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25 **SUPERIOR COURT OF CALIFORNIA**
26 **COUNTY OF LOS ANGELES**

27 VALERIE ALBERTS, RUDOLPH
28 BREILEIN, ROBIN MOTOLA, CYNDI
29 LANE, and AVIANCE CONTRERAS,

30 Plaintiffs,

31 v.

32 AURORA BEHAVIORAL HEALTH CARE,
33 AURORA LAS ENCINAS LLC, AURORA
34 CHARTER OAK - LOS ANGELES LLC, *et*
35 *al.*,

36 Defendants.

37 **Case No. BC 419340**

38 **Assigned to: Hon. Upinder S. Kalra**

39 **PLAINTIFFS' NOTICE OF MOTION**
40 **AND UNOPPOSED MOTION FOR FINAL**
41 **APPROVAL OF CLASS AND PAGA**
42 **SETTLEMENT; MEMORANDUM OF**
43 **POINTS AND AUTHORITIES IN**
44 **SUPPORT THEREOF**

45 **[SUPPORTING EVIDENCE AND**
46 **[PROPOSED] ORDER, SUBMITTED**
47 **UNDER SEPARATE COVER]**

48 **Hearing Date: November 13, 2024**
49 **Time: 9:00 a.m.**
50 **Dept: 51**
51 **Reservation ID: 700964608086**

Electronically FILED by
Superior Court of California,
County of Los Angeles
10/21/2024 6:14 PM
David W. Slayton,
Executive Officer/Clerk of Court,
By K. Hung, Deputy Clerk

1 **TO THE HONORABLE COURT AND ALL INTERESTED PARTIES AND THEIR**
2 **ATTORNEYS OF RECORD:**

3 PLEASE TAKE NOTICE that on **November 13, 2024, at 9:00 a.m.** in Department 51 of the
4 above-captioned Court located at 111 N. Hill Street, Los Angeles, CA 90012, Plaintiffs Valerie Alberts,
5 Rudolph Breilein, Robin Motola, Cyndi Lane, and Aviance Contreras, on behalf of the certified class, will
6 move this Court for an order granting final approval for the class action and PAGA settlement with
7 Defendants. In particular, Plaintiffs seek the following:

- 8 1. Final approval of the class action and PAGA settlement of this action for \$6,250,000 as set
9 forth in the Settlement Agreement (Exhibit 2 to the Declaration of Michael D. Seplow).
- 10 2. Final approval of the payment of a “service award” in the amount of \$25,000 each to the
11 named Plaintiffs/class representatives.
- 12 3. Final approval of payment to Class Counsel of reasonable attorneys’ fees of \$2,083,333.33,
13 which is one third of the total settlement amount and a substantial reduction of counsel’s
14 actual lodestar.
- 15 4. Final approval of reimbursement for reasonable and actual litigation costs incurred in the
16 amount of \$441,317.14.
- 17 5. Final approval payment for the costs of administration to Simpluris as Settlement
18 Administrator in the amount of \$11,408.
- 19 6. Entry of final judgment in the form provided to the Court, including the release of all claims
20 against Defendants relating to this action.

21 This notice and motion are made pursuant to California Rules of Court, rule 3.769 and on the
22 grounds that the proposed Settlement is fair, reasonable and adequate and in the best interests of the
23 proposed class. The motion is unopposed by Defendants, who are parties to the proposed Settlement. To
24 date, there have been no objections to the notice since the notice was mailed to the class members on July
25 2, 2024

26 This motion is also based upon this notice; the Memorandum of Points and Authorities submitted
27 herewith; the Declaration of Michael D. Seplow and exhibits filed concurrently herewith, the declaration
28 of Jennifer Beliveau regarding notice and settlement administration, the declarations of the named

1 Plaintiffs/Class Representatives and the other records and pleadings filed in this action including the
2 Motion for Preliminary Approval and this Court’s May 15, 2024 Order Granting Preliminary Approval
3 (Exhibit 1 to the Seplow Decl.), and upon such other documentary and oral evidence or argument as may
4 be presented to the Court at the hearing of this motion.

5
6 Dated: October 21, 2024

Respectfully Submitted,

7 **SCHONBRUN SEPLOW HARRIS**
8 **HOFFMAN & ZELDES, LLP**
9 **ORANGE LAW OFFICES**
10 **LAW OFFICES OF COLLEEN FLYNN**

11 By: 
12 Michael D. Seplow
13 *Attorneys for Plaintiffs and Certified Class.*

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 After 15 years of litigation, Plaintiffs are pleased to present the Court with this Motion for Final
4 Approval of a global settlement of \$6,250,000 which will resolve the wage and hour claims of 1,173 class
5 members, who are current and former non-exempt nursing staff employees of two Southern California
6 psychiatric hospitals, Aurora Las Encinas and Aurora Charter Oak.

7 Notice in the form approved by the Court has been provided to the class members and there have
8 been no objections to the settlement, which represents a fair and reasonable compromise by both sides and
9 provides a substantial recovery for class members on disputed claims. The average payment to class
10 members is approximately \$2,974, with the highest class member payment being over \$25,932.

11 This settlement was only achieved after years of hard fought litigation which included extensive
12 discovery including dozens of depositions of lay witnesses, substantial expert discovery including multiple
13 expert depositions, review of extensive payroll and time keeping data covering over 350,000 shifts by
14 Plaintiffs' expert, a successful appeal of the initial order denying class certification, a renewed motion for
15 class certification, and Plaintiffs' motion for summary adjudication, which was pending when the
16 settlement in principle was reached.

17 This settlement is the result of informed, non-collusive negotiations conducted at arms' length by
18 the Parties with the assistance of mediator Patrick J. Walsh, a retired U.S. Magistrate Judge. The parties
19 considered the merits of Plaintiffs' claims as well as the strength of Defendants' affirmative defenses, the
20 risks of continued litigation, the financial condition of Defendants, and the need for fair compensation to
21 Class members. The settlement is a compromise by both sides, which avoids the uncertainties of continued
22 litigation and trial and likely further appeals, is fair and reasonable and provides significant compensation
23 to class members. Moreover, the fact that there have been no objections to this settlement further supports
24 the Court's granting final approval. The settlement satisfies all of the criteria for final approval.
25 Accordingly, this unopposed Motion for Final Approval should be granted.

26 **II. FACTUAL AND PROCEDURAL BACKGROUND**

27 This action was filed in Los Angeles County Superior Court on August 6, 2009 ("the Action"). In
28 the complaint, Plaintiffs sought damages on behalf of themselves and other similarly non-exempt health

1 care workers for Defendants’ alleged violation of the California Labor Code, including compensation of
2 alleged unpaid overtime and missed meal and rest breaks. On or about October 5, 2010, Plaintiffs filed a
3 Third Amended Complaint to include allegations under the Private Attorneys General Act (“PAGA”)
4 (Labor Code 2698, *et seq.*) based on the PAGA notice to the Labor Workforce Development Agency
5 (“LWDA”) on or about July 7, 2010. Plaintiffs contend that class members were denied legally complaint
6 meal and rest breaks and were not paid for all overtime for all hours worked as a result of Defendants’
7 policies, including alleged understaffing at the hospitals. Defendants dispute Plaintiffs’ allegations and
8 deny that their policies violated any wage and hour laws or that there was understaffing at their hospitals.

9 Plaintiffs’ initial motion for class certification was denied on April 10, 2013. On October 16, 2015,
10 the Court of Appeal reversed the trial court’s ruling and remanded the case to the trial court. *See Alberts*
11 *v. Aurora Behavioral Health Care*, 241 Cal. App. 4th 388 (2015).

12 On June 5, 2018, this Court granted Plaintiffs’ renewed motion for class certification. The Court
13 certified two primary subclasses, one for Las Encinas and one for Charter Oak, each of which comprises
14 five secondary subclasses: (1) a rest break subclass; (2) a meal break subclass; (3) an overtime subclass;
15 (4) a waiting time subclass; and (5) an itemized wage statement subclass. The Class Period is from August
16 6, 2005 through April 10, 2013. Class members are defined as persons who worked at either Aurora Las
17 Encinas or Aurora Charter Oak during the class period and who held one or more of the following job
18 titles: Registered Nurse (“RN”) (including Charge Nurse), Licensed Vocational Nurse (“LVN”), Licensed
19 Psychiatric Technician (“LPT”), Mental Health Worker (“MHW”) or Behavioral Health Specialist
20 (“BHS”). [Seplov Decl. at ¶ 5.]

21 On or about March 28, 2019, approximately 1,268 class members were mailed a notice of the class
22 certification and provided an opportunity to opt out of the class action. Approximately 18 class members
23 requested exclusion from the class.¹ [Seplov Decl. at ¶ 6.]

24 Throughout the course of this litigation, the parties have conducted extensive discovery including
25 the depositions of over 30 lay witnesses, the production of thousands of pages of records and documents,
26 including hospital policies, staffing schedules and documents concerning patient acuity, the production of

27 ¹ 54 people who received notice were later removed from the class because they did not meet the class
28 definition upon further review of payroll data and as set forth in a stipulation of the parties approved by
the Court on March 21, 2023. [Seplov Decl. at ¶ 6, fn.1]

1 detailed payroll and timekeeping records for the entire class covering over 350,000 shifts, as well as
2 extensive expert discovery including multiple expert witnesses depositions and a fulsome damages
3 calculation based on review of voluminous timekeeping and payroll records. [Seplow Decl. at ¶ 7.]

4 On May 5, 2023, Plaintiffs filed a motion for summary adjudication of their meal break claims.
5 After the motion had been fully briefed, the parties participated in a mediation before the Hon. Patrick J.
6 Walsh (Ret.) on November 20, 2023. With the assistance of mediator Walsh, the parties reached a
7 settlement in principle on December 8, 2023 after both sides accepted the “mediator’s proposal” proffered
8 by Judge Walsh. In light of this settlement in principle, the hearing on the motion for summary
9 adjudication, as well as the February 2024 trial date, were vacated. [Seplow Decl. at ¶ 8.]

10 This Court granted the unopposed Motion for Preliminary Approval (“MPA”) on May 15, 2024.
11 (The Court’s Order granting Preliminary Approval is attached as Exhibit 1 to the Seplow Declaration).
12 The Court preliminarily determined that the Settlement is the product of informed, non-collusive
13 negotiations conducted at arms’ length by the Parties and that that the Settlement is fair, adequate, and
14 reasonable to the Class Members and PAGA Members. [MPA Order at p1. ¶¶ 2-3] The Court also
15 approved the form and manner of notice and determined that it met the requirements of due process
16 requirements and the California Rules of Court. [MPA Order at p 1, ¶ 4]

17 In addition, the Court appointed Simpluris as Administrator and directed that the Class Notice be
18 served in accordance with the terms of the Settlement. [MPA Order at 1:27-28] The Court ordered that
19 any written objections be mailed to the Administrator within 45 days after notice, with an additional 14
20 days provided for any re-mailed notices. [MPA Order at pp. 2-3, ¶ 7] The Court set the Final Approval
21 Hearing for November 13, at 9:00 a.m.

22 **A. Notice Was Duly Provided To The Class Members**

23 Between June 6, 2024, and June 21, 2024, Counsel provided Simpluris, the Administrator, with a
24 data list containing the names, Social Security numbers, last known addresses, and pertinent employment
25 information during the Class Period for each Class Member. See Declaration of Jennifer Beliveau at ¶ 3.
26
27
28

1 The administrator was also provided with the job title, number of compensable shifts and allocation for
2 each class member. Id at. ¶ 3.²

3 The Notice, which was approved by the Court, advised Class Members of their right to object to
4 the Settlement or dispute the job titles, Compensable Shifts, Eligible Pay Periods or do nothing, and the
5 implications of each such action. The Notice also advised Class Members of the applicable deadlines and
6 other events, including the date of the Final Approval Hearing, and how Class Members could obtain
7 additional information. [Beliveau Decl. at ¶ 5]

8 On July 2, 2024, Simpluris caused the Notice to be mailed via First Class U.S. Mail to 1,172 Class
9 Members. [Beliveau Decl. at ¶ 6] (A true and correct copy of the Notice is attached as Exhibit A to the
10 Beliveau declaration.) 195 Notices were returned by the post office. For the Notices returned without a
11 forwarding address, Simpluris performed an advanced address search (i.e. skip trace) on all of these
12 addresses by using Accurint, a reputable research tool owned by Lexis-Nexis. Simpluris used the Class
13 Member’s name, previous address and Social Security number to locate a more current address. Of the
14 195 returned Notice Packets, 172 Notices were re-mailed to either a newfound address or with forwarding
15 addresses provided by USPS. The remaining 23 Notices were undeliverable because Simpluris was unable
16 to find a better address. The postmark deadline for Class Members to dispute the Defendant’s records that
17 were pre-printed on their Notice was August 16, 2024—45 days after the notices were mailed.³ To date,
18 Simpluris has not received any disputes or objections. [Beliveau Decl. at ¶ 10]

21 ² The Class Information contained records for 1,183 individuals identified as Class Members. Of the one
22 thousand one hundred and eighty-three 1,183 records, two were removed from the Class List because they
23 were determined to have zero (0) Workweeks. Nine records were removed as they were determined to be
24 duplicates, 1,172 individuals identified as Class Members. [Beliveau Decl. at ¶ 3] One additional class
25 member was located and has been added to the Class. Id. at ¶ 9 The mailing addresses contained in the
26 Class List were processed and updated utilizing the National Change of Address Database (“NCOA”)
27 maintained by the U.S. Postal Service (“USPS”). The NCOA contains changes of addresses filed with
28 the USPS. In the event that any individual had filed a USPS change of address request, the address listed
with the NCOA was utilized in connection with the mailing of the Notices. Id. at ¶ 4.

³ Simpluris established and is maintaining a toll-free telephone number, (888) 906-9092, for the purpose
of allowing the Class Members to contact Simpluris and to make inquiries regarding the Settlement. The
system is accessible 24 hours a day, 7 days a week, and will remain in operation throughout the settlement
administration process. Callers have the option to speak with a live call center representative during
normal business hours or to leave a message during non-business hours and receive a return call during.
The toll-free telephone number, as well as a website about the settlement, was set forth in the Notice
Packet. [Beliveau Decl. at ¶ 8]

1 **III. SUMMARY OF PROPOSED SETTLEMENT**

2 The basic terms of the settlement are that Defendants shall pay the Gross Settlement Amount of
3 Six Million, Two-Hundred and Fifty Thousand Dollars (\$6,250,000) on a non-reversionary basis which
4 shall include the attorneys’ fees and costs incurred by Plaintiffs’ counsel, Service Awards to each Class
5 Representative, costs of administration and the PAGA Payment. Defendants’ payroll taxes are not
6 included in the Gross Settlement Amount and will be paid by Defendants in addition to the Gross
7 Settlement Amount. The amount allocated to the PAGA settlement is \$100,000 of which \$75,000 will
8 be paid to the LWDA. [Seplov Decl. at ¶11]; Ex. 2 at p 6.]

9 In exchange for the payment of the Gross Settlement Amount, Defendants will be entitled to a full
10 release of all claims based on the allegations in the Action, including claims for wages, penalties, interest,
11 restitution, costs, and attorneys’ fees. [Seplov Decl. at ¶ 12, Ex. 2 at pp.4-5.]

12 The net settlement proceeds are to be allocated to the Class Members pursuant to the following
13 formula: Class Members will be paid based on the number of “Compensable Shifts” (*i.e.* shifts over 5
14 hours) which shall be multiplied by the following values depending on the positions held by each Class
15 Member: Mental Health Workers (“MHW”) and Behavioral Health Specialists (“BHS”) shall have a value
16 of 1.0. Licensed Vocational Nurses and Licensed Psychiatric Technicians shall have a value of 1.5, and
17 Registered Nurses shall have a value of 2.5, which reflects the fact that RNs and LVNs, who are licensed
18 by the state, had a higher rate of pay than MHW and BHS. The respective Compensable Shifts for each
19 Class Member will be divided by the total Compensable Shifts for all Class Members, resulting in the
20 Payment Ratio for each Class Member. Each Class Member’s Payment Ratio is then multiplied by the
21 Net Settlement Amount to determine their Individual Settlement Payment. There are 382,858
22 Compensable Shifts for the Class Members.⁴ [Seplov Decl. at ¶ 13]

23 Additionally, subject to Court approval, Plaintiffs request, and Defendants do not oppose, an award
24 of attorneys’ fees in the amount of \$2,083,333.33, which is one third of the Gross Settlement Amount and
25 is significantly less than their actual lodestar which after 15 years of litigation exceeds \$5,000,000.

26 _____
27 ⁴ For tax purposes, 30% of each payment from the class settlement shall be treated as unpaid wages and
28 reported on a W2 form and 70% shall be treated as interest and/or penalties and reported on a 1099 form.
Each class member shall be responsible for payment of their own taxes, other than the employer’s portion
of the payroll taxes. [Seplov Decl. at ¶ 13, fn 2, Ex. 2 at p. 8]

1 [Seplow Decl. at ¶ 14.] Plaintiffs’ counsel also seek reimbursement for actual costs which are \$441,317.14.
2 Plaintiffs also seek service awards of \$25,000 to each of the named Plaintiffs. Further, settlement
3 administration costs are \$11,408. After deducting attorneys’ fees and costs, service awards,
4 administration costs and the LWDA payment, the remaining Net Settlement Amount (\$3,488,941) will be
5 distributed to Class members pursuant to the formula described above. [Seplow Decl. at ¶ 17.] Moreover,
6 180 days after class distributions are made, any uncashed checks will be sent to the State of California’
7 Controller in accordance with California’s unclaimed property law. [Seplow Decl. at ¶ 18; Settlement
8 Agreement at pp.14-15, ¶ 5.4(c).]

9 There are 1,173 Class Members who will be paid their portion of the Net Settlement Fund,
10 estimated to be \$3,488,941.53. The average *estimated* Individual Participating Class Member payment is
11 \$2,974.37. The highest *estimated* Individual Class Member payment is \$25,932.91. [Beliveau Decl. at ¶
12 13] ⁵

13 **IV. THE COURT SHOULD GRANT FINAL APPROVAL OF THE SETTLEMENT**
14 **AGREEMENT AS IT IS FAIR, REASONABLE AND ADEQUATE AND THERE HAVE**
15 **BEEN NO OBJECTIONS.**

16 A class action may not be dismissed, compromised or settled without approval of the Court. *See*
17 Cal. Civ. Code § 1781(f); Cal. Rules of Court 3.769. The decision to approve or reject a proposed
18 settlement is committed to the “broad discretion” of the Court. *Wershba v. Apple Computer, Inc.* (2001)
19 91 Cal. App. 4th 224, 235. The law favors the settlement of lawsuits, particularly in class actions and
20 other complex cases where substantial resources can be conserved by avoiding time, expense and rigors
21 of protracted litigation. *See Neary v. Regents of Univ. of Cal.* (1992) 3 Cal. 4th 273, 277-81; *Lealao v.*
22 *Beneficial Cal., Inc.* (2000) 82 Cal. App. 4th 19, 52 (observing that “our Supreme Court has placed an
23 extraordinarily high value on settlement”).

24 In determining whether a settlement should be considered fair, the Court should consider several
25 factors, including “the strength of plaintiffs’ case, the risk, expense, complexity and likely duration of
26

27 ⁵ There are 673 PAGA Members who will be paid their portion of the 25% of the PAGA Payment (\$25,000)
28 to be distributed to PAGA Members. The average *estimated* Aggrieved Employee PAGA payment is
\$37.15. [Beliveau Decl. at ¶ 14] Should the Court-awarded fees or costs differ than those shown above
the estimated award allocation calculations would change accordingly. *Id.*

1 further litigation, the risk of maintaining class action status through trial, the amount offered in settlement,
2 the extent of discovery completed and the stage of the proceedings, [and] the experience and views of
3 counsel.” *Dunk v. Ford Motor Co.* (1996) 48 Cal. App. 4th 1794, 1801; *see also In re Microsoft I-V*
4 *Cases* (2006) 135 Cal. App. 4th 706, 723. “The list of factors is not exclusive and the court is free to
5 engage in a balancing and weighing of the factors depending on the circumstances of each case.”
6 *Wershba*, 91 Cal. App. 4th at 245. In *Kullar v Foot Locker Retail, Inc.*, (2008) 168 Cal. App. 4th 116,
7 120, the Court of Appeal stated that although the trial court should consider “the realistic range of
8 outcomes of the litigation,” the trial court “is **not** required to decide the ultimate merits of the claims
9 before approving a proposed settlement.” (emphasis added).

10 This Court should begin its analysis with a presumption that the proposed Settlement is fair:

11 [A] presumption of fairness exists where: (1) the settlement is reached
12 through arm’s-length bargaining; (2) investigation and discovery are
13 sufficient to allow counsel and the court to act intelligently; (3) counsel is
14 experienced in similar litigation; and (4) the percentage of objectors is small.

15 *Dunk*, 48 Cal. App. 4th at 1802; *see also Wershba*, 91 Cal. App. 4th at 245. Moreover, a settlement is not
16 judged based solely on what might have been recovered if the plaintiff had prevailed at trial, nor does the
17 settlement have to provide 100% of the damages sought to be fair and reasonable. *See Linney v. Cellular*
18 *Alaska Partnership*, 151 F.3d 1234, 1242 (9th Cir. 1998); *Rebney v. Wells Fargo Bank*, 220 Cal. App. 3d
19 1117, 1139 (1990) (approving settlement although monetary relief was “relatively paltry”); *Wershba*, 91
20 Cal.App.4th at 251 (2001).⁶

21 In its May 15, 2024 Order granting preliminary approval, the Court made a preliminary
22 determination that the proposed settlement was fair and reasonable. [MPA Order at p 1, ¶¶ 2-3.] In light
23 of the fact that there have been no objections, this Court should grant Final Approval of the Settlement so
24 that this case may be finally concluded after over 15 years.

25
26
27 ⁶ The financial condition of the defendant, including its ability to satisfy a judgment is a factor which can
28 be considered in determining the reasonableness of the settlement. *See Rieckenborn v Velti PLC*, WL
468329 at * 6 (N.D. Cal. 2015). In this case, the Defendants are privately owned psychiatric hospitals
and are not Fortune 500 billion dollar companies.

1 **A. The Terms of the Settlement are Fair and Reasonable.**

2 The total settlement amount is \$6.25 million, which includes payment to Class Members, the
3 requested named Plaintiffs’ service award, the costs of administration of the settlement, payment to the
4 LWDA, and the requested attorneys’ fees and costs. The settlement, which represents a compromise in
5 light of the risks of further litigation, provides class members substantial compensation, especially in light
6 of the risks of continued litigation and the fact that this case has been pending for 15 years and the litigation
7 concerns events that occurred between August 2005 and April 2013. [Seplow Decl. at ¶ 20.]

8 In terms of the range of possible outcomes, it is obvious that if Plaintiffs do not prevail, the class
9 members would receive no compensation at all. Although it is difficult to predict the precise amounts
10 that Plaintiffs would recover should they win at trial and on appeal, the following information should
11 provide the Court with sufficient information upon which to grant preliminary approval. *See Kullar, supra*,
12 168 Cal. App. 4th at 130-31. In their motion for summary adjudication, Plaintiffs’ expert’s analysis of
13 the meal break claims indicated, that if successful, the class members would be owed approximately
14 \$5,100,000 in principal damages. In addition, interest of approximately \$5,000,000 would also be owed.
15 [Seplow Decl. at ¶ 21.]

16 Although the amount of additional damages for the rest break and off the clock claims would
17 obviously depend on the jury findings, a reasonable range of estimated damages for the rest break and off
18 the clock claims would be \$2,000,000-\$6,000,000, in addition to interest awarded, *if* Plaintiffs were to
19 prevail on these claims at trial and on appeal.⁷ [Seplow Decl. at ¶ 22] Further, if Plaintiffs were to prevail
20 on their claims for penalties for inaccurate wage statements (Labor Code Sect. 226) and waiting time
21 penalties (Labor Code Sect. 203), a reasonable estimate of the range of possible recovery for wage
22 statement penalties is \$300,000 to \$1,700,000 and for waiting time penalties is \$1,200,000 to \$4,400,000.
23 [Seplow Decl. at ¶ 22.] With respect to the claims for penalties, it should be noted that Defendants contend
24 that even if they are found liable for wage violations that penalties would not be awarded because they
25 were acting in good faith and the award of penalties requires a finding that Defendants acted “willfully”
26 or “knowingly and intentionally.” [Id. at ¶ 20.]

27 _____
28 ⁷ Defendants assert that their written policies expressly prohibited “off the clock work” and therefore
would have prevailed on such claims if the litigation continued.

1 Finally, with respect to the PAGA claims, it is possible that a court could find that such penalties
2 are duplicative of the other damages and penalties and significantly reduce the PAGA award as being
3 duplicative. *See* Cal. Lab. Code § 2699(e)(2). Therefore, the estimated PAGA penalties range from \$0 if
4 Plaintiffs lose to over \$5,000,000 should Plaintiffs prevail on all of their PAGA claims and the Court
5 decides to award full PAGA penalties in addition to the damages and penalties under the Labor Code.
6 Given that the PAGA claims are merely derivative of the wage and break claims and the maximum PAGA
7 penalties are subject to being reduced significantly at the court's discretion, Plaintiffs' counsel believes
8 that the proposed PAGA settlement is fair and reasonable and should be approved. [Seplow Decl. at ¶ 23.]

9 Here, if Plaintiffs were to hit "a grand slam" and prevail on the majority of their claims at trial and
10 on appeal, they estimate that they would receive an award in the range of \$20,000,000. This settlement
11 of \$6,250,000 is about 31.5 percent of a potential maximum recover and therefore satisfies the criteria for
12 approval especially in light of the risks involved in further litigation. [Seplow Decl. at ¶ 24.]⁸

13 The Settlement represents a significant benefit to the class members, with the average payment of
14 \$2,974 and the highest payment over \$25,932 and therefore final approval should be granted.

15 Should the Court not approve the Settlement, the Court would have to rule on the pending motion
16 for summary adjudication and the case would thereafter proceed to trial. Moreover, Defendants would

17 ⁸ Indeed, Courts have regularly approved settlements for far less than the overall potential recovery. *See,*
18 *e.g., In re Domestic Air Transp. Antitrust Lit.*, 148 F.R.D. 297, 325 (N.D. Ga. 1993) (approving settlement
19 of 12%-15.3% of possible untrebled damages); *Behrens v. Wometco Enterprises, Inc.*, 118 F.R.D. 534,
20 543 (S.D. Fla. 1988) (approving settlement of 3-5% of estimated recovery at trial); *Newman v. Stein*, 464
21 F.2d 689 (2d. Cir. 1972), *cert. denied*, 409 U.S. 1039 (1972) (approving settlement of 14% of potential
22 recovery); *Dunleavy v. Nadler (In re Mego Fin. Corp. Sec. Litig.)*, 213 F.3d 454, 456, 458 (9th Cir. 2000)
23 (comparing a nearly \$2 million gross settlement payment to a potential recovery figure of \$12 million and
24 finding that recovering "roughly one-sixth of the potential recovery" was fair and adequate); *Brown v.*
25 *CVS Pharm., Inc.*, No. CV15-7631 PSG (PJWx), 2017 U.S. Dist. LEXIS 182309, *10 (C.D. Cal. Apr. 24,
26 2017) (granting final approval where settlement amount represented approximately 27% of possible
27 recovery); *Frieri v. Sysco Corp.*, No. 16-CV-1432 JLS (NLS), 2019 U.S. Dist. LEXIS 207481, *16 (S.D.
28 Cal. Dec. 2, 2019) (granting preliminary approval where settlement amount represented less than 20% of
defendants' maximum liability exposure); *Giordani v. Orange Ave. Express*, No. 19STCV0U05, 2021 Cal.
Super. LEXIS 107245, *8 (Los Angeles Super. Ct. May 26, 2021) (finding settlement that represented
approximately 15% of the maximum recovery to be "within the ballpark of reasonableness") (internal
quotation marks omitted); *Vasquez v. Chriswell Home Improvements*, No. 34-2021-00305938-CU-OE-
GDS, 2023 Cal. Super. LEXIS 6187, *10 (Sacramento Super. Ct. Feb. 3, 2023) (granting preliminary
approval where gross settlement amount represented 5.4% of maximum likely recovery); *Vega v. Riebe's*
Auto Parts, No. 34-2021-00293414-CU-OE-GDS, 2023 Cal. Super. LEXIS 5068, *9 (Sacramento Super.
Ct. Jan. 6, 2023) (granting preliminary approval where parties settled for 25% of defendants' potential
exposure); *Blair v. Designs*, No. 34-2021-00313156-CU-OE-GDS, 2023 Cal. Super. LEXIS 5339, *8
(Sacramento Super. Ct. Jan. 13, 2023) (granting final approval to settlement that reflected 10% of
maximum value of potential damages and penalties).

1 likely appeal any adverse verdict at trial and/or challenge the basis for class certification. Not only will
2 the settlement provide fair compensation to the class but it brings an end to 15 years of litigation and will
3 result in the conservation of judicial resources by avoiding further protracted litigation.

4 **B. An Assessment of the Claims and Defenses Asserted, and Other Relevant Factors**
5 **Weigh Strongly in Favor of Approving the Settlement.**

6 The Parties and their counsel have conducted a full evaluation of their claims and defenses and
7 believe it is in the best interest of the Parties and putative Class Members to settle this class action.

8 For 15 years, Plaintiffs' counsel, who are experienced class action litigators, have engaged in
9 substantial litigation, appeal, discovery and investigation of the claims and defenses in this case and are
10 highly familiar with facts of this case.

11 Plaintiffs' counsel's work and investigation included: 1) sending a survey to potential class
12 members and interviewing dozens of class members 2) conducting extensive discovery as to Defendants'
13 practices and policies, including taking the depositions of Defendants' nursing directors and other
14 employees 3) working with statistical experts to perform an incredibly detailed analysis of all of
15 Defendants' timekeeping and payroll records, 4) working with a nursing expert to review and examine
16 Defendants' policies and staffing documents, including voluminous schedules, staffing and acuity reports
17 for the class period, 5) deposing Defendants' statistics expert, 6) preparing an initial class certification
18 motion which was denied in 2013, 7) successfully appealing the denial of class certification , 8) preparing
19 a renewed class certification motion as well as a detailed trial plan, 9) fully briefing and preparing to argue
20 a motion for summary adjudication of the meal break claims, which was pending at the time the settlement
21 was reached, including a fulsome damages analysis and calculation, and 10) attending three mediations,
22 the last of which resulted in this settlement, just three months before trial. [Seplov Decl. at ¶ 26.]

23 In light of the tremendous amount of work done on this case, Plaintiffs' counsel believe that their
24 decision to accept the terms of the settlement is sound, reasonable and in the best interest of the class
25 members, given the risks and uncertainties of continued litigation against Defendants' who have fought
26 this case tooth and nail for 15 years. [Seplov Decl. at ¶ 27.] Defendants have continued to assert that
27 they should not be found liable and that their policies were complaint with California's labor laws and
28

1 undoubtedly would appeal any final judgment in this case, resulting in further delay of relief to class
2 members.

3 As the above makes clear, at the time of settlement, Plaintiffs' counsel had a wealth of information
4 upon which to make an informed decision about the appropriate value at which to settle this case.

5 **C. The Settlement is the Product of Serious, Informed, Non-Collusive and Good-Faith**
6 **Negotiations.**

7 The settlement was a result of arm's-length bargaining after 15 years of hard fought litigation. The
8 resulting settlement was the outcome of an informed and educated analysis of all the risks and benefits of
9 continued litigation. At all times the negotiations were at arms-length and adversarial in nature. Indeed,
10 at the end of the November 20, 2023 mediation, the parties were at an impasse which led to Judge Walsh
11 making a "mediator's proposal" of \$6,250,000 which was accepted by both sides two weeks later after
12 serious consideration. [Seplow Decl. at ¶ 28.]

13 **D. Notice was properly given.**

14 This Court previously approved of the content of the notice and the manner of service. MPA Order
15 at. The notice was sent to all class member pursuant to the Court's MPA Order. [Beliveau Decl. at ¶¶ 5-
16 7] The Administrator has reported that no objections or disputes were received within the notice period.
17 [Id. at ¶ 10.]

18 The notice also contains a website to be set up by the administrator to provide class members with
19 information about the case and the proposed settlement, including the date of the final approval hearing.
20 The Final Judgment will also be posted on this website. [Seplow Decl. at ¶ 30.]

21 **E. The Requested Attorneys' Fees of 1/3 of the Settlement, which is a substantial**
22 **reduction of counsel's actual lodestar, and the costs expended, are fair and**
23 **reasonable and should be approved.**

24 As set forth in the Motion for Attorneys' Fees, Costs and Service Awards, Class Counsel is
25 requesting an attorney fee award of One Third of the Gross Settlement, which is a substantial discount on
26 their lodestar, as well as actual costs incurred in the amount of \$441,317.1. Administration costs of
27 \$11,408 and \$25,000 Service Awards of for each of the named Plaintiff/Class Representatives.

1 Plaintiffs' counsel requests, and Defendants do not oppose, an award of attorneys' fees in the
2 amount of \$2,083,333 million to include all work previously rendered by Plaintiffs' counsel and all future
3 work to be rendered in connection with this case. This requested amount is one third (33-1/3%) of the total
4 gross settlement amount of \$6.25 million which is consistent with the one-third benchmark typically
5 approved by courts. *See Laffitte v. Robert Half Internat. Inc.* (2016) 1 Cal.5th 480 (affirming award of
6 one-third of the common fund); *Chavez v. Netflix, Inc.* (2008) 162 Cal. App. 4th 43, 66 n. 11 ("Empirical
7 studies show that, regardless whether the percentage method or the lodestar method is used, fee awards in
8 class actions average around one-third of the recovery.

9 Notably, the requested fees are far less than Plaintiffs counsel's actual lodestar which, after 15
10 years of litigation, is over \$5,000,000. [Seplov Decl. at ¶ 32.] Accordingly approving the fees requested
11 will not result in a windfall to counsel, but rather a substantial discount of their lodestar incurred to
12 prosecute this action to settlement. The requested one-third fee award, which is the standard benchmark
13 in California class action cases, is more than justified in that Plaintiffs' counsel achieved a just settlement
14 that will result in monetary payment to Settlement Class members and that likely would not have been
15 possible without the determined 15 year efforts of Plaintiffs' counsel, whose lodestar far exceeds the
16 amount of fees being requested. Moreover, Plaintiffs' counsel have incurred \$441,317.14 in actual out of
17 pocket costs, including hundreds of thousands of dollars for expert witnesses, as well as costs for
18 depositions and other required litigation expenses.⁹ [Seplov Decl. at ¶ 34.]

19 **F. The Requested Service Awards to the Plaintiffs Are Reasonable and Comparable to**
20 **Those Routinely Awarded.**

21 Courts have long acknowledged that active litigants are entitled to be compensated for bearing the
22 risk and time to represent others. *See Bell v. Farmers Ins. Exch.* (2004) 115 Cal. App. 4th 715, 725 (2004)
23 (upholding service payments to named plaintiffs for their efforts in bringing class case). Accordingly,
24 Plaintiffs in class actions are eligible for reasonable service awards as compensation "for the expense or
25 risk they have incurred in conferring a benefit on other members of the class." (*Munoz v. BCI Coca-Cola*
26 *Bottling Co.* (2010) 186 Cal.App.4th 399, 412). Courts routinely grant approval of class action settlement

27 _____
28 ⁹ In their motion for attorneys' fees and costs, which is being filed concurrently with this motion for final approval, Plaintiffs' counsel provide a detailed analysis of the fees and costs incurred including showing that their lodestar far exceeds the requested 1/3 award for attorneys' fees in this case.

1 agreements containing service awards for the class representative, which are necessary to provide
2 incentive to represent the class and are appropriate given the benefit the class representatives help to bring
3 about for the class. See, e.g., *See Van Vranken v. Atlantic Richfield Co.* (N.D. Cal. 1995) 901 F .Supp.
4 294, 299 (approving \$50,000.00 service award);

5 Here, Plaintiffs seek approval of a service award in the amount of \$25,000 to each Class Repetitive.
6 Being a class representative in a case against a current or former employer comes with risk, such as
7 retaliation and being blackballed from future employment. Furthermore, compensation for all of the
8 eligible class members in this case could not have been achieved but for individuals such as the Plaintiffs
9 being willing to step forward and take these risks. Notably, each of the Plaintiffs performed substantial
10 work on this case including responding to discovery requests, having their depositions taken, reviewing
11 numerous documents and working closely with counsel to advance the case through certification and
12 potential trial. [Seplov Decl. at ¶26; see also declarations of Plaintiffs/Class Representatives.] Each of
13 the Plaintiffs stuck with this case for 15 years. Therefore, Plaintiffs respectfully requests that the court
14 grant approval of \$25,000 service awards for each Class Representative.

15 **V. CONCLUSION**

16 For all the foregoing reasons, this Court should grant Final Approval of the Settlement
17 Agreement and enter the proposed Judgment and Order Granting Motion for Final Approval of Class
18 Action and PAGA Settlement, Award of Attorneys' Fees and Costs, and Approval of Class
19 Representative Service Awards

20
21 Dated: October 21, 2024

Respectfully Submitted,

22 **SCHONBRUN SEPLOW HARRIS**
23 **HOFFMAN & ZELDES, LLP**

24 **ORANGE LAW OFFICES**

25 **LAW OFFICES OF COLLEEN FLYNN**

26 By: 

27 Michael D. Seplov

28 *Attorneys for Plaintiffs and Certified Class.*



Make a Reservation

VALERIE ALBERTS, ET AL VS. AURORA BEHAVIORAL HEALTH CARE

Case Number: BC419340 Case Type: Civil Unlimited Category: Other Employment Complaint Case
Date Filed: 2009-08-06 Location: Stanley Mosk Courthouse - Department 51

Reservation

Case Name: VALERIE ALBERTS, ET AL VS. AURORA BEHAVIORAL HEALTH CARE	Case Number: BC419340
Type: Motion re: (Motion for Final Approval)	Status: RESERVED
Filing Party: Valerie Alberts (Plaintiff)	Location: Stanley Mosk Courthouse - Department 51
Date/Time: 02/18/2025 9:00 AM	Number of Motions: 1
Reservation ID: 700964608086	Confirmation Code: CR-JDAFVFUKQ9DD6WU2X

Fees

Description	Fee	Qty	Amount
Motion re: (name extension)	0.00	1	0.00
TOTAL			\$0.00

Payment

Amount: \$0.00	Type: NOFEE
Account Number: n/a	Authorization: n/a
Payment Date: n/a	

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