

ZAKAY LAW GROUP, APLC

Shani O. Zakay (State Bar #277924)
Jackland K. Hom (State Bar #327243)
3990 Old Town Avenue, Suite C204
San Diego, CA 92110
Telephone: (619)255-9047
Facsimile: (858) 404-9203
shani@zakaylaw.com
jackland@zakaylaw.com

JCL LAW FIRM, APC

Jean-Claude Lapuyade (State Bar #248676)
3990 Old Town Avenue, Suite C204
San Diego, CA 92110
Telephone: (619)599-8292
Facsimile: (619) 599-8291
jlapuyade@jcl-lawfirm.com

Attorneys for Plaintiffs

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF LOS ANGELES**

CHARLES P. SANDLIN III, on behalf of
himself, and others similarly situated,

Plaintiff,

v.

SECURE NURSING SERVICE, INC., a
California Corporation, and DOES 1-50,
inclusive,

Defendants.

Case No: 20STCV25675

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

Hearing Date:
Hearing Time:

Honorable Judge Yvette M. Palazuelos
Department 009

Trial Date: Not Set
Action Filed: July 7, 2020

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1 **I. INTRODUCTION**

2 Plaintiff Charles P. Sandlin III (“Plaintiff”) respectfully submits this memorandum in
3 support of the motion for preliminary approval of the proposed class and Private Attorneys General
4 Act (“PAGA”) action settlement with Defendant Secure Nursing Service, Inc. (“Defendant”), and
5 seek entry of an order: (1) preliminary approving the proposed settlement of this class and PAGA
6 action with Defendant; (2) approving the form and method for providing class-wide notice; (3)
7 directing that notice of the proposed settlement be given to the class; and (4) scheduling a final
8 approval hearing date to consider Plaintiff’s motion for final approval of the settlement and entry
9 of the Judgment, and Plaintiff’s motion for approval of attorneys’ fees and litigation expenses.

10 Plaintiff and Defendant have reached a full settlement of the above-captioned action, which
11 is embodied in the Class and PAGA Action Settlement Agreement (“Agreement”). A copy of the
12 fully executed Agreement is attached as Exhibit #1 to the Declaration of Shani O. Zakay (“Decl.
13 Zakay”), served and filed herewith.

14 As consideration for this Settlement, the total amount to be paid by Defendant is Three
15 Hundred and Fifty Thousand Dollars (\$350,000) (the “Gross Settlement Amount”). The Gross
16 Settlement Amount will settle all issues pending in this litigation between the Plaintiff and the
17 California Class (the “Class”), on the one hand, and the Defendant and the Released Parties, on the
18 other hand, including: payment of all Settlement Shares to Participating Class Members, the Class
19 Representative Service Payment, the Class Counsel Fees Payment, Class Counsel Litigation
20 Expenses Payment, the payment to the California Labor Workforce Development Agency (“LWDA
21 Payment”), and the expenses of the Settlement Administrator. The Gross Settlement Amount does
22 not include Defendant’s share of employer payroll taxes, which it shall pay separately. The
23 Settlement is all-in with no reversion to Defendant and no need to submit a claim form. (Decl.
24 Zakay at ¶ 3).

25 On February 1, 2021, the parties participated in a full-day mediation before Gig Kyriacou,
26 Esq. At the conclusion of the full-day mediation, the Parties had not reached an agreement for
27 settlement. However, Mediator Kyriacou presented a mediator’s proposal to both Parties. After
28 conferring with their clients, both Parties accepted the mediator’s proposal without modification.

1 The basic terms were set forth in a signed Memorandum of Understanding. The Parties then
2 prepared the full Agreement, which was signed by all counsel and the Parties and is now presented
3 to this Court for preliminary approval. Plaintiff and Class Counsel believe that this Settlement is
4 fair, reasonable, and adequate. (Decl. Zakay at ¶ 5).

5 The Settlement is fair, reasonable, and adequate, and should be preliminarily approved.
6 Therefore, Plaintiff respectfully requests that this Court grant preliminary approval of the
7 Agreement and enter the proposed order submitted herewith.

8 **II. DESCRIPTION OF THE SETTLEMENT**

9 The Gross Settlement Amount to be paid by Defendant is Three Hundred and Fifty
10 Thousand Dollars (\$350,000). Under the Settlement, the Gross Settlement Amount consists of the
11 following elements: (1) payments of the Settlement Shares to Participating Class Members,
12 including the California Class Members, (2) Class Counsel Fees Payment and Class Counsel
13 Litigation Expenses Payment, (3) Settlement Administration Costs, (4) the LWDA Payment, and
14 (5) the Class Representative Service Payment to the Plaintiff. The Gross Settlement Amount does
15 not include Defendant's share of employer payroll taxes, which Defendant shall pay to the
16 Administrator separately. The Gross Settlement Amount shall be all-in with no reversion to
17 Defendant. (Decl. Zakay at ¶ 12).

18 After final approval and the Judgment becomes final, the Defendant will fund the Gross
19 Settlement Amount. Within fifteen (15) days after Defendant funds the Gross Settlement Amount,
20 the Settlement Administrator will pay: the Participating Class Members their Settlement Shares;
21 Class Counsel their Class Counsel Fees Payment and the Class Counsel Litigation Expenses
22 Payment; the LWDA its LWDA Payment; and the Settlement Administrator its Settlement
23 Administration Costs, all in the amounts approved by the Court. (Decl. Zakay at ¶13).

24 The Net Settlement Amount shall equal the net amount available for Settlement shares to
25 Participating Class Members from the Gross Settlement Amount after deducting the Court-
26 approved amounts for the Class Representative Service Payments, the Class Counsel Fees Payment,
27 the Class Counsel Litigation Expenses Payments, the LWDA Payment, and the Settlement
28 Administration Costs. The Settlement Administrator will pay a Settlement Share from the Net

1 Settlement Amount to each Participating Class Member. The submission of a claim form is not
2 required in order for the Participating Class Member to be paid his or her Settlement Share. The
3 Net Settlement Amount shall be allocated forty percent (40%) to the Per Diem Nurse Class (the
4 “Net Per Diem Nurse Class Settlement Amount”) and sixty percent (60%) to the Travel Nurse Class
5 (the “Net Travel Nurse Class Settlement Amount”). The Settlement Share for each Participating
6 Class Member will be calculated as follows: (1) from the Net Settlement Amount, with respect to
7 the Per Diem Nurse Class, the Settlement Share for each Participating Class Member in the Per
8 Diem Nurse Class will be calculated by (a) dividing this amount by the total number of workweeks
9 worked by all Participating Per Diem Nurse Class Members during the California Class Period to
10 determine a dollar amount per workweek (“Workweek Payment”), and (b) multiplying the total
11 number of workweeks worked by each Participating Per Diem Nurse Class Member in the
12 California Class during the California Class Period by the Workweek Payment; and (2) from the
13 Net Settlement Amount, with respect to the Travel Nurse Class, the Settlement Share for each
14 Participating Class Member in the Travel Nurse Class will be calculated by (a) dividing the amount
15 by the total number of workweeks worked by all Participating Travel Nurse Class Members during
16 the California Class Period to determine a Workweek Payment, and (b) multiplying the total number
17 of workweeks worked by each Participating Travel Nurse Class Member in the California Class
18 during the California Class Period by the Workweek Payment. The entire Net Settlement Fund shall
19 be distributed. (Decl. Zakay at ¶14).

20 Class Members will have 45 days after the mailing of the Class Notice to exclude themselves
21 or submit written objections. Class Members may choose to opt-out of the Settlement by following
22 the directions in the Class Notice. All Class Members who do not “opt out” will be deemed
23 Participating Class Members who will be bound by the Settlement and will be entitled to receive a
24 settlement payment. Finally, the Class Notice will advise the Class Members of their right to object
25 to the Settlement. (Decl. Zakay at ¶15).

26 If a check is returned to the Settlement Administrator, the Settlement Administrator will
27 make all reasonable efforts to obtain a correct address for the Participating Class Member and re-
28 mail the check to the Participating Class Member at his or her correct address. If a Participating

1 Class Member's Settlement Share check is not cashed within 120 days after the Settlement
2 Administrator's last mailing to the Participating Class Member, the Settlement Administrator will
3 send the affected Participating Class Member a notice informing him or her that unless the check is
4 cashed in the next 60 days, it will expire and become non-negotiable, and offer to replace the check
5 if it was lost or misplaced but not cashed. If the check remains uncashed by the expiration of the
6 60 days period after this notice, the funds from such uncashed check will be paid to the State
7 Uncashed Wage Fund to be held in the name of the Participating Class Member and the Participating
8 Class Member will remain bound by the Settlement. (Decl. Zakay at ¶16).

9 The Parties have agreed to use ILYM Group as the Settlement Administrator for the
10 Settlement. Payment of the expenses of the Settlement Administrator from the Gross Settlement
11 Fund shall be made for the expenses of effectuating and administering the Settlement. The
12 Settlement Administrator shall receive payment for services in an amount not to exceed \$9,900.20.
13 (Decl. Zakay at ¶17).

14 Subject to Court approval, the Agreement provides for Class Counsel to be awarded a sum
15 not to exceed 1/3 of the Gross Settlement Amount as their Class Counsel Fees Payment. Class
16 Counsel will also be allowed to apply separately for an award of litigation expenses in an amount
17 not to exceed \$15,000. In support of this request, Class Counsel will provide evidentiary support,
18 including lodestar method calculations. Subject to Court approval, the Agreement provides for
19 payment of Class Representative Service Payments of no more than \$5,000 for Plaintiff, or such
20 lesser amount as may be approved by the Court at final approval.¹ Defendant will not oppose a
21 motion for approval of attorneys' fees, costs and a service award consistent with the Agreement.
22 (Decl. Zakay at ¶18).

23 Subject to Court approval, \$8,000 will be paid from the Gross Settlement Amount for
24 settlement of civil penalties under PAGA, Labor Code Section 2698 *et seq.* Pursuant to the
25 requirements of Labor Code §2699(i), the PAGA Payment shall be allocated \$6,000 (75%) to the
26

27 ¹ Plaintiff will address the reasonableness of this award when filing their final approval papers,
28 including the enhancement factors set forth in *Golba v. Dick's Sporting Goods, Inc.*, 238 Cal. App.
4th 1251 (2015) and *Clark v. Am. Residential Servs. LLC*, 175 Cal. App. 4th 785 (2009).

1 LWDA (the “LWDA Payment”) as the LWDA’s share of the settlement of civil penalties and
2 \$2,000 (25%) to the Net Settlement Amount for distribution to the Participating Class Members in
3 the California Class. (Decl. Zakay at ¶19).

4 **III. CASE BACKGROUND**

5 On July 7, 2020, Plaintiff filed a class action Complaint against Defendant in the Superior
6 Court of the State of California, County of Los Angeles. On September 4, 2020, Plaintiff filed a
7 First Amended Complaint, asserting additional claims against Defendant for: (1) Wrongful
8 Termination in Violation of Public Policy; and (2) Violation of Constitutional Right to Privacy. On
9 April 12, 2021, the Parties stipulated for leave for Plaintiff to file a Second Amended Complaint
10 against Defendant in the Superior Court of California, County of Los Angeles, asserting an
11 additional claim for violations of the Private Attorneys General Act (“PAGA”). On April 23, 2021,
12 Plaintiff filed the Second Amended Complaint, alleging an additional claim for violations of the
13 PAGA. (Decl. Zakay at ¶7).

14 Plaintiff seeks to represent a putative class of all individuals who worked for Defendant as
15 per-diem nurses and/or travel nurses in California during the California Class Period (the
16 “California Class”). The Class Period is defined as the period between April 6, 2016 and May 1,
17 2021. The Action generally alleges that Defendant failed to properly pay Plaintiff and Class
18 Members minimum and overtime wages, accurately calculate the California Class Members’
19 overtime rate, failed to provide them with proper meal breaks and rest breaks, failed to pay them
20 wages for all time worked, failed to provide them with complete and accurate wage statements,
21 engaged in unfair business practices, and failed to timely pay them all wages owed at the time of
22 the separation of their employment. The Action seeks unpaid wages, statutory penalties, civil
23 penalties, attorneys’ fees, litigation costs², and any other equitable or legal relief allegedly due and
24 owing to Plaintiff and the other Class Members by virtue of the foregoing claims. (Decl. Zakay at
25 ¶8).

26
27
28 ² Plaintiff will provide a lodestar analysis for the fees and supporting evidence of the costs with
the final approval papers.

1 Prior to mediation, the Parties engaged in investigation and the exchange of documents and
2 information in connection with the Action. As part of this process, Defendant provided a significant
3 sample of time records and payroll records, as well as other documents and information, to Class
4 Counsel to review and analyze. On February 1, 2021, the Parties participated in an all-day
5 mediation presided over by Gig Kyriacou, Esq., a respected mediator. The Parties were unable to
6 reach an agreement to settle the Action, at which point Mediator Kyriacou made a mediator's
7 proposal, which was accepted by the Parties. The Parties documented the agreement in the form of
8 a Memorandum of Understanding. The Parties then prepared the Settlement Agreement, which was
9 signed by the Parties and is now presented to this Court for preliminary approval. (Decl. Zakay at
10 ¶9).

11 Although a resolution has been reached, Defendant denies any liability or wrongdoing of
12 any kind associated with the claims alleged in the Action and further denies that, for any purpose
13 other than Settlement, the Action is appropriate for class treatment. Defendant contends, among
14 other things, that it has correctly and fully compensated the Class Members, provided compliant
15 meal and rest periods to the Class Members, provided complete, accurate itemized wage statements,
16 and complied at all times with the California Labor Code, and the applicable Wage Orders. Further,
17 Defendant contends that class certification would be inappropriate for any reason other than for
18 settlement. (Decl. Zakay at ¶10).

19 Plaintiff contends that Defendant violated California wage and hour laws. Plaintiff further
20 contends that the Action is appropriate for class certification on the basis that the Plaintiff's claims
21 meet the requisites for class certification. Without admitting that class certification is proper,
22 Defendant has stipulated that the above Class may be certified for settlement purposes only. The
23 Parties agree that certification for settlement purposes is not an admission that class certification
24 would be proper or that Plaintiff would be an adequate class representative if the class certification
25 issues were litigated. Further, the Agreement is not admissible in this or any other proceeding as
26 evidence that the Class could be certified absent a settlement. Solely for purposes of settling the
27 Action, the Parties stipulate and agree that the requisites for establishing class certification with
28 respect to the Class, as above, are satisfied. (Decl. Zakay at ¶10).

1 Class Counsel has conducted a thorough investigation into the facts of the class action. Class
2 Counsel has diligently evaluated the Class Members' claims against Defendant. Class Counsel
3 reviewed the production of documents from the Defendant. Prior to the settlement negotiations,
4 counsel for Defendant provided Class Counsel with access to the necessary data and information
5 for Class Counsel to evaluate the claims by the Class. Class Counsel conducted extensive review
6 of a significant sample of time records and data with the assistance of an expert. Based on the
7 foregoing data and their own independent investigation, evaluation and experience, Class Counsel
8 believe that the Settlement is fair, reasonable, and adequate and are in the best interest of the Class
9 in light of all known facts and circumstances, including the risk of significant delay, the defenses
10 asserted by Defendant, and potential appellate issues. (Decl. Zakay at ¶11).

11 12 **IV. THE SETTLEMENT MEETS THE CRITERIA NECESSARY FOR THIS** 13 **COURT TO GRANT PRELIMINARY APPROVAL**

14 When a proposed class-wide settlement is reached, the settlement must be submitted to the
15 court for approval. (2 H. Newberg & A. Conte, *Newberg on Class Actions* (3d ed. 1992) at §11.41,
16 p.11-87). California "[p]ublic policy generally favors the compromise of complex class action
17 litigation." (*Nordstrom Comm'n Cases*, 186 Cal. App. 4th 576, 581 (2010) (quoting *Cellphone*
18 *Termination Fee Cases*, 180 Cal. App. 4th 1110, 1117-18 (2009).) Class action settlements are
19 approved where the proposed settlement is "fair, adequate and reasonable." (*Dunk v. Ford Motor*
20 *Co.*, 48 Cal. App. 4th 1794, 1801 (1996) (citing *Officers for Justice v. Civil Serv. Comm'n*, 688 F.2d
21 615, 625 (9th Cir. 1982), cert. denied, 459 U.S. 1217 (1983)).

22 Preliminary approval is the first of three steps that comprise the approval procedure for
23 settlements of class actions. The second step is the dissemination of notice of the settlement to all
24 Class Members. The third step is a final settlement approval hearing, at which evidence and
25 argument concerning the fairness, adequacy, and reasonableness of the settlement may be presented
26 and Class Members may be heard regarding the settlement. (See *Dunk v. Ford Motor Co.*, 48 Cal.
27 App. 4th 1794, 1801 (1996); *Manual for Complex Litigation, Second* §30.44 (1993); Cal. Rules of
28 Court, rule 3.769.).

1 The primary question presented on an application for preliminary approval of a proposed
2 class action settlement is whether the proposed settlement is “within the range of possible approval.”
3 (*Manual for Complex Litigation*, Second §30.44 at 229; *Gautreaux v. Pierce*, 690 F.2d 616, 621 n.3
4 (7th Cir. 1982)).³ Preliminary approval is merely the prerequisite to giving notice so that “the
5 proposed settlement... may be submitted to members of the prospective Class for their acceptance
6 or rejection.” (*Philadelphia Housing Authority v. American Radiator & Standard Sanitary Corp.*,
7 323 F. Supp. 364, 372 (E.D. Pa. 1970); *Sayaman v. Baxter Healthcare Corp.*, 2010 U.S. Dist.
8 LEXIS 151997, *3 (C.D. Cal. 2010)). There is an initial presumption of fairness when a proposed
9 settlement, which was negotiated at arm’s length by counsel for the Class, is presented for court
10 approval. (*Newberg*, 3d Ed., §11.41, p.11-88; *Wershba v. Apple Computer, Inc.*, 91 Cal. App. 4th
11 224, 245 (2001) [citation omitted]; *see also Cho v. Seagate Tech. Holdings, Inc.*, 177 Cal. App. 4th
12 734, 742-45 (2009) (upholding trial court’s determination that settlement was “fair, reasonable and
13 adequate” where the settlement “provided valuable benefits to the class ... that were ‘particularly
14 valuable in light of the risks plaintiff would have faced if she proceeded to litigate her case.’”).
15 However, the ultimate question of whether the proposed settlement is fair, reasonable, and adequate
16 is made after notice of the settlement is given to the Class Members and a final settlement hearing
17 is held by the Court.

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

19 The approval of a proposed settlement of a class action suit is a matter within the broad
20 discretion of the trial court. (*Wershba*, 91 Cal. App. 4th at 234-235; *Dunk*, 48 Cal. App. 4th at
21 1794). Preliminary approval does not require the trial court to answer the ultimate question of
22 whether a proposed settlement is fair, reasonable, and adequate. That final determination is made
23 only after notice of the settlement has been given to the class members and after they have been
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26 ³ 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
28 are 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 given an opportunity to voice their views of the settlement or to be excluded from the settlement.
2 (3B J. Moore, *Moore's Federal Practice* §§23.80 - 23.85 (2003)).

3 In considering a potential settlement for preliminary approval purposes, the trial court does
4 not have to reach any ultimate conclusions on the issues of fact and law which underlie the merits
5 of the dispute, and need not engage in a trial on the merits. (*Wershba, supra*, 91 Cal. App. 4th at
6 239-40; *Dunk, supra*, 48 Cal. App. 4th at 1807). The Ninth Circuit explains, “the very essence of a
7 settlement is compromise, ‘a yielding of absolutes and an abandoning of highest hopes.’” (*Officers*
8 *for Justice v. Civil Service Com’n of City and County of S.F.*, 688 F.2d 615, 624 (9th Cir. 1982).
9 The question whether a proposed settlement is fair, reasonable, and adequate necessarily requires a
10 judgment and evaluation by the attorneys for the parties based upon a comparison of “‘the terms of
11 the compromise with the likely rewards of litigation.’” (*Weinberger v. Kendrick*, 698 F.2d 61, 73
12 (2d Cir. 1982), cert. denied 464 U.S. 818 (1983) (quoting *Protective Comm. for Indep. Stockholders*
13 *of TMT Trailer Ferry, Inc. v. Anderson*, 390 U.S. 414, 424-25 (1968))). Thus, when analyzing the
14 settlement, the amount is “not to be judged against a hypothetical or speculative measure of what
15 might have been achieved by the negotiators.” (*Officers for Justice*, 688 F.2d at 625, 628).

16 With regard to class action settlements, the opinions of counsel should be given considerable
17 weight both because of counsel’s familiarity with this litigation and previous experience with cases
18 such as these. (*Officers for Justice*, 688 F.2d 615, 625 (9th Cir. 1982); *In re Wash. Public Power*
19 *Supply System Sec. Litig.*, 720 F. Supp. 1379, 1392 (D. Ariz. 1989); *Kirkorian v. Borelli*, 695 F.
20 Supp. 446, 451 (N.D. Cal. 1988); *Weinberger*, 698 F.2d at 74). For example, in *Lyons v. Marrud,*
21 *Inc.*, [1972-1973 Transfer Binder] Fed. Sec. L. Rep. (CCH) Paragraph 93,525 (S.D.N.Y. 1972), the
22 court noted that “[e]xperienced and competent counsel have assessed these problems and the
23 probability of success on the merits... The parties’ decision regarding the respective merits of their
24 position has an important bearing.” (*Id.* at ¶ 92,520). “The recommendations of plaintiffs’ counsel
25 should be given a presumption of reasonableness.” (*Boyd v. Bechtel Corp.*, 485 F.Supp. 610, 622
26 (N.D. Cal. 1979)). As a result, courts hold that the recommendation of counsel is entitled to
27 significant weight. (*Nat’l Rural Telecomms. Coop. v. DIRECTV, Inc.*, 221 F.R.D. 523, 528 (C.D.
28 Cal. 2004)).

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

2 A number of factors are to be considered in evaluating a settlement for purposes of
3 preliminary approval. In determining whether to grant preliminary approval, the court considers
4 whether the “(1) the proposed settlement appears to be the product of serious, informed, non-
5 collusive negotiations, (2) has no obvious deficiencies, (3) does not improperly grant preferential
6 treatment to class representatives or segments of the class, and (4) falls within the range of possible
7 approval.” (*In re Tableware Antitrust Litig.*, 484 F. Supp. 2d 1078, 1079 (N.D. Cal. 2007)). No
8 one factor should be determinative, but rather all factors should be considered. The analysis has
9 been summarized as follows:

10 If the proposed settlement appears to be the product of serious, informed,
11 noncollusive negotiations, has no obvious deficiencies, does not improperly grant
12 preferential treatment to class representatives or segments of the class, and falls
13 within the range of possible approval, then the court should direct that notice be
14 given to the class members of a formal fairness hearing, at which evidence may be
presented in support of and in opposition to the settlement. (*Manual of Complex
Litigation, Second* §30.44, at 229).

15 Here, the Settlement meets all of these criteria for preliminary approval.

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

18 This settlement is the result of extensive and hard-fought litigation and negotiations before
19 an experienced and well-respected mediator. Defendant has expressly denied and continues to deny
20 any wrongdoing or legal liability arising out of the conduct alleged in the Action. Plaintiff and
21 Class Counsel have determined that it is desirable and beneficial to the Class Members to put to rest
22 the Released Class Claims.⁴

23 _____
24 ⁴ Upon the entry of Final Judgment and funding in full of the Gross Settlement Amount by
25 Defendant, any person who is a Participating Class Member of the California Class who does not
26 timely and validly opt out shall be deemed to have fully and finally released all claims that were
27 alleged based on the facts asserted in in the operative complaint of the Action that occurred during
28 the California Class Period. The release expressly excludes all other claims, including claims for
vested benefits, wrongful termination, unemployment insurance, disability, social security,
workers’ compensation, and claims outside of the respective Class Periods and PAGA claims
outside of the PAGA period. This release shall be referred to here is the “Released Class Claims.”
(See Agreement at ¶ III((F)(1)).

1 The Parties scheduled and attended an arms-length private mediation before Gig Kyriacou,
2 Esq., a respected and experienced mediator. In preparation for the mediation, Defendant provided
3 Class Counsel with necessary records and information for the members of the Class. Defendant
4 produced a large sample consisting of pay records and time records. Defendant also produced
5 Defendant's relevant employment policies, including compensation policies and timekeeping
6 policies. Plaintiffs analyzed the data with the help of an expert Berger Consulting Group
7 ("Berger"). On February 1, 2021, the parties participated in a full-day mediation before Gig
8 Kyriacou, Esq. The Parties were unable to reach an agreement to settle the Action, at which point
9 Mediator Kyriacou made a mediator's proposal, which was accepted by the Parties.⁵ The basic
10 terms were set forth in a signed Memorandum of Understanding. The Parties then prepared the full
11 Agreement, which was signed by all counsel and the Parties. (Decl. Zakay at 5).

12 Class Counsel has conducted a thorough investigation into the facts of the class action. Class
13 Counsel has diligently evaluated the Class Members' claims against Defendant. Class Counsel
14 reviewed the production of documents from the Defendant. Prior to the settlement negotiations,
15 counsel for Defendant provided Class Counsel with access to the necessary data and information
16 for Class Counsel to evaluate the claims by the Class. Class Counsel conducted extensive review
17 of a significant sample of time records and data with the assistance of an expert. Based on the
18 foregoing data and their own independent investigation, evaluation and experience, Class Counsel
19 believe that the Settlement is fair, reasonable, and adequate and are in the best interest of the Class
20 in light of all known facts and circumstances, including the risk of significant delay, the defenses
21 asserted by Defendant, and potential appellate issues. (Decl. Zakay at ¶26).

22 Plaintiff and Class Counsel recognize the expense and length of continuing to litigate and
23 trying the Action against Defendant through possible appeals which could take several years. Class
24 Counsel have also taken into account the uncertain outcome and risk of litigation, especially in
25 complex actions such as the one here. Class Counsel are also mindful of, and recognize, the inherent
26 problems of proof under, and asserted defenses to, the claims asserted in the Action. Based upon
27
28

⁵ Defined below.

1 their evaluation, Plaintiff and Class Counsel have determined that the settlement set forth in the
2 Agreement is in the best interest of the Class Members. (Decl. Zakay at ¶20).

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

9 **2. The Settlement Has No “Obvious Deficiencies” and Falls Within the Range of**
10 **Approval**

11 **a. The Settlement is Fair, Reasonable, and Adequate**

12 The proposed Settlement here has no “obvious deficiencies” and is well within the range of
13 possible approval. All Class Members will receive an opportunity to participate in the Settlement
14 and receive payment according to the same formula if they do not opt out. (Agreement at ¶ III(C)).

15 The amounts to compensate the Class Members for the alleged violations at the time this
16 Settlement was negotiated were calculated by Berger, Plaintiff’s damage expert. Plaintiff used
17 Berger to analyze the data and determine the potential damages for the employees. For the Class,
18 Plaintiff estimates that Defendant was subject to maximum liability for damages in the amount of
19 \$1,488,904.68 consisting of \$559,318.68 for underpaid overtime, and \$929,586 for meal and rest
20 break periods. In addition, Plaintiff calculated that Defendant could be liable for \$339,700 for wage
21 statement penalties.⁶ Finally, Plaintiffs’ expert calculated that Defendant could be liable for PAGA

22 ⁶ While Plaintiffs alleged claims for statutory penalties, they recognize that this claim is subject to
23 various defenses asserted by Defendant, including, but not limited to, a good faith dispute defense
24 as to whether Defendant, as a staffing agency, is governed by Labor Code Section 201.3, instead of
25 Section 203, which, if proven, would significantly limit the amount of damages owed to the
26 California Class. Moreover, Plaintiff’s claims pursuant to Labor Code Section 226 and various
27 PAGA penalties are also subject to a good faith defense as to whether any premium wages for meal
28 or rest periods or other wages were owed given Defendant’s position that Plaintiff and the Class
were properly compensated. *See Reber v. AIMCO/Bethesda Holdings, Inc.*, 2008 WL 4384147, at
*9 (C.D. Cal. Aug. 25, 2008) (granting defendant’s motion for summary judgment on claim for
failure to provide accurate itemized wage statements “because a good faith dispute exists...
[therefore, defendant] was not ‘knowing and intentional’ in failing to provide [Section 226]
statements”); *see also Nordstrom Commission Cases*, 186 Cal. App. 4th 576, 584 (2010) (“There is

1 penalties in an amount of \$2,325,100.⁷ Consequently, the Settlement of approximately \$350,000
2 represents more than 23.5% of the value of the maximum actual damages at issue. Furthermore,
3 the Settlement represents more than 19% of the maximum combination of damages and penalties
4 to the Class, assuming all of these amounts could be proved at trial. Given the amount of the
5 Settlement as compared to the potential value of claims in this case, the Settlement is fair and
6 reasonable. Clearly, the goal of this litigation to provide compensation to Class Members for unpaid
7 time and for allegedly missed rest breaks has been met.

8 In *Stovall-Gusman v. W.W. Granger, Inc.*, 2015 U.S. Dist. LEXIS 78671, at *12 (N.D. Cal.
9 2015) the court approved a settlement of an action claiming unpaid wages where the settlement
10 amount constituted roughly 10% of the estimated actual damages to the class. Here, the settlement
11 consideration far exceeds the percentage approved in *Stovall-Gusman*. In *Stovall-Gusman*, the court
12 ruled that the settlement which represented approximately 10% of the estimated loss to the class
13 was fair, reasonable, and adequate. As a result, this settlement, which exceeds the percentage
14 approved in *Stovall-Gusman*, is entitled to preliminary approval.

15 **b. The Strengths and Weaknesses in Plaintiff's Case and Defendant's Defenses**
16 **Warrant the Settlement**

17 _____
18 no willful failure to pay wages if the employer and employee have a good faith dispute as to whether
19 and when the wages were due.”). Additionally, there is serious doubt as to whether violations of
20 the meal/rest period regulations, which require payment of a “premium wage” for each improper
21 meal period, give rise to claims under sections 203 and 226. See *Ling v. P.F. Chang's China Bistro,*
22 *Inc.*, 245 Cal. App. 4th 1242, 1261 (2016) and *Maldonado v. Epsilon Plastics, Inc.*, 22 Cal. App.
23 5th 1308, 1336 (2018). This issue was decided in *Naranjo v. Spectrum Sec. Servs., Inc.*, 40 Cal.
24 App. 5th 444, 474, (Ct. App. 2019), which held that actions for meal break and rest break premiums
25 “do not entitle employees to pursue the derivative penalties in sections 203 and 226.”

26 ⁷ Plaintiff recognizes that the PAGA penalties claim is also subject to various defenses by
27 Defendant, including that Class Members may not be able to recover subsequent penalties until, at
28 a minimum, Plaintiff provided PAGA notice. See *Amaral v. Cintas Corp.*, 163 Cal. App. 4th 1157,
1209 (2008) (“Until the employer has been notified that it is violating a Labor Code provision
(whether or not the commissioner or court chooses to impose penalties), the employer cannot be
presumed to be aware that its continuing underpayment of employees is a “violation” subject to
penalties.”). In addition, Plaintiff recognizes that PAGA claims bear some risk. See *Carrington v.*
Starbucks Corp., 30 Cal. App. 5th 504 (2018). In *Carrington*, while the plaintiff prevailed on his
PAGA claim at trial, the trial court reduced the maximum PAGA penalty amount by 90%, citing
the employer's good faith attempt at complying with the law. *Id.* at 517. Upon review, the Court of
Appeal found such reduction to be proper. *Id.* at 539. Again, the *Carrington* decision was after
Plaintiff actually prevailed at trial, and even then, the PAGA penalties were reduced by 90%.

1 Where both sides face significant uncertainty, the attendant risks favor settlement. (*Hanlon*
2 *v. Chrysler Corp.*, 150 F.3d 1011, 1026 (9th Cir. 1998)). Here, a number of defenses asserted by
3 Defendant presented serious threats to the claims of the Plaintiffs and the other Class Members. For
4 instance, Defendant asserted that the employment practices complied with all applicable Labor
5 Laws.

6 Defendant argued that the Supreme Court decision in *Brinker v. Superior Court*, 53 Cal. 4th
7 1004 (2012) weakened, if not eliminated, Plaintiff's claims, on liability, value, and class
8 certifiability as to the meal and rest period claims. A major component of the damages alleged to
9 have been suffered by the Class Members are attributed to missed meal and rest breaks. Before and
10 during the mediation, Defendant aggressively argued that Defendant's policies and culture afforded
11 the Class Members an opportunity to take timely meal and rest breaks, and that employees like the
12 Plaintiffs *chose* not to take compliant breaks. Defendant argued, therefore, that under the *Brinker*
13 decision it has no liability for the missed breaks whatsoever. Defendant argued that it adopted and
14 strictly enforced lawful policies, afforded Plaintiff and the Class Members compliant meal and rest
15 breaks, and had a system in place to pay premiums when breaks were missed, short or untimely.
16 Finally, the court may find remitter/reduction of the statutory damages appropriate. See e.g.
17 *Klingensmith v. Max & Erma's Restaurants, Inc.*, 2007 U.S. Dist. LEXIS 81029, 2007 WL 3118505,
18 at *5 (E.D. Pa. 2007). Defendant also argued that it was not required to include the housing and
19 meals and incidental per diems in its traveling employees' regular rate of pay because it pegged
20 those per diems to the number of hours/shifts worked – a defense upheld by some courts. See *Clarke*
21 *v. AMN Servs., LLC* (C.D. Cal. 2018) 2018 U.S. Dist. LEXIS 162330, revd. and remanded (9th Cir.
22 2021) 987 F.3d 848. If successful, these defenses could eliminate or substantially reduce any
23 recovery to the Class. While Plaintiff believes that these defenses, and others, could be overcome,
24 Defendant maintains these defenses have merit and therefore present a serious risk to recovery for
25 the Class. (Decl. Zakay at ¶22).

26 **c. The Risk of Obtaining and Maintaining a Class Action and the Risk, Duration**
27 **and Complexity of Further Litigation Weight in Favor of the Settlement**
28

1 There was also a significant risk that, if the Action was not settled, Plaintiff would be unable
2 to obtain class certification and thereby not recover on behalf of any employee other than
3 themselves. Defendant argued that the individual experience of each employee varied with respect
4 to the alleged claims. While other cases have approved class certification of wage and hour claims,
5 class certification in this action would have been hotly disputed and was by no means a foregone
6 conclusion. Finally, even if class certification was successful, as demonstrated by the California
7 Supreme Court decision in *Duran v. U.S. Bank National Assn.*, 59 Cal. 4th 1 (2014), there are
8 significant hurdles to overcome for a class-wide recovery even where the class has been certified.
9 (Decl. Zakay at ¶23).

10 This Settlement is therefore entitled to preliminary approval. Were this case to go to trial,
11 the Plaintiffs and other Class Members would need to prove to the satisfaction of the Court, among
12 other things, that wages, premiums, and other damages were owed on a class-wide basis. This was
13 and is a substantial risk, and the Parties, after arm's-length negotiations between experienced and
14 informed counsel, recognized the potential risks and agreed on the settlement. The "risk, expense,
15 complexity, and likely duration of further litigation" in this case "favors the settlement." *Glass v.*
16 *UBS Fin. Servs.*, 2007 WL 221862 at *4 (N.D. Cal. Jan. 27, 2007) ("Regardless of how this Court
17 might have ruled on the merits of the legal issues, the losing party likely would have appealed, and
18 the parties would have faced the expense and uncertainty of litigating an appeal. 'The expense and
19 possible duration of the litigation should be considered in evaluating the reasonableness of [a]
20 settlement.'") (citing *In re Mego Financial Corp. Securities Litigation*, 213 F.3d 454, 458 (9th Cir.
21 2000)).

22 **3. The Settlement Does Not Improperly Grant Preferential Treatment to the** 23 **Class Representative or Segments of The Class**

24 The relief provided in the Settlement will benefit all members of the Class who do not opt
25 out. The Settlement does not improperly grant preferential treatment to the Plaintiff or segments of
26 the Class in any way. Each Participating Class Member will be entitled to a cash payment based
27 on the plan of allocation described herein. Each Participating Class Member's Settlement Share
28

1 will be determined based upon the weeks worked by that employee during the prescribed California
2 Class Period. (Decl. Zakay at ¶4).

3 Plaintiff will apply to the Court for Class Representative Service Payments in consideration
4 for his service, and for the risks undertaken on behalf of the Class. (Agreement at ¶III(B)(1)).
5 Plaintiff performed his duties admirably by working with Class Counsel. The requested Plaintiff's
6 service payment is well within the accepted range of awards for purposes of preliminary approval.
7 *See e.g. Mathein v. Pier 1 Imps. (U.S.), Inc.*, 2018 U.S. Dist. LEXIS 71386 (E.D. Cal. 2018)
8 (awarding \$12,500 where average class member payment was \$351); *Holman v. Experian Info.*
9 *Solutions, Inc.*, 2014 U.S. Dist. LEXIS 173698 (N.D. Cal. 2014) (approving \$10,000 service award
10 where class member recovery was \$375); *Rausch v. Hartford Fin. Servs. Grp.*, 2007 U.S. Dist.
11 LEXIS 14740, 2007 WL 671334 (D. Or. 2007) (approving award of \$10,000 where class member
12 recoveries were as little as \$150); *Louie v. Kaiser Foundation Health Plan, Inc.*, 2008 WL 4473183,
13 *7 (S.D. Cal. Oct. 06, 2008) (awarding \$25,000 service award to each of six plaintiffs in overtime
14 class action); *Glass v. UBS Fin. Servs.*, 2007 WL 221862, *16-17 (N.D. Cal. 2007) (awarding
15 \$25,000 service award in overtime class action and a pool of \$100,000.00 in enhancements). As
16 explained in *Glass*, service awards are routinely awarded to class representatives to compensate the
17 employees for the time and effort expended on the case, for the risk of litigation, for the fear of
18 suing an employer and retaliation therefrom, and to serve as an incentive to vindicate the statutory
19 rights of all employees. 2007 WL 221862 at *16-17. (Decl. Zakay at ¶25).

20 **4. The Stage Of The Proceedings Are Sufficiently Advanced To Permit**
21 **Preliminary Approval Of The Settlement**

22 The stage of the proceedings at which this Settlement was reached also militates in favor of
23 preliminary approval and ultimately, final approval of the settlement. Class Counsel has conducted
24 a thorough investigation into the facts of the class action. Class Counsel began investigating the
25 Class Members' claims before this action was filed. Class Counsel performed significant review
26 and analysis of Defendant's documents, time records and pay records. Class Counsel engaged in a
27 thorough research and analysis of the relevant claims and data. Class Counsel were also
28 experienced with the claims at issue here, as Class Counsel previously litigated and settled similar

1 claims in numerous other actions. Accordingly, the Settlement did not occur until Class Counsel
2 possessed sufficient information to make an informed judgment regarding the likelihood of success
3 on the merits and results that could be obtained through further litigation. (Decl. Zakay at ¶26).

4 Based on the foregoing data and their own independent investigation and evaluation, Class
5 Counsel is of the opinion that the settlement with Defendant for the terms set forth in the Agreement
6 is fair, reasonable, and adequate and is in the best interest of the Class in light of all known facts
7 and circumstances, including the risk of significant delay, defenses asserted by Defendant, and
8 numerous potential appellate issues. There can be no doubt that Counsel for both Parties possessed
9 sufficient information to make an informed judgment regarding the likelihood of success on the
10 merits and the results that could be obtained through further litigation. (Decl. Zakay at ¶27).

11 The fact that an informal exchange of information (as opposed to formal discovery) was
12 agreed to by the Parties is of no consequence. In *Glass*, the Northern District of California granted
13 final approval of an unpaid wages action although in *Glass* no formal discovery had been conducted
14 prior to the settlement:

15 Here, no formal discovery took place prior to settlement. As the Ninth Circuit has
16 observed, however, “[i]n the context of class action settlements, ‘formal discovery
17 is not a necessary ticket to the bargaining table’ where the parties have sufficient
18 information to make an informed decision about settlement.” See *In re Mego
Financial Corp. Securities Litigation*, 213 F.3d at 459. (*Glass*, 2007 U.S. Dist.
LEXIS 8476 at *14).

19 Here, Class Counsel was in an equally strong position to evaluate the fairness of this
20 settlement because Class Counsel had the same sufficient information, as well as document
21 production, independent investigations and due diligence, to confirm the accuracy of the
22 information supplied by Defendant.

23 **V. THE CLASS IS PROPERLY CERTIFIED FOR SETTLEMENT PURPOSES**

24 Plaintiffs contend that the proposed settlement meets all the requirements for class
25 certification under the California Code of Civil Procedure section 382 as demonstrated below, and
26 therefore, the Court may appropriately approve the Class as defined in the Agreement. This Court
27 should conditionally certify the Classes for settlement purposes only, defined as follows:

28 The California Class:

1 “all individuals who worked for Defendant Secure Nursing Service, Inc. as per-diem nurses
2 and/or travel nurses, in California at any time during the Class Period.” (Agreement at
3 ¶I(B)).

4 The California Class Period is the period of time from April 6, 2016 to the End Date. The End Date
5 will be either May 1, 2021 or a date to be determined by the Parties that accounts for no more than
6 16,500 workweeks since April 6, 2016. The Parties estimate that there are 420 California Class
7 Members who collectively worked approximately 15,000 workweeks. (Decl. Zakay at ¶28).

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

9 Plaintiff seeks certification of this Class for settlement purposes under California Code of
10 Civil Procedure section 382. The California Supreme Court has summarized the standard for
11 determining whether class certification is appropriate as follows:

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

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

19 While Defendant reserves all rights to dispute that the Plaintiff can satisfy any of these
20 requirements, Defendant will not dispute that these requirements may be satisfied in this case for
21 purposes of settlement and therefore, the proposed Class should be certified for purposes of
22 settlement only.

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

24 Here, the approximately 420 current and former employees that comprise the California
25 Class can be identified based on Defendant’s records and are sufficiently numerous for class
26 certification. All of these employees are ascertainable because the class members can readily be
27 determined through examination of Defendant’s employment files. Given that the classes consist of
28 approximately 420 members, numerosity is easily satisfied. (*See Bowles v. Superior Court*, 44

1 Cal.2d 574 (1955) (class with 10 members sufficiently numerous); *Rose v. City of Hayward*, 126
2 Cal.App.3d 926, 934 (1981) (class of 48 members satisfies numerosity requirement.)). Moreover,
3 the current and former employees that comprise the Class can be identified based on Defendant's
4 records and are sufficiently numerous for class certification. (Decl. Zakay at 28(a)).

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

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

11 Commonality exists if there is a predominant common legal question regarding how an
12 employer's policies impact its employees. (*Ghazaryan v. Diva Limousine, Ltd.*, 169 Cal. App. 4th
13 1524, 1536 (2008) ("[T]he common legal question remains the overall impact of Diva's policies on
14 its drivers.")). Whether Plaintiff is likely to prevail on his theory of recovery is irrelevant at the
15 certification stage since the question is "essentially a procedural one that does not ask whether an
16 action is legally or factually meritorious." (*Linder v. Thrifty Oil Co.*, 23 Cal. 4th 429, 439-440
17 (2003)).

18 Here, Plaintiff contends that common questions of law and fact are present, and specifically,
19 whether Defendant failed to properly provide and/or pay for meal and rest periods, whether
20 Defendant paid the correct overtime rate, whether Defendant provided accurate wage statements,
21 whether Defendant failed to pay all wages, and whether the Class is entitled to compensation and
22 related penalties. (Decl. Zakay at ¶28(b)). Defendant will not oppose such a finding for purposes
23 of this settlement only.

24 **D. The Claims of the Plaintiff Are Typical of the Class Claims**

25 The typicality requirement requires Plaintiff to demonstrate that the members of the class
26 have the same or similar claims as Plaintiff. "The typicality requirement is met when the claims of
27 the Plaintiff [] arise from the same event or are based on the same legal theories." (*Tate v.*
28 *Weyerhaeuser Co.*, 723 F.2d 598, 608 (8th Cir. 1983)). In *Hanlon v. Chrysler Co.*, 150 F.3d 1011

1 (9th Cir. 1998), the Ninth Circuit held that “[u]nder the rule’s permissive standards, representative
2 claims are ‘typical’ if they are reasonably coextensive with those of absent class members; they
3 need not be substantially identical.” (50 F.3d at 1020).

4 In the instant case, Plaintiff contends that the typicality requirement is fully satisfied. The
5 Plaintiff, like every other member of the Class was employed by Defendant and is a member of the
6 Class. Plaintiff was subject to the same employment practices concerning overtime rate calculation,
7 and the meal and rest periods, and received similar wage statements. Thus, the claims of the
8 Plaintiff and the Class Members arise from the same course of conduct by the Defendant, involve
9 the same employment policies, and are based on the same legal theories. (Decl. Zakay at ¶28(c)).
10 For purposes of settlement, the typicality requirement is met as to the common issues presented in
11 this case. Defendant will not oppose such a finding for purposes of this settlement only.

12 **E. The Class Representative Fairly and Adequately Protected the Class**

13 The Class Members are adequately represented because Plaintiff and Class Counsel (a) do
14 not have any conflicts of interest with other class members, and (b) will prosecute the case
15 vigorously on behalf of the class. (See *Hanlon* 150 F.3d at 1020). First, Plaintiff is well aware of
16 his duties as representative of the Class and have actively participated in the prosecution of this case
17 to date. He effectively communicated with Class Counsel, provided documents to them and
18 participated in discovery, investigation and negotiations in the Action. Second, Plaintiff retained
19 competent counsel who are experienced in employment class actions. Third, there is no antagonism
20 between the interests of the Plaintiff and those of the Class. Both the Plaintiff and the Class
21 Members seek monetary relief under the same set of facts and legal theories. (Decl. Zakay at
22 ¶28(d)).

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

24 To certify a class, the Court must also determine that a class action is superior to other
25 available methods for the fair and efficient adjudication of the controversy. “Where classwide
26 litigation of common issues will reduce litigation costs and promote greater efficiency, a class action
27 may be superior to other methods of litigation.” (*Valentino v. Carter-Wallace, Inc.*, 97 F.3d 1227,
28 1234 (9th Cir. 1996)). As courts have previously observed:

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

5 *Sav-On*, 34 Cal. 4th at 340.

6
7 Here, a class action is the superior mechanism for resolution of the claims as pled by the
8 Plaintiff. Defendant will not dispute such a finding for purposes of this settlement only.

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

10 The Court has broad discretion in approving a practical notice program. The Parties have
11 agreed upon procedures by which the Class Members will be provided with written notice of the
12 Settlement similar to that approved and utilized in hundreds of class action settlements. In
13 accordance with the Agreement, within 14 days after the Court enters its order granting Preliminary
14 Approval of the Settlement, Defendant will provide to the Settlement Administrator an electronic
15 database containing the Class Data. (Agreement at ¶ III(E)(2)(a)). Within 14 days after receiving
16 the Class Data, the Settlement Administrator will mail the Class Notice Packets to all Class
17 Members via first-class regular U.S. Mail to their last known addresses. (Agreement at ¶
18 III(E)(2)(b)).

19 The Class Notice, drafted jointly and agreed upon by the Parties through their respective
20 counsel and to be approved by the Court, includes all relevant information. (See Exhibit A to the
21 Agreement). The Class Notice will include, among other information: (i) information regarding the
22 Action; (ii) the impact on the rights of the Class Members if they do not opt out; (iii) information
23 to the Class Members regarding how to opt out and how to object to the Settlement; (iv) the
24 estimated settlement payment for each of the Class Members; (v) the amount of attorneys’ fees and
25 litigation expenses to be sought; (vi) the amount of the Plaintiff’s Class Representative Service
26 Payment requests; (vii) the amount being paid to the LWDA; and (viii) the Settlement
27 Administration Costs. (Decl. Zakay at ¶30).

1 The Class Notice will state that the Class Members shall have forty-five (45) days from the
2 date that the Class Notice is mailed to them to request exclusion or to submit an objection. The
3 Class Members will be given an opportunity to object to the terms of the Agreement and/or the
4 request for attorneys' fees and costs and to participate at the final approval hearing, in accordance
5 with the instructions set forth in the Class Notice. Class Members will be instructed to only contact
6 the Settlement Administrator and Class Counsel and not the Court. Class Members who do not
7 opt out will automatically receive a settlement payment. The Class Members are highly skilled and
8 educated nurses who must speak and read in English fluently in order to perform their job.
9 Therefore, Spanish notice is not necessary and is not included. This notice program was designed
10 to meaningfully reach the Class Members and advises them of all pertinent information concerning
11 the Settlement. The mailing and distribution of the Class Notice satisfies the requirements of due
12 process, is the best notice practicable under the circumstances and constitutes due and sufficient
13 notice to all persons entitled thereto. The Class Notice provides information on the terms and
14 provisions of the Settlement; the benefits that the Settlement provides for Class Members; the date,
15 time and place of the final settlement approval hearing; and the procedure and deadline for
16 submitting comments, objections, and requests for exclusion. The Class Notice complies with
17 Rules of Court 3.766 and 3.769(f). (Decl. Zakay at ¶30).

18 VII. CONCLUSION

19 Plaintiff respectfully requests that the Court preliminarily approve the proposed settlement
20 and sign the proposed Preliminary Approval Order, which is submitted herewith, and schedule the
21 final fairness hearing for a date that is at least one hundred twenty (120) days after the date of
22 Preliminary Approval.

23 DATED: May 11, 2021

24 **ZAKAY LAW GROUP, APLC**

25
26
27 By: _____

28 Shani O. Zakay
Attorney for Plaintiff