

1 **RICHARD LAW, P.C.**

2 Diane E. Richard (State Bar No. 204897)

3 5060 N. Harbor Drive, Suite 265

4 San Diego, CA 92106

5 Telephone: (619) 880-5534; Facsimile: (619) 880-5459

6 diane@richardlawpc.com

7
8 Attorneys for PLAINTIFFS JOANABELLE PIZARRO ORDONA and
9 TAKEYA RIDEOUT

10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

11 **COUNTY OF ORANGE**

12 JOANABELLE PIZARRO ORDONA,
13 TAKEYA RIDEOUT, Individually and on
14 Behalf of Other Members of the Public and
15 those Similarly Situated,

16 Plaintiffs,

17 v.

18 FIRST CLASS NURSES, INC., a California
19 Corporation,
20 AMGAD WAHBA,
21 RAMY WAHBA, and
22 DOES 1-10, Inclusive,

23 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

CLASS ACTION/PAGA ACTION

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

Hearing:

Date: October 13, 2023

Time: 1:30 p.m.

Dept.: CX-103

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I. INTRODUCTION

Plaintiffs Joanabelle Pizarro Ordon and Takeya Rideout (“Plaintiffs”) submit this memorandum in support of their Motion for Preliminary Approval. The proposed Settlement¹ arose after significant investigation into the alleged claims and defenses, and resolves claims in the Settlement Action against Defendants First Class Nurses, Inc. (“FCN”), Amgad Wahba and Ramy Wahba (collectively, Defendants and Plaintiffs are the “Parties”). Through hard fought, arm’s-length negotiations, including at a full-day mediation, and with the assistance of experienced employment mediator Marc Feder, Plaintiffs and Class Counsel achieved an excellent result for Class Members, under the circumstances of action and FCN’s significant financial hardship caused by the loss of its largest client and principle source of revenue. Richard Decl., ¶¶21, 42-43; Wahba Decl. ¶7.²

The Settlement Agreement itself and accompanying declarations follow each and every one of the procedures and address all of the issues in the Court’s Procedural Guideline for Preliminary Approval of Class Action Settlements (“Guideline”). The Parties considered the Guideline during settlement negotiations, and the drafting of the Settlement Agreement and preliminary approval motion documents. All fourteen (14) of the items contained in the Guideline are addressed by way of this Motion and concurrently filed declarations.³ In conformance with Item 13 of the Guideline, the Parties, Class Counsel and Defense Counsel, after making a reasonable inquiry, are not aware of any class, representative or other collective action in any other court that asserts claims similar to those

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 concurrently filed Declaration of Diane E. Richard in Support of Plaintiffs’ Motion for Preliminary Approval of Class Action Settlement (“Richard Decl.” or “Richard Declaration”). As used herein, the terms Settlement Action and Settlement refers to the disposition of the Action and the PAGA Notice solely on behalf of Class Members and Aggrieved Employees as defined in the Settlement and no other persons, which is effected by the Settlement Agreement and the Judgment.

² As used herein, “Wahba Decl.” refers to the Declaration of Amgad Wahba in Support of Plaintiffs’ Motion for Preliminary Approval. “Peterson Decl.” refers to the Declaration of Lisa Peterson in Support of Plaintiffs’ Motion for Preliminary Approval. “Ordon Decl.” refers to the Declaration of Joanabelle Pizarro Ordon in Support of Settlement. “Rideout Decl.” refers to the Declaration of Takeya Rideout in Support of Settlement. “Mullins Decl.” refers to the Declaration of Lisa Mullins of ILYM Group, Inc. re Settlement Administration.

³ For ease of references, when addressing procedures/issues set forth in the Guideline, said procedures are addressed by “Item” number.

1 asserted in the Settlement Action. Agreement, ¶2.6; Richard Decl., ¶9; Wahba Decl., ¶3; Peterson
2 Decl., ¶3; Ordoná Decl., ¶3; Rideout Decl., ¶2.

3 The \$260,000 all-cash, non-reversionary Settlement reaps both monetary benefits through a
4 “checks-mailed” settlement, and significant injunctive relief in the form of Defendants’ (i)
5 elimination, from its nurse agreements, of the provisions that the lawsuit sought to remove (i.e. non-
6 compete, liquidated damages for training/orientation costs, and wage non-disclosures); and (ii)
7 agreement to cease all enforcements of liquidated damages provisions and all collection proceedings,
8 and not receive any monies for liquidated damages. Richard Decl., ¶¶35-36, 44-46; Wahba Decl.,
9 ¶¶4-6. The approximate 158 Class Members substantially benefit from the injunctive relief that the
10 lawsuit, Plaintiffs and Class Counsel were a catalyst for. Wahba Decl., ¶4; Richard Decl., ¶¶44-46.
11 In exchange for Settlement benefits, there is a narrowly tailored release of claims. Agreement, ¶¶1.39-
12 1.41, 5.2-5.4. Instructions for requesting exclusion from or objecting to the proposed Settlement are
13 clearly identified in the Class Notice, the Request for Exclusion Form and Objection Form, all to be
14 mailed by the proposed Administrator, ILYM Group, Inc. (“ILYM”). Agreement, Ex. A-C.

15 As detailed below and in the accompanying declarations, the proposed Settlement is fair,
16 adequate, and reasonable, particularly given the benefits to Class Members and the inherent risks
17 involved with further litigation and in light of FCN’s significant financial hardship. The Settlement
18 meets all of the requirements for preliminary approval and the Guideline. Accordingly, Plaintiffs
19 respectfully submit that the Court should grant this Motion.

20 **II. SUMMARY OF THE LITIGATION**

21 On December 27, 2021, Plaintiffs commenced their lawsuit and on March 23, 2022, filed the
22 operative First Amended Complaint. In summary, the lawsuit claims that FCN’s employment
23 agreements contain unlawful language pertaining to liquidated damages, wage non-
24 disclosure/confidentiality, and non-competition, and that Defendants did not pay proper and timely
25 wages and business reimbursements and did not provide compliant wage statements, breaks, and
26 engaged in unfair competition. Richard Decl., ¶¶14-16; Agreement, ¶¶2.1-2.2. Defendants deny
27 liability and allege a variety of defenses. Richard Decl., ¶¶16-17, 37. Class Counsel has conducted
28 discovery and investigation which has included, among other things inspection and analysis of

1 policies and procedures, pay and time records, and nurse agreements, and research of applicable law
2 with respect to claims and defenses. Richard Decl., ¶¶18-19; Agreement, ¶2.4. The lawsuit seeks a
3 variety of remedies including wages, penalties, interest, and declaratory/injunctive relief.⁴

4 The Parties mediated with Marc Feder (“Mediator”) who has substantial experience with
5 employment class and PAGA actions. Prior to attending the February 14, 2023 mediation, the Parties
6 performed significant work, exchanging data, documents and legal positions with each other and
7 participating in mediation discussions both with each other and with the Mediator. With the assistance
8 of Mediator Feder, the Parties explored settlement in light of the financial hardship that FCN attests
9 to a result of the loss of its largest client and principle source of revenue. Following Class Counsel’s
10 thorough analysis of significant discovery and differing legal positions, the disclosure of FCN’s
11 financial hardship, substantial arm’s-length bargaining by the Parties and a mediator’s proposal, the
12 Parties agreed to settle the Settlement Action on behalf of a narrowly defined group of Class Members
13 and Aggrieved Employees who worked for FCN at the Centinela Hospital Medical Center in
14 Inglewood, California. The Parties thereafter, through arm’s-length bargaining and using this Court’s
15 Guideline, negotiated terms of the Memorandum of Understanding , the Settlement Agreement, the
16 Class Notice, the Request for Exclusion Form, and the Objection Form. Richard Decl., ¶¶18-22

17 **III. SUMMARY OF SETTLEMENT**

18 **A. Terms of Settlement**

19 **1. The Settlement Class**

20 The settled Class is “all non-exempt employees of FCN who worked for FCN at the Centinela
21 Hospital Medical Center in Inglewood, California at any time during the Class Period of December 27,
22 2017 to March 1, 2023.”⁵ Pursuant to Item 3 of the Guideline, it is estimated that there are 158 Class
23 Members. Agreement, ¶¶1.5, 4.1

24
25 ⁴ The second, fourth and fifth causes of action for declaratory/injunctive relief, respectively claim
26 that FCN’s employment agreements contain unlawful language pertaining to liquidated damages for
training/orientation costs, wage non-disclosure/confidentiality, and non-competition.

27 ⁵ Aggrieved Employees are defined as “all non-exempt employees of FCN who worked for FCN at the
28 Centinela Hospital Medical Center in Inglewood, California at any time during the PAGA Period of
December 24, 2020 to March 1, 2023.” It is estimated that there are 102 Aggrieved Employees.
Agreement, ¶¶1.4, 4.1

1 **2. The Settlement Administrator**

2 The Settlement seeks appointment of ILYM as the settlement Administrator. Agreement,
3 ¶¶1.2, 7.1. ILYM is a third-party administrator experienced in class action settlement administration
4 and there are no known conflicts with ILYM. In conformance with Item 6 of the Guideline, the
5 Administrator’s level of experience has been provided. Mullins Decl., ¶2, Ex. A; Richard Decl., ¶¶7-
6 8, 31-33; Wahba Decl., ¶2; Peterson Decl., ¶2; Ordoná Decl., ¶4; Rideout Decl., ¶3.

7 **3. The Injunctive Relief Benefits**

8 The Settlement achieves substantial benefit from the injunctive relief that the lawsuit,
9 Plaintiffs and Class Counsel were a catalyst for. Agreement, ¶6.1; Richard Decl., ¶¶44-46. “FCN has
10 revised its policies to no longer include liquidated damages and non-compete provisions within its
11 nurse agreements, and to modify the confidentiality provision within nurse agreements to make clear
12 that rates of pay can be discussed and disclosed. The instant action, the Plaintiffs, and their counsel
13 were a catalyst for this change.” Wahba Decl., ¶4 All Class Members hired prior to the filing of the
14 action signed nurse agreements with FCN that contained a version of a liquidated damages provision.
15 *Id.*, ¶5. FCN has and will continue to cease all enforcements of and collection proceedings based on
16 the liquidated damages provision, and will not receive any monies for this provision, binding on
17 Defendants, Released Parties, assignees, attorney or collection firms. *Id.*, ¶6.

18 **4. The Settlement Amount**

19 Under the Settlement, Defendants will pay a \$260,000 fixed common-fund amount, to which
20 Defendants hold no further rights (“non-reversionary”) (the “Gross Settlement Amount” or “GSA”).
21 The GSA is inclusive of all payments to be distributed under the Settlement. Agreement, ¶¶1.22, 3.1.
22 Per Item 4 of the Guideline, Defendants are to separately pay employer taxes owed on the Wage
23 Portions of the Individual Class Payments. *Id.*, ¶3.1

24 **5. Distributions from the GSA**

25 Subject to Court approval, the following distributions will be made from the \$260,000 GSA:
26 (i) LWDA PAGA Payment for its 75% share (\$3,750) and Individual PAGA Payment to Aggrieved
27 Employees for their 25% share (\$1,250); (ii) Administrator Expenses Payment (estimated not to
28 exceed \$6,000) (see Mullins Decl., ¶¶9-10); (iii) Service Payments (requesting \$10,000.00 to each of

1 the two Class Representative for a total of \$20,000); and (iv) Class Counsel Fees Payment and
2 Litigation Expenses Payment (requesting \$104,000 in fees (40% of the GSA) and actual costs
3 expected not to exceed \$15,000). Agreement, ¶¶1.22, 3.2.1-3.2.3, 3.2.5. The fund remaining from the
4 GSA after these deductions is the Net Settlement Amount (“NSA”). *Id.*, ¶1.28. Should the Court grant
5 full and final approval to the Settlement, the NSA is estimated to be \$110,000, from which Individual
6 Class Payments will be disbursed to Class Members. *Id.*, ¶3.2.4.

7 **6. Settlement Payments**

8 Per Item 2 of the Guideline, this is a “checks-mailed” settlement. Agreement, ¶3.1; Richard
9 Decl., ¶28. Individual settlement payments are comprised of two components: (i) Individual PAGA
10 Payments, for settlement of PAGA Claims, are calculated using PAGA Pay Periods and will be issued
11 to Aggrieved Employees pro rata; (i) Individual Class Payments, for settlement of Class Claims, are
12 calculated using Workweeks and will be issued to Participating Class Members pro rata. Eligibility
13 and calculations for these awards are set forth in paragraphs 3.2.4 and 3.2.5 of the Settlement
14 Agreement. Per Item 6 of the Guideline, should the Court approve less than any amounts allocated
15 under the Settlement and/or should any Class Member not participate in the Class Settlement (i.e. by
16 requesting exclusion from the Class Settlement), the remainder will be allocated to the NSA and
17 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.

18 Pursuant to Item 3 of the Guideline, preliminary calculations⁶ of the estimated gross, pre-tax
19 withholding settlement payments Class Members are eligible for should the Settlement receive full
20 and final approval is as follows (inclusive of Individual PAGA Payment for Class Members who are
21 also Aggrieved Employees): the lowest settlement payment is estimated at \$16.99; the average
22 settlement payment is estimated at \$708.45; the highest settlement payment is estimated at \$1,932.62.
23 The estimated settlement payments for Plaintiffs Ordon and Rideout are \$681.73 and \$499.19
24 respectively. Pursuant to Item 4 of the Guideline, consistent with the *Kullar* analysis, one hundred
25 percent (100%) of Individual PAGA Payments is allocated as penalties, reported via IRS Form
26

27 ⁶ Based on a review of Defendants records, Defendants estimate there are 158 Class Members who
28 collectively worked a total of 6,729 Workweeks, and 102 Aggrieved Employees who worked a total
of 1,960 PAGA Pay Periods. Agreement, ¶4.1

1 1099 as non-wage income. For the Individual Class Payments, twenty percent (20%) is allocated to
2 the settlement of wage claims (the “Wage Portion”) reported via IRS Form W-2, and eighty percent
3 (80%) is allocated to settlement of claims for interest and penalties (the “Non-Wage Portion”),
4 reported via IRS Form 1099. Richard Decl., ¶¶41; Agreement, ¶¶3.2.4.1, 3.2.5.2.

5 Pursuant to Items 6 of the Guideline, any returned checks will be resent after a skip trace.
6 Settlement checks will be negotiable for a period of 180 days from the date of issuance of the check,
7 and after this time period, will be cancelled. The Administrator will transmit funds from any after-
8 the-void date cancelled checks to the California Controller’s Unclaimed Property Fund in the name
9 of the Class Member thereby leaving no unpaid residue subject to the requirements of California
10 Code of Civil Procedure §384. Agreement, ¶¶1.10, 4.4.1, 4.4.2, 4.4.3; Richard Decl. ¶¶23, 25. 29.

11 **B. Proposed Form of Notice to Class and Notice Procedure**

12 The manner of giving notice complies with Rule 3.766(e) of the California Rules of Court
13 (“Rule”). The Class Notice complies with Rule 3.766(d) and explains the proposed Settlement. In
14 negotiating and drafting the Settlement Agreement, Class Notice, Objection Form and Request for
15 Exclusion Form, the Parties have been mindful of and followed the Court’s Guideline. Per Items 7
16 and 8 of the Guideline, the Class Notice (i) is to be sent to Class Members via First Class U.S. Mail
17 and provides for a 60-day notice period, with a re-sending of any returned mail after a skip trace; (ii)
18 follows the form and content of class notices from The Federal Judicial Center’s “Illustrative” Forms
19 of Class Action Notice to convey important information to Class Members in a way that is
20 understandable and is in plain English; and (iii) provides Class Counsel’s contact information and
21 URLs for the Court website as well as the website to be maintained by the Administrator.

22 Pursuant to Item 10 of the Guideline and the Court’s preference, the Parties ensured that the
23 Class Notice is accompanied by an Objection Form and a Request for Exclusion Form with only
24 necessary information to be completed by the Class Member. These forms comply with Item 10 of
25 the Guideline prohibiting the solicitation of extraneous information in order to effect an exclusion or
26 objection and further comply by (i) including that any Objection Form will be sent to the
27 Administrator (not filed with the Court nor served on counsel) leaving counsel to file in a single
28 packet any and all objections with the Court, and (ii) not including any language stating that

1 objections will be waived or not considered if not timely or otherwise compliant. Agreement, Ex. B-
2 C; Richard Decl., ¶26. After making an inquiry with Defense Counsel pursuant to Item 10 of the
3 Guideline the Parties believe that English is sufficient and it is not necessary to provide translations
4 of the Class Notice, Objection Form and Request for Exclusion Form. Richard Decl., ¶27.

5 **C. Proposed Release**

6 Pursuant to Item 5 of the Guideline, the release in the Settlement Agreement is narrowly
7 tailored to the claims that were or could be asserted in the Settlement Action based upon the facts
8 alleged in the Settlement Action. The Released Class Claims (Agreement, Paragraph 5.2) and
9 Released PAGA Claims (Agreement, Paragraph 5.3) are not overbroad but are specific and narrowly
10 defined. There is a separate narrowly tailored release for Released Class Claims, and a separate
11 narrowly tailored release for Released PAGA Claims (with the Released PAGA Claims releasing
12 PAGA penalties only). These releases do not include a California Civil Code §1542 waiver (“1542”)
13 by absent Class Members. The named Plaintiffs, on the other hand, in consideration of the Service
14 Payment have entered into a broad general release of claims that also has a broader definition of
15 released parties (Plaintiffs’ Release) than that given by absent Class Members. Plaintiffs are the only
16 persons who are entering into a 1542 waiver (Settlement Agreement, Paragraphs 1.14, 5.1, 5.1.1)
17 Also pursuant to Item 5 of the Guideline, the proposed Class Notice contains a plain language
18 summary of the Released Class Claims and Released PAGA Claims rather than a verbatim rendition
19 of the releases. Richard Decl., ¶30; Settlement Agreement, ¶¶1.14, 1.41, 5.1, 5.1.1, 5.2, 5.3.

20 **D. Requested Attorney’s Fees and Costs, and Service Payments**

21 After all of the substantive terms of the proposed Settlement were reached, the Parties agreed
22 that Plaintiffs may seek Court approval of the following payments from the GSA. Richard Decl., ¶56.
23 Defendants does not oppose these amounts. First, Class Counsel will seek \$104,000 (40% of the
24 GSA) in fees,⁷ and reimbursement of actual costs incurred which are expected to not exceed
25

26 ⁷ The fee amount recognizes, among things, Class Counsel’s work and resulting Settlement, the
27 substantial benefit from the Settlement including the injunctive relief, that the Settlement Action
28 enforces important rights affecting the public interest (including the prohibitions against non-
competition agreements, liquidated damages for training/orientation, and wage non-disclosures) and
the catalyst for the injunctive relief.

1 \$15,000.00. Agreement, ¶¶1.7, 3.2.2; Richard Decl., ¶¶56-60. Second, each of the two Class
2 Representatives will seek a \$10,000 Service Payment. Agreement, ¶¶1.14, 3.2.1. The requested
3 service award is a fair and reasonable sum including in light of: Plaintiffs' involvement, the actual
4 and substantial risks each Plaintiff took, the fact that Plaintiffs each are entering into a general release
5 of claims with a 1542 waiver; and the substantial cash and injunctive benefits achieved. Richard
6 Decl., ¶¶44-55; Rideout Declaration, ¶¶ 4-13; Ordona Declaration, ¶¶5-14.

7 **IV. ARGUMENTS IN FAVOR OF PRELIMINARY APPROVAL**

8 A class action may not be dismissed, compromised, or settled without the approval of the
9 court. *See* Rule 3.769(a) ("A settlement or compromise of an entire class action, or of a cause of
10 action in a class action, or as to a party, requires the approval of the court after hearing."). The
11 California Rules of Court set forth the two-part procedure for court approval of a class action
12 settlement: (1) the court preliminarily approves the settlement and the class members are notified as
13 directed by the court; and (2) the court conducts a final approval hearing to inquire into the fairness
14 of the proposed settlement. *See* Rule 3.769(c), (e)-(f), *see also In re Cellphone Termination Fee*
15 *Cases*, 180 Cal. App. 4th 1110, 1117-19 (2009) (setting forth procedure codified in Rule 3.769). In
16 determining appropriateness of preliminary approval, the Court is to "prevent fraud, collusion or
17 unfairness to the class." *Consumer Advocacy Grp., Inc. v. Kintetsu Enters. of Am.*, 141 Cal. App. 4th
18 46, 60 (2006) (citing *Dunk v. Ford Motor Co.*, 48 Cal. App. 4th 1794, 1800 (1996)).

19 Plaintiffs here submit: (1) the proposed Settlement meets the standards for preliminary
20 approval; (2) provisional certification of the Class is appropriate because all the requirements are met;
21 and (3) the proposed Class Notice is an appropriate form of giving notice to the Class. Therefore,
22 with this motion, Plaintiffs request that this Court take the initial steps to preliminarily approve the
23 Settlement and the form, content, and distribution of the Class Notice, Request for Exclusion Form
24 and Objection Form, and schedule a final approval hearing to facilitate the Settlement process. In
25 addition, although a class has not yet been certified, the Parties have agreed, for purposes of
26 Settlement only, to the certification of the Class. In that regard, Plaintiffs requests that the Court
27 provisionally certify the Class per the terms of the Settlement. Rule 3.769(d) (stating that after the
28 preliminary hearing, the court may make an order approving the provisional settlement class).

1 **A. The Proposed Settlement Meets the Standards for Preliminary Approval**

2 **1. The Settlement Is Entitled to a Presumption of Fairness**

3 Public policy generally favors settlement, particularly in class actions and other complex
4 cases. *See In re Microsoft I-V Cases*, 135 Cal. App. 4th 706, 723 n.14 (2006) ⁸ (“Public policy
5 generally favors the compromise of complex class action litigation.”). *See also* William B.
6 Rubenstein, et al., 4 Newberg on Class Actions §13:44 (5th ed. 2013) (“Newberg”) (“[T]he law favors
7 settlement, particularly in class actions”). The ultimate duty of the court is to determine whether
8 the settlement is fair, adequate, and reasonable. *See Dunk*, 48 Cal. App. 4th at 1801 (setting forth the
9 “‘fair, adequate and reasonable’” standard) (citing *Officers for Justice v. Civil Serv. Comm’n of S.F.*,
10 688 F.2d 615, 625 (9th Cir. 1982)); *Cho v. Seagate Tech. Holdings, Inc.*, 177 Cal. App. 4th 734, 742-
11 43 (2009) (a trial court must approve a class action settlement agreement, but only after determining
12 that it is “‘fair, adequate, and reasonable,’” considering factors such as the “‘risk, expense, [and]
13 complexity’” of continued litigation). The Court enjoys broad discretion in making its fairness
14 determination, and should consider factors including, but not limited to:

15 [T]he strength of plaintiffs’ case, the risk, expense, complexity and likely duration of further
16 litigation, the risk of maintaining class action status through trial, the amount offered in
17 settlement, the extent of discovery completed and the stage of the proceedings, the experience
18 and views of counsel ... and the reaction of the class members to the proposed settlement.

19 *Dunk*, 48 Cal. App. 4th at 1801 (setting forth a non-exhaustive list of factors for consideration).

20 Furthermore, the Court must give “[d]ue regard ... to what is otherwise a private consensual
21 agreement between the parties.” *Id.* As such, the inquiry “‘must be limited to the extent necessary
22 to reach a reasoned judgment that the agreement is not the product of fraud or overreaching by, or
23 collusion between, the negotiating parties”’ *Id.* (citing *Officers*, 688 F.2d at 625). “[A]
24 presumption of fairness exists where: (1) the settlement is reached through arm’s-length bargaining;
25 (2) investigation and discovery are sufficient to allow counsel and the court to act intelligently; (3)
26 counsel is experienced in similar litigation; and (4) the percentage of objectors is small.”’ *Wershba*
27 *v. Apple Computer, Inc.*, 91 Cal. App. 4th 224, 245 (2001) (citing *Dunk*, 48 Cal. App. 4th at 1802);
28 *see also* Newberg, *supra* §13:45 (stating that “a court will presume that a proposed class action

⁸ Here, as throughout, all internal citations are omitted and emphasis is added unless otherwise noted.

1 settlement is fair when certain factors are present, particularly evidence that the settlement is the
2 product of arm's-length negotiation, untainted by collusion"). At the preliminary approval stage, the
3 Court need only determine that the Settlement falls within the "range of possible [judicial] approval,"
4 so that notice to the class and the scheduling of the fairness hearing are worthwhile. *See Newberg,*
5 *supra* §13:13; *see also Kullar v. Foot Locker Retail, Inc.*, 168 Cal. App. 4th 116, 120 (2008). As
6 shown below, the Settlement falls well within the range of reasonableness, and there are no grounds
7 to doubt its fairness.

8 **a. The Settlement Is the Result of Arm's-Length Negotiations**

9 Here, subsequent to significant investigation, the Parties engaged in a full-day mediation and
10 other mediation-related discussions with the assistance of highly experienced Mediator Feder. Only
11 after significant discovery was analyzed and serious, arm's-length negotiations, and only with the
12 extensive assistance of the Mediator and a mediator's proposal, did the Parties agree to settle. The
13 discussions were based on both sides' understanding of the legal battle facing them if litigation were
14 to continue, and in light of all of the facts and circumstances present in this matter. Richard Decl.,
15 ¶¶18-22, 36-37, 42-43. Because this Settlement comes before the Court only after the Settlement
16 Action was thoroughly investigated and evaluated by counsel experienced in similar litigation and
17 was negotiated at arm's-length through a respected mediator, a presumption of fairness should apply.⁹
18 Plaintiffs respectfully asks this Court to grant preliminary approval.

19 **b. Extensive Investigation and Discovery Have Been Conducted**

20 Among the considerations for the Court is the extent of investigation and discovery completed
21 by the Parties. *See Dunk*, 48 Cal. App. 4th at 1801. Here, before arriving at the proposed Settlement
22 Agreement, the Parties engaged in significant investigation, research, and discovery, and thoroughly
23 evaluated the factual strengths and weaknesses of this Settlement Action. Richard Decl., ¶¶18-22, 36-

24 _____
25 ⁹ The fourth factor, enumerated in *Dunk*, is that the ultimate percentage of objectors to the settlement
26 is small. 48 Cal. App. 4th at 1802. The Parties are unaware of any persons currently objecting to
27 the agreement, and do not anticipate many objectors, if any, at the final fairness hearing. There is
28 also no presence of a governmental entity in the Settlement Action. Plaintiffs exhausted their PAGA
notice requirement and the LWDA opted not to investigate. Accordingly, Plaintiffs have standing
to pursue and resolve the claims for civil penalties under PAGA. The LWDA has been notified of
the Settlement and will be a recipient of 75% of the PAGA Penalties. Richard Decl., ¶¶10-13; Ex.
3 thereto.

1 37, 42-43. The discovery conducted in this Settlement , and the information exchanged through the
2 Parties' negotiations, are sufficient to assess reliably the merits of the respective Parties' positions
3 and to compromise the issues on a fair and equitable basis. *Id.* Accordingly, the Parties have engaged
4 in sufficient discovery and investigation to assess the relative merits of the claims of the Class
5 Representatives and Defendants' defenses to them. *Id.* Based on experience, Class Counsel believes
6 that the negotiated Settlement represents a fair recovery for the purported Class and is well within the
7 range of possible recovery. *Id.*

8 **c. The Settlement Consideration Is Within the Range of**
9 **Reasonableness**

10 The range of the estimated gross settlement payments to Class Members is: \$16.99 at the
11 lowest end, \$798.45 as the average, and \$1,932.62 at the highest end. The estimated settlement
12 payments for Plaintiffs Ordon and Rideout are \$681.73 and \$499.19 respectively. Richard Decl.,
13 ¶41. Although the potential exposure in this case exceeds the amount ultimately settled for, there
14 were significant risks associated with the proceeding to trial. These risks include, but are not limited
15 to: (i) an adverse ruling on an anticipated summary judgment motion and/or class certification; (ii)
16 an unfavorable verdict from the bench/jury; (iii) the novelty of some of the issues; (iv) a judgment
17 that ultimately could not be paid by Defendants; and (v) an adverse court decision on any of the
18 claims including but not limited to whether waiting time penalties are due to Class Members if their
19 work assignment ended, but not employment with FCN (when the Parties mediated in February 2023,
20 this issue was up on appeal in the case of *Young v REMX Specialty Staffing*). Moreover, a significant
21 component to the Settlement is the achieved injunctive relief. Although Plaintiffs and Class Counsel
22 are confident the claims are legally sound, given the risk and delay associated with further
23 prosecution, Class Counsel believes the Settlement is well within the range of reasonableness.
24 Richard Decl., ¶¶21, 34-46.

25 **d. Class Counsel is Experienced in Similar Litigation**

26 Counsel for both Parties are experienced litigators. *See Dunk*, 48 Cal. App. 4th at 1801
27 (explaining among the trial court's considerations should be the "experience and views of counsel").
28 The lead defense attorneys, Boris Sorsher and Lisa Peterson, are experienced employment litigators.

1 See, <https://www.fisherphillips.com/en/people/boris-sorsher.html?tab=overview> (last visited August
2 1, 2023); <https://www.fisherphillips.com/en/people/lisa-peterson.html?tab=overview> (last visited
3 August 1, 2023). Class Counsel is likewise experienced. Diane Richard of Richard Law, P.C., has
4 more than 20 years of targeted experience in employment law with substantial complex civil litigation
5 and class/PAGA action experience. Ms. Richard has served as class counsel in dozens of wage hour
6 actions. Richard Decl., ¶¶3-6. Class Counsel is knowledgeable in the matters in this litigation, and
7 agrees that the Settlement is fair and reasonable to the purported class. Richard Decl., ¶¶42-43.

8 **B. Provisional Certification of the Class Is Appropriate Because the Following**
9 **Requirements Are Met**

10 Under California law, class certification is appropriate only if there is: (1) an ascertainable
11 class; and (2) a well-defined community of interest. C.C.P. §382. The Parties have agreed to
12 certification solely for purposes of this Settlement. In the settlement context, the Court can
13 appropriately use a lesser standard to determine the appropriateness of a settlement class as opposed
14 to a litigated class certification. *Dunk*, 48 Cal. App. 4th at 1806-07 & n.19. Accordingly, Plaintiffs
15 requests this Court provisionally certify the Class for purposes of settlement only.

16 **1. Numerosity**

17 The Class is sufficiently numerous with approximately 158 Class Members. Agreement, ¶4.1.

18 **2. Ascertainability**

19 A proposed class is ascertainable if the class members can be objectively identified and given
20 notice of the litigation without unreasonable time or expense. *See Medraza v. Honda of N.*
21 *Hollywood*, 166 Cal. App. 4th 89, 101 (2008) (“As long as the potential class members may be
22 identified without unreasonable expense or time ... and the proposed class definition offers an
23 objective means of identifying those persons who will be bound by the results of the litigation, the
24 ascertainability requirement is met.”); *see also Rose v. City of Hayward*, 126 Cal. App. 3d 926, 932
25 (1981) (finding that class members are ascertainable where “they may be readily identified without
26 unreasonable expense or time by reference to official records”). Here, because the Class Members
27 have worked for FCN, they are easily identified through payroll files maintained by FCN. Thus, the
28 Class Members are ascertainable.

1 **3. Commonality/Predominance**

2 To justify certification, the class proponent “must show ... that questions of law or fact
3 common to the class predominate over the questions affecting the individual members” *See*
4 *Arenas v. El Torito Rests., Inc.*, 183 Cal. App. 4th 723, 732 (2010) (citing *Wash. Mut. Bank, FA v.*
5 *Superior Court*, 24 Cal. 4th 906, 913 (2001)). The Parties agree that for the purposes of the
6 Settlement, the claims of the Class Members all stem from the same sources, including allegations
7 that employment agreements contain unlawful language pertaining to liquidated damages, wage non-
8 disclosure/confidentiality, and non-competition, and that Defendants did not pay proper and timely
9 wages and business reimbursements, did not provide compliant wage statements, breaks, and engaged
10 in unfair competition. Under these circumstances, predominance is satisfied.

11 **4. Typicality**

12 The Class Representatives must be similarly situated to the rest of the purported class. *See*
13 *Classen v. Weller*, 145 Cal. App. 3d 27, 46 (1983) (stating “it has never been the law in California
14 that the class representative must have *identical* interests with the class members. The only
15 requirements are ... that the class representative be *similarly* situated”) (emphasis in original); *see*
16 *also Newberg supra*, §3:29 (typicality “determines whether a sufficient relationship exists between
17 the injury to the named plaintiff and the conduct affecting the class so that the court may properly
18 attribute a collective nature to the challenged conduct”). Here, Plaintiffs’ claims are typical because,
19 like the Class Members, Plaintiffs were employees and allege, among other things, that employment
20 agreements contain unlawful language pertaining to liquidated damages, wage non-
21 disclosure/confidentiality, and non-competition, and that Defendants did not pay proper and timely
22 wages and business reimbursements, did not provide compliant wage statements and breaks.

23 **5. Adequacy of Representation**

24 The Class Representatives must establish that they will adequately represent the purported
25 class. *See Barboza v. W. Coast Digital GSM, Inc.*, 179 Cal. App. 4th 540, 546 (2009) (explaining
26 that both the representative plaintiffs and class counsel have a fiduciary duty to protect the absentee
27 class members’ interests). Here, Plaintiffs have the same incentive as the rest of the Class to achieve
28 the maximum possible recovery and they have thus far protected the interests of the Class. Moreover,

1 Plaintiffs and Class Members are represented by counsel who have extensive experience in wage and
2 hour litigation, and have thus far protected the interests of the Class. *See generally* Richard
3 Declaration, Ordoná Declaration, Rideout Declaration.

4 **6. Superiority**

5 Class certification is the superior method here because the claims of the Class Members all
6 stem from the same alleged violations. Thus, certification will permit resolution of similar claims in
7 an efficient manner. The Parties agree that for the purposes of the Settlement only, the purported
8 Class is appropriately certifiable.

9 **C. The Proposed Class Notice Is An Appropriate Form of Giving Notice to the Class** 10 **Members**

11 To effectuate the Settlement, the Court must also approve of the proposed notice to the Class.
12 *See* Rule 3.769(c); *see also* Rule 3.766 (setting forth the requirements for the content of the notice
13 and the means of distribution). California law vests its courts with broad discretion in fashioning an
14 appropriate notice program. *See also Wershba*, 91 Cal. App. 4th at 251 (the standard is whether the
15 notice has “a reasonable chance of reaching a substantial percentage of the class members”); *see also*
16 Fed. R. Civ. P. 23(c)(2)(B) (stating “the court must direct to class members the best notice that is
17 practicable under the circumstances”). The notice must inform the class members of their right to opt-
18 out, the preclusive effect of the Settlement, and the right to enter an appearance. *See* Rule 3.766(d);
19 *Cho*, 177 Cal. App. 4th at 746 (notice must “fairly apprise the class members of the terms of the
20 proposed compromise and of the options open to dissenting class members”) (citing *Wershba*, 91
21 Cal. App. 4th at 251); *Cartt v. Superior Court*, 50 Cal. App. 3d 960, 970 (1975) (“The principal
22 purpose of notice to the class is the protection of the integrity of the class action process, one of the
23 functions of which is to prevent burdening the courts with multiple claims where one will do.”).

24 Here, the Settlement provides for the best notice practicable under the circumstances of this
25 Settlement Action, satisfies due process, and complies with the requirements of Rules 3.766 and
26 3.769. The Class Notice will inform Class Members of: the key Settlement terms, the effect of the
27 released claims, all proposed distributions from the GSA, the timing and process to challenge
28 Workweeks and Pay Period information which serve as a basis for settlement payment, how to and

1 timing for opting out of the Settlement if they elect not to participate, how to and timing for making
2 an objection, details about the date and place of the Court hearing on Settlement approval, the timing
3 for making challenges how to make an appearance, and how Class Members can obtain additional
4 information. Agreement, ¶¶1.11, 7.4, Ex. A-C.; Richard Decl. ¶¶23-25.

5 The notice procedures further satisfy due process, and complies with the requirements in that
6 the Settlement requires Defendants to provide the Administrator with Class Data for each Class
7 Member which will contain Class Members' addresses and information to calculate Individual Class
8 Payments and Individual PAGA Payments within fourteen (14) calendar days after preliminary
9 approval of the Settlement. Agreement, ¶¶1.8, 4.2. No later than fourteen (14) calendar days after
10 receipt of the Class Data, the Administrator is to mail the Class Notice to Class Members via First
11 Class U.S. Mail, using the most current, known mailing address identified by Defendants and updated
12 by the Administrator through a Class Member Address Search which includes a NCOA search prior
13 to mailing and a skip trace on any returned mail or returned checks. The Administrator is required to
14 re-mail Class Notices and settlement checks returned as undeliverable after the Administrator's Class
15 Member Address Search. *Id.* at ¶¶1.8, 4.4.2, 7.4.2; Richard Decl., ¶25.

16 V. CONCLUSION

17 Plaintiffs submits that the Settlement is in the best interests of Class, and respectfully requests
18 that this Court certify the Class for Settlement purposes only; preliminarily approve the Class
19 Settlement and approve the PAGA Settlement; appoint the Class Representatives, the Administrator,
20 Class Counsel; approve the form, content, and distribution of the Class Notice, Objection Form, and
21 Request for Exclusion Form; and set a date for the final approval hearing.

22 Respectfully submitted,

23 Dated: August 11, 2023

RICHARD LAW, P.C.

By: /s/ Diane E. Richard

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

PROOF OF SERVICE

Joanabelle Pizarro Ordon, 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 **August 11, 2023** I served the following document(s), including all exhibits thereto:

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

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 **August 11, 2023**, at San Diego, California.

Diane Richard

Name

/s/ Diane Richard

Signature