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12 **UNITED STATES DISTRICT COURT**
13 **CENTRAL DISTRICT OF CALIFORNIA**

14 BARBARA GRADY, individually and
15 on behalf of all others similarly
16 situated,
17
18 Plaintiffs,
19
20 vs.
21 RCM TECHNOLOGIES, INC.,
22
23 Defendant.

Case No.: 5:22-cv-00842 JLS-SHK

**PLAINTIFF’S NOTICE OF MOTION
AND MOTION FOR PRELIMINARY
APPROVAL OF CLASS ACTION
AND PAGA SETTLEMENT;
MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT
THEREOF**

Date: August 23, 2024

Time: 10:30 a.m.

Location:

First Street U.S. Courthouse
350 W. 1st Street, Courtroom 8A, 8th
Floor, Los Angeles, CA 90012

Complaint Filed: February 7, 2022

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NOTICE OF MOTION AND MOTION

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

Plaintiff Barbara Grady (“Plaintiff”) hereby moves this Court for relief as follows:

1. To preliminarily approve the proposed Class Action and PAGA Settlement Agreement between Plaintiff and Defendant;

2. To certify under Federal Rule of Civil Procedure 23(a) & (b)(3), for settlement purposes only, the following Settlement Class:

All those employed as non-exempt, hourly paid nurses by Defendant RCM in California at any time between March 1, 2020 and March 7, 2023 and assigned by RCM to work at COVID-19 testing or vaccination sites for San Bernardino County (including Arrowhead Regional Medical Center), and at K-12 schools for Los Angeles Unified School District (LAUSD) or Ginkgo Concentric (Ginkgo).

3. To appoint named Plaintiff Barbara Grady as Settlement Class Representative and Plaintiff’s attorneys as Settlement Class Counsel;

4. To appoint JND Legal Administration as the Settlement Administrator;

5. To approve the proposed notice to be distributed to Class Members under Federal Rule of Civil Procedure 23(c) (2) and (e)(1); and

6. To set a fairness hearing consistent with the schedule for class notice, objections, disputes, and requests for exclusion, as set forth in this Motion.

This Motion is made following the conference of counsel pursuant to L.R. 7-3, which took place after the Parties accepted the mediator’s proposal, and over the course of preparing the long-form settlement agreement, class notice, and other supporting documents. Defendant’s counsel has reviewed this Motion and does not intend to oppose it.

This Motion is based on the accompanying memorandum of points and authorities; the Settlement Agreement attached as Exhibit A to the Declaration of

1 Joshua G. Konecky; the Proposed Notice of Class Action Settlement (attached as
2 Exhibit B to the Declaration of Joshua G. Konecky and as Exhibit 1 to the Settlement
3 Agreement); the Declaration of Alexander Williams, Vice President of Operations at
4 JND Legal Administration; such oral argument as may be heard by the Court; and all
5 other papers on file in this action.

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Dated: July 26, 2024

Respectfully Submitted,

**SCHNEIDER WALLACE
COTTRELL KONECKY LLP**

/s/ Joshua G. Konecky

Joshua G. Konecky
Attorney for Plaintiffs

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiff seeks preliminary approval of a proposed non-reversionary, class-
4 action settlement to resolve California wage and hour claims of non-exempt, hourly
5 paid nurses employed by Defendant RCM in California at any time between March
6 1, 2020 and March 7, 2023, and assigned by RCM to work at COVID-19 testing or
7 vaccination sites for San Bernardino County (including Arrowhead Regional Medical
8 Center) or K-12 schools for Los Angeles Unified School District (LAUSD) or Ginkgo
9 Concentric (Ginkgo). The proposed Settlement Class encompasses the Subclasses A
10 and B described in the Motion for Class Certification that Plaintiff filed on June 21,
11 2024 (ECF No. 41). It is focused on employees performing specific jobs (Covid
12 testing and vaccination) during a particular period of time (the height of the Covid
13 pandemic), where Plaintiff maintains that RCM did not adequately establish the wage
14 and hour procedures or oversight necessary to meet the sharp increase in service
15 demands experienced by its employees.

16 The proposed Settlement Class also is a narrower class than the one alleged in
17 Plaintiff's original complaint as well as the one described in the previous proposed
18 settlement that the parties reached in December 2022. The Settlement Release in the
19 proposed settlement now before the Court does not release or compromise any claims
20 that are outside this narrowed class definition.

21 The proposed Settlement now before the Court is for a Gross Settlement Amount
22 of \$1,658,410, which includes all payments except the Defendant's share of payroll
23 taxes on the net settlement amounts allocated to wages. After subtracting the
24 proposed amounts for attorneys' fees (25% the Gross Settlement Amount), attorneys'
25 costs (not to exceed \$50,000), the named Plaintiff service award (\$5,000), settlement
26 administration costs (estimated at \$39,220), and payment to the LWDA (\$124,380),
27 the Net Settlement Amount for the Class and PAGA Members is approximately
28 \$1,026,206.75, including the 25% portion of the PAGA allocation to be distributed

1 to Class Members who worked within the PAGA Period.

2 As shown by Plaintiff’s Motion for Class Certification (ECF No. 41), Plaintiff
3 obtained both documentary and testimonial evidence that RCM’s policies and
4 practices were common across the class.

5 Conversely, the settlement value (approximately \$897.67 per person, not
6 including the PAGA allocation) reflects a reasonably negotiated compromise that
7 takes into account Defendant’s exposure and Plaintiff’s risks in proving class-wide
8 liability and damages. While Plaintiff has obtained discovery and developed a record
9 to support her claim that RCM did not do enough to provide meal and rest periods or
10 prevent off-the-clock work, Defendant’s evidence and Plaintiff’s investigation
11 indicates that the impact of RCM’s alleged deficiencies on the class, including the
12 violation rate, would be hotly disputed. Further, while Plaintiff would argue that
13 variations in the impact of the policies would go solely to damages, Defendant would
14 argue that it also goes to injury and liability. The settlement presents a reasonable
15 and fair compromise between the strengths and risks of these competing positions.

16 As a matter of process, the settlement is the result of arms-length negotiations
17 facilitated by a neutral mediator and performed after significant formal discovery,
18 including production of policy documents, interrogatory responses, time and payroll
19 data, a class list, and depositions.

20 In sum, the proposed settlement satisfies all the criteria for settlement approval
21 under Federal Rule of Civil Procedure 23 and falls within the range of reasonableness
22 for preliminary approval. Accordingly, Plaintiff requests that the Court preliminarily
23 approve the proposed settlement, conditionally certify the proposed settlement class,
24 approve distribution of notice of the proposed settlement, and set a final approval
25 hearing.

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1 **II. BACKGROUND**

2 **A. RCM’s Business and Composition of the Settlement Class.**

3 Barbara Ann Grady worked as a temporary nurse for Defendant RCM
4 Technologies (USA), Inc. (RCM) during the Covid-19 pandemic. *See* Declaration of
5 Barbara Grady (ECF No. 41-19) at 5, ¶ 2. RCM is a “provider of business and
6 technology solutions,” with headquarters in New Jersey. *See*
7 <https://www.rcmt.com/about/>; Deposition of Desiree Disotell – PMK (“PMK Depo”)
8 at 40:9-10, attached as Exhibit D to the Declaration of Joshua Konecky (“Konecky
9 Decl.”).¹ A component of RCM’s business is healthcare staffing. *See*
10 <https://www.rcmt.com/healthcare>. RCM’s “travel division” hires and assigns nurses
11 to the RCM clients, including in California, which operate hospitals and clinics,
12 skilled nursing facilities, and, during the Covid-19 pandemic, Covid testing and
13 vaccination sites. PMK Depo at 10:7-10; 54:22-55:16.² RCM typically considers the
14 nurses it places to be “temporary” employees. *Id.* at 138:17-24.

15 During 2020-2022, approximately 90% of the RCM nurse placement business
16 in California was for Covid testing. Deposition of Tricia Spangler, at 13:11-16, Exh
17 F to Konecky Decl.³ Within this space, 90% or more of RCM’s placements were
18 either in “pop up” testing centers or schools. *Id.* at 34:10-24; PMK Depo 54:22-25.
19 RCM had one client, the County of San Bernardino, for Covid testing at
20 approximately 25 “pop up” centers, and two other clients, Ginkgo Concentric and the
21 Los Angeles Unified School District (LAUSD), for Covid testing and/or vaccination
22 in the schools – Ginkgo had approximately 25 school sites, and LAUSD had

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24 ¹ Unless otherwise noted, a reference to “Exhibit” or “Exh” is to an Exhibit to the Konecky Decl.

25 ² Desiree Disotell appeared for deposition as RCM’s Person Most Knowledgeable (PMK) with
26 respect to its policies, practices and procedures pertaining to meal and rest periods, recording time
worked, and related issues. *See* PMK Depo at 39:17-40:8; Exh E to Konecky Decl. (Depo notice).

27 ³ Tricia Spangler has been RCM’s travel division manager for the last 10 years. *See* Spangler Depo
28 at 6:24-7:5. She oversees the travel contracts and placements throughout the U.S. *Id.* at 10:6-9.

1 approximately 15 school sites. *See* Spangler Depo at 34:10-24; Exh G to Konecky
2 Decl. (RCM’s Response to Interrogatory No. 14).

3 With respect to COVID testing and vaccinations, there was little, if any,
4 material difference between the jobs based on what certification the nurse had or
5 whether they worked at a pop-up location or a school site. PMK Depo at 93:19-23;
6 Spangler Depo at 29:10-24 and 19:6-24. “They were doing the same job.” Spangler
7 Depo at 29:23-24.

8 RCM also does not make any distinction between types of nurses when it comes
9 to its policies for meal and rest periods, recording time worked outside the scheduled
10 shift, or overtime. PMK Depo at 43:7-14; 47:6-10. Whether RN, LVN, LPN, or
11 CNA, they are treated the same. *Id.*

12 During the Settlement Class Period (March 1, 2020 to March 7, 2023) RCM
13 placed approximately 382 individuals to work at Covid testing pop-up sites for San
14 Bernardino County, and a total of 721 individuals to perform Covid testing and/or
15 vaccinations at K-12 school sites – 612 for Ginkgo and 109 for LAUSD. *See* Konecky
16 Decl. at ¶ 38 and Exh G (RCM’s Responses to Interrogatory Nos. 1, 6).⁴ During the
17 Settlement Class Period, these individuals worked approximately 26,580 shifts in the
18 pop-up sites and 35,760 shifts in the K-12 schools. The Covid testing placements
19 rarely occur anymore. *See* Spangler Depo at 13:12-13.

20 RCM maintains records that can identify its employees, their dates of
21 employment, and the RCM clients at which they were placed. *See* Spangler Depo at
22 41:22-42:14.

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⁴ The interrogatory responses identified 395 individuals to work at Covid testing and/or vaccination (pop up) and 727 individuals to perform Covid testing and/or vaccinations in schools, from October 8, 2017, through June 17, 2023. In preparation for the mediation, Defendant identified the slightly lower numbers stated in the text above for the shorter Settlement Class Period of March 1, 2020 to March 7, 2023.

1 For all the nurse assignments in California, RCM employed the nurses as W2
2 employees. *See* PMK Depo at 18:25-19:5. All the nurses are non-exempt employees
3 and RCM pays them all by the hour. *Id.* at 19:6-13.

4 **B. RCM’s business in California during the Covid-19 Pandemic.**

5 When Ms. Grady started her employment with RCM, RCM was ramping up its
6 California presence to meet the demand for Covid testing. *See* PMK Depo at 7:11-
7 8:1; Spangler Depo at 12:22-25. In her motion for class certification, Plaintiff cited
8 to testimony that RCM lacked a human resources presence in California until late
9 2022. *See* ECF No. 41 at 3:24-4:4. RCM disputes Plaintiff’s interpretation of the
10 evidence and maintains that its human resource department in New Jersey provided
11 the resources needed to cover the California employees.

12 **C. Commonality of RCM’s policies.**

13 On September 30, 2022, RCM hired Desiree Disotell to be the “Senior HR
14 California labor specialist.” PMK Depo at 7:12-16. Thereafter, Ms. Disotell worked
15 with legal counsel to create a “California Timekeeping, Meal Period and Rest Break
16 Policy,” and a standardized written meal period waiver form. PMK Depo 76:22:77:8;
17 72:25-73:16. RCM now provides the same versions of these policies and forms to all
18 the California nurse employees. *Id.* RCM also provides the same Employee
19 Handbook to all the nurses in California. *See* PMK Depo at 84:19-22, 138:2-9.

20 **D. Plaintiff’s theories of liability**

21 As more fully described in the motion for class certification, Plaintiff maintains
22 that RCM failed to live up to its affirmative legal duty to provide meal and rest
23 periods to its employees, and to prevent off-the-clock work. *See* ECF No. 41 at 11:4-
24 16:21. For example, Plaintiff alleges that RCM over-relied on its clients to create the
25 conditions necessary to provide compliant meal and rest periods, and to ensure that
26 all compensable time is recorded on the timecards. *Id.* at 11:4-13:4. However, as
27 Plaintiff further maintains, RCM’s clients did not have the contractual obligation,
28 financial incentive, or administrative capacity to perform this function, and that RCM

1 did not sufficiently monitor the working conditions to safeguard the employees’
2 rights. *Id.* at 4:16-5:13, 11:12-18.

3 In addition to deposition testimony and evidence from RCM regarding the
4 common scope of its policies, Plaintiff also cited to testimony from Class Members
5 as anecdotal evidence of the alleged impact that RCM’s policies and approach had
6 on the employees working at the client sites. *Id.* at 5:14-7:2. Plaintiff maintains that
7 RCM’s overreliance on the clients to safeguard the rights of its employee had a
8 particularly detrimental impact on the nurses during the Covid-19 pandemic. *Id.* at
9 1:10-12, 3:18-4:9, 5:14-7:2, 13:25-14:8.

10 Plaintiff further cited template emails RCM sent to its nurses in California
11 during the pandemic evidencing what Plaintiff describes as a policy of assuming
12 Class Members received compliant meal periods and automatically deducting time
13 for them from their hours worked. *Id.* at 7:5-13. Plaintiff maintained that this policy
14 unlawfully shifted the burden onto the nurses to prove that meal periods were not
15 compliant and that there was not a reliable method of communication with RCM for
16 them to meet this burden. *Id.* at 13:5-14:27. Plaintiff also cited testimony that RCM
17 permitted its clients to secure verbal agreements with the nurses to waive meal
18 periods (which Plaintiff alleged was unlawful). *Id.* at 7:20-8:2, 15:1-15. Finally,
19 Plaintiff cited pay records showing the lack of meal and rest period premiums as
20 evidence in support of her argument that RCM did not have a policy for paying meal
21 and rest period premiums in California until the tail end of the Settlement Class
22 Period, if not afterwards. *Id.* at 8:3-9:11, 13:25-14:8.

23 RCM maintains that its written policies were lawful on their face, and that
24 employees were instructed about their breaks and told to record all time worked.
25 RCM further argues that inasmuch as the nurses worked at the client facilities, its
26 clients had compliant processes and it was lawful for RCM to rely on the clients to
27 supervise the employees and implement schedules to allow for meal and rest periods.
28 RCM also maintains that employees could contact RCM representatives if there were

1 problems, and that the deficiencies Plaintiff alleges did not cause violations on the
2 ground.

3 **III. PROCEDURAL HISTORY**

4 On July 22, 2021, Plaintiff submitted a notice letter to the Labor Workforce and
5 Development Agency (LWDA) specifying her claims under the Private Attorneys
6 General Act (PAGA). Konecky Decl. at ¶ 14. On February 7, 2022, Plaintiff filed a
7 class action and law enforcement complaint in the San Bernardino County Superior
8 Court. *Id.* at ¶ 15. On May 19, 2022, Defendant answered and removed the action to
9 this Court. ECF 1. The parties thereafter agreed to mediation and the production of
10 written policies and aggregate data to facilitate mediation. *Id.* at ¶¶ 19-22.

11 On December 7, 2022, the Parties engaged in a full-day mediation before
12 Michael J. Loeb of JAMS, which eventually resulted in a proposed settlement for the
13 alleged class action and PAGA claims. *Id.* at ¶ 19. Ultimately, the proposed
14 Settlement was for a gross, non-reversionary settlement fund of \$1,600,000.00, on
15 behalf of a settlement class consisting of approximately 1,414 individuals who
16 worked a combined 90,939 shifts for RCM as a traveling nurse or like hourly position
17 anywhere in California between October 8, 2017 and March 7, 2023. *See* ECF No.
18 31-2 at ¶¶ 6, 7, 15, 66.

19 On May 2, 2023, the Court denied without prejudice Plaintiff's motion for
20 preliminary approval of the settlement for several reasons, including the failure to
21 show sufficient investigation into the claims and potential value of the case. *See* ECF
22 No. 30. On September 7, 2023, the Court denied Plaintiff's renewed motion for
23 preliminary approval based on the lack of information provided to assess
24 commonality, typicality, and the reasonableness of the settlement, among other
25 things. *See* ECF No. 35 at 9:5-10:17, 12:21-13:8. On February 5, 2024, the Court
26 denied the parties' request to conduct a joint survey of class members as part of the
27 settlement approval process and ordered Plaintiff to show cause why the stay should
28

1 not lift so that litigation may resume. *See* ECF No. 38. Plaintiff responded that she
2 would no longer seek approval of the settlement and that litigation should resume.
3 ECF No. 39. On February 18, 2024, the Court discharged the Order to Show Cause
4 and set a litigation schedule for the case. ECF No. 40.

5 Following receipt of the Court's Order, the Parties engaged in significant
6 written discovery, depositions, and further investigation directed toward both class
7 certification issues and the merits of the claims. *See* Konecky Decl. at ¶ 27.
8 Defendant produced additional documents and data beyond what was earlier
9 produced. *Id.* This consisted of class member contact information and additional
10 policies and additional procedures applicable to California placements during the
11 putative class period. *Id.* Plaintiff also propounded, and Defendant answered,
12 interrogatories to show the breakdown of assignment types and work settings within
13 the originally alleged class, including related information pertaining to that
14 breakdown. *Id.* Defendant also supplemented information produced previously in the
15 case showing, by employee ID, the daily work hours recorded, the type of service
16 being provided, the applicable wage rates, and related information. *Id.*

17 Both parties also proceeded with depositions. Defendant took the deposition of
18 the named Plaintiff. *Id.* at ¶ 28. Plaintiff took the deposition of Defendant's Director
19 of National Recruiting, and the deposition of Defendant's 30(b)(6) designee on topics
20 including: the work assignments, settings, and job duties of the putative class
21 members; the policies, procedures, and practices pertaining to meal and rest periods;
22 the policies, procedures, and practices pertaining to wages and compensation of
23 putative class members; and the policies, procedures, and practices pertaining to
24 approval and/or payment of overtime and double time, amongst other topics. *Id.*

25 Plaintiff engaged in further informal discovery as well, interviewing putative
26 class members and obtaining signed declarations in support of her Motion for Class
27 Certification. *Id.* at ¶ 29.

28 On June 21, 2024 Plaintiff filed her Motion for Class Certification. *See* ECF

1 No. 41. Thereafter, the Parties met and conferred regarding the potential to re-engage
2 in settlement discussions in advance of the class certification hearing. *See* Konecky
3 Decl. at ¶ 31. The Parties then participated in a full-day mediation with mediator
4 Michael Loeb on July 2, 2024, following which the mediator issued a mediator’s
5 proposal for the proposed class action and PAGA settlement that is the subject of the
6 instant motion. *Id.* at ¶¶ 31-32. The Parties accepted the mediator’s proposal on July
7 8, 2024. *Id.* at ¶ 32. Among other things, the current proposed settlement has a
8 narrower Settlement Class, covers a shorter Settlement Class Period, has a different
9 distribution formula, and has a higher per class member recovery, than the earlier
10 settlement. *Id.* at ¶ 33.

11 On July 11, 2024, the Parties submitted a stipulated request to vacate the class
12 certification hearing and set a preliminary approval hearing. *See* ECF No. 42. On
13 July 14, 2024, the Court vacated the Class Certification Motion and directed Plaintiff
14 to file her Motion for Preliminary Approval of the Class and PAGA Settlement. *See*
15 ECF No. 43.

16 **IV. KEY TERMS OF THE PROPOSED SETTLEMENT**

17 Under the Settlement Agreement, RCM will pay \$1,658,410 to resolve this
18 litigation (“Gross Settlement Amount”). Konecky Decl., Exhs. A & B (Settlement
19 Agreement and proposed Notice). This entire amount will be disbursed pursuant to
20 the terms of the Settlement Agreement, and none of it will revert to Defendant. Exh.
21 A to Konecky Decl., Settlement Agreement at ¶ 53.

22 The key terms of the Settlement Agreement include:

- 23 • Gross Settlement Amount: The Gross Settlement Amount is \$1,658,410.
24 *Id.* at ¶ 15. The Gross Settlement Amount does *not* include the employer’s
25 share of payroll taxes, which Defendant will pay separately in addition to
the Gross Settlement Amount. *Id.* at ¶¶ 12, 15, 63.
- 26 • No Reversion: All settlement funds will be paid out, and none will revert
27 to Defendant. *Id.* at ¶ 53.
- 28 • Class Period: The Class Period is March 1, 2020 to March 7, 2023. *Id.* at ¶

1 7.

- 2 • PAGA Period: The PAGA Period is July 22, 2020 through March 7, 2023.
3 *Id.* at ¶ 23.
- 4 • Settlement Class: The Settlement Class comprises all those employed as
5 non-exempt, hourly paid nurses by Defendant RCM in California at any
6 time between March 1, 2020 and March 7, 2023 and assigned by RCM to
7 work at COVID-19 testing or vaccination sites for San Bernardino County
8 (including Arrowhead Regional Medical Center), or K-12 schools for
9 LAUSD or Ginkgo. *Id.* at ¶ 6.
- 10 • PAGA Members: The PAGA Members are the subset of Class Members
11 employed by RCM during the PAGA Period, July 22, 2020 to March 7,
12 2023. *Id.* at ¶ 20.
- 13 • Participating Class Members: The Participating Class Members are the
14 Settlement Class Members and the PAGA Members. *Id.* at ¶ 25
- 15 • Release by Participating Class Members: The Released Claims are limited
16 to the Participating Class Members and the claims that were pled in the
17 Complaint, based on or arising out of the factual allegations therein, during
18 the applicable Class and PAGA Periods. *Id.* at ¶¶ 27, 58; *see also* proposed
19 Notice to Class, Exh. B to Konecky Decl. & Exh. 1 to Settlement
20 Agreement at § 9.
- 21 • PAGA Release: The PAGA Release is limited to the PAGA Members and
22 the claims for civil penalties under PAGA that arise out of or relate to the
23 statutes and regulations pled in the PAGA Notice and Class Action and
24 PAGA Complaint during the PAGA Period. Settlement Agreement at ¶¶ 24,
25 59; *see also* Notice to Class at at § 9.
- 26 • Net Settlement Amount: The Net Settlement Amount is the Gross
27 Settlement Amount less the Class Counsel Award, Class Representative
28 Service Award, LWDA Payment, and Settlement Administration Costs.
Settlement Agreement at ¶ 18.
- Direct Payments to Settlement Class Members / No Claim Forms:
Settlement Class Members who do not opt out of the Settlement will not
need to submit claims to receive their pro-rata settlement payment. *Id.* at ¶
61. Rather, Individual Settlement Awards and Individual PAGA Payments
(i.e., settlement checks) will be automatically sent to all Class Members for
whom a valid address can be located either through Defendant's records,
and/or by the Settlement Administrator through the National Change of
Address database (NCOA) and/or by skip tracing and other research. *Id.* at
¶¶ 61(a)(i)-(ii).

- 1 • Distribution Formula: the proposed distribution formula values the shifts
2 for providing Covid testing and/or vaccinations at Ginkgo K-12 sites at 1.0,
3 and the shifts at LAUSD K-12 sites and San Bernardino County sites at
4 1.5. *Id.* at ¶ 61(f). This reflects the lower hours worked at the Ginkgo K-12
5 assignments, among the other factors discussed below.
- 6 • PAGA Payment: The Parties have agreed to pay the California Labor and
7 Workforce Development Agency (“LWDA”) and the employees in
8 connection with the claims under the California Labor Code Private
9 Attorneys General Act of 2004, California Labor Code Sections 2698, *et*
10 *seq.* (“PAGA”). Settlement Agreement at ¶ 54. The Parties have agreed that
11 One Hundred Sixty Five Thousand Eight Hundred and Forty One Dollars
12 (\$165,841.00)—ten percent (10%) of the Gross Settlement Amount—will be
13 allocated to the resolution of the claims arising under PAGA. Pursuant to
14 Labor Code Section 2699(i), it would be distributed as follows: 25%, or
15 \$41,460.25, to the Settlement Class Members and 75%, or \$124,380.75, to
16 the LWDA (the “LWDA Payment”). *Id.*
- 17 • Tax Allocation: Subject to Court approval, the Parties further agree to the
18 following as a reasonable and fair tax allocation for Individual Settlement
19 Awards: one-third (33%) as alleged unpaid wages subject to all applicable
20 tax withholdings; one-third (33%) as alleged unpaid interest; and one-third
21 (33%) as alleged unpaid penalties. *Id.* at ¶ 61(g)(ii). Subject to Court
22 approval, the Parties further agree that Individual PAGA Awards shall be
23 allocated as alleged unpaid civil penalties for which an IRS Form 1099
24 shall be issued. *Id.*
- 25 • Class Representative Service Award: The Settlement provides that Plaintiff
26 may seek a service payment not to exceed \$5,000.00, subject to Court
27 approval. *Id.* at ¶ 8. The proposed service payment is approximately 0.3
28 percent of the Gross Settlement Amount. Konecky Decl. at ¶ 76.
- Class Counsel Award: Plaintiff’s attorneys’ fees and costs are included in
the Gross Settlement Amount of \$1,658,410. The Settlement provides that
Plaintiff may make a motion to the Court for up to twenty-five percent
(25%) of the Gross Settlement Amount in attorneys’ fees, plus
reimbursement of actual, reasonable, costs not to exceed \$50,000.00.
Settlement Agreement at ¶ 4.
- Settlement Administration Costs: The costs of settlement administration
are included in the gross settlement amount of \$1,658,410. *Id.* at ¶ 33. JND
Legal Administration (“JND”), the Parties’ selected Settlement
Administrator, assesses the administration costs at \$39,220. *See*
Declaration of Alexander Williams, at ¶ 19.

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- Notice of Class Action and PAGA Settlement: The proposed Notice sets forth in plain terms, a statement of case, the terms of Settlement, the maximum amount of attorneys’ fees, costs, and service award that can be sought, an explanation of how the settlement allocations are calculated, each Class Member’s own credited shifts, total Class Member shifts, as well as the estimated settlement award. *See* Notice to Class at § 7. The Notice to the Class will be sent by first class mail and email to the Settlement Class and PAGA Members. JND, the Parties’ selected Settlement Administrator, will undertake its best efforts to ensure that the notice is provided to the current addresses of Class Members. This includes conducting a National Change of Address search before the mailing and then conducting skip tracing on any individual Notices returned as undeliverable. Settlement Agreement at ¶ 61(a)(i). The Settlement Administrator also will set up a website posting the Notice to the Class and other important case documents. *Id.* at ¶ 61(a)(iii).
 - Right to Object: The Notice shall state that Settlement Class Members who wish to object to the Settlement must mail to the Settlement Administrator a written statement of objection (“Notice of Objection”) by the Response Deadline, which is 45 days following the date the Settlement Administrator mails the Notice of Class Action and PAGA Settlement to Class Members. *Id.* at ¶¶ 19, 30; Notice to Class at § 12. Class Members who submit a timely Notice of Objection will have a right, subject to the Court’s discretion, to appear at the Final Approval/Fairness Hearing to have their objections heard by the Court. Notice to Class at § 12.
 - Right to Opt Out: The Notice shall state that Class Members who wish to exclude themselves from the Settlement Class and Settlement must submit a written Request for Exclusion to the Settlement Administrator by the 45-day Response Deadline. *Id.* ¶¶ 29-30; Notice to Class at § 11. Any Class Member who submits a completed, signed, and timely written Opt-Out shall no longer be a member of the Class, although they still will be PAGA Members and subject to the PAGA Release. Settlement Agreement at ¶ 29; Notice to Class at § 11; *Arias v Superior Ct. (Dairy)*, 46 Cal.4th 969 (2009).
 - Right to Challenge Defendant’s Records. Class Members will have the opportunity, should they disagree with Defendant’s records regarding the number of shifts credited on their Class Notice, to provide documentation and/or an explanation to show a contrary number of shifts. All shift disputes shall be resolved and decided by the Settlement Administrator, with consultation with Defense and Class Counsel as appropriate. If a shift dispute cannot be resolved by the Settlement Administrator, then it shall be resolved by the Court. Settlement Agreement at ¶ 36.

1 **V. ARGUMENT**

2 **A. The Settlement Class Satisfies FRCP 23**

3 1. ***Plaintiff satisfies numerosity under Rule 23(a)(1).***

4 There are approximately 1,097 Settlement Class Members, consisting of
5 approximately 382 assigned to Covid testing pop up sites in San Bernardino County,
6 a total of 721 assigned to Covid testing and/or vaccination sites at K-12 schools – 109
7 for LAUSD and 612 for Ginkgo. Konecky Decl. at ¶ 38. This satisfies numerosity
8 under Fed. R. Civ. P. 23(a)(1). *Sinohui v. CEC Entm't, Inc.*, 2016 U.S. Dist. LEXIS
9 192363, at *32 (C.D. Cal. Mar. 16, 2016) (Staton, J.). Further, RCM’s records can
10 identify its employees, their dates of employment, and the RCM clients at which they
11 were placed. Spangler Depo at 41:22-42:14.

12 2. ***Plaintiff satisfies commonality under Rule 23(a)(2).***

13 Commonality assesses “the capacity of a classwide proceeding to generate
14 common answers apt to drive the resolution of the litigation.” *Wal-Mart Stores, Inc.*
15 *v. Dukes*, 131 S.Ct. 2541, 2551 (2011). The standard for finding commonality is
16 “permissive.” *Butel v. Marathon Refin. & Logistics Servs., LLC*, 2024 U.S. Dist.
17 LEXIS 99393, at *6 (C.D. Cal. June 3, 2024) (citation omitted). “[W]here the
18 circumstances of each particular class member vary but retain a common core of
19 factual or legal issues with the rest of the class, commonality exists.” *Evon v. Law*
20 *Offices of Sidney Mickell*, 688 F.3d 1015, 1029 (9th Cir. 2012).

21 Commonality must be examined through the lens of the plaintiff’s theories of
22 liability. *United Steel v. ConocoPhillips Co.*, 593 F.3d 802, 808-10 (9th Cir. 2009);
23 *Sullivan v. DB Inv.*, 667 F.3d 273, 299 (3d Cir. 2011) (citing *Dukes*, 131 S. Ct. 2541);
24 *see also Villalpando v. Exel Direct Inc.*, 2016 WL 1598663, at *56 (N.D. Cal. Apr.
25 21, 2016) (court cannot “disregard plaintiffs’ theory of recovery.”); *Alberts v. Aurora*
26 *Behavioral Health Care*, 241 Cal. App. 4th 388, 410 (2015) (class certification
27 evaluated “under the prism of the *plaintiff’s theory of recovery.*”) (citations omitted)
28 (italics added in opinion).

1 Here, Plaintiff’s theory of the case is that RCM has several uniform policies
2 and alleged deficiencies that do not measure up to the affirmative obligations that
3 employers have under California law. As described in more detail in the previous
4 Motion for Class Certification, Plaintiff maintains that RCM:

- 5 • Had a common policy of over-relying on its non-employer clients to provide
6 compliant meal and rest periods, without appropriate oversight or
7 coordination with the clients to ensure that the employees had the
8 opportunity to take breaks that comply with the timing, durational, and off-
9 duty requirements of California law.
- 10 • Did not have a human resource presence in California or formalize a
11 standalone written meal and rest period policy for its California placements
12 until the Fall of 2022.
- 13 • Did not take measures of its own, but instead expected nurses placed at
14 Covid testing sites to informally “coordinate” amongst themselves to take
15 breaks in compliance with California law.
- 16 • Had a common policy of shifting the burden to employees to report missed
17 meal or rest periods, and prove their case for premium wages, rather than to
18 have a reliable mechanism for identifying noncompliance and paying the
19 premium wage immediately without any demand from the employee.
- 20 • Had a common policy of automatically deducted pay for a half-hour meal
21 period by assuming it was taken unless the employee could obtain local
22 management to write that it was not.
- 23 • Did not pay any meal or rest period premiums until late 2022, despite
24 evidence of non-compliance.
- 25 • Had a common policy of relying on verbal agreements between its nurses
26 and clients to waive meal period rights.
- 27 • Did not implement procedures beyond promulgation of a rule to prevent off
28 the clock work and ensure compensation for all hours worked.

1 As discussed in Plaintiff’s previously filed Motion for Class Certification,
2 Plaintiff maintains that these policies and omissions caused nurses to miss their
3 breaks and work off-the-clock. *See* ECF No. 41 at 11:4-16:21. Further, Plaintiff
4 argues that differences in the impact of these policies on the Settlement Class
5 Members goes to damages, which does not defeat class certification under applicable
6 law. *Id.* at 18:13-19:24.

7 Defendant denies that its policies violated applicable legal standards and denies
8 allegations of widespread noncompliance, and further avers that Ms. Grady was not
9 required to work off-the-clock and was provided with the opportunity to take rest
10 breaks and meal breaks.

11 **3. Plaintiff satisfies typicality under Rule 23(a)(3)**

12 “Under [Rule 23(a)(3)’s] permissive standards, representative claims are
13 ‘typical’ if they are reasonably coextensive with those of absent class members; they
14 need not be substantially identical.” *Chacon v. Express Fashion Operations LLC*,
15 2021 U.S. Dist. LEXIS 195353, at *35 (C.D. Cal. June 14, 2021) (Staton, J.). Ms.
16 Grady testified to facing the same or similar difficulties with obtaining compliant
17 meal and rest periods and working off-the-clock as the other class member declarants,
18 and as are alleged for the class as a whole. *See* ECF No. 41-19 at 6-9, ¶¶ 3-14; *see*
19 *also* Declaration of Barbara Grady filed in support of Motion for Preliminary
20 Approval (“Grady PA Decl.”), at ¶¶ 3-9. Moreover, she reports encountering these
21 common problems at numerous locations while working for RCM. *See* ECF 41-19,
22 at ¶ 10; Grady PA Decl. at ¶ 5.

23 **4. Plaintiff satisfies adequacy under Rule 23(a)(4)**

24 The adequacy requirement is satisfied where “the proposed representative
25 Plaintiffs do not have conflicts of interest with the proposed class, and [] Plaintiffs
26 are represented by qualified and competent counsel.” *Sinohui*, 2016 U.S. Dist. LEXIS
27 192363, at *38 (Staton, J.). Ms. Grady shares common claims and interests with the
28

1 Class and does not have any conflict that would prevent her from prosecuting the case
2 in the best interest of the class. She has sat for deposition, spent numerous hours
3 providing information to counsel, and is committed to prosecuting the case in the best
4 interests of the class. *See* ECF 41-19 at 8-9, ¶¶ 15-18; Grady PA Decl. at ¶¶ 10-12.

5 Plaintiff’s counsel bring years of experience and success in prosecuting
6 complex class actions, including analogous wage and hour claims. Konecky Decl. at
7 ¶¶ 4-10, & Exh C. They have devoted significant time and resources to investigate
8 the claims and develop a record of commonality, particularly since the Court’s
9 previous orders, and are committed to continuing to pursue the case in the best
10 interest of the Class. *Id.* at ¶¶ 27-36. Plaintiff’s counsel requests appointment as class
11 counsel under Fed. R. Civ. P. 23(g)(1) & (4).

12 **5. Common questions predominate over individual questions**

13 The Rule 23(b)(3) predominance inquiry “tests whether proposed classes are
14 sufficiently cohesive to warrant adjudication by representation.” *Amchem Prods.,*
15 *Inc. v. Windsor*, 521 U.S. 591, 623 (1997). “When common questions present a
16 significant aspect of the case and they can be resolved for all members of the class in
17 a single adjudication, there is clear justification for handling the dispute on a
18 representative rather than on an individual basis.” *Chacon*, 2021 U.S. Dist. LEXIS
19 195353, at *14 (Staton, J.) (citation omitted). The presence of individual issues does
20 not preclude certification. *See Local Joint Executive Bd. v. Las Vegas Sands, Inc.*,
21 244 F.3d 1152, 1163 (9th Cir. 2001). Predominance is not “a matter of nose-
22 counting. Rather, more important questions apt to drive the resolution of the litigation
23 are given more weight in the predominance analysis over individualized questions
24 which are of considerably less significance to the claims of the class.” *Torres v.*
25 *Mercer Canyons Inc.*, 835 F.3d 1125, 1134 (9th Cir. 2016).

26 Our Supreme Court has recognized that a class can be certified under Rule
27 23(b)(3) even if not all class members have suffered injury as a result of the allegedly
28 unlawful practice. *Tyson Foods, Inc. v. Bouaphakeo*, 136 S. Ct. 1036, 1049-1050

1 (2016). Indeed, “even a well-defined class may inevitably contain some individuals
2 who have suffered no harm as a result of a defendant's unlawful conduct.” *Id.* at 1136;
3 *see also Messner v. Northshore Univ. HealthSystem*, 669 F.3d 802, 823 (7th Cir.
4 2012) (“[S]ome class members’ claims will fail on the merits if and when damages
5 are decided, a fact generally irrelevant to the district court's decision on class
6 certification.”).

7 Challenges to admittedly common policies that drive the determination of
8 liability predominate over individual questions of “which class members were
9 actually adversely affected” and the degree of harm. *See McReynolds v. Merrill*
10 *Lynch, Pierce, Fenner & Smith, Inc.*, 672 F.3d 482, 491-92 (7th Cir. 2012) (Posner,
11 J.). Indeed, “whether individual employees were able to take breaks despite the
12 defendant’s allegedly unlawful policy (or unlawful lack of a policy) is not a proper
13 basis for denying certification.” *Benton v. Telecom Network Specialists, Inc.*, 220
14 Cal. App. 4th 701, 726 (2013). “Whether or not the employee was able to take the
15 required break goes to damages, and ‘[t]he fact that individual [employees] may have
16 different damages does not require denial of the class certification motion.’” *Id.* at
17 726 (citations omitted).

18 Courts have consistently held that meal and rest period claims similar to
19 Plaintiff’s here are appropriate for class adjudication, despite alleged variation in
20 localized policies and practices. *See, e.g., Benton*, 220 Cal. App. 4th at 730; *Shaw v.*
21 *AMN Healthcare, Inc.*, 326 F.R.D. 247, 273 (N.D. Cal. 2018); *Jaimez v. DAIOHS*
22 *USA, Inc.*, 181 Cal.App.4th 1286, 1305 (2010); *Alberts*, 241 Cal. App. 4th at 409.
23 For instance, in *Benton*, the Court of Appeal rejected the argument that “diverse meal
24 and rest break policies” of “coemployer entities” preclude adjudication on a class
25 basis. *See* 220 Cal. App. 4th at 730. Here, RCM’s clients are not even coemployers
26 with a recognized legal responsibility to RCM’s nurses, making any localized policies
27 even less material. Further, “variations among facilities are not inconsistent with
28 Plaintiffs’ theory, which is based on [RCM’s] failure to adopt policies and procedures

1 to ensure that Plaintiffs were consistently provided timely and uninterrupted breaks.”
2 *See Shaw*, 326 F.R.D. at 273.

3 For these reasons, and as more fully explained in Plaintiff’s Motion for Class
4 Certification, the same policies cited above that establish commonality under Rule
5 23(a)(2) also demonstrate predominance under Rule 23(b)(3). Furthermore,
6 variability in damages is not a bar to class certification under Rule 23(b)(3). *Ridgeway*
7 *v. Walmart Inc.*, 946 F.3d 1066, 1086 (9th Cir. 2020) (collecting cases).

8 **6. Plaintiff satisfies superiority under Rule 23(b)(3)**

9 Plaintiff also satisfies each of the Rule 23(b)(3) superiority factors. First, there
10 is no indication that class members have an interest in individually controlling their
11 own cases, which would impose prohibitive costs. *See Amchem*, 521 U.S. at
12 617. Second, the Parties are not aware of any other class action cases on behalf of
13 nurses alleging noncompliant meal and rest periods and/or unpaid wages against
14 RCM. The third factor – the desirability of concentrating the litigation in this forum
15 – is also met, because the Class comprises nurses who worked for RCM in
16 California. Plaintiff also meets the fourth factor because implementing the class
17 settlement will not pose unique case management problems, but would be a far more
18 efficient vehicle for resolving the class-wide liability questions than thousands of
19 individual trials. *See Thomas v. Baca*, 231 F.R.D. 397, 403 (C.D. Cal. 2005); *Woods*
20 *v. Vector Mktg. Corp.*, 2015 WL 5188682, at *16 (N.D. Cal. 2015).

21 **B. Overview of the Class Action Settlement Process**

22 A class action settlement like the one proposed here must be approved by the
23 Court to be effective. *See Fed. R. Civ. P. 23(e)*. The process for court approval
24 comprises three principal steps:

- 25 1. A preliminary approval hearing, at which the court considers whether
26 the proposed settlement is within the range of reasonableness
27 possibly meriting final approval;
- 28 2. Dissemination of notice of the proposed settlement to Class Members

1 for comment; and

2 3. A formal “fairness hearing,” or final approval hearing, at which the
3 Court decides whether the proposed settlement should be approved
4 as fair, adequate, and reasonable to the class.

5 *See Manual for Complex Litigation* §§ 21.632-34 (4th ed. 2004). This procedure
6 safeguards Class Members’ procedural due process rights and enables the Court to
7 fulfill its role as the guardian of class interests. *See Newberg on Class Actions*, §
8 11.22, *et seq.* (4th ed. 2002) (“*Newberg*”).

9 Plaintiff asks the Court to take the first step in the settlement approval process
10 and grant preliminary approval of the settlement. Plaintiff further requests that the
11 Court order dissemination of notice to Class Members and establish a schedule for
12 the final approval process.

13 **C. The Settlement Should be Preliminarily Approved**

14 1. The Standards for Preliminary Approval

15 At this preliminary approval stage, the Court determines whether the proposed
16 settlement “(1) appears to be the product of serious, informed, non-collusive
17 negotiations; (2) has no obvious deficiencies; (3) does not improperly grant
18 preferential treatment to class representatives or segments of the class; and (4) falls
19 within the range of possible approval,” such that it is worthwhile to give the class
20 notice of the settlement and proceed to a formal fairness hearing. *Eddings v. Health*
21 *Net, Inc.*, 2013 WL 169895, at *2 (C.D. Cal. Jan. 16, 2013); *see also 4 Newberg*, §
22 11.25 (4th ed. 2002). The proposed settlement here meets all these criteria.

23 2. The Proposed Settlement Meets the Preliminary Approval
24 Standards

25 The law favors the compromise and settlement of class-action suits. *See, e.g.*,
26 *Churchill Vill. L.L.C. v. Gen. Elec.*, 361 F.3d 566, 576 (9th Cir. 2004); *Class Plaintiffs*
27 *v. City of Seattle*, 955 F.2d 1268, 1276 (9th Cir. 1992); *Officers for Justice v. Civil*
28 *Serv. Comm’n*, 688 F.2d 615, 625 (9th Cir. 1982). The Ninth Circuit recognizes the

1 “overriding public interest in settling and quieting litigation . . . particularly . . . in
2 class action suits . . .” *Van Brokhorst v. Safeco Corp.*, 529 F.2d 943, 950 (9th Cir.
3 1976); *see also Weeks v. Kellogg Co.*, 2013 WL 6531177, at *10 (C.D. Cal. Nov. 23,
4 2013) (quoting *In re Synacor ERISA Litig.*, 516 F.3d 1095, 1101 (9th Cir. 2008))
5 (“[T]here is a strong judicial policy that favors settlements, particularly where
6 complex class action litigation is concerned.”).

7 “[T]he decision to approve or reject a settlement is committed to the sound
8 discretion of the trial judge because he [or she] is exposed to the litigants and their
9 strategies, positions, and proof.” *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1026 (9th
10 Cir. 1998) (internal citations and quotations omitted). In exercising such discretion,
11 the Court should give “proper deference to the private consensual decision of the
12 parties . . . [T]he court’s intrusion upon what is otherwise a private consensual
13 agreement negotiated between the parties to a lawsuit must be limited to the extent
14 necessary to reach a reasoned judgment that the agreement is not the product of fraud
15 or overreaching by, or collusion between, the negotiating parties, and that the
16 settlement, taken as a whole, is fair, reasonable and adequate to all concerned.” *Id.* at
17 1027 (internal citations omitted); Fed. R. Civ. P. 23(e).

18 This determination involves a balancing of several factors, including: “the
19 strength of plaintiffs’ case; the risk, expense, complexity, and likely duration of
20 further litigation; the risk of maintaining class action status throughout the trial; the
21 amount offered in settlement; [and] the extent of discovery completed” among other
22 factors. *Chun-Hoon v. McKee Foods Corp.*, 715 F.Supp.2d 848, 850-51 (N.D. Cal.
23 2010) (quoting *Class Plaintiffs*, 955 F.2d at 1291).

24 At the preliminary approval stage, the Court need only find that the proposed
25 settlement is within the “range of reasonableness” such that dissemination of notice
26 to the class, and the scheduling of a fairness hearing, are appropriate. *Newberg* §
27 11.25; *see also Carter v. Anderson Merchandisers, LP*, 2010 WL 144067, at *4 (C.D.
28 Cal. Jan. 7, 2010); *In re Tableware Antitrust Litig.*, 484 F.Supp.2d 1078, 1079-80

1 (N.D. Cal. 2007). Preliminary approval of a proposed class action settlement is
2 appropriate where “the proposed settlement appears to be the product of serious,
3 informed, non-collusive negotiations, has no obvious deficiencies, does not
4 improperly grant preferential treatment to class representatives or segments of the
5 class, and falls within the range of possible approval[.]” *In re Tableware Antitrust*
6 *Litig., supra*, at 1079. As discussed below, the instant settlement falls within the
7 “range of reasonableness” for preliminary approval.

8 a) *The Settlement is the product of serious, informed and non-*
9 *collusive negotiations*

10 The Settlement was reached after informed, arms-length settlement
11 negotiations by experienced attorneys. *See* Konecky Decl. at ¶ 32. Before the
12 original mediation in December 2022, Defendant provided employee handbooks,
13 timecards, and template emails concerning RCM’s expectations with respect to meal
14 periods and timekeeping, as well as wage and shift data that enabled Plaintiff to run
15 damages calculations for the putative class. *Id.* at ¶¶ 20-21, 48-52. Since then, Parties
16 engaged in additional written discovery, depositions, and further investigation
17 directed toward both class certification issues and the merits of the claims, including
18 the impact of the policies on the Settlement Class. *Id.* at ¶¶ 27-30.

19 This more robust discovery consisted of class member contact information and
20 additional policies applicable to California placements during the putative class
21 period. *Id.* at ¶ 27. Plaintiff also propounded, and Defendant answered,
22 interrogatories to show the breakdown of assignment types and work settings within
23 the originally alleged class, including related information pertaining to that
24 breakdown. *Id.* Additionally, Defendant took the deposition of the named Plaintiff,
25 while Plaintiff took the deposition of Defendant’s Director of National Recruiting,
26 and the deposition of Defendant’s Rule 30(b)(6) designee on topics including: the
27 work assignments, settings, and job duties of the putative class members; the
28 policies, procedures, and practices pertaining to meal and rest periods; the policies,

1 procedures, and practices pertaining to wages and compensation of putative class
2 members; and the policies, procedures, and practices pertaining to approval and/or
3 payment of overtime and double time, amongst other topics. *Id.* at ¶ 28.

4 Plaintiff engaged in further informal discovery as well, interviewing putative
5 class and obtaining signed declarations in support of her Motion for Class
6 Certification. *Id.* at ¶ 29.

7 The parties were well-informed and well-positioned to negotiate a fair
8 settlement, and each side developed their own exposure analyses. *Id.* at ¶ 32. The
9 parties were not able to arrive at a final settlement amount through negotiation, but
10 the mediator made a proposal that both sides could ultimately accept. *Id.* The process
11 that the Parties undertook, particularly after the Court’s Orders regarding the previous
12 settlement, demonstrates an informed, arms-length negotiation.

13 *b) The Settlement provides a meaningful benefit to Class*
14 *Members and has no obvious deficiencies*

15 A proposed settlement is not to be measured against a hypothetical ideal result
16 that might have been achieved. *See, e.g., In re Heritage Bond Litig.*, 2005 WL
17 1594403, at * 2 (C.D. Cal. June 10, 2005) (quoting *Officers for Justice*, 688 F.2d at
18 625) (a proposed settlement should not “be judged against a hypothetical or
19 speculative measure of what might have been achieved.”); *Nat’l Rural Telecomm’s*
20 *Coop v. Directv, Inc.*, 221 F.R.D. 523, 527 (C.D. Cal. 2004) (“[I]t is well-settled law
21 that a proposed settlement may be acceptable even though it amounts to only a
22 fraction of the potential recovery that might be available to the class members at
23 trial.”).

24 The Settlement provides a beneficial result for the Class. After estimated
25 attorneys’ fees and costs, the proposed service award, the LWDA payment, and the
26 estimated costs of settlement administration, there will be an estimated \$1,026,206.75
27 for distribution to the Settlement Class and PAGA Members. *See Konecky Decl.* at
28 ¶¶ 42. There are approximately 1,097 Settlement Class Members. *Id.* The average net

1 Settlement Share will be approximately \$897.67 per individual, not including the
2 Individual PAGA Payments for the Class Members who also are PAGA Employees.
3 *Id.*

4 Under the weighted distribution formula discussed below, the average
5 Settlement Share will be approximately \$1,245.80 per individual who worked at
6 “pop-up” sites or LAUSD K-12 sites; and \$618.71 per individual who worked at
7 Ginkgo K-12 school sites. The amount will increase or decrease for each Class
8 Member depending upon the number of shifts the Class Member has worked for each
9 assignment type during the Class Period. *See* Settlement Agreement at ¶ 44.

10 Further, based on counsel’s investigation, the average recovery is a reasonable
11 approximation of the amount of premium wages that might be owed for noncompliant
12 meal and rest periods if the claims were successful on the merits. The weighted
13 average hourly wage for the Settlement Class Members is approximately \$38.27.
14 Konecky Decl. at ¶ 49. In turn, the average recovery per shift worked is \$15.91. *Id.*
15 at ¶ 42. As discussed below, this wage recovery is within the violation rate that
16 Plaintiff’s counsel estimated based on their interviews with the Class Members.

17 Additionally, the Settlement provides the Class Members the opportunity,
18 should they disagree with Defendant’s records regarding their number of shifts
19 (during the Class Period) and pay periods (during the PAGA Period), to provide
20 documentation and/or an explanation to show contrary shifts and/or workweeks.
21 Settlement Agreement at ¶ 36. If there is a dispute, the Settlement Administrator will
22 attempt to resolve it, with consultation with Defense and Class Counsel as
23 appropriate. *Id.* If those efforts fail, the Court will resolve the dispute. *Id.* Class
24 Members will also be given the opportunity to object to the Settlement and, at the
25 Court’s discretion, to appear at the Final Approval/Fairness Hearing to have their
26 objections heard by the Court. *Id.* at ¶¶ 19, 30. Settlement Class Members will further
27 have the opportunity to opt out of the class portion of the Settlement should they so
28

1 desire. *Id.* at ¶¶ 29-30.⁵ These procedural safeguards are explained in the Notice of
2 Class Action and PAGA Settlement to the Class (attached as Exhibit 1 to the
3 Settlement Agreement and as Exhibit B to the Konecky Decl.)

4 In addition to the meaningful monetary benefit described above, it is noteworthy
5 that, after this case was filed, Defendant hired a “Senior HR California labor
6 specialist” to implement California-specific policies and procedures pertaining to
7 meal and rest periods. *See id.* at ¶ 66. These policy changes, adopted after the lawsuit,
8 provide an additional benefit to the Settlement Class that supports preliminary
9 approval.

10 c) *Calculation of Defendant’s Potential Exposure and*
11 *Reasonableness of Discounts to Achieve Settlement*

12 Plaintiff’s counsel calculated Defendant’s potential exposure based on specific
13 information as to the shifts worked, time recorded for the shifts, the client for the
14 shifts, and the hourly wage rate, for each Class Member, as exported by Defendant
15 from its ADP and SAP concur time and payroll systems. *Id.* at ¶ 48.

16 The exposure that Plaintiff calculated, the discounts to this exposure, and the
17 reasoning therefor, are discussed in counsel’s Declaration. *Id.* at ¶¶ 48-68. Below,
18 Plaintiff provides a summary discussion of her risk assessment to illustrate why the
19 ultimate result represents a reasonable compromise.

20 Plaintiff calculated potential exposure by applying assumptions as to the rate of
21 violations that significantly exceed her reasonable assessment of the extent of
22 damages, even if she were prove that Defendant was liable on a class basis. Indeed,
23 Plaintiff’s calculation of total exposure was premised on Class Members having one
24 noncompliant rest period *per shift*, one noncompliant meal period *per shift*, and 30
25

26 ⁵ Under applicable law, Class Members will not have an opportunity to opt out of the
27 PAGA portion of the settlement, as this technically belongs to the State of California,
28 which also is receiving notice of the Settlement. *Uribe v. Crown Building*
Maintenance Co., 70 Cal.App.5th 986, 1001 (2021) (citations omitted).

1 minutes of off-the-clock set-up and clean up work *per shift* (except for the Class
2 Members at the Ginkgo sites, whose exposure calculations did not include meal
3 period or overtime damages because they had an average shift length of 4.7 hours and
4 were generally guaranteed pay for six hours per shift). *Id.* at ¶ 50.

5 However, Plaintiff’s Counsel’s interviews with Class Members and review of
6 timecard information produced by Defendant in the case indicated that the resulting
7 violation rate would likely be substantially less than 100% and challenging to prove
8 on a class basis. *Id.* at ¶ 54.

9 Additionally, the parties vigorously disputed whether the auto-deduct policy
10 itself was facially unlawful, and by late 2022, RCM had implemented a more robust
11 set of written break and overtime policies. Similarly, while RCM’s template emails
12 to the nurses before the end of 2022 stated that local manager approval would be
13 necessary to document deviations from the presumptive schedule (which Plaintiff
14 maintains causes nurses to underreport their time and noncompliant breaks), RCM’s
15 timecards still had language on them instructing the nurses to accurately document
16 their time (which RCM would argue demonstrates a lawful policy). Taken together,
17 this meant there would be risk in prevailing on a claim that the policies themselves
18 were unlawful on their face *Id.* at ¶¶ 56-57.

19 This in turn raises a likelihood that Plaintiff would need to prove the extent of
20 Defendant’s liability based on representative testimonial evidence to establish a
21 “pattern and practice” of noncompliant breaks and off-the-clock work. Proving
22 liability in this manner carried further risk and uncertainty. *Id.* at ¶¶ 58. In addition
23 to potential variation in Class Member testimony, Defendant also maintained that its
24 clients had documented, reliable procedures for ensuring meal and rest breaks were
25 provided. While Plaintiff disputes that this was the nurses’ experience on the ground,
26 these arguments nevertheless carried risk. Furthermore, the impact of the policies and
27 alleged omissions was subject to further debate and uncertainty. Defendant would
28 point to timecards showing facial compliance, while Plaintiff would argue that there

1 was a practice of having timecards filled out superficially to give the appearance of
2 compliance. *Id.* at ¶ 59. These are non-exhaustive examples of the risks that we
3 considered in making deductions from our exposure analysis. *See id.* at ¶¶ 53-68.

4 In evaluating the reasonableness of the settlement, Plaintiff has made estimates
5 in terms of the rate at which Class Members missed meal and rest periods and/or
6 worked off the clock, followed by estimations as to their risk in maintaining a class
7 action, followed by the risks in proving class liability and class-wide damages, and
8 for the penalty claims, the additional risks of proving willful violations, knowing and
9 intentional violations, and the good faith defense. This analysis is further elaborated
10 in counsel’s declaration. *Id.* at ¶¶ 63-67.

11 Courts have long recognized the inherent risks and “vagaries of litigation,” and
12 emphasized the comparative benefits of “immediate recovery by way of the
13 compromise to the mere possibility of relief in the future, after protracted and
14 expensive litigation.” *Nat’l Rural Telecomm*, 221 F.R.D. at 526. Proceeding to trial in
15 this action under the circumstances would be risky to the class and delay any chance
16 of recovery. Considered against the risks of continued litigation, the potential for
17 delay and limitations in recovery even if Plaintiff and the class were successful, and
18 the importance of a reasonably speedy recovery to the Settlement Class Members, the
19 totality of relief provided under the proposed Settlement is well within the range of
20 reasonableness.

21 *d) The Distribution Formula is Reasonable*

22 The Parties have proposed a distribution formula that reasonably reflects the
23 differential in the value of claims between those Class Members worked at the “pop
24 up” sites and LAUSD K-12 school sites, on the one hand, versus those who worked
25 at the Ginkgo K-12 school sites, on the other. Specifically, the proposed distribution
26 formula values the shifts for providing Covid testing at the “pop up” sites and LAUSD
27 K-12 sites at a rate of 1.5 to 1 to those at the Ginkgo K-12 schools. *Id.* at ¶ 43. This
28 reflects the likely differential in average violations incurred by Settlement Class

1 Members given the shorter shifts worked at the Ginkgo sites. *Id.* Defendant’s data
2 show that the average shift length was 8.4 hours at the San Bernardino County pop-
3 up sites and 7.7 at the LAUSD K-12 school sites, as compared to 4.7 at the Ginkgo
4 sites. Further, RCM had a general practice of guaranteeing 6 hours of pay at the
5 Ginkgo sites even if the actual hours worked were lower. *Id.* Thus, while RCM’s meal
6 and rest period policies, as well as its policies for how nurses should record their time,
7 were the generally same between the pop-up sites and the K-12 school sites, the
8 shorter shift length combined with the 6-hour guaranteed shifts, means that the nurses
9 working at the Ginkgo K-12 school sites as a practical matter would not be entitled
10 to as many meal and rest periods and would not work off-the-clock to the same extent
11 as the nurses at the pop-up locations. *Id.* The proposed distribution formula
12 reasonably accounts for these differentials.

13 e) *Service Award and Attorneys’ Fees and Costs*

14 The maximum service award Plaintiff Grady will seek under the Amended
15 Settlement Agreement is \$5,000. *See* Settlement Agreement at ¶ 8.

16 Service awards “are intended to compensate class representatives for work done
17 on behalf of the class, to make up for financial or reputational risk undertaken in
18 bringing the action, and, sometimes, to recognize their willingness to act as a private
19 attorney general.” *Rodriguez v. West Publ’g Corp.*, 563 F.3d 948, 958-59 (9th Cir.
20 2009); *see also Weeks*, 2013 WL 6531177, at *34. The factors courts use in
21 determining whether to authorize a service award include: “1) the risk to the class
22 representative in commencing suit, both financial and otherwise; 2) the notoriety and
23 personal difficulties encountered by the class representative; 3) the amount of time
24 and effort spent by the class representatives; 4) the duration of the litigation[;] and 5)
25 the personal benefit (or lack thereof) enjoyed by the class representative as a result of
26 the litigation.” *Van Vranken v. Atl. Richfield Co.*, 901 F. Supp. 294, 299 (N.D. Cal.
27 1995).

28 The time and effort Plaintiff invested into this case was substantial. She

1 appeared for deposition, appeared for the mediation, and had numerous phone calls
2 and meetings with Plaintiff’s counsel throughout the case to provide information and
3 evidence. *See* Grady PA Decl. at ¶ 12. She not only initiated the case, but continued
4 her commitment to the Class even when the circumstances may have prompted others
5 to settle individually or quit. *Id.* at ¶¶ 10-11. Plaintiff intends to seek a service award
6 of \$5,000 by separate motion to be heard at the final approval hearing.

7 Plaintiff’s counsel also will be filing a separate motion for attorneys’ fees and
8 costs pursuant to Fed. R. Civ. P. 23(h). Under the Amended Settlement Agreement,
9 Plaintiff will not seek attorneys’ fees above the 25% benchmark in the Ninth Circuit.
10 *See* Settlement Agreement at ¶ 4. In addition, Plaintiff will seek reimbursement of
11 out-of-pocket costs, not to exceed \$50,000. *Id.* To date, Plaintiff has invested more
12 than 875 hours into the case and anticipates that the maximum fee being sought will
13 result in a negative multiplier on the lodestar. *See* Konecky Decl. at ¶ 77. Plaintiff
14 proposes that she file her motion for attorneys’ fees and costs within two weeks of
15 the mailing of the class notice to afford Class Members a full opportunity to review
16 and comment on it. *See In re: Mercury Interactive Corp. Sec. Litig. v. Mercury*
17 *Interactive Corp.*, 618 F.3d 988, 991 (9th Cir. 2010).

18 **D. The Court Should Order Dissemination of the Proposed Class Notice**

19 1. The Settlement Agreement provides for the best method of
20 notice practicable under the circumstances

21 The federal rules require that before finally approving a class settlement, “[t]he
22 court must direct notice in a reasonable manner to all class members who would be
23 bound by the proposal.” Fed. R. Civ. P. 23(e). Where the class is certified pursuant to
24 Rule 23(b)(3), the notice must be the “best notice practicable under the circumstances,
25 including individual notice to all members who can be identified through reasonable
26 effort.” Fed. R. Civ. P. 23(c)(2)(B).

27 The parties have agreed on a notice plan that would provide Class Members
28 with individual notice by first class mail. Additionally, where notices are returned as

1 undeliverable a second time even after skip tracing and re-mailing, the parties will
2 endeavor to identify the recipients' email addresses and provide notice by email.
3 Further, the Settlement Administrator will establish a website where Class Members
4 can access the Notice and other important case documents. Settlement Agreement at
5 ¶¶ 61(a)(i)-(iii). Plaintiff requests that the Court approve this method of notice as the
6 best practicable under the circumstances. *See, e.g., Rannis v. Recchia*, 380 F. App'x.
7 646, 650 (9th Cir. 2010) (finding mailed notice to be the best notice practicable where
8 reasonable efforts were taken to ascertain class members' addresses). Plaintiff further
9 requests that the Court appoint JND Legal Administration ("JND") to serve as
10 Settlement Administrator. JND's qualifications are described in the Declaration of
11 Alexander Williams, filed herewith.

12 2. The proposed form of notice adequately informs Class
13 Members of the litigation and their rights in connection
14 with the Settlement

15 The notice provided to Class Members should "clearly and concisely state in
16 plain, easily understood language" the nature of the action; the class definition; the
17 class claims, issues, or defenses; that the class member may appear through counsel;
18 that the court will exclude from the class any member who requests exclusion; the
19 time and manner for requesting exclusion; and the binding effect of a class judgment
20 on class members." Fed. R. Civ. P. 23(c)(2)(B).

21 The notice form proposed by the parties complies with Rule 23 and is
22 substantially similar to those encouraged by the Federal Judicial Center. *See* proposed
23 Notice to Class, Exhibit 1 to Settlement Agreement. It accurately informs Class
24 Members of the material terms of the Settlement and their rights pertaining to it,
25 including the right to opt out from or object to the Settlement. *Id.* The notice also will
26 be tailored for each individual and provide the Class Member's number and length of
27 shifts during the Class Period, the number of workweeks during the Class Period,
28 whether the Class Member is a current or former employee, and the estimated

1 settlement share of such Class Member in the event that all Class Members participate
2 in the Settlement. *Id.* Plaintiff thus requests that the Court approve the form of notice.

3 **E. The Court Should Set a Schedule for Final Approval**

4 The next steps in the settlement approval process are to notify the class of the
5 proposed settlement, allow Class Members an opportunity to file any objections,
6 disputes, or opt-outs, and hold a final approval hearing. Toward those ends, the parties
7 propose a schedule set forth in the Proposed Order submitted herewith.

8 **VI. CONCLUSION**

9 For the foregoing reasons, Plaintiff respectfully requests that the Court enter the
10 accompanying Proposed Order granting Plaintiff’s Motion for Preliminary Approval
11 of Class Action and PAGA Settlement, conditionally certifying the Settlement Class,
12 appointing Plaintiff as class representative and her attorneys as class counsel,
13 directing dissemination of the proposed class notice, and setting a hearing for the
14 purpose of deciding whether to grant final approval of the Settlement.

15 **VII. REQUEST TO BE EXUSED FROM L.R. 11-6.1**

16 This brief contains 9,909 words, which exceeds the brief length limit of L.R.
17 11-6.1. Plaintiff respectfully requests that the Court make an exception to the length
18 limitation here to allow for the showing at issue and because the Motion is expected
19 to be unopposed, thereby reducing the number of briefs in total.

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Dated: July 26, 2024

/s/ Joshua G. Konecky

Joshua G. Konecky
SCHNEIDER WALLACE
COTTRELL KONECKY LLP
Attorneys for Plaintiff

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CERTIFICATE OF SERVICE

I hereby certify that on July 26, 2024, I electronically filed the foregoing document with the Clerk of the Court using the Court’s CM/ECF system, which will send a notice of electronic filing to all CM/ECF participants.

/s/ Joshua G. Konecky
Joshua G. Konecky