RICHARD LAW, P.C.
Diane E. Richard (State Bar No. 204897)
5060 N. Harbor Drive, Suite 265
San Diego, CA 92106
Telephone: (619) 880-5534; Facsimile: (619) 880-5459
diane@richardlawpc.com

Attorneys for PLAINTIFFS JOANABELLE PIZARRO ORDONA and TAKEYA RIDEOUT

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF ORANGE

JOANABELLE PIZARRO ORDONA, TAKEYA RIDEOUT, Individually and on Behalf of Other Members of the Public and those Similarly Situated, Plaintiffs, v. FIRST CLASS NURSES, INC., a California Corporation, AMGAD WAHBA, RAMY WAHBA, and DOES 1-10, Inclusive, Defendants.	**Case No. 30-2021-01238237-CU-OE-CXC** *ASSIGNED FOR ALL PURPOSES TO: HONORABLE LON F. HURWITZ* *DEPARTMENT: CX-103* *ACTION FILED: DECEMEBER 27, 2021* *FAC FILED: MARCH 23, 2022* *ANSWER FILED: APRIL 26, 2022* **<u>CLASS ACTION/PAGA ACTION</u>** **MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF PLAINTIFFS' MOTION FOR FINAL APPROVAL OF CLASS ACTION AND PAGA SETTLEMENT, AND APPROVAL OF CLASS REPRESENTATIVE SERVICE PAYMENTS, ADMINISTRATION EXPENSES, AND ATTORNEYS' FEES AND COSTS** **<u>Hearing:</u>** Date: July 12, 2024 Time: 1:30 p.m. Location: Dept. CX-103

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I. INTRODUCTION

On February 9, 2024, this Court entered preliminary approval of a proposed Settlement[1] reached in the Settlement Action. The Settlement was reached after a full-day mediation and mediator's proposal from experienced mediator Marc Feder (the "Mediator"). Through the proposed Settlement, the $260,000 all-cash, non-reversionary Settlement reaps both monetary benefits through a "checks-mailed" settlement, and significant injunctive relief in the form of Defendants' (i) elimination, from its nurse agreements, of the provisions that the lawsuit sought to remove (i.e. non-compete, liquidated damages for training/orientation costs, and wage non-disclosures); and (ii) agreement to cease all enforcements of liquidated damages provisions and all collection proceedings, and not receive any monies for liquidated damages. The 156 Class Members substantially benefit from the injunctive relief that Plaintiffs and Class Counsel were a catalyst for.

The Court-appointed Settlement Administrator, ILYM Group, Inc. ("Administrator" or "ILYM"), mailed the Notice Packet on March 8, 2024 to Class Members. Castro Decl.,¶7.[2] The Settlement has been extremely well received. To date, there are ***no*** objections to the Settlement and there is a 100% participation rate, with ***no*** requests for exclusion. *Id.*, ¶¶12-13. The average pre-tax Class Member settlement award is approximately $729. *Id.*, ¶14. In exchange for Settlement benefits, there is a narrowly tailored release of claims. Agreement, ¶¶1.39-1.41, 5.2-5.4.

Plaintiffs now move for final approval of the Settlement, and approval of the Administration Expenses Payment, and an award for attorneys' fees and costs, and the class representative service payments from the Settlement. As detailed below, Plaintiffs submit that the Settlement and all requested payments are fair, adequate and reasonable and that the Class meets all of the requirements for class certification for settlement purposes. Accordingly, Plaintiffs respectfully request that the Court enter the [Proposed] Order of Final Approval of Class and PAGA Action Settlement and Final Judgment ("Order of Final Approval and Judgment").

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[1] All capitalized terms not otherwise defined have the same definitions Class Action and PAGA Settlement Agreement ("Settlement" or "Settlement Agreement" or "Agreement") attached as Ex. 1 to the Supplemental Declaration of Diane E. Richard in Support of Plaintiffs' Motion for Preliminary Approval of Class Action Settlement (ROA #118).

[2] "Castro Decl." or "Castro Declaration" refers to the concurrently filed Declaration of Nick Castro of ILYM Group, Inc. re Notice and Settlement Administration.

II. SUMMARY OF THE LITIGATION AND SETTLEMENT EFFORTS

Plaintiffs commenced their lawsuit on December 27, 2021. In summary, the Action claims that employment agreements utilized by First Class Nurses ("FCN") contain unlawful language pertaining to liquidated damages, wage non-disclosure/confidentiality, and non-competition, and that Defendants did not pay proper and timely wages and business reimbursements or provide compliant wage statements and breaks, and engaged in unfair competition. Defendants deny liability and allege a variety of defenses. Agreement, ¶¶2.1-2.2; Richard Decl.[3], ¶¶7-11.

Class Counsel has conducted discovery and investigation which has included, among other things inspection and analysis of policies and procedures, pay and time records, and nurse agreements, and research of applicable law. The Parties mediated with Marc Feder who has substantial experience with employment class and PAGA actions. Prior to attending the February 14, 2023 mediation, the Parties performed significant work, exchanging data, documents and legal positions with each other and participating in mediation discussions both with each other and with the Mediator. With the assistance of Mediator Feder, the Parties explored settlement in light of the financial hardship that FCN attests to a result of the loss of its largest client and principle source of revenue. Following Class Counsel's thorough analysis of significant discovery and differing legal positions, the disclosure of FCN's financial hardship, substantial arm's-length bargaining by the Parties and a mediator's proposal, the Parties agreed to settle the Settlement Action on behalf of a narrowly defined group of Class Members and Aggrieved Employees. The Parties thereafter, using this Court's Guideline, negotiated the terms of the Agreement and Notice Packet. *Id.*, ¶¶12-16; Agreement, ¶2.4. At all times, the Parties' settlement negotiations have been non-collusive, adversarial, and at arm's length. This Settlement was reached after Class Counsel analyzed discovery and after substantial arm's-length bargaining. In summary, discovery and investigation has been conducted to assess the relative merits of the claims and defenses, and to compromise the issues on a fair and equitable basis. Richard Decl., *generally.*

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[3] "Richard Declaration" or "Richard Decl." refers to the concurrently filed Declaration of Diane E. Richard in Support of Plaintiffs' Motion for Final Approval of Class Action and PAGA Settlement, and Approval of Class Representative Service Payments, Administration Expenses, and Attorneys' Fees and Costs.

III. SUMMARY OF THE SETTLEMENT

A. Terms of Settlement

The settled Class is "all non-exempt employees of FCN who worked for FCN at the Centinela Hospital Medical Center in Inglewood, California at any time during the Class Period of December 27, 2017 to March 1, 2023."[4] Agreement, ¶¶1.5, 4.1. There are 156 Class Members. Castro Decl., ¶5. The Settlement includes both an injunctive relief and a lump-sum cash component:

Injunctive Relief: The Settlement achieves significant benefit from the substantial injunctive relief that the lawsuit, Plaintiffs and Class Counsel were a catalyst for. Agreement, ¶6.1; Richard Decl., ¶¶27-29. "FCN has revised its policies to no longer include liquidated damages and non-compete provisions within its nurse agreements, and to modify the confidentiality provision within nurse agreements to make clear that rates of pay can be discussed and disclosed. The instant action, the Plaintiffs, and their counsel were a catalyst for this change." Wahba Decl., ¶4[5]. All Class Members hired prior to the filing of the action signed agreements that contained a version of a liquidated damages provision. *Id.,*¶5. FCN has and will continue to cease all enforcements of and collection proceedings based on the liquidated damages provision, and will not receive any monies for this provision, binding on Defendants, Released Parties, assignees, attorney or collection firms. *Id.,*¶6.

Cash Payment: Defendants will pay a $260,000 fixed, "non-reversionary" common-fund amount (the Gross Settlement Amount or the "GSA"). The GSA is inclusive of all payments to be distributed under the Settlement. Agreement, ¶¶1.22, 3.1. Defendants will separately pay employer taxes owed on the Wage Portions of the Individual Class Payments. *Id.*, ¶3.1

Subject to Court approval, the following distributions will be made from the GSA: (i) LWDA PAGA Payment for its 75% share ($3,750) and Individual PAGA Payment to Aggrieved Employees for their 25% share ($1,250); (ii) Administrator Expenses Payment (requesting $6,000); (iii) Class Representative Service Payments (requesting $10,000.00 to each of the two Class Representative for

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[4] Aggrieved Employees are defined as "all non-exempt employees of FCN who worked for FCN at the Centinela Hospital Medical Center in Inglewood, California at any time during the PAGA Period of December 24, 2020 to March 1, 2023." There are 102 Aggrieved Employees. Castro Decl., ¶5.

[5] "Wahba Decl." or "Wahba Declaration" refers to the previously filed Amended Declaration of Amgad Wahba In Support of Plaintiffs' Motion for Preliminary Approval (ROA #120).

a total of $20,000); and (iv) Class Counsel Fees Payment and Litigation Expenses Payment (requesting $104,000 in fees (40% of the GSA) and costs of $11,288.58). Agreement, ¶¶1.22, 3.2.1-3.2.3, 3.2.5. Remaining after these deductions is the Net Settlement Amount ("NSA"). *Id.*, ¶1.28.

Should the Court grant full and final approval to the Settlement, the NSA is estimated to be $113,711.42, from which Individual Class Payments will be disbursed to Participating Class Members. *Id.*,¶3.2.4. This is a "checks-mailed" settlement. Agreement, ¶3.1; Castro Decl.,¶14. Individual settlement payments are comprised of two components: (i) Individual PAGA Payments, for settlement of PAGA Claims, are calculated using PAGA Pay Periods and will be issued to Aggrieved Employees pro rata; (i) Individual Class Payments, for settlement of Class Claims, are calculated using Workweeks and will be issued to Participating Class Members pro rata. Eligibility and calculations for these awards are set forth in paragraphs 3.2.4 and 3.2.5 of the Agreement. Should the Court approve less than any amounts allocated under the Settlement and/or should any Class Member not participate in the Class Settlement, the remainder will be allocated to the NSA and distributed to Participating Class Members pro rata. *Id.*, ¶¶3.2.1, 3.2.2, 3.2.3, 3.2.4.2, 3.2.5.2. One hundred percent (100%) of Individual PAGA Payments is allocated as penalties, reported via IRS Form 1099 as non-wage income. For the Individual Class Payments, twenty percent (20%) is allocated to the settlement of wage claims (the "Wage Portion") reported via IRS Form W-2, and eighty percent (80%) is allocated to settlement of claims for interest and penalties (the "Non-Wage Portion"), reported via IRS Form 1099. Agreement, ¶¶3.2.4.1, 3.2.5.2.

B. Preliminary Approval, Notice Process, and Response to the Settlement

On February 9, 2024, this Court granted preliminary and, in doing so, also ordered ILYM to mail the Notice Packet to Class Members. Richard Decl., ¶30. ILYM received the Notice Packet on February 15, 2024 and the file containing information for Class Members on February 23, 2024. After updating the addresses, ILYM mailed the Class Notice to 156 individuals. Castro Decl., ¶¶4-7. ILYM received fifteen Notice Packets returned as undeliverable; seven were able to be re-mailed as a result of skip tracing. A total of eight Notice Packets are determined to be undeliverable. *Id.*, ¶¶8-10.

As a result of this notice process, to date, ***no* Class Member has objected** to the Settlement, and ***no* Class Member has requested exclusion** from the Settlement. *Id.*, ¶¶12-13; Richard Decl.,

¶¶32-33.[6] [7] Given the 100% participating rate to date, should the Settlement and all requested payments from the Settlement receive full and final approval, ILYM states that Participating Class Members average gross Individual Class Payment is approximately $728.92. Castro Decl., ¶14.[8]

C. Settlement Funding and Distributions

Defendants shall fully fund the GSA and the employer's payroll taxes no later than twenty-one (21) calendar days after the Effective Date (the date by when the Court enters a Final Judgment; and the Final Judgment is final). Within fourteen (14) calendar days after funding, the Administrator will make distributions, including mailing settlement awards. Agreement, ¶¶1.18, 4.3-4.4. Any returned checks will be resent after a skip trace. Settlement checks will be negotiable for 180 days and cancelled after this time. The Administrator will transmit funds from any after-the-void date cancelled checks to the California State Controller's Office – Unclaimed Property Fund in the name of the Class Member thereby leaving no unpaid residue subject to the requirements of California Code of Civil Procedure §384. Agreement, ¶¶1.10, 4.4.1, 4.4.2, 4.4.3.

D. Notice of Judgment

The Order of Final Approval and Judgment will be posted on the Administrator's website.

IV. THE COURT SHOULD CONFIRM ITS CONDITIONAL CERTIFICATION OF THE CLASS FOR SETTLEMENT PURPOSES

A class may be certified when it meets the requirements of Section 382 of the Code of Civil

[6] Further, no objection has been submitted by the LWDA upon submission of the proposed settlement to the LWDA. Richard Decl., ¶29. Upon preliminary approval, Class Counsel served the LWDA with the Notice of Ruling (ROA #138) and the Notice of Ruling and Entry of Amended Order Granting Preliminary Approval of Class Action and PAGA Settlement (ROA #142). Richard Decl., ¶31.

[7] Based on the original Notice Packet mailing date, the deadline to request exclusion or to file a written objection was May 7, 2024. Pursuant to the Settlement, Notice Packets that were resent after having been returned undeliverable to the Administrator, have 45 calendar days after the Notice Packet re-mailing to object or request exclusion; the response deadline for the last re-mailed Notice Packet is June 24, 2024. Castro Decl.,¶11. Class Counsel will provide a supplemental Castro declaration to the Court finalizing the responses after this response deadline has passed.

[8] The highest being approximately $1,980.26, and the lowest being approximately $17.07. Plaintiff Ordona's estimated gross total is $716.99 and Plaintiff Rideout's estimated gross total is $665.78. For those Participating Class Members who are also Aggrieved Employees, the highest gross combined class and PAGA award is approximately $2,015.99, with the average being approximately $736.93, and the lowest being approximately $17.07. Plaintiff Ordona and Rideout's combined gross total is approximately $730.16 and $674.55 respectively. Castro Decl., ¶14.

Procedure ("Section 382") including that it is ascertainable, sufficiently numerous, and has a well-defined community of interest. In the settlement context, the Court may use a lesser standard to determine the appropriateness of a settlement class as opposed to a litigated class certification. *Dunk v. Ford Motor Co.*, 48 Cal. App. 4th 1794, 1806-07 & n.19 (1996). The Parties have agreed to certification solely for purposes of Settlement, and this Court found that the Class meets requirements for certification, for settlement purposes, when it granted preliminary approval of the Settlement and conditional certification of the Class on February 9, 2024. No events have occurred that would change the propriety of certification. Moreover, the positive reaction to the Settlement during the notice process supports certification. This Court should confirm its conditional certification of the Class.

V. THE SETTLEMENT IS FAIR, ADEQUATE, AND REASONABLE AND SHOULD RECEIVE FINAL COURT APPROVAL

The Settlement is fair, adequate, and reasonable as it provides monetary benefits and substantial injunctive relief to Class Members. The fairness, adequacy, and reasonableness are also illustrated by the lack of objectors to date.

A. The Three-Step Class Action Settlement Approval Process

The law favors settlement, particularly in class actions and other complex cases where substantial resources can be conserved by avoiding the time, cost, and rigors of formal litigation. *See Potter v. Pac. Coast Lumber Co. of Cal.*, 37 Cal. 2d 592, 602-03 (1951); *see also* William B. Rubenstein, et al., 4 Newberg on Class Actions §13:44 (5th ed. 2013) ("Newberg") ("[T]he law favors settlement, particularly in class actions …."). These concerns apply with particular force in an action such as this, where an allegedly improper practice affected many employees.

A class action may not be dismissed, compromised, or settled without the approval of the Court. Cal. R. Ct. 3.769 ("Rule 3.769"). Judicial protocol calls for the following steps in the class settlement approval procedure: (i) preliminary approval of the proposed settlement at an informal hearing; (ii) dissemination of mailed and/or published notice of the settlement to all affected class members; and (iii) a "formal fairness hearing," or final settlement approval hearing, at which class members may be heard regarding the settlement, and evidence and argument concerning the fairness, adequacy, and reasonableness of the settlement may be presented. Cal. R. Ct. 3.769(c), (d), (f), (g).

This commonly used procedure safeguards class members' procedural due process rights and enables the court to fulfill its role as the guardian of class interests. *See* Newberg, *supra*, §13:10.

The first step of this process was completed when this Court granted preliminary approval of the Settlement. Cal. R. Ct. 3.769(d); *see also Wershba v. Apple Computer, Inc*., 91 Cal. App. 4th 224, 232-34 (2001); Newberg, *supra*, §13:10. The second step - the dissemination of the Class Notice - is complete as well. The Parties worked with ILYM to implement the Court-approved notice program, which employed the best practicable means to disseminate notice, to Class Members, of the Settlement and of the final approval process. Cal. R. Ct. 3.769(f). The third and last step is the final approval hearing at which time this Court shall determine whether the Settlement is fair, adequate, and reasonable. Cal. R. Ct. 3.769(g). At the hearing, this Court will decide whether to grant final approval and whether to enter a final judgment.

B. The Settlement Is Presumptively Fair

When presented with a motion for final approval under Section 382, a court inquires whether the settlement is "fair, adequate and reasonable." *See Wershba*, 91 Cal. App. 4th at 244-45; *Dunk v. Ford Motor Co*., 48 Cal. App. 4th 1794, 1801 (1996). A review shows that the Settlement is fair. Indeed, this Court should begin its analysis with a presumption that the Settlement is fair: "[A] presumption of fairness exists where: (1) the settlement is reached through arm's-length bargaining; (2) investigation and discovery are sufficient to allow counsel and the court to act intelligently; (3) counsel is experienced in similar litigation; and (4) the percentage of objectors is small." *Dunk*, 48 Cal. App. 4th at 1802; *Wershba*, 91 Cal. App. 4th at 245. Each indicia of fairness is present here.

The Parties negotiated the Settlement of the complex claims at issue in good faith and at arm's-length, following investigation of the claims. Richard Decl.,¶¶12-26. The Parties performed significant work, exchanging data, documents and legal positions with each other and participating in mediation discussions both with each other and with the Mediator. *Id.* Class Counsel is experienced in class action wage-and-hour litigation of this type. Richard Decl.,¶¶3-6. Additionally, the presumption of fairness and adequacy is appropriate here because the reaction of Class Members has been very positive – no one to date has objected to the Settlement. *See Dunk*, 48 Cal. App. 4th at 1802. The four *Dunk* factors are present here and thus it is appropriate for the Court to presume that the Settlement is fair and worthy of final approval. Cal. R. Ct. 3.769(g).

C. Each of the Relevant Criteria Supports Final Approval of the Settlement

California courts consider several factors, including the following, when reviewing final approval: (i) the value of the settlement; (ii) the risks inherent in continued litigation; (iii) the extent of discovery completed and the stage of proceedings when settlement was reached; (iv) the complexity, expense, and likely duration of litigation in the absence of settlement; (v) the experience and views of class counsel; and (vi) the reaction of class members. *See Wershba*, 91 Cal. App. 4th at 244-45; *see also Dunk*, 48 Cal. App. 4th at 1801. Each of these criteria supports final approval.

1. The Value of the Settlement Favors Final Approval

The Settlement is well within the range of possible approval. Defendants agreed to a $260,000 common fund. Class Members have claimed 100% of the funds available to Class Members. The average gross class settlement award (exclusive of PAGA payments) is approximately $728.92 and is based on a workweek formula. Castro Decl., ¶14. This is a good resolution and a fair and adequate compromise in relation to the claimed harm and adjustments for risk associated with this complex action including FCN's financial circumstances. Moreover, the substantial injunctive relief achieved provides significant value to Class Members. Richard Decl., ¶¶21-22, 27-28, 53.

2. The Risks Inherent in Continued Litigation Are Substantial and Favor Final Approval

Defendants vigorously contested the claims, which are subject to legal uncertainties, and asserted numerous defenses raising challenging legal issues. Plaintiffs faced the risks of appeals. There is also a risk that if litigation continued, a trial judgment could ultimately not be paid by Defendants. The defenses and inherent risks of litigation favor approval here. *Id.*, ¶¶25-26.

3. The Settling Parties Engaged in Extensive Investigation of the Claims, Which Favors Final Approval

Before arriving at the Settlement, the Parties engaged in extensive investigation, research, and discovery, and evaluated the strengths and weaknesses of this Settlement Action. The discovery conducted and the information exchanged are sufficient to assess reliably the merits of the respective Parties' positions and to compromise the issues on a fair and equitable basis. *Id.*, ¶¶12-26.

4. The Complexity, Expense, and Likely Duration of Continued Litigation in the Absence of Settlement Favors Final Approval

Employment class action cases are expensive and time consuming to prosecute. This action in particular is a difficult and challenging case given the defenses raised by Defendants, the novel legal issues, and uncertainties in the law. Continued litigation would likely be complex and expensive. Settlement avoids the need for contested class certification and summary judgment motions, and trial, all of which would be time consuming and costly for the Parties and the Court.

5. The Experience and Views of Class Counsel Favor Final Approval

The endorsement of the settlement by qualified, well-informed class counsel as fair is entitled to significant weight. *See Dunk*, 48 Cal. App. 4th at 1802. Class Counsel supports the Settlement as fair, adequate, reasonable, in the best interests of the Class. Richard Decl.,¶26.

6. Class Members' Positive Reaction to the Settlement Favors Final Approval

Of high importance is the fact that, to date, not a single one of the Class Members have objected to the Settlement and there are no opt-outs of the Settlement. The Court should construe the overwhelming non-opposition to the Settlement as a strong indication of Class Members' support for the Settlement as being fair, adequate, and reasonable and, thus, deserving of final approval.

For these reasons, the Settlement should be approved as being fair, adequate and reasonable.

VI. THE ADMINISTRATION EXPENSES SHOULD BE FINALLY APPROVED

ILYM's fees and costs in connection with the administration of this Settlement, which includes amounts incurred to date, as well as anticipated amounts for administration completion, are $6,000.00. Castro Decl., ¶15; Exhibit B. As detailed in the Castro Declaration, ILYM's work to date has included mailing of the printed Notice Packet to 156 Class Members, address verifications and Notice Packet re-mailings, initial settlement award calculations, and providing status reports and a declaration in conjunction with final approval. Future work includes the calculation of the settlement awards, issuance and mailing of the settlement checks, completion of the distributions including transmission of any unclaimed funds to Unclaimed Property Fund, preparation of a final compliance and status declaration, necessary tax filing and reporting, and any other tasks that the Parties agree to and/or the Court orders ILYM to perform. *See generally*, Castro Declaration. For these reasons, the Administration Expenses Payment is fair and reasonable and should be finally approved.

VII. THE REQUESTED ATTORNEYS' FEES AWARD WARRANTS FINAL APPROVAL AS FAIR AND REASONABLE, CONFIRMED BY A LODESTAR CROSS-CHECK

A. The Fee Award Is Fair and Reasonable Under the Common Fund Doctrine

Class Counsel respectfully submits that the attorneys' fees award of $104,000 (representing 40% of the $260,000 GSA) is fair and reasonable and is confirmed by a lodestar cross-check, which results in a negative multiplier since Class Counsel's fees (through completion of the final accounting/compliance hearing) is expected to be a minimum of $161,167.60 which is $57,167.50 less than a $161,167.50 lodestar. This application for fees, made pursuant to Rule 3.769(b) (requiring approval of the fees paid through class settlement), addresses the reasons an upward movement (from 33.33% to 40% fees) is warranted here.

The award is appropriate under the "common fund" doctrine and is supported by a lodestar cross-check.[9] Courts have long recognized the "common fund" doctrine, under which attorneys who create a common fund or benefit for a group of persons may be awarded their fees and costs to be paid out of the fund. *See Serrano v. Priest*, 20 Cal. 3d 25, 34 (1977) (quoting *D'Amico v. Bd. of Med. Exam'rs*, 11 Cal. 3d 1, 25 (1974)); *Glendale City Emps.' Ass'n v. City of Glendale*, 15 Cal. 3d 328, 341 n.19 (1975); *Quinn v. State of Cal.*, 15 Cal. 3d 162, 167-68 (1975); *see also Boeing Co. v. Van Gemert*, 444 U.S. 472, 478 (1980); *Mills v. Elec. Auto-Lite Co.*, 396 U.S. 375, 391-92 (1970). The California Supreme Court has held that, "when a number of persons are entitled in common to a specific fund, and an action brought by a plaintiff or plaintiffs for the benefit of all results in the creation or preservation of that fund, such plaintiff or plaintiffs may be awarded attorneys' fees out of the fund." *Serrano*, 20 Cal. 3d at 34 (quoting *D'Amico*, 11 Cal. 3d at 25); *see also Boeing Co.*, 444 U.S. at 478 ("[A] lawyer who recovers a common fund for the benefit of persons other than himself or his client is entitled to a reasonable attorney's fee from the fund as a whole."); *Mills*, 396 U.S. at 391-92 (U.S. Supreme Court endorsing the common fund approach in class actions). The common fund doctrine is explained as follows: "Where the lawsuit results in the recovery of a fund or property benefiting others as well as plaintiff (e.g., a class action), the court has inherent equitable power to

[9] Separately, Sections 226(e)(1), (h) 1194, 2699(g)(1), 2802(c), 2802.1(d) of the Labor Code and section 1021.5 of the Code of Civil Procedure all provide for an award of attorney's fees and costs.

order plaintiff's attorney fees paid out of the common fund or property.... Such "fee spreading" assures that all of those benefited by the litigation pay their fair share of obtaining the recovery. " William E. Wegner, et al., *California Practice Guide: Civil Trials and Evidence*, §17:172.3 (2016).

The percentage-of-the-fund approach appears to be the preferred method of awarding fees in traditional common fund cases, such as this case. *See Serrano*, 20 Cal. 3d at 35. Where the settlement amount is "a certain or easily calculable sum of money," use of the percentage-of-the-fund method is appropriate. *Id.* In *Glendale* (at 341& n.19), the California Supreme Court upheld an attorneys' fee award based on a percentage of the common benefit obtained in a lawsuit for retroactive wages: "That [fee] award may be sustained under the rule that a litigant who creates a fund in which others enjoy beneficial rights may require those beneficiaries to pay their fair share of the expense of litigation." *see also, Sprague v. Ticonic Nat'l Bank*, 307 U.S. 161, 164-67 (1939). Attorneys' fee awards of 40% are established by California law and practice and recognize that higher percentages are warranted in smaller cases. *See e.g.*, *Van Vranken v. Atl. Richfield Co*., 901 F. Supp. 294, 297 (N.D. Cal. 1995) (class counsel fee awards of 30-50% are more typical where the common fund is less than $10 million); *Williams v. Costco Wholesale Corp*., 02-cv-2003 IEG, 2010 WL 2721452 at *6 (S.D. Cal. July 7, 2010 (courts awarded between 33.33% and 40% in wage hour class actions); *Cicero v. DirectTV, Inc.,* No. EDCV 07-1182, 2010 WL 2991486 at *7 (C.D. Cal. July 27, 2010) (observing that "30-50% [is] commonly awarded in cases in which the common fund is relatively small" and that in California "courts usually award attorneys' fees in the 30-40% range). Here, given the small size of the common fund, the fee request is fair and reasonable in light of awards in California.

B. A Lodestar/Multiplier Cross-Check Confirms that the Requested Fees are Fair and Reasonable

Under the lodestar cross-check/multiplier method[10], the Court first determines a lodestar value for the fees by multiplying the time reasonably spent by Class Counsel on the case by a reasonable hourly rate. *In re Consumer Privacy Cases*, 175 Cal. App. 4th 545, 556-557 (2009). Here, Class

[10] The Richard Declaration provides information supporting attorney experience, status, and hourly rate, as well as the number of hours expended on the action. As noted in this declaration, significant time and resources were expended on bringing the Action to successful resolution on behalf of the Class. A lodestar/multiplier crosscheck confirms the reasonableness of the attorneys' fees request.

Counsel's hours spent on the matter are reasonable. Richard Decl., ¶49; Ex. 4. Further, Class Counsel's hourly rate is comparable to those charged by class action attorneys. Richard Decl., ¶50; Ex. 5. The lodestar then may be enhanced or reduced by applying a multiplier to take into account the contingent nature and risk associated with the action, delayed payment, and other factors such as the degree of skill required, and success achieved. *Ketchum v. Moses,* 24 Cal. 4th 1122, 1132 (2001). Here, Class Counsel's lodestar is more than the requested award, resulting in a negative multiplier. Richard Dec., ¶¶44,49. Although positive multipliers of 2.5 and higher are routinely awarded in both California state and federal courts, Class Counsel is not seeking a multiplier here. *See, e.g.*, *Vizcaino v Microsoft Corp.,* 290 F.3d 1043, 1051 (9th Cir. 2002) (3.65 multiplier applied after analyzing most commonly applied multipliers); *Chavez v. Netflix, Inc.,* 162 Cal. App. 4th 43, 66 (2008) (2.5 multiplier); *Wershba v. Apple Computer, Inc.*, 91 Cal. App. 4th 224, 255 (2001) ("Multipliers can range from 2 to 4 or even higher."). Accordingly, a lodestar/multiplier confirms the reasonableness of Class Counsel's attorney fee request.

C. The Circumstances of This Action Support the Requested Fee Award

Given the contingent nature of this case, the experience, reputation, and ability of Class Counsel, and the significant results achieved, a $104,000 fee award is reasonable.

1. The Contingent Nature of This Action and the Preclusion of Other Employment

As California law recognizes, Class Counsel's commitment to this litigation should not be assessed in a vacuum. *See Serrano*, 20 Cal. 3d at 49. A relevant factor in determining attorneys' fees is whether the litigation required Class Counsel to forego other employment. *Id.* Another factor is the contingent nature of the Action. *Beasley v. Wells Fargo Bank*, 235 Cal. App. 3d 1407, 1419 (1991) (award of enhanced fees is intended to compensate for the risk of loss in contingency cases as a class action); *Amaral v. Cintas Corp. No. 2*, 163 Cal. App. 4th 1157, 1217-18 (2008) (contingent fee must be higher than a fee for the same legal services paid as it compensates not only for the legal services rendered but also for the loan of those services). From the outset to the present, undertaking representation in this action has involved significant financial risk for Class Counsel. Class Counsel undertook this matter solely on a contingent basis with no guarantee of recovery. Class Counsel placed its own resources at risk to pursue this action with no guarantee of success, spending hundreds of hours and many thousands of dollars in costs. Richard Decl., ¶¶51-54.

2. The Experience, Reputation, and Ability of Class Counsel, and the Skill Displayed in Litigation

Class Counsel has substantial experience in handling wage-and-hour and other class and complex litigation. Richard Decl., ¶¶3-6. Class Counsel's skills in developing a factual record and convincing Defendant of the exposure under the law were essential to achieving the Settlement. Through Class Counsel's skill, experience, and reputation, the Settlement was achieved.

3. The Results Achieved in the Settlement

The excellent results achieved support the request for attorney's fees. Class Members' support for the results is demonstrated by the absence of any objections to the Settlement or the request for fees, both of which were described in the Notice Packet. Due to Class Counsel's efforts, Class Counsel were able to negotiate for the benefit of the Class a settlement not only comprised of a cash component of $260,000 but also 100% of the injunctive relief sought through the Settlement Action - which as detailed in the Declaration has a potential value of greater than $4,000,0000. Richard Decl., ¶¶18-19, 21-22, 53. Attorneys' fees may be received on the value of injunctive relief under the catalyst theory. See *Graham v. DaimlerChrysler Corp*., 34 Cal.4th 553 (2004). Here, the work Class Counsel performed and the results achieved fall squarely under recoverable fees as a catalyst. See e.g. Richard Decl., ¶¶27-28, 48.

4. No Class Member Objected to Class Counsel's Fee Award

Class Counsel's intention to request $104,000 for payment of attorney's fees from the GSA was clearly disclosed to each Class Member in the Court-approved Class Notice. Not a single one of the Class Members has objected to attorney's fees. The Class Members clearly approve the award of attorney's fees. Class Counsel respectfully request $104,000 in attorney's fees be awarded.

VIII. CLASS COUNSEL'S REQUESTED COST AMOUNT WARRANTS FINAL APPROVAL AS FAIR AND REASONABLE

Documented costs that Class Counsel seeks are $11,288.58.[11] Richard Decl., ¶¶55-56; Exh. 6. This amount is $3,711.42 less than the $15,000 in costs noted in the Agreement, Class Notice and

[11] This amount includes future anticipated costs of $200 for items such as litigation support fees and filing fees through final approval/notice of entry of order and judgment.

at the preliminary approval stage. The cost request is fair, adequate and reasonable. The reasonably incurred costs include court fees, LWDA fees, mediation fees, postage, research, copying, scanning and printing fees, and litigation support service fees. *Id*., ¶56. Such costs are appropriate and routinely approved for reimbursement in these types of cases. *See, e.g.*, *In re United Energy Corp. Solar Power Modules Tax Shelter Inv. Sec. Litig.*, MDL No. 726, 1989 WL 73211, at *6 (C.D. Cal. Mar. 9, 1989); *Trustees of Const. Industry & Laborers Health and Welfare Trust v. Redlands Ins. Co*., 460 F. 3d 1253, 1258-59 (9th Circ. 2006) (costs for legal research reimbursable). Labor Code §§226(e)(1), (h), 1194, 2802(c), 2699(g)(1) and Code of Civil Procedure §1021.5 also all provide for an award of attorney costs. Further, as part of the Settlement, Class Counsel is permitted to seek costs. Class Counsel's intention to request costs from the GSA was clearly disclosed in the Class Notice and Class Members were informed that costs were expected to not exceed $15,000. To date, one of the Class Members have objected to the cost request. The costs, undertaken and advanced by Class Counsel, benefited the Class Members. In light of the foregoing, the $11,288.58 in costs is fair, adequate and reasonable. Plaintiffs respectfully request the Court grant final approval of this amount.

IX. THE REQUESTED SERVICE PAYMENTS WARRANT FINAL APPROVAL AS FAIR AND REASONABLE

A named plaintiff is an essential ingredient of any class action and, thus, a service/incentive award is appropriate. *Stanton v. Boeing Co.*, 327 F.3d 938, 977 (2003); *Cook v. Niedert*, 142 F.3d 1004, 1016 (7th Cir. 1998). For the reasons stated herein and in the Ordona, Rideout[12] and Richard Declarations, it is respectfully submitted that the requested $10,000 service payments are fair and reasonable, and, warrant approval. Indeed, in conjunction with Plaintiffs' Preliminary Approval Motion, the Court noted "In light of the considerable financial and career risks they faced, and the substantial injunctive relief achieved for the Class, the enhancement payments are fair and reasonable."[13] Also significant is that the $10,000 service payment to each of the two Class

[12] "Ordona Declaration" refers to the Declaration of Joanabelle Pizarro Ordona in Support of Class Action and PAGA Settlement (ROA #122) and "Rideout Declaration" refers to the Declaration of Takeya Rideout in Support of Class Action and PAGA Settlement (ROA #124). True and correct copies are attached to the Richard Declaration as Exhibits 2 and 3.

[13] Notice of Ruling filed by Plaintiffs on October 31, 2023, ROA #113 (Item 9, Enhancement).

Representatives was clearly disclosed to Class Members in the Class Notice, and not a single Class Member to date has objected to it. The requested award is a fair and reasonable sum in light of: (i) Plaintiffs' time, efforts and contributions they made; (ii) the risks Plaintiffs took; (iii) the monetary and substantial injunctive relief achieved and the fact that Class Members are greatly benefitting from Plaintiffs' work; and (iv) the stigma brought to them by suing a former employer. Further supporting the award is that Plaintiffs agreed to a general release of claims (much broader than the narrow Class Member release). Richard Decl., ¶¶34-42; *see also generally*, Ordona and Rideout Declarations.

First, Plaintiffs have been active participants in the Action and provided significant contributions including unpaid time on the case. Richard Decl., ¶36. *Second,* Plaintiffs took the risk that this lawsuit would have negative impacts to them including financial and career risks. Richard Decl., ¶¶40-41.[14] *Third*, had it not been for Plaintiffs, no Class Member would receive the benefits of the Settlement including a lump-sum cash payment and substantial injunctive relief. Plaintiffs and Class Counsel did all the work and secured an excellent result in light of the challenges faced. *Fourth*, by being publicly named representatives in a class action lawsuit against a former employer, the Class Representatives risk reputational repercussions. For the foregoing reasons, the requested service payments are fair and reasonable and should be finally approved. The Ordona and Rideout Declarations each detail these efforts and risks. *See generally*, Ordona and Rideout Declarations

X. CONCLUSION

For all of the foregoing reasons, Plaintiffs respectfully submit this Court should grant full and final approval to the Settlement, grant Plaintiffs' motion in its entirety, and adopt the submitted [Proposed] Order of Final Approval of Class and PAGA Action Settlement and Final Judgment. Pursuant to the timeline detailed in paragraph 16 of the Castro Declaration, a final accounting hearing is proposed to be set for a date between June 15 and June 30, 2026 at 1:30 p.m., with a deadline to file the Administrator declaration not later than ten calendar days prior to the hearing.

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[14] If class representatives do not prevail in class action litigation, they are potentially liable for the prevailing party's costs. *See, e.g.*, *Earley v. Superior Court*, 79 Cal. App. 4th 1420, 1433-34 (2000); *Van de Kamp v. Bank of Am. Nat'l Trust & Sav. Ass'n*, 204 Cal. App. 3d 819, 869 (1988). While a class representative is potentially personally liable for costs in an unsuccessful suit, the class representative does not reap all of the benefits in a successful one.

Respectfully submitted,

Dated: June 18, 2024 By: Diane Richard

DIANE E. RICHARD,
Attorney for Plaintiffs Joanabelle Pizarro Ordona and Takeya Rideout

PROOF OF SERVICE

Joanabelle Pizarro Ordona, et al. v. First Class Nurses, Inc. **(30-2021-01238237-CU-OE-CXC)**

1. At the time of service, I was a United States citizen, a resident of the County of San Diego, over 18 years of age, and not a party to or interest in this action.

2. My business address is 5060 N. Harbor Drive, Suite 265, San Diego, CA 92106.

3. On **June 18, 2024** I served the following document(s), including all exhibits thereto:

   - **MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF PLAINTIFFS' MOTION FOR FINAL APPROVAL OF CLASS ACTION AND PAGA SETTLEMENT, AND APPROVAL OF CLASS REPRESENTATIVE SERVICE PAYMENTS, ADMINISTRATION EXPENSES, AND ATTORNEYS' FEES AND COSTS**

4. I served the document(s) on the following:
   FISHER & PHILLIPS LLP
   Boris Sorsher (State Bar No. 251718)
   Lisa Peterson (State Bar No. 292798)
   2050 Main Street, Suite 1000
   Irvine, CA 92614
   Telephone: (949) 851-2424; Facsimile: (949) 851-0152
   Electronic Service Addresses: bsorsher@fisherphillips.com; lpeterson@fisherphillips.com

5. The document(s) were served by the following means:

☒ **BY ELECTRONIC SERVICE** –Based on a court order, court rule, or an agreement of the parties to accept electronic service, I caused such document(s) to be delivered to the person(s) at the electronic service address set forth above. Said document(s) was/were served electronically and the transmission was reported as complete and without error.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on June 18, 2024, at San Diego, California.

Diane Richard	/s/ Diane Richard
Name	Signature