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Attorneys for Plaintiff Nicole Chettero and the Certified Class

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SONOMA

NICOLE CHETTERO, individually and on behalf of all others similarly situated,

Plaintiff,

v.

AURORA BEHAVIORAL HEALTHCARE-SANTA ROSA, LLC, d/b/a AURORA SANTA ROSA HOSPITAL; SIGNATURE HEALTHCARE SERVICES, LLC; and DOES 1-20, inclusive,

Defendants.

Case No.: SCV-268610

CLASS ACTION

MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF UNOPPOSED MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT

Date: ~~TBD~~ January 24, 2025
Time: ~~TBD~~ 3:00pm
Dept: 16

Complaint Filed: June 14, 2021

Assigned to Hon. Patrick Broderick for All Purposes

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I. INTRODUCTION

Plaintiff Nicole Chettero hereby requests that the Court grant preliminary approval of a proposed $6.25 million non-reversionary settlement of the certified wage and hour class action and Private Attorneys General Act ("PAGA") claims in this case. The Court should grant the motion because the settlement, which will bring substantial monetary benefits to 854 class members, is fair, adequate, and reasonable. The settlement was reached after arm's-length negotiations and provides an excellent result given the risks inherent in the claims. The Court, therefore, should preliminarily approve the settlement, approve the class notice and proposed notice plan, appoint Simpluris as the settlement administrator, and set a hearing for final approval.

II. FACTUAL AND PROCEDURAL BACKGROUND

Plaintiff commenced this action on June 14, 2021,[1] by filing a complaint against Defendants Aurora Behavioral Healthcare-Santa Rosa, LLC, dba Aurora Santa Rosa Hospital and Signature Healthcare Services, LLC, and DOES 1 through 20, inclusive, alleging causes of action for failure to provide proper meal and rest periods, failure to timely pay all wages owed at termination, failure to provide accurate wage statements, and unfair business practices. (Declaration of Xinying Valerian [hereafter "Valerian Dec."], ¶ 3.) The complaint also sought civil penalties pursuant to PAGA. (*Ibid*.) On March 29, 2023, Plaintiff substituted eleven named defendants for DOES 1 to 11. (Valerian Decl., ¶ 3.)

The parties mediated the case on April 12, 2021, and March 16, 2023, without reaching a settlement. (Valerian Decl., ¶ 12.)

The Court thereafter certified a class on December 7, 2023, consisting of "[a]ll former and current registered nurses ("RNs"), licensed vocational nurses and psychiatric technicians ("LVNs" or "LPTs"), and mental health workers and technicians ("MHWs" or "MHTs") who worked at least one shift in the Nursing Department at Aurora Santa Rosa Hospital (also known as Santa Rosa

[1] The relevant statutes of limitation in the case were tolled between January 15, 2021, and June 11, 2021, pursuant to a tolling agreement between the parties. (Valerian Decl., ¶ 4.) Emergency Rule 9 related to COVID further tolled the relevant statutes of limitation claims between April 6, 2020, and October 1, 2020. (*Ibid*.)

Behavioral Healthcare Hospital) from July 21, 2016 through the date of class notice." (*Id*., ¶ 11.) Notice was sent to 857 individuals on January 19, 2024. (*Ibid*.) Three individuals opted out of the class. (*Ibid*.)

The parties once more mediated the case on January 25, 2024. (Valerian Decl., ¶ 12.) Though the parties did not reach agreement, the parties continued to exchange settlement offers. On August 23, 2024, approximately four weeks before trial was set to begin, the parties reached the principal terms of a settlement that was memorialized in a memorandum of understanding. (*Ibid*.) The parties eventually reduced that agreement to the agreement attached as Exhibit 1 to the Valerian Declaration (hereafter "SA"). (*Ibid*.)

III. SUMMARY OF SETTLEMENT TERMS

A. MONETARY TERMS

The proposed settlement establishes a common fund of $6,250,000. (SA, ¶ 3.1.) Subject to Court approval, this fund is allocated as follows: $100,000 in civil penalties pursuant to PAGA, attorneys' fees up to $2,083,333.33 (one-third of the fund), class counsel expenses up to $200,000, a class representative award up to $30,000, and administration costs up to $17,000. (SA, ¶ 3.6.) The remaining $3,819,667 will be distributed to the class members without a claim form in proportion to the number of weeks worked. (SA, ¶ 3.6(e).) Plaintiff estimates that class members will receive an average of approximately $4,300, with a maximum distribution of $26,000. (Valerian Decl., ¶ 19.)

B. SETTLEMENT FUNDING

The settlement will be funded in two payments. Defendants will make the first payment of $3,250,000.00 within 30 days after the settlement's effective date.[2] (SA, ¶ 4.2.) Defendants will then

[2] The settlement defines "Effective Date" to mean the earliest of: (i) the date the Court's order of Final Approval in the event that the Settlement and there were no timely objections filed, or that any timely objections have been withdrawn; (ii) the date on which the time for an objector to seek appellate review of the Court's order of Final Approval passes, without a timely appeal having been filed, in the event that one or more timely objections has/have been filed and not withdrawn; and (iii) the date the applicable appellate court has rendered a final decision or opinion affirming the Court's order of Final Approval without material modification, and the applicable date for seeking further appellate review has passed, or the date that any such appeal has been either dismissed or withdrawn by the appellant in the event that a timely appeal of the Court's order of Final Approval has been filed. (SA, ¶ 1.21.)

make a second payment of $3,000,000.00 within six months of the first payment due date or by no later than December 12, 2025, whichever is earlier. (*Ibid*.) The Administrator will disburse the funds as follows:

- The first distribution will be made within 14 days of Defendants' first installment payment. This distribution will consist of the administration cost, class counsel's costs, and forty percent of class counsel's fees. A net $2,141,666.67 (67% of the first payment) will be disbursed to the class.
- The second distribution will be made within 21 days of Defendants' second installment payment. This distribution will consist of the payment to the LWDA of $75,000, payment to Aggrieved Employees of $25,000, the class representative service award, and the remaining 60% of class counsel's fees. After accounting for these payments, a net $1,645,000.00 will be disbursed to the class.

(SA, ¶ 4.3.)

C. CLASS CONSTITUENCY

The Court has already certified a class in this case. (Valerian Decl., ¶ 11.) Everyone but the three people who opted out of class certification will participate in the settlement (the "Class Members"). (SA, ¶ 1.14.)

D. AGGRIEVED EMPLOYEES

The settlement includes civil penalties that will be allocated pursuant to the Labor Code, 75% to the LWDA and 25% to the "Aggrieved Employees," defined as everyone to whom class notice was sent and includes the three individuals who opted out of class certification. (SA, ¶ 1.5.)

E. SCOPE OF RELEASES

Section 5.1 of the settlement provides for the following releases to the Released Parties:

(a) Plaintiff will waive and generally release the Released Parties from all claims, whether known or unknown, that Plaintiff has or may have against the Released Parties that arose on or prior to August 23, 2024. Plaintiff will also expressly waive the protections of Civil Code section 1542.

(b) Plaintiff, the aggrieved employees and the State of California will release the PAGA claims under Labor Code § 2698 et seq. in Plaintiff's complaint that could have reasonably been brought based on the facts alleged in Plaintiff's LWDA letter(s), arising from any alleged violations occurring to Aggrieved Employees during the PAGA Period.

(c) Each Class Member will release the Released Parties from all claims within the Class Period arising from the allegations of the operative complaint on file in the Action, including but not limited to claims for meal and rest period violations, meal period premiums, rest period premiums, waiting time penalties, and accurate and complete wage statements, or arising under Labor Code §§ 201, 202, 203, 226, 226.7, 512, 516, or Sections 11 and 12 of the applicable IWC Wage Order, and claims for attorney's fees and costs associated with any of the above claims.

F. NOTICE PROCESS AND PROCEDURES

The settlement identifies Simpluris as the settlement administrator. (SA, ¶ 7.1.) Plaintiff solicited bids from six potential administrators and obtained bids from five. (Valerian Decl., ¶ 21.) The parties selected Simpluris based on its reputation, counsel's research and experience, and its submission of one of the lowest bids. (*Ibid.*)

The settlement obligates Defendants to provide the administrator with employee data, including the number of workweeks worked and number of pay periods worked for each class member and aggrieved employee, within 15 days after preliminary approval. (SA, ¶ 4.1.) The administrator will then send class members the notice attached as Exhibit A to the settlement via first-class mail and email within 14 days. (SA, ¶ 7.4(b).) The administrator will also provide notice via text message.[3] (*Ibid.*) The administrator will update the employee addresses using the National

[3] The proposed text message is:

> If you worked at the Aurora Santa Rosa Hospital (also known as Santa Rosa Behavioral Healthcare Hospital) as a registered nurse, a licensed vocational nurse or psychiatric technician, or a mental health worker or technician between July 21, 2016, and January 19, 2024, you may be eligible for benefits from a class action settlement. Visit [website link] or call [toll-free number] for more information. Your notice identifier is [notice id].

Change of Address database before mailing the notice. (*Ibid*.) The administrator will re-mail returned notices and perform skip traces, (SA, ¶ 7.4(c).)

The proposed notices are based on templates developed by the Impact Fund's Class Notice Project. (Valerian Decl., ¶ 22.) The mailed and emailed notice includes the workweek data upon which the class member's settlement allocation will be based and directs the recipient to the settlement website with a link and scannable QR code for the recipient to obtain more information about the settlement. (SA, Ex. A.) The notice also advises class members that they can object to the settlement or contest the number of workweeks reported in Defendants' data and tells class members how to do so. (*Ibid*.) The notice also advises class members that they can opt for electronic payment. (*Ibid*.) A long form notice to be posted on the settlement website will contain detailed information in a question-and-answer format. (SA, Ex. B.)

Class Members will have 45 days to submit their objection to the Settlement Administrator or to challenge their workweek allocation, with additional time for those with re-mailed notices. (SA, ¶¶ 7.5-7.6) Objections and workweek challenges will be sent to the administrator, who will forward them to class counsel. (SA, ¶¶ 7.5, 7.6.) Class Counsel will submit the objections to the Court along with their motion for final approval. (SA, ¶ 8.1.)

G. UNCASHED CHECKS

None of the gross settlement funds revert to Defendants. (SA, ¶ 3.5.) Checks from the first distribution that are voided as stale will be included in the class member's second distribution. (SA, ¶ 4.3(a)(ii).) Checks voided after the second distribution will be donated to Legal Aid at Work (SA, ¶ 4.3(d), a California-based nonprofit that provides legal aid to low-income, working families, whose mission includes enforcing workplace protections through education, litigation, and policy advocacy. Legal Aid at Work is an IOLTA-qualified legal services provider. (Valerian Decl., ¶¶ 23-24.)

H. ATTORNEYS' FEES AND EXPENSES

Plaintiff will file a motion for an award of attorneys' fees in the amount of one-third of the gross settlement amount and costs of no more than $200,000 no later than 16 court days prior to the final approval hearing set by the Court. (SA, ¶ 3.6(b).)

I. TAX TREATMENT

The civil penalties paid to each Aggrieved Employee will be reported on an IRS 1099 Form. (SA, ¶ 3.6(d).) The class members' settlement payments will be allocated 35% to wage claims, 55% to interest and liquidated damages, and 10% to statutory penalties, accompanied by appropriate tax forms. (SA, ¶ 3.6(f).) This allocation fairly tracks the proportion of these components in Plaintiff's damage model. (Valerian Decl., ¶ 20.) Defendants will separately pay the employer's share of the taxes owed on the wage portions. (SA, ¶ 3.1.)

J. IMPACT ON OTHER PENDING LITIGATION

The Parties, Class Counsel, and Defense Counsel represent that they are aware of two recently filed matters or actions asserting claims on a statewide and national basis that might be partially extinguished or affected by the settlement. These other pending cases are *Dorgan et al., v. Signature Healthcare Services, LLC, et al* (C.D. Cal., Case No. 5:23-cv-02192-MEMF-SHK and *Merchain et al., v. Signature Healthcare Services LLC* (LA Super. Ct. Case No. 24STCV06297). (SA, ¶ 2.11.) Class Counsel has communicated with the plaintiffs' counsel in those cases and does not believe those cases present any concerns for approval of the settlement herein. (Valerian Decl., ¶ 10.)

IV. ARGUMENT

There are two steps to approving a class action settlement in California. (Cal. Rules of Court, rule 3.769; *Cellphone Termination Fee Cases* (2009) 180 Cal.App.4th 1110, 1118.) "[T]he purpose of the first step is to determine whether the proposed settlement and plan of distribution are within the range of possible approval and whether notice to the settlement class of its terms and conditions, and the scheduling of a final approval hearing, will be worthwhile." (Newberg on Class Actions, Class Actions in State Courts, Preliminary Approval (4th ed. 2002) § 13:64.) Accordingly, the Court's task at the preliminary approval stage is simply to determine whether the settlement falls "within the range of possible approval." (*In re Wells Fargo & Co.* (N.D. Cal. 2020 445 F.Supp.3d 508, 517.) In this connection, "a presumption of fairness exists where: (1) the settlement is reached through arm's-length bargaining; (2) investigation and discovery are sufficient to allow counsel and the court to act intelligently; (3) counsel is experienced in similar litigation; and (4) the percentage of

objectors is small." (*Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1802; accord Newberg on Class Actions, *supra*, § 11.41, pp. 11-91) "If 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, then the court should direct that the notice be given to the class members of a formal fairness hearing." (Manual for Complex Litigation, Second (1985) § 30.44.)

This standard is easily met in the present case. Moreover, the proposed notice here is clear and more than adequate. (*Cellphone Termination Fee Cases*, *supra*, 180 Cal.App.4th at p. 1118; accord Cal. Rules of Court, rule 3.769(f).) The Court, therefore, should grant the motion.[4]

A. THE PRESUMPTION OF FAIRNESS APPLIES

As noted above, a presumption of fairness exists where a settlement is reached through arm's-length negotiation that was adequately informed and where there is no evidence of fraud or collusion. Such a presumption applies here.

1. <u>The Settlement Was Reached Through Arm's-Length Negotiations</u>

The settlement in this case was reached after years of litigation, on the eve of trial, between experienced counsel through hard-fought negotiations overseen by David Lowe, Esq., an experienced mediator. The negotiations spanned over three years and three mediation sessions, with the parties only agreeing on a term sheet on the eve of trial following additional negotiations. (Valerian Decl., ¶¶ 12-13.) The settlement, therefore, is the result of arms-length negotiation. (*Gong-Chun v. Aetna Inc.* (E.D. Cal., July 12, 2012, No. 1:09-CV-01995-SKO) 2012 WL 2872788, at *12 [settlement reached through efforts of counsel with the assistance of a mediator was the result of arm's-length negotiation]; accord *Kelley v. City of San Diego* (S.D. Cal., Feb. 8, 2021, No. 19-CV-622-GPC-BGS) 2021 WL 424290, at *7 [settlement resulted from arm's-length negotiation where parties engaged in telephonic and in-person settlement conferences with settlement judge]; see also Newberg on Class Actions, *supra*, § 13:14.)

[4] The California Supreme Court has authorized California's trial courts to use Rule 23 of the Federal Rules of Civil Procedure and cases applying it for guidance in considering class issues. *See Vasquez v. Super. Ct.* (1971) 4 Cal.3d 800, 821.

2. The Negotiations Were Well-Informed

Plaintiff engaged in extensive formal discovery – fact and expert discovery -- prior to settling the case four weeks before trial. Plaintiff propounded 65 document requests, 42 special interrogatories, 75 requests for admission, and eight sets of form interrogatories, and took two depositions. Plaintiff also relied on the discovery obtained from Defendants, as well as the depositions conducted in *Teresa Brooke v. Aurora Behavioral Healthcare – Santa Rosa, et al.*, Case No. SCV261926, which preceded this litigation on similar issues. This discovery—along with substantial class member outreach—enabled class counsel to prepare detailed mediation briefs and devise a damages model for the case. (Valerian Decl., ¶ 8.) Key evidence for estimating damages included comprehensive time punch data, wage rates, and employment dates. (*Ibid*.) Class counsel made reasonable assumptions regarding gaps in the data, based on, *inter alia*, testimony gathered from absent class members. (*Ibid*.) The negotiations, therefore, were fully informed. (See *Foster v. Adams and Associates, Inc.* (N.D. Cal., Feb. 11, 2022, No. 18-CV-02723-JSC) 2022 WL 425559, at *6 [Plaintiff was "'armed with sufficient information about the case' to broker a fair settlement" where parties engaged in extensive discovery and litigated case through class certification].)

3. There Is No Evidence of Fraud or Collusion

There was no collusion in settling this case. (Valerian Decl., ¶ 12.) None of the traditional markers of collusion are present.

The settlement is non-reversionary. (SA, ¶ 3.5.) An experienced mediator oversaw the bulk of negotiations, which "confirms that the settlement is non-collusive." (*Satchel v. Federal Express Corp.* (N.D. Cal., Apr. 13, 2007, No. 03-cv-2878-SI) 2007 WL 1114010, at *4; *Bower v. Cycle Gear, Inc.* (N.D. Cal., Aug. 23, 2016, No. 14-cv-02712-HSG) 2016 WL 4439875, at *5 ["[T]he parties reached their settlement after two full-day mediation sessions before impartial and experienced mediators, which strongly suggests the absence of collusion or bad faith by the parties or counsel."].) The proportional allocation of the net settlement fund according to the number of weeks worked guarantees fair and equitable treatment between class members. (*Hudson v. Libre Tech. Inc.* (S.D. Cal., May 13, 2020, No. 3:18-CV-1371-GPC-KSC) 2020 WL 2467060, at *9 ["the Settlement does not improperly discriminate between any segments of the Settlement Class as the

Settlement Class Members are entitled to the same relief from the same formula"]; *Mejia v. Walgreen Co.* (E.D. Cal., Nov. 24, 2020, No. 2:19-CV-00218 WBS AC) 2020 WL 6887749, at *11 [no discrimination where relief is proportionately based on compensable workweeks].) Finally, there is no clear-sailing provision regarding attorneys' fees. (See SA, ¶ 3.6(b).) Accordingly, there is no evidence of fraud or collusion. (See *Medina v. Evolve Mortgage Services, LLC* (C.D. Cal., Apr. 3, 2023, No. SACV 21-01338-CJC (JDEx))2023 WL 11915763, at 7 [concluding that there is no evidence of collusion given absence of clear sailing provision]; see also *Edenborough v. ADT, LLC* (N.D. Cal., Oct. 16, 2017, No. 16-CV-02233-JST) 2017 WL 4641988, at *8; *In re ConAgra Foods, Inc.* (C.D. Cal., Sept. 18, 2023, No. CV1105379CJCAGRX) 2023 WL 8937622, at *9.)

4. Class Counsel Support the Settlement

Class Counsel—who collectively have over 80 years of experience in employment class actions—recommend the settlement. (Valerian Decl., ¶ 33; Declaration of Christian Schreiber, ¶ 21.) Such a recommendation weighs in favor of approval. (*Cabiness v. Educ. Fin. Solutions, LLC* (N.D. Cal., Mar. 26, 2019, No. 16-cv-01109-JST) 2019 WL 1369929, at *6; *Acosta v. Frito-Lay, Inc.* (N.D. Cal., May 4, 2018, No.15-cv-02128-JSC) 2018 WL 2088278, at *9; see also *In re Omnivision Techs., Inc.* (N.D. Cal. 2008) 559 F.Supp.2d 1036, 1043 ["The recommendations of plaintiffs' counsel should be given a presumption of reasonableness."].)

B. THE COURT NEED NOT RECONSIDER CLASS CERTIFICATION

The Court has already certified a class in this case. The claims being released in the settlement are the same claims that the Court certified. The only concern for the Court, then, "is whether the proposed settlement calls for any change in the class certified, or of the claims, defenses, or issues regarding which certification was granted." (*Senne v. Kansas City Royals Baseball Corp.* (N.D. Cal., Mar. 29, 2023, No. 14-CV-00608 JCS) 2023 WL 2699972, at *5 [quoting Fed. R. Civ. P. 23 Advisory Committee's Note to 2018 Amendment]; *Benjamin v. Dept. of Public Welfare of the Commonwealth of Pa.* (M.D. Pa. 2011) 807 F.Supp.2d 201, 206 ["As noted above, the class was properly certified in September 2009, so the Court need not make a certification determination as it would with a settlement class."].)

Nothing has changed to warrant reconsidering the Court's December 7, 2023, order. Membership in the class has been affixed and there are no new claims requiring certification.

C. THE SETTLEMENT FALLS WITHIN THE RANGE OF APPROVAL

A settlement is not required to meet a minimum dollar or percentage threshold to be deemed adequate. (See *7-Eleven Owners for Fair Franchising v. Southland Corp.* (2000) 85 Cal.App.4th 1135, 1150.) Rather, the adequacy of a settlement is evaluated considering litigation uncertainties and class expectations. (See *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1801.) Both favor the adequacy of the settlement in this case. "In most situations, unless the settlement is clearly inadequate, its acceptance and approval are preferable to lengthy and expensive litigation with uncertain results." (*National Rural Telecomms. Co-op. v. DIRECTV, Inc.* (C.D. Cal. 2004) 221 F.R.D. 523, 526; Newberg on Class Actions, *supra*, § 11:50.)

1. The Settlement Is Fair and Reasonable Considering the Strengths and Weaknesses of the Claims and Risks of Continued Litigation

Plaintiff estimated before the first mediation that the best-case scenario would yield a $17.5 million recovery. (Valerian Decl., ¶ 8.) Plaintiff remains confident that she would prevail at trial if the case were litigated. Plaintiff nevertheless recognizes that there are considerable risks. Chief among the risks is that Defendants would successfully manage to decertify the claims after Plaintiff rested her case and failed to prove that the class claims were manageable. (*Id*., at ¶ 14.) Another risk is the high likelihood of post-trial appeal by Defendants, who have a history of aggressive use of appeals. (*Ibid*.) In addition, certain class members were purportedly subject to arbitration agreements, which could have prevented their participation in the Court's judgment. (*Ibid*.) There was also concern about the defendants' ability to pay a larger amount given the multiple judgments and other obligations pending against them from other cases. (*Ibid*.) These factors created risk of prolonged litigation and delayed justice. (*Ibid*.) Had the case not settled when it did, trial would have started on September 20, 2024, with the inevitable appeal thereafter. (*Id*., at ¶¶ 15-16.) There was also a possibility that Plaintiff would recover nothing for the class. (*Id*., at ¶ 16.)

The settlement, on the other hand, provides an average recovery of approximately $4,300 per class member. This compares favorably to other class action settlements involving similar claims.

(Valerian Decl., ¶ 19.) In this context, "the tangible, immediate benefits of . . . [s]ettlement outweigh continued litigation and the uncertainty of a trial." (*Ebarle v. Lifelock, Inc.* (N.D. Cal., Jan. 20, 2016) 2016 WL 234364, at *8; *In re Linkedin User Privacy Litig.* (N.D. Cal. 2015) 309 F.R.D. 573, 587 ["Immediate receipt of money through settlement, even if lower than what could potentially be achieved through ultimate success on the merits, has value to a class, especially when compared to risky and costly continued litigation."].)

2. The Proposed Award of Attorneys' Fees and Costs Is Reasonable

In the final approval stage, Class Counsel will apply to the Court for reasonable attorney's fees up to one-third of the gross settlement amount and actual costs of up to $200,000.[5] (SA, ¶ 3.6(b).) At that time, Class Counsel will provide the requisite substantiation for such an award.

For preliminary approval purposes, it suffices that an award of one-third of the fund is consistent with California benchmarks. (*Laffitte v. Robert Half Internat,. Inc.* (2016) 1 Cal.5th 480, 503.) It is also eminently reasonable given that empirical studies show that fee awards in class actions average around one-third of the recovery. (*In re Consumer Privacy Cases* (2009) 175 Cal.App.4th 545, 558.)

Even if the benchmark were lower, an upwards departure from the benchmark would still be appropriate in the present case given the results achieved, especially considering the skill and quality of class counsel's work, the risk that class counsel undertook, and the fact that the class in the present case has done better for itself than the much larger and longer-termed class did in a class action settlement against one of Aurora's sister hospitals that was recently approved.[6] (*Vizcaino v. Microsoft Corp.* (9th Cir. 2002) 290 F.3d 1043, 1048–1049 ["[e]xceptional results," "risk," conferring "non-monetary benefits," and "forgo[ing] significant other work" justify upward adjustment].) For now, it suffices that the proposed fee and expense award is within the range of approval. (*Cicero v. DIRECTV, Inc.* (C.D. Cal., July 27, 2010, No. EDCV 07-1182) 2010 WL

[5] Actual costs are currently $189,911, with a current lodestar of approximately $1,708,720. (Valerian Decl., ¶¶ 27, 30.)

[6] See Valerian Decl., ¶ 17.

2991486, at *6 ["a review of California cases in other districts reveals that courts usually award attorneys' fees in the 30-40% range in wage and hour class actions that result in recovery of a common fund under $10 million"]; accord *Craft v. County of San Bernardino* (C.D. Cal. 2008) 624 F.Supp.2d 1113, 1127 ["Cases of under $10 Million will often result in result in fees above 25%."].)

3. The Proposed Service Award Is Fair, Adequate, and Reasonable

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 Publishing Corp.* (9th Cir. 2009) 563 F.3d 948, 958–959.) "[A] class representative is entitled to some compensation for the expense he or she incurred on behalf of the class lest individuals find insufficient inducement to lend their names and services to the class action." (*In re Oracle Securities Litigation* (N.D. Cal., June 18, 1994, No. C-90-0931) 1994 WL 502054, at *1.)

Courts routinely approve service awards that are much larger than sought here. (See, e.g., *Nitsch v. DreamWorks Animation SKG Inc.* (N.D. Cal. June 5, 2017) 2017 WL 2423161, at *14-16 [$100,000 service award approved in protracted litigation where average class recovery was approximately $5,000]; *Van Vranken v. Atlantic Richfield Co.* (N.D. Cal. 1995) 901 F.Supp. 294 [approving $50,000 award]; *Pan v. Qualcomm Incorporated* (S.D. Cal., July 31, 2017, No. 16-CV-01885-JLS-DHB) 2017 WL 3252212, at *14 [same]; *Carlin v. DairyAmerica, Inc.* (E.D. Cal. 2019) 380 F. Supp. 3d 998, 1026 [$45,000].)

In the present case, $30,000 is reasonable given Plaintiff Nicole Chettero's efforts in this lengthy case and the risks she undertook on behalf of the class as the sole named plaintiff. Plaintiff advanced the interests of the class by regularly meeting with counsel in person and over the telephone, gathering documents and answering discovery, assisting counsel in identifying potential claims and in preparing for multiple mediations, attending her own full-day deposition and multiple days of mediations, working on declarations, and communicating with class members. (Valerian Decl., ¶ 25.) Plaintiff was not only exemplary in her diligence and efforts as the class representative, but she also undertook the risk of disclosure to future employers that she sued her former employer, a risk enhanced by the public nature of this case and the close-knit nature of the psychiatric nursing

community. (*Ibid*.) The case settled only on the eve of trial. (*Ibid*.) Finally, Plaintiff is providing Defendants with a general release and non-disparagement clause, which other class members are not providing. (SA, ¶ 9.8.) The proposed award represents less than 0.5% of the total settlement and will not materially reduce class member awards. (Valerian Decl., ¶ 25.) The requested award, therefore, is manifestly reasonable. (*Rodriguez, supra*, 563 F.3d at pp. 958–959.)

D. THE PROPOSED NOTICE PLAN IS ADEQUATE

A notice of a class action settlement is adequate if the notice "contain[s] an explanation of the proposed settlement and procedures for class members to follow in filing written objections to it and in arranging to appear at the settlement hearing and state any objections to the proposed settlement." (Cal. Rules of Court, rule 3.769(f); *Cellphone Termination Fee Cases, supra*, 186 Cal.App.4th at p. 1390.) "The notice given to the class must fairly apprise the class members of the terms of the proposed compromise and of the options open to dissenting class members." (*Trotsky v. Los Angeles Fed. Sav. Loan Assn.* (1975) 48 Cal.App.3d 134, 151-52.) "The purpose of a class notice in the context of a settlement is to give class members sufficient information to decide whether they should accept the benefits offered . . . or object to the settlement. (*Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 252.) "As a general rule, class notice must strike a balance between thoroughness and the need to avoid unduly complicating the content of the notice and confusing class members." (*Ibid*.) "[T]he trial court has virtually complete discretion as to the manner of giving notice to class members." (*7-Eleven, supra*, 85 Cal.App.4th at p. 1164.)

The proposed notice in the present case satisfies this standard. The Notice was created using improvements to notices developed by the Impact Fund, a Berkeley-based non-profit that has studied the most effective forms of notice to make them more understandable and user-friendly. (*See* https://noticeproject.org./) As noted above, class members will receive notice via first-class mail, email, and text message that will direct them to obtain more information from a website where class members will be able to review a long form notice as well as the settlement agreement, this motion, and the operative complaint. Both short and long form notices explain what the settlement is about, who is a class member, how payments will be calculated, and the actions that a class member can

take. The long form further explains how to object to the settlement, contest the workweek allocation, and how counsel will be paid. Such a plan is more than adequate.[7]

E. THE ALLOCATION OF THE SETTLEMENT FUND TO CIVIL PENALTIES IS CONSISTENT WITH PAGA'S PURPOSE

"Where PAGA claims are settled in the same agreement with the underlying Labor Code claims, courts have . . . looked to the interplay of the two recoveries to determine whether PAGA's purposes have been served." (*Haralson v. U.S. Aviation Services Corp.* (N.D. Cal. 2019) 383 F.Supp.3d 959, 972; *O'Connor v. Uber Technologies, Inc.* (N.D. Cal. 2016) 201 F.Supp.3d 1110, 1134-35 [apply sliding scale and concluding that "if the settlement for the . . . class is robust, the purposes of PAGA may be concurrently fulfilled"].) A court must also consider whether it would exercise discretion under Labor Code section 2699, subdivision (e)(2), to reduce the amount of PAGA penalties were those claims to be litigated through judgment. (*Haralson, supra*, at p. 973.)

In the present case, the proposed settlement provides class members and aggrieved employees with substantial and robust relief. The settlement as a whole, then, fulfills PAGA's underlying policy objectives.[8] (*Loreto v. General Dynamics Information Technology, Inc.* (S.D. Cal., May 7, 2021, No. 319CV01366GPCMSB) 2021 WL 1839989, at *15 ["[t]he public policies underlying PAGA are also likely met here, because the settlement more broadly provides a 'robust; remedy for possible violations of the California Labor Code by requiring Defendant to pay about a quarter of its maximum potential exposure on the class claims"].) Moreover, the allocation of $100,000 to civil penalties, 1.6 percent of the gross settlement, exceeds allocations that courts have

[7] There is no need to provide class members a second opportunity to opt-out of the class. (*Officers for Justice v. Civil Serv. Comm'n* (9th Cir. 1982) 688 F.2d 615, 635 ["Nevertheless, we have found no authority of any kind suggesting that due process requires that members of a Rule 23(b)(3) class be given a second chance to opt out. We think it does not."]; *Low v. Trump Univ., LLC* (9th Cir. 2018) 881 F.3d 1111, 1121-22.) Nor is there a need to provide aggrieved employees with notice. (*Arias v. Super. Ct.* (2009) 46 Cal.4th 969, 984; accord *Baumann v. Chase Inv. Services Corp.* (9th Cir. 2014) 747 F.3d 1117, 1122 ["PAGA has no notice requirements for unnamed aggrieved employees, nor may such employees opt out of a PAGA action."]; see also *Ochoa-Hernandez v. Cjaders Foods, Inc.* (N.D. Cal., Apr. 2, 2010, No. C 08-2073 MHP) 2010 WL 1340777, at *5 ["Unnamed employees need not be given notice of the PAGA claim, nor do they have the ability to opt-out of the representative PAGA claim."].)

[8] Plaintiff has fulfilled the administrative requirements to bring PAGA claims. (Valerian Decl. ¶ 32.)

approved elsewhere. (See *Magadia v. Wal-Mart Associates, Inc.* (N.D. Cal. 2019) 384 F.Supp.3d 1058, 1101 [collecting cases approving PAGA penalties between 0.14% to 1.11% of the gross settlement fund]; accord *Cavazos v. Salas Concrete, Inc.* (E.D. Cal., July 25, 2022, No. 119CV00062DADEPG) 2022 WL 2918361, at *7 [penalties amounting to 2.3% of gross settlement "is consistent with other PAGA settlements approved by this court"].) Finally, it is likely that the Court would have exercised its discretion—as other courts have—to reduce the penalties were the claims litigated through judgment. (E.g., *Magadia v. Wal-Mart Assocs*. (N.D. Cal. 2019) 384 F.Supp.3d 1058, 1101 [reducing PAGA penalties by approximately 63%]; *Aguirre v. Genesis Logistics* (C.D. Cal. Dec. 30, 2013) 2013 WL 10936035, at *2-3 [reducing PAGA penalties by over 72%]; *Fleming v. Covidien, Inc.* (C.D. Cal. Aug. 12, 2012) 2011 WL 7563047, at *3-4 [reducing PAGA penalties by over 82%].) The allocation of civil penalties, then, is fair, adequate, and consistent with PAGA's purposes.

V. THE COURT SHOULD SET A HEARING DATE FOR FINAL APPROVAL

The soonest the Court can hear the motion for final approval given the timelines in the settlement is 133 days after the order granting preliminary approval. Plaintiff will file the motion for final approval and her motion for an award of attorneys' fees and costs no later than 16 court days prior to the date of the hearing on the motion for final approval (S.A. ¶¶ 3.6(b), .8.1.)

VI. CONCLUSION

For the foregoing reasons, Plaintiff respectfully requests that the Court preliminarily approve the proposed settlement in this case and appoint Simpluris as the settlement administrator. Plaintiff also requests that the Court order that the notice plan set forth above be implemented in accordance with the settlement agreement.

Respectfully submitted,

Dated: October 16, 2024.

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