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Attorneys for Defendants

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

WILLIAM CAMPOS; individually, and on
behalf of other members of the general public
similarly situated and on behalf of other
aggrieved employees pursuant to the
California Private Attorneys General Act;
JUANITA HERNANDEZ; individually, and
on behalf of other members of the general
public similarly situated and on behalf of
other aggrieved employees pursuant to the
California Private Attorneys General Act;

Plaintiffs,

vs.

MOTIVE ENERGY, INC., a California
corporation; MOTIVE ENERGY
TELECOMMUNICATIONS GROUP, INC.,
a California corporation; ADVANCED
CHARGING TECHNOLOGIES, INC., a
California corporation; and DOES 1 through
100, inclusive,

Defendants.

Case No.: 30-2016-00828352-CU-OE-CXC

Honorable William D. Cluster
Department CX104

CLASS ACTION

**JOINT SUPPLEMENTAL BRIEF IN
SUPPORT OF PLAINTIFFS' MOTION
FOR FINAL APPROVAL OF CLASS
ACTION SETTLEMENT, ATTORNEYS'
FEES, COSTS, AND SERVICE
PAYMENTS**

[Supplemental Declaration of Edwin
Aiwarzian; Supplemental Declaration of
Lindsay Kline; and [Revised Proposed] Final
Approval Order and Judgment filed
concurrently herewith]

Date: May 10, 2019
Time: 9:00 a.m.
Department: CX104

Complaint Filed: January 5, 2016
FAC Filed: September 22, 2016
SAC Filed: December 2, 2016
Trial Date: None Set

1 Plaintiffs William Campos and Juanita Hernandez ("Plaintiffs") and Defendants Motive
2 Energy, Inc., Motive Energy Telecommunications Group, Inc., and Advanced Charging
3 Technologies, Inc. ("Defendants") (together, the "Parties") hereby submit the following Joint
4 Supplemental Brief in Support of Plaintiffs' Motion for Final Approval of Class Action
5 Settlement, Attorneys' Fees, Costs, and Service Payments ("Motion for Final Approval"), in
6 advance of the continued hearing of the motion that is set for May 10, 2019.

7 **I. INTRODUCTION**

8 On March 14, 2019, the Court issued a tentative ruling on the Motion for Final Approval,
9 which was adopted as the ruling of the Court on March 15, 2019 ("March 15, 2019 Order"),
10 requesting additional information and amended settlement papers, which amend the disposition
11 of funds from uncashed settlement checks, and continuing the Final Approval Hearing to
12 May 10, 2019 at 9:00 a.m.

13 Per the Court's instruction in the March 15, 2019 Order, the Parties executed Amendment
14 No. 3 to Joint Stipulation of Class Action and PAGA Settlement and Release ("Amendment No.
15 3"), a true and correct copy of which is attached as "Exhibit B" to the Supplemental Declaration
16 of Edwin Aiwarzian in Support of Plaintiffs' Motion for Final Approval of Class Action
17 Settlement, Attorneys' Fees, Costs, and Service Payments ("Supplemental Declaration of Edwin
18 Aiwarzian" or "Aiwarzian Suppl. Decl.").¹ Together, the Joint Stipulation of Class Action and
19 PAGA Settlement and Release ("Original Agreement"), Amendment No. 1 to Joint Stipulation of
20 Class Action and PAGA Settlement and Release ("Amendment No. 1"), Amendment No. 2 to
21 Joint Stipulation of Class Action and PAGA Settlement and Release ("Amendment No. 2"), and
22 Amendment No. 3 are referred to as "Settlement," "Agreement," or "Settlement Agreement."

23 The Parties have also prepared a [Revised Proposed] Final Approval Order and
24 Judgment, which is submitted to the Court concurrently herewith.

25 The Court is respectfully requested to grant final approval of the Settlement.

26
27 ¹ A redline version of Amendment No. 3 showing how the terms of the Original Agreement as
28 amended by Amendment No. 1 and Amendment No. 2 have been revised, is attached as "Exhibit C" to the Supplemental Declaration of Edwin Aiwarzian.

1 **II. SUPPLEMENTAL DECLARATION OF SETTLEMENT ADMINISTRATOR**

2 Filed concurrently herewith is the Supplemental Declaration of Lindsay Kline Regarding
3 Settlement Notice Administration (“Supplemental Declaration of Simpluris” or “Simpluris
4 Suppl. Deel.”), which provides updated information regarding settlement notice administration.
5 Based on the initial mailing of the Notice Packet on January 16, 2019, the deadline for Class
6 Members to submit an Opt Out Form, objection to the Settlement, and/or Workweeks disputes to
7 the Settlement Administrator (“Response Deadline”), was March 2, 2019.² The Response
8 Deadline for Class Members to whom a Notice Packet was re-mailed, was the later of the
9 Response Deadline or fifteen (15) calendar days from the date on which the Notice Packet was
10 re-mailed (“Extended Response Deadline”),³ the latest of which was March 7, 2019.⁴

11 As of April 9, 2019, the Settlement Administrator has not received any objections to the
12 Settlement and has received nine (9) timely and valid Opt Out Forms from Class Members.⁵
13 Four hundred eighty-three (483) Class Members did not submit timely and valid Opt Out Forms
14 (“Settlement Class Members”) and will be paid a *pro rata* share of the Net Settlement Amount
15 (“Individual Settlement Share”).⁶ The highest Individual Settlement Share to a Settlement Class
16 Member is estimated to be \$2,712.51 and the average Individual Settlement Share is estimated to
17 be \$837.67.⁷

18 **III. REASONABLENESS OF ATTORNEYS’ FEES BASED ON LODESTAR**
19 **ANALYSIS**

20 The Court requested additional information as to the request for attorneys’ fees, including
21 the identity of the attorneys performing work, the time spent by each attorney on each task, and
22 information from which a billing value may be assigned to each attorney’s time. The
23 Supplemental Declaration of Edwin Aiwazian provides the identities of the attorneys who

24
25 ² Declaration of Lindsay Kline Regarding Settlement Notice Administration (“Simpluris Deel.”),
¶ 8.

26 ³ Amendment No. 1, ¶ B.

⁴ Simpluris Suppl. Deel., ¶ 4.

27 ⁵ *Id.*, ¶¶ 5 & 6. The Class Members who opted out of the Settlement are identified in Paragraph
7 of the [Revised Proposed] Final Approval Order and Judgment.

28 ⁶ *Id.*, ¶ 8.

⁷ *Id.*, ¶ 10.

1 worked on this case, the year they were admitted to practice law in the State of California, the
2 hours they spent performing various tasks associated with the case, and their hourly billing
3 rates.⁸

4 The billing rates for each of the attorneys who worked on this case, which range from
5 \$400 to \$650 per hour⁹, are reasonable. The California Supreme Court has held that the
6 reasonable hourly rate used for the lodestar calculation “is that prevailing in the community for
7 similar work.” *PLCM Group v. Drexler* (2000) 22 Cal.4th 1084, 1095; see also *Ketchum v.*
8 *Moses* (2001) 24 Cal.4th 1122, 1132 (stating that “the lodestar is the basic fee for *comparable*
9 *legal services* in the community” (emphasis added)). Courts in California have approved
10 comparable hourly rates for similar work performed by other attorneys in the community. See
11 *Ibarra v. Wells Fargo, N.A.* (C.D. Cal. 2018) No. CV 17-4344 PA (ASX), 2018 WL 5276295, at
12 *4 (approving an hourly rate of \$725 for an attorney with 18 years of experience, \$550 for an
13 attorney with 12 years of experience, and \$350 for an attorney with 3 years of experience in a
14 wage-and-hour class action filed in Los Angeles County); see *Bradley Taylor, et al. v. TIC - The*
15 *Indus. Co.* (C.D. Cal. 2018) No. EDCV16186VAPSPX, 2018 WL 6131198, at *10 (finding
16 reasonable hourly rates of \$695 for a partner admitted in 2006, \$625 for a senior associate
17 admitted in 2009, \$525 for an associate admitted in 2012, \$450 for an associate admitted in
18 2013, and \$425 for an associate admitted in 2015 in a wage-and-hour class action filed in San
19 Bernardino County) see, e.g., *Campbell v. Best Buy Stores, L.P.* (C.D. Cal. 2016) No. LA CV12-
20 07794 JAK (JEMx), 2016 WL 6662719, at *9 (finding that hourly rates between \$375 and \$875
21 for attorneys were reasonable in a wage-and-hour class action filed in Los Angeles County); see
22 *Hartless v. Clorox Co.* (S.D. Cal. 2011) 273 F.R.D. 630, 643-44, *aff’d in part*, 473 Fed.Appx.
23 716 (9th Cir. 2012) (approving rates of \$675-\$795 for partners and up to \$410 for associates in
24 complex litigation involving product misrepresentation filed in San Diego County).

25 Although an award of attorneys’ fees based on a percentage of the value of the settlement
26 is appropriate, Class Counsel’s request for attorneys’ fees in the amount of \$262,500 is also

27 ⁸ Aiwazian Suppl. Deel., ¶ 4, Exh. D.

28 ⁹ *Id.*, ¶ 6.

1 justified under a simple lodestar analysis. Based on the hours worked by attorneys at Lawyers
2 for Justice, PC and their hourly billing rates, the total lodestar fees for work performed is
3 \$358,037.50.¹⁰

4 Here, the Supplemental Declaration of Edwin Aiwarzian and the revised Attorney Task
5 and Time Chart, attached thereto as "Exhibit D," set forth the tasks performed by each attorney
6 and the hours that each attorney spent performing such tasks, as well as their hourly billing rates.
7 The information provided by Class Counsel is sufficient to allow an assessment of the amount of
8 attorneys' fees that would be reasonable to award, under the lodestar method, and confirms that
9 the attorneys' fees requested here are reasonable and appropriate.

10 **IV. AMENDMENT AND SETTLEMENT ADMINISTRATION COSTS**

11 In compliance with the March 13, 2019 Order, the Parties amended the settlement papers
12 in light of the California Department of Industrial Relations' Unclaimed Wage Fund ("DIR") no
13 longer accepting funds from uncashed settlement checks into its Unclaimed Wage Fund.¹¹
14 Amendment No. 3 provides that funds associated with Individual Settlement Payment checks
15 that have not been cashed or deposited within one hundred eighty (180) calendar days will be
16 remitted to the Unclaimed Property Fund maintained by the State Controller's Office in the
17 names of Settlement Class Members whose checks are cancelled.¹²

18 The additional Settlement Administration Costs associated with remitting funds from
19 uncashed Individual Settlement Payment checks to the Unclaimed Property Fund instead of the
20 DIR in the names of the Settlement Class Members whose checks are cancelled, are \$2,500.¹³
21 The total Settlement Administration Costs, including the additional costs associated with
22 remitting uncashed Individual Settlement Payment checks to the Unclaimed Property Fund, are
23 \$11,647¹⁴ and does not exceed the estimated Settlement Administration Costs in the amount of
24 \$12,000, as provided for in the Settlement Agreement.

25 ¹⁰ Aiwarzian Suppl. Deel., ¶¶ 6 & 7.

26 ¹¹ See <https://www.dir.ca.gov/dlse/Unpaid-Wage-Fund-FAQs.pdf>.

27 ¹² Paragraph 17 of the [Revised Proposed] Final Approval Order and Judgment reflects the
change to the disposition of funds from uncashed settlement checks.

28 ¹³ Simpluris Suppl. Deel., Exh. A.

¹⁴ Simpluris Suppl. Deel., ¶ 12.

1 Accordingly, the Court is respectfully requested to grant final approval of payment to the
2 Settlement Administrator, Simpluris, Inc., in the amount of \$11,647.¹⁵

3 **V. CONCLUSION**

4 Having provided the additional information and amended settlement papers requested by
5 the Court, the Parties respectfully request that the Court grant final approval of the Settlement,
6 Attorneys' Fees and Litigation Costs and Expenses, Service Payments, Settlement
7 Administration Costs, and allocation for the PAGA Penalties.

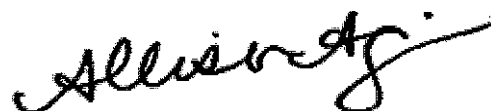
8
9 Dated: April 30, 2019

LAWYERS for JUSTICE, PC

10 By: 
11 Edwin A. Iwazian
12 Joanna Ghosh
13 Attorneys for Plaintiffs and the Class

14 Dated: April 24, 2019

MICHELMAN & ROBINSON, LLP

15 By: 
16 Mona Z. Hanna
17 Marc R. Jacobs
18 Amanda K. Pawlyk
19 Allison Aguirre
20 Attorneys for Defendants

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28 ¹⁵ The adjusted Settlement Administration Costs are reflected in Paragraph 8 of the [Revised Proposed] Final Approval Order and Judgment.