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Department 34
Noted for Consideration: November 18, 2022, at 10:00 a.m.
With Oral Argument

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

MONICA JIMENEZ, on her own behalf and on
the behalf of all others similarly situated,

Plaintiff,

V.

TTB HOLDINGS, LLC, a Washington LLC,
and KI WON JEON, individually and the
marital community composed of Ki Won Jeon
and spouse,

Defendants.

No. 21-2-11619-8 KNT

**PLAINTIFF'S MOTION FOR FINAL
APPROVAL OF CLASS ACTION
SETTLEMENT**

I. INTRODUCTION

Plaintiff Monica Jimenez respectfully requests the Court grant final approval of a class action Settlement Agreement reached with Defendants TTB Holdings, LLC, Ki Won Jeon, and JJK Holdings, LLC ("Defendants"). On June 21, 2022, this Court granted preliminary approval of the Settlement finding it and its terms to be "fair, reasonable, and adequate." Dkt. No. 18, ¶ 1 ("Preliminary Approval Order"). The Court provisionally certified a Settlement Class of up to one hundred and forty-four (144) hourly paid employees who worked for Defendants during the Class Period, and who do not choose to opt out of the Settlement. *Id.* ¶¶ 10, 15(d). Plaintiff alleged

1 Defendants willfully failed to pay her and the Settlement Class for all hours worked, including
2 overtime, for mandated meal and rest breaks. Defendants deny all such allegations.

3 In September 2022, Class Counsel discovered that the identities of up to forty (40)
4 potential Settlement Class members had accidentally not been disclosed by Defendants. Thus,
5 these individuals had not received notice of the Settlement. Accordingly, the parties amended the
6 Settlement Agreement to allow for them to receive notice, which this Court allowed. *See* Dkt.
7 No. 19. The Settlement Administrator promptly issued notice, with no such individuals choosing
8 to object to the Settlement or opt out.
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10 The amended Settlement—which authorizes Defendants to pay \$181,000¹—is fair,
11 adequate, reasonable, and in the best interests of the Settlement Class. The settlement is an
12 excellent result, with Settlement Class members receiving either (a) approximately 75% of their
13 potential unpaid wages as calculated by Class Counsel, or (b) nearly double their unpaid wages
14 according to Defendants’ expert. Settlement Administrator Simpluris successfully implemented
15 the notice program approved by this Court, providing notice to 92% of members of the Settlement
16 Class by U.S. mail. No Settlement Class Members objected to or opted out of the Settlement.
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18 For the reasons set forth below and previously submitted in support of settlement
19 approval, the Settlement is fair, adequate, reasonable and in the best interests of the Settlement
20 Class. Thus, Plaintiff respectfully requests the Court grant final approval of the Settlement by:
21 (1) finding the Settlement to be fair, adequate, and reasonable; (2) determining that adequate
22 notice was provided to Settlement Class members; and (3) approving the requested class
23 representative service award, settlement administration expenses, and attorneys’ fees and costs.
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26 ¹ The amendment contemplated an additional 40 Settlement Class Members, which would have resulted in a gross
27 settlement amount of \$183,000; however, the parties discovered that two of the 40 were duplicates, resulting in a
gross settlement amount of \$181,000. *See* Agreement § VI.1.k; Wolk Decl. ¶ 6.

II. STATEMENT OF FACTS

A. Factual and Procedural Background.

Defendants have collectively operated the three Top to Bottom retail clothing stores throughout the Class Period from September 1, 2018 to April 29, 2022 (“Class Period”). Declaration of Gregory Wolk (“Wolk Decl.”) ¶ 2. During the Class Period, Defendants paid most of their employees at the Top to Bottom stores on an hourly basis. *Id.* Plaintiff alleges Defendants denied Settlement Class members wages by: (1) failing to pay them for all hours worked, including improper rounding of clock-in and clock-out times, and other off the clock work; (2) failing to pay all overtime compensation earned when they worked more than forty hours a week; and (3) failing to provide mandated meal and rest breaks and ensure that they were taken. *Id.* ¶ 3. Plaintiff also alleges Defendants’ violations of Washington law were willful. *Id.* Defendants deny Plaintiff’s claims. *Id.*

For approximately eight months, the Parties engaged in substantial informal discovery and investigation, with Plaintiff’s counsel spending over 75 hours reviewing and analyzing the damages data, contacting and interviewing proposed class members, and reviewing other relevant documents. Wolk Decl. ¶ 4. Defense counsel likewise conducted their own investigation, including hiring an expert to calculate potential exposure, and contacting class members regarding the claims and defenses. *Id.* On April 29, 2022, the Parties engaged in a full day mediation with Margo Keller and agreed to the essential terms of a settlement at the mediation’s conclusion. *Id.* ¶ 5. The Parties then drafted, finalized, and executed the long-form settlement agreement in May 2022, attached to the Wolk Declaration as Exhibit 1. *Id.*, Ex. 1 (“Agreement”). All of the Parties’ settlement negotiations have been non-collusive and at arm’s length. Wolk Decl. ¶ 5; *see also* Agreement § IV.

1 On June 21, 2022, the Court granted Plaintiffs' motion for preliminary approval of the
2 Settlement. *See* Preliminary Approval Order, Dkt. No. 44. The Settlement requires Defendants
3 to pay a total \$181,000 for the benefit of the Settlement Class. Settlement § VI.1.k; Wolk Decl.
4 ¶ 6. Subject to Court approval, these proceeds will be used to pay settlement administration
5 expenses, service award to Plaintiff, Class Counsel's fees and costs, and Settlement Class
6 Member awards (the "Class Fund") as set forth in detail below. *Id.* § VI.1.k-o.

8 **B. Notice Process.**

9 During informal discovery and as reflected in the Motion for Preliminary Approval,
10 Defendants had notified Plaintiff that the Settlement Class was comprised of 144 individuals.
11 Wolk Decl. ¶ 6. However, the actual Settlement Class consists of 181 individuals. *Id.* Simpluris
12 mailed notices to these 181 Settlement Class Members. Declaration of Denise Islas ("Islas
13 Decl.") ¶¶ 4-11.

14 The notice campaign was successful. Notices were sent to 92% of the Settlement Class,
15 with no members objecting to or opting out of the Settlement. Islas Decl. ¶¶ 8-14. Given the
16 excellent recovery to the Settlement Class, from over 90% to nearly two and one-half times the
17 potential unpaid wages, Plaintiff and Class Counsel maintain the Settlement is fair, adequate,
18 reasonable, and in the best interests of the Settlement Class. Wolk Decl. ¶¶ 5, 7.

20 **III. STATEMENT OF ISSUES**

21 Whether the Court should: (1) grant final approval of the Settlement Agreement; (2) find
22 the notice program was constitutionally sound; (3) approve a service award of \$2,500 to Plaintiff
23 as Class Representative; (4) approve an award of \$4,990.54 to Simpluris for its settlement
24 administration expenses; (5) approve an award of \$57,587.69 to Class Counsel in fees and costs.
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1 **IV. EVIDENCE RELIED UPON**

2 Plaintiff relies on the Declarations of Gregory Wolk and Denise Islas in support of this
3 motion and the attached exhibits, as well as the pleadings and records on file with the Court.

4 **V. AUTHORITY AND ARGUMENT**

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

14 Here, the first two steps in this procedure have already occurred. The Court granted
15 preliminary approval of the Settlement on June 21, 2022. *See* Preliminary Approval Order. On
16 July 11, 2022 and September 28, 2022, Simpluris sent out notice by direct mail to the members
17 of the Settlement Class. Islas Decl. ¶¶ 4-11. As mentioned above, the notice program was
18 successful, resulting in only 8% of the Settlement Class as unreachable. *Id.* ¶¶ 8, 11. By this
19 motion, Plaintiff asks the Court to take the final step in this process.

20 When considering final approval of a class action settlement, a court determines whether
21 the settlement is “fair, adequate, and reasonable.” *Pickett v. Holland Am. Line- Westours, Inc.*,
22 145 Wn.2d 178, 188, 35 P.3d 351 (2001) (quoting *Torrison v. Tucson Elec. Power Co.*, 8 F.3d
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1 1370, 1375 (9th Cir. 1993)). This is a “largely unintrusive inquiry.” *Id.* at 189. Although the
2 Court possesses some discretion whether to approve a settlement,

3 [T]he court’s intrusion upon what is otherwise a private consensual
4 agreement negotiated between the parties to a lawsuit must be
5 limited to the extent necessary to reach a reasoned judgment that
6 the agreement is not the product of fraud or overreaching by, or
7 collusion between, the negotiating parties, and that the settlement,
8 taken as a whole, is fair, reasonable and adequate to all concerned.

9 *Id.* (quoting *Officers for Justice v. Civil Serv. Comm’n*, 688 F.2d 615, 625 (9th Cir. 1982)).
10 Indeed, “it must not be overlooked that voluntary conciliation and settlement are the preferred
11 means of dispute resolution.” *Id.* at 190 (quoting *Officers for Justice*, 688 F.2d at 625).

12 **C. The Settlement is fair, adequate, and reasonable.**

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

23 1. The strength of Plaintiff’s case.

24 Plaintiff and Class Counsel continue to believe they have a strong case but are also
25 pragmatic in their awareness of the risks inherent in litigation and the various defenses available
26 to Defendants. The reality that members of the Settlement Class could end up recovering only a
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1 fraction of their claimed damages or losing some claims at trial was significant enough to
2 convince Plaintiff and Class Counsel that the Settlement reached with Defendants outweighs the
3 gamble and expense of further litigation. Wolk Decl. ¶ 8.

4 First, although Plaintiff is confident this case is appropriate for class treatment,
5 Defendants would have opposed class certification. Plaintiff recognizes the risk that the Court
6 would decline to certify the Class, leaving only Plaintiff's individual claims. Wolk Decl. ¶ 9.
7 Second, Defendants have denied liability and maintained Settlement Class Members did receive
8 their wages and mandated breaks as required. *Id.* In addition, Plaintiff did not maintain that she
9 and the Settlement Class Members missed every single break. As such, Plaintiff did not anticipate
10 ever receiving a verdict reflecting all of their potential unpaid wages, especially as to their break
11 claims. *Id.* Factoring in the likely damages to be awarded given the breaks claims, recovering
12 over 90% of all potential unpaid wages, as calculated by Class Counsel, is an excellent recovery.
13 *Id.* It goes without saying that recovering nearly two and one-half times their potential unpaid
14 wages, as calculated by Defendants' expert, is remarkable. The Settlement obtained provides
15 substantial monetary benefits to Settlement Class members without further expense and delay.
16 *Id.*

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

20 Additional litigation would be lengthy and expensive if this action were to proceed.
21 Plaintiff had many hurdles to clear before a potential successful resolution. If this litigation
22 continued, the parties would need to take depositions. Wolk Decl. ¶ 8. Plaintiffs would then need
23 to move for class certification and each party would likely move for summary judgment. *Id.* In
24 addition, trial is always risky and even if Plaintiff prevailed, she would likely face an appeal. *Id.*
25 This Settlement avoids these risks and provides immediate and certain benefits.
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1 3. The risk of maintaining class action status through trial.

2 Plaintiff had not yet moved for class certification. Although Plaintiff is confident this case
3 is appropriate for class treatment, she recognizes there is always a risk the Court would decline
4 to certify the class. Even if a class was certified, Plaintiff would face the risk that Defendants
5 would move to decertify or appeal certification after trial. Wolk Decl. ¶ 8. Plaintiff therefore
6 faced the risk that individual members of the Settlement Class would have to file their own suits
7 or that payouts on any class-wide recovery would be delayed by appeals.
8

9 4. The amount offered in settlement.

10 The Settlement requires Defendants to pay \$181,000. This amount will be used to pay
11 Settlement Class Members after deducting the class representative service awards, settlement
12 administration expenses, and attorneys' fees and costs as approved by the Court. If the Court
13 approves, Plaintiff will receive a service award of \$2,500, Simpluris will be paid fees and costs
14 of \$4,990.54, and Class Counsel will be awarded \$57,587.69 for attorneys' fees and costs which
15 is less than their lodestar, with their compensation limited to only a portion of their work given
16 their right to statutory fees and costs under RCW 49.48.030, 49.46.090, and 49.52.070.
17 Settlement § IV.1.k-o; Wolk Decl. ¶ 15.
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19 If approved, the remaining amount of \$115,921.77 shall be distributed to Settlement Class
20 Members. Settlement § IV.1.k. The amount of each Member's award is based on the Member's
21 aggregate proportional share of the class fund as split among their claims. *Id.* § VI.4.a-c. Their
22 recovery is above the percentage recoveries obtained in settlements approved by other courts.
23 *See, e.g., Rodriguez v. W. Publ'g Corp.*, 563 F.3d 948, 965 (9th Cir. 2009) (approving settlement
24 amounting to 30 percent of damages estimated by expert and noting even if plaintiffs were
25 entitled to treble damages, settlement would be approximately 10 percent of estimated damages);
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1 *In re Mego Fin. Corp. Sec. Litig.*, 213 F.3d 454, 459 (9th Cir. 2000) (approving settlement
2 estimated to be worth between 1/6 and 1/2 of plaintiffs' estimated loss).

3 5. The extent of discovery completed and the state of the proceedings.

4 "A key inquiry is whether the parties had enough information to make an informed
5 decision about the strength of their cases and the wisdom of settlement." *Rinky Dink, Inc. v.*
6 *World Business Lenders*, Case No. C14-0268-JCC, 2016 WL 3087073, at *3 (W.D. Wash. May
7 31, 2016). Here, the parties were well informed about the strengths and weaknesses of their
8 cases. *See* Wolk Decl. ¶¶ 4, 7. Counsel for the parties thoroughly analyzed the factual and legal
9 issues involved. *Id.* Class Counsel devoted over 75 hours to conducting a thorough investigation
10 to prepare a damages analysis. *Id.* Plaintiff and Class Counsel agreed to settle because it best
11 serves the class. *Id.* ¶ 5.

12 6. The experience and views of counsel.

13 Where class counsel is qualified and well informed, their opinion that a settlement is fair,
14 reasonable, and adequate is entitled to significant weight. *See Pelletz v. Weyerhaeuser Co.*, 255
15 F.R.D. 537, 543 (W.D. Wash. 2009). Class Counsel are particularly experienced in litigating
16 employment class actions and have a keen understanding of the legal and factual issues involved
17 in this case. *See* Wolk Decl. ¶¶ 11-13. Class Counsel believe the Settlement is fair, reasonable,
18 adequate, and in the best interest of the Settlement Class. *Id.* ¶ 5.

19 7. The reaction of members of the settlement class.

20 A positive response to a settlement by the class—as evidenced by a small percentage of
21 opt-outs and objections—will further support final approval. *See Pelletz*, 255 F.R.D. at 543;
22 *Tadepalli v. Uber Techs., Inc.*, No. 15-CV-04348-MEJ, 2016 WL 1622881, at *8 (N.D. Cal. Apr
23 25, 2016) (quoting *In re Omnivision Techs., Inc.*, 559 F. Supp. 2d at 1043) (observing "the
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1 absence of a large number of objections to a proposed class action settlement raises a strong
2 presumption that the terms of a proposed class settlement action are favorable to the class
3 members”). The deadline for objecting or opting out of the Settlement was August 25, 2022 and
4 October 18, 2022 for the 38 additional members, to date, no members of the Settlement Class
5 have objected or opted out of the Settlement. *Islas Decl.* ¶¶ 6, 10-14. This factor weighs in favor
6 of approval.
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8 **D. Members of the Settlement Class received the best notice practicable.**

9 This Court has determined that the notice program meets the requirements of due process
10 and applicable law, provides the best notice practicable under the circumstances, and constitutes
11 due and sufficient notice to all individuals entitled thereto. Preliminary Approval Order, ¶¶ 14-
12 15. Simpluris, has fully implemented the program. *See Islas Decl.* ¶¶ 3-14.
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14 Specifically, on July 11 and September 28, 2022, Simpluris sent the Court approved
15 notice by U.S. mail to the Class. *Id.* ¶¶ 4-6, 10. Class Counsel’s contact information was on the
16 notices. *Id.*, Exs. A, B. Settlement class members could also contact Simpluris for information.
17 *Id.* ¶ 7.

18 The notice program was successful. Of the 181 Settlement Class Members, 167 received
19 notice by U.S. mail. *Islas Decl.* ¶¶ 8, 11. Thus, the Court should find that Simpluris provided
20 adequate notice to the Settlement Class.
21

22 **E. The requested service award for the named Plaintiff is reasonable.**

23 Service payments “are intended to compensate class representatives for work undertaken
24 on behalf of a class” and “are fairly typical in class action cases.” *In re Online DVD-Rental*
25 *Antitrust Litig.*, 779 F.3d 934, 943 (9th Cir. 2015) (citation omitted). Such awards are generally
26 approved so long as the awards are reasonable and do not undermine the adequacy of the class
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1 representatives. See *Radcliffe v. Experian Info. Solutions, Inc.*, 715 F.3d 1157, 1164 (9th Cir.
2 2013). These awards promote the public policy of encouraging individuals to undertake the
3 responsibility of representative lawsuits. See *Rodriguez*, 563 F.3d at 958–59.

4 The requested award of \$2,500 for the named Plaintiff is reasonable given her efforts
5 during the litigation and settlement and are well in line with awards approved by other courts.
6 See, e.g., *Pelletz v. Weyerhaeuser Co.*, 592 F. Supp. 2d 1322, 1329-30 & n.9 (W.D. Wash. 2009)
7 (approving \$7,500 service awards and citing decisions approving awards in other cases). Plaintiff
8 assisted Class Counsel with investigation and litigating this case and took the risk of stepping
9 forward as a representative of the Class. Wolk Decl. ¶ 14. Plaintiff’s support of the settlement is
10 independent of any award and not conditioned on the Court awarding an award at all. *Id.* Thus,
11 Plaintiff’s adequacy is unaffected by the proposed award. The award is well deserved and should
12 be approved.
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15 **F. The award of attorneys’ fees and costs is fair and reasonable.**

16 A plaintiff may recover his or her attorneys’ fees when the plaintiff obtains a “common
17 fund” for the benefit of others. *Bowles v. Dept. of Retirement*, 121 Wn.2d 52, 70, 847 P.2d 440
18 (1993). Under Washington law, the percentage-of-recovery approach is used in calculating fees
19 in common fund cases. *Bowles*, 121 Wn.2d at 72. Plaintiffs’ efforts obtained a common fund for
20 the benefit of the Class. See Settlement Agreement § IV.1.k-o. (establishing a common fund to
21 be shared among the Settlement Class).
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23 Here, Class Counsel seeks a fee award of 30% of the recovery obtained, or \$54,000. Wolk
24 Decl. ¶ 15. Class Counsel has worked on this case without compensation for over one year. *Id.*
25 In addition, Class Counsel anticipates additional work with the Settlement Administrator to
26 ensure the settlement is fairly administered and implemented and obtaining dismissal of this
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1 action. *Id.* As mentioned above, Class Counsel’s lodestar exceeds \$72,000. *Id.*; As such, Class
2 Counsel compensation will be limited to a portion of the work spent prosecuting the case.

3 Class Counsel also seeks to be reimbursed for their out-of-pocket litigation costs that they
4 have and will continue to incur until dismissal of this lawsuit. Wolk Decl. ¶ 16. “Reasonable
5 costs and expenses incurred by an attorney who creates or preserves a common fund are
6 reimbursed proportionately by those class members who benefit from the settlement.” *In re*
7 *Media Vision Tech. Sec. Litig.*, 913 F. Supp. 1362, 1366 (N.D. Cal. 1996); *see also In re Immune*
8 *Response Sec. Litig.*, 497 F. Supp. 2d 1166, 1177–1178 (S.D. Cal. 2007) (finding costs such as
9 filing fees, messenger fees, and online legal research fees, are relevant and necessary expenses
10 in class action litigation). Class Counsel requests reimbursement of their filing, service, research,
11 and mediation fees in the amount of \$3,587.69, which were reasonable and necessary to secure
12 the successful resolution of this litigation. Wolk Decl. ¶ 16.
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15 The award request is particularly reasonable in light of the risks inherent in this class
16 action. Indeed, there was a real possibility that Class Counsel would recover nothing for their
17 work. But for nearly one year, Class Counsel investigated and litigated this class action, applied
18 their investigation to the claims and defenses, engaged in a mediation with Defendants, and
19 ultimately achieved a favorable settlement for the Settlement Class. Wolk Decl. ¶¶ 4-5, 7.
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21 Indeed, the recovery is an excellent result, given Defendants’ expert’s damage
22 calculations as well as the risks and delays posed with continued litigation and possible appeals.
23 *Id.* ¶¶ 7-9. Class Counsel’s request for fees and costs of \$57,587.69, which is substantially less
24 than their lodestar, is therefore reasonable.
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1 Finally, Settlement Class Members were explicitly advised of the requested fee and costs
2 award as set forth in the Notice of Settlement. *See* Islas Decl., Exs. A, B. None of the Settlement
3 Class Members objected to the award. Again, this supports granting the requested fee award.

4 VI. CONCLUSION

5 For the above reasons, Plaintiff respectfully requests the Court grant final approval of the
6 Settlement, including the award to Plaintiffs, Simpluris, and Class Counsel, and enter the
7 Proposed Order Granting Final Approval.
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9 VII. LCR CERTIFICATION

10 I certify that this memorandum contains not more than 4,200 words, in compliance with
11 the Local Civil Rules.
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14 RESPECTFULLY SUBMITTED AND DATED this 4th day of November, 2022.

15 REKHI & WOLK, P.S.

16 By: /s/ Gregory A. Wolk, WSBA #28946

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