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IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

SUPERIOR COURT OF SAN BERNARDINO

NAHRAIN SMITH, on behalf of herself and others similarly situated,

Plaintiff,

v.

CHG MEDICAL STAFFING, INC. DBA RNNETWORK; and DOES 1-20, inclusive

Defendants.

Case No.: CIVSB2308055

Assigned for All Purposes to Hon. Jessica L. Morgan; Dept. S-26

MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF PLAINTIFF'S UNOPPOSED MOTION FOR PRELIMINARY APPROVAL OF CLASS AND REPRESENTATIVE ACTION SETTLEMENT

Hearing Date: October 8, 2024
Hearing Time: 8:30 a.m.
Department: S-26

Action Filed: April 20, 2023
Trial Date: Not Set

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I. INTRODUCTION

Plaintiff Nahrain Smith ("Plaintiff" or "Named Plaintiff") respectfully submits this memorandum in support of Plaintiff's Unopposed Motion for Preliminary Approval of Class and Private Attorneys General Act ("PAGA") Representative Action Settlement with Defendant CHG Medical Staffing, Inc. dba RNnetwork ("Defendant"), and seeks entry of an order: (1) preliminarily approving the proposed settlement of this class and PAGA action with Defendant; (2) approving the form and method for providing class-wide notice; (3) directing that notice of the proposed settlement be given to the class; and (4) scheduling a final approval hearing date for Plaintiff's motion for final approval of the settlement and entry of judgment, and Plaintiff's motion for approval of attorneys' fees, litigation expenses, and class representative service payment 100 days after granting preliminary approval, or anytime thereafter as the Court's calendar permits.

Plaintiff and Defendant (collectively, "the Parties") have reached a full settlement of the above-captioned action, which is embodied in the Class Action and PAGA Settlement Agreement ("Settlement Agreement" or "Settlement").[1] A copy of the fully executed Settlement Agreement is attached as Exhibit 1 to the Declaration of Ashkan Shakouri ("Decl. Shakouri"), concurrently filed herewith. The Settlement Agreement and Class Notice are modeled after the model settlement agreement and class notice approved by the Los Angeles County Superior Court. The Settlement Agreement has been submitted to the Labor and Workforce Development Agency ("LWDA"), and a copy of the email receipt of the submission is attached to Ashkan Shakouri's Declaration as Exhibit 2.

As consideration for this Settlement, the total amount to be paid by Defendant is $2,900,000.00 (the "Gross Settlement Amount"). The Gross Settlement Amount will settle all claims and issues pending in this litigation between Plaintiff and the Class, on the one hand, and the Defendant and the Released Parties, on the other hand, including: payment of Individual Class Payments to Participating Class Members; Individual PAGA Payments to the Aggrieved Employees; the LWDA PAGA Payment; Class Representative Service Payment to Named Plaintiff; Class Counsel Fees and Class Counsel Litigation Expenses Payment to Class Counsel; and the

[1] All capitalized terms used herein shall have the same meaning ascribed to them in the Settlement Agreement.

Administration Expenses Payment to the Administrator. The Settlement is all-in with no reversion to Defendant and no need to submit a claim form. (Decl. Shakouri at ¶3). Based on Defendant's latest estimate, there are approximately 643 Class Members, which means that, if the Court approves the Settlement, on average each Class Member will be entitled to about $2,777.35. (Decl. Shakouri at ¶37).

On June 4, 2024, the Parties participated in a full-day mediation before well-respected wage and hour mediator Eve Wagner, Esq. At the mediation, the Parties were able to reach an agreement to settle the Action by accepting the mediator's proposal. The Parties then prepared the Settlement Agreement, which was signed by all counsel and the Parties and is now presented to this Court for preliminary approval. Named Plaintiff and Class Counsel believe that this Settlement is fair, reasonable, adequate, and should be preliminarily approved. (Decl. Shakouri at ¶4).

Therefore, Plaintiff respectfully requests that this Court grant preliminary approval of the Settlement and enter the Proposed Order, concurrently filed herewith.

II. DESCRIPTION OF THE SETTLEMENT

The Gross Settlement Amount to be paid by Defendant is $2,900,000.00. Under the Settlement, the Gross Settlement Amount consists of the following elements: 1) Individual Class Payments to Participating Class Members; 2) Individual PAGA Payments to Aggrieved Employees; 3) the LWDA PAGA Payment; 4) the Class Representative Service Payment to Named Plaintiff; 5) Class Counsel Fees Payment; 6) Class Counsel Litigation Expenses Payment; and 7) the Administration Expenses Payment. The Gross Settlement Amount does not include Defendant's share of employer-side payroll taxes, which Defendant shall pay to the Administrator separately. The Gross Settlement Amount shall be all-in with no reversion to Defendant. (Decl. Shakouri at ¶5).

Within fourteen (14) calendar days of the Effective Date, Defendant shall pay the Gross Settlement Amount to the Administrator. Within ten (10) calendar days after Defendant funds the Gross Settlement Amount, the Administrator shall issue payments to (1) the Participating Class Members; (2) Aggrieved Employees; (3) the LWDA; (4) Named Plaintiff; (5) Class Counsel; and (6) the Administrator, all in the amounts approved by the Court. (Decl. Shakouri at ¶6).

The Net Settlement Amount shall equal the net amount available for Individual Class Payments to Participating Class Members from the Gross Settlement Amount after deducting the Court-approved amounts for Named Plaintiff's Class Representative Service Payment; Class Counsel Fees Payment; Class Counsel Litigation Expenses Payment; PAGA Penalties; and the Administration Expenses Payment. The Administrator will pay an Individual Class Payment from the Net Settlement Amount to each Participating Class Member and an Individual PAGA Payment from the 25% share of PAGA Penalties to each Aggrieved Employee. The submission of a claim form is not required in order for the Class Member to be paid his or her Individual Class Payment and Individual PAGA Payment, if any. The Individual Class Payments to Participating Class Members will be calculated by dividing the Net Settlement Amount by the total number of Workweeks worked by all Participating Class Members during the Class Period and then multiplying the result by each Participating Class Member's Workweeks. The Individual PAGA Payments to the Aggrieved Employees will be calculated by dividing the amount of the Aggrieved Employees' 25% share of PAGA Penalties by the total number of PAGA Period Pay Periods worked by all Aggrieved Employees during the PAGA Period and then multiplying the result by each Aggrieved Employee's PAGA Period Pay Periods. (Decl. Shakouri at ¶7).

Class Members will have forty-five (45) days after the mailing of the Class Notice ("Response Deadline") to exclude themselves, submit written objections and/or submit disputes as to their estimated payments. Class Members may choose to opt-out of the Settlement by following the directions in the Class Notice. The procedure for dissemination of the Class Notice, as well as the procedure Class Members must follow to dispute their estimated payments, submit objections to the Settlement and/or requests for exclusion from the Class, is specifically articulated in Exhibit A of the Settlement Agreement (pp. 23-32). The Class Notice shall provide that Class Members who wish to exclude themselves from the Class must submit a written Request for Exclusion by the Response Deadline. The Class Notice shall also provide that Class Members who wish to object to the Settlement may submit a written objection to the Administrator (or through any other method through which the Court will accept objections, if any). The Class Notice also informs Class Members of their right to appear at the fairness or final approval hearing ("Final Approval Hearing")

and to orally object to the Settlement at the Final Approval Hearing, regardless of whether they have submitted written objections. (Decl. Shakouri at ¶8).

If a Class Member's Individual Class Payment check or Individual PAGA Payment check is not cashed within one hundred and eighty (180) calendar days from the date the settlement checks are issued, the funds from such uncashed checks will be distributed to the California Controller's Unclaimed Property Fund in the name of the Class Member and the Class Member will remain bound by the Settlement. A Class Member who opts out of the Settlement will not release his or her claims pursuant to the Settlement, except for Released PAGA Claims, as defined in the Settlement, which will be released whether or not the Class Member opts out of the Settlement. (Decl. Shakouri at ¶9).

The Parties have agreed to use CPT Group as the Administrator for the Settlement. Payment of the expenses of the Administrator from the Gross Settlement Amount shall be made for the expenses of effectuating and administering the Settlement. The Administrator shall receive payment for its services in an amount not to exceed $12,500.00. (Decl. Shakouri at ¶10).

Subject to Court approval, the Settlement Agreement provides for Class Counsel to be awarded as their attorneys' fees (i.e., Class Counsel Fees Payment) a sum not to exceed one-third of the Gross Settlement Amount (i.e., $966,666.67). Class Counsel will also be allowed to apply separately for reimbursement of reasonable litigation costs and expenses (i.e., Class Counsel Litigation Expenses Payment) in an amount not to exceed $25,000.00. In support of these requests, Class Counsel will provide evidentiary support, including lodestar method calculations. Subject to Court approval, the Settlement Agreement provides for a Class Representative Service Payment of no more than $10,000.00 to the Named Plaintiff, or such lesser amount as may be approved by the Court at final approval.[2] Defendant will not oppose a motion for approval of the Class Counsel Fees Payment, the Class Counsel Litigation Expenses Payment, and the Class Representative Service Payment consistent with the Settlement Agreement. (Decl. Shakouri at ¶11).

[2] Plaintiff will address the reasonableness of these payments when filing her final approval papers, including the enhancement factors set forth in *Golba v. Dick's Sporting Goods*, *Inc.*, 238 Cal.App.4th 1251 (2015) and *Clark v. Am. Residential Servs. LLC,* 175 Cal.App.4th 785 (2009).

Subject to Court approval, $100,000.00 will be allocated to the PAGA Penalties for settlement of Plaintiff's, the Aggrieved Employees' and the LWDA's PAGA claims under Labor Code Section 2698 *et seq.* Pursuant to the requirements of Labor Code §2699(i), the PAGA Penalties shall be allocated $75,000.00 (75%) to the LWDA as the LWDA's share of the settlement of civil penalties, and $25,000.00 (25%) will be distributed to the Aggrieved Employees. (Decl. Shakouri at ¶12).

Should the Court approve the above distributions, the Net Settlement Amount is estimated to be $1,785,833.33. Based on Defendant's latest estimate there are approximately 643 Class Members, which means that on average each Class Member will be entitled to about $2,777.35. (Decl. Shakouri at ¶37).

In exchange for participating in the Settlement, and only after Final Approval and Judgment is entered and upon the full funding of the Gross Settlement Amount, Plaintiff and all Class Members who do not submit timely and valid Requests for Exclusion (i.e., Participating Class Members) will be deemed to have fully and finally released the Released Parties from all claims that were alleged, or reasonably could have been alleged, based on the facts stated in the Operative Complaint and ascertained in the course of the Action, that arose during the Class Period ("Released Class Claims"). Upon the full funding of the Gross Settlement Amount, Plaintiff, the Aggrieved Employees, and the LWDA will be deemed to have released the Released Parties from all claims for violation of PAGA that were alleged, or reasonably could have been alleged, based on the facts stated in the Action, the Operative Complaint, Plaintiff's PAGA Notice, or ascertained in the course of the Action through the PAGA Period ("Released PAGA Claims"), whether or not they submitted Requests for Exclusion. (*See* Settlement Agreement at ¶¶1.39, 1.40, 1.41, 5.2, 5.3). (Decl. Shakouri at ¶13).

III. CASE BACKGROUND

On February 1, 2023, Plaintiff provided written notice of various alleged California Labor Code violations to the LWDA and Defendant pursuant to PAGA, California Labor Code section 2699, *et seq.* On April 20, 2023, Plaintiff filed this Action by filing a representative action complaint in the Superior Court of the State of California, County of San Bernardino, alleging a

single cause of action against Defendant for PAGA violations. On January 31, 2023, Plaintiff filed a separate class action against Defendant in the Superior Court of the State of California, County of San Diego, Case No. 37-2023-00004507-CU-OE-CTL, on behalf of herself and all of Defendant's non-exempt employees who were assigned to work at any facility inside California during the Class Period, with the exception of all individuals who are members of the class certified in *Carlino v. CHG Med. Staffing, Inc.*, Eastern Dist. Case No. 1:17-cv-01323-DAD-JLT, alleging the following causes of action: (1) failure to pay overtime; (2) failure to authorize and/or permit meal breaks or pay lawful premiums; (3) failure to authorize and/or permit rest breaks; (4) failure to reimburse for business-related expenditures; (5) failure to furnish accurate wage statements; (6) waiting time penalties; and (7) unfair business practices ("San Diego Action"). On September 28, 2023, the court in the San Diego Action granted Defendant's motion to compel arbitration, which Plaintiff appealed on October 31, 2023. On July 1, 2024, the Parties filed a stipulation to stay the appeal of the San Diego Action pending approval of the Settlement in this Action. On July 5, 2024, the Appellate Court in the San Diego Action ordered Plaintiff and Appellant to file a request to dismiss the appeal by October 3, 2024, or a letter stating good cause why the appeal should not be dismissed within the specified time period. The Parties filed a stipulation to permit the filing of the First Amended Complaint ("FAC") in the Action. Pursuant to the Parties' stipulation, the Court in this Action entered an order permitting the filing of the FAC. Thereafter, Plaintiff filed the FAC, which added the seven additional causes of action against Defendant for the class allegations that were originally alleged in the San Diego Action. (Decl. Shakouri at ¶13).

Following the filing of the Action, the Parties met and conferred with respect to a potential resolution and agreed to stay formal discovery, exchange informal discovery and engage in a private mediation. Prior to mediation, the Parties engaged in investigation and the further exchange of documents and information in connection with the Action. As part of this process, Defendant provided documents and information to Class Counsel to review and analyze. Prior to the mediation, in response to an extensive "wish list" prepared by Plaintiff, Defendant produced a randomized sampling of payroll and time records for the Class Members, figures and information regarding the

class size and composition, in addition to relevant company policies and procedures and agreements signed by Class Members. Class Counsel reviewed these records and, with the assistance of a retained expert, analyzed the time and pay records to determine Defendant's potential damage exposure. Class Counsel then used this analysis in conjunction with the anecdotal evidence provided by Plaintiff to obtain detailed information on both liability and damages. (Decl. Shakouri at ¶15).

On June 4, 2024, the Parties participated in an all-day mediation presided over by Eve Wagner, Esq., a respected mediator for wage and hour class actions. The settlement discussions were conducted at arm's-length. At the mediation, the Parties were unable to settle the Action. However, the Parties continued settlement negotiations and eventually accepted the mediator's settlement proposal. The Settlement was the result of an informed and detailed analysis of Defendant's alleged, potential liability of total exposure in relation to the costs and risks associated with continued litigation. The Parties subsequently prepared the Settlement Agreement, which was signed by the Parties and is now presented to this Court for preliminary approval. Based on the documents and information produced, as well as Class Counsel's own independent investigation and evaluation, and the mediator's efforts, Class Counsel believe that the Settlement with Defendant for the consideration and on the terms set forth in the Settlement Agreement is fair, reasonable, and adequate, and is in the best interest of the Class Members in light of the facts and circumstances, including the risk of significant delay and uncertainty associated with litigation and various defenses asserted by Defendant. (Decl. Shakouri at ¶16).

Accordingly, for purposes of this Settlement, Plaintiff seeks to represent the following Class: All of Defendant's non-exempt employees who were assigned to work at any facility inside California during the Class Period, with the exception of all individuals who are members of the class certified in *Carlino v. CHG Med. Staffing, Inc.*, E.D. Cal. Case No. 1:17- cv-01323-DAD-JLT. The Class Period means the period from January 31, 2019 through August 5, 2024. (Settlement Agreement at ¶¶1.5, 1.12). (Decl. Shakouri at ¶17).

Although a resolution has been reached, Defendant denies any liability or wrongdoing of any kind associated with the claims alleged in the Action and further denies that, for any purpose other than Settlement, the Action is appropriate for class treatment. Defendant contends, among

other things, that it has complied at all times with the California Labor Code and the applicable Wage Orders. Further, Defendant contends that class certification would be inappropriate for any reason other than for settlement. Plaintiff contends that Defendant violated California wage and hour laws. Plaintiff further contends that the Action is appropriate for class certification on the basis that Plaintiff's claims meet the requisites for class certification. Without admitting that class certification is proper, Defendant has stipulated that the above Class may be certified for settlement purposes only. Based upon the totality of the evidence presented, Plaintiff is equipped to provide this Court with sufficient evidence to determine adequacy of the Settlement. The Parties agree that certification for settlement purposes is not an admission that class certification would be proper or that Plaintiff would be an adequate class representatives if the class certification issues were litigated. Further, the Settlement Agreement is not admissible in this or any other proceeding as evidence that the Class could be certified absent a settlement. Solely for purposes of settling the Action, the Parties stipulate and agree that the requisites for establishing class certification with respect to the Class, as defined above, are satisfied. (Decl. Shakouri at ¶18).

Class Counsel have conducted a thorough investigation into the facts of the class action. Class Counsel has diligently evaluated the Class Members' claims against Defendant. Class Counsel reviewed the extensive production of records and data from the Defendant. Prior to the settlement negotiations, counsel for Defendant provided Class Counsel with access to the necessary information for Class Counsel to evaluate the class and PAGA claims. Class Counsel conducted extensive review of time and pay data with the assistance of an expert. Based on the documents and information produced and their own independent investigation, evaluation and experience, Class Counsel believe that the Settlement is fair, reasonable, and adequate and is in the best interest of the Class in light of all known facts and circumstances, including the risk of significant delay, the defenses asserted by Defendant, and potential appellate issues. (Decl. Shakouri at ¶19).

IV. THE SETTLEMENT MEETS THE CRITERIA NECESSARY FOR THIS COURT TO GRANT PRELIMINARY APPROVAL

When a proposed class-wide settlement is reached, the settlement must be submitted to the court for approval. 2 H. Newberg & A. Conte, *Newberg on Class Actions* (3d ed. 1992) at §11.41,

p.11-87. California "[p]ublic policy generally favors the compromise of complex class action litigation." *Nordstrom Comm'n Cases*, 186 Cal.App.4th 576, 581 (2010) (quoting *Cellphone Termination Fee Cases*, 180 Cal.App.4th 1110, 1117-18 (2009)). Class action settlements are approved where the proposed settlement is "fair, adequate and reasonable." *Dunk v. Ford Motor Co*., 48 Cal.App.4th 1794, 1801 (1996) (citing *Officers for Justice v. Civil Serv. Comm'n*, 688 F.2d 615, 625 (9th Cir. 1982), cert. denied, 459 U.S. 1217 (1983)).

The decision to approve or reject a proposed settlement is committed to the Court's sound discretion. *Kullar v. Foot Locker Retail, Inc.*, 168 Cal.App.4th 116, 128 (2008); *Wershba v. Apple Computer, Inc.*, 91 Cal.App.4th 224, 234-35 (2001). The purpose of the preliminary evaluation of class action settlements is to determine only whether the proposed settlement terms and conditions and the scheduling of a formal fairness hearing is worthwhile. *Wershba*, 91 Cal.App.4th at 234-35; 4 *Newberg* § 11:25. In passing on class action settlements, the Court has broad powers to determine whether the proposed settlement is fair under the circumstances of the case.

Preliminary approval is the first of three steps that comprise the approval procedure for settlements of class actions. The second step is the dissemination of notice of the settlement to all Class Members. The third step is a final settlement approval hearing, at which evidence and argument concerning the fairness, adequacy, and reasonableness of the settlement may be presented and Class Members may be heard regarding the settlement. *See Dunk, supra,* at 1801; *Manual for Complex Litigation, Second* §30.44 (1993); Cal. Rules of Court, rule 3.769.

The primary question presented on an application for preliminary approval of a proposed class action settlement is whether the proposed settlement is "within the range of possible approval." *Manual for Complex Litigation*, Second §30.44 at 229; *Gautreaux v. Pierce*, 690 F.2d 616, 621 n.3 (7th Cir. 1982).[3] Preliminary approval is merely the prerequisite to giving notice so that "the proposed settlement... may be submitted to members of the prospective Class for their acceptance

[3] California courts look to federal authority on class actions. *Vasquez v. Superior Court*, 4 Cal.3d 800, 821 (1971). "It is well established that in the absence of relevant state precedents trial courts are urged to follow the procedures prescribed in Rule 23 of the Federal Rules of Civil Procedure for conducting class actions." *Frazier v. City of Richmond*, 184 Cal.App.3d 1491, 1499 (1986), *citing Green v. Obledo*, 29 Cal.3d 126, 145-146 (1981).

or rejection." *Philadelphia Housing Authority v. American Radiator & Standard Sanitary Corp.*, 323 F. Supp. 364, 372 (E.D. Pa. 1970); *Sayaman v. Baxter Healthcare Corp*., 2010 U.S. Dist. LEXIS 151997, *3 (C.D. Cal. 2010). There is an initial presumption of fairness when a proposed settlement, which was negotiated at arm's length by counsel for the Class, is presented for court approval. *Newberg*, 3d Ed.,§11.41, p.11-88; *Wershba v. Apple Computer, Inc.*, 91 Cal.App.4th 224, 245 (2001) [citation omitted]; *see also Cho v. Seagate Tech. Holdings, Inc.*, 177 Cal.App.4th 734, 742-45 (2009) (upholding trial court's determination that settlement was "fair, reasonable and adequate" where the settlement "provided valuable benefits to the class … that were 'particularly valuable in light of the risks plaintiff would have faced if she proceeded to litigate her case.'"). However, the ultimate question of whether the proposed settlement is fair, reasonable, and adequate is made after notice of the settlement is given to the class members and a final settlement hearing is held by the Court.

A. The Role of the Court in Preliminary Approval of a Class Action Settlement

The approval of a proposed settlement of a class action suit is a matter within the broad discretion of the trial court. *Wershba*, 91 Cal.App.4th at 234-235; *Dunk, supra,* at 1794. Preliminary approval does not require the trial court to answer the ultimate question of whether a proposed settlement is fair, reasonable, and adequate. That final determination is made only after notice of the settlement has been given to the class members and after they have been given an opportunity to voice their views of the settlement or to be excluded from the settlement. 3B J. Moore, *Moore's Federal Practice* §§23.80 - 23.85 (2003).

In considering a potential settlement for preliminary approval purposes, the trial court does not have to reach any ultimate conclusions on the issues of fact and law which underlie the merits of the dispute and need not engage in a trial on the merits. *Wershba*, *supra*, 91 Cal.App.4th at 239-40; *Dunk*, *supra*, 48 Cal.App.4th at 1807. The Ninth Circuit explains, "the very essence of a settlement is compromise, 'a yielding of absolutes and an abandoning of highest hopes.'" *Officers for Justice v. Civil Service Com'n of City and County of S.F.*, 688 F.2d 615, 624 (9th Cir. 1982). The question whether a proposed settlement is fair, reasonable, and adequate necessarily requires a judgment and evaluation by the attorneys for the parties based upon a comparison of "'the terms of

the compromise with the likely rewards of litigation.'" *Weinberger v. Kendrick*, 698 F.2d 61, 73 (2d Cir. 1982), cert. denied 464 U.S. 818 (1983) (quoting *Protective Comm. for Indep. Stockholders of TMT Trailer Ferry, Inc. v. Anderson*, 390 U.S. 414, 424-25 (1968)). Thus, when analyzing the settlement, the amount is "not to be judged against a hypothetical or speculative measure of what might have been achieved by the negotiators." *Officers for Justice*, 688 F.2d at 625, 628.

With regard to class action settlements, the opinions of counsel should be given considerable weight both because of counsel's familiarity with this litigation and previous experience with cases such as these. *Officers for Justice*, 688 F.2d 615, 625 (9th Cir. 1982); *In re Wash. Public Power Supply System Sec. Litig.*, 720 F. Supp. 1379, 1392 (D. Ariz. 1989); *Kirkorian v. Borelli*, 695 F. Supp. 446, 451 (N.D. Cal. 1988); *Weinberger*, 698 F.2d at 74. For example, in *Lyons v. Marrud, Inc.*, [1972-1973 Transfer Binder] Fed. Sec. L. Rep. (CCH) Paragraph 93,525 (S.D.N.Y. 1972), the court noted that "[e]xperienced and competent counsel have assessed these problems and the probability of success on the merits... The parties' decision regarding the respective merits of their position has an important bearing." Id. at ¶92,520. "The recommendations of plaintiffs' counsel should be given a presumption of reasonableness." *Boyd v. Bechtel Corp.*, 485 F.Supp. 610, 622 (N.D. Cal. 1979). As a result, courts hold that the recommendation of counsel is entitled to significant weight. *Nat'l Rural Telecomms. Coop. v. DIRECTV, Inc.*, 221 F.R.D. 523, 528 (C.D. Cal. 2004).

B. Factors to be Considered in Granting Preliminary Approval

A number of factors are to be considered in evaluating a settlement for purposes of preliminary approval. In determining whether to grant preliminary approval, the court considers whether the "(1) the proposed settlement appears to be the product of serious, informed, non-collusive negotiations, (2) has no obvious deficiencies, (3) does not improperly grant preferential treatment to class representatives or segments of the class, and (4) falls within the range of possible approval." *In re Tableware Antitrust Litig.*, 484 F. Supp. 2d 1078, 1079 (N.D. Cal. 2007). No one factor should be determinative, but rather all factors should be considered. The analysis has been summarized as follows:

> If the proposed settlement appears to be the product of serious, informed, noncollusive negotiations, has no obvious deficiencies, does not improperly grant preferential treatment to class representatives or segments of the class, and falls within the range of possible approval, then the court should direct that notice be given to the class members of a formal fairness hearing, at which evidence may be presented in support of and in opposition to the settlement. *Manual of Complex Litigation, Second* §30.44, at 229.

Here, the Settlement meets all of these criteria for preliminary approval.

1. The Settlement Is the Product of Serious, Informed and Arm's-Length Negotiations by Experienced Counsel

This Settlement is the result of extensive and hard-fought litigation and negotiations between the Parties. Defendant has expressly denied and continues to deny any wrongdoing or legal liability arising out of the conduct alleged in the Action. Plaintiff and Class Counsel have determined that it is desirable and beneficial to the Class Members to put to rest the Released Class Claims and Released PAGA Claims.

The Parties scheduled and attended an arms-length private mediation before Eve Wagner, Esq., a respected and experienced mediator. In preparation for the mediation, Defendant provided Class Counsel with necessary records and information for the members of the Class. Defendant also produced Defendant's relevant employment policies, including compensation and timekeeping policies. Plaintiff analyzed the data with the help of an expert Berger Consulting Group ("Berger"). (Decl. Shakouri at ¶20). On June 4, 2024, the Parties participated in a full-day mediation before Eve Wagner, Esq. At the mediation, the Parties were unable to settle the Action. However, the Parties continued settlement negotiations and eventually accepted the mediator's settlement proposal. The Parties then prepared the full Settlement Agreement, which was signed by all counsel and the Parties. (Decl. Shakouri at ¶16).

Class Counsel have conducted a thorough investigation into the facts of the Action. Class Counsel have diligently evaluated the Class Members' claims against Defendant. Class Counsel reviewed the production of documents from the Defendant. Class Counsel conducted extensive review of Defendant's time records and data with the assistance of an expert. Based on the foregoing data and their own independent investigation, evaluation and experience, Class Counsel believe that

the Settlement is fair, reasonable, and adequate and is in the best interest of the Class in light of all known facts and circumstances. (Decl. Shakouri at ¶20).

Plaintiff and Class Counsel recognize the expense and length of continuing to litigate and trying the Action against Defendant through possible appeals which could take several years. Class Counsel have also taken into account the uncertain outcome and risk of litigation, especially in complex actions such as the one here. Class Counsel are also mindful of, and recognize, the inherent problems of proof under, and asserted defenses to, the claims asserted in the Action. Based upon their evaluation, Plaintiff and Class Counsel have determined that the settlement set forth in the Settlement Agreement is in the best interest of the Class Members. (Decl. Shakouri at ¶21).

Here, there can be no dispute that the litigation has been hard-fought with aggressive and capable advocacy on both sides. The Parties were represented by experienced and capable counsel who zealously advocated their respective positions with the assistance of an experienced mediator. Accordingly, "[t]here is likewise every reason to conclude that settlement negotiations were vigorously conducted at arms' length and without any suggestion of undue influence." *In re Wash. Public Power*, 720 F. Supp. at 1392.

2. The Settlement Has No "Obvious Deficiencies" and Falls Within the Range of Approval

a. The Settlement Is Fair, Reasonable, and Adequate

The Settlement has no "obvious deficiencies" and is well within the range of possible approval. All Class Members will receive an opportunity to participate in the Settlement and receive payment according to the same formula if they do not opt out. (Settlement Agreement at ¶3.2.4).

The amounts to compensate the Class Members for the alleged violations at the time this Settlement was negotiated were calculated by Berger, Plaintiff's damage expert. Plaintiff used Berger to analyze the data and determine the potential damages for the Class Members. For the Class, Plaintiff estimates that Defendant was subject to maximum liability for alleged damages in the amount of $11,925,415, consisting of $3,096,025 for alleged unpaid overtime; $3,068,531 for alleged meal break premiums; $5,169,589 for alleged rest break premiums; and $591,270 for alleged unreimbursed expenses. Consequently, the Gross Settlement Amount of $2,900,000

represents 24.3% of the value of the maximum actual damages at issue here. Plaintiff further calculated that Defendant could be liable for $8,773,173 for alleged waiting time penalties, and $889,500 for alleged wage statement penalties.[4] Finally, Plaintiff's expert calculated that Defendant could be liable for PAGA penalties in an amount of $5,309,700.[5] Thus, the maximum combination of damages and penalties to the Class amounts to $26,897,788, assuming all of these amounts could be proven at trial. Consequently, the Settlement represents approximately 10.8% of the maximum combination of damages and penalties at issue here. Given the amount of the Settlement as compared to the potential value of claims in this case, the Settlement is fair and reasonable. Clearly, the goal of this litigation to provide compensation to Class Members for their alleged damages has been met. (Decl. Shakouri at ¶22).

In *Stovall-Gusman v. W.W. Granger, Inc.*, 2015 U.S. Dist. LEXIS 78671, at *12 (N.D. Cal. 2015), the court approved a settlement of an action claiming unpaid wages where the settlement amount constituted roughly 10% of the estimated actual damages to the class. In *Bellinghausen v. Tractor Supply Co.*, 306 F.R.D. 245, 256 (N.D. Cal. 2015), the Court approved a settlement where the gross recovery to the class was approximately 8.5% of the maximum recovery amount. The Settlement here recovered a significantly higher percentage than those in the above cases. As a result, this Settlement is entitled to preliminary approval.

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[4] While Plaintiff alleged claims for statutory penalties, she recognized that these claims were derivative of Plaintiff's previous claims and if certification was denied on these underlying claims, these claims would also likely fail. Moreover, Plaintiff's claims pursuant to Labor Code §§ 203, 226 and various PAGA penalties are also subject to a good faith defense as to whether any premium wages for meal or rest periods or other wages were owed given Defendant's position that Plaintiff and the Class were properly compensated. *See Reber v. AIMCO/Bethesda Holdings, Inc.*, 2008 WL 4384147, at *9 (C.D. Cal. Aug. 25, 2008) (granting defendant's motion for summary judgment on claim for failure to provide accurate itemized wage statements "because a good faith dispute exists... [therefore, defendant] was not 'knowing and intentional' in failing to provide [Section 226] statements"); *see also Nordstrom Commission Cases*, 186 Cal.App.4th 576, 584 (2010) ("There is no willful failure to pay wages if the employer and employee have a good faith dispute as to whether and when the wages were due.").

[5] Plaintiff recognizes that the PAGA penalties claim is also subject to various defenses by Defendant, including that Aggrieved Employees may not be able to recover subsequent penalties until, at a minimum, Plaintiff provided PAGA notice. *See Amaral v. Cintas Corp.*, 163 Cal.App.4th 1157, 1209 (2008) ("Until the employer has been notified that it is violating a Labor Code provision (whether or not the commissioner or court chooses to impose penalties), the employer cannot be presumed to be aware that its continuing underpayment of employees is a "violation" subject to penalties."). In addition, Plaintiff recognizes that PAGA claims bear some risk. *See Carrington v. Starbucks Corp.*, 30 Cal.App.5th 504 (2018). In *Carrington*, while the plaintiff prevailed on his PAGA claim at trial, the trial court reduced the maximum PAGA penalty amount by 90%, citing the employer's good faith attempt at complying with the law. *Id.* at 517. Upon review, the Court of Appeal found such reduction to be proper. *Id.* at 539. Again, the *Carrington* decision was after plaintiff actually prevailed at trial, and even then, the PAGA penalties were reduced by 90%.

b. The Strengths and Weaknesses in Plaintiff's Case and Defendant's Defenses Warrant the Settlement

As detailed below, the strengths and weaknesses in Plaintiff's Actions, the defenses asserted by Defendant, the risks of obtaining and maintaining a class action, and the risks, duration, and complexity of further litigation, all weigh in favor of the Settlement reached here. Where both sides face significant uncertainty, the attendant risks favor settlement. *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1026 (9th Cir. 1998). Here, a number of defenses asserted by Defendant presented serious threats to the claims of Plaintiff and the Class Members. Defendant asserted that its employment practices complied with all applicable Labor Laws. (Decl. Shakouri at ¶23).

First, it is entirely unclear whether the class claims resolved through the settlement could have survived the appeal in this matter. Specifically, as discussed above, Defendant successfully moved to compel arbitration and obtained the dismissal of the class claims initially asserted in the San Diego action. Thus, absent this settlement, Plaintiff and the Class faced significant risk of a zero dollar recovery on their class claims.

Moreover, Plaintiff's claim for unpaid overtime was based on the allegations that Defendant unlawfully failed to include housing and meals and incidentals stipends ("travel stipends") in Class Members' regular rates of pay to determine their overtime and double-time rates of pay. Nonetheless, there is no California authority holding that Defendant's stipend practice violates California law. There is, however, the Ninth Circuit ruling in *Clarke v. AMN Servs., LLC,* 987 F.3d 848 (9th Cir. 2021), holding that the travel stipends paid to travelers in that case were not excludable for overtime calculation purposes, because the defendant in that case prorated its "travel stipends" based on the numbers of hours worked; reduced stipends if employees called in sick; did not verify that travel expenses were actually incurred; did not reduce "travel stipends" for scheduled days off; paid local employees "travel stipends"; and allowed traveling employees to make up missed shifts to avoid "travel stipends" deductions (i.e., "banked hours"). Here, Defendant vociferously argued that the *Clarke* holding was distinguishable based on several factors. Therefore, it was not at all certain that Plaintiff would ultimately prevail on this substantive claim. (Decl. Shakouri at ¶24).

Defendant further argued that the Supreme Court decision in *Brinker v. Superior Court*, 53 Cal.4th 1004 (2012) weakened, if not eliminated, Plaintiff's claims, on liability, value, and class certifiability as to the meal and rest period claims. A major component of the damages alleged to

have been suffered by the Class Members are attributed to alleged missed meal and rest breaks. Before and during the mediation, Defendant aggressively argued that its policies and culture afforded Class Members an opportunity to take timely meal and rest breaks, and that employees like Plaintiff *chose* not to take compliant breaks. Defendant argued, therefore, that under the *Brinker* decision it had no liability for the missed breaks whatsoever. Defendant argued that it adopted and strictly enforced lawful policies, afforded Plaintiff and the Class Members compliant meal and rest breaks, and had a system in place to pay premiums when breaks were missed, short or untimely. This presented a very real concern for Plaintiff and Class Members. If successful, these defenses could substantially reduce, or even eliminate, any recovery to the Class. While Plaintiff believes that these defenses, and others, could ultimately be overcome, Defendant maintains these defenses have merit and therefore present a serious risk to recovery for the Class. Plaintiff's meal and rest break claims would have also been difficult to certify because Class Members worked for different facilities who had different break policies and practices. Plaintiff's rest break claim would have been difficult to certify for the additional reason that Defendant did not record rest breaks, as it is not required to do so under California law. (Decl. Shakouri at ¶25).

As to expense reimbursement, Plaintiff's claim was based on business-related travel costs, such as costs of flights and luggage, transportation to and from the airport, and/or mileage, which Defendant argued would similarly raise numerous individualized inquiries that would prohibit certification. Finally, the court may have also found remitter/reduction of the statutory damages appropriate. *See e.g., Klingensmith v. Max & Erma's Restaurants, Inc.*, 2007 U.S. Dist. LEXIS 81029, at *5 (E.D. Pa. 2007). (Decl. Shakouri at ¶26).

c. The Risk of Obtaining and Maintaining a Class Action and the Risk, Duration and Complexity of Further Litigation Weigh in Favor of the Settlement

There was also a significant risk that, if the Class Action was not settled, Plaintiff would be unable to obtain class certification and thereby not recover on behalf of any employee other than herself. Defendant argued that the individual experience of each employee varied with respect to the alleged claims. While other cases have approved class certification of wage and hour claims, class certification in this action would have been hotly disputed and was by no means a foregone conclusion. Finally, even if class certification was successful, as demonstrated by the California

Supreme Court decision in *Duran v. U.S. Bank National Assn.,* 59 Cal. 4th 1 (2014), there are significant hurdles to overcome for a class-wide recovery even where the class has been certified. (Decl. Shakouri at ¶27).

This Settlement is therefore entitled to preliminary approval. Were this case to go to trial, Plaintiff and other Class Members would need to prove to the satisfaction of the Court, among other things, that wages, premiums, and other damages were owed on a class-wide basis. This was and is a substantial risk, and the Parties, after arm's-length negotiations between experienced and informed counsel, recognized the potential risks and agreed to the Settlement. (Decl. Shakouri at ¶28). The "risk, expense, complexity, and likely duration of further litigation" in this case "favors the settlement." *Glass v. UBS Fin. Servs.*, 2007 WL 221862 at *4 (N.D. Cal. 2007) ("Regardless of how this Court might have ruled on the merits of the legal issues, the losing party likely would have appealed, and the parties would have faced the expense and uncertainty of litigating an appeal. 'The expense and possible duration of the litigation should be considered in evaluating the reasonableness of [a] settlement.'") (citing *In re Mego Financial Corp. Securities Litigation*, 213 F.3d 454, 458 (9th Cir. 2000)).

Furthermore, Plaintiff alleged claims that Defendant is liable for civil penalties under the PAGA. However, such penalties are discretionary and, thus, uncertain. Given the uncertain nature of the underlying claims, the value of the claims under this statute are significantly lower. Despite these hurdles, Plaintiff obtained a substantial monetary recovery. By any reasonable measure, this recovery is a significant achievement given the significant obstacles that Plaintiff faced in the litigation. Thus, Plaintiff is of the opinion that the Settlement is fair, reasonable and in the best interests of the Class. (Decl. Shakouri at ¶29).

3. The Settlement Does Not Improperly Grant Preferential Treatment to the Named Plaintiff or Segments of the Class

The relief provided in the Settlement will benefit all Class Members who do not opt out. The Settlement does not improperly grant preferential treatment to the Plaintiff or segments of the Class in any way. Each Participating Class Member will be entitled to a cash payment based on the plan of allocation described herein. Each Participating Class Member's Individual Class Payment and each Aggrieved Employee's Individual PAGA Payment will be determined based upon the

Workweeks that employee worked during the prescribed Class Period and PAGA Period. (Decl. Shakouri at ¶30).

Plaintiff will apply to the Court for a Class Representative Service Payment in consideration for her service, her general release, and for the risks she has undertaken on behalf of the Class. (Settlement Agreement at ¶¶1.14, 3.2.1). Plaintiff performed her duties admirably by working with Class Counsel. The requested Plaintiff's Class Representative Service Payment is well within the accepted range of awards for purposes of preliminary approval. *See e.g., Mathein v. Pier 1 Imps. (U.S.), Inc.*, 2018 U.S. Dist. LEXIS 71386 (E.D. Cal. 2018) (awarding $12,500 where average class member payment was $351); *Holman v. Experian Info. Solutions, Inc.*, 2014 U.S. Dist. LEXIS 173698 (N.D. Cal. 2014) (approving $10,000 service award where class member recovery was $375); *Rausch v. Hartford Fin. Servs. Grp.*, 2007 U.S. Dist. LEXIS 14740, 2007 WL 671334 (D. Or. 2007) (approving award of $10,000 where class member recoveries were as little as $150); *Louie v. Kaiser Foundation Health Plan, Inc*., 2008 WL 4473183, *7 (S.D. Cal. Oct. 06, 2008) (awarding $25,000 service award to each of six plaintiffs in overtime class action); *Glass v. UBS Fin. Servs.*, 2007 WL 221862 at *16-17 (N.D. Cal. 2007) (awarding $25,000 service award in overtime class action and a pool of $100,000.00 in enhancements). As explained in *Glass*, service awards are routinely awarded to class representatives to compensate class representatives for the time and effort expended on the case, for the risk of litigation, for the fear of suing and retaliation, and to serve as an incentive to vindicate the statutory rights of their coworkers. *Glass v. UBS Fin. Servs.*, 2007 WL 221862 at *16-17.

4. The Stage of the Proceedings Are Sufficiently Advanced to Permit Preliminary Approval of the Settlement

The stage of the proceedings at which this Settlement was reached also militates in favor of preliminary approval and ultimately, final approval of the Settlement. Class Counsel have conducted a thorough investigation into the facts of the class action. Class Counsel began investigating the Class Members' claims before this action was filed. Class Counsel performed significant review and analysis of Defendant's records. Class Counsel further engaged in thorough research and analysis of the relevant claims and issues in the Action. Class Counsel are also

experienced with the claims at issue here, as Class Counsel previously litigated and settled similar claims in numerous other actions. Accordingly, the Settlement did not occur until Class Counsel possessed sufficient information to make an informed judgment regarding the likelihood of success on the merits and results that could be obtained through further litigation. (Decl. Shakouri at ¶31).

Based on the foregoing data and their own independent investigation and evaluation, Class Counsel are of the opinion that the Settlement Agreement is fair, reasonable, and adequate and is in the best interest of the Class in light of all known facts and circumstances, including the risk of significant delay, defenses asserted by Defendant, and numerous potential appellate issues. There can be no doubt that Counsel for both Parties possessed sufficient information to make an informed judgment regarding the likelihood of success on the merits and the results that could be obtained through further litigation. (Decl. Shakouri at ¶32).

The fact that an informal exchange of information (as opposed to formal discovery) was agreed to by the Parties is of no consequence. In *Glass*, *supra*, at *4 the Northern District of California granted final approval of an unpaid wages action although no formal discovery had been conducted prior to the settlement:

> Here, no formal discovery took place prior to settlement. As the Ninth Circuit has observed, however, '[i]n the context of class action settlements, 'formal discovery is not a necessary ticket to the bargaining table' where the parties have sufficient information to make an informed decision about settlement." *See In re Mego Financial Corp. Securities Litigation*, 213 F.3d 454, 458 (9th Cir. 2000).

Here, Class Counsel were in an equally strong position to evaluate the fairness of this Settlement because Class Counsel had the same sufficient information, as well as document production, independent investigations and due diligence, to confirm the accuracy of the information supplied by Defendant.

V. THE CLASS IS PROPERLY CERTIFIED FOR SETTLEMENT PURPOSES

Plaintiff contends that the Settlement meets all the requirements for class certification under the California Code of Civil Procedure § 382 as demonstrated below, and therefore, the Court may appropriately approve the Class as defined in the Settlement Agreement. This Court should conditionally certify the Class for settlement purposes only, defined as follows: All of Defendant's non-exempt employees who were assigned to work at any facility inside California from January

31, 2019 through August 5, 2024, with the exception of all individuals who are members of the class certified in *Carlino v. CHG Med. Staffing, Inc.*, E.D. Cal. Case No. 1:17- cv-01323-DAD-JLT. (Settlement Agreement at ¶¶1.5, 1.12).

A. California Code of Civil Procedure Section 382

Plaintiff seeks certification of this Class for settlement purposes under California Code of Civil Procedure § 382. The California Supreme Court has summarized the standard for determining whether class certification is appropriate as follows:

> Code of Civil Procedure Section 382 authorizes class actions "when the question is one of a common or general interest, of many persons, or when the parties are numerous, and it is impracticable to bring them all before the court...." The party seeking certification has the burden to establish the existence of both an ascertainable class and a well-defined community of interest among class members. (*citations omitted*). The "community of interest" requirement embodies three factors: (1) predominant common questions of law or fact; (2) class representatives with claims or defenses typical of the class; and (3) class representatives who can adequately represent the class.

Sav-On Drug Stores, Inc. v. Superior Court, 34 Cal.4th 319, 326 (2004).

While Defendant reserves all rights to dispute that the Plaintiff can satisfy any of these requirements, Defendant will not dispute that these requirements may be satisfied in this case for purposes of settlement and therefore, the proposed Class should be certified for purposes of settlement only.

B. The Proposed Class Is Ascertainable and Numerous

Here, the approximately 643 individuals that comprise the Class can be identified based on Defendant's records and are sufficiently numerous for class certification. All of these Class Members are ascertainable because they can readily be determined through examination of Defendant's records. Given that the Class consists of at least 643 Class Members, numerosity is easily satisfied. *See Bowles v. Superior Court*, 44 Cal.2d 574 (1955) (class with 10 members sufficiently numerous); *Rose v. City of Hayward*, 126 Cal.App.3d 926, 934 (1981) (class of 48 members satisfies numerosity requirement).

C. Common Issues of Law and Fact Predominate

Predominance of common issues of law or fact does not require that the common issues be dispositive of the entire controversy or even that they be dispositive of all liability issues. 1 *Newberg on Class Actions*, Section 4.25 at 4-82, 4-83 (1992). "Predominance is a comparative concept, and 'the necessity for class members to individually establish eligibility and damages does not mean individual fact questions predominate.'" *Sav-On*, *supra*, at 334.

Commonality exists if there is a predominant common legal question regarding how policies impact workers. *Ghazaryan v. Diva Limousine, Ltd.*, 169 Cal.App.4th 1524, 1536 (2008) ("[T]he common legal question remains the overall impact of Diva's policies on its drivers."). Whether Plaintiff is likely to prevail on their theory of recovery is irrelevant at the certification stage since the question is "essentially a procedural one that does not ask whether an action is legally or factually meritorious." *Linder v. Thrifty Oil Co.*, 23 Cal.4th 429, 439-440 (2003).

Here, Plaintiff contends that common questions of law and fact are present, specifically the common questions of whether Defendant's practices were lawful, whether Defendant failed to properly provide and/or pay for meal and rest periods, whether Defendant failed to properly pay overtime, whether Defendant failed to pay all wages, whether Defendant failed to provide accurate wage statements, and whether the Class is entitled to compensation and related penalties. Defendant will not oppose such a finding for purposes of this settlement only. (Decl. Shakouri at ¶33).

D. The Claims of the Plaintiff Are Typical of the Class Claims

The typicality requirement requires Plaintiff to demonstrate that the members of the class have the same or similar claims as Plaintiff. "The typicality requirement is met when the claims of the Plaintiff [] arise from the same event or are based on the same legal theories." *Tate v. Weyerhaeuser Co.*, 723 F.2d 598, 608 (8th Cir. 1983). In *Hanlon, supra,* at 1020, the Ninth Circuit held that "[u]nder the rule's permissive standards, representative claims are 'typical' if they are reasonably coextensive with those of absent class members; they need not be substantially identical."

In the instant case, Plaintiff contends that the typicality requirement is fully satisfied. Plaintiff, like every other member of the Class, was employed by Defendant and is a member of the

Class. Thus, the claims of Plaintiff and the Class Members arise from the same course of conduct by the Defendant, involve the same policies, and are based on the same legal theories. For purposes of settlement, the typicality requirement is met as to the common issues presented in this case. Defendant will not oppose such a finding for purposes of this settlement only. (Decl. Shakouri at ¶34).

E. The Named Plaintiff Fairly and Adequately Protected the Class

The Class Members are adequately represented because Named Plaintiff and Class Counsel (a) do not have any conflicts of interest with other class members, and (b) will prosecute the case vigorously on behalf of the class. *See Hanlon*, *supra*, at 1020. First, Plaintiff is well aware of her duties as the representatives of the Class and have actively participated in the prosecution of this case to date. She effectively communicated with Class Counsel, provided documents to them and participated in discovery, investigation and negotiations in the Action. Second, Plaintiff retained competent counsel who are experienced in class actions. Third, there is no antagonism between the interests of Plaintiff and those of the Class. Both the Plaintiff and the Class Members seek monetary relief under the same set of facts and legal theories. (Decl. Shakouri at ¶35).

F. The Superiority Requirement Is Met

To certify a class, the Court must also determine that a class action is superior to other available methods for the fair and efficient adjudication of the controversy. "Where classwide litigation of common issues will reduce litigation costs and promote greater efficiency, a class action may be superior to other methods of litigation." *Valentino v. Carter-Wallace, Inc.*, 97 F.3d 1227, 1234 (9th Cir. 1996). As courts have previously observed:

> Absent class treatment, each individual plaintiff would present in separate, duplicative proceedings the same or essentially the same arguments and evidence, including expert testimony. The result would be a multiplicity of trials conducted at enormous expense to both the judicial system and the litigants. 'It would be neither efficient nor fair to anyone, including defendants, to force multiple trials to hear the same evidence and decide the same issues.'

Sav-On, 34 Cal.4th at 340.

Here, a class action is the superior mechanism for resolution of the claims as pled by the Plaintiff. Defendant will not dispute such a finding for purposes of this settlement only.

VI. THE PROPOSED METHOD OF CLASS NOTICE IS APPROPRIATE

The Court has broad discretion in approving a practical notice program. The Parties have agreed upon procedures by which the Class Members will be provided with written notice of the Settlement similar to that approved and utilized in hundreds of class action settlements. In accordance with the Settlement Agreement, within fifteen (15) calendar days after the Court enters its order granting Preliminary Approval of the Settlement, Defendant will provide to the Administrator the Class Data. (Settlement Agreement at ¶4.2). Within ten (10) calendar days after receiving the Class Data, the Administrator will mail the Class Notice to all Class Members via first-class regular U.S. Mail to their last known addresses. (Settlement Agreement at ¶7.4.2).

The Class Notice, drafted jointly and agreed upon by the Parties through their respective counsel and to be approved by the Court, includes all relevant information. (*See* Exhibit A to the Settlement Agreement, pp. 23-32). The Class Notice will include, among other information: (a) information regarding the nature of the Action; (b) a summary of the Settlement's principal terms; (c) the Class definition; (d) the total number of Workweeks each respective Class Member worked for Defendant during the Class Period; (e) each Class Member's estimated share of the Settlement, including both Individual Class Payment and the Individual PAGA Payment, if any; (f) the dates that comprise the Class Period and the PAGA Period; (g) information regarding disputing Workweeks, objections, or requests for exclusion from the Settlement; (h) the deadlines by which Class Members must postmark disputes of Workweeks, objections, or requests for exclusion from the Settlement; (i) the claims to be released; and (j) the date for the Final Approval Hearing. (Settlement Agreement, Exhibit A).

The Class Notice will state that the Class Members shall have forty-five (45) days from the date that the Class Notice is mailed to them to dispute the information, request exclusion, or to submit an objection. The Class Members will be given an opportunity to object to the terms of the Settlement Agreement and/or the request for attorneys' fees and costs and to participate at the Final Approval Hearing, in accordance with the instructions set forth in the Class Notice. Class Members who do not opt out will automatically receive a settlement payment. The Class Members are highly skilled and educated healthcare workers who are legally required to comprehend the English

language in order to perform their job duties. *See,* 16 CCR § 1413. Therefore, Spanish notice is not necessary and is not included. This Notice program was designed to meaningfully reach the Class Members and advises them of all pertinent information concerning the Settlement. The mailing and distribution of the Class Notice satisfies the requirements of due process, is the best notice practicable under the circumstances and constitutes due and sufficient notice to all persons entitled thereto. The Class Notice provides information on the terms and provisions of the Settlement; the benefits that the Settlement provides for Class Members; the date, time and place of the Final Approval Hearing; and the procedure and deadline for submitting disputes, objections, and requests for exclusion. The Class Notice complies with Rules of Court 3.766 and 3.769(f). (Decl. Shakouri at ¶36).

VII. CONCLUSION

Plaintiff respectfully requests that the Court preliminarily approve the proposed Settlement and sign the proposed Preliminary Approval Order, which is submitted herewith, and schedule the Final Approval Hearing 100 days after granting preliminary approval, or anytime thereafter as the Court's calendar permits.

DATED: July 16, 2024

Respectfully submitted,

SHAKOURI LAW FIRM

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