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on behalf of himself and others similarly situated

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**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA**

CESAR CRUZ, on behalf of himself and others  
similarly situated

PLAINTIFF,

vs.

SKY CHEFS, INC., a corporation; LSG  
LUFTHANSA SERVICE HOLDING AG, dba  
LSG SKY CHEFS, a corporation; and DOES 1  
to 100, Inclusive.

DEFENDANTS.

Case No.: C-12-02705-DMR

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

Date: December 18, 2014  
Time: 11:00 a.m.  
Courtroom: 4

Before Donna M. Ryu, United States Magistrate  
Judge

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**MEMORANDUM OF POINTS AND AUTHORITIES**

**I. INTRODUCTION**

On or about March 16, 2012, Plaintiff filed the original Complaint in the Superior Court of the State of California, County of Alameda, Case No. HG12621714, captioned *Cruz v. Sky Chefs, Inc., et al.* On May 24, 2012, Plaintiff filed a First Amended Complaint. On May 25, 2012, Defendant removed the action to the United States District Court for the Northern District of California. On January 16, 2013, Plaintiff filed a Second Amended Complaint in the United States District Court for the Northern District of California.

Prior to the mediation, Plaintiff propounded written discovery, Interrogatories and Request for Production of Documents, which required Defendant to spend substantial time and effort in gathering the requested information. The parties also agreed to conduct informal discovery including a random sample. Defendant produced thousands of pages of documents (in hardcopy and electronic form) and detailed information regarding class data including putative Class Members' payroll records, timesheets, and other payroll information. Defendant also disclosed policies and procedures related to meal and rest breaks, work time, recording time, and other workplace policies applicable to the Plaintiff's class claims. (Lavi Dec. ¶7). Defendant provided multiple Excel documents which contained the above identified employees' actual punch history and the employees' paid history. (Lavi Dec. ¶7). The random sample was analyzed by the Plaintiff's expert. Upon analyzing Defendant's policies, procedures and data as well as Plaintiff's expert analysis and prior to the mediation, Plaintiff's counsel informed Defendant that Plaintiff intended to Amend his Complaint to add meal and rest break causes of action. (Lavi Dec. ¶9).

Furthermore, once the parties had sufficient time to analyze the data and armed with sufficient information to assess their relative strengths and weaknesses, the parties thereafter participated in a day-long mediation on June 5, 2013, before Jeff Krivis, Esq. (*Id.* ¶ 6.) While the mediation did not culminate in a settlement on that day, the parties continued to utilize the services of Mr. Krivis to continue the settlement discussions for an additional ten (10) weeks. The continued efforts of the parties and mediator culminated in the Stipulation and Settlement Agreement which the Parties are now asking the Court to preliminarily approve. (*Id.*)

1 As a result of the Settlement Agreement, Plaintiff filed a Third Amended Complaint,  
2 seeking damages, penalties, restitution, injunctive relief, costs, attorney fees, and any further relief  
3 deemed appropriate by the Court on the basis that Defendant failed to pay wages due (at applicable  
4 legal rate) for all time worked, failed to pay overtime at the proper rate by including all forms of  
5 remuneration in calculating the regular rate of pay, failed to provide proper meal and rest periods,  
6 failed to provide accurate wage statements, failed to timely pay all final unpaid wages, and violated  
7 California Unfair Competition law, Cal. Bus. & Prof. Code §§ 17200, *et seq.* Defendant denies each  
8 allegation asserted in the operative Complaint and asserts that it has no liability for the claims of the  
9 Representative Plaintiff or the Class.

10 The mediation involved extensive, arms-length negotiations, wherein numerous offers and  
11 counter offers were exchanged without the parties agreeing to any of the offers. (*Id.* ¶ 6). The parties  
12 were not able to reach a settlement at the mediation. (*Id.*) However, the parties continued to  
13 negotiate with the assistance of Jeff Krivis and finally agreed to the terms of the settlement  
14 approximately ten weeks after the mediation. (*Id.*) The assistance and experience of Jeff Krivis was  
15 essential to the resolution of the matter due to the contentious negotiations.

16 Plaintiff considered the facts of the case, probability of prevailing on the claims, Defendant's  
17 defenses, class certification, recent case law developments, potential appeals, delays and the  
18 settlement reached in the matter of *Johnson v. Sky Chefs, Inc.*, United States District Court,  
19 Northern District, Case No. 5:11-CV-05619 LHK wherein the *Johnson* case covered the period of  
20 October 18, 2007, to approximately September 1, 2013, and released all of the potential class  
21 members' Labor Code Section 203 claims as well as Labor Code Section 226 claims. (*Id.* ¶ 10.)

22 Plaintiff now moves for final approval of the Settlement pursuant to Rule 23(e) of the  
23 Federal Rules of Civil Procedure and, for settlement purposes only, certification of the Settlement  
24 Class.

25 The parties agreed to settle the claims in this action for (1) One Million Seven Hundred Fifty  
26 Thousand Dollars (\$1,750,000.00); (2) an enhancement award of Fifteen Thousand Dollars  
27 (\$15,000), or 0.86% of the total settlement amount, for Plaintiff; (3) an attorney's fee award of Four  
28 Hundred Thirty Seven Thousand Five Hundred Dollars (\$437,500.00), or 25% of the Total

1 Settlement Amount, plus costs not to exceed Thirteen Thousand Dollars (\$13,000.00); (4) LWDA  
2 payment of Ten Thousand Dollars (\$10,000) and Administrative Costs not to exceed Thirty Three  
3 Thousand Dollars (\$33,000).

4 On August 19, 2014, this Court Granted Plaintiff’s Motion for Preliminary Approval.

5 **II. FACTUAL BACKGROUND**

6 **A. THE SETTLEMENT TERMS**

7 **1. Monetary Terms of the Settlement**

8 The settlement class is defined as “any current or former hourly, non-exempt employee of  
9 Sky Chefs who performed paid work for Sky Chefs in California from March 16, 2008 up to  
10 December 12, 2013, or if such person is incompetent or deceased, the person’s guardian, executor,  
11 heir or successor in interest”. The settlement provides for a **non-reversionary** claims-made process  
12 requiring Defendant to make a maximum payment of One Million Seven Hundred Fifty Thousand  
13 Dollars (\$1,750,000.00).

14 **2. The Release**

15 **a. Release By Cruz and the Class Members:**

16 Plaintiff and each Class Member fully released Defendant and parent, subsidiary, affiliate,  
17 predecessor or successor, and all agents, employees, officers, directors and attorneys thereof, from:  
18 any and all claims, debts, liabilities, demands, obligations, guarantees, costs, expenses, attorneys’  
19 fees, damages or causes of action which relate to any claims which were alleged or could have been  
20 alleged based on the facts in the Complaint filed by Plaintiff, on his behalf and on behalf of the  
21 Class Members in this Action during the Class Period, including the date of preliminary approval of  
22 this proposed Settlement under any federal, state or local law, and shall specifically include, but is  
23 not limited to, the failure to pay any of the penalties which are or may be available under the  
24 California Labor Code, including without limitation penalties under California Labor Code §§ 203,  
25 226, 226.7, 2699 and 1197.1, and Industrial Welfare Commission Wage Orders, any possible  
26 violation of Business & Professions Code §17200, and any other claims pertaining to the Class  
27 Members which were alleged, or could have been alleged based on the facts in the operative  
28 Complaint, including, without limitation, all claims for restitution and equitable relief, expenses,

1 overtime pay, regular pay, wages, liquidated damages, punitive damages, waiting time penalties,  
2 penalties of any nature whatsoever, and attorneys' fees and costs, arising out of the claims which  
3 were alleged in the Complaint. As to the foregoing claims, Plaintiff, personally and on behalf of the  
4 Class, expressly waives the benefits of California Civil Code §1542.

5 The Release is limited from March 16, 2008 to December 12, 2013, and does not include  
6 any post-class period claims.

7 **b. Plaintiff's Full General Release:**

8 In addition to the release set forth above, Plaintiff also provided Defendant with a **general**  
9 release for **all** of his claims including Age Discrimination in Employment Act. Furthermore,  
10 Plaintiff Cesar Cruz had to agree to **no-re-employment**, that he will not be re-employed or seek  
11 employment by Sky Chefs, and that he will not apply for or otherwise seek employment with Sky  
12 Chefs, LSG Sky Chefs North America Solutions, Inc. and/or LSG Sky Chefs Supply Chain  
13 Solutions, Inc., **at any time**. (Agreement Page 29).

14 **B. THE NOTICE AND CLAIMS PROCESS WAS SUCCESSFULLY  
15 COMPLETED AFTER PRELIMINARY APPROVAL**

16 On August 28, 2014 and September 3, 2014, following the Court's preliminary grant of  
17 approval of the Settlement, Counsel for Defendants provided the Claims Administrator with the Class  
18 List containing the names, last known mailing addresses, Social Security numbers and employment  
19 information for the Class Members. (Shirinian Dec. ¶ 5 (attached as Ex. 1 to Lavi Decl.)) The Claims  
20 Administrator processed and updated the mailing addresses using the National Change of Address  
21 Database ("NCOA") maintained by the United States Postal Service. (*Id.* ¶ 6.)

22 On September 18, 2014, the Claims Administrator mailed the Court-approved Class Notice of  
23 Settlement and Claim Form (collectively "Notice Packet") to 2,995 Class Members. (*Id.* ¶ 7.) The  
24 Notice included Notice of the Class Action Settlement and a Claim Form, in both English and Spanish.  
25 (*Id.*) Class members were informed of the settlement terms and the amount of \$1,750,000.00, the  
26 requested attorneys' fees of up to \$525,000.00 (30% of the Gross Fund Value), cost request of  
27 \$13,000.00, an Enhancement request of \$15,000.00 (a mere 0.86% of the GFV), and claims  
28 administration costs of up to \$33,000.00.



1 In addition, the Claims Administrator utilized Accurint, one of the most comprehensive  
2 address databases available, to perform a Skip Trace on the twenty-four Notice Packets returned by the  
3 Post Office, and a copy of the mailing was sent to those Class members at the new addresses provided  
4 by Accurint. (*Id.* ¶ 9.) CPT provided the class members with a toll free number to call with case-  
5 specific questions. (*Id.* ¶ 2, Ex. A.)

6 On or about October 31, 2014, CPT mailed reminder postcards to 2,388 class members who  
7 had not submitted a response. (Shirinian Dec. ¶ 8.)

8 As of November 24, 2014, CPT had received approximately 896 Claim Forms in response to  
9 its mailings. (*Id.* ¶ 18.) There were 41 invalid claims, caused by a class member submitting a duplicate  
10 response, no late claims, and 14 deficient claims resulting from incomplete Claim Forms. (*Id.* Dec. ¶  
11 14, 15, 16.) CPT has mailed out a deficiency letter with instructions to cure. (*Id.* ¶ 14.)

12 Class members were informed they could object if they wished, yet not a single class member  
13 out of 2,995 has objected to the settlement, request for enhancement or attorney's fees and costs. (*Id.* ¶  
14 17.) Class members also were informed they could submit a request for exclusion and only 4 Class  
15 member have returned an Opt Out request. (*Id.* ¶ 12.)

16 By contrast, assuming the deficient claims are cured approximately 896 Class Members have  
17 submitted valid and timely claim forms, representing 52.19% of the Net Settlement Amount.  
18 (Shirinian Dec. ¶ 18.) Moreover, at least some of the class members will receive in excess of  
19 \$5,040.62, and the average the class members will receive \$1,290.74. (*Id.* ¶ 19.)

### 20 C. THE SETTLEMENT MERITS FINAL APPROVAL

21 The law favors settlement, particularly in class actions and other complex cases, where  
22 substantial resources can be conserved by avoiding the time, cost, and the rigors of formal litigation.  
23 *Van Bronkhorst v. Safeco Corp.*, 529 F.2d 943, 950 (9th Cir. 1976). These concerns apply in a case  
24 such as this, where allegedly illegal practices potentially affected approximately 2,995 employees, in  
25 relatively small amounts.

26 Any settlement of class litigation must be reviewed and approved by the court. This is done  
27 in two steps: (1) an early (preliminary) review by the court, and (2) a final review after notice has  
28

1 been distributed to the class for their comment or objections. The *Manual for Complex Litigation*  
2 *Second* states at § 30.44 (1985):

3 A two-step process is followed when considering class settlements  
4 ... if the proposed settlement appears to be the product of serious,  
5 informed, non-collusive negotiations, has no obvious deficiencies,  
6 does not improperly grant preferential treatment to class  
7 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.

8 When parties reach a settlement agreement prior to class certification, “courts must peruse  
9 the proposed compromise to ratify both the propriety of the certification and the fairness of the  
10 settlement.” *Acosta v. Trans Union LLC*, 243 F.R.D. 377, 383 (C.D. Cal. 2007).

11 “The first step is a preliminary, pre-notification hearing to determine whether the proposed  
12 settlement is ‘within the range of possible approval.’ This hearing is not a fairness hearing; its  
13 purpose, rather is to ascertain whether there is any reason to notify the class members of the  
14 proposed settlement and to proceed with a fairness hearing.” *Armstrong v. Board of School*  
15 *Directors of the City of Milwaukee*, 616 F.2d 305, 314 (6th Cir. 1980) [quoting *Manual for*  
16 *Complex Litigation* s 1.46, at 53-55 (West 1977)]. “[T]he district court must assess whether a class  
17 exists,” *Staton v. Boeing Co.*, 327 F.3d 938, 952 (9th Cir. 2003), *i.e.*, whether the lawsuit qualifies  
18 as a class action under Rule 23. *See, e.g., Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1022 (9th Cir.  
19 1998) (reviewing settlement to ensure compliance with requirements of Rule 23(a) and Rule  
20 23(b)(3)).

21 At the second stage of the approval process, after class members have had an opportunity to  
22 object to the settlement, the court makes a final determination whether the settlement is “fair,  
23 reasonable and adequate” under Rule 23(e). *Armstrong*, 616 F.2d at 314; *see Staton*, 327 F.3d at  
24 952; *see also* Rule 23(e)(C)(1), which provides that a court may finally approve a settlement of a  
25 class action if it finds after a hearing that the settlement is “fair, reasonable, and adequate” and Rule  
26 23(e)(C)(4), which provides that any class member may object to a proposed settlement.

27 This matter is in the second stage of the approval process.

28 **D. THE TERMS OF THE SETTLEMENT ARE FAIR, REASONABLE, AND  
ADEQUATE**

1           The law favors settlement, particularly in class actions and other complex cases where  
2 substantial resources can be conserved by avoiding the time, cost, and rigors of formal litigation.  
3 *See Authors Guild v. Google, Inc.*, 770 F. Supp.2d 666, 674-75 (S.D.N.Y. 2011) (“Public policy, of  
4 course, favors settlement”); *Ouellette v. Cardenas (In re Sony Corp. Sxrd)*, 448 Fed.Appx.85, 87  
5 (2d Cir. N.Y. 2011) (“Public policy favors settlement”); *Bano v. Union Carbide Corp.*, 273 F.3d  
6 120, 129 (2d Cir. N.Y. 2001) (“it is axiomatic that the law encourages settlement of disputes”).  
7 These concerns apply with particular force in a case such as this where an allegedly illegal practice  
8 affected more than one hundred employees.

9           Federal Rule of Civil Procedure 23(e) requires that a class action settlement be “fair,  
10 adequate, and reasonable” in order to merit approval. The Ninth Circuit has identified a non-  
11 exhaustive list of factors to guide the final approval inquiry, including (1) the amount offered in  
12 settlement, (2) the reaction of the class to the proposed settlement, (3) the strength of the plaintiffs’  
13 case balanced against the “risk, expense, complexity, and likely duration of further litigation” and  
14 the “risk of maintaining class action status throughout the trial,” (4) the “extent of discovery  
15 completed” and the “stage of the proceedings,” and (5) the informed views of experienced counsel.  
16 *Graham v. Overland Solutions, Inc.*, 2012 U.S. Dist. LEXIS 130113 at pp. 12-13 (Sept. 12, 2012);  
17 *see Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1026 (9th Cir. 1998); *see also Staton v. Boeing Co.*,  
18 327 F.3d 938, 959 (9th Cir. 2003). With respect to the last factor, the “recommendations of  
19 plaintiffs’ counsel should be given a presumption of reasonableness,” particularly when counsel has  
20 significant experience litigating similar cases. *White v. Experian Info. Solutions, Inc.*, 803  
21 F.Supp.2d 1086, 1099 (2011) (quoting *Boyd v. Bechtel Corp.*, 485 F. Supp. 610, 622 (N.D. Cal.  
22 1979) and *Ellis v. Naval Air Rework Facility*, 87 F.R.D. 15, 18 (N.D. Cal. 1980) (“the fact that  
23 experienced counsel involved in the case approved the settlement after hard-fought negotiations is  
24 entitled to considerable weight.”).

25           “The district court’s role in evaluating a proposed settlement is limited to the extent  
26 necessary to reach a reasoned judgment that the agreement is not the product of fraud or collusion  
27 between the negotiating parties, and that the settlement is fair as a whole. [Citation] It is neither for  
28 the court to reach any ultimate conclusions regarding the merits of the dispute, nor to second guess

1 the settlement terms.” *Ko v. Natura Pet Prods.*, 2012 U.S. Dist. LEXIS 128615 (N.D. Cal. Sept. 10,  
2 2012) (citing to *Officers for Justice v. Civil Serv. Comm’n of City and County of San Francisco*,  
3 688 F.2d 615, 625 (9th Cir. 1982)); *see also Hanlon*, 150 F.3d at 1026 (“It is the settlement taken as  
4 a whole, rather than the individual component parts, that must be examined for overall fairness.”).

5 The parties’ settlement easily satisfies the “fair, reasonable, and adequate” standard for final  
6 approval. *See* Fed. R. Civ. P. 23(e). Class counsel, who are experienced in litigating employment  
7 class action cases, and who were thoroughly familiar with the law and facts of this case at the time  
8 the settlement was negotiated, believe that this proposed settlement is in the best interest of the  
9 class. This is evident by the fact that not a single class member out of 2,996 objected and only 4  
10 opted out of the settlement. (Shirinian Dec. ¶¶ 12, 17.) In addition, the fact that the highest class  
11 member will receive approximately \$5,040.62 with the average wage claim each claimant will  
12 receive is approximately \$1,290.74. (*Id.* ¶ 19.)

13 Parties conducted written discovery, Interrogatories and Request for Production of  
14 Documents, which required Defendant to spend substantial time and effort in gathering the  
15 requested information, including a random sample. In order to have a random sample of the class  
16 data, Class Counsel requested Defendant to provide the Plaintiff with class members’ payroll and  
17 punch history (i.e. punch in at the beginning of the shift, punch out for 1<sup>st</sup> meal break, punch in for  
18 1<sup>st</sup> meal break, punch out for 2<sup>nd</sup> meal breaks, punch in for 2<sup>nd</sup> meal breaks and punch out at the end  
19 of the shift) for class members with last names beginning with “G”, “J”, “M”, “R”, “S”, “T”, and  
20 “W” for the period of March 16, 2008, to March 15, 2013.

21 Defendant produced thousands of pages of documents (in hardcopy and electronic form) and  
22 detailed information regarding class data including putative Class Members’ payroll records,  
23 timesheets, and other payroll information. Defendant also disclosed policies and procedures related  
24 to meal and rest breaks, work time, recording time, and other workplace policies applicable to the  
25 Plaintiff’s class claims. Defendant provided multiple Excel documents which contained the above  
26 identified employees’ actual punch history and the employees’ paid history.

27 The random sample was analyzed by the Plaintiff’s expert. After Plaintiff’s expert combined  
28 the Excel files and formatted the provided timecards, the results were as follows: 1) There were 564

1 uniquely identified employees; 2) The total number of the hours analyzed was 1,948,057 hours; 3)  
2 The total number of days worked analyzed was 224,785 days; 4) The total amount of unpaid hours  
3 based on comparing the actual punches and paid amount was 9,856 hours; 5) The total number of  
4 times that the employees worked 10 or more hours was 32,683 times; 6) The total number of times  
5 that the employees worked 10 or more hours, without having a 2<sup>nd</sup> meal punch was punch 32,137  
6 times; and 7) Total number of times that the employees' 1<sup>st</sup> meal break punches came after 6 hours  
7 of work was 28,274 times. (Berger Dec. ¶ 7 (attached as Ex. 6 to Lavi Decl.).)

8 Defendant estimated the total number of the workweeks as of May 24, 2013 to be 271,000  
9 seven day workweeks, which is equivalent to 379,400 five day. (Beger Dec. ¶8.) The data analyzed  
10 was for 44,957 workweeks or 11.8% of the total workweeks. (*Id.*) Plaintiff's expert believed that  
11 the 11.8% random sample in this matter truly represented a random sample and was sufficiently  
12 large enough since the employees' were randomly selected by their last initials, it was for the years  
13 throughout the class period, represented more than 560 uniquely identified employees and included  
14 approximately 2,000,000 worked hours. (*Id.* ¶ 10.)

15 Thereafter, the Parties participated in a full day mediation with Jeff Krivis, Esq. on June 5,  
16 2013. (Lavi Dec. ¶ 6). By the time of the mediation, Plaintiff's Class Counsel were fully informed  
17 about the strengths and weaknesses of their case and thoroughly familiar with Defendant's policies.  
18 The information enabled the Parties to have a meaningful discussion of the issues and participate in  
19 the mediation.

20 **D. THE COURT SHOULD GRANT FINAL APPROVAL TO THE**  
21 **SETTLEMENT**

22 **1. The Settlement Provides Exceptional Relief to the Class**

23 On or about September 18, 2014, CPT mailed Class notice packets to a total of 2,995 class  
24 members. (Shirinian Decl. ¶ 7.) On or about October 31, 2014, CPT mailed reminder postcards to  
25 2,388 class members who had not submitted a response. (*Id.* ¶ 8.) As of November 24, 2014, CPT  
26 had received approximately 896 Claim Forms in response to its mailings with 4 Opt Out requests,  
27 12 disputed claims, and, significantly, no objections to the settlement from a single Class member.  
28 (*Id.* ¶¶ 12, 13, 17.) The 896 Class Members' claim forms represents 52.19% of the net settlement

1 fund. (*Id.* ¶ 18.) In addition, the highest class member will receive approximately \$5,040.62 with the  
2 average wage claim each claimant will receive is approximately \$1,290.74. (*Id.* ¶ 19.)

3 This is evidence of class member's support of the settlement and final approval.

## 4 **2. The Litigation Involved Substantial Potential Risks**

5 The "risk, expense, complexity, and likely duration of further litigation" are factors to be  
6 considered in assessing a proposed settlement. *Graham*, 2012 U.S. Dist. at pp. 12-13. Plaintiff  
7 considered the facts of the case, probability of prevailing on the claims, Defendant's defenses, class  
8 certification, recent case law developments, potential appeals, delays and the settlement reached in  
9 the matter of *Johnson vs. Sky Chefs, Inc.*, 11:CV-05619-LHK, wherein the Johnson case covered the  
10 period of October 18, 2007, to approximately September 1, 2013, and released all of the potential  
11 class members' Labor Code Section 203 claims as well as Labor Code Section 226 claims.

12 Furthermore, Defendant alleged it could strongly challenge any request for class certification  
13 by submitting testimony, declarations, and evidence that Plaintiff can point to no unlawful  
14 company-wide policy or practice or willful conduct by Defendant, among other evidence. In  
15 connection with the time shaving/rounding wage claims, Defendant claimed that the amount of  
16 unpaid wages was relatively minimal for each Class member and *de minimus*. Defendant also  
17 claimed that there was no evidence that the unpaid worked time was a result of Defendant's  
18 widespread policies affecting all class members. As to the regular rate claims, Defendant claimed  
19 that class members were exempt from entitlement to overtime under Wage Order 9 based on the  
20 existence of a CBA and payment of more than 30 percent than the state minimum wage.

21 Defendant further argued that even if the employees were not exempt and Plaintiff  
22 succeeded on establishing validity of the regular rate argument on a class basis, Defendant would  
23 have a good faith defense argument, an argument that Defendant did not willfully fail to pay  
24 employees, i.e., Defendant did not intentionally withhold the wages or refuse to pay the wages.

25 As to the meal and rest break Defendant claimed that the class member were preempted  
26 pursuant to ADA and/or FAAAA. Defendant also argued that the class members had waived their  
27 2<sup>nd</sup> meal breaks since they were informed of their right to take a 2<sup>nd</sup> meal break as stated in the CBA  
28 agreement as well as the fact that some of the class members in fact took their 2<sup>nd</sup> meal breaks.



1 Defendant further argued that the 2<sup>nd</sup> meal break and 3<sup>rd</sup> rest break class would be limited in size, as  
2 records showed that most employees did not work shifts of ten (10) or more hours thus not being  
3 entitled to 2<sup>nd</sup> meal breaks or 3<sup>rd</sup> rest breaks.

4 Formal discovery, data, and ever-changing and unsettled legal authorities revealed  
5 weaknesses in Plaintiff's claims that could severely challenge Plaintiff's success at class  
6 certification. Our investigation established risks related to certification and liability on a number of  
7 claims. Those risks led to the Settlement and a compromise figure. Plaintiff and Class Counsel  
8 concluded, after taking into account the disputed factual and legal issues involved in this case, the  
9 risks attending further prosecution such as meal and rest breaks being preempted by FAAAA or the  
10 Court determining that the unpaid time was de minimus , including risks related to a contested  
11 motion for class certification, and the substantial benefits to be received pursuant to a compromise  
12 and settlement of the case as set forth in the Agreement, that settlement on the terms agreed to are in  
13 the best interest of Plaintiff and the settlement class.

14 As a factual matter, Defendant still denies it failed to comply with California's wage and  
15 hour laws.

### 16 **3. The Parties Conducted Extensive Investigation and Analysis and the** 17 **Settlement Was Reached Through Arms' Length Negotiations**

18 As described above, Class Counsel engaged in extensive fact-gathering, informal and formal  
19 discovery before agreeing to the terms of the proposed settlement. Before and during the formal  
20 litigation of this action, Class Counsel conducted a thorough investigation into the merits of the  
21 potential claims and defenses. Class Counsel conducted both formal discovery and informal  
22 investigation regarding the facts of this case.

23 Prior to the mediation, Plaintiff propounded written discovery, Interrogatories and Request  
24 for Production of Documents, which required Defendant to spend substantial time and effort in  
25 gathering the requested information. The parties also agreed to conduct informal discovery  
26 including a random sample. In order to have a random sample of the class data, Class Counsel  
27 requested Defendant to provide the Plaintiff with class members' payroll and punch history (i.e.  
28 punch in at the beginning of the shift, punch out for 1<sup>st</sup> meal break, punch in for 1<sup>st</sup> meal break,

1 punch out for 2<sup>nd</sup> meal breaks, punch in for 2<sup>nd</sup> meal breaks and punch out at the end of the shift) for  
2 class members with last names beginning with “G”, “J”, “M”, “R”, “S”, “T”, and “W” for the period  
3 of March 16, 2008, to March 15, 2013.

4 Defendant produced thousands of pages of documents (in hardcopy and electronic form) and  
5 detailed information regarding class data including putative Class Members’ payroll records,  
6 timesheets, and other payroll information. Defendant also disclosed policies and procedures related  
7 to meal and rest breaks, work time, recording time, and other workplace policies applicable to the  
8 Plaintiff’s class claims. (Lavi Dec. ¶7). Defendant provided multiple Excel documents which  
9 contained the above identified employees’ actual punch history and the employees’ paid history.  
10 (Lavi Dec. ¶8).

11 The random sample was analyzed by the Plaintiff’s expert. After Plaintiff’s expert combined  
12 the Excel files and formatted the provided timecards, the results were as follows: 1) There were 564  
13 uniquely identified employees; 2) The total number of the hours analyzed was 1,948,057 hours; 3)  
14 The total number of days worked analyzed was 224,785 days; 4) The total amount of unpaid hours  
15 based on comparing the actual punches and paid amount was 9,856 hours; 5) The total number of  
16 times that the employees worked 10 or more hours was 32,683 times; 6) The total number of times  
17 that the employees worked 10 or more hours, without having a 2<sup>nd</sup> meal punch was punch 32,137  
18 times; and 7) Total number of times that the employees’ 1<sup>st</sup> meal break punches came after 6 hours  
19 of work was 28,274 times. (Berger Dec. ¶7).

20 Defendant estimated the total number of the workweeks as of May 24, 2013 to be 271,000  
21 *seven* day workweeks, which is equivalent to 379,400 *five* day. (Berger Dec. ¶ 8). The data  
22 analyzed was for 44,957 workweeks which represented more than 560 uniquely identified  
23 employees and included approximately 2,000,000 worked hours. (*Id.* ¶ 10).

24 The parties vigorously pressed their positions throughout the mediation. The mediation  
25 involved extensive, arms-length negotiations, wherein numerous offers and counter offers were  
26 exchanged without the parties agreeing to any of the offers. The parties were unable to reach a  
27 settlement on said date. It took the Parties an additional 10 weeks to reach a settlement and  
28 thereafter, the parties continued their negotiations, exchanging extensive iterations of comments and



1 edits to the proposed settlement agreement, culminating in a signed Stipulation.

2 **4. The Recommendations of Experienced Counsel Favor Approval of the**  
3 **Settlement**

4 The judgment of experienced counsel regarding the settlement is entitled to significant  
5 weight. *Graham*, 2012 U.S. Dist. at pp. 12-13. The recommendation of experienced class counsel  
6 should be given a presumption of reasonableness. *White*, 803 F.Supp.2d at 1099. Here, Class  
7 Counsel, who have extensive experience prosecuting and litigating employment cases and class  
8 actions, and who conducted a comprehensive legal and factual investigation into the claims in this  
9 case, firmly believe that the proposed Consent Decree easily satisfies Rule 23(e)'s requirements and  
10 is in the best interest of all class members. (Lavi Dec. ¶¶ 3, 5-19.)

11 **III. THIS SETTLEMENT SHOULD BE FINALLY APPROVED**

12 The Court's August 14, 2014, Preliminary Approval Order conditionally certified a  
13 settlement class. Subsequently, in compliance with the Court Order, Class members were informed  
14 of the settlement terms and its amount, the requested attorneys' fees and costs as well as the  
15 Enhancement request.

16 Class members were informed they could object if they wished, yet not a single class  
17 member out of 2,995 has objected to the settlement, the request for enhancements or attorney's fees  
18 and costs. (Shirinian Dec. ¶ 17.) Class members also were informed they could submit a request  
19 for exclusion, and only 4 have returned an Opt Out request. (*Id.* ¶ 12.)

20 By contrast, approximately 896 Class Members have submitted valid and timely claim  
21 forms, or 30% of the 2,995 class members. (*Id.* ¶ 18.) The 896 Class Members' claims represent  
22 approximately 52.19% of the net settlement fund. (*Id.* ¶ 18.) Moreover, the average wage claim  
23 each claimant will receive is approximately \$1,290.74. (*Id.* ¶ 19.)

24 For this reason, in addition to the reasons stated in Plaintiff's Motion for Preliminary  
25 Approval and in the Court's August 14, 2014, Order, the Court should grant final certification to  
26 the Classes and should confirm the appointment of class representatives and class counsel.

27 **IV. PROPOSED SCHEDULE OF FINAL SETTLEMENT PROCEEDINGS**

28 The Parties propose the following schedule for the final proceedings:

1           1.       No later than thirty (30) days after the Finality Approval, Defendant shall provide  
2 payment to the Claims Administrator in the total amount of One Million Seven Hundred Fifty  
3 Thousand Dollars (\$1,750,000.00). Interest accrued on the deposit, if any, shall be included in the  
4 Net Fund Value.

5           2.       No later than 15 business days after the “effective date” of final approval, the  
6 Claims Administrator shall promptly cut checks and mail them by first-class mail to the respective  
7 Participating Settlement Class Members their respective checks.

8           3.       No later than 15 business days after the “effective date” of final approval, the  
9 Claims Administrator shall promptly cut checks and mail the Enhancement Award for the Class  
10 Representative approved by the Court.

11          4.       No later than 15 business days after the “effective date” of final approval, the  
12 Claims Administrator shall promptly cut checks and mail the Court-approved Fees and Costs  
13 Award to Class Counsel.

14          5.       No later than 15 business days after the “effective date” of final approval, the  
15 Claims Administrator shall promptly cut check and mail the Court approved LWDA payment.

16          6.       Any settlement checks remaining un-cashed after one hundred and eighty (180)  
17 calendar days after being issued shall be void and the amount shall be escheated to the State of  
18 California pursuant to California Code of Civil Procedure Section 1513.

19 **V. CONCLUSION**

20           The parties reached a fair compromise that does not excessively reward class members for  
21 weak claims, or sell them short for strong claims. The Settlement is fair, adequate, and reasonable.  
22 It will result in substantial payments to Class Members, it is non-collusive, and was achieved as a  
23 result of informed, extensive litigation, and arms’-length negotiations conducted by counsel for  
24 respective parties who are experienced in wage and hour class action litigation and with the  
25 assistance of Mediator. For the foregoing reasons, Plaintiff respectfully request the Court grant

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