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13 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
14 **FOR THE COUNTY OF SAN FRANCISCO**

15 ADRIANA HAYTER, LARINE SHIELDS,
16 and TAYLOR EVANS; individually, and on
17 behalf of all other similarly situated persons;
18 and ROES 1-100,

19 Plaintiffs,

20 vs.

21 EWALD & WASSERMAN RESEARCH
22 CONSULTANTS, LLC, a California limited
23 liability corporation; KATRIN EWALD, an
24 individual; LISA WASSERMAN, and
25 individual; and DOES 1-20,

26 Defendants.

Case No.: CGC-19-577753

**MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
MOTION FOR PRELIMINARY
APPROVAL OF CLASS ACTION
SETTLEMENT AND CLASS
CERTIFICATION**

Date: May 3, 2021

Time: 10:00 a.m.

Dept.: 304

Judge: Hon. Anne-Christine Massullo

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1 **I. INTRODUCTION**

2 This motion seeks preliminary approval of a proposed class action settlement in the
3 amount of one hundred forty-four thousand dollars and zero cents (\$144,000.00), inclusive of
4 attorneys’ fees and costs, for all claims and causes of action brought by Named Plaintiffs
5 ADRIANA HAYTER, LARINE SHIELDS, and TAYLOR EVANS (“Plaintiffs” or “Named
6 Plaintiffs”) on behalf of themselves and all others similar situated, against Defendants EWALD
7 & WASSERMAN, LLC (“E&W”), KATRIN EWALD and LISA WASSERMAN (collectively,
8 “Defendants”) according to a JOINT STIPULATION AND SETTLEMENT AGREEMENT
9 BETWEEN PLAINTIFFS AND DEFENDANTS that was fully executed on February 8, 2021
10 (the “Settlement Agreement”). This motion is unopposed, and Defendants agree to waive the
11 statutory notice period pursuant to Code of Civil Procedure section 1005. [See Declaration of
12 Yosef Peretz in Support of Motion for Preliminary Approval (“Peretz Decl.”), ¶ 2.]

13 Plaintiffs submit that the settlement is fair and reasonable, and confers a substantial benefit
14 upon the class, which includes approximately fifty-six (56) members (including the three named
15 plaintiffs). The settlement readily satisfies the standard for preliminary approval as it fairly and
16 appropriately resolves the claims of the class in a manner that provides substantial financial relief.
17 The eventual final fairness hearing will provide the Court with another opportunity to review the
18 Settlement Agreement, with the benefit of class members’ responses, as well as information
19 regarding the rates of participation compared with objections.

20 Accordingly, pursuant to California Rule of Court 3.769, Plaintiffs respectfully request
21 that the Court (1) grant preliminary approval of the parties’ class action settlement in this matter,
22 including but not limited to, the means of allocation and distribution of funds, and the allocations
23 for penalties under the California Labor Code Private Attorneys General Act of 2004 (“PAGA”);
24 (2) authorize Plaintiffs and Defendants to provide notice to the class of the settlement in the forms
25 of the proposed notices submitted herewith; (3) approve Plaintiffs and their counsel Peretz &
26 Associates as class representatives; and (4) schedule a final approval hearing date.

27 **II. PROCEDURAL BACKGROUND**

28 This putative class action was filed on July 18, 2019. [Peretz Decl., ¶ 3.] Plaintiffs served
extensive written discovery requests on Defendants shortly thereafter on August 15, 2019. [Id. at
¶ 3.] Plaintiffs filed the operative First Amended Complaint on September 16, 2019. [Id.] The
parties then met and conferred and agreed to attend private mediation with John Hyland, Esq. of

1 Rukin Hyland & Riggin LLP. [Peretz Decl., ¶ 4.] As part of the agreement to mediate, Defendants
2 provided Plaintiffs with certain key payroll and timekeeping documents and further agreed to
3 provide Plaintiffs with the putative class list. [Id.]

4 In order to provide Plaintiffs with the class list, including contact information for class
5 members, the parties stipulated to a form opt-out notice pursuant to *Belaire-West Landscape, Inc.*
6 *v. Superior Court* (2007) 149 Cal.App.4th 554 (“*Belaire-West*”). [Peretz Decl., ¶ 5.] This
7 stipulation was approved by the Court on December 30, 2019. [Id.] The *Belaire-West* notices
8 were mailed to putative class members on January 14, 2020 with an opt-out deadline of February
9 4, 2020. [Id.] Ultimately, three of the fifty-six (56) notices mailed out were returned as
10 undeliverable, and no members opted out of providing their contact information to Plaintiff’s
11 counsel. [Id.]

12 The parties then held a full-day session of mediation with Mr. Hyland on February 19,
13 2020. [Peretz Decl., ¶ 6.] However, the parties were unable to reach a settlement at that time. [Id.]
14 The parties continued to informally discuss settlement throughout the spring and summer of 2020,
15 while simultaneously exchanging further written discovery requests, responses and production of
16 documents. [Id.]

17 At a Case Management Conference on September 14, 2020, the Court ordered the parties
18 to attend a Mandatory Settlement Conference before the Honorable Mary E. Wiss. [Peretz Decl.,
19 ¶ 7.] The parties agreed to convert the conference into a judicial mediation, which took place
20 with Judge Wiss during a full-day session on November 6, 2020. [Id.] With the help of Judge
21 Wiss, the parties were able to reach a class action and PAGA settlement in this matter, which was
22 formalized into the Settlement Agreement currently before the Court for preliminary approval.
23 [Id.] As part of the settlement, the parties also agreed to allow Plaintiffs’ counsel to file a Second
24 Amended Complaint to allege a PAGA claim, and provide notice to the California Labor and
25 Workforce Development Agency (hereinafter “LWDA”) pursuant to Cal. Lab. Code § 2699.3(a)
26 (hereinafter the “PAGA Notice”). [Peretz Decl., ¶ 8.]

27 On January 14, 2021, the parties filed a joint stipulation to file a Second Amended
28 Complaint that included the PAGA claims. [Id.] On February 1, 2021, the Court ordered
Defendants to file their responsive pleading to Plaintiff’s Second Amended Complaint, and on
February 23, 2021, the parties jointly stipulated to stay Defendants’ responsive pleading deadline
pending the Court’s ruling on final approval of the settlement between the Parties. [Id.]

1 **III. TERMS OF PROPOSED SETTLEMENT**

2 The details of the proposed class action settlement are contained in the Settlement
3 Agreement attached as **Exhibit 1** to the Peretz Decl. As set forth below, the terms of the proposed
4 settlement are fair and reasonable in light of the size of the putative class and litigation risks.

5 **A. The Class and Individual Plaintiffs**

6 The “Class” “Class Members,” “Settlement Class,” or “Settlement Class Members,” are
7 defined as “all persons employed by any of the Defendants or Released Parties in a Class Position,
8 at any time during the Class Period.”¹

9 The “Class Period” is defined as “the time period from August 1, 2015 through the date
10 of the Court’s entry of judgment granting Preliminary Approval of the Settlement.”

11 The “Class Position” is defined as “all persons who worked for Defendants as a non-
12 exempt Part-Time Telephone Interviewer, or other similar positions, classified as an hourly, non-
13 exempt employee by the State of California during the Class Period.”

14 “Eligible Class Member” include all members of the Class who do not opt-out from this
15 settlement.

16 **B. Settlement Amount and Distribution**

17 Defendants will pay One Hundred Forty-Four Thousand Dollars and Zero Cents
18 (\$144,000.00) to settle this case (hereinafter the “Gross Settlement Amount”). This Gross
19 Settlement Amount includes payments to the members of the Class, attorneys’ fees, the LWDA
20 for PAGA penalties, reasonable litigation expenses, service fees to each class representative, and
21 costs of administration.

22 The Eligible Class Member Share shall encompass the Net Settlement Amount that will
23 be allocated to each Eligible Class Member as follows: first, dividing the Net Settlement Amount
24 by the total number of Eligible Work Weeks to arrive at the Eligible Work Week Rate, and then
25 second, by multiplying the resulting Eligible Work Week Rate by the total number of Eligible
26 Work Weeks for each respective Eligible Class Member. Payment of Eligible Class Member

27 ¹ The term “Released Parties”, means Defendants Lisa Wasserman, Katrin Ewald, Ewald and
28 Wasserman Research Consultants, LLC, their parents, subsidiaries, affiliates, insurers, related
entities and divisions, and its and their respective: (i) predecessors, successors, and assigns, and
(ii) current and former agents, heirs, executors, administrators, principals, officers, directors,
shareholders, employees, founders, members, assigns, insurers, attorneys, and all other claiming
through and by any of them.

1 Shares shall be subject to legally required withholdings, deductions, and contributions. Any
2 unclaimed funds from the Net Settlement Amount will be sent by the Class Administrator to the
3 State of California Department of Industrial Relations Unclaimed Wages Fund in the name of the
4 Eligible Class Member who did not cash his or her check. The unclaimed funds shall not revert
5 back to the Defendants. This amount of Eligible Class Member Shares is in addition to the Court-
6 approved Named Plaintiffs Enhancements.

7 **C. Payment to Named Class Representatives**

8 In recognition for their effort in coming forth as Class and PAGA representatives, Named
9 Plaintiffs Adriana Hayter, Larine Shields, and Taylor Evans shall receive, in addition to their
10 Eligible Class Member Shares, Four Thousand Dollars and Zero Cents (\$4,000.00) each subject
11 to the Court's approval. This amount shall total Twelve Thousand Dollars and Zero Cents
12 (\$12,000.00).

13 Named Plaintiffs Hayter, Shields, and Evans were instrumental in contacting and
14 providing information to their counsel which led to the initial filing of this action. [Peretz Decl.,
15 ¶ 10.] After the action was filed, each responded to extensive written discovery. [Id.] All three
16 named plaintiffs were present and participated in the full day of mediation with Mr. Hyland on
17 February 4, 2020, including by providing additional factual background and answering questions
18 posed by counsel and Mr. Hyland. [Id.] Finally, all three named plaintiffs were available and
19 provided information which assisted the parties in finally settling this action with Judge Wiss at
20 the full day, remote mediation held on November 4, 2020. [Id.]

21 **D. Attorneys' Fees and Costs**

22 Plaintiffs' Counsel seeks a fee award of no more than thirty-eight percent (38%) of the
23 Gross Settlement Amount in Class Counsel's Fees subject to the Court's approval, in addition to
24 the actual costs and expenses incurred by Class Counsel related to this Action, with total fees,
25 costs and expenses not to exceed fifty-two thousand dollars (\$52,000). This total amount is
26 inclusive of attorneys' fees and estimated litigation costs. Class Counsel Fees and Costs shall be
27 paid to Class Counsel from the Qualified Settlement Fund by the Class Administrator. Such
28 payment of Class Counsel Fees and Costs shall be deemed to be full satisfaction of any obligations
by Defendants to pay any attorney fees, attorney costs and/or other fees or costs to Plaintiffs,
Class Members, and/or Class Counsel in relation to the Action.

///

1 **E. Scope of Release**

2 The release in this matter is limited to the “Released Claims”, which applies to any and
3 all facts and claims asserted in the Action or any other claims, demands, obligations, actions,
4 causes of action, liabilities, debts, promises, agreements, attorneys’ fees, losses or expense,
5 known or unknown, suspected or unsuspected, filed or unfiled, that they may have or had had
6 arising out of any known or unknown fact, condition or incident occurring prior to the date of the
7 Settlement, including but not limited to any claims that could have been asserted in the Action,
8 including but not limited to any and all claims for PAGA penalties, for paid sick leave under
9 California Labor Code § 246, for interference with employee use of paid sick leave under
10 California Labor Code § 246.5, for failure to provide paid sick leave in violation of San Francisco
11 Administrative Code, Chapter 12W, 12W.3, 12W.4, 12W.7, for intentional misrepresentation, for
12 fraud, for fraud by concealment, for violations of California Business & Professions Code §§
13 17200, *et seq.*, for violations of the California Labor Code governing: meal and rest breaks; unpaid
14 wages, including minimum wages, regular wages, overtime and double time wages; unpaid
15 reimbursements; wage statement violations and separation pay violations, including but not
16 limited to violations of Labor Code §§ 200, 201, 202, 203, 204, 218, 218.5, 218.6, 226, 226.3,
17 226.7, 246, 246.5, 248.5, 351, 450, 500, 510, 512, 558, 1174, 1174.5, 1194, 1194.2, 1197, 1197.1,
18 1198, and 1199, 8 Cal. Code of Regulations § 11050 and IWC Wage Order 4-2001, Sections 1,
19 2, 3, 4, 5, 6, 7, 8, 9, 11 and 12.

20 Regardless of whether Class Members opt-out of the Class Settlement, this Settlement
21 shall release all PAGA claims as alleged on behalf of all Class Members.

22 **F. Administration of the Settlement Process**

23 The Class Administrator shall be Simpluris, Inc., a third-party professional class action
24 claims administrator, jointly selected by the Parties and/or appointed by the Court to perform the
25 Class Administration Duties. The Class Administration Costs encompasses the fees and expenses
26 reasonably and necessarily incurred by the Class Administrator as a result of performing the Class
27 Administration Duties. Class Administration Costs shall be paid from the Gross Settlement
28 Amount. Based on an estimate provided by the Class Administrator based on presently and
reasonably available information, the Parties stipulate that Class Administration Costs shall be up
to \$5,000. Should any actual Class Administration Costs turn out to be less than the projected
amount, the Parties agree that the savings will be allocated to the Net Settlement Amount, to be

1 distributed to Eligible Class Members in proportion to their respective numbers of Eligible Class
2 Member Workweeks. Should any actual reasonable and necessary Class Administration Costs be
3 more than the above estimate amount, the Parties stipulate that the Class Administrator should be
4 paid such amounts, the Parties will apply to the Court for an adjustment, with any additional Class
5 Administration Costs to be paid from the Gross Settlement Amount, accompanied by a
6 corresponding reduction in another or other elements of the Gross Settlement Amount, to be
7 approved by the Court as part of Final Approval.

8 Plaintiffs' Counsel will provide Simpluris with the names, addresses and social security
9 numbers of all Class Members for Simpluris to provide all Class Members with notice. The notice
10 will provide each Class Member with information regarding the Settlement including the sum to
11 be paid to each Class Member under the terms of the proposed Settlement, his or her right to
12 object and/or opt-out of the settlement. Class Members may also challenge and seek correction
13 of the computation of their pro rata share, with all challenges to be determined by the Claims
14 Administrator. The proposed class Notice and Claim Form are attached to the Peretz Decl. as
15 **Exhibit 2.**

16 Settlement Class members may elect to opt out of the Settlement Class and thus exclude
17 themselves from the litigation, the Settlement, and the Settlement Class by the claims period
18 deadline. If a Class member opts out, the funds allocated to them will not be returned to
19 Defendants. If more than twenty percent (20%) of the Class opts out of the settlement, Defendants
20 may elect to void the Settlement Agreement.

21 **IV. THE COURT SHOULD PRELIMINARILY APPROVE THE SETTLEMENT**

22 The law favors settlements, particularly in class actions and other complex cases where
23 substantial resources can be conserved by avoiding the time, cost, and rigors of formal litigation.
24 *7-Eleven Owners for Fair Franchising v. Southland Corp.* (2000) 85 Cal. App. 4th 1135, 1151;
25 *Class Plaintiffs v. City of Seattle* (9th Cir. 1992) 955 F.2d 1268, 1276. The purpose of the
26 preliminary evaluation of class action settlements is to determine only whether the proposed
27 settlement is within the range of possible approval, and thus whether notice to the class of the
28 terms and conditions and the scheduling of a formal fairness hearing are worthwhile. *Wershba v.*
Apple Computer, Inc. (2001) 91 Cal.App.4th 224, 234-35. In passing on class action settlements,
a court has broad powers to determine whether a proposed settlement is fair under the
circumstances of the case. *Id.*; see also *Mallick v. Superior Ct.* (1979) 89 Cal. App. 3d 434, 438.

1 To grant preliminary approval of this Settlement, the Court need find only that the Settlement
2 falls within the range of possible final approval, also described as “the range of reasonableness.”
3 *North Cty. Contractor’s Assn., Inc. v. Touchstone Ins. Svcs.* (1994) 27 Ca1. App. 4th 1085, 1089-
4 1090 ; *In re Traffic Exec. Ass’n* (2d Cir. 1980) 627 F.2d 631, 633-634. A decision approving a
5 class action settlement may be reversed only upon a strong showing of clear abuse of discretion.
6 *See Hanlon v. Chrysler Corp.* (9th Cir. 1998) 150 F.3d 1011, 1027.

7 For the reasons set forth below, the Court should grant the motion for preliminary approval
8 of this Settlement.

9 **A. The Settlement Was Negotiated at Arm’s Length**

10 California courts recognize that “a presumption of fairness exists where . . . [a] settlement
11 is reached through arm’s-length bargaining.” *Wershba*, 91 Cal. App. 4th at 245. There is no doubt
12 that the settlement in this case is the result of non-collusive, arm’s-length and informed
13 negotiations. *Chavez v. Netflix, Inc.* (2008) 162 Cal. App. 4th 43, 53 (finding evidence of arm’s-
14 length bargaining based on mediator’s reputation and knowledge).

15 The Settlement was reached after there was extensive litigation of the case. The parties
16 engaged in extensive and hotly disputed meet and confer regarding the type and scope of
17 Plaintiffs’ alleged claims. After Plaintiffs amended their complaint, significant discovery was
18 conducted by both sides, including 24 sets of written discovery. [Peretz Decl., ¶ 6.] There were
19 two full-day mediation sessions held and ultimately a settlement was reached in an arm’s length
20 negotiation with the help of Judge Wiss. [Peretz Decl., ¶¶ 6-7.]

21 In reaching the Settlement, counsel on both sides relied on their respective substantial
22 litigation experiences in similar employment class actions and thorough analysis of the legal and
23 factual issues presented in this case. Information gleaned from investigation and discovery
24 informed both parties’ assessment of the strengths and weaknesses of the case and the benefits of
25 the Settlement. Plaintiffs’ Counsel’s evaluation of the liability and damages in the case was
26 premised on an extensive evaluation of, among other things, the number of the putative Class
27 Members, the alleged amounts of unpaid wages owed, the average hourly rate each class member
28 actually received for his or her work and the penalties that could be awarded with respect to the
alleged violations of law. [Peretz Decl., ¶ 12.] Plaintiffs’ Counsel also performed extensive
analysis of recovery limits for both civil and statutory penalties. [*Id.*]

///

1 **B. The Settlement is Reasonable in Light of the Litigation Risks and Favors**
2 **Approval**

3 The proposed Settlement provides a reasonable amount of recovery as to each of the
4 classes and the individual Plaintiffs. On average, Class Members will receive approximately
5 \$1,300, which will vary by length of employment, while also avoiding the risks, time, and expense
6 of litigation in this case. [Peretz Decl., ¶ 13.] The Class consists of approximately 56 Class
7 employees. [*Id.*] All of these employees are wage earning employees who will receive upfront
8 cash payments. This is significant for employees who work low wage positions.

9 While the proposed Settlement may be less than the amount that the Class could
10 potentially recover at trial, it is unlikely that Plaintiffs would receive the full amount to which
11 they believe they are entitled. First, full recovery could not be achieved unless a jury were to
12 award the Class Members an amount in excess of the allegedly stolen wages from Defendants,
13 the amount of which remains in dispute. Second, full recovery could not be achieved unless the
14 jury were to award all available penalties including multiple penalties for each legal claim asserted
15 in the litigation. However, whether to award penalties, and the quantum of such penalties, is
16 within the discretion of the court. *See, e.g., Thurman v. Bayshore Transit Mgmt.* (2012) 203 Cal.
17 App. 4th 1112, 1135 (affirming trial court’s reduction of civil penalties by thirty percent).

18 Moreover, since the COVID-19 pandemic has hit Defendants’ business, coupled with the
19 amount spent litigating this action, Defendants have lost a substantial amount of income both as
20 a natural result of the pandemic as well as mounting attorneys’ fees. Settling this action at this
21 time would allow the Class to recoup a significant amount of the allegedly unpaid wages from
22 Defendants while also ensuring that Defendants still have some assets left through which to settle
23 this action.

24 Absent Settlement, Plaintiffs’ counsel would still have to litigate various issues regarding
25 the scope of class discovery, the scope of the class for purposes of certification, liability, not to
26 mention the quantum of damages as well as the applicability and appropriate amount of penalties.
27 Such litigation would be costly and time consuming and would likely take many months, if not
28 years, to resolve. By contrast, the settlement ensures timely and substantial relief to all Class
Members.

29 **C. The Amount Designated for Class Representative Payments is Reasonable**

30 Courts routinely approve incentive awards in order to compensate class representatives
for the services they provide and the risks they incur during class action litigation. *Clark v.*

1 *American Residential Services LLC* (2009) 175 Cal. App. 4th 785, 806 (approving the rationale
2 behind awarding participation payments); *Bell v. Farmers Ins. Exchange* (2004) 115 Cal. App.
3 4th 715, 726 (affirming an order for “service payments” to the five named plaintiffs for their
4 efforts litigating the case); *In re Cellphone Termination Fee Cases* (2010) 186 Cal. App. 4th 1380
5 (awarding \$10,000 each to two named plaintiffs); *Van Vranken v. Atlantic Richfield Co.* (N.D.
6 Cal. 1995) 901 F. Supp. 294, 299 (awarding \$50,000 to the named plaintiff).

7 One indicator courts use to assess the reasonableness of the participation payment amount
8 is the payment amount relative to what the other Class members will receive. In *Clark, supra*,
9 175 Cal.App.4th at 804, the court reversed for abuse of discretion a participation award of \$25,000
10 to both named plaintiffs. The court noted that the participation payment awarded to the named
11 plaintiffs was at least 44 times the average payout to the other Class members. *Id.* at 805. In
12 contrast, in *Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles* (2010) 186 Cal. App. 4th 399,
13 412, the court upheld a participation payment of \$5,000 to each named plaintiff, distinguishing
14 the award from that in *Clark* on the basis that the amount was just twice as much as the payout to
15 the other class members.

16 In the instant case, the class representatives (Named Plaintiffs Hayter, Evans and Shields)
17 will receive \$4,000, in addition to the payments they will receive as Class Members. The average
18 payment for non-named Class Members is likely to be approximately \$1,300. [Peretz Decl., ¶ 13.]
19 As such, the amount that the Named Plaintiffs will receive as class representatives is reasonable.

20 Furthermore, the court in *In re Cellphone Termination Fee Cases* articulated the following
21 relevant factors to assess the appropriateness of a class representative’s enhancement: “1) the risk
22 to the class representative in commencing suit, both financial and otherwise; 2) the notoriety and
23 personal difficulties encountered by the class representative; 3) the amount of time and effort
24 spent by the class representative; 4) the duration of the litigation, and; 5) the personal benefit (or
25 lack thereof) enjoyed by the class representative as a result of the litigation.” *Id.*, 186 Cal. App.
26 4th at 1394-95 (quoting *Van Vranken*, 901 F. Supp. at 299). Four of these factors strongly support
27 the requested enhancement here. First, the Named Plaintiffs have taken on a substantial risk, as
28 all of the Named Plaintiffs are at or near minimum-wage employees who have had to work around
their current jobs to provide the labor necessary to take on this Action. [Peretz Decl., ¶ 11.]
Additionally, Shields and Evans both became pregnant during the scope of this Action and have
had to balance their time between their new jobs, new children, and this Action. [*Id.*] Second, all

1 the Named Plaintiffs were required to respond to extensive written discovery, with significant
2 hours of work for each Named Plaintiff. [Peretz Decl., ¶ 10.] Third, the Named Plaintiffs spent
3 many hours participating in multiple full-day mediation sessions and providing information for
4 additional informal settlement discussions. [*Id.*] Finally, the Named Plaintiffs have not received
5 any personal benefits from this participation. [*Id.*] In light of the above factors, the proposed
6 participation payment compares favorably with the amount recovered by the other class members
and is reasonable and fair.

7 **D. The Requested Attorneys' Fees and Costs are Reasonable**

8 An attorneys' fees award is justified where the legal action has produced its benefits by
9 way of a voluntary settlement. *Maria P. v. Riles* (1987) 43 Cal. 3d 1281, 1290-91; *Westside Cmty.*
10 *for Indep. Living, Inc. v. Obledo* (1983) 33 Cal. 3d 348, 352-53.

11 There are two different methods for calculating attorneys' fees — the Lodestar/Multiplier
12 Method and the Common Fund. *Zucker v. Occidental Petroleum Corp.* (C.D. Cal. 1997) 968
13 F.Supp. 1396, 1400. Plaintiffs submit that an award of *no more than* \$52,000 in attorneys' fees
14 — which is equivalent to less than thirty-eight percent (38%) of the Gross Settlement Amount —
15 is justified by both the results in this case, and the time expended by Plaintiffs' Counsel in
obtaining this result.

16 Here, Plaintiffs' Counsel seek an award of attorneys' fees and costs under the common
17 fund doctrine, which has been approved by the California Courts and is customarily used in
18 assessing settlements in wage and hour class actions. *Wershba v. Apple Computer, Inc.* (2001) 91
19 Cal.App.4th 224, 254; *Lealao v. Beneficial California, Inc.*, 82 Cal. App. 4th 19, 26-30 (2000).
20 California courts have repeatedly permitted the recovery of attorneys' fees awards based upon the
21 value of the settlement achieved. *Id.* In the instant case, Plaintiffs' Counsel seeks to have the
22 Court approve attorneys' fees in the amount of approximately 38% of the Gross Settlement
23 Amount. Not only does this sum fairly reflect the value of the work done by Plaintiffs' Counsel
24 in this case, it is reasonable in light of the fact that California courts have customarily approved
25 payments of attorneys' fees amounting to approximately one-third of the common fund, and have
26 frequently granted fees as high as 40% of the common fund in comparable wage and hour class
27 actions. *Big Lots Overtime Cases* (San Bernardino Super. Ct., JCC Proceeding No. 4283, Feb. 4,
28 2004) (33% fee recovery); *Davis v. The Money Store, Inc.* (Sacramento Super. Ct.,
No. 99AS01716, Dec. 26, 2000) (33.3% of \$6,000,000 settlement); *Crandall v. U-Haul* (LASC,

1 Case No. BC178775) (40% attorneys' fees in an overtime exemption class action); *Bushnell v.*
2 *Cremer, Inc.* (OCSC Case No. 657778) (attorneys' fees in the amount of 38%); *Elliott v.*
3 *Clothestime* (OCSC Case No. 01-CC00333) (40% fee in a wage and hour settled prior to class
4 certification).

5 The work done by Plaintiffs' Counsel in this case is unique and thorough. Plaintiffs'
6 Counsel was required to advance numerous theories and research various angles in order to apply
7 causes of action under numerous Labor Code statutes as well as doing numerous hours of outside
8 research to figure out the extent of Defendants' alleged unpaid wages, given that the alleged
9 unpaid wages were not consistent and taken sporadically off of the Class Members' paychecks.

10 Once Plaintiffs' Counsel obtained the putative class list, counsel engaged in extensive
11 outreach and communications with class members both to gather supplemental evidence and
12 confirm the experience of Named Plaintiffs. [Peretz Decl., ¶ 15.] On March 6, 2020, Plaintiffs'
13 Counsel sent a letter to each and every class member providing information about this proposed
14 class action lawsuit, the basis for Plaintiffs' claims, and inviting the Class Members to contact
15 Plaintiffs' Counsel. [*Id.*] Many class members subsequently called or wrote to Plaintiffs' counsel
16 to express their interest in learning more about the lawsuit and sharing their experience at E&W.
17 [*Id.*] Plaintiffs' counsel had many conversations with class members which corroborated the
18 allegations and claims brought by Named Plaintiffs. [*Id.*]

19 Finally, as opposed to any wage and hour case, given that the main theories of liability
20 against Defendants in this case were based on alleged torts as well as the Labor Code, Plaintiffs'
21 Counsel was looking at a reasonable way to recover fees in addition to any recovery made for the
22 alleged damages. In that sense, this case was a tort action and thus should be treated as such when
23 it comes to determining the attorneys' fees award for Plaintiffs' Counsel. It is common in any
24 contingency arrangement for tort recovery to seek for 40% and even 45% of the total recovery at
25 this stage of the litigation. This case should be of no exception and thus the award of attorneys'
26 fees is reasonable for that reason.

27 In the instant case, calculating attorneys' fees on the basis of a percentage of the total
28 settlement yields *no more than* \$52,000 in fees. Plaintiffs' Counsel submits that given the
outstanding results obtained by counsel, this Court should approve an award of attorneys' fees
equivalent to less than 38% of the total settlement amount.

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1 **E. The Proposed Notice is Adequate and Meets All Necessary Requirements**

2 In order to protect the rights of absent class members, the court must provide the best notice
3 practicable to class members of a potential class action settlement. *Phillips Petroleum Co. v.*
4 *Shutts* (1985) 472 U.S. 797, 811-12; *Eisen v. Carlisle & Jacquelin* (1974) 417 U.S. 156, 174-175.
5 The primary purpose of procedural due process is to provide affected parties with the right to be
6 heard at a meaningful time and in a meaningful manner. It does not guarantee any particular
7 procedure but rather requires only notice reasonably calculated to apprise interested parties of the
8 pendency of the action affecting their interests and an opportunity to present their objections.
9 *Ryan v. California Interscholastic Federation - San Diego Section* (2001) 94 Cal. App. 4th 1048,
10 1072. Such notice meets due process standards. *Phillips*, 472 U.S. at 812.

11 Preliminary approval of the settlement will enable notice to go out to Settlement Class
12 Members in the best practicable manner calculated to ensure that class members are alerted to the
13 terms of the settlement and allowed to protect their rights under it. The parties' proposed notice
14 plan is as follows: Simpluris, who is experienced in similar cases, will act as Settlement
15 Administrator. [Peretz Decl., ¶ 16.] Under an agreement reached with Simpluris, the total costs
16 of administering the fund, including the cost of providing Notice to the Class Members will not
17 exceed \$5,000. [Peretz Decl., Exhibit 1 at Section I ¶ 5; *see also* Peretz Decl., Exhibit 3 (initial
18 estimate \$4,135 from Simpluris, with a capped fee of \$4,300).] Under the terms of the Settlement
19 Agreement, these costs will be paid out of the Gross Settlement Amount.

20 The Claims Process will proceed as follows:

21 a. Within fourteen (14) calendar days after preliminary approval of this Agreement,
22 Defendants shall provide to the Claims Administrator the name, last-known address, social
23 security number, and dates of employment for each Class Member (the "Class Data").

24 b. Within ten (10) calendar days after receiving the Class Data, the Claims
25 Administrator shall send to each Class Member, by email if available or otherwise by first-class
26 mail, the court-approved Notice, Request for Exclusion Form and appropriate Claim Form
27 (collectively, the "Notice Packets").

28 c. In the event that any Notice Packets are deemed undeliverable, the Class
Administrator shall have forty-five (45) days from receipt of notice that a Notice Packet was
undeliverable to perform one "skip trace" or similar search and to re-mail the same Notice Packet
(or a true and correct copy thereof) to any new addresses disclosed by such search via first-class

1 regular U.S. Mail indicating on the Notice the date it was re-mailed, and including written notice
2 that a Class Member has fifteen (15) days to respond to a re-mailed Notice via either Objection
3 or Opt-Out Request. In the event that such procedures were followed and the Class Member does
4 not receive a Notice Packet, that Class Member will still be deemed a Class Member unless he or
5 she submits a Class Member Objection or Opt-Out Request.

6 d. Within forty-five (45) calendar days from the date the Notice Packets are mailed
7 by the Claims Administrator (the “Claims Period”), Class Members shall return their Claim
8 Forms, any Objection, and/or Request for Exclusion directly to the Claims Administrator at the
9 address indicated on the Claim Form.

10 e. In the event a Class Member timely returns a Claim Form that is signed, dated and
11 completed in full, the Claim Form shall be deemed valid, and any such Class Member becomes a
12 Settlement Class Member and will receive the appropriate amount of the Gross Settlement
13 Amount.

14 f. In the event a Class Member timely returns a Claim Form that is not signed, dated
15 and/or completed in full, the Claims Administrator shall send one, but not more than one,
16 deficiency notice to that Class Member advising the Class Member to cure the deficiency. Any
17 Class Member who receives a deficiency notice must cure the deficiency within fifteen (15)
18 calendar days from the date of mailing of the deficiency notice or by the close of the Claims
19 Period, whichever is later; the corrected Claim Form must be postmarked no later than the
20 fifteenth (15th) day after the date of mailing of the deficiency notice or it will not be honored, the
21 Claim Form shall be deemed invalid, and any such Class Member becomes a Settlement Class
22 Member but will receive no amount of the Gross Settlement Amount.

23 g. In the event a Class Member returns any materials (including a Claim Form and/or
24 a Request for Exclusion) postmarked after the close of the Claims Period, it will not be honored
25 and shall be deemed invalid, any such Class Member will become a Settlement Class Member
26 but will receive no amount of the Gross Settlement Amount.

27 h. In the event a Class Member does not respond by the close of the Claims Period,
28 their Claim Form shall be deemed invalid, any such Class Member will become a Settlement
29 Class Member but will receive no amount of the Gross Settlement Amount.

30 i. In the event a Class Member timely returns a Claim Form that is signed, dated and
31 completed in full — together with a Request for Exclusion — the Claim Form shall be deemed

1 valid, and the Claims Administrator will contact the Class Member for clarification of the Class
2 Member's intent.

- 3 • If the Class Member fails to provide clarification during the Claims Period, his or
4 her request for exclusion will be deemed void as if no request were made at all,
5 and that Class Member will become a Settlement Class Member and will receive
6 the appropriate amount of the Gross Settlement Amount.
- 7 • If the Class Member confirms his or her decision to be excluded during the Claims
8 Period, then that Class Member will be excluded as a Settlement Class Member,
9 will receive no amount of the Gross Settlement Amount, and will have opted-out
10 of the Settlement. Any Class Member who opts-out of the Settlement will not be
11 bound by the Settlement or have any right to object to, appeal, or comment on it.

12 j. If any mailed Notice Packets are returned as undeliverable, then the Class
13 Administrator shall have forty-five (45) days from receipt of notice that a Notice Packet was
14 undeliverable to perform one "skip trace" or similar search and to re-mail the same Notice Packet
15 (or a true and correct copy thereof) to any new addresses disclosed by such search via first-class
16 regular U.S. Mail indicating on the Notice the date it was re-mailed, and including written notice
17 that a Class Member has fifteen (15) days to respond to a re-mailed Notice via either Objection
18 or Opt-Out Request.

19 k. The Claims Administrator shall keep counsel for Plaintiffs and Defendants
20 apprised of all mailings related to this Agreement.

21 l. Within ten (10) days following the conclusion of the Claims Period, the Claims
22 Administrator shall provide a certified list to counsel for Plaintiffs and Defendants of which
23 claims were timely filed, which are valid, which are invalid, and:

- 24 • which Class Members have become a Settlement Class Member and will receive
25 some amount of the Gross Settlement Amount (and identify the amount);
- 26 • which Class Members have become a Settlement Class Member but will receive
27 no amount of the Gross Settlement Amount; and
- 28 • which Class Members have timely requested exclusion from the Class and will be
excluded as a Settlement Class Member, will receive no amount of the Gross
Settlement Amount, and have opted-out of the Settlement.

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1 **F. Class Members Have the Opportunity to Opt Out or Object**

2 The Settlement provides a simple method for Class Members to opt out, by sending the
3 Administrator a written statement of desire to be excluded from the class action, or to object to
4 its terms.² Class Members who file a timely written objection may appear and be heard at the
5 Final Settlement Hearing, the date, time and location of which will be specified in the notice.

6 If a Settlement Class Member timely disputes the amount of his or her claim, Plaintiffs’
7 Counsel shall make a good faith effort to resolve the dispute informally. If no agreement is
8 reached, the dispute shall be submitted to the Claims Administrator, who shall examine the
9 records in an attempt to resolve the dispute. The Claims Administrator will make every effort to
10 resolve any such disputes prior to final approval of this Settlement. In no event, however, will
11 any such dispute provide any basis whatsoever to delay, or object to, the Settlement or its final
12 approval.

13 These procedures fully protect the rights of Class Members under the settlement, or to
14 proceed on their own if they wish outside the settlement. They warrant preliminary approval,
15 authorizing the parties to proceed to present the settlement terms to the class and for them and
16 Class Members to present to the Court the Class’ response to the settlement terms before the
17 Court considers whether to grant final approval.

18 **V. CONDITIONAL CLASS CERTIFICATION**

19 California Code of Civil Procedure § 382 authorizes class actions “when the question is
20 one of a common or general interest, of many persons, or when the parties are numerous, and it
21 is impracticable to bring them all before the court” Code of Civil Procedure § 382; *Sav-On*
22 *Drug Stores v. Superior Court* (2004) 34 Cal.4th 319, 326. Class certification is appropriate where
23 Plaintiffs establish: (1) the presence of an ascertainable class; and (2) a well-defined community
24 of interest among the class members. *Sav-On*, 34 Cal.4th at 326 (citing *Lockheed Martin Corp. v.*
25 *Superior Court* (2003) 29 Cal.4th 1096, 1104).

26 As has been made clear by the discussion of the evidence above, (a) this class is
27 ascertainable and numerous, as the parties already have the class list and contact information for
28 each class member, and the class consists of approximately 56 persons; (b) there is a well-defined
community of interest among the class members, as they were all subject to the same employment

² Class Members who opt out but then change their minds during the notice response period may withdraw their request for exclusion.

1 practices and policies; (c) a class action is superior to other means of resolving this suit, individual
2 trials for over 50 individuals would be impractical and a waste of judicial resources; and (d) The
3 Class Representatives and Class Counsel can adequately represent the class. This Settlement of
4 Class Action Claims was stipulated and agreed upon. As such, in light of the above, the class
5 should receive conditional certification for the purposes of settlement.

6 **VI. CONCLUSION**

7 For the foregoing reasons, Plaintiffs submit that the settlement is fair, adequate and
8 reasonable. Plaintiffs' Counsel believes that the settlement is in the best interests of the Plaintiffs
9 and the Class. Under the applicable class and collective action standards, the Parties request that
10 the Court grant this unopposed motion and grant conditional class certification; preliminarily
11 approve the Settlement Agreement; name Adriana Hayter, Larine Shields, and Taylor Evans as
12 Class Representatives; name Plaintiffs' counsel as class counsel; name Simpluris as Claims
13 Administrator; authorize the mailing (by email and U.S. Mail) of Notice to the Settlement
14 Class; and schedule a final approval hearing date.

15 Dated: April 9, 2021

PERETZ & ASSOCIATES

16 By:  _____

17 Yosef Peretz

18 Shane Howarter

Attorneys for Named Plaintiffs

19 ADRIANA HAYTER, LARINE SHIELDS, and
20 TAYLOR EVANS