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on behalf of the Certified Class

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

ANDRE WATSON, on behalf of himself and all others similarly-situated,

Plaintiff,

v.

RAYTHEON COMPANY and DOES 1 through 100, Inclusive,

Defendant.

CASE NO. 10-cv-00634-LAB-RBB

MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT

[UNOPPOSED]

Date:	March 7, 2011
Time:	11:45 a.m.
Courtroom:	9
Judge:	Hon. Larry A. Burns
Complaint filed:	May 29, 2008
Trial Date:	None set

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I. INTRODUCTION AND OVERVIEW

This motion is brought seeking final approval of a certified wage and hour class action settlement by Plaintiff Andre Watson on behalf of himself and the certified Class consisting of 394 persons employed in California by Defendant Raytheon Company ("Raytheon") as Software Engineers I ("SE-01"), job code CE37, and Software Engineers II ("SE-02"), job code CE38, at any time during the Class Period, May 29, 2004 through October 7, 2010. Plaintiff contends these two software positions were salaried and misclassified as exempt from the requirements of overtime compensation resulting in numerous wage and hour violations and associated penalties, including non-payment of overtime compensation, the failure to provide meal and rest breaks or compensation in lieu thereof, the failure to pay all wages owed to terminated employees, and the failure to provide accurate itemized wage statements. (Declaration of Timothy D. Cohelan, ("Cohelan Decl.,") ¶8.)

A. Proposed Settlement.

Raytheon has vigorously contested and continues to contest any liability on the claims asserted in the complaint, even after Class Certification. Although it believed (and continues to believe) that class certification is inappropriate, it nevertheless agreed to attempt resolution of the case at the time of the Early Neutral Evaluation (ENE) Conference to avoid the expense, distraction and uncertainty of protracted litigation and trial.

On June 30, 2010, the Parties appeared for the scheduled ENE Conference before Magistrate Ruben B. Brooks. As a result of Magistrate Brooks' extensive efforts and knowledge of the facts and law as well as the arms-length negotiations he facilitated, the Parties reached agreement on the principal terms of the proposed settlement. (Cohelan Decl., ¶27.) In the months which followed, the Parties continued to negotiate at arms-length, the balance of the terms described in the Stipulation and Settlement Agreement of Class Action Claims ("Settlement Agreement" or "SA"), previously filed in conjunction with the Motion for Preliminary Approval, and now before the Court for final approval.

Pursuant to the Settlement Agreement, the Parties have agreed (subject to and contingent upon the approval of this Court), that this action be settled and compromised for *a non-*

reversionary total Maximum Settlement Amount ("MSA") of $2,000,000, which sum includes, subject to Court approval, (a) attorneys' fees in the sum of up to one-third ($666,666.67) of the MSA to compensate Class Counsel for all work already performed and all work remaining to be performed in documenting the settlement, administrating the settlement and securing Court approval; (b) litigation costs of $29,198.17; (c) enhancement award to the Class Representative ANDRE WATSON in the sum of $35,000.00 in consideration of initiating and prosecuting this Class Action, serving as a Class Representative, work performed, risks undertaken for the payment of attorneys' fees and costs in the event he had been unsuccessful in this matter, and as consideration for providing a general release of all known and unknown claims arising out of his employment; (d) claims administration expenses in the sum of $25,000.00, and (e) a payment in the sum of $20,000.00 to the Labor and Workforce Development Agency for all civil penalties under the California Labor Code's Private Attorney General Act of 2004, as amended, California Labor Code sections 2699, *et seq*. (SA 36, 49; Cohelan Decl., ¶28.) In addition to the MSA, RAYTHEON will also pay the employer-sided payroll taxes on that portion of the Class Member's Settlement Award payment allocated to wages. (SA, 58, 62; Cohelan Decl., ¶29.)

After all Court-approved deductions, it is estimated that $1,224,135.16 (the "Net Settlement Amount" or "NSA") will be entirely distributed to Class Members who participate in the Settlement. (Cohelan Decl., ¶30.) The Settlement further provides that the 263 Current Raytheon employee Class Members will receive their Settlement Award *automatically without having to return a Claim Form***,** while the 131 Former Raytheon employee Class Members, are required to return a Claim Form on or before the Claims Period Deadline of January 31, 2011. *The NSA will be paid entirely to these Class Members provided they do not request to be excluded from the Settlement.* Under no circumstances will any portion of the MSA revert to Raytheon. (SA 22, 49, 55, 57, 71, Cohelan Decl., ¶31; Declaration of Caryn Donly, ("Donly Decl.") ¶7.)

Furthermore, the MSA will be divided and comprised of two Sub-funds, with each Sub-Fund responsible for its proportional share of the Court-approved deductions referenced above[1].

[1] The Sub-Fund Net amounts may vary if the Court does not approve the requested amount for fees, enhancement award to the Class Representative, or the cost of claims administration is different than estimated.

(SA 56, Cohelan Decl., ¶32.) The Parties have agreed the MSA allocation is reasonable in light of the potentially stronger claims of those in lower level SE-01 position. The weighting of workweeks toward the SE-01 employees reflect the realities that these employees generally had less experience, but did obtain much greater proficiency as the salary grade increases from a level SE-01 software engineer to a level SE-02. It is also apparent that SE-02 employees, by and large, had obtained degrees beyond a bachelor's which, in turn, makes the defense for exempt status much more viable. (Cohelan Decl., ¶33.) The allocation is as follows:

(a) "SE-01 Sub-Fund" - $1,175,178.70. SE-01 Sub-Fund Class Members shall be Class Members who were employed at any time during the Class Period at the SE-01 level. The Settlement Administrator shall add together all the SE-01 Sub-Fund Class Members' total Work Weeks worked during the Class Period to arrive at "SE-01 Sub-Fund Total Work Weeks" for SE-01 Sub-Fund Class Members. (The Total Work Weeks were estimated to be 12,593 as of August 6, 2010.) The Settlement Administrator shall then divide each SE-01 Sub-Fund Class Member's total Work Weeks worked by the SE-01 Sub-Fund Total Work Weeks, in order to determine a "Percentage Share" of the SE-01 Sub-Fund Total Work Weeks for each SE-01 Sub-Fund Class Member. Each Current Raytheon employee Class Member and all Former Raytheon employee Class Members who return a valid and timely Claim Form shall be entitled to receive a Settlement Award equal to his or her Percentage Share of the SE-01 Sub-Fund Total Work Weeks multiplied by the portion of SE-01 Sub-Fund remaining after payment of all Court-approved deductions. (SA 56; Cohelan Decl., *Id*.)

(b) "SE-2 Sub-Fund" - $824,821.30. SE-02 Sub-Fund Class Members shall be Class Members who were employed at any time during the Class Period at the SE-02 level. The Settlement Administrator shall add together all the SE-02 Sub-Fund Class Members' total Work Weeks worked during the Class Period to arrive at "SE-02 Sub-Fund Total Work Weeks" for SE-02 Sub-Fund Class Members. (The Total Work Weeks are estimated to be 30,268 as of August 6, 2010.) The Settlement Administrator shall then divide each SE-02 Sub-Fund Class Member's total Work Weeks worked by the SE-02 Sub-Fund Total Work Weeks, in order to determine a "Percentage Share" of the SE-02 Sub-Fund Total Work Weeks for each SE-02 Sub-Fund Class

Member. Each Current Class Member and all Former Class Members (who return a valid and timely Claim Form) shall be entitled to receive a Settlement Award equal to his or her Percentage Share of the SE-02 Sub-Fund Total Work Weeks multiplied by the portion of SE-02 Sub-Fund remaining after payment of all Court-approved deductions. (Cohelan Decl., *Id*.)

(c) Weekly Recovery Rates. Based upon the above-referenced Sub-Fund allocations and proportional deductions from each Sub-Fund for the Court-approved deductions, and to account for the potentially stronger claims of those employed in the lower position of SE-01, the distribution formula weighing in favor of the SE-01, the SE-01's will receive an estimated **$62.69**, while SE-02's will receive an estimated **$16.53**, less taxes, for each week worked during the Class Period. (Cohelan Decl., *Id*; Donly Decl., ¶16.)

Depending on their work histories, some Class Members may be entitled to payment from both Sub-Funds. (Cohelan Decl., ¶34.) Furthermore, unclaimed shares of each Sub-Fund associated with Former Raytheon employee Class Members will be redistributed on a proportional basis to those Class Members who are participating in the respective Sub-Fund, thereby increasing the estimated weekly pay rates. (*Id*.)

All Class Members who have not returned a valid and timely request to be excluded, will release the claims alleged in the action relating to the misclassification of their position as exempt from the requirements of overtime pay, the failure to provide rest and/or meal periods or to compensate in lieu thereof, failure to provide accurate itemized wage statements, failure to pay all wages upon termination of their employment, and based upon those violations, the unfair competition law claim. (SA 28, 46-48, Cohelan Decl., ¶35.)

B. Notice of Class Action Settlement and Notice Process.

On October 7, 2010, this Court granted preliminary approval of the Parties' settlement and directed that the Notice of Class Settlement and Settlement Hearing ("Notice") be mailed to the 394 member Class. (Cohelan Decl., ¶36.) After Class Member addresses were updated by the Claims Administrator through a National Change of Address search, on November 22, 2010, it mailed the Notice, Claim Form, and pre-printed postage paid return envelope ("Notice Packet") to the Class. (Cohelan Decl.,¶37; Donly Decl., ¶¶6, 7, 8, 9; Exhs. A and B.)

The Notice advised the Class of the pertinent terms of the proposed settlement, namely, the claims to be resolved by way of the settlement, the non-reversionary nature of the proposed settlement, the proposed deduction for attorneys' fees, litigation costs, class representative enhancement payment, claims administration expenses, and the payment to the State of California's Labor Workforce and Development Agency. (Cohelan Decl., ¶38; Donly Decl., ¶6, Exh. A.)

The Notice also informed the Class of the estimated weekly pay rates for each of the two covered positions and the basis upon which the pay rate was calculated. The Notice advised that if a Class Member was a Current Raytheon employee Class Member as of the date of mailing the Notice Packet, their proportional share of the Settlement would be paid *automatically*, without the need to return a Claim Form, unless he or she requested to be excluded from the Settlement. (Cohelan Decl., ¶39; Donly Decl., ¶6, Exh. A.) The Notice further advised that if the Class Member was a Former Raytheon employee Class Member, a Claim Form was required to be returned on or before the Claims Period Deadline. (*Id*.)

Furthermore, the Notice advised of the manner and deadlines within which to request exclusion or to object to the settlement as well as the manner and timing to dispute the information upon which the Claims Administrator would rely to calculate the Class Member's share of the settlement proceeds. In addition, both the Notice and Claim Form identified the specific claims to be released by the Settlement. (Cohelan Decl., ¶40; Donly Decl., ¶6, Exhs. A and B.)

On January 7, 2011, a reminder postcard was mailed to 85 Former Raytheon employee Class Members who, as of that date, had not responded with the return of a Claim Form or a request to be excluded to remind each of the January 21, 2011 Claims Period Deadline to submit a Claim Form. (Cohelan Decl., ¶41; Donly Decl., ¶12, Exh. C.)

C. Class Participation in the Settlement.

As a result of the successful notice process described above and as set forth in the Declaration of Caryn Donly, the Class has been given an opportunity to participate in the Settlement. The Class has overwhelmingly accepted the Settlement with 333 of 394 Class

Members or rather 84.5% choosing to participate in the Settlement. (Donly Decl., 14, 15; Cohelan Decl., ¶42.) These participating class members ("Authorized Claimants") represent and claim $1,171,992.77 or rather 96% of the Net Settlement Amount ("NSA"). Based thereon, the weekly pay rate for an SE-01 Class Member is $62.69; while the weekly pay rate for an SE-02 Class Member is $16.53. Based on this weekly pay rate, the average claim to be paid to a SE-01 Class Member is estimated at $4,524.27, while the highest claim to be paid is estimated at $16,926.07; and the average claim to be paid to a SE-02 Class Member is estimated at $1,560.81, while the highest claim to be paid is estimated at $5,207.64. (Cohelan Decl., ¶43; Donly Decl., ¶¶15, 16.) The four percent of the NSA not claimed by the Former Raytheon Employee Class Member will be redistributed proportionally to the 333 participating members of the class increasing the weekly pay rates, and thus increasing the average and highest claim payments. (Cohelan Decl., ¶44; Donly Decl., ¶16.)

D. Requests for Exclusion.

The deadline for filing a request for exclusion was January 21, 2011 and only four Class Members chose to be excluded from the Settlement. (Cohelan Decl., ¶45; Donly Decl., ¶17.)

E. Objections.

On or about December 26, 2010, Class Counsel received an objection in the form of a letter from Class Member Minh-Long Hoang. Following review of the objection, Class Counsel made efforts to personally speak with Ms. Hoang telephonically to respond to her questions/comments, but was unsuccessful in reaching her. (Cohelan Decl., ¶46.) Class Counsel did, however, respond to Ms. Hoang's questions/comments in writing by way of a two-page letter dated January 5, 2011 sent certified, return receipt requested. (Cohelan Decl., ¶47, see, Exhibit 1.) The letter concluded by inviting Ms. Hoang to contact Class Counsel if she wished to discuss the matter further. Ms. Hoang acknowledged receipt of the certified letter on January 7, 2011, and to date, there has been no further communication from or with Ms. Hoang. (*Id*.) Class Counsel has assumed that Ms. Hoang's objection has been withdrawn, since subsequently she submitted a timely claim form. (Cohelan Decl., ¶48.)

The deadline to file an objection is still open and will close on February 21, 2011, approximately two weeks following the filing of the instant motion for final approval and the accompanying motion for an award of attorneys' fees, costs, etc. Class Counsel will submit a supplemental declaration to the Court following the close of the objection deadline to advise whether any objections were subsequently received and/or filed. (Cohelan Decl., ¶49.)

The extraordinary effort to ensure that all members of the Class were informed and given the opportunity to participate in the Settlement has resulted in an amazingly high claims participation rate of 84.5%, whereby the entire NSA estimated at $1,224,135.16 will be paid out to these 333 participating Class Members. (Cohelan Decl., ¶50.) By resolving this matter now and granting final approval, these class members will receive a *guaranteed* recovery without risk of nonpayment, delay, or an adverse judgment at trial. The Settlement should receive final approval because it provides substantial monetary benefits to Class Members and is the product of diligent efforts and extensive arms' length negotiations by Class Counsel to obtain the best possible result for Class. Class Counsel has achieved an excellent result in this litigation.

II. ARGUMENT

A. Class Action Settlements are Subject to Court Review and Approval Under the Federal Rule of Civil Procedure.

Rule 23(e) of the Federal Rule of Civil Procedure provides that "[a] class action shall not be dismissed, settled, or compromised without the approval of the Court, and notice of the proposed dismissal, settlement or compromise shall be given as the Court directs." The Ninth Circuit has stated that in order to approve a final settlement in a class action, the district court must find that the proposed settlement is fundamentally fair, adequate, and reasonable. *Id*. at *Rule 23(e)(1)(C)*; *Staton v. Boeing Co.*, 327 F. 938, 952 (9th Cir. 2003).

B. The Class Action Is Certified.

On March 24, 2010, this case was removed to the United States District Court following the Superior Court's Order Granting Class Certification on January 29, 2010. (Cohelan Decl., ¶51.) While the terminology is slightly different, California Rules of Court and Civil Code of Civil Procedure Section 382 are directly in line with Rule 23 prerequisites. Here, as the

Certification Order shows, certification was deemed appropriate, superior and manageable based on the evidence submitted.[2] While Raytheon did not challenge the Order through any Writ proceedings in the State appellate courts, it did anticipate a motion to vacate the certification order and/or a motion for decertification in the district court had the matter not resolved. While the Parties can only speculate as to the result, such efforts would present a risk to the certified class of not being able to successfully obtain recovery.

C. The Settlement Is Fair, Reasonable and Adequate.

Courts act within their discretion in approving settlements which are fair, not collusive, and take into account "all the normal perils of litigation as well as the additional uncertainties inherent in complex class actions." *In re Beef Industry Antitrust Litigation*, 607 F. 2d 167, 179 (5th Cir. 1979) cert. denied; *Iowa Beef Processors, Inc. v. Meat Price Investigators Ass'n*, 452 U.S. 905 (1981). In deciding whether to approve a proposed class action settlement, the Court must find that a proposed settlement is "fair, adequate and reasonable." *Dunk v. Ford Motor Co.*, 48 Cal.App.4th 1794, 1801 (1996) (quoting *Officers for Justice v. Civil Serv. Comm.*, 688 F.2d 615, 625 (9th Cir. 1982), cert. denied 459 U.S. 1217 (1983).) The trial court considers all relevant factors, such as "the strength of plaintiffs' case, the risk, expense, complexity and likely duration of further litigation, the risk of maintaining class action status through trial, the amount offered in settlement, the extent of discovery completed and the stage of the proceedings, the experience and views of counsel, the presence of a governmental participant, and the reaction of the class members to the proposed settlement." (*Id.*) Where a settlement is reached on terms agreeable to all parties, a court should disapprove of the settlement "only with considerable circumspection." *Jamison v. Butcher & Sherrerd*, 68 F.R.D. 479, 481 (E. D. Pa. 1975).

In the Ninth Circuit, a court affords a *presumption of fairness* to a settlement, if: (1) the negotiations occurred at arm's length; (2) there was sufficient discovery to allow counsel to act and the Court to review their actions in an informed manner; (3) the proponents of the settlement

[2] Upon removal, the District Court takes the case as it finds it. See, *Jenkins v. Commonwealth Land Title Ins. Co.* (9th Cir. 1996) 95 F.3d 791,795 and 28 U.S.C. Section 1450, stating all "orders and other proceedings had in (state court) action prior to its removal *shall remain in full force and effect* until dissolved or modified by the District Court." [Emphasis added.] See also, Rutter, Federal Civil Procedure Before Trial (2010) at 2:1016-2:1024.

are experienced in similar litigation; and (4) only a small fraction of the class objected. *Rodriguez v. West Publishing Corp*., No. CV-05-3222 R(MCx) 2007 U.S. Dist. LEXIS 74849 at 33 (C.D. Ca. Sept. 10, 2007), *Dunk v. Ford Motor Co.*, 48 Cal. App.4th, 1794, 1801-1802 (1996). In the case at bar, the proposed Settlement was the product of serious, informed, and non-collusive negotiations. The Cohelan Declaration demonstrates 1) that the proposed settlement was the product of serious, informed, and non-collusive negotiations, overseen by Magistrate Ruben B. Brooks, 2) that the certified class is represented by experienced counsel, and 3) that sufficient discovery and investigation such that Plaintiff and his counsel are able to make an informed recommendation about the proposed Settlement, and 4) with respect to objections, as noted above, only one has been received thus far and it appears that the basis for the objection may have been nullified as a claim form was subsequently submitted and there has been no further contact with that Class Member. A supplemental declaration will be filed with the Court before the final approval hearing to inform the Court of the status of objections which may have been subsequently filed.

Class Counsel submits that based on the foregoing, the proposed Settlement is entitled to a presumption that it is fair, reasonable and adequate and in all other respects proper, and one which should be finally approved.

1. The Amount of the Settlement is a Fair Compromise of Vigorously Contested, Factually Complex Claims, Subject to Many Legal Uncertainties.

Exempt status under California law is to be narrowly construed and applied only to those employees who plainly and unmistakably meet the requirements. Plaintiff believes the Class was properly certified in that the positions were entry-level, with employees performing low-level, routine, repetitive and menial task work which did not include creative design or the development of software. Although certification was granted, Plaintiff recognizes that it would require a considerable showing in order to ultimately prove the covered positions continue to fail to meet Defendant's proffered exemption should Defendant file its Motion for De-Certification. Yet, it is not inconceivable that even after a full and fair hearing of all favorable evidence against the proffered exemption, Plaintiff could still end up on the losing end of the equation. Similar risks

are presented to Raytheon.

Class certification is always a matter of the trial court's sound discretion, and recent district court decisions have been unfavorable in the misclassification area, i.e. *Weigele v. FedEx Ground Package System, Inc*., United States District Court, Southern District of California, Case No. 06CV 1330 JLS (POR), overtime case - reversal of class certification; *Vinole v. Countrywide Home Loans, Inc*., United States District Court, Southern District of California, Case No. 07CV0127 DMS (WMC), misclassification OT case - grant of motion to deny class certification; *Jimenez v. Domino's Pizza, LLC*, United States District Court, Central District of California, Case No. SACV04-1107 JVS (RCX), misclassification OT - denial of class certification.

Raytheon has strongly disputed liability and believes that class certification was inappropriate. There are significant legal uncertainties associated with misclassification claims and in cases such as this one, such claims can be factually complex and require protracted litigation to resolve. Raytheon has maintained that resolution of these issues required individualized analysis of the nature of the class members' work, job duties and responsibilities, because the Company's practices and procedures varied by location, supervisor, job, and employee. Therefore, Raytheon has maintained that because individual issues would predominate over common facts that certification is inappropriate. Plaintiff would be likely facing the prospect of opposing a motion to vacate the certification order and/or a de-certification motion absent the proposed Settlement.

Furthermore, legal uncertainties also abound, with several published conflicting decisions in wage and hour cases. *See, e.g.*, *Hefflefinger v. EDS, Inc.* (C.D. Cal.2008) U.S. Dist. LEXIS 46461 (certifying classes of Data Base Administrators, Senior Systems Administrators, Systems Engineers, and Information Analysts); *Harris v. Superior Court*, 154 Cal. App. 4th 164 (reversing decertification of class claiming misclassification and ordering summary adjudication in favor of employees), *review granted*, 171 P.3d 545 (2007) (not cited as precedent, but rather for illustrative purposes only); *Walsh v. IKON Solutions, Inc.*, 148 Cal. App. 4th 1440 (2007) (affirming decertification of class claiming misclassification); *Aguiar v. Cintas Corp. No. 2*, 144 Cal. App. 4th 121 (2006) (reversing denial of certification); *Dunbar v. Albertson's Inc*., 141 Cal.

App. 4th 1422 (2006) (affirming denial of certification). These uncertainties bore heavily on the negotiations leading to the Settlement now before the Court for final approval.

Based on the information provided by Raytheon at the time of the ENE, as well as the additional information provided through formal discovery, Class Counsel was permitted to develop a damage model based on the alleged claims and size of the class for the covered period of time. The primary claim developed for overtime, however, the company's role as a government contractor along with the "extended work time" payment policy tended to offset any considerable outside overtime exposure. Anecdotally, the employees would not necessarily be subjected to routine and extensive overtime hours. Overtime ("OT") estimates by class members varied and many did indicate that the extended work period pre-approval at an employee's standard hourly rate helped to compensate for long hours during critical time periods for projects or "milestones." Plaintiff's counsel estimated that without factoring in the extended work time credit, three (3) hours of OT was an appropriate weekly average at an OT rate of approximately $45 per hour. Without the extended work hour offset or credit, the outside exposure contemplated by Plaintiff on the OT claim (assuming a favorable outcome from a class-wide trial) was estimated at just over $5,700,000. (Cohelan Decl., ¶52.) Plaintiff estimates that once the credit for amounts Raytheon paid for the extended pre-approved work time policy were factored in, the exposure, assuming all went well at a trial, was in the neighborhood of $4,600,000. (Cohelan Decl., ¶53.)

Further, employees generally were free to take breaks and meal periods - with the exception of certain project milestone deadlines. Thus, the evaluation of this claim was limited to essentially one (1) violation per employee per workweek at $30 per hour premium pay rate, which yielded a Meal/Rest period claim evaluation in the neighborhood of $1,275,000 – again assuming no issue with class-wide proof and manageability issues, not to mention the uncertainty relating to a pending decision of the California Supreme Court (*Brinker Restaurant Corp. v. Superior Court (Hohnbaum)*, California Supreme Court Case No. S166350 – pertaining to meal period. (Cohelan, Khoury & Singer are co-counsel in the *Brinker* matter. Cohelan Decl., ¶54.)

In the face of these uncertainties, the Parties agreed to a compromise settlement, of a *non-reversionary* $2,000,000 plus the payment of the employer's share of payroll taxes. Upon final

approval, the entire NSA estimated at $1,224,135.16 will be distributed to 333 members of the class, paying SE-01 Class Members an estimated $62.69 for each week and SE-02 Class Members an estimated $16.53 for each week worked during the Class Period. (Cohelan Decl., ¶55.) Based thereon, and before redistribution of the unclaimed NSA, the average claim to be paid to an SE-01 participating class member is $4,524.27, while the highest claim to be paid is $16,926.07. As for the SE-02 participating class member, the average claim to be paid is $1,560.81 while the highest claim to be paid is $5,207.64. (Cohelan Decl., ¶56.) These figures will be adjusted and updated and provided to the Court prior to the hearing and following the close of the objection deadline.

A settlement is not judged solely against what might have been recovered had plaintiff prevailed at trial, nor does the settlement have to provide 100% of the damages sought to be fair and reasonable. (*Linney v. Cellular Alaska Partnership*, 151 F. 3d 1234, 1242 (9th Cir. 1998); *Wershba v. Apple Computers, Inc*. (2001) 91 Cal.App.4th 224, 246, 250; *Rebney v. Wells Fargo Bank*, 220 Cal.App.3d 1117, 1139 (1990) ["Compromise is inherent and necessary in the settlement process...even if the relief afforded by the proposed settlement is substantially narrower than it would be if the suits were to be successfully litigated, this is no bar to a class settlement because the public interest may indeed be served by a voluntary settlement in which each side gives ground in the interest of avoiding litigation"]; *Officers for Justice v. Civil Serv. Comm'n* (9th Cir. 1982) 688 F.2d 615, 628 ["It is well-settled law that a cash settlement amounting to only a fraction of the potential recovery does not . . . render the settlement inadequate or unfair"]; see, also, *In re Omnivision Technologies, Inc.* (N.D. Cal. 2007) 2007 U.S. Dist LEXIS 95616, at p. 21, noting that certainty of recovery in settlement of 6% of maximum potential recovery after reduction for attorney's fees was higher than median percentage for recoveries in shareholder class action settlements, averaging 2.2%-3% from 2002 through 2006.)

Plaintiff considers the proposed settlement to be *significantly more* than a "fraction," particularly considering the various potential complications, dangers and pitfalls that proceeding would entail. Indeed, "[t]he determination whether a settlement is reasonable does not involve

the use of a 'mathematical equation yielding a particularized sum.'" *Frank* v. *Eastman Kodak Co.*, (W.D.N.Y. 2005) 228 F.R.D. 174, 186, *quoting In re Michael Milken and Assoc. Sec. Litig.* (S.D.N.Y. 1993) 150 F.R.D. 57, 66. Courts recognize that there is an inherent "range of reasonableness" in determining whether to approve settlement "which recognizes the uncertainties of law and fact in any particular case and the concomitant risks and costs necessarily inherent in taking any litigation to completion." *Id.* at 188, *quoting Newman v. Stein* (2nd Cir. 1972) 464 F. 2d 689, 693, *cert denied* 409 U.S. 1039.

In light of the uncertainties of protracted litigation and the mixed legal precedent regarding the legal positions of the Parties, the non-reversionary settlement with automatic payment to the currently employed class member reflects an excellent result for the Class. Indeed, the policy under California law in favor of settlement in class actions and other complex cases applies with particular force in this case. Certainty of recovery is enhanced by an equitable and timely consummated settlement such as that under consideration in this case. Tensions created in the employment relationship in the litigation process are alleviated by such settlements as opposed to a trial of the matter, and all Parties are in a better position to move forward with their roles in the economy. The expense of protracted litigation in these cases is formidable and the downside of loss to one side or the other is very great.

2. The Extent of Investigation by the Parties Was, and Is, Sufficient to Allow Counsel, and this Court, to Support the Settlement.

The Parties have conducted significant investigation of both the facts and law before and after the class action was filed. On June 20, 2008, Plaintiff served Defendant with his first round of written discovery which included General Form Interrogatories, Special Interrogatories, Request for Admissions and Requests for Production of Documents. (Cohelan Decl., ¶9.) On or about August 11, 2008, Defendant served its objections and responses. (*Id*.)

On August 20, 2008, Plaintiff served Defendant with Employment Form Interrogatories (set no. 1); Defendant served its objections and responses on or about September 24, 2008. (Cohelan Decl., ¶10.)

On September 23, 2008, following review of these objections and responses and with

unsuccessful efforts to obtain the putative class members' contact information, Plaintiff filed a Motion to Compel Further Responses to Special Interrogatories, (Set No. 1), which hearing was set for November 14, 2008. (Cohelan Decl., ¶11.) After the motion was filed, however, the Parties continued to discuss Plaintiff's request for the putative classes' contact information. Those discussions led to an agreement to have a third-party neutral administrator mail a privacy notice to the then-estimated 427 member class on December 3, 2008. In response to the privacy notice, 86 class members requested their contact information be withheld from production and 16 privacy notices were returned as undeliverable. *(Id.)*

As for Defendant's responses to Plaintiff's other discovery requests, Plaintiff continued to attempt to resolve their differences by way of no less than five meet and confer letters. (Cohelan Decl., ¶12.) With failed efforts, on September 29, 2008 Plaintiff filed an Ex Parte Application Regarding Discovery set for hearing September 30, 2008. The Court issued motion hearing dates and Plaintiff prepared and filed his motions to compel. Ultimately, the motions were not heard and the Parties reached accord on many of the discovery issues. (*Id.*)

To those 323 class members who did not opt out of releasing their contact information, on January 29, 2009, Class Counsel mailed a two-page "Newsletter" providing background information on Plaintiff's class action and a request each contact Class Counsel to discuss their work experiences at Raytheon, specifically, their job duties and tasks as well as the hours worked per day/week in order to support Plaintiff's anticipated motion for class certification. (Cohelan Decl., ¶13.)

In response to Plaintiff's document production requests and pursuant to a stipulated protective order, Defendant produced over the course of a year's time beginning November 17, 2008, nearly 5,000 pages consisting of (1) Plaintiff's Personnel file, including performance summaries, promotion forms, evaluations, etc.; (2) job requisitions for the SE01/02 positions; (3) time sheets; (4) overtime policies; (5) portions of Defendant's Exempt Classification Guide for Professional/Individual Contributors; (6) numerous employee emails; (7) multiple company policy and procedure manuals; (8) multiple company training and logistics manuals; (9) Job Descriptions for the SE01/02 positions; and (10) various other documents. (Cohelan Decl., ¶14.)

On November 20, 2008, Plaintiff served a second set of Requests for Production of Documents to which Defendant provided responses/documents on January 20, 2009. Defendant thereafter served its supplemental responses to all of Plaintiff's discovery requests on September 2, 2009. (Cohelan Decl., ¶15.)

On November 17, 2008, Defendant served Plaintiff Andre Watson with Form and Special Interrogatories, Requests for Admissions and Requests for Production of Documents. On January 9, 2009, Plaintiff served his responses and an estimated 560 pages of documents; his supplemental responses were served on March 25, 2009. (Cohelan Decl., ¶16.)

Plaintiff Andre Watson prepared for and gave three full days of deposition testimony, (an estimated 709 pages) on April 22, 2009, May 21, 2009, and May 29, 2009. (Cohelan Decl., ¶17.)

Furthermore, in anticipation of filing his class certification motion, Class Counsel noticed and took the depositions of Defendant's corporate representatives: (1) Thomas Bradley Moore, Defendant's Person Most Knowledgeable ("PMK") of Payroll of Raytheon Space and Airborne Systems on March 24, 2009; (2) David Maroney, Defendant's PMK Re: Exemption Status of Employees of Raytheon Space and Airborne Systems, on April 29, 2009; (3) Patricia Anne Strickland, Defendant's PMK Re: Classification of Employees of Ids of Raytheon Space and Airborne Systems, on October 20, 2009; (4) Richard Scott Swisshelm, a Software Engineering Manager III, on October 21, 2009; (5) Kevin Paquin, Defendant's PMK of Network Centrix Systems, on October 27, 2009; (6) Stacey Allen, Defendant's PMK of Intelligence Information Systems, on October 28, 2009; and (7) Therese Boyle, Defendant's PMK of Space and Airborne Systems, on October 29, 2009. (Cohelan Decl., ¶18.)

In a second effort to reach out to the putative class, on September 17, 2009 Class Counsel mailed a second "Newsletter" to 310 putative Class Members providing an update on the status of the case and requesting each contact Class Counsel to discuss their Raytheon work experiences. (Cohelan Decl., ¶19.)

Furthermore, Class Counsel attempted to contact over 300 Class Members telephonically to obtain anecdotal information for use in assessing the strengths and weaknesses of Plaintiff's case and to develop a damage model based upon the information obtained and extrapolated to the

entire class. Through these phone calls, Class Counsel spoke with approximately 45 putative Class Members who provided valuable information corroborating information provided by Plaintiff and utilized in preparation of Plaintiff's motion for class certification. (Cohelan Decl., ¶20.) Class counsel also spoke to several former Raytheon supervisors (persons who oversaw SE-01/02 employees) to get their perspective on tasks and duties assigned. Several putative class members declined to speak with Class Counsel in fear of retaliation of losing their jobs as well as a belief that due to the national security aspects of their jobs, they were precluded from doing so. (Cohelan Decl., ¶21.)

Counsel for the Parties have further investigated the applicable law as applied to the facts discovered regarding the alleged claims in the lawsuit and potential defenses thereto and the damages claimed by Plaintiff. (Cohelan Decl., ¶22.) Counsel for the Parties engaged in several conferences with each other to discuss the duties and responsibilities of the class positions, among other things. (Cohelan Decl., ¶23.)

The discovery and investigation were extensive as detailed above and sufficient to permit the Court to grant class certification status. In addition, Class Counsel was able to assess the extent of overtime worked by the Class and estimated meal and rest breaks not taken in accordance with the California Labor Code and Industrial Welfare Commission Orders for nonexempt employees to formulate a damage analysis for use at the ENE. As part of ongoing behind-the -scenes efforts to seek mediation, and as part of a battle over whether CAFA jurisdiction existed, Raytheon provided workweek and salary data to allow for damage calculations. (Cohelan Decl., ¶24.) The only missing element was the amount of credit afforded to Raytheon for its policy of paying an occasional 1.0 hour extended work credit to the class for special projects. (*Id.*) Finally at the ENE with Magistrate Judge Brooks, Defendant provided this missing piece of data in order for Plaintiff to assess available damages and Raytheon's offset credit for the extended work time hours paid to SE01/02 employees referenced above. (Cohelan Decl., ¶25.)

Before arriving at the proposed agreed-upon settlement, the Parties thoroughly investigated and evaluated the factual strengths and weaknesses of this case and engaged in

extensive investigation, research, and formal discovery. (Cohelan Decl., ¶26.) Class Counsel also conducted informal interviews of other material witnesses, conducted other forms of investigation during the prosecution of this case, analyzed the potential class-wide damages, and researched the applicable law with respect to the claims asserted in the Complaint and Defendant's affirmative defenses and other potential defenses in order to assess the merits, ability to maintain certification of the class claims, and to formulate a damage model for settlement purposes. (*Id*.) Thus, the Settlement before the Court came only after the case was fully investigated by counsel. This litigation, therefore, has reached the stage where "the Parties certainly have a clear view of the strengths and weaknesses of their cases" sufficient to support the Settlement. *Boyd v. Bechtel Corp*., 485 F. Supp. 610, 617 (N.D. Cal. 1979).

3. Plaintiff's and Defendant's Counsel are Experienced and Support the Settlement; and the Settlement is the Product of Serious, Informed, Non-collusive Negotiations.

Plaintiff's counsel have had significant experience in litigating misclassification, overtime, expense reimbursement, and failed rest/meal period cases. Cohelan Khoury & Singer has certified several such class action cases in Orange County Superior Court, (before the Hon. David C. Velasquez, and the Hon. Jonathan Cannon), in the United States District Court for the Southern District of California, (before the Hon. Judge Marilyn Huff; the Hon. Judge Sammartino), and in San Diego County Superior Court (before the Hon. Patricia A. Cowett, the Hon. Linda B. Quinn, the Hon. Steven R. Denton, and the Hon. Timothy Taylor); and in the Sacramento County Superior Court (before the Hon. Raymond M. Cadei), (Cohelan Decl.,¶57.)

Experienced counsel, operating at arm's length, have weighed the strengths of the case and examined all of the issues and risks of litigation and endorse the proposed settlement. The view of the attorneys actively conducting the litigation "is entitled to significant weight" in deciding whether to approve the settlement. *Fisher Bros. v. Cambridge Lee Industries, Inc*., 630 F. Supp. 482, 488, (E.D. Pa. 1985); *Ellis v. Naval Air Rework Facility*, 87 F.R.D. 15, 18 (N.D. Cal. 1980) aff'd. 661 F.2d 939 (9th Cir. 1981); *Boyd v. Bechtel Corp., supra*, 485 F. Supp. at 616-17.

Both Plaintiff's and Defendant's counsel are particularly experienced in wage and hour employment law and class actions. (Cohelan Decl., ¶58; See, Declaration of Merrill F. Storms,

Jr., in support of Raytheon's Opposition to Plaintiff's Remand filed June 7, 2010, paragraph 4.) Counsel are experienced and qualified to evaluate the Class claims and to evaluate settlement versus trial on a fully informed basis, and to evaluate the viability of the defenses. (Cohelan Decl., ¶59.) Counsel on both sides share the view that this is a fair and reasonable settlement in light of the complexities of the case, the state of the law and uncertainties of class certification and litigation, and an excellent result for the Class. Given the risks inherent in litigation and the defenses asserted, this settlement is fair, adequate, and reasonable and in the best interests of the class and which should be finally approved. (Cohelan Decl., ¶60.)

III. CONCLUSION

Plaintiff respectfully submits that the proposed Settlement is fair, adequate, and reasonable, and that it is in the best interests of Plaintiff and the Certified Class. Under the applicable class action criteria and guidelines, the proposed Settlement should be finally approved by the Court and Judgment entered.

Dated: February 9, 2011

COHELAN KHOURY & SINGER
GASTON & GASTON

By:/s/ Diana M. Khoury
Diana M. Khoury
Counsel for Plaintiff Andre Watson
and the Certified Class