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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 PRELIMINARY
APPROVAL OF CLASS SETTLEMENT and
CONDITIONAL CERTIFICATION FOR
SETTLEMENT PURPOSES ONLY;**

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

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

**DECLARATION OF CATHRYN-LUCY
PRICE IN SUPPORT OF MOTION;**

**DECLARATION OF MICHELLE PONO
IN SUPPORT OF MOTION;**

[PROPOSED] ORDER with COVER SHEET

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

Date: March 24, 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 March 24, 2023 at 9:30 a.m.
3 a.m., or as soon as the matter may be heard, in Department C-71 (Hon. Gregory W. Pollack) of the
4 above entitled Court located at San Diego County Superior Court - Central Branch - 330 West
5 Broadway, San Diego CA 92101, Plaintiffs Cathryn-Lucy Price and Michelle Pono (“Plaintiffs”)
6 pursuant to California Code of Civil Procedure §382 and California Rules of Court, rule 3.769, *et*
7 *seq.*, will and does move this Court for an Order granting preliminary approval of the proposed
8 class action and PAGA settlement on the terms and conditions set forth in the Joint Stipulation of
9 Class Action Settlement Agreement and Release (“Settlement Agreement”), a copy of which is
10 attached as **Exhibit B: Settlement Agreement** to the Declaration of Matthew S. Da Vega in
11 Support of Motion (“Da Vega Decl.”). Plaintiffs further moves the Court for an Order:

- 12 1. Approving the Stipulation and [Proposed] Order Granting Plaintiffs’ Leave to File
13 a Fourth Amended Complaint adding a PAGA cause of action (simultaneously
14 filed and served with this Motion), for settlement purposes only;
- 15 2. Preliminarily approving the Settlement in a form similar to [Proposed]
16 Preliminary Approval Order submitted at the same time as this Motion, for
17 settlement purposes only;;
- 18 3. Certifying the proposed Class, for settlement purposes only;
- 19 4. Appointing Plaintiffs as “Class Representatives”, for settlement purposes only;
- 20 5. Appointing Plaintiff’s Counsel Da Vega Fisher Mechtenberg LLP as Class
21 Counsel, for settlement purposes only;
- 22 6. Approving the proposed Class Notice which is attached to the Da Vega Decl. as
23 **Exhibit A: [Proposed] Notice of Class Action Settlement;**
- 24 7. Approving the method and manner for providing notice to the Class, as
25 well as procedure for requesting exclusion (“opting out”), making objections,
26 and disputing the number of Class Member’s workweeks, as set forth in the
27 Settlement Agreement;
- 28

- 1 8. Approving the schedule for sending of notice to the Class per the
2 Settlement Agreement;
3 9. Setting a date and time for Final Approval / Fairness Hearing as soon as
4 possible to consider Final Approval of the Settlement;

5 Plaintiffs seeks class certification of the following class, for settlement purposes only:

6 **The “Class” is defined as:**

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

13 “Class Periods” or “Covered Periods” refers to the period of time from April 11, 2014
14 through the Approval Date for the Credentialing Analysts sub-class and from January 8,
15 2015 through the Approval Date for the CAMs sub-class.” (Settlement Agreement §2.A.)

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

19 This Motion will be made on the grounds that the Parties have reached a settlement
20 subject to approval by this Court, which the Parties believe provides fair, just, and reasonable
21 compensation to the class of employees (Credentialing Analysts and Customer Account
22 Managers) who Plaintiffs allege were not paid for all overtime hours worked, were not paid
23 minimum wage, were not provide duty-free meal/rest periods, were not furnished timely/accurate
24 wage statements, and were not paid full wages upon separation/termination, all in violation of
25 California Labor Codes, California Unfair Business Act, the Private Attorney General Act
26 (“PAGA”) . Plaintiffs desire to give notice of the proposed settlement to the Class Members and
27 hold a hearing as to whether the settlement should be finally approved. The Parties have met and
28 conferred regarding this Motion for the Preliminary Approval of Class and PAGA Settlement and
 request the Court to approve it.

 This Motion is based on the following Memorandum of Points and Authorities in Support
 of Motion for Preliminary Approval of the Class Settlement, the Declaration of Matthew S.
 Da Vega in Support of the Motion, Declarations of the Class Representatives in Support of the

1 Motion, and all other records and papers on file in this action. Pursuant to Labor Code §
2 2699(1)(2), and the instructions provided by the Department of Industrial Relations on its
3 website, a PDF copy of this motion and the supporting papers will be sent/uploaded
4 electronically to LWDA's website at the time it is filed and served (see Da Vega Decl., **Exhibit**
5 **C: PAGA Submissions**).

6
7 Dated: March 2, 2023

DAVEGA | FISHER | MECHTENBERG LLP

8
9
10 By: _____


Matthew S. Da Vega
Attorneys for Plaintiffs

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

On behalf of himself and similarly situated individuals, Plaintiffs Cathryn-Lucy Price and Michelle Pono (“Plaintiffs” or “Class Representative”) respectfully moves for preliminary approval of a **\$600,000 (Six Hundred Thousand Dollars)** settlement of the class and PAGA claims asserted in this lawsuit against Defendant AMN Healthcare, Inc. and AMN Services, LLC (“Defendants” or “AMN”) or together with the Plaintiffs, the “Parties”. The Parties to the Lawsuit vigorously disagree on the merits of the case. Class certification, liability and damages are all sharply disputed. Nevertheless, after 4 years of litigation, investigation, numerous interviews, depositions, exchange of extensive information, data, documents, and a mediation before a professional mediator skilled in California employment laws, and additional years of litigation, the Parties reached an informed agreement to settle the class and PAGA claims pursuant to the Stipulation of Settlement and Release (“Settlement Agreement”) (See Da Vega Decl., **Exhibit B: Settlement Agreement**).

The Parties’ investigations and interchange of information enabled them to conduct meaningful and prolonged negotiations, with a keen eye towards the strengths and weaknesses of their positions and the value of the claims. In particular, the Parties exchanged data (i.e. documents and spreadsheets of all alleged Class Members employment data during the damages period) and Plaintiffs completed expert analyses of the data (i.e. estimates of potential damages for various claims if proven), which informed their views of the case, and ultimately helped set the parameters for settlement talks. All negotiations were conducted at arm’s-length and were originally facilitated by a highly experienced class action and employment mediator, Hon. Ron Sabraw (Ret.) of JAMS and then later between the Parties directly.

The Parties, after years of litigation, eventually agreed to basic terms of a potential resolution of claims codified in a Memorandum of Understanding (“MOU”) and eventually the Settlement Agreement. The Settlement represents a good value for the Class and provides an estimated average gross settlement payment of **approximately \$514.75 (pre-tax) to each of the 525 Class Member**. Further, each PAGA Class Member will receive the average and **additional**

1 **amount of \$28.77** in a PAGA Payment. The fact that the Parties were able to reach a favorable
2 settlement without additional years of risky and costly litigation presents substantial benefits to
3 the Class Members and promotes judicial economy. As detailed in these papers, the Parties
4 believe the Settlement is the best possible outcome of this matter, especially given the substantial
5 risks and delays associated with litigation.

6 Therefore, Pursuant to California Rules of Court, Rule § 3.769, Plaintiffs now seeks, and
7 Defendants do not oppose, preliminary approval of the Settlement. See Manual for Complex
8 Litigation (“MCL”) § 21.63 (4th ed. 2004). In order to effectuate the settlement and the
9 resolution of this action, Plaintiffs respectfully moves the Court for an Order:

- 10 1. Approving the Stipulation and [Proposed] Order Granting Plaintiffs’ Leave to File
11 a Fourth Amended Complaint adding a PAGA cause of action (simultaneously
12 filed and served with this Motion), for settlement purposes only;
- 13 2. Preliminarily approving the Settlement in a form similar to [Proposed]
14 Preliminary Approval Order submitted at the same time as this Motion, for
15 settlement purposes only;;
- 16 3. Certifying the proposed Class, for settlement purposes only;
- 17 4. Appointing Plaintiffs as “Class Representatives”, for settlement purposes only;
- 18 5. Appointing Plaintiff’s Counsel Da Vega Fisher Mechtenberg LLP as Class
19 Counsel, for settlement purposes only;
- 20 6. Approving the proposed Class Notice which is attached to the Da Vega Decl. as
21 **Exhibit A: [Proposed] Notice of Class Action Settlement;**
- 22 7. Approving the method and manner for providing notice to the Class, as
23 well as procedure for requesting exclusion (“opting out”), making objections,
24 and disputing the number of Class Member’s workweeks, as set forth in the
25 Settlement Agreement;
- 26 8. Approving the schedule for sending of notice to the Class per the
27 Settlement Agreement;
- 28 9. Setting a date and time for Final Approval / Fairness Hearing as soon as

possible to consider Final Approval of the Settlement;

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

III. PROCEDURAL HISTORY

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

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

June 25, 2018 (Defendants Answered the FAC): Defendants’ filed and served their answer to the FAC. (Da Vega Decl. ¶11.)

September 6, 2018 (Belaire Stipulation): The Parties submitted a stipulation to the Court re providing *Belaire* notice to Credentialing Analyst class members regarding disclosure of their contact information to Plaintiff’s counsel. (Da Vega Decl. ¶12.)

1 **September 12, 2018 (Order re *Belaire* Notice #1):** The court approved the stipulation and
2 order the parties comply with procedures in the stipulation re *Belaire* Notice. (Da Vega Decl.
3 ¶13.)

4 **October 12, 2018 (*Belaire* Notice #1 - Credentialing Analysts):** *Belaire* notice was
5 mailed by the class administrator to the Credentialing Analysts Class members per the previous
6 stipulation and order. (Da Vega Decl. ¶14.)

7 **January 7, 2019 (Stipulation and Proposed Order re Leave to File/Serve Second**
8 **Amended Complaint):** The Parties filed a joint stipulation for Plaintiff filing/serving a Second
9 Amended Complaint (“SAC”) with the addition of a second class representative, Michelle Pono,
10 and additional class claims/allegations related to a separate class/sub-class of “Customer Account
11 Managers”, and updated the definition of the class to include Customer Account Managers. (Da
12 Vega Decl. ¶15.)

13 **January 10, 2019 (Order re SAC):** The Court ordered the SAC be deemed filed and
14 served as of the date of its order on January 10, 2019. (Da Vega Decl. ¶16.)

15 **January 28, 2019 (Case Reassigned to Judge Gregory W. Pollack):** The case was
16 reassigned to San Diego County Superior Court Judge Gregory W. Pollack (Dept. C-71). (Da
17 Vega Decl. ¶17.)

18 **March 4, 2019 (Protective Order):** The Parties entered into a protective order. (Da Vega
19 Decl. ¶18.)

20 **March 25, 2019 (*Belaire* Notice #2 – Customer Account Managers - Mailing**
21 **Completed):** The mailing of *Belaire* notice to the putative Customer Account Manager class
22 members was completed. (Da Vega Decl. ¶19.)

23 **October 1, 2019 (Agreement to Mediate):** The Parties agreed to mediate the matter with
24 Hon. Ron Sabraw (Ret.) of JAMS. (Da Vega Decl. ¶20.)

25 **January 15, 2020 (Class Action Mediation):** The Parties participated in the scheduled
26 mediation at JAMS San Jose with Hon. Ron Sabraw (Ret.). While the mediation was unsuccessful
27 the Parties continued to negotiate post-mediation regarding potential settlement. These
28

1 negotiations continued off and on over the next two years during active discovery and litigation.
2 (Da Vega Decl. ¶21.)

3 **January 16, 2020 to April 2021 (Continued Discovery):** The Parties continued to engage
4 in active discovery and litigation including various depositions, interviews and production of
5 declarations from witnesses re Plaintiffs' claims, document requests, discovery disputes, case
6 management conferences, etc. (Da Vega Decl. ¶22.)

7 **April 5, 2021 (Donohue matter Remitted to San Diego County Superior Court):** The
8 *Donohue v. AMN Services, LLC* matter (San Diego County Superior Court, Case No. 37-2014-
9 00012605-CU-OE-CTL) was remitted to the Superior Court and Department C-66 (Hon. Kenneth
10 J. Medel) for further proceedings. In October 2015, the *Donohue* matter had been certified as a
11 class action prior to a summary judgment issue related to the issue of meal period "rounding"
12 went up on appeal to the California Supreme Court. (Da Vega Decl. ¶23.)

13 **June 17, 2021 (Notice of Related Case of *Donohue v. AMN Services, LLC* filed by**
14 **Plaintiffs):** Plaintiff filed a notice of the related cases in both the *Price* court and the *Donohue*
15 court. The *Donohue* matter is/was a pending class action in San Diego County Superior Court
16 alleging a class of all nonexempt California based "Recruiters" (i.e. "Recruiter-in-training,"
17 "Recruiter," "Senior Recruiter," and "Recruiting Consultant") who were employed by AMN and
18 subject to alleged illegal wage and hour violations including failure to pay overtime wages,
19 rounding of time entries, meal and rest break violations, wage statement violations, etc. (Da Vega
20 Decl. ¶24.)

21 **June 24, 2021 (Stipulation and Proposed Order re Filing of Third Amended**
22 **Complaint [TAC]):** After weeks of discussion and final agreement the Plaintiffs filed/served a
23 Stipulation and Proposed Order re filing of TAC to include additional facts and legal claims
24 related to Defendant AMN's former use of the "Team Time" timekeeping system during the
25 alleged class period. (Da Vega Decl. ¶25.)

26 **June 25, 2021 (Defendant File Opposition to Notice of Related Case):** AMN
27 filed/served an opposition to notice of related cases with *Donohue v. AMN Services, LLC*. (Da
28 Vega Decl. ¶26.)

1 **July 2021 (Continued Scheduling of Witness and Employee Depositions):** The Parties
2 continued to schedule and negotiate dates and times of depositions of various employees and third
3 party witnesses. (Da Vega Decl. ¶27.)

4 **July 26, 2021 (Defendant Answers Third Amended Complaint [TAC]):** Defendant filed
5 its answer to the TAC. The Parties continued to discuss and schedule depositions and meet and
6 confer regarding response to requests for documents (set four) and the later document production.
7 (Da Vega Decl. ¶28.)

8 **August 2021 to March 28, 2022 (Continued Discovery and Depositions):** The Parties
9 continued to litigate the matter, engage in discovery, and take depositions of various
10 employees/witnesses. (Da Vega Decl. ¶29.)

11 **March 29, 2022 (Continued Negotiations re Settlement):** The Parties agreed to
12 informally stay discovery and further depositions while they engaged in further settlement
13 discussions under continued mediation privileges and California Evidence Code § 1119 including
14 the production of updated class data/information to help facilitate settlement discussions and
15 Plaintiff's expert damage analysis. That data took several month to gather and produce to
16 Plaintiffs. (Da Vega Decl. ¶30.)

17 **June 7, 2022 to August 4, 2022 (Defendant Produced Updated Class Data ISO**
18 **Settlement Negotiations):** Defendant produced the updated data regarding the putative class
19 members to facilitate settlement discussions. (Da Vega Decl. ¶31.)

20 **August 12, 2022 to November 10, 2022 (Continued Negotiations re Class Settlement):**
21 After Plaintiff's expert analysis of the updated class data the Parties continued settlement
22 negotiations. After several months of negotiations the Parties finally agreed upon the terms
23 reflected in the proposed Settlement Agreement now before the Court. (Da Vega Decl. ¶32.)

24 **IV. CASE INVESTIGATION, DISCOVERY, NEGOTIATIONS and MEDIATION**

25 The Parties vigorously investigated and debated the claims asserted against Defendants.
26 Plaintiff's Counsel began their investigation into the claims long before the case was filed.
27 Plaintiff's Counsel interviewed and obtained discovery/documents from various current and
28 former employees regarding their experiences working for Defendant. (Da Vega Decl. ¶33.)

1 After the Lawsuit was initiated, the Parties' Counsel engaged in years of discovery, litigation,
2 data production, discussions and negotiations before reaching this Settlement. (*Id.*) Early in the
3 litigation process the Parties' Counsel began having regular discussions regarding the claims,
4 discovery, production of data, and the possibility of a mediation and settlement and after over 4
5 years of litigation came to a proposed settlement. (*Id.*)

6 **A. The Parties' Dispute of the Merits of the Case.**

7 Throughout the litigation, Defendants have denied Plaintiffs' allegations, and further have
8 denied the case is appropriate for class certification. (Da Vega Decl. ¶34.) Further, in addition to
9 generally denying the allegations, Defendants have contended that the putative Class Members
10 are/were paid correctly for all hours worked, provided minimum wage for said hours, provided
11 duty-free meal/rest periods, provided compliant wage statements, and were paid correctly upon
12 separation. (*Id.*) On the other hand, Plaintiffs allege that the Class Members were subject to the
13 same policy and practice promulgated by Defendants throughout the Class Period/Covered Period
14 including not being paid overtime wages correctly, not provided duty-free meal/rest periods, not
15 provided compliant wage statements and not paid all wages upon separation. (*Id.*) As part of the
16 investigation into the claims, Class Counsel interviewed and deposed numerous current and
17 former employees and reviewed various documents, policies, and handbooks related to Class
18 Member employees work for Defendants. (*Id.*) This investigation was crucial to the Parties'
19 dispute over both the merits of the case, as well as with respect to the appropriate scope of the
20 Class. (*Id.*)

21 **B. Document and Data Discovery and Expert Analysis**

22 Plaintiffs and Defendants informally exchanged extensive documents and multiple data
23 points/sets of data for the class (i.e. data for all class members of class period including job titles,
24 wages (salaries and bonuses), wage rates, weeks/shifts worked, start/end dates, hours worked, etc.)
25 which at the time of filing includes approximately **525 Class Members**. (Da Vega Decl. ¶35.)
26 Plaintiff retained experts Desmond, Marcello & Amster - Valuation and Litigation Consultants
27 (www.dmavalue.com) ("Plaintiff's Expert"), to examine the data produced for mediation and
28 then again for class data produced post mediation for settlement discussions. (*Id.*) Based on

1 analysis of the data, Plaintiffs made various assessments of the data, unpaid overtime
2 hours/wages, correct pay rates, minimum wage violations, meal/rest period violations, interest,
3 penalties, and calculated the potential damages. (*Id.*). Further, Plaintiff's Counsel provided
4 Defendant with Plaintiffs' position as to those calculation of damages at mediation. (*Id.*) Those
5 expert calculations estimated Defendants' potential maximum liability if the two classes were
6 certified and all the Plaintiffs' assumptions were proven true at trial:

- 7 (1) Unpaid overtime wages (Credentialing Analysts [CAs]) = \$2.5 million;
- 8 (2) Interest on those unpaid overtime wages (CAs) = \$1.1 million;
- 9 (3) Meal/Rest Period Premiums (CAs) = \$2.1 million
- 10 (4) Penalties (waiting time, wage stmt, min wage, PAGA, etc. [CAs]) = \$ 8.5 million
- 11 (5) Unpaid overtime wages (Customer Account Managers [CAMs]) = \$1.5 million;
- 12 (6) Interest on those unpaid overtime wages (CAMs) = \$704 thousand;
- 13 (7) Meal/Rest Period Premiums (CAMs) = \$1.2 million
- 14 (8) Penalties (waiting time, wage stmt, min wage, PAGA, etc. [CAMs]) = \$ 4.6
15 Million. (*Id.*)

16 The average hourly rate of the 525 putative Class Members was approximately \$21/hr.
17 (*Id.*) If you take the Estimated Net Settlement Amount (\$270,250) divided by 525 Settlement
18 Class Members then the average gross payment per Settlement Class Member will be \$514.75
19 (pre-tax). Further, each PAGA Class Member will receive the average and additional amount of
20 \$28.77 in a PAGA Payment (\$15,000 PAGA Group Amount divided by 525 PAGA Group
21 Members). (*Id.*)

22 C. Mediation and Settlement

23 On January 15, 2020 the Parties engaged in a full day of mediation with the experienced
24 JAMS employment and class action mediator Hon. Ron Sabraw (Ret.) (Da Vega Decl. ¶36.) After
25 exchanging data, documents, and other evidence the Parties met for a full-day mediation in person
26 with Plaintiffs, Plaintiff's counsel, and Defendants' counsel and representatives. (*Id.*) The
27 mediation was unsuccessful but settlement negotiations and discussions continued. (*Id.*) After
28 years of litigation the Parties engaged in further settlement discussions in earnest in March of

2022. The Parties agreed to informally stay discovery and further depositions while they engaged in further settlement discussions under continued mediation privileges and California Evidence Code § 1119 including the production of updated class data/information to help facilitate settlement discussions and Plaintiff's expert damage analysis. (*Id.*) That data took several months to gather and produce to Plaintiffs. (*Id.*) After Plaintiff's expert analysis of the updated class data the Parties continued settlement negotiations. On approximately November 10, 2022, after several months of negotiations the Parties finally agreed upon the terms reflected in the proposed Settlement Agreement now before the Court. (*Id.*) The Parties ultimately executed a confidential memorandum of understanding ("MOU"), which included settlement of the class and PAGA claims for the Maximum Settlement Amount of **\$600,000 (Six Hundred Thousand Dollars)**, subject to Court approval. (*Id.*) The Parties then later finalized the terms of the settlement in a long form Stipulation of Settlement and Release (the "Settlement Agreement"). (*Id.*)

V. CLASS REPRESENTATIVES' SERVICE TO THE CLASS

Plaintiffs were the driving force behind this class action. (Da Vega Decl., ¶ 37.) Plaintiffs played a critical role in retaining Matthew Da Vega and Matthew Fisher of Da Vega Fisher Mechtenberg LLP and providing information regarding his legal claims to make them successful. (*Id.*) Plaintiffs have/had years experience as a Credentialing Analyst and Customer Account Manager and knew other putative class members that in turn provided additional information in support of the legal claims. With their help Plaintiff's counsel was able to gather additional evidence, and contact additional putative class members. (*Id.*) Together, the Plaintiffs worked dozens of hours to help Plaintiff's counsel, sacrificing their personal time and reputation to make the case successful. (*Id.*)

In fact Plaintiff's counsel spoke to other witnesses who were afraid to participate in litigation for fear that it might result in damage to their careers. (Da Vega Decl., ¶ 38.) Plaintiffs and witnesses feared that by initiating or participating a class action lawsuit might risk their future job opportunities. (*Id.*) Despite this Plaintiffs stepped up and worked diligently in support of the case. Plaintiffs have had numerous meetings and telephone conversations with Class Counsel to aid in the initial investigation, factual development, mediation, depositions, and resolution of this

1 case. They also reached out to and communicated with other Class Member employees about their
2 work for Defendants, and encouraged by Plaintiffs, other Class Member employees contacted
3 Class Counsel to provide information and declarations about their time at Defendants. (*Id.*) In
4 sum, the Settlement could never have been achieved without Plaintiffs' service on behalf of the
5 Class. (*Id.*)

6 **VI. KEY TERMS OF THE SETTLEMENT**

7 The Settlement provides for a significant settlement payment to each Class Member. In
8 exchange, Class Members will release claims, which were asserted or could have been asserted in
9 the Lawsuit based on the facts alleged in support of the class and PAGA claims.

10 **A. Definition of the Class**

11 Under the Settlement Agreement, the "Class" is defined as follows:

12 The "Class":

13 "All current and former California based non-exempt employees who
14 worked for AMN as Credentialing Analysts from April 11, 2014 through
15 the date that the Court issues its order granting preliminary approval of the
16 settlement. ("Approval Date") and/or Customer Account Managers
17 ("CAMs") from January 8, 2015 through the Approval Date (the "Class")" (Settlement
18 Agreement §2.A.)

19 "Class Periods" or "Covered Periods" refers to the period of time from April 11, 2014
20 through the Approval Date for the Credentialing Analysts sub-class and from January 8,
21 2015 through the Approval Date for the CAMs sub-class." (Settlement Agreement §2.A.)

22 "Settlement Class Members" is defined to mean those Class Members who have not
23 "opted out" of the Class Settlement by submitting a timely and valid Request for
24 Exclusion. (Settlement Agreement §2.A.)

25 **B. \$600,000 Maximum Settlement Amount**

26 The Settlement provides for Defendant to make a maximum payment of **\$600,000 (Six**
27 **Hundred Thousand Dollars)** in settlement of all class and PAGA claims in the case, including
28 the Class Counsel Award, all Settlement Administration Costs, the PAGA Penalties amount, all
settlement payments to Settlement Class Members and PAGA Group Members, and the Class
Representatives Enhancement Payments. (the "Maximum Settlement Amount") (Settlement
Agreement §6.A. - E.)

1 The “Individual Settlement Payment” amounts to the Settlement Class Members and
2 PAGA Group Members will be based on the approximate number of Workweeks each Settlement
3 Class Member and/or PAGA Group Member worked during the Class Period/Covered Period.
4 The Settlement Administrator will determine the total number of Workweeks worked by all Class
5 Members during the Class Period/Covered Period and then divide that Net Settlement Amount
6 and/or PAGA Group Amount by taking the Net Settlement Amount (for Settlement Class
7 Members) and PAGA Group Amount (for PAGA Group Members) and apportioning to each
8 Settlement Class Member/PAGA Group Member, based on their proportionate number of Weeks
9 Worked, by multiplying the Net Settlement Amount and PAGA Group Amount by a fraction, the
10 numerator of which is the Settlement Class Member’s/PAGA Group Member’s individual total
11 Weeks Worked, and the denominator of which is the total number of Weeks Worked of all
12 Settlement Class Members/PAGA Group Members. Thirty-three percent (33%) of each
13 Individual Settlement Payment shall be considered wages (“Wages Portion”) and subject to
14 reduction for all applicable employee’s and employer’s share of payroll contributions and
15 withholdings, which shall be reported by the Settlement Administrator on an IRS Form W-2.
16 Thirty-three percent (33%) of each Individual Settlement Payment shall be allocated as penalties
17 and other non-wage damages and thirty-four percent (34%) of each Individual Settlement
18 Payment shall be allocated as interest (collectively, “Non-Wages Portion”), which shall be
19 reported by the Settlement Administrator on an IRS Form 1099. The PAGA Group Payments shall
20 be reported by the Settlement Administrator on an IRS Form 1099. (Settlement Agreement §10.A.
21 - C.)

22 The portion of the Net Settlement Amount allocated to the Class shall be all-in and
23 settlement checks will be sent to all Settlement Class Members. Any settlement checks not cashed
24 after 120 days from the date of the class-wide distribution shall be void, and the Settlement
25 Administrator shall, as soon as practicable, redistribute such remaining funds pro-rata to
26 Settlement Class Members who have cashed their original checks sent during the initial
27 distribution in a second distribution. If after the second distribution there remains any uncashed
28 monies the Settlement Administrator will send it to the California State Controller’s Unclaimed

1 Property Division in accordance with California Unclaimed Property Laws. (Settlement
2 Agreement §10.A. - C.)

3 **C. Released Claims**

4 *Released Claims:* Under the terms of the Settlement Agreement, upon Final Approval by
5 the Court, and subject to Defendants' deposit of the Maximum Settlement Amount with the
6 Settlement Administrator, Plaintiffs and each Settlement Class Member shall be bound by the
7 Settlement, and, at the same time, will have released the Released Parties from the Released
8 Claims. The "Released Claims" with respect to the "Released Parties" (defined below) are,
9 "Plaintiffs and Settlement Class Members will release the Released Parties from any and all wage-
10 and-hour claims, rights, demands, liabilities and causes of action of every nature and description,
11 whether known or unknown, that arise out of or are reasonably related to the allegations in the
12 operative complaint including unpaid wages, overtime premium pay, meal and rest period penalty
13 pay, failure to reimburse business expenses, and statutory or civil penalties arising during the
14 period (1) for the Credentialing Analysts from April 11, 2014 through the date on which the Court
15 grants preliminary approval of the Settlement and (2) for the CAMs from January 8, 2015 through
16 the date on which the Court grants preliminary approval of the Settlement (collectively, "Class
17 Members' Released Period"). The claims released by the Class Members include, but are not
18 limited to, statutory, constitutional, contractual or common law claims for wages, damages,
19 unpaid costs, penalties, liquidated damages, punitive damages, interest, attorneys' fees, litigation
20 costs, restitution, or equitable relief, for the following categories of allegations: (a) all claims for
21 failure to pay wages for hours worked, including overtime premium pay; (b) all claims for failure
22 to pay the minimum wage in accordance with applicable law; (c) all claims for the failure to
23 provide meal and/or rest periods in accordance with applicable law, including payments of
24 premiums for missed meal and/or rest periods and alleged non-payment of wages for meal periods
25 worked and not taken; and (d) any and all claims for recordkeeping or pay stub violations, waiting
26 time penalties and all other civil and statutory penalties, including those recoverable under PAGA,
27 assuming the Court's approval of the PAGA Group Settlement ("Class Members' Released
28 Claims"). The Class Members' Released Claims include all those recited in the operative

1 complaint as well as all claims that reasonably relate to the allegations in the operative complaint
2 that could have been brought under the Fair Labor Standards Act that arose during the Class
3 Members' Released Period. The Class Members' Released Claims include without limitation
4 claims meeting the above definition(s) under any and all applicable statutes, including without
5 limitation the California Payment of Wages Law, and in particular, California Labor Code §§ 201,
6 202, 203, 204, 206, 210, 216, 218.5, 218.6, 226, 226.3, 226.7, California Working Hours Law,
7 including California Labor Code §§ 510, 512, 558; California Labor Code §§ 1174, 1174.5,
8 1182.11, 1182.12, 1194, 1194.2, 1194.3, 1194.5, 1197, 1197.1, 1198, 1199; the California Unfair
9 Competition Act, and in particular, California Bus. & Prof. Code §§ 17200 et seq.; the PAGA,
10 California Labor Code §§ 2698 et. seq.; California Code of Civil Procedure § 1021.5; California
11 Civil Code § 3287; California Industrial Wage Order Nos. 4, 5, and 15, and any other provision of
12 the California Labor Code or any applicable California Industrial Welfare Commission Wage
13 Orders, in all of their iterations, and the Fair Labor Standards Act, 29 U.S.C. § 201 et. seq. (the
14 "Released Claims")." (Settlement Agreement §3.) (Da Vega Decl., ¶ 43.)

15 *Released Parties:* The term "Class Members' Released Parties" means, "Defendants, and
16 all of its former and present parents, subsidiaries, and affiliates, and their current and former
17 officers, directors, employees, partners, shareholders and agents, and the predecessors and
18 successors, assigns, and legal representatives of all such entities and individuals (collectively, the
19 "Class Members' Released Parties")" (Settlement Agreement §3). The Settlement Agreement
20 also provides Defendant with a general release from named Plaintiffs/Class Representatives,
21 including a Civil Code § 1542 waiver. (Settlement Agreement § 4) (Da Vega Decl., ¶ 44.)

22 **D. Attorneys' Fees and Incurred Expenses**

23 Under the terms of the Settlement Agreement, Class Counsel will move for reasonable
24 attorney's fees, not exceeding one-third or **\$200,000 (Two Hundred Thousand Dollars)** of the
25 Maximum Settlement Amount (\$600,000). (Settlement Agreement §§ 6 (C.)(3); 11). Class
26 Counsel will also seek reimbursement of reasonable expenses incurred by Class Counsel in
27 connection with the Lawsuit, not exceeding **\$40,000 (Forty Thousand Dollars)**. (*Id.*) The Court
28 need not rule on Class Counsel's fees and expenses now; a formal application will be filed prior to

1 and to be heard at the same date and time as the Final Approval Hearing. As will be explained in
2 detail in the application, the requested fees and costs are eminently reasonable considering the
3 amount of time and expenses incurred by Class Counsel in this case. In that application for fees
4 and costs Class Counsel will provide a lodestar cross check and itemization of costs so that the
5 court can see the requests are reasonable. (Da Vega Decl., ¶ 45.)

6 **E. PAGA Penalties, LWDA Payment, and Settlement Administrator Costs**

7 **\$60,000 (Sixty Thousand Dollars)** of the Maximum Settlement Amount is allocated to be
8 paid for the resolution of potential PAGA claims (the “PAGA Penalties”). (Settlement Agreement
9 §§ 6.C.(4); 10.C.) Pursuant to PAGA, 75% of that amount, **\$45,000 (Forty Five Thousand**
10 **Dollars)**, is to be paid to the California Labor and Workforce Development Agency (the “LWDA
11 Payment”) and 25% to the PAGA Group, **\$15,000 (Fifteen Thousand Dollars)**, (the “PAGA
12 Group Amount”). (*Id.*). Prior to the Final Approval/Fairness Hearing, Class Counsel will apply to
13 the Court for payment from the Maximum Settlement Amount to compensate the Settlement
14 Administrator, Phoenix Settlement Administrators, for fees and costs associated with the
15 administration of the settlement (not to exceed **\$9,750 [Nine Thousand Seven Hundred and**
16 **Fifty Dollars]**)(the “Settlement Administration Costs”). (Settlement Agreement §§ 6.C.; 13)
17 (Da Vega Decl., ¶ 46.)

18 **F. Class Representative Enhancement Payment**

19 Pursuant to the terms of the Settlement Agreement, Class Counsel will seek Enhancement
20 Payments of \$10,000 (Ten Thousand Dollars) for each of the the two Class Representative for a
21 total of **\$20,000 (Twenty Thousand Dollars)**. (Settlement Agreement §§ 6.C (2); 12) The Court
22 need not rule on the Class Representative Enhancement Payments now; a formal application will
23 be filed prior to the Final Approval/Fairness Hearing. As will be explained in detail in the
24 application, the requested Enhancement Payments are reasonable and justified based on the
25 significant time, effort and risks the Class Representatives incurred in bringing this case on behalf
26 of the Class, as well as the substantial benefits the resulting Settlement provides the Class. The
27 proposed Class Representative Enhancement Payment represents only .03% of the total Maximum
28 Settlement Amount and will not significantly reduce the awards of the Class Members. Public

1 policy strongly supports service awards to plaintiffs in employment class actions, and they are
2 routinely granted by courts in this state and around the country. Such awards compensate
3 plaintiffs for the efforts and risks they have undertaken on behalf of the Class, without which no
4 settlement would be possible. And, they provide an incentive for other employees to bring cases
5 that vindicate the public interest in the lawful payment of wages. (Da Vega Decl., ¶47.)

6 **VII. THE SETTLEMENT IS FAIR, REASONABLE, AND ADEQUATE AND SHOULD**
7 **BE PRELIMINARILY APPROVED**

8 The law favors settlements, especially of class actions. See *Potter v. Pacific Coast*
9 *Lumber Co.* (1951) 37 Cal. 2d 592, 602; *Van Bronkhorst v. Safeco Corp.* (9th Cir. 1976) 529 F.2d
10 943, 950. To ensure there is no “fraud, collusion or unfairness to the class,” class claims can only
11 be settled through Court review and approval. *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th
12 1794, 1801. The trial court is required to determine whether the “settlement is fair, adequate and
13 reasonable,” and has “broad discretion” in making this assessment. *Id.* Nevertheless, “[d]ue regard
14 should be given to what is otherwise a private consensual agreement between the parties.” *Id.*

15 At this stage, the Court is making a preliminary assessment of whether the Settlement
16 appears to be fair, adequate, and reasonable and, thus, whether notice to the class of the settlement
17 terms and conditions and the scheduling of a final approval hearing is worthwhile. See Cal. Rules
18 of Court, rule 3.769; 4 NEWBERG ON CLASS ACTIONS § 13:13 (5th ed. 2014). (“The goal of
19 preliminary approval [of a class settlement] is for a court to determine whether notice of the
20 proposed settlement should be sent to the class, not to make a final determination of the
21 settlement’s fairness.”) “The general rule is that a court will grant preliminary approval where the
22 proposed settlement is neither illegal nor collusive and is within the range of possible of
23 approval.” 4 NEWBERG ON CLASS ACTIONS § 13:10 (5th ed. 2014). See also *Harris v. Vector*
24 *Mktg. Corp.* (N.D. Cal. Apr. 29, 2011) No. C-08-5198 EMC, 2011 WL 1627973, at *7 (“the Court
25 may grant preliminary approval of a settlement and direct notice to the class if the settlement (1)
26 appears to be the product of serious, informed, non-collusive negotiations; (2) has no obvious
27 deficiencies; (3) does not improperly grant preferential treatment to class representatives or
28 segments of the class; and (4) falls within the range of possible approval.”)

1 Following notice to the Class, the Court will make a final determination regarding the
2 fairness of Settlement. In making this evaluation, courts consider and balance a number of
3 factors, including:

4 [T]he strength of plaintiffs' case, the risk, expense, complexity and likely duration
5 of further litigation, the risk of maintaining class action status through trial, the
6 amount offered in settlement, the extent of discovery completed and the stage of
7 the proceedings, the experience and views of counsel, the presence of a
governmental participant, and the reaction of the class members to the proposed
settlement.

8 *Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 244–45 (quoting *Dunk v. Ford*
9 *Motor Co., supra*, 48 Cal.App.4th at 1801). Nevertheless, a presumption of fairness exists when:
10 (1) the parties reached a settlement through arm's-length bargaining; (2) the parties conducted
11 sufficient investigation and discovery to allow counsel and the Court to act intelligently; (3)
12 counsel are experienced in similar litigation; and, (4) the percentage of objectors is small. *Dunk,*
13 *supra*, 48 Cal.App.4th at 1802.

14 **A. The Settlement Is the Product of Non-Collusive, Arm's-length, and Well-**
15 **Informed Negotiations**

16 In reaching the Settlement Agreement, counsel on both sides relied on their respective
17 substantial litigation experience in similar employment class actions, and thorough analysis of the
18 legal and factual issues presented in this case. Information obtained through Class Member
19 interviews, depositions, and informal discovery informed Plaintiffs' assessment of the strengths
20 and weaknesses of the case and the benefits of the Settlement Agreement. The document and data
21 exchanges have allowed the Parties to closely evaluate the claims in this case, and the benefits of
22 the proposed Settlement Agreement. *See 7-Eleven Owners for Fair Franchising v. Southland*
23 *Corp.* (2000) 85 Cal.App.4th 1135, 1150 (“[I]n the context of class action settlements, formal
24 discovery is not a necessary ticket to the bargaining table where the parties had sufficient
25 information to make an informed decision about settlement.”) (quoting *Linney v. Cellular Alaska*
26 *P'ship* (9th Cir. 1998) 151 F.3d 1234, 1239).

27 The Parties initially engaged in a full day of mediation and then years of litigation and
28 discovery, which resulted in an agreement to certain terms of resolution. Further, even after a deal

1 was reached in the form of a confidential MOU, the Parties continued to engage with each other in
2 regards to the terms of the long form Settlement Agreement. The fact that the Settlement “was the
3 product of extensive and hard-fought adversarial negotiations between the parties” and only
4 reached with the assistance of an experience mediator and years of post-mediation litigation and
5 settlement discussions is a strong indication that the settlement process was fair and non-collusive.
6 *See Wershba v. Apple Computer, Inc., supra*, 91 Cal.App.4th at p. 245.

7 **B. The Settlement Agreement Provides Reasonable Compensation for Class**
8 **Members’ Damages in Light of Significant Litigation Risks**

9 Class and PAGA Members will share in an estimated “Net Settlement Amount” of
10 approximately **\$270,250 (Two Hundred and Seventy Thousand Two Hundred and Fifty**
11 **Dollars)** (\$600,000 Maximum Settlement Amount minus attorney fees [- \$200,000], estimated
12 attorney costs [-\$40,000], estimated class administration costs [-\$9,750], service awards [-
13 \$20,000] and PAGA Penalties [-\$60,000 of which includes \$45,000 will be paid to the State of
14 California (“the LWDA Payment”) and \$15,00 will be paid to the PAGA Group Members (“the
15 PAGA Group Amount”), to be distributed to the Settlement Class Members. This is a good
16 recovery for the class of approximately 525 Class Members. The average Settlement Class
17 Member will receive a total pre-tax award of approximately \$514.76 (\$270,250 [estimated Net
18 Settlement Amount] divided by 525 Class Members = \$514.76/per Class Member). Further, each
19 PAGA Class Member will receive the average and additional amount of \$28.57 in a PAGA
20 Payment (\$15,000 PAGA Group Amount divided by 525 PAGA Group Members = \$28.57).
21 (Da Vega Decl., ¶35.)

22 The amount of the Settlement is reasonable given: (1) the difficulty of the claims, (2) the
23 degree of risk and uncertainty involved in further litigation, (3) the amount of time that would
24 pass before Plaintiffs and the Class Members would see the fruits of any class verdict in their
25 favor, (4) ability of Defendants to pay/ further costs by both Parties, and (5) the amount of alleged
26 under-paid overtime wages. Defendant assert numerous legal and factual grounds for defending
27 this action and the costs of protracted litigation that might lead to little or no recovery for any
28 Class Member. Further, absent this Settlement, Defendants would have vehemently contested the

1 propriety of class treatment both through motion practice regarding class certification and through
2 any trial.

3 While Plaintiffs remains confident that were this case to proceed in litigation, they would
4 successfully move for class certification, defeat decertification, and prove their claims at trial,
5 Plaintiffs recognize there are considerable risks, and that “off the clock” wage and hour class
6 actions are particularly challenging. See *Deaver v. Compass Bank* (N.D. Cal. Dec. 11, 2015) 2015
7 WL 8526982, at *7 (approving class settlement in part because of the “difficulties [in] certifying
8 the class and establish liability on the merits of Plaintiff’s [off-the-clock] claims”); *Cf. Chu v.*
9 *Wells Fargo Investments, LLC* (N.D. Cal. Feb. 16, 2011) 2011 WL 672645, at *4 (ruling that class
10 certification risk weighed in favor of settlement approval, recognizing that “the outcome of
11 plaintiffs’ case was far from certain, particularly in light of several recent decertification orders
12 and denials of certification in similar wage and hour class actions.”)

13 Further, even if Plaintiffs succeeded in proving at trial that Defendants should be liable for
14 Class Members working “off the clock”/unpaid for overtime hours, Plaintiffs would still have the
15 challenge of proving the extent of hours worked/unpaid. Given the nature of a “off the clock”
16 class action case not all the information sought to be analyzed by Class Counsel could be found in
17 documented records. Instead, Plaintiff’s Expert analyzed potentially unpaid overtime and penalties
18 based on the estimates of the testimony/declarations of Plaintiffs and Class Members and
19 assumptions from evidence provided by Class Members and Defendants’ data. Based on Class
20 Counsel’s investigation and Plaintiff Expert’s experience from other cases, Plaintiffs believe their
21 assumptions are reasonable. Nevertheless, Plaintiffs are very cognizant that Defendants would
22 challenge the assumptions as aggressive. Indeed, Defendants dispute that the evidence establishes
23 a pattern and practice of wage and hour violations (e.g., unpaid overtime, failure to pay minimum
24 wage, meal/rest period violations, etc.). The Court could ultimately reject, either in whole or in
25 part, Plaintiff’s model for analyzing the existence of “off-the-clock”/unpaid overtime work thus
26 mooted their and the class claims and damages potentially leading to no recovery. See *Wren v.*
27 *RGIS Inventory Specialists* (N.D. Cal. Apr. 1, 2011) 2011 WL 1230826, at *7 (risk associated
28 with “challenges to their expert witnesses and damages calculations” supported approval of

1 settlement in off-the-clock class action); *In re Wells Fargo Loan Processor Overtime Pay Litig.*
2 (N.D. Cal. Aug. 2, 2011) 2011 WL 3352460, at *6 (recognizing that the potential difficulty in
3 proving “off-the-clock” hours is a significant risk which supports approval of class settlement).

4 Based on his current analysis, Plaintiffs believe – and Defendants deny - that in the best-
5 case scenario, they would prove that the Class Members were owed on average a few hours of
6 unpaid overtime wages each week (see Damage Analysis above). However, “[t]he proposed
7 settlement is not to be judged against a hypothetical or speculative measure of what might have
8 been achieved had plaintiffs prevailed at trial.” *Wershba v. Apple Computer, Inc.*, *supra*, 91
9 Cal.App.4th at p. 246.

10 A settlement need not obtain 100 percent of the damages sought in order to be fair
11 and reasonable. (See *Rebney v. Wells Fargo Bank*, *supra*, 220 Cal.App.3d at p.
12 1139 [settlements found to be fair and reasonable even though monetary relief
13 provided was “relatively paltry”]; *City of Detroit v. Grinnell Corp.*, *supra*, 495
F.2d at p. 455 [settlement amounted to only “a fraction of the potential
recovery”].)

14 *Id.* at 250. See also *Officers for Justice v. Civil Serv., Commission* (9th Cir. 1982) 688 F.2d 615,
15 624, 628 (recognizing that “the very essence of a settlement is compromise, a yielding of
16 absolutes and an abandoning of highest hopes” and that “[i]t is well-settled law that a cash
17 settlement amounting to only a fraction of the potential recovery will not per se render the
18 settlement inadequate or unfair.”) (internal quotation omitted).

19 Considering the significant challenges faced by Plaintiffs including Defendants’ legal and
20 factual defenses, there is a great risk the Class would do substantially worse in litigation than
21 under the Settlement or receive nothing at all. Further, absent a settlement, Class Members might
22 not receive any recovery at all or may not see any recovery until after years of litigation, including
23 appeals. See *Nat’l Rural Telecommunications Coop. v. DIRECTV, Inc.* (C.D. Cal. 2004) 221
24 F.R.D. 523, 526 (“In most situations, unless the settlement is clearly inadequate, its acceptance
25 and approval are preferable to lengthy and expensive litigation with uncertain results.”) (internal
26 quotation omitted).

27 On the other hand, the average Settlement Class Member will receive approximately
28 \$514.76 under the Settlement and the average PAGA Group Member will receive the additional

1 approximate amount of \$28.57. This is a good recovery similar to many other wage and hour
2 actions brought on behalf of hourly paid workers. *See e.g. Ogbuehi v. Comcast of*
3 *California/Colorado/Florida/Oregon, Inc.* (E.D. Cal. June 9, 2015) 2015 WL 3622999, at *7, 10
4 (approval of wage settlement where the average non-exempt/hourly class member was receiving
5 \$531.67); *Gardner v. GC Servs., LP* (S.D. Cal. Apr. 2, 2012) 2012 WL 1119534, at *4 (average
6 settlement award for the non-exempt/hourly employee class was “around several hundred dollars”
7 – “a good result for the class”); *Collins v. Cargill Meat Solutions Corp.* (E.D. Cal. 2011) 274
8 F.R.D. 294, 302 (preliminary approval of wage settlement where the average non-exempt/hourly
9 class member was receiving \$685). In sum, the Settlement provides meaningful, prompt relief for
10 the disputed wage and hour violations and is well within the range of reasonableness.

11 **C. The Class Settlement Payment Process is Fair and Reasonable**

12 All Settlement Class Members will be eligible to receive a share of the estimated Net
13 Settlement Amount and PAGA Group Payment based upon the number of Workweeks s/he
14 worked during the Class Period/Covered Period. (Settlement Agreement § 10. A. - C.). This
15 method of distribution is reasonably designed so that Settlement Class Members who worked
16 more workweeks and thus, Plaintiffs allege, would have larger overtime claims will receive a
17 larger share of the Settlement and PAGA Group Payment. Significantly, the proposed payment
18 process ensures that the maximum possible estimated Net Settlement Amount will actually be
19 received by Settlement Class Members. As stated in the Class Notice, the Settlement Class
20 Members need not take any further action to receive a Settlement payment other than cash the
21 settlement checks they receive in the mail. Class Members who may be hesitant to take
22 affirmative action to claim monies from Defendants will not face the barrier of taking affirmative
23 action to recover their portion of the Settlement. If they do not “opt-out” of the settlement they
24 will simply receive a check in the mail that they can deposit/cash. Any settlement checks not
25 cashed after 180 days from the date of the class-wide distribution shall be void and the sums
26 correlating to those checks not cashed and any residual amounts will be transferred by the
27 Settlement Administrator to the Controller of the State of California, Unclaimed Property Fund in
28

1 the name of the Settlement Class Member whose check was canceled. (Settlement Agreement
2 §10. J.).

3 **D. The Settlement of Penalties Under the Labor Code Private Attorney General**
4 **Act of 2004 (PAGA) is Reasonable**

5 The settlement of the PAGA claim for **\$60,000** (10% of \$600,000 Maximum Settlement
6 Amount) is within the range of reasonable PAGA settlement amounts. *See, e.g. Nelson v. Avon*
7 *Prod., Inc.* (N.D. Cal. Feb. 24, 2017) 2017 WL 733145, at *2 (approving class settlement of \$1.8
8 Million with \$10,000 attributed to PAGA claim); *Taylor v. Shippers Transp. Express, Inc.* (C.D.
9 Cal. May 14, 2015) 2015 WL 12658458, at *19 (approving payment of \$50,000 for PAGA
10 penalties from a \$11 Million class settlement, finding that “[t]he proposed PAGA payment is
11 greater than awards deemed reasonable and approved in other cases,” and citing cases); *Franco v.*
12 *Ruiz Food Prod., Inc.* (E.D. Cal. Nov. 27, 2012) 2012 WL 5941801, at *14 (approving PAGA
13 payment of \$10,000 from a \$2.5 Million class settlement, finding the “amount comports with
14 settlement approval of PAGA awards in other cases,” and citing cases); *Cotter v. Lyft, Inc.* (N.D.
15 Cal. 2016) 193 F.Supp.3d 1030, 1037 [preliminarily approving class action settlement allocating a
16 PAGA set-aside worth a fraction of the PAGA claim’s potential value, where the defendant’s
17 obligations were “genuinely unclear” and there was no evidence the defendant acted deliberately
18 or negligently failed to learn about its obligations].) Pursuant to Labor Code § 2699(i), the
19 LWDA will receive 75% of this amount (**\$45,000**), and the remaining 25% (**\$15,000**) will be
20 shared by the PAGA Group.(Settlement Agreement §§ 6.C.; 13).

21 **E. The Settlement’s Provision for Attorneys’ Fees, Expenses, and Costs is**
22 **Reasonable, Fair, and Appropriate Under the Circumstances**

23 In connection with Final Approval/Fairness Hearing, Class Counsel will apply to the Court
24 for reasonable attorney’s fees and costs. The Settlement Agreement allows Counsel to seek one-
25 third of total Settlement fund (**\$200,000**) in attorney fees. Fee awards of 33% are commonly
26 awarded by courts. *See, e.g. Laffitte v. Robert Half Int’l Inc.* (2016) 1 Cal. 5th 480, 503 (affirming
27 fee award of one-third of the common fund in a wage and hour class action and recognizing the
28 following advantages in using the percentage method: “relative ease of calculation, alignment of

1 incentives between counsel and the class, a better approximation of market conditions in a
2 contingency case, and the encouragement it provides counsel to seek an early settlement and avoid
3 unnecessarily prolonging the litigation”) (internal quotation omitted); *In re Consumer Privacy*
4 *Cases* (2009) 175 Cal.App.4th 545, 558 (“Empirical studies show that, regardless whether the
5 percentage method or the lodestar method is used, fee awards in class actions average around one-
6 third of the recovery.”) (internal quotation omitted); *Smith v. CRST Van Expedited, Inc.* (S.D. Cal.
7 Jan. 14, 2013) 2013 WL 163293, at *5 (recognizing the California benchmark for fee awards in
8 class actions as 33%).

9 The Court need not rule on Class Counsel’s fees and costs now; a formal application will
10 be filed prior to the Final Approval Hearing. As will be explained in detail in the application,
11 including a lodestar cross-check, a fee award of one-third (33%) of the Settlement fund is
12 reasonable and well-justified in consideration of the risks Class Counsel has undertaken in
13 pursuing this case on a contingency basis and the good result achieved on behalf of the Class.
14 Class Counsel expended significant time and resources on this matter and will continue to do so
15 over the next approximate six months as they oversee the administration of the Settlement. Class
16 Counsel will further request reimbursement of their incurred, reasonable costs, **not exceeding**
17 **\$40,000**. See *Thieriot v. Celtic Inc. Co.* (N.D. Cal. Apr. 21, 2011) 2011 WL 1522385, *7 (“Class
18 counsel are entitled to reimbursement of reasonable out-of-pocket expenses.”)

19 **F. Class Representative Enhancement Payments Are Reasonable and**
20 **Routinely Awarded**

21 Prior to the Final Approval Hearing/Fairness Hearing, Class Counsel will file a motion
22 seeking a reasonable Class Representative Enhancement Payment for the Class Representatives.
23 The Court need not rule on this request now. At present, it is sufficient for the Court to determine
24 that the award provided for in the Settlement Agreement does not render the overall Settlement
25 inherently unfair and is not an obstacle to preliminary approval.

26 Courts routinely approve service (“incentive” or “enhancement”) awards to compensate
27 class representatives for the services they provide and the risks they incur during class litigation.
28 See *In re Cellphone Fee Termination Cases* (2010) 186 Cal.App.4th 1380, 1393 (“incentive

1 awards are fairly typical in class action cases . . . and are intended to compensate class
2 representatives for work done on behalf of the class, to make up for financial or reputational risk
3 undertaken in bringing the action, and, sometimes, to recognize their willingness to act as a
4 private attorney general.”)

5 At the Final Approval Hearing/Fairness Hearing, Class Counsel will ask the Court to
6 approve an Enhancement Payment of **\$10,000 for each of the two Class Representatives for a**
7 **total of \$20,000.** Based on Class Representative’s significant time, effort and risks incurred in
8 bringing this case on behalf of the Class, as well as the substantial benefits the resulting
9 Settlement provides the Class, the requested service awards should ultimately be found to be
10 reasonable. See, *e.g. Hasty v. Elec. Arts, Inc.* (San Mateo Cty. Super. Ct., Sept. 22, 2006) No. CIV
11 444821 (approving an award of \$30,000 to the class representative in a wage and hour class
12 action); *Meewes v. ICI Dulux Paints* (Los Angeles Cty. Super. Ct. Sept. 19, 2003) No. BC265880
13 (approving service awards of \$50,000, \$25,000 and \$10,000 to the named plaintiffs); *In re High-*
14 *Tech Employee Antitrust Litig.* (N.D. Cal. Sept. 2, 2015) No. 11-CV-02509-LHK, 2015 WL
15 5158730, at *17 (awarding service awards of \$80,000 and \$120,000).

16 The requested Class Representative Enhancement Payments are also reasonable in
17 proportion to the overall Settlement. The award represents only a small fraction of the total
18 Settlement fund and thus barely impacts the recovery of the Class Members. See *Singer v. Becton*
19 *Dickinson & Co.* (S.D. Cal. June 1, 2010) 2010 WL 2196104, at *9 (awarding \$25,000 to class
20 representative from \$1 Million wage and hour case settlement (2.5% of fund)); *Thieriot v. Celtic*
21 *Inc. Co, supra* 2011 WL 1522385 at *8 (awarding \$25,000 service award to class representative
22 from class settlement of \$1.375 Million (1.8% of fund)).

23 In sum, the proposed Attorneys’ fees, costs and Class Representative Enhancement
24 Payments are within the typical range of approval, and are justified given the facts of this case.
25 Regardless, both the attorneys’ fees, costs and Enhancement Payments are subject to the Court’s
26 approval and should be assessed at the Final Approval/Fairness Hearing after Class Counsel
27 formally applies for fees, costs and Class Representative Enhancement Payments and the Class
28 Members have an opportunity to respond.

1 **G. Phoenix Should Be Appointed as the Settlement Administrator**

2 Pursuant to the Settlement Agreement, the Parties seek to have Phoenix Settlement
3 Administrators (“Phoenix”) appointed as the Settlement Administrator. Amongst other things, the
4 Settlement Administrator will be responsible for: processing class data from Defendant; mailing
5 Notices to Class Members and requests for exclusion, objections, and workweek disputes;
6 handling returned Class Notices, using skip-tracing and last-known telephone numbers to obtain
7 current addresses for Class Members; creating and overseeing a Qualified Settlement Fund (QSF);
8 calculating the Class Settlement Payments (with the assistance and input of the Parties);
9 distributing the Individual Settlement Amount and PAGA Group Payments to Settlement Class
10 Members/PAGA Group Members; and tax reporting of Individual Settlement Payments. Phoenix
11 is a competent and experienced settlement administration company. Plaintiffs will apply to the
12 Court for payment for Phoenix’s fees and costs, which it estimates is /and not to exceed at **\$9,750**.
13 Based on the amount of work demanded of the Settlement Administration, this sum is reasonable.
14 See, e.g. *McNeal v. RCM Techs. USA Inc.* (C.D. Cal. Mar. 16, 2017) 2017 WL 1807595, at *3
15 (preliminarily approving \$327,000 class settlement where the Claims Administrator would receive
16 fees not exceeding \$20,000).

17 **VIII. THE COURT SHOULD CONDITIONALLY CERTIFY A PROVISIONAL**
18 **SETTLEMENT CLASS**

19 When a negotiated class action settlement has been reached prior to certification—as
20 here—the Parties may agree that a defined class be conditionally (or provisionally) certified
21 for settlement purposes only. Cal. Rules of Court, Rule 3.769(d). In such circumstances, the
22 decision to certify a class is purely a procedural one and should be based on the allegations in the
23 Complaint and not on the perceived factual or legal merit of the class claims. *Linder v. Thrifty*
24 *Oil Co.*, 23 Cal.4th 429, 439-41 (2000). Therefore in a class action settlement context the Parties
25 are not required to stipulate to certification as contemplated by Cal. Rules of Court, Rule
26 3.764(e).

27 In support of conditional class certification, a party must show that (1) the class is
28 “ascertainable and sufficiently numerous;” (2) there are “predominant common questions of law

1 or fact;” (3) the class representatives have “claims or defenses typical of the class;” (4) the class
2 representatives can “adequately represent the class;” and (5) the benefits of a class action make it
3 “superior to the alternatives.” *Brinker Rest. Corp. v. Superior Court* (2012) 53 Cal. 4th 1004,
4 1021.

5 *Ascertainability and Numerosity:* For settlement purposes the Class Members are
6 identifiable from Defendants’ records, and they total approximately 525 individuals. For
7 purposes of administering this Settlement, the Class is ascertainable and sufficiently numerous as
8 to make joinder impracticable. *Citizens of Humanity, LLC v. Ramirez* (2021) 63 Cal.App.5th
9 117, 130–131.

10 *Common Legal and Factual Questions Predominate:* For settlement purposes, the
11 common questions include, without limitation: (i) whether Class Members were paid for all hours
12 worked and wages to which they were entitled; (ii) whether Class Members were paid for all
13 overtime hours worked and wages to which they were entitled at the appropriate rate; (iii)
14 whether Class Members were paid minimum wage for all hours worked; (iv) whether Class
15 Members were denied duty-free meal/rest periods; (v) whether Class Members were provided
16 timely/accurate wage statements; (vi) whether Class Members are entitled to recover waiting
17 time penalties under California law. *See, e.g. Williams v. Superior Court* (2013) 221 Cal.App.4th
18 1353, 1369-1371 (overturning decertification of off-the-clock class and ruling the plaintiffs had
19 adequately shown that defendants had a company-wide practice of having class members work
20 off-the-clock).

21 *Typicality of Claims:* “The test of typicality is whether other members have the same or
22 similar injury, whether the action is based on conduct which is not unique to the named plaintiffs,
23 and whether other class members have been injured by the same course of conduct.” *Johnson v.*
24 *GlaxoSmithKline, Inc.* (2008) 166 Cal.App.4th 1497, 1509. Like all Class Members, Plaintiffs
25 were engaged as Credentialing Analyst or Customer Account Manager employee and alleges that
26 they and all other similar non-exempt employees were subject to the same or similar policies and
27 practices of Defendants whereby they were allegedly not paid for all overtime hours worked, not
28 paid minimum wage for all hours worked, not provided compliant wage statements, not provided

1 duty-free meal/rest periods, and not paid all wages due upon separation. See *Wershba v. Apple*
2 *Computer, Inc.*, supra, 91 Cal.App.4th at p. 239 (class representative typical as “all of the class
3 members [including the class representative] here suffered a common alleged wrong.”)

4 *Adequate Representation:* Plaintiffs will adequately represent the Class. They have the
5 same interest in maintaining this action as any Class Member would have. Further, they have
6 hired counsel experienced in class actions and wage and hour law. See *McGhee v. Bank of*
7 *America* (1976) 60 Cal.App.3d 442, 450 (“Adequacy of representation depends on whether the
8 plaintiff’s attorney is qualified to conduct the proposed litigation and the plaintiff’s interests are
9 not antagonistic to the interests of the class.”)

10 *Superiority of Class Action:* Further, the maintenance of the Class results in “substantial
11 benefits” to the Parties, including the Class Members, and the Court. *Linder v. Thrifty Oil Co.*
12 (2000) 23 Cal. 4th 429, 435. It would be inefficient and a waste of the Court’s and Parties’
13 resources to require 20 Class Members to separately litigate the same issues in different lawsuits.
14 *Capitol People First v. Dep’t of Developmental Servs.* (2007) 155 Cal.App.4th 676, 702 (“without
15 class treatment there could be multiple actions that would burden the litigants and the courts with
16 cumulative and excessive expenses, discovery efforts and evidence.”) The class action procedure
17 is an ideal method for resolving the relatively modest individual claims of 525 current and former
18 employees, many of whom would be deterred from bringing individual claims due to the costs of
19 litigation and concerns that bringing a lawsuit could adversely affect current or future
20 employment. See *Bibo v. Fed. Exp., Inc.* (N.D. Cal. Apr. 21, 2009) 2009 WL 1068880, at *9
21 (“Class treatment will increase class members’ access to redress because it unifies what may be a
22 series of small claims . . . Additionally, class treatment may relax any concerns that current
23 employees may have about retaliation if they were to bring a suit against FedEx, as unity of the
24 employee class would prevent retaliation.”)

25 Accordingly, the Class should be conditionally certified as a provisional settlement class.

26 **IX. THE COURT SHOULD APPROVE THE PROPOSED CLASS NOTICE**

27 A court is afforded broad discretion in determining appropriate notice to class members.
28 *Cartt v. Superior Court* (1975) 50 Cal.App.3d 960, 973-74. The Class Notice should be provided

1 in a manner that “has a reasonable chance of reaching a substantial percentage of the class
2 members.” *Wershba v. Apple Computer, Inc.*, *supra*, 91 Cal.App.4th at p. 251 (internal quotation
3 omitted). “In regard to the contents of the notice, the notice given to the class must fairly apprise
4 the class members of the terms of the proposed compromise and of the options open to dissenting
5 class members.” *Id.* (internal quotation omitted).

6 The proposed Class Notices is attached to the Declaration of Matthew S. Da Vega in
7 support of this motion (“Da Vega Decl.”) as **Exhibit A: Notice of Class Action Settlement**. The
8 Class Notice will be sent to Class Members. The Notice Period and “Response Deadline” will be
9 45 calendar days. The Class Notice clearly and accurately describes (a) the case information and
10 the nature of the action; (b) the terms of Settlement Agreement; (c) the definition of the class; (d)
11 the formula for calculating the Net Settlement Amount (including the amounts sought for the
12 Class Counsel Award (Attorney Fees and Costs), Class Representative Enhancement Payments,
13 Settlement Administration Costs and the PAGA Penalties (including LWDA Payment and PAGA
14 Group Amount) and Individual Settlement Amounts; (e) the individual Class Member’s estimated
15 number of Workweeks worked during the Class Period and gross allocated amount; (f) the dates
16 which comprise the Class Periods/Covered Periods, (g) instructions on how to submit a Workweek
17 Dispute, Request for Exclusion, or Objection, and (h) the deadlines by which Workweek Disputes,
18 Requests for Exclusion, or Objections to the Settlement Agreement must be submitted to the
19 Settlement Administrator. It also describes that Class Members who do not opt-out/request to
20 exclude themselves, will be bound by the Settlement Agreement, including the release of claims
21 and PAGA settlement/PAGA Group Payment, if the Settlement Agreement is approved by the
22 Court; the process and right to appear at the Final Approval Hearing/Fairness Hearing to state any
23 objections; and that a Class Member may retain separate counsel to appear on the Class Member’s
24 behalf. *See* Cal. Rules of Court, rule 3.766(d) & 3.769(f).

25 The proposed plan for distributing the Class Notice is also reasonable and satisfies the
26 notice requirements of California Rules of Court, Rules 3.766 & 3.769(f) and all other legal and
27 due process requirements. Individual notice will be mailed to Class Members, which is a
28 reasonable and practicable way of reaching all of the Class Members. 4 NEWBERG ON CLASS

ACTIONS § 8:15 (5th ed. 2014). The Class Notice will have contact information for Class Counsel and the Settlement Administrator. Defendants will provide the Settlement Administrator with a Class Data containing each Class Members' last known: (1) full name; (2) mailing address; (3) Social Security number; (4) Employment Status; and (5) estimated number of Individual Workweeks worked during the Class/Covered Periods to the extent any or all such information in reasonably available to Defendant. ("Class Data"). (Settlement Agreement §8.B.)

Prior to the mailing of the Class Notice, the Settlement Administrator will run the list of all Class Members through the United States Postal Service's National Change of Address database ("NCOA"). (Settlement Agreement §8.C.) However, if Class Notices are returned because the address of the recipient is no longer valid, the Settlement Administrator will perform skip traces to locate Class Members. (Settlement Agreement §8.C.) The proposed mailing and distribution of the Class Notice constitutes the best notice practicable.

X. A FINAL APPROVAL / FAIRNESS HEARING SHOULD BE SCHEDULED

The last step in the settlement approval process is a final approval hearing, at which the Court may hear all evidence and argument necessary to evaluate the proposed Settlement. *See* California Rules of Court, Rules 3.769(g). Plaintiffs respectfully requests that the Court schedule the Final Approval / Fairness Hearing and set deadlines for the submission of motion and supporting papers.

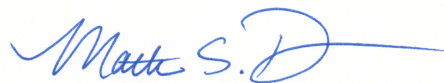
XI. CONCLUSION

For the reasons set forth above and in the accompanying papers, Plaintiff respectfully requests that the Court grant Plaintiff's Motion for Preliminary Approval of the Class Settlement.

DATED: March 2, 2023

DA VEGA | FISHER | MECHTENBERG LLP

By: _____



Matthew S. Da Vega
Attorneys for Plaintiff and Class