

1 David R. Markham (SBN 071814)
2 *dmarkham@markham-law.com*
3 Lisa Brevard (SBN 323391)
4 *lbrevard@markham-law.com*
5 **THE MARKHAM LAW FIRM**
6 888 Prospect St., Ste. 200
7 La Jolla, CA 92037
8 Tel.: (619) 399-3995 / Fax: (619) 323-1684

6 Isam Khoury (SBN 58759)
7 *ikhoury@cksllaw.com*
8 Michael D. Singer (SBN 115301)
9 *msinger@cksllaw.com*
10 Maggie Realin (SBN 263639)
11 *mrealin@cksllaw.com*
12 **COHELAN KHOURY & SINGER**

13 605 C St., Suite 200
14 San Diego, CA 92101
15 Tel.: (619) 595-3001 / Fax: (619) 595-3000
16 [Additional Counsel on Next Page]

17 *Attorneys for Plaintiff*

14 **SUPERIOR COURT OF CALIFORNIA**
15 **COUNTY OF SACRAMENTO**

16 JENNIFER WARD, individually and on behalf
17 of all other similarly-aggrieved employees,

18 Plaintiff,

19 v.

20 SUTTER VALLEY HOSPITALS, a California
21 corporation; and DOES 1 through 100,
22 inclusive,

23 Defendant.

Case No.: **CV-2020-00279954**
REPRESENTATIVE ACTION

Assigned To:
Judge: Hon. Lauri A. Damrell

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

Date: June 21, 2024
Time: 9:00 a.m.
Dept.: 22
Reservation: A-279954-001

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I. INTRODUCTION

Plaintiffs Jennifer Ward and Sacora Besabe¹ seek preliminary approval,² under Rule 3.769(c) of the California Rules of Court, of a \$775,000 non-reversionary Settlement on behalf of approximately 740 current and former surgical technicians, anesthesia technicians, and similar positions who worked for Defendant Sutter Valley Hospitals (“Sutter”) in California between February 13, 2015 and February 1, 2024. This settlement resolves this action, as well as a separate class and FLSA action Plaintiffs brought for the same underlying Labor Code violations, which is pending in the Eastern District of California.

This is a cash settlement, and all Class Members who do not opt out will receive a payment, without submitting a claim form. Plaintiffs allege that the press of business, emergent nature of the surgery department, and understaffing, forced them to work off the clock and skip meal and rest breaks, and that they were not reimbursed for cell phones expenses and mandatory uniform items, such as operating room shoes. Plaintiffs further allege derivative claims for inaccurate wage statements and untimely paid wages at termination of employment, as well as a cause of action for violations of PAGA and UCL.

The parties reached this global settlement after mediation before an experienced neutral, Michael Dickstein, Esq. Plaintiffs argue that Defendant’s maximum potential liability for all claims, excluding PAGA penalties,³ is \$16,879,538.96. This assumes the class would collect meal and rest break premiums every week, would be compensated for 5 minutes of off the clock work, every other week, at an overtime rate, and that they incurred \$40 in monthly cell phone expenses, and \$100 a year for operating room boots. Thus, the \$775,000 Maximum Settlement Amount represents 4.6% of Sutter’s maximum potential liability for all of Plaintiffs’ non-PAGA claims, and over 8% of Plaintiffs’ direct overtime, meal and rest break, and unreimbursed business expense claims. This is an excellent result in light of the risks of continued litigation, and within the range of typical class action settlement recoveries.

II. PROCEDURAL HISTORY

Plaintiffs filed two actions against Sutter in Sacramento Superior Court. One is a class and FLSA

¹ Besabe and Ward, are named plaintiffs in the class action against Sutter pending in the Eastern District of California, Case No. 2:19-cv-00581-KJM-AC. Besabe is not a named Plaintiff in this PAGA action. This settlement resolves both actions, and Plaintiffs will file an amended complaint adding both Plaintiffs to this action upon the Court’s approval.

² This memorandum exceeds the 15-page limit set forth in CRC 3.1113 because it seeks class certification as part of the settlement approval process, which has a 20-page limit).

³ The settlement of Plaintiffs’ PAGA claims is discussed in section IV(A)(3), below.

1 collective action, filed on February 13, 2019, and the other is this PAGA action, filed on June 4, 2020.
2 Only Ms. Ward is a named plaintiff in the PAGA action. Sutter removed the class action to federal court.
3 The PAGA action remains in this Court. Decl. of David R. Markham (“Markham Decl.”), ¶2.

4 The parties engaged in discovery in the District Court action, and Plaintiffs filed a motion for class
5 and collective certification on April 30, 2021. The court denied the motion, without prejudice, on the
6 basis the class evidence was too vague to show predominance of common issues. Plaintiffs filed a renewed
7 motion for certification on November 11, 2022, supplementing class evidence. However, Sutter moved
8 to strike Plaintiffs’ renewed motion, arguing it was untimely and procedurally improper, as the time to
9 seek certification had since expired. The court denied certification on April 10, 2023. At the same time,
10 Plaintiffs were prosecuting their PAGA case in this Court, and presented their trial plan for the Court’s
11 approval. The District Court’s case is stayed pending the settlement approval process. *Id.*, ¶3.

12 III. FACTUAL BACKGROUND

13 Plaintiffs were employed as surgical technicians, Ms. Ward in the urology department, and Ms.
14 Besabe in the obstetrics department. *Id.*, ¶4. Surgical technicians’ duties include sanitizing surgical
15 instruments, ordering and stocking supplies, assisting nurses, positioning and moving patients, and other
16 tasks needed to assist the surgical team during surgery. *Id.*, ¶4; *see also* Decs. of Jennifer Ward (“Ward
17 Decl.”), ¶3 and Sacora Besabe (“Besabe Decl.”), ¶3. Sutter employed class members at various locations
18 in California (such as Sacramento, Roseville, Los Banos, Modesto, Davis, Tracy, Auburn, and Vallejo)
19 during the class period. Markham Decl., ¶4.

20 Plaintiffs alleged that surgical technicians were rarely afforded uninterrupted meal and rest breaks.
21 Each technician handled about 20 patients, and had to ensure the surgical and post-op rooms were clean
22 and supplied. *Id.*, ¶5. There could be five or more surgeries per day, and should the procedure take longer,
23 technicians had to forego breaks, as some doctors feared contamination and did not allow anybody to
24 enter the operating room to relieve employees for breaks. *Id.*, ¶5. Class members were tasked with
25 reporting missed or interrupted breaks, and requesting premium payments, either in the Kronos
26 timekeeping system, or a binder located in each department. *Id.*, ¶5. Class members state they were
27 discouraged from requesting premiums, however Sutter disputes this, arguing they paid a million dollars
28 in premiums during the class period. *Id.*, ¶5.

1 In November of 2016, before this action was filed, Ms. Ward filed a claim with the DLSE seeking
2 unpaid meal and rest break premiums. *Id.*, ¶6. After evidentiary hearing, the Labor Commissioner rejected
3 Ms. Ward's claim (and the claim of five other class members), due to insufficient evidence that she was
4 prevented from requesting premiums. *Id.*, ¶6. Ms. Ward's payroll records show she was paid 70 meal and
5 rest break premiums, and almost 500 hours of overtime/double time during the class period. *Id.*, ¶6.

6 Regarding Plaintiffs' off-the-clock claim, class members state they spent about 1 to 5 minutes
7 answering questions about patients, surgeries, or supplies outside of their shifts, on average, twice a
8 month. Also, at times, class members answered doctors or supervisors' questions during their meal
9 breaks, resulting in off-the-clock work. *Id.*, ¶7. Sutter's evidence shows, however, that employees were
10 not prevented from obtaining compensation for this time. *Id.*, ¶7.

11 Lastly, class members aver Sutter did not reimburse them for operating room shoes, which cost
12 about \$100 per pair. These shoes cannot be used as footwear in everyday life, as they are non-slip, hard-
13 shelled, and specifically made to protect employees from blood and other operating room elements. *Id.*,
14 ¶8. Sutter claims it does not require employees to purchase any special shoes, and that numerous
15 employees testified they wear their own tennis shoes in the operating room, with a cover over them. *Id.*,
16 ¶8. It is Plaintiffs' position that shoes worn in the operating room, whether or not specialty shoes, cannot
17 be worn elsewhere due to the risk of contamination. *Id.*, ¶8; 29 CFR 1910.132(h)(2). As part of their
18 expense reimbursement claim, Plaintiffs also alleged they used personal cell phones to answer doctors
19 and managers' calls, without reimbursement. Markham Decl., ¶9. In fact, Sutter's policy excludes personal
20 cell phone costs from reimbursement. *Id.*, ¶9. In response, Sutter states that class members were not
21 required to use personal cell phones, as the company provides Cisco phones. *Id.*, ¶9.

22 Plaintiffs further alleged derivative claims for inaccurate wage statements and for waiting time
23 penalties, and violations of the UCL. *Id.*, ¶10.

24 **IV. VIGOROUS PROSECUTION OF THIS ACTION**

25 **A. Summary of Motion Practice and Discovery**

26 The parties vigorously litigated this action, and exchanged multiple sets of discovery. *Id.*, ¶11. Sutter
27 produced over 4,000 pages of documents. In connection with certification briefing, the parties submitted
28 42 employee declarations (29 for Plaintiffs and 13 for Defendant), and testimony from over 20 deponents

1 (16 declarant depositions and the depositions of both Plaintiffs, Sutter's PMK witnesses and Plaintiffs'
2 managers). *Id.*, ¶11

3 The parties also engaged in heavy motion practice. Plaintiffs twice moved for certification of their
4 class and collective claims. *Id.*, ¶12. Plaintiffs also filed a motion to strike declarations of Sutter's witnesses.
5 Sutter opposed Plaintiffs' first certification motion, and moved to strike the renewed one. Sutter also
6 moved to exclude Plaintiffs' expert. *Id.*, ¶12. Meanwhile, in this PAGA action, Plaintiffs presented a trial
7 plan for the Court's approval. *Id.*, ¶12. After the second denial of certification in the class action case,
8 the parties agreed to mediation, and stipulated to stay the District Court action. *Id.*, ¶12.

9 The parties carefully investigated the claims and facts alleged in this action, and made a thorough
10 study of the legal principles applicable to the claims asserted against Sutter. As a result of heavy discovery
11 and motion practice, the parties had a clear understanding of their respective claims and defenses. *Id.*,
12 ¶13.

13 **B. Settlement Reached with Assistance of Experienced Mediator**

14 Plaintiffs retained counsel with extensive experience in prosecuting wage and hour class actions.
15 Markham Decl., ¶¶34-40; Decl. of Michael Singer ("Singer Decl."), ¶¶7-14. On February 1, 2024, the
16 parties mediated this case before Michael Dickstein, Esq., of Dickstein Dispute Resolution, a mediator
17 vastly experienced in wage and hour class actions. At the conclusion of the mediation, the parties reached
18 the settlement in principle, and executed a Memorandum of Understanding. After additional weeks of
19 arms'-length negotiations, the parties finalized the terms of the settlement agreement. Markham Decl.,
20 ¶14. The executed version of the Settlement Agreement is attached as **Exhibit 1** to Markham
21 Declaration.⁴

22 **C. Summary of the Risks to Further Litigation**

23 Plaintiffs recognize several risks to succeeding on the merits in this PAGA action, especially after
24 losing certification in the District Court twice. *Id.*, ¶24. Although Plaintiffs need not meet certification
25 requirements, nor manageability, in a PAGA action (*Arias v. Super. Ct.*, 46 Cal. 4th 969, 981 (2009), *Estrada*
26 *v. Royalty Carpet Mills, Inc.*, ---P.3d---, 2024 WL 188863, at *1, *6 (Cal. Jan. 18, 2024)), the denial of class

27 ⁴ The Settlement Agreement was submitted to the LWDA concurrent to the filing of this motion, and proof of submission is
28 attached as **Exhibit 2** to Markham Declaration.

1 certification suggests it would be unlikely for Ms. Ward to prevail on her PAGA claims, because they are
2 based on the same alleged underlying violations.

3 Although Plaintiffs allege they worked off-the-clock and were denied overtime, discovery showed
4 that Sutter's timekeeping policies are lawful, and they paid substantial overtime during the class period.
5 (Ms. Ward received close to \$20,000 in overtime/double time up until 2019). Markham Decl., ¶25
6 Further, Sutter will likely contend that where an employer provides a means to record work time, the
7 employer is entitled to rely on those time records, and is not required to audit other available records
8 (such as cell phone bills) to ascertain if any off-the-clock work is occurring. *Brinker Rest. Corp. v. Super. Ct.*,
9 53 Cal.4th 1004, 1051 (2012) ("that employees are clocked out creates a presumption they are doing no
10 work"); *Hertz v. Woodbury County*, 566 F.3d 775, 781-782 (8th Cir. 2009) (no duty to audit other available
11 records); *Jong v. Kaiser Found. Health Plan, Inc.*, 226 Cal.App.4th 391, 398-399 (2014) (same).

12 Regarding Plaintiffs' meal and rest break claim, Plaintiffs would rely on class members' statements
13 that they were not able to take timely and uninterrupted meal breaks due to the nature of their jobs, but
14 Sutter presented evidence that class members were encouraged to request – and did request and were
15 paid – meal and rest break premiums. In fact, Sutter paid nearly a million dollars in premiums during the
16 class period. To the extent class members argue the management discouraged them from requesting
17 premiums, the Labor Commissioner, on a claim filed by 28 Sutter employees, including 6 surgical
18 technicians, ruled that "claimants...failed to present evidence that reporting meal or rest period
19 premiums...resulted in retaliatory action, directly or indirectly, from Defendant." Markham Decl. ¶26,
20 Ex. 3 at 17. Sutter will also argue that several deposed class members recanted their testimony about meal
21 break violations. Sutter might also present evidence of its new scheduling system, which was put in place
22 in 2019 to help ensure employees take their breaks. *Id.*, ¶27. Further, as typical in a meal break case,
23 Plaintiffs would rely on a timecard review of meal break recordings to assert a presumption under *Donobue*
24 *v. AMN Servs., LLC*, 11 Cal.5th 58 (2021) that meal breaks were not provided. However, here, the rate
25 of facial timecard violation is very low, as only 7% of Ward's breaks, and 2.3% of Besabe's, were missed,
26 and 1.4% and 5.4%, respectively, were short.⁵ Markham Decl., ¶27. This could prevent a showing that
27

28 ⁵ Plaintiffs' meal breaks cannot be deemed late because both Plaintiffs signed second meal break waivers. Markham Decl., ¶27.

1 Sutter failed to provide meal breaks to aggrieved employees. *Id.*, ¶27.

2 Further, for rest breaks, penalties calculations could present complicated issues, as employees did
3 not have to clock out to take rest breaks, or otherwise record them. *Id.*, ¶28.

4 Plaintiffs would also argue that Sutter did not reimburse them for personal cell phone expenses and
5 for operating room shoes. *Id.*, ¶29. It is Plaintiffs' position that under Wage Order No. 5, section 9,
6 and/or OSHA, 29 CFR 1910.132(h)(2), Sutter is required to reimburse class members for operating room
7 shoes, because they are specialty items, made to protect employees from operating room elements, and
8 they cannot be worn off the job site. Markham Decl., ¶29. However, in response, Sutter will likely argue
9 that numerous class members confirmed they were not required to wear special shoes at work, only
10 closed-toe, non-slip shoes, i.e., and they could wear them outside of hospital. *Lemus v. Denny's, Inc.*, 617
11 F.App'x 701, 703 (9th Cir. 2015) (slip resistant shoes not reimbursable if they can generally be used in the
12 occupation). Further, to the extent Plaintiffs and other class members did not seek reimbursement of
13 these expenses, this claim would be susceptible to summary judgment. *Hammit v. Lumber Liquidators*, 19
14 F. Supp. 3d 989, 1001 (S.D. Cal. 2014) (granting summary judgment when employee failed to request
15 reimbursement). Finally, regarding Plaintiffs' claim for failure to reimburse for personal cell phone
16 expenses, Sutter presented evidence it provided company-issued Cisco phones to class members, so they
17 were not required to use their personal cell phones for work purposes. Markham Decl., ¶30. In fact, Ms.
18 Ward's cell phone records showed that her only work-related cell phone calls were during work hours,
19 when she had equal access to a landline on hospital premises. *Id.*, ¶30.

20 Lastly, with respect to wage statement and untimely wages claims, they are derivative of Plaintiffs'
21 unpaid time, and meal and rest break claims, so if Ms. Ward does not prevail on the underlying claims,
22 her derivative claims would also fail. *See Gomez v. Lincare, Inc.*, 173 Cal.App.4th 508, 524-25 (2009). Also,
23 Sutter will likely assert that wages that were not paid cannot form the basis of these derivative claims
24 based on *Maldonado v. Epsilon Plastics, Inc.*, 22 Cal.App.5th 1308, 1336-37 (2018). Markham Decl., ¶31.

25 V. SUMMARY OF SETTLEMENT TERMS

26 A. Settlement Relief

27 Maximum Settlement Amount ("MSA"):	\$775,000, non-reversionary and non-claims made. 28 Settlement Agreement ("SA"), ¶¶X, 54.
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Deductions from the MSA:	- Attorneys' fees not to exceed 33.33% of the MSA (\$258,333.33); - Out-of-pocket litigation costs not to exceed \$55,000; - Service Payments to Plaintiffs not to exceed \$12,500 each; - PAGA penalties of \$77,500 (of which 75% or \$58,125.00 will be paid to the LWDA and 25% or \$19,375.00 to PAGA-Eligible Employees, who are Class Members employed at any time from March 3, 2019 through February 1, 2024); - Administration costs of approximately \$9,000. <i>Id.</i> , ¶¶17-20.
Net Settlement Amount ("NSA"):	Approximately \$350,166.67. <i>See id.</i>
Definition of the Settlement Class:	All current and former employees employed by Defendant in California as surgical technicians, anesthesia technicians, and similar positions performing similar work duties at any time from February 13, 2015 through February 1, 2024, including those employees of Defendant who, by virtue of their employment in these positions, were excluded from the settlement class in <i>Sandra Muniz v. Sutter Valley Hospitals</i> , Sacramento Superior Court No. 34-2017-00209151-CU-OE-ODS. <i>Id.</i> , ¶B.
Class Period	From February 13, 2015 through the earlier of preliminary approval or May 1, 2024. <i>Id.</i> , ¶I.
Definition of PAGA-Eligible Employees	All current and former employees employed by Defendant in California as surgical technicians, anesthesia technicians, and similar positions performing similar work duties at any time from March 3, 2019 through February 1, 2024, including those employees of Defendant who, by virtue of their employment in these positions, were excluded from the settlement class in <i>Sandra Muniz v. Sutter Valley Hospitals</i> , Sacramento Superior Court No. 34-2017-00209151-CU-OE-ODS. <i>Id.</i> , ¶CC.
PAGA Period	From March 3, 2019 through the earlier of preliminary approval or May 1, 2024. <i>Id.</i> , ¶EE.
The number of Class Members and workweeks worked during the Class Period	Approx. 740 Class Members and 171,016 workweeks until February 1, 2024. <i>Id.</i> , ¶43; Markham Decl., ¶17.
The average individual settlement payment	\$2 per workweek; or approximately \$500 per class member (without accounting for the number of workweeks worked). <i>Id.</i>

1. *Settlement Formula and Distribution*

Participating Class Members will receive their Settlement Payments from the NSA based on the number of workweeks they worked during the Class Period (SA, ¶21), calculated as follows:

$$\frac{\text{Workweeks Worked by Class Member}}{\text{Total Workweeks Worked by all Class Members}} \times \text{Net Settlement Amount} = \text{Class Member's Payment}$$

*Id.*⁶

Sutter will pay employer's side payroll taxes in addition to the MSA. *Id.*, ¶24. Class members who do not opt out of the Settlement will release Sutter from all claims that relate to the causes of action asserted in this action – or those that could have been asserted in this action based on the facts alleged in Plaintiffs' operative complaints. *See id.*, ¶25; *Amaro v. Anaheim Arena Mgmt., LLC*, 69 Cal.App.5th 521, 538-39 (2021). Plaintiff Ward and the LWDA, acting on behalf of the PAGA-Eligible Employees, will separately release their claims for penalties under PAGA, based on any underlying claims and factual allegations that were alleged, or reasonably could have been alleged in Plaintiffs' operative complaints and/or PAGA letters. SA, ¶27. The settlement notice will advise PAGA-Eligible Employees that they cannot exclude themselves from the PAGA portion of the settlement. *Id.*, Ex. 1 to SA (Notice) at 4; *see also* SA, ¶¶28, 41.

Settlement checks will be valid and negotiable for 180 days. *Id.*, ¶55. Then, the Parties will seek the Court's approval to donate the funds represented by uncashed checks, plus interest, to the State Controller's Unclaimed Property Fund in the name of the intended recipient, pursuant to California Code of Civil Procedure Section 384(b). *Id.* Any uncashed checks from the PAGA portion of the fund will be distributed to the LWDA. *Id.*

All Settlement Payments will be reported to the IRS and state tax authorities. Twenty percent (20%) of each class member's settlement payment will be allocated as wages, and 80% as penalties and interest, with withholding to apply only to the portion allocated to wages. *Id.*, ¶23. This allocation is based upon the nature of the claims; when allocating a portion of recovery to interest, and accounting for the fact that the 2802 reimbursements are not wages, and sections 226, 203, and 2698 provide for the payment of penalties, this tax allocation is reasonable. Markham Decl., ¶19. Class members shall seek their own tax advice regarding this Agreement. SA, ¶¶63-64.

2. Attorneys' Fees and Costs

Subject to the Court's approval, up to \$258,333.33 or 33.33% of the MSA, may be allocated to

⁶ The PAGA Payment allocated to PAGA-Eligible Employees will be calculated similarly on a *pro rata* basis, based on the total amount of workweeks PAGA-Eligible Employees worked during the PAGA Period. *Id.*, ¶22.

attorneys' fees, and up to \$55,000 to litigation costs.⁷ SA, ¶17. Courts in California wage and hour cases, where the common fund is under \$10 million, tend to award attorneys' fees in the 30% - 40% range. *Vasquez v. Coast Valley Roofing, Inc.*, 266 F.R.D. 482, 491-92 (E.D. Cal. 2010) (citing to five wage and hour class actions where courts approved fee awards ranging from 30 to 33%). The trial court has discretion to award attorneys' fees based on either the lodestar/multiplier calculation or the percentage-of-recovery method. *Laffitte v. Robert Half Int'l Inc.*, 1 Cal.5th 480, 503 (2016). Class Counsel will brief the fee application using both methodologies, as cross checks.⁸ Any portion of the requested attorneys' fees and costs not awarded to Class Counsel shall be part of the NSA to be distributed to class members. SA, ¶17.

3. *PAGA Payment to Labor Workforce Development Agency*

The Parties agreed \$77,500, or 10% of the MSA will be allocated for payment under the PAGA. 75% of this amount (\$58,125.00) will be paid to the LWDA, and 25% (\$19,375.00) to PAGA-Eligible Employees. *Id.*, ¶20. The PAGA penalties under this Settlement represent approximately 0.45% of the total potential PAGA penalties for Plaintiff's direct claims, assuming class members suffered four types of violations in every single pay period (49,269 pay periods times \$100 multiplied by 3 penalties for unpaid time, meal and rest break violations (=\$17,780,700), plus 24,634.50 pay periods to represent unreimbursed business expenses incurred on a monthly basis, times \$100 per pay period (=\$2,463,459), for maximum penalties of \$17,234,150. Markham Decl., ¶20. The subsequent penalties should be calculated at \$100, not \$200 per pay period because under *Amaral v. Cintas Corp. No. 2*, 163 Cal.App.4th 1157 (2008), to recover \$200 per subsequent violation, an employer must have been cited first, which has not occurred here. *Id.* at 1207-09; *see also Hernandez v. Best Buy Stores, LP*, 2017 WL 2445438, 2 (S.D. Cal. June 6, 2017) (holding, based on *Amaral*, that \$100 penalty per pay period is warranted because "no court, commissioner, or any other authority had held [that] Best Buy misclassified" the general managers.').

Such allocation falls within the range of other approved PAGA settlements, as courts frequently approve PAGA awards between 0.2% to 2.2% of the total potential penalties. *Carrington v. Starbucks Corp.*, 30 Cal. App. 5th 504, 528 (2018) (awarding PAGA penalties of 0.2% of the maximum, or \$5 per pay

⁷The counsel's declarations provide itemized costs incurred to date, and the estimated future costs. Singer Decl., ¶16; Markham Decl., ¶42.

⁸ 85% of the awarded attorneys' fees will be allocated to the Markham Law Firm, and 15% to Cohelan, Khoury & Singer. Markham Decl., ¶41. The clients have given written approval to this split. *Id.*, 41.

period); *Ruch v. AM Retail Grp., Inc.*, 2016 WL 5462451, at *2, 7 (N.D. Cal. Sept. 28, 2016) (settlement allocating \$10,000 to PAGA penalties where potential value was over \$5.2 million, resulting in 0.2 percent PAGA recovery approved); *Van Kempen v. Matheson Tri-Gas, Inc.*, 2017 WL 3670787, at *10 (N.D. Cal. Aug. 25, 2017) (approving \$5,000 PAGA penalty from \$370,000 settlement, or 1.4 percent); *Slavkov v. Fast Water Heater Partners I, LP*, 2017 WL 3834873, at *2 (N.D. Cal. July 25, 2017) (finding that “\$7,500 PAGA payment is reasonable when measured against the total overall settlement [of \$345,000] and the possible weaknesses in Plaintiffs’ case,” or 2.2 percent); *Bravo v. Gale Triangle, Inc.*, 2017 WL 708766, at *19 (C.D. Cal. Feb. 16, 2017) (\$10,000 in PAGA penalties found reasonable).

4. *Settlement Administration Costs*

The parties selected Phoenix as the Settlement Administrator. SA, ¶33. The parties obtained bids from four administrators, and Phoenix’s was the most competitive bid. Markham Decl., ¶21. The costs of the Administrator, estimated at \$9,000, will be deducted from the MSA. *Id.*, ¶21. The attached declaration of Michael Moore of Phoenix shows the qualifications and experience of the Administrator, procedures in place to protect the security of class data, the description of the notice procedure, and the anticipated costs of the notice. *See* Moore Decl.

5. *Service Payments to Class Representatives*

Subject to Court’s approval, Sutter will pay up to \$12,500 from the MSA as an incentive award to each Plaintiff for their services as class representatives. SA, ¶18. Any portion of the requested Service Payments not awarded to Plaintiffs shall be part of the NSA to be distributed to class members. *Id.*

B. Settlement Administration

Within 45 calendar days after the preliminary approval, Defendant will provide the Administrator with a class list containing class members’ contact information and sufficient information to determine the total number of workweeks worked within the relevant time periods. SA, ¶35. Within 14 calendar days thereafter, the Settlement Administrator will send Class Notice to each class member as provided in this Settlement. *Id.*, ¶36. Settlement Administrator will also determine the eligibility for, and the amounts of, any Settlement Payments under the terms of this Agreement, process and distribute class members’ payments, and process and mail tax payments to the appropriate state and federal taxing authorities. *Id.*, ¶¶50-53. Further, class members will also be able to contact the Settlement Administrator by telephone

1 or e-mail, or access the settlement website,⁹ if they have any Settlement questions or need assistance. *See*
2 Class Notice, **Ex. A** to the SA. Also, any objections to or opt-outs from the Settlement must be delivered
3 to the Settlement Administrator. SA, ¶¶40-41.

4 **VI. THE SETTLEMENT SATISFIES THE PRELIMINARY APPROVAL CRITERIA**

5 There is a strong judicial preference for pre-trial settlement of complex class actions. *Officers for*
6 *Justice v. Civil Serv. Comm’n of San Francisco*, 688 F.2d 615, 625 (9th Cir. 1982). The trial judge exercises
7 discretion in deciding whether to grant preliminary approval of a class action settlement and “great weight
8 is accorded to [the] judge’s views.” *7-Eleven Owners for Fair Franchising v. Southland Corp.*, 85 Cal. App. 4th
9 1135, 1145 (2000). At this stage, a court limits its inquiry to the extent necessary to reach a reasoned
10 judgment that “the agreement is not the product of fraud or overreaching by, or collusion between, the
11 negotiating parties.” *In re Microsoft I-V Cases*, 135 Cal.App.4th 706, 723 (2006).

12 In approving a settlement where the class has not yet been certified, the court must first determine
13 that a class exists. *Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 613, 619-20 (1997) (commonality must be
14 shown at a preliminary approval stage, although not necessarily manageability). Then, the Court should
15 examine the settlement as a whole to determine if it is fair, adequate and reasonable. *Id.*

16 **A. The Value of the Class Settlement is Reasonable (*Kullar* analysis)**

17 The settlement amount of \$775,000 derives primarily from Plaintiffs’ unpaid overtime, meal and
18 rest break, and unreimbursed business expense claims. Markham Decl., ¶17. Defendant estimates there
19 were approximately 171,016¹⁰ workweeks worked by the class members through February 1, 2024. *Id.*
20 The average hourly rate for class members is \$33. Approximately half of class members worked 8-hour
21 shifts, and the other half 12-hour shifts. Based on the analysis of the produced data, Defendant’s
22 maximum potential exposure is as follows:

23 Overtime/double time claim: \$395,046.96. This is based on Plaintiffs’ assumption that class
24 members worked approximately 5 minutes of overtime off-the-clock every other week, or 0.04 hours per
25 week. Markham Decl., ¶17. Thus, the total number of unpaid hours is 6,840.64 (171,016 workweeks x

27 ⁹ The website will contain settlement-related documents, including notice of final judgment. C.R.C., Rule 3.771(b).

28 ¹⁰ The agreement contains an escalator clause, providing that Sutter has an option to either increase the Maximum Settlement Amount, or cut off the Class/PAGA Periods should the number of workweeks as of February 1, 2024 exceed 188,119. SA, ¶43.

1 0.04 hours per week). To reflect that half of class members worked 8-hour shifts, and the other half 12-
2 hour shifts, Plaintiffs multiplied one half of unpaid hours (3,420.32) by an average overtime rate of \$49.50,
3 and the other half, by a double rate of \$66, resulting in maximum unpaid overtime/double time of
4 **\$395,046.96.**

5 Meal break claim: \$4,543,528. Evidence in this action shows that class members suffered meal
6 break violations once per workweek. Thus, the meal break premium calculation is 171,016 workweeks
7 times 1 times \$33 (= \$5,643,528). Defendant paid \$1,000,000 in meal break premiums to class members
8 during the class period, so the total exposure for meal premiums is **\$4,543,528.** *Id.*, ¶17.

9 Rest break claim: \$2,821,764. This is based on 1 violation per workweek, based on Plaintiffs'
10 evidence that rest breaks were at times missed and interrupted due to work duties. The 171,016
11 workweeks multiplied by the 1 per workweek violation rate, multiplied by \$33 hourly rate equals
12 \$5,643,528 in unpaid rest break premiums. *Id.*, ¶17. Plaintiffs applied a 50% discount to this claim to
13 account for additional risks in prevailing on this claim, such as that rest breaks are not recorded, Sutter's
14 policy authorized 15-minute rest breaks, in excess of the required 10 minutes, Kronos system allowed
15 employees to submit a rest break premium request, and many class members testified they took rest
16 breaks, or received rest break premiums. *Id.*, ¶17.¹¹

17 Unreimbursed Business Expense Claim: \$1,785,000. This is based on \$40 per month for
18 unreimbursed cell phone expenses, and once a year unreimbursed expense of \$100 for operating room
19 shoes. *Id.* On average, class members worked for Sutter for 4.25 years or 51 months. Thus, for cell phone
20 expenses, the maximum exposure is \$1,428,000 (700 class members x 51 months x \$40 per month), and
21 for operating room shoes, it is maximum \$357,000 (700 class members x 4.25 years x \$100 per year), for
22 a total of \$1,785,000. *Id.*, ¶17.

23 Wage statement penalties: \$2,800,000, based on the \$4,000 cap in penalties per class member (700
24 x \$4000). *Id.*, ¶17.

26 ¹¹ Settlements are routinely approved as fair and reasonable when the maximum valuation is discounted by fifty percent, or
27 more, to account for the class certification and merits risks. *See e.g., Milburn v. PetSmart, Inc.*, 2019 WL 5566313 *4 (E.D. Cal.
28 Oct. 29, 2019) (approving settlement as fair and reasonable where plaintiff applied **forty to fifty percent discount each for class certification and risks on the merits**); *see also Galvan v. Superior Tank Co Inc.*, 2016 WL 11502115 *7 (C.D. Cal. July 19, 2016) (approving settlement as fair and reasonable where maximum valuation was discounted for the risk of non-certification, *i.e.* **the rest period claim was discounted by 85% for a risk of non-certification and by 65% on the merits**);

1 Waiting time penalties: Plaintiffs calculated daily wages for 459 former employees at \$264 for 229
2 8-hour employees (8 hours at \$33), and at \$396 for 229 12-hour employees, (12 hours at \$33), times 30
3 days, to amount to \$1,813,680 for 8-hour employees, and \$2,720,520 for 12-hour employees, for a total
4 of **\$4,534,200**. *Id.*, ¶17.

5 Thus, Sutter's potential maximum liability for Plaintiffs' direct claims is **\$9,545,338.96**, and an
6 additional **\$7,334,200** for Plaintiffs' wage statement and waiting time penalties claims, for a total of
7 **\$16,879,538.96**. Thus, the MSA of \$775,000 represents 8.1% of Sutter's maximum potential liability for
8 Plaintiffs' direct claims, and almost 4.6% of Sutter's maximum liability for all Plaintiffs' claims. *Id.*, ¶18.
9 This result is well within the range of settlements commonly approved by California state and district
10 courts. *Id.* See also section IV(B)(2) below for a detailed explanation.

11 **B. The Proposed Settlement is Fair, Adequate, and Reasonable**

12 The court must determine whether the settlement is fair, adequate, and reasonable. *See Dunk v. Ford*
13 *Motor Co.*, 48 Cal.App.4th at 1801, *citing Officers for Justice, supra*, 688 F.2d. at 625. The "fair, reasonable and
14 adequate" test stems from Rule 23 of the Federal Rules of Civil Procedure. *Consumer Advocacy Group, Inc.*
15 *v. Kintetsu Enters. of Am.*, 141 Cal.App.4th 46, 61 (2006). However, California courts have been urged to
16 be flexible in dealing with class actions. *Wershba v. Apple Computer, Inc.*, 91 Cal.App.4th 224, 240 (2001),
17 *citing Cartt v. Super. Ct.*, 50 Cal.App.3d 960, 970, n.16 (1975). Generally, the opinions of counsel should be
18 given considerable weight because of counsel's familiarity with the litigation, and previous experience
19 with cases such as this one. *Officers for Justice, supra*, 688 F.2d at 625; *7-Eleven Owners, supra*, 85 Cal.App.4th
20 at 1151. At the preliminary approval stage, the Court considers if:

21 (1) the proposed settlement appears to be the product of serious, informed, noncollusive
22 negotiations, (2) has no obvious deficiencies, (3) does not improperly grant preferential
23 treatment to class representatives or segments of the class, and (4) falls with the range of
24 possible approval.

25 *In re Tableware Antitrust Litig.*, 484 F.Supp.2d 1078, 1079 (N.D. Cal. 2007) (citing Manual for Complex
26 Litigation, ¶ 30.44 (2d ed.1985)). This Settlement meets all of these criteria.

27 1. The Settlement is the Product of Serious, Informed and Noncollusive Negotiations

28 This Settlement is the result of extensive negotiations. Markham Decl., ¶14. Class Counsel analyzed
pre-mediation data and investigated class members' claims. *Id.*, ¶¶11-13, section III(A), *supra*. Sutter produced
over 4,000 pages of documents. Class Counsel reviewed Sutter's policies, and prepared a damages model. *Id.*,

¶15.

The vigorous litigation of this case gave both parties a clear view of the strengths and weaknesses of their respective positions. *Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles*, 186 Cal.App.4th 399, 410 (2010) (approving settlement where “considerable information [exists] from which to assess the strength of the class claims” and litigation risks); *Kullar v. Footlocker*, 168 Cal.App.4th 116, 129-130 (2008) (trial court should have sufficient information about the potential value of the case and litigation issues to independently review the reasonableness of the settlement.)

The parties participated in mediation before a private neutral with extensive experience in mediating wage and hour class actions. Markham Decl., ¶14; section III(B), *supra*. That indicates the settlement was free of collusion. *Murillo v. Pac. Gas & Elec. Co.*, 266 F.R.D. 468, 479 (E.D. Cal. 2010); *Dunk*, *supra*, 48 Cal.App.4th at 1802-03. The parties have been cooperative, yet aggressive, and displayed capable and experienced advocacy on both sides. Accordingly, “[t]here is ... 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 Supply Sys. Sec. Litig.*, 720 F.Supp. 1379, 1392 (D. Ariz. 1989).

2. The Settlement has no “Obvious Deficiencies” and Falls within the Approval Range

“[T]he very essence of a settlement is compromise, ‘a yielding of absolutes and an abandoning of highest hopes.’” *Officers for Justice*, 688 F.2d at 624 (quoting *Cotton v. Hinton*, 559 F.2d 1326, 1330 (5th Cir. 1977)). Thus, when evaluating the amount offered in settlement, the Court should consider “the complete package taken as a whole,” and the amount should “not be judged against a hypothetical or speculative measure of what might have been achieved by the negotiators.” *Id.* at 625-28.

(i) The Class Recovery Compares Favorably with Similar Wage and Hour Class Action Settlements

Courts routinely approve settlements where the settlement amount is a lower percentage of the claimed amount of damages. *Thomas v. Cognizant Tech. Sols. U.S. Corp.*, 2013 WL 12371622, at *6 (C.D. Cal. June 24, 2013) (granting final approval in wage and hour action for settlement between 4.4% and 5% of maximum liability); *Villegas v. J.P Morgan Chase & Co.*, 2012 WL 5878390, at *6 (N.D. Cal. Nov. 21, 2012) (15%); *In re MyFord Touch Consumer Litig.*, 2019 WL 1411510, at *10 (N.D. Cal. Mar. 28, 2019) (6% of valuation); *Bellinghausen v. Tractor Supply Co.*, 303 F.R.D. 611, 623-24 (N.D. Cal. 2014) (settlement between 9% and 27% of total potential liability fair, adequate and reasonable given the uncertainty of

1 continued litigation); *Stovall-Gusman v. W.W. Granger, Inc.*, 2015 WL 3776765, at *4 (N.D. Cal. June 17,
2 2015) (approving settlement representing 10% of potential value). Simply put, “the fact that a proposed
3 settlement may only amount to a fraction of the potential recovery does not mean that [it] should be
4 disapproved.” *7-Eleven Owners, supra*, 85 Cal.App.4th at 1150, citing *Linney v. Cellular Alaska P’ship*, 151
5 F.3d 1234, 1242 (9th Cir. 1998).

6 Here, the Settlement represents over 8% of Sutter’s maximum potential liability for Plaintiffs’ direct
7 overtime, break and unreimbursed business expense claims, and 4.6% of Sutter’s maximum liability for
8 all claims, without any risks, costs, and uncertainty of prolonged litigation. Markham Decl., ¶22. Without
9 accounting for the length of each class member’s employment, a class member will recover over \$500 as
10 a result of this settlement, or \$2 per workweek. *Id.*, ¶22. Based on the average hourly rate of \$33, this
11 amounts to recovery of approximately 15 meal and rest break premiums, or approximately 10 hours of
12 overtime wages per class member. *Id.*, ¶22. This is an excellent result when considering that Plaintiffs lost
13 their certification bid twice, and could face difficulties to prevail at a PAGA trial, and is well within the
14 range of approved settlement payments. *See e.g., Villegas, supra*, 2012 WL 5878390, at *2, 6 (approving
15 settlement with approximately \$255 settlement payment per class member).

16 (ii) *The Formula of Allocation based on Workweeks is Fair and should be Approved*

17 Class members will receive a portion of the MSA based on the number of workweeks they worked
18 during the class period. This formula is realistic because class members’ individual recovery is
19 proportionate to the amount of time they were employed with Sutter. Markham Decl., ¶23. As discussed
20 in section III(C), *supra*, considering the probability of lengthy litigation in the absence of a settlement, the
21 risk that Plaintiffs and the class members might not have been able to succeed at trial, and the risk that
22 the court could award less than \$775,000 in penalties, the settlement amount is reasonable. *In re Mego Fin.*
23 *Corp. Sec. Litig.*, 213 F.3d at 458; *Sandoval*, 2010 WL 2486346, at *7.

24 3. The Settlement does not Improperly Grant Preferential Treatment to Class
Representatives or Segments of the Class

25 Ms. Ward and Ms. Besabe will receive \$12,500 each for their time and efforts in representing the
26 Class. SA, ¶18. “Incentive awards [for class representatives] are fairly typical in class actions.” *Cellphone*
27 *Termination Fee Cases*, 186 Cal.App.4th 1380, 1393 (2010), citing *Rodriguez v. West Publ’g*, 563 F.3d 948, 958
28 (9th Cir. 2009); *Cellphone Termination, supra*, 186 Cal.App.4th at 1394. “Since without a named plaintiff

1 there can be no class action, such compensation as may be necessary to induce him to participate in the
2 suit could be thought the equivalent of the lawyers' nonlegal but essential case-specific expenses, such as
3 long-distance phone calls, which are reimbursable.” *Clark v. Am. Residential Servs.*, 175 Cal.App.4th 785,
4 804 (2009), citing *Matter of Cont’l Ill. Sec. Litig.*, 962 F.2d 566, 571 (7th Cir. 1992).

5 Here, the service payments to Plaintiffs are based on the extent of Plaintiffs’ participation in this action
6 and not conditioned upon Plaintiffs’ support of the settlement. *Cf. Radcliffe v. Experian Info. Solutions, Inc.*, 715 F.3d
7 1157, 1165 (2013). Plaintiffs assisted in investigation, participated in multiple call conferences with counsel,
8 responded to discovery, provided and reviewed documents, sat for full-day depositions, and were on
9 standby during mediation. *See* Ward Decl., ¶¶11-14; Besabe Decl., ¶11-14.

10 Courts award incentive awards in this range. *Ross v. U.S. Bank Nat’l Ass’n*, 2010 WL 3833922, at *3
11 (N.D. Cal. Sept. 29, 2010) (approving an award of \$20,000 to each of four named plaintiffs based on
12 their contributions to litigation and the risk that being a class representative would harm their reputation);
13 *Ridgeway v. Wal-Mart Stores Inc.*, 2017 WL 4071293, at *19 (N.D. Cal., Sept. 14, 2017) (\$15,000 incentive
14 awards for each of the named plaintiffs awarded); *Low v. Trump University, LLC*, 246 F.Supp.3d 1295, 1316
15 (S.D. Cal. 2017) (\$15,000 incentive award approved where plaintiffs “devoted significant amounts of time
16 and energy” to the action); *Glass v. UBS Fin. Servs.*, 2007 WL 221862 at *17 (\$25,000 for each class
17 representative in wage and hour action). Thus, the proposed service payments are reasonable.

18 4. The Stage of the Proceedings is Sufficiently Advanced to Permit Preliminary Approval

19 “A court is more likely to approve a settlement if most of the discovery is completed because it
20 suggests that the parties arrived at a compromise based on a full understanding of the legal and factual
21 issues surrounding the case.” *Nat’l Rural Telecomms. Corp.*, *supra*, 221 F.R.D. at 527. Here, before settling
22 this action, the parties had a thorough understanding of their respective claims and defenses, as this action
23 and the District Court action have been litigated for over four years. *See* section III(A), *supra*; Markham
24 Decl., ¶¶11-13. Before mediation, Class Counsel had investigated class members’ claims, examined
25 documents and data, and performed damage calculations. *Id.*, ¶15. At the time of mediation, the parties
26 understood their respective positions. *Id.*, ¶15. As a result of the work performed in this case, the real
27 value of the class claims was well known, and Class Counsel determined that the Settlement with Sutter
28 is fair, reasonable, and adequate. *Young v. Polo Retail, LLC*, 2007 WL 951821, at *4 (N.D. Cal. Mar. 28,

1 2007).

2 **C. The Proposed Class Meets the Qualifications for Certification for Settlement Purposes.**¹²

3 To certify a class, plaintiffs need to show that “the question is one of a common or general interest,
4 of many persons, or...the parties are numerous, and it is impracticable to bring them all before the court.”
5 Cal. Code of Civ. Proc. §382. Plaintiffs need to prove that the class is both ascertainable and that there
6 is a well-defined community of interest among class members. *See Sav-On Drug Stores, Inc. v. Super. Ct.*, 34
7 Cal.4th 319, 326 (2004). A test for “community of interest” consists of the following prongs: (1) there
8 are predominant common questions of law or fact; (2) class representatives have claims typical to those
9 of the class; and (3) class representatives can adequately represent the interests of the class. *Id.*

10 1. An Ascertainable and Numerous Class Exists

11 A class is considered ascertainable when: (i) under the class definition the members are clearly
12 identifiable, and (ii) the members can be located and notified through a reasonable expenditure of time
13 and money. *See Reyes v. San Diego County Board of Supervisors*, 196 Cal.App.3d 1263, 1274-75 (1987); *Sevidal*
14 *v. Target Corp.*, 189 Cal.App.4th 905, 919-20 (2010). Class members are ascertainable when they can be
15 easily identified by reference to official or business records. *Archer v. United Rentals, Inc.*, 195 Cal.App.4th
16 807, 828 (2011); *Sevidal*, 189 Cal.App.4th at 919. Here, the Class is composed of approximately 740
17 current and former surgical technician employees of Sutter in California, who can be identified and
18 located from Sutter’s personnel and payroll records. In California, as few as ten (10) or twenty-eight (28)
19 members satisfy numerosity. *Bowles v. Super. Ct.*, 44 Cal.2d 574 (1955); *Hebbard v. Colgrove*, 28 Cal.App.3d
20 1017, 1030 (1972). Thus, numerosity is satisfied, and the class is ascertainable.

21 2. Common Issues of Law and Fact Predominate over any Individual Issues

22 “As a general rule if the defendant’s liability can be determined by facts common to all members of
23 the class, a class will be certified even if the members must individually prove their damages.” *Brinker*,
24 *supra*, 53 Cal.4th at 1022. The court only determines whether or not “the theory of recovery advanced by
25 the proponents of certification is, as an analytical matter, likely to prove amenable to class treatment.”
26 *Sav-On Drug Stores, supra*, 34 Cal.4th at 327.

28 ¹² Sutter agrees to certify a class for settlement purposes only, and their agreement to do so shall not be construed as an admission of the propriety of class certification outside of the settlement context. SA, ¶14.

1 Plaintiffs lost certification in the District Court action, because their class evidence (in the form of
2 employee declarations) was too vague to show predominance of common issues. Markham Decl., ¶32.
3 Yet, upon proper presentation of class evidence, Plaintiffs could have shown there are common questions
4 of law and fact across the board. For example, Sutter's meal break policy puts onus on the employees to
5 notify the management of their inability to take a meal or a rest break, and request premiums. Markham
6 Decl. ¶32, Ex. 4 at SVH0001538 2(a) and (b); SVH0001539 at 3. Some courts question the legality of
7 such policies. *Chacon v. Express Fashion Operations LLC*, 2021 WL 4595772, at *8 (C.D. Cal. June 14, 2021)
8 (granting certification). Further, Sutter's policy does not allow overtime without written, advanced approval
9 from management. Markham Decl., Ex 4 at SVH0001541. However, in a hospital, the need for overtime is
10 often not known in advance, and written pre-approval from a manager is not feasible. This creates a Catch-
11 22 situation, resulting in off-the-clock work on a classwide basis.

12 Further, Sutter's policy excludes personal cell phones from reimbursement (*id.*, Ex. 4 at
13 SVH0003460), whereas class members aver they were called on their cell phones with work-related
14 questions. Also, upon showing that shoes class members wore in the operating room cannot be worn
15 outside of the hospital, the common question arises whether Sutter is required to reimburse class
16 members for these shoes.

17 Because several issues are common to all class members, a class action is superior to numerous
18 individual actions, and the maintenance of this action as a class action will save judicial resources, and
19 help avoid inconsistent judgments. *See Savon Drugs, supra*, 34 Cal.4th at 326. Class members' interests are
20 relatively small, so they are unlikely to prosecute separate actions. Plaintiffs' claims arise from their
21 employment with Sutter in California.

22 3. Plaintiffs' Claims are Typical of the Claims of Class Members

23 Typicality does not mean that the interests of plaintiffs must be identical to those of absent class
24 members. *Classen v. Weller*, 145 Cal.App.3d 27, 46 (1983); *Staton v. Boeing Co.*, 327 F.3d 938, 957 (9th Cir.
25 2003). They only need to be "reasonably co-extensive with those of absent class members." *Parsons v.*
26 *Ryan*, 754 F.3d 657, 685 (9th Cir. 2014). Also, the representative plaintiff must be a member of the class
27 she seeks to represent. *La Sala v. American Sav. & Loan Assn.*, 5 Cal.3d 864, 875 (1971). Here, Plaintiffs'
28 claims arise from the same facts and legal theories as the class members' claims. Plaintiffs worked as

1 surgical technicians in California, and were subject to the same policies and practices of Sutter with respect
2 to timekeeping, meal and rest breaks, and unreimbursed business expenses. Thus, typicality is met.

3 4. Plaintiffs and Class Counsel will Adequately Protect the Interests of the Class

4 To meet adequacy, the named plaintiff must be represented by counsel qualified to prosecute class
5 actions of this type, and the named plaintiff's interests cannot be antagonistic to those of the class. *See*
6 *McGhee v. Bank of America*, 60 Cal.App.3d 442, 450 (1976). Here, Plaintiffs retained counsel with extensive
7 experience in prosecuting wage and hour class actions. Markham Decl., ¶¶34-40; Singer Decl., ¶¶7-14.
8 Plaintiffs have the same interests as the rest of the class, because they have allegedly been injured in
9 substantially the same manner. Ward Decl., ¶¶4-7; Besabe Decl., ¶¶4-7. Thus, the Court should certify
10 Plaintiffs' class claims for Settlement purposes.

11 **VII. THE PROPOSED NOTICE TO THE CLASS SHOULD BE APPROVED**

12 **A. Proposed Notice Plan**

13 Within 14 calendar days after receiving class data from Sutter, the Administrator will send Class
14 Notice to class members via first class mail. SA, ¶36. First, the Administrator will run a check of the class
15 members' addresses against those contained in the USPS's National Change of Address database, and
16 take any other appropriate steps to validate the correctness of the addresses provided by Sutter. *Id.* If the
17 Notice is returned with the forwarding address, the Administrator will use the forwarding addresses to
18 locate the missing class members, and re-mail the Notice. *Id.*, ¶37. If a Notice is returned as non-
19 deliverable with no forwarding address, the Administrator shall conduct an advanced skip trace to locate
20 the most current address, and resend the Notice to any updated address within five (5) calendar days. *Id.*
21 Any responses from the class member (*i.e.*, a dispute regarding calculation of workweeks, a Request for
22 Exclusion, or an objection) are due to the Administrator by the Response Deadline, or within seven (7)
23 calendar days from the date of re-mailing, whichever is later. *Id.*

24 The Class Notice summarizes the terms of the Settlement Agreement, advises the class members
25 of their estimated individual settlement payment, and informs them of their right to object to or exclude
26 themselves from the Settlement within 60 days after the Notice mailing. **Ex. 1.** Because this is the
27 California-only class, and the mailing will occur only in California, 60 days to opt out from or object to
28 the Settlement is sufficient. Markham Decl., ¶21. Further, because class members worked as surgical

1 technicians in California, communicating with patients on a daily basis in English, English-only notice is
2 sufficient. *Id.* All 42 class member declarants in this action spoke English. *Id.*

3 **B. The Proposed Notice to the Class is Fair and Adequate**

4 The parties agreed on the language of the class notice. *Id.* The threshold requirement regarding the
5 sufficiency of class notice is whether the means proposed for distributing the notice are reasonably
6 calculated to apprise the class of the action, the proposed settlement, and the right to opt out of or object
7 to the settlement. *Eisen v. Carlisle & Jacquelin*, 417 U.S. 156, 173 (1974); *Mullane v. Cent. Hanover Bank &*
8 *Trust Co.*, 339 U.S. 306, 315 (1950); *see also* Cal. Rules of Court, Rule 3.766.

9 Here, the Notice is sufficient, because it gives class members, in a clear language: (1) basic
10 information about this action and the Settlement; (2) an estimate of the weeks class members worked
11 during the Class Period, and an explanation how class members can dispute this calculation; (3) an
12 explanation how the payout from the Settlement will be calculated for each class member, and an estimate
13 of a class member's Settlement Payment; (4) an explanation how class members can exercise their right
14 to opt-out from, or object to, the Settlement; (5) an explanation that any claims against Sutter that could
15 have been litigated in these two actions will be released if the class member does not opt out, and that
16 PAGA claims will be released whether or not a class member opts out of the class portion of the
17 settlement; (6) name of Class Counsel and information regarding attorneys' fees and costs; (7) the date of
18 the Fairness Hearing and an explanation of eligibility to appear at the Fairness Hearing; and (8) the
19 telephone and e-mail number, as well as website address, where class members can obtain additional
20 information. *See* Ex. 1 to SA (proposed Class Notice).

21 Thus, the Notice plan proposed by the Settlement is fair and adequate, and complies with the
22 California Rules of Court, Rules 3.766 and 3.769(f).

23 **VIII. CONCLUSION**

24 The proposed Settlement is fair, reasonable and adequate, and warrants preliminary approval.

25 Dated: May 24, 2024

Respectfully submitted,

26 THE MARKHAM LAW FIRM

27 /s/ David Markham

David Markham

28 Lisa Brevard for Plaintiffs