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Superior Court of California
County of Los Angeles

OCT 16 2017

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on behalf of all others similarly situated

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES – CENTRAL CIVIL WEST

SANDER GARZO, an individual, on
behalf of himself and all others similarly
situated,

Plaintiff,

vs.

METRO SERVICES GROUP, a California
limited liability company; and DOES 1
through 50, inclusive,

Defendants.

Case No. BC618119

CLASS ACTION

[Assigned for all purposes to the Honorable
Ann I. Jones, Dept. 308]

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

Date: November 7, 2017
Time: 9:00 a.m.
Dept.: 308

Action Filed: April 22, 2016
Trial Date: None Set

BY FAX

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1 TO THE COURT, ALL PARTIES, AND THEIR ATTORNEYS OF RECORD:

2 PLEASE TAKE NOTICE that, on November 7, 2017 at 9:00 a.m., in Department 308 of the Los
3 Angeles Superior Court, Central Civil West Courthouse, located at 600 South Commonwealth Avenue,
4 Los Angeles, California 90005, Plaintiff Sander Garzo will, and hereby does, move this Court for entry
5 of an order providing for the following:

6 1. Granting final approval of the terms of the Stipulation of Class Action Settlement
7 (“Settlement” or “Settlement Agreement”) as fair, adequate, and reasonable to all parties and to all Class
8 Members;

9 2. Finally certifying the class for settlement purposes only;

10 3. Finding that the notice distributed to Class Members, pursuant to the Court’s June 30,
11 2017 Order Granting Motion for Preliminary Approval of Class Action Settlement, constituted the best
12 notice practicable under the circumstances;

13 4. Approving Individual Settlement Payments to Participating Class Members pursuant to
14 the terms of the Settlement;

15 5. Approving a payment to the California Labor and Workforce Development Agency
16 (“LWDA”) in the amount of \$7,500.00 for penalties under the Labor Code Private Attorneys General Act
17 of 2004 (“PAGA”);

18 6. Approving payment of a Class Representative Service Award to Plaintiff in the amount of
19 \$8,000.00;

20 7. Awarding Class Counsel attorney fees in the amount of \$125,000.00 (*which is over*
21 *\$34,000.00 less than Class Counsel’s lodestar*) and reimbursement of reasonable litigation costs in the
22 amount of \$17,810.35 (also well under the \$20,000.00 stipulated limit); and

23 8. Approving payment of Settlement Administration Costs to Simpluris, Inc. in the amount
24 of \$21,500.00.

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1 This motion is made on the grounds that the proposed Settlement is fair, adequate, and reasonable
2 and is in the best interest of the Class Members. The motion is based upon this Notice, the attached
3 Memorandum of Points and Authorities, the Declarations of Matthew J. Matern, Sander Garzo and
4 Jeremiah Kincannon, the complete files and records of this case, and any other evidence or oral argument
5 which may be considered by the Court at the time of the hearing.
6

7 DATED: October 16, 2017

Respectfully submitted,

MATERN LAW GROUP, PC



By:

MATTHEW J. MATERN
MATTHEW W. GORDON
BRAUNSON C. VIRJEE
Attorneys for Plaintiff
SANDER GARZO, individually and on
behalf of all others similarly situated

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiff Sander Garzo (“Plaintiff”), individually, and on behalf of all other similarly situated
4 current and former employees of Defendants Metro Services Group, Metro Services South, Inc., Metro
5 Maintenance, Inc., Metro Express of Northern California, Inc., Pro Forma Business Services, LLC, and
6 Leeding Edge Consulting Services, LLC d/b/a Leading Edge Consulting Services, LLC (“Defendants”)
7 seek final approval of an all-inclusive, non-reversionary settlement with Defendants (collectively “the
8 Parties”) of a wage and hour class action (“Action”) for Three Hundred and Seventy-Five Thousand
9 Dollars (\$375,000.00). On June 30, 2017, the Court granted preliminary approval of the Settlement. The
10 proposed Settlement will dispose of this action in its entirety as to the following class: “All persons
11 employed as non-exempt employees by Defendants in the State of California at any time from April 22,
12 2012 through March 20, 2017.” Declaration of Matthew J. Matern, Ex. A (“Settlement”) at ¶¶ 5, 7.

13 A presumption of fairness exists as: (1) the Settlement was reached through multiple extensive,
14 mediated arm’s-length negotiations; (2) Class Counsel, Matern Law Group, PC (“MLG”) is experienced
15 in similar wage-and-hour class litigation and conducted extensive investigation and discovery which
16 allowed them to act intelligently in reaching the Settlement; and (3) as of the date of filing this motion,
17 there are no objections to the settlement by Class Members.

18 Furthermore, Plaintiff’s request for \$125,000.00 in attorney’s fees and reimbursement of
19 litigation costs in the amount of \$17,810.35 is reasonable. The amount of attorney’s fees, which is
20 one-third of the Maximum Settlement Amount, is well within the range generally sought and approved
21 in class actions. The requested fee award is also reasonable based upon a cross-check of Class
22 Counsel’s total lodestar of \$159,170.00, with 300.80 billable hours at customary hourly rates.

23 Thus, the proposed settlement is fair, reasonable, and adequate, and is in the best interest of the
24 Class Members. Accordingly, Plaintiff requests that the Court grant final approval of the Settlement.

25 **II. FACTUAL AND PROCEDURAL BACKGROUND**

26 **A. The Parties**

27 Defendants provide janitorial, engineering, and sustainability consulting services for
28 commercial buildings and facilities throughout California. Plaintiff is a former non-exempt employee

1 who worked as a janitor for Defendants in Los Angeles from October 2008 to November 2015. Matern
2 Decl. ¶ 3.

3 **B. Procedural History**

4 On April 22, 2016, Plaintiff filed this Action. *Id.* at ¶ 4. On February 21, 2017, Plaintiff
5 amended the complaint to name Metro Services South, Inc., Metro Maintenance, Inc., Metro Express
6 of Northern California, Inc., Pro Forma Business Services, LLC, and Leading Edge Consulting
7 Services, LLC d/b/a Leading Edge Consulting Services, LLC in place of Does 1 through 5. The
8 operative complaint alleges the following causes of action: (1) Failure to Provide Required Meal
9 Periods; (2) Failure to Provide Required Rest Periods; (3) Failure to Pay Overtime Wages; (4) Failure
10 to Pay Minimum Wages; (5) Failure to Pay All Wages Due to Discharged and Quitting Employees; (6)
11 Failure to Maintain Required Records; (7) Failure to Furnish Accurate Itemized Wage Statements; (8)
12 Failure to Indemnify Employees for Necessary Expenditures Incurred in Discharge of Duties; (9)
13 Unfair and Unlawful Business Practices; and (10) Representative Action for Penalties under the
14 PAGA. *Id.* at ¶ 5.

15 **C. Discovery and Investigation**

16 Prior to the Settlement, Class Counsel conducted an investigation into Plaintiff's claims,
17 conducted legal research, and engaged in extensive informal discovery, including obtaining nearly
18 7,000 pages of time records, payroll records, and employment records from Defendants. Defendants
19 also produced approximately 10 collective bargaining agreements as well as employee handbook and
20 wage and hour policy documents. Class Counsel deposed Defendants' Persons Most Qualified on two
21 days and prepared and defended Plaintiff at his full-day deposition. Plaintiff retained a statistical expert
22 who analyzed the time and payroll data which was instrumental for the mediation. Based upon this
23 information, Class Counsel was able to act intelligently and effectively in negotiating the proposed
24 Settlement. *Id.* at ¶ 6.

25 **D. Mediation**

26 The Parties participated in mediation on January 18, 2017 with Jeffrey Krivis, Esq., an
27 experienced and respected mediator. At the conclusion of the mediation, with Mr. Krivis' assistance,
28 ///

1 the Parties entered into a Settlement Term Sheet, and, on April 7, 2017, the Parties entered into a long-
2 term Settlement Agreement that would fully resolve the matter. *Id.* at ¶ 7, Ex. A.

3 **III. SUMMARY OF SETTLEMENT**

4 **A. The Class**

5 The Class is comprised of all of Defendants’ non-exempt employees in the State of California at
6 any time from April 22, 2012 through March 20, 2017 (“Class Members”). Settlement ¶¶ 5, 7.

7 **B. Settlement Terms**

8 The claims of all Participating Class Members shall be settled for the Maximum Settlement
9 Amount of \$375,000.00, which shall be allocated as follows:

10 **1. Individual Settlement Payments.**

11 Participating Class Members shall not be required to submit a claim in order to receive an
12 Individual Settlement Payment, and no portion of the Maximum Settlement Amount shall revert to
13 Defendant. Settlement ¶ 48. The Individual Settlement Payments shall be calculated as follows:
14 Defendants shall provide the Settlement Administrator with the Individual Workweeks Worked for each
15 Participating Class Member; the Settlement Administrator shall then (1) divide the Individual
16 Workweeks Worked by the Total Workweeks Worked, and (2) multiply the result in (1) by the Net
17 Settlement Amount. The Individual Settlement Payment will be reduced by any required legal
18 deductions for each Participating Class Member. Settlement ¶ 48(a). Each Individual Settlement
19 Payment shall be allocated as follows: (1) 20% as wages; and (2) 80% as penalties, expenses and
20 interest. Settlement ¶ 48(a). Defendants’ share of payroll taxes shall be deducted from the Maximum
21 Settlement Amount. Settlement ¶ 20. Any uncashed checks after ninety (90) days shall be transmitted
22 to the Department of Industrial Relations Unpaid Wage Fund. Settlement ¶ 48(a)(iv).

23 **2. Class Representative Incentive Award.**

24 Subject to Court approval, in recognition of Plaintiff’s efforts and risks in prosecuting this matter,
25 and for releasing his claims, Plaintiff shall be paid a Class Representative Service Award not to exceed
26 \$8,000.00. Settlement ¶ 48(c).

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1 **3. Payment to the LWDA.**

2 Subject to Court approval, \$10,000.00 from the Maximum Settlement Amount shall be allocated
3 to penalties under PAGA, 75% of which (\$7,500.00) shall be paid by the Settlement Administrator to the
4 LWDA, with the remaining 25% (\$2,500.00) becoming part of the Net Settlement Amount. Settlement ¶
5 48(f).

6 **4. Settlement Administration Costs.**

7 Subject to Court approval, the Settlement Administrator shall be paid the reasonable costs and
8 fees of administration of the Settlement, not to exceed \$21,500.00. Settlement ¶ 48(e).

9 **5. Class Counsel Fees and Expenses.**

10 Subject to Court approval, Class Counsel shall receive reasonable attorney’s fees in an amount not
11 to exceed thirty-three and one-third percent (33 1/3%) of the Maximum Settlement Amount, or
12 \$125,000.00, plus reimbursement of reasonable litigation costs not to exceed actual costs. Settlement
13 ¶ 48(d). Class Counsel’s costs are \$17,810.35. Matern Decl. ¶ 34; Ex. C. The requested fee award is more
14 than \$40,000.00 less than Class Counsel’s lodestar. Matern Decl. ¶ 18

15 **IV. CLASS NOTICE WAS EFFECTUATED AND COMPORTS WITH CALIFORNIA LAW**
16 **AND DUE PROCESS**

17 To protect the right of absent class members, the trial court must provide the best notice
18 practicable to class members. *Phillips Petroleum Co. v. Shutts* (1985) 472 U.S. 797, 811-12; *Eisen v.*
19 *Carlisle & Jacquelin* (1974) 417 U.S. 156, 174-175. There is no requirement that all class members
20 receive actual notice, whether by mail or some other means; rather, “individual notice must be
21 provided to those class members who are identifiable through reasonable effort.” *Id.* at 175.

22 The notice plan, as approved by the court, has been implemented by Simpluris. On June 30,
23 2017, Simpluris received the court-approved Notice Packet from MLG. Kincannon Decl. ¶ 4. On July
24 17, 2017, Simpluris received a mailing list from Defendants’ counsel containing the class members’
25 names, last known addresses, social security numbers, and pertinent employment information (the “Class
26 List”) for 1,907 Class Members. *Id.* at ¶ 5. Simpluris updated the Class List using the National Change
27 of Address Database. *Id.* at ¶ 6. On August 1, 2017, the Notice Packets were mailed via U.S. First Class
28 mail to all 1,907 Class Members. *Id.* at ¶ 7. As of October 6, 2017, there are **zero (0) objections** and
only five (5) exclusion requests. *Id.* at ¶¶ 9-10. The deadline for Class Members to respond to the Notice

1 Packet was September 15, 2017. *Id.* ¶ 4, Ex. A at 4. If the Court approves the requested settlement
2 amounts, then the average estimated Individual Settlement Payment will be approximately \$97.58, with
3 the highest estimated Individual Settlement estimated to be approximately \$357.73. *Id.* ¶ 11.

4 **V. THE COURT SHOULD GRANT FINAL APPROVAL OF THE SETTLEMENT**

5 **A. The Settlement Is Entitled to a Presumption of Fairness**

6 A presumption of fairness exists where: (1) the settlement is reached through arm's length
7 bargaining; (2) investigation and discovery are sufficient to allow counsel and the court to act
8 intelligently; (3) counsel is experienced in similar litigation; and (4) the percentage of objectors is small.
9 *Dunk v. Ford Motor Company* (1996) 48 Cal.App.4th 1794, 1802. Because the proposed settlement was
10 reached through arm's-length negotiations, sufficient investigation and discovery allowed Class Counsel
11 to act intelligently, Class Counsel is experienced in wage-and-hour class actions, and there are no
12 objections to the settlement, the proposed settlement should be presumed to be fair.

13 **1. The Settlement Was Reached Through Arm's Length Bargaining.**

14 The Settlement was reached following a full day of mediation and settlement negotiations
15 which were at arm's length and, although conducted in a professional manner, were adversarial. The
16 Parties went into mediation willing to explore the potential for a settlement of the dispute, but each side
17 was prepared to litigate its position through trial and appeal if a settlement had not been reached.
18 Matern Decl. ¶ 13.

19 **2. Settlement Negotiations Were Conducted Based on Ample Investigation and
20 Discovery.**

21 MLG conducted extensive formal and informal discovery and investigation, including extensive
22 interviews with Plaintiff, obtaining thousands of pages of data and policy documents from Defendants,
23 including time and payroll data, collective bargaining agreements, employee handbooks, policy materials,
24 taking two PMQ depositions, preparing Plaintiff for deposition, defending Plaintiff's full-day deposition,
25 and retaining an expert to analyze the data and prepare a damages model. Matern Decl. ¶¶ 7-10.

26 **3. Class Counsel Has Extensive Experience in Wage and Hour Class Actions.**

27 The settlement negotiations were conducted by experienced counsel. MLG is well-versed in
28 handling complex wage and hour class action litigation. Matern Decl. ¶¶ 27-33. Although Plaintiff and

1 Class Counsel were prepared to litigate the claims in this action, they support the proposed settlement as
2 being in the best interests of the Class. Matern Decl. ¶ 13.

3 **4. None of the Class Members Have Objected to the Settlement.**

4 The response of Class Members is indicative of the fairness of the settlement. To date, there are
5 *no objections* to the Settlement. Kincannon Decl. ¶ 10. The lack of objections is a strong indication of
6 the fairness of the settlement.

7 **B. The Settlement Is Fair, Adequate, and Reasonable**

8 The trial court has “broad discretion to determine “whether a settlement [is] fair and reasonable.”
9 *In re Cellphone Fee Termination Cases* (2010) 186 Cal.App.4th 1380, 1389. In considering whether a
10 settlement is reasonable, the trial court should consider relevant factors, which may include the strength
11 of plaintiff’s case, the risk, expense, complexity and likely duration of further litigation, the risk of
12 maintaining class action status through trial, the amount offered in settlement, the extent of discovery
13 completed and the stage of the proceedings, the experience and views of counsel, the presence of a
14 governmental participant, and the reaction of the class members to the proposed settlement. *Kullar v.*
15 *Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 128.

16 In order to approve a class action settlement, the court must satisfy itself that the class settlement
17 is within the “ballpark” of reasonableness. *Id.* at 133. Before approving a class action settlement, a trial
18 court must have an understanding “of the amount that is in controversy and the realistic range of
19 outcomes of the litigation.” *Id.* at 120. However, the Parties need not provide an explicit statement of
20 the maximum amount plaintiff could have potentially recovered. *Munoz v. BCI Coca-Cola Bottling*
21 *Company of Los Angeles* (2010) 186 Cal.App.4th 399, 409.

22 The proposed settlement is fair, adequate, and reasonable to the Class Members. The Class’s
23 maximum potential damages, exclusive of interest and penalties, are approximately \$6.5 million. Matern
24 Decl. ¶ 9. Taking into consideration both the risks in not obtaining class certification and establishing
25 liability and damages on a class-wide basis, and the risks of an unfavorable judgment followed by
26 appeals, Plaintiff’s estimated value of the case would be significantly less than the maximum potential
27 damages. Matern Decl. ¶¶ 13, 22.

28 ///

1 While Plaintiff and Class Counsel remain confident in the merits of Plaintiff's case, a legitimate
2 controversy exists as to each cause of action. Proving the amount of wages due to each Class Member
3 would be an expensive, time-consuming, and extremely uncertain proposition involving a trial and
4 possible appeal which would very likely reduce and substantially delay recovery by the Class. In order to
5 prove liability, Plaintiff would need to obtain the cooperation of the Class Members, including current
6 employees, which may be difficult, given their likely reluctance to aid the prosecution of a lawsuit
7 against their employer. Moreover, continued litigation would very likely reduce and substantially delay
8 recovery by Class Members. In contrast, because of the proposed settlement, Class Members will receive
9 timely relief and avoid the risk of an unfavorable judgment. Matern Decl. ¶ 10. Furthermore, the
10 significant risk that this Court may deny class certification is obviated by the settlement. Matern Decl.
11 ¶ 11.

12 Additionally, Plaintiff and his financial analysts reviewed Defendants' financial records which
13 reveal substantial risk in Class Members' recovery of any judgment from Defendants. For example,
14 relevant tax returns reflect that Defendant Metro Services Group operated at substantial losses for the
15 years of 2012 and 2013. Defendants have represented that they operate at an extremely low profit margin
16 and maintain very little cash-on-hand. The Net Settlement Amount constitutes over eighty-four percent
17 (84%) of Metro Services Group's cash-on-hand as reported by its 2015 balance sheet. The proposed
18 Settlement would ensure that Class Members will receive actual relief and avoid the risk of an
19 unrecoverable judgment. Matern Decl. ¶ 12.

20 In sum, when the risks of litigation, the uncertainties involved in achieving class certification, the
21 burdens of proof necessary to establish liability, and the probability of appeal of a favorable judgment are
22 balanced against the merits of Plaintiff's claims, it is clear that the settlement amount of \$325,000.00 is
23 within the "ballpark" of reasonableness and settlement approval is appropriate. Matern Decl. ¶ 14.

24 **VI. THE REQUESTED CLASS REPRESENTATIVE SERVICE AWARD IS REASONABLE**

25 Plaintiffs in class action lawsuits are eligible for reasonable incentive payments as
26 compensation "for the expense or risk they have incurred in conferring a benefit on other members of
27 the class." *Munoz*, 186 Cal.App.4th at 412. Courts routinely grant approval of class action settlement
28 agreements containing enhancements for the class representatives, which are necessary to provide

1 incentive to represent the class, and are appropriate given the benefit the class representatives help to
2 bring about for the class. Class Representative Payments are especially appropriate where the plaintiff
3 is a present or past employee whose present position or employment credentials or recommendation
4 may be at risk by reason of having prosecuted the suit, and therefore lends his or her name and efforts
5 to the prosecution of litigation at some personal peril. *Roberts v. Texaco* (S.D.N.Y. 1997) 979 F. Supp.
6 185, 201.

7 The Agreement provides that Plaintiff be paid a Class Representative Service Award in an
8 amount not to exceed \$8,000.00 in recognition of his efforts and risks in prosecuting this matter.
9 Settlement Agreement ¶ 48(c). The requested payments are intended to recognize: (1) the substantial time
10 and effort Plaintiff has expended on behalf of the Class; (2) the risks Plaintiff faced as a result of bringing
11 this action; (3) the fact that Plaintiff put the interest of the Class ahead of his own; and (4) the substantial
12 benefit conferred upon the Class as a result of Plaintiff's actions.

13 Plaintiff meets this test. During the more than one and one-half years that this Action has been
14 pending, Plaintiff actively participated in making decisions in this case, including settlement, devoting
15 over 45 hours of his time to this case. Declaration of Sander Garzo ¶ 3. Plaintiff performed a number of
16 tasks as a proposed class representative, including the following: (a) participating in in-person meetings
17 and telephone calls with MLG; (b) providing information about witnesses and other class members;
18 (c) searching for and producing relevant documents; (d) reviewing documents; (e) preparing for and
19 attending a full-day deposition; (f) participating in settlement negotiations; (g) reviewing settlement
20 documents; and (h) reviewing declarations in support of this motion. *Id.* Plaintiff faces the real risk that
21 future employers may not hire him because he lent his name as the class representative in this case, and
22 he could have been liable for Defendants' litigation costs and attorneys' fees if the case went to trial and
23 he lost. Garzo Decl ¶¶ 4-5. Additionally, Plaintiff is giving a broader release to Defendants than the
24 other Class Members. Settlement ¶¶ 28-29. The requested payment is thus reasonable under California
25 law. *Clark v. American Residential Services, LLC* (2009) 175 Cal.App.4th 785, 805-806; *see also*
26 *Cellphone Termination Cases*, 186 Cal.App.4th at 1394-1395. Because this Action would not have been
27 possible without Plaintiff's participation, the Court should acknowledge and reward Plaintiff for his
28 significant contribution. Garzo Decl. ¶¶ 3-9; Matern Decl. ¶¶ 35-37.

1 **VII. CLASS COUNSEL’S REQUESTED FEES AND COSTS ARE REASONABLE**

2 The Agreement provides for attorneys’ fees to Class Counsel in an amount up to thirty-three and
3 one-third percent (33 and 1/3%) of the Maximum Settlement Amount, for a maximum fee award of
4 \$125,000.00, plus reasonable and actual litigation expenses. Settlement ¶ 48(d). Class Counsel’s costs
5 amount to \$17,810.35. Matern Decl. ¶ 34; Ex. C.

6 Class Counsel is entitled to reasonable attorneys’ fees pursuant to Labor Code §§ 1194 and Code
7 of Civil Procedure § 1021.5. The requested fees are well within the range of fees generally sought and
8 approved in common fund class action cases, and are also reasonable based on Class Counsel’s lodestar.
9 Indeed, the requested fees are \$40,875.00 less than Class Counsel’s lodestar.

10 **A. Class Counsel Is Entitled to Attorneys’ Fees and Costs Under the California Labor**
11 **Code and California’s Private Attorney General Statute**

12 Since this litigation culminated in a settlement that provided for a recovery of unpaid wages,
13 including unpaid wages and overtime compensation, Plaintiff is entitled to recover reasonable attorneys’
14 fees and costs under the California Labor Code § 1194, which provides in part that:

15 [A]ny employee receiving less than the legal minimum wage or the legal
16 overtime compensation applicable to the employee is entitled to recover
17 in a civil action the unpaid balance of the full amount of this minimum
18 wage or overtime compensation, including interest thereon, reasonable
19 attorney’s fees, and costs of suit.

20 Attorneys’ fees are also recoverable to a prevailing party under Labor Code § 2699(g)(1) (*Olson*
21 *v. Michaels Stores, Inc.* (C.D. Cal. Aug. 2, 2017) No. CV1703403ABGJSX, 2017 WL 3317811, at *3)
22 and under California’s private attorney general statute, Code of Civil Procedure § 1021.5. “The award
23 of attorney’s fees is proper under section 1021.5 if ‘(1) plaintiffs’ action ‘has resulted in the
24 enforcement of an important right affecting the public interest,’ (2) ‘a significant benefit, whether
25 pecuniary or nonpecuniary, has been conferred on the general public or a large class of persons’ and (3)
26 ‘the necessity and financial burden of private enforcement are such as to make the award appropriate.’”
27 *Press v. Lucky Stores* (1983) 34 Cal.3d 311, 317-318. The fundamental objective of the statute is “to
28 encourage suits enforcing public policies by providing substantial attorneys’ fees to successful litigants
in such cases.” *Graham v. DaimlerChrysler Corp.* (2004) 34 Cal.4th 553, 565.

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1 This Action resulted in the enforcement of important rights affecting the public interest, as
2 Plaintiff sought to enforce Class Members’ rights to recover statutory wages arising from Defendants’
3 failure to pay all wages and failure to provide meal and rest breaks. *Murphy v. Kenneth Cole*
4 *Productions, Inc.* (2007) 40 Cal.4th 1094, 1113 (noting that “health and safety concerns” are what
5 motivated the Industrial Wage Commission to adopt mandatory meal and rest periods).

6 This Action also conferred a significant benefit on a large class of persons—1,902 Participating
7 Class Members—who worked for Defendants during the Class Period and were not properly
8 compensated for their wages and missed meal and rest periods.

9 Finally, the necessity and financial burden of private enforcement render an award appropriate.
10 Without the incentive of an attorneys’ fee award, Plaintiff could not have afforded to hire counsel to
11 pursue this case, as the cost of litigating this matter far outweighed Plaintiff’s potential recovery. *Ryan v.*
12 *California Interscholastic Federation* (2001) 94 Cal.App.4th 1033, 1044 (“As to the necessity and
13 financial burden of private enforcement, an award is appropriate where the cost of the legal victory
14 transcends the claimants’ personal interest; in other words, where the burden of pursuing the litigation is
15 out of proportion to the plaintiff’s individual stake in the matter.”). Thus, an award of reasonable
16 attorneys’ fees under Code of Civil Procedure § 1021.5 is appropriate in this action.

17 **B. Class Counsel’s Attorneys’ Fees Are Reasonable Under the Common Fund Method**

18 A request for attorneys’ fees as a percentage of the settlement amount is supported by the
19 common fund theory, where “one who expends attorneys’ fees in winning a suit which creates a fund
20 from which others derive benefits, may require those passive beneficiaries to bear a fair share of the
21 litigation costs.” *Serrano v. Priest* (1977) 20 Cal.3d 25, 35 (quoting *Quinn v. State of California* (1975)
22 15 Cal.3d 162, 167).

23 The purpose of the common fund/percentage approach is to “spread litigation costs proportionally
24 among all the beneficiaries so that the active beneficiary does not bear the entire burden alone.” *Vincent*
25 *v. Hughes Air West, Inc.* (9th Cir. 1977) 557 F.2d 759, 769. In *Quinn*, 15 Cal.3d at 167, the California
26 Supreme Court stated: “one who expends attorneys’ fees in winning a suit which creates a fund from
27 which others derive benefits may require those passive beneficiaries to bear a fair share of the litigation
28 costs. Similarly, in *City and County of San Francisco v. Sweet* (1995) 12 Cal.4th 105, 110, the California

1 Supreme Court recognized that the common fund doctrine has been applied “consistently in California
2 when an action brought by one party creates a fund in which other persons are entitled to share.” (fn.
3 omitted.)

4 The lodestar analysis may be used to cross-check a percentage-of-recovery award. *In re*
5 *Consumer Privacy Cases* (2009) 175 Cal.App.4th 545, 556-558. However, in a recent case involving an
6 objection to a one-third percentage based recovery in a \$19 million employment class action lawsuit, the
7 Supreme Court of California clarified that:

8 [W]hen an attorney fee is awarded out of the common fund preserved or
9 recovered by means of litigation [citation], the award is not per se unreasonable
merely because it is calculated as a percentage of the common fund.

10 *Laffitte v. Robert Half Intern, Inc.* (2016) 1 Cal.4th 480, 486. The Court further held that “. . . trial courts
11 have discretion to conduct a lodestar cross-check on a percentage fee . . . [and] also retain the **discretion**
12 **to forego a lodestar cross-check** and use other means to evaluate the reasonableness of a requested
13 percentage fee.” *Id.* at 506 (emphasis added).

14 Indeed, several courts have expressed frustration with the alternative “lodestar” approach for
15 deciding fees, which usually involves wading through voluminous and often indecipherable time records.
16 *In re Activision Securities Litigation* (N.D. Cal. 1989) 723 F. Supp. 1373, 1375. The percentage
17 approach is preferable to the lodestar because: (1) it provides predictability to class counsel and class
18 members; (2) encourages efficient resolution of the litigation by providing an incentive for early, yet
19 reasonable, settlement; and (3) reduces the demands on judicial records. *Id.* at 1378-1379.

20 In fact, “[a] task force commissioned by the Third Circuit concluded that the lodestar approach”
21 has numerous deficiencies including that it “(1) increases the workload of an already overtaxed judicial
22 system, (2) is insufficiently objective and produces results that are far from homogenous, (3) creates a
23 sense of mathematical precision that is unwarranted in terms of the realities of the practice of law, (4) is
24 subject to manipulation by judges who prefer to calibrate fees in terms of percentages of the settlement
25 fund or the amounts recovered by the Claimants or of an overall dollar amount, (5) encourages lawyers to
26 expend excessive hours, and engage in duplicative and unjustified work, (6) creates a disincentive for the
27 early settlement of cases, (7) deprives trial courts of flexibility to reward or deter lawyers so that
28 desirable objectives, such as early settlement, will be fostered, (8) works to the particular disadvantage of

1 the public interest bar, and (9) results in confusion and lack of predictability.” *Lealao v. Beneficial*
2 *California, Inc.* (2000) 82 Cal.App.4th 19, 28 (citations and quotation marks omitted.) The Third Circuit
3 concluded that “the lodestar technique is a cumbersome, enervating, and often surrealistic process of
4 preparing and evaluating fee petitions that now plagues the Bench and Bar and recommended a return to
5 the percentage of the recovery fee formula in cases involving a settlement fund.” *Id.* at 28.

6 The percentage of attorneys’ fees set forth in the Settlement Agreement, thirty-three and one-third
7 percent (33 1/3%) of the Maximum Settlement Amount, is eminently reasonable. Historically, courts
8 have awarded percentage fees in the range of 20% to 50%, depending on the circumstances of the case.
9 *Newberg on Class Actions*, 4th Ed. 2002, § 14:6. California and federal courts have long recognized that
10 a percentage of recovery for attorneys’ fees is properly awarded on the basis of the total value. *Boeing v.*
11 *Van Gemert* (1980) 444 U.S. 472, 480-481; *Consumer Privacy Cases*, 175 Cal.App.4th at 558, fn. 13
12 (“Empirical studies show that, regardless whether the percentage method or the lodestar method is used,
13 fee awards in class actions average around *one-third* of the recovery.”). (Emphasis added.)

14 The requested fee percentage is less than that charged by Class Counsel for other employment
15 cases and is in line with the one-third recovery that has been recognized as standard for class actions in
16 California. Not only have MLG’s efforts resulted in monetary benefits to the Class Members to
17 compensate them for Defendants’ wage and hour violations, payment to Class Counsel was deferred to
18 the end of the litigation—over one and one-half years—and entirely contingent upon the outcome.
19 Without Class Counsel’s efforts, the claims alleged in the complaint would have gone without a remedy.
20 Matern Decl. ¶ 16. In light of all these reasons, Plaintiff respectfully requests that this Court approve his
21 request for reasonable attorneys’ fees pursuant to Labor Code § 1194 and Code of Civil Procedure
22 § 1021.5 and under the percentage-of-recovery approach.

23 **C. Class Counsel’s Proposed Attorneys’ Fees Are Substantially Less Than Their Lodestar**

24 Under the lodestar method, the court considers a compilation of the time spent and a reasonable
25 hourly compensation of each attorney to evaluate the reasonableness of the fee requested. *Ramos v.*
26 *Countrywide Home Loans, Inc.* (2000) 82 Cal.App.4th 615, 622. The moving party meets its burden in
27 this regard by submitting “declarations evidencing the reasonable hourly rate for their services and
28 establishing the number of hours spent working on the case” as “California case law permits fee awards

1 in the absence of detailed time sheets.” *Wershba v. Apple Computer* (2001) 91 Cal.App.4th 224, 254-55;
2 *Dunk*, 48 Cal.App.4th at 1810. The hours spent and the reasonable hourly compensation are computed to
3 arrive at a “lodestar” figure. *Ramos*, 82 Cal.App.4th at 622 (citing *Serrano*, 20 Cal.3d at 48-49).

4 MLG’s lodestar is \$159,170.00, which is based on approximately 300.80 hours of attorney time at
5 customary hourly rates. Matern Decl. ¶ 18; Ex. B. Class Counsel should be compensated at their
6 attorneys’ current hourly rates rather than at historic rates, to account for the delay in payment.
7 *Missouri v. Jenkins* (1989) 491 U.S. 274, 282-84. Pursuant to the Settlement Agreement, the proposed
8 fee award of \$125,000.00 is significantly less—by more than \$20,000.00—than Class Counsel’s lodestar,
9 rendering it eminently reasonable. *Demetrio v. Sakuma Bros. Farms, Inc.*, No. 2:13-CV-01918-MJP,
10 2014 WL 12710199, at *2 (W.D. Wash. Nov. 14, 2014) (“attorneys’ fee award is substantially less than
11 Class Counsel’s lodestar, and thus, is reasonable.”); *McPhail v. First Command Fin. Planning, Inc.*, No.
12 05CV179-IEGJMA, 2009 WL 839841, at *8 (S.D. Cal. Mar. 30, 2009) (“the proposed attorneys’ fee
13 award is less than Class Counsel’s lodestar calculation, buttressing the Court’s finding of
14 reasonableness.”).

15 **1. Class Counsel’s Hours Are Reasonable**

16 In determining whether the number of hours expended on the litigation was reasonable, the Court
17 must determine that “the time spent was reasonably necessary and that [] counsel made ‘a good faith
18 effort to exclude from the fee request hours that are excessive, redundant, or otherwise unnecessary.”
19 *Jordan v. Multnomah County* (9th Cir. 1987) 815 F.2d 1258, 1263, fn. 8. The Court “should defer to the
20 winning lawyer’s professional judgment as to how much time he was required to spend on the case.”
21 *Moreno v. City of Sacramento* (9th Cir. 2008) 534 F.3d 1106, 1112 (noting that “[l]awyers are not likely
22 to spend unnecessary time on contingency fee cases in the hope of inflating their fees. The payoff is too
23 uncertain, as to both the result and the amount of the fee.”).

24 As explained above, Class Counsel expended significant time litigating the case over one and
25 one-half years on behalf of the Class, including conducting legal research, conducting informal and
26 formal discovery, obtaining nearly 7,000 pages of documents from Defendants, preparing for, taking and
27 defending depositions, retaining an expert statistician who analyzed the copious data and prepared a
28 damages model, drafting a mediation brief, attending mediation, negotiating the Settlement, drafting the

1 Settlement Agreement and Motion for Preliminary Approval, attending court hearings, researching and
2 writing this Motion for Final Approval and supporting documents and monitoring the notice process.
3 Matern Decl. ¶ 17.

4 To date, MLG has spent approximately 300.80 hours litigating this case. Matern Decl. ¶ 18; Ex.
5 B. These hours were necessary and reasonable to achieve the good result on behalf of the Class.
6 Additionally, if this motion is granted, Class Counsel will spend additional time monitoring the
7 settlement process after final approval is granted. Matern Decl. ¶ 19.

8 **2. Class Counsel’s Hourly Rates Are Reasonable**

9 The reasonable hourly rate is that prevailing in the community for similar work. *PLCM Group,*
10 *Inc. v. Drexler* (2000) 22 Cal.4th 1084, 1095. “[I]n assessing a reasonable hourly rate, the trial court is
11 allowed to consider the attorneys’ skill as reflected in the quality of work, as well as the attorneys’
12 reputation and status.” *MBNA American Bank, N.A. v. Gorman* (2006) 147 Cal.App.4th 1, 3. The trial
13 court may also “find hourly rates reasonable based on evidence of other courts approving similar rates.”
14 *Parkinson v. Hyundai Motor America* (C.D. Cal. 2010) 796 F. Supp. 2d 1160, 1172.

15 The current prevailing billing rates in the Los Angeles area range from \$285 to \$900 per hour.
16 Matern Decl. ¶¶ 27-28. Class Counsel’s rates are within that range and in line with the rates approved in
17 other class actions. Matern Decl. ¶¶ 28, 30. Class Counsel employs experienced litigators who specialize
18 in employment law, with a substantial wage and hour class action practice. Matern Decl. ¶¶ 20-26.
19 Several courts have approved Class Counsel’s hourly rates. Matern Decl. ¶ 29. Given Class Counsel’s
20 skill and experience, and the excellent result achieved for the Class, Class Counsel’s hourly rates are
21 reasonable.

22 **D. Class Counsel’s Costs Are Reasonable**

23 Class Counsel’s costs are limited to reasonable costs which shall not exceed \$20,000.00.
24 Kincannon Decl. ¶ 4; Ex. A, p. 3, last paragraph. Class Counsel’s actual costs are \$17,810.35. Matern
25 Decl. ¶ 34; Ex. C. These costs were reasonably incurred in prosecuting this action and therefore should
26 be approved by the Court. *Id.*

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1 **VIII. THE REQUESTED SETTLEMENT ADMINISTRATION COSTS ARE REASONABLE**

2 Simpluris' costs of \$21,500.00 are reasonable, given the tasks performed and remaining to be
3 performed. Kincannon Decl. ¶¶ 3, 12. Plaintiff requests that the Court approve Simpluris' expenses.

4 **IX. CONCLUSION**

5 The proposed Settlement is fair, adequate and reasonable. Plaintiff requests that the Court grant
6 final approval of the Settlement and enter the proposed judgment.

7
8 DATED: October 16, 2017

Respectfully submitted,

MATERN LAW GROUP, PC

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11 

12 By:

13 MATTHEW J. MATERN
14 MATTHEW W. GORDON
15 BRAUNSON C. VIRJEE
16 Attorneys for Plaintiff
17 SANDER GARZO, individually and on
18 behalf of all others similarly situated
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PROOF OF SERVICE

Garzo v. Metro Services Group
LASC Case No. BC618119

I am employed in the County of Los Angeles, State of California. I am over the age of 18 years, and not a party to this action. My business address is 1230 Rosecrans Avenue, Suite 200, Manhattan Beach, California 90266.

On October 16, 2017, I served the following document or documents:

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

By electronic service. Based upon a court order authorizing electronic service, I caused a true and correct copy of the document(s) to be electronically served on counsel of record listed below by transmission to Case Anywhere LLC.

Dennis C. Huie, Esq. Sharon Ongerth Rossi, Esq ROGERS JOSEPH O'DONNELL, PC 311 California Street San Francisco, California 94104 Telephone: (415) 956-2828 Facsimile: (415) 956-6457 E-mail: dhuie@rjo.com srossi@rjo.com	Attorneys for Defendant METRO SERVICES GROUP
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I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on October 16, 2017 at Manhattan Beach, California.



Hannah Ahn