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8
9 **SUPERIOR COURT OF CALIFORNIA**

10 **COUNTY OF TULARE**

11
12 LUCI GILLESPIE and ILEANA
13 SUASTEGUI, on behalf of themselves and all
others similarly situated,

14 Plaintiffs,

15 v.

16
17 PLUM HEALTHCARE GROUP, LLC, a
California limited liability company; and
18 DOES 1-100, inclusive,

19 Defendants.

Case No. VCU285376

**MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
PLAINTIFFS' MOTION FOR
PRELIMINARY APPROVAL OF CLASS
AND PAGA ACTION SETTLEMENT**

Judge: Hon. Bret Hillman
Dept.: 7
Date: March 12, 2024
Time: 8:30 a.m.

Complaint Filed: December 17, 2020
Trial Date: None Set

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1 **I. INTRODUCTION**

2 In this wage and hour action, Plaintiffs Luci Gillespie, Ileana Suastegui, Trevor Harding,
3 Esther Corona, Joselito Guerrero, and Mildred Arriaga, on behalf of themselves and all others
4 similarly situated (“Plaintiffs”), have achieved an excellent class and Private Attorneys General Act
5 (“PAGA”) settlement with Defendant Plum Healthcare Group, LLC and various Facility Entities,
6 covering non-exempt employees at approximately 37 healthcare facilities around California (the
7 “Facilities”).¹ The proposed Settlement Agreement features a Gross Settlement Amount of
8 \$10,000,000 as well as significant equitable components under which the Facilities will make
9 meaningful operational and policy changes to promote compliance with California wage and hour
10 laws.²

11 Plaintiffs contend that Defendant Plum Healthcare Group, LLC (“Plum”) operates a system of
12 skilled nursing facilities in the State of California.³ Plaintiffs allege that chronic understaffing at the
13 Facilities led to wage and hour violations, such as non-exempt employees working during meal
14 periods, rest breaks, and before and after scheduled shift times, without compensation. On this basis,
15 Plaintiffs brought claims against Defendants for unpaid wages (including minimum wages and
16 overtime), meal period violations, rest break violations, unreimbursed expenses, waiting time
17 penalties, wage statement penalties, and PAGA penalties. Plaintiffs allege that, even though the
18 Facilities were each operated by separate LLCs (the “Facility Entities”), that Plum exercised control
19 over the non-exempt employees at the Facilities as a joint employer and was liable for the wage and
20 hour violations alleged.

21 Plaintiffs Gillespie and Suastegui filed this putative class action on December 14, 2020. The
22 Parties engaged in extensive motion practice, as well as considerable formal and informal discovery
23 and meet and confer. Ultimately, the Parties conducted two mediation sessions with Jeffrey Krivis on
24

25 ¹ For the definitions of the named parties, please see Section II.A, *infra*.

26 ² The Settlement is attached as Exhibit 1 to the Declaration of Carolyn H. Cottrell in Support of
27 Plaintiffs’ Motion for Preliminary Approval of Class and PAGA Action Settlement (“Cottrell Decl.”),
28 filed herewith. Unless otherwise defined herein, capitalized terms have the meaning ascribed to them
in the Settlement.

³ Defendants dispute that Plum operates the facilities and further dispute that Plum is the employer
for facility employees or otherwise liable for the violations alleged.

March 30, 2023 and on May 16, 2023. The mediations covered the instant class action, a related class action, and six additional California Labor Code Private Attorneys General Act (“PAGA”) actions:

- *Luci Gillespie v. Flax Holdings, LLC d/b/a River Valley Care Center* (Sutter County Superior Court, Case No. CVCS22-0001058)
- *Ileana Susategui v. Plum Healthcare Group, LLC* (Alameda County Superior Court, Case No. RG21092158)
- *Luci Gillespie v. Flax Holdings, LLC d/b/a River Valley Care Center* (Alameda County Superior Court, Case No. RG21093104)
- *Trevor Harding v. Plum Healthcare Group, LLC; Gladiolus Holdings, LLC d/b/a The Pines at Placerville Healthcare Center* (Alameda County Superior Court, Case No. RG21097877)
- *Esther Corona v. Jujube Holdings, LLC d/b/a Sunnyvale Post-Acute Center; Plum Healthcare Group, LLC* (Alameda County Superior Court, Case No. RG21111905)
- *Joselito Guerrero v. Douglas Fir Holdings, LLC d/b/a Huntington Valley Healthcare Center; Plum Healthcare Group, LLC* (Alameda County Superior Court, Case No. RG21111952)
- *Mildred Arriaga v. Olive Holdings, LLC d/b/a Aviara Healthcare Center; Plum Healthcare Group, LLC* (Alameda County Superior Court, Case No. 22CV006835)

The mediations were productive and resulted in a settlement in principle of the eight above-named actions (the “Actions”). The Parties negotiated and drafted the long-form settlement agreement in a multi-month process, which included a separate drafting process for the Class Notice (Exhibit B to the Settlement) and other attachments to the Settlement. The Parties have stipulated to consolidate the Actions for settlement purposes. The proposed Settlement globally resolves the eight actions, and Plaintiffs now seek preliminary approval in this Court.

The Gross Settlement Amount is \$10,000,000, which is fully non-revisionary. The following will be paid from the Gross Settlement Amount: (1) the costs and expenses of the Settlement Administrator, Atticus Administration LLC, currently estimated at \$83,000; (2) Service Awards of up to \$10,000 each for Plaintiffs Luci Gillespie, Ileana Suastegui, Trevor Harding, Esther Corona, and

1 Mildred Arriaga, and up to \$15,000 for Plaintiff Joselito Guerrero; (3) attorneys’ fees of up to 35% of
2 the Gross Settlement Amount, or \$3,500,000, plus reimbursement of actual costs (currently estimated
3 at \$50,000) to Class Counsel; (4) the employer-side payroll taxes triggered by payment of the unpaid
4 wage portion of each Class Settlement Share; and (5) the PAGA Allocation of \$100,000. After these
5 deductions, an estimated Class Net Settlement Amount of approximately \$5,581,800 will be available
6 for distribution to Participating Class Members. The average net Class Settlement Share for each of
7 the approximately 8,478 proposed Class Members is approximately \$658.39. Additionally, Aggrieved
8 Employees (i.e., those employees eligible for the PAGA component of the Settlement) will receive a
9 share from the 25% employee portion of the PAGA Allocation.

10 Moreover, the Equitable/Injunctive Components of the Settlement require specific changes to
11 operations at the Facilities. Among other changes, the Facilities and Facility Entities agree to establish
12 a “missed meal period log” and a “missed rest break log” where non-exempt employees can readily
13 report that that were not provided with a full, timely, uninterrupted, off-duty break. The Facilities and
14 Facility Entities also agree to ensure that their timekeeping and payroll systems duly and timely pay
15 non-exempt employees for all time that they record, with their hours of work readily viewable in the
16 timekeeping application. The Facilities will also provide required training for management and
17 supervisors on the California wage and hour laws as alleged in this case; furthermore, management at
18 the Facilities will orally read a notice to all current non-exempt employees (i.e., at a team meeting or
19 similar setting) that summarizes in plain language the wage and hour laws and related protections and
20 obligations, and will inform workers of the “missed meal period log” and the “missed rest break log.”

21 This is a large and complex settlement that will provide crucial relief to thousands of lower-
22 wage workers at dozens of skilled nursing facilities across the State of California. It provides strong
23 monetary and equitable benefits for the Class Members, Aggrieved Employees, and the State of
24 California. Moreover, the Settlement will resolve eight cases pending in three courts, and thereby will
25 achieve significant judicial economy and the conservation of the resources of multiple courts. The
26 proposed Settlement satisfies all the criteria for preliminary approval under California law and falls
27 well within the range of reasonableness, and Plaintiffs respectfully submit that the Court should grant
28 the requested approvals.

1 **II. BACKGROUND**

2 **A. Parties**

3 The Plaintiffs in this action, as originally filed, are Luci Gillespie and Ileana Suastegui and the
4 Defendant is Plum Healthcare Group, LLC. Plaintiffs file a Consolidated Class and PAGA Complaint
5 (“Consolidated Complaint”) herewith, pursuant to an accompanying stipulation, which consolidates
6 the eight separate class and PAGA actions, inclusive of the six Plaintiffs and seven Defendants, in
7 this single proceeding.

8 Under Plaintiffs’ Consolidated Complaint, the six Plaintiffs are Luci Gillespie, Ileana
9 Suastegui, Trevor Harding, Esther Corona, Joselito Guerrero, and Mildred Arriaga, on behalf of
10 themselves and all others similarly situated, the State of California and Aggrieved Employees
11 (collectively, “Plaintiffs”). The seven defendants are Plum Healthcare Group, LLC; Flax Holdings,
12 LLC d/b/a River Valley Care Center; Gladiolus Holdings, LLC d/b/a The Pines at Placerville
13 Healthcare Center; Jujube Holdings, LLC d/b/a Sunnyvale Post-Acute Center; Douglas Fir Holdings
14 LLC d/b/a Huntington Valley Healthcare Center; Olive Holdings, LLC d/b/a Aviara Healthcare
15 Center; and Rosebud Holdings, LLC d/b/a Western Slope Health Center (collectively, “Defendants”).

16 **B. Factual Background**

17 Plum was California’s second-largest skilled nursing facility operator, with skilled nursing
18 facilities across the state, focusing on higher acuity residents.⁴ Plaintiffs allege that Plum set up
19 separate LLCs for each Facility that are nominally the employers for the non-exempt employees at a
20 particular location.⁵ (See Consolidated Complaint, ¶ 18.) Plaintiffs’ claims are grounded in Plum’s
21 alleged central control over staffing allocations, availability of relief workers, other operational
22 policies, practices, and procedures, and the overall work environment and facility operations.
23 Plaintiffs allege that Plum controlled wages, hiring and firing decisions, and other direct aspects of
24

25 ⁴ “Plum Healthcare CEO: We’re Not Out of This Yet, Time to Rethink Reimbursement,” *Skilled*
26 *Nursing News*, May 5, 2021. Available at <https://skillednursingnews.com/2021/05/plum-healthcare-ceo-were-not-out-of-this-yet-time-to-rethink-reimbursement/>.

27 ⁵ Providence Group, Inc. acquired Plum as of November 2021. “Providence Group Acquires Plum
28 Healthcare, Adds 58 New Facilities to Portfolio,” *Skilled Nursing News*, November 8, 2021. Available
at <https://skillednursingnews.com/2021/11/providence-group-acquires-plum-healthcare-adds-58-new-facilities-to-portfolio/>

1 the employment relationship—even as to specific facility-level employees. Under Plaintiff’s theory
2 of the case, Plum is the employer (or co-employer) for Plaintiffs and other non-exempt employees at
3 the Facilities, despite the subsidiary structure—and is thereby jointly liable for the wage and hour
4 violations alleged with the Facility Entities.⁶ (See *id.*, ¶¶ 28-30.)

5 Plaintiffs are facility-level employees at various skilled nursing and post-acute healthcare
6 centers across California. To briefly summarize the Plaintiffs and their employment:

- 7 • Plaintiff Ileana Suastegui worked for Defendants as a Certified Nursing Assistant from
8 approximately October 2019 to April 2020 at Redwood Springs Healthcare Center (now
9 Visalia Post Acute) in Visalia, California.
- 10 • Plaintiff Luci Gillespie worked for Defendants as a Nursing Assistant from approximately
11 April 2020 to June 2020 at River Valley Care Center in Live Oak, California.
- 12 • Plaintiff Trevor Harding worked for Defendants as a dietary aide, cook, and dishwasher from
13 approximately 2017 to March 2020 at The Pines at Placerville Healthcare Center and Western
14 Slope Health Center, both located in Placerville, California.
- 15 • Plaintiff Esther Corona worked for Defendants as a Certified Nursing Assistant from
16 approximately January 2020 to August 2020 at Sunnyvale Health Center in Sunnyvale,
17 California.
- 18 • Plaintiff Joselito Guerrero has worked for Defendants as a Licensed Vocational Nurse from
19 approximately December 2012 to the present at Huntington Valley Healthcare Center in
20 Huntington Beach, California.
- 21 • Plaintiff Mildred Arriaga worked for Defendants as a non-exempt Nursing Assistant from
22 approximately June 2020 to approximately November 19, 2021 at Aviara Healthcare Center
23 in Encinitas, California.

24 (See *id.*, ¶¶ 12-17.)

25 Plaintiffs allege that chronic understaffing at the Facilities led to wage and hour violations,
26

27 ⁶ Plum does not concede that it, in fact, operates the Facilities. Plum denies that it employed Plaintiffs
28 and other facility-level employees or is otherwise liable for the wage and hour violations alleged.
Rather, Plum has maintained that it operated as a service provider for the Facilities.

1 such as non-exempt employees working during meal periods, rest breaks, and before and after
2 scheduled shift times, without compensation. (See *id.*, ¶¶ 39-42, 47.) Plaintiffs further allege that non-
3 exempt employees were denied payment for all hours worked due to waiting in line to clock in before
4 shifts, undergoing COVID-19 screenings during unpaid time, communications with personnel during
5 shift changes, engaging in prep, clean-up, and close-out tasks, and attending meetings. (See *id.*, ¶¶ 43-
6 45.) Additionally, Plaintiffs allege that non-exempt employees incurred work-related expenses for
7 which they were not reimbursed, such as purchases of scrubs, protective equipment, food for the
8 Facilities, and other supplies, and for usage of personal vehicles and personal phones for work
9 purposes. (See *id.*, ¶ 51.) Plaintiffs filed the Actions to contest these alleged violations.

10 **C. Procedural History**

11 Broadly, the Actions can be conceptualized in three categories:

12 (1) This putative class action against Plum, which alleges a broad putative class that spans all
13 non-exempt employees at all Plum facilities across the state of California. This case seeks the
14 underlying damages for the wage and hour violations as to each putative class member. The case does
15 not name any facility level LLCs and is based on a claim of joint employer liability as to Plum.

16 (2) Six PAGA-only actions against Plum and various facility LLCs, all pending in Alameda
17 County Superior Court before Judge Tara Desautels. The PAGA actions vary in their scope, but across
18 the six cases, Plaintiffs bring PAGA claims against Plum and five facility LLCs with the total pool of
19 aggrieved employees covering all non-exempt employees at all Plum facilities in the state.

20 (3) A narrow putative class action against a single facility LLC, pending in Sutter County
21 Superior Court before Judge Perry Parker. This case covers all non-exempt employees at River Valley
22 Care Center in Live Oak, California, and is thereby limited to a single Plum facility.

23 The proposed Settlement resolves all of the Actions.

24 **1. The instant Action**

25 Plaintiffs Luci Gillespie and Ileana Suastegui filed a broad putative class action complaint in
26 this Court on December 17, 2020, to challenge Plum's alleged non-compliant employment practices
27 and attendant violations of California law on a statewide basis. Plum filed a Motion to Compel
28 Arbitration and Stay Court Action, with respect to both Plaintiffs, on March 26, 2021. The Court

1 granted Plum’s motion on May 11, 2021 and ordered this case stayed pending resolution of the
2 arbitration proceedings.

3 Plaintiffs initiated their arbitration actions on July 19, 2021. (Cottrell Decl., ¶ 21.) As each
4 arbitration agreement required a different arbitral forum, Plaintiff Suastegui filed her arbitration
5 demand with AAA and Plaintiff Gillespie filed her arbitration demand with JAMS. (*Id.*) Plum’s
6 former counsel (Procopio, Cory, Hargreaves & Savitch LLP) did not arrange for the payment of
7 required arbitration fees to AAA and JAMS, respectively. (*Id.*, ¶ 22.) Plaintiffs Gillespie and
8 Suastegui filed a Motion to Vacate Order Compelling Arbitration, pursuant to Code of Civil Procedure
9 (“CCP”) sections 1281.97, *et seq.*, in Tulare County Superior Court on April 27, 2022, premised on
10 Plum’s alleged failure to timely pay required arbitration fees that AAA and JAMS billed in each
11 arbitration proceeding. After full briefing and argument, the Court granted Plaintiffs’ Motion to
12 Vacate Order Compelling Arbitration, as set forth in its Ruling on Motion to Set Aside Arbitration
13 Order, dated May 25, 2022.

14 Thereafter, litigation resumed in this Court on a putative class basis, with Defendants
15 represented by new counsel from Fisher & Phillips, LLP.⁷ Plaintiffs Gillespie and Suastegui served
16 formal requests for production of documents and special interrogatories on August 26, 2022, and the
17 Parties conferred extensively regarding Plum’s responses to these requests. (Cottrell Decl., ¶ 24.)
18 Plaintiffs’ requests sought considerable documents and information, including, *inter alia*, a variety of
19 timekeeping, payroll, and scheduling records for the putative class members; policy documents;
20 documents relating to Plum’s involvement in complaints, investigations, reviews, and audits of wage
21 and hour issues for putative class members; contacts and agreements between Plum and the facility
22 LLCs; and entity formation documents. (*Id.*, ¶ 25.) Plaintiffs’ requests were crafted to seek general
23 information regarding the putative class members as well as documents and information that are
24 probative of the joint employer claims of liability. (*Id.*) After the extensive meet and confer, Plum
25 began to substantively respond to Plaintiffs’ discovery, including serving supplemental responses on

26 ⁷ Plum substituted Fisher & Phillips counsel into this case, and the other Actions, on or about May 5,
27 2022. The substitution followed Defendants’ loss of a crucial motion to strike Plaintiffs’ PAGA claims
28 in the PAGA actions (discussed *infra*) and Plaintiffs’ filing of the Motion to Vacate Order Compelling
Arbitration in this case.

February 13, 2023. (*Id.*, ¶ 26.) At the time of mediation, Plaintiffs were preparing a motion to compel further RFP and interrogatory responses.

2. The additional Actions

The seven other Actions are the six PAGA cases and the narrow Sutter County class action. Each of the six total Plaintiffs maintains a separate PAGA case against Plum and/or facility LLCs in Alameda County Superior Court, and additionally, Plaintiff Gillespie maintains the Sutter County class action, which is limited to a single Facility and associated Facility Entity (Flax Holdings, LLC d/b/a River Valley Care Center (“Flax”)). (Cottrell Decl., ¶ 27.)

Plaintiff Suastegui filed the first of the PAGA actions on March 18, 2021, alleging PAGA claims against Plum with respect to all of Plum’s current and former non-exempt employees in California. Thus, the *Suastegui* PAGA action is the broadest of the PAGA cases in the sense that it has the greatest scope of Labor Code violations and covers all non-exempt employees at Plum’s facilities statewide. Plaintiff Gillespie filed the second PAGA action on March 25, 2021, alleging PAGA claims against Flax Holdings, LLC d/b/a River Valley Care Center (“Flax”) with respect to all of Flax’s current and former non-exempt employees. The *Gillespie* PAGA action is limited in scope to River Valley Care Center.

Plaintiff Harding filed the third PAGA action on May 5, 2021, alleging PAGA claims against Plum, Gladiolus Holdings, LLC d/b/a The Pines at Placerville Healthcare Center (“Gladiolus”) and Rosebud Holdings, LLC d/b/a Western Slope Health Center (“Rosebud”). *Harding* incorporates a joint employer theory and covers employees involved with patient care at Plum’s facilities statewide, and in particular those employees at The Pines at Placerville Healthcare Center and Western Slope Health Center.

Plaintiff Corona and Plaintiff Guerrero filed their PAGA actions on September 1, 2021. *Corona* alleges PAGA claims against Plum and Jujube Holdings, LLC d/b/a Sunnyvale Post-Acute Center, and also incorporates a joint employer theory and covers employees at Plum’s facilities statewide, and in particular the employees at Sunnyvale Post-Acute Center. *Guerrero* alleges PAGA claims against Plum and Douglas Fir Holdings, LLC d/b/a Huntington Valley Healthcare Center, and again, incorporates a joint employer theory and covers employees at Plum’s facilities statewide, and

1 in particular the employees at Huntington Valley Healthcare Center. Plaintiff Arriaga filed the sixth
2 and final PAGA action on February 10, 2022, alleging PAGA claims against Plum and Olive
3 Holdings, LLC d/b/a Aviara Healthcare Center. *Arriaga*, like *Harding*, *Corona*, and *Guerrero*,
4 incorporates a joint employer theory and covers employees at Plum’s facilities statewide, and in
5 particular the employees at Aviara Healthcare Center.

6 The PAGA actions have been deemed related cases and are assigned to Judge Tara Desautels
7 (the cases were reassigned to Judge Desautels on December 29, 2023, but were previously assigned
8 to Judge Brad Seligman). (Cottrell Decl., ¶ 31.) Though their scope differs to some extent, these
9 actions all contain PAGA claims for violations with respect to hourly, non-exempt employees at
10 Plum’s facilities in California. (*Id.*) Each action alleges PAGA claims for failure to authorize and
11 permit compliant meal breaks and rest periods; failure to compensate for all hours worked; failure to
12 pay minimum wages; failure to pay overtime compensation; and other violations. (*Id.*)

13 The Parties also litigated extensive motion and discovery practice in the PAGA cases. (*Id.*, ¶
14 32.) After initial discovery, Defendants filed motions to strike in each of the actions that sought to
15 challenge the PAGA claims on manageability and other grounds on November 8, 2021. Defendants
16 argued that the PAGA claims could not be manageably tried under *Wesson v. Staples the Office*
17 *Superstore, LLC* (2021) 68 Cal.App.5th 746—and that the alleged violations could not be tried
18 manageably across the Plum network and even as to single facilities.⁸ At the urging of Judge Brad
19 Seligman, the Parties stipulated to omnibus briefing for the oppositions and replies to Defendants’
20 motions to strike. (Cottrell Decl., ¶ 33.)

21 Plaintiffs’ opposition had a two-pronged overall theme. (*Id.*, ¶ 34.) First, Plaintiffs argued that
22 Defendants’ motions were premature because Plaintiffs were entitled to discovery to develop
23 manageable theories of the litigation and an informed assessment of manageability. (*Id.*) Second,
24 Plaintiffs articulated that their PAGA claims are amenable to common proof and efficient resolution
25 by virtue of Plum’s overarching, common control across its California facilities. (*Id.*)

27 ⁸ On January 18, 2024, in a highly anticipated and unanimous decision, the Supreme Court of
28 California barred striking PAGA claims on trial manageability grounds alone, overturning *Wesson*, in
Estrada v. Royalty Carpet Mills, Inc., S274340.

1 To substantiate this showing, Plaintiffs pointed to Plum’s own written policies, which were
2 implemented universally and created common employments conditions across the Facilities. (*Id.*, ¶
3 35.) Plaintiffs also adduced statements of Plum’s former CEO, Cory Christensen, showing that Plum
4 operates a cohesive system with extensive involvement in the wages, hours, and working conditions
5 for facility employees. (*Id.*) Plaintiffs argued that the PAGA claims are grounded in Plum’s central
6 control over staffing allocations, availability of relief workers, other operational policies, practices,
7 and procedures, and the overall work environment and facility operations. (*Id.*) Plaintiffs maintained
8 that, together with the universal requirements of patient care and other operational realities that are
9 ever present in the skilled nursing setting, Plum sets in motion a series of Labor Code violations that
10 may be efficiently prosecuted and adjudicated on a representative basis. (*Id.*)

11 The Court denied the motions to strike after extensive briefing and oral argument on February
12 4, 2022. At the hearing, Judge Seligman instructed the Parties to proceed with discovery with a focus
13 on first developing evidence to support the joint employer claims of liability. Again, shortly after
14 Defendants’ loss on their motions to strike, Defendants replaced their prior counsel from Procopio
15 with their current counsel from Fisher & Phillips.

16 Plaintiffs propounded considerable discovery in the PAGA cases on April 8, 2022. (*Id.*, ¶ 37.)
17 Plaintiffs served one set of “joint employer” discovery requests on Plum, consisting of 118 requests
18 for production of documents and 52 special interrogatories, which were intended by Plaintiffs to elicit
19 responses that apply to the joint employer claims across the actions. (*Id.*) Also on April 8, 2022,
20 Plaintiffs served approximately 60 RFPs and approximately 19 to 23 SROGs for each of the five
21 Plaintiffs (Susategui, Gillespie, Harding, Corona, and Guerrero) that are specific to their particular
22 actions.⁹ (*Id.*)

23 After several extensions, Defendants served objections (without substantive responses) in June
24 2022. (*Id.*, ¶ 38.) The Parties engaged in extensive meet and confer in August and September 2022;
25 Defendants’ counsel ultimately informed Plaintiffs’ counsel that they intended to file motions to
26 compel arbitration on the basis of the United States Supreme Court’s then-recent decision in *Viking*

27
28 ⁹ Plaintiff Arriaga served 65 RFPs and 23 SROGs that are specific to the Arriaga action on May 13,
2022. (*Id.*)

1 *River Cruises, Inc. v. Moriana* (2022) 142 S.Ct. 1906, and maintained that formal discovery should
2 be stayed across all the actions. (*Id.*, ¶ 39.) *Viking River* was decided after the PAGA cases were
3 filed—following the resolution of Defendants’ motions to strike the PAGA claims and in the midst of
4 formal discovery. Plaintiffs’ counsel recognized that the Supreme Court’s decision could potentially
5 have marked impacts on the nature and scope of these actions and were reasonable in prioritizing the
6 resolution of the *Viking River* motions. (*Id.*)

7 Defendants moved to compel arbitration as to five of the six Plaintiffs—Plaintiffs Susategui,
8 Gillespie, Harding, Guerrero, and Arriaga—on November 1, 2022. Defendants withdrew the *Arriaga*
9 motion on December 19, 2022 and did not file a motion as to Plaintiff Corona. After full briefing and
10 argument, the Court denied Defendants’ remaining motions in large part on January 13, 2023. The
11 Court ruled that Defendants failed to prove that Plaintiff Guerrero had agreed to arbitration, and
12 moreover, denied the motion in its entirety as to Plaintiff Gillespie based on carveout language for
13 PAGA claims. Thus, four out of six actions were completely unscathed by Defendants’ *Viking River*
14 motion practice. Even as to Plaintiffs Suastegui and Harding, the motion was granted only as to the
15 individual PAGA claims; Defendants’ motion was denied as to Plaintiffs Suastegui and Harding’s
16 representative PAGA claims, meaning that the cases could proceed in court as to the violations alleged
17 for all employees beyond Plaintiffs Suastegui and Harding.

18 Following the resolution of the *Viking River* motions, the Parties resumed discovery practice.
19 (Cottrell Decl., ¶ 42.) At the time of mediation, the Parties had tentatively agreed to an approach under
20 which they would prioritize the joint employer discovery as to the facilities where the Named
21 Plaintiffs worked. (*Id.*)

22 Turning to the narrow Sutter County class action, Plaintiff Gillespie originally filed the case,
23 seeking damages for the underlying wage and hour violations from Flax, on December 14, 2020. Flax
24 filed a motion to compel arbitration on March 26, 2021. After this Court granted Plum’s motion to
25 compel arbitration, Plaintiff Gillespie and Flax stipulated to proceed in arbitration and dismiss the
26 case, which the Court signed on May 14, 2021. Following Defendants’ failure to pay the required
27 arbitration fees and this Court’s vacating its order to compel arbitration in the Tulare action, Plaintiff
28 Gillespie refiled the Sutter action on June 14, 2022. The refiled action names only Flax as the

1 Defendant. Plaintiff Gillespie propounded initial discovery on December 19, 2022, and the Parties
2 were engaged in meet and confer at the time of mediation. (*Id.*, ¶ 44.)

3 **D. Mediations**

4 At the August 10, 2022 Case Management Conference, this Court ordered the Parties to agree
5 upon a mediator and reserve a mediation date. The Parties agreed to mediate with Jeffrey Krivis, one
6 of the most highly respected mediators of wage and hour actions in California, and booked the
7 mediation session for March 30, 2023. After several months of meet and confer on the scope of
8 mediation, and following the Alameda County rulings on Defendants’ motions to compel arbitration
9 in the PAGA cases, Defendants agreed to engage in a global mediation of all eight pending actions in
10 approximately January 2023. (Cottrell Decl., ¶ 46.)

11 At the first mediation session, Plaintiffs’ counsel worked with Mr. Krivis to build an
12 understanding as to the cases, including the claims and procedural history, the joint employer
13 framework, Plum’s operational background, and Plum’s anticipated defenses. (*Id.*, ¶ 47.) The Parties
14 agreed, with the assistance of the mediator, to negotiate a class and PAGA settlement on a statewide
15 basis as to all of the Facilities allegedly at issue in California as alleged in all Actions, pursuant to an
16 agreed upon scope determined by prior settlements and arbitration agreements. (*Id.*) After Mr. Krivis
17 secured confirmation of Defendants’ willingness to entertain a “Plum-wide” settlement, he then
18 worked with the Parties to develop a concrete framework for the production of data necessary to
19 negotiate a statewide settlement at the second session on May 16, 2023. (*Id.*, ¶ 48.)

20 The Parties agreed there were 37 Facilities at issue, and that Defendants would produce
21 informal mediation discovery showing the total number Class Members, the number of current
22 employee Class Members, the number of former employee Class Members, the total number of Class
23 workweeks and pay periods, and the average hourly rate of pay for Class Members. (*Id.*, ¶ 49.)
24 Defendants agreed to provide separate information showing the total number of PAGA Aggrieved
25 Employees, the number of current employee Aggrieved Employees, the number of former employee
26 Aggrieved Employees, the total number of PAGA workweeks and pay periods, and the average hourly
27 rate of pay for Aggrieved Employees. (*Id.*) Defendants also produced a 5% sampling of timekeeping
28 and payroll records for each of the Facilities at issue and numerous other documents. (*Id.*) The data

1 showed that, across all Actions, there were 8,478 Class Members that worked a combined total of
2 355,196 workweeks at an average hourly rate of \$24.81, and 1,402 Aggrieved Employees that worked
3 a combined total of 47,944 pay periods at an average hourly rate of \$29.18. (*Id.*, ¶ 50.)

4 Plaintiffs’ counsel developed estimated violation rates for off-the-clock time, meal and rest
5 break violations, and unreimbursed expenses, which accounted for job type and time period. (*Id.*, ¶
6 51.) Applying the estimated violation rates to input data provided by Defendants, Plaintiffs’ counsel
7 created a damages analysis under which potential settlement amounts could be compared to the total
8 estimated exposure. (*Id.*)

9 The Parties participated in the second mediation with Mr. Krivis on May 16, 2023. During the
10 mediation, each side, represented by its respective counsel, evaluated the potential exposure and the
11 risks of an adverse result in litigation, and agreed to settle all claims in the Actions for the employees
12 at the Facilities that did not execute arbitration agreements and did not release claims in a prior
13 settlement. (*Id.*, ¶ 52.)

14 **E. Settlement**

15 After the May 16, 2023 mediation, the Parties and their counsel signed a Term Sheet that
16 contained the broad terms of the Settlement. (*Id.*, ¶ 53.) Plaintiffs’ counsel worked diligently to
17 prepare and circulate a draft of the settlement agreement on an expeditious basis. Plaintiffs’ counsel
18 provided a draft of the long-form settlement agreement to Defendants’ counsel on June 7, 2023. (*Id.*,
19 ¶ 54.) After a multi-month drafting process, which involved numerous rounds of edits for the long-
20 form agreement and separate drafts and rounds of edits for the Class Notice and other ancillary
21 documents, the Parties fully executed the Settlement Agreement on February 2, 2024. (*Id.*, ¶ 55.)
22 Pursuant to the Settlement, the Parties have stipulated to filing of the Consolidated Complaint.

23 **III. TERMS OF THE SETTLEMENT**

24 **A. Monetary Terms**

25 The Settlement provides for a non-reversionary Gross Settlement Amount of \$10,000,000.
26 (Settlement, ¶ III.A.) The Settlement allocates \$100,000 of the Gross Settlement Amount to PAGA
27 claims (the “PAGA Allocation”), of which \$75,000 will be paid to the LWDA (the “LWDA
28

1 Payment”) and \$25,000 will be distributed to Aggrieved Employees on a *pro rata* basis by pay period
2 (the “PAGA Net Settlement Amount”). (Settlement, ¶¶ II.W, II.Y, III.C.3.)

3 Additionally, the Class Counsel Fees and Expenses Payment, the Service Awards, the costs
4 and expenses of the Settlement Administrator, and the employer-side payroll taxes triggered by
5 payment of the unpaid wage portion of each Class Settlement Share will be paid from the Gross
6 Settlement Amount. With the motion for final approval, Plaintiffs will seek fees not to exceed 35%
7 of the Gross Settlement Amount and actual costs (currently estimated at \$50,000) for Class Counsel,
8 Schneider Wallace Cottrell Konecky and Lawyers for Justice PC. (Settlement, ¶¶ II.D, III.C.2; Cottrell
9 Decl., ¶ 58.) Plaintiffs will seek Service Awards of \$10,000 each for Plaintiffs Gillespie, Suastegui,
10 Harding, Corona, and Arriaga, and \$15,000 for Plaintiff Guerrero. (Settlement, ¶ III.C.1.) The
11 Settlement also provides that the Settlement Administrator will be paid its reasonable fees and
12 expenses from the Gross Settlement Amount, currently estimated at \$83,000. (Settlement, ¶ III.C.4,
13 Cottrell Decl., ¶ 59.)

14 After these deductions, an estimated Class Net Settlement Amount of approximately
15 \$5,581,800 will be available for distribution to Participating Class Members. (Cottrell Decl., ¶ 60.)
16 The average net Class Settlement Share for each of the approximately 8,478 Class Members is
17 approximately \$658.39. (*Id.*) Additionally, Aggrieved Employees (i.e., those employees eligible for
18 the PAGA component of the Settlement) will receive a share from the 25% employee portion of the
19 PAGA Allocation. The average net PAGA Settlement Share for each of the approximately 1,402
20 Aggrieved Employees is approximately \$17.83. (*Id.*)

21 The proposed Settlement provides that Defendants will fund the Gross Settlement Amount in
22 three equal installments. The first installment will be due 90 days after the Effective Date, the second
23 installment will be due 180 days after the Effective Date, and the third and final installment will be
24 due 270 days after the Effective Date. (Settlement, ¶ III.E.10.) All payments under the Settlement—
25 to Participating Class Members, Aggrieved Employees, Plaintiffs, Class Counsel, the LWDA, and the
26 Settlement Administrator—will be made in three equal shares.

27 **B. Settlement Awards for Participating Class Members and Aggrieved Employees**

28 Participating Class Members (i.e., those Class Members who do not opt out of the Settlement)

1 and Aggrieved Employees are eligible for Class Settlement Shares and PAGA Settlement Shares,
2 respectively, under the Settlement. Class Members and Aggrieved Employees are not required to
3 submit an opt-in form or claim form in order to receive payment under the Settlement.

4 For purposes of the Settlement, the Class includes all current and former non-exempt
5 employees, allegedly employed in California by Plum Healthcare Group, LLC and/or the applicable
6 Facility Entity, who worked at any of the Facilities during the Class Period, was not subject to an
7 arbitration agreement, and did not release claims under a settlement in any of the Settled Cases.
8 (Settlement, ¶ II.C.) In turn, the Facilities are identified in Exhibit A to the Settlement and in Section
9 2 of the Class Notice, and the Settled Cases are identified in Paragraph 2.II of the Settlement and in
10 Section 3 of the Class Notice. The Class Period, which runs from December 17, 2016 through July
11 17, 2023, is defined at Paragraph 2.J of the Settlement.

12 Under the Settlement, the Aggrieved Employees include all current and former non-exempt
13 employees, allegedly employed in California by Plum Healthcare Group, LLC and/or the applicable
14 Facility Entity, who worked at any of the Facilities during the PAGA Period, was not subject to an
15 arbitration agreement, and did not release claims under a settlement in any of the Settled Cases.
16 (Settlement, ¶ II.B.) The PAGA Period, which runs from January 13, 2020 through the date of
17 preliminary approval of the Settlement, is defined at Paragraph 2.AA of the Settlement.

18 The Class Net Settlement Amount is to be allocated among and paid to Participating Class
19 Members based on Class Workweeks (the number of workweeks worked by the Participating Class
20 Member as a non-exempt employee at any Facility during the Class Period), in proportion to the total
21 Class Workweeks for all Participating Class Members. (Settlement, ¶ III.B.1.) Similarly, the PAGA
22 Net Settlement Amount is to be allocated among and paid to Aggrieved Employees based on PAGA
23 Pay Periods (the number of pay periods worked by the Aggrieved Employee as a non-exempt
24 employee at any Facility during the PAGA Period), in proportion to the total PAGA Pay Periods for
25 all Aggrieved Employees. (*Id.*)

26 10% of each Class Settlement Share will be treated as a payment in settlement of wages, and
27 will be reduced by applicable payroll tax withholding and deductions and reported on Form W-2.
28 (Settlement, ¶ III.B.3.b.) The other 90% of each Class Settlement Share will be treated as a payment

1 in settlement of unreimbursed business expenses, liquidated damages, and penalties, will not be
2 reduced by applicable payroll tax withholding and deductions, and will be reported on Form 1099.
3 (*Id.*) 100% of each PAGA Settlement Share will be treated as a payment in settlement of penalties
4 and will be reported on Form 1099. (Settlement, ¶ III.B.3.c.)

5 Again, Class Settlement Shares and PAGA Settlement Shares will be paid in equal
6 installments, approximately 90 days apart. Class Members and Aggrieved Employees will have 90
7 days to cash each check; if an individual does not cash his or her check in the first or second round of
8 payments, the payment will be reissued to him or her with the next round of checks. (Settlement, ¶
9 III.E.11.) If an individual does not cash his or her third check within the 90-day check void period,
10 the payment will be forfeited. At the conclusion of the 90-day check void period for the third round
11 of payments, the uncashed checks funds will be redistributed among Participating Class Members and
12 Aggrieved Employees that cashed their third check, on a *pro rata* basis, provided that the total amount
13 of uncashed checks equals or exceeds \$100,000. (*Id.*) Any uncashed checks from this second
14 distribution will be paid to the Parties' agreed upon *cy pres* recipient, Legal Aid at Work, subject to
15 the Court's approval. (*Id.*)

16 C. Settlement Administration

17 The Parties have agreed to retain Atticus Administration LLC ("Atticus") as the Settlement
18 Administrator. (Settlement, ¶¶ II.JJ, III.D.) Within 21 days after preliminary approval, Defendants
19 will provide the Settlement Administrator with the following information for each Class Member and
20 Aggrieved Employee: name, last known mailing address, last known email address, Social Security
21 number, number of Class Workweeks, and number of PAGA pay periods. (Settlement, ¶ III.E.2.a.)

22 The Settlement Administrator will then send each Class Member and Aggrieved Employee
23 the Notice Packet via first class U.S. mail and email. (Settlement, ¶ III.E.2.b.) Prior to the initial
24 mailing, the Settlement Administrator will check the addresses through the National Change of
25 Address System. (*Id.*) The Settlement Administrator will make reasonable efforts to re-send Notice
26 Packets that are returned or non-deliverable. (*Id.*) If a Notice Packet is returned with no forwarding
27 address, the Settlement Administrator will promptly search for a current address using a skip trace
28 and re-mail the Notice Packet. (Settlement, ¶ III.E.2.d.) The Settlement Administrator will also create

1 and host a website for the Settlement, which will allow Class Members and Aggrieved Employees to
2 view the Class Notice, the Settlement, the preliminary and final approval papers, and the related orders
3 of the Court, and will additionally create a toll-free call center to field telephone inquiries from Class
4 Members and Aggrieved Employees during the notice and settlement administration periods.
5 (Settlement, ¶ III.E.2.c.)

6 Class Members will have 45 days after the date the Settlement Administrator first mails the
7 Notice Packet to submit objections to the Settlement, requests for exclusion, and disputes regarding
8 workweeks. (Settlement, ¶¶ III.E.3, III.E.4.) Aggrieved Employees may not opt out of the PAGA
9 component of the Settlement—if a Class Member who is also an Aggrieved Employee timely and
10 validly opts out of the Settlement by submitting an Exclusion Letter, he or she will still receive a
11 PAGA Settlement Share and will still release the PAGA Released Claims. (Settlement, ¶ III.E.3.b.)

12 If 10% or more of Class Members submit valid and timely opt-outs, Defendants shall have the
13 right, in their sole discretion, to unilaterally rescind the Settlement within 30 days after the Settlement
14 Administrator notifies the parties of the number of opt-outs. (Settlement, ¶ III.E.6.)

15 **D. Releases of Claims**

16 The Settlement provides separate, distinct releases for Participating Class Members versus
17 Aggrieved Employees. Broadly, the Participating Class Members release all individual wage and hour
18 claims that are or could have been alleged under state and federal law based on the facts of the case
19 (the “Class Released Claims”), while the LWDA and Aggrieved Employees release all PAGA claims
20 that are or could have been alleged based on the facts of the case (the “PAGA Released Claims”). The
21 separate releases allow for the release of PAGA claims by Class Members that opt out of the
22 Settlement. Additionally, Plaintiffs agree to a general release.

23 The releases take effect as of the Effective Date (i.e., the date by which the Settlement is fully
24 approved and there is no possibility for appellate review). (Settlement, ¶¶ III.F.2, II.O.) The Class
25 Released Claims include all claims and/or causes of action against Defendants and the Released
26 Parties during the Class Period, known or unknown, that are or could have been alleged based on the
27 facts alleged in the operative complaints and/or the notices of claims under the PAGA to the LWDA
28 in any of the Actions. (Settlement, ¶ II.K.) The PAGA Released Claims include all claims and/or

1 causes of action under the PAGA against Defendants and the Released Parties during the PAGA
2 Period, known or unknown, that are or could have been alleged based on the facts alleged in the
3 operative complaints and/or the notices of claims under the PAGA to the LWDA in any of the Actions.
4 (Settlement, ¶ II.BB.) Additionally, Plaintiffs will generally release claims provided that they are
5 awarded a Service Award by the Court. (Settlement, ¶ III.F.1.)

6 The Released Parties include Defendants, the Facilities, and the Facility Entities—along with
7 their parents, subsidiaries, and affiliated companies or entities, and their officers, directors,
8 employees, partners, shareholders and agents. As Plum was acquired by the Providence Group in
9 November 2021 (see Footnote 5), the Released Parties include the Providence Group, Inc. and
10 Providence Administrative Consulting Services. (*Id.*)

11 The Released Claims are proper under California class action law. “In a class action
12 settlement, a clause providing for the release of claims may refer to all claims, both potential and
13 actual, that may have been raised in the pending action with respect to the matter in controversy. A
14 court may release not only those claims alleged in the complaint and before the court, but also claims
15 which could have been alleged by reason of or in connection with any matter or fact set forth or
16 referred to in the complaint.” (*Amaro v. Anaheim Arena Mgmt., LLC* (2021) 69 Cal.App.5th 521, 537;
17 *Uribe v. Crown Bldg. Maint. Co.* (2021) 70 Cal.App.5th 986, 1005; *Robinson v. Southern Counties*
18 *Oil* (2020) 53 Cal.App.5th 476.)

19 E. Equitable/Injunctive Components

20 The Equitable/Injunctive Components of the Settlement require the Facilities to make
21 meaningful operational and policy changes to promote compliance with California wage and hour
22 laws. These include (but are not limited to) the following:

- 23 • The Facilities and Facility Entities agree to not punish or discipline non-exempt employees,
24 or otherwise impose negative employment consequences, when they report that (1) they were
25 not provided with a compliant meal period or rest break, or (2) they were required to work
26 additional hours beyond their scheduled shift time and/or overtime hours.
- 27 • The Facilities and Facility Entities will establish a “missed meal period log” and a “missed
28 rest break log” where non-exempt employees can readily report that that were not provided

- 1 with a full, timely, uninterrupted, off-duty break.
- 2 • The Facilities and Facility Entities agree to remedy any issues with their timekeeping and
 - 3 payroll systems so that non-exempt employees are duly and timely paid for all “on the clock”
 - 4 time that they record. All “on the clock” time must be readily viewable by non-exempt
 - 5 employees in the Workday application.
 - 6 • The Facilities will provide required training for management and supervisors on the California
 - 7 wage and hour laws as alleged in this case, and methods for compliance.
 - 8 • Management at the Facilities will orally read a notice to all current non-exempt employees
 - 9 (i.e., at a team meeting or similar setting) that summarizes in plain language the wage and hour
 - 10 laws and related protections and obligations, and will inform workers of the “missed meal
 - 11 period log” and the “missed rest break log.”

12 These changes will foster an improved working environment as to pay and break issues for hourly
13 employees at the Facilities, and Class Counsel respectfully submit that they are proud to have achieved
14 a rare wage and hour settlement that includes strong, meaningful equitable relief.

15 **IV. PRELIMINARY APPROVAL OF THE SETTLEMENT IS APPROPRIATE**

16 The decision to approve or reject a proposed settlement is committed to a court’s broad
17 discretion. (*Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 234-35.) To grant
18 preliminary approval of a class action settlement, courts need find only that the settlement falls within
19 the range of possible final approval, also described as “the range of reasonableness.” (See, e.g., *North*
20 *County Contractor’s Assn., Inc. v. Touchstone Ins. Svcs.* (1994) 27 Cal.App.4th 1085, 1089-90; see
21 also *Newberg on Class Actions*, § 11:25.)

22 To make this determination, courts must consider several relevant factors, including “the
23 strength of [the] plaintiffs’ case, the risk, expense, complexity and likely duration of further litigation,
24 the risk of maintaining class action status through trial, the amount offered in settlement, the extent
25 of discovery completed and the stage of the proceedings, [and] the experience and views of counsel.”
26 (*Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1801.) “The list of factors is not exclusive,
27 and the court is free to engage in a balancing and weighing of the factors depending on the
28 circumstances of each case.” (*Wershba*, 91 Cal.App.4th at 245.) Under the relevant factors, the

1 Settlement warrants preliminary approval.

2 **A. The Proposed Settlement is Entitled to a Presumption of Fairness**

3 A presumption of fairness exists where: (1) the settlement is reached through arm's-length
4 bargaining; (2) investigation and discovery are sufficient to allow counsel and the court to act
5 intelligently; (3) counsel is experienced in similar litigation; and (4) the percentage of objectors is
6 small. (*Dunk*, 48 Cal.App.4th 1802.)

7 In this litigation, Class Counsel battled through several years of intense motion practice,
8 extensive discovery and related disputes, and comprehensive mediation with Jeffrey Krivis, among
9 the best wage and hour mediators in the state, to achieve an excellent eight-figure settlement with
10 strong equitable relief components in the face of a bevy of risks. (Cottrell Decl., ¶ 78.) Plaintiffs
11 prevailed on several key motions—notably, the motion to vacate the arbitration order in this case, and
12 Plaintiffs' defeat of the motion to strike the PAGA claims of the Alameda County cases—and
13 proceeded to highly contentious discovery practice on the joint employer claims. (*Id.*) The skill Class
14 Counsel brought to bear allowed the Actions to proceed to mediation on a statewide basis, informed
15 by extensive formal and informal discovery and investigation by Class Counsel. (*Id.*, ¶ 79.) The
16 material terms of the Settlement were only agreed to by the Parties after two mediation sessions with
17 Mr. Krivis, followed by a lengthy drafting process for the long-form agreement. (*Id.*)

18 The Settlement provides strong monetary and equitable relief, and after preliminary approval
19 and notice to the Class, Plaintiffs expect that there will be few (if any) objections. The proposed
20 Settlement is strongly entitled to a presumption of fairness in these circumstances.

21 **B. The Proposed Settlement is Well Within the Range of Fairness**

22 A preliminary review of the Settlement reveals the fairness of its terms. (See *id.*, ¶ 81.) An
23 estimated Class Net Settlement Amount of approximately \$5,581,800 will be available for distribution
24 to Participating Class Members. The average net Class Settlement Share for each of the approximately
25 8,478 proposed Class Members is approximately \$658.39. (*Id.*) Additionally, Aggrieved Employees
26 (i.e., those employees eligible for the PAGA component of the Settlement) will receive an estimated
27 average recovery of \$17.83 per person from the 25% employee portion of the PAGA Allocation. (*Id.*)
28 This result is not only within the reasonable standard, but Class Counsel believes it is exceptional

1 when considering the nature of Plaintiffs' claims and the difficulty and risks presented by continuing
2 this litigation. (*Id.*)

3 Here, to facilitate settlement negotiations, Class Counsel investigated the applicable law and
4 the facts in this case and extensively analyzed the potential damages that might be recovered following
5 the exchange of documents and information with Defendants. (*Id.*, ¶ 82.) Defendants provided formal
6 and informal discovery showing the total number Class Members, the number of current employee
7 Class Members, the number of former employee Class Members, the total number of Class
8 workweeks and pay periods, and the average hourly rate of pay for Class Members, as well as similar,
9 separate information for Aggrieved Employees. (*Id.*, ¶ 83.) Defendants also produced a 5% sampling
10 of timekeeping and payroll records for each of the Facilities at issue and numerous other documents.
11 (*Id.*) The data showed that, across all Actions, there were 8,478 Class Members that worked a
12 combined total of 355,196 workweeks at an average hourly rate of \$24.81, and 1,402 Aggrieved
13 Employees that worked a combined total of 47,944 pay periods at an average hourly rate of \$29.18.
14 (*Id.*, ¶ 84.)

15 Plaintiffs used this information, along with information and data gathered in in Plaintiffs'
16 investigation, to perform a careful and extensive analysis of the effects of Defendants' compensation
17 practices on Class Members' pay. (*Id.*, ¶ 85.) Applying these inputs and further data points to
18 Defendants' compensation practices, Plaintiffs prepared a damages analysis that provided the
19 estimated recovery for each cause of action. (*Id.*, ¶ 86.) The input variables in the analysis can be
20 adjusted to reflect differing assumptions for the level of violations that Plaintiffs may prove. (*Id.*)

21 Assuming that Plaintiffs and the Class fully certify and prevail on all claims and prove that
22 they are owed for unpaid time ranging from 0.5 to 1.5 hours per week (depending on the type of
23 employee and time period, i.e., pre-Covid, during the pandemic, and post-Covid), experienced meal
24 period violations in 50% of shifts and rest break violations in 65% of shifts, and unreimbursed
25 expenses ranging from \$10 to \$30 per week (again, depending on the type of employee and time
26 period), Plaintiffs estimate the total damages for substantive claims (i.e., minimum wage, overtime,
27
28

1 meal and rest break, and unreimbursed expenses) at approximately \$69,116,166.¹⁰ (*Id.*, ¶¶ 87-89.)

2 Plaintiffs further estimated the further derivative penalties of \$33,583,534 for waiting time
3 penalties and \$9,332,127 and for wage statement penalties, and additionally, PAGA penalties of
4 \$11,234,761.¹¹ (*Id.*, ¶ 90.)

5 Adding together the exposure for substantive claims and derivative and PAGA claims results
6 in a total estimated exposure of \$123,266,589 for the entire litigation. *Id.*, ¶ 92. This is the full,
7 “soaking wet” valuation for the entire scope of representative claims. These figures provided
8 benchmarks for Plaintiffs and Class Counsel to gauge settlement offers, compared to a hypothetical
9 maximum that assumes complete success on every claim and overcoming each of Defendants’
10 defenses. *Id.*, ¶ 93. Accordingly, the Settlement was agreed upon following an extensive review of the
11 facts and law in this case. (*Id.*; *Kullar v. Foot Locker Retail Inc.* (2008) 168 Cal.App.4th 116, 129-
12 31.)

13 The Gross Settlement Amount of \$10,000,000 is approximately 14.5% of Plaintiffs’ total
14 estimated exposure for the substantive Class claims, and approximately 8.1% of Plaintiffs’ total
15 estimated exposure for the substantive Class, derivative, and PAGA Claims. (*Id.*, ¶ 94.) This is a
16 recovery that easily falls within the range of reasonableness, particularly considering that Courts
17 routinely approve settlements that provide a fraction of the maximum potential recovery. (See, e.g.,
18 *Officers for Justice v. Civil Serv. Com.* (9th Cir. 1982) 688 F.2d 615, 628; *Viceral v. Mistras Grp.,*
19 *Inc.* (N.D. Cal. Oct. 11, 2016) 2016 WL 5907869, 2016 U.S. Dist. LEXIS 140759, at *7 [approving
20 wage and hour settlement which represented 8.1% of the total verdict value].)¹² “It is well-settled law
21

22 ¹⁰ This total is comprised of \$11,025,312 for unpaid wage (minimum wage and overtime) claims,
23 \$22,031,032 for meal period claims, \$28,640,341 for rest break claims, and \$7,419,481 for
unreimbursed expenses. (*Id.*, ¶ 89.)

24 ¹¹ Plaintiffs’ PAGA assessment assumes that three PAGA penalties of \$100 each are “stacked” per
25 pay period—one each for the fundamental substantive claims: unpaid wages, meal periods and rest
breaks, and unreimbursed expenses. (*Id.*, ¶ 91.)

26 ¹² See also *Stovall-Gusman v. W.W. Granger, Inc.* (N.D. Cal. June 17, 2015) 2015 WL 3776765, at
27 *4 [“10% gross and 7.3% net figures are ‘within the range of reasonableness’”]; *Balderas v. Massage*
28 *Envy Franchising, LLP* (N.D. Cal. July 21, 2014) 2014 WL 3610945, at *5 [gross settlement amount
of 8% of maximum recovery and net settlement amount of 5%]; *Ma v. Covidien Holding, Inc.* (C.D.
Cal. Jan. 31, 2014) 2014 WL 360196, at *4-5 [9.1% of “the total value of the action” is within the
range of reasonableness].

1 that a cash settlement amounting to only a fraction of the potential recovery does not *per se* render the
2 settlement inadequate or unfair.” (*In Re Mego Fin. Corp. Sec. Litig.* (9th Cir. 2000) 213 F.3d 454, 459
3 [internal quotations and citations omitted].)

4 Lastly, the PAGA Allocation of \$100,000 is approximately 0.89% of Plaintiffs’ total estimated
5 undiscounted exposure of approximately for the PAGA claims, which is within the range of
6 settlements previously approved in other California courts in hybrid class/PAGA settlements. (Cottrell
7 Decl., ¶ 95; see *Haralson v U.S. Aviation Servs. Corp.* (N.D. Cal. 2019) 383 F.Supp.3d 959, 972-74
8 [citing cases reflecting approval of settlements at 0.2% to 1.1% of verdict value of PAGA penalty].)

9 **C. The Proposed Settlement Provides Compelling Benefits Compared to the**
10 **Significant Risks of Continued Litigation**

11 It is equally well-settled that a proposed settlement is not to be measured against a hypothetical
12 ideal result that might have been achieved. (See, e.g., *7-Eleven Owners for Fair Franchising v.*
13 *Southland Corp.* (2000) 85 Cal.App.4th 1135, 1150.) “[I]t is the very uncertainty of outcome in
14 litigation and avoidance of wasteful and expensive litigation that induce consensual settlements. The
15 proposed settlement is not to be judged against a hypothetical or speculative measure of what might
16 have been achieved by the negotiators.” (*Id.* [quoting *Linney v. Cellular Alaska Partnership* (9th Cir.
17 1998) 151 F.3d 1234, 1242].) Here, the certain benefits of the Settlement must be considered in
18 conjunction with the major risks of continuing the Actions—many of which are unique to this to this
19 litigation—which Class Counsel carefully assessed. (Cottrell Decl., ¶¶ 96-114.) Plaintiffs face an
20 array of factual, evidentiary, and legal complications in pursuing these claims, including Plum’s entity
21 structure for the Facilities, Plum’s acquisition by Providence, the nature of the off-the-clock violations
22 at issue, and the hurdles of certification proceedings.

23 Plum’s entity structure, under which each Facility has a separate LLC that at least nominally
24 operates the Facility and employs the facility-level workers, poses risks and complications that are
25 fundamental to Plaintiffs’ case. Plaintiffs’ investigation shows that personnel at both the Plum level
26 and the Facility Entity level were involved in managerial decisions affecting the wages, hours, and
27 working conditions for non-exempt employees at the Facilities. (*Id.*, ¶ 99.) For example, Class
28 Counsel has developed information that Plum was involved in hiring and termination decisions for

1 particular facility-level employees, as well as setting pay rates and labor budgeting. (*Id.*) This exists
2 against a backdrop where Plum created written policies and other procedures that applied across the
3 Facilities, as well as statements by Plum’s leadership indicating that Plum operates a cohesive network
4 of healthcare facilities with common control and standardized operations. (*Id.*)

5 While these facts are, of course, beneficial to Plaintiffs’ joint employer claim of liability, they
6 nevertheless highlight the legal risks and the evidentiary and factual complications of pursuing this
7 unique litigation. In *Martinez v. Combs* (2010) 49 Cal.4th 35, 58, the California Supreme Court
8 explained that “to employ” has three alternative definitions: (a) to exercise control over the wages,
9 hours, or working conditions, (b) to suffer or permit to work, or (c) to engage. (See *Curry v. Equilon*
10 *Enterprises, LLC* (2018) 23 Cal.App.5th 289, 301, *as modified on denial of reh’g* (May 18, 2018)
11 [citing *Martinez*].) In this framework, joint employer liability can exist across multiple entities, but
12 Plaintiffs will be required to establish that Plum controls the wages, hours, or working conditions for
13 the facility-level employees (or is otherwise liable for the wage and hour violations alleged). Plaintiffs
14 will be called on to make a showing of joint employer liability at the class certification, merits, and
15 potentially even the discovery phases of the proceedings, through a comprehensive presentation of
16 testimony and documentary evidence. Doing so for thousands of employees, at various Facilities, will
17 be no minor matter—this is a central, core risk to this litigation. (Cottrell Decl., ¶ 100.)

18 Moreover, this scenario poses serious risks and complications for Plaintiffs’ ability to conduct
19 discovery and develop evidence to build their case. In this context, key witnesses and documentary
20 evidence and records are disbursed between Plum and the Facility Entities. (*Id.*, ¶ 101.) In contrast to
21 many wage and hour cases, Plaintiffs will not be able to obtain documents and records from single
22 source and will instead be forced to obtain these materials from Plum and dozens of Facility Entities.
23 (*Id.*) Beyond these practical complications, Plum has and would continue to strenuously resist
24 discovery against it on the basis that it was *not* the employer of the Facility Employees. (*Id.*, ¶ 102.)
25 Thus, Plaintiffs face serious risks and complications in their ability to develop evidence for the central
26 joint employer issue, and Plum will continue to attempt to stifle Plaintiffs’ efforts to do so. To be sure,
27 it is a virtual certainty that Plum would oppose class certification and engage in dispositive motion
28 practice on the very basis that Plaintiffs lack sufficient evidence of joint employer liability. (*Id.*) These

1 hurdles are fundamental to the case and would be in play even if the litigation was focused on the
2 employees at a single Facility.

3 While Plaintiffs are confident in their ability to ultimately show that Plum is the joint employer
4 of Plaintiffs and the facility-level employees, the issue would be bitterly disputed by Plum at every
5 phase. The issue was already raised in Plum's motions to strike the PAGA claims in the Alameda
6 County cases, and it would likely come up at each phase of future proceedings in all of the Actions.
7 (*Id.*, ¶ 103.) It would require the Parties to delve into granular disputes regarding Plum's asserted
8 control over the wages, hours, and working conditions and to present an abundance of highly specific
9 evidence on various aspects of employee control in the healthcare setting. If Plaintiffs are unable to
10 establish joint employer liability, they would be limited in their ability to obtain broader, statewide
11 relief and to go after the deeper pockets of the larger entity. The joint employer dispute poses core
12 risks as to all the claims, including Plaintiffs' ability to proceed on a representative basis, and renders
13 this case different than many typical wage and hour actions. (*Id.*, ¶ 105.)

14 Plum's takeover by Providence imposes significant additional risks. The role of Plum as a
15 human resources service provider to the Facilities (its role according to Plum's rubric) has been
16 supplanted by Providence. (*Id.*, ¶ 106.) There may naturally be a loss of access to witnesses and
17 documents due to turnover and changes in operations. Ostensibly, Providence may implement
18 differing policies and practices, which may tend to skew the testimony of employees and managers
19 regarding prior practices at issue in this litigation and would invariably complicate Plaintiffs' ability
20 to make a cohesive showing of uniform, common operations. Moreover, there is the basic risk that
21 the new ownership would attempt to liquidate Plum and/or the Facility Entities and create a new entity
22 structure, thereby inhibiting Plaintiffs' ability to recover for the wage and hour violations and/or
23 enforce any judgment obtained (even if the liability flowed to successor entities). (*Id.*, ¶ 107.)

24 Plaintiffs would face other significant risks if the litigation were to proceed to trial. The wage
25 and hour claims at issue are highly dependent on employee testimony and, to the extent available,
26 indirect documentary evidence of the wage and hour violations alleged. (*Id.*, ¶ 108.) For example,
27 there is lack of direct records of the off-the-clock work alleged, as the time was not logged, and
28 Plaintiffs would be reliant on indirect evidence, such as timestamped activities that may have left a

1 “paper trail” in the various electronic systems used by Defendants. (*Id.*) Plaintiffs are largely
2 dependent on obtaining credible testimony from employees that may be unwilling to testify and
3 obtuse, indirect records of work activities that pose difficulties for review and analysis. (*Id.*)

4 Again, these issues would arise at both the merits and certification stages. Plaintiffs’ motion
5 for class certification would require extensive investigation and outreach efforts by Class Counsel to
6 obtain supporting evidence and would be vigorously contested by Defendants with significant risk
7 that the motion would be denied. (*Id.*, ¶ 109.) In the experience of Class Counsel, putative class actions
8 for off-the-clock claims have traditionally been difficult to certify.¹³ (*Id.*) Plaintiffs’ theory of off-the-
9 clock work is based in large part on indirect pressures to work unpaid time, driven by insufficient
10 staffing and the obligations of providing sufficient patient care, food, nourishment, and living
11 conditions in the long-term care setting. (*Id.*, ¶ 110.) These pressures may be found to vary from
12 worker to worker or location to location. (*Id.*) Plaintiffs would face considerable risk that the Court
13 would find that individual issues predominate over common questions of law and fact. (*Id.*) Such an
14 outcome would doom the Class claims, and could pose significant challenges for litigating the PAGA
15 claims.

16 Even assuming that the motion is granted, Plaintiffs would then have to establish class-wide
17 liability—inclusive of joint employer liability as to Plum—and prove up various issues regarding
18 damages and penalties. (Cottrell Decl., ¶ 111.) Proving liability and damages issues would also be
19 complicated by any individualized differences in wage and hour experiences across the Class, and
20 would be vigorously disputed by Defendants. (*Id.*) Plaintiffs and Class Counsel would be confronted
21 with a lack of direct documentary evidence regarding off-the-clock time, break violations, and
22 unreimbursed expenses and again, their showing on joint employer liability would be strenuously
23 attacked by Plum. (*Id.*) Obtaining class certification, establishing liability, and proving damages
24 would take many months, and would necessitate expert witness testimony and significant additional
25 resources. (*Id.*, ¶ 112)

26
27 ¹³ See, e.g., *In re AutoZone, Inc., Wage & Hour Employment Practices Litig.* (N.D. Cal. 2012) 289
28 F.R.D. 526, 539, *aff’d*, 2019 WL 4898684 (9th Cir. Oct. 4, 2019); *Kilbourne v. Coca-Cola Co.* (S.D.
Cal. July 29, 2015) 2015 WL 5117080, at *14; *York v. Starbucks Corp.* (C.D. Cal. Nov. 23, 2011)
2011 U.S. Dist. LEXIS 155682, 2011 WL 8199987, at *30.

1 Given the broad scope and magnitude of risks, Class Counsel concluded that a settlement that
2 provides a material percentage of Plaintiff’s full “soaking wet” damages estimate would be a
3 beneficial and just result for the Class. (*Id.*, ¶ 113.) The proposed Settlement achieves this result, and
4 further, provides major equitable relief. (*Id.*) In light of the challenges that Plaintiffs would likely face,
5 the proposed Settlement is extremely reasonable. (*Id.*, ¶ 114.) In contrast to the risk and uncertainty
6 of continued litigation, the Settlement will yield a prompt, certain, and substantial recovery for Class
7 Members. Such a result will benefit the Parties and the court system. (*Id.*)

8 **D. The Proposed Service Awards are Reasonable**

9 It is well-established that representative plaintiffs are eligible for reasonable incentive
10 payments to compensate them for the time, expense, and risk they have incurred in conferring a benefit
11 on other members of the class. (See, e.g., *Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles* (2010)
12 186 Cal.App.4th 399, 412.) Courts award service payments to advance public policy by encouraging
13 individuals to come forward and perform their civic duty in protecting the rights of the class, as well
14 as to compensate class representatives for their time, effort and inconvenience. (*In Re California*
15 *Indirect Purchases* (1998) 1998 WL 1031494, *11.)

16 Plaintiffs seek reasonable Service Awards from the Gross Settlement Amount. Under the
17 terms of the Settlement, Plaintiffs will seek service awards of \$10,000 each for Plaintiffs Gillespie,
18 Suastegui, Harding, Corona, and Arriaga, and \$15,000 for Plaintiff Guerrero. (Settlement, ¶ III.C.1.)
19 The \$65,000 total amount of the Service Awards represents just 0.65% of the Gross Settlement
20 Amount. These amounts are reasonable, particularly given the length of time the Actions have been
21 in litigation and the importance of the monetary and equitable relief achieved.¹⁴ Plaintiffs have
22 contributed numerous hours of their own time and efforts over a period of three years in pursuing the
23 Class and PAGA claims, and have subjected themselves to considerable risk with regards to future
24 employment opportunities. (Cottrell Decl., ¶ 117; Gillespie Decl., ¶ 6; Guerrero Decl., ¶ 6; Suastegui
25

26 ¹⁴ The increased amount for Plaintiff Guerrero reflects that he is a current employee at a Facility, was
27 instrumental in providing information on current operations for the mediations, and allowed for the
28 Equitable/Injunctive Components of the Settlement to become a reality. While the participation of all
Plaintiffs was important, Plaintiff Guerrero played a particularly critical role in the litigation and
mediations.

Decl., ¶ 6; Arriaga Decl., ¶ 6; Corona Decl., ¶ 6; Harding Decl., ¶ 6.)

Given that detailed information regarding operations at the Facilities is not publicly available, inclusive of the role of Plum in the work setting, Class Counsel required significant participation and assistance by Plaintiffs to provide an understanding of the work and the wage and hour violations at issue. As noted above, the alleged off-the-clock time, work during breaks, and unreimbursed expenses were not formally logged or tracked, and thus, Class Counsel did not have a direct, easily accessible methodology for developing an understanding of violation rates. Among their many contributions, Plaintiffs worked closely with Class Counsel to develop realistic estimates of the amount and frequency of the wage and hour violations at the Facilities, which provided inputs that drove Plaintiffs' damages analyses. (Cottrell Decl., ¶ 119.) Plaintiffs had discussions with Class Counsel, worked with Class Counsel to review facts and answer questions, assisted Class Counsel in their mediation efforts, and remained apprised of the case since they elected to become named Plaintiffs. (*Id.*, ¶ 120.)

Moreover, Plaintiffs took the significant risk of coming forward to represent the interests of their fellow employees. (*Id.*, ¶ 121.) They filed the Actions to improve the working environment for workers at the Facilities, but in doing so, subjected themselves to considerable risk with regards to having their names in the public forum. (*Id.*) Plaintiffs' participation in this litigation is discernible from a simple background check and even via simple Google searches—this poses serious risks that their service as wage and hour plaintiffs will be discerned by potential employers and negatively impact future employment opportunities. In 2024, this risk is very real. The requested service awards are reasonable considering the efforts Plaintiffs made and the risks they took in prosecuting the Actions to obtain the Settlement. (See *Cellphone Termination Fee Cases* (2010) 186 Cal.App.4th 1380, 1393-94 [Service awards “are intended to compensate class representatives for work done on behalf of the class, to make up for financial or reputational risk undertaken in bringing the action, and, sometimes, to recognize their willingness to act as a private attorney general.”].)

E. The Proposed Payment of Attorneys' Fees and Costs is Reasonable

Plaintiffs seek reasonable attorneys' fees and costs from the Gross Settlement Amount. (Cottrell Decl., ¶ 123.) Under the terms of the Settlement, Class Counsel may seek up to 35% of the Gross Settlement Amount, or \$3,500,000, and actual costs (currently estimated at \$50,000). (*Id.*;

1 Settlement, ¶¶ II.D, III.C.2.)¹⁵ The requested Class Counsel Fees and Expenses Payment are
2 reasonable compensation for the excellent monetary recovery and equitable relief achieved.

3 In this case, there was no guarantee of compensation or reimbursement. (Cottrell Decl., ¶ 124.)
4 Rather, Class Counsel has undertaken all the risks of this litigation on a completely contingent fee
5 basis. (*Id.*) The inherent risk of proving liability and damages on a class-wide basis and Defendants’
6 representation by skillful counsel confronted Class Counsel with the prospect of recovering nothing
7 or close to nothing for their commitment to and investment in the case. (*Id.*) Nevertheless, Plaintiffs
8 and Class Counsel have committed themselves to developing and pressing Plaintiffs’ legal claims to
9 enforce the employees’ rights and maximize the Class recovery—as reflected by Class Counsel’s
10 perseverance and skill in prevailing through several years of intensive motion practice across the
11 Actions, which allowed this broad, statewide Settlement to become a reality. (*Id.*, ¶ 125.)

12 Attorneys who litigate on a wholly or partially contingent basis expect to receive significantly
13 higher effective hourly rates in cases where compensation is contingent on success, particularly in
14 hard-fought cases where, like in the Actions at bar, the result is uncertain. (*Id.*, ¶ 126.) This does not
15 result in any windfall or undue bonus. (*Id.*) In the legal marketplace, a lawyer who assumes a
16 significant financial risk on behalf of a client rightfully expects that his or her compensation will be
17 significantly greater than if no risk was involved (i.e., if the client paid the bill monthly), and that the
18 greater the risk, the greater the “enhancement.” (*Id.*) Adjusting court-awarded fees upward in
19 contingent fee cases to reflect the risk of recovering no compensation whatsoever for hundreds of
20 hours of labor simply makes those fee awards consistent with the legal marketplace, and in so doing,
21 helps to ensure that meritorious cases will be brought to enforce important public interest policies and
22 that clients who have meritorious claims will be better able to obtain qualified counsel. (*Id.*)

23 This commitment and the risks involved are precisely the reasons for multipliers in
24 contingency fee cases. The requested attorneys’ fees reflect a reasonable multiplier when compared
25 to Class Counsel’s lodestar amount, currently estimated to be approximately \$1,500,000 across the

26 ¹⁵ Class Counsel, at their option, may also apply to the court in any of the Actions for further attorneys’
27 fees and costs associated with obtaining and monitoring the Equitable/Injunctive Components of the
28 Settlement, in the amount of up to an additional 35% of the valuation of the equitable/injunctive relief,
and Defendants will not oppose their request. (Settlement, ¶ III.C.2.)

1 Actions. (*Id.*, ¶ 127.) This amount would only increase with preparation and attendance at the
2 preliminary and final approval hearings, further communications with Class Members during the
3 notice process, and Settlement administration and oversight.¹⁶ (*Id.*) As Class Members will receive a
4 significant payment if the Settlement is approved, Class Counsel seeks a reasonable fee award for
5 their efforts and the risk they have assumed. (*Id.*, ¶ 128.)

6 Class Counsel’s fee request of 35% of the Gross Settlement Amount is well within the range
7 customarily approved by California and federal courts in comparable class actions. (See, e.g., *Laffitte*
8 *v. Robert Half Internat. Inc.* (2014) 231 Cal.App.4th 860, 878; *Van Vranken v. Atlantic Richfield Co.*
9 (N.D. Cal. 1995) 901 F.Supp. 294, 297-98 [“Class Counsel have also cited 73 district court opinions
10 in which fees in the range of 30-50 percent of the common fund were awarded.”]; *Cicero v. DirecTV,*
11 *Inc.* (C.D. Cal. July 27, 2010) 2010 U.S. Dist. LEXIS 86920, 2010 WL 2991486, at *17 [“a review
12 of California cases in other districts reveals that courts usually award attorneys’ fees in the 30-40%
13 range in wage and hour class actions that result in recovery of a common fund under \$10 million”].)

14 Furthermore, reasonable litigation expenses are ordinarily included with an award of
15 attorneys’ fees pursuant to California wage and hour law. Class Counsel’s expenses were reasonable,
16 were necessary to the prosecution, and are customarily billed to fee-paying clients. (Cottrell Decl., ¶
17 129.) The requested attorneys’ fees and costs are reasonable compensation for the excellent result
18 achieved and should be preliminarily approved. (*Id.*, ¶ 130.)

19 **V. THE COURT SHOULD CONDITIONALLY CERTIFY THE CLASS FOR**
20 **SETTLEMENT PURPOSES**

21 This Court should certify the proposed Class pursuant to CCP section 382 for purposes of the
22 Settlement.¹⁷ Section 382 provides: “[W]hen the question is one of a common or general interest, of
23 many persons, or when the parties are numerous, and it is impracticable to bring them all before the
24 court, one or more may sue or defend for the benefit of all.” California has a strong public policy in
25 favor of broad enforcement of wage and hour laws for the benefit of workers and in favor of using the
26

27 ¹⁶ Plaintiffs will include detailed lodestar figures and information with their final approval motion.

28 ¹⁷ For purposes of the Settlement only, the Parties have stipulated that all requirements of class
certification have been met. (Settlement, ¶ III.K.1.b.)

1 class action device. (*Sav-On Drug Stores, Inc. v. Superior Court* (2004) 34 Cal.4th 319, 340.)

2 The party seeking certification has the burden of establishing the existence of both an
3 ascertainable class and a well-defined community of interest among class members. (*Id.* at 326.) The
4 “community of interest” requirement embodies three factors: (1) predominant common questions of
5 law or fact; (2) class representatives with claims or defenses typical of the class; and (3) class
6 representatives who can adequately represent the class. (*Id.*) Plaintiffs can meet that burden here for
7 settlement purposes.

8 **A. Plaintiffs Satisfy the Ascertainability and Numerosity Requirements**

9 In determining whether a class is “ascertainable,” courts “examine the class definition, the size
10 of the class, and the means of identifying the class members.” (*Reyes v. Bd. of Supervisors* (1987) 196
11 Cal.App.3d 1263, 1274-75.) Plaintiffs have defined the Class according to objective criteria.
12 (Settlement, ¶¶ II.C, II.R, II.Q, II.J, II.II; Cottrell Decl., ¶ 132.) Plaintiffs contend the Class Members
13 are easily identifiable and can be easily located from Defendants’ records. (Cottrell Decl., ¶ 133.)
14 With respect to numerosity, the Class consists of 8,478 putative individuals. (*Id.*, ¶ 134.) This size
15 clearly renders the Class so large as to make joinder impracticable. (*Id.*)

16 **B. Common Questions of Law and Fact Predominate**

17 “[T]he focus in a certification dispute is on what type of questions – common or individual –
18 are likely to arise in the action[.]” (*Sav-On*, 34 Cal.4th at 427.) Predominance does not require that all
19 questions of law and fact be uniform for all members of the class. (*Id.* at 338.) Here, Plaintiffs contend
20 that Defendants’ class-wide policies and procedures raise common issues of law and fact that are
21 applicable to the claims of Plaintiffs and Class Members. (Cottrell Decl., ¶ 135.)

22 In particular, Plaintiffs’ investigation shows that Plum created written policies and other
23 procedures that applied across the Facilities in a cohesive network of healthcare facilities with
24 common control and standardized operations. (*Id.*, ¶ 136.) Class Counsel has further developed
25 information that Plum was involved in employment decisions for Class Members, as well as setting
26 pay rates and labor budgeting. (*Id.*) Across all the Facilities, the Class Members are subject to the
27 obligations of providing sufficient patient care, food, nourishment, and living conditions in the long-
28 term care setting.

1 Plaintiffs allege that the Class Members experience common types of wage and hour
2 violations, driven by uniform policies and procedures, uniform insufficient staffing, and the
3 obligations of the healthcare setting. (*Id.*, ¶ 137.) These commonalities provide the cohesion necessary
4 for certification of the Class. With the common policies, procedures, practices, and working
5 conditions, “the legal question to be resolved is not an individual one. To the contrary, the common
6 legal question remains the overall impact of [Defendants’] policies on its [employees].” (*Jaimez v.*
7 *Daiohs USA, Inc.* (2010) 181 Cal.App.4th 1286, 1299.)

8 **C. Plaintiffs Satisfy the Typicality Requirement**

9 A representative plaintiff’s claims are “typical” if they arise from the same event, practice, or
10 course of conduct that gives rise to the claims of the other class members and if their claims are based
11 on the same legal theory. (*Classen v. Weller* (1983) 145 Cal.App.3d 27, 46-47; *Linder v. Thrifty Oil*
12 *Co.* (2010) 23 Cal.4th 429, 435.) The typicality requirement is not onerous and does not require the
13 claims to be identical. (*Id.*)

14 Here, Plaintiffs contend that they, like other Class Members, were subject to Defendants’
15 policies and procedures described above, and suffered damages from the alleged wage and hour
16 violations that emanated as a result. (Cottrell Decl., ¶ 138.) Plaintiffs also assert that the Class
17 Members were subjected to the same illegal practices and policies to which Plaintiffs were subjected
18 and the Class claims are based on the same legal theory as Plaintiffs’ individual claims. (*Id.*, ¶ 139.)
19 Accordingly, Plaintiffs are members of the Class they seek to represent, and their claims are “typical”
20 of those asserted by other Class Members.

21 **D. Plaintiffs Satisfy the Adequacy Requirement**

22 A plaintiff is an adequate class representative if his or her claims are not inconsistent with or
23 antagonistic to the claims of the class members. (See *Johnson v. GlaxoSmithKline, Inc.* (2008) 166
24 Cal.App.4th 1497, 1509.) Here, Plaintiffs contend that their interests are exactly in line with those of
25 the Class, Plaintiffs have agreed to prosecute this case as named Plaintiffs with the interests of the
26 Class in mind and understand their responsibilities, and there are no conflicts between Plaintiffs and
27 the proposed Class. (Cottrell Decl., ¶ 140.) Furthermore, Plaintiffs are represented by counsel with
28 extensive experience in class action and employment litigation, including wage and hour class actions,

1 and who do not have any conflict with the Class. (*Id.*, ¶¶ 6-8, 141.) For these reasons, Plaintiffs satisfy
2 the adequacy requirement.

3 **VI. THE PROPOSED NOTICE PROVIDES ADEQUATE NOTICE TO THE CLASS**

4 “Adequate notice is critical to court approval of a class settlement....” (*Hanlon v. Chrysler*
5 *Corp.* (9th Cir. 1998) 150 F.3d 1011, 1025.) A class action settlement notice “is satisfactory if it
6 generally describes the terms of the settlement in sufficient detail to alert those with adverse
7 viewpoints to investigate and to come forward and be heard.” (*Churchill Village LLC v. General*
8 *Electric* (9th Cir. 2004) 361 F.3d 566, 575.)

9 Here, Defendants will identify all Class Members, and the Settlement Administrator will send
10 the Class Notice, via first class U.S. mail and email to each Class Member at their last known
11 addresses provided by Defendants, following an updated review of the National Change of Address
12 database by Settlement Administrator. (Settlement, ¶ III.E.2.b, d) Prior to mailing the Notice to Class
13 Members, the Settlement Administrator will run the addresses in the data provided by Defendants
14 through the National Change of Address Database for any address updates and update the data as
15 necessary, and will engage in skip tracing for undeliverable notices. (*Id.*) The Settlement
16 Administrator will also create and host a website for the Settlement and a toll-free call center to field
17 telephone inquiries from Class Members during the notice and settlement administration periods.
18 (Settlement, ¶ III.E.2.c.)

19 The proposed Class Notice is clear and straightforward, and provides information on the case,
20 the meaning and nature of the proposed Settlement, its terms and provisions, and the rights of the
21 Class Members to participate, opt out, and object. (Cottrell Decl., ¶ 142; Settlement, Ex. B.) It
22 describes the monetary awards that the Settlement will provide to Class Members, how the awards
23 were calculated, and the Class release. (*Id.*) It also provides the date, time, and location of the Final
24 Approval Hearing, and the identity and contact information for Class Counsel. (*Id.*) The proposed
25 Class Notice fulfills the requirement of neutrality in class notices. (Cottrell Decl., ¶ 143; *see Newberg*
26 *on Class Actions* at §§ 8:21 and 8:39; *Manual for Complex Litig.* at §§ 21:311 and 21:312.) Based on
27 the foregoing, the Class Notice complies with the standards of fairness, completeness, and neutrality
28 required of a settlement class notice disseminated under authority of the Court. (Cottrell Decl., ¶ 144.)

1 **VII. CONCLUSION**

2 For the foregoing reasons, Plaintiffs respectfully request that the Court grant this Motion for
3 Preliminary Approval and enter an order consistent with the [Proposed] Order submitted herewith.
4 Plaintiffs also respectfully request that the Court grant the accompanying stipulation for leave to file
5 the Consolidated Complaint.

6
7 Respectfully submitted,

8
9 

10 Dated: February 8, 2024

11 _____
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