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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SACRAMENTO

In re: Healthnet/Centene cases

Coordinated Actions:

Flora Candelaria Alvarez, et. al. v. Health Net of
California Inc.
34-2020-00289192; Sacramento Superior Court

Ariana Carranza, et. al. v. Health Net of
California, Inc.; Centene Corporation
20STC14774; Los Angeles Superior Court

JCCP 5225

Sacramento Superior Court Case No. 34-2020-
00289192

Los Angeles Superior Case No.: **19STCV15353**

[Assigned to: Hon. Jill H. Talley]

CLASS ACTION

**PLAINTIFFS' NOTICE OF MOTION AND
MOTION FOR PRELIMINARY APPROVAL
OF CLASS AND REPRESENTATIVE
ACTION SETTLEMENT; MEMORANDUM
OF POINTS AND AUTHORITIES**

Date: December 2, 2022

Time: 9:00 a.m.

Courtroom: 25

Judge: Hon. Jill H. Talley

RESERVATION NO.: 2686677

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11 Attorneys for Plaintiff Flora Candelaria Alvarez and the Class

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

2 PLEASE TAKE NOTICE that on December 2, 2022 at 9:00 a.m. or as soon thereafter as the
3 matter may be heard, in Department 25 of the above-captioned Court, located at 813 6th Street,
4 Sacramento, CA 95814, Plaintiffs Ariana Carranza and Flora Candelaria Alvarez (“Plaintiffs”) will
5 and hereby do move this Court for an order:

6 1. Granting provisional class certification of the Class, solely for settlement purposes
7 pursuant to Code of Civil Procedure § 382;

8 2. Preliminarily approving the JOINT STIPULATION RE: CLASS AND
9 REPRESENTATIVE ACTION SETTLEMENT (“Settlement” or “Agreement”);

10 3. Appointing counsel for Plaintiffs, Bradley/Grombacher, LLP, Law Offices of Sahag
11 Majarian II, Diversity Law Group and Polaris Law Group, LLP as Class Counsel;

12 4. Appointing Ariana Carranza and Flora Candelaria Alvarez as the Class
13 Representatives;

14 5. Approving the use of the proposed notice procedure and related notice form;

15 6. Approving ILYM Group, Inc. as the third-party administrator;

16 7. Directing that notice be mailed to the Class; and,

17 8. Scheduling a hearing date for motions for final approval of class action settlement
18 and awards of attorneys’ fees and costs.

19 Good cause exists to grant this Motion because:

20 1. The Class meets all of the requirements for class certification for settlement
21 purposes under Code of Civil Procedure § 382;

22 2. The Settlement Agreement is a fair, adequate, and reasonable compromise of the
23 disputed wage and hour claims asserted by Plaintiffs;

24 3. Plaintiffs and Class Counsel are adequate to represent the Class;

25 4. The proposed notice procedures and related forms comply with California Rules of
26 Court 3.766(d) and (e), adequately apprise Class Members of their rights, and fully comport with due
27 process; and

28 5. Based on the foregoing, notice should be directed to the Class Members and a final

1 fairness hearing should be scheduled (Plaintiffs propose 120 days after preliminary approval is
2 granted).

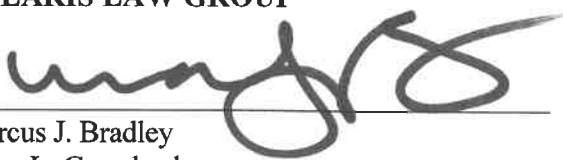
3 This Motion is made pursuant to Rule 3.769 and Rule 3.1113(e) of the California Rules of
4 Court, which require approval by the Court of a class action settlement and permit the Court to extend
5 the page limit for memoranda.

6 **NOTE:** Pursuant to **Rule 3.764(c)(2)** of the California Rules of Court, this Motion, which
7 includes a request for class certification as just one of the issues that must be discussed in connection
8 with the relief requested, may be up to 20 pages in length, not 15 pages for most motions.

9 This Motion is based on this Notice of Motion and Motion, the attached Memorandum of
10 Points and Authorities, the Declarations of Counsel for the Class, Plaintiffs, and the Settlement
11 Administrator in support thereof, all papers and pleadings on file with the Court in this action, all
12 matters judicially noticeable, and on such oral and documentary evidence as may be presented in
13 connection with the hearing on the Motion.

14 Dated: November 7, 2022

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15
16
17 By: 

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Pursuant to California Rules of Court, Rules 3.769(d) and (e), Plaintiffs respectfully request that
4 this Court preliminarily approve the proposed class action settlement set forth in the JOINT
5 STIPULATION RE: CLASS AND REPRESENTATIVE ACTION SETTLEMENT (“Settlement” or
6 “Agreement”) with Defendant Health Net Inc. (hereinafter “Health Net” or “Defendant”)¹.

7 Plaintiffs and Defendant (collectively referred to herein as the “Parties”) reached a proposed class
8 action settlement with a gross settlement amount (“GSA”) of **\$420,000** in compromise of disputed claims
9 asserted on behalf of the below-defined Class consisting of approximately **340** members. Plaintiffs
10 respectfully request that the Court: (1) grant preliminary approval of the Settlement; (2) provisionally
11 certify Class, solely for settlement purposes pursuant to Code of Civil Procedure § 382; (3) appoint
12 Bradley/Grombacher, LLP, Law Offices of Sahag Majarian II, Diversity Law Group and Polaris Law
13 Group, LLP as Class Counsel; and (4) approve the proposed Notice of Class Action Settlement and
14 Fairness Hearing and direct its distribution to Class Members. Plaintiffs now submit this Motion for
15 Preliminary Approval of Class Action Settlement, along with the Settlement (Decl. of Marcus J. Bradley
16 at Exhibit 1 thereto). For the Court’s convenience, below is a summary of the key provisions of the
17 Settlement.

18 None of the \$420,000 will revert back to Defendant. Any individual Settlement Share
19 payment that remains uncashed or undistributed in the settlement fund after the payment of all
20 claims, will be distributed to a Court-approved nonprofit organization or foundation consistent with
21 the Code of Civil Procedure Section 384, subd. (b), Legal Aid at Work. Defendant will also pay any
22 employer-side payroll tax obligations separately above the \$420,000.

23 The process for reaching the proposed settlement was also informed and reasonable. First,
24 Plaintiffs and their counsel did not enter into settlement negotiations without first reviewing
25 extensive documentation and data, and preparing, *inter alia*, a liability and exposure analysis.

26
27
28 ¹ Plaintiff Arianna Carranza’s original complaint names Defendant Centene Corporation but Centene
is not a part of the settlement and accordingly, Plaintiff will file a dismissal of named Defendant.

1 Plaintiffs and their counsel also vetted the strengths and weakness of the claims through pre-
2 discovery investigation, informal discovery, putative class member interviews, and by drawing from
3 their experience in analogous class action cases. The parties and their counsel then conducted their
4 negotiations at arms-length, with the assistance of a highly regarded mediator experienced in the
5 area of wage-and-hour class actions. Further, Plaintiffs’ counsel brought substantial experience and
6 expertise in wage and hour class actions to the negotiation process. As discussed in the Declaration
7 of Marcus J. Bradley; William L. Marder; Larry W. Lee and; Max W. Gavron (submitted herewith),
8 Plaintiffs’ counsel submits that the benefits of the proposed settlement for the class are substantial
9 as weighed against the potential exposure and the risks and delays of continued litigation.

10 In sum, the proposed settlement satisfies all the criteria for settlement approval. As discussed
11 in more detail below, it falls comfortably within the “ballpark of reasonableness” standard for
12 preliminary approval. *See Kullar v. Foot Locker Retail, Inc.*, (2008) 168 Cal.App.4th 116, 133; *Dunk*
13 *v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1802; Alba Conte & Herbert Newberg, Newberg on
14 Class Actions, § 11:25-11:26, (4th ed. 2002) (“Newberg”). Accordingly, Plaintiffs request that the
15 Court preliminarily approve the proposed settlement, approve distribution of the notice of the proposed
16 settlement, set the deadline(s) for Plaintiff to file his motion for attorneys’ fees and costs and his
17 motion for a service award, and set a final approval hearing.

18 **II. FACTUAL AND PROCEDURAL BACKGROUND**

19 **A. Plaintiff Carranza**

20 Plaintiff Carranza was a full-time non-exempt employee of Defendants. Plaintiff worked as a
21 “customer service support representative” at Defendants’ call center on Burbank Blvd. in Woodland Hills,
22 California. Plaintiff worked for Defendants from approximately November 26, 2016 through January 4,
23 2019. (Declaration of Marcus J. Bradley (“Bradley Decl.”) ¶15).

24 Plaintiff Carranza filed a notice letter on February 8, 2019, to the Labor and Workforce
25 Development Agency and Defendants of her intent to seek penalties under California Labor Code §§ 2699
26 et seq. Plaintiff Carranza filed a class action lawsuit in the County of Los Angeles on May 2, 2019, seeking
27 penalties under California Labor Code §§ 2699 et seq, which Plaintiff later dismissed with prejudice on
28 April 7, 2020. Subsequently, Plaintiff filed a class action lawsuit on April 16, 2020. Plaintiff Carranza

1 alleged that (1) Defendant failed to pay a language differential in violation of California Labor Code §
2 1194; (2) Failure to furnish an accurate itemized wage statement upon payment of wages in violation of
3 California Labor Code § 226; (3) Failure to pay all wages at time of termination in violation of California
4 Labor Code §§ 201-203; and (4) Penalties Pursuant to Labor Code §§ 2698 et seq.

5 **B. Plaintiff Candelaria Alvarez**

6 Plaintiff Alvarez worked for Defendants as a non-exempt employee and earned shift differential
7 wages during her employment, including a “language premium.” Plaintiff filed her putative class and
8 PAGA complaint in Sacramento County Superior Court on November 17, 2020. Plaintiff brings a claim
9 for violation of California Labor Code Section 226(a), and a PAGA claim premised on the same theories
10 of liability.

11 Plaintiff Alvarez was employed as a “customer service representative” and has been employed
12 by Defendants since approximately August 2012. Plaintiff worked in Rancho Cordova, California. On
13 November 13, 2020, Plaintiff Alvarez submitted a letter to the Labor and Workforce Development
14 Agency (LWDA) providing notice of the law enforcement action for civil penalties under the Private
15 Attorneys’ General Act of 2004, California Labor Code §§ 2698 *et seq.* (PAGA). (Bradley Decl. ¶19)

16 Plaintiff Candelaria Alvarez filed a wage-and-hour putative Class Action against Defendant Health
17 Net of California, Inc. in Sacramento County Superior Court on November 17, 2020. Plaintiff alleged
18 claims for (1) Violation of California Labor Code §§226(a); and (2) Violation of California Labor Code
19 §2698, et seq.

20 Pursuant to the Settlement Agreement, for purposes of settlement, the Parties have stipulated to
21 coordinate both actions. On October 3, 2022, the Parties stipulated to the filing of the Consolidated First
22 Amended Complaint (“FAC”), and the Court entered an Order approving the filing of that FAC. On
23 October 27, 2022, the Plaintiffs filed a consolidated FAC, alleging four wage and hour causes of action
24 against Defendant: (1) Violation of Cal. Labor Code §§ 226(a); (2) Violation of Cal. Labor Code §§ 201-
25 203; (3) Violation of Cal. Labor Code § 1194; (4) Violation of Cal. Labor Code § 2698, *et seq.* (The
26 “Action.”) (Bradley Decl., ¶ 25.)

27 **C. Pre-Mediation Data Production and Analysis**

28 Plaintiffs’ counsel’s efforts to investigate and prosecute the claims in this case have been

substantial and began over 2 years ago. The Parties have conducted a thorough investigation of the facts and law. Such discovery and investigation have included, inter alia, the exchange of written discovery and documents and the exchange of informal data and discoverable information in preparation for the mediation session. Bradley Decl., ¶ 21. The Parties analyzed payroll data, data on class composition, hourly pay rates, and documents reflecting Defendants’ wage and hour policies. *Id.*

After reviewing documents regarding Defendant’s wage and hour policies and practices and other information obtained during the informal exchange of discovery, Class Counsel were able to evaluate the probability of class certification, success on the merits, and the reasonably obtainable maximum monetary exposure for all claims. Bradley Decl., at ¶¶ 21-22.

D. Settlement

On November 18, 2021, the Parties participated in an all-day mediation presided over by the Hon. Jay C. Gandhi (Ret.), which led to the Settlement Agreement (“Agreement”). (Bradley Decl., ¶ 20.)

In the weeks leading up to the mediation, Defendant provided class data showing class size, workdays, and pay periods, electronic time and payroll records for a representative sample of the class, and Defendant’s employment written policies. Bradley Decl. ¶ 21. This data and information assisted Plaintiffs in evaluating the strengths and weaknesses of the claims and in preparing an exposure analysis for mediation. *Ibid.* Counsel also prepared a mediation brief examining the evidence as well as evaluating the legal claims and defenses, drawing upon their experience in previous cases, to prepare a liability analysis tailored to the particular facts at issue here. *Id.* ¶ 21. Counsel vetted the claims through rigorous legal analysis, both on the class certification and merits issues. *Ibid.*

On November 18, 2021, Parties engaged in mediation before Hon. Jay C. Gandhi (Ret.), an experienced and well-regarded mediator in this area of law. Bradley Decl. ¶ 23. The mediation was rigorous and conducted at arms-length, leading to a settlement. *Id.*

Plaintiffs and Class Counsel have determined that the Settlement set forth in this Agreement is a fair, adequate, and reasonable Settlement and is in the best interests of the Class. Bradley Decl., ¶ 52. This Settlement, if approved by the Court, will result in the termination of the litigation through the entry of the Judgment and the release of all Released Claims for all Class Members, including all within the

class definition who have not elected to exclude themselves from the Class. *Id.*

III. KEY TERMS OF THE PROPOSED SETTLEMENT

Under the Settlement Agreement, Defendant will pay the sum of \$420,000 to resolve this litigation (“Gross Settlement Amount”). Bradley Decl., Exh. 1 – Settlement Agreement (“SA”) ¶ 1.22. This entire amount will be disbursed pursuant to the terms of the Settlement Agreement, and none of it will revert to Defendant. SA ¶ 3.1.

The key terms of the Settlement Agreement include:

- Gross Settlement Amount: The Gross Settlement Amount is \$420,000 for approximately 340 Class Members. It is the total sum that Defendant has agreed to pay in exchange for Plaintiffs’ and the settlement Class Members’ releases to fully and finally settle this matter. It does not include the employer’s portion of any payroll taxes owed to the government authorities as a result of the settlement payments, which Defendant will pay in addition to the Gross Settlement Amount. SA ¶ 3.1.
- No Reversion: All settlement funds will be paid out, and none will revert to Defendant. SA ¶ 3.1.
- Released Class Claims: The Released Class Claims with respect to the settlement Class Members are limited to the wage and hour claims that were pled or could have been pled based on the alleged facts in the Action. SA ¶ 5.2
- Settlement Class: The Settlement Class consists of all current and former non-exempt employees of Defendant in the State of California who were paid language premium and/or shift differential wages from April 16, 2016 to January 31, 2022. SA ¶ 1.5.
- LWDA Payment: \$42,000 shall be allocated as a settlement of Plaintiff’s claims under the Private Attorney General Act of 2004 (“PAGA”), California Labor Code section 2699 *et seq.*, with 75% thereof earmarked for the California Labor Workforce Development Agency (LWDA). SA ¶ 1.34.
- Net Settlement Amount: The Net Settlement Amount is the amount that remains and that shall be paid to settlement Class Members, after the following amounts are subtracted: (1) Individual PAGA Payments; (2) the LWDA Payment; (3) Class Representatives Service Payment; (4) Class Counsel Fees Payment; (5) Class Counsel Litigation Expenses Payment; and (6) the Administration Expenses Payment. SA ¶ 1.28.
- Direct Payments to Settlement Class Members / No Claim Forms: Class Members who do not opt out of the Settlement will not need to submit claims to receive their pro-rata Settlement Share payment. Rather, individual Settlement Share payments (i.e., settlement checks) will be automatically sent to all class members for whom a valid address can be located either through Defendant’s records, and/or by the Settlement Administrator through the National Change of Address database (NCOA). Declaration of Sean Hartranft, representative of Settlement Administrator, ILYM Group, Inc. (“Hartranft (Admin) Decl.”) ¶ 7.

- 1 • Distribution Formula: Each Class Member's individual share of the Settlement will be
2 proportional to the number of Pay Periods worked by all Participating Class Members during
3 the Class Periods. SA ¶ 3.2.4. The exact formula is set forth in the Settlement Agreement as
4 well as the proposed class notice. *Ibid.*; see also **Exhibit 2** to Bradley Decl.
- 5 • Tax Allocation: The Settlement provides that settlement awards to Class Members will be
6 allocated as follows: Twenty Percent (20%) shall be treated as wages, Eighty Percent (80%)
7 shall be treated as penalties and interest. SA ¶ 3.2.4.1.
- 8 • Notice of Proposed Settlement: The Notice sets forth in plain terms, a statement of the case,
9 the terms of the Settlement, the amount of attorneys' fees, costs, and the service awards being
10 sought, an explanation of how the settlement allocations are calculated, among other pertinent
11 information. See proposed Notice to Class, **Exhibit 2** to Bradley Decl. The Notice also is
12 tailored to provide each Class Member with the number of pay periods credited to that Class
13 Member and an estimate of the amount of money that the Class Member will receive if all
14 Class Members participate in the Settlement. Class members will be notified by first class
15 mail of the settlement. SA ¶ 4.4.1. ILYM Group, Inc., the parties' selected Settlement
16 Administrator, will undertake its best efforts to ensure that the notice is provided to the
17 current addresses of class members, including conducting a national change of address search
18 and re-mailing the notice to updated addresses. Hartranft (Admin) Decl. ¶ 5)
- 19 • Right to Challenge Defendant's Workweek Records: Settlement Class Members will have
20 the opportunity, should they disagree with Defendant's records regarding the number of Class
21 and/or PAGA Pay Periods allocated to the Class Members in the Class Notice. The Class
22 Member may challenge the allocation by communicating with the Administrator via fax,
23 email or mail. The Administrator must encourage the challenging Class Member to submit
24 supporting documentation. In the absence of any contrary documentation, the Administrator
25 is entitled to presume that the Pay Periods contained in the Class Notice are correct so long
26 as they are consistent with the Class Data. The Administrator's determination of each Class
27 Member's allocation of Pay Periods shall be final and not appealable or otherwise susceptible
28 to challenge. SA ¶ 7.6.
- Right to Object: Only Participating Class Members may object to the class action components
of the Settlement and/or this Agreement, including contesting the fairness of the Settlement,
and/or amounts requested for the Class Counsel Fees Payment, Class Counsel Litigation
Expenses Payment and/or Class Representatives Service Payment. Participating Class
Members may send written objections to the Administrator, by fax, email, or mail. In the
alternative, Participating Class Members may appear in Court (or hire an attorney to appear
in Court) to present verbal objections at the Final Approval Hearing. A Participating Class
Member who elects to send a written objection to the Administrator must do so not later than
45 days after the Administrator's mailing of the Class Notice (plus an additional 14 days for
Class Members whose Class Notice was re-mailed). SA ¶ 7.7.1, 7.7.2.
- Right to Opt Out: Class Members who wish to exclude themselves (opt-out of) the Class
Settlement must send the Administrator, by fax, email, or mail, a signed written Request for
Exclusion not later than 45 days after the Administrator mails the Class Notice (plus an
additional 14 days for Class Members whose Class Notice is re-mailed). A Request for
Exclusion is a letter from a Class Member or his/her representative that reasonably
communicates the Class Member's election to be excluded from the Settlement and includes
the Class Member's name, address and email address or telephone number. To be valid, a

Request for Exclusion must be timely faxed, emailed, or postmarked by the Response Deadline. However, Non-Participating Class Members that worked during the PAGA Period are still an Aggrieved Employee bound by the PAGA released claims. SA ¶ 7.5.3, 7.5.4.

IV. DISCUSSION

A. The Court Should Conditionally Certify the Class Because It Meets All the Requirements for Certification for Settlement Purposes Under CCP § 382

The Class should be provisionally certified for settlement because: (1) the Class is ascertainable and sufficiently numerous; (2) there exists a well-defined community of interest; and (3) a class action is the superior method of adjudication for this settlement. Code of Civ. Proc. § 382; *Brinker Rest. Corp. v. Super. Ct.*, 53 Cal. 4th 1004, 1021 (2012); *Linder v. Thrifty Oil Co.*, 23 Cal. 4th 429, 435 (2000).

Under Code of Civil Procedure § 382, class certification is warranted so long as there is a numerous and ascertainable class with a well-defined community of interest among its members and that a “class action proceeding is superior to other means for a fair and efficient adjudication of the litigation.” See, e.g., *Sav-on Drug Stores, Inc. v. Superior Court*, 34 Cal.4th 319, 326, 332 (2004). For purposes of this Settlement *only*, Defendant stipulated to conditional certification.² (Settlement ¶ 12.1.)

“The certification question is ‘essentially a procedural one that does not ask whether an action is legally or factually meritorious.’” *Id.*, at 326, quoting *Linder v. Thrifty Oil Co.*, 23 Cal. 4th 429, 439-440 (2000). Indeed, the certification question simply asks whether the theory of recovery advanced by the plaintiff is likely to prove amenable to class treatment. See, e.g., *Jaimez v. Daiohs USA, Inc.*, 181 Cal. App. 4th 1286, 1298 (2010). “[I]t is also well established that trial courts should use different standards to determine the propriety of a settlement class, as opposed to a litigation class certification. Specifically, a lesser standard of scrutiny is used for settlement cases.” *Global Minerals & Metals Corp. v. Superior Court*, 113 Cal. App. 4th 836, 859 (2003), citing *Dunk v. Ford Motor Co.* 48 Cal. App. 4th 1794, 1807 n. 19 (1996). As the court noted in *Dunk*, although certification requirements are intended “to protect the interests of the non-representative class members,” that concern is “protected by the trial court’s fairness review of the settlement.” *Dunk*, 48 Cal. App. 4th at 1807 n.19.

² Defendant stipulated to certification for settlement only, and otherwise would have opposed class certification if the case does not settle. Defendant disputes the validity of the claims raised but to avoid the time-consuming and costly nature of further litigation, the Parties have negotiated the Settlement.

1 In view of these standards, and as shown below, the Class should be certified for purposes of
2 settlement. Code Civ. Proc. § 382; Rules of Court, Rule 3.769(c).

3 **B. Class Certification is Appropriate for Settlement Purposes**

4 The proposed Settlement Class is defined as all current and former non-exempt employees
5 of Defendant in the State of California who were paid language premium and/or shift differential
6 wages from April 20, 2019 to January 31, 2022. SA ¶ 1.5.

7 Under California Code of Civil Procedure § 382, certification is proper “when the question
8 is one of a common or general interest, of many persons, or when the parties are numerous, and it
9 is impracticable to bring them all before the court, one or more may sue or defend for the benefit of
10 all.” Cal. Code Civ. Proc. § 382; *see also* Cal. R. Ct. 3.769(d) (“The court may make an order
11 approving . . . certification of a provisional settlement class after the preliminary settlement
12 hearing.”). Courts have interpreted Section 382 as imposing two requirements that must be met in
13 order for a class to be certified: (1) “there must be an ascertainable class” and (2) “there must be a
14 well-defined community of interest in the questions of law and fact involved affecting the parties to
15 be represented.” *Daar v. Yellow Cab* (1967) 67 Cal.2d 695, 704 (internal citations omitted). “The
16 community of interest requirement embodies three factors: (1) predominant common questions of
17 law or fact; (2) class representatives with claims or defenses typical of the class; and (3) class
18 representatives who can adequately represent the class.” *Richmond v. Dart Indus., Inc.* (1981)
19 29 Cal.3d 462, 470. Finally, in making a class certification decision, the Court must determine
20 whether “the class action proceeding is superior to alternate means for a fair and efficient
21 adjudication of the litigation.” *Sav-On Drug Stores, Inc. v. Super. Ct.* (2004) 34 Cal.4th 319, 332
22 (internal quotation omitted). In doing so, Courts may relax certain manageability concerns that may
23 arise with litigation classes, given that there is no longer ongoing litigation to manage and that the
24 absentees’ interests are protected by the court’s fairness review. *Dunk*, 48 Cal.App.4th at 1807,
25 fn.19.³

26
27
28 ³ For settlement purposes only, Defendant has stipulated and agreed that the requisites for
establishing class certification have been met. SA ¶ 12.1.

1 **C. The Proposed Class Is Numerous and Ascertainable**

2 Whether a class is “ascertainable” within the meaning of Code of Civil Procedure section 382
3 is “determined by examining (1) the class definition, (2) the size of the class, and (3) the means
4 available for identifying class members.” *Reyes v. Bd. of Supervisors* (1987)196 Cal.App.3d 1263,
5 1271. In this case, the proposed Class consists of all current and former non-exempt employees of
6 Defendant in the State of California who were paid language premium and/or shift differential wages
7 from April 20, 2019 to January 31, 2022. SA ¶ 1.5. Defendant’s records show the class consists of
8 approximately 340 individuals, making joinder of all Class Members impracticable. Bradley Decl.
9 at ¶55. Further, the Class is readily ascertainable from Defendant’s business records because all
10 Class Members are current or former employees of Defendant. *Ibid*.

11 **D. The central issues that are common to all Class Members predominate over any**
12 **individual issues**

13 The test for predominance is whether the issues that are common to all class members “would
14 be the principal issues in any individual action, both in terms of time to be expended in their proof
15 and of their importance, and that if a class suit were not permitted, a multiplicity of legal actions
16 dealing with identical basic issues would be required in order to permit recovery by each [individual
17 member of the class].” *Vasquez v. Super. Ct.* (1971) 4 Cal.3d 800, 810.

18 Here, commonality is satisfied as to all of Plaintiff’s class claims because they turn upon
19 answers to overarching common questions regarding Defendant’s policies and procedures that are
20 capable of classwide resolution. The claims brought by the proposed Settlement Class all arise from
21 the same policies. Plaintiff challenges Defendant’s uniform failure to pay their employees
22 language premiums and shift differential wages, and failure to provide compliant wage statements.
23 First Amended Consolidated Complaint ¶¶ 34-37, 43-53.

24 Additionally, Plaintiff’s allegations present common legal and factual questions of, *inter alia*,
25 whether Defendant applied the same compensation policies to all Class Members; whether those
26 policies or their implementation resulted in Labor Code violations; whether Defendant’s conduct
27 was intentional; and whether Class Members are entitled to damages and/or penalties. Bradley Decl.
28 ¶¶ 57-58. These questions can be resolved using Defendant’s time and payroll records, corporate

representative testimony, and written policies and practices. *Ibid.* Thus, the Court should exercise its discretion to grant conditional class certification for settlement purposes.

E. Plaintiff's claims are typical of the claims of the Settlement Class

To satisfy the typicality requirement, California law requires that the named plaintiff be “similarly situated” to the other members of the proposed class. *Classen v. Weller* (1983) 145 Cal.App.3d 27, 46. Where, as Plaintiff contends is true here, the same underlying conduct affects the named and the class sought to be represented, the typicality requirement is met irrespective of any differences that may underlie individual claims. *Rosack v. Volvo of Am. Corp.*, (1982) 131 Cal.App.3d 741, 763.

Here, the named Plaintiffs seeking to represent the proposed Settlement Class satisfies the typicality requirement because they assert the same type of injuries arising from the same conduct by Defendant as the absent class members. Bradley Decl. ¶ 41. Plaintiffs performed the same kind of work and was subject to the same uniform policies and practices as the other members of the proposed Settlement Class, including Defendant’s common policies and practices related to compensation and wage statements. *Ibid.* Plaintiff seeks relief for these claims and derivative claims on behalf of all Class Members. *Ibid.* Thus, Plaintiff’s claims arise from the same employment practices and are based on the same legal theories as those applicable to the other Class Members. *Ibid.*

F. The named Plaintiffs and their counsel adequately represent the class

Adequacy of representation consists of two components: (1) no disabling conflict of interest between the class representative and the class, and (2) the named representative must be represented by counsel competent and experienced in the kind of litigation to be undertaken. *McGhee v. Bank of Am.* (1976) 60 Cal.App.3d 442, 450-51. Both requirements are satisfied here.

Plaintiffs are represented by counsel with substantial experience in wage and hour class action litigation. *See generally* Bradley Decl. ¶¶ 4-13. Second, Plaintiffs do not have any conflicts with other settlement Class members. Plaintiffs’ interests are co-extensive with those of other settlement Class Members and their agreement to serve as a class representative, participate in discovery and mediation, and participation in mediation demonstrates their serious commitment to bringing about

the best results possible for fellow settlement Class Members. *Id.* ¶¶ 48-52; *see McGhee*, 60 Cal.App.3d at 451. Accordingly, Plaintiffs should be appointed Class Representatives, and Plaintiff’s Counsel should be appointed Class Counsel.

G. A settlement class is superior to a multiplicity of litigation

A lawsuit warrants certification as a class action when doing so would be superior to alternative means for the fair and efficient adjudication of the litigation. This is the case here. Consolidating 340 individual actions into a single proceeding saves the parties and the Court substantial time, effort, and expense. Additionally, particularly in the context of settlement, the case management concerns are manageable. Accordingly, certification of the Settlement Class is superior to any other method of resolving this matter, since it will promote economy, expediency, and efficiency.

H. The Settlement is fair, reasonable and adequate

i. The Settlement is entitled to a presumption of fairness because it is the product of serious, informed, and non-collusive negotiations

A settlement that is the product of an arms-length negotiation is entitled to a presumption of fairness. *See, e.g., Dunk*, 48 Cal.App.4th at 1802.

The Settlement was reached after informed, arms-length settlement negotiations supervised by a well-respected mediator experienced in wage-and-hour class action cases, Hon. Jay C. Gandhi.⁴ Bradley Decl. ¶ 23 Before the mediation, counsel vetted the claims through rigorous legal analysis, both on the class certification and merits issues. *Id.* ¶ 22. Counsel also evaluated class data provided by Defendant showing class size, workdays, pay periods and electronic time and payroll records, which allowed for further vetting of the claims and preparation of an exposure analysis. *Id.* ¶57. Counsel also drew upon their extensive experience litigating, trying, and settling complex wage and hour class actions, similar to this one. *Id.* ¶¶ 4-13. The parties then participated in a day-long mediation before a very experienced and highly regarded mediator. *Id.* ¶20. Although respectful, the negotiations were rigorous and at arms-length. *Id.* ¶23. Additionally, both Defendant and

⁴ The parties first participated in a full-day mediation on November 18, 2021, with mediator Hon. Jay C. Gandhi (Ret.)

1 Plaintiffs were represented by experienced counsel through the negotiations. *Id.* ¶ 75; *Kullar*, 168
2 Cal.App.4th at 129 (courts should weigh “the competency and integrity of counsel and the
3 involvement of a neutral mediator in assuring ... that a settlement agreement represents an arm’s
4 length transaction entered without self-dealing or other potential misconduct.”). Accordingly, the
5 settlement here is the product of extensive and hard-fought adversarial litigation and arms-length
6 negotiations between the parties and is therefore fair. *See Wershba v. Apple Computer, Inc.* (2001)
7 91 Cal.App.4th 224, 245.

8 ii. **The Settlement has no obvious deficiencies but rather provides a very**
9 **strong result for the Class Members**

10 A proposed settlement is not to be measured against a hypothetical ideal result that might
11 have been achieved. *See Wershba*, 91 Cal.App.4th at 246 (citing *Linney v. Cellular Alaska*
12 *Partnership* (9th Cir.1998) 151 F.3d 1234, 1242.). “The test is not the maximum amount plaintiffs
13 might have obtained at trial on the complaint, but rather whether the settlement is reasonable under
14 all of the circumstances.” *Id.* at 250; *In re Sutter Health Uninsured Pricing Cases* (2009) 171
15 Cal.App.4th 495, 510.

16 The Settlement provides a very beneficial result for the Class. Even after estimated attorneys’
17 fees and costs, the proposed service award, the LWDA payment, and the estimated costs of
18 settlement administration, there will be an estimated \$191,500 for distribution to the settlement
19 Class Members. Bradley Decl. ¶ 29. This works out to an average Settlement Share of approximately
20 \$563.24 per person if all 340 Class Members participate in the Settlement. *Id.* ¶30 Ultimately, this
21 will bring significant relief to the Class.

22 Additionally, the Settlement Agreement and Notice provide settlement Class Members the
23 opportunity, should they disagree with Defendant’s records regarding the number of Pay Periods
24 they worked, to provide documentation and/or an explanation to show contrary dates. *See SA* ¶ 7.6.
25 If there is a dispute, the Settlement Administrator will consult with the Parties to determine whether
26 an adjustment is warranted. *Ibid.*

27 Settlement Class Members will also be given the opportunity to object to the settlement and
28 to appear at the Final Approval to have their objections heard by the Court. *SA* ¶ 7.7.2. Class

Members will further have the opportunity to opt-out of the settlement should they so desire. SA ¶ 7.5.1. These procedural safeguards are explained in the proposed Notice to the Class. See Exhibit 2 to Bradley Decl.

iii. **The settlement amount is reasonable given the risks associated with continued litigation**

A settlement does not have to provide 100% of the damages sought to be considered a fair and reasonable settlement. *Rebney*, 220 Cal.App.3d at 1139. Rather, compromise is expected:

Compromise is inherent and necessary in the settlement process...even if “the relief afforded by the proposed settlement is substantially narrower than it would be if the suits were to be successfully litigated,” this is no bar to a class settlement because “the public interest may indeed be served by a voluntary settlement in which each side gives ground in the interest of avoiding litigation.”

Wershba, 91 Cal.App.4th at 250.

Although there is uncertainty in projecting trial-ready damages before significant class certification and post-certification merits discovery has been conducted, the \$420,000 recovery still compares favorably with Plaintiffs’ estimates of Defendant’s total exposure. Based upon the analysis of Defendant’s records, Class Counsel’s expert estimated of total damages, monetary penalties, interest and other relief that the Class would be awarded if successful at trial on all of their claims would be a maximum of approximately \$1,779,072.50. Bradley Decl. ¶ 58. However, this figure is based on Plaintiffs’ assessment of a best-case-scenario. *Ibid*. To have obtained such a result at trial, Plaintiffs would have had to prove that all Class Members were not paid language differentials and/or shift differentials, all figures that Defendant strongly disputed. *Ibid*.⁵

For mediation, Plaintiff’s Counsel also considered the arguable presence of various penalties, including waiting time penalties, wage statement penalties, and penalties pursuant to PAGA. Bradley Decl. ¶ 21. Plaintiff calculated Defendant’s exposure for waiting time penalties at approximately \$226,800. *Id*. ¶60. Plaintiff’s potential recovery of waiting time penalties is

⁵ Plaintiffs’ discussion of risk is not intended to be a concession on any issue, but offered to illustrate the litigation risks faced and the reasonableness of the Settlement achieved. Plaintiff explicitly reserves his positions on all of their claims.

1 limited in that Plaintiff faced the risk that Defendant would be able to defeat the waiting time
2 claim by showing they acted in good faith. *Id.* ¶63.

3 Plaintiffs' estimated wage statement penalties at approximately \$838,000, which
4 assumed violations in each pay period. Bradley Decl. ¶ 62 A key basis for this claim was
5 Plaintiffs' allegation that Defendant's failure to properly pay all wages due caused Plaintiffs'
6 wage statements to show inaccurate hours and compensation. *Id.* Thus, Plaintiffs would have
7 likely been required to demonstrate unpaid wage violations in each workweek to recover wage
8 statement penalties on this scale. *Ibid.* Plaintiffs also would have been required to demonstrate
9 that Defendant acted intentionally, which Defendant strongly disputed. *Id.* ¶ 60.

10 Plaintiffs calculated the total exposure based on Defendant's failure to pay language
11 differentials/shift differentials to be \$44,572.50.. Plaintiffs alleged that Defendant failed to pay
12 language differentials as agreed and failed to calculate increases in the hourly rate of pay due
13 to employees who were Spanish speaking or multi/bilingual. However, Defendant contested
14 the number of individuals who were entitled to language differentials. This defense justified a
15 substantial compromise on the wage claim. *Id.* ¶59.

16 Plaintiff's calculation of Defendant's outside exposure for PAGA penalties was
17 substantial. Conceivably, Plaintiff could have recovered as much as \$668,700 in PAGA
18 penalties at trial. Bradley Decl. ¶65. However, it is unlikely that Plaintiffs would have
19 recovered PAGA penalties on this scale. To have triggered such PAGA penalties, Plaintiffs
20 would have had to prevail on all of his underlying claims. Under such circumstances, the Court
21 may well have determined that awarding full PAGA penalties would have been "unjust,
22 arbitrary and oppressive, or confiscatory" under Cal. Lab. Code § 2699(e)(2), and reduced them
23 accordingly. *Ibid.* Moreover, Plaintiffs' exposure figures for the PAGA penalties were
24 calculated by applying the higher "subsequent" penalty rate for any violations that occurred
25 after the first violation within the liability period.⁶ *Ibid.* Defendant would have strongly
26

27 ⁶ For violations of Labor Code provisions without their own penalty, such as Labor Code § 226.7, PAGA establishes civil
28 penalties of "one hundred dollars (\$100) for each aggrieved employee per pay period for the initial violation and two hundred
dollars (\$200) for each aggrieved employee per pay period for each subsequent violation." Labor Code § 2699(f)(2).

1 challenged this approach by pointing to case law that the subsequent rate is not used until there
2 is notice of a violation by a court or commissioner. *See, e.g., Jimenez v. Menzies Aviation, Inc.*
3 (N.D.Cal., Apr. 8, 2013, No. C 10–03477 SBA) 2013 WL 1411228 , at *4; *Trang v. Turbine*
4 *Engine Components Techs. Corp.* (C.D.Cal., Dec. 19, 2012, No. CV 12–07658 DDP (RZx))
5 2012 WL 6618854, at *5. While Plaintiffs do not read the language of the statute this way,
6 these authorities present a risk that the Court might. Plaintiffs also faced the risk that the Court
7 would follow authority precluding Plaintiffs from “stacking” penalties for the same or similar
8 underlying violations or that substantial penalties would be confiscatory. Bradley Decl. ¶ 65.
9 For all these reasons, the final settlement amount compares very favorably with Plaintiffs’
10 estimates of Defendant’s exposure.

11 The class-wide recovery here also compares very favorably with settlement amounts in
12 several other wage-and-hour class action settlements. *See, e.g., Osegueda v. N. California*
13 *Inalliance* (E.D.Cal., Jan. 15, 2020, No. 18-cv-00835 WBS EFB) 2020 WL 230201, at *6;
14 (preliminary approval of a wage and hour class action settlement with an approximate recovery
15 of \$328.06 per class member); *Bolton v. U.S. Nursing Corp.* (N.D.Cal., Oct. 18, 2013, No. C
16 12–4466 LB) 2013 WL 5700403, at *2 (finally approving class action settlement of California
17 state law wage and hour class action, with approximate per-person recovery of \$595); *Saldivar*
18 *v. Priority One Med. Transp., Inc.* (C.D.Cal., Mar. 22, 2011, No. CV 09–04789 MMM (Ex))
19 2011 WL 13213889, at *7 (finally approving class action settlement of wage and hour class
20 claims for approximate per-person recovery of \$530).

21 The potential risks attending further litigation also support preliminary approval. Courts
22 have long recognized the inherent risks of litigation and emphasized the comparative benefits
23 of immediate recovery by way of the compromise to the mere possibility of relief in the future,
24 after protracted and expensive litigation. *See In re Sutter Health Uninsured Pricing Cases*, 171
25 Cal.App.4th at 510-511. Proceeding to trial (and potential appeals) could add years and
26 possibly a decade to the resolution of this case. Instead of having to wait many years for relief,
27 settlement Class Members will receive payments in a reasonably prompt timeframe.

28 Here, although Plaintiffs strongly believe that they would prevail on their motion for class

1 certification, denial of class certification remains a risk. Bradley Decl. ¶¶ 48-51. Obtaining class
2 certification of a pattern and practice claim—even when meritorious—is difficult without facially
3 unlawful policies. *See, e.g., Civil Rights Education and Enforcement Center v. Hospitality*
4 *Properties Trust*, (9th Cir. 2017) 867 F.3d 1093, 1104 (citing *Nordstrom v. Ryan*, (9th Cir. 2014) 762
5 F.3d 903, 911). If Plaintiffs’ wage claims were not certified, all or many of those eligible to recover
6 under this settlement would have lost significant compensation, and may have been left with nothing
7 at all. Bradley Decl. ¶ 49. Plaintiff also faced the risk, post-certification, that he would not be able
8 to prove class-wide liability on the merits based on “pattern and practice” evidence, without being
9 able to point to written policies that were, by themselves, contrary to law. *Id.* ¶ 50. Further, assuming
10 Plaintiffs would prevail at summary judgment or trial on the issue of class liability, there still would
11 be uncertainty in terms of the damages that would be proved and collected. *Ibid.* Again, Defendant
12 strongly disputed the exposure figures Plaintiffs have presented, and the parties had considerable
13 disagreement about the amount of damages Plaintiffs could recover even in a best-case scenario for
14 Plaintiff. *Ibid.*

15 In reaching the settlement, Plaintiffs weighed the value of the prospective relief and actual
16 payments to the settlement Class Members against the risks of achieving and maintaining class
17 status through the damages phase, proving liability and damages, and the consequences of further
18 delay to class members. Bradley Decl. ¶¶ 50-54. Moreover, even if Plaintiffs prevailed on all the
19 claims and damages theories through verdict, one or more appeals would have been likely given
20 the nature of this case and the defense presented. *Id.* ¶ 54. Given these risks, costs and delays
21 associated with litigating the case through a trial and appeals, the total settlement amount of
22 \$420,000 provides very strong recovery for the 340 members of the Settlement Class. *Id.* ¶ 53.

23 **iv. The formula for each class member’s share is fair and reasonable**

24 The proposed formula for allocation of class member payments is subject to the same standard
25 of review as class action settlements—it must be “fair, adequate and reasonable.” *See, e.g., 7-Eleven*
26 *Owners for Fair Franchising v. Southland Corp.* (2000) 85 Cal.App.4th 1135, 1166-1167 (holding
27 that plans of allocation within the context of settlement agreements are subject to a fair, adequate,
28 and reasonable standard). *Accord Chavez v. Netflix, Inc.* (2008) 162 Cal.App.4th 43, 55-56 (holding

1 that courts do not decide whether plans of allocation are the best plans possible, but rather whether
2 they are fair, adequate, and reasonable).

3 Here, the distribution formula is designed to take into account objective data, specifically the
4 length of time worked by each of member of the Settlement Class and whether they worked pursuant
5 to an alternative workweek. Bradley Decl. ¶¶ 27-32. Each Settlement Class Member's share will
6 increase or decrease proportionally based on the number of pay periods he or she has in comparison
7 to the pay periods of the settlement Class Members. *Id.* ¶31. This is reasonable because the
8 settlement Class Members' share will increase or decrease proportionally based on the amount of
9 time worked. *Ibid.*

10 Additionally, any individual class payment that remains uncashed and cancelled after the void
11 date, the funds will be transmitted to the Court-approved nonprofit organization or foundation
12 consistent with the Code of Civil Procedure Section 384, subd. (b), Legal Aid at Work. SA ¶ 4.4.3.

13 v. **The proposed service award to the class representative is reasonable and**
14 **will be presented in a separate motion**

15 Service awards are common in class action cases. *See Munoz v. BCI Coca-Cola Bottling Co.*
16 *of Los Angeles* (2010) 186 Cal.App.4th 399, 412; *Newberg on Class Actions* § 11:38; Manual for
17 Complex Litigation § 21.62 n.971 (4th ed. 2004). The purpose of such awards is to compensate
18 named plaintiffs for work done on behalf of the class and to make up for financial or reputational
19 risk undertaken in bringing the action. *Clark v. American Residential Services* (2009) 175
20 Cal.App.4th 785, 806. The Court has discretion to approve a class representative service award that
21 it considers reasonable. In its discretionary role as a fiduciary for absent class members, the Court
22 may determine the amount of any service awards for class representatives. *See Clark*, 175
23 Cal.App.4th at 800.

24 Pursuant to the Settlement Agreement, Plaintiffs may seek a service award of up to \$10,000.
25 SA ¶ 3.2.1. Plaintiffs have devoted substantial time and effort on this case by producing relevant
26 documents, meeting and communicating with and assisting their attorneys in prosecuting the case,
27 reviewing complex legal documents, and engaging in settlement negotiations for the benefit of the
28 class. Bradley Decl. ¶ 77. These factors support the requested service award. Plaintiffs will submit

1 a declaration concerning their efforts and service in connection with their motion for a service
2 award. *Id.* ¶ 78. Although Plaintiffs will be seeking a service award, the settlement is not contingent
3 upon them receiving such award.

4 Furthermore, courts often approve service awards substantially larger than the one requested
5 by Plaintiff here, where the named plaintiffs have made significant contributions to the prosecution
6 of the class action, and the settlement has yielded a substantial benefit for the class. *See, e.g.,*
7 *Helmick v. Air Methods Corp.* (Sup Ct. Alameda County. Oct. 16, 2020) No. RG13-665373 at. p. 9
8 (approving service awards of ranging from \$19,000 to \$38,000 for four Class Representatives);
9 *Wisniewski v. Pacific Maritime Assoc.* (Super. Ct., Los Angeles County, Nov. 20, 2006) No.
10 BC293134 (approving \$50,000 service payment); *Clark v. Am. Residential Servs. LLC* (Super. Ct.,
11 Los Angeles County, Aug. 29, 2007) No. BC332632 (approving \$25,000 service payment);
12 *Kirschenbaum v. Elec. Arts, Inc.* (Super. Ct., San Mateo County, Jan. 27, 2006) No. Civ. 440876
13 (approving \$30,000 and \$15,000 service payments); *Crespo-Szabo v. Hollywood Entm't Corp.*
14 (Super. Ct., Alameda County, May 31, 2005) No. RG04-135321 (approving \$25,000 service
15 payment); *Junglas v. General Motors Corp* (Sup.Ct. Alameda County, April 20, 1990) No. 558-
16 051-6 (awarding choice of \$12,000 or free new Cadillac to named plaintiffs); *Gaudin v. Saxon*
17 *Mortgage Servs., Inc.* (N.D.Cal., Nov. 23, 2015, No. 11-cv-01663-JST) 2015 WL 7454183, at *10
18 (finding service award of \$15,000 to be “fair and reasonable”).

19 **vi. The attorneys’ fees and litigation costs sought are reasonable and will be**
20 **supported by a separate motion**

21 The purpose of an attorneys’ fee award in class action litigation is to reward counsel who
22 invested in a case despite the risk of non-payment and achieved a substantial positive result for the
23 class. California courts routinely award attorneys’ fees equaling one-third or more of the potential
24 value of the common fund. *See Chavez v. Netflix, Inc.*, 162 Cal.App.4th 43, 66, n.11 (2008)
25 (“Empirical studies show that, regardless of whether the percentage method or the lodestar method
26 is used, fee awards in class actions average around one-third of the recovery”). In accordance with
27 the Settlement Agreement, Plaintiff will seek Court approval of attorneys’ fees in the amount of
28 \$147,000, which is 35% of the Gross Settlement Amount of \$420,000. SA ¶ 3.2.2.

1 Plaintiffs will bring a separate motion for attorneys’ fees and costs on a date set by the Court
2 before the motion for final approval. Bradley Decl. ¶ 79. The motion will support the reasonableness
3 of the fee requested with details as to the work Class Counsel performed for the benefit of the class
4 and the hours devoted to such work, the market hourly rates for each significant biller on this matter,
5 and the reasonableness of their corresponding lodestar. *Id.* ¶80.

6 The fee motion will show that the attorneys’ fees provided for under the settlement are fair
7 and reasonable under both the lodestar-multiplier and percentage of the fund approaches to awarding
8 fee requests in similar cases. Plaintiffs’ Counsel will also seek a maximum of \$20,000 for out of
9 pocket litigation expenses. Bradley Decl. ¶ 79.

10 **V. THE COURT SHOULD ORDER DISTRIBUTION OF THE PROPOSED**
11 **NOTICE**

12 Rule 3.769(f) of the California Rules of Court sets forth the requirements for class notice of
13 settlement after class certification is granted. Rule 3.769(f) states as follows:

14 If the court has certified the action as a class action, notice of the final approval
15 hearing must be given to the class members in the manner specified by the court.
16 The notice must contain an explanation of the proposed settlement and
17 procedures for class members to follow in filing written objections to it and in
18 arranging to appear for the settlement hearing and state any objections to the
19 proposed settlement.

20 As discussed below, the proposed class notice in this case meets these requirements.

21 **A. The notice procedure is adequate**

22 The primary purpose of procedural due process is to provide affected parties with the right to
23 be heard at a meaningful time and in a meaningful manner. It does not guarantee any particular
24 procedure but rather requires only notice reasonably calculated to apprise interested parties of the
25 pendency of the action affecting their interests and an opportunity to present their objections. *Ryan*
26 *v. Cal. Interscholastic Fed* (2001) 94 Cal.App.4th 1048, 1072. Indeed, courts have approved class
27 notices, even when they provide only general information about a settlement. *See, e.g., Mendoza v.*
28 *United States* (9th Cir. 1980) 623 F.2d 1338, 1351 (“very general description of the proposed
settlement” satisfies standards), disapproved on other grounds by *Evans v. Jeff D.* (1986) 475 U.S.

1 717, 725, n. 10; *In re Michael Milken & Assoc. Sec. Lit.* (S.D.N.Y. 1993) 150 F.R.D. 57, 60,
2 (“settlement notices need only describe the terms of the settlement generally.”).

3 As set forth in the Settlement Agreement, within twenty-one (21) calendar days after
4 Preliminary Approval of the Settlement Agreement, Defendant will provide the Settlement
5 Administrator with the class information for purposes of mailing the Class Notice to Class Members.
6 SA ¶ 4.2. The parties have agreed on a notice plan that would provide class members with individual
7 notice by first class mail. *Id.* ¶ 4.4.1. Upon receipt of the Class Information, the Settlement
8 Administrator will perform a search based on the National Change of Address Database to update
9 and correct any known or identifiable address changes. *Ibid.* No more than fourteen (14) calendar
10 days after receipt of the Class Information, the Settlement Administrator shall mail copies of the
11 Class Notice to all Class Members via regular First-Class U.S. Mail. *Id.* ¶ 7.4.2.

12 Any Class Notices returned to the Settlement Administrator as non-delivered on or before the
13 Response Deadline shall be re-mailed to the forwarding address provided by the USPS. *Id.* ¶ 7.4.3.
14 If no forwarding address is provided, the Settlement Administrator shall conduct a Class Member
15 Address Search, and re-mail the Class Notice to the most current address obtained. *Ibid.* This notice
16 procedure is reasonable and adequate under applicable law. *See, e.g., Cartt v. Superior Court* (1975)
17 50 Cal.App.3d 960, 974 (holding that class notice is adequate if it has “a reasonable chance of
18 reaching a substantial percentage of the class members”).

19 **B. The notice fairly apprises settlement Class Members of the settlement terms and**
20 **their rights under the settlement**

21 The “notice given to the class must fairly apprise the class members of the terms of the
22 proposed compromise and of the options open to dissenting class members.” *Trotsky v. Los Angeles*
23 *Fed. Sav. & Loan Assn.* (1975) 48 Cal.App.3d 134, 152-153. The purpose of a class notice in the
24 context of a settlement is to give class members sufficient information to decide whether they should
25 accept the benefits offered, opt out, or object to the settlement. *Ibid.*

26 Here, the notice clearly and accurately informs class members of the material terms of the
27 settlement and their rights pertaining to it, including the right to opt out from or object to the
28

1 settlement. See proposed Notice to Class, Exhibit 2 to Bradley Decl. The notice also will be tailored
2 for each individual and provide the class member's total workweeks and a method by which the
3 class member may calculate an estimate of his or her settlement share in the event that all class
4 members participate in the settlement. *Ibid.* Thus, the proposed notice to class members in this case
5 satisfies all of the requirements of Rule 3.769(f) of the California Rules of Court.

6 **VI. Preliminary approval should be granted**

7 Given the favorable terms of the settlement and informed, arms-length negotiations, the
8 proposed settlement should be preliminarily viewed as a fair, reasonable, and adequate compromise
9 of the issues in dispute. The Court should therefore grant preliminary approval of the settlement,
10 order dissemination of notice to the Class for comment, and proceed to a formal fairness hearing.

11 **VII. The Court should set a schedule for final approval**

12 The next steps in the settlement approval process are to notify the class of the proposed
13 settlement, allow class members an opportunity to file any objections or opt-out, and hold a final
14 approval hearing. Toward those ends, the parties propose the following schedule:

16	Deadline for Defendant to provide class data to Settlement Administrator	Twenty-one (21) days after entry of Preliminary Approval
17		
18	Deadline for Settlement Administrator to mail Notice of Settlement	Fourteen (14) calendar days after provision of class list to Settlement Administrator
19		
20	Last day for Class Members to dispute claim amounts, file any requests for exclusions or objections	Forty-Five (45) calendar days from date notice is mailed
21		
22	Deadline for the parties' replies to any class member objections	[TO BE SET BY COURT]
23		
24	Deadline for Plaintiff to file motion for final approval of class action settlement, motion for attorneys' fees and costs and motion for service award	[TO BE SET BY COURT]
25		
26	Final Fairness Hearing and hearing on Plaintiff's motion for fees, costs and service awards	[TO BE SET BY COURT]
27		
28		

1 **VIII. CONCLUSION**

2 For each of the foregoing reasons, Plaintiffs respectfully request that the Court enter an
3 order: (1) preliminarily approving the proposed Settlement; (2) approving the form and method for
4 providing notice of the Settlement to the class; (3) setting the date(s) for Plaintiffs to file their motion
5 for attorneys' fees and costs and for a service award; and (4) scheduling a fairness hearing to
6 consider final approval of the Settlement.

7 Dated: November 7, 2022

Respectfully submitted,

8 **BRADLEY/ GROMBACHER. LLP**
9 **LAW OFFICES OF SAHAG MAJARIAN II**
10 **DIVERSITY LAW GROUP, P.C.**
11 **POLARIS LAW GROUP**

12 By: 

13 Marcus J. Bradley
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20 Attorneys for Plaintiffs
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1 **PROOF OF SERVICE**

2 STATE OF CALIFORNIA)
3) ss.
4 COUNTY OF LOS ANGELES)

5 I am employed in the County of Los Angeles, State of California. I am over the
6 age of 18 and not a party to the within action. My business address is 31365 Oak Crest
Drive, Suite 240, Westlake Village, CA 91361.

7 On November 7, 2022, I served the foregoing document described as:

- 8 **1) PLAINTIFFS' NOTICE OF MOTION AND MOTION FOR PRELIMINARY**
9 **APPROVAL OF CLASS AND REPRESENTATIVE ACTION SETTLEMENT;**
10 **MEMORANDUM OF POINTS AND AUTHORITIES**
11 **2) DECLARATION OF MARCUS J. BRADLEY IN SUPPORT**
12 **3) DECLARATION OF MAX W. GAVRON IN SUPPORT**
13 **4) DECLARATION OF LARRY W. LEE IN SUPPORT**
14 **5) DECLARATION OF WILLIAM L. MARDER IN SUPPORT**
15 **6) DECLARATION OF PLAINTIFF FLORA CANDELARIA IN SUPPORT**
16 **7) DECLARATION OF PLAINTIFF ARIANA CARRANZA IN SUPPORT**
17 **8) DECLARATION OF SEAN HARTRANFT RE: QUALIFICATIONS OF ILYM GROUP,**
18 **INC. AND SETTLEMENT ADMINISTRATOR**
19 **9) [PROPOSED] ORDER GRANTING PRELIMINARY APPROVAL OF CLASS AND**
20 **REPRESENTATIVE ACTION SETTLEMENT**

21 on all interested parties in said action:

22 **SEE ATTACHED SERVICE LIST**

23 [X] **(VIA US MAIL)** I caused such envelope(s) to be deposited in the mail at Westlake
24 Village, California with postage thereon fully prepaid. I am "readily familiar" with the
25 firm's practice of collection and processing correspondence for mailing. It is deposited
26 with the U.S. Postal Service on that same day in the ordinary course of business. I am
27 aware that on motion of party served, service is presumed invalid if postal cancellation
28 date or postage meter date is more than one day after date of deposit for mailing in
affidavit.

[X] **(VIA ELECTRONIC MAIL)** I delivered the aforementioned document (s) by
electronic mail to the parties' email addresses as they are known to me on the attached
Service List. My email address is sboucher@bradleygrombacher.com. I did not receive,
within a reasonable period of time, any indication that the transmission was not
successful.

I declare under penalty of perjury under the laws of the State of California that the above
is true and correct.

Executed on November 7, 2022 at Westlake Village, California.



Suzette Boucher

**Healthnet/Centene Cases
Sacramento Superior Court
Coordination Proceeding JCCP No. 5225**

Mailing List

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(Via U.S. Mail Only) The Honorable Jill H. Talley Superior Court of California, County of Sacramento 720 Ninth Street, Dept. 25 Sacramento, CA 95814	