IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

THERESA EGAN, *et al*.,

Plaintiffs,

v.

FASTAFF, LLC, *et al.*,

Defendants.

Case No. 1:22-cv-03364-CYC

PLAINTIFFS' MOTION TO DIRECT CLASS NOTICE AND GRANT PRELIMINARY APPROVAL OF CLASS AND COLLECTIVE ACTION SETTLEMENT

TABLE OF CONTENTS

TABLE OF AUTHORITIES iii

SUMMARY OF THE LITIGATION 1

I. Nature of the Claims 1

II. Procedural History of the Litigation 2

SUMMARY OF THE SETTLEMENT 3

I. The Scope of the Settlement 3

II. The Settlement Benefits and Release 4

III. The Settlement Notice and Process 4

IV. Attorneys' Fees, Expenses, and Service Awards. 6

ARGUMENT 6

I. The Standard of Review for Preliminary Approval of a Class Action Settlement. 6

II. The Settlement Agreement is Fair, Reasonable, and Adequate 7

A. Plaintiffs and Class Counsel adequately represented the classes. 7

B. The Settlement Agreement was negotiated at arm's length. 8

C. The relief provided to the classes is adequate. 9

1. The relief provided to the class is adequate considering the costs, risks, and delay of trial and appeal. 9

2. The relief provided to the class is adequate considering the effectiveness of distributing relief to the class. 11

3. The relief provided to the class is adequate considering the terms of the proposed award of attorneys' fees. 11

4. The relief provided to the class is adequate considering there are no agreements required to be identified under Rule 23(e). 12

D. The Settlement Treats Class Members Equitably to One Another 12

III. The PAGA Payment is Fair, Reasonable, and Adequate. 13

IV. The FLSA Settlement is a Fair and Reasonable Resolution of a *Bona Fide* Dispute. 14

V. Class Certification Remains Warranted. 14

VI. The Proposed Notice Satisfies Rule 23. 15

VII. Scheduling the Final Approval Hearing Is Appropriate. 15

CONCLUSION 15

TABLE OF AUTHORITIES

Cases

Alvarado v. Dart Container Corp.,
(2018) 4 Cal.5th 542 ..... 10, 12

Baker v. Vail Resorts Mgmt. Co.,
2014 WL 700096 (D. Colo. Feb. 24, 2014) 14

Beasley v. TTEC Servs. Corp.,
2024 WL 710411 (D. Colo. Feb. 21, 2024) 12

Chu v. Wells Fargo Invs., LLC,
2011 WL 672645 (N.D. Cal. Feb. 16, 2011) 13

Clarke v. AMN Servs., LLC,
987 F.3d 848 (9th Cir. 2021) 10

Class Plaintiffs v. City of Seattle,
955 F.2d 1268 (9th Cir. 1992) 5

Egan v. Fastaff, LLC,
2024 WL 719006 (D. Colo. Jan. 31, 2024) 2

Egan v. Fastaff, LLC,
2024 WL 6887137 (D. Colo. Dec. 27, 2024) 2

Egan v. Fastaff, LLC,
2025 WL 2781227 (D. Colo. Sept. 30, 2025) 2, 3, 8, 14

Garcia v. Gordon Trucking, Inc.,
2012 WL 5364575 (E.D. Cal. Oct. 31, 2012) 13

Garcia v. Tyson Foods, Inc.,
2012 WL 5985561 (D. Kan. Nov. 29, 2012) 8

Gottlieb v. Barry,
43 F.3d 474 (10th Cir. 1994) 12

In re Samsung Top-Load Washing Mach. Mktg., Sales Pracs. & Prods. Liab. Litig.,
997 F.3d 1077 (10th Cir. 2021) 7, 9

In re Viropharma Inc. Sec. Litig.,
2016 WL 312108 (E.D. Pa. Jan. 25, 2016) 8

Little v. Wendy's Int'l, LLC,
2025 WL 552466 (D. Colo. Feb. 19, 2025) ..... *passim*

Lowery v. City of Albuquerque,
2013 WL 1010384 (D.N.M. Feb. 27, 2013) 5

Lynn's Food Stores, Inc. v. United States,
679 F.2d 1350 (11th Cir. 1982) 14

Moniz v. Adecco USA, Inc.,
72 Cal. App. 5th 56 (2021) 13

Mostajo v. Nationwide Mut. Ins. Co.,
2023 WL 2918657 (E.D. Cal. Apr. 12, 2023) 13

O'Connor v Uber Techs., Inc.,
201 F. Supp. 3d 1110 (N.D. Cal. 2016) 13

Oliveira v. Language Line Servs., Inc.,
767 F. Supp. 3d 984 (N.D. Cal. 2025) 9

Ross v. Convergent Outsourcing, Inc.,
323 F.R.D. 656 (D. Colo. 2018) 6

Slaughter v. Sykes Enters., Inc.,
2019 WL 529512 (D. Colo. Feb. 11, 2019) 14

Turrieta v. Lyft,
16 Cal. 5th 664 (2024) 13

Statutes

Cal. Bus. & Prof. Code § 17200 2

Cal. Lab. Code § 2699 2

Cal. Lab. Code §§ 510 2

N.J. Stat. Ann. §§ 34:11-56a4, 34:11-56a25 2

N.Y. Lab. Law § 198 2

Rules

Fed. R. Civ. P. 23 ..... *passim*

Plaintiffs Theresa Egan, Brian Barker, Sabrina Budden-Wright, Taylor Berdoll, Allison Rideout, Brittany Scalia, and Jennifer Maslowsky contracted with Fastaff, LLC to work short-term travel nursing assignments at hospitals nationwide. Fastaff paid them stipends—nominally reimbursements for nurses' expenses. But, Plaintiffs alleged these payments *functioned* as wages, meaning the failure to include them when calculating the regular rate violated the Fair Labor Standards Act and state overtime laws. After nearly four years of hard-fought litigation, the parties accepted the Hon. Michael E. Hegarty's (Ret.) mediator's proposal to resolve the overtime claims.

The Settlement Agreement (Exhibit 1 to the Declaration of Alexander T. Ricke) provides for a $7,000,000 settlement fund to resolve the claims of approximately 6,600 travel nurses. After deducting estimated costs for notice and settlement administration, service awards, and Class Counsel's attorneys' fees and expenses, the average settlement payment is estimated to be more than $650 with no class or collective member recovering less than $100. There is no claims process. Checks will be mailed following final approval, and the release of class and collective claims is tailored to the overtime allegations in the Complaint. This is a fair and equitable result.

Plaintiffs request that the Court direct notice of the settlement to the classes, approve the form and manner of notice, and schedule a final approval hearing.

SUMMARY OF THE LITIGATION

I. Nature of the Claims

This is a certified class and collective action alleging that Plaintiffs and similarly situated travel nurses were underpaid overtime under the FLSA and California, New York, and New

Jersey's wage and hour laws.[1] The overtime claims are premised on Fastaff's payment of stipends to travel nurses, which Fastaff argues function as expense reimbursement but Plaintiffs maintain function as wages that must be included in the regular rate. Plaintiffs argue these payments bear multiple indicia of functioning as wages, but, as the Court pointed out, the key allegation is "Fastaff deducted them for missed shifts." *Egan v. Fastaff, LLC*, 2025 WL 2781227, at *8 (D. Colo. Sept. 30, 2025). Whether these payments function as wages that must be included in the regular rate for overtime purposes is the predominant question in this case. *Id*. at *7-8.

II. Procedural History of the Litigation

Following a failed early mediation in 2023 (ECF Nos. 26, 28), the parties engaged in dispositive motion practice. Fastaff moved to dismiss for failure to state a claim (ECF No. 32). After Plaintiffs amended, Fastaff again moved to dismiss, which resulted in the Court's Order dismissing some claims but leaving the federal and state overtime claims at issue here intact. *Egan v. Fastaff, LLC*, 2024 WL 719006 (D. Colo. Jan. 31, 2024). Later, Fastaff sought judgment on the pleadings aimed at the bait-and-switch claims, which the Court denied. *Egan v. Fastaff, LLC*, 2024 WL 6887137, at *1 (D. Colo. Dec. 27, 2024).

While these motions were litigated, Plaintiffs remained focused on obtaining class and collective certification. Plaintiffs moved for conditional collective certification (ECF No. 33) in

[1] The Court conditionally certified the FLSA claim as a collective action (ECF Nos. 41-42), and several thousand nurses timely filed Consent to Join forms. Then, the Court granted class certification of the California Class claims (California's overtime provisions, *see* Cal. Lab. Code §§ 510, and the Unfair Competition Law, *see* Cal. Bus. & Prof. Code § 17200), the New York Class claims (New York's overtime statute, N.Y. Lab. Law § 198), and the New Jersey Class claims (New Jersey's overtime statute, N.J. Stat. Ann. §§ 34:11-56a4, 34:11-56a25). *Egan,* 2025 WL 2781227, at *14-15 (D. Colo. Sept. 30, 2025). In addition, Plaintiffs asserted claims pursuant to the California Private Attorneys General Act ("PAGA"), which seek penalties on behalf of the State of California that will be released through this settlement. *See* Cal. Lab. Code § 2699.

September 2023, which resulted in an agreed stipulation that the Court granted (ECF Nos. 41-42) and several thousand nurses then filed Consents to Join. Then, between February 2024 and January 2025, the parties conducted significant Phase I discovery focused on class certification issues. All told, Fastaff produced more than 300,000 pages of ESI, which Class Counsel used in deposing two corporate representatives. Class Counsel also produced Plaintiffs Barker and Egan for depositions. This work culminated in two motions for class certification—one focused on overtime and one focused on bait-and-switch claims. ECF Nos. 130-131. Ultimately, the Court largely granted class certification of the overtime claims. *Egan,* 2025 WL 2781227, at *14-15; Ricke Decl., ¶¶ 9-11.

After the class notice process (ECF Nos. 173, 179), Phase II discovery occurred. Plaintiffs obtained the wage data necessary to disclose a damages expert, which they did in June 2026. At the same time, the parties explored settlement. In May 2026, the parties mediated in person with Judge Hegarty but reached impasse. However, Judge Hegarty continued to press the parties' positions over the following months, culminating in a mediator's proposal in August that the parties accepted and resulted in the Settlement Agreement. Ricke Decl., ¶¶ 12-15.

SUMMARY OF THE SETTLEMENT

I. The Scope of the Settlement

The scope of the settlement is consistent with the classes and collective the Court previously certified, including The California Class, the New York Class, the New Jersey Class, and the FLSA Collective. *Egan v. Fastaff, LLC*, 2025 WL 2781227, at *14–15 (D. Colo. Sept. 30, 2025); ECF Nos. 41-42; Ex. 1, Settlement Agreement, §§ I.C, I.E, I.G. This proposed settlement includes approximately 6,600 unique nurses between the classes and collective, which overlap

considerably. Ricke Decl., ¶ 18. In addition, the settlement releases claims for PAGA penalties as associated with claims of California Class members. Settlement Agreement, §§ I.W, I.X.

II. The Settlement Benefits and Release

The settlement creates a $7,000,000 non-reversionary common settlement fund to pay class and collective members, PAGA penalties, service awards to Named Plaintiffs and Opt-In Plaintiff Sims, the cost of notice and settlement administration, and Class Counsel's attorneys' fees and expenses. Settlement Agreement, §§ I.T. After allocating $15,000 to the PAGA Payment and a $100 minimum payment to each class and collective member, the remaining fund is allocated proportional to each class and collective member's unpaid overtime damages based on Plaintiffs' expert damages analysis. *Id*.,§ II.A; Ricke Decl., ¶ 21 (plan of allocation). Settlement payments will be treated as 50% wages and 50% interest and penalties, with Fastaff separately paying the employer's share of payroll taxes on the wage portion. *Id*., §§ IV.E.1-2. In exchange, class and collective members will release all claims that "were or could have been asserted based on the facts alleged in the Complaint premised on the underpayment of overtime due to miscalculation of the regular rate." Settlement Agreement, §§ I.GG, I.HH, I.II, I.JJ, I.KK.[2]

III. The Settlement Notice and Process.

If the Court grants preliminary approval of the Settlement Agreement, the parties will engage a Settlement Administrator to effectuate the notice process. *Id*., § IV.C. The Settlement Administrator will distribute the proposed notice (Ex. A to the Settlement Agreement) to class and

[2] The Settlement Agreement releases Named Plaintiffs Maslowsky and Budden-Wright's state law overtime claims that were not certified as class claims (*id*., § I.II). It also releases claims for PAGA penalties coextensive with the release of California Class members' claims (*id*., § I.KK). The 25% portion of the PAGA Payment that the statute mandates be distributed to PAGA Group Members will be allocated *pro rata* based on pay periods during the PAGA Period. *Id*., § III.A.1.

collective members, which will identify estimated individual settlement payments. *Id.*, § IV.C.2. The notice explains in clear and easy to understand language the settlement structure, the settlement amount, the requested attorneys' fees and expenses, the requested service awards, the scope of the release, and the class members' option to object to the Settlement Agreement within 45 days of mailing of the notice. *See* Proposed Settlement Notice (Ex. A to Settlement Agreement). The Notice does not provide a subsequent right to opt out of the previously certified classes.[3]

There is no claims process; instead, class and collective members will receive a check in the mail for their settlement share upon final approval. Settlement Agreement, § IV.C.4. The settlement checks will be valid and negotiable for a period of 120 days from issuance, after which time they will be transferred to the relevant state unclaimed property fund to be held for that specific class or collective member. *Id.* at § IV.C.4.b; IV.D. In other words, the settlement is non-reversionary and this money will be available to any class or collective member who does not cash their check for whatever reason. *Id*.

[3] When a class has been certified, noticed, and given the choice to opt out, a second opt-out opportunity for a settlement is not required and approval of same is within the Court's discretion. *See* Fed. R. Civ. P. 23(e)(4). Not doing so here is appropriate given the parties completed the notice process only a few months ago. ECF Nos. 173, 179. Further, this case was settled as Phase II discovery closed and the parties were set to begin filing dispositive motions that would have bound class members. A complete resolution of the classes' claims is fair, reasonable, and adequate. *Lowery v. City of Albuquerque*, 2013 WL 1010384, at *42 (D.N.M. Feb. 27, 2013) (approving settlement without an additional opt-out period); *Class Plaintiffs v. City of Seattle*, 955 F.2d 1268, 1289 (9th Cir. 1992) ("the MDL 551 Class Members were given notice of the action and afforded an opportunity to opt out. The MDL 551 Class Members also were given notice of the proposed settlement and afforded the opportunity to object. This is all that Rule 23 requires.").

IV. Attorneys' Fees, Expenses, and Service Awards.

The Settlement Agreement contemplates Class Counsel seeking up to one-third of the common fund as attorneys' fees plus reimbursement of reasonable expenses, subject to Court approval. *Id*., § III.D. The Settlement Agreement also contemplates $7,500 service awards to each of the Named Plaintiffs and Opt-In Plaintiff Lindsey Sims ($60,000 total), subject to Court approval. *Id*., § III.C Plaintiffs and Class Counsel will brief both issues (attorneys' fees and expenses and service awards) prior to the deadline to object to the Settlement Agreement.

ARGUMENT

I. The Standard of Review for Preliminary Approval of a Class Action Settlement.

Federal Rule of Civil Procedure 23(e) requires judicial review of any "settlement, voluntary dismissal, or compromise of the claims, issues, or defenses of a certified class." *See* Fed. R. Civ. P. 23(e). "Approval of a class-action settlement is a two-step process." *Little v. Wendy's Int'l, LLC*, 2025 WL 552466, at *2 (D. Colo. Feb. 19, 2025) (Chung, J.). First, "a district court merely decides if giving notice to the class is justified by the parties' showing that the court will likely be able to: (i) approve the proposal under Rule 23(e)(2); and (ii) certify the class for purposes of judgment on the proposal." *Id*. (cleaned up) (quoting Fed. R. Civ. P. 23(e)(1)(B)).[4] Second, "after notice is given to the putative class, the court holds a fairness hearing at which it will address the fairness, reasonableness, or adequacy of the settlement terms." *Id*. (quoting *Ross v. Convergent Outsourcing, Inc.*, 323 F.R.D. 656, 659 (D. Colo. 2018)).

[4] Here, the Court has already addressed the second issue—whether to certify the classes for notice purposes—when it certified the California, New York and New Jersey classes as part of the litigation. *Little*, 2025 WL 552466, at *2 (finding class certification showing met when class at issue was previously certified).

As to the second inquiry, Rule 23(e)(2) sets out the relevant factors: whether (A) the class representatives and class counsel have adequately represented the class; (B) the proposal was negotiated at arm's length; (C) the relief provided for the class is adequate[5]; and (D) the proposal treats class members equitably relative to each other. Fed. R. Civ. P. 23(e)(2). The Tenth Circuit has identified four additional factors: (1) whether the proposed settlement was fairly and honestly negotiated; (2) whether serious questions of law and fact exist, placing the ultimate outcome of the litigation in doubt; (3) whether the value of an immediate recovery outweighs the mere possibility of future relief after protracted and expensive litigation; and (4) the judgment of the parties that the settlement is fair and reasonable. *In re Samsung Top-Load Washing Mach. Mktg., Sales Pracs. & Prods. Liab. Litig.*, 997 F.3d 1077, 1087 (10th Cir. 2021).

II. The Settlement Agreement is Fair, Reasonable, and Adequate

Plaintiffs address each Rule 23(e)(2) factor in turn and address the four Tenth Circuit factors within that framework, where relevant.

A. Plaintiffs and Class Counsel adequately represented the classes.

This factor focuses "on the actual performance of counsel acting on behalf of the class." Fed. R. Civ. P. 23, Advisory Committee Notes (Dec. 1, 2018) (hereafter "Advisory Committee Notes"). The adequacy factor is satisfied. First, the interests of Plaintiffs are aligned with those of other class members, as they all suffered and seek to redress the same injuries: unpaid overtime premised on the alleged failure to include the value of stipends in the regular rate. Plaintiffs

[5] This factor takes into account: (i) the costs, risks, and delay of trial and appeal; (ii) the effectiveness of any proposed method of distributing relief to the class, including the method of processing class-member claims; (iii) the terms of any proposed award of attorney's fees, including timing of payment; and (iv) any agreement required to be identified under Rule 23(e)(3).

produced documents, responded to written discovery, some were deposed, and they stayed the course over nearly four years of litigation. Ricke Decl., ¶ 9.

Next, Class Counsel are highly experienced in complex class actions and wage and hour litigation in particular. *See* Ricke Decl., ¶¶ 30-40; *Garcia v. Tyson Foods, Inc*., 2012 WL 5985561, at *4 (D. Kan. Nov. 29, 2012), *aff'd*, 770 F.3d 1300 (10th Cir. 2014) (stating with respect to Stueve Siegel Hanson LLP that "it appears that plaintiffs' counsel's experience in wage-hour class actions has unmatched depth."). As this Court noted when finding Rule 23(a)(4)'s adequacy requirement satisfied for purposes of class certification, "plaintiffs' counsel, as well as their firm, have extensive experience in wage litigation." *Egan*, 2025 WL 2781227, at *9.

Finally, absent Plaintiffs and Class Counsel's work over years for class members, this $7 million non-reversionary settlement with no claims process and a tailored release would not have occurred. This factor is satisfied.

B. The Settlement Agreement was negotiated at arm's length.

This factor focuses on whether the settlement negotiations "were conducted in a manner that would protect and further the class interests." *See* Fed. R. Civ. P. 23(e), Advisory Committee Notes.[6] The Settlement Agreement is the product of nearly four years of litigation. It was achieved only after a failed mediation effort with the Hon. Michael E. Hegarty (Ret.), followed by Judge Hegarty reengaging the parties and making a mediator's proposal that ultimately resolved the litigation. Ricke Decl., ¶ 13; *see In re Viropharma Inc. Sec. Litig.*, 2016 WL 312108, at *8 (E.D. Pa. Jan. 25, 2016) ("participation of an independent mediator virtually ensures that the negotiations

[6] This Rule 23(e) factor encompasses the Tenth Circuit's fair and honest negotiation factor. *Little*, 2025 WL 552466, at *3 (D. Colo. Feb. 19, 2025) (analyzing these factors in tandem).

were conducted at arm's length and without collusion between the parties") (cleaned up); *Little* 2025 WL 552466, at *4 (finding this factor satisfied where litigation was pending four years and settlement reached through a mediator). This factor weighs in favor of approval.

C. The relief provided to the classes is adequate.

The relief afforded by the Settlement Agreement is objectively meaningful: a $7 million non-reversionary fund with no claims process, average payments net of all fees and expenses exceeding $650 per person, and a release tailored to the operative allegations.

1. The relief provided to the class is adequate considering the costs, risks, and delay of trial and appeal.[7]

Considering the costs, risks, and delay of trial and appeal, the proposed settlement satisfies Rule 23(e)(2)(c)(i). The $7 million settlement fund making average payments of more than $650 *per capita* is fair, reasonable, and adequate. The settlement represents 27% of class and collective members' unpaid overtime[8] under the principal damages analysis contained in the report of Plaintiffs' labor economist, Dr. Armenak Markosyan. *Oliveira v. Language Line Servs., Inc.*, 767 F. Supp. 3d 984, 1005 (N.D. Cal. 2025) (approving hybrid FLSA, California state law, and PAGA settlement at 24% of exposure). That said, Fastaff contested nearly every aspect of Plaintiffs'

[7] The Tenth Circuit's three substantive fairness factors are addressed in this section. *Samsung Top-Load Washing Mach. Mktg., Sales Pracs. & Prods. Liab. Litig.*, 997 F.3d 1077, 1087.

[8] A useful comparison is the settlement reached in the earlier case, *Dalchau v. Fastaff*. That case resulted in a $2.75 million fund for 2,700 class and collective members representing 50% of alleged unpaid overtime with average payments of $624 per class member. *Dalchau*, Case No. 3:17-cv-01584-WHO, ECF No. 105-1, at 14, 18 (N.D. Cal. Septe. 11, 2019). Although that case pre-dates the *Clarke* opinion, it also reflects a time where Fastaff's policies more clearly tethered the payment of stipends to the specific numbers of hours worked. *Id*. at 16. The comparison to *Dalchau* supports preliminary approval of the settlement.

claims, including arguing Plaintiffs' best-day damages analysis was *less than half* the $26.2 million in alleged unpaid overtime in Dr. Markosyan's analysis.

Although Plaintiffs remain confident in the merits of their claims, Fastaff was not without defenses, which must be factored into the risk analysis. On liability, Fastaff argued this case was fundamentally different than the facts at issue in the Ninth Circuit's seminal *Clarke v. AMN Servs., LLC* decision. 987 F.3d 848 (9th Cir. 2021). Fastaff contended that, while the staffing company in *Clarke* deducted stipends for missed shifts, that company did so proportionally (*i.e.*, if a nurse misses one of three shifts in a week, one-third of stipends are deducted) while Fastaff deducted one day of stipends for one missed shift. Fastaff also claimed that, unlike in *Clarke*, Fastaff's nurses could not bank extra hours to offset missed shifts and preserve their stipends, nor did Fastaff have an express policy of paying local nurses stipends and acknowledge that payment was "an incentive for working the minimum required hours." *Clarke*, 987 F.3d 848, 851-52; Ricke Decl., ¶ 25. If Plaintiffs did not prevail on these threshold legal issues, they would recover nothing.

As to damages, a primary issue was calculating the regular rate under the California Labor Code. Plaintiffs argued damages should be calculated consistent with the California Division of Labor Standards Enforcement Manual (Section 49.2.4.2), which adopted the California Supreme Court's formula in *Alvarado v. Dart Container Corp.*, (2018) 4 Cal.5th 542.[9] Fastaff responded that damages should be calculated based on Department of Labor guidance issued in January 2026.[10] If Fastaff were correct, it would reduce those damages by two-thirds. Fastaff made numerous other criticisms of Plaintiffs' damage model, including that it should be limited to

[9] https://www.dir.ca.gov/dlse/DLSEManual/dlse_enfcmanual.pdf
[10] https://www.dol.gov/agencies/whd/fact-sheets/56c-bonuses

workweeks where a nurse experienced a stipend reduction, which would reduce class-wide damages to approximately $1 million. Ricke Decl., ¶ 27.

Finally, Class Counsel had legitimate concerns about ability to pay based on publicly available data concerning Fastaff's parent company Ingenovis Health, which were consistent with an industry-wide market contraction after the pandemic. Around the time Judge Hegarty made his mediator's proposal to the parties, Ingenovis announced an $800 million debt restructuring.[11] These issues weighed heavily on and informed Class Counsel's view that this settlement making meaningful payments to class and collective members now with no litigation or ability-to-pay risks was the correct path. As a result, Plaintiffs accepted Judge Hegarty's mediator's proposal. This factor weighs in favor of settlement approval. Ricke Decl., ¶¶ 28-29.

2. The relief provided to the class is adequate considering the effectiveness of distributing relief to the class.

Under this factor, the Court "scrutinize[s] the method of claims processing to ensure that it facilitates filing legitimate claims" and "should be alert to whether the claims process is unduly demanding." Advisory Committee Notes. Here, there is no claims process and class members will automatically receive a check in the mail following final approval. Settlement Agreement, § IV.C.4. This factor weighs in favor of settlement approval.

3. The relief provided to the class is adequate considering the terms of the proposed award of attorneys' fees.

This factor recognizes that "[e]xamination of the attorney-fee provisions may also be valuable in assessing the fairness of the proposed settlement." Advisory Committee Notes. Class

[11]https://www.staffingindustry.com/editorial/healthcare-staffing-report/ingenovis-health-refinancing-cuts-debt-bolsters-growth-strategy

Counsel may petition the Court for an award of attorneys' fees of up to one-third of the settlement fund plus reimbursement of litigation expenses and will receive that payment consistent with the timing of distribution of settlement payments to class and collective members. Settlement Agreement, §§ III.D, IV.C.4. There is no so-called clear-sailing agreement. *Id*. Further, The Settlement Agreement is not conditioned on the Court's award of attorneys' fees and any amount sought as fees but not awarded remains in the net settlement fund for distribution to class and collective members. *Id*. Class Counsel will brief the fairness of the anticipated attorneys' fee request prior to final approval under the *Johnson* factors. *Gottlieb v. Barry*, 43 F.3d 474, 483 (10th Cir. 1994). For now, the anticipated request for a "fee of one-third of the common fund is typical in complex cases," like this one. This factor supports approval. *Beasley v. TTEC Servs. Corp.*, 2024 WL 710411, at *7 (D. Colo. Feb. 21, 2024).

4. The relief provided to the class is adequate considering there are no agreements required to be identified under Rule 23(e).

Under Rule 23(e)(3), "[t]he parties seeking approval must file a statement identifying any agreement made in connection with the proposal." Here, there is no agreement between the parties, except those set forth or explicitly referenced in the Settlement Agreement. Ricke Decl., ¶ 16 Accordingly, this factor supports approval of the settlement.

D. The Settlement Treats Class Members Equitably to One Another

This factor seeks to prevent the "inequitable treatment of some class members *vis-a-vis* others." Advisory Committee Notes. Here, Class Counsel worked with an expert to create a class-wide damage model calculating each worker's damages, which is now used to allocate most of the net settlement fund. After allocating $15,000 to PAGA penalties and a $100 minimum payment to each class member, the remainder is allocated *pro rata* among class and collective members based

on their individual overtime damages. Settlement Agreement, § III.A; Ricke Decl. ¶ 21. Class members with the highest damages receive the highest allocations. *Id.* This factor weighs in favor of settlement approval. *Little*, 2025 WL 552466, at *7 (D. Colo. Feb. 19, 2025) (finding *pro rata* distribution in wage and hour case weighed in favor of approval).

III. The PAGA Payment is Fair, Reasonable, and Adequate.

Although there is not a binding standard for approval of a PAGA settlement, courts apply a fair, reasonable, and adequate standard to evaluate them. *Mostajo v. Nationwide Mut. Ins. Co*., 2023 WL 2918657, at *7 (E.D. Cal. Apr. 12, 2023). Here, the $15,000 PAGA payment is "fair, reasonable, and adequate in view of PAGA's purposes to remediate present labor law violations, deter future ones, and to maximize enforcement of state labor laws." *Moniz v. Adecco USA, Inc.*, 72 Cal. App. 5th 56, 77 (2021), *disapproved of on other grounds by Turrieta v. Lyft*, 16 Cal. 5th 664 (2024). This is especially true considering that the payment is part of a larger settlement that resolves the underlying class action claims on behalf of the nurses that give rise to the penalties. *See, e.g.*, *O'Connor v Uber Techs., Inc.*, 201 F. Supp. 3d 1110, 1134–35 (N.D. Cal. 2016) (noting that when a class action settlement "is robust," resolves important legal issues, or includes meaningful injunctive relief, a lower PAGA award may be appropriate as long as the settlement as a whole "substantially vindicate[s]" PAGA's goals of protecting employee rights, promoting compliance with wage and hour laws, and supplementing state enforcement through private action). The ratio of the PAGA payment to the gross settlement fund is comparable to those approved in other hybrid class action and PAGA settlements, particularly considering here that California Class overtime claims account for approximately 70% of the total unpaid overtime at issue in this case. *See, e.g.*, *Garcia v. Gordon Trucking, Inc.*, 2012 WL 5364575, at *7, *11 (E.D. Cal. Oct. 31, 2012) (approving a $10,000 PAGA award out of a $3.7 million settlement); *Chu v. Wells Fargo Invs., LLC*, 2011 WL 672645, at *1 (N.D. Cal. Feb. 16, 2011) (approving a $10,000 PAGA award out of a $6.9 million settlement); Ricke Decl., ¶ 23.

IV. The FLSA Settlement is a Fair and Reasonable Resolution of a *Bona Fide* Dispute.

It is an open question in this District whether FLSA settlements require court approval. *Slaughter v. Sykes Enters., Inc*., 2019 WL 529512, at *1-6 (D. Colo. Feb. 11, 2019). Because this settlement resolves FLSA collective claims, Plaintiffs address the relevant concepts that courts in this District typically evaluate. The release of FLSA claims may be approved when the Plaintiffs show "(1) the litigation involves a bona fide dispute, (2) the proposed settlement is fair and equitable to all parties concerned, and (3) the proposed settlement contains a reasonable award of attorneys' fees." *Baker v. Vail Resorts Mgmt. Co.*, 2014 WL 700096, at *1 (D. Colo. Feb. 24, 2014) (citing *Lynn's Food Stores, Inc. v. United States*, 679 F.2d 1350, 1353 (11th Cir. 1982)).

Here, many collective members are also members of one or more classes. And, as the Court has already found, liability under the FLSA and operative state overtime statutes is the same. *Egan*, 2025 WL 2781227, at *8 (finding state law claims "all follow the FLSA's liability standards"). As a result, collective members are part of the same settlement payment allocation formula as class members. Settlement Agreement, § II.A. Thus, for the same reasons that the settlement is fair, reasonable, and adequate under Rule 23(e)(2), the settlement likewise is a fair and reasonable resolution of a *bona fide* dispute such that the Court will be able to approve the FLSA release.

V. Class Certification Remains Warranted.

The Court previously certified the classes under Rule 23(a) and 23(b)(3) in its Order dated September 30, 2025. *Egan,* 2025 WL 2781227. In that Order, the Court engaged in a detailed analysis of the Rule 23(a) and (b)(3) standards for class certification and concluded the standards were met for each class. *Id*. at *14-15. Thus, "the only information ordinarily necessary is whether the proposed settlement calls for any change in the class certified, or of the claims, defenses, or

issues regarding which certification was granted." Fed. R. Civ. P. 23(e)(1), Advisory Committee Notes. Because the classes are identical to those the Court certified, they should be maintained for settlement purposes. Settlement Agreement, § I.C; *Little*, 2025 WL 552466, at *2.

VI. The Proposed Notice Satisfies Rule 23.

When a class action lawsuit is settled, "[t]he court must direct notice in a reasonable manner to all class members who would be bound by the proposal." Fed. R. Civ. P. 23(e)(1)(B). The direct notice by mail provided by the Settlement Agreement is the "the best notice that is practicable under the circumstances." Fed. R. Civ. P. 23(c)(2)(B); Settlement Agreement, § IV.C.2. As explained above, the notice explains, in clear and plain language, (i) the nature of the action; (ii) the class, collective, and PAGA Group definitions; (iii) the claims and defenses at issue; (iv) that a class member may enter an appearance through an attorney if the member so desires; (vi) the means of objecting; and (vii) the binding effect of a class judgment. Fed. R. Civ. P. 23(c)(2)(B); *see* Proposed Class Notice, Ex. A to the Settlement Agreement.

VII. Scheduling the Final Approval Hearing Is Appropriate.

The last step in the settlement approval process is a final fairness hearing for the Court to determine whether the proposed settlement is fair, reasonable, and adequate. Fed. R. Civ. P. 23(e)(2). Plaintiffs request this Court set a final fairness hearing approximately 120 days after entering an Order granting preliminary approval of the settlement.

CONCLUSION

Plaintiffs request the Court grant Plaintiffs' motion, direct class notice, preliminarily approve the settlement, schedule a final approval hearing 120 days (or after) from a preliminary approval Order, and direct the parties to proceed as outlined in the Settlement Agreement.

Dated: October 23, 2026

CERTIFICATE REGARDING LOCAL RULE 7.1(A)

Pursuant to L.Civ.R. 7.1(a), Class Counsel, undersigned, communicated with Defendants' counsel, Ms. Dolan, on October 23, 2026. Consistent with the Settlement Agreement, Defendants' counsel confirmed Defendants do not oppose the relief requested in this motion.

CERTIFICATE OF SERVICE

I certify that on October 23, 2026, a true and correct copy of this document was filed with the Clerk of Court using the CM/ECF system, which sent notification of such filing to all counsel of record.

/s/ *Alexander T. Ricke*
Class Counsel