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2 THE HONORABLE JOHN P. ERLICK
3 Note for Motion: February 9, 2018 at 11:00 a.m.
4 With Oral Argument
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8 IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
9 IN AND FOR KING COUNTY

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

12 Plaintiffs,

13 v.

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

18 Defendants.
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No. 16-2-29685-8 SEA

[PROPOSED] ORDER GRANTING
PLAINTIFFS' MOTION FOR FINAL
APPROVAL OF CLASS ACTION
SETTLEMENT

ORIGINAL

1 On December 19, 2017, this Court entered its Order Granting Preliminary Approval of
2 Class Action Settlement (the "Preliminary Approval Order"); and

3 Individual notice complying with Civil Rule 23 was sent to the last-known address of
4 each member of the Class; and

5 A fairness hearing on final approval of the settlement was held before the Court on
6 February 9, 2018; and

7 No objections to the settlement were made by any member of the Class; and

8 The Court, being advised, finds that good cause exists for entry of the below Order;

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10 NOW THEREFORE, IT IS HEREBY FOUND, ORDERED, ADJUGED AND
11 DECREED THAT:

12 1. Unless otherwise provided here, all capitalized terms in this Order shall have
13 the same meaning as set forth in the Settlement Agreement attached as Exhibit 1 to the
14 Declaration of Scott C.G. Blankenship in Support of Plaintiffs' Motion for Preliminary
15 Approval of Class Action Settlement.

16 2. The court finds that notice to the Class has been completed ^(BE) in conformity with
17 the Preliminary Approval Order. The Court finds that this notice was the best notice
18 practicable under the circumstances, that it provided due and adequate notice of the
19 proceedings and of the matters set forth therein, and that it fully satisfied all applicable
20 requirements of law and due process.

21 3. The Court finds it has personal and subject matter jurisdiction over all claims
22 asserted in this litigation with respect to all members of the Class.

23 4. On March 17, 2017, pursuant to Civil Rule 23, the Court certified a Class of
24 "all persons who were employed as Technicians between December 9, 2013, and the final
25 disposition of this case."
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1 5. The Court has appointed Jeffrey Main and Todd Phelps as representatives of
2 the class.

3 6. The Court has appointed The Blankenship Law Firm P.S., and Scott
4 Blankenship as Class Counsel.

5 7. No objections to the settlement have been lodged.

6 8. The terms set forth in the settlement, including the payment by Defendants of
7 \$1,700,000, are approved as being fair, adequate, and reasonable in light of the degree of
8 recovery obtained in relation to the risks faced by the Class. The relief provided to the Class
9 under the Settlement Agreement is appropriate as to the individual members of the Class and
10 as a whole.

11 9. Under Washington law, the percentage-of-recovery approach is used in
12 calculating fees in common fund cases. *Bowles v. Wash. Dep't of Ret. Sys.*, 121 Wn.2d 52, 72,
13 847 P.2d 440 (1993). When counsel's efforts result in the creation of a common fund that
14 benefits plaintiffs and class members, counsel have an equitable right to be compensated from
15 that fund for their successful efforts in creating it. *See Boeing Co. v. Van Gemert*, 444 U.S.
16 472, 478 (1980) ("lawyer who recovers a common fund...is entitled to a reasonable attorney's
17 fee from the fund as a whole"); *Staton v. Boeing Co.*, 327 F.3d 938, 967 (9th Cir. 2003)
18 (quoting *Van Gemert*). The Washington Supreme Court has held that for common fund
19 settlements, "the size of the recovery constitutes a suitable measure of the attorneys'
20 performance." *Id.* Class Counsel seeks an award of 30 percent of the total monetary damages
21 recovered for the Class; equal to 33% of the Settlement Amount. The Court finds that Class
22 Counsel's request is a reasonable percentage consistent with Washington law. The Court
23 therefore approves the payment of \$561,000 in attorneys' fees to Class Counsel as fair and
24 reasonable based on the "percentage of the recovers" approach.

25 The approved attorney fee award of \$561,000 is 33 percent of the \$1,700,000 common
26 fund, and 30.06 percent of the total monetary recovery for the Class including the

1 \$166,377.98 Bonus Correction damages payment already made to Class Members. The Court
2 reaches the conclusion that a fee award of 33 percent of the common fund is reasonable in this
3 case after analyzing (1) the substantial financial recovery for Class Members; (2) the diligent
4 effort utilized by Class Counsel in litigating Class claims; (3) Class Counsels' substantial
5 experience in complex litigation and the skill utilized to achieve the settlement; (4) the hurdles
6 to obtaining and maintaining certification of the Class and proving liability and damages at
7 trial; (5) the substantial risks Class Counsel took in litigating this case on a contingency basis
8 and paying all costs; (6) the fact that Class Counsel had to forego other work due to their
9 duties and obligations to the Class; (7) the high-quality work Class Counsel performed; and
10 (8) the duration and complexity of the litigation and scope of discovery.

11 10. For common fund settlements, reasonable litigation costs incurred by attorneys
12 for a class are awarded in addition to percentage fee awards. *See Bowles*, 121 Wn.2d at 70.
13 Class Counsel seek reimbursement of \$32,029.15. The Court approves payment of \$32,029.15
14 in litigation costs to Class Counsel as fair and reasonable to compensate Class Counsel for the
15 relevant and necessary costs incurred in this case.

16 11. Pursuant to the Settlement Agreement, the Court approves payment of \$7,000
17 from the common fund to the Settlement Administrator, SIMPLURIS. The payment of \$7,000
18 in settlement administration expenses from the common fund is fair and reasonable to
19 compensate the Settlement Administrator for its work and costs incurred in administering the
20 settlement.

21 12. The Court approves the services awards of \$10,000 each to Plaintiffs Jeffrey
22 Main and Todd Phelps. These awards reasonably compensate Plaintiffs for their time and
23 effort in stepping forward to serve as Class representatives, assisting in the investigation,
24 participating actively in the litigation, and reviewing and approving the proposed settlement
25 terms after consulting with Class Counsel.

1 13. Each Class Member shall be entitled to receive a proportional share of the
2 remaining Class funds after deduction of the amounts awarded for attorneys' fees and costs,
3 services awards, and settlement administration expenses. The amount each Class Member will
4 receive will be calculated based on the individual Class Member's tenure with the company,
5 their individual base rate of pay, and historical drive-time. This number will then be increased
6 appropriately to account for exemplary damages, split equally with wages.

7 14. Within 10 days after the Effective Date of the Settlement Agreement,
8 Defendants shall deposit the Settlement Amount of \$1,700,000 in the Settlement Fund of
9 SIMPLURIS.

10 15. Within 20 business days after the Effective Date, the Settlement Administrator
11 shall pay to Class Counsel \$561,000 in attorneys' fees and \$32,029.15 in costs, shall pay
12 Class Representatives \$10,000 each as detailed above, and shall pay to itself \$7,000 in
13 settlement administration expenses.

14 16. Within 20 business days after the Effective Date, the Settlement Administrator
15 shall mail a net check (less deductions and withholdings) to each Class Member eligible to
16 receive payment of their respective percentage of the Net Settlement Fund as provided by
17 Class Counsel.

18 17. Any Class Member who fails to cash or deposit a Settlement check within 180
19 days will not receive a share of the Class settlement funds but nevertheless be bound by the
20 terms of the Settlement Agreement.

21 18. All Class Members who have not excluded themselves from the Class are
22 bound by the terms of the Settlement Agreement, including the Release. As of the Effective
23 Date, the settlement constitutes a full and final settlement and release of all claims, demands,
24 rights, liabilities, and causes of action alleged or that could have been alleged in the Class
25 Complaint in the Litigation, arising under Washington's Wage Statues RCW 49.46 *et seq.*,
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1 49.48 *et seq.*, and 49.52 *et seq.*, and any analogous state or federal law claims including
2 common law and equitable claims; Released Claims.

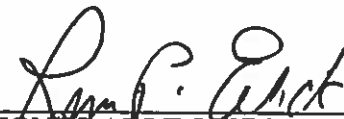
3 19. The Parties and their counsel shall implement and consummate the Settlement
4 Agreement according to its terms and provisions.

5 20. This Court hereby dismisses with prejudice all claims described in Paragraph
6 18 as to all Class Members. This dismissal shall be without costs or attorneys' fees, except as
7 otherwise ordered here.

8 21. The dismissal of the claims against Defendants is without prejudice to the
9 rights of the Parties to enforce the terms of the Settlement Agreement and the rights of Class
10 Counsel to seek payment of fees and costs as provided for in this Order.

11 22. The Court retains jurisdiction over the parties, the Class Members, and the
12 settlement with respect to the future performance of the terms of the Settlement Agreement,
13 including the administration and enforcement of the Agreement, to ensure that all payments
14 and other actions required by the Settlement are properly carried out.

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17 IT IS SO ORDERED this 9th day of February, 2018.

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20 
21 THE HONORABLE JOHN P. ERLICK
22 King County Superior Court Judge

23 23. The Court authorizes distribution of any
24 excess or cy pres funds in accordance with the
25 terms of the Settlement Agreement entered into between
26 the parties.

27 24. The parties shall submit a stipulation and
28 order of dismissal with prejudice within sixty (60)
29 days of this order.