)[.]" The class is
17 estimated at 9,280 members.

18 The class members will not be required to file a claim. Class members may object or opt
19 out of the settlement. (Class members cannot opt out of the PAGA portion of the settlement.)
20 Each class member would receive a \$100 "base payment" plus a "sick payment," which is based
21 on the number of pay periods in which PSL or PTO-Sick was paid below the regular rate of pay.
22 (Apparently, that information is available, enabling a more tailored allocation than is typical in
23 wage-and-hour cases.)

24 In addition, PAGA Members will receive an allocation based on pay periods worked.

25 Various prescribed follow-up steps will be taken with respect to mail that is returned as
26 undeliverable. Uncashed checks would be cancelled and the amounts would be would be
27 provided to the State Controller's Unclaimed Property Fund.

28 The settlement contains release language covering any claims "brought in the Lawsuit

1 (or that could have been brought in the Lawsuit based on the facts pleaded in the Lawsuit, and
2 except for Claims under Labor Code Section 2802)[.]” (Agreement, Par. 2.39.)

3 Informal discovery was undertaken prior to mediation. The matter settled after extensive
4 arms-length negotiations, with included a mediation session with an experienced mediator.

5 Counsel also has provided a summary of a quantitative analysis of the case, and how the
6 settlement compares to the potential value of the case, after allowing for various risks and
7 contingencies. As to the sick pay claim, however, Plaintiff estimates that it’s actual value equals
8 \$1,368,373, based on a calculation of the total number of pay periods worked by the class
9 (326,540) and the number of pay periods that include paid sick leave or PTO-Sick leave (9,615).
10 “Pay stub” claims are highly devalued. Claims for PAGA penalties are estimated by counsel at
11 a theoretical maximum of over \$59 million, but are difficult to evaluate for a number of reasons:
12 they derive from other violations, they include “stacking” of violations, the law may only allow
13 application of the “initial violation” penalty amount, and the total amount may be reduced in the
14 discretion of the court.

15 The LWDA was notified of the settlement.

16 **B. Legal Standards**

17 The primary determination to be made is whether the proposed settlement is “fair,
18 reasonable, and adequate,” under *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1801,
19 including “the strength of plaintiffs’ case, the risk, expense, complexity and likely duration of
20 further litigation, the risk of maintaining class action status through trial, the amount offered in
21 settlement, the extent of discovery completed and the state of the proceedings, the experience
22 and views of counsel, the presence of a governmental participant, and the reaction ... to the
23 proposed settlement.”

24 Because this matter also proposes to settle PAGA claims, the Court also must consider
25 the criteria that apply under that statute. Recently, the Court of Appeal’s decision in *Moniz v.*
26 *Adecco USA, Inc.* (2021) 72 Cal.App.5th 56, provided guidance on this issue. In *Moniz*, the court
27 found that the “fair, reasonable, and adequate” standard applicable to class actions applies to
28 PAGA settlements. (*Id.*, at 64.) The Court also held that the trial court must assess “the fairness

1 of the settlement’s allocation of civil penalties between the affected aggrieved employees[.]”
2 (*Id.*, at 64-65.)

3 California law provides some general guidance concerning judicial approval of any
4 settlement.

5 First, public policy generally favors settlement. (*Neary v. Regents of University of*
6 *California* (1992) 3 Cal.4th 273.) Nonetheless, the court should not approve an agreement
7 contrary to law or public policy. (*Bechtel Corp. v. Superior Court* (1973) 33 Cal.App.3d 405,
8 412; *Timney v. Lin* (2003) 106 Cal.App.4th 1121, 1127.) Moreover, “[t]he court cannot surrender
9 its duty to see that the judgment to be entered is a just one, nor is the court to act as a mere puppet
10 in the matter.” (*California State Auto. Assn. Inter-Ins. Bureau v. Superior Court* (1990) 50 Cal.3d
11 658, 664.) As a result, courts have specifically noted that *Neary* does not always apply, because
12 “[w]here the rights of the public are implicated, the additional safeguard of judicial review,
13 though more cumbersome to the settlement process, serves a salutary purpose.” (*Consumer*
14 *Advocacy Group, Inc. v. Kintetsu Enterprises of America* (2006) 141 Cal.App.4th 48, 63.)

15 **C. Attorney fees**

16 Plaintiffs seek one-third of the total settlement amount as fees, relying on the “common
17 fund” theory. Even a proper common fund-based fee award, however, should be reviewed
18 through a lodestar cross-check. In *Lafitte v. Robert Half International* (2016) 1 Cal.5th 480, 503,
19 the Supreme Court endorsed the use of a lodestar cross-check as a way to determine whether the
20 percentage allocated is reasonable. It stated: “If the multiplier calculated by means of a lodestar
21 cross-check is extraordinarily high or low, the trial court should consider whether the percentage
22 used should be adjusted so as to bring the imputed multiplier within a justifiable range, but the
23 court is not necessarily required to make such an adjustment.” (*Id.*, at 505.) Following typical
24 practice, however, the fee award will not be considered at this time, but only as part of final
25 approval.

26 Similarly, litigation costs and the requested representative payment of \$10,000 for each
27 plaintiff will be reviewed at time of final approval. Criteria for evaluation of such requests are
28 discussed in *Clark v. American Residential Services LLC* (2009) 175 Cal.App.4th 785, 804-807.

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D. Discussion

The moving papers sufficiently establish that the proposed settlement is fair, reasonable, and adequate to justify preliminary approval.

E. Conclusion

The motion is granted. Counsel are directed to prepare an order reflecting this tentative ruling, the other findings in the previously submitted proposed order, and to obtain a hearing date for the motion for final approval from the Department clerk. Other dates in the scheduled notice process should track as appropriate to the hearing date. The ultimate judgment must provide for a compliance hearing after the settlement has been completely implemented. Plaintiffs’ counsel are to submit a compliance statement one week before the compliance hearing date. 5% of the attorney’s fees are to be withheld by the claims administrator pending satisfactory compliance as found by the Court.

The Court **HEREBY FURTHER ORDERS THE FOLLOWING:**

1. The Court grants preliminary approval to the Settlement based on the terms set forth in Settlement Agreement (“Settlement” or “Agreement” used below, interchangeably, refer to the terms in the Settlement Agreement.) This Order incorporates by reference the definitions in the Agreement, and all terms defined therein shall have the same meaning in this Order as set forth in the Agreement.

2. The Settlement provides for Defendant John Muir Health (“Defendant”) to pay the Gross Settlement Amount of \$3,250,000. The Court preliminarily finds that the Settlement is fair, adequate, and reasonable to the Class, and preliminarily approves the terms of the settlement. This preliminary approval is subject to the objections of Class Members and final review by the Court.

3. A Final Approval Hearing shall be held before this Court on September 15, 2022, at 9:00 a.m. in Department 39 of the Superior Court of the State of California for the County of Contra Costa, to determine all necessary matters concerning the Settlement, including: whether the proposed settlement of the Action on the terms and conditions provided for in the Settlement is fair, adequate, and reasonable and should be finally approved by the

1 Court; whether the Final Approval Order and Judgment should be entered; whether the Plan
2 of Allocation contained in the Settlement should be approved as fair, adequate, and
3 reasonable to the Class Members; and whether to finally approve the PAGA Allocation, the
4 Class Counsel Award, the Service Award, and the Settlement Administration Expenses. The
5 motion for final approval and the motion for award of attorneys' fees and costs shall be filed
6 no later than sixteen (16) court days before the Final Approval Hearing.

7 4. The Court recognizes that the Plaintiff and the Defendant stipulate and agree
8 to certification of the Class for settlement purposes only. This stipulation will not be deemed
9 admissible in this or any other proceeding should this Settlement not become final. Whether
10 or not the settlement is finally approved, neither the Agreement, nor any document, statement,
11 proceeding or conduct related to the Agreement may be admitted in any proceeding as an
12 admission by Defendant or any of the Released Parties, the Plaintiff, or any person within
13 the definition of the Class.

14 5. The Class Period is from June 8, 2016, through and including November 8,
15 2021. The PAGA Period is from May 23, 2019, through and including November 8, 2021 For
16 settlement purposes only, the Court certifies the following Settlement Class: "all current and
17 former non-exempt California employees of John Muir Health and related entities John Muir
18 Behavioral Health, John Muir Physician Network, John Muir Health Foundation and John Muir
19 Health Community Benefit Fund (collectively 'JMH') who: (a) were employed by JMH during
20 the PAGA Period; and/or (b) received paid sick leave pay (PSL) or PTO-Sick pay during the
21 Class Period.

22 6. The Court hereby appoints Renato Farias as the representative of the Class.
23 The Court further appoints Diversity Law Group, A Professional Corporation, Law Offices of
24 Choi and Associates, and Hyun Legal, APC, as counsel for the Class ("Class Counsel").

25 7. The Agreement specifies for an attorneys' fees award not to exceed one-third
26 of the Gross Settlement Amount, an award of litigation expenses incurred, not to exceed
27 \$30,000, and proposed Service Award to the Class Representative in an amount not to exceed
28 \$10,000. While these awards appear to be within the range of reasonableness, the Court will

1 not approve the amount of attorneys' fees and costs until the Final Approval Hearing. Similarly,
2 the Court will not decide the amount of any Class Representative Service Payment until the
3 Final Approval Hearing. The Plaintiff will be required to present evidence supporting these
4 requests, including lodestar, prior to final approval. The Court further orders that, in the event
5 that final approval is granted, 5% of the attorney's fees are to be withheld by the Settlement
6 Administrator pending satisfactory compliance as found by the Court.

7 8. The Court hereby approves, as to form and content, the Class Notice attached
8 as Exhibits A to the Agreement. The Court finds that the distribution of the Class Notice
9 substantially in the manner and form set forth in the Agreement and this Order meets the
10 requirements of due process, is the best notice practicable under the circumstances, and
11 shall constitute due and sufficient notice to all persons entitled thereto. The Court hereby
12 approves on a preliminary basis the Gross Settlement Amount as provided for in the
13 Agreement. It appears to the Court on a preliminary basis that the settlement amount and
14 terms are fair, adequate, and reasonable as to all potential Class Members when balanced against
15 the probable outcome of further litigation relating to liability and damages issues. It further
16 appears that: investigation and research have been conducted such that counsel for the Parties
17 at this time are able to reasonably evaluate their respective positions; that settlement at this
18 time will avoid substantial additional costs by all Parties, as well as avoid the delay and risks
19 that would be presented by the further prosecution of the Action; and that the Settlement has
20 been reached as the result of intensive, serious and non-collusive, arms-length negotiations
21 before an experienced mediator.

22 9. The Court hereby appoints Phoenix Settlement Administrators. as Settlement
23 Administrator. Within 14 days of this Order, Defendant will provide to the Settlement
24 Administrator an electronic database containing the Class Information. Within 30 days of this
25 Order, the Settlement Administrator will mail the Class Notice Packets to all Class Members
26 via first-class regular U.S. Mail to their last known address.

27 10. Any Class Member may choose to opt out of and be excluded from the Class
28 as provided in the Class Notice by following the instructions for requesting exclusion from

1 the Class that are set forth in the Class Notice. PAGA Members may not opt out of the PAGA
2 portion of the Settlement. All requests for exclusion must be submitted within forty-five (45)
3 days from the date the Class Notice is first mailed. Any such person who chooses to opt out of
4 and be excluded from the Class will not be entitled to any recovery under the Settlement
5 and will not be bound by the non-PAGA portion of the Settlement or have any right to
6 object, appeal, or comment thereon. Any written request to opt out must comply with the
7 instructions in the Class Notice and be signed by each such person opting out. Class Members
8 who have not validly requested exclusion shall be bound by all determinations of the Court,
9 the Agreement, and the Judgment.

10 11. Any Class Member who has not opted out may appear at the final approval
11 hearing and may object or express their views regarding the Settlement and may present
12 evidence and file briefs or other papers that may be proper and relevant to the issues to be heard
13 and determined by the Court as provided in the Class Notice. Class Members will have 45
14 days from the date the Class Notices are mailed to postmark their written objections to the
15 Settlement Administrator. Class Members who fail to timely submit objections in the manner
16 specified above shall be deemed to have waived any objections and shall be foreclosed from
17 making any objection (whether by appeal or otherwise) to the Settlement.

18 12. The Settlement is not a concession or admission and shall not be used
19 against Defendant as an admission or indication with respect to any claim of any fault or
20 omission by Defendant. Whether or not the Settlement is finally approved, neither the
21 Settlement, nor any document, statement, proceeding or conduct related to the Settlement, nor
22 any reports or accounts thereof, shall in any event be construed as, offered or admitted in
23 evidence as, received as or deemed to be evidence for any purpose adverse to the Defendant,
24 including, but not limited to, evidence of a presumption, concession, indication or admission by
25 Defendant of any liability, fault, wrongdoing, omission, concession, or damage.


26 13. In the event the Settlement does not become effective in accordance with
27 the terms of the Agreement, or the Settlement is not finally approved, or is terminated or fails
28 to become effective for any reason, this Order shall be rendered null and void and shall be

1 vacated, and the Parties shall revert to their respective positions as of before entering into
2 the Agreement.

3 14. The Court reserves the right to adjourn or continue the date of the final
4 approval hearing and all dates provided for in the Agreement without further notice to Class
5 Members and retains jurisdiction to consider all further applications arising out of or
6 connected with the proposed Settlement.

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DATED: May 11, 2022



Honorable Edward G. Weil
Judge of the Superior Court

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