

1 UNITED STATES DISTRICT COURT
2 DISTRICT OF NEVADA

3 ALICE SINANYAN, an individual; JAMES )
4 KOURY, an individual and trustee of the )
5 Koury Family Trust; and SEHAK TUNA, an )
6 individual, on behalf of themselves and others )
7 similarly situated, )

Case No.: 2:15-cv-00225-GMN-VCF

ORDER

8 Plaintiffs, )
9 vs. )

10 LUXURY SUITES INTERNATIONAL, LLC, )
11 a Nevada limited liability company; RE/MAX )
12 PROPERTIES, LLC, a Nevada limited liability )
13 company; JETLIVING HOTELS, LLC, a )
14 Nevada limited liability company; and DOES 1 )
15 through 100, inclusive, )

16 Defendants. )

17 This action involves claims brought by Alice Sinanyan ("Plaintiff" or "Sinanyan"),
18 individually and on behalf of a putative class of approximately 110 condominium owners,
19 against property rental manager JetLiving Hotels, LLC ("JetLiving").<sup>1</sup> Plaintiff alleges that
20 JetLiving violated its contractual, statutory, and common law duties by failing to disclose its
21 collection of a "resort fee" from rental guests, and the parties have now reached a settlement.
22 Pending before the Court is the Second Renewed Motion for an Order, (ECF No. 111), filed by
23 both parties requesting that the Court grant provisional approval of the proposed settlement
24 agreement and preliminarily certify Plaintiff's proposed class action for purposes of settlement.

25 <sup>1</sup> There are also two other named plaintiffs—James Koury and Sehak Tuna—who are seeking to represent a class
against Defendant Luxury Suites International, LLC ("LSI"). Plaintiff is also seeking to represent the class
against LSI and Defendant Jab Affiliates, LLC ("Jab"). Reference to these plaintiffs and codefendants is omitted
because the instant Motion only concerns allegations with respect to Plaintiff and JetLiving.

1 For the reasons stated herein, the Motion is **GRANTED**.

2 **I. BACKGROUND**

3 On February 9, 2015, Plaintiff filed the instant action alleging various state law  
4 violations on behalf of a putative class comprising all condominium owners at the Signature at  
5 MGM Grand (“The Signature”) who contracted with JetLiving to manage the rental of their  
6 condominium units after January 5, 2009 (“Putative Class”). (Compl. ¶ 60, ECF No. 1-1).  
7 Specifically, Plaintiff alleges that pursuant to the JetLiving Rental Agreement, members of the  
8 Putative Class were entitled to 65% of a “resort fee” collected by JetLiving from rental guests.  
9 (Id. ¶ 55). According to Plaintiff, not only did JetLiving retain all resort fees, JetLiving also  
10 failed to disclose that it was collecting the fee. (Id. ¶¶ 52, 54, 55). Based on these allegations,  
11 the Complaint alleges the following causes of action against JetLiving: (1) breach of contract;  
12 (2) breach of implied covenant of good faith and fair dealing; (3) intentional misrepresentation;  
13 (4) fraudulent concealment; (5) negligent misrepresentation; (6) violation of Nevada Revised  
14 Statutes § 41.600; (7) breach of fiduciary duty; and (8) unjust enrichment.

15 On January 14, 2016, the parties reached a tentative settlement through mediation and  
16 subsequently submitted a proposed settlement (“Proposed Settlement”) now before the Court.  
17 (See Second Renewed Mot. for Order 4:13–16, ECF No. 111). The total settlement amount is  
18 \$250,000 (“Settlement Amount”), which the parties propose allocating in the following  
19 manner: (1) “attorney’s fees not to exceed the amount of one hundred thousand dollars  
20 (\$100,000.00)”; (2) “costs not to exceed ten thousand dollars (\$10,000.00)”; (3) “an incentive  
21 payment in the amount of ten thousand dollars (\$10,000.00) for plaintiff Alice Sinanyan”; (4)  
22 “administrative expenses in the amount of no greater than nine thousand dollars (\$9,000.00)”;  
23 and (5) an allocation of the remaining \$121,000 “on a pro rata basis based on the total resort  
24 fees collected by JetLiving from the rental of the individual Putative Class member’s unit  
25 divided by the total resort fees collected by JetLiving from the rental of all non-opt out Putative

1 Class members' units." (Id. 6:24–7:5, 7:12–16). The Proposed Settlement provides for notice  
2 by direct mail to all Putative Class members identified through JetLiving's business records.  
3 (Id. 24:2–5).

4 On February 24, 2016, the parties filed their first Joint Motion for an Order. (See Mot.  
5 for Order, ECF No. 69). The Motion requested that the Court adopt the parties' proposed order  
6 (1) granting preliminary approval of the proposed class action Proposed Settlement; (2)  
7 provisionally certifying the Putative Class; (3) approving the proposed method and form of  
8 notice; and (4) scheduling a final approval hearing. (See *id.*). On April 18, 2016, the Court  
9 denied the parties' Motion because "Plaintiff [had] not provided a basis for concluding that the  
10 proposed fee award [was] reasonable." (Order 12:11–12, ECF No. 83).

11 In light of the Court's Order, the parties filed a Renewed Joint Motion for an Order. (See  
12 Renewed Mot. for Order, ECF No. 88). The Court again denied the parties request, finding that  
13 Plaintiff "failed to justify why Plaintiff's counsel [Wolf, Rifkin, Shapiro, Schulman & Rabkin,  
14 LLP] ('Counsel') is entitled to 40% of the Settlement Amount under either [of the two methods  
15 approved by the Ninth Circuit for calculating a reasonable attorneys' fee award]." (Order 4:23–  
16 5:2, ECF No. 105). In this Second Joint Motion for an Order, the parties repeat their request  
17 for preliminary approval of the settlement agreement and class certification. (See Second  
18 Renewed Mot. for Order, ECF No. 111).

## 19 **II. LEGAL STANDARD**

20 The Ninth Circuit has declared that a strong judicial policy favors settlement of class  
21 actions. *Class Plaintiffs v. City of Seattle*, 955 F.2d 1268, 1276 (9th Cir. 1992). However, a  
22 class action may not be settled without court approval. Fed. R. Civ. P. 23(e). When the parties  
23 to a putative class action reach a settlement agreement prior to class certification, "courts must  
24 peruse the proposed compromise to ratify both the propriety of the certification and the fairness  
25 of the settlement." *Staton v. Boeing Co.*, 327 F.3d 938, 952 (9th Cir. 2003). At the preliminary

1 stage, the court must first assess whether a class exists. *Id.* (citing *Amchem Prods. Inc. v.*  
2 *Windsor*, 521 U.S. 591, 620 (1997)).

3         Second, the court must determine whether the proposed settlement “is fundamentally  
4 fair, adequate, and reasonable.” *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1026 (9th Cir. 1998).  
5 Pre-class certification settlements “must withstand an even higher level of scrutiny for evidence  
6 of collusion or other conflicts of interest than is ordinarily required under Rule 23(e) before  
7 securing the court’s approval as fair.” *In re Bluetooth Headset Prods. Liab. Litig.*, 654 F.3d  
8 935, 946 (9th Cir. 2011). This heightened scrutiny “ensure[s] that class representatives and  
9 their counsel do not secure a disproportionate benefit ‘at the expense of the unnamed plaintiffs  
10 who class counsel had a duty to represent.’” *Lane v. Facebook, Inc.*, 696 F.3d 811, 819 (9th  
11 Cir. 2012) (quoting *Hanlon*, 150 F.3d at 1027). As such, courts must evaluate the settlement  
12 for evidence of collusion. *Id.*

13         If the court preliminarily certifies the class and finds the proposed settlement fair to its  
14 members, the court schedules a fairness hearing where it will make a final determination as to  
15 the fairness of the class settlement. Finally, the court must “direct notice in a reasonable  
16 manner to all class members who would be bound by the proposal.” Fed. R. Civ. P. 23(e)(1).

### 17 **III. DISCUSSION**

18         The Court has already analyzed this case under Rule 23’s certification requirements, (see  
19 *Order*, ECF No. 83), and it need not repeat that analysis here. Instead, the success of the  
20 pending motion depends on the second step of the preliminary certification analysis—whether  
21 Plaintiff has demonstrated that the Proposed Settlement “is fundamentally fair, adequate, and  
22 reasonable.” See *Hanlon*, 150 F.3d at 1026. On this point, the Court previously expressed  
23 concern that Counsel’s request for a fee award of 40% was unsupported under either method  
24 approved by the Ninth Circuit for calculating a reasonable attorneys’ fee award—the  
25 percentage method and the lodestar method. See *Bluetooth*, 654 F.3d at 941.

1 Under the percentage method, the Court noted that “Plaintiff has not shown unusual  
2 circumstances justifying an upward deviation from the 25% common fund benchmark.” (Order  
3 7:3–4, ECF No. 105). With regard to the lodestar method, the Court found that  
4 “[d]ocumentation of Counsel’s hourly rate and hours expended is insufficient allow a lodestar  
5 cross-check.” (Id. 9:14–15). Plaintiff’s Second Renewed Motion remedies these defects by  
6 “reduc[ing] their request for attorney’s fees to \$62,500.00, or twenty-five percent (25%) of the  
7 common fund.” (Second Renewed Mot. for Order. 21:13–14, ECF No. 111). Counsel’s  
8 proposed award aligns with the Ninth Circuit’s “benchmark” of twenty-five percent, and the  
9 Court therefore need not conduct a cross check with the loadstar amount. See Powers v. Eichen,  
10 229 F.3d 1249, 1256–57 (9th Cir. 2000) (“[T]wenty-five percent of the recovery [is] a  
11 ‘benchmark’ for attorneys’ fees calculations under the percentage-of-recovery approach.”).

12 In addition, the Court finds that the notice and exclusion form proposed by Plaintiff  
13 meets the requirements of Federal Civil Procedure Rule 23(c)(2)(B) and that the proposed mail  
14 delivery is also appropriate in these circumstances. (See Exs. B, C to Mariam Decl., ECF Nos.  
15 113-2, 113-3). Specifically, Plaintiff’s proposed notice adequately describes the terms of the  
16 settlement, informs the class of the proposed award, provides information concerning the time,  
17 place, and date of the final approval hearing, and informs absent class members that they may  
18 enter an appearance through counsel. See Churchill Vill., LLC v. Gen. Elec., 561 F.3d 566, 575  
19 (9th Cir. 2004) (noting that a class action settlement notice “is satisfactory if it generally  
20 describes the terms of the settlement in sufficient detail to alert those with adverse viewpoints  
21 to investigate and to come forward and be heard”).

22 The Court therefore **GRANTS** that parties’ request for preliminary class certification.  
23 However, the Court cautions Plaintiff with regard to her proposed incentive award of  
24 \$10,000.00. During the final fairness review, the Court will determine whether the requested  
25 incentive award is appropriate in light of “the proportion of the payments relative to the

1 settlement amount,” “the size of the payment,” “the actions the plaintiff has taken to protect the  
2 interests of the class, the degree to which the class has benefitted from those actions,” and “the  
3 amount of time and effort the plaintiff expended in pursuing the litigation.” Staton, 327 F.3d at  
4 952; see also Deatruck v. Securitas Sec. Servs. USA, Inc., No. 13-CV-05016-JST, 2016 WL  
5 5394016, at \*8 (N.D. Cal. Sept. 27, 2016) (finding that while \$5,000 was a presumptively  
6 reasonable incentive award in the Ninth Circuit, such an award in that case was not warranted  
7 because plaintiff did not offer details regarding the actions the plaintiff had taken to protect the  
8 interests of the class). Without satisfactory elaboration on these points, the Court will reduce  
9 Plaintiff’s incentive award at the final fairness hearing to a reasonable amount. See, e.g., Wolph  
10 v. Acer Am. Corp., No. C 09-01314 JSW, 2013 WL 5718440, at \*6 (N.D. Cal. Oct. 21, 2013).

11 **IV. CONCLUSION**

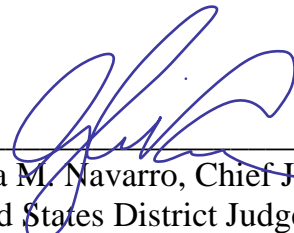
12 **IT IS HEREBY ORDERED** that the parties’ Renewed Motion for an Order, (ECF No.  
13 111), is **GRANTED** as follows:

- 14 1. Preliminary class certification is approved;
- 15 2. Plaintiff’s Counsel are appointed as Class Counsel;
- 16 3. Sinanyan is appointed as Class Representative;
- 17 4. CPT Group, Inc., is approved as Claims Administrator;
- 18 5. The Settlement Agreement is approved on a preliminary basis as fair and  
19 adequate;
- 20 6. Within thirty days from the date this Order is filed, Defendant shall provide the  
21 Claims Administrator with the name, last known home address, home telephone  
22 number, and email address pertaining to each class member;
- 23 7. Within thirty days after receipt by the Claims Administrator of the putative class  
24 members’ identifying information, the Claims Administrator shall mail the Class  
25 Notice, (Ex. B to Mariam Decl., ECF No. 113-2), and Exclusion Form, (ECF No.

1 C to Mariam Decl., ECF No. 113-3), (collectively, the “Class Notice Package”)  
2 by United States First Class Mail;

- 3 8. The deadline for class members to mail an Exclusion Form and/or mail any  
4 objection(s) to the Settlement Agreement is sixty days from the date the Claims  
5 Administrator mails the Class Notice Package;
- 6 9. The deadline for Class Counsel to file a motion for attorneys’ fees, costs, and  
7 incentive award to the Class Representative is November 13, 2017;
- 8 10. The deadline for Plaintiff to file a motion for final approval of class action  
9 settlement, as well as the Claims Administrator to file a declaration of due  
10 diligence and proof of mailing, is December 11, 2017;
- 11 11. A final fairness hearing shall take place on January 12, 2018, at 9:00 am in  
12 Courtroom 7C before Chief Judge Gloria Navarro. The matter of Class Counsel’s  
13 motion for attorneys’ fees, costs, and incentive awards to the Class  
14 Representative will be considered at the final fairness hearing.

15 **DATED** this 20 day of July, 2017.

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19 Gloria M. Navarro, Chief Judge  
20 United States District Judge  
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