

THE HONORABLE DAVID WHEDBEE
Noted for Hearing: April 26, 2024 at 9:00 a.m.
With Oral Argument

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

KRISTA BELLE and DEVIN MAGGARD, on
their own behalf and on the behalf of all others
similarly situated,

Plaintiffs,

v.

PPC SOLUTIONS, INC., a Washington
Corporation; PHOENIX PROTECTIVE
CORPORATION, a Washington Corporation;
JAGRUT SHAH, individually and/or the marital
community composed of JAGRUT SHAH and
JANE DOE SHAH; and SHEILA LESLIE,
individually and/or the marital community
composed of SHEILA LESLIE and JOHN DOE
LESLIE,

Defendants.

No: 20-2-02871-1 KNT

**PLAINTIFFS' MOTION FOR FINAL
APPROVAL OF CLASS ACTION
SETTLEMENT**

I. INTRODUCTION

On December 18, 2023, this Court granted preliminary approval of a class action settlement ("Settlement Agreement" or "Agreement") entered into by Plaintiffs Krista Kane (nee Belle) and Devin Maggard on behalf of themselves and a class of security guards employed by Defendants PPC Solutions, Inc., Phoenix Protective Corporation, Jagrut Shah, and Sheila Leslie ("Defendants"). Plaintiffs allege Defendants made unlawful deductions to Class Member pay,

1 willfully failed to provide meal and rest breaks, and failed to pay for orientation and training.
2 Defendants have denied Plaintiffs' claims. After a hearing and reviewing the Settlement
3 Agreement, this Court found it and its terms to be "fair, reasonable and adequate." *Id.* ¶ 1.

4 The Agreement – which required Defendants pay \$2,500,000 for the benefit of the
5 Settlement Class –is fair, adequate, and reasonable, and in their best interest. The Agreement is
6 an excellent result, with Settlement Class members receiving over \$636.28 on average. This
7 amounts to approximately one week of pay for each class member on average. Settlement
8 Administrator Simpluris has successfully implemented the notice program approved by this
9 Court, providing notice to nearly the entirety of the class of members of the Settlement Class.
10 Only 49 notices out of 2,559 that were post mailed were returned undeliverable. Email notices
11 were successfully sent to 48 out of those 49 prospective recipients – only one emailed notice
12 returned as undeliverable. Settlement Administrator Simpluris has successfully implemented the
13 notice program approved by this Court, providing notice to 99% of members of the Settlement
14 Class. As of April 15 2023, no Settlement Class Members have objected to the Agreement and
15 only 2 have opted out.

16 For the reasons set forth below and previously submitted in support of preliminary
17 settlement approval, the Agreement is fair, adequate, reasonable, and in the best interests of the
18 Settlement Class. Thus, Plaintiffs respectfully request the Court grant final approval of the
19 Agreement by: (1) finding the Agreement to be fair, adequate, and reasonable; (2) determining
20 that adequate notice was provided to Settlement Class members; and (3) approving the requested
21 Class Representative service awards and attorneys' fees and costs.
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II. STATEMENT OF FACTS

A. Factual and Procedural Background.

Defendants PPC Solutions, Inc. and Phoenix Protective Corporation, based in Spokane, Washington, provide security guard services to clients in the State of Washington. Dkt. No. 13. Defendant Leslie is the president and owner of PPC Solutions, Inc. and Phoenix Protective Corporation. *Id.* Defendant Shah is the Vice President and/or Principal of PPC Solutions, Inc. and Phoenix Protective Corporation. *Id.*

Plaintiffs filed their complaint against Defendants on January 31, 2020, amending their complaint on July 22, 2020. Dkt. Nos. 1, 13. The Court certified the Class on July 1, 2021. Dkt. No. 118. The Parties have engaged in substantial and contentious litigation over the course of nearly four years. Plaintiffs' counsel completed extensive investigation and discovery, including reviewing and analyzing the damages data with the assistance of a damages expert, contacting and interviewing the Class Members, working with a survey expert to obtain a survey of Class Member experiences regarding the alleged claims, and reviewing, analyzing other relevant documents and taking/defending depositions. Declaration of Hardeep S. Rekhi in support of Plaintiffs' Motion for Preliminary Approval ("Rekhi Decl.") ¶ 3. There was extensive motion practice, including the motion for Class certification, multiple motions to compel, and cross motions for summary judgment which were still pending at the time of settlement. Dkt. Nos. 161, 203.

The Parties engaged in mediation on September 28, 2023 with experienced mediator Louis D. Peterson, resulting in an agreement as to the essential terms of the settlement. Rekhi Decl. ¶ 6. The Parties then drafted, finalized, and executed the long-form settlement agreement ("Agreement") in October 2023. Rekhi Decl., Ex. 1.

1 All of the Parties' settlement negotiations have been non-collusive and at arm's length.
2 Rekhi Decl. ¶ 7; *see also* Agreement § III. Plaintiffs and their counsel believe the Agreement is
3 fair, adequate, reasonable, and in the best interests of the proposed class. Rekhi Decl. ¶ 9; *see*
4 *also* Agreement § III.

5 On November 7, 2023, the Court heard Plaintiffs' motion for preliminary approval of the
6 Settlement Agreement. Rekhi Decl. ¶ 8. On December 18, 2023, the Court granted the motion.
7 *See* Preliminary Approval Order [Dkt. No. 222]. The Settlement requires Defendants to pay a
8 total of \$2,500,000 for the benefit of the Settlement Class. Agreement § 3.1.d. Subject to Court
9 approval, these settlement proceeds will be used to pay settlement administration expenses,
10 service awards to Plaintiffs, attorneys' fees and costs, and awards to eligible members of the
11 Settlement Class (the "Class Fund"). *Id.* After deducting the proposed service awards and fees
12 and costs, the Settlement Class will be entitled to recover \$1,633,366.67, with the average
13 Settlement Class Member recovering about \$640, the equivalent of approximately 40 hours of
14 work. Rekhi Decl. ¶ 9; Agreement § 3.1.k.

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17 **B. Notice Process.**

18 The notice campaign was successful. Simpluris, the Court-appointed Settlement
19 Administrator, mailed and emailed notices to the 2,559 Settlement Class Members identified by
20 Defendants. Declaration of Lisa Pavlik ("Pavlik Decl.") ¶ 9-10; Rekhi Decl. ¶ 10. While 49
21 notices were undeliverable by post mail, Simpluris successfully sent 48 of those recipients notice
22 by email. *Id.* ¶ 10. In response to the Simpluris' outreach, no Class Members objected to the
23 settlement, and only two opted out. Pavlik Decl. ¶ 13-14. One additional Class Member was
24 identified in the settlement administration process who was not included in previous class lists.
25 *See* Rekhi Decl. ¶ 10. Class Counsel sent the Settlement Notice to this Class Member and,
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1 through email and phone correspondence, confirmed in writing that he does not wish to opt out
2 of nor object to the settlement. *Id.* Notices were therefore sent to over 99.99% of the Settlement
3 Class with no members objecting and only two opting out. *Id.*

4 Given the excellent recovery of nearly an additional week of pay for each Class Member
5 on average, Plaintiffs and Class Counsel maintain the Settlement is fair, adequate, reasonable,
6 and in the best interest of the Settlement Class. *See* Rekhi Decl. ¶ 9.

8 **C. Damages – Minimum Distribution.**

9 Plaintiffs alleged that Defendants failed to pay Class Members for hours worked during
10 onboarding and orientation (“New Hire Processing”). Dkt. No. 212 at 7-9. Defendants contended
11 the New Hire Processing constituted non-compensable pre-hire activities. *Id.* at 7-12. During the
12 discovery process, Defendants conceded they had no pay or hours data for employee time spent
13 attending New Hire Processing. Rekhi Decl. ¶ 11. Upon investigation and analysis, Class Counsel
14 determined that there are 143 Settlement Class Members not reflected in Defendants’ pay and
15 hours data because they attended New Hire Processing but did not go on to work any security
16 guard shifts. *Id.* To account for these individuals, and with the discretion afforded by the
17 Agreement, Class Counsel concluded a minimum distribution of \$50 to these Settlement Class
18 Members for hours spent in New Hire Processing is a fair and reasonable allocation of the Class
19 Fund. Agreement § III.3.c.; Rekhi Decl. ¶ 11.

22 **III. STATEMENT OF ISSUES**

23 Whether the Court should: 1) grant final approval of the Settlement Agreement; 2) find
24 the notice process was constitutionally sound; 3) approve the requested service awards to Class
25 Representatives; 4) approve the requested award to Simpluris for its settlement administrations
26 expenses; and 5) approve the requested fee and costs awards to Class Counsel.

1 **IV. EVIDENCE RELIED UPON**

2 Plaintiffs rely on the Declarations of Plaintiff’s Attorney Hardeep S. Rekhi and Simpluris
3 Settlement Administrator Lisa Pavlik in support of this motion, as well as the attached exhibit(s),
4 and the pleadings and records on file with the Court.
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6 **V. AUTHORITY AND ARGUMENT**

7 The approval process for a class action settlement takes place in three stages: (1)
8 preliminary approval of the settlement; (2) dissemination of notice to class members; and (3) a
9 “fairness hearing” or final approval hearing, at which class members may be heard regarding the
10 settlement, and at which evidence and argument concerning the fairness, adequacy, and
11 reasonableness of the settlement may be presented. *Manual for Complex Litigation* (Fourth
12 (“MCL 4th”) §§ 21.632-.634 (2016). This procedure, which is used by Washington state courts
13 and endorsed by class action commentator Professor Newberg, safeguards class members’ due
14 process rights and enables the Court to fulfill its role as the guardian of class interests. *See* 4
15 William B. Rubenstein, *Newberg on Class Actions* §§ 13:10, 13:39 (5th ed. 2019).
16

17 Here, the first two steps in this procedure have already occurred. The Court granted
18 preliminary approval of the Settlement on December 18, 2023. *See* Dkt. No. 222. On January 18,
19 2024, Simpluris sent out notice by direct mail and by email to the members of the Settlement
20 Class. Pavlik Decl. ¶¶ 8-9. As mentioned above, the notice program was successful, resulting in
21 only 1 of the Settlement Class Members being unreachable. *Id.* By this motion, Plaintiffs ask the
22 Court to take the final step in this process.
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24 When considering final approval of a class action settlement, a court determines whether
25 the settlement is “fair, adequate, and reasonable.” *Pickett v. Holland Am. Line-Westours, Inc.*,
26 145 Wn.2d 143, 188, 35 P.3d 351 (2001) (quoting *Torrisi v. Tucson Elec. Power Co.*, 8 F.3d
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1 1370, 1375 (9th Cir. 1993)). This is a “largely unintrusive inquiry.” *Id.* at 189. Although the
2 Court possesses some discretion whether to approve a settlement,

3 [T]he court’s intrusion upon what is otherwise a private consensual agreement
4 negotiated between the parties to a lawsuit must be limited to the extent
5 necessary to reach a reasoned judgment that the agreement is not the product of
6 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.

7 *Id.* (quoting *Officers for Justice v. Civil Serv. Comm’n*, 688 F.2d 615, 625 (9th Cir. 1982)).

8 Indeed, “it must not be overlooked that voluntary conciliation and settlement are the preferred
9 means of dispute resolution.” *Id.* at 190 (quoting *Officers for Justice*, 688 F.2d at 625).

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11 **A. The Settlement is fair, adequate, and reasonable.**

12 To decide whether a class action settlement is fair, adequate, and reasonable such that
13 final approval is appropriate, courts consider several factors, including the strength of the
14 plaintiff’s case; the risk, expense, complexity, and likely duration of further litigation; the risk of
15 maintaining class action status throughout the trial; the amount offered in settlement; the extent
16 of discovery completed and the state of the proceedings; the experience and views of counsel;
17 the presence of a governmental participant; the reaction of the class members to the proposed
18 settlement; and the absence of collusion. *Churchill Vill., L.L.C. v. Gen. Elec.*, 361 F.3d 566, 575
19 (9th Cir. 2004); *see also Pickett*, 145 Wn.2d at 188-89. This list is “not exhaustive, nor will each
20 factor be relevant in every case.” *Pickett*, 145 Wn.2d at 189 (quoting *Officers for Justice*, 688
21 F.2d at 625). An analysis of these factors supports final approval of the Settlement Agreement.

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23 **1. The strength of Plaintiffs’ case.**

24 Plaintiffs and Class Counsel continue to believe they have a strong case but are also
25 pragmatic in their awareness of the risks inherent in litigation and the various defenses available
26 to Defendants. The reality that members of the Settlement Class could end up recovering only a
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1 fraction of their claimed damages or losing some claims at trial was significant enough to
2 convince Plaintiffs and Class Counsel that the Settlement reached with Defendants outweighs
3 the gamble and expense of further litigation. Rekhi Decl. ¶ 14.

4 First, although the Court has certified the Class, Defendants conveyed their intent to move
5 for decertification. Plaintiffs recognize the risk that the Court could have decertified the Class,
6 leaving only Plaintiffs' individual claims. *Id.* ¶ 15. At that point, individual members of the
7 Settlement Class would have to file their own lawsuits or have payouts on any class-wide
8 recovery substantially delayed by appeals.

10 Second, Defendants have denied liability and maintained they made no unlawful
11 deductions to Class Member pay, and those Class Members received their wages and mandated
12 breaks as required. Indeed, prior to mediation, Defendants moved for summary judgment against
13 all Class claims and opposed Plaintiffs' motions. Dkt. Nos. 161, 212. Those motions remained
14 undecided, posing significant risk to the claims of all parties. Rekhi Decl. ¶ 14.

16 2. The risk, expense, complexity, and likely duration of further litigation.

17 Additional litigation would be lengthy and expensive if this action were to proceed.
18 Plaintiffs had many hurdles to clear before a potential successful resolution. As mentioned above,
19 Defendants could have moved to decertify the Class. *Id.* ¶ 15. In addition, trial is always risky
20 and even if Plaintiffs prevailed, they would likely face an appeal. *Id.* This Settlement avoids
21 these risks and provides immediate and certain benefits. *Id.*

23 3. The amount offered in settlement.

24 The Settlement requires Defendants to pay \$2,500,000. This amount will be used to pay
25 Settlement Class Members after deducting the Class Representative service awards, settlement
26 administration expenses, and attorneys' fees and costs as approved by the Court. If the Court
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1 approves, Plaintiffs will each receive a service award of \$10,000, Defendants will pay
2 Simpluris's fees and costs of up to \$13,300 and Class Counsel will be awarded \$833,333.33 for
3 attorneys' fees and costs. Agreement §§ III.1.n-o., III.4., III.6.d., Ex. A; Rekhi Decl. ¶ 17; Pavlik
4 Decl. ¶ 15.

5 If approved, the remaining amount of \$1,633,366.67 shall be distributed to Settlement
6 Class Members. Agreement § III.1.k. The amount of each Member's award is based on the
7 Member's aggregate proportional share of the Class fund as split among their claims, as
8 calculated by Class Counsel using data and information provided by Defendants. *Id.* § III.3.c.
9 The average payment per class member is about \$640, equivalent to approximately 40 hours of
10 pay. Rekhi Decl. ¶ 9.

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12 4. The extent of discovery completed and the state of the proceedings.

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14 "A key inquiry is whether the parties had enough information to make an informed
15 decision about the strength of their cases and the wisdom of settlement." *Rinky Dink, Inc. v.*
16 *World Business Lenders*, Case No. C14-0268-JCC, 2016 WL 3087073, at *3 (W.D. Wash. May
17 31, 2016). Here, the parties were well informed about the strengths and weaknesses of their cases.
18 See Rekhi Decl. ¶ 5. The Parties engaged in a full day mediation on September 28, 2023 before
19 reaching an agreement on September 29, 2023. *Id.* ¶ 6. The Parties exchanged voluminous written
20 discovery, conducted several depositions, engaged in extensive motions practice, and engaged in
21 extensive discussions about the strengths and weaknesses of their respective cases. See *id.* ¶¶ 3-
22 5. Additionally, Plaintiffs' counsel spent numerous hours interviewing Plaintiffs and Class
23 Members and analyzing the payroll data and employee pay sheets, and other information
24 provided by Defendants to determine and assess the risks associated with a trial on the merits of
25 the claims. See *id.* ¶¶ 4, 19. Based on the damages analysis performed by both Plaintiff's damages
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1 expert and information obtained in discovery and directly from Class members, Class Counsel
2 was well prepared for mediation and to enter into the Settlement Agreement on November 6,
3 2023. *Id.* ¶ 16. Plaintiffs and Class Counsel only agreed to settle because it best serves the Class.
4 *Id.*

5 5. The experience and views of counsel.

6
7 Where class counsel is qualified and well informed, their opinion that a settlement is fair,
8 reasonable, and adequate is entitled to significant weight. *See Pelletz v. Weyerhaeuser Co.*, 255
9 F.R.D. 537, 543 (W.D. Wash. 2009). Class Counsel are particularly experienced in litigating
10 employment class actions and have a keen understanding of the legal and factual issues involved
11 in this case on behalf of security guards. *See Rekhi Decl.* ¶¶ 21-27. Class Counsel believe the
12 Settlement is fair, reasonable, adequate, and in the best interest of the Settlement Class. *Id.* ¶ 7.

13 6. The reaction of members of the Settlement Class.

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15 The positive response to a settlement by the class—as evidenced by a small percentage
16 of opt-outs and objections—further supports final approval. *See Pelletz*, 255 F.R.D. at 543;
17 *Tadepalli v. Uber Techs., Inc.*, No. 15-CV-04348-MEJ, 2016 WL 1622881, at *8 (N.D. Cal. Apr.
18 25, 2016) (quoting *In re Omnivision Techs., Inc.*, 559 F. Supp. 2d at 1043) (observing “the
19 absence of a large number of objections to a proposed class action settlement raises a strong
20 presumption that the terms of a proposed class settlement action are favorable to the class
21 members”). The deadline for objecting or opting out of the Settlement was March 18, 2024, and
22 to date, only two Class Members have opted out, and none have objected. *Pavlik Decl.* ¶¶ 12-14.
23 This factor weighs in favor of approval.
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1 **B. Members of the Settlement Class received the best notice practicable.**

2 This Court has determined that the notice program meets the requirements of due process
3 and applicable law, provides the best notice practicable under the circumstances, and constitutes
4 due and sufficient notice to all individuals entitled thereto. Preliminary Approval Order ¶ 4.
5 Simpluris has fully implemented the program. *See* Pavlik Decl. ¶¶ 3-11.
6

7 Specifically, on January 18, 2023, Simpluris sent the Court-approved notice by U.S. mail
8 and by email to the Class. *Id.* ¶¶ 8-9. Class Counsel’s contact information was on the notices. *Id.*,
9 Ex. A. Settlement Class Members could also contact Simpluris for information. *Id.*

10 The notice program was successful. Of the 2,560¹ Class Members, 2,559 received notice.
11 *Id.* ¶ 10. In addition to notices sent by post mail, Simpluris also sent emailed notices to class
12 members for whom an email address was available. Thus, the Court should find that Simpluris
13 provided adequate notice to the Settlement Class.
14

15 **C. The requested service awards for the named Plaintiffs are reasonable.**

16 Service payments “are intended to compensate class representatives for work undertaken
17 on behalf of a class” and “are fairly typical in class action cases.” *In re Online DVD-Rental*
18 *Antitrust Litig.*, 779 F.3d 934, 943 (9th Cir. 2015) (citation omitted). Such awards are generally
19 approved so long as the awards are reasonable and do not undermine the adequacy of the class
20 representatives. *See Radcliffe v. Experian Info. Solutions, Inc.*, 715 F.3d 1157, 1164 (9th Cir.
21 2013). These awards promote the public policy of encouraging individuals to undertake the
22 responsibility of representative lawsuits. *See Rodriguez v. W. Publ’g Corp.*, 563 F.3d 948, 958–
23 59 (9th Cir. 2009).
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27 ¹ The Class Size of 2,560 represents the addition of the one additional Class Member to the original Class of 2,559 individuals.

1 The requested awards of \$10,000 for the named Plaintiffs are reasonable given their
2 efforts during the litigation and settlement and are well in line with awards approved by other
3 courts. *See, e.g., Tuttle v. Audiophile Music Direct, Inc.*, No. C22-1081JLR, 2023 WL 8891575,
4 at *15 (W.D. Wash. Dec. 26, 2023) (approving \$10,000 service awards and citing decisions
5 approving the same award in other cases). Plaintiffs assisted Class Counsel with investigating
6 and mediating this case and took the risk of stepping forward as representatives of the Class.
7 Rekhi Decl. ¶ 18. In addition, Plaintiffs also sat for individual depositions, assisted with
8 discovery responses, and provided input during settlement negotiations. *Id.* Plaintiffs' support of
9 the settlement was independent of any award and not conditioned on the Court awarding an award
10 at all. *Id.* Thus, Plaintiffs' adequacy is unaffected by the proposed awards and the awards should
11 be approved.
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13 **D. The award of attorneys' fees and costs is fair and reasonable.**
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15 A plaintiff may recover his or her attorneys' fees when the plaintiff obtains a "common
16 fund" for the benefit of others. *Bowles v. Dept. of Retirement*, 121 Wn.2d 52, 70, 847 P.2d 440
17 (1993). Under Washington law, the percentage-of-recovery approach is used in calculating fees
18 in common fund cases. *Bowles*, 121 Wn.2d at 72. Plaintiffs' efforts obtained a common fund for
19 the benefit of the Class. *See* Agreement § III.1.k. (establishing a common fund to be shared
20 among the Settlement Class).
21

22 Here, Class Counsel seeks a fee award of 33% of the recovery obtained. Rekhi Decl. ¶
23 19. Class Counsel has worked on these class claims without compensation for over four years,
24 collectively accruing over \$550,000 in fees and \$64,500 in costs. *Id.* In addition, Class Counsel
25 anticipates additional work with the Settlement Administrator to ensure the settlement is fairly
26 administered and implemented and obtaining dismissal of this action. *Id.*
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1 The fee request is particularly reasonable in light of the risks inherent in this class action.
2 Indeed, there was a real possibility that Class Counsel would recover nothing for their work. But
3 Class Counsel thoroughly investigated and litigated these claims, applied their investigation to
4 the claims and defenses, engaged in extensive discovery and motions practice, participated in
5 lengthy negotiations with Defendants, and ultimately achieved a favorable settlement for the
6 Settlement Class. *Id.* ¶ 20. Plaintiffs and Class Counsel maintain the Settlement is in the best
7 interests of the Settlement Class. *Id.* ¶ 9. Indeed, this is an excellent result, given the risks and
8 delays posed by continued litigation and possible appeals. *Id.* ¶ 20. Class Counsel's request for
9 fees and costs of \$833,333.33, is therefore reasonable.
10

11 Finally, Settlement Class Members were explicitly advised of the requested fee award as
12 set forth in the Notice of Settlement. *See* Pavlik Decl., Ex. A. None of the Settlement Class
13 Members objected to the award. Again, this supports granting the requested fee award.
14

15 VI. CONCLUSION

16 For the reasons stated above, Plaintiffs respectfully request that the Court grant final
17 approval of the Settlement Agreement, including the awards to Plaintiffs, Simpluris, and Class
18 Counsel, and enter the Proposed Order Granting Final Approval.
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20 VII. LCR CERTIFICATION

21 I certify that this memorandum contains not more than 4,200 words, in compliance with
22 the Local Civil Rules.

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1 RESPECTFULLY SUBMITTED AND DATED this 15th day of April, 2024.

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