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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN BERNARDINO

EVELYN MARTINEZ and SANDY ACOSTA, as
individuals and on behalf of all others similarly
situated, and as private attorneys general,

Plaintiffs,

vs.

CITY OF HOPE NATIONAL MEDICAL
CENTER, a California corporation; CITY OF
HOPE, a California corporation; CITY OF HOPE
MEDICAL FOUNDATION, a California
corporation; and DOES 1 through 50, inclusive,

Defendants.

Case No. CIVDS2015729

[Hon. David Cohn, Department S26]

**[PROPOSED] ORDER GRANTING
MOTION FOR PRELIMINARY APPROVAL
OF CLASS ACTION AND PAGA
SETTLEMENT**

*[Filed concurrently with Notice of Motion and
Motion for Preliminary Approval; Declaration of
Larry W. Lee; Declaration of Simon L. Yang;
Declaration of Edwin Aiwazian; Declaration of
Evelyn Martinez; Declaration of Sandy Acosta]*

Date: June 21, 2022
Time: 10:00 a.m.
Department: S26

Complaint Filed: August 4, 2020
FAC Filed: September 28, 2021
SAC Filed: April 7, 2022

1 A hearing on Plaintiffs Evelyn Martinez and Sandy Acosta’s (“Plaintiffs”) Motion for
2 Preliminary Approval of Class Action and PAGA Settlement was held before this Court on June 21,
3 2022. Lawyers *for* Justice, PC and Diversity Law Group, P.C. appeared as counsel of record for the
4 Plaintiffs and GBG LLP appeared as counsel for Defendants City of Hope, City of Hope National
5 Medical Center, and City of Hope Medical Foundation (“Defendants”). Plaintiffs and Defendants are
6 collectively referred to as the “Parties.” Counsel for the Parties appeared telephonically.

7 On August 4, 2020, Plaintiff, Evelyn Martinez, initiated this class and representative Labor Code
8 Private Attorneys General Act of 2004 (“PAGA”) action. On July 27, 2021, the Parties attended
9 mediation that did not result in a resolution. On September 28, 2021, Plaintiff Martinez filed an
10 amended complaint.

11 On December 23, 2021, Plaintiff Martinez, as well as Sandy Acosta, who was the plaintiff in two
12 separate lawsuits pending in Los Angeles Superior Court, attended a second mediation with Defendants
13 City of Hope, City of Hope National Medical Center, and City of Hope Medical Foundation. Following
14 extensive settlement negotiations, the Parties were ultimately able to agree to settlement terms described
15 in the Stipulation of Class Action and PAGA Settlement (“Agreement”) attached as Exhibit 1 to the
16 Declaration of Larry W. Lee.

17 On February 4, 2022, Plaintiff Martinez filed a notice of settlement. As part of the terms of the
18 global resolution, the Parties agreed to file an amended complaint in this matter, which adds Plaintiff
19 Acosta and her allegations and causes of action, in order to implement the settlement. On February 10,
20 2022, the Court granted leave to file the operative Second Amended Class and Representative Action
21 Complaint (“Second Amended Complaint”), which was filed on April 7, 2022.

22 The operative Second Amended Complaint alleges that Defendants have violated the California
23 Labor Code and Industrial Welfare Commission (“IWC”) Wage Orders by engaging in a uniform
24 practice and procedure with respect to Plaintiffs and the Settlement Class, failing to properly pay
25 regular, reporting time pay, overtime, and minimum wages for all hours worked (including and not
26 limited to, arising from off-the-clock work (e.g., for alleged time spent in or on prior to clocking in and
27 after clocking out, including and not limited to, COVID-19 screenings and/or donning and doffing),
28 reporting time, rounding, and incorrect regular rate calculations), failing to provide a day of rest, failing

1 to provide compliant meal period and rest periods and associated premium pay, failing to timely pay
2 wages and associated waiting time penalties, failing to provide compliant wage statements, failing to
3 keep requisite payroll records and produce personnel records, and failing to reimburse business
4 expenses. It further alleges that Defendants have thereby engaged in unfair business practices in
5 violation of the California Business and Professions Code section 17200 *et seq.* and conduct giving rise
6 to civil penalties recoverable pursuant PAGA.

7 After considering the papers and evidence, arguments of counsel, and all other matters presented
8 to the Court, and having taken the matter under submission, **IT IS HEREBY ORDERED** as follows:

9 1. The Court conditionally certifies the following “Settlement Class” for settlement
10 purposes only: all non-exempt employees of City of Hope, City of Hope National Medical Center, and
11 City of Hope Medical Foundation who were employed at any time between July 23, 2016 to March 31,
12 2022 in the State of California, with the exception of individuals whose entire employment by
13 Defendants during the period July 23, 2016 to March 31, 2022 is covered by the settlement in *Jordan A.*
14 *Seper v. City of Hope National Medical Center*, Los Angeles Superior Court Case No. BC630925.

15 2. The Court finds that on a preliminary basis the terms and conditions provided for in the
16 Stipulation of Class Action and PAGA Settlement (“Agreement”) for settlement and resolution of Class
17 Released Claims (“Class Settlement”) fall within the range of reasonableness of a settlement and appears
18 to be presumptively valid, subject to any objections that may be raised at the final approval hearing and
19 subject to final approval by the Court. It appears to the Court on a preliminary basis that the Class
20 Settlement is fair, adequate, and reasonable as to all potential Settlement Class Members when balanced
21 against the uncertain outcome of further litigation relating to liability and damages issues. It also appears
22 that investigation, research, and court proceedings have been conducted so that counsel for the Parties
23 are able to reasonably evaluate their respective positions. It appears to the Court that settlement at this
24 time will avoid substantial additional costs by all Parties, as well as avoid the delay and risks that would
25 be presented by the further prosecution of the action. It also appears that settlement has been reached as
26 a result of intensive, serious, and non-collusive arms-length negotiations.

27 3. The Court appoints and designates: (a) Plaintiffs Evelyn Martinez and Sandy Acosta as
28 Class Representatives, and (b) Larry W. Lee and Simon L. Yang of Diversity Law Group, P.C., and

1 Edwin Aiwasian, Arby Aiwasian, and Joanna Ghosh of Lawyers *for* Justice, PC as Class Counsel for the
2 Settlement Class. Class Counsel is authorized to act on behalf of the Settlement Class with respect to all
3 acts or consents required by, or which may be given, pursuant to the Agreement, and such other acts
4 reasonably necessary to finalize the Agreement and its terms. Any Participating Settlement Class
5 Member may enter an appearance through his or her own counsel at such Participating Settlement Class
6 Member's own expense. Any Participating Settlement Class Member who does not enter an appearance
7 or appear on his or her own behalf will be represented by Class Counsel.

8 4. A final approval hearing on the question of whether the Agreement, settlement amount,
9 the allocation of payments to Settlement Class Members, attorneys' fees and costs to Class Counsel, and
10 Class Representative Service Awards to Plaintiffs should be finally approved as fair, reasonable, and
11 adequate as to the members of the Class is set for _____, 2022, at _____ in
12 this Court ("Final Approval Hearing"). On a preliminary basis, the Agreement and monetary payments
13 and allocations provided thereby could ultimately be given final approval

14 5. The Court also finds that the terms and conditions provided for in the Agreement for
15 settlement and resolution of PAGA Released Claims ("PAGA Settlement") are fair, reasonable, and
16 adequate as to the State of California and all non-exempt employees of City of Hope, City of Hope
17 National Medical Center and City of Hope Medical Foundation who were employed at any time
18 between May 28, 2019 to March 31, 2022 in the State of California ("PAGA Aggrieved Employees").
19 The Court hereby approves the PAGA Settlement and finds that it, the PAGA Penalties, and the
20 allocation of payments to the Labor and Workforce Development Agency and PAGA Aggrieved
21 Employees are fair, reasonable, and adequate.

22 6. The Court hereby approves, as to form and content, the Notice of Class Action Settlement
23 ("Class Notice"), which is attached as Exhibit A to the Agreement and **Exhibit 1** to this Order. The
24 Court finds that distribution of the Class Notice to Settlement Class Members substantially in the
25 manner and form set forth in the Agreement and this Order meets the requirements of due process and
26 shall constitute due and sufficient notice to all parties entitled thereto.

1 7. The Court appoints and designates Simpluris, Inc. as the Settlement Administrator. The
2 Court hereby directs the Settlement Administrator to provide the approved Class Notice to Settlement
3 Class Members using the procedures set forth in the Agreement.

4 8. Any Settlement Class Member may choose to opt out of and be excluded from the Class
5 Settlement as provided in the Agreement and Class Notice and by following the instructions for
6 requesting exclusion. Any Settlement Class Member who timely and properly opts out of the Class
7 Settlement will not be bound by the Class Settlement or have any right to object, appeal, or comment
8 thereon. Any Request for Exclusion must be in writing and signed by each such Settlement Class
9 Member opting out and must otherwise comply with the requirements delineated in the Class Notice.
10 Settlement Class Members who have not requested exclusion by submitting a valid and timely Request
11 for Exclusion shall be bound by all determinations of the Court, the Agreement, and final judgment.
12 Nevertheless, all PAGA Aggrieved Employees (including those who request exclusion from the Class
13 Settlement) shall be bound by the PAGA Settlement and shall be issued Individual PAGA Payments
14 after the Effective Date.

15 9. Any Participating Settlement Class Member may object to the Class Settlement or
16 express his or her views regarding the Class Settlement by submitting a Notice of Objection to the
17 Settlement Administrator as provided in the Class Notice or by presenting their objection orally at the
18 Final Approval Hearing. Any Participating Settlement Class Member may present evidence and file
19 briefs or other papers relevant to the issues to be heard and determined by the Court as provided in the
20 Class Notice.

21 10. A Motion for Final Approval shall be filed by the Class Representatives no later than
22 sixteen (16) court days before the Final Approval Hearing.

23 11. The Court reserves the right to adjourn or continue the date of the Final Approval
24 Hearing and all dates provided for in the Agreement and/or or this Order without further notice to the
25 Settlement Class. The Court retains jurisdiction to consider all further applications arising out of or
26 connected with the Agreement.

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1 12. Should for whatever reason final approval not be granted, the fact that the Parties were
2 willing to stipulate to certification of a class as part of the settlement shall have no bearing on the issue
3 of whether a class should be certified in a non-settlement context.

4 **IT IS SO ORDERED.**

5 DATED: _____, 2022

THE HONORABLE DAVID COHN