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18 UNITED STATES DISTRICT COURT
19 CENTRAL DISTRICT OF CALIFORNIA
20 (WESTERN DIVISION – LOS ANGELES)

21 BRYAN SHIOSAKA, an individual,
22 and on behalf of all others similarly
23 situated,

24 Plaintiff,

25 v.

26 STATE FARM MUTUAL
27 AUTOMOBILE INSURANCE
28 COMPANY, an Illinois Corporation,
and DOES 1 through 50

Defendants

Case No.: CV 12 1268-CAS (CWx)

Honorable Christina A. Snyder

CLASS ACTION

**MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
PLAINTIFF'S MOTION FOR
CONDITIONAL CERTIFICATION
AND PRELIMINARY APPROVAL
OF CLASS ACTION
SETTLEMENT**

Date: July 1, 2013

Time: 10:00 a.m.

Dept.: 5

Action Filed: December 23, 2011

TABLE OF CONTENTS

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

I. INTRODUCTION 1

II. THE CLASS REPRESENTED 2

III. THE TWO-STEP APPROVAL PROCESS..... 2

IV. THE PRESUMPTION OF FAIRNESS..... 5

V. PROPOSED SHARE PER CLASS MEMBER 6

 1. Class Member Compensation 6

VI. LIMITED STANDING TO OBJECT TO PROPOSED SETTLEMENT12

VII. SETTLEMENT AGREEMENT AND ACCOMPANYING DOCUMENTS12

VIII. THE SETTLEMENT IS FAIR AND REASONABLE BASED UPON OBJECTIVE EVIDENCE13

IX. CONDITIONAL CERTIFICATION OF THE CLASS14

 A. Class Certification Is Appropriate in this Case.....14

 B. The Proposed Class is Ascertainable and Numerous15

 C. Common Issues of Law or Fact Predominate15

 D. Plaintiff’s Claims Are Typical of the Class Claims16

 E. Adequacy of Representation.....16

X. PROPOSED SCHEDULE OF SETTLEMENT PROCEEDINGS16

XI. ACTION REQUESTED AS PART OF THE MOTION FOR PRELIMINARY APPROVAL17

CONCLUSION17

TABLE OF AUTHORITIES

Treatises

Manual for Complex Litigation Second states at §30.44 (1985)..... 2
Newberg on Class Actions, 3rd Ed., 11.26..... 3, 5, 6, 12

State Cases

B.W.I. Custom Kitchen v. Owens-Illinois, Inc. (1987) 191 Cal.App.3d 134116
Classen v. Weller (1983) 145 Cal.App.3d 2716
Clothesrigger, Inc. V. GTE Corp., (1987) 191 Cal.App.3d 605.....15
Dunk v. Ford Motor Co. (1996) 48 C.A.4th 1794 4
Kullar v. Footlocker Retail Inc. 168 Cal. App 4th 116 4
Linder v. Thrifty Oil Co. (2000) 23 Cal. 4th 429.....14
Richmond v. Dart Industries (1981) 29 C3d 462.....14
Sav-On Drug Stores, Inc. v. Superior Court (2004) 34 Cal.4th 319.....14, 15
Stephens v. Montgomery Ward & Co., Inc. (1987) 193 Cal.App.3d 411.....15
Tidewater Marine Western, Inc. v. Bradshaw (1966) 14 Cal.4th 55715

Rules & Statutes

CCP §38214
 Civil Code §1542.....11
 IWC Wage Order 4-200115

Federal Cases

Gould v. Alleco, Inc., 883 F.2d 281, 284 (4th Cir. 1989)12
Hammon v. Barry, 752 F.Supp 1087 (D.D.C. 1990) 5
In re Armored Car Antitrust Litigation, 472 F.Supp 1357 (N.D. Ga. 1979), aff'd in part, rev'd in part in 645 F.2d 488 (5th Cir. 1981)..... 5
In re Chicken Antitrust Litigation, 560 F.Supp 957..... 5
In re School Asbestos Litigation, 921 F.2d 1330 (3rd Cir. 1990)12

1 Mars Steel Corp. v. Continental Illinois National Bank and Trust Co., 834 F.2d 677

2 5

3 Priddy v. Edelman, 883 F.2d 438, 447 (6th Cir. 1989) 5

4 Sommers v. Abraham Lincoln Federal Savings & Loan Association, 79 F.R.D. 571

5 (E.D. Pa. 1978)..... 5

6 Steinberg v. Carey, 470 F.Supp. 471 (S.D.N.Y. 1979) 5

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1 This Memorandum is submitted in support of the Plaintiff’s Motion for
2 Conditional Certification and Preliminary Approval of Class Action Settlement.
3 The proposed settlement before this Court will dispose of the entire action as to
4 Defendant State Farm Mutual Automobile Insurance Company. (hereinafter
5 referred to as “Defendant” or “State Farm”) except as to any Class Members who
6 elect to exclude themselves (“opt-out”) from the settlement Class.

7 **I. INTRODUCTION**

8
9 On December 23, 2011, the Complaint in this action was filed in the
10 Superior Court of the State of California, in and for the County of Los Angeles,
11 captioned as Bryan Shiosaka v. State Farm Mutual Automobile Insurance
12 Company, Case No. BC475824. On or about February 14, 2012, Defendant
13 removed the matter to federal court. Thereafter the Plaintiff filed a First Amended
14 Complaint on May 2, 2013 pursuant to a stipulation and order. (**Antonelli Decl.**
15 ¶8) Plaintiff alleges that he and other hourly non-exempt Automotive Estimatics
16 Inspector (“AEI”) employees employed by State Farm in California have not been
17 paid all wages due, including but not limited to overtime due to various theories.

18 The parties served initial discovery and thereafter agreed to an informal
19 exchange of information in preparation for a formal mediation with Barry
20 Winograd, Esq. Plaintiff demanded documents in order to investigate a class wide
21 certification, liability, merits, and damage analysis. Defendant provided
22 voluminous documents, including time records, payroll records, personnel file, and
23 defendant’s policies and procedures. Plaintiff hired an expert to review the data
24 and compile damage calculations. In preparation for that mediation, Plaintiff
25 prepared a thorough exposure analysis. The mediation occurred on April 10, 2013
26 and settled.

27
28 //

1 The Class Representative and Class Counsel have concluded, after taking
2 into account sharply disputed factual and legal issues involved in this litigation, the
3 risks attending further prosecution, and the substantial benefits received and to be
4 received pursuant to the compromise and settlement of the litigation, that
5 settlement on the terms hereinafter set forth is in the best interest of the class
6 members.

7 State Farm and Defense Counsel have concluded, after taking into account
8 the sharply disputed factual and legal issues involved in the litigation, the risks
9 attending further defense, the substantial expense and burden of protracted
10 litigation, and their desire to put the controversy to rest, that Settlement on the
11 terms hereinafter set forth is in the best interest of Defendants
12

13 **II.**
THE CLASS REPRESENTED

14 ("Employees at Issue")
15

16 **All current employees who worked for Defendant in**
17 **California as an hourly non-exempt AEI from December 23,**
2007 to May 31, 2013.

18 **III.**
THE TWO-STEP APPROVAL PROCESS

19 Any settlement of class litigation must be reviewed and approved by the
20 Court. This is done in two steps: (1) an early (preliminary) review by the trial
21 court, and (2) a final review after notice has been distributed to the Class Members
22 for their comment or objections. The Manual for Complex Litigation Second states
23 at §30.44 (1985),
24

25 A two-step process is followed when considering class settlements ...
26 if the proposed settlement appears to be the product of serious,
27 informed, non-collusive negotiations, has no obvious deficiencies,
28 does not improperly grant preferential treatment to Class
Representatives or segments of the class, and falls within the range of
possible approval, then the court should direct that notice be given to
the Class Members of a formal fairness hearing, at which evidence
may be presented in support of and in opposition to the settlement.

1 Thus, the preliminary approval of the trial court is simply a conditional
2 finding that the settlement appears to be within the range of acceptable settlements.
3 As Professor Newberg comments, “The strength of the findings made by a judge at
4 a preliminary hearing or conference concerning a tentative settlement proposal
5 may vary. The court may find that the settlement proposal contains some merit, is
6 within the range of reasonableness required for a settlement offer, or is
7 presumptively valid subject only to any objections that may be raised at a final
8 hearing.” Newberg on Class Actions, 3rd Ed., 11.26.
9

10 The procedures for submission of a proposed settlement for preliminary
11 approval are discussed at Newberg on Class Actions, 3rd Ed., §11.24 – 11.26.
12 Newberg observes at §11.24:

13 When the Parties to an action reach a monetary settlement, they will
14 usually prepare and execute a joint stipulation of settlement, which is
15 submitted to the court for preliminary approval. The stipulation should
16 set forth the central terms of the agreement, including but not limited
17 to, the amount of the settlement, form of payment, manner of
18 determining the effective date of settlement, and any recapture clause.

18 While the details of the recovery for each Class Member are set forth in the
19 proposed Settlement Agreement filed concurrently herewith and attached to the
20 Declaration of Joseph Antonelli in support of preliminary approval, the settlement
21 for each participating Class Member is fair, reasonable, and adequate, given the
22 inherent risk of litigation, the risk relative to class certification, and the costs of
23 litigation. (**Declaration of Joseph Antonelli ¶9**)

24 To prevent fraud, collusion, or unfairness to the class, the settlement or
25 dismissal of a class action requires court approval. In order to protect those class
26 members, including the named plaintiffs, whose rights may not have been given
27 due attention by the negotiating parties, the court must determine whether the
28 settlement is fair, adequate, and reasonable. (Dunk v. Ford Motor Co. (1996) 48

1 C.A.4th 1794.)

2 While the details of the recovery for each Class Member are set forth in the
3 proposed Settlement Agreement attached to the Declaration of Joseph Antonelli in
4 Support of Preliminary Approval as **Exhibit 1**, the settlement for each participating
5 Class Member is fair, reasonable, and adequate, given the inherent risk of
6 litigation, the risk relative to class certification, the costs of litigation, and the
7 financial condition of the defendant. (*See Decl. Antonelli ¶9*)

8 The Court must look to the admissible evidence regarding the following
9 factors specified in Dunk v. Ford Motor Co., supra at 1800-1801:

- 10 A. Strength of Plaintiff's case;
- 11 B. The risk, expense, complexity and likely duration of further
- 12 litigation;
- 13 C. The risk of maintaining class action status through trial;
- 14 D. With respect to the amount of the settlement, the number of
- 15 "cents on the dollar" or percentage of total damages the settlement
- 16 represents; and
- 17 E. Presence (or lack thereof) of a governmental participant.

18 Further the Court must take into consideration the Dunk factors and the
19 additional Kullar factor which is "the most important factor is the strength of the
20 case for the plaintiffs on the merits, balanced against the amount offered in
21 settlement." (Kullar v. Footlocker Retail Inc. 168 Cal. App 4th 116, 118) (*See*
Decl. Antonelli, ¶10)

22 In the case at bar, the settlement is for a maximum amount of \$5,000,000.00.
23 The settlement amount balanced against the merits of the Plaintiff's case is strong
24 as all factors listed supra are discussed in detail in the **Declaration of Joseph**
25 **Antonelli ¶10**, filed concurrently herewith.

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IV.**THE PRESUMPTION OF FAIRNESS**

Courts presume the absence of fraud or collusion in the negotiation of a settlement unless evidence to the contrary is offered. In short, there is a presumption that the negotiations were conducted in good faith. Newberg, §11.51; In re Chicken Antitrust Litigation, 560 F.Supp 957, 962 (N.D. Ga. 1980); Priddy v. Edelman, 883 F.2d 438, 447 (6th Cir. 1989); Mars Steel Corp. v. Continental Illinois National Bank and Trust Co., 834 F.2d 677, 682 (7th Cir. 1987). Courts do not substitute their judgment for that of the proponents, particularly where, as here, settlement has been reached with the participation of experienced counsel familiar with the litigation. Hammon v. Barry, 752 F.Supp 1087 (D.D.C. 1990); Steinberg v. Carey, 470 F.Supp. 471 (S.D.N.Y. 1979); In re Armored Car Antitrust Litigation, 472 F.Supp 1357 (N.D. Ga. 1979), aff'd in part, rev'd in part in 645 F.2d 488 (5th Cir. 1981); Sommers v. Abraham Lincoln Federal Savings & Loan Association, 79 F.R.D. 571 (E.D. Pa. 1978). This is especially true where, as here, a very experienced, highly regarded neutral mediator, one very familiar with this type of class action in its substance and procedure, presided over the mediation session.

While the recommendations of counsel proposing the settlement are not conclusive, the Court can properly take them into account, particularly where, as here, they have been involved in litigation for some period of time, appear to be competent, have experience with this type of litigation, and have obtained substantial evidence from the opposing party. See Newberg, §11.47. Here, the Plaintiff's firms involved in the case have a great deal of experience in wage and hour class action litigation. Joseph Antonelli, Janelle Carney of the Law Office of Joseph Antonelli have been approved as Class Counsel in over 100 wage hour class actions. A sampling of such cases is listed in the Antonelli Declaration.

1 Additionally, co-counsel, Conforti & Carras, APC are likewise experienced and
2 qualified (**Carras Decl. ¶¶3-4**) Plaintiff’s attorneys and the Class Representative
3 have been actively engaged in resolving this matter, hiring a damage expert at
4 considerable cost to assist with the analysis of the financial records produced by
5 Defendant.

6 **The settlement is for a total non-reversionary amount of \$5,000,000.00.**

7 Likewise, since there is no reversion to the Defendant, all putative Class Members
8 who do not request exclusion will share proportionately in the settlement based
9 upon their gross earnings during the class period as hourly non-exempt AEI
10 employees. Each class member will receive a claim form that details their
11 approximate settlement share and the amount of wages earned during the class
12 period.

13
14 The settlement amount is fair and reasonable based on a review of all
15 objective evidence. The party’s assessment of the matter is based on extensive
16 research before and during the litigation, and written discovery. The settlement
17 was further reached after consultation with a damage expert regarding potential
18 damage exposure. (**Decl Antonelli ¶12**)

19 **V. PROPOSED SHARE PER CLASS MEMBER**

20 **1. Class Member Compensation**

21 Each AEI Class Member who does not request exclusion will receive a
22 check based on the following formula:

- 23 a. Determine the Total Gross Wages, as defined by pertinent pay
24 codes as agreed upon by the Parties, paid to State Farm AEI Non-
25 Exempt Employees during the Class Period (“Total Gross Wages”)
26 as provided in the Class List and Data Report.
27
28

- 1 b. Determine the portion of the Total Gross Wages paid to State Farm
2 AEI Non-Exempt Employees during the Class Period (“Individual
3 Gross Wages”) as provided in the Class List and Data Report.
- 4 c. Use each State Farm AEI Non-Exempt Employee’s Individual
5 Gross Wages to determine what percent of the Total Gross Wages
6 was earned by each State Farm AEI Non-Exempt Employee during
7 the applicable Class Period (“Gross Wages Percentage Value”).
- 8 d. State Farm AEI Non-Exempt Employees will have the opportunity,
9 should they disagree with State Farm records, to provide
10 documentation and/or an explanation to show contrary evidence of
11 their Individual Gross Wages during the Class Period. If there is a
12 dispute or contrary evidence, the Claims Administrator will consult
13 with the Parties to determine whether an adjustment is warranted.
14 The Claims Administrator shall determine the eligibility for, and
15 the amounts of, any Individual Settlement Payments under the
16 terms of this Settlement Agreement. Any disputes (including those
17 concerning the Gross Individual Settlement Amount of each State
18 Farm AEI Non-Exempt Employees) not resolved by the Claims
19 Administrator concerning the administration of the Settlement will
20 be resolved by the Court, venue in United States District Court, Los
21 Angeles, California, under the laws of the State of California. Prior
22 to any such involvement of the Court, counsel for the Parties will
23 confer in good faith to resolve the dispute without the necessity of
24 involving the Court.
- 25 e. Each State Farm AEI Non-Exempt Employee will be entitled to a
26 percentage of the Net Settlement Amount that is equivalent to
27
28

1 his/her Gross Wages Percentage Value (“Gross Individual
2 Settlement Payment”), as described herein.

3 i State Farm shall provide AEI Non-Exempt Employees, on a
4 claims-made basis, monetary compensation in the maximum
5 total amount of Five Million Dollars (\$5,000,000), less amounts
6 Attorneys’ Fees and Costs Awards, Service Awards, Claims
7 Administration Costs, Employer’s Share of employment taxes
8 the Net Settlement Amount, the Seventy-Five Percent (75%) of
9 the \$15,000.00 Civil Penalty Payment, Twenty-Two Thousand
10 Five Hundred Dollars (\$11,250.00), and enhancement payment
11 to the Named Plaintiff (the “Net Settlement Amount” or
12 “NSA”). The monetary compensation shall be divided as
13 follows: (1) State Farm AEI Non-Exempt employees working
14 from December 23, 2007 to December 24, 2011 will receive
15 Ninety-Eight Percent (98%) of the NSA (Time Period 1); and
16 (2) State Farm AEI Non-Exempt Employees working from
17 December 25, 2011 to May 31, 2013 will receive Two Percent
18 (2%) of the NSA (Time Period 2.) Each State Farm AEI Non-
19 Exempt Employee will be entitled to a percentage of his/her
20 respective portion that is the equivalent of his/her Gross Wages
21 Percentage Value. If the calculation described above results in a
22 calculated payment to a State Farm AEI Non-Exempt Employee
23 of less than Fifty Dollars (\$50), that State Farm AEI Non-
24 Exempt Employee’s payment will be increased to Fifty Dollars
25 (\$50). State Farm AEI Non-Exempt Employees will receive a
26 minimum payment of Fifty (\$50), so long as such payment will
27 not increase the overall Net Settlement Amount. If payments
28

1 pursuant to this paragraph would require an increase in the
2 overall Net Settlement Amount, no increase will be made and
3 each State Farm AEI Non-Exempt Employee will receive an
4 amount equal to the original result of his/her calculated
5 payment, even if that result is less than Fifty Dollars (\$50).

6 f. The Net Settlement Amount shall include the State Farm AEI Non-
7 Exempt Employees’ share of the PAGA Payments remaining after
8 three quarters of the payment is made to the California Labor
9 Workforce Development Agency. From each State Farm AEI Non-
10 Exempt Employee’s Gross Individual Settlement Payment the
11 Parties shall apportion Forty Percent (40%) to wages (“Wage
12 Component”) and Sixty Percent (60%) to interest and penalties.
13 The portion of each State Farm AEI Non-Exempt Employee’s
14 Gross Individual Settlement Payment that constitutes the Wage
15 Component will be reduced by any required legal deductions for
16 each State Farm AEI Non-Exempt Employee. Standard employer
17 and employee payroll deductions will be made for state and federal
18 withholding taxes and any other applicable payroll deductions owed
19 by the Participating Class Members as a result of the Wage
20 Component, resulting in a “Net Wage Component.” The Claims
21 Administrator will issue one (1) check and W-2 Form to each Class
22 member for the Wage Component and the interest and penalty
23 portion of the Gross Individual Settlement Payment. The Claims
24 Administrator or State Farm will detail the gross award and how it
25 breaks down into a wage and penalty portion and provide a net
26 payment for both. The Claims Administrator along with the check
27 will provide a separate document which is broken down into
28

1 quarters and it includes the following: A detailed breakdown of the
2 payment, tax withholding, and why they are receiving the check; a
3 W-2; a 1099; and a perforated check at the bottom.

4 g. No withholding shall be made on the interest and penalty portion of
5 the Gross Individual Settlement Payment. The Claims
6 Administrator will issue an IRS Form 1099 for the remaining
7 interest and penalty component.

8 h. The Net Wage Component shall be added to the penalties and
9 interest component, resulting in the Net Individual Settlement
10 Payment.

11 i. Any and all amounts remaining in the Net Individual Settlement
12 Amount that were not claimed by State Farm AEI Non-Exempt
13 Employees through the claims process shall be distributed to the
14 State Farm AEI Non-Exempt Employees who are Participating
15 Settlement Class Members on a pro rata basis and thereby
16 proportionally increasing the Individual Settlement Payments to the
17 State Farm AEI Non-Exempt Employees who are Participating
18 Settlement Class Members based upon their Gross Wages
19 Percentage Value.

20 j. The Claims Administrator shall be responsible for issuing the
21 payments and calculating and withholding all required state and
22 federal taxes.

23 k. State Farm will be responsible for paying all employer tax liabilities
24 separate and apart from the Total Maximum Settlement Fund.
25

26
27 In addition to the sums paid to Class Members for compensation of their
28 unpaid overtime and wages the named Plaintiff Bryan Shiosaka will request a

1 litigation enhancement of \$20,000.00. This enhancement take into consideration
 2 the risks, time, effort, and expenses incurred by the Named Plaintiff in coming
 3 forward to litigate this matter on behalf of all Class Members. Furthermore, the
 4 enhancement will also include the Named Plaintiff consideration for executing a
 5 Civil Code §1542 General Release. The settlement is broken down further:

- | | | |
|----|---------------------------------------|-------------------------------------|
| 6 | 1) Total Settlement Fund: | \$5,000,000.00 |
| 7 | 2) Attorneys' Fees and Costs: | Attorneys' Fees: \$1,500,000.00 |
| 8 | | (30% of the total settlement); |
| 9 | | Costs: up to \$15,000.00, as |
| 10 | | verified by Class Counsel and |
| 11 | | approved by the Court |
| 12 | 3) Class Representative Enhancement: | \$20,000.00 |
| 13 | 4) Cost to Administer the Settlement: | \$25,000.00 |
| 14 | 5) PAGA Payment to LWDA | \$11,250.00 (75% of \$15,000.00 |
| 15 | | allocated as PAGA penalties per |
| 16 | | <u>LC § 2649, et seq.</u> |
| 17 | 6) Employer share of taxes (approx.) | \$165,000.00 |
| 18 | | |
| 19 | 6) Net Settlement Fund: | \$3,263,750.00 to be distributed to |
| 20 | | the class. |
| 21 | | |
| 22 | | |

23 At the very least, the Class Settlement Fund will be \$3,263,750.00. This
 24 estimate is based on the court approving all the requested amounts listed above.
 25 To the extent any request is not approved, the net Settlement fund will increase
 26 accordingly. To the extent that any estimate is less than stated, the actual numbers
 27 will be used to determine the NSF. Fairness of the settlement is further
 28 demonstrated by risks of non-certification, trial or appeal. It is extremely unlikely

1 that the majority of the current employees in the Class could or would maintain
2 individual actions against Defendant.

3 **VI. LIMITED STANDING TO OBJECT TO PROPOSED**
4 **SETTLEMENT**

5 Non-settling Parties or third Parties sometimes attempt to object to
6 settlements, but the right of non-settling Parties to object even at the final
7 settlement approval hearing, let alone the preliminary approval hearing, is quite
8 limited. As a general rule, only Class Members have standing to object to a
9 proposed settlement. “Beginning from the unassailable premise that settlements are
10 to be encouraged, it follows that to routinely allow non-Class Members to inject
11 their concerns via objection at the settlement stage would tend to frustrate this
12 goal.” Gould v. Alleco, Inc., 883 F.2d 281, 284 (4th Cir. 1989).

13 As Newberg observes, even non-settling defendants in a multiple-defendant
14 litigation context have no standing to object to the fairness or adequacy of the
15 settlement by other defendants; they are limited to objecting to any terms that
16 would preclude them from seeking indemnification from the settling defendants.
17 Newberg at §11.55. Since an application is being filed to obtain a good faith
18 determination, no one other than Class Members have standing to object to the
19 proposed settlement. In re School Asbestos Litigation, 921 F.2d 1330 (3rd Cir.
20 1990).

21 **VII. SETTLEMENT AGREEMENT AND ACCOMPANYING**
22 **DOCUMENTS**

23 The Parties have finalized a formal Settlement Agreement. The Parties are
24 filing all settlement and notice documents with this Motion for Preliminary
25 Approval of Class Action Settlement: **(1) Stipulation and Settlement of Class**
26 **Action Claims (see Exhibit 1 to the Declaration of Joseph Antonelli);**
27

28 Because this is a non-reversionary settlement, upon the expiration of the

1 Claims/Objection/Exclusion period, Settlement Class members will receive a
2 check for their settlement amount based on the formulas listed supra. Upon
3 expiration of the settlement checks, i.e., not cashed within number of days after
4 issue, any funds not cashed will escheat in the claimants name to the State of
5 California Industrial Relations Unpaid Wage Fund. The Class Members will have
6 to submit a timely and valid claim form in order to receive his/her share of the
7 settlement. The Parties respectfully request that this Court approve those
8 documents to be disseminated to the Class consistent with the manner and timing
9 as set forth in this Memorandum.

10
11 The Parties have agreed on Rust Consulting, Inc. (“Rust”) as the Claims
12 Administrator and respectfully request that this court appoint Rust to handle the
13 notice and claims administration procedures.

14 **VIII. THE SETTLEMENT IS FAIR AND REASONABLE BASED**
15 **UPON OBJECTIVE EVIDENCE**

16 The settlement that has been reached, subject to this Court's approval, is
17 the product of tremendous effort, time, and expense by the Parties and their
18 counsel. The settlement was reached after factual and legal research, discovery,
19 informal data exchange, including the plaintiff and class payroll records and
20 sampling of time records, review of thousands of pages of documents, a full-day
21 Mediation with Mr. Barry Winograd, Esq.

22 The settlement amount is, of course, a compromise figure. It took into
23 account what State Farm contended were risks that the class would be certified,
24 what State Farm contended were risks regarding proof of overtime, and other
25 defenses asserted by State Farm. It also took into account the possibility that if a
26 settlement were reached after many months or even years of litigation, the great
27 expenses and attorneys' fees of litigation would cause Defendant to decrease what
28 it was willing to offer. Furthermore, Plaintiff also took into consideration the time

1 delay and financial repercussions in the event of liability trials, numerous damages
2 trials, and appeal by State Farm.

3 **IX. CONDITIONAL CERTIFICATION OF THE CLASS**

4 **A. Class Certification Is Appropriate in this Case**

5
6 The proposed settlement seeks conditional certification of the class. The
7 certification of the class is essential to the settlement.

8 California public policy favors the use of the class action device.

9 Richmond v. Dart Industries (1981) 29 C3d 462, 469. CCP §382 authorizes class
10 suits in California when "the questions is one of the common or general interest, of
11 many persons, or when the parties are numerous, and it is impracticable to bring
12 them all before the courts, one or more may sue or defend for the benefit of all."

13 To obtain certification, a party must establish the existence of both an ascertainable
14 class and a well-defined community of interest among class members. Linder v.
15 Thrifty Oil Co. (2000) 23 Cal. 4th 429, 435. The "community of interest"

16 requirement depends on three factors: (1) whether common issues of law or fact
17 predominate; (2) whether the class representatives have claims that are typical of
18 the class; and (3) whether the class representatives will adequately represent the
19 class. Richmond, 29 Cal.3d at 470. Because the policy of favoring use of class

20 actions is so strong, any doubts as to the appropriateness of class treatment must be
21 resolved in favor of certification, subject to later modification. Richmond, 29

22 Cal.3d at 473-75. Except in extraordinary circumstances not present here, the trial
23 court does not weigh the merits of the claims in ruling on a motion for class

24 certification. Linder, supra ,23 Cal.4th at 443. The seminal California Supreme
25 Court decision of Sav-On Drug Stores, Inc. v. Superior Court (2004) 34 Cal.4th

26 319, 326 has reemphasized the procedural nature of the certification motion.
27
28

1 Here, class treatment is warranted for the class. Evidence of the
2 defendant's pay policies are uniform and proven by objective evidence. The
3 evidence consists of payroll records, pay stubs given to all hourly non-exempt AEI
4 employees and time records.

5 **B. The Proposed Class is Ascertainable and Numerous**

6 For a class to exist, the class description must be sufficiently definite so
7 that it is administratively feasible for the court to determine whether a particular
8 individual is a member of the proposed class by reference to objective criteria. The
9 class definition is sufficiently specific to enable potential class members, and the
10 court, to readily determine the parameters of the class. (See, Clothesrigger, Inc. V.
11 GTE Corp., (1987) 191 Cal.App.3d 605, 617.)

12 **C. Common Issues of Law or Fact Predominate**

13 There can be no dispute that common questions of law and fact
14 predominate. As an employer, State Farm is required to pay wages to all its
15 employees in accordance with the Labor Code and IWC Wage Order 4-2001.
16 (See, LC §§1173, 1178.5, 1182; Tidewater Marine Western, Inc. v. Bradshaw
17 (1966) 14 Cal.4th 557, 561-562). As indicated supra, the predominant legal and
18 factual issues in this case are whether the defendant's pay policies are complaint
19 with California law. In assessing whether common issues predominate over
20 individual issues, it is not necessary that the class members' claims or their
21 circumstances be identical. L.A. Fire & Police Protective League, supra, 23
22 Cal.App.3d at 74 (in an overtime action, the fact that there were 19 different
23 subgroups of employees did not preclude finding that common issues
24 predominated.) California law specifically authorizes class actions when a
25 defendant's corporate policies result in injury to a group of plaintiffs. In Stephens
26 v. Montgomery Ward & Co., Inc. (1987) 193 Cal.App.3d 411, 421, the court held
27 that testimony from the class representative, coupled with proof of company-wide
28

1 policies and practices, was sufficient to prove that common issues affecting the
2 class of employees as a whole predominated over individual issues. See Sav-On,
3 supra.

4 **D. Plaintiff's Claims Are Typical of the Class Claims**

5 Typicality simply means that the representatives' claims be similar to those
6 of class members. The interests of the class representative need not be identical to
7 those of other class members; the class representative must simply be similarly
8 situated. B.W.I. Custom Kitchen v. Owens-Illinois, Inc. (1987) 191 Cal.App.3d
9 1341, 1347; Classen v. Weller (1983) 145 Cal.App.3d 27, 46. The named
10 representative Bryan Shiosaka has claims that are typical of other similarly situated
11 employees, thus is an adequate representative.

12 **E. Adequacy of Representation**

13 Adequacy of representation depends on whether the named class plaintiff
14 and the plaintiff's attorneys qualify to conduct the proposed litigation and whether
15 the named plaintiff's interests are antagonistic to those of the classes. In this case,
16 the representative plaintiff's injuries and damages are similar to those of the class
17 she seeks to represent. Plaintiff has no claims that are antagonistic to the class.

18 (Antonelli Decl. ¶16) Plaintiff's counsel is experienced and qualified. (Antonelli
19 Decl. ¶¶ 4-6 & 15)

20 **X. PROPOSED SCHEDULE OF SETTLEMENT PROCEEDINGS**

21 The Parties propose the following schedule for the fairness hearing and final
22 proceedings:
23

- 24 1. First Mailing of Notice, etc., to the Class (25 business-days from the date of
25 Preliminary Approval), on: **August 6, 2013**;
- 26 2. Follow-up mailing to Class (when mail returned): 5 business days after
27
28

1 receipt of returned mail;

2 3. Deadline to postmark Claim Forms/Objections and/or Opt-Out (45 calendar-
3 days from the First Mailing of Notice, etc., to the Class), on: **September 20,**
4 **2013;**

5
6 4. Fairness Hearing (no earlier than 30 calendar-days from the deadline to
7 postmark Claim Forms/Objections and/or Opt-Out), on: **October 28, 2013**
8

9
10 **XI. ACTION REQUESTED AS PART OF THE MOTION FOR**
11 **PRELIMINARY APPROVAL**

12 The Parties request this Court, as part of the preliminary approval process, to
13 do the following:

- 14 1. Review the proposed Settlement Agreement;
- 15 2. Conditionally certify for settlement purposes only, a Class consisting
16 of: All current employees who worked for Defendant in
17 3. California as an hourly non-exempt AEI from December 23, 2007 to
18 May 31, 2013;
- 19 3. Confirm Joseph Antonelli, Janelle Carney, Jason Hatcher, Michael
20 Carras and Daniel Conforti as Class Counsel and Bryan Shiosaka as
21 Class Representative;
- 22 4. Approve an order preliminarily approving the proposed settlement on
23 a class basis, direct notice to be given to the Class, and setting a
24 hearing for final review of the proposed settlement on October 21,
25 2013.
- 26 5. Approve Rust Consulting, Inc. as Claims Administrator to handle the
27 notice and claims procedures as set forth in its proposal.
28

CONCLUSION

Accordingly, Plaintiff respectfully requests that the settlement be given preliminary approval and notice be approved for mailing to the class. A proposed order and a proposed notice will be filed prior to said hearing.

Dated: June 5, 2013

LAW OFFICE OF JOSEPH ANTONELLI
CONFORTI & CARRAS, APC

By: _____

Joseph Antonelli
Attorney for the Plaintiff