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8
9 UNITED STATES DISTRICT COURT
10 NORTHERN DISTRICT OF CALIFORNIA

11
12 RONALD CHIN, individually, and
13 on behalf of other members of the
general public similarly situated,
14 Plaintiff,
15 vs.
16 WACHOVIA FINANCIAL
SERVICES, INC.; WACHOVIA
17 MORTGAGE CORPORATION;
WACHOVIA SERVICES, INC.;
18 WORLD MORTGAGE COMPANY;
WACHOVIA COMMERCIAL
19 MORTGAGE, INC.; WORLD
SAVINGS, INC.; WACHOVIA
20 EQUITY SERVICING, LLC;
WACHOVIA BANK, N.A;
21 WACHOVIA CORPORATION; and
DOES 1 through 10, inclusive,
22 Defendants.

Case No.: 4:08-cv-00684-CW

Assigned to the Hon. Claudia Wilken

CLASS ACTION

**NOTICE OF JOINT MOTION AND
JOINT MOTION FOR FINAL
APPROVAL OF CLASS ACTION
SETTLEMENT; MEMORANDUM
OF POINTS AND AUTHORITIES
IN SUPPORT OF JOINT MOTION
FOR FINAL APPROVAL OF
CLASS ACTION SETTLEMENT**

Date: November 4, 2010

Time: 2:00 p.m.

Place: Courtroom 2

Other Case Affected by Settlement:
*Chin v. Wachovia Financial Services,
Inc., et al.*, Case No. 4:08-cv-01320-CW

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6 Attorneys for Defendants
WACHOVIA FINANCIAL SERVICES, WACHOVIA MORTGAGE
CORPORATION, WACHOVIA SHARED RESOURCES, LLC
7 (erroneously sued as Wachovia Services, Inc.), WORLD
MORTGAGE COMPANY, WACHOVIA COMMERCIAL
8 MORTGAGE, INC., WORLD SAVINGS, INC., WACHOVIA
EQUITY SERVING, LLC, WACHOVIA BANK, N.A., WACHOVIA
9 CORPORATION, and WACHOVIA MORTGAGE, FSB
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1 **TO THE COURT, ALL PARTIES AND THEIR ATTORNEYS OF**
2 **RECORD:**

3 **PLEASE TAKE NOTICE** that on November 4, 2010, at 2:00 p.m., or as
4 soon thereafter as counsel may be heard, in Courtroom 2 of the United States
5 District Court, Northern District of California, located at 1301 Clay Street,
6 Courtroom 2, Oakland, CA 94612, the Honorable Claudia Wilken presiding,
7 Plaintiff Ronald Chin (“Plaintiff”) and Defendants Wachovia Mortgage, FSB, et
8 al. (collectively “Wachovia” or “Defendants”) will, and hereby do, move this
9 Court for entry of an Order and Judgment granting final approval to this class
10 action settlement and all agreed-upon terms therein. This Motion seeks the
11 approval of a settlement in which Wachovia has agreed to pay a maximum of
12 \$450,000 to resolve this class action. Specifically, Plaintiff and Wachovia
13 request that the Court grant final approval of:

- 14 • The Stipulation Re: Settlement of Class Action lodged on May 4, 2010;
15 and
- 16 • The payment of agreed-upon administrative expenses to the claims
17 administrator, Rust Consulting, Inc., in the estimated amount of
18 \$10,000; and

19 This Motion is based upon this Notice of Joint Motion and Joint Motion;
20 the Memorandum of Points and Authorities in Support of the Joint Motion for
21 Final Approval of Class Action Settlement; the Declaration of Marc Primo; the
22 Declaration of Mónica Balderrama in Support of Motion for Preliminary
23 Approval (Docket No. 43); the Declaration of Amanda Myette; the Declaration
24 of Ronald Chin; the [Proposed] Order Determining Good Faith and Granting
25 Final Approval of Settlement; the [Proposed] Judgment as well as the records,
26 pleadings, and papers filed in this action; and upon such other documentary
27 and/or oral evidence as may be presented to the Court at the hearing of this
28 Motion.

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Dated: September 30, 2010

Respectfully submitted,
Initiative Legal Group APC

By: /S/ MÓNICA BALDERRAMA

Marc Primo
Mónica Balderrama

Attorneys for Plaintiff Ronald Chin and
the Settlement Class

Dated: September 30, 2010

Respectfully submitted,
Munger, Tolles & Olson LLP

By: /S/ MALCOLM A. HEINICKE

Malcolm A. Heinicke

Attorneys for Defendants

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INITIATIVE LEGAL GROUP APC
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 28 11:41 (4th ed. 2002)..... 8

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INITIATIVE LEGAL GROUP APC
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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 On June 21, 2010, the Court granted preliminary approval of the
4 Stipulation Regarding Settlement of Class Action¹ (“Settlement” or “Settlement
5 Agreement”) and approved distribution of the Notice to Class Members Re:
6 Pendency of a Class Action and Notice of Hearing on Proposed Settlement
7 (“Class Notice”) to the Class. Plaintiff Ronald Chin and Defendants Wachovia
8 Mortgage, FSB, et al. (“Wachovia” or “Defendants”) now jointly seek final
9 approval of this Settlement Agreement.

10 Under this Settlement, Wachovia has agreed to pay a Maximum
11 Settlement Amount of \$450,000 to Class Members to settle class-wide wage and
12 hour claims. This Settlement also will resolve claims for penalties pursuant to
13 the Labor Code Private Attorneys General Act of 2004 (Cal. Lab. Code §§ 2698
14 *et seq.*, “PAGA”).

15 Significantly, the class response to the Settlement was positive. None of
16 the Class Members objected to this Settlement or chose to opt out. The positive
17 response is a clear indication that the Settlement is fair, reasonable, adequate,
18 and meriting approval. As set forth below, this Settlement meets all the
19 requirements and the standard for approval of a class action settlement under
20 Rule 23(e) of the Federal Rules of Civil Procedure.

21 Accordingly, Plaintiff and Wachovia respectfully request that this Court
22 grant this motion for final approval of the Settlement Agreement and the claims
23 administration costs. Plaintiff and Wachovia further request this Court enter
24 judgment pursuant to the terms of the Settlement Agreement, and retain
25 jurisdiction to enforce the terms of the Settlement as the parties have agreed.²

26 _____
27 ¹ Capitalized defined terms used in this memorandum have the same
28 definition as those set forth in the Settlement Agreement.

² Plaintiff separately moves for approval of the Class Representative
Enhancement Award and an award of attorneys’ fees and costs to Initiative Legal

1 **II. FACTS AND PROCEDURE**

2 **A. Plaintiff Brought A Class Action Complaint Alleging Multiple**
 3 **Wage And Hour Violations**

4 Plaintiff Ronald Chin began working for World Mortgage Company as a
 5 “Telefi/ELOC loan representative” at the company’s (now closed) call center in
 6 San Leandro, California on August 14, 2006. (*See* Declaration of Mónica
 7 Balderrama In Support of Motion for Preliminary Approval of Class Action
 8 Settlement [“Balderrama Decl.”] ¶ 4.) (Docket No. 43.) Plaintiff and others like
 9 him at the call center were responsible for both receiving inbound calls and
 10 making outbound calls, with the goal of securing loan commitments. (*Id.*)
 11 Plaintiff was classified as an hourly, non-exempt employee, and was eligible to
 12 receive commissions on loan activity in addition to hourly pay. (*Id.*) He worked
 13 at World Mortgage Company for six months, until February 15, 2007, when he
 14 was discharged. World Mortgage Company was eventually acquired by
 15 Wachovia. (*Id.*)

16 On January 29, 2008, Plaintiff filed *Chin v. Wachovia Financial Services,*
 17 *Inc., et al.*, Case No. 4:08-cv-00684-CW (the “Lead Action”) in this Court. (*Id.*
 18 at ¶ 5.) On January 29, 2008, Plaintiff also filed a separate action, *Chin v.*
 19 *Wachovia Financial Services, Inc., et al.*, Case No. RG08368375 (the “PAGA
 20 Action”), in the Superior Court of the State of California for the County of
 21 Alameda. (*Id.*) On March 7, 2008, Wachovia removed the PAGA Action to this
 22 Court, and on March 21, 2008, the District Court ruled that the PAGA Action is
 23 related to the Lead Action. (*Id.*) The PAGA Action, case number 4:08-CV-
 24 01320-CW, was assigned to the Honorable Claudia Wilken. (*Id.*)

25 The PAGA Action and the Lead Action both initially named the same nine
 26 defendants: Wachovia Financial Services, Inc.; Wachovia Mortgage

27 _____
 28 Group APC (“Class Counsel”). Wachovia has agreed not to oppose Plaintiff’s
 motion.

1 Corporation; Wachovia Shared Resources, LLC (erroneously sued as Wachovia
 2 Services, Inc.); World Mortgage Company; Wachovia Commercial Mortgage,
 3 Inc.; World Savings, Inc.; Wachovia Equity Servicing, LLC; Wachovia Bank,
 4 N.A.; and Wachovia Corporation. Defendant has contended that Wachovia
 5 Mortgage, FSB was the actual employer of Plaintiff and the other members of
 6 the Class proposed here. In accordance with the Settlement Agreement, the
 7 complaints in the Lead Action and the PAGA Action have been amended to add
 8 Defendant Wachovia Mortgage, FSB, for purposes of effectuating this
 9 Settlement. Additionally, the class definition has now been modified to match
 10 the class definition set forth herein.³

11 **B. Class Counsel Conducted A Thorough Investigation Of The**
 12 **Facts And Legal Issues**

13 Class Counsel has diligently pursued an investigation of Class Members'
 14 claims against Wachovia, any and all applicable defenses, and the applicable
 15 law. The investigation included the exchange of discovery, numerous
 16 conferences between Class Counsel and Wachovia's counsel, and review and
 17 analysis of class specific evidence. (Balderrama Decl. ¶¶ 6, 11.)

18 Based on the evidence produced during discovery and on its own
 19 independent investigation and evaluation, Class Counsel is of the opinion that
 20 this Settlement for the consideration and on the terms set forth in the Settlement
 21 Agreement, which was reached after extensive arm's-length negotiations, is fair,
 22 reasonable and adequate, and is in the best interest of Class Members in light of
 23 all known facts and circumstances, including the risk of significant delay and
 24 uncertainty associated with litigation, various defenses asserted by Wachovia
 25 and numerous potential appellate issues. (Balderrama Decl. ¶ 9.)

26
 27 ³ As a condition of the Parties' settlement agreement, Plaintiff filed an
 28 amended complaint in the Lead Action to reflect the revised class definition and
 group of aggrieved employees in conformity with the scope of the settlement.

1 **C. The Parties Settled The Class Claims At Mediation**

2 On December 12, 2008, the parties attended mediation with David A.
3 Rotman, a respected mediator of wage and hour class actions. Mr. Rotman's
4 supervision of the mediation was critical in managing the expectations of the
5 parties and providing a useful and neutral analysis of the issues and risks to both
6 sides. Counsel for the parties reached a compromise on a number of key terms at
7 mediation, and formalized that compromise in a Memorandum of Understanding.
8 The Parties then spent the next several months negotiating additional terms that
9 are now set forth in complete and final form in the Settlement Agreement. In
10 summary, the settlement discussions during and after mediation were conducted
11 at arm's-length and the resulting settlement was the outcome of an educated
12 analysis of Wachovia's potential liability and total exposure in relation to the
13 costs and risks attendant to Plaintiff and the Class of continuing to pursue the
14 action. (Balderrama Decl. ¶ 10.)

15 **D. The Proposed Settlement Fully Resolves The Claims**

16 **1. Composition of the Class**

17 The Settlement calls for certification of a Settlement Class consisting of all
18 individuals who were employed by Wachovia or World Mortgage Company in
19 the position of Telefi/ELOC Loan Representative at the San Leandro call center
20 in question during the Class Period, i.e., January 29, 2004 through June 21,
21 2010.⁴ (Settlement Agreement ¶¶ 1.2, 1.5, 1.8, 1.39.) The Class does not
22 include any Persons who were never employed by Wachovia or World Mortgage
23 Company or another Wachovia predecessor entity as a Telefi/ELOC Loan
24 Representative at the San Leandro, California call center during the Class Period.
25

26 ⁴ It must be noted that although the Class Period begins on January 29,
27 2004 and ends on June 21, 2010, the call center in San Leandro closed before the
28 parties mediated the dispute. Accordingly, the protracted settlement negotiations
after mediation had no effect on the value of the settlement because no new
claims accrued after the call center closed.

1 (*Id.* at ¶ 1.2) The Class consists of 105 people. (*Id.*)

2 **2. Settlement Consideration**

3 The Settlement was made on a class-wide basis. The Maximum
 4 Settlement Amount, i.e., the maximum amount that Wachovia will pay under the
 5 terms of this Settlement Agreement is \$450,000. The specific components of
 6 this Maximum Settlement Amount are: (a) the Maximum Settlement Portion for
 7 Payments to Participating Claimants, which is \$266,250; (b) the maximum gross
 8 amount for Class Counsel’s attorney fees and costs, which is \$160,000; (c) the
 9 maximum gross amount for claims administration costs, which is \$10,000;
 10 (d) enhancement payment to the Class Representative Ronald Chin, which will
 11 be in the maximum gross amount of \$10,000; and (e) the maximum gross
 12 amount for payment to the California Labor Workforce Development Agency
 13 pursuant to the California Labor Code Private Attorneys General Act, which is
 14 \$3,750. (Settlement Agreement ¶ 1.14.) Under the Settlement, Class Members
 15 are compensated according to how many weeks they worked during the Class
 16 Period, at a rate of approximately \$29.28 per week. (Settlement Agreement ¶¶
 17 1.35-1.36.)

18 **3. Release by the Class**

19 The Class Members’ consideration is in the form of a release of the claims
 20 litigated in this matter. The Release includes all known or unknown claims
 21 relating to: (1) any and all claims for (a) failure to pay regular or premium
 22 wages, (b) failure to comply with payroll or wage record-keeping or itemization
 23 requirements, (c) failure to provide meal and/or rest periods and/or to pay
 24 additional sums of money in lieu thereof, and (d) failure to timely pay wages due
 25 at termination or otherwise; (2) any and all statutory claims arising from the
 26 categories of allegations set forth above, including without limitation claims
 27 under the Fair Labor Standards Act (“FLSA”), the Portal to Portal Act,
 28 California Labor Code sections 203, 218, 218.5, 226.7, 512, 1194 and 2698 *et*

1 *seq.* and California Business & Professions Code section 17200 *et seq.*; (3) any
2 and all claims arising from the categories of allegations set forth in part (1) for
3 penalties or liquidated damages, including without limitation claims under the
4 FLSA or Portal to Portal Act or California Labor Code sections 203, 226, 226.7,
5 512, 1194 and 2698 *et seq.*; and (4) any and all claims arising from the categories
6 of allegations set forth above in part (1) for interest, costs, or attorney fees; and
7 (5) to the extent not covered above, any and all claims pled in the Litigation.
8 (Settlement Agreement ¶ 1.29.) The parties further agreed that the Released
9 Claims include claims under the California Private Attorneys General Act of
10 2004, for which the Class was granted additional consideration, a portion of
11 which shall be paid to the California Labor and Workforce Development
12 Agency. (*Id.*)

13 **E. The Notice And Claims Administration Processes Were**
14 **Completed Pursuant To The Preliminary Approval Order**

15 As authorized by the Court's Order preliminarily approving the Settlement
16 Agreement, the Parties engaged Rust Consulting, Inc. ("Rust") to provide claims
17 administration services. Rust has provided notification and/or claims
18 administration services in more than 2,500 cases. Of these, more than 900 were
19 labor and employment cases.

20 Here, Rust's duties included: printing and mailing the Class Notice;
21 receiving undeliverable Class Notices; receiving and validating Claim Forms and
22 Elections to Opt Out of Settlement and Class Action; and calculating claim
23 payments. (Declaration of Amanda Myette ["Myette Decl."] ¶ 3.) If the Court
24 grants final approval of the Settlement, Rust will be responsible mailing
25 settlement checks and tax-reporting materials to participating Class Members.
26 (*Id.*)

27 On June 18, 2010, Rust received the Class Notice prepared by Class
28 Counsel and Defendant's Counsel. (Myette Decl. ¶ 5.) The Class Notice

1 advised Class Members that they could participate in the Settlement by
2 submitting a timely and valid Claim Form. The Class Notice also advised Class
3 Members of their option to opt out of the Settlement. (*Id.*) On the same day,
4 Wachovia’s counsel provided Rust with a mailing list containing Class Member
5 names, last known addresses and other relevant information necessary for
6 settlement administration. (*Id.* at ¶ 6.) The Class List contained 105 Class
7 Members. (*Id.*)

8 The mailing addresses contained in the Class List were processed and
9 updated using the National Change of Address Database maintained by the U.S.
10 Postal Service. (Myette Decl. ¶ 7.) On July 9, 2010, Class Notices were mailed
11 to 105 potential Class Members via First-Class U.S. Mail. (*Id.*) On August 18,
12 2010, a postcard was also mailed to Class Members who had not yet responded
13 to remind them of the claims deadline and to provide supplemental information
14 about the Settlement. (*Id.* at ¶ 9.)

15 Rust has been responsible for receipt of all Claim Forms. (Myette Decl. ¶
16 13.) Rust has received 55 valid Claim Forms, comprising approximately 52% of
17 the Settlement Class. (*Id.*) These participating Class Members have claimed
18 62% of the net settlement amount, or \$165,637. The average recovery under the
19 Settlement is \$2,957.80 and the highest is \$6,148.80. (*Id.*) Notably, none of the
20 Class Members objected to the Settlement and none have opted out. (*Id.* at ¶ 14.)

21 **III. ARGUMENT**

22 **A. The Class Action Settlement Is Presumptively Fair**

23 **1. All Relevant Factors Support the Presumption That the** 24 **Settlement Is Fair**

25 Under Federal Rule of Civil Procedure 23(e), the central issue on a motion
26 for final approval of a class action settlement is whether the settlement is “fair,
27 adequate and reasonable.” *Officers for Justice v. Civil Serv. Comm’n*, 668 F.2d
28 615, 625 (9th Cir. 1982). A settlement is fair, adequate and reasonable when

1 “the interests of the class are better served by the settlement than by further
2 litigation.” *Garner v. State Farm Mut. Auto. Ins. Co.*, 2010 U.S. Dist. LEXIS
3 49477, *20 (N.D. Cal. 2010) (citing *Manual for Complex Litigation (Fourth)* §
4 21.61 (2004)).

5 Federal and California state law favor settlement, especially in class
6 actions and other complex cases where party and judicial resources can be
7 conserved by avoiding the time, cost, and rigors of formal litigation. *Class*
8 *Plaintiffs v. City of Seattle*, 955 F.2d 1268, 1276 (9th Cir. 1992); *Van Bronkhorst*
9 *v. Safeco Corp.*, 529 F.2d 943, 950 (9th Cir. 1976); *Bush v. Superior Court*, 10
10 Cal. App. 4th 1374, 1382 (1992).

11 A settlement is fair where, as here, sufficient investigation and discovery
12 have taken place to allow counsel and the Court to act intelligently, the
13 settlement is the product of arm’s-length negotiations, and counsel is
14 experienced in similar types of litigation. *See Young v. Polo Retail*, 2006 U.S.
15 Dist. LEXIS 81077, at *12-13 (N.D. Cal. Oct. 25, 2006); Alba Conte and Herbert
16 B. Newberg, *Newberg on Class Actions* § 11:41 (4th ed. 2002).

17 **2. Significant Investigation and Discovery Was Conducted**

18 Class Counsel diligently pursued an investigation of the Settlement Class
19 Members’ claims against Wachovia. On July 15, 2008, Initiative propounded
20 first sets of Requests for Production of Documents and Interrogatories on
21 Wachovia. (Balderrama Decl. ¶ 6.) The Interrogatories sought, among other
22 things, the identity of each putative class member, the number of putative class
23 members who had been employed by Wachovia, and the number of putative
24 class members who were discharged or terminated by Wachovia. (*Id.*) The
25 Requests for Production sought, in part, Plaintiff’s entire personnel file and all
26 documents reflecting Wachovia’s policies regarding meal and rest periods,
27 payment of final wages and payment of overtime wages for all non-exempt
28 employees in California stores during the Class Period.

1 Overall, Class Counsel submits that they performed an exhaustive
2 investigation into the claims at issue, which included: obtaining and analyzing
3 Plaintiff's employment files and related records; evaluating all of Plaintiff's
4 potential claims; researching all related litigation involving Wachovia, including
5 class actions, wage and hour, or employment matters; researching similar wage
6 and hour class actions to the claims brought; drafting and serving interrogatories
7 and requests for production of documents; obtaining and analyzing Wachovia's
8 written policies and procedures, employment handbooks, and training materials;
9 researching the latest caselaw developments regarding the theories of liability
10 and certification of potential claims; researching settlements in similar cases;
11 conducting discounted valuation analysis of claims; preparing a damages
12 analysis for mediation; and engaging in lengthy post-mediation settlement
13 discussions on the remaining settlement terms in order to achieve optimum
14 results for the Class.

15 **3. The Settlement Was Reached Through Arm's-Length**
16 **Negotiations in Which Both Parties Were Represented by**
17 **Experienced Counsel**

18 The settlement was the product of arm's-length negotiations by
19 experienced counsel before a well-respected mediator. Class Counsel has
20 considerable experience and has demonstrated competence with litigating wage
21 and hour class actions. (Declaration of Marc Primo in Support of Motion for
22 Preliminary Approval of Class Action Settlement ["Primo Decl."] ¶¶ 3-5.) (Doc.
23 No. 42.) The mediator was helpful in managing the expectations of the Parties
24 and providing a useful, neutral analysis of the issues and risks to both Parties.

25 **4. The Proposed Settlement Is Reasonable Given the**
26 **Strengths of Plaintiff's Claims and the Risk and Expense**
27 **of Continued Litigation**

28 In determining whether to approve a class action settlement, the Court

1 should consider the settlement in light of the “risk, expense, complexity, and
2 likely duration of further litigation.” *Shaffer v. Cont’l Cas. Co.*, 362 Fed. Appx.
3 627, 629 (9th Cir. 2010). Plaintiff alleged that Wachovia unlawfully made
4 putative class members work off-the-clock, had no policy of compensating non-
5 exempt employees for missed or late meal and rest periods, owed waiting time
6 penalties to employees as a result of the failure to compensate employees for
7 missed or late meal and rest periods, and issued wage statements to the putative
8 class members that were noncompliant with California Labor Code section
9 226(a).

10 Due in large part to the unsettled state of the law underlying Plaintiff’s
11 claims, Plaintiff faced significant obstacles to recovery. Indeed, the prosecution
12 of Plaintiff’s meal and rest break claims was particularly risky in light of
13 continuing uncertainty as to the requirements of the California Labor Code.
14 Such risks are highlighted by Court of Appeal’s decisions in *Brinker Restaurant*
15 *Corp. v. Superior Court*, 165 Cal. App. 4th 25, 31 (2008) (holding that
16 employers “need only provide [meal breaks] and not ensure they are taken”), rev.
17 granted Oct. 22, 2008, S166350, and *Brinkley v. Public Storage, Inc.*, 167 Cal.
18 App. 4th 1278, 1290 (2008) (holding that “California law does not require an
19 employer to ensure that employees take rest periods. An employer need only
20 make rest periods available”), rev. granted Jan. 14, 2009, S168806.⁵ Until the
21 California Supreme Court resolves the issues, the current state of California law
22 poses considerable challenges to any litigant who chooses to pursue claims for
23 meal and rest break violations. Additionally, it should also be mentioned that
24 meal and rest break class actions are not infrequently *denied* certification
25 resulting in no recovery for the class and, of course, no compensation for
26 Plaintiff’s counsel time and effort. *See, e.g., Wren v. RGIS Inventory Specialists,*

27 ⁵ *Brinker* and *Brinkley* are not cited in this Memorandum as authority for
28 any legal proposition. They are mentioned solely to explain the context in which
this settlement was reached, including the unsettled nature of the law in this area.

1 256 F.R.D. 180, 208 (N.D. Cal 2009) (“the Court also concludes that many
2 individualized inquiries will be necessary, at least as to the California class, to
3 determine the reason meal breaks were missed and whether they were waived”);
4 *Kimoto v. McDonald’s Corps.*, 2008 U.S. Dist. LEXIS 86203, *19 (C.D. Cal.
5 Aug. 19, 2008) (although store managers may have instructed employees to help
6 customers rather than take ten-minute breaks, and such an instruction could be
7 viewed as “the employer not ‘providing’ a meal break; however, it is an
8 individual question that cannot be resolved class wide”); *Salazar v. Avis Budget*
9 *Group, Inc.*, 251 F.R.D. 529, *14 (S.D. Cal. July 2, 2008) (“individual issues
10 predominate. Liability cannot be established without individual trials for each
11 class member to determine why each class member did not clock out for a full
12 30-minute meal break on any particular day”); *Blackwell v. SkyWest Airlines,*
13 *Inc.*, 245 F.R.D. 453, 467 (S.D. Cal. 2007) (“[g]iven the evidence presented
14 [about meal period violations] . . . the Court is persuaded that individual
15 questions, rather common issues, predominate the adjudication of this class
16 claim”).

17 Further, Wachovia contended that Plaintiff would be unable to
18 demonstrate that Wachovia committed any of the alleged violations. According
19 to Wachovia, Class Members completed time sheets, through which they were
20 required by policy to state their hours worked and record their meal periods.
21 Wachovia contends that these employees were paid for their recorded hours, and
22 that these records confirm that meal periods were both provided and in fact
23 taken. Also, Wachovia contended that the majority of the Class Members
24 executed severance agreements when they left the company. Although the
25 enforceability of such agreements was an open issue at the time of the mediation
26 in this case, California courts have found that the general releases associated
27 with these agreements would serve to release the sorts of state wage and hour
28 claims at issue here. *See Watkins v. Wachovia Corp.*, 172 Cal. App. 4th 1576

(2009) (holding that the sort of release provisions at issue here are valid to bar wage and hour claims under California law); *Chindarah v. Pick Up Stix, Inc.*, 171 Cal. App. 4th 796 (2009) (reaching a similar conclusion); *see also Reynov v. ADP Claims Services Group, Inc.*, Case No. C 06-2056-CW, 2007 WL 5307977 (N.D. Cal. April 30, 2007) (Judge Wilken) (essentially forecasting this outcome).

Accordingly, the settlement is reasonable given the considerable risks of continued litigation.

5. The Response of the Class Was Positive

Measured by their response, this Settlement is highly favored by the Class. There are 105 Class Members and none have opted out of the settlement. (Myette Decl. ¶¶ 6, 13.) Furthermore, Rust has received 55 valid Claim Forms, representing approximately 52% of the Settlement Class. (*Id.* at ¶ 13.) This participation rate is well within the range of expectations for comparable class actions. (*Id.* at ¶ 13.) It should also be noted that numerous measures were taken to ensure strong Class participation in the Settlement: (1) Rust updated Class Member addresses by searching the National Change of Address Database (*Id.* at ¶ 7), (2) mailed reminder postcards to Class Members who had not responded to the Notice (*Id.* at ¶ 9), and (3) performed skip traces on undeliverable Class Notices and then re-mailed them to the updated addresses (*Id.* at ¶ 11).

There were no objections to the Settlement. (Myette Decl. ¶¶ 14-15.) A low number of objections is a strong indicator that a settlement is fair and reasonable. *See, e.g., Boyd v. Bechtel Corp.*, 485 F. Supp. 610, 624 (N.D. Cal. 1979) (finding that objections from only 16 percent of the class was persuasive that the settlement was adequate).

B. The Proposed Payment To The Claims Administrator Is Reasonable

The Parties request final approval for claims administration costs of

1 \$10,000. The Claims Administrator promptly and properly distributed the Class
2 Notice to Class Members and has completed its duties in accordance with the
3 settlement terms and the Court's preliminary approval Order. Rust has
4 disseminated the Class Notice and processed Claim Forms and opt out forms. If
5 the Court grants final approval of the Settlement, Rust will be responsible for
6 mailing settlement checks and tax-reporting materials to participating Class
7 Members. (Myette Decl. ¶ 3.) This payment is fair and reasonable. It has
8 received no objections, and should be accorded final approval along with the rest
9 of the Settlement terms.

10 C. The Proposed PAGA Payment Is Reasonable

11 Pursuant to the Settlement Agreement, \$3,750 from the Maximum
12 Settlement Amount shall be paid to the LWDA by Wachovia. Where settlements
13 are "negotiated a good faith amount" as to PAGA penalties and "there is no
14 indication that this amount was the result of self-interest at the expense of other
15 Class Members," such amounts are generally considered reasonable. *Hopson v.*
16 *Hanesbrands Inc.*, No. CV-08-0844 EDL, 2009 U.S. Dist. LEXIS 33900, at *24
17 (N.D. Cal. Apr. 3, 2009). Moreover, the amount, approximately one percent of
18 the Maximum Settlement Amount, is well within the range of reasonable PAGA
19 settlement amounts approved by the courts. *See, e.g., Hopson v. Hanesbrands*
20 *Inc., supra* (approving a PAGA settlement of 0.3% or \$1,500); *In Re M.L. Stern*
21 *Overtime Litig.*, No. 07-CV-O118-BTM, 2009 U.S. Dist. LEXIS 31650, at *4
22 (S.D. Cal. Apr. 13, 2009) (preliminarily approving a PAGA settlement of
23 approximately 2%, or \$20,000).

24 IV. CONCLUSION

25 The Parties have negotiated a fair Settlement of the wage and hour claims,
26 and the positive response rate is an indicator that the Settlement is fair and
27 reasonable. Notably, there were no objectors to the Settlement. Accordingly,
28 the Parties respectfully request that this Court grant final approval of the

1 Settlement Agreement.

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Dated: September 30, 2010

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