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11 MICHELLE NOURIAN MARTINEZ

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

**DECLARATION OF RICHARD A.  
HOYER SUPPORTING  
UNOPPOSED MOTION FOR  
FINAL APPROVAL OF CLASS  
SETTLEMENT**

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

**DECLARATION OF RICHARD A. HOYER**

22 I, Richard A. Hoyer, declare:

- 23 1. I have personal knowledge of the facts set forth in this Declaration and, if  
24 called upon as a witness, I could and would testify competently as to these facts.  
25 2. This Declaration is submitted in support of Plaintiff's Unopposed Motion  
26 for Final Approval of Class Settlement.

**QUALIFICATIONS, EXPERIENCE, AND EXPERTISE**

- 27 3. I am an attorney licensed to practice law in the state of California, the  
28 principal of Hoyer & Hicks and one of the attorneys of record for plaintiff in the

1 above entitled action. I make this declaration based on my personal knowledge  
2 and if called upon to do so, could and would competently testify to the contents  
3 hereof.

4 4. I have practiced litigation in San Francisco since 1990. I have a Bachelor  
5 of Arts degree from Northwestern University (1987) and a Law Degree from  
6 Georgetown (1990). I was a commercial litigator at what is now called Pillsbury  
7 Winthrop (1990-1993) and an employment litigator at Epstein, Becker & Green  
8 (1993-1997), which are both national firms. I was a partner at Whitehead, Porter  
9 & Gordon LLP from 1997 to 2001.

10 5. Since 1993, I have focused almost exclusively on employment disputes.  
11 Since 2002, over ninety percent of my clients have been plaintiffs in employment  
12 cases. Specifically, I have represented clients with claims of sexual  
13 discrimination and harassment, racial discrimination and harassment,  
14 employment retaliation, and wage and hour disputes. Since 2002, I have had  
15 my own practice.

16 6. HH and I specifically have acted or are acting as class counsel in  
17 numerous cases. A partial list of class actions in which I or HH were counsel  
18 includes: *Butler v. Home Depot*, (N.D.Cal. Case No. C-94-4335) (representing  
19 Defendant in nationwide class action alleging gender discrimination); *Ling, et*  
20 *al. v. Regents* (Alameda Sup. Ct. No. 2001-035654) (represented class  
21 members in a race discrimination claim that resulted in class certification and  
22 settlement); *Wahid v. Nations Foodservice, Inc.* and *Saavedra v. Nations*  
23 *Foodservice, Inc.* (Alameda County Superior Court Nos. RG 05246866 and RG  
24 08421015) (wage and hour class action regarding misclassification of  
25 restaurant managers); *Stockwell, et al v. City and County of San Francisco*,  
26 (N.D.Cal. Case No. C 08-05180 PJH) (disparate impact age discrimination  
27 claims on behalf of police officers); *Kauffman v. Bank of America* (D.Kan. Case  
28 No. 10-md-2138-JWL-KGS) (wage and hour class action and multidistrict  
HOYER DECLARATION SUPPORTING FINAL APPROVAL OF CLASS SETTLEMENT

litigation and settlement concerning unpaid wages and overtime and missed meal and rest periods under the FMLA and California law); In *In Re: Sanofi-Aventis U.S., Inc. Wage and Hour Litigation* (N.D.Cal. Case Nos. 3:10-CV-04141 SBA; 3:10-CV-04672 SBA) (class of pharmaceutical sales representatives in a state-wide misclassification case); *Neu-Helms v. UHS of Delaware, Inc.* (Alameda County Case No. RG08425516) (post- certification settlement of class claims regarding missed meal and rest periods for classroom assistants at schools for special needs children); *Al Lahham, et al vs. Serra Medical Transportation*, (N.D.Cal. Case No. 3:12-cv-00355-CRB) (FLSA Collective of drivers deprived of overtime pay and meal and rest breaks); *Okechukwu, et al. vs. DEM* (putative class arbitration representing limousine drivers on claims of unpaid overtime, as well as meal and rest break violations); *Parvataneni, et al. vs. E\*Trade Financial*, (N.D.Cal. Case No. 3:13-cv-02428-JSW) (statewide representative claims of unpaid overtime for PAGA collective of computer systems employees); *Sanchez-Ramirez v. The Consulate General of Mexico in San Francisco* (N.D.Cal. Case No. 4:12-cv-03485-PJH) (represented non-exempt workers on class claims of unpaid overtime and missed breaks); *Asghari, et al. v. Friendly Cab Company, Inc.* (Alameda County Case No. AG11556435) (class settlement on behalf of taxicab drivers alleging improperly assessed processing fees on credit card transactions); *Palm v. Sur la Table, Inc.* (N.D.Cal. Case No. 13-cv-1250-JCS) (class settlement of over 2,800 non-exempt retail store employees in California on rest break claims); *Shaghafi v. ValleyCare Health System* (Alameda County Case No. RG12618899) (class settlement of meal and rest period claims on behalf of respiratory therapists); *Jenkins v. Goodwill Industries of the Greater East Bay, Inc.* (Alameda County Case No RG12659632) (class settlement of unpaid wages, overtime, and meal and rest period violations); *Marr v. Poodles, Inc., et al.* (S.F. Sup. Ct. Case No. CGC-14-537154) (class settlement for unpaid wages

1 and missed break premiums); *Oseas DeLeon et al. v. Clock Freight*  
2 *International, Inc. et al.* (San Mateo County Case No. CIV-521247) (class  
3 settlement of drivers' claims of missed meal and rest periods) *Guilbaud v.*  
4 *Sprint/United Management Co. Inc.* (N.D.Cal. Case Nos. 3:13-cv-04357-VC and  
5 3:14-cv-02642-VC) (final approval of class and FLSA settlement for off-the-  
6 clock and missed meal and rest period claims on behalf of class and FLSA  
7 collective of non-exempt retail store employees); HH is currently counsel in the  
8 following pending wage and hour class/representative actions: *Thomas v.*  
9 *Sonoma Mission Inn Management, et al.* (Sonoma County Case No. SCV-  
10 257470) (putative class of massage therapists and estheticians alleging missed  
11 meal and rest periods); *Casas v. Mission-Hope Day Program, LLC et al.*  
12 (Alameda County Case No. RG15797671) (class and PAGA claims of missed  
13 meal and rest periods for employees who care for special needs adults); *D'sa*  
14 *v. Amber India Corp.* (San Francisco Superior Court Case No. CGC-15-544578)  
15 (non-exempt restaurant workers alleging missed meal and rest periods);  
16 *Villarreal v. Perfection Pet Food* (E.D.Cal. Case No. 1:16-cv-01661-LJO-EPG)  
17 (pet food factory workers alleging missed rest and meal periods for shifts  
18 exceeding 10 hours); *Coppernoll v. Hamcor Inc.* (N.D.Cal. Case No. 3:16-cv-  
19 05936-WHA) (piece-rate automotive service technicians alleging off the clock  
20 work, unpaid overtime, missed breaks); *Coppernoll v. Hamcor Inc.* (Alameda  
21 County Case No. RG16843171) (parallel PAGA-only state court action);  
22 *Heartley v. On My Own, Inc.* (E.D.Cal. Case No. 2:17-CV-00353-KJM-EFB)(in-  
23 home care providers alleging unpaid overtime and meal/rest period violations);  
24 *Magee v. AEG Management Oakland, LLC* (N.D.Cal. Case No. 3:17-cv-02631-  
25 JD)(Security Guards Asserting meal/rest period violations); *Thaoho v. Capitol*  
26 *Casino, Inc.* (Sacramento County Case No. 2018-00228073) (Class action on  
27 behalf of casino dealers with meal period and tip theft violations); and *Wiley v.*  
28 *Health Services Media, Inc.* (Cal.N.D. Case No. 3:18-cv-06680-SK) (Class  
HOYER DECLARATION SUPPORTING FINAL APPROVAL OF CLASS SETTLEMENT

1 action involving house cleaners misclassified as independent contractors).  
 2 *Gutierrez v. El & El Wood Products Corp.* (Sacramento County Case No. 34-  
 3 2019-00268549) (Class/PAGA Action involving wage and hour claims of wood  
 4 manufacturing workers); *Benroth v. Glassybaby, LLC, et al.* (Alameda County  
 5 Case No. HB19045978) (Class/PAGA action involving wage and hour claims of  
 6 glassblowers); *Landucci v. Freeman Expositions, LLC* (N.D.Cal. Case No. 3:19-  
 7 cv-07573-JCS) (Class/PAGA action involving paycheck cashing fees on event  
 8 workers); *Rivera, et al. v. Home Care Assistance, Inc. et al.* (Alameda County  
 9 Case No. RG20058229) (Class/PAGA action involving healthcare workers  
 10 misclassified as exempt from overtime); and *Hand v. Spread Your Wings, LLC,*  
 11 *et al.* (Contra Costa County Case No. C20-02287) (PAGA action involving  
 12 improper payroll practices and bounced paychecks); *Castaneda, et al. v. S&F*  
 13 *Towing, LLC, et al.* (Alameda County Case No. RG18932965) (Class/PAGA  
 14 Action involving wage and hour claims of tow truck drivers and dispatchers).

15 7. In the prosecution of this case, my firm efficiently prosecuted this litigation  
 16 and conducted relevant discovery. We endeavored to efficiently divide  
 17 assignments, avoid duplication of efforts, and accomplish all tasks in the most  
 18 efficient manner possible.

### 19 **CLASS COUNSEL**

20 8. Plaintiff's Counsel in this case is Hoyer & Hicks ("HH"). The attorneys at  
 21 our firm are highly-regarded members of the wage and hour and employment  
 22 class and collective action bar, with extensive experience in this highly-  
 23 specialized type of litigation.

24 9. Declarations and supporting exhibits outlining Plaintiff's Counsel's work  
 25 on this matter have been submitted in support Plaintiff's Unopposed Motion for  
 26 Attorneys' Fees, Costs, and Service Award filed on the same day as this motion  
 27 and all supporting documents. I refer the Court to these additional declarations  
 28

1 for a detailed overview of my work as well as other Plaintiff's Counsel's work on  
2 the matter.

### 3 **INTRODUCTION**

4 10. The Parties have resolved the claims of 31 of Defendant's employees for  
5 a total settlement of \$475,000. In order to provide notice of the Settlement to  
6 CMs, Defendant conducted a final review of its employee records to provide the  
7 Settlement Administrator with workweek and contact information for all CMs.  
8 The CM numbers included in this brief are the most recent, accurate total  
9 numbers of CMs.

10 11. The Court granted preliminary approval of this Settlement as to the Class  
11 on April 12, 2021 (Dkt. No. 31). Following the Court's approval, notice of the  
12 Settlement was sent to the Class on June 21, 2021. The exclusion and objection  
13 period expired August 5, 2021. To date, CMs have responded favorably. Not a  
14 single objection has been filed, and not a single CM has opted out of the  
15 Settlement, as noted in the Declaration of Meagan Brunner, the Administrator's  
16 Representative ("Brunner Dec."), submitted concurrently herewith.

### 17 **PROCEDURAL HISTORY**

18 12. On May 27, 2020, Plaintiff filed a complaint alleging class wage and hour  
19 violations in the United States District Court for the Central District of California  
20 (Dkt. # 1). That same day, Plaintiff submitted a PAGA notice to the Labor and  
21 Workforce Development Agency ("LWDA"). Following the expiration of the  
22 LWDA 65-day response period, on August 7, 2020, Plaintiff filed the operative  
23 Amended Complaint, adding a claim for PAGA penalties. (Dkt. # 20). Defendant  
24 timely answered on September 1, 2020. (Dkt. # 26). The parties exchanged  
25 their initial disclosures, and Plaintiff propounded a full set of discovery requests.  
26 Shortly thereafter, the Parties agreed to mediate the case. In addition to the  
27 informal discovery, the Parties agreed to a *Belaire* notice process completed in  
28 December 2020.

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

10 14. Throughout the pendency of the Lawsuit, the Parties engaged in an  
11 extensive pre-certification, voluntary exchange of information, including but not  
12 limited to Defendant and Plaintiff exchanging documents, aggregate information  
13 regarding the total workweeks, wage rates, pay periods and class members, as  
14 well as actual timekeeping data, payroll documents, and internal store staffing  
15 data for an audit sample of employees to confirm the other class wide data  
16 provided. The Parties agreed to stay all formal proceedings pending the  
17 mediation.

18 15. In addition to the extensive pre-certification, voluntary exchange of  
19 information, the Parties each conducted independent investigations and fact-  
20 finding. Plaintiff's counsel contacted all CMs for whom contact information was  
21 provided and ultimately interviewed ten (10) Class Members. Of those ten, two  
22 (2) executed sworn declarations, four (4) were willing only to provide  
23 anonymous written statements, and one (1) eventually changed their mind and  
24 retracted their statement out of fear of retaliation. Counsel also made a thorough  
25 study of the legal principles applicable to the claims asserted against Defendant.  
26 The Parties have engaged in adequate discovery to value the claims.

27 16. Class Counsel based their damages analysis and settlement negotiations  
28 on the informal discovery and the information supplied through interviews with  
HOYER DECLARATION SUPPORTING FINAL APPROVAL OF CLASS SETTLEMENT

1 Plaintiff and the PCMs regarding non-discretionary bonus compensation, hours  
2 worked per week, the availability of meal and rest periods, and their time  
3 performing sales and other non-exempt tasks. Because of the data production,  
4 Defendant's straightforward and uniform policies, and that every single CM  
5 Plaintiff's counsel interviewed confirmed that they spent over half their work time  
6 on the sales floor making sales along-side their sales associates to meet their  
7 own sales requirements, Plaintiff's Counsel was required to make only a few  
8 assumptions regarding the exposure based on averages derived from the PCM  
9 interviews then extrapolated across the entire class.

10 17. Defense counsel indicated prior to the mediation that data after June 27,  
11 2020 was not as reliable for extrapolation purposes because the COVID-19  
12 pandemic resulted in Defendant temporarily closing a number of stores,  
13 temporarily reopening stores with limited staff for curbside pickup, and more  
14 closing of stores (either temporarily or permanently).

15 18. Utilizing those assumptions and further assuming that Plaintiff and the  
16 Class Members would certify all of their claims and prevail at trial, Plaintiff's  
17 Counsel calculated total damages, including all penalties, through June 27,  
18 2020 to be \$4,148,924.22. The Maximum Settlement Amount of \$475,000 is  
19 about 11% of that amount. Excluding PAGA, the amount is estimated to be  
20 \$2,618,724.22, and the settlement amount approximately 18% of that amount.  
21 Plaintiff calculated the maximum PAGA penalties as \$1,530,200.00, but  
22 because California Labor Code §§ 203, and 226 already incorporate their own  
23 penalty provisions, an award of additional PAGA penalties – or an award of the  
24 maximum penalty amount provided by PAGA – is uncertain. See Cal. Lab. Code  
25 § 2699(f); *see also Guifi Li v. A Perfect Day Franchise Inc.*, No. 5:10-CV-01189-  
26 LHK, 2012 WL 2236752 at \*17 (N.D. Cal. June 15, 2012). Moreover, even  
27 assuming Plaintiff's claims qualify for PAGA penalties, any such award is not  
28 automatic. Cal. Lab. Code § 2699(e)(2); *see also Thurman v. Bayshore Transit*

1 *Mgmt., Inc.*, 203 Cal.App.4th 1112, 1135-36 (Cal. App. Ct. 2012). We also note  
 2 that a recent California appellate opinion, though in conflict with several federal  
 3 opinions, has recently held that wage statement penalties and waiting time  
 4 penalty claims cannot be premised on meal and/or rest period violations.  
 5 *Naranjo v. Spectrum Security Services, Inc.*, \_\_ Cal.Rptr.3d \_\_ 2019 WL  
 6 5078721 (Cal. Ct. App. Oct. 10, 2019). Furthermore, the California Supreme  
 7 Court has recently held that PAGA Plaintiff can only recover the per pay period  
 8 penalties or other penalties only available to the Labor Commissioner, and not  
 9 any unpaid wages, premium wages for missed breaks, waiting time penalties,  
 10 or wage statement penalties. *ZB, N.A. v. Superior Court*, 8 Cal.5th 175 (2019).  
 11 Defendant also provided citations in its mediation brief to many cases where  
 12 PAGA penalties were severely reduced by a trial court after trial.<sup>1</sup>

13 19. The total amount of damages is further broken down as follows: the  
 14 estimated unpaid overtime is \$1,593,720.05, premium pay for missed/untimely  
 15 meal periods is \$377,877.85, and the estimated rest period exposure is  
 16 \$450,119.21. As derivative damages, Plaintiff's Counsel calculated statutory  
 17 penalties for improper wage statements totaling \$114,762.50, and waiting time  
 18 penalties for 30 days for Defendant's former employees in the amount of  
 19 \$1,530,200.00.

20 20. The net amount being disbursed to CMs is \$285,416.67, which is roughly  
 21 7% of the total damages and penalties estimated by Plaintiff, and approximately  
 22 11% of the estimated non-PAGA damages.

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24 <sup>1</sup> *Parr v. Golden State Overnight Delivery Service, Inc.*, 2014 WL 11199453, \*5–  
 25 6 (Cal. Superior July 10, 2014) (95% reduction in penalties); *Carrington v.*  
 26 *Starbucks Corp.*, 30 Cal. App. 5th 504 (2018) (90% reduction); *Kaanaana v.*  
 27 *Barrett Bus. Servs., Inc.*, 29 Cal. App. 5th 778 (2018) (87% reduction), *Fleming*  
 28 *v. Covidien Inc.*, 2011 WL 7563047, at \*4 (C.D. Cal. Aug. 12, 2011) (82%  
 reduction); *Aguirre v. Genesis Logistics*, 2013 WL 10936035, at \*3 (C.D. Cal.  
 Dec. 30, 2013) (725 reduction).

1 21. The settlement amount is fair, reasonable, and adequate. The settlement  
2 amount takes into account the substantial risks inherent in any wage-and-hour  
3 class action, the status of the litigation, the evidence that Defendant provided at  
4 the mediation, and the specific defenses asserted by Defendant.

5 22. On February 5, 2021, the Parties participated in a mediation before Steve  
6 Pearl, a highly respected neutral mediator in Los Angeles, California, who  
7 specializes in wage and hour mediations. The parties exchanged additional  
8 information and briefing regarding Defendant's realistic exposure to damages,  
9 the relative strengths and weaknesses of Plaintiff's claims, the risks and delays  
10 of further litigation, the current state of the law as it related to Plaintiff's claims,  
11 and the difficulty Plaintiff may have in obtaining and maintaining class  
12 certification on each of her claims in the action. With Mediator Pearl's  
13 assistance, the Parties agreed, subject to approval by the Federal Court, to a  
14 Settlement of the Actions. The Parties engaged in arm's-length negotiations,  
15 culminated by the execution of the longform Settlement Agreement on March 2,  
16 2021.

17 23. On March 5, 2021, Plaintiff filed a Motion for Preliminary Approval of the  
18 Settlement. On April 12, 2021, the Court issued an Order Granting Preliminary  
19 Approval of Settlement.

20 24. The Court granted conditional certification of the settlement class,  
21 conditionally appointed Hoyer & Hicks ("HH") as counsel for the class;  
22 conditionally appointed Plaintiff as Class Representative; approved the Class  
23 notice (see Dkt. No. 31); approved the settlement produced for the Class; and  
24 preliminarily approved Class Counsel's ability to request attorneys' fees of up  
25 to one-third of the Gross Settlement Amount (\$158,333.33), and costs not to  
26 exceed \$10,000.00.

27 25. Simpluris Inc. is responsible for distributing the Class Notice, calculating  
28 individual settlement payments, calculating all applicable payroll taxes,  
HOYER DECLARATION SUPPORTING FINAL APPROVAL OF CLASS SETTLEMENT

1 withholdings and deductions, preparing and issuing all disbursements to be paid  
2 to Class Members, Collective Members, the Class Representative, Class  
3 Counsel, the LWDA, any applicable local, state, and federal tax authorities, and  
4 handling inquiries and/or disputes from CMs. Simpluris is also responsible for  
5 the timely preparation and filing of all tax returns, and making the timely and  
6 accurate payment of any and all necessary taxes and withholdings. Simpluris  
7 also established a mailing address and toll-free telephone number to direct  
8 inquiries regarding the Notices and determination of individual settlement  
9 payments.

10 26. Following the Court's order, notice was mailed to 31 CMs on June 21,  
11 2021. In order to mail notices to CMs, Simpluris first calculated the individual  
12 settlement award for every CM after receipt of the CM list from Defendant in  
13 order to include such information on the notices. The Notice informed the Class  
14 of: the Settlement terms; their expected share; the August 5, 2021 deadline to  
15 submit objections, requests for exclusions, or disputes; the September 10, 2021  
16 final approval hearing; and that Plaintiff would seek attorneys' fees, costs, and  
17 service awards and the corresponding amounts. A true and correct copy of the  
18 final notice is attached as Exhibit A to the Brunner Dec. Simpluris also included  
19 a toll-free number in the Settlement Notice, which Class Members could call for  
20 information about the Settlement. Likewise, contact information for Class  
21 Counsel in the case was provided. As of June 21, 2021, the Settlement  
22 Administrator has successfully mailed notice packets to all Class Members.

23 27. The deadline for Class Members to opt-out, objection, and dispute their  
24 awards expired August 5, 2021. To date, not a single objection has been filed,  
25 and not a single California Class Member has opted out of the Settlement.

#### 26 **FINAL APPROVAL OF THE SETTLEMENT**

27 28. The Final Approval Hearing for the Court to approve the Settlement as to  
28 the California Class is currently scheduled for September 10, 2021. With this  
HOYER DECLARATION SUPPORTING FINAL APPROVAL OF CLASS SETTLEMENT

1 motion, Plaintiff asks the Court to grant final approval of this settlement as to  
2 the Class. Following an order by the Court on this motion, the Parties and the  
3 Settlement Administrator will execute the final steps of the settlement process,  
4 including sending individual checks to all participating CMs for their Settlement  
5 award.

### 6 **THE SETTLEMENT**

7 29. The Parties have resolved this matter in a Stipulation of Settlement and  
8 Release (the “Settlement Agreement” or the “Settlement”), a true and correct  
9 fully executed copy of which is attached as **Exhibit 1** to this Declaration. In  
10 addition, true and correct copies of the Class Notice is attached as **Exhibit 1** to  
11 the Settlement Agreement.

12 30. Defendant has agreed to pay a total of \$475,000 to settle all aspects of  
13 this case. The “Net Settlement Amount,” which is the amount available to pay  
14 settlement awards to the CMs, is defined as the Maximum Settlement Amount  
15 less: any attorneys’ fees and costs awarded to Class Counsel (fees of up to  
16 one-third of the Gross Settlement Amount, \$158,333.33, plus costs incurred up  
17 to \$10,000, any enhancement payments awarded to the Class Representative  
18 (up to \$10,000.00), the payment made to the California Labor & Workforce  
19 Development Agency (“LWDA”) pursuant to PAGA (\$7,500)<sup>2</sup>, and the  
20 Settlement Administrator’s fees and costs (up to \$10,000, but which have been  
21 quoted at \$3,750) by Simpluris, Inc. The Maximum Settlement Amount includes  
22 any and all payments of any type to be made in the settlement of the Lawsuit to

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23 <sup>2</sup> Plaintiff will submit a copy of the Settlement Agreement and these moving  
24 papers through the LWDA’s online submission system concurrently with these  
25 papers, per Cal. Labor Code §2699(l)(2). The Parties also agree to allocate  
26 \$10,000.00 of the Total Settlement Fund to the settlement of the PAGA claims,  
27 which the Parties believe in good faith is a fair and reasonable apportionment.  
28 The Settlement Administrator shall pay 75%, or \$7,500, of this amount to the  
LWDA, and allocate 25%, or \$2,500.00, of this amount to the Net Settlement  
Amount. Settlement Agreement ¶ III.54(d).

1 the Class Representative, the LWDA and all participating Class Members and  
2 for individual, private attorney general and class-wide relief, including without  
3 limitation any class representative enhancement, settlement administration fees  
4 and costs, and attorneys' fees and costs.

5 31. An individual is a member of the Class if he or she works or worked as a  
6 Store Manager for Defendant in California at any time during the period of April  
7 6, 2016 through the end of the Class Period, which is the date for preliminary  
8 approval of the Settlement or ninety (90) days after the execution of the  
9 Settlement Agreement, whichever occurs first. Settlement Agreement at ¶ I.2  
10 (Class Definition); ¶ I.7 (Class Period). Since the Court granted Preliminary  
11 Approval on April 12, 2021, the Class Period ends on that date, which is less  
12 than ninety (90) days after the parties executed the Settlement Agreement on  
13 March 2, 2021.

14 32. The Net Settlement Amount to be paid to CMs will be at least  
15 \$285,416.67. Only those CMs who do not opt-out of the Settlement will receive  
16 payment. Each CM's settlement share will be determined based on the total  
17 number of weeks that the respective CM worked as a retail store manager  
18 during the Class Period as compared to the total weeks worked by all CMs as  
19 a retail store manager during the Class Period. Settlement Agreement at ¶  
20 III.54(b)(i). All eligibility and Individual Settlement Payment determinations shall  
21 be based on employee workweek information that the Settlement Administrator  
22 calculates based on Defendant's data provided to the Settlement Administrator.  
23 CMs will have the opportunity should they disagree with the Settlement  
24 Administrator's calculations, to provide documentation and/or an explanation to  
25 show a contrary number of weeks worked. (See Class Notice, Exhibit 1 to  
26 Settlement Agreement.) For any CM that does not timely opt out of the  
27 Settlement and receives a payment, but does not timely cash his or her  
28 settlement check within 180 days after its issuance by the Settlement

1 Administrator, the Settlement Administrator will immediately stop payment on  
2 the check and such funds, plus any accrued interest, will be tendered to the  
3 State Controller's Office Unclaimed Property Fund in the name of Settlement  
4 Class Members who did not cash their settlement checks.<sup>3</sup>

5 33. The release contemplated by the proposed Settlement will release all  
6 claims in connection with the lawsuit, all violations alleged in the notice sent to  
7 the LWDA, as well as all predicate claims based on the factual and legal  
8 theories alleged in the complaint (i.e., based on misclassification as an exempt  
9 employee), from the beginning of any applicable statute of limitations period  
10 through the end of the Class Period. Settlement Agreement at ¶¶ I.29  
11 ("Released Claims"); III.45 (Release by Settlement Class Members). Only Class  
12 Members who do not opt out will release their Claims. *Id.* at ¶ III.45.

13 34. The Parties agreed to use, and the Court has appointed Simpluris, Inc. to  
14 administer the Settlement, for total fees and costs it has quoted at \$3,750.00.  
15 Attached hereto as **Exhibit 2** is a true and correct copy of the quote from  
16 Simpluris regarding this proposed Settlement. Simpluris will distribute the  
17 Notice Package, calculate individual settlement payments, calculate all  
18 applicable payroll taxes, withholdings and deductions, preparing and issuing all  
19 disbursements to be paid to CMs, the Class Representatives, Class Counsel,  
20 the LWDA, any applicable local, state, and federal tax authorities, and handling  
21 inquiries and/or disputes from CMs. Settlement Agreement. at ¶ III.52. Simpluris  
22 is also responsible for the timely preparation and filing of all tax returns, and  
23 making the timely and accurate payment of any and all necessary taxes and  
24 withholdings. *Id.* Simpluris will also establish a mailing address to direct inquiries  
25 regarding the Notices and determination of individual settlement payments. *Id.*

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26  
27 <sup>3</sup> Settlement Agreement at ¶ III.54(b)(iv) (Uncashed Checks). The Settlement  
28 Administrator will also send a reminder to any CMs who have not cashed their  
checks after 120 days.

1 at ¶ III.3(b)(iii). The Notice Package and relevant documents will be available  
2 on a website established by the Settlement Administrator.

3 **FINAL APPROVAL**

4 35. In its April 12, 2021 order, the Court preliminarily approved the Settlement  
5 with respect to these CMs. Accordingly, the only step that remains is final  
6 approval of the Settlement as to the Class. Consistent with the precedent of this  
7 Circuit and this Court's own decisions, the Settlement should be finally  
8 approved.

9 36. The Court should find that the Settlement is fair, reasonable, and  
10 adequate, and finally approve it with respect to the Class.

11 37. Pursuant to the Court's April 12, 2021 order granting preliminary approval  
12 of the Settlement as to the Class, Simpluris sent the Court-approved Class  
13 Notice to the Class Members in accordance with the terms of the Settlement  
14 Agreement.

15 38. Reasonable steps have been taken to ensure that all Class Members  
16 received the Notice. Prior to mailing the notices, the Claims Administrator ran  
17 the class list through the United States Postal Service's National Change of  
18 Address database ("NCOA"), and performed address searches using public and  
19 proprietary electronic resources which collect data from various sources such  
20 as utility records, property tax records, motor vehicle registration records (where  
21 allowed) and credit bureaus. Ultimately, of the 31 notices distributed, none have  
22 been returned as undeliverable.

23 39. A review of the Settlement Agreement reveals the fairness,  
24 reasonableness, and adequacy of its terms. The total amount paid to CMs in  
25 this settlement will be at least \$285,416.67, derived from a Maximum Settlement  
26 Amount of \$475,000, and will result in fair and just relief to CMs. Payments to  
27 the CMs are roughly 11% of the total non-PAGA damages, penalties and  
28 interest attainable in this case, and roughly 7% of the total damages including

1 the duplicative PAGA penalties. The result is well within the reasonable  
2 standard when considering the difficulty and risks presented by pursuing further  
3 litigation. Furthermore, the final settlement amount takes into account the  
4 substantial risks inherent in any class action wage-and-hour case, as well as  
5 the specific defenses asserted by Defendant, including as well as the specific  
6 defenses asserted by Defendant here, most notably numerosity issues raised  
7 by a class size of just over 30, nearly half of whom provided declarations to  
8 Defendant prior to the mediation that undermine certification.

9 40. In an effort to further ensure fairness for the employees, the Parties have  
10 agreed to allocate the settlement proceeds amongst CMs on a *pro rata* basis  
11 so that CMs who worked more during the Class Period receive a proportion of  
12 the Net Settlement Proceeds that corresponds to the time that they worked  
13 compared to the other CMs. The allocation was made based on Class Counsel's  
14 assessment of the risk of continued litigation and risk on certification and merits,  
15 to further ensure that employees are compensated accordingly and in the most  
16 equitable manner.

17 41. The Parties engaged in an informal information exchange and discovery  
18 to enable both sides to assess the claims and potential defenses in this action.  
19 The Parties were able to accurately assess the legal and factual issues that  
20 would arise if the case proceeded to trial and evidentiary hearing, respectively.  
21 In addition, in reaching this settlement, Class Counsel relied on their substantial  
22 litigation experience in similar wage and hour class and collective actions. Class  
23 Counsel's liability and damages evaluation was premised on a careful and  
24 extensive analysis of the effects of Defendant's compensation policies and  
25 practices on CMs' pay, and the information and sworn testimony provided by a  
26 substantial portion of the Class. Ultimately, facilitated by Mediator Pearl, the  
27 Parties used this information and informal discovery to fairly resolve the  
28 litigation.

**Unpaid Overtime Claim**

42. Section 510 of the California Labor Code and applicable wage orders require employers to pay overtime for hours worked beyond eight in a day and forty in a week (and double-time as provided in the statute and Wage Order). The Wage Orders define “hours worked” as the “time during which an employee is subject to the control of an employer and includes all the time the employee is suffered or permitted to work, wither or not required to do so.” Labor Code § 1194(a) states that employees are entitled to recover the unpaid balance of their minimum wage and overtime compensation.

43. Plaintiff contends Defendant improperly classified her and the CMs as exempt employees and therefore not entitled to overtime pay.

44. Plaintiff alleges, based on the testimony of CMs, that CMs were expected to meet a significant personal sales quota. Plaintiff also alleges that oftentimes, when a CM was performing managerial tasks such as observing subordinates and coaching while helping customers on the floor of the store, the entirety of that time spent on the floor must be classified as non-exempt because the general purpose of the work is customer sales. *Heyen v. Safeway*, 216 Cal.App.4th 795, 826 (2013). Defendant represented that CMs have no personal sales quotas, that no company policies require personal sales quotas, and that several declarations from CMs confirm that they have no personal sales quotas. Defendant also represented that sworn testimony from almost half of the CMs in the class confirm that CMs spend well more than 50% of their time on exempt duties. Plaintiff also alleges that there are low staffing levels at the PCMs’ stores, and that combined with alleged personal sales quotas, the CMs spend the vast majority of their time on the floor of the store serving customers, ringing up sales, answering questions, or performing other non-exempt tasks like counting inventory, ordering and stocking supplies, cleaning, and generally interacting with customers or walking them through the sign-up

1 process for a line of credit, like any other associate. Plaintiff also alleged that  
2 Defendant fully expected the PCMs to “pick up the slack” and do whatever was  
3 necessary to meet the stores monthly quotas. See *Heyen*, 216 Cal.App.4th at  
4 828-829; *Ramirez v. Yosemite Water Co.*, 20 Cal.4th 785, 801-802 (1999).  
5 Defendant represented that many CMs provided their sworn testimony that they  
6 spend much more than 50% of their time on exempt duties, including recruiting,  
7 interviewing, and hiring associates; training, monitoring, coaching, motivating,  
8 supervising, and disciplining associates; creating and implementing action  
9 plans to drive sales and customer satisfaction; managing payroll and  
10 strategically scheduling associates; leading the “running the Store” activities like  
11 managing the store’s appearance and inventory; and studying up on the  
12 competition to anticipate future strategies.

13 45. Plaintiff and the CMs interviewed by Plaintiff’s counsel all stated that they  
14 regularly worked between for (4) and sixteen (16) hours of overtime per week.  
15 However, Plaintiff alleges that because of their exempt status, they were not  
16 appropriately compensated for these hours worked. Furthermore, their regular  
17 non-discretionary bonus compensation would also have to account for overtime  
18 worked during the pay period in which the bonus was earned.

19 46. However, Defendant represented that it has 15 declarations from CMs,  
20 approximately 48% of the Class, that include information that allegedly shows  
21 CMs were primarily engaged in exempt work. Additionally, due to the lack of  
22 complete or consistent timekeeping records, the inquiry as to the total amount  
23 of overtime worked by each CM is potentially highly individualized as to each  
24 CM, rendering class certification potentially difficult.

25 47. Plaintiff estimates that Defendant’s potential exposure was approximately  
26 \$1,593,720.05 for the overtime claim.

27 48. Plaintiff’s counsel were aware of these risks and took them into account  
28 when discounting the claims for settlement purposes.

**Meal and Rest Period Claims**

49. California Labor Code Sections 226.7 and 512 and the applicable wage orders require employers to provide meal periods and to authorize and permit rest periods for their employees. As the California Supreme Court has noted, an employer meets the requirements of the applicable Wage Order's meal period requirement if the employee (1) has at least 30 minutes uninterrupted, (2) is free to leave the premises, and (3) is relieved of all duty for the entire period. *Brinker v. Superior Court* (2012) 53 Cal.4th 1004, 1036. California law prohibits employers from employing an employee for more than five hours without a meal period of at least 30 minutes, and from employing an employee more than ten hours per day without providing the employee with a second meal period of not less than 30 minutes. Cal. Lab. Code § 512. Labor Code section 226.7 and applicable wage orders also require employers to authorize and permit employees to take 10-minute rest periods for each four hours worked or major fraction thereof of work, and to pay employees their full wages during their rest periods.

50. Plaintiff alleges because she and the CMs were misclassified as exempt employees, there were not permitted to take off-duty meal and rest periods or to seek premium wages for Defendant's failure to permit or provide compliant meal and/or rest periods. Plaintiff and the CMs Plaintiff's counsel interviewed report being able to take compliant rest periods, on average, only 24% of the days they worked. They reported being able to take a compliant meal period, on average, 10% of the days they worked. Due to their improper exempt status, no CM was paid a premium for missed or otherwise non-compliant breaks, and they reported that they understood that the meal and rest period policies applicable to their subordinates did not apply to them as managers.

51. As with the unpaid overtime claims above, Defendant brought 15 declarations from CMs to the mediation which they maintained would defeat any

HOYER DECLARATION SUPPORTING FINAL APPROVAL OF CLASS SETTLEMENT 19

1 certification motion, given that the class size was only 31 members. Defendant  
2 further represented that the CMs provided sworn testimony that CMs are in  
3 charge of their daily schedules, are always able to take a duty-free,  
4 uninterrupted meal break of at least 30 minutes that they can start before the  
5 end of the fifth hour of their workday, can completely relinquish their duties  
6 during their meal breaks, leave the store, and take their meal breaks without  
7 having to remain in contact with the store. Defendant further represented that  
8 on days when CMs work more than 10 hours, they always have the opportunity  
9 to take a second meal break before the end of the tenth hour of their workday.

10 52. The area of law regarding the propriety of class treatment of meal and rest  
11 period requirements remains unsettled, notwithstanding the California Supreme  
12 court's ruling in *Brinker v. Superior Court* (2012) 54 Cal.4th 1004.

13 53. Any dispute about the extent to which timely meals were not provided is  
14 an issue related to individual damages, not liability. However, Defendant  
15 contended that such individual questions regarding when and whether each  
16 meal period for each PCM was missed or untimely make the case unsuitable  
17 for class treatment, particularly in Federal Court. Defendant also asserted that  
18 meal periods were taken when the employees wanted to take them. Regardless  
19 of whether a class is certified, the result would undoubtedly be appealed by the  
20 losing parties based on *Wal-Mart Stores, Inc. v. Dukes* (2011) 564 U.S. 338, a  
21 recent case that has muddied the waters as to the propriety of representative  
22 testimony as evidence of liability in class actions. *But see Tyson Foods, Inc. v.*  
23 *Bouaphakeo* (2016) \_\_ U.S. \_\_, 136 S.Ct. 1036.

24 54. Plaintiff estimated that Defendant's potential exposure was \$377,877.85  
25 for the meal period claims, and another \$450,119.21 for the rest period claims.

26 55. Plaintiffs' counsel were aware of all of these risks and took them into  
27 account when discounting the claims.

28 Inaccurate Wage Statement Claims

1 56. Plaintiff contends that Defendant's wage statements were inaccurate in  
2 that they failed to include the hours that Plaintiff and the PCMs worked, the  
3 premium wages to which they were entitled for missed meal and rest periods,  
4 for the overtime to which Plaintiff and the PCMs were entitled, and were  
5 inaccurate in other respects as well giving rise to penalties pursuant to Labor  
6 Code § 226 due to the failure to record meal periods, all hours worked, and  
7 premium wages owed.<sup>4</sup> Plaintiff also alleged that Defendant's treatment of the  
8 PCMs as exempt employees necessarily rendered the wage statements  
9 inaccurate upon a showing the PCMs were in fact non-exempt. Common  
10 questions predominate in claims regarding such claims, which are well-suited  
11 to class treatment. *See Jaimez v. DAIOHS USA, Inc.* (2010) 181 Cal.App.4th  
12 1286, 1304

13 57. Defendant maintained that the wage statement claim was completely  
14 derivative of the misclassification theory, and thus lacked merit.

15 58. Plaintiff estimated that Defendant's potential exposure was \$377,877.85  
16 for the wage statement claims.

17 59. Plaintiff's counsel were aware of all of these risks and took them into  
18 account when discounting the claims.

19 **Waiting Time Penalties**

20  
21 <sup>4</sup> Plaintiff notes that the Court of Appeal in *Ling v. P.F.Chang's China Bistro,*  
22 *Inc.* (2016) 245 Cal.App.4th 1242, recently discussed in dicta that it did not  
23 believe that meal/rest period violations can form the basis for a waiting time  
24 penalty or § 226 wage statement claim. *But see In re: Autozone, Inc.* (N.D.Cal.  
25 August 10, 2016) 2016 WL 4208200 (Denying summary judgment and  
26 disagreeing with *P.F. Chang's* "[b]ecause the Court is persuaded by the  
27 numerous Northern District courts recognizing that section 203 penalties are  
28 available for wage payments under section 226.7...."). The question is currently  
pending before the California Supreme Court in *Naranjo v. Spectrum Security*  
*Services*, S258966. (B256232; 40 Cal.App.5th 444; Los Angeles County  
Superior Court; BC372146).

1 60. The claims for waiting time penalties are derivative of the meal and rest  
2 period and unpaid wages claims. If meal or rest period premiums or other wages  
3 were not paid to class members upon termination of their employment, then  
4 Plaintiffs contend that the Class Members are entitled to waiting time penalties.  
5 However, Defendants maintain that the class members were properly classified  
6 as exempt, were provided an opportunity to take all of their meal and rest  
7 periods, were not owed any unpaid wages and are thus not entitled to any  
8 damages or penalties for waiting time penalties. Defendants also contended  
9 that this subclass could not meet the numerosity requirement.

10 61. There were only seven PCMs whose employment ended during the  
11 applicable statutory period (and Plaintiff remained employed and not eligible for  
12 waiting time penalties), rendering certification of that claim all but impossible.  
13 Nevertheless, Plaintiff estimated that Defendant's exposure was \$82,244.61 for  
14 waiting time penalties claims

15 62. Plaintiff's counsel were aware of all of these risks and took them into  
16 account when discounting the claims.

17 **Derivative PAGA Penalties**

18 63. Plaintiff's claims on behalf of similarly aggrieved PCMs seeking penalties  
19 under the PAGA are also derivative of the overtime, meal and rest period claims  
20 discussed above, which also resulted in violations of Labor Code §§ 203, 204,  
21 226, 226.3, 226.7, 210, 510, 558, 1174.5, 7, 2699(f) (all based on the exact  
22 same conduct – to wit – missed meal and rest periods and unpaid wage  
23 practices resulting from the alleged misclassification as exempt) in addition to  
24 the violations asserted hereinabove. While Plaintiff is confident that she would  
25 have been able to proceed on their PAGA claims for penalties regardless of  
26 whether a class was certified under CCP § 382, Defendant still maintains that it  
27 would have prevailed on all or most of the claims, negating the derivative PAGA  
28 claims, or would have been able to seek dismissal of the PAGA claims as

1 unmanageable, thought Plaintiff maintains that there is no legal basis for such  
2 a motion.

3 64. Notwithstanding Defendant's asserted defenses based on the underlying  
4 meal and rest period claims and unpaid wages claims, the case law regarding  
5 the wholly derivative PAGA claims remains inconsistent at best, and downright  
6 murky and conflicted at worst. For example, there is at least one case which  
7 ruled that only the named Plaintiffs could recover penalties for violations  
8 suffered by the other PCMs (as in a *qui tam* lawsuit), while other Courts have  
9 ruled that each aggrieved employee is entitled to the 25% of the penalties that  
10 do not go to the state based on conduct that the individual suffered. The  
11 California Supreme Court's recent opinion in *Iskanian v. CLS Transportation*  
12 *Los Angeles, LLC* (2014) 59 Cal.4th 348 recently characterized PAGA claims  
13 as *qui tam* claims, but did not touch upon any issues regarding the propriety of  
14 potential multiple PAGA penalties being awarded based upon the same  
15 unlawful conduct. Also, the *P.F. Chang's* case discussed above calls into doubt  
16 whether § 226.3 penalties can even be awarded based on rest and meal period  
17 violations.

18 65. Courts have discretion to reduce any amount of penalties awarded under  
19 PAGA, and it is very possible that the Court could find that a \$250/\$1,000  
20 penalty under the PAGA for a violation of §226.3 is duplicative of the \$50/\$100  
21 penalty provided specifically to employees for a violation of §226(e), since the  
22 exact same conduct gives rise to the exact same violations under both statutes.  
23 While Plaintiffs maintain that the PAGA penalties stack on top of any penalties  
24 available to employees for the underlying violations, there is currently no  
25 uniform guidance or authority available to predict whether this Court would  
26 award all of the PAGA penalties (an estimated total of \$1,530,200.00, consisting  
27 of penalties for Labor Code §§ 203 (wages owed at termination) (\$2,200.00),  
28 204 (timely payment of wages) (\$121,800.00), 226 (wage statements)

1 (\$121,800.00), 226.3 (wage statements) (\$603,500.00), 226.7 (meal and rest  
2 periods) (\$121,800.00), 210 (failure to pay wages owed) (\$121,800.00), 510  
3 (meal periods) (\$121,800.00). 558 (violation of Wage Order) (\$60,900), 1174.5  
4 (recordkeeping) (\$11,000.00), 1197 (minimum wage) (\$121,800.00), and  
5 2699(f) (\$121,800.00)), deem them to be wholly duplicative, or something in  
6 between. Even if the Court were to grant substantial PAGA penalties at trial, the  
7 lion's share would go to the State instead of the PCMs whose rights were  
8 violated, and only 25%, or \$382,550.00 would go to the aggrieved employees  
9 themselves. Any PAGA award would be influenced by the presence or absence  
10 of a certified class, and presumably the PAGA penalties awarded would be of a  
11 greater amount if a class were not certified at trial. Since all of the penalties  
12 arise out of the underlying misclassification claim (and the derivative claims  
13 based thereon), there is a substantial risk that even if Plaintiffs prevail on the  
14 PAGA claims, any award could be reduced to nearly nothing by the Court so as  
15 to prevent the Plaintiffs and Class Members from recovering twice (or up to six  
16 separate penalties in addition to those already provided for their underlying  
17 primary claims) for the exact same violations, especially taking into account the  
18 fact that the PCMs could only recover 25% of any such award. See fn. 1.  
19 However, the Settlement awards CMs will receive vindicate the rights of the  
20 CMs as employees and may have a deterrent effect on the defendant  
21 employers, an objective of the PAGA.

22 66. My firm has been litigating PAGA claims since the statute's inception, and  
23 also has regular practice before the Labor Commissioner, which is charged (like  
24 a plaintiff under the PAGA) with enforcing the Labor Code. In our experience,  
25 Labor Commissioners never "stack" penalties. Indeed, in settlement  
26 conferences, the Labor Commissioner encourages that the aggrieved  
27 employees agree to waive penalties in exchange for payment of all or a  
28 substantial portion of the underlying unpaid wages.

1 67. Counsel submitted a copy of the proposed settlement agreement to the  
2 LWDA via its online submission system on the same date that this motion was  
3 filed.

4 68. Plaintiff's counsel were aware of all of these risks and took them into  
5 account when discounting the claims.

6 69. Plaintiff contends the common questions raised in this action predominate  
7 over any individualized questions concerning the CMs. Plaintiff believes that the  
8 Class is entirely cohesive because resolution of Plaintiff's claims all hinge on  
9 the uniform policies and practices of Defendant, rather than any treatment the  
10 CMs experienced on an individual level. As a result, Plaintiff contends that the  
11 resolution of these alleged class claims will be resolved through the use of  
12 common forms of proof, such as Defendant's uniform policies, and would not  
13 require inquiries specific to individual class members. While Class Counsel is  
14 confident that Plaintiff would succeed on liability, continued litigation would be  
15 costly, time-consuming, and not certain in outcome, particularly based on the  
16 evidence Defendant provided at the mediation.

17 70. As described above, Defendant has legal and factual grounds available  
18 to defend this action. In fact, Defendant has taken the position all along that  
19 this case is not suitable for class treatment and that it properly classified the  
20 CMs as exempt employees, and thus complied with its requirements regarding  
21 the payment of wages and provision of meal and rest periods. Defendant  
22 asserted numerous complete liability defenses against Plaintiff's claims, many  
23 of which were supported by the declarations gathered and produced by  
24 Defendant. Defendant also raised defenses against certification, which would  
25 be raised in response to Plaintiff's motion to certify the California Class,  
26 including that (1) numerosity was not satisfied; (2) that individualized  
27 determinations regarding whether an individual CM was properly classified as  
28 exempt would overwhelm common issues; (2) that individualized

1 determinations regarding the amount of wages, if any, would overwhelm  
2 common issues; and (3) whether CMs actually took timely meal and rest periods  
3 would overwhelm any common issues. If Defendant succeeded on any of these  
4 or other defenses to class certification, Plaintiff would be left with only her  
5 individual claims during her employment with Defendant and the Class would  
6 likely recover nothing. Weighing all of these considerations, resolution of the  
7 litigation by way of Settlement is reasonable.

8 71. The monetary value of the proposed Settlement represents a fair  
9 compromise given the litigation risks and uncertainties posed by continued  
10 litigation. If this case were to go to trial as a class action (which Defendant would  
11 vigorously oppose if this Settlement Agreement were not approved), Class  
12 Counsel estimates that fees and costs would exceed \$1,000,000.00. Litigating  
13 the class claims would require substantial additional preparation and discovery.  
14 It would require depositions of experts, the presentation of percipient and expert  
15 witnesses at trial, as well as the consideration, preparation, and presentation of  
16 voluminous documentary evidence and the preparation and analysis of expert  
17 reports and extensive motion practice in the litigation. Recovery of the damages  
18 and penalties previously referenced would also require complete success and  
19 certification of all of Plaintiff's claims, a questionable feat in light of recent  
20 developments in wage and hour and class and collective action law (see  
21 *Naranjo, supra* and *ZB, N.A., supra*), potential problems with numerosity, as  
22 well as the legal and factual grounds that Defendant has asserted to defend this  
23 action, including the 15 declarations it obtained from CMs. Furthermore, the  
24 PAGA penalties would more than likely be substantially reduced based on the  
25 applicable authority referenced above See fn 1. In contrast, resolving these  
26 disputes by means of a global settlement will yield a prompt, certain, and  
27 substantial recovery for the CMs of an average payment of \$9,206.99. Such a  
28 result will benefit the Parties and the court system.

1 72. This proposed settlement is a product of non-collusive, arm's-length  
2 negotiations. The Parties participated in a full-day mediation before Mediator  
3 Pearl, a skilled mediator with many years of experience mediating employment  
4 matters just like this one. In addition, the adversarial mediation resulted in the  
5 attached Settlement Agreement, executed on March 2, 2021.

6 73. Class Counsel are experienced and respected class action litigators.  
7 Based on Class Counsel's knowledge and expertise in this area of law, Class  
8 Counsel believes this Settlement will provide a substantial benefit to the Class.

9 74. To date, not a single Settlement Class Members has objected to the  
10 Settlement, and not a single Settlement Class Member has opted out of the  
11 Settlement. In addition, the Class Representative supports the terms of the  
12 Settlement. This shows widespread support for the settlement among Class  
13 Members, and gives rise to a presumption of fairness.

14 **PLAINTIFF'S SERVICE AWARD**

15 75. The enhancement payment of \$10,000.00 to Plaintiff is intended to  
16 compensate her for the critical role she played in this case, and the time, effort,  
17 and risks undertaken in helping secure the result obtained on behalf of the CMs.  
18 In agreeing to serve as Class representative, Plaintiff formally agreed to accept  
19 the responsibilities of representing the interests of all CMs. Moreover, Plaintiff  
20 agreed to end her employment with Defendant as of February 27, 2021 as a  
21 part of the settlement, foregoing a severance package Defendant had  
22 previously offered her. In addition, unlike the class members, Plaintiff is  
23 executing a general release of all claims with a Civil Code § 1542 waiver.  
24 Instead of accepting the offered severance which would have led to the  
25 dismissal of this action and an end to the prosecution of the class claims, she  
26 persevered and continued to represent the interests of the class instead of  
27 accepting the offered severance. Plaintiff's requested amount represents  
28 approximately 2 percent of the overall settlement, and is less than \$800 more

1 than the average amount each CM is expected to recover (\$9,206.99).  
2 Defendant does not oppose payment of up to \$10,000.00 to Plaintiff as a  
3 reasonable service award. Plaintiff spent dozens of hours working on this case,  
4 as will be memorialized in declarations from Plaintiff at the Final Approval stage  
5 to justify her award.

6 76. A Declaration outlining Plaintiff's extensive work on this matter has been  
7 submitted concurrently herewith in support of Plaintiff's Unopposed Motion for  
8 Attorneys' Fees, Cost, and Service Awards. I refer the Court to Plaintiff's  
9 declaration for a detailed overview of her work on the matter.

10 **REASONABLE ATTORNEYS' FEES AND COSTS**

11 77. In their fee motion to be submitted with the final approval papers, Class  
12 Counsel will request up to thirty-three percent (33%) of the Gross Settlement  
13 Amount, \$158,333.33, plus reimbursement of costs incurred in the amount of  
14 \$6,715.00. In this case, given the results achieved, the effort expended litigating  
15 these claims, and the difficulties attendant to litigating this case, such an upward  
16 adjustment is warranted. There was no guarantee of compensation or  
17 reimbursement. Rather, counsel undertook all the risks of this litigation on a  
18 completely contingent fee basis. These risks were front and center. Defendant's  
19 vigorous and skillful defenses further confronted Class Counsel with the  
20 prospect of recovering nothing or close to nothing for their commitment to and  
21 investment in the case, and a very real danger that the class would not be  
22 certified. Nevertheless, Plaintiff and Class Counsel committed themselves to  
23 developing and pressing Plaintiff's legal claims to enforce the employees' rights  
24 and maximize the class and collective recovery. During the litigation, counsel  
25 had to turn away other less risky cases to remain sufficiently resourced for this  
26 one. The challenges that Class Counsel had to confront and the risks they had  
27 to fully absorb on behalf of the class here are precisely the reasons for  
28 multipliers in contingency fee cases.

1 78. The requested attorneys' fees and expense award is also reasonable  
2 when compared to Class Counsel's lodestar amount.

3 79. Declarations and supporting exhibits outlining Plaintiff's Counsel's work  
4 on this matter have been submitted in support of Plaintiff's Unopposed Motion  
5 for Attorneys' Fees, Cost, and Service Awards filed on the same day as this  
6 motion and all supporting documents. I refer the Court to these additional  
7 declarations for a detailed overview of my work as well as other Plaintiff's  
8 Counsel's work on the matter.

9  
10  
11 I declare under penalty of perjury under the laws of the United States that  
12 the foregoing is true and correct and is based upon my own personal  
13 knowledge. Executed in San Francisco, California on August 11, 2021.

14 /s/ Richard A. Hoyer  
15 RICHARD A. HOYER  
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# EXHIBIT 1

## JOINT STIPULATION OF CLASS ACTION AND PAGA SETTLEMENT AGREEMENT

***Michelle Nourian Martinez v. Helzberg's Diamond Shops, Inc.***

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

**United States District Court, Central District of California**

Subject to the Court's approval, the Parties have entered into this Agreement pursuant to the terms and conditions in this Joint Stipulation of Class Action and PAGA Settlement Agreement ("Agreement" or "Settlement Agreement") between the Plaintiff Michelle Nourian Martinez, individually and on behalf of the Settlement Class, and Defendant Helzberg's Diamond Shops, Inc. ("Defendant").

### **I. DEFINITIONS**

1. "Action" means the action entitled *Michelle Nourian Martinez v. Helzberg's Diamond Shops, Inc.*, Case No. 5:20-cv-01085-PSG-SHK, United States District Court, Central District of California (the "Action"). The operative complaint of this Action is the First Amended Complaint filed on August 7, 2020.
2. "Class" is defined as all current and former employees of Defendant who worked as a Store Manager at any time in the State of California from April 6, 2016 through the date of the Court's order granting preliminary approval of this Settlement Agreement, or ninety (90) days after the execution of this agreement, whichever is earlier.
3. "Class Counsel" means Hoyer & Hicks.
4. "Class Counsel Award" means an award of attorneys' fees and reimbursement of litigation expenses and costs to Class Counsel and paid from the Maximum Settlement Amount.
5. "Class Data" means information regarding Class Members that Defendant provides to the Settlement Administrator from its records. It shall be formatted as a Microsoft Excel spreadsheet and shall include each Class Member's full name, last known resident address, personal email address (if available), last known telephone number, and Social Security number; as well as information sufficient to allow the Settlement Administrator to calculate the number of Workweeks for all Class Members during the Class Period.
6. "Class Members" means members of the Class.
7. "Class Period" means the time period from April 6, 2016 until the Preliminary Approval Date, or the date ninety (90) days after this agreement is executed, whichever is earliest.
8. "Class Representative" or "Plaintiff" means Michelle Nourian Martinez.
9. "Class Representative Service Award" or "Service Award" means the amount that the Court authorizes to be paid to the Class Representative from the

Maximum Settlement Amount, which is in addition to her Individual Settlement Payment.

10. “Complaint” means the First Amended Complaint filed on August 7, 2020 in the United States District Court, Central District of California, captioned *Michelle Nourian Martinez v. Helzberg’s Diamond Shops, Inc.*, Case No. 5:20-cv-01085-PSG-SHK,
11. “Court” means the United States District Court, Central District of California.
12. “Defendant” means Helzberg’s Diamond Shops, Inc.
13. “Defense Counsel” or “Counsel for Defendant” means Ogletree, Deakins, Nash, Smoak & Stewart, P.C.
14. “Effective Date” is the later of the following: (a) if no objections to the settlement are filed, then the date the Court enters judgment granting Final Approval; (b) if an objection to the settlement is filed, then the date when the time expires to file an appeal of the Court’s Final Approval Order; or (c) if an objection is filed, as well as a timely Notice of Appeal of the Court’s Final Approval Order, then the date the appeal is finally resolved, with the final approval unaffected.
15. “Final Approval Order” means the Court’s order granting final approval of the Settlement.
16. “Settlement Class” is defined as all Class Members who do not request to be excluded from the Settlement Agreement.
17. “Individual Settlement Payment” means the amount payable from the Net Settlement Amount to each Settlement Class Member.
18. “Maximum Settlement Amount” means the maximum sum to be paid by Defendant pursuant to this Settlement, which is four hundred seventy five thousand dollars (\$475,000). The Maximum Settlement Amount shall include all payments contemplated by this Settlement Agreement, including all Individual Settlement Payments to Settlement Class Members, the Service Award to Plaintiff, the Class Counsel Award to Class Counsel, the PAGA Penalties, and the Settlement Administration Costs to the Settlement Administrator. The Maximum Settlement Amount shall not include Defendant’s share of taxes on the wages portion of Individual Settlement Payments, which will be paid by Defendant separately and in addition to the Maximum Settlement Amount.
19. “Net Settlement Amount” means the Maximum Settlement Amount minus the Service Award, the Class Counsel Award, the LWDA Payment, and the Settlement Administration Costs.
20. “Notice” means the Notice of Class Action and PAGA Settlement in a form substantially similar to the form attached as **Exhibit 1**.
21. “PAGA” means the Private Attorneys General Act of 2004, California Labor Code §§ 2698, *et seq.*

22. "PAGA Letter" means Plaintiff's May 27, 2020 letter to the Labor & Workforce Development Agency.
23. "PAGA Penalties" is the amount of \$10,000, which shall be deducted from the Maximum Settlement Amount. The PAGA Penalties shall be allocated as follows: twenty-five percent (25%) to the Net Settlement Amount for distribution to Settlement Class Members on a *pro rata* basis, and seventy-five percent (75%) to the LWDA pursuant to Cal. Lab. Code § 2699(i).
24. "Parties" mean the Plaintiff and Defendant collectively, and "Party" shall mean either Plaintiff or Defendant, individually.
25. "Payment Ratio" means the respective Workweeks for each Settlement Class Member divided by the total Workweeks for all Settlement Class Members.
26. "Preliminary Approval Date" means the date the Court enters the Preliminary Approval Order.
27. "Preliminary Approval Order" means the Order granting preliminary approval of the Settlement.
28. "Qualified Settlement Fund" means the fund set up by the Settlement Administrator into which the Maximum Settlement Amount shall be deposited and disbursements from it shall be made.
29. "Released Claims" by Settlement Class Members means all claims and causes of action alleged in the Action and the PAGA Letter, as well as all predicate claims based on the factual or legal theories alleged in the Action and the PAGA Letter, or reasonably could have been alleged based on the facts and legal theories alleged in the Action and the PAGA Letter, including all of the following legal claims: all claims for unpaid wages, including claims for minimum, overtime, and double-time wages, the alleged failure to pay for all time worked, the alleged failure to pay for all hours worked at correct rates, including overtime at the correct rates; all claims for meal period violations, including claims for late, short, interrupted and/or missed meal periods and/or the failure to pay premiums, and the alleged failure to properly record meal periods; all claims for rest break violations, including claims for late, short, interrupted, missed, or otherwise improperly controlled rest breaks and/or the failure to pay premiums; all claims for untimely paid wages; all claims for improper or inaccurate itemized wage statements, including alleged violations of Labor Code Section 226(a)(1)-(9) based on the facts and legal theories contained in the Action and the PAGA Letter, including the allegation that the wage statements lacked the total number of hours worked, and including claims for injuries suffered therefrom; all claims for the untimely payment of final wages and associated waiting time penalties under Labor Code Section 203 based on the allegations in the Action and the PAGA Letter; any and all claims regarding the alleged failure to maintain required records in violation of Labor Code §§ 226, 1174 and the applicable IWC Wage Order provisions; all claims for civil penalties under the Labor Code Private Attorneys General Act of 2004, Labor Code Section 2699 et seq. ("PAGA") premised on the allegations in the Action and the PAGA Letter, including under Labor Code sections 201, 202, 203, 204, 210, 226, 226.3, 226.7, 510, 512, 558, 1174, 1174.5, 1194, 11197, 11198, and all claims under the Business & Professions Code (including Section 17200 et seq.) premised on the allegations in the Action; any other claims or

penalties under the wage and hour laws alleged in the Action and the PAGA Letter under California and federal law, including the California Labor Code and the applicable Wage Orders (collectively, the “Released Claims.”) The period of the Release shall extend to the limits of the Covered Period. The res judicata effect of the Judgment will be the same as that of the Release.

30. “Released Parties” means Defendant and their past, present and/or future, direct and/or indirect, officers, directors, members, managers, employees, agents, representatives, attorneys, insurers, partners, investors, shareholders, administrators, parent companies, subsidiaries, affiliates, divisions, predecessors, successors, assigns, and joint venturers.
31. “Request for Exclusion” refers to a formal request to be excluded from the Settlement as described herein.
32. “Response Deadline” means forty-five (45) days after the Settlement Administrator initially mails the Notice to Class Members, and the last date on which Class Members may submit Requests for Exclusion, objections to the Settlement, and/or Disputes.
33. “Settlement” means the settlement and resolution of the Action in accordance with this Agreement.
34. “Settlement Administrator” means Simpluris, Inc., as approved by the Court.
35. “Settlement Administration Costs” means the amount to be paid to the Settlement Administrator from the Maximum Settlement Amount for administration of this Settlement.
36. “Settlement Class Member” or “Settlement Class” means Class Members who do not submit a timely and valid Request for Exclusion and will be bound by the terms of the Agreement, including the Released Claims, and any final judgment entered in the Action.
37. “Workweek” means a consecutive seven (7) day period starting on and including Monday through and including Sunday during which time the Class Data reflects that a given Settlement Class Member worked any amount of time, and does not include weeks when a Settlement Class Member was on PTO, leaves of absence, jury duty, or the like for the entire 7-day period. Each Class Member will be credited with at least one (1) Workweek.

## **II. RECITALS**

38. Class Certification. The Parties stipulate and agree to certification of the Settlement Class for the purposes of this Settlement Agreement only and to agree that the Plaintiff shall be appointed as Class Representative, and that Hoyer & Hicks shall be appointed Class Counsel. Should the Settlement Agreement not obtain Court approval and become final and effective, class certification shall immediately be set aside and any order to certify the Settlement Class for settlement purposes shall be vacated. The Parties’ stipulation to class certification as part of the Settlement Agreement shall not be considered in connection with the issue of whether a class should be certified in this Action, and shall not be admissible in any such proceeding other than in the context of this Settlement Agreement.

39. Procedural History. On May 27, 2020, Plaintiff filed a Class Action Complaint in the United States District Court, Central District of California. Also on May 27, 2020, Plaintiff filed the PAGA Letter. On August 7, 2020, Plaintiff filed the First Amended Complaint in this Action. On February 5, 2020, the Parties participated in a mediation with Steve Pearl, Esq., an experienced wage and hour class action mediator, and with the aid of the mediator's evaluation, the Parties agreed to settle the Action.
40. Benefits of Settlement Agreement to Settlement Class Members. Plaintiff and Class Counsel recognize the expense and length of continued proceedings necessary to litigate this Action through trial and potential appeals. Plaintiff has also taken into account the uncertainty and risk of the outcome of further litigation, and the difficulties and delays inherent in such proceedings. Plaintiff and Class Counsel are also aware of the burdens of proof necessary to establish liability for the claims asserted in the Action, both generally and in response to Defendant's defenses, and the difficulties in establishing damages for Class Members. Thus, Plaintiff and Class Counsel have determined that the terms set forth in this Settlement Agreement are fair, adequate and reasonable, and in the best interests of the Settlement Class Members.
41. Defendant's Reasons for Settlement Agreement. Defendant has concluded that further defense of this Action would be protracted and expensive for all Parties. Substantial amounts of Defendant's time and resources have been, and unless this Settlement Agreement is completed, will continue to be devoted to the defense of the Action. Defendant has also taken into account the risks of further litigation in reaching their decision to enter into this Settlement Agreement. Defendant firmly contends that they are not liable for any of Plaintiff's claims, but have agreed to settle along the terms set forth in this Settlement Agreement to fully resolve the Action.
42. Class Members' Claims. The Class Representative claims that her allegations have merit in regards to the Class Members. Defendant claims that the Released Claims have no merit. This Settlement Agreement is a compromise and settlement of disputed claims. The amount to be paid by way of this Settlement Agreement is genuinely disputed and the Parties agree that the provisions of California Labor Code section 206.5 do not apply to this Settlement Agreement. Nothing in this Settlement Agreement or its exhibits, and no action taken to carry out this Settlement Agreement may be construed or used as an admission by or against the Class Members or Class Counsel as to the merits of the claims asserted.

### **III. TERMS OF SETTLEMENT AGREEMENT**

43. Settlement Agreement Consideration by Defendant. Notwithstanding the Modification section below, Defendant shall pay the Maximum Settlement Amount and nothing more than the Maximum Settlement Amount, in the total amount of four hundred seventy thousand dollars (\$475,000).
44. Maximum Settlement Amount Modification. Defendant represented at the mediation that an extrapolation of the workweeks among the Class is 3,594 workweeks from April 6, 2016 to February 5, 2021 (the "Extrapolation Period"). The Parties agree that if, once the actual data from the Extrapolation Period is reviewed, the actual number of workweeks is more than five percent (5%) more than 3,594, or more than 3,774, then for each additional week

worked by Settlement Class Members over that amount during the Extrapolation Period, the MSA will increase by \$132.00 per workweek. For example, if the actual number of workweeks is 3,780 during the Extrapolation Period, then the MSA shall increase by the total amount of \$792. If the total amount of actual data shows that the total number of workweeks is 3,774 or less, then the MSA amount will not be modified.

45. Release By Settlement Class Members. Upon the Effective Date, Plaintiff and all Class Members who do not submit a timely and valid Request for Exclusion (i.e., Settlement Class Members) will be deemed to have fully, finally, and forever released, settled, compromised, relinquished, and discharged the Released Parties of all Released Claims.
46. General Release of Claims By the Named Plaintiff. The Parties agree that Plaintiff's last date of employment with Defendant shall be February 27, 2021. As of the Effective Date of this Agreement, and in exchange for the consideration in this Settlement Agreement, Plaintiff, for herself and her heirs, successors and assigns, hereby waives, releases, acquits and forever discharges the Released Parties from any and all Released Claims as well as any and all claims, actions, charges, complaints, grievances and causes of action, of whatever nature, whether known or unknown, which exist or may exist on Plaintiff's behalf as of the date she signs this Settlement Agreement, including any and all tort claims, contract claims, claims for unpaid wages, wrongful termination claims, disability claims, benefit claims, public policy claims, retaliation claims, statutory claims, personal injury claims, emotional distress claims, invasion of privacy claims, defamation claims, fraud claims, quantum meruit claims, and any and all claims arising under any federal, state or other governmental statute, law, regulation or ordinance, including, but not limited to, claims for violation of the Fair Labor Standards Act, the California Labor Code, the Wage Orders of California's Industrial Welfare Commission, other state wage and hour laws, the Americans with Disabilities Act, the Employee Retirement Income Security Act, Title VII of the Civil Rights Act of 1964, the California Fair Employment and Housing Act, the California Family Rights Act, the Family Medical Leave Act, California's Whistleblower Protection Act, California Business & Professions Code Section 17200 *et seq.* Plaintiff expressly waives and relinquishes any and all claims, rights or benefits they may have under California Civil Code § 1542, which provides as follows: **"A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release and that, if known by him or her, would have materially affected his or her settlement with the debtor or released party."** Plaintiff may later discover claims or facts in addition to, or different from, those which she knows or believes to exist, but she expressly agrees to fully, finally and forever settle and release any and all claims against the Released Parties, known or unknown, suspected or unsuspected, which exist or may exist at the time she signs this Settlement Agreement, including, but not limited to, any and all claims relating to or arising from Plaintiff's employment with Defendant. The Parties further acknowledge, understand and agree that this Settlement Agreement would not have been finalized without this representation and commitment from the Plaintiff.
47. Conditions Precedent: This Settlement Agreement will become final and effective only upon the occurrence of all of the following events: (a) the Court enters an order and judgment granting preliminary approval of the Settlement

Agreement; (b) the Court enters an order granting final approval of the Settlement Agreement and a Final Judgment; and (c) the Effective Date occurs.

48. Nullification of Settlement Agreement. In the event that this Settlement Agreement is not finally approved by the Court, fails to become effective, or is reversed, withdrawn or modified by the Court, or in any way prevents or prohibits Defendant from obtaining a complete resolution of the claims as described herein, then (a) this Settlement Agreement shall be void and inadmissible in any judicial, administrative or arbitral proceeding for any purpose or with respect to any issue, substantive or procedural; (b) the conditional class certification for settlement purposes shall be void and not admissible in any judicial, administrative or arbitral proceeding for any purpose or with respect to any issue, substantive or procedural; and (c) none of the Parties to this Settlement Agreement will be deemed to have waived any claims, objections, defenses or arguments in the Action, including with respect to the issue of class certification.
49. Tax Liability. The Parties make no representations as to the tax treatment or legal effect of the payments in this Agreement. Settlement Class Members understand and agree that they will be responsible for the payment of any taxes assessed on the Individual Settlement Payments that they receive.
50. No Tax Advice. Neither Class Counsel nor Defendant's Counsel intend anything contained in this Settlement to constitute advice regarding taxes or taxability, nor shall anything in this Settlement be relied upon as such within the meaning of United States Treasury Department Circular 230 (31 CFR Part 10, as amended) or otherwise.
51. Preliminary Approval Motion. Class Counsel shall file with the Court a motion for preliminary approval of the Settlement and supporting papers, which shall include this Settlement Agreement. Class Counsel shall provide a courtesy draft of these papers to Defense Counsel at least five (5) court days before filing the documents.
52. Settlement Administrator. By accepting the role as Settlement Administrator, the Settlement Administrator is bound to all of the terms, conditions and obligations described in this Settlement Agreement. Among these obligations, the Settlement Administrator shall have sole and exclusive responsibility for: (a) calculating the Workweeks, Payment Ratio, and the Individual Settlement Payment for each Settlement Class Member; (b) processing and mailing payments to the Class Representative, Class Counsel, the LWDA, and the Settlement Class Members; (c) printing and mailing the Notices to the Class Members as directed by the Court; (d) receiving and reporting objections, Requests for Exclusion, and disputes about the number of Workweeks applicable to individual settlement Class Members; (e) deducting all legally required taxes from the Individual Settlement Payments and distributing tax forms; (f) processing and mailing any tax payments to the appropriate state and federal taxing authorities; (g) providing declaration(s) as necessary in support of preliminary and/or final approval of this Settlement Agreement; and (h) other tasks that the Parties mutually agree on, or the Court orders the Settlement Administrator to perform. The Settlement Administrator shall keep the Parties timely apprised of the performance of its duties. Defendant and their Counsel shall have no responsibility for validating or ensuring the accuracy of the Settlement Administrator's work. Plaintiff, Class Counsel, Defendant and

Defendant's Counsel shall not bear any responsibility for errors or omissions in the calculation or distribution of the Individual Settlement Payments or any other distribution of monies contemplated by this Settlement Agreement.

53. Notice Procedure.

- a. Class Data. The Class Data shall be confidential. The Settlement Administrator shall not provide the Class Data to Class Counsel or Plaintiff or any third party, or use the Class Data for any purpose other than to administer this Settlement Agreement. Defendant shall provide the Settlement Administrator with the Class Data to prepare and mail the Notices to the Settlement Class Members within ten (10) calendar days after the Preliminary Approval Date.
- b. Notices.
  - i. The Notice that is mailed out to Class Members shall be in a form substantially similar to the form attached as **Exhibit 1**. The Notice shall inform Class Members to notify the Settlement Administrator of their current mailing address and the address where their Individual Settlement Payment should be mailed following the Effective Date, if the addresses are different from the address that the Notice is initially mailed. The Notice shall include the release to be given by each Settlement Class Member in exchange for the Individual Settlement Payment.
  - ii. The Notice shall also provide each Settlement Class Member's number of Workweeks and each Settlement Class Member's estimated Individual Settlement Payment calculated by the Settlement Administrator.
  - iii. Notice By First Class U.S. Mail. After receiving the Class Data from Defendant as provided herein, the Settlement Administrator shall mail copies of the Notice to all Class Members via First Class U.S. Mail. The Settlement Administrator shall exercise its best judgment to determine the current mailing address for each Class Member.
  - iv. Undeliverable Notices. Any Notices returned to the Settlement Administrator as undeliverable on or before the Response Deadline shall be re-mailed to the forwarding address affixed thereto. If no forwarding address is provided, the Settlement Administrator shall promptly attempt to determine a correct address by lawful use of standard search techniques (e.g., skip trace search), and shall then perform a re-mailing if another mailing address is identified by the Settlement Administrator. If any Notices sent to Settlement Class Members currently employed by Defendant are returned to the Settlement Administrator as undeliverable and no forwarding address is provided, the Settlement Administrator shall notify Defendant. Defendant will request that the currently employed Settlement Class Member provide an updated address to the Defendant to forward to the Settlement Administrator. Class Members who received a re-mailed Notice shall have their Response Deadline extended fifteen calendar (15) days from the original Response Deadline.

- c. Disputes Regarding Individual Settlement Payments. Settlement Class Members will have the opportunity, should they disagree with the estimated number of Workweeks stated on their Notice, to provide documentation and/or an explanation to show contrary employment dates. If there is a dispute, the Settlement Administrator will consult with the Parties to determine whether an adjustment is warranted. The Settlement Administrator shall determine the eligibility for, and the amounts of, any Individual Settlement Payment under the terms of this Settlement Agreement, and that determination shall be binding upon the Settlement Class Member and the Parties.
- d. Disputes Regarding Administration of Settlement Agreement. Any disputes not resolved by the Settlement Administrator concerning the administration of the Settlement Agreement will be resolved by the Court under the laws of the State of California. Prior to any such involvement of the Court, counsel for the Parties will confer in good faith to resolve the disputes without the necessity of involving the Court.
- e. Requests for Exclusion.
  - i. The Notice shall include an explanation that Class Members who wish to exclude themselves from the Settlement Agreement must submit a written Request for Exclusion to the Settlement Administrator by the Response Deadline. The written Request for Exclusion must: (1) state the case name and number of the Action; (2) clearly state that the Class Member requests to be excluded from the Settlement; (3) contain the name, address, and the last four digits of the Social Security number and/or Employee ID number of the person requesting exclusion; (4) be signed by the Class Member; and (5) be mailed to the Settlement Administrator, postmarked by the Response Deadline at the address specified in the Notice.
  - ii. The Request for Exclusion will not be valid if it is not timely submitted, or if it is not signed by the Class Member, or if it does not contain the name and address of the Class Member. The date of the postmark on the return mailing envelope for the Request for Exclusion shall be the exclusive means used to determine whether the Request for Exclusion was timely submitted. Class Members who fail to submit a valid and timely written Request for Exclusion on or before the Response Deadline shall be Settlement Class Members who are bound by all terms of the Settlement Agreement, and any final judgment entered in this Action.
  - iii. Any Class Member who requests to be excluded from the Settlement Agreement will not be entitled to any recovery under the Settlement Agreement and will not be bound by its terms or have any right to object, appeal or comment on it. Nothing in this Settlement Agreement can be construed as a waiver of any defense that Defendant or the Released Parties have or could assert against anyone who timely serves a Request for Exclusion.

- iv. No later than five (5) court days after the Response Deadline, the Settlement Administrator shall provide counsel for the Parties with a final list of the Class Members who have timely submitted written Requests for Exclusion.
- v. At no time shall any of the Parties or their counsel seek to solicit or otherwise encourage Class Members to submit Requests for Exclusion.

f. Objections.

- i. The Notice shall state that Settlement Class Members who wish to object to the Settlement Agreement must mail to the Settlement Administrator a written statement of objection ("Notice of Objection") by the Response Deadline. The postmark date of the mailing shall be deemed the exclusive means for determining that a Notice of Objection was served timely.
- ii. Settlement Class Members who submit a timely Notice of Objection will have a right to appear at the Final Approval Hearing in order to have their objections heard by the Court. The Notice of Objection must: (1) be signed by the Settlement Class Member; (2) state the case name and number of the Action, the name and address of the Settlement Class Member, and the last four digits of the Settlement Class Member's Social Security number and/or Employee ID number; (3) contain the basis and/or grounds for the objection; and (4) state whether the Settlement Class Member intends to appear at the Final Approval Hearing. Settlement Class Members who fail to make objections in the manner specified above shall be deemed to have waived any objections and shall be foreclosed from making any objections (whether by appeal or otherwise) to the Settlement Agreement.
- iii. At no time shall any of the Parties or their counsel seek to solicit or otherwise encourage Settlement Class Members to object to the Settlement Agreement or appeal from the Final Approval Order and Final Judgment.
- iv. Class Members who submit a written Request for Exclusion are not entitled to object to the Settlement Agreement.
- v. The Settlement Administrator shall send all objections to Class Counsel and Defense Counsel. Class Counsel will be responsible for filing the Notices of Objection with the Court in advance of the Final Approval Hearing. Plaintiff and/or Defendant may file oppositions to Notices of Objection prior to the date of the Final Approval Hearing.
- vi. Defendant shall not be responsible for the fees, costs, or expenses incurred by Plaintiff, Class Counsel, or Settlement Class Members arising from or related to any objection to the Settlement Agreement or related to any appeals thereof.

54. Funding and Allocation of the Maximum Settlement Amount. Upon satisfaction of the preconditions described in this Settlement Agreement, and pursuant to the timeline and instructions below, Defendant will deposit the Maximum Settlement Amount into a Qualified Settlement Fund to be established by the Settlement Administrator.
- a. Funding Due Date. No later than twenty (20) days after the Effective Date, Defendant shall provide the Maximum Settlement Amount to the Settlement Administrator to fund the Settlement Agreement.
  - b. Individual Settlement Payments. Individual Settlement Payments shall be paid from the Net Settlement Amount and shall be paid pursuant to the following formula:
    - i. Calculation of Individual Settlement Payments. Using the Class Data, the Settlement Administrator will calculate the total Workweeks for all Settlement Class Members. The respective Workweeks for each Settlement Class Member will be divided by the total Workweeks for all Settlement Class Members, resulting in the Payment Ratio for each individual Settlement Class Member. Each Settlement Class Member's Payment Ratio will then be multiplied by the Net Settlement Amount to calculate each Settlement Class Member's estimated Individual Settlement Payment. The Individual Settlement Payment will be provided only to the individual Settlement Class Member. Each Individual Settlement Payment will be reduced by any legally mandated employee tax withholdings (e.g., employee payroll taxes, etc.) on the wages portion of the Individual Settlement Payment. The Individual Settlement Payment checks will include an endorsement confirming that by cashing the check, each Settlement Class Member is releasing the Released Claims.
    - ii. Tax Allocation. The Settlement Administrator will be responsible for issuing to Settlement Class Members an IRS Form W-2 for any amounts deemed "wages" and an IRS Form 1099 for the portions allocated to non-wage amounts, including penalties and interest. For tax purposes, each Individual Settlement Payment shall be allocated as follows: (a) 25% as wages subject to IRS Form W-2 reporting and applicable taxes/withholdings; and (b) 75% as non-wage income, penalties, and interest for which an IRS Form 1099 will be issued.
    - iii. Mailing. Individual Settlement Payments shall be mailed by First Class U.S. Mail to each Settlement Class Member no later than fourteen (14) calendar days after Defendant provide funds to the Settlement Administrator for disbursement under this Settlement Agreement.
    - iv. Uncashed Checks. Any checks issued to Settlement Class Members shall remain valid and negotiable for one hundred and eighty (180) calendar days after the date they are issued. The Settlement Administrator will mail a reminder notice to those Settlement Class Members who have not cashed their checks after one hundred twenty (120) calendar days and will also send a

reminder via any available email address or social media for these Settlement Class Members. In the event that an Individual Settlement Payment check has not been cashed within one hundred and eighty (180) calendar days, then such funds, plus any accrued interest, will be tendered to the State Controller's Office Unclaimed Property Fund in the name of Settlement Class Members who did not cash their settlement checks. The Parties agree that this disposition results in no unpaid residue under California Civil Procedure Code § 384, as the entire Net Settlement Amount will be paid out to participating Settlement Class Members, whether or not they all cash their individual settlement payment checks. Therefore, Defendant will not be required to pay any interest set amount. The Settlement Administrator shall prepare a report regarding the extent of unclaimed funds, and the report shall be presented to the Court by Class Counsel.

- v. Class Representative Service Award ("Service Award"). Defendant agrees not to oppose or object to a Class Representative Service Award in an amount not to exceed \$10,000 in exchange for Class Representative's general release of claims, including the Released Claims, and for her time, effort and risk in bringing and prosecuting this matter. The Service Award shall be in addition to the Class Representative's Individual Settlement Payment as a Settlement Class.
  - vi. The Settlement Administrator shall pay the Service Award to Class Representative from the Maximum Settlement Amount within fourteen (14) calendar days after Defendant funds the Maximum Settlement Amount. Any portion of the requested Service Award that is not awarded to the Class Representative shall become part of the Net Settlement Amount.
  - vii. The Settlement Administrator shall issue an IRS Form 1099 - MISC to the Class Representative for the Service Award. The Class Representative shall be solely and legally responsible to pay any and all applicable taxes on the Service Award and shall hold harmless Defendant and the Released Parties from any claim or liability for taxes, penalties, or interest arising as a result of the Service Award.
  - viii. If the Court reduces or does not approve the requested Service Award, Plaintiff shall not have the right to revoke the Settlement Agreement, which shall remain binding.
- c. Class Counsel Award.
- i. Plaintiff shall seek and Defendant will not oppose an application for an award of attorneys' fees not to exceed one one-third of the Maximum Settlement Amount (\$158,333) and reimbursement of actual costs and expenses as supported by declaration not to exceed ten thousand dollars (\$10,000). The Court-approved amount for the

Class Counsel Award will be issued out of the Maximum Settlement Amount.

- ii. Class Counsel, Plaintiff and the Settlement Class Members will not apply to the Court for any additional payment of attorneys' fees and costs, or for an increase in the Maximum Settlement Amount. The Parties agree that, over and above the Court-approved Class Counsel Award, each of the Parties, including all Settlement Class Members, shall bear their own fees and costs, including, but not limited to, those related to the investigation, filing, or prosecution of the Action; the negotiation, execution, or implementation of this Settlement Agreement; and/or the process of obtaining, administering, or challenging a Preliminary Approval Order and/or Final Approval Order.
  - iii. Any portion of the requested Class Counsel Award that is not awarded to Class Counsel shall be part of the Net Settlement Amount and shall be distributed to Settlement Class Members as provided in this Settlement Agreement.
  - iv. The Settlement Administrator shall pay the Class Counsel Award to Class Counsel from the Maximum Settlement Amount within fourteen (14) calendar days after the Maximum Settlement Amount is funded.
  - v. Class Counsel shall be solely and legally responsible to pay all applicable taxes on the Class Counsel Award. The Settlement Administrator shall issue an IRS Form 1099 - MISC to Class Counsel for the payment.
  - vi. In the event that the Court reduces or does not approve the requested Class Counsel Award, Plaintiff and Class Counsel shall not have the right to modify or revoke the Settlement Agreement, although Plaintiff shall retain the right to appeal any reduction to the Class Counsel Award.
- d. PAGA Penalties. The amount of \$10,000 shall be allocated from the Maximum Settlement Amount for the release of claims for civil penalties under the Private Attorneys General Act of 2004. The Settlement Administrator shall pay seventy-five percent (75%) of the PAGA Penalties, or \$7,500, to the California Labor and Workforce Development Agency (the "LWDA Payment") within fourteen (14) calendar days after Defendant provide funds to the Settlement Administrator for disbursement under this Settlement Agreement. Twenty-five (25%) of the PAGA Penalties, or \$2,500, will remain part of the Net Settlement Amount and distributed to Settlement Class Members as described in this Settlement Agreement. Plaintiff will take all actions required by California Labor Code section 2699(l).
- e. Settlement Administrator Costs. The Settlement Administrator shall be paid for the costs of administration of the Settlement Agreement from the Maximum Settlement Amount. Based upon estimates received, the Settlement Administrator Costs shall not exceed ten-thousand dollars (\$10,000). The Settlement Administrator shall be paid the Settlement

Administrator Costs within fourteen (14) calendar days after Defendant provides funds to the Settlement Administrator for disbursement under this Settlement Agreement.

55. Mutual Full Cooperation. The Parties agree to fully cooperate with each other to accomplish the terms of this Settlement Agreement, including but not limited to, the execution of necessary documents and to take such other action as may be reasonably necessary to implement the terms of this Settlement Agreement. As soon as practicable after execution of this Settlement Agreement, Class Counsel shall, with the assistance and cooperation of Defendant and Defense Counsel, take all necessary steps to secure the Court's Preliminary and Final Approval of this Settlement Agreement. The Parties also agree to cooperate in the Settlement Administration process. The Parties each represent they do not have any financial interest in the Settlement Administrator or otherwise have a relationship with the Settlement Administrator that could create a conflict of interest.
56. Preliminary Approval Hearing. Plaintiff shall obtain a hearing before the Court to request the preliminary approval of the Settlement Agreement, and the setting of a date for a Final Approval Hearing. The Preliminary Approval Order shall provide for the Notice to be sent to all Class Members as specified herein. In conjunction with the Preliminary Approval Hearing, Plaintiff shall submit this Settlement Agreement and the proposed Notice. Plaintiff shall provide drafts of all papers filed in support of preliminary approval to Defense Counsel at least five (5) court days before filing the documents.
57. Final Approval Motion. After the expiration of the Response Deadline, Plaintiff shall file with the Court a motion for final approval of the Settlement, requesting final approval of the Settlement Agreement and a determination of the amounts payable for the Service Award, the Class Counsel Award, the PAGA Payment, and the Settlement Administration Costs. Plaintiff shall provide drafts of these papers to Defense Counsel at least five (5) court days before filing the documents.
- a. Declaration by Settlement Administrator. The Settlement Administrator shall submit a declaration in support of Plaintiff's motion for final approval of this Settlement Agreement detailing the number of Notices mailed and re-mailed to Class Members, the number of undeliverable Notices, the number of Requests for Exclusion received, the number of Notices of Objections received, the number of disputes received about the Workweek counts, the amount of the average Individual Settlement Payment, the Settlement Administration Costs, and any other information as the Parties mutually agree on, or that the Court orders the Settlement Administrator to provide.
- b. Final Approval Order and Judgment. The Parties shall present a proposed Final Approval Order to the Court for its approval, and Judgment thereon consistent with the terms and conditions of this Settlement Agreement.
58. Review of Motions for Preliminary and Final Approval. Class Counsel will provide an opportunity for Defense Counsel to review the Motions for Preliminary and Final Approval prior to filing with the Court. The Parties and their counsel will cooperate and use their best efforts to effect the Court's

approval of the Motions for Preliminary and Final Approval of the Settlement Agreement, and entry of Judgment.

59. Interim Stay of Proceedings. The Parties agree to stay all proceedings in the Action, except such proceedings necessary to implement and complete the Settlement Agreement, pending the Final Approval Hearing to be conducted by the Court, and that the time within which to bring this action to trial under California Code of Civil Procedure Section 583.310 shall be extended from the date the parties engaged in mediation on February 5, 2021, until the Agreement is revoked and the stay is lifted.
60. Nullification of Settlement Agreement. In the event that the Court does not grant final approval, or the Court does not enter a final judgment as provided herein, or the Settlement Agreement does not become final for any other reason, this Settlement Agreement shall be null and void and any order or judgment entered by the Court in furtherance of this Settlement Agreement shall be treated as void from the beginning. In such a case, the entire Maximum Settlement Amount shall be returned to Defendant; the Parties shall proceed in all respects as if this Settlement Agreement had not been executed, except that any costs already incurred by the Settlement Administrator shall be paid by equal apportionment among the Parties; and this Agreement and its terms, and the communications, negotiations, and settlement discussions related to the Action, shall be inadmissible and treated as confidential to the fullest extent allowed by law. In the event an appeal is filed from the Court's final judgment, or any other appellate review is sought, administration of the Settlement Agreement shall be stayed pending final resolution of the appeal or other appellate review, but any fees incurred by the Settlement Administrator prior to being notified of the filing of an appeal from the Court's Final Judgment, or any other appellate review, shall be paid to the Settlement Administrator within thirty (30) days of said notification.
61. Defendant's Option To Terminate Settlement. If up to three (3) Class Members submit timely and valid written requests for exclusion from the Settlement, Defendant shall have, in its sole discretion, the option to terminate this Settlement and its stipulation to class certification before the Final Approval Hearing. If Defendant exercises the option to terminate this Settlement, Defendant shall: (a) provide written notice by certified mail to Class Counsel prior to the Final Approval Hearing and no later than five (5) court days after receiving notice from the Settlement Administrator of the number of Class Members who have submitted timely and valid requests for exclusion; (b) pay all Settlement Administration Costs incurred up to the date or as a result of the termination; and (c) the Parties shall proceed in all respects as if this Agreement had not been executed.
62. No Effect on Employee Benefits. Amounts paid to the Plaintiff or other Settlement Class Members pursuant to this Settlement Agreement shall not be deemed pensionable earnings or have any effect on the eligibility for, or calculation of, any employee benefits (e.g., vacations, holiday pay, retirement plans, etc.) of the Plaintiff or Settlement Class Members.
63. Exhibit and Headings. The terms of this Settlement Agreement include the terms set forth in the attached Exhibit. The descriptive headings of any paragraphs or sections of this Settlement Agreement are inserted for ease of reference only and do not constitute a part of this Settlement Agreement.

64. Amendment or Modification. With Court approval, this Settlement Agreement may be amended or modified only by a written instrument that is signed by counsel for all Parties or their successors-in-interest, and signed by the Parties or their successors-in-interest.
65. Entire Settlement Agreement. This Settlement Agreement and its exhibits constitute the entire Settlement Agreement among the Parties, and no oral or written representations, warranties or inducements have been made to any Party concerning this Settlement Agreement or its exhibits other than the representations, warranties and covenants contained and memorialized in the Settlement Agreement and its exhibits.
66. Authorization to Enter into Settlement Agreement. Counsel for all Parties warrant and represent they are expressly authorized by the Parties whom they represent to negotiate this Settlement Agreement and to take all appropriate actions needed by this Settlement Agreement to effectuate its terms. The person signing this Settlement Agreement on behalf of Defendant represent and warrant that she or she is authorized to sign this Settlement Agreement on behalf of Defendant. Plaintiff represents that she is authorized to sign this Settlement Agreement and that she has not assigned, transferred, or encumbered any claim, or part of a claim, demand, cause of action or any rights herein released and discharged or covered by this Settlement Agreement to any third-party.
67. Binding on Successors and Assigns. The provisions of this Settlement Agreement shall run in perpetuity. This Settlement Agreement shall be binding upon, and inure to the benefit of, the successors or assigns of the Parties.
68. California Law Governs. All terms of this Settlement Agreement and its exhibits, and any disputes arising hereunder shall be governed by and interpreted according to the laws of the State of California.
69. Counterparts. This Settlement Agreement may be executed in one or more counterparts. All executed counterparts and each of them shall be deemed to be one and the same instrument provided that counsel for the Parties to this Settlement Agreement shall exchange among themselves copies or originals of the signed counterparts through DocuSign/Adobe Sign functionalities.
70. This Settlement Agreement Is Fair, Adequate and Reasonable. The Parties believe that this Settlement Agreement is a fair, adequate and reasonable Settlement Agreement of this Action and have arrived at this Settlement Agreement after extensive arm's-length negotiations, taking into account all relevant factors, present and potential. The Parties further agree that this Settlement Agreement shall not be construed in favor of or against any party by reason of the extent to which any party or their counsel participated in the drafting of this Settlement Agreement.
71. Jurisdiction of the Court. The Parties agree that, pursuant to California Code of Civil Procedure Section 664.6, the Court shall retain jurisdiction with respect to the interpretation, implementation and enforcement of the terms of this Settlement Agreement and all orders and judgments entered in connection to it, and the Parties and their counsel submit to the jurisdiction of the Court for purposes of interpreting, implementing and enforcing the Settlement Agreement and all orders and judgments entered in connection to it.

72. Publicity. Plaintiff and Class Counsel agree not to disclose or publicize the Settlement, including the fact of the Settlement, its terms or contents, and the negotiations underlying the Settlement, in any manner or form, directly or indirectly, to any person or entity, except as may be strictly required to effectuate the terms of the Settlement. For the avoidance of doubt, this section includes Plaintiff and Class Counsel's agreement not to issue press releases, communicate with, or respond to any media or publication entities, publish information in manner or form, whether printed or electronic, on any medium or otherwise communicate, whether by print, video, recording or any other medium, with any person or entity concerning the Settlement, including the fact of the Settlement, its terms or contents and the negotiations underlying the Settlement, except as shall be contractually required to effectuate the terms of the Settlement. However, Class Counsel may disclose the name of the Parties in this action, the venue/case number, and settlement details available in the public record, for the limited purpose of allowing Class Counsel to prove adequacy as class counsel in other actions.
73. Waiver of Certain Appeals. Except as provided herein, the Parties agree to waive all appeals from the Court's final approval of the Settlement Agreement, unless the Court modifies the Settlement Agreement.
74. Denial of Liability. The Parties expressly recognize that the making of this Settlement Agreement does not in any way constitute an admission or concession of wrongdoing on the part of Defendant. The Settlement and any related statements, discussions, communications, or materials cannot be admissible in any way in any other judicial, arbitral, administrative, investigative or other forum or proceeding as evidence of any violation of any federal, state, or local law, statute, ordinance, regulation, rule or executive order, or any obligation or duty at law or in equity. Notwithstanding the foregoing, this Agreement may be used in any proceeding in the Court that has as its purpose the interpretation, implementation, or enforcement of the Settlement or any orders or judgments of the Court entered into in connection therewith.
75. Notice of Settlement Agreement to LWDA. Plaintiff shall provide notice of this Settlement Agreement to the Labor Workforce Development Agency ("LWDA") as required by Labor Code Section 2699(1)(2).

IN WITNESS WHEREOF, this Joint Stipulation of Class Action and PAGA Settlement Agreement and Release of Claims is voluntarily executed by the Parties and their attorneys as of the dates noted.

*(signature page follows)*

**IT IS SO AGREED:**

Dated: 03/02/2021 \_\_\_\_\_

Michelle Nourian Martinez  
Michelle Nourian Martinez (Mar 2, 2021 07:43 PST)

Michelle Nourian Martinez  
*Plaintiff*

Dated: 2/25/2021 \_\_\_\_\_

DocuSigned by:  
Lea Cummings  
C4A3A07349084AC...

Lea Cummings  
*Authorized agent for Defendant*

**APPROVED AS TO FORM ONLY:**

Dated: 3/2/2021 \_\_\_\_\_



Ryan Hicks  
Hoyer & Hicks  
*Attorneys for Plaintiff and Proposed  
Class Counsel*

Dated: 3/1/2021 \_\_\_\_\_

DocuSigned by:  
Michael Nader  
CB5B5405BB794CA...

Michael J. Nader  
OGLETREE, DEAKINS, NASH,  
SMOAK & STEWART  
*Attorneys for Defendant*

# EXHIBIT 1

**NOTICE OF PROPOSED CLASS ACTION SETTLEMENT**

***Michelle Nourian Martinez v. Helzberg's Diamond Shops, Inc.***  
**Case No. 5:20-cv-01085-PSG-SHK**  
**United States District Court, Central District of California**

**THIS IS A COURT-AUTHORIZED NOTICE.  
YOU ARE NOT BEING SUED.**

**PLEASE READ THIS NOTICE CAREFULLY ABOUT YOUR LEGAL RIGHTS.**

**To:** “**Class Members**” defined as all current and former employees of Helzberg’s Diamond Shops, Inc. (the “**Defendant**”) who worked as a Store Manager at any time in the State of California from April 6, 2016 through the [date] (the “**Class Period**”).

**GENERAL INFORMATION**

**1. Why did I get this notice?**

The Court has preliminarily approved a settlement of the class action lawsuit, ***Michelle Nourian Martinez v. Helzberg's Diamond Shops, Inc.***, Case No. 5:20-cv-01085-PSG-SHK, United States District Court, Central District of California (the “**Lawsuit**”). You received this notice because Defendant’s records show that **you are a Class Member** and thus entitled to a payment from the settlement. This notice explains the Lawsuit, the Settlement Agreement, your legal rights, your eligibility for benefits, and how you obtain them.

**2. What is this Lawsuit about?**

The Lawsuit claims that Defendant violated sections of the California Labor Code and the California Business and Professions Code. Specifically, Plaintiff’s First Amended Complaint alleges that Defendant misclassified Store Managers as exempt and thus failed to pay all wages, including overtime wages, failed to provide compliant meal and rest breaks, failed to pay final wages upon termination, and failed to provide compliant wage statements. The settlement also seeks to recover penalties pursuant to the California Private Attorneys General Act (“**PAGA**”) based on the claims pleaded in Plaintiff’s First Amended Complaint. Defendant denies the allegations in the Lawsuit and contends that it complied with the law. The Court has not made a ruling on the merits of the case.

**3. Why is this a class action?**

In a class action, an individual called a Class Representative (in this case, Plaintiff Michelle Nourian Martinez) sues on behalf of people who appear to have similar claims, in this case the Class Members. One court resolves the issues for all Class Members in one lawsuit, except for those who exclude themselves from the Class. The Lawsuit is before the U.S. District Court for the Central District of California (the “**Court**”).

**4. How do I know if I am part of the settlement?**

You are part of the settlement, and a Class Member, if you are included in the following definition: All current and former employees of Helzberg’s Diamond Shops, Inc. who worked as a Store Manager at any time in the State of California from April 6, 2016 through the [date].

**5. Do I have a lawyer in this case?**

The Court has appointed Class Counsel listed below to represent your interests in this case: Hoyer & Hicks.

**6. What is the settlement amount and how will the Individual Settlement Payment be calculated?**

The Settlement provides that Defendant will pay a maximum of \$475,000 (the “**Maximum Settlement Amount**”). The “**Net Settlement Amount**” is the portion of the Maximum Settlement Amount that will be available for distribution to Class Members who do not exclude themselves from the settlement (“**Settlement Class Members**”). The Net Settlement Amount is the Maximum Settlement Amount less the following amounts (which are subject to Court approval):

- A. **Attorneys’ Fees to Class Counsel** not to exceed one-third of the Maximum Settlement Amount, or \$158,333.
- B. **Litigation Costs/Expenses to Class Counsel** not to exceed \$10,000.
- C. **Service Payments to the Class Representative** of \$10,000.
- D. **Settlement Administration Costs** not to exceed \$10,000.
- E. **PAGA Payment to the LWDA** of \$7,500.

The portion of the Net Settlement Amount that you are eligible to claim (“**Individual Settlement Payment**”) will be determined on a proportional basis, based on the number workweeks you worked in California as a Class Member for Defendant during the Class Period, which is from April 6, 2016 through [date] (“**Workweeks**”).

Your Individual Settlement Payment will be apportioned as twenty-five percent (25%) for wages and seventy-five percent (75%) for penalties and interest. The wage portion of the Individual Settlement Payment will be subject to withholding for the employee and will be reported on a W-2 Form. Employer-side payroll taxes will be paid separately. The penalties and interest portions of each Individual Settlement Payment will not be subject to any withholdings and will be reported on an IRS Form 1099.

**7. How much will my Individual Settlement Payment be?**

You worked [XXX] Workweeks as a Class Member during the Class Period. Your estimated Individual Settlement Payment is \$[XXX.XX]. The amount of your Settlement Payment may change depending on the number of timely and valid Requests for Exclusions submitted in the settlement, if any. This amount is only an estimate. The actual Individual Settlement Payment you receive may be slightly more or less than the estimated amount shown.

Your estimated Individual Settlement Payment was determined based on your timekeeping records with Defendant during your employment during the Class Period.

**8. What do I do if I think the calculation of my Workweeks are wrong?**

If you dispute the accuracy of the calculation of the number of weeks you worked during the Class Period, you must contact the Settlement Administrator and provide any documentation you have supporting your position. Submission of your documentation must be postmarked by [45 calendar days from the date of mailing] (the “**Response Deadline**”). All disputes regarding your Workweeks will be resolved and decided by the Settlement Administrator, and the Settlement Administrator’s decision on all disputes will be final. The Settlement Administrator’s contact information is listed below:

[Settlement Administrator]

[Address]

[Telephone No.]

**HOW CAN I GET A PAYMENT?****9. How do I get my Individual Settlement Payment?**

You do not need to do anything to get your Individual Settlement Payment after the Court approves the Settlement. You must notify the Settlement Administrator of any change or correction in your contact information. **It is your responsibility to keep the Settlement Administrator informed of any change in your address**, which you can do by using the enclosed Change of Address Form.

**10. What am I giving up to get an Individual Settlement Payment?**

Unless you exclude yourself, you remain in the Class, which means that you will not be able to sue or be part of any other lawsuit against the “Released Parties” for any of the “Released Claims” in this Lawsuit. Specifically, you will be giving up or “releasing” the “Released Claims” described below:

**“Released Claims”** means

29. “Released Claims” means all claims and causes of action alleged in the Lawsuit, as well as all predicate claims based on the factual or legal theories alleged in the Lawsuit, or reasonably could have been alleged based on the facts and legal theories alleged in the Lawsuit, including all of the following legal claims: all claims for unpaid wages, including claims for minimum, overtime, and double-time wages, the alleged failure to pay for all time worked, the alleged failure to pay for all hours worked at correct rates, including overtime at the correct rates; all claims for meal period violations, including claims for late, short, interrupted and/or missed meal periods and/or the failure to pay premiums, and the alleged failure to properly record meal periods; all claims for rest break violations, including claims for late, short, interrupted, missed, or otherwise improperly controlled rest breaks and/or the failure to pay premiums; all claims for untimely paid wages; all claims for improper or inaccurate itemized wage statements, including alleged violations of Labor Code Section 226(a)(1)-(9) based on the facts and legal theories contained in the Lawsuit, including the allegation that the wage statements lacked the total number of hours worked, and including claims for injuries suffered therefrom; all claims for the untimely payment of final wages and associated waiting time penalties under Labor Code Section 203 based on the allegations in the Lawsuit; any and all claims regarding the alleged failure to maintain required records in violation of Labor Code §§ 226, 1174 and the applicable IWC Wage Order provisions; all claims for civil penalties under the Labor Code Private Attorneys General Act of 2004, Labor Code Section 2699 et seq. (“PAGA”) premised on the allegations in the Lawsuit, including under Labor Code sections 201, 202, 203, 204, 210, 226, 226.3, 226.7, 510, 512, 558, 1174, 1174.5, 1194, 11197, 1198, and all claims under the Business & Professions Code (including Section 17200 et seq.) premised on the allegations in the Lawsuit; any other claims or penalties under the wage and hour laws alleged in the Lawsuit under California and federal law, including the California Labor Code and the applicable Wage Orders.

**“Released Parties”** shall mean Defendant and its past, present and/or future, direct and/or indirect, officers, directors, members, managers, employees, agents, representatives, attorneys, insurers, partners, investors, shareholders, administrators, parent companies, subsidiaries, affiliates, divisions, predecessors, successors, assigns, and joint venturers.

**EXCLUDING YOURSELF FROM THE SETTLEMENT****11. How do I exclude myself from the settlement?**

If you want to keep the right to sue or continue to sue Defendant with respect to the Released Claims, then you must submit a Request for Exclusion in conformity with the requirements described here. If you exclude yourself, you will not receive an Individual Settlement Payment.

To exclude yourself from the Settlement Agreement, you must submit a signed written Request for Exclusion. The statement (1) must state in substance: "I wish to opt out of the Settlement Agreement of the class action lawsuit entitled *Michelle Nourian Martinez v. Helzberg's Diamond Shops, Inc.*, Case No. 5:20-cv-01085-PSG-SHK, United States District Court, Central District of California, (2) must contain your name, address, and the last four digits of your social security number and/or Employee ID number, (3) must be signed by you, and (4) must be mailed to the Settlement Administrator at the address listed below, post-marked by [45 calendar days from the date of mailing]. You cannot exclude yourself by phone.

[Settlement Administrator]

[Address]

[Telephone No.]

Requests for Exclusion which are postmarked after the Response Deadline shall not be accepted.

**12. If I don't exclude myself, can I sue Defendant for the same thing later?**

No. Unless you submit a Request for Exclusion, you give up the right to sue Defendant and Released Parties for the Released Claims. If you have a pending lawsuit involving Released Claims, speak to your lawyer immediately.

**13. How do I tell the Court that I don't like the settlement?**

You can ask the Court to deny approval by filing an objection. You can't ask the Court to order a different settlement; the Court can only approve or reject the settlement. If the Court denies approval, no settlement payments will be sent out and the lawsuit will continue. If that is what you want to happen, you must object.

To make a written objection, you may mail your objection to the Settlement Administrator no later than [45 calendar days from the date of mailing]. Your objection must be signed and include your full name, address, the name of this case and case number (provided above), the last four digits of your social security number and/or employee ID number, and the specific reason for your objection. You may also come to the Final Approval Hearing on [DATE] if you wish to make an objection even if you do not submit a written objection.

**14. What is the difference between objecting and being excluded?**

Objecting is telling the Court that you do not like something about the settlement. You may only object if you remain a Settlement Class Member. Excluding yourself is telling the Court that you do not want to be a Settlement Class Member. If you exclude yourself, you cannot object.

**THE COURT'S FINAL APPROVAL HEARING**

**15. When and where will the Court decide whether to approve the Settlement?**

The Court will hold the Final Approval Hearing at [ ] a.m./p.m. on [ ], 2021], either virtually (see below), or if permitted at the Courthouse at:

First Street Courthouse  
350 West 1st Street, Courtroom 6A, 6th Floor  
Los Angeles, California 90012-4565

At this hearing, the Court will consider whether the settlement is fair, reasonable, and adequate, and determine whether to grant final approval of the settlement. If there are objections, the Court may consider them.

The Final Approval Hearing may be continued to a different date or time, or changed to a different location without further notice to the Class. You may contact Class Counsel, listed below in this Class Notice, to inquire into the date, time, and location of the Final Approval Hearing.

**16. Do I have to come to the hearing?**

No. If you agree to the settlement, you do not have to attend the hearing. You have a right to attend the hearing, but you are not required to attend. You may also retain your own lawyer at your expense to attend on your behalf. If you would like to attend. If you would like to attend the Final Approval Hearing remotely, you will need to attend via Zoom by going to the link below, and/or entering the following information from the Judge's website ([cacd.uscourts.gov/honorable-philip-s-gutierrez](https://cacd.uscourts.gov/honorable-philip-s-gutierrez)):

Zoom Webinar Information (also available with a clickable link at the Judge's website above)

Zoom: <https://cacd-uscourts.zoomgov.com/j/1612059552?pwd=MWJUQ0MxZXhJSEtGaCtwZmltVVhOdz09>

Telephone: (669) 254-5252

Webinar ID: 161 205 9552

Passcode: 734987

Class Members planning to attend the Final Approval Hearing in person (or reviewing court files in person) should note the Court's current social distancing procedures as of [February 1, 2021], which can be found on the Court's website at <https://www.cacd.uscourts.gov/> generally, and its COVID-19 notice, found at <https://www.cacd.uscourts.gov/news/amended-expiration-continuity-operations-plan>. As of February 2, 2021

1. All Courthouses of the Central District of California will be closed to the public except for certain exceptions which do not include the Final Approval Hearing.
2. All appearances in civil cases will be by telephone or video conference.
3. For members of the press or public who wish to listen in on a hearing being held by telephone or video conference, refer to the assigned judge's procedures and schedules web page (<https://www.cacd.uscourts.gov/honorable-philip-s-gutierrez>) or calendar for login-in or call-in information. If login-in or call-in information is not available or to listen to or view a criminal bench duty matter, submit a Hearing Access Request Form (available at <https://www.cacd.uscourts.gov/hearing-access-request-form>) at least four hours prior to the hearing.

The Court's social distancing procedures may change without further notice to the Class. Class Members may visit the Court's website at <https://www.cacd.uscourts.gov/> to see if the Court has updated its social distancing procedures.

**17. How will I learn if the settlement is approved?**

A notice of final judgment will be posted on the Settlement Administrator website located at [www. com](http://www. com).

**18. What happens if I do nothing at all?**

If you do nothing, you will receive your share of the Net Settlement Amount, and you will release the Released Claims. You will not be able to start a lawsuit, continue with a lawsuit, or be part of any other lawsuit against Defendant or any of the Released Parties about the Released Claims during the Class Period.

**GETTING MORE INFORMATION****19. Who may I contact if I have questions about the Settlement?**

This notice summarizes the proposed Settlement Agreement. More details are in the Settlement Agreement. You can get a copy of the Settlement Agreement by contacting the Settlement Administrator or Class Counsel, by visiting the Settlement Administrator website located at [www. \[REDACTED\] .com](http://www. [REDACTED] .com).

Please **do not** contact the following for information: the clerk of the Court, the Judge, or any managers, supervisors, or attorneys for the Defendant.

**ADDITIONAL IMPORTANT INFORMATION**

- 20. Defendant supports the settlement and will not retaliate in any manner whatsoever** against any Class Member, whether they choose to stay in the Class as a Settlement Class Member and receive an Individual Settlement Payment, or request to be excluded from the Settlement, or object to the settlement.
- 21. It is your responsibility to ensure that the Settlement Administrator has your current mailing address and telephone number on file**, as this will be the address where your Individual Settlement Payment will be sent. If you no longer receive mail at the address where this Notice was mailed, you may use the enclosed Change of Address Form to notify the Settlement Administrator of your current mailing address and telephone number.
- 22. Individual Settlement Payment checks must be cashed soon after receipt.** If the Settlement Agreement is approved, you will be mailed your Individual Settlement Payment. The check will remain valid for 180 days after the date it is issued. If you do not cash the check within 180 days, these funds will be sent to the California State Controller and held by the State Controller's Office Unclaimed Property Fund on your behalf.

# EXHIBIT 2



Class Action Settlement Administration

 3194-C Airport Loop Drive  
 Costa Mesa, CA 92626  
 800-779-2104 www.simpluris.com

|                |           |               |                                                                          |
|----------------|-----------|---------------|--------------------------------------------------------------------------|
| Estimate #:    | 12935V2   | Prepared By:  | Michael Sutherland                                                       |
| Estimate Date: | 2/11/2021 | Direct Dial # | 321-223-5067                                                             |
|                |           | Email:        | <a href="mailto:msutherland@simpluris.com">msutherland@simpluris.com</a> |

Plaintiff Attorney

Attorney/Client: **Ryan L. Hicks**

Firm: Hoyer & Hicks

Email:

Defense Attorney

Attorney/Client: Mike Nader

Firm: Ogletree Deakins

Email:

**Case Name: Martinez v Helzberg's Diamond Shops: Opt Out Settlement**

|                    |                |
|--------------------|----------------|
| <b>Capped Fee*</b> | <b>\$3,750</b> |
|--------------------|----------------|

**Terms:**

1) Capped Fees assume that Simpluris will receive data in a Single Excel file with no substantial change in class size or response rate.

|                            |         |                     |      |
|----------------------------|---------|---------------------|------|
| Total Possible Class Size: | 31      | Undeliverable Rate: | 20%  |
| Response Rate:             | 1%      | Call Rate:          | 10%  |
| Mailing Document Language: | English | Redistribution:     | None |
| Reminder Post Card         | No      | State               | CA   |
| Uncashed Checks            | cy pres |                     |      |

### Case Setup

#### Data Compilation - Develop Case Specific Response Tracking - Error Reports

| Category                                 | Unit Value | # of Units | Total      |
|------------------------------------------|------------|------------|------------|
| Project Manager - Case Setup             | \$125.00   | 3          | \$375.00   |
| Toll free number and call center support | \$250.00   | 1          | \$250.00   |
| Database Manager - Initial Data Analysis | \$140.00   | 3          | \$420.00   |
| Total                                    |            |            | \$1,045.00 |

### Notification

#### Mailing Notice Pack- 5 pg Notice, Double Sided - English

| Category                 | Unit Value | # of Units | Total    |
|--------------------------|------------|------------|----------|
| Mailing Notice Pack      | \$1.00     | 31         | \$31.00  |
| Postage                  | \$0.42     | 31         | \$13.02  |
| NCOA/CASS/LACS           | \$10.00    | 1          | \$10.00  |
| Undeliverable Processing | \$0.25     | 6          | \$1.55   |
| Skip Trace RUM           | \$2.00     | 6          | \$12.40  |
| Remail                   | \$2.00     | 5          | \$10.54  |
| Final Approval mailed    | \$1.50     | 31         | \$46.50  |
| Clerical                 | \$50.00    | 1          | \$50.00  |
| Total                    |            |            | \$175.01 |

### Call Center-Not requested

#### Establish Case Specific Toll Free Number

| Category                                  | Unit Value | # of Units | Total  |
|-------------------------------------------|------------|------------|--------|
| Customer Service Reps/Call Center Support | \$75.00    | 0          | \$0.00 |
| 800 # Charges                             | \$0.10     | 0          | \$0.00 |
| Total                                     |            |            | \$0.00 |



Class Action Settlement Administration

3194-C Airport Loop Drive  
Costa Mesa, CA 92626  
800-779-2104 www.simpluris.com

### Administration

#### Process Mail, Opt-Outs or Objections

| Category                                    | Unit Value | # of Units          | Total    |
|---------------------------------------------|------------|---------------------|----------|
| Database Manager                            | \$125.00   | 1                   | \$125.00 |
| Resolving Mismatched TINs                   | \$75.00    | 0                   | \$0.00   |
| Dispute/Deficiencies - Send One Cure Letter | \$2.50     | 1                   | \$2.50   |
| Opt Out Processing                          | \$2.50     | 1                   | \$2.50   |
| Data Entry                                  | \$50.00    | 0                   | \$0.00   |
| Project Manager                             | \$125.00   | 1                   | \$125.00 |
| Weekly Reporting to Counsel                 | WAIVED     | 12 Wks of Reporting | \$0.00   |
| Total                                       |            |                     | \$255.00 |

### Distribution

#### Setup a Disbursement Account

#### Print & Mail Checks to Class Members - W2's / 1099's - File Reports with Appropriate Federal & State Taxing Authorities

#### Account Management & Reconciliation. • **Employer payroll taxes not part of settlement.**

| Category                                   | Unit Value | # of Units | Total      |
|--------------------------------------------|------------|------------|------------|
| Disbursement Data Preparation              | \$140.00   | 1          | \$140.00   |
| Disbursement Manager - Data Validation     | \$75.00    | 1          | \$75.00    |
| Setup Banking Account/QSF                  | \$300.00   | 1          | \$300.00   |
| Print & Mail-Check                         | \$3.00     | 31         | \$93.00    |
| Postage                                    | \$0.42     | 31         | \$13.02    |
| Process Returned Checks                    | \$0.25     | 0          | \$0.08     |
| Skip Trace Search Undeliverable Checks     | \$5.00     | 0          | \$1.55     |
| Remail Checks                              | \$5.00     | 0          | \$1.55     |
| QSF Account Reconciliation                 | \$250.00   | 1          | \$250.00   |
| Individual Federal/State Tax Reporting     | \$250.00   | 1          | \$250.00   |
| QSF Reporting/Declaration                  | \$300.00   | 1          | \$300.00   |
| QSF Annual Tax Preparation Fee(2021)       | \$750.00   | 1          | \$750.00   |
| Reissuing Checks/Mailing                   | \$5.00     | 0          | \$2.33     |
| Reissuing W2s/1099s                        | \$5.00     | 0          | \$2.33     |
| Disbursement Agent                         | \$75.00    | 1          | \$75.00    |
| Responding to IRS, State, Agency Inquiries | \$75.00    | 0          | \$0.00     |
| Disbursement Manager                       | \$125.00   | 1          | \$125.00   |
| Total                                      |            |            | \$2,378.85 |



Class Action Settlement Administration

3194-C Airport Loop Drive  
Costa Mesa, CA 92626  
800-779-2104 www.simpluris.com

### Case Wrap Up

#### Send Final Reports to Counsel

| Category                             | Unit Value | # of Units | Total  |
|--------------------------------------|------------|------------|--------|
| Data Manager-Final Reporting         | \$125.00   | 0          | \$0.00 |
| Clerical-Clean Up Any Misc           | \$50.00    | 0          | \$0.00 |
| Project Manager-Wrap-up Final Issues | \$125.00   | 0          | \$0.00 |
| Total                                |            |            | \$0.00 |

Total Case Costs

\$3,853.86



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Costa Mesa, CA 92626  
800-779-2104 www.simpluris.com

All administration services to be provided by Simpluris to Client, are provided subject to the following terms and conditions:

1. **Services.** Simpluris agrees to provide Client those services set forth in the Bid (the "Services") to which these terms and conditions are attached and which has been provided to Client. As compensation for such Services, Client agrees to pay the fees for Services outlined in the Bid. However, Client such fees for Services are estimated based on the requirements provided by Client and actual fees charged by Simpluris may be greater or less than such estimate and Client will be responsible for the payment of all such fees.
2. **Billing and Payment.** Simpluris will invoice Client on a regular basis unless a specific timeframe is otherwise set forth in the Bid. Client shall pay all invoices within 30 days of receipt. Amounts unpaid after thirty (30) days are subject to a service charge at the rate of 1.5% per month or, if less, the highest rate permitted by law. Services are not provided on a contingency basis and Client shall remain liable to Simpluris for all fees for the Services, regardless of any court decisions, and/or actions by the parties, including disapproval or withdrawal of a settlement.
3. **Retention of Documents.** Unless directed otherwise in writing by the Client, Simpluris will destroy all undeliverable mail (except for undeliverable checks) on the date that it is processed and retained in Simpluris' system. Simpluris will maintain records to establish that the subject mail is undeliverable. Simpluris will retain undeliverable checks until the Qualified Settlement Fund is closed. Simpluris will also retain all other class member and putative class member correspondence (including without limitation, claims forms and opt out forms) for one year after final distribution of funds or benefits, or until the date that the disposition of the case is no longer subject to appeal or review, whichever is later. Lastly, Simpluris will retain bank & tax documents for such period of time as it determines is required to maintain compliance with various federal and state requirements.
4. **Limitation of Liability; Disclaimer of Warranties.** Simpluris warrants that it will perform the Services diligently, with competence and reasonable care. Simpluris' only obligation will be to correct any non-conformance with the foregoing warranty. In no event will Simpluris be liable for any lost profits/opportunities, business interruption or delay or, special, consequential, or incidental damages incurred by Client relating to the performance of the Services, regardless of whether Client's claim is for breach of contract, tort (including negligence and strict liability) or otherwise. Under no circumstances will Simpluris be liable to Client for any claims, losses, costs, penalties, fines, judgment or damages, including court costs and reasonable attorney's fees (collectively, "Losses"), whether direct or indirect, arising out of, related to, or in connection with Services in an amount in excess of the total fees charged or chargeable to Client for the particular portion of the Services affected by Simpluris' omission or error. THE WARRANTIES SET FORTH IN THIS SECTION ARE EXCLUSIVE AND IN LIEU OF ALL OTHER WARRANTIES, EXPRESS, IMPLIED OR STATUTORY, INCLUDING WITHOUT LIMITATION ANY IMPLIED WARRANTY OF MERCHANTABILITY OR OF FITNESS FOR A PARTICULAR PURPOSE.
5. **Force Majeure.** To the extent performance by Simpluris of any of its obligations hereunder is substantially prevented by reason of any act of God or because of any other matter beyond Simpluris' reasonable control, then such performance shall be excused and this Agreement, at Simpluris' option, be deemed suspended during the continuation of such condition and for a reasonable time thereafter.
6. **Rights in Data.** Client agrees that it will not obtain, nor does Simpluris convey, any rights of ownership in the programs, system data, or materials provided or used by Simpluris in the performance of the Services.
7. **Electronic Communications.** During the provision of the Services the parties may wish to communicate electronically with each other at a business e-mail address. However, the electronic transmission of information cannot be guaranteed to be secure or error free and such information could be intercepted, corrupted, lost, destroyed, arrive late or incomplete or otherwise be adversely affected or unsafe to use. Accordingly, each party agrees to use commercially reasonable procedures to check for the then most commonly known viruses and to check the integrity of data before sending information to the other electronically, but each party recognizes that such procedures cannot be a guarantee that transmissions will be virus free. It remains the responsibility of the party receiving an electronic communication from the other to carry out a virus check on any attachments before launching any documents whether received on disk or otherwise.
8. **Notice.** Any notice required or permitted hereunder shall be in writing and shall be delivered personally, by, or sent by registered mail, postage prepaid, or overnight courier and shall be deemed given when so delivered personally, or, if mailed, five days after the date of deposit in United States mail, or, if sent by courier, one business day after delivery to such courier service. Notice should be addressed to an officer or principal of Client and Simpluris, as the case may be.
9. **Waiver.** Failure or delay on the part of a party to exercise any right, power or privilege hereunder shall not operate as a waiver thereof or any of other subject, right, power or privilege.
10. **Termination.** Client may terminate the Services at anytime upon 30 days prior written notice to Simpluris. Termination of Services shall in no event relieve Client of its obligation make any payments due and payable to Simpluris in respect of Services rendered up to the effective date of Termination. Simpluris may terminate this Agreement (i) for any reason upon no less than 90 days prior written notice to the Client; or (ii) upon 15 calendar days' prior written notice, if the Client is not current in payment of fees.
11. **Jurisdiction.** The parties hereto irrevocably and unconditionally submit to the jurisdiction of the Court of the applicable case for purposes of any suit, action or proceeding to enforce any provision of, or based on any right arising out of, this Agreement. The parties hereto hereby irrevocably and unconditionally waive any objection to the laying of venue of any such suit, action or proceeding in such Court.
12. **Survival.** Any remedies for breach of this Agreement, this Section and the following Sections will survive any expiration or termination of this Agreement: Section 4 - Limitation of Liability; Disclaimer of Warranties, Section 6 - Rights in Data, and Section 12- Jurisdiction, 14 -Confidentiality, and Section 15 - Indemnification.
13. **Entire Agreement.** These Terms and Conditions and the proposal embody the entire agreement between the parties with respect to the subject matter hereof, and cancels and supersedes all prior negotiations, representations, and agreements related thereto, either written or oral, except to the extent they are expressly incorporated herein. No changes in, additions to, or waivers of, the terms and conditions set forth herein will be binding upon any party, unless approved in writing by such party's authorized representative.
14. **Confidentiality.** Simpluris maintains reasonable and appropriate safeguards to protect the confidentiality and security of data provided by Client to Simpluris in connection with the Services. If, pursuant to a court order or other proceeding, a third party requests that Simpluris to disclose any confidential data provided by or for Client, Simpluris will promptly notify the Client unless prohibited by applicable law. Client will then have the option to provide Simpluris with qualified legal representation at Client's expense to defend against such request. If, pursuant to a court order, Simpluris is required to disclose data, produce documents, or otherwise act in contravention of the obligation to maintain confidentiality set forth in these terms and conditions, Simpluris will not be liable for breach of said obligation.
15. **Indemnification.** Client will indemnify and hold Simpluris (and the officers, employees, affiliates and agents harmless against any Losses incurred by Simpluris, arising out of, in connection with, or related to (i) any breach of the terms by Client; (ii) the processing and handling of any payment by Simpluris in accordance with Client's instructions, including without limitation, the imposition of any stop payment or void payment on any check or the wrongful dishonor of a check by Simpluris pursuant to Client's instructions.
16. **Severability.** If any term or condition or provisions of this Agreement shall be held to be invalid, illegal, unenforceable or in conflict with the law of any jurisdiction, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.
17. **Database Administration.** Simpluris' database administration for Client assumes that Client will provide complete data that includes all information required to send notifications and calculate and mail settlement payments. Data must be provided in a complete, consistent, standardized electronic format. Simpluris' standardized format is Microsoft Excel, however, Simpluris may accept other formats at its discretion. Further developments or enhancements to non-standardized data will be billed to Client by Simpluris on a time and materials basis according to Simpluris' Standard Rates.



## Simpluris Security Summary – White Paper

Simpluris is committed to the security and overall protection of not only our data and information but our client's data and information, as well. As a demonstration of our commitment, we maintain SOC 2 Certification which requires strict adherence to policies and procedures surrounding information security, including processing and storage of confidential customer data. Simpluris supports a comprehensive, written Information Security Program that complies with all applicable laws and regulations (e.g. HIPAA, Gramm-Leach-Bliley Act, MA 201 CMR 17.00) and is designed to (a) ensure the security, privacy and confidentiality of Client and Class Member Information, (b) protect against any reasonably anticipated threats or hazards to the security or integrity of Client or Class Member Information, and (c) protect against unauthorized access to, use, deletion, or modification of Class Member Information. Simpluris has designated specific employees to be responsible for the administration of its Information Security Program. Also, Simpluris regularly and routinely monitors, tests, and updates our Information Security Program.

Simpluris uses Client and Class Member Information only for the purposes for which its' clients provide it, as described in any Agreements or Court Orders governing the provision of Simpluris' services in any particular case. Simpluris maintains a process for identifying, assessing, and mitigating the risks to Class Member Information in each relevant area of Simpluris' operations. At Simpluris, we continuously evaluate the effectiveness of the safeguards for controlling these risks to data and bank accounts. Simpluris restricts access to Class Member Information only to those employees, agents, or subcontractors who need to know the information to perform their jobs. Simpluris performs background checks of all its employees that will have access to Sensitive Personal Information, including a review of their references, employment eligibility, education, and criminal history to ensure they do not pose a risk to the security of Client or Class Member Information.

Simpluris adheres to the following industry best practices to safeguard its systems which process, store or transmit Client and Class Member Information:

- Identity and Access Management;
- Complex passwords are routinely and regularly changed;
- Role-based access control systems to limit individual employee access to network applications and systems based on their particular job role and function;
- Data Loss Prevention and Intrusion Prevention System software at multiple layers to prevent from internal and external threats of data leaks, malicious activity, and policy violations
- Encryption of Class Member Information if transmitted over public or wireless networks (e.g., via email, FTP, the Internet, etc.);
- Implementation of a Secure File Transfer system (using SSL encryption) for transmitting documents back and forth to clients;
- Encryption of servers, portable media, laptops, desktops, smartphones, mobile devices, and new technologies that store Class Member Information;
- Complex password authentication for remote access to Company's networks;
- Upon hire and annually after that, training of all employees with access to Class Member Information, (including any agents, and subcontractors with access to Class Member Information) about their obligations to implement the Information Security Program;
- Strict disciplinary measures for employees who violate the Information Security Program;
- Preventing terminated employees from accessing Class Member Information;
- Appropriately configured and updated firewall, antivirus, and spyware software;
- Prompt application of vendor-recommended security patches and updates to systems and other applications to avoid any adverse impact on Class Member Information;
- Separation of Duties;
- Infrastructure and Physical Security;
- Business Continuity Planning;
- Disaster Recovery Planning