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MARIN COUNTY SUPERIOR COURT
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15 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

16 **COUNTY OF MARIN**

17 MARY KNAPP-SAMET, JANE ANN
18 MIDDLETON, KATHRYN BALLINGER,
19 NORA BURNS, BARBARA RUSSELL,
20 WINNIE HUANG and HEATHER
21 GOSLINER, individually and on behalf of
22 others similarly situated,

23 **Plaintiffs,**

24 v.

25 MARIN GENERAL HOSPITAL
26 CORPORATION, a California
27 corporation, SUTTER HEALTH
28 CORPORATION, a California Corporation
and DOES 1 through 50,

Defendants.

CASE NO. 1400998

CLASS ACTION

**NOTICE OF MOTION AND MOTION FOR
UNOPPOSED PRELIMINARY APPROVAL
OF CLASS ACTION SETTLEMENT AND
CERTIFICATION OF SETTLEMENT CLASS;
MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT THEREOF**

Hearing Date: March 23, 2016

Time: 1:30 p.m.

Place: Dept B

Complaint filed: March 14, 2014

Trial Date: Vacated

1 TO THE COURT, TO ALL PARTIES AND TO THEIR COUNSEL OF RECORD:
2 PLEASE TAKE NOTICE THAT on March 23rd, at 1:30 p.m., in Department B of this Court
3 located at San Rafael, California, pursuant to Code of Civil Procedure § 382 and California
4 Rules of Court 3.769, Plaintiffs, MARY KNAPP-SAMET, JANE ANN MIDDLETON,
5 KATHRYN BALLINGER, NORA BURNS, BARBARA RUSSELL, WINNIE HUANG and
6 HEATHER GOSLINER ("Plaintiffs") will move the Court for an Order granting preliminary
7 approval of the proposed class action settlement between Plaintiffs and Defendants MARIN
8 GENERAL HOSPITAL, a California public benefit corporation, and SUTTER HEALTH
9 CORPORATION, a California corporation ("Defendants"). Plaintiffs will further move the
10 Court for an Order:
11

- 12 1. Certifying a Class for settlement purposes;
- 13 2. Appointing MARY KNAPP-SAMET, JANE ANN MIDDLETON, KATHRYN
14 BALLINGER, NORA BURNS, BARBARA RUSSELL, WINNIE HUANG,
15 HEATHER GOSLINER, SHARON REID and CHING REDMON as the Class
16 Representatives for settlement purposes and approving the payment to them of
17 Class Representative payments.
- 18 3. Appointing the law firms of Jaret & Jaret and the Law Office of Arthur R. Siegel
19 as Plaintiffs' Counsel for settlement purposes and approving the payment to them
20 of attorneys' fees.
- 21 4. Approving the proposed Notice of Class Action Settlement in the form attached as
22 Exhibit A hereto, to be mailed to the Class;
- 23 5. Approving the opt out and objection procedures provided in the Agreement and
24 set forth in the Notice of Class Action Settlement;
- 25 6. Directing Defendants to furnish the Administrator within 15 calendar days after
26 the Court grants preliminary approval of the Settlement the names, employee
27 identifications numbers and last known addresses, email addresses and telephone
28

1 numbers of all Class Members, as well as any other information the Administrator
2 may reasonably need to administer this settlement; and

- 3
4 7. Setting a Final Approval Hearing after preliminary approval of the Settlement in
5 Department B of the Marin County Superior Court.

6 The motion will be based upon this notice, the attached memorandum of points and
7 authorities, the Declarations of Arthur R. Siegel, Robert S. Jaret, and Michael Sutherland filed
8 concurrently herewith, the records and files in this action, and any other further evidence or
9 argument that the Court may properly receive at or before the hearing.

- 10 8. Defendants' counsel has agreed not to oppose preliminary approval of the
11 settlement.

12 Respectfully submitted,

13
14 DATED: February 25, 2016

15 Plaintiffs, Mary Knapp-Samet, Jane Ann Middleton,
16 Kathryn Ballinger, Nora Burns, Barbara Russell, Winnie
17 Huang, Heather Gosliner and Proposed Class

18 By attorneys
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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiffs Mary Knapp-Samet, Jane Ann Middleton, Kathryn Ballinger, Nora Burns,
4 Barbara Russell, Winnie Huang and Heather Gosliner, and Sharon Reid and Ching Redmon
5 referred to herein as the "Class Representatives," seek preliminary approval of a \$850,000 class
6 action settlement on behalf of approximately 47 current and former Nurse Case Managers
7 employed by Defendants Marin General Hospital ("Marin General" or "MGH") and Sutter
8 Health Corporation ("Sutter Health") (collectively, "Defendants"). Plaintiffs aver, *inter alia*,
9 that Defendants violated various provisions of the California Labor Code, Wage Orders and the
10 California Business and Professions Code by allegedly failing to pay overtime compensation,
11 failing to provide proper wage statements, and failing to pay all wages due at the time of
12 termination.
13

14 The Settlement Class consists of all individuals who are currently and were formerly
15 employed by Defendants as Nurse Case Managers at Marin General Hospital from March 14,
16 2010 through the date of the preliminary approval hearing of this Class Action Settlement
17 Agreement (March 23, 2106), including Representative Plaintiffs. For purposes of this
18 settlement only, all parties agree that the proposed Settlement Class satisfies each of the
19 requirements of Code of Civil Procedure Section 382 for class certification.

20 Plaintiffs submit that the settlement is fair, adequate, reasonable, and confers a substantial
21 benefit to the class under the facts and circumstances of the case. Accordingly, Plaintiffs request
22 that the Court grant preliminary approval of the Stipulation and Settlement Agreement.
23 ("Settlement" or "Agreement") submitted herewith, conditionally certify the Settlement Class,
24 approve the proposed Settlement Notice, and set a hearing date for final settlement approval.

25 **II. FACTUAL AND PROCEDURAL BACKGROUND**

26 **A. Procedural History**

1 Plaintiffs, on behalf of themselves and other employees who worked as Nurse Case
2 Managers for Defendants at Marin General Hospital, filed the Actions against Defendants for
3 alleged violations of California wage and hour laws in the Superior Court for the State of
4 California, County of Marin.

5
6 **B. The Class Action Complaint**

7 The Class Action Complaint alleges that Defendants violated various provisions of the
8 California Labor Code and the California Business and Professions Code by failing to pay
9 overtime compensation, failing to provide proper wage statements, and failing to pay all wages
10 due at the time of termination. In particular, Plaintiffs and the other similarly situated Nurse
11 Case Managers were employed by Defendants during the Liability Period, from March 14, 2010
12 to the date of the preliminary approval hearing of the Settlement Agreement.

13 The Complaint alleges that Defendants: (i) failed to pay overtime wages in violation of
14 Labor Code §§ 510, 1194 and Wage Order No. 5; (ii) failed to pay all wages upon termination in
15 violation of Labor Code § 203; (iii) failed to furnish and maintain timely and accurate wage
16 statements in violation of Labor Code § 226; and (iv) for violations of California's Unfair
17 Competition Law ("UCL"), Bus. & Prof. Code § 17200 *et seq.*; Additionally, Plaintiffs sought
18 relief, including penalties, under the Labor Code Private Attorneys General Act of 2004, Labor
19 Code § 2698, *et seq.*

20 The legal issues in the Action concern:

- 21 a. Whether Defendants are liable to Plaintiffs and the Class for damages for failing
22 to pay proper overtime wages;
- 23 b. Whether Defendants willfully failed to pay its employees' wages upon termination
24 in violation of California Labor Code section 202 entitling Plaintiffs and the Class
25 members to waiting time penalties;
- 26 c. Whether Defendants are liable to Plaintiffs and the Class members for failing to
27 furnish and maintain timely and accurate wage records;
- 28

- 1 d. Whether Defendants engaged in unlawful and unfair business practices in
2 violation of Business & Professions Code section 17200, and if so, whether
3 Plaintiffs are entitled to equitable relief including but not limited to restitution and
4 injunctive relief;
5
6 e. Whether certification of the proposed class is proper.
7
8 k. The appropriate amount of damages and restitution.

9 **Remedies:** Plaintiffs, on behalf of themselves and all others similarly situated, sought all
10 unpaid overtime wages due to Plaintiffs and each Class member ; continuation wages under
11 Labor Code § 203; statutory penalties under Labor Code § 226(e); damages as provided by law;
12 prejudgment interest at the maximum legal rate; reasonable attorneys' fees; and costs of suit.

13 **C. Settlement**

14 Prior to reaching a settlement, the parties engaged in extensive formal and informal
15 discovery. Among other things, counsel for Defendants produced relevant electronic and paper
16 documents (redacting the names of current and former employees), including: (1) a class list
17 (including date of hire and, if no longer employed, date of termination); (2) payroll data for the
18 Class Liability Period; (3) Paragon System (an MGH patient information system) access logs;
19 and (4) Personnel files.

20 Written discovery was conducted, including form and special interrogatories and requests
21 for production of documents. Requests for admission were also propounded. There are 7 named
22 plaintiffs in the class-action (and 2 additional plaintiffs in a related case who pursued the same
23 wage and hour claims) and extensive discovery responses were prepared on behalf of each of the
24 named plaintiffs. Through ongoing meet and confer sessions with defense counsel the parties
25 were able to avoid any significant discovery disputes.

26 Numerous depositions were also taken. Defendants took the depositions of each of the
27 plaintiffs. With respect to some of the plaintiffs, the depositions occurred on 2 separate days.

28 **Plaintiffs** took the depositions of multiple Marin General current and former managers,

1 including Ms. Sheila Lywza, Mr. William Keast, Ms. Carrie Schofield, and Mr. Richard Abbate,
2 all of whom were involved in decisions regarding classification of Nurse Case Managers as
3 Exempt or Non-Exempt, or otherwise knew of the duties and responsibilities of Nurse Case
4 Managers. Plaintiffs' counsel also interviewed more than a dozen other witnesses. Declaration
5 of Robert S. Jaret in Support of Motion For Preliminary Approval of Class Action ("Jaret
6 Decl."), ¶ 10.

7
8 The parties in the Action participated in two lengthy days of private mediation on
9 February 2, 2015 and August 20, 2015 with mediator Michael Loeb of JAMS. Settlement was
10 reached with Sutter Health during the first mediation session, but was not reached with Marin
11 General at either mediation session. Between the first and second mediation sessions, Mr. Loeb
12 devoted 3 additional hours to followup settlement efforts. After the second mediation session,
13 Plaintiffs and Defendants conducted some direct arms-length negotiations, and Mr. Loeb devoted
14 an additional 4.6 Hours to settlement efforts. Siegel Decl., ¶ 5.

15 **III. THE SETTLEMENT TERMS**

16 **A. The Class Definition**

17 The Settlement Class is defined as follows:

18 All individuals who are currently and were formerly employed by Defendants as
19 Nurse Case Managers at Marin General Hospital from March 14, 2010 through
20 the date of the preliminary approval hearing of this Class Action Settlement
21 Agreement (March 23, 2106), including Representative Plaintiffs.

22 (Stipulation and Settlement Agreement ("Agreement"), Page 4, ¶2.1, (Siegel Decl., Ex. 1.)

23 For purposes of the Settlement, payments to Settlement Class Members will consist of
24 payments divided 75% to wages, 25% to waiting time penalties and other penalties and interest.
25 Agreement, ¶6.1.

26 **B. The Proposed Monetary Settlement**

1 The proposed settlement resolves all claims of the Plaintiffs and the proposed Settlement
2 Class against Defendants related to alleged failure to pay wages, failure to furnish timely and
3 accurate wage statements, unlawful or unfair business practices in violation of California
4 Business & Professions Code Section 17200, et seq., including waiting time penalties, interest,
5 civil penalties provided by the Labor Code Private Attorneys General Act of 2004 ("PAGA")
6 and other penalties under federal and state law. The detailed terms are contained in the
7 Settlement Agreement attached as Exhibit 1 to the Siegel Declaration filed herewith. Key
8 provisions of the proposed settlement include the following:
9

- 10 • Defendants stipulate to certification of a Settlement Class for purposes of this
11 Settlement only; Agreement, ¶9.1, 14.
- 12 • Defendants will pay a total of \$850,000, allocated between Defendants as follows,
13 \$750,000 from Marin General, \$100,000 from Sutter Health ("Maximum
14 Payment"). Agreement, ¶2.10.
- 15 • The Employers' share of payroll taxes and contributions shall be paid by
16 Defendants from their separate funds, and these will be paid separate and apart
17 from the Maximum Payment. Agreement, ¶2.10.
- 18 • No claim or other submission is necessary in order to become a member of the
19 Settlement Class; Agreement, ¶4.
- 20 • Settlement Class Members will be mailed a check automatically if they do not opt
21 out of the Settlement; Agreement, ¶8.4.
- 22 • The settlement will release wage-and-hour related claims for those Settlement
23 Class Members who are mailed a check; Agreement, ¶13.
- 24 • The release for those Class Members is precisely tailored to only those claims
25 alleged in the Complaint and any claims which could have been plead based on
26 the facts alleged in the Complaint; Agreement, ¶13.
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- After deducting Plaintiffs' Counsel's attorneys' fees and costs, Class Representative Payments to the Plaintiffs and Ms. Sharon Reid and Ms. Ching Redmon, a portion of settlement administration costs, and a payment to California Labor Workforce Development Agency, the Net Settlement Amount will be distributed and paid to Settlement Class Members who do not opt out of the Settlement, with each Settlement Class Member's share to be determined based primarily on the number of workweeks worked by each Settlement Class Member during the Settlement Class Period as set forth in Defendants' records, whether they worked those weeks before or after July 1, 2013 (when Marin General reclassified Nurse Case Managers from Exempt to Non-Exempt), whether they were per diem workers (who were eligible for Overtime wages both before and after July 1, 2013, and whether they are present or former employees of Defendants.;
- Any settlement checks that are mailed to the Settlement Class Members and remain uncashed after 150 days of the date of mailing will be cancelled, and the moneys will be directed in the name of the Final Settlement Class Member to the State of California, Controller – Unclaimed Property Division, for further handling on behalf of the Class Member. Agreement, ¶16
- The notice portion of the Settlement will be administered by Simpluris, a third-party Administrator;
- Defendants will not oppose Class Representative Payments in the total amount of \$67,500 to the Named Plaintiffs, and to Ms. Sharon Reid and Ms. Ching Redmon, to be paid out of the Maximum Payment. Agreement, ¶7.2
- Defendants will not oppose payment to Plaintiffs' Counsel for fees up to the 33.3% (\$283,050) of the Maximum Payment and costs of up to \$35,000, to be paid out of the Maximum Payment. Agreement, ¶7.3

1 **C. Settlement Administration**

2 The Parties have agreed to use Simpluris, Inc. to serve as the Settlement Administrator.
3 The firm is highly experienced in claims administration and supported over 1,000 class action
4 administrations that have included the processing of more than \$600 million in settlements.
5 Declaration of Michael Sutherland. ¶¶ 2,3.
6

7 The Settlement Administrator will, among other things, distribute the Class Settlement
8 Notices, calculate Individual Settlement Allocations for each Settlement Class member, resolve
9 any disputes over the dates of employment, gross wages paid during the class period and/or
10 membership in the Settlement Class, draw and distribute checks to the Settlement Class
11 Members, administer the Fund, prepare and file any necessary tax reporting for the Fund, and
12 report to the Court and the Parties on the notice/opt out process and payment of the Fund.
13 Individual notices will be mailed to all Settlement Class Members, whose contact and
14 employment information the Defendants will provide to the Settlement Administrator.
15 Agreement, ¶¶ 9.2 to 9.7.

16 **D. Class Notice**

17 The proposed Notice of Class Action Settlement will be disseminated through direct mail
18 to the last known address for each Settlement Class Member. It informs the Settlement Class
19 Members of the terms of the settlement and their right to be excluded from the Settlement. And
20 if there are Settlement Class Members who wish to object to this proposed class action
21 settlement, they will have the opportunity to file their objections and be heard at the Final
22 Approval Hearing.

23 The Notice also summarizes the proceedings to date and the terms and conditions of the
24 proposed Settlement, in an informative and coherent manner. It makes clear that the Settlement
25 does not constitute an admission of liability by the Defendants, and recognizes that this Court has
26 not ruled on the merits of the action. It also states that the final settlement approval decision has
27 yet to be made. The Form of Notice is attached to as Exhibit 1.
28

1 **E. Settlement Payments**

2 Each Class Member's settlement, as applicable, will be divided as follows the following
3 manner: Seventy-five percent (75%) to wages, which will be calculated and payable to all
4 Settlement Class Members, will be subject to withholding, including the employee's portion of
5 FICA, FUTA, SDI, and any other mandated taxes withholding, as to which each Settlement
6 Class Member shall be issued a Form W-2 by the Settlement Administrator; 25% to penalties
7 and interest, which shall be paid to all Settlement Class Members and as to which each
8 Settlement Class Member shall be issued a Form 1099 INT by the Settlement Administrator if
9 such issuance is required by law. The Defendants shall pay the employer's share of payroll
10 taxes, and contributions shall be paid by Defendants from its separate funds. Agreement, ¶ 2.10.

11 **F. Stipulation to Class Certification and Approval of Settlement**

12 Plaintiffs now respectfully move this Court to: (a) preliminarily approve the proposed
13 class action settlement, (b) appoint Plaintiffs and Sharon Reid and Ching Redmon as the Class
14 Representatives for purposes of this settlement and approve the payment to them of Class
15 Representative Payments, (c) appoint the law firms of, the Law Office of Arthur R. Siegel and
16 Jaret & Jaret as Plaintiffs' Counsel for settlement purposes and approve the payment of
17 attorneys' fees, (d) approve the proposed Notice of Class Action Settlement in the form attached
18 as Exhibit 1 hereto. (e) approve the procedures for opting out and objecting to the settlement set
19 forth in the Notice of Class Action Settlement, (f) direct Defendants to furnish the Administrator
20 within 15 days after the Court grants preliminary approval of the Settlement the names and last
21 known addresses, employee identification numbers and telephone numbers of all Class
22 Members, as well as any other information the Administrator may reasonably need to provide
23 notice of this Settlement, and (g) set a Final Approval Hearing. Defendants, through their
24 counsel, have agreed that they do not oppose Plaintiffs' motion for class certification and that the
25 Proposed Settlement Class satisfies each of the requirements for class certification of Code of
26 Civil Procedure section 382.
27

1 **IV. THE COURT SHOULD GRANT PRELIMINARY APPROVAL OF THE CLASS**
2 **ACTION SETTLEMENT**

3 **A. Class Action Settlements Are Subject to Review and Approval Under**
4 **California Law**

5 A class action may not be dismissed, compromised, or settled without approval of the
6 Court. *See* Civ. Code § 1781(f); Cal. Rule of Court 3.769. Proper review and approval of a class
7 action settlement requires three steps: (1) preliminary approval of the proposed settlement after
8 submission of a written motion; (2) dissemination of mailed and/or published notice of the
9 settlement to all class members; and (3) a formal fairness hearing, or final settlement approval
10 hearing, at which class members may be heard regarding the settlement, and at which evidence
11 and argument concerning the fairness, adequacy, and reasonableness of the settlement is
12 presented. Rule of Court 3.769; David F. Herr, Manual for Complex Litigation § 21.61 (4th ed.
13 2012) ("Manual"). This procedure, commonly used by California courts, safeguards class
14 members' procedural due process rights and enables the court to fulfill its role as the guardian of
15 class members' interests. *See* Alba Conte & Herbert B. Newberg, 4 Newberg on Class Actions §
16 11:22, et seq. (4th ed. 2002) ("Newberg").

17
18 The decision to approve or reject a proposed settlement is committed to the sound
19 discretion of the court. *See* Kullar v. Foot Locker Retail, Inc., 168 Cal. App. 4th 116, 128
20 (2008); Wershba v. Apple Computer, Inc., 91 Cal. App. 4th 224, 234-35 (2001). Accordingly, a
21 decision approving a class action settlement may be reversed only upon a strong showing of
22 clear abuse of discretion. *See* Kullar, 168 Cal. App. 4th at 128; Hanlon v. Chrysler Corp., 150
23 F.3d 1011, 1027 (9th Cir. 1998).

24 Plaintiffs request that the Court take the first step in the settlement approval process, and
25 grant preliminary approval of the proposed Settlement. The purpose of the preliminary
26 evaluation of class action settlement is to determine only whether the proposed settlement is
27 within the "range of reasonableness," and whether and how notice to the class of the terms and
28

1 conditions of the Settlement may be given, and whether the scheduling of a formal fairness
2 hearing, is worthwhile. *See Wershba*, 91 Cal. App. 4th at 234-35; 4 Newberg § 11:25. In this
3 matter, counsel have provided information exceeding the threshold required to provide this Court
4 with “an understanding of the amount that is in controversy and the realistic range of outcomes
5 of the litigation.” *See*, generally, Siegel Declaration, and discussion at IV.B.2 *infra*.

6
7 Plaintiffs further request that the Court provisionally and conditionally certify the
8 proposed Settlement Class as defined above. Provisional and conditional class certification is
9 appropriate at the preliminary approval stage where, as here, the proposed class as it is defined in
10 the parties' Settlement Agreement has not previously been certified by the Court, and the
11 requirements for certification are met. *See* 4 Newberg § 11:22, *et seq.* The practical purpose of
12 provisional and conditional class certification is to facilitate distribution of notice to the class of
13 the terms of the proposed settlement and the date and time of the final approval hearing. *See*
14 Rule of Court 3.769; Manual § 21.632. The additional rulings sought on this motion - approving
15 the form, content, and distribution of the Class Action Settlement Notices and scheduling a
16 formal fairness hearing - facilitate the settlement approval process, and are also typically made at
17 the preliminary approval stage. *See* Rule of Court 3.769.

18 Having presented the materials and information necessary for preliminary approval, the
19 Plaintiffs request that the Court preliminarily approve the settlement, authorize notice to the
20 Class and set a Final Approval Hearing.

21 **B. The Settlement Should Be Given Preliminary Approval as It Is Fair,**
22 **Reasonable, Adequate, and the Product of Investigation, Litigation, and Arms-**
23 **Length Negotiation**

24 **1. Applicable Standard**

25 At the preliminary approval stage, the court has broad powers to determine whether the
26 proposed settlement is fair under the circumstances of the case. *See Wershba*, 91 Cal. App. 4th
27 at 234-35; *Mallick v. Super. Ct.*, 89 Cal. App. 3d 434, 438 (1979). **Preliminary approval is**

1 warranted if the settlement falls within “the range of reasonableness.”

2 *See N. County Contractor's Ass'n., Inc. v. Touchstone Ins. Servs.*, 27 Cal. App. 4th 1085, 1089-
3 90 (1994); Newberg § 11:25.

4 For preliminary approval, the court makes an “initial evaluation” of the fairness of the
5 proposed settlement on the basis of written submissions and informal presentation from the
6 settling parties. *See Manual* § 21.632. To make the fairness determination, the court must
7 consider several factors, including “the strength of Plaintiffs' case, the risk, expense, complexity
8 and likely duration of further litigation, the risk of maintaining class action status through trial,
9 the amount offered in settlement, the extent of discovery completed and the stage of the
10 proceedings, [and] the experience and views of counsel.” *Kullar*, 168 Cal. App. 4th at 128
11 (quoting *Dunk v. Ford Motor Co.*, 48 Cal. App. 4th 1794, 1801 (1996)). The court may consider
12 other factors as well when balancing and weighing the circumstances of each case with the
13 settlement terms proposed. *See Wershba*, 91 Cal. App. 4th at 245. The court must ensure that
14 “the agreement is not the product of fraud or overreaching by, or collusion between, the
15 negotiating parties, and that the settlement, taken as a whole, is fair, reasonable and adequate to
16 all concerned.” *Hanlon*, 150 F.3d at 1027.

17
18 The California standard for approval of class settlements is similar to the federal
19 standard: the settlement should be fair, reasonable, and adequate for class members overall.
20 *Dunk, Supra*, at 1801. Accordingly, in making the fairness determination in this case, the Court
21 should consider “the strength of the Plaintiffs' case, the risk, expense, complexity and likely
22 duration of further litigation, the risk of maintaining class action status through trial, the amount
23 offered in settlement, the extent of discovery completed and the stage of the proceedings, [and]
24 the experience and views of counsel. . . .” *Id.* A presumption of fairness exists where: (1) the
25 settlement is reached through arm's-length bargaining; (2) investigation and discovery are
26 sufficient to allow counsel and the court to act intelligently; (3) counsel is experienced in similar
27

1 litigation; and (4) the percentage of objectors is small. *Id.* at 1802; Wershba, 91 Cal. App. 4th at
2 245.

3
4 The court should view these factors and, in its final analysis, ensure that the proposed
5 settlement represents a reasonable compromise given the magnitude and apparent merit of the
6 claims being released, discounted by the risks and expenses of attempting to establish and collect
7 on those claims by pursuing the litigation. Kullar, *Supra*, 168 Cal. App. 4th at 129. The
8 information that the Court needs to perform this analysis in this case is contained in this
9 Memorandum of Points and Authorities, and in the accompanying Declaration of Arthur R.
10 Siegel .

11 **2. The Settlement Terms Are Within the Range of Reasonableness**

12 Given the potential exposure or liability, the strength of Defendants' factual and legal
13 defenses, this Settlement is within the range of reasonableness, and will result in a substantial
14 benefit to all Settlement Class Members.

15 The Settlement Class Members will share in a Net Settlement Amount of approximately
16 \$489,450 , after deductions for attorneys' fees and costs, class representative payments, a penalty
17 payment to the State, and a portion of settlement administration costs. As stated in the
18 Declaration of Arthur R. Siegel, this is a reasonable sum given the circumstances presented by
19 this case.

20 As described herein, Plaintiffs' Counsel diligently pursued an investigation of the claims
21 of Settlement Class Members against Defendants, through multiple depositions and acquisition
22 of payroll and other relevant data. In addition, all counsel convened in San Francisco for two
23 separate days of mediation and extensive discussions with the mediator both between sessions
24 and after the last session.

25 Based on an investigation and evaluation, and in light of all known facts and
26 circumstances, including the risk of significant delay, the difficulty of the claims and the risk that
27 a Class may not be certified, as well as the degree of risk involved in further litigation, Plaintiffs'
28

1 Counsel are of the opinion that the Settlement with Defendants for the consideration and on the
2 terms set forth in this Settlement is fair, reasonable, and adequate, and is in the best interest of
3 the Settlement Class Members.
4

5 **3. The Settlement Agreement Is the Product of Informed, Arm's-Length**
6 **Negotiations**

7 California courts recognize that "a presumption of fairness exists where . . . [a] settlement
8 is reached through arm's-length bargaining." Wershba, 91 Cal. App. 4th at 245; *see also* Clark v.
9 Am. Residential Servs. LLC, 175 Cal. App. 4th 785, 799 (2009). The settlement in this matter
10 was reached only with the assistance of a skilled professional mediator. On February 2, 2015
11 and August 20, 2015, the Parties participated in two full day mediations with mediator Michael
12 Loeb of JAMS. Siegel Decl., ¶ 5. Plaintiffs' Counsel have considerable experience in class
13 litigation and have demonstrated competence with litigating wage and hour claims. (Siegel
14 Decl., Jaret Decl.) Prior to the lengthy settlement negotiations, the Parties conducted extensive
15 formal and informal discovery and exchanged substantial amounts of data enabling Plaintiffs'
16 Counsel to make an informed decision as to the merits of the Settlement. Plaintiffs' Counsel also
17 conducted interviews of potential witnesses and communicated with members of the Settlement
18 Class. Siegel Decl., ¶ 4 Jaret Decl. ¶ 9, 10.

19 Furthermore, information obtained from Plaintiffs' Counsel's investigation of the case, as
20 summarized above, informed their assessment of the strengths and weaknesses of the case and
21 the benefits of the proposed Settlement under the circumstances of this case. *See, e.g.,* Lewis v.
22 Starbucks Corp., No. 2:07-cv-00490-MCE-DAD, 2008 WL 4196690, at *6 (E.D. Cal. Sept. 11,
23 2008) ("approval of a class action settlement is proper as long as discovery allowed the parties to
24 form a clear view of the strengths and weaknesses of their cases").

25 **4. The Proposed Stipulation of Settlement Is Fair and Reasonable in Light of**
26 **the Parties' Respective Legal Positions**
27

1 A settlement is not judged against what might have been recovered had Plaintiffs
2 prevailed at trial, nor does the settlement have to provide 100% of the damages sought to be fair
3 and reasonable. Wershba, 91 Cal. App. 4th 224, 246, 250. (“Compromise is inherent and
4 necessary in the settlement process...even if the relief afforded by the proposed settlement is
5 substantially narrower than it would be if the suits were to be successfully litigated, this is no bar
6 to a class settlement because the public interest may indeed be served by a voluntary settlement
7 in which each side gives ground in the interest of avoiding litigation.”)

9 Plaintiffs believe that this case is suitable for class certification in that there was strong
10 evidence that class members employed on or before July 1, 2013, were subject to an improper
11 classification as employees exempt from the laws and regulations granting them overtime
12 compensation from Defendants, and testimony from Plaintiffs and declarations from class
13 members would have demonstrated that to be true. Siegel Decl., ¶ 9. However, while Plaintiffs
14 assert that this is a suitable case for certification, Plaintiffs realize that there is always a
15 significant risk associated with class certification proceedings. Siegel Decl., ¶ 9. In light of the
16 uncertainties of protracted litigation and the probable difficulties in securing a judgment in
17 substantial excess of the settlement amount, the settlement amount reflects the best practicable
18 recovery for the Class Members. The settlement amount is, of course, a compromise figure. By
19 necessity it took into account risks related to liability, damages, and all the defenses asserted by
20 the Defendants. Siegel Decl., ¶ 9. Moreover, each Class Member will be given the opportunity
21 to opt-out of the Settlement, allowing those who feel they have claims that are greater than the
22 benefits they can receive under this Settlement to pursue their own claims. Siegel Decl., ¶ 9.

23 The Maximum Payment represents more than the risk adjusted recovery at this stage in the
24 litigation. In fact, Plaintiffs believe that the risk-adjusted settlement exceeds the expected value
25 of the case at this point in time. Siegel Decl., ¶ 10. On that basis, it would be unwise to pass up
26 this settlement.

1 Analyzing the claims in this matter, Plaintiffs have concluded that the value of this
2 Settlement is fair, adequate and reasonable based upon the following calculations and risk
3 adjustments:

4 While Plaintiffs' Counsel felt they had a strong case, there were also facts which, if
5 interpreted in Defendants' favor in the litigation, would have significantly reduced the maximum
6 amounts recited above. Plaintiffs asserted that Nurse Case Managers did not meet the required
7 criteria for any legal exemption from overtime compensation before Marin General reclassified
8 them as non-exempt in June, 2013.

9
10 Defendants presented evidence that the Nurse Case Managers exercised discretion in
11 carrying out their duties, as part of multi-disciplinary teams that in their view constituted a basis
12 for an exemption. Siegel Decl., ¶ 11.

13 Plaintiffs' Counsel questioned the Defendants' position in substantial part because
14 testimony showed that Nurse Case Managers worked under extensive written policies and
15 guidelines that severely limited their discretion in carrying out their duties. Siegel Decl., ¶ 12.

16 With respect to the number of hours worked before June, 2013, Plaintiffs generally
17 testified to at least 10 hours per day, and Defendant disputed that that number of hours was
18 provable, given the testimony of its witnesses.

19 Defendants also produced electronic records detailing the times Nurse Case Managers
20 accessed its Paragon database, which contained patient and other records necessary to carry out
21 the Plaintiffs' duties. The records produced were for a limited period after the changeover to
22 non-exempt status and were never used for timekeeping purposes. Also, there was testimony
23 that some Nurse Case Managers, after logging off the system for the day, would do work-related
24 tasks such as conferring with the families of patients due for discharge.

25 Plaintiffs' analysis of the Paragon records did not show any consistent pattern of access
26 to the database consistent with regular 10-hour days. Thus, if the trier of fact were to interpret
27

1 the Paragon records as undermining Plaintiffs' reports of an average of 10 hours of overtime per
2 week, any recovery might have been substantially reduced.

3
4 Defendant had some Nurse Case Managers who, at various times during the class liability
5 period were classified as "per diem" workers, without fringe benefits but eligible for overtime.
6 Plaintiffs found no substantial evidence that the per diem workers worked uncompensated
7 overtime, thus there was a great risk of that group of Nurse Case Managers receiving nothing had
8 the case proceeded through certification to trial.

9 Finally, after the June, 2013 reclassification, Defendant MGH asserted that it granted and
10 paid for overtime hours worked by the Nurse Case Managers. Any claims after that time,
11 therefore, relied solely on an "off the clock" theory, i.e. that the Nurse Case Managers clocked
12 out and then continued to work with the tacit consent of MGH management. Apart from some
13 anecdotal evidence, Plaintiffs did not uncover substantial proof that this had regularly occurred.

14 Thus, in entering negotiations in this case, Plaintiffs sought 10 hours of weekly overtime
15 compensation for workweeks during the Exempt period, and only 5 hours in the Non-Exempt,
16 "off the clock" period. The facts as they emerged in discovery informed Plaintiffs' view that the
17 strongest claims were in the early years of the liability period, before the reclassification in June,
18 2013, and that the "off the clock" claims and any claims at all for per diem Nurse Case Managers
19 were at severe risk for both certification and ultimate liability. Further, class members who were
20 still employed would not be eligible to receive compensation under Labor Code Section 203,
21 which creates liability for a final payroll amount that is not accurate. These realizations
22 informed the negotiation of the settlement formula for Adjusted Compensable Workweeks.

23 Using these assumptions, MGH maximum underpayment liability for the Exempt Period
24 would have been \$1,068, 916. Sutter underpayment liability would have been \$211,406. Its
25 liability was for the underpayment and interest only, as no penalty violations were viable for its
26 period of liability, which consisted only of a few months after the start of the four year class
27 liability period (It ceased administration of MGH at that time). For the "off the clock" Non-

1 Exempt period, a potential liability for MGH only, the total would have been **\$305,361**.
2 Penalties (attributable only to MGH) were estimated as follows: Labor Code § 226(e) Wage
3 Statement Penalties, \$102,400; Labor Code § 203 Penalties, \$356,672; PAGA penalties
4 \$154,900, for a **Penalties total of \$613,972**.

5
6 The result here (\$100,000 from Sutter, \$750,000 from MGH) is therefore exceptional in
7 many respects. The possible impediments to wage underpayment and interest liability have been
8 discussed above. Regarding the penalties, it is important to recognize that the willfulness finding
9 required in Labor Code § 203, the largest single potential liability here apart from the overtime
10 and PAGA penalty claims, can be difficult to establish. Siegel Decl., ¶ 20. Also, the certification
11 rates in California are substantially lower than conventional wisdom holds. Notably, the
12 estimated certification probabilities equal or exceed by more than a factor of two the rate of
13 certification in contested motions in California between 2000 and 2006, based upon data
14 available through the California Courts website. See, Findings of the Study of California Class
15 Action Litigation, 2000-2006, available at [http://www.courts.ca.gov/documents/class-action-lit-](http://www.courts.ca.gov/documents/class-action-lit-study.pdf)
16 [study.pdf](http://www.courts.ca.gov/documents/class-action-lit-study.pdf) Appendix C: Disposition Analysis, at p. C11, Table C29 (finding that only 21.4% of
17 all class actions were certified either as part of a settlement or as part of a contested certification
18 motion. 77.7% were disposed of without being certified. In other words, well under 20% of all
19 class actions were successfully certified by way of a contested motion.

20 Additionally, wage statement penalty claims have also seen high and low water
21 marks in their treatment at the appellate level. Compare, Jaimez v. DAIOHS USA, Inc., 181
22 Cal.App.4th 1286 (2010) with Price v. Starbucks Corp., 192 Cal.App.4th 1136 (2011) and
23 Morgan v. United Retail, 186 Cal. App. 4th 1136 (2010).

24 Had the case not settled, the recovery for the Class could well have been
25 substantially less than the settlement amount reached through formal discovery, mediation and
26 negotiation, \$850,000.

1 (2) the notoriety and personal difficulties encountered by the class representative; (3) the amount
2 of time and effort spent by the class representative; (4) the duration of the litigation; and (5) the
3 personal benefit (or lack thereof) enjoyed by the class representative as a result of the litigation."
4 In re Cellphone Fee Termination Cases, 186 Cal. App. 4th at 1394-95 (quoting Van Vranken v.
5 Atlantic Richfield Co., 901 F. Supp. 294, 299 (N.D. Cal. 1995)). A reviewing court also
6 considers whether the litigation will further the public policy underlying the statutory scheme.
7 See, e.g., Roberts v. Texaco, Inc., 979 F. Supp. 185, 201 n.25 (S.D.N.Y. 1997). All of the above
8 factors support the service awards requested here.
9

10 Under the Settlement, subject to the Court's approval, Plaintiffs request the following
11 payments, to which Defendants do not object: \$7,500 to each Class Representative, totaling
12 \$67,500. These payments are completely reasonable in light of their participation in the
13 litigation and the risks they faced by their involvement in it. Class Representatives devoted a
14 great deal of time and work assisting counsel in the case and frequently communicated with
15 counsel. Jaret Decl., ¶ 11.

16 By filing a class action and serving as the named Plaintiffs, Plaintiffs also took on
17 personal perils of being perceived as non-loyal employees willing to assert claims against
18 Defendants, their past employer, a perception that could adversely affect employment in the
19 future. See Does I thru XXIII v. Advanced Textile Corp., 214 F.3d 1058, 1073 (9th Cir. 2000)
20 ("fear of employer reprisals will frequently chill employees' willingness to challenge employers'
21 violations of their rights"); see also Rivera v. NIBCO, Inc., 364 F.3d 1057, 1064 (9th Cir. 2004).
22 See NLRB v. Robbins Tire & Rubber Co., 437 U.S. 214, 240 (1978) ("Not only can the
23 employer fire the employee, but job assignments can be switched, hours can be adjusted, wage
24 and salary increases held up, and other more subtle forms of influence exerted.") Mitchell v.
25 Robert DeMario Jewelry, Inc., 361 U.S. 288, 292 (1960) ("[I]t needs no argument to show that
26 fear of economic retaliation might often operate to induce aggrieved employees quietly to accept
27 substandard conditions."); Mullen v. Treasure Chest Casino, LLC, 186 F.3d 620, 625 (5th Cir.
28

1 1999) (recognizing that current employees "might be unwilling to sue individually or join a suit
2 for fear of retaliation at their jobs").

3
4 The requested service payments to each of the Plaintiffs are reasonable, particularly in
5 light of the substantial benefits Plaintiffs have generated for the class members

6 **7. Settlement of Penalties Under the Private Attorney General Act is**
7 **Reasonable**

8 The claim under PAGA was part of the parties' negotiations during the mediation. One
9 basis of the PAGA claim was the contention that each time a paycheck with paystub was
10 issued to a Class Member without accounting for overtime hours worked, a PAGA penalty was
11 assessable. The statute of limitations on this claim is one year before the filing of the lawsuit,
12 i.e., from March 14, 2013, based on the California Supreme Court's decision in Murphy v.
13 Kenneth Cole Productions, Inc. (2007) 40 Cal.4th 1094.

14 Using the number of pay periods in this one year period, penalties were calculated at
15 \$154,900. This "dripping wet" estimate also assumed that each violation after the first would
16 be doubled as a "subsequent violation" under the statute. However, there would have been
17 legal challenges to many or most of the claimed penalties. For instance, Labor Code § 2699(f)
18 provides "gap-filler penalties" to aggrieved employees except for violations for which a civil
19 penalty is specifically provided, and at least one court has held that the existence of the Labor
20 Code § 226.3's civil penalties forecloses the possibility of pursuing a claim for the same Labor
21 Code § 226(a) violations under PAGA. Wert v. U.S. Bancorp et al, U.S. Dist. Court, SD
22 California June 23, 2014, 2014 WL 2860287.

23 One court has held that doubling of Labor Code penalties from their initial levels to
24 their doubled levels for "subsequent violations" should be reserved for cases where the
25 employer was on notice of the violation and then persisted in it. Amaral v. Cintas Corp. No. 2,
26 163 Cal. App. 4th 1157, 1209 (2008). While Plaintiffs would have argued against that
27 interpretation, it was possible that the claimed penalties would have been halved.

1 Importantly, under PAGA, the LWDA would have received 75% of this amount. As the
2 Class recovery is reduced by attorney fees in the amount of 33.3% of the recovery, as well as
3 ½ the cost of administration and the Class Representative Payments, the LWDA's recovery
4 should bear at least a similar burden. The LWDA's share assumes a 100% certain recovery,
5 whereas the class' settlement represents a reduction of the class' gross damages claim to
6 discount for the litigation, and certification risks in the trial court and on appeal. A
7 compelling argument can and should be made that a greater discount must be applied to the
8 value of the penalty claim. To recover at trial for the largest liability, overtime, the employee
9 Class Members need only establish that they were misclassified and worked hours payable at
10 overtime rates, and then they can recover whatever damages are proved to the trier of fact.
11 This is not true for a PAGA penalty claim. Under Labor Code § 2699(e)(2), even if the Labor
12 Code is violated, penalties are not recoverable where it would be "unjust, arbitrary and
13 oppressive, or confiscatory." Even if the Court were to award overtime, it does not follow that
14 the Court would refuse to credit Defendants' arguments and rationale for having failed to do.
15 Stated differently, it is highly possible for the class to recover overtime damages but fail to
16 recover PAGA penalties. Plaintiffs submit that there was a chance that a court would not issue
17 a PAGA penalty against the Defendants in this case. In the particular circumstances of this
18 case, the allocation of \$10,000 to PAGA claims (\$7,500 to the LWDA) in settlement of the
19 PAGA claim has substantial and rational bases. This is particularly so where, as here, the
20 LWDA has decided to take no action on its own, and there would have been no recovery at all
21 for the LWDA but for Plaintiffs' litigation efforts. Siegel Decl., ¶¶ 21-24.

22 The settlement of the claim for penalties under PAGA is reasonable under the
23 circumstances. Under PAGA, California Labor Code Section 2698, et seq., the Labor Workforce
24 and Development Agency is entitled to 75% of any settlement of civil penalties awardable under
25 the Labor Code. *See* Lab. Code § 2699(i). Defendants offered the amount of \$10,000 in
26 settlement for the PAGA penalties and Plaintiffs accepted this as a reasonable settlement of those
27
28

1 claims. Where settlements "negotiate[] a good faith amount" for PAGA penalties and "there is no
2 indication that this amount was the result of self-interest at the expense of other Class Members,"
3 such amounts are generally considered reasonable. Hopson v. Hanesbrands Inc., No. CV-08-
4 0844 EDL, 2009 WL 928133, at *9 (N.D. Cal. Apr. 3, 2009).

5
6 **8. Attorneys Fees and Costs Are Reasonable**

7 The negotiated attorneys fee of 33.3% (\$283,050) of the Maximum Payment (\$850,000)
8 and reimbursement of costs to a maximum amount of \$35,000 are fair and reasonable under the
9 circumstances of this case.

10 **a. The Percentage-of-the-Benefit Method Is Applicable Because the**
11 **Settlement Creates a \$850,000.00 Common Fund**

12 The common fund doctrine "has been recognized and applied consistently in California
13 when an action brought by one party creates a fund in which other persons are entitled to share."
14 City & Cnty. of San Francisco v. Sweet, 12 Cal. 4th 105, 110-11 (1995). The doctrine provides
15 that "when a number of persons are entitled in common to a specific fund, and an action brought
16 by a plaintiff or plaintiffs for the benefit of all results in the creation or preservation of that fund,
17 such plaintiff or plaintiffs may be awarded attorneys fees out of the fund." Serrano v. Priest, 20
18 Cal. 3d 25, 34 (1977). Counsel may be awarded a percentage of the common fund "where the
19 amount [is] a 'certain or easily calculable sum of money.'" Dunk v. Ford Motor Co., 48 Cal.
20 App. 4th 1794, 1809 (1996). See also Lealao v. Beneficial California, Inc., 82 Cal. App. 4th 19,
21 27 (2000) (discussing the percentage of the benefit approach).

22 Here, the Settlement provides for Defendants to pay \$850,000.00 from which all
23 payments, including an award of attorneys' fees and costs, Class Representative Payments,
24 administration costs, LWDA payment, and distribution to Settlement Class members, are to be
25 made. Since the Settlement Agreement here has a certain and readily determinable value, the
26 percentage-of-the-benefit method is the most appropriate basis for awarding attorneys' fees and
27 costs.

1 **b. The Fees and Costs Award Sought Herein is Reasonable as a**
2 **Percentage of the Total Settlement Fund**

3 The proposed attorneys' fees award of \$283,050 is 33 1/3% of the \$850,000.00 Total
4 Settlement Fund and is reasonable given the circumstances of the case. See Chavez v. Netflix,
5 Inc., 162 Cal. App. 4th 43, 66 n.11 (2008) ("Empirical studies show that, regardless whether the
6 percentage method or the lodestar method is used, fee awards in class actions average around
7 one-third of the recovery" (quoting Shaw v. Toshiba Am. Info. Sys., Inc., 91 F. Supp. 2d 942,
8 972 (E.D. Tex. 2000)); Lealao, 82 Cal. App. 4th at 31 n.5 ("the result is an award that almost
9 always hovers around 30% of the fund created by the settlement")

10 "When assessing whether the percentage requested is reasonable, courts look to factors
11 such as: (a) the results achieved; (b) the risk of litigation; (c) the skill required; (d) the quality of
12 work; (e) the contingent nature of the fee and the financial burden; and (f) the awards made in
13 similar cases." Vasquez v. Coast Valley Roofing, Inc., 266 F.R.D. 482, 492 (E.D. Cal. 2010)
14 (citing Vizcaino v. Microsoft Corp., 290 F.3d 1043, 1047 (9th Cir. 2002) ("Vizcaino II"), and
15 Six (6) Mexican Workers v. Arizona Citrus Growers, 904 F.2d 1301 (9th Cir. 1990)). All of
16 these factors strongly support the proposed \$283,050 in fees requested here.

17 (1) Results Achieved

18 The results achieved in this litigation are excellent. The Settlement Agreement creates a
19 \$850,000.00 Maximum Payment, and a Net Settlement Amount of at least \$489,450¹, from
20 which all Settlement Class members who can be located and who do not opt out will receive a
21 cash payment. Siegel Decl., ¶ 6. Under any measure, this is a substantial recovery for the
22 Settlement Class as a whole, and individually for the approximately 47 current and former
23 employees of Defendants in the Settlement Class. In assessing the results achieved through a
24

25
26

27 ¹ This is an approximation of the lowest the Net Settlement Amount will be, as it is calculated
28 using the maximum allowable amounts of \$35,000 in attorneys' costs and \$7,500 of administration costs. It is
possible that either or both of those numbers will be lower when the Amount is ready for distribution, but they will
not be higher.

1 class action settlement for purposes of awarding attorneys' fees and costs, the Court must
2 "recognize that 'settlement represents a compromise in which the highest hopes for recovery are
3 yielded in exchange for certainty and resolution and guard against demanding too large a
4 settlement . . .'" Nichols v. SmithKline Beecham Corp., No. Civ.A.00-6222, 2005 WL 950616,
5 at *15 (E.D. Pa. Apr. 22, 2005).

6
7 Moreover, a settlement is not judged against what might have been recovered had the
8 plaintiff prevailed at trial; nor does the settlement need to provide anywhere near 100% of the
9 damages sought to be fair and reasonable. Wershba v. Apple Computer, Inc., 91 Cal. App. 4th
10 224, 246 and 250 (2001); Rebney v. Wells Fargo Bank, 220 Cal. App. 3d 1117, 1139 (1990).
11 "Compromise is inherent and necessary in the settlement process . . . [E]ven if 'the relief
12 afforded by the proposed settlement is substantially narrower than it would be if the suits were to
13 be successfully litigated,' this is no bar to a class settlement because 'the public interest may
14 indeed be served by a voluntary settlement in which each side gives ground in the interest of
15 avoiding litigation.'" Wershba, 91 Cal. App. 4th at 250 , Ultimately, Courts have consistently
16 recognized that the result achieved is a major factor to be considered in making a fee award.
17 Hensley v. Eckerhart, 461 U.S. 424, 436 (1983) (the "most critical factor is the degree of success
18 obtained").

19 Here, the relief afforded by the Settlement Agreement is substantial in light of the
20 obstacles the litigation presented and thus strongly supports the proposed \$283,050 fee award
21 and (up to) \$35,000 costs reimbursement. In the face of the risks of litigation, the Settlement
22 Agreement's recovery of \$850,000 represents a substantial, arguably extraordinary, result. And,
23 importantly, this amount was agreed upon only "after protracted arms-length and adversarial
24 negotiation, during which time an experienced impartial mediator helped the Parties arrive at a
25 compromise amount that both Parties find satisfactory." Garner v. State Farm Mut. Auto. Ins.
26 Co., CV 08 1365 CW EMC, 2010 WL 1687832, at *11 (N.D. Cal. Apr. 22, 2010).

27 (2) Quality of Work Performed
28

1 Throughout the course of the litigation, the quality of the legal work performed by Class
2 Counsel has been excellent. Extensive discovery, including many depositions, requests for
3 documents and requests for admission took place. Independent investigation of the facts was
4 undertaken as well. Counsel also prepared for and participated in two full days of mediation and
5 multiple instances of further negotiation with both the mediator and opposing counsel.
6

7 (3) Skill Required

8 (i) Complexity and Difficulty of the Issues

9 This case has required Class Counsel to confront many difficult legal and factual issues.
10 These include the difficult and disputed questions of whether the Nurse Case Managers were
11 eligible for any of the recognized exemptions from overtime compensation, as well as whether
12 any “off the clock” work was performed after MGH reclassified those employee as Non-Exempt

13 Courts have recognized that the novelty and difficulty of issues in a case are significant
14 factors to be considered in making a fee award. See, e.g., Vizcaino v. Microsoft Corp., 142 F.
15 Supp. 2d 1299, 1306 (W.D. Wash. 2001) (“Vizcaino I”). Here, Plaintiffs and Class Counsel
16 have achieved significant successes in litigating these issues to date, which have resulted in the
17 substantial monetary relief provided to the Settlement Class under the Settlement Agreement.
18 Class Counsel’s successes on these issues weigh strongly in favor of the proposed fees and costs
19 award.

20 (ii) High Caliber of Opposing Counsel

21 The caliber of opposing counsel is another important factor in assessing the quality of
22 Class Counsel’s representation of the Settlement Class. See, e.g., Vizcaino I, 142 F. Supp. 2d at
23 1303; Here, Class Counsel was opposed by attorneys from well-regarded law firms who were
24 representing sophisticated clients. Despite facing such heavily funded adversaries, Class
25 Counsel achieved an outstanding result for the Settlement Class by virtue of the Settlement
26 Agreement’s \$850,000 settlement fund and the substantial cash benefits provided therein for the
27 relatively small total number of Settlement Class members. Class Counsel’s achievement of this
28

1 result against highly skilled opposing counsel backed by massive resources likewise supports the
2 33.3% fee award sought herein.

3 (4) Risks of Litigation

4 Risk is likewise an important factor in assessing the fairness and reasonableness of a class
5 action settlement fee and cost award. See, e.g., *Vizcaino I*, 142 F. Supp. 2d at 1303-04 (33% of
6 common fund as attorneys' fees was fair and reasonable because of the complexity of issues and
7 risks of litigation). In particular, the 1st District Court of Appeals' decision in *Jong v. Kaiser*
8 *Found. Health Plan, Inc.*, 226 Cal. App. 4th 391 (2014), which came out after this case was filed,
9 negatively impacted the Plaintiffs' chances of both certifying a class and recovering on the "off
10 the clock" overtime theory.

11 (i) Risk as to Measure and Amount of Restitution and Damages

12 The Maximum Payment represents more than the risk adjusted recovery at this stage
13 in the litigation. In fact, Plaintiffs believe that the risk-adjusted settlement exceeds the expected
14 value of the case at this point in time. Siegel Decl., ¶¶ 30, 31. On that basis, it would be unwise
15 to pass up this settlement.

16 **c. A Lodestar Cross-Check Easily Supports the Reasonableness of the**
17 **Requested Reward.**

18 Even in common fund cases like this one where a percentage-based award is readily
19 determinable with straightforward calculations, a lodestar cross-check may help a court in
20 determining whether a proposed percentage award is reasonable in light of all circumstances of a
21 case. See *Lelao*, 82 Cal. App. 4th at 47-50; *Vizcaino II*, 290 F.3d at 1050.

22 Here, a lodestar cross-check of the requested fee award shows that counsel have
23 expended time, at their regular billing rates, of \$511,820, while the fee agreed to will be
24 \$283,050. See Siegel Decl., ¶ 28, Jaret Decl. ¶ 12. Additionally, Class Counsel are continuing,
25 and will continue, to dedicate significant time to the case throughout the final approval and
26
27

1 administration process. Thus, the Lodestar cross-check here easily supports the requested fee
2 award.

3
4 The fact that the lodestar figure will be even lower after Class Counsel performs all of the
5 necessary additional work to secure final approval and implementation of the Settlement
6 Agreement only further underscores the reasonableness of the proposed award. See generally
7 Hanlon v. Chrysler Corp., 150 F.3d 1011, 1029 (9th Cir. 1998) (affirming fee award where class
8 counsel "must remain available to enforce the contractual elements of the settlement agreement
9 and represent any class members who encounter difficulties").

10 For all of the reasons set forth, whether measured as a percentage of the common fund
11 under the Settlement Agreement or on a lodestar basis, the proposed attorneys' fee of \$283,050
12 and maximum cost award of \$35,000 to Class Counsel falls well within the bounds of fairness
13 and reasonableness recognized by California Courts, and therefore should be approved.

14 **V. CERTIFICATION FOR SETTLEMENT PURPOSES IS WARRANTED**

15 **A. Legal Standard**

16 The proposed Settlement Class is well suited for class certification. All of the claims
17 derive from a core set of alleged violations of California's wage and hour laws and regulations.
18 For the reasons set forth more fully below, the Class satisfies the prerequisites for certification
19 under Code of Civil Procedure § 382. Section 382 provides that "[w]hen the question is one of a
20 common or general interest, of many persons, or when the parties are numerous, and it is
21 impracticable to bring them all before the court, one or more may sue or defend for the benefit of
22 all." There are two requirements to § 382: "(1) There must be an ascertainable class; and (2)
23 there must be a well-defined community of interest in the questions of law and fact involved
24 affecting the parties to be represented." Daar v. Yellow Cab Co., 67 Cal. 2d 695, 704 (1967)
25 (citations omitted). To clarify these requirements, the California Supreme Court has looked to
26 Federal Rule of Civil Procedure 23 to explain that the community-of-interest requirement itself
27 embodies three factors: "(1) predominant questions of law or fact; (2) class representatives with
28

1 claims or defenses typical of the class; and (3) class representatives who can adequately
2 represent the class." Richmond v. Dart Indus., Inc., 29 Cal. 3d 462, 470 (1981).

3
4 California law and policy favor the fullest and most flexible use of the class action
5 device. Richmond, 29 Cal.3d at 469-473. Indeed, "Courts long have acknowledged the
6 importance of class actions as a means to prevent a failure of justice in our judicial system"
7 particularly where the rights of consumers are at issue. Linder v. Thrifty Oil Co., 23 Cal. 4th
8 429, 434, 445 (2000). Any doubt as to the appropriateness of class treatment should be resolved
9 in favor of certification. Richmond, 29 Cal. 3d at 473-475.

10 **B. The Criteria For Class Certification Are Satisfied**

11 **1. An Ascertainable Class Exists Which Is So Numerous That Joinder**
12 **Of All Members Is Impracticable**

13 Here, the members of the Settlement Class are ascertainable through the Defendants' own
14 records. See Rose v. City of Hayward, 126 Cal. App. 3d 926, 932 (1981) (finding that "[c]lass
15 members are 'ascertainable' where they may be readily identified without unreasonable expense
16 or time by reference to official records"). Defendants will compile the necessary information to
17 identify the Settlement Class Members and gather and organize the dates in each class position,
18 dates of termination, gross wages paid and last-known addresses for its current and former
19 employees. The ascertainability requirement is thus met.

20 **2. The Numerosity Requirement Is Satisfied**

21 The numerosity requirement is met if the class is so large that joinder of all members
22 would be impracticable. See Gentry v. Super. Ct., 42 Cal. 4th 443, 460 (2007); Bell v. Farmers
23 Insurance Exchange, 115 Cal.App.4th 715, at 745(2004). Defendants' records show that there
24 will be approximately 47 Settlement Class Members. Joinder of all of these individuals would
25 be impracticable, and a class-wide proceeding is preferable and superior because this number is
26 sufficiently large. Cf. Hebbard v. Colgrove, 28 Cal. App. 3d 1017, 1030 (1972) (certifying class
27

1 with only 28 members); Rose, 126 Cal. App. 3d at 934 (class of 42 sufficiently numerous);

2
3 **3. The Commonality Requirement is Met**

4 The commonality requirement is met when there are questions of law and fact common to
5 the class. See Sav-On Drug Stores, Inc. v. Superior Court, 34 Cal. 4th at 326-27; Hanlon, 150
6 F.3d at 1019. Commonality requires only that common legal or factual questions predominate;
7 the Plaintiffs need not show that all issues in the litigation are identical. See Sav-On, 34 Cal. 4th
8 at 328, 332-33; Richmond, 29 Cal. 3d at 473. Here, the issues of law and fact common to all
9 Settlement Class Members satisfy this standard. As set forth below, the issues that may be
10 jointly tried with respect to Plaintiffs' claims, "when compared with those requiring separate
11 adjudication, are so . . . substantial that maintenance of a class action would be advantageous to
12 the judicial process and to the litigants." Sav-On, 34 Cal. 4th at 326. Where the Defendants
13 employer's policies or conduct is uniformly directed at a class of employees, as it is here, the
14 class-wide impact of the Defendants' policies satisfies the commonality requirement. See Sav-
15 On, 34 Cal. 4th at 331 (upholding class certification, where the common issue was whether the
16 employer properly classified grocery store managers as exempt from California's overtime
17 requirements); Vasquez v. Superior Court, 4th Cal. 3d at 800, 808 (1971); Stephens v.
18 Montgomery Ward & Co., Inc., 193 Cal. App. 3d 411, 421 (1987).

19 Here, the employment practices that are alleged by Plaintiffs to be unlawful are: 1)
20 failure to pay proper overtime wages; 2) failure to provide proper wage statements; and 3)
21 various actions giving rise to penalties flowing from these violations. Though there was a period
22 after May of 2013 when Nurse Case Managers were Non-Exempt, many of the basic factual and
23 legal issues arising from these allegations are the same for all of the identified Settlement Class
24 Members. Furthermore, most Settlement Class Members suffer from, and seek redress for, the
25 same alleged injuries. Some Settlement Class Members who are still presently employed cannot
26 seek Labor Code §203 penalties, and the parties have negotiated an enhanced payment only for
27 former employees to account for this. Some employees worked before, and some after, the date
28

1 on which Nurse Case Managers became eligible for overtime payments, and the parties have
2 negotiated a formula that accounts for the difference in those claims.

3
4 **4. Plaintiffs' Claims Are Typical of the Claims of the Class**

5 Class representatives' interests need not be identical to other class members; to be typical,
6 Plaintiffs and class members need only be similarly situated. B.W.I. Custom Kitchen, 191 Cal.
7 App. 3d at 1347. The typicality requirement does not focus on the personal characteristics of the
8 representative Plaintiffs or their individual circumstances with respect to the class, but rather
9 upon the typicality of the proposed representative's claims as they relate to the Defendants'
10 conduct and activities. See Classen v. Weller, 145 Cal. App. 3d 27, 46 (1983) ("[t]he only
11 requirements are that common questions of law and fact predominate and that the class
12 representative be similarly situated" vis-à-vis the class). A representative Plaintiff's claim is
13 typical if it arises from the same event, practice, or course of conduct that gives rise to the claims
14 of other class members, and if his or her claims are based on the same legal theory. *Id.*

15 Like all Settlement Class Members, the named Plaintiffs alleged damages as a result of
16 the alleged violations of California's wage and hour laws and regulations related to overtime
17 wages. Since all members of the Settlement Class would need to demonstrate the same elements
18 to recover on their claims (with the exceptions noted above), their interests are sufficiently
19 aligned that the proposed Class Representatives can be expected to adequately pursue the
20 interests of the absentee Settlement Class Members. See Wehner v. Syntex Corp., 117 F.R.D.
21 641, 644 (N.D. Cal. 1987). Factual differences may exist between the class representative and
22 the class members so long as the claims arise from the same events or course of conduct and are
23 based on the same legal theories. Hanlon, 150 F.3d at 1020; see also Wehner, 117 F.R.D. at 644;
24 B.W.I. Custom Kitchen, 191 Cal. App. 3d at 1347 (1987).

25
26 **5. Plaintiffs and Their Counsel Meet the Adequacy Requirement**

27 The adequacy of representation requirements is met by fulfilling two conditions: first,
28 Plaintiffs must be represented by counsel qualified to conduct the pending litigation; second, a

1 named Plaintiff's interests cannot be antagonistic to those of the class. McGhee v. Crocker-
2 Citizens Nat. Bank, 60 Cal. App. 3d 442, 451 (1976). Plaintiffs here meet both of these
3 requirements. They have no conflicts, and Plaintiffs have, with counsel, litigated this case for
4 over two years, showing their dedication. Soc. Servs. Union, Local 535 v. Cnty. of Santa Clara,
5 609 F.2d 944, 946-47 (9th Cir. 1979) As shown by counsel's declaration filed herewith, Plaintiffs
6 retained counsel with experience in prosecuting complex class actions, including class actions
7 like this one which were previously settled. (Siegel Decl. ¶ 27, Jaret Decl. ¶¶ 6, 7) With their
8 combined experience, Plaintiffs' Counsel unquestionably are "qualified, experienced and
9 generally able to conduct the proposed litigation." Miller v. Woods, 148 Cal. App. 3d 862, 875
10 (1983). In addition, Plaintiffs' interests are co-extensive with those of the Settlement Class, since
11 all have allegedly been injured in the same manner by Defendants, and Plaintiffs seek relief
12 similar to that sought by every other Settlement Class member. Moreover, Plaintiffs' agreement
13 to serve as representatives demonstrates their serious commitment to bringing about the best
14 results possible for fellow settlement Class Members. McGhee, 60 Cal.App.3d at 451. Finally,
15 any Settlement Class Member who wishes to opt out of the Settlement to pursue his or her own
16 individual claims may do so. See Hanlon, 150 F.3d at 1020-21.

18 **6. A Class Action is Superior to a Multiplicity of Litigation.**

19 Class certification is authorized where common questions of law and fact predominate
20 over individual questions, and where classwide treatment of a dispute is superior to individual
21 litigation. See Sav-On, 34 Cal. 4th at 326; Richmond, 29 Cal. 3d at 469. When assessing
22 predominance and superiority, a court may consider that the class will be certified for settlement
23 purposes only and that manageability of trial is therefore irrelevant. Amchem Prods., Inc. v.
24 Windsor, 521 U.S. 591, 620 (1997). The test is whether proposed classes are sufficiently
25 cohesive to warrant adjudication by representation. See Hanlon, 150 F.3d at 1022. The
26 Settlement Class in this case is sufficiently cohesive, since all members share a "common
27 nucleus of facts and potential legal remedies." See *id.*

1 In making its class certification decision, the Court must determine that a class action
2 would be superior to alternative means for the fair and efficient adjudication of the litigation. By
3 consolidating close to 50 potential individual actions into a single proceeding, this Court's use of
4 the class action device enables it to manage this litigation in a manner that serves the economics
5 of time, effort and expense for the litigants and the judicial system. Absent class treatment,
6 similarly-situated employees with small but nevertheless potentially meritorious claims for
7 damages would, as a practical matter, have no means of redress because of the time, effort and
8 expense required to prosecute individual actions. See e.g., Vasquez, 4 Cal. 3d at 808; Wilner v.
9 Sunset Life Ins. Co., 78 Cal. App. 4th at 959 (2000). Moreover, in the context of settlement, the
10 superiority concerns are essentially non-existent.
11

12 Furthermore, particularly in the settlement context, class resolution is superior to other
13 available methods for the fair and efficient adjudication of the controversy. See Hanlon, 150
14 F.3d at 1023; Dunk, 48 Cal. App. 4th at 1807 n.19; Lewis v. Starbucks Corp. Supra, 2008 WL
15 4196690, at *4 ("as the parties have already agreed on a settlement, 'the desirability of
16 concentrating the litigation in one forum is obvious.'") (citation omitted). The superiority
17 requirement involves a "comparative evaluation of alternative mechanisms of dispute
18 resolution." Hanlon, 150 F.3d at 1023. Here, as in Hanlon, the alternative methods of resolution
19 are individual claims for a relatively small amount of damages. See id. These claims "would
20 prove uneconomic for [a] potential Plaintiff' because "litigation costs would dwarf potential
21 recovery." Id. While attorneys' fees and costs are awardable in winning cases, it is likely that
22 not every class member could win his or individual claim, particularly those with "off the clock"
23 claims.
24

25 The class action device can also conserve judicial resources by avoiding the waste and
26 delay of repetitive proceedings and prevent inconsistent adjudications of similar issues and
27 claims. See NASDAQ Mkt.-Markers Antitrust Litig., 169 F.R.D. 493, 529 (S.D.N.Y. 1996)
28 (noting that the relevant inquiry is not individual versus class cases, but other methods for the

1 group-wide adjudication of a controversy). Class certification in this case will provide
2 substantial benefits to the litigants and the Court. "[T]he alternative to a class action is
3 potentially [dozens or hundreds] of individual cases seeking damages unlikely to cover the costs
4 of litigation, and thus no tangible alternative remedy exists." Lewis v. Starbucks Corp., *Supra*,
5 2008 WL 4196690, at *4. A large number of repetitive individual cases would waste judicial
6 resources and could lead to inconsistent adjudications of similar monetary issues and claims.
7 Many class members with relatively small claims would likely decide not to bother pursuing
8 their claims at all. Aside from class treatment, a group-wide adjudication of unlawful conduct is
9 not available. Rather than having a multiplicity of proceedings, all involving substantially the
10 same issues and evidence, a class action allows these matters to be resolved once on behalf of all
11 claimants. For all these reasons, the Settlement Class should be certified.

12 **VI. PROPOSED NOTICE, APPROVAL, AND PAYMENT SCHEDULE**

13 **A. The Proposed Notice Plan Satisfies Due Process**

14 Notice requirements are set forth in the California Rules of Court. Cal. Rules of Court,
15 Rule 3.766 (e) and (f). California law vests the Court with broad discretion in fashioning an
16 appropriate notice program. Cartt v. Superior Court, 50 Cal. App. 3d 960, at 973-74 (1975).
17 There is no statutory or due process requirement that all Class Members receive actual notice,
18 but in this matter, the Settlement Class Members will receive direct mailed notice. As the Court
19 of Appeals has explained, "[t]he notice given should have a reasonable chance of reaching a
20 substantial percentage of the Class Members" Cartt, *Supra* at 974. In this case, notice of
21 the proposed settlement will be provided by direct mailing, the best possible form of notice.

22 **B. The Notice is Accurate and Informative**

23 In order to protect the rights of absent class members, the court must provide the best
24 notice practicable of a potential class action settlement. See Phillips Petroleum Co. v. Shutts,
25 472 U.S. 797, 811-12 (1985); Eisen v. Carlisle & Jacquelin, 417 U.S. 156, 174-75 (1974). The
26 primary purpose of procedural due process is to provide affected parties with the right to be
27

1 heard at a meaningful time and in a meaningful manner. It does not guarantee any particular
2 procedure but rather requires only notice reasonably calculated to apprise interested parties of the
3 pendency of the action affecting their interests and an opportunity to present their objections.

4 Ryan v. Cal. Interscholastic Fed'n - San Diego Section, 94 Cal. App. 4th 1048, 1072 (2001).

5
6 The proposed Notice of Class Action Settlement, in the form attached hereto as Exhibit
7 I, should be approved for dissemination to the Settlement Class Members. It will be
8 disseminated through direct mail to the last known address for each Settlement Class Member. It
9 informs the Settlement Class Members of the terms of the settlement and their right to be
10 excluded from the Settlement. And if there are Settlement Class Members who wish to object to
11 this proposed class action settlement, they will have the opportunity to file their objections and
12 be heard at the Final Approval Hearing.

13 Rule 3.769(f) of the California Rules of Court provides as follows:-

14 If the court has certified the action as a class action, notice of the final approval
15 hearing must be given to the class members in the manner specified by the court.

16 The notice must contain an explanation of the proposed settlement and procedures
17 for class members to follow in filing written objections to it and in arranging to
18 appear at the settlement hearing and state any objections to the proposed
19 settlement.

20 The Notice also fulfills the requirement of neutrality in class notices. 3 Newberg
21 § 8.39. It summarizes the proceedings to date and the terms and conditions of the proposed
22 settlement, in an informative and coherent manner, in compliance with the Manual for Complex
23 Litigation (Third Ed.) (Fed. Judicial Center 1995) ("Manual")'s statement that "the notice should
24 be accurate, objective, and understandable to Class Members ..." Manual, § 30.211. It makes
25 clear that the settlement does not constitute an admission of liability by the Defendants, and
26 recognizes that this Court has not ruled on the merits of the action. It also states that the final
27 settlement approval decision has yet to be made. Accordingly, the Notice complies with the
28

1 standards of fairness, completeness, and neutrality required of a combined settlement-
2 certification class notice. Fed. R. Civ. P. 23(c)(2), (e); 3 Newberg §§ 8:21, 8:39 (4th ed. 2002);
3 Manual § 21.312. Upon the Court's approval, the Notice of Class Action Settlement will be
4 mailed by the Administrator to each Settlement Class Member.

5 **VII. SCHEDULING A FINAL APPROVAL HEARING IS APPROPRIATE**

6 The implementation schedule proposed by the parties follows a specified sequence for the
7 relevant dates and deadlines, as set out in the Settlement Agreement. This schedule is
8 incorporated in the proposed Order lodged herewith.

9 This last step in the settlement approval process is the formal hearing, at which the Court
10 may hear all evidence and argument necessary to evaluate the proposed Settlement. At that
11 hearing, proponents of the Settlement may explain and describe its terms and conditions and
12 offer argument in support of settlement approval; Settlement Class Members, or their counsel,
13 may be heard in support of or in opposition to the Settlement Agreement. The parties request
14 that the hearing be held at the earliest date permitted by the terms of the Settlement.

15 The proposed implementation schedule is reasonable and feasible, and will provide
16 adequate time to carry out the various steps required by law for notice, opt-out and objection
17 rights, challenges to factual information regarding Class Members' employment, payment and
18 deposit of settlement funds, and making the payments involved.

19 Plaintiffs request a Final Approval Hearing date that is approximately 12 weeks after the
20 date of the Preliminary Approval Hearing, to allow 15 calendar days to provide information to
21 the Administrator, 10 business days for the Administrator to process and mail notices, 60 days
22 for the notice period, and at least 10 days for preparation of the motion for final approval.

23 The proposed schedule is as follows:

- 24
- 25 • Event: Hearing on Preliminary Approval: March 23, 2016
 - 26 • Deliver information to Administrator: 15 days after Preliminary Approval
 - 27 • Last day to mail notices: 30 days after Preliminary Approval
- 28

- Opt-out period ends: 45 days after mailing of notices
- Objection deadline: 45 days after mailing of notices. (Objections accepted if postmarked by that date).
- Final Approval Hearing: Plaintiffs recommend a date 12 weeks after Hearing on Preliminary Approval
- Distributions must begin (no appeals): 30 days from date Settlement becomes Final.
- Final Accounting: To be made upon completion of distribution.

(Agreement, ¶¶8,9)

VII. CONCLUSION

For all of the foregoing reasons, Plaintiffs respectfully request that this Court grant preliminary approval, provisionally certify the proposed Settlement Class and approve the proposed form of Notice.

DATED: February 25, 2015

Plaintiffs, Mary Knapp-Samet, Jane Ann Middleton,
Kathryn Ballinger, Nora Burns, Barbara Russell, Winnie
Huang, Heather Gosliner and Proposed Class

By attorneys
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Exhibit 1

**YOU MAY BE ENTITLED TO RECEIVE MONEY FROM A CLASS ACTION SETTLEMENT
FOR HAVING WORKED FOR MARIN GENERAL HOSPITAL IN CALIFORNIA AS A
RESULT OF A CLASS ACTION LAWSUIT PENDING IN SUPERIOR COURT:**

Mary Knapp-Samet, et al. v. Marin General Hospital Corporation; Sutter Health Corporation

(Marin County Superior Court Case No. CIV 140-0998)

YOU ARE NOT BEING SUED, AND THIS LAWSUIT IS NOT AGAINST YOU.

MARIN GENERAL HOSPITAL AND SUTTER HEALTH CORPORATION HAVE AGREED TO THIS SETTLEMENT.

YOUR RIGHTS MAY BE AFFECTED.

PLEASE READ THIS NOTICE IMMEDIATELY!

ATTENTION: A judge has granted Preliminary Approval to a settlement of the above-captioned class-action lawsuit (“Action”) against Marin General Hospital and Sutter Health Corporation. If you were employed at Marin General Hospital as a Nurse Case Manager (i.e. a discharge nurse) from March 14, 2010 to the current time, then you are a “Class Member” and may be eligible to receive money from the Settlement of the Action. If you worked at Marin General Hospital from March 14, 2010 through July 20, 2010, your employer was Sutter Health Corporation. Thereafter your employer was Marin General Hospital, a California public benefit corporation.

PLEASE READ THIS NOTICE CAREFULLY. This Notice relates to a Settlement of the Action. If you are a Class Member, it contains important information affecting your rights to participate in the Settlement as further described below. This Notice advises you of the terms of the Settlement and your rights and options under the Settlement.

A Settlement has been reached in this Class Action.

These are the steps you may take in response, as explained in detail below:

You can do nothing and you will receive a monetary Settlement Award: If you do nothing, you will be bound by the proposed Settlement terms and you will receive a monetary Settlement Award.

You can exclude yourself from the Settlement: If you do not want a monetary Settlement Award and do not want to be bound by the proposed Settlement terms, you may do so by making a timely written Request for Exclusion.

You can object to the Settlement: You may object to the proposed Settlement in writing. You may also appear at the Final Approval Hearing to state any objections.

What is the proposed Settlement about?

This Action was filed on March 14, 2014 against Marin General Hospital and Sutter Health Corporation ("Defendants"). The Action was filed by individuals designated as the "Class Representatives", including Mary Knapp-Samet, Jane Ann Middleton, Kathryn Ballinger, Nora Burns, Barbara Russell, Winnie Huang, and Heather Gosliner. In addition, two other individuals who pursued a separate lawsuit alleging the same claims have been included as "Class Representatives" in this action. They are Sharon Reid and Ching Redmon. In total there are 9 Class Representatives.

The Class Action Complaint alleges that the Defendants failed to properly pay overtime wages, failed to pay all wages upon separation of employment, failed to furnish and maintain timely and accurate wage statements, and in these ways engaged in unfair competition and also owe civil penalties to the extent that these other allegations also violated the Private Attorneys General Act of 2004 ("PAGA"). The Action was brought as a "putative" or "reputed" class-action lawsuit and sought damages, penalties, and restitution, as well as interest, attorney fees, and litigation costs.

The Action has been vigorously litigated since it was filed. Additionally, the parties participated in 2 mediations conducted by a professional mediator. At the conclusion of the mediations, the parties reached an agreement to settle the Action.

Under the proposed Settlement, Defendants agree to make payments to the Class Members who do not opt out of the Settlement. These payments will be based on the pro rata compensation earned by each Settlement Class Member during the Class Period compared to the total compensation earned by all Settlement Class Members during the Class Period. Out of the Maximum Payment Defendants agree to pay Class Representative Payments to the Class Representatives, payments to the California Labor Workforce Development Agency, and Class Counsel's attorney fees and costs up to the amounts described below, subject to Court approval. Defendants' total obligation under the proposed Settlement is \$850,000, comprised of \$750,000 from Marin General Hospital and \$100,000 from Sutter Health Corporation, to be paid in one payment. Defendants' full payroll tax obligations, as well as one half of the costs of settlement administration (up to \$7,500) will be paid separately and in addition to the Maximum Payment.

The proposed Settlement is not an admission of liability by Defendants. Throughout the case, Defendants have denied any liability or wrongdoing, or that any compensable injury arose out of any of the matters alleged in the Action.

Class Counsel believe that the proposed Settlement is in the best interests of the Class members. Further proceedings would be very expensive and take a long time. Also, no one can predict the precise outcome of the disputed issues in this case. Therefore, Class Counsel believe that the proposed Settlement is fair, reasonable, and adequate for the Class Members.

Summary of the proposed Settlement.

Defendants have agreed to pay \$850,000 in 1 payment ("Maximum Payment") to resolve all claims that were or could have been asserted in the Action and for your release of claims described below. If the Settlement is approved by the Court, the proposed Settlement will distribute money as follows:

"Net Settlement Amount" means the Gross Settlement Amount less the following amounts: (i) Enhancement payments to the Representative Claimants; (ii) the payment of attorney fees to Class Counsel, not to exceed one third (33.33%) of the Gross Settlement Amount; (iii) Class Counsel's litigation expenses not to exceed \$35,000; (iv) up to \$7,500 (half of the estimated cost) for the cost of the settlement administration, including the Claims Administrator's cost; and (v) the payment of \$7,500

(representing the State of California's share of the \$10,000 to settle claims pursuant to the California Private Attorney Generals Act – Cal. Labor Code §2698, et seq. – to the California Labor Workforce Development Agency. The remaining \$2,500 of this \$10,000 amount is the Settlement Class Members' share and will be included in the Net Settlement Amount.

Fee and Expense Award to Class Counsel: Upon approval by the Court, Defendants will pay attorney fees and out-of-pocket costs/expenses to Class Counsel, Law Offices of Jaret & Jaret and Law Offices of Arthur R. Siegel. The proposed Settlement permits Class Counsel to request up to 33.33% of the Gross Settlement Amount (\$283,050) as their fees for prosecuting this case and expenses estimated at \$35,000 for reimbursement of their out-of-pocket costs/expenses incurred in the Action. You are not personally responsible for any of the Class Counsel attorneys' fees or costs/expenses.

Other Costs: The Settlement provides for a total of \$67,500 in Enhancement Payments to the Class Representatives, which represents \$7,500 for each Class Representative. The proposed Settlement further provides for payment estimated to be \$7,500 to the Settlement Administrator, which is 50% of the estimated cost as Defendants have agreed to pay the other estimated half, or \$7,500, separate and apart from the Gross Settlement Amount. The Settlement also provides for payment of \$7,500 (representing the state of California's share of the \$10,000 to settle claims pursuant to the California Private Attorney General's Act under Labor Code §2698, et seq.) to the California Labor Workforce Development Agency. (The remaining \$2,500 of this \$10,000 is the Settlement Class Members' share and will be included in the net Settlement Amount.)

Settlement Awards to Class Members: To all Class Members who do not exclude themselves from the Settlement as described below ("Settlement Class Members"), The Claims Administrator will make payments according to the following formula from the Net Settlement Amount.

The Net Settlement Amount shall be allocated as follows: (a) 75% wages (Wage Fund); and (b) 25% waiting time penalties, other penalties and interest (Other Penalty and Interest Fund). The Claims Administrator shall distribute the Settlement Awards to the Settlement Class Members who do not opt out of the Settlement. The distribution of the Settlement shall be made within thirty (30) days of the Effective Date of the Settlement, and shall be based on the amount of the Net Settlement Amount available for distribution at that time.

The Claims Administrator will calculate an award for each Settlement Class Member as follows:

There are 3 categories of Class Members. This includes Nurse Case Managers who were classified as "exempt" until on or about June 1, 2013; Nurse Case Managers who were classified as "non-exempt" from June 1, 2013 to the present; and Nurse Case Managers who worked on a "per diem" basis.

All Class Members' Adjusted Compensable Workweeks, added together, represent the Class's "Aggregate Adjusted Compensable Workweeks." The Class Members' distribution dollars-per-week amount will be calculated by dividing the Net Settlement Amount by the Aggregate Adjusted Compensable Workweeks. The Settlement Administrator will then calculate the amount due to each Settlement Class Member by multiplying the appropriate dollars-per-week amount by the Class Member's individual Adjusted Compensable Workweeks.

Adjusted Compensable Workweeks is calculated in two steps:

First, Marin General will report the number of weeks during which a Class Member performed work as a Hospital employee during the Class Period, except that weeks during which the Class Member worked as an acknowledged non-exempt (i.e., hourly) employee shall be counted as one-tenth (1/10th) of a week.

This reduction is based on the small number of alleged violations of these employees' right to overtime pay as well as the difficulties of maintaining and substantiating such claims on a class basis. For purposes of this step, weeks during which the Class Member received only paid time off benefits (such as vacation or sick pay) or was, for the entire week, on an unpaid leave of absence, will not be counted.

Second, the number generated in step 1 will be multiplied by the employee's FTE status number (e.g., "1.0" for a full-time employee or "0.8" for a part-time employee assigned a 32-hour workweek). For purposes of this calculation, Class Members in "per diem" positions will be assigned an FTE status number of "0.1." If Class Members were assigned multiple FTE statuses during the Class Period, the Adjusted Compensable Workweeks will be calculated separately for each FTE status.

Enhancement of Compensable Workweeks. Prior to calculating Class Members' individual Settlement Shares, the number of Compensable Workweeks will be enhanced by 10% for each Class Member who experienced a termination of employment with the Hospital on or since April the last three years of the Class Period, in reflection of those Class Members' alleged claims for "willful" violations of their right to a complete and timely final paycheck (Labor Code § 203). After this calculation is performed, each Class Member will have a number of "Adjusted Compensable Workweeks" (which will be the number of Compensable Workweeks subject, where applicable, to the enhancement provided in this paragraph).

Distribution Formula: The Class Members' distribution dollars-per-week amount will be calculated by dividing the Net Settlement Amount by the Aggregate Adjusted Compensable Workweeks. The Settlement Administrator will then calculate the amount due to each Final Settlement Class Member by multiplying the appropriate dollars-per-week amount by that Class Member's individual Adjusted Compensable Workweeks.

Settlement Awards shall be subject to applicable withholding taxes, but Defendants' share of any applicable payroll taxes and any applicable employer payroll contributions shall be paid by Defendants separately from the Gross Settlement Amount.

Resolution of Disputes: If a Class Member wishes to dispute the number of Compensable Workweeks that has been calculated for him or her, the Class Member may so notify the Settlement Administrator and must produce supporting evidence to the Settlement Administrator for the dates the Class Member contends he or she worked as a Nurse Case Manager. Defendants will review their personnel and payroll records, and provide information to the Settlement Administrator in response to such disputed claims. Defendants' records will be presumed determinative, but the Settlement Administrator will evaluate the evidence submitted by the Class Member and make the decision as to how many Compensable Workweeks the Class Member is entitled. The Settlement Administrator shall also notify all counsel of the details of any such dispute, in order that they may submit their views regarding such dispute to the Settlement Administrator. The determination by the Settlement Administrator will be final, subject to final review by the Court, if necessary.

Unclaimed Portion of Net Settlement Amount: If a Class Member fails to cash the check for their Settlement Share within 150 days after it is mailed to the Class Member, all such checks shall be voided, and the unclaimed funds represented by the checks shall be forwarded, in the name of the Final Settlement Class Member, to the State of California, Controller – Unclaimed Property Division, for further handling on behalf of the Participating Class Member.

What are my rights and options?

1. **You can do nothing:** You can do nothing. If you do nothing, you will be bound by the proposed Settlement terms and you will receive a monetary Settlement Award.

What claims am I releasing by participating in the Settlement?

In exchange for the consideration undertaken by Defendants as a result of the proposed Settlement, the Settlement Class Members will expressly release, waive and discharge, and are deemed to have released, waived and discharged, all Settled Claims against all Released Parties. This includes releasing Defendants from any and all claims and causes of action asserted in the Class Action Complaint, all claims and causes of action arising out of, or in connection with the facts, claims and causes of action alleged in this Litigation, even if presently unknown or unasserted, and all claims and causes of action that could have been pled in this Litigation, based on the facts recited in the Class Action Complaint. The matters released include, but are not limited to, any claims or causes of action that could have been pled under tort, contract, state and federal wage-and-hour laws or other laws affecting working conditions, the California Labor Code, all applicable Welfare Commission Wage Orders (including Wage Order 10 – 2001), the California Business & Professions Code, or the Private Attorneys General Act, Labor Code section 2698, et seq.

“Released Parties” means Defendants and their past, present, or future officers, directors, shareholders, owners, partners, limited partners, assignees, entity owners, interest holders, employees, agents, principals, heirs, representatives, accountants, auditors, attorneys, consultants, insurers, their successors and predecessors in interest, subsidiaries, affiliates, parents, and their company-sponsored benefit programs, and all of their respective officers, directors, owners, employees, partners, limited partners, administrators, fiduciaries, trusts, and agents.

2. **You can exclude yourself from the Settlement:** If you do not want a monetary Settlement Award and do not want to be bound by any of the proposed Settlement’s terms, you must make a timely written Request for Exclusion. Your Request for Exclusion must contain your name, address, telephone number and last four digits of your Social Security Number, must be signed and dated by you, and must state the following:

“I wish to be excluded from the Settlement in the case of *Mary Knapp-Samet, et al. v. Marin General Hospital Corporation; Sutter Health Corporation* (Marin County Superior Court Case No. CIV 140-0998)”

Your Request for Exclusion must be mailed to the Settlement Administrator at the following address and must be postmarked within 45 days after the date of mailing of this Notice. You should not request exclusion if you wish to receive money from the Settlement.

Settlement Administrator Address:

Marin General Hospital/Sutter Health Settlement – EXCLUSION

c/o Simpluris Class Action Settlement Administration

3176 Pullman Street, Suite 123

Costa Mesa, CA 92626

3. You can object to the Settlement:

You may object to the proposed Settlement in writing. You may also appear at the Final Approval Hearing, either in person or through an attorney at your own expense, provided you notify the Court of your intent to do so. All written objections, supporting papers and/or notices of intent to appear at the Final Approval Hearing must: (a) clearly identify the case name and number: *Mary Knapp-Samet, et al. v. Marin General Hospital Corporation; Sutter Health Corporation* (Marin County Superior Court Case No. CIV 140-0998), (b) be submitted to the Court either by mailing to: Clerk of Court, Superior Court of California, County of Marin, 3501 Civic Center Drive, San Rafael, CA 94903, or by filing in person at any location of the Superior Court, County of Marin that includes a facility for civil filings, (c) also be served on the law firms identified below by personal delivery, facsimile transmission, or mail, and (d) be filed or postmarked within 45 days after the date of mailing of this Notice.

You must serve copies of your written objection to the following attorneys:

ATTORNEYS FOR PLAINTIFFS:

Robert S. Jaret, Esq.

Arthur R. Siegel, Esq.

1016 Lincoln Ave.

San Rafael, CA 94901

Telephone: 415 – 455 – 1010

Facsimile: 415 – 455 – 1050

ATTORNEYS FOR MARIN GENERAL HOSPITAL:

David J. Reis, Esq.

Christopher T. Scanlan, Esq.

Arnold & Porter LLP

Three Embarcadero Center, 10th Floor

San Francisco, CA 94111

Telephone: 415 – 471 – 3100

Facsimile: 415 – 471 – 3400

ATTORNEYS FOR SUTTER HEALTH CORPORATION:

Alexander Hernaez, Esq.

Fox Rothschild LLP

345 California Street, Suite 2200

San Francisco, CA 94104

Telephone: 415 – 364 – 5566

Facsimile: 415 – 391 – 4436

When is the next Court hearing?

A Final Approval Hearing will be held before the Hon. Roy O. Chernus in Department “B” of the Superior Court of the State of California for the County of Marin, located at 3501 Civic Center Drive, San Rafael, CA 94903. Judge Chernus will be asked to approve the plan for distributing the Settlement Awards, Class Counsel’s Fee and Expense Award, the Enhancement Payments for the Class Representatives, and payment to the Settlement Administrator. A motion for final approval of these items will be filed with the Court and will be available for review. This hearing may be continued without further notice to Class Members. It is not necessary for you to appear at this hearing for your objections, if you have timely made them, to be considered.

What if I need more information?

For the precise terms and conditions of the Settlement, you should consult the detailed Agreement and the Preliminary Approval Order, which is also on file with the Court. The terms used in this Notice have the same meaning they are given in the Joint Stipulation and Settlement Agreement (“Agreement”) on file with the Court in this Action. If you have any questions, you can contact the Settlement Administrator at 321 – 223 – 5067. You can also contact Class Counsel listed above.

The pleadings and other records in this Litigation, including the Settlement Agreement, are listed on the Register of Actions online on the Marin County Superior Court website located at:

http://apps.marincounty.org/BeaconRoa/BeaconROAView.aspx?cvl_case_intrnl_no=179190.

**PLEASE DO NOT TELEPHONE THE COURT OR DEFENDANT'S COUNSEL FOR
INFORMATION REGARDING THIS SETTLEMENT OR THE CLAIM PROCESS!**

Additional information and key documents relating to the Action and the Settlement can also be accessed free of charge at the following Internet site maintained by Plaintiffs' counsel:

www.jaretlaw.com/maringeneralclassaction.html.

**BY ORDER OF THE SUPERIOR COURT
OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF MARIN**