THE HONORABLE JOHN P. ERLICK
Notice of Hearing: February 9. 2018 at 11:00 am

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR KING COUNTY

JEFFREY MAIN and TODD PHELPS, on behalf of themselves and all others similarly situated,

Plaintiffs,

v.

QUICK & CLEAR, INC. d/b/a/ AA WINDOW AND GUTTER CLEANING, a Washington corporation, and BRETT VANDENBRINK, and his marital community,

Defendants.

No. 16-2-29685-8 SEA

PLAINTIFFS' UNOPPOSED MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT

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I. INTRODUCTION

On December 19, 2017, this Court granted preliminary approval of the class action settlement. It did so after careful review of Plaintiffs' (1) detailed analysis of the agreement, (2) the expected recovery for the class, (3) class administration procedures to protect Class Members' due process rights, and (4) a detailed explanation of the fees, costs, and service awards sought. This information is contained in Plaintiffs' Unopposed Motion for Preliminary Approval of the Class Action Settlement. Plaintiffs Jeffrey Main and Todd Phelps, respectfully request that the Court grant final approval of the class action settlement reached with Defendants, Quick & Clear Inc., d/b/a/ AA Window & Gutter Cleaning, and Brett VandenBrink and his marital community. The settlement establishes a $1,700,000 non-reversionary settlement fund for the Class Members, which is comprised of 151 Field Technician and Lead Field Technician current and former employees. The settlement is fair, adequate, and reasonable, and in the best interests of the Class. It provides Class Members with an exceptional recovery of their estimated damages, including both wages and penalty damages. If the Court approves this settlement, it will provide virtually complete relief with little to no compromise, and avoid the additional risks, attorneys' fees and costs inherent with litigation, despite a hard-fought case by Defendants and denial of any wrongdoing. This settlement fully satisfies Washington's substantial interest in encouraging fair resolution through settlement in class actions.

After this Court preliminarily approved the settlement, the settlement administrator sent detailed settlement notices to 151 Class Members. *See Declaration of Lindsay Kline Regarding Settlement Administration*. To date, no Class Member has objected to the settlement, and only one has requested exclusion. *Blankenship Decl*.

The settling Parties have complied with all the notice and procedural requirements of Rule 23(e) and this Court's Order. A balancing of the relevant factors, including the reaction of Class Members to the proposed settlement, demonstrates that the Settlement Agreement is

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fair, reasonable, and adequate. There is no evidence of any fraud, overreaching, or collusion between the settling Parties. Plaintiffs ask that the Court grant final approval of the settlement by: (1) finding the settlement is fair, reasonable, and adequate; (2) approving the requested attorneys' fees and costs, settlement administration expenses, and Class representative service awards; and (3) determining the settlement administrator provided adequate notice to the Class.

II. STATEMENT OF FACTS

This class action arises from, what the Class alleges, Defendants' practices of not lawfully compensating employees for all hours worked, not lawfully calculating overtime, and unlawfully deducting wages, in violation of the Washington wage statutes, RCW 49.46 *et seq*., RCW 49.48 *et seq.*, and RCW 49.52 *et seq.* Dkt. 1, ¶ 1. Plaintiffs filed this action on December 9, 2016, on behalf of themselves and Class of all others similarly situated. *Id*. Plaintiffs outlined the basic facts in their motion for preliminary approval (Dkt. 69), which this Court granted on December 19, 2017. Dkt 71. Here, Plaintiffs summarize relevant facts for final approval.

After Plaintiffs filed this lawsuit, the parties engaged in targeted discovery which revealed facts and admissions from Defendants which set the stage for Plaintiffs to prevail on the question of liability at summary judgment. *Blankenship Decl*. Plaintiffs' obtained and analyzed a substantial amount of information from specific categories of data needed to prove the Class claims, including (1) Defendants' wage policies and practices – current and historical – including for overtime; (2) time-keeping and company vehicle use policies and actual practices, including GPS data tracking vehicle drive-time, and (3) actual wage, compensation, and time records of Class Members. *Blankenship Decl*. Plaintiffs also took the deposition of Defendant Brett VandenBrink. *Id*. This was in addition to numerous meeting, interviews, and correspondence with Class Members and the Class Representatives. *Id*.

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After the Court granted summary judgment in favor of Plaintiffs and the Class on all claims, the parties engaged in an all-day mediation session with private mediator, John F. Aslin, of Perkins Coie, LLP. *Blankenship Decl*. Mediation took place on September 29, 2017. *Id*. The mediation session was integral to the parties' ultimate settlement agreement by helping to illustrate and verify the accuracy of Bonus Correction damages payments that had already been made to the Class, and verifying certain projections and calculations for unpaid wages and liquidated damages.

Following numerous demands and counter-proposals, a final agreement was reached on the creation of a common fund settlement for the benefit of the Class on October 6, 2017. *Id*. Following agreement on the common fund amount, nearly a month of continued negotiations took place to establish other non-monetary benefits to the Class and the scope of a Class release for Defendants. *Id*.

After the Court granted preliminary approval, the administrator mailed notice to 151 Class Members. Kline Decl. Prior to doing so, Class Counsel worked closely with the administrator to provide accurate address and contact information for Class Members. *Blankenship Decl*. Plans were also made in the event any Notice could not be delivered which include using the National Change of Address Database and skip-trace databases, along with the continued assistance of the Class Representatives if necessary. *Id*. Because of the administrator's diligent efforts, as of January 19, 2018, no Notices have been returned as undeliverable. The Notice sent to Class Members was identical in all material respects to the form approved by the Court with the only change being insertion of the actual date of mailing and inclusion of the opt-out/objection deadline date. *Id*.

III. AUTHORITY AND ARGUMENT

This settlement provides virtually complete relief to the Class, gives closure for Defendants, fosters judicial efficiency and furthers express public policy. As a matter of "express public policy," Washington courts strongly favor and encourage settlements. *City of*

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Seattle v. Blume, 134 Wn.2d 243, 258, 947 P.2d 223 (1997); *see also Pickett v. Holland Am. Line-Westours, Inc.*, 145 Wn.2d 178, 190, 35 P.3d 351 (2001) ("voluntary conciliation and settlement are the preferred means of dispute resolution."). This is particularly true in class actions and other complex matters where the inherent costs, delays, and risks of continued litigation might otherwise overwhelm any potential benefit the Class could hope to obtain. *See Class Plaintiffs v. City of Seattle*, 955 F.2d 1268, 1276 (9th Cir. 1992) (acknowledging a "strong judicial policy that favors settlements, particularly where complex class action litigation is concerned")

When considering final approval of a class action settlement, a court determines whether the settlement is "fair, adequate, and reasonable." *Pickett*, 145 Wn.2d at, 188 (quoting *Torrisi v. Tucson Elec. Power Co.*, 8 F.3d 1370, 1375 (9th Cir. 1993)). This is a "largely unintrusive inquiry." *Id.* at 189. Although the Court possesses some discretion in determining whether to approve a settlement,

> [T]he court's intrusion upon what is otherwise a private consensual agreement negotiated between the parties to a lawsuit must be limited to the extent necessary to reach a reasoned judgment that the agreement is not the product of fraud or overreaching by, or collusion between, the negotiating parties, and that the settlement, taken as a whole, is fair, reasonable and adequate to all concerned.

Id. (quoting *Officers for Justice v. Civil Serv. Comm'n*, 688 F.2d 615, 625 (9th Cir. 1982)). Moreover, "it must not be overlooked that voluntary conciliation and settlement are the preferred means of dispute resolution." *Id.* at 190 (quoting *Officers for Justice*, 688 F.2d at 625).

In evaluating whether a class settlement is "fair, adequate, and reasonable," courts generally reference the following criteria, with differing degrees of emphasis: (1) the likelihood of success by plaintiffs; (2) the amount of discovery or evidence; (3) the settlement terms and conditions; (4) recommendation and experience of counsel; (5) future expense and likely duration of litigation; (6) recommendation of neutral parties, if any; (6) number of objectors and nature of objections; and (8) the presence of good faith and absence of

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collusion. *Id.* at 188–89 (citing 2 Herbert B. Newberg & Alba Conte, *Newberg on Class Actions* § 11.43 (3d ed. 1992)). This list is "not exhaustive, nor will each factor be relevant in every case." *Id.* at 189 (quoting *Officers for Justice*, 688 F.2d at 625).

A. This Settlement Is Fair, Adequate, And Reasonable.

The Settlement Agreement is fair, adequate, and reasonable. It provides for Defendants' common fund payment of $1,700,000 for Class Members unpaid wages claims, in addition to $166,377.98 in damages already paid for the Class' overtime and unlawful deductions claims. The relevant criteria, as explained below, weigh heavily in favor of final approval.

1. Plaintiffs' likelihood of success supports final approval.

The existence of risk and uncertainty to the Plaintiffs and Class "weigh heavily in favor of a finding that the settlement was fair, adequate, and reasonable." *Pickett*, 145 Wn.2d at, 192. Indeed, the Class would have faced significant hurdles to relief had the settlement not been reached. This would include additional discovery which had already been served,[1] and a prolonged damages trial. There was also the very real risk of a prolonged appeals process. Defendants made it clear that they were prepared to file an interlocutory appeal on the Court's summary judgment ruling on willfulness, and threatened a full appeal of on all rulings following any final judgment. While attorneys' fees and litigation costs would undoubtedly increase to the detriment of Defendants, the potential recovery for Class Members that a jury might award may not exceed the settlement, even with a complete win at trial.

Class Counsel understood and considered these risks when they negotiated the settlement, which eliminates these risks and provides substantial compensation to Class Members without further delay. This is a testament to the reasonableness of entering into the Settlement Agreement, but also to the outstanding results achieved for the Class. In fact,

[1] Prior to settlement, both parties served additional discovery with Defendants sending comprehensive interrogatories and requests for production requesting information on all Class Members, and Plaintiffs served a notice of CR 30(b)(6) deposition on the corporate Defendant. *Blankenship Decl.*

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according to the cross-checked calculations outlined below, the Class will be receiving 100% of owing wages, and what appears to also be 100% of liquidated/double damages.[2] *Blankenship Decl.*

2. The settlement terms and conditions support final approval.

For the benefit of all Class Members, Defendants have agreed to pay the substantial sum of $1,700,000, in addition to the $166,377.98 in damages that Defendants paid out in January and September of 2017. This fund will cover payments to Class Members, Notice and settlement administration cost, service awards to the named Plaintiffs, and the awards of attorneys' fees and litigation costs, as approved by this Court. Settlement Agreement §II. Unlike many class actions that are claims made where the balance reverts to the Defendant, none of the $1,700,000 will revert to Defendants should this settlement receive, as it should, final approval. *Blankenship Decl.*

Again, this is in addition to the Bonus Correction payments that all Class Members already received as an early result of this lawsuit, which represented 200% of the withheld wages for Defendants' failure to properly calculate overtime. *See, e.g., Rodriguez v. W. Publ'g Corp.*, 563 F.3d 948, 964–66 (9th Cir. 2009) (approving settlement amounting to thirty percent of the damages estimated by the class expert); *In re Mego Fin. Corp. Sec. Litig.*, 213 F.3d 454, 459 (9th Cir. 2000) (approving a settlement estimated to be worth between one-sixth and one-half the plaintiffs' estimated loss); *In re Omnivision Tech., Inc.*, 559 F. Supp. 2d 1036, 1042 (N.D. Cal. 2008) (approving settlement that amounted to nine percent of the maximum potential recovery). In light of the uncertainties of litigation, this is an excellent settlement for the Class.

Using a diverse, representative sample of Class Members and analyses of commute times during Defendants busy and slower seasons, estimates were made as to the number of

[2] These are reasonable and fair estimates, as exact calculations could not have been made without what was estimated at hundreds of hours of work requiring exorbitant expert costs. *Blankenship Decl.*

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hours worked that went uncompensated during the statutory period at issue in this case.[3] Approximately 27,221 hours of drive-time is estimated to be owing to Class Members. This amount has been further analyzed with the number of days each Class Member has worked for Defendants, to determine the percentage of the total number of uncompensated hours attributable to each Class Member. That identified percentage has been used to determine each Class Member's individual percentage share of the Net Settlement Fund. Class Members will be recovering nearly 100% of the monetary damages they could hope to recover if the case had gone through trial. Even after deductions of attorneys' fees, costs, incentive awards, and administration costs, the total monetary damages paid to the Class will total over $1,200,000.00. *Blankenship Decl*.

The funds distributed to the Eligible Class Members will be allocated in a manner that is fair and reasonable, and no segment of the Settlement Class is excluded from relief or consigned to inferior benefits. Each Eligible Class Member's share will be based on the Member's hours worked. Settlement Agreement at § III.E. No settlement funds will revert to Defendants under any circumstances.

3. *The amount of discovery and evidence supports final approval.*

Where "extensive discovery" takes place before a class action settlement, final approval is favored. *See Pickett*, 145 Wn.2d, at 199. Plaintiffs' obtained and analyzed a substantial amount of information from specific categories of data needed to prove the Class claims, including (1) Defendants' wage policies and practices – current and historical – including for overtime; (2) time-keeping and company vehicle use policies and actual practices, including GPS data tracking vehicle drive-time, and (3) actual wage, compensation, and time records of Class Members. *Blankenship Decl*. Plaintiffs also took the deposition of

[3] The statutory period is December 9, 2013 – three years prior to the filing of the Class complaint – to September 2, 2017, the date upon which Defendants began compensating employees for all hours worked.

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Defendant Brett VandenBrink. *Id*. This was in addition to numerous meeting, interviews, and correspondence with Class Members and the Class Representatives. *Id*.

By the time the parties attended an all-day mediation session with private mediator John Aslin on September 29, 2017, Class Counsel were prepared to negotiate a strong settlement. *Id*. The mediation was instrumental to establishing the accuracy of damages calculations and payments, and set the stage for final negotiations that took place over the two weeks following the mediation that ultimately resulted in this exceptional outcome for the Class. A CR 2A agreement on essential terms was reached on October 6, 2017, and after negotiation and memorialization of other non-monetary terms of the agreement, a final Settlement Agreement was signed by all parties on November 27, 2017. *Blankenship Decl*.

4. *The positive recommendation and extensive experience of counsel support final approval.*

"When experienced and skilled class counsel support a settlement, their views are given great weight." *Pickett*, 145 Wn.2d at 200. Class Counsel, who are experienced and skilled in class action litigation, support the settlement as fair, reasonable, adequate, and in the best interests of the Class. *Blankenship Decl*. Class Counsel and Defense counsel in this case have significant class action experience, and litigated the case aggressively and efficiently. Given Class Counsel's knowledge and experience in litigating class actions and their evaluation of the strengths and weaknesses of this case, Counsel believe the settlement is an excellent result. *Blankenship Decl*.

5. *Future expense and likely duration of litigation support final approval.*

Another factor for the Court to consider in assessing the fairness of a settlement is the expense and likely duration of the litigation had a settlement not been reached. *Pickett*, 145 Wn.2d at 188. This settlement guarantees a substantial recovery for Class Members while obviating the need for lengthy, uncertain, and expensive litigation. Continued litigation of this matter would cause additional expense and delay. Although the parties had conducted significant discovery up to this point, substantial work was necessary to prepare the case for

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trial. For example, Plaintiffs would need to prepare additional discovery and further engage its experts – Mueller & Partin, Certified Public Accountants & Forensic Economists – to prepare the case for a trial on damages. *Blankenship Decl*. This had the potential to exponentially increase costs for the class. As previously stated, appeals from Defendants were not just likely, but certain. *Blankenship Decl*. Defendants were preparing for an interlocutory appeal of the Court's summary judgment order, and threatened a full appeal following any judgment at trial. *Id*. Even with the Class prevailing in the end, justice would be substantially delayed, likely by years. In contrast, the settlement makes substantial monetary relief available to Class Members in a prompt and efficient manner.

6. *The reaction of the Class supports final approval.*

A court may infer a class action settlement is fair, adequate, and reasonable when few, if any, class members object to it. *See Pickett*, 145 Wn.2d at 200–01 (approving settlement with almost fifty objections). Here, the deadline to opt out or object to the settlement is February 2, 2018. As of January 19, no Class Member has objected, and only a single Class Member has opted out. *Blankenship Decl*. Plaintiffs will update this information and respond to any objections prior to the Fairness Hearing scheduled for February 9, 2018.

7. *The presence of good faith and absence of collusion support final approval.*

In determining the fairness of a settlement, the Court should consider the presence of good faith and absence of collusion. *Pickett*, 145 Wn.2d at 201. Here, there has been no collusion or bad faith. The settlement is the result of extensive negotiations between experienced attorneys who are highly familiar with class action litigation and the legal and factual issues of this case. *Blankenship Decl*.; *Aslin Decl*. At all times, the negotiations leading to the settlement were adversarial, non-collusive, and at arm's length. *Blankenship Decl*.

For these reasons, final approval of the settlement is appropriate.

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B. Class Members Received The Best Notice Practicable.

This Court has determined that the notice program meets the requirements of due process and applicable law, provides the best notice practicable under the circumstances, and constitutes due and sufficient notice to all individuals entitled thereto. Order Granting Plaintiffs' Motion for Preliminary Approval of Class Action Settlement, p. 3:23-26. The settlement administrator, SIMPLURIS, has implemented the program with the help of Class Counsel. *Blankenship Decl*. *Kline Decl*.

Specifically, on January 2, 2018, SIMPLURIS mailed notice to 151 Class Members, which included the Notice approved by the Court. *Blankenship Decl*.; *Kline Decl*. The Notice was mailed to the last known addresses of Class Members, and as of January 19, 2018, no Notices have been returned as undeliverable. *Blankenship Decl*. The Blankenship Law Fir, also established a webpage dedicated to this lawsuit which includes the full settlement and settlement notice, key documents and information relating to the settlement including the complaint, the order on class certification, and the motion for preliminary approval of the settlement agreement. *Blankenship Decl*. Among the key documents made available on the website will be this motion for final approval, including Class Counsel's request for attorneys' fees and costs, settlement administration expenses, and service awards for the Class Representatives. *Id*. Class Members will have two weeks to review and respond to these requests before the objection deadline. Id. *see In re Mercury Interactive Corp. Sec. Litig.*, 618 F.3d 988, 994 (9th Cir. 2010) (class members should receive opportunity to examine final motion for attorneys' fees and costs before deadline for objections to class action settlement).

To date, the Notice program has been successful. Not a single notice has been returned as undeliverable as of this date, January 19, 2018. For these reasons, the Court should find that the settlement administrator has provided adequate Notice to the Class.

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C. The Payment Of Attorneys' Fees At The Requested Level Is Fair And Reasonable

Class Counsel seeks an award of 33% of the Settlement Fund, which is equal to 30% of the easily quantifiable total monetary recovery by the Class. The Settlement Amount here is $1,700,000.00. Class Counsel's efforts also resulted in an additional $166,377.98 in damages, already paid to Class Members for past wages owed. A 33% recovery for fees from the $1.7million Settlement Amount is almost exactly 30% of $1,866,377.98.[4] As a result of this lawsuit, Class Members have been paid more for the same work across-the-board. Class Members now receive wages for all hours worked, including drive-time and time spent cleaning and maintaining tools and equipment, and have their overtime calculate lawfully.

Under Washington law, the percentage-of-recovery approach is used in calculating fees in common fund cases. *Bowles v. Wash. Dep't of Ret. Sys.*, 121 Wn.2d 52, 72, 847 P.2d 440 (1993). When counsel's efforts result in the creation of a common fund that benefits plaintiffs and class members, counsel have an equitable right to be compensated from that fund for their successful efforts in creating it. *See Boeing Co. v. Van Gemert*, 444 U.S. 472, 478 (1980) ("lawyer who recovers a common fund…is entitled to a reasonable attorney's fee from the fund as a whole"); *Staton v. Boeing Co*., 327 F.3d 938, 967 (9th Cir. 2003) (quoting *Van Gemert*). The Washington Supreme Court has held that for common fund settlements, "the size of the recovery constitutes a suitable measure of the attorneys' performance." *Id.* Public policy supports this approach.

In Washington, this requested percentage award is well within the percentage range for fee awards *See Bowles*, 131 Wn.2d at 72. In class actions, fee awards generally fall around one-third of the common fund recovery. *See Lopez v. Youngblood*, 2011 U.S. Dist. LEXIS 99289, at *12 (E.D. Cal. Sept. 1, 2011) (fees in common fund cases average 32% or 34.64%); *Omnivision*, *supra* at 1047 ("This court's review of recent reported cases discloses that nearly all common fund awards range around 30%"); *In re Pacific Enterprises Sec. Litig*., 47 F.3d

[4] $1,700,000 x .33 = $561,000; $1,866,377.98 x .30 = $559,913.39

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373, 379 (9th Cir. 1995) (affirming fee award equal to 33% of fund); *Romero v. Producers Dairy Foods, Inc*., 2007 U.S. Dist. LEXIS 86270 ("Empirical studies show that, regardless whether the percentage method or the lodestar method is used, fee awards in class actions average around one-third of the recovery" (*citing* 4 Newberg, NEWBERG ON CLASS ACTIONS § 14.6 (4th ed. 2007)); *In re Mego,* 213 F.3d 457, 463 (9th Cir. 2000) (affirming award of 33% of common fund); *Vandervort v. Balboa Capital Corp*. 8 F. Supp. 3d 1200, 1210 (C.D. Cal. 2014) (awarding 33% of fund in class action));

Class Counsel's fee request is reasonable and fair in light of the exceptional results achieved for the Class, which drastically improved working wages and conditions for Class Members within two months of filing the complaint, and full relief within one year. Counsel's inclusion of the full monetary benefit to the Class which includes the Bonus Correction amount, for determination of the requested percentage of the Settlement Amount, is well supported. Defendants admitted that this lawsuit was the catalyst for its changes in policy and payments to Class Members.

> Under the catalyst theory, the plaintiff is entitled to attorney fees as the prevailing party under a fee-shifting statute if the lawsuit results in a voluntary change in the defendant's conduct. A. Conte, H. Newberg, *Newberg on Cl* ass Action, § 14.4, "Catalyst Theory" (4th ed.2002). Under the catalyst theory, the plaintiff is entitled to attorney fees as the prevailing party under a fee-shifting statute if the lawsuit results in a voluntary change in the defendant's conduct.

A. Conte, H. Newberg, *Newberg on Class Action*, § 14.4, "Catalyst Theory" (4th ed.2002).

Class Counsel request is for 33% of the Settlement Amount; a number that does not include the substantial payments caused by this lawsuit. Therefore, the fee request is in-line with Washington caselaw, and does not take away from the Class recovery of more than 100% of owing wages, and substantial double damages. Counsel has fronted all of the costs

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relating to this case,[5] and has expended substantial time and effort, including staff time, and the requested fee amount is fair and reasonable.

Finally, Class Members received settlement notices stating the amount and percentage of fees Class Counsel requested, and as of January 19, 2018, no Class Member has objected to the fee request. *Blankenship Decl*. For these reasons, Class Counsel ask that this Court approve the fee of $561,000, which is 30% of the monetary damages recovered for the Class.

D. Reimbursement Of Class Counsel's Litigation Costs Is Reasonable.

For common fund settlements, litigation costs are awarded in addition to percentage fee awards. *See Bowles*, 121 Wn.2d at 70–74 (affirming common fund fee award of $1.5 million and costs award of $17,000). "Reasonable costs and expenses incurred by an attorney who creates or preserves a common fund are reimbursed proportionately by those class members who benefit from the settlement." *In re Media Vision Tech. Sec. Litig.*, 913 F. Supp. 1362, 1366 (N.D. Cal. 1996). Here, Class Counsel incurred $31,455.01 in litigation expenses. *Blankenship Decl*. These expenses include: (1) filing and service fees; (2) copying and mailing expenses; (3) deposition expenses; (4) computer research expenses; (5) mediation expenses; and (6) expert witness expenses. *Id*. The vast majority of litigation costs were expended on expert fees to most accurately determine damages figures for settlement purposes. *Blankenship Decl*. The expenses were reasonable and necessary to secure the successful resolution of this litigation. *See In re Immune Response Sec. Litig.*, 497 F. Supp. 2d 1166, 1177–1178 (S.D. Cal. 2007) (finding costs such as filing fees, messenger fees, photocopy costs, class action notices, expert fees, travel expenses, postage, online legal research fees, and mediation expenses are relevant and necessary expenses in class action litigation). Class Counsel request reimbursement of these costs.

[5] "[I]n matters maintained as class actions only, repayment of expenses of litigation may be contingent on the outcome of the matter." Washington Rule of Professional Conduct 1.8(e)(2).

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E. The Settlement Administration Expenses Award Is Reasonable.

The settlement agreement also provides for payment of settlement administration expenses from the common settlement fund. *Blankenship Decl.* Administration is administering the settlement, including providing Class Members Notice of the settlement by mail, mailing settlement checks, and handling employee tax reporting duties associated with the Settlement. SIMPLURIS has agreed to cap its fee for settlement administration expenses at $7,000.00. The settlement administration expenses are reasonable in light of the size of the Class and the necessary duties that must be performed by the Settlement Administrator.

For a settlement this size, $7,000.00 in administration expenses from the common fund is low. In fact, Plaintiffs received quotes from other potential settlement administrators which estimated the cost of administration as high as $13,689.00. *Blankenship Decl*. The administration expenses paid from the common fund are reasonable and necessary to inform the Class Members of the settlement and ensure the settlement funds are distributed fairly and orderly. Thus, Plaintiffs request approval of a settlement administration expense award of $7,000.00.

F. The Requested Class Representative Service Awards Are Reasonable.

Subject to Court approval, the Settlement Agreement provides that the Class Representatives may be paid a reasonable incentive award of $10,000 each. "Service" awards "are intended to compensate class representatives for work undertaken on behalf of a class." *In re Online DVD-Rental Antitrust Litig.*, 779 F.3d 934, 943 (9th Cir. 2015). These awards, which serve as a premium in addition to individual recoveries from the settlement, promote the public policy of encouraging individuals to undertake the responsibility of representative lawsuits. *See Rodriguez*, 563 F.3d at 958–59. An incentive is also appropriate to "compensate class representatives for work done on behalf of the class, to make up for financial or reputational risk undertaken in bringing the action, and, sometimes, to recognize their willingness to act as a private attorney general." *Id.* at 958.

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The proposed service awards are in recognition of the Class Representatives substantial service to and efforts on behalf of the Class. Plaintiffs assisted Class Counsel in investigating the claims, preparing the complaint, and understanding the factual background of the lawsuit for the initial claims. *Blankenship Decl*. Both named Plaintiffs attended the full-day mediation on September 29, 2017, and the full-day deposition of Defendant Brett VandenBrink on February 28, 2017. Id. Plaintiffs Main and Phelps initiated the litigation; exposed themselves to potential retaliation, and they remained in contact with Class Counsel throughout the litigation. In addition, both assisted in the preparation for contacting Class Members, and worked diligently to ensure that all Class Members received notice of this lawsuit. *Blankenship Decl.* The service awards will compensate Plaintiffs for their time and effort in stepping forward to protect the rights of Class Members. *Id*. The awards are well deserved and should be approved.

IV. CONCLUSION

The $1,700,000 settlement is fair, adequate, and reasonable in light of the potential obstacles to recovery in this case and the risks of continued litigation, and the $166,377.98 in damages already recovered by Class Members. Moreover, it is appropriate for the Court to grant an award of 33 percent of the common fund for attorneys' fees and $31,455.01 in reasonable litigation cost expenses given the high-quality work performance and successful resolution achieved. An award of $7,000 for settlement administration expenses from the common fund is also appropriate. Finally, awards of $10,000 each to Class Representatives Main and Phelps, are reasonable given their service to the Class. For these reasons, Plaintiffs respectfully request that the court enter Plaintiffs' Proposed Order Granting Final Approval.

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DATED this _____day of _____, 2018.

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By:_____

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