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CONRAD SILVA, and **EDITH VIERA** individually, and on
10 behalf of all others similarly situated

11
12 **UNITED STATES DISTRICT COURT**

13 **NORTHERN DISTRICT OF CALIFORNIA – SAN FRANCISCO DIVISION**

<p>15 ANDREA SEWELL, CONRAD SILVA, and 16 EDITH VIERA, individually and on behalf of all others similarly situated,</p> <p>17 Plaintiffs,</p> <p>18 v.</p> <p>19 STATE COMPENSATION INSURANCE 20 FUND,</p> <p>21 Defendant.</p>	<p>Case No.: 3:13-cv-00588-TEH</p> <p>[PROPOSED] ORDER GRANTING FINAL APPROVAL OF CLASS ACTION SETTLEMENT; GRANTING MOTION FOR AWARD OF ATTORNEY'S FEES AND COSTS</p> <p>Judge: Honorable Thelton E. Henderson Courtroom: 2 Date: January 26, 2015 Time: 10:00 a.m.</p> <p>Action Filed: February 11, 2013</p>
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24 This matter was heard by the Court on January 26, 2015, at 10:00 a.m., in Courtroom 2, of
25 the United States District Court, Northern District of California, before the Honorable Thelton E.
26 Henderson, pursuant to Plaintiffs' noticed Motion for Final Approval of Class Action Settlement
27 and Motion for Award of Attorney's Fees and Costs. Appearances were noted in the record.

1 The Court has reviewed the materials submitted by the parties and has heard arguments
2 presented at the hearing. For the reasons cited on the record as well as those stated hereafter, the
3 Court finds and orders as follows:

4 The Court, having considered the documents filed by the Parties in connection with the
5 class action settlement, the arguments of counsel, the Motion for Final Approval of Class Action
6 Settlement, filed December 22, 2014, Dkt. No. 74; the Motion for Award of Attorney's Fees and
7 Costs, filed November 24, 2014, Dkt No. 69; the Memorandum of Understanding Regarding Class
8 Action Settlement Agreement and Release, filed as Exhibit 1 to the Declaration of Harvey Sohnen
9 in Support of Plaintiffs' Motion for Preliminary Approval of Class Action Settlement, Approval of
10 Attorney Fees, Enhancements and Administration Costs, filed June 16, 2014, Dkt. No. 46, as
11 amended by the Amended Memorandum of Understanding Regarding Class Action Settlement
12 Agreement and Release, attached as Exhibit 1 to the Supplemental Declaration of Harvey Sohnen
13 in Support of Plaintiffs' Motion for Preliminary Approval of Settlement, filed July 23, 2014, Dkt.
14 No. 56 (jointly referred to as the "Settlement Agreement"); the Motion for Preliminary Approval of
15 Class Action Settlement, filed June 16, 2014, Dkt. No. 44; the Supplemental Briefs in Support of
16 Preliminary Approval of Class Action Settlement, filed June 16, 2014, Dkt. Nos. 45-46; this
17 Court's Order Granting Preliminary Approval of Class Action Settlement, filed August 27, 2014,
18 Dkt. No. 65; Statement of Non-Opposition to Motion for Award of Attorney's Fees and Costs filed
19 by State Compensation Insurance Fund, filed December 8, 2014, Dkt. No. 73; and the reply briefs
20 in support of Final Approval of Class Action Settlement and Award of Attorney's Fees and Costs,
21 filed November 24, 2014, and December 22, 2014, Dkt. Nos. 70 and 75; Statement of Non-
22 Opposition to Motion for Final Approval filed by State Compensation Insurance Fund, filed
23 January 5, 2015, Dkt. No. 77; Supplemental Declaration of Mary Butler Regarding Notice and
24 Settlement Administration, filed January 12, 2015, Dkt. No. 78; Supplemental Declaration of
25 Harvey Sohnen in Support of Plaintiffs' Motion for Final Approval of Class Action Settlement and
26 Award of Attorney's Fees and Costs, filed January 12, 2015, Dkt. No. 79; Supplemental
27 Declaration of Michael Ahmad in Support of Plaintiffs' Motion for Award of Attorney's Fees and
28 Costs, filed January 12, 2015, Dkt. No. 80; Supplemental Memorandum of Points and Authorities

1 in Support of Plaintiffs' Motion for Final Approval of Class Action Settlement and Award of
2 Attorney's Fees and Costs, filed January 12, 2015, Dkt. No. 81; hereby grants final approval of the
3 Settlement and grants the Motion for Award of Attorney's Fees and Costs and HEREBY ORDERS
4 AND MAKES THE FOLLOWING DETERMINATIONS:

5 1. Except as otherwise specified herein, the Court for purposes of this Final Approval
6 Order adopts all defined terms set forth in the Settlement Agreement.

7 2. This Court has jurisdiction over the subject matter of this litigation and all claims
8 raised in this action and released in the Settlement Agreement, and personal jurisdiction over State
9 Compensation Insurance Fund and all Settlement Class Members. Specifically, this Court has
10 subject matter jurisdiction over this action pursuant to 28 U.S.C. section 1331.

11 3. Pursuant to this Court's Order filed August 27, 2014, Dkt. No. 65, the Notice of
12 Pendency of Class and Collective Action and Proposed Settlement and Claim Form (collectively
13 "Notice Packet") were mailed by first-class mail on October 6, 2014, to 314 Class Members. Any
14 Notice Packets that were initially returned undeliverable were re-mailed to new addresses
15 determined after investigation, and ultimately only 2 Notice Packets remained undeliverable due to
16 an inability to find a correct address. In addition, on November 7, 2014, an email reminder was
17 sent to 85 Class Members who had not responded to the initial mailing with the return of a Claim
18 Form or a Request for Exclusion Form. The Notice Packet advised the Class Members of the
19 pertinent terms of the proposed settlement, namely, the claims to be resolved by way of the
20 settlement, the Total Settlement Amount, the preliminary estimate of each Settlement Class
21 Member's distribution and the basis upon which the Class Member's share was calculated, the
22 proposed class representative service awards and the proposed deduction for attorney's fees,
23 litigation costs, and administration fees. It further informed the Class Members of the manner in
24 which to challenge their work history stated on the Claim Form, request exclusion, or to object to
25 the settlement and the deadlines for each, and their right to appear in person or by counsel at the
26 final approval hearing. Adequate periods of time were provided for each of these procedures as set
27 forth in the Settlement Agreement approved by this Court. Furthermore, no member of the Class
28 has appeared at the final approval hearing to object.

1 4. As of January 22, 2015, there were 255 Class Members who consented to join the
2 FLSA Settlement Class, either by filing a consent form or by submitting an opt-in Claim Form. As
3 such, more than seventy-five percent of Class Members have joined the FLSA Settlement Class.
4 As a part of the notice process, only one member of the Class has sought to be excluded from the
5 California Settlement Class. No Class Member has submitted a written objection.

6 5. The Court finds and determines that this notice procedure afforded adequate
7 protections to Class Members and provides the basis for the Court to make an informed decision
8 regarding approval of the Settlement based on the responses of Class Members. The Court finds
9 and determines that the notice provided in this case was the best notice practicable, which satisfied
10 the requirements of law and due process.

11 6. The Court further finds and determines that the terms of the Settlement are fair,
12 reasonable and adequate to the Settlement Class and to each Settlement Class Member, that the
13 Settlement is ordered finally approved, and that all terms and provisions of the Settlement should
14 be and hereby are ordered to be consummated. In addition to the reasons set forth in the Court's
15 statements set forth in the Preliminary Approval Order, the fact that no Class Member objected,
16 and that only one Class Member opted out, further supports the Court's finding that the Settlement
17 is fair, reasonable, and adequate.

18 7. The Court finds and determines that the Settlement payments to be paid to the
19 participating Settlement Class Members as provided for by the Settlement Agreement are fair and
20 reasonable. The Court hereby gives final approval to and orders the payment of those amounts be
21 made to the participating Settlement Class Members in accordance with the terms of the Settlement
22 Agreement.

23 8. Nothing in this order shall preclude any action to enforce the Parties' obligations
24 under the Settlement or under this Order, including the requirement that Defendant make payments
25 to the participating Settlement Class Members in accordance with the Settlement Agreement.

26 9. The Parties are hereby ordered to comply with and carry out the terms of the
27 Settlement Agreement.

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1 10. Solely for purposes of effectuating this Settlement, this Court certifies a “California
2 Settlement Class” of “all persons employed as a ‘Payroll Auditor’ or ‘Senior Payroll Auditor’ by
3 Defendant and who regularly performed officially assigned duties outside of an assigned office at
4 any time during the period on or after February 11, 2009 through August 27, 2014, and who has
5 not validly opted-out.” This class was provisionally certified in the Order Granting Preliminary
6 Approval of Class Action Settlement, filed August 27, 2014, Dkt. No. 65.

7 11. At his request, one individual has opted out of the California Settlement Class as
8 identified in the Supplemental Declaration of Mary Butler Regarding Notice and Settlement
9 Administration, filed January 12, 2015, Dkt. No. 78.

10 12. The Court further certifies, solely for purposes of effectuating this Settlement, an
11 “FLSA Settlement Class” of “all persons employed as a ‘Payroll Auditor’ or ‘Senior Payroll
12 Auditor’ by Defendant and who regularly performed officially assigned duties outside of an
13 assigned office at any time during the period on or after April 4, 2010 through August 27, 2014,
14 who have submitted an ‘opt-in’ claim form in this Action.” This class was provisionally certified
15 in the Order Granting Preliminary Approval of Class Action Settlement, filed August 27, 2014,
16 Dkt. No. 65. The FLSA Settlement Class consists of 255 Settlement Class Members who opted
17 into the FLSA Settlement Class by filing either consent forms with the Court or sending opt-in
18 Claim Forms to the Settlement Administrator. The list of individuals who have opted into the
19 FLSA Settlement Class is attached as Exhibit 1 to the Supplemental Declaration of Mary Butler
20 Regarding Notice and Settlement Administration, filed January 12, 2015, Dkt. No. 78, and two
21 additional persons, Aileen Alvarez-Sparks and Linda Namy. The submitted Claim Forms have
22 been filed with this court consistent with 28 U.S.C. 216(b), and are attached as Exhibits 2 and 3 to
23 the Supplemental Declaration of Mary Butler Regarding Notice and Settlement Administration,
24 filed January 12, 2015, Dkt. No. 78, except for the claim forms of the two additional persons,
25 which are Exhibits 1 and 2 to the Declaration of Harvey Sohnen filed January 22, 2015, Dkt. No.
26 83.

27 13. The “Settlement Class” consists of the California and FLSA Settlement Classes.
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1 14. With respect to the Settlement Class and for purposes of approving this settlement
2 only, this Court finds and concludes that: (a) the Members of the Settlement Class are
3 ascertainable and so numerous that joinder of all members is impracticable; (b) there are questions
4 of law or fact common to the Settlement Class which predominate over any individual issues; (c)
5 the claims of Class Representatives Andrea Sewell, Conrad Silva, and Edith Viera are typical of
6 the claims of the members of the Class; (d) each Class Representative has fairly and adequately
7 protected the interests of the members of the Class; (e) a class action is superior to other available
8 methods for an efficient adjudication of this controversy; and (f) the counsel of record for the Class
9 Representatives, i.e., Class Counsel, are qualified to serve as counsel for Plaintiffs in their
10 individual and representative capacities and for the Settlement Class. The Court's findings are
11 based on Plaintiffs' motions for preliminary approval and final approval, and on the fact that
12 Defendant has not opposed class certification for the limited purpose of class action settlement.
13 The Court further recognizes that certification under this Order is for settlement purposes only, and
14 shall not constitute or be construed as an admission by Defendant that this action is appropriate for
15 class treatment for litigation purposes.

16 15. Every person in the California Settlement Class, except the individual who opted
17 out, is a California Settlement Class Member and shall be bound by the Settlement Agreement and
18 be deemed to release and forever discharge all Released State Law Claims, as set forth in the
19 Settlement Agreement.

20 16. Every person in the FLSA Settlement Class who filed a consent form with the Court
21 or sent an opt-in claim form to the Settlement Administrator is an FLSA Settlement Class Member
22 and shall be bound by the Settlement Agreement and be deemed to release and forever discharge
23 all Released Federal Law Claims, as set forth in the Settlement Agreement. The list of individuals
24 who have opted into the FLSA Settlement Class is attached as Exhibit 1 to the Supplemental
25 Declaration of Mary Butler Regarding Notice and Settlement Administration, filed January 12,
26 2015, Dkt. No. 78.

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1 17. The Court approves a payment to the Class Representatives in the amount of
2 \$7,500.00 to Andrea Sewell and Conrad Silva, each, and \$5,000.00 to Edith Viera, as an
3 enhancement for the initiation and pursuit of this action, work performed, and risks undertaken, as
4 more fully set forth in the moving papers and Class Representative Declarations. These amounts
5 are separate and apart from any other recovery to which these Class Representatives might be
6 entitled to under other provisions of the Settlement Agreement.

7 18. The Court finds that notice of the requested award of attorney’s fees and costs was
8 directed to Class Members in a reasonable manner, and complied with Rule 23(h)(1) of the Federal
9 Rules of Civil Procedure. Class Members and any party from whom payment is sought have been
10 given the opportunity to object pursuant to Rule 23(h)(2) of the Federal Rules of Civil Procedure,
11 and no Class Member has objected to the requested fees or expenses.

12 19. Class Counsel, having conferred a benefit on absent Class Members and having
13 expended efforts to secure a benefit to the Class, is entitled to a fee and accordingly, the Court
14 approves the application of Class Counsel, 1) Law Offices of Sohnen & Kelly; and 2) Law Office
15 of Mary-Alice Coleman, in the total amount of \$293,750, which is 25 per cent of the gross
16 settlement fund, for their attorney’s fees and \$10,150.35 for their litigation expenses. This award
17 of 25 per cent of the common fund is within the range of attorney’s fee awards in similar wage-
18 and-hour class actions and is warranted in this case due to the high level of risk involved and the
19 exceptional skill and diligence required to litigate and resolve the difficult claims at issue. The
20 propriety of awarding twenty five per cent of the common fund in this case is confirmed by the
21 lodestar cross check: Based on the time expended and rates charged, which the Court specifically
22 finds to be reasonable, Class Counsel’s lodestar actually exceeds the common fund award.

23 20. The Court further approves and directs Simpluris, Inc., the appointed Settlement
24 Administrator, to disburse to those persons and entities referenced below, in the manner set forth as
25 follows:

26 A. Participating Settlement Class Members, by check, his/her individual
27 Settlement Payment as calculated by the Settlement Administrator within twenty-five (25) days of
28 the “Settlement Effective Date” as defined in paragraph 42 of the Settlement Agreement;

1 B. Class Representatives, the sums of \$7,500.00 to Andrea Sewell and Conrad
2 Silva, each, and \$5,000.00 to Edith Viera, by check, in addition to any Settlement distribution to
3 which he/she is entitled within fifteen (15) days of the Settlement Effective Date;

4 C. The Law Offices of Sohnen & Kelly and Law Office of Mary-Alice
5 Coleman, jointly, by check, the total amount of \$293,750, for their attorney's fees and \$10,150.35
6 for their litigation expenses within fifteen (15) days of the Settlement Effective Date; and,

7 D. Simpluris, Inc. the total amount of \$14,000 for administration costs and
8 expenses within fifteen (15) days of the Settlement Effective Date.

9 E. Second round Settlement share checks to all participating Settlement Class
10 Members from the Settlement Fund who cashed first round checks within the ninety (90) day
11 period, within forty-five (45) days of date of expiration of first round Settlement Class Member
12 settlement checks.

13 F. Residual funds in the Settlement Fund to the cy pres beneficiary no later
14 than thirty (30) days after the end of the ninety (90)-day period for cashing checks in the second
15 round distribution.

16 21. The Court retains jurisdiction over the administration and effectuation of the
17 Settlement including, but not limited to, the ultimate disbursement to the participating Settlement Class
18 Members, payment of attorney's fees and expenses, the enhancement payment awards to the Class
19 Representatives, payment to the Settlement Administrator, and other issues related to this
20 Settlement.

21 22. The Court enters judgment and dismissal of the entire action with prejudice, as of
22 the filing date of entry of this final order.

23
24 **IT IS SO ORDERED.**

25
26 Dated: 01/26/15



HONORABLE THELTON E. HENDERSON
U.S. DISTRICT JUDGE

1 Approved as to form:

2 DATED: January 12, 2015

MEDINA MCKELVEY LLP

3

By: /s/ Brandon R. McKelvey

4

Brandon R. McKelvey

5

Attorneys for Defendant

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STATE COMPENSATION INSURANCE

FUND

7 DATED: January 12, 2015

SEYFARTH SHAW LLP

8

By: /s/ Julie G. Yap

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Mark P. Grajski

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Julie G. Yap

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Attorneys for Defendant

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STATE COMPENSATION INSURANCE

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FUND

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