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7
8 **UNITED STATES DISTRICT COURT**
9 **CENTRAL DISTRICT OF CALIFORNIA**

10
11 BARBARA GRADY, individually and
12 on behalf of all others similarly
situated,
13
14 Plaintiffs,
15
16 vs.
17 RCM TECHNOLOGIES, INC.,
18
19 Defendant.

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

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

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

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1 **NOTICE OF RENEWED MOTION AND RENEWED MOTION**

2 **TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:**

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

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

7 2. To certify under Federal Rule of Civil Procedure 23(a) & (b)(3), for
8 settlement purposes only, a Class comprising all current and former non-exempt
9 employees of Defendant who have worked for Defendant as a traveling nurse or like
10 hourly position in California between October 8, 2017 and March 7, 2023;

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

13 4. To appoint ILYM Group, Inc. as the Settlement Administrator;

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

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

18 This Motion is based on the accompanying memorandum of points and
19 authorities; the Settlement Agreement attached as Exhibit A to the Declaration of
20 Joshua G. Konecky; the Proposed Notice of Class Action Settlement (attached as
21 Exhibit C to the Declaration of Joshua G. Konecky and as Exhibit 1 to the Settlement
22 Agreement); the Declaration of Lisa Mullins, President of ILYM Group, Inc.; the
23 Declaration of Cheryl Borelli, Director of Operations for RCM Technologies (USA),
24 Inc., such oral argument as may be heard by the Court; and all other papers on file in
25 this action.

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Dated: July 1, 2023

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 \$1,600,000.00 non-
4 reversionary, class-action settlement to resolve this wage and hour case brought on
5 behalf of traveling nurses and those in other like hourly positions who have worked
6 for Defendant RCM Technologies (USA), Inc. (“RCM”) in California between
7 October 8, 2017 and March 7, 2023 (“Class Period”). The case alleges that Defendant
8 suffered and permitted these employees whom it hired and placed at various locations
9 in California (“Class Members”) to regularly work off-the-clock and without the off-
10 duty meal and rest periods to which they are entitled under California law. Defendant
11 denies that it failed to compensate Class Members for all work performed, that it
12 failed to provide off-duty meal and rest periods, or that it owes Class Members any
13 compensation or penalty pay.

14 This renewed motion and the supporting counsel declaration provide additional
15 detail as to the specific data and documents that Defendant produced to Plaintiff in
16 connection with the mediation as well as the maximum potential exposure that
17 Plaintiff’s counsel calculated. This renewed motion and the supporting declaration
18 also describe the assessment of the evidence and litigation risks that Plaintiff and
19 Plaintiff’s counsel considered in making discounts to ultimately agree to accept the
20 mediator’s proposal.

21 As described herein, the parties also agreed to make changes to the proposed
22 Settlement Agreement to address additional concerns raised in the Court’s Order of
23 May 2, 2023. *See* ECF 30. Specifically, the parties have agreed to allocate a
24 substantial portion of the Net Settlement Amount to waiting time penalties for former
25 employees. The Parties also have agreed to change the distribution formula for the
26 remaining claims from a workweek framework to a shift framework, and to have a
27 graduated weighting of shifts based on shift-length. The parties further have
28 memorialized that Plaintiff will not seek a service award greater than \$5,000 and

1 Plaintiff's counsel will not seek a fee award greater than 25% of the Gross Settlement
2 Fund. Additionally, the Settlement is not contingent on the Court awarding either of
3 these maximum amounts or any particular amount.

4 The proposed settlement represents a beneficial result for the Class Members
5 on Plaintiff's disputed claims. The proposed settlement also would ensure that the
6 recovery is distributed to Settlement Class Members in a reasonable proportion to the
7 estimated value of their individual claims. Settlement Class Members will share in
8 the recovery on a pro rata basis based on their number of shifts worked during the
9 Class Period.

10 The Joint Stipulation of Class Action and PAGA Settlement and Release
11 ("Settlement Agreement") also has a reasonable allocation to the LWDA for the
12 PAGA claim and none of the \$1,600,000 will revert Defendant. To the extent there
13 are any uncashed checks or other residual, it will be paid to a Court-approved *cy pres*
14 beneficiary or to the State Controller's Office, Unclaimed Property Division. The
15 settlement was reached through informed, arms-length negotiations by attorneys with
16 substantial experience in employment class actions, which were facilitated by an
17 experienced and neutral mediator.

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

24 **II. THE COMPLAINT AND PROCEDURAL HISTORY BEFORE**
25 **MEDIATION**

26 Plaintiff's previous motion for preliminary approval summarized the allegations
27 and procedural history leading up to the mediation and settlement in this action.
28 Plaintiff will not reiterate that all here, although it is contained in counsel's

1 Declaration submitted in support of this renewed motion. *See* Declaration of Joshua
2 G. Konecky ISO Plaintiff’s Renewed Motion for Preliminary Approval (“Second
3 Konecky Decl.”), at ¶¶ 12-20. As discussed therein, Plaintiff’s class claims are for
4 off-the-clock work and missed meal and rest periods on behalf of herself and other
5 traveling nurses employed by RCM Technologies (USA), Inc. (“Defendant” or
6 “RCM”), for placement in California facilities. *Id.* at ¶¶ 13, 16. RCM is a specialty
7 healthcare staffing company that employs nurses in California at various healthcare
8 sites with which it contracts. *Id.* at ¶ 12. After an exchange of documents, data and
9 investigation, summarized in more detail below, the parties appeared before Michael
10 J. Loeb of JAMS for a mediation on December 7, 2022. *Id.* at ¶ 24. The parties had
11 an arms-length negotiation and eventually accepted a mediator’s proposal for the
12 material terms of the proposed settlement now before the Court. *Id.* at ¶ 25.

13 **III. DISCOVERY AND INVESTIGATION FOR MEDIATION**

14 Plaintiff’s counsel investigated Plaintiff’s complaints with due diligence prior to
15 and in connection with the mediation. As a preliminary matter, Plaintiff worked at
16 multiple facilities for Defendant in California and provided information regarding her
17 experience at these facilities as well as what she observed and discussed with other
18 nurses of RCM. *See* Konecky Decl. at ¶ 36. Plaintiff also referred counsel to other
19 nurse witnesses to assist in the investigation. *Id.*

20 Before the mediation, Plaintiff requested and received certain categories of
21 documents and data from Defendant to assist in evaluating the case and to allow them
22 to prepare an exposure analysis for mediation. *See* Konecky Decl. at ¶¶ 22-23

23 With respect to documents, Defendant produced the written information and
24 instructions provided to nurses concerning timecard completion, timecard protocol,
25 and meal break requirements and procedures. *Id.* at ¶ 22. Defendant also produced its
26 Travel Assignment Contract for nurses in California, which also showed Defendant’s
27 policies regarding hourly pay, recording hours worked, and meal and rest periods. *Id.*
28 Additionally, Defendant produced a copy of its mandatory arbitration agreement for

1 the nurses, which contains a class and collective action waiver, among other
2 provisions. *Id.*

3 Defendant also produced data showing the following information for each
4 putative class member: (a) the job title of the nurse; (b) the date of each shift worked
5 by the nurse; (b) the hours clocked-in for each shift; (c) the hourly pay rate paid for
6 each shift; (d) the location of the assignment for each shift; and (e) the type of service
7 corresponding to each shift (e.g. COVID testing, hospital work, schools, etc.). *Id.* at
8 ¶ 23. Defendant also provided workweek information from which the number of
9 wage statements issued to each Class Member could be calculated. *Id.*

10 After the mediation, Defendant provided confirmatory discovery describing
11 how the data provided to Plaintiff for the mediation was pulled from their payroll and
12 timekeeping records. *Id.* at ¶ 24.

13 In addition to the investigation and discovery particular to this case, Plaintiff's
14 counsel also brought to bear their meaningful experience in other similar wage and
15 hour cases involving traveling nurses in California. *Id.* at ¶¶ 9-11, 38. This includes
16 nursing cases resolved on a class basis after extensive discovery and certification of
17 the class action through a contested motion, as well as other cases that resolved on a
18 class basis for fair value before extensive discovery and a class certification motion.
19 *Id.* at ¶ 10. While no two employers or cases are the same, Plaintiff's counsel's
20 breadth of experience in field did provide them with valuable insights to help evaluate
21 the reasonableness of the mediator's proposal. *Id.* at ¶ 38.

22 **IV. THE MEDIATOR**

23 As discussed above, the parties had a mediation before Michael J. Loeb of
24 JAMS on December 7, 2022. *See* Konecky Decl. at ¶ 19. As part of the mediation
25 process, Plaintiff had prepared a substantive mediation brief examining the evidence,
26 the legal claims and defenses, and potential scope of damages. *Id.* A summary of
27 Plaintiff's exposure analysis is presented in counsel's declaration. *Id.* at ¶¶ 36-40.

28 Defendant also shared its mediation brief and analysis with Plaintiff. *Id.* at ¶ 25.

1 Plaintiff vetted the claims through informed analysis and back-and-forth that covered
2 an array of issues, ranging from class certification and arbitration issues, to merits
3 questions and possible damages. *Id.* Plaintiff participated in the mediation with a
4 well-informed understanding of the disputed factual and legal issues that would be in
5 play if the case proceeded with further litigation. *Id.*

6 The mediation was conducted at arms-length. *Id.* at ¶ 26. The mediator, Mr.
7 Loeb, explored and challenged the parties on many issues. *Id.* After a full day of
8 rigorous negotiation, Mr. Loeb presented a mediator’s proposal. *Id.* After serious
9 consideration, internal discussions, and further communications with Mr. Loeb,
10 Plaintiff accepted the mediator’s proposal for the core terms of the settlement. *Id.*
11 Defendant also accepted the mediator’s proposal. *Id.* The parties then worked together
12 to resolve some remaining issues so that they would have a complete agreement. *Id.*

13 After the parties completed their negotiation and execution of the long form
14 settlement agreement, Plaintiff filed a motion for preliminary approval of the
15 proposed settlement on March 3, 2023. ECF 28. On May 2, 2023, the Court issued
16 its Order denying the motion without prejudice. ECF 30.

17 The parties have since amended the original long form settlement agreement to
18 address the concerns raised by the Court in the Order of May 2. The Amended
19 Settlement Agreement is attached as Exhibit A to the Konecky Declaration and a
20 redlined document showing the changes from the previous version is attached as
21 Exhibit B to this Declaration. Additionally, attached as Exhibit C to the Declaration
22 is an amended proposed settlement notice that corresponds with the changes made to
23 the proposed Settlement Agreement.

24 **V. KEY TERMS OF THE PROPOSED SETTLEMENT**

25 Under the Settlement Agreement, RCM will pay \$1,600,000.00 to resolve this
26 litigation (“Gross Settlement Amount”). Konecky Decl., Exhs. A & C (Settlement
27 Agreement and proposed Notice). This entire amount will be disbursed pursuant to
28 the terms of the Settlement Agreement, and none of it will revert to Defendant. Exh.

1 A to Konecky Decl., Settlement Agreement at ¶ 59.e.

2 The key terms of the Settlement Agreement include:

- 3 • Gross Settlement Amount: The Gross Settlement Amount is \$1,600,000.00.
4 *Id.* at ¶¶ 6, 15, 51, 56-58. The Gross Settlement Amount does *not* include
5 the employer’s share of payroll taxes, which Defendant will pay separately
6 in addition to the Gross Settlement Amount. *Id.* at ¶¶ 12, 15, 51, 61.
- 7 • No Reversion: All settlement funds will be paid out, and none will revert
8 to Defendant. *Id.* at ¶ 59.e.
- 9 • Class Period: The Class Period is October 8, 2017 to March 7, 2023. *Id.* at
10 ¶ 7.
- 11 • PAGA Period: The PAGA Period is July 22, 2020 through March 7, 2023.
12 *Id.* at ¶ 23.
- 13 • Settlement Class: The Settlement Class comprises all current and former
14 nonexempt employees of Defendant who work or worked for Defendant as
15 a traveling nurse or like hourly position in California during the Class
16 Period and who do not submit a timely and valid Request for Exclusion
17 from the settlement. *Id.* at ¶ 6.
- 18 • PAGA Members: The PAGA Members are all current and former non-
19 exempt employees of Defendant who work or worked for Defendant in
20 California as a traveling nurse or like hourly position during the PAGA
21 Period. *Id.* at ¶ 20.
- 22 • Participating Class Members: The Participating Class Members are the
23 Settlement Class Members and the PAGA Members.
- 24 • Release by All Participating Class Members: The Released Claims with
25 respect to Participating Class Members shall be limited to all claims that
26 were pled in the Complaint, based on or arising out of the factual
27 allegations therein, during the applicable Class and PAGA Periods. *Id.* at
28 ¶¶ 25, 27; *see also* proposed Notice to Class, Exh. C to Konecky Decl. &
Exh. 1 to Settlement Agreement at § 9.
- PAGA Release: The PAGA Release with respect to the PAGA Members is
limited to all claims for civil penalties under PAGA that arise out of or
relate to the statutes and regulations pled in the PAGA Notice and Class
Action and PAGA Complaint during the PAGA Period. Settlement
Agreement at ¶ 24; *see also* Notice to Class at at § 9.
- Net Settlement Amount: The Net Settlement Amount is the Gross
Settlement Amount less the Class Counsel Award, Class Representative

1 Service Award, PAGA Payment, and Settlement Administration Costs.
2 Settlement Agreement at ¶ 18.

- 3 • Direct Payments to Settlement Class Members / No Claim Forms:
4 Settlement Class Members who do not opt out of the Settlement will not
5 need to submit claims to receive their pro-rata settlement payment. *Id.* at
6 ¶ 56.e. Rather, Individual Settlement Awards and Individual PAGA
7 Payments (i.e., settlement checks) will be automatically sent to all Class
8 Members for whom a valid address can be located either through
9 Defendant’s records, and/or by the Settlement Administrator through the
10 National Change of Address database (NCOA) and/or by skip tracing and
11 other research. *Id.* at ¶¶ 59.a.1-ii; 59.e; 59.g.i-ii.
- 12 • Distribution Formula: After considering the Court’s guidance in the May
13 2, 2023 Order, and in light of the temporary nature of the position, the
14 parties have agreed to allocate 60% of the Net Settlement Amount to claims
15 for waiting time penalties. *Id.* at ¶ 59(f); Konecky Decl. at ¶ 47. This is
16 reflective of the Parties’ respective damages analyses and assessment of the
17 strength of the claims. Konecky Decl. at ¶ 47. Former employees will share
18 equally in this fund. *See* Settlement Agreement at ¶ 59.f.v. With respect to
19 the non-waiting time penalty component, each Settlement Class Member’s
20 individual share of the Settlement will be proportional to the number and
21 length of shifts the Class Member worked for Defendant during the Class
22 Period, in comparison to the aggregate number of weeks all Settlement
23 Class Members combined worked for Defendant during the same period.
24 Settlement Agreement at ¶ 59.f; Notice to Class at § 6. There is also a
25 weighting of the shifts based on shift length. *Id.*
- 26 • PAGA Payment: The Parties have agreed to pay the California Labor and
27 Workforce Development Agency (“LWDA”) and the employees in
28 connection with the claims under the California Labor Code Private
Attorneys General Act of 2004, California Labor Code Sections 2698, *et*
seq. (“PAGA”). Settlement Agreement at ¶ 22. The Parties have agreed that
Two Hundred Thousand Dollars and No Cents (\$200,000.00) of the Gross
Settlement Amount will be allocated to the resolution of all claims arising
under PAGA. Pursuant to Labor Code Section 2699(i), it would be
distributed as follows: 25%, or \$50,000.00, to the Settlement Class
Members and 75%, or \$150,000.00, to the LWDA. *Id.*
- Tax Allocation: Subject to Court approval, the Parties further agree to the
following as a reasonable and fair tax allocation for Individual Settlement
Awards: one-third (33%) as alleged unpaid wages subject to all applicable
tax withholdings; one-third (33%) as alleged unpaid interest; and one-third
(33%) as alleged unpaid penalties. *Id.* at ¶ 59.g.ii. Subject to Court

1 approval, the Parties further agree that Individual PAGA Awards shall be
2 allocated as alleged unpaid civil penalties for which an IRS Form 1099
shall be issued. *Id.*

- 3 • Class Representative Service Award: The Amended Settlement provides
4 that Plaintiff may seek a service payment to the Class Representative, not
5 to exceed \$5,000.00, subject to Court approval. *Id.* at ¶ 8. The proposed
6 service payment is less than one percent of the Gross Settlement Amount.
Id. at ¶¶ 8, 15.
- 7 • Class Counsel Award: Plaintiff’s attorneys’ fees and costs are included in
8 the gross settlement amount of \$1,600,000.00. The Amended Settlement
9 provides that Plaintiff may make a motion to the Court for up to twenty-
10 five percent (25%) of the Gross Settlement Amount in attorneys’ fees, plus
11 reimbursement of costs not to exceed \$15,000.00. *Id.* at ¶ 4.
- 12 • Notice of Class Action and PAGA Settlement: The proposed Notice sets
13 forth in plain terms, a statement of case, the terms of Settlement, the
14 maximum amount of attorneys’ fees, costs, and service award that can be
15 sought, an explanation of how the settlement allocations are calculated,
16 each Class Member’s own credited workweeks, total Class Member
17 workweeks, as well as the estimated settlement award. *See* Notice to Class.
18 The Notice to the Class will be sent by first class mail to the Settlement
19 Class and PAGA Members. ILYM Group, Inc., the Parties’ selected
20 Settlement Administrator, will undertake its best efforts to ensure that the
21 notice is provided to the current addresses of Class Members. This
22 includes conducting a National Change of Address search before the
23 mailing and then conducting skip tracing on any individual Notices
24 returned as undeliverable. Settlement Agreement at ¶ 59.a.i. Additionally,
25 in the event a notice remains undeliverable even after skip tracing, the
26 parties will endeavor to obtain email addresses to send the notice by email.
27 *Id.* at ¶ 59.a.ii. The Settlement Administrator also will set up a website
28 posting the Notice to the Class and other important case documents. *Id.* at
¶ 59.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.
Settlement Agreement at ¶¶ 19, 30; Notice to Class. 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.

- 1 • Right to Opt Out: The Notice shall state that Class Members who wish to
2 exclude themselves from the Settlement Class and Settlement must submit
3 a written Request for Exclusion to the Settlement Administrator by the 45-
4 day Response Deadline. *Id.* ¶¶ 29, 30; Notice to Class. Any Class Member
5 who submits a completed, signed, and timely written Opt-Out shall no
6 longer be a member of the Class, although they still will be PAGA
7 Members and subject to the PAGA Release. *Id.* ¶¶ 29, 30; *Arias v Superior*
8 *Ct. (Dairy)*, 46 Cal.4th 969 (2009).
- 9 • Right to Challenge Defendant’s Workweek Records. Class Members will
10 have the opportunity, should they disagree with Defendant’s records
11 regarding the workweek information stated on their Class Notice, to
12 provide documentation and/or an explanation to show contrary workweeks.
13 All workweek disputes shall be resolved and decided by the Settlement
14 Administrator, with consultation with Defense and Class Counsel as
15 appropriate. If a workweek dispute cannot be resolved by the Settlement
16 Administrator, then it shall be resolved by the Court. Settlement Agreement
17 at ¶¶ 30, 36.
- 18 • Escalator Clause: Defendant’s records showed that there were 1,414 Class
19 Members who worked for RCM in California between October 8, 2017 and
20 October 22, 2022, on 90,939 shifts in the Class Period. *Id.* at ¶ 66.
21 Defendant has represented that, based on a good faith and diligent review
22 of its records, the number of Class Members through the end of the class
23 period on March 7, 2023 will not exceed 10% of this number. Were it to
24 do so, then under the escalation clause, at Defendant’s option, it shall either
25 (1) pay a pro rata additional sum for the amount exceeding 10%; or (2)
26 elect to end the release date when the number of Class Members or
27 workweeks exceeds 10% over the represented amounts. *Id.*

20 VI. ARGUMENT

21 A. The Settlement Class Meets the Criteria for Certification Under 22 FRCP 23

23 1. The elements of Rule 23(a) are satisfied

24 a) *Rule 23(a)(1): Numerosity*

25 The first requirement of Rule 23(a) is that the class be so numerous that joinder
26 of all members would be “impracticable.” See Fed. R. Civ. P. 23(a)(1). Here, there
27 are more than 1,000 class members, all of whom are identifiable from Defendant’s
28 records. Konecky Decl. at ¶ 23; Settlement Agreement at ¶ 63. This easily satisfies

1 numerosity under Fed. R. Civ. P. 23(a)(1). *See, e.g., Bruno v. Outen Rsch. Inst., LLC*,
2 280 F.R.D. 524, 533 (C.D. Cal. 2011) (“A proposed class of at least forty members
3 presumptively satisfies the numerosity requirement [of Rule 23(a)(1)].”); *Johnson v.*
4 *Winco Foods*, 2020 U.S. Dist. LEXIS 104516, at *11 (C.D. Cal. Mar. 13, 2020)
5 (finding a class sufficiently numerous where defendant produced “Class Member
6 contact information for over 400 individuals...” and citing *Bruno*, 280 F.R.D at 533).

7 *b) Rule 23(a)(2): Commonality*

8 Rule 23(a) also requires “questions of law or fact common to the class.” Fed.
9 R. Civ. P. 23(a)(2). The Ninth Circuit permissively construes the commonality
10 requirement such that the “existence of shared legal issues with divergent factual
11 predicates is sufficient, as is a common core of salient facts coupled with disparate
12 legal remedies within the class.” *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1019 (9th
13 Cir. 1998). Plaintiff meets the criteria of Rule 23(a)(2) because the claims of the
14 putative class members turn upon answers to overarching common questions
15 regarding Defendant’s policies and procedures that are capable of class-wide
16 resolution for settlement purposes.

17 Central common questions in this case include (a) whether Defendant suffered
18 and permitted Plaintiff and the other Class Members to work unscheduled overtime,
19 through its policies with the Class Members and/or its clients; (b) whether Defendant
20 suffered and permitted nurses to perform tasks off-the-clock, such as equipment setup
21 and breakdown, and patient-hand-offs; (c) whether Defendant’s policies failed to
22 account for and compensate nurses for pre- and post-shift work, such as equipment
23 setup and breakdown, and patient hand-offs; (d) whether Defendant required and/or
24 suffered and permitted nurses to work through and/or remain on-duty during their
25 meal and/or rest periods; (e) whether Defendant had sufficient policies and
26 procedures to permit the nurses to verify their unscheduled work time with their
27 placement sites or otherwise; (f) whether Defendant had sufficient policies and
28 procedures to provide the nurses with off-duty meal and rest periods at their host

1 facilities; (g) whether Defendant provided overtime and double time compensation;
2 and (h) whether Defendant provided meal and rest period penalty pay.

3 Courts in the Ninth Circuit have found that similar claims satisfy the
4 commonality requirement. *See Shaw v. AMN Healthcare, Inc.*, 326 F.R.D. 247, 267-
5 72, 275 (N.D. Cal. 2018) (finding commonality and predominance; granting
6 certification of overtime and meal/rest period claims for a class of traveling nurses
7 subject to similar working conditions); *Carlino v. CHG Med. Staffing, Inc.*, 2019
8 U.S. Dist. LEXIS 33282, at *3-4, *11-16 (E.D. Cal. Feb. 28, 2019) (finding
9 commonality and predominance; certifying overtime claims for a class of traveling
10 healthcare workers); *see also, e.g., Dynabursky v. AlliedBarton Sec. Servs. LP*, 2014
11 U.S. Dist. LEXIS 36915, at *10-32 (C.D. Cal. Jan. 29, 2014) (Staton, J.) (finding
12 commonality as to meal/rest period claims of a statewide class of security officers;
13 rejecting arguments against commonality based on alleged variations between
14 placement sites; analyzing *Abdullah v. U.S. Sec. Assocs.*, 731 F.3d 952 (9th Cir.
15 2013)). Thus, these common questions demonstrate that this action satisfies the
16 commonality requirement.

17 *c) Rule 23(a)(3): Typicality*

18 A representative plaintiff must establish that the “claims or defenses of the
19 representative parties are typical of the claims or defenses of the class.” Fed. R. Civ.
20 P. 23 (a)(3). This is a permissive standard that is met so long as the representative
21 claims “are reasonably coextensive with those of absent class members.” *Hanlon*, 150
22 F.3d at 1020. Here, Ms. Grady satisfies the typicality requirement because she asserts
23 the same types of injuries arising from the same conduct by Defendant as the absent
24 Class Members.

25 *d) Rule 23(a)(4): Adequacy of Representation*

26 Rule 23 also requires that “the representative parties fairly and adequately
27 protect the interests of the class.” Fed. R. Civ. P. 23(a)(4). The adequacy requirement
28 is satisfied where, as here, the class representative (1) has common, and not

1 antagonistic, interests with unnamed class members; and (2) will vigorously
2 prosecute the interests of the class through qualified counsel. *See Amchem Prods.,*
3 *Inc. v. Windsor*, 521 U.S. 591, 625 (1997); *Hanlon*, 150 F.3d at 1021. Here, the named
4 Plaintiff shares common alleged injuries with the class because she worked in a
5 similar role as the putative Class Members and has the same or similar claims
6 concerning off-the-clock work and missed meal and rest periods. Her interests are
7 aligned with those of the other Class Members. Furthermore, Plaintiff’s counsel are
8 well-qualified and committed to vigorously prosecuting the class claims. Konecky
9 Decl. at ¶¶ 5-11.

10 2. The elements of Rule 23(b)(3) are satisfied

11 Having met the four prerequisites for class certification in Rule 23(a), Plaintiff
12 submits that the proposed Settlement Class also satisfies Rule 23(b)(3). Rule 23(b)(3)
13 certification is proper when common questions “predominate over any questions
14 affecting only individual members” and class resolution is “superior to other available
15 methods for the fair and efficient resolution of the controversy.” Fed. R. Civ. P.
16 23(b)(3). Both Rule 23(b)(3)’s predominance and superiority requirements are
17 satisfied for purposes of certifying the proposed Settlement Class.

18 Common Questions Predominate

19 “The Rule 23(b)(3) predominance inquiry tests whether proposed class [is]
20 sufficiently cohesive to warrant adjudication by representation.” *Amchem*, 521 U.S.
21 at 623. “When common questions present a significant aspect of the case and they
22 can be resolved for all members of the class in a single adjudication, there is clear
23 justification for handling the dispute on a representative rather than an individual
24 basis.” *Id.* at 1022. Here, the claims brought on behalf of the proposed Settlement
25 Class all arise from Plaintiff’s allegation that Defendant suffers and permits off-the-
26 clock work and does not provide off-duty meal and rest, as a result of its alleged
27 insufficient policies and lack of oversight at the placement facilities. The claims also
28 involve related issues such as whether Defendant knowingly places nurses in

1 understaffed locations and whether Defendant fails to provide the required premium
2 pay for missed meal and rest periods. The predominance requirement is met because
3 the threshold questions as to Plaintiff’s claims are susceptible to common proof. *See,*
4 *e.g., Castro v. ABM Indus.*, 325 F.R.D. 332, 339 (N.D. Cal. 2018).

5 For these reasons, the core issues raised by Plaintiff’s claims are well-suited for
6 class treatment. *See, e.g., Shaw*, 326 F.R.D. at 267-72, 275 (finding commonality and
7 predominance; granting certification of overtime and meal/rest period claims for a
8 class of traveling nurses subject to similar working conditions); *Carlino*, 2019 U.S.
9 Dist. LEXIS 33282, at *3-4, *11-16 (finding commonality and predominance;
10 certifying overtime claims for a class of traveling healthcare workers in partially
11 unopposed motion); *see also Dynabursky*, 2014 U.S. Dist. LEXIS 36915, at *27-30
12 (Staton, J.) (finding predominance as to meal/rest period claims of a statewide class
13 of security officers; rejecting arguments against predominance based on alleged
14 variations between placement sites; analyzing *Abdullah v. U.S. Sec. Assocs.*, *supra*).

15 a) *A Class Action is Superior*

16 Rule 23(b)(3)’s final requirement is “that the class action be superior to other
17 methods of adjudication.” This requirement is satisfied because there is no indication
18 that Class Members seek to individually control their cases, that individual litigation
19 is already pending in other forums, or that this particular forum is undesirable for any
20 reason. Fed. R. Civ. P. 23(b)(3)(A)-(D). In addition, the alternative of over a thousand
21 individual actions “is not realistic.” *See Wren v. RGIS Inventory Specialists*, 256
22 F.R.D. 180, 210 (N.D. Cal. 2009); *see also Morales v. Kraft Foods Grp., Inc.*, 2015
23 U.S. Dist. LEXIS 177918, at *29 (C.D. Cal. June 23, 2015) (“[I]f hundreds or
24 thousands of class members brought individual claims, it would be an inefficient use
25 of judicial and party resources.”) Accordingly, certification of the Settlement Class is
26 superior to any other method of resolving this matter, since it will promote economy,
27 expediency, and efficiency.

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

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

- 5 1. A preliminary approval hearing, at which the court considers whether
6 the proposed settlement is within the range of reasonableness
7 possibly meriting final approval;
- 8 2. Dissemination of notice of the proposed settlement to Class Members
9 for comment; and
- 10 3. A formal “fairness hearing,” or final approval hearing, at which the
11 Court decides whether the proposed settlement should be approved
12 as fair, adequate, and reasonable to the class.

13 *See Manual for Complex Litigation* §§ 21.632-34 (4th ed. 2004). This procedure
14 safeguards Class Members’ procedural due process rights and enables the Court to
15 fulfill its role as the guardian of class interests. *See Newberg on Class Actions*, §
16 11.22, *et seq.* (4th ed. 2002) (“*Newberg*”).

17 Plaintiff asks the Court to take the first step in the settlement approval process
18 and grant preliminary approval of the settlement. Plaintiff further requests that the
19 Court order dissemination of notice to Class Members and establish a schedule for
20 the final approval process.

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

22 1. The Standards for Preliminary Approval

23 At this preliminary approval stage, the Court determines whether the proposed
24 settlement “(1) appears to be the product of serious, informed, non-collusive
25 negotiations; (2) has no obvious deficiencies; (3) does not improperly grant
26 preferential treatment to class representatives or segments of the class; and (4) falls
27 within the range of possible approval,” such that it is worthwhile to give the class
28 notice of the settlement and proceed to a formal fairness hearing. *Eddings v. Health*

1 *Net, Inc.*, 2013 WL 169895, at *2 (C.D. Cal. Jan. 16, 2013); *see also* 4 *Newberg*, §
2 11.25 (4th ed. 2002). The proposed settlement here meets all these criteria.

3 2. The Proposed Settlement Meets the Preliminary Approval
4 Standards

5 The law favors the compromise and settlement of class-action suits. *See, e.g.*,
6 *Churchill Vill. L.L.C. v. Gen. Elec.*, 361 F.3d 566, 576 (9th Cir. 2004); *Class Plaintiffs*
7 *v. City of Seattle*, 955 F.2d 1268, 1276 (9th Cir. 1992); *Officers for Justice v. Civil*
8 *Serv. Comm’n*, 688 F.2d 615, 625 (9th Cir. 1982). The Ninth Circuit recognizes the
9 “overriding public interest in settling and quieting litigation . . . particularly . . . in
10 class action suits . . .” *Van Brokhorst v. Safeco Corp.*, 529 F.2d 943, 950 (9th Cir.
11 1976); *see also Weeks v. Kellogg Co.*, 2013 WL 6531177, at *10 (C.D. Cal. Nov. 23,
12 2013) (quoting *In re Synacor ERISA Litig.*, 516 F.3d 1095, 1101 (9th Cir. 2008))
13 (“[T]here is a strong judicial policy that favors settlements, particularly where
14 complex class action litigation is concerned.”).

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

26 This determination involves a balancing of several factors, including: “the
27 strength of plaintiffs’ case; the risk, expense, complexity, and likely duration of
28 further litigation; the risk of maintaining class action status throughout the trial; the

1 amount offered in settlement; [and] the extent of discovery completed” among other
2 factors. *Chun-Hoon v. McKee Foods Corp.*, 715 F.Supp.2d 848, 850-51 (N.D. Cal.
3 2010) (quoting *Class Plaintiffs*, 955 F.2d at 1291).

4 At the preliminary approval stage, the Court need only find that the proposed
5 settlement is within the “range of reasonableness” such that dissemination of notice
6 to the class, and the scheduling of a fairness hearing, are appropriate. *Newberg* §
7 11.25; *see also Carter v. Anderson Merchandisers, LP*, 2010 WL 144067, at *4 (C.D.
8 Cal. Jan. 7, 2010); *In re Tableware Antitrust Litig.*, 484 F.Supp.2d 1078, 1079-80
9 (N.D. Cal. 2007). Preliminary approval of a proposed class action settlement is
10 appropriate where “the proposed settlement appears to be the product of serious,
11 informed, non-collusive negotiations, has no obvious deficiencies, does not
12 improperly grant preferential treatment to class representatives or segments of the
13 class, and falls within the range of possible approval[.]” *In re Tableware Antitrust*
14 *Litig., supra*, at 1079. As discussed below, the instant settlement falls within the
15 “range of reasonableness” for preliminary approval.

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

18 The Settlement was reached after informed, arms-length settlement
19 negotiations by experienced attorneys. *See* Second Konecky Decl. at ¶¶ 21-26. Before
20 the mediation, Defendant provided documents and data that assisted Plaintiff in
21 evaluating the strengths and risks of the claims and enabled them to run damages
22 calculations for the putative class. *Id.* at ¶¶ 21-24. The Second Konecky Declaration
23 describes the documents and data produced. *Id.*

24 Additionally, Plaintiff brought her experience and observations of the
25 workplace to the table as she worked at numerous locations and referred several of
26 her co-workers to Plaintiff’s counsel. *Id.* at ¶ 37.

27 The parties also exchanged mediation briefs with substantive analysis. *See*
28 Second Konecky Decl. at ¶ 25. The parties were well-informed and well-positioned

1 to negotiate a fair settlement, and each side developed their own exposure analyses.
2 *Id.* at ¶¶ 9-11, 21-26, 37-38. The parties were not able to arrive at a number through
3 negotiation, but the mediator identified a middle ground that resolved the case. The
4 fact that qualified and well-informed counsel endorse the proposed Settlement as
5 being fair, reasonable, and adequate weighs heavily in favor of approval. *See Brown*
6 *v. Hain Celestial Grp.*, 2016 U.S. Dist. LEXIS 20118, at *16 (N.D. Cal. Feb. 18,
7 2016).

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

10 A proposed settlement is not to be measured against a hypothetical ideal result
11 that might have been achieved. *See, e.g., In re Heritage Bond Litig.*, 2005 WL
12 1594403, at * 2 (C.D. Cal. June 10, 2005) (quoting *Officers for Justice*, 688 F.2d at
13 625) (a proposed settlement should not “be judged against a hypothetical or
14 speculative measure of what might have been achieved.”); *Nat’l Rural Telecomm’s*
15 *Coop v. Directv, Inc.*, 221 F.R.D. 523, 527 (C.D. Cal. 2004) (“[I]t is well-settled law
16 that a proposed settlement may be acceptable even though it amounts to only a
17 fraction of the potential recovery that might be available to the class members at
18 trial.”).

19 The Settlement provides a beneficial result for the Class. After estimated
20 attorneys’ fees and costs, the proposed service award, the LWDA payment, and the
21 estimated costs of settlement administration, there will be an estimated \$988,950 for
22 distribution to the Settlement Class and PAGA Members. *See* Second Konecky Decl.
23 at ¶¶ 33-34. There are approximately 1,414 Settlement Class Members. *Id.* at ¶ 34.
24 The average Settlement Share will be approximately \$664 per individual, not
25 including the Individual PAGA Payments for the Class Members who also are PAGA
26 Employees. *Id.* The average amount will increase or decrease for each Class Member
27 depending upon whether he or she is a former employee, and the number and length
28 of shifts the Class Member has in the Class Period. *See* Amended Settlement

1 Agreement at ¶ 59.f.

2 Additionally, the Settlement provides the Class Members the opportunity,
3 should they disagree with Defendant’s records regarding their number of shifts
4 (during the Class Period) and workweeks (during the PAGA Period), to provide
5 documentation and/or an explanation to show contrary shifts and/or workweeks. *See*
6 Amended Settlement Agreement at ¶ 36. If there is a dispute, the Settlement
7 Administrator will attempt to resolve it, with consultation with Defense and Class
8 Counsel as appropriate. *Id.* If those efforts fail, the Court will resolve the dispute. *Id.*
9 Class Members will also be given the opportunity to object to the Settlement and, at
10 the Court’s discretion, to appear at the Final Approval/Fairness Hearing to have their
11 objections heard by the Court. *Id.* at ¶ 19. Settlement Class Members will further have
12 the opportunity to opt out of the class portion of the Settlement should they so desire.
13 *Id.* at ¶ 29.¹ These procedural safeguards are explained in the Notice of Class Action
14 and PAGA Settlement to the Class (attached as Exhibit 1 to the Settlement Agreement
15 and as Exhibit C to the Second Konecky Declaration.)

16 c) *Calculation of Maximum Exposure and Reasonableness of*
17 *Discounts to Achieve Settlement*

18 Plaintiff’s counsel calculated Defendant’s maximum potential exposure based
19 on timecard and payroll data provided by Defendant for the Class. *See* Second
20 Konecky Decl. at ¶ 36. As discussed above, Defendant’s data shows the shifts
21 worked, length of shifts, locations worked, and hourly wage rates for each Class
22 Member. *Id.* at ¶¶ 23, 36. The maximum exposure that Plaintiff calculated and the
23 reasoning for discounting this maximum are discussed in counsel’s Declaration. *Id.*
24 at ¶¶ 39-46.

25 Courts have long recognized the inherent risks and “vagaries of litigation,” and

26
27
28

¹ Under applicable law, Class Members will not have an opportunity to opt out of the PAGA portion of the settlement, as this technically belongs to the State of California, which also is receiving notice of the Settlement. *Uribe v. Crown Building Maintenance Co.*, 70 Cal.App.5th 986, 1001 (2021) (citations omitted).

1 emphasized the comparative benefits of “immediate recovery by way of the
2 compromise to the mere possibility of relief in the future, after protracted and
3 expensive litigation.” *Nat’l Rural Telecomm*, 221 F.R.D. at 526. Proceeding to trial in
4 this action under the circumstances would be risky to the class and delay any chance
5 of recovery. Instead of having to wait for relief that is far from certain, Settlement
6 Class Members will receive payments in a reasonably prompt timeframe.

7 Here, even if Plaintiff had continued to litigate this case, there is no guarantee
8 that she would have been able to achieve class certification, demonstrate liability, or
9 obtain extensive damages for the class, beyond what was achieved in settlement. *See*
10 *Second Konecky Decl.* at ¶¶ 41-46. To begin with, the impact of Defendant’s
11 arbitration agreements and whether the case was suitable for class certification were
12 hotly contested. *Id.* There also were serious disputes over whether Plaintiff could
13 prove a pattern and practice of violation in light of Defendant’s written policies
14 instructing nurses how to take compliant meal and rest periods, and instructing them
15 not to work off the clock. *Id.* at ¶¶ 41-42. While disputed, there also was evidence
16 presented that the named Plaintiff and others were able to take breaks and/or obtain
17 premium pay when they could not. *Id.* In the end, Plaintiff had to weight the mix of
18 evidence as to how often nurses may have worked off-the-clock or through breaks,
19 whether such work was compelled or voluntary, and the resulting impact on the
20 likelihood of achieving class certification, class liability, and/or a class-wide damages
21 recovery. *Id.*

22 Considered against the risks of continued litigation, the potential for delay and
23 limitations in recovery even if Plaintiff and the class were successful, and the
24 importance of a speedy recovery to the Settlement Class Members, the totality of
25 relief provided under the proposed Settlement is well within the range of
26 reasonableness.

27 *d) The Distribution Formula is Reasonable*

28 In light of the Court’s guidance in the May 2, 2023 Order, the Parties revisited

1 and revised the distribution formula in the Amended Settlement Agreement. As set
2 forth in Paragraph 59(f) of the Amended Settlement Agreement, the Parties have
3 agreed to amend the distribution formula in two significant respects:

4 First, the parties have agreed to allocate 60% of the Net Settlement Amount to
5 waiting time penalties for former employees. *See* Amended Settlement Agreement at
6 ¶ 59.f.i. As of the mediation approximately 1,306 of the 1,414 identified class
7 members were former employees—i.e., approximately 92%. *See* Second Konecky
8 Decl. at ¶ 47. The 60/40 ratio is also commensurate based on a compromise between
9 the Parties’ competing damages analyses and assessment of risk. *Id.* at ¶ 48. Further,
10 because waiting time penalties are measured on a daily basis and capped at 30-days,
11 former employees will share equally in the waiting time penalty fund. *See* Amended
12 Settlement Agreement at ¶ 59.f.v.

13 The remaining allocation will be divided proportionally based on the number
14 of shifts the Participating Class Member worked in comparison to the total shifts of
15 all the Participating Class Members combined. *Id.* at ¶ 59.f.ii-iv. Additionally, the
16 Parties agreed to weight the shifts by length, such that shifts of less than 3.5 hours
17 (i.e., those not eligible for meal and rest periods) are weighted at 1.0; shifts between
18 3.5 and 5 hours are weighted at 1.5 (as they are eligible for one rest period); shifts
19 between 5-10 hours are weighted at 2.0 (as they are eligible for a meal period and
20 potentially an additional rest period); and shifts over 10 hours are weighted at 2.5 (as
21 they could be eligible for two meal periods and multiple rest periods). *Id.*

22 As explained in the Court’s Order of May 2, 2023, the intent is to make the
23 distribution formula more equitable among the Class members.

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

25 The maximum service award Plaintiff Grady will seek under the Amended
26 Settlement Agreement is \$5,000. *See* Amended Settlement Agreement at ¶ 59.h.

27 Service awards “are intended to compensate class representatives for work done
28 on behalf of the class, to make up for financial or reputational risk undertaken in

1 bringing the action, and, sometimes, to recognize their willingness to act as a private
2 attorney general.” *Rodriguez v. West Publ’g Corp.*, 563 F.3d 948, 958-59 (9th Cir.
3 2009); *see also Weeks*, 2013 WL 6531177, at *34. The factors courts use in
4 determining whether to authorize a service award include: “‘1) the risk to the class
5 representative in commencing suit, both financial and otherwise; 2) the notoriety and
6 personal difficulties encountered by the class representative; 3) the amount of time
7 and effort spent by the class representatives; 4) the duration of the litigation[;] and 5)
8 the personal benefit (or lack thereof) enjoyed by the class representative as a result of
9 the litigation.’” *Van Vranken v. Atl. Richfield Co.*, 901 F. Supp. 294, 299 (N.D. Cal.
10 1995).

11 Plaintiff intends to seek a service award of no greater than \$5,000 by separate
12 motion to be heard at the final approval hearing. In that motion, Plaintiff will
13 document why the amount is reasonable.

14 Plaintiff’s counsel also will be filing a separate motion for attorneys’ fees and
15 costs pursuant to Fed. R. Civ. P. 23(h). Under the Amended Settlement Agreement,
16 Plaintiff’s will not seek attorneys’ fees above the 25% benchmark in the Ninth Circuit,
17 plus reimbursement of out-of-pocket costs not to exceed \$15,000. *See Amended*
18 *Settlement Agreement* at ¶ 59.i. Plaintiff proposes that she file her motion for
19 attorneys’ fees and costs within two weeks of the mailing of the class notice to afford
20 Class Members a full opportunity to review and comment on it. *See In re: Mercury*
21 *Interactive Corp. Sec. Litig. v. Mercury Interactive Corp.*, 618 F.3d 988, 991 (9th Cir.
22 2010).

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

24 1. The Settlement Agreement provides for the best method of notice
25 practicable under the circumstances

26 The federal rules require that before finally approving a class settlement, “[t]he
27 court must direct notice in a reasonable manner to all class members who would be
28 bound by the proposal.” Fed. R. Civ. P. 23(e). Where the class is certified pursuant to

1 Rule 23(b)(3), the notice must be the “best notice practicable under the circumstances,
2 including individual notice to all members who can be identified through reasonable
3 effort.” Fed. R. Civ. P. 23(c)(2)(B).

4 The parties have agreed on a notice plan that would provide Class Members
5 with individual notice by first class mail. Additionally, where notices are returned as
6 undeliverable a second time even after skip tracing and re-mailing, the parties will
7 endeavor to identify the recipients’ email addresses and provide notice by email.
8 Further, the Settlement Administrator will establish a website where Class Members
9 can access the Notice and other important case documents. Settlement Agreement at
10 ¶ 56.a.iii. Plaintiff requests that the Court approve this method of notice as the best
11 practicable under the circumstances. *See, e.g., Rannis v. Recchia*, 380 F. App’x. 646,
12 650 (9th Cir. 2010) (finding mailed notice to be the best notice practicable where
13 reasonable efforts were taken to ascertain class members’ addresses). Plaintiff further
14 requests that the Court appoint ILYM Group, Inc. (“ILYM”) to serve as Settlement
15 Administrator. ILYM’s qualifications are described in the Declaration of Lisa
16 Mullins, filed herewith. Mullins (Admin) Decl. at ¶¶ 3-7 and Exh. A.

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

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

25 The notice form proposed by the parties complies with Rule 23 and is
26 substantially similar to those encouraged by the Federal Judicial Center. See proposed
27 Notice to Class, Exhibit 1 to Settlement Agreement. It accurately informs Class
28 Members of the material terms of the Settlement and their rights pertaining to it,

1 including the right to opt out from or object to the Settlement. *Id.* The notice also will
2 be tailored for each individual and provide the Class Member’s number and length of
3 shifts during the Class Period, the number of workweeks during the PAGA Period,
4 whether the Class Member is a current or former employee, and the estimated
5 settlement share of such Class Member in the event that all Class Members participate
6 in the Settlement. *Id.* Plaintiff thus requests that the Court approve the form of notice.

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

8 The next steps in the settlement approval process are to notify the class of the
9 proposed Settlement, allow Class Members an opportunity to file any objections,
10 disputes, or opt-outs, and hold a final approval hearing.

11 **VII. CONCLUSION**

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

18
19
20 Dated: June 30, 2023

/s/ Joshua G. Konecky

21 Joshua G. Konecky
22 **SCHNEIDER WALLACE**
23 **COTTRELL KONECKY LLP**
24 Attorneys for Plaintiff
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CERTIFICATE OF SERVICE

I hereby certify that on June 30, 2023, 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_____