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13

14 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

15 **IN AND FOR THE COUNTY OF STANISLAUS**

16 FRANCISCO RAMIREZ on behalf of
17 himself, all others similarly situated, and
18 on behalf of the general public,

19 Plaintiffs,

20 v.

21 MESSER LLC; and DOES 1-100,

22 Defendants.

Case No. CV-23-002006

**PLAINTIFF FRANCISCO RAMIREZ'S
MEMORANDUM OF POINTS AND
AUTHORITY IN SUPPORT OF HIS
MOTION FOR FINAL APPROVAL OF
CLASS AND PAGA ACTION
SETTLEMENT**

Date: April 29, 2025

Time: 8:30 a.m.

Judge: Hon. John Freeland

Dept.: 23

Complaint Filed: April 14, 2023

Trial Date: None Set

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1 **I. INTRODUCTION**

2 This motion seeks final approval of a non-reversionary \$450,000 proposed wage and hour
3 class action settlement by Plaintiff Francisco Ramirez (hereinafter “Plaintiff”) on behalf of himself
4 and all persons employed by Defendant Messer LLC (“Defendant” or “Messer”) (hereinafter,
5 Plaintiff and Defendant are collectively referred to as the “Parties”)¹ in California as a non-exempt
6 driver at any time from April 14, 2019 through August 15, 2024 (this period of time is the “Class
7 Period”).² To date, there is a 100% participation rate amongst Class Members—that is, there were
8 no objections, no disputes, and no requests for exclusion. **The proposed settlement is projected**
9 **to pay an average estimated payment of \$1,888.14 per Class Member, with a high payment**
10 **of \$4,123.63.**³

11 This case required 240 hours of attorney time from Class Counsel and sought relief for 132
12 individuals. This litigation involved significant investigation, extensive discovery, the production
13 of hundreds of pages of documents and thousands of lines of data by Defendant, and a full day of
14 mediation.

15 Plaintiff moves for final approval of attorneys’ fees in the amount of \$150,000, which
16 represents 33 1/3% of the Gross Settlement Amount (“GSA”). As will be demonstrated herein,
17 Plaintiff’s attorney fee request is supported using the percentage fee method and the lodestar
18 method. Second, Plaintiff moves for final approval of litigation costs in the amount of \$18,765.04
19 incurred in litigating this matter. Third, Plaintiff moves for final approval of the Class
20 Representative Enhancement Payment in the amount of \$5,000 to compensate the Class
21 Representative for a general release of his claims against Defendant and for the time he spent on
22 and the risks absorbed in undertaking this case. Plaintiff played a vital role in representing the
23 other individuals in this case and spearheading the lawsuits to seek monetary relief for them.
24 Fourth, Plaintiff moves for final approval of payment of \$7,000 to the Settlement Administrator,
25 Simpluris, Inc. (“Simpluris”) for the costs and fees of administering settlement. Fifth, Plaintiff

26
27 ¹ The Parties’ Agreement is attached to the Declaration of David Mara, Esq. (Mara Dec.) as Exhibit 1. “Exhibit 1”
28 herein refers to the Parties’ Agreement.

² Exhibit 1 at Section I, Paragraph 5, Page 1; Exhibit 1 at Section I, Paragraph 10, Page 2.

³ Declaration of Lindsay Romo (“Romo Dec.”) ¶ 17.

1 moves for final approval of payment to the Labor and Workforce Development Agency
2 (“LWDA”) under the Private Attorneys’ General Act (“PAGA”) in the amount of \$15,000 (75%
3 of \$20,000 allocated to PAGA penalties).

4 The requested amounts of attorneys’ fees, litigation costs, class representative
5 enhancement payment, settlement administration costs, and PAGA payment were fully disclosed
6 to the Class Members when the Class Notice was mailed to them on January 21, 2025. **Most**
7 **importantly, the Settlement and all its terms received universal support from Class Members**
8 **as there were no objections, no disputes, and no requests for exclusion.**⁴ The Court is therefore
9 respectfully requested to honor the Class Members’ endorsement of the settlement and grant final
10 approval of the settlement, attorneys’ fees, litigation costs, class representative enhancement
11 payment, costs of settlement administration, and payment to the LWDA pursuant to PAGA in the
12 amounts as preliminarily approved by this Court, as fully disclosed to the Class Members, and as
13 requested herein.

14 **II. BACKGROUND, INVESTIGATION, AND LITIGATION HISTORY**

15 **A. Background and Litigation History**

16 A class action complaint was filed by Plaintiff on April 14, 2023, in Stanislaus County
17 Superior Court (Case No. CV-23-002006). The complaint alleges the following claims: (1) Failure
18 to Pay All Straight Time Wages, (2) Failure to Pay All Overtime Wages, (3) Failure to Adopt a
19 Complaint Sick Pay Policy, (4) Knowing and Intentional Failure to Comply with Itemized
20 Employee Wage Statement Provisions, (5) Failure to Pay All Wages Due at the Time of
21 Termination of Employment, and (6) Violation of Unfair Competition Law (Business &
22 Professions Code § 17200, *et seq.*). Defendant filed an answer to Plaintiff’s class action complaint
23 on May 17, 2023. (Mara Dec. ¶ 12).

24 Plaintiff provided notice to the Labor and Workforce Development Agency (“LWDA”)
25 and Defendant in accordance with the Private Attorneys General Act of 2004 (“PAGA”) on April
26 10, 2023. On July 27, 2023, Plaintiff filed a PAGA complaint in the Stanislaus County Superior
27 Court (Case No. CV-23-004196). The complaint alleges the following PAGA claims: (1) Failure
28

⁴ See Romo Dec. ¶¶ 12-14.

1 to Pay All Straight Time Wages, (2) Failure to Pay All Overtime Wages, (3) Failure to Pay All
2 Wages Due at the Time of Termination of Employment, (4) Knowing and Intentional Failure to
3 Comply with Itemized Employee Wage Statement Provisions, (5) Failure to Adopt a Complaint
4 Sick Pay Policy. Defendant filed an answer to Plaintiff's PAGA complaint on November 14, 2023.
5 (Mara Dec. ¶ 13).

6 On September 20, 2024, Plaintiff provided an amended notice to the LWDA and
7 Defendant. On October 14, 2024, the Parties filed a stipulation for leave to allow Plaintiff to file a
8 First Amended PAGA Complaint adding in a cause of action pursuant to California Labor Code §
9 213, which was granted by the Court on the same day. Plaintiff filed his First Amended PAGA
10 Complaint on October 14, 2024. (Mara Dec. ¶ 14).

11 On October 14, 2024, the Parties stipulated to consolidate Plaintiff's class and PAGA
12 actions with the class action as the lead case. The Court granted this stipulation on the same day.
13 (Mara Dec. ¶ 15).

14 **B. Discovery and Investigation**

15 After filing, the Parties engaged in informal discovery. These discovery efforts led to
16 Defendant producing hundreds of pages of policy documents such as employee handbooks and
17 Collective Bargaining Agreements that covered Class Members' employment. Defendant further
18 produced a sampling of time and pay records for Class Members. Defendant also produced
19 Plaintiff's personnel file and time and pay records. Plaintiff also requested, and Defendant
20 produced, data surrounding the number of current and former employees, as well as the number of
21 workweeks worked by Class Members during the relevant time period, to establish a potential
22 exposure model in preparation for mediation. From this discovery, Plaintiff and his Counsel were
23 able to analyze Defendant's liability in this action and prepare a realistic damage model. (Mara
24 Dec. ¶ 16).

25 **C. The Parties Agreed to Attend Mediation**

26 The Parties attended an all-day mediation presided over by wage and hour mediator Steve
27 Serratore on May 17, 2024. This mediation was successful. The Parties then met and conferred
28 over all the terms of the settlement and finalized their settlement in the Parties' Agreement. The

Parties seek final approval of the Agreement in the instant motion. (Mara Dec. ¶ 17; *see also* Exhibit 1 attached thereto).

III. THE PROPOSED SETTLEMENT AND THE CLASS MEMBERS' RESPONSE

Under the terms of the settlement, Defendant will create a settlement fund of \$450,000.

A. Deductions from the Settlement

The Parties have agreed (subject to and contingent upon the Court's approval) that this action be settled and compromised for the non-reversionary total sum of \$450,000 ("Gross Settlement Amount" or "GSA"), which includes, subject to Court approval: (a) attorneys' fees in the amount of \$150,000 (33 1/3% of the GSA) to compensate Class Counsel for work already performed and all work remaining to be performed in documenting the settlement, administering the settlement, and securing Court approval; (b) litigation expenses in the amount of \$18,765.04 (originally estimated not to exceed \$20,000); (c) a Class Representative Enhancement Payment to the named class representative in the amount of \$5,000 in consideration for prosecuting this class action, serving as Class Representative, work performed, and risks undertaken for the payment of attorneys' fees and costs in the event he had been unsuccessful in the matter; (d) settlement administration fees and expenses to Simpluris in the amount of \$7,000 (originally estimated not to exceed \$10,000); and (e) \$20,000 allocated to Plaintiff's claims under the PAGA. Of this payment, 75%, or \$15,000 will be provided to the LWDA, and 25%, or \$5,000, will be available for distribution to PAGA Aggrieved Employees.⁵

B. Calculation of Settlement Payments to Class Members

After all Court-approved deductions from the GSA, it is estimated that \$249,234.96 ("Net Settlement Amount" or "NSA"), less employee taxes on the "wage portion" of the settlement payment, will be distributed to Participating Class Members.⁶ Subject to the terms and conditions of the settlement, each Participating Class Member will receive a proportionate share of the Net Settlement Amount that is equal to (i) the number of weeks he or she worked for Defendant, based

⁵ PAGA Aggrieved Employees are all Class Members who worked at least one pay period for Messer between April 10, 2022, to August 15, 2024. (Exhibit 1 Section I, Paragraph 32, Page 5).

⁶ Participating Class Members are all Class Members who do not submit a valid and timely request to exclude themselves from this Settlement. (Exhibit 1 at Paragraph 34, Page 5).

1 on the Class Data provided by Defendant, divided by (ii) the total number of weeks worked by all
2 Participating Class Members based on the same Class Data, which is then multiplied by the Net
3 Settlement Amount. Therefore, the value of each Class Member's Individual Settlement Share ties
4 directly to the amount of weeks that he or she worked. (Exhibit 1 at Paragraph 61.1.1, Page 10).
5 This payment will be divided into a "wage portion" to compensate Participating Class Members
6 for alleged unpaid wages and a "non-wage portion" to compensate Participating Class Members
7 for alleged interest and penalties. The wage portion will make up one-tenth (1/10) of each
8 Participating Class Members' individual settlement payment, and the non-wage portion will make
9 up nine-tenths (9/10) of each Participating Class Members' individual settlement payment.
10 (Exhibit 1 at Paragraph 61.1.3, Page 11).

11 In addition, each PAGA Aggrieved Employee will receive a proportionate share of the Net
12 PAGA Settlement Amount that is equal to (i) the number of workweeks he or she worked for
13 Defendant, based on the PAGA Data provided by Defendant, divided by (ii) the total number of
14 workweeks worked by all PAGA Aggrieved Employees based on the same PAGA data, which is
15 then multiplied by the Net PAGA Settlement Amount (\$2,500). Therefore, the value of each
16 PAGA Aggrieved Employee's Individual PAGA Settlement Share ties directly to the amount of
17 workweeks that he or she worked during the PAGA Period. (Exhibit 1 at Paragraph 62.1.1). This
18 payment will be treated as 100% penalties. (Exhibit 1 at Paragraph 62.2, Page 12).

19 Under no circumstances will any portion of the \$450,000 settlement revert to Defendant.

20 **C. Release of Claims**

21 In exchange for an Individual Class Payment, Participating Class Members will agree to
22 release claims that were or could have been asserted based upon the facts and allegations made in
23 the Actions. (See Exhibit 1 at Section I, Paragraph 37, Pages 5-6). In addition, all PAGA Aggrieved
24 Employees will agree to release all claims seeking civil penalties under PAGA that were asserted
25 or could reasonably have asserted based on the facts alleged in the Actions and/or the LWDA
26 letter. (See Exhibit 1 at Section I, Paragraph 38, Page 6).

27 In addition, Plaintiff has agreed to a general release of his claims. (See Exhibit 1 at Section
28 III, Paragraph 80, Pages 23-24).

1 **D. Notice to the Class**

2 On December 18, 2024, Simpluris received the Court-approved Notice of Class Action
3 Settlement (hereafter “Class Notice”). The Class Notice advised Class Members of their right to
4 request exclusion from the Settlement, object to the Settlement, dispute Workweeks, do nothing,
5 and the implications of each such action. The Class Notice advised Class Members of applicable
6 deadlines and other events, including the Final Approval Hearing, and how Class Members could
7 obtain additional information. (Romo Dec. ¶ 5)

8 On January 6, 2025, Defendant’s Counsel provided Simpluris a Class List containing each
9 Class Member’s last known full name, last known mailing address, last known telephone number,
10 Social Security Number, and Class Period and PAGA Period workweeks (“Class Data and List”).
11 The Class Data and List contained data for one hundred and thirty-two (132) individuals who
12 worked 16,848 work weeks. (Romo Dec. ¶¶ 6, 10).

13 The mailing addresses contained in the Class List were processed and updated utilizing
14 the National Change of Address Database (“NCOA”) maintained by the U.S. Postal Service. The
15 NCOA contains requested changes of address filed with the U.S. Postal Service. In the event that
16 any individual had filed a U.S. Postal Service change of address request, the address listed with
17 the NCOA would be utilized in connection with the mailing of the Class Notice. Simpluris was
18 able to locate eight (8) updated addresses using NCOA prior to the mailing of the Class Notice.
19 (Romo Dec. ¶ 7).

20 On January 21, 2025, the Class Notice was mailed to one hundred and thirty-two (132)
21 individuals identified as Class Members. The Class List was mailed via First Class in English.
22 (Romo Dec. ¶ 8). A total of seven (7) Class Notices were returned to Simpluris. Of these, none
23 were returned with a forwarding address. If a Class Member’s Class Notice was returned by the
24 USPS as undeliverable and without a forwarding address, Simpluris performed an advanced
25 address search (i.e. skip trace) on all of these addresses by using Accurant, a reputable research
26 tool owned by Lexis-Nexis. Simpluris used the Class Member’s name and previous address to
27 locate a current address. Through the advanced address searches, Simpluris was able to locate five
28 (5) updated addresses and Simpluris promptly mailed a Class Notice to those updated addresses.

1 As of this date, there are two (2) Class Notices that remain undeliverable. (Romo Dec. ¶ 9)

2 The deadline for Class Members to submit a Request for Exclusion from the Settlement,
3 Object to the Settlement, or Workweeks Dispute was March 7, 2025. (Romo Dec. ¶ 11). The
4 settlement received overwhelming support from Class Members. Not a single Class Member
5 objected to, requested exclusion from, or disputed the settlement. Romo Dec. ¶ 12-14). Therefore,
6 all Class Members are participating in the settlement, meaning 100% of the Class Members are
7 Participating Class Members.

8 **E. Distribution of Funds**

9 Defendant shall wire or otherwise provide to the Settlement Administrator the Gross
10 Settlement Amount no later than thirty (30) days of the Effective Final Settlement Date. (Exhibit
11 1 at Paragraph 21, Page 3, and Paragraph 81.1, Page 22). The Effective Final Settlement Date will
12 be when the final approval of the settlement can no longer be appealed, or, if there are no objectors
13 and no plaintiffs in intervention at the time the court grants final approval of the settlement, the
14 date the Court enters judgment granting final approval of the settlement. (Exhibit 1 at Paragraph
15 18, Page 3).

16 Within fourteen (14) days after the Settlement Administrator's receipt of the Gross
17 Settlement Amount, the Settlement Administrator shall disburse: (1) the Net Settlement Amount
18 to be paid to Participating Class Members; (2) the Net PAGA Settlement Amount to Aggrieved
19 Employees; (3) the Attorney Fee Award and Cost Award to Class Counsel for attorneys' fees and
20 costs, as approved by the Court; (4) the Class Representative Enhancement Payment paid to the
21 Class Representative, as approved by the Court; (5) the Administration Costs, as approved by the
22 Court; and (6) the LWDA Payment to the LWDA. (Exhibit 1 at Paragraph 17, Page 3, and
23 Paragraph 81.2, Page 22).

24 Participating Class Members and Aggrieved Employees must cash or deposit their
25 Individual Settlement Share checks within one hundred and eighty (180) calendar days after the
26 checks are mailed to them. If any checks are not redeemed or deposited within ninety (90) calendar
27 days after mailing, the Settlement Administrator will send a reminder postcard indicating that
28 unless the check is redeemed or deposited in the next ninety (90) days, it will expire and become

1 non-negotiable, and offer to replace the check if it was lost or misplaced. If any checks remain
2 uncashed or not deposited by the expiration of the ninety (90) day period after mailing the reminder
3 notice, the Settlement Administrator will, within two hundred (200) calendar days after the checks
4 are mailed, cancel the checks. All funds associated with the Individual Settlement Share checks
5 returned as undeliverable and funds associated with those checks remaining un-cashed shall be
6 sent to the The United Way, which is a non-profit organization that supports projects that benefit
7 employees and applicants throughout the State of California, thereby leaving no “unpaid residue”
8 subject to the requirements of Code of Civil Procedure section 384, subdivision (b). The Parties
9 agree that designating The United Way as the *cy pres* beneficiary will further the purposes of the
10 underlying class proceedings in this action will promote justice for all Californians. (Exhibit 1 at
11 Paragraph 77, Pages 22-23).

12 **IV. ARGUMENT**

13 **A. The Settlement is Fair, Reasonable, and Adequate and Satisfies the Standard for** 14 **Final Approval**

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

21 In deciding whether to approve a class settlement, a court evaluates whether the proposed
22 settlement is “fair, adequate, and reasonable.” *Dunk v. Ford Motor Co.* (1996) 48 Cal. App. 4th
23 1794, 1801 (citing *Officers for Justice v. Civil Serv. Comm’n of City & Cnty. of S.F.* (9th Cir. 1982)
24 688 F.2d 615, 625); *Cho v. Seagate Tech. Holdings, Inc.* (2009) 177 Cal. App. 4th 734, 742 43. A
25 court enjoys broad discretion to make its fairness determination. *Dunk*, 48 Cal. App. 4th at 1801.
26 However, “a presumption of fairness exists where: (1) the settlement is reached through arm’s-
27 length bargaining; (2) investigation and discovery are sufficient to allow counsel and the court to
28 act intelligently; (3) counsel is experienced in similar litigation; and (4) the percentage of objectors

1 is small.” *Dunk*, 48 Cal. App. 4th at 1802; accord *Wershba*, 91 Cal. App. 4th at 245. In addition, a
2 court should consider additional relevant factors, including the strength of the plaintiff’s case
3 compared to the settlement amount; the risk, expenses, complexity, and likely duration of further
4 litigation; and the fair treatment of class members in relation to each other. *Dunk*, 48 Cal. App. 4th
5 at 1802; see also *In re Microsoft I-V Cases* (2006) 135 Cal. App. 4th 706, 723; see also *Boyd v.*
6 *Bechtel Corp.* (N.D. Cal. 1979) 485 F. Supp. 610, 617.

7 At the time of preliminary approval, the Court was provided with sufficient information to
8 satisfy three of the four *Dunk* factors, leaving the fourth factor, the number of objectors, unknown
9 until after the Class had an opportunity to respond to the settlement.⁷ Subject only to the Class’s
10 reaction to the settlement, the Court preliminarily presumed the settlement was fair, adequate and
11 reasonable. Not a single objection to the settlement has been submitted by any Class Member to
12 the Settlement Administrator. Thus, the settlement is entitled to the presumption that it is fair and
13 in all other respects proper and should be finally approved.

14 **B. The Court Should Approve the Requested Fees and Costs**

15 **i. The Requested Fee Award is Fair and Reasonable, Calculated as a**
16 **Percentage of a Common Fund**

17 Class Counsel applies for an award of attorneys’ fees in the sum of \$150,000 (33 1/3% of
18 the GSA), and litigation costs of \$18,765.04 (originally estimated not to exceed \$20,000). (Mara
19 Dec. ¶ 18). California courts have recognized an appropriate method for determining an award of
20 attorneys’ fees is based on a percentage of the total value of benefits to Class Members by the
21 settlement, also known as the “common fund” method. *Serrano v. Priest* (1977) 20 Cal.3d 25, 34
22 (*Serrano III*) 34 (“when a number of persons are entitled in common to a specific fund, and an
23 action brought by a plaintiff or plaintiffs for the benefit of all results in the creation or preservation
24 of that fund, such plaintiff or plaintiffs may be awarded attorney’s fees out of the fund.”); *Serrano*
25 *v. Unruh*, 32 Cal.3d 621, 627 (1982) (in awarding a fee from the common fund obtained for the

26 _____
27 ⁷ See Memorandum of Points and Authorities in Support of Motion for Preliminary Approval, pages 20-26. In addition
28 to the *Dunk* factors, Class Counsel also detailed the other factors such as the strengths of Plaintiff’s case, risks and
costs of further litigation, as well as the reasonableness of the GSA amount in light of *Kullar v. Foot Locker Retail,*
Inc. (2008) 168 Cal.App.4th 116.

benefit of all parties, the trial court acts within its equitable power to prevent the other parties' unjust enrichment.); *Rawlings v. Prudential-Bache Properties, Inc.*, 9 F.3d 513, 516 (6th Cir. 1993) (the percentage of the fund method for calculating attorney's fees more accurately reflects the results achieved for the putative class than the lodestar method and "establishes reasonable expectations on the part of plaintiffs' attorneys as to their expected recovery; and it encourages early settlement, which avoids protracted litigation."); *In re Rite Aid Corp. Securities Litigation*, 396 F.3d 294, 300 (3d Cir. 2005) ("The percentage-of-recovery method is generally favored in common fund cases because it allows courts to award fees from the fund 'in a manner that rewards counsel for success and penalizes it for failure.'").

The purpose of the common fund/percentage 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, 167, the 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." Similarly, in *City and County of San Francisco v. Sweet* (1995) 12 Cal.4th 105, 110, 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." The reasons for applying the common fund doctrine include: "...fairness to the successful litigant, who might otherwise receive no benefit because his recovery might be consumed by the expenses; correlative prevention of an unfair advantage to the others who are entitled to share in the fund and who should bear their share of the burden of its recovery; encouragement of the attorney for the successful litigant, who will be more willing to undertake and diligently prosecute proper litigation for the protection or recovery of the fund if he is assured that he will be properly and directly compensated should his efforts be successful." *Id.*

Indeed, the California Supreme Court confirmed in *Laffitte v. Robert Half Int'l, Inc.* that using the percentage method has many advantages:

The recognized advantages of the percentage method - including relative ease of

1 calculation, alignment of incentives between counsel and the class, a better
2 approximation of market conditions in a contingency case, and the encouragement
3 it provides counsel to seek an early settlement and avoid unnecessarily prolonging
4 the litigation—convince us the percentage method is a valuable tool that should not
5 be denied our trial courts.

6 *Id.* at 503 (internal citation omitted).⁸ Because there is a defined and traceable benefit to the Class,
7 the Court can base an award of attorneys’ fees using a ‘common fund’ approach.

8 Moreover, trial courts have “wide latitude” in assessing the value of attorneys’ fees and
9 their decisions will “not be disturbed on appeal absent a manifest abuse of discretion.” *Lealao*
10 *v. Beneficial Cal., Inc.* (2000) 82 Cal.App.4th 19, 41; *Ketchum v. Moses* (2001) 24 Cal.4th 1122,
11 1132 (The “experienced trial judge is the best judge of the value of professional services rendered
12 in his court[.]”); *Cellphone Termination Fee Cases* (2009) 180 Cal.App.4th 1110, 1118.

13 California law provides that an attorneys’ fee award should be equivalent to fees paid in
14 the legal marketplace for the result achieved and risk incurred. *Id.* at 47-50; *Laffitte v. Robert Half*
15 *Int’l, Inc.* (2016) 1 Cal.5th 480, 503. In *Lealao*, the court held that when an action leads to a
16 recovery that can be “monetized” with a reasonable degree of certainty, the trial court should
17 “ensure that the fee awarded is within the range of fees freely negotiated in the legal marketplace
18 in comparable litigation.” *Lealao, supra*, 82 Cal.App.4th at 50. Fee awards that are too small will
19 “chill the private enforcement essential to the vindication of many legal rights and obstruct the
20 representative actions that often relieve the courts of the need to separately adjudicate numerous
21 claims.” *Lealao, supra*, 82 Cal.App.4th at 53. Therefore, fees in class and representative actions
22 should approximate the probable terms of a contingent fee contract negotiated by a sophisticated
23 attorney and client in comparable litigation. *Id.* at 48.

24 “The ultimate goal . . . is the award of a ‘reasonable’ fee to compensate counsel for their
25 efforts, irrespective of the method of calculation.” *Consumer Privacy Cases* (2009) 175
26 Cal.App.4th 545, 557-58 (quoting *Apple Computer, Inc. v. Superior Court, supra*, 126 Cal.App.4th
27 at 1270). It is not an abuse of discretion to choose one method over another as long as the method

28 ⁸ *Laffitte* also held trial courts have discretion to assess reasonableness of fee awards with tools such as the lodestar cross-check, although they need not do so. *Laffitte*, 1 Cal.5th at 506 (“We hold further that trial courts have discretion to conduct a lodestar cross-check on a percentage fee . . . they also retain the discretion to forgo a lodestar cross-check and use other means to evaluate the reasonableness of a requested percentage fee”).

1 chosen is applied consistently using percentage figures and/or rates that accurately reflect the
2 marketplace. In cases where class members present claims against a settlement amount and the
3 settlement agreement provides that the defendant agrees to paying the attorneys a percentage of
4 the same, use of that percentage method is appropriate. *Lealao, supra*, 82 Cal.App.4th at 32.

5 Where the amount of a settlement is a “certain easily calculable sum of money,” California
6 courts may calculate attorneys’ fees as a reasonable percentage of the settlement. Weil and Brown,
7 California Practice Guide, Civil Procedure Before Trial, Chapter 14, § 14:145; *Dunk, supra*, 48
8 Cal.App.4th at 1808. The percentage-of-the-benefit approach is preferred in class and
9 representative actions because “it better approximates the workings of the marketplace than the
10 lodestar approach.” *Lealao, supra*, 82 Cal.App.4th at 49. The purpose of the common
11 fund/percentage approach is to “spread litigation costs proportionally among all the beneficiaries
12 so that the active beneficiary does not bear the entire burden alone.” *Vincent, supra*, 557 F.2d at
13 769.

14 Courts have consistently recognized that class action litigation is increasingly necessary to
15 protect the rights of individuals whose injuries and/or damages are too small to economically
16 justify legal action on an individual basis. Accordingly, in determining a reasonable fee award,
17 courts award fees to serve as an economic incentive for lawyers to pursue such litigation in order
18 to achieve increased access to the judicial system for meritorious claims and to enhance deterrents
19 to wrongdoing. This is especially true in situations where multiple similar alleged wrongs would
20 not be economically feasible to pursue individually, such as here. *See A. Conte, Attorney Fee*
21 *Awards* (2d Ed., 1993) 104, at 6.

22 When the lawsuit was originally filed, the prospect of a long, drawn-out battle with a
23 defendant represented by experienced counsel, was almost a certainty. By taking on this “battle”
24 on a contingency basis, Class Counsel risked substantial economic loss if the results were not
25 successful. This substantial risk is the reason that the courts approve the use of the percentage
26 method when a settlement is obtained by the efforts of class counsel. *See Vizcaino v. Microsoft*
27 (9th Cir. 2002) 290 F.3d 1043, 1048-49 (quotations omitted) (discussing the risks of engaging in
28 litigation without certainty of compensation).

Under the terms of the Agreement, Defendant will pay a Gross Settlement Amount of

1 \$450,000. An award of attorneys' fees is to be calculated as a percentage of the total value of
2 benefits made available to the Class Members under the settlement. In light of Class Counsel's
3 prosecution and resolution of the case, the requested Attorneys' Fees are appropriate and
4 reasonable.

5 Compensating class counsel in class litigation on a percentage basis makes good sense
6 because: (1) it is consistent with the private marketplace where contingent fee attorneys are
7 customarily compensated on such a basis; (2) it aligns the interests of class counsel and absent
8 class members in achieving the maximum possible resolution of the case; and (3) it encourages
9 the most efficient and expeditious resolution of the litigation by providing an incentive for early,
10 yet reasonable, settlement. The requested Attorneys' Fees in this matter satisfies all of those factors
11 and should be approved on a percentage basis.

12 Class Counsel have obtained a substantial recovery on behalf of Plaintiff and the Class.
13 Thus, the requested Class Counsel Fees Payment is appropriate. In short, Class Counsel's fee
14 request of \$150,000 (which represents 33 1/3% of the GSA) is in line with awards in similar cases
15 in California and nationwide and demonstrates that Class Counsel's fee request is consistent with
16 market rates and is reasonable.

17 **ii. The Requested Attorney's Fee and Cost Award is Within the Range of Fees**
18 **Approved in Comparable Common Fund Cases**

19 Several studies of class action fee awards have found that the median common fund fee
20 award is approximately one-third of the total settlement fund.⁹ The requested fee of 1/3 of the gross
21 settlement amount falls within that median common fund fee award, and it constitutes fair
22 compensation for undertaking complex, risky, expensive, uncertain, and time-consuming litigation
23 on a contingent basis and compensates Class Counsel for their efforts, as well as the result achieved
24 for the benefit of the Class. Numerous state and federal courts in California routinely approve fee
25 requests equal to or greater than 33 1/3% of the common fund. Indeed, courts have found that an

26 ⁹See, e.g., *Chavez v. Netflix, Inc.* (2008) 162 Cal. App. 4th 43, 66, n.11 (numerous studies have shown that "fee awards
27 in class actions average around one-third of the recovery."); Reagan W. Silber and Frank E. Goodrich, *Common Funds*
28 *and Common Problems: Fee Objections and Class Counsel's Response*, 17 Rev. Litig. 525, 546 ; T. Willging, L.
Hooper and R. Niemic, *Empirical Study of Class Actions in Four Federal District Courts: Final Report to the*
Advisory Committee on Civil Rules, 90 (1996) (finding that attorneys' fees in class litigation "were generally in the
traditional range of approximately one-third of the total settlement").

award of 33 1/3% of the common fund represents the “benchmark” in California.¹⁰ In short, Class Counsel’s fee request of \$150,000 (which represents 33 1/3% of the GSA) is in line with awards in similar cases in California and nationwide and demonstrates that Class Counsel’s fee request is consistent with market rates and is reasonable.

iii. A Lodestar Cross-Check Confirms the Reasonableness of the Requested Fee

Class Counsel’s fee request is reasonable when calculated using the lodestar method. Under the lodestar method, a base fee amount is calculated from a compilation of time reasonably spent on the case and the reasonable hourly compensation of the attorney. *Serrano v. Priest* (1977) 20 Cal. 3d 25, 48. The court then enhances this lodestar figure by a “multiplier” to account for a range of factors, such as the novelty and difficulty of the case, its contingent nature, and the degree of success achieved. *Id.* at 49; see also *Ketchum v. Moses* (2001) Cal.4th 1122, 1132-36; *PLCM Group, Inc. v. Drexler* (2000) 22 Cal.4th 1084, 1096; *Thayer v. Wells Fargo Bank* (2001) 92 Cal.App.4th 819, 834, (“[t]here is no ... rule limiting the factors that may justify an exercise of judicial discretion to [adjust the] lodestar”).

Class Counsel has worked 240 hours to date on this case and have calculated the lodestar fee on those hours at \$168,950 at rates reflecting those currently earned in the marketplace. (Mara Dec. ¶ 19, Exhibit 5). Class Counsel respectfully requests attorneys’ fees in the amount of \$150,000 (33 1/3% of the GSA). As Class Counsel’s lodestar fee is in excess of their fee request, a multiplier on their lodestar fee is not sought herein. In fact, the requested fee results in a so-called “negative multiplier” which suggests the percentage of the fund amount is reasonable and fair. See *Chun-Hoon v. McKee Foods Corp.* (N.D. Cal. 2010) 716 F.Supp.2d 848, 854; *In re Portal Software, Inc. Securities Litigation* (N.D. Cal. 2007) 2007 U.S. Dist. LEXIS 88886, 2007 WL 4171201, at *16.

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¹⁰ *Smith v. CRST Van Expedited, Inc.* (S.D. Cal. Jan. 14, 2013) 10-CV-1116-IEG WMC, 2013 WL 163293, *5 (“These percentages compare favorably with both California (33%) and federal (25%) benchmarks.”); *Dennis v. Kellogg Co.* (S.D. Cal. Nov. 14, 2013) 09-CV-1786-L WMC, 2013 WL 6055326, at *7 (“This percentage compares favorably with both California (33%) and federal (25%) benchmarks and the requested fee compares well with a lodestar cross-check as well.”).

1 **iv. Class Counsel's Hourly Rates are Reasonable**

2 Class Counsel's hourly rates are between \$400 and \$850 and are in line with rates typically
3 approved in wage and hour class action litigation and which rates have been approved by Courts
4 in California in the Los Angeles, Sacramento, San Francisco, Alameda, Orange and San Diego
5 County Superior Courts. (Mara Dec. ¶ 22; Exhibit 2, Westlaw Court Express's Legal Billing
6 Report, Volume 14, Number 3, California Region for December 2012; Exhibit 3, 2014 Declaration
7 of Richard M. Pearl in *Hohnbaum v. Brinker Restaurant Corp.* SDSC GIC834348; Exhibit 4, 2012
8 National Law Journal Survey of Hourly Billing Rates for Partners and Associates).

9 Class Counsel's skill and experience support their hourly rates. Their practice is limited
10 exclusively to litigation, focusing on the representation of employees in wage and hour and
11 consumer class action matters. (Mara Dec. ¶¶ 23-33). As leading attorneys in the field of wage and
12 hour class action litigation, Plaintiff's counsel continually monitors the prevailing market rates
13 charged by both defense and plaintiff law firms and set the billing rates of their attorneys and
14 paralegals/law clerks to be consistent with the prevailing market rates in the private sector for
15 attorneys and staff of comparable skill, qualifications and experience. Therefore, as they are in line
16 with those of the relevant community, Class Counsel's hourly rates are reasonable.

17 **v. Class Counsel's Total Hours are Reasonable**

18 In determining a lodestar fee, reasonable hours include, in addition to time spent during
19 litigation, the time spent before the action was filed, including time spent interviewing clients,
20 investigating the facts and law, and preparing the pleadings. See *New York Gaslight Club, Inc. v.*
21 *Carey* (1980) 447 U.S. 54, 62; *Vo v. Las Virgenes Municipal Water Dist.* (2000) 79 Cal.App.4th
22 440, 447. Further, the fee award should include fees incurred to establish and defend the attorneys'
23 fee claim. *Serrano v. Priest* (1982) 32 Cal.3d 621, 639 ("*Serrano IV*"). Under California law,
24 counsel is entitled to compensation for every hour reasonably spent on the matter. *Id.* at 1133.

25 Class Counsel has expended a total of 240 hours on this case. The work performed by Class
26 Counsel in order to achieve a settlement that will provide valuable consideration to the Class,
27 averaging a \$1,888.14 settlement payment per Class Member, with the highest estimated award
28 being \$4,123.63, is outlined by Class Counsel in the declarations submitted herewith. (Romo Dec.

¶ 17). Class Counsel have been actively involved in this case, prior to the commencement of this action and all the way up to the present, and Class Counsel's dedication to providing representation in the case has precluded other employment. Here, Class Counsel's many tasks, in summary form, included the following: pre-filing investigation and legal research; communicating with the Class Representative; discussions with Class Members; researching and investigating California's ever-evolving wage and hour laws regarding compensation, overtime, meal and rest periods, itemized wage statements, waiting time penalties, and California's Unfair Competition Law; conducting investigation into Defendant's pay-structures, policies for its non-exempt employees; drafting and filing pleadings; drafting and uploading notice to the Labor and Workforce Development Agency; drafting discovery to propound on Defendant; drafting stipulations; engaging in conferences with Defense Counsel; drafting Case Management Conference statements; appearing at Case Management Conferences; analyzing records produced by Defendant including a sampling of Class Member time and pay records; drafting the mediation brief and performing mediation damages and exposure models; preparing for and attending mediation; drafting and revising the settlement agreement and the Notice to the Class; drafting preliminary approval papers; working with Settlement Administrator on the notice process; reviewing, revising, and proofing Notice papers from the Settlement Administrator; preparing for and appearing at preliminary approval hearing; reviewing weekly status reports from the Settlement Administrator regarding Class participation; reviewing and editing the Settlement Administrator's declaration; drafting final approval papers, and preparing for and appearing at the Final Approval Hearing. (Mara Dec. ¶¶ 23, 28, 32).

Class Counsel bore the risk that, despite all of their efforts and skills employed, there may be no recovery. All of the work performed was reasonable and necessary to the prosecution of this case. The work performed was particularly justified, in light of the result achieved.

vi. Costs of Litigation

Class Counsel seeks reimbursement of the litigation costs and expenses of \$18,765.04. (Mara Dec. ¶ 34, Exhibit 5). These costs were all reasonable and necessary to the prosecution of this case and the results achieved and are fair and reasonable.

1 **C. The Class Representative Enhancement Payment is Reasonable**

2 Class Counsel seeks approval of the Class Representative Enhancement Payment to the
3 named Plaintiff in the sum of \$5,000. In agreeing to the settlement, Plaintiff has agreed to a general
4 release of his claims against Defendant. This general release is far greater than the release being
5 given by other Class Members. This payment not only compensates Plaintiff for the work he
6 undertook in this case, but also for the claims and potential claims he may have against Defendant
7 that he are releasing. Since the inception of this case, Plaintiff has put the Class's interests ahead
8 of his own. This payment compensates Plaintiff for the claims that he forwent bringing for the
9 betterment of the Class Members.

10 There are also other factors supporting the request that Plaintiff receive \$5,000. The
11 requested Class Representative Enhancement Payment is reasonable in light of the benefits
12 Plaintiff has conferred upon the entire Class, resulting in payments averaging at \$1,888.14 with a
13 high payment of \$4,123.63. The requested award is appropriate and reasonable based upon
14 Plaintiff's time and effort expended on this case, the risks he faced, and the outcome of this case.
15 Plaintiff has submitted declarations detailing the efforts and time he expended on behalf of the
16 Class in order to advance this case to its successful conclusion. There is no question that this case
17 would not have reached the same result but for Plaintiff's involvement and input at all stages of
18 the litigation.

19 It should be noted that service awards are particularly important to plaintiffs in wage and
20 hour cases because they promote the important public policies underlying the wage and hour laws.
21 This strong policy is codified in California Labor Code § 90.5, which provides that "[i]t is the
22 policy of this state to vigorously enforce minimum labor standards in order to ensure employees
23 are not required or permitted to work under substandard unlawful conditions . . ." Cal. Lab. Code
24 § 90.5. Nonetheless, the California Supreme Court has noted that "retaliation against employees
25 for asserting statutory rights under the Labor Code is widespread," despite anti-retaliation statutes
26 designed to protect employees. *Gentry v. Super. Ct.* (2007) 42 Cal.4th 443, 460–61. In this context,
27 class representatives should be rewarded for assuming the risk of retaliation for the sake of class
28 members. *See Frank v. Eastman Kodak Co.* (W.D.N.Y. 2005) 228 F.R.D. 174, 187.

1 In addition, there are few individuals that are willing to act as a class representative and
2 provide the work, diligence, and willingness to assume a substantial financial risk should
3 Defendant have prevailed in this case. Plaintiff's willingness to assume the financial risk is
4 significant. Plaintiff risked a potential judgment taken against him for attorneys' fees and costs if
5 this matter had not been successfully concluded. Case law holds that a losing party is liable for the
6 prevailing party's costs, *Early v. Superior Court*, 79 Cal.App.4th 1420, 1433 (2000), and in some
7 wage and hour actions, such as this case, pursuant to California Labor Code § 218.5, for attorneys'
8 fees as well. Though the fee agreement provides that Class Counsel would pay such costs, Plaintiff
9 would nevertheless have had a cost bill entered against him leaving him ultimately liable for
10 potentially hundreds of thousands of dollars in the unexpected possibility that Class Counsel did
11 not meet their obligation to cover those costs. Unfortunately, there have been several judgments
12 entered against class representatives, e.g. *Koehl v. Verio, Inc.* 142 Cal.App.4th 1313, 1328 (2006)
13 (a wage and hour class action where Defendant prevailed at trial, the named plaintiffs were held
14 liable, jointly and severally for the Defendant's attorneys' fees); *Whiteway v. Fedex Kinkos Office*
15 *& Print Services, Inc.*, 2007 U.S. Dist. LEXIS 95398 (N.D. Cal. 2007) (a wage and hour
16 misclassification case lost on summary judgment, after the case was certified, the named Plaintiff
17 was assessed costs in the sum of \$56,788.). The risk of payment of Defendant's costs, in itself
18 alone, is a sufficient basis for an award of the requested enhancement sum. Few individuals are
19 willing to take this risk, and it is clear that Plaintiff, here, championed a cause on behalf of others
20 with potentially huge monetary risks.

21 Courts routinely approve service payments, or incentive awards, to compensate named
22 plaintiffs for the services they provide and the risks they incur during class litigation. See *In re*
23 *Cellphone Fee Termination Cases* (2010) 186 Cal. App. 4th 1380, 1393; see also *Bell v. Farmers*
24 *Ins. Exch.* (2004) 115 Cal. App. 4th 715, 725-26 (upholding service payments to class
25 representatives); Manual § 21.62 n.971 (noting that service payments are warranted); *Cook v.*
26 *Niedert*, 142 F.3d 1004, 1015 (7th Cir. 1998); *Roberts v. Texaco*, 979 F. Supp. 185 (S.D.N.Y.
27 1997) ("present or past employee whose present position or employment credentials or
28 recommendation may be at risk by reason of having prosecuted the suit, who therefore lends his

1 or her name and efforts to the prosecution of litigation at some personal peril, a substantial
2 enhancement award is justified”); *Thornton v. East Texas Motor Freight*, 497 F.2d 416, 420 (6th
3 Cir. 1974) (“We also think there is something to be said for rewarding those drivers who protect
4 and help to bring rights to a group of employees who have been the victims of discrimination.”).

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

13 Based on the foregoing, the \$5,000 Class Representative Enhancement Payment to the
14 Class Representative is fair, appropriate, and justified in light of the work performed, risks
15 undertaken for payment of fees and costs if this case had not been successfully concluded, stigma
16 on future employment opportunities, and the benefits all Class Members.

17 **D. The Administration Costs are Reasonable**

18 The Court-approved Settlement Administrator was responsible for formatting, printing and
19 mailing the Class Notices. The Settlement Administrator was responsible for responding to Class
20 Member inquiries, providing weekly status reports, answering questions from Counsel for the
21 Parties, and providing a declaration to document its duties and responsibilities under the
22 settlement. Plaintiffs now request that the Court finally approve the Settlement Administration
23 Costs in the amount of \$7,000 to Simpluris for services rendered and to be rendered for the notice
24 and settlement administration process.

25 Following the grant of final approval, the Settlement Administrator’s duties will continue
26 in order to calculate and mail the individual settlement payments to Participating Class Members,
27 perform tax reporting obligations, disburse other payments as ordered by the Court, and perform
28 such other duties as set forth in the Agreement. Administration Costs in the amount of \$7,000 to

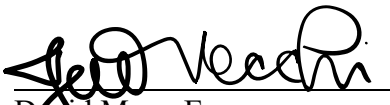
1 Simpluris for services rendered and to be rendered is fair and reasonable and should be granted.

2 **V. CONCLUSION**

3 Based on the foregoing, Class Counsel respectfully requests the Court grant final approval
4 of the settlement, and award Class Counsel attorneys' fees in the sum of \$150,000 and litigation
5 expenses of \$18,765.04 to Class Counsel, Class Representative Enhancement Payment in the sum
6 of \$5,000 to Plaintiff, Administration Costs in the amount of \$7,000 to Simpluris, and a payment
7 to the LWDA in the amount of \$15,000 (which is 75% of \$20,000 allocated to Plaintiff's claims
8 under PAGA).

9
10
11 Date: April 3, 2025

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