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

SANTIAGO GUTIERREZ, as an individual
and on behalf of all others similarly situated,

Plaintiff,

vs.

M.M.C.L., INC. dba CALIFORNIA
LANDCARE, a California corporation; and
DOES 1 through 100,

Defendants.

Case No. 30-2021-01182371-CU-OE-CXC

*[Case assigned for all purposes to the Hon.
Randall J. Sherman, Dept. CX105]*

**PLAINTIFF'S NOTICE OF MOTION AND
MOTION FOR FINAL APPROVAL OF
CLASS ACTION SETTLEMENT,
ATTORNEYS' FEES AND COSTS, AND
CLASS REPRESENTATIVE
ENHANCEMENT PAYMENT**

Date: June 2, 2023
Time: 10:00 a.m.
Dept.: CX105

Action Filed: February 2, 2021
Trial Date: None Set

PLEASE TAKE NOTICE that on June 2, 2023, at 10:00 a.m., or as soon thereafter as the matter may be heard in Department CX105 of the Orange County Superior Court, located at 751 W Santa Ana Blvd, Santa Ana, California 92701, Plaintiff Santiago Gutierrez, as an individual and on behalf of a class of similarly situated individuals, will and hereby does move this Court for entry of an Order pursuant to California Code of Civil Procedure § 382 and Rule 3.769 of the California Rules of Court:

1. Confirming the certification of the Settlement Class for settlement purposes under California Code of Civil Procedure § 382;
2. Confirming the appointment of Plaintiff Santiago Gutierrez as the Class Representative for settlement purposes;
3. Confirming the appointment of Paul K. Haines, Fletcher W. Schmidt, Matthew K. Moen, and Susan J. Perez of Haines Law Group, APC as Class Counsel for settlement purposes;
4. Granting final approval of the Stipulation of Settlement and the Amendment to Stipulation of Settlement (collectively, "Settlement Agreement");
5. Approving an award of \$416,666.67 in attorneys' fees to Class Counsel;
6. Approving an award of \$9,398.81 in actual litigation costs reimbursement to Class Counsel;
7. Approving an award of \$5,795.00 in costs to Simpluris, Inc. ("Simpluris") for its settlement administration services;
8. Approving a Class Representative Enhancement Payment of \$5,000.00 to Plaintiff Santiago Gutierrez for his service as the Class Representative;
9. Approving an award of \$40,000.00 for civil penalties under the Private Attorneys General Act ("PAGA"), \$30,000.00 of which will be paid to the California Labor and Workforce Development Agency ("LWDA"); and
10. Entering final judgment in the form of the [Proposed] Judgment and Order Granting Plaintiff's Motion for Final Approval of Class Action Settlement, Attorneys' Fees and Costs, and Class Representative Enhancement Payment (the "[Proposed] Judgement and Order") submitted herewith.

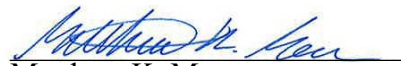
1 This Motion is made on the following grounds: (1) the Settlement Class continues to meet
2 the requirements for class certification for settlement purposes only under Code of Civil
3 Procedure § 382; (2) Plaintiff and Class Counsel continue to be adequate representatives of the
4 Settlement Class; (3) the Settlement is a fair, adequate, and reasonable compromise of disputed
5 wage and hour claims; (4) the requested awards of attorneys' fees and costs, Class Representative
6 Enhancement Payment, LWDA payment for its share of PAGA penalties, and settlement
7 administration costs are all fair, adequate, and reasonable; and (5) in light of the foregoing, the
8 [Proposed] Judgment and Order submitted concurrently herewith should be entered so as to give
9 finality to, and allow for disbursements from, the Settlement.

10 This Motion is based on this Notice of Motion; the attached Memorandum of Points and
11 Authorities; the supporting declarations of Matthew K. Moen, Paul K. Haines, Fletcher W.
12 Schmidt, Susan J. Perez, Santiago Gutierrez,¹ and Evelin Reyes of Simpluris, and the exhibits
13 attached thereto; the Settlement Agreement; all other pleadings and papers on file in this action;
14 and on any further oral or documentary evidence or argument presented at the time of hearing.

15 Dated: May 10, 2023

Respectfully submitted,
HAINES LAW GROUP, APC

17 By:


Matthew K. Moen
Attorneys for Plaintiff

27 _____
28 ¹ Plaintiff Santiago Gutierrez previously submitted his declaration in support of preliminary settlement
approval on July 7, 2022. For the convenience of the Court, Plaintiff is re-submitting his declaration with
the current filing.

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiff Santiago Gutierrez (“Plaintiff”) hereby submits this Memorandum of Points and
4 Authorities in support of his Motion for Final Approval of this Class Action Settlement (the
5 “Settlement”) on behalf of all current and former non-exempt employees who worked for
6 Defendant M.M.C.L., Inc. dba California Landcare (“Defendant”) in California at any time
7 between February 2, 2017 and October 31, 2021 (the “Class Period”) and who did not sign a
8 “Release Agreement” with Defendant in connection with its *Chindarah v. Pick Up Stix, Inc.*
9 campaign. Plaintiff and Defendant are referred to collectively as “the Parties.”

10 This is a \$1,250,000.00 non-reversionary Settlement, in which all participating Settlement
11 Class members will automatically receive payments without the need to submit a claim form. This
12 results in average Individual Settlement Payments of approximately \$2,243.95 to each of the 349
13 participating Settlement Class members, with the highest Individual Settlement Payment expected
14 to be approximately \$4,748.54, and the lowest Individual Settlement Payment expected to be
15 approximately \$31.92. Further, this Settlement provides additional consideration to the State of
16 California and 226 aggrieved employees for settlement of Plaintiff’s claim for civil penalties
17 under the Private Attorneys General Act. This results in average payments to the aggrieved
18 employees of approximately \$28.65, with the highest payment from the PAGA Amount expected
19 to be approximately \$62.50, and the lowest payment from the PAGA Amount expected to be
20 approximately \$0.78.² This is a fair and reasonable resolution of the disputed wage and hour
21 claims at issue in this case considering the significant litigation risks that Plaintiff faced. After
22 receiving notice of the proposed Settlement and the estimated Individual Settlement Payments,
23 zero Settlement Class members objected to the Settlement or opted out from participation,
24 resulting in a 100% participation rate.

25
26
27 ² While these amounts accurately reflect the highest, average, and lowest PAGA payments to be received
28 by the PAGA Aggrieved Employees, zero participating Settlement Class members opted out from the
Settlement, therefore all PAGA Aggrieved Employees will be receiving additional consideration from the
Settlement as participating Settlement Class members.

As explained below, the Court should grant Plaintiff's Motion in its entirety because: (1) the Settlement Class continues to meet the requirements for class certification for settlement purposes under Code of Civil Procedure § 382; (2) the Settlement is a fair, adequate, and reasonable compromise of the disputed claims in this case; and (3) the amounts requested for Class Counsel's attorneys' fees and costs, Plaintiff's Class Representative Enhancement Payment, payment to the LWDA, and settlement administration costs are all fair, adequate, and reasonable. In light of the foregoing, this Court should enter the [Proposed] Judgment and Order Granting Plaintiff's Motion for Final Approval of Class Action Settlement, Attorneys' Fees and Costs, and Class Representative Enhancement Payment (the "[Proposed] Judgement and Order"), submitted concurrently herewith.

II. FACTUAL AND PROCEDURAL BACKGROUND

Defendant operates a landscaping company specializing in landscape maintenance. Moen Decl., ¶ 9. Plaintiff was employed by Defendant as a non-exempt employee from approximately August 2019 until approximately March 24, 2020. *Id.*; Declaration of Santiago Gutierrez ("Gutierrez Decl."), ¶ 2. Plaintiff's primary job duties included landscaping and maintenance work, such as trimming trees, planting seeds, and uprooting plants and flowers. *Id.* Like all Settlement Class members, Plaintiff was subject to Defendant's wage and hour policies and practices. Moen Decl., ¶ 9; Gutierrez Decl. ¶ 3.

On February 2, 2021, Plaintiff filed the initial Complaint in this action, alleging Defendant failed to: (i) pay all overtime wages owed; (ii) pay all minimum wages; (iii) provide all lawful meal periods; (iv) authorize and permit all lawful rest periods; (v) reimburse necessary business expenses; (vi) issue accurate and itemized wage statements; (vii) timely pay all final wages upon separation; and (viii) comply with California's Unfair Competition laws. Moen Decl., ¶ 10. On April 9, 2021, Plaintiff filed the operative First Amended Complaint ("FAC"), adding a cause of action for civil penalties under PAGA, premised on the same underlying Labor Code violations. *Id.*

Shortly after Plaintiff filed this action, Defendant engaged in a *Pick Up Stix* campaign to obtain general releases from putative class members. Moen Decl., ¶ 11; *see Chindarah v. Pick Up*

1 *Stix, Inc.* (2009) 171 Cal.App.4th 796, 803 (allowing employer to enter into individual releases
2 with employees during pendency of putative class action litigating same claims). Therefore, the
3 scope of the Parties' Settlement is with respect to only those putative class members who did not
4 sign a "Release Agreement" with Defendant in connection with its *Pick Up Stix* campaign. *See*
5 Settlement, ¶ 1.

6 In connection with mediation, Defendant provided Plaintiff with electronic timekeeping
7 and payroll records for approximately 20% of the Settlement Class members spanning the entire
8 Class Period, as well as key policy documents and an anonymized list identifying all putative
9 Settlement Class members and their dates of employment and total bi-weekly pay periods. Moen
10 Decl., ¶ 12. Plaintiff and his counsel then conducted a comprehensive analysis of the produced
11 data to create a detailed, class-wide exposure model for the claims at issue. *Id.* On January 5,
12 2022, the Parties participated in a mediation session with Todd Smith, Esq., during which the
13 Parties exchanged divergent views on Defendant's liability and exposure valuations, their legal
14 positions, and the likelihood of certification of Plaintiff's claims. *Id.* At the conclusion of
15 mediation, Mr. Smith made a mediator's proposal that the Parties ultimately accepted. *Id.* Over
16 the following months, the Parties negotiated and finalized the remaining terms of the proposed
17 class-wide stipulation of settlement. *Id.* At the request of this Court, the Parties entered into an
18 Amendment to Stipulation of Settlement (collectively with the Stipulation of Settlement, the
19 "Settlement Agreement"). *Id.* On January 27, 2023, this Court preliminarily approved the
20 Settlement Agreement. *Id.*; *see* Exhibit 1 (Preliminary Approval Order).³

21 On March 3, 2023, the Court-approved Notice of Class Action Settlement, Request for
22 Exclusion Form, and Notice of Individual Settlement Payment (collectively, the "Notice Packet")
23 was mailed in English and Spanish via U.S. first-class mail to all 349 potential Settlement Class
24 members. *See* Declaration of Evelin Reyes ("Reyes Decl.") ¶ 8; Exhibit A. Settlement Class
25 members had until May 2, 2023, to submit disputes, objections, and/or requests for exclusion (the
26

27 ³ On July 7, 2022, Plaintiff submitted the Parties' Stipulation of Settlement to the LWDA in connection
28 with the filing of his Motion for Preliminary Approval. *See* Moen Decl., Exhibit 2. On January 9, 2023,
Plaintiff submitted the Parties' Amendment to Stipulation of Settlement to the LWDA in connection with
the filing of his supplemental briefing for his Motion for Preliminary Approval. *Id.*

“Response Deadline”). *Id.*, ¶ 13. After the Response Deadline passed, zero Settlement Class members had objected to the Settlement or opted out from participation, resulting in a 100% participation rate. *Id.*, ¶ 14. Plaintiff now respectfully submits the Settlement for this Court’s final approval.

III. SUMMARY OF THE SETTLEMENT AND NOTICE PROCESS

A. Settlement Class Definition

The Settlement Class includes: “All current and former non-exempt employees who worked for Defendant in California at any time between February 2, 2017 and October 31, 2021 and who did not sign a ‘Release Agreement’ with Defendant in connection with its *Chindarah v. Pick Up Stix, Inc.* campaign.” *See* Moen Decl., Exhibit 1.

B. Monetary Terms

Defendant will pay a non-reversionary Maximum Settlement Amount (“MSA”) of \$1,250,000.00. *See* Settlement, § 3. The Net Settlement Amount (“NSA”) is the amount remaining from the MSA after deducting Court-approved amounts for attorneys’ fees (\$416,666.67) and verified costs reimbursement (\$9,398.81), the Class Representative Enhancement Payment (\$5,000.00), settlement administration costs (\$5,795.00), and payment to the LWDA for its share of PAGA penalties (\$30,000.00). Moen Decl., ¶ 14; Exhibit 3 (Expense Summary).⁴ Based on these requested amounts, Simpluris calculates the NSA to be approximately \$773,139.52. *See* Reyes Decl., ¶¶ 10-12.

Simpluris will calculate and apportion Individual Settlement Payments from the NSA using the following formula: (1) the \$10,000.00 payable to the PAGA Aggrieved Employees as the PAGA Amount shall be designated as the “PAGA Amount,” and will be distributed to each PAGA Aggrieved Employee who was employed by Defendant at any time between February 2, 2020 through October 31, 2021, proportionate to the number of workweeks that he or she worked during the aforementioned time period compared to the total workweeks worked by all PAGA

⁴ Plaintiff’s Counsel’s expense summary identifies Plaintiff’s Counsel’s to-date out of pocket expenses as \$9,313.81. *See* Moen Decl., Exhibit 3. The total amount that Plaintiff’s Counsel is requesting for expense reimbursement (\$9,398.81) includes an additional \$85.00 in anticipated future costs for the filing and service of the Motion for Final Approval, as well as costs to appear at the Final Approval Hearing, which will be incurred by the time the motion is heard. *Id.*, ¶ 23.

1 Aggrieved Employees during the aforementioned time period; (2) ten percent (10%) of the NSA
2 will be designated as the “Wage Statement Amount,” and distributed to each participating
3 Settlement Class member who was employed by Defendant at any time between February 2, 2020
4 and October 31, 2021, proportionate to the number of workweeks that he or she worked during
5 the aforementioned time period compared to the total workweeks worked by all participating
6 Settlement Class members during the aforementioned time period; (3) five (5%) of the NSA will
7 be designated as the “Waiting Time Amount,” and distributed in equal, pro-rata shares to each
8 participating Settlement Class member who separated their employment from Defendant at any
9 time between February 2, 2018 and October 31, 2021; and (4) the remainder of the NSA will be
10 distributed to each participating Settlement Class member based on their proportionate number
11 of workweeks worked during the Class Period compared to the total workweeks worked by all
12 participating Settlement Class members during the Class Period. *See* Settlement, § 4.B. Individual
13 Settlement Payments will be classified as 33.3% wages to be reported on an IRS Form W-2, and
14 66.7% penalties and interest to be reported on an IRS Form 1099. *See* Amendment to Stipulation
15 of Settlement, p. 1.

16 **C. Summary of Notice Process**

17 On February 14, 2023, Defendant provided Simpluris, the Court-approved Settlement
18 Administrator, with a mailing list containing the names, last known addresses, Social Security
19 numbers, and pertinent employment information for each Settlement Class member during the
20 Class Period. Reyes Decl., ¶ 6. After performing address updates and verifications, Simpluris
21 mailed the Notice Packets to all 349 potential Settlement Class members on March 3, 2023. *Id.*,
22 ¶¶ 7-8. As a result of Simpluris’ use of a skip trace, a total of 38 Notice Packets were re-mailed.
23 *Id.*, ¶ 9. Simpluris received two Notice Packets returned with forwarding address that were also
24 re-mailed. *Id.* Ultimately, 45 Notice Packets remain undeliverable. *Id.* Settlement Class members
25 had until May 2, 2023, to submit objections, disputes, and/or requests for exclusion. *Id.*, ¶¶ 13-
26 15. As of the date of this filing, not a single Settlement Class member objected to the Settlement
27 or opted out from participation, resulting in a 100% participation rate. *Id.* Simpluris also reports
28 zero disputes regarding the information included in the Notice Packet. *Id.*, ¶ 15.

1 **D. Timing of Payments**

2 Defendant will deposit the MSA (\$1,250,000.00) with the Settlement Administrator
3 within 60 calendar days after the Effective Date.⁵ See Settlement, ¶¶ 2.B, 3.B. Within ten (10)
4 business days of the full funding of the MSA, the Settlement Administrator will calculate each
5 Individual Settlement Payment and mail the Individual Settlement Payments to the participating
6 Settlement Class members. *Id.*, ¶ 4.C. Settlement Class members will have 180 days from the date
7 Simpluris mails the Individual Settlement Payments to cash their checks. *Id.*, ¶ 4.E. In the event
8 there are any uncashed checks remaining after 180 days, Simpluris will transfer any remaining
9 funds to Girls Inc. of Orange County, the Parties' agreed-upon *cy pres* designee. *Id.* The Parties
10 submit that the distribution method called for under the Settlement Agreement is proper as a party-
11 selected distribution, subject to this Court's approval. See Code of Civil Procedure
12 § 384(b) (authorizing child advocacy programs as recipients for uncashed funds in a class action).
13 Further, Plaintiff, Plaintiff's counsel, Defendant, and Defendant's counsel submitted declarations
14 in connection with Preliminary Approval confirming that all parties and their counsel lack any
15 relationship with the proposed *cy pres* that could create a potential conflict of interest. Moen
16 Decl., ¶ 26.

17 **IV. ARGUMENT**

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

21 Under Code of Civil Procedure § 382, a class may be certified if: (1) it is ascertainable
22 and its members are too numerous for joinder to be practical; (2) the representative and absent
23 class members share a community of interest, and questions of law and fact common to the class
24 predominate over questions unique to individual class members; (3) the representative's claims
25 are typical of the class' claims; and (4) the representative will fairly and adequately represent the
26 class' interests. See *Richmond v. Dart Industries, Inc.* (1981) 29 Cal.3d 462, 470. Here, the Court
27 found that the Settlement Class meets all the requirements for class certification for settlement

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⁵ The "Effective Date" is defined in the Settlement Agreement as the date upon which the Court signs an
order granting final approval of the Settlement Agreement. See Settlement, § 2.B.

1 purposes when it granted preliminary approval of the Settlement on January 27, 2023. *See* Moen
2 Decl., Exhibit 1. Since then, no events have cast doubt on the propriety of this determination, and
3 in fact, the reaction of the Settlement Class members has been overwhelmingly supportive of the
4 Settlement, with not a single Settlement Class member objecting to or opting out from
5 participation, resulting in a 100% participation rate. *See* Reyes Decl., ¶¶ 13-14. The Court should
6 therefore confirm its conditional certification of the Settlement Class.

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

9 California courts have a strong policy in favor of settlement. *See Stambaugh v. Superior*
10 *Court* (1976) 62 Cal.App.3d 231, 236. Unlike individual settlements, class action settlements
11 involve a court approval process that exists to prevent fraud, collusion, and unfairness to class
12 members. *See Malibu Outrigger Bd. of Governors v. Superior Court* (1980) 103 Cal.App.3d 573,
13 578-79. This approval process consists of preliminary settlement approval, notice being given to
14 class members, and a final fairness and approval hearing being held, at which class members can
15 be heard with respect to the settlement. *Id.* Now that the settlement administrator has provided
16 notice to the Class Members, Plaintiff respectfully requests that the Court finally approve the
17 Settlement as fair, adequate, and reasonable.

18 **1. *The Settlement was Reached at Arms' Length, Through Experienced***
19 ***Counsel and an Experienced Mediator, and Was Based on Sufficient***
20 ***Information to Intelligently Negotiate a Fair Settlement Considering the***
21 ***Claims Asserted and Risks of Continued Litigation***

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

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

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

8 “In the context of a settlement agreement, the test is not the maximum amount plaintiffs
9 might have obtained at trial on the complaint, but rather whether the settlement is reasonable
10 under all of the circumstances.” *Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224,
11 250. Because settlements inherently involve compromise, even settlements providing for
12 substantially narrower relief than what may be obtained if the suit were successfully litigated can
13 be reasonable because, “the public interest may indeed be served by a voluntary settlement in
14 which each side gives ground in the interest of avoiding litigation.” *Id.* (quoting *Air Lines*
15 *Stewards, etc., Local 550 v. American Airlines, Inc.*, 455 F.2d 101, 109 (7th Cir. 1972)).

16 Here, the Settlement resulted from extensive arms’-length settlement negotiations
17 between qualified and experienced counsel with the aid of a neutral third-party mediator. The
18 Settlement is fair, adequate, and reasonable for all Settlement Class members. While Plaintiff
19 steadfastly maintains that his claims are meritorious, Defendant vigorously contests liability and
20 the appropriateness of class treatment and, correspondingly, Plaintiff acknowledges the
21 substantial risks and uncertainty in proceeding with class certification and eventually trial, which
22 justify a downward departure from the maximum exposure that Plaintiff calculated each claim
23 carried.

24 As detailed in Plaintiff’s Motion for Preliminary Approval, Defendant maintains it has
25 properly paid all minimum and overtime wages for all hours worked by the Settlement Class
26 members. Moen Decl., ¶ 15. Defendant argues it did not direct Plaintiff and other non-exempt
27 employees to conduct off-the-clock work and, in fact, there was no work to be done prior to or
28 after scheduled shift times. *Id.* As such, Defendant contends that all work was performed while

1 on the clock and accurately recorded, and Plaintiff's claim would fail on the merits. *Id.* Further,
2 Defendant asserts that this claim is not suitable for class treatment, as it requires individualized
3 inquiries into exactly how much time each employee purportedly worked off-the-clock each day,
4 resulting in an unmanageable series of mini-trials. *Id.*

5 As to Plaintiff's meal period allegations, Defendant contends that the Settlement Class
6 members were never required to remain on Defendant's jobsites during meal periods and were
7 free to come and go as they wished during their duty-free meal periods. Moen Decl., ¶ 16. Further,
8 Defendant contends that its scheduled meal periods ensured that all employees whose shifts
9 started at or after 7:00 a.m. were provided with a timely meal period, and any late meal periods
10 were the result of employee choice. *Id.* Defendant, therefore, contends that Plaintiff's meal period
11 claim is not suited for class certification as individual inquiries would be required to assess the
12 reasons why a particular individual recorded a non-compliant meal period or missed a meal period
13 on a particular shift, and whether a particular individual chose to take an untimely meal period on
14 a particular shift, resulting in a series of mini-trials. *Id.*

15 As to Plaintiff's rest period claim, Defendant asserts it has always authorized and
16 permitted all required rest periods for its non-exempt employees. Moen Decl., ¶ 17. Defendant
17 argues that it maintained lawful rest period practices at all times during the Class Period, including
18 authorizing and permitting two rest periods per workday that exceeded 6.5 hours in length, which
19 were pre-scheduled at 9:30am and 1:30pm, and Plaintiff and other non-exempt employees were
20 authorized and permitted to take all lawful rest periods to which they were entitled. *Id.* Therefore,
21 Defendant asserts that if employees did not take all lawful rest periods, this was solely the result
22 of employee choice and not reflective of Defendant's policies and practices. *Id.* Further,
23 Defendant asserts that this claim is unmanageable, as it requires individualized inquiries into
24 whether each employee failed to take a lawful rest period and on which days, resulting in an
25 unmanageable series of mini-trials. *Id.* These manageability concerns are especially present for
26 rest periods, Defendant argues, as rest periods are not required by statute to be recorded. *Id.*

27 In response to Plaintiff's allegations that Defendant failed to reimburse the Settlement
28 Class members for all necessary business expenses incurred, Defendant argues that it maintains a

1 policy to reimburse all reasonable and necessary business expenditures and that, to the extent that
2 any expenses were not reimbursed, it was the result of Defendant’s employees failing to submit
3 expense reimbursement requests. Moen Decl., ¶ 18. Further, Defendant argues that any expenses
4 incurred by the Settlement Class members were minimal given the wide availability of low-cost
5 cellular phone plans. *Id.* Defendant also maintains that this claim faces similar obstacles towards
6 certification as Plaintiff’s other claims, particularly that it would require a series of mini-trials to
7 determine which employees incurred expenses, whether those expenses were reasonable and
8 necessary for the particular job duties of the affected employee, and in which pay periods such
9 expenses were allegedly incurred. *Id.*

10 As to Plaintiff’s derivative penalty claims, Defendant argues that Plaintiff’s underlying
11 claims will fail and, as a result, the wholly derivative wage statement, waiting time, and PAGA
12 claims will also fail. Moen Decl., ¶ 19; *see Price v. Starbucks Corp.* (2011) 192 Cal.App.4th 1136,
13 1147 (“Because the underlying causes of action fail, the derivative UCL and PAGA claims also
14 fail.”). *see Price v. Starbucks Corp.* (2011) 192 Cal.App.4th 1136, 1147 (“Because the underlying
15 causes of action fail, the derivative UCL and PAGA claims also fail.”). Defendant also maintains
16 that Plaintiff cannot show that the wage statement violations were “knowing and intentional,” or
17 that the putative class members “suffer[ed] injury” as a result of the alleged violations, as required
18 by Labor Code § 226(e) for the imposition of wage statement penalties. Moen Decl., ¶ 19; *see*
19 Labor Code § 226(e)(1). Further, Defendant argues that the wage statements always accurately
20 reflected hours worked and amounts actually paid to employees, and thus Defendant could not be
21 found liable for wage statement penalties. Moen Decl., ¶ 19; *see also Maldonado v. Epsilon*
22 *Plastics, Inc.* (2018) 22 Cal.App.5th 1308, 1336-37 (agreeing with employer’s “commonsense
23 position that the pay stubs were accurate in that they correctly reflected the hours worked and the
24 pay received.”) (citation omitted). Moreover, Defendant maintains that its good faith defenses to
25 Plaintiff’s underlying claims would preclude the recovery of waiting time penalties, which are
26 only available for the “willful” failure to pay wages, and that this Court would exercise its
27 discretion to substantially reduce any PAGA penalties awarded. Moen Decl., ¶ 19; *see also* 8 Cal.
28 Code Regs. § 13520 (“[A] good faith dispute that any wages are due will preclude imposition of

1 waiting time penalties under Section 203.”); Labor Code § 2699(e)(2); *Thurman v. Bayshore*
2 *Transit Mgmt., Inc.* (2012) 203 Cal.App.4th 1112, 1135; *Carrington v. Starbucks Corporation*
3 (2018) 30 Cal.App.5th 504 (affirming reduction of PAGA penalties to 10% of exposure).

4 These considerations not only bore heavily on the negotiations leading to the Settlement,
5 but also confirm that the Settlement is a fair, adequate, and reasonable compromise considering
6 the risks of further litigation. As detailed in Plaintiff’s Motion for Preliminary Approval, Plaintiff
7 and Class Counsel carefully vetted the claims at issue and conducted a detailed analysis of
8 Defendant’s data to arrive at the calculated damages figures. It was only after this comprehensive
9 analysis that the Parties participated in a mediation session and ultimately reached the Settlement
10 now before the Court. Thus, while these risks are far from exhaustive, they show that the
11 Settlement is fair, adequate, and reasonable.

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

15 Simpluris will calculate Individual Settlement Payments based on the proportionate
16 number of workweeks worked by each participating Settlement Class member during the Class
17 Period divided by the total number of workweeks worked by all participating Settlement Class
18 members. *See* Settlement, ¶ 4.B. Further, portions of the NSA will also be distributed to
19 Settlement Class members who have standing to pursue claims for wage statement penalties,
20 waiting time penalties, and PAGA penalties. *Id.* This method of distribution compensates
21 Settlement Class members based on the estimated extent of their injuries, as Settlement Class
22 members who worked more workweeks during the relevant time periods were subjected to more
23 of the alleged wage and hour violations than those who worked fewer workweeks, and only
24 Settlement Class members with standing to pursue derivative and/or PAGA penalties would have
25 been eligible to recover those penalties. Thus, the formula is tethered to the damages and penalties
26 that Settlement Class members could recover and is therefore, fair, adequate, and reasonable.
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C. The Requested Award of Attorneys' Fees is Reasonable as a Percentage of the Maximum Settlement Amount Confirmed by a Lodestar Cross-Check

California state and federal courts routinely award fee awards of one-third of the settlement fund in class actions. *Chavez v. Netflix, Inc.* (2008) 162 Cal. App. 4th 43, 66, fn. 11; *see also Wershba, supra*, 91 Cal. App. 4th at 254 (recognizing the “percentage of recovery” method); *In re Pacific Enterprises Securities Litig.*, 47 F.3d 373, 379 (9th Cir. 1995) (affirming 33% fee award). Indeed, the California Supreme Court approved the use of the “percentage of fund” method in California. *See Laffitte v. Robert Half Int’l, Inc.* (2016) 1 Cal.5th 480, 506 (“the percentage of fund method survives in California class action cases...”); *see also Rawlings v. Prudential-Bache Properties, Inc.*, 9 F.3d 513, 516 (6th Cir. 1993) (holding that the percentage

1 of the fund method more accurately reflects the results achieved than the lodestar method and
2 “establishes reasonable expectations on the part of plaintiffs’ attorneys as to their expected
3 recovery; and it encourages early settlement, which avoids protracted litigation.”); *In re Rite Aid*
4 *Corp. Securities Litigation*, 396 F.3d 294, 300 (3d Cir. 2005) (“The percentage-of-recovery
5 method is generally favored in common fund cases because it allows courts to award fees from
6 the fund ‘in a manner that rewards counsel for success and penalizes it for failure.’”). This is
7 consistent with Class Counsel’s experience in similar wage-and-hour class action matters. *See*
8 Moen Decl., ¶ 20. Here, Class Counsel’s fee request of \$416,666.67, representing one-third of the
9 MSA, is the same percentage sought in *Laffitte*, and is fair and reasonable based on the percentage
10 of the recovery method. *Id.*

11 In *Laffitte*, the California Supreme Court held that trial courts have discretion to assess the
12 reasonableness of fee awards with tools such as the “lodestar cross-check,” whereby the trial court
13 calculates counsel’s lodestar and determines whether the “lodestar multiplier” needed to bring the
14 lodestar on par with the percentage of recovery is reasonable. *Laffitte*, 1 Cal.5th at 503-06. Under
15 the lodestar method, the court multiplies the number of hours reasonably expended by each
16 attorney or legal staff member by their reasonable hourly rates, then enhances this lodestar figure
17 by a “multiplier” to account for a range of factors, such as the contingent nature of the case and
18 the degree of success achieved. *See Serrano v. Priest*, (1977) 20 Cal.3d 25, 48-49; *Ketchum v.*
19 *Moses*, (2001) 24 Cal.4th 1122, 1132-36; *Thayer v. Wells Fargo Bank*, (2001) 92 Cal.App.4th
20 819, 834 (“There is no hard-and-fast rule limiting the factors that may justify an exercise of
21 judicial discretion to increase or decrease a lodestar calculation”).

22 Under California law, lodestar multipliers can range from 2 to 4 or even higher. *See, e.g.,*
23 *Chavez*, 162 Cal.App.4th at 49-50 (approving multiplier of approximately 2.5); *Coalition for L.*
24 *County Planning etc. Interest v. Bd. of Supervisors*, (1977) 76 Cal.App.3d 241, 251 (approving
25 multiplier of approximately 12.8). In class and representative actions, where the value of the
26 benefit conferred “can be monetized with a reasonable degree of certainty,” a court may “adjust
27 the lodestar in comparison to a percentage of the common fund to ensure that the fee awarded is
28

reasonable and within the range of fees freely negotiated in the legal marketplace in comparable litigation.” *Consumer Privacy Cases*, (2009) 175 Cal.App.4th 545, 557.

In this case, Plaintiff’s counsel has a lodestar of approximately \$198,425.00, which results in a multiplier of 2 compared to the \$416,666.67 fee request. Moen Decl., ¶ 21. A summary showing the number of hours of work performed by each attorney and paralegal is set forth on the following page. *Id.*; Exhibit 4 (Class Counsel’s detailed hourly breakdown); Exhibit 5 (2023 Laffey Matrix).

Name	Rate	Hours	Pre-Multiplier Lodestar
Paul K. Haines (17th Year Attorney)	\$750	7.4	\$5,550.00
Fletcher W. Schmidt (11th Year Attorney)	\$725	94.8	\$68,730.00
Matthew K. Moen (8th Year Attorney)	\$575	176.5	\$101,487.50
Susan J. Perez (4th Year Attorney)	\$475	41.4	\$19,665.00
Firm Paralegals	\$175	17.1	\$2,992.50
Total Lodestar			\$198,425.00

As discussed above, this case presented significant risks to both class certification and merits considerations. Accordingly, it is fair and reasonable to account for these risks in compensating Class Counsel. Since undertaking representation of Plaintiff, Class Counsel has devoted substantial time to this litigation without receiving any compensation to date. Moen Decl., ¶ 22. Class Counsel’s efforts include conducting the pre-filing investigation, analyzing Plaintiff’s claims, conducting legal research and analysis into those claims, reviewing data and documents produced by Defendant, calculating a comprehensive damages model, preparing for and attending mediation, negotiating and drafting the Memorandum of Understanding, the long-form Settlement Agreement, and the Notice Packet documents, preparing the Motions for Preliminary and Final Approval, drafting the Amendment to Stipulation of Settlement and providing supplemental briefing to the Court in support of Plaintiff’s Motion for Preliminary Approval, overseeing the notice process, fielding questions from Settlement Class Members, and

1 otherwise litigating the case. *Id.* Given the considerable potential for adverse outcomes in this
2 case, including, but not limited to, losing on class certification, the contingent risk borne by Class
3 Counsel was great. The quality of Class Counsel's work, and the efficacy and dedication with
4 which it was performed, should be equivalently compensated.

5 As discussed above, this case presented significant risks to both class certification and
6 merits considerations. Accordingly, it is fair and reasonable to account for these risks in
7 compensating Class Counsel. Class Counsel should also be compensated for the risks involved in
8 undertaking this litigation and for expending considerable effort, all while working on a pure
9 contingency basis. Since undertaking representation of Plaintiff, Class Counsel has expended
10 \$9,398.81 in litigation costs and devoted substantial time to this litigation without receiving any
11 compensation to date. Moen Decl., ¶ 22, Exhibit 3.

12 Class Counsel's previous experience in litigating wage and hour class actions also
13 supports the reasonableness of the fee request. Class Counsel are well-versed in plaintiff and
14 defense-side wage and hour class action litigation and collectively bring more than three decades
15 of wage-and-hour class and representative action litigation experience. *See* Moen Decl., ¶¶ 2-7;
16 *see also generally* Declaration of Paul K. Haines; Declaration of Fletcher W. Schmidt;
17 Declaration of Susan J. Perez. Class Counsel have also been certified as class counsel in numerous
18 other cases in both State and federal court. *Id.* Class Counsel's experience in similar matters was
19 integral in evaluating the strengths and weaknesses of this case and the reasonableness of the
20 Settlement. Practice in the narrow field of wage and hour litigation requires skill and knowledge
21 concerning the rapidly evolving substantive state and federal law, as well as the procedural law
22 of class action litigation. Because it is reasonable to compensate Class Counsel equal with their
23 skill, reputation, and experience, the requested fee award of one-third of the MSA is fair and
24 reasonable and should therefore be approved.

25 **D. The Requested Cost Reimbursement Warrants Final Approval as Fair,**
26 **Adequate, and Reasonable**

27 Class Counsel incurred and respectfully requests reimbursement of \$9,398.81 in actual
28 litigation costs, which is more than \$10,000.00 *less* than the \$20,000.00 amount preliminarily
approved by the Court as set out in the Settlement Agreement. Moen Decl., ¶ 23, Exhibit 1; *see*

1 also Settlement, ¶¶ 3.C.(4), 5. The unclaimed amount of litigation costs will be paid to the
2 Settlement Class members as part of the NSA. See Settlement, ¶ 3.D. Class Counsel’s request is
3 fair, adequate, and reasonable, as all these costs are documented and reasonably incurred. See
4 Moen Decl., Exhibit 3. Moreover, the costs Plaintiff seeks to reimburse are the types of costs
5 routinely approved by courts. See, e.g., *Harris v. Marhoefer* 24 F.3d 16, 19 (9th Cir.
6 1994) (counsel should recover “those out-of-pocket expenses that would normally be charged to
7 a fee paying client”); *Ashker v. Sayre*, No. 05-03759 CW, 2011 WL 825713, at * 3 (N.D. Cal.
8 2011) (“costs of reproducing pleadings, motions and exhibits are typically billed by attorneys to
9 their fee-paying clients” and are reimbursable); *Trustees of Const. Industry & Laborers Health*
10 *and Welfare Trust v. Redland Ins. Co.*, 460 F.3d 1253, 1258-59 (9th Cir. 2006) (legal research
11 costs are reimbursable); *In re Immune Response Securities Litigation* 497 F.Supp.2d 1166, 1177-
12 78 (S.D. Cal. 2007) (mediation expenses, legal research, copies, postage, filing fees, messenger
13 and overnight delivery costs are reimbursable). Further, not a single Settlement Class member
14 objected to the Settlement, including Class Counsel’s request for up to \$20,000.00 in
15 reimbursement of verified costs. Reyes Decl., ¶ 14. Because the expense reimbursements
16 requested by Class Counsel were reasonably incurred, and no Settlement Class member has
17 objected to them, the Court should grant Class Counsel’s request for \$9,398.81 in actual litigation
18 costs reimbursement.

19 **E. The Court Should Finally Approve the Requested Settlement Administration**
20 **Costs**

21 Plaintiff also requests that the Court approve \$5,795.00 in administration costs to
22 Simpluris as the Settlement Administrator. Moen Decl., ¶ 24; Reyes Decl., ¶ 16. As detailed in
23 the declaration of Evelin Reyes, submitted concurrently with this Motion, Simpluris performed
24 duties in connection with this Settlement that were integral in effectuating the Settlement and the
25 Notice process. Among other things, Simpluris calculated each Settlement Class member’s
26 Individual Settlement Payment, updated addresses contained in the class data supplied by
27 Defendant, formatted and translated the Notice Packets for mailing, mailed Notice Packets to all
28 349 individuals who were eligible to take part in the Settlement, kept the Parties informed of the
status of the Notice mailing through weekly reports, and otherwise administered the Settlement.

1 *See generally*, Reyes Decl. For these reasons, Simpluris’ requested costs are fair, reasonable, and
2 adequate, and should be finally approved.

3 **F. The Court Should Finally Approve Plaintiff’s Requested Class**
4 **Representative Enhancement Payment Because the Requested Amount is**
5 **Fair, Adequate, and Reasonable Considering Plaintiff’s Efforts and the Risks**
6 **Assumed on Behalf of the Class**

7 Courts routinely approve service awards to compensate named plaintiffs for the services
8 they provide and the risks they incur during class action litigation. *See, e.g., Bell v. Farmers Ins.*
9 *Exchange* (2004) 115 Cal.App.4th 715, 726 (upholding “service payments” to named plaintiffs
10 for their efforts in bringing the case); *Van Vranken v. Atlantic Richfield Co.* 901 F.Supp. 294
(N.D. Cal. 1995) (approving \$50,000.00 service payment).

11 Here, Plaintiff seeks a Class Representative Enhancement Payment of \$5,000.00 and
12 believes that this request is reasonable given Plaintiff’s considerable efforts in this case, the risks
13 Plaintiff undertook on behalf of the Settlement Class members, and his general release of all
14 claims against Defendant subject to a waiver of California Civil Code section 1542. Moen Decl.,
15 ¶ 25; *see also* Gutierrez Decl., ¶¶ 4-5; Settlement § 2.B. Among other things, Plaintiff gathered
16 relevant documents for use in the lawsuit and provided copies of his wage statements and other
17 factual information to his attorneys, held various phone calls with his attorneys to discuss the
18 claims in the lawsuit and Defendant’s practices, assisted his attorneys in preparing for mediation,
19 reviewed and provided input regarding the Settlement in this case, and otherwise assisted his
20 attorneys in moving the case towards resolution. Moen Decl., ¶ 25; Gutierrez Decl., ¶ 5.

21 Plaintiff has invested considerable time and effort into seeing this litigation through
22 resolution, and the Settlement Class, who would not be receiving anything if it were not for
23 Plaintiff’s decision to pursue these claims, will benefit from his participation. Moen Decl., ¶ 25.
24 Plaintiff attached his name to this lawsuit for the benefit of the Settlement Class members and to
25 the risk of himself, and has agreed to a broader, general release of claims beyond what other
26 Settlement Class members are releasing through this action, including a waiver of Civil Code
27 section 1542. *Id.*; Gutierrez Decl., ¶ 4. Plaintiff deserves to be compensated for these unique risks
28 and his broad release of claims, which other Settlement Class members are not subject to. Plaintiff

1 estimates that he spent approximately 10 to 15 hours performing these duties on behalf of the
2 Settlement Class. Gutierrez Decl., ¶ 5. Moreover, after receiving notice of the proposed
3 enhancement award, not a single Settlement Class member objected to the proposed award. *See*
4 Reyes Decl., ¶ 14. Thus, Plaintiff's request for an enhancement payment is proper and justified
5 as part of the Settlement and should be finally approved.

6 **V. CONCLUSION**

7 For the reasons stated herein, Plaintiff respectfully submits that this Court should grant
8 Plaintiff's Motion in its entirety and adopt the [Proposed] Judgment and Order Granting
9 Plaintiff's Motion for Final Approval of Class Action Settlement, Attorneys' Fees and Costs, and
10 Class Representative Enhancement Payment, submitted herewith.

11
12 Dated: May 10, 2023

Respectfully submitted,
HAINES LAW GROUP, APC

13
14 By:


Matthew K. Moen
Attorneys for Plaintiff