

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

TYRUS COLLINS and JAMES GREER,
on behalf of themselves and
others similarly situated,

Plaintiffs,

v.

CARGILL MEAT SOLUTIONS
CORPORATION, a Kansas
Corporation, and Does 1
through 50, inclusive,

Defendants.

No. 1:10-CV-00500-OWW-GSA

MEMORANDUM DECISION RE:
PRELIMINARY APPROVAL OF CLASS
ACTION SETTLEMENT (Doc. 37)

I. INTRODUCTION.

Plaintiffs Tyrus Collins and James Greer brought this action on behalf of themselves and approximately 219 current and former nonexempt hourly workers employed at Defendant Cargill Meat Solutions' facility in Fresno, California. Plaintiffs allege that Cargill violated state wage-and-hour laws, e.g., it failed to provide employees with paid rest periods of not less than ten minutes for every four consecutive hours worked; and failed to reimburse employees for expenses necessarily incurred in the performance of their job duties for Cargill, namely, the costs of acquiring required safety footwear.¹

¹ Plaintiffs also allege that Defendants failed to pay wages in a timely manner; failed to provide accurate wage statements; and

1 case was transferred to the Eastern District of California on
2 February 25, 2010.

3 Plaintiffs filed a first amended complaint ("FAC") on August
4 25, 2010, adding a new cause of action under the California Labor
5 Code Private Attorney General Act of 2004, § 2699. Doc. 23.

6 Plaintiffs filed the operative second amended complaint (the
7 "SAC") on December 17, 2010.² Doc. 32. The SAC correctly
8 identifies the Defendant as "Cargill Meat Solutions Corporation"
9 and defines/clarifies the class as "nonexempt hourly employees at
10 any time between August 1, 2008 and the date of preliminary
11 approval by the Court of the settlement." Cf. FAC, Doc. 23, ¶
12 1) ("Plaintiffs bring this action pursuant to Rule 23 of the Federal
13 Rules of Civil Procedure on behalf of all persons who are or were
14 employed by Defendant as nonexempt hourly employees within the
15 State of California at any time four (4) years prior to the
16 original filing of the lawsuit and continuing to the present.").

17 On January 21, 2011, the parties filed a Stipulation of
18 Settlement and the instant motion for preliminary approval of the
19 proposed settlement.

20 From January 2010 through the day of the settlement
21 negotiation, the parties conducted extensive formal and informal
22 discovery concerning Defendant's policy and practices. Plaintiffs'
23 counsel undertook an extensive review of the information amassed
24 during discovery, including: (1) analysis of hundreds of documents
25

26 ² The second amended complaint realleges the seven causes of
27 action in the FAC, i.e., violations of Labor Code §§ 201, 202, 203,
28 204, 226, 2699, 2802, IWC Wage Orders, and Business and Professions
Code §§ 17200, et seq. Doc. 32 at ¶¶ 23-55.

1 produced by Defendant, including time records and payroll data for
2 class members and Defendant's employment records; (2) analysis of
3 Defendant's legal arguments, including *Brinker Rest. Corp. v.*
4 *Superior Court* (Hohnbaum), 165 Cal. App. 4th 25, 80 Cal. Rptr. 3d
5 781 (2008) (review granted); (3) analysis of class-wide violations
6 and damages relating to Defendant's reimbursement policies and
7 practices for work-related expenses; (4) review and analysis of
8 Defendant's policies and practices relating to safety equipment and
9 devices required including document relating to workplace safety
10 compliance; and (5) research of the applicable law with respect
11 to Plaintiffs' claims. Orshansky Decl., Doc. 38, ¶ 11.

12 13 III. SUMMARY OF THE SETTLEMENT

14 The case was resolved with the aid of a mediator, Michael
15 Loeb, Esq., and a third party neutral. The Settlement covers
16 approximately 219 current and former nonexempt hourly workers
17 employed by Defendant in Fresno, California from August 1, 2008 to
18 the date the Court enters an Order of Preliminary Approval.
19 Settlement, ¶ 1. Under the proposed settlement, a non-revertible
20 fund of \$150,000 will be established to provide cash payments to
21 qualified class members ("Net Settlement Fund" or "NSF"). This
22 amount is not subject to any pre-distribution reductions as
23 Defendant has agreed to separately pay claims administration
24 costs.³

25
26
27 ³ Defendants have agreed to separately pay attorneys' fees and
28 litigation costs, enhancement payments to Class Representatives and
required payments to the California Labor and Workforce Development
Agency ("CLWD"). Settlement, ¶ 11.

1
2 **A. Payment Terms**

3 Under the proposed settlement, a non-revertible fund of
4 \$150,000 will be established to provide cash payments to class
5 members who submit timely and valid Claim Forms ("Qualified
6 Claimant"),⁴ based upon the following allocation formula:

7 Each Qualified Claimant shall receive a payment based on
8 the number of weeks that he or she worked during the
9 Covered Period, which shall be from August 1, 2008
10 through preliminary approval.

11 Each Qualified Claimant will be entitled to a
12 provisional share of the settlement calculated by (1)
13 taking that Qualified Claimant's number of workweeks,
14 (2) dividing that number by the total number of
15 workweeks for all Qualified Claimants, and (3)
16 multiplying the resulting number by the NSF.

17 For purposes of this calculation, the number of an
18 employee's workweeks shall be calculated by (1)
19 subtracting that employee's first workday period during
20 the Covered Period from his or her last workday of the
21 Covered Period, (2) dividing that number of days by 7,
22 and then (3) rounding to the nearest integer.

23 Doc. 38-1, ¶ 9(c).

24 A Notice Packet, which includes a Notice of Pendency of Class
25 Action,⁵ Claim Form, and Request for Exclusion Form, will include
26 for each Class Member the number of weeks actively worked during
27 the Class Period and the Class Member's estimated Settlement
28 Amount. Docs. 38-2 thru 38-4. The Settlement Amount is based on

24 ⁴ "Qualified Claimant" is defined as "an individual in the
25 Settlement Class who will have timely submitted a Claim Form
26 properly signed and including the last four number of his or her
social security number."

27 ⁵ The five-page notice document is headed, "Notice of Pendency
28 of Class Action, Proposed Settlement, Your Rights, and Options for
Your to Consider." Doc. 38-2

1 the number of workweeks a Qualified Claimant worked compared with
2 other Qualified Claimants who worked during the same time period.

3 Id. The exact amount a Qualified Claimant receives depends upon
4 how many other Class Members submit timely and valid Claim Forms.

5 Id.

6 For tax purposes, twenty-five percent (25%) of each Settlement
7 Amount will be deemed wages, fifty-percent (50%) expense as expense
8 reimbursement and twenty-five percent (25%) will be treated as
9 penalties and interest. Id. ¶ 9(e). Defendant will pay its share
10 of payroll taxes on any portion of the settlement where payroll
11 taxes are required by law; however, Qualified Claimants will be
12 responsible for correctly characterizing the compensation they
13 receive for tax purposes.

14 The formula relies upon objective evidence of the number of
15 weeks worked during the Class Period. Class Members can review and
16 confirm this information, and the Claim Form permits Class Members
17 to challenge the number of weeks worked. Settlement, ¶ 9(d).

18
19 B. Change in Policy

20 Defendant will provide and/or reimburse Class Members for the
21 cost of steel-toe footwear to the extent Defendant requires such
22 footwear to be worn. Settlement, ¶ 9(c).

23
24 C. Releases

25 The Settlement provides that all Class Members other than
26 those who elect not to participate in the Settlement shall have
27 released the "Released Parties" from the "Released Claims." The
28 Notice contains the following release:

1 Upon the final approval by the Court of the settlement,
2 each Class Member who does not opt out of the
3 settlement, shall, for the period of time extending from
4 August 1, 2008 to [preliminary approval], fully release
5 and forever discharge Defendant and its respective
6 present and former officers, directors, employees,
7 shareholders, agents, trustees, representatives,
8 attorneys, insurers, parent companies, subsidiaries,
9 divisions, affiliates, predecessors, successors,
10 assigns, and any individual or entity that could be
11 jointly liable with Defendant (the foregoing are
12 collectively referred to hereafter as the "Releasees")
13 from any and all claims, causes of action, damages,
14 wages, benefits, expenses, penalties, debts,
15 liabilities, demands, obligations, attorneys' fees,
16 costs, and any other form of relief or remedy at law or
17 in equity, of whatever kind or nature, asserted by the
18 Covered Claims based on the facts alleged in the Second
19 Amended Complaint ("Complaint") filed in the Lawsuit.

20 "Covered Claims" means any and all claims, demands,
21 rights, liabilities, and/or causes of action arising out
22 of the facts alleged in the Complaint for: (1) violation
23 of Labor Code § 2802(a); (2) rest-period violations,
24 Labor Code § 226.7; (3) violation of Labor Code § 204;
25 (4) violation of Labor Code § 226(a); (5) penalties
26 pursuant to Labor Code § 203; (6) penalties under
27 California Labor Code § 2699 et seq.; (7) any penalties
28 that could have been brought based on the violations
alleged in the Complaint, and (8) violation of Business
& Professions Code § 17200, et seq. based on the
foregoing alleged violations

Claim Form, Doc. 38-3, pg. 2.

Under the Settlement Agreement, Defendant is further entitled
to include the following release language on the back of each
settlement check:

My signature constitutes a full and complete release of
Cargill Meat Solutions Corp., and any entity that could
be jointly liable, by me for all claims I agreed to
settle by submitting a claim form to participate in the
settlement of Collins, et al. V. Cargill Meat Solutions
Corp., Case No. 1:10-CV-00500-OWW-GSA up to and
including the date of preliminary Court approval of the
settlement, as well as my acknowledgment that I accept
this check as payment in full for all California State
Law claims alleged on my behalf in the lawsuit.

Doc. 38-1, ¶ 10.

1 **D. Objections and Opt-Out Process**

2 Any Class Member who so wishes may object or elect not to
3 participate in the Settlement. The Notice fully explains the
4 objection and opt-out procedures.⁶ Doc. 38-2.

5
6 **E. Class Representative Payments; Claims Administrator Payments;**
7 **Class Counsel Attorneys' Fees Payment and Class Counsel**
8 **Litigation Expenses Payment**

9 Defendant has agreed to make the following payments in
10 addition to and entirely independent of the NSF:

- 11 * a payment to the California Labor and Workforce
12 Development Agency in the amount of \$2,000;
- 13 * enhancement payments to the Class Representative
14 Plaintiffs each in the amount of \$4,000;
- 15 * Plaintiffs' attorneys' fees not to exceed \$82,500,
16 and litigation costs not to exceed \$7,500;
- 17 * all fees and costs to the claims administrator not to
18 exceed \$10,000. Should the claims administrator's
19 cost of administration exceed \$10,000, such
20 additional cost will be borne solely by Defendant in
21 addition to the total settlement amount.

22 Settlement, ¶ 11(a).

23 The exact amounts requested are subject to the Court's final
24 review and approval. Id.

25
26 **F. Excess Opt-Outs and Right to Rescission**

27 Defendant retains the right to nullify the settlement, within

28 ⁶ The Notice provides Qualified Claimants with four options:
(1) Participation as a Class Member; (2) Opt Out; (3) Object; or
(4) No action. These options are fully explained in the Notice
Form, Doc. 38-2.

1 ten calendar days of expiration of the opt-out deadline, if ten
2 percent or more of Class Members opt out of the settlement.
3 Settlement, ¶ 22.

4
5 IV. DISCUSSION.

6 A. Conditional Certification of a Class for Settlement

7 Plaintiffs request certification of the Class under Rule
8 23(c) (1) which permits a court to "make a conditional determination
9 of whether an action should be maintained as a class action,
10 subject to final approval at a later date." *Fry v. Hayt, Hayt &*
11 *Landau*, 198 F.R.D. 461, 466 (E.D. Pa. 2000). Conditional
12 certification requires satisfaction of the pre-requisites of Rule
13 23(a) and (b). *Id.*

14
15 1. Rule 23(a) Requirements

16 Federal Rule of Civil Procedure 23(a) states in pertinent part
17 that "[o]ne or more members of a class may sue or be sued as
18 representative parties on behalf of all." As a threshold matter,
19 in order to certify a class, a court must be satisfied that:

20 (1) the class is so numerous that joinder of all members
21 is impracticable (the "numerosity" requirement); (2)
22 there are questions of law or fact common to the class
23 (the "commonality" requirement); (3) the claims or
24 defenses of representative parties are typical of the
25 claims or defenses of the class (the "typicality"
26 requirement); and (4) the representative parties will
27 fairly and adequately protect the interests of the class
28 (the "adequacy of representation" requirement).

In re Intel Secs. Litig., 89 F.R.D. 104, 112 (N.D. Cal. 1981)
(citing Fed. R. Civ. P. 23(a)).

1 a. *Numerosity*

2 A proposed class must be "so numerous that joinder of all
3 members is impracticable." Fed. R. Civ. P. 23(a)(1). The
4 numerosity requirement demands "examination of the specific facts
5 of each case and imposes no absolute limitations." *Gen. Tel. Co.*
6 *of the Nw., Inc. v. EEOC*, 446 U.S. 318, 330 (1980).

7 The proposed class is comprised of current and former
8 nonexempt hourly workers employed at Defendant Cargill Meat
9 Solutions' facility in Fresno, California from August 1, 2008 to
10 the date the Court enters an Order of Preliminary Approval. There
11 are approximately 219 Class Members. Courts have routinely found
12 the numerosity requirement satisfied when the class comprises 40 or
13 more members. *Ansari v. New York Univ.*, 179 F.R.D. 112, 114
14 (S.D.N.Y. 1998). Numerosity is also satisfied where joining all
15 class members would serve only to impose financial burdens and clog
16 the court's docket. *In re Intel Secs. Litig.*, 89 F.R.D. at 112.
17 Here, the joinder of approximately 219 individual current and
18 former employees to hear their several claims would only further
19 clog this Court's already overburdened docket.

20
21 b. *Common Questions of Fact and Law*

22 Rule 23(a) also demands "questions of law or fact common to
23 the class." Fed. R. Civ. P. 23(a)(2). It does not require that
24 all questions of law or fact be common to every single member of
25 the class. To satisfy the commonality requirement, plaintiffs need
26 only point to a single issue common to the class. *Dukes v.*
27 *Wal-Mart, Inc.*, 509 F.3d 1168, 1177 (9th Cir. 2007). Commonality
28 exists when there is either a common legal issue stemming from

1 divergent factual predicates or a common nucleus of facts resulting
2 in divergent legal theories. *Hanlon v. Chrysler Corp.*, 150 F.3d
3 1011, 1019 (9th Cir. 1998).

4 In this case, potential Class Members share the following
5 legal and factual questions:

- 6 • Whether Defendant failed to provide nonexempt hourly
7 employees with paid rest periods of not less than ten
8 minutes for every four consecutive hours worked;
- 9 • Whether Defendant failed to reimburse nonexempt
10 hourly employees for expenses necessarily incurred in
11 the performance of their job duties for Defendant,
12 namely, the costs of acquiring required safety
13 footwear;
- 14 • Whether Defendant failed to pay nonexempt hourly
15 employees premium pay for each day on which requisite
16 rest periods were not provided or were deficiently
17 provided;
- 18 • Whether Defendant failed to pay premium pay or
19 reimburse nonexempt hourly employees for necessarily
20 incurred expenses at the time of termination or
21 within 72 hours of resignation;
- 22 • Whether the above practices violate the Labor Code
23 and Wage Orders.

24 These common questions of law or fact shared by all
25 prospective class members are sufficient to satisfy the commonality
26 requirement.

27 c. *Typicality*

28 Rule 23(a)(3) demands "the claims or defenses of the
representative parties are typical of the claims or defenses of the
class." *Armstrong v. Davis*, 275 F.3d 849, 868 (9th Cir. 2001).
Typicality is satisfied if the representatives' claims arise from
the same course of conduct as the class claims and are based on the
same legal theory. See, e.g., *Kayes v. Pac. Lumber Co.*, 51 F.3d

1 1449, 1463 (9th Cir. 1995) (claims are typical where named
2 plaintiffs have the same claims as other members of the class and
3 are not subject to unique defenses).

4 Because every class member was paid under the same pay
5 practices as every other class member (nonexempt hourly employees),
6 the Class Representatives' claims are typical of those of the other
7 Class Members. The typicality requirement is satisfied.

8
9 d. *Fair & Adequate Representation*

10 The final Rule 23(a) prerequisite is satisfied if "the
11 representative parties will fairly and adequately protect the
12 interests of the class." Fed. R. Civ. P. 23(a)(4). "The proper
13 resolution of this issue requires that two questions be addressed:
14 (a) do the named plaintiffs and their counsel have any conflicts of
15 interest with other class members and (b) will the named plaintiffs
16 and their counsel prosecute the action vigorously on behalf of the
17 class?" *In re Mego Fin. Corp. Sec. Litig.*, 213 F.3d 454, 462 (9th
18 Cir. 2000).

19 All requirements are satisfied here. Proposed class counsel,
20 Anthony J. Orshansky, Esq., and David H. Yeremian, Esq., of
21 Orshansky & Yeremian, LLP, have significant experience litigating
22 class actions, serving as class counsel, representing plaintiffs in
23 wage and hour litigation. Orshansky Decl., Doc. 38, ¶¶ 3-4.
24 Proposed Class Counsel have no conflicts with the class, *Id.* at ¶26
25 (e), and have devoted a significant amount of time to the lawsuit
26 *Id.* ¶ 11.

27 Additionally, the Class Representatives' interests are
28 completely aligned with those of the class - to maximize their

1 recovery. Although they will each receive an additional \$4,000,
2 this amount is reasonable compensation for the time and expense
3 they spent on this case. *Id.* ¶ 15.
4

5 2. Certification of a Class under Rule 23(b) (3)

6 Once the threshold requirements of Rule 23(a) are satisfied,
7 a class may be certified only if the class action satisfies the
8 superiority requirements of Rule 23(b) (1), (b) (2), and/or (b) (3).
9 The parties agree for purposes of the Settlement only that
10 certification of the Class is appropriate under Rule 23(b) (3)
11 because "questions of law or fact common to the members of the
12 class predominate over any questions affecting only individual
13 members, and ... a class action is superior to other available
14 methods for the fair adjudication of the controversy." Fed. R.
15 Civ. P. 23(b) (3); accord *Orshanksy Decl.*, Doc. 38, ¶ 26(g).
16

17 B. Preliminary Approval of the Settlement

18 In reviewing the settlement, although it is not a court's
19 province to "reach any ultimate conclusions on the contested issues
20 of fact and law which underlie the merits of the dispute," a court
21 should weigh the strength of plaintiff's case; the risk, expense,
22 complexity, and likely duration of further litigation; the stage
23 of the proceedings, and the value of the settlement offer. *Chem.*
24 *Bank v. City of Seattle*, 955 F.2d 1268, 1291 (9th Cir. 1992). The
25 court should also watch for collusion between class counsel and
26 defendants. *Id.*

27 Preliminary approval of a settlement and notice to the
28 proposed class is appropriate: "[i]f [1] the proposed settlement

1 appears to be the product of serious, informed, noncollusive
2 negotiations, [2] has no obvious deficiencies, [3] does not
3 improperly grant preferential treatment to class representatives or
4 segments of the class, and [4] falls with the range of possible
5 approval....” *In re Tableware Antitrust Litig.*, 484 F. Supp. 2d
6 1078, 1079 (N.D. Cal. 2007) (adding numbers). The Settlement
7 proposed by the parties satisfies this test.

8
9 1. The Settlement Was the Product of Informed, Arm's Length
10 Negotiations

11 The Settlement was reached after informed, arm's length
12 negotiations between the parties. Both parties conducted extensive
13 investigation and discovery allowing them to assess the strengths
14 and weaknesses of the case. Plaintiffs' counsel had access to
15 thousands of documents, including payroll data, time records, and
16 policies and practices for work-related expense reimbursement and
17 workplace safety compliance. Orshansky Decl., Doc. 38, ¶ 10. The
18 parties participated in mediation with an impartial mediator, Mr.
19 Michael Loeb, Esq. *Id.* at ¶ 11. The Settlement is the product of
20 non-collusive negotiations.

21
22 2. The Proposed Settlement Has No “Obvious Deficiencies”

23 The Settlement provides for a payment of \$150,000 by
24 Defendants, which is substantial given the size of the class, 219
25 Class Members, and limited nature of the alleged violations at
26 issue, SAC, Doc. 32, ¶¶ 23-55. All Settlement Amounts to be paid
27 under the Settlement are determined by the number of weeks each
28 Class Member worked between August 1, 2008 and the date of

1 preliminary approval by the Court of the settlement. This amount
2 is not subject to any pre-distribution reductions as Defendant has
3 agreed to separately pay claims administration costs. The
4 provisions and structure of the NSF are appropriate, fair, and
5 ensure that the entire \$150,000, about \$685.00 per member, is
6 directed to class members who submit timely and valid Claim Forms.
7 Defendant will also provide and/or reimburse Class Members for the
8 cost of steel-toe footwear to the extent Defendant requires such
9 footwear to be worn.

10 The Class Representative payments and the Class Counsel
11 attorneys' fees and costs payment are appropriate, and are subject
12 to court approval at the final approval hearing. The expected
13 Settlement Administrator's fees and costs of approximately \$10,000
14 is reasonable. The payment to the California Labor and Workforce
15 Development Agency in the amount of \$2,000 is reasonable.

16
17 3. The Settlement Falls Well Within the Range of Possible
18 Approval

19 To determine whether a settlement "falls within the range of
20 possible approval" a court must focus on "substantive fairness and
21 adequacy," and "consider plaintiffs' expected recovery balanced
22 against the value of the settlement offer." *In re Tableware*
23 *Antitrust Litig.*, 484 F. Supp. 2d at 1080.

24 If the litigation proceeds, Plaintiffs would face significant
25 risks. For instance, several of the principal claims in this case
26 revolve around the provision of rest periods. The meaning of an
27 employer's obligation to provide rest periods/meal breaks under
28 California law is currently before the California Supreme Court.

1 See *Brinker Rest. Corp. v. Superior Court* (Hohnbaum), 165 Cal. App.
2 4th 25, 80 Cal. Rptr. 3d 781 (2008) (review granted)); accord
3 Orshanksy Decl., Doc. 38, ¶ 6. A defense ruling in *Brinker* could
4 impair Plaintiffs' ability to proceed on these causes of action.
5 The remaining claims challenge the legality of Defendant's policies
6 and practices relating to reimbursements and workplace safety gear,
7 among others. Defendant sharply disputed the accuracy of these
8 allegations during discovery.

9 Even if Plaintiffs were to prevail, they would be required to
10 expend considerable additional time and resources potentially
11 outweighing any additional recovery obtained through successful
12 litigation. Additionally, continued litigation would delay payment
13 to the Class Members and increase the amount of attorneys' fees.

14 In light of these risks, the proposed recovery is fair,
15 reasonable, and adequate and is in the best interest of the Class
16 Members in light of all known facts and circumstances.

17
18 4. The Claim Form's Release Is Proper and Not Overly Broad

19 As part of the Settlement, Class Members will be deemed to
20 have released "all claims, causes of action, damages, wages,
21 benefits, expenses, penalties, debts, liabilities, demands,
22 obligations, attorneys' fees, costs, and any other form of relief
23 or remedy at law or in equity, of whatever kind or nature, asserted
24 by the Covered Claims based on the facts alleged in the Second
25 Amended Complaint [] filed in the Lawsuit." Claim Form, Doc. 38-3,
26 pg. 2. The Claim Form defines "Covered Claims" as "any and all
27 claims, demands, rights, liabilities, and/or causes of action
28 arising out of the facts alleged in the Complaint for: (1)

1 violation of Labor Code § 2802(a); (2) rest-period violations,
2 Labor Code § 226.7; (3) violation of Labor Code § 204; (4)
3 violation of Labor Code § 226(a); (5) penalties pursuant to Labor
4 Code § 203; (6) penalties under California Labor Code § 2699 et
5 seq.; (7) any penalties that could have been brought based on the
6 violations alleged in the Complaint, and (8) violation of Business
7 & Professions Code § 17200, et seq. based on the foregoing alleged
8 violations." Id.

9 These released claims appropriately track the breadth of
10 Plaintiffs' allegations in the action and the settlement does not
11 release unrelated claims that class members may have against
12 defendants. *Cf. Bond v. Ferguson Enter., Inc.*, No. 1:09-CV-01662-
13 OWW-MJS, 2011 WL 284962, at 7 (E.D. Cal. Jan. 25, 2011) ("This form
14 of release is overbroad by arguably releasing all unrelated claims
15 up to the date of the Agreement.").

16

17 5. Collusion

18 There is no evidence of collusion. The settlement is
19 preliminarily approved as fair and reasonable, subject to a
20 narrowing of the release.

21

22 C. Proposed Class Notice & Administration

23 "Adequate notice is critical to court approval of a class
24 settlement under Rule 23(e)." *Hanlon*, 150 F.3d at 1025. A class
25 action settlement notice "is satisfactory if it generally describes
26 the terms of the settlement in sufficient detail to alert those
27 with adverse viewpoints to investigate and to come forward and be
28 heard." *Churchill Vill., LLC v. Gen. Elec.*, 361 F.3d 566, 575 (9th

1 Cir. 2004) (internal quotations and citations omitted).

2 The proposed Notice (Doc. 38-2) and the manner of notice
3 agreed upon by the parties (Settlement, Doc. 38-1, ¶¶ 13-14) is
4 "the best notice practicable," as required under Rule 23(c) (2) (B).
5 All Class Members can be identified and the Notice and related
6 materials (Claim Form, Doc. 38-3, and Request for Exclusion Form,
7 Doc. 38-4) will be mailed directly to each Class Member. The Class
8 Notice adequately informs Class Members of the nature of the
9 litigation, the essential terms of the Settlement, and how to make
10 a claim under the Settlement, object to or comment on the
11 Settlement, or elect not to participate in the Settlement.
12 Additionally, the Class Notice identifies Class Counsel, specifies
13 the amounts of the Class Representative and CLWD payments, Class
14 Counsel Attorneys' fees and cost, the expense of administering the
15 claims, and explains how to obtain additional information regarding
16 the action and the Settlement.

17 Within ten days of approval of this preliminary settlement
18 agreement, Defendant will transmit to the Claims Administrator the
19 following information concerning each of the approximate 219 Class
20 Members: (1) name; (2) last known home address and telephone
21 number; (3) social security number; and (4) dates of employment
22 during the Covered Period. Settlement, ¶ 13. The Settlement
23 Administrator will mail the Notice, Claim Form, and Request for
24 Exclusion to Class Members within 20 days following the preliminary
25 approval. Id. ¶ 14. Class Members must submit and postmark their
26 Claim Form, Objections, and/or Request for Exclusion Forms no later
27 than 45 days after the Notice is mailed. Id. ¶ 15. The Settlement
28 Administrator will resend improperly completed Claim Forms; and

1 Class Members who receive a re-mailed Claim Form will have 15 days
2 to correct, complete, and/or sign the Claim Form. Id.

3 The Claim Form includes each individual Class Member's weeks
4 worked and estimated Settlement Award. Id. ¶ 9(d). Defendant's
5 employment records will control, however, the parties will make a
6 good faith effort to resolve any dispute over the proper size of a
7 particular claim. Id. If the parties cannot resolve the dispute,
8 it will be referred to the claims administrator for determination.
9 Id.

10 The Claim Forms will be sent directly to the Claims
11 Administrator. Id. ¶ 17. Defendant will provide the Claims
12 Administrator with the Class Data List that the administrator will
13 use to calculate each Class Member's proportional share. Id. The
14 Claims Administrator is responsible for calculating the payments,
15 issuing the payments and calculating and withholding all required
16 state and federal taxes, if any. Id. Upon completion of the
17 calculation of payments, the Claims Administrator will provide
18 Plaintiffs and Defendant with a report listing the amount of all
19 payments to be made to each Qualified Claimant. Id. Proof of
20 payment will be filed with the Court and provided to the Parties'
21 counsel as directed by the Court. Id.

22 The procedures set forth in the Settlement provide the best
23 possible notice to the Class Members.

24
25 D. Rust Consulting, Inc. Is an Appropriate Settlement
26 Administrator

27 The parties have agreed upon and recommend that the court
28 appoint Rust Consulting, Inc., to serve as the Settlement

1 Administrator. Rust Consulting's proposed fee is \$10,000.
2 Settlement, ¶ 11(c). Should the claims administrator's cost of
3 administration exceed \$10,000, such additional cost will also be
4 paid solely by Defendant. Id.

5
6 **E. Settlement Approval Schedule**

7 The parties submit the following schedule for approval of the
8 Settlement:

9
10

<u>Timing</u>	<u>Event</u>
11 March 17, 2011 - 10 calendar 12 days after preliminary 13 approval of settlement.	Defendant provides Claims Administrator mailing addresses for Class Members.
14 March 25, 2011 - Within 20 15 calendar days after 16 preliminary approval of 17 settlement.	Claims Administrator mails Notice Packet to Class Members.
18 May 9, 2011 - 45 calendar 19 days after preliminary 20 approval of settlement.	Deadline for Class Members to submit Claim Form, Exclusion Form or Objections.
21 May 30, 2011 - 28 calendar 22 days before final approval of 23 hearing.	Plaintiffs file Motion for Final Approval of Class Action Settlement.
24 June 27, 2011 at 10:00 a.m.	Final Approval Hearing.

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V. CONCLUSION

For all the reasons set forth above:

(1) The Settlement Class is conditionally certified;

(2) The Class Settlement is preliminarily approved;

(3) Anthony J. Orshansky, Esq., and David H. Yeremian, Esq.,
of Orshansky & Yeremian, LLP, are appointed Class Counsel;

(4) The named plaintiffs, Tyrus Collins and James Greer, are
appointed Class Representatives;

(5) Rust Consulting, Inc. is appointed Claims Administrator;
and

(6) The Class Notice and related materials are approved for
distribution;

IT IS SO ORDERED.

Dated: March 8, 2011

/s/ Oliver W. Wanger
UNITED STATES DISTRICT JUDGE