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12 UNITED STATES DISTRICT COURT
13 CENTRAL DISTRICT OF CALIFORNIA

14 MICHELLE NOURIAN MARTINEZ, on
15 behalf of herself and all others similarly
16 situated,

17 Plaintiff,

18 vs.

19 HELZBERG'S DIAMOND SHOPS,
20 INC., and DOES 1-25 inclusive,

21 Defendant.

Case No. 5:20-cv-01085-PSG-SHK

**NOTICE AND UNOPPOSED
MOTION FOR FINAL
APPROVAL OF CLASS
SETTLEMENT**

Date: September 10, 2021
Time: 1:30 p.m.
Courtroom: 6A (6th Floor)
Judge: Hon. Philip S.
Gutierrez

22 TO ALL PARTIES AND ATTORNEYS OF RECORD:

23 NOTICE IS HEREBY GIVEN that on September 10, 2021, at 1:30 p.m. in
24 Courtroom 6A before Hon. Philip S. Gutierrez of the United States District Court,
25 Central District of California, Plaintiff MICHELLE NOURIAN MARITNEZ
26 ("Plaintiff") in the above-entitled action moves the Court for final approval of the
27 "Joint Stipulation of Class Action and PAGA Settlement Agreement" (the
28 "Settlement Agreement" or the "Settlement," attached as **Exhibit 1** to the
Declaration of Richard A. Hoyer, filed concurrently herewith), which was already
preliminarily approved by this Court on April 12, 2021. (Dkt. No. 31.) In
particular, Plaintiff moves for an order:

1. granting final approval of the Settlement Agreement;
2. certifying the Class;
3. finally approving Hoyer & Hicks as Class Counsel;
4. finally approving the Named Plaintiff as Class Representative;
5. finally approving payment of \$3,750.00 to Simpluris, Inc. as Settlement Administrator from the Settlement as compensation for administering the Settlement;
6. finally approving the implementation schedule preliminarily approved on April 12, 2021; and
7. entering a final judgment with the terms of the Settlement.

This Motion is based on this notice, the following attached Memorandum of Points and Authorities, the Declaration of Richard A. Hoyer ("Hoyer Dec."), and all other records, pleadings, and papers on file in this action and such other evidence or argument as may be presented to the Court at the hearing on this Motion. Accompanying this Motion is also Plaintiff's Proposed Order Granting Final Approval of Class Settlement and Judgment. Plaintiff has separately, but concurrently filed a Motion Regarding Attorneys' Fees and Costs, Class Representative Award as directed in the Court's Preliminary Approval Order (Dkt. No. 31 at 17-18).

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I. INTRODUCTION

This class and collective action is pursued on behalf of all current and former Retail Store Managers of Defendant HELZBERG’S DIAMOND SHOPS, INC., (“Defendant” or “Helzberg”) who were classified as exempt employees in California during the Class Period. Plaintiff alleges multiple violations of California labor laws resulting from the alleged misclassification of the class as exempt employees, including failure to pay overtime, failure to provide meal and rest periods and other violations of applicable law. Following extensive informal discovery, a mediation, and extensive arm’s-length negotiations between counsel, the Parties have reached a settlement of this dispute. Plaintiffs seek final approval of the Settlement as to the Class Members (“CMs”). The Parties are resolving numerous wage and hour claims unlikely to have been prosecuted as individual actions which were pending in this action, and in doing so provide substantial benefit to the Class. Specifically, the Parties have resolved the claims of 31 employees, for a total settlement of \$475,000.¹ This favorable Settlement is fair, reasonable, and adequate in all respects.

The Court granted preliminary approval of this Settlement on April 12, 2021 (Dkt. No. 31). Following the Court’s approval, notice of the Settlement was sent to the Class on June 21, 2021 (Declaration of Simpluris representative Meagan Brunner (“Brunner Dec.”) filed concurrently herewith.) at ¶10. The exclusion and objection period elapsed on August 5, 2021. (*Id.* at ¶¶15-18). To date, CMs have responded favorably. Not a single objection has been filed, and not a single CM has opted out of the Settlement. *Id.* Assuming the Court grants the requested attorneys’ fees, costs, service award, and administrative costs, the average settlement share per class member will be more than \$9,200. *Id.*

¹ The Settlement Agreement (“Settlement”) is attached as Exhibit 1 to the Declaration of Richard A. Hoyer ISO Preliminary Approval (“Hoyer Dec.”).
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At ¶14. Accordingly, for the reasons set forth herein, the Court should grant final approval of the Settlement as to the Class.²

II. FACTUAL BACKGROUND

Helzberg is nationwide retail jewelry store chain. Plaintiff and the Class Members (collectively, “CMs”) are former and current Retail Store Managers classified by Defendant as exempt who worked in California during the applicable limitations period. Plaintiff alleges that the Retail Store Managers worked in small stores alongside their subordinates making sales along with the rest of their team. Plaintiff alleges that Defendant misclassified the CMs as exempt employees under California law due to their sales responsibilities (which Plaintiff alleges matched those of a full-time sales associate), lack of staff, and other required non-exempt tasks that rendered the CMs ineligible for any overtime exemption. As a result of the alleged misclassification, Plaintiff asserts that the Defendant failed to pay them overtime, failed to provide off-duty meal and rest periods, and also resulted in derivative issues, including failing to provide accurate, itemized wage statements, and failing to pay all wages owed after termination of employment. Defendant has at all times denied these allegations.

III. PROCEDURAL HISTORY

A. Plaintiff’s Claims

On May 27, 2020, Plaintiff filed a complaint alleging class wage and hour violations in the United States District Court for the Central District of California (Dkt. # 1). That same day, Plaintiff submitted a PAGA notice to the Labor and Workforce Development Agency (“LWDA”). (Hoyer Dec. at ¶12). Following the

² In a separate motion filed concurrently with this final approval motion, Plaintiff seeks approval of an award of attorneys’ fees, costs, and service awards for the Named Plaintiff. This brief does not repeat that request and corresponding background information set forth in the fee, cost, and service award motion.

1 expiration of the LWDA 65-day response period, on August 7, 2020, Plaintiff
2 filed the operative Amended Complaint, adding a claim for PAGA penalties.
3 (Dkt. # 20). Defendant timely answered on September 1, 2020. (Dkt. # 26). The
4 parties exchanged their initial disclosures, and Plaintiff propounded a full set of
5 discovery requests. (Hoyer Dec. at ¶12). Shortly thereafter, the Parties agreed
6 to mediate the case. *Id.* at ¶12. In addition to the informal discovery, the Parties
7 agreed to a *Belaire* notice process completed in December 2020. *Id.* at ¶12.

8 The substantial informal discovery that occurred prior to the mediation
9 included aggregate information regarding the total workweeks, wage rates, pay
10 periods and class members, as well as actual timekeeping data, payroll
11 documents, and internal store staffing data for an audit sample of employees to
12 confirm the other class wide data provided. *Id.* at ¶¶13-17. The Parties agreed
13 to stay all formal proceedings pending the mediation. *Id.* at ¶14.

14 In addition to the extensive pre-certification, voluntary exchange of
15 information, the Parties each conducted independent investigations and fact-
16 finding. *Id.* Plaintiff's counsel interviewed ten (10) CMs, two (2) of whom
17 executed sworn declarations, four (4) of whom were willing only to provide
18 anonymous written statements, and one of whom (1) eventually changed their
19 mind and retracted their statement out of fear of retaliation. *Id.* at ¶15.

20 On February 5, 2021, the Parties participated in an exhaustive full-day
21 mediation session via Zoom before Steve Pearl, Esq., a highly respected neutral
22 mediator out of the Los Angeles area, who specializes in wage and hour
23 mediations. *Id.* at ¶22. Plaintiff submitted a mediation brief summarizing the
24 evidence that counsel had marshalled and synthesized, the state of the
25 applicable law, and potential individual and class-wide exposure. *Id.* Defendant
26 submitted its own brief arguing that no class could be certified and that they
27 would also prevail on the merits against the individual Plaintiff and any other
28 PCMs, and brought fifteen (15) supporting declarations, constituting roughly

1 48% of the putative class. *Id.* With Mediator Pearl’s assistance, the Parties
 2 agreed, subject to approval by this Court, to a Settlement of the Actions. *Id.* The
 3 Parties executed the Settlement Agreement on March 2, 2021. *Id.*; Ex. 1.

4 The August 7, 2020 operative Amended Complaint asserts six causes of
 5 action under the California Labor Code, applicable Industrial Welfare
 6 Commission (“IWC”) Wage Orders, and Bus. and Profs. Code §§ 17200, *et seq.*
 7 (“UCL”). Plaintiff alleges class and collective violations on behalf of herself and
 8 the Class for: (1) failure to provide minimum, straight time, and overtime wages;
 9 (2) failure to authorize, permit, and/or make available meal and rest periods; (3)
 10 waiting time penalties; (4) failure to provide accurate wage statements; (5)
 11 violation of the UCL for unlawful, unfair, and/or fraudulent business acts or
 12 practices; and (6) penalties pursuant to the California Private Attorney General
 13 Act (“PAGA”). (Dkt. # 20).

14 **B. Discovery**

15 As a condition of the mediation, Plaintiff required Defendant to provide a
 16 dataset sufficient to prepare a full exposure analysis (along with the audit
 17 sample information and other documents described above). Hoyer Dec. at
 18 ¶¶14-18. Plaintiff’s counsel then calculated the damages for the class based on
 19 the data provided by Defendant, and the information supplied through
 20 interviews with Plaintiff and the PCMs regarding non-discretionary bonus
 21 compensation, hours worked per week, the availability of meal and rest periods,
 22 and their time performing sales and other non-exempt tasks. *Id.* at ¶¶15-16.
 23 Class Counsel also made a thorough study of the legal principles applicable to
 24 the claims asserted against Defendant. *Id.* Plaintiff’s counsel interviewed a
 25 substantial portion of the putative class after receiving the contact information
 26 following the *Belair* notice process, which resulted in declarations, anonymous
 27 statements, and other interview information. *Id.*

1 **C. Damages Analysis**

2 Class Counsel based their damages analysis and settlement negotiations
3 on the informal discovery and data provided for the full class and the information
4 obtained from the 32% of 31 CMs interviewed by counsel prior to the mediation.
5 *Id.* at ¶18. Because of the data production, and the fact that every single CM
6 Plaintiff's counsel interviewed confirmed that they spent over half of their work
7 time on the floor making sales along-side their sales associates to meet their
8 own sales requirements, Plaintiff's Counsel was required to make only a few
9 assumptions regarding the exposure. *Id.*

10 Using these averages and assumptions and further assuming that Plaintiff
11 and the CMs would certify all of their claims and prevail at trial on all claims for
12 the absolute maximum "perfect world" exposure, Plaintiff's Counsel calculated
13 total damages, including all penalties, through June 27, 2020³ to be
14 \$4,148,924.22 (including \$1,503,200 in derivative PAGA penalties). *Id.* at ¶18.
15 The total amount of damages is further broken down as follows: overtime
16 (\$1,593,720.05); meal periods (\$377,877.85); rest periods (\$450,119.21); wage
17 statement penalties (\$114,762.50); and waiting time penalties (\$82,244.61). *Id.*
18 at ¶¶18-19.

19 The net amount being disbursed to CMs, assuming the Court approves
20 all deductions is \$285,416.67, which is approximately 11% of the total non-
21 PAGA damages and penalties estimated by Plaintiff, and roughly 7% of the total
22 damages. *Id.* at ¶20. The settlement amount is fair, reasonable, and adequate.
23 *Id.* at ¶21. The settlement amount takes into account the substantial risks
24 inherent in any wage-and-hour class action, the status of the litigation, the

25

26 ³ Defense counsel indicated that data after that date was not as reliable for
27 extrapolation purposes because the COVID pandemic resulted in a number of
28 stores closing temporarily and reopening temporarily with limited staff, or for
curbside pickup, and reclosing again (either temporarily or permanently). *Id.* at
¶17.

1 evidence that Defendant provided at the mediation, and the specific defenses
2 as to certification and on the merits asserted by Defendant. *Id.* at ¶21.

3 **D. Mediation**

4 The Parties mediated this dispute on February 5, 2021 before Steve
5 Pearl, Esq., a respected and experienced wage and hour mediator, engaging in
6 arm's-length negotiations, and the Parties reached a settlement. *Id.* at ¶22.
7 Thereafter, counsel for the Parties worked to finalize the settlement for the CMs
8 and the proposed class notice, subject to the Court's approval. *Id.* The
9 Settlement Agreement was fully executed on March 2, 2021. *Id.*; Ex. 1.

10 **E. Preliminary Approval of Settlement and Settlement** 11 **Administration**

12 On March 5, 2021, Plaintiff filed her Unopposed Motion for Preliminary
13 Approval of Class Settlement. (Dkt. No. 30.) On April 12, 2021 the Court issued
14 an Order granting the motion for preliminary approval. (Dkt. No. 31.)

15 The Court found that the settlement agreement falls within the range of
16 possible approval, granted conditional certification of the settlement class,
17 conditionally appointed Hoyer & Hicks ("HH") as counsel for the class;
18 conditionally appointed Plaintiff as Class Representative; approved the Class
19 notice approved the settlement produced for the Class; and preliminarily
20 approved Class Counsel's request for attorneys' fees and reasonable costs
21 incurred. *Id.* The Court also appointed Simpluris as the Settlement Administrator
22 for the purpose of the Settlement. *Id.*

23 Simpluris, Inc. ("Simpluris") is responsible for distributing the Class Notice,
24 calculating individual settlement payments, calculating all applicable payroll
25 taxes, withholdings and deductions, preparing and issuing all disbursements to
26 be paid to Class Members, the Class Representatives, Class Counsel, the
27 LWDA, any applicable local, state, and federal tax authorities, and handling
28 inquiries and/or disputes from CMs. Hoyer Dec. at ¶25. Simpluris is also
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1 responsible for the timely preparation and filing of all tax returns, and making
2 the timely and accurate payment of any and all necessary taxes and
3 withholdings. *Id.* Simpluris also established a mailing address and toll-free
4 telephone number to direct inquiries regarding the Notices and determination of
5 individual settlement payments. *Id.*

6 In order to mail notices to Class Members, Simpluris first calculated the
7 individual settlement award for every CM after receipt of the CM list from
8 Defendant in order to include such information on the notices. Brunner Dec. At
9 ¶¶6-8. Ultimately, following some issues with the class data, Simpluris sent 31
10 court-approved Settlement Notices to the Class Members on June 21, 2021. *Id.*
11 at ¶10. The Notice informed the Class of: the Settlement terms; their expected
12 share; the August 5, 2021 deadline to submit objections, requests for exclusions,
13 or disputes; the September 30, 2021 final approval hearing; and that Plaintiff
14 would seek attorneys' fees, costs, and service awards and the corresponding
15 amounts. (A true and correct copy of the final notice is attached as Exhibit A to
16 the Brunner Dec.) Simpluris also included a toll-free number in the Settlement
17 Notice, which Class Members could call for information about the Settlement.
18 *Id.* Likewise, contact information for Class Counsel in the case was provided.
19 *Id.* The Settlement Administrator successfully mailed notice packets to all Class
20 Members. *Id.* at ¶11.

21 The deadline for Class Members to opt-out, object, and dispute their
22 awards expired August 5, 2021. To date, not a single objection has been filed,
23 and not a single Class Member has opted out of the Settlement. Brunner Dec.
24 at ¶¶15-18.

25 **F. Final Approval of the Settlement**

26 The Final Approval Hearing for the Court to approve the Settlement as to
27 the Class is currently scheduled for September 30, 2021. With this motion,
28 Plaintiff asks the Court to grant final approval of this settlement as to the Class.

1 Hoyer Dec. at ¶28. Following an order by the Court on this motion, the Parties
 2 and the Settlement Administrator will execute the final steps of the settlement
 3 process, including sending individual checks to all participating CMs for their
 4 Settlement award. *Id.*

5 **IV. TERMS OF THE SETTLEMENT**

6 **A. Basic Terms**

7 Defendants have agreed to pay a total of \$475,000 to settle all aspects of
 8 the case. Settlement at ¶¶I.18, III.43. The “Net Settlement Amount,” which is
 9 the amount available to pay settlement awards to the CMs, is defined as the
 10 Settlement Fund less: any attorneys’ fees and costs awarded to Class Counsel
 11 (fees of up to one-third of the Maximum Settlement Amount, \$158,333.33, plus
 12 costs up to \$10,000, any enhancement payments awarded to the Class
 13 Representative (up to \$10,000), the payment made to the California Labor &
 14 Workforce Development Agency (“LWDA”) pursuant to PAGA (\$7,500)⁴, and
 15 the Settlement Administrator’s fees and costs (which have been quoted at
 16 \$3,750⁵). *Id.*

17 Assuming the Court approves all of the requested attorneys’ fees, costs,
 18 administration costs, and the requested class representative award, a fund of
 19 \$285,416.67 will be distributed to the CMs, with an average payment of
 20 \$9,206.99. Brunner Dec. at ¶14.

21 **B. Class Definition**

22 An individual is a member of the proposed settlement Class if he or she
 23 works or worked as a Store Manager for Defendant in California at any time
 24

25 ⁴ Plaintiff will submit a copy of the Settlement Agreement and these papers to
 26 the LWDA, per Cal. Lab. Code §2699(l)(2). Hoyer Dec. at ¶30, fn. 2. \$10,000.00
 27 of this Settlement is allocated to settle the PAGA claims. *Id.* The Settlement
 28 Administrator shall pay \$7,500 of this amount to the LWDA, and allocate the
 remaining 25% to the Net Settlement Amount. Settlement ¶III.54(d).

⁵ The Simpluris’ quote is attached to the Hoyer Dec. at ¶34; Ex. 2.

1 during the period from April 6, 2016 through the end of the Class Period, which
 2 is the date of preliminary approval of the Settlement, April 12, 2021. Settlement
 3 at ¶¶I.2; I.7.

4 **C. Allocation and Awards**

5 The Net Settlement Fund to be paid to CMs is estimated to be
 6 \$285,416.67. Hoyer Dec. at ¶¶31-32. All CMs who do not opt-out of the
 7 Settlement will receive a payment. Each CM's settlement share will be
 8 determined based on the total number of weeks that the CM worked as a retail
 9 store manager during the Class Period as compared to the total weeks worked
 10 by all CMs during the Class Period. Settlement at ¶III.54(b)(i). All eligibility and
 11 Class Settlement Award determinations shall be based on employee workweek
 12 information that the Settlement Administrator calculates based on Defendant's
 13 data provided to the Settlement Administrator. Id. at ¶¶III.53(a); III.54. CMs will
 14 have the opportunity should they disagree with the Settlement Administrator's
 15 calculations, to provide documentation and/or an explanation to show a contrary
 16 number of weeks worked. Id. at ¶III.53(c). (See Notice, at p. 2). For any CM that
 17 does not timely opt out of the Settlement and receives a payment, but does not
 18 timely cash his or her settlement check within 180 days, the Settlement
 19 Administrator will immediately stop payment on the check and such funds, plus
 20 any accrued interest, will be tendered to the State Controller's Office Unclaimed
 21 Property Fund in their name.

22 **D. Scope of Release and Final Judgment**

23 The release contemplated by the proposed Settlement will release all
 24 claims in connection with the lawsuit, all violations asserted in any notice sent
 25 to the LWDA, as well as all predicate claims based on the factual and legal
 26 theories alleged based on the facts alleged in the complaint (i.e. based on
 27 misclassification as an exempt employee), from the beginning of any applicable
 28 statute of limitations period through the end of the Class Period. Settlement at
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¶¶I.29; III.45. Only CMs who do not opt out will release their Claims. *Id.* at ¶III.45.

V. ARGUMENT

A. The Court Should Finally Approve the Settlement as to the Class.

A class action may not be settled without Court approval. See FED.R.CIV.P. 23(e). Approval of a class action settlement requires three steps: (1) preliminary approval; (2) notice to all class members; and (3) a final settlement approval hearing at which objecting class members may be heard. Manual for Complex Litigation, *Judicial Role in Reviewing a Proposed Class Action Settlement*, § 21.61 (4th ed. 2004). The decision to approve or reject a proposed settlement is committed to the sound discretion of the court. See *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1027 (9th Cir. 1998).

A court may finally approve a class action settlement “only after a hearing and on finding that the settlement . . . is fair, reasonable and adequate.” Fed. R. Civ. P. 23(e)(2). Approval or rejection of a settlement agreement is committed to the district court’s sound discretion. See *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1026 (9th Cir. 1998), *overruled on other grounds by Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338 (2011). In determining whether a settlement is fair, reasonable and adequate, the court must “balance a number of factors: [1] the strength of the plaintiffs’ case; [2] the risk, expense, complexity and likely duration of further litigation; [3] the risk of maintaining class action status throughout the trial; [4] the amount offered in settlement; [5] the extent of discovery completed and the stage of proceedings; [6] the experience and views of counsel; [7] the presence of a government participant; and [8] the reaction of the class members to the proposed settlement.” *Id.*; see also *Staton v. Boeing Co.*, 327 F.3d 938, 959 (9th Cir. 2003); *Officers for Justice v. Civil Serv. Comm’n*

1 of *S.F.*, 688 F.2d 615, 625 (9th Cir. 1982) (noting that the list of factors is “by no
2 means an exhaustive list”).⁶

3 The district court must approve or reject the settlement, as a whole, after
4 comprehensively exploring all factors. See *Hanlon*, 150 F.3d at 1026 (“It is the
5 settlement taken as a whole, rather than the individual component parts, that
6 must be examined for overall fairness.”). The Court may not delete, modify or
7 rewrite particular provisions of the settlement. See *id.* The district court is
8 cognizant that the settlement “is the offspring of compromise; the question . . .
9 is not whether the final product could be prettier smarter or snazzier, but
10 whether it is fair, adequate and free from collusion.” *Id.* In determining whether
11 a proposed settlement should be approved, the Ninth Circuit has a “strong
12 judicial policy that favors settlement, particularly where complex class action
13 litigation is concerned.” *Class Plaintiffs v. Seattle*, 955 F.2d 1268, 1276 (9th Cir.
14 1992).

15 Federal law strongly favors and encourages settlements, especially in
16 class actions. See *Franklin v. Kaypro Corp.*, 884 F.2d 1222, 1229 (9th Cir. 1989)
17 (“[T]here is an overriding public interest in settling and quieting litigation. This is
18 particularly true in class action suits.”). Moreover, when reviewing a motion for
19

20 ⁶ The recent amendments to Rule 23(e)(2) instruct district courts to consider
21 whether: the class representatives and class counsel have adequately
22 represented the class; the proposal was negotiated at arm’s length; the relief
23 provided for the class is adequate; and the proposal treats Class Members
24 equitably relative to each other. However, recognizing that each circuit has
25 developed its own vocabulary to express these concerns, the Advisory
26 Committee explained that it did not intend to “displace any factor [used by
27 different circuits], but rather to focus the court and the lawyers on the core
28 concerns of procedure and substance that should guide the decision whether
to approve the proposal.” Fed. R. Civ. P. 23(e)(2) Advisory Committee’s Note
to 2018 amendment. Accordingly, the Court should apply the Rule 23(e)(2)
factors through the lens of the Ninth Circuit’s *Hanlon/Staton* factors and existing
relevant precedent.

1 approval of a class settlement, the Court should give due regard to “what is
 2 otherwise a private consensual agreement negotiated between the parties,” and
 3 must therefore limit the inquiry “to the extent necessary to reach a reasoned
 4 judgment that the agreement is not the product of fraud or overreaching by, or
 5 collusion between, the negotiating parties, and that the settlement, taken as a
 6 whole, is fair, reasonable and adequate to all concerned.” *Officers for Justice v.*
 7 *Civil Serv. Comm’n*, 688 F. 2d 615, 625 (9th Cir. 1982). The Court of Appeals
 8 will rarely overturn approval of a class action settlement unless “the terms of the
 9 agreement contain convincing indications that the incentives favoring pursuit of
 10 self-interest rather than the class’s interests in fact influenced the outcome of
 11 the negotiations and that the district court was wrong in concluding otherwise.”
 12 *Staton v. Boeing Co.*, 327 F.3d 938, 960 (9th Cir. 2003).

13 **1. The best practicable notice was provided to the Class in**
 14 **accordance with the process approved by the Court.**

15 Pursuant to the Court’s April 12, 2021 order granting preliminary approval
 16 of the Settlement, Simpluris sent the Court-approved Class Notice to the Class
 17 Members in accordance with the terms of the Settlement Agreement.

18 Notice of a class action settlement is adequate where the notice is given
 19 in a “form and manner that does not systematically leave an identifiable group
 20 without notice.” *Mandujano v. Basic Vegetable Products, Inc.*, 541 F.2d 832,
 21 835 (9th Cir. 1976). The notice should be the best “practicable under the
 22 circumstances including individual notice to all members who can be identified
 23 through reasonable effort.” *Torrissi v. Tucson Elec. Power Co.*, 8 F.3d 1370, 1374
 24 (9th Cir. 1993). Sending individual notices to settlement class members’ last-
 25 known addresses constitutes the requisite effort. *Grunin v. Int’l House of*
 26 *Pancakes*, 513 F.2d 114, 121 (8th Cir. 1975). “[N]otice mailed by first class mail
 27 has been approved repeatedly as sufficient notice of a proposed settlement.”
 28 *Langford v. Devitt*, 127 F.R.D. 41, 45 (S.D.N.Y. 1989).

1 The Settlement Administrator followed all of the procedures set forth in
 2 the Court-approved notice plan. Reasonable steps have been taken to ensure
 3 that all Class Members received the Notice. Prior to mailing the notices, the
 4 Administrator ran the class list through the United States Postal Service's
 5 National Change of Address database ("NCOA"), and performed address
 6 searches using public and proprietary electronic resources which collect data
 7 from various sources such as utility records, property tax records, motor vehicle
 8 registration records (where allowed) and credit bureaus. Ultimately, of the 31
 9 notices distributed, none have been returned as undeliverable. *See, generally*
 10 Brunner Dec. Accordingly, the notice process satisfies the "best practicable
 11 notice" standard. *See* Hoyer Dec. at ¶¶37-38.

12 **2. The terms of the Settlement are fair, reasonable, and**
 13 **adequate.**

14 In evaluating the fairness of a proposed settlement, courts compare the
 15 settlement amount with the estimated maximum damages recoverable in a
 16 successful litigation. *In re Mego Fin. Corp. Sec. Litig.*, 213 F.3d 454, 459 (9th
 17 Cir.2000). Courts routinely approve settlements that provide a fraction of the
 18 maximum potential recovery. *See, e.g., Officers for Justice v. Civil Serv.*
 19 *Comm'n of San Francisco*, 688 F.2d 615, 623 (9th Cir. 1982).⁷ A review of the
 20 Settlement Agreement reveals the fairness, reasonableness, and adequacy of
 21 its terms. Hoyer Dec. at ¶39. The Net Settlement Fund of \$285,416.67, derived
 22 from a Gross Settlement Amount of \$475,000.00, will result in fair and just relief
 23 to CMs. *Id.* Payments to the Class members are roughly 11% of the total non-

24
 25 ⁷ *In Re Sunrise Secs. Litig.*, 131 F.R.D. 450, 457 (E.D. Pa. 1990) (approving
 26 20% of damages); *In Re Armored Car Antitrust Litig.*, 472 F.Supp. 1357, 1373
 27 (N.D. Ga.1979) (settlements with a value of 1% to 8% of the estimated total
 28 damages were approved); *Entin v. Barg*, 412 F.Supp. 508, 514 (E.D. Pa. 1976)
 (approving 17% of damages); *In Re Four Seasons Secs. Laws Litig.*, 58 F.R.D.
 19, 37 (W.D. Okla.1972) (approving 8% of damages).

1 PAGA damages, penalties and interest attainable in this case, and roughly 7%
2 of the total damages including the duplicative PAGA penalties.⁸ *Id.* The result is
3 well within the reasonable standard when considering the difficulty and risks
4 presented by pursuing further litigation. *Id.* The final settlement amount takes
5 into account the substantial risks inherent in any class action wage-and-hour
6 case, as well as the specific defenses asserted by Defendant, including a class
7 size of just over 30, nearly half of whom provided declarations harmful to
8 certification to the Defendant prior to the mediation. *Id.* See *Officers for Justice*,
9 688 F.2d at 623. Despite the fact that certification would be an uphill climb, the
10 Settlement confers a substantial benefit on CMs who faced the significant risk
11 of no recovery and ongoing litigation expenses if they filed their own lawsuit, if
12 they could retain their own counsel to do so. Given that “the risk of continued
13 litigation balanced against the certainty and immediacy of recovery from the
14 Settlement” is a relevant factor, *Vasquez v. Coast Valley Roofing, Inc.*, 266
15 F.R.D. 482, 489 (E.D. Cal. 2010) (*citing In re Mego*, 213 F.3d at 458), this reality
16 also supports preliminary approval.

21 ⁸ The \$10,000 allocation for PAGA penalties falls within the range of
22 reasonableness previously approved by courts in this Circuit. See, e.g., *In re*
23 *M.L. Stern Overtime Litig.*, No. CV 07-0118 BTM (JMAx), 2009 WL 995864, at
24 *1 (S.D. Cal. Apr. 13, 2009) (approving PAGA settlement of 2 percent); *Hopson*
25 *v. Hanesbrands, Inc.*, No. CV 08-0844 EDL, 2008 WL 3385452, at *1 (S.D. Cal.
26 Apr. 13, 2009) (approving a PAGA settlement of 0.3 percent); see also *Dearaujo*
27 *v. Regis Corp.*, No. 2:14-cv-01408-KJM-AC (E.D. Cal. June 29, 2016), 2016 WL
28 3549473 at *3 (\$1.95 million settlement allocating \$10,000 to PAGA penalties);
Garcia v. Gordon Trucking, Inc., No. 1:10-CV-0324 AWI SKO (E.D. Cal. Oct.
31, 2012), 2012 WL 5364575 at *7 (\$3.9 million settlement allocating \$10,000
to PAGA penalties)).

1 **3. The Parties Have Agreed to Distribute Settlement**
 2 **Proceeds Tailored to the Class and their Respective**
 3 **Claims.**

4 In an effort to further ensure fairness for the employees, the Parties have
 5 agreed to allocate the settlement proceeds amongst CMs on a *pro rata* basis
 6 so that CMs receive a proportion of the Net Settlement Amount that corresponds
 7 to the time that they worked compared to the other CMs. Hoyer Dec. at ¶40.
 8 The allocation was made based on Class Counsel's assessment of the risk of
 9 continued litigation and risk on certification and merits. *Id.*

10 A class action settlement need not benefit all class members equally.
 11 *Holmes v. Continental Can Co.*, 706 F.2d 1144, 1148 (11th Cir.1983); *In re AT*
 12 *& T Mobility Wireless Data Services Sales Tax Litigation*, 789 F.Supp.2d 935,
 13 979–80, 2011 WL 2204584 at *42 (N.D.Ill.2011). Rather, although disparities in
 14 the treatment of class and collective members may raise an inference of
 15 unfairness and/or inadequate representation, this inference can be rebutted by
 16 showing that the unequal allocations are based on legitimate considerations.
 17 *Holmes*, 706 F.2d at 1148; *In re AT & T*, 789 F.Supp.2d at 979–80, 2011 WL
 18 2204584 at *42. Here, the only consideration is the length of an individual CM's
 19 employment during the Class Period in a Covered Position.

20 **4. The sufficient informal discovery exchange between the**
 21 **parties enabled them to make informed decisions**
 22 **regarding settlement.**

23 The amount of discovery completed prior to reaching a settlement is
 24 important because it bears on whether the Parties and the Court have sufficient
 25 information before them to assess the merits of the claims. *See, e.g., Lewis v.*
 26 *Starbucks Corp.*, No. 2:07-cv-00490-MCE-DAD, 2008 WL 4196690, at *6 (E.D.
 27 Cal. Sept. 11, 2008); *Boyd v. Bechtel Corp.*, 485 F.Supp. 610, 617 (N.D. Cal.
 28 1979). Informal discovery is a strong factor in favor of settlement approval so

1 long as the Parties had an opportunity to “form a clear view of the strengths and
 2 weaknesses of their cases.” *Monterrubio v. Best Buy Stores, L.P.*, 291 F.R.D.
 3 443, 454 (E.D. Cal. 2013).

4 The Parties engaged in an exchange of informal discovery to enable both
 5 sides to assess the claims and potential defenses. Hoyer Dec. at ¶¶14-16, 41.
 6 The Parties accurately assessed the legal and factual issues that would arise if
 7 the case proceeded to trial. *Id.* at ¶41.⁹ In addition, in reaching this Settlement,
 8 Class Counsel relied on their substantial litigation experience in similar wage
 9 and hour class and collective actions. *Id.* Class Counsel’s liability and damages
 10 evaluation was premised on a careful and extensive analysis of the effects of
 11 Defendant’s policies and practices, and a review of the relevant documents and
 12 data, including actual timekeeping data and payroll records, and interviews with
 13 32% of the class members. *Id.* Ultimately, facilitated by Mediator Pearl, the
 14 Parties used this information and discovery to fairly resolve the litigation. *Id.*

15 **5. Litigating this Action not only would Delay Recovery,**
 16 **but would be Expensive, Time Consuming, and Involve**
 17 **Substantial Risk.**

18 The total monetary value of the proposed Settlement represents a fair
 19 compromise given risks and uncertainties posed by continued litigation. Hoyer
 20 Dec. at ¶71. If this case were to go to trial as a class action, Class Counsel
 21 estimates that fees and costs would exceed \$1,000,000.00. *Id.* Litigating the
 22 class and collective claims would require substantial additional discovery,
 23 including depositions of experts, the presentation of percipient and expert
 24 witnesses at trial, as well as the consideration, preparation, and presentation of
 25 voluminous documentary and expert evidence. *Id.* Recovery of the full exposure
 26 previously referenced would also require complete success and certification of

27 ⁹ An assessment of the viability of each of the claims, and of class certification
 28 is contained in the Hoyer Dec at ¶¶42-70

all of Plaintiff's claims, a questionable feat in light of the small class size, and Defendant's asserted defenses, including its 15 CM declarations. *Id.* In contrast, resolving this case by means of a global settlement will yield a prompt, certain, and substantial recovery for the CMs (an average payment of at least \$9,200). *Id.* Such a result will benefit the Parties and the court system. *Id.*

6. The settlement is the product of informed, non-collusive, and arm's-length negotiations between experienced counsel.

Courts routinely presume a settlement is fair where it is reached through arm's-length bargaining. See *Hanlon*, 150 F.3d at 1027; *Wren*, 2011 WL 1230826, at *14. Furthermore, where counsel are well-qualified to represent the proposed class and collective in a settlement based on their extensive class and collective action experience and familiarity with the strengths and weaknesses of the action, courts find this factor to support a finding of fairness. *Wren*, 2011 WL 1230826, at *10; *Carter v. Anderson Merchandisers, LP*, 2010 WL 1946784 (C.D.Cal. May 11, 2010), at *8 ("Counsel's opinion is accorded considerable weight."). Here, the settlement was a product of non-collusive, arm's-length negotiations. Hoyer Dec. at ¶72. The Parties participated in a full-day mediation before Steve Pearl, a skilled mediator. *Id.* In addition, the adversarial mediation resulted in a written memorandum of understanding that memorialized the core terms of the proposed settlement. *Id.* Subsequently, the Parties continued to negotiate the long form settlement agreement, with several rounds of correspondence related to the details of the settlement. *Id.*

7. Class Counsel are Experienced Class Action Litigators.

Where counsel are well-qualified to represent the proposed class in a settlement based on their extensive class action experience and familiarity with the strengths and weaknesses of the action, courts find this factor to support a finding of fairness. *Wren*, 2011 WL 1230826, at *10; *Bellinghausen v. Tractor*

1 *Supply Co.*, No. 13-cv-02377-JSC, 2015 WL 1289342, at *8 (N.D. Cal. Mar. 20,
 2 2015) (“Given counsel's experience in this field, his assertion that the settlement
 3 is fair, adequate, and reasonable support[s] final approval of the settlement.”).
 4 Class Counsel are experienced and respected class action litigators. See
 5 Hoyer Dec. at ¶¶3-6. Based on Class Counsel’s knowledge and expertise in
 6 this area of law, Class Counsel believes this Settlement will provide a
 7 substantial benefit to the Class. See Hoyer Dec. at ¶73.

8 **8. Class Members Approve the Settlement.**

9 The Ninth Circuit and other federal courts have made clear that the
 10 number or percentage of class members who object to or opt out of the
 11 settlement is a factor of great significance. See *Mandujano v. Basic Vegetable*
 12 *Prods., Inc.*, 541 F.2d 832, 837 (9th Cir. 1976); see also *In re Am. Bank Note*
 13 *Holographics, Inc.*, 127 F.Supp.2d 418, 425 (S.D.N.Y. 2001) (“It is well settled
 14 that the reaction of the class to the settlement is perhaps the most significant
 15 factor to be weighed in considering its adequacy.” (internal quotation marks and
 16 citation omitted)). Courts have made clear that a relatively low percentage of
 17 objectors or opt outs is a very strong sign of fairness that factors heavily in favor
 18 of approval. See *Cody v. Hillard*, 88 F.Supp.2d 1049, 1059-60 (D.S.D. 2000)
 19 (approving the relevant settlement in large part because only 3% of the apparent
 20 class had objected to the settlement); *In re Dun & Bradstreet Credit Servs.*
 21 *Customer Litig.*, 130 F.R.D. 366, 372 (S.D. Ohio 1990) (approving the relevant
 22 settlement and affording “substantial weight” to the fact that fewer than 5% of
 23 the class members elected to opt out of the settlement); *In re Art Materials*
 24 *Antitrust Litig.*, 100 F.R.D. 367, 372 (N.D. Ohio 1983) (approving the settlement
 25 and holding that the fact that none of the class members had objected and a
 26 small percentage opted out of the settlement was “entitled to nearly dispositive
 27 weight”).
 28

To date, **not a single Settlement Class Member has objected to the Settlement, and not a single Settlement Class Member has opted out of the Settlement.** See Hoyer Dec. at ¶74; Brunner Dec. at ¶15-18. In addition, the Class Representative supports the terms of the Settlement. See Hoyer Dec. at ¶54. This shows widespread support for the settlement among Class Members and gives rise to a presumption of fairness.

B. The Class Representative Service Award is Reasonable.

As noted above, in approving the Settlement, the Court must determine whether “the settlement, taken as a whole, is fair, reasonable and adequate to all concerned.” *Officers for Justice*, 688 F.2d at 625. In addition to the terms and details of the Settlement discussed above, the Settlement also establishes a service award in the amount of \$10,000.00 to be paid to Plaintiff.

Named plaintiffs in class action litigation are eligible for reasonable service awards. See *Staton v. Boeing Co.*, 327 F.3d 938, 977 (9th Cir. 2003). “Courts routinely approve incentive awards to compensate named plaintiffs for the services they provided and the risks they incurred during the course of the class action litigation.” *Van Vranken v. Atl. Richfield Co.*, 901 F. Supp. 294, 300 (N.D. Cal. 1995) (named plaintiff received \$50,000 for work in class action). The enhancement payment of \$10,000 to Plaintiff is intended to compensate Plaintiff for the critical role she played in this case, and the time, effort, and risks undertaken in helping secure the result obtained on behalf of the CMs. Hoyer Dec. at ¶75. In agreeing to serve as Class Representative, Plaintiff formally agreed to accept the responsibilities of representing the interests of all CMs, as discussed in her declaration supporting the concurrently filed motion requesting attorneys’ fees, costs, and service award. *Id.*; see also Declaration of Michelle Nourian Martinez (“Martinez Dec.”) at ¶¶3-26. Defendant does not oppose payment of up to \$10,000.00 to Plaintiff as a reasonable service award. *Id.* Moreover, the service awards are fair when compared to the payments

1 approved in similar cases. See, e.g., *Contreras v. Bank of America*, No. CGC-
 2 07-467749 (San Francisco Super. Ct., Sept. 3, 2010) (approving \$10,000
 3 service payment for each class representative).¹⁰

4 Ultimately, the Court should approve the requested service awards as
 5 reasonable. Plaintiff set forth her arguments in support of the service award in
 6 her accompanying Unopposed Motion for Attorneys' Fees, Costs, and Service
 7 Award. Plaintiff does not repeat those arguments here.

8 **C. The Requested Attorneys' Fees and Costs are Reasonable.**

9 Likewise in evaluating the Settlement, the Court should evaluate Plaintiff's
 10 request for attorneys' fees and costs pursuant to the terms of the Settlement.

11 In their concurrently filed fee motion, Class Counsel request one-third
 12 (33%) of the Gross Settlement Amount, for a total of \$158,333.33, plus
 13 reimbursement of costs of \$6,715.00. Hoyer Dec. at ¶77. In California, federal
 14 and state courts have customarily approved payments of attorneys' fees
 15 amounting to one-third of the common fund in comparable wage and hour class
 16 actions. See *Regino Primitivo Gomez, et al. v. H&R Gunlund Ranches, Inc.*, No.
 17 CV F 10-1163 LJO MJS, 2011 WL 5884224 (E.D. Cal. 2011) (approving
 18 attorneys' fees award equal to 45% of the settlement fund).¹¹ In this case, given

19 ¹⁰ *Castellanos v. The Pepsi Bottling Group*, No. RG07332684 (Alameda Super
 20 Ct., Mar. 11, 2010) (approving award of \$12,500); *Novak v. Retail Brand*
 21 *Alliance, Inc.*, No. RG 05-223254 (Alameda Super. Ct., Sept. 22, 2009)
 22 (approving award of \$12,500); *Hasty v. Elec. Arts, Inc.*, No. CIV 444821 (San
 23 Mateo Super. Ct., Sept. 22, 2006) (approving award of \$30,000); *Meewes v. ICI*
 24 *Dulux Paints*, No. BC265880 (Los Angeles Super. Ct. Sept. 19, 2003)
 25 (approving service awards of \$50,000, \$25,000 and \$10,000 to the named
 plaintiffs); *Mousai v. E-Loan, Inc.*, No. C 06-01993 SI (N.D. Cal. May 30, 2007)
 (approving service award of \$20,000).

26 ¹¹ *Wren*, 2011 WL 1230826 (N.D. Cal. 2011) (approving attorneys' fee award of
 27 just under 42% of common fund); *Big Lots Overtime Cases*, JCC Proceeding
 28 No. 4283 (San Bernardino Super. Ct., Feb. 4, 2004) (approving award of
 attorneys' fees of 33% of the recovery); *Barela v. Ralph's Grocery Co.*, No.
 BC070061 (Los Angeles Super. Ct., June 5, 1998) (same); *Davis v. The Money*
 NOTICE AND MOTION FOR FINAL APPROVAL OF CLASS SETTLEMENT 20

the results expeditiously achieved, the effort expended litigating the case, and the difficulties attendant to litigating this case, the fee and cost award is warranted. Hoyer Dec. at ¶¶77-79. Plaintiff presents her arguments in support of her fee and cost request in her Unopposed Motion for Attorneys' Fees, Costs, and Service Award also being filed concurrently herewith. Plaintiff directs the Court to her fee motion for his supporting points and authorities and does not repeat those arguments here.

VI. CONCLUSION

For the foregoing reasons, Plaintiff respectfully requests that this Court grant this motion for Final Approval and enter an order:

1. Granting final approval of the settlement;
2. Certifying the Class;
3. Finally Approving Hoyer & Hicks as Class Counsel;
4. Finally Approving Plaintiff Nourian Martinez as Class Representative;
5. Finally Approving payment of \$3,750.00 to Simpluris, Inc. as Settlement Administrator from the Settlement as compensation for administering the Settlement;
6. Finally approving the implementation schedule approved on April 12, 2021:

Date of preliminary approval of the Settlement as to Class and approval of the Settlement as to the Collective	April 12, 2021
Simpluris to Mail the Notices	June 21, 2021
Deadline to postmark requests to opt-out, objections to Settlement, or dispute the information showing in Class Notice pursuant to the	August 5, 2021

Store, Inc., No. 99AS01716, (Sacramento Super. Ct., Dec. 26, 2000) (same); *Ellmore v. Ditech Funding Corp.*, No. SAVC 01-0093 (C.D. Cal., Sept. 12, 2002) (same); *Miskell v. Auto. Club of S. Cal.* (Orange County Super. Ct., No. 01CC09035, May 27, 2003) (same); *Sconce/Lamb Cremation Cases*, JCC Proceeding No. 2085, (Los Angeles Super. Ct., Mar. 24, 1992) (same).

1	instructions set forth in the Class Notice	
2	Filing Deadlines for Final Approval Motion and Fees motion	August 11, 2021
3		
4	CPT to provide all counsel with a declaration attesting to the completion of the Notice process	August 10, 2021
5		
6	Final Approval Hearing	September 10, 2021
7	Effective Date	(a) if no objections to the settlement are filed, then the Effective Date shall be the date of final court approval; or
8		(b) if objections to the settlement are filed, the date of final court approval of the Settlement and the expiration of the time to file appeals or the resolution of any appeals filed.
9		
10		
11	Defendant to provide Maximum Settlement Amount to Simpluris	20 Calendar days after Settlement Calculation or 10 calendar days after Effective Date, whichever is later.
12		
13	Fees and costs, Class Representative Award, Class awards, LWDA payment to be paid by Simpluris	No later than 14 calendar days after Defendant deposits Settlement Fund Deposit Amount into QSF.
14		
15		
16	Simpluris to stop payment on checks for CMs that do not timely opt-out and so receive a payment, but do not cash settlement check and transmit funds to the California State Controller's Office Unclaimed Property Fund	180 days after issuance of awards
17		
18		
19		

20 and

21 7. Entering a final judgment with the terms of the Settlement.

22 Respectfully submitted,

23
24 Date: August 11, 2021

HOYER & HICKS

25 /s/ Ryan L. Hicks

26 Ryan L. Hicks
27 Attorney for Plaintiff MICHELLE
28 NOURIAN MARTINEZ