

Jonathan M. Genish (State Bar No. 259031)

jgenish@blackstonepc.com

Miriam L. Schimmel (SBN 185089)

mschimmel@blackstonepc.com

Joana Fang (State Bar No. 309623)

jfang@blackstonepc.com

BLACKSTONE LAW, APC

8383 Wilshire Blvd., Suite 745

Beverly Hills, California 90211

Telephone: (310) 622-4278

Attorneys for Plaintiff ALEXANDER GNAEDIG

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

ALEXANDER GNAEDIG, individually, and
on behalf of other aggrieved employees
pursuant to the California Private Attorneys
General Act;

Plaintiff,

vs.

FAVORITE HEALTHCARE STAFFING
INC., a California limited liability corporation;
and DOES 1 through 25, inclusive,

Defendants.

Case No. 21STCV20904

**NOTICE OF MOTION AND MOTION FOR
PRELIMINARY APPROVAL OF CLASS
ACTION AND PAGA SETTLEMENT;
MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT THEREOF**

Date: December 7, 2022

Time: 9:00 a.m.

Dept.: 58

Reservation ID: 191962494900

Complaint Filed: June 4, 2021

Trial Date: None Set

1 **TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:**

2 **PLEASE TAKE NOTICE THAT** on December 7, 2022 at 9:00 a.m. in Department 58 of
3 the above-captioned Court located at 111 N. Hill Street, Los Angeles, California 90012, pursuant to
4 California Code of Civil Procedure section 382, Rule 3.769 of the California Rules of Court, and
5 California Labor Code section 2699(l), Plaintiffs Alexander Gnaedig, Akimasia Walker, Amy
6 Weston, and Janet Clifford (“Plaintiffs”)¹ will and hereby do move the Court for an Order granting
7 preliminary approval of the proposed class action and Labor Code Private Attorneys General Act of
8 2004, California Labor Code sections 2698, *et seq.* (“PAGA”) settlement between Plaintiffs and
9 Defendant Favorite Healthcare Staffing, Inc. (“Defendant”).

10 Plaintiffs request that the Court enter an Order:

- 11 1. Preliminarily approving the Joint Stipulation of Class Action and PAGA Settlement
12 (“Settlement” or “Settlement Agreement”) attached as Exhibit A to the Declaration of Jonathan M.
13 Genish in Support of Plaintiffs’ Motion for Preliminary Approval of Class Action and PAGA
14 Settlement;
- 15 2. Certifying the Class for Settlement purposes;
- 16 3. Appointing Plaintiffs Alexander Gnaedig, Akimasia Walker, Amy Weston, and Janet
17 Clifford as the Class Representative for Settlement purposes;
- 18 4. Appointing Jonathan M. Genish of Blackstone Law, APC, Hali M. Anderson of
19 GrahamHollis APC, Ashkan Shakouri of Shakouri Law Firm, and Joshua G. Konecky of Schneider
20 Wallace Cottrell Konecky LLP as Class Counsel for Settlement purposes;
- 21 5. Approving the proposed Notice of Class Action Settlement attached as Exhibit 1 to
22 the Settlement Agreement (“Class Notice”) to be mailed to the Class;
- 23 6. Approving the opt-out and objection procedures provided in the Settlement
24 Agreement and set forth in the Class Notice;

25 _____
26 ¹ As discussed herein, pursuant to the global settlement reached in this matter, on November 3,
27 2022 the parties filed a Stipulation seeking leave to file a First Amended Complaint to add these
28 individuals as additional named plaintiffs to this Action. As of the date this Motion is filed, the
Order granting approval has not been signed; however, since this Action has been resolved
globally, this Motion is being filed on behalf of all settling parties.

1 7. Directing Defendant to furnish Class Data to the Settlement Administrator no later
2 than fourteen (14) calendar days after the Court grants preliminary approval of the Settlement;

3 8. Approving the proposed deadlines for the settlement administration process; and

4 9. Setting a Final Approval Hearing.

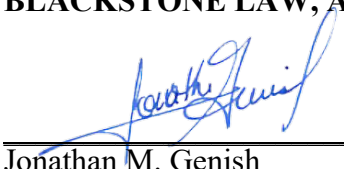
5 Pursuant to California Labor Code section 2699(l)(2), a copy of the proposed Settlement, as
6 well as information regarding the preliminary approval hearing on this matter, were submitted to the
7 California Labor and Workforce Development Agency via online submission concurrently with the
8 filing of this motion. (Genish Decl. ¶ 43).

9 This motion is based upon this notice, the attached memorandum of points and authorities,
10 the Declarations of Jonathan M. Genish, Hali M. Anderson, Ashkan Shakouri, and Joshua G.
11 Konecky, in Support of Plaintiffs' Motion for Preliminary Approval of Class Action and PAGA
12 Settlement, the Declarations of Alexander Gnaedig, Akimasia Walker, Amy Weston, and Janet
13 Clifford in Support of Plaintiff's Motion for Preliminary Approval of Class Action and PAGA
14 Settlement, the pleadings and other records on file with the Court in this matter, and any other further
15 evidence or argument that the Court may properly receive at or before the hearing.

16
17 Dated: November 10, 2022

BLACKSTONE LAW, APC

18
19 By:



Jonathan M. Genish
Miriam L. Schimmel
Attorneys for Plaintiff Alexander Gnaedig

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TABLE OF CONTENTS

I.	INTRODUCTION.....	1
II.	FACTUAL AND PROCEDURAL BACKGROUND	2
III.	THE SETTLEMENT TERMS	5
	A. Class Definition, Class Period and PAGA Period.....	5
	B. Amount of Settlement	5
	C. Allocation and Funding of the Gross Settlement Payment	6
	D. Release of Class Claims	7
	E. Release of PAGA Claims	8
IV.	STANDARD OF REVIEW FOR PRELIMINARY APPROVAL	8
V.	THE SETTLEMENT IS PRESUMED FAIR	9
	A. The Settlement Was Reached as a Result of Arm’s-Length Bargaining	9
	B. Sufficient Investigation and Discovery by Experienced Class Counsel	10
	C. The Settlement is Fair and Reasonable in Light of the Parties’ Respective Legal Positions and Recovery Risks	11
	1. Class Counsel’s Analysis of the Maximum Realistic Liability and Damages	11
	2. Class Counsel’s Risk-Based Analysis and Risk-Based Adjustments	12
VI.	CERTIFICATION FOR SETTLEMENT PURPOSES IS WARRANTED	17
	A. An Ascertainable Class Exists Which is So Numerous That Joinder of All Members is Impracticable	18
	B. The Class Shares a Well-Defined Community of Interest	18
	C. A Class Action is Superior to a Multiplicity of Litigation	20
VII.	THE REQUESTED ENHANCEMENT AWARDS ARE REASONABLE.....	20
VIII.	THE REQUESTED ATTORNEYS’ FEES AND COSTS ARE REASONABLE ..	21
IX.	THE CLASS NOTICE AND THE OPT-OUT AND OBJECTION PROCESS MEETS DUE PROCESS REQUIREMENTS	22
X.	CONCLUSION	24

TABLE OF AUTHORITIES

Federal Cases

<i>Aguirre v. Genesis Logistics</i> , 2013 WL 10936035 (C.D. Cal. 2013).....	16
<i>Armstrong v. Board of School Directors of City of Milwaukee</i> , 616 F.2d 305 (7th Cir. 1980)	9
<i>Bowles v. Superior Court</i> , 44 Cal. 2d 574 (1995)	18
<i>Castillo v. ADT, LLC</i> , 2017 WL 363108 (E.D. Cal. Jan. 25, 2017).....	16
<i>Cotter v. Lyft, Inc.</i> , 193 F.Supp.3d 1030 (N.D. Cal. 2016)	16
<i>Davis v. Brown Shoe Co.</i> , 2015 U.S. Dist. LEXIS 149010 (E.D. Cal. 2015)	17
<i>Elliot v. Spherion Pac. Work, LLC</i> , 572 F.Supp.2d 1169, 1181-82 (C.D. Cal. 2008)	15
<i>Gaudin v. Saxon Mortgage Servs., Inc.</i> , 2015 WL 7454183 (N.D. Cal. Nov. 23, 2015).....	20
<i>In re Online DVD Rental</i> , 779 F.3d 934 (9th Cir. 2014).....	20
<i>Lusby v. Gamestop Inc.</i> , 2015 U.S. Dist. LEXIS 42637 (N.D. Cal. 2015)	17
<i>Martinov. Ecolab Inc.</i> , No. 3: 14CV04358 (N.D. Cal. 201 7)	17
<i>Officers for Justice v. Civil Service Commission of City and County of San Francisco</i> , 688 F.2d 615 (1982)	9
<i>Smith v. Lux Retail North America, Inc.</i> , 2013 WL 2932243 at *3 (N.D. Cal. June 13, 2013)	16
<i>Wal-Mart Stores, Inc. v. Dukes</i> , 131 S.Ct. 2541, 2551(2011).....	12
<i>Zamora v. Ryder Integrated Logistics, Inc.</i> , 2014 U.S. Dist. LEXIS 184096 (S.D. Cal. 2014)	17

State Cases

<i>B.W.I. Custom Kitchen v. Owens-Illinois, Inc.</i> , 191 Cal.App.3d 1341 (1987).....	19
<i>Bararsani v. Coldwell Banker Residential Brokerage Company, Los Angeles Superior Court Case No. BC495767</i> (2016)	17
<i>Bradley v. Networkers Int’l, LLC</i> , 211 Cal.App.4th 1129 (2012)	12
<i>Brinker Restaurant Corp. v. Superior Court</i> , 53 Cal.4th 1051 (2012);	12
<i>Carrington v. Starbucks Corp.</i> 30 Cal.App.5th 504, 529 (2018).....	16
<i>Clark v. Am. Residential Servs. LLC</i> , 175 Cal. App. 4th 785 (2009).....	10
<i>Clothesrigger, Inc. v. GTE Corp.</i> , 191 Cal.App.3d 605 (1987).....	18
<i>Daar v. Yellow Cab Co.</i> , 67 Cal. 2d 695 (1967)	18
<i>Duran v. U.S. Bank Nat. Assn.</i> , 59 Cal.4th 1 (2014).....	12

1	<i>Hebbard v. Colgrove</i> , 28 Cal.App.3d 1017, 1030 (1972).....	18
2	<i>In re Cellphone Fee Termination Cases</i> , 186 Cal.App.4th 1380 (2010)	23
3	<i>Kullar v. Foot Locker Retail, Inc.</i> (2008) 168 Cal.App.4th 116	11
4	<i>Lealao v. Beneficial Cal, Inc.</i> , 82 Cal.App.4th 19 (2000).....	21
5	<i>Linder v. Thrifty Oil Co.</i> , 23 Cal.4th 429 (2000)	20
6	<i>McGee v. Bank of America</i> , 60 Cal.App.3d 442 (1976).....	19
7	<i>Miller v. Woods</i> , 148 Cal.App.3d 862 (1983).	18
8	<i>Munoz v. BCI Coca-Cola Bottling Co.</i> , 186 Cal.App.4th 399 (2010)	20
9	<i>Rose v. City of Hayward</i> , 126 Cal.App.3d 926, 934 (1981).....	18
10	<i>Sanchez v. McDonalds Restaurants of California, Inc.</i> , 2017 WL 4620746 (LA Super. Ct. July 6, 2017).....	16
11	<i>Seastrom v. Neways, Inc.</i> , 149 Cal.App. 4th 1496 (2007).....	19
12	<i>See In re Microsoft I-V Cases</i> , 135 Cal.App.4th 706 (2006)	9
13	<i>Thurman v. Bayshore Transit Management, Inc.</i> , 203 Cal.App.4th 1112,1131 (2012).....	16
14	<i>Wershba v. Apple Computer, Inc.</i> , 91 Cal.App.4th 224 (2001)	9, 10, 11
15	<i>Wesson v. Staples the Office Superstore, LLC</i> , 68 Cal.App.5th 746 (2021).....	16
16	Statutes	
17	29 U.S.C. § 207	3, 7
18	California Business and Professions Code §§ 17200, <i>et seq</i>	3, 7
19	California Civil Code § 3287(a).....	7
20	California Code of Civil Procedure § 1021.5.....	7
21	California Code of Civil Procedure section 382.	17
22	California Code of Civil Procedure section 384	7
23	California Labor Code § 200	7
24	California Labor Code §201.....	2, 3, 7
25	California Labor Code § 201.3.....	7
26	California Labor Code §202.....	2, 3, 7
27	California Labor Code § 203.....	2, 3, 7
28		

1	California Labor Code § 204	7
2	California Labor Code §210.....	7
3	California Labor Code § 218.5.....	7
4	California Labor Code §218.6.....	7
5	California Labor Code §221.....	7
6	California Labor Code § 222.....	7
7	California Labor Code §223.....	7
8	California Labor Code §225.5.....	7
9	California Labor Code §226.....	7
10	California Labor Code §226.3.....	7
11	California Labor Code §226.7,	7
12	California Labor Code §246(i)	7
13	California Labor Code §500.....	7
14	California Labor Code §510	7
15	California Labor Code §512.....	7
16	California Labor Code §554.....	7
17	California Labor Code §558.....	7
18	California Labor Code §1174.....	7
19	California Labor Code §1174.5.....	7
20	California Labor Code §1194.....	7
21	California Labor Code §1194.2.....	7
22	California Labor Code §1194.3.....	7
23	California Labor Code § 1197.....	7
24	California Labor Code §1197.1.....	7
25	California Labor Code § 1198,	7
26	California Labor Code §1199,	7
27	California Labor Code §2800.....	7
28	California Labor Code §2802.....	7

1	Code of Civil Procedure Section 382	17
2	IWC Wage Order No. 5.....	3
3	Labor Code § 204.....	2
4	Labor Code § 226(a)	3
5	Labor Code § 226.7	2
6	Labor Code §§ 510.....	2
7	Labor Code § 512(a)	2
8	Labor Code sections 2699 <i>et. seq.</i>	5
9	Other Authorities	
10	<i>Findings of the Study of California Class Action Litigation</i> , 2000-2006, available at http://www.courts.ca.gov/documents/class-action-lit-study.pdf	12
11		
12	Rules	
13	Cal. Rules of Court, Rule 3.769(c).....	9
14	Cal. Rules of Court, Rule 3.769(g).....	9
15	Regulations	
16	Cal. Code Regs., Title 8 § 11040	3

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Plaintiffs Alexander Gnaedig, Akimasia Walker, Amy Weston, and Janet Clifford (“Plaintiffs”) seek preliminary approval of the Class Action and PAGA Settlement Agreement (“Settlement” or “Settlement Agreement”) entered into by the parties on behalf of all hourly-paid and/or non-exempt employees employed by Defendant Favorite Healthcare Staffing, Inc. (“Defendant”) as “Temporary Healthcare Professionals” in the State of California during the Class Period (Declaration of Jonathan M. Genish in Support of Plaintiff’s Motion for Preliminary Approval of Class Action and PAGA Settlement [“Genish Decl.”], ¶¶ 13, 14, Exh. B thereto). The Settlement terms are outlined as follows:

- Class Size: Approximately 7,290 individuals.
- Estimated Total Workweeks: 73,161
- Gross Settlement Payment: Three Million Six Hundred and Fifty Thousand Dollars and Zero Cents (\$3,650,000.00), exclusive of employer-side payroll taxes.
- Settlement Administration Costs: Not to exceed Thirty Thousand Dollars and Zero Cents (\$30,000.00).
- Class Representative Enhancement Awards: Not to Exceed Ten Thousand Dollars and Zero Cents (\$10,000.00) each to Plaintiffs Alexander Gnaedig, Akimasia Walker, Amy Weston, and Janet Clifford.
- PAGA Penalties: One Hundred and Fifty Thousand Dollars and Zero Cents (\$150,000.00), 75% of which, One Hundred and Twelve Thousand Five Hundred Dollars and Zero Cents (\$112,500.00), will be paid to the California Labor and Workforce Development Agency (“LWDA”) and the remaining 25%, Thirty-Seven Thousand Five Hundred Dollars and Zero Cents (\$37,500.00) to be paid to the PAGA Members.
- Requested Attorneys’ Fees and Costs: Attorneys’ fees of One Million Two Hundred and Sixteen Thousand Six Hundred and Sixty-Six Dollars and Sixty-Seven Cents

1 (\$1,216,666.67) (thirty-three percent of the Gross Settlement Amount) plus actual
2 litigation costs and expenses not to exceed Forty Thousand Dollars and Zero Cents
3 (\$40,000.00).

- 4 • Estimated Net Settlement Fund: Net Settlement Amount of \$2,173,333.33 to be
5 distributed to Participating Class Members.
- 6 • Average Estimated Individual Settlement Payment, including the 25% of the PAGA
7 Penalties allocated for PAGA Members: \$298.13.

8 As set forth herein, the Settlement is the product of informed discovery, arms-length
9 negotiations, and provides a fair, adequate, and reasonable recovery for the Class. Plaintiff therefore
10 respectfully requests that the Court grant preliminary approval of the proposed Settlement,
11 conditionally certify the Class, approve the proposed Class Notice, and set a hearing date for final
12 settlement approval, among other requested relief.

13 **II. FACTUAL AND PROCEDURAL BACKGROUND**

14 Defendant Favorite Healthcare Staffing, Inc., a Kansas corporation, was and is an employer
15 whose employees are engaged in the State of California, including the County of Los Angeles.

16 Plaintiff Alexander Gnaedig was employed by Defendant as a non-exempt Registered Nurse
17 in the Emergency Room of the Antelope Valley Medical Center in Los Angeles County from
18 approximately January 1, 2021, to approximately July 31, 2022. (Declaration of Alexander Gnaedig
19 in Support of Plaintiff's Motion for Preliminary Approval of Class Action and PAGA Settlement
20 ["Gnaedig Decl."] ¶ 3). On March 29, 2021, Plaintiff provided notice to the LWDA and to Defendant
21 of his intent to seek civil penalties pursuant to the Private Attorneys General Act, Labor Code section
22 2698, et seq. ("PAGA"). (Genish Decl., ¶ 9, Exh. A thereto). On June 4, 2021, Plaintiff Gnaedig
23 filed his representative action complaint in the Los Angeles County Superior Court pursuant to the
24 PAGA alleging that Defendant: (1) failed to pay overtime wages in violation of Labor Code §§ 510
25 and 1198; (2) failed to provide meal periods in violation of Labor Code §§ 226.7 and 512(a); (3)
26 failed to provide rest periods in violation of Labor Code § 226.7; (4) failed to pay all wages during
27 employment in violation of Labor Code § 204; (5) failed to pay all wages due upon termination of
28 employment in violation of Labor Code §§ 201, 202, and 203; (6) failed to provide accurate itemized

1 wage statements in violation of Labor Code § 226(a); and (7) failed to maintain accurate payroll
2 records in violation of Labor Code § 1174(d). (Genish Decl., ¶ 9.)

3 Plaintiff Akimasia Walker (“Plaintiff Walker”) was employed by, or otherwise performed
4 work for, Defendant as a travel emergency room (“ER”) nurse at the Kaiser Permanente Fontana
5 Medical Center in San Bernardino County from approximately February 22, 2021 to March 20, 2021.
6 (Declaration of Plaintiff Akimasia Walker in Support of Plaintiffs’ Motion for Preliminary Approval
7 of Class Action and PAGA Settlement [“Walker Decl.”] ¶ 3). On April 3, 2021, Plaintiff Walker
8 submitted written notice to the LWDA, and Defendant as required by the PAGA informing them of
9 Defendant’s alleged violations of the Labor Code. (Walker Decl., ¶ 9, Exh. A thereto). Plaintiff
10 Walker filed her representative action complaint on June 11, 2021, and her First Amended Complaint
11 on October 15, 2021 in the San Bernardino County Superior Court pursuant to the PAGA for
12 Defendant’s alleged: (1) failure to pay all minimum and regular wages during employment; (2) failure
13 to timely pay overtime wages during employment; (3) failure to provide legally compliant meal
14 periods and/or timely pay premium wages for non-compliant meal periods during employment; (4)
15 failure to provide legally compliant rest periods and/or timely pay premium wages for non-compliant
16 rest periods during employment; (5) failure to pay all wages due and owing at the time of separation
17 and/or the required waiting time penalties; (6) failure to reimburse for all necessary expenses; (7)
18 failure to furnish accurate itemized wage statements; and (8) failure to maintain accurate employment,
19 time, and/or payroll records. (Walker Decl., ¶ 10.)

20 Plaintiff Janet Clifford (“Plaintiff Clifford”) filed a wage and hour case against Defendant on
21 July 8, 2021. *Clifford, et al. v. Favorite Healthcare Staffing, Inc.*, Case No. 21-cv-1237-CAB-DEB
22 (S.D. Cal.). Ms. Clifford’s complaint alleges violations of the Fair Labor Standards Act, the California
23 Labor Code and related regulations, and California’s Unfair Competition law. Specifically, her
24 complaint alleges causes of action for under 29 U.S.C. § 207; California Labor Code §§ 201, 202,
25 203, 204, 221-223, 226, 226.7, 510, 512, 515.5, 1174, 1174.5, 1194, 1198 *et seq.*, and 2698, *et seq.*;
26 IWC Wage Order No. 5, Cal. Code Regs., Title 8 § 11040; and California Business and Professions
27 Code §§ 17200, *et seq.* (See, generally, Declaration of Plaintiff Janet Clifford in Support of Motion
28 for Preliminary Approval of Class Action and PAGA Settlement [“Clifford Decl.”].)

1 The parties met and conferred with respect to the potential resolution of this action and agreed
2 to a private mediation. As a condition of mediation, Plaintiffs and Defendant agreed to participate in
3 informal discovery and to stay formal discovery. On February 10, 2022, Plaintiffs served Defendant
4 with a list requesting the documents and data necessary to adequately prepare for this mediation.
5 (Genish Decl., ¶ 10).

6 In response Defendant provided relevant information pertaining to this matter including the
7 start date of its operations in California, the total number of Temporary Health Professionals (“THP”)
8 employed during the relevant time period, total number of locations where THPs were placed in
9 California, and number of meal and rest period premiums paid. Defendant also provided excerpts
10 from employee handbooks. Plaintiffs also obtained time and payroll data for Plaintiffs and a sample
11 of the putative class, along with key data points including the class size and composition, the number
12 of total workweeks worked, the number of locations, average rate of pay, and the number of
13 terminated employees. (Genish Decl., ¶ 10).

14 After a thorough investigation and analysis of these documents and data, the parties attended
15 a formal mediation on April 18, 2022 with Tripper Ortman, a neutral and respected mediator with
16 extensive experience in complex wage and hour matters. At the mediation, the parties engaged in
17 intensive settlement discussions during which they debated their respective positions and exchanged
18 views regarding the strengths and weaknesses of the alleged claims. After a full day of mediation,
19 and with the help of the mediator, the Parties were able to reach an agreement to resolve this dispute
20 on a class and representative basis. Thereafter, the parties spent several weeks negotiating a
21 memorandum of understanding (“MOU”) memorializing the key settlement terms. After extensive
22 debate, an agreed upon MOU was executed by the parties as of August 13, 2022. The parties then
23 spent many hours negotiating and memorializing the terms into a long form settlement agreement.
24 (Genish Decl., ¶ 11).

25 On October 25, 2022, after additional discussions and revisions to the agreement, the
26 Settlement Agreement was fully executed. (Genish Decl., ¶ 12, Exh. B).

27 On November 3, 2022, Plaintiff filed a Stipulation and Proposed Order seeking leave to file a
28 First Amended Complaint, amended in accordance with the terms of the Settlement Agreement,

1 including adding Plaintiffs Amy Weston, Akimasia Walker, and Janet Clifford as additional named
2 plaintiffs and all alleged labor code violations.² (Genish Decl., ¶ 13).

3 Now, following substantial investigation and extensive settlement negotiations, Plaintiffs
4 seek preliminary approval of the proposed settlement, which will resolve all class and representative
5 claims alleged in the Complaint.

6 In accordance with Labor Code sections 2699 *et. seq.*, and concurrently with the filing of this
7 motion, Plaintiffs’ counsel provided notice of the proposed settlement to the LWDA. (Genish Decl.,
8 ¶ 43, Exhibit B).

9 **III. THE SETTLEMENT TERMS**

10 **A. Class Definition, Class Period and PAGA Period**

11 For purposes of settlement only, the Parties have agreed that the Class shall be defined as “all
12 hourly-paid and/or non-exempt employees of Favorite referred to as “Temporary Healthcare
13 Professionals” who performed work in the State of California and were paid for one or more pay
14 periods during the Class Period.” (“Class Members” or “Class”). The Class Period and release of
15 claims begins on January 1, 2021 and ends on July 31, 2022. (Settlement Agreement, ¶ 1.12). It is
16 estimated that there were 7,290 Class Members as of the date the Agreement was signed. (Genish
17 Decl., ¶ 14; Settlement Agreement, ¶ 4.1). The PAGA Period also begins on January 1, 2021 and
18 ends on July 31, 2022 and includes “all hourly-paid and/or non-exempt employees of Favorite
19 referred to as “Temporary Healthcare Professionals” who performed work in the State of California
20 and were paid for one or more pay periods during the PAGA Period (“Aggrieved Employees”).
21 (Genish Decl., ¶ 14; Settlement Agreement, ¶¶ 1.4, 1.31)

22 **B. Amount of Settlement**

23 The parties have agreed to settle the Class and PAGA claims at issue in the Complaint for a
24 non-reversionary Gross Settlement Payment of Three Million Six Hundred and Fifty Thousand
25 Dollars and Zero Cents (\$3,650,000.00), exclusive of any employer-side payroll taxes. (Genish Decl.,
26

27
28 ² As of the date this motion was filed, the Court had not yet signed the order permitting Plaintiff to
file the proposed First Amended Complaint. (Genish Decl., ¶ 13).

¶ 15; Settlement Agreement ¶ 3.1).

C. Allocation and Funding of the Gross Settlement Payment

The Gross Settlement Payment is a common fund and therefore includes all requested costs, fees, and other allocations. As stated above, the Gross Settlement Payment includes: (1) Class Counsel's fees in the amount of thirty-three percent (33%) of the Gross Settlement Payment, equaling One Million Two Hundred and Sixteen Thousand Six Hundred and Sixty-Six Dollars and Sixty-Seven Cents (\$1,216,666.67); (2) Class Counsel's actual litigation costs, not to exceed Forty Thousand Dollars and Zero Cents (\$40,000.00); (3) Settlement Administration Costs, capped at Thirty Thousand Dollars and Zero Cents (\$30,000.00); (4) Class Representative Enhancement Award in the amount of Ten Thousand Dollars and Zero Cents (\$10,000.00) to Plaintiff; and (5) PAGA Penalties of One Hundred and Fifty Thousand Dollars and Zero Cents (\$150,000.00). After the above-estimated amounts are deducted from the Gross Settlement Payment, approximately 7,290 Class Members will share in a Net Settlement Fund of approximately Two Million One Hundred Seventy-Three Thousand Three Hundred Thirty-Three and Thirty-Three Cents (\$2,173,333.33) (Genish Decl., ¶ 15; Settlement Agreement, ¶ 3.2, et seq.).

The Net Settlement Fund will be distributed and paid to Participating Class Members on a pro-rata basis based on the number of workweeks worked during the Class Period. This will provide Participating Class Members with an average estimated payment of \$298.13. (Genish Decl., ¶ 16). The actual payments to Participating Class Members will vary based on the actual weeks worked by Participating Class Members and shall be confirmed by the Settlement Administrator in advance of the final approval hearing. Employees who worked during the PAGA Period shall receive a share of the 25% portion of the PAGA Penalties designated for distribution to PAGA Members.³ These payments will be distributed on a pro rata basis based on the number of workweeks worked during the PAGA Period. Payments to Participating Class Members will be allocated as 20% wages and 80% interest and penalties. The employee share of any applicable payroll taxes on wages will be

³ As noted above, the Class Period and PAGA Period are identical; therefore, the Class Members and Aggrieved Employees comprise the exact same individuals.

1 deducted from the wage portion of each Participating Class Member's Individual Settlement
2 Payment. Employer-side payroll taxes shall be paid by Defendant separately from and in addition to
3 the Gross Settlement Payment. (Genish Decl., ¶ 16; Settlement Agreement ¶ 3.2).

4 The Settlement Agreement is a non-reversionary and a non-claims made settlement. All
5 money from the Net Settlement Fund will be distributed to Participating Class Members. No money
6 will revert to Defendant. (Genish Decl., ¶ 17; Settlement Agreement ¶ 3.1).

7 Any Individual Settlement Payment checks remaining uncashed after 180 days will be
8 transferred to the California State Controller's Office and held in a trust for such Participating Class
9 Members and PAGA Members. As such, no "unpaid residue" under California Code of Civil
10 Procedure section 384 will result from the Settlement. (Genish Decl., ¶ 18; Settlement Agreement ¶
11 4.4.3).

12 **D. Release of Class Claims**

13 In exchange for participating in the Settlement, Participating Class Members Class Members
14 (including Plaintiffs), on behalf of themselves and their respective former and present representatives,
15 agents, attorneys, heirs, administrators, successors, and assigns, release Released Parties from all
16 claims for wages, statutory and civil penalties, damages and liquidated damages, premiums, interest,
17 restitution, injunctive relief, fees and costs under federal and California law that were alleged in the
18 operative Complaints and any Amended Complaints in the Actions, and/or any letters submitted by
19 Plaintiffs to the LWDA against Favorite in the Actions, and/or claims which could have been alleged
20 that reasonably relate to or which reasonably arise out of the same set of operative facts pled therein,
21 whether such claims or forms of relief are known or unknown during the Class Period, including, but
22 not limited to: California Labor Code §§ 200, 201, 201.3, 202, 203, 204, 210, 218.5, 218.6, 221, 222,
23 223, 225.5, 226, 226.3, 226.7, 246(i), 500, 510, 512, 554, 558, 1174, 1174.5, 1194, 1194.2, 1194.3,
24 1197, 1197.1, 1198, 1199, 2800, 2802 and all Applicable Wage Orders and California Code of
25 Regulations, 29 U.S.C. §§ 207, 216(b), Business & Professions Code § 17200 et seq., California Civil
26 Code § 3287(a), California Code of Civil Procedure § 1021.5, and all other statutory and regulatory
27 violations alleged in the operative Complaints and any Amended Complaints in the Actions, and
28 with respect to the statutory and civil penalties claimed in the Actions, any source of obligation as a

1 basis for claiming such penalties during the Class Period, including any and all obligations released
2 above which are imposed by the applicable Wage Orders. The release shall be given full res judicata
3 and collateral estoppel effect upon entry of judgment. All Participating Class Members who cash their
4 Individual Class Payment checks (that will include language to the effect that cashing the check will
5 release their rights under the FLSA for any claims pled or that could have been pled based on the
6 factual allegations pled in the Operative Complaint and any Amended Complaint in the Actions) will
7 also be deemed to have opted in for purposes of the FLSA, and their Released Claims will include a
8 release of the FLSA claims based on claims alleged, or that could have been alleged based on the
9 factual allegations pled in the Operative Complaint and any Amended Complaint in the Actions.
10 Except as set forth in paragraph 5.3 of this Agreement, Participating Class Members (except
11 Plaintiffs) do not release any other claims, including claims for vested benefits, wrongful termination,
12 violation of the Fair Employment and Housing Act, unemployment insurance, disability, social
13 security, workers' compensation, or claims based on facts occurring outside the Class Period.
14 (Settlement Agreement ¶ 5.2).

15 **E. Release of PAGA Claims**

16 The Labor Workforce Development Agency, State of California, in addition to all Aggrieved
17 Employees, and Plaintiffs as a proxy for the LWDA, are deemed to release, on behalf of themselves
18 and their respective former and present representatives, agents, attorneys, heirs, administrators,
19 successors, and assigns, the Released Parties from all claims for civil penalties under the Labor Code
20 pursuant to PAGA that were alleged, or reasonably could have been alleged, based on the facts stated
21 in the Operative Complaints, any Amended Complaints in the Actions, the PAGA Notices and
22 ascertained in the course of the Actions. The PAGA Release shall be given full res judicata and
23 collateral estoppel effect upon entry of the judgment in this Action so as to bar the LWDA and any
24 other individual or entity from filing or pursuing the PAGA Released Claims against the Released
25 Parties in any forum. (Settlement Agreement ¶ 5.3).

26 **IV. STANDARD OF REVIEW FOR PRELIMINARY APPROVAL**

27 The settlement of a class action requires court approval. *See Dunk v. Ford Motor Co.*, 48 Cal.
28 App. 4th 1794 (1996). "In general, questions whether a settlement was fair and reasonable, whether

1 notice to the class was adequate, whether certification of the class was proper, and whether the
2 attorney fee award was proper are matters addressed to the trial court’s broad discretion.” *Wershba*
3 *v. Apple Computer, Inc.*, 91 Cal.App.4th 224, 234-35 (2001) (disapproved on other grounds).

4 The review and approval of a proposed class action settlement involves a two-step process.
5 See Cal. Rules of Court, Rule 3.769(c). First, counsel submit the proposed terms of the settlement
6 and the Court makes a preliminary assessment of whether the settlement appears to be sufficiently
7 within the range of a fair settlement to justify providing notice of the proposed settlement to class
8 members. After notice is provided to the class, the Court must conduct a second inquiry into whether
9 the proposed settlement is fair, reasonable, and adequate. *Id.*

10 The initial evaluation of the settlement at the preliminary approval step “is not a fairness
11 hearing.” *Armstrong v. Board of School Directors of City of Milwaukee*, 616 F.2d 305, 314 (7th Cir.
12 1980). Rather, the limited purpose of this initial inquiry is to determine, at a threshold level, only
13 whether the proposed settlement is within the range of possible approval and, as a result, “whether
14 there is any reason to notify the class members of the proposed settlement and to proceed with a
15 fairness hearing.” A presumption of fairness exists where: (1) the settlement is reached through arm’s
16 length bargaining; (2) investigation and discovery are sufficient to allow counsel and the court to act
17 intelligently; (3) counsel is experienced in similar litigation; and (4) the percentage of objectors is
18 small. See *In re Microsoft I-V Cases*, 135 Cal. App. 4th 706, 723 (2006).

19 Preliminary approval does not require a court to make a final determination that the settlement
20 is fair, reasonable, and adequate. Rather, that decision is made only at the final approval stage, after
21 notice of the settlement has been given to the class members and they have had an opportunity to
22 object or exclude themselves from the settlement. See Cal. Rules of Court, Rule 3.769(g). In
23 considering a potential class settlement, the court need not reach any ultimate conclusions on the
24 issues of fact and law which underlie the merits of the dispute, and need not engage in a trial on the
25 merits. See *Officers for Justice v. Civil Service Commission*, 688 F.2d 615, 625 (9th Cir. 1982).

26 **V. THE SETTLEMENT IS PRESUMED FAIR**

27 **A. The Settlement Was Reached as a Result of Arm’s-Length Bargaining**

28 California courts recognize that “a presumption of fairness exists where . . . [a] settlement is

1 reached through arm’s-length bargaining.” *Wershba*, 91 Cal.App.4th at 245; *see also Clark v. Am.*
2 *Residential Servs. LLC*, 175 Cal.App.4th 785, 799 (2009). Here, the parties’ settlement negotiations
3 were at all times made at arm’s-length and were adversarial. (Genish Decl., ¶ 22). The Settlement
4 was reached following a full day of mediation by all parties and the assistance of a highly respected
5 mediator with substantial experience mediating wage and hour cases. (Genish Decl., ¶¶ 11).
6 Moreover, Plaintiffs engaged in additional negotiations in order to finalize the long-form agreement
7 presently before the Court. At all times, Plaintiffs were willing and prepared to litigate this matter
8 through class certification and trial if the parties had been unable to reach a favorable resolution.
9 (Genish Decl., ¶¶ 23).

10 **B. Sufficient Investigation and Discovery by Experienced Class Counsel**

11 Courts typically assess the status of discovery in determining whether a class action settlement
12 agreement is fair, reasonable, and adequate. *Dunk*, 48 Cal.App.4th at 1801. In preparation for
13 mediation, on October 15, 2021, Plaintiff Gnaedig initially provided Defendant with a detailed list of
14 documents and data need for mediation of this action. Thereafter, counsel for all Plaintiffs conferred
15 regarding the global mediation and agreed to send an updated letter outlining the documents and data
16 necessary to adequately prepare for mediation of all of the cases.

17 On February 10, 2022, Plaintiffs requested the informal production of the documents and data
18 necessary to adequately prepare for this mediation. Defendant provided key data points including the
19 start date of its operations in California, the total number of Temporary Health Professionals (“THP”)
20 during the relevant time period, the total number of locations where THPs were placed in California,
21 total number of workweeks, and number of meal and rest period premiums paid. Defendant also
22 provided relevant excerpts from its Employee Handbooks. In sum, through informal discovery,
23 Plaintiffs obtained time and payroll data for Plaintiff and a sample of the putative class, and key data
24 points including the class size and composition, the number of workweeks worked, the number of
25 locations, average rate of pay, and the number of terminated employees – all of which enabled
26 Plaintiffs to assess the nature and extent of Defendant’s potential liability and damages. (Genish
27 Decl., ¶ 22).

28 The parties extensively briefed issues regarding class certification and liability and provided

1 their analyses to the mediator who helped the parties debate the strengths and weakness of their
2 respective positions. (Genish Decl., ¶ 23). Additionally, settlement negotiations were conducted by
3 highly capable and experienced counsel. Class Counsel are respected members of the California State
4 Bar with strong records of vigorous and effective advocacy and are experienced in handling complex
5 wage and hour class action litigation. (Genish Decl., ¶¶ 2-8, 23; Anderson Decl. ¶¶ 4-12, Ex. A
6 thereto; Shakouri Decl., ¶¶ 3-5; Konecky Decl. ¶¶ 3-7, Ex. 1 thereto). Accordingly, Class Counsel
7 had sufficient information and experience to act intelligently in negotiating the Settlement.

8 **C. The Settlement is Fair and Reasonable in Light of the Parties' Respective Legal**
9 **Positions and Recovery Risks**

10 A settlement is not judged against what might have been recovered had a plaintiff prevailed
11 at trial, nor does the settlement have to obtain 100% of the damages sought to be fair and reasonable.
12 *Wershba*, 91 Cal.App.4th at 246, 250. In evaluating the reasonableness of a settlement, a trial court
13 must consider “the strength of plaintiffs’ case, the risk, expense, complexity and likely duration of
14 further litigation, the risk of maintaining class action status through trial, the amount offered in
15 settlement, the extent of discovery completed and the stage of the proceedings, the experience and
16 views of counsel, the presence of a governmental participant, and the reaction of the class members
17 to the proposed settlement.” *Kullar v. Foot Locker Retail, Inc.*, 168 Cal.App.4th 116, 128 (2008).

18 Here, the reasonableness of the Settlement is underscored by the fact that Defendant has legal
19 and factual grounds for defending the action. Based upon Class Counsel’s experience litigating
20 similar complex matters, Plaintiffs reasonably expected a vigorous and lengthy defense to both class
21 certification and the merits of the action absent a settlement. (Genish Decl., ¶¶ 2-8; Anderson Decl.
22 ¶¶ 4-12, Ex. A thereto; Shakouri Decl., ¶¶ 3-5; Konecky Decl. ¶¶ 3-7, Ex. 1 thereto).

23 **1. Class Counsel’s Analysis of the Maximum Realistic Liability and**
24 **Damages**

25 Prior to mediation, Class Counsel analyzed a sampling of time and payroll records provided
26 by Defendant and other relevant documents and discovery. Based on the discovery provided, Class
27 Counsel estimated with respect to the class claims, with all claims adjudicated in favor of the Class,
28 that Defendant faced a maximum potential liability of \$49,019,493.00. This estimate is based off an

1 estimated maximum realistic liability for each of the alleged claims as follows: \$8,076,974.00 for
2 meal period violations (25% violation rate), \$8,076,974.00 for rest period violations (25% violation
3 rate), \$25,240,545.00 for unpaid wages (2 hours off-the-clock overtime per week), \$3,645,000.00 for
4 unpaid reimbursable business expenses (\$500 per employee), and wage statement penalties of
5 \$3,980,000.00 (assumes maximum cap of \$4,000). Plaintiffs further estimated that Defendant faced
6 an additional exposure of \$7,316,100 in potential PAGA penalties (\$100 x 73,161 aggregate
7 workweeks). (Genish Decl., ¶ 24).

8 2. Class Counsel's Risk-Based Analysis and Risk-Based Adjustments

9 While Plaintiffs believe that Defendant faced significant exposure, substantial barriers to a
10 recovery existed. Defendant denied and continues to deny any liability and wrongdoing of any kind
11 associated with the claims alleged in this action, and further denies that class certification is
12 appropriate for any purpose other than this Settlement. Defendant believes that it would ultimately
13 prevail in this action. Defendant proffered defenses to both certification and to the merits of
14 Plaintiff's claims. Defendant contended that Plaintiffs claims are not suitable for class certification
15 because individual issues would predominate should this case go to trial. *See Brinker Restaurant*
16 *Corp. v. Superior Court*, 53 Cal.4th 1004 (2012); *Duran v. U.S. Bank Nat. Assn.*, 59 Cal.4th 1, 35-36
17 (2014); *Wal-Mart Stores, Inc. v. Dukes*, 131 S.Ct. 2541, 2551(2011). While Plaintiffs and Class
18 Counsel disagree with Defendant's predictions, they also recognize that there is a significant risk that
19 the Court may deny class certification. (Genish Decl., ¶¶ 25-36); *see also, Findings of the Study of*
20 *California Class Action Litigation*, 2000-2006, available at
21 <http://www.courts.ca.gov/documents/class-action-lit-study.pdf> (finding that only 21.4% of all class
22 actions were certified either as part of a settlement or as part of a contested certification motion).

23 For example, a large portion of Defendant's overall liability lies in Plaintiffs' meal period
24 claims. These claims have been increasingly difficult to certify in recent years and Defendant
25 contended its practices were lawful. *See Brinker*, 53 Cal. 4th at 1034-35. Plaintiffs' theory of liability
26 for meal period violations was based on allegations that Defendant had failed to implement lawful
27 policies and practices that allowed Class Members to take meal breaks in the manner required under
28 California law. *See Bradley v. Networkers Int'l, LLC*, 211 Cal.App.4th 1129 (2012) (holding that

1 “the lack of a meal/rest break policy and uniform failure to authorize such breaks are matters of
2 common proof.”). Specifically, Plaintiffs assert that Defendant did not provide them with the
3 opportunity to take timely, uninterrupted 30-minute meal periods when they worked shifts of five
4 hours or more, or take a second lawful meal break on shifts that exceeded 10 hours. Further, Plaintiffs
5 alleged that Defendant did not allow them to clock in and out for their meal periods, which often
6 resulted in late or missed meal periods. And even when meal periods were missed or late, Defendant
7 automatically deducted 30-minute meal periods from employees’ paychecks. Plaintiffs further
8 alleged that Defendant did not have a policy or practice to pay meal period premiums for all
9 noncompliant meal periods. (Genish Decl., ¶ 28).

10 In contrast, Defendant argued that its practices at all times during the class period were lawful.
11 Defendant argued that the rate of purported meal period violations reflected in the data would require
12 individualized inquiry and that such inquiry would prohibit a class from being certified. Class
13 Counsel disagreed with this assessment but had to consider the risk that the Court would find validity
14 in an individualized proof defense to certification of Plaintiff’s meal period claim. (Genish Decl., ¶
15 28).

16 Plaintiffs’ rest period allegations were based on a similar lack of lawful practice and failure
17 to provide employees with timely, full, and uninterrupted rest periods due to the excessive demands
18 during employees’ shifts. Plaintiffs also contended that Defendant lacked any policy or practice to
19 compensate employees who were not permitted to take lawful rest periods. As with the meal period
20 allegations, Defendant contended that it did provide rest breaks and relieve Class Members of all
21 duties as required under California law. This claim, however, was even more uncertain given the
22 difficulties associated with proving the alleged rest period violations, as Defendant was not required
23 to record these breaks. Given the lack of records demonstrating rest period violations, there were
24 legitimate concerns Plaintiffs would not be able to certify these claims or prove substantial damages
25 with requisite certainty. (Genish Decl., ¶ 29).

26 Plaintiffs also faced challenges certifying and proving liability for their minimum wage and
27 overtime claims. These claims were largely based on unrecorded, off-the-clock work performed by
28 the Class Members both before and after their shifts. These off-the-clock uncompensated duties

1 included, among other things, pre-shift requirements performed by travel nurses, transport time for
2 some nurses at certain facilities, gathering tools and supplies pre-shift, waiting for other employees
3 after clocking out, as well as waiting for employer-provided shuttles post-shift. Additionally,
4 employees had to respond to text messages, phone calls and group messages in an application on their
5 mobile phones regarding work-related issues when not on shift. Yet, the individualized nature of the
6 performance of these tasks, and the individualized nature of damages, presented substantial concerns
7 regarding the manageability of the case and the risk the Court could find these issues prevented
8 certification. (Genish Decl., ¶ 30).

9 Last, Plaintiffs' claim for unreimbursed business expenses faced some challenges. Plaintiffs
10 asserted that Defendant universally failed to reimburse Class Members for using their personal cell
11 phones in the discharge of their work duties. Additionally, Class Members who traveled for work
12 were also not reimbursed for all travel costs incurred in direct consequence of the discharge of their
13 duties. These claims also faced challenges of being too individualized to certify or to quantify
14 damages. (Genish Decl., ¶ 31).

15 Class Counsel also recognized that, even if Plaintiffs prevailed at class certification, proving
16 the amount of wages due to Class Members would be an expensive, time-consuming, and uncertain
17 proposition. In order to prove liability and damages, Class Counsel will need to request and analyze
18 thousands of pages of documents, obtain the Class Members' contact information and contact
19 hundreds of them and obtain their declarations at great expense. Obtaining the cooperation of current
20 employees might also prove difficult, given the likely reluctance to aid prosecution of a lawsuit
21 against a current employer. More significantly, all of Defendant's employees are short term
22 employees, most of whom live out of state and only traveled to California for short-term job
23 assignments. On the other hand, Defendant would likely be able to obtain the cooperation of its
24 employees. Moreover, even if Plaintiffs prevailed at class certification and trial, possible appeals
25 would substantially delay any recovery by the Class. (Genish Decl., ¶ 32).

26 Both sides have had the opportunity to interview witnesses and review documents and
27 information relating to Plaintiffs' and the Settlement Class Members' employment with Defendant,
28 and Defendant's operations and employment policies, practices, and procedures. The Parties also

1 reviewed and analyzed hundreds of pages of documents and data, including but not limited to a
2 sampling of the time and pay data of the Settlement Class Members, to determine the potential value
3 and strength of the claims. The available information enabled Class Counsel to estimate the potential
4 claims of the Settlement Class and prepare damages/valuation models. Accordingly, the Parties have
5 conducted adequate investigation and discovery to be sufficiently informed of the nature and extent
6 of the Settlement Class Members' claims, and to enable both sides to fully evaluate the Settlement
7 for its fairness, adequacy, and reasonableness. The Parties have agreed that the matter is well-suited
8 for settlement given the legal issues relating to Plaintiff's principal claims, as well as the costs and
9 risks to both sides that would attend further litigation. The Settlement takes into account the strengths
10 and weaknesses of each side's position and the uncertainty of how the case might have concluded at
11 trial, and/or after exhaustion of all appeals. (Genish Decl., ¶ 33).

12 Plaintiffs further realized that Plaintiffs prevailed at class certification, proving the amount of
13 wages due to each Class Member would be an expensive, time-consuming, and extremely uncertain
14 proposition. In order to prove liability and damages, my office will need to request and analyze
15 thousands of pages of documents, obtain the Class Members' contact information, contact them, and
16 obtain declarations. Obtaining the cooperation of current employees would also be difficult, given
17 the likely reluctance to aid prosecution of a lawsuit against a current employer. Moreover, even if
18 Plaintiff prevailed at class certification and trial, possible appeals would substantially delay any
19 recovery by the Class. (Genish Decl., ¶ 34).

20 Therefore, taking into account the risk of not obtaining class certification, Class Counsel
21 discounted Defendant's estimated liability by 50%. The merits-based risk factors also reduced
22 Defendant's estimated liability by an additional 40%. This resulted in an adjusted estimated liability
23 of \$4,901,949.30. (Genish Decl., ¶ 35).

24 Class Counsel also separately contemplated the risks of proceeding with the PAGA action
25 and potential liability Defendant could face from this claim. First, Class Counsel recognized that the
26 PAGA claims would be subject to the same defenses and risks as Plaintiff's underlying wage claims.
27 (Genish Decl., ¶¶ 36-37); *see, Elliot v. Spherion Pac. Work, LLC*, 572 F.Supp.2d 1169, 1181-82 (C.D.
28 Cal. 2008) ("Plaintiff's claim under [PAGA] is wholly dependent upon her other claims. Because

1 Plaintiff's other claims fail as a matter of law, so does her PAGA claim"). Moreover, although
2 California case law clearly states that PAGA actions need not satisfy class action requirements, Class
3 Counsel remained mindful of the fact that some courts have nevertheless held that PAGA claims must
4 meet a threshold "manageability" requirement. *See, e.g., Wesson v. Staples the Office Superstore,*
5 *LLC*, 68 Cal.App.5th 746 (2021). Class Counsel also anticipated that even if successful on the merits
6 at trial, the imposition of cumulative civil penalties based on the alleged wage and hour violations
7 could be considered unjust, arbitrary and oppressive, or confiscatory, and that Defendant would argue
8 that it made a good faith attempt to comply with its legal obligations warranting a reduction in
9 penalties.⁴ Class Counsel also anticipate Defendant would argue that it made a good faith attempt to
10 comply with its legal obligations, and that the violations per pay period were low, warranting an
11 additional reduction in civil penalties. Finally, Class Counsel was also mindful of the fact that PAGA
12 is fundamentally not intended to be compensatory in nature but is instead intended to facilitate
13 enforcement of California's labor laws by financing state activities and educating and deterring non-
14 compliance. (Genish Decl., ¶¶ 36, 37).

15 Therefore, after considering this multitude of factors, Plaintiff and Class Counsel concluded
16 that it was in the best interest of the State of California and the Aggrieved Employees to enter into
17 the Settlement, and to allocate One Hundred and Fifty Thousand Dollars (\$150,000.00) of the
18 Settlement towards the PAGA claims, which represents approximately 4.2% of the Gross Settlement
19 Payment. This percentage of the settlement is well-within the range of wage and hour settlements
20

21 ⁴ *See, e.g., Thurman v. Bayshore Transit Management, Inc.*, 203 Cal.App.4th 1112, 1131 (2012)
22 (imposition of both statutory and civil penalties for same conduct is impermissible double recovery)
23 (disapproved on other grounds); *Aguirre v. Genesis Logistics*, 2013 WL 10936035, at *3 (C.D. Cal.
24 2013) ("duplicative effect" of penalties is a factor in favor of "reducing ...the PAGA penalty"); *Smith*
25 *v. Lux Retail North America, Inc.*, 2013 WL 2932243, at *3 (N.D. Cal. June 13, 2013) (declining to
26 stack penalties based on the same conduct); *Castillo v. ADT, LLC*, 2017 WL 363108, at *4 (E.D. Cal.
27 Jan. 25, 2017); *Sanchez v. McDonalds Restaurants of California, Inc.*, 2017 WL 4620746 (LA Super.
28 Ct. July 6, 2017) (declining to stack penalties arising out of the same conduct); *Fleming v. Covidien,*
Inc., 2011 WL 756304718, at *4 (C.D. Cal. Aug. 12, 2011) (reducing PAGA penalties by 80%);
Cotter v. Lyft, Inc., 193 F.Supp.3d 1030 (N.D. Cal. 2016) (indicating that a substantial reduction is
warranted where good faith dispute exists in legal obligations); *Carrington v. Starbucks Corp.*, 30
Cal.App.5th 504, 529 (2018) (approving reduction in penalties from \$50 per pay period to \$5 per pay
period based on good faith attempts to comply with obligations and minimal violations).

1 regularly approved in both state and federal court for cases that include both a class and PAGA action.
2 Typically, such hybrid cases allocate only 1% of the gross settlement value to resolve PAGA claims,
3 and, indeed, settlements allocations as little as 0.22% of the gross settlement amount have been
4 approved as reasonable by courts. *See, e.g., Bararsani v. Coldwell Banker Residential Brokerage*
5 *Company*, Los Angeles Superior Court Case No. BC495767 (2016) (\$10,000 allotted as PAGA
6 penalties or 0.22% of \$4,500,000 settlement amount); *Davis v. Brown Shoe Co.*, 2015 U.S. Dist.
7 LEXIS 149010 (E.D. Cal. 2015) (PAGA Payment of \$5,000 in a \$1.5 million class settlement); *Lusby*
8 *v. Gamestop Inc.*, 2015 U.S. Dist. LEXIS 42637 (N.D. Cal. 2015) (PAGA Payment of \$5,000 in a
9 \$500,000 class settlement); *Martinov. Ecolab Inc.*, No. 3: 14CV04358 (N.D. Cal. 201 7) (\$100,000
10 allotted as PAGA penalties or 0.48% of \$21,000,000 settlement amount); *Zamora v. Ryder Integrated*
11 *Logistics, Inc.*, 2014 U.S. Dist. LEXIS 184096 (S.D. Cal. 2014) (\$7,500 payment to LWDA for
12 PAGA on a \$1.5 million class settlement). (Genish Decl., ¶¶ 36-37). Moreover, the overall relief
13 obtained by the Settlement is significant, not only from a monetary perspective, but also because it
14 fulfills the public policy objectives of PAGA—to promote enforcement of California’s labor laws,
15 provide funds to the state, and deter future non-compliance by the employer.

16 In light of the parties’ respective legal positions and the risks of continued litigation, the Gross
17 Settlement Payment for resolution of the class and PAGA claims, is fair, adequate, and reasonable.
18 (Genish Decl., ¶ 38).

19 VI. CERTIFICATION FOR SETTLEMENT PURPOSES IS WARRANTED

20 Code of Civil Procedure Section 382 provides that three basic requirements must be met in
21 order to sustain any class action: (1) there must be an ascertainable class; (2) there must be a well-
22 defined community of interest in the question of law or fact affecting the parties to be represented;
23 and (3) certification will provide substantial benefits to litigants and the courts, i.e., proceeding as a
24 class action is superior to other methods. *See Dunk*, 48 Cal.App.4th at 1806. Plaintiffs contend that
25 this action, which is based upon Defendant’s wage and hour policies and practices, satisfies the class
26 certification requirements under California Code of Civil Procedure section 382. Defendant denies
27 Plaintiffs’ allegations, but for purposes of this Settlement only, Defendant has stipulated to
28 certification of the proposed class action.

1 **A. An Ascertainable Class Exists Which is So Numerous That Joinder of All**
2 **Members is Impracticable**

3 Whether an ascertainable class exists turns on three factors: (1) the class definition, (2) the
4 size of the class, and (3) the means of identifying the class members. *See Miller v. Woods*, 148
5 Cal.App.3d 862, 873 (1983). In this case, all three considerations strongly favor class certification.
6 Here, the Class is defined as “all hourly-paid and/or non-exempt employees of Favorite referred to as
7 “Temporary Healthcare Professionals” who performed work in the State of California and were paid
8 for one or more pay periods during the Class Period.” (“Class Members” or “Class”). (Genish Decl.,
9 ¶ 14; Settlement Agreement, ¶ 1.15). This provides a clear and definite scope for the proposed class.

10 Next, the class is sufficiently numerous. There is no magic number that satisfies the
11 numerosity requirement. Courts have certified classes with as few as ten or twenty-eight class
12 members. *Rose v. City of Hayward*, 126 Cal.App.3d 926, 934 (1981); *Bowles v. Superior Court*, 44
13 Cal. 2d 574 (1995); *Hebbard v. Colgrove*, 28 Cal.App.3d 1017, 1030 (1972). Here, the estimated
14 Class size of 7,290 individuals meets the numerosity requirement. (Genish Decl., ¶ 14).

15 Finally, the question of whether class members are easily identifiable turns on whether a
16 plaintiff can establish “the existence of an ascertainable class.” *Daar v. Yellow Cab Co.*, 67 Cal.2d
17 695 at 706 (1967). The existence of an ascertainable class in this case can be established through
18 Defendant’s payroll records, and the class definition is sufficiently specific to enable the parties,
19 potential Class Members and the Court to determine the parameters of the Class. *See Clothesrigger,*
20 *Inc. v. GTE Corp.*, 191 Cal.App.3d 605, 617 (1987).

21 **B. The Class Shares a Well-Defined Community of Interest**

22 The community of interest requirement embodies three factors: (1) predominant questions of
23 law and fact; (2) class representatives with claims or defenses typical of the class; and (3) class
24 representatives who can adequately represent the class. *Dunk*, 48 Cal.App.4th at 1806. Here, all three
25 requirements are easily satisfied.

26 The commonality criterion requires the existence of common question of law or fact and is
27 generally established with the issues of predominance and typicality. *See Daar*, 67 Cal.2d 695, 706.
28 What is required is that a common question of fact or law exist which predominates over issues unique

1 to individual plaintiffs. The existence of individual issues or facts—generally present in any case
2 arising from employment—is not a bar to class certification as long as they do not render class
3 litigation unmanageable or predominate over the common issues. *See B.W.I. Custom Kitchen v.*
4 *Owens-Illinois, Inc.*, 191 Cal.App.3d 1341, 1354 (1987).

5 Here, Plaintiffs’ claims present common issues of law and fact that predominate and warrant
6 class certification. Plaintiffs allege that Defendant denied compliant meal and rest periods to
7 employees, required employees to perform work off-the-clock, failed to fully compensate employees
8 for all time actually worked and failed to reimburse employees for all business expenses incurred.
9 These policies and practices meant that Defendant allegedly failed to pay minimum and overtime
10 wages, and other related claims. Plaintiffs allege that Defendant’s policies and practices were uniform
11 as to all Class Members. Thus, class treatment is appropriate.

12 To satisfy the typicality requirement, California law does not require that Plaintiffs’ claims
13 be identical to the other class members. Rather, the test of typicality for a class representative is
14 whether other members have the same or similar injury, whether the action is based on conduct which
15 is not unique to the named plaintiff, and whether other class members have been injured by the same
16 course of conduct. *See Seastrom v. Neways, Inc.*, 149 Cal.App.4th 1496, 1502 (2007). The typicality
17 requirement for a class representative refers to the nature of the claim or defense of the representative,
18 and not to the specific facts from which it arose or the relief sought. *See id.*

19 Here, Plaintiffs allege that their claims are similar to that of the other Class Members and that
20 Plaintiffs’ claims arise out of the same alleged course of conduct giving rise to the claims of the other
21 Class Members. Because Plaintiffs’ claims are based upon the same alleged conduct and business
22 practices as those of Class Members, the typicality requirement has been satisfied.

23 Finally, the question of adequacy of representation “depends on whether the plaintiff’s
24 attorney qualifies to conduct the proposed litigation in the plaintiff’s interest or not antagonistic to
25 the interests of the class.” *McGee v. Bank of America*, 60 Cal.App.3d 442, 450 (1976). Here, these
26 considerations are satisfied. Class Counsel are well-regarded and accomplished lawyers who are
27 qualified and experienced in employment-related, class-action litigation. (Genish Decl., ¶¶ 2-8,
28 Anderson Decl. ¶¶ 4-12, Ex. A thereto; Shakouri Decl., ¶¶ 3-5; Konecky Decl. ¶¶ 3-7, Ex. 1 thereto).

1 Plaintiffs will vigorously, adequately and fairly represent the interests of the class. Plaintiffs have, at
2 all times throughout the course of the litigation, considered the interests of the Class and understood
3 that they must take steps to adequately represent the class and their interests. (Gnaedig Decl. ¶¶ 3-7,
4 8, Walker Decl., ¶¶ 6-26; Weston Decl., ¶¶ 6-15, Clifford Decl., ¶¶ 12-16). Because Plaintiffs' claims
5 are typical of other Class Members and are not based on unique circumstances, there is no antagonism
6 between the interests of Plaintiffs and the Class.

7 **C. A Class Action is Superior to a Multiplicity of Litigation**

8 Under the circumstances, proceeding as a class action is a superior means of resolving this
9 dispute, as the class members and the court will derive substantial benefits. Class certification would
10 serve as the only means to deter and redress the alleged violations. *See Linder v. Thrifty Oil Co.*, 23
11 Cal.4th 429, 434 (2000) (relevant considerations include the probability that each class member will
12 come forward to prove his or her separate claim and whether the class approach would actually serve
13 to deter and redress the alleged wrongdoing). Further, individual actions arising out of the same
14 operative facts would unduly burden the courts and could result in inconsistent results. Therefore,
15 class action proceedings are superior to individual litigation.

16 **VII. THE REQUESTED ENHANCEMENT AWARDS ARE REASONABLE**

17 Plaintiffs in class action lawsuits are eligible for reasonable enhancement awards as
18 compensation “for the expense or risk they have incurred in conferring a benefit on other members
19 of the class.” *Munoz v. BCI Coca-Cola Bottling Co.*, 186 Cal.App.4th 399, 412 (2010). Courts
20 routinely grant approval of class action settlement agreements containing enhancements for the class
21 representative, which are necessary to provide incentive to represent the class and are appropriate
22 given the benefit the class representatives help to bring about for the class. *See In re Online DVD*
23 *Rental*, 779 F.3d 934, 947-948 (9th Cir. 2014) (approving enhancement award 417 times larger than
24 individual payments where enhancement award made up a mere .17% of the settlement); *Gaudin v.*
25 *Saxon Mortgage Servs., Inc.*, 2015 WL 7454183, at *10 (N.D. Cal. Nov. 23, 2015) (finding service
26 award of \$15,000 to be “fair and reasonable”).

27 Plaintiffs each initiated their lawsuits on behalf of their former co-workers who will now be
28 entitled to receive payment from the Settlement. Plaintiffs invested substantial time and effort into

1 this litigation including conducting their own research, reviewing relevant documents, contacting
2 other putative class members to obtain their participation in the action, and engaging in extensive
3 discussions with Class Counsel. (Gnaedig Decl. ¶¶ 3-7, Walker Decl., ¶¶ 6-26; Weston Decl., ¶¶ 6-
4 15, Clifford Decl., ¶¶ 12-16). Further, the amount requested for each Plaintiff is also reasonable given
5 the average award and the benefit gained by other Class Members. For these reasons, Plaintiffs
6 request that an enhancement award of \$10,000.00 to each Plaintiff (for a total of \$40,000.00) be
7 preliminarily approved by the Court. (Genish Decl., ¶ 37; Gnaedig Decl., ¶ 9; Walker Decl., ¶¶ 28-
8 30; Weston Decl., ¶¶ 9-11; Clifford Decl., ¶¶ 14-16).

9 **VIII. THE REQUESTED ATTORNEYS' FEES AND COSTS ARE REASONABLE**

10 Trial courts have “wide latitude” in assessing the value of attorneys’ fees and their decisions
11 will “not be disturbed on appeal absent a manifest abuse of discretion.” *Lealao v. Beneficial Cal,*
12 *Inc.*, 82 Cal.App.4th 19, 41 (2000). California law provides that attorney fee awards should be
13 equivalent to fees paid in the legal marketplace to compensate for the result achieved and risk
14 incurred. *Id.* at 47. In cases where class members present claims against a common fund and the
15 defendant agrees to a percentage of the fund as part of the settlement, use of the percentage method
16 is appropriate. *Id.* at 32.

17 Here, the requested attorneys’ fees of One Million Two Hundred and Sixteen Thousand Six
18 Hundred and Sixty-Six Dollars and Sixty-Seven Cents (\$1,216,666.67), which is thirty-three percent
19 of the common fund, are disclosed to Class Members in the proposed Class Notice. (Settlement
20 Agreement, Exh. 1). The requested fee was freely negotiated, is common in the legal marketplace,
21 and is not opposed by Defendant. The Motion for Final Approval will elaborate on the nature of the
22 legal services provided and will also support Class Counsel’s request for the reimbursement of
23 litigation costs not to exceed \$40,000.00. (Genish Decl., ¶¶ 38-40). All costs and fees that are not
24 ultimately approved by the Court shall instead be included in the Net Settlement Fund and distributed
25 to Participating Class Members. (Settlement Agreement, ¶ 3.2.2).

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1 **IX. THE CLASS NOTICE AND THE OPT-OUT AND OBJECTION PROCESS MEETS**
2 **DUE PROCESS REQUIREMENTS**

3 No later than 14 calendar days after the Court grants preliminary approval of the Settlement,
4 Defendant will deliver the Class Data to the Administrator, in the form of a Microsoft Excel
5 spreadsheet. To protect Class Members' privacy rights, the Administrator must maintain the Class
6 Data in confidence, use the Class Data only for purposes of this Settlement and for no other purpose,
7 and restricts access to the Class Data to Administrator employees who need access to the Class Data
8 to effect and perform under the Settlement Agreement. Defendant has a continuing duty to
9 immediately notify Class Counsel if it discovers that the Class Data omitted class member identifying
10 information and to provide corrected or updated Class Data as soon as reasonably feasible. Using best
11 efforts to perform as soon as possible, the Parties and their counsel will expeditiously use best efforts,
12 in good faith, to reconstruct or otherwise resolve any issues related to missing or omitted Class Data.
13 (Settlement Agreement, ¶ 4.2).

14 Defendant shall fully fund the Gross Settlement Amount, and also fund the amounts necessary
15 to fully pay Defendant's share of payroll taxes by transmitting the funds to the Administrator no later
16 than 15 business days after the Effective Date defined as the date upon which the time for appeal of
17 the Court's order granting final approval of the Settlement and entry of judgment expires; unless an
18 appeal is timely filed, and then the "Effective Date" shall be the date of final resolution of any appeal
19 from the order granting final approval of the Settlement and entry of judgment. (Settlement
20 Agreement, ¶¶ 1.18, 4.3).

21 No later than three (3) business days after receipt of the Class Data, the Administrator shall
22 notify Class Counsel that the list has been received and state the number of Class Members, PAGA
23 Members, Workweeks, and PAGA Pay Periods in the Class Data. (Settlement Agreement, ¶ 7.4.1).

24 The parties have jointly drafted a Class Notice which will be delivered to the Class Members.
25 (Settlement Agreement, Exh. 1). The Class Notice is being provided in English only which is
26 sufficient. Class Members speak and read English because it is necessary in order for them to be able
27 to perform their job duties. Using best efforts to perform as soon as possible, and in no event later
28 than 14 calendar days after receiving the Class Data, the Administrator will send to all Class Members

1 identified in the Class Data, via first-class United States Postal Service (“USPS”) mail, the Class
2 Notice substantially in the form attached to this Motion. The first page of the Class Notice shall
3 prominently estimate the dollar amounts of any Individual Class Payment and/or Individual PAGA
4 Payment payable to the Class Member, and the number of Workweeks and PAGA Pay Periods (if
5 applicable) used to calculate these amounts. Before mailing Class Notices, the Administrator shall
6 update Class Member addresses using the National Change of Address database. (Settlement
7 Agreement, ¶ 7.4.2).

8 Within 15 business days after Defendant funds the Gross Settlement Amount, the
9 Administrator will mail checks for all Individual Class Payments, all Individual PAGA Payments,
10 the LWDA PAGA Payment, the Administration Expenses Payment, the Class Counsel Fees Payment,
11 the Class Counsel Litigation Expenses Payment, and the Class Representative Service Payments.
12 Disbursement of the Class Counsel Fees Payment, the Class Counsel Litigation Expenses Payment
13 and the Class Representative Service Payments shall not precede disbursement of Individual Class
14 Payments and Individual PAGA Payments. (Settlement Agreement, ¶ 4.4).

15 In determining whether to approve a settlement of a class action, a trial court has virtually
16 complete discretion as to the manner of giving notice to class members, and review on appeal is
17 governed by the abuse of discretion standard. *See In re Cellphone Fee Termination Cases*, 186
18 Cal.App.4th 1380 (2010). Here, Class Counsel is not aware of an alternative method of providing
19 notice to the Class which would result in a higher likelihood of actual notice. (Genish Decl., ¶ 43-
20 44). The original source of the mailing addresses is from Class Members, who provided the
21 information to Defendant. (Genish Decl., ¶ 44). Not later than 3 business days after the
22 Administrator’s receipt of any Class Notice returned by the USPS as undelivered, the Administrator
23 shall re-mail the Class Notice using any forwarding address provided by the USPS. If the USPS does
24 not provide a forwarding address, the Administrator shall conduct a Class Member Address Search,
25 and re-mail the Class Notice to the most current address obtained. The Administrator has no
26 obligation to make further attempts to locate or send Class Notice to Class Members whose Class
27 Notice is returned by the USPS a second time. (Settlement Agreement, ¶ 7.4.3).

28 Any Class Members who wish to object to the approval of this Settlement may do so by fax,

1 email, or mail. (Settlement Agreement, ¶ 7.7, et seq.). Written objections must be mailed to the
2 Settlement Administrator no later than 45 days following the initial mailing of the Class Notice (plus
3 an additional 14 days for Class Members whose Class Notice was re-mailed. (Settlement Agreement,
4 ¶ 7.7.2). In the alternative, Class Members may also appear, or hire an attorney to appear in Court,
5 and object at the Final Approval Hearing. (Settlement Agreement, ¶ 7.7.2).

6 Class Members who wish to exclude themselves (opt-out of) the Class Settlement must send
7 the Administrator, by fax, email, or mail, a signed written Request for Exclusion not later than 45
8 days after the Administrator mails the Class Notice (plus an additional 14 days for Class Members
9 whose Class Notice is re-mailed). A Request for Exclusion is a letter from a Class Member or his/her
10 representative that reasonably communicates the Class Member's election to be excluded from the
11 Settlement and includes the Class Member's name, address and email address or telephone number.
12 To be valid, a Request for Exclusion must be timely faxed, emailed, or postmarked by the Response
13 Deadline. (Settlement Agreement, ¶¶ 7.5.1-7.5.4).

14 **X. CONCLUSION**

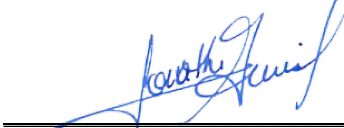
15 For all of the foregoing reasons, Plaintiffs respectfully request that this Court grant Plaintiffs'
16 Motion for Preliminary Approval and the relief requested herein.

17 Respectfully submitted,

18
19 Dated: November 10, 2022

BLACKSTONE LAW, APC

20
21 By:



Jonathan M. Genish
Miriam L. Schimmel
Attorneys for Plaintiff Alexander Gnaedig



Reschedule a Reservation

Reservation

Reservation ID:
191962494900

Reservation Type:
Motion re: (Preliminary Approval of Class and PAGA Settlement)

Case Number:
21STCV20904

Case Title:
ALEXANDER GNAEDIG vs FAVORITE HEALTHCARE STAFFING, INC.

Filing Party:
Alexander Gnaedig (Plaintiff)

Location:
Stanley Mosk Courthouse - Department 58

Date/Time:
November 30th 2022, 9:30AM

Status:
RESERVED

Number of Motions:
1

Motions to Reschedule

Motion re: (Preliminary Approval of Class and PAGA Settlement)

Reschedule To:

Date: 12/07/2022 9:00 AM

Location: Stanley Mosk Courthouse - Department 58

Fees

Description	Fee	Qty	Amount
Reschedule Fee	20.00	1	Chat 0.00
Credit Card Percentage Fee (2.75%)	0.55	1	

Description	Fee	Qty	Amount
TOTAL			\$20.55

Payment

Amount:
\$20.55

Type:
AmericanExpress

Account Number:
XXXX1008

Authorization:
162876

-  Print Receipt
-  [Reserve Another Hearing](#)
-  [View My Reservations](#)