

1 UNITED STATES DISTRICT COURT
2 NORTHERN DISTRICT OF CALIFORNIA
3 SAN FRANCISCO DIVISION

4 JOSH HAZEL, on behalf of himself, the
5 general public, and all others similarly
6 situated,,

6 Plaintiffs,

7 v.

8 CONNECTICUT GENERAL LIFE
9 INSURANCE COMPANY, a Connecticut
10 corporation, and DOES 1 through 10,
11 inclusive,,

11 Defendants.

Case No. 08-cv-03552-MMC

**NOTICE OF (1) PROPOSED FLSA CLASS
ACTION SETTLEMENT AND (2) FINAL
SETTLEMENT APPROVAL HEARING**

12 **PLEASE READ THIS NOTICE CAREFULLY**

13 **YOU MAY BE ENTITLED TO MONEY FROM THIS SETTLEMENT**

14 **This Notice, which has been approved by the United States District Court for the**
15 **Northern District of California (the "Court"), is to notify FLSA Class Members that a**
16 **proposed settlement of up to \$3.3 million (the "Settlement") has been reached between the**
17 **parties in the class action entitled *Hazel v. Connecticut General Life Insurance Company, Inc.***
18 **The Court has granted preliminary approval to the Settlement, and it has conditionally certified the**
19 **Class for settlement purposes only.**

20 **Important Dates**

- 21 • If you wish to participate in the settlement described in this notice, and obtain a portion
22 of the settlement proceeds, you must complete and submit a Claim Form, postmarked or
23 received by the Claims Administrator on or before October 5, 2009, or else you will not
24 receive any money from the settlement.
25 • If you wish to object to the settlement, your objection must be postmarked or received by
26 the Claims Administrator on or before September 21, 2009, or else your objections will
27 be deemed waived.

26 All claim forms and objections must be postmarked or received by the Claims Administrator,
27 Simpluris, Inc., at the address below, by the applicable deadline:
28

1 *Hazel v. CGLIC Class Action Settlement*
2 *Simpluris, Inc.*
3 3176 Pullman Street, Suite 123
4 Costa Mesa, CA 92626
5 Tel: 888-654-1269

6 Pursuant to the order of the Court entered on July 17, 2009, YOU ARE HEREBY
7 NOTIFIED AS FOLLOWS:

8 **1. SUMMARY OF THE SETTLEMENT AND YOUR RIGHTS**

9 § 1.a. What Is a Class Action? A class action is a lawsuit in which the claims and
10 rights of many similarly situated people (“Class Members”) are decided in a single court proceeding.
11 One or more representative plaintiffs (“Class Representatives”) file a lawsuit asserting claims on
12 behalf of all the class members.

13 § 1.b. The Class Definition. You were sent this notice because the records of
14 Connecticut General Life Insurance Company (“CGLIC”) show that you are a Member of the FLSA
15 Class. The FLSA Class includes all hourly employees employed by CGLIC in states other than
16 California during the period June 13, 2006 to July 10, 2009, who were required to report to work,
17 start up their computer, and log in, before being allowed to clock into an electronic timekeeping
18 system, and were required to shut down their computer, after clocking out of the electronic
19 timekeeping system, and who were not compensated for such “log in”, “boot up” and “shut down”
20 time (referred to herein as “preliminary” and “postliminary” time). Members of the FLSA Class
21 who timely submit a valid claim form pursuant to the procedure described in § 4 shall become
22 members of the FLSA Settlement Class.

23 The parties have also agreed to the creation of a California Class, which consists of
24 those hourly employees employed by CGLIC within California during the period June 13, 2004 to
25 July 10, 2009, who were required to report to work, start up their computer, and log in, before being
26 allowed to clock into an electronic timekeeping system, and were required to shut down their
27 computer, after clocking out of the electronic timekeeping system, and who were not compensated
28 for such preliminary and postliminary time. Members of the California Class who fail to submit a
valid request to opt out of participating in the Settlement, following the procedure described in the
Notice they will be receiving, shall become members of the California Settlement Class.

1 The FLSA Settlement Class and the California Settlement Class are jointly referred to
2 herein as “the Settlement Classes”.

3 § 1.c. Options and Dates. As a member of the FLSA Class, you have two options:

4 (1) To receive a payment under the Settlement, you must complete a Claim Form (which
5 is enclosed with this Notice) and submit it to the Claims Administrator by first-class mail,
6 postmarked by October 5, 2009, or deliver it to the Claims Administrator by that date, following the
7 procedure described in § 4.a. If you do not do this, you will no longer be an FLSA Class Member –
8 and therefore will receive no money under this Settlement – and you will not release your claims,
9 which means that you will be able to bring a separate lawsuit on your own for these claims.

10 (2) You may object to the Settlement in writing, postmarked or delivered by September
11 21, 2009, following the procedure described in § 8.

12 **2. BACKGROUND OF THE CASE**

13 § 2.a. The Claims at Issue. On June 13, 2008, plaintiff Josh Hazel (“Plaintiff”) filed
14 a class action complaint in Alameda County Superior Court, which Defendant CGLIC subsequently
15 removed to this Court. Plaintiffs and the other members of the California and FLSA Classes use an
16 electronic timekeeping system called OMD which they can only access through their computers. In
17 the lawsuit, Plaintiff alleged that CGLIC failed to pay him and the members of the California and
18 FLSA Classes wages for the time they spent booting up their computers at the outset of each
19 workday (before they have logged into the OMD timekeeping system) and the time they spend
20 shutting down their computers at the end of each workday (after they have logged out of the OMD
21 timekeeping system). Plaintiff sought compensation due, including straight time and overtime,
22 under the Fair Labor Standards Act (“FLSA”), 29 U.S.C. § 201 *et seq.*, and California wage-and-
23 hour laws. Plaintiff further alleged that CGLIC failed to provide him and the other members of the
24 California Class with correctly itemized wage statements. Plaintiff further alleged that by
25 committing the unlawful acts alleged in their complaint, CGLIC engaged in unfair competition in
26 violation of California Business and Professions Code section 17200 *et seq.*

27 § 2.b. CGLIC’s Denial of Liability. CGLIC denies all of Plaintiff’s allegations.
28 Specifically, CGLIC denies that Plaintiff or the Proposed Settlement Classes are owed any additional

1 compensation for the time they spent booting up their computers before logging into OMD or for the
2 time they spent booting down their computers after logging out of OMD. CGLIC further denies that
3 it failed to provide Plaintiffs or the California Class with correctly itemized wage statements or
4 committed any unlawful acts that constitute unfair competition. CGLIC further denies that a class
5 can be properly certified in this case.

6 **3. SUMMARY OF THE SETTLEMENT**

7 § 3.a. The Mediation. The parties participated in extensive settlement discussions,
8 including a full day of mediation before a neutral third party, a respected mediator in San Francisco.
9 At the mediation, the parties reached the Settlement which provides for total payments of up to \$3.3
10 million dollars. The Settlement represents a compromise regarding disputed claims, considering the
11 risks and uncertainties of continued litigation. Plaintiff's counsel has determined that the Settlement
12 is fair, reasonable, and adequate and is in the best interests of the members of the Settlement Classes.

13 § 3.b. The Settlement Agreement and the Court's Final Approval Hearing. The
14 parties have presented the Settlement to the Court for its review. The Court has granted preliminary
15 approval to the Settlement. As described in this Notice, the Court will hold a hearing on November
16 20, 2009 to determine whether to grant final approval to the Settlement. Only after the Settlement is
17 granted final approval will money be paid to California or FLSA Class Members under the
18 Settlement.

19 § 3.c. How the Settlement Funds Will Be Distributed. Under the Settlement,
20 CGLIC will pay up to \$3.3 million. These settlement funds will be used to pay (1) Class
21 Representative Payments to Plaintiff to compensate Plaintiff for his services to the Settlement
22 Classes (see § 6 below), (2) Class Counsel's attorneys' fees and costs (see § 7 below) to compensate
23 Plaintiff's counsel for their services to the Settlement Classes, (3) the reasonable fees and expenses
24 of the Claims Administrator, (4) money to all California and FLSA Class Members who properly
25 submit Claim Forms (see § 4.a below), pursuant to the plan of allocation (see § 4.b below); and (5)
26 CGLIC's share of FICA, FUTA, and all other state and federal payroll taxes and deductions for the
27 payments made to the Settlement Class Members ("Employer Payroll Taxes"), to the extent that any
28 unclaimed portion of the \$3.3 million is insufficient to cover the Employer Payroll Taxes.

1 § 3.d. You Must File a Claim Form to Receive Money. In order to receive money
2 from the Settlement, you (an FLSA Class Member) must submit a Claim Form by the deadline set
3 under the Settlement (see § 4 below).

4 § 3.e. The Final Approval Hearing. The parties have submitted the Settlement to the
5 Court. The Court has granted preliminary approval of the Settlement. The Court will hold a hearing
6 on November 20, 2009, at 9:00 a.m., to determine whether to grant final approval to the Settlement
7 (see §10 below). Only after the Settlement is granted final approval can money be paid to FLSA or
8 California Class Members under the Settlement.

9 **4. HOW TO PARTICIPATE IN AND RECEIVE MONEY FROM THE SETTLEMENT**
10 **(COMPLETING AND SUBMITTING THE CLAIM FORM)**

11 § 4.a. Participating in the Settlement by Completing and Submitting the Claim
12 Form. If you want to receive money from the Settlement, you must choose to participate in the
13 Settlement by properly completing and submitting the Claim Form enclosed with this notice. Please
14 follow all instructions on the Claim Form, and send it via U.S. Mail, or professional or personal
15 delivery to the Claims Administrator at 3176 Pullman Street, Suite 123, Costa Mesa, CA 92626.
16 The Claim Form must be postmarked or received by October 5, 2009. If you need another Claim
17 Form, contact the Claims Administrator. **If you do not properly submit a Claim Form, you will**
18 **not receive any money from the Settlement.**

19 § 4.b. How Will My Settlement Share Be Calculated? CGLIC has agreed to pay up
20 to \$3,300,000 to settle this case. From that Maximum Gross Settlement Amount, the following
21 items shall be deducted: i) the Class Representative Payments (see § 6), (ii) a \$15,000 Private
22 Attorney General Act (“PAGA”) Payment that will be distributed 75% to the California Labor and
23 Workforce Development Agency and 25% to the eligible members of the California Class; (iii) Class
24 Counsel Attorneys’ Fees and Costs Payment (see § 7); (iv) and the Claims Administrator’s fees and
25 costs. The remainder is the “Maximum Settlement Distribution Amount”. The precise amount of
26 the Maximum Settlement Distribution Amount cannot be determined at this time but, if the Court
27 fixes the payments described above in the amounts requested by Plaintiff and if the Claims
28 Administrator’s expenses are as expected, the parties presently estimate that the total amount of

1 money paid to the class members (“Maximum Settlement Distribution Amount”) will be
2 approximately \$2,400,000.

3 From data provided by CGLIC, the Claims Administrator will calculate each
4 Claimant’s Settlement Share based on the total number of Compensable Days they were employed in
5 a Covered Position during the applicable Covered Period. Each weekday that a Claimant was
6 employed in a Covered Position during the applicable Covered Period will be counted as a
7 Compensable Day – without regard to whether or not the Claimant actively worked that day.
8 Covered Positions are those in which an hourly employee (in California for the California Class and
9 outside of California for the FLSA Class) was required to report to work, start up his or her
10 computer, and log in, before being allowed to clock into an electronic timekeeping system (OMD),
11 and was required to shut down the computer, after clocking out of OMD, and who were not
12 compensated for such time. The Covered Period for the FLSA Class is June 13, 2006 through July
13 10, 2009 and the Covered Period for the California Class is June 13, 2004 through July 10, 2009.

14 Specifically, each Claimant’s Settlement Share will be calculated as follows:

- 15 1. The total number of Compensable Days Employed by the California Class Members will
16 be added to the total number of Compensable Days Employed by the FLSA Class
17 Members. The sum of those two numbers shall be the “Total Compensable Days”.
- 18 2. The “Dollars Per Day” will be calculated by dividing the Total Compensable Days into
19 the Maximum Settlement Distribution Amount.
- 20 3. The Gross Settlement Amount allocated to each California and FLSA Class Member who
21 timely submits a valid Claim Form and who is eligible to receive a payment under the
22 Settlement will be calculated by multiplying the Dollars Per Day by the total
23 Compensable Days Employed by that Class Member.
- 24 4. From this Gross Settlement Amount, deductions/withholding will be made for the
25 employee’s share of payroll taxes (and all other applicable deductions or withholding
26 required by law or expressly authorized by the Settlement Class Member) and, to the
27 extent that any unclaimed portion of the Maximum Settlement Distribution Amount is
28 insufficient to cover them, for the Employer Payroll Taxes with the difference being the
Net Settlement Amount.
5. In addition to the Net Settlement Amount, those members of the California Class who
timely submit a valid Claim Form and who are eligible to receive a payment under this
Settlement shall receive an Allocated PAGA Payment. The Allocated PAGA Payment
for a California Settlement Class member will be calculated by dividing \$3,750 by the
total number of Compensable Days Employed by those California Class Members who

1 timely submit a valid Claim Form and then multiplying the quotient by the Claimant's
2 number of Compensable Days Employed.

3 As a member of the FLSA Class, your Settlement Share is equal to your Net
4 Settlement Amount. **Your Estimated Settlement Share is shown on your enclosed Claim Form.**
5 **This is the estimated (gross) amount of money that you will receive if you timely submit a valid**
6 **Claim Form.** This amount was calculated under the assumption that Court awards the Class
7 Representative Payments and the Class Counsel Attorneys' Fees and Costs Payment as requested
8 and that the Claims Administrator's fees and costs are as anticipated. Your actual Settlement Share
9 may be higher or lower.

10 § 4.c. What if the Information on My Claim Form is Incorrect? The information on
11 the Claim Form, and each Settlement Share, is based on CGLIC's official employment and payroll
12 records. The Claim Form enclosed with this Notice identifies each Covered Position in which you
13 were employed, the dates you held that position and the number of Compensable Days you were
14 Employed. If you believe that any of the information on the Claim form is incorrect, you must
15 follow the instructions in § 2 of the Claim Form, including providing the correct information and
16 enclosing supporting documentation. Challenges will be resolved by the Claims Administrator
17 without a hearing.

18 § 4.d. When Will My Share of the Settlement Be Distributed to Me? Within 30 days
19 after the Court's order granting final approval of the Settlement becomes final and non-appealable,
20 the Claims Administrator will mail Settlement Share checks to all Claimants who submitted valid
21 and timely Claim Forms. It is expected that checks will be mailed out sometime in January 2010,
22 but that date is subject to change. The Claims Administrator, working with Plaintiff's counsel and
23 CGLIC, will diligently attempt to ensure that all eligible Claimants receive their Settlement Shares.

24 § 4.e. Settlement Share Checks Not Cashed Within Six Months Will Be Forfeited.
25 If any Claimant who submitted a timely and valid Claim Form does not cash the check(s) for his or
26 her Settlement Share within six (6) months after issuance, he or she will not receive any proceeds
27
28

1 under the Settlement, and the Settlement Share proceeds represented by the check will be returned to
2 CGLIC.

3 § 4.f. Tax Consequences. Half of each Settlement Share is considered a settlement
4 of claims for wages subject to Form W-2 reporting and therefore will be reduced by normal payroll
5 tax withholding and deductions. CGLIC's share of applicable payroll taxes (*i.e.*, the Employer
6 Payroll Taxes) shall be paid in the first instance from the unclaimed portion, if any, of the Maximum
7 Settlement Distribution Amount. In the unlikely event that the unclaimed portion of the Maximum
8 Settlement Distribution Amount is insufficient to cover the entire amount of the Employer Payroll
9 Taxes, the uncovered portion shall be deducted from the Maximum Gross Settlement Amount,
10 which will have the effect of reducing your Individual Settlement Payment.

11 The other half of each Settlement Share is considered a settlement of claims for
12 interest and penalties subject to Form 1099 reporting. Claimants will be responsible for all taxes
13 owed based on this half of the Settlement Share.

14 You should consult your tax advisor regarding any questions about the tax
15 consequences of the treatment of your Settlement Share.

16 § 4.g. What Happens If Some Class Members Do Not Submit Claim Forms?
17 CGLIC is only obligated to pay the claims of those individuals who timely submit valid Claim
18 Forms. Thus, if not all the FLSA and California Class Members submit Claim Forms, CGLIC will
19 pay less than the Maximum Gross Settlement Amount.

20 **5. RELEASE OF CLAIMS**

21 Under the Settlement, as of the date the Final Approval Order is entered by the Court,
22 each and every FLSA Class Member who timely and validly requests to participate in the Settlement
23 releases CGLIC and its former and current parents, subsidiaries, and affiliated corporations, its
24 officers, directors, employees, partners, shareholders, and agents, and any other insurers, successors,
25 assigns, and legal representatives (the "Released Parties"), from any and all claims, charges,
26 complaints, liens, demands, causes of action, obligations, damages and liabilities, known or
27 unknown, suspected or unsuspected, that the FLSA Class Member had, now has, or may hereafter
28 claim to have against the Released Parties that arise from or relate in any way to the time spent

1 booting their computer up or down, regardless of whether such wage-and-hour related claims arise
2 under federal, state and/or local law, statute, ordinance, regulation, common law, or other source of
3 law (“the Released Claims”). The Released Claims specifically include, but are not limited to, those
4 arising from or dependent upon alleged violations of the Fair Labor Standards Act, 29 U.S.C. §201,
5 *et seq.*, the Portal to Portal Act of 1947, 29 U.S.C. §251, *et seq.*, the California Labor Code
6 (including Sections 201, 203, 226, 510, 1194, 1194.2, 1197 and 1198), the applicable Wage Orders
7 of California’s Industrial Welfare Commission, the California Business and Professions Code, the
8 California Private Attorney General Act (“PAGA”), and/or the law of any other state in which the
9 FLSA Class Member was employed by CGLIC.

10 **Waiver of California Civil Code Section 1542:** With respect to the subject matter of
11 their respective Released Claims, FLSA Class Members expressly waive and relinquish the
12 provisions, rights and benefits of section 1542 of the California Civil Code and any analogous law,
13 statute, or rule. Section 1542 states:

14 A general release does not extend to claims which the creditor does not know or
15 suspect to exist in his or her favor at the time of executing the release, which if
16 known by him or her must have materially affected his or her settlement with the
debtor.

17 **6. CLASS REPRESENTATIVE PAYMENTS**

18 Plaintiffs will request that the Court approve a Class Representative Payment of
19 \$10,000 for Plaintiff. This amount is in recognition of the service performed by Plaintiff in
20 representing the Classes and advancing the litigation. This payment will be paid in addition to
21 Plaintiff’s Settlement Share as a Class Member. The Class Representative Payment will be paid
22 only if the Court approves them.

23 **7. CLASS COUNSEL ATTORNEYS’ FEES AND COSTS PAYMENT**

24 Plaintiff’s counsel will request that the Court approve a payment of 25% of the
25 Maximum Gross Settlement Amount (\$825,000) to compensate them for their time and effort in
26 bringing this case, and that it award them an amount up to \$10,000 to reimburse them for the out-of-
27 pocket costs they have incurred during the litigation. These amounts, if awarded, will be deducted
28 from the Maximum Gross Settlement Amount. Plaintiff’s counsel believe the attorneys’ fees and

1 costs requested are fair and reasonable. These fee and cost payments will be paid only if the Court
2 approves them.

3 **8. HOW TO OBJECT TO THE SETTLEMENT (IF DESIRED)**

4 If you wish, you may object to the Settlement by submitting a written notice of
5 objection. To be valid and effective, any objections must be postmarked or received by the Claims
6 Administrator by September 21, 2009. The objection need not be in any specific form; a short and
7 simple statement of your objection is sufficient. You may be represented by your own attorney, but
8 you do not have to be to object. If you comment through an attorney, you will be solely responsible
9 for the fees and costs of your own attorney. If you wish to present your objection at the Final
10 Approval Hearing scheduled for November 20, 2009 at 9:00 a.m., you must state your intention to
11 do so in your written objection.

12 If you object to the Settlement, but wish to receive your individual settlement
13 payment if the Settlement is approved, you must comply with the Claim Form submission
14 requirements described in § 4. If the Court approves the Settlement despite any objections, and you
15 have not properly submitted a Claim Form, you will not receive any money from the Settlement,
16 even if you submitted an objection.

17 **9. HOW TO ELECT NOT TO PARTICIPATE IN THE SETTLEMENT (IF DESIRED)**

18 As an FLSA Class Member, you must affirmatively opt to participate in the
19 Settlement so, by failing to take the actions described in § 4 you will exclude yourself from the
20 Settlement. If you are excluded from the Settlement, you will not receive any money from the
21 Settlement, will not be bound by the Settlement, including its release of claims, and will be free to
22 pursue your own claim against CGLIC (at your own expense).

23 **10. FINAL SETTLEMENT APPROVAL HEARING**

24 The Court will hold a final approval hearing on November 20, 2009, at 9:00 a.m., in
25 Courtroom 7 of the Court, located at 450 Golden Gate Avenue, San Francisco, CA 94102, before the
26 Honorable Maxine M. Chesney, to determine whether the Settlement should be finally approved as
27 fair, reasonable, and adequate. The Court will also be asked to approve Plaintiff's request for the
28 Class Representative Payments and Plaintiff's counsel's request for the Class Counsel Attorneys'

1 Fees and Costs Payment. The hearing may be postponed without further notice to the Class. **It is**
2 **not necessary for you to appear at this hearing.** You may appear at the hearing if you wish but if
3 you wish to object to the Settlement in person, you must have given notice of your objections against
4 the Settlement under the procedures set forth in § 8.

5 **11. OTHER INFORMATION**

6 § 11.a. No Cost to You. The Settlement does not require you to pay money out of
7 pocket. However, you are responsible for all taxes owed on your paid Settlement Shares.

8 § 11.b. Tax Advice Caveat. Any perceived tax advice in this Notice was not intended
9 or written to be used, and it cannot be used by any recipient, for the purpose of avoiding any tax
10 penalties that may be imposed on any person. This Notice imposes no limitation on the disclosure of
11 the tax treatment or tax structure of any transaction. Plaintiff's counsel cannot give you tax advice.

12 § 11.c. This Notice Provides Only a Summary. This Notice provides only a summary
13 of the basic terms of the Settlement. For the precise terms and conditions of the Settlement, you are
14 referred to the detailed Joint Stipulation of Class Settlement and Class Settlement Agreement and
15 Release, which is on file with the Clerk of the Court. The pleadings and other records in this
16 litigation, including the Settlement, may be examined at any time during regular business hours with
17 the Clerk of Court, 450 Golden Gate Avenue, San Francisco, CA 94102, or online on through the
18 Public Access to Court Electronic Resources system, known as "PACER," at
19 <http://ecf.cand.uscourts.gov>. You also may contact Plaintiffs' counsel at the numbers listed below.

20 **Please do not telephone the court or CGLIC's counsel for information regarding this**
21 **Settlement or the claim process.**

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1 § 11.d. Questions. If you have questions, please feel free to contact the Claims
2 Administrator at (888) 654-1269. You can also check the website for this Class Action:
3 <http://cglic.simpluris.net/>. If you would like to speak with an attorney, please contact Class Counsel
4 (the attorneys who represent the Class):

5
6 ERIC M. EPSTEIN
Eric M. Epstein, APC
7 Tel: 310-552-5366
E-mail: EMEpstein@aol.com

8
9 WALTER HAINES
United Employees Law Group, PC
10 Tel: 877-696-8378

11 MARK R. THIERMAN
Thierman Law Firm
12 Tel: 775-284-1500
13 E-mail: laborlawyer@pacbell.net

14 **12. COURT APPROVAL**

15 Although the Court has reviewed the proposed Settlement, no decision has been, or
16 will be, reached by the Court until the Final Approval Hearing on November 20, 2009. This Notice
17 does not indicate that the Court has approved the Settlement.