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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN DIEGO**

CATHRYN-LUCY PRICE and MICHELLE
PONO, on behalf of herself and all others
similarly situated,

Plaintiffs,

vs.

AMN HEALTHCARE, INC.; AMN
SERVICES, LLC, and DOES 1-100,
inclusive,

Defendants.

Case No.: 37-2018-00017996-CU-OE-CTL

CLASS and REPRESENTATIVE ACTION

**PLAINTIFF'S NOTICE OF MOTION AND
MOTION FOR FINAL APPROVAL OF
CLASS SETTLEMENT, CLASS
REPRESENTATIVE ENHANCEMENT
PAYMENT, and CLASS COUNSEL
AWARD;**

**MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
MOTION;**

**DECLARATION OF MATTHEW S.
DA VEGA IN SUPPORT OF MOTION;**

**DECLARATION OF MATTHEW H.
FISHER IN SUPPORT OF MOTION;**

**DECLARATION OF TED D.
MECHTENBERG IN SUPPORT OF
MOTION; and**

[PROPOSED] ORDER with COVER SHEET

Assigned For All Purposes to the Honorable
Gregory W. Pollack (Dept. C-71)

Date: October 5, 2023

Time: 9:30 a.m.

Location: Dept. C-71 (Hon. Gregory W.
Pollack)

1 **TO THIS HONORABLE COURT, ALL INTERESTED PARTIES, and THEIR**
2 **ATTORNEYS OF RECORD PLEASE TAKE NOTICE** that on October 5, 2023 at 9:30 a.m.,
3 or as soon as the matter may be heard, in Department C-71 (Hon. Gregory W. Pollack) of the
4 above entitled Court at San Diego County Superior Court - Central Branch, 330 West Broadway,
5 San Diego, CA 92101, Plaintiffs Cathryn-Lucy Price and Michelle Pono (“Plaintiffs”), pursuant
6 to California Code of Civil Procedure §382 and California Rules of Court, rule 3.769, *et seq.*, will
7 and do move this Court for an Order granting final approval of the proposed class action
8 settlement on the terms and conditions that this Court has previously approved (“The Motion”).
9 The Motion is *unopposed*, and is made pursuant to the California Code of Civil Procedure §382
10 and California Rules of Court, rule 3.769, *et seq.*, and the Order Granting Preliminary Approval
11 of Class Settlement (“Preliminary Approval Order”). Specifically, Plaintiffs move the Court for
12 an Order:

- 13 1. Approving the Class Settlement (**\$600,000** Maximum Settlement Amount);
- 14 2. Certifying the Class for settlement purposes only;
- 15 3. Appointing Plaintiffs as “Class Representatives” for settlement purposes;
- 16 4. Appointing Plaintiffs’ Counsel Da Vega Fisher Mechtenberg LLP as
17 “Class Counsel” for settlement purposes;
- 18 5. Approving the “Class Representatives’ Enhancement Awards” to the Class
19 Representatives for their service to the Class and taking the risks of
20 bringing this Action as a class action, which has resulted in substantial
21 benefits to the Class, in an amount up to \$10,000 to each Plaintiff for **total**
22 **of \$20,000;**
- 23 6. Approving a “Class Counsel Award” of reasonable attorneys’ fees of
24 **\$200,000** to Class Counsel plus reimbursement of **\$40,000 for litigation**
25 **costs** incurred in pursuing the claims;
- 26 7. Approving the “PAGA Penalty Amount” payment for civil penalties under
27 the Private Attorneys General Act of 2004 (“PAGA”) of **\$60,000** (75% of
28 this amount [**\$45,000**] paid to the California Labor and Workforce

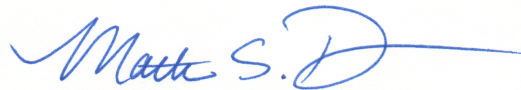
1 Development Agency [“LWDA Payment”] and 25% to this amount
2 [\$15,000] paid back to the PAGA group [“PAGA Group Amount”]).

- 3 8. Approving the “Settlement Administration Costs” of \$9,750 paid to the
4 Phoenix Settlement Administrators (“Phoenix”) for settlement
5 administration costs;
6 9. Directing the Parties to implement the terms of the Settlement; and
7 10. Entering a Judgment approving the Settlement and retaining jurisdiction
8 over the parties to enforce the terms of the judgment.

9 This unopposed Motion will be based upon: this Notice; the attached Memorandum of
10 Points and Authorities; the concurrently filed Declarations of Class Counsel, the Class
11 Representatives, and the Settlement Administrator Representative; and the records and files in this
12 action, and any other further evidence or argument that the Court may properly receive at or
13 before the hearing. Pursuant to Labor Code § 2699(1)(2), and the instructions provided by the
14 Department of Industrial Relations on its web site, a PDF copy of this motion and the supporting
15 papers will be sent/uploaded electronically to LWDA’s website at the time it is filed and served. A
16 copy of the proof of that LWDA submission is attached to Declaration of Matthew S. Da Vega.

17
18 Dated: September 11, 2023

DAVEGA | FISHER | MECHTENBERG LLP

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21 By: _____

Matthew S. Da Vega
Attorneys for Plaintiffs

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION and SUMMARY OF SETTLEMENT TERMS**

3 On behalf of themselves and similarly situated individuals, Plaintiff Cathryn-Lucy Price
4 and Michelle Pono (“Plaintiffs” or “Class Representatives”) respectfully move for final
5 settlement approval of the **\$600,000 (Six Hundred Thousand dollars)** maximum settlement
6 payment for the class claims asserted against Defendants AMN Healthcare, Inc. and AMN
7 Services, LLC, (“Defendants” or “AMN”)(or together with the Plaintiffs, the “Parties”).

8 Plaintiffs and Defendants vigorously disagree on the merits of the case. Class
9 certification, liability and damages are all sharply disputed. Nevertheless, after litigation,
10 investigations, numerous interviews, exchange of extensive information, data, and documents,
11 and an all day mediation the Parties reached an informed agreement to settle the class claims
12 pursuant to the Joint Stipulation of Settlement and Release (“Settlement Agreement”).

13 Plaintiffs filed their unopposed Motion for Preliminary Approval of Class Action
14 Settlement. A copy of the Settlement Agreement was submitted to the Court and attached to the
15 Declaration of Matthew S. Da Vega in support of that motion.

16 On May 19, 2023, the Court held a hearing on the motion for Preliminary Approval. The
17 Court preliminarily approved the settlement.

18 On May 19, 2023, the Court issued its Order Granting Preliminary Approval of Class
19 Settlement (“Preliminary Approval Order”). The Court’s Preliminary Approval Order states, in
20 part:

21 “The Court determines there is sufficient evidence to suggest that the Agreement
22 (including the Class Representative Enhancement Payment, Class Counsel's fees
23 and costs, the Settlement Administration Costs, and the allocation of payments to
24 Settlement Class Members and PAGA Group Members) falls within the range of
possible approval that could ultimately be given final approval by this Court as
fair, reasonable, and adequate ...”

25 “The Settlement Agreement and the Notice of Class Action Settlement are
26 preliminarily approved. The Court further preliminarily approves the formulas
27 provided in the Settlement for calculating Individual Settlement Payments to the
28 Class Members and PAGA payments to the PAGA Group Members using a work
week calculation methodology.”

1 “The Settlement Class is provisionally certified for settlement purposes only as a
2 class of: ""All current and former California based non-exempt employees who
3 worked for AMN as Credentialing Analysts from April 11, 2014 through the
4 date that the Court issues its order granting preliminary approval of the settlement.
5 ("Approval Date") and/or Customer Account Managers ("CAMs") from January 8,
6 2015 through the Approval Date (the "Class"). Excluded from the Settlement
7 Class are putative Class Members who submit a timely and valid Request for
8 Exclusion (as defined by the Settlement Agreement)”.

9 In that Order the Court also set a date for the Final Approval/Fairness hearing for October
10 6, 2023 at 9:30 a.m. in Dept. C-71 (Hon. Gregory W. Pollack). That hearing date was then later
11 changed by the Court to October 5, 2023 at 9:30 a.m. (Declaration of Matthew S. Da Vega in
12 Support of Plaintiffs' Unopposed Motion for Final Approval [“Da Vega Decl.”], **Exhibit 1 – May**
13 **19, 2023 Preliminary Approval of Class and Representative Action Settlement and**
14 **Provisional Class Certification Order (“Preliminary Approval Order”).**

15 On July 10, 2023, in accordance with the terms of the Settlement Agreement and
16 Preliminary Approval Order, the Class Settlement Administrator Phoenix mailed the Court-
17 approved Notice of Class Action and Proposed Settlement (aka “Notice Packets”) via first class
18 mail to all of the approximate 526 Class Members after receiving the class member data and
19 running a change of address search. Da Vega Decl., **Exhibit 2 – Declaration of Yami Burns**
20 **(On Behalf of Phoenix Settlement Administrators) with Respect to Notice and Settlement**
21 **Administration** [“Phoenix Decl.”], ¶ 1 - 17).

22 On August 14, 2023 the “Opt-Out”, dispute, and objection deadline passed. (Exhibit 2 –
23 Phoenix Decl., ¶ 8-10).

24 As of August 31, 2023 the Settlement Administrator Phoenix reported:

- 25 • 7 (seven) Notice Packets remains undeliverable despite skip trace efforts;
- 26 • 1 (one) Request for Exclusion from Class Member Brianna Calvert (“Opt-Out”);
- 27 • 0 (zero) Disputes; and
- 28 • 0 (zero) Objections.

(Exhibit 2 – Phoenix Decl., ¶ 7 - 10).

Therefore, there are a total of 525 participating Settlement Class Members out of 526
putative Class Members, representing a 99.81% participation rate. The average individual pre-tax
gross settlement payment, including PAGA payment, to each Settlement Class Members is

1 estimated at \$514.76. The highest individual settlement payment to a Settlement Class Member is
2 estimated at \$2,698.72 and the lowest is \$6.31 (Exhibit 2 – Phoenix Decl., ¶12-13).

3 As of the date of the filing of this motion, and pursuant to the terms of the Settlement
4 Agreement and Preliminary Approval Order, the Class will receive an **Estimated Net Settlement**
5 **Amount of \$270,250** (Two Hundred Seventy Thousand and Two Hundred and Fifty dollars) to
6 pay Settlement Class Members. That amount was determined by subtracting Class Counsel’s
7 attorneys’ fees [-\$200,000], Class Counsel’s litigation costs [-\$40,000], the Class Representative
8 Enhancement Awards [-\$20,000 (2 x \$10,000)], the PAGA Penalty Amount (-\$60,000, which
9 includes the LWDA payment [\$45,000] and the PAGA Group Employee payment [\$15,000]),
10 and the Settlement Administrator costs [-\$9,750] from the Maximum Settlement Amount
11 [\$600,000] to determine settlement fund payment to Class Members. (Exhibit 2 – Phoenix Decl.,
12 ¶12.)

13 This an excellent result for Class Members, especially given the potential challenges
14 entailed in successfully litigating this case. Courts routinely approve wage and hour settlements
15 of comparable cases resulting in far less recovery to individual class members. In Class
16 Counsel’s opinion, this is a good result in light of the disputed material factual and legal issues
17 involved, the intrinsic risks of further litigation without any assurance of a better outcome for
18 Class Members, and the substantial benefits available to Class Members under the Settlement.
19 The Settlement promotes judicial economy and eliminates the risk that Class Members could
20 receive nothing after protracted litigation.

21 The Settlement’s key terms are summarized as follows:

22 1. The Settlement Class is defined as:

23 “All current and former California based non-exempt employees who
24 worked for AMN as Credentialing Analysts from April 11, 2014 through
25 the date that the Court issues its order granting preliminary approval of the
26 settlement. (“Approval Date”) and/or Customer Account Managers
27 (“CAMs”) from January 8, 2015 through the Approval Date (the “Class”)”
28 (Settlement Agreement §2.A.)

“Class Periods” or “Covered Periods” refers to the period of time from
April 11, 2014 through the Approval Date for the Credentialing Analysts
sub-class and from January 8, 2015 through the Approval Date for the
CAMs sub-class.” (Settlement Agreement §2.A.)

1 “Settlement Class Members” is defined to mean those Class Members
2 who have not “opted out” of the Class Settlement by submitting a timely
3 and valid Request for Exclusion. (Settlement Agreement §2.A.)

4 2. The Maximum Settlement Amount:

5 The Settlement provides for Defendants to make a maximum payment of
6 **\$600,000** in settlement of all class and PAGA claims in the case, including
7 the Class Counsel Award, all Settlement Administration Costs, the PAGA
8 Penalty Amounts, all settlement payments to Settlement Class Members,
9 and the Class Representative Enhancement Payment. (the “Maximum
10 Settlement Amount”) (Settlement Agreement §6.A.- E.).

11 3. The Estimated Net Settlement Amount to Class Members:

12 After deducting the Class Counsel’s Award of attorney fees (-\$200,000)
13 and litigation costs (-\$40,000), Settlement Administration costs (-\$9,750),
14 PAGA penalties paid to the LWDA payment (-\$45,000), PAGA Group
15 employee payment (-\$15,000) and a Class Representative Enhancement
16 Award (-\$20,000) from the total of the Maximum Settlement Amount
17 (\$600,000), the Participating Settlement Class Members shall receive the
18 approximate Net Settlement Amount/remainder of **\$270,250** (“Estimated
19 Net Settlement Amount”) based on a pro rata allocation formula.
20 (Settlement Agreement §10.A.-B.).

21 4. Individual Settlement Payment Calculations:

22 The “Individual Settlement Payment Calculations” payment to the Class
23 Members will be based on the approximate number of Workweeks each
24 Settlement Class Member and/or PAGA Group Member worked during
25 the Class Period. The Settlement Administrator will determine the total
26 number of Workweeks worked by all Class Members during the Class
27 Period/Covered Period and then divide that Net Settlement Amount and/or
28 PAGA Group Amount (for PAGA Group Members) and apportioning to
each Settlement Class Member/PAGA Group Member, based on their
proportionate number of Weeks Class Member/PAGA Group Member,
based on their proportionate number of Weeks Worked, by multiplying
the Net Settlement Amount and PAGA Group Amount by a fraction, the
numerator of which is the Settlement Class Member’s/PAGA Group
Member’s individual total Weeks Worked, and the denominator of which
is the total number of Weeks Worked for all Settlement Class
Members/PAGA Group Members. Thirty-three percent (33%) of each
Individual Settlement Payment shall be considered wages (“Wages
Portion”) and subject to reduction for all applicable employee’s and
employer’s share of payroll contributions and withholdings, which shall
be reported by the Settlement Administrator on an IRS Form W-2. Thirty-
three percent (33%) of each Individual Settlement Payment shall be
allocated as penalties and other non-wage damages and thirty-four percent
(34%) of each Individual Settlement Payment shall be allocated as interest
(collectively, “Non-Wages Portion”), which shall be reported by the
Settlement Administrator on an IRS Form 1099. The PAGA Group
Payments shall be reported by the Settlement Administrator on an IRS
Form 1099. (Settlement Agreement §10.A.- C.)

29 5. Notice Period and Response/Opt-Out Deadline:

30 Class Members had **45 calendar days** following Class Notice (mailed on
31 July 10, 2023) on and until August 14, 2023, to mail in a written request to
32 be excluded (“Opt-Out”), dispute, or object to the proposed settlement.
(Settlement Agreement §8.E.)

6. Release of Claims For Settling Class Members:

The Settlement Agreement provides for a release of claims for Class Members who did not timely submit an “Opt-Out” Request. The released claims include:

“Released Claims” with respect to the “Released Parties” (defined below) are, “Plaintiffs and Settlement Class Members will release the Released Parties from any and all wage-and-hour claims, rights, demands, liabilities and causes of action of every nature and description, whether known or unknown, that arise out of or are reasonably related to the allegations in the operative complaint including unpaid wages, overtime premium pay, meal and rest period penalty pay, failure to reimburse business expenses, and statutory or civil penalties arising during the period (1) for the Credentialing Analysts from April 11, 2014 through the date on which the Court grants preliminary approval of the Settlement and (2) for the CAMs from January 8, 2015 through the date on which the Court grants preliminary approval of the Settlement (collectively, “Class Members’ Released Period”). The claims released by the Class Members include, but are not limited to, statutory, constitutional, contractual or common law claims for wages, damages, unpaid costs, penalties, liquidated damages, punitive damages, interest, attorneys’ fees, litigation costs, restitution, or equitable relief, for the following categories of allegations: (a) all claims for failure to pay wages for hours worked, including overtime premium pay; (b) all claims for failure to pay the minimum wage in accordance with applicable law; (c) all claims for the failure to provide meal and/or rest periods in accordance with applicable law, including payments of premiums for missed meal and/or rest periods and alleged non-payment of wages for meal periods worked and not taken; and (d) any and all claims for recordkeeping or pay stub violations, waiting time penalties and all other civil and statutory penalties, including those recoverable under PAGA, assuming the Court’s approval of the PAGA Group Settlement (“Class Members’ Released Claims”). The Class Members’ Released Claims include all those recited in the operative complaint as well as all claims that reasonably relate to the allegations in the operative complaint that could have been brought under the Fair Labor Standards Act that arose during the Class Members’ Released Period. The Class Members’ Released Claims include without limitation claims meeting the above definition(s) under any and all applicable statutes, including without limitation the California Payment of Wages Law, and in particular, California Labor Code §§ 201, 202, 203, 204, 206, 210, 216, 218.5, 218.6, 226, 226.3, 226.7, California Working Hours Law, including California Labor Code §§ 510, 512, 558; California Labor Code §§ 1174, 1174.5, 1182.11, 1182.12, 1194, 1194.2, 1194.3, 1194.5, 1197, 1197.1, 1198, 1199; the California Unfair Competition Act, and in particular, California Bus. & Prof. Code §§ 17200 et seq.; the PAGA, California Labor Code §§ 2698 et. seq.; California Code of Civil Procedure § 1021.5; California Civil Code § 3287; California Industrial Wage Order Nos. 4, 5, and 15, and any other provision of the California Labor Code or any applicable California Industrial Welfare Commission Wage Orders, in all of their iterations, and the Fair Labor Standards Act, 29 U.S.C. § 201 et. seq. (the “Released Claims”).” (Settlement Agreement §3.)

The “Released Parties” means “Defendants, and all of its former and present parents, subsidiaries, and affiliates, and their current and former officers, directors, employees, partners, shareholders and agents, and the predecessors and successors, assigns, and legal representatives of all such entities and

individuals (collectively, the “Class Members’ Released Parties”)” (Settlement Agreement §3). The Settlement Agreement also provides Defendants with a general release from named Plaintiffs/Class Representatives, including a Civil Code § 1542 waiver. (Settlement Agreement § 4)

7. PAGA Payments

\$60,000 of the Maximum Settlement Amount is allocated to be paid for the resolution of potential PAGA claims (the “PAGA Penalty Amount”). (Settlement Agreement §6.C.(4); §10.C.). Pursuant to PAGA, 75% of that amount, **\$45,000**, is to be paid to the California Labor and Workforce Development Agency (the “LWDA Payment”) and 25% of that amount, **\$15,000**, to the PAGA Group (the “PAGA Group Amount”). (Settlement Agreement §6.C.(4); §10.C.)

8. Settlement Administrator Payment

As part of the Final Approval/Fairness Hearing, Class Counsel has applied to the Court for payment from the Maximum Settlement Amount to compensate the Settlement Administrator – Phoenix Settlement Administrators - for fees and costs associated with the administration of the settlement for **\$9,750** (the “Settlement Administration Costs”). (Settlement Agreement §6.C.; § 13; Phoenix Decl., ¶ 16)

9. Class Representative Enhancement Award

Pursuant to the terms of the Settlement, Class Counsel will seek Enhancement Payments of \$10,000 for each of the two (2) Class Representatives for a total of **\$20,000**. (Settlement Agreement §6.C.(2); §12)

10. Class Counsel Award (Attorney Fees and Costs)

Plaintiffs may apply to the Court for an award of up to **\$200,000 in attorney fees plus** reimbursement of up to **\$40,000 in litigation costs** (actual costs are over \$40,000). (Settlement Agreement §6.C.(3); §11)

The final approval of the Settlement is appropriate as all requirements for a class action have been satisfied and the terms of the Settlement are fair and reasonable.

II. FACTUAL BACKGROUND

Plaintiffs allege that they and other Class Members were subject to a company-wide common policy of pressuring employees to work “off the clock” by “capping” the amount of overtime they could work and work through/during meal and rest periods without additional compensation. Plaintiffs further allege that Defendants failed to pay Plaintiffs and Class Members for all wages earned including for overtime hours worked at the appropriate overtime rate, failed to pay minimum wages, failed to pay for “on-duty” meal periods or “on-duty” rest breaks, failed to keep and provide accurate and timely records of wages earned and other legally

1 mandated records, and failed to pay Plaintiffs and Class Members whose employment has
2 terminated (voluntarily resigned and/or were terminated) a final payment of his or her wages in a
3 prompt and timely manner in conformity with California Labor Codes.

4 **III. PROCEDURAL HISTORY**

5 **April 11, 2018 (Original Class Action Complaint Filed):** Plaintiff filed and served her
6 original class action complaint. Plaintiff's complaint alleged 7 causes of action, including:
7 Failure to Pay Overtime Wages; Failure to Pay Minimum Wage; Failure to Provide Meal Breaks;
8 Failure to Provide Rest Breaks; Failure to Furnish Timely/Accurate Wage Statements; Failure to
9 Pay All Wages Due at Discharge in Timely Manner; Unlawful Business Practices.

10 **May 10, 2018 (First Amended Complaint Filed):** Plaintiff filed a FAC correcting the
11 names of the Defendants to AMN Healthcare, Inc.. and AMN Services, LLC.

12 **June 25, 2018 (Defendants Answered the FAC):** Defendants' filed and served their
13 answer to the FAC.

14 **September 6, 2018 (*Belaire* Stipulation):** The Parties submitted a stipulation to the Court
15 re providing *Belaire* notice to Credentialing Analyst class members regarding disclosure of their
16 contact information to Plaintiff's counsel.

17 **September 12, 2018 (Order re *Belaire* Notice #1):** The court approved the stipulation and
18 order the parties comply with procedures in the stipulation re *Belaire* Notice.

19 **October 12, 2018 (*Belaire* Notice #1 - Credentialing Analysts):** *Belaire* notice was
20 mailed by the class administrator to the Credentialing Analysts Class members per the previous
21 stipulation and order.

22 **January 7, 2019 (Stipulation and Proposed Order re Leave to File/Serve Second**
23 **Amended Complaint):** The Parties filed a joint stipulation for Plaintiff filing/serving a Second
24 Amended Complaint ("SAC") with the addition of a second class representative, Michelle Pono,
25 and additional class claims/allegations related to a separate class/sub-class of "Customer Account
26 Managers", and updated the definition of the class to include Customer Account Managers.

27 **January 10, 2019 (Order re SAC):** The Court ordered the SAC be deemed filed and
28 served as of the date of its order on January 10, 2019.

1 **January 28, 2019 (Case Reassigned to Judge Gregory W. Pollack):** The case was
2 reassigned to San Diego County Superior Court Judge Gregory W. Pollack (Dept. C-71).

3 **March 4, 2019 (Protective Order):** The Parties entered into a protective order.

4 **March 25, 2019 (Belaire Notice #2 – Customer Account Managers - Mailing**
5 **Completed):** The mailing of *Belaire* notice to the putative Customer Account Manager class
6 members was completed.

7 **October 1, 2019 (Agreement to Mediate):** The Parties agreed to mediate the matter with
8 Hon. Ron Sabraw (Ret.) of JAMS.

9 **January 15, 2020 (Class Action Mediation):** The Parties participated in the scheduled
10 mediation at JAMS San Jose with Hon. Ron Sabraw (Ret.). While the mediation was unsuccessful
11 the Parties continued to negotiate post-mediation regarding potential settlement. These
12 negotiations continued off and on over the next two years during active discovery and litigation.

13 **January 16, 2020 to April 2021 (Continued Discovery):** The Parties continued to engage
14 in active discovery and litigation including various depositions, interviews and production of
15 declarations from witnesses re Plaintiffs' claims, document requests, discovery disputes, case
16 management conferences, etc.

17 **April 5, 2021 (Donohue matter Remitted to San Diego County Superior Court):** The
18 *Donohue v. AMN Services, LLC* matter (San Diego County Superior Court, Case No. 37-2014-
19 00012605-CU-OE-CTL) was remitted to the Superior Court and Department C-66 (Hon. Kenneth
20 J. Medel) for further proceedings. In October 2015, the *Donohue* matter had been certified as a
21 class action prior to a summary judgment issue related to the issue of meal period "rounding"
22 went up on appeal to the California Supreme Court.

23 **June 17, 2021 (Notice of Related Case of *Donohue v. AMN Services, LLC* filed by**
24 **Plaintiffs):** Plaintiffs filed a notice of the related cases in both the *Price* court and the *Donohue*
25 court. The *Donohue* matter is/was a pending class action in San Diego County Superior Court
26 alleging a class of all nonexempt California based "Recruiters" (i.e. "Recruiter-in-training,"
27 "Recruiter," "Senior Recruiter," and "Recruiting Consultant") who were employed by AMN and
28

1 subject to alleged illegal wage and hour violations including failure to pay overtime wages,
2 rounding of time entries, meal and rest break violations, wage statement violations, etc.

3 **June 24, 2021 (Stipulation and Proposed Order re Filing of Third Amended**
4 **Complaint [TAC]):** After weeks of discussion and final agreement the Plaintiffs filed/served a
5 Stipulation and Proposed Order re filing of TAC to include additional facts and legal claims
6 related to Defendant AMN's former use of the "Team Time" timekeeping system during the
7 alleged class period.

8 **June 25, 2021 (Defendants File Opposition to Notice of Related Case):** AMN
9 filed/served an opposition to notice of related cases with *Donohue v. AMN Services, LLC*.

10 **July 2021 (Continued Scheduling of Witness and Employee Depositions):** The Parties
11 continued to schedule and negotiate dates and times of depositions of various employees and third
12 party witnesses.

13 **July 26, 2021 (Defendants Answers Third Amended Complaint [TAC]):** Defendants
14 filed its answer to the TAC. The Parties continued to discuss and schedule depositions and meet
15 and confer regarding response to requests for documents (set four) and the later document
16 production.

17 **August 2021 to March 28, 2022 (Continued Discovery and Depositions):** The Parties
18 continued to litigate the matter, engage in discovery, and take depositions of various
19 employees/witnesses.

20 **March 29, 2022 (Continued Negotiations re Settlement):** The Parties agreed to
21 informally stay discovery and further depositions while they engaged in further settlement
22 discussions under continued mediation privileges and California Evidence Code § 1119 including
23 the production of updated class data/information to help facilitate settlement discussions and
24 Plaintiffs' expert damage analysis. That data took several month to gather and produce to
25 Plaintiffs.

26 **June 7, 2022 to August 4, 2022 (Defendants Produced Updated Class Data ISO**
27 **Settlement Negotiations):** Defendants produced the updated data regarding the putative class
28 members to facilitate settlement discussions.

1 **August 12, 2022 to November 10, 2022 (Continued Negotiations re Class Settlement):**

2 After Plaintiffs' expert analysis of the updated class data the Parties continued settlement
3 negotiations. After several months of negotiations the Parties finally agreed upon the terms
4 reflected in the proposed Settlement Agreement now before the Court.

5 **May 19, 2023 (Hearing on Motion for Preliminary Approval):** The Plaintiffs filed their
6 unopposed Motion for Preliminary Approval of Class and PAGA Settlement. A copy of the
7 Settlement Agreement was attached to the Declaration of Matthew S. Da Vega ISO of the
8 Motion. The Court held the hearing on the Plaintiffs' motion on May 19, 2023. The Court
9 granted the motion.

10 **May 19, 2023 (Court Issues Order Preliminary Approving Class Settlement):** The
11 same day the Court issued its Order Granting Preliminary Approval of Class Settlement
12 ("Preliminary Approval Order"). In the Preliminary Approval Order the Court set the hearing for
13 Final Approval/Fairness Hearing for October 6, 2023. That Court later changed the date to
14 October 5, 2023 (a day earlier) at 8:30 a.m.

15 **July 10, 2023 (Notice of Class Action and PAGA Settlement Mailed):** Notice Packets
16 to Class Members were mailed by the Settlement Administrator Phoenix.

17 **August 14, 2023 (Class Action Notice Period/Response Deadline Ended):** The Class
18 Notice/Response Deadline ended.

19 **October 5, 2023 @ 9:30 a.m. (Hearing on Final Approval/Fairness of Class**
20 **Settlement):** The hearing on Final Approval/Fairness of the Class Action and PAGA settlement
21 is to be held.

22 **IV. THE SETTLEMENT SHOULD RECEIVE FINAL APPROVAL**

23 Pursuant to the Settlement, the Settlement Administrator Phoenix has engaged in a
24 comprehensive notification process which started on July 10, 2023 with mailing of notice to 526
25 Class Members via First Class mail. The notice period in which to submit a dispute, objection, or
26 "opt out" of the settlement concluded on August 14, 2023. The terms of the Settlement have been
27 well received by the Class Member as only 1 (one) Class Members has submitted an "opt-out"
28 (99.81 % participation rate), 0 (zero) Class Members have objected, and 0 (zero) Class Members

1 have submitted a dispute. (Exhibit 2 – Phoenix Decl., ¶¶ 8-11)

2 “The trial court’s discretion is broad” regarding approval of a class action settlement, and
3 “is to be exercised though the application of several well-recognized factors.” *Munoz v. BCI*
4 *Coca-Cola Bottling Co. of Los Angeles* (2010) 186 Cal.App.4th 399, 407. These factors include,
5 but are not limited to, the strength of Plaintiff’s case; the risk, expense, complexity and likely
6 duration of further litigation; the risk of maintaining class action status through trial; the amount
7 offered in settlement; the extent of discovery completed and the stage of the proceedings; the
8 experience and views of counsel; and the reaction of the class members to the proposed
9 settlement. *Id.* (omitting quotations and citations). “The most important factor is the strength of
10 the case for plaintiffs on the merits, balanced against the amount offered in settlement.” *Id.* at
11 407-408 (quoting *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 130). An
12 analysis of the pertinent factors to the Parties’ Settlement demonstrates that final approval is
13 appropriate.

14 **A. The Parties Disputed the Merits of Plaintiffs' Case and Likelihood of Class**
15 **Certification**

16 The Settlement is the result of years of litigation, numerous depositions, and the exchange
17 of significant data and information and vigorously investigated and debated claims. Plaintiffs’
18 Counsel began their investigation into the claims well before the case was filed. Plaintiffs’
19 Counsel interviewed and obtained informal discovery from the Plaintiffs and various current and
20 former Class Members regarding their experiences working for Defendants. Likewise,
21 Defendants’ counsel conducted their own investigation of Plaintiffs’ allegations after the litigation
22 was initiated. These investigations and discovery were crucial to the Parties’ dispute over both the
23 merits of the case, as well as with respect to the appropriate scope of the Class.

24 After the Action was initiated, Plaintiffs’ counsel and Defendants’ counsel engaged in
25 years of litigation, written discovery, depositions, “*Belaire*” notices, discussions, a mediation, and
26 further settlement negotiations before reaching this Settlement. Early on they began having
27 regular discussions regarding the claims, discovery, depositions, production of data, the scope of
28 the Class, and the possibility of mediation and settlement. The Parties each feel strongly

1 regarding their respective positions as to the claims asserted, both at the certification stage and on
2 the merits. In this case, Plaintiffs allege that class certification is appropriate because Defendants'
3 employees were subjected to consistent wage and hour policies regarding the lack of payment of
4 overtime wages, duty-free meal/rest periods, and wage statements. Plaintiffs allege Defendants
5 subjected Class Members to unpaid "off the clock" work and Class Members worked overtime
6 hours but were not paid for said overtime and/or at the appropriate overtime rates, were not
7 permitted duty-free meal/rest periods, and not provided timely/accurate wage statements
8 throughout the Class Period. Defendants assert that class certification would not be appropriate
9 because Plaintiffs' proposed Class Members were paid all overtime hours, permitted duty-free
10 meal/rest periods, and provided timely/accurate wage statements.

11 Throughout the litigation, the Parties also have vigorously disputed the merits of Plaintiffs'
12 claims. Plaintiffs allege that all Class Members throughout the Class Period were subject to the
13 same wage policy and practices promulgated by Defendants. Plaintiffs allege Defendants
14 pressured Class Members to work overtime hours that were not paid for at all and/or at the
15 appropriate overtime rates, etc. Defendants have generally denied Plaintiffs' allegations, and
16 further asserts that it has no liability for any of Plaintiffs' or the Class Members' alleged claims on
17 the basis that Class Members were paid for all overtime hours and permitted duty-free meal/rest
18 periods. Defendants further contends that, if this matter were to be further litigated, it would have
19 strong defenses on the merits. As the Parties clearly disagree regarding the strength of Plaintiffs'
20 claims and likelihood of class certification, the Settlement represents a fair compromise assuring
21 significant recovery to the Class Members that they would not otherwise be guaranteed.

22 **B. The Risk, Expense, And Complexity Of Continuing To Litigate The Action**

23 As demonstrated above, the Parties are sharply divided on the factual and legal issues
24 pertaining to the underlying claims, as well as whether class certification can be obtained in this
25 case. Defendants are represented by well-staffed counsel who are experienced in wage and hour
26 law and class actions, as are Plaintiffs' counsel. The Parties contend that continued litigation
27 would be protracted and expensive, with no assurance of a better outcome for the Class.

28 Significantly, while extensive informal and formal discovery has occurred to ensure the
Settlement is fair and reasonable to the Class, should the Settlement not be finally approved, the

1 Parties will need to start from scratch in terms of engaging in formal discovery on the
2 certification issues, as well as the merits in this matter. The Settlement reached by the Parties
3 through extensive arms-length negotiations eliminates the risk that the Class Members will
4 receive nothing, eliminates the need for further protracted and expensive litigation that financially
5 jeopardizes any recovery, and eliminates the risk of lengthy and uncertain appeals. The
6 elimination of those many uncertainties is reflected in the Settlement which provides prompt and
7 substantial relief to the Class Members. These factors weigh heavily in favor of approving the
8 Settlement.

9 **C. The Settlement Amount Offered To Class Members Is Fair And Reasonable**

10 The Settlement provides for Defendants to make a payment of **\$600,000** in settlement of
11 all Class claims in the case, including attorney's fees and costs, settlement administration fees,
12 PAGA penalties, and a class representative enhancement award. Class Members will share in a
13 Estimated Net Settlement Amount of approximately **\$270,250** after subtracting attorney fees
14 [-\$200,000] and costs [-\$40,000], the class representatives enhancement awards [- \$20,000
15 (\$10,000 to each of 2 class representatives)], PAGA Penalties [-\$60,000] (consisting of the
16 LWDA Payment [-\$45,000] and PAGA Group Amount [-\$15,000]) and Settlement
17 Administration Costs [-\$9,750]. (Exhibit 2 – Phoenix Decl., ¶12.) This is an excellent recovery
18 for the class, which at the time of filing includes 525 (out of 526) Settlement Class Members. The
19 average Class Member will receive a pre-tax award of approximately \$514.76 (Exhibit 2 –
20 Phoenix Decl., ¶13). The amount of the Settlement is reasonable given the difficulty of the
21 claims, the degree of risk and uncertainty involved in further litigation, the amount of time that
22 would pass before Plaintiffs and the Class Members would see the fruits of any class verdict in
23 their favor, and the lack of ability of Defendants to pay.

24 The "Individual Settlement Payment" amounts to the Settlement Class Members and
25 PAGA Group Members will be based on the approximate number of Workweeks each Settlement
26 Class Member and/or PAGA Group Member worked during the Class Period/Covered Period.
27 The Settlement Administrator will determine the total number of Workweeks worked by all Class
28 Members during the Class Period/Covered Period and then divide that Net Settlement Amount
and/or PAGA Group Amount by taking the Net Settlement Amount (for Settlement Class

Members) and PAGA Group Amount (for PAGA Group Members) and apportioning to each Settlement Class Member/PAGA Group Member, based on their proportionate number of Weeks Worked, by multiplying the Net Settlement Amount and PAGA Group Amount by a fraction, the numerator of which is the Settlement Class Member's/PAGA Group Member's individual total Weeks Worked, and the denominator of which is the total number of Weeks Worked of all Settlement Class Members/PAGA Group Members. Thirty-three percent (33%) of each Individual Settlement Payment shall be considered wages ("Wages Portion") and subject to reduction for all applicable employee's and employer's share of payroll contributions and withholdings, which shall be reported by the Settlement Administrator on an IRS Form W-2. Thirty-three percent (33%) of each Individual Settlement Payment shall be allocated as penalties and other non-wage damages and thirty-four percent (34%) of each Individual Settlement Payment shall be allocated as interest (collectively, "Non-Wages Portion"), which shall be reported by the Settlement Administrator on an IRS Form 1099. The PAGA Group Payments shall be reported by the Settlement Administrator on an IRS Form 1099. (Settlement Agreement §10.A. - C.). As stated in the Class Notices, the Settlement Class Members need not take any further action to receive a Settlement payment other than cash the settlement checks they receive in the mail. The portion of the Net Settlement Amount allocated to the Class shall be all-in and settlement checks will be sent to all Settlement Class Members. Any settlement checks not cashed after 120 days from the date of the class-wide distribution shall be void, and the Settlement Administrator shall, as soon as practicable, redistribute such remaining funds pro-rata to Settlement Class Members who have cashed their original checks sent during the initial distribution in a second distribution. If after the second distribution there remains any uncashed monies the Settlement Administrator will send it to the California State Controller's Unclaimed Property Division in accordance with California Unclaimed Property Laws. (Settlement Agreement §10.A. - C.)

D. The Settlement Agreement Is Fair And Reasonable

The law favors settlements, especially of class actions. *See Potter v. Pacific Coast Lumber Co.* (1951) 37 Cal. 2d 592, 602; *Van Bronkhorst v. Safeco Corp.* (9th Cir. 1976) 529 F.2d 943,

1 950. To ensure there is no “fraud, collusion or unfairness to the class,” class claims can only be
2 settled through Court review and approval. *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794,
3 1801. The trial court is required to determine whether the “settlement is fair, adequate and
4 reasonable,” and has “broad discretion” in making this assessment. *Id.*

5 Following notice to the Class, the Court can now make a final determination regarding the
6 fairness of the Settlement. In making this evaluation, courts consider and balance a number of
7 factors, as described above, including: [T]he strength of plaintiffs’ case, the risk, expense,
8 complexity and likely duration of further litigation, the risk of maintaining class action status
9 through trial, the amount offered in settlement, the extent of discovery completed and the stage of
10 the proceedings, the experience and views of counsel, the presence of a governmental participant,
11 and the reaction of the class members to the proposed settlement. *Wershba v. Apple Computer,*
12 *Inc.* (2001) 91 Cal.App.4th 224, 244–45 (quoting *Dunk v. Ford Motor Co.*, *supra*, 48 Cal.App.4th
13 at 1801).

14 A presumption of fairness exists when: (1) the parties reached a settlement through arm’s-
15 length bargaining; (2) the parties conducted sufficient investigation and discovery to allow
16 counsel and the Court to act intelligently; (3) counsel are experienced in similar litigation; and,
17 (4) the percentage of objectors is small. *Dunk, supra*, 48 Cal.App.4th at 1802. In this case, both
18 Plaintiffs and Defendants recognized that it was in their mutual interest to explore resolution.
19 Defendants agreed, through both formal and informal discovery processes, to produce a significant
20 amount of data to enable Plaintiffs to fully and fairly evaluate both liability and damages. Indeed,
21 prior to and during the mediation and later settlement discussions/discovery, Defendants
22 produced voluminous data, which Plaintiffs analyzed through dynamic spreadsheet calculations
23 via Plaintiffs’ experts multiple occasions. Those calculations were provided in Plaintiffs’ motion
24 for preliminary approval and declarations in support thereof.

25 The Parties therefore had more than enough information to allow for a sufficient analysis
26 of the likelihood of certification (and decertification), liability, and damages. Prior to attending
27 mediation and later settlement discussions, the Parties were aware of the strengths and
28 weaknesses of their respective positions, and they addressed their respective positions at the
lengthy mediation session and at further settlement discussions. It was only after the exchange of

1 information and multiple rounds of arm's-length demands and offers facilitated by the mediator
2 and later attorney to attorney, that the parties finally reached their proposed Settlement. The
3 amount is, of course, a compromise figure, and considers risks related to liability, possible
4 damage scenarios, and all defenses asserted by Defendants.

5 Should a Class Member not desire to participate in the Settlement, for whatever reason,
6 the Parties provided for an "opt-out" procedure. This procedure allowed any Class Members who
7 believed they had claims worth more than what the Settlement provides with an opportunity to
8 pursue their individual claims. Moreover, in the event that a Class Member disagreed with the
9 Settlement for any reason whatsoever, the Parties provided for an objection procedure. However,
10 to date only 1 (one) Class Member has "opted out", 0 (zero) Class Members have disputed their
11 Workweeks/individual payment amounts, and 0 (zero) Class Members have objected to final
12 settlement approval. At all times during this litigation, the Parties were represented by competent
13 and experienced counsel with decades of class action experience, who vigorously prosecuted their
14 respective positions while seeking a cost-effective resolution to this Action. Counsel is confident
15 that the Settlement is in the best interest of the Plaintiffs, and the Class, as it is fair, reasonable,
16 and provides substantial relief which the Class would not be guaranteed, for numerous reasons,
should litigation proceed.

17 **V. THE CLASS REPRESENTATIVE ENHANCEMENT PAYMENT IS**
18 **REASONABLE**

19 Pursuant to the terms of the Settlement, Class Counsel now seeks an Enhancement
20 Payment of **\$20,000** (\$10,000 for each of the two Class Representatives). (Settlement Agreement
21 § 6.C.(2); §12)). Courts have routinely granted such enhancements. *Staton v. Boeing Co.*, 327
22 F.3d 938, 977 (9th Cir. 2003) ("[N]amed Plaintiffs . . . are eligible for reasonable incentive
23 payments.").

24 When considering whether to make an incentive award, courts consider the following
25 factors: (1) the risk to the class representative in commencing suit, both financial and otherwise;
26 (2) the notoriety and personal difficulties encountered by the class representative; (3) the amount
27 of time and effort spent by the class representative; (4) the duration of the litigation; and (5) the
28 personal benefit, or lack thereof, received by the class representative as a result of the litigation.

1 *Van Vranken v. Atl. Richfield Co.*, 901 F. Supp. 294, 299 (N.D. Cal. 1995) (quotations and
2 citation omitted).

3 The typical enhancement award ranges from approximately \$5,000.00 to \$40,000.00,
4 although some awards are higher, and commonly more than one class representative receives
5 awards in the above range. *Mirkarimi v. Nev. Property I, LLC*, No. 12cv2160 BTM (DHB), 2016
6 WL 795878, at *6 (S.D. Cal. Feb. 29, 2016) (finding a \$30,000.00 enhancement award is proper);
7 *Chu v. Wells Fargo Inv., LLC*, Nos. C 05-4526 MHP, C 06-7924 MHP, 2011 WL 672645, at *5
8 (N.D. Cal. Feb. 16, 2011) (awarding \$10,000.00 to two named plaintiffs, and \$4,000.00 to three
9 named plaintiffs, and indicating that enhancement awards have ranged from \$5,000.00 to
10 \$50,000.00); *see also Williams v. Centerplate, Inc.*, No 11-CV-2159 H-KSC, 12-cv-0008-H-KSC,
11 2013 WL 4525428, at * (S.D. Cal. Aug. 26, 2013) (finding \$5,000.00 incentive awards to three
12 named plaintiffs, representing 2.3% of the common fund, reasonable).

13 Here, the requested Class Representative Enhancement Payments of \$10,000 each (total of
14 \$20,000) is reasonable and justified based on the significant risk, difficulties, time and effort the
15 Class Representatives incurred in bringing this case on behalf of the Class, as well as the
16 substantial benefits the resulting Settlement provides the Class. The requested award is at the
17 bottom of the reasonable range, and is justified because of the Class Representatives' involvement.
18 The Class Representatives have made exceptional efforts to provide information, witnesses, and
19 evidence to Plaintiffs' Counsel to achieve the excellent result described herein. The proposed
20 Class Representative Enhancement Payments of \$10,000 each (\$20,000 total) represents only
21 0.033 % of the \$600,000 maximum settlement amount (\$20,000 divided by \$600,000) and will not
22 significantly reduce the awards of the Class Members.

23 Plaintiffs are both young females. They were the driving force behind this case. They
24 initiated the respective claims, arranged for Plaintiffs' Counsel to obtain evidence through
25 production of their own employment files, interviewed former co-workers, reviewed the
26 pleadings/briefs, attended their own full-day depositions, had numerous calls and meetings with
27 counsel, attended a full day mediation in person, and took personal and financial risk in coming
28 forward (*see, e.g., Earley v. Sup. Ct.*, 79 Cal. App. 4th 1420, 1433 (2000) (representative risk an

adverse award of costs). Plaintiffs know little about the legal system but provided and obtained additional information in support of their legal claims. Plaintiffs and witnesses expressed fear that by participating in a class action lawsuit they might risk their current jobs and/or future opportunities. Plaintiffs however stepped up and worked diligently in support of the case. Plaintiffs had numerous meetings and telephone conversations with Class Counsel to aid in the initial investigation, factual development, depositions (their own and Defendants' employees), mediation, and resolution of this case. They also reached out to and communicated with other Class Members about their work, and encouraged by Plaintiffs, these other Class Members contacted Class Counsel to provide information about their work at Defendants. In sum, the Settlement could never have been achieved without their service to the greater good on behalf of the Class that has resulted in a recovery for these workers. (See Da Vega Decl., **Exhibit 3 - Declarations of Cathryn-Lucy Price and Michelle Pono ISO Motion for Final Approval of Class Settlement**). The Class Representatives also risked potential judgments against themselves if these matters were unsuccessful as a losing party is liable for the prevailing party's costs. *Earley v. Sup. Ct.* (2000) 79 Cal.App.4th 1420, 1431-33. Additionally, Plaintiffs have protected the interests of Class Members during the pending of this matter, and will continue to do so.

VI. THE PROPOSED ATTORNEYS' FEES AND COSTS ARE REASONABLE

Under the terms of the Settlement Agreement, Class Counsel now moves for a Class Counsel Award of reasonable **attorney's fees in the amount of \$200,000** (33.33% of the Maximum Settlement Amount of \$600,000) approved per Court's Preliminary Approval Order and Settlement Agreement. (Settlement Agreement § 6.C.(3); §11); and Preliminary Approval Order). Class Counsel also seeks reimbursement of reasonable **costs incurred in the amount of \$40,000**. (Da Vega Decl., ¶14; Settlement Agreement § 6.C.(3); §11). These amount falls well within the historical range of attorneys' fee awards, especially as Class Counsel's fees constitute one-third (1/3) of the total settlement value. The requested fee represents fair compensation for undertaking complex, risky, expensive, and time-consuming litigation on a contingent fee basis, especially in light of the substantial benefits achieved by Class Counsel for the Class Members.

1 Plaintiffs' Counsel diligently litigated and investigated this case. Class Counsel has attached a
2 detailed declaration justifying the award of fees and costs. (see Da Vega Decl., ¶¶ 1- 22).

3 It has long been recognized that “a litigant or a lawyer who recovers a common fund for
4 the benefit of persons other than himself or his client is entitled to a reasonable attorney’s fee
5 from the fund as a whole.” *Boeing Co. v. Van Gemert*, 444 U.S. 472, 478 (1980). The purpose of
6 this doctrine is to avoid unjust enrichment and to spread litigation costs proportionately among all
7 the beneficiaries. *Id.* This common fund doctrine is firmly rooted in American case law. *See, e.g.,*
8 *Trustees v. Greenough*, 105 U.S. 527 (1882); *Central R. & Banking Co. v. Pettus*, 113 U.S. 116
9 (1885); *Blum v. Stenson*, 465 U.S. 886, 900 n.16 (1984).

10 California courts have recognized that an appropriate method for awarding attorney’s fees
11 in class action cases like this is to award a percentage of the “common fund” created as a result of
12 the settlement. *City & Cnty. of San Francisco v. Sweet* (“*Sweet*”), 12 Cal.4th 105, 110-11 (1995);
13 *Quinn v. State*, 15 Cal.3d 162, 168 (1975). The basis of the common fund is fairness to the
14 successful litigant who might otherwise receive no benefit because his recovery might be
15 consumed by the expenses; correlative prevention of an unfair advantage to others who are
16 entitled to share in the fund and who should bear their share of the burden of its recovery; and
17 encouragement of the attorney, who will be more willing to undertake and diligently prosecute
18 proper litigation for the protection or recovery of the fund if he is assured that he will be properly
19 and directly compensated should his efforts be successful. *Sweet*, 12 Cal.4th 105, 111 (1995). In
20 *Quinn v. State*, the California Supreme Court expressly recognized that “one who expends
21 attorneys’ fees in winning a suit which creates a fund from which others derive benefits may
22 require those passive beneficiaries to bear a fair share of the litigation costs.” 15 Cal.3d 162, 167
23 (1975). Similarly, in *Sweet*, the Court recognized that the common fund doctrine has been
24 applied “consistently in California when an action brought by one party creates a fund in which
25 other persons are entitled to share.” 12 Cal.4th at 110.

26 Several courts have expressed frustration with the alternative “lodestar” approach for
27 deciding fee awards, which usually involves wading through voluminous and often
28 indecipherable time records. *Lealao v. Beneficial Cal., Inc.*, 82 Cal. App. 4th 19, 31 n.5 (citing *In re Activision Sec. Litig.*, 723 F. Supp. 1373, 1375 (N.D. Cal 1989)). The percentage approach is

1 preferable to the lodestar because it: (1) aligns the interests of class counsel and absent class
2 members; (2) encourages efficient resolution of the litigation by providing an incentive for early,
3 yet reasonable, settlement; and (3) reduces the demands on judicial resources. *In re Activision*,
4 723 F. Supp. at 1378-79. The Ninth Circuit now routinely uses the percentage of the common
5 fund approach to determine the award of attorney's fees. *Lealao*, 82 Cal. App. 4th at 30-31; *see*
6 *e.g.*, *In re Pacific Enters. Sec. Litig.*, 47 F.3d 373, 378-79 (9th Cir. 1995) (approving attorney's
7 fee of 33%).

8 Class Counsel's request for fees of one-third of the Maximum Settlement Amount is well
9 within the range of reasonableness. Historically, courts have awarded percentage fees between
10 20% and 50%, depending on the circumstances of the case. *See In re Activision*, 723 F.Supp. at
11 1378. Awarding 33% of a common fund is neither unreasonable nor uncommon. California
12 courts have frequently awarded attorneys' fees in common fund cases equal to one-third of the
13 gross recovery. *See, e.g.*, *Lafitte v. Robert Half International Inc.* (2016) 1 Cal.5th 480 (approving
14 one-third percent attorneys' fee); *Chavez v. Netflix, Inc.*, 162 Cal.App.4th 43, 66 n.11 (1st Dist.
15 2008) (noting that fee of one-third gross settlement value is customary); *see also, e.g.*, *In re*
16 *M.D.C. Holdings Sec. Litig.*, 1990 WL 454747, at *7 (S.D. Cal. Aug. 30, 1990) ("In private
17 contingent litigation, fee contracts have traditionally ranged between 30% and 40% of the total
18 recovery.").

19 Further, California courts recognize that a percentage fee "may be calculated on the basis
20 of the total fund made available rather than the actual payment made to the class." *Lealao*, 82
21 Cal.App.4th at 51 (citing *Boeing Co. v. Van Gemert*, 444 U.S. 472 (1980); *Waters v. Intern.*
22 *Precious Metals Corp.*, 190 F.3d 1291 (11th Cir. 1999); *Williams v. MGM-Pathe Commun's. Co.*,
23 129 F.3d 1026 (9th Cir. 1997)); *see also, e.g.*, *Bergman v. Thelen LLP*, 2016 U.S. Dist. LEXIS
24 170861, *21-22 (N.D. Cal. Dec. 9, 2016) ("...Ninth Circuit precedent requires courts to award
25 class counsel fees based on the total benefits being made available to class members rather than
26 the actual amount that is ultimately claimed.") (citing *Williams*).

27 Class Counsel has borne, and continues to bear, the entire risk and cost of litigation
28 associated with this class action on a pure contingency basis. The factual and legal issues posed
in this case are highly disputed, and there also were risks whether a class would be certified,

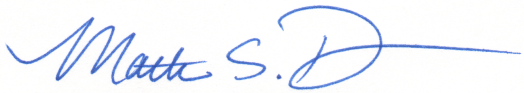
1 leaving a large number of putative class members unlikely to receive any recovery. While
2 California courts recognize that the percentage method is superior to the lodestar method, they
3 also recognize that the lodestar provides a useful “cross-check” in determining reasonableness of
4 percentage fees sought. Here, the requested fee award of \$200,000 represents a negative
5 multiplier of the lodestar to date (\$248,500) which is well within the range warranted under
6 California law. (see Da Vega Decl., ¶ 13, 19-21; **Exhibit 4 - NALFA 2020 Litigation Hourly**
7 **Rate Range Growth; Exhibit 5 - Laffey Matrix; Exhibit 6 - National Law Journal Billing**
8 **Survey 2017**; See also Declaration of Matthew H. Fisher ISO Final Approval, ¶¶ 8-13;
9 Declaration of Ted Mechtenberg ISO Final Approval ¶¶ 8-13). ““Multipliers of 1 to 4 are
10 commonly found to be appropriate in complex class action cases.”” *Destefano v. Zynga, Inc.*,
11 2016 WL 537946, at *21 (N.D. Cal. Feb. 11, 2016) (quoting *Hopkins v. Stryker Sales Corp.*, 2013
12 WL 496358, at *4 (N.D. Cal. Feb. 6, 2013)); see *Vizcaino v. Microsoft Corp.*, 290 F.3d United
13 States District Court Northern District 1043, 1051 n.6 (9th Cir. 2002)(citing survey finding most
14 multipliers range from 1.0 to 4.0). As a result, this Court should have no trouble concluding that
15 an award is supported by the lodestar cross-check is fair and reasonable and is justified under
16 California law. “[T]he lodestar method better accounts for the amount of work done, while the
17 percentage of the fund method more accurately reflects the results achieved.” *Rawlings v.*
18 *Prudential-Bache Properties, Inc.* (6th Cir. 1993) 9 F.3d 513, 516. The Court should approve the
19 requested attorneys’ fees and costs, which are justified by the results achieved, the complexity of
20 the issues, the difficulty of the case, and the risk undertaken by Class Counsel. The requested
21 attorneys’ fees and costs will not be opposed by Defendants and are well within established
22 guidelines.

22 **VII. CONCLUSION**

23 For the reasons set forth above and in the accompanying papers, Plaintiffs respectfully
24 requests that the Court grant Plaintiffs' unopposed Motion for Final Approval of the Class
25 Settlement and sign the proposed Order and Judgment thereon. The Settlement is fair, adequate,
26 and reasonable. It will result in substantial payments to Class Members; it is non-collusive; and it
27 was achieved as the result of informed, extensive, and arm’s length negotiations conducted by
28 counsel for respective Parties who are experienced in wage and hour class action litigation.

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DATED: September 11, 2023

DA '  LP

By: _____
Matthew S. Da Vega
Attorneys for Plaintiffs and Class