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8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 COUNTY OF SANTA CLARA

10 ANDREW VEITCH, RAMONA McCAMISH, and
11 BENNIE SUMNER, individually, and on behalf of
12 others similarly situated,

13 Plaintiffs,

14 vs.

15 STANFORD HEALTH CARE, a corporation, and
16 DOES 1-20, inclusive,

17 Defendants.

Case No. 22CV395001

CLASS ACTION

**MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
PLAINTIFF'S UNOPPOSED MOTION FOR
PRELIMINARY APPROVAL OF CLASS
AND PAGA ACTION SETTLEMENT**

Date: September 29, 2024

Time: 1:30 p.m.

Dept: D7

Before: Hon. Charles Adams

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1 **I. INTRODUCTION**

2 Plaintiffs Andrew Veitch, Ramona McCamish, and Bennie “Jon” Sumner seek preliminary
3 approval of a non-reversionary, checks-mailed class action settlement of at least \$10 million covering
4 California wage and hour claims against Defendant Stanford Health Care (“SHC”).¹ The proposed
5 settlement includes all SHC nurses who were paid on an hourly basis and who worked in California
6 for SHC as (1) an operating nurse, (2) a peri-operative and/or post-operative nurse, or (3) a
7 catheterization laboratory/endoscopy/interventional radiology/procedure room nurse from March 4,
8 2018 through April 13, 2024. The settlement class covers an estimated 880 class members. Plaintiffs
9 calculate rough estimated average pre-tax awards of about \$7,600 per Class Member, a significant
10 award for a settlement primarily involving meal period violations.

11 Plaintiffs allege that Defendant failed to provide compliant meal breaks – thirty-minute,
12 uninterrupted meal breaks for every five hours worked – and failed to pay premiums for noncompliant
13 meal periods. Plaintiffs also allege that when SHC did pay meal period premiums, it failed to pay at
14 the regular rate of pay, and that SHC also failed to provide compliant wage statements and pay all
15 wages due upon termination. Plaintiffs also bring a claim under the Unfair Competition Law,
16 California Business and Professions Code section 17200 *et seq.* (“UCL”), and representative claims
17 under the Private Attorneys General Act, California Labor Code section 2698 *et seq.* (“PAGA”).
18 Defendant contends that its employment policies and practices are lawful and appropriate.

19 In January 2024, less than two years after the case was filed, the parties participated in a second
20 all-day mediation session with respected mediator Jeffrey Ross. The parties reached a settlement in
21 principle at mediation and negotiated for several months over the details of the Agreement to Settle
22 Class and PAGA Claims (“Settlement Agreement” or “Settlement”), which is now presented to the
23 Court for preliminary approval. Under the Settlement, Defendant agrees to pay at least \$10 million.

24 In this Motion, Plaintiffs request the Court to (1) grant preliminary approval of the proposed
25 Settlement, including the settlement amount and the plan for allocation and distribution of settlement
26

27 _____
28 ¹ The proposed settlement is attached to the Declaration of Laura L. Ho (“Ho Decl.”), submitted
herewith, at Ex. 1.

1 funds, (2) approve the proposed notice plan and the dates by which Settlement Class Members must opt
2 out or object to the Settlement, (3) appoint Atticus Administration, LLC as Settlement Administrator,
3 (4) conditionally certify the proposed Settlement Class, (5) conditionally appoint Plaintiffs as Class
4 Representatives and Plaintiffs' Counsel, Goldstein, Borgen, Dardarian & Ho, as Class Counsel for the
5 Settlement Class, and (6) schedule a hearing date for Plaintiffs' Motion for Final Approval of Class and
6 Representative Action Settlement, Motion for Attorneys' Fees and Costs, and Motion for Service
7 Awards. Defendants do not oppose this motion.

8 **II. BACKGROUND**

9 **A. Factual Background and the Parties' Positions**

10 SHC operates several hospitals and medical facilities in the San Francisco Bay Area, including
11 Stanford Hospital in Palo Alto, California. Plaintiffs and putative class members are current and
12 former employees of Defendants, who worked in California as nurses responsible for the medical care
13 of patients and who frequently are assigned ten- and twelve-hour shifts. Plaintiffs allege that SHC
14 failed to provide class members with adequate meal breaks, and chronic understaffing has left nurses
15 unable to get adequate patient coverage to ensure timely meal breaks for all on-duty nurses. Plaintiffs
16 allege that until August 2021, SHC told class members that they were not eligible for a meal period
17 penalty if their meal period was provided between the end of their fifth and sixth hour of work and
18 were eligible for a penalty payment only if their meal period was provided after the end of the sixth
19 hour of work. Plaintiffs also allege that class members who worked more than ten hours in a day were
20 not provided with a second meal period, the wage statements provided to class members did not show
21 all premium wages owed and listed the incorrect rate of pay for meal period premium wages, and class
22 members who stopped working for SHC were not paid all wages due. Ho Decl. ¶ 8.

23 SHC contends that class members were provided an opportunity to take a timely, 30-minute
24 meal break on every shift, and that the collective bargaining agreement signed by the nurses' union
25 contained an enforceable waiver of the requirements of Labor Code section 512(a) such that SHC was
26 not obligated to provide a second meal break for shifts over ten hours and that the remaining unwaived
27 meal break could be at any time during the nurses' shift.

1 **B. Procedural Background**

2 On March 4, 2022, Plaintiffs gave written notice by certified mail of Defendant’s alleged
3 violations of various provisions of the California Labor Code to the Labor and Workforce Development
4 Agency (“LWDA”) and to Defendant. Ho Decl. ¶ 5. Plaintiffs supplemented their notice on
5 September 26, 2022. *Id.* ¶ 6. The LWDA has not indicated an intention to investigate the alleged
6 violations. *Id.* Plaintiffs filed their original complaint in this Court on March 4, 2022, followed by a
7 First Amended Complaint on May 10, 2022, a Second Amended Complaint on July 21, 2022, a Third
8 Amended Complaint on December 15, 2022, and a Fourth Amended Complaint on September 12,
9 2023. Defendant answered the Second Amended Complaint on August 22, 2022, the Third Amended
10 Complaint on January 5, 2023, and the Fourth Amended Complaint on September 12, 2023. *Id.* ¶ 7.

11 Following the Court’s lift of the stay of discovery on July 13, 2022 (by Judge Patricia Lucas),
12 Plaintiffs served form interrogatories, special interrogatories, and requests for production of
13 documents on Defendant. Shortly thereafter, the Parties agreed to engage in early mediation with Mr.
14 Jeffrey Ross and to limit SHC’s responses to discovery to those documents that would aid settlement
15 discussions. The Parties went to mediation with Mr. Ross on March 29, 2023. The Parties exchanged
16 detailed mediation briefs and Plaintiffs provided their damages exposure calculations to Defendant and
17 the mediator. Although the Parties did not reach a resolution at that time, they agreed to continue
18 settlement discussions with the aid of Mr. Ross, while resuming formal discovery. *See* Ho Decl. ¶ 9.

19 For the parties’ settlement discussions and in response to Plaintiffs’ discovery requests, SHC
20 produced thousands of pages of documents, including personnel files for each of the three Named
21 Plaintiffs, timekeeping data for the entire class, payroll data for the entire class, contact information for
22 the entire class, job history assignment data for the entire class, meal period policy documents, payroll
23 policy documents, employee handbooks, collective bargaining agreements, document and data
24 retention policies, job descriptions, and thousands of pages of redacted documents related to meal break
25 timing and exception requests maintained by SHC in hard copy form. *See* Ho Decl. ¶ 10. In addition
26 to formal exchanges of discovery with Defendant, Plaintiffs’ Counsel undertook substantial
27 independent investigation, including in-depth interviews with Plaintiffs and many putative class
28

1 members and reviewed many documents provided by Plaintiffs and putative class members, such as
2 employee handbooks, wage statements, and emails with SHC management related to SHC’s meal
3 period policies and practices. *See id.* ¶ 11.

4 The Parties had a second mediation session with Mr. Ross on January 24, 2024, at which time
5 they were able to reach a settlement in principle. Ahead of mediation, the Parties again exchanged
6 mediation briefs and Plaintiffs provided updated damages assessments with Defendant and the
7 mediator. The Parties executed a memorandum of understanding on April 16, 2024 and a long form
8 settlement agreement on May 10, 2024. *See id.* ¶ 12.

9 **C. The Terms of the Settlement**

10 This Settlement resolves Plaintiffs’ and the class and representative claims against Defendant.
11 The basic terms of the Settlement are:

12 **1. Settlement Fund**

13 Defendant has agreed to pay a total Settlement Fund of at least \$10 million which includes all
14 settlement payments to approximately 880 eligible Class Members, class administration costs, Class
15 Counsel fees and costs, enhancement payments to Named Plaintiffs, and a \$240,000 PAGA fund (75%
16 to be paid to the State of California). Settlement Agreement ¶ III(A). Defendants will separately pay
17 its share of payroll taxes. *Id.* None of the funds shall revert back to Defendants. *Id.* ¶ I(O). The
18 Settlement agreement also contains an escalator clause which provides for scaled increases in the
19 Settlement Fund in the event that there is a 10% increase in the number of Work Weeks encompassed
20 by the Settlement Class during the Class Period as compared to the data Defendant provided for
21 mediation. *Id.* ¶ III(A).

22 **2. Class Definition**

23 The Class is defined as “all SHC nurses who were paid on an hourly basis and who worked in
24 California for SHC as (1) an operating nurse, (2) a peri-operative and/or post-operative nurse, or (3) a
25 catheterization laboratory/endoscopy/interventional radiology/procedure room nurse from March 4,
26 2018 through April 13, 2024.” *Id.* ¶ I(G).

1 **3. Attorneys' Fees, Costs, and Named Plaintiffs' Enhancement Payments**

2 The Settlement provides for payment of up to one-third of the Settlement amount, or about
3 \$3.33 million, to Class Counsel as attorney's fees, and up to \$50,000 for reimbursement of litigation
4 costs. *Id.* ¶ III(L)(4)(a). It also specifies that up to \$60,000 is allocated to payments to the Named
5 Plaintiffs as Class Representative General Release/Enhancement Payments and as consideration for
6 the mutual general releases for the three Named Plaintiffs. Plaintiffs will request \$20,000 for each
7 Named Plaintiff. *Id.* ¶ III(L)(3)(a).

8 **4. Settlement Administrator and Administration Costs**

9 The Settlement proposes the appointment of Atticus Administration, LLC as Settlement
10 Administrator and allocates up to \$15,000 for payment of administration expenses. *Id.* ¶ III(L)(6).
11 Plaintiffs' Counsel sought bids from different administrators and selected what they viewed as the best
12 option for the Class. Class Counsel has previously worked with Atticus on settlement administration
13 and has found Atticus to be an experienced and qualified administrator. Atticus has confirmed that it
14 has procedures in place to protect the security of class data and has adequate insurance in the event of
15 a data breach or defalcation of funds. Ho Decl. ¶ 15.

16 **5. PAGA Allocation**

17 The Settlement allocates \$240,000 to PAGA penalties, with 75% of that amount (\$180,000) to
18 be paid to the LWDA. Settlement Agreement ¶ III(L)(5). Plaintiffs' Counsel has notified the LWDA
19 of the settlement and will upload copies of this preliminary approval filing on the LWDA website after
20 submission to this Court. Ho Decl. at ¶ 32. Plaintiffs' Counsel will notify the LWDA of the date,
21 time, and location of the final approval hearing. *Id.* Opting out of the Settlement does not opt the
22 Settlement Class Member out of the PAGA payment or release. Settlement Agreement ¶ III(K)(9)(d).

23 **6. Net Settlement Fund**

24 The Net Settlement Fund – *i.e.*, the amount remaining of the Settlement Fund after deductions
25 for attorneys' fees and costs, the PAGA allocation, settlement administration expenses, and the Class
26 Representative Enhancement Awards—will be distributed according to a formula based on Work
27 Weeks. Settlement Agreement ¶ III(L)(2)(a).

1 **7. Settlement Administration and Notice Procedures**

2 The Settlement Administrator will, among other tasks, perform a search on the National
3 Change of Address Database to update and correct any known or identifiable address changes,
4 distribute a Notice Packet to each Class Member, and use skip-tracing and remailing when necessary
5 for delivery; calculate payouts for each Settlement Class Member and disclose this amount along with
6 each Settlement Class Member’s total number of Work Weeks and dates of employment during the
7 Class Period; draw and distribute checks to Settlement Class Members who do not opt-out; administer
8 the Settlement Fund; mail any necessary tax reporting forms to Settlement Class Members, the Parties,
9 and the Settlement Fund; and report to the Court on the notice/opt out process and payment of the
10 Settlement Fund. *Id.* ¶ III(K).

11 No later than twenty-one (21) calendar days after the preliminary approval date, Defendants
12 will provide the Settlement Administrator with the contact information of the Settlement Class
13 Members, their names, last known mailing addresses, social security and employment ID numbers,
14 and the number of Work Weeks in the Class Period and, if applicable, the PAGA Period. *Id.* ¶
15 III(K)(1). Individual notice will be mailed to all Settlement Class Members no later than seven (7)
16 calendar days after the Settlement Administrator receives the foregoing information. *Id.* ¶ III(K)(3).

17 **8. Class Notice**

18 The proposed Class Notice explains the terms of the Settlement and how to receive a
19 Settlement Payment, object, or opt out. *Id.* ¶ III(K)(2)(a), Ex. 1. All requests for exclusion must be
20 submitted by mail to the Court no later than 45 days after the Class Administrator’s mailing of the
21 Class Notice or 15 days after a re-mailing of Notice, whichever is later, and the deadline is disclosed
22 to Class Members in the Notice. *Id.* ¶ III(K)(9). The proposed Class Notice asks Class Members who
23 want to opt out to submit their name and an assigned Class Member ID to help the Settlement
24 Administrator identify the Class Member in case there are duplicative names on the class list. Class
25 Members will be able to submit objections in writing to the Settlement Administrator or orally at the
26 Fairness Hearing. *Id.* ¶ III(K)(10). Class Notice also informs Settlement Class members of how to
27 submit disputes regarding their dates worked. *Id.* ¶ III(K)(5).

1 The Notice will be provided to Class Members in English and not translated into any other
2 languages. English-only notice is appropriate in this case because Class Members, who are trained
3 and state-certified nurses, are expected to understand and communicate in English as part of the
4 performance of their job duties. Ho Decl. ¶ 18.

5 Plaintiffs note that the Santa Clara County Superior Court Guidelines for Motions Relating to
6 Preliminary and Final Approval of Class Actions recommend including instructions to Class Members
7 who want to access the Court’s docket online via two websites, but one of the websites
8 (www.scefilings.org) appears not to work and the proposed Class Notice therefore does not direct Class
9 Members to that website. *Id.* ¶ 19.

10 **9. Tax Consequences of Settlement Payments**

11 The Parties agree that 20% of each Class Member Award shall be allocated to Form W-2
12 wages, and 80% to penalties, interest, and other non-wages subject to Form 1099 reporting.
13 Settlement Agreement ¶ III(L)(2)(d). Each PAGA Award shall be allocated as 100% penalties subject
14 to Form 1099 reporting. *Id.* The Class Administrator will calculate from the Net Settlement Fund
15 each Eligible Class Member’s share of the settlement, employee taxes, deductions, contributions and
16 other amounts required to be paid to government agencies and/or tax authorities, which amounts then
17 shall be paid by the Class Administrator from the Settlement Fund. Defendants are responsible for
18 payment of all employer payroll taxes. *Id.* ¶ III(A)

19 **10. Uncashed Checks**

20 Funds associated with checks uncashed after 180 days will be distributed to the State of
21 California and held pursuant to the Unclaimed Property Law. *Id.* ¶ III(L)(2)(e). Alternatively, if the
22 Court does not approve escheatment to the State, the Parties have selected to split the uncashed
23 amounts equally to two *cy pres* recipients. First, the parties have selected Asian Law Alliance
24 (“ALA”), a non-profit legal organization based in Santa Clara County. ALA provides a variety of
25 legal services, including services related to housing, public benefits, and civil rights, to residents of
26 Santa Clara County and the broader Silicon Valley, with a focus on service to the Asian Pacific
27 Islander and low-income communities in the South Bay. ALA serves a community similar to the class
28

1 in this case, who live and work in the San Francisco Bay Area, primarily at and near the main Stanford
2 Hospital in Palo Alto. Second, the parties have selected Centro Legal de la Raza (“Centro”), a non-
3 profit legal organization based in Alameda County representing low-income and immigrant workers,
4 tenants, and others. One of Centro’s primary areas of legal service is dedicated to workers
5 experiencing wage theft. Centro’s services support California workers in pursuit of their rights under
6 the California Labor Code, like the objectives of the lawsuit here. Ho Decl. ¶ 16. These organizations
7 meet the statutory requirements of Code of Civil Procedure Section 384(b), as they have projects that
8 benefit people similar to the class involved in this case, promote the rights of workers similar to the
9 claims at issue in this case, and provide civil legal services to low-income Californians in the San
10 Francisco Bay Area.

11 **11. Scope of Release and Final Judgment**

12 The release contemplated by the proposed Settlement corresponds to the claims made against
13 Defendant in the Plaintiffs’ complaints and to the violations identified in Plaintiffs’ PAGA notices.
14 Settlement Agreement ¶ III(B) & (C). The Released Claims include all claims that were or could have
15 been raised arising from or based on facts alleged in the complaints or PAGA notices. *Id.* ¶ I(GG).
16 The Named Plaintiffs additionally agree to a general release of all potential claims against Defendant
17 as part of the consideration for their proposed service awards. *Id.* ¶ III(D).

18 **III. THE COURT SHOULD PRELIMINARILY APPROVE THE SETTLEMENT**
19 **BECAUSE IT IS FAIR, REASONABLE, AND ADEQUATE**

20 **A. The Two-Step Settlement Approval Process**

21 A class action settlement requires “approval of the court after [a] hearing.” Cal. Rule of Court
22 3.769(a). Court approval is a two-step process: (1) the court undertakes a preliminary review of the
23 fairness, reasonableness, and adequacy of the settlement, and (2) the court conducts a detailed review
24 after notice has been distributed to Class Members for their comments or objections. Cal. Rule of
25 Court 3.769(c)-(g); *Cellphone Termination Fee Cases*, 180 Cal. App. 4th 1110, 1118 (2009).

26 After notice of settlement has been distributed, then the court considers the extent of opt-outs,
27 evaluates any objections, and makes a final determination whether to approve the settlement. Cal. Rule
28

1 of Court 3.769(f), (g); *Cellphone Term. Fee Cases*, 180 Cal. App. 4th at 1118. In deciding whether a
2 settlement is reasonable at the final fairness stage courts consider: (1) the strength of the plaintiff’s case
3 balanced against the settlement amount; (2) “the risk, expense, complexity and likely duration of
4 further litigation, including the risk of maintaining class action status through trial;” (3) “the extent of
5 discovery completed and the stage of the proceedings;” (4) “the experience and view of counsel” and
6 (5) “the reaction of the class members to the proposed settlement.” *Kullar v. Foot Locker Retail, Inc.*,
7 168 Cal. App. 4th 116, 128 (2008) (citing *Dunk v. Ford Motor Co.*, 48 Cal. App. 4th 1794, 1801
8 (1996)) (internal quotations omitted).

9 The trial court has broad discretion in determining whether a settlement is fair. *See In re Sutter*
10 *Health Uninsured Pricing Cases*, 171 Cal. App. 4th 495, 504-05 (2009). A “presumption of fairness”
11 exists when: (1) a settlement is reached through arm’s length bargaining; (2) investigation and
12 discovery are sufficient to allow counsel and the Court to act intelligently; (3) counsel is experienced
13 in similar litigation; and (4) the percentage of objectors is small.² *Wershba v. Apple Computer, Inc.*,
14 91 Cal. App. 4th 224, 245 (2001) (internal citation omitted) (disapproved of on another ground by
15 *Hernandez v. Restoration Hardware, Inc.*, 4 Cal. 5th 260, 269 (2018)).

16 **B. The Settlement Merits a Preliminary Finding of Reasonableness.**

17 Preliminary approval is appropriate because the Settlement is within the range of reasonableness
18 for each factor that the Court will consider at the final approval hearing.

19 **1. In Light of Significant Litigation Risks, the Settlement Provides Reasonable**
20 **Compensation for Class Members’ Damages and Substantial Injunctive Relief.**

21 The amount of the settlement in light of the strength of the plaintiff’s case is the most
22 important “reasonableness” factor. *See Kullar*, 168 Cal. App. 4th at 130. This \$10 million, non-
23 reversionary Settlement will provide Class Members with a substantial payment for their claims and
24 avoid the risks of continued litigation. Based on class data through September 17, 2023, Plaintiffs
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26

27 _____
28 ² The factor regarding percentage of objectors is not pertinent at the preliminary approval stage since
notice has not yet been distributed.

1 calculate rough estimated average pre-tax awards of about \$7,600 per Class Member, a significant
2 award for a settlement primarily about meal period violations. Ho Decl. ¶ 24.

3 The Settlement’s monetary relief compares favorably with Class Counsel’s calculations of the
4 realistic exposure on the class claims. *Id.* ¶ 25. Plaintiffs provide below a summary of the value of
5 each claim that is being settled. The risks of each claim will be addressed in turn, along with a
6 comparison of the estimated potential recovery at trial on each claim compared to the discounted
7 settlement amount attributable to each claim. As explained below, when accounting for the various
8 litigation risks on Defendant’s various arguments regarding the unsuitability of these claims for class
9 treatment and on the merits of each claim, the settlement compares favorably with a realistic estimated
10 exposure on each claim.

11 **a. Late, Short, and Missed Meal Break Claims**

12 Plaintiffs’ claim that Defendant failed to provide timely, thirty-minute meal breaks faces
13 significant litigation risks on the merits and at class certification. Defendant’s primary defense is that
14 the nurses’ union bargained for a waiver of one of two meal breaks owed to nurses who worked longer
15 than ten hours under Wage Order 5 section 11(D), which states: “Notwithstanding any other provision
16 of this order, employees in the health care industry who work shifts in excess of eight (8) total hours in
17 a workday may voluntarily waive their right to one of their two meal periods. In order to be valid, any
18 such waiver must be documented in a written agreement that is voluntarily signed by both the
19 employee and the employer. The employee may revoke the waiver at any time by providing the
20 employer at least one day’s written notice. The employee shall be fully compensated for all working
21 time, including any on-the-job meal period, while such waiver is in effect.” Ho Decl. ¶ 25(a).

22 Plaintiffs’ position is that the collective bargaining agreement failed to meet the “clear and
23 unmistakable” standard for CBA waivers of statutory rights, as the agreement does not set forth the
24 Labor Code section 512 rights that are being waived and does not permit the employee to revoke the
25 waiver at any time as required by Wage Order 5 section 11(D). *See Choate v. Celite Corp.*, 215 Cal.
26 App. 4th 1460, 1462 (2013); *Ehret v. WinCo Foods, LLC*, 26 Cal. App. 5th 1, 7 (2018). Plaintiffs,
27 however, acknowledge the legal risks of their position and understand that no California appellate
28

1 courts have decided whether a CBA may contain an enforceable waiver of a second meal period under
2 section 11(D) and if so, whether the remaining meal period must begin by the end of the employee's
3 fifth hour of work. Ho Decl. ¶ 25(b).

4 If Defendant won its waiver argument, the number of meal period violations at issue would
5 drop significantly. Plaintiffs identified 206,080 shifts in Defendant's data that lasted longer than ten
6 hours, such that under Labor Code section 512 the employee should receive a second meal period. If
7 Labor Code section 512 applies, the data show 205,323 of those shifts over ten hours have meal period
8 violations – over 99.6% of 10+ hour shifts. Assuming the enforceability of the waiver, however,
9 Plaintiffs identify only 88,614 meal period violations for those shifts (*i.e.* no meal period at all or a
10 meal period under 30 minutes) – only about 43% of 10+ hour shifts. Ho Decl. ¶ 25(c).

11 Additionally, crediting the common employer defense that meal periods close to but not quite
12 thirty minutes is indicative of employee choice to return to work early rather than an employer's
13 failure to provide a full meal period, Plaintiffs' estimated violation rate drops even further: the data
14 show only 5,307 shifts over ten hours with meal periods under 25 minutes (1.1% of 10+ hour shifts).
15 For shifts between six and ten hours, Plaintiffs count 149,437 total shifts, of which 100,424 have meal
16 period violations (no meal period, meal period under thirty minutes, or meal period after the end of the
17 fifth hour of work), or 67.2% of shifts between six and ten hours; but excluding meal period violations
18 for meal periods between 25 and 30 minutes, Plaintiffs count only 71,338 meal period violations, or
19 47.7% of shifts between six and ten hours. Ho Decl. ¶ 25(d).

20 SHC takes the position that class certification is inappropriate on Plaintiffs' meal period claims
21 given the differences among class members and individualized issues presented. Class members
22 belong to a variety of surgery and non-surgery departments, each with different meal period policies
23 and practices, including coverage practices. SHC also argues that nurses, particularly those working
24 12-hour shifts, prefer to take a single meal period in the middle of their shift than two unpaid thirty-
25 minute breaks and voluntarily decline a timely meal break by the end of the fifth hour of work. Ho
26 Decl. ¶ 25(e).

1 Plaintiffs believe that the maximum exposure Defendant faces if the class were to prevail on the
2 meal period claims (including missed, short, and untimely first and second meal periods) including
3 interest, is \$35.9 million. Applying a discount of 50% of second meal period violations if Defendant
4 wins on its waiver argument and accounting for an 85% discount for litigation risks on meal periods
5 close to 30 minutes (25 minutes or longer), Defendant’s exposure is \$12.7 million. Accounting for
6 class certification risks with a 20% overall exposure discount and another 10% discount for risks on the
7 merits of the remaining meal period violations, Plaintiffs estimate that Defendant’s realistic exposure
8 on their meal period claims is about \$9.2 million. *Id.* ¶ 25(f).

9 **b. Failure to Pay Meal Period Premiums at the Regular Rate of Pay**

10 Plaintiffs alleged that even when Defendant paid meal period premiums, it paid at the base
11 hourly rate instead of at the regular rate of pay, which should include other forms of compensation,
12 such as night and weekend shift differential pay. Plaintiffs estimate a relatively low maximum
13 exposure on this claim: \$113,736 including interest. *Id.* ¶ 25(g).

14 **c. Wage Statement and Waiting Time Penalties**

15 Plaintiffs allege derivative violations for wage statement and waiting time penalties, which are
16 subject to the litigation risks described above.

17 Additionally, the exposure on Plaintiffs’ wage statement claim was significantly limited by the
18 settlement of a related case involving wage statement claims. On April 7, 2023, the plaintiffs in
19 *Audycki et al. v. Stanford Health Care*, No. 19CV347173 (Santa Clara Super. Ct.) (consolidated with
20 Case Nos. 19CV360010 and 20CV365879) filed a motion for preliminary approval of a class action
21 settlement involving SHC and a class of non-exempt employees of SHC. The language of the release
22 in *Audycki* carved out the entirety of the *Veitch* case except for “claims related to inaccurate or non-
23 compliant wage statements under Labor Code § 226” through the end of the *Audycki* class period,
24 which ended on April 1, 2023. *See* Jt. Stip. of Class Action & PAGA Settlement & Release of Claims
25 at p. 10, *Audycki*, No. 19CV347173 (Santa Clara Cnty. Super. Ct. Apr. 7, 2023). Judge Sunil R.
26 Kulkarni entered an order granting final approval of the *Audycki* settlement on October 19, 2023.

1 Therefore, Plaintiffs’ wage statement penalty exposure is limited to April 2, 2023 through the end of
2 the *Veitch* class period on April 13, 2024. Ho Decl. ¶ 25(h).

3 Defendant will likely argue that even if a wage statement violation did result, it was not the
4 result of a “knowing and intentional” failure. Defendants will argue that they are not liable for
5 penalties under the “subsequent pay periods” rate in California Labor Code section 226(e)(1). In
6 addition, Plaintiffs will likely face arguments that employees did not suffer injury as a result of any
7 wage statement violations and that there was a good faith dispute as to whether meal period premium
8 wages were due. *Id.* ¶ 25(i); *see Naranjo v. Spectrum Sec. Servs., Inc.*, 88 Cal. App. 5th 937 (2023)
9 (the good faith defense under section 203 applies equally to penalties under section 226), *aff’d* 2024
10 WL 1979980, *1, Case No. S279397 (Cal. May 6, 2024).

11 Accounting for the limited liability period for their wage statement claims given the *Audycki*
12 settlement and release, Plaintiffs estimate a maximum exposure of \$660,300, or \$589,100 excluding
13 violations related to SHC’s waiver argument. Applying a 60% discount for the good faith defense and
14 a 10% discount for the risk on subsequent penalties, Plaintiffs calculate a realistic exposure of
15 \$350,000. *Id.* ¶ 25(j).

16 For waiting time penalties under Labor Code section 203, Defendants will assert that there is a
17 “good faith dispute” that meal premium wages were due and that no penalties should be imposed. *Id.* ¶
18 25(k). Plaintiffs calculate a maximum exposure on waiting time penalties of \$8,802,915 for 233 class
19 members who stopped working for SHC during the class period. Applying a 80% discount based on
20 the risks on the merits of Plaintiffs’ meal period claims, and a 75% discount for Defendants’ good faith
21 dispute argument, a realistic exposure for the waiting time penalties is approximately \$440,000. *Id.*

22 **d. Interest and Penalties**

23 The Parties agree that for taxation purposes, 20% of the settlement payment will be considered
24 wages, and 80% will be considered non-wage income, an allocation regularly approved in similar
25 wage and hour cases. *See, e.g., Audycki et al. v. Stanford Health Care*, No. 19CV347173 (Santa Clara
26 Cnty. Super. Ct. Oct. 19, 2023) (granting final approval of a \$15 million wage and hour settlement
27 with 20/80 wage/nonwage allocation on class settlement awards); *Abron v. University Healthcare*

1 *Alliance*, RG20066438 (Alameda Cnty. Super. Ct. Dec. 28, 2023) (granting final approval of \$5
2 million wage and hour settlement with 20/80 wage/nonwage allocation on class settlement awards).
3 Settlement awards from the PAGA allocation will be considered 100% non-wage penalties.
4 Settlement Agreement ¶ III(L)(2)(d).

5 **2. The Class Would Face Considerable Risks and Delays Absent Settlement.**

6 As the preceding section describes, Plaintiffs and the Class face significant risks on the merits
7 and at class certification. Without the Settlement, Plaintiffs and the Class would experience a lengthy
8 delay before receiving any recovery. Plaintiffs would have to move for and win class certification,
9 complete merits discovery, defeat a likely motion for summary adjudication, and prepare for and
10 prevail at trial. If Plaintiffs prevail, Defendant will likely appeal. Even if Plaintiffs were to win the
11 issue of whether a collective bargaining agreement may waive a meal period and the timing of the
12 remaining meal period on behalf of nurses under Wage Order 5, Defendant would surely continue to
13 litigate the question on appeal. Continued litigation will result in additional expenses, including
14 attorneys' fees, costs of Defendant depositions, and expert fees. Thus, this Settlement provides
15 substantial benefits to Class Members by ensuring timely and meaningful relief. Ho Decl. ¶ 26.

16 **3. The Settlement Is the Result of Arm's-Length, Informed Negotiation.**

17 This Settlement was negotiated with the assistance of experienced mediator Jeffrey Ross. In
18 determining that a settlement represents an arm's-length transaction, courts give "considerable weight"
19 to the "involvement of a neutral mediator." *Kullar*, 168 Cal. App. 4th at 129; *see also In re Sutter*
20 *Health Uninsured Pricing Cases*, 171 Cal. App. 4th at 504. Plaintiffs and Defendant exchanged
21 several rounds of mediation briefs and supplemental briefs on liability and damages with each other
22 and the mediator.

23 Prior to mediation the parties exchanged substantial amounts of information in formal
24 discovery. Plaintiff served form interrogatories, special interrogatories, and requests for production of
25 documents. SHC produced thousands of pages of documents, including personnel files for each of the
26 three Named Plaintiffs, classwide timekeeping data, classwide payroll data, classwide contact
27 information, classwide job history assignments, meal period policy documents, payroll policy
28

1 documents, employee handbooks, collective bargaining agreements, document and data retention
2 policies, job descriptions, and thousands of pages of redacted documents related to meal break timing
3 and exception requests maintained by SHC in hard copy form. In addition to formal exchanges of
4 discovery with Defendant, Plaintiffs’ Counsel undertook substantial independent investigation,
5 including in-depth interviews with each Named Plaintiff and several putative class members and
6 reviewed many documents provided by Plaintiffs and putative class members, such as employee
7 handbooks, wage statements, and emails with SHC management. *See* Ho Decl. ¶ 28.

8 Plaintiffs have efficiently obtained substantial and adequate information to arrive at a reliable
9 estimate of the risk facing Plaintiffs’ claims and the exposure Defendant faces. *Id.* ¶ 29.

10 **4. The Views of Experienced Counsel Support the Reasonableness of the Settlement.**

11 Proposed Class Counsel has extensive experience in class action litigation and has been
12 appointed as Class Counsel in many class-action lawsuits involving wage-and-hour violations in
13 California. Drawing on their experience, Plaintiffs’ Counsel believes that the Settlement is reasonable
14 considering the litigation risks described above. *Id.* ¶¶ 38-40.

15 **C. Settlement of Penalties under the Private Attorneys General Act of 2004 Is Reasonable.**

16 The estimated PAGA penalties in this case stem from allegations that Defendant failed to:
17 provide timely meal periods, pay meal period premiums, pay meal period premiums at the regular rate
18 of pay, provide accurate wage statements, pay wages timely, pay all wages to separated employees,
19 and maintain accurate records. Plaintiffs estimate the maximum exposure on their PAGA claim is
20 over \$18 million. *Id.* ¶ 30.

21 Plaintiffs acknowledge that the likelihood of recovering that full penalty amount is low. Courts
22 have discretion to reduce the amount of PAGA penalties if the full award would be “unjust, arbitrary
23 and oppressive, or confiscatory” under California Labor Code section 2699(e)(2). Courts have, for
24 example, reduced PAGA penalties where the class is otherwise being compensated for their Labor
25 Code claims on the same facts and the underlying PAGA violations, as is the case here, where
26 the Class’s Labor Code damages are significant. *See Carrington v. Starbucks Corp.*, 30 Cal. App. 5th
27 504, 529 (2018). Courts will also reduce PAGA penalties where there is evidence that a defendant
28

1 made a “good faith effort” to comply with the underlying Labor Code requirements. *See id.* (affirming
2 trial court’s reduction of PAGA penalties from the \$50 maximum per initial violation to \$5 per initial
3 violation due to Defendant’s good faith attempts to comply with Labor Code).

4 The Court might also decide that no penalties for “subsequent” violations may be awarded
5 absent evidence that another court or the Labor Commissioner decided against Defendant on the same
6 facts. *See Amaral v. Cintas Corp. No. 2*, 163 Cal. App. 4th 1157, 1209 (2008) (applying PAGA
7 penalties to initial violations but not to subsequent violations where the employer was not yet notified
8 that they were violating the Labor Code); *Bernstein v. Virgin Am., Inc.*, 3 F.4th 1127, 1144 (9th Cir.
9 2021) (reversing district court’s imposition of penalties for subsequent violations where neither the
10 Labor Commissioner nor the court notified defendant of California Labor Code violations).

11 The Court may also decline to impose multiple PAGA penalties for the same underlying
12 violation, or for the same pay period when a statute is violated under different theories of liability (*i.e.*
13 “stacking”). *See, e.g., Snow v. United Parcel Serv., Inc.*, No. 5:20-cv-00025-PSG-AFM, 2020 WL
14 1638250, at *3 (C.D. Cal. Apr. 1, 2020).

15 The PAGA allocation in this case is appropriate given the merits risks on the claims as
16 discussed above, the open legal questions about the calculation of PAGA penalties, and the likelihood
17 that a court would exercise its discretion to reduce PAGA penalties after trial. The PAGA allocation
18 from the settlement fund is \$240,000. Of the PAGA allocation, 75% will be distributed to the LWDA
19 and 25% will be distributed to Class Members who worked during the PAGA period. Plaintiffs’
20 Counsel has notified the LWDA of the settlement agreement and will upload additional documents
21 about the settlement after submission to this Court. Ho Decl. ¶ 30.

22 This allocation also falls within the approved settlement ranges of other cases involving both
23 damages and PAGA penalties. *See, e.g., Audycki et al. v. Stanford Health Care*, No. 19CV347173
24 (Santa Clara Cnty. Super. Ct. Oct. 19, 2023) (final approval granted on \$15 million wage and hour
25 settlement with \$500,000 PAGA allocation); *Abron v. University Healthcare Alliance*, RG20066438
26 (Alameda Cnty. Super. Ct. Dec. 28, 2023) (granting final approval of \$5 million wage and hour
27 settlement with \$250,000 PAGA allocation).

1 **D. The Settlement Is Presumptively Fair Because It Is the Result of Non-Collusive, Arm’s-**
2 **Length, and Informed Negotiations by Experienced Counsel.**

3 A settlement is presumptively fair where it was reached through arm’s-length bargaining, was
4 informed by sufficient investigation and discovery, and conducted by experienced counsel. *Munoz v.*
5 *BCI Coca-Cola Bottling Co. of L.A.*, 186 Cal. App. 4th 399, 408 (2010) (citing *Dunk*, 48 Cal. App. 4th
6 at 1802).

7 As described above, the parties here negotiated the Settlement Agreement in good faith after
8 extensive interviews, document review, and legal briefing through mediation brief exchanges. The
9 parties debated their positions with the mediator during both mediation sessions and further
10 investigated their positions during formal discovery between mediation sessions. Further negotiation
11 over several months on the details of the proposal, with additional mediator assistance, resulted in the
12 current Settlement. Ho Decl. ¶¶ 9-12.

13 Plaintiffs’ Counsel, GBDH, are experienced and qualified to evaluate the class claims, the risks
14 and benefits of continued litigation and settlement, and the strength of defenses asserted. GBDH has
15 significant experience litigating wage-and-hour cases, including cases like this one. *Id.* ¶¶ 22, 38-41.

16 The Settlement is the result of non-collusive, arms-length, and informed negotiation between
17 the parties, which supports the presumption that it is fair and should be approved.

18 **E. The Proposed Class Notice Content and Procedures Are Appropriate.**

19 The proposed Notice and Class Administration Procedures satisfy due process because they
20 provide the best practicable notice of the Settlement to the Class and that notice contains all the
21 required information.

22 To guard the rights of absent Class Members, the Class must be provided with the best notice
23 practicable of the potential settlement. *Wershba*, 91 Cal. App. 4th at 251-52. The Court has discretion
24 to fashion an appropriate notice program. Cal. Civ. Code § 1781. In addition, Rule 3.766(d) of the
25 California Rules of Court states that a class notice must contain: (1) a brief explanation of the case; (2)
26 a statement about requests for exclusion by a specific date; (3) a procedure for requesting exclusion
27 from the class; (4) a statement that the judgment will bind all members who do not request exclusion;

1 and (5) a statement that any member who does not request exclusion may enter an appearance through
2 counsel.

3 Plaintiffs' comprehensive Notice satisfies all of these requirements. The proposed Class Notice
4 will notify all Settlement Class Members of the terms of the settlement, that their rights may be affected
5 by the settlement, that they may participate, opt out of, or object to the settlement. The Notice is in
6 English, which is appropriate for this class because they are required to read and write in English to
7 perform their jobs. The Notice will describe the procedure for opting out and will explain that if they
8 choose to participate, they may appear through their own counsel. The proposed Notice will provide
9 each Settlement Class Member with their estimated award, along with an explanation of how the
10 allocation was calculated and how to dispute any information regarding their employment dates or job
11 position. *See* Ho Decl., Ex. 1.

12 Notice will have a "reasonable chance of reaching a substantial percentage of the class
13 members." *Cartt v. Superior Court*, 50 Cal. App. 3d 960, 974 (1975). Here, the Settlement
14 Administrator will receive contact and work week information from Defendant and, after performing a
15 search on the National Change of Address Database to update and correct any known or identifiable
16 address changes, send notice by first class mail to each Settlement Class Member. If any notices are
17 returned as undeliverable, the Claims Administrator will use skip tracing or other comparable methods
18 to resend the notice. Consequently, notice is likely to reach most Settlement Class Members.
19 Settlement Agreement ¶ III(K)(2)-(4).

20 The Parties have selected claims administrator Atticus Administration to distribute Notice,
21 process opt-outs, and share challenges. Atticus is a well-regarded administrator that Plaintiffs'
22 Counsel have retained in the past with good results. In Plaintiffs' Counsel's experience, Atticus' bid
23 was reasonable. Ho Decl. ¶ 14.

24 **F. The Service Payments to the Class Representatives Are Preliminarily Reasonable.**

25 Although this Court does not the decide the amount of any service award until the final approval
26 hearing, notice of the requested service payments of \$20,000 to each of the three named plaintiffs
27 should be provided to the Class. Named Plaintiffs are eligible to receive service awards that reasonably
28

1 compensate them for undertaking and fulfilling a fiduciary duty to represent the absent class members.
2 *See Cellphone Term. Fee Cases*, 186 Cal. App. 4th at 1393-94 (2010); *Bell v. Farmers Ins. Exchange*,
3 115 Cal. App. 4th 715, 725-26 (2004) (affirming service payments to class representatives); Manual
4 for Complex Litigation § 21.62 (4th ed. 2004) (service awards are warranted).

5 Named Plaintiffs have expended significant amounts of time on this case, including being
6 interviewed, searching for and providing documents to their lawyers, keeping their lawyers informed
7 of changes in meal period policies at SHC, and preparing for and attending or being available at
8 mediation. Ho Decl. ¶ 34, Veitch Decl. ¶¶ 5-8, 11-18; McCamish Decl. ¶¶ 5-8, 11-18; Sumner Decl.
9 ¶¶ 4, 7-14. Their efforts secured a significant estimated average settlement award of \$7,600 – an
10 outstanding result in a case primarily involving meal period violations – and only two years after filing
11 their original complaint. Two of the Named Plaintiffs no longer work for SHC and therefore will
12 receive smaller awards than Class Members who worked for a longer portion of the Class Period.
13 Named Plaintiffs placed themselves in the spotlight and risked that SHC might retaliate or future
14 employers would learn of their role in the litigation and look unfavorably on it. Ho Decl. ¶ 34; Veitch
15 Decl. ¶ 20; McCamish Decl. ¶ 20; Sumner Decl ¶ 16. Service payments are also consideration for the
16 Named Plaintiffs’ execution of broader release of claims than the rest of the class. Ho Decl. ¶ 33. As
17 Plaintiffs will brief in further detail, the requested award is reasonable. *See, e.g., Audycki et al. v.*
18 *Stanford Health Care*, No. 19CV347173 (Santa Clara Cnty. Super. Ct. Oct. 19, 2023) (final approval
19 granted on \$15 million wage and hour settlement with \$20,000 class representative incentive awards
20 for each of the three named plaintiffs); *Sephora Wage and Hour Cases*, Nos. CJC-16-004911, 4911,
21 CGC-16-550894, 16CV294112, CGC-17-557031, CGC-17-561452, 2022 WL 4295613 (San
22 Francisco Cnty. Super. Ct. June 13, 2022) (approving \$20,000 service award to each of five named
23 plaintiffs in \$12.75 million wage and hour settlement); *Cubillas v. Dav-El L.A.*, No. BC427918, 2018
24 WL 3760657, at *4 (L.A. Cnty. Super. Ct. June 14, 2018) (approving a \$17,500 service award in \$2.8
25 million wage and hour settlement).

1 **G. Plaintiffs’ Request for Attorneys’ Fees and Reimbursement of Litigation Costs**

2 Plaintiffs, having reached a favorable settlement of this wage and hour class action, are
3 “prevailing parties” entitled to recover reasonable attorneys’ fees and costs. See Cal. Lab. Code
4 §§ 218.5, 226, 1194, & 2699(g)(1); Cal. Civ. Proc. Code § 1021.5(a) (awarding reasonable attorneys’
5 fees and costs where plaintiff’s action resulted in the enforcement of an important right, conferred a
6 significant benefit to a large class of persons, and private enforcement was necessary); *Maria P. v.*
7 *Riles*, 43 Cal. 3d 1281, 1290-91 (1987) (fee award justified when legal action produced its benefits
8 through voluntary settlement).

9 The Settlement authorizes Plaintiffs’ Counsel to request up to one-third of the gross settlement
10 amount and up to \$50,000 for reimbursement of litigation costs. Plaintiffs will fully brief these
11 requests when moving for final approval. At this stage, Plaintiffs asks that the Court authorize notice
12 of the requested award of the fees and costs to the Settlement Class. Ho Decl. ¶ 36.

13 **1. The Class Should be Informed of the Requested Attorneys’ Fee Award.**

14 Courts may award attorneys’ fees from a common fund in a class action using either the
15 “percentage” method or the “lodestar-multiplier” method. *Lafitte v. Robert Half Int’l, Inc.*, 1 Cal. 5th
16 480, 489 (2016). “The percentage method calculates the fee as a percentage share of a recovered
17 common fund or the monetary value of plaintiffs’ recovery.” *Id.* The common fund method provides
18 both “[f]airness to the successful litigant, who might otherwise receive no benefit because his recovery
19 might be consumed by the expenses” and “encouragement of the attorney for the successful litigant,
20 who will be more willing to undertake and diligently prosecute proper litigation for the protection or
21 recovery of the fund.” *Bank of Am. v. Cory*, 164 Cal. App. 3d 66, 90 (1985) (citation omitted). The
22 lodestar method, on the other hand, “is calculated by multiplying the reasonable hours expended by a
23 reasonable hourly rate.” *Wershba*, 91 Cal. App. 4th at 254. “The court may then enhance the loadstar
24 with a multiplier, if appropriate.” *Id.* (citations omitted). “Multipliers can range from 2 to 4 or even
25 higher.” *Id.* at 255.

26 The Court need not decide now what amount of attorneys’ fees and expenses should be
27 awarded. Rather, the Court need only satisfy itself that the overall settlement is within a range that
28

1 could justify final approval. That standard is met here. Considering the monetary relief, Plaintiffs’
2 Counsel’s request of up to one third of the gross settlement amount is reasonable and routinely
3 rewarded in similar cases. *See Chavez v. Netflix, Inc.*, 162 Cal. App. 4th 43, 66 n.11 (2008) (“Empirical
4 studies show that, regardless whether the percentage method or the lodestar method is used, fee awards
5 in class actions average around one-third of the recovery.”); *see also Parker v. City of Los Angeles*, 44
6 Cal. App. 3d 556, 567-68 (1974) (affirming fee award to counsel of one-third recovery achieved);
7 *Audycki et al. v. Stanford Health Care*, No. 19CV347173 (Santa Clara Cnty. Super. Ct. Oct. 19, 2023)
8 (approving fees of one-third of \$15 million settlement of wage and hour claims); *Reni v. REACH*
9 *Medical Holdings, LLC*, No. RG 20072101 (Alameda Cnty. Super. Ct. Sept. 21, 2023) (approving fees
10 of one-third of \$15 million settlement of wage and hour claims); *Bartoni v. American Medical*
11 *Response West*, No. RG 08-382130, 2019 WL 12265864 (Alameda Cnty. Super. Ct. Sept. 13, 2019)
12 (approving fees of one-third of \$17 million wage and hour settlement).

13 **2. The Requested Litigation Costs Are Preliminarily Reasonable.**

14 Plaintiffs’ Counsel have incurred approximately \$50,000 in litigation costs to date. Ho Decl.
15 ¶ 37. These costs include court-filing and process-serving fees, e-discovery fees, mediation costs,
16 online research costs, postage costs, and copying costs. This amount is modest and reflects efficient
17 litigation of the case. Plaintiffs’ Counsel will provide the court with updated costs information and
18 additional briefing in the final approval motion. *Id.*

19 **IV. CERTIFICATION FOR SETTLEMENT PURPOSES IS APPROPRIATE.**

20 A court may certify a provisional settlement class after the preliminary settlement hearing. *See*
21 Cal. Rule of Court 3.769(d). Manageability and due process concerns for absent class members are
22 eliminated or mitigated in the context of settlement. *Dunk*, 48 Cal. App. 4th at 1807 n.19. “Courts
23 regularly certify class actions to resolve wage and hour claims.” *Gonzales v. San Gabriel Transit,*
24 *Inc.*, 40 Cal. App. 5th 1131, 1149 (2019) (internal citation omitted) (*superseded by statute on another*
25 *ground as stated in Parada v. East Coast Transport Inc.*, 62 Cal. App. 5th 692, 699 n.2 (2021)). In
26 California, a class is certifiable if (1) it is ascertainable and sufficiently numerous; (2) there is a well-
27 defined community of interest, and (3) a class action is superior to other methods of adjudication.

1 *Brinker Rest. Corp. v. Superior Court*, 53 Cal. 4th 1004, 1021 (2012). Plaintiffs contend, and
2 Defendants do not dispute for settlement purposes only, that all of the elements are met here.

3 **A. The Class Is Ascertainable and Sufficiently Numerous.**

4 A class is ascertainable if it “identifies a group of unnamed plaintiffs by describing a set of
5 common characteristics sufficient to allow a member of that group to identify himself or herself as
6 having a right to recover based on the description.” *Aguirre v. Amscan Holdings, Inc.*, 234 Cal. App.
7 4th 1290, 1299-1300 (2015) (quoting *Bartold v. Glendale Fed. Bank*, 81 Cal. App. 4th 816, 828
8 (2000)). Here, Class Members are ascertainable from Defendant’s records, which provide information
9 about the employee’s name, dates of employment, and rates of pay. *See Aguiar v. Cintas Corp. No. 2*,
10 144 Cal. App. 4th 121, 136 (2006) (members of proposed class were ascertainable because they could
11 be determined from Defendant’s payroll records) (*disapproved of on other grounds by Noel v. Thrifty*
12 *Payless, Inc.*, 7 Cal. 5th 955, 985-86 (2019)).

13 A class is sufficiently numerous if joinder of all class members would be impracticable. *See*
14 *Hendershot v. Ready to Roll Transp., Inc.*, 228 Cal. App. 4th 1213, 1222 n.5 (2014). Here, SHC’s
15 records show that there are over 870 members of the proposed class. Ho Decl. ¶ 20. Joinder of so
16 many parties would be impracticable.

17 **B. A “Community of Interest” Exists Among Settlement Class Members.**

18 The “community of interest” requirement includes three elements: (1) predominant common
19 questions of law or fact; (2) a class representative whose claims are typical of those of the class; and (3)
20 a class representative who can adequately represent the class. *See Brinker*, 53 Cal. 4th at 1021. The
21 proposed Settlement Class meets each element here.

22 **1. Common Questions of Law and Fact Predominate.**

23 “Claims alleging that a uniform policy consistently applied to a group of employees is in
24 violation of the wage and hour laws are of the sort routinely, and properly, found suitable for class
25 treatment.” *Brinker*, 53 Cal. 4th at 1033.

26 Here, Defendant’s uniform policies mean common questions predominate as to all Labor Code
27 violations alleged. All Class Members were subject to the same meal break policies, the same policy of
28

1 chronic understaffing, the same collective bargaining agreement, and the question of whether the
2 Section 11(D) waiver can be in a collective bargaining agreement applies is a legal issue appropriate for
3 class certification. Furthermore, an employer’s own records create a rebuttable presumption of
4 violations such that class certification is particularly appropriate on meal period claims. *See Donohue*
5 *v. AMN Services, LLC*, 11 Cal. 5th 58, 75-76 (2021). Similarly, all Class Members were subject to the
6 same policies that excluded shift differential pay from their meal period premiums. *See Faulkinbury v.*
7 *Boyd & Assocs., Inc.*, 216 Cal. App. 4th 220, 238 (2013) (whether certain types of compensation “must
8 be included in calculating the overtime rate of pay can be decided on a classwide basis as a legal matter
9 based on common proof”), *overruled in part on other grounds by Noel v. Thrifty Payless, Inc.*, 7 Cal.
10 5th 955, 986 (2019).

11 Plaintiffs’ wage statement and waiting time claims are amenable to class certification.
12 Plaintiffs’ wage statement and waiting time claims are derivative of the other Labor Code claims.
13 *Bradley v. Networkers Int’l, LLC*, 211 Cal. App. 4th 1156 (2012) (Derivative claims for waiting time
14 penalties and wage statement penalties based on underlying Labor Code claims should be certified.).

15 **2. Plaintiffs’ Claims Are Typical of the Class Claims.**

16 “The test of typicality is whether other [class] members have the same or similar injury,
17 whether the action is based on conduct which is not unique to the named plaintiffs, and whether other
18 class members have been injured by the same course of conduct.” *Seastrom v. Neways, Inc.*, 149 Cal.
19 App. 4th 1496, 1502 (2007) (internal citation omitted). Plaintiffs are current and former SHC nurses
20 who allege that they suffered the same injuries as other nurses and seek the same relief as the rest of
21 the class. Ho Decl. ¶ 21.

22 **3. Plaintiffs and Their Attorneys Will Adequately Represent the Class.**

23 “Adequacy of representation depends on whether the plaintiff’s attorney is qualified to conduct
24 the proposed litigation and the plaintiff’s interests are not antagonistic to the interests of the class.”
25 *Caro v. Proctor & Gamble Co.*, 18 Cal. App. 4th 644, 669 n.21 (1993) (quoting *McGhee v. Bank of*
26 *Am.*, 60 Cal. App. 3d 442, 450 (1976)).

1 Here, Plaintiffs' Counsel have extensive experience in complex wage-and-hour litigation.
2 Plaintiffs have committed to represent the interests of the Class and do not have conflicts with the
3 interests of the Class. Ho Decl. ¶ 22.

4 **C. This Class Action Is a Superior Method of Adjudication.**

5 Plaintiffs and Class Members' claims are based on Defendant's uniform policies and practices
6 and involve common evidence. It would be inefficient to resolve these claims at separate trials. *See*
7 *Bufile v. Dollar Fin. Grp., Inc.*, 162 Cal. App. 4th 1193, 1208 (2008) (*disapproved of on other grounds*
8 *by Noel*, 7 Cal. 5th at 985-86).

9 The Class meets all of the requirements for certification in California. Therefore, this Court
10 should conditionally certify the Class for settlement purposes.

11 **V. CONCLUSION**

12 The Settlement is well within the range of acceptable settlements and provides substantial
13 monetary relief. Plaintiffs respectfully requests that the Court certify the class for settlement purposes,
14 conditionally appoint Goldstein, Borgen, Dardarian & Ho as Class Counsel and Named Plaintiffs as
15 Class Representatives, appoint Atticus Administration, LLC as Settlement Administrator, grant
16 preliminary approval of the settlement terms and notice process, order the issuance of notice, and set a
17 date for the final fairness hearing, as set forth in the accompanying proposed order.

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19 Dated: May 13, 2024

Respectfully submitted,

20 GOLDSTEIN, BORGEN, DARDARIAN & HO

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22 _____
Ginger Grimes

23 Attorneys for Plaintiffs
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