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FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF RIVERSIDE

FEB 02 2024

E. Escobedo

FEB 05 2024

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF RIVERSIDE**

ARACELI VIRUETE, individually, and on behalf
of all others similarly situated,

Plaintiff,

vs.

ORANGE TREEIDENCE OPCO, LLC, a limited
liability company dba RIVERWALK POST
ACUTE; and DOES 1 through 10, inclusive,

Defendants

Case No.: CVRI2201128

**CLASS AND REPRESENTATIVE
ACTION**

[Hon. Harold W. Hopp, Dept. 1]

**PROPOSED ORDER GRANTING
MOTION FOR FINAL APPROVAL OF
CLASS AND PAGA ACTION
SETTLEMENT AND JUDGMENT**

*[Filed with Plaintiff Notice of Motion and
Memorandum of Points and Authorities, and
the Declarations of Kane Moon, Plaintiff
Araceli Viruete, and Yami Burns in Support
of Motion]*

FINAL APPROVAL HEARING:

Date: February 2, 2024

Time: 8:30 a.m.

Dept.: 1

Action Filed: March 22, 2022

Trial Date: Not Set

1 **[PROPOSED] FINAL ORDER AND JUDGMENT**

2 **TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:**

3 On October 9, 2023, the Court entered an (Amended) Order Granting Plaintiff's Motion for
4 Preliminary Approval of Class and PAGA Action Settlement, conditional class certification, and
5 approval of the Class Notice and accompanying Forms, and setting a Final Approval Hearing (the
6 "Preliminary Approval Order"), thereby preliminarily approving a settlement of the above-entitled
7 action (the "Action") that was reached between Plaintiff Araceli Viruete ("Plaintiff") and Defendant
8 Orange Treeidence OPCO, LLC dba Riverwalk Post Acute ("Defendant," and together with Plaintiff,
9 the "Parties"), in accordance with the Parties' Joint Stipulation for Settlement of Class and PAGA
10 Action and Release of Claims (the "Settlement"). The Settlement was attached as **Exhibit 1** to the
11 Declaration of Kane Moon in Support of Plaintiff's Motion for Preliminary Approval of Class and
12 PAGA Action Settlement that was filed on August 31, 2023, and which, together with the exhibits
13 referenced and annexed thereto, set forth the terms and conditions for settlement of the Action. The
14 Court now has before it a Proposed Final Order and Judgment.

15 Due and adequate notice having been given to Class Members, and the Court having reviewed
16 the Settlement and duly considered Plaintiff's Motion for Final Approval of Class and PAGA Action
17 Settlement, the supporting declarations and exhibits thereto, all other papers filed and proceedings
18 had hereto, the record in this Action, and any oral argument, and good cause appearing,

19 **THE COURT HEREBY ORDERS, ADJUDGES, AND DECREES AS FOLLOWS:**

20 1. The Court, for purposes of this Final Order and Judgment, refers to all terms and
21 definitions as set forth in the Settlement.

22 2. Plaintiff's Motion for Final Approval of Class and PAGA Action Settlement,
23 including a motion for payment of Class Counsel's Fees and Litigation Expenses, Class
24 Representative Payment, Settlement Administrator Payment, and the PAGA Payment (collectively
25 "Motion for Final Approval"), and whether the Settlement should be finally approved as fair,
26 reasonable, and adequate as to Class Members, came before Department 1 of this Court, the
27 Honorable Harold W. Hopp presiding, on February 2, 2024.

28 3. The Court finds that the Settlement appears to have been made and entered into in

1 good faith, the terms of which are fair, reasonable, and adequate; was reached following meaningful
2 discovery and investigation conducted by Plaintiff and her counsel of record (“Class Counsel”); is
3 the result of serious, informed, adversarial, and arms-length negotiations between the Parties; and
4 therefore, meets the requirements for final approval. In so finding, the Court has considered all the
5 evidence presented, including evidence regarding the strength of Plaintiff’s claims; the risk, expense,
6 and complexity of the claims presented; the likely duration of further litigation; the amount offered
7 in the Settlement; the extent of investigation and discovery completed; and the experience and views
8 of Class Counsel. The Court has further considered the absence of objections and requests for
9 exclusion from Class Members. Accordingly, the Court hereby **GRANTS** Plaintiff’s Motion for
10 Final Approval and **ORDERS** Judgment to be entered in accordance with the terms herein.

11 4. The Court certifies, for settlement purposes only, the following Class (the “Settlement
12 Class”): All current and former non-exempt employees who worked for Defendant in California from
13 March 3, 2021 to March 20, 2023. Excluded from the Settlement Class are any persons who
14 submitted a timely and valid Request for Exclusion Form.

15 5. The deadline to request exclusion from or to a submit written objection to the
16 Settlement was December 26, 2023. No Request for Exclusion Forms were received.

17 6. All other Class Members who did not timely request exclusion from the Settlement
18 Class had an opportunity to object to the Settlement. No Objection Forms were received.

19 7. The Court-approved Notice of Class Action Settlement Affecting Your Rights,
20 Request for Exclusion Form, and Objection Form (collectively, “Class Notice”), which were attached
21 to the Preliminary Approval Order as **Exhibits A–C** and provided to the Class pursuant to the plan
22 for distribution described under the Settlement, conformed with the requirements of California Rules
23 of Court 3.766 and 3.769, and constituted the best notice practicable under the circumstances, by
24 providing individual and adequate notice of the proceedings and of the matters set forth therein to
25 Class Members. The Class Notice fully satisfied the requirements of due process and provided the
26 Class Members with adequate instructions and a variety of means to obtain additional information.

27 8. A full opportunity has been afforded to Class Members to participate in the Final
28 Approval Hearing, and all Class Members and other persons wishing to be heard have been heard

1 and/or had an opportunity to be heard. Class Members have had a full and fair opportunity to exclude
2 themselves from the Settlement or object to the Settlement. Accordingly, the Court determines that
3 all Class Members who did not request exclusion from the Settlement ("Participating Class
4 Members") are bound by this Final Order and Judgment.

5 9. Release of Claims:

6 a. Plaintiff's Released Claims. Only after Defendant's final payment on or before
7 August 15, 2024, Plaintiff, individually and on behalf of Plaintiff's heirs, executors,
8 administrators, representatives, attorneys, successors and assigns knowingly and
9 voluntarily releases and forever discharges Defendant, including any and all parent
10 corporation, affiliates, subsidiaries, managers, divisions, predecessors, insurers,
11 franchisors, successors and assigns, including but not limited to each of their current
12 and former employees, attorneys, officers, directors and agents thereof, both
13 individually and in their business capacities, and their employee benefit plans and
14 programs and the trustees, administrators, fiduciaries and insurers of such plans and
15 programs (collectively, "Plaintiff's Released Parties"), to the fullest extent permitted
16 by law, of and from any and all claims, known and unknown, asserted and unasserted,
17 which Plaintiff has or may have against the Plaintiff's Released Parties as of the date
18 of execution of this Settlement Agreement. Plaintiff is not waiving any rights Plaintiff
19 may have to: (i) Plaintiff's own vested accrued employee benefits under the
20 Defendant's health, welfare or retirement benefits plans, if any, as of the date of
21 execution of this Settlement Agreement; (ii) benefits or rights to seek benefits under
22 applicable workers' compensation (except as to claims under Labor Code §§ 132a
23 and 4553 which are expressly released herein) or unemployment insurance or
24 indemnification statutes; (iii) pursue claims which by law cannot be waived by
25 signing this Settlement Agreement; and (iv) enforce this Settlement Agreement.

26 1) To affect a full and complete general release as described above, and
27 only after Defendant's final payment on or before August 15, 2024, Plaintiff
28 expressly waives and relinquishes all rights and benefits of § 1542 of the Civil

Code of the State of California, without exception, except as may be prohibited by law, and does so understanding and acknowledging the significance and consequence of specifically waiving § 1542.

b. Participating Class Members Released Claims. Only after Defendant's final payment on or before August 15, 2024, each Participating Class Member, and without the need to manually sign a release document, shall release the Released Parties from all causes of action and claims stated in the Operative Complaint and those based solely upon the facts alleged therein, including all of the following claims for relief from March 3, 2021, through March 20, 2023: (1) Failure to Pay Minimum Wages; (2) Failure to Pay Overtime Compensation; (3) Failure to Provide Meal Periods; (4) Failure to Authorize and Permit Rest Breaks; (5) Failure to Indemnify Necessary Business Expenses; (6) Failure to Timely Pay Wages at Termination; (7) Failure to Provide Accurate and Itemized Wage Statements; and (8) Violation of Business & Professional Code section 17200 ("Class Released Claims"). The Class Released Claims for the Participating Class Members excludes all claims for vested benefits, wrongful termination, unemployment insurance, disability, social security, workers' compensation, claims while not an Eligible Employee, claims outside of the Class Period, and claims covered in the PAGA Group Released Claims. The Class Released Claims only covers the time period of from March 3, 2021, and ending on March 20, 2023 (the "Class Period").

c. The PAGA Group Released Claims. Only after Defendant's final payment on or before August 15, 2024, Plaintiff, and the LWDA shall release, from March 3, 2021, through March 20, 2024, the Released Parties from all claims for civil penalties under the California Labor Code Private Attorney's General Act of 2004 that were alleged in Plaintiff's LWDA Exhaustion Letter and only to the extent those claims are also alleged in the Action, including claims for relief for: (1) Failure to Pay Minimum Wages; (2) Failure to Pay Overtime Compensation; (3) Failure to Provide Meal Periods; (4) Failure to Authorize and Permit Rest Breaks; (5) Failure to Indemnify

1 Necessary Business Expenses; (6) Failure to Timely Pay Wages at Termination; and
2 (7) Failure to Provide Accurate and Itemized Wage Statements. The PAGA Released
3 Claims only cover the time period of March 3, 2021, and ending on March 20, 2023
4 (the "PAGA Period").

5 d. Released Parties. Released Parties include Defendant, together with its past and
6 present, officers, directors, and employees.

7 10. Notwithstanding the above releases, Class Members shall not be exposed to any
8 potential contempt charge or to any potential liability for either breach of contract or
9 misrepresentation for prosecuting or attempting to prosecute the released claims.

10 11. The Parties shall bear their own respective attorneys' fees and costs, except as
11 otherwise provided for in the Settlement and approved by the Court.

12 12. The Court finds that the Maximum Settlement Amount, the Net Settlement Amount,
13 and the methodology used to calculate Individual Settlement Shares and Individual PAGA Payment
14 Shares to Participating Class Members and PAGA Group Members, respectively, are fair and
15 reasonable. The Court thus authorizes the Settlement Administrator to pay settlement allocations in
16 accordance with the terms of the Settlement.

17 13. Within seven (7) calendar days of the Effective Date (as that term is defined under the
18 Settlement), the Settlement Administrator shall provide the Parties an accounting of all anticipated
19 payments from the Maximum Settlement Amount. Within ten (10) calendar days of the Effective
20 Date, the Settlement Administrator shall establish a Qualified Settlement Fund (the "QSF") and
21 notify the Parties when the QSF has been established. Within fourteen (14) calendar days of
22 Defendant having fully funded the QSF, the Settlement Administrator shall mail all distribution
23 checks to Class Members via U.S. Mail.

24 14. Defendant shall deposit funds into the QSF as follows: \$100,000.00 by February 15,
25 2024; \$100,000.00 by May 15, 2024; and \$100,000.00 by August 15, 2024. Besides Defendant's
26 share of employer taxes owed on Individual Settlement Shares, Defendant shall have no obligation
27 to pay any additional funds into the QSF.

28 15. Any envelope transmitting a settlement distribution to a Class Member shall bear the

1 notation, "YOUR CLASS ACTION SETTLEMENT CHECK IS ENCLOSED." Checks shall be
2 negotiable for at least 90 days but not more than 180 days from the date of mailing. The Settlement
3 Administrator shall mail a reminder postcard to any Class Member whose check has not been
4 negotiated within 60 days after the date of mailing. If any of the Class Members are current
5 employees of Defendant and those Class Members' mailed distribution is returned to the Settlement
6 Administrator as being undeliverable, and if the Settlement Administrator is unable to locate a valid
7 mailing address, the Settlement Administrator shall arrange with Defendant to have those
8 distributions delivered to those Class Members at their place of employment.

9 16. A total amount of \$20,000.00 shall be allocated, from the Maximum Settlement
10 Amount, to resolution of claims under the Private Attorneys General Act of 2004 ("PAGA") and
11 distributed as follows: 25% (\$5,000.00) to PAGA Group Members via Individual PAGA Payment
12 Shares and 75% (\$15,000.00) to the LWDA. The LWDA's claims for the PAGA Released Claims
13 are hereby extinguished.

14 17. The Court confirms the appointment of Plaintiff as the Class Representative, for
15 settlement purposes only. In addition to any recovery that Plaintiff is eligible to receive as a Class
16 Member, the Court approves and orders a service payment in the amount of \$7,500.00, from the
17 Maximum Settlement Amount, to Plaintiff for her role and service as the Class Representative, for
18 the risks and work attendant to that role, and for her general release of claims, both known and
19 unknown, and waiver of section 1542 rights.

20 18. The Court confirms the appointment of Moon Law Group, PC as Class Counsel, for
21 settlement purposes only, as they are experienced in wage and hour class action litigation, have no
22 apparent conflicts of interest with Plaintiff, other Class Members, or the *cy pres* beneficiary, and have
23 adequately represented Class interests. The Court approves and orders the payment to Class Counsel,
24 from the Maximum Settlement Amount, for reasonable attorneys' fees in the amount of \$100,000.00.
25 Additionally, the Court approves and orders the payment to Class Counsel, from the Maximum
26 Settlement Amount, for reimbursement of actual litigation costs in the amount of \$20,693.63. The
27 Court finds that these amounts are reasonable considering the benefits provided to the Class.

28 19. The Court confirms the appointment of Phoenix Settlement Administrators as the

1 Settlement Administrator, who has fulfilled its initial notice and reporting duties. The Court approves
2 and orders the payment of \$11,000.00, from the Maximum Settlement Amount, to the Settlement
3 Administrator for settlement administration services.

4 20. The Court confirms the California State Bar's Justice Gap Fund as an appropriate *cy*
5 *pres* beneficiary of any uncashed checks, pursuant to California Code of Civil Procedure section 384.
6 Following the expiration of the 180-day check-cashing deadline, should there be uncashed checks,
7 Class Counsel shall file an amended judgment providing the Settlement Administrator shall transmit
8 those amounts to the Justice Gap Fund.

9 21. In accordance with California Rule of Court 3.771(b), notice of this Final Order and
10 Judgment, and any amended judgment, will be given to the Class by the Settlement Administrator,
11 who will post a copy of this Final Order and Judgment on a website maintained by the Settlement
12 Administrator, the address of which was provided to Class Members in the Class Notice, for a
13 period from seven (7) calendar days after entry to thirty (30) days following the one hundred and
14 eighty (180) check-cashing deadline.

15 22. This Final Order and Judgment is intended to be a final disposition of the Action in
16 its entirety and is intended to be immediately appealable.

17 23. The obligations set forth in the Settlement are deemed part of this Final Order and
18 Judgment, and the Parties are ordered to carry out the Settlement according to its terms and
19 provisions.

20 24. Following entry of this Final Order and Judgment, and without affecting the finality
21 thereof, the Court shall retain continuing jurisdiction over the Action and the Settlement solely for
22 purposes of (i) enforcing this Settlement, (ii) addressing settlement administration matters, and (iii)
23 addressing such post-Judgment matters may be appropriate under court rules or applicable law.

24 25. The Settlement is finally approved but is not an admission by Defendant of the
25 validity of any claims in this Action, or of any wrongdoing by Defendant or of any violation of
26 law. Neither the Settlement nor any related document shall be offered or received in evidence in
27 any civil, criminal, or administrative action or proceeding other than such proceedings as may be
28 necessary to consummate or enforce the Settlement.

1 26. The Court sets a Non-Appeal Case Review ("NACR") Hearing re: Distribution
2 on April 02nd, 2024 at 8 : 30 (a.m)/p.m. in Department 1. Class Counsel are
3 ordered to file a final report and declaration by the Settlement Administrator regarding settlement
4 distribution no later than 5 court days prior to the NACR. No appearance is required at the NACR
5 if the Settlement Administrator's declaration reports that all the distributions under the Settlement
6 are complete.

7 **IT IS SO ORDERED.**

8 DATE: 2/2/24


The Honorable Harold W. Hopp
Judge of the Superior Court, Riverside County