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SUPERIOR COURT OF CALIFORNIA

COUNTY OF SACRAMENTO

Coordination Proceeding
Special Title (Rule 3.550)

**SUNSHINE RETIREMENT WAGE AND
HOUR CASES**

) JCCP No. 5247
) Hon. Lauri A. Damrell
) Dept. 28
)
) **[PROPOSED] ORDER GRANTING**
) **PLAINTIFFS' MOTION FOR**
) **PRELIMINARY APPROVAL OF CLASS**
) **ACTION AND PAGA SETTLEMENT**
)
) Date: October 6, 2023
) Time: 9:00 a.m.
) Dept.: 28
)
) Action filed: September 22, 2021
)

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

1 WHEREAS, this Action is pending before this Court as a putative class action lawsuit brought
2 by Lupe Morales, Erika Muniz, and Blanca Navarro, the Named Plaintiffs (“Plaintiffs” or “Named
3 Plaintiffs”) against Defendants Sunshine Retirement Living, LLC dba Creekside Oaks, Folsom
4 Retirement LP, Antioch Retirement Residence LP, Deer Park Retirement Residence LP, La Mesa
5 Retirement Residence LP, LaQuinta Investors LP, Canterbury Court Investors LLC, and Fountain
6 Valley Senior Living LLC (hereinafter referred to as “Defendants”); and

7 WHEREAS, Class Counsel applied to this Court for an order preliminarily approving the
8 settlement of the Action in accordance with the Class Action and PAGA Settlement Agreement (the
9 “Settlement Agreement”), which, together with the exhibits annexed thereto, sets forth the terms and
10 conditions for a proposed Settlement and final resolution of the Action upon the terms and conditions
11 set forth therein; and the Court having read and considered the Settlement Agreement and the exhibits
12 annexed thereto;

13 NOW, THEREFORE, IT IS HEREBY ORDERED:

14 1. This Order incorporates by reference the definitions in the Settlement Agreement, and
15 all terms defined therein shall have the same meaning in this Order as set forth in the Settlement
16 Agreement. Per the Parties’ Settlement Agreement, the Court hereby conditionally certifies the
17 following Settlement Class: All current and former non-exempt hourly individuals employed by
18 Defendants at any time from September 27, 2017, until October 6, 2023, at any of the Defendant’s
19 California facilities.

20 2. Effective on the date when Defendant fully funds the entire Gross Settlement Amount
21 and funds all employer payroll taxes owed on the Wage Portion of the Individual Class Payments,
22 Plaintiffs, Participating Class Members, and Class Counsel will release claims against all Released
23 Parties as follows:

24 a. Plaintiffs’ Release. As part of the consideration for the settlement of Plaintiffs’
25 representative service awards, Plaintiffs shall enter into individual general releases of
26 all known and unknown claims of any type whatsoever that they may have against the
27 Released Parties. These releases are entitled “Individual General Release,”
28

1 (“Releases”). These Releases are incorporated herein by reference and attached to
2 the settlement agreement as **Exhibit B**. These Releases include, but are not
3 limited to, a release of all claims under the Fair Employment and Housing Act,
4 Americans with Disabilities Act, and Title VII of the Civil Rights Act of 1964. This
5 will also include a release of any and all claims, known or unknown, contingent or
6 accrued arising out of any act or event that occurred prior to execution of the release,
7 including a California Civil Code section 1542 waiver.

- 8 b. Plaintiffs’ Waiver of Rights Under California Civil Code Section 1542. For
9 purposes of Plaintiffs’ Release, the named Plaintiffs expressly waive and relinquish
10 the provisions, rights, and benefits, if any, of section 1542 of the California Civil
11 Code, which reads:

12 A general release does not extend to claims that the creditor or releasing party does
13 not know or suspect to exist in his or her favor at the time of executing the release,
14 and that if known by him or her would have materially affected his or her settlement
with the debtor or Released Party

- 15 c. Release by Class Members: Each Class Member who does not opt out of
16 the settlement shall be deemed to release the Released Parties from any and
17 all claims, known or unknown, that: were asserted in any and/or all of the
18 complaints in the Action and/or any of Plaintiffs’ letters to the LWDA
19 (including any subsequently amended complaints or letters); and/or any and
20 all claims, that could have been asserted based on the factual allegations in
21 all of the complaints in the Action and/or any of Plaintiffs’ letters to the
22 LWDA (including any subsequently amended complaints or letters). This
23 includes but is not limited to claims for or related to: pay for all hours
24 worked/compensation due for services; calculation of the regular rate of pay;
25 rest periods; meal and/or rest period premiums pay, including the calculation
26 of the meal and/or rest period premium pay; wage statements; payment of
27 wages at termination; maintain accurate and complete records; unfair

1 competition related to any or all of the foregoing; any unpaid wages or
2 compensation related to any or all of the foregoing; restitution related to any
3 or all of the foregoing; and any penalties, including statutory or civil
4 penalties, related to any or all of the foregoing. This release includes any and
5 all claims pursuant to: California Labor Code sections §§ 200, et seq., 204,
6 226, 226.7, 510, 512, 1194, 1194.2, 1197, 1198, and 2698, et seq.; Business
7 & Professions Code § 17200; and Industrial Welfare Commission Wage
8 Order 5-01. The release shall run through the date the court grants
9 preliminary approval of the settlement or sixty (60) days after the agreement
10 is signed, whichever occurs first.

- 11 d. Release by PAGA Representative Action Members: Each PAGA
12 Representative Action Member, irrespective of whether he or she opts out of
13 the settlement as a Non-Participating Class Member, shall be deemed to
14 release the Released Parties from any and all claims, known or unknown, for
15 civil penalties under California Labor Code section 2698 et seq. (PAGA)
16 that: were asserted in any and/or all of the complaints in the Action and/or
17 any of Plaintiffs' letters to the LWDA (including any subsequently amended
18 complaints or letters); and/or any and all claims, that could have been
19 asserted based on any or all the factual allegations in any and/or all of the
20 complaints in the Action and/or any of Plaintiffs' letters to the LWDA
21 (including any subsequently amended complaints or letters). This release
22 includes, but is not limited to, claims for PAGA civil penalties premised on:
23 California Labor Code sections §§ 200, et seq. (inclusive of section 201-
24 203), 210, 218, 226, 226.7, 246, 510, 512, 558, 1174, 1174.5, 1194, 1194.2,
25 1197, 1198, and 2698, et seq.; failure to pay overtime; failure to pay for all
26 hours worked/compensation due for services; calculation of the regular rate
27 of pay, including failure to include all remuneration into the regular rate for
28 overtime, meal and rest period premiums and sick pay, and other incentive

1 payments when calculating the overtime rate; failure to provide meal
2 periods; failure to authorize and permit rest periods; failure to pay meal or
3 rest period premiums, including the calculation of the meal and/or rest period
4 premium pay; failure to provide accurate itemized wage statements; and
5 failure to timely pay wages at termination; The release shall run through the
6 date the Superior Court of the State of California, County of Sacramento
7 grants preliminary approval of the settlement or sixty (60) days after the
8 agreement is signed, whichever is earlier.

9 3. Named Plaintiffs are hereby appointed and designated, for all purposes, as the
10 representative of the Class and Representative Action, and the following attorneys are hereby
11 appointed and designated as counsel for the Named Plaintiff, the Class Representatives and the Class:
12 Janelle Carney of Janelle Carney – Attorney at Law, APC, Manny Starr and Theodore Tang of
13 Frontier Law Center, and Justin F. Marquez, Christina M. Le, and Zachary D. Greenberg of Wilshire
14 Law Firm (“Class Counsel”). Class Counsel are authorized to act on behalf of Participating Class
15 Members with respect to all acts or consents required by, or which may be given pursuant to, the
16 Settlement, and such other acts reasonably necessary to consummate the Settlement. Any Objecting
17 Class Member may enter an appearance through counsel of such Class Member’s own choosing and
18 at such Class Member’s own expense.

19 4. The Court finds on a preliminary basis that the Settlement appears to be fair,
20 reasonable and adequate, and one that would merit, ultimately, final approval by this Court. The
21 Court has reviewed the Settlement and recognizes the value thereof to the Class Members. The Court
22 finds, on a preliminary basis, that the Settlement is fair, adequate and reasonable as to all Class
23 Members when balanced against the potential outcomes of further litigation relating to liability and
24 damages issues. The Court further finds that the Settlement has been reached as the result of serious
25 and non-collusive, arms-length negotiations by Defendants and Plaintiff (the “Settling Parties”).

26 5. A hearing (the “Settlement Hearing”) shall be held before this Court, located at 720
27 Ninth Street, Sacramento, CA 95814-1380, on _____, 2023 at _____.m., in Department

28, to determine all necessary matters concerning the Settlement, including: whether the proposed settlement of the Action should be finally approved by the Court; whether a Judgment, as provided in the Settlement Agreement, should be entered herein; whether the plan of allocation contained in the Settlement Agreement should be approved as fair, adequate and reasonable to the Class Members; and to finally approve Class Counsel's Fees Award and Cost Award, the Class Representative's Enhancement award, payment to the Labor and Workforce Development Agency and the Settlement Administration Costs.

6. The Court hereby approves, as to form and content, the Notice, attached as **Exhibit A** to the Settlement Agreement that is attached to the Declaration of Janelle Carney as **Exhibit 1**. The Court finds that distribution of the Notice, substantially in the manner and form set forth in the Settlement Agreement and this Order, meets the requirements of due process, is the best notice practicable under the circumstances, and will constitute due and sufficient notice to all persons entitled thereto.

7. The Court hereby appoints ILYM Group, Inc. as Settlement Administrator and hereby directs the Settlement Administrator to simultaneously mail or cause to be mailed to Class Members the Notice (**Exhibit A**) by first class mail at their last known address within fourteen (14) days of receiving a Class Information from Defendants.

8. Any Class Member (as defined by the Settlement Agreement) may choose to opt-out of the Settlement or object to the Settlement as provided in the Notice by following the instructions for requesting exclusion from the Settlement Class or objecting to the settlement. Class Members will have forty-five (45) days from the date of mailing of the Notice in which to postmark objections or a notice of opting out. All Class Members who do not timely and properly notify the Settlement Administrator of their desire to opt-out of the Settlement, shall become bound by all determinations of the Court, the Settlement Agreement and Judgment.

9. Any Class Member who did not opt-out may appear at the Settlement Hearing and may object or express his/her views regarding the Settlement and may present evidence and file briefs or other papers that may be proper and relevant to the issues to be heard and determined by the Court

1 as provided in the Notice. However, if a Class Member requests exclusion, the Class Member shall
2 not be heard or entitled to object, and no papers or briefs submitted by any such person shall be
3 received or considered by the Court.

4 10. As of the date this Order is signed, all dates and deadlines associated with the Action
5 shall be stayed, other than those pertaining to the administration of the Settlement of the Action.

6 11. The Court reserves the right to adjourn or continue the date of the Final Settlement
7 Hearing and all dates provided for in the Settlement Agreement without further notice to Class
8 Members, and retains jurisdiction to consider all further applications arising out of or connected with
9 the proposed Settlement.

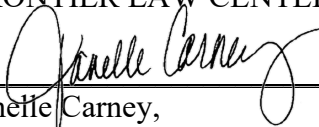
10
11 Dated: _____

JUDGE OF THE SUPERIOR COURT

12 APPROVED AS TO FORM AND CONTENT:

13
14 Date: September 13, 2023

JANELLE CARNEY – ATTORNEY AT LAW, APC
FRONTIER LAW CENTER

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16 

Janelle Carney,
Attorney for Plaintiff
Lupe Morales

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18 Date: September 13, 2023

WILSHIRE LAW FIRM

19
20 S/ Christina M. Le

Justin F. Marquez
Christina M. Le
Zachary D. Greenberg
Attorney for Plaintiff Erika Muniz

21
22
23 Date: September 13, 2023

TONKON TORP LLP

24
25 By: S/ Megan R. Reuther

Haley Morrison
Megan R. Reuther
Attorneys for Defendant