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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF MARIN

MARY KNAPP-SAMET, JANE ANN MIDDLETON, KATHRYN BALLINGER, NORA BURNS, BARBARA RUSSELLL, WINNIE HUANG and HEATHER GOSLINER, individually and on behalf of others similarly situated, Plaintiffs, v. MARIN GENERAL HOSPITAL CORPORATION, a California corporation, SUTTER HEALTH CORPORATION, a California Corporation and DOES 1 through 50, Defendants.	**CASE NO. 1400998** CLASS ACTION **DECLARATION OF ARTHUR R. SIEGEL IN SUPPORT OF MOTION FOR UNOPPOSED PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT AND CERTIFICATION OF SETTLEMENT CLASS** **Hearing Date:** **March 23, 2016** **Time:** **1:30 p.m.** **Place:** **Room B** **Complaint filed:** **March 14, 2014** **Trial Date:** **Not set**

I, Arthur R. Siegel, declare as follows:

1. I am an attorney duly licensed to practice law in the State of California since

December, 1976. I am in private practice in San Francisco, California. Together with the law firm of Jaret & Jaret (Robert S. Jaret and Phillip A. Jaret) in San Rafael, California, I am counsel for Plaintiffs Mary Knapp-Samet, Jane Ann Middleton, Kathryn Ballinger, Nora Burns, Barbara Russell, Winnie Huang and Heather Gosliner ("Plaintiffs") in this matter.

2. This Declaration is submitted in support of Plaintiffs' Motion for Preliminary Approval of Class Action Settlement. Each of the counsel in this action has reviewed this declaration and approved its contents. In particular, the opinions in Paragraph 30 below concerning the probabilities of success and likely outcomes represent the consensus of the counsel for Plaintiffs and the proposed class.

3. Before the Court is Mary Knapp-Samet, Jane Ann Middleton, Kathryn Ballinger, Nora Burns, Barbara Russell, Winnie Huang and Heather Gosliner, individually and on behalf of others similarly situated v. Marin General Hospital Corporation, a California Corporation, Sutter Health Corporation, a California corporation , et al., Marin County Superior Court Case No. 1400998. The Complaint was filed in the Actions on March 14, 2014.

CLASS COUNSEL'S INVESTIGATION AND SETTLEMENT EFFORTS

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

5. The parties in the Action participated in two lengthy days of private mediation on February 2, 2015 and August 20, 2015 with mediator Michael Loeb of JAMS. Settlement was reached with Sutter Health during the first mediation session, but was not reached with Marin

General at either mediation session. Between the first and second mediation sessions, Mr. Loeb devoted 3 additional hours to followup settlement efforts. After the second mediation session, Plaintiffs and Defendants conducted some direct arms-length negotiations, and Mr. Loeb devoted an additional 4.6 hours to settlement efforts.

SUMMARY OF SETTLEMENT TERMS

6. The Joint Stipulation and Settlement Agreement ("Agreement") is attached hereto as Exhibit 1. A summary of its key terms is:

- The Class Definition

The Settlement Class is defined as follows:

All individuals who are currently and were formerly employed by Defendants as Nurse Case Managers at Marin General Hospital from March 14, 2010 through the date of the preliminary approval hearing of this Class Action Settlement Agreement (March 23, 2016), including Representative Plaintiffs. Agreement, Page 4, ¶2.1

- The Proposed Monetary Settlement

The proposed settlement resolves all claims of the Plaintiffs and the proposed Settlement Class against Defendants related to alleged failure to pay wages, failure to furnish timely and accurate wage statements, unlawful or unfair business practices in violation of California Business & Professions Code Section 17200, et seq., including waiting time penalties, interest, civil penalties provided by the Labor Code Private Attorneys General Act of 2004 ("PAGA") and other penalties under federal and state law. Agreement, ¶¶12, 13

- Defendants will pay a total of $850,000, allocated between Defendants as follows, $750,000 from Marin General, $100,000 from Sutter Health ("Maximum Payment"). Agreement, ¶2.10.

- The Settlement Class Members will share in a Net Settlement Amount of approximately $489,450 , after deductions for attorneys' fees and costs, class representative payments, a penalty payment to the State, and a portion of settlement administration costs. The

Net Settlement Amount may be larger, if the administration costs are less than 15,000, and if the final costs of Class Counsel are less than $35,000. Agreement, ¶¶ 7.3, 7.4

- The Employers' share of payroll taxes and contributions shall be paid by Defendants from their separate funds, and these will be paid separate and apart from the Maximum Payment. Agreement, ¶2.10
- Defendants stipulate to certification of a Settlement Class for purposes of this Settlement only; Agreement, ¶¶ 9.1, 14
- No claim or other submission is necessary in order to become a member of the Settlement Class; Agreement, ¶ 4
- Settlement Agreement may be voided if 9 or more class members opt out; Agreement, ¶ 9.5
- Settlement Class Members will be mailed a check automatically if they do not opt out of the Settlement; Agreement, ¶ 8.4
- The settlement will release wage-and-hour related claims for those Settlement Class Members who are mailed a check; Agreement, ¶ 13
- The release for those Class Members is precisely tailored to only those claims alleged in the Complaint and any claims which could have been plead based on the facts alleged in the Complaint; Agreement, ¶13.
- 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, and Defendants shall pay up to one half of Simpluris' administration costs, not to exceed $7,500.;

- 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

THE SETTLEMENT IS FAIR, JUST AND REASONABLE

7. Based on an investigation and evaluation, and in light of all known facts and circumstances, including the risk of significant delay, the difficulty of the claims and the risk that a Class may not be certified, as well as the degree of risk involved in further litigation, Plaintiffs' Counsel are of the opinion that the Settlement with Defendants for the consideration and on the terms set forth in this Settlement is fair, reasonable, and adequate, and is in the best interest of the Settlement Class Members.

8. Although Plaintiffs believe strongly that they could have prevailed, there was no guarantee that Plaintiffs could prevail at both the certification and merits stages on their theories.

Therefore, Class Counsel had to assess both the risks surrounding certification as well as liability.

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

10. I believe the Maximum Payment represents more than the risk adjusted recovery at this stage in the litigation. In fact, I believe that the risk-adjusted settlement exceeds the expected value of the case at this point in time. On that basis, it would be unwise to pass up this settlement.

11. For instance, while my co-counsel and I feel we have a strong case, there were also facts which, if interpreted in Defendants' favor in the litigation, would have significantly reduced the probability of obtaining more than the negotiated settlement amount of $850,000. Plaintiffs key assertions were that Nurse Case Managers did not meet the required criteria for any legal exemption from overtime compensation before Marin General reclassified them as non-exempt in June, 2013, but Marin General contended that Nurse Case Managers exercised

discretion in carrying out their duties, as part of multi-disciplinary teams that in MGH's view constituted a basis for an exemption.

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

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

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

15. Our analysis of the Paragon records did not show any consistent pattern of access to the database consistent with regular 10-hour days. Thus, if the trier of fact were to interpret the Paragon records as undermining Plaintiffs' reports of an average of 10 hours of overtime per week, any recovery would have been substantially reduced.

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

17. Finally, after the June, 2013 reclassification, Defendant MGH asserted that it granted and paid for overtime hours worked by the Nurse Case Managers. Any claims after that time, therefore, relied solely on an "off the clock" theory, i.e. that the Nurse Case Managers

clocked out and then continued to work with the tacit consent of MGH management. Apart from some anecdotal evidence, Plaintiffs did not uncover substantial proof that this had regularly occurred.

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

19. Using the 10 hour and 5 hour weekly overtime assumptions for the Exempt and Non-Exempt periods, respectively, MGH maximum underpayment liability for the Exempt Period would have been **$1,068, 916**. Sutter underpayment liability would have been **$211,406**. Its liability was for the underpayment and interest only, as no penalty violations were viable for its period of liability, which consisted only of a few months from the start of the four year class liability period (It ceased administration of MGH at that time). For the "off the clock" Non-Exempt period, a potential liability for MGH only, the total would have been **$305,361**. Penalties (attributable only to MGH) were estimated as follows: Labor Code § 226(e) Wage Statement Penalties, $102,400; Labor Code § 203 Penalties, $356,672; PAGA penalties $154,900, for a **Penalties total of $613,972**.

20. The result here ($100,000 from Sutter, $750,000 from MGH) is therefore exceptional in many respects. The possible impediments to wage underpayment and interest liability have been discussed above. Regarding the penalties, it is important to recognize that

the willfulness finding required in Labor Code § 203, the largest single potential liability here apart from the overtime and PAGA penalty claims, can be difficult to establish.

When the risks of prevailing at both certification and trial are factored into the equation, as well as the risks of non-collectibility, the settlement value is reasonable and supportable.

SETTLEMENT OF PENALTIES UNDER THE PRIVATE ATTORNEY GENERAL ACT IS REASONABLE

21. The claim under PAGA was part of the parties' negotiations during the mediation. One basis of the PAGA claim was the contention that each time a paycheck with paystub was issued to a Class Member without accounting for overtime hours worked, a PAGA penalty was assessable. The statute of limitations on this claim is one year before the filing of the lawsuit, i.e., from March 14, 2013, based on the California Supreme Court's decision in Murphy v. Kenneth Cole Productions, Inc. (2007) 40 Cal.4th 1094. The parties agreed to allocate $10,000 to settle this claim, with $7,500 going to the LWDA.

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

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

interpretation, it was possible that the claimed penalties would have been halved.

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

QUALIFICATIONS OF COUNSEL AND TIME EXPENDED TO DATE ON CASE

25. I obtained a B.A. degree from Miami University in Oxford, Ohio in 1973 and a Juris Doctorate from the University Of San Francisco School Of Law in 1976. After an

internship at the United States Equal Employment Opportunity Commission regional litigation center in San Francisco, I was admitted to practice in 1976. In 1977, I was retained through the auspices of the ACLU to manage the litigation of numerous individual and class discrimination claims against the trucking industry, its trade organizations and union entities. In 1978, I started a private litigation practice in San Francisco specializing in employment matters. In the course of that practice, I have handled court trials, jury trials, arbitrations, and administrative hearings, as well as severance negotiations for his clients. I lecture to community and legal organizations in the areas of mediation and employment law.

26. Since 1995, I have served as a mediator and neutral evaluator in over 200 employment disputes, , both privately and for state and federal courts in the San Francisco Bay Area, including the Alameda County Superior Court and the San Francisco Superior Court.

27. In the course of my legal practice, I have handled scores of individual wage and hour disputes and have been counsel to the plaintiffs and the class in three wage and hour class actions. In the course of my mediation practice I have also served as a mediator in settling dozens of wage and hour cases, including two wage and hour class actions.

28. I have reviewed my records of my time spent on the representation of my clients and the Class in this matter. My total hours to date on this case are 254. At my ordinary hourly rate of $650, my full fee would be $165,100. I have incurred costs of $5,153. Total costs and fees are presently $170,253. I am further obligated to work on the case following settlement and through the multi-year payout period agreed to in the settlement of this case.

I declare under penalty of perjury, under the laws of the State of California, that the foregoing is true and correct.

Dated: February 25, 2016

Arthur R. Siegel