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Attorneys for Plaintiff, ALEXANDRIA ILENE KABITZKE,
on behalf of herself and all others similarly situated

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN DIEGO – HALL OF JUSTICE

ALEXANDRIA ILENE KABITZKE on behalf
of herself and all others similarly situated,

Plaintiff,

v.

CENTRO DE SALUD DE LA COMUNIDAD
DE SAN YSIDRO d/b/a SAN YSIDRO
HEALTH, a California corporation; and DOES 1
through 50, inclusive,

Defendants.

Case No. 37-2022-00046873-CU-OE-CTL

Judge: Hon. Gregory Pollack
Action Date: November 18, 2022
Trial Date: Not Yet Set

**DECLARATION OF MARIA C.
ROBERTS IN SUPPORT OF UNOPPOSED
SECOND AMENDED MOTION FOR
PRELIMINARY APPROVAL OF CLASS
AND PAGA SETTLEMENT**

ACCOMPANYING DOCUMENTS:
NOTICE OF MOTION AND MOTION;
MEMORANDUM OF POINTS AND
AUTHORITIES; DECLARATION OF JAMES
HAWKINS; [PROPOSED] ORDER

Date: April 26, 2024
Time: 9:30 a.m.
Dept.: 71

1 I, Maria C. Roberts, declare as follows:

2 1. I am an attorney licensed to practice law before all courts in the State of California. I
3 am an attorney with the law firm of Greene & Roberts, attorneys of record herein for Defendant
4 Centro De Salud De La Comunidad De San Ysidro, Inc., dba San Ysidro Health ("San Ysidro
5 Health"). I have personal knowledge of the facts set forth in this Declaration and can competently
6 testify thereto.

7 2. I have represented, mediated, and settled many other class actions filed against my
8 clients alleging wage and hour violations on a putative class and under PAGA and have knowledge
9 of the strengths and weaknesses of the claims pled and defenses available in this case and the
10 benefits of the proposed Settlement under the circumstances of the case. This declaration is
11 submitted in support of the joint motion for preliminary approval of a classwide and PAGA
12 settlement.

13 3. On September 8, 2022, Plaintiff, Kabitzke, filed a complaint alleging putative wage
14 and hour claims against San Ysidro Health in San Diego Superior Court, including claims for alleged
15 failure to: (1) Pay Lawful Wages; (2) Provide Lawful Meal Periods or Compensation in Lieu
16 Thereof; (3) Provide Lawful Rest Periods or Compensation in Lieu Thereof; (4) Pay Employee
17 Expenses; (5) Timely Pay Wages During Employment; (6) Timely Pay Wages at Termination; (7)
18 Provide Accurate, Itemized Wage Statements; and for (8) Violations of the Unfair Competition Law.

19 4. Throughout this litigation (and throughout the litigation filed by Intervenor), San
20 Ysidro Health has denied the allegations against it and raised defenses to the claims pled,
21 individually and on a class wide basis. SYH maintains that its policies and practices are compliant
22 with the California Labor Code, case law and applicable Wage Orders.

23 5. Through exchange of informal discovery in the Kabitzke v. San Ysidro Health case,
24 we produced to Kabitzke's lawyers more than 100,000 pages of documents, including all of San
25 Ysidro Health's pertinent policies, handbooks, the time and wage records for more than 1,100
26 putative class members dating back as far as 2016, copies of its arbitration policies, and copies of all
27 pleadings, motions, court orders, depositions, discovery requests and responses and everything
28 produced in discovery in the lawsuits filed by Intervenor, which involve some overlapping putative

1 class and PAGA claims, as well as a list of pay rates and dates of employment for the approximate
2 3700 putative class members and the aggrieved employees. San Ysidro Health also produced nearly
3 100 affidavits signed by current/former nonexempt employees and others, which supported SYH's
4 position that the wage and hour/PAGA claims pled against it are not supported and contrary to their
5 experience at San Ysidro Health.

6 6. San Ysidro Health also provided all briefing and a related court order issued by the
7 Superior Court in early 2023 denying certification on all putative class claims pled in one of
8 Intervenors' Actions, the Hernandez case.

9 7. On March 21, 2023, the Parties in this case attended mediation with Hon. Ronald M.
10 Sabraw (Ret.), an experienced wage and hour class action mediator and former Supervising Judge of
11 the Complex Division of the Alameda Superior Court. In the mediation process, the Parties
12 exchanged further information concerning the putative class and PAGA claims and San Ysidro
13 Health's defenses. Unfortunately, this case did not settle at mediation. However, the dialogue
14 between counsel and the mediator continued, and ultimately a mediator's proposal was made and
15 accepted in principle on March 24, 2023.¹

16 8. After the Parties reached a settlement in principle in the instant case, counsel spent
17 months in continued negotiations about the settlement terms and in the process exchanged additional
18 detailed information pertinent to the settlement.

19 9. As a threshold matter, at least 60% of the putative class (including the Plaintiff in this
20 case) are subject to SYH's Binding Arbitration Policy, which went into effect in February 2021. This
21 policy included a class action waiver and delegated the "gateway" question of arbitrability and
22 enforceability of the policy "exclusively to [the] arbitrator." Thus, many, if not most, of the putative
23 class members are required to litigate their claims on an individualized basis through binding
24 arbitration per SYH's arbitration policy.

25 10. SYH disputes allegations that its employees were ever required to perform any work
26 "off the clock," pointed to long-standing policies that prohibit off-the-clock work and that require
27 employees to review and verify the accuracy of their time punches every single pay period. SYH

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¹ Prior to settling with Kabitzke, San Ysidro Health participated in three mediation sessions with Intervenors and mediator, Hon. William Pate (ret.), but were unable to reach resolution.

1 also provided nearly 100 employee declarations that refute this claim. SYH's binding arbitration
2 policy that applies to all employment disputes and most of the putative class members, and includes
3 class waivers applies to this claim. SYH also contends this claim would be difficult to certify given
4 the predominance of the individualized inquiry as to whether, and to what extent, any Class Member
5 ever performed work "off the clock" In violation of SYH's policies.

6 11. SYH also denies Plaintiff's meal break allegations in their entirety and maintains that,
7 per its long-standing policies, all non-exempt employees were provided with full, timely and
8 uninterrupted meal periods of 30 to 60 minutes. All putative class members were also required to
9 verify every pay period that they had taken all of their breaks in that pay period or had advised their
10 supervisor of any missed breaks. Also, under the holding in *Brinker* and other pertinent decisions,
11 SYH fulfilled its legal obligations to provide timely and proper meal periods. SYH produced
12 policies, nearly 100 employee declarations that refute this claim and pointed to its binding arbitration
13 policy that applies to all employment disputes and includes class waivers.

14 12. SYH disputes Plaintiff's allegations regarding rest break violations and asserts that its
15 policies required employees to take timely, uninterrupted rest breaks of at least 10-minutes and to
16 verify every pay period that they had taken all of their breaks.

17 13. SYH denies that any unpaid overtime wages are owed and that it failed to pay the
18 correct overtime wages and/or accrued vacation pay. SYH also asserts that it did not willfully fail to
19 pay any amount owed to its employees and, thus, waiting time penalties cannot be awarded.

20 14. SYH further denies that a violation for each pay period can be established, because
21 the PAGA claims are essentially derivative of the class claims and are subject to the same defenses.
22 For many of the same reasons the class claims fail, SYH believes the PAGA claim fails as well.

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15. SYH's practice and policy was to also provide Plaintiff and Class Members with all required equipment, materials, and tools to perform their duties and to reimburse for any personal equipment used.

I declare under penalty of perjury that the foregoing is true and correct. Executed this 27th day of March 2024 at San Diego, California.

Maria C. Roberts