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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

**DECLARATION OF TED D.
MECHTENBERG IN SUPPORT OF
MOTION FOR FINAL APPROVAL OF
CLASS SETTLEMENT and ATTORNEY
FEES and COSTS**

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)

I, Ted D. Mechtenberg, hereby declare as follows:

1. I make this Declaration based on personal knowledge. If called and sworn as a witness, I would testify competently as to the facts in this Declaration.

2. I am an attorney admitted to practice law in the State of California.

3. I am a named Partner of Da Vega Fisher Mechtenberg, LLP ("DFM LLP").

4. DFM LLP is lead and only counsel for the Plaintiff in this Lawsuit. ("Class Counsel.")

5. I have been intimately involved in all aspects of this dispute and the resulting settlement. I make this declaration in support of Plaintiff's Motion for Final Approval of Class Settlement and Attorney Fees and Costs.

1 **I. LEAD COUNSEL BACKGROUND and COMPETENCY**

2 6. **DA VEGA | FISHER | MECHTENBERG LLP (“DFM LLP”)**: DFM LLP is a
3 small plaintiff-side contingency fee based law firm representing individuals who could not
4 otherwise afford legal counsel. Each case the firm takes, including this one, runs the risk of an
5 uncertain outcome and possibility of little or no recovery for the client or the firm. Many cases
6 the firm takes can require years of litigation and thousands of hours of attorney time and costs.
7 To represent our clients in this case on a contingent fee basis, our firm had to forego compensable
8 hourly work on other cases to devote the necessary time and resources to this case. In so doing,
9 our firm gave up work that a firm receives more immediate payment for in exchange for risky
10 contingent fee work in this case. This firm has previously invested in similar cases which resulted
11 in little or no recovery due to various issues, including but not limited to bankruptcy, change in
12 prevailing law, and/or lengthy appeals.

13 7. **Plaintiff’s Counsel Ted D. Mechtenberg**: I am an equity partner at the firm. I am
14 a graduate of the University of Notre Dame, B.A. Anthropology, Cum Laude (1996) and
15 Washington University School of Law, J.D. (2001). I became a member of the California State
16 Bar in 2002. I have worked with firms both in Washington State and California. From 2011 to
17 2013 I worked with the Ventura, California firm of Anderson Kill. In 2013, I was designated as a
18 Rising Star by Southern California Super Lawyers. I joined DFM LLP in 2014 as a partner. DFM
19 LLP has always been a Plaintiff-side contingency based law firm representing clients
20 predominantly in employment and personal injury matters in both individual and class actions.
21 DFM LLP is experienced counsel in matters such as this and has worked on significant
22 employment cases such as *Salvatierra v. Intuitive Surgical, Inc.*, Santa Clara County Superior
23 Court, Case No. 2014-1-CV-272069 (2016) (\$4.6M gross settlement for class of 208 misclassified
24 class member employees); *Gibbins/Leal v. Hismeh Enterprises, Inc.*, Ventura County Superior
25 Court, Case No. 56-2015-00468352 (2017) (\$1M gross settlement for class of 4000+ delivery
26 driver members reimbursements); *Sena v. Facebook, Inc.*, San Mateo County Superior Court,
27 Case No. 16CIV00496 (2018) (\$4.25M gross settlement for class of 900+ class member
28 employees for unpaid overtime wage); and *Magpiong v. CareLinx*, San Mateo County Superior

1 Court, Case No. 21-CIV-03038 (2022) (\$1.8 M gross settlement for class of 2000+ class member
2 employees for IC misclassification /unpaid overtime wage), to name but a few.

3 **II. CLASS COUNSEL AWARD OF ATTORNEY FEES and COSTS**

4 8. **Common Fund Settlement:** In this matter DFM LLP negotiated a Class action
5 settlement providing a common settlement fund with a payout of **\$600,000 (Four Hundred**
6 **Thousand dollars)**. (Settlement Agreement §§ 6.A.- E). Class Counsel is seeking as a Fee Award
7 **\$200,000 (Two Hundred Thousand dollars)** or one-third of this common settlement fund.
8 (Settlement Agreement §§ 6.C.(3)).

9 9. **Attorney Fees of 33.33% Percent of Common Fund is Reasonable:** Class
10 Counsel requests the Court grant its application for an award of attorneys' fees in the amount of
11 **\$200,000 (Two Hundred Thousand dollars)**. This is equal to 1/3 of the Maximum Settlement
12 Amount of \$600,000 created on behalf of the Class. (Settlement Agreement § 6.C.(3), §11). The
13 requested award is fair, reasonable, and well within the common range for attorney fees of 20% to
14 50% in a common fund settlement. The requested award also compares favorably to the overall
15 lodestar incurred to date (see below). Therefore, the DFM LLP respectfully requests approval of
16 the agreed upon fee award.

17 10. **Contingency Fee Matter:** As this is a contingency matter, Class Counsel litigated
18 this action without receiving any payment for their services or reimbursement of their costs
19 incurred for the benefit of the Class. To represent the Class on a contingent fee basis, Class
20 Counsel had to forego compensable hourly work or other contingency fee cases to devote the
21 necessary time and resources to this contingent case. In so doing, Class Counsel gave up work
22 that a firm receives more immediate payment for in exchange for risky class action contingency
23 fee work which could have paid the Class and its Counsel nothing. A number of difficult issues,
24 the adverse resolution of any one of which could have barred the successful prosecution of the
25 action, were present here. Attorneys' fees in this case were not only contingent but risky, with a
26 very real chance that Class Counsel would receive nothing at all for their efforts, having devoted
27 time and advancing costs. Class Counsel has previously invested in similar cases which resulted
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1 in little or no recovery due to various issues, including but not limited to bankruptcy, failed
2 certification/decertification, other overlapping class cases, and/or lengthy appeals.

3 **11. Contingency Fee Market:** I am familiar with the contingent fee market
4 throughout California and in particular as it pertains to complex employer, wage and hour, and
5 class action litigation. On behalf of my firm, I have negotiated hundreds of contingency fee
6 agreements with Plaintiffs, including both individual matters and as representatives in class action
7 suits. Many of those agreements provide that counsel will receive between 33% to 40%+ of any
8 recovery that is obtained, and, in addition that counsel be reimbursed for the costs they incurred
9 out of the recovery amount. These are typical and standard percentages in employment-related
10 contingency fee agreements throughout California. The Class Members in this complex wage and
11 hour case would not be likely to obtain competent counsel in California, for any amount less than
12 these standard fee percentages. Class Counsel has also advanced all costs in this matter and not
13 been paid for any attorney's fees or costs to date.

14 **12. Class Counsel's Hours and Hourly Rates:** I will have worked on this matter for
15 13 hours at the time of this motion and my current billable rate as of 2023 is \$650/hr. for class
16 action work (\$650/hr. x 13 hours = \$8,450 in lodestar).

17 **13. Class Counsel Lodestar Cross-Check:** I have reviewed my firm's lodestar in this
18 matter and believe the charges are reasonable and were reasonably necessary to the conduct of the
19 case. These rates are in line with the prevailing rates of attorneys in the California legal
20 community for similar work. In this case, the reasonableness of the requested for \$200,000 in
21 attorneys' fees is further supported by a cross-check using attorney's lodestar in this matter. Class
22 Counsel has spent a significant amount of hours investigating, researching, and litigating this
23 matter, including but not limited to the following: interviewing Plaintiffs and flushing out facts
24 and issues; researching employer and causes of action; developing facts and investigating
25 Defendant's ownership structure (Secretary of State, etc.); investigating and discussing job
26 functions, duties, compensation, policies and procedures, etc.; regularly meeting and/or
27 communicating with our clients who are the Class Representatives; drafting pleadings (complaint,
28 case management statements, mediation briefs); drafting and responding to informal discovery;

1 reviewing information produced in formal and informal discovery (payroll data, etc.); researching
2 employee classifications and various impact on class actions; participating in Court-ordered
3 hearings and conferences; taking and defending numerous depositions, attending mediation;
4 retention of expert witnesses; discussion with expert witnesses issues related to damage model
5 calculations; preparing and analyzing damage models; negotiating the terms of the Settlement;
6 reviewing and making changes to Settlement Agreement; and coordinating and overseeing all the
7 administration of the Settlement. The contemporaneous billing records evidence that the
8 attorneys' lodestar is \$248,500 (greater than the amount of fees requested) with additional fees
9 still to be incurred for preparation and attending the final approval hearing, managing post
10 approval settlement distribution with the claims administrator, responding to class member
11 inquiries, and handling any potential appeal of the matter. As a result, the current lodestar amount
12 understates the total attorneys' fees ultimately incurred in this action. Class Counsel lodestar
13 crosscheck of attorney fees is as follows:

Attorney Name	Hours	Hourly Rate	Totals
Matthew S. Da Vega	281	\$775	\$217,775
Matthew H. Fisher	33	\$675	\$22,275
Ted Mechtenberg	13	\$650	\$8,450
TOTAL	327		\$248,500

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18 The requested fee award of \$200,000 represents a negative multiplier. Whereas
19 “Multipliers of 1 to 4 are commonly found to be appropriate in complex class action cases.”
20 *Destefano v. Zynga, Inc.*, 2016 WL 537946, at *21 (N.D. Cal. Feb. 11, 2016) (quoting *Hopkins v.*
21 *Stryker Sales Corp.*, 2013 WL 496358, at *4 (N.D. Cal. Feb. 6, 2013)); see *Vizcaino v. Microsoft*
22 *Corp.*, 290 F.3d United States District Court Northern District 1043, 1051 n.6 (9th Cir.
23 2002)(citing survey finding most multipliers range from 1.0 to 4.0). As a result, this Court should
24 have no trouble concluding that an award is supported by the lodestar cross-check is fair and
25 reasonable and is justified under California law. “[T]he lodestar method better accounts for the
26 amount of work done, while the percentage of the fund method more accurately reflects the results
27 achieved.” *Rawlings v. Prudential-Bache Properties, Inc.* (6th Cir. 1993) 9 F.3d 513, 516..
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1 14. **Class Counsel Attorney Costs:** The Settlement Agreement permits up to **\$40,000**
2 **in reimbursement of costs.** (Settlement Agreement § 6.C.(3), §11). However, Plaintiff's actual
3 costs are only \$45,146 (Forty Five Thousand One Hundred and Forty Six dollars). Therefore,
4 Class Counsel requests the Court award it \$40,000 in costs related to filing fees, service fees,
5 mediation fees, travel costs, and expert fees which could not have been recovered if this case had
6 been lost. Class Counsel was required to advance all costs in this litigation. In this type of
7 litigation where the corporate defendant and their attorneys are well funded, this can prove to be
8 very expensive, risky, and therefore cost prohibitive to many attorneys. The financial burdens
9 undertaken by Plaintiff and Class Counsel in prosecuting this action on behalf of the Class were
10 substantial. Plaintiff undertook the risk of liability for Defendant's costs and even fees had this
11 case not succeeded, as well as other potential negative financial ramifications from having come
12 forward to sue Defendant on behalf of the Class. Accordingly, the contingent nature of the fee and
13 the financial burdens on Class Counsel and Plaintiff also support the requested awards. The
14 following list itemizes Class Counsel's costs and expenses to date:

Filings/Service/Depos/Court Fees:	\$ 15,981
Travel (Flights, Lodging, Rentals, Meal):	\$ 7,744
Mediation Fees/Costs:	\$ 6,400
Experts Fees/Costs:	\$ 15,021
TOTAL	\$ 45,146

18 15. I am presently unaware of any opposition to the final approval of this settlement.
19 I declare under penalty of perjury under the laws of the State of California that the
20 foregoing is true and correct.

22 **DATED:** September 11, 2023

DA VEGA | FISHER | MECHTENBERG LLP



25 By: _____
26 Ted D. Mechtenberg
27 Attorneys for Plaintiff and Class
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