

1 James R. Hawkins, SBN 192925
Isandra Fernandez, SBN 220482
2 isandra@jameshawkinsaplc.com
Anthony L. Draper, SBN 334391
3 anthony@jameshawkinsaplc.com
JAMES HAWKINS APLC
4 9880 Research Drive, Suite 200
Irvine, CA 92618
5 Telephone: (949) 387-7200
Facsimile: (949) 387-6676
6

7 Attorneys for Plaintiff, ALEXANDRIA ILENE KABITZKE,
on behalf of herself and all others similarly situated
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9 SUPERIOR COURT OF THE STATE OF CALIFORNIA

10 COUNTY OF SAN DIEGO – HALL OF JUSTICE

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

12 Plaintiff,

13 v.

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

16 Defendants.
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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 JOINT
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: November 17, 2023
Time: 9:30 a.m.
Dept.: 71

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1. I am an attorney licensed to practice law before all courts in the State of California. I am an attorney with the law firm of Greene & Roberts, attorneys of record herein for Defendant Centro De Salud De La Comunidad De San Ysidro, Inc., dba San Ysidro Health (“San Ysidro Health” or “SYH”). I have personal knowledge of the facts set forth in this Declaration and can competently testify thereto. I have represented, mediated, and settled many other class actions filed against my clients alleging wage and hour violations on a putative class and under PAGA and have knowledge of the strengths and weaknesses of the claims pled and defenses available in this case and the benefits of the proposed Settlement under the circumstances of the case. This declaration is submitted in support of the joint motion for preliminary approval of a classwide and PAGA settlement.

2. I am lead defense counsel for San Ysidro Health in both lawsuits filed against it by Plaintiff, Alexandria Kabitzke, including a wage and hour class action and a separate case alleging violations of PAGA. I am also lead defense counsel in the defense of two earlier filed cases against San Ysidro Health. The following is a summary of each of the cases and the claims pled in each:

First Case: *Audrey Heredia v. San Ysidro Health*
Case No. San Diego Superior Court Case No: 37-2020-00046387, Dept. 73
Date Filed: December 17, 2020,
Claims: (1) Failure to Provide Compliant Rest Periods;
 (2) Failure to Reimburse for Necessary Business Expenditures;
 (3) Failure to Pay Overtime Wages;
 (4) Failure to Provide Premium Payments in Lieu of Compliant Meal Periods;
 (5) Failure to Provide Timely and Accurate Itemized Wage Statements;
 (6) Waiting Time Penalties; and
 (7) Unlawful Business Practices.

Mediation: 9/12/2022 unsuccessful mediation with Judge William Pate

Discovery:	SYH has served nearly 1,000 written discovery responses, produced 127,151 pages of documents (including time and wage records for more than 1,100 employees, all pertinent policies, handbooks, arbitration policies, thousands of emails, hundreds of employee waivers, etc.) and the name and contact information for 1,087 nonexempt employees to interview.
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Motions: SYH was forced to file numerous motions to secure deposition of Heredia and responses to 2031 demands. Because of her discovery abuses, Heredia has been sanctioned \$5,250.00 and also been the subject of evidence sanctions.

Certification: SYH moved to deny certification on 2/1/23, which motion was supported by 88 affidavits of current and former SYH employees, SYH's compliant wage and hour, SYH's binding arbitration policies, etc. On 3/3/23, the Court denied the motion finding "This action was initiated on December 17, 2020. Since its inception, this action has been heavily litigated, including a multitude of discovery disputes. Trial is currently scheduled for August 11, 2023. Paragraphs 12 - 38 of the declaration of attorney Esther L. Bylsma set forth a detailed timeline. Given this information, the Court is troubled by the potential for a due process violation in two respects. First, it is troubling that Defendant completed its voluminous discovery production in early February. It is reasonable to presume Plaintiff's counsel has not had adequate time to review and digest the document production. Second, although the procedural mechanism of a motion to *deny* class certification appears to be proper, as discussed above, this procedure deprives Plaintiff of the opportunity to file a reply brief. As Plaintiff bears the ultimate burden of demonstrating the propriety of a class action, Plaintiff should necessarily have the last word on the subject. Given these due process concerns, the Court denies this Motion without offering any conclusions to whether common issues will ultimately predominate. However, Plaintiff is cautioned that the trial date is fast approaching. Absent extraordinary circumstances, a further trial continuance will not be forthcoming. Plaintiff must file her Motion for class certification without delay." Heredia has not filed any motion on the issue of class certification.

Second Case: *Jacqueline Hernandez v. San Ysidro Health*

Case No. San Diego Superior Court Case No: 37-2021-00017369, Dept. 71 (formerly in Dept. 67.)

Date Filed: April 20, 2021,

Claims: (1) Unlawful Business Practices;
(2) Failure to Pay Minimum Wages;
(3) Failure to Pay Overtime Wages;
(4) Failure to Provide Required Meal Periods;
(5) Failure to Provide Required Rest Periods;
(6) Failure to Reimburse for Required Expenses;
(7) Failure to Provide Accurate Itemized Wage Statements;
(8) Waiting Time Penalties; and
(9) Violations of PAGA

Mediation: 3/23/2022 unsuccessful mediation with Judge William Pate
07/2022 unsuccessful on-going efforts at resolution with Judge Pate
07/20/22 mediator's proposal made, accepted by SYH, rejected by Hernandez

Discovery: SYH has served hundreds of responses to written discovery, produced extensive documents requested (including all pertinent policies, handbooks, arbitration policies).

Motions: SYH was forced to file numerous motions to secure deposition of Hernandez and responses to 2031 demands. Because of her discovery abuses, Hernandez has been sanctioned \$2,129.50. Hernandez also filed 7 motions to compel against SYH, which were all denied.

Certification: SYH moved to deny certification on all class claims on 12/28/22, which motion was supported by 88 affidavits of current and former SYH employees, SYH's compliant wage and hour, SYH's binding arbitration policies, etc. On 2/3/23, the Court granted the motion finding the claims were not suitable for class certification, dismissed all putative class claims pled, leaving only a PAGA claim.

Third/Fourth Cases: *Alexandria Kabitzke v. San Ysidro Health*

Class Case. San Diego Superior Court Case No: 37-2022-00036081, removed to Southern District of Ca.

PAGA Case: 37-2022-00046873

Date Filed: November 18, 2022

Claims in Class Case:

- (1) Failure to Pay Wages;
- (2) Failure to Provide Required Meal Periods;
- (3) Failure to Provide Required Rest Periods;
- (4) Failure to Reimburse for Required Expenses;
- (5) Failure to timely pay wages during employment;
- (6) Failure to time pay wages at termination
- (7) Failure to Provide Accurate Itemized Wage Statements;
- (8) Violation of UCL

Claims in PAGA case: (1) Violation of PAGA

Mediation: 3/21/2023 mediation with Judge Ronald Sabraw, mediator's proposal thereafter issued and accepted by all parties.

Discovery: See Paragraph 4 below.

3. San Ysidro Health has denied the allegations made and raised numerous factual and legal defenses to the claims pled, individually and on a class wide and PAGA basis in the *Heredia*, *Hernandez* and *Kabitzke* cases. San Ysidro Health maintains that its policies and practices meet the requirements of the Labor Code and applicable Wage Orders and has records, policies, handbooks, nearly 100 affidavits and other documents that prove its compliance with the law. In addition, I took the depositions of both Ms. Heredia and Ms. Hernandez, which overwhelmingly confirmed that San Ysidro Health's wage and hour policies and practices are legally compliant. In contrast, the plaintiff in *Hernandez* has taken no depositions in the more than two years the case has been pending and the plaintiff in *Heredia* has taken only one deposition, in the nearly three years the case has been pending.

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2 4. In the **instant** case, in late 2022 the parties agreed to attempt mediation and, in
3 anticipation of the mediation, at the request of Kabitzke's counsel, my client produced: all of the
4 discovery requests/responses, pleading, motions, court orders, writ petitions and more than 100,000
5 pages of documents produced in the earlier filed cases, including all of San Ysidro Health's policies,
6 handbooks, the time and wage records for more than 1,100 putative class members dating back as far
7 as 2016, copies of arbitration policies, and all of the pleadings, motions, court orders, depositions,
8 discovery requests and responses and everything produced in discovery in two other pending cases
9 involving overlapping putative class and PAGA claims against San Ysidro Health. We also
10 provided pay rates and dates of employment for the approximate 3700 putative class members, as
11 well as the alleged aggrieved employees. We also produced copies of nearly **100 affidavits signed**
12 **by current and former nonexempt employees and others, which verified the wage and hour**
13 **and PAGA claims pled against it were not supported.** (SDSC 37-2020-00046387, ROA 665,
14 670.)

15 5. My office also produced to Kabitzke's lawyers all of the briefing on the motion we
16 filed in the *Hernandez v. San Ysidro Health* case to deny class certification of all putative class
17 claims pled in that case and the order issued by the San Diego Superior Court (Hon. Eddie Sturgeon)
18 on February 3, 2023 denying class certification on all putative class claims pled in that case, which
19 claims are very similar to those pled by Kabitzke in this case. We also provided copies of the
20 motion, opposition, reply and order on San Ysidro Health's motion to deny certification filed in
21 2023 in the *Heredia v. San Ysidro Health* case.

22 6. My client's decision to attend mediation in **this** case in March 2023 with Judge
23 Ronald Sabraw followed extensive unsuccessful efforts by San Ysidro Health in 2022 to settle the
24 *Heredia* and *Hernandez* cases, with the assistance of mediator, Hon. William Pate (ret.). Those
25 efforts spanned a seven-month period and cost San Ysidro Health more than \$50,000 in fees and
26 costs. Despite San Ysidro Health's willingness to pay millions of dollars to buy its peace in cases in
27 which it denies liability, the plaintiff lawyers in *Heredia* and *Hernandez* did not negotiate in good
28 faith and refused to accept a mediator's proposal made by Judge Pate.

1 7. At the March 21, 2023, mediation with Judge Sabraw in the **instant** case, the parties
2 negotiated throughout the day and made good progress, but did not reach a settlement. However,
3 following the mediation, Judge Sabraw issued a mediator's proposal which the parties accepted on
4 March 24, 2023. After that, the parties spent significant time in the following weeks and months
5 ironing out the details of the settlement, negotiating on key terms and exchanging additional
6 information pertinent to the settlement.

7 8. San Ysidro Health has had in effect since early 2021, a binding Arbitration Policy
8 that applies to about 60% of the putative class. This policy includes a class action waiver and
9 delegated the "gateway" question of arbitrability and enforceability of the policy "exclusively to
10 [the] arbitrator." Consequently, many, if not most, of the putative class members are required to
11 litigate their claims on an individualized basis through binding arbitration per SYH's binding
12 arbitration policy.

13 9. In addition, as stated above, in the *Hernandez v. San Ysidro Health* case, San Ysidro
14 Health filed a motion to deny certification of all of the putative class claims, which motion was
15 granted by the San Diego Superior Court on February 3, 2023. In granting the motion, the Court
16 found that the plaintiff had failed to provide proof of "the existence of an ascertainable and
17 sufficiently numerous class, a well-defined community of interest, and substantial benefits from
18 certification that render proceeding as a class superior to the alternatives." (*Brinker Rest. Corp. v.*
19 *Super. Ct.* (2012) 53 Cal.4th 1004, 1021.) The Court also found that Plaintiff failed to meet her
20 burden to dispute any of the Defendants arguments, including that: (1) most of the putative class are
21 bound by arbitration agreements and unable to participate in the litigation; (2) there is no community
22 of interest among the putative class members because Defendant had no policy or practice of
23 violating the Labor Code and each claim would require individualized factual inquiries; (3) Plaintiff
24 Hernandez cannot adequately represent the class because of her limited time and experience working
25 for Defendant; (4) class treatment is not superior nor the class manageable; and (5) there has been no
26 demonstration of ascertainability or numerosity. A true and correct copy of a Court Order dated
27 February 3, 2023, issued in the matter of *Jacqueline Hernandez v. San Ysidro Health*, is attached
28 hereto as **Exhibit 2**.

10. It is also important to note that when Hernandez responded to SYH's motion to deny certification in January 2023 in the *Hernandez* case, she did not submit a single declaration of a single putative class member in support of her claims.

11. When Heredia opposed San Ysidro Health's motion to deny class certification on her claims February 17, 2023 in the *Heredia* case, this was more than two full years after her lawsuit had been filed and after extensive discovery had been conducted. Nonetheless, Heredia only attached six affidavits from former SYH employees to her opposition, which provided minimal, if any, support for her putative class claims. Upon receipt of the six declarations filed by Heredia, my client issued subpoenas for the depositions of the six declarants after which one of the six declarants called me and advised she had been told by Heredia's lawyers that if she signed the declaration she would receive money from the Heredia case and would not have to testify in any manner in the case. This witness also admitted that statements in her affidavit were false. This witness provided a second declaration attesting to these facts. (SDSC 37-2020-00046387, ROA 693, 703.)

I declare under penalty of perjury that the foregoing is true and correct. Executed this 21st day of August 2023 at San Diego, California.

Maria C Roberts
Maria C. Roberts

Exhibit 2

SUPERIOR COURT OF CALIFORNIA,
COUNTY OF SAN DIEGO
CENTRAL

MINUTE ORDER

DATE: 02/03/2023

TIME: 02:00:00 PM

DEPT: C-67

JUDICIAL OFFICER PRESIDING: Eddie C Sturgeon

CLERK: Jessica Pascual, Stephanie Goodrich

REPORTER/ERM: Not Reported

BAILIFF/COURT ATTENDANT: M. Micone

CASE NO: **37-2021-00017369-CU-OE-CTL** CASE INIT.DATE: 04/20/2021

CASE TITLE: **Hernandez vs Centro De Salud De La Comunidad De San Ysidro Inc [E-FILE]**

CASE CATEGORY: Civil - Unlimited CASE TYPE: Other employment

EVENT TYPE: Motion Hearing to Certify/Decertify Class Action

MOVING PARTY: Centro De Salud De La Comunidad De San Ysidro Inc

CAUSAL DOCUMENT/DATE FILED: Motion - Other to Deny Class Certification as to All of the Putative Class Claims Pled by Plaintiff, 12/28/2022

APPEARANCES

Victoria Rivapalacio, counsel, present for Plaintiff(s) via remote audio conference.

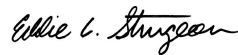
Noel J Meza, counsel, present for Defendant(s).

The Court hears oral argument and confirms the tentative ruling as follows:

Defendant Centro de Salud de la Comunidad de Salud de la Comunidad de San Ysidro dba San Ysidro Health's Motion to Deny Class Certification is **GRANTED**.

Defendants are entitled to initiate the class certification process. (*In re BCBG Overtime Cases* (2008) 163 Cal.App.4th 1293, 1298-1299.) In opposing such a motion, Plaintiff bears the burden of proving that class certification is appropriate. (*Sav-On Drug Stores v. Super. Ct.* (2004) 34 Cal.4th 319, 332.) Plaintiff is required to prove "the existence of an ascertainable and sufficiently numerous class, a well-defined community of interest, and substantial benefits from certification that render proceeding as a class superior to the alternatives." (*Brinker Rest. Corp. v. Super. Ct.* (2012) 53 Cal.4th 1004, 1021.) In opposition to Defendant's motion to deny class certification, Plaintiff has provided no such proof. Nor has Plaintiff disputed or argued any of the points raised by Defendant, including but not limited to: (1) most of the putative class are bound by arbitration agreements and unable to participate in the litigation; (2) there is no community of interest among the putative class members because Defendant had no policy or practice of violating the Labor Code and each claim would require individualized factual inquiries; (3) Plaintiff Hernandez cannot adequately represent the class because of her limited time and experience working for Defendant; (4) class treatment is not superior nor the class manageable; and (5) there has been no demonstration of ascertainability or numerosity. Because Plaintiff has failed to meet her burden and left Defendant's arguments unopposed, the motion to deny certification is granted.

IT IS SO ORDERED.



Judge Eddie C Sturgeon