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**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO/OAKLAND DIVISION**

Zachary NIGHTINGALE, *et al.*,

Plaintiffs,

v.

U.S. CITIZENSHIP AND IMMIGRATION
SERVICES, *et al.*,

Defendants.

No. 3:19-cv-03512-WHO

**UNOPPOSED MOTION AND FOR
PAYMENT OF ATTORNEYS' FEES AND
COSTS**

Date: April 12, 2022

Time: 2:00 P.M.

Judge William H. Orrick

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Following the status conference held on January 4, 2022, Plaintiffs and Defendants, by and through their counsel of record, reopened and successfully concluded settlement negotiations regarding payment of attorneys' fees and costs in this case. Pursuant to Federal Rules of Civil Procedure 23(h) and 54(d), Plaintiffs now file this motion for the payment of \$787,500 in attorneys' fees and costs pursuant to 5 U.S.C. § 552(a)(4)(E).

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1. Exhibit A contains the Settlement Agreement executed by the parties.

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2. Exhibit B contains the documents Plaintiffs' counsel provided to Defendants, detailing the basis for Plaintiffs' request for payment of legal fees through December 2020. This documentation reflects fees in excess of the \$787,500 figure upon which the parties ultimately agreed.

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3. The key consideration in determining the appropriate fees under Federal Rule of Civil Procedure 23 is "reasonableness." The Ninth Circuit has prescribed the following factors to be considered in the balancing process required in a determination of the reasonableness of attorney fees:

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(1) the time and labor required, (2) the novelty and difficulty of the questions involved, (3) the skill requisite to perform the legal service properly, (4) the preclusion of other employment by the attorney due to acceptance of the case, (5) the

1 customary fee, (6) whether the fee is fixed or contingent, (7) time limitations imposed
2 by the client or the circumstances, (8) the amount involved and the results obtained,
3 (9) the experience, reputation, and ability of the attorneys, (10) the “undesirability”
4 of the case, (11) the nature and length of the professional relationship with the client,
5 and (12) awards in similar cases.

6 *Kerr v. Screen Extras Guild, Inc.*, 526 F.2d 67, 70 (9th Cir.1975) *abrogated on other grounds; see*
7 *also Stanger v. China Electric Motor, Inc.*, 812 F.3d 734, 738-41 (9th Cir. 2016) (reviewing district
8 court’s application of *Kerr* factors).

9 4. Applying these factors to the fee documentation provided in Exhibit A, the fact that
10 this case involves a first-of-its kind nationwide class action, the need for discovery, the expertise of
11 class counsel (*see* ECF 28-17 – 28-20), the results obtained, *see* ECF 47 (order granting nationwide
12 class certification) and ECF 89 (order granting summary judgment), and the fact that the negotiated
13 settlement includes a significant reduction in the fees Plaintiffs’ originally sought, Plaintiffs submit
14 that \$787,500 represents a reasonable payment in attorneys’ fees and costs.

15 5. Defendants consent to approval of the proposed settlement of attorney’s fees and
16 costs. However, should the settlement not be approved, Defendants reserve their right to challenge
17 Plaintiffs’ fee request.

18 6. Pursuant to Federal Rule Civil Procedure 23(h)(1), notice of this motion is directed
19 to all class members through the posting of this motion (without Exhibits A and B) on the websites
20 of the National Immigration Litigation Alliance, Northwest Immigrants’ Rights Project, and
21 American Immigration Council within two business days of filing.

22 7. Pursuant to Federal Rule of Civil Procedure 54(d)(2)(C), Plaintiffs’ request that the
23 Court rule on this motion on or before April 12, 2022, the date that the Court tentatively set for a
24 hearing on Plaintiffs’ fee motion prior to the parties reaching a settlement. *See* Civil Minutes of
25 January 4, 2022, Case Management Conference, ECF 122. Defendants’ consent to this request.
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2 For the reasons stated above, Plaintiffs request that the Court grant the instant motion for
3 payment of \$787,500 in attorneys' fees and costs.

4 Respectfully submitted,

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6 Trina Realmuto (CA SBN 201088)
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*Admitted pro hac vice

16 *Counsel for Plaintiffs and Class Members*

17 Dated: January 24, 2022
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