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ORIGINAL FILED  
Superior Court of California  
County of Los Angeles

RECEIVED  
MAY 07 2015  
Dept. 307

MAY 20 2015

Sherri R. Carter, Executive Officer/Clerk  
By: Martha Cervantes, Deputy

**SUPERIOR COURT OF THE STATE OF CALIFORNIA  
FOR THE COUNTY OF LOS ANGELES**

RICARDO CHACON, an individual; JOSE  
GUTIERREZ, an individual; and SAL  
ROJAS, an individual; on behalf of  
themselves and others similarly situated,

Plaintiffs,

v.

THYSSENKRUPP MATERIALS NA, INC.,  
a Michigan corporation; DAVID DICIOLLA,  
an individual; and DOES 1 through 10  
inclusive,

Defendants.

) Case No.: BC510966

) Judge: Hon. Amy D. Hogue  
) Dept: 307

) CLASS ACTION

) ~~PROPOSED~~ FINAL JUDGMENT

1           WHEREAS, on June 30, 2014, Plaintiffs Ricardo Chacon, Jose Gutierrez, and Sal Rojas  
2 (collectively, "Plaintiffs"), on behalf of themselves and others similarly situated, and Defendants  
3 ThyssenKrupp Materials NA, Inc. ("TKMNA") and David Diciolla (collectively, "Defendants"),  
4 by and through their duly authorized counsel, entered into a Stipulation of Class Action  
5 Settlement, Conditional Class Certification, and Release ("Settlement Agreement");

6           WHEREAS, on October 2, 2014, the Court held a preliminary approval hearing on the  
7 Settlement Agreement and entered an Order Granting Motion for Preliminary Approval of Class  
8 Action Settlement;

9           WHEREAS, on May 6, 2015, the Court held a final fairness hearing on the Settlement  
10 Agreement and entered an Order Granting Motion for Final Approval of Class Action  
11 Settlement;

12           NOW, THEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND DECREED as  
13 follows:

14           1.       This Final Judgment ("Judgment") incorporates by reference the definitions in the  
15 Settlement Agreement and all capitalized terms used in this Judgment shall have the same  
16 meanings as set forth in the Settlement Agreement.

17           2.       The Order Granting Motion for Final Approval of Class Action Settlement dated  
18 May 6, 2015 and attached hereto as Exhibit A is incorporated herein.

19           3.       The Court certifies the Class for settlement purposes and finds that the  
20 requirements for class treatment have been met for purposes of the Class.

21           4.       The Court finds that the dissemination of the Class Notice and Claim Form in the  
22 form and manner ordered by the Court was accomplished as directed, met the requirements of  
23 due process, was the best notice practicable under the circumstances, and constituted due and  
24 sufficient notice to all persons entitled thereto.

25           5.       The Court finds that the Class Representatives and Class Counsel herein have  
26 fairly and adequately represented and protected the interests of the Class at all times in the  
27 Action.  
28

1           6.       The Court finally approves the Settlement Agreement and the Settlement as fair,  
2 reasonable and adequate and directs consummation of the Settlement in accordance with its  
3 terms and provisions.

4           7.       The Settling Parties are directed to implement the terms of the Settlement  
5 Agreement, including without limitation the provisions regarding the payment of Individual  
6 Settlement Payments to each Class Member as set forth in the Settlement Agreement, the  
7 payment of attorney fees and costs, enhancements to each named Plaintiff and the costs of  
8 administration.

9           8.       The Class consists of all current and former non-exempt, non-union, hourly-paid  
10 employees of TKMNA within the state of California for the period of time from June 4, 2009 up  
11 to and including October 2, 2014. This includes both employees on the payroll of TKMNA and  
12 temporary employees working at TKMNA through a temporary placement agency during that  
13 time period.

14           9.       The Court releases and discharges the Released Parties from any and all liability  
15 with respect to the Released Claims as provided in the Settlement Agreement, after all payments  
16 have been made as set forth in the Settlement Agreement.

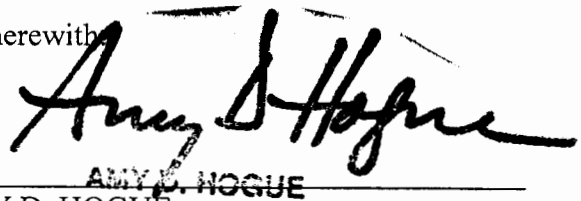
17           10.      In order to protect the continuing jurisdiction of the Court, prevent a multiplicity  
18 of lawsuits, and protect and effectuate the Court's Judgment in this Action, Class  
19 Representatives and all Class Members, and anyone acting on their behalf (including, but not  
20 limited to, attorneys, representatives, and agents of Class Representatives or any Class  
21 Members), are permanently and forever barred and enjoined from instituting, commencing, or  
22 continuing to prosecute, directly or indirectly, as an individual or collectively, representatively,  
23 derivatively, or on behalf of himself or herself, or in any other capacity of any kind whatsoever,  
24 any action in this Court, any other state court, or any arbitration or mediation proceeding or any  
25 other similar proceeding, against any Released Party that asserts any claims that are Released  
26 Claims under the terms of the Settlement. Any Person who violates such injunction shall pay the  
27 costs and attorneys' fees incurred by any Released Party as a result of the violation.  
28

1           11.     The Court awards reasonable attorneys' fees and costs to Class Counsel as set  
2 forth in the Order Granting Motion for Final Approval of Class Action Settlement dated May 6,  
3 2015 and attached hereto as Exhibit A.

4           12.     The Court awards enhancements to the Class Representatives as set forth in the  
5 Order Granting Motion for Final Approval of Class Action Settlement dated May 6, 2015 and  
6 attached hereto as Exhibit A.

7           13.     The Court reserves continuing and exclusive jurisdiction over all matters related  
8 to the administration and consummation of the terms of the Settlement, over the enforcement,  
9 construction and interpretation of the Settlement Agreement, over the enforcement, construction,  
10 and interpretation of this Judgment, including, but not limited to, the provisions herein enjoining  
11 any further litigation of Released Claims, and over Class Representatives and all Class Members  
12 (and their attorneys and law firms) in connection therewith.

13  
14 DATED: 5/20/15



15 AMY D. HOGUE  
16 HON. AMY D. HOGUE  
17 Judge of the Superior Court

# **EXHIBIT A**

CONFORMED COPY  
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Superior Court of California  
County of Los Angeles

MAY 06 2015

Sherri R. Carter, Executive Officer/Clerk  
By: Nancy Navarro, Deputy

SUPERIOR COURT OF CALIFORNIA  
COUNTY OF LOS ANGELES

RICARDO CHACON, an individual; JOSE  
GUTIERREZ, an individual; and SAL ROJAS,  
an individual; on behalf of themselves and other  
similarly situated,

Plaintiffs,

v.

THYSSENKRUPP MATERIALS NA, INC., a  
Michigan corporation; DAVID DICIOLLA, an  
individual; and DOES 1 through 10, inclusive,

Defendants.

Case No.: BC510966

ORDER GRANTING  
MOTION FOR FINAL APPROVAL  
OF CLASS ACTION SETTLEMENT

Date: ~~April 10, 2015~~ 5-6-15  
Time: ~~10:00 a.m.~~ 1:45 pm

I. BACKGROUND

This is a wage and hour class action filed by Plaintiffs Ricardo Chacon, Jose Gutierrez, and Sal Rojas (collectively, "Plaintiffs"), on behalf of themselves and similarly situated employees of Defendant ThyssenKrupp Materials NA, Inc. ("TKMNA").

The operative complaint—the Third Amended Complaint filed on 4/7/14—asserts the following causes of action: (1) failure to provide meal periods; (2) failure to authorize and permit rest periods; (3) forfeiture/repayment of wages earned; (4) failure to pay all wages/overtime; (5) failure to provide accurate itemized wage statements; (6) waiting time

1 penalties; (7) unfair competition pursuant to Business & Professions Code §17200; and (8) & (9)  
2 civil penalties.

3 Following mediation and additional negotiations, Plaintiffs and Defendants TKMNA and  
4 David Diciolla (jointly, "Defendants") entered into a *Stipulation of Class Action Settlement,*  
5 *Conditional Class Certification, and Release* ("settlement agreement").

6 Plaintiffs then filed a motion for preliminary approval of the settlement agreement,  
7 which was originally set for hearing on 8/14/14. In advance of the 8/14/14 hearing date, the  
8 Court issued a *Preliminary Approval of Class Action Settlement Checklist* ("Checklist"). In  
9 response to the Checklist, Plaintiffs filed a *Further Brief in Support of Motion for Preliminary*  
10 *Approval of Class Action Settlement.* On 10/2/14, the Court granted preliminary approval of the  
11 settlement.

12 Now before the Court is the motion for final approval of the settlement agreement.  
13

## 14 II. DISCUSSION

### 15 A. SETTLEMENT CLASS DEFINITION

16 The proposed settlement class is defined as: "[A]ll current and former non-exempt, non-  
17 union, hourly-paid employees of TKMNA within the state of California for the period of time  
18 from June 4, 2009 up to and including the date of preliminary approval of this settlement. This  
19 includes both employees on the payroll of TKMNA and temporary employees working at  
20 TKMNA through a temporary placement agency during the relevant time period." See  
21 Settlement Agreement, §2.4.  
22

### 23 B. TERMS OF SETTLEMENT AGREEMENT

24 A copy of the settlement agreement is attached to the Hayes Declaration Re: Final  
25 Approval as Exhibit 1. Its essential terms are as follows:

- 1 • The gross settlement amount is \$1,375,000, non-reversionary. §4.1.
- 2 • The net settlement amount is the gross settlement amount minus the following:<sup>1</sup>
  - 3 ○ Up to \$458,333 (33.33% of the gross settlement amount) for attorney fees;<sup>2</sup>
  - 4 ○ Up to \$25,000 for attorney costs;<sup>3</sup>
  - 5 ○ Up to \$19,500 (\$6,500 x 3) for enhancement awards;<sup>4</sup>
  - 6 ○ Up to \$30,000 for claims administration costs;<sup>5</sup>
  - 7 ○ \$15,000 for PAGA penalties payable to the Labor Workforce and Development
  - 8 Agency;<sup>6</sup> and
  - 9 ○ “[A]ll payroll taxes (including, but not limited to, employer side taxes.”<sup>7</sup>
- 10 • To receive a settlement share, a class member must submit a claim form.<sup>8</sup> §2.3.
- 11 • Each claimant’s settlement share will be based on the number of workweeks he/she
- 12 worked as a temporary employee and/or as a regular employee. Each workweek worked
- 13 by a temporary employee will be assigned 1 point and each workweek worked by a
- 14 regular employee will be assigned 2 points. §§6.1, 6.1.1-6.1.3.
- 15 • For tax purposes, payments to participating class members will be allocated 50% to
- 16 wages and 50% to attorney fees, costs, penalties, and other non-wage income. §12.1.

19 <sup>1</sup> See Settlement Agreement, §5.1.

20 <sup>2</sup> See Settlement Agreement, §7.

21 <sup>3</sup> See Settlement Agreement, §7. The actual amount of attorney costs is \$10,131.74. Hayes Declaration Re: Final Approval, ¶53.

22 <sup>4</sup> See Settlement Agreement, §8.

23 <sup>5</sup> See Settlement Agreement, §9. The actual amount of claims administration costs is \$14,800. Behring Declaration, ¶15.

24 <sup>6</sup> See Settlement Agreement, §10.

25 <sup>7</sup> See Settlement Agreement, §5.1.

<sup>8</sup> While it is normally preferable to dispense with this requirement (at least as to current employees), a claim form appears to be necessary under the circumstances because the claim form doubles as a method to opt-in to the Fair Labor Standards Act (FLSA) portion of the class action. [*La Parne v. Monex Deposit Co.* (C.D.Cal. 2010) 2010 WL 4916606 at 3 (“[O]nly class members who affirmatively ‘opt-in’ to the Settlement should be bound by the Settlement’s release of FLSA liability. The following class members will be deemed to have opted in for purposes of a release of FLSA liability: those who opted into the FLSA action during the initial opt-in period and *those who file claims under the Settlement.*”) (italics supplied).]



- Checks will be valid for 180 days from the date of issuance. §11.3.
- Funds attributable to uncashed checks will be delivered to the State of California's unclaimed property fund. §11.3.
- The claims administrator will be Simpluris, Inc. §2.33.
- The named Plaintiffs and participating class members will release certain claims against Defendants. (See further discussion below)

7 **C. ANALYSIS OF SETTLEMENT AGREEMENT**

8 **1. Standards for Final Fairness Determination**

9 "Before final approval, the court must conduct an inquiry into the fairness of the  
10 proposed settlement." CRC 3.769(g). "If the court approves the settlement agreement after the  
11 final approval hearing, the court must make and enter judgment. The judgment must include a  
12 provision for the retention of the court's jurisdiction over the parties to enforce the terms of the  
13 judgment. The court may not enter an order dismissing the action at the same time as, or after,  
14 entry of judgment." CRC 3.769(h).

15  
16 "In a class action lawsuit, the court undertakes the responsibility to assess fairness in  
17 order to prevent fraud, collusion or unfairness to the class, the settlement or dismissal of a class  
18 action. The purpose of the requirement [of court review] is the protection of those class  
19 members, including the named plaintiffs, whose rights may not have been given due regard by  
20 the negotiating parties." See Consumer Advocacy Group, Inc. v. Kintetsu Enterprises of  
21 America (2006) 141 Cal.App.4th 46, 60 (internal quotation marks omitted); see also Wershba v.  
22 Apple Computer, Inc. (2001) 91 Cal.App.4th 224, 245 (Court needs to "scrutinize the proposed  
23 settlement agreement to the extent necessary to reach a reasoned judgment that the agreement is  
24 not the product of fraud or overreaching by, or collusion between, the negotiating parties, and  
25

1 that the settlement, taken as a whole, is fair, reasonable and adequate to all concerned”) (internal  
2 quotation marks omitted).

3 “The burden is on the proponent of the settlement to show that it is fair and reasonable.  
4 However ‘a presumption of fairness exists where: (1) the settlement is reached through arm’s-  
5 length bargaining; (2) investigation and discovery are sufficient to allow counsel and the court to  
6 act intelligently; (3) counsel is experienced in similar litigation; and (4) the percentage of  
7 objectors is small.” See Wershba at 245 (citing Dunk v. Ford Motor Co. (1996) 48 Cal.App.4th  
8 1794, 1802. Notwithstanding an initial presumption of fairness, “the court should not give  
9 rubber-stamp approval.” See Kullar v. Foot Locker Retail, Inc. (2008) 168 Cal.App.4th 116,  
10 130. “Rather, to protect the interests of absent class members, the court must independently and  
11 objectively analyze the evidence and circumstances before it in order to determine whether the  
12 settlement is in the best interests of those whose claims will be extinguished.” *Id.* In that  
13 determination, the court should consider factors such as “the strength of plaintiffs’ case, the risk,  
14 expense, complexity and likely duration of further litigation, the risk of maintaining class action  
15 status through trial, the amount offered in settlement, the extent of discovery completed and  
16 stage of the proceedings, the experience and views of counsel, the presence of a governmental  
17 participant, and the reaction of the class members to the proposed settlement.” *Id.* at 128.  
18 “Th[is] list of factors is not exclusive and the court is free to engage in a balancing and weighing  
19 of factors depending on the circumstances of each case.” Wershba at 245.

21 Nevertheless, “[a] settlement need not obtain 100 percent of the damages sought in order  
22 to be fair and reasonable. Compromise is inherent and necessary in the settlement process.  
23 Thus, even if ‘the relief afforded by the proposed settlement is substantially narrower than it  
24 would be if the suits were to be successfully litigated,’ this is no bar to a class settlement  
25

1 because 'the public interest may indeed be served by a voluntary settlement in which each side  
2 gives ground in the interest of avoiding litigation.'" Id. at 250.

3 **2. Does a presumption of fairness exist?**

4 a. Was the settlement reached through arm's-length bargaining? Yes. On 1/30/14,  
5 the parties participated in a full-day mediation with Steve Rottman, Esq. See  
6 Hayes Declaration Re: Final Approval, ¶29. Afterwards, the mediator issued a  
7 mediator's proposal, which the parties agreed to in February 2014, subject to  
8 confirmatory discovery. Id., ¶30. It was not until June 2014 that the parties  
9 entered into the settlement agreement. Id., ¶33.

10 b. Were investigation and discovery sufficient to allow counsel and the court to act  
11 intelligently? Yes. Class counsel, *inter alia*: evaluated Plaintiffs' claims and  
12 Defendants' defenses; interviewed class members; reviewed the applicable wage  
13 and hour policies and procedures; analyzed "thousands of pages" of class  
14 members' time records spanning the 4-year class period; and analyzed class  
15 members' vacation records, pay records, and wage statements. Id., ¶¶19-26.

16 c. Is counsel experienced in similar litigation? Yes. Class counsel is experienced in  
17 class action litigation, including wage and hour class actions. Id., ¶¶44-47; see  
18 also Pawlenko Declaration Re: Final Approval, ¶¶6-8.

19 d. What percentage of the class has objected? Zero. See Behring Declaration, ¶17.

20 CONCLUSION: The settlement is entitled to a presumption of fairness.

21  
22 **2. Is the settlement fair, adequate, and reasonable?**

23 a. Strength of Plaintiffs' case. "The most important factor is the strength of the case  
24 for plaintiffs on the merits, balanced against the amount offered in settlement."  
25

1 See Kullar v. Foot Locker Retail, Inc. (2008) 168 Cal.App.4th 116, 130. . Here,  
2 class counsel estimates Plaintiffs' maximum potential damages to be between  
3 \$3,000,000 and \$4,000,000. See Hayes Declaration Re: Final Approval, ¶42.  
4 Notwithstanding this estimate, the \$1,375,000 gross settlement amount appears to  
5 be a fair, adequate, and reasonable compromise of Plaintiffs' claims in light of  
6 Defendants' defenses. Class counsel states that Defendants have contested  
7 liability from the outset of this case. Id., ¶18. For example, Defendants  
8 produced: (1) declarations from 35 putative class members attesting to the fact  
9 that Defendants provided, and all employees received, the required 30-minute  
10 meal periods and 10-minute rest periods; (2) an audit of Plaintiff Chacon's  
11 vacation records (to show that he was purportedly overpaid instead of underpaid);  
12 and (3) a declaration from TKMNA's Director of Finance attesting to the fact that  
13 the calculation formula for incentive pay is based on both regular and overtime  
14 wages. Id., ¶¶18, 36, 38-40. Class counsel also considered the impact of Brinker  
15 v. Superior Court (2012) 53 Cal.4<sup>th</sup> 1004 and the risk of non-certification of the  
16 meal period and rest period claims "given the peculiarities of the manufacturing  
17 industry and the differing practices at each of [TKMNA's] California facilities."  
18 Id., ¶38. Class counsel also recognizes that the vacation forfeiture claim is  
19 difficult to certify because of the inconsistent practices regarding accrued  
20 vacation. Id., ¶40. Further, even if a class is certified, class counsel recognizes  
21 that damages are potentially limited because some class members used all of their  
22 accrued vacation. Id. Lastly, class counsel took into account difficulties in  
23  
24  
25

1 establishing the commonality requirement for class certification given the ruling  
2 in Wal-Mart Stores, Inc. v. Dukes (2011) 131 S.Ct. 2541. Id., ¶41.

3 b. Risk, expense, complexity and likely duration of further litigation. Given the  
4 nature of the class claims, the case is likely to be expensive and lengthy to try.  
5 Procedural hurdles (e.g., motion practice and appeals) are also likely to prolong  
6 the litigation as well as any recovery by the class members.

7 c. Risk of maintaining class action status through trial. Even if a class is certified,  
8 there is always a risk of decertification. See Weinstat v. Dentsply Intern., Inc.  
9 (2010) 180 Cal.App.4th 1213, 1226 (“Our Supreme Court has recognized that  
10 trial courts should retain some flexibility in conducting class actions, which  
11 means, under suitable circumstances, entertaining successive motions on  
12 certification if the court subsequently discovers that the propriety of a class action  
13 is not appropriate.”).

14 d. Amount offered in settlement. As indicated above, the gross settlement amount  
15 is \$1,375,000. Assuming that the Court approves all of the requested deductions,  
16 approximately \$827,167<sup>9</sup> (less all payroll taxes) will be available for distribution  
17 to claimants. Assuming full participation, the average settlement share will be  
18 approximately **\$2,104.75** (\$1,375,000 / 393).

19 e. Extent of discovery completed and stage of the proceedings. As discussed  
20 above, at the time of the settlement, Plaintiffs had conducted extensive discovery.  
21  
22

23  
24 <sup>9</sup> \$1,375,000 (gross settlement amount) minus \$458,333 (attorney fees), \$25,000 (attorney costs), \$19,500  
(enhancement awards), \$30,000 (claims administration costs), and \$15,000 (PAGA penalties payable to the  
25 LWDA).

Note, the actual amount of claims administration cost is \$14,800, which increases the net settlement  
amount to **\$842,367**, which increases the payout to **\$2,320.57**.

1 f. Experience and views of counsel. The settlement was negotiated and endorsed  
2 by class counsel who, as indicated above, is experienced in class action litigation,  
3 including wage and hour cases.

4 g. Presence of a governmental participant. This factor is not applicable here.

5 h. Reaction of the class members to the proposed settlement.

6 Number of class members: 373<sup>10</sup>  
7 Number of notices mailed: 373<sup>11</sup>  
8 Number of undeliverable notices: 15<sup>12</sup>  
9 Number of opt-outs: 2<sup>13</sup> (.53%)  
10 Number of objections: 0<sup>14</sup> (0%)  
11 Number of participating class members: 135<sup>15</sup> (36.19%)

12 CONCLUSION: The settlement can be deemed "fair, adequate, and reasonable."  
13

14 **D. ATTORNEY FEES AND COSTS**

15 Class counsel, HAYES PAWLENKO LLP, requests \$458,333 for attorney fees and  
16 \$10,131.74 for costs.

17 The lodestar calculation is as follows:

18

<b>Timekeeper</b>	<b>Hours</b>	<b>Hourly Rate</b>	<b>Total Lodestar</b>
19 Matthew B. Hayes (Admitted 2002)	477.2	\$650	\$310,180
20 Kye D. Pawlenko (Admitted 2002)	220	\$600	\$132,000
21 <b>TOTAL</b>	<b>697.2</b>		<b>\$442,180</b>

22

23 <sup>10</sup> See Behring Declaration, ¶6.

24 <sup>11</sup> See Behring Declaration, ¶8. A total of 373 notice packets were mailed, 39 returned, and 34 re-mailed. Of those, 15 were undeliverable. Behring Declaration, Exhibit C.

25 <sup>12</sup> See Behring Declaration, ¶11.

<sup>13</sup> See Behring Declaration, ¶16.

<sup>14</sup> See Behring Declaration, ¶17.

<sup>15</sup> See Behring Declaration, ¶4.

1 Based on a review of class counsel's attached invoices, the hours spent on the tasks  
2 performed appear to be reasonable for this 1-year-old case. See Hayes Declaration Re: Final  
3 Approval, ¶¶11, 52, and Exhibit 3; Pawlenko Declaration Re: Final Approval, ¶3. The hourly  
4 rates charged also appear to be reasonable and in line with prevailing rates in the community.  
5 Accordingly, class counsel's actual attorney fees of \$442,180 can be deemed the lodestar.

6 The \$458,333 fee request is greater than the lodestar.

7 The fee request translates into a multiplier of approximately 1.037. Motion for  
8 Attorney's Fees, §II.B.3. The lodestar may be adjusted based on factors such as "the quality of  
9 the representation, the novelty and complexity of the issues, the results obtained, and the  
10 contingent risk presented." See Thayer v. Wells Fargo Bank, N.A. (2001) 92 Cal.App.4th 819,  
11 833. Applying these factors, this case appears to be of medium difficulty to litigate. The issues  
12 were not particularly novel or difficult in this wage and hour case. Nevertheless, class counsel,  
13 who is well-qualified to litigate wage and hour cases, obtained a relatively significant recovery  
14 on behalf of class members (i.e., an average settlement share of approximately \$4,000 to  
15 \$5,000<sup>16</sup>). Further, class counsel accepted this case on a contingency basis of any recovery plus  
16 actual litigation costs. See Motion for Attorney's Fees, §II.B.3. Class counsel was willing to  
17 advance all fees and costs for more than 20 months and to assume the risk of not being paid  
18 anything if the case were unsuccessful. Hayes Declaration Re: Final Approval, ¶ 50. As a  
19 result, class counsel has risked nonpayment of the costs advanced and attorney time worked.  
20

21 Applying the cross-check, the fee request represents 33.33% of the gross settlement  
22 amount. This percentage is within the ballpark of the average 33.33% generally awarded in  
23 class actions. See In re Consumer Privacy Cases (2009) 175 Cal.App.4th 545, 558, FN13  
24

---

25 <sup>16</sup> These amounts are based on the number of members actually participating in the settlement.

1 (“Empirical studies show that, regardless whether the percentage method or the lodestar method  
2 is used, fee awards in class actions average around one-third of the recovery.”); see also Laffitte  
3 v. Robert Half International Inc. (2014) 231 Cal.App.4<sup>th</sup> 860, 878 (holding that “the trial court’s  
4 use of a percentage of 33 1/3 percent of the common fund is consistent with, and in the range of,  
5 awards in other class action lawsuits”).

6 Further, the notice expressly advised class members of the fee request,<sup>17</sup> and not a single  
7 class member objected to it (or to any other aspect of the settlement for that matter).

8 As for costs, class counsel requests a total of \$10,131.74. See Hayes Declaration Re:  
9 Final Approval, ¶53 and Exhibit 4. The costs—including \$4,750 in mediation fees—appear to  
10 be reasonable and necessary to the litigation. *Id.*

11 For all of the foregoing reasons, the fee and cost requests may be approved.

12 **E. INCENTIVE AWARD TO CLASS REPRESENTATIVE**

13 An incentive fee award to a named class representative must be supported by evidence  
14 that quantifies time and effort expended by the individual and a reasoned explanation of  
15 financial or other risks undertaken by the class representative. See Clark v. American  
16 Residential Services LLC (2009) 175 Cal.App.4<sup>th</sup> 785, 806-807; see also Cellphone  
17 Termination Cases (2010) 186 Cal.App.4<sup>th</sup> 1380, 1394-1395 (“[C]riteria courts may consider in  
18 determining whether to make an incentive award include: 1) the risk to the class representative  
19 in commencing suit, both financial and otherwise; 2) the notoriety and personal difficulties  
20 encountered by the class representative; 3) the amount of time and effort spent by the class  
21 representative; 4) the duration of the litigation and; 5) the personal benefit (or lack thereof)  
22 enjoyed by the class representative as a result of the litigation. [Citations.]”)

23  
24  
25  

---

<sup>17</sup> See Notice, §C (“Settlement Amount”).



1 Here, the three named Plaintiffs request an incentive award of **\$6,500** each, or \$19,500  
2 total.

3 In support, the Plaintiff Chacon states that he was unemployed at the time of the action  
4 and bore the risk of the difficulty to obtain employment while participating in a class action.  
5 Chacon Declaration, ¶4. For the past year and a half, Plaintiff Chacon spent over 40 hours  
6 communicating and personally meeting with class counsel on multiple occasions, engaging in  
7 telephone conversations, reviewing documents, speaking with putative class members, gathering  
8 information, acting as a liaison with class counsel and the putative class, taking time off his new  
9 job to attend mediation, and conferring with class counsel before signing the settlement  
10 document. *Id.*, ¶¶6-9. He also points to the stigma associated with suing a former employer.  
11 *Id.*, ¶12.

12 Plaintiff Gutierrez also spent over 40 hours participating in this action, meeting with  
13 counsel, reviewing and gathering documents, speaking with class members, and conferring with  
14 class counsel before signing the settlement document. *Gutierrez Declaration*, ¶¶5, 7. During the  
15 time of his participation, Plaintiff Gutierrez was unemployed and bore the risks of obtaining  
16 employment while suing his former employer. *Id.*, ¶4.

17 Plaintiff Rojas also spent approximately 35 to 50 hours participating in this action,  
18 meeting with counsel, reviewing and gathering documents, speaking with class members, and  
19 conferring with class counsel before signing the settlement document. *Rojas Declaration*, ¶¶5-7.  
20 During the time of his participation, Plaintiff Rojas was unemployed and bore the risks of  
21 obtaining employment while suing his former employer. *Id.*, ¶4.

22 In light of the above as well as the benefits obtained on behalf of the class, \$6,500  
23 appears to be a reasonable inducement for her participation in this case. The requested incentive  
24 award may therefore be approved.

25 ///

1 **F. CLAIMS ADMINISTRATION COSTS**

2 The claims administrator requests \$14,800, which is a lower than the amount estimated  
3 at the time of preliminary approval. Given the tasks performed, this amount appears to be  
4 reasonable. See Behring Declaration, ¶19. This amount was also disclosed to class members  
5 and deemed unobjectionable. See Notice, §C (“Settlement Amount”).

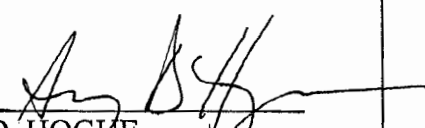
6 **III. CONCLUSION AND ORDER**

7 **A. TENTATIVE RULING**

- 8 (1) Grant class certification for purposes of settlement;  
9 (2) Grant final approval of the settlement as fair, adequate, and reasonable;  
10 (3) Award \$458,333 in attorney fees and \$10,131.74 in costs to class counsel;  
11 (4) Award \$19,500 (or \$6,500 each) as an incentive award to the three class representatives;  
12 (5) Award \$14,800 in claims administration costs to Simpluris, Inc.; and  
13 (6) Order class counsel to provide notice to the class members pursuant to California Rules  
14 of Court, rule 3.771(b).

15 (7) Report due re: final distribution (to be filed in court) by 11/16/15 if  
16 11/13/15 non-appearance hearing.

17 Dated: 5-6-15

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19 AMY D. HOGUE  
20 Judge of the Superior Court  
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**PROOF OF SERVICE**

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

1. At the time of service I was at least 18 years of age and not a party to this legal action.
2. My business address is 595 E. Colorado Blvd., Ste. 303, Pasadena, CA 91101.
3. I served copies of the following documents (specify the exact title of each document served):

**[PROPOSED] FINAL JUDGMENT**

4. I served the documents listed above in item 3 on the following persons at the addresses listed:

PROSKAUER ROSE LLP  
Laura Reathaford  
Charles Stiegler

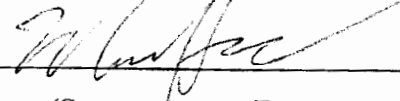
5.  **By electronic transmission via FILE & SERVEXPRESS.** Based on a Court order to serve documents by electronic transmission, I caused the documents to be served through File & ServeXpress on all parties appearing on the electronic service list in this case. The service transmission was reported as complete and a copy of the File & ServeXpress Filing Receipt Page/Confirmation will be filed, deposited, and/or maintained in my office.

6. I served the documents by the means described in item 5 on *(date)*: May 7, 2015

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

5/7/15

Matthew B. Hayes



DATE

(TYPE OR PRINT NAME)

(SIGNATURE OF DECLARANT)