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and all others similarly situated

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN MATEO

LISA SKERL, an individual; VICTORIA
KROPP, an individual; LORI ROARK, an
individual; on behalf of themselves and all
others similarly situated and the general public,

Plaintiffs,

v.

SUTTER BAY HOSPITALS, a California
corporation; and DOES 1 to 100, inclusive,

Defendants.

Case No. 21-CIV-02057

[Assigned For All Purposes To The Hon.
Nancy L. Fineman, Dept. 4]

**PLAINTIFFS' NOTICE OF MOTION
AND MOTION FOR FINAL APPROVAL
OF CLASS ACTION SETTLEMENT;
MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT THEREOF**

Date: October 24, 2023
Time: 2:00 p.m.
Dept: 4

1 **TO THE COURT, ALL PARTIES AND THEIR ATTORNEYS OF RECORD:**

2 **PLEASE TAKE NOTICE** that on October 24, 2023, at 2:00 p.m., or as soon thereafter
3 as the matter may be heard in Department 4 of the above-entitled court, located at 800 North
4 Humboldt Street, San Mateo, California 94401, Plaintiffs Lisa Skerl, Victoria Kropp, and Lori
5 Roark (“Plaintiffs”) will hereby move the Court for an Order Granting Final Approval of a Class
6 Action Settlement and Entry of a Final Order and Judgment.

7 This Motion is based upon this Notice, the attached Memorandum of Points and
8 Authorities, the Declarations of Aaron Bartz and Cassandra Polites, all documents and records
9 on file in this action, including the Motion for Attorneys’ Fees and Costs and declarations in
10 support thereof, and on such other further oral and documentary evidence as may be given at the
11 hearing on this Motion.

12 Dated: September 27, 2023

SHANBERG STAFFORD LLP
BARTZ LAW GROUP, APC

13
14
15 /s/Aaron A. Bartz

AARON A. BARTZ

Attorneys for Plaintiffs LISA SKERL,
VICTORIA KROPP, LORI ROARK and all
others similarly situated

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1 **I. INTRODUCTION**

2 This class action and PAGA settlement is sought on behalf of approximately 22,326
3 current and former non-exempt hourly employees who worked in California for Defendant Sutter
4 Bay Hospitals (“SBH” or “Defendant”), including those employees who worked for SBH
5 hospitals California Pacific Medical Center (CPMC) and Mills-Peninsula Medical Center
6 (MPMC)¹, between July 20, 2016 and January 31, 2023.

7 This Court preliminarily approved this settlement on April 26, 2023. Pursuant to the
8 preliminary approval order, the notice of class settlement and related settlement documents were
9 mailed to the class on July 21, 2023. (*See* Exhibit A to Declaration of Cassandra Polites
10 (“Polites Decl.”), ¶ 7.) Only .30% of the class has opted out of the settlement (67 class
11 members). No class members have served an objection to the settlement.²

12 The case arises out of Plaintiffs’ allegations that SBH violated California’s wage and
13 hour laws, including failing to pay all wages owed and overtime, failing to authorize and permit
14 meal and rest periods, failing to pay Plaintiffs and the class members at the regular rate of pay
15 for meal and rest period premiums, and failing to properly maintain and submit wage statements.

16 There is no claim form requirement, and each class member who has not opted out of the
17 settlement is entitled to receive compensation, with no reversion to the Defendant. The gross
18 settlement is **\$12 million**. The net amount to be paid to class members (after payment of class
19 counsel fees and expenses, settlement administration costs, PAGA penalties to the LWDA, and

20
21
22 ¹ Defendant Sutter Bay Hospitals is a California corporation, and consists of
23 numerous individual hospitals, including CPMC and MPMC.

24 ² On September 19, 2023, the settlement administrator sent out supplemental
25 notices to 59 class members whose class notices inadvertently included them in the incorrect
26 sub-class of employees. Plaintiffs do not anticipate that any of these class members will opt out
or object because they will all be receiving increased settlement amounts because of the earlier
error. Plaintiffs, however, will submit a supplemental declaration from the class administrator
prior to the hearing to further update the Court.

1 Plaintiffs’ enhancement awards), is approximately **\$7.68 million**. Each class member’s share of
2 the settlement is based on each of their eligible number of pay periods, and shall receive, on
3 average, approximately \$345.

4 The settlement is fair, reasonable, and confers a substantial monetary benefit to the entire
5 class. Accordingly, Plaintiffs request that this Court grant final approval of the settlement, and
6 approve Plaintiffs’ attorneys’ fees, costs, administrative expenses, and the enhancement awards.³

7 **II. THE LAWSUIT**

8 Plaintiff Lisa Skerl (“Skerl”) filed a lawsuit against SBH for wage and hour violations on
9 July 20, 2020 in the San Francisco Superior Court (“Skerl Action”). Later, Plaintiff Skerl added
10 Private Attorneys General Act (PAGA) allegations in a First Amended Complaint on December
11 1, 2020, and thereafter, Plaintiff Victoria Kropp was added as a plaintiff in the Skerl Action in a
12 Second Amended Complaint on October 18, 2021.

13 Plaintiff Lori Roark (“Roark”) filed a wage and hour lawsuit against SBH and Mills-
14 Peninsula Hospital on April 12, 2021 (“Roark Action”). Subsequently, the parties filed a First
15 Amended Consolidated Class and PAGA Action, which effectively combined all of the
16 allegations from the Skerl Action and Roark Action into the instant action before this Court.

17 From the inception of the Skerl Action, Plaintiffs have aggressively pursued discovery.
18 In the combined actions, Plaintiffs served over 9 sets of formal discovery, noticed the person
19 most knowledgeable of SBH with over 13 detailed categories of wage and hour inquiries, sent
20 out multiple *Belaire-West* notices, spoke to scores of potential witnesses and current and former
21 SBH employees, reviewed more than 40,000 pages of time, payroll, and policy records, and
22 engaged in extensive informal discovery prior to a 14-hour marathon Mediation session that
23 eventually resulted in a settlement in principle.

24
25
26 ³ On September 1, 2023, Plaintiffs filed their Motion for Attorneys’ Fees, Costs,
and Incentive Fees for the Class Representatives, which will also be heard on October 24, 2023.

1 **III. THE SETTLEMENT**

2 The class members entitled to the settlement fund are grouped into three categories: (1)
3 all current and former non-exempt nurses and surgical technicians, and other non-exempt patient
4 care employees working at CPMC; (2) all current and former non-exempt employees who
5 worked at MPMC; and (3) all current and former non-exempt hourly employees of SBH,
6 excluding those already included in the CPMC and MPMC group above.⁴ (Bartz Decl., ¶ 10.)
7 The Class Period is between July 20, 2016 and January 31, 2023. (*Ibid.*) There are 22,326 class
8 members according to SBH's employment records. (*Ibid.*)

9 The settlement fund is all in (except for the employer's share of payroll taxes, which SBH
10 shall pay in addition to the \$12 million settlement), there is no claim form requirement, and no
11 residual will revert to SBH. (Bartz Decl., ¶ 11.) In the event a class member does not negotiate
12 his or her settlement check, the settlement administrator will forward the check to Legal Aid at
13 Work as the cy pres for uncashed settlement monies. (*Ibid.*)

14 The payment to the Class Members will be characterized eighty percent interest and
15 penalties, and twenty percent wages. (Bartz Decl., ¶ 12.) This allocation is justified because
16 many of the claims alleged contain provisions for penalties, and the vast majority of the alleged
17 violations occurred years before the settlement, implicating significant alleged interest owed.
18 (*Ibid.*) The class administrator will issue W-2 statements for the wage portion of the settlement,
19 and a form 1099 for all amounts paid as penalties and interest. (*Ibid.*)
20
21
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25 ⁴ The latter group of SBH non-exempt employees is providing a more limited
26 release than either the CPMC or MPMC settlement classes, which is why there are three separate
buckets of class members.

1 Based upon Class Counsel's independent analysis and investigation in this matter, the
2 Settlement Class will be compensated based on each member's respective number of workweeks
3 during the Class Period.⁵ (Bartz Decl., ¶ 13).

4 Pursuant to the settlement terms, there will be an approximate net settlement fund of
5 **\$7,683,000**. (Bartz Decl., ¶ 14.) The class member payouts are, on average, approximately as
6 follows: (1) \$723 to each member of the CPMC class; (2) \$386 to each member of the MPMC
7 class; and (3) \$221 to each member of the SBH class. (*Ibid.*) In exchange for their payment, the
8 CPMC and MPMC classes will release Defendant from any and all claims, known or unknown,
9 contingent or accrued, arising out of the operative facts alleged in the lawsuit, and the SBH class
10 members will release a narrower set of claims based on rounding and regular rate claims. (*Ibid.*)
11 The named Plaintiffs will, in addition to releasing claims alleged in the lawsuit, give a general
12 release of all claims pursuant to Civil Code section 1542. (*Ibid.*)

13 The all-in settlement fund will also include all of the attorneys' fees and costs allowed by
14 this Court. (Bartz Decl., ¶ 15.) The attorneys' fees shall not exceed one-third of the \$12 million
15 settlement fund, or \$4,000,000. (*Ibid.*) Defendant will also pay class counsel's costs, which are
16 \$21,566.33, as well as settlement administration costs not to exceed \$67,000, out of the common
17 fund. (*Ibid.*)

18 The PAGA allocation of the settlement is \$240,000, of which \$180,000 (75%) will be
19 distributed to the Labor Workforce and Development Agency (LWDA), with the remaining
20

21
22
23 ⁵ The parties have allocated the settlement such that the CPMC Settlement Class
24 receives 30% of the Net Settlement Amount, the MPMC receives 20% of the Net Settlement
25 Amount, and the SBH Premium Calculation and Rounding Class receives 50% of the Net
26 Settlement. This allocation is justified because the CPMC includes only nurses, surgical
technicians, and patient care employees, who are paid more, on average, than the MPMC
settlement class. The SBH Premium Calculation and Rounding Class includes all other non-
exempt employees of SBH, and so it necessarily includes damages exposure on a larger scale.
As such, Class Counsel believes it is fair to allocate 50% of the Net Settlement amount to this
group. (See Bartz Decl., ¶ 13.)

1 portion - \$60,000 (25%) - going to PAGA Members (all allegedly aggrieved persons who
2 worked for SBH as non-exempt employees in California, at any time from July 17, 2019 through
3 January 31, 2023). (Bartz Decl., ¶ 16.)

4 The settlement also includes Plaintiffs' class representative enhancements. (Bartz Decl.,
5 ¶ 17.) Based on Plaintiffs' work in connection with this case, including connecting Class
6 Counsel with other witnesses, meeting and conferring with Class Counsel regarding legal
7 strategies, and assisting with developing the claims and theories in this case, and attending
8 Mediation, Plaintiffs collectively seek \$45,000. (*Ibid.*)

9 **In summary, the settlement fund is allocated as follows:**

- 10 (1) A net settlement fund of approximately \$7,683,000.
11 (2) Attorney's fees and costs: \$4,000,000 in attorneys' fees and \$21,566.33 in
12 costs.
13 (3) Settlement administrator expenses not to exceed \$67,000.
14 (4) PAGA payment to the LWDA: \$180,000.
15 (5) Class representative enhancements of \$45,000 for the three named Plaintiffs.
16 (Bartz Decl., ¶ 18.)

17
18 **III. FINAL SETTLEMENT APPROVAL IS APPROPRIATE IN THIS CASE**

19 Pursuant to both state and federal rules of civil procedure, "a class action shall not be
20 dismissed or compromised without the approval of the court, and notice of the proposed
21 dismissal or compromise shall be given to all members of the class in such manner as the Court
22 directs" (Cal. Civ. Code § 1781(f); *see also* Fed. R. Civ. P. 23(e).)

23 To prevent fraud, collusion or unfairness to the class, the settlement or dismissal of a
24 class action requires court approval. (*See Malibu Outrigger Bd. of Governors v. Superior Court*
25 (1980) 103 Cal. App. 3d 573, 578-579.) The purpose of the requirement is the protection of
26 those class members, including the named plaintiffs, whose rights may not have been given due

1 regard by the negotiating parties. (*See Officers for Justice v. Civil Service Comm.* (9th Cir. 1982)
2 688 F.2d 615, 625, cert. denied 459 U.S. 1217.) To determine whether to grant final approval to
3 a proposed class action under Civil Code section 382, the Court's overriding concern is whether
4 the proposed settlement is "fair, adequate, and reasonable." (*Dunk v. Ford Motor Company*
5 (1996) 48 Cal. App. 4th 1794, 1801 (quoting *Officers of Justice, supra*, 688 F.2d at 623-624).)
6 The settlement of a class action follows in three stages: (1) preliminary approval of the proposed
7 settlement; (2) notice to class members; and (3) final approval or fairness hearing at which
8 evidence and argument may be heard on the fairness of the settlement. Here, this Court already
9 preliminarily approved the settlement, notice was provided to all class members, no class
10 members have objected, and only 67 class members have opted out.

11 **A. The Settlement is Presumed Fair**

12 A presumption of fairness exists where: (1) the settlement is reached through arm's
13 length bargaining, (2) investigation and discovery are sufficient to allow counsel and the court to
14 act intelligently, (3) counsel is experienced in similar litigation, and (4) the percentage of
15 objectors is small. (*See Dunk, supra*, 48 Cal. App. 4th at 1802.) A court may also consider
16 relevant factors such as the strength of the plaintiffs' case, the risk, expense, complexity and
17 likely duration of further litigation, the risk of maintaining class action status through trial, the
18 amount offered in settlement, the extent of discovery completed and the stage of the proceedings,
19 the experience and views of counsel, the presence of a governmental participant and the reaction
20 of the class members to the proposed settlement. (*See Officers of Justice, supra*, 688 F.2d at
21 624.) "This list is not exhaustive and should be tailored to each case. Due regard should be
22 given to what is otherwise a private consensual agreement between the parties." (*Dunk, supra*,
23 48 Cal. App. 4th at 1801.) Moreover, the trial court has broad powers to determine whether a
24 proposed class action settlement is fair. (*See Mallick v. Superior Court* (1979) 89 Cal. App. 3d
25 434.)
26

1 **B. The Settlement Was Reached Through Arm’s Length Negotiations**

2 This settlement is the result of extensive and hard-fought negotiations. On August 15,
3 2022, the Parties attended Mediation before prominent wage and hour mediator Michael Loeb.
4 The case settled after 14 hours of lengthy and spirited debate about the merits of the case and the
5 damages exposure. Even after settling the matter in principle on the day of the Mediation, the
6 parties continued to negotiate the long-form settlement agreement for more than three months,
7 ultimately entering into the Joint Stipulation of Class Action and PAGA Settlement and Release
8 in December 2022.

9 Defendant has denied and continues to deny all of the claims and contentions alleged in
10 this case. Nonetheless, Defendant has agreed to settle this case in the manner and upon the terms
11 and conditions set forth in the Settlement Agreement in order to avoid the expense,
12 inconvenience, and burden of further legal proceedings, and the uncertainties of trial and
13 possible appeals.

14 Here the litigation has been hard fought and displayed capable and experienced advocacy
15 on both sides. “There is likewise every reason to conclude that settlement negotiations were
16 vigorously conducted at arm’s length and without any suggestion of undue influence.” *In re*
17 *Wash. Public Power Supply System Sec. Litig.*, 720 F. Supp. 1379, 1392 (D. AZ 1989).

18 **C. Plaintiffs Conducted Sufficient Investigation and Discovery To Warrant**
19 **Settlement**

20 The stage of the proceedings and the amount of discovery completed are important
21 factors for courts to consider in determining whether a settlement is fair, adequate and
22 reasonable. (*See In re Warner Communications Sec. Lit.* (S.D.N.Y. 1985) 618 F.Supp. 735, 741,
23 *affd.*, 198 F.2d 35 (2d Cir. 1986); *Ellis v. Naval Air Rework Facility* (N.D. Cal. 1980) 87 F.R.D.
24 15, 18, *affd.*, 661 F.2d 939 (9th Cir. 1981).)

1 The agreement to settle did not occur until Class Counsel possessed sufficient
2 information to make an informed judgment regarding the likelihood of success on the merits and
3 the results that could be obtained through further litigation.

4 Plaintiffs served 9 sets of formal discovery, including Requests for Production of
5 Documents and Special Interrogatories, engaged in two separate *Belaire-West* notices to gather
6 invaluable information about the putative class members, deposed Defendant's person most
7 knowledgeable on over thirteen subjects, interviewed scores of class members and witnesses,
8 reviewed over forty thousand of pages of documents, and exhaustively turned over every stone in
9 an effort to prosecute this action.

10 Plaintiffs also hired an experienced wage and hour damages expert James Toney to
11 analyze voluminous payroll and related wage data and create a damages model for the various
12 claims alleged in the case. Based upon the analysis of the time records and payroll data, Mr.
13 Toney and Class Counsel were able to calculate damage estimates on a class-wide basis.

14 The parties did not attend Mediation in this matter until more than two years into the
15 litigation, and voluminous discovery had been completed. In addition to the formal discovery
16 that had already been produced in the case in advance of Mediation, Defendant produced
17 substantial additional payroll data and related information to allow Plaintiffs to fully evaluate the
18 damages exposure in the case. Plaintiffs' counsel thoroughly reviewed, investigated, and
19 analyzed this information. This informal discovery process occurred over a period of several
20 months and involved extensive meet and confer efforts between counsel for the parties. As such,
21 this case did not settle until Class Counsel exhaustively investigated, researched, and prosecuted
22 this action.

23 **D. Class Counsel Is Experienced In Similar Litigation And Endorse The**
24 **Settlement**

25 The view of attorneys advocating for the class is "entitled to significant weight." (*Fisher*
26 *Bros. v. Cambridge-Lee Industries, Inc.* (E.D. Pa. 1985) 630 F.Supp. 482, 488; *see also Ellis,*

1 *supra*, 87 F.R.D. at 18.) Class counsel has significant experience in class actions and
2 employment litigation, including wage and hour class actions. As such, they are experienced and
3 qualified to evaluate the claims and defenses in this case, and unequivocally support the
4 settlement reached herein. The recovery for the class is fair, reasonable and adequate, and Class
5 Counsel supports the settlement.

6 **E. There Are No Objectors To The Settlement**

7 Significantly, there has not been a single objection to the settlement, and only .30% of the
8 class (67 class members) have asked to be excluded from the settlement. This alone is a
9 testament to the fairness and adequacy of the settlement.

10 **F. The Strength of Plaintiffs' Case, The Amount Offered In Settlement, and**
11 **The Risk, Expense, Complexity, and Duration of Further Litigation Favors**
12 **Settlement**

13 Where both sides face significant uncertainty, the attendant risks favor settlement.
14 (*Hanlon v. Chrysler Comm.* (9th Cir. 1998) 150 F.3d 1011, 1026. Moreover, “[t]he expense and
15 possible duration of the litigation should be considered in evaluating the reasonableness of [a]
16 settlement.” (*In re Mega Financial Corp. Securities Litigation* (9th Cir. 2000) 213 F.3d 454,
17 458.)

18 Plaintiffs’ First Amended Consolidated Class Action Complaint alleges claims for 1)
19 Failure to Pay All Wages and Illegal Rounding; 2) Failure to Provide Meal Periods; 3) Failure to
20 Authorize and Permit Proper Rest Periods; 4) Failure to Pay Meal and Rest Break Premiums at
21 the Proper Regular Rate of Pay; 5) Failure to Properly Maintain and Submit Itemized Wage
22 Statements; 6)Waiting Time Penalties; 7) Unfair Business Practices; and 8) Violation of Labor
23 Code § 2699 (PAGA). Plaintiffs further allege that they and the Class are entitled to damages,
24 restitution, wages, attorneys’ fees, and interest, among other remedies.

25 Pursuant to *Kullar v. Footlocker Retail Inc.*, 168 Cal.App.4th 116 (2008) and *Dunk*
26 *v. Ford Motor Co.*, 48 Cal.App.4th 1794 (1996), the following describes the settlement's

1 reasonably. Plaintiffs recognize the expense and length of continued proceedings necessary
2 to continue the litigation against Defendant through trial and through any possible appeals.
3 Plaintiffs have also taken into account the uncertainty and risk of denial of motion for class
4 certification and the uncertain outcomes resulting from further litigation, and the difficulties and
5 delays inherent in such litigation. Plaintiffs are also aware of the burdens of proof necessary to
6 establish liability for the claims asserted in this case, Defendant's defenses thereto, and the
7 difficulties in establishing damages for the Plaintiffs and Class Members.

8 Based on the foregoing, Plaintiffs have determined that the settlement is a fair, adequate
9 and reasonable settlement and is in the best interests of the Class Members. The reasonable
10 exposure and the reasonable settlement value for each of the alleged claims are as follows:

11 **1. Unpaid Wages/Rounding**

12 Plaintiffs allege that SBH fail to pay employees for all time worked due to their rounding
13 mechanism that results in rounding off of the time worked which fails to pay employees for all
14 time worked. Defendant records the time worked to the minute but uses a rounding system for
15 purposes of paying wages, including deducting time from class members' wages based upon
16 Defendant's policy and practice of rounding the time on a daily basis for time spent during meal
17 periods. Plaintiffs assert that Defendant's rounding practice is uniform and has applied to all
18 putative class members during the class period. Plaintiffs believe that this was an objective
19 claim and would obtain certification on the claim.

20 The law on whether rounding is legal or not in California is unsettled. California
21 employers have long engaged in employee time-rounding, yet there is no California statute
22 specifically authorizing or prohibiting this practice. *See's Candy Shops, Inc. v. The Superior*
23 *Court of San Diego*, 210 Cal.App.4th 889, 901 (2012) ("*See's Candy I*"). Likewise, until the
24 decision of *See's Candy I*, there was no California case law on point. *See's Candy I* confirmed
25 that although there are no California reported decisions holding the federal standard applies
26 under California law, the agency empowered to enforce California's labor laws, the Division of

1 Labor Standards Enforcement (“DLSE”) has adopted the federal regulation in its Enforced
2 Policies and Interpretations Manual (2002 Rev.) (“DLSE Manual”). (*Id.* at p. 902.)

3 A time-rounding policy is improper unless it is: (1) facially neutral; and (2) actually
4 compensates the employee for all hours worked. (*See’s Candy I, supra*, 210 Cal.App.4th at p.
5 901.) California has adopted the federal rounding standard for claims under the California Labor
6 Code, which allows the practice “of recording the employees’ starting time and stopping time to
7 the nearest 5 minutes, or to the nearest one-tenth or quarter of an hour, provided that it is used in
8 such a manner that it will not result, over a period of time, in failure to compensate the
9 employees properly for all the time they have actually worked.” (*Ibid.*; 29 C.F.R. § 785.48(b).)
10 The policies underlying the federal regulation – recognizing that time rounding is a practical
11 method for calculating work time and can be a neutral calculation tool for providing full payment
12 to employees – apply equally to the employee-protective policies embodied in California Labor
13 Law. (*See’s Candy I, supra*, 201 Cal.App.4th at p. 907.) Accordingly, California law “permits
14 employers to use a rounding policy for recording and compensating employee time as long as the
15 employer’s rounding policy does not ‘consistently result[] in a failure to pay employees for time
16 worked’” and it is “fair and neutral on its face.” (*Id.* at p. 901, quoting *Alonzo v. Maximus, Inc.*,
17 832 F.Supp.2d 1122, 1126 (C.D. Cal. 2011). In other words, a rounding policy must not impose
18 any burden on employees. (*See’s Candy I, supra*, 210 Cal.App.4th at p. 902.)

19 Recently, the California Supreme Court weighed in on the rounding of meal periods, and
20 held that such a practice was illegal. *See Donohue v. AMN Services, LLC*, 11 Cal.5th 58 (2021).
21 The Court, however, declined to rule on the “validity of the rounding standard articulated in
22 *See’s Candy I.*” *Id.* at 72. Thus, whether rounding of time is appropriate in California is still an
23 open question.⁶

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25
26 ⁶ After the parties reached a settlement, the Sixth District in *Camp v. Home Depot*
U.S.A., Inc., 84 Cal.App.5th 638, 300 Cal.Rptr.3d 548 (2022), criticized *See’s Candy I* and
related cases upholding rounding, and reversed summary judgment in favor of the employer.

1 Defendant contends that its rounding policy is legal under California law, and that it does
2 not individually round meal periods as in *Donohue*. Defendant also hired an expert showing
3 that, if anything, Defendant’s rounding policy benefited class members, and that there are no
4 damages resulting from the rounding policy.

5 Plaintiffs and their expert analyzed payroll and time records for the class members and
6 calculated that approximately 62% of the pay periods for the class members were unfavorable to
7 them. In arriving at the damages calculation, Plaintiffs’ expert reviewed payroll records for the
8 class, including pay period counts per year, unfavorable rounding minutes per pay period, and a
9 weighted average rate of pay. Based on that evaluation, the total potential verdict value of the
10 failure to pay wages and rounding claim is approximately **\$48 million**. Because of the
11 uncertainty of the law, and the fact that California appellate courts have upheld other neutral
12 rounding practices in similar situations, the Plaintiffs placed a reasonable settlement value of the
13 rounding claim at ten percent of the total verdict value, or **\$4.8 million**. This valuation takes into
14 consideration Plaintiffs’ counsels’ analysis of the law, and evidence produced by the Defendant.

15 **2. Meal and Rest Period Claims**

16 a. Meal period liability and damages

17 Plaintiffs contend that SBH fails to provide duty-free meal periods to Plaintiffs and the
18 class members, who suffered short, late and missed meal periods on a regular basis. Plaintiffs’
19 expert analyzed each pay period for any meal violation (i.e. short, late, missed) and calculated
20 1.35 million shifts with at least one (1) violation.

21 In *Brinker Restaurant Corp. v. Superior Court*,² 53 Cal. 4th 1004 (2012), the California
22 Supreme Court held that “under ... Labor Code section 512, subdivision (a), an employer must

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24
25 The court invited the California Supreme Court to “review the issue of neutral time rounding by
26 employers and to provide guidance on the propriety of time rounding by employers.” *Id.* at 565.
The California Supreme Court has now accepted the Sixth District’s invitation, and review is
pending in the *Camp* case. *Camp v. Home Depot U.S.A.*, 523 P.3d 391 (Feb. 1, 2023).

1 relieve the employee of all duty for the designated period but need not ensure that the employee
2 does no work” during the meal period. *Brinker*, 53 Cal. 4th at 1034. However, “...an employer
3 may not undermine a formal policy of providing meal breaks by pressuring employees to
4 perform their duties in ways that omit breaks. *Cicairos v. Summit Logistics, Inc.*, 133 Cal. App.
5 4th 949, 962–963 (2005); *see also Jaimez v. DAIOHS USA, Inc.*, 181 Cal. App. 4th 1286, 1304–
6 1305 (2010) [proof of common scheduling policy that made taking breaks extremely difficult
7 would show violation]; *Dilts v. Penske Logistics, LLC*, 267 F.R.D. 625, 638 (S.D.Cal.2010)
8 [indicating informal anti-meal-break policy "enforced through ‘ridicule’ or ‘reprimand’ " would
9 be illegal].) The wage orders and governing statute do not countenance an employer's exerting
10 coercion against the taking of, creating incentives to forego, or otherwise encouraging the
11 skipping of legally protected breaks.” *Brinker*, 53 Cal. 4th at 1040.

12 Moreover, in *Donohue, supra*, the Court held that at both the class certification and
13 summary judgment stage, when time records show short, missed, and late meal periods, there is a
14 presumption that an employer violated California’s meal period requirements. *See Donohue,*
15 *supra*, 11 Cal.5th at 78 (“If time records show noncompliant meal periods, then a rebuttable
16 presumption of liability arises.”)

17 Plaintiffs allege that the failure to provide meal periods here was particularly acute, given
18 that Plaintiffs allege that Defendant understaffed its hospitals, which Plaintiffs contend is shown
19 on census/patient daily assignment sheets. Class Counsel’s further investigation revealed that
20 class members were required to carry communications devices during their meal periods, and
21 they were often interrupted during their meal periods to address work issues.

22 Defendant, on the other hand, contends that it has fully compliant meal period policies,
23 and that its objective records reflect strict compliance with California’s meal period
24 requirements. Defendant also produced records showing substantial meal period premium
25 payments of more than \$16 million to the class members. Further, Defendant believes that the
26 meal period claim cannot be certified because of the existence of individualized issues as to the

1 why meal periods were not taken, among other reasons.

2 Class Counsel and their expert calculated the maximum verdict value of the meal break
3 claims to be approximately **\$93 million**. This calculation is based on the assumption that each
4 late, missed or short meal period was the result of Defendant's interference with Plaintiffs' and
5 the class members abilities to take duty-free meal periods. Accordingly, Class Counsel and their
6 expert determined a total violation rate for the class members, and average rate of pay based on
7 the payroll data for the class. Based on discussions with Plaintiffs and interviews of other class
8 members, and the fact that Defendant has facially compliant meal period policies, Plaintiffs
9 believe they had a ten percent probability of recovering all of these damages. Accordingly,
10 Plaintiffs contend the reasonable exposure of the meal break claim is approximately **\$9.3**
11 **million**.

12 b. Rest period liability and damages

13 *Labor Code* § 226.7(b) provides that "[a]n employer shall not require an employee to
14 work during a meal or rest or recovery period mandated under an applicable statute, or applicable
15 regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and
16 Health Standards Board, or the Division of Occupational Safety and Health."

17 Section 12(A) of the IWC Wage Order(s) states: "Every employer shall authorize and
18 permit all employees to take rest periods, which insofar as practicable shall be in the middle of
19 each work period. The authorized rest period time shall be based on the total hours worked daily
20 at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof. However,
21 a rest period need not be authorized for employees whose total daily work time is less than three
22 and one-half (3½) hours. Authorized rest period time shall be counted as hours worked for which
23 there shall be no deduction from wages."

24 Plaintiffs' theory on the rest break claim is that Plaintiffs and the class were not able to
25 take duty-free rest periods, based upon hospital understaffing and carrying of communications
26 devices while they were taking their rest periods. Defendant contends, on the other hand, that

1 liability is tenuous at best because Defendant had a compliant rest period policy, and that
2 Plaintiffs would not be able to succeed on this claim because of numerous individual issues
3 regarding why rest periods were not taken. Plaintiffs acknowledge the difficulty in proving the
4 rest period violations as a result of an absence of objective evidence.

5 Based on discussions with Plaintiffs and interviews of other class members, Class
6 Counsel assumed a 50% violation rate for all shifts by class members of 3.5 hours or more.
7 Based on that assumption, Plaintiffs' expert calculated total violations across the class,
8 multiplied by an average rate of pay for the class members. As such, Class Counsel and their
9 expert calculated the maximum verdict value of the rest period claims to be **\$124 million**. Based
10 on the difficulty of proving rest period violations on a classwide basis, and the lack of objective
11 evidence proving such violations, Plaintiffs believe they had a five percent chance of recovering
12 all of the rest period damages. As such, Plaintiffs believe the reasonable exposure of the rest
13 break claim is approximately **\$6.2 million**.

14 **3. Failure to Pay Meal and Rest Period Premiums At The Regular Rate**

15 Plaintiffs contend that when Defendant pays for missed meal and missed rest periods,
16 Defendant did so at the base rate, and not the regular rate of pay. During discovery, Plaintiffs
17 determined that Defendant failed to pay meal and rest period violations at the regular rate of pay
18 between 2017 and August 2021.

19 Pursuant to Labor Code §226.7(c), “[i]f an employer fails to provide an employee a meal
20 or rest or recovery period in accordance with state law, . . . ***the employer shall pay the employee***
21 ***one additional hour of pay at the employee’s regular rate of compensation*** for each workday
22 that the meal or rest or recovery period is not provided.” (emphasis added). The California
23 Supreme Court has held that “regular rate of compensation” in section 226.7(c) “has the same
24 meaning as ‘regular rate of pay’ in section 510(a) and encompasses not only hourly wages but all
25 nondiscretionary payments for work performed by the employee.” *Ferra v. Loews Hollywood*
26 *Hotel, LLC*, 11 Cal.5th 858, 878 (2021).

1 *Ferra* was decided during the pendency of this case, and Defendant does not seriously
2 contend that it is not liable for these damages. Plaintiffs' expert concludes that the regular rate
3 claim has a maximum verdict value of **\$665,220**, based on tallying the total number premium
4 payments and multiplying those payments by the percentage of pay periods when the regular rate
5 was underpaid as well as the average underpayment. Plaintiffs do not discount this claim
6 whatsoever, and believe they have a 100% chance of recovering on this claim.

7 **4. Wage Statement Claim**

8 *Labor Code* §226(a) states in pertinent part: "Every employer shall, semimonthly or at
9 the time of each payment of wages, furnish each of his or her employees, either as a detachable
10 part of the check, draft, or voucher paying the employee's wages, or separately when wages are
11 paid by personal check or cash, an accurate itemized statement in writing showing (1) gross
12 wages earned, (2) total hours worked by the employee, (3) the number of piece-rate units earned
13 and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions, ...
14 (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the
15 name of the employee and only the last four digits of his or her social security number or an
16 employee identification number other than a social security number, (8) the name and address of
17 the legal entity that is the employer..., and (9) all applicable hourly rates in effect during the pay
18 period and the corresponding number of hours worked at each hourly rate by the employee... ."

19 Plaintiffs' theory of liability with respect to the paystub claim is that Defendant failed to
20 set forth all premium payments for meal and rest period violations, and in instances where
21 premium payments were identified on paystubs, oftentimes the incorrect rate was listed. In
22 *Naranjo v. Spectrum Security Servs., Inc.*, 13 Cal.5th 93 (2022), the California Supreme Court
23 held that an employer's obligation to report wages includes an obligation to report premium pay
24 for meal and rest break violations. Plaintiffs therefore contend that any time Defendant failed to
25 do so here should result in paystub penalties. Defendant argues that, even assuming there are any
26 violations, which it denies, Defendant presents evidence of a good faith dispute as to any

1 violation. *Hurst v. Buczek Enters., LLC*, 870 F.Supp.2d 810, 829 (N.D. Cal. 2012) (no section
2 226 violation where the employer "makes a good faith claim" in its defense); *Harris v. Vector*
3 *Mktg. Corp.*, 656 F.Supp.2d 1128, 1146 (2009) (the "employer did not knowingly and
4 intentionally fail to provide itemized wage statements" where there was a "good faith dispute").

5 Pursuant to Labor Code section 226, subd. (e)(1), employees are entitled to \$50 for the
6 initial pay period in which a violation occurs, and \$100 per pay period for subsequent violations.
7 Nevertheless, pursuant to *Amaral v. Cintas Corp. No. 2*, 163 Cal.App.4th 1157, 1209 (2008), the
8 heightened penalty amount is not recoverable unless there is a showing of a prior citation or in
9 the absence of a good faith dispute. *See also Bernstein v. Virgin America, Inc.*, 3 F.4th 1127,
10 1144 (9th Cir. 2021). Because there is no evidence here that Defendant has previously been cited
11 with Labor Code violations, Class Counsel believes the \$50 penalty to be applicable for all
12 violations.

13 Based on the pay periods at issue here, Plaintiffs and their expert calculated wage
14 statement penalties by multiplying the total employee count during the statutory period by the
15 total number of pay periods during that period. The maximum verdict value of the paystub
16 penalties are approximately **\$14 million**. Plaintiffs believe they have a ten percent chance of
17 recovering all of those penalties, or **\$1.4 million**, based on the risks set forth above and
18 Defendant's defenses.

19 **5. Waiting Time Penalties**

20 *Labor Code* § 203 provides that if an employer willfully fails to pay, without abatement
21 or reduction, in accordance with *Labor Code* §§ 201 and 202, any wages of an employee who is
22 discharged or who quits, the wages of the employee shall continue at the same rate, for up to
23 thirty (30) days from the due date thereof, until paid or until an action therefore is commenced.

24 In *Naranjo, supra*, the Court held that failing to pay meal and rest period premium
25 payments constituted "wages" for purposes of waiting time penalties. *Naranjo, supra*, 13 Cal.5th
26 at 117. Defendant denies any violations whatsoever, and that even if such violations are proven,

1 that Defendant has a good faith dispute regarding whether such wages are owed.

2 Plaintiffs and their expert determined that the total verdict value of this claim is
3 approximately **\$46 million**, based on termination counts provided, multiplied by the average
4 daily rate per terminated employee and the maximum 30-day waiting time period. Class Counsel
5 believes the reasonable settlement value is far less than the maximum amount because of the
6 willfulness standard for proving such penalties. Plaintiffs believe they have a ten percent
7 possibility of proving all such penalties. As such, Plaintiffs believe the realistic value of the
8 waiting time penalties are **\$4.6 million**.

9 **6. PAGA**

10 Plaintiffs contend that PAGA penalties are owed based on the numerous alleged Labor
11 Code violations identified above. Once a PAGA violation is found, a court must award civil
12 penalties. *See Amaral v. Cintas Corp. No. 2*, 163 Cal.App.4th 1157, 1211-1213 (2008).
13 Nevertheless, a court has discretion to reduce the award of civil penalties if it finds that “based
14 on the facts and circumstances of the particular case, to do otherwise would result in an award
15 that is unjust, arbitrary and oppressive, or confiscatory.” Cal. Lab. Code § 2699(e)(2).

16 Significantly, moreover, because the law is unsettled in many areas of the law alleged by
17 Plaintiffs herein, there is a very real possibility that a court would substantially reduce the
18 penalties, even if they are proven. *See, e.g., Fleming v. Covidien, Inc.*, 2011 WL 7563047, *3-4
19 (C.D. Cal. 2011) (reducing penalties from \$2.8 million to \$500,000 based on wage statement
20 violations because to assess full penalties would be unjust and arbitrary); *Thurman v. Bayshore*
21 *Transit Mgmt., Inc.*, 203 Cal.App.4th 1112, 1134 (2012) (reduction of PAGA penalties by 30%
22 affirmed on appeal).

23 Plaintiffs and their expert calculated the maximum verdict value of the PAGA penalties
24 at approximately **\$96 million**, based on assumed violations of Labor Code sections 1194, 512,
25 226.7, 226, and 256, violations for each and every pay period at issue, stacking of penalties,
26 heightened subsequent penalties, and a 100% violation rate. Plaintiffs believe recovering all of

1 these penalties is highly unlikely, and based on a Court’s discretion to reduce such penalties,
2 Plaintiffs believe they had the chance of recovering five percent of those penalties, or **\$4.8**
3 **million.**

4 **7. Total Damages Exposure⁷**

5 Plaintiffs believe that the **\$12 million** settlement achieved in this case is excellent for the
6 class members. Based upon a realistic exposure of approximately \$32 million, the settlement
7 represents approximately 38% of that total value. Given the many defenses raised, the
8 uncertainty of the certifiability of any class, and the difficulty in proving the claims, Class
9 Counsel believes this settlement is an excellent result for all of the class members.

10 **G. All Class Members Have Received Proper Notice of the Settlement**

11 Pursuant to the Court’s Preliminary Approval Order dated April 26, 2023, the Notice of
12 Pendency of Class Action Settlement, Class Member Settlement Information Sheet, Request for
13 Exclusion and Objection Form (collectively “Class Notice Packet”) were sent out to all 22,326
14 Class Members via first-class mail by Claims Administrator ILYM Group, Inc. (“ILYM”) on
15 July 21, 2023 (*See* Polites Decl., ¶ 7, and Ex. A thereto.) Prior to this date, the name, last known
16 address, and social security number of each Class Member were provided by Defendant through
17 a review of its personnel files. Upon its receipt of the Class Member contact information, ILYM
18 accessed the National Change of Address (“NCOA”) database and updated the addresses
19 provided by Defendant. (Polites Decl. ¶ 6.)

20 As of the date of the filing of this motion, except for 209 Notice Packets that have been
21 deemed undeliverable, all of the Class Notice Packets have been delivered successfully. (Polites
22 Decl., ¶¶ 8-10.) Further, not a single Class Member has objected to the settlement and only 67
23

24
25 ⁷ The Unfair Competition claim is subsumed into the *Kullar* analysis above. The
26 Unfair Competition claim is based upon the wage and hour violations, and adds an extra year of
damages, and is included within the above analysis.

1 Class Members have requested exclusion from the settlement. (Polites Decl., ¶¶ 11-12.) ILYM
2 requests \$67,000 for fees and expenses to administer the settlement. (Polites Decl., ¶ 27.) Such
3 amount is fair and reasonable, and should be approved by the Court.

4 **VII. CONCLUSION**

5 Based on the foregoing, Plaintiffs respectfully request that this Court issue an Order and
6 Judgment approving the Settlement, and grant Plaintiffs' attorneys' fees and costs, ILYM's
7 administrative expenses, and Plaintiffs' enhancement awards.

8 Dated: September 27, 2023

SHANBERG STAFFORD LLP
BARTZ LAW GROUP, APC

10
11 /s/Aaron A. Bartz

AARON A. BARTZ

12 Attorneys for Plaintiffs LISA SKERL,
13 VICTORIA KROPP, LORI ROARK and all
14 others similarly situated
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