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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF SAN DIEGO**

JACQUELYN CRANTON and KATRENA
ARNOLD, individuals, on behalf of
themselves and on behalf of all persons
similarly situated,

Plaintiffs,

vs.

GROSSMONT HOSPITAL
CORPORATION, a California Corporation;
and DOES 1 through 50, inclusive,

Defendants.

CASE NO.: **37-2022-00001574-CU-OE-CTL**
[Consolidated with Case No.
37-2022-00024671-CU-OE-CTL]

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

Hearing Date: March 29, 2024
Hearing Time: 9:30 a.m.

Judge: Hon. Gregory W. Pollack
Dept.: 71

Action Filed: January 13, 2022
Trial Date: Not set

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1 **I. INTRODUCTION**

2 Plaintiffs Jacqueline Cranton and Katrena Arnold (“Plaintiffs”) respectfully submits this
3 memorandum in support of the unopposed motion for preliminary approval of the proposed class action
4 settlement with Defendant Grossmont Hospital Corporation (“Defendant”), and seek entry of an order:
5 (1) preliminarily approving the proposed settlement of this class action with Defendant; (2) for
6 settlement purposes only, conditionally certifying the Class, which is comprised of “all non-exempt
7 employees who are or previously were employed by Defendant Grossmont Hospital Corporation in the
8 State of California from January 13, 2018 to March 20, 2024 (the “Class Period”)”; (3) provisionally
9 appointing Plaintiffs as the representatives of the Class; (4) provisionally appointing Norman B.
10 Blumenthal, Kyle R. Nordrehaug, Aparajit Bhowmik, Nicholas J. De Blouw, Jeffrey S. Herman, Sergio
11 J. Puche, and Trevor G. Moran of Blumenthal Nordrehaug Bhowmik De Blouw LLP; Craig J
12 Ackermann of Ackermann & Tilajef, P.C.; and Amire H. Seyedfarshi of Employment Rights Lawyers,
13 APC as Class Counsel; (5) approving the form and method for providing class-wide notice;
14 (6) directing that notice of the proposed settlement be given to the class; (7) appointing ILYM Group
15 as Administrator, and (8) scheduling a final approval hearing date, proposed for August 9, 2024 which
16 is at least 120 days from preliminary approval, to consider Plaintiffs’ motion for final approval of the
17 settlement and for approval of attorneys’ fees and expenses. Plaintiffs and Defendant (collectively the
18 “Parties”) have reached a full and final settlement of the above-captioned action, which is set forth in
19 the Class Action and PAGA Settlement Agreement (“Agreement”) filed concurrently with the Court.¹
20 A copy of the fully executed Agreement is attached as Exhibit #1 to the Declaration of Kyle
21 Nordrehaug (“Decl. Nordrehaug”), served and filed herewith. The form of the Agreement is based
22 upon the Los Angeles County Superior Court model form for a class and PAGA settlement.

23 As consideration for this Settlement, the non-reversionary Gross Settlement Amount of Five
24 Million Nine Hundred Fifty Thousand Dollars (\$5,950,000) (the “Gross Settlement Amount”) is to be
25 paid by Defendant, as set forth in the Agreement. The Gross Settlement Amount will settle all issues
26 pending in the Action between the Parties and will be made in full and final settlement of the Released
27

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

1 Class Claims in exchange for the payments to Participating Class Members from the Net Settlement
2 Amount, and includes (a) the costs of administration of the settlement, (b) all attorneys' fees and costs,
3 (c) Class Representative Service Payments, and (d) the PAGA Penalties payment allocated 75% to the
4 LWDA and 25% to the Aggrieved Employees. (Agreement at ¶ 1.22.) Decl. Nordrehaug at ¶3. The
5 following is a table of the key Settlement terms and the proposed deductions:

6	\$5,950,000 (Gross Settlement Amount)
7	- \$25,000 (Plaintiffs' proposed service awards not to exceed \$12,500 each)
8	- \$70,000 (Class Counsel Litigation Expenses Payment - not to exceed amount)
9	- \$1,983,333 (Class Counsel Fees Payment - not to exceed 1/3 of settlement)
	- \$120,000 (PAGA Payment - 75% to LWDA / 25% to Aggrieved Employees)
	- \$55,000 (Administration Expenses Payment - not to exceed amount)
	\$3,696,667 (Net Settlement Amount)

10 Based upon 7,494 Class Members who worked an estimated 550,000 pay periods (Agreement at ¶ 4.1),
11 the Gross Settlement Amount provides an average value of \$793 per Class Member and \$10 per pay
12 period and after deductions the Net Settlement Amount provides an average recovery of \$493.28 per
13 Class Member and a recovery of \$6.72 per pay period. Decl. Nordrehaug at ¶6.

14 On December 20, 2023, the Parties participated in an all-day mediation session presided over
15 Jeffrey Ross, a respected jurist and experienced mediator of wage and hour class actions. Following
16 the mediation, the Parties agreed on the basic terms of a settlement pursuant to a mediator's proposal
17 which was memorialized in the form of a Memorandum of Understanding. Decl. Nordrehaug at ¶5.
18 The Settlement is fair, reasonable and adequate, and should be preliminarily approved because there
19 is a substantial monetary payment, and there are significant litigation and class-certification risks.
20 Therefore, Plaintiffs respectfully request that this Court grant preliminary approval of the Agreement
21 and enter the proposed order submitted herewith.

22 **II. DESCRIPTION OF THE SETTLEMENT**

23 The Gross Settlement Amount is Five Million Nine Hundred Fifty Thousand Dollars
24 (\$5,950,000). (Agreement at ¶ 1.22.) Under the Settlement, the Gross Settlement Amount consists of
25 the following elements: (1) payment of the Individual Class Payments to the Participating Class
26 Members; (2) Class Counsel Fees Payment and Class Counsel Litigation Expenses Payment; (3)
27 Administration Expenses Payment; (4) the Class Representative Service Payments to the Plaintiffs; and
28 (5) the PAGA Penalties payment. (Agreement at ¶ 1.22.) The Gross Settlement Amount does not

1 include Defendant's share of payroll taxes. (Agreement at ¶ 3.1.) The Gross Settlement Amount shall
2 be all-in with no reversion to Defendant. (Agreement at ¶ 3.1.) Decl. Nordrehaug at ¶15.

3 The Agreement contains appropriate terms which have been previously approved by this Court
4 and Courts throughout California. (See Agreement at ¶¶ 1.28, 3.2, 4.3, 5.1.) The proposed Class
5 Notice also provides the required protections for the Class to opt out, object or dispute their pay
6 periods. (See Agreement at ¶¶ 8.5, 8.6, 8.7, and Exhibit A.) The additional details of the Settlement
7 are addressed in the Decl. Nordrehaug at ¶¶ 16-22. As set forth in the accompanying proof of service,
8 the LWDA has been served with this motion and the Agreement.

9 **III. CASE BACKGROUND**

10 The description of the case and claims, along with the procedural history is set forth in the
11 Declaration of Kyle Nordrehaug at ¶¶ 7-14. The Parties engaged in thorough investigation and the
12 exchange of documents and information in connection with the Action for more than two years which
13 permitted Class Counsel to perform a thorough analysis of the claims. Decl. Nordrehaug, ¶¶ 10 and
14 14. The Parties participated in mediation on December 20, 2023 with Jeffrey Ross, which after arms'
15 length negotiations both during and after the mediation, resulted in this Settlement. Decl. Nordrehaug,
16 ¶12.

17 **IV. THE SETTLEMENT MEETS THE CRITERIA NECESSARY FOR THIS COURT TO 18 GRANT PRELIMINARY APPROVAL**

19 California "[p]ublic policy generally favors the compromise of complex class action litigation."
20 *Nordstrom Comm'n Cases*, 186 Cal. App. 4th 576, 581 (2010) quoting *Cellphone Termination Fee*
21 *Cases*, 180 Cal.App.4th 1110, 1117-18 (2009). Class action settlements are approved where the
22 proposed settlement is "fair, adequate and reasonable." *Dunk v. Ford Motor Co.*, 48 Cal.App.4th 1794,
23 1801 (1996) (citing *Officers for Justice v. Civil Serv. Comm'n*, 688 F.2d 615, 625 (9th Cir. 1982), cert.
24 denied, 459 U.S. 1217 (1983)).

25 Preliminary approval is the first of three steps that comprise the approval procedure for
26 settlements of class actions. The second step is the dissemination of notice of the settlement to all class
27 members. The third step is a final settlement approval hearing, at which evidence and argument
28 concerning the fairness, adequacy, and reasonableness of the settlement may be presented, and class

1 members may be heard regarding the settlement. *See Dunk v. Ford Motor Co.*, 48 Cal.App.4th 1794,
2 1801 (1996); *Manual for Complex Litigation, Second* §30.44 (1993); Cal. Rules of Court, rule 3.769.

3 The primary question presented on an application for preliminary approval of a proposed class
4 action settlement is whether the proposed settlement is “within the range of possible approval.”
5 *Manual for Complex Litigation, Second* §30.44 at 229; *Gautreaux v. Pierce*, 690 F.2d 616, 621 n.3 (7th
6 Cir. 1982).² Preliminary approval is merely the prerequisite to giving notice so that “the proposed
7 settlement... may be submitted to members of the prospective Class for their acceptance or rejection.”
8 *Sayaman v. Baxter Healthcare Corp.*, 2010 U.S. Dist. LEXIS 151997, *3 (C.D. Cal. 2010). There is
9 “a presumption of fairness . . . where . . . [a] settlement is reached through arms-length bargaining.”
10 *Wershba v. Apple Computer, Inc.*, 91 Cal.App.4th 224, 245 (2001) (citation omitted); see also *Cho v.*
11 *Seagate Tech. Holdings, Inc.*, 177 Cal. App. 4th 734, 742-45 (2009) (upholding trial court's
12 determination that settlement was “fair, reasonable and adequate” where the settlement “provided
13 valuable benefits to the class . . . that were ‘particularly valuable in light of the risks plaintiff would have
14 faced if she proceeded to litigate her case.’”); *Newberg*, 3d Ed., §11.41, p.11-88. However, the ultimate
15 question of whether the proposed settlement is fair, reasonable and adequate is made after notice of the
16 settlement is given to the class members and a final settlement hearing is held by the Court.

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

18 The approval of a proposed settlement of a class action suit is a matter within the broad
19 discretion of the trial court. *Wershba, supra*, 91 Cal.App.4th at 234-235; *Dunk*, 48 Cal.App.4th 1794.
20 In considering a potential settlement for preliminary approval purposes, the trial court does not have
21 to reach any ultimate conclusions on the issues of fact and law which underlie the merits of the dispute,
22 and need not engage in a trial on the merits. *Wershba, supra*, 91 Cal.App.4th at 239-40; *Dunk, supra*,
23 48 Cal.App. 4th at 1807. The Ninth Circuit explained that, “the very essence of a settlement is
24 compromise, ‘a yielding of absolutes and an abandoning of highest hopes.’” *Officers for Justice*, 688

25
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
Green v. Obledo, 29 Cal.3d 126, 145-146 (1981).

1 F.2d at 624. Thus, when analyzing the settlement, the amount is “not to be judged against a
2 hypothetical or speculative measure of what might have been achieved by the negotiators.” *Officers*
3 *for Justice*, 688 F.2d at 625, 628.

4 With regard to class action settlements, the opinions of counsel should be given considerable
5 weight both because of counsel’s familiarity with this litigation and previous experience with cases
6 such as these. *Officers for Justice*, 688 F.2d at 625. As a result, courts hold that the recommendation
7 of counsel is entitled to significant weight. *Nat’l Rural Telecomms. Coop. v. DIRECTV, Inc.*, 221
8 F.R.D. 523, 528 (C.D. Cal. 2004).

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

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

21 **1. The Settlement is the Product of Serious, Informed and**
22 **Arm’s Length Negotiations by Experienced Counsel**

23 This settlement is the result of extensive and hard-fought litigation as well as negotiations
24 before an experienced and well-respected mediator. Defendant has expressly denied and continues to
25 deny any wrongdoing or legal liability arising out of the conduct alleged in the Action. Plaintiffs and
26 Class Counsel have determined that it is desirable and beneficial to the Class to resolve the Released
27 Class Claims of the Class in accordance with this Settlement. The release applicable to the Class is
28 appropriately tethered to allegations in the Action. (Agreement at ¶¶ 1.39 and 6.2.)

1 Class Counsel are experienced and qualified to evaluate the class claims, the defenses asserted,
2 and the risks and benefits of trial and settlement, and Class Counsel are particularly experienced in
3 wage and hour employment class actions, as Class Counsel has previously litigated and certified similar
4 claims against other employers. Decl. Nordrehaug at ¶31; Declaration of Craig J Ackermann at ¶¶ 5-
5 13; Declaration of Amir H. Seyedfarshi at ¶¶ 5-10. The view of qualified and well-informed counsel
6 that a class action settlement is fair, adequate, and reasonable is entitled to significant weight. *See*
7 *Kullar v. Foot Locker*, 168 Cal. App. 4th 116, 133 (2008) (the trial court "undoubtedly should continue
8 to place reliance on the competence and integrity of counsel, the involvement of a qualified mediator,
9 and the paucity of objectors to the settlement."); *Dunk*, 48 Cal. App. 4th at 1802.

10 The Parties attended an arms-length mediation session with Jeffrey Ross, a respected jurist and
11 experienced mediator of wage and hour class actions, in order to reach this Settlement. In preparation
12 for the mediation, Defendant provided Class Counsel with payroll, time and employment data, along
13 with and other information regarding the Class Members, various internal documents, and other
14 compensation and employment-related materials. Class Counsel analyzed the data with the assistance
15 of damages expert Berger Consulting and prepared and submitted a mediation brief to the mediator. The
16 final settlement terms were negotiated and set forth in the Agreement now presented for this Court's
17 approval. Decl. Nordrehaug at ¶ 5. Importantly, Plaintiffs and Class Counsel believe that this
18 Settlement is fair, reasonable and adequate.

19 Class Counsel has conducted a thorough investigation into the facts of the class action as
20 detailed in the Decl. Nordrehaug. Based on the Class data and their own independent investigation,
21 evaluation and experience, Class Counsel believes that the settlement with Defendant on the terms set
22 forth in the Agreement is fair, reasonable, and adequate and is in the best interest of the Class in light
23 of all known facts and circumstances, including the risk of significant delay, defenses asserted by
24 Defendant, and potential appellate issues. Decl. Nordrehaug at ¶ 14. Plaintiffs and Class Counsel
25 recognize the risks, expense and length of continuing to litigate and trying this Action against
26 Defendant and then litigating possible appeals which could take several years. Plaintiffs and Class
27 Counsel have determined that the Settlement set forth in the Agreement is in the best interest of the
28 Class Members. Decl. Nordrehaug, ¶ 23.

1 Here, there can be no dispute that the litigation has been hard-fought with aggressive and
2 capable advocacy on both sides. The Parties were represented by experienced and capable counsel who
3 zealously advocated their positions. Accordingly, “[t]here is likewise every reason to conclude that
4 settlement negotiations were vigorously conducted at arms’ length and without any suggestion of undue
5 influence.” *In re Wash. Public Power Supply Sec. Litig.*, 720 F. Supp. 1379, 1392 (D. Ariz 1989).

6 **2. The Settlement Has No "Obvious Deficiencies" and Falls Well Within**
7 **the Range for Approval**

8 The proposed Settlement herein has no "obvious deficiencies" and is well within the range of
9 possible approval. All Class Members will receive an opportunity to participate in the Settlement and
10 receive payment according to the same formula. (Agreement at ¶ 3.2(e).) Based upon 7,494 Class
11 Members who collectively worked an estimated 550,000 pay periods (Agreement at ¶ 4.1), the Gross
12 Settlement Amount provides an average value of \$793 per Class Member and \$10 per pay period and
13 after deductions the Net Settlement Amount provides an average recovery of \$493.28 per Class
14 Member and a recovery of \$6.72 per pay period. Decl. Nordrehaug, ¶6.

15 The calculations to compensate for the amount due for the Class at the time of the mediation
16 were calculated by Berger Consulting, Plaintiffs’ damage expert. As to the Class whose claims are at
17 issue in this Action, Plaintiffs used the expert to analyze the data and determine the potential unpaid
18 wages for the employees. The maximum potential damages were calculated to be \$3,455,986 for the
19 alleged unpaid wages for off-the-clock work due to rounding, \$628,445 for the alleged unpaid wages
20 due to miscalculation of the regular rate when paying wages, \$1,203,483 for alleged unpaid wages for
21 meal premiums and sick pay, \$8,241,116 for alleged meal period damages based upon a 9.5% potential
22 violation rate for shifts worked and after deducting the meal premiums (\$4,213,796) actually paid by
23 Defendant, \$12,454,912 for alleged rest period damages based upon the same 9.5% potential violation
24 rate for shifts worked observed for meal periods, \$1,248,635 for alleged unreimbursed business
25 expenses for personal cell phone usage at \$5 per month. Decl. Nordrehaug, ¶6. As a result, the total
26 damage valuation was calculated that Defendant was subject to a maximum damage claim in the
27 amount of \$27,232,577. As to potential penalties, Plaintiffs calculated that potential waiting time
28 penalties were a maximum of between \$17,705,579 and \$33,800,350, and potential maximum wage

1 statement penalties were \$24,264,000.³ Defendant vigorously disputed Plaintiffs' calculations and
2 exposure theories. Decl. Nordrehaug, ¶6.

3 Consequently, the Gross Settlement Amount of \$5,950,000 represents more than 21% of the
4 maximum value of the alleged damages at issue in this case at the time this Settlement was negotiated.⁴
5 The above maximum calculations should then be adjusted in consideration for both the risk of class
6 certification and the risk of establishing class-wide liability on all claims. Given the amount of the
7 settlement as compared to the potential value of claims in this case and the defenses asserted by
8 Defendant, this settlement is fair and reasonable.⁵ Clearly, the goal of this litigation has been met.
9 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 Plaintiffs and the other Class Members.
13 Defendant asserted that Defendant's practices complied with all applicable Labor laws. Defendant
14 argued that Class Members were paid for all time worked and that all work time was properly recorded.
15 Defendant maintained there was no miscalculation of the regular rate when paying wages to the

16
17 ³ While Plaintiffs alleged claims for statutory penalties pursuant to Labor Code Sections 203 and
18 226, at mediation Plaintiffs recognized that these claims were subject to additional, separate defenses
19 asserted by Defendant, including, a good faith dispute defense as to whether any premium wages for
20 meal or rest periods or other wages were owed given Defendant's position that Plaintiffs and Class
Members were properly 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.").

21 ⁴ Because the PAGA claim is not a class claim and primarily is paid to the State of California,
22 Plaintiff did not included the PAGA claim in this discussion of the value of the class claims. The
PAGA claim is addressed in the Decl. Nordrehaug at ¶33.

23 ⁵ See *Glass v. UBS Fin. Servs.*, 2007 U.S. Dist. LEXIS 8476 (N.D. Cal. 2007) (approving a
24 settlement where the settlement amount constituted approximately 25% of the estimated overtime
25 damages for the class); *Stovall-Gusman v. W.W. Granger, Inc.*, 2015 U.S. Dist. LEXIS 78671, at *12
26 (N.D. Cal. 2015) (granting final approval where "the proposed Total Settlement Amount represents
approximately 10% of what class might have been awarded had they succeeded at trial."); *Viceral v.*
27 *Mistras Grp., Inc.*, 2016 WL 5907869 (N.D. Cal. 2016) (approving wage and hour class action
28 settlement amounting to 8.1% of full 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 maximum valuation).

1 Plaintiffs and the Class. Defendant also maintains that as to Class Members in the union, they are not
2 covered by Labor Code §510 (overtime) under California law. Defendant contends that its meal and
3 rest period policies fully complied with California law and Defendant did not fail to provide the
4 opportunity for legally required meal and rest breaks. Defendant could argue that its payment of
5 significant meal period premiums is evidence of its lawful practices, and as to rest periods, there was
6 a pay code to claims rest period premiums that was used frequently by the Class. Defendant contend
7 that there was no failure to pay for business expenses and any cell phone usage was merely convenient
8 and voluntary such that reimbursement was not legally required. Finally, Defendant could argue that
9 the Supreme Court decision in *Brinker v. Superior Court*, 53 Cal. 4th 1004 (2012), weakened Plaintiffs'
10 claims, on liability, value, and class certifiability as to the meal and rest period claims. Defendant also
11 argues that based on its facially lawful practices, Defendant acted in good faith and without willfulness,
12 which if accepted would negate the claims for waiting time penalties and/or inaccurate wage
13 statements. If successful, Defendant's defenses could eliminate or substantially reduce any recovery
14 to the Class. While Plaintiffs believe that these defenses could be overcome, Defendant maintains these
15 defenses have merit and therefore present a serious risk to recovery by the Class. Decl. Nordrehaug,
16 ¶ 24.

17 There was also a significant risk that, if the Action was not settled, Plaintiffs would be unable
18 to obtain a certified class and maintain the certified class through trial, and thereby not recover on
19 behalf of any employees other than herself. At the time of the mediation, Defendant forcefully opposed
20 the propriety of class certification, arguing that individual issues precluded class certification. Further,
21 as demonstrated by the California Supreme Court decision in *Duran v. U.S. Bank National Assn.*, 59
22 Cal. 4th 1 (2014), there are significant hurdles to overcome for a class-wide recovery even where the
23 class has been certified. While other cases have approved class certification in wage and hour claims,
24 class certification in this action was hotly disputed and the maintenance of a certified class through trial
25 was by no means a foregone conclusion. Decl. Nordrehaug, ¶ 25.

26 After arm's length negotiations between experienced and informed counsel, the Parties
27 recognized the potential risks and agreed on the Settlement with a Gross Settlement Amount of
28 \$5,950,000. As the Court held in *Glass*, where the parties faced uncertainties similar to those here:

1 In light of the above-referenced uncertainty in the law, the risk, expense, complexity,
2 and likely duration of further litigation likewise favors the settlement. Regardless of
3 how this Court might have ruled on the merits of the legal issues, the losing party likely
4 would have appealed, and the parties would have faced the expense and uncertainty of
5 litigating an appeal. ‘The expense and possible duration of the litigation should be
6 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)).

7 **3. The Settlement Does Not Improperly Grant Preferential Treatment To
8 Class Representatives or Segments Of The Class**

8 The relief provided in the Settlement will benefit all members of the Class. The Settlement does
9 not grant preferential treatment to Plaintiffs or segments of the Class in any way. Payments to the Class
10 Members are all determined under a neutral methodology. Each Participating Class Member will
11 receive the same opportunity to participate in and receive payment through a neutral formula that is
12 based upon the Pay Periods for that individual. Decl. Nordrehaug, ¶4.

13 Plaintiffs will apply to the Court for Class Representative Service Payments in consideration
14 for their service and for the risks undertaken on behalf of the Class. (Agreement at ¶ 3.2(a).) Plaintiffs
15 performed their duties admirably by working with Class Counsel over the course of litigation. The
16 Declaration of the Plaintiffs are submitted herewith in support. Decl. Nordrehaug at ¶27. At this stage,
17 the requested service award of \$12,500 is within the accepted range of awards for purposes of
18 preliminary approval. *See e.g. Andrews v. Plains All Am. Pipeline L.P.*, 2022 U.S. Dist. LEXIS
19 172183, at *11 (C.D. Cal. 2022) (finding that the requested service awards of \$15,000 each are
20 appropriate); *Reynolds v. Direct Flow Med., Inc.*, 2019 U.S. Dist. LEXIS 149865, at *19 (N.D. Cal.
21 2019) (granting request for \$12,500 service award); *Mathein v. Pier 1 Imps. (U.S.), Inc.*, 2018 U.S.
22 Dist. LEXIS 71386 (E.D. Cal. 2018) (awarding \$12,500 where average class member payment was
23 \$351); *Louie v. Kaiser Foundation Health Plan, Inc.*, 2008 WL 4473183, *7 (S.D.Cal. Oct. 06, 2008)
24 (awarding \$25,000 service award to each of six plaintiffs in overtime class action); *Glass v. UBS Fin.*
25 *Servs.*, 2007 WL 221862, *16-17 (N.D. Cal. 2007) (awarding \$25,000 service award in overtime class
26 action and a pool of \$100,000 in enhancements). As explained in *Glass*, service awards are routinely
27 awarded to class representatives to compensate the employees for the time and effort expended on the
28 case, for the risk of litigation, for the fear of suing an employer and retaliation there from, and to serve

1 as an incentive to vindicate the statutory rights of all employees. 2007 WL 221862 at *16-17.

2 **4. The Stage Of The Proceedings Are Sufficiently Advanced To Permit**
3 **Preliminary Approval Of The Settlement**

4 The stage of the proceedings at which this Settlement was reached also militates in favor of
5 preliminary approval and ultimately, final approval of the Settlement. Class Counsel has conducted
6 a thorough investigation into the facts of the class action. Class Counsel began investigating the Class
7 Members' claims before the Action were filed, and during the course of litigation, depositions were
8 taken and Class Counsel and engaged in both formal and informal discovery to obtain necessary
9 information. Class Counsel conducted a review and analysis of the relevant documents and data. Class
10 Counsel was also experienced with these claims, as Class Counsel previously litigated and settled
11 similar claims in other actions. Accordingly, the agreement to settle did not occur until Class Counsel
12 possessed sufficient information to make an informed judgment regarding the likelihood of success on
13 the merits and the results that could be obtained through further litigation. Decl. Nordrehaug at ¶28.

14 Based on the foregoing data and their own independent investigation and evaluation, Class
15 Counsel is of the opinion that the Settlement with Defendant for the consideration and on the terms set
16 forth in the Agreement is fair, reasonable, and adequate and is in the best interest of the Class in light
17 of all known facts and circumstances, including the risk of significant delay, defenses asserted by
18 Defendant, and numerous potential appellate issues. Decl. Nordrehaug at ¶29.

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

20 Plaintiffs contend that the proposed settlement meet all of the requirements for class
21 certification under California Code of Civil Procedure § 382 as demonstrated below, and therefore, the
22 Court may appropriately approve the Class as defined in the Agreement. This Court should
23 conditionally certify the Class for settlement purposes only, defined as follows:

24 All non-exempt employees who are or previously were employed by Defendant
25 Grossmont Hospital Corporation in the State of California from January 13, 2018 to
26 March 20, 2024 (the "Class Period").

27 (Agreement at ¶ 1.5.)

28 **A. California Code of Civil Procedure § 382**

Plaintiffs seek certification of this Class for settlement purposes under California Code of Civil

1 Procedure § 382. The California Supreme Court has summarized the standard for determining whether
2 class certification is appropriate as follows:

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

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

12 While Defendant reserves all rights to dispute that the Plaintiff can satisfy these requirements,
13 the Parties agree that Defendant will not dispute that these requirements may be satisfied in this case
14 for purposes of settlement only and therefore, the proposed Class should be certified for purposes of
15 settlement only. (Agreement at ¶ 2.13.)

16 **B. The Proposed Class Is Ascertainable and Numerous**

17 Plaintiffs bring this action on behalf of a Class of non-exempt employees of Defendant during
18 the Class Period. Plaintiffs assert that all of these individuals are ascertainable because the class
19 members can readily be determined through examination of Defendant’s files. Given that the Class
20 consists of 7,494 individuals, Plaintiffs maintain that numerosity is clearly satisfied. *See Bowles v.*
21 *Superior Court*, 44 Cal.2d 574 (1955) (class with 10 members sufficiently numerous); *Rose v. City of*
22 *Hayward*, 126 Cal.App.3d 926, 934 (1981) (class of 48 members satisfies numerosity requirement.)
23 Here, Plaintiffs assert that the 7,494 current and former employees that comprise the Class can be
24 identified based on Defendant’s records and are sufficiently numerous for class certification. Decl.
25 Nordrehaug at ¶30.

26 **C. Common Issues of Law and Fact Predominate**

27 Predominance of common issues of law or fact does not require that the common issues be
28 dispositive of the entire controversy or even that they be dispositive of all liability issues. 1 *Newberg*
2 *on Class Actions*, Section 4.25 at 4-82, 4-83 (1992). “Predominance is a comparative concept, and ‘the
3 necessity for class members to individually establish eligibility and damages does not mean individual
4 fact questions predominate.’” *Sav-On*, 34 Cal. 4th at 334.

1 Commonality exists if there is a predominant common legal question regarding how an
2 employer's policies impact its employees. *Ghazaryan v. Diva Limousine, Ltd.*, 169 Cal. App. 4th 1524,
3 1536 (2008) (“[T]he common legal question remains the overall impact of Diva's policies on its
4 drivers.”) Whether the plaintiff is likely to prevail on their theory of recovery is irrelevant at the
5 certification stage since the question is “essentially a procedural one that does not ask whether an action
6 is legally or factually meritorious.” *Linder v. Thrifty Oil Co.*, 23 Cal. 4th 429, 439-440 (2003).

7 Here, Plaintiffs contend that common questions of law and fact are present, specifically the
8 common questions of whether Defendant's employment practices were lawful, whether Defendant
9 failed to provide meal and rest periods to Class Members, whether Class members were lawfully
10 compensated for all hours worked, whether Defendant failed to provide required expense
11 reimbursement, and whether Class Members are entitled to damages and penalties as a result of these
12 practices. Plaintiffs contend that certification of this Class is appropriate because Defendant allegedly
13 engaged in uniform practices with respect to the Class Members. As a result, these common questions
14 of liability could be answered on a class wide basis. Decl. Nordrehaug, ¶30. Defendant disputes that
15 common questions predominate but will not oppose such a finding for purposes of this Settlement only.

16 **D. The Claims of the Plaintiffs Are Typical of the Class Claims**

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

23 In this Action, Plaintiffs contend that the typicality requirement is fully satisfied. Plaintiffs, like
24 every other member of the Class, were employed by Defendant as non-exempt employees, and, like
25 every other member of the Class, were subject to the same employment practices. Plaintiffs, like every
26 other member of the Class, also claim owed compensation as a result of the Defendant's uniform
27 company policies and practices. Thus, the claims of Plaintiffs and the members of the Class arise from
28 the same course of conduct by Defendant, involve the same issues, and are based on the same legal

1 theories. Decl. Nordrehaug at ¶30. For purposes of settlement, Plaintiffs assert that the typicality
2 requirement is met as to the common issues presented in this case. Defendant does not oppose a finding
3 of typicality for purposes of this Settlement only.

4 **E. The Class Representation Fairly and Adequately Protected the Class**

5 Plaintiffs contends that the Class Members are adequately represented here because Plaintiffs
6 and representing counsel (a) do not have any conflicts of interest with other class members, and (b) will
7 prosecute the case vigorously on behalf of the class. *Hanlon*, 150 F.3d at 1020. This requirement is
8 met here. First, Plaintiffs are well aware of their duties as the representatives of the Class and have
9 actively participated in the prosecution of this case to date. Plaintiffs effectively communicated with
10 Class Counsel, provided documents and information to Class Counsel, and participated in the
11 investigation and resolution of the Action. The personal involvement of the Plaintiffs was essential to
12 the prosecution of the Action and the monetary settlement reached. Second, Plaintiffs retained
13 competent counsel who are experienced in employment class actions and who have no conflicts. Decl.
14 Nordrehaug at ¶ 31; Declaration of Craig J Ackermann at ¶¶ 5-13; Declaration of Amir H. Seyedfarshi
15 at ¶¶ 5-10. Third, there is no antagonism between the interests of the Plaintiffs and those of the Class.
16 Both the Plaintiffs and the Class Members seek monetary relief under the same set of facts and legal
17 theories. Under such circumstances, there can be no conflicts of interest, and adequacy of
18 representation is satisfied. *Reaves v. Ketoro, Inc.*, 2020 U.S. Dist. Lexis 167926, *23 (C.D. Cal. 2020).
19 Defendant disputes that the adequacy requirement is satisfied but will not oppose such a finding for
20 purposes of this Settlement only.

21 **F. The Superiority Requirement Is Met**

22 To certify a class, the Court must also determine that a class action is superior to other available
23 methods for the fair and efficient adjudication of the controversy. “Where classwide litigation of
24 common issues will reduce litigation costs and promote greater efficiency, a class action may be
25 superior to other methods of litigation.” *Valentino v. Carter-Wallace, Inc.*, 97 F.3d 1227, 1234 (9th Cir.
26 1996). As courts have previously observed:

27 Absent class treatment, each individual plaintiff would present in separate, duplicative
28 proceedings the same or essentially the same arguments and evidence, including expert
testimony. The result would be a multiplicity of trials conducted at enormous expense

1 to both the judicial system and the litigants. "It would be neither efficient nor fair to
2 anyone, including defendants, to force multiple trials to hear the same evidence and
decide the same issues."

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

4 Here, Plaintiffs contend that a class action is the superior mechanism for resolution of the claims
5 as pled by the Plaintiffs. While Defendant disputes that class treatment is superior, Defendant does not
6 dispute a finding of superiority in this action for purposes of this Settlement only.

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

8 The Court has broad discretion in approving a practical notice program. *7- Eleven Owners for*
9 *Fair Franchising v. Southland Corp.*, 85 Cal. App. 4th 1135, 1164 (2000). The Parties have agreed
10 upon procedures by which the Class Members will be provided with written notice of the Settlement
11 similar to that approved and utilized in hundreds of class action settlements and the Class Notice
12 includes all relevant information. (See Exhibit "A" to the Agreement.) Decl. Nordrehaug at ¶32. The
13 Class Notice will state that the Class Members shall have sixty (60) days from the date that the Class
14 Notice is mailed to them (the "Response Deadline") to request exclusion (opt-out) or to submit a written
15 objection. (Agreement at ¶¶ 1.43, 8.5, 8.7.) Class Members shall be given the opportunity to object
16 to the Settlement and the request for attorneys' fees and expenses, and to appear at the Final Approval
17 Hearing. (Agreement at ¶ 8.7.) This notice program was designed to meaningfully reach the Class
18 Members and it advises them of all pertinent information concerning the Settlement. Decl. Nordrehaug
19 at ¶32. The distribution of the Class Notice satisfies the requirements of due process and is the best
20 notice practicable under the circumstances and complies with Rules of Court 3.766 and 3.769(f).

21 **VII. CONCLUSION**

22 Plaintiffs respectfully request that the Court preliminarily approve the proposed settlement and
23 sign the proposed Preliminary Approval Order, which is submitted herewith, and schedule the final
24 approval hearing for the proposed date of August 9, 2024, which date is at least one hundred twenty
25 (120) days from the date of Preliminary Approval.

26 Dated: March 4, 2024

**BLUMENTHAL NORDREHAUG BHOWMIK
DE BLOUW LLP**

27 By: /s/ Kyle Nordrehaug
28 Kyle R. Nordrehaug, Esq.
Attorney for Plaintiffs