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On behalf of herself and all others similarly situated

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN BERNARDINO**

ANGEL PEREZ, on behalf of herself and all
others similarly situated,

Plaintiff,

vs.

HILTON MANOR, LLC; BLUE JAY
MANOR, LLC; JUNIPER MANOR, LLC;
BRIGHT SKY HOME HEALTH CARE,
INC.; BRIGHT SKY HOSPICE CARE INC.;
ELEANOR ISWINARI POSNER; and DOES
3-50, inclusive,

Defendants.

Case No. CIVSB2220728

**MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
PLAINTIFF'S MOTION FOR
PRELIMINARY APPROVAL OF CLASS
ACTION SETTLEMENT;
CONDITIONAL CERTIFICATION OF
SETTLEMENT CLASS; APPOINTMENT
OF CLASS REPRESENTATIVE, CLASS
COUNSEL AND SETTLEMENT
ADMINISTRATOR; APPROVAL OF
CLASS NOTICE PACKET; AND
SETTING OF FINAL APPROVAL
HEARING**

Date: July 31, 2024
Time: 8:30 a.m.
Judge: Hon. Jessica Morgan
Dept: S-26

Action Filed: September 16, 2022
Trial Date: None

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1 **I. INTRODUCTION AND SUMMARY OF SETTLEMENT.**

2 Plaintiff Angel Perez (“Plaintiff”) seeks preliminary approval of her proposed class action
3 settlement (the “Settlement”) against Hilton Manor, LLC (“Hilton”), Juniper Manor, LLC
4 (“Juniper”), and Elizabeth Iswinari Posner (“Posner”) (Hilton, Juniper, and Posner are collectively
5 referred to as “Defendants”).^{1 2} Subject to Court approval, Plaintiff and the putative Class have
6 settled a limited and distinct set of class claims against Defendants for \$600,000.00. The
7 Settlement resolves the overtime claim, as well as the derivative wage statement and waiting time
8 penalty claims of Plaintiff and the approximately 142 putative Class Members against Defendants
9 from September 16, 2018 to December 1, 2020 (the “Class Period”).³ Plaintiff alleges that during
10 the Class Period Defendants utilized a 12 hours a day, 3 days a week, alternative workweek
11 schedule (“AWS”) without holding a proper election as required by Wage Order No. 5, and thus
12 owes overtime wages for work performed over 8 hours in a day during the Class Period. In late
13 October of 2020 Defendants held a new AWS election to remedy the issue.

14 This Settlement is very narrowly drawn and releases only the specific claims related to
15 Defendants’ failure to pay overtime wages during the Class Period, it does not release any PAGA
16 claims. The Settlement is projected to provide an average payment of approximately \$2,605.63
17 (\$68.39 per workweek), to the putative Class Members, an outstanding recovery when compared to
18 most wage and hour class action settlements. The Settlement satisfies all of the criteria for
19 preliminary settlement approval and falls well within the range of possible approval. Accordingly,
20 Plaintiff requests that the Court provisionally certify the proposed class for settlement purposes

21 ¹ On January 11, 2024, Plaintiff dismissed her claims against Blue Jay Manor, LLC, Bright
22 Sky Home Healthcare, Inc., and Bright Sky Hospice Care, Inc. leaving only Hilton, Juniper, and
23 Posner as Defendants remaining in this action.

24 ² A copy of the fully executed Settlement Agreement, including its exhibit, is attached as
25 **Exhibit “1”** to the Declaration of Torey Joseph Favarote in Support of Plaintiff’s Motion for
26 Preliminary Approval of Class Action Settlement; Conditional Certification of Settlement Class;
27 Appointment of Class Representative, Class Counsel, and Settlement Administrator; Approval of
28 Class Notice; and Setting of Final Approval Hearing (“Favarote Decl.”), ¶ 3, **Exh. “1”**. The Form
of Notice to the Class is attached to the Settlement Agreement as **Exhibit A** (the “Class Notice
Packet”). The proposed class notice document is referred to as the “Class Notice Packet.” All
references to “Exhibits” in this Motion are to the exhibits attached to the Favarote Declaration
unless otherwise noted.

³ Plaintiff will seek the dismissal of the remaining class claims and the PAGA claim in this
Action without prejudice should final approval of the settlement be granted. (Favarote Decl. ¶ 26).

only, grant preliminary approval of the Settlement, direct the distribution to the Class of the notice of Settlement and the opportunity to object to the Settlement or elect not to participate in the Settlement, and schedule a final approval hearing.

For the Court's convenience in analyzing this Settlement, these are the pertinent facts, figures, and terms of the Settlement:

➤ **Class Period:** September 16, 2018 to December 1, 2020;

➤ **Putative Class Members:** Approximately 142;

➤ **Principal Settlement Terms:**

○ Total Settlement: \$600,000.00;

○ Class Counsel Costs: \$12,000.00;

○ Settlement Administration Costs: Estimated \$8,000.00;

○ Class Counsel Fees: 33.3% (\$200,000.00);

○ Class Representative Enhancement: \$10,000.00;

○ Non Reversionary plus Defendants pay the employer's share of payroll taxes

NET SETTLEMENT TO CLASS: \$370,000.00 with an average payment of \$2,605.63 per putative Class Member, with a net value of approximately \$68.39 per workweek⁴, and a theoretical maximum payment of \$7,865.06 for any putative Class Member who worked the full Class Period (approximately 115 workweeks).

As an overview, Defendants operate small 24 hour residential nursing facilities in San Bernardino County. Plaintiff alleges that during the Class Period Defendants utilized an invalid alternative workweek schedule that did not comply with Wage Order No. 5, codified as Cal. Code Regs. tit. 8, § 11050. Plaintiff's theory of recovery is that without having lawfully implemented an AWS, Plaintiff and the putative Class Members are entitled to overtime wages after 8 hours in a day for each shift worked during the Class Period. The 142 putative Class Members are all current and former nurses who worked at Defendants' two facilities. (Favarote Decl. ¶¶ 4, 23). Defendants have given deposition testimony that they did not knowingly or intentionally flaunted

⁴ Net Settlement Amount of \$370,000.00 ÷ 5,410 work weeks = \$68.39, the gross workweek value is actually \$110.91 per workweek. (\$600,000.00 ÷ 5,410 work weeks = \$110.91)

1 the law as a 3 day a week, 12 hours a day AWS is fairly standard in the nursing industry and
2 Defendants took steps to hold a valid AWS election after they discovered their lack of compliance.
3 (Id.) It is Class Counsel's opinion that while there is liability to the putative Class for overtime
4 wages, the liability for waiting time penalties and wage statement penalties is theoretical as those
5 claims require a finding of intentional or willful conduct. Additionally, it is clear that Defendants
6 are small, primarily family run businesses, and that their two facilities combined only
7 accommodate 12 to 20 individuals. (Id.) Defendants have claimed that they do not have the ability
8 to pay a larger settlement and have provided confidential tax documents to evidence that claim.
9 (Favarote Decl. ¶ 28).

10 This Settlement was reached after extensive formal and informal discovery, and litigation
11 including: (1) the drafting of a motion for class certification; (2) Plaintiff's prosecution of a two
12 person most knowledgeable ("PMK") depositions, and the deposition of individual defendant
13 Posner; (3) Defendants' production of approximately 1,300 pages of records, including a random
14 sample of the putative Class Members' time and payroll records during the Class Period after an
15 informal discovery conference with the Court; (4) Defendants' verified responses and supplemental
16 responses to three sets of special interrogatories, three sets of requests for production of documents,
17 and two sets of requests for admissions; and (5) Defendant's confidential production of tax
18 documents related to its current financial condition. (Favarote Decl. ¶¶ 27-30.)

19 **II. BACKGROUND**

20 On September 16, 2022, Plaintiff filed this wage and hour class action against Hilton
21 Manor, LLC, Bright Sky Hospice Care, Inc., Bright Sky Home Health Care Inc., and Eleanor
22 Iswinari Posner asserting seven causes of action. On January 10, 2023, Plaintiff filed a first
23 amended complaint including a PAGA cause of action and adding Blue Jay Manor, LLC, and
24 Juniper Manor, LLC as defendants. On January 11, 2024, Plaintiff dismissed Blue Jay Manor,
25 LLC, Bright Sky Hospice Care, Inc., and Bright Sky Home Health Care, Inc. from this action
26 without prejudice. On May 18, 2024, the parties attended a mediation with respected wage and
27 hour mediator Daniel Turner, Esq. Plaintiff reserved an April 30, 2024 hearing date for a motion
28 for class certification and briefed a motion for class certification prior to mediation. (Favarote

Decl. ¶ 29). After the mediation, on March 26, 2024, the parties accepted a mediator's proposal. (Id.) On April 8, 2024, the parties signed a binding memorandum of understanding, and on June 18, 2024 signed the long form Settlement Agreement that is before the Court. (Favarote Decl. ¶ 30).

III. FACTUAL BACKGROUND.

A. **Procedural History and Plaintiff's Contentions.**

Plaintiff Angel Perez worked as a nurse for Defendants throughout the Class Period. (Perez Decl. ¶ 4). During the Class Period Perez and the putative Class Members worked an AWS of 3 days a week and 12 hours a workday, without the payment of overtime after 8 hours in a workday. On or around October 27 and 26, 2020 Defendants held new AWS elections.⁵ (Favarote Decl. ¶ 4). During the Class Period Plaintiff was not paid overtime after working 8 hours in a workday. (Id.) As a result, Plaintiff did not receive accurate wage statements showing overtime earned and was not paid all wages owed to her when she ended her employment with Defendants in April of 2022. (Perez Decl. ¶ 3-4.)

B. **Discovery and Investigation of Facts**

Putative Class Counsel has conducted significant investigation since the inception of the action as detailed in the concurrently filed declaration of Torey Joseph Favarote (collectively referred to as "Putative Class Counsel"). Putative Class Counsel's investigation as to the Class claims included the exchange of substantial information and data pursuant to formal and informal discovery methods, including multiple days of deposition including deposition of Defendants' person most knowledgeable ("PMK") and defendant Posner, 77 special interrogatories, 143 requests for production of documents, and several sets of form interrogatories. (Favarote Decl. ¶ 9). Defendants produced around 1,300 documents, including nearly 1,000 pages of time and payroll records for the putative Class. (Favarote Decl. ¶ 9). Defendants also provided their confidential tax records for the past three years to support that the Settlement is fair, reasonable,

⁵ The results of those AWS elections, which were reported to the Department of Industrial relations show that the employees involved in those AWS elections unanimously voted in favor of keeping the AWS schedule. (Favarote Decl. ¶ 24).

1 and in the best interests of the putative Class Members. (Favarote Decl. ¶ 28).

2 Putative Class Counsel represents that they have thoroughly reviewed all of the produced
3 data, records, testimony, and information provided by Defendants, and thoroughly investigated
4 Plaintiff's class and representative claims against Defendants. (Favarote Decl. ¶¶ 27-30).

5 **C. The Parties Litigation and Motion Practice**

6 The parties litigated this action for more than a year and a half before coming to the present
7 Settlement. In addition to the copious discovery and substantial meet and confer efforts, the parties
8 also held an informal discovery conference with the Court on October 5, 2023, and scheduled
9 another informal discovery conference for November 1, 2023 which resulted in a minute order, to
10 resolve discovery issues in the case. Plaintiff also prepared a motion for class certification.
11 (Favarote Decl. ¶ 29).

12 On May 18, 2024, the parties attended a full day mediation, and accepted the mediator's
13 proposal on March 27, 2024. (Favarote Decl. ¶ 30). On June 18, 2024, the parties executed a
14 Memorandum of Agreement. (*Id.*)

15 **IV. SUMMARY OF THE PROPOSED SETTLEMENT**

16 The following is a summary of the material terms of the Settlement.

17 **A. Principal Terms**

18 Defendants will pay \$600,000.00 (the "Gross Settlement Amount") to settle the Action on a
19 class-wide basis for the approximately 142 putative Class Members. (Settlement, § 3.1; Favarote
20 Decl. ¶ 3). The total number of workweeks settled under the Settlement Agreement is
21 approximately 5,410. (Settlement, § 8; Favarote Decl. ¶ 5). The Class to be conditionally certified
22 is defined as:

23 **All persons currently or formerly employed by Defendants**
24 **Hilton Manor, LLC and Juniper Manor, LLC as hourly-paid,**
25 **non-exempt employees who worked an alternative workweek**
schedule of 12 hours a workday, 3 workdays a workweek from
September 16, 2018 to December 1, 2020. (the "Class")

26 (Settlement, § 1.4; Favarote Decl. ¶ 11).

27 From the Gross Settlement Amount will be paid: (i) a Net Settlement Amount of
28 \$370,000.00 which will be distributed *pro rata* to the putative Class Members, except those who

1 elect not to participate, based on the number of workweeks worked at Hilton or Juniper during the
2 Class Period (no claim form will be required for Class Members to receive their Settlement
3 Payment); (ii) Class Representative Payment to Plaintiff in the amount of \$10,000.00 (as approved
4 by the Court) to compensate her for her services to the putative Class in pursuing in the Action and
5 the risk she assumed on behalf of the putative Class Members; (iii) Class Counsel attorneys' fees of
6 \$200,000.00 (33.3% of the Gross Settlement Amount as approved by the Court) to compensate
7 them for their services to the Class in prosecuting the Action and securing the Settlement, and
8 Class Counsels' litigation expenses of up to \$12,000.00 (as approved by the Court); (iv) a payment
9 to the Settlement Administrator for its reasonable fees and expenses incurred in administering the
10 Settlement, which are estimated at approximately \$8,000.00; (v) any other fees or expenses (other
11 than attorneys' fees and expenses) incurred in implementing the terms and conditions of Settlement
12 and securing the judgment from the Court pursuant to the Settlement. None of the Gross
13 Settlement Amount will revert to Defendants. (Settlement, § 3; Favarote Decl. ¶ 13).

14 The Settlement is premised upon 5,410 total workweeks worked by the putative Class
15 Members during the Class Period. If the agreed upon settlement administrator ILYM Group, Inc.
16 (the "Settlement Administrator" or the "Administrator") determines from the Class data that there
17 is a more than 5% increase from 5,410 workweeks during the Class Period (an increase of 271 or
18 more workweeks), then the total Settlement amount will increase or the Class Period will be
19 reduced so that only 5,410 workweeks will be released. (Settlement § 8).

20 The Settlement does not release any PAGA claims as the Class Period is outside of the
21 PAGA statute of limitations. Once final approval has been granted, Plaintiff will seek to dismiss
22 her PAGA claim without prejudice. Plaintiff will also seek to have her meal period, rest break, and
23 reimbursement claims dismissed without prejudice as they are not part of the Settlement. After
24 much discovery and investigation Putative Class Counsel felt it would be difficult to certify those
25 claims.

26 The Settlement Payments will be distributed to all putative Class Members who do not opt
27 out of the Settlement as follows:

28 ///

1 An Individual Class Payment will be calculated by (a) dividing the Net Settlement Amount
2 by the total number of workweeks worked by all participating Class Members during the Class
3 Period and (b) multiplying the result by each participating Class Member's workweeks. (Favarote
4 Decl. ¶ 14; Settlement, § 3.2.4).

5 Each putative Class Member who does not opt out shall have 45 days after the Settlement
6 Administrator mails the Class Notice (plus an additional 14 days for putative Class Members
7 whose Class Notice is re-mailed) to challenge the number of workweeks allocated to the putative
8 Class Member in the Class Notice. Each putative Class Member may challenge the allocation by
9 communicating with the Settlement Administrator via fax, email or mail. In the absence of any
10 contrary documentation, the Administrator is entitled to presume that the workweeks contained in
11 the Class Notice are correct so long as they are consistent with the putative Classes' data. The
12 Administrator's determination of each challenging Class Member's allocation of workweeks shall
13 be final and not appealable or otherwise susceptible to challenge. The Administrator shall
14 promptly provide copies of all challenges to calculation of workweeks to defense counsel and Class
15 Counsel, and the Settlement Administrator's determination the challenges.

16 Before individual payroll taxes, the average Individual Net Settlement Payment to Class
17 Members is expected to be approximately \$2,605.63.⁶ (Favarote Decl. ¶ 5).

18 Once the judgment becomes final, Class Members who do not opt out of the Settlement will
19 release their claims against the Defendants arising under Labor Code §§ 510, 558, 558.1, 1194, and
20 1198 for the failure to pay overtime wages; Labor Code § 226(a) for failure to provide accurate
21 itemized wage statements under; Labor Code §§ 201-203 for waiting time penalties; and Business
22 & Professions Code § 17200, et. seq., that were raised or that could have been raised in the Action
23 based on the facts alleged in the operative complaint during the Class Period. (Favarote Decl. ¶ 16;
24 Settlement § 5.2). The putative Class Members are not releasing any other claims they may have
25 during the Class Period, nor are they releasing any claims they may have against Defendants which
26 may arise outside of their employment with Hilton and Juniper, or outside the Class Period.

27 ⁶ Estimated Net Settlement Amount of \$370,000.00 ÷ 142 putative Class Members =
28 \$2,605.63

1 **B. Additional Terms**

2 Within 15 business days after preliminary approval of the Settlement is granted by the
3 Court, Defendants will provide the Settlement Administrator with the putative Class Members'
4 data in Excel format, which includes the names, last known mailing addresses of the putative Class
5 Members, their Social Security Numbers, and the number of workweeks worked during the Class
6 Period. (Settlement § 1.7 and 4.2). Defendants will also verify the truth and correctness of the
7 putative Class Member's data with a signed declaration. (Id.) Within 5 business days of receiving
8 the putative Class Members' data, the Settlement Administrator will notify Class Counsel that the
9 putative Class Member's data has been received and the number of Class Members and total
10 number of workweeks in the putative Class Members' data. (Settlement § 7.3.2). Within 14
11 calendar days after receiving the putative Class Members' data the Settlement Administrator will
12 send to all putative Class Members (in English and Spanish) the Class Notice, which will show
13 each putative Class Member his or her reported number of workweeks worked during the Class
14 Period and an estimate of his or her Individual Settlement Payment. (Id.)

15 The Class Notice will be sent to the putative Class Members by First-Class U.S. Mail based
16 upon the last know addresses provided by Defendants, unless modified by any updated address
17 information that the Settlement Administrator obtains in the course of the administration of the
18 Settlement. (Id.) For any notices returned, the Settlement Administrator will make reasonable
19 efforts to find corrected addresses. (Settlement, § 7.3.3).

20 Putative Class Members will have 45 days after the Class Notice documents are mailed to
21 object to or opt out of the Settlement. (Settlement § 7.4.1 and 7.6.2). Those who do not timely
22 submit opt out requests will be bound by the Settlement (and be paid their Settlement Shares).
23 (Settlement, § 7.4.3). For the benefit of the putative Class Members the Settlement Administrator
24 will establish and maintain a webpage to post information regarding the Settlement for the putative
25 Class Members including the date, time and location for the Final Approval Hearing and copies of
26 the Settlement Agreement, Motion for Preliminary Approval, the Preliminary Approval Order, the
27 Class Notice, the Motion for Final Approval, the Motion for Class Counsel Fees Payment, Class
28 Counsel Litigation Expenses Payment and Class Representative Service Payment, the Final

1 Approval Order and the Judgment. The Administrator will also maintain and monitor an email
2 address and a toll-free telephone number to receive putative Class Member calls, faxes and emails.
3 (Settlement, § 7.7.1).

4 If any of the Settlement checks to participating Class Members are uncashed after 180 days
5 from mailing, those funds will be transmitted to the California Controller's Unclaimed Property
6 Fund in the name of the participating Class Member. (Settlement, § 4.4.3). None of the Settlement
7 money will revert to Defendants, and Defendants will also pay the employer's share of payroll
8 taxes.

9 **V. THE SETTLEMENT SHOULD BE GIVEN PRELIMINARY APPROVAL**

10 **A. Class Action Settlements Are Subject to Court Review and Approval**
11 **Under the California Rules of Court.**

12 California Rule of Court 3.769 requires court approval for class action settlements.⁷
13 "Before final approval, the court must conduct an inquiry into the fairness of the proposed
14 settlement." Cal. R. Ct. 3.769(g). Rule 3.769 further requires a noticed motion for preliminary
15 approval of class settlements:

16 (a) A settlement or compromise of an entire class action, or of a
17 cause of action in a class action, or as to a party, requires the
approval of the court after hearing. ...

18 (c) Any party to a settlement agreement may serve and file a
19 written notice of motion for preliminary approval of the settlement.
20 The settlement agreement and proposed notice to class members
must be filed with the motion, and the proposed order must be lodged
with the motion. Cal. R. Ct. 3.769(a), (c).

21 Courts act within their discretion in approving settlements that are fair, not collusive, and
22 take into account "all the normal perils of litigation as well as the additional uncertainties inherent
23 in complex class actions." In re Beef Indus. Antitrust Litig., 607 F.2d 167, 179-80 (5th Cir. 1979),
24 cert. denied sub nom. Iowa Beef Processors, Inc. v. Meat Price Investigators Ass'n, 452 U.S. 905

25
26 ⁷ The California Supreme Court has authorized California's trial courts to use Federal Rule
of Civil Procedure 23 and cases applying it for guidance in considering class issues. See Vasquez
27 v. Superior Court, 4 Cal. 3d 800, 821 (1971); Green v. Obledo, 29 Cal. 3d 126, 145-46 (1981).
28 Where appropriate, therefore, Plaintiff cites Federal Rule 23 and federal case law in addition to
California law.

(1981) (citation omitted). Where a settlement is reached on terms agreeable to all parties, a court should disapprove of the settlement “only with considerable circumspection.” Jamison v. Butcher & Sherrerd, 68 F.R.D. 479, 481 (E.D. Pa. 1975).

B. The Settlement Is Fair, Adequate and Reasonable.

In deciding whether to approve a proposed class action settlement under California Code of Civil Procedure section 382, a court must find that a proposed settlement is “fair, adequate and reasonable.” Dunk v. Ford Motor Co., 48 Cal. App. 4th 1794, 1801 (1996) (citing Officers for Justice v. Civil Serv. Comm’n, 688 F.2d 615, 625 (9th Cir. 1982), cert. denied, Byrd v. Civil Serv. Comm’n, 459 U.S. 1217 (1983)). The court must consider all relevant factors, such as the following:

the strength of plaintiffs’ case, the risk, expense, complexity and likely duration of further litigation, the risk of maintaining class action status through trial, the amount offered in settlement, the extent of discovery completed and the stage of the proceedings, the experience and views of counsel, the presence of a governmental participant, and the reaction of the class members to the proposed settlement. (Id.)

The court’s primary function is to determine that the settlement is not the product of fraud, overreach, or collusion, and taken as a whole, is fair, reasonable and adequate to all concerned. (Id.)

A proposed class action settlement is *presumed* fair under the following circumstances: (i) the parties reached settlement after arm’s-length negotiations; (ii) investigation and discovery were sufficient to allow counsel and the court to act intelligently; (iii) counsel is experienced in similar litigation; and (iv) the percentage of objectors is small. Dunk, 48 Cal. App. 4th at 1802. The Favarote declaration filed with this motion demonstrates that: (i) the Settlement was the product of serious, informed, and non-collusive negotiations conducted at arm’s-length and facilitated by experienced counsel; (ii) the parties have engaged in both extensive formal discovery such that the parties and their counsel are able to make an informed recommendation about the Settlement; and (iii) the putative Class is represented by counsel experienced in wage-and-hour

1 class actions.⁸

2 Thus, the Settlement, at this time, is entitled to the presumption that it is fair and in all other
3 respects proper and should be preliminarily approved.

4 **C. The Settlement Is the Result of Serious, Informed, Non-Collusive**
5 **Negotiations.**

6 The Settlement was reached as a result of the extensive arm's-length negotiations between
7 experienced wage/hour class action counsel. (Favarote Decl., ¶ 40). Though cordial and
8 professional, the settlement negotiations have been adversarial and non-collusive in nature. (*Id.*)
9 The Settlement reached is the product of substantial effort by the parties and their counsel after
10 more than a year and a half of very hard-fought litigation. While Plaintiff believes that she has a
11 high probability of success in certifying the claims based upon the motion for class certification
12 that was prepared in this case, she also recognizes the inherent risks of litigation and understands
13 the benefit of the putative Class receiving Settlement funds immediately rather than risking
14 potential unfavorable decisions on class certification, at trial, on the damages awarded, and/or on
15 an appeal that could take several more years to litigate against a small primarily family owned and
16 operated business. (Favarote Decl., ¶ 23). Further, litigating Plaintiff's claims, which involve an
17 estimated 142 Class Members during the Class Period, would have required substantial additional
18 preparation and discovery, as well as the consideration, preparation and analysis of expert reports.
19 Therefore, should litigation have progressed any further, each side would have incurred significant
20 expense. Finally, Plaintiff and her counsel understand that the financial condition of Defendants,
21 who are small employers, was a relevant concern given the scope and size of the class and
22 Defendants' likely inability to pay any large judgment which could bankrupt them and result in
23 lengthy proceedings which may ultimately result in less money for the putative Class after
24 Defendants' creditors are first made whole. (Favarote Decl., ¶ 28).

25
26
27 ⁸ The fourth factor—the number of objectors—cannot be known until after the notice of the
28 Settlement has been disseminated to the putative Class Members and they have had an opportunity
to react to it and respond.

D. The Extent of Discovery and the Stage of the Proceedings Support Settlement.

Plaintiff thoroughly investigated and evaluated the factual strengths and weaknesses of the Action before reaching the Settlement and engaged in sufficient investigation and formal discovery, as described above, to support the Settlement. (Favarote Decl., ¶¶ 27-30). Putative Class Counsels' investigation as to the proposed class representative's claims, included prosecuting the depositions of Hilton and Juniper's corporate representative PMK witnesses and named defendant Eleanor Posner; reviewing all of Defendants' relevant policies, procedures and practices in place during the entirety of the Class Period in regards to the claims alleged in the Action; reviewing Defendants' AWS materials; reviewing nearly 1,300 pages of documents produced by Defendants in response to 143 document-production requests; and reviewing Defendants' responses and supplemental responses to 77 special interrogatories. (Favarote Decl., ¶¶ 9, 27). The Settlement amount is, of course, a compromise figure. It took into account risks related to liability, damages, and all of the defenses asserted by Defendants. (Favarote Decl., ¶¶ 31-39).

Thus, the Settlement came only after counsel investigated the case and the parties engaged in extensive discovery, as set forth above. This litigation, therefore, has reached the stage where the parties "certainly have a clear view of the strengths and weaknesses of their cases" sufficient to support the Settlement. In re Warner Commc'ns Sec. Litig., 618 F. Supp. 735, 745 (S.D.N.Y. 1985), aff'd 798 F.2d 35 (2d Cir. 1986).

E. Plaintiff's Counsel Are Experienced in Similar Litigation.

Putative Class Counsel have significant experience litigating wage-and-hour class actions. (Favarote Decl., ¶¶ 52-55). Having prosecuted dozens of cases on behalf of tens of thousands of employees for California Labor Code violations, Putative Class Counsel represent that they are qualified to evaluate the class claims and to evaluate settlement versus trial on a fully informed basis. (Favarote Decl., ¶¶ 52-55).

Putative Class Counsel have the view that this is a fair and reasonable settlement in light of the complexities of the Action, the state of the law, and uncertainties of class certification and Defendants' financial condition. (Favarote Decl., ¶¶ 28, 52-55). Given the risks inherent in litigation and the defenses asserted, this Settlement is fair, adequate, and reasonable and in the best

1 interests of the Class and should be preliminarily approved. (Favarote Decl., ¶ 40).

2 Experienced counsel, operating at arm's length, have weighed the strengths and weaknesses
3 of the case, examined all of the issues and risks of litigation, and endorse the proposed Settlement.
4 (Favarote Decl., ¶¶ 49-51). The view of the attorneys actively conducting the litigation "is entitled
5 to significant weight" in deciding whether to approve the settlement. Fisher Bros. v. Cambridge-
6 Lee Indus, Inc., 630 F. Supp. 482, 488 (E.D. Pa. 1985); Ellis v. Naval Air Rework Facility, 87
7 F.R.D. 15, 18 (N.D. Cal. 1980), aff'd, 661 F.2d 939 (9th Cir. 1981); Boyd v. Bechtel Corp., 485 F.
8 Supp. 610, 616-17 (N.D. Cal. 1979).

9 Accordingly, Plaintiff submits the Settlement, having satisfied the three requirements of
10 Dunk at this stage, sufficient for the Court to grant preliminary approval. (Favarote Decl., ¶¶ 40-
11 44).

12 **F. The Settlement Is Fair and Reasonable Based on the Risks and Costs of**
13 **Further Litigation.**

14 Plaintiff and her counsel have concluded it was reasonable to enter into the Settlement at
15 this stage of the litigation in the Action. (Favarote Decl., ¶ 40). Defendants have vigorously
16 contested and continue to contest the claims asserted in the Action.

17 There are significant legal uncertainties associated with cases such as this, as they can
18 require protracted litigation to resolve. On the one hand, Plaintiff believes her claims are very well
19 suited for certification. Plaintiff further contends that these claims plainly involve common
20 questions of law and fact, and common proof. (Favarote Decl., ¶¶ 45-47).

21 On the other hand, Defendants maintain that resolution of each claim would require highly
22 individualized analysis of the facts and circumstances of each putative Class Member's individual
23 work history and schedules worked, the individual working flexibility offered to each putative
24 Class Member, and that any violation of the law was unwilling and that Defendants always
25 attempted to pay all wages owed in good faith. (Favarote Decl., ¶¶ 21-23). Defendants have
26 argued that they always engaged in at least substantial compliance with the law and that working a
27 3 day a week, 12 hours a day, AWS is industry standard in the nursing industry. Accordingly,
28 while Plaintiff believes this is a strong case for certification and on the merits for the overtime

claim, there is always risk and significant expenses associated with class certification proceedings and appeals, especially where, as here, there are substantial arguments regarding the willfulness of the alleged violations. (Favarote Decl., ¶¶ 34-37). Decertification motions and reversals following trial are also a legitimate risk in light of the U.S. Supreme Court decision in Wal-Mart Stores, Inc. v. Dukes, 564 U.S. 338, 349-50 (2011).

These uncertainties, along with the financial viability of small businesses like Defendants, bore heavily on the negotiations leading to the Settlement. In the face of these legal and financial uncertainties, the parties agreed to a compromise Settlement of \$600,000.00. A settlement is not judged *solely* against what might have been recovered had a plaintiff prevailed at trial, nor does a settlement have to provide 100% of the damages sought to be fair and reasonable. See Wershba v. Apple Computer, Inc., 91 Cal. App. 4th 224, 246, 250 (2001) (“Compromise is inherent and necessary in the settlement process ... [E]ven if the relief afforded by the proposed settlement is substantially narrower than it would be if the suits were to be successfully litigated, this is no bar to a class settlement because the public interest may indeed be served by a voluntary settlement in which each side gives ground in the interest of avoiding litigation.”) (internal quotation marks and citation omitted); Officers for Justice, 688 F.2d at 628 (“It is well-settled law that a cash settlement amounting to only a fraction of the potential recovery will not . . . render the settlement inadequate or unfair.”).

G. The Settlement Is a Reasonable Compromise of Claims.⁹

1. Plaintiff’s Overtime Wages Claims.

Plaintiff contended that the putative Class Members who worked for Defendants were not paid overtime after 8 hours in a workday. (Favarote Decl., ¶¶ 4, 22-23). Specifically, Plaintiff’s theory of the case is that without a valid AWS election the putative Class Members, as employees of Defendants, were entitled to overtime after 8 hours in a workday. Defendants have been unable to provide evidence that prior to their October 2020 elections the Putative Class Members were

⁹ Putative Class Counsel believes that the realistic value of this case is approximately \$1,162,987.62, making the \$600,000.00 Settlement a good result. \$600,000.00 is 51.59% of the realistic value of this case. See Favarote Decl., ¶¶ 31-39, for a full *Kullar* analysis by Plaintiff of the claims alleged in the Action.

1 working under a valid AWS. However, Defendants also contend that there are individualized
2 issues relating to the schedules of the Class Members and that if there was any technical overtime
3 violation of the Wage Orders, that failure to pay wages was not willful and that Defendants always
4 paid all wages they believed were owed in good faith.

5 **2. Plaintiff's Derivative Claims for Waiting Time Penalties,**
6 **Failure to Provide Accurate Itemized Wage Statements, and**
7 **Unfair Business Practices Claims.**

8 Plaintiff's claims for failure to pay all wages due at termination of employment pursuant to
9 Labor Code § 203; claim for failure to provide accurate itemized wage statements pursuant to
10 Labor Code section 226; and claim for unfair business practices in violation of Business &
11 Professions Code section 17200 are derivative of her overtime claim. (Favarote Decl., ¶¶ 33-39).
12 Since these claims are derivative, they entail the same risks as the claims outlined above.
13 However, these claims by statute also require a finding of willful or intentional conduct. Given the
14 small size and limited sophistication of Defendants, and how standard this kind of AWS is in the
15 nursing industry,¹⁰ its entirely probable that a jury, or even an appellate court would find that these
16 violations were not intentional or willful. Without a finding of willfulness no penalties whatsoever
17 could be collected for these claims.

18 In light of the risks involved in the Actions, the \$600,000.00 Gross Settlement Amount is a
19 reasonable compromise. (Favarote Decl., ¶¶ 40, 43).

20 Putative Class Counsel is convinced that the Settlement is in the best interest of the Class
21 based on the negotiations and a detailed knowledge of the issues present in the Actions. (Favarote
22 Decl., ¶¶ 40-44). The length and risks of trial and other normal perils of litigation were all weighed
23 in reaching the Settlement. (*Id.*) In addition, the: (1) financial condition of Defendants, two very
24 small private companies with an owner that works day to day in the businesses, and their likely
25 inability to pay a large judgment to the Class; (2) the potential lack of willfulness on behalf of the
26 Defendants; and (3) the lengthy process of establishing specific damages and various possible
27 delays and appeals, were also carefully considered by Putative Class Counsel in agreeing to the

28 ¹⁰ This is evidenced by Wage Order No. 5 which specifically allows a 3 days a week, 12
hours a day, AWS for nurses.

1 Settlement. (Favarote Decl., ¶¶ 27-29). In light of the above, the Settlement is well within the
2 “ballpark” of reasonableness and should be granted preliminary approval.

3 **VI. CONDITIONAL CERTIFICATION FOR SETTLEMENT PURPOSES**

4 In California, there are two certification prerequisites: (i) the existence of an “ascertainable
5 class,” and (ii) “a well-defined community of interest in the questions of law and fact involved
6 affecting the parties to be represented.” Daar v. Yellow Cab Co., 67 Cal. 2d 695, 704 (1967)
7 (citations omitted).

8 A lesser standard of scrutiny applies when evaluating these criteria for settlement purposes,
9 and courts should take settlement into account in evaluating class certification. Because the Court
10 is certifying this action for settlement purposes only, it need not determine whether the Class would
11 be manageable. Amchen Prods., Inc. v. Windsor, 521 U.S. 591, 620 (1977).

12 Plaintiff asserts that the putative Class would meet the requirements of numerosity as it
13 contains at least 142 putative Class Members (Favarote Decl., ¶ 45); commonality as the putative
14 Class Members all worked the same AWS (Id., ¶ 46); typicality as there is no dispute that Plaintiff
15 worked the same AWS as the putative Class Members (Id., ¶ 47); adequacy of representation as
16 Plaintiff is not antagonistic to the putative Class and putative Class Counsel are experienced
17 litigators (Id., ¶ 48), and superiority of the class action device over individual litigation.
18 Defendants maintain that the Class cannot properly be certified but does not oppose conditional
19 certification of the Class for settlement purposes only, acknowledging the low threshold required
20 under such circumstances.

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VII. PROPOSED SETTLEMENT TIMELINE

Should the Court grant preliminary approval of the Settlement at the July 31, 2024 hearing, Plaintiff proposes the following Settlement timeline:

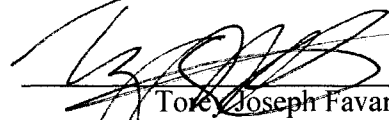
<u>Date</u>	<u>Event</u>
July 31, 2024	Court grants preliminary approval
August 21, 2024	Last day for Defendants to provide the Settlement Administrator with Class data and declaration as to its accuracy (15 business days after preliminary approval)
September 4, 2024	Last day for Settlement Administrator to mail out to Class Members Class Notice packets (14 days after Defendants provide the Class data to Settlement Administrator)
November 2, 2024	Last day for participating Class Members to dispute information provided by Defendants regarding number of Workweeks (45 days after Class Notice is mailed + 14 days for remailed notices) Last day for participating Class Members to file objections to Settlement (45 days after Class Notice is mailed + 14 days for remailed notices) Last day for non-participating Class Members to mail Requests for Exclusion to Settlement Administrator (45 days after Class Notice is mailed + 14 days for remailed notices)
November 13, 2024	Last day for the Settlement Administrator to provide the parties with a declaration of due diligence setting forth its compliance with its obligations under the Agreement and information regarding claims submissions (14 days before Plaintiff files the Motion for Final Approval)
November 27, 2024	Last day for Plaintiff to file with the Court a motion for a final approval of the Settlement, and payment of the Settlement Administrator's fees and expenses (16 court days before the Final Approval Hearing) Last day for Plaintiff and putative Class Counsel to serve on Defendants and file with the Court a motion for award of the Class Representative Payment and the Class Counsel Fees and Expenses Payment (16 court days before the Final Approval Hearing)
December 19, 2024	Final Approval Hearing
<i>(All dates that follow assume final approval granted and noticed on December 19, 2024)</i>	
February 18, 2025	Effective Date of Settlement
March 4, 2025	Last day for Defendants to pay to the Settlement Administrator the Gross Settlement Amount and the amounts necessary to fully pay Defendants' share of payroll taxes (14 days after the Effective Date)
March 18, 2025	Settlement Administrator to pay to Class Members their Settlement Shares; to Plaintiff, the Class Representative Payment; to putative Class Counsel, the Class Counsel Fees and Expenses Payment; and to the Settlement Administrator, its reasonable fees and expenses (14 days after the Effective Date)

1 **VIII. CONCLUSION**

2 Plaintiff respectfully submits that the Settlement is in the best interests of the putative
3 Class, as it is fair, adequate, and reasonable, and one that could ultimately be granted final
4 approval. Under the applicable class action criteria and guidelines, the Settlement should be
5 preliminarily approved by the Court, the Class should be conditionally certified for purposes of
6 settlement only, the class notice and related papers should be approved, the Settlement
7 Administrator should be appointed, and the final approval hearing should be set for December 19,
8 2024, or the next date available to the Court.

9 Dated: July 9, 2024

GLEASON & FAVAROTE LLP
TOREY JOSEPH FAVAROTE
DAVID H. DANNING

12 
Torey Joseph Favarote

Attorneys for Plaintiff Angel Perez, on
behalf of herself and all others similarly
situated

PROOF OF SERVICE

I, Thomas Steinhart, declare:

I am and was at the time of the service mentioned in this declaration, employed in the County of Los Angeles, California. I am over the age of 18 years and not a party to the within action. My business address is Gleason & Favarote, LLP, 3646 Long Beach Blvd., Suite 203, Long Beach, CA 90807.

On July 9, 2024, I served a copy(ies) of the following document(s):

**MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF PLAINTIFF'S
MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT;
CONDITIONAL CERTIFICATION OF SETTLEMENT CLASS; APPOINTMENT OF
CLASS REPRESENTATIVE, CLASS COUNSEL AND SETTLEMENT
ADMINISTRATOR; APPROVAL OF CLASS NOTICE PACKET; AND SETTING OF
FINAL APPROVAL HEARING**

on the parties to this action by having them placed them in a sealed envelope(s) addressed as follows:

Attorney	Party(ies) Served	Method of Service
Erick J. Becker, P.C. Garrett Fahy Hwui Lee CUMMINS & WHITE, LLP 2424 S.E. Bristol St., Ste. 300 Newport Beach, CA 92660 Tel: (949) 852-1800 Fax: (949) 852-8510 ebecker@cwlawyers.com gfahy@cwlawyers.com hlee@cwlawyers.com dpimentel@cwlawyers.com dgabrielson@cwlawyers.com	Attorney for Defendants HILTON MANOR, LLC; BLUE JAY MANOR, LLC; JUNIPER MANOR, LLC; BRIGHT SKY HOME HEALTH CARE, INC.; BRIGHT SKY HOSPICE CARE INC.; and ELEANOR ISWINARI POSNER	Hand

☐ [BY OVERNIGHT COURIER] I caused the sealed envelope(s) to be delivered by a commercial courier service for overnight delivery to the offices of the addressee(s).

☒ [BY HAND] I directed the sealed envelope(s) to the party(ies) so designated on the service list to be delivered by Bosco Legal Services, Inc. this date.

☐ [BY FACSIMILE TRANSMISSION] I caused said document to be sent by facsimile transmission to the fax number indicated for the party(ies) listed above.

☐ [BY DESIGNATED ELECTRONIC FILING SERVICE] I hereby certify that the above-referenced document(s) were served electronically on the parties listed herein at their most recent known email address or email of record by submitting an electronic version of the document(s) to One Legal, LLC, through the user interface at www.onelegal.com.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct, and that this declaration was executed on July 9, 2024, at Long Beach, California.

Thomas Steinhart