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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:

- 1) PRELIMINARILY APPROVING
CLASS ACTION SETTLEMENT;**
- 2) CONDITIONALLY CERTIFYING A
CLASS FOR SETTLEMENT
PURPOSES ONLY;**
- 3) DIRECTING DISTRIBUTION TO THE
CLASS OF THE SETTLEMENT
NOTICE AND EXPLANATION FORM;
AND**
- 4) SETTING A HEARING FOR FINAL
APPROVAL OF THE SETTLEMENT**

Complaint filed: September 27, 2021

Having reviewed and read the Class Action and Private Attorney General Act Settlement Agreement and Release of Claims (the "Settlement Agreement") between Plaintiffs Armando Flores and William Storey and Defendants Sunrise Respiratory Care, Inc., Michael Eilbert, Oscar

1 Munoz, and Sunrise Respiratory Management Group, LLC (collectively, the “Parties”), as well
2 as the Memorandum of Points and Authorities in Support of the Unopposed Motion for
3 Preliminary Approval of Class Action Settlement, the documents submitted in support of the
4 motion, and all supporting legal authorities and documents, IT IS HEREBY ORDERED:

5 1. The Court GRANTS preliminary approval of the Settlement based upon the terms
6 set forth in the Settlement Agreement and finds its terms to be within the range of reasonableness
7 of a settlement that ultimately could be granted final approval by the Court at a Final Approval
8 hearing. The settlement appears to be fair, adequate and reasonable to the Class. Based on a
9 review of the papers submitted by Plaintiffs, the Court finds that the Settlement is the result of
10 arms-length negotiations conducted after the Parties adequately investigated and became familiar
11 with the strengths and weaknesses of the claims. The assistance of an experienced mediator in
12 the Settlement process supports the Court’s conclusion that the Settlement is non-collusive.

13 2. For settlement purposes only, the Court finds that the proposed Class is
14 ascertainable and that there is a sufficiently defined community of interest among the Class
15 Members in questions of law and fact. The Court, therefore, conditionally certifies the following
16 Class, for settlement purposes only:

17 All current and former non-exempt employees employed by
18 Defendant Sunrise Respiratory Care, Inc. in California at any time
19 during the Class Period.

20 3. Additionally, the “Aggrieved Employees” are defined to include: “all current and
21 former nonexempt employees employed by Defendant Sunrise Respiratory Care, Inc., in
22 California at any time during the PAGA Period.”

23 4. As set forth in the Settlement Agreement and as relevant to Class and Aggrieved
24 Employees definitions: (a) “Class Period” means the period of September 27, 2017, through the
25 date of this Order and (b) “PAGA Period” means the period of September 27, 2020, through the
26 date of this Order.

27 5. The class action settlement set forth in the Settlement Agreement between
28 Plaintiffs and Defendants is preliminarily approved as it appears to be proper, to fall within the

1 range of a fair, reasonable and adequate settlement, and to be presumptively valid, subject only
2 to any objections that may be raised at the Final Approval Hearing.

3 6. For settlement purposes only, the Court appoints Plaintiffs Armando Flores and
4 William Storey as Class Representatives, and Brian Mankin and Kristina Bui Carlson as Class
5 Counsel.

6 7. The Court approves Phoenix Settlement Administrators to act as the Settlement
7 Administrator.

8 8. The Court approves, as to form and content, the Class Notice and finds that the
9 Class Notice satisfies the requirements of California Rule of Court, rules 3.766 and 3.769, subd.
10 (f), and fairly apprises the Class Members of the terms of the final approval hearing date, the
11 proposed settlement terms and of their options, including: (1) the nature of the action, the
12 definition of the Class, the identity of Class Counsel, and the essential terms of the Settlement;
13 (2) Named Plaintiffs' and Class Counsel's applications for the Class Representative Service
14 Payments, and Class Counsel's request for attorneys' fees and costs; (3) a formula used to
15 determine the Class Member's estimated Individual Settlement Payment; (4) Settlement Class
16 Members' rights to appear through counsel if they desire; (5) how to object to the Settlement or
17 submit an opt-out request if a Class Member wishes to do so; and (6) how to obtain additional
18 information regarding the action and the Settlement. Counsel for the Parties are authorized to
19 correct any typographical errors in settlement and make clarifications, to the extent the same are
20 found or needed, so long as such corrections do not materially alter the substance of the
21 documents.

22 9. The Court approves the procedure for Class Members to participate in, request
23 exclusion from or object to, and preserve appeal rights as set forth in the Settlement Agreement
24 and the Class Notice.

25 10. The Court finds that the deadlines and method set forth in the Settlement
26 Agreement for the mailing of the Class Notice meet the requirements of due process, provide the
27 best notice practicable under the circumstances, constitute due and sufficient notice to all persons
28 entitled to notice, and otherwise satisfy the requirements of California law and due process.

1 11. The Court directs the Settlement Administrator to perform address verification
2 measures and mail the Class Notice by first class mail to the Class Members not later than 10
3 days after it receives the “Class Data” as defined in the Settlement Agreement and to otherwise
4 carry out the Settlement according to the terms of the Settlement Agreement and in conformity
5 with this Order. The Parties are also ordered to carry out the Settlement according to the terms
6 of the Settlement Agreement.

7 12. All Class Members shall be deemed to participate in the Settlement, although any
8 Class Member who wishes to comment on or object to the Settlement or who elects not to
9 participate in the Settlement has until thirty (30) days after the mailing of the Class Notice to
10 submit his or her objection or Request to be Excluded, pursuant to the procedures set forth in the
11 Class Notice.

12 13. The Court approves the handling of unclaimed funds set forth in the Settlement
13 Agreement, specifically that any unclaimed funds in the Settlement Administrator’s account as a
14 result of a failure to timely cash a settlement check shall be issued to the State Controller’s
15 Office in the name of the Class Member, as set forth in the Settlement Agreement.

16 14. The following dates shall govern for purposes of this settlement:

February 14, 2023	Preliminary Approval (PA) hearing
March 10, 2023 (<i>24 days after PA</i>)	Deadline for Settlement Administrator to complete first mailing of the Notice Packet to all Settlement Class Members.
April 10, 2023 (<i>30 days after mailing Class Notice</i>)	Deadline for Settlement Class Members to submit Requests for Exclusion and Objections to the settlement.
16 court days before Final Approval hearing	Deadline for Plaintiffs to file and serve Motion for Final Approval and application for award of attorneys’ fees, costs and service payments.
9 court days before Final Approval hearing	Deadline for filing of any written opposition to Plaintiffs’ Motion for Final Approval, or filing any response to an objection to the settlement.
5 court days before final approval hearing	Deadline for filing of any written reply to opposition Motion for Final Approval
TBD (Approximately June 14, 2023 - 120 days after Preliminary Approval)	Final Approval Hearing.

15. A final approval hearing shall be held in this Court on _____, 2023 at _____ a.m. to determine (1) whether the proposed settlement is fair, reasonable, and adequate and should be finally approved by the Court; (2) the amount of Attorneys' Fees and Costs Award to Class Counsel; and (3) the amount of the Service Payment to the Class Representatives. The Court may continue or adjourn the final approval hearing without further notice to the Class Notice.

16. Counsel for the parties shall file memoranda, declarations, or other statements and materials in support of their request for final approval of the Settlement, attorneys' fees, litigation costs, Class Representatives' Service Payments, Settlement Administration Costs, and payment to LWDA for PAGA penalties prior to the Final Approval hearing according to the time limits set by the Code of Civil Procedure and the California Rules of Court.

17. Neither this Order, the Settlement Agreement, nor any document referred to therein, nor any action taken to carry out the settlement embodied in the Settlement Agreement may be construed as, or may be used as an admission by or against Defendant or any of the other Released Parties (as that term is defined in the Settlement Agreement) of any fault, wrongdoing or liability whatsoever. The entering into or carrying out of the Settlement Agreement, and any negotiations or proceedings related thereto, shall not in any event be construed as, or deemed to be evidence of, an admission or concession with regard to the denials or defenses by Defendants or any of the other Released Parties and shall not be offered in evidence in any action or proceeding against Defendants or any of the Released Parties in any court, administrative agency or other tribunal for any purpose whatsoever other than to enforce the provisions of this Order, the Settlement Agreement, or any related agreement or release.

18. The Court may, for good cause shown, extend any of the deadlines set forth in this Order.

19. In the event that the Settlement Agreement does not receive final approval or the Effective Date of the Settlement does not occur, this Order shall be rendered null and void and shall be vacated.

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1 20. Pending the Final Approval hearing, all proceedings in this action, other than
2 proceedings necessary to carry out or enforce the terms and conditions of the Settlement and this
3 Order, are stayed.

4 21. Counsel for the parties are hereby authorized to utilize all reasonable procedures
5 in connection with the administration of the Settlement which are not materially inconsistent
6 with either this Order or the terms of the Settlement.

7
8 Date: _____

Hon. Joseph T. Ortiz