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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF CONTRA COSTA

RUFFO PASTOR DIAZ, JAIME TORRES,
and EDGAR GOMEZ,

Plaintiffs,

v.

DOS COYOTES DEVELOPMENT
COMPANY, LLC; DOS COYOTES
SUNRISE, INC.; DOS COYOTES
CONCORD, INC.; EAST BAY COYOTES,
INC.; COLTAM, INC., COLMAX LLC;
TRUMAX, LLC; COYOTE SUNSHINE,
LLC; COYOTE R15, INC.; ROBERT H.
DAVIDSON; JASON WOLENIK;
MICHAEL TOPF; and DOES 1 through 25,
inclusive,

Defendants.

Case No. CIVMSC20-01670

CLASS ACTION - COMPLEX

[ASSIGNED FOR ALL PURPOSES TO
THE HON. CHARLES TREAT]

**NOTICE OF MOTION AND MOTION
FOR AWARD OF ATTORNEYS' FEES,
REIMBURSEMENT OF COSTS, AND
PLAINTIFFS' ENHANCEMENT**

Hearing Date: August 29, 2024

Hearing Time: 9:00 a.m.

Dept.: 12

Action Filed: August 26, 2020

1 **NOTICE OF MOTION**

2 TO EACH PARTY AND TO COUNSEL FOR EACH PARTY OF RECORD: NOTICE
3 IS HEREBY GIVEN that on August 29, 2024, at 9:00 a.m., or as soon thereafter as counsel may
4 be heard, Plaintiffs Ruffo Pastor Diaz, Jaime Torres, and Edgar Gomez (hereinafter “Plaintiffs”)
5 will move for an order granting the following: (1) attorneys’ fees for Class Counsel equaling
6 \$291,637.50 (33.33% of the gross settlement amount); (2) \$15,590.28 in accrued litigation costs
7 for Class Counsel; (3) \$18,000 in settlement administration fees for Simpluris, Inc.; and (4)
8 representative enhancement awards to Plaintiffs equaling \$5,000 each (\$15,000 total).

9 This motion will be made and based upon: (1) this notice of motion; (2) the
10 memorandum of points and authorities in support thereof; (3) the declaration of Arlo Garcia
11 Uriarte and the exhibits attached thereto, all of which are filed and served concurrently
12 herewith; as well as (4) the records, pleadings, and papers on file in this action, and upon such
13 other matters as may be presented at the time of hearing on this motion.

14
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16 Dated: August 7, 2024



17 Arlo Garcia Uriarte
18 Liberation Law Group, P.C.
19 Attorneys for Plaintiffs
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Table of Contents

I.	INTRODUCTION	1
II.	PLAINTIFFS' REQUESTED DEDUCTIONS SHOULD BE GRANTED.....	2
A.	Common Fund Fee Recovery is Appropriate and Recommended.....	2
1.	Legal Standard for Attorneys' Fee Awards in Similar Cases	2
2.	The Common Fund Method Should Be Applied Here	3
B.	33.33% of the Common Fund is a Reasonable Fee Award	4
1.	Favorable Results Were Achieved in the Face of Significant Challenges.....	4
2.	Contingent Representation – No Fees or Costs if No Recovery.....	5
3.	The Fee Request is the Same as Class Counsel's Actual Rate and is Consistent with Previous Local Awards and Other Awards in California	6
C.	Lodestar Crosscheck	8
1.	Summary of the Work Performed by Class Counsel and his Team	9
2.	The Positive Multiplier Required is Within an Acceptable Range.....	11
D.	The Litigation and Administration Costs Reimbursement Request is Fair, Adequate, and Reasonable	12
E.	Plaintiffs' Enhancement Requests are Fair, Adequate, and Reasonable	13
III.	CONCLUSION.....	15

Table of Authorities

Cases

<i>Ayala v. Antelope Valley Newspapers, Inc.</i> (2014) 59 Cal. 4th 522	5
<i>Bell v. Farmers Ins. Exchange</i> (2004) 115 Cal.App.4th 715.....	9
<i>Bellinghausen v. Tractor Supply Co.</i> 306 F.R.D. 245 (N.D. Cal. Mar. 19, 2015)	12
<i>Boeing Co. v. Van Gemert</i> (U.S. 1980) 444 U.S. 472.....	2
<i>Cates v. Chiang</i> (2013) 213 Cal. App. 4th 791.....	6
<i>City of San Jose v. Superior Court</i> (1974) 12 Cal.3d 447.....	9
<i>Cubillas v. Dav-El Los Angeles</i> (Los Angeles County, Superior Court Case No. BC427918, June 14, 2018).....	8
<i>De Leon v. Ricoh USA, Inc.</i> , No. 18-cv-03725-JSC, 2020 U.S. Dist. LEXIS 56285 (N.D. Cal. Mar. 31, 2020).....	8
<i>Dill v. Mainz Brady, Grp.</i> (San Mateo County, Superior Court Case No. CIV 527099, June 24, 2015) ...	8
<i>Dunk v. Ford Motor Co.</i> , 48 Cal.App.4th 1794, 1800-01 (1996).....	9
<i>Hall v. Cole</i> , 412 U.S. 1 (1973)	2
<i>Hanlon v. Chrysler Corp.</i> (9th Cir. 1998) 150 F.3d 1011.....	9
<i>In re Magsafe Apple Power Adapter Litig.</i> , No. 5:09-CV-01911-EJD, 2015 U.S. Dist. LEXIS 11353 (N.D. Cal. Jan. 30, 2015).....	8
<i>Jimenez v. Max's World, Inc.</i> (San Francisco County Superior Court Case No. CGC-13-530509, April 23, 2015).....	7
<i>Ketchum v. Moses</i> (2001) 24 Cal.4th 1122.	8
<i>Laffitte v. Robert Half Internat., Inc.</i> , 1 Cal. 5th 480 (2016).....	3
<i>Lealao v. Beneficial Cal., Inc.</i> , 82 Cal. App. 4th 19 (2000).....	4, 11
<i>Miguel-Sanchez v. Mesa Packing, LLC</i> , No. 20-cv-00823-VKD, 2021 U.S. Dist. LEXIS 202330 (N.D. Cal. Oct. 20, 2021).....	8
<i>Mills v. Elec. Auto-Lite Co.</i> (1970) 396 U.S. 375.....	12
<i>Moore v. Indian Spring Channel Gold Mining Co.</i> , 37 Cal. App. 370 (Cal. App. 1918).	4
<i>Naranjo v. Spectrum Sec. Servs., Inc.</i> (2023) 88 Cal. App. 5th 937, 304 Cal. Rptr. 3d 898.....	5

1	<i>Paul, Johnson, Alston & Hunt v. Gaulty</i> (9th Cir. 1989) 886 F.2d 268	4
2	<i>Pena v. U.S. Bancorp</i> , 2019 Cal. Super. LEXIS 1264 (San Francisco City and County, No. CGC-17-	
3	556646, March 21, 2019).....	7
4	<i>PLCM Group, Inc. v. Drexler</i> (2000) 22 Cal. 4th 1084.....	8
5	<i>Radcliffe v. Experian Info. Solutions</i> (9th Cir. Cal. 2013) 715 F.3d 1157	13
6	<i>Robato v. Dry Bar Holdings, LLC</i> (San Francisco County Superior Court Case No. CGC-14-540275,	
7	April 13, 2016)	7
8	<i>Rodriguez v. West Publ’g Corp.</i> (9th Cir. 2009) 563 F.3d 948.....	13
9	<i>Roe v. Heritage Mgmt. Servs.</i> , 2019 Cal. Super. LEXIS 16293 (San Francisco City and County, No.	
10	CGC-16-555733, February 22, 2019).....	7
11	<i>Serrano v. Priest</i> (1977) 20 Cal.3d 25, 38	2
12	<i>Thayer v. Wells Fargo Bank</i> , 92 Cal. App. 4th 819 (2001)	11
13	<i>Thompson v. Ontario 947, Inc.</i> (San Bernardino County, Superior Court Case No. CIVDS 1604818, Jan.	
14	08, 2019).....	8
15	<i>Vasquez v. Superior Court</i> , 4 Cal.3d 800 (1971)	9
16	<i>Vincent v. Hughes Air West, Inc.</i> , supra, 557 F.2d at 769	2
17	<i>Vizcaino v. Microsoft Corp.</i> (9th Cir. 2002) 290 F.3d 1043	8, 12
18	Treatises	
19	Newberg, <u>Newberg on Class Actions</u> , 4th Ed., 2002.....	6
20		
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23		
24		
25		
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I. INTRODUCTION

In the accompanying motion filed concurrently herewith, Plaintiffs Ruffo Pastor Diaz, Jaime Torres, and Edgar Gomez (hereinafter “Plaintiffs”) seek final approval of a \$875,000 class and representative action settlement¹ reached between them and Defendants East Bay Coyotes, Inc., Jason Wolenik, Michael Topf, Dos Coyotes Development Company, LLC, Dos Coyotes Sunrise, Inc., Dos Coyotes Concord, Inc., Coltam, Inc., Colmax, LLC, Trumax, LLC, and Robert Davidson (hereinafter “Defendants”) (collectively “the Parties”). Plaintiffs bring the instant motion seeking the following deductions from the gross settlement amount: (1) attorneys’ fees equaling \$291,637.50 (33.33% of the gross settlement amount) for Class Counsel²; (2) \$15,590.28 in accrued litigation costs for Class Counsel; (3) \$18,000 in settlement administration fees for Simpluris, Inc. (“Settlement Administrator”); and (4) representative enhancement awards equaling \$5,000 each (\$15,000 total).

The settlement received the Court’s preliminary approval on May 3, 2024. On June 21, 2024, the Court-approved notice form was mailed to 882 putative settlement class members (hereinafter “SCM”). [Beliveau Dec.³ ¶ 8]. To date, no one has objected and only two people have requested exclusion. [Beliveau Dec. ¶¶ 13-14]. Thus, there are 880 total SCM.

Plaintiffs’ attorneys’ fees and costs requests are well supported by relevant case law as explained herein. California trial courts routinely approve fee requests of up to 33.33% of the common fund when the results achieved are positive and to recognize the risks undertaken by counsel in contingency fee cases. Both of these factors apply. SCM are set to recover \$552.31 each on average, despite the litigation challenges that would otherwise lie ahead, while only

¹ The Joint Stipulation of Class and PAGA Settlement (hereinafter “Agreement” or “AGMT”) contains the terms of the proposed settlement (hereinafter “Settlement”) and is attached as Exhibit “1” to the Declaration of Arlo Uriarte (hereinafter “Uriarte Dec.”), filed concurrently herewith.

² “Class Counsel” refers to Arlo Garcia Uriarte of Liberation Law Group, P.C., as appointed by the Court in its order granting Preliminary Approval.

³ “Beliveau Dec.” means the declaration of Jennifer Beliveau. Ms. Beliveau is employed as a Project Manager by Simpluris, Inc., and has been assigned to this case. [Beliveau Dec. ¶ 1]. Her declaration is attached as Exhibit “2” to Uriarte Dec.

1 releasing⁴ the claims relevant to Plaintiffs’ lawsuit. [Beliveau Dec. ¶ 16]. This is a very positive
2 result. Also, Class Counsel has accepted this case on pure contingency. [Uriarte Dec. ¶ 15].

3 Plaintiffs’ enhancement request is also appropriate because they should be compensated
4 for expending their time and effort on behalf of SCM and attaining a successful resolution.
5 Additionally, Plaintiffs executed a broader, general release, which includes a California Code of
6 Civil Procedure § 1542 waiver. [See, AGMT ¶ E(1)]. For all the reasons discussed herein,
7 Plaintiffs respectfully urge the Court to approve the requested awards and cost reimbursements.

8 **II. PLAINTIFFS’ REQUESTED DEDUCTIONS SHOULD BE GRANTED**

9 **A. Common Fund Fee Recovery is Appropriate and Recommended**

10 **1. Legal Standard for Attorneys’ Fee Awards in Similar Cases**

11 The U.S. Supreme Court has recognized that “a lawyer who recovers a common fund for
12 the benefit of persons other than himself or his client is entitled to a reasonable attorneys’ fee
13 from the fund as a whole.” *Boeing Co. v. Van Gemert* (U.S. 1980) 444 U.S. 472, 478. *Accord*,
14 *Serrano v. Priest* [Serrano III] (1977) 20 Cal.3d 25, 38 (trial courts have equitable power to
15 award attorneys’ fees and costs when a litigation proceeding in a representative capacity secures
16 a substantial benefit). The purpose of the “common fund doctrine” is not only to reward
17 effective legal advocacy but to “spread litigation costs proportionally among all of the
18 beneficiaries” preventing unjust enrichment. *Vincent v. Hughes Air West, Inc.* 557 F.2d 759, 769
19 (9th Cir. 1977).

20 In *Laffitte v. Robert Half Internat., Inc.*, the California Supreme Court “join[ed] the
21 overwhelming majority of federal and state courts in holding that when class action litigation
22 establishes a monetary fund for the benefit of the class members, and the trial court in its
23 equitable powers awards class counsel a fee out of that fund, the court may determine the
24 amount of a reasonable fee by choosing an appropriate percentage of the fund created.” *Laffitte*
25 *v. Robert Half Internat., Inc.* (2016) 1 Cal. 5th 480, 503.

26
27 ⁴ Settlement Class members will only release claims “...that were alleged in the Action and that
28 reasonably could have been alleged in the Action based on the allegations asserted in the Action
and any amendments thereto,” [AGMT ¶ E(3)].

1 Our state’s Supreme Court highlighted some of the many advantages of the percentage
2 method: “relative ease of calculation, alignment of incentives between counsel and the class, a
3 better approximation of market conditions in a contingency case, and the encouragement it
4 provides counsel to seek an early settlement and avoid unnecessarily prolonging the litigation.”
5 *Id.* In addition to its apparent endorsement of the percentage fee method, the *Laffitte* Court
6 clarified that it does not “perceive an abuse of discretion in [a] court’s decision to double check
7 the reasonableness of the percentage fee through a lodestar calculation.” *Id.* at 504. The *Laffitte*
8 Court regards the lodestar cross-check as “a mechanism for bringing an objective measure of the
9 work performed into the calculation of a reasonable attorney fee.” *Id.*

10 *Laffitte* stands for the proposition that a trial judge may rely on his or her discretion and
11 utilize either the percentage method, the lodestar method, or both to calculate a reasonable
12 attorneys’ fee. Furthermore, should a lodestar crosscheck be elected, the trial court does not
13 abuse its discretion whether it chooses to “perform[] the cross-check using counsel declarations
14 summarizing overall time spent” or opts to do a more detailed analysis of daily time sheets. *Id.*
15 at 505. Indeed, “[t]he choice of a fee calculation method is generally one within the discretion of
16 the trial court, the goal...being the award of a reasonable fee to compensate counsel for their
17 efforts.” *Id.* at 504.

18 *Laffitte* affirmed a fee award representing 33 and 1/3 percent of the common fund. *Id.* at
19 506. And, this was based on a lodestar amount that required a multiplier of 2.13. *Id.* at 487. As
20 the Court held, only when the multiplier is “extraordinarily high or low [should] the trial court []
21 consider whether the percentage method should be adjusted so as to bring the imputed multiplier
22 within a justifiable range.” *Id.* at 505.

23 2. The Common Fund Method Should Be Applied Here

24 The common fund doctrine is appropriately applied here because the following
25 conditions are present: (1) the class of beneficiaries is sufficiently identifiable; (2) the benefits
26 can be accurately traced; and (3) the fee can be shifted with some exactitude to those benefiting.
27 *Paul, Johnson, Alston & Hunt v. Graulty* (9th Cir. 1989) 886 F.2d 268, 271. *Accord, Lealao v.*
28 *Beneficial Cal., Inc.* (2000) 82 Cal. App. 4th 19, 30-31. Courts find these conditions “easily

met” when “each member of a certified class has an undisputed and mathematically ascertainable claim to part of a lump-sum recovered on his [or her] behalf.” *Paul, Johnson, Alston & Hunt, supra*.

The instant matter concerns a certified settlement class that has a mathematically ascertainable claim to part of a lump-sum recovery. Additionally, the class of beneficiaries is readily identifiable (members have been identified through an examination of Defendants’ business records provided to the Settlement Administrator [*See, Beliveau Dec. ¶¶ 3-5*]), the benefits are easily traceable (monetary payments to SCM are calculated based upon the specific formula identified in the Agreement ¶ C(3)(d)), and the fee can be shifted with exactitude because Class Counsel is requesting a specific percentage of a gross amount that will be fully distributed to the class after Court-approved deductions.

B. 33.33% of the Common Fund is a Reasonable Fee Award

Once a court determines that the common fund doctrine is applicable, then that court must assign a reasonable percentage amount for the fee award. Plaintiffs seek 33.33% of the common fund on behalf of Class Counsel for multiple key reasons: (1) the positive results achieved; (2) to recognize the risks associated with contingency fee representation; (3) the requested fee percentage mirrors Class Counsel’s own contingency fee retainers; and (4) numerous courts in this locality have made similar awards when adjudicating the propriety of similar wage and hour settlements. [*Uriarte Dec. ¶ 15*].

1. Favorable Results Were Achieved in the Face of Significant Challenges

Plaintiffs and Class Counsel worked diligently to secure an all-cash, non-reversionary gross settlement fund totaling \$875,000. The settlement provides for significant individual recoveries. SCM will receive approximately \$552.31 each on average. [*Beliveau Dec. ¶¶ 15-16*]. The highest estimated individual payment is \$3,629.31 while the lowest is \$10.14. [*Beliveau Dec. ¶ 16*]. Plaintiffs submit this recovery is a very favorable result when you consider the strengths and weaknesses of the claims at hand and the potential defenses. Risk mitigation is indeed a key reason why the result is so positive. Plaintiffs rightfully fear that even

1 if they manage to certify a large class, Defendants may prevail on a decertification motion; even
2 if Plaintiffs can get the class case to trial, they may be unable to establish liability; even if trial
3 is seemingly an unmitigated success, Defendants may successfully appeal. Any failure along
4 these lines could lead SCM to recover nothing at all.

5 More specifically, Defendants have convincing arguments that may prevent Plaintiffs
6 from overcoming the next major litigation obstacle which is class certification: (1) Defendants
7 hold a strong position⁵ that the misclassification subclass is not suitable for class adjudication;
8 (2) Defendants may successfully argue that the class as a whole is unmanageable⁶ because SCM
9 worked at ten different restaurant locations with distinct supervisors/managers, and this tends to
10 create unique working conditions; (3) meal/rest period claims are generally difficult to certify
11 due to the “provide” standard confirmed in *Brinker*; (4) the COVID-19 pandemic may
12 significantly limit Plaintiffs’ alleged damages because they complain of break issues due to high
13 volume/low staffing, and the pandemic forced restaurants to close in-person dining for long
14 periods of time; and (5) Defendants may successfully argue that any wage and hour violations
15 committed were not willful,⁷ rather they were the product of good-faith disputes, limiting
16 Plaintiffs’ ancillary damages for wage statement violations and waiting time penalties. In short,
17 Defendants have a more than reasonable chance to defeat Plaintiffs’ class claims or to at least
18 significantly limit their value. Plaintiffs carefully considered this reality when settling the case.

19 2. Contingent Representation – No Fees or Costs if No Recovery

20 Another element that supports the requested fee award is the contingent nature of the
21 representation. [Uriarte Dec. ¶ 15]. Class Counsel undertook this matter on pure contingency.
22 Neither he nor his firm will be rewarded or reimbursed unless a success is achieved, and
23 fees/costs are awarded. *Id.* “The contingent fee compensates the lawyer not only for the legal

24 ⁵ See, Plaintiffs’ Final Approval Motion, 9:14-10:7.

26 ⁶ See, e.g., *Ayala v. Antelope Valley Newspapers, Inc.* (2014) 59 Cal. 4th 522, 536; Plaintiffs’
27 Final Approval Motion 10:8-11:17.

28 ⁷ See, e.g., *Naranjo v. Spectrum Sec. Servs., Inc.* (2023) 88 Cal. App. 5th 937, 951, 304 Cal.
Rptr. 3d 898.

services he renders but for the loan of those services.” *Cates v. Chiang* (2013) 213 Cal. App. 4th 791, 823 (internal quotations omitted).

Class Counsel should be rewarded for his willingness to accept contingency fee cases, especially those that require many hours of work over a span of multiple years like the instant action. This is especially true because contingency fee arrangements allow lawyers to provide legal aid to clients who cannot afford hourly fees. Few, if any, employees pay hourly fees for extensive class action litigations. Class Counsel’s class action representatives have never paid hourly fees. [Uriarte Dec. ¶ 15]. Attorneys should be incentivized to undertake these matters, especially in the employment context, to help empower ill-treated employees with little leverage against powerful employers to ensure that the latter act fairly and appropriately under the law. Therefore, the economic realities of the work at hand should be closely considered.

3. The Fee Request is the Same as Class Counsel’s Actual Rate and is Consistent with Previous Local Awards and Other Awards in California

In awarding fees, courts should approximate what counsel could get on the free market for the same services. *Lealao, supra* at 47-48, citing *Gaskill v. Gordon* (7th Cir. 1998) 160 F.3d 361, 363 (“When a fee is set by a court rather than by contract, the object is to set it at a level that will approximate what the market would set...The judge, in other words, is trying to mimic the market in legal services.”). The requested fee award is justified under this perspective because 33.33% (pre-trial) is the contingency fee rate Class Counsel and his firm use in their standard retainer agreements. [Uriarte Dec. ¶ 15].

The requested fee falls well within the range commonly awarded in class action litigation. The upper limit on a reasonable fee award from a common fund is normally 50%, depending on the circumstances of the case. Newberg, *Newberg on Class Actions*, 4th Ed., 2002, vol. 4, p. 550. Overall, the goal should be to attempt to “award the fee that informed private bargaining, if it were truly possible, might have reached.” The following are recent, instructive wage and hour class action or representative action cases (PAGA) where 33% or greater of the common fund was awarded:

1 *Lacy v. Agro Merchs. Oakland*, 2021 Cal. Super. LEXIS 150810 (Alameda County,
2 Superior Court Case No. RG18909127, April 27, 2021) (wage and hour class action where the
3 Court awarded \$594,000 in attorneys' fees, 33.33% of the common fund, without performing a
4 lodestar crosscheck.)

5 *Garza v. Cen-Cal Fire Sys.*, 2021 Cal. Super. LEXIS 16539 (Alameda County, Superior
6 Court Case No. RG20070111, April 27, 2021) (wage and hour class action with a PAGA cause
7 of action as well where the Court awarded 1/3 of the common fund in attorneys' fees to class
8 counsel equaling \$116,666.66 despite a lodestar of \$99,692.50.)

9 *Pena v. U.S. Bancorp*, 2019 Cal. Super. LEXIS 1264, *2-3 (San Francisco City and
10 County, No. CGC-17-556646, March 21, 2019 (wage and hour class action where the Court
11 awarded Class Counsel a 33.33% contingency fee that necessitated a 1.8 lodestar multiplier.)

12 *Roe v. Heritage Mgmt. Servs.*, 2019 Cal. Super. LEXIS 16293, *2-3 (San Francisco City
13 and County, No. CGC-16-555733, February 22, 2019) (wage and hour class action where the
14 Court awarded Class Counsel a 33.33% contingency fee after a lodestar cross check.)

15 *Robato v. Dry Bar Holdings, LLC* (San Francisco City and County Superior Court Case
16 No. CGC-14-540275, April 13, 2016) (class counsel was awarded one-third of the gross
17 settlement amount (\$433,333.33) even though a relatively small lodestar (\$300,965) was
18 submitted; a significant positive multiplier was awarded because of the contingent nature of the
19 representation, the quality of the representation, the benefits obtained for the class, the risk of
20 nonpayment, and other related reasons).

21 *Jimenez v. Max's World, Inc.* (San Francisco County Superior Court Case No. CGC-13-
22 530509, April 23, 2015) (the representative plaintiff alleged three wage and hour causes of
23 action for unpaid wages, wage statement violations, and PAGA. The Court awarded a fee
24 percentage award equaling 33 1/3% of the gross settlement amount stating that the percentage is
25 appropriate under California law for awarding attorney's fees in class actions).

26 *Dill v. Mainz Brady, Grp.* (San Mateo County, Superior Court Case No. CIV 527099,
27 June 24, 2015) (wage and hour class action where the Court awarded \$126,000 in attorney's
28

1 fees and costs, representing 35% of the Settlement Sum, regarding it as “in the range of the
2 prevailing market rate for contingency litigation in the employment or wage and hour context”)

3 *Thompson v. Ontario 947, Inc.* (San Bernardino County, Superior Court Case No.
4 CIVDS 1604818, Jan. 08, 2019) (PAGA representative action that led to a class settlement;
5 counsel was awarded 35% of the common fund “in light of the substantial risks and significant
6 work undertaken...and the positive results obtained for the class.”

7 *Cubillas v. Dav-El Los Angeles* (Los Angeles County, Superior Court Case No.
8 BC427918, June 14, 2018) (wage and hour class action with causes of action nearly identical to
9 the instant action; the court awarded \$1,120,000 in attorneys’ fees equaling 40% of the common
10 fund).

11 **C. Lodestar Crosscheck**

12 While the “percentage of the benefit” method is often endorsed as the best measure for
13 determining a fair fee, courts tend to compare the requested percentage amount to counsel’s
14 “lodestar” to cross-check the reasonableness of the award applied for. *E.g., Vizcaino v.*
15 *Microsoft Corp.* (9th Cir. 2002) 290 F.3d 1043, 1050. The “lodestar” is calculated by
16 multiplying the number of hours expended on litigation by a reasonable hourly rate. *Ketchum v.*
17 *Moses* (2001) 24 Cal.4th 1122, 1134 .

18 “The reasonable hourly rate is that prevailing in the community for similar work.”
19 *PLCM Group, Inc. v. Drexler* (2000) 22 Cal. 4th 1084, 1095. Courts in the San Francisco Bay
20 Area have determined that rates up \$800 are reasonable depending on an attorney’s level of
21 experience. *Miguel-Sanchez v. Mesa Packing, LLC*, No. 20-cv-00823-VKD, 2021 U.S. Dist.
22 LEXIS 202330, at *29 (N.D. Cal. Oct. 20, 2021); *De Leon v. Ricoh USA, Inc.*, No. 18-cv-
23 03725-JSC, 2020 U.S. Dist. LEXIS 56285, at *48 (N.D. Cal. Mar. 31, 2020) *citing, In re*
24 *Magsafe Apple Power Adapter Litig.*, No. 5:09-CV-01911-EJD, 2015 U.S. Dist. LEXIS 11353,
25 at *12 (N.D. Cal. Jan. 30, 2015) (“In the Bay Area, reasonable hourly rates for partners range
26 from \$560 to \$800, for associates from \$285 to \$510, and for paralegals and litigation support
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1 staff from \$150 to \$240.") (collecting cases).⁸ Notably, \$800 has been a reasonable rate since at
2 least 2021.

3 Class Counsel's hourly rate is \$800 per hour. [Uriarte Dec. ¶ 16]. Hours worked by his
4 team are also part of the lodestar calculation, and they are billed as follows: Ernesto Sanchez is
5 billed at \$500 per hour; Nick Aguilar is billed at \$350 per hour; Luiseth Contreras is billed at
6 \$280 per hour, and Kristoffer Solomon is billed at \$300 per hour. *Id.* Plaintiffs submit these
7 rates are appropriate considering the above individuals' credentials and experience, which are
8 provided via declaration. *Id.* Plaintiffs further submit that these rates are more than reasonable
9 considering the locality and the complex nature of the class action work performed by Class
10 Counsel and by his team under his supervision.

11 Upon accepting a lodestar amount, courts have routinely applied positive or negative
12 multipliers; a positive multiplier is often applied in contingency fee cases, paying attorneys a
13 "premium over their normal hourly rates... to mitigate the risk of nonpayment." *Vizcaino, supra*
14 at 1051. *See also, Hanlon v. Chrysler Corp.* (9th Cir. 1998) 150 F.3d 1011, 1029 (district courts
15 may upwardly adjust the lodestar amount depending on the "quality of the representation, the
16 benefit obtained for the class, the complexity and novelty of the issues presented, and the risk of
17 nonpayment.").

18 1. Summary of the Work Performed by Class Counsel and his Team

19 Since February 2021, when Plaintiffs were retained, Class Counsel and his team have
20 accrued a lodestar amount of \$169,445 based on 334.8 total hours of work. [*See*, Uriarte Dec. ¶
21 18; Exhibit "3" for the Table of Hours Worked]. Class Counsel submits these litigation hours
22 were necessary to attain the instantly proposed settlement. [Uriarte Dec. ¶¶ 16, 18].

23
24 ⁸ California courts commonly look to Federal Rule of Civil Procedure ("FRCP") 23
25 jurisprudence for guidance when adjudicating class action litigation under California Code of
26 Civil Procedure § 382 and California Rule of Court 3.769. *Vasquez v. Superior Court* (1971) 4
27 Cal.3d 800, 821; *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1800-01. *See also, Bell*
28 *v. Farmers Ins. Exchange* (2004) 115 Cal.App.4th 715, 740, *citing City of San Jose v. Superior*
Court (1974) 12 Cal.3d 447, 453 ("the California Supreme Court has urged trial courts to be
procedurally innovative in determining whether to allow class suits, encouraging them to
incorporate procedures from outside sources in particular Rule 23 of the Federal Rules of Civil
Procedure") (internal quotations omitted).

1 To start, Class Counsel and his team conducted a thorough pre-litigation investigation;
2 this included initial intakes and detailed follow-up intakes of Plaintiffs, plus interviews of
3 several putative class members (contacts provided by Plaintiffs) who supported Plaintiffs'
4 allegations. [Uriarte Dec. ¶ 3]. Relevant employment documents were provided by Plaintiffs
5 and reviewed by counsel. *Id.* After engaging in several interviews, gathering documents,
6 researching prior lawsuits, and discussing the issues relevant to Defendants' wage and hour
7 policies/practices with Plaintiffs, a Notice of Violations Letter was created for the LWDA.
8 [Uriarte Dec. ¶ 3]. Later, a putative class action complaint with a PAGA cause of action was
9 drafted and eventually filed. *Id.*

10 The complaint was challenged multiple times by Defendants. A demurrer and motion to
11 strike the first amended complaint was filed on May 28, 2021, which led to a second amended
12 complaint on June 25, 2021. Another demurrer was filed on July 27, 2021, and it was opposed
13 by Plaintiffs on September 17, 2021. This second demurrer was mostly overruled by the Court,
14 but Plaintiffs were still required to make certain revisions to the complaint. The third amended
15 complaint was filed by Plaintiffs on October 12, 2021.

16 Next, the Parties moved to discovery where both sides propounded voluminous
17 interrogatories and requests for production of documents. [Uriarte Dec. ¶ 5]. Discussions
18 surrounding the discovery requests and responses led counsel for the Parties to consider private
19 mediation. After some deliberation, Steven Serratore was selected as the mediator. [Uriarte Dec.
20 ¶ 7].

21 Since discovery had not yet been completed, Class Counsel conditioned Plaintiffs'
22 participation in any mediation on Defendants providing certain key documents that would allow
23 Plaintiffs to be better informed about the case, specifically the potential damages at hand.
24 [Uriarte Dec. ¶¶ 8, 9]. Defendants agreed to provide all relevant written, wage and hour policies,
25 data points (*e.g.*, total number of putative class members, total workweeks, average pay rate,
26 etc.), and a 10 percent sample of timekeeping and payroll records for the putative class. *Id.* This
27 is in addition to the interrogatories already answered and other relevant documents already
28 produced through formal discovery. *Id.*

1 The Parties attended a full-day's mediation session with Mr. Serratore on April 6, 2023,
2 but a resolution was not possible then. [Uriarte Dec. ¶ 7] However, Mr. Serratore issued a
3 mediator's proposal that the Parties eventually accepted after some additional, mediator-aided
4 negotiation. *Id.* A memorandum of understanding was fully executed by the Parties in May
5 2023. *Id.* After, the Parties drafted and finalized a long-form settlement agreement, which was
6 fully executed in October 2023. [See, Agreement pages 21-23].

7 Plaintiffs moved for preliminary approval of the settlement in December 2023. Their
8 motion was eventually granted on May 3, 2024. Now, Plaintiffs have prepared their motions for
9 final approval and attorneys' fees, costs, plus Plaintiffs' enhancement.

10 2. The Positive Multiplier Required is Within an Acceptable Range

11 "Once the court has fixed the lodestar, it may increase or decrease that amount by
12 applying a positive or negative 'multiplier' to take into account a variety of other factors,
13 including the quality of the representation, the novelty and complexity of the issues, the results
14 obtained, and the contingent risk presented." *Thayer v. Wells Fargo Bank* (2001) 92 Cal. App.
15 4th 819, 833, *citing Lealao, supra*, 82 Cal. App. 4th 19, 26. "The purpose of such adjustment is
16 to fix a fee at the fair market value for the particular action. In effect, the court determines,
17 retrospectively, whether the litigation involved a contingent risk or required extraordinary legal
18 skill justifying augmentation of the unadorned lodestar in order to approximate the fair market
19 rate for such services." *Id.*

20 Plaintiffs request \$291,637.50 in attorneys' fees on behalf of Class Counsel or 33.33%
21 of the gross settlement amount. Class Counsel's lodestar is \$169,445; the request therefore
22 implies a positive multiplier of 1.72. This is less than the 2.13 multiplier discussed in *Laffitte*.
23 *Laffitte v. Robert Half Internat., Inc.* (2016) 1 Cal. 5th 480, 487. Plaintiffs maintain the
24 requested multiplier is appropriate because of the results achieved and the risks undertaken by
25 Class Counsel. As discussed above using relevant legal authority, counsel should be rewarded
26 for undertaking complex matters like the instant one on pure contingency because aggrieved
27 employees need experienced counsel to help fight for their rights on scales large and small.

1 The requested multiplier or more has been awarded in similar cases numerous times.
2 *See, e.g., Vizcaino*⁹ *v. Microsoft Corp.* (9th Cir. 2002) 290 F.3d 1043, 1051–1052 and n. 6
3 (finding that, in approximately 83 percent of the cases surveyed by the court, the multiplier was
4 between 1.0 and 4.0 with a “bare majority ... 54% ... in the 1.5—3.0 range; a multiplier of 3.65
5 was granted here); *Bellinghausen v. Tractor Supply Co.* 306 F.R.D. 245, 265 (N.D. Cal. Mar.
6 19, 2015) (“Multipliers of 1 to 4 are commonly found to be appropriate in complex class action
7 cases.”).

8 **D. The Litigation and Administration Costs Reimbursement Request is**
9 **Fair, Adequate, and Reasonable**

10 An attorney who creates or preserves a common fund is entitled to reimbursement of
11 litigation costs. *Mills v. Elec. Auto-Lite Co.* (1970) 396 U.S. 375, 391-393. This reimbursement
12 is done proportionately by the fund’s beneficiaries. *Id. See also*, Herbert B. Newberg, Attorney
13 Fee Award (1986) § 2.19: “Costs Reimbursement in Common Fund Fee Determinations” at 69.

14 Plaintiffs seek reimbursement on behalf of Class Counsel for accrued litigation expenses
15 totaling \$15,590.28 and \$18,000 on the Settlement Administrator’s behalf. [*See*, Class
16 Counsel’s Summary of Litigation Expenses attached as Exhibit “4” to Uriarte Dec; Beliveau
17 Dec. ¶ 18]. Class Counsel submits these expenses were necessary to fund this litigation effort
18 and achieve the proposed settlement. [Uriarte Dec. ¶ 19].

19 The types of expenses at issue here are of the kind that courts have routinely approved as
20 compensable. Class Counsel has attached an itemized list of expenses; they fall into the
21 following categories: the mediation fee, expert fees, filing fees, copies, postage, research fees,
22 and other miscellaneous expenses. [*See*, Exhibit “4” to Uriarte Dec.].

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24
25 ⁹ Recently, California trial courts have echoed *Vizcaino*’s position on multipliers: (1) *Marko v.*
26 *Doordash, Inc.*, 2022 Cal. Super. LEXIS 69268, *61 (Los Angeles Superior Court, January 13,
27 2022) (awarding a fee award that necessitated a 4.1 multiplier stating “[w]hile on the higher end
28 of multipliers typically awarded, it remains within range” *citing Vizcaino*); (2) *Watson v. Jones*
Fin. Cos., 2020 Cal. Super. LEXIS 1769, *2 (Sacramento Superior Court, November 16, 2020)
 (“Class Counsel’s request for fees of \$756,666.67 result in a multiplier of 1.89—well below the
 range of what courts typically award in employment class actions. *See, e.g., Vizcaino*... ”)

1 The amount requested on behalf of the Settlement Administrator is also typical and fair.
2 Simpluris, Inc. has processed the class list from Defendants, made final edits to the notice form,
3 mailed out notice forms to putative SCM, set up a telephone customer service line and a
4 settlement website, addressed undeliverable mailings, and used skip-tracing to locate updated
5 addresses. [See generally, Beliveau Dec.]. It has also calculated each Settlement Class
6 members' estimated share of the Settlement and communicated effectively with counsel. *Id.*
7 Assuming the Settlement receives final approval, the Settlement Administrator will eventually
8 distribute funds to Settlement Class Members.

9 **E. Plaintiffs' Enhancement Requests are Fair, Adequate, and Reasonable**

10 Class representative enhancement awards are important because they are multi-
11 purposed: they serve to (1) reward the named plaintiffs for work done on behalf of the class, (2)
12 make up for any potential financial or reputational risks undertaken by plaintiffs in bringing the
13 action, and (3) compensate the named plaintiffs for signing broader releases than the class they
14 represent. "Incentive awards are fairly typical in class action cases." *Rodriguez v. West Publ'g*
15 *Corp.* (9th Cir. 2009) 563 F.3d 948, 958. *See also, Radcliffe v. Experian Info. Solutions* (9th Cir.
16 2013) 715 F.3d 1157, 1163 (an incentive award should not be so large when compared to class
17 member payments so that representatives are more interested in their enhancement than in
18 advancing the interests of the class).

19 Plaintiffs seek enhancement awards in the amount of \$5,000 each or \$15,000 total. In
20 general, Plaintiffs have expended considerable time and effort advocating on behalf of SCM.
21 Plaintiff Pastor spent approximately 35 hours helping this case along [See, Pastor Dec. ¶ 7];
22 Plaintiff Torres spent than 30 hours working on this action [See, Torres Dec. ¶ 1]; and Plaintiff
23 Gomez spent more than 35 hours helping Class Counsel work this case [See, Gomez Dec. ¶ 1].¹⁰

24 Plaintiffs carefully searched for and found competent counsel to help pursue their
25 putative class/representative action claims against Defendants. They spoke with former co-
26 workers about their wage and hour allegations and asked them if they would be willing to speak

27
28 ¹⁰ Plaintiffs' Declarations are attached as Exhibit "5" to Uriarte Dec.

1 with their counsel in order to corroborate their allegations (these pre-litigation interviews were
2 critical for Plaintiffs’ counsel to recommend class/representative action litigation). [Uriarte Dec.
3 ¶ 20; Pastor Dec. ¶ 5; Gomez Dec. ¶ 3; Torres Dec. ¶ 3.]. Plaintiffs gathered and provided key
4 employment documents to counsel. [Uriarte Dec. ¶ 3]. They completed detailed intake
5 processes (both initial intakes and more detailed follow-up intakes). *Id.*

6 Prior to mediation, they participated in strategy sessions with counsel that were crucial
7 to the preparation process and helped negotiations. [Pastor Dec. ¶ 6; Gomez Dec. ¶ 5; Torres
8 Dec. ¶ 5.]. They all attended the mediation session and helped answer the mediator’s questions
9 in addition to participating in the negotiation process. *Id.* Plaintiffs have been instrumental to
10 the litigation from beginning to the present. The settlement clearly could not have occurred
11 without them, and they should be rewarded accordingly for all of the above.

12 Furthermore, upon retaining counsel, Plaintiffs attested that they understood their
13 responsibilities as class representatives; they agreed to put the interests of the putative class
14 ahead of their own if necessary. [Uriarte Dec. ¶ 20]. Plaintiffs have closely guarded SCM
15 interests and fought to secure a substantial amount of money on their behalf. [*See generally*,
16 Plaintiffs’ Declarations]. Moreover, Plaintiffs signed a broader release than is required for
17 SCM, and they risked reputational harm by pursuing this class action case. [*See*, AGMT ¶ E].

18 Lastly, with regard to the exact amount requested, Courts in Northern California have
19 approved similar or greater enhancement awards to representative plaintiffs. *E.g.*, *Bellinghausen*
20 *v. Tractor Supply Co.* (N.D. Cal. Mar. 19, 2015) 306 F.R.D. 245 (plaintiff awarded \$15,000 “in
21 light of the time and effort Plaintiff expended for the benefit of the class—at times, to his own
22 personal detriment—and the risks associated with initiating the litigation and representing the
23 class.); *Covillo v. Specialty's Café*, 2014 U.S. Dist. LEXIS 29837, *28 (N.D. Cal. Mar. 6, 2014)
24 *28-29 (two representative plaintiffs were awarded \$8,000 each “in light of the time and effort
25 Plaintiffs expended for the benefit of the class and the risks associated with initiating the
26 litigation and representing the class. Plaintiffs also undertook a “reputational risk” in bringing
27 the action); *Cordy v. USS-Posco Indus.* (N.D. Cal. Jan. 8, 2014) 2014 U.S. Dist. LEXIS 2217,
28 *3-4, 14-15 (a total of \$9,500 in enhancement payments was approved to two separate

1 plaintiffs, \$1,500 to the representative for the wage statement subclass and \$8,000 to the other
2 representative).

3 **III. CONCLUSION**

4 Based on the information and legal arguments provided herein, Plaintiffs respectfully
5 request that this Court approve: (1) attorneys' fees for Class Counsel equaling \$291,637.50
6 (33.33% of the gross settlement amount); (2) \$15,590.28 in accrued litigation costs for Class
7 Counsel; (3) \$18,000 in settlement administration fees for Simpluris, Inc.; and (4) representative
8 enhancement awards to Plaintiffs equaling \$5,000 each (\$15,000 total).

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11 Dated: August 7, 2024



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14 Liberation Law Group, P.C.
15 Attorneys for Plaintiffs
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