CLARKSON LAW FIRM, P.C.
Glenn A. Danas (SBN 270317)
gdanas@clarksonlawfirm.com
Maxim Gorbunov (SBN 343128)
mgorbunov@clarksonlawfirm.com
Janet J. Hur (SBN 330358)
jhur@clarksonlawfirm.com
22525 Pacific Coast Highway
Malibu, CA 90265
Telephone: (213) 788-4050
Facsimile: (213) 788-4070

Attorneys for Plaintiff and the Putative Class

ELECTRONICALLY
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Superior Court of California, County of San Francisco
08/14/2026
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Deputy Clerk

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN FRANCISCO

DOMINIQUE DONJUAN CAVALIER II, individually, and on behalf of all other similarly situated,

Plaintiff,

v.

SURGE LABS, INC. DBA DATAANNOTATION, a corporation; EDWIN CHEN, an individual; and DOES 1–50, inclusive,

Defendants.

Case No.: CGC-25-625502

CLASS ACTION

Assigned for all purposes to:
Hon. Ethan P. Schulman, Dept. 304

PLAINTIFF'S NOTICE OF MOTION AND MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT; MEMORANDUM OF POINTS AND AUTHORITIES

[Filed concurrently with Declarations of Glenn A. Danas and Dominique Cavalier in Support of Plaintiff's Motion for Preliminary Approval of Class Action Settlement and [Proposed] Order Granting Motion]

PRELIMINARY APPROVAL HEARING
Date: September 8, 2026
Time: 9:00 a.m.
Dept: 304

Complaint filed: May 20, 2025
FAC filed: September 3, 2025

TO THE COURT AND TO ALL PARTIES AND THEIR COUNSEL OF RECORD:

PLEASE TAKE NOTICE that on September 8, 2026, at 9:00 a.m. in Dept. 304 of the San Francisco County Superior Court, located at 400 McAllister Street, San Francisco, CA 94102, pursuant to Code of Civil Procedure § 382 and California Rules of Court 3.769, *et seq*., Plaintiff Dominique DonJuan Cavalier II ("Plaintiff" or "Mr. Cavalier") will move the Court for an Order granting preliminary approval of the proposed class action settlement between Plaintiff and Defendants Surge Labs, Inc. dba DataAnnotation and Edwin Chen ("Defendants").[1] Plaintiff further moves the Court for an Order:

1. Granting preliminary approval of the Class Settlement set forth in the Class Action and PAGA Settlement Agreement that is attached as Exhibit 1 to the Declaration of Glenn A. Danas filed with this Motion;
2. Certifying a Class for settlement purposes only;
3. Approving the Class Notice and the plan for the distribution of the Class Notice;
4. Appointing Plaintiff Dominique DonJuan Cavalier II as Class Representative for settlement purposes only;
5. Appointing Plaintiff's Counsel, Clarkson Law Firm, P.C., as Class Counsel for settlement purposes only;
6. Appointing Simpluris, Inc. as the Administrator; and
7. Scheduling a Final Approval Hearing.

The Motion will be based upon this Notice; the attached Memorandum of Points and Authorities; the Declaration of Glenn A. Danas, filed concurrently herewith; the records and files in this action; and any other further evidence or argument that the Court may properly receive at or before the hearing.

[1] Unless otherwise specified, all capitalized terms in this Notice of Motion and Motion have the same definitions set forth in the Class Action and PAGA Settlement Agreement (the "Settlement" or "Settlement Agreement").

Dated: August 14, 2026

Respectfully submitted,

CLARKSON LAW FIRM, P.C.

/s/ Glenn A. Danas

Glenn A. Danas
Maxim Gorbunov
Janet J. Hur

Attorneys for Plaintiff
Dominique DonJuan Cavalier II

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Vizcaino v. Microsoft
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Conte & Newberg, Newberg on Class Actions (3rd Ed.) § 8.39 15
Theodore Eisenberg & Jeffrey P. Miller, "Incentive Awards to Class Action Plaintiffs: An Empirical Study," 53 UCLA L. Rev. 1303, 1308 (2006) 19

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Plaintiff Dominique DonJuan Cavalier II ("Plaintiff" or "Mr. Cavalier") seeks preliminary approval of a proposed $6,450,000 non-reversionary, wage and hour class action common fund settlement with Defendants Surge Labs, Inc. dba DataAnnotation and Edwin Chen (Collectively "Defendants," and together with Plaintiff, the "Parties") as set forth in the Class Action and PAGA Settlement Agreement ("Settlement" or "Settlement Agreement") that is attached as Exhibit 1[2] to the Declaration of Glenn A. Danas ["Danas Decl."] filed with this Motion.[3] The Settlement will provide monetary payments to approximately 7,694 class members, the vast majority of whom would likely recover nothing absent this settlement. As set forth more fully below, the proposed Settlement satisfies all the criteria for settlement approval under California law. The Settlement, was reached after extensive investigation, informal discovery, and a full-day mediation, facilitated by an experienced class action mediator, Hon. Peter D. Lichtman (Ret.). Accordingly, Mr. Cavalier requests that the Court preliminarily approve the proposed Settlement, certify the proposed settlement class for settlement purposes only, approve the proposed notice, and set a Final Approval Hearing.

II. SUMMARY OF THE LITIGATION AND SETTLEMENT

A. Mr. Cavalier's Claims

This is a wage and hour class and Private Attorneys General Act ("PAGA") (Cal. Lab. Code §§ 2699, *et seq.*) representative action. Mr. Cavalier and putative class members worked in California as independent contractors for Defendants during the class period, as "Data Annotators" or in similar positions. Defendant Surge Labs, Inc. recruits Data Annotators through its service called Dataannotation.tech. Surge Labs then assigns Data Annotators to work

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[2] The Parties are still working on obtaining the necessary signatures but expect to fully execute the Settlement Agreement within a few days of filing this motion. Plaintiff will file a supplemental declaration as soon as practicable with the executed Settlement Agreement attached.

[3] Unless otherwise specified, all capitalized terms in this Memorandum of Points and Authorities have the same definitions set forth in the Class Action and PAGA Settlement Agreement.

on data annotation projects for its client companies. (Danas Decl. ¶ 2.)

Mr. Cavalier alleges that Defendants willfully misclassified Class Members as independent contractors, failed to pay minimum and straight time wages, failed to provide compliant meal and rest periods or pay premiums, required Mr. Cavalier and Class Members to perform work off-the-clock without compensation, and failed to reimburse necessary business expenses. (Danas Decl. ¶ 3.) Based on these allegations, Mr. Cavalier asserts related claims for failure to provide accurate wage statements, failure to timely pay wages, failure to pay all earned and unpaid wages upon separation, failure to keep requisite payroll records and properly maintain required records, unfair business practices, and civil penalties under the California Private Attorneys General Act ("PAGA"). (*Id*.) Defendants deny all the allegations alleged in Mr. Cavalier's Complaint, deny any failure to comply with the laws identified in the Operative Complaint, and deny any and all liability. (Settlement, ¶2.1.)

On May 20, 2025, Mr. Cavalier commenced this action alleging he was misclassified by Defendants and alleging various wage and hour claims. (Danas Decl. ¶ 4.) On September 3, 2025, Mr. Cavalier filed an amended complaint to add a claim for civil penalties and willful misclassification under PAGA, which Mr. Cavalier had exhausted with California's Labor Workforce Development Agency (LWDA) on June 13, 2025. (*Id*.)

B. Discovery and Investigation

Mr. Cavalier's counsel undertook an extensive investigation before bringing this lawsuit, including researching Defendants' DataAnnotation platform which Class Members used as the primary platform to perform their work, what tasks Class Members were engaged in, and analyzing whether AB 5 applies to the Class Members. (Danas Decl., ¶ 5.) During the pendency of the case and up to the filing of this motion, Mr. Cavalier's counsel spoke with over 100 Class Members who worked for Defendants regarding their experiences and the claims at issue. After scheduling the mediation, the Parties exchanged documents and information before mediating the actions. (*Id*.) Defendants produced various documents including a sampling of time and pay data, information regarding DataAnnotation platform, and statistical data regarding the putative class and aggrieved employees. (*Id*.) Before filing, and in preparation for the mediation, Mr.

Cavalier's counsel consulted at length with Mr. Cavalier and putative class members regarding their experiences, including a thorough review of materials they provided. (*Id*.)

After reviewing and analyzing documents produced by Defendants and speaking with other individuals who worked for Defendants, Class Counsel was able to evaluate the likelihood of success at various anticipated points in the litigation, including defeating motions to compel arbitration and on class certification, success on the merits at summary judgment and trial, and Defendants' maximum monetary exposure for all claims. (Danas Decl., ¶ 6.) Class Counsel also investigated the applicable law regarding the defenses Defendants indicated they would assert in these Actions. (*Id*.) Through this robust investigation, Class Counsel was able to compile a damage analysis. (*Id*.)

C. Settlement Negotiations

The Action was successfully mediated in person with Hon. Peter D. Lichtman (Ret.) in Los Angeles on April 16, 2026. (Danas Decl., ¶ 7.) After extensive negotiations and discussions regarding the strengths and weaknesses of Mr. Cavalier's claims and Defendants' defenses, the Parties were able to reach a resolution, with the Parties accepting a very detailed mediator's proposal on April 21, 2026. (*Id*.)

D. Overview of the Major Risks of Continued Litigation

Class Counsel has conducted a significant investigation into the facts and risks of this case and the likelihood of obtaining a higher recovery for the class through continued litigation. Based on the foregoing discovery and their own independent investigation and evaluation, Class Counsel believes that the Settlement is fair, reasonable, and adequate and is in the best interests of the Class in light of all known facts and circumstances, the risk of significant delay, the defenses that could be asserted by Defendants both to certification and on the merits, trial risk, and appellate risk.

Indeed, the **$6,450,000** Settlement represents a sizeable recovery on a high-risk case in which most class members would likely have received nothing. Considering the risk and uncertainty of prevailing on a motion to compel arbitration, at class certification, and at trial, this is an excellent result for the Class. Indeed, because of the proposed Settlement, class

members will receive timely, guaranteed relief and will avoid the risk of an unfavorable judgment. Although Defendants deny all of Mr. Cavalier's claims and contend Mr. Cavalier would not succeed in bringing those claims to court (as opposed to arbitration), let alone in certifying those claims for class treatment or on the merits of their claims, Defendants nonetheless agreed to resolve the claims asserted in the Actions through settlement to avoid the expense, distraction, and uncertainty of protracted litigation.

Although Class Counsel estimated that Defendants' maximum potential liability for all claims could be ten times larger than the settlement, or more, several factors make it highly unlikely that such an amount would ever be awarded or recovered.[4] For class members to have had any chance of recovering damages at trial, Mr. Cavalier would have needed to prevail on a motion to compel arbitration on an individual basis, and to avoid potential issues at class certification, would have needed to defeat the entire arbitration agreement in a way that applied classwide. (Danas Decl., ¶ 17.) While waivers of the right to pursue representative PAGA claims are not enforceable, Mr. Cavalier would likely have had to arbitrate his individual PAGA claims first before returning to court to address the representative portion. (*Id*.) Although Mr. Cavalier believes he would likely have prevailed on the merits of his claims in arbitration, Defendants would assert defenses that could convince the arbitrator to rule the against Mr. Cavalier. (*Id*.) Moreover, assuming arbitrator(s) ruled on the merits, there are unanswered questions regarding whether claim and issue preclusion applies when an arbitrator resolves an "individual" PAGA claim, potentially necessitating a second round of merits briefing in this Court. (*Id*.)

Further, Mr. Cavalier would have had to persuade the court that the entire arbitration agreement should be thrown out (including the class action waiver), rather than just severing unconscionable provisions. (Danas Decl., ¶ 18.) It is possible that Defendants would have prevailed in enforcing their arbitration clause as to the class claims, in which case, all class members would have been required to file their own individual arbitrations, incurring significant out-of-pocket

[4] *See, e.g., In re Uber FCRA Litig.* (N.D.Cal. June 29, 2017, No. 14-cv-05200-EMC) 2017 U.S. Dist. LEXIS 101552, at *18 (Approving $7.5 million settlement despite potential liability ranging from $100 million to $1 billion where Plaintiffs faced significant risks including an arbitration agreement.)

expenses, investment of time, and challenges obtaining legal representation in pursuing smaller value individual claims on a risky and novel case theory. Inevitably, based upon class counsel's experience, and despite the strength of their claims, most class members would never file them. (*Id*.) Moreover, even if Mr. Cavalier prevailed in opposing Defendants' motion to compel arbitration, Defendants would almost certainly have pursued an appeal as of right from the ruling on their motion to compel arbitration and would likely have been able to stay the case in court for years during the appeal. (*Id*.)

Thus, the mere fact that this case has settled on a classwide basis at an early stage, before risky motion practice and immediate arbitration-related appeals, is a victory for the class, who faced the prospects of no recovery concerning their non-PAGA damages had Defendants prevailed on an early motion to compel arbitration, and long-delayed recovery in any event. (Danas Decl., ¶ 19.) Even if these arbitration obstacles were the only risks, the recovery here would be fair. But there were other risks here as well. (*Id*.)

Mr. Cavalier would also have needed to prevail on a contested Motion for Class Certification. (Danas Decl., ¶ 20.) Defendants dispute that class certification is warranted here and would likely argue that the claims here require individualized inquiries, rather than involving common questions of law and fact. (*Id*.) For example, Defendants would likely argue that Class Members worked on their own time, and any non-compliant meal and rest breaks would have been due to voluntary or individualized reasons, rather than a common practice or policy of Defendant. (*Id*.)

Also, a significant portion of the Class Members would need to prevail by proving that they were in fact misclassified by Defendants as independent contractors. (Danas Decl., ¶ 21.) As noted above, Defendants would likely assert that the Class Members fall under various exemptions to the AB5 misclassification test (*e.g.,* for data aggregators or professional services), as to which there is little case authority.

Additionally, there were risks that even if Mr. Cavalier were to prevail on his claims, PAGA civil penalties or statutory penalties might be trivial or nonexistent. (Danas Decl., ¶ 29.) For example, the California Supreme Court has recently held that employers are only liable for

failure to provide accurate wage statements if they do so "knowingly and intentionally." (See *Naranjo v. Spectrum Security Services, Inc.* (2024) 15 Cal.5th 1056, 1087.) If an employer has a reasonable, good faith belief it is complying with California law, it may be able to avoid liability under Labor Codes 226 and 203. (*Id.* at p. 1065.) Similarly, a trial court has discretion to reduce PAGA penalties if an employer makes a "good faith attempt" to comply with California law. (*Carrington v. Starbucks* (2018) 30 Cal.App.5th 504, 517, 529 [affirming the trial court's decision to award only $5 for each PAGA violation].) In addition to the "good faith" defense, Defendants would also dispute whether any misclassification was "willful" as required for PAGA penalties under Labor Code 226.8 to attach. The risks above, many of which are unique to misclassification or the industry specifically, were accounted for in reaching this settlement.

E. Key Terms of the Proposed Settlement

The Parties used the Los Angeles County Superior Court's Form Class Action and PAGA Settlement Agreement and Class Notice. The Class Notice is attached as Exhibit A to Exhibit 1 of the Danas Declaration (hereinafter referred to as "Class Notice" or "Notice"). A document showing edits the Parties made to the template in redline is attached to the Declaration of Glenn Danas as Exhibit 2. The Settlement's key terms include:

1. Class: For settlement purposes only, the Parties agree to the certification of a class pursuant to California Code of Civil Procedure § 382 defined as: "all current and former individuals classified as independent contractors, who worked as Data Annotators or in similar positions, and resided in the State of California during the Class Period." (Settlement, ¶ 1.5.)

2. Class Period: Defined as the period from "May 20, 2021 to through Preliminary Approval." (Settlement, ¶ 1.12.)

3. Class Member or Settlement Class Member: Defined as "a member of the Class, as either a Participating Class Member or Non-Participating Class Member (including a Non-Participating Class Member who qualifies as an Aggrieved Employee)." (Settlement, ¶ 1.9.)

4. Participating Class Member: Defined as a "Class Member who does not submit a valid and timely Request for Exclusion from the Settlement." (Settlement, ¶ 1.34.)

5. Non-Participating Class Member: Defined as any Class Member who opts out of the Settlement by sending the Administrator a valid and timely Request for Exclusion. (Settlement, ¶ 1.28.)

6. Aggrieved Employee: Defined as "all current and former individuals classified as independent contractors, who worked as Data Annotators or in similar positions, and resided in the State of California during the PAGA Period." (Settlement, ¶ 1.4.)

7. PAGA Period: Defined as "the period from May 20, 2024 through Preliminary Approval." (Settlement, ¶ 1.30.)

8. Gross Settlement Amount: means "$6,450,000 which is the total amount Surge agrees to pay under the Settlement. The Gross Settlement Amount will be used to pay Individual Class Payments, Individual PAGA Payments, the LWDA PAGA Payment, Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment, Class Representative Service Payment, and Administration Expenses Payment" (Settlement, ¶ 1.21.)

9. Payment Process: Thorough their work, Class Members and Aggrieved Employees were paid through PayPal. (Danas Decl. ¶ 13.) Surge does not have information regarding these individuals' physical addresses. (*Id*.) Therefore, the payments under this settlement will be made through Paypal, to the same accounts which were used for payment during their work for Surge. The settlement requires Simpluris to "conduct an Address Search for all Class Members and Aggrieved Employees whose payments are returned rejected, declined, or otherwise fail to process" and "[w]ithin 7 days of being notified of a failed payment, the Administrator must mail a check to the address ascertained through the Address Search." (Settlement, ¶ 4.3.2.) Moreover, the Class Notice informs Class Members that "If your PayPal information has changed or your account is no longer active, it is important that you contact the Administrator using the contact information found in Section 9 of this Notice as soon as possible, so that Administrator can update your PayPal information or issue a physical check. (Class Notice, § 5 ¶ 3.)

10. Release by Plaintiff: Plaintiff and Plaintiff's respective former and present representatives, agents, attorneys, administrators, successors and assigns, release and discharge Released Parties from all claims, transactions or occurrences that occurred up to the date of

execution of the Agreement, including, but not limited to: (a) all claims that were, or reasonably could have been, alleged based on the facts contained in the Operative Complaint and (b) all PAGA claims that were, or reasonably could have been, alleged based on facts contained in the Operative Complaint and Plaintiff's PAGA Notice. ("Plaintiff's Release.") Plaintiff's Release does not extend to any claims or actions to enforce this Agreement, or to any claims for vested benefits, unemployment benefits, disability benefits, social security benefits, or workers' compensation benefits that arose at any time, or based on occurrences outside the Class Period. Plaintiff acknowledges that Plaintiff may discover facts or law different from, or in addition to, the facts or law that Plaintiff now knows or believes to be true but agrees, nonetheless, that Plaintiff's Release shall be and remain effective in all respects, notwithstanding such different or additional facts or Plaintiff's discovery of them.

11. Release by Participating Class Members: All Participating Class Members, on behalf of themselves and their respective former and present representatives, agents, attorneys, administrators, successors and assigns, release Released Parties from all claims that were alleged, or reasonably could have been alleged, based on the facts and allegations in the Operative Complaint and ascertained in the course of the Action including Labor Code sections 201, 202, 203, 204, 226(a), 226.7, 226.8, 510, 512(a), 1194, 1194.2, 1197, 1997.1, 1198, 2802, and Business and Professions Code section 17200, et seq.. Except as set forth in Section 5.3 of this Agreement, Participating Class Members do not release any other claims.

12. Release by PAGA Claimants: All Aggrieved Employees are deemed to release, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors and assigns, the Released Parties from all claims for PAGA Penalties that were alleged, or reasonably could have been alleged, based on the facts stated in the Operative Complaint, and the PAGA Notice and ascertained in the course of the Action including Labor Code sections 201, 202, 203, 204, 226(a), 226.7, 226.8, 510, 512(a), 1194, 1194.2, 1197, 1997.1, 1198, 2802.

13. No Reversion: "None of the Gross Settlement Amount will revert to Surge." (Settlement, ¶ 3.1.)

14. PAGA Payment and Allocation: Defined as the $250,000.00 from the Total Gross Settlement Amount allocated to civil penalties under the Private Attorneys General Act, California Labor Code §§ 2698, et seq. ("PAGA"), 65% ($162,500.00) of which is being paid to the LWDA and 35% ($87,500.00) in settlement of PAGA claims. (Settlement, ¶ 3.2.5.) Class Counsel submitted the proposed settlement to the LWDA concurrently with filing this Motion for Preliminary Approval.

15. Net Settlement Amount: the Gross Settlement Amount, less the following payments in the amounts approved by the Court: Individual PAGA Payments, LWDA PAGA Payment, Class Representative Service Payment, Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment, and Administration Expenses Payment. The remainder is to be paid to Participating Class Members as Individual Class Payments. (Settlement, ¶ 1.27.)

16. Distribution Formula: An Individual Class Payment, which the Administrator shall calculate by (a) dividing the Net Settlement Amount by the total number of Workweeks worked by all Participating Class Members during the Class Period and (b) multiplying the result by each Participating Class Member's Workweeks. (Settlement, ¶ 3.2.4.)

17. Tax Allocation: 20% of each Participating Class Member's Individual Class Payment will be allocated to settlement of wage claims (the "Wage Portion"). The Wage Portions are subject to tax withholding and will be reported on an IRS W-2 Form. The 80% of each Participating Class Member's Individual Class Payment will be allocated to settlement of claims for interest and penalties (the "Non-Wage Portion"). The Non-Wage Portions are not subject to wage withholdings and will be reported on IRS 1099 Forms. (Settlement, ¶ 3.2.4.1.)

18. Class Representative Service Payment: Subject to Court approval, Plaintiff will receive a service award not to exceed $15,000.00. (Settlement, ¶ 3.2.1.) If the Court approves a lesser enhancement, then the unapproved portion or portions shall revert into the Net Settlement Amount to be distributed between the Participating Class Members on a pro-rata basis. (Settlement, ¶ 3.2.1.)

19. Attorneys' Fees and Costs: Defendants will not oppose a Class Counsel Fee Payment application of up to 33 1/3% ($2,150,000) of the Gross Settlement Amount, plus a Class Counsel Litigation Expenses Payment for out-of-pocket costs not to exceed $25,000.00.

20. Class Notice: The Class Notice means "the COURT APPROVED NOTICE OF CLASS ACTION SETTLEMENT AND HEARING DATE FOR FINAL COURT APPROVAL, to be e-mailed to Class Members in English in the form, without material variation, attached as Exhibit A and incorporated by reference into this Agreement."

III. DISCUSSION

To prevent fraud, collusion, or unfairness to the class, the settlement of a class action requires court approval. (*Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1800-01.) This Court has broad discretion to determine whether the proposed settlement is fair. (*Mallick v. Super. Ct.* (1979) 89 Cal.App.3d 434, 438.) Fairness is presumed when: (1) the settlement is reached through arm's-length bargaining; (2) investigation is sufficient to allow counsel and the court to act intelligently; (3) counsel is experienced in similar litigation; and (4) the percentage of objectors is small. (*Dunk,* 48 Cal.App.4th at p. 1800.)

In considering whether a settlement is reasonable, the Court should consider relevant factors, which may include the strength of Mr. Cavalier's case, the risk, expense, complexity, and likely duration of further litigation, the risk of maintaining class action status through trial, the amount offered in settlement, the extent of discovery 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. (*Kullar v. Foot Locker Retail, Inc*. (2008) 168 Cal.App.4th 116, at p. 128.) To approve a class action settlement, the court must satisfy itself that the class settlement is within the "ballpark" of reasonableness. (*Id*. at p. 133.) The record need not contain an explicit statement of the maximum theoretical recovery. (*Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles* (2010) 186 Cal.App.4th 399, 408-09 [holding that *Kullar* does not require "an explicit statement of the maximum amount the Plaintiffs class could recover if it prevailed on all its claims", but instead, only an "understanding of the amount that is in controversy and the realistic range of outcomes of the litigation."].)

As discussed below, Class Counsel has provided information exceeding the threshold required to provide this Court with materials and information necessary to determine that the proposed settlement is fair, adequate, and reasonable.

A. <u>The Settlement Is Fair, Reasonable, Adequate, and the Product of Investigation, Litigation, and Negotiation.</u>

1. The Settlement Is the Product of Informal Discovery, Investigation, and Informed and Non-Collusive Arm's-Length Negotiations.

Courts presume the absence of fraud or collusion in the negotiation of a settlement, unless evidence to the contrary is offered; thus, there is a presumption here that the negotiations were conducted in good faith. (Conte & Newberg, *Newberg on Class Actions* (3rd ed.) § 11.51.) Settlement is favored, and settlement agreements are realistically assessed. (*Stamburgh v. Super. Ct.* (1976) 62 Cal.App.3d 231, 236; *Priddy v. Edelman* (6th Cir. 1989) 883 F.2d 438, 447 ["The fact that a Plaintiffs might have received more if the case had been fully litigated is no reason not to approve the settlement."].)

The Settlement was reached following extensive negotiations following mediation with experienced employment mediator, Judge Peter D. Lichtman (Ret.) (Danas Decl. ¶ 7.) The Parties went into the mediation willing to explore the potential for a settlement of the dispute, but each side was also prepared to litigate their position through trial and appeal if a settlement had not been reached. (*Id.*)

Prior to reaching this settlement, Class Counsel conducted informal discovery concerning the claims set forth in the Actions, including review of a sampling of time and pay data, data showing active dates of accounts in the sample, and statistical data regarding the putative class and aggrieved employees. (*Id.* at ¶¶ 5-6.) During the pendency of this case, Plaintiff's counsel also spoke to over 100 Class Members who worked for Defendants regarding their experiences and the claims at issue. (*Id*.) In conjunction with their extensive factual investigation, Class Counsel investigated the applicable law regarding the claims and defenses asserted in the Litigation. (*Id*.) Thus, Mr. Cavalier and his counsel were able to act intelligently and effectively in negotiating the proposed Settlement. (*Id*.)

2. The Settlement Is Fair and Reasonable in Light of the Parties' Respective Legal Positions.

A settlement is not judged against what Plaintiffs might recover had they prevailed at trial, nor does the settlement have to provide 100% of the damages sought to be fair and reasonable. (*Wershba v. Apple Computers, Inc.* (2001) 91 Cal.App.4th 224, 246, 250 ["Compromise is inherent and necessary in the settlement process … even if the relief afforded by the proposed settlement is substantially narrower than it would be if the suits were to be successfully litigated, this is no bar to a class settlement because the public interest may indeed be served by a voluntary settlement in which each side gives ground in the interest of avoiding litigation."].)

This settlement avoids the risks and the accompanying expense of further litigation. (Danas Decl., ¶ 32.) While Mr. Cavalier is confident in the merits of his claims, a legitimate controversy exists as to each cause of action. (*Id.* at ¶ 31.) Mr. Cavalier also recognizes that proving the amount of wages due to each class member would be an expensive, time-consuming, and uncertain proposition. (*Id*.)

The proposed settlement of $6,450,000 therefore represents a substantial recovery when compared to the enormous risks here and the remote likelihood that full penalties and classwide damages will be awarded, in light of the arbitration clause, novelty of several issues, and the overall risks of protracted litigation. (*Id.* at ¶ 34.) The settlement represents 7.4% of the total possible recovery for the class if the class were to completely overcome every risk including arbitration, class certification, and the merits. This is in line with other agreements that were granted preliminary approval. (*Wilburg v. iVueit, LLC* (N.D.Cal. Aug. 26, 2025, No. 24-cv-02642-AMO) 2025 U.S.Dist.LEXIS 166103, at *13) [granting preliminary approval of a misclassification wage and hour settlement where recovery amounted to approximately 7% of total estimated damages.]; *Ma v. Covidien Holding, Inc.*, No. 12 Civ. 02161, 2014 U.S. Dist. LEXIS 13296, 2014 WL 360196, at *5 (C.D. Cal. Jan. 31, 2014) [granting preliminary approval of a wage and hour settlement where class payment represented 9.1% of the total value of the action]; *Guthrie v. ITS Logistics, LLC* (E.D. Cal., Jan. 9, 2026, No. 1:21-CV-000729-EPG) 2026 WL 74010, at *16

[finding a wage and hour settlement of $550,000 reasonable when compared to the total estimated recovery amount of $5,612,979, equaling about 9.7% of the total potential recovery amount.)

Because of the proposed Settlement, participating class members will receive timely, guaranteed relief and will avoid the risk of an unfavorable judgment. When considering the risks of litigation, the uncertainties involved in achieving class certification, the burdens of proof necessary to establish liability, the probability of appeal of a favorable judgment, the settlement amount of $6,450,000 is clearly within the "ballpark" of reasonableness, and preliminary settlement approval is appropriate. (*Id.*) Indeed, each Class Member is eligible to receive an average gross benefit of approximately **$838.** (*Id.* at ¶ 33.) This value is higher than other approved misclassification settlements. (See e.g., *Cotter v. Lyft, Inc.* (N.D. Cal. 2016) 193 F.Supp.3d 1030, 1037 [approving settlement of misclassification claims for $27 million on behalf of 150,000 class members, resulting in per capita relief of approximately $180 per class member].) Moreover, the significant chunk of the estimated total possible damages arises out of the PAGA claims, especially penalties for willful misclassification, which are discretionary and come with additional risks as discussed above. (Danas Decl. ¶¶ 27-28.) Importantly, this Court has recently granted preliminary approval of a similar settlement in *McKinney et.al v. Scale AI, Inc. et al.* (San Francisco Case No. CGC-24-620481) which encompassed similar facts, claims and average gross recovery.[5]

3. Class Counsel Has Extensive Experience in Class Action Litigation.

The settlement negotiations were conducted by highly capable and experienced counsel. Class Counsel have a strong record of vigorous and effective advocacy for their clients and are experienced in handling complex wage and hour class action litigation. (Danas Decl. at ¶¶ 45-53.) Although Mr. Cavalier and his counsel were prepared to litigate the claims alleged in the litigation, they support the proposed Settlement as being in the best interests of the class.

[5] Scale AI's and Surge's AI training platforms operate similarly by recruiting independent contractors to perform work to train AI, and the two actions alleged similar misclassification claims. In their Motion for Preliminary Approval of Class Action Settlement in the *Scale AI* Action, the plaintiffs estimated a similar average gross benefit of $815.23.

B. The Proposed Class Notice of Settlement Should Be Approved.

1. The Proposed Class Notice Plan Satisfies Due Process

Notice requirements are set forth in the California Rules of Court. (Cal. Rules of Court, Rule 3.766 (e) and (f).) California law vests the Court with broad discretion in fashioning an appropriate notice program. (*Cartt v. Super Ct.* (1975) 50 Cal.App.3d 960, 973-74.) There is no statutory or due process requirement that all class members receive actual notice, but in this matter, the class members will receive direct mailed notice. As the Court of Appeals has explained, "[t]he notice given should have a reasonable chance of reaching a substantial percentage of the Class Members … ." (*Id.* at 974.) In this case, notice of the proposed settlement will be provided by direct mail, the best possible form of notice.

2. The Notice is Accurate and Informative

The Parties' proposed Administrator Simpluris, Inc is adequate to administer the notice procedure and settlement as a whole. Simpluris has significant experience with distributing wage and hour class action settlements. (See e.g., *Andrade v. Beacon Sales Acquisition* (C.D.Cal. May 24, 2021, No. 2:19-CV-06963-MCS-RAO) 2021 U.S.Dist.LEXIS 198561, at *10; *Sarabia v. Ricoh United States, Inc.* (C.D.Cal. May 1, 2023, No. 8:20-cv-00218-JLS-KES) 2023 U.S.Dist.LEXIS 85742, at *6.) These settlements include *Rimler, et al. v. Postmates Inc*., San Francisco Case No. CJC-20-005068, consisting of over 600,000 class members.

The Class Notice attached as Exhibit A to Exhibit 1 of the Danas Declaration should be approved. Surge only collected a valid email address for each Class Members and Aggrieved Employees and does not have information regarding physical addresses for these individuals. Accordingly, the notice will be disseminated through email. (Settlement, ¶ 7.4.2.) If any email comes back as undeliverable, Simpluris will perform a skip trace to locate the last known physical address for those individuals and send a copy of the notice by U.S. first-class. (Settlement, ¶ 7.4.3.) The Notice informs the Class Members of the terms of the Settlement and their right to be excluded from the Settlement. The Notice also provides instructions in the event a Class Member wishes to object to this proposed class action settlement, either in writing or at the hearing, and explains that

the Class Member will have the opportunity to file an objection and be heard at the Final Approval Hearing.

The Class Notice also fulfills the requirement of neutrality in class notices. (Conte & Newberg, Newberg on Class Actions (3rd Ed.) § 8.39.) It summarizes the proceedings to date and the terms and conditions of the Settlement Agreement, in an informative and coherent manner. It makes clear that the Settlement Agreement does not constitute an admission of liability by the Defendants, who deny all liability, and it recognizes that this Court has not ruled on the merits of the action. It also states that the final settlement approval decision has yet to be made. Accordingly, the Class Notice complies with the standards of fairness, completeness, and neutrality required of a combined settlement-certification class notice.

C. The Proposed Attorneys' Fees and Costs Are Reasonable

Under the Settlement, subject to the Court's approval, the Administrator will allocate from the Gross Settlement Amount a Class Counsel Fee Payment in the amount of $2,150,000, which is 33 1/3% of the Gross Settlement Amount, and a Class Counsel Litigation Expenses Payment to compensate Class Counsel for actual costs incurred to prosecute these Actions. These amounts will be disclosed to all class members in the Class Notice and are reasonable.

1. Class Counsel Request an Award of Fees Based on the "Common Fund" Method.

California courts have long awarded attorneys' fees as a percentage of the benefit created by counsel in pursuing claims on behalf of a class. The California Supreme Court held that "when a number of persons is entitled in common to a specific fund, and an action brought by a Plaintiff or Plaintiffs for the benefit of all results in the creation or preservation of that fund, such Plaintiffs or Plaintiffs may be awarded attorneys' fees out of the fund." (*Serrano v. Priest* (1977) 20 Cal.3d 25, 34 [quoting *D'Amico v. Bd. of Medical Examiners* (1974) 11 Cal.3d 1].)

Consistent with California's long established practice, Class Counsel seeks an award of attorneys' fees on the "percentage of recovery/common fund" theory. The purpose of this approach is to "spread litigation costs proportionally among all the beneficiaries so that the active beneficiary does not bear the entire burden alone." (*Vincent v. Hughes Air West, Inc.* (9th Cir. 1977) 557 F.2d

759, 769.) In *Quinn v. State of California* (1995) 15 Cal.3d 162, the California Supreme Court stated: "[O]ne who expends attorneys' fees in winning a suit which creates a fund from which others derive benefits may require those passive beneficiaries to bear a fair share of the litigation costs." (*Id.* at p. 167.) Similarly, in *City and County of San Francisco v. Sweet* (1995) 12 Cal.4th 105, the California Supreme Court recognized that the common fund doctrine has been applied "consistently in California when an action brought by one party creates a fund in which other persons are entitled to share." (*Id.* at p. 110.)

The California Supreme Court affirmed in *Laffitte v. Robert Half Int'l Inc*. (2016) 1 Cal.5th 480 that, "when class action litigation establishes a monetary fund for the benefit of the class members, and the trial court in its equitable powers awards class counsel a fee out of that fund, the court may determine the amount of a reasonable fee by choosing an appropriate percentage of the fund created." (*Id*. at p. 503.) The court explained: "The recognized advantages of the percentage method—including relative ease of calculation, alignment of incentives between counsel and the class, a better approximation of market conditions in a contingency case, and the encouragement it provides counsel to seek an early settlement and avoid unnecessarily prolonging the litigation—convince us the percentage method is a valuable tool that should not be denied our trial courts." (*Id*. [internal citations omitted].)

2. The Requested Fee Award Is in Line with Typical Cases.

According to a leading treatise on class actions, "No general rule can be articulated on what is a reasonable percentage of a common fund. Usually, 50% of the fund is the upper limit on a reasonable fee award from a common fund in order to assure that the fees do not consume a disproportionate part of the recovery obtained for the class, although somewhat larger percentages are not unprecedented." (*See* Conte & Newberg, Newberg on Class Actions (3rd Ed.) § 14.03.) Attorneys' fees that are fifty percent of the fund are typically considered the upper limit, with thirty to forty percent commonly awarded in cases where the settlement is relatively small. (*Id*; see also *Van Vranken v. Atlantic Richfield Co.* (N.D. Cal. 1995) 901 F.Supp. 294 [stating that most cases where 30-50 percent was awarded involved "smaller" settlement funds of under $10 million].)

Here, Mr. Cavalier requests attorneys' fees equal to 33 1/3% of the Gross Settlement

Amount, which is in line with the prevailing guidelines established in California case law and academic literature and is consistent with awards in California. (See *Amaro v. Anaheim Arena Management, LLC* (2021) 69 Cal.App.5th 521, 545 ["'[F]ee awards in class actions average around one-third of the recovery' regardless of 'whether the percentage method or the lodestar method is used.'"]; *Chavez v. Netflix, Inc.* (2008) 162 Cal.App.4th 43, 66, fn.11.) Moreover, Mr. Cavalier has obtained a strong, early resolution through this settlement for the class members, which is preferable over lengthy litigation. (See, e.g., *Ramirez v. Rite Aid Corp.* (C.D.Cal. May 3, 2022, No. CV 20-3531-GW-SKx) 2022 U.S.Dist.LEXIS 109069, at *12 ["[U]nless the settlement is clearly inadequate, its acceptance and approval are preferable to lengthy and expensive litigation with uncertain results."]; *Vizcaino v. Microsoft* (9th Cir. 2002) 290 F.3d 1043, 1050 fn. 5 ["We do not mean to imply that class counsel should necessarily receive a lesser fee for settling a case quickly; in many instances, it may be a relevant circumstance that counsel achieved a timely result for class members in need of immediate relief."].) Therefore, Mr. Cavalier's counsel should not be punished for achieving a quick result for the class members by a reduction of their fees, especially since they have performed over 900 hours of legal work with no guarantee of compensation. (*Laffitte,* 1 Cal.5th at pp. 487, 503-504 [contingent risk considered in awarding percentage of fund that would reflect a multiplier >2 in a lodestar cross-check]; see also *Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 255, disapproved of on other grounds by *Hernandez v. Restoration Hardware* (2018) 4 Cal.5th 260 ("Multipliers can range from 2 to 4 or even higher."); *Vizcaino,* 290 F.3d at p. 1051 fn. 6 (approving fee award with lodestar cross-check multiplier of 3.65, collecting appendix of cases approving fees awarded with lodestar cross-check up to 19.6x).

Accordingly, Mr. Cavalier respectfully requests that the Court approve the attorneys' fees as negotiated by the Parties and requested herein.

3. The Experience, Reputation and Ability of Class Counsel Support the Requested Fee Award.

As demonstrated by their experience in pursuing class actions on behalf employees, Class Counsel possesses considerable expertise in litigating class actions. (Danas Decl. at ¶¶ 45-53.) Class Counsel has been involved as lead counsel or co-counsel in numerous class actions that

resulted in millions in recovery. (*Id*.) Because it is reasonable to compensate class counsel commensurate with their skill, reputation and experience, Class Counsel's requested fee award is supported here.

Class Counsel's experience in wage and hour class actions was integral in evaluating the strengths and weaknesses of the case against Defendants and the reasonableness of the settlement. Practice in wage and hour litigation requires skill and knowledge concerning the rapidly evolving substantive law (state and federal), as well as the procedural law of class action litigation. Based on these and other factors, Class Counsel has frequently received fee awards of this percentage from the gross recovery for the class. Therefore, the requested fee award is reasonable and fair.

D. <u>The Named Plaintiff's Award is Reasonable.</u>

Named Plaintiffs in class action lawsuits "are eligible for reasonable incentive payments to compensate them for the expense or risk they have incurred in conferring a benefit on other members of the class." (*Munoz,* 86 Cal.App.4th at p. 412.) Courts routinely grant approval of class action settlement agreements containing enhancements for the class representatives, which are necessary to provide incentive to represent the class, and are appropriate given the benefit the class representatives help to bring about for the class. (See *Rodriguez v. W. Publ'g Corp*. (9th Cir. 2009) 563 F.3d 948, 958-59.)

Service awards are particularly important to plaintiffs in wage and hour cases because they promote the important public policies underlying the wage and hour laws. This strong policy is codified in Labor Code § 90.5, which provides, "it is the policy of this state to vigorously enforce minimum labor standards in order to ensure employees are not required or permitted to work under substandard unlawful conditions… ."). Nonetheless, the California Supreme Court has noted that "retaliation against employees for asserting statutory rights under the Labor Code is widespread," despite anti-retaliation statutes designed to protect employees. (*Gentry v. Super. Ct.* (2007) 42 Cal.4th 443, 460-61, overruled on other grounds in *AT&T Mobility LLC v. Concepcion* (2011) 563 U.S. 333.)

Under the Settlement Agreement, subject to the Court's approval, the Administrator will allocate from the Gross Settlement Amount a Class Representative Service Payment in the amount

of $15,000 to Mr. Cavalier. This amount is also in exchange for Mr. Cavalier's general release of all claims against Defendants. Class Counsel represent that Mr. Cavalier devoted a great deal of time and work assisting counsel in the case, communicated with counsel very frequently for litigation and to prepare for mediation, and was frequently in contact with Class Counsel during the mediation. (Danas Decl. at ¶¶ 35-38) This amount is reasonable particularly in light of the substantial benefits Mr. Cavalier generated for all class members. (*Id*.)

When compared with the amounts awarded in typical class action cases, the amount requested here is particularly reasonable. Indeed, a ***2006*** study examining the average incentive award given to class action Plaintiffs from ***1993 to 2002*** found that the "average award per class representative was $15,992 and the median award per class representative was $4,357." (Theodore Eisenberg & Jeffrey P. Miller, "Incentive Awards to Class Action Plaintiffs: An Empirical Study," 53 UCLA L. Rev. 1303, 1308 (2006).) That same study found that named Plaintiffs in employment discrimination class actions received an average award of $69,850 and a median award of $31,081, while named Plaintiffs in other employment class actions received an average award of $12,121 and a median award of $13,059. (*Id.* at p. 1334.) The authors of the study found that higher awards in employment cases reflected the "courts' wish to make representative Plaintiffs whole by compensating them for the high costs of their service to the class, including risks of stigmatization or retaliation on the job." (*Id.* at 1308.)

IV. CERTIFICATION FOR SETTLEMENT PURPOSES ONLY IS WARRANTED

A. Legal Standard

The proposed Class is well suited for class certification. All of the claims derive from a core set of alleged violations of California's wage and hour laws and regulations. For the reasons set forth more fully below, for purposes of settlement only, the Class satisfies the prerequisites for certification under Code of Civil Procedure § 382. Section 382 provides: "when the question is one of a common or general interest, of many persons, or when the parties are numerous, and it is impracticable to bring them all before the court, one or more may sue or defend for the benefit of all." (Code Civ. Proc., § 382.) There are two requirements to section 382: "(1) There must be an ascertainable class; and (2) there must be a well-defined community of interest in the questions of

law and fact involved affecting the parties to be represented." (*Daar v. Yellow Cab Co*. (1967) 67 Cal.2d 695, 704 [citations omitted].) To clarify these requirements, the California Supreme Court has looked to Federal Rule of Civil Procedure 23 to explain that the community-of-interest requirement itself embodies three factors: "(1) predominant questions of law or fact; (2) class representatives with claims or defenses typical of the class; and (3) class representatives who can adequately represent the class." (*Richmond v. Dart Indus., Inc*. (1981) 29 Cal.3d 462, 470.)

California law and policy favor the fullest and most flexible use of the class action device. (*Id.* at pp. 469-73.) Indeed, "[c]ourts long have acknowledged the importance of class actions as a means to prevent a failure of justice in our judicial system," particularly where the rights of consumers are at issue. (*Linder v. Thrifty Oil Co*. (2000) 23 Cal.4th 429, 434.) Any doubt as to the appropriateness of class treatment should be resolved in favor of certification. (*Richmond*, *supra,* 29 Cal.3d at 473-75.)

B. <u>Mr. Cavalier Maintains That the Criteria for Class Certification Are Satisfied for Settlement Purposes.</u>

1. The Class is Ascertainable and Numerous.

Mr. Cavalier contends that the proposed class that Mr. Cavalier seeks to represent is easily ascertainable, and it includes approximately 7,694 Class Members, thus far surpassing the numerosity threshold.

2. There are Many Common Issues of Law and Fact Which Predominate.

The Court should grant conditional class certification for settlement purposes here on the grounds that questions of law and fact common to all class predominate over any individual questions. This inquiry tests whether proposed classes are sufficiently cohesive to warrant adjudication by representation. (See, e.g., *Clothesrigger, Inc. v. GTE Corp*. (1987) 191 Cal.App.3d 605, 617.)

Here, Mr. Cavalier alleges that Defendants' wage and hour practices resulted in Labor Code violations. Mr. Cavalier alleges that Defendants failed to have legally compliant meal and rest period policies, resulting in Defendants failing to provide compliant meal and rest periods or pay all meal rest premiums, that Mr. Cavalier and Class Members were required to perform work off-

the-clock which they were not compensated for, that Defendants misclassified Class Members, that Defendants failed to reimburse Mr. Cavalier and Class Members for necessary business expenses. Based on these allegations, Mr. Cavalier asserts related claims for failure to provide accurate wage statements, failure to timely pay wages, failure to timely pay all final wages at termination, failure to keep requisite payroll records and properly maintain required records, unfair business practices, and civil penalties under PAGA. Mr. Cavalier contends that the factual and legal issues are the same for all of the identified class members, including Mr. Cavalier. Further, all class members are alleged to have suffered from, and seek redress for, the same alleged injuries. Defendants deny all allegations.

3. Mr. Cavalier's Claims Are Typical of the Claims of the Class.

The typicality requirement does not focus on the individual characteristics or circumstances of the representative Mr. Cavalier compared to those of the remainder of the class, but rather upon the typicality of the proposed representative's claims as they relate to the defendant's conduct and activities. (*Classen v. Weller* (1983) 145 Cal.App.3d 27, 47 ["[t]he only requirements are that common questions of law and fact predominate and that the class representative be similarly situated" vis-à-vis the class.].) A representative Mr. Cavalier's claims are typical of the class if they arise from the same event, practice or course of conduct, and if the claims rest on the same legal theories. (*Id*.) That is precisely the case here. Mr. Cavalier is a former independent contractor of Defendants; as such, he alleges that they were subject to the same policies and practices as other similarly situated independent contractors.

4. Mr. Cavalier and his Counsel Meet the Adequacy Requirement.

The adequacy of representation requirements is met by fulfilling two conditions: first, a named Plaintiff must be represented by counsel qualified to conduct the pending litigation; second, a named Plaintiff's interests cannot be antagonistic to those of the class. (*McGhee v. Bank of America* (1976) 60 Cal.App.3d 442, 451.)

All these requirements are met here for settlement purposes. Mr. Cavalier retained counsel with extensive experience in prosecuting complex class actions, including similar class actions that previously settled. (Danas Decl., at ¶¶ 45-53.) Class Counsel unquestionably is "qualified,

experienced and generally able to conduct the proposed litigation." (*Miller v. Woods* (1983) 148 Cal.App.3d 862, 875.) In addition, Mr. Cavalier has no conflicts, and Mr. Cavalier has, with counsel, litigated this case and diligently reviewed the settlement terms, showing their dedication. Mr. Cavalier's willingness to serve as representatives demonstrates his serious commitment to bringing about the best results possible for the class. (*McGhee*, 60 Cal.App.3d at 451.)

5. A Class Action is Superior to a Multiplicity of Litigation.

Finally, in making its class certification decision, the Court must determine that a class action would be superior to alternative means for the fair and efficient adjudication of the litigation. By consolidating many potential individual actions into a single proceeding, this Court's use of the class action device enables it to manage this Litigation in a manner that serves the economics of time, effort and expense for the litigants and the judicial system. Absent class treatment, similarly situated employees with small but nevertheless meritorious claims for damages would, as a practical matter, have no means of redress because of the time, effort and expense required to prosecute individual actions. Moreover, in the context of settlement, the superiority concerns are essentially non-existent.

V. CONCLUSION

For the foregoing reasons, Mr. Cavalier respectfully requests that the Court grant preliminary approval of the proposed Class Settlement, approve the Class Notice, appoint Simpluris as the Administrator and set a Final Approval Hearing in January of 2027, or the first available date thereafter.

Dated: August 14, 2026

Respectfully submitted,

CLARKSON LAW FIRM, P.C.

/s/ Glenn A. Danas

Glenn A. Danas
Maxim Gorbunov

Attorneys for Plaintiff
Dominique DonJuan Cavalier II

PROOF OF SERVICE

Cavalier v. Surge Labs, Inc., et al.
CGC-25-625502

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action; my business address is 22525 Pacific Coast Highway, Malibu, CA 90265.

On August 14, 2026, I served the foregoing document(s) described as:

PLAINTIFF'S NOTICE OF MOTION AND MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT; MEMORANDUM OF POINTS AND AUTHORITIES

on the interested party(ies) in this action as follows:

KATTEN MUCHIN ROSENMAN LLP
Janella T. Gholian
janella.gholian@katten.com
Stacey McKee Knight
stacey.knight@katten.com
2121 Avenue of the Stars, Suite 1100
Los Angeles, CA 90067-5010
310-788-4400
310-788-4471 (Fax)
Attorneys for Defendants

Method of Service

[X] **BY ELECTRONIC MEANS**: I caused to be transmitted a true and correct copy of the foregoing document(s) via File & Serve XPress to the interested party(ies)/person(s) as set forth on the above service list pursuant to court order.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on August 14, 2026

Antonia Smith
Antonia Smith