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UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

BARBARA GRADY, individually and on behalf of all others similarly situated,

Plaintiffs,

vs.

RCM TECHNOLOGIES, INC.,

Defendant.

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

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

Date: April 28, 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

NOTICE OF MOTION AND MOTION

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

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

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

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

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

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

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

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

This Motion is based on the accompanying memorandum of points and authorities; the Settlement Agreement attached as Exhibit A to the Declaration of Joshua G. Konecky; the Proposed Notice of Class Action Settlement (attached as Exhibit B to the Declaration of Joshua G. Konecky and as Exhibit 1 to the Settlement Agreement); the Declaration of Lisa Mullins, President of ILYM Group, Inc.; such oral argument as may be heard by the Court; and all other papers on file in this action.

Dated: March 3, 2023

Respectfully submitted,

SCHNEIDER WALLACE
COTTRELL KONECKY LLP

/s/ Joshua G. Konecky
Joshua G. Konecky
Attorney for Plaintiffs

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

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

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

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

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

II. SUMMARY OF THE CASE AND SETTLEMENT

Defendant RCM is a specialty healthcare staffing company that employs numerous traveling nurses in California at various healthcare sites with which it contracts. Compl. (ECF 1-1) at ¶ 1. In approximately June 2021, Plaintiff's counsel were contacted by Barbara Grady, who worked for RCM from approximately August 30, 2020 through approximately October 17, 2020. Declaration of Joshua G. Konecky ISO Motion for Preliminary Approval ("Konecky Decl.") at ¶ 10. Ms. Grady contacted Counsel regarding concerns over unpaid, off-the-clock work and missed meal and rest periods at her placement sites. *Id.* RCM had placed Ms. Grady in both skilled nursing facility settings and at COVID testing sites. *Id.* Ms. Grady's time was tracked using timesheets. *Id.* Ms. Grady reported that in both placement settings, she was required to perform work before and after her official start time, but also was required to write her official shift start and end times on her timesheets. *Id.*

On July 22, 2021, Plaintiff submitted a notice to the Labor Workforce Development Agency ("LWDA") regarding the portion of Ms. Grady's claims that might be brought under the Private Attorneys General Act ("PAGA"). *Id.* at ¶ 11. After Defendant received and evaluated the PAGA notice, Plaintiff and Defendant entered into an agreement to toll the statute of limitations on Plaintiff's claims for the purposes of creating space for settlement discussions, before a case was filed in court. *Id.* at ¶ 12. However, the parties did not resolve the claims at that time. *Id.*

On February 7, 2022, Plaintiff filed a class action and PAGA enforcement complaint in the San Bernardino County Superior Court. *Id.* at ¶ 13. The complaint alleged that Defendant routinely suffered and permitted Plaintiff and other similarly situated nurses and employees working in like hourly positions to work off-the-clock at their placements. The alleged off-the-clock work included activities such as setting up and/or breaking down equipment, and conducting patient hand-offs between shifts. The complaint further alleged, among other things, that Defendant maintained insufficient staffing levels to provide nurses with off-duty meal and rest periods at the frequency and duration required by California law. *See, e.g.*, Compl. (ECF 1-1) at ¶¶ 1-4. 20-28. The complaint sought back wages, penalties, and declaratory relief. *See id.* at p. 25:11-27:11. It alleged claims under California Labor Code §§ 201-204, 221-223, 226, 226.7, 510, 512, 1174, 1174.5, 1194, and 1198 *et seq.*; IWC Wage Order No. 5; the California Code of Regulations, Title 8 § 11040 and ¶¶ 7, 11, 12; the Private Attorneys General Act of 2004 ("PAGA"); and the California Business and Professions Code. *Id.* at ¶¶ 36-109.

On May 19, 2022, Defendant removed the action to this Court. ECF 1. Defendant filed its Answer and Affirmative Defenses on the same day, denying the allegations. ECF 1-2; Defendant also has maintained that putative class members have worked at different sites, for different clients, and under different conditions of employment (including under arbitration agreements), than Plaintiff, rendering class certification unsuitable. ECF 10 at 4:1-8 (Defendant's Statement of the Case); Konecky Decl. at ¶ 14.

On June 28, 2022, the parties conducted their initial Rule 26(f) conference. Konecky Decl. at ¶ 15. On July 12, 2022, the parties exchanged initial disclosures. *Id.*

On August 2, 2022, Plaintiff served her first sets of interrogatories and requests for production of documents on Defendant. Id. at ¶ 16. In the months that followed,

Plaintiff engaged in ongoing meet and confer with Defendant (by videoconference and in writing) regarding these requests. *Id.* When the parties were unable to resolve their differences, they sought an informal discovery conference, which took place on November 8, 2022. *Id.*

In the meantime, the parties also met and conferred regarding the possibility of exploring an early resolution and agreed to schedule a private mediation session. *Id.* at ¶ 17. As part of this process, Plaintiff also met and conferred with Defendant regarding the production of informal discovery that would enable Plaintiff to meaningfully evaluate liability and damages. *Id.*

Before the mediation, Defendant provided Plaintiff with documents and data that assisted in evaluating the strengths and weaknesses of the claims and in preparing a liability and exposure analysis for mediation. *Id.* at ¶ 18.

On December 7, 2022, the parties engaged in mediation before Michael J. Loeb of JAMS, an experienced mediator in this area of law. *Id.* at ¶ 19. As part of the mediation process, Plaintiff had prepared a substantive mediation brief examining the evidence, the legal claims and defenses, and potential scope of damages. *Id.* Defendant also shared its mediation brief and analysis with Plaintiff. *Id.* Plaintiff vetted the claims through informed analysis and back-and-forth that covered an array of issues, ranging from class certification and arbitration issues, to merits questions and possible damages. *Id.* Plaintiff participated in the mediation with a well-informed understanding of the disputed factual and legal issues that would be in play if the case proceeded with further litigation. *Id.*

The mediation was rigorous and conducted at arms-length. Id. at ¶ 20. The mediator, Mr. Loeb, explored and challenged the parties on many issues. Id. After a full day of rigorous negotiation, Mr. Loeb presented a mediator's proposal. Id. After serious consideration, internal discussions, and further communications with Mr. Loeb, Plaintiff accepted the mediator's proposal for the core terms of the settlement.

Id. Defendant also accepted the mediator's proposal. Id. The parties then worked together to resolve some remaining issues so that they would have a complete agreement. *Id.*

On December 16, 2022, the parties filed a stipulation to stay the case pending resolution of Plaintiff's motion for preliminary approval of the proposed class action and PAGA settlement. ECF 23. The Court granted that request on January 10, 2023, ECF 24, and a subsequent one to permit additional time to complete drafting of the long form settlement agreement and proposed settlement notice. ECF 27.

The parties have now completed their drafting of the long form settlement agreement and proposed settlement class notice. These finalized documents are attached as Exhibits A and B to the Konecky Declaration.

III. KEY TERMS OF THE PROPOSED SETTLEMENT

Under the Settlement Agreement, RCM will pay $1,600,000.00 to resolve this litigation ("Gross Settlement Amount"). Konecky Decl., Exhs. A & B (Settlement Agreement and proposed Notice). This entire amount will be disbursed pursuant to the terms of the Settlement Agreement, and none of it will revert to Defendant. Exh. A to Konecky Decl., Settlement Agreement at ¶ 56.e.

The key terms of the Settlement Agreement include:

- Gross Settlement Amount: The Gross Settlement Amount is $1,600,000.00. *Id.* at ¶¶ 6, 15, 48, 53-55. The Gross Settlement Amount does *not* include the employer's share of payroll taxes, which Defendant will pay separately in addition to the Gross Settlement Amount. *Id.* at ¶¶ 12, 15, 48, 58.
- No Reversion: All settlement funds will be paid out, and none will revert to Defendant. *Id.* at ¶ 56.e.
- Class Period: The Class Period is October 8, 2017 to March 7, 2023. *Id.* at ¶ 7.
- PAGA Period: The PAGA Period is July 22, 2020 through March 7, 2023. *Id.* at ¶ 23.
- Settlement Class: The Settlement Class comprises all current and former

nonexempt employees of Defendant who work or worked for Defendant as a traveling nurse or like hourly position in California during the Class Period and who do not submit a timely and valid Request for Exclusion from the settlement. *Id.* at ¶ 6.

- PAGA Members: The PAGA Members are all current and former non-exempt employees of Defendant who work or worked for Defendant in California as a traveling nurse or like hourly position during the PAGA Period. *Id.* at ¶ 20.
- Participating Class Members: The Participating Class Members are the Settlement Class Members and the PAGA Members.
- Release by All Participating Class Members: The Released Claims with respect to Participating Class Members shall be limited to all claims that were pled in the Complaint, based on or arising out of the factual allegations therein, during the applicable Class and PAGA Periods. *Id.* at ¶¶ 25, 27; *see also* proposed Notice to Class, Exh. B. 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 Service Award, PAGA Payment, and Settlement Administration Costs. Settlement Agreement at ¶ 18.
- Direct Payments to Settlement Class Members / No Claim Forms: Settlement Class Members who do not opt out of the Settlement will not need to submit claims to receive their pro-rata settlement payment. *Id.* at ¶ 56.e. Rather, Individual Settlement Awards and Individual PAGA Payments (i.e., settlement checks) will be automatically sent to all Class Members for whom a valid address can be located either through Defendant's records, and/or by the Settlement Administrator through the National Change of Address database (NCOA) and/or by skip tracing and other research. *Id.* at ¶¶ 56.a.1-ii; 56.e; 56.g.i-ii.
- Distribution Formula: Each Settlement Class Member's individual share of the Settlement will be proportional to the number of weeks the class member worked for Defendant during the applicable time period, in comparison to the aggregate number of weeks all Settlement Class

Members combined worked for Defendant during the same period. Settlement Agreement at ¶ 56.f-g; Notice to Class at § 6.

- PAGA Payment: The Parties have agreed to pay the California Labor and Workforce Development Agency ("LWDA") and the employees in 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 ¶ 56.g.ii. Subject to Court approval, the Parties further agree that Individual PAGA Awards shall be allocated as alleged unpaid civil penalties for which an IRS Form 1099 shall be issued. *Id.*

- Class Representative Service Award: The Settlement provides that Plaintiff may seek a service payment to the Class Representative, not to exceed $15,000.00, subject to Court approval. *Id.* at ¶ 8. The parties further agree, subject to Court approval, that thirty-three percent (33%) of this amount shall be deemed consideration for a general release and sixty-seven percent (67%) shall be for assuming the risks associated with this litigation (including for assuming the risks on the PAGA claims). *Id.* The proposed service payment is less than one percent of the Gross Settlement Amount. *See id.* at ¶¶ 8, 15.

- Class Counsel Award: Plaintiff's attorneys' fees and costs are included in the gross settlement amount of $1,600,000.00. The Settlement provides that Plaintiff may make a motion to the Court for up to one-third (33.33%) of the Gross Settlement Amount in attorneys' fees, plus reimbursement of costs not to exceed $15,000.00. *Id.* at ¶ 4.

- Notice of Class Action and PAGA Settlement: The proposed Notice sets forth in plain terms, a statement of case, the terms of Settlement, the maximum amount of attorneys' fees, costs, and service award that can be sought, an explanation of how the settlement allocations are calculated,

each Class Member's own credited workweeks, total Class Member workweeks, as well as the estimated settlement award. *See* Notice to Class. The Notice to the Class will be sent by first class mail to the Settlement Class and PAGA Members. ILYM Group, Inc., the Parties' selected Settlement Administrator, will undertake its best efforts to ensure that the notice is provided to the current addresses of Class Members. This includes conducting a National Change of Address search before the mailing and then conducting skip tracing on any individual Notices returned as undeliverable. Settlement Agreement at ¶ 56.a.i. Additionally, in the event a notice remains undeliverable even after skip tracing, the parties will endeavor to obtain email addresses to send the notice by email. *Id.* at ¶ 56.a.ii. The Settlement Administrator also will set up a website posting the Notice to the Class and other important case documents. *Id.* at ¶ 56.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.
- Right to Opt Out: The Notice shall state that Class Members who wish to exclude themselves from the Settlement Class and Settlement must submit a written Request for Exclusion to the Settlement Administrator by the 45-day Response Deadline. *Id.* ¶¶ 29, 30; Notice to Class. Any Class Member who submits a completed, signed, and timely written Opt-Out shall no longer be a member of the Class, although they still will be PAGA Members and subject to the PAGA Release. *Id.* ¶¶ 29, 30; *Arias v Superior Ct. (Dairy),* 46 Cal.4th 969 (2009).
- Right to Challenge Defendant's Workweek Records. Class Members will have the opportunity, should they disagree with Defendant's records regarding the workweek information stated on their Class Notice, to provide documentation and/or an explanation to show contrary workweeks. All workweek disputes shall be resolved and decided by the Settlement Administrator, with consultation with Defense and Class Counsel as appropriate. If a workweek dispute cannot be resolved by the Settlement Administrator, then it shall be resolved by the Court. Settlement

Agreement at ¶¶ 30, 36.

- Escalator Clause: Defendant represented that, based on a good faith and diligent review of their records, there are an estimated 1,420 Class Members who worked for RCM between October 8, 2017 and October 22, 2022, and an estimated 29,660 workweeks in the Class Period. *Id.* at ¶ 63. in the event the actual number of Class Members in the Class Period exceeds 1,420 by more than 10% (1,562) or the actual number of workweeks (pay periods) in the Class Period exceeds 29,660 by more than 10% (32,626), at Defendant's option, it shall either (1) pay a pro rata additional sum for the amount exceeding 10%; or (2) elect to end the release date when the number of Class Members or workweeks exceeds 10% over the represented amounts. *Id.*

IV. ARGUMENT

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

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

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

The first requirement of Rule 23(a) is that the class be so numerous that joinder of all members would be "impracticable." See Fed. R. Civ. P. 23(a)(1). Here, there are more than 1,000 class members, all of whom are identifiable from Defendant's records. Konecky Decl. at ¶ 23; Settlement Agreement at ¶ 63. This easily satisfies numerosity under Fed. R. Civ. P. 23(a)(1). See, e.g., Bruno v. Outen Rsch. Inst., LLC, 280 F.R.D. 524, 533 (C.D. Cal. 2011) ("A proposed class of at least forty members presumptively satisfies the numerosity requirement [of Rule 23(a)(1)]."); Johnson v. Winco Foods, 2020 U.S. Dist. LEXIS 104516, at *11 (C.D. Cal. Mar. 13, 2020) (finding a class sufficiently numerous where defendant produced "Class Member contact information for over 400 individuals…" and citing Bruno, 280 F.R.D at 533).

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

Rule 23(a) also requires "questions of law or fact common to the class." Fed. R. Civ. P. 23(a)(2). The Ninth Circuit permissively construes the commonality

requirement such that the "existence of shared legal issues with divergent factual predicates is sufficient, as is a common core of salient facts coupled with disparate legal remedies within the class." Hanlon v. Chrysler Corp., 150 F.3d 1011, 1019 (9th Cir. 1998). Plaintiff meets the criteria of Rule 23(a)(2) because the claims of the putative class members turn upon answers to overarching common questions regarding Defendant's policies and procedures that are capable of class-wide resolution for settlement purposes.

Central common questions in this case include (a) whether Defendant suffered and permitted Plaintiff and the other Class Members to work unscheduled overtime, through its policies with the Class Members and/or its clients; (b) whether Defendant suffered and permitted nurses to perform tasks off-the-clock, such as equipment setup and breakdown, and patient-hand-offs; (c) whether Defendant's policies failed to account for and compensate nurses for pre- and post-shift work, such as equipment setup and breakdown, and patient hand-offs; (d) whether Defendant required and/or suffered and permitted nurses to work through and/or remain on-duty during their meal and/or rest periods; (e) whether Defendant had sufficient policies and procedures to permit the nurses to verify their unscheduled work time with their placement sites or otherwise; (f) whether Defendant had sufficient policies and procedures to provide the nurses with off-duty meal and rest periods at their host facilities; (g) whether Defendant provided overtime and double time compensation; and (h) whether Defendant provided meal and rest period penalty pay.

Courts in the Ninth Circuit have found that similar claims satisfy the commonality requirement. See Shaw v. AMN Healthcare, Inc., 326 F.R.D. 247, 267-72, 275 (N.D. Cal. 2018) (finding commonality and predominance; granting certification of overtime and meal/rest period claims for a class of traveling nurses subject to similar working conditions); Carlino v. CHG Med. Staffing, Inc., 2019 U.S. Dist. LEXIS 33282, at *3-4, *11-16 (E.D. Cal. Feb. 28, 2019) (finding

commonality and predominance; certifying overtime claims for a class of traveling healthcare workers); see also, e.g., Dynabursky v. AlliedBarton Sec. Servs. LP, 2014 U.S. Dist. LEXIS 36915, at *10-32 (C.D. Cal. Jan. 29, 2014) (Staton, J.) (finding commonality as to meal/rest period claims of a statewide class of security officers; rejecting arguments against commonality based on alleged variations between placement sites; analyzing Abdullah v. U.S. Sec. Assocs., 731 F.3d 952 (9th Cir. 2013)). Thus, these common questions demonstrate that this action satisfies the commonality requirement.

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

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

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

Rule 23 also requires that "the representative parties fairly and adequately protect the interests of the class." Fed. R. Civ. P. 23(a)(4). The adequacy requirement is satisfied where, as here, the class representative (1) has common, and not antagonistic, interests with unnamed class members; and (2) will vigorously prosecute the interests of the class through qualified counsel. See Amchem Prods., Inc. v. Windsor, 521 U.S. 591, 625 (1997); Hanlon, 150 F.3d at 1021. Here, the named Plaintiff shares common alleged injuries with the class because she worked in a similar role as the putative Class Members and has the same or similar claims concerning off-the-clock work and missed meal and rest periods. Her interests are aligned with those of the other Class Members. Furthermore, Plaintiff's counsel are

well-qualified and committed to vigorously prosecuting the class claims. Konecky Decl. at ¶¶ 3-8.

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

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

Common Questions Predominate

"The Rule 23(b)(3) predominance inquiry tests whether proposed class [is] sufficiently cohesive to warrant adjudication by representation." Amchem, 521 U.S. at 623. "When common questions present a significant aspect of the case and they can be resolved for all members of the class in a single adjudication, there is clear justification for handling the dispute on a representative rather than an individual basis." Hanlon, 150 F.3d at 1022. Here, the claims brought on behalf of the proposed Settlement Class all arise from Plaintiff's allegation that Defendant suffers and permits off-the-clock work and does not provide off-duty meal and rest, as a result of its alleged insufficient policies and lack of oversight at the placement facilities. The claims also involve related issues such as whether Defendant knowingly places nurses in understaffed locations and whether Defendant fails to provide the required premium pay for missed meal and rest periods. The predominance requirement is met because the threshold questions as to Plaintiff's claims are susceptible to common proof. See, e.g., Castro v. ABM Indus., 325 F.R.D. 332, 339 (N.D. Cal. 2018).

For these reasons, the core issues raised by Plaintiff's claims are well-suited for

class treatment. See, e.g., Shaw, 326 F.R.D. at 267-72, 275 (finding commonality and predominance; granting certification of overtime and meal/rest period claims for a class of traveling nurses subject to similar working conditions); Carlino, 2019 U.S. Dist. LEXIS 33282, at *3-4, *11-16 (finding commonality and predominance; certifying overtime claims for a class of traveling healthcare workers in partially unopposed motion); see also Dynabursky, 2014 U.S. Dist. LEXIS 36915, at *27-30 (Staton, J.) (finding predominance as to meal/rest period claims of a statewide class of security officers; rejecting arguments against predominance based on alleged variations between placement sites; analyzing Abdullah v. U.S. Sec. Assocs., 731 F.3d 952 (9th Cir. 2013)).

a) A Class Action is Superior

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

B. Overview of the Class Action Settlement Process

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

1. A preliminary approval hearing, at which the court considers whether the proposed settlement is within the range of reasonableness possibly meriting final approval;
2. Dissemination of notice of the proposed settlement to Class Members for comment; and
3. A formal "fairness hearing," or final approval hearing, at which the Court decides whether the proposed settlement should be approved as fair, adequate, and reasonable to the class.

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

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

C. The Settlement Should be Preliminarily Approved

1. The Standards for Preliminary Approval

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

2. The Proposed Settlement Meets the Preliminary Approval Standards

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

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

This determination involves a balancing of several factors, including: "the strength of plaintiffs' case; the risk, expense, complexity, and likely duration of further litigation; the risk of maintaining class action status throughout the trial; the amount offered in settlement; [and] the extent of discovery completed" among other

factors. Chun-Hoon v. McKee Foods Corp., 715 F.Supp.2d 848, 850-51 (N.D. Cal. 2010) (quoting Class Plaintiffs, 955 F.2d at 1291).

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

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

The Settlement was reached after informed, arms-length settlement negotiations by experienced attorneys. Konecky Decl. at ¶¶ 17-20. Before the mediation, Defendant provided documents and data that enabled Plaintiff to vet the strengths and risks of the claims and run damages calculations for the putative class. Id. at ¶ 18. Additionally, the parties exchanged mediation briefs with substantive analysis. Id. at ¶ 19. The parties were well-informed and well-positioned to negotiate a fair settlement. Id. The fact that qualified and well-informed counsel endorse the proposed Settlement as being fair, reasonable, and adequate weighs heavily in favor of approval. See Brown v. Hain Celestial Grp., 2016 U.S. Dist. LEXIS 20118, at *16 (N.D. Cal. Feb. 18, 2016).

b) The Settlement provides a meaningful benefit to Class

Members and has no obvious deficiencies

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

The Settlement provides a beneficial result for the Class. Even after estimated attorneys' fees and costs, the proposed service award, the LWDA payment, and the estimated costs of settlement administration, there will be an estimated $805,616.67 for distribution to the Settlement Class Members.[1] Konecky Decl. at ¶¶ 25-26. There are approximately 1,420 Settlement Class Members. Id. at ¶ 23. The average Settlement Share will be approximately $567 per individual, not including the Individual PAGA Payments for the Class Members who also are PAGA Employees. Id. at ¶ 26. The average amount will increase or decrease for each Class Member depending upon his or her relative workweeks in the Class Period.

Additionally, the Settlement provides the Class Members the opportunity, should they disagree with Defendant's records regarding the number of workweeks

[1] Plaintiff calculated this Net Settlement Amount by subtracting the following from the Gross Settlement Amount of $1,600,000.00: (1) the fees and costs of the third party administrator charged with administering the settlement (estimated to be approximately $31,050); (2) the $200,000 PAGA Payment; (3) any service award approved by the Court for the Class Representative, Ms. Grady (up to maximum of $15,000); and (4) any attorneys' fees and costs approved by the Court (Plaintiff will seek up to the 1/3 of the Gross Settlement Amount, or $533,333.33, in fees, and reasonable costs not to exceed $15,000). *Id.*

each Class Member worked, to provide documentation and/or an explanation to show contrary workweeks. Settlement Agreement at ¶ 36. If there is a dispute, the Settlement Administrator will attempt to resolve it, with consultation with Defense and Class Counsel as appropriate. Id. If those efforts fail, the Court will resolve the workweek dispute. Id. Class Members will also be given the opportunity to object to the Settlement and, at the Court's discretion, to appear at the Final Approval/Fairness Hearing to have their objections heard by the Court. Id. at ¶ 19. Settlement Class Members will further have the opportunity to opt out of the class portion of the Settlement should they so desire. Id. at ¶ 29.2 These procedural safeguards are explained in the Notice of Class Action and PAGA Settlement to the Class (attached as Exhibit 1 to the Settlement Agreement and as Exhibit B to the Konecky Declaration.)

The potential risks attending further litigation also support preliminary approval. Courts have long recognized the inherent risks and "vagaries of litigation," and emphasized the comparative benefits of "immediate recovery by way of the compromise to the mere possibility of relief in the future, after protracted and expensive litigation." Nat'l Rural Telecomm, 221 F.R.D. at 526. Proceeding to trial in this action under the circumstances would be risky to the class and delay any chance of recovery. Instead of having to wait for relief that is far from certain, Settlement Class Members will receive payments in a reasonably prompt timeframe.

Here, even if Plaintiff had continued to litigate this case, there is no guarantee that Plaintiff would have been able to achieve class certification or demonstrate liability. Many issues would be hotly contested, including whether the case was

[2] 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).

suitable for class certification, whether Defendant suffered and permitted the Class Members to work off-the-clock, whether Defendant suffered and permitted the Class Members to work through meal and rest periods, and whether Defendant provided overtime and penalty pay as the law requires. The possibility of any class recovery at all would be erased if Plaintiff was unable to achieve any of these prerequisites.

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

c) The distribution formula is reasonable

The distribution formula takes into account objective data. It fairly and reasonably compensates Settlement Class Members in accordance with the relative strengths and weaknesses of their individual claims. Settlement Class Members' shares will increase or decrease proportionally based on the number of workweeks they have in comparison to the workweeks of all the Settlement Class Members combined. Konecky Decl. at ¶ 27. Thus, the Settlement Class Members' respective shares will increase or decrease proportionally based on the amount of time worked during the liability period. The Settlement Class Members' tenures performing work for Defendant during the liability period are reasonable proxies for the amount of alleged damages they incurred.

Further, the service award Plaintiff Grady intends to seek is reasonable and appropriate and does not unreasonably favor her over other Settlement Class Members. Id. ¶¶ 50-52. Service awards "are intended to compensate class representatives for work done on behalf of the class, to make up for financial or reputational risk undertaken in bringing the action, and, sometimes, to recognize their willingness to act as a private attorney general." Rodriguez v. West Publ'g Corp., 563 F.3d 948, 958-59 (9th Cir. 2009); see also Weeks, 2013 WL 6531177, at

*34. The factors courts use in determining whether to authorize a service award include: "'1) the risk to the class representative in commencing suit, both financial and otherwise; 2) the notoriety and personal difficulties encountered by the class representative; 3) the amount of time and effort spent by the class representatives; 4) the duration of the litigation[;] and 5) the personal benefit (or lack thereof) enjoyed by the class representative as a result of the litigation.'" Van Vranken v. Atl. Richfield Co., 901 F. Supp. 294, 299 (N.D. Cal. 1995).

Plaintiff will seek a service award of no more than $15,000. Plaintiff intends to seek this by separate motion to be heard at the final approval hearing. In that motion, Plaintiff will document why the amount is reasonable. Preliminarily, Plaintiff also notes here that "service awards of this size or even larger are common in class action cases." Andrews v. Plains All Am. Pipeline L.P., 2022 U.S. Dist. LEXIS 172183, at *12-13 (C.D. Cal. Sept. 20, 2022) (collecting cases and granting a $15,000 service award to each class representative).

Plaintiff's counsel also will be filing a separate motion for attorneys' fees and costs pursuant to Federal Rule 23(h). Plaintiff will be seeking attorneys' fees of up to one-third the Gross Settlement Amount, plus reimbursement of out-of-pocket costs not to exceed $15,000. Id. Plaintiff proposes that she file her motion for attorneys' fees and costs within two weeks of the mailing of the class notice to afford Class Members a full opportunity to review and comment on it. See In re: Mercury Interactive Corp. Sec. Litig. v. Mercury Interactive Corp., 618 F.3d 988, 991 (9th Cir. 2010).

In sum, given the favorable terms of the Settlement and the manner in which these terms were negotiated, the proposed Settlement should be preliminarily viewed as a fair, reasonable, and adequate compromise of the issues in dispute. The Court should therefore grant preliminary approval of the Settlement, order dissemination of notice to the Settlement Class for comment, and proceed to a formal fairness

hearing.

D. The Court should order dissemination of the proposed class notice

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

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

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

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

The notice provided to Class Members should "clearly and concisely state in plain, easily understood language" the nature of the action; the class definition; the

class claims, issues, or defenses; that the class member may appear through counsel; that the court will exclude from the class any member who requests exclusion; the time and manner for requesting exclusion; and the binding effect of a class judgment on class members." Fed. R. Civ. P. 23(c) (2)(B).

The notice form proposed by the parties complies with Rule 23 and is substantially similar to those encouraged by the Federal Judicial Center. See proposed Notice to Class, Exhibit 1 to Settlement Agreement. It accurately informs Class Members of the material terms of the Settlement and their rights pertaining to it, including the right to opt out from or object to the Settlement. Id. The notice also will be tailored for each individual and provide the Class Member's total workweeks worked during the class period, the dates of those workweeks, and the estimated settlement share of such Class Member in the event that all Class Members participate in the Settlement. Id. Plaintiff thus requests that the Court approve the form of notice.

E. The Court should set a schedule for final approval

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

V. CONCLUSION

For the foregoing reasons, Plaintiff respectfully requests that the Court enter the accompanying Proposed Order Granting Plaintiff's Motion for Preliminary Approval of Class Action and PAGA Settlement, conditionally certifying the Settlement Class, appointing Plaintiff as class representative and his attorneys as class counsel, directing dissemination of the class notice, and setting a hearing for the purpose of deciding whether to grant final approval of the settlement.

Dated: March 3, 2023

/s/ Joshua G. Konecky
Joshua G. Konecky
SCHNEIDER WALLACE
COTTRELL KONECKY LLP
Attorneys for Plaintiffs

CERTIFICATE OF SERVICE

I hereby certify that on March 3, 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