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**SUPERIOR COURT OF NEW JERSEY
MONMOUTH COUNTY**

Jemarie Cruz, Mary Fober Ced, Alvin Javier,
Shirley Anne Fajardo, Iñigo P. Espiritu, and
Zaena Diamad, *individually and on behalf of
all others similarly situated,*

Plaintiffs,

v.

Towne Nursing Staff, Inc. and Towne
Pediatric Homecare LLC,

Defendants

LAW DIVISION

Civ. Action No: MON-L-002021-26

**MEMORANDUM OF LAW IN SUPPORT OF PLAINTIFFS' MOTION
FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT,
PRELIMINARY CLASS CERTIFICATION, APPOINTMENT OF
CLASS COUNSEL, AND OTHER RELIEF, PURSUANT TO R. 4:32-2(e)**

Dated: New York, New York
May 27, 2026

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PRELIMINARY STATEMENT¹

Plaintiffs Jemarie Cruz, Mary Fober Ced, Alvin Javier, Shirley Anne Fajardo, Iñigo P. Espiritu, and Zaena Diamad are nurses who came to the United States from the Philippines to work for either Defendant Towne Nursing Staff, Inc. (“Towne Nursing”) or Defendant Towne Pediatric Homecare LLC (“TPH”) (together, “Defendants”)², two business entities which recruit, hire, and place foreign nurses from the Philippines in hospitals, long-term care facilities, and homes throughout the United States. Five of the Plaintiffs worked at long-term care/rehabilitation facilities for Towne Nursing in New York State or Virginia, and Plaintiff Diamad provided homecare nursing for TPH pediatric patients throughout New Jersey.

To work in the United States, each Plaintiff and recruited nurse entered into a standardized, form contract with their employer (Defendants). Compl. ¶¶ 24–43. These contracts required the nurses to work for Defendants for a set period of time, generally equal to three years. *Id.* ¶ 28. If a nurse resigned before the end of their contract term without “Good Reason” for doing so, the nurse could be held contractually liable to pay significant sums of money to Defendants, adding up to tens of thousands of dollars.³ *Id.* ¶ 42. When nurses failed to pay these amounts, Defendants initiated legal action, including arbitration proceedings, to recover the funds. *Id.* ¶¶ 42.

¹ Defendants’ non-opposition to this Motion (and the statements herein) is for settlement purposes only. As stated in the Settlement Agreement, Defendants deny Plaintiffs’ allegations and claims and entered the Settlement Agreement to avoid the further time and expense of ongoing litigation. *See* Settlement Agreement ¶ 64 (“No Admission of Liability”).

² While used generically herein, Defendants is not always intended to refer to both Defendants. As a general matter, each Named Plaintiff and member of the proposed Settlement Class worked for only one of the Defendants.

³ The Contracts define “Good Reason” as “a failure by Employer to correct a material breach of Sections 3 or 10 of this Agreement.” Section 3 describes the Employer’s obligation to pay certain fees associated with Employee’s work authorization application(s). Section 10 describes the

In August 2024, Plaintiffs (except Diamad, who joined the group of Named Plaintiffs later) raised by letter—on behalf of themselves and others similarly situated—a number of legal claims against Defendants based on their employment and the alleged obligations imposed on nurses if they failed to work for Defendants for the proscribed three-year period. In response to this letter and prior to filing this lawsuit, Plaintiffs’ and Defendants’ counsel engaged in a lengthy period of negotiations in an attempt to resolve these claims, including two mediations at JAMS and a robust exchange of documents and data. Through this process, the parties reached a settlement, as described below, of Plaintiffs’ claims (and of any potential claims by Defendants based on the contract).

Because Plaintiffs have raised claims on behalf of a class whose members are not named parties, this settlement requires judicial approval. In seeking Court approval of their proposed settlement here, Plaintiffs are filing concurrently (1) their Complaint, and (2) their Settlement Agreement, along with the instant motion for preliminary Settlement Class certification, Settlement Collective certification,⁴ and preliminary approval of the Settlement. If the Court grants preliminary approval of the parties’ settlement, Plaintiffs will provide notice to potential

Employee’s compensation structure and payment schedule. This definition of “Good Reason” is different than the definition Defendants will be adopting as part of the proposed Settlement Agreement.

⁴ Because the Fair Labor Standards Act specifically requires similarly situated plaintiffs to opt into an action to bring claims collectively with other workers, actions under this statute cannot be maintained as an opt-out class action. *See* 29 U.S.C. § 216(b); *Crisostomo v. Exclusive Detailing, Inc.*, No. 08-1771 (SRC), 2008 WL 11383727, at *1 (D.N.J. Oct. 31, 2008). Accordingly, in situations where a proposed settlement is reached under the FLSA and of other claims that are maintainable in an opt-out class action, notice is typically sent simultaneously to all potential opt-ins (who, in this case, overlap completely with the potential members of the proposed opt-out settlement class) at the same time. Those who opt into the action are deemed members of the settlement collective.

Settlement Class and Collective members, and give Settlement Class members an opportunity to present any objections in connection with a final fairness hearing to be held by the Court.

For the reasons set forth below, the Court should grant preliminary approval of the parties' proposed Settlement. The Court should also (i) preliminarily certify the Settlement Class and Collective for settlement purposes; (ii) appoint Plaintiffs' counsel as Class Counsel; and (iii) approve the form and method of notice to Settlement Class members.

FACTUAL BACKGROUND

Plaintiffs Jemarie Cruz, Mary Fober Ced, Alvin Javier, Shirley Anne Fajardo, Iñigo P. Espiritu, and Zaena Diamad are nurses who immigrated to the United States from the Philippines and were sponsored through the immigration process by Defendants Towne Nursing and TPH. Compl. ¶ 3. Defendant Towne Nursing recruits, hires, and places nurses from the Philippines—including Plaintiffs Ms. Cruz, Ms. Ced, Ms. Fajardo, Mr. Javier, and Mr. Espiritu—in hospitals and long-term care facilities throughout the United States. *Id.* ¶ 24.

The recruited nurses, including Plaintiffs, were required under their contracts with Defendants to work for Defendants for a period of three years. *Id.* ¶ 28. While working for Towne Nursing, however, Plaintiffs Ms. Cruz, Ms. Ced, Ms. Fajardo, Mr. Javier, and Mr. Espiritu each resigned from Towne Nursing before the end of their required three-year terms. *Id.* ¶¶ 55–70. In response, Towne Nursing demanded that each nurse pay thousands of dollars to the company, and threatened to initiate arbitration proceedings against the nurses if they did not pay the demanded monies. *Id.* Similarly, Ms. Diamad resigned from TPH before completing nearly three years of employment with the company; she did not resign sooner because she believed the financial consequences of doing so under TPH's contract would be significant. *Id.* ¶ 71–72.

Plaintiffs contend that Defendants' actions violated federal and state law. In their Complaint, Plaintiffs allege that Defendants used or attempted to use the threat of substantial harm (including financial harm) or abuse of legal process to keep nurses from resigning, in violation of federal law, including 18 U.S.C. § 1589 (the forced labor provision of the Trafficking Victims Protection Act), and state law. *Id.* ¶¶ 89–117. Plaintiffs also allege that Defendants failed to pay Plaintiffs wages for their work “free and clear” in violation of the federal Fair Labor Standards Act (“FLSA”), New Jersey Wage & Hour Law, New Jersey Wage Payment Law, and New York Labor Law. And finally, Plaintiffs alleged that the amounts that Defendants required nurses to pay to leave Defendants' employ before their contractual employment period ended amounts to an impermissible kickback under the FLSA and state law.

Defendants deny Plaintiffs' allegations in their entirety. Agmt. ¶ 69.

PROCEDURAL BACKGROUND

The procedural posture of this case is unusual in that the parties have spent well over a year negotiating a settlement of Plaintiffs' claims before filing anything in court. And they are filing, at the same time and with Defendants' consent, both their Complaint and their Settlement Agreement. As noted above, Plaintiffs first raised their legal claims with Defendants by way of a demand letter. The parties then engaged a mediator experienced with mediating wage and hour matters, retired U.S. magistrate judge Michael Dolinger, and held a full-day mediation at JAMS in New York City on January 20, 2026. *See* May 27, 2026 Decl. of Hugh Baran (“Baran Decl.”), ¶ 4. At the conclusion of that day's mediation, the parties had not reached a resolution. *Id.* ¶ 5. However, the parties continued their discussions over the course of 2025, and ultimately engaged in a second mediation with a different JAMS mediator, Marc Isserles, on December 4, 2025. *Id.* ¶ 6. With the continued assistance of Mr. Isserles, the parties reached a settlement several months

later. *Id.* ¶ 7. The parties then entered into a term sheet going to the essential terms of the settlement on March 17, 2026, and signed their Settlement Agreement on May 27, 2026. *Id.* ¶ 8, Ex. A (the “Settlement Agreement” or “Agmt.”).

Because the settlement of a class action in New Jersey requires judicial approval, Plaintiffs have now commenced this action. At the same time, Plaintiffs are moving for preliminary certification of this matter as a class action (for settlement purposes only) and preliminary approval of the class settlement. Plaintiffs also seek preliminary Court approval of a Settlement Collective under the FLSA (for settlement purposes only), and Court approval of the notice of this case to be provided to putative class and collective members. Defendants do not oppose this motion or the proposed order submitted by Plaintiff. Baran Decl. ¶ 17.

As described below, the parties have agreed to settle this action for the amount of \$1,850,000, inclusive of costs, fees, and service awards. The parties’ settlement also contains meaningful other relief as far as changed practices on the part of Defendants. *See infra*, SUMMARY OF THE PARTIES’ SETTLEMENT.

Overall, the settlement is fair, reasonable, and adequate, and thus it satisfies the preliminary approval criteria under New Jersey law. And the proposed Settlement Class meets the standards for preliminary certification. It satisfies the numerosity requirement because there are over 450 putative Class members; the named Plaintiffs’ claims (and Defendants’ potential defenses) are typical of those of the proposed Settlement Class; such claims (and Defendants’ potential defenses) raise common questions of law and fact that predominate over any individual differences among Class members; and the named Plaintiffs and their counsel have fairly and adequately protected the interests of the proposed Settlement Class.

Considering the fairness of the settlement, its adequacy, its reasonableness, and the best interests of the class members, the Plaintiffs therefore request that the Court: (1) certify the proposed Settlement Class for settlement purposes only, (2) conditionally certify the proposed Fair Labor Standards Act Collective for settlement purposes only; (3) grant Preliminary Approval of the proposed Settlement; (4) authorize notice to the Settlement Class and FLSA Collective; (5) appoint Plaintiffs' counsel as Class Counsel and the Plaintiffs as Class Representatives for settlement purposes only; (6) appoint Atticus Administration as Settlement Administrator and authorize the Administrator to distribute the proposed Notices in the manner described below; and (7) set a final fairness hearing to be held no earlier than 80 days from the Court's Order on this motion to consider final class certification and final approval of the Settlement.

SUMMARY OF THE PARTIES' SETTLEMENT

The key terms of the parties' Settlement Agreement ("Agmt."), attached as Baran Decl., Exhibit A, are as follows:

- Defendants agree to pay the Settlement Fund of \$1,850,000 to cover the following payments: payment to Class Members; Court-approved attorneys' fees, costs, and expenses; service awards to the named Plaintiffs; and the Claims Administrator's fees. Agmt. ¶¶ 43, 45, 46, 48, 49.
- The settlement is non-reversionary; unclaimed payments or uncashed checks to individuals who have not opted out shall be deposited with the applicable state agency in charge of unclaimed property. *Id.* ¶ 78.
- Of the total settlement amount, \$474,121 shall be distributed to class members who paid money in connection with resigning. The amount of money to be distributed to each such class member will be the same amount that the companies' records show each individual paid to the companies in connection with resigning.
- Monetary relief for all other claims for relief (including alleged damages suffered by settlement class members) shall be distributed based on the relative amount of hours each class member worked for the companies. Putative collective members (those who opt-in to pursue claims under the FLSA) shall receive an additional payment, based on payments being reallocated so that they receive an approximately 15% increase in the amount

otherwise allocated to them in exchange for their submitting completed FLSA Consent and Release Forms.

- The Settlement includes meaningful non-monetary relief:
 - Towne Nursing and TPH and their subsidiaries, affiliates, parent corporations, owners, officers, members, and assigns (“the companies” or “company”) shall adopt a new contract that does not include an arbitration provision, a repayment provision, or most post-employment non-competition agreements, and shall remove those provisions from current contracts.
 - The new contract shall give nurses the opportunity to opt into or out of company-offered benefits; will state that the companies are required to comply with all applicable federal, state, and local laws in connection with nurse’s employment; and will state that, except for resignations for good reason (as defined in the Settlement Agreement) the nurse’s repayment obligations will be actual direct costs (as defined in the Settlement Agreement) prorated based on time worked. It will also specify for class members and future nurses that no repayment is owed in event of death; if the nurse is terminated without “cause” as defined in the Settlement; or if the class member or future nurse resigns for good reason.
 - The companies shall limit the contractual employment period for each nurse to 6,240 hours.
 - The companies shall send any nurse they allege to have resigned their employment without good cause a detailed Notice of Rights.
 - The companies shall entirely forgive the alleged debt of class members whose employment ended on or before December 3, 2025, and agree to waive any and all claims related to that alleged debt.
 - As to class members who are current employees, the companies will only be able to collect agreed upon *actual direct costs* if nurses leave before the end of the contract period.
 - The companies may not recoup actual direct costs from future nurses that the companies have not disclosed to the nurses, and may not recoup any of the following costs from current or future nurses: Lost profits or overhead; back office costs; most attorneys’ fees and costs of collection/enforcement, including costs of arbitration; most costs of hiring a replacement or upfront indirect costs of having recruited or hired the worker.
 - The companies will offer class members or future nurses who resign without good reason a payment plan with specified terms offered as described in the Settlement Agreement.

- Class members who do not exclude themselves from the settlement will release all claims asserted in the action or which arise out of the factual allegations in the Complaint. *Id.* ¶ 63.

Under the Agreement, nurses who opt into the case to pursue their FLSA claims will release those FLSA claims upon Court approval of the FLSA settlement. Named Plaintiffs release their claims more broadly, *id.* ¶ 66, and under the Settlement Agreement will receive additional compensation beyond the damages they will receive as a Settlement Class Member. This additional compensation includes their requested service awards of up to \$12,000 each for their efforts and service in achieving this result for the Class Members. This payment is included in the Settlement Fund amount.

The Agreement also provides that Plaintiffs will seek Court approval for attorneys' fees and costs as follows. First, Plaintiffs will seek up to \$60,000 in litigation costs and expenses, such as the costs of mediation and related pre-mediation discovery. Then, Plaintiffs will seek up to one-third of the Net Settlement Amount (the Settlement Amount minus costs) for their attorneys' fees. Plaintiffs will move for Court approval of their attorneys' fees simultaneously with their anticipated Motion for Final Approval of the Settlement. Attorneys' fees, costs, and expenses are included in the Settlement Fund amount.⁵ Plaintiffs' motion will also include a request for the Settlement Administrator's fees. The parties have designated Atticus

⁵ If more than 10 percent of potential class members submit valid and timely opt out requests, the companies have the sole right (in their sole discretion) to cancel the Settlement Agreement. If the companies exercise this option, the settlement shall terminate and the parties shall return to their position(s) prior to executing the Terms Sheet. Plaintiffs have agreed to the settlement amounts herein based on companies' representation as to the number of workweeks worked by potential class members. In the event that the class list provided by companies' counsel for notice and settlement distribution contains 10% or more workweeks than stated by the companies, companies shall make an additional deposit into the common fund that is proportional to the increased class size.

Administration (“Atticus”) as Settlement Administrator, subject to this Court’s approval. *Id.*

¶ 33. Atticus’s fees, which will be no more than \$20,000, will be paid from the Settlement Amount pursuant to the terms of the Settlement Agreement. *Id.* ¶ 48.

ARGUMENT

I. The Court Should Certify the Settlement Class

Under New Jersey law, a class may be certified when (1) the class is so numerous that joinder of all members is impracticable; (2) there are questions of law or fact common to the class; (3) the claims or defenses of the representative parties are typical of the claims or defenses of the class; and (4) the representative parties will fairly and adequately protect the interests of the class. N.J. Court Rules 4:32-1(a). In addition, a party seeking certification under N.J.C.R. 4:32-1(b)(3) must show that questions of law or fact predominate over individual questions and that a class action is the superior method to resolve the controversy. “[T]he class action rule should be liberally construed and a class action should be permitted unless there is a clear showing that it is inappropriate or improper.” *Saldana v. City of Camden*, 252 N.J. Super. 188, 196, 599 A.2d 582, 586 (Super. Ct. App. Div. 1991).⁶

The Court may take a proposed settlement into account when determining whether the proposed class meets all of the requirements. *Easterday v. USPack Logistics LLC*, No. 1:15-CV-07559 (RBK/AMD), 2023 U.S. Dist. LEXIS 116655, at *5 (D.N.J. Jul. 6, 2023).

Here, Plaintiffs’ Complaint proposes a Settlement Class of “any Nurse who entered the United States under the auspices of the Companies’ foreign nurse recruitment program and who

⁶ The class certification rules for New Jersey align with Rule 23 of the Federal Rules of Civil Procedure. *Strougo v. Ocean Shore Holding Co.*, 457 N.J. Super. 138, 158, 457 A.3d 309, 321 (Super. Ct. 2017); *Sutter v. Horizon Blue Cross Blue Shield*, Docket No. A-5725-09T1, 2012 N.J. Super. Unpub. LEXIS 1661, at *7 n. 1 (Super. Ct. App. Div. July 11, 2012) (federal Rule 23 cases are persuasive authority).

was a party to contracts with one or both of the Companies for at least one day, from August 13, 2014 through the Settlement Execution Date.” Compl. ¶ 87; *see also* Agmt. ¶ 38. This proposed Settlement Class meets each requirement for certification.

A. The Proposed Class is Sufficiently Numerous.

In *Saldana*, the court found a class of 81 members to satisfy the numerosity requirement. 252 N.J. Super. at 193. Here, there are more than 450 Settlement Class Members, Baran Decl. ¶ 16, a number that well exceeds the number found sufficient in *Saldana*. Numerosity has therefore been satisfied.

B. The Proposed Class Shares Common Questions of Law and Fact.

The New Jersey Rules require “questions of law or fact common to the class,” N.J.C.R. 4:32-1(a)(2), “although not all questions of law or fact raised need be in common.” *Weiss v. York Hosp.*, 745 F.2d 786, 808–09 (3d Cir. 1984), *cert. denied*, 470 U.S. 1060. Class members need not share all questions relevant to their claims and even “[a] single common question will satisfy this requirement.” *Goasdone v. Am. Cyanamid Corp.*, 354 N.J. Super. 519, 529 (N.J. Super. 2002) (citing *Baby Neal v. Casey*, 43 F.3d 48, 56 (3d Cir. 1994)). Where class members’ factual circumstances are materially the same and the “questions of law raised by the plaintiff are applicable to each [class] member,” the commonality requirement is satisfied. *Weiss*, 745 F.2d at 809 (citations omitted). Further, the commonality requirement is met “[w]hen the party opposing the class has engaged in a course of conduct that affects a group of persons and gives rise to a cause of action,” resulting in all of the members sharing at least one of the elements of that cause of action. *Newberg Class Actions*, § 3.10 (3d ed.1992).

Here, there are numerous questions common to the Settlement Class, including the following:

- Whether Defendants obtain/have obtained the labor of foreign nurses in violation of 18 U.S.C. § 1581 et seq. and New Jersey and New York law;
- Whether Defendants’ uniform practices surrounding the commitment period, monetary penalties, and conditions of work constitute attempts to violate 18 U.S.C. § 1581 et seq.;
- Whether Defendants knowingly recruit/have recruited nurses and knowingly benefited by their violations of 18 U.S.C. § 1581 et seq.;
- The proper measure of damages for violations alleged; and
- The proper measure of punitive damages for violations alleged.

Compl. ¶¶ 91.

These common questions arise because of the uniform circumstances under which the members of the Settlement Class worked. Nurses had the same form contracts and workplace policies that Plaintiffs contend resulted in a set of employer-mandated conditions under which employees were allegedly forced to abide under the same threat of legal action and serious financial harm.

While the parties disagree as to the answers to these questions, they agree that the answers to each question would be the same for all Settlement Class Members, and that these questions could be resolved by examining Defendants’ common policies and practices. Therefore, commonality is satisfied, as courts around the country have found with respect to similar classes of foreign nurses challenging similar contract provisions under 18 U.S.C. § 1589 and the FLSA. *See, e.g., Carmen v. Health Carousel, LLC*, No. 1:20-cv-313, 2025 U.S. Dist. LEXIS 53761, at *21 (S.D. Ohio Mar. 24, 2025) (finding commonality satisfied, at final approval, in case involving similar allegations by Filipino nurses allegedly subject to stay-or-pay contracts, because “every class member ‘was subject to the same allegedly coercive practices and contractual terms.’ So ‘the core questions in this case could be answered [using] common proof’—that is, with evidence shared by every class member.”) (citation omitted); *Miclat v. Advanced Care Staffing, LLC*, No.

23-cv-5296-NRM-MMH (E.D.N.Y.), Order Granting Preliminary Settlement Approval, ECF No. 88 (finding commonality satisfied, at preliminary approval, in case involving similar allegations for class of Filipino nurses) (attached as Ex. B to Baran Decl.), 2026 WL 603411 (E.D.N.Y. Mar. 4, 2026) (finally approving *Miclat* class); *Villarín v. Health Care Facility Mgmt.*, No. 23-cv-97-MRB (S.D. Ohio), Order Granting Preliminary Settlement Approval, ECF No. 89 (Feb. 20, 2026), at 2 (attached as Ex. B to Baran Decl.) (finding commonality satisfied, at preliminary approval, in case involving similar allegations for class of Filipino nurses).

C. The Proposed Class Representatives are Typical of the Proposed Class.

Typicality is met if “plaintiffs’ claims have the essential characteristics common to the claim of the class.” *Saldana*, 252 N.J. Super. at 193, 599 A.2d at 585; *Marcus v. BMW of N. Am., LLC*, 687 F.3d 583, 598 (3d Cir. 2012) (concluding typicality exists when “‘a plaintiff’s claim arises from the same event, practice or course of conduct that gives rise to the claims of the class members’”). “Typicality does not require that claims of all of the class members be identical to that of the class representatives.” *Goasdone v. Am. Cyanamid Corp.*, 354 N.J. Super. 519, 529 (N.J. Super. 2002) (citation omitted). Here, the claims brought by Plaintiffs arise from the same set of facts as those of the Settlement Class Members. Plaintiffs and all Settlement Class Members are nurses from the Philippines, and they were all subjected to common policies surrounding departure before the end of their contract periods and the requirement to pay for leaving early. Thus, the Class Representatives are typical. *See Goasdone*, 354 N.J. Super. at 530 (concluding the class representative’s claim was typical of the proposed class members claims where they all worked for the same plant and were all exposed to the same types of dyes and thereby subjected to an increased risk of cancer, and that “the legal theories to support the claims of the class representative and class members...are the same”).

D. The Proposed Class Representative and Class Counsel are Adequate.

Parties seeking settlement approval must demonstrate that “class counsel will fairly and adequately protect the interests of the class,” considering their work in identifying and investigating potential claims, experience, knowledge of applicable law, and resources they will commit to representing the class. N.J.C.R. 4:32-2(g). Class counsel must be “qualified, experienced, and generally able to conduct the proposed litigation.” *Strougo*, 457 N.J. Super. at 156, 198 A.3d at 319. The class representative(s) “must not have interests antagonistic to those of the class.” *Id.* The Class Representative and Class Counsel proposed meet these requirements.

First, as set forth above, Plaintiffs have common interests with unnamed members of the class because their claims and legal interest are aligned with those of the other members of the Settlement Classes. Moreover, Plaintiffs have demonstrated their commitment to this case and fulfilled their duties to the class by, among other things, initiating this lawsuit, communicating regularly with Class Counsel, attending two mediations and regular meetings, and reviewing the proposed Settlement. Baran Decl. ¶ 18. They have directed and questioned Class Counsel on aspects of the proposed Settlement to make sure it is sufficient for Settlement Class Members. *Id.* ¶ 19. They are informed of and approve of this Settlement and have no claims against Defendants other than those raised in the instant case. They are therefore adequate class representatives. *Easterday*, 2023 U.S. Dist. LEXIS 116655, at *10 (“A named plaintiff is ‘adequate’ if his interests do not conflict with those of the class”).

Proposed Class Counsel are experienced class action and employment lawyers, and have experience representing nurses with claims such as those at issue here. Class Counsel has significant experience in employment class and collective action litigation and settlements, including other cases involving nurses in similar situations as Plaintiffs. Baran Decl. ¶ 25. They have zealously represented the proposed Settlement Class throughout this case and during more

than a year and a half of arms-length settlement negotiations, and will continue doing so through the conclusion of the settlement process. *Id.*; see *Strougo*, 457 N.J. Super. at 156, 198 A.3d at 320 (finding adequacy of representation where class counsel has substantial experience litigating similar class action cases); *Fink v. Ricoh Corp.*, 365 N.J. Super. 520, 567, 839 A.2d 942, 972 (Super. Ct. 2003) (same).

Proposed Class Counsel have also achieved a \$1.85 million settlement for the Class, along with meaningful other relief. In sum, the qualification of proposed Class Counsel supports the adequacy element of the certification analysis here.⁷

E. Common Issues Predominate Over Any Individual Issues and the Class Action Mechanism is Superior.

Predominance may be found if there is a common nucleus of operative facts, *Saldana*, 252 N.J. Super. at 197, while a finding of superiority requires consideration of alternative methods of adjudication and a comparison of the fairness and efficiency of those methods with the class action device. *Id.* at 199. Individual questions are those where class members “will need to present evidence that varies from member to member,” while common questions are those where “the same evidence will suffice for each member to make a prima facie showing [or] the issue is susceptible to generalized, class-wide proof.” *Tyson Foods, Inc. v. Bouaphakeo*, 577 U.S. 442, 453 (2016). As discussed above, there are numerous common questions in this matter. Many, if not all, of these questions focus on the legality of Defendants’ employment contracts. Because the contracts at issue are form contracts, there are unlikely to be individualized inquiries that predominate.

⁷ More information about each Class Counsel firm and the lawyers leading this litigation are provided in the accompanying declarations and resumes. See Baran Decl. ¶ 29–38.

Before certifying a class action under the New Jersey rules, the Court must also consider whether “a class action is superior to other available methods for fairly and efficiently adjudicating the controversy.” N.J.C.R. 4:32-1(b)(3) (listing considerations). Resolution of the instant matter as a class action is superior to individual actions as the class action will achieve economies of time, effort, and expense, and promote uniformity of results. Here, the Settlement Class Members are recent immigrants to the United States who may not choose to spend resources and time on individual litigation at this stage of their lives here, and for whom litigation is likely to be cost-prohibitive. *See Easterday*, 2023 U.S. Dist. LEXIS 116655, at *12 (if individual recoveries are likely to be modest, the benefit of bringing an individual claim is low, and a class action is the superior method for resolving the claims). Counsel are not aware of any evidence that Class Members are interested in individually controlling the prosecution of separate actions. Baran Decl. ¶ 20. Finally, because this class is being certified for settlement purposes only, manageability is not a concern. *See Strougo*, 457 N.J. Super. at 162, 198 A.3d at 323. For all of these reasons, the Court should certify the Settlement Class.

II. The Court Should Conditionally Certify the FLSA Collective Action.

Putative class members may opt to become parties to an FLSA suit after the court determines that plaintiffs that the employees are “similarly situated.” *Sperling v. Hoffman-La Roche, Inc.*, 118 F.R.D. 392, 399 (D.N.J. 1988). Here, the Settlement Class Members who are eligible to become Settlement Collective Members are “all nurses who entered the United States under the auspices of the Companies’ foreign nurse recruitment program and were parties to contracts with the Companies for at least one day and worked for the Companies for at least one day between August 13, 2021 and the Settlement Execution Date.” This set of common facts binds the proposed Settlement Collective together, and meets both the “substantial allegations” test and

the “factual nexus test” for finding employees to be similarly situated. *See Dreyer v. Alchem Env'tl. Servs.*, No. 06-2393 (RBK), 2007 U.S. Dist. LEXIS 71048, at **5-6 (D.N.J. Sep 25, 2007).

Under the FLSA, wages must be paid “free and clear,” and it is unlawful to require an employee to kick back to the employer “directly or indirectly ... for the employer’s benefit the whole or part of the wage delivered to the employee.” 29 C.F.R. § 531.35; *see e.g., Hatmaker v. PJ Ohio, LLC*, No. 3:17-CV-146, 2019 U.S. Dist. LEXIS 191790, at *6 (S.D. Ohio Nov. 5, 2019) (“The wage requirements of the [FLSA] will not be met where the employee ‘kicks back’ directly or indirectly to the employer or to another person for the employer’s benefit the whole or part of the wage delivered to the employee.”). Plaintiffs allege that Defendants’ threats to enforce the repayment provision in their contracts violated the FLSA and that other nurses were subject to the threatened or actual enforcement of the same provision. They have provided “substantial allegations that the putative class members were together the victims of a single decision, policy, or plan,” which means they are similarly situated. *Lopez v. 5 De Mayo Bakery, Inc.*, No. A-2520-08T3, 2010 N.J. Super. Unpub. LEXIS 1648, at *9 (Super. Ct. App. Div. July 20, 2010).

For these reasons, the Court should conditionally certify the FLSA collective for settlement purposes only.

III. The Settlement is a Fair, Reasonable, and Adequate Resolution for the Class.

A. The Settlement is Fair and Reasonable Under the *Girsh* Factors

“The court shall approve any settlement, voluntary dismissal, or compromise of the claims, issues, or defenses of a certified class” after notice to class members and a hearing finding that the settlement is fair, reasonable, and adequate. N.J.R.C. 4:32-2(e). New Jersey courts utilize the so-called *Girsh* factors developed by federal courts in evaluating the fairness of a class action settlement under New Jersey law. *See, e.g., Strougo*, 457 N.J. Super. at 158, 198 A.3d at 321;

Moore v. Atl. Cnty, 2021 N.J. Super. Unpub. LEXIS 5576, at *3 (May 11, 2021). Those factors are:

- (1) the complexity, expense and likely duration of the litigation;
- (2) the reaction of the class to the settlement;
- (3) the stage of the proceedings and the amount of discovery completed;
- (4) the risks of establishing liability;
- (5) the risks of establishing damages;
- (6) the risks of maintaining the class action through the trial;
- (7) the ability of the defendants to withstand a greater judgment;
- (8) the range of reasonableness of the settlement fund in light of the best possible recovery; and
- (9) the range of reasonableness of the settlement fund to a possible recovery in light of all the attendant risks of litigation.

Girsh v. Jepson, 521 F.2d 153, 157 (3d Cir. 1975) (cleaned up).

“All of the *Girsh* factors must be weighed against the actual benefit obtained for the Class.”

Strougo, 457 N.J. Super. at 164, 198 A.3d at 324. Some of the factors are not relevant to the settlement context or the preliminary approval stage. For example, the manageability factor is not useful in the settlement context. *Id.* at 162, 198 A.3d at 323. Additionally, the reaction of the class will not be apparent until final approval (and is a factor for the Court to analyze at that time). When assessing the range of reasonableness of the settlement fund, where the Court does not have information about the best possible recovery, it “may consider whether a settlement yields immediate and tangible benefits.” *Id.* at 163, 198 A.3d at 323.

Preliminary approval “should be granted ‘[w]here the proposed settlement appears to be the product of serious, informed, non-collusive negotiations, has no obvious deficiencies, [and] does not improperly grant preferential treatment to class representatives or segments of the class[.]’” *Easterday*, 2023 U.S. Dist. LEXIS 116655, at *14 (internal citations omitted). With this motion, Plaintiffs request that the Court take the first step by granting preliminary approval of the

Settlement Agreement; after notice to potential class members, Plaintiffs will seek final approval by the Court.

Although the parties have not gone through discovery in this case, the settlement is based on fully-developed facts. Defendants provided documents that allowed Class Counsel to evaluate the strengths and weaknesses of each side's positions. Baran Decl. ¶ 3. Ultimately, the parties reached this settlement after a review of documents provided by Defendants, analysis of the information in these documents by a computer scientist/data analyst, two mediation sessions with a professional mediator, and further settlement discussions thereafter through the mediator. Each side had time to weigh and consider the benefits and trade-offs of the proposed settlement. *Id.* These facts demonstrate that the settlement was the product of non-collusive, arms-length, hard-fought negotiations. *See, e.g., Easterday*, 2023 U.S. Dist. LEXIS 116655, at *14 (substantial discovery and mediation with an experienced wage and hour mediator demonstrated negotiations were arms-length).

The proposed settlement, in the opinion of Plaintiffs and Class Counsel, achieves the objectives of the litigation (and resolves the claims raised in Plaintiffs' initial demand letter). It includes a meaningful monetary settlement to be divided among class members who were allegedly subject to the alleged practices of Defendants. *See* Agmt. Ex. A. It also includes substantial non-monetary relief, including debt relief to class members and future nurses, and new contracts with important due process protections. *See Moore*, 2021 N.J. Super. Unpub. LEXIS 5576, at *4 (finding settlement agreement "is fair and reasonable because it provides significant monetary and relief to Class Members, as well as societal benefits in cessation of the practices alleged").

The proposed additional payments to the Class Representative are also fair and reasonable. Plaintiffs seek service awards of \$12,000 each, which is included in the Settlement Fund amount, for their service in obtaining this result for the Class, which involved extensive hours of time being interviewed and providing information to counsel, producing documents as part of several rounds of mediation discovery, joining two mediation sessions, and participating in numerous additional meetings with counsel concerning the settlement discussions. Baran Decl. ¶ 21. The service awards are reasonable and within the range of additional compensation for lead plaintiffs that have been approved by courts in similar class actions in both state and federal court. *See, e.g., Fernandez v. Douyu Int'l Holdings Ltd.*, No. 2:23-cv-03161 (SDA), 2025 U.S. Dist. LEXIS 257416, at **27–28 (D.N.J. Dec. 12, 2025) (approving service awards for lead plaintiffs who reviewed pleadings and court orders, discussed settlement strategy, and evaluated and finalized the settlement); *Politi v. Boscov's Inc.*, No. 2:11-cv-07298 (WJM), 2025 U.S. Dist. LEXIS 251295, at *7 (D.N.J. Dec. 5, 2025) (awarding \$12,500 service award); *Demaria v. Horizon Healthcare Servs.*, No. 2:11-cv-07298, 2016 U.S. Dist. LEXIS 143941, at **13-14 (D.N.J. Oct. 18, 2016) (approving a \$45,000 service award for class representatives' assistance with discovery and settlement).

Class Counsel here has carefully evaluated the merits of the case and the proposed settlement, and has concluded it has no obvious deficiencies and represents a very fair resolution of this litigation. Class members will receive compensation for an amount believed to represent (1) all of their payments toward the alleged illegally-charged debt repayments, (2) relief from future debt, (3) future contracts without onerous terms and with significant protections, and (4) monies for their alleged damages. The settlement represents a compromise that nevertheless compensates class members for their claims. If this case were to proceed to trial, there would be a

risk that some class members would recover less money, or nothing at all, on some or all of their claims. For all these reasons, the settlement is not obviously deficient and should be approved.

In addition, the *Girsh* factors favor settlement. This case involves complex federal and state claims, and litigation is likely to be lengthy and expensive, weighing in favor of settlement. While the case is in an early stage of litigation, the parties possess the necessary information to fairly evaluate the strength and weaknesses of the claims and possible defenses, and the settlement was reached after mediation and subsequent negotiations. Baran Decl. ¶ 10. Continued litigation involves risks related to class action approval and establishing liability and damages and will require extensive discovery and likely dispositive motions. *Id.* 12; *see also Strougo*, 457 N.J. Super. at 162, 198 A.3d at 323 (risk of decertification is “of negligible importance” when certification is for settlement purposes). There is a risk that the Plaintiffs would not recover any damages, or would recover damages lower than what is accounted for in the Settlement. It is not clear whether Defendants could pay a larger judgment, but “this by itself is not enough to reject the settlement because the other factors cut clearly in favor of settlement. *Id.* at 163, 198 A.3d at 323. As discussed above, the settlement fund provides a reasonable recovery to the class, the settlement has no obvious deficiencies, and it does not provide preferential treatment to the class representatives or to some members of the class. The *Girsh* factors therefore also favor preliminary approval.

B. The FLSA Settlement Should be Approved.

The parties seek to resolve the Plaintiffs’ FLSA claim on behalf of all persons who opt into a collective defined as “Any nurse who entered the United States under the auspices of any Company’s foreign nurse recruitment program and who was a party to any contract with such Company for at least one day, and who worked for at least one day, from August 13, 2014 through the Settlement Execution Date.” Agmt. ¶ 40.

“[J]udicial approval is appropriate in FLSA collective action settlements.” *Payton-Fernandez v. Burlington Stores, Inc.*, No. 22-608 (AMD), 2024 U.S. Dist. LEXIS 231619, at **10–11 (D.N.J. Dec. 23, 2024). The court looks to whether the settlement involves a bona fide dispute between the parties, whether the settlement is fair and reasonable to the plaintiffs, and whether it does not interfere with following the FLSA in that workplace in the future. *Id.* at *12. And because state courts have concurrent jurisdiction over federal law matters, they are permitted to approve FLSA settlements just as federal courts are. *See Claffin v. Houseman*, 93 U.S. 130, 137 (1876); *see also United States v. Bank of New York*, 296 U.S. 463, 479 (1936) (“Upon the state courts, equally with the courts of the Union, rests the obligation to guard and enforce every right secured by the Constitution and laws of the United States whenever those rights are involved in any suit or proceedings before them.”)

The proposed settlement meets the criteria for approval of FLSA settlements. First, it involves a bona fide dispute. For purposes of the FLSA, a *bona fide* dispute exists when the dispute “fall[s] within the contours of the FLSA and there [is] evidence of the defendant’s intent to reject or actual rejection of that claim when it is presented.” *Id.* at *13 (internal citations omitted). Here, Plaintiffs allege the companies violated the FLSA in their final workweeks by requiring Plaintiffs and putative opt-ins to pay them large sums upon leaving their employment. Compl. ¶¶ 160-61. Defendants deny that this requirement violated the FLSA.

Second, the FLSA portion of the settlement is fair and reasonable because FLSA opt-ins will receive an approximate 15% addition to their settlement payment in exchange for releasing their FLSA claims. *See* Agmt. ¶ 50.

Finally, the provisions in the new contract required by the Settlement Agreement will ensure that the alleged FLSA violations related to payment by employees to the companies will not occur in the future. *See id.*, ¶ 42.

C. The Proposed Notice Fairly Informs Class Members of their Rights and the Proposed Settlement, and Should be Approved by the Court.

Class members should receive “the best notice that is practicable under the circumstances.” N.J.C.R. 4:32-2(b)(2); Rule 23(b)(3). Plaintiffs’ proposed method of distribution and proposed notices meet this standard.⁸ *See, e.g., Pizzeria v. Harbortouch*, 2025 WL 922699, at *2 (N.J. Super. Mar. 27, 2025) (noting that the court approved the class settlement following a fairness hearing, where 38,000 notices were sent to class members). The proposed notices include all of the information required by the New Jersey Rules. N.J.C.R. 4:32-2(b)(2). The notices inform Settlement Class and Collective Members of the nature of the action; contain details about the definition of the Settlement Class and Collective; explain the claims, issues, and defenses; notify class members that they may appear through counsel; explain how class members may exclude themselves; and notify them of the binding effect of a class judgment. In addition, the notices provide the terms of the Settlement and class members’ rights and deadlines in which to exercise them. The notices also provide information about methodology for submitting a Claim Form, opting out, objecting, the potential size of Class Counsel’s request for attorneys’ fees and costs, and the date and location of the final approval hearing.

The proposed notices agreed to by the parties – submitted to the Court with this motion, see Baran Decl., Ex. A (Exhibit 1, email notice; Exhibit 2, text notice; Exhibit 3, long-form notice;

⁸ Class Counsel have designed the long-form and email notices in line with standards and templates developed by the Impact Fund, an organization that has invested considerable time and resources into studying ways to improve class action notices such that they provide more effective, understandable notice. Baran Decl. ¶ 22. While the Class Members all speak English, the notices will also be translated and available on the Settlement Website in their native language, Filipino.

Exhibit 6, postcard notice; and Exhibits 11 and 12, reminder notices) – are written in clear, simple language that is likely to be easily understood by Class members. The notices also contain a clear explanation of the procedure for opting out of the proposed settlement. Notice will be provided through multiple means: email, text, and postcard.

For all these reasons, the proposed notice fairly informs class members of the value of the proposed settlement, and of their rights to opt-out of the settlement. The Court should approve Plaintiffs’ proposed notices and method of notice dissemination.⁹ *See generally Gilbertson v. J. Givoo Consultants I, Inc.*, No. CV 20-6991, 2021 WL 689114, at *2 (D.N.J. Feb. 23, 2021) (“the practice of permitting notice [to Class members] by USPS and additional electronic means, including email and text messaging, finds ample support in this district.”) (collecting cases approving these methods of notice in U.S. District Court for the District of New Jersey).

D. The Proposed Settlement Administrator is Highly Qualified to Administer the Settlement and Should be Approved by the Court.

With the Court’s approval, Atticus Administration would serve as the Settlement Administrator, being responsible for sending notice of the settlement and, ultimately, distributing settlement funds. Atticus is a highly qualified class action administration company that has been used by Plaintiffs’ counsel in the past, and who Defendants do not oppose using. Baran Decl. ¶ 39 & Ex. D (declaration of Atticus CEO setting forth Atticus’s qualifications and experience administering numerous other class action settlements). Atticus’s duties as administrator will include: giving notice of the settlement to the Settlement Class Members; administering any opt-

⁹ The proposed notices Plaintiffs submit to the Court inform nurses of both the class action and the right to opt-in to pursue FLSA claims. Following conditional certification of a FLSA collective, it is appropriate to provide notice to the putative members of the collective, to allow them an opportunity to opt into the FLSA action. *Lusardi v. Xerox Corp.*, 99 F.R.D. 89, 93 (D.N.J. 1983) (ADEA case following FLSA), appeal dismissed, 747 F.2d 174 (3d Cir. 1984).

out requests and objections to the settlement; calculating and paying the amounts to be provided to Settlement Class Members, Plaintiffs, and Class Counsel under the Agreement; providing settlement payments inclusive of IRS forms W-2 and 1099 if required by law; certification of completion of notice and payment processes to the Court; establishing and administering a Qualified Settlement Fund (“QSF”) account to hold and distribute the Settlement Fund; and performing any other duties that are necessary to effectuate the Agreement. Agmt. ¶¶ 44, 50–52, 54–72.

IV. The Court Should Approve and Enter the Parties’ Proposed Schedule.

To provide for a final resolution of this matter, the Parties respectfully request this Court to consider, approve, and enter the following proposed schedule, which is set forth both here and in the Parties’ agreed-upon proposed Order, *see* Baran Decl. Ex. E (Proposed Order):

- Within 21 days following issuance of the Court’s Preliminary Approval Order, Defendants will provide Class Counsel and the Settlement Administrator with a class list that contains each Class Member’s contact information and dates worked.
- Within 15 days after receiving the class list from Defendants, the Settlement Administrator will mail to all Class Members the Court approved Settlement Notice.
- Class Members who wish to opt out must do so pursuant to the procedures and timelines in paragraph 63 of the Settlement Agreement.
- A Fairness Hearing will be held as soon as is convenient for the Court after the end of the Opt-Out/Objection Period, on a date between approximately 106 days and 120 days after the preliminary approval date.
- Class Counsel will file their Final Approval Motion with the Court by the later of (a) 15 days before the Fairness Hearing or (b) any filing deadline set by the Court.

- At the Fairness Hearing and in their Final Approval Motion, the parties will request that the Court, *inter alia*, (1) approve the settlement as defined in Settlement Agreement; (2) order the Settlement Administrator to issue and distribute settlement checks; (3) determine the amount of attorneys' fees, costs, and expenses to be paid to Class Counsel; (4) determine the amounts of any administration fees; (5) order the dismissal with prejudice of the litigation; (6) order entry of final judgement; and (7) retain jurisdiction over the interpretation and implementation of the Settlement Agreement.

CONCLUSION

For the reasons set forth above, Plaintiffs respectfully request that the Court grant their Motion for Preliminary Approval of Settlement and related relief, and enter the Proposed Order.

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