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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

JOSE LUIS TOPETE PEREZ, as an individual
and on behalf of all others similarly situated,

Plaintiff,

vs.

PRODUCTION RESOURCE GROUP LLC, a
Delaware limited liability company; and DOES 1
through 100, inclusive,

Defendants.

Case No.: 20STCV38584 *related to* Case No.
20STCV27311

*[Assigned for All Purposes to Hon. Maren E.
Nelson, SSC-17]*

**PLAINTIFF'S NOTICE OF MOTION AND
MOTION FOR FINAL APPROVAL OF
CLASS ACTION SETTLEMENT, CLASS
REPRESENTATIVE'S SERVICE AWARD,
AND ATTORNEYS' FEES AND COSTS;
MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT THEREOF**

Date: August 19, 2022
Time: 9:00 a.m.
Dept.: SSC-17

Complaint Filed: October 7, 2020
Trial Date: None Set

1 **TO THE COURT, ALL PARTIES, AND THEIR ATTORNEYS OF RECORD:**

2 PLEASE TAKE NOTICE that pursuant to Rule 3.769 of the California Rules of Court, on
3 August 19, 2022 at 9:00 a.m. in Department 17 of the above-entitled Court, located at 312 N. Spring
4 Street, Los Angeles, California 90012, Plaintiff Jose Luis Topete Perez (“Plaintiff”), individually and
5 on behalf of a class of similarly situated individuals, will and hereby does move this Court for an order:

- 6 1. Confirming the certification of the Settlement Class for settlement purposes under Section
7 382 of the California Code of Civil Procedure;
- 8 2. Confirming the appointment of Plaintiff Jose Luis Topete Perez as Class Representative for
9 settlement purposes;
- 10 3. Confirming the appointment of Scott M. Lidman, Elizabeth Nguyen, and Milan Moore of
11 Lidman Law, APC and Paul Haines of Haines Law Group, APC, as Class Counsel for
12 settlement purposes;
- 13 4. Granting final approval of the Second Amended Stipulation Regarding Class and Private
14 Attorneys General Act Settlement and Release (referred to hereinafter as “Amended
15 Settlement”);
- 16 5. Approving an award of \$66,666.66 in attorneys’ fees to Class Counsel;
- 17 6. Approving an award of \$7,068.87 in costs to Class Counsel;
- 18 7. Approving an award of \$9,400.00 in costs to Simpluris, Inc. for its settlement administration
19 services;
- 20 8. Approving a service award of \$5,000.00 to Plaintiff Jose Luis Topete Perez for his services
21 as Class Representative;
- 22 9. Approving an award of \$15,000.00 to the Labor & Workforce Development Agency
23 (“LWDA”); and
- 24 10. Entering final judgment in the form of the [Proposed] Order Granting Plaintiff’s Motion for
25 Final Approval of Class Action Settlement and Final Judgment filed concurrently herewith.

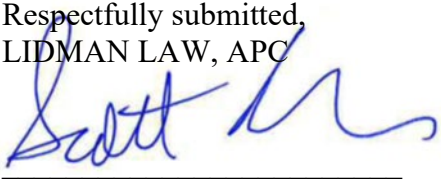
26 This Motion is based on this Notice; the attached Memorandum of Points and Authorities; the
27 supporting declarations of Scott M. Lidman, Elizabeth Nguyen, Milan Moore, Paul K. Haines, Jose Luis
28

1 Topete Perez¹, Mary Butler of Simpluris, Inc., and the exhibit attached thereto; the Settlement; all other
2 pleadings and papers on file in this action; and on any further oral or documentary evidence or argument
3 presented at the time of hearing.

4
5 Dated: July 26, 2022

Respectfully submitted,
LIDMAN LAW, APC

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7 By:


Scott M. Lidman
Attorney for Plaintiff
JOSE LUIS TOPETE PEREZ

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27 ¹ The declaration of Plaintiff Jose Luis Topete Perez was originally filed with this Court on September
28 10, 2021 in connection with Plaintiff's Motion for Preliminary Approval. For the convenience of the
Court, Plaintiff has re-filed his declaration with the instant Motion.

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiff Jose Luis Topete Perez (“Plaintiff”) submits this memorandum of points and authorities
4 in support of his motion for final approval of the class action settlement (the “Settlement”) with Defendant
5 Production Resource Group, L.L.C. (hereinafter “PRG” or “Defendant”) on behalf of the Settlement Class
6 defined as: “all current and former employees of Production Resource Group, L.L.C. who were employed
7 by PRG in the State of California at any time during the period from April 6, 2019 through and including
8 August 20, 2020 and who received a wage statement that identified the employer as “PRG” and/or
9 anything other than “Production Resource Group, L.L.C.”

10 In this non-reversionary Settlement, all Participating Class Members will receive **automatic**
11 payments without the need to submit a claim form, resulting in an average settlement payment of
12 approximately \$114.12 to each Participating Class Member. This is a favorable resolution of the highly
13 disputed wage and hour claims in this case and the significant litigation risks that Plaintiff faced. Since
14 this Court granted preliminary approval on March 25, 2022, nothing has changed to impact the propriety,
15 fairness, adequacy and reasonableness of the Settlement. In addition, after receiving notice of the
16 Settlement and of their projected Settlement payments, only 3 individuals have opted out and not a single
17 Class Member submitted a written objection to the Settlement.

18 As explained below, the Court should grant Plaintiff’s motion in its entirety because: (1) the
19 Settlement Class continues to meet the requirements for class certification for settlement purposes under
20 Code of Civil Procedure § 382; (2) the Settlement warrants final approval because it is a fair, adequate,
21 and reasonable compromise of the disputed claims in this case; and (3) the amounts requested for Class
22 Counsel’s attorneys’ fees and costs, Plaintiff’s Class Representative Service Award, PAGA Distribution
23 Amount, and settlement administration costs are all fair, adequate, and reasonable. For these reasons,
24 Plaintiff respectfully requests that this Court enter the [Proposed] Order Granting Plaintiff’s Motion for
25 Final Approval of Class Action Settlement and Final Judgment submitted concurrently herewith.

26 **II. FACTUAL AND PROCEDURAL BACKGROUND**

27 On October 7, 2020, Plaintiff filed a putative class and California Private Attorneys General Act
28 (“PAGA”) representative action complaint against PRG in Los Angeles County Superior Court alleging

the following causes of action: (i) a class-wide claim for PRG’s failure to provide accurate, itemized wage statements due to its failure to list its complete legal name; and (ii) a PAGA-based claim for PRG’s alleged failure to authorize and permit all required rest periods. *See* Declaration of Scott M. Lidman (“Lidman Decl.”), ¶ 10.

A. Plaintiff’s Claims

As explained in detail in the Motion for Preliminary Approval and Supplemental Brief in Support of Motion for Preliminary Approval, Plaintiff’s primary theories of liability are related to PRG’s alleged failure to provide Class Members with accurate wage statements and all failure to authorize and permit legally compliant rest periods. Lidman Decl., ¶¶ 11-17. Plaintiff alleges that PRG issued inaccurate wage statements in violation of Labor Code § 226. Lidman Decl., ¶ 11. Specifically, Plaintiff contends that Labor Code § 226(a) was violated because the wage statements issued to Class Members by PRG failed to include the name of the legal entity that is/was the employer. *Id.* Plaintiff alleges that beginning in or around 2019, Defendant Production Resource Group, L.L.C. issued wage statements to its employees with “PRG” as the employer name on them, which Plaintiff contends is not its legal name. Plaintiff alleges that this caused confusion and damages to employees who received such incorrect and unlawful wage statements. *Id.* Plaintiff’s data analysis reflected that there were approximately 17,857 wage statements issued during the relevant time period, and up to August 20, 2020 when PRG modified its wage statements. *Id.*

Plaintiff also seeks civil penalties under the PAGA as a result of PRG allegedly failing to authorize and permit lawful rest periods. Lidman Decl., ¶ 13. Specifically, Plaintiff alleges that PRG’s rest period practices required non-exempt employees to remain on the work premises during rest periods. *Id.* By prohibiting its non-exempt employees from leaving the work premises during rest periods, Plaintiff alleges PRG fails to relinquish control in violation of California law and resulted in at least one rest period violation on every shift in excess of 3.5 hours. *Id.*

As explained *infra* and in Plaintiff’s Motion for Preliminary Approval, PRG denies Plaintiff’s claims and asserts several affirmative defenses, both on the merits and with respect to class certification.

B. Informal Discovery and Direct Settlement Negotiations

The Parties have diligently engaged in informal discovery to investigate the claims alleged in the

operative complaint. Lidman Decl., ¶ 16. Specifically, after agreeing to participate in early settlement discussions in light of the simplified nature of the claims alleged, PRG informally produced information regarding the number of current and former putative class members and allegedly aggrieved employees, exemplars of its wage statements issued during the relevant time period, information regarding the changes PRG made to its wage statements in response to the claims made herein, the number of pay periods worked by putative class members during the Class Period, and the number of pay periods worked by allegedly-aggrieved employees during the PAGA Period.² *Id.* Moreover, without admitting that its wage statements violated California Labor Code section 226(a)(8), on August 18, 2020, Defendant cured any alleged deficiency pursuant to California Labor Code section 2699.3(c)(3) by re-issuing wage statements to its California employees from and after January 1, 2019 to identify the employer as Production Resource Group, L.L.C. *Id.*

In addition, because PRG was not legally required to nor did keep track of rest periods, there was no data to produce regarding rest periods allegedly taken or missed by the PAGA Affected Employees. Indeed, since the nature of the rest period claim is that employees were required to remain on the premises for rest periods, there was no internal PRG data that exists that could be used to evaluate the claim. However, PRG provided Plaintiff with its rest period policies, PRG denied that it requires employees to remain on premises during rest periods, and PRG provided legal authorities supporting its contention that Plaintiff's rest period theory (*i.e.*, that employees were not permitted to leave Defendant's premises during rest periods) is not cognizable as a matter of law.

This discovery allowed the parties to assess the merits and value of Plaintiff's claims and PRG's defenses thereto, if a settlement could not be reached.

In late December 2020, the Parties decided that they would exchange informal discovery and information in an effort to engage in early settlement discussions to determine if the case could be resolved. Lidman Decl., ¶ 17. Further, due to the simplified and limited nature of the claims at issue,

² Plaintiff verified the data points by way of a verified declaration signed under penalty of perjury from Defendant. Audrey Colotti, the Payroll Manager of Defendant provided a declaration to be submitted in connection with the motion for preliminary approval. The Declaration of Audrey Colotti is attached to Lidman Declaration as Exhibit 2.

counsel for the Parties believed attempts at direct negotiations were appropriate so that money that would have been spent on an expensive, experienced mediator could instead be used to pay an eventual settlement if it could be reached. *Id.* During settlement discussions, the parties vigorously debated their opposing legal positions, the likelihood of certification of Plaintiff’s wage statement claim, the manageability of a trial of the PAGA-based rest period claim, and the legal basis for the claims and defenses. *Id.* Ultimately, the parties agreed in principle on a class-wide and PAGA resolution. *Id.* In the weeks that followed, the parties finalized the terms of settlement and executed the Stipulation Regarding Class and Private Attorneys General Act Settlement and Release (“Settlement”).

C. Preliminary Approval of Settlement

On September 10, 2021, Plaintiff filed his motion for preliminary approval of the Settlement. Lidman Decl., ¶ 18. On October 1, 2021, the Court issued its tentative ruling and identified issues the Parties needed to address. On February 10, 2022, to address the issues identified in the tentative ruling, the Parties executed an Amended Stipulation Regarding Class and Private Attorneys General Act Settlement and Release. *Id.* Subsequently on March 22, 2022, the Parties executed a Second Amended Stipulation Regarding Class and Private Attorneys General Act Settlement and Release (“Amended Settlement”). *Id.* Thereafter, on March 25, 2022, the Court granted preliminary approval of the Amended Settlement. Lidman Decl., ¶ 24, Exh. A.

Plaintiff will also provide the LWDA with a copy of the instant motion for final approval and supporting documents after the instant motion is filed and will file a supplemental proof of service prior to the hearing. Lidman Decl., ¶ 34.

On April 26, 2021, the Settlement Administrator sent the Court-approved Notice of Pendency of a Class Action Settlement in English and Spanish to 809 Class Members/PAGA Affected Employees, who had until June 20, 2022 to submit disputes, objections, and/or requests for exclusion. *See* Declaration of Mary Butler of Simpluris, Inc. (“Butler Decl.”), ¶ 8. As of the date of this filing, there have been **no objections, no disputes** and **only 3 opt-outs**. *Id.*, ¶¶ 12-15. Plaintiff now respectfully submits the Settlement for this Court’s final approval.

//

1 **III. SUMMARY OF THE SETTLEMENT AND NOTICE PROCESS**

2 **A. Settlement Class Definition**

3 The Settlement Class encompasses “all current and former employees of Production Resource
4 Group, L.L.C. who were employed by PRG in the State of California at any time during the period from
5 April 6, 2019 through and including August 20, 2020 and who received a wage statement that identified
6 the employer as “PRG” and/or anything other than “Production Resource Group, L.L.C.” Lidman Decl.,
7 ¶ 19.

8 **B. Monetary Terms of the Amended Settlement**

9 The Amended Settlement requires PRG to pay a Gross Settlement Amount (“GSA”) of
10 \$200,000.00. Butler Decl., ¶ 16. The Net Settlement Amount (“NSA”) is the amount remaining from
11 the GSA after deducting requested attorneys’ fees (\$66,666.66) and verified costs (\$7,068.87), proposed
12 Class Representative Service Award to Plaintiff (\$5,000.00), Settlement Administration Costs
13 (\$9,400.00), and the PAGA Distribution Amount (\$20,000.00). Based on these requested amounts, the
14 NSA is calculated to be approximately **\$91,864.47**. Butler Decl., ¶ 16; Lidman Decl., ¶ 23, Exh. B.

15 Each Class Member Payment shall be calculated by dividing a Participating Class Member’s
16 individual pay periods worked for Defendant in California during the Class Period by the total of all
17 Participating Class Members’ pay periods worked for Defendant in California during the Class Period
18 (all according to Defendant’s business records), and multiplying this result by the Net Settlement Amount.
19 Amended Settlement, ¶ 3.5.1.7.

20 The Class Member Payments will be allocated 100% as penalties and interest and will be subject
21 to IRS Form 1099 reporting. *Id.*

22 Additionally, \$5,000.00 of the Gross Settlement Amount has been designated as the “PAGA
23 Affected Employee Payments” which shall be distributed to all current and former non-exempt employees
24 who were employed by Defendant in the State of California at any time during the PAGA Period of July
25 16, 2019 through April 1, 2021. Amended Settlement, ¶ 3.5.1.6.2.

26 The PAGA Affected Employee Payments will be allocated 100% as penalties and interest and
27 will be subject to IRS Form 1099 reporting. *Id.*

1 **C. Summary of Notice Process**

2 **1. *Mailing of Notice Packets***

3 On March 30, 2022, PRG provided Simpluris, Inc. (“Simpluris”) with data files with the full name,
4 last known address, last known telephone number, social security number, whether the employee is
5 currently employed by Defendant, whether the employee is a Class Member, whether the employee is a
6 PAGA Affected Employee, the number of pay periods worked for Defendant in California during the
7 Class Period, and the number of pay periods worked for Defendant in California during the PAGA Period.
8 Butler Decl., ¶ 6. After performing address updates and verifications, Simpluris mailed the Notice of
9 Pendency of a Class Action Settlement (“Notice”) to the 809 Class Members/PAGA Affected Employees
10 on April 20, 2022. *Id.*, ¶¶ 7-9. Following the initial mailing, 21 Notices were returned to Simpluris as
11 undeliverable. *Id.*, ¶ 9. As a result of a skip trace, forwarding address provided by the Post Office, or re-
12 mail requests from Counsel or Class Members, 19 Notices were re-mailed. *Id.*, ¶ 11. As of the date of
13 filing this final approval motion, 2 Notices remain undeliverable with no forwarding address, and where
14 no new address could be located through skip trace. *Id.*, ¶ 12.

15 The deadline for Class Members to submit objections, requests for exclusion, or disputes was June
16 20, 2022. Butler Decl., ¶ 8.

17 As of the date of this filing, there were no objections, no disputes, and only 3 Class Members who
18 elected to opt-out of the Settlement. *Id.*, ¶¶ 10-16. Accordingly, as of the date of this Motion, the
19 participation rate amongst the 805 Participating Class Members is 99.6% and the average estimated
20 payment is \$114.12, with the highest estimated payment to a Participating Class Member being \$188.82,
21 the lowest estimated payment to a Participating Class Member being \$5.24, and the median amount being
22 \$136.37. *Id.*, ¶¶ 13-19.

23 **D. Timing of Payments**

24 Within fifteen (15) calendar days following the Effective Date, PRG shall fund the Settlement by
25 providing the Gross Settlement Amount to the Settlement Administrator. The Settlement Administrator
26 shall deposit the funds in the Settlement Fund Account and will disburse the funds in the manner and at
27 the times set forth in the Settlement. *See* Amended Settlement, ¶ 3.7.2. Within thirty (30) calendar days
28 following the Effective Date, the Settlement Administrator shall issue the Class Member Payments, Class

Counsel Fees Award and Class Counsel Costs Award, Service Award, Settlement Administration Costs, PAGA LWDA Payment, and PAGA Affected Employee Payments. Amended Settlement, ¶¶ 3.7.3 – 3.7.8.

E. Uncashed Funds

Any checks issued to Participating Class Members or PAGA Affected Employees shall remain valid and negotiable for one hundred and fifty (150) calendar days from the date of their issuance and then shall become void on the 151st day after mailing, i.e., the Void Date. The Parties agree that any unclaimed funds in the Settlement Fund Account as a result of the failure to cash Class Member Payment checks and PAGA Affected Employee Payment checks by the Void Date shall be transmitted by the Settlement Administrator to the State of California Controller’s Office, Unclaimed Property Fund, in accordance with California law regarding such escheatment, within twenty-one (21) calendar days of the Void Date. Amended Settlement, ¶ 3.7.9; Lidman Decl., ¶ 20.

IV. ARGUMENT

A. This Court Should Confirm its Conditional Certification of the Settlement Class for Settlement Purposes Because It Meets All of the Requirements for Class Certification Under Code of Civil Procedure § 382

Under Code of Civil Procedure § 382, a class may be certified if: (1) it is ascertainable and its members are too numerous for joinder to be practical; (2) the representative and absent class members share a community of interest, and questions of law and fact common to the class predominate over questions unique to individual class members; (3) the representative’s claims are typical of the class’ claims; and (4) the representative will fairly and adequately represent the class’ interests. *See Richmond v. Dart Industries, Inc.* (1981) 29 Cal.3d 462, 470.

Here, this Court found that the Settlement Class meets all the requirements for class certification for settlement purposes when it granted preliminary approval of the Amended Settlement on March 25, 2022. *See* Lidman Decl., ¶ 18; Exh. A. After the court entered an order granting preliminary approval, no events have cast doubt on the propriety of this determination. In fact, the reaction of the Class Members thus far to the Settlement has been strongly in support of the Settlement, with no Class Members objecting to any portion of the Settlement and only 3 Class Members electing to opt-out of the Settlement. *See* Butler Decl., ¶¶ 12-15. This Court should therefore confirm its conditional certification of the Settlement Class.

1 **B. This Court Should Finally Approve the Settlement Because it is a Fair, Adequate,**
2 **and Reasonable Compromise of Disputed Wage and Hour Claims**

3 California courts have a strong policy in favor of settlement. *See, e.g., Stambaugh v. Superior*
4 *Court*, 62 Cal.App.3d 231, 236 (1976). Unlike individual settlements, class action settlements involve a
5 court approval process that exists to prevent fraud, collusion, and unfairness to class members. *Malibu*
6 *Outrigger Bd. of Governors v. Superior Court*, 103 Cal.App.3d 573, 578-79 (1980). This approval
7 process consists of preliminary settlement approval, notice being given to class members, and a final
8 fairness and approval hearing being held, at which class members have the opportunity to be heard with
9 respect to the settlement. *Id.* Now that notice has been provided to the Settlement Class, Plaintiff
10 respectfully requests that the Court finally approve the Settlement as fair, adequate, and reasonable.

11 ***1. The Settlement was Reached at Arm’s-Length, Through Experienced Counsel***
12 ***and an Experienced Mediator, and Was Based on Sufficient Information to***
13 ***Intelligently Negotiate a Fair Settlement in Light of the Claims Asserted and***
14 ***Risks of Continued Litigation***

15 A settlement is presumptively fair where it is reached through arm’s-length bargaining, based on
16 sufficient discovery and investigation to allow counsel and the court to act intelligently, counsel is
17 experienced in similar litigation, and the percentage of objectors to the settlement is small. *Dunk v. Ford*
18 *Motor Co.*, 48 Cal.App.4th 1794, 1802 (1996). In deciding whether to approve a proposed settlement, a
19 trial court has broad powers to determine if the proposed settlement is fair under the circumstances of the
20 case. *Mallick v. Superior Court*, 89 Cal.App.3d 434, 438 (1979). In exercising these powers, the
21 overriding concern is to ensure that a proposed settlement is “fair, adequate, and reasonable.” *Dunk,*
22 *supra*, 48 Cal.App.4th at 1801 (internal quotations omitted). Relevant factors for the Court to consider
23 include, but are not limited to:

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

Id. These factors require balancing, are non-exhaustive and, as such, trial courts should tailor the factors
to each case and give due regard to “what is otherwise a private consensual agreement between the
parties.” *Id.*

“In the context of a settlement agreement, the test is not the maximum amount plaintiffs might

1 have obtained at trial on the complaint, but rather whether the settlement is reasonable under all of the
2 circumstances.” *Wershba v. Apple Computer, Inc.*, 91 Cal.App.4th 224, 250 (2001). Because settlements
3 inherently involve compromise, even settlements providing for substantially narrower relief than likely
4 would be obtained if the suit were successfully litigated can be reasonable because, “the public interest
5 may indeed be served by a voluntary settlement in which each side gives ground in the interest of avoiding
6 litigation.” *Id.* (quoting *Air Lines Stewards, etc., Local 550 v. American Airlines, Inc.*, 455 F.2d 101, 109
7 (7th Cir. 1972)).

8 Here, the Settlement resulted from arm’s length settlement negotiations between qualified and
9 experienced counsel, and is fair, adequate, and reasonable for all Class Members. While Plaintiff
10 maintains that his claims are meritorious, Plaintiff acknowledges that his position includes substantial
11 risks and uncertainty, which justifies a downward departure from the maximum exposure that Plaintiff
12 calculated each claim carried.

13 As detailed in Plaintiff’s Motion for Preliminary Approval and Supplemental Brief, there is
14 significant risk of non-certification and/or not prevailing on the merits with respect to each of Plaintiff’s
15 claims. For example, with respect to Plaintiff’s wage statement claim, PRG argues that its alleged wage
16 statement violation could not be shown to be “knowing and intentional,” because it was well known that
17 PRG stood for Production Resource Group, L.L.C. (which complete name was contained on other
18 company documents provided to employees) and that Plaintiff cannot show that he or any other employee
19 “suffer[ed] injury” as a result of the alleged wage statement violation, as required by Lab. Code § 226(e)
20 for imposition of penalties. *Lidman Decl.*, ¶ 12. PRG also contends that the issue of damages and
21 confusion would be individualized such that it would prevent the class from being certified. *Id.*
22 Additionally, PRG, without admitting that its wage statements violated the Labor Code, on August 18,
23 2020, cured any alleged deficiency pursuant to California Labor Code section 2699.3(c)(3) by re-issuing
24 wage statements to its California employees from and after January 1, 2019 to identify the employer as
25 Production Resource Group, L.L.C. *Id.*

26 As for Plaintiff’s rest period claim, PRG provided Plaintiff with legal authorities supporting its
27 contention that Plaintiff’s rest period theory (*i.e.*, that employees were not permitted to leave Defendant’s
28 premises during rest periods) is not cognizable as a matter of law. PRG also argues that Plaintiff’s PAGA

claim would fail because neither its written policies nor its practices required employees to remain on the premises during rest periods, employees regularly left the premises during rest periods, and a PAGA trial on such a claim would be completely unmanageable due to the varied individualized issues. Lidman Decl., ¶ 14. PRG contends it has always maintained and enforced lawful rest period policies and practices, and that employees were authorized and permitted to take all off-duty rest periods in compliance with California law. *Id.* PRG also maintains that, given its good faith defenses this Court would exercise its discretion to substantially reduce any PAGA penalties if it were to find PRG liable for Plaintiff's rest period claim. *See* Lab. Code § 2699(e)(2); *Thurman v. Bayshore Transit Mgmt., Inc.* (2012) 203 Cal.App.4th 1112, 1135 (affirming reduction of PAGA penalties); *Fleming v. Covidien Inc.* (C.D. Cal. 2011) Case No. ED CV10-01487 RGK (OPx), 2011 WL 7563047, at *4 (reducing PAGA penalties from \$2.8 million to \$500,000). *Id.*

These considerations not only bore heavily on the negotiations leading to the Settlement, but also confirm that the Settlement is fair, adequate, and reasonable compromise in view of the risks of further litigation. Lidman Decl., ¶ 15. As detailed in Plaintiff's Motion for Preliminary Approval, Plaintiff carefully vetted the claims at issue and conducted a detailed statistical analysis of class-wide data to arrive at the calculated damages figures. Thus, while these risks are far from exhaustive, they demonstrate that the Settlement is fair, adequate, and reasonable in view of them. *Id.*

2. The Settlement Fairly, Reasonably, and Adequately Compensates Class Members Because Each Participating Class Member Will Be Paid Based on the Extent of His or Her Injury

Individual Class Member Payments will be calculated based on the pay periods worked by each Participating Class Member. *See* Amended Settlement ¶ 3.7.8. This method of distribution compensates Participating Class Members based on the estimated extent of their injuries, as Participating Class Members who worked more pay periods, would have been subject to more of the alleged wage and hour violations than those who worked fewer shifts. Thus, the formula for compensating Participating Class Members is fair, adequate, and reasonable, as it is tethered to the damages and penalties that could be recovered by them.

3. The 99.6% Participation Rate and Absence of Any Objections Further Confirms that the Settlement is Fair, Adequate, and Reasonable

Class members' response to a settlement is relevant in evaluating whether it merits final approval.

1 *Dunk, supra*, 48 Cal.App.4th at 1801. The lack of objections and requests for exclusion supports a
2 fairness presumption. *See 7-Eleven Owners for Fair Franchising v. Southland Corp.* (2000) 85
3 Cal.App.4th 1135, 1152-53 (finding 9 objections and 80 opt-outs from a class of 5,454 showed a
4 “particularly impressive” favorable response from class members). Here, as of the filing of this Motion,
5 not a single Class Member has objected to the Settlement, only three Class Members have elected to opt-
6 out, and 2 of the 809 Notices were returned undeliverable. Butler Decl., ¶¶ 12-15. The extremely
7 favorable response of the Settlement Class further confirms that the Settlement is fair, adequate, and
8 reasonable.

9 **C. The Requested Award of Attorneys’ Fees is Reasonable as a Percentage of the**
10 **Common Fund Confirmed by a Lodestar Cross-Check**

11 Plaintiff and the Settlement Class, as the prevailing parties in settlement, are entitled to recover
12 their attorneys’ fees and costs for their wage claims. *See* Lab. Code §§ 218.5, 226(e) and 2699(g). A fee
13 award is justified where the legal action has produced its benefits by way of a voluntary settlement. *See,*
14 *e.g., Maria P. v. Riles*, 43 Cal.3d 1281, 1290-91 (1987); *Westside Community for Independent Living,*
15 *Inc. v. Obledo*, 33 Cal.3d 348, 352-53 (1983). When a settlement results in a common fund for the benefit
16 of a class, class counsel may be awarded fees as a percentage of the common fund. *See Wershba, supra*,
17 91 Cal.App.4th at 254 (recognizing the “percentage of recovery” method). The California Supreme Court
18 confirmed in *Laffitte v. Robert Half Int’l, Inc.*, 1 Cal.5th 480, 506 (2016), that “[t]he percentage of fund
19 method survives in California class action cases.” Specifically, the *Laffitte* Court held:

20 The recognized advantages of the percentage method—including relative ease of
21 calculation, alignment of incentives between counsel and the class, a better
22 approximation of market conditions in a contingency case, and the encouragement it
23 provides counsel to seek an early settlement and avoid unnecessarily prolonging the
24 litigation—convince us the percentage method is a valuable tool that should not be denied
25 our trial courts.”

26 *Id.* at 503 (internal citation omitted); *see also, e.g., Serrano v. Priest*, 20 Cal.3d 25, 34 (1977) (“when a
27 number of persons are entitled in common to a specific fund, and an action brought by a plaintiff or
28 plaintiffs for the benefit of all results in the creation or preservation of that fund, such plaintiff or plaintiffs
may be awarded attorney’s fees out of the fund.”); *Serrano v. Unruh*, 32 Cal.3d 621, 627 (1982) (in
awarding a fee from the common fund obtained for the benefit of all parties, the trial court acts within its
equitable power to prevent the other parties’ unjust enrichment.); *Rawlings v. Prudential-Bache*

1 *Properties, Inc.*, 9 F.3d 513, 516 (6th Cir. 1993) (the percentage of the fund method for calculating
2 attorneys' fees more accurately reflects the results achieved for the putative class than the lodestar method
3 and "establishes reasonable expectations on the part of plaintiffs' attorneys as to their expected recovery;
4 and it encourages early settlement, which avoids protracted litigation."); *In re Rite Aid Corp. Securities*
5 *Litigation*, 396 F.3d 294, 300 (3rd Cir. 2005) ("The percentage-of-recovery method is generally favored
6 in common fund cases because it allows courts to award fees from the fund 'in a manner that rewards
7 counsel for success and penalizes it for failure.") (citation omitted).

8 *Laffitte* also held that trial courts have discretion to assess reasonableness of fee awards with tools
9 such as the "lodestar cross-check," whereby the trial court calculates class counsel's lodestar (hours
10 worked multiplied by hourly rate) and determines whether the "lodestar multiplier" needed to bring the
11 lodestar on par with the percentage of recovery is reasonable. *Laffitte* at 503-06. While a trial court may
12 utilize the lodestar cross-check, it need not do so. *Id.* at 506 ("[w]e hold further that trial courts have
13 discretion to conduct a lodestar cross-check on a percentage fee, as the court did here; they also retain the
14 discretion to forgo a lodestar cross-check and use other means to evaluate the reasonableness of a
15 requested percentage fee.")

16 Here, Class Counsel's fee request of \$66,666.66 (one-third of the Gross Settlement Amount) is
17 fair and reasonable based on a percentage of the recovery confirmed with a lodestar cross-check. First,
18 "regardless whether the percentage method or the lodestar method is used, fee awards in class actions
19 average around one-third of the recovery." *Chavez v. Netflix, Inc.*, 162 Cal.App.4th 43, 66, n.11 (2008);
20 *see also, e.g., Cicero v. DirectTV, Inc.*, No. EDCV 07-1182, 2010 WL 2991486 at * 7 (C.D. Cal. July 27,
21 2010) (observing that "30-50% [is] commonly awarded in cases in which the common fund is relatively
22 small" and that in California, "courts usually award attorneys' fees in the 30-40% range in wage and hour
23 class actions..."); *Williams v. Costco Wholesale Corp.*, No. 02-cv-2003 IEG (AJB), 2010 WL 2721452
24 at * 6 (S.D. Cal. July 7, 2010) (collecting cases where courts awarded between 33.33% and 40% in
25 attorneys' fees in wage and hour class actions). This is also consistent with Class Counsel's experience
26 in similar wage and hour class action matters. *See* Lidman Decl., ¶ 21. Thus, the percentage sought by
27 Class Counsel here (the same percentage sought by class counsel in *Laffitte*) is reasonable.

28 Next, as stated, under the lodestar method the court computes the "lodestar" amount by

1 multiplying the number of hours reasonably expended by each attorney or legal staff member by their
2 reasonable hourly rates. *See, e.g., Serrano v. Priest* 20 Cal.3d 25, 48 (1977). The court then enhances
3 this lodestar figure by a “multiplier” to account for a range of factors, such as the novelty and difficulty
4 of the case, its contingent nature, and the degree of success achieved. *Id.* at 49; *Ketchum v. Moses*, 24
5 Cal.4th 1122, 1132-36 (2001); *Thayer v. Wells Fargo Bank*, 92 Cal.App.4th 819, 834 (2001) (“There is
6 no hard-and-fast rule limiting the factors that may justify an exercise of judicial discretion to increase or
7 decrease a lodestar calculation”).

8 Under California law, lodestar multipliers can range from 2 to 4 or even higher. *See, e.g., Chavez*,
9 *supra*, 162 Cal.App.4th at 49-50 (approving multiplier of approximately 2.5); *City of Oakland v. Oakland*
10 *Raiders*, 203 Cal.App.3d 78 (1988) (approving multiplier of ~2.34); *Coalition for L. County Planning*
11 *etc. Interest v. Bd. of Supervisors*, 76 Cal.App.3d 241, 251 (1977) (approving multiplier of ~2.04). In
12 class actions such as this one, where the value of the benefit conferred to the class “can be monetized
13 with a reasonable degree of certainty,” a court may “adjust the lodestar in comparison to a percentage of
14 the common fund to ensure that the fee awarded is reasonable and within the range of fees freely
15 negotiated in the legal marketplace in comparable litigation.” *Consumer Privacy Cases*, 175 Cal.App.4th
16 545, 557 (2009). In doing so, “the court determines, retrospectively, whether the litigation involved a
17 contingent risk or required extraordinary legal skill justifying augmentation of the unadorned lodestar in
18 order to approximate the fair market for such services.” *Id.* at 556; *see also Laffitte, supra*, 1 Cal.5th at
19 503-05.

20 In this case, Class Counsel have a lodestar of \$111,980.00 without the use of any multiplier, which
21 is 1.68 times more than the \$66,666.66 fee request. Lidman Decl., ¶ 26. A summary showing the number
22 of hours of work performed by each attorney and paralegals is set forth below. The billing rates used are
23 reasonable especially in light of the hourly rates identified based on years of experience in the *Laffey*
24 Matrix, submitted concurrently herewith. *Id.*, at ¶ 27, Exh. C. Based on the *Laffey* Matrix, the hourly
25 rate for a 23rd year attorney is \$914, the hourly rate for a 16th year attorney is \$759, and the hourly rate
26 for a 6th year attorney is \$465. *See* Lidman Decl., Exh. C.

Name	Rate	Hours	Pre-Multiplier Lodestar
Scott M. Lidman (23rd Year Attorney)	\$750	68.7	\$51,525
Elizabeth Nguyen (16th Year Attorney)	\$650	32.1	\$20,865
Paul K. Haines (15th Year Attorney)	\$675	17.2	\$11,610
Milan Moore (6th Year Attorney)	\$450	55.8	\$25,110
Paralegals	\$175	16.4	\$2,870
Total Lodestar			\$111,980

The fee award requested here is justified because it is **lower** than the lodestar. The fee award requested here is also justified because Class Counsel achieved a significant monetary recovery for the Settlement Class in an uncertain and risky case, while bearing the substantial burdens of representation on a contingency basis, and the fees requested are in line with the market rate. *Vizcaino v. Microsoft Corp.*, 290 F.3d 1043, 1048-51 (9th Cir. 2002) (finding that exceptional results in a contingency case, significant risk and the absence of supporting precedents, are proper considerations in awarding attorneys' fees).

First, Class Counsel negotiated a substantial recovery for the Settlement Class, resulting in a current participation rate of 99.6%, and not a single Class Member has objected to the Settlement or to Class Counsel's requested fees as of the date of this filing. *See* Butler Decl., ¶¶ 11-15. Additionally, the average settlement payment in this case of approximately \$114.12 is in line with, and above, settlement payments in similar wage and hour class action settlements. *See, e.g., Sorenson v. PetSmart, Inc.*, Case No. 2:06-CV-02674-JAM-DAD (E.D. Cal. 2008) (wage and hour class action settlement approved where average class member recovery was approximately \$60); *Williams v. Centerplate, Inc.*, Nos. 11-CV-2159-H-KSC, 12-CV-0008-H-KSC, 2013 WL 4525428, at *4 (S.D. Cal. 2013) (granting final approval of class action settlement where average recovery for each class member was approximately \$108). The

fact that Class Counsel achieved these results without engaging in a protracted legal battle, in the face of serious defense challenges and an uncertain legal landscape confirms the strength of the results achieved.

As discussed above, this case presented significant risk as to both class certification and merits considerations. Accordingly, it is fair and reasonable to account for these risks in compensating Class Counsel. Class Counsel should also be compensated for the risks involved in undertaking this litigation and expending considerable effort, all while working on a pure contingency basis. Since undertaking representation of Plaintiff, Class Counsel have borne all the costs of litigation without receiving any compensation for over two years of work. Lidman Decl., ¶ 23. During this time, Class Counsel have expended \$5,868.87, in actual costs, have devoted substantial time to this litigation and expect to incur approximately \$1,200.00 in future costs for filing the instant motion, filing the final declaration regarding distribution of settlement, continued Case Anywhere fees through the filing of the distribution declaration in 2024, service and messenger fees, postage fees, and/or costs for future appearances.³ Lidman Decl., ¶ 23, Exh. B. Class Counsel's efforts have included conducting pre-filing investigation, analyzing Plaintiff's claims, conducting legal research, reviewing PRG's documents and policies, analyzing Class Members' timekeeping and payroll data, preparing for and engaging in direct settlement negotiations, negotiating and revising the long-form Settlement, Amended Settlement Agreement, Second Amended Settlement Agreement, preparing the Motion for Preliminary Approval of Settlement and Final Approval, overseeing the settlement administration process, communicating with Class Members, and otherwise litigating this case. *See* Lidman Decl., ¶ 22. Given the considerable potential for adverse outcomes in this case, including, but not limited to losing on class certification and/or merits issues, the contingent risk borne by Class Counsel was great. Lidman Decl., ¶ 31.

Class Counsel's previous experience in litigating wage and hour class actions also supports the reasonableness of the fee request. Class Counsel are well-versed in plaintiff and defense-side wage and hour class action litigation, with substantial experience litigating claims for meal and rest period violations, and related penalties. *See* Lidman Decl., ¶¶ 3-8; Declaration Elizabeth Nguyen ("Nguyen Decl."), ¶¶ 3-8; Declaration of Paul K. Haines ("Haines Decl."), ¶¶ 3-8. They have been certified as class

³ This includes total costs incurred by both law firms.

counsel in numerous other cases. *Id.* Their experience in similar matters was integral in evaluating the strengths and weaknesses of the case against PRG and the reasonableness of the Settlement. *See* Nguyen Decl., ¶ 24. Practice in the narrow field of wage and hour litigation requires skill and knowledge concerning the rapidly evolving substantive state and federal law, as well as the procedural law of class action litigation. *Id.* Because it is reasonable to compensate Class Counsel commensurate with their skill, reputation, and experience, a fee award of one-third of the Gross Settlement Amount is reasonable.

Other factors also show that the fee amount requested in this case is reasonable under the circumstances. This case involved nuanced legal issues including questions surrounding PRG's obligation to "authorize and permit" rest periods and the propriety of statutory penalties, to name just a few. Lidman Decl., ¶¶ 11-15. Thus, Class Counsel's requested fee award is fair, reasonable, and adequate and should be approved.

D. The Requested Cost Amount Warrants Final Approval as Fair, Adequate, and Reasonable

Class Counsel seek reimbursement of \$7,068.87⁴ (including anticipatory fees and expenses related to the instant motion) in litigation costs. Class Counsel's request is fair, adequate, and reasonable, as all of these costs are documented and reasonably incurred. *See* Lidman Decl., ¶ 29; Exh. B. Moreover, the costs Plaintiff seeks are the types of costs routinely approved by courts. *See, e.g., Harris v. Marhoefer*, 24 F.3d 16, 19 (9th Cir. 1994) (counsel should recover "those out-of-pocket expenses that would normally be charged to a fee paying client"); *Ashker v. Sayre*, No. 05-03759 CW, 2011 WL 825713, at *3 (N.D. Cal. 2011) ("costs of reproducing pleadings, motions and exhibits are typically billed by attorneys to their fee-paying clients" and are reimbursable); *Trustees of Const. Industry & Laborers Health and Welfare Trust v. Redland Ins. Co.*, 460 F.3d 1253, 1258-59 (9th Cir. 2006) (legal research costs are reimbursable); *In re Immune Response Securities Litigation*, 497 F. Supp. 2d 1166, 1177-78 (S.D. Cal. 2007) (mediation expenses, consultant and expert fees, legal research, copies, postage, filing fees, messenger and overnight delivery costs are reimbursable). Because the expense reimbursements requested by Class Counsel were (or will be) reasonably incurred, and no Class Member has objected to

⁴ This amount includes the anticipated costs of \$1,200.00 for filing fees, continued Case Anywhere fees through 2024, service and messenger fees, postage fees, and/or costs for future court appearances.

1 them, Plaintiff respectfully requests the Court should grant the request for actual costs incurred and
2 estimated costs to be incurred through conclusion of this litigation.

3 **E. The Court Should Finally Approve the Requested Administration Costs**

4 Plaintiff also requests that the Court approve \$9,400.00 in administration costs to the Settlement
5 Administrator, Simpluris, Inc. As detailed in the declaration of Mary Butler on Behalf of Simpluris, Inc.
6 submitted herewith, Simpluris performed duties in connection with this Settlement that were integral in
7 effectuating the Settlement and the Notice process. Among other things, Simpluris calculated each Class
8 Member's individual settlement payment, updated addresses contained in the class data supplied by
9 Defendant, formatted and translated Notices of Settlement for mailing, mailed Notices to all 809 Class
10 Members/PAGA Affected Employees in English and Spanish, created a static website, kept the parties
11 informed of any objections or requests for exclusion, and have otherwise administered the Settlement.
12 See Butler Decl., ¶¶ 2-20. For these reasons, Simpluris' requested costs are fair, reasonable, and adequate,
13 and should be finally approved.

14 **F. This Court Should Finally Approve Plaintiff's Requested Service Award Because It**
15 **Is Fair, Adequate, and Reasonable in View of Plaintiff's Efforts and the Risks that**
16 **He Assumed on Behalf of the Class**

17 Courts routinely approve service payments to compensate named plaintiffs for the services they
18 provide and the risks they incur during class action litigation. See, e.g., *Bell v. Farmers Ins. Exchange*,
19 115 Cal.App.4th 715, 726 (2004) (upholding "service payments" to named plaintiffs for their efforts in
20 bringing the case); *Van Vranken v. Atlantic Richfield Co.*, 901 F. Supp. 294 (N.D. Cal. 1995) (approving
21 \$50,000 service payment). In analyzing the requested service payment, courts consider the following
22 factors: the risk, both financial and otherwise, the class representative faced in bringing the suit; the
23 notoriety and personal difficulties encountered by the class representative; the actions the plaintiff has
24 taken to protect the interests of the class, the degree to which the class has benefitted from those actions,
25 and the amount of time and effort the plaintiff expended in pursuing the litigation. See *Golba v. Dick's*
26 *Sporting Goods, Inc.* (2015) 238 Cal.App.4th 1251, 1272; *Clark v. Am. Residential Servs. LLC* (2009) 175
27 Cal.App.4th 785, 804.

28 Here, analyzing these factors weigh in favor of approving Plaintiff's requested Service Award of
\$5,000.00 because it is reasonable given Plaintiff's efforts in this case and the risks he undertook on

1 behalf of Settlement Class members. Lidman Decl., ¶ 31; Declaration of Jose Luis Topete Perez (“Perez
2 Decl.”), ¶ 11. Plaintiff gathered documents for use in the lawsuit, and met with Class Counsel regarding
3 the case, the merits, the defenses, and the overall fairness of the settlement reached. *See* Lidman Decl., ¶
4 31; Perez Decl., ¶¶ 6-8. Plaintiff has also agreed to a full and general release of all claims against PRG
5 arising from his employment, including a waiver of section 1542 of the California Civil Code, that is
6 broader than the release for the Participating Class Members. Perez Decl., ¶ 11. The class has benefited
7 from Plaintiff’s actions as the average settlement amount is **\$114.12**.

8 Plaintiff understood that the lawsuit is a matter of public record and being part of the lawsuit could
9 stigmatize and/or affect his future employment. Perez Decl., ¶¶ 7-8. Plaintiff also understood the risk
10 that he could be liable for Defendant’s costs if he lost the case. Plaintiff accepted these risks and burdens
11 because he wanted Defendant to compensate its current and former employees. Plaintiff estimates that he
12 spent approximately 15 hours on activities related to this case. *Id.* at ¶ 10.

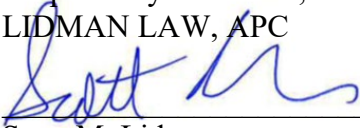
13 Additionally, after receiving notice of the proposed Class Representative Service Award for
14 Plaintiff, no Class Member has objected to the proposed award, as of the date of this filing. *See* Butler
15 Decl., ¶ 15. Thus, the service award to Plaintiff is appropriate and justified as part of the Settlement and
16 should be finally approved.

17 **V. CONCLUSION**

18 For the reasons stated herein, Plaintiff respectfully submits that this Court should grant Plaintiff’s
19 motion in its entirety and adopt the [Proposed] Order Granting Plaintiff’s Motion for Final Approval of
20 Class Action Settlement and Final Judgment submitted herewith.

21 Based on the terms of the agreement, Plaintiff proposes the deadline for the Settlement
22 Administrator to submit a declaration regarding the disbursement be set for August 23, 2024, which will
23 provide sufficient time for the uncashed checks to be sent to the State Controller after remaining uncashed
24 for a year after the 150-day expiration deadline.

25 Dated: July 26, 2022

26 By: 
27 Scott M. Lidman
28 Attorney for Plaintiff
JOSE LUIS TOPETE PEREZ