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FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN BERNARDINO
SAN BERNARDINO DISTRICT

JUN 14 2023

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN BERNARDINO

ARMANDO FLORES and WILLIAM
STOREY, individually, on a representative
basis, and on behalf of all others similarly
situated;

Plaintiffs,

v.

SUNRISE RESPIRATORY CARE, INC., a
California Corporation; SUNRISE
RESPIRATORY MANAGEMENT GROUP,
LLC, a California Limited Liability
Company, MICHAEL EILBERT, OSCAR
MUNOZ, and DOES 1 through 20, inclusive;

Defendants.

Case No.: CIVSB2127592
[Assigned to Hon. Judge Joseph T. Ortiz,
Dept. S17, for all purposes]

**[PROPOSED] ORDER GRANTING
FINAL APPROVAL OF SETTLEMENT;
AND ENTRY OF FINAL JUDGMENT**

Complaint filed: September 27, 2021

The Motion for Final Approval of the Settlement (the "Final Approval Motion") as set forth in the Class Action and PAGA Settlement Agreement and Release of Claims ("Settlement Agreement") between Plaintiffs Armando Flores and William Storey and Defendants Sunrise Respiratory Care, Inc., Sunrise Respiratory Management Group, LLC, Michael Eilbert, and Oscar Munoz, (collectively, "Defendants") came for hearing in Department S17 of the above-entitled court. The Final Approval Motion was unopposed by Defendants. Having considered the Final Approval Motion, the Settlement Agreement, the Declarations, and all other materials

**[PROPOSED] ORDER GRANTING FINAL APPROVAL OF SETTLEMENT; AND ENTRY OF FINAL
JUDGMENT**

1 properly before the Court and having conducted an inquiry pursuant to California Rules of Court,
2 rule 3.769(g), the Court finds that the Settlement Agreement was entered in good faith between
3 Plaintiffs and Defendants, and the Settlement Agreement is approved. Due and adequate notice
4 having been given to the Class, and the Court having considered the Settlement Agreement, all
5 papers filed, and proceedings had herein and all oral and written comments received regarding
6 the proposed settlement, and having reviewed the record in this Litigation, and good cause
7 appearing,

8 IT IS HEREBY ORDERED, ADJUDGED, AND DECREED AS FOLLOWS:

9 1. The Court, for purposes of this Judgment and Order ("Judgment"), refers to all
10 defined terms (i.e., terms with initial capitalization) as set forth in the Settlement Agreement.

11 2. The Court has jurisdiction over the subject matter over this Action, the Class
12 Representatives, the Class Members, and Defendants.

13 3. The Court finds that the distribution of the Class Notice, as provided for in the
14 Order Granting Preliminary Approval for the Settlement, constituted the best notice practicable
15 under the circumstances to all Class Members and fully met the requirements of California law
16 and due process under the California and United States Constitution. Based on evidence and
17 other material submitted, the actual notice to the class was adequate.

18 4. The Court finds that the instant Action presented a good faith dispute of the
19 claims alleged, and the Court finds in favor of settlement approval.

- 20 a. Specifically, the claims on behalf of the Class Members included: (a)
21 failure to pay minimum wages, (b) failure to pay overtime wages, (c)
22 failure to provide meal periods, (d) failure to provide rest breaks, (e)
23 failure to failure to timely pay wages each period and upon separation of
24 employment, (f) failure to provide accurate itemized wage statements, (g)
25 unfair and unlawful competition, and (h) all other claims for statutory
26 penalties based on the facts or claims alleged in the operative complaint
27 and/or any and all PAGA Notices sent to the LWDA by Plaintiffs
28 Armando Flores and/or William Storey; as well as any claims that were or

could have been pled based on the same or similar facts (the “Released Class Claims”).

b. The claims on behalf of the Aggrieved Employees included all claims for civil penalties under the Private Attorneys General Act, Labor Code § 2698 *et seq.*, that Plaintiffs alleged against the Released Parties, on behalf of Aggrieved Employees and State of California, based on the facts stated in Plaintiffs’ Complaint and in Plaintiffs’ LWDA notice letters, including all PAGA claims seeking civil penalties for: (a) failure to pay minimum wages, (b) failure to pay overtime wages, (c) failure to provide meal periods, (d) failure to provide rest breaks, (e) failure to failure to timely pay wages each period and upon separation of employment, (f) failure to provide accurate itemized wage statements, and (g) all other claims for civil penalties recoverable under the Private Attorneys General Act, Labor Code §§ 2698 *et seq.* based on the facts or claims alleged in the operative complaint, and any PAGA Notices submitted by Armando Flores or William Storey (the “PAGA Released Claims”).

5. There were no Objections and one Requests for Exclusion to the Settlement. Excluding the one opt-out, all other Class Members shall become Participating Class Members who are entitled to payment pursuant to the Settlement and this Judgment.

6. The Court approves the Settlement, as set forth in the Settlement Agreement and each of the releases and other terms, as fair, just, reasonable, and adequate as to the Settling Parties. The Settling Parties are directed to perform in accordance with the terms set forth in the Settlement Agreement.

7. The Settling Parties are to bear their own costs, except as otherwise provided in the Settlement Agreement.

8. For purposes of effectuating this Order and Judgment, this Court has certified the following class: “All current and former non-exempt employees employed by Defendant Sunrise Respiratory Care, Inc. in California at any time during the Class Period of September 27, 2017,

1 through February 14, 2023,” as defined in the Settlement Agreement. The Court deems this
2 definition sufficient for purposes of California Rules of Court, rule 3.765(a).

3 9. With respect to the Settlement Class and for purposes of approving this
4 Settlement, this Court finds and concludes as follows: (a) the Class Members are ascertainable
5 and so numerous that joinder of all members is impracticable; (b) there are questions of law or
6 fact common to the Settlement Class Members, and there is a well-defined community of interest
7 among the Settlement Class Members with respect to the subject matter of the Action; (c) the
8 claims of the Class Representative are typical of the claims of the Class Members; (d) the Class
9 Representative has fairly and adequately protected the interests of the Class Members; (e) a class
10 action is superior to other available methods for an efficient adjudication of this controversy; and
11 (f) the counsel of record for the Class Representatives, i.e., Class Counsel, are qualified to serve
12 as counsel for the Plaintiff in her individual and representative capacity and for the Settlement
13 Class.

14 10. By this Judgment, the Class Representatives shall release, relinquish, and
15 discharge, and each of the Participating Class Members shall be deemed to have, and by
16 operation of the Judgment shall have, fully, finally, and forever released, relinquished, and
17 discharged all Released Class Claims, as defined herein and in the Settlement Agreement.

18 11. For purposes of effectuating this Order and Judgment, the PAGA Released
19 Claims, as defined in the Settlement Agreement, shall apply to all Aggrieved Employees which
20 consists of “All current and former non-exempt employees employed by Defendant Sunrise
21 Respiratory Care, Inc. in California at any time during the PAGA Period of September 27, 2020,
22 through February 14, 2023.”

23 12. Neither the Settlement Agreement nor the Settlement contained therein, nor any
24 act performed or document executed pursuant to or in furtherance of the Settlement Agreement
25 or the Settlement (i) is or may be deemed to be or may be used by the Plaintiffs or Participating
26 Class Members as an admission of, or evidence of, the validity of any of the Class Members’
27 Released Claims, or of any wrongdoing or liability of Defendants, or any of the other Released
28 Parties; or (ii) is or may be deemed to be or may be used by Plaintiffs or Participating Class

Members as an admission of, or evidence of, any fault or omission of Defendants, or any of the other Released Parties in any civil, criminal, or administrative proceeding in any court, administrative agency, or other tribunal. Defendants or any of the other Released Parties may file the Settlement Agreement and/or the Judgment from this Action in any other action that may be brought against it or them in order to support a defense or counterclaim based on principles of *res judicata*, collateral estoppel, release, good faith settlement, judgment bar or reduction, or any theory of claim preclusion or issue preclusion or similar defense or counterclaim.

13. In accordance with the Settlement Agreement, the Gross Settlement Amount to be paid under the Settlement Agreement is \$385,300. From this amount, Class Counsel sought an award of attorney's fees one-third of the Gross Settlement Amount (\$128,433.33), litigation expenses of \$14,200.93, Service Awards of \$7,500 to Armando Flores and \$3,000 to William Storey for their service as Class Representatives, \$8,000 to the Settlement Administrator, Phoenix Settlement Administrators, \$30,000 to the LWDA for PAGA penalties and \$10,000 to the Aggrieved Employees for PAGA penalties. Defendants do not oppose these requests. The Court finds that the Settlement Amount is fair, reasonable and adequate, and awards the payments set forth below from the Settlement Amount:

- A. \$128,433.33 to Class Counsel for attorneys' fees;
- B. \$14,200.93 to Class Counsel for costs/expenses;
- C. \$7,500 to Armando Flores and \$3,000 to William Storey as Class Representative Service Awards;
- D. \$8,000 to the Settlement Administrator, Phoenix Settlement Administrators;
- E. \$30,000 to the LWDA;
- F. \$10,000 to the Aggrieved Employees on a pro rata basis;
- G. After deducting the foregoing payments from the Settlement Amounts, the remainder shall form the Net Settlement Amount payable to the Participating Class Members as set forth in the Settlement Agreement and as calculated by the Settlement Administrator.

14. Defendants are directed to fund the Gross Settlement Amount within 15 calendar days after the Effective Date, which shall occur sixty-one (61) calendar days following the date the Court enters this Order granting final approval (assuming no appeal, intervention, or writ is filed). The Settlement Administrator is directed to calculate the Participating Class Members' Individual Settlement Amounts from the Net Settlement Amount, as well as the payments due to the Aggrieved Employees, and issue all payments within 10 days of receipt of the payment in accordance with the Settlement Agreement. Concurrently with mailing the settlement checks to the Participating Class Members and Aggrieved Employees, the Settlement Administrator include a Notice of Entry of Judgment to all Class Members either on a postcard or as a detachable portion of the check, noting the following: "Please be advised that on [date] the Superior Court of California for the County of San Bernardino entered Judgment in the case entitled *Flores v. Sunrise Respiratory Care, LLC, et al.*, San Bernardino County Superior Court, Case No. CIVSB2127592, on behalf of All current and former non-exempt employees employed by Defendant Sunrise Respiratory Care, Inc. in California at any time during the Class Period of September 27, 2017, through February 14, 2023."

15. Participating Class Members shall have 180 days to negotiate the settlement check from the date of issuance by the Settlement Administrator. In the event that a Participating Class Member does not negotiate his/her check within this time period, the check will be canceled. The value of the unclaimed funds in the Settlement Administrator's account as a result of a failure to timely cash a settlement check shall be issued to the State Controller's Office in the name of the Class Member.

16. The following dates shall govern for purposes of this implementing this Order/Judgment:

June 14, 2023 (<i>estimated</i>)	Final Approval Order is entered
61 days after Final Approval Order is entered (<i>estimated August 14, 2023</i>)	Effective Date occurs.

15 days after Effective Date (estimated August 29, 2023)	Defendant is directed to fund the Gross Settlement Amount and separately pay its share of the employer's tax, as calculated and directed by the Settlement Administrator.
10 days after Funding (estimated September 8, 2023)	Settlement Administrator to issue checks to Participating Class Members, Class Representatives, Class Counsel, Aggrieved Employees and LWDA.
180 days after disbursement (estimated March 6, 2024)	Deadline for Class Members and Aggrieved Employees to cash settlement checks.
45 days after check cashing deadline (estimated April 19, 2024)	Deadline to file Declaration by Settlement Administrator describing: (i) the date the checks were mailed, (ii) the total number of checks mailed to class members, (iii) the number of checks that were uncashed, (iv) the total value of those uncashed checks, and (v) the anticipated date payment will issued to the State Controller.

17. This document shall constitute a Judgment for purposes of California Rule of Court 3.769(h). The Court reserves exclusive and continuing jurisdiction over the Action, the Class Representatives, the Class Members, Aggrieved Employees, and Defendants for the purposes of supervising the implementation, enforcement, construction, administration, and interpretation of the Settlement Agreement and this Judgment.

IT IS SO ORDERED.

Dated: 6/14/23


Hon. Joseph Ortiz