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8 Attorneys for Plaintiffs,
 9 CARLOS FRANCO, on behalf of himself and
 10 all others similarly situated

FILED
 Superior Court of California
 County of Los Angeles
10/28/2022

Sherri R. Carter, Executive Officer / Clerk of Court
 By: N. Navarro Deputy

11 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
 12 **COUNTY OF LOS ANGELES - SPRING STREET COURTHOUSE**

13 CARLOS FRANCO, on behalf of himself and)
 14 all others similarly situated,)

15 Plaintiffs,)

16 v.)

17 PROPERTY PREP SERVICES, INC., a)
 18 California corporation; PARKING PROS,)
 19 INC., a California corporation; and DOES 1)
 20 through 100, Inclusive)

21 Defendants.)
 22)
 23)
 24)
 25)
 26)
 27)
 28)

CASE NO.: 20STCV05646

[Assigned for all purposes to the Hon. Maren
 E. Nelson - Dept. "17"]

~~REVISED PROPOSED~~ JUDGMENT

DATE: July 25, 2022
 TIME: 9:00 a.m.
 DEPT.: 17

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1 **JUDGMENT**

2 Pursuant to the Order Granting Motion for Final Approval of Class Action Settlement
3 entered on July 25, 2022 (“Order Granting Final Approval”), a copy of which is attached hereto as
4 Exhibit “A”, it is hereby **ORDERED, ADJUDGED AND DECREED** as follows:

5
6 1. Judgment in this matter is entered in accordance with the Order Granting Final
7 Approval and the parties’ Revised Joint Stipulation for Class Action Settlement (“Settlement
8 Agreement”). Unless otherwise provided herein, all capitalized terms used herein shall have the
9 same meaning as defined in the Settlement Agreement.

10
11 2. Consistent with the definitions provided in the Settlement Agreement, the
12 settlement class or Class Members consists of: Plaintiff and all current and former hourly non-
13 exempt employees of Defendants within California at any time during the period from February
14 13, 2016 through January 24, 2021.

15
16 3. Consistent with the definitions provided in the Settlement Agreement, the
17 aggrieved employees or PAGA Group Members consist of: Plaintiff and all current and former
18 hourly non-exempt employees of Defendants within California at any time during the period from
19 February 13, 2019 through January 24, 2021.

20
21 4. Upon the date the Court enters an order granting final approval of the Settlement
22 and Defendants fully fund the Gross Settlement Amount, all Class Members who do not timely
23 submit a valid Request for Exclusion do and will be deemed to have fully, finally and forever
24 released, settled, compromised, relinquished, waived, and discharged any and all Defendants and
25 Defendants’ former and present parents, subsidiaries, and affiliated companies and entities,
26 franchisors and franchisees, and its current, former, and future owners, officers, shareholders,
27 directors, members, managers, operators, principals, employees, consultants, vendors, partners,
28 affiliates, subsidiaries, members, divisions, fiduciaries, trustees shareholders, attorneys, insurers,

1 payroll providers, joint venturers and agents, and any successors and predecessors in interest,
2 assigns, or legal representatives and all persons or entities acting by, through under or in concert
3 with any of them (“Released Parties”) from any and all California wage and hour claims, debts,
4 liabilities, demands, obligations, guarantees, costs, expenses, attorneys’ fees, damages, penalties,
5 interest, and causes of action, arising from or related to the claims pled in Plaintiff’s operative
6 complaint (“Complaint”) or that could have been pled in the Complaint based on the factual
7 allegations pled in the Complaint, including all claims for allegedly unpaid minimum and
8 overtime wages, failure to provide compliant meal breaks, failure to provide complaint rest breaks,
9 inaccurate wage statements, and failure to pay all wages owed upon termination under the
10 California Labor Code, or applicable wage order(s), unfair competition claims under California
11 Business & Professions Code §17200, et seq. based on the labor code violations alleged, and
12 violations of California Labor Code §§201-203, 226, 226.2, 226.7, 510, 512, 1194, 1194.2, 1197
13 including any penalties, restitution, disgorgement, interest or attorneys’ fees thereon (“Released
14 Class Claims”).

15
16 5. Released PAGA Claims means any and all claims for civil penalties under PAGA
17 [Cal. Lab. Code §§2699, et seq.] based on the labor code violations alleged and that are based
18 upon or arise from the factual allegations in Plaintiffs’ notice(s) sent to the LWDA and alleged in
19 the operative Complaint, including attorneys’ fees and costs related thereto, regardless of whether
20 PAGA Group Members opt out from the Settlement Agreement.

21
22 6. No Class Members submitted a valid opt-out.

23
24 7. Consistent with the terms of the Settlement Agreement, Defendants shall pay
25 \$375,000.00 (“Gross Settlement Amount”) and employer’s share of payroll taxes within the time
26 period set forth in the Settlement Agreement. From the Gross Settlement Amount, the Claims
27 Administrator shall distribute the funds as follows:

28 ///

- 1 (a) Class Counsel, The Nourmand Law Firm, APC, \$125,000.00 in attorneys
2 fees' and \$11,255.97 in litigation costs;
- 3 (b) Class Representative, Carlos Franco \$5,000.00 as Class Representative
4 Enhancement Payment;
- 5 (c) Simpluris, Inc. \$6,000.00 for settlement administration costs;
- 6 (d) \$7,500.00 to the LWDA for its share of the PAGA penalties;
- 7 (e) \$2,5000 of the PAGA penalties will be distributed to PAGA Group
8 Members in compliance with the procedure set forth in the Settlement
9 Agreement; and
- 10 (f) The Net Settlement Amount, as defined in the Settlement Agreement, will
11 be distributed to the Class Members in compliance with the procedure set
12 forth in the Settlement Agreement.

13

14 8. Without affecting the finality of the Judgment, the Court shall retain exclusive and
15 continuing jurisdiction over the above-captioned action and the parties, including all Class
16 Members, for purposes of enforcing the terms of the Judgment entered herein.

17

18 9. This document shall constitute a Judgment for purposes of California Rules of
19 Court, Rule 3.769(h).

20

21 10. Pursuant to California Rules of Court, Rule 3.771(b), Simpluris, Inc. is ordered to
22 post on its website a copy of this Judgment for a period of thirty days from the date the Court
23 signs the Judgment.

24

25 **IT IS SO ORDERED, ADJUDGED, AND DECREED.**

26

27 DATED: 10/28/2022

28 
HONORABLE MAREN E. NELSON
LOS ANGELES COUNTY SUPERIOR COURT

EXHIBIT “A”

FILED

Superior Court of California
County of Los Angeles

07/25/2022

Steen R. Carter, Executive Officer / Clerk of Court

By: N. Navarro Deputy

**SUPERIOR COURT OF CALIFORNIA
COUNTY OF LOS ANGELES**

CARLOS FRANCO, on behalf of himself
and all others similarly situated,

Plaintiff,

v.

PROPERTY PREP SERVICES, INC., a
California corporation; PARKING PROS,
INC., a California corporation; and DOES 1
through 100, inclusive,

Defendants.

Case No.: 20STCV05646

**ORDER GRANTING
MOTION FOR FINAL APPROVAL
OF CLASS ACTION SETTLEMENT**

Date: July 25, 2022

Time: 9:00 a.m.

Dept.: SSC-17

I. BACKGROUND

Plaintiff Carlos Franco sues his former employer, Defendants Property Prep Services, Inc. and Parking Pros, Inc. (collectively, "Defendants") for alleged wage and hour violations. Defendant Property Prep is in the business of providing professional cleaning and maintenance of commercial and retail parking structures and parking lots.

1 Defendant Parking Pros was in the business of providing power sweeping of
2 commercial and retail parking structures and parking lots, and ceased operations in
3 December 2018. Plaintiff seeks to represent a class of Defendants' current and former
4 non-exempt employees.

5 On February 13, 2020, Plaintiff filed a class action complaint alleging claims
6 for: failure to pay minimum wages (Labor Code §§ 1194 and 1197); failure to pay
7 overtime wages (Labor Code § 1194); failure to provide meal periods (Labor Code §§
8 226.7 and 512); failure to provide rest periods (Labor Code § 226.7); failure to pay all
9 wages upon termination (Labor Code §§ 201 and 202); failure to provide accurate wage
10 statements (Labor Code § 226(a); and unfair competition (Bus. & Prof. Code § 17200,
11 *et seq.*). On December 4, 2020, Plaintiff filed a First Amended Complaint ("FAC")
12 which added a cause of action for civil penalties under the Private Attorneys General
13 Act of 2004 (Labor Code § 2699, *et seq.*) ("PAGA").

14 On November 19, 2020, the parties mediated before Marc J. Feder, Esq. and
15 accepted the mediator's proposal. The terms of settlement were finalized in the long-
16 form *Joint Stipulation for Class Action Settlement* ("Settlement Agreement"), a copy of
17 which was filed with the Court.

18 On July 28, 2021, the Court issued a "checklist" to the parties pertaining to
19 deficiencies in Plaintiff's motion for preliminary approval. In response, the parties filed
20 further briefing, including the Revised Settlement Agreement.

21 The settlement was preliminarily approved on January 24, 2022, subject to
22 certain conditions, with which there has been compliance. Notice was given to the
23 Class Members as ordered (see Declaration of Lindsay Kline). Now before the Court is
24 Plaintiff's motion for final approval of the Settlement Agreement, including for
25

1 payment of fees, costs, and a service award to the named plaintiff. For the reasons set
2 forth below, the Court grants final approval of the settlement.

3 4 **II. THE TERMS OF THE SETTLEMENT**

5 6 **A. SETTLEMENT CLASS DEFINITION**

7 “Class Member(s)” or “Settlement Class” means Plaintiff and all current and
8 former hourly non-exempt employees of Defendants within California at any time
9 during the Class Period. (¶7)

10 “Class Period” means the period from February 13, 2016 through January 24,
11 2021. (¶8)

12 “Participating Class Members” means all Class Members who do not submit
13 valid Requests for Exclusion. (¶22)

14 “PAGA Group Member(s)” means Plaintiff and all current and former hourly
15 non-exempt employees of Defendants within California at any time during the PAGA
16 Period. (¶19)

17 “PAGA Period” means the period from February 13, 2019 through January 24,
18 2021. (¶20)

19 20 **B. THE MONETARY TERMS OF SETTLEMENT**

21 The essential monetary terms are as follows:

- 22 • The Gross Settlement Amount (“GSA”) is \$375,000 (¶13). This includes
23 payment of a PAGA penalty of \$10,000 to be paid 75% to the LWDA (\$7,500)
24 and 25% to the Aggrieved Employees (\$2,500) (¶21).

- 1 ○ Increase in Workweeks: Defendants represent that that there are
2 approximately 13,612 total workweeks as of November 19, 2020. In the
3 event the total number of workweeks exceeds by more than 10%, i.e.,
4 14,973 by the end of the Class Period, the Net Settlement Amount shall
5 be increased by determining the workweek value calculated off of 14,973
6 workweeks and multiplied by the additional number of workweeks. For
7 example, if the total number of workweeks is 15,000 and the workweek
8 value is \$10.00 per workweek, Defendants would have to increase the Net
9 Settlement Amount by \$270 ($15,000 - 14,973 = 27 \times \$10.00 = \$270$).
10 (¶50). At hearing counsel confirmed that the total workweeks was
11 14,398. The escalator clause was not triggered.
- 12 • The Net Settlement Amount ("Net") (\$206,500) is the GSA less:
- 13 ○ Up to \$125,000 (33 1/3%) for attorney fees (¶5);
- 14 ○ Up to \$20,000 for attorney costs (*Ibid.*);
- 15 ○ Up to \$7,500 for a service award to the proposed class representative (¶9);
- 16 and
- 17 ○ Estimated \$6,000 for settlement administration costs (¶3).
- 18 • Defendants will pay the employer's share of payroll taxes in addition to the
- 19 Gross Settlement Amount. (¶54)
- 20 • According to the settlement administrator, assuming the Court approves all
- 21 maximum requested deductions, the average payment is \$1014.56, with the
- 22 highest award being \$3,752.43. This calculation was predicated on costs of
- 23 \$20,000. In fact, costs of counsel are \$11,255.97, resulting in an average
- 24 payment of approximately \$1067.01. In addition, each PAGA Group Member
- 25

1 will receive a portion of the PAGA penalty. (\$2,500 or 25% of \$10,000 PAGA
2 penalty).

- 3 • There is no Claim Requirement (Notice pg. 2).
- 4 • The settlement is not reversionary (§30), with the exception that in the event the
5 settlement is made null and void, any installment payments made to the Claims
6 Administrator pursuant to the agreement, including any interest accrued thereon,
7 will revert back to Defendants (§§ 61, 62).
- 8 • Individual Settlement Share Calculation: Defendants will provide the Claims
9 Administrator with the total number of Workweeks for each Class Member
10 during the Class Period and Workweeks for each PAGA Group Member during
11 the PAGA Period. The Claims Administrator will divide the Net Settlement
12 Amount less \$2,500 (or the Court approved amount from the PAGA Settlement
13 Amount allocated for PAGA penalties to PAGA Group Members) by the total
14 number of workweeks ("Work Week Rate Amount") and then multiply this
15 amount by each Class Member's total number of Workweeks to yield that
16 employee's Net Settlement Payment. In the event a Class Member submits a
17 timely Request for Exclusion from the settlement, his/her share of the settlement
18 will be added to the Net Settlement Amount. (§36)
 - 19 ○ In addition, each Class Member who is a PAGA Group Member will be
20 paid a pro-rata share of the \$2,500.00 allocated for PAGA penalties to
21 PAGA Group Members, as calculated by the Claims Administrator, with
22 a formula similar to payments to Participating Class Members. Class
23 Members who are PAGA Employees will not be permitted to exclude
24 themselves from the PAGA claim portion of the Settlement. (*Ibid.*)
25

- 1 • **Tax Withholdings:** 100% of each PAGA Groups Members pro-rate share of the
2 \$2,500.00 allocated for PAGA penalties shall be allocated as penalties; 20% of
3 each Individual Settlement Payment (less any amounts attributed to PAGA
4 penalties) will be allocated for the settlement of wage claims; and 80% of each
5 Individual Settlement Payment (less any amounts attributed to PAGA penalties)
6 will be allocated for the settlement of interest and penalties. (§52)
- 7 • **Uncashed Settlement Payment Checks:** Participating Class Members will have
8 one hundred eighty (180) calendar days from the date of issuance of the check to
9 cash their check. For any check not cashed after 180 calendar days, the Claims
10 Administrator will send the amount represented by the check to the California
11 State Controller Unclaimed Property, with the identity of the Participating Class
12 Member to whom the funds belong, to be held for the participating Class
13 Member per California Unclaimed Property Law. (§49)
- 14 • **Settlement Funding:** Defendants shall fund the Gross Settlement Amount by
15 making twenty-four equal installment payments in the amount of Fifteen
16 Thousand Six Hundred Twenty-Five Dollars (\$15,625) commencing December
17 30, 2020 to be transferred and/or deposited with the Claims Administrator who
18 will deposit the funds into an interest-bearing trust account referred to as the
19 Qualified Settlement Fund account from which the Claims Administrator will
20 have authority to distribute money in accordance with the terms of this
21 Settlement Agreement. The employers' share of the payroll taxes arising from
22 the payments made under this Settlement shall be paid by Defendants in addition
23 to the Gross Settlement Amount and paid in addition to the twenty-fourth
24 installment payment. The Parties agree that Defendants' payment obligations
25 with respect to each installment payment made pursuant to this Agreement shall

1 be met upon initiating the electronic transfer of funds to the Claims
2 Administrator, pursuant to its instructions. Except as provided in Paragraphs 61
3 and 62 [i.e., if the Settlement is made null and void], no part of the Gross
4 Settlement Amount shall revert to Defendants. (§30)

- 5 ○ Timing of Distribution of Individual Settlement Payments: Within three
6 (3) calendar days of Defendants depositing the twenty-fourth and final
7 installment payment as set forth above, the Claims Administrator will
8 issue payments to (1) Participating Class Members and PAGA Group
9 Members; (2) Plaintiff; (3) Class Counsel; and (4) payment to LWDA.
10 The Claims Administrator will also issue a payment to itself for Court-
11 approved services performed in connection with the settlement. (§48)
- 12 ○ As of December 16, 2021, Defendant Property Prep Services, Inc.
13 represented that it timely made 12 out of 24 installment payments thus far
14 (i.e., a total of \$187,500 out of the \$375,000 GSA), which the Settlement
15 Administrator confirmed. (Declaration of Brad Burns filed 12/20/21 ¶5;
16 Declaration of Michael Bui ¶7.) At hearing it was represented that the
17 payments are current.
- 18 ● Cure Provision: If Defendants fail to timely make an installment payment as set
19 forth in this Agreement, Defendants and Guarantors shall have fourteen (14)
20 calendar days from the date written notice of default in payment is provided to
21 counsel for Defendants and Guarantors to cure the untimely installment
22 payment. Defendants and Guarantors shall make any payment under this
23 provision pursuant to the Claims Administrator's electronic transfer instructions.
24 The Parties expressly agree that the Defendants' payment obligations with
25

1 respect to any cure shall be met upon initiating the electronic transfer of funds to
2 the Claims Administrator, pursuant to its instructions. (§31)

- 3 • **Personal Guarantee:** In the event Defendants fail to fully comply with the terms
4 of this Settlement Agreement, and in consideration for the acceptance of the
5 Gross Settlement Amount in installments, Brad Burns, Tim R. Cole, and Oscar
6 Javier Lizarraga (referred to collectively as "Guarantors") hereby irrevocably,
7 absolutely and unconditionally personally guarantee to Plaintiff the prompt and
8 complete payment of the Gross Settlement Amount, thereon, when due. In the
9 event that Defendants fail to make any installment payment pursuant to this
10 Settlement Agreement, the Guarantors shall be provided the opportunity to cure
11 any untimely installment payment in accordance with Paragraph 31 of the
12 Settlement Agreement and shall have the option to make the installment
13 payments in the same manner as if they were the principals of this Settlement
14 Agreement pursuant to the same terms and conditions provided by the
15 Agreement. Brad Burns, Tim R. Cole, and Oscar Javier Lizarraga hereby waive
16 the right to assert any defenses they may have to the liability for the Gross
17 Settlement Amount, thereon, in case of payment default by Defendants. (§88)

18 **C. TERMS OF RELEASES**

- 19
20 • **Release of Claims by Class Members:** Upon the date the Court enters an order
21 granting final approval of the Settlement and Defendants fully fund the Gross
22 Settlement Amount, all Class Members who do not timely submit a valid
23 Request for Exclusion do and will be deemed to have fully, finally and forever
24 released, settled, compromised, relinquished, waived, and discharged any and all
25

1 of the Released Parties of and from any and all Released Class Claims accruing
2 during the Class Period. (§58)

- 3 ○ In addition, on the date the Court enters an order granting final approval
4 of the settlement, all Class Members who do not timely submit a valid
5 Request for Exclusion and all successors in interest will be barred from
6 prosecuting or participating in any and all Released Class Claims against
7 the Released Parties. (*Ibid.*)
- 8 ○ Furthermore, upon the date the Court enters an order granting final
9 approval of the Settlement and Defendants fully fund the Gross
10 Settlement Amount, the State of California and PAGA Group Members
11 (regardless of whether PAGA Group Members opt out of the Class
12 Settlement) release the Released Parties from the Released PAGA Claims.
13 (*Ibid.*)
- 14 ● Class members will release: Any and all California wage and hour claims, debts,
15 liabilities, demands, obligations, guarantees, costs, expenses, attorneys' fees,
16 damages, penalties, interest, and causes of action, arising from or related to the
17 claims pled in Plaintiff's operative complaint ("Complaint") or that could have
18 been pled in the Complaint based on the factual allegations pled in the
19 Complaint, including all claims for allegedly unpaid minimum and overtime
20 wages, failure to provide compliant meal breaks, failure to provide compliant
21 rest breaks, inaccurate wage statements, and failure to pay all wages owed upon
22 termination under the California Labor Code, or applicable wage order(s), unfair
23 competition claims under California Business & Professions Code §17200, et
24 seq. based on the labor code violations alleged and violations of California Labor
25 Code §§ 201-203, 226, 226.2, 226.7, 510, 512, 1194, 1194.2, 1197 including any

1 penalties, restitution, disgorgement, interest or attorneys' fees thereon
2 ("Released Class Claims"). This release will cover all Class Members who do
3 not opt out. (§24)

- 4 • "Released PAGA Claims" means any and all claims for civil Penalties under
5 PAGA [Cal. Lab. Code §§ 2699, et seq.] based on the labor code violations
6 alleged and that are based upon or arise from the factual allegations in Plaintiff's
7 notice(s) sent to the LWDA and alleged in the operative Complaint, including all
8 attorneys' fees and costs related thereto, regardless of whether PAGA Group
9 Members opt out from the Settlement Agreement. (§25)
- 10 • "Released Parties" means Defendants and Defendants' former and present
11 parents, subsidiaries and affiliated companies and entities, franchisors and
12 franchisees, and its current, former, and future owners, officers, shareholders,
13 directors, members, managers, operators, principals, employees, consultants,
14 vendors, partners, affiliates, subsidiaries, members, divisions, fiduciaries,
15 trustees shareholders, attorneys, insurers, payroll providers, joint venturers and
16 agents, and any successors and predecessors in interest, assigns, or legal
17 representatives and all persons or entities acting by, through under or in concert
18 with any of them. (§26)
- 19 • The named Plaintiff will also provide a general release and a waiver of the
20 protections of Cal. Civ. Code §1542. (§59)
- 21 • The releases are effective upon the date the Court enters an order granting final
22 approval of the Settlement and Defendants fully fund the Gross Settlement
23 Amount. (§58) Defendants shall fund the Gross Settlement Amount by making
24 twenty-four equal installment payments in the amount of Fifteen Thousand Six
25

1 Hundred Twenty-Five Dollars (\$15,625) commencing December 30, 2020.

2 (¶30). Counsel represented at hearing that all payments are current.

3
4 **III. ANALYSIS OF SETTLEMENT AGREEMENT**

5 “Before final approval, the court must conduct an inquiry into the fairness of the
6 proposed settlement.” Cal. Rules of Court, rule 3.769(g). “If the court approves the
7 settlement agreement after the final approval hearing, the court must make and enter
8 judgment. The judgment must include a provision for the retention of the court’s
9 jurisdiction over the parties to enforce the terms of the judgment. The court may not
10 enter an order dismissing the action at the same time as, or after, entry of judgment.”
11 Cal. Rules of Court, rule 3.769(h).

12 As discussed more fully in the Order conditionally approving the settlement, “[i]n
13 a class action lawsuit, the court undertakes the responsibility to assess fairness in order to
14 prevent fraud, collusion or unfairness to the class, the settlement or dismissal of a class
15 action. The purpose of the requirement [of court review] is the protection of those class
16 members, including the named plaintiffs, whose rights may not have been given due
17 regard by the negotiating parties.” See *Consumer Advocacy Group, Inc. v. Kintetsu*
18 *Enterprises of America* (2006) 141 Cal. App.4th 46, 60 [internal quotation marks
19 omitted]; see also *Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 245
20 (“*Wershba*”), disapproved on another ground in *Hernandez v. Restoration Hardware*
21 (2018) 4 Cal.5th 260 [Court needs to “scrutinize the proposed settlement agreement to the
22 extent necessary to reach a reasoned judgment that the agreement is not the product of
23 fraud or overreaching by, or collusion between, the negotiating parties, and that the
24 settlement, taken as a whole, is fair, reasonable and adequate to all concerned.”] [internal
25 quotation marks omitted].

1 “The burden is on the proponent of the settlement to show that it is fair and
2 reasonable. However ‘a presumption of fairness exists where: (1) the settlement is
3 reached through arm's-length bargaining; (2) investigation and discovery are sufficient to
4 allow counsel and the court to act intelligently; (3) counsel is experienced in similar
5 litigation; and (4) the percentage of objectors is small.’” See *Wershba, supra*, 91
6 Cal.App.4th at pg. 245, citing *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794,
7 1802. Notwithstanding an initial presumption of fairness, “the court should not give
8 rubber-stamp approval.” See *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th
9 116, 130. “Rather, to protect the interests of absent class members, the court must
10 independently and objectively analyze the evidence and circumstances before it in order
11 to determine whether the settlement is in the best interests of those whose claims will be
12 extinguished.” *Ibid.*, citing 4 Newberg on Class Actions (4th ed. 2002) § 11:41, p. 90. In
13 that determination, the court should consider factors such as “the strength of plaintiffs’
14 case, the risk, expense, complexity and likely duration of further litigation, the risk of
15 maintaining class action status through trial, the amount offered in settlement, the extent
16 of discovery completed and stage of the proceedings, the experience and views of
17 counsel, the presence of a governmental participant, and the reaction of the class
18 members to the proposed settlement.” *Id.* at 128. This “list of factors is not exclusive and
19 the court is free to engage in a balancing and weighing of factors depending on the
20 circumstances of each case.” *Wershba, supra*, 91 Cal.App.4th at pg. 245.)

21 **A. A PRESUMPTION OF FAIRNESS EXISTS**

22 The Court preliminarily found in its Order of January 24, 2022 that the
23 presumption of fairness should be applied. No facts have come to the Court’s attention
24 that would alter that preliminary conclusion. Accordingly, the settlement is entitled to a
25 presumption of fairness as set forth in the preliminary approval order.

1 **B. THE SETTLEMENT IS FAIR, ADEQUATE, AND REASONABLE**

2 The settlement was preliminarily found to be fair, adequate and reasonable.

3 Notice has now been given to the Class and the LWDA. The notice process resulted in
4 the following:

5 Number of class members: 206

6 Number of notices mailed: 206

7 Number of undeliverable notices: 14

8 Number of opt-outs: 0 (1 received and deemed untimely)

9 Number of objections: 0

10 Number of participating class members: 206

11 (Declaration of Lindsay Kline ("Kline Decl.") ¶¶ 6-16.)

12 The Court finds that the notice was given as directed and conforms to due process
13 requirements. Given the reactions of the Class Members and the LWDA to the proposed
14 settlement and for the reasons set for in the Preliminary Approval order, the settlement is
15 found to be fair, adequate, and reasonable.

16 **C. CLASS CERTIFICATION IS PROPER**

17 For the reasons set forth in the preliminary approval order, certification of the
18 Class for purposes of settlement is appropriate.

19 **D. ATTORNEY FEES AND COSTS**

20 Class Counsel requests \$125,000 (33 1/3%) for attorney fees and \$11,255.97 for
21 costs. (Declaration of Michael Nourmand ("Nourmand Decl.") ISO Final ¶22.)

22 Courts have an independent responsibility to review an attorney fee provision and
23 award only what it determines is reasonable. *Garabedian v. Los Angeles Cellular*
24 *Telephone Company* (2004) 118 Cal.App.4th 123, 128. A percentage calculation is
25

1 permitted in common fund cases. *Laffitte v. Robert Half Int'l, Inc.* (2016) 1 Cal.5th 480,
2 503.

3 In the instant case, fees are sought pursuant to the percentage method. (MFA at
4 pp. 13-16.) The \$125,000 fee request is 33 1/3% of the Gross Settlement Amount.

5 Here, the \$125,000 fee request represents a reasonable percentage of the total
6 funds paid by Defendant. Further, the notice expressly advised class members of the fee
7 request, and no one objected. (Kline Decl. ¶13, Exhibit A thereto.) Accordingly, the
8 Court awards fees in the amount of \$125,000.

9 Class Counsel requests \$11,255.97 in costs. This is less than the \$20,000 cap
10 provided in the settlement agreement (¶5). The amount was disclosed to Class Members
11 in the Notice, and no objections were received. (Kline Decl. ¶13, Exhibit A thereto.)
12 Costs include: Mediation (\$5,000); Professional Services (\$2,362.50); and Filing Fees
13 (\$1,705). (Nourmand Decl. ISO Final ¶28.)

14 The costs appear to be reasonable and necessary to the litigation, are reasonable
15 in amount, and were not objected to by the class.

16 For all of the foregoing reasons, costs of \$11,255.97 are approved.

17 **E. SERVICE AWARD TO CLASS REPRESENTATIVE**

18 A service (or incentive) fee award to a named class representative must be
19 supported by evidence that quantifies the time and effort expended by the individual and
20 a reasoned explanation of financial or other risks undertaken by the class representative.
21 See *Clark v. American Residential Services LLC* (2009) 175 Cal.App.4th 785, 806-807
22 (*Clark*); see also *Cellphone Termination Cases* (2010) 186 Cal.App.4th 1380, 1394-1395
23 ["Criteria courts may consider in determining whether to make an incentive award
24 include: (1) the risk to the class representative in commencing suit, both financial and
25 otherwise; (2) the notoriety and personal difficulties encountered by the class

1 representative; (3) the amount of time and effort spent by the class representative; (4) the
2 duration of the litigation and; (5) the personal benefit (or lack thereof) enjoyed by the
3 class representative as a result of the litigation. (Citations.)”].

4 The Court’s published checklist asks that plaintiffs provide information as to
5 “why any proposed class representative enhancement is reasonable, including what the
6 class representative did beyond the expected services of any class representative. (*Munoz*
7 *v. BCI Coca-Cola Bottling Co. of Los Angeles* (2010) 186 Cal.App.4th 399, 412;
8 *Radcliffe v. Experian Information Solutions Inc.* (9th Cir. 2013) 715 F.3d 1157, 1165.)”

9 The Court’s preliminary approval order also noted that “specificity, in the form of
10 quantification of time and effort expended on the litigation, and in the form of reasoned
11 explanation of financial or other risks incurred by the named plaintiffs, is required in
12 order for the trial court to conclude that an enhancement was ‘necessary to induce [the
13 named plaintiff] to participate in the suit.” See Preliminary Approval Order at 23:5-10,
14 citing *Clark, supra*, 175 Cal. App. 4th at 806-807. That order invited Plaintiff file a
15 further declaration in support of his requested enhancement award but he did not do so.

16 Plaintiff requests an enhancement award totaling \$7,500. (MFA at 13:15-17.) He
17 represents that his contributions to the action include: meeting with and participating in
18 telephone conferences with his attorneys; providing knowledge and documentation as to
19 Defendants’ policies and practices; assisting in reviewing time and payroll records
20 produced by Defendants; and being available on the day of mediation. He does not
21 provide an estimate of his total time spent on the case or any other quantification.
22 (Declaration of Carlos Franco ISO Final ¶¶ 5-6.) There is no indication that he was
23 deposed or attended the mediation. Insofar as risk is concerned Franco opines that he
24 was aware he could be responsible for costs had the case not resolved.

1 At oral argument counsel urged that Franco is giving a general release but did not
2 show that the claims being released have any value. It was also argued that the amount
3 of costs were less than estimated, resulting in a net greater award to the class. How this
4 should be related to an incentive award is not clear.

5 The amount sought is approximately 2% of the gross settlement and more than
6 700% greater than the average award. There is no showing plaintiff took extraordinary
7 risk or spent greater time than any class representative would be expected to spend.
8 Given the result to the class and his contributions to the action an award of \$5,000 is
9 reasonable and approved.

10 F. SETTLEMENT ADMINISTRATION COSTS

11 The Settlement Administrator, Simpluris, Inc., requests \$6,000 in compensation
12 for its work in administrating this case. (Kline Decl. ¶19.) At the time of preliminary
13 approval, costs of settlement administration were estimated at \$6,000 (¶3). Class
14 Members were provided with notice of this amount and did not object. (Kline Decl. ¶13,
15 Exhibit A thereto.)

16 Accordingly, settlement administration costs are approved in the amount of
17 \$6,000.

18 19 IV. CONCLUSION AND ORDER

20 The Court hereby:

- 21 (1) Grants class certification for purposes of settlement;
- 22 (2) Grants final approval of the settlement as fair, adequate, and reasonable;
- 23 (3) Awards \$125,000 in attorney fees to Class Counsel, The Nourmand Law Firm;
- 24 (4) Awards \$11,255.97 in litigation costs to Class Counsel;
- 25 (5) Approves payment of \$7,500 (75% of \$10,000 PAGA penalty) to the LWDA;

- 1 (6) Awards \$5,000 as a Class Representative Service Award to Carlos Franco;
2 (7) Awards \$6,000 in settlement administration costs to Simpluris, Inc.;
3 (8) Orders class counsel to lodge a proposed Judgment, consistent with this ruling
4 and containing the class definition, full release language, and a statement that no
5 class members opted out by July 27, 2022;
6 (9) Orders class counsel to provide notice to the class members pursuant to
7 California Rules of Court, rule 3.771(b) and to the LWDA pursuant to Labor
8 Code §2699 (1)(3); and
9 (10) Sets a Non-Appeal Case Review re: Final Report re: Distribution of
10 Settlement Funds for August 4, 2023 at ^{8:30}~~9:30~~ a.m.. Final Report is to be filed by
11 ²⁸~~29~~ July, 2023.
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Dated:

7/25/2022



MAREN E. NELSON

Judge of the Superior Court

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PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within entitled action; my business address is 8822 West Olympic Boulevard, Beverly Hills, California 90211.

On October 21, 2022, I served the following document(s) described as:

[REVISED PROPOSED] **JUDGMENT**

on the interested parties in this action as follows:

Evelyn Zarraga, Esq.
LANDEGGER RIVAS VERANO & DAVIS ALC
15760 Ventura Boulevard, Suite 1200
Encino, California 91436

BY NOTICE OF ELECTRONIC FILING THROUGH CASE ANYWHERE: I caused a true and correct copy of the above listed document(s) to be served by electronic transmission to the parties and/or counsel who are registered above and set forth in said service list.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct and that this Proof of Service was executed on October 21, 2022, at Beverly Hills, California.

/s/ Alejandra Beltran
Alejandra Beltran