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DAYMIEN HARDY on behalf of themselves, all others similarly
situated, and on behalf of the general public

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SUTTER**

RON ELLWANGER, ANTHONY
GRIFFIN, and DAYMIEN HARDY on
behalf of themselves, all others similarly
situated, and on behalf of the general
public,

Plaintiffs,

v.

NEW LEGEND, INC. and DOES 1-100,
Defendants.

Case No. CVCS 19-0000452

**NOTICE OF MOTION AND MOTION
FOR FINAL APPROVAL OF CLASS
ACTION SETTLEMENT;
ATTORNEYS' FEES, COSTS,
ENHANCEMENT AWARD AND
ADMINISTRATION COSTS;
MEMORANDUM OF POINTS AND
AUTHORITIES; DECLARATIONS OF
CLASS COUNSEL; DECLARATION
OF PLAINTIFFS**

Date: January 10, 2025

Time: 9:00 a.m.

Judge: Hon. Susan E. Green

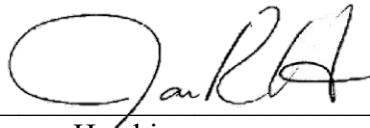
1 **TO THE HONORABLE COURT, ALL PARTIES, AND COUNSEL OF RECORD:**
2 **NOTICE IS HEREBY GIVEN** that on January 10, 2025 at 9:00 a.m. or as soon thereafter as the
3 matter may be heard in Department 23 before the Honorable Susan E. Green of the Sutter County
4 Superior Court, Plaintiffs Ron Ellwanger, Anthony Griffin, and Daymien Hardy (hereinafter
5 “Plaintiffs”), by and through their counsels of record, will and hereby move the Court for Final
6 Approval of the Joint Stipulation and Settlement Agreement, awarding attorneys’ fees, litigation
7 costs, Class Representative Enhancement Payments, Settlement Administration Costs, and
8 entering final approval and judgment.

9 This Motion is made pursuant to Rule 3.769 of the California Rules of Court and Labor
10 Code section 2699(l). This Motion is based on this Notice of Motion and Motion, the attached
11 Memorandum of Points and Authorities, the accompanying declarations of James R. Hawkins
12 (“Hawkins”) and David Mara, the declaration of Mary Butler of Simpluris, Inc., the declarations
13 of Plaintiffs Ron Ellwanger, Anthony Griffin, and Daymien Hardy, the Joint Stipulation and
14 Settlement Agreement (the “Settlement Agreement”), attached to the Hawkins, argument of
15 counsel, all papers and pleadings filed in the action, and upon any further information or evidence
16 requested by the Court at the time of hearing on this Motion.
17

18
19 Dated: December 16, 2024

JAMES HAWKINS APLC

20
21 BY:



James Hawkins
Gregory Mauro
Michael Calvo
Lauren Falk
Ava Issary

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25 Attorneys for Plaintiffs and the Proposed
26 Class
27
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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 This Court preliminary approved the settlement on or about June 24, 2024. (James
4 Hawkins Decl. – hereinafter “Hawkins Decl.”, **Exhibit A** - Preliminary Approval Order).
5 Plaintiffs Ron Ellwanger, Anthony Griffin, and Daymien Hardy (“Plaintiffs”), now respectfully
6 request that this Court grant final approval of the settlement agreement attached to the Hawkins
7 Declaration as **Exhibit B**, which seeks to resolve claims against NEW LEGEND, INC.,
8 (“Defendant”) in exchange for a non-reversionary Gross Settlement Amount of (“GSA”) of One
9 Million Six Hundred One Thousand Five Hundred and Sixty Nine Dollars and Fifty Two Cents
10 (\$1,601,569.52).¹

11 The Class Members overwhelmingly supported the Settlement, as there is a high
12 participation rate, with zero objections and only three opt outs, resulting in 2,976 Participating
13 Class Members. The *highest* Individual Settlement Amount to a Participating Class Member is
14 currently estimated to be approximately \$3,347.60, the *average* Individual Settlement Amount is
15 currently estimated to be approximately \$301.02. These amounts are subject to employee-side tax
16 and withholdings. (Administrator Decl. of Mary Butler-hereinafter “Butler Decl.”, ¶ 16).

17 Plaintiffs also move for final approval of attorneys’ fees in the amount of \$560,549.33
18 which is 35% of GSA. As will be demonstrated herein, Class Counsel’s attorney fee request is
19 supported using the percentage fee method and the lodestar method. Second, Plaintiffs move for
20 final approval of payment of the litigation costs in the amount of \$21,115.43, all of which was
21 incurred in litigating this matter. Third, Plaintiffs move for final approval of the Class
22 Representative Enhancement Payments to Plaintiffs in the sum of \$15,000.00 each (\$45,000.00
23 total), to compensate the Class Representatives for their service as the Class Representatives and
24 providing a general release of their claims against Defendant – a release significantly greater than
25

26
27 ¹ The Escalator Clause of the Settlement Agreement indicates that this settlement is estimated to encompass
28 approximately 2,720 Class members and approximately 85,231 workweeks. To the extent that the total number of
Class Members or workweeks increases by more than ten percent (10%) of these estimates, the Gross Settlement
Amount shall increase proportionately. The total number of Workweeks during this period was ninety-three thousand
seven hundred fifty-five (93,755), which exceeds the Escalator Clause by ninety-two (92) workweeks. Therefore, the
Escalator Clause is triggered, and the Gross Settlement Amount will increase to \$1,601,569.52 (Butler Decl., ¶ 11).

1 the Class Members provided – and for the risks absorbed and time spent litigating the case.
2 Plaintiffs played a vital role in representing Class Members in this case and spearheading the
3 lawsuit to seek monetary relief on behalf of all Class Members. Fourth, Plaintiffs move for final
4 approval of the payment of \$19,065.00 in administrative costs to Simpluris, Inc. Fifth, Plaintiffs
5 move for final approval of the \$60,000.00 PAGA Payment and the payment to the Labor and Work
6 Development Agency (“LWDA”) for its share of the PAGA Payment (\$45,000.00, which is 75%
7 of \$60,000.00; with the remaining \$15,000.00 payable to Aggrieved Employees).

8 This case required many hours of attorney and Plaintiffs time who sought relief on behalf
9 of 2,979 class members within the State of California defined as all current and former non-exempt
10 employees who were employed by Defendant at any time between March 31, 2019, through May
11 17, 2024 for drivers (“Driver Class Period”) and August 13, 2016, through May 14, 2024 for non-
12 drivers (“Non-Driver Class Period”). (Settlement Agreement I ¶¶ 5, 17-18).

13 This litigation involved the review and analysis of documents, policies, and practices, as
14 well as a full day of mediation. Most importantly, the Settlement and all its terms received
15 overwhelming support from Class Members, as there were no objections and only one request for
16 exclusion. Therefore, Plaintiffs respectfully request the Court grant final approval of the
17 Settlement, attorneys’ fees, litigation costs, Class Representative Enhancement Payments,
18 Settlement Administration Costs, and payment to the LWDA in the amounts preliminarily
19 approved by the Court and as fully disclosed to Class Members.

20 **II. BACKGROUND, INVESTIGATION, DISCOVERY**

21 A class action complaint was filed by Plaintiff Ronald Ellwanger on February 20, 2019, in
22 Sutter County Superior Court (Case No. CVCS19-0000452). The complaint alleges the following
23 claims: (1) Failure to Pay All Straight Time Wages, (2) Failure to Pay All Overtime Wages, (3)
24 Failure to Provide Meal Periods, (4) Failure to Authorize and Permit Rest Periods, (5) Failure to
25 Provide Recovery Periods, (6) Knowing and Intentional Failure to Comply with Itemized
26 Employee Wage Statement Provisions, (7) Failure to Pay All Wages Due at the Time of
27 Termination of Employment, (8) Violations of the PAGA, and (9) Violation of Unfair Competition
28

1 Law (Business & Professions Code § 17200, *et seq.*). (Declaration of David Mara, Esq. –
2 hereinafter “Mara Decl.”, ¶ 10).

3 Plaintiff Ronald Ellwanger submitted his Notice of Labor Code Violations to the LWDA
4 on October 11, 2018. Plaintiff Ronald Ellwanger submitted an amended Notice of Labor Code
5 Violations to the LWDA on November 27, 2018. (Mara Decl., ¶ 11).

6 On May 14, 2019, Defendant filed a Demurrer to Plaintiff Ronald Ellwanger’s Complaint
7 seeking a stay in this matter. Defendant’s demurrer argued that Plaintiff Ronald Ellwanger’s case
8 should be stayed under California Code of Civil Procedure § 430.10(c), the doctrine of exclusive
9 concurrent jurisdiction, and res judicata because there were two prior cases filed against
10 Defendant. (Mara Decl., ¶ 12).

11 The first case is entitled *Ybarra, Buckingham v. New Legend, Inc.* (Sutter County Superior
12 Court Case No. CVCS16-0002097). The *Ybarra* action was filed on September 7, 2017, on behalf
13 of a class of truck drivers employed by Defendant in California. In the *Ybarra* action, the parties
14 reached a settlement that released truck drivers’ claims for the period of November 7, 2012,
15 through June 1, 2017. The parties settled the claims in the *Ybarra* case for a gross settlement
16 amount of \$650,000. (Mara Decl., ¶ 13).

17 The second case is entitled *Cuevas v. New Legend, Inc.* (San Bernardino County Superior
18 Court Case No. CIVDS1722708). The *Cuevas* action was filed on November 13, 2017, on behalf
19 of truck drivers employed in California. In the *Cuevas* action, the parties reached a settlement that
20 released truck drivers’ claims for the period of June 2, 2017, through March 30, 2019. The parties
21 settled the claims in the *Cuevas* action for a gross settlement amount of \$235,000. (Mara Decl., ¶
22 14).

23 On June 4, 2019, the Parties stipulated to vacate the hearing on Defendant’s Demurrer and
24 enter an order staying this matter pending resolution of the *Cuevas* Action. As a result of this
25 stipulation, the Court issued an order staying this action. (Mara Decl., ¶ 15).

26 On August 13, 2020, Plaintiff Daymien Hardy filed a class action complaint in the San
27 Bernardino County Superior Court (Case No. CIVDS-2016736). The complaint alleges the
28

1 following claims: (1) Failure to Pay Minimum Wages, (2) Failure to Provide Meal Periods, (3)
2 Failure to Provide Rest Periods, (4) Failure to Pay Timely Wages, (5) Failure to Provide Accurate
3 Itemized Wage Statements, (6) Failure to Indemnify for Business Expenses, and (7) Violation of
4 Business & Professions Code § 17200, *et seq.*

5 Plaintiff Daymien Hardy submitted his Notice of Labor Code Violations to the LWDA on
6 August 12, 2020, and filed his PAGA Complaint on October 19, 2020 (San Bernardino County
7 Superior Court Case No. CIVDS-2022742). The PAGA complaint alleged PAGA claims for (1)
8 Failure to Pay Minimum Wages, (2) Failure to Provide Meal Periods, (3) Failure to Provide Rest
9 Periods, (4) Failure to Pay Timely Wages, (5) Failure to Provide Accurate Itemized Wage
10 Statements, and (6) Failure to Indemnify for Business Expenses.

11 On December 12, 2022, the Parties stipulated to lift the stay of Plaintiff Ron Ellwanger's
12 action and stipulated to allow Plaintiff Ronald Ellwanger to file a First Amended Complaint that
13 added in Plaintiff Anthony Griffin and Plaintiff Daymien Hardy, his counsel, and his additional
14 claims into this action. (Mara Decl., ¶ 16). After which, Plaintiff Hardy dismissed his action
15 pending in the San Bernardino County Superior Court.

16 On December 19, 2022, Plaintiffs filed a First Amended Complaint. The complaint alleges
17 the following claims: (1) Failure to Pay All Straight Time/Minimum Wages, (2) Failure to Pay All
18 Overtime Wages, (3) Failure to Provide Meal Periods, (4) Failure to Authorize and Permit Rest
19 Periods, (5) Failure to Authorize and Permit Recovery Periods, (6) Knowing and Intentional
20 Failure to Comply with Itemized Employee Wage Statement Provisions, (7) Failure to Pay All
21 Wages Due at the Time of Termination of Employees, (8) Violation of Labor Code Private
22 Attorneys General Act of 2004, (9) Violation of Unfair Competition Law, and (10) Failure to
23 Indemnify Necessary Business Expenses. (Mara Decl., ¶ 17).

24 On April 17, 2024, Plaintiff filed a Second Amended Complaint adding in allegations for
25 Defendant's failure to show accrued sick leave on wage statements and failure to provide a Labor
26 Code § 2810.5 notice. (Mara Decl., ¶ 18).

On March 21, 2024, the Parties engaged in private mediation with a well-respected wage and hour class action mediator, Lynn Frank, a respected mediator of complex wage and hour actions, and, with Ms. Frank's assistance, the Parties agreed to a mediator proposal. (Hawkins Decl. ¶ 5). The settlement discussions were conducted at arm's-length, and the settlement is the result of an informed and detailed analysis of Defendant's potential liability in relation to the costs and risks associated with continued litigation. Based on the documents produced, as well as Class Counsel's own independent investigation and evaluation, Class Counsel believes that the Settlement with Defendant for the consideration and on the terms set forth in their Agreement is fair, reasonable, and adequate and is in the best interest of the Class Members in light of all known facts and circumstances, including the risk of significant delay and uncertainty associated with litigation and various defenses asserted by Defendant. (Hawkins Decl. ¶¶ 4-12, Ex. 1.)

In reaching the proposed settlement, Plaintiffs counsel's negotiation efforts took into consideration relevant factors such as the size of the class, the information, data, and documents obtained in the litigation and/or otherwise exchanged pursuant to the mediation privilege; the experience of the named Plaintiffs; the strengths and weaknesses of the case; the uncertain outcome and risk of litigating complex actions; the time and expense in litigating a case through trial; Defendant's defenses; and the non-reversionary nature of the settlement.

1. The Settlement Provides Reasonable Compensation to Class Members

As a result of the mediation, the parties agreed to settle this matter for a Gross Settlement Amount ("GSA") of \$1,600,000² (Hawkins Decl., ¶ 5, Butler Decl., ¶ 14). Based on their own respective independent investigations and evaluations, and after taking into account the sharply disputed factual and legal issues involved in this matter, the risks attending further prosecution of the case, and the monetary benefits received under the Settlement, Plaintiffs' counsel is of the opinion that Settlement for the consideration and on the terms set forth in the Settlement Agreement remains fair, reasonable and adequate and is in the best interests of the Class Members. (Hawkins Decl., ¶¶ 5-13).

² This amount increased to \$1,601,569.52 after the escalator clause was triggered.

Even without the presumption of fairness and reasonableness, the settlement is clearly within the range of reasonableness as thoroughly discussed in detail in the motion for preliminary approval, and as considered by the Court in granting preliminary approval, (Hawkins Decl., ¶¶ 9-18; Ex. A- Order Granting Preliminary Approval).

Accounting for the risks of continued litigation, Plaintiffs determined that a settlement amounting to \$1,600,000.00 was fair and reasonable and the Court preliminarily agreed. (Hawkins Decl., ¶¶ 11-21). *See, e.g., In re Warfarin Sodium Antitrust Litig.*, 212 F.R.D. 231, 256-58 (D. Del. 2002) (recognizing that a reasonable settlement amount can be 1.6% to 14% of the total estimated damages); *In Re Armored Car Antitrust Litig.*, 472 F. Supp. 1357, 1373 (N.D. Ga. 1979) (settlements with a value of 1% to 8% of the estimated total damages were approved); *In Re Four Seasons Secs. Laws Litig.*, 58 F.R.D. 19, 37 (W.D. Okla.1972) (approving 8% of damages); *Balderas v. Massage Envy Franchising, LLP*, 2014 WL 3610945, at *5 (N.D. Cal. July 21, 2014) (finding that settlement which amounted to 8% of maximum recovery “[fell] within the range of possible initial approval based on the strength of Plaintiffs’ case and the risk and expense of continued litigation.”); *In re Omnivision Techs., Inc.*, 559 F. Supp. 2d 1036, 1042 (N.D. Cal. 2008) (approving settlement of 6% to 8% of estimated damages).³ (*Id.*)

III. THE PROPOSED SETTLEMENT AND THE CLASS MEMBERS’ RESPONSE

A. Terms of the Settlement

The GSA is \$1,601,569.52. This amount includes the Settlement Administration Costs of \$19,065.00; the Class Representative Enhancement Payments of up to \$45,000.00 (\$15,000 to each Plaintiff) to Plaintiffs; Court-approved attorneys’ fees up to \$560,549.33, litigation costs to

³ *See also In re Uber FCRA Litig.*, No. 14-cv-05200-EMC, 2017 U.S. Dist. LEXIS 101552, at *23- 24 (N.D. Cal. June 29, 2017) (granting preliminary approval to class action settlement where gross settlement fund, prior to deducting attorneys’ fees and services awards, was valued at 7.5% or less of total possible verdict); *Viceral v. Mistras Grp., Inc.*, No. 15-cv-02198-EMC, 2016 U.S. Dist. LEXIS 140759, at *21 (N.D. Cal. Oct. 11, 2016) (granting preliminary approval to class action settlement representing “8.1% of the full verdict value” with net settlement amount representing approximately 5.3% of full verdict value); *Stovall-Gusman v. W.W. Granger, Inc.*, No. 13-cv-02540-HSG, 2015 WL 3776765, at *4 (N.D. Cal. June 17, 2015) (granting final approval to settlement with net recovery to Plaintiffs valued at 7.3% of potential maximum recovery); *Cruz v. Sky Chefs, Inc.*, No. 12-cv-02705-DMR, 2014 WL 7247065, at *5 (N.D. Cal. Dec. 19, 2014) (granting final approval where gross settlement amount represented 8.6% of the maximum potential recovery from the class claims and estimated amount distributable to class after accounting for attorneys’ fees and other deductions represented approximately 6.1% of maximum potential recovery); *In re LDK Solar Sec. Litig.*, No. 07-cv-05182-WHA, 2010 WL 3001384, at *2 (N.D. Cal. July 29, 2010) (granting final approving where “[t]he proposed settlement amount is [. . .] only about five percent of the estimated damages before fee and costs—even before any reduction thereof for attorney’s fees and costs.”).

1 Class Counsel in the amount of \$21,115.43; and PAGA penalties of \$60,000.00 with 75% of that
2 amount paid to the LWDA and the remaining 25% paid to the Aggrieved Employees. The Net
3 Settlement Amount (“NSA”) is approximately \$895,839.76. (Butler Decl., ¶ 16).

4 The Settlement is a common fund settlement with no reversion to Defendant. Thus, each
5 of the participating Settlement Class Members will be paid his or her pro-rata share of the NSA.

6 **B. Released Claims**

7 Subject to approval by this Court, and in exchange for the consideration recited in the
8 Settlement Agreement, the Released Claims are all claims that were pled or that could have been
9 pled based upon the facts contained in complaints on file in this matter and claims that were or
10 reasonably could have been alleged based on the claims, facts and/or allegations that were
11 contained in the PAGA Notices and as defined in the Settlement. (Hawkins Decl., Ex. B-
12 Settlement Agreement ¶¶ 39-40).

13 **C. The Class Members Support the Settlement – Zero (0) Objections, Two (2)**
14 **Requests for Inclusion and Three (3) Opt-Outs**

15 On June 24, 2024, the Court granted Preliminary Approval of the Settlement, conditionally
16 certified the class for settlement purposes, appointed Simpluris, Inc. to act as the administrator,
17 approved the Notice to be sent to the Class, and directed that the Notice be mailed to the Class via
18 U.S. First Class Mail. (Hawkins Decl., Ex. A- Order Granting Preliminary Approval). On October
19 15, 2024, after updating the mailing addresses through the NCOA, Notice Packets were mailed via
20 First Class Mail to two thousand nine hundred and seventy-seven (2,977) individuals contained in
21 the Class List. (Butler Decl., ¶ 8).

22 After the initial notice mailing, two (2) individuals contacted Simpluris to request inclusion
23 in the Settlement Class. Information regarding the self-identifying Class Members was forwarded
24 to Defense Counsel for research to determine if they should be included in the Settlement Class.
25 After reviewing supporting documentation submitted by these individuals, it is determined that the
26 individuals should be added to the class. This brought the number of Class Members to two
27 thousand nine hundred and seventy-nine (2,979). (Butler Decl., ¶ 9).

1 As of this date, three hundred twenty-eight (328) Notice Packets were returned by the post
2 office. For those without a forwarding address, Simpluris performed an advanced address search
3 (i.e. skip trace) on all of these addresses by using Accurant, a reputable research tool owned by
4 Lexis-Nexis. Simpluris used the Class Member's name, previous address and Social Security
5 number to locate a more current address. Two hundred sixty-six (266) Notice Packets were re-
6 mailed to either a newfound address, with forwarding addresses provided by the United States
7 Postal Service or at the request of the Class Member. Sixty-two (62) Notice Packets were
8 undeliverable. (Butler Decl., ¶ 10).

9 The deadline for Class Members to submit a Request for Exclusion, Object to the
10 Settlement or Challenge their workweeks and/or pay periods was November 29, 2024. (Butler
11 Decl., ¶ 12). As of this date, Simpluris received no objections and only three (3) Request for
12 Exclusions from the Settlement. (Butler Decl., ¶¶ 13-14). As such, there are 2,974 Participating
13 Class Members.

14 **D. Distribution of Funds**

15 Defendant shall wire or otherwise provide to the Settlement Administrator the Gross
16 Settlement Amount no later than fourteen (14) days of the Effective Final Settlement Date or April
17 21, 2025, whichever is later. The Effective Final Settlement Date is the date when the final
18 approval of the settlement can no longer be appealed, or, if there are no objectors and no plaintiffs
19 in intervention at the time the court grants final approval of the settlement, the date the Court enters
20 judgment granting final approval of the settlement.

21 Participating Class Members and Aggrieved Employees must cash or deposit their
22 Individual Settlement Share checks within one hundred and eighty (180) calendar days after the
23 checks are mailed to them. If any checks are not redeemed or deposited within ninety (90) calendar
24 days after mailing, the Settlement Administrator will send a reminder postcard indicating that
25 unless the check is redeemed or deposited in the next ninety (90) days, it will expire and become
26 non-negotiable, and offer to replace the check if it was lost or misplaced. If any checks remain
27 uncashed or not deposited by the expiration of the ninety (90) day period after mailing the reminder
28 notice, the Settlement Administrator will, within two hundred (200) calendar days after the checks

are mailed, cancel the checks. All funds associated with the Individual Settlement Share checks returned as undeliverable and funds associated with those checks remaining un-cashed shall be sent to the California Controller's Unclaimed Property Fund in the name of the Class Member thereby leaving no "unpaid residue" subject to the requirements of Code of Civil Procedure section 384, subdivision (b).

IV. THE SETTLEMENT IS FAIR, REASONABLE, AND ADEQUATE

A. The Settlement Satisfies the Standard for Final Approval

California Rule of Court, Rule 3.769, requires court approval for class action settlements. Cal. R. Ct. 3.769(g). California courts favor settlement. *Stambaugh v. Superior Court* (1976) 62 Cal. App. 3d 231, 236, *Potter v. Pacific Coast Lumber Co. of Cal.* (1951) 37 Cal. 2d 592, 602 ("[T]he law wisely favors settlements"). Accordingly, the Court must give "[due] regard to what is otherwise a private consensual agreement between the parties." *Wershba v. Apple Computer, Inc.* (2001) 91 Cal. App. 4th 224, 245.

In deciding whether to approve a class settlement, a court evaluates whether the proposed settlement is "fair, adequate, and reasonable." *Dunk v. Ford Motor Co.* (1996) 48 Cal. App. 4th 1794, 1801 (citing *Officers for Justice v. Civil Serv. Comm'n of City & Cnty. Of S.F.* (9th Cir. 1982) 688 F.2d 615, 625). A court enjoys broad discretion to make its fairness determination. *Dunk*, 48 Cal. App. 4th at 1801. However, "a presumption of fairness exists where: (1) the settlement is reached through arms-length bargaining; (2) investigation and discovery are sufficient to allow counsel and the court to act intelligently; (3) counsel is experienced in similar litigation; and (4) the percentage of objectors is small." *Id.* at 1802; accord *Wershba*, 91 Cal. App. 4th at 245. In addition, a court should consider additional relevant factors, including the strength of the Plaintiffs' case compared to the settlement amount; the risk, expenses, complexity, and likely duration of further litigation; and the fair treatment of class members in relation to each other. *Dunk*, 48 Cal. App. 4th at 1802.

At the time of preliminary approval, the Court was provided with sufficient information to satisfy three of the four *Dunk* factors, leaving the fourth factor, the number of objectors, unknown until after the Class had an opportunity to respond to the Settlement as explained in the Notice.

1 Subject only to the Class’s reaction to the Settlement, the Court preliminarily presumed the
2 Settlement was fair, adequate, and reasonable. Following dissemination of the Notice, and
3 adequate time provided to the Class to object to the Settlement, no class member submitted
4 objections, two Class Members requested inclusion and only three Class Members excluded
5 themselves from the settlement. (Butler Decl., ¶¶ 12-15). Thus, the proposed Settlement is entitled
6 to the presumption that it is fair and in all other respects proper and should be finally approved.

7 **V. THE COURT SHOULD APPROVE THE REQUESTED FEES AND COSTS**

8 **B. The Requested Fee Award is Fair and Reasonable, Calculated as a Percentage**
9 **of a Common Fund**

10 Class Counsel applies for an award of attorneys’ fees in the sum of \$560,549.33 of the
11 GSA, and litigation costs of \$21,115.43 (Hawkins Decl., ¶¶ 25-28, Ex. C). When a settlement
12 results in a common fund for the benefit of a class, class counsel may be awarded fees as a
13 percentage of the common fund. *See Wershba, supra*, 91 Cal.App.4th at 254 (recognizing the
14 “percentage of recovery” method). The California Supreme Court confirmed in *Laffitte v. Robert*
15 *Half Int’l, Inc.* that “[t]he percentage of fund method survives in California class action cases.” 1
16 Cal.5th 480, 506 (2016), in stating:

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

21 *Id.* at 503 (internal citation omitted); *see also e.g., Serrano v. Priest*, 20 Cal.3d 25, 34 (1977)
22 (“when a number of persons are entitled in common to a specific fund, and an action brought by a
23 Plaintiffs or Plaintiffs for the benefit of all results in the creation or preservation of that fund, such
24 Plaintiffs or Plaintiffs may be awarded attorney’s fees out of the fund.”); *Serrano v. Unruh*, 32
25 Cal.3d 621, 627 (1982) (in awarding a fee from the common fund obtained for the benefit of all
26 parties, the trial court acts within its equitable power to prevent the other parties’ unjust
27 enrichment.); *Rawlings v. Prudential-Bache Properties, Inc.*, 9 F.3d 513, 516 (6th Cir. 1993) (the
28 percentage of the fund method for calculating attorney’s fees more accurately reflects the results
achieved for the putative class than the lodestar method and “establishes reasonable expectations

1 on the part of Plaintiffs’ attorneys as to their expected recovery; and it encourages early settlement,
2 which avoids protracted litigation.”); *In re Rite Aid Corp. Securities Litigation*, 396 F.3d 294, 300
3 (3d Cir. 2005) (“The percentage-of-recovery method is generally favored in common fund cases
4 because it allows courts to award fees from the fund ‘in a manner that rewards counsel for success
5 and penalizes it for failure.’”).⁴

6 The purpose of the common fund/percentage approach is to “spread litigation costs
7 proportionally among all the beneficiaries so that the active beneficiary does not bear the entire
8 burden alone.” *Vincent, supra*, 557 F.2d at 769. In *Quinn v. State of California* (1995) 15 Cal.3d
9 162, 167, the Court stated: “[O]ne who expends attorneys’ fees in winning a suit which creates a
10 fund from which others derive benefits may require those passive beneficiaries to bear a fair share
11 of the litigation costs.” Similarly, in *City and County of San Francisco v. Sweet* (1995) 12 Cal.4th
12 105, 110, the California Supreme Court recognized that the common fund doctrine has been
13 applied “consistently in California when an action brought by one party creates a fund in which
14 other persons are entitled to share.” The reasons for applying the common fund doctrine include:
15 “...fairness to the successful litigant, who might otherwise receive no benefit because his recovery
16 might be consumed by the expenses; correlative prevention of an unfair advantage to the others
17 who are entitled to share in the fund and who should bear their share of the burden of its recovery;
18 encouragement of the attorney for the successful litigant, who will be more willing to undertake
19 and diligently prosecute proper litigation for the protection or recovery of the fund if he is assured
20 that he will be properly and directly compensated should his efforts be successful.” *Id.* Because
21 there is a defined and clearly traceable benefit to the Class, the Court can base an award of
22 attorneys’ fees using a ‘common fund’ approach to compensate Class Counsel.

23 **1. The Requested Attorneys’ Fee is Within the Range of Fees Approved in**
24 **Comparable Common Fund Cases**

26 ⁴ *Laffitte* also held trial courts have discretion to assess reasonableness of fee awards with tools
27 such as the lodestar cross-check, although they need not do so. *Laffitte*, 1 Cal.5th at 506 (“We hold
28 further that trial courts have discretion to conduct a lodestar cross-check on a percentage fee . . .
they also retain the discretion to forgo a lodestar cross-check and use other means to evaluate the
reasonableness of a requested percentage fee”).

1 Assessing an appropriate fee based on a percentage of the fund involves considering “all
2 of the circumstances of the case.” Appellate cases addressing fees arise almost exclusively where
3 awards were challenged by Defendants or objectors – the only parties with standing to appeal.
4 *Wershba*, 91 Cal.App.4th at 236.

5 The requested fee falls in the mid-range of percentage class fee awards, which generally
6 range from 20% to 50% of a common fund, and it constitutes fair compensation for undertaking
7 complex, risky, expensive, and time-consuming litigation on a contingent basis and compensates
8 Class Counsel for their efforts, as well as the result achieved for the benefit of the Class. Numerous
9 courts in California routinely approve fee requests equal to or greater than 35% of the common
10 fund. *See Martin v. Ameripride Servs.*, 2011 U.S. Dist. LEXIS 61796, *22-23 (S.D. Cal. 2011)
11 (collecting cases); *Birch v. Office Depot, Inc.*, USDC Southern District, Case No. 06cv1690 DMS
12 (WMC) (awarding 40% fee on a \$16 million wage and hour class action settlement); *Rippee v.*
13 *Boston Mkt. Corp.*, USDC Southern District, Case No. 05cv1359 BTM (JMA) (awarding a 40%
14 fee on a \$3.75 million wage and hour class action settlement). In fact, the Sacramento County
15 Superior Court has awarded fees of 35% of the common fund in wage and hour class actions.
16 (*McMahon v. Airco Mechanical, Inc.*, Case No. 34-2019-00259269; *Uribe v. EcoGuard Pest*
17 *Management, Inc.*, Case No. 34-2021-00300650; *Arroyo v. Epic Home Solar*, Case No. 34-2021-
18 00310634; *Blair v. Clark Wagaman Designs*, Case No. 34-2021-00313156).

19 In short, Class Counsels’ fee request of \$560,549.33 (35% of the common fund) is in line
20 with awards in similar cases in California and demonstrates that Class Counsels’ fee request is
21 consistent with market rates and is reasonable.

22 **2. A Lodestar Cross-Check Confirms the Reasonableness of the Requested Fee**

23 Class Counsels’ fee request is reasonable when calculated using the lodestar method. Under
24 the lodestar method, a base fee amount is calculated from a compilation of time reasonably spent
25 on the case and the reasonable hourly compensation of the attorney. *Serrano*, 20 Cal. 3d at 48. The
26 court then may enhance this lodestar figure by a “multiplier” to account for a range of factors, such
27 as the novelty and difficulty of the case, its contingent nature, and the degree of success achieved.
28 *Id.* at 49; *see also Ketchum v. Moses*, 24 Cal.4th 1122, 1132-36 (2001); *Thayer v. Wells Fargo*

1 *Bank*, 92 Cal.App.4th 819, 834 (2001), “[t]here is no...rule limiting the factors that may justify
2 an exercise of judicial discretion to [adjust the] lodestar”].

3 Courts “routinely enhance[] the lodestar to reflect the risk of non-payment in common fund
4 cases.” *Vizcaino v. Microsoft Corp.* (9th Cir. 2002) 290 F.3d 1043, 1051; *Graham v.*
5 *DaimlerChrysler Corp.* (2004) 34 Cal.4th 553, 579 (“One of the most common fee enhancers [...] is for contingency risk.”). Such an enhancement “mirrors the established practice in the private
6 legal market of rewarding attorneys’ fees for taking the risk of nonpayment by paying them a
7 premium over their normal hourly rates for winning contingency cases.” *Vizcaino*, 220 F.3d at
8 1051. A risk multiplier also serves to bring the financial incentives for enforcing important rights
9 “into line with incentives [attorneys] have to undertake claims for which they are paid on a fee-
10 for-service basis.” *Ketchum*, 24 Cal.4th at 1132. In determining whether or not to enhance or
11 reduce the lodestar, California courts take into account multiple factors, including: the time and
12 labor required; the skill requisite to perform the legal services properly; the preclusion of other
13 employment by the attorney due to the acceptance of the case; the contingent nature of the fee; the
14 amount involved and results obtained; the experience, reputation, and ability of the attorney; and
15 awards in similar cases. *Cates v. Chiang* (2013) 213 Cal. App. 4th 791, 822.

17 As of the date of filing, Class Counsel worked approximately 767.9 combined documented
18 hours on this case and have calculated the lodestar fee on those hours at \$575,558 at rates reflecting
19 those currently earned in the marketplace. All of the work and tasks performed by Class Counsel
20 were reasonable and necessary for the prosecution of this case. (*Id.*). All services were performed
21 by Class Counsel on a contingent basis. As Class Counsel’s lodestar fee is in excess of their fee
22 request, a multiplier on their lodestar fee is not sought herein. In fact, the requested fee results in
23 a so-called “negative multiplier” which suggests the percentage of the fund amount is reasonable
24 and fair. See *Chun-Hoon v. McKee Foods Corp.* (N.D. Cal. 2010) 716 F.Supp.2d 848, 854; *In re*
25 *Portal Software, Inc. Securities Litigation* (N.D. Cal. 2007) 2007 U.S. Dist. LEXIS 88886, 2007
26 WL 4171201, at *16. Thus, consideration of the lodestar method as a cross-check to the percentage
27 figure sought strongly supports the reasonableness of the requested fee award. Class Counsel
28

1 moves for and respectfully requests that the Court grant attorneys' fees in the amount of
2 \$560,549.33.

3 **3. Class Counsel's Hourly Rates are Reasonable**

4 Class Counsels' hourly rates are between \$200 and \$950 and are in line with rates typically
5 approved in wage and hour class action litigation and which rates have been approved by Courts
6 in California in the Los Angeles, Sacramento, San Francisco, Alameda, Orange and San Diego
7 County Superior Courts. (Hawkins Decl., ¶ 24); *Children's Hosp. and Med. Ctr. v. Bonta*, 97
8 Cal.App.4th 740, 746 (2002) (noting rates were reasonable where they were "within the range of
9 reasonable rates charged by and judicially awarded comparable attorneys for comparable work").

10 A reasonable hourly rate is the prevailing rate charged by attorneys of similar skill and
11 experience in the relevant community. *PLCM Group, Inc v. Drexler* (2000) 22 Cal. 4th 1084, 1095.
12 When determining a reasonable hourly rate, courts may consider factors such as skill and
13 experience, the nature of the work performed, the relevant area of expertise and the attorney's
14 customary billing rates. *Flannery v. California Highway Patrol* (1998) 61 Cal. App. 4th 629, 632.
15 Class Counsels' skill and experience support their hourly rates. Our practices are limited
16 exclusively to litigation, focusing on the representation of employees in wage and hour and
17 consumer class action matters. (Hawkins Decl., ¶ 24). As prominent attorneys in the field of wage
18 and hour class action litigation, Class Counsel continually monitors the prevailing market rates
19 charged by both defense and Plaintiffs law firms and set the billing rates of their attorneys and
20 paralegals to be consistent with the prevailing market rates in the private sector for attorneys and
21 staff of comparable skill, qualifications and experience. Other wage and hour attorneys working
22 as class counsel before California courts charge comparable if not higher rates. Therefore, as they
23 are in line with those of the relevant community, Class Counsels' hourly rates are reasonable.

24 **4. Class Counsel's Total Hours are Reasonable**

25 In determining a lodestar fee, reasonable hours include, in addition to time spent during
26 litigation, the time spent before the action was filed, including time spent interviewing clients,
27 investigating the facts and the law, and preparing the initial pleadings. *See New York Gaslight*
28

1 *Club, Inc. v. Carey* (1980) 447 U.S. 54, 62. The fee award should include fees incurred to establish
2 and defend the attorneys' fee claim. *Serrano v. Priest* (1982) 32 Cal.3d 621, 639.

3 Class Counsel expended a combined total of approximately 767.9 hours on this case. The
4 work performed to achieve a settlement that will provide valuable consideration to the Class is
5 summarized by Class Counsel in the declaration submitted herewith. (Hawkins Decl., ¶¶ 25-28;);
6 *Syers Props. III, Inc. v. Rankin*, 226 Cal.App.4th 691, 699 (2014) ("Because time records are not
7 required under California law ..., there is no required level of detail that counsel must achieve.")
8 (internal quotations omitted). All tasks and work performed were reasonable and necessary for the
9 prosecution of this case. The work performed was justified considering the result achieved.

10 **5. Costs of Litigation are Reasonable**

11 Class Counsel seeks reimbursement of the litigation costs and expenses of \$21,115.43.
12 These costs were reasonable and necessary to prosecute this case, and the results achieved are fair,
13 and reasonable. (Hawkins Decl., ¶¶ 25-28, Ex. C).

14 **VI. THE CLASS REPRESENTATIVE ENHANCEMENT PAYMENTS ARE**
15 **REASONABLE**

16 Class Counsel seeks approval of \$15,000.00 each Class Representative Enhancement
17 Payments (totaling \$45,000.00) to the named Plaintiffs/Class Representatives. The requested
18 enhancement awards are reasonable in light of the general release of all claims Plaintiffs agreed
19 to, greater than the release given by Class Members, the benefits Plaintiffs conferred upon the
20 entire Class resulting in payments to all Class Members, the time spent assisting counsel with the
21 investigation and prosecution of these claims and consenting to the proposed Settlement.
22 Furthermore, in pursuing this action on behalf of the Class, Plaintiffs risked a judgment for
23 attorneys' fees and costs in the event this matter had been lost. (Hawkins Decl., ¶¶ 29-30; *See also*
24 declaration of Plaintiffs filed concurrently herewith)

25 Courts routinely approve service payments, or incentive awards, to compensate named
26 Plaintiffs for the services they provide and the risks they incur during class litigation. *See In re*
27 *Cellphone Fee Termination Cases* (2010) 186 Cal. App. 4th 1380, 1393; *see also Bell v. Farmers*
28

1 *Ins. Exch.* (2004) 115 Cal. App. 4th 715, 725-26 (upholding service payments to class
2 representatives); Manual § 21.62 n.971 (noting that service payments are warranted).

3 It should be noted that service awards are particularly important to plaintiffs in wage and
4 hour cases because they promote the important public policies underlying the wage and hour laws.
5 This strong policy is codified in California Labor Code section 90.5, which provides that “[i]t is
6 the policy of this state to vigorously enforce minimum labor standards in order to ensure employees
7 are not required or permitted to work under substandard unlawful conditions . . .” Cal. Lab. Code
8 § 90.5. Nonetheless, the California Supreme Court has noted that “retaliation against employees
9 for asserting statutory rights under the Labor Code is widespread,” despite anti-retaliation statutes
10 designed to protect employees. *Gentry v. Super. Ct.* (2007) 42 Cal.4th 443, 460–61. In this context,
11 class representatives should be rewarded for assuming the risk of retaliation for the sake of class
12 members. *See Frank v. Eastman Kodak Co.* (W.D.N.Y. 2005) 228 F.R.D. 174, 187.

13 In addition, there are few individuals that are willing to act as a class representative and
14 provide the work, diligence, and willingness to assume a substantial financial risk should
15 Defendant have prevailed in this case. Plaintiffs’ willingness to assume the financial risk is
16 significant. Plaintiffs risked a potential judgment taken against them for attorneys’ fees and costs
17 if this matter had not been successfully concluded. Case law holds that a losing party is liable for
18 the prevailing party’s costs, *Early v. Superior Court*, 79 Cal.App.4th 1420, 1433 (2000), and in
19 some wage and hour actions, such as this case, pursuant to California Labor Code § 218.5, for
20 attorneys’ fees as well. Though the fee agreement provides that Class Counsel would pay such
21 costs, Plaintiffs would nevertheless have had a cost bill entered against them leaving them
22 ultimately liable for potentially hundreds of thousands of dollars in the unexpected possibility that
23 Class Counsel did not meet their obligation to cover those costs. Unfortunately, there have been
24 several judgments entered against class representatives, e.g. *Koehl v. Verio, Inc.* 142 Cal.App.4th
25 1313, 1328 (2006) (a wage and hour class action where Defendant prevailed at trial, the named
26 plaintiffs were held liable, jointly and severally for the Defendant’s attorneys’ fees); *Whiteway v.*
27 *Fedex Kinkos Office & Print Services, Inc.*, 2007 U.S. Dist. LEXIS 95398 (N.D. Cal. 2007) (a
28 wage and hour misclassification case lost on summary judgment, after the case was certified, the

1 named Plaintiff was assessed costs in the sum of \$56,788.). The risk of payment of Defendant's
2 costs, in itself alone, is a sufficient basis for an award of the requested enhancement sum. Few
3 individuals are willing to take this risk, and it is clear that Plaintiffs, here, championed a cause on
4 behalf of others with potentially huge monetary risks.

5 Moreover, the modern-day work force is mobile, with employees holding several jobs over
6 the span of their career. It is also true that prospective employers in this computer, high-tech age
7 "Google" and/or do extensive background checks and have access to court databases to see if
8 applicants have ever filed a lawsuit or have ever been sued. Here, Plaintiffs' conduct will not be
9 lost on a prospective employer who has to choose between an applicant who has never sued an
10 employer and one who has done so. The requested award far from compensates Plaintiffs for
11 opportunities they may lose in the future because of the exercise of a Constitutional right to Petition
12 the Courts for redress of a grievance.

13 Based on the foregoing, the \$45,000.00 (\$15,000.00 to each Plaintiff) Class Representative
14 Enhancement Payments is fair, appropriate, and justified as part of the overall settlement.

15 **VII. THE SETTLEMENT ADMINISTRATION COSTS ARE REASONABLE**

16 The Parties agreed to hire Simpluris, Inc. as the administrator, and the Court approved this
17 choice. The Administrator was responsible for formatting, printing and mailing the Notice. It was
18 also responsible for updating addresses and re-mailing Notices returned as undeliverable,
19 responding to Class Member inquiries, answering questions from Counsel for the Parties, and
20 providing a declaration to document its duties and responsibilities under the settlement. Plaintiffs
21 now requests that the Court approve the \$19,065.00 fee to Simpluris, Inc. for services rendered
22 and to be rendered. (Butler Decl., ¶ 17). Following the grant of final approval, the Administrator's
23 duties will continue in order to calculate and mail the Individual Settlement Payment checks to
24 Class Members, perform tax reporting obligations, disburse other payments as ordered by the
25 Court, and perform such other duties as set forth in the Settlement Agreement. The fee of
26 \$19,065.00 for services rendered and to be rendered is fair and reasonable and should be granted.

27 **VIII. THE SETTLEMENT PENALTIES UNDER PAGA ARE REASONABLE**

28

1 The PAGA payment of \$60,000.00 with 75% of to the LWDA and 25% to the aggrieved
2 employees is reasonable under the circumstances. The Parties negotiated a good faith amount for
3 PAGA penalties. The LWDA was also provided notice of the Settlement with the concurrent filing
4 of the preliminary approval motion and the instant motion. Plaintiffs did not receive a response or
5 objection to the Settlement from the LWDA. Thus, Plaintiffs requests the Court finally approve
6 the PAGA allocation in the amount of \$60,000.00 with 75% being paid to the LWDA and 25%
7 being distributed to the Aggrieved Employees.

8 **IX. CONCLUSION**

9 Based on the foregoing, Class Counsel respectfully requests the Court grant final approval
10 of the Class Action Settlement, award (1) Class Counsels' fees in the sum of \$560,549.33 and
11 litigation costs of \$21,115.43; (2) award the named Plaintiffs a Class Representative Enhancement
12 Payments in the sum of \$15,000.00 each (\$45,000.00 total); (3) award \$19,065.00 to Simpluris,
13 Inc., for settlement administration services, and (4) approve the PAGA Payment of \$60,000.00
14 with a \$45,000.00 of that sum paid to the LWDA and the remaining \$15,000.00 paid to the
15 Aggrieved Employees.

16
17 Dated: December 9, 2024

JAMES HAWKINS APLC

18
19 BY:



James Hawkins
Gregory Mauro
Michael Calvo
Lauren Falk
Ava Issary

22
23 Attorneys for Plaintiffs and the Proposed
24 Class

I am a resident of the State of California, County of Orange. I am over the age of eighteen years and not a party to the within action. My business address is 9880 Research Drive., Suite 200, Irvine, California 92618.

NOTICE OF MOTION AND MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT; ATTORNEYS' FEES, COSTS, ENHANCEMENT AWARD AND ADMINISTRATION COSTS; MEMORANDUM OF POINTS AND AUTHORITIES; DECLARATIONS OF CLASS COUNSEL; DECLARATION OF PLAINTIFFS; [PROPOSED] ORDER

SERVICE LIST

[XX] **STATE:** I declare under penalty of perjury, under the laws of the State of California, that the above is true and correct.

Alma Chavarin
Alma Chavarin

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20 **Via LWDA Website Only**

21 Labor and Workforce Development Agency
22 Attn: PAGA Administrator
23 1515 Clay Street, Ste 801
24 Oakland, CA 94612
25 <http://www.dir.ca.gov/Private-Attorneys-General-Act>