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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF SANTA CLARA**

JENNIFER WONG, an individual, on
behalf of herself, and on behalf of all
persons similarly situated,

Plaintiff,

vs.

NURSE LOGISTICS, INC., a California
Corporation; and DOES 1 through 50,
inclusive,

Defendants.

Case No. 22CV408939

**MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF MOTION
FOR PRELIMINARY APPROVAL OF
CLASS SETTLEMENT**

Hearing Date: August 21, 2024

Hearing Time: 1:30 p.m.

Judge: Hon. Theodore C. Zayner

Dept: 19

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Trial Date: Not set

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1 **I. INTRODUCTION**

2 Plaintiff Jennifer Wong (“Plaintiff”) will move for an order: (1) preliminarily approving the
3 proposed settlement of this class action with Defendant Nurse Logistics, Inc. (“Defendant”); (2) for
4 settlement purposes only, conditionally certifying the Class, which is comprised of “all individuals who
5 currently work or previously worked as a nurse and an independent contractor in the State of California
6 and who were paid by Defendant or its affiliate Nurse Registry, Inc. at any time during the Class
7 Period”, which is December 16, 2018 through October 5, 2023; (3) provisionally appointing Plaintiff
8 as the representative of the Class; (4) provisionally appointing Norman B. Blumenthal, Kyle R.
9 Nordrehaug, Aparajit Bhowmik, Nicholas J. De Blouw, Jeffrey S. Herman, Sergio J. Puche, and Trevor
10 G. Moran of Blumenthal Nordrehaug Bhowmik De Blouw LLP as Class Counsel for the Class; (5)
11 approving the form and method for providing notice to the Class of the proposed settlement;
12 (6) directing that notice of the proposed settlement be given to the Class; (7) appointing Apex Class
13 Action as the Administrator; and (8) scheduling a final approval hearing date for January 8, 2025 to
14 consider the Plaintiff’s motion for final approval of the settlement and for approval of attorneys’ fees,
15 expenses and the service award. Plaintiff and Defendant have reached a full and final settlement of the
16 above-captioned action, which is set forth in the Class Action and PAGA Settlement Agreement (the
17 “Agreement”) filed concurrently with the Court.¹ A copy of the fully executed Agreement is attached
18 as Exhibit #1 to the Declaration of Kyle Nordrehaug (“Decl. Nordrehaug”), served and filed herewith,
19 and the form of the Agreement is based on the Los Angeles Superior Court model form for class and
20 PAGA settlements.

21 As consideration for this Settlement, the Gross Settlement Amount is One Million Two Hundred
22 Fifty Thousand Dollars and Zero Cents (\$1,250,000.00) to be paid by Defendant, as set forth in the
23 Agreement. The Gross Settlement Amount will settle all issues pending in the Action between the
24 Parties and will be made in full and final settlement of the released claims. The Gross Settlement
25 Amount includes all payments of Individual Class Payments to the Participating Class Members, the
26 Administration Expenses Payment to the Administrator, the Class Counsel Fees Payment and Class
27

28 ¹ Capitalized terms shall have the same meaning as defined in the Agreement.

Counsel Litigation Expenses Payment to Class Counsel, the Class Representative Service Payment to Plaintiff, the Individual Settlement Payment, and the PAGA Penalties payment to the California Labor and Workforce Development Agency (the “LWDA”) and the PAGA Members. The Gross Settlement Amount does not include the employer’s share of payroll taxes which will be separately paid by Defendant. The Settlement is all-in with no reversion to Defendant and no need to submit claim forms. Decl. Nordrehaug at ¶3. The following is a table of the key financial terms of the Settlement and the proposed deductions:

\$1,250,000 (Gross Settlement Amount)

- \$14,500 (Plaintiff’s proposed service award not to exceed amount)
- \$500 (Plaintiff’s Individual Settlement Payment)
- \$25,000 (Class Counsel Litigation Expenses Payment - not to exceed amount)
- \$416,666 (Class Counsel Fees Payment - not to exceed one-third of settlement)
- \$25,000 (PAGA Penalties - 75% to LWDA / 25% to PAGA Members)
- \$14,000 (Administration Expenses Payment - not to exceed amount)

\$754,334 (Net Settlement Amount)

Based upon 784 Class Members who collectively worked 21,325 Workweeks (Agreement at ¶4.1), the Gross Settlement Amount provides a value of \$1,594 per Class Member and \$58 per Workweek and, after deductions, the Net Settlement Amount provides an average recovery of \$962.16 per Class Member and \$35.37 per Workweek. Decl. Nordrehaug at ¶6.

On October 3, 2023, the Parties participated in an all-day mediation session presided over by Tripper Ortman, a respected and experienced mediator of wage and hour class actions. Following this mediation, the Parties reached an agreement to settle the Action. Decl. Nordrehaug at ¶5. The Settlement is fair, reasonable and adequate, and should be preliminarily approved because there is a substantial monetary payment, and there are substantial litigation and class-certification risks. Therefore, Plaintiff respectfully requests that this Court grant preliminary approval of the Agreement and enter the proposed order submitted herewith.

II. DESCRIPTION OF THE SETTLEMENT

The Gross Settlement Amount is One Million Two Hundred Fifty Thousand Dollars (\$1,250,000). (Agreement at ¶1.20.) Under the Settlement, the Gross Settlement Amount consists of the following elements: (i) all Individual Class Payments and Individual PAGA Payments; (ii) the LWDA PAGA Payment; (iii) the Class Counsel Fees Payment and the Class Counsel Litigation

1 Expenses Payment; (iv) the Class Representative Service Payment; (v) Individual Settlement Payment;
2 and (vi) the Administration Expenses Payment. (Agreement at ¶ 1.20.) The Gross Settlement Amount
3 does not include Defendant's share of payroll taxes. (Agreement at ¶ 3.1.) The Gross Settlement
4 Amount shall be all-in with no reversion to Defendant. (Agreement at ¶ 3.1.) Decl. Nordrehaug at ¶15.

5 Defendant will fund the Gross Settlement Amount no later than ten (10) days after the Effective
6 Date. (Agreement at ¶ 4.3.) The distribution of Individual Class Payments to Participating Class
7 Members along with the other Court-approved distributions shall be made by the Administrator within
8 fourteen (14) days after Defendant fully funds the Gross Settlement Amount. (Agreement at ¶ 5.1.)
9 Decl. Nordrehaug at ¶16.

10 The amount remaining in the Gross Settlement Amount after the deduction of Court-approved
11 amounts for Individual PAGA Payments, the LWDA PAGA Payment, the Class Representative Service
12 Payment, the Class Counsel Fees Payment, the Class Counsel Litigation Expenses Payment, Individual
13 Settlement Payment, and the Administration Expenses Payment (the "Net Settlement Amount") shall
14 be allocated to Participating Class Members as their Individual Class Payments. (Agreement at ¶¶ 1.26
15 and 3.2(e).) From the Net Settlement Amount, the Individual Class Payment for each Participating
16 Class Member will be calculated by (i) dividing the Net Settlement Amount by the total number of
17 Workweeks worked by all Participating Class Members during the Class Period and (b) multiplying the
18 result by each Participating Class Member's Workweeks. (Agreement at ¶ 3.2(e).) Workweeks will be
19 calculated based on Defendant's records; however, Class Members will have the right to challenge their
20 number of Workweeks. Decl. Nordrehaug at ¶17.

21 Class Members may choose to opt-out of the Settlement by following the directions in the Class
22 Notice. (Agreement at ¶ 8.5, Ex. A.) All Class Members who do not "opt out" will be deemed
23 Participating Class Members and will be bound by the Settlement and will be entitled to receive an
24 Individual Class Payment. (Agreement at ¶ 8.5(c).) All PAGA Members, including any who submit
25 an opt-out request, still will receive an Individual PAGA Payment and will release of the Released
26 PAGA Claims regardless of their request for exclusion. (Agreement at ¶¶ 6.3 and 8.5(d)) Finally, the
27 Class Notice will advise the Class Members of their right to object to the Settlement and/or dispute their
28 Workweeks. (Agreement at ¶¶ 8.6 and 8.7, Ex. A.) Decl. Nordrehaug at ¶18.

1 A Participating Class Member must cash the check for his or her Individual Class Payment (and,
2 if applicable, Individual PAGA Payment) within 180 days after it is mailed. (Agreement at ¶ 5.2.) Any
3 settlement checks not cashed within 180 days will be voided and any funds represented by such checks
4 sent to a Court-approved nonprofit organization or foundation consistent with Code of Civil Procedure
5 Section 384(b) ("Cy Pres Recipient"). The Parties propose Project HOPE as the Cy Pres Recipient,
6 subject to Court approval. (Agreement at ¶ 5.4.) Decl. Nordrehaug at ¶19.

7 Subject to Court approval, the Parties have agreed on Apex Class Action to administer the
8 settlement in this action (the "Administrator"). (Agreement at ¶ 1.2.) The Administrator will be paid
9 for settlement administration in an amount not to exceed \$14,000. (Agreement at ¶ 3.2(c).) Decl.
10 Nordrehaug at ¶20. A Declaration from ILYM is submitted herewith. See Decl. Nordrehaug at ¶37.

11 Subject to Court approval, the Agreement provides for Class Counsel to be awarded a sum not
12 to exceed one-third of the Gross Settlement Amount as the Class Counsel Fees Payment. (Agreement
13 at ¶ 3.2(b).) Class Counsel will also be allowed to apply for an award of Class Counsel Litigation
14 Expenses Payment in an amount not to exceed \$25,000. (Agreement at ¶ 3.2(b).) Subject to Court
15 approval, the Agreement provides for a payment of no more than \$14,500 to Plaintiff as the Class
16 Representative Service Payment and a payment of no more than \$500 to plaintiff as the Individual
17 Settlement Payment for a general release. (Agreement at ¶ 3.2(a).) Decl. Nordrehaug at ¶21.

18 Subject to Court approval, Twenty-Five Thousand Dollars (\$25,000) will be paid from the Gross
19 Settlement Amount in settlement of Plaintiff's claim for civil penalties under the California Labor Code
20 Private Attorneys General Act ("PAGA"), Cal. Labor Code Section 2698, *et seq.* Pursuant to the
21 express requirements of Labor Code § 2699(i), the PAGA Penalties payment shall be allocated as
22 follows: 75% (\$18,750) shall be allocated to the LWDA as its share of the civil penalties and 25%
23 (\$6,250) allocated to the PAGA Members and distributed as Individual PAGA Payments based on the
24 number of their respective PAGA Pay Periods. (Agreement at ¶ 3.2(d).) As set forth in the
25 accompanying proof of service, the LWDA has been served with this motion and the Agreement. Decl.
26 Nordrehaug at ¶22.

27 **III. CASE BACKGROUND**

28 The description of the case and claims, along with the procedural history, is set forth in the

1 Declaration of Kyle Nordrehaug at ¶¶ 7-14. The Parties engaged in thorough investigation and an
2 informal exchange of documents, information, and data in connection with the Action which permitted
3 Class Counsel to perform a thorough analysis of the claims. Decl. Nordrehaug, ¶¶ 10 and 14. The
4 Parties participated in private mediation on October 3, 2023 with Tripper Ortman, which after arm's
5 length negotiations, resulted in this Settlement. Decl. Nordrehaug, ¶12.

6 **IV. THE SETTLEMENT MEETS THE CRITERIA NECESSARY FOR THIS COURT TO**
7 **GRANT PRELIMINARY APPROVAL**

8 When a proposed class-wide settlement is reached, the settlement must be submitted to the court
9 for approval. 2 H. Newberg & A. Conte, *Newberg on Class Actions* (3d ed. 1992) at §11.41, p.11-87.
10 California "[p]ublic policy generally favors the compromise of complex class action litigation."
11 *Nordstrom Comm'n Cases*, 186 Cal. App. 4th 576, 581 (2010) quoting *Cellphone Termination Fee*
12 *Cases*, 180 Cal.App.4th 1110, 1117-18 (2009). Class action settlements are approved where the
13 proposed settlement is "fair, adequate and reasonable." *Dunk v. Ford Motor Co.*, 48 Cal.App.4th 1794,
14 1801 (1996) (citing *Officers for Justice v. Civil Serv. Comm'n*, 688 F.2d 615, 625 (9th Cir. 1982), *cert.*
15 *denied*, 459 U.S. 1217 (1983)).

16 Preliminary approval is the first of three steps that comprise the approval procedure for
17 settlements of class actions. The second step is the dissemination of notice of the settlement to all class
18 members. The third step is a final settlement approval hearing, at which evidence and argument
19 concerning the fairness, adequacy, and reasonableness of the settlement may be presented, and class
20 members may be heard regarding the settlement. *See Dunk*, 48 Cal.App.4th at 1801; *Manual for*
21 *Complex Litigation, Second* §30.44 (1993); Cal. Rules of Court, rule 3.769.

22 The primary question presented on an application for preliminary approval of a proposed class
23 action settlement is whether the proposed settlement is "within the range of possible approval." *Manual*
24 *for Complex Litigation, Second* §30.44 at 229; *Gautreaux v. Pierce*, 690 F.2d 616, 621 n.3 (7th Cir.
25 1982).² Preliminary approval is merely the prerequisite to giving notice so that "the proposed

26 ² California courts look to federal authority on class actions. *Vasquez v. Superior Court*, 4 Cal.3d
27 800, 821 (1971). "It is well established that in the absence of relevant state precedents trial courts are
28 urged to follow the procedures prescribed in Rule 23 of the Federal Rules of Civil Procedure for
conducting class actions." *Frazier v. City of Richmond*, 184 Cal. App.3d 1491, 1499 (1986), *citing*

1 settlement... may be submitted to members of the prospective Class for their acceptance or rejection.”
2 *Sayaman v. Baxter Healthcare Corp.*, 2010 U.S. Dist. LEXIS 151997, *3 (C.D. Cal. 2010). There is
3 "a presumption of fairness . . . where . . . [a] settlement is reached through arms-length bargaining."
4 *Wershba v. Apple Computer, Inc.*, 91 Cal.App.4th 224, 245 (2001) (citation omitted); *see also Cho v.*
5 *Seagate Tech. Holdings, Inc.*, 177 Cal. App. 4th 734, 742-45 (2009) (upholding trial court's
6 determination that settlement was "fair, reasonable and adequate" where the settlement "provided
7 valuable benefits to the class . . . that were 'particularly valuable in light of the risks plaintiff would have
8 faced if she proceeded to litigate her case.'"); *Newberg*, 3d Ed., §11.41, p.11-88. However, the ultimate
9 question of whether the proposed settlement is fair, reasonable and adequate is made after notice of the
10 settlement is given to the class members and a final settlement hearing is held by the Court.

11 **A. The Role Of The Court In Preliminary Approval Of A Class Action Settlement.**

12 The approval of a proposed settlement of a class action suit is a matter within the broad
13 discretion of the trial court. *Wershba, supra*, 91 Cal.App.4th at 234-235; *Dunk* , 48 Cal.App.4th at
14 1794. Preliminary approval does not require the trial court to answer the ultimate question of whether
15 a proposed settlement is fair, reasonable and adequate. That final determination is made only after
16 notice of the settlement has been given to the class members and after they have been given an
17 opportunity to voice their views of the settlement or to be excluded from the settlement. 3B J. Moore,
18 *Moore's Federal Practice* §§23.80 - 23.85 (2003).

19 In considering a potential settlement for preliminary approval purposes, the trial court need not
20 reach any ultimate conclusions on the issues of fact and law which underlie the merits of the dispute,
21 and need not engage in a trial on the merits. *Wershba, supra*, 91 Cal.App.4th at 239-40; *Dunk, supra*,
22 48 Cal.App. 4th at 1807. The Ninth Circuit explains, “the very essence of a settlement is compromise,
23 ‘a yielding of absolutes and an abandoning of highest hopes.’” *Officers for Justice*, 688 F.2d at 624.
24 The question whether a proposed settlement is fair, reasonable and adequate necessarily requires a
25 judgment and evaluation by the attorneys for the parties based upon a comparison of “the terms of the
26 compromise with the likely rewards of litigation.” *Weinberger v. Kendrick*, 698 F.2d 61, 73 (2d Cir.

27 _____
28 *Green v. Obledo*, 29 Cal.3d 126, 145-146 (1981).

1 1982), *cert. denied* 464 U.S. 818 (1983) (quoting *Protective Comm. for Indep. Stockholders of TMT*
2 *Trailer Ferry, Inc. v. Anderson*, 390 U.S. 414, 424-25 (1968)). Thus, when analyzing the settlement,
3 the amount is “not to be judged against a hypothetical or speculative measure of what might have been
4 achieved by the negotiators.” *Officers for Justice*, 688 F.2d at 625, 628.

5 With regard to class action settlements, the opinions of counsel should be given considerable
6 weight in light of their familiarity with the litigation and previous experience with similar cases.
7 *Officers for Justice*, 688 F.2d at 625; *In re Wash. Public Power Supply System Sec. Litig.*, 720 F. Supp.
8 1379, 1392 (D. Ariz. 1989); *Kirkorian v. Borelli*, 695 F. Supp. 446, 451 (N.D. Cal. 1988); *Weinberger*,
9 698 F.2d at 74. “The recommendations of plaintiffs’ counsel should be given a presumption of
10 reasonableness.” *Boyd v. Bechtel Corp.*, 485 F.Supp. 610, 622 (N.D. Cal. 1979). As a result, courts
11 hold that the recommendation of counsel is entitled to significant weight. *Nat’l Rural Telecomms.*
12 *Coop. v. DIRECTV, Inc.*, 221 F.R.D. 523, 528 (C.D. Cal. 2004).

13 **B. Factors To Be Considered In Granting Preliminary Approval.**

14 A number of factors are to be considered in evaluating a settlement for purposes of preliminary
15 approval. In determining whether to grant preliminary approval, the court considers whether “(1) the
16 proposed settlement appears to be the product of serious, informed, non-collusive negotiations, (2) has
17 no obvious deficiencies, (3) does not improperly grant preferential treatment to class representatives
18 or segments of the class, and (4) falls within the range of possible approval.” *In re Tableware Antitrust*
19 *Litig.*, 484 F.Supp. 2d 1078, 1079 (N.D. Cal. 2007). Courts hold that “a presumption of fairness exists
20 where: (1) the settlement is reached through arm's-length bargaining; (2) investigation and discovery
21 are sufficient to allow counsel and the court to act intelligently; (3) counsel is experienced in similar
22 litigation; and (4) the percentage of objectors is small.” *Kullar v. Foot Locker Retail, Inc.*, 168 Cal.
23 App. 4th 116, 128 (2008). Here, the Settlement meets all of these criteria for preliminary approval, and
24 therefore, the presumption applies.

25 **1. The Settlement Is The Product Of Serious, Informed And**
26 **Arm’s Length Negotiations By Experienced Counsel.**

27 The Settlement is the result of extensive and hard-fought litigation as well as negotiations before
28 an experienced and well-respected mediator. Defendant has expressly denied and continues to deny any

1 wrongdoing or legal liability arising out of the conduct alleged in the Action. Plaintiff and Class
2 Counsel have determined that it is desirable and beneficial to the Class to resolve the Released Class
3 Claims in accordance with the Settlement.³

4 Class Counsel are experienced and qualified to evaluate the class claims, the defenses asserted,
5 and the risks and benefits of trial and settlement, and Class Counsel are particularly experienced in wage
6 and hour employment class actions, as Class Counsel has previously litigated and certified similar
7 claims against other employers. Decl. Nordrehaug at ¶31. The view of qualified and well-informed
8 counsel that a class action settlement is fair, adequate, and reasonable is entitled to significant weight.
9 *See Kullar v. Foot Locker*, 168 Cal. App. 4th 116, 133 (2008) (the trial court "undoubtedly should
10 continue to place reliance on the competence and integrity of counsel, the involvement of a qualified
11 mediator, and the paucity of objectors to the settlement."); *Dunk*, 48 Cal. App. 4th at 1802.

12 The Parties attended an arms-length mediation session with Tripper Ortman, a respected and
13 experienced mediator of wage and hour class actions, to reach the Settlement. In preparation for the
14 mediation, Defendant provided Class Counsel with necessary information, including the payroll and
15 timekeeping data for the Class. Plaintiff analyzed the data with the assistance of a damages expert,
16 Berger Consulting, and prepared and submitted a mediation brief and damage valuation to the Mediator.
17 Following the all-day mediation, the Parties agreed to the Settlement, which was memorialized in the
18 form of a Memorandum of Understanding. The final terms of the Settlement were negotiated and set
19 forth in the Agreement now presented for this Court's approval. Decl. Nordrehaug at ¶ 5. Importantly,
20 Plaintiff and Class Counsel believe that this Settlement is fair, reasonable and adequate.

21 As consideration for this Settlement, the Gross Settlement Amount to be paid by Defendant is
22

23 ³ The release applicable to the Class is tethered to allegations in the Action as the "Released Class
24 Claims" are "all claims that occurred during the Class Period that were asserted in the Operative
25 Complaint including claims based on the facts in the Operative Complaint or claims that could have
26 been raised in the Operative Complaint based on the facts in the Operative Complaint or class claims
27 that could have been raised in the Operative Complaint based on the facts stated in Plaintiff's
28 letter/notice to the LWDA." Participating Class Members do not release any other claims, including
claims for vested benefits, wrongful termination, violation of the Fair Employment and Housing Act,
unemployment insurance, disability, social security, workers' compensation, or Class claims based on
facts occurring outside the Class Period (Agreement at ¶¶ 1.37 and 6.2.)

1 One Million Two Hundred Fifty Thousand Dollars (\$1,250,000). The Settlement is all-in with no
2 reversion to Defendant and no need the submission of claim forms. Decl. Nordrehaug at ¶3.

3 Class Counsel has conducted a thorough investigation into the facts of the class action. Over
4 the course of two years, Class Counsel diligently evaluated the Class Members' claims against
5 Defendant. Prior to the settlement negotiations, counsel for Defendant provided Class Counsel with
6 access to necessary documents and information for the Class. In addition, Class Counsel has previously
7 negotiated settlements with other employers in actions involving nearly identical issues and analogous
8 defenses. Based on the informal discovery and their own independent investigation, evaluation and
9 experience, Class Counsel believes that the settlement with Defendant on the terms set forth in the
10 Agreement is fair, reasonable, and adequate and is in the best interest of the Class in light of all known
11 facts and circumstances, including the risk of significant delay, the risk that the claims would not be
12 allowed to proceed on a class or representative basis, the defenses asserted by Defendant, and potential
13 appellate issues. Decl. Nordrehaug at ¶ 14.

14 Plaintiff and Class Counsel recognize the expense and length of continuing to litigate and trying
15 this Action against Defendant and then litigating a possible appeal that could take several years. Class
16 Counsel has also taken into account the uncertain outcome and risk of litigation, especially in complex
17 class actions such as this Action. Class Counsel is also mindful of and recognizes the inherent problems
18 of proof under, and alleged defenses to, the claims asserted in the Action. Based upon their evaluation,
19 Plaintiff and Class Counsel have determined that the Settlement set forth in the Agreement is in the best
20 interest of the Class Members. Decl. Nordrehaug, ¶ 23.

21 Here, there can be no dispute that the litigation has been hard-fought with aggressive and
22 capable advocacy on both sides. The Parties were represented by experienced and capable counsel who
23 zealously advocated their positions. Accordingly, "[t]here is likewise every reason to conclude that
24 settlement negotiations were vigorously conducted at arms' length and without any suggestion of undue
25 influence." *In re Wash. Public Power Supply System Sec. Litig.*, 720 F. Supp. at 1392.

26 **2. The Settlement Has No "Obvious Deficiencies" And Falls Well Within**
27 **The Range For Approval.**

28 The proposed Settlement has no "obvious deficiencies" and is well within the range of possible

1 approval. All Class Members will receive an opportunity to participate in the Settlement and receive
2 payment according to the same formula. (Agreement at ¶ 3.2(e).) Based upon 784 Class Members who
3 collectively worked 21,325 Workweeks (Agreement at ¶ 4.1), the Gross Settlement Amount provides
4 a value of \$1,594 per Class Member and \$58 per Workweek and, after deductions, the Net Settlement
5 Amount provides an average recovery of \$962.16 per Class Member and \$35.37 per Workweek. Decl.
6 Nordrehaug, ¶6.

7 The calculations to compensate for the amount due to the Class Members at the time the
8 Settlement was negotiated were calculated by Plaintiff's expert, Berger Consulting, in advance of
9 mediation. Class Counsel analyzed the data for putative class members and determined the potential
10 maximum damages for the class claims. For the Class, the maximum value of the claim for unpaid
11 wages due to alleged overtime work was \$3,516,645, the maximum value of unpaid wages due to
12 alleged off-the-clock work was \$3,707,049, the maximum potential damages for alleged meal period
13 violations were estimated to be \$2,413,878 based upon a 100% violation rate, the maximum potential
14 damages for alleged rest period violations were estimated to be \$2,833,104 based upon the same 100%
15 violation rate, and the maximum potential damages for the alleged failure to reimburse business
16 expenses were calculated to be \$359,650 based upon \$50 per month. In total, the damages for the Class
17 were calculated to have a maximum potential total value of \$12,830,326. In addition, Plaintiff
18 calculated that the maximum value of the potential waiting time penalties was \$7,882,48, and the
19 maximum value of the potential wage statement penalties were \$832,300.⁴ Decl. Nordrehaug, ¶6.
20 Defendant vigorously disputed Plaintiff's calculations and exposure theories.

21 Consequently, the Gross Settlement Amount represents more than 9.7% of Plaintiff's calculation
22 of the potential maximum damages at issue for the Class in this case, assuming these amounts could
23

24
25 ⁴ While Plaintiff alleged claims for statutory penalties pursuant to Labor Code Sections 203 and 226,
26 at mediation Plaintiff recognized that these claims were subject to additional, separate defenses asserted
27 by Defendant, including but not limited to, a good-faith dispute defense as to whether any premium
28 wages for meal or rest periods or other wages were owed given Defendant's position that Plaintiff and
Class Members were properly classified and compensated. *See Nordstrom Commission Cases*, 186 Cal.
App. 4th 576, 584 (2010) ("There is no willful failure to pay wages if the employer and employee have
a good faith dispute as to whether and when the wages were due.").

1 all be proven in full at trial.⁵ The 100% alleged violation rate for meal and rest breaks likely overstates
2 the value of these claims as the Class Members assuredly received some meal and rest breaks.
3 Importantly, The recent decision that good faith belief of compliance by the employer in *Naranjo v.*
4 *Spectrum Sec. Servs., Inc.*, 15 Cal. 5th 1056, 1065 (2024), could completely negate the claims for
5 waiting time and wage statement penalties, even if wages were owed to the class. The maximum
6 calculations should then be realistically risk rated in consideration for both the risk of class certification
7 and the risk of establishing class-wide liability on all claims. Given the amount of the Settlement as
8 compared to the potential value of the claims, the Settlement is most certainly fair and reasonable.⁶
9 Clearly, the goal of this litigation has been met. Decl. Nordrehaug, ¶6.

10 Where both sides face significant uncertainty, the attendant risks favor settlement. *Hanlon v.*
11 *Chrysler Corp.*, 150 F.3d 1011, 1026 (9th Cir. 1998). Here, a number of defenses asserted by
12 Defendant present serious threats to the claims of the Plaintiff and the other Class Members. Defendant
13 maintains that its practices complied with California law. Defendant maintains that that the nurses were
14 properly classified as independent contractors and that Class Members' time was properly compensated.
15 As to expense reimbursement, Defendant maintains that it did not fail to provide reimbursement for
16 necessary business expenses because, among other things, nurses were independent contractors and are
17 not required to use their personal cell phones to perform their work. Defendant could argue that the
18 decisions in *Brinker v. Superior Court*, 53 Cal. 4th 1004 (2012), *Lockheed Martin Corp. v. Superior*
19 *Ct.*, 29 Cal. 4th 1096, 1108 (2003), and *Salazar v. See's Candy Shops Inc.*, 64 Cal.App.5th 85 (2021),
20 weakened Plaintiff's claims in terms of liability and value, and preclude claims from proceeding on a

21
22 ⁵ Because the PAGA claim does not provide a recovery to the Class, Plaintiff did not included the
23 PAGA claim in this discussion of the class claim valuation. The PAGA claim is addressed in the Decl.
Nordrehaug at ¶ 33.

24 ⁶ See *Dunleavy v. Nadler (In re Mego Fin. Corp. Sec. Litig.)*, 213 F.3d 454, 459 (9th Cir. 2000)
25 approving settlement which represented "roughly one-sixth of the potential recovery"); *Stovall-Gusman*
26 *v. W.W. Granger, Inc.*, 2015 U.S. Dist. LEXIS 78671, at *12 (N.D. Cal. 2015) (granting final approval
27 where "the proposed Total Settlement Amount represents approximately 10% of what class might have
28 been awarded had they succeeded at trial."); *Viceral v. Mistras Grp., Inc.*, 2016 WL 5907869 (N.D. Cal.
2016) (approving wage and hour class action settlement amounting to 8.1% of full verdict value); *Ma*
v. Covidien Holding, Inc., 2014 WL 2472316, (C.D. Cal. 2014) (approving wage and hour class action
settlement worth "somewhere between 9% and 18%" of full verdict value).

1 class or representative basis. Defendant also maintains that a good faith defense as to its classification
2 would negate the claims for waiting time penalties and/or failure to provide accurate itemized wage
3 statements. See e.g. *Naranjo v. Spectrum Sec. Servs.*, 15 Cal. 5th 1056, 1065 (May 6, 2024). If
4 successful, Defendant's defenses could eliminate or substantially reduce any recovery to the Class.
5 While Plaintiff believes that these defenses could be overcome, Defendant maintains these defenses
6 have merit and therefore present a serious risk to recovery by the Class. Decl. Nordrehaug, ¶ 24.

7 There was also a significant risk that, if the Action was not settled, Plaintiff would be unable
8 to obtain class certification and thereby not recover on behalf of any nurse other than herself. Defendant
9 forcefully opposed the propriety of class certification and argued that the individual experience of each
10 putative class member varied with respect to the claims, which would preclude the claims from
11 proceeding on a class basis. For instance, Plaintiff's meal and rest period claims would require
12 individualized inquiries into whether each nurse took a compliant meal or rest period on a given shift
13 and, if not, why. Plaintiff is aware of other cases where class certification of similar claims was denied.
14 See e.g. *Cacho v. Eurostar, Inc.*, 43 Cal. App. 5th 885 (2019) (denying certification of rest break
15 claims). Finally, even if class certification was successful, as demonstrated by the California Supreme
16 Court decision in *Duran v. U.S. Bank National Association*, 59 Cal. 4th 1 (2014), there are significant
17 hurdles to overcome for a class-wide recovery even where a class has been certified. While other cases
18 have approved class certification of wage and hour claims, class certification in this Action would have
19 been hotly disputed and was by no means a foregone conclusion. Decl. Nordrehaug, ¶ 25.

20 After arm's-length negotiations between experienced and informed counsel, the Parties
21 recognized the potential risks and agreed on the Settlement with a Gross Settlement Amount of
22 \$1,250,000.00. As the Court held in *Glass*, where the parties faced uncertainties similar to those here:

23 In light of the above-referenced uncertainty in the law, the risk, expense, complexity,
24 and likely duration of further litigation likewise favors the settlement. Regardless of how
25 this Court might have ruled on the merits of the legal issues, the losing party likely
26 would have appealed, and the parties would have faced the expense and uncertainty of
27 litigating an appeal. 'The expense and possible duration of the litigation should be
28 considered in evaluating the reasonableness of [a] settlement.'

2007 WL 221862, at *4 (quoting *In re Mego Financial Corp. Securities Litigation*, 213 F.3d 454, 458
(9th Cir. 2000)).

1 **3. The Settlement Does Not Improperly Grant Preferential Treatment To**
2 **Class Representatives Or Segments Of The Class.**

3 The relief provided in the Settlement will benefit all members of the Class. The Settlement does
4 not grant preferential treatment to Plaintiff or segments of the Class in any way. Payments to the Class
5 Members are all determined under a neutral methodology. Each Participating Class Member will
6 receive the same opportunity to participate in and receive payment through a neutral formula that is
7 based upon the Workweeks worked by that individual. Decl. Nordrehaug, ¶4.

8 Plaintiff will apply to the Court for a Class Representative Service Payment in consideration for
9 her service and for the risks undertaken on behalf of the Class. (Agreement at ¶ 3.2(a).) Plaintiff
10 performed her duties admirably by working with Class Counsel. Decl. Nordrehaug at ¶27. The
11 concurrently filed declaration of the Plaintiff is presented herewith in support of the request. For
12 purposes of this preliminary approval stage, the requested service award of is within the accepted range
13 of awards for purposes of preliminary approval. *See, e.g., Andrews v. Plains All Am. Pipeline L.P.*,
14 2022 U.S. Dist. LEXIS 172183, at *11 (C.D. Cal. 2022) (finding that the requested service awards of
15 \$15,000 each are appropriate); *Reynolds v. Direct Flow Med., Inc.*, 2019 U.S. Dist. LEXIS 149865, at
16 *19 (N.D. Cal. 2019) (granting request for \$12,500 service award); *Mathein v. Pier 1 Imps. (U.S.), Inc.*,
17 2018 U.S. Dist. LEXIS 71386 (E.D. Cal. 2018) (awarding \$12,500 where average class member
18 payment was \$351); *Louie v. Kaiser Foundation Health Plan, Inc.*, 2008 WL 4473183, *7 (S.D. Cal.
19 2008) (awarding \$25,000 service award to each of six plaintiffs in overtime class action); *Glass v. UBS*
20 *Fin. Servs.*, 2007 WL 221862, *16-17 (N.D. Cal. 2007) (awarding \$25,000 service award in overtime
21 class action and a pool of \$100,000 in enhancements). As explained in *Glass*, service awards are
22 routinely awarded to class representatives to compensate them for the time and effort expended on the
23 case, for the risk of litigation, for the fear of suing an employer and retaliation therefrom, and to serve
24 as an incentive to vindicate the statutory rights of all employees. 2007 WL 221862 at *16-17.

25 **4. The Stage Of The Proceedings Are Sufficiently Advanced To Permit**
26 **Preliminary Approval Of The Settlement.**

27 The stage of the proceedings at which the Settlement was reached also militates in favor of
28 preliminary approval and, ultimately, final approval of the Settlement. Class Counsel has conducted
a thorough investigation into the facts of the class action. Class Counsel began investigating the Class

1 Members' claims before the Action was filed. Class Counsel engaged in an investigation of the claims
2 and conducted a review and analysis of the relevant documents and data. Class Counsel was also
3 experienced with the claims at issue here, as Class Counsel previously litigated and settled similar
4 claims in other actions. Accordingly, the agreement to settle did not occur until Class Counsel
5 possessed sufficient information to make an informed judgment regarding the likelihood of success on
6 the merits and the results that could be obtained through further litigation. Decl. Nordrehaug at ¶28.

7 Based on the informal discovery of data and documents, and their own independent investigation
8 and evaluation, Class Counsel is of the opinion that the Settlement with Defendant for the consideration
9 and on the terms set forth in the Agreement is fair, reasonable, and adequate and is in the best interest
10 of the Class in light of all known facts and circumstances, including the risk of significant delay,
11 defenses asserted by Defendant, and numerous potential appellate issues. There can be no doubt that
12 counsel for both Parties possessed sufficient information to make an informed judgment regarding the
13 likelihood of success on the merits and the results that could be obtained through further litigation.
14 Decl. Nordrehaug at ¶29.

15 In *Glass*, the Northern District of California granted final approval of an overtime wage action
16 although in *Glass* no formal discovery had been conducted prior to the settlement. *Glass*, 2007 U.S.
17 Dist. LEXIS 8476 at *14 (quoting *In re Mego Financial Corp. Securities Litigation*, 213 F.3d at 459).
18 Here, Class Counsel was in a superior position to evaluate the fairness of this Settlement because Class
19 Counsel received relevant documents and data through informal discovery, evaluated the information
20 with the assistance of an expert, and performed independent investigations and due diligence to confirm
21 the accuracy of the information supplied by Defendant.

22 **V. THE CLASS IS PROPERLY CERTIFIED FOR SETTLEMENT PURPOSES ONLY**

23 Plaintiff contends that the Settlement meets all of the requirements for certification of a
24 settlement class under California Code of Civil Procedure § 382 as demonstrated below, and therefore,
25 the Court may appropriately approve the Class as defined in the Agreement. This Court should
26 conditionally certify the Class, for settlement purposes only, defined as follows:

27 All individuals who currently work or previously worked as a nurse and an independent
28 contractor in the State of California and who were paid by Defendant or its affiliate
Nurse Registry, Inc. at any time during the Class Period.

1 (Agreement at ¶ 1.4.)

2 The “Class Period” is from December 16, 2018 through October 5, 2023. (Agreement at ¶ 1.11.)

3 **A. Class Certification for Purposes Of Settlement.**

4 The California Supreme Court has summarized the standard for determining whether class
5 certification is appropriate under California Code of Civil Procedure section 382 as follows:

6 Code of Civil Procedure Section 382 authorizes class actions “when the question is one
7 of a common or general interest, of many persons, or when the parties are numerous, and
8 it is impracticable to bring them all before the court....” The party seeking certification
9 has the burden to establish the existence of both an ascertainable class and a well-
10 defined community of interest among class members. (*citations omitted*). The
11 “community of interest” requirement embodies three factors: (1) predominant common
12 questions of law or fact; (2) class representatives with claims or defenses typical of the
13 class; and (3) class representatives who can adequately represent the class.

14 *Sav-On Drug Stores, Inc. v. Superior Court*, 34 Cal. 4th 319, 326 (2004).

15 Plaintiff contends that the proposed Class satisfies the criteria for certification under Code of
16 Civil Procedure section 382. Defendant disputes that Plaintiff can satisfy any of these requirements for
17 class certification in the litigation context and reserves all rights to dispute that Plaintiff can satisfy
18 these requirements, but does not oppose certification for purposes of the Settlement only. Accordingly,
19 the proposed Class should be certified for purposes of the Settlement only. (Agreement at ¶ 2.9.)

20 **1. Ascertainability And Numerosity.**

21 Plaintiff brings this Action on behalf of a Class of nurses who worked for Defendant during the
22 applicable Class Period. Plaintiff asserts that all of these individuals are ascertainable because the class
23 members can readily be determined through examination of Defendant’s files. Given that the Class
24 consists of approximately 784 members, Plaintiff maintains that numerosity is clearly satisfied. *See*
25 *Bowles v. Superior Court*, 44 Cal.2d 574 (1955) (class with 10 members sufficiently numerous); *Rose*
26 *v. City of Hayward*, 126 Cal.App.3d 926, 934 (1981) (class of 48 members satisfies numerosity.) Here,
27 Plaintiff asserts that the 784 individuals who comprise the Class can be identified based on Defendant’s
28 records and are sufficiently numerous for class certification. Decl. Nordrehaug at ¶30.

2. Predominance of Common Issues Of Law and Fact.

Predominance of common issues of law or fact does not require that the common issues be
dispositive of the entire controversy or even that they be dispositive of all liability issues. 1 *Newberg*

1 on *Class Actions*, Section 4.25 at 4-82, 4-83 (1992). “Predominance is a comparative concept, and ‘the
2 necessity for class members to individually establish eligibility and damages does not mean individual
3 fact questions predominate.’” *Sav-On*, 34 Cal. 4th at 334.

4 Commonality exists if there is a predominant common legal question regarding how an
5 employer’s policies impact its employees. *Ghazaryan v. Diva Limousine, Ltd.*, 169 Cal. App. 4th 1524,
6 1536 (2008) (“[T]he common legal question remains the overall impact of Diva’s policies on its
7 drivers.”) Whether the plaintiff is likely to prevail on their theory of recovery is irrelevant at the
8 certification stage since the question is “essentially a procedural one that does not ask whether an action
9 is legally or factually meritorious.” *Linder v. Thrifty Oil Co.*, 23 Cal. 4th 429, 439-440 (2003).

10 Here, Plaintiff contends that common questions of law and fact are present, and specifically the
11 common questions of whether Defendant’s practices were lawful, whether the Class Members were
12 properly classified as independent contractors, whether Class Members were lawfully compensated for
13 all hours worked, whether the Defendant failed to provide meal and rest periods to Class Members,
14 whether Defendant failed to provide expense reimbursement, and whether Class Members are entitled
15 to damages and penalties as a result of these alleged practices. Decl. Nordrehaug, ¶30. Defendant
16 disputes that common questions predominate but will not oppose such a finding for purposes of this
17 Settlement only.

18 3. Typicality.

19 The typicality requirement requires the Plaintiff to demonstrate that the members of the class
20 have the same or similar claims as the plaintiff. “The typicality requirement is met when the claims of
21 the [p]laintiff arise from the same event or are based on the same legal theories.” *Tate v. Weyerhaeuser*
22 *Co.*, 723 F.2d 598, 608 (8th Cir. 1983). In *Hanlon, supra*, 150 F.3d at 1020, the Ninth Circuit held that
23 “[u]nder the rule’s permissive standards, representative claims are ‘typical’ if they are reasonably
24 coextensive with those of absent class members; they need not be substantially identical.”

25 In the Action, Plaintiff contends that there can be little doubt that the typicality requirement is
26 satisfied. Plaintiff worked for Defendant as independent contractor nurse during the Class Period.
27 Plaintiff contends that, like every other member of the Class, she was subjected to the same practices
28 and policies of Defendant and is subject to the same defenses. Thus, Plaintiff asserts that the claims of

1 Plaintiff and the Class Members arise from the same course of conduct by the Defendant, involve the
2 same policies and practices of Defendant, and are based on the same legal theories. Decl. Nordrehaug
3 at ¶30. For purposes of settlement, Plaintiff maintains that the typicality requirement is met as to the
4 common issues presented in this case. Defendant do not oppose a finding of typicality for purposes of
5 this Settlement only.

6 **4. Adequacy.**

7 Plaintiff contends that the Class Members are adequately represented here because Plaintiff and
8 Class Counsel (a) do not have any conflicts of interest with other Class members, and (b) will prosecute
9 the case vigorously on behalf of the Class. *Hanlon*, 150 F.3d at 1020. First, Plaintiff is well aware of
10 her duties as the representative of the Class and has actively participated in the prosecution of this case
11 to date. Plaintiff effectively communicated with counsel, provided documents to counsel, and
12 participated in the investigation and negotiations in the Action. Second, Plaintiff retained competent
13 counsel who are experienced in employment class actions and who have no conflicts. Decl. Nordrehaug
14 at ¶ 31. Third, there is no antagonism between the interests of the Plaintiff and those of the Class. Both
15 Plaintiff and the Class Members seek monetary relief under the same set of facts and legal theories.
16 Defendant disputes that the adequacy requirement is satisfied but will not oppose such a finding for
17 purposes of this Settlement only.

18 **5. Superiority.**

19 To certify a class, a court also must determine that a class action is superior to other available
20 methods for the fair and efficient adjudication of the controversy. “Where classwide litigation of
21 common issues will reduce litigation costs and promote greater efficiency, a class action may be
22 superior to other methods of litigation.” *Valentino v. Carter-Wallace, Inc.*, 97 F.3d 1227, 1234 (9th Cir.
23 1996). As courts have previously observed:

24 Absent class treatment, each individual plaintiff would present in separate, duplicative
25 proceedings the same or essentially the same arguments and evidence, including expert
26 testimony. The result would be a multiplicity of trials conducted at enormous expense
27 to both the judicial system and the litigants. “It would be neither efficient nor fair to
28 anyone, including defendants, to force multiple trials to hear the same evidence and
decide the same issues.”

Sav-On, 34 Cal. 4th at 340, citing *Boggs v. Divested Atomic Corp.*, 141 F.R.D. 58, 67 (S.D. Ohio 1991).

1 Here, Plaintiff contends that a class action is the superior mechanism for resolution of the claims as pled
2 by the Plaintiff. While Defendant disputes that class treatment is superior, Defendant does not dispute
3 a finding of superiority in this Action for purposes of this Settlement only.

4 **VI. THE PROPOSED METHOD OF CLASS NOTICE IS APPROPRIATE**

5 The Court has broad discretion in approving a practical notice program. *7- Eleven Owners for*
6 *Fair Franchising v. Southland Corp.*, 85 Cal. App. 4th 1135, 1164 (2000). The Parties have agreed
7 upon procedures by which the Class Members will be provided with written notice of the Settlement
8 similar to those approved and utilized in hundreds of class action settlements. In accordance with the
9 Agreement, Defendant will provide to the Administrator a confidential electronic spreadsheet
10 containing the Class Data. (Agreement at ¶ 4.2.) Within 14 days after receiving the Class Data, the
11 Administrator will mail the Class Notice to all Class Members via first-class U.S. Mail using the most
12 current mailing address information available. (Agreement at ¶ 8.4(b).)

13 The Class Notice, drafted jointly and agreed upon by the Parties through their respective counsel
14 and to be approved by the Court, includes all relevant information. (See Exhibit “A” to the Agreement.)
15 The Class Notice will include, among other information: (i) information regarding the Action; (ii) the
16 impact on the rights of the Class Members if they do not opt out, including a description of the
17 applicable release; (iii) information to the Class Members regarding how to opt out and how to object
18 to the Settlement; (iv) the estimated Individual Class Payment (and, if applicable, Individual PAGA
19 Payment) for each of the Class Members and how to dispute the information used to calculate the
20 payment; (iii) the amount of attorneys’ fees and expenses to be sought; (v) the amount of the Plaintiff’s
21 service award request; and (vi) the anticipated expenses of the Administrator. Decl. Nordrehaug at ¶32.

22 The Class Notice will state that the Class Members shall have sixty (60) days from the date that
23 the Class Notice is mailed to them (the “Response Deadline”) to request exclusion (opt-out), and that
24 the Response Deadline shall be extended 14 days in the event of a re-mailing. (Agreement at ¶¶ 1.41,
25 8.5(a).) Class Members shall be given the opportunity to object to the Settlement and/or requests for
26 attorneys’ fees and expenses and to appear at the Final Approval Hearing. (Agreement at ¶ 8.7.) Class
27 Members who do not submit a timely and proper request to opt out will automatically receive a payment
28 of their Individual Class Payment (and, if applicable, their Individual PAGA Payment). This notice

1 program was designed to meaningfully reach the Class Members and it advises them of all pertinent
2 information concerning the Settlement. Decl. Nordrehaug at ¶32. The mailing and distribution of the
3 Class Notice satisfies the requirements of due process, is the best notice practicable under the
4 circumstances, and complies with Rules of Court 3.766 and 3.769(f).

5 **VII. CONCLUSION**

6 Based on the foregoing, Plaintiff respectfully requests that the Court preliminarily approve the
7 proposed settlement and sign the proposed Preliminary Approval Order, which is submitted herewith,
8 and schedule the final approval hearing for January 8, 2025.

9 Dated: July 26, 2024

BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP

10 By: /s/ Kyle Nordrehaug
11 Kyle R. Nordrehaug, Esq.
12 Attorney for Plaintiff
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