

Brian S. Kabateck (SBN 152054)
bsk@kbklawyers.com
Shant Karnikian (SBN 285048)
sk@kbklawyers.com
Jerusalem F. Beligan (SBN 211258)
jfb@kbklawyers.com
KABATECK LLP
633 W. Fifth Street, Suite 3200
Los Angeles, CA 90071
Telephone: (213) 217-5000

James L. Simon (admitted *pro hac vice*)
(OH SBN 0089483)
james@simonsayspay.com
SIMON LAW CO.
5000 Rockside Road
Liberty Plaza – Suite 520
Independence, OH 44131
Telephone: (216) 816-8696

Michael L. Fradin (admitted *pro hac vice*)
(OH SBN 0091739; IL SBN 6289502)
mike@fradinlaw.com
8401 Crawford Ave., Ste. 104
Skokie, IL 60076
Telephone: (847) 986-5889

Attorneys for Plaintiffs and the Putative Classes

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

Sharon Oliveira; and Ingrid Leeman,
individually, and on behalf of
themselves and all others similarly
situated,

Plaintiffs,

vs.

AMN Healthcare Language Services,
Inc., a Delaware corporation; and
DOES 1 through 10, inclusive,

Defendants.

Case No. 22-cv-00003-LL-WVG

CLASS ACTION

**MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
PLAINTIFFS' MOTION FOR
PRELIMINARY APPROVAL OF
FLSA AND CLASS ACTION
SETTLEMENT, CONDITIONAL
CERTIFICATION OF THE
SETTLEMENT CLASSES,
APPOINTMENT OF CLASS
REPRESENTATIVES AND CLASS
COUNSEL, APPROVAL OF CLASS
NOTICES, AND SETTING OF
FINAL APPROVAL HEARING**

Judge: Hon. Linda Lopez
Date: December 5, 2022
Time: N/A¹
Courtroom: 5D

¹ Per chambers rules, no oral arguments unless separately ordered by the Court.

TABLE OF CONTENTS

I.	INTRODUCTION	1
II.	FACTUAL AND PROCEDURAL BACKGROUND	2
	A. The complex procedural history in this Action.....	2
	1. Plaintiff Oliveira initiates the action as a nationwide FLSA Collective with a Rule 23 Ohio class.....	2
	2. Plaintiff Oliveira filed an amended complaint to avoid a threatened Rule 12(b)(6) motion.....	3
	3. Plaintiff Leeman—a California plaintiff—joins the Action and the Parties file a stipulation to allow Plaintiff Oliveira to amend the FAC.....	3
	4. Plaintiffs amended the SAC to add a claim under the Private Attorneys General Act (“PAGA”).....	4
	5. Plaintiffs amended the TAC after the mediation.....	4
	B. The Case Management Conference and Early Neutral Evaluation convened by Honorable William V. Gallo.....	5
	C. The mediation and substantial exchange of class data before the mediation.....	6
III.	SUMMARY OF THE MATERIAL TERMS OF THE SETTLEMENT	7
	A. The Gross Settlement Amount and Settlement Classes.....	7
	B. The Net Settlement Amount to be distributed to Settlement Class Members, allocation between the Settlement Classes, and formula to determine distribution among participating Settlement Class Members.....	9
	C. The limited scope of release for Settlement Class Members and general release for Named Plaintiffs.....	12
	D. The notice to Settlement Class Members advising them of the	

1	Settlement and opportunity to opt-in, opt-out, or object.....	13
2	IV. THE SETTLEMENT SHOULD BE PRELIMINARILY	
3	APPROVED.....	15
4	A. The standard for settlement approval of collective and class	
5	actions.....	15
6	B. The Settlement is “fair, adequate and reasonable” and should be	
7	preliminarily approved.....	16
8	1. Named Plaintiffs and their counsel have adequately	
9	represented the Settlement Classes.....	17
10	2. The Settlement was negotiated at arm’s length.....	18
11	3. The quality of relief to the Settlement Classes weighs in	
12	favor of approval.....	18
13	(i) The Settlement provides strong relief to Settlement	
14	Class Members.....	19
15	(ii) Continued litigation could entail substantial cost,	
16	risk, delay and potential appeals.....	19
17	(iii) The Settlement provides for an effective distribution	
18	of proceeds to the Settlement Classes.....	23
19	(iv) The terms of the proposed award of attorneys’ fees,	
20	including timing of payment, also support settlement	
21	approval.....	23
22	(v) The Parties have no other agreements pertaining to	
23	the Settlement.....	24
24	4. The Settlement treats all Settlement Members equitably...	24
25	V. THE SETTLEMENT CLASSES MEET ALL THE	
26	REQUIREMENTS OF CONDITIONAL CERTIFICATION AND	
27	RULE 23.....	26
28	A. Conditional certification under the FLSA has been satisfied.....	26

1	B. The Rule 23 requirements are met.....	27
2	1. Rule 23(a)(1) – Numerosity.....	27
3	2. Rule 23(a)(2) – Commonality.....	28
4	3. Rule 23(a)(3) – Typicality.....	28
5	4. Rule 23(a)(4) – Adequacy.....	29
6	5. Rule 23(b) – Predominance and Superiority.....	29
7	VI. CONCLUSION.....	30

TABLE OF AUTHORITIES

<i>Federal Cases</i>	<i>Page(s)</i>
<i>Altamirano v. Shaw Indus., Inc.,</i> No. 13-cv-00939, 2015 WL 4512372 (N.D. Cal. July 24, 2015).....	25
<i>Betancourt v. Advantage Human Resourcing, Inc.,</i> No. 14-CV-01788-JST, 2016 WL 344532 (N.D. Cal. Jan. 28, 2016).....	23
<i>Bittinger v. Tecumseh Prods. Co.,</i> 123 F.3d 877 (6th Cir. 1997).....	28
<i>Boyd v. Bank of Am. Corp.,</i> No. 13-cv-0561-DOC, 2014 WL 6473804 (C.D. Cal. Nov. 18, 2014).....	25-26
<i>Campanelli v. Image First Healthcare Laundry Specialists, Inc.,</i> No. 5-cv-04456-PJH, 2018 WL 6727825 (N.D. Cal. Dec. 21, 2018).....	27
<i>Campbell v. City of Los Angeles,</i> 903 F.3d 1090 (9th Cir. 2018).....	26, 27
<i>Class Plaintiffs v. City of Seattle,</i> 955 F.2d 1268 (9th Cir. 1992).....	15
<i>Glass v. UBS Fin. Serv., Inc.,</i> No. C-0604068 MMC, 2007 WL 221862 (N.D. Cal. Jan. 26, 2007).....	22
<i>Haley v. Medtronic, Inc.,</i> 169 F.R.D. 643 (C.D. Cal. 1996).....	28
<i>Hanlon v. Chrysler Corp.,</i> 150 F.3d 1011 (9th Cir. 1998).....	28, 29, 30
<i>Hudson v. Libre Technology, Inc.,</i> No. 18-cv-1371-GPC-KSC, 2019 WL 5963648 (S.D. Cal. Nov. 13, 2019)...	15, 26
<i>In re Cooper Cos. Sec. Litig.,</i> 254 F.R.D. 628 (C.D. Cal. 2009).....	27
<i>In re Heartland Payment Systems, Inc.,</i> 851 F.Supp.2d 1040 (S.D. Tex. Mar. 20, 2012).....	22

1	<i>In re Paxil Litigation,</i>	
2	212 F.R.D. 539 (C.D. Cal. 2003).....	29
3	<i>In re Volkswagen “Clean Diesel” Mktg., Sales Practices, & Prod. Liab. Litig.,</i>	
4	895 F.3d 597 (9th Cir. 2018).....	16, 18
5	<i>James v. City of Dallas,</i>	
6	254 F.3d 551 (5th Cir. 2001).....	28
7	<i>Linney v. Cellular Alaska P’ship,</i>	
8	151 F.3d 1234 (9th Cir. 1998).....	19, 23
9	<i>Murillo v. Pac. Gas & Elec. Co.,</i>	
10	266 F.R.D. 468 (E.D. Cal. 2010).....	15
11	<i>Officers for Justice v. Civil Serv. Comm’n,</i>	
12	688 F.2d 615 (9th Cir. 1982).....	16
13	<i>Pederson v. Airport Terminal Servs.,</i>	
14	No. 15-cv-02400, 2018 WL 2138457 (C.D. Cal. Apr. 5, 2018).....	18
15	<i>Sadowska v. Volkswagen Grp. Of Am.,</i>	
16	No. CV 11-00665, 2013 WL 9600948 (C.D. Cal. Sept. 25, 2013).....	24
17	<i>Singer v. Becton Dickinson and Co.,</i>	
18	No. 08-CV-821-IEG, 2010 WL 2196104 (S.D. Cal. Jun. 1, 2010).....	22
19	<i>Staton v. Boeing Co.,</i>	
20	327 F.3d 938 (9th Cir. 2003).....	15, 26, 29
21	<i>Stovall-Gusman v. W.W. Granger, Inc.,</i>	
22	No. 13-CV-02540-HSG, 2015 WL 3776765 (N.D. Cal. June 17, 2015).....	23
23	<i>Tyson Foods, Inc. v. Bouaphakeo,</i>	
24	136 S.Ct. 1036 (2016).....	30
25	<i>Valentino v. Carter-Wallace, Inc.,</i>	
26	97 F.3d 1227 (9th Cir. 1996).....	30
27	<i>Vizcaino v. U.S. Dist. Court for W. Dist. Of Wash.,</i>	
28	173 F.3d 713 (9th Cir. 1999).....	28

State Cases

Wershba v. Apple Computer, Inc.,

91 Cal.App.4th 224 (2001).....19, 20

Federal Statutes

29 U.S.C. § 201.....3

29 U.S.C. § 216(b).....26

State Statutes

Cal. Bus. & Prof. Code § 17200.....4

Cal. Lab. Code § 200, 218, 1194.....3

Cal. Lab. Code § 203.....5

Cal. Lab. Code § 226, 1174(d), 1198.....4

Cal. Lab. Code § 226.7, 512.....3-4

Cal. Lab. Code § 510, 1194.....3

Cal. Lab. Code § 2802.....4

O.R.C. 4111.01.....3

O.R.C. 4111.10.....9, 26

Federal Rules

Fed. R. Civ. P. 23(a).....27, 28

Fed. R. Civ. P. 23(c)(2)(B).....27

Fed. R. Civ. P. 23(e).....15, 16, 18, 19, 22, 24

Fed. R. Civ. P. 23(h).....24

1 **I. INTRODUCTION**

2 Plaintiffs Sharon Oliveira and Ingrid Leeman (“Named Plaintiffs”) and
3 Defendant AMN Healthcare Language Services, Inc. (“AMN” or “Defendant,” and
4 collectively with Named Plaintiffs, the “Parties”) are pleased to report they have
5 finalized a proposed class settlement that is ready to undergo the court-approval
6 process.² The Parties seek to conditionally certify a class and two collectives for
7 settlement only: (1) a nationwide FLSA Collective; (2) an Ohio Collective; and (3) a
8 California Class. Subject to this Court’s approval, AMN agrees to pay a Gross
9 Settlement Amount of \$3,000,000 to settle the claims of Named Plaintiffs and the
10 Settlement Classes. The Settlement resolves the claims of Named Plaintiffs and
11 approximately 2,404 FLSA Collective Members, 98 Ohio Collective Members, 351
12 California Class members, and 263 PAGA Representative Group Members.³

13 The Settlement satisfies all criteria for preliminary settlement approval and falls
14 well within the range of approval. Plaintiffs’ counsel, having resolved many
15 employment class actions, believe the Settlement provides strong relief to the
16 Settlement Classes and is worthy of this Court’s approval. It provides guaranteed
17 relief for Settlement Class Members without further risks and delay of a litigated
18 outcome and conserves the time and resources of not only the Parties, but also this
19 Court. Accordingly, the Parties respectfully request this Court to preliminarily
20 approve the Settlement and grant a Preliminary Approval Order that does the
21 following: (1) preliminarily approves the Settlement as fair, reasonable, and
22

23 ² A copy of the fully executed Class and Collective Action Settlement Agreement and
24 Release, including its exhibits (the “Settlement Agreement”), is attached as Exhibit 1
25 to the Declaration of Jerusalem F. Beligan (“Beligan Decl.”). Unless otherwise stated,
all capitalized terms used herein are defined and carry the same definition as the terms
used in the Settlement Agreement.

26 ³ The estimated class sizes were calculated as of September 23, 2022. The exact
27 number of FLSA/Ohio Collective members will vary at the time of final approval
depending on the date on which the Court grants conditional certification and number
28 of FLSA/Ohio Collective members who opt-in during the FLSA Collective Period and
Ohio Collective Period. The final number on California Class members will vary
depending on the number of California Class Members who opt out.

adequate; (2) conditionally certifies the FLSA Collective, Ohio Collective, and California Class for settlement only; (3) preliminarily approves the PAGA Gross Settlement Amount; (4) appoints both Plaintiffs Oliveira and Leeman as the Class Representatives for the Nationwide FLSA Collective, Plaintiff Oliveira as the Class Representative for the Ohio Collective, Plaintiff Leeman as the Class Representative for the California Class, and Plaintiffs' attorneys as Class Counsel for the Class/Collective Members; (5) approves the Notices and Opt-In Consent Forms (attached as Exhibits A-E to the Settlement Agreement) to be disseminated to the Class/Collective Members in the form and manner proposed by the Parties as set forth in the Settlement Agreement; (6) preliminarily enjoins all Class/Collective Members from commencing, prosecuting or maintaining any claim already asserted in, and encompassed by, this case, or commencing, prosecuting or maintaining in any court or forum, other than in this Court, any claim, action or other proceeding that challenges, or seeks review of or relief from, any order, judgment, act, decision or ruling of the Court in connection with the settlement of this case; and (7) sets a hearing date and schedule for the Final Approval Hearing and consideration of Class Counsel's motion for award of fees, costs, expenses, service awards, and administration costs not less than 134 days after the date of the order granting this Motion for Preliminary Approval.

II. FACTUAL AND PROCEDURAL BACKGROUND

A. The complex procedural history in this Action.

AMN supplies healthcare providers with Interpreters throughout the United States, including Ohio and California. Plaintiff Oliveira and Leeman both began their employment with AMN in late Spring 2020. Both are current full-time employees. AMN treats its Interpreters as nonexempt employees and pays them an hourly wage.

1. Plaintiff Oliveira initiates the action as a nationwide FLSA Collective with a Rule 23 Ohio class.

On January 3, 2022, Plaintiff Oliveira initially filed a complaint against

1 Defendant AMN Healthcare, Inc. (“AMN Healthcare”) in this Court (the “Initial
2 Complaint”). *See* Dkt. 1. The Initial Complaint alleged causes of action against AMN
3 Healthcare for violations of the Fair Labor Standards Act, 29 U.S.C. § 201, *et seq.*
4 (“FLSA”), and the Ohio Minimum Fair Wage Standards Act, O.R.C. 4111.01, *et seq.*
5 (“OMWFSA”). *Id.* ¶ 1. Specifically, the Initial Complaint pled eight causes of action
6 and alleged AMN Healthcare violated the FLSA and Ohio state law by failing to pay
7 members of the FLSA Collective and Ohio Collective for: (1) hours worked pre- and
8 post-shift, resulting in minimum wage and overtime violations; (2) failing to include
9 certain bonuses in the regular rate of pay when calculating overtime; (3) failing to
10 pay for rest breaks that were less than 20 minutes and taken off the clock; and (4)
11 failing to reimburse for certain business expenses. *Id.* ¶¶ 5-8.

12 **2. Plaintiff Oliveira filed an amended complaint to avoid a**
13 **threatened Rule 12(b)(6) motion.**

14 On March 9, 2022, Plaintiff Oliveira filed a First Amended Complaint (“FAC”)
15 to add specific examples and time periods during which she was allegedly not
16 properly compensated by AMN Healthcare. *See* Dkt. 8. AMN Healthcare answered
17 the FAC on March 23, 2022. *See* Dkt. 12.

18 **3. Plaintiff Leeman—a California plaintiff—joins the Action and**
19 **the Parties file a stipulation to allow Plaintiff Oliveira to**
20 **amend the FAC.**

21 The Parties filed a joint motion seeking leave to allow Plaintiff Oliveira to file
22 a Second Amended Complaint (“SAC”) on June 16, 2022. *Id.* This Court granted the
23 joint motion on June 27, 2022, Dkt. 24, and Plaintiffs filed the SAC on the same day,
24 Dkt. 25. In addition to the FLSA and Ohio claims, the SAC added Plaintiff Leeman
25 as a named plaintiff and added allegations that AMN Healthcare had violated several
26 California Labor Codes: (1) California’s minimum wage requirements (Cal. Lab.
27 Code §§ 200, 218 and 1194); (2) California’s overtime laws (Cal. Lab. Code §§ 510
28 and 1194); (3) California’s meal-and-rest period requirements (Cal. Lab. Code §§

1 226.7 and 512.); (4) California’s wage statement requirements (Cal. Lab. Code §§
2 226, 1174(d) and 1198); (5) California’s expense reimbursement requirements (Cal.
3 Lab. Code § 2802); and (6) California’s Unfair Competition Law (Cal. Bus. & Prof.
4 Code § 17200, *et seq.* (the “UCL”)). *See* Dkt. 25 ¶¶ 11-17. The addition of the
5 California claims increased the total counts pled in the SAC to 12.

6 **4. Plaintiffs amended the SAC to add a claim under the Private**
7 **Attorneys General Act (“PAGA”).**

8 Before filing the SAC, Plaintiff Leeman gave notice to the Labor and
9 Workforce Development Agency (“LWDA”) as well as the agent for service of
10 process for AMN Healthcare of the alleged violations of the California Labor Codes
11 (the “PAGA Notice”). *See* Dkt. 23. Plaintiffs waited the requisite statutory period to
12 allow the LWDA time to decide whether it intended to investigate the alleged
13 violations in the PAGA Notice. When the LWDA did not respond within the statutory
14 period, and with this Court’s permission, *see* Dkt. 28, Plaintiffs filed a Third
15 Amended Complaint (“TAC”) adding the PAGA claim and adding AMN Healthcare
16 Language Services, Inc. as a defendant on August 2, 2022, Dkt. 29. On July 27, 2022,
17 Plaintiff Leeman amended the PAGA Notice to include an additional defendant,
18 AMN Healthcare Language Services, Inc. *Id.*, Ex. B.

19 **5. Plaintiffs amended the TAC after the mediation.**

20 On August 19, 2022, the Parties filed a joint motion extending AMN
21 Healthcare’s deadline to respond to the TAC until after the Parties completed their
22 mediation with the Honorable Jan Adler (Ret.) on September 2, 2022. *See* Dkt. 32.
23 The Court granted the Parties’ joint motion on August 23, 2022. *See* Dkt. 33. After
24 the successful mediation, Plaintiffs filed their Fourth Amended Complaint (the
25 “Operative Complaint”) on September 22, 2022. *See* Dkt. 36. In the Operative
26 Complaint, Plaintiffs removed AMN Healthcare as a named defendant leaving AMN
27 Healthcare Language Services, Inc. as the only named defendant. *Id.* at 2, fn. 1.
28 Plaintiffs also removed allegations regarding missed rest break claims under the

1 FLSA and Ohio state law and added a claim under California Labor Code § 203 (the
2 “Waiting Time Claim”). AMN filed an answer to the Operative Complaint on
3 October 7, 2022.

4 **B. The Case Management Conference and Early Neutral Evaluation**
5 **convened by Honorable William V. Gallo.**

6 On April 1, 2022, Judge Gallo issued an order setting an Early Neutral
7 Evaluation (“ENE”), Case Management Conference (“CMC”) and telephonic status
8 conference. *See* Dkt. 13. On April 14, 2022, the Parties filed a joint motion extending
9 the ENE, CMC and related deadlines. *See* Dkt. 16. On April 20, 2022, Judge Gallo
10 granted the joint motion in part and ordered Plaintiffs to serve their settlement
11 proposal to AMN no later than May 27, 2022 and ordered AMN to serve its response
12 to Plaintiffs’ settlement proposal no later than June 3, 2022. *See* Dkt. 17. Judge Gallo
13 also ordered the Parties to exchange ENE statements no later than June 10, 2022 and
14 to participate in a telephonic Pre-ENE Conference on June 23, 2022 and an ENE and
15 CMC on July 13, 2022.

16 As ordered by Judge Gallo, the Parties exchanged their initial settlement
17 proposals and ENE statements. On June 23, 2022, Judge Gallo convened a telephonic
18 Pre-ENE Conference with the Parties. *See* Dkt. 26. After the Pre-ENE Conference,
19 Judge Gallo ordered Plaintiffs to serve their demand on AMN as it related to the
20 FLSA and Ohio state claims and California claims no later than July 15, 2022 and
21 August 5, 2022, respectively. *Id.* Judge Gallo also ordered AMN to respond to
22 Plaintiffs’ demands no later than August 5, 2022 and to advise him via email of the
23 Parties’ respective demands and counteroffers by August 9, 2022. *Id.* Judge Gallo
24 continued the ENE and CMC to August 10, 2022. *Id.*

25 On August 10, 2022, Judge Gallo convened the ENE. The Parties spent two and
26 a half hours working with Judge Gallo to develop a framework for informal resolution
27 of the matter. Based on the Parties mutual desire to continue settlement discussions
28 with a private mediator, Judge Gallo set CMC deadlines based on when the Parties

1 could complete private mediation. *See* Dkt. 30. On August 17, 2022, the Parties
2 agreed to participate in a private mediation session with Judge Adler on September
3 2, 2022. *See* Dkt. 31.

4 On September 2, 2022, the Parties participated in a full-day mediation with
5 Judge Adler that began at 8:00 a.m. Pacific Time and extended into the evening hours
6 (lasting past 7:00 p.m. Pacific Time). *See* Dkt. 31. After the Action settled, the Parties
7 negotiated and fully executed a Memorandum of Understanding (“MOU”) on
8 September 27, 2022. Subsequently, the Parties jointly prepared and negotiated a long-
9 form settlement agreement and notices to be sent to the Class/Collective Members.
10 The Settlement Agreement was fully executed by the Parties on October 31, 2022.

11 **C. The mediation and substantial exchange of class data before the**
12 **mediation.**

13 Before the mediation took place on September 2, 2022, AMN provided
14 Plaintiffs’ counsel with substantial data relating to the Class/Collective Members,
15 including relevant policies and employee handbooks. Regarding the FLSA Collective
16 and Ohio Collective, AMN produced a 20% sampling of time and payroll data.
17 Regarding the California Class, AMN also produced a 20% sampling of time and
18 payroll data, as well as data concerning the interpreters’ “status” throughout the day
19 (including, for example “break” and “lunch” status). Plaintiffs, in turn, produced this
20 sampling to their retained experts to analyze and estimate damages to the balance of
21 the Class/Collective Members. Plaintiffs’ experts provided Plaintiffs’ counsel a
22 damages analysis. The Parties’ counsel exchanged comprehensive mediation briefs
23 before the mediation discussing their positions on the likelihood of conditional and
24 class certification, liability and damages. This provided each side with information
25 necessary to evaluate the likelihood of conditional and class certification, AMN’s
26 potential exposure, and risks of continued litigation, including denial of conditional
27 and/or class certification, losing on the merits, and potential appeals.

28 Throughout this litigation, Plaintiffs and their counsel expended substantial

1 time, effort, energy, and expenses in order to achieve the best recovery possible for
2 the Settlement Classes. Plaintiffs' counsel had to balance the amount being offered
3 in the Settlement against the risks of continued litigation, which could result in both
4 sides incurring substantial attorneys' fees and litigation and expert costs, delay, losing
5 on the merits, and appeals. Plaintiffs' counsel believe they were in a position to weigh
6 the risks and benefits of continued litigation at the time of mediation and believe—
7 based on their experience—the best alternative for the Class/Collective Members was
8 to settle the Action for the Gross Settlement Amount of \$3,000,000.

9 Below, Plaintiffs provide additional information about the settlement benefits,
10 the class releases, why the settlement is fair, adequate, and reasonable, and why the
11 FLSA Collective, Ohio Collective, and California Class should be certified. Given
12 the strength of the Settlement and the certifiability of the class and collectives,
13 Plaintiffs respectfully request this Court to preliminarily approve the Settlement,
14 conditionally certify the FLSA Collective, Ohio Collective, and California Class,
15 appoint Named Plaintiffs as the Class Representatives for their respective classes and
16 Plaintiffs' counsel as Class Counsel for the Class/Collective Members, approve the
17 Class Notices and Consent Forms, and set a schedule for the Final Approval Hearing.

18 **III. SUMMARY OF THE MATERIAL TERMS OF THE SETTLEMENT**

19 **A. The Gross Settlement Amount and Settlement Classes.**

20 AMN agrees to pay a Gross Settlement Amount of \$3,000,000 to settle this
21 Action. *See* Settlement Agreement ¶ 24. From the Gross Settlement Amount, and
22 subject to this Court's approval, the following will be paid: (1) settlement payments
23 to Settlement Class Members, which will include penalties, liquidated damages,
24 interest, and employee withholding on any portion of the payments to the Settlement
25 Class Members that constitute wages; (2) court-approved service awards to Named
26 Plaintiffs; (3) court-approved costs of a third-party administration company; (4)
27 court-approved attorneys' fees; (5) court-approved out-of-pocket litigation expenses
28 associated with the Action; (6) payments to the PAGA Representative Group; and (7)

1 payments to the LWDA. *Id.* The Gross Settlement Amount does not include the
2 employer-side payroll taxes due on any portion of the payments to the Settlement
3 Class Members that constitutes wages, which AMN will pay in addition to the Gross
4 Settlement Amount. *Id.*

5 The Gross Settlement Amount shall be allocated as follows: One Million Five
6 Hundred Thousand Dollars and no cents (\$1,500,000.00) to settle the claims of the
7 California Class in connection with the California Released Claims (“California
8 Gross Settlement Amount”); Fifty Thousand Dollars and no cents (\$50,000.00) to
9 settle the PAGA claims of the PAGA Representative Group (“PAGA Gross
10 Settlement Amount”); One Million Four Hundred Forty Thousand Dollars and no
11 cents (\$1,440,000.00) to settle the claims of the FLSA Collective in connection with
12 the FLSA Released Claims (“FLSA Gross Settlement Amount”); and Ten Thousand
13 Dollars and no cents (\$10,000.00) to settle the claims of the Ohio Collective in
14 connection with the Ohio Released Claims (“Ohio Gross Settlement Amount”). *Id.* ¶
15 24(a)-(d).

16 The Settlement will provide relief to members of the following Settlement
17 Classes:

18 **The FLSA Settlement Collective:** Named Plaintiffs and all current
19 and former employees employed by AMN Healthcare Language
20 Services, Inc. or its Predecessor Companies as Interpreters in the United
21 States (excluding Puerto Rico) from the date three years prior to the
22 date the Court grants Conditional Certification of the collective through
November 1, 2022 and who opt-in the Action after notice is issued. *Id.*
¶ 18, 20, 22.

23 **The Ohio Settlement Collective:** Plaintiff Oliveira and all current and
24 former employees employed by AMN Healthcare Language Services,
25 Inc. or its Predecessor Companies as Interpreters in the State of Ohio
26 from the date two years prior to the date the Court grants Conditional
Certification of the collective through November 1, 2022 and who opt-
27
28

1 in the Action after notice is issued.⁴ *Id.* ¶ 31,32, 36.

2 **The California Settlement Class:** Plaintiff Leeman and all current and
3 former employees employed by AMN Healthcare Language Services,
4 Inc. or its Predecessor Companies as Interpreters in the State of
5 California from June 27, 2018 through November 1, 2022 and who do
6 not opt-out after receiving notice. *Id.* ¶ 5, 6, 8.

7 **The PAGA Representative Group:** All current and former employees
8 employed by AMN Healthcare Language Services, Inc. or its
9 Predecessor Companies as Interpreters in the State of California from
10 May 29, 2021 through November 1, 2022 (the “PAGA Period”). *Id.* ¶
11 42, 43.

12 If this Court grants conditional certification and preliminary approval of the
13 Settlement, the members of the FLSA Collective and Ohio Collective will be
14 provided 60 days to opt-in and will be provided reminder postcards, and for those
15 collective members for whom AMN has personal email addresses, reminder emails
16 to opt-in 20- and 40- calendar days after the initial notices are sent. *Id.* ¶ 69(b)(vi).
17 The members of the California Class will be provided 45 days to opt-out. The
18 California Class will also be provided an opportunity to object to the Settlement.⁵ *Id.*
19 ¶ 69(c)(i).

20 **B. The Net Settlement Amount to be distributed to Settlement Class**
21 **Members, allocation between the Settlement Classes, and formula to**
22 **determine distribution among participating Settlement Class**
23 **Members.**

24 At the final approval stage, Plaintiffs’ counsel will petition the Court to award

25 ⁴ Although the Operative Complaint pleads the Ohio claims as a Rule 23 class, the
26 Parties agreed—for purposes of settlement only—to convert the class into an opt-in
27 collective because as of July 6, 2022, Ohio no longer allows the opt-out class
28 mechanism for overtime claims under the OMFWSA and will instead require an opt-
in mechanism (presumably similar to the FLSA collective action mechanism). See
O.R.C. § 4111.10(c).

⁵ Because members of the FLSA Settlement Collective and Ohio Settlement
Collective are only bound by the Settlement if they opt-in to the Settlement, no right
to object to the Settlement is necessary or appropriate as individuals who do not opt-
in are free to pursue their own claims. Allowing such individuals a right to object
would allow a non-party to the settlement to hold up the settlement for others who
have opted-in.

1 Plaintiff Oliveira and Plaintiff Leeman service awards in the amount of \$7,500 each
2 or a total of \$15,000 for the work and risks they incurred in prosecuting this Action.
3 At the final approval stage, Plaintiffs' counsel will also petition the Court to approve
4 attorneys' fees in the amount of \$1,000,000 (or 1/3 of the Gross Settlement Amount)
5 for the substantial work and risks they undertook prosecuting this Action and will
6 seek reimbursement of their actual out-of-pocket litigation expenses which are
7 currently \$42,824.27, up to a maximum of \$46,000. Plaintiffs' counsel has selected
8 a Settlement Administrator to administer the Settlement and, at the final approval
9 stage, will petition the Court to reimburse the Settlement Administrator for its
10 services in an amount not to exceed \$35,000. The Parties also agreed to allocate
11 \$50,000 of the Gross Settlement Amount towards the PAGA Payment (75% of which
12 will be paid to the LWDA and 25% will be distributed in payments to members of
13 the PAGA Representative Group) and will petition the Court to approve this amount.

14 After the class representative service awards (\$15,000), attorneys' fees and
15 costs (\$1,046,000), costs of claims administration (\$35,000), payments to the PAGA
16 Representative Group and payment to the LWDA (\$50,000) have been deducted from
17 the Gross Settlement Amount, the Net Settlement Amount (\$1,854,000) shall be
18 distributed to the FLSA Settlement Collective, the Ohio Settlement Collective, and
19 the California Settlement Class as follows: 50.85% of the Approved Service Awards,
20 Approved Attorneys' Fees and Costs, and Approved Administration Costs will be
21 deducted from the California Gross Settlement Amount, with the remaining amount
22 constituting the California Net Settlement Amount; 48.81% of the Approved Service
23 Awards, Approved Attorneys' Fees and Costs, and Approved Administration Costs
24 will be deducted from the FLSA Gross Settlement Amount, with the remaining
25 amount constituting the FLSA Net Settlement Amount; and 0.34% of Approved
26 Service Awards, Approved Attorneys' Fees and Costs, and Approved Administration
27 Costs will be deducted from the Ohio Gross Settlement Amount, with the remaining
28 amount constituting the Ohio Net Settlement Amount.

1 The Parties further agree the Net Settlement Amount and the PAGA Payment
2 be distributed as follows:

3 **California Settlement Amount:** AMN will determine the total number of Part
4 Time (“PT”) workweeks and Full Time (“FT”) workweeks in the California Class
5 Period for each class member who does not opt out. Each PT workweek will be worth
6 one (1) California Settlement Share. Each FT workweek will be worth one and one-
7 half (1.5) California Settlement Shares. The Settlement Administrator will calculate
8 the total number of California Settlement Shares across the entire class, and each
9 class member will be paid based on his/her proportionate share of the California
10 Settlement Shares. The payments received by members of the California Settlement
11 Class will be characterized as 50% wages and 50% non-wage. If none of the
12 California Class Members exclude themselves from the settlement, and the full
13 amount of requested fees, costs, and incentive awards is granted, the individual
14 California Settlement Awards will average approximately \$2,685.79.

15 **FLSA Nationwide Settlement Amount:** AMN will determine the total number
16 of PT workweeks and FT workweeks in the FLSA Collective Period for each opt-in
17 collective member. Each PT workweek will be worth one (1) FLSA Settlement
18 Share. Each FT workweek will be worth ten (10) FLSA Settlement Shares. The
19 Settlement Administrator will calculate the total number of FLSA Settlement Shares
20 across the entire group of opt-in collective members, and each collective member will
21 be paid based on his/her proportionate share of the FLSA Settlement Shares. The
22 payments received by members of the FLSA Nationwide Settlement Collective will
23 be characterized as 50% wages and 50% non-wage. If 100% of the FLSA Collective
24 Members opt in, and the full amount of requested fees, costs, and incentive awards is
25 granted, the individual FLSA Settlement Awards will average approximately
26 \$376.46. If 40% opt in, the total per person will be approximately \$941.14, and if
27 only 10% opt in, the per-person amount will be approximately \$3,764.57.

28 **Ohio Settlement Amount:** AMN will determine the total number of

workweeks in the Ohio Collective Period for each opt-in collective member. The Settlement Administrator will calculate the total number of workweeks across the entire group of opt-in collective members, and each collective member will be paid based on his/her proportionate share of the total workweeks. The payments received by members of the Ohio Settlement Collective will be characterized as 50% wages and 50% non-wage. If 100% of the Ohio Collective Members opt in, and the full amount of requested fees, costs, and incentive awards is granted, the individual Ohio Settlement Awards will average approximately \$64.13. If 40% opt in, the total per person will be approximately \$160.33, and if only 10% opt in, the per-person amount will be approximately \$641.30.

PAGA Settlement Amount: Seventy-five percent (75%) of the approved PAGA Gross Settlement Amount will be paid to the LWDA. The remaining twenty-five percent (25%) (the “Net PAGA Amount”) will be distributed on the basis of the PAGA Representative Group Member’s total PAGA Pay Periods. AMN will determine the total number of PAGA Pay Periods in the PAGA Period for each member of the PAGA Representative Group. The Settlement Administrator will calculate the total number of pay periods across the entire group, and each person will be paid based on his/her proportionate share of the amount remaining after the LWDA payment. The PAGA Penalty Amount paid to members of the PAGA Representative Group will be characterized as 100% non-wage. The average PAGA Penalty Amount per person will be approximately \$47.53.

As discussed above, AMN will pay its employer-side payroll taxes with funds outside the Gross Settlement Amount and no portion of the Gross Settlement Amount will revert to AMN. Instead, should the Court fail to approve any of the allocations requested herein, such funds will be returned to the Net Settlement Amount.

C. The limited scope of release for Settlement Class Members and general release for Named Plaintiffs.

In exchange for the benefits provided under the Settlement, the Settlement Class

Members will release claims based on the Settlement Class(es) of which they are a part for claims arising from the start of the statute of limitations through November 1, 2022. This is outlined in detail in section III of the Settlement Agreement, but on a broad level, individuals who opt in to the FLSA Settlement Collective will release FLSA claims that were or could have been pled based on the factual allegations in the Operative Complaint or any preceding complaint filed in this Action; individuals who opt in to the Ohio Settlement Collective will release claims that were or could have been pled based on the factual allegations in the Operative Complaint or any preceding complaint filed in this Action; individuals who do not exclude themselves from the California Settlement Class will release claims that were or could have been pled based on the factual allegation in the Operative Complaint or any preceding complaint filed in this Action; and the members of the PAGA Representative Group will release all claims under the PAGA for civil penalties for Labor Code violations identified, pleaded, or otherwise set out in the PAGA Notice and/or the Operative Complaint or any preceding complaint filed in this Action during the PAGA Period.⁶ Named Plaintiffs will execute a general release of all claims, whether known or unknown to them at the time the Settlement Agreement was executed. Named Plaintiffs' release will also include a waiver pursuant to California Code of Civil Procedure § 1542. The release will not include, however, claims that cannot be waived and released as a matter of law.

D. The notice to Settlement Class Members advising them of the Settlement and opportunity to opt-in, opt-out, or object.

If preliminary approval is obtained, AMN will provide the Settlement Administrator with the contact information of all Class/Collective Members. The Settlement Administrator will then disperse three separate and independent Notice Packets: (1) one packet to members of the FLSA Collective who are not also members

⁶ Ohio Settlement Collective Members and California Settlement Class Members will not release FLSA claims unless they *also* opt in to the FLSA settlement.

1 of the Ohio Collective or the California Class giving them notice of the Settlement
2 and 60-days to opt in to the FLSA Settlement Collective; (2) one packet to members
3 of the Ohio Collective giving them notice of the Settlement and 60-days to opt in to
4 the FLSA Settlement Collective and/or the Ohio Settlement Collective; and (3) a
5 separate packet to members of the California Class giving them notice of the
6 Settlement and 60-days to opt in to the FLSA Settlement Collective (if they were
7 employed as Interpreters during the FLSA Collective Period), and 45-days to object
8 to the California Settlement or to opt out of the California Settlement Class by
9 submitting a written request for exclusion.⁷ California Class Members will also be
10 advised of the PAGA settlement.

11 To ensure as many FLSA and Ohio Collective Members receive compensation
12 for the alleged violations in the Operative Complaint, the Parties agreed to provide
13 all members of the Nationwide FLSA Collective and the Ohio Collective who have
14 not yet opted in to the Action two reminder notices: (1) a reminder postcard, and for
15 those collective members for whom AMN has provided personal email addresses, a
16 reminder email, 20 calendar days after the initial notices are sent; and (2) a reminder
17 postcard, and for those collective members for whom AMN has provided email
18 addresses, a reminder email, 40 calendar days after the initial notices are sent. To
19 further facilitate a high opt-in rate, AMN management will send a communication to
20 currently-employed members of the FLSA Collective, Ohio Collective, and
21 California Class encouraging them to participate in the Action by opting in/not opting
22 out, emphasizing that no one will be retaliated against for participating, and providing
23 contact information to the Settlement Administrator. The Parties also agreed that all
24 FLSA Collective Members and Ohio Collective Members will have the option of
25 opting-in through the regular mail or electronically, via DocuSign or another
26 commercially available electronic signature software which results in confirmed

27 ⁷ Because of the different lengths of the California Class Period and the FLSA
28 Collective Period, it is possible that some California Class Members may not also be
members of the FLSA Collective.

1 signatures delivered electronically to the Settlement Administrator, if allowed by this
2 Court.

3 Aside from opting-in or opting-out and/or objecting (for California Class
4 Members only), the Notice Packets will notify Class/Collective Members of, among
5 other things, the following: (1) the amounts to be deducted from the Gross
6 Settlement Amount for reimbursement of attorneys' fees and costs, Named
7 Plaintiff Service Awards and Settlement Administration Costs; and (2) for each
8 of the foregoing actions, the manner and deadline date for opting-in, opting-out
9 and/or objecting (where applicable). If the Settlement is preliminarily approved,
10 the Notice Packets will also inform Class/Collective Members of the date of the
11 Final Approval Hearing.

12 **IV. THE SETTLEMENT SHOULD BE PRELIMINARILY APPROVED**

13 **A. The standard for settlement approval of collective and class actions.**

14 Class action settlements must be approved by the trial court. *See* Fed. R. Civ.
15 P. 23(e). "The Ninth Circuit has a strong judicial policy that favors settlements in
16 class actions." *Hudson v. Libre Technology Inc.*, No. 3:18-cv-1371-GPC-KSC, 2019
17 WL 5963648, at *3 (S.D. Cal. Nov. 13, 2019) (citing *Class Plaintiffs v. City of*
18 *Seattle*, 955 F.2d 1268, 1276 (9th Cir. 1992)). If, however, the parties reach a
19 settlement before class certification, "the court must peruse the proposed compromise
20 to ratify both the propriety of the certification and the fairness of the settlement." *Id.*
21 (citing *Staton v. Boeing Co.*, 327 F.3d 938, 952 (9th Cir. 2003)). A majority of courts
22 have determined a hybrid Rule 23 and FLSA action is proper. *Murillo v. Pac. Gas &*
23 *Elec. Co.*, 266 F.R.D. 468, 472 (E.D. Cal. 2010).

24 The approval process is twofold: first, this Court must determine whether the
25 proposed settlement is "fair, adequate, and reasonable"; and if so, determine if the
26 Settlement Classes meet the requirements for conditional certification and class
27 certification under Rule 23. *Id.*

1 **B. The Settlement is “fair, adequate, and reasonable” and should be**
2 **preliminarily approved.**

3 “If the propos[ed] [settlement] would bind class members, the court may
4 approve it only after a hearing and only on finding that it is fair, reasonable, and
5 adequate after considering” the following factors:

- 6 (A) the class representatives and class counsel have adequately
7 represented the class;
8 (B) the proposal was negotiated at arm’s length;
9 (C) the relief provided for the class is adequate, taking into account:
10 (i) the costs, risks, and delay of trial and appeal;
11 (ii) the effectiveness of any proposed method of distributing
12 relief to the class, including the method of processing class-
13 member claims;
14 (iii) the terms of any proposed award of attorney’s fees,
15 including timing of payment; and
16 (iv) any agreement required to be identified under Rule 23(e)(3);
17 and
18 (D) the proposal treats class members equitably relative to each other.

19 Fed. R. Civ. P. 23(e)(2)(A)-(D).

20 The “underlying question remains this: Is the settlement fair?” *In re*
21 *Volkswagen “Clean Diesel” Mktg., Sales Practices, & Prod. Liab. Litig.*, 895 F.3d
22 597, 611 (9th Cir. 2018). This Court’s primary function is to determine that the
23 Settlement is not the product of fraud or overreaching by, or collusion between, the
24 negotiating parties, and that the settlement, taken as a whole, is fair, reasonable, and
25 adequate to all concerned. *Officers for Justice v. Civil Serv. Comm’n*, 688 F.2d 615,
26 625 (9th Cir. 1982).

27 As discussed in each factor below, the proposed Settlement is fair, and the Rule
28 23(e)(2) factors weigh in favor of approving it.⁸

⁸ While Defendant does not object to conditional certification/preliminary approval for purposes of settlement, Defendant specifically reserves and does not waive any and all defenses to Rule 23 class certification and/or FLSA/Ohio collective treatment in the event the class and settlement terms proposed in the Settlement Agreement are not fully and finally approved by the Court.

1 **1. Named Plaintiffs and their counsel have adequately**
2 **represented the Settlement Classes.**

3 Named Plaintiffs have diligently represented the Class/Collective Members.
4 See Declaration of Sharon Oliveira (“Oliveira Decl.”) ¶ 12, 17-18; Declaration of
5 Ingrid Leeman (“Leeman Decl.”) ¶ 16, 21-22. They actively participated by
6 providing documentation, submitting to interviews, and answering questions asked
7 by their counsel to fill in factual gaps. Oliveira Decl. ¶ 13-14; Leeman Decl. ¶ 17-18.
8 They also participated in the ENE and made themselves available during the
9 mediation. Throughout, they have remained in contact with their counsel, stayed
10 apprised of the litigation, and have acted with the interests of the Class/Collective
11 Members in mind.

12 Plaintiffs’ counsel has also adequately represented the Class/Collective
13 Members. They have vigorously prosecuted the Action, having filed multiple
14 complaints to preserve and maximize the claims of the Class/Collective Members,
15 obtained substantial informal discovery before the ENE and mediation, retained an
16 expert to review and analyze sample time and payroll records, prepared a detailed
17 and comprehensive mediation brief, attended a full-day mediation, negotiated a MOU
18 and the long-form settlement agreement, retained a Settlement Administrator, and
19 prepared and finalized this motion and supporting documents, including the notices
20 to the Class/Collective Members. This does not include the time they will have to
21 expend working with the Settlement Administrator on issuing the notices and fielding
22 inquiries from Class/Collective Members. Plaintiffs’ counsel also interviewed
23 Named Plaintiffs, obtained documents from them, met and conferred with AMN’s
24 counsel on several occasions, finalized a Rule 26(f) report, and attended the ENE.
25 Plaintiffs’ counsel also advanced litigation expenses and expert costs on behalf of the
26 Class/Collective Members, with no assurance that those expenses would be
27 reimbursed. Finally, Plaintiffs’ counsel has successfully litigated many wage-and-
28 hour class actions, and have brought that experience and knowledge to bear on behalf

1 of the Class/Collective Members. Accordingly, this factor weighs in favor of
2 preliminary approval.

3 **2. The Settlement was negotiated at arm's length.**

4 The Settlement was reached as a result of the extensive arm's-length
5 negotiations facilitated first at the ENE by Judge Gallo and then more extensively by
6 former judge and experienced mediator, Judge Adler. Though cordial and
7 professional, the settlement negotiations were adversarial and non-collusive in nature
8 as evidenced by the lengthy mediation (lasting over 11 hours) to arrive at an
9 agreement in principal, followed by almost 3.5 weeks of negotiations to fine-tune the
10 agreement into an MOU, followed by another 5 weeks of negotiations to arrive at a
11 long-form settlement agreement. "[T]he involvement of a neutral or ... facilitator in
12 [settlement] negotiations may bear on whether th[ose] [negotiations] were conducted
13 in a manner that would protect and further the class interests." Fed. R. Civ. P. 23(e),
14 2018 Advisory Committee's Notes; accord *Pederson v. Airport Terminal Servs.*, No.
15 15-cv-02400, 2018 WL 2138457, at *7 (C.D. Cal. Apr. 5, 2018) (finding the oversight
16 "of an experienced mediator" reflected noncollusive negotiations). In sum, this Court
17 can be confident of the arm's length nature of the process and that the Settlement was
18 not the product of collusion.

19 **3. The quality of relief to the Settlement Classes weighs in favor**
20 **of approval.**

21 The third factor to be considered is whether "the relief provided for the class is
22 adequate, taking in to account: (i) the costs, risks, and delay of trial and appeal; (ii)
23 the effectiveness of any proposed method of distributing relief to the class, including
24 the method of processing class-member claims; (iii) the terms of any proposed award
25 of attorney's fees, including timing of payment; and (iv) any agreement required to
26 be identified under Rule 23(e)(3)." Fed. R. Civ. P. 23(e)(2)(C). Under this factor, the
27 relief "to class members is a central concern." Fed. R. Civ. P. 23(e)(2)(C), Advisory
28 Committee's Notes; *In re Volkswagen*, 895 F.3d at 611.

1 **(i) The Settlement provides strong relief to Settlement**
2 **Class Members.**

3 The relief to be provided to Settlement Class Members is strong. AMN is
4 offering an all-in, non-reversionary Gross Settlement Amount of \$3,000,000 to settle
5 its alleged violations as set forth in the Operative Complaint. Subject to this Court’s
6 approval, and after all approved deductions are made, at least \$1,854,000 will be
7 allocated and proportionately distributed to pay Settlement Class Members for
8 alleged violations during the applicable class periods. In addition, not only were
9 Named Plaintiffs and their counsel able to recover unpaid wages for the Settlement
10 Class Members, but their actions also caused AMN to more carefully review its
11 policies and practices and refine and clarify the same. This Settlement provides
12 substantial and immediate benefits to Settlement Class Members, and readily satisfies
13 the Rule 23 standard of being fair, reasonable, and adequate, especially when
14 measured against the risks of further litigation.

15 **(ii) Continued litigation could entail substantial cost, risk,**
16 **delay and potential appeals.**

17 Almost all class actions involve high levels of cost, risk, and time, which
18 supports the Ninth Circuit’s “strong judicial policy that favors settlements,
19 particularly where complex class action litigation is concerned.” *Linney v.*
20 *Cellular Alaska P’ship*, 151 F.3d 1234, 1238 (9th Cir. 1998). “A[] central concern
21 [when evaluating a proposed class action settlement] ... relate[s] to **the cost and**
22 **risk involved in pursuing a litigated outcome.**” Fed. R. Civ. P. 23(e), 2018
23 Advisory Committee’s Notes (emphasis added). “The proposed settlement is not
24 to be judged against a hypothetical or speculative measure of what might have
25 been achieved had plaintiffs prevailed at trial.” *Wershba v. Apple Computer, Inc.*,
26 91 Cal.App.4th 224, 246 (2001) (citing *Linney*, 151 F.3d at 1242). Rather, “the
27 test is... whether the settlement is reasonable under all of the circumstances.” *Id.*
28 at 250. “A settlement need not obtain 100 percent of the damages sought in order

1 to be fair and reasonable. [Citations omitted] ... Compromise is inherent and
2 necessary in the settlement process. Thus, even if ‘the relief afforded by the
3 proposed settlement is substantially narrower than it would be if the suits were to
4 be successfully litigated,’ this is no bar to a class settlement because ‘the public
5 interest may indeed be served by a voluntary settlement in which each side gives
6 ground in the interest of avoiding litigation.’” *Id.*

7 While Plaintiffs believe in the strength of their claims, the risks to Settlement
8 Class Members of continued litigation were significant. AMN argued that the “gap
9 time” claims of the FLSA Collective and Ohio Collective for minimum wages were
10 nonexistent and had a value of zero. Plaintiffs’ counsel agreed the “gap time” claims
11 as pled were subject to attack, but had this Action not settled, Plaintiffs’ counsel were
12 going to amend the Operative Complaint and replace the “gap time” claims with
13 various breach-of-contract claims. See Dkt. 32. Defendant argued that any time
14 worked off-the-clock was de minimis and that Named Plaintiffs’ accounts of such
15 time would not be supported by other interpreters. Defendant argued that unpaid
16 breaks about which Named Plaintiffs complained were subject to various defenses
17 under the FLSA and Ohio law, and were not prohibited by California law. Defendant
18 argued that due to the high rate of pay for interpreters, any failure to reimburse for
19 expenses would not bring interpreters below the minimum wage in any workweek,
20 and thus would not ever violate the FLSA or Ohio law. Defendant further argued that
21 any required expense reimbursement under California law was much less than what
22 was alleged by Named Plaintiffs. Defendant also argued that the proper statute of
23 limitations under the FLSA should only be two years. Defendant also argued that the
24 case was not appropriate for class or collective treatment due to differences among
25 class/collective members as to whether they experienced the practices about which
26 Named Plaintiffs complained, and/or whether they suffered any damage even if they
27 were subjected to the same policies. In addition, Defendant argued that the PAGA
28 claims would be unmanageable at trial. Defendant made clear that it intended to bring

1 a motion to dismiss and/or motion for summary judgment on many of these issues,
2 and Plaintiffs intended to oppose such motions.

3 Thus, had this case not settled, this Action was poised for contentious pre-
4 certification law-and-motion work which would have consumed a substantial amount
5 of attorney time, court time, and depending on the motion and the result, potential
6 appeals to the Ninth Circuit. Thus, continued litigation would likely have been risky,
7 protracted, and costly for both sides.

8 Were the case to continue, the Parties would have to engage in formal
9 discovery, briefing conditional and class certification motions, briefing a Rule 23(f)
10 appeal after the Court's certification ruling, followed by summary judgment, *Daubert*
11 motions, motions in limine, a possible decertification motion, and then trial. Each
12 stage would have added risk and unnecessarily imposed delay before relief could be
13 provided to Settlement Class Members. As to the merits of the case, Plaintiffs believe
14 they ultimately would have been able to demonstrate that Settlement Class Members
15 were not paid all wages due, were not properly reimbursed, and did not receive the
16 proper breaks. However, Plaintiffs' counsel also recognized, based on their
17 experience in other class litigation, that their case could fail on liability, or at least be
18 whittled down. For example, AMN vigorously contended that the pre- and post-shift
19 work Named Plaintiffs and Class/Collective Members allegedly performed, if any at
20 all, were de minimis and could not have taken 15-minutes per shift.

21 Even if Plaintiffs prevailed on these issues through trial, an appeal would likely
22 follow, taking another two-plus years to resolve. Again, while Plaintiffs believe the
23 case they are pursuing on behalf of the Settlement Classes is a strong one, all cases,
24 including this one, are subject to substantial risk. Plaintiffs' theories of liability, while
25 sound in their view, remain subject to attack from AMN in a disputed conditional and
26 class certification setting and unproven in front of a jury. Also—as in any class action
27 case—establishing liability and damages on a classwide basis is rife with uncertainty,
28 making settlement the more prudent course when a reasonable deal is available. In

1 other words, a victory at trial might not even yield superior results to this settlement.

2 By settling now, AMN is agreeing to pay a Gross Settlement Amount of
3 \$3,000,000 and provide Settlement Class Members a remedy that is imminently
4 available. *See* Fed. R. Civ. P. 23(e), 2018 Advisory Committee’s Notes (“The relief
5 that the settlement is expected to provide to class members is a central concern.”).
6 The amount being offered is reasonable and well within the range of recovery after
7 considering the challenges to recovery at trial that could preclude the class from
8 collecting altogether. Here, if Named Plaintiffs adjust the damages assessed by their
9 expert to take into account just Defendant’s gap time and opt-in rate arguments (i.e.,
10 eliminating the “gap time” claims and associated statutory penalties from the FLSA
11 and Ohio exposure and then adjusting the FLSA and Ohio estimated damages
12 downward from a 100% opt in rate to a 40% opt in rate, which Defendant argued was
13 still above what would likely be the rate of opt ins in this case, Named Plaintiffs
14 estimated AMN’s potential exposure to the Nationwide FLSA and Ohio Collective
15 to be \$2,816,966. Coupled with the potential damages and penalties relating to the
16 claims of the California Class and PAGA Representative Group, Named Plaintiffs
17 estimated AMN’s potential exposure to the Class/Collective Members to be
18 \$10,060,864 for purposes of the mediation.⁹ Recovering 29.8% of a reasonable band
19 of potential damages, after the risks are considered, is well “within [the] *reasonable*
20 *range of recovery*, given the likelihood of the [P]laintiffs’ success on the merits.” *In*
21 *re Heartland Payment Systems, Inc.*, 851 F.Supp.2d 1040, 1067 (S.D. Tex. Mar. 20,
22 2012) (emphasis in original); *see also Singer v. Becton Dickinson and Co.*, No. 08–
23 CV–821–IEG (BLM), 2010 WL 2196104, at *5 (S.D. Cal. Jun. 1, 2010) (finding
24 28.84 % of claimed losses reasonable); *Glass v. UBS Fin. Serv., Inc.*, No. C–06–4068
25 MMC, 2007 WL 221862, at *4 (N.D. Cal. Jan. 26, 2007) (finding settlement of a

26 ⁹ These estimates are based on Named Plaintiffs’ expert’s evaluation of documents
27 and data provided by AMN for purposes of the ENE and mediation. If preliminary
28 approval is not granted, Named Plaintiffs intend to conduct formal discovery on
damages and obtain more information and data for their experts to analyze to ensure
their damages model can withstand anticipated *Daubert* challenges at trial.

1 wage-and-hour class action between 25% to 35% of the claimed damages to be
2 reasonable in light of the uncertainties involved in the litigation); *Betancourt v.*
3 *Advantage Human Resourcing, Inc.*, No. 14-CV-01788-JST, 2016 WL 344532, at *5
4 (N.D. Cal. Jan. 28, 2016) (concluding that a settlement providing 9.7% of the total
5 potential recovery was within the range of reasonableness); *Stovall-Gusman v. W.W.*
6 *Granger, Inc.*, No. 13-CV-02540-HSG, 2015 WL 3776765, at *4 (N.D. Cal. June 17,
7 2015) (concluding that a settlement providing 10% of the total potential recovery was
8 within the range of reasonableness); *Linney v. Cellular Alaska P'ship*, 151 F.3d 1234,
9 1242 (9th Cir. 1998) (noting that a settlement may be adequate even if it “amount[s]
10 to a fraction of the potential recovery” (citation omitted)). All of these considerations
11 favor settlement; the Settlement Class Members will receive meaningful relief now—
12 not years down the road.

13 **(iii) The Settlement provides for an effective distribution of**
14 **proceeds to the Settlement Classes.**

15 Here, the Settlement provides for an efficient and effective distribution of funds
16 to Settlement Class Members. Members of the FLSA Collective and Ohio Collective
17 will have 60 days to opt in either via regular mail or electronically to collect their
18 settlement proceeds. They will also be given reminder notices 20- and 40-calendar
19 days after the notices are issued to opt in. Members of the California Class and PAGA
20 Representative Group do not have to do anything to collect their settlement proceeds.
21 Thus, the claims process in this Settlement poses no artificial hurdles and should
22 encourage class member participation in the Settlement. Accordingly, this factor
23 weighs in favor of preliminary approval.

24 **(iv) The terms of the proposed award of attorneys' fees,**
25 **including timing of payment, also support settlement**
26 **approval.**

27 Nothing about the negotiated attorney's fee award should detract from the
28 fairness of the Settlement. The Parties (under Judge Adler's supervision) finalized

1 the material terms of the classwide relief under the Settlement before broaching the
2 subject of attorney's fees—so there is no risk that the attorney's fee agreement
3 impacted the nature of the class relief. Had the Parties not negotiated the fee, they
4 would still have proceeded with this settlement and simply would have litigated the
5 fee before this Court. In addition, the agreement was itself secured through arm's
6 length negotiations under the supervision of Judge Adler, and of course remains
7 subject to this Court's approval once Plaintiffs file their supporting motion. See Fed.
8 R. Civ. P. 23(h).

9 While the percentage sought by Plaintiffs' counsel (33% of the Gross
10 Settlement Amount) is slightly higher than the benchmark in the Ninth Circuit (25%),
11 Plaintiffs' counsel will request a modest multiplier at the appropriate time,
12 considering the risks, substantial work, contingent nature, and costs advanced by
13 Plaintiffs' counsel to bring this Action to a successful resolution. See *e.g.*, *Sadowska*
14 *v. Volkswagen Grp. of Am.*, No. CV 11-00665, 2013 WL 9600948, at *9 (C.D. Cal.
15 Sept. 25, 2013) (approving negotiated fee award 1.37 times the lodestar and noting
16 that “[m]ultipliers can range from 2 to 4 or even higher[.]”). Plaintiffs' counsel will
17 detail further when they file their Rule 23(h) motion for attorney's fees.

18 **(v) The Parties have no other agreements pertaining to the**
19 **Settlement.**

20 This Court must also evaluate any agreement made in connection with the
21 proposed Settlement. See Fed. R. Civ. P. 23(e)(2)(C)(iv), (e)(3). Here, the Settlement
22 Agreement before this Court is the only extant agreement. Thus, this factor weighs
23 in favor of preliminary approval.

24 **4. The Settlement treats all Settlement Class Members equitably.**

25 The final Rule 23(e)(2) factor turns on whether the proposed settlement “treats
26 class members equitably relative to each other.” Fed. R. Civ. P. 23(e)(2)(D).

27 Here, the Parties took into consideration the allocation between the Settlement
28 Classes as detailed in Part III.B, above. Based on the Parties' assessment of exposure,

1 risk, strength of claims, AMN’s defenses, and likely opt-in rates, they believe that
2 allocation between the Settlement Classes as discussed above is fair and reasonable.
3 In addition, and as discussed in detail in Part III.B above and detailed even further in
4 the Settlement Agreement at ¶ 55, 75(e)(iii)-(ix), the Parties proposed a fair method
5 to distribute the settlement amounts to the Settlement Class Members based on the
6 claims in the Action that applied to them, the number of workweeks in the position,
7 and for individuals with potential FLSA and/or California claims, accounting for
8 whether they worked full time or part time.¹⁰ See, e.g., *Altamirano v. Shaw Indus.,*
9 *Inc.*, No. 13-cv-00939, 2015 WL 4512372, at *8 (N.D. Cal. July 24, 2015) (finding
10 no preferential treatment because the settlement “compensates class members in a
11 manner generally proportionate to the harm they suffered on account of [the] alleged
12 misconduct”). The same is true for the releases provided by Settlement Class
13 Members: all Settlement Class Members (except for the Named Plaintiffs who will
14 sign a general release) will provide a release that is tailored to the claims that were
15 raised or could have been raised based on the alleged facts pertaining to the
16 class/collective group(s) to which they are a member. As a result, the Settlement
17 treats all Settlement Class Members equitably, further supporting approval of the
18 Settlement.

19 Finally, though Named Plaintiffs will receive additional compensation
20 commensurate with their participation in the Action, the extra payment is in
21 recognition for the service they performed on behalf of the Settlement Classes and
22 broader release of claims. The Ninth Circuit has approved such awards. *Boyd v. Bank*

23
24 ¹⁰ The allocation provides equitable distribution of the FLSA Net Settlement Amount
25 for all members of the FLSA Settlement Collective. The allocation further takes into
26 consideration that the Ohio state law claims do not provide any relief over and above
27 the relief provided under the FLSA; thus, only a minimal additional amount will be
28 paid to Ohio Settlement Collective Members in exchange for the release of their Ohio
claims. On the other hand, the allocation acknowledges that California state law
provides for potential relief far in excess of the relief provided under the FLSA
(including, for example, statutory penalties for meal and rest break violations), and
thus California Settlement Class Members will receive additional compensation in
exchange for the release of their California claims.

1 of *Am. Corp.*, No. 13-cv-0561-DOC, 2014 WL 6473804, at *7 (C.D. Cal. Nov. 18,
2 2014) (citing *Staton v. Boeing Co.*, 327 F.3d 938, 976-77 (9th Cir. 2003)).

3 For all these reasons, the proposed Settlement merits preliminary approval.

4 **V. THE SETTLEMENT CLASSES MEET ALL THE REQUIREMENTS OF**
5 **CONDITIONAL CERTIFICATION AND RULE 23**

6 As stated above, a prerequisite for the Court’s preliminary approval of a
7 class/collective action settlement is that the proposed classes meet the requirements
8 of conditional certification under the FLSA and Rule 23, as applicable.

9 **A. Conditional certification under the FLSA has been satisfied.**

10 For employees allegedly denied wages and overtime pay, the FLSA and Ohio
11 state law (based on the new Ohio statute implemented by Ohio Senate Bill 47 and
12 encoded at Ohio Revised Statutes section 4111.10(c)) establish an opt-in procedure.
13 “Under the FLSA, ‘one or more employees’ may file a civil action—termed a
14 collective action—on “behalf of himself or themselves and other employees similarly
15 situated.” *Hudson*, No. 3:18-cv-1371-GPC-KSC at *6 (citing 29 U.S.C. § 216(b)).

16 In determining whether an FLSA collective action may proceed, the Ninth
17 Circuit in *Campbell* requires a two-step approach. First, plaintiffs move for
18 preliminary certification, which involves disseminating notice to putative collective
19 members and advises them that “they must affirmatively opt in to participate in the
20 litigation.” *Campbell v. City of Los Angeles*, 903 F.3d 1090, 1108-1109 (9th Cir.
21 2018). This dissemination of notice is “conditioned on a preliminary determination
22 that the collective as defined in the complaint satisfies the ‘similarly situated’
23 requirement of section 216(b).” *Id.* at 1109. At this preliminary stage, this Court
24 applies a “lenient” standard, “loosely akin to a plausibility standard, commensurate
25 with the state of the proceedings.” *Id.* Second, “[t]he employer can move for
26 ‘decertification’ of the collective action for failure to satisfy the ‘similarly situated’
27 requirement in light of the evidence produced to that point.” *Id.*

28 According to the court in *Campbell*, “[p]arty plaintiffs are similarly situated,

1 and may proceed in a collective, to the extent *they share a similar issue of law or*
2 *fact material to the disposition of their FLSA claims.*” *Id.* at 1117 (emphasis added).
3 “If plaintiff makes a plausible showing that such a similarity exists, the district court
4 should grant first-stage certification.” *Campanelli v. Image First Healthcare Laundry*
5 *Specialists, Inc.*, No. 5-cv-04456-PJH, 2018 WL 6727825, at *5 (N.D. Cal. Dec. 21,
6 2018).

7 Here, Named Plaintiffs and other Interpreters are “similarly situated” because
8 they allegedly worked pre- and post-shift hours for which they were not paid, were
9 not paid for rest breaks that were less than 20 minutes, and had to pay for internet
10 expenses that they claim should have been borne by AMN. Named Plaintiffs and
11 other members of the Nationwide FLSA Collective and Ohio Collective are also
12 pursuing claims for unpaid overtime wages under the FLSA and Ohio state law. Since
13 Named Plaintiffs and other Interpreters are “similarly situated,” conditional
14 certification of the Nationwide FLSA and Ohio Collectives should be granted.

15 **B. The Rule 23 requirements are met.**

16 Certification requires that all four elements of Rule 23(a) and at least one prong
17 under Rule 23(b) be satisfied. The requirements of Rule 23(a) are: numerosity,
18 commonality, typicality, and adequacy. Fed. R. Civ. P. 23(a). In addition, the Court
19 must assure itself that the proposed forms of notice to the California Class are the
20 “best notice that is practicable under the circumstances.” Fed. R. Civ. P. 23(c)(2)(B).
21 Here, the California Class meets the requirements under Rule 23.

22 **1. Rule 23(a)(1) – Numerosity**

23 Numerosity requires that the proposed class be so numerous that joinder of all
24 members is impracticable. *See* Fed. R. Civ. P. 23(a)(1). No exact number is required,
25 but courts have routinely found numerosity where the putative class contains 40 or
26 more members. *In re Cooper Cos. Sec. Litig.*, 254 F.R.D. 628, 634 (C.D. Cal. 2009).

27 Here, according to AMN, there are more than 300 individuals in the California
28 Class, falling well within the acceptable scope of numerosity.

1 **2. Rule 23(a)(2) – Commonality**

2 A plaintiff has met the commonality requirement for class certification if “there
3 are questions of law or fact common to the class.” Fed. R. Civ. P. 23(a)(2). The
4 requirement is “construed permissively.” *Hanlon v. Chrysler Corp.*, 150 F.3d 1011,
5 1019 (9th Cir. 1998). “[F]or the commonality requirement to be met, there must only
6 be one single issue common to the proposed class.” *Haley v. Medtronic, Inc.*, 169
7 F.R.D. 643, 648 (C.D. Cal. 1996). The presence of one common issue whose
8 resolution will affect all or a significant number of the putative class members
9 suffices to satisfy this requirement. *See James v. City of Dallas*, 254 F.3d 551, 570
10 (5th Cir. 2001); *Bittinger v. Tecumseh Prods. Co.*, 123 F.3d 877, 884 (6th Cir. 1997);
11 *Vizcaino v. U.S. Dist. Court for W. Dist. of Wash.*, 173 F.3d 713, 722 (9th Cir. 1999)
12 (defining a class of employees as linked by their common claim to have been denied
13 benefits to which they were entitled as common law employees was proper).

14 Plaintiff Leeman alleges that AMN’s uniform policies and actions deprived
15 members of the California Class of minimum and overtime wages, compliant meal-
16 and-rest periods, compliant wage statements, unreimbursed expenses, and timely
17 payment of wages upon separation of employment. Plaintiffs take the position that
18 common proof applicable to the California Class is based on AMN’s overtime, pay,
19 meal period, and rest break policies. Thus, the California Class members share the
20 same common questions regarding the legality of AMN’s actions.¹¹

21 **3. Rule 23(a)(3) – Typicality**

22 Typicality requires that “the claims or defenses of the representative parties [be]
23 typical of the claims or defenses of the class.” Fed. R. Civ. P. 23(a)(3). The
24 representative plaintiffs’ claims are “typical” if they are “reasonably co-extensive
25 with those of absent class members.” *Hanlon*, 150 F.3d at 1020. The claims “need
26 not be substantially identical.” *Id.* However, class representatives “must be able to

27 ¹¹ Defendant contests that the policies cited have the meaning or alleged. This would be
28 a subject of motion work should this Settlement not be finally approved.

1 pursue [their] claims under the same legal or remedial theories as the unrepresented
2 class members.” *In re Paxil Litigation*, 212 F.R.D. 539, 549 (C.D. Cal. 2003).

3 Here, typicality is easily met. Plaintiff Leeman alleges she and the California
4 Class members, suffered violations of their legal rights, including not being paid
5 overtime wages, not having compliant meal-and-rest breaks, not being reimbursed
6 for business expenses, and more. Also, the law applicable to those facts is the same
7 for both Plaintiff Leeman and the California Class members. The claims Plaintiff
8 Leeman pursues on behalf of the California Class are based on the same legal theories
9 and involve the same course of conduct that equally impacted all California Class
10 members. Based on the foregoing, the typicality requirement is also satisfied.

11 **4. Rule 23(a)(4) – Adequacy**

12 The final Rule 23(a) requirement requires (1) that the representative plaintiffs
13 do not have conflicts of interest with the putative class; and (2) that plaintiffs are
14 represented by qualified and competent counsel. *Staton*, 327 F.3d at 957. Here,
15 Plaintiff Leeman has adequately represented the California Class throughout this
16 litigation. There are no intra-class conflicts as Plaintiff Leeman and the California
17 Class members share the same interest in holding AMN accountable for the alleged
18 violations. Also, Plaintiffs’ counsel are highly experienced trial and class-action
19 attorneys who have successfully handled complex class actions in both state and
20 federal court. *See* Beligan Decl., Exhs. 2 and 3; Declaration of Michael L. Fradin
21 (“Fradin Decl.”) ¶ 1; and Declaration of James L. Simon (“Simon Decl.”) ¶ 1.
22 Therefore, adequacy is satisfied.

23 **5. Rule 23(b) – Predominance and Superiority**

24 “In addition to meeting the conditions imposed by Rule 23(a), the parties
25 seeking class certification must also show that the action is maintainable under Fed.
26 R. Civ. P. 23(b)(1), (2), or (3).” *Hanlon*, 150 F.3d at 1022. Under Rule 23(b)(3): (1)
27 “the questions of law or fact common to class members predominate over any
28 questions affecting only individual members” and (2) “a class action is superior to

1 other available methods for fairly and efficiently adjudicating the controversy.”

2 As alleged, the California Class members’ claims depend on whether AMN
3 paid them for all hours worked, overtime pay, and provided them with compliant
4 meal-and-rest breaks. If found liable, those potential violations trigger derivative
5 claims (i.e., wage statement violations, waiting-time penalties and potential PAGA
6 violations, etc.). It is Plaintiffs’ position that liability and damages can be resolved
7 using the same evidence for all California Class members, and thus this Action
8 provides the precise type of predominant questions that makes a classwide
9 adjudication worthwhile. *Tyson Foods, Inc. v. Bouaphakeo*, 136 S.Ct. 1036, 1045
10 (2016) (“When ‘one or more of the central issues in the action are common to the
11 class and can be said to predominate, the action may be considered proper under Rule
12 23(b)(3)...”).

13 Superiority turns on “whether objectives of the particular class action procedure
14 will be achieved in the particular case.” *Hanlon*, 150 F.3d at 1023. The main inquiry
15 in determining superiority is whether “classwide litigation of common issues will
16 reduce litigation costs and promote greater efficiency.” *Valentino v. Carter-Wallace,*
17 *Inc.*, 97 F.3d 1227, 1234 (9th Cir. 1996). Here, resolution of the issues through
18 individual actions is impracticable as the recovery for each class member would be
19 less, especially given the attorneys’ fees, and costs that would be incurred by each
20 individual member. Accordingly, the class device is the superior method of
21 adjudicating the California Class members’ claims.

22 **VI. CONCLUSION**

23 For the foregoing reasons, the Parties respectfully request this Court to grant
24 preliminary approval of the Settlement, conditionally certify the FLSA Collective,
25 Ohio Collective, and California Class, appoint Named Plaintiffs as the Class
26 Representatives, appoint their attorneys as Class Counsel, approve as to form the
27 Notices and Opt-In Consent Forms and set a Final Approval Hearing not less than
28 134 days after the date of the order granting this Motion for Preliminary Approval.

1
2 DATED: October 31, 2022

Respectfully submitted,

3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

KABATECK LLP

By: /s/ Jerusalem F. Beligan
Brian S. Kabateck (SBN 152054)
bsk@kbklawyers.com
Shant Karnikian (SBN 285048)
sk@kbklawyers.com
Jerusalem F. Beligan (SBN 211258)
jfb@kbklawyers.com
633 W. Fifth Street, Suite 3200
Los Angeles, CA 90071
Telephone: (213) 217-5000

SIMON LAW CO.

By: /s/ James L. Simon
James L. Simon (admitted *pro hac*
vice)
james@simonsayspay.com
5000 Rockside Road
Liberty Plaza – Suite 520
Independence, OH 44131
Telephone: (216) 216-8696

By: /s/ Michael L. Fradin
Michael L. Fradin, Esq. (admitted
pro hac vice)
mike@fradinlaw.com
8401 Crawford Ave., Ste. 104
Skokie, IL 60076
Telephone: 847-986-5889

Attorneys for Plaintiffs and the Putative Classes