

THE HONORABLE ROBERT J. BRYAN

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IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON
AT TACOMA

HANA ETCHEVERRY, Individually and On
Behalf of All Others Similarly Situated,

Plaintiff,

v.

FRANCISCAN HEALTH SYSTEM D/B/A
CHI FRANCISCAN HEALTH,
FRANCISCAN MEDICAL GROUP,
FRANCISCAN HEALTH VENTURES,
HARRISON MEDICAL CENTER, and
HARRISON MEDICAL CENTER
FOUNDATION.

Defendants.

Case No. 3:19-cv-05261-RJB-MAT

**FINAL APPROVAL ORDER AND
JUDGMENT**

**NOTED FOR HEARING: October 19,
2021 at 9:30am**

1 The Motion for Final Approval of Class and Collective Action Settlement filed by Plaintiff
2 Hana Etcheverry came for hearing in the above-captioned court, the Honorable Robert J. Bryan
3 presiding. Defendants do not oppose the motion.

4 In the Complaint, Plaintiff alleges that Defendants violated federal and Washington wage
5 and hour laws with respect to a group of approximately 8,000 current and former non-exempt
6 patient care staff who have worked for Franciscan Health System d/b/a CHI Franciscan Health,
7 Franciscan Medical Group, Franciscan Health Ventures, Harrison Medical Center, and Harrison
8 Medical Center Foundation (“Defendants” or “CHI Franciscan”). Throughout the relevant time
9 period, Plaintiff alleges she and other patient care workers were required to remain on-duty during
10 their unpaid, automatically-deducted meal breaks and rest periods in accordance with Defendants’
11 practices, policies, and as a requirement to abide by their patient care-related ethical obligations to
12 their patients. Plaintiff also alleges she and other patient care workers were required to arrive early
13 for their shifts, but were instructed to remain clocked out while they prepared for their day and were
14 required to clock in only within a few minutes of their scheduled start time. Plaintiffs also allege
15 they were required to clock out within a few minutes of their end-of-shift, but were expected to stay
16 late to complete charting and assist other hospital personnel.

17 Plaintiff alleges causes of action under the Fair Labor Standards Act (“FLSA”), 29 U.S.C.
18 §§ 201, *et seq.*; and Washington wage and hour laws, RCW 49.46.090, 49.46.130, 49.48.010,
19 49.52.050, 49.12.020 and WAC 296-126-092, and 19.86.090.

20 After formal discovery, informal discovery, and investigation by Class Counsel, the Parties
21 entered into voluntary private mediation session overseen by Cliff Freed of the Washington
22 Arbitration & Mediation Service in an attempt to resolve the claims. Following the initial mediation
23 session, and after months of settlement negotiations where Mr. Freed continued to act as mediator,
24 the Parties reached a global settlement that resolves all of the claims in the action as to the Class
25 Members. The Parties then executed a Class and Collective Action Settlement Agreement, that was
26 executed on or around June 9, 2021, filed at ECF 70-1.

1 Plaintiff filed a Motion for Preliminary Approval of Class and Collective Action Settlement
2 on June 10, 2021. ECF 67. The Court granted the motion on June 16, 2021. *See* ECF 70. Before the
3 Court is the last stage of the settlement approval process: final approval of the Settlement. Plaintiff
4 has separately moved for approval of attorneys' fees and costs and the service award for the Class
5 Representative.

6 At the final approval hearing, Schneider Wallace Cottrell Konecky LLP and Terrell Marshall
7 Law Group, PLLC appeared for Plaintiff and the Class and Collective, and Polsinelli for
8 Defendants.

9 Having reviewed the papers and documents presented, having heard the statements of
10 counsel, and having considered the matter, the Court HEREBY ORDERS as follows:

11 1. The Court has jurisdiction over the claims of the Participating Class Members and
12 Opt-In Plaintiffs asserted in this proceeding and over all Parties to the action.

13 2. The Court finds that zero Class Members have objected to the Settlement and two
14 Class Members have requested exclusion from the Settlement. Additionally, approximately 1,811
15 Collective Members have filed valid opt-in forms.

16 3. The Court hereby excludes Faith Pearsall, Cheri Evanson, Patricia Wims and
17 Stashanee Barrett from the Settlement and this Final Approval Order and Judgment, on the basis of
18 their Requests for Exclusion. Faith Pearsall, Cheri Evanson, Patricia Wims and Stashanee Barrett
19 have opted out of the Settlement, and they shall not be paid any monies under the Settlement and
20 shall not be subject to the release of any claims under the Settlement.

21 4. The Court hereby GRANTS final approval of the terms and conditions contained in
22 the Settlement, as to the Participating Class Members and Opt-In Plaintiffs. The Court finds that
23 the terms of the Settlement are within the range of possible approval, pursuant to Federal Rule of
24 Civil Procedure 23 and applicable law.

25 5. The Court finds that: (1) the settlement amount is fair and reasonable to the
26 Participating Class Members and Opt-In Plaintiffs when balanced against the probable outcome of
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1 further litigation relating to class and collective certification, liability and damages issues, and
2 potential appeals; (2) sufficient discovery, investigation, research, and litigation have been
3 conducted such that counsel for the Parties at this time are able to reasonably evaluate their
4 respective positions; (3) settlement at this time will avoid substantial costs, delay, and risks that
5 would be presented by the further prosecution of the litigation; and (4) the proposed Settlement has
6 been reached as the result of intensive, serious, and non-collusive negotiations between the Parties.
7 Accordingly, the Court finds that the Settlement was entered into in good faith.

8 6. The Court hereby makes final its certification of the provisional Class, in accordance
9 with the Settlement, for the purposes of this Settlement only. The Class is defined as all current and
10 former non-exempt patient care workers, identified by specific job categories identified in the
11 Settlement Agreement at ¶ I.B, employed by Defendants and subjected to an automated 30-minute
12 meal period deduction policy at any time from April 9, 2015 through final judgment.¹ The Court
13 hereby makes final its certification of the FLSA Collective comprised of the Opt-In Plaintiffs in
14 this Action.

15 7. The Court hereby finally appoints Plaintiff as the Class Representative and as
16 representative for Class and Collective.

17 8. The Court hereby finally appoints Schneider Wallace Cottrell Konecky LLP and
18 Terrell Marshall Law Group, PLLC as Class Counsel.

19 9. The Court finds that the approved Class and Collective Notice Packet (ECF 70-1 at
20 pp. 26-39) constituted the best notice practicable under the circumstances and is in full compliance
21 with the applicable laws and the requirements of due process. The Court finds that the Class and
22 Collective Notice Packet fully and accurately informed the Class Members of all material elements
23 of the proposed Settlement, of their right to be excluded from the Settlement, and of their right and
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25 ¹ Excluding the time period covered by any previous settlement involving the Class including, but
26 not limited to, a settlement with St. Joseph Medical Center which applied to registered nurses
27 from April 9, 2015 through November 30, 2016.

1 opportunity to object to the Settlement. A full opportunity has been afforded to the Class Members
2 to participate in this hearing and all Class Members and other persons wishing to be heard have
3 been heard. Accordingly, the Court determines that all Class Members that did not submit a Request
4 for Exclusion are bound by this Final Approval Order and Judgment.

5 10. The Court further finds that the Class and Collective Notice Packet fully and
6 accurately informed the Collective Members of all material elements of the proposed Settlement
7 and of their right to opt in to the Settlement. Accordingly, the Court determines that all Opt-In
8 Plaintiffs are bound by this Final Order and Judgment.

9 11. The Court FINALLY APPROVES Class Counsel's request for attorneys' fees of one
10 third of the Gross Settlement Amount, for a total of \$1,833,333.33 in fees. This amount is justified
11 under the common fund doctrine, the range of awards ordered in this District and Circuit, the
12 excellent results obtained, the substantial risk borne by Class Counsel in litigating this matter, the
13 high degree of skill and quality of work performed, the financial burden imposed by the contingency
14 basis of Class Counsel' representation of Plaintiff and the Class and Collective, and the additional
15 work required of Class Counsel to bring this Settlement to conclusion. The Court finds the fee
16 award is further supported by a lodestar crosscheck, whereby it finds that the hourly rates of
17 Schneider Wallace Cottrell Konecky LLP and Terrell Marshall Law Group, PLLC are reasonable,
18 and that the estimated hours expended are reasonable.

19 12. The Court FINALLY APPROVES Class Counsel's request for litigation costs in the
20 amount of \$11,000.00.

21 13. The Court FINALLY APPROVES a service award of \$10,000 for Plaintiff, and finds
22 that this award is fair and reasonable for the work this individual provided to the Class and
23 Collective and the broader release she executed than the Class Members and Opt-In Plaintiffs.

24 14. The Court confirms the appointment of Settlement Services, Inc. ("SSI") as
25 Settlement Administrator and approves its reasonable administration costs of \$75,000.00, which
26 are to be paid from the Gross Settlement Amount.

1 15. The Court approves Pierce County Catholic Community Services and the Legal
2 Foundation of Washington as the *cy pres* recipients, with any *cy pres* funds split equally between
3 the two organizations.

4 16. Accordingly, GOOD CAUSE APPEARING, the Court hereby APPROVES the
5 following implementation schedule.

6 7 8 9 10 11 12	Effective Date	The date by which the Agreement is approved by the Court, and latest of: (i) if no objection to the Settlement is made, or if an objection to the Settlement is made and Judgment is entered but no appeal is filed, the last date on which a notice of appeal from the Judgment may be filed and none is filed; or (ii) if Judgment has been entered and a timely appeal from the Judgment is filed, the date the Judgment is affirmed and is no longer subject to appeal.
13 14	Deadline for Defendants to pay the Gross Settlement Amount into the Qualified Settlement Account	Within 15 business days after Effective Date
15 16	Deadline for Defendants to deposit the amount of employer-side payroll taxes	Within 15 business days after Effective Date
17 18	Deadline for Settlement Services Inc. to make payments under the Settlement to Participating Class Members, Opt-In Plaintiffs, Plaintiff, Class Counsel, and itself	Within 15 days after Defendants fund the Gross Settlement Amount
19 20	Deadline for SSI to send a reminder notice to Participating Class Members that have not cashed their Settlement Share checks	120 days after issuance
21	Check-cashing deadline	180 days after issuance
22 23 24	Deadline for SSI to redistribute funds from uncashed Settlement Share checks to those Class Members and Opt-In Plaintiffs who cashed their Settlement Share checks or to the <i>cy pres</i> recipients, as applicable	As soon as practicable after check-cashing deadline
25 26 27	Deadline for SSI to provide written certification of completion of administration of the Settlement to counsel for all Parties and the Court	As soon as practicable after completion of the redistribution of uncashed Settlement Share check funds and/or the tender such funds to <i>cy pres</i>

1 17. The Court further ORDERS that, pending further order of this Court, all proceedings
2 in the Action, except those contemplated herein and in the Settlement, are stayed.

3 18. With this final approval of the Settlement, it is hereby ordered that all claims that are
4 released as set forth in the Settlement are barred as of the Effective Date.

5 19. The Court permanently enjoins all of the Participating Class Members and Opt-In
6 Plaintiffs from pursuing, or seeking to reopen, any released claims (as defined in the Settlement at
7 Paragraph III.G) against any of the Defendants and Released Parties (as defined in the Settlement
8 at Paragraph I.EE) as of the Effective Date.

9 20. The Court dismisses the above-captioned Action with prejudice and HEREBY
10 ENTERS JUDGMENT consistent with the Settlement and this Order to so dismiss the Action.
11 Accordingly, The Court HEREBY ORDERS, ADJUDGES, AND DECREES THAT all
12 Participating Class Members and all Opt-In Plaintiffs are permanently enjoined and barred from
13 prosecuting against any released claims (as defined in the Settlement at Paragraph III.G) against
14 any of the Defendants and Released Parties (as defined in the Settlement at Paragraph I.EE) as of
15 the Effective Date.

16 21. The Court shall retain jurisdiction to enforce the terms of the Settlement.

17 **IT IS SO ORDERED, ADJUDGED, AND DECREED.**

18 Dated this 19th day of October, 2021.

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20 ROBERT J. BRYAN
21 United States District Judge
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