UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

BARBARA GRADY, et al.,

Plaintiffs,

v.

RCM TECHNOLOGIES, INC.,

Defendant.

CASE NO. 5:22-cv-00842-JLS-SHK

ORDER CONDITIONALLY GRANTING PLAINTIFFS' MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT (Doc. 44)

Before the Court is an unopposed Motion for Preliminary Approval of a Class Action Settlement filed by Plaintiff Barbara Grady. (Mot., Doc. 44.) The Motion asks the Court to (1) preliminarily approve a proposed settlement of this class action, (2) preliminarily certify the proposed Class, (3) approve the form and manner of giving notice to the Class, (4) authorize JND Legal Administration to serve as the Settlement Administrator, (5) appoint Joshua Konecky as Class Counsel, (6) appoint Grady as Class Representative, and (7) schedule the final fairness hearing. (Mot. at 2.)

Having considered the briefs, the Court now CONDITIONALLY GRANTS Plaintiffs' Motion for the reasons stated below. Within five (5) days of the issuance of this Order, the parties must submit an amended Settlement Agreement and amended Class Notice, addressing the Court's concerns with the processes for objecting to and requesting exclusion from the Settlement, detailed below. The Court will set a Final Fairness Hearing and further deadlines in an order following receipt of the amended Agreement and Notice.

I. BACKGROUND

On February 7, 2022, Grady initiated this putative wage-and-hour class action by filing a complaint in San Bernardino County Superior Court. (*See* Notice of Removal ("NOR") ¶ 3, Doc. 1; Complaint, Doc. 1-1.) Grady alleges the following causes of action, on her own behalf and on behalf of others similarly situated, against Defendant RCM Technologies, Inc.: (1) unpaid overtime in violation of California Labor Code §§ 510, 1194 and 1198 and IWC Wage Order No. 5; (2) failure to provide meal periods in violation of California Labor Code §§ 226.7 and 512(a) and California Code of Regulations tit. 8, § 11040; (3) failure to provide rest breaks in violation of California Labor Code § 226.7 and California Code of Regulations tit. 8, § 11040; (4) failure to pay for all hours worked in violation of California Labor Code §§ 201, 202, 204 and 221–23; (5) failure to keep accurate payroll records in violation of California Labor Code §§ 1174 and 1174.5; (6) failure to furnish accurate wage statements in violation of California Labor Code § 226; (7) failure to timely pay all wages owed on separation under California Labor

Code §§ 201–3 (known as "waiting time penalties"); (8) unfair competition in violation of California Business & Professions Code §§ 17200, *et seq.*; and (9) enforcement of the Private Attorneys General Act ("PAGA"), California Labor Code §§ 2698, *et seq*. (*See* NOR ¶ 3; Complaint ¶¶ 36–109.)

RCM is a specialty healthcare staffing company that employs traveling nurses. (Compl. ¶ 2.) RCM staffs nurses at different locations, for weeks or months at a time. (*Id.*) Grady worked for RCM from August 30, 2020, to October 17, 2020, and was staffed at Hi Desert Continuing Care and at COVID-19 testing centers operated by San Bernadino County. (Grady Decl. ¶¶ 2–5, Doc. 44-9.) She alleges that RCM's policies and its failure properly to oversee the California host sites at which nurses were staffed resulted in the asserted violations of California law. (Compl. ¶¶ 3–4.)

A. Procedural History

RCM removed the action to this Court on May 19, 2022, invoking federal jurisdiction under the Class Action Fairness Act of 2005 ("CAFA"), 28 U.S.C. § 1332(d). (*See generally* NOR.) On December 7, 2022, the parties engaged in mediation before Michael J. Loeb of Judicial Arbitration and Mediation Services, Inc. ("JAMS"). (Konecky Decl. ¶ 19, Doc. 44-1.) Shortly thereafter, the parties reached an agreement to settle the case. (Konecky Decl. ¶ 23.) On December 16, 2022, the parties filed a stipulation to stay the case pending resolution of Plaintiff's motion for preliminary approval of the proposed class action and PAGA settlement; the Court granted the stay. (*See* Order Staying Action, Doc. 24.) On March 3, 2023, Grady filed her first Motion for Preliminary Approval of Class Action Settlement. (First Mot. for Preliminary Approval, Doc. 28.)

The Court denied that Motion. (*See* First Order Denying Preliminary Approval, Doc. 30.) The Court noted five main concerns. First, Grady's counsel failed to explain what investigation had been done in the case and to provide information about the details of the alleged wage claims. (*Id.* at 10.) Second, counsel failed to calculate a maximum potential recovery amount and compare it to the settlement amount. (*Id.* at 12–13.) Third,

the proposed attorneys' fee award was too high, particularly given that there was no significant discovery or motions practice in the case. (*Id.* at 16.) Fourth, the proposed service award for Grady was too high, given that it exceeded the average class member's recovery by a factor of 26.5 and was based on an improper consideration of Grady's released claims. (*Id.* at 20–21.) Fifth, the proposed distribution formula was based on number of weeks worked, even though the number and length of shifts serve as better proxies for an individual class member's wage loss. (*Id.* at 23–24.)

Grady then renewed her Motion. (*See* Second Mot. for Preliminary Approval, Doc. 31.) Although Grady made some substantive amendments to the proposed settlement and the distribution formula, adjusted the attorneys' fees and service award sought, and provided more information about the value of the Class claims, the Court still had concerns. (*See* Second Order Denying Preliminary Approval, Doc. 35.) The Court noted that there remained "several gaps in information," which made it difficult to evaluate the proposed settlement. (*Id.* at 9.) In particular, the variations in work assignments undermined the proposed Class's ability to meet the commonality requirement of Federal Rule of Civil Procedure 23(a). "Based on the threadbare information provided, it is possible that there would be significant differences in how RCM's policies affected the members of the proposed class." (*Id.*) The Court also reasoned that the dearth of information made it "near impossible … to evaluate the fairness of $1.6 million as a proposed settlement amount." (*Id.* at 12.) Finally, the Court had continued concerns about the proposed distribution formula, which allocated 60% of the settlement fund to be equally divided between Class Members who were former employees, as recovery for waiting time penalties. (*Id.* at 13.) Though Grady tried to justify this allocation on the basis that over 90% of the Class were former employees entitled to such penalties, the Court noted that it was improper for "the bulk of the award" to be allocated without regard for the number of shifts worked and for the Class Members who were current employees to be shut out of 60% of the fund. (*Id.*)

The Court again denied the Motion for Preliminary Approval without prejudice and gave the parties 120 days to address the information gaps identified. (*See* Minutes of Hearing, Doc. 34.) Well after that 120-day mark, the parties filed a status report updating the Court about a plan to conduct a survey of Class Members. (*See* Status Report, Doc. 37.) But, as the Court noted, the parties were using this late-in-the-game survey effort to seek "post-hoc justification of their settlement agreement"; this reaffirmed the Court's position that the parties lacked the necessary information to craft a fair and reasonable settlement at the time they drafted the proposed settlement agreement. (Order to Show Cause, Doc. 38.) On February 18, 2024, the Court lifted the stay, set new case deadlines, and ordered the parties to resume litigation. (*See* Order Setting Case Schedule, Doc. 40.)

The parties resumed discovery, exchanging further document production and interrogatory responses, taking several depositions, and interviewing putative Class Members about their experiences working for RCM. (Konecky Decl. ¶ 27–29.) Grady timely filed a Motion to Certify the Class on June 21, 2024. (*See* Mot. to Certify Class, Doc. 41.) While that Motion was pending, the parties engaged in a second full-day mediation with Loeb. (Konecky Decl. ¶ 31.) That mediation produced the present Settlement Agreement, which differs in many material respects from the previous settlement agreements that the Court evaluated: the proposed Class is narrower, the proposed Class Period is shorter, the distribution formula has been amended, and the Settlement results in higher recovery per Class Member. (*Id.* ¶ 33.)

B. Settlement Agreement

The proposed Settlement Class is defined as "[a]ll current and former non-exempt employees of Defendant who were nurses assigned by Defendant to staff COVID-19 testing and/or vaccination sites for San Bernardino County (including assignments at San Bernardino County's Arrowhead Regional Medical Center), and at K-12 schools for Los Angeles Unified School District (LAUSD), or Ginkgo Concentric (Ginkgo) during the Class Period and who do not submit a timely and valid request for exclusion from the

settlement." (*See* Settlement Agreement ¶ 6, Doc. 44-2.) The parties estimate that about 382 Class Members were assigned to work for San Bernadino County, 109 Class Members were assigned to work for LAUSD, and 612 Class Members were assigned to work for Gingko, for a total Class of 1,097 Class Members. (*Id.*) The Class Period runs from March 1, 2020, to March 7, 2023. (*Id.* ¶ 7.) The Settlement also defines a separate PAGA Class—the subset of Class Members who worked for RCM during the PAGA Period, from July 22, 2020, to March 7, 2023. (*Id.* ¶¶ 20, 23.)

The Settlement Agreement provides that RCM will pay $1,658,410 to fund the Settlement. (*Id.* ¶ 15.) That amount will be used to distribute payments to Class Members, to make a PAGA payment to the California Labor Workforce Development Agency ("LWDA"), and to cover payments for attorneys' fees, litigation costs, administration costs, and service awards. (*Id.*) The Settlement proposes the following amounts for these various categories of payments: (1) $165,841 to address Class Members' PAGA claims, with 75% of that ($124,380.75) to be paid to the LWDA and the remaining 25% ($41,460.25) to be distributed as payment to PAGA Class Members[1]; (2) attorneys' fees not to exceed 25% of the fund, or $414,602.50, if approved by the Court at final approval; (3) litigation costs not to exceed $50,000, if approved at final approval; (4) Settlement administration costs not to exceed $33,000; and (5) a service award for the Class Representative not to exceed $5,000, if approved by the Court at final approval. (*Id.* ¶¶ 4, 8, 22, 33.) The remaining amount—$984,746.50 if all other payments are approved—will be distributed to Class Members as relief for all remaining claims.

Individual payments for Class Members and PAGA Members will rely on slightly different distribution formulas. The individual PAGA payment will be allotted in proportion to pay periods worked during the PAGA Period. The Settlement Administrator will calculate the total number of pay periods attributable to all PAGA Members during the

[1] This allocation—75% payable to the LWDA and 25% to the Class Members with viable PAGA claims—is mandated by statute. *See* Labor Code Private Attorneys General Act of 2004, 2004 Cal. Legis. Serv. ch. 221 (S.B. 1809) (West) (current version at Cal. Lab. Code § 2699(m)).

PAGA Period, divide $41,460.25 by that total number to determine the value per pay period, and then pay each PAGA Member one pay period value per pay period worked. (*Id.* ¶ 61.g.)

Meanwhile, the payment to Class Members for other claims will be allotted in proportion to the number and length of shifts worked. (*Id.* ¶ 35.) First, the Settlement Administrator will weight all work shifts; because average shift length for Class Members stationed at a Gingko site was 4.7 hours, compared to 8.4 hours at a San Bernadino County site and 7.7 hours at a LAUSD site, Gingko shifts will be valued as one work shift and shifts at the other locations will be valued as 1.5 work shifts. (*Id.* ¶ 61.f.i; Konecky Decl. ¶ 43.) The Settlement Administrator will calculate the total number of weighted work shifts attributable to all Class Members during the Class Period and determine a weighted work shift value by dividing the net Settlement amount remaining by the total number of weighted work shifts. (Settlement Agreement ¶ 61.f.ii.) Each Class Member will receive one weighted work shift value per weighted work shift worked. (*Id.* ¶ 61.f.iii.) Grady estimates that this formula will result in a weighted work shift value of $15.91 per shift, and an average award of $897.67 per Class Member. (Konecky Decl. ¶ 42.) Class Members will have 180 days from receipt of their individual Settlement payment to cash their check. (Settlement Agreement ¶ 61.g.iii.)

If a Class Member disputes the number of work shifts credited, he or she may lodge that dispute with the Settlement Administrator. (*Id.* ¶ 36.) Class Members will receive notice of their individual number of work shifts on their Settlement Notice. (*Id.*) Disputes may be emailed, faxed, or mailed to the Settlement Administrator within forty-five days of when Class Notice is mailed. (*Id.* ¶¶ 30, 36.) The dispute must be in writing, state the correct number of work shifts, and attach any supporting evidence. (*Id.* ¶ 36.) The Settlement Administrator is responsible for resolving all disputes and may consult with Class Counsel and Counsel for RCM as appropriate. (*Id.*) The Settlement also designates the Court to decide any disputes that the Settlement Administrator cannot resolve. (*Id.*)

Class Members who participate in this Settlement will release certain claims against RCM and nothing in the Settlement is to be construed as an admission of fault by RCM. (*Id.* ¶¶ 58, 72.) Released claims include "all claims … based on or arising out of the factual allegations" in the Complaint, including (1) "all claims for failure to pay minimum wages"; (2) "all claims for failure to pay overtime wages"; (3) "all claims for failure to authorize and permit required rest breaks"; (4) "all claims for failure to provide required meal periods"; (5) "all claims for failure to maintain accurate employment records"; (6) "all claims for failure to timely pay wages during employment"; (7) "all claims for failure to pay [] wages earned and unpaid at separation"; (8) "all claims for failure to furnish accurate itemized wage statements"; (9) claims for "violation[s] of California's Unfair Competition Law"; and (10) claims for "civil penalties under [PAGA]." (*Id.* ¶ 27.)

C. Class Notice and Response

Class Notice will occur through a combination of direct mailings and publication to the website maintained by the Settlement Administrator. (*Id.* ¶¶ 61.a.i, 61.a.iii.) RCM shall provide the Settlement Administrator with a list of all Class Members within fourteen days of the entry of the Court's preliminary approval Order and the Settlement Administrator will locate mailing addresses for all listed Class Members. (*Id.* ¶ 61.a.) The Settlement Administrator will conduct the first Class-wide mailing within fourteen days of receipt of the Class list. (*Id.* ¶ 61.a.i.) Returned mail will be re-sent, either to a forwarding address if provided or to an updated address located via skip trace. (*Id.* ¶ 61.a.ii.)

Class Members wishing to opt out of the Settlement must submit a request for exclusion within forty-five days of when Class Notice is mailed. (*Id.* ¶¶ 29, 30.) The request must be in writing, be signed by the Class Member, and clearly state a desire to be excluded. (*Id.* ¶ 29.) The request can be emailed, faxed, or mailed to the Settlement Administrator. (*Id.*) PAGA Class Members cannot opt out of the PAGA portion of the Settlement, as the money has been recovered on behalf of the State of California. (*See* Mot. at 33 n.5 (citing *Uribe v. Crown Bldg. Maint. Co.*, 70 Cal. App. 5th 986, 1001

(2021)).) Class Members who object to the Settlement may submit a notice of objection detailing the grounds for objection. (Settlement Agreement ¶ 19.) The Settlement currently provides that all objections will be filed with the Settlement Administrator, via mail, email, or fax, within forty-five days of when Class Notice is mailed. (*Id.* ¶ 19, 30.)

II. CONDITIONAL CERTIFICATION OF THE CLASS

A. Legal Standard

"A party seeking class certification must satisfy the requirements of Federal Rule of Civil Procedure 23(a) and the requirements of at least one of the categories under Rule 23(b)." *Wang v. Chinese Daily News, Inc.*, 737 F.3d 538, 542 (9th Cir. 2013). Rule 23(a) provides:

> One or more members of a class may sue or be sued as representative parties on behalf of all members only if:
> (1) the class is so numerous that joinder of all members is impracticable;
> (2) there are questions of law or fact common to the class;
> (3) the claims or defense of the representative parties are typical of the claims or defenses of the class; and
> (4) the representative parties will fairly and adequately protect the interest of the class.

Fed. R. Civ. P. 23(a). "Rule 23 does not set forth a mere pleading standard. A party seeking class certification must affirmatively demonstrate his compliance with the Rule—that is, he must be prepared to prove that there are *in fact* sufficiently numerous parties, common questions of law or fact, etc." *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 350 (2011). This requires a district court to conduct a "rigorous analysis" that frequently "will entail some overlap with the merits of the plaintiff's underlying claim." *Id.* at 350-51.

"Second, the proposed class must satisfy at least one of the three requirements listed in Rule 23(b)." *Id.* at 345. Here, the parties seek a conditional certification of the class under Rule 23(b)(3). Rule 23(b)(3) permits maintenance of a class action if "the court finds that the questions of law or fact common to class members predominate over any questions affecting only individual members, and that a class action is superior to other

available methods for fairly and efficiently adjudicating the controversy." Fed. R. Civ. P. 23(b)(3).

B. The Proposed Class Satisfies Rule 23(a) Requirements

1. Numerosity

Rule 23(a)(1) requires that the class be "so numerous that joinder of all members is impracticable." Fed. R. Civ. P. 23(a)(1). This Court has repeatedly held that "[a]s a general rule, classes of forty or more are considered sufficiently numerous." *Crews v. Rivian Auto., Inc.*, 2024 WL 3447988, at *3 (C.D. Cal. July 17, 2024) (Staton, J.) (quoting *Mazza v. Am. Honda Motor Co.*, 254 F.R.D. 610, 617 (C.D. Cal. 2008), *vacated on other grounds*, 555 F.3d 581 (9th Cir. 2012)). Here, Grady contends that there are about 1,097 individuals in the proposed Class. (Mot. at 22.) Accordingly, Rule 23(a)(1)'s numerosity requirement is satisfied.

2. Common Questions of Law and Fact

Rule 23(a)(2) requires that "there are questions of law or fact common to the class." Fed. R. Civ. P. 23(a)(2). "Commonality requires the plaintiff to demonstrate that the class members have suffered the same injury." *Dukes*, 564 U.S. at 349–50. The Plaintiff must allege that the class's injuries "depend upon a common contention" that is "capable of classwide resolution." *Id.* at 350. In other words, the "determination of [the common contention's] truth or falsity will resolve an issue that is central to the validity of each of the claims in one stroke." *Id.* "What matters to class certification . . . is not the raising of common questions—even in droves—but rather, the capacity of a classwide proceeding to generate common *answers* apt to drive the resolution of the litigation." *Id.* (cleaned up).

Grady argues that commonality is met because RCM "has several uniform policies" that result in common injuries to all Class Members. (Mot. at 23.) Grady identifies the common policies as the policy governing meal and rest periods, the lack of support from human resources in California, the failure to provide any oversight to host sites or ensure compliance with California law, the policy of requiring employees to report missed break

time, the policy of automatically deducting pay without confirming that breaks were taken, the failure to pay premiums for work done during meal and rest periods, and the policy of permitting host sites to secure verbal waivers of an employee's meal periods. (*Id.*)

The Court previously questioned Grady's showing of commonality. (*See* Second Order Denying Preliminary Approval at 9–10.) Specifically, this case involves traveling nurses who were staffed at different host sites, and there was insufficient evidence to show that the alleged wage-and-hour violations were common across all locations. (*Id.*) Grady has remedied this problem, both by narrowing the scope of the Settlement and conducting additional discovery. Grady limited the Class to nurses staffed at COVID-19 testing or vaccination sites operated by San Bernadino County, LAUSD, and Gingko. (Settlement Agreement ¶ 6.) She also showed that Class Members had similar job responsibilities and obtained declarations from Class Members who testified that they were similarly affected by RCM's policies. (Mot. at 12–15); *see also Dynabursky v. AlliedBarton Sec. Servs. LP*, 2014 WL 12690698, at *5–6 (C.D. Cal. Jan. 29, 2014) (Staton, J.) (holding that commonality was met, notwithstanding "variations in worksites and duties," if the variations do not alter the impact of a uniform policy). The commonality requirement is satisfied.

3. Typicality

Rule 23(a)(3) requires that "the claims or defenses of the representative parties are typical of the claims or defenses of the class." Fed. R. Civ. P. 23(a)(3). "Under the rule's permissive standards, representative claims are 'typical' if they are reasonably coextensive with those of absent class members; they need not be substantially identical." *Dukes v. Wal-Mart Stores, Inc.*, 603 F.3d 571, 613 (9th Cir. 2010) (en banc) *rev'd on other grounds*, 564 U.S. 338 (2011) (quotations omitted). As to the representative, "[t]ypicality requires that the named plaintiffs be members of the class they represent." *Id.*

Here, Grady worked at a COVID-19 pop-up testing center operated by San Bernadino County and avers that she suffered the precise types of wage-and-hour

violations that are said to have affected the Class. (*See* Grady Decl. ¶ 5–9.) She accrued uncompensated off-clock work setting up the sites and was not provided off-duty meal and rest periods; she nevertheless had pay deducted as though she had received off-duty breaks, and she did not receive premium pay. (*Id.*) The remaining claims are derivative of these violations: payroll records and wage statements are inaccurate because they do not account for all time worked or all wages owed; waiting time penalties are incurred upon separation because RCM never paid the full amount owed; and the violations of the Labor Code support an award of penalties under PAGA. (*See* Compl. ¶¶ 70–109.) Therefore, Grady is a representative Class Member for all claims brought. Typicality is met.

4. Adequacy

Rule 23(a)(4) permits certification of a class action only if "the representative parties will fairly and adequately protect the interests of the class." Fed. R. Civ. P. 23(a)(4). "Resolution of two questions determines legal adequacy: (1) do the named plaintiffs and their counsel have any conflicts of interest with other class members and (2) will the named plaintiffs and their counsel prosecute the action vigorously on behalf of the class?" *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1020 (9th Cir. 1998), *overruled on other grounds by Dukes*, 564 U.S. 338 (2011).

As to Grady, there are no apparent conflicts of interest between her and the rest of the Class. Courts recognize a potential conflict of interest between a named plaintiff and the class where "there is a large difference between the enhancement award and individual class member recovery." *Mansfield v. Southwest Airlines Co.*, 2015 WL 13651284, at *7 (S.D. Cal. Apr. 21, 2015). Here, the proposed service award of $5,000 is not so large as to create a potential conflict of interest. *See Carlin v. DairyAmerica, Inc.*, 380 F. Supp. 3d 998, 1024 (E.D. Cal. 2019) ("In the Ninth Circuit, courts have found that $5,000 is a presumptively reasonable service award"). Grady also sat for a deposition and cooperated extensively with Class Counsel in the prosecution of this action. (Mot. at 25.) The Court

finds that Grady's interests are aligned with the rest of the Class and that she will continue vigorously to prosecute the action on the Class's behalf.

As to the adequacy of Class Counsel, the Court must consider "(i) the work counsel has done in identifying or investigating potential claims in the action; (ii) counsel's experience in handling class actions, other complex litigation, and the types of claims asserted in the action; (iii) counsel's knowledge of the applicable law; and (iv) the resources that counsel will commit to representing the class." Fed. R. Civ. P. 23(g)(1)(A).

Here, proposed Class Counsel engaged in a substantial investigation and committed sufficient resources following the Court's second denial of preliminary approval of the proposed settlement. RCM produced additional documents, answered interrogatories about assignment types and work settings, and provided employment records for Class Members. (Konecky Decl. ¶ 27.) The parties also took several depositions, including a deposition of RCM's 30(b)(6) designee who answered questions about RCM's relevant policies and practices. (*Id.* ¶ 28.) Class Counsel interviewed several Class Members about their experiences working at COVID-19 sites. (*Id.* ¶ 29.) Further, Class Counsel represents that he has extensive experience in handling these kinds of class actions and sufficient knowledge of the applicable law. Joshua Konecky is a partner at a leading plaintiff's side employment firm and has litigated several class actions involving wage-and-hour disputes, including other cases involving nurses and the healthcare industry. (*Id.* ¶¶ 4, 6, 8–10.) Based on this experience, the Court concludes that Class Counsel satisfies the adequacy requirement.

C. The Proposed Class Satisfies Rule 23(b)(3) Requirements

Grady seeks to certify the class under Rule 23(b)(3), which asks whether common questions of law or fact predominate over individual questions and whether a class action is superior to other available methods of adjudication. Fed. R. Civ. P. 23(b)(3).

1. Predominance

"The Rule 23(b)(3) predominance inquiry tests whether proposed classes are sufficiently cohesive to warrant adjudication by representation" and "focuses on the relationship between the common and individual issues." *Hanlon*, 150 F.3d at 1022. "When common issues present a significant aspect of the case and they can be resolved for all members of the class in a single adjudication, there is clear justification for handling the dispute on a representative rather than on an individual basis." *Id.* (quotations omitted).

Here, as discussed above, Grady alleges that RCM maintained uniform policies and that the lawfulness of those common policies is susceptible to classwide proof. Therefore, despite some variation within the Class caused by differences in host sites and work assignments, Grady argues that individual issues do not predominate. (Mot. at 26.) Indeed, courts often find that common issues predominate in these kinds of wage-and-hour actions where "there is evidence of a common policy that applies to all class members … and all class members are subject to the same core duties." *Shaw v. AMN Healthcare, Inc.*, 326 F.R.D. 247, 269 (N.D. Cal. 2018). Now that the Class is limited to nurses who were assigned to COVID-19 testing and vaccination centers operated by only three hosts, Grady has shown that Class Members engaged in the same core duties and were subject to the same policies. Predominance is met.

2. Superiority

"The superiority inquiry under Rule 23(b)(3) requires determination of whether the objectives of the particular class action procedure will be achieved in the particular case." *Hanlon*, 150 F.3d at 1023. "This determination necessarily involves a comparative evaluation of alternative mechanisms of dispute resolution." *Id.* "The overarching focus [of the superiority inquiry] remains whether trial by class representation would further the goals of efficiency and judicial economy." *Vinole v. Countrywide Home Loans, Inc.*, 571 F.3d 935, 946 (9th Cir. 2009)). Additionally, "[w]here recovery on an individual basis would be dwarfed by the cost of litigating on an individual basis, this factor weighs in

favor of class certification." *Wolin v. Jaguar Land Rover N. Am., LLC*, 617 F.3d 1168, 1175 (9th Cir. 2010).

Here, each member of the proposed Class pursuing a claim individually would burden the judicial system and run afoul of Rule 23's focus on efficiency and judicial economy, especially because discovery would necessarily be duplicative of the extensive discovery and investigation that has already been conducted. Further, it would not be preferable for Class Members to pursue their claims individually because doing so would "impose prohibitive costs." (Mot. at 27.) The superiority requirement is met.

D. Conclusion as to Class Certification

In sum, having considered requirements of Rule 23(a) and the non-exclusive factors set forth under Rule 23(b)(3), the Court finds that the proposed Class may be certified under Rule 23(b)(3). The Court conditionally certifies the Class for settlement purposes only. The court also appoints Barbara Grady to serve as Class Representative, and Joshua Konecky to serve as Class Counsel.

The proposed Class Notice also lists Nathan Piller as an attorney representing the Class. (*See* Ex. 1 to Settlement Agreement, Long-Form Notice at 47, Doc. 44-2.) But, unlike Konecky, the Court has no information about Piller's experience or adequacy because he has not submitted a declaration or a resume, and none of the papers submitted discuss Piller's work. Piller is ***not*** approved as Class Counsel and should be removed from the amended Notice and amended Settlement Agreement.

III. PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT

A. Legal Standard

To preliminarily approve a proposed class action settlement, Federal Rule of Civil Procedure 23(e)(2) requires the Court to determine whether the proposed settlement is fair, reasonable, and adequate. Fed. R. Civ. P. 23(e)(2). Review of a proposed settlement typically proceeds in two stages, with preliminary approval followed by a final fairness hearing. Manual for Complex Litigation, § 21.632 (4th ed. 2004). "The decision to [grant

preliminary approval and] give notice of a proposed settlement to the class is an important event. It should be based on a solid record supporting the conclusion that the proposed settlement will likely earn final approval after notice and an opportunity to object." Fed. R. Civ. P. 23 advisory committee's note to 2018 Amendment.

Although there is a "strong judicial policy that favors settlements, particularly where complex class action litigation is concerned," *Linney v. Cellular Alaska P'ship*, 151 F.3d 1234, 1238 (9th Cir. 1998), "[t]he purpose of Rule 23(e) is to protect the unnamed members of the class from unjust or unfair settlements affecting their rights," *In re Syncor ERISA Litig.*, 516 F.3d 1095, 1100 (9th Cir. 2008). Rule 23(e)(2) provides that a "court may approve" a class action settlement proposal "after considering whether:"

> (A) the class representatives and class counsel have adequately represented the class;
> (B) the proposal was negotiated at arm's length;
> (C) the relief provided for the class is adequate, taking into account:
> (i) the costs, risks, and delay of trial and appeal;
> (ii) the effectiveness of any proposed method of distributing relief to the class, including the method of processing class-member claims;
> (iii) the terms of any proposed award of attorney's fees, including timing of payment; and
> (iv) any agreement required to be identified under Rule 23(e)(3)[2]; and
> (D) the proposal treats class members equitably relative to each other.

These factors were codified in the Federal Rules of Civil Procedure in 2018 in recognition of the fact that "[c]ourts have generated lists of factors to shed light on" the fairness, reasonableness, and adequacy of the proposed settlement. Fed. R. Civ. P. 23 advisory committee's note to 2018 Amendment. Indeed, the Ninth Circuit's articulated list of factors has governed settlement approvals in the Circuit for over forty years. *See Officers for Justice v. Civil Service Comm'n*, 688 F.2d 615, 625 (9th Cir. 1982). Those factors overlap in many ways with the Rule 23(e)(2) factors, and include: "[1] the strength

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[2] Under Rule 23(e)(3), "[t]he parties seeking approval must file a statement identifying any agreement made in connection with the proposal."

of plaintiffs' case; [2] the risk, expense, complexity, and likely duration of further litigation; [3] the risk of maintaining class action status throughout the trial; [4] the amount offered in settlement; [5] the extent of discovery completed, and the stage of the proceedings; [6] the experience and views of counsel; [7] the presence of a governmental participant; and [8] the reaction of the class members to the proposed settlement." *Staton v. Boeing Co.*, 327 F.3d 938, 959 (9th Cir. 2003) (cleaned up). "The relative degree of importance to be attached to any particular factor will depend upon and be dictated by the nature of the claim(s) advanced, the type(s) of relief sought, and the unique facts and circumstances presented by each individual case." *Officers for Justice*, 688 F.2d at 625. Here, the Court relies on the Rule 23(e)(2) factors but uses some of the developed guidance regarding the application of the Ninth Circuit's factors where relevant.

In addition to these factors, the Court must also satisfy itself that "settlement is not the product of collusion among the negotiating parties." *In re Bluetooth Headset Prods. Liab. Litig.*, 654 F.3d 935, 946–47 (9th Cir. 2011) (cleaned up). It is most important to look for signs of collusion in "settlements struck before class certification" because "counsel may collude … to strike a quick settlement without devoting substantial resources to the case," but the Ninth Circuit has made clear that the "heightened inquiry [also] applies to *post-class certification* settlements." *Briseno v. Henderson*, 998 F.3d 1014, 1023–24 (9th Cir. 2021). Accordingly, in any class action settlement, the Court must look for explicit collusion and "more subtle signs that class counsel have allowed pursuit of their own self-interests and that of certain class members to infect the negotiations." *In re Bluetooth*, 654 F.3d at 947. Such signs include (1) "when counsel receive a disproportionate distribution of the settlement"; (2) "when the parties negotiate a 'clear sailing' arrangement providing for the payment of attorneys' fees separate and apart from class funds"; and (3) "when the parties arrange for fees not awarded to revert to defendants rather than be added to the class fund." *Id.* (cleaned up).

B. Adequate Representation

"Under Rule 23(e)(2)(A), the first factor to be considered is whether the class representative and class counsel have adequately represented the class." *Hang v. Old Dominion Freight Line, Inc.*, 2024 WL 2191930, at *4 (C.D. Cal. May 14, 2024). Part of this analysis overlaps with the adequacy considerations discussed above when the Court conditionally certified the Class—whether there is a conflict of interest and whether representation has been competent and vigorous. *See Hanlon*, 150 F.3d at 1020. But the analysis also involves "'procedural' concerns" and requires "looking to the conduct of the litigation and of the negotiations leading up to the proposed settlement." Fed. R. Civ. P. 23 advisory committee's note to 2018 Amendment. Therefore, the Court must consider "the nature and amount of discovery in this or other cases, or the actual outcomes of other cases, [which] may indicate whether counsel negotiating on behalf of the class had an adequate information base." *Id.*

The need for an adequate information base is important: A plaintiff will not be able to broker a fair settlement without having been "armed with sufficient information about the case to have been able to reasonably assess its strengths and value." *Acosta v. Trans Union, LLC*, 243 F.R.D. 377, 396 (C.D. Cal. 2007). And for a court to be able to approve a settlement, "the parties must have engaged in sufficient investigation of the facts to enable the court to intelligently make an appraisal of the settlement." *Id.* (cleaned up). A court considering a proposed settlement has a duty "to evaluate the scope and effectiveness of the investigation plaintiffs' counsel conducted prior to reaching an agreement." *Id.* (citing *In re Mego Fin. Corp. Sec. Litig.*, 213 F.3d 454, 459 (9th Cir. 2000)).

As the Court already discussed above, in Section II.B.4, Grady and Class Counsel have been adequately representing the Class. Further, the Court finds that this Settlement Agreement was reached after Grady obtained an adequate information base. As mentioned, Class Counsel engaged in extensive discovery and, in response to the Court's previous orders, focused that discovery on the relevant work assignments, job duties, and

policies for putative Class Members to better understand how RCM's policies affected all Class Members. (Konecky Decl. ¶¶ 27–28.) This targeted discovery has also produced a more refined Settlement Agreement, and the Class and the distribution formula have both been better defined because of the more thorough discovery. (*See* Mot. at 10–11.)

Given these facts, the Court concludes that the parties possess enough information to make an informed settlement decision. Accordingly, this factor weighs in favor of granting preliminary approval.

C. Arm's Length Negotiation

Rule 23(e)(2)(B) asks whether "the proposal was negotiated at arm's length." As with the adequacy of representation, this is a "'procedural' concern[]" and "the involvement of a neutral or court-affiliated mediator or facilitator in those negotiations may bear on whether they were conducted in a manner that would protect and further the class interests." Fed. R. Civ. P. 23 advisory committee's note to 2018 Amendment. "The Ninth Circuit, as well as courts in this District, 'put a good deal of stock in the product of an arms-length, non-collusive, negotiated resolution' in approving a class action settlement." *In re Stable Rd. Acquisition Corp.*, 2024 WL 3643393, at *6 (C.D. Cal. Apr. 23, 2024) (quoting *Rodriguez v. West Publ'g Corp.*, 563 F.3d 948, 965 (9th Cir. 2009)).

Settlement was reached in this matter after extended, arms-length negotiations between the parties. The parties engaged in two, full-day mediations with JAMS mediator Michael Loeb. (Konecky Decl. ¶¶ 19, 31–32.) The parties also substantively refined the Settlement Agreement in response to the Court's concerns, raised in the two prior orders denying preliminary approval of previous settlement agreements. (*Id.* ¶ 33.) This factor weighs in favor of granting preliminary approval.

D. Adequacy of Relief

Having addressed possible procedural concerns, the Court next turns to a "'substantive' review of the terms of the proposed settlement." Fed. R. Civ. P. 23 advisory committee's note to 2018 Amendment. Rule 23(e)(2)(C) requires that "the relief provided

for the class is adequate, taking into account: (i) the costs, risks, and delay of trial and appeal; (ii) the effectiveness of any proposed method of distributing relief to the class, including the method of processing class-member claims; (iii) the terms of any proposed award of attorney's fees …; and (iv) any agreement required to be identified under Rule 23(e)(3)." The parties have not identified any agreement other than the Settlement Agreement, and so the final factor is not relevant.

Here, the Settlement Agreement provides for the creation of a Settlement fund of $1,658,410, to be distributed among Class Members after payments are made for attorneys' fees, costs, service awards, the PAGA payment, and administration costs. (*See* Settlement Agreement ¶ 53.) As explained more fully below, the relief is adequate.

1. Costs, Risks, and Delay of Trial and Appeal

Courts are instructed to "balance the risks of continued litigation, including the strengths and weaknesses of plaintiff's case, against the benefits afforded to class members, including the immediacy and certainty of recovery." *Knapp v. Art.com, Inc.*, 283 F. Supp. 3d 823, 831 (N.D. Cal. 2017). To conduct this analysis, "courts may need to forecast the likely range of possible classwide recoveries and the likelihood of success in obtaining such results." Fed. R. Civ. P. 23 advisory committee's note to 2018 Amendment. Indeed, many district courts—including this Court—require that motions for preliminary approval of class settlements include estimates of the defendant's maximum potential liability. *See, e.g.*, *Chen v. Western Digit. Corp.*, 2020 WL 13587954, at *3 (C.D. Cal. Apr. 3, 2020) (Staton, J.).

Here, the Court evaluates the value of the Settlement, measured against Grady's estimated maximum trial recovery and the risk of continued litigation. Assuming the Court awards the requested amounts for attorneys' fees, litigation and administration costs, and service awards, there will be $1,026,206.75 remaining in the Settlement fund as the net value to Class Members and PAGA Members. (Konecky Decl. ¶ 42.) Meanwhile, Grady measured the Class's maximum potential trial recovery to be $17,686,216. (*See id.* ¶¶ 50–

52.) Based on an average hourly wage of $38.27 for the approximately 1,097 Class Members and 61,902 shifts worked, and assuming that there was a rest period violation, a meal period violation, and thirty minutes of uncompensated off-the-clock work every shift, Grady calculated the following exposure totals: (1) $2,369,068 in rest period premium wages; (2) $1,152,886 in meal period premium wages; (3) $864,664 in off-the-clock wages. (*Id.* ¶¶ 49–50.) Grady then assumed a 100% violation rate for inaccurate wage statements, resulting in potential civil penalties of $1,902,850. (*Id.* ¶ 51.) A similar 100% violation rate for waiting time penalties would produce civil penalties of $8,705,848 for the Class Members who are former employees (95% of the Class). (*Id.*) Finally, Grady calculated the civil penalties under PAGA to be $2,690.900. (*Id.* ¶ 52.)

Based on these estimates, the net Settlement value represents about 6% of the maximum potential trial recovery. This is relatively low. District courts in the Ninth Circuit have approved class action settlements that provide around 20–30% of the maximum trial award. *Hurtado v. Rainbow Disposal Co., Inc.*, 2021 WL 2327858, at *4 (C.D. Cal. May 21, 2021) (approving class settlement that offered approximately 23.4–34% of the maximum amount recoverable at trial); *Winans v. Emeritus Corp.*, 2016 WL 107574, at *5 (N.D. Cal. Jan. 11, 2016) (approving class settlement that offered about 33.2% of "maximum projected 'hard damages' at trial").

But the Court still finds that relief provided by the Settlement warrants preliminary approval in light of the risks of continued litigation. First, the calculations for maximum potential trial recovery represent an unattainable best-case scenario, given that they are premised on 100% violation rates and full recovery of all civil penalties. Grady represents that it is more likely that there was a rest period violation and meal period violation in one out of every 2.5 shifts. (Konecky Decl. ¶ 63.) Adjusting for that more realistic violation rate means that the total exposure is $947,627.37 for rest period premium wages and $461,154 for meal period premium wages. (*Id.*) Similarly, the large civil penalties are unrealistic because waiting time violations need to be willful while wage statement

violations need to be knowing and intentional and cause injury. (*Id.* ¶ 66 (citing Cal. Lab. Code § 203 & § 226(e)).) Grady proposes that a more realistic trial recovery would be 10% of the maximum calculated penalties. (*Id.*) The Court finds that reduction somewhat steep but agrees that any civil penalties awarded for wage statement violations and waiting time penalties would be much less than the $10,611,698 calculated above. Therefore, the Court is confident that the $1,062,206.75 recovered for the Class represents a reasonable percentage of the realistic trial recovery. The estimated average recovery per Class Member—$897.67 plus any allocation of the PAGA payment for PAGA Members—is also a meaningful amount. (*Id.* ¶ 42.)

Second, early resolution provides a benefit to Class Members that might outweigh any potential trial recovery. *See Nat'l Rural Telecomms. Coop. v. DIRECTV, Inc.*, 221 F.R.D. 523, 526 (C.D. Cal. 2004) ("In most situations, unless the settlement is clearly inadequate, its acceptance and approval are preferable to lengthy and expensive litigation with uncertain results."). RCM strongly disputes Grady's theory of liability and has defended the lawfulness of its policies, raising the risk that Grady could not rely on facially unlawful policies and would prevail only if she was able to establish a pattern and practice of wage-and-hour violations, which presents a higher evidentiary bar. (Konecky Decl. ¶¶ 56–59.) Further, to achieve recovery at trial, Grady would had to have won at class certification, maintained class certification even in the face of a possible appeal, and then defeated summary judgment. (*See id.* ¶ 64.) The Settlement eliminates these risks, and this factor weighs in favor of granting preliminary approval.

2. Effectiveness of Proposed Distribution Method and Claims Processing

Next, the adequacy of the relief depends on "the effectiveness of any proposed method of distributing relief to the class, including the method of processing class-member claims." Fed. R. Civ. P. 23(e)(2)(C)(ii). "Often it will be important for the court to scrutinize the method of claims processing to ensure that it facilitates filing legitimate

claims." Fed. R. Civ. P. 23 advisory committee's note to 2018 Amendment. "A claims processing method should deter or defeat unjustified claims, but the court should be alert to whether the claims process is unduly demanding." *Id.*

Here, Class Members who do not opt out of the Settlement Agreement will receive their individual award under the Settlement directly through the mail and will not need to submit a claim form. (*See* Settlement Agreement ¶ 61.g.) The Settlement Administrator will have confirmed and updated addresses during the Class Notice procedure. (*Id.* ¶ 61.a.) The Court finds this to be an effective method of distribution that weighs in favor of preliminary approval.

The Court also generally approves the procedure in place for allowing Class Members to dispute their allotted work shifts. But the Court will not serve as the final arbitrator of any disputes that the Settlement Administrator cannot resolve. The dispute resolution method is sufficient without the Court's input; the Settlement Administrator and Class Counsel will resolve all work shift disputes.

The Court also notes that the Settlement Agreement contemplates a single round of check distributions to Class Members. (*Id.* ¶ 61.g.iii.) Class Members will have 180 days to cash their checks, after which any amount remaining in the Settlement fund due to uncashed checks "will be transmitted by the Settlement Administrator to a Court-approved *cy pres* beneficiary." (*Id.*) The use of a *cy pres* beneficiary "'to distribute unclaimed or non-distributable portions of a class action settlement fund'" is appropriate only when the "fund is 'non-distributable'" [because] 'the proof of individual claims would be burdensome or distribution of damages costly.'" *Lane v. Facebook, Inc.*, 696 F.3d 811, 819 (9th Cir. 2012) (quoting *Nachshin v. AOL, LLC*, 663 F.3d 1034, 1036, 1038 (9th Cir. 2011)). Therefore, the parties and the Settlement Administrator should be prepared to conduct a second round of check distributions if the amount remaining is larger than the cost of a second distribution and permits more than a de minimis second payment to Class Members who timely cashed their first check.

As a condition of approval, the parties must submit an amended Settlement Agreement that removes the provision designating the Court as a source for resolving work shift disputes and accounts for the possible necessity of a second or even third round of check distributions.

3. Proposed Attorneys' Fees

The "terms of any proposed award of attorney's fees" also affects the adequacy of the relief. Fed. R. Civ. P. 23(e)(2)(C)(iii). When considering this factor, "district courts must apply the *Bluetooth* factors to scrutinize fee arrangements," meaning the Court should look for a disproportionate distribution of attorneys' fees, clear sailing provisions, and "reverter" or "kicker" clauses that return undistributed funds to the defendant. *Briseno*, 998 F.3d at 1026–27. "[C]ourts typically calculate 25% of the fund as the 'benchmark' for a reasonable fee award." *In re Bluetooth*, 654 F.3d at 942.

Here, Grady will move for an award of attorneys' fees at the time she seeks final approval. (*See* Mot. at 37.) Counsel will move for an award not to exceed 25% of the Settlement fund. (*Id.*) Therefore, beginning with the markers of collusion identified in *In re Bluetooth*, the Court notes that the proposed distribution of fees is not clearly disproportionate. Counsel are limiting fees to the Ninth Circuit benchmark, and represent that this will result in a negative multiplier to their lodestar. (*Id.*)

As to other collusive red flags identified in *In re Bluetooth*, there is no clear sailing provision here; attorneys' fees will be paid from the Settlement fund and not separate and apart from the relief provided to the Class. *See In re Bluetooth*, 654 F.3d at 947. Finally, there is no reverter clause, and no money will be returned to RCM or result in unpaid residue. (Settlement Agreement ¶ 61.e.) Without any collusive red flags, the Court concludes that the arrangement for attorneys' fees warrants preliminary approval.

E. Equitable Treatment of Class Members Relative to Each Other

The last factor to consider under Rule 23(e)(2) is whether "the proposal treats class members equitably relative to each other." Fed. R. Civ. P. 23(e)(2)(D). "Matters of

concern could include whether the apportionment of relief among class members takes appropriate account of differences among their claims, and whether the scope of the release may affect class members in different ways that bear on the apportionment of relief." Fed. R. Civ. P. 23 advisory committee's note to 2018 Amendment.

The Court concludes that the Settlement Agreement proposes equitable treatment of the Class Members. In its previous orders denying preliminary approval, the Court expressed concern about the proposed distribution formulas and whether the formulas treated Class Members equitably and in proportion to the harm suffered. For example, the Court noted that a previous distribution formula allotted payment according to work weeks, which would result in a Class Member who worked four shifts over two weeks receiving the same amount of money as a Class Member who worked ten shifts over two weeks. (*See* First Order Denying Preliminary Approval at 23.) The Court also took issue with a formula that proposed that 60% of the Settlement fund would be distributed equally among Class Members as a remedy for waiting time penalties; the Court observed that this resulted in the bulk of the payments being undifferentiated, even though Class Members clearly incur harm per shift worked. (*See* Second Order Denying Preliminary Approval at 13.) It also treated the small percentage of Class Members who are still employed by RCM unfairly by shutting them out of 60% of the Settlement fund. (*Id.*)

The formula proposed in the present Settlement Agreement fixes these problems. First, the Settlement Administrator will weight work shifts so that the shorter shifts at Gingko count as one work shift and the longer shifts at LAUSD and San Bernadino County count as 1.5 shifts. (Settlement Agreement ¶ 61.f.) The Settlement Administrator will then calculate the total number of weighted work shifts worked by the entire Class and calculate the number of weighted work shifts attributable to each Class Member. (*Id.*) The individual Settlement award will be allotted in proportion to each Class Member's share of the total number of weighted work shifts. (*Id.*) For the portion of the Settlement fund allocated to individual PAGA payments, that award will be apportioned based on the

total number of pay periods worked. (*Id.* ¶ 61.g.) The Court finds that these formulas treat the Class Members equitably by ensuring that the individual award is proportionate to the number of shifts worked and, therefore, the number of wage-and-hour violations incurred.

Finally, the Court considers the proposed service awards and whether the awards result in an inequitable distribution to Grady as the Class Representative. The Settlement requests a service award not to exceed $5,000 for Grady. (*See* Mot. at 36.) The Court concludes that this does not result in an inequitable distribution to the Class Representative. *See Carlin*, 380 F. Supp. at 1024. As a result, the treatment of Class Members relative to each other warrants preliminary approval.

F. Conclusion as to Preliminary Approval

Considering the factors established by Rule 23(e), the Court preliminarily concludes that the Settlement Agreement is fair, reasonable, and adequate, and appears to be the product of serious, informed, non-collusive negotiations. The Court will preliminarily approve the proposed Settlement, subject to the necessary amendments identified in this Order. But the Court reminds the parties that the PAGA portion of this Settlement is subject to Court approval pursuant to California Labor Code § 2699(s)(2), separate and apart from the approval required under Rule 23(e). Because PAGA approval is not a two-step approval process, the Court will decide the Settlement's fairness with respect to the PAGA claims at the final approval stage. The parties should consider separately justifying the PAGA portion of the Settlement, using the distinct standards for approval of PAGA settlements, when moving for final approval.

IV. SETTLEMENT ADMINISTRATOR

The parties agree to appoint JND Legal Administration to serve as Settlement Administrator. (*See* Settlement Agreement ¶ 32.) JND has extensive experience in claims administration and has overseen administration of some of the largest class action settlements in the United States. (Williams Decl. ¶¶ 4–6, Doc. 44-10.) JND estimates that the cost of administration here will be $39,220, to be paid out of the Settlement fund. (*Id.*

¶ 19; Settlement Agreement ¶ 33.) Briefly, the Court notes a discrepancy in the administration costs cited; the Settlement Agreement represents that costs are not to exceed $33,000 while the costs quoted by JND itself are $39,220. (*See id.*) Because the parties must submit an amended Settlement Agreement to address the Court's concerns with the objection and opt-out procedures, the parties shall also address this discrepancy in the amended Agreement or in a further submission. The Court approves JND as the Settlement Administrator.

V. CLASS NOTICE FORM AND METHOD

For a class certified under Rule 23(b)(3), "the court must direct to class members the best notice that is practicable under the circumstances, including individual notice to all members who can be identified through reasonable effort." Fed. R. Civ. P. 23(c)(2)(B). Under Rule 23, the notice must include,: "(i) the nature of the action; (ii) the definition of the class certified; (iii) the class claims, issues, or defenses; (iv) that a class member may enter an appearance through an attorney if the member so desires; (v) that the court will exclude from the class any member who requests exclusion; (vi) the time and manner for requesting exclusion; and (vii) the binding effect of a class judgment on members under Rule 23(c)(3)." Fed. R. Civ. P. 23(c)(2)(B).

Here, there are shortcomings in both the method and form of notice, so the Court's approval is conditioned on the modifications noted below. As to method of notice, Grady proposes mailing notice by first class U.S. mail and posting notice on the website maintained by the Settlement Administrator. (Settlement Agreement ¶¶ 61.g.i–61.g.iii.) Because Class Members are traveling nurses who can be assigned to work sites far afield of their home mailing addresses for months at a time, email notice would be more "reasonably calculated . . . to apprise interested parties of the pendency of the action." *Mullane v. Cent. Hanover Bank & Tr. Co.*, 339 U.S. 306, 314 (1950). Accordingly, absent a valid reason, notice should also be sent via email. As to the form of notice, the proposed long-form Notice does not contain all the information that Rule 23(c)(2)(B) requires.

Namely, the Notice does not state that Class Members may enter an appearance through an attorney if desired and have the attorney appear at the Final Approval Hearing. (*See* Ex. 1 to Settlement Agreement, Long-Form Notice.)

Therefore, as a condition of approval, the parties shall address these problems through amendment of the Settlement Agreement and amended Notice that must be filed with the Court. The amended filings should add notice by email to the notice method, assuming that RCM can generate a list of Class Members' emails from its employment records. In the alternative, if notice by email is not possible, Grady may submit a declaration from Class Counsel explaining to the Court why emailed notice is not feasible. If further amendments to the notice method are required to accommodate notice by email, such as additional time for RCM to compile the Class list, those amendments may be included in the amended filings. The parties shall also ensure that the amended Class Notice complies with Rule 23(c)(2)(B)(iv).

The amended Notice must further account for the following change to the procedures for objecting to the Settlement or requesting exclusion. First, because both the requests for exclusion and notices of objection can be submitted electronically, the Settlement Agreement and Class Notice should make clear that an e-signature is acceptable. The opt-out and objection processes are otherwise reasonable, particularly since the Settlement provides Class Members the opportunity to make their submissions via email, fax, or mail. (*See* Settlement Agreement ¶ 29.) Within five (5) days of the issuance of this Order, as a condition of approval, the parties shall lodge an amended Settlement Agreement and amended Class Notice, clarifying that that e-signatures are acceptable.

Second, both the LWDA and CAFA impose further notice requirements. Grady represents that she has already provided notice of the Settlement to the LWDA, pursuant to California Labor Code § 2699(s)(2). But, because the Court's jurisdiction over this matter arises in part from CAFA (*see* NOR ¶ 9), the parties must also provide notice to relevant

state and federal authorities at least ninety (90) days prior to the date of the Final Fairness Hearing. *See* 28 U.S.C. § 1715(d). When moving for final approval, the parties shall submit a declaration reflecting compliance with § 1715(d).

VI. CONCLUSION

For the foregoing reasons, the Court CONDITIONALLY GRANTS Plaintiffs' Motion for Preliminary Approval of a Class Action Settlement. Within five (5) days of the issuance of this Order, the parties shall submit an amended Settlement Agreement and Class Notice, addressing the concerns raised herein. The amended Settlement Agreement and Notice shall:

- Remove Nathan Piller as Class Counsel;
- Remove the provision designating the Court to resolve work shift disputes;
- Account for the possibility of further rounds of payment distribution to Class Members, prior to payment to a *cy pres* beneficiary;
- Provide an accurate estimate for the costs of Settlement administration;
- State that Class Members may enter an appearance through an attorney if desired;
- Absent a declaration explaining why emailed notice is not feasible, provide for Class notice by email; and
- Clarify that an e-signature is acceptable for all submissions to the Settlement Administrator.

DATED: October 10, 2024

JOSEPHINE L. STATON

HON. JOSEPHINE L. STATON
UNITED STATES DISTRICT JUDGE