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10 on behalf of himself and others similarly situated

11 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
12 **FOR THE COUNTY OF LOS ANGELES**

13 MELVIN STAKELY, JR., an individual on
14 behalf of himself and all others similarly
15 situated,

16 Plaintiff,

17 vs.

18 WINDSOR PALMS CARE CENTER OF
ARTESIA, a business entity of unknown
19 form; WINDSOR TWIN PALMS
HEALTHCARE CENTER, LLC, a
20 California limited liability company;
MODERN HERO, INC., a California
21 corporation, and DOES 1 through 50,
inclusive,

22 Defendants.

Case No.: 21STCV10507

CLASS ACTION

Assigned for All Purposes To:
Hon. Carolyn B. Kuhl
Dept.: 12

**[PROPOSED] ORDER GRANTING
PRELIMINARY APPROVAL OF
CLASS ACTION SETTLEMENT,
APPROVING FORM OF NOTICE TO
THE CLASS, CERTIFYING THE
SETTLEMENT CLASS, AND SETTING
FINAL APPROVAL HEARING**

Hearing

Date: December 13, 2021
Time: 9:30 a.m.
Dept: 12

1 **RECITALS**

2 On November 8, 2021, Plaintiff Melvin Stakely Jr. (the “Named Plaintiff”), individually and
3 on behalf of the Class, and Defendant Windsor Palms Care Center of Artesia, Windsor Twin Palms
4 Healthcare Center, LLC, and Modern Hero, Inc. (collectively “Defendants”) entered into a class
5 action settlement, the terms and conditions of which are set forth in the parties’ Joint Stipulation of
6 Class Action Settlement (hereafter collectively, the “Settlement” or “Settlement Agreement”).
7 Unless otherwise provided in this Order, all capitalized terms shall have the same meaning as set
8 forth in the Settlement Agreement.

9 The motion of Named Plaintiff for an order preliminarily approving the settlement of this
10 action, approving the form of notice to the class, certifying the settlement class for settlement
11 purposes, and setting a final approval hearing came on for hearing in Department 12 of this Court
12 on _____, 2021.

13 This Court, having fully considered Plaintiff’s Motion, the Memorandum of Points and
14 Authorities in support, the Declarations in support, the Settlement Agreement, the proposed form of
15 Class Notice, and the oral argument presented to the Court, finds that: (1) the proposed settlement
16 appears fair, reasonable and adequate, and that a final hearing should be held after notice to the
17 Class (defined below) of the proposed settlement to determine if the Settlement Agreement and
18 settlement are fair, reasonable, and adequate such that a Final Order and Judgment should be entered
19 in these actions based upon the Settlement Agreement and (2) the PAGA Settlement Payment is fair
20 and adequate and the PAGA Settlement Payment should be approved.

21 **THE COURT ORDERS AND MAKES DETERMINATIONS AS FOLLOWS:**

22 **ORDER PROVISIONALLY CERTIFYING SETTLEMENT CLASS AND**
23 **APPOINTMENT OF CLASS REPRESENTATIVE AND CLASS COUNSEL**

24 1. The Court finds that certification of the following class, for settlement purposes only,
25 is appropriate:

26 “all current and former non-exempt employees who worked for Defendants in
27 California at any time between March 17, 2017 to the date of Preliminary Approval
28 or such earlier date as Defendants may hereafter designate pursuant to paragraph 60(b)

of the Settlement Agreement.”

2. The Court grants preliminary approval of the terms and conditions contained in the Settlement Agreement. The Court finds that the terms of the Settlement Agreement are within the range of possible approval at the final approval hearing.

3. The Court preliminarily finds, for settlement purposes only, that the Class meets (i) the ascertainability and numerosity requirements; (ii) the commonality requirement because, in the absence of class certification and settlement, each individual Class Member would have to litigate core common issues of law and fact, all relating to Defendants’ alleged wage-and-hour violations asserted in the action; (iii) the typicality requirement because the Named Plaintiff and the Class Members’ claims all arise from the same alleged events and course of conduct, and are based on the same legal theories; and (iv) the adequacy of representation requirement because the Named Plaintiff has the same interests as all members of the Class, and they are represented by experienced and competent counsel.

4. The Court further finds, preliminarily and for settlement purposes only, that common issues predominate over individual issues in this litigation and that class treatment is superior to the other means of resolving this dispute. Employing the class device here will not only achieve economies of scale for Class Members with individual claims, but also conserve the resources of the judicial system and preserve public confidence in the integrity of the system by avoiding the waste and delay of repetitive proceedings. In addition, certifying the class will prevent inconsistent adjudications of similar issues and claims.

5. For settlement purposes only, the Court finds that the Named Plaintiff, Melvin Stakely Jr., is an adequate representative and appoints him as such. The Court further finds that David Yeremian of David Yeremian & Associates, Inc. and Walter Haines of United Employees Law Group, P.C. have adequately represented the Named Plaintiff and the Class in this litigation, and the Court appoints them as Class Counsel.

6. The Court appoints CPT Group, Inc. to perform the duties of a Settlement Administrator for the purpose of issuing the Class Notice and administering the Settlement.

7. The Court recognizes that certification under this Order is for *settlement purposes*

1 only, and shall not constitute or be construed as a finding by the Court, or an admission on the part
2 of Defendants, that this action is appropriate for class treatment for litigation purposes. Entry of
3 this Order is without prejudice to the rights of Defendants to oppose class certification in the actions,
4 should the proposed Settlement Agreement not be granted final approval.

5 **PRELIMINARY APPROVAL OF THE SETTLEMENT AGREEMENT**

6 8. The Court has reviewed the Settlement Agreement and the proposed Class Notice to
7 the Settlement Agreement. The Court finds, on a preliminary basis, that the Settlement Agreement
8 appears to be within the range of reasonableness of a settlement that could ultimately be given final
9 approval by this Court. It appears to the Court on a preliminary basis that:

10 a. The settlement amount is fair and reasonable to all Class Members when
11 balanced against the probable outcome of further litigation relating to liability and damages issues;

12 b. Extensive and costly investigation and research have been conducted such
13 that counsel for the parties at this time are reasonably able to evaluate their respective positions;

14 c. Settlement at this time will avoid additional substantial costs, such as those
15 that have already been incurred by both parties, as well as avoid the delay and risks that would be
16 presented by the further prosecution of this litigation; and

17 d. The proposed settlement has been reached as the result of intensive, serious,
18 and non-collusive arm's-length negotiations.

19 9. The Court further approves the following representative group of employees as
20 governed by the Settlement Agreement with respect to the PAGA Claim:

21 "all current and former non-exempt employees who worked for Defendants in
22 California at a time during the PAGA limitations which is at any time between March
23 17, 2020 to the date of Preliminary Approval or such earlier date as Defendants may
24 hereafter designate pursuant to paragraph 60(b) of the Settlement Agreement."

25 10. The Court grants approval of the PAGA Settlement Payment pursuant to the terms
26 and conditions contained in the Settlement Agreement. The Court finds that the terms of the PAGA
27 settlement are fair and reasonable and approves the PAGA settlement pursuant to Labor Code
28 § 2699(l)(2).

1 11. Because a PAGA action is not a class action, Class Members may not opt out of, or
2 object to, the PAGA Settlement Payment.

3 12. If the Court does not grant final approval of the Settlement Agreement, approval of
4 the PAGA settlement will be vacated.

5 **APPROVAL OF DISTRIBUTION OF THE CLASS NOTICE**

6 **AND TIMELINE FOR SENDING CLASS NOTICE**

7 13. This Court finds that the Class Notice fairly and adequately advises the potential
8 Class Members of the terms of the Settlement and the process for the Class Members to obtain the
9 benefits available under the Settlement Agreement, as well as the right of Class Members to opt out
10 of the class, to file documentation in opposition to the proposed settlement, and to appear at the
11 settlement hearing to be conducted on the date set by the Court. The Court further finds that the
12 Class Notice and proposed distribution of such Class Notice by first-class mail to each identified
13 Class Member at their last known address comports with all constitutional requirements, including
14 those of due process under the United States and California constitutions, and meets the
15 requirements of Code of Civil Procedure § 382 and California Rules of Court rule 3.766.
16 Accordingly, good cause appearing therefore, the Court hereby approves the proposed Class Notice.

17 14. The Settlement Administrator shall, as soon as practicable, but no later than
18 _____, 2021 [not less than 30 days following the date of this Order], cause the Class Notice
19 to be mailed by first class mail to all known members of the Class certified by this Court in this
20 action to the most recent address in Defendants' business records for each known member of the
21 Class. The mailing of the Class Notices directed in this Order constitutes the best notice practicable
22 under the circumstances and sufficient notice to all members of the Class.

23 15. The costs of settlement administration, including the cost of printing and mailing the
24 Class Notices shall be paid from the Settlement Amount. Such costs shall be withheld from the
25 Settlement Amount by the Settlement Administrator pursuant to the terms of the Settlement
26 Agreement.

27 16. Each member of the Class who wishes to be excluded from the Class must submit a
28 request to be excluded from the Settlement by the deadline set forth in the Class Notice. Any Class

1 Member who does not submit a timely request to be excluded from the Settlement consistent with
2 the terms of the Settlement Agreement shall be bound by the terms of the Settlement Agreement,
3 even if such Class Member has previously initiated or subsequently initiates individual litigation
4 against Defendants or other proceedings encompassed by the Settled Claims defined in the
5 Settlement Agreement.

6 **OBJECTIONS TO SETTLEMENT**

7 17. Any member of the Class who has not timely elected to be excluded from the Class,
8 and who wishes to object to the fairness, reasonableness or adequacy of the Settlement Agreement
9 or the proposed settlement, or to the award of attorneys' fees and costs, shall provide to the
10 Settlement Administrator a written statement of the objection, as well as the specific reasons, if any,
11 for each objection. The Settlement Administrator will promptly transmit any objections it receives
12 to Class Counsel and Defendants' counsel.

13 18. All written objections must be signed by the Class Member or the Class Member's
14 representative and must include the information specified in the Class Notice.

15 19. A Class Member may appear either in person or through personal counsel at the Final
16 Hearing to object to the Settlement. If represented by personal counsel, the counsel will be hired at
17 the Class Member's expense.

18 20. Class Counsel and Defendants' counsel shall promptly furnish each other with copies
19 of any and all objections or written requests for exclusion that come into their possession.

20 **FINAL APPROVAL FAIRNESS HEARING**

21 21. The Court grants Plaintiff's motion to set a settlement hearing for final approval of
22 the Settlement Agreement on _____, 2021, at _____ in Department 12 of this Court
23 ("Final Hearing"), as set forth in the Class Notice, to determine whether the proposed settlement of
24 this action is fair, reasonable and adequate and should be finally approved. The Court will also
25 consider at the Final Hearing whether applications for Plaintiff's attorneys' fees and costs and
26 enhancement award to the Named Plaintiff should be granted and, if so, in what amounts.

27 22. Members of the Class who have not timely elected to be excluded from the Class and
28 who object to the proposed Settlement may appear and present such objections at the Settlement

1 Hearing in person or by counsel, provided that the objecting Class Member complied with the
2 requirements to object to the Settlement. No person shall be heard, and no briefs or papers shall be
3 received or considered, unless the requirements to object to the Settlement have been satisfied,
4 except as this Court may permit for good cause shown.

5 23. Class Counsel shall file Plaintiff's memorandum of points and authorities in support
6 of the final approval of the Settlement Agreement and his request for approval of the attorneys' fees,
7 litigation costs, and enhancement award no later than _____ days prior to the Final Hearing.
8 After the Final Hearing, the Court may enter a Final Order and Final Judgment in accordance with
9 the Settlement Agreement that will adjudicate the rights of all Class Members.

10 24. All discovery and other pretrial proceedings in this action are stayed and suspended
11 until further order of this Court, except such actions as may be necessary to implement the
12 Settlement Agreement and this Order.

13 25. If, for any reason, the Court does not grant final approval of the Settlement, all
14 evidence and proceedings held in connection therewith shall be without prejudice to the status quo
15 ante rights of the parties to the litigation as more specifically set forth in the Settlement Agreement.

16 **IT IS SO ORDERED.**

17
18 Dated: _____, 2021

JUDGE OF THE SUPERIOR COURT