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7 *Attorneys for Plaintiff and the Putative Class*

8  
9 **UNITED STATES DISTRICT COURT**  
10 **CENTRAL DISTRICT OF CALIFORNIA**

11  
12 BARBARA GRADY, individually  
13 and on behalf of all others similarly  
14 situated,

15 Plaintiffs,

16 v.

17  
18 RCM TECHNOLOGIES, INC.,

19 Defendant.  
20  
21  
22  
23  
24

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

**DECLARATION OF JOSHUA G.  
KONECKY IN SUPPORT OF MOTION  
FOR PRELIMINARY APPROVAL OF  
CLASS ACTION AND PAGA  
SETTLEMENT**

**Date:** August 18, 2023

**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

1 I, Joshua G. Konecky, declare as follows:

2 1. I am an attorney duly licensed to practice law in the State of California and  
3 counsel of record for Plaintiff in the above-captioned case. I am familiar with the file, the  
4 documents, and the history related to this case. The following statements are based on my  
5 personal knowledge and review of the files. If called on to do so, I could and would testify  
6 competently thereto.

7 2. I am submitting this Declaration in support of Plaintiff's renewed motion for  
8 preliminary approval of the proposed class action and PAGA settlement, and conditional  
9 certification of a settlement class under Fed. R. Civ. P. 23. The renewed motion addresses  
10 questions and concerns raised by the Court in its Order of May 2, 2023, which denied  
11 without prejudice Plaintiff's initial motion for preliminary approval. ECF 30.

12 3. Since the Court's Order, the Parties have agreed to amend the Settlement  
13 Agreement to address issues concerning the distribution formula, attorneys' fees and  
14 costs, and service award. The Amended Settlement Agreement also memorializes more  
15 specifically the documents and data produced by Defendant in connection with the  
16 mediation and settlement discussions, which I also discuss below.

17 4. A true and correct copy of this Amended Joint Stipulation of Class Action and  
18 PAGA Settlement and Release ("Amended Settlement Agreement") is attached to this  
19 Declaration as **Exhibit A**. A redlined version of this Amended Settlement Agreement  
20 tracking the changes from the previous version is attached hereto as **Exhibit B**. An  
21 amended proposed Notice of Settlement, subject to court approval and formatting by the  
22 Settlement Administrator, is attached as Exhibit 1 to the Amended Settlement Agreement.  
23 For the Court's convenience, the amended proposed Notice is also attached to this  
24 Declaration as **Exhibit C**.

25 **EXPERIENCE OF COUNSEL**

26 5. I have been counsel for Plaintiff and the proposed plaintiff class throughout this  
27 case. I am a partner at Schneider Wallace Cottrell Konecky LLP, which is a leading private  
28 plaintiff firm in employment and other class action cases. More details on the work,

1 experience and accomplishments of the firm can be found at [www.schneiderwallace.com](http://www.schneiderwallace.com).

2 6. A copy of my curriculum vitae, which contains a representative list of class  
3 action and multi-plaintiff cases I have handled, is attached as **Exhibit D** to this  
4 Declaration.

5 7. My practice over the past twenty years has focused on the representation of  
6 plaintiffs in class and representative actions involving wage and hour disputes. I have also  
7 litigated class actions in employment discrimination and disability rights, including cases  
8 involving access to public accommodations and educational services under the Americans  
9 with Disabilities Act of 1990 (ADA). I also have litigated and tried business disputes.

10 8. As I mentioned above, my firm is also a leading class action firm. Our partners  
11 and attorneys have litigated major wage and hour class actions, have won several  
12 prestigious awards, and sit on important boards and committees in the legal community.  
13 The Recorder has listed our firm as one of the “top 10 go-to plaintiffs’ employment firms  
14 in Northern California.” I also have been named by the Daily Journal as a top labor and  
15 employment attorney in California and I have been on the Northern California Super  
16 Lawyers list every year since 2011.

17 9. I have been lead counsel and/or co-lead counsel in numerous class actions. In  
18 this capacity, I have successfully litigated contested class certification motions in some  
19 twenty or more cases and have brought several certified class actions to trial. I also have  
20 negotiated numerous class action settlements, both before and after contested motions for  
21 class certification.

22 10. My experience includes class actions involving off-the-clock and meal and rest  
23 periods claims asserted by nurses and other healthcare workers. For example, I was lead  
24 counsel in *Shaw v AMN Healthcare, Inc.*, 326 F.R.D. 247 (N.D. Cal. July 5, 2018), a wage  
25 and hour case on behalf of traveling nurses placed at Kaiser facilities in California. *Shaw*  
26 did not resolve until after extensive discovery and motion practice, due to the  
27 particularities and dynamics of the case. *Shaw v. Amn Servs.*, 2019 U.S. Dist. LEXIS  
28 239899, at \*2 (N.D. Cal. May 31, 2019). *Shaw* also included numerous depositions of

1 nurses concerning (among other things) their duties and the time it takes to perform them.  
2 As a different kind of example, I also was plaintiffs’ counsel in *Gnaedig et al., v Favorite*  
3 *Healthcare Staffing, Inc.*, 21STCV20904 (Superior Court, Los Angeles County). This  
4 case was brought on behalf of a similar type of class of traveling nurses but resolved on  
5 a class action basis for fair value before motion practice and formal discovery, due to the  
6 particularities and dynamics presented there. Additionally, my partners and colleagues at  
7 our firm have litigated several other cases involving claims by nurses of off-the-clock  
8 work and missed meal and rest periods, which also have helped me to evaluate policies  
9 and fair settlement value.

10 11. Through the many employment class action cases that I have litigated and  
11 observed, I have gained substantial experience in class action law and practice over the  
12 years, including cases in the nursing and healthcare industry. I believe that my experience  
13 in these cases has allowed me to develop, not just the skills to litigate and try such cases  
14 successfully, but also to have good judgment in terms of understanding the strength,  
15 value, and risks of them when it comes time to making decisions regarding settlement and  
16 whether a potential settlement provides fair value at various stages of the litigation.

17 **THE COMPLAINT AND PROCEDURAL HISTORY BEFORE MEDIATION**

18 12. RCM Technologies (USA), Inc. (“Defendant” or “RCM”) is a specialty  
19 healthcare staffing company that employs numerous traveling nurses in California at  
20 various healthcare sites with which it contracts. Compl. (ECF 1-1) at ¶ 1.

21 13. In approximately June 2021, my firm was contacted by Barbara Grady, who  
22 worked for RCM as a nurse from approximately August 30, 2020 through approximately  
23 October 17, 2020. Ms. Grady contacted us regarding concerns over unpaid, off-the-clock  
24 work and missed meal and rest periods at her placement sites. RCM had placed Ms. Grady  
25 in both skilled nursing facility settings and at COVID testing sites. Ms. Grady’s time was  
26 tracked using timesheets. Ms. Grady reported that in both placement settings, she had to  
27 perform work before and after her official start time without compensation. She also  
28 reported difficulties in securing off-duty meal and rest periods.

1 14. On July 22, 2021, we submitted a notice to the California Labor and Workforce  
2 Development Agency (LWDA) regarding the portion of Ms. Grady’s claims that might  
3 be brought under the Private Attorneys General Act (“PAGA”).

4 15. After Defendant received and evaluated the PAGA notice, we had some  
5 discussions with Defendant through their counsel and entered into a tolling agreement  
6 under which Defendant agreed to toll the statute of limitations effective October 8, 2021,  
7 on all Plaintiff’s claims for the purposes of creating space for settlement discussions,  
8 before a case was filed in court. However, the parties did not resolve the claims at that  
9 time. We therefore provided notice to Defense counsel that Ms. Grady would file a class  
10 action and PAGA complaint.

11 16. On February 7, 2022, we filed Ms. Grady’s class action and PAGA enforcement  
12 complaint in the San Bernardino County Superior Court. The complaint alleged that  
13 Defendant suffered and permitted Plaintiff and other similarly situated nurses and  
14 employees working in like hourly positions to work off-the-clock at their placements. The  
15 off-the-clock work included activities such as setting up and/or breaking down  
16 equipment, and conducting patient hand-offs between shifts. The complaint further  
17 alleged, among other things, that the nurses did not receive off-duty meal and rest periods  
18 at the frequency and duration required by California law. *See, e.g.*, Compl. (ECF 1-1) at  
19 ¶¶ 1-4, 20-28. The complaint sought back wages, penalties, and declaratory relief. *See id.*  
20 at p. 25:11-27:11. It alleged claims under Cal. Lab. Code §§ 201-204, 221-223, 226,  
21 226.7, 510, 512, 1174, 1174.5, 1194, and 1198 *et seq.*; IWC Wage Order No. 5; the Cal.  
22 Code of Regs., Title 8 § 11040 and ¶¶ 7, 11, & 12; the Private Attorneys General Act of  
23 2004 (“PAGA”); and the Cal. Bus. & Prof. Code. *Id.* at ¶¶ 36-109.

24 17. On May 19, 2022, Defendant removed the action to this Court. ECF 1.  
25 Defendant filed its Answer and Affirmative Defenses on the same day, denying the  
26 allegations. ECF 1-2. Defendant also has maintained that putative class members have  
27 worked at different sites, for different clients, and under different conditions of  
28 employment (including under arbitration agreements), than Plaintiff, rendering class

1 certification unsuitable.

2 18. On June 28, 2022, the parties conducted their initial Rule 26(f) conference. On  
3 July 12, 2022, the parties exchanged initial disclosures.

4 19. On August 2, 2022, we served Plaintiff's first sets of interrogatories and requests  
5 for production of documents on Defense counsel. In the months that followed, we  
6 engaged in ongoing meet and confer with Defense counsel (by videoconference and in  
7 writing) regarding these requests and the appropriate scope of pre-certification discovery.  
8 When the parties were unable to resolve their differences, we sought an informal  
9 discovery conference with Magistrate Judge Kewalramani, which took place on  
10 November 8, 2022.

11 20. In the meantime, we met and conferred with Defense counsel regarding the  
12 possibility of exploring an early resolution and agreed to schedule a private mediation  
13 session. As part of this process, we also met and conferred with Defense counsel regarding  
14 the production of informal discovery that would enable us to meaningfully evaluate  
15 potential liability and damages.

16 **MEDIATION DISCOVERY**

17 21. In connection with the mediation, Defendant provided us with documents and  
18 data that assisted in our evaluation of the strengths and weaknesses of the claims and  
19 allowed us to prepare an exposure analysis for mediation.

20 22. With respect to documents, Defendant produced the written information and  
21 instructions provided to nurses concerning timecard completion, timecard protocol, and  
22 meal break requirements and procedures. Defendant also produced its Travel Assignment  
23 Contract for nurses in California, which also showed Defendant's policies regarding  
24 hourly pay, recording hours worked, and meal and rest periods. Additionally, Defendant  
25 produced a copy of its mandatory arbitration agreement for the nurses, which contains a  
26 class and collective action waiver, among other provisions.

27 23. Defendant also produced data showing the following information for each  
28 putative class member: (a) the job title of the nurse; (b) the date of each shift worked by

1 the nurse; (b) the hours clocked-in for each shift; (c) the hourly pay rate paid for each  
2 shift; (d) the location of the assignment for each shift; and (e) the type of service  
3 corresponding to each shift (e.g. Covid testing, hospital work, schools, etc.) Defendant  
4 also provided workweek information from which the number of wage statements issued  
5 to each Class Member could be calculated.

6 24. After the mediation, Defendant provided confirmatory discovery regarding the  
7 data sources for the composition of the class list, hours worked and shift counts; meal and  
8 rest period premium totals; and additional timekeeping and meal and rest break policies.

### 9 MEDIATION

10 25. On December 7, 2022, we had a mediation before Michael J. Loeb of JAMS, an  
11 experienced mediator in this area of law. As part of the mediation process, we had  
12 prepared a substantive mediation brief examining the evidence, the legal claims and  
13 defenses, and potential scope of damages. Defense counsel also shared their mediation  
14 brief and analysis with us. Each side prepared exposure analyses used in the negotiation  
15 based on the data produced prior to the mediation. We vetted the claims through rigorous  
16 back-and-forth that covered an array of issues, ranging from class certification and  
17 arbitration issues, to merits questions and possible damages. We participated in the  
18 mediation with a well-informed understanding of the disputed factual and legal issues that  
19 would be in play if the case proceeded with further litigation.

20 26. The mediation was conducted at arms-length. The mediator, Mr. Loeb, explored  
21 and challenged the parties on many issues. After a full day of rigorous negotiation, Mr.  
22 Loeb presented a mediator's proposal. After serious consideration, discussions with our  
23 client, and further communications with Mr. Loeb, we accepted the mediator's proposal  
24 for the material terms of the settlement. Defendant also accepted the mediator's proposal.  
25 We then worked with Defense counsel to resolve some remaining issues and questions so  
26 that the parties had a complete agreement.

27 27. After the parties completed their negotiation and execution of the long form  
28 settlement agreement, Plaintiff filed a motion for preliminary approval of the proposed

1 settlement on March 3, 2023. ECF 28. On May 2, 2023, the Court issued its Order  
2 denying the motion without prejudice. ECF 30.

3 28. The parties amended the original long form settlement agreement to address  
4 concerns raised by the Court in the Order of May 2. The Amended Settlement Agreement  
5 is attached as **Exhibit A** and a redlined document showing the changes from the previous  
6 version is attached as **Exhibit B** to this Declaration. Attached as **Exhibit C** to this  
7 Declaration is an amended proposed settlement notice that corresponds with the changes  
8 made to the proposed Settlement Agreement.

9 29. Pursuant to Cal. Lab. Code § 2699(1)(2), my office submitted a copy of the  
10 previous version of the Settlement Agreement to the Labor and Workforce Development  
11 Agency (LWDA) on March 3, 2023. We have not received comment from the LWDA.  
12 We are also submitting a copy of the Amended Settlement Agreement.

13 **VALUE AND MATERIAL TERMS OF THE SETTLEMENT**

14 30. As memorialized in Paragraph 66 of the Amended Settlement Agreement, there  
15 are an estimated 1,414 Class Members who worked for RCM between October 8, 2017  
16 and October 22, 2022, and an estimated 90,939 shifts in the Class Period as of that date.  
17 (The Class Period runs from October 8, 2017 to March 7, 2023. *Id.* at ¶ 7.) As I explain  
18 in further detail below, the Amended Settlement Agreement contains an escalator clause  
19 to protect the Class’s interests in the event that a material number of additional Settlement  
20 Class Members are identified. (Defense counsel has informed us that based on a review  
21 of the data through March 7, 2023, the escalator clause will not be triggered.)

22 31. The proposed Settlement is for a non-reversionary Gross Settlement Amount of  
23 \$1,600,000.00. *See* Amended Settlement Agreement at ¶ 15. This Gross Settlement  
24 Amount does not include the employer’s side of the payroll taxes associated with the  
25 settlement payments, which Defendant is obligated to pay in addition to the Gross  
26 Settlement Amount. *Id.* at ¶¶ 12, 15, 51, 61. Section 59(e) of the Amended Settlement  
27 Agreement explicitly provides that there will be no reversion of any of the Gross  
28 Settlement Amount to the Defendant. To the extent there are any uncashed checks or other



1 residual, it will be paid to a Court-approved *cy pres* beneficiary or to the State Controller's  
2 Office, Unclaimed Property Division. *Id.* at ¶ 59(g)(iii).

3 32. The case also alleged claims under California's Private Attorneys' General Act  
4 (PAGA), Cal. Lab. Code sections 2699, *et seq.* Under the PAGA, private individuals step  
5 into the shoes of the Labor Commissioner to pursue claims for civil penalties, with 75%  
6 of the penalties paid to the Labor and Workforce Development Agency (LWDA) and  
7 another 25% to be paid to the aggrieved employees. Here, the parties have allocated a  
8 \$200,000.00 for the PAGA claims, with 75% of it earmarked for the LWDA. *See*  
9 Amended Settlement Agreement at ¶¶ 22 & 52.

10 33. The Net Settlement Amount is the Gross Settlement Amount minus: the  
11 \$200,000 allocated to the claims for civil penalties under the PAGA; the settlement  
12 administration costs (capped at \$31,050); the service award the Court may approve for  
13 the Class Representative (up to \$5,000); and the amount the Court may approve for  
14 reasonable attorneys' fees and costs (up to twenty-five percent of the total settlement  
15 amount in fees plus costs of not more than \$15,000). *Id.* at ¶¶ 4, 8, 15, 18, 22, 33, 51, 52,  
16 59(h) & (i), 60.

17 34. If the foregoing amounts are approved, the Net Settlement Amount would be  
18 approximately \$938,950.00 and the portion of the PAGA allocation to be distributed to  
19 the employees would be \$50,000. As mentioned above, there are approximately 1,414  
20 Class Members and 90,939 shifts. *See* Amended Settlement Agreement at ¶ 66. At these  
21 numbers, there would be an average award of \$664 per Class Member and \$10.87 per  
22 shift, plus the Class Member's share of the PAGA allocation. Each Class Member's award  
23 would increase or decrease from the average based on the distribution formula set forth  
24 in 59(f) of the Amended Settlement Agreement.<sup>1</sup>

25 35. The proposed Settlement also includes an Escalator Clause, found at Paragraph  
26

27 <sup>1</sup> As set forth in Paragraph 59(f) of the Amended Settlement Agreement and discussed below, the parties  
28 agreed to revise the distribution formula from workweeks to shifts so that, as observed by the Court, it  
could better account for individuals working more or less shifts per week from one another. The parties  
also agreed to a graduated weighting of the shifts based on length and agreed to allocate a percentage of  
the Net Settlement Fund to waiting time penalties that is proportional to exposure.

1 66 of the Amended Settlement Agreement. This clause provides that, in the event the  
2 actual number of Class Members in the Class Period exceeds 1,414 by more than 10% or  
3 the actual number of shifts in the Class Period exceeds 90,939 by more than 10%, at  
4 Defendant's option, it shall either (1) pay a pro rata additional sum for the amount  
5 exceeding 10%; or (2) elect to end the release date when the number of putative class  
6 members or shifts exceeds 10% over the represented amounts. Again, Defense counsel  
7 has recently informed us that based on a review of the data through March 7, 2023, the  
8 escalator clause will not be triggered.

9 **CALCULATION OF DEFENDANT'S MAXIMUM POTENTIAL EXPOSURE**

10 36. We calculated Defendant's maximum potential exposure based on timecard and  
11 payroll data provided by Defendant for the Class. As discussed above, this provided  
12 specific information as to shifts worked, length of shifts, locations worked, and hourly  
13 wage rates for each Class Member.

14 37. In addition to the full class data provided by Defendant, we incorporated the  
15 information provided to us by the named plaintiff regarding the length of time it took her  
16 and others with whom she worked to perform the pre- and post-shift activities alleged to  
17 occur off-the-clock, as well as the stresses placed on her and the other nurses with respect  
18 to getting fully compliant meal and rest periods. The named plaintiff worked at numerous  
19 locations for Defendant and thus had representative experience. She also referred several  
20 co-workers to us to interview to inform our assessment of the case.

21 38. While, concededly, we agreed during the informal discovery conference to defer  
22 a motion to compel production of class contact information, we did vet the estimates and  
23 information we were able to obtain before mediation against testimony and interviews  
24 taken in other nursing cases we have done over the past several years that evaluated the  
25 length of time it takes to perform the same types of tasks. I do not mean to suggest that  
26 any two employers or cases are the same—they are not. Nonetheless, our experience with  
27 analogous cases did provide us with some reasonable benchmarks and knowledge of  
28 industry practice. Still, we performed our exposure calculation based on the specific

1 timecard and wage data for the Class provided by the Defendant here.

2 39. For purposes of our maximum exposure calculation, we assumed a 100% rate -  
3 - that each employee had one non-complaint rest period for every shift that was at least  
4 3.5 hours, one non-complaint meal period for every shift that was five or more hours, and  
5 45 minutes of off-the-clock work per shift. (Defendant's timecard data showed an average  
6 shift length of approximately 5.5 hours and median shift length of approximately 8 hours.)  
7 This resulted in maximum damages of \$4,008,667 in rest period premium wages,  
8 \$3,485,051 in meal period premium wages, and \$4,757,538 in alleged off-the-clock  
9 wages, for a total of \$12,251,257. We calculated interest on the meal period, rest period  
10 and off-the-clock damages to be \$1,819,518. We performed these calculations on an  
11 employee-shift by employee-shift basis (including interest based on the date of each  
12 shift).

13 40. We also calculated maximum penalties based on a 100% violation rate for  
14 inaccurate wage statements under Labor Code 226 to be \$1,906,300. With respect to  
15 waiting time penalties, we calculated maximum exposure based on a 100% violation rate  
16 of \$12,969,727, based on the position that all employees within the three-year statute of  
17 limitations would be former employee because each assignment was temporary.  
18 (Defendant informed us that their count of former employees is 1,306 of the 1,414 Class  
19 Members—*i.e.*, approximately 92%.) With respect to theoretic civil penalties under  
20 PAGA, we calculated \$2,365,700 for alleged meal and rest break violations and  
21 \$2,365,700 for off-the-clock violations. This assumes that we would prove at least one  
22 break violation and at least one off-the-clock violation for every employee, each pay  
23 period, within the PAGA limitations period. (We also calculated PAGA penalties to add  
24 onto the waiting time penalties and wage statement penalties.)

25 **DISCOUNTS BASED ON ASSESSMENT OF EVIDENCE AND RISK**

26 41. Based on our investigation with the plaintiff, we understood that a 100%  
27 violation rate was not a realistic starting point. Again, the named plaintiff worked at  
28 numerous locations for Defendant and we were able to have detailed discussions

1 regarding her experience and observations there. In addition, while disputed, there also  
2 was evidence presented that the named Plaintiff and others were able to take breaks and/or  
3 obtain premium pay when they could not. Indeed, we know from our experience in other  
4 similar cases that, even if certified as a class action, violation rates fall well short of 100%.  
5 In the end, we had to weigh the mix of evidence as to how often nurses may have worked  
6 off-the-clock or through breaks, whether such work was compelled or voluntary, and the  
7 resulting impact on the likelihood of achieving class certification, class liability, and/or a  
8 class-wide damages recovery.

9 42. It is our judgment that potential liability of one missed meal or rest a week and  
10 15 minutes of off-the-clock work per shift, for each Class Member, would be a reasonable  
11 benchmark for the kind of recovery we might seek at trial if we could proceed on a class  
12 basis. This would result in meal and rest period damages of approximately \$1,248,953  
13 and off-the-clock damages of approximately \$1,578,660. From this number, we had to  
14 consider the waiting time penalty claim and other derivative claims but also then apply a  
15 discount for litigation risk. While the waiting time penalty and PAGA claims have the  
16 potential to be eye-popping, we had to be realistic about the likelihood of showing a  
17 consistent level of violation. As indicated above, Defendant produced written policies  
18 instructing nurses how to take compliant meal and rest periods, and instructing them not  
19 to work off the clock, as well as evidence the breaks were taken or premiums paid. This  
20 is not to say that written policies prove compliance if there is a pattern of non-compliance,  
21 but the evidence at least at this stage created too much uncertainty in our view to justify  
22 pursuing further litigation rather than to accept the mediator's proposal (which came after  
23 extensive negotiation and to break an impasse).

24 43. After mediation, if the case were not to resolve, there would be extensive  
25 discovery and depositions, motion practice (including motions for class certification and  
26 summary judgment), and the possibility of a class action trial on some or all issues. This  
27 would have carried substantial risks for both sides on the overarching liability questions  
28 of whether Defendant committed wage and hour violations, and if so, the extent of the

1 violations.

2 44. Even if we had continued to litigate this case, the results were far from  
3 guaranteed. Defendants hotly contested many of the issues. First and foremost, Defendant  
4 vigorously contested the overarching question of whether it was suffering and permitting  
5 Class Members to work off-the-clock and to miss meal and rest periods, or that it was  
6 failing to provide overtime or premium pay as the law requires.

7 45. Assuming we prevailed at class certification and then demonstrated class-wide  
8 violations on some or all of the claims, the measure of damages presented further risk.  
9 As I discussed at the beginning of this Section, we understood that the extent of damages  
10 would be significantly lower than the maximum theoretical exposure we calculated.

11 46. Furthermore, one or more appeals would be likely given the nature of this case.  
12 Assuming we prevailed on class certification and liability, Defendant might appeal any  
13 number of determinations regarding class action status, liability, evidentiary rulings, and  
14 damages, causing potentially years of further delay. Throughout it all, Defendant might  
15 continue to argue that it maintained lawful policies and procedures and paid the Class  
16 Members sufficiently under California law.

17 47. These very practical considerations confirm our judgment, as experienced class  
18 action attorneys in cases such as this, that the proposed settlement provides fair value and  
19 a beneficial result for the class. While it is possible that Plaintiff could have won more  
20 than the current settlement value, it is also possible she could have won less (in either  
21 current value or absolute terms), or nothing at all. In contrast, the proposed settlement  
22 will secure reasonable recoveries for the individual Settlement Class Members and the  
23 class overall. We believe it is a fair result in light of the potential exposure and challenges  
24 posed by this case.

25 **AMENDED DISTRIBUTION FORMULA**

26 48. As set forth in Paragraph 59(f) of the Amended Settlement Agreement, the  
27 Parties agreed to allocate 60% of the Net Settlement Amount to claims for waiting time  
28 penalties that will be shared by the former employees. Defendant's data show that

1 approximately 1,306 of the 1,414 Class Members identified at the mediation were former  
2 employees—*i.e.*, approximately 92%. The 60/40 ratio also is reflective of the Parties’  
3 respective damages analyses and assessment of the strength of the claims.

4 49. With respect to the remaining allocation, the individual settlement award for  
5 each Participating Class Member will increase or decrease from the average  
6 proportionally based on the number of shifts the Participating Class Member worked in  
7 comparison to the total shifts of all the Participating Class Members combined.  
8 Additionally, the Parties agreed to weight the shifts by length, such that shifts of less than  
9 3.5 hours (*i.e.*, those not eligible for meal and rest periods) are weighted at 1.0; shifts  
10 between 3.5 and 5 hours are weighted at 1.5 (as they are eligible for one rest period);  
11 shifts between 5-10 hours are weighted at 2.0 (as they are eligible for a meal period and  
12 potentially an additional rest period); and shifts over 10 hours are weighted at 2.5 (as they  
13 could be eligible for two meal periods and multiple rest periods). As explained in the  
14 Court’s Order of May 2, 2023, the intent is to make the distribution formula more  
15 equitable among the Class members.

16 50. Under Section 59(g), there is a pro-rata distribution method to distribute the  
17 employee-share of the PAGA allocation. This distribution is based on pay periods, rather  
18 than shifts, because PAGA penalties are assessed on a pay period by pay period basis.  
19 Additionally, the PAGA Period is shorter than the Class Period due to the difference in  
20 statutes of limitations.

21 51. We appreciate the Court’s guidance regarding the distribution formula. We  
22 believe the amended formula described above fairly reflects how the claim value of the  
23 individual Class Members may increase or decrease depending on the number of shifts  
24 worked, shift length, number of pay periods, and whether the employee is still working  
25 for Defendant. It does not address every contingency or possible distinction, but it can  
26 be administered in an objective and manageable fashion. Additionally, the shift and pay  
27 period information to input into the formula for each Settlement Class Member and PAGA  
28 Member will come directly from Defendant’s records. Moreover, as explained in the

1 Amended Settlement Agreement and proposed Class Notice, Class Members will receive  
2 notice of the number of shifts and pay periods credited to them, and whether they are a  
3 current or former employee, and will have an opportunity to challenge Defendant's  
4 records if they do not believe the information shown is accurate.

5 **NOTICE OF PROPOSED SETTLEMENT**

6 52. Class Members will be notified of the settlement by first class mail. The parties  
7 have agreed to request that the Court appoint ILYM Group, Inc., to serve as the Settlement  
8 Administrator. Lisa Mullins, the President of ILYM Group, has submitted a declaration  
9 attesting to their qualifications to administer the settlement and their estimated costs for  
10 doing so.

11 53. The Settlement Administrator will undertake its best efforts to ensure that the  
12 notice is sent to the most current mailing address of each Class Member. The notice,  
13 objection, opt-out and dispute procedures are set forth in Paragraphs 19, 29, 30, 36, and  
14 59 of the Amended Settlement Agreement. Notice will be by First Class Mail, with the  
15 Settlement Administrator performing a National Change of Address search on all  
16 addresses before the mailing as well as skip tracing and re mailing of notices returned as  
17 undeliverable. Additionally, in the event a notice remains undeliverable even after skip  
18 tracing and re mailing, the parties will endeavor to obtain email addresses to send the  
19 notice by email.

20 54. The proposed Notice of Settlement is attached as Exhibit 1 to the Amended  
21 Settlement Agreement and separately as **Exhibit C** to this Declaration. It provides, among  
22 other things, a description of the case; the total settlement amount and how it will be  
23 allocated (including information about Plaintiff's motion for attorneys' fees and costs and  
24 how to review it); the procedures for opting out of the settlement, objecting to the  
25 settlement, and disputing settlement calculations; and an explanation of how the  
26 settlement allocations among Class Members will be calculated.

27 55. Each settlement notice also will be individually tailored to provide each Class  
28 Member an estimate of the amounts his or her Individual Class Settlement Payment and

1 Individual PAGA Payment. *See* Notice at § 7. The Notices also will be tailored to provide  
2 each Class Member with her or his dates of employment and number of shifts credited to  
3 him or her during the Class Period, and the formula for calculating the settlement  
4 payments. *Id.* at §§ 6-7. The Notice also explains how Settlement Class Members can  
5 dispute Defendant’s records as to their employment dates and number of shifts credited  
6 to them. *Id.* at § 6.

7 56. Additionally, Class Members will have forty-five days to decide whether to opt  
8 out of the Agreement or object to any terms of the Agreement, including Plaintiff’s  
9 application for attorneys’ fees and costs, and the proposed service awards. These  
10 procedures are contained in Paragraphs 19, 29, and 30 of the Amended Settlement  
11 Agreement and explained in Sections 11 and 12 of the proposed Notice.

12 57. Additionally, as referenced above, the Settlement provides each Settlement  
13 Class Member the opportunity, should they disagree with Defendant’s records regarding  
14 their employment dates and number of shifts, to dispute the records by providing  
15 documentation and/or an explanation to show different employment dates and/or shifts.  
16 *See* Amended Settlement Agreement at ¶ 36; Class Notice at § 7.

17 **PROPOSED SERVICE AWARD**

18 58. Ms. Grady provided a valuable service in the prosecution of this case. She  
19 initiated the case, consulted with Counsel at length, and provided important information  
20 regarding Defendant’s practices. As a traveling nurse who works short-term assignments  
21 and inevitably must apply to work for multiple staffing companies, she also faced  
22 professional risks by publicly stepping forward to challenge the policies and practices of  
23 a major staffing company in the industry.

24 59. The Amended Settlement Agreement permits Ms. Grady to seek a service award  
25 in an amount not to exceed \$5,000. This will be further discussed when Plaintiff files her  
26 motion for service award and supporting declaration in connection with the final fairness  
27 hearing.

28



**ATTORNEYS' FEES AND COSTS**

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2 60. The Amended Settlement Agreement provides that Plaintiff's counsel can move  
3 for a maximum fee award of 25% the Gross Settlement Amount, plus actual out-of-pocket  
4 costs not to exceed \$15,000. To date, our firm has invested over 325 hours into the case  
5 for a lodestar of approximately \$260,000. This does not include the additional time we  
6 will work on the case going forward, including work with the Settlement Administrator  
7 during implementation, work on the final approval motion and related papers, and  
8 responding to inquiries from Class Members. Based on experience, I know this time can  
9 be substantial.

10 61. Pursuant to Fed. R. Civ. P. 23(h), we intend to file a separate motion for  
11 attorneys' fees and costs on a date to be set by the Court. The separate motion for  
12 attorneys' fees and costs will provide analysis as to the reasonableness of the fees and  
13 costs sought and show how they fall within the range of fees awarded in similar class  
14 action cases. The separate motion will also include, among other things, the evidentiary  
15 documentation that this Court's procedures require.

**EXHIBITS**

16  
17 62. A true and correct copy of the Amended Class Action Settlement Agreement is  
18 attached to this Declaration as **Exhibit A**.

19 63. A true and correct copy of a redlined version of the Amended Class Action  
20 Settlement Agreement, showing the changes from the previous version, is attached to this  
21 Declaration as **Exhibit B**.

22 64. A true and correct copy of the proposed Notice to Class is attached hereto as  
23 **Exhibit C**.

24 65. A true and correct copy of my curriculum vitae is attached hereto as **Exhibit D**.

25  
26  
27 I declare under penalty of perjury under the laws of the State of California and the  
28 United States of America that the foregoing is true and correct and is based upon my

1 personal knowledge. Executed on June 30, 2023, in Berkeley, California.

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/s/ Joshua G. Konecky  
Joshua G. Konecky