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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE 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
ASSIGNED FOR ALL PURPOSES TO:
JUDGE: Hon. Gregory Pollack
DEPT: 71

**[PROPOSED] ORDER GRANTING
UNOPPOSED SECOND AMENDED
MOTION FOR PRELIMINARY
APPROVAL OF CLASS ACTION
SETTLEMENT**

Date:
Time:
Dept.:

1 WHEREAS, this action is pending before this Court as a putative class and PAGA action
2 (the “Action”); and

3 WHEREAS, Plaintiff, through her motion for preliminary approval, has applied to this
4 Court for an order preliminarily approving the settlement of the Action in accordance with the
5 Stipulation of Class Action and PAGA Settlement, Addendum to it, and any exhibit annexed
6 thereto, (“Settlement Agreement”), , which sets forth the terms and conditions for a proposed
7 settlement and final resolution of the Action upon the terms and conditions set forth therein; and
8 the Court having read and considered the Settlement Agreement;

9 NOW, THEREFORE, IT IS HEREBY ORDERED:

10 1. This Order incorporates by reference the definitions in the final version of the
11 Settlement Agreement as filed with the Court and all terms defined therein shall have the same
12 meaning in this Order as set forth in the Settlement Agreement;

13 2. The Court hereby preliminarily certifies the Class for settlement purposes only.
14 For the purposes of this settlement, the Class is defined as: all persons employed by San Ysidro
15 Health and classified as a nonexempt, hourly-paid employee and who worked for Defendant at
16 any time between December 15, 2016, to March 24, 2023. Should for whatever reason the
17 Settlement not become final, the fact that the Parties were willing to stipulate to class
18 certification as part of the Settlement shall have no bearing on, nor be admissible in connection
19 with, the issue of whether a class should be certified in a non-settlement context;

20 3. Aggrieved Employees shall mean those persons employed by Defendant as non-
21 exempt employees in the State of California and who worked for Defendant at any time during
22 the PAGA Period of April 20, 2020 to March 24, 2023;

23 4. The Court hereby authorizes the retention of ILYM Group, Inc. as Settlement
24 Administrator for the purpose of this Settlement;

25 5. The Court hereby preliminarily finds that James R. Hawkins, Isandra Fernandez,
26 and Lance Dacre of the law firm of James Hawkins APLC may act as counsel for the Class. The
27 Court further conditionally finds that Plaintiff Alexandria Ilene Kabitzke may act as the class
28 representative for the Class;

1 6. The Court hereby preliminarily APPROVES the proposed Notice of Class Action
2 and PAGA Settlement (“Class Notice”) (The Class Notice is attached hereto as Exhibit 1). The
3 Court further finds that the Class Notice appears to fully and accurately inform the Class
4 Members of all material elements of the proposed Settlement Agreement, of the Class
5 Members’ right to be excluded from the Class, and of each Class Member’s right and
6 opportunity to object to the Settlement. The Class Notice shall be mailed to the Class Members
7 as set forth in the Settlement Agreement;

8 7. The Court finds on a preliminary basis that the Settlement Agreement appears to
9 be within the range of reasonableness of a settlement that could ultimately be given final
10 approval by this Court. It appears to the Court on a preliminary basis that the settlement amount
11 is fair, adequate, and reasonable to all potential Class Members when balanced against the
12 probable outcome of further litigation relating to liability and damages issues. It further appears
13 that investigation and research have been conducted such that counsel for the Parties, at this
14 time, are able to reasonably evaluate their respective positions. It further appears to the Court
15 that settlement at this time will avoid substantial additional costs by all Parties, as well as avoid
16 the delay and risks that would be presented by the further prosecution of the Action. It further
17 appears that the Settlement has been reached as the result of serious and non-collusive, arms-
18 length negotiations;

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8. The Court orders the following implementation schedule for further proceedings:

Preliminary approval order.	April 26, 2024
Deadline for Defendants to provide the Class List to the Settlement Administrator.	May 16, 2024 (within twenty (20) calendar days after Court Grants Preliminary Approval).
Mail notices to Settlement Class Members.	May 31, 2024 (within fifteen (15) calendar days after Settlement Administrator Receives Class List from Defendant).
Deadline for postmark by registered mail of any Request for Exclusion.	July 15, 2024 (forty-five (45) days after Settlement Administrator first mails Notice of Class Settlement to Settlement Class Members).
Deadline for receipt by the Settlement Administrator of any objections to the Settlement.	July 15, 2024 (forty-five (45) days after Settlement Administrator first mails Notice of Class Settlement to Settlement Class Members).
Deadline for Class Counsel to file Motion for Final Approval of Settlement.	September 19, 2024, or as set by the Court
Final Fairness and Final Approval Hearing.	October 11, 2024, or as set by the Court

IT IS SO ORDERED.

Dated: _____

Hon. Gregory Pollack
Judge of the San Diego County Superior Court

EXHIBIT 1

NOTICE OF CLASS ACTION AND PAGA SETTLEMENT

(Kabitzke v. Centro de Salud de la Comunidad de San Ysidro, Case No. 37-2022-00046874-CU-OE-CTL
("Kabitzke Action"))

You May Be Entitled to Receive Money From a Settlement Arising From Your Employment By Centro de Salud de la Comunidad de San Ysidro d.b.a. San Ysidro Health

A California court authorized this notice. This is not a solicitation from a lawyer.

- A settlement of a lawsuit will pay money to nonexempt (hourly) employees who were employed by Centro de Salud de la Comunidad de San Ysidro d.b.a. San Ysidro Health ("San Ysidro Health") and worked between the dates of December 15, 2016, to March 24, 2023.
- The Settlement resolves claims asserted in class action cases alleging various wage and hour claims against San Ysidro Health on behalf of persons employed by San Ysidro Health as non-exempt employees during this specified time period.
- The Settlement also resolves claims for alleged penalties brought on behalf of the State of California under California's Private Attorneys General Act ("PAGA").
- The Settlement avoids the costs and risks of continuing the lawsuits, pays money to eligible employees, and releases San Ysidro Health from liability.
- San Ysidro Health expressly denies all of the claims in the lawsuits and denies any wrongdoing or liability and the parties disagree on how much money – if any – could have been awarded if employees won at trial.
- **YOUR LEGAL RIGHTS ARE AFFECTED WHETHER YOU ACT OR DO NOT ACT.**

YOUR LEGAL RIGHTS AND OPTIONS UNDER THIS SETTLEMENT:	
Do Nothing	You need not take any action if you wish to receive your settlement payment. If the Settlement is approved by the Court, you will automatically be mailed a settlement check at the address on file with the Settlement Administrator, [REDACTED]. If you move, you must notify the Settlement Administrator of your new address.
Exclude Yourself from the Settlement	You will get no class settlement payment. To exclude yourself, you must send a letter to the Settlement Administrator, as explained below, stating that you wish to exclude yourself from the Settlement. This is the only option that allows you to be part of another potential lawsuit against San Ysidro Health asserting the legal claims settled in this case. You will, however, be bound by the Private Attorneys General Act ("PAGA") release, and you will receive a payment for the PAGA release even if you exclude yourself.
Object to the Settlement	Write to the Court, as explained below, if you believe the Settlement is unfair.
Go to a Hearing	Ask to speak in Court about the fairness of the Settlement.

- **YOUR LEGAL RIGHTS ARE AFFECTED WHETHER YOU ACT OR DO NOT ACT. PLEASE READ THIS NOTICE CAREFULLY.**

WHY DID YOU RECEIVE THIS NOTICE?

This notice explains the proposed settlement of the Kabitzke Action (and three other cases alleging similar claims) for alleged wage and hour violations and informs you of your legal rights under that proposed settlement (“the Settlement”). You are receiving this notice because you may be a member of the class on whose behalf the lawsuits were filed.

WHAT ARE THESE LAWSUITS ABOUT?

On December 17, 2020, a former employee of San Ysidro Health, Audrey Heredia, filed a lawsuit against San Ysidro Health in San Diego County Superior Court alleging violations of the California Labor Code and the California Business and Professions Code. On April 20, 2021, another former employee of San Ysidro Health, Jaqueline Hernandez, brought a similar lawsuit against San Ysidro Health in San Diego County Superior Court. On September 8, 2022, another former employee of San Ysidro Health, Alexandria Kabitzke, brought a lawsuit against San Ysidro Health in San Diego County Superior Court. On November 18, 2022, Alexandria Kabitzke brought a separate lawsuit for an award of civil penalties under the PAGA. In these four lawsuits, the Plaintiffs allege various wage and hour violations and seek to recover unpaid wages, meal and rest break premiums, unreimbursed expenses, penalties, and attorneys’ fees and costs, on behalf of themselves and other similarly situated employees of San Ysidro Health. San Ysidro Health has denied the material allegations against it and denies that it failed to comply with the law.

SUMMARY OF THE SETTLEMENT

A. Why is there a Settlement?

The Court has not made any ruling on the merits in favor of the Plaintiffs or of San Ysidro Health. Plaintiffs believe they could have prevailed on some of their claims at a trial, which is disputed by San Ysidro Health. But there has been no trial in the cases. Instead, both sides agreed to a settlement as a means of avoiding the costs, risks, and uncertainties of a trial, and to ensure the eligible employees will receive compensation. Plaintiffs and their attorneys believe the Settlement is fair, reasonable, and adequate.

B. Who is in the Settlement Class?

The Settlement Class consists of all current and former non-exempt (hourly) employees of San Ysidro Health who were employed by San Ysidro Health and who worked between December 15, 2016 and March 24, 2023 (the “Class Period”).

The settlement of the Plaintiff’s PAGA penalty claims will cover all current and former non-exempt (hourly) employees who were employed by San Ysidro Health (“Aggrieved Employees”) and who worked for it between April 20, 2020, and March 24, 2023 (the “PAGA Period”).

C. What has San Ysidro Health agreed to do?

San Ysidro Health has agreed to pay a settlement of \$2,900,000.00 (the “Maximum Settlement Amount”) to end all of the lawsuits against it and to benefit current and former non-exempt (hourly) employees. The following sums will be paid from the Maximum Settlement Amount: (1) Class Counsel’s attorneys’ fees in an amount set by the Court not to exceed forty percent (40%) of the Maximum Settlement Amount (\$1,160,000.00), plus reasonable litigation costs in an amount set by the Court not to exceed \$175,000.00; (2) service awards to the three Plaintiffs in an amount set by the Court, not to exceed \$10,000.00 for Alexandria Kabitzke, and not to exceed \$20,000 each for Audrey Heredia and Jacqueline Hernandez, for their services as the class representatives in the lawsuits; and (3) a reasonable amount set by the Court to the Settlement Administrator for administering the settlement, not to exceed \$30,000.00; and (4) \$100,000.00 in resolution of the PAGA claims, of which, 75% (\$75,000.00) will be paid to the State of California, and the remaining 25% (\$25,000.00) will be paid to eligible members of the Settlement Class.

The portion of the Maximum Settlement Amount remaining after these payments is the Net Settlement Amount, which will be paid out to those Settlement Class Members who do not opt out of the Settlement, as explained below. San Ysidro Health also will pay its employer share of applicable payroll taxes on the portion of the settlement payments designated as “wages.”

D. What are you giving up in order to receive a payment and stay in the Class?

Subject to the Court’s approval of the Settlement, all members of the Settlement Class who do not opt out of the Settlement will release San Ysidro Health, and any of its past, present and future subsidiaries, parents, affiliated and related companies, divisions, successors, predecessors or assigns; its past, present, and future officers, directors, shareholders, partners, agents, insurers, employee, advisors, accountants, representatives, trustees, heirs, executors, administrators, predecessors, successors or assigns (“Released Parties”), as follows:

(1) If you do not request exclusion from the Settlement, you will fully release the Released Parties from any and all claims, wages, penalties, interest, debts, demands, rights, liabilities, costs, compensation, damages, attorneys’ fees, actions, and/or causes of action that were pleaded or could have been pleaded based upon the factual allegations set forth in the lawsuits and arising at any time during the Class Period, including any and all claims for and/or related to the causes of action pled for alleged: (1) Failure to Pay Lawful Wages; (2) Failure to Provide Lawful Meal Periods or Compensation in Lieu Thereof; (3) Failure to Provide Lawful Rest Periods or Compensation in Lieu Thereof; (4) Failure to Pay Employee Expenses; (5) Failure to Timely Pay Wages During Employment; (6) Failure to Timely Pay Wages at Termination; (7) Failure to Provide Accurate, Itemized Wage Statements; and (8) Violations of the Unfair Competition Law.

The Released Claims do not include a release of all the other rights you have as an employee or former employee of San Ysidro Health. The Released Claims are specifically limited to the claims set forth above.

E. How much money will I receive?

Each participating Settlement Class Member will receive an “Individual Class Payment”, which is a share of the Net Settlement Amount. The Net Settlement Amount is calculated by first deducting from the Maximum Settlement Amount the court-approved (1) attorneys’ fees and costs to Class Counsel; (2) settlement administration costs; (3) service award payments to the Plaintiffs; and (4) PAGA payments to the State of California and the PAGA-eligible members of the Settlement Class.

Based on San Ysidro Health's records, the Settlement Administrator will determine the number of workweeks worked by each Class Member in the Settlement Class in the pertinent time periods. Those who do not opt out of the Settlement will receive an individual settlement award that amounts to a pro rata share of their allocated Net Settlement Amount. Aggrieved Employees will receive a pro rata share of their portion of PAGA Payment. These payments are calculated as follows:

Individual Class Payments. The Administrator will calculate Individual Class Payments by (a) dividing the Net Settlement Amount by the total number of Workweeks worked by all Participating Class Members, and (b) multiplying the result by the number of Workweeks worked by each individual Participating Class Member.

According to San Ysidro Health's records, you were employed in the Settlement Class for [REDACTED] Compensable Workweeks between March 15, 2015 and April 2, 2023 ("Class Period"). Your Individual Class Payment is estimated to be _\$_____ (less withholding) Please be advised that the number of Compensable Workweeks listed above is presumed to be correct unless you submit documents proving otherwise. If you disagree with the number of Compensable Workweeks listed above, please submit an explanation and evidence of your proposed Compensable Workweeks to the Settlement Administrator no later than [45 days after mailing]. In the event of a dispute about the correct number of Compensable Workweeks you worked during the Class Period, the Settlement Administrator will resolve the challenge with input from San Ysidro Health and Class Counsel, subject to final resolution by the Court if necessary.

F. Will any taxes be taken out of the settlement payments?

Twenty percent (25%) of your Individual Payment Amount will be designated as wages and reported on an IRS Form W-2 with all appropriate taxes withheld. Fifty percent (50%) will be designated as penalties and twenty-five percent (25%) will be designated as interest and reported as non-wage income on an IRS Form 1099 with no payroll withholding. IRS W-2 and 1099 Forms will be issued to all Settlement Class Members who cash their checks, as required by law. The PAGA payments will be treated solely as penalties and reported on an IRS Form 1099, without tax withholding.

Aside from the employer portion of payroll taxes, Settlement Class Members are responsible for the appropriate payment of any federal, state, and/or local income or payroll taxes owed on the Individual Payment Amounts they receive. The tax issues for each Settlement Class Member are unique to that Class Member. You are advised to obtain tax advice from your own tax advisor with respect to any payments resulting from this Settlement. This Notice does not constitute legal or tax advice regarding any federal, state, or local tax issue, and nothing in this Notice is intended to or should be used by any person for the purpose of avoiding any tax liability or tax penalties.

THE FINAL APPROVAL HEARING

The Court will conduct a final approval hearing regarding the proposed settlement (the "Final Approval Hearing") on [REDACTED], 2024, at [REDACTED] m., in Department 71 of the San Diego County Superior Court, located at 330 W Broadway, San Diego, California 92101. The Court will then determine: (i) whether the lawsuit should be certified as a class action for settlement purposes only; (ii) whether the Settlement should be given the Court's final approval as fair, reasonable, adequate and in the best interests of the Settlement Class Members; (iii) whether the Settlement Class Members should be bound by the terms of the Settlement; (iv) the amount of the attorneys' fees and costs to be awarded to Plaintiff's attorneys; (v) the amount that should be awarded to Plaintiffs for their service as class representatives; (vi) the amount that should be approved for civil penalties under PAGA; and (vii) the

amount that should be approved for settlement administration costs. At the Final Approval Hearing, the Court will hear all objections as well as arguments for and against the proposed Settlement. You have a right to attend this hearing, but you are not required to do so. You also have the right to hire an attorney to represent you, at your own expense, or to enter an appearance and represent yourself.

WHAT ARE YOUR OPTIONS?

- **OPTION 1 – DO NOTHING AND PARTICIPATE IN THE SETTLEMENT**

IF YOU TAKE NO ACTION IN RESPONSE TO THIS NOTICE, YOU WILL AUTOMATICALLY RECEIVE YOUR SHARE OF THE SETTLEMENT ASSUMING IT IS APPROVED BY THE COURT. YOU WILL NEVER BE REQUIRED TO GO TO COURT OR PAY ANYTHING TO THE LAWYERS IN THIS CASE. If you move your residence, you must update your address with the Settlement Administrator. If you disagree with the number of workweeks worked as indicated in section E above, you must submit an explanation and/or documentation to the Settlement Administrator to support your position. The Settlement Administrator's address is [Settlement Administrator address].

- **OPTION 2 – OBJECT TO THE SETTLEMENT**

If you wish to remain a Settlement Class Member but you object to the proposed Settlement (or any of its terms) and wish the Court to consider your objection at the Final Approval Hearing, you may object to the Settlement in writing. You may also appear at the Final Approval Hearing, either in person or through an attorney at your own expense. All written objections, supporting papers, and/or notices of intent to appear at the Final Approval Hearing must clearly identify the case name and number and be mailed to the Settlement Administrator, [redacted] at [address]. Objections must be postmarked no later than [45 days after mailing]. However, you still may appear at the Final Approval Hearing and raise an objection to the Settlement even if you did not submit written objections within this 45-day deadline.

- **OPTION 3 – EXCLUDE YOURSELF FROM THE SETTLEMENT**

You have a right to exclude yourself from ("opt out" of) the Settlement, but if you choose to do so, you will not receive any payment from the proposed Class Settlement. You will also not be bound by a judgment in this case as to the Class claims, and you will have the right to file your own lawsuit against San Ysidro Health and pursue your own claims in a separate suit if you wish. You can opt out of the Class by mailing a written statement to the Settlement Administrator, [redacted], at the above-stated address, so that it is postmarked no later than [45 days after mailing of the notice]. The written statement should contain your name, address, signature; your telephone number; and the name of this case, *Kabitzke v. Centro de Salud de la Comunidad de San Ysidro, Case No. 37-2022-00046874-CU-OE-CTL*. Your request must also clearly state that you do not wish to be included in the Settlement, or words to that effect. It must be faxed, emailed or postmarked on or before _____. If you do not exclude yourself from the Settlement in accordance with this procedure, you will be bound by the terms of the Settlement and the related judgment entered by the Court. Even if you exclude yourself as described above, you will still be bound by the PAGA release and you will receive a PAGA payment if you were employed within the PAGA Period. If an exclusion request is submitted along with an objection and/or a dispute, the exclusion request will control.

NOTE REGARDING RESPONSE DEADLINES:

The 45-day deadline for you to opt out of the Settlement, object to the Settlement, or submit a challenge to the number of Compensable Workweeks being credited to you may be extended if your Notice was initially returned to the Settlement Administrator as undeliverable and, as a result, the Settlement Administrator re-mailed this Notice to you later. In such a case, you will have up to 15 calendar days from the date of the re-mailing to submit your response, even if that falls beyond the regular 45-day deadline

ARE THERE MORE DETAILS ABOUT THE SETTLEMENT?

The above is a summary of the basic terms of the Settlement. For the precise terms and conditions of the Settlement, you should review the detailed Settlement Agreement, which is on file with the clerk of the San Diego County Superior Court, located at 330 W Broadway, San Diego, California 92101, and may also be reviewed online at [\[insert court website link\]](#) or [\[Settlement Administrator's website at _____\]](#).

ALL INQUIRIES REGARDING THIS LITIGATION SHOULD BE MADE TO THE SETTLEMENT ADMINISTRATOR OR COUNSEL FOR THE CLASS. CLASS COUNSEL ARE:

JAMES HAWKINS APLC
James R. Hawkins, Esq.
Isandra Fernandez, Esq.
Lance Dacre, Esq. SBN 190305
9880 Research Drive, Suite 200
Irvine, CA 92618
Telephone: (949) 387-7200

Attorneys for Plaintiffs Alexandria Kabitzke, on behalf of herself and all others similarly situated.

DO NOT TELEPHONE THE COURT FOR LEGAL ADVICE OR FOR INFORMATION ABOUT THIS SETTLEMENT.