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17 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

18 **FOR THE COUNTY OF SACRAMENTO**

19 SUZANNE M. RYAN, individually and on
20 behalf of herself and others similarly
21 situated,

22 Plaintiff,

23 vs.

24 DIGNITY HEALTH, a California
25 corporation, and DOES 1 through 100,
26 inclusive,

27 Defendants.

28 RUTH ELKINS, individually and on
behalf of all others similarly situated,

Plaintiff,

vs.

DIGNITY HEALTH, a California
corporation, and DOES 1 through 100,
inclusive,

Defendants.

Lead Case No. 34-2013-00147371-CU-OE-GDS

CLASS ACTION

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

UNOPPOSED MOTION

Date: August 17, 2017

Time: 1:30 p.m.

Dept: 35

Judge: Honorable Alan G. Perkins

Ryan Complaint Filed: June 27, 2013

Trial Date: None set

Elkins Complaint Filed: April 3, 2014

Trial date: None set

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1 **I. INTRODUCTION**

2 This motion seeks preliminary approval of a pre-certification wage and hour non-
3 reversionary class action settlement of \$395,000.00, between the Parties to a consolidated action
4 which includes *Suzanne M. Ryan v. Dignity Health*, Sacramento Superior Court Case No. 34-
5 2013-00147371 (“*Ryan*”), and *Ruth Elkins v. Dignity Health*, Sacramento Superior Court Case No.
6 34-2014-00161389 (“*Elkins*”) (collectively the “*Action*”), on behalf of plaintiffs Suzanne M. Ryan
7 and Ruth Elkins and the estimated 15,000 Registered Nurses employed by defendant Dignity
8 Health (“*Defendant*” or “*Dignity*”) who received a meal and/or rest period premium payment at
9 any time during the period from June 27, 2009 to May 2, 2017 (the “*Class*” or “*Class Members*”).

10 In the *Ryan* complaint filed on June 27, 2013, Plaintiff contended she and the putative class
11 were underpaid meal and rest period premium payments due to Defendant’s failure to properly
12 calculate the regular rate of compensation for purposes of premium payments, which also resulted
13 in failure to pay all wages owed at termination due to this shortfall. In the *Elkins* complaint filed
14 on April 3, 2014, Plaintiff made similar allegations regarding and alleged failure to calculate the
15 correct regular rate for payment of meal and rest period penalties and related waiting time
16 penalties, but also included a claim for penalties under the Private Attorneys General Act under
17 Labor Code section 2698 *et seq.*

18 To be clear, this case is *not* about payment of earned meal and rest break premiums,
19 because Dignity did pay out premiums amounting to more than \$29 million, but rather, that the
20 *rate* at which these premiums were paid out was undercalculated due to various overtime factors.
21 This lawsuit seeks to recapture this shortfall.

22 On April 3, 2017, the Court ordered *Ryan* and *Elkins* cases consolidated for settlement
23 purposes. Pursuant to the Order, the *Ryan* action is designated the lead case and all pleadings
24 pertaining to the settlement are to be filed in the *Ryan* action only.

25 Preliminary approval is warranted in view of the strengths and vulnerabilities of the Class’
26 claims compared with Defendant’s potential liability exposure and defenses, making this proposed
27 settlement of \$395,000.00 well within the “ballpark of reasonableness.”

28 ///

1 **II. THE PARTIES**

2 **A. Plaintiffs.**

3 Plaintiff Suzanne M. Ryan was employed by Defendant in the State of California as an
4 hourly Registered Nurse, from approximately January 9, 1989 until her retirement on August 2,
5 2011. Ryan Decl. ¶2.

6 Plaintiff Ruth Elkins was employed by Defendant in the State of California as an hourly
7 Registered Nurse from approximately November 5, 1992 until she terminated her employment on
8 December 2, 2013. Elkins Decl. ¶2.

9 **B. Defendant.**

10 Defendant Dignity Health is a California Corporation and operates within California.
11 Dignity Health employs numerous Class Members in Sacramento County at hospitals operated by
12 Dignity Health. The evidence shows that at each of its hospitals, Dignity Health employs hourly
13 Registered Nurse employees.

14 **C. The Class.**

15 The Settlement Class is defined as “All Registered Nurses employed by Dignity Health in
16 California who were paid at least one meal or rest period premium payment at any time during the
17 period from June 27, 2009 to May 2, 2017” (“Class Members”). Individuals excluded from the
18 Class are Registered Nurses employed by Dignity Health at French Hospital, Marian Medical
19 Center and Arroyo Grande Community Hospital, to the extent they released similar claims in the
20 *Bryant v. Dignity Health* class action settlement covering the period from August 3, 2007 through
21 April 20, 2016. Khoury Decl. ¶10.

22 **D. Damages**

23 The gross settlement fund for approximately 15,000 nurses employed by Dignity during
24 the class period may at first blush seem modest, \$395,000.00. Discovery disclosed, however, that
25 Dignity has paid out more than \$29 million to class members in meal and rest break premiums.
26 The only issue is the rate at which the premium was calculated, due to additional shift premiums
27 which would affect this rate, which Plaintiffs contend was undercalculated. Accordingly, the
28 damages allegedly owed are modest. Plaintiff Ryan’s actual damages amounted to \$18.00. The

1 average calculated payout, per class member, of approximately \$11.50, represents a 100%
2 recovery of the net wages which would be paid if every class member were also owed \$18.00.

3 **III. LITIGATION HISTORY**

4 **A. The *Ryan* Litigation.**

5 The *Ryan* litigation, filed in Sacramento, has been vigorously litigated from its inception,
6 including filing competing Case Management Statements due to perceived inaccuracies by either
7 party. Plaintiff filed a motion to compel discovery responses, which was granted in part and
8 denied in part. Defendant attempted to relate the case into San Francisco via notice of related case,
9 which relation was denied. Defendant later moved to transfer venue to San Francisco, which
10 motion was denied. Defendant also moved for judgment on the pleadings in January, 2015, which
11 was denied. Plaintiff filed a second motion to compel further responses to discovery, which
12 motion was denied. Defendant also moved for summary judgment, which motion was granted in
13 part and denied in part. As a result of the motion for summary judgment, Plaintiff's Labor Code
14 section 203 claims were eliminated, leaving only the Labor Code section 1174.7 claims to be
15 resolved together with related Unfair Competition claims.

16 During this time, Plaintiff filed a notice of related case regarding the *Elkins* matter pending
17 in the same court.

18 After the Court's ruling granting in part and denying in part the motion for summary
19 judgment and/or adjudication, the parties agreed to mediate this case. The parties reached a global
20 settlement, and filed a Notice of Tentative Class Action Settlement on February 27, 2017. At the
21 April 3, 2017 status conference, the Court ordered the *Ryan* and *Elkins* matters consolidated for
22 purposes of settlement, with *Ryan* as the lead case. At the last status conference on June 23, 2017,
23 the Court set August 17, 2017, for the next status conference, at which time the Court stated it
24 would hold the preliminary approval hearing.

25 **B. The *Elkins* Litigation.**

26 Plaintiff *Elkins* filed a complaint with the Labor and Workforce Development Agency
27 regarding the matters alleged in her complaint and satisfied the administrative requirements for
28 filing a claim for penalties under the Private Attorneys General Act. Her complaint, therefore,

1 includes this claim together with the meal and rest break premium underpayment claims. The
2 *Elkins* matter is equally characterized by vigorous motion practice by both sides, including two
3 motions to compel further discovery responses.

4 Defendant filed a notice of related case which was pending against Catholic Healthcare
5 West, which relation was denied. Defendant then moved to transfer venue to San Francisco,
6 which motion was subsequently withdrawn.

7 Plaintiff later moved to file a First Amended Complaint to add allegations regarding Labor
8 Code section 203; Defendant did not oppose this motion and eventually stipulated to its filing.
9 Defendant did, however, demur to the First Amended Complaint, which demurrer was overruled
10 (at the same time as the *Ryan* motion for judgment on the pleadings was denied).

11 Defendant moved for summary adjudication in this matter on the same grounds as in the
12 *Ryan* matter, which order was issued on the same date as in the *Ryan* matter, and granted in part
13 and denied in part just as in *Ryan*. The Court's Order on the Motions for Summary Judgment
14 and/or Summary Adjudication provided the catalyst for the parties to agree to mediate this case,
15 which was disclosed at the July 29, 2016 status conference. The parties reached a global
16 settlement agreement after mediation in February, 2017, and filed the Notice of Settlement on
17 February 27, 2017. On April 11, 2017, the *Elkins* action was consolidated with the *Ryan* action
18 for the purposes of settlement only.

19 **IV. INVESTIGATION AND DISCOVERY**

20 **A. *Ryan* Investigation and Discovery.**

21 The parties propounded and exchanged formal written discovery including multiple sets of
22 requests for production of documents, special interrogatories, and requests for admissions.
23 Defendant's responses led to Plaintiff filing two separate motions to compel further responses, one
24 of which was granted in part. Both parties supplemented their responses and provided several
25 hundred pages of documents each.

26 **B. *Elkins* Investigation and Discovery.**

27 Multiple sets of requests for production of documents and other formal written discovery
28 were propounded, and each party produced hundreds of pages of documents in response to the

1 many requests. Plaintiff Elkins also filed a motion to compel further responses, which motion was
2 granted in part, and the responses supplemented accordingly.

3 **V. MEDIATION AND THE PROPOSED SETTLEMENT**

4 **A. Mediation.**

5 With an agreement to mediate the *Ryan* and *Elkins* actions together, the Parties agreed to
6 an informal exchange of further information and data.

7 Defendant provided Plaintiffs with data covering the period of June 27, 2009 (beginning of
8 then *Ryan* class period) to December 31, 2016. The data was compiled for each individual year.
9 The data included the approximate number of Registered Nurses who received premium
10 payments, the approximate numbers of premiums paid to these Registers Nurses, the average
11 hourly rate of premiums paid, and the approximate value of all premiums paid during this time
12 period. Plaintiffs were able to extrapolate and apply this information to create comprehensive
13 class-wide damages model.

14 On February 7, 2017, the Parties appeared before Jeffrey Krivis, Esq., a well-respected and
15 experienced wage and hour mediator. At mediation, the Parties engaged in serious, informed and
16 lengthy arms'-length negotiations facilitated by Mr. Krivis. After a full day of negotiations, the
17 Parties reached the principal terms of the proposed global settlement of the claims in *Elkins* and
18 *Ryan*, and continued to negotiate in the following weeks the balance of the terms contained in the
19 Stipulation and Settlement of Class Action Claims ("Agreement"), attached to the Khoury
20 Declaration as Exhibit "1" and presented here for preliminary approval.

21 **B. The Settlement Terms.**

22 The Parties have agreed the Action may be settled and compromised for the non-
23 reversionary sum of \$395,000.00 ("Gross Settlement Amount" or "GSA"), which includes,
24 contingent upon the approval of this Court, (a) attorneys' fees of \$130,350.00¹ (one-third of the
25 GSA) to compensate Class Counsel for work performed and all work remaining to be performed
26 in securing final Court approval; (b) Class Counsel's litigation expenses of up to \$19,500.00; (c) a
27 Service Award to each Named Plaintiff, Suzanne M. Ryan and Ruth Elkins, in the sum of

28 ¹ This should be compared with nearly \$500,000 in lodestar to date.

1 \$5,000.00 in consideration and recognition of their initiation and prosecution of the action, serving
2 as a representatives for the Class, work performed, and risks undertaken for the payment of costs
3 in the event the case had not concluded successfully, benefits conferred on the absent Class
4 Members, and a general release of claims; (d) settlement administration fees and expenses to Rust
5 Consulting, Inc. in an amount not to exceed \$55,000.00; and (e) the payment to the California
6 Labor and Workplace Development Agency of \$3,750.00 (75% of \$5,000.00), allocated for the
7 payment of all applicable penalties under PAGA. Khoury Decl. ¶11.

8 After all Court-approved deductions from the GSA, the remaining sum, the Net Settlement
9 Fund (“NSF”), estimated at \$176,650, will be divided among Class Members who do not opt out,
10 based on the total number of Premium Payments he or she was paid by Dignity Health. With an
11 aggregate 546,752 premium payments for missed meal period or rest breaks during the Class
12 Period from June 27, 2009 through May 2, 2017, a Participating Settlement Class Member may
13 expect to receive an estimated \$0.32 for each premium payment paid to him or her during the
14 Class period. Khoury Decl. ¶12. Furthermore, amounts allocated to Class Members who opt-out
15 of the Settlement shall be re-allocated to those Participating Class members, so that the per-shift
16 rate will be increased for those remaining in the settlement. The entire amount of the NSA will be
17 paid to Participating Settlement Class Members and there is no reversion. Khoury Decl. ¶13.
18 Following final approval and the effective date of settlement, each Participating Settlement
19 Class Member will be mailed an Individual Settlement Payment representing his or her
20 proportionate share of the NSA. Khoury Decl. ¶14.

21 **C. Claims Administrator, Notice Packet to the Class, and Release of Claims.**

22 Rust Consulting, Inc., the Claims Administrator selected by the Parties, will conduct a
23 search of the National Change of Address database to update Class Member addresses, and will
24 thereafter mail to each Class Member identified by Defendant’s employment records, a Notice of
25 Class Action Settlement (“Notice”) and Notice of Change Of Address Form (collectively “Notice
26 Packet”). Khoury Decl. ¶15, Exh. A – Notice; and Exh. B – Change of Address Form.

27 The proposed Notice advises the Class of their rights (1) to participate in the proposed
28 Settlement, (2) to be excluded from the proposed Settlement, (3) to object to the Settlement or to

1 any of its terms, (4) to dispute the dates of employment or number of premium payments shown in
2 the Notice upon which their Settlement Payment will be based, and (5) for each of the foregoing
3 actions, the manner and deadline date for doing so. The Notice also informs the Class of the date
4 of the final fairness hearing. Khoury Decl. ¶16, Exh. A – Notice.

5 In exchange for a settlement payment, each Class Member who does not submit a valid
6 and timely Request for Exclusion will release the Released Parties from the Released Claims,
7 and/or any such claims or causes of action that could have been brought in the Action and based
8 on or arising out of the events, facts, and circumstances as alleged in the Action, including all
9 claims for failure to properly calculate meal and/or rest period premiums, any claim for failure to
10 pay all wages owed at time of termination that is derivative of claims for failure to properly
11 calculate meal and/or rest period premiums, and any other penalties, attorneys’ fees and costs
12 related to such claims, including derivative claims under the California Business and Professions
13 Code section 17200 *et seq.* and the Private Attorneys General Act. The Released Claims
14 specifically exclude claims for workers’ compensation, unemployment insurance and state
15 disability compensation, claims under the Employment Retirement Income Security Act of 1974,
16 claims for previously vested benefits under any Employer-sponsored benefits plan, wrongful
17 termination and discrimination, retaliation, and harassment under the Age Discrimination in
18 Employment Act, the California Fair Employment and Housing Act, Title VII of the Federal Civil
19 Rights Act of 1964, the Federal Civil Rights Act of 1991, the California Family Rights Act, the
20 federal Family Medical Leave Act, the California Pregnancy Leave Law, the federal Equal Pay
21 Act of 1963, and the Americans with Disabilities Act of 1990, and the release of any other claims
22 not permitted by law. Khoury Decl. ¶17.

23 **VI. ARGUMENT**

24 **A. Class Action Settlements Are Subject to Court Review and Approval Under** 25 **California Rules of Court.**

26 Rule 3.769 requires court approval for class action settlements.² “Before final approval,

27 ² The California Supreme Court also has authorized California's trial courts to use Federal Rule 23
28 and cases applying it for guidance in considering class issues. *See Vasquez v. Superior Court*
(1971) 4 Cal.3d 800, 821; *Green v. Obledo* (1981) 29 Cal.3d 126, 145-46. Where appropriate,
therefore, the Parties cite Federal Rule 23 and federal case law in addition to California law.

1 the court must conduct an inquiry into the fairness of the proposed settlement.” California Rules
2 of Court, Rule 3.769 (g). Courts act within their discretion in approving settlements which are fair,
3 not collusive, and take into account “all the normal perils of litigation as well as the additional
4 uncertainties inherent in complex class actions.” *In re Beef Industry Antitrust Litigation* (5th Cir.
5 1979) 607 F. 2d 167, 179, cert. den. sub nom. *Iowa Beef Processors, Inc. v. Meat Price*
6 *Investigators Ass’n* (1981) 452 U.S. 905. Where a settlement is reached on terms agreeable to all
7 Parties, a court should disapprove of the settlement “only with considerable circumspection.”
8 *Jamison v. Butcher & Sherrerd* (E.D. Pa. 1975) 68 F.R.D. 479, 481.

9 **B. The Settlement Is Fair, Reasonable, and Adequate.**

10 In deciding whether to approve a proposed class action settlement under California Code
11 of Civil Procedure section 382, the Court must find that a proposed settlement is “fair, adequate
12 and reasonable.” *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1801 (quoting *Officers for*
13 *Justice v. Civil Serv. Comm’n* (9th Cir. 1982) 688 F.2d 615, 625, cert. den. (1983) 459 U.S. 1217).
14 The trial court considers all relevant factors, such as: “the strength of plaintiffs’ case, the risk,
15 expense, complexity and likely duration of further litigation, the risk of maintaining class action
16 status through trial, the amount offered in settlement, the extent of discovery completed and the
17 stage of the proceedings, the experience and views of counsel, the presence of a governmental
18 participant, and the reaction of the class members to the proposed settlement.” *Id.* The Court’s
19 primary function is to determine that the Settlement is not the product of fraud, overreaching, or
20 collusion, and taken as a whole, is fair, reasonable and adequate. *Dunk, supra*, at 1801.

21 A proposed class action settlement is *presumed* fair under the following circumstances:
22 (1) the parties reached settlement after arms-length negotiations; (2) investigation and discovery
23 were sufficient to allow counsel and the court to act intelligently; (3) counsel is experienced in
24 similar litigation; and (4) the percentage of objectors is small. *Dunk, supra*, at 1802. The Khoury
25 Declaration demonstrates that 1) the proposed settlement is the product of serious, informed, and
26 non-collusive negotiations overseen by Jeffrey Krivis, Esq., a well-respected wage and hour
27 mediator; 2) the putative Class is represented by experienced counsel; and 3) the Parties conducted
28 significant investigation of the facts and law during the prosecution of the Action, such that

1 Plaintiffs and their counsel were able to make an informed recommendation about the proposed
2 Settlement. Such discovery and investigation includes: the exchange of numerous sets of written
3 discovery, the production and analysis of detailed records relevant to Plaintiffs' claims and the
4 analysis by the Parties of the class-wide data to investigate the merits of Plaintiffs' claims and
5 potential liability. Furthermore, counsel for the Parties have investigated the law regarding the
6 claims of Plaintiffs and potential defenses thereto, and the potential damages claimed by Plaintiffs.

7 The fourth factor, percentage of objectors, cannot be known until after the Notice has been
8 disseminated and the Class has had an opportunity to respond. Thus, the proposed Settlement, at
9 this stage, is entitled to the presumption that it is fair and in all other respects proper.

10 **1. The Settlement Is the Result of Serious, Informed, Non-Collusive**
11 **Negotiations.**

12 The proposed Settlement was reached as a result of arms'-length negotiations facilitated by
13 Mr. Krivis. Though cordial and professional, the settlement negotiations have been, at all times,
14 adversarial and non-collusive in nature. Following the agreement to settle, counsel for the Parties
15 continued to negotiate the remainder of the terms memorialized in the Agreement. Khoury Decl.
16 ¶18. While Plaintiffs believe in the merits of their case, they also recognize the inherent risks of
17 litigation and understand the benefit of the Class receiving significant settlement funds
18 immediately as opposed to risking an unfavorable decision on class certification, the merits of the
19 case at trial, the damages awarded, and/or on an appeal.

20 **2. Discovery and State of the Proceedings Support Settlement.**

21 The Parties thoroughly investigated and evaluated the factual strengths and weaknesses of
22 this case before reaching the proposed Settlement, and engaged in sufficient investigation,
23 research and exchange of information referenced above, to support the Settlement. Khoury Decl.
24 ¶19. The factual investigation was robust; the Settlement came only after the case was fully
25 investigated, after multiple rounds of formal discovery requests and motions to compel in each
26 action. This litigation has reached the stage where "the Parties certainly have a clear view of the
27 strengths and weaknesses of their cases" sufficient to support the Settlement. *Boyd v. Bechtel*
28 *Corp.* (N.D. Cal. 1979) 485 F. Supp. 610, 617.

1 **3. Counsel are Experienced in Similar Litigation.**

2 Plaintiffs' counsel, with decades of experience in wage and hour litigation, are experienced
3 and qualified to evaluate the class claims and to evaluate settlement versus trial on a fully
4 informed basis, and to evaluate the viability of the defenses. Khoury Decl. ¶¶ 4-8, and Exhibit 2
5 (firm resume).

6 Similarly, Defense counsel is comprised of a team of highly skilled and sophisticated
7 lawyers with extensive class action experience and has defended Defendant vigorously throughout
8 the litigation.

9 Counsel on both sides believe this is a fair and reasonable Settlement in light of the
10 percentage of monetary recovery by the Class, complexities of the case, state of the law and
11 uncertainties of class certification and continued litigation. The view of the attorneys actively
12 conducting the litigation "is entitled to significant weight" in deciding whether to approve the
13 settlement. *Fisher Bros. v. Cambridge Lee Industries, Inc.* (E.D. Pa. 1985) 630 F.Supp. 482, 488;
14 *Ellis v. Naval Air Rework Facility* (N.D. Cal. 1980) 87 F.R.D. 15, 18, *affd.* 661 F.2d 939 (9th Cir.
15 1981); *Boyd v. Bechtel Corp., supra*, 485 F.Supp. at 616-17. Accordingly, Plaintiff submits that
16 the Settlement, having satisfied the requirements of *Dunk* at this stage, is sufficient for the Court
17 to grant preliminary approval.

18 **4. The Settlement is Fair and Reasonable Based on the Strengths of**
19 **Plaintiffs' Case and the Risks and Costs of Further Litigation.**

20 Defendant contends this Action could not proceed as a class action, or even a PAGA
21 representative action. Defendant has also contended even if this matter were to proceed as a
22 PAGA action, the statute of limitations would be limited to one year (and not four years). See
23 e.g., *See Cal. Civ. Code § 340(a); see also Ortiz v. Hobby Lobby Stores, Inc.*, 2014 U.S. Dist.
24 LEXIS 140552 (E.D. Cal. Sept. 30, 2014) ("Pursuant to Section 340 of the California Code of
25 Civil Procedure, there is a one-year statute of limitations for Plaintiff's PAGA claim."). Defendant
26 contends it presented significant evidence that no damages (and no liability) exist, and further
27 contends its practices were legally compliant under the California Labor Code. This is not an
28 exhaustive list of defenses, but demonstrates the risks of prosecuting this action and the strength of

1 the defenses in this matter. Of particular weight are the multiple motions for summary judgment
2 and/or summary adjudication, which were successful in dismissal of Plaintiff's waiting time
3 claims in both actions.

4 Although Defendant believes that certification would be unlikely, it nevertheless agreed to
5 attempt resolution to avoid further expense, distraction and uncertainty of protracted litigation.
6 There are significant legal uncertainties associated with these cases, and such claims can be
7 factually complex and require protracted litigation to resolve. Plaintiffs believe their case is
8 suitable for certification, and contend that the only individual inquiry would be as to damages,
9 which does not preclude certification. *Sav-on Drug Stores, Inc. v. Superior Court* (2004) 34 Cal.
10 4th 319, 332-33.

11 Decisions following *Sav-On* have reached different conclusions with respect to
12 certification of wage and hour claims, evidenced by several published conflicting decisions, *see*,
13 *e.g.*, *Walsh v. IKON Solutions, Inc.*, 148 Cal. App. 4th 1440 (2007) (affirming decertification of
14 class claiming misclassification); *Aguilar v. Cintas Corp. No. 2*, 144 Cal. App. 4th 121 (2006)
15 (reversing denial of certification); *Dunbar v. Albertson's Inc.*, 141 Cal. App. 4th 1422 (2006)
16 (affirming denial of certification). The uncertainties of certification bore heavily on the
17 negotiations leading to the Settlement before the Court. Certainty of recovery is enhanced by an
18 equitable and timely consummated settlement such as that under consideration. Khoury Decl. ¶21.

19 In view of these uncertainties, the Parties agreed to a compromise, a non-reversionary
20 settlement, which will pay each Participating Class Member an estimated \$11.70, on average, for
21 the total number of Premium Payments he or she was allegedly underpaid by Dignity Health,
22 which represents almost a 100% net recovery. Khoury Decl. ¶22.

23 5. The Proposed Settlement is a Reasonable compromise of Claims.

24 *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal. App. 4th 116, requires that additional
25 information be presented to the Court, a fiduciary for the absent class members, "to ensure that the
26 recovery represents a reasonable compromise, given the magnitude and apparent merit of the
27 claims being released, discounted by the risks and expenses of attempting to establish and collect
28 on those claims by pursuing the litigation" *Kullar, supra*, at 129.

1 Subsequently, *Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles* (2010) 186
2 Cal. App. 4th 399, clarified that a *Kullar* showing does not require the parties to submit an illusory
3 prediction of the outer reaches of exposure without taking into account the actual risks of
4 certification, decertification, dispositive motions, and trial. *Kullar* does not require an explicit
5 statement of the maximum amount the plaintiff class could recover if it prevailed on all claims,
6 provided there is a record which allows “an understanding of the amount that is in controversy and
7 the realistic range of outcomes of the litigation.” *Munoz*, 186 Cal. App. 4th at 409.

8 Assuming 14,752 unique nurses claim premiums from June 27, 2009 through December
9 31, 2016, there were a total of 546,752 premiums paid at the average rate, under DIGNITY’s
10 method of calculation, which resulted in \$29,607,153 worth of premiums paid at an average rate of
11 \$53.75 per premium.

12 Based on data, each of the 14,752 nurses claimed a steady rate of 37 premiums divided by
13 7.5 class years, or at a rate of 5 per year. The number of premiums seemed to plateau in 2015 in
14 terms of frequency (106,063) but the number of employees claiming rose to over 11,500 in 2016.
15 The trend appears to be more employees claiming, but less frequently.

16 Plaintiffs’ counsel understands that LC 203 claims are adjudicated against them under a
17 “good faith” defense, in spite of a PAGA notice sent in February 2014 outlining potential
18 violations. The trial court did not consider this “notice” and as a result, it could result in an
19 appellate issue in the event the parties cannot reach amicable agreement. If Dignity wants a full
20 class release for those claims, there must be some consideration paid. Dignity has placed a
21 maximum value on this case of \$278,000, which the GSA exceeds by more than \$100,000, or by
22 about 30%.

23 **C. Conditional Certification of the Class is Appropriate.**

24 Plaintiffs further request that the Court provisionally certify the proposed Class for
25 purposes of Settlement. Provisional certification is appropriate at the preliminary approval stage
26 where the Class has not previously been certified and the requirements for certification are met.
27 See Alba Conte & Herbert Newberg, *4 Newberg on Class Actions* (2002) (“*Newberg*”), § 11.22, *et*
28 *seq.*

1 California law favors the fullest and most flexible use of the class action procedure, so any
2 doubts as to the appropriateness of certification should be resolved in favor of certification. *See*
3 *Sav-On Drug Stores, supra*; *Vasquez*, 4 Cal. 3d at 807-10; *Richmond v. Dart Indus., Inc.*, 29 Cal.
4 3d 462, 473-74 (1981). Class certification is appropriate when the class is ascertainable and there
5 is “a well-defined community of interest in the questions of law and fact involved affecting the
6 parties to be represented.” *Dunk*, 48 Cal. App. 4th at 1806 (*quoting Darr v. Yellow Cab Co.*, 67
7 Cal. 2d 695, 704 (1967)). The “community of interest” element embodies three factors:
8 (1) predominant common questions of law or fact; (2) class representatives with claims or
9 defenses typical of the class; and (3) class representatives who can adequately represent the class.
10 *Sav-On*, 34 Cal. 4th at 326. Finally, the court must determine that a class action proceeding is the
11 superior means for fair and efficient adjudication of the litigation. *Id.*; *Dunk*, 48 Cal. App. 4th at
12 1806. For settlement purposes, each of these prerequisites must be met. *See Wershba*, 91 Cal.
13 App. 4th at 237-38.

14 **1. The Proposed Class Is Ascertainable.**

15 The Class is ascertainable through Defendant’s own records. *See Rose v. City of Hayward*,
16 126 Cal. App. 3d 926, 932 (1981) (finding that “[c]lass members are ‘ascertainable’ where they
17 may be readily identified without unreasonable expense or time by reference to official records”).
18 Defendant possesses the necessary information to identify the Class and can easily gather and
19 organize the Class Members’ number of premium payments during the settlement class period.
20 Khoury Decl. ¶23.

21 **2. The Proposed Class Is Sufficiently Numerous.**

22 The numerosity requirement is met if the class is so large that joinder of all members
23 would be impracticable. *Gentry v. Super. Ct.*, 42 Cal. 4th 443, 460 n.5 (2007). Defendant has
24 represented that there are an estimated 15,000 Class Members. Joinder of all of these individuals
25 would be impracticable and a class-wide proceeding is superior because this number is sufficiently
26 large. *Hebbard v. Colgrove*, 28 Cal. App. 3d 1017, 1030 (1972) (certifying class with only 28
27 members); *Rose*, 126 Cal. App. 3d at 934-35 (class of 42 sufficiently numerous).

28 ///

1 **3. The Commonality Requirement Is Met.**

2 The commonality requirement is met when there are questions of law and fact common to
3 the class. *See Sav-On*, 34 Cal. 4th at 326-27; *Hanlon*, 150 F.3d at 1019. Commonality requires
4 only that common legal or factual questions predominate; plaintiffs need not show that all issues
5 in the litigation are identical. *See Sav-On*, 34 Cal. 4th at 328, 332-34; *Richmond*, 29 Cal. 3d at 473.
6 Here, the claims of the Class Members raise common questions of law and fact for settlement
7 purposes, including whether the meal and rest period premium payments made to members of the
8 Class were properly calculated.

9 For settlement purposes, the defined Class Members were subject to the same employment
10 policies and procedures and same compensation pay plan. Such uniform policies directed at the
11 Class satisfy the commonality requirement. *See Sav-On*, 34 Cal. 4th at 331; *Vasquez*, 4 Cal. 3d at
12 810-11; *Stephens v. Montgomery Ward & Co., Inc.*, 193 Cal. App. 3d 411, 421 (1987).

13 **4. The Typicality Requirement Is Met.**

14 The typicality requirement is met if the claims of the named representatives are typical of
15 those of the class, though “they need not be substantially identical.” *See Hanlon*, 150 F.3d at 1020;
16 *Classen v. Weller*, 145 Cal. App. 3d 27, 46-47 (1983). The claims of the Plaintiffs in this case are
17 typical of the claims of the Class because they arise from the same factual basis and are based on
18 the same legal theories as those applicable to the Class Members. *See Wehner v. Syntex Corp.*, 117
19 F.R.D. 641, 644 (N.D. Cal. 1987). Plaintiffs meet the typicality requirement because they are a
20 member of the Class they seek to represent, share the same claims and legal theories as other Class
21 Members, and are not subject to any unique defenses. *Fireside Bank v. Super. Ct.*, 40 Cal. 4th
22 1069, 1090-91 (2007). Ryan Decl. ¶¶ 3, 5; Elkins Decl. ¶¶ 3, 5.

23 **5. The Adequacy Requirement Is Met.**

24 A plaintiff can adequately represent the Class where she is represented by qualified counsel
25 and has interests aligned with the Class. *McGhee v. Bank of Am.*, 60 Cal. App. 3d 442, 450-51
26 (1976); *Hanlon*, 150 F.3d at 1020. Vigorous prosecution of class claims also supports a showing
27 of adequacy. *Soc. Servs. Union, Local 535 v. County of Santa Clara*, 609 F.2d 944, 946-47 (9th
28 Cir. 1979). Plaintiffs have demonstrated they are adequate representatives of the Class, as their

1 interests in prosecuting the case and obtaining the most beneficial recovery possible fully align
2 with the interests of the Class. Plaintiffs have devoted time and effort in prosecuting the class
3 claims, including gathering and organizing documents, assisting Class Counsel with investigating
4 the case, and responding to discovery served by Defendant. Ryan Decl. ¶¶ 8, 12-14; Elkins Decl.
5 ¶¶ 8, 12-13.

6 Plaintiffs' counsel is experienced in wage and hour class action litigation cases and is well-
7 qualified to represent this Class. Khoury Decl. ¶¶ 4-8 (Exhibit 2 thereto).

8 **6. Common Issues Predominate, Rendering Class-wide Settlement Superior**
9 **to Other Available Methods of Resolution.**

10 Class certification is proper where common questions of law and fact predominate over
11 individual questions, and where class-wide treatment of a dispute is superior to individual
12 litigation. *See Sav-On*, 34 Cal. 4th at 326; *Richmond*, 29 Cal. 3d at 469. When assessing
13 predominance and superiority, a court may consider that the class will be certified for settlement
14 purposes only and that manageability of trial is therefore moot. *Amchem Prods., Inc. v. Windsor*,
15 521 U.S. 591, 620 (1997). The test is whether proposed classes are sufficiently cohesive to
16 warrant adjudication by representation. *See Hanlon*, 150 F.3d at 1022. For settlement purposes,
17 the proposed Class in this case is sufficiently cohesive, since all Class Members share a “common
18 nucleus of facts and potential legal remedies,” because Plaintiffs and the Class seek to recover
19 underpaid meal and rest period premium payments and related PAGA penalties, and the Class
20 Members' potential legal remedies are virtually identical. *See Jaimez v. DAIOHS USA, Inc.*, 181
21 Cal. App. 4th 1286 (2010) (directing trial court to certify overtime and meal and rest break claims
22 based on misclassification).

23 Particularly in the settlement context, class resolution is superior to other available methods
24 for the fair and efficient adjudication of the controversy. *See Hanlon*, 150 F.3d at 1023; *see*
25 generally *Dunk*, 48 Cal. App. 4th at 1807 n.19. The superiority requirement involves a
26 “comparative evaluation of alternative mechanisms of dispute resolution.” *Hanlon*, 150 F.3d at
27 1023. Here, as in *Hanlon*, the alternative methods of resolution are individual claims for a
28 relatively small amount of damages. These claims “would prove uneconomic for potential

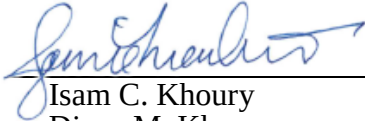
1 plaintiffs” because “litigation costs would dwarf potential recovery.” *Id.*

2 **VII. CONCLUSION**

3 For the reasons provided herein, the Settlement should be preliminarily approved, the
4 Class should be certified for purposes of Settlement only, the Class Notice should be approved and
5 ordered to be disseminated to the Class, and the Final Approval Hearing date be set.

6 Dated: July 26, 2017

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7
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