

1 Joshua Konecky, Esq. (SBN 182897)  
Nathan Piller, Esq. (SBN 300569)  
2 SCHNEIDER WALLACE COTTRELL  
KONECKY WOTKYNS LLP  
3 2000 Powell Street, Suite 1400  
Emeryville, CA 94608  
4 Telephone: (415) 421-7100  
Facsimile: (415) 421-7105  
5 jkonecky@schneiderwallace.com  
npiller@schneiderwallace.com

6 Shanon Carson (admitted pro hac vice)  
Sarah Schalman-Bergen (admitted pro hac vice)  
7 BERGER MONTAGUE PC.  
1818 Market St., Suite 3600  
8 Philadelphia, PA 19103  
Telephone: (215) 875-3000  
9 scarson@bm.net  
Sshalman-bergen@bm.net

10 Attorneys for Plaintiffs

11 **UNITED STATES DISTRICT COURT**  
12 **NORTHERN DISTRICT OF CALIFORNIA**  
13

14  
15 ROBERT SHAW, et al., individually and on  
16 behalf of all others similarly situated, and as a  
17 proxy of the State of California on behalf of  
aggrieved employees

18 Plaintiffs,

19 vs.

20 AMN SERVICES, LLC, KAISER  
21 FOUNDATION HOSPITALS, SOUTHERN  
CALIFORNIA PERMANENTE MEDICAL  
22 GROUP, INC., and THE PERMANENTE  
MEDICAL GROUP, INC

23 Defendants.  
24  
25  
26  
27  
28

Case No. 3:16-cv-02816 JCS

**PLAINTIFFS' NOTICE OF MOTION AND  
MOTION FOR REASONABLE  
ATTORNEYS' FEES AND COSTS;  
MEMORANDUM OF POINTS AND  
AUTHORITIES IN SUPPORT THEREOF**

Date: May 31, 2019  
Time: 9:30 a.m.  
Courtroom: G, 15<sup>th</sup> Floor  
Judge: Hon. Joseph C. Spero

**TABLE OF CONTENTS**

1

2 I. INTRODUCTION .....1

3 II. OVERVIEW OF COUNSEL’S WORK ON THE CASE .....3

4 A. Case Investigation, Filing the Complaint: July 2015 to April 6, 2016 3

5 B. Amending the Complaint, the First Phase of Discovery, Early Resolution  
6 Efforts: April 7, 2016 to January 31, 2017 5

7 C. Further Pre-Certification Discovery, Third Mediation: February 1, 2017 to  
8 November 30, 2017 6

9 D. Motion for Class Certification and Related Discovery: December 1, 2017 to  
10 July 5, 2018 9

11 E. Resolution of *Clarke* Action, Settlement, and Preliminary Approval: July 6,  
12 2018 to February 24, 2019 13

13 III. ARGUMENT .....15

14 A. Plaintiffs are entitled to reasonable attorneys’ fees and costs under California  
15 law 15

16 B. Plaintiffs’ attorneys’ fees are reasonable under California’s  
17 Lodestar/Multiplier calculation method 16

18 1. Plaintiffs’ Counsel’s time was reasonably spent .....16

19 2. Plaintiffs’ Counsel’s hourly rates fall within the range of rates prevailing  
20 in the community and that have been previously approved.....18

21 3. The multiplier sought here is reasonable .....20

22 i The risks presented by the contingent nature of recovery justify a  
23 substantial multiplier.....22

24 ii The difficulty of the questions involved and the skill required justify  
25 a substantial multiplier.....23

26 iii The vigorous opposition by Defendants justifies a substantial  
27 multiplier.....24

28 iv The extent to which litigation precluded other employment justifies a  
substantial multiplier.....25

v The excellent result obtained justifies a substantial multiplier .....25

C. The “Percentage of the Fund” cross-check supports the reasonableness of  
Plaintiffs’ fee request 27

D. Plaintiffs’ requested cost reimbursements are reasonable 28

IV. CONCLUSION .....29

## TABLE OF AUTHORITIES

**Federal Cases**

1		
2	<b>Federal Cases</b>	
3	<i>Barjon v. Dalton</i>	
4	132 F.3d 496 (9th Cir. 1997) .....	18
5	<i>Been v. O.K. Industries, Inc.</i>	
6	2011 WL 4478766 (E.D. Okla. 2011) .....	21
7	<i>Blanchard v. Bergeron</i>	
8	489 U.S. 87 (1989) .....	18
9	<i>Blum v. Stenson</i>	
10	465 U.S. 886 (1984) .....	18
11	<i>Boeing Co. v. Van Gemert</i>	
12	444 U.S. 472 (1980) .....	27
13	<i>Bolton v. U.S. Nursing Corp.</i>	
14	2013 WL 5700403 (N.D. Cal. Oct. 18, 2013) .....	26
15	<i>Cabrales v. County of Los Angeles</i>	
16	935 F.2d 1050 (9th Cir. 1991) .....	17
17	<i>Camacho v. Bridgeport Fin., Inc.</i>	
18	523 F.3d 973 (9th Cir. 2008) .....	18
19	<i>Carnes v. Atria Senior Living Inc.</i>	
20	Case No. 14-cv-02727-VC, ECF 115 (N.D. Cal. July 12, 2016) .....	19
21	<i>Caudle v. Bristow Optical Co.</i>	
22	224 F.3d 1014 (9th Cir. 2000) .....	17
23	<i>Chalmers v. City of Los Angeles</i>	
24	796 F.2d 1205 (9th Cir. 1986) .....	16
25	<i>Civil Rights Education and Enforcement Center v. Hospitality Properties Trust</i>	
26	867 F.3d 1093 (9th Cir. 2017) .....	23
27	<i>De Munecas v. Bold Food, LLC</i>	
28	2010 WL 3322580 (S.D.N.Y. 2010) .....	28
29	<i>Devlin v. Ferrandino &amp; Sons, Inc.</i>	
30	No. 2:15-cv-4976, ECF No. 46 (E.D. Pa. Dec. 9, 2016) .....	19
31	<i>Diaz v. Target Corp.</i>	
32	2010 WL 11558085 (C.D. Cal. Dec. 13, 2010) .....	23
33	<i>Ellis v. Costco Wholesale Corp.</i>	
34	657 F.3d 970 (9th Cir. 2011) .....	23
35	<i>Farrar v. Hobby</i>	
36	506 U.S. 103 (1992) .....	15
37	<i>Fischel v. Equitable Life Assurance Soc’y of the United States</i>	
38	307 F.3d 997 (9th Cir. 2002) .....	20, 22
39	<i>Fischer v. SJB-P.D. Inc.</i>	
40	214 F.3d 1115 (9th Cir. 2000) .....	16

1 *Galt v. Eagleville Hosp.*  
 2 310 F. Supp. 3d 483 (E.D. Pa. 2018)..... 26

3 *Gergetz v. Telenav, Inc.*  
 4 2018 WL 4691169 (N.D. Cal. Sept. 27, 2018)..... 27

5 *Gutierrez v. Wells Fargo Bank, N.A.*  
 6 2015 WL 2438274 (N.D. Cal. 2015)..... 20

7 *Harman v. Lyphomed, Inc.*  
 8 945 F.2d 969 (7th Cir. 1991)..... 22

9 *Hensley v. Eckerhart*  
 10 461 U.S. 424 (1983) ..... 17

11 *In re Bluetooth Headset Prods. Liab. Litig.*  
 12 654 F.3d 935 (9th Cir. 2011)..... 16

13 *In re Cadence Design Systems, Inc. Securities and Derivative Litigation*  
 14 2012 U.S. Dist. LEXIS 56785 (N.D. Cal. April 23, 2012) ..... 21

15 *In re Media Vision Tech. Sec. Litig.*  
 16 913 F.Supp. 1362 (N.D. Cal. 1996)..... 28

17 *In re NASDAQ Market-Makers Antitrust Litig.*  
 18 187 F.R.D. 465 (S.D.N.Y. 1998)..... 21

19 *In re Nat'l Collegiate Athletic Ass'n Athletic Grant-in-Aid Cap Antitrust Litig.*  
 20 2017 WL 6040065 (N.D. Cal. Dec. 6, 2017) ..... 21

21 *In Re Pacific Enter. Sec. Litig.*  
 22 47 F.3d 373 (9th Cir. 1995)..... 27

23 *In re VeriFone Holdings, Inc. Sec. Litig.*  
 24 2014 WL 12646027 (N.D. Cal. Feb. 18, 2014)..... 21

25 *In Re Vitamins Antitrust Litig.*  
 26 2001 WL 34312839 (D.D.C. 2001)..... 27

27 *Ingalls v. Hallmark Mktg. Corp.*  
 28 Dkt. No. 77 (C.D. Cal. Oct. 16, 2009)..... 28

*Johnson v. Fujitsu Tech. & Bus. of Am., Inc.*  
 2018 WL 2183253 (N.D. Cal. May 11, 2018) ..... 21, 24

*Jones v. Dominion Res. Servs.*  
 601 F.Supp. 2d 756 (W.Va. 2009) ..... 21

*Knapp v. Art.com, Inc.*  
 No. 3:16-cv-00768-WHO (N.D. Cal. October 24, 2018)..... 18

*Maher v. Gagne*  
 448 U.S. 122 (1980) ..... 15

*McClellan v. Health Sys., Inc.*  
 2015 WL 12426091 (W.D. Mo. June 1, 2015)..... 27

*Meza v. S.S. Skikos, Inc.*  
 Case No. 3:15-cv-01889-TEH, ECF 58 (N.D. Cal. May 25, 2016)..... 19

1	<i>Nordstrom v. Ryan</i>	
2	762 F.3d 903 (9th Cir. 2014).....	23
3	<i>O’Sullivan v. AMN Services, LLC</i>	
4	2014 WL 11514268 (N.D.Cal. 2014).....	2, 26
5	<i>Perdue v. Kenny A.</i>	
6	559 U.S. 542 (2010) .....	16
7	<i>Rabin v. Concord Assets Group</i>	
8	1991 WL 275757 (S.D.N.Y. Dec. 19, 1991).....	21
9	<i>Retta v. Millennium Prod., Inc.</i>	
10	2017 WL 5479637 (C.D. Cal. Aug. 22, 2017) .....	25
11	<i>Saldivar v. Priority One Med. Transp., Inc.</i>	
12	2011 WL 13213889 (C.D. Cal. Mar. 22, 2011) .....	26
13	<i>Singer v. Becton Dickinson and Company</i>	
14	2010 WL 2196104 (S.D. Cal. 2010) .....	28
15	<i>Staton v. Boeing Co.</i>	
16	327 F.3d 938 (9th Cir. 2003).....	28
17	<i>Trustees v. Greenough</i>	
18	105 U.S. 527 (1881) .....	28
19	<i>Van Vranken v. Atlantic Richfield Co.</i>	
20	901 F.Supp. 294 (N.D. Cal. 1995).....	27
21	<i>Villalpando v. Exel Direct Inc.</i>	
22	2016 WL 7740854 (N.D. Cal. Dec. 12, 2016) .....	19, 20
23	<i>Vizcaino v. Microsoft Corp.</i>	
24	290 F.3d 1043 (9th Cir. 2002), <i>cert. denied</i> , 537 U.S. 1018 (2002) .....	15, 21
25	<i>Widrig v. Apfel</i>	
26	140 F. 3d 1207 (9th Cir. 1998).....	19
27	<i>Williams v. MGM-Pathe Communications Co.</i>	
28	129 F.3d 1026 (9th Cir. 1997).....	27
	<i>Winans v. Emeritus Corp.</i>	
	2016 WL 107574 (N.D. Cal. Jan. 11, 2016) .....	19
	<i>Wren v. RGIS Inventory Specialists</i>	
	2011 WL 1230826 (N.D. Cal. 2011).....	19, 28
	<b>State Cases</b>	
	<i>Children’s Hosp. and Med. Ctr. v. Bonta</i>	
	97 Cal.App.4th 740 (2002).....	18
	<i>Cotchett, Pitre &amp; McCarthy v. Universal Paragon Corp.</i>	
	187 Cal.App.4th 1405 (2010).....	28
	<i>Edgerton v. State Pers. Bd.</i>	
	83 Cal.App.4th 1350 (2000).....	22, 24, 25

1 *Folsom v. Butte Cty. Assn. of Governments*  
 32 Cal. 3d 668 (1982)..... 15

2 *Graciano v. Robinson Ford Sales, Inc.*  
 3 144 Cal. App. 4th 140 (2006)..... 27

4 *Graham v. DaimlerChrysler Corp.*  
 34 Cal. 4th 553 (2004)..... 16, 25

5 *Hernandez v. Restoration Hardware, Inc.*  
 4 Cal. 5th 260 (2018)..... 16

6 *Horsford v. Bd. of Trustees of California State Univ.*  
 7 132 Cal. App. 4th 359 (2005)..... 20

8 *Janssen v. Square, Inc.*  
 Case No. CGC-16-549980, Superior Court of California, County of San Francisco ..... 18

9 *Ketchum v. Moses*  
 10 24 Cal. 4th 1122 (2001)..... passim

11 *Lealao v. Beneficial Cal., Inc.*  
 82 Cal.App.4th 19 (2000)..... 16, 27

12 *Marine v. Interstate Distributor Co.*  
 Case No. RG07358277, Superior Court of California, County of Alameda..... 19

13 *PLCM Group, Inc. v. Drexler*  
 14 22 Cal.4th 1084 (2000)..... 18

15 *Robertson v. Fleetwood Travel Trailers*  
 144 Cal.App.4th 785 (2006)..... 18

16 *Serrano v. Priest*  
 17 20 Cal. 3d 25 (1977)..... passim

18 *Vo v. Los Virgenes Mun. Water Dist.*  
 79 Cal.App.4th 440 (2000)..... 16

19 *Wershba v. Apple Computer, Inc.*  
 91 Cal.App.4th 224 (2001)..... 16, 21

20

21 **Statutes**

22 Cal. Code of Civ. Proc. § 1021..... 15

23 Cal. Lab. Code § 1194..... 15

24 Cal. Lab. Code § 2804..... 15

25 **Other Authorities**

26 3 Newberg on Class Actions ..... 27

27 Manual for Complex Litigation..... 27

28

**NOTICE OF MOTION AND MOTION**

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that, on May 31, 2019 at 9:30 a.m. or as soon thereafter as the parties may be heard in Courtroom G, 15<sup>th</sup> Floor of the above-titled Court located at 450 Golden Gate Avenue, San Francisco, CA 94102, Plaintiffs will move, and hereby do move, this Court for an Order awarding Plaintiffs' Counsel reasonable attorneys' fees of \$6,666,666.67, plus reimbursement of actual out of pocket costs of \$185,850.01. Plaintiffs' Counsel spent approximately 4,830 hours litigating the case, for a lodestar of \$2,770,526.50. Plaintiffs' requested fees represent a reasonable multiplier of 2.4, and one third of the common fund. Plaintiffs' fee request fits comfortably within the range of fee awards provided to Plaintiffs' Counsel in comparable wage and hour class actions in the Ninth Circuit and California courts. Plaintiffs' out-of-pocket costs are documented, reasonable and recoverable under applicable law as well.

This motion is based on the accompanying Memorandum of Points and Authorities; the Declaration of Joshua Konecky, and the exhibits attached thereto; the Declaration of Shanon Carson, and the exhibits attached thereto; the Declaration of Richard Pearl, and all the exhibits attached thereto, such oral argument as may be heard by the Court; and all other papers on file in this action.

Respectfully submitted,

Dated: February 25, 2019

SCHNEIDER WALLACE  
COTTRELL KONECKY WOTKYNS LLP

*/s/ Joshua G. Konecky*

Joshua G. Konecky

1

2

**MEMORANDUM OF POINTS AND AUTHORITIES**

3

4

**I. INTRODUCTION**

5 Plaintiffs' Counsel respectfully submit this application for an award of reasonable attorneys'  
6 fees and costs to compensate them for their extensive work over the past three-plus years in achieving  
7 a \$20,000,000 non-reversionary, class-action settlement on behalf of approximately 8,212 traveling  
8 nurses who have worked for Defendants AMN and Kaiser in at least one Kaiser facility in California  
9 from September 11, 2013 to the present. The Settlement brings substantial relief to numerous nurses  
10 who work long hours performing the critical patient care duties on which our healthcare system  
11 depends. Plaintiffs' Counsel spent approximately 4,830 hours litigating the case, for a lodestar of  
12 \$2,770,526.50, which results in a reasonable multiplier of 2.4. The fees sought here—one third of  
13 the common fund—are reasonable compensation for the work performed, particularly given the risk  
14 of nonpayment, the skill and effort required to prosecute this risky case, and the excellent result  
15 achieved for the Class. The out-of-pocket costs are also documented and reasonably incurred in  
16 litigating this case. Both the fees and costs sought are reasonable and warranted under the facts of  
17 the case and applicable law.

18 This excellent result did not come without extensive effort, skill, and risk. While Plaintiffs  
19 were confident that class-wide evidence would support their claims that Defendants had a common  
20 practice of discouraging full reporting of overtime and denying off-duty meal and rest periods,  
21 bringing a class action case based on "pattern and practice" allegations like these was a risky  
22 proposition. Indeed, obtaining class certification of a pattern and practice claim—even when  
23 meritorious—is difficult without facially unlawful policies. Despite these risks, Class Counsel  
24 devoted themselves to vigorously prosecuting the "pattern and practice" claims through their  
25 successful motion for class certification, and beyond.

26 Furthermore, Defendants put up a staunch defense, including substantial discovery  
27 propounded on class members, discovery motion practice, numerous depositions, and a vigorous  
28 opposition to Plaintiffs' motion for class certification that was supported by an array of declarations  
and the testimony of two expert witnesses. If not for Plaintiffs' Counsel's considerable effort and



1 skill in uncovering key evidence and effectively rebutting Defendants’ arguments, class certification  
2 may well have been denied, potentially leaving the Class Members with no recovery at all. In  
3 addition, settlement negotiations were protracted and intensive. Indeed, the parties participated in  
4 four separate mediation sessions with three different mediators, as well as additional facilitated  
5 negotiations by email and phone, before the parties ultimately accepted the mediator’s proposal  
6 following the fourth mediation. The Settlement was reached only after extensive investigation,  
7 written discovery, 26 depositions, motion practice, and four mediations.

8 Even after proposed fees, costs, and service awards, the average net recovery is approximately  
9 \$1,570 per class member. This result is excellent, particularly in light of the class members’  
10 relatively short tenures—just 26 weeks per class member, on average—in qualifying employment.  
11 The average individual recovery also compares very favorably with analogous California wage and  
12 hour class action settlements. For instance, a previous wage and hour class action brought against  
13 Defendant AMN settled for \$3 million on behalf of approximately 11,685 non-exempt healthcare  
14 professionals, resulting in less than a quarter of the average per-workweek recovery achieved here.  
15 *O’Sullivan v. AMN Services, LLC*, 2014 WL 11514268 (N.D.Cal. 2014) (Spero, J.). Moreover,  
16 unlike in *O’Sullivan* and in other analogous settlements cited herein, Class Counsel litigated this  
17 case successfully through the class certification stage—despite the risk that certification would be  
18 denied—leading to the much larger per-person recovery here. The comparatively strong result in  
19 this case warrants a substantial multiplier.

20 Through February 24, 2019, the attorneys and staff at Schneider Wallace Cottrell Konecky  
21 Wotkins LLP (“Class Counsel”) and Berger Montague PC. (referred to herein jointly as “Plaintiffs’  
22 Counsel”) have collectively spent over 4,830 hours litigating the case, incurred \$2,770,526.50 in  
23 lodestar fees, and advanced \$185,850.01 in litigation expenses. Plaintiffs’ Counsel also anticipates  
24 follow-up work in administering the settlement, which would increase the lodestar amount listed  
25 here. Plaintiffs’ Counsel’s fee request represents a reasonable multiplier of approximately 2.4 as of  
26 February 24, 2019. This multiplier will continue to decrease until final approval and thereafter.  
27 Moreover, Class Counsel’s rates are reasonable and have recently and repeatedly been approved by  
28

1 the courts. The fees and costs sought are justified by the substantial efforts of Plaintiffs' Counsel,  
2 the risk involved, and the strong result for the Class.

3 For the reasons discussed herein, the requested awards are appropriate under both the lodestar-  
4 multiplier and percentage of the fund approaches for awarding reasonable fees under applicable law.  
5 Accordingly, Plaintiffs respectfully request that the Court grant the motion.

## 6 **II. OVERVIEW OF COUNSEL'S WORK ON THE CASE**

7 The procedural history of his action has been well documented in prior briefs, including the  
8 parties' Motion for Preliminary Approval of Settlement. [ECF 151.] For purposes of this Motion,  
9 Plaintiffs have broken the case down chronologically to focus on the specific work projects and  
10 corresponding lodestar that Counsel dedicated at each stage of the case.

### 11 **A. Case Investigation, Filing the Complaint: July 2015 to April 6, 2016**

12 In July 2015, Plaintiffs' Counsel began investigating complaints from traveling nurses that  
13 Defendants would often discourage the full reporting and payment of overtime, and often did not  
14 provide full and adequate relief for meal and rest periods. Konecky Decl. at ¶ 66. Counsel spent  
15 significant time speaking with the original named plaintiff and other traveling nurses to ascertain the  
16 legal merit of the complaints as well as the extent to which they presented common questions of fact  
17 and law. *Id.* Counsel also conducted thorough research regarding AMN, Kaiser and their operations,  
18 to identify the responsible entities and determine the most appropriate venue to file suit. *Id.* This  
19 commitment to the pre-litigation process was well worth the effort because it enabled Plaintiffs to  
20 hone in on pertinent practices and to develop a solid legal strategy from the start. *Id.* Counsel's  
21 investigation indicated an unlawful pattern and practice of discouraging the reporting of overtime  
22 and denying meal and rest periods that are truly off duty. *Id.*

23 In the course of investigating the claims, Plaintiffs' Counsel also conducted research and  
24 evaluated the legal landscape regarding similar claims based on evidence of an unlawful "pattern  
25 and practice." *Id.* at ¶ 67. Plaintiffs' research and evaluation indicated that obtaining class  
26 certification of claims like the ones brought here—even when meritorious—would be difficult  
27 without facially unlawful policies. *Id.* Counsel also faced the risk that even if they were able to obtain  
28

1 class certification, would have the additional hurdle of proving class-wide liability on the merits,  
2 potentially without have a stand-alone written policy that was, on its face, contrary to law. *Id.*

3 Despite these challenges, Counsel began drafting the initial complaint. *Id.* at ¶ 68. The drafting  
4 process was time-consuming and meticulous, requiring multiple interviews with the original named  
5 plaintiff and other traveling nurses, as well as follow-up research regarding AMN, Kaiser and their  
6 various locations and operations. *Id.*

7 On September 21, 2015, Plaintiffs submitted a letter to Labor and Workforce Development  
8 Agency (LWDA) providing notice of the law enforcement action for civil penalties under PAGA,  
9 California Labor Code section 2699 *et seq.* Konecky Decl. at ¶ 69. Before the complaint was filed,  
10 the parties entered into a tolling agreement to facilitate early negotiations. *Id.* Although these  
11 discussions did not result in a settlement, they nonetheless provided the parties' an early opportunity  
12 to begin to understand the strengths and risks of their respective claims and defenses. *Id.*

13 On April 6, 2016, Plaintiffs filed a complaint in the Superior Court of Alameda County,  
14 alleging that Defendants knew and/or had reason to know that AMN traveling nurses at Kaiser and  
15 other client facilities in California were working off-the-clock to perform patient transfers and  
16 charting after their scheduled shifts, and that they did not receive meal and rest periods that are truly  
17 off-duty, or within the time intervals required by California law. *Id.* at ¶ 70. Plaintiffs brought claims  
18 under the California Labor Code and the California Industrial Welfare Commission wage orders for  
19 unpaid overtime and double time, non-compliant meal and rest periods, and statutory penalties for  
20 inaccurate wage statements and the failure to timely pay all wages due. *See* Second Amended Class  
21 Action Complaint [ECF 92] at ¶¶ 1-21, 35-58, 67-124. Plaintiffs also asserted claims under PAGA,  
22 California Labor Code section 2699 *et seq.*, and the Business and Professions Code sections 17200  
23 *et seq.*, based on the same allegations. *Id.* at ¶¶ 125-136. Defendants removed the case to this Court  
24 on May 25, 2016. [ECF 1.]

25 During this first stage of the case, Class Counsel billed approximately 51.2 hours, for a  
26 lodestar of approximately \$35,882.00. Konecky Decl. at ¶ 71.

1           **B. Amending the Complaint, the First Phase of Discovery, Early Resolution**  
2           **Efforts: April 7, 2016 to January 31, 2017**

3           In May, 2016, the original named plaintiff became unable to perform her duties as a class  
4 representative and had to be removed. *Id.* at ¶ 72. Thereafter, Plaintiffs' Counsel continued  
5 interviewing current and former traveling nurses of AMN who had worked in various locations  
6 across California, some of whom expressed a strong interest in serving as a class representative. *Id.*  
7 After a thorough vetting process, including several fact-intensive interviews with current and former  
8 AMN traveling nurses who wished to serve as representative plaintiffs, Plaintiffs' Counsel resolved  
9 to seek to substitute Named Plaintiff Robert Shaw as lead plaintiff. *Id.* On July 22, 2016, Plaintiffs  
10 moved for leave to amend to substitute in representative plaintiffs. [ECF 15]. Counsel's extensive  
11 interviews and class outreach proved worthwhile. Konecky Decl. at ¶ 72. Indeed, on August 25,  
12 2016, the Court granted Plaintiffs' motion for leave to amend to file the First Amended Complaint,  
13 with Plaintiff Shaw as lead plaintiff. [ECF 34.]

14           Following amendment of the Complaint, the parties conducted early written discovery.  
15 Konecky Decl. at ¶ 73. On September 15, 2016, Plaintiffs served several sets of requests for  
16 production of documents and targeted interrogatories seeking production of Defendants' corporate  
17 policies and procedures, organizational structure, and records of hours worked and compensation  
18 data for traveling nurses. *Id.* The discovery was focused at developing a sufficient factual record for  
19 Plaintiffs to prevail on their forthcoming motion class certification. *Id.* Defendant AMN made a  
20 substantial production of documents in response. *Id.* Several of the documents produced by AMN  
21 were important to Plaintiffs' motion for class certification because they demonstrated the  
22 commonality of many of AMN's policies and practices with regard to overtime and meal and rest  
23 periods. *Id.* Defendant AMN and Defendant Kaiser also provided substantive, sworn responses to  
24 Plaintiffs' interrogatories. *Id.*

25           Defendants also propounded interrogatories, requests for admission, and requests for  
26 production. *Id.* ¶ 74. The Plaintiffs provided sworn responses to interrogatories and requests for  
27 admission, and produced documents regarding their employment with Defendants. *Id.* Plaintiff Shaw  
28 alone produced 599 pages of documents. *Id.* Plaintiffs' Counsel's extensive work interviewing the

1 Plaintiffs and assisting with their discovery responses served as valuable preliminary preparation for  
2 subsequent depositions. *Id.* The documents produced by Plaintiffs also were helpful in  
3 demonstrating the existence of common practices amenable to class treatment. *Id.* For instance,  
4 Plaintiff Shaw produced an e-mail from his assignment at Kaiser’s San Diego facility containing the  
5 instruction “OT is not permitted at this facility,” which Counsel, through further investigation, found  
6 had been included in the initial assignment emails to numerous other class members. *Id.*

7 In January of 2017, the parties agreed to mediate the case before David Rotman, an  
8 experienced mediator in class action cases, including complex wage and hour disputes. *Id.* at ¶ 75.  
9 The parties participated in two mediations before Mr. Rotman in January, 2017. *Id.* In the months  
10 leading up to these mediations, Counsel spent time pursuing and analyzing additional discovery  
11 going to the merits of the claims and the calculation of damages, and Counsel prepared a thorough  
12 mediation brief. *Id.* The case did not settle at these mediations. *Id.*

13 During this second stage of the case, Class Counsel billed approximately 242.2 hours, for a  
14 lodestar of approximately \$144,716.00. *Id.* at ¶ 76.

15 **C. Further Pre-Certification Discovery, Third Mediation: February 1, 2017 to**  
16 **November 30, 2017**

17 Following the mediations in January of 2017, the parties engaged in further pre-certification  
18 discovery. *Id.* at ¶ 77. On April 25, 2017, Plaintiffs took the deposition of Defendant AMN’s  
19 corporate representative Lisa Larson, pursuant to Federal Rule of Civil Procedure 30(b)(6). *Id.*  
20 Counsel reviewed and analyzed more than 2,000 pages of documents produced by AMN to prepare  
21 for Ms. Larson’s deposition. *Id.* The testimony elicited from Ms. Larson in this deposition was  
22 important in establishing the existence of systemic policies and practices that Plaintiffs alleged were  
23 suppressing overtime and causing the denial of off-duty meal and rest periods on a class-wide basis,  
24 despite the array of counter-arguments and individualized evidence AMN proffered. *Id.*

25 In this same timeframe, the parties met and conferred on Defendants’ responses to Plaintiffs’  
26 initial sets of written discovery, and Plaintiffs propounded additional, targeted written discovery. *Id.*  
27 at ¶ 78. For instance, the parties met and conferred regarding a dispute as to whether and to what  
28 extent Defendant Kaiser was obligated to produce policy and procedure documents in advance of

1 Plaintiffs' motion for class certification, as well as the permissible scope of topics for the deposition  
2 of Defendant Kaiser's Rule 30(b)(6) corporate designee. *Id.* The parties presented their dispute to  
3 the Court in a letter brief, [ECF 67], and the Court held a discovery hearing. The Court directed that  
4 the parties negotiate a resolution, including potential sampling of policy and procedure documents  
5 from a subset of Kaiser facilities. [ECF 68.]

6 One of Defendants' central arguments was that Plaintiffs were only entitled to discovery  
7 pertaining to the Kaiser location where the Named Plaintiff Shaw worked. Konecky Decl. at ¶ 79.  
8 Plaintiffs effectively rebutted this position after Plaintiffs' Counsel conducted further interviews  
9 with several additional class members who had worked at different Kaiser locations and who were  
10 interested in serving as class representatives, as part of another in-depth vetting process. *Id.* A driver  
11 of the parties' ultimate compromise of the discovery dispute was that additional proposed class  
12 representatives who had worked at Kaiser facilities other than the one where Plaintiff Shaw worked  
13 agreed to step forward to help represent the Class. *Id.* These individuals included Plaintiffs Candy  
14 Kucharski and Jennifer Corona Teitelbaum. *Id.* For this and other reasons, Counsel's vetting process,  
15 though extensive, was certainly worthwhile. *Id.*

16 Following lengthy meet and confer discussions, including in-person meetings, the parties  
17 reached a resolution providing for sampling from a subset of many of the larger Kaiser facilities. *Id.*  
18 at ¶ 80; CMC Statement [ECF 83]. On September 25, 2017, the parties stipulated to the filing of a  
19 second amended complaint, which added as named plaintiffs Ms. Kucharski and Ms. Corona  
20 Teitelbaum. [ECF 87, 92]. Plaintiffs' Counsel's work in litigating the discovery dispute proved to  
21 be time well-spent. Indeed, soon after the complaint was amended, Defendant Kaiser produced  
22 hundreds of pages of documents regarding its policies and procedures, from the negotiated sample  
23 of facilities. Konecky Decl. at ¶ 80. Many documents within this production would prove relevant  
24 to Plaintiffs' motion for class certification because they indicated the commonality of Kaiser's  
25 overtime reporting process for traveling nurses, as well as the uniformity of other relevant overtime  
26 policies across its locations in California. *Id.* The documents also played an important role in the  
27 subsequent deposition of Kaiser's corporate representative witness. *Id.*

1 On September 29, 2017, the parties submitted proposals for a briefing schedule on class  
2 certification. [ECF 91]. Following a case management conference on October 6, 2017, the Court set  
3 a deadline of February 9, 2018 for Plaintiffs to file their motion for class certification. [ECF 94].

4 In the meantime, the parties continued gathering discovery in preparation for the briefing on  
5 Plaintiffs' motion for class certification. In the fall of 2017, Defendants took depositions of the  
6 named plaintiffs Robert Shaw, Candy Kucharski, and Jennifer Corona Teitelbaum. Konecky Decl.  
7 at ¶ 82. Counsel thoroughly prepared each of the named plaintiffs for their deposition testimony by  
8 conducting several preparation sessions, including mock deposition questioning. *Id.* Counsel's  
9 efforts to prepare the named plaintiffs for deposition were critical, as Defendants' deposition  
10 questioning was difficult and intensive. *Id.* Nonetheless, the named plaintiffs provided thorough  
11 testimony supporting the class claims. *Id.*

12 In October 2017, Plaintiffs took the deposition of Kaiser's Rule 30(b)(6) representative  
13 Kristin Mussman. *Id.* at ¶ 83. Plaintiffs' counsel reviewed more than 1,000 pages of detailed  
14 documents produced by Kaiser to prepare for Ms. Mussman's deposition. *Id.* Many of these  
15 documents contained detailed materials that took time to fully digest and incorporate into the  
16 deposition questioning. *Id.* The testimony elicited from Ms. Mussman was crucial in establishing  
17 the class-wide nature of Kaiser's overtime and meal and rest break policies and procedures. *Id.* As  
18 just one example, Plaintiffs' Counsel elicited testimony that Kaiser had no mechanism in place for  
19 completely removing traveling nurses from duty for meal and rest periods. *Id.*

20 In November 2017, Plaintiffs issued a third party subpoena on Marliese Bartz, a consultant  
21 who performed work for Defendants regarding time entry processes at Kaiser facilities. *Id.* at ¶ 84.  
22 Plaintiffs learned of Ms. Bartz and her work with Defendants from their own interviews with a class  
23 member who had earlier participated in an interview with Ms. Bartz as part of a consulting project  
24 commissioned by AMN. *Id.* Ms. Bartz's consulting work is just one of many instances in which  
25 Plaintiffs' Counsel were able to gather important evidence through their extensive and sustained  
26 contact with class members. *Id.* After meet and confer, Ms. Bartz produced documents and appeared  
27 for deposition in response to the third party subpoena. *Id.* Ms. Bartz's testimony and documentary  
28

1 evidence was a milestone in the case, as it supported Plaintiffs' claim that Defendants had knowledge  
2 of class-wide issues regarding the alleged deficiencies in their overtime reporting and timekeeping  
3 procedures. *Id.*

4 Later in November 2017, the parties agreed to a third mediation before the Honorable John  
5 M. True III, another experienced and highly regarded mediator in complex wage and hour disputes.  
6 *Id.* at ¶ 85. Prior to the mediation, Defendants provided timekeeping and compensation figures that  
7 assisted Plaintiffs in assessing the value of their claims and estimating damages. *Id.* Plaintiffs'  
8 Counsel prepared a detailed mediation statement, declarations from putative class members, and a  
9 compilation of documentary evidence in advance of the mediation, which they shared with  
10 Defendants. *Id.* Counsel also prepared a detailed PowerPoint presentation summarizing the key  
11 evidence and legal analysis. *Id.* Unfortunately, the case did not settle. *Id.* Still, the pre-mediation  
12 exchange of information, as well as the information exchange during the mediation session itself,  
13 facilitated by Judge True, allowed the parties to more meaningfully vet their claims and defenses.  
14 *Id.*

15 During this third stage of the case, Class Counsel billed approximately 2,040.7 hours, for a  
16 lodestar of approximately \$1,128,531.25. Konecky Decl. at ¶ 86.

17 **D. Motion for Class Certification and Related Discovery: December 1, 2017 to July**  
18 **5, 2018**

19 After the November 2017 mediation, Plaintiffs' Counsel continued preparing Plaintiffs'  
20 opening briefing in support of their motion for class certification under Federal Rule of Civil  
21 Procedure 23. *Id.* at ¶ 87. Counsel worked with dozens of class members to prepare and finalize  
22 declarations attesting to their experiences working for Defendants, which Plaintiffs submitted with  
23 the motion. *Id.* Plaintiffs also conducted substantial legal research and prepared the supporting  
24 papers, including 31 exhibits. *Id.* Plaintiffs relied on written policies, standard paper timecards,  
25 assignment emails and other common instructions conveyed by Defendants to class members,  
26 interrogatory responses obtained from Defendants in discovery, deposition testimony from AMN's  
27 and Kaiser's corporate designee witnesses and from Ms. Bartz, deposition testimony from the named  
28 plaintiffs, and declarations from 35 traveling nurses. *Id.*



1 On December 15, 2017, Plaintiffs disclosed their expert witness for class certification, Dr.  
2 Elsie Crowninshield, who prepared a report examining Defendants' policies and procedures  
3 regarding overtime and meal and rest periods. *Id.* at ¶ 88. Counsel spent extensive time  
4 communicating with Dr. Crowninshield regarding Defendants' policies and procedures and  
5 providing to her the evidence she needed to review to opine on those policies. *Id.*

6 On February 9, 2018, Plaintiffs filed their motion for class certification. [ECF 105]. Preparing  
7 the motion for class certification was a formidable task that demanded the coordinated efforts our  
8 attorneys, paralegals, and other staff members alike. It encompassed an array of work tasks,  
9 including class outreach, legal research, review of numerous documents, and a multi-step drafting  
10 process, among others. *Id.* at ¶ 89.

11 Following the filing of Plaintiffs' motion, Defendants took the depositions of 8 of Plaintiffs'  
12 class member declarants. *Id.* at ¶ 90. Plaintiffs' Counsel devoted substantial time to thoroughly  
13 preparing each of these class member witnesses, including with in-person preparation sessions and  
14 mock deposition questioning. *Id.* Both counsel for Defendant AMN and counsel for Defendant  
15 Kaiser conducted lengthy questioning of the declarants. *Id.* The extensive preparation was well  
16 worth the effort, as the class members provided thorough testimony in the face of Defendants' often  
17 unrelenting questioning. *Id.*

18 On March 19, 2018, Defendants also deposed Plaintiffs' expert witness, Dr. Crowninshield.  
19 *Id.* at ¶ 91. Preparing Dr. Crowninshield for deposition required multiple preparation sessions, mock  
20 deposition questioning, and a thorough review of documents on which she relied. *Id.* This proved to  
21 be worthwhile, as Defendants' motion to strike Dr. Crowninshield's expert opinions was denied. *Id.*

22 Defendants submitted their opposition to Plaintiffs' motion on April 4, 2018. [ECF 118]. The  
23 Opposition included: a 66-page report from a labor economic and statistical expert (Robert  
24 Crandall), who presented a data analysis of the time records and class member testimony; an 18-  
25 page report from an experienced hospital administrator (Dr. Suzanne M. Boyle) regarding nursing  
26 standards, facilities, practices, and hospital timekeeping procedures; declarations from putative class  
27 members who purported to be paid fairly for their time and receive all of their breaks; declarations  
28

1 from Kaiser managers attesting to purported lawfulness of Kaiser's practices; various other  
2 documentary evidence; and a 39-page brief in opposition to the motion. Konecky Decl. at ¶ 92.

3 To prepare Plaintiffs' reply briefing, Plaintiffs' Counsel took the depositions of 4 of  
4 Defendants' Kaiser manager declarants, 3 of Defendants' traveling nurse declarants, and both of  
5 Defendants' expert witnesses. *Id.* at ¶ 93. Deposing Defendants' witnesses demanded significant  
6 attorney time for preparation, travel, and taking the actual depositions, but the undertaking was  
7 certainly worthwhile. *Id.* Indeed, the testimony elicited by Counsel in the depositions later proved  
8 instrumental in rebutting Defendants' arguments in opposition. *Id.* For instance, two of Defendants'  
9 traveling nurse declarant witnesses recanted statements from their declarations that they had reported  
10 and been paid for all of their overtime. Order [ECF 136] at 33:6-18. As another example, Dr. Boyle  
11 testified that AMN traveling nurses are duty-bound to complete end-of-shift duties, regardless of  
12 whether they must work overtime to do so or whether they are compensated for that time. *Id.* at 4:10-  
13 13. The depositions also were important in rebutting Defendants' contention that Plaintiffs' claims  
14 were too individualized to be manageable at trial. Konecky Decl. at ¶ 93; Reply MPA [ECF 123] at  
15 9:9-10. For instance, the Court cited Mr. Crandall's concession in deposition that Plaintiffs would  
16 likely be able to estimate unpaid overtime using statistical studies in combination with records  
17 reflecting time actually paid. Order [ECF 136] at 43:15-18.

18 Defendants also argued in their Opposition briefing that any discouraging "no overtime"  
19 instructions were isolated and not reflective of a common practice. *Id.* at ¶ 94. To rebut this  
20 contention, Plaintiffs' Counsel endeavored to seek additional discovery regarding the assignment e-  
21 mails and other paperwork containing language that Plaintiffs contended discouraged full reporting  
22 of overtime. *Id.* Plaintiffs' Counsel met and conferred with Defense counsel regarding the  
23 production of additional examples of this paperwork, and the parties agreed that Defendants would  
24 produce a sample of the assignment paperwork before Plaintiffs' deadline to submit their reply  
25 briefing. *Id.* A substantial proportion of the sample paperwork produced by Defendants contained  
26 explicit warnings against claiming overtime at Kaiser facilities. *Id.* Also in this timeframe, Plaintiffs'  
27 Counsel worked with a class member who provided an additional policy document from her Kaiser  
28

1 assignment that contained “no overtime” instructions similar to those appearing in the assignment  
2 paperwork. *See* Exh. A to Declaration of Sarah Reynosa-Juarez, Dkt. 123-4. Plaintiffs’ Counsel’s  
3 efforts to gather this documentary evidence were key to rebutting Defendants’ contention that the  
4 “no overtime” instructions were isolated instances, and in corroborating Plaintiffs’ allegations of a  
5 “pattern and practice” of discouraging overtime. Konecky Decl. at ¶ 94.

6 Plaintiffs also had to respond to Defendants’ argument that the allegations of a widespread  
7 practice of underreporting overtime did not square with their payroll data purportedly showing  
8 overtime being paid. *Id.* at ¶ 95. Plaintiffs’ Counsel worked with a forensic accountant, David  
9 Breshears, to analyze Defendants’ data and Mr. Crandall’s Report. *Id.* Counsel’s work with Mr.  
10 Breshears proved very important to Plaintiffs’ argument in reply, as his analysis revealed that  
11 Defendants had incorrectly represented, by a significant margin, the extent to which AMN traveling  
12 nurses at Kaiser facilities were paid for unscheduled overtime. *Id.*

13 Defendants’ opposition also raised several complicated legal and factual issues, which  
14 required Counsel to conduct legal research and review numerous documents produced by  
15 Defendants to prepare the reply memorandum. *Id.* at ¶ 96. For example, Defendants contended that  
16 it was Plaintiffs’ burden to demonstrate that the allegedly common policies injured *all* putative class  
17 members and that class members had no reasons other than Defendants’ policies for allegedly not  
18 reporting all of their overtime. *Id.* Counsel effectively rebutted these contentions with thorough  
19 legal research and persuasive argument. *Id.* Counsel also reviewed extensive documents and  
20 deposition testimony to present evidence rebutting Defendants’ contentions that they did not have a  
21 burdensome pre-approval requirement for claiming unscheduled overtime. *Id.* Plaintiffs submitted  
22 their reply briefing on May 4, 2018. [ECF 123].

23 On May 23, 2018, Defendants filed a sur-reply in response to Plaintiffs’ reply briefing on the  
24 motion for class certification, which contended that Mr. Breshears’ analysis was not timely  
25 disclosed, among other arguments. [ECF 125]. This required Plaintiffs to spend time preparing a  
26 response on a short turnaround, which they filed on May 26, 2018. Konecky Decl. at ¶ 97; [ECF  
27 128]. The time taken to respond was well-spent, as the Court ruled that Mr. Breshears’ analysis was  
28

1 proper rebuttal to an incorrect representation. Order [ECF 136] at 28:17-25.

2 Counsel's extensive time spent conducting written discovery, taking and defending  
3 depositions, compiling declarations, conducting legal research, preparing memoranda, and  
4 reviewing numerous documents produced by Defendants in discovery proved to be well worth the  
5 effort. Konecky Decl. at ¶ 98. Indeed, on July 5, 2018, the Court granted Plaintiffs' motion for class  
6 certification in its entirety. [ECF 136].

7 During this fourth stage of the case, Class Counsel billed approximately 1,499.2 hours, for a  
8 lodestar of approximately \$902,456.00. Konecky Decl. at ¶ 99.

9 **E. Resolution of *Clarke* Action, Settlement, and Preliminary Approval: July 6,  
10 2018 to February 24, 2019**

11 After class certification, the parties agreed to mediate the case once again, this time before  
12 Jeffrey A. Ross, a well-respected mediator specializing exclusively in the mediation of employment  
13 matters, and very experienced in the area of wage and hour class action cases. *See* Stipulation [ECF  
14 140]. In advance of the mediation, Defendants provided Plaintiffs with timekeeping and  
15 compensation data showing the days and hours of work, and payments made, and applicable rates  
16 of pay for the class members. Konecky Decl. at ¶ 100. Plaintiffs' Counsel worked with the statistical  
17 consulting firm Drogin-Kakigi & Associates to conduct a damages analysis using Defendants' data  
18 and incorporating Plaintiffs' estimates as to the amount of unpaid time and the frequency of  
19 noncompliant meal and rest periods. *Id.* Counsel also prepared a comprehensive mediation brief,  
20 which they circulated with Defendants before the mediation.

21 Meanwhile, on September 12, 2018, Plaintiffs' Counsel participated in a mediation in the  
22 matter of *Clarke v. AMN Healthcare, Inc.*, facilitated by the Honorable Jay C. Gandhi (Ret.). *Id.* at  
23 ¶ 101. The *Clarke* matter alleged claims for inaccurate wage statements under California Labor  
24 Code § 226, on behalf of a class of AMN traveling nurses that has some overlap with the class in  
25 this case. *Id.*<sup>1</sup> Counsel's time and effort spent coordinating with *Clarke* counsel to participate in the

26  
27 <sup>1</sup> By way of background, the class action of *Clarke v. AMN Healthcare, Inc.*, 2:16-cv-0413-DSF-KS  
28 (C.D. Cal.), brought claims for the denial of overtime based, not on alleged off-the-clock work, but  
a theory that Defendant AMN did not include the value of per diem benefits in the regular rate of  
pay. The *Clarke* case also alleged class claims for allegedly inaccurate wage statements under

1 mediation and negotiations on behalf of the class in this case proved to be well-spent. *Id.* Following  
2 the mediation in the *Clarke* case, the parties agreed to resolve the Labor Code § 226 claims for \$2.6  
3 million, \$1.3 million of which was ultimately incorporated into the total \$20 million settlement in  
4 this case.<sup>2</sup> *Id.* In Counsel’s judgment, \$1.3 million represents an excellent value for the Labor Code  
5 § 226 claims. *Id.*

6 On October 2, 2018, following the *Clarke* mediation, the parties participated in a full-day  
7 mediation session in this case, conducted by Mr. Ross. *Id.* ¶ 102. The case did not settle at the  
8 mediation, but the parties made significant progress in narrowing the gap between their positions.  
9 *Id.* At the close of the mediation, Mr. Ross made a mediator’s proposal. *Id.* On October 5, 2018, the  
10 parties accepted the proposal, after which they executed a memorandum of understanding. *Id.*

11 Thereafter, Plaintiffs’ Counsel worked with Defendants’ attorneys to draft the long-form  
12 settlement agreement. *Id.* at ¶ 103. Counsel also prepared Plaintiffs’ motion for preliminary  
13 approval, which the Court granted. *Id.* On February 25, 2019, notice of the settlement was sent out  
14 to approximately 8,212 class members. *Id.* The Court-approved notice drafted by Counsel provided  
15 information regarding the terms of the settlement, as well as individually tailored, preliminary  
16 estimates of class members’ settlement shares. *Id.* The notice also includes information regarding  
17 the attorneys’ fees and costs sought here, how to obtain a copy of this Motion, and that class members  
18 have 45 days to review and consider the Settlement, including the attorneys’ fees and costs sought  
19

20 California Labor Code § 226 and waiting time penalties under Labor Code § 203. Konecky Decl. at  
21 ¶ 28. The *Clarke* class covers AMN nurses who have worked in both Kaiser and non-Kaiser facilities  
22 in California. *Id.* Thus, there is some overlap between the class members in the *Clarke* matter and  
23 the class members in the more narrowly defined class of AMN traveling nurses at Kaiser facilities  
24 in this case. *Id.* On June 26, 2018, the Honorable Dale S. Fischer granted summary judgment for  
25 AMN on the overtime and waiting time penalty claims in the *Clarke* case, but denied summary  
26 judgment on the wage statement claims under Labor Code § 226. *Id.* at ¶ 29. The parties in *Clarke*  
27 then agreed to mediate their claims for inaccurate wage statements under Labor Code § 226, after  
28 which the *Clarke* plaintiffs would appeal the summary judgment ruling on the overtime and waiting  
time penalty claims. *Id.*

<sup>2</sup> Based on an evaluation of the relative class sizes and overlap between the certified classes in each  
case, the parties also agreed that \$1.3 million of the \$2.6 million settlement of the Labor Code § 226  
class would be attributable to the *Shaw* case. Konecky Decl. at ¶ 30.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

here. *Id.*

During this fifth and final stage of the case, Class Counsel billed approximately 469.2 hours, for a lodestar of approximately \$308,722.50. *Id.* at ¶ 104. This figure does not include time spent after February 24, 2019, including any time spent preparing the motion for final approval or any follow up work related to the administration of the Settlement. *Id.*

In addition to the above, co-counsel firm Berger Montague PC invested approximately 528 hours into this case, for a lodestar of approximately \$250,220. The work performed by Berger Montague PC is separately documented in the Declaration of Shanon Carson. As stated in the Carson Declaration, the work performed by Berger Montague PC consisted of assisting with class outreach, preparing for and attending the 2017 mediations, conducting document review, and preparing discovery responses, among other tasks performed primarily in the earlier stages of the case. Carson Decl. at ¶¶ 16-19.

**III. ARGUMENT**

**A. Plaintiffs are entitled to reasonable attorneys’ fees and costs under California law**

California law governs the attorneys’ fee award here because Plaintiffs’ claims arise under California law. *See, e.g., Vizcaino v. Microsoft Corp.*, 290 F.3d 1043, 1047 (9th Cir. 2002), *cert. denied*, 537 U.S. 1018 (2002). Plaintiffs are entitled to recover an award of reasonable attorneys’ fees and costs as part of their claims under California law. *See* Cal. Lab. Code §§ 1194, 2804; *see also* Cal. Code of Civ. Proc. § 1021.5. A plaintiff who obtains a successful settlement, such as the one presented here, is a prevailing party. *See Folsom v. Butte Cty. Assn. of Governments*, 32 Cal. 3d 668, 685 (1982) (citing *Maher v. Gagne*, 448 U.S. 122, 129 (1980)); *see also Farrar v. Hobby*, 506 U.S. 103, 111 (1992).<sup>3</sup>

Under California law, the court is empowered to award reasonable attorneys’ fees and costs when a litigant proceeding in a representative capacity has achieved a “substantial benefit” for a

---

<sup>3</sup> Although California law applies to Plaintiffs’ motion for attorneys’ fees and costs, Plaintiffs also cite to federal case law that either addresses fee motions in cases bringing claims under California law or is otherwise instructive to the analysis.

1 class of persons. *Serrano v. Priest*, 20 Cal. 3d 25, 38 (1977). There are two methods of calculating  
 2 attorneys' fees in civil class actions: (1) the lodestar/multiplier method, and (2) the percentage of  
 3 recovery method. *Wershba v. Apple Computer, Inc.*, 91 Cal.App.4th 224, 254 (2001), *disapproved*  
 4 *of on other grounds by Hernandez v. Restoration Hardware, Inc.*, 4 Cal. 5th 260, 269 (2018). While  
 5 the trial court has discretion, one recognized approach is to determine the plaintiffs' lodestar fees,  
 6 assess the propriety of the proposed multiplier, and then "cross check" the propriety of that amount  
 7 as a percentage of the overall recovery. *See Lealao v. Beneficial Cal., Inc.*, 82 Cal.App.4th 19, 49-  
 8 50 (2000). As discussed below, a multiplier of 2.4 is warranted in light of the contingency risk and  
 9 difficulty of the representation here, as well as the excellent result achieved. Moreover, the  
 10 percentage "cross check" demonstrates that the requested fees are reasonable.

11 **B. Plaintiffs' attorneys' fees are reasonable under California's Lodestar/Multiplier**  
 12 **calculation method**

13 The lodestar method is used to determine an award of reasonable fees. *Fischer v. SJB-P.D.*  
 14 *Inc.*, 214 F.3d 1115, 1119 (9th Cir. 2000). As affirmed by the Supreme Court: "The 'lodestar' figure  
 15 has, as its name suggests, become the guiding light of our fee-shifting jurisprudence." *Perdue v.*  
 16 *Kenny A.*, 559 U.S. 542, 504 (2010). The lodestar figure is calculated by multiplying the hours spent  
 17 on the case by the reasonable hourly rates for the region and attorney experience. *In re Bluetooth*  
 18 *Headset Prods. Liab. Litig.*, 654 F.3d 935, 941-42 (9th Cir. 2011). A reasonable hourly rate is the  
 19 prevailing rate charged by attorneys of similar skill and experience in the relevant community.  
 20 *Chalmers v. City of Los Angeles*, 796 F.2d 1205, 1210 (9th Cir. 1986).

21 1. Plaintiffs' Counsel's time was reasonably spent

22 The lodestar method requires the Court to determine a "touchstone" or lodestar figure based  
 23 on a compilation of time spent and reasonable hourly compensation for each attorney. *See, e.g.,*  
 24 *Graham v. DaimlerChrysler Corp.*, 34 Cal. 4th 553, 579 (2004); *Vo v. Los Virgenes Mun. Water*  
 25 *Dist.*, 79 Cal.App.4th 440, 445 (2000). Generally, hours are reasonable if they were "reasonably  
 26 expended in pursuit of the ultimate result achieved in the same manner that an attorney traditionally  
 27 is compensated by a fee-paying client." *Hensley v. Eckerhart*, 461 U.S. 424, 431 (1983).

1 Counsel undertook significant work to prosecute this case. This included investigations, filing,  
 2 drafting of pleadings, legal research on numerous complex issues, dozens of fact-intensive  
 3 interviews of Plaintiffs and class members, lengthy written discovery, 26 depositions, numerous  
 4 lengthy meet and confer to resolve multiple discovery disputes, motion practice, including a hotly  
 5 contested motion for class certification, and settlement negotiations, including four in-person  
 6 mediations. *See generally* Declarations of Joshua Konecky and Shanon Carson. A summary chart of  
 7 the hours worked and corresponding lodestar for Plaintiffs' Counsel is shown below:

<u>Firm</u>	<u>Hours</u>	<u>Lodestar</u>
Schneider Wallace Cottrell Konecky Wotkyns LLP	4,302.5	\$2,520,306.50
Berger Montague PC	528.1	\$250,220.00
<b>Total</b>	4,830.6	\$2,770,526.50

8  
 9  
 10  
 11  
 12  
 13 In addition, a breakdown of the hours worked and corresponding lodestars on a timekeeper by  
 14 timekeeper basis is presented in Counsel's declarations. *See* Konecky Decl. at ¶¶ 61-64; Carson  
 15 Decl. at ¶¶ 12-13. As Counsel's declarations make clear, the time reported in the chart above was  
 16 devoted to necessary and worthwhile tasks, and was calculated at counsel's reasonable billing rates.  
 17 Additionally, tasks were delegated when possible to associate attorneys or legal assistants.

18 The number of hours that Plaintiffs' Counsel devoted to this case is reasonable. *See, e.g.,*  
 19 *Ketchum v. Moses*, 24 Cal.4th 1122, 1133 (2001) (fee award should be "fully compensatory [and]  
 20 absent circumstances rendering the award unjust, an attorney fee award should ordinarily include  
 21 compensation for *all* the hours reasonably spent.") (emphasis in original); *Serrano*, 20 Cal. 3d at  
 22 49 (counsel are entitled to compensation for all hours reasonably expended); *Hensley*, 461 U.S. at  
 23 435-36; *Caudle v. Bristow Optical Co.*, 224 F.3d 1014, 1028 (9th Cir. 2000); *Cabrales v. County of*  
 24 *Los Angeles*, 935 F.2d 1050, 1052-53 (9th Cir. 1991). As discussed herein, Plaintiffs' Counsel were  
 25 required to expend considerable time and resources to investigate, litigate, and successfully settle  
 26 these claims for the benefit of the Class.



1                   2. Plaintiffs' Counsel's hourly rates fall within the range of rates prevailing in the  
2                   community and that have been previously approved

3                   The second step is determining the reasonable market value of the attorneys' services at an  
4 hourly rate. *Ketchum*, 24 Cal.4th at 1134; *Blum v. Stenson*, 465 U.S. 886, 895 n.11 (1984); *PLCM*  
5 *Group, Inc. v. Drexler*, 22 Cal.4th 1084, 1094 (2000); *Camacho v. Bridgeport Fin., Inc.*, 523 F.3d  
6 973, 979 (9th Cir. 2008). This rule applies even when, as here, the attorneys representing the named  
7 Plaintiffs performed the work on a contingent fee basis. *See, e.g., Robertson v. Fleetwood Travel*  
8 *Trailers*, 144 Cal.App.4th 785, 818 (2006); *Blanchard v. Bergeron*, 489 U.S. 87, 96 (1989).

9                   The established standard when determining a reasonable hourly rate is the "rate prevailing in  
10 the community for similar work performed by attorneys of comparable skill, experience, and  
11 reputation." *Camacho*, 523 F.3d at 979 (quoting *Barjon v. Dalton*, 132 F.3d 496, 502 (9th Cir.  
12 1997)). Here, counsel's hourly rates are reasonable in light of their significant experience, expertise,  
13 and skill. Rates are reasonable if they are "within the range of reasonable rates charged by and  
14 judicially awarded comparable attorneys for comparable work." *Children's Hosp. and Med. Ctr. v.*  
15 *Bonta*, 97 Cal.App.4th 740, 783 (2002).

16                   The attorneys responsible for prosecuting and settling this case are among the leading  
17 employment and class action attorneys in California and nationwide. *See* Konecky Decl. at ¶ 33,  
18 Exhs. A & B; Carson Decl. at Exh. A. For example, the Schneider Wallace firm was listed as one  
19 of the "top 10 go-to plaintiffs' employment firms in Northern California" by the Recorder. Konecky  
20 Decl. at ¶ 33. Furthermore, the National Law Journal has selected Berger Montague in 12 out of the  
21 last 14 years for its "Hot List" of top plaintiffs' oriented litigation firms in the United States. Carson  
22 Decl., at Exh. A.

23                   The courts have recently and consistently approved the hourly rates of Class Counsel's firm  
24 (Schneider Wallace). *See, e.g.,* Exh. D to Konecky Decl., *Knapp v. Art.com, Inc.*, No. 3:16-cv-  
25 00768-WHO (N.D. Cal. October 24, 2018) (approving 2018 rates); Exh. E to Konecky Decl.,  
26 *Janssen v. Square, Inc.*, Case No. CGC-16-549980, Superior Court of California, County of San  
27 Francisco, Order dated September 26, 2018 (approving 2018 rates); Exh. G to Konecky Decl.,  
28 *Marine v. Interstate Distributor Co.*, Case No. RG07358277, Superior Court of California, County

1 of Alameda, Order dated November 19, 2016 (approving 2016 rates); *Winans v. Emeritus Corp.*,  
2 2016 WL 107574, at \*8 (N.D. Cal. Jan. 11, 2016); Exh. H to Konecky Decl., *Carnes v. Atria Senior*  
3 *Living Inc.*, Case No. 14-cv-02727-VC, ECF 115, at 4-5 (N.D. Cal. July 12, 2016); Exh. I to Konecky  
4 Decl., *Meza v. S.S. Skikos, Inc.*, Case No. 3:15-cv-01889-TEH, ECF 58, at 4 (N.D. Cal. May 25,  
5 2016).<sup>4</sup>

6 Furthermore, this Court approved Class Counsel’s rates in 2016 and 2011. *Villalpando v. Exel*  
7 *Direct Inc.*, 2016 WL 7740854, at \*1 (N.D. Cal. Dec. 12, 2016) (Spero, J.) (approving 2016 rates  
8 and observing that “the hourly rates of Lead Counsel Schneider Wallace Cottrell Konecky Wotkyns,  
9 [] have consistently and recently been approved as reasonable by the courts.”), *see* Order at Exh. F  
10 to Konecky Decl.; *Wren v. RGIS Inventory Specialists*, 2011 WL 1230826, at \*22 (N.D. Cal. 2011)  
11 (Spero, J.), *see* Order at Exh. O to Konecky Decl.

12 Similarly, District Courts have held that the Berger Montague attorneys’ “hourly rates are []  
13 within the range charged by attorneys with comparable experience levels for litigation of a similar  
14 nature.” *See, e.g.*, Carson Decl. at ¶¶ 2; 15 (citing *Devlin v. Ferrandino & Sons, Inc.*, No. 2:15-cv-  
15 4976, ECF No. 46 (E.D. Pa. Dec. 9, 2016))

16 Declarations documenting the prevailing market rates in the relevant community also are  
17 sufficient to establish a reasonable rate. *See Widrig v. Apfel*, 140 F. 3d 1207, 1209 (9th Cir. 1998).  
18 Here, counsel have submitted the Declaration of Richard M. Pearl, who has conducted extensive  
19 research on San Francisco Bay Area rates. Pearl Decl. at ¶¶ 3-9. His Declaration documents rates  
20 charged by firms in the Bay Area over the years, and shows that the rates requested here by Plaintiffs’  
21 counsel are reasonably within the market range. *Id.* at ¶¶ 12-13. Mr. Pearl further opines that Class  
22 Counsel’s “skills and work product would command market rates at the high end of the local legal  
23 marketplace.” *Id.* at ¶ 11. Even so, Class Counsel’s rates are lower than several of the non-contingent  
24 market rates that San Francisco Bay Area attorneys of reasonably similar qualifications and  
25 experience have charged for reasonably similar services, as reported in surveys conducted in recent  
26

27  
28 <sup>4</sup> *See also* Konecky Decl. at ¶¶ 50-51 (citing orders approving Counsel’s hourly rates).

1 years.<sup>5</sup> This Court relied in part on a similar declaration from Mr. Pearl in approving Class Counsel's  
 2 rates in 2016. *Villalpando*, 2016 WL 7740854, at \*1; *see also Gutierrez v. Wells Fargo Bank, N.A.*,  
 3 2015 WL 2438274 at \*5 (N.D. Cal. 2015) (Alsulp, J.) (approving similar rates, relying in part on a  
 4 similar declaration from Mr. Pearl). Moreover, Plaintiffs' attorneys are among the leading  
 5 employment and class action attorneys in California and nationwide. Pearl Decl. at ¶ 11; *see also*  
 6 Konecky Decl. at ¶ 33; Exhs. A & B; *see also* Carson Decl. at ¶ 2-4, Exh. A.<sup>6</sup>

7 Counsel's hourly rates are "in line" with prevailing market rates and thus are reasonable.

8  
 9 3. The multiplier sought here is reasonable

10 Courts have long recognized that the contingent and deferred nature of fee awards in cases  
 11 with statutory attorney fees "requires that the fee be adjusted in some manner to reflect the fact that  
 12 the fair market value of legal services provided on that basis is greater than the equivalent  
 13 noncontingent hourly rate." *Horsford v. Bd. of Trustees of California State Univ.*, 132 Cal. App. 4th  
 14 359, 394–95 (2005) (citing *Ketchum*, 24 Cal.4th at 1132-1133); *see also Fischel v. Equitable Life*  
 15 *Assurance Soc'y of the United States*, 307 F.3d 997, 1008 (9th Cir. 2002). Thus, fee awards often  
 16 require significant lodestar enhancements through the application of multipliers. *See id.* "A lawyer  
 17 who both bears the risk of not being paid and provides legal services is not receiving the fair market  
 18 value of his work if he is paid only for the second of these functions. If he is paid no more, competent

19  
 20 <sup>5</sup> *See, e.g.*, Pearl Decl. at p. 19 (2015 rate of \$920 per hour for attorney with 20 years of experience  
 21 and \$710 per hour for attorney with 6 years of experience, reported by Arnold Porter LLP); *id.* at p.  
 22 20 (2017 rate of \$972 per hour for attorney with 11 years of experience, reported by Boies Schiller  
 23 & Flexner LLP); *id.* at p. 22 (2017 rate of \$960 per hour for attorney with 20 years of experience,  
 24 reported by Gibson Dunn & Crutcher LLP); *id.* at p. 24 (2017 rate of \$810 per hour for attorney with  
 25 3 years of experience, reported by Kirkland & Ellis); *id.* (2016 average associate rate of \$754.62 per  
 26 hour, reported by Latham & Watkins); *id.* at p. 26 (2013 average partner rate of \$915 per hour,  
 27 reported by Quinn Emanuel Urquhart & Sullivan); *id.* at p. 30 (2013 average partner rate of \$1,035  
 28 per hour, reported by Skadden, Arps, Slate, Meagher & Flom).

29  
 30 <sup>6</sup> Berger Montague PC also would be able to command the rates claimed by Class Counsel here, but  
 31 have conservatively used their customary rates in the Philadelphia market, which are somewhat  
 32 lower than the prevailing rates for similar work in the San Francisco Bay Area market, where this  
 33 case is pending and which are routinely approved by federal courts around the country. Carson Decl.  
 34 at ¶¶ 12, 15.

1 counsel will be reluctant to accept fee award cases.” *Ketchum*, 24 Cal.4th at 1133. A risk  
2 enhancement is “earned compensation; unlike a windfall, it is neither unexpected nor fortuitous.  
3 Rather it is intended to approximate market-level compensation for such services which typically  
4 pay a premium for the risk of nonpayment or delay in payment of attorney’s fees.” *Id.* at 1138.

5 While Plaintiffs seek a multiplier of approximately 2.4 here, the overall reasonableness of  
6 Plaintiffs’ request is underscored by the fact that a higher multiplier would be justified under  
7 applicable law as well.

8 Multipliers normally range from two to four or higher. *Wershba*, 91 Cal.App.4th at 255;  
9 *Jones v. Dominion Res. Servs.*, 601 F.Supp. 2d 756 (W.Va. 2009) (“Courts have generally held that  
10 lodestar multipliers between 2 and 4.5 demonstrate a reasonable attorneys’ fee”); *see also Vizcaino*,  
11 290 F.3d at 1051 n.6 (observing that 83% of common fund cases apply a multiplier of 1.0-4.0); *Been*  
12 *v. O.K. Industries, Inc.*, 2011 WL 4478766, at \*11 (E.D. Okla. 2011) (citing a study “reporting [an]  
13 average multiplier of 3.89 in survey of 1,120 class action cases” and finding that a multiplier of 2.43  
14 would be “per se reasonable”.); *In re NASDAQ Market-Makers Antitrust Litig.*, 187 F.R.D. 465, 489  
15 (S.D.N.Y. 1998) (awarding 3.97 multiplier, and observing that “[i]n recent years multipliers of  
16 between 3 and 4.5 have become common.”); *Rabin v. Concord Assets Group*, 1991 WL 275757, at  
17 \*2 (S.D.N.Y. Dec. 19, 1991) (awarding 4.4 multiplier and observing that “multipliers of between 3  
18 and 4.5 have been common”).

19 Courts in this Judicial District have found reasonable multipliers in excess of 4 times the  
20 lodestar. *See, e.g., Johnson v. Fujitsu Tech. & Bus. of Am., Inc.*, 2018 WL 2183253, at \*7 (N.D. Cal.  
21 May 11, 2018) (finding multiplier of 4.37 to be reasonable); *In re VeriFone Holdings, Inc. Sec. Litig.*,  
22 2014 WL 12646027, at \*2 (N.D. Cal. Feb. 18, 2014) (finding multiplier of 4.3 to be reasonable); *see*  
23 *also In re Nat’l Collegiate Athletic Ass’n Athletic Grant-in-Aid Cap Antitrust Litig.*, 2017 WL  
24 6040065, at \*9 (N.D. Cal. Dec. 6, 2017), *appeal filed* January 11, 2018 (finding multiplier of 3.66  
25 to be “well within the range of awards in other cases.”); *In re Cadence Design Systems, Inc.*  
26 *Securities and Derivative Litigation*, 2012 U.S. Dist. LEXIS 56785, \*17 (N.D. Cal. April 23, 2012)  
27 (finding multiplier of 2.88 to be reasonable).  
28

1 Factors considered in determining the appropriate lodestar multiplier generally include: (1)  
2 the risks presented by the contingent nature of the case; (2) the difficulty of the questions involved  
3 and the skill requisite to perform the legal service properly; (3) the nature of the opposition; (4) the  
4 preclusion of other employment by the attorney from accepting the case; and (5) the result obtained.  
5 *Serrano*, 20 Cal. 3d at 48-49; *Edgerton v. State Pers. Bd.*, 83 Cal.App.4th 1350, 1363 (2000).

6 All of these factors favor approval of a multiplier higher than the 2.4 multiplier that Plaintiffs'  
7 Counsel seeks here. To date, Plaintiffs' Counsel have spent approximately 4,830 hours litigating the  
8 case, for a lodestar of \$2,770,526.50, and have advanced \$185,850.01 in litigation costs and  
9 expenses. After reimbursement of reasonable out-of-pocket expenses, Counsel's fee request  
10 represents a multiplier of approximately 2.4 of the lodestar fees incurred in prosecuting this case  
11 (which will decrease after additional time required for settlement approval and implementation).

12 *i The risks presented by the contingent nature of recovery justify a*  
13 *substantial multiplier*

14 The major consideration in determining the appropriateness of the proposed multiplier is the  
15 contingent nature of the award. *Ketchum*, 24 Cal.4th at 1132-33; *see also Fischel*, 307 F.3d at 1008.  
16 In determining what multiplier to award, the probability of success must be assessed *ex ante*, that is  
17 as viewed from the outset of the case. *See e.g., Harman v. Lyphomed, Inc.*, 945 F.2d 969, 976 (7th  
18 Cir. 1991). Further, the possibility of no recovery is only one of the uncertainties involved in taking  
19 on such a case. Other uncertainties are the amount that will be recovered, uncertainty as to the cost,  
20 both in effort and expenses, and uncertainty about how much time will pass before the recovery is  
21 obtained. *See e.g., Ketchum*, 24 Cal.4th at 1132-1133, 1138.

22 Plaintiffs' Counsel have been the only counsel to represent class members in this matter and  
23 have borne the entire risk and costs of litigation for more than three years purely on a contingency  
24 basis. Konecky Decl. at ¶¶ 114-118; Carson Decl. at ¶¶ 9,10, 22. Plaintiffs' Counsel's outlay of  
25 time and money in this case has been significant. *Id.* In all, Plaintiffs' Counsel and their staffs have  
26 spent approximately 4,830 hours investigating, analyzing, researching, litigating, and negotiating a  
27 favorable resolution of this case, and have incurred \$185,850.01 in necessary litigation expenses.  
28 Konecky Decl. at ¶ 108; Carson Decl. at ¶¶ 12, 25.

1 Plaintiffs' Counsel bore the substantial risk of an uncertain outcome in agreeing to prosecute  
2 this class action case on a contingency fee basis, as well as the difficulties and delay inherent in such  
3 litigation. Konecky Decl. at ¶¶ 114-118; Carson Decl. at ¶¶ 9,10, 22. This case was particularly  
4 risky given the difficulty of obtaining class certification of claims based on evidence of an unlawful  
5 "pattern and practice," as well as of proving such claims at trial, without evidence of facially  
6 unlawful policies. *Id.*; see also, e.g., *Civil Rights Education and Enforcement Center v. Hospitality*  
7 *Properties Trust*, 867 F.3d 1093, 1104 (9th Cir. 2017) (citing *Nordstrom v. Ryan*, 762 F.3d 903, 911  
8 (9th Cir. 2014)); *Ellis v. Costco Wholesale Corp.*, 657 F.3d 970, 983 (9th Cir. 2011) *Diaz v. Target*  
9 *Corp.*, 2010 WL 11558085, at \*10 (C.D. Cal. Dec. 13, 2010). There also was the enormous cost  
10 inherent in class action litigation, as well as a staunch opposition by corporate defendants who  
11 vigorously opposed Plaintiffs claims. Konecky Decl. at ¶¶ 108-113, 117. Plaintiffs' Counsel risked,  
12 and in fact devoted significant time and expense to ensure the successful class settlement.

13  
14 *ii The difficulty of the questions involved and the skill required justify a  
substantial multiplier*

15 Plaintiffs' Counsel are skilled attorneys who have had success in wage-and-hour class actions.  
16 Konecky Decl. at ¶ 33, Exhs. A & B; Carson Decl. at ¶¶ 2-4, Exh. A. This case required experienced  
17 and competent lawyers and expertise in the issues presented herein. To obtain such an attorney on  
18 the free market, a client must pay the market rate. While most class actions are complex and involve  
19 some risk, Plaintiffs' Counsel had to overcome several major obstacles in prosecuting this case. The  
20 nature of the claims in this case posed particularly challenging obstacles. As discussed herein, even  
21 meritorious claims based on evidence of an unlawful "pattern and practice" are difficult to certify  
22 under Rule 23, much less to prove at trial, and require substantial investigation and skill to prosecute  
23 effectively. Konecky Decl. at ¶¶ 10, 67.

24 Counsel believed the claims were meritorious from the start, but gathering the evidence and  
25 preparing the arguments necessary to obtain class certification of the "pattern and practice" claims  
26 still was a formidable task, the success of which depended on the skill and thoroughness of Plaintiffs'  
27 Counsel. *Id.* at ¶¶ 94, 116, 128. For instance, Counsel brought their skills to bear on the discovery  
28 process, including by negotiating with highly sophisticated Defense counsel and bringing a

1 discovery dispute to the Court in order to obtain crucial information supporting the allegedly  
2 unlawful “pattern and practice.” *Id.* at ¶ 15. Counsel also worked diligently to maintain close contact  
3 with class members, who provided still more important information supporting class certification  
4 and the existence of an unlawful “pattern and practice.” *Id.* at ¶¶ 84, 94. Indeed, Plaintiffs learned  
5 of the common “no overtime” instructions and Bartz consultancy through Plaintiffs’ Counsel’s  
6 outreach to and interviews of class members, which opened the door to substantial additional sources  
7 of common proof through further discovery and depositions. *Id.* at ¶ 84. Counsel also applied their  
8 skills and experience in extensive interviews with class members, which formed the basis for the 35  
9 traveling nurse declarations submitted in support of Plaintiffs’ motion for class certification. *Id.* at ¶  
10 87. Without this discovery and class member testimony, class certification may well have been  
11 denied.

12 Moreover, Defendants staunchly opposed Plaintiffs’ motion for class certification with two  
13 expert witnesses, declarations of several Kaiser managers and AMN traveling nurses, deposition  
14 testimony of several putative class members, and sophisticated legal arguments in a lengthy  
15 opposition briefing and sur-reply. *Id.* at ¶¶ 92, 97. Plaintiffs’ Counsel skillfully responded to these  
16 arguments with effective questioning of Defendants’ witnesses in deposition and by deftly rebutting  
17 Defendants’ legal arguments. *Id.* at ¶¶ 93-97. Plaintiffs’ Counsel also worked with a forensic  
18 accountant to rebut representations of pay data presented in Defendants’ briefing, without which  
19 Plaintiffs may not have been able to demonstrate the merits of their claims. *Id.* at ¶ 97. Any of these  
20 obstacles may well have prevented recovery completely if not for Plaintiffs’ Counsel’s thoroughness  
21 and skill in prosecuting the claims. *See Johnson*, 2018 WL 2183253, at \*7 (awarding multiplier in  
22 excess of 4 times the lodestar, and observing that “the litigation and settlement appear by all  
23 measures to be the work of skillful and experienced attorneys with significant expertise...”).

24  
25 *iii The vigorous opposition by Defendants justifies a substantial multiplier*

26 Counsel who skillfully overcome difficult issues or uncompromising opposition in the  
27 litigation are entitled to a fee enhancement. *Serrano*, 20 Cal.3d at 49; *Edgerton*, 83 Cal.App.4th at  
28 1363. Here, before eventually agreeing to the Settlement, Defendants asserted a vigorous defense,

1 including stiff resistance to class discovery, a forceful opposition to Plaintiffs' motion for class  
 2 certification, which was supported by several witness declarations and the testimony of two expert  
 3 witnesses, and a motion to strike the expert opinions of Dr. Crowninshield, among others.  
 4 Defendants also took the depositions of eight declarant class members and each of the three named  
 5 Plaintiffs, as well as of Plaintiffs' expert witness. The settlement effort was protracted, with extended  
 6 discussions, four formal mediations, and several instances in which it appeared the parties would not  
 7 reach a settlement. *See* Konecky Decl. at ¶¶ 53, 90-92, 117.

8 Further, proceeding through further motion practice and to trial would have added years to  
 9 this case because of the difficult legal and factual issues raised. Indeed, Defendants consistently  
 10 stated their intention to seek decertification of Plaintiffs' claims. *Id.* at ¶ 128. While Plaintiffs  
 11 strongly believe the Court's rulings are sound, the propriety of class certification, among other  
 12 determinations, could have been revisited on a motion for decertification or in an appeal. *Id.*; *see*,  
 13 *e.g. Retta v. Millennium Prod., Inc.*, 2017 WL 5479637, at \*13 (C.D. Cal. Aug. 22, 2017) (approving  
 14 3.5 multiplier where counsel "faced vigorous opposition, engaged in more than a year of discovery  
 15 and motion practice, and achieved results that represent a significant recovery for the class").

16 *iv The extent to which litigation precluded other employment justifies a*  
 17 *substantial multiplier*

18 There are only so many cases that Plaintiffs' Counsel can take at any one time. Konecky Decl.  
 19 at ¶ 114; Carson Decl. at ¶ 10. Consequently, there were other meritorious cases presented to  
 20 Plaintiffs' Counsel that would have generated substantial fees, but were declined, during the  
 21 pendency of this action in order to devote the attention necessary to achieve the highly favorable  
 22 results in the Settlement. *Id.*

23 *v The excellent result obtained justifies a substantial multiplier*

24 The results obtained in litigation justify a substantial enhancement of the lodestar where  
 25 counsel's extensive effort produced excellent results. *Graham*, 34 Cal.4th at 582; *Edgerton*, 83  
 26 Cal.App.4th at 1363.

27 Here, the final settlement fund figure of \$20 million represents an excellent result for the  
 28 Class. Even after the attorneys' fees and costs that Plaintiffs seek here, the highest service awards



1 permitted under the Settlement Agreement, the PAGA allocation, the estimated costs of settlement  
2 administration, and the modest set aside for the Reserve Fund, an estimated Net Settlement Amount  
3 of approximately \$12,904,418 would be distributed to the approximately 8,212 members of the  
4 Settlement Class. This works out to an average share of approximately \$1,570 per person, and a  
5 little over \$61 per workweek. Konecky Decl. at ¶¶ 119-127. The approximate \$1,570 per-person  
6 recovery is particularly strong in light of the class members' relatively short tenures in Kaiser  
7 facilities in California during the class period. Indeed, the average tenure for class members in  
8 covered employment during the class period is approximately 26 weeks, which reflects the class  
9 members' status as temporary workers who have moved between various Kaiser and non-Kaiser  
10 health care facilities, inside and outside of California, during the class period. Class members with  
11 a full year of qualifying workweeks during the class period will receive over \$3,000, double the  
12 average per-person recovery. This will bring substantial relief to the Class.

13 The recovery also compares very favorably with other settlements of analogous wage and  
14 hour class actions. For instance, an analogous California wage and hour class action also brought  
15 against Defendant AMN settled for \$3 million on behalf of approximately 11,685 non-exempt  
16 healthcare professionals. *O'Sullivan v. AMN Services, LLC*, 2014 WL 11514268 (N.D. Cal. 2014)  
17 (Spero, J.) (briefing on motion for final approval describing settlement). Moreover, the projected  
18 average per-person recovery of approximately \$1,570 and per-week recovery of just over \$61 in the  
19 instant Settlement compares very favorably with the average per-person recovery of less than \$500  
20 and per-week recovery of less than \$15 in *O'Sullivan*. *See id.* at 5. The recovery also is excellent in  
21 comparison to other wage and hour settlements in the health care context. *See, e.g., Bolton v. U.S.*  
22 *Nursing Corp.*, 2013 WL 5700403, at \*2 (N.D. Cal. Oct. 18, 2013) (Settlement of California state  
23 law wage and hour class action on behalf of temporary nurses, with approximate per-person recovery  
24 of \$595); *Saldivar v. Priority One Med. Transp., Inc.*, 2011 WL 13213889, at \*7 (C.D. Cal. Mar.  
25 22, 2011) (class action settlement of wage and hour class claims of emergency medical response  
26 workers, for approximate per-person recovery of \$530); *Galt v. Eagleville Hosp.*, 310 F. Supp. 3d  
27 483, 489 (E.D. Pa. 2018) (FLSA and state law settlement of class and collective claims brought on  
28

1 behalf of nurses, for approximately \$725 per-person recovery); *McClellan v. Health Sys., Inc.*, 2015  
 2 WL 12426091, at \*3 (W.D. Mo. June 1, 2015) (class action settlement of wage and hour claims on  
 3 behalf of nursing home employees, for approximate per-person recovery of \$286).

4 Furthermore, the comparatively excellent recovery here is in large part attributable to  
 5 Plaintiffs' Counsel's skilled advocacy and determination to litigate through the class certification  
 6 stage in pursuit of a better recovery for the Class. Indeed, unlike in *O'Sullivan, Bolton, and Saldivar,*  
 7 *supra*, Plaintiffs' Counsel did not agree to resolve the claims for a substantially lower amount before  
 8 class certification, despite the risk that certification of Plaintiffs' "pattern and practice" claims would  
 9 be denied or that Defendants' forthcoming motion for decertification would be granted.

10 Considered against the risks of continued litigation, and the importance of the employment  
 11 rights at issue and a speedy recovery, the relief provided under the Settlement represents an excellent  
 12 result for the Class, and therefore justifies a substantial multiplier. *See, e.g., Gergetz v. Telenav, Inc.*,  
 13 2018 WL 4691169, at \*7 (N.D. Cal. Sept. 27, 2018) (approving 2.65 multiplier in light of "excellent  
 14 result" achieved for the class).

15 **C. The "Percentage of the Fund" cross-check supports the reasonableness of**  
 16 **Plaintiffs' fee request**

17 A common cross-check regarding the reasonableness of a fee award is its percentage of the  
 18 total value of the benefits conferred on the class. *Serrano*, 20 Cal. 3d at 34; *Boeing Co. v. Van*  
 19 *Gemert*, 444 U.S. 472, 478-81 (1980); *Lealao*, 82 Cal.App.4th at 49-50; *Graciano v. Robinson Ford*  
 20 *Sales, Inc.*, 144 Cal. App. 4th 140, 164 (2006); 3 Newberg on Class Actions, § 14.7.

21 Viewed from a "percentage of fund" perspective, the fee request of \$6,666,666.67 represents  
 22 one third of the common fund. Konecky Decl. at ¶ 7. The courts regularly approve fee requests  
 23 within and above that range. *See, e.g.,* Newberg on Class Actions at §11:24; Manual for Complex  
 24 Litigation at §14:6; *Van Vranken v. Atlantic Richfield Co.*, 901 F.Supp. 294, 297-98 (N.D. Cal. 1995)  
 25 ("Class Counsel have also cited 73 district court opinions in which fees in the range of 30-50 percent  
 26 of the common fund were awarded."); *In Re Pacific Enter. Sec. Litig.*, 47 F.3d 373, 379 (9th Cir.  
 27 1995) (33% fee award); *Williams v. MGM-Pathe Communications Co.* 129 F.3d 1026, 1027 (9th  
 28 Cir. 1997) (33% of total fund); *In Re Vitamins Antitrust Litig.*, 2001 WL 34312839 (D.D.C. 2001)

1 (34.6% of \$365 million recovery); *Cotchett, Pitre & McCarthy v. Universal Paragon Corp.*, 187  
2 Cal.App.4th 1405, 1421 (2010) (contingency fees typically range from 33 to 40% of class benefit).

3 Moreover, courts in this judicial district and elsewhere regularly approve fee requests within  
4 and above the range requested here in comparable employment class actions. For instance, this  
5 Court found to be reasonable a fee request by Class Counsel's firm representing 42% of the common  
6 fund in another wage and hour class action alleging "off the clock" claims. *Wren*, 2011 WL 1230826,  
7 at \*29 (Spero, J.); *Singer v. Becton Dickinson and Company*, 2010 WL 2196104 at \*8 (S.D. Cal.  
8 2010) (awarding 33.33%); *Ingalls v. Hallmark Mktg. Corp.*, Dkt. No. 77 (C.D. Cal. Oct. 16, 2009)  
9 (awarding 33.33%); *De Munecas v. Bold Food, LLC*, 2010 WL 3322580, at \*9 (S.D.N.Y. 2010)  
10 (request for 33% of fund is reasonable "because reasonable paying clients typically pay one-third of  
11 their recovery under private retainer agreements."). Accordingly, this cross-check demonstrates the  
12 propriety of the requested fee.

13 **D. Plaintiffs' requested cost reimbursements are reasonable**

14 Plaintiffs' Counsel are entitled to recover the out-of-pocket costs and litigation expenses they  
15 reasonably incurred in investigating, prosecuting, and settling this case. *Staton v. Boeing Co.*, 327  
16 F.3d 938, 974 (9th Cir. 2003); *In re Media Vision Tech. Sec. Litig.*, 913 F.Supp. 1362, 1366 (N.D.  
17 Cal. 1996); *see also Trustees v. Greenough*, 105 U.S. 527, 533 (1881).

18 Here, Plaintiffs' Counsel have incurred \$185,850.01 to date in costs and litigation expenses  
19 necessary for the investigation, prosecution, and settlement of this action. Litigating this case was  
20 costly, given its protracted nature, the vigorousness and quality of Defendants' legal defense, and  
21 the motion practice, substantial documentary evidence, and sizeable number of witnesses and  
22 depositions (with attendant travel costs). Konecky Decl. at ¶¶ 110-113; Carson Decl. at ¶ 25. For  
23 instance, there were 26 depositions in this case, which required Counsel to travel throughout  
24 California and to Nevada, Colorado, and Arizona. Konecky Decl. at ¶ 113. There were also four  
25 formal mediations and several court hearings throughout this case. *Id.* Therefore, Counsel's  
26 requested cost reimbursements are reasonable.

1 **IV. CONCLUSION**

2 For the foregoing reasons, Class Counsel respectfully request that the Court issue an Order  
3 awarding Class Counsel \$6,666,666.67 in attorneys' fees and \$185,850.01 in litigation expenses to  
4 be paid from the settlement fund pursuant to the terms and timeframe set forth in the settlement  
5 agreement.

6 Dated: February 25, 2019

*/s/ Joshua G. Konecky*

7 \_\_\_\_\_  
8 Joshua G. Konecky  
9 SCHNEIDER WALLACE COTTRELL  
10 KONECKY WOTKYNS, LLP

11 Attorneys for Plaintiffs  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**CERTIFICATE OF SERVICE**

I hereby certify that I electronically filed the foregoing document with the Clerk of the Court for the United States District Court, Northern District of California, by using the Court's CM/ECF system on February 25, 2019.

I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the Court's CM/ECF system.

Date: February 25, 2019

Respectfully Submitted,

/s/ Joshua Konecky

Joshua Konecky (SBN 182897)

SCHNEIDER WALLACE

COTTRELL KONECKY WOTKYNS LLP

2000 Powell Street, Suite 1400

Emeryville, California 94608

Telephone: (415) 421-7100

Facsimile: (415) 421-7105

Counsel for Plaintiff