

1 UNITED STATES DISTRICT COURT
2 FOR THE EASTERN DISTRICT OF CALIFORNIA
3

4 OCTAVIO ALVARADO, PABLO
5 MARTINEZ, OMAR GOMEZ, DANIEL
6 GOMEZ, JOSE DE JESUS GARCIA,
7 on behalf of themselves and
8 all other similarly situated
9 individuals,

10 Plaintiffs,

11 v.

12 REX NEDEREND AND SHERI
13 NEDEREND (dba "Northstar
14 Dairy," "Wildwood Farms,"
15 "Freeway Associates"),

16 Defendants.

1:08-cv-01099 OWW DLB

MEMORANDUM DECISION RE
MOTION FOR PRELIMINARY
APPROVAL OF CLASS ACTION
SETTLEMENT (DOC. 40)

17 I. INTRODUCTION

18 This is a wage-and-hour class action brought on
19 behalf of Dairy workers employed by Rex and Sheri
20 Nederend in, or around, Tulare and/or Kern County,
21 California. Declaration of Stan S. Mallison, Doc. 47,
22 ¶2; see also Second Amended Class Action Complaint
23 ("SAC"), Doc. 27, filed Jan. 19, 2010. The action is
24 brought on behalf of Plaintiffs and approximately 150
25 current and former non-exempt employees of Defendants for
26 alleged violations of federal and state wage-and-hour
27 laws. *Id.*

28 The parties have entered into a Joint Stipulation of
Settlement. Under the terms of the Settlement, the

1 parties move for an order: (1) conditionally certifying
2 a Settlement Class; (2) preliminarily approving the Class
3 Settlement; (3) appointing Class Representatives and
4 Class Counsel; (4) approving class notice and related
5 materials; (5) appointing a settlement administrator; and
6 (6) scheduling a final approval hearing. Doc. 40.
7

8 Although the pending motion was not filed until
9 December 15, 2010, at which time the first available
10 hearing date was March 7, 2011, the motion was advanced
11 to and heard on January 10, 2011, to accommodate the
12 settlement schedule.
13

14 II. BACKGROUND

15 Plaintiffs allege that Defendants failed to pay
16 overtime and minimum wages; failed to pay wages due at
17 termination of employment; failed to provide all legally
18 required meal periods and rest breaks; and failed to
19 provide accurate, itemized employee wage statements.
20 Plaintiffs sought to certify a class composed of
21 themselves and similarly situated individuals and to
22 recover back wages, interest, penalties, and attorneys'
23 fees and costs from Defendants. See SAC.
24

25 After the complaint was filed, Plaintiffs conducted
26 substantial discovery and non-discovery investigation
27 regarding class certification and the merits of their
28

1 claims. Mallison Decl. at ¶ 34. Among other discovery,
2 Plaintiffs served an extensive set of document requests,
3 demanding all of the critical payroll and timekeeping
4 information at issue in this case, as well as the names
5 and contact information for Defendants' former and
6 current employees. After meeting and conferring
7 regarding these issues, Defendants produced the core
8 payroll and timekeeping information. *Id.* at ¶ 34.
9 Defendants' timekeeping system is both computer and
10 "paper-based," consisting of paper time records for the
11 earlier part of the time period and a database for the
12 later part of the time period. *Id.* at ¶ 35. This
13 required Plaintiffs' counsel to employ both database
14 experts to analyze the data as well as to copy and review
15 tens of thousands of pages of documents. *Id.* Much of
16 the document and data review took place with Plaintiffs
17 and other witnesses, who guided counsel through time and
18 payroll records. *Id.*

21 22 III. SUMMARY OF THE SETTLEMENT.

23 The case was resolved with the aid of a mediator's
24 proposal drafted by Mediator former District Court Judge
25 Raul Ramirez. *Id.* at ¶ 37. The Settlement Agreement
26 covers approximately 150 current and former Dairy
27 employees who worked for Defendants from July 30, 2004 to
28

1 September 7, 2010. Mallison Decl., Ex. 1, Doc. 47-1,
2 Settlement Agreement ("Settlement") § I.N.

3
4 **A. Gross Settlement Payment.**

5 Under the Settlement, Defendants will make Gross
6 Settlement Payments totaling \$505,058.60 by November 8,
7 2011. Mallison Decl. at ¶ 38. This total sum will
8 cover:

- 9
- 10 • Settlement Shares to be paid to Class Members who
11 submit valid claims;
 - 12 • any payroll withholding on the Settlement Shares;
 - 13 • a \$10,000 payment to the California Labor and
14 Workforce Development Agency for its share of the
15 settlement of civil penalties;
 - 16 • the Settlement Administrator's reasonable fees and
17 expenses (no more than \$15,000);
 - 18 • (subject to court approval) payments to Plaintiffs,
19 in addition to their Settlement Shares, of \$7,500
20 each in compensation of their services as Class
21 Representatives;
 - 22 • and (also subject to court approval) payments to
23 Class Counsel of no more than 33.33% of the gross
24 settlement amount for their reasonable attorneys'
25 fees, as well as \$10,000 in expenses incurred in
26 investigating and prosecuting the case, preparing for
27
28

1 and negotiating at the mediation, documenting the
2 Settlement, securing approval of the Settlement, and
3 related tasks.

4 Settlement, § III.A - C. There will be no reversion of
5 the Gross Settlement Payment to Defendants. Mallison
6 Decl. at ¶ 39.

8 **B. Payment of Settlement Shares.**

9 After the other amounts are deducted, the Gross
10 Settlement Amount (then called the "Net Settlement
11 Amount") will be distributed as Settlement Shares to all
12 Class Members who submit valid claims, see Settlement §
13 III, based upon the following allocation formula:

15 The Settlement Share for each Claimant will be
16 based on (a) that Claimant's total number of
17 Months of Employment during the Class Period (b)
18 divided by the aggregate number of Months of
19 Employment of all Participating Class Members
during the Class Period (with the division rounded
to four decimal places) (c) multiplied by the
value of the Net Settlement Amount.

20 Settlement § III.D.1. This formula relies upon objective
21 evidence of the term of employment, which Class Members
22 can easily review and confirm. Mallison Decl. at ¶ 40.
23 In addition, this information is readily available from
24 Defendants' records, and the Settlement Administrator can
25 apply the formula in a fair and transparent manner. *Id.*¹

27
28 ¹ Plaintiffs' counsel considered other, more complicated
methods, but determined that although these methods have some merit,

1 The parties estimate that, if all amounts sought under
2 the Settlement are awarded, a Class Member's average
3 Settlement Share will average approximately \$2,000 per
4 employee. *Id.*

5
6 C. Distribution of Unclaimed Funds and Uncashed Checks.

7 In the event that not all Class Members submit
8 claims, the residue will be redistributed to those Class
9 Members who do submit valid claims. Settlement, §
10 III.D.3. The settlement agreement provides that in the
11 event that checks issued to Class Members are not cashed,
12 these monies will be donated to California Rural Legal
13 Assistance, *Id.*, § III.F.10, a public interest
14 organizations that serves low-income workers in the same
15 geographical area as the class.
16

17
18 D. Scope of the Release.

19 The scope of the release by all Participating Class
20 Members (all Class Members other than those who elect not

21
22 they were not without controversy and would likely lead to a myriad
23 of objections. Mallison Decl. at ¶ 41. Plaintiffs' counsel
24 represents that the formula employed in the Settlement is commonly
25 used in wage-and-hour cases, and is appropriate in this case, where
26 most workers experience the same working conditions and have similar
27 claims that roughly correlate with the number of hours that they
28 have worked. *Id.* Further, Plaintiffs' counsel maintains that,
although their might be marginally better theoretical methods for
calculating allocations amongst class members, the costs of
obtaining and processing the information necessary and to make such
calculations (especially given Defendants' reliance upon a paper
based payroll system for part of the class period) would likely
outweigh any benefits of using a more complex calculation method.
Id.

1 to participate in the Settlement) tracks the scope of
2 Plaintiffs' allegations:

3 As of the date of the Judgment, all
4 Participating Class Members hereby fully and
5 finally release Defendants, and its parents,
6 predecessors, successors, subsidiaries,
7 affiliates, and trusts, and all of its
8 employees, officers, agents, attorneys,
9 stockholders, fiduciaries, other service
10 providers, and assigns, from any and all claims,
11 known and unknown, for or related to all claims
12 based on or arising from the allegations that
13 they were or are improperly compensated under
14 federal, California, or local law (the "Class's
15 Released Claims"). The Class's Released Claims
16 include all such claims for alleged unpaid
17 wages, including overtime compensation, missed
18 meal-period and rest-break wages or penalties,
19 and interest; related penalties, including, but
20 not limited to, recordkeeping penalties, pay-
21 stub penalties, minimum-wage penalties, missed
22 meal-period and rest-break penalties, and
23 waiting-time penalties; and costs and attorneys'
24 fees and expenses.

25 Settlement, § III.G.2.

26
27
28
E. Objections and Opt-Out Process

Any Class Member who so wishes may object to or
comment on the Settlement; or may elect not to
participate in the Settlement. The Class Notice fully
explains the objection/comment and opt-in procedures.
Settlement, § III.F.4., Exh. C. The Class Notice, as
with all forms, will be provided to the Class Members in
English and Spanish.

1 F. Class Representative Payments; Class Counsel
2 Attorneys' Fees Payment and Class Counsel Litigation
3 Expenses Payment.

4 By a motion to be filed prior to the Final Approval
5 Hearing, Plaintiffs and their counsel will seek (and
6 Defendants have agreed not to oppose):

- 7 • awards to Plaintiffs of Class Representative
8 Payments of \$7,500 each, in addition to their
9 Settlement Shares, in compensation for their
10 services as Class Representatives; and
- 11 • awards to Class Counsel of a Class Counsel
12 Attorneys' Fees Payment of not more than 33.33% of
13 the Gross Settlement Amount and a Class Counsel
14 Litigation Expenses Payment of not more than
15 \$10,000.

16 Settlement, § III.B.1-2. The exact amounts requested,
17 and their justification, will be detailed in a motion,
18 brief, and declaration to be provided in conjunction with
19 the final approval of the settlement and are subject to
20 this court's final review and approval.

21
22
23 IV. DISCUSSION

24 A. Request for Conditional Certification of a Class for
25 Settlement.

26 Plaintiffs request certification of the Class under
27 Rule 23(c)(1) which permits a court to "make a
28 conditional determination of whether an action should be

1 maintained as a class action, subject to final approval
2 at a later date." *Fry v. Hayt, Hayt & Landau*, 198 F.R.D.
3 461, 466 (E.D. Pa. 2000). Conditional certification
4 requires satisfaction of the pre-requisites of Rule 23(a)
5 and (b). *Id.*

7 1. Rule 23(a) Requirements.

8 Federal Rule of Civil Procedure 23(a) states in
9 pertinent part that "[o]ne or more members of a class may
10 sue or be sued as representative parties on behalf of
11 all." As a threshold matter, in order to certify a
12 class, a court must be satisfied that
13

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

25 *In re Intel Secs. Litig.*, 89 F.R.D. 104, 112 (N.D. Cal.
26 1981) (citing Fed. R. Civ. P. 23(a)).

27 a. Numerosity.

28 Here, the proposed class is comprised of all
individuals who have been employed by defendants in
California as non-exempt Dairy workers during the period
July 30, 2004 through September 7, 2010. There are

1 approximately 150 Class Members. Courts have routinely
2 found the numerosity requirement satisfied when the class
3 comprises 40 or more members. *Ansari v. New York Univ.*,
4 179 F.R.D. 112, 114 (S.D.N.Y. 1998). Numerosity is also
5 satisfied where joining all Class members would serve
6 only to impose financial burdens and clog the court's
7 docket. *In re Intel Secs. Litig.*, 89 F.R.D. at 112.
8 Here, the joinder of approximately 150 individual former
9 employees would only further clog this court's already
10 overburdened docket.
11

12
13 b. Common Questions of Fact and Law.

14 Commonality exists when there is either a common
15 legal issue stemming from divergent factual predicates or
16 a common nucleus of facts resulting in divergent legal
17 theories. *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1019
18 (9th Cir. 1998). Here, the parties agree that potential
19 Class Members advance claims that raise common questions
20 of both law and fact, including:
21

- 22 • Whether Northstar authorized and permitted the Dairy
23 workers to take required rest periods;
- 24 • Whether Northstar failed to pay Dairy workers an
25 additional hour of wages for missed meal periods and
26 rest breaks;
- 27 • Whether Northstar failed to pay all legally required
28

1 minimum wages and overtime compensation to hourly
2 production workers;

- 3 • Whether hourly production workers are owed waiting
4 time penalties because Northstar allegedly willfully
5 failed to pay them additional wages for missed meal
6 periods and rest breaks, and for meal periods taken
7 during which they remained on duty, upon the
8 termination of their employment; and

9 • Whether Northstar's business practices violated
10 Business and Professions Code section 17200 et seq.
11 Every class member was paid under the same pay
12 practices as every other class member. The Commonality
13 requirement is satisfied.
14 requirement is satisfied.
15

16 c. Typicality.

17 Typicality is satisfied if the representatives'
18 claims arise from the same course of conduct as the class
19 claims and are based on the same legal theory. See e.g.,
20 *Kayes v. Pac. Lumber Co.*, 51 F.3d 1449, 1463 (9th Cir.
21 1995) (claims are typical where named plaintiffs have the
22 same claims as other members of the class and are not
23 subject to unique defenses). Because every class member
24 was paid under the same pay practices as every other
25 class member, the representatives' claims are typical of
26 those of the other class members.
27
28

1 d. Fair & Adequate Representation.

2 The final Rule 23(a) requirement is that the class
3 representative fairly and adequately protect the
4 interests of the class. This requirement has two parts.
5 First, the representative's attorney must be "qualified,
6 experienced, and able to conduct the litigation." *In re*
7 *United Energy Corp. Solar Power Modules Tax Shelter Inv.*
8 *Secs. Litig.*, 122 F.R.D. 251, 257 (C.D. Cal. 1998).
9
10 Second, the suit must not be "collusive" and the named
11 Plaintiff's interests must not be "antagonistic to the
12 class." *Id.*

13 All requirements are satisfied here. Proposed class
14 counsel, Stan S. Mallison, Esq., of the law firm Mallison
15 & Martinez, is highly experienced in labor class action
16 litigation for more than 15 years. Mallison Decl. at ¶¶
17 5-6. He is highly qualified.

18
19 In addition, the Class Representatives' interests are
20 completely aligned with those of the class. Each
21 Representatives' interest is in maximizing their
22 recovery. Although they will receive an additional
23 \$7,500, this appears to be reasonable to compensate them
24 for the time and expense he devoted to pursuing this
25 case. See Declarations of Class Representatives, Docs.
26 41-45.
27

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

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

15 B. Preliminary Approval of the Settlement.

16 In reviewing the settlement, although it is not a
17 court's province to "reach any ultimate conclusions on
18 the contested issues of fact and law which underlie the
19 merits of the dispute," a court should weigh the strength
20 of plaintiff's case; the risk, expense, complexity, and
21 likely duration of further litigation; the stage of the
22 proceedings, and the value of the settlement offer.

23 *Chemical Bank v. City of Seattle*, 955 F.2d 1268, 1291
24 (9th Cir. 1992). The court should also watch for
25 collusion between class counsel and defendants. *Id.*
26 Preliminary approval of a settlement and notice to the
27
28

1 proposed class is appropriate: "[i]f [1] the proposed
2 settlement appears to be the product of serious,
3 informed, noncollusive negotiations, [2] has no obvious
4 deficiencies, [3] does not improperly grant preferential
5 treatment to class representatives or segments of the
6 class, and [4] falls with the range of possible
7 approval...." *In re Tableware Antitrust Litig.*, 484 F.
8 Supp. 2d 1078, 1079 (N.D. Cal. 2007) (adding numbers).
9 The Settlement proposed by the parties meets this test.
10
11

12 1. The Settlement Was the Project of Informed,
13 Arm's Length Negotiations.

14 The Settlement was reached after informed, arm's
15 length negotiations between the parties. Both parties
16 conducted extensive investigation and discovery allowing
17 them to assess the strengths and weaknesses of the case.
18 As such, the Settlement is the product of non-collusive
19 negotiations. See Mallison Decl. at ¶¶ 37-55.
20 Plaintiffs' counsel had access to thousands of pages of
21 documents and the full database of timekeeping entries
22 for the relevant time period, which Plaintiffs' expert
23 and Plaintiffs' counsel reviewed prior to and during the
24 negotiations. Counsel was also informed by numerous
25 interviews with witnesses to the allegations. Mallison
26 Decl. at ¶ 48.
27
28

1 2. The Proposed Settlement Has No "Obvious
2 Deficiencies."

3 The Settlement provides for a payment of \$505,058.60
4 by Defendants, which is substantial given the relatively
5 small size of the class (approximately 150 members, with
6 approximately 40 full time employees at any given time)
7 and the limited nature of the alleged violations at
8 issue. The average settlement share is nearly \$2,000 per
9 employee. Mallison Decl. at ¶ 40. All Settlement Shares
10 to be paid under the Settlement are determined by the
11 number of months each Class Member worked in a Covered
12 Position. *Id.*

13
14 The Class Representative Payments and the Class
15 Counsel Attorneys' Fees Payment are appropriate, and are
16 nevertheless subject to court approval at the Final
17 Approval hearing.

18 Finally, the expected Settlement Administrator's fees
19 and costs of approximately \$15,000 are less than similar
20 wage-and-hour settlements of this type and size.
21 Mallison Decl. at ¶ 39.

22
23 3. The Settlement Falls Well Within the Range of
24 Possible Approval.

25 To determine whether a settlement "falls within the
26 range of possible approval" a court must focus on
27 "substantive fairness and adequacy," and "consider
28

1 plaintiffs' expected recovery balanced against the value
2 of the settlement offer." *In re Tableware Antitrust*
3 *Litig.*, 484 F. Supp. 2d at 1080.

4 Defendants contest liability in this action and are
5 prepared to vigorously defend against these claims if the
6 action is not settled. Mallison Decl. at ¶ 53. If the
7 litigation proceeds, Plaintiffs would face significant
8 risks. *Id.* at ¶ 53. For example, the primary cause of
9 action in this case revolves around the provision of meal
10 periods. However, the meaning of an employer's
11 obligation to provide meal periods under California law
12 is currently before the California Supreme Court (see
13 *Brinker Restaurant Corp. v. Superior Court (Hohnbaum)*,
14 165 Cal. App. 4th 25 (2008) (review granted)). A defense
15 ruling in *Brinker* could impair Plaintiffs' ability to
16 proceed on these causes of action.

17 Even if Plaintiffs were to prevail, they would be
18 required to expend considerable additional time and
19 resources potentially outweighing any additional recovery
20 obtained through successful litigation. In addition,
21 continued litigation would clearly delay payment to the
22 Class. Mallison Decl. at ¶ 50.

23 In light of these risks, the significant recovery is
24 fair, reasonable, and adequate and is in the best
25

1 interest of the Settlement Class in light of all known
2 facts and circumstances.

3
4 4. The Release Is Appropriate Given Plaintiffs'
Claims.

5 As part of the Settlement, Class Members will be
6 deemed to have released all claims "based on or arising
7 from the allegations that they were or are improperly
8 compensated under federal, California, or local law."
9 Settlement, § III. These released claims appropriately
10 track the breadth of Plaintiffs' allegations in the
11 action and the settlement does not release unrelated
12 claims that class members may have against defendants.
13
14

15 5. Collusion.

16 There is no evidence of collusion here.

17
18 The settlement is preliminarily approved as fair and
19 reasonable.
20

21 C. Proposed Class Notice & Administration.

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

1 *Churchill Village, LLC v. General Electric*, 361 F.3d 566,
2 575 (9th Cir. 2004) (internal quotations and citations
3 omitted).

4 Here, the proposed Class Notice (Settlement, Exh. 2),
5 and the manner of notice agreed upon by the parties
6 (Settlement, § III.E.2.) is "the best notice
7 practicable," as required under Rule 23(c)(2)(B). All
8 Class Members can be identified, and the Class Notice and
9 the related materials (the Claim Form, Settlement, Exh.
10 3, and the form of Election Not to Participate in
11 Settlement, *id.*, Exh. 4) will be mailed directly to each
12 Class Member. The Class Notice adequately informs Class
13 Members of the nature of the litigation, the essential
14 terms of the Settlement, and how to make a claim under
15 the Settlement, object to or comment on the Settlement,
16 or elect not to participate in the Settlement. Further,
17 the Class Notice identifies Class Counsel, specifies the
18 amounts of the Class Representative Payments, Class
19 Counsel Attorneys' Fees Payment, and Class Counsel
20 Litigation Expenses Payment that Plaintiffs and Class
21 Counsel will seek, and explains how to obtain additional
22 information regarding the action and the Settlement. All
23 of these forms and notices will be sent in English (as
24 provided) and Spanish.

1 Within 7 days after the Court grants preliminary
2 approval of the Settlement, Defendant will provide the
3 Settlement Administrator with a spreadsheet containing
4 the name and current or last known address of each Class
5 Member, as well as the employment dates necessary to
6 calculate Settlement Shares and administer the
7 Settlement. Settlement, § III.E.2.a. The Class Notice
8 and other materials will be mailed by the Settlement
9 Administrator within 10 days following Defendants'
10 delivery of the Class Members' data. *Id.*, § III.E.2.b.
11 The Settlement Administrator also will send a reminder
12 notice 14 days before the deadline for Class Members to
13 submit claims. *Id.*, § III.E.2.e. The Settlement
14 Administrator will use the National Change of Address
15 database to locate any Class Members whose Notices are
16 returned as undeliverable. *Id.*, § III.D. Not later than
17 when the parties file their motion for final approval of
18 the Settlement, the Settlement Administrator will submit
19 a declaration describing efforts made to locate all Class
20 Members. *Id.*, § III.E.2.f.

21 The procedures set forth in the Settlement provide
22 the best possible notice to the Class Members.
23
24
25
26
27
28

1 D. Simpluris Inc. is an Appropriate Settlement
2 Administrator.

3 The parties have agreed upon and propose that the
4 Court appoint Simpluris, Inc., to serve as the Settlement
5 Administrator. Simpluris is experienced in administering
6 wage-and-hour class action settlements, and has bid its
7 fees and costs for this Settlement at \$15,000. Mallison
8 Decl. at ¶ 64, Exh. 5.

9
10 E. Settlement Approval Schedule.

11 The following schedule for approval of the Settlement
12 is adopted:

13

Date	Event
1/10/10	Preliminary Approval hearing (all dates that follow assume this date)
1/24/11	Defendants to provide to Settlement Administrator with an electronic data base containing Class Member contact information and data necessary to calculate settlement shares (7days after Preliminary Approval)
2/4/11	Settlement Administrator to mail Notice Packets to all Class Members (10 days after receiving Class Member information)
2/25/11	Date for Settlement Administrator to contact Class Members who have not submitted Claim Forms to remind them of the of the upcoming deadline

14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

3/7/11	Last day for Class Members to comment on or object to Settlement (30 days after mailing of Notice Packets), to mail valid Elections Not to Participate in Settlement, and to mail valid claims for Settlement Shares (30 days after mailing of Notice Packets)
3/14/11	Last day for Settlement Administrator to report to parties on Class Members who have elected not to participate in Settlement or who have submitted claims (7 days after the deadline for submission of Elections Not to Participate in Settlement and Claims Forms)
3/14/11	Last day for Settlement Administrator to serve on the parties and file with the Court statement of due diligence in complying with its obligations under the settlement.
3/25/11	Due date for motion for final approval of settlement and plaintiff's separate motion for class representative fee and class counsel's attorneys' fees and expenses
4/4/11	Final approval hearing

V. CONCLUSION

For all the reasons set forth above:

- (1) The Settlement Class is conditionally certified;
- (2) The Class Settlement is preliminarily approved;
- (3) Stan S. Mallison, Esq., of Mallison & Martinez is appointed Class Counsel;
- (4) The named plaintiffs are appointed Class Representatives;
- (5) The class notice and related materials are approved for distribution;
- (5) Simpluris, Inc., is appointed settlement

1 administrator; and

2 (6) The Schedule set forth above is adopted, with the
3 final approval hearing set for April 4, 2011, at 10:00 am
4 in Courtroom 3 (OWW).

5 Plaintiffs shall submit a form of order consistent
6 with this decision within five (5) days following
7 electronic service.
8

9

10 SO ORDERED
11 Dated: January 11, 2011

12

/s/ Oliver W. Wanger
Oliver W. Wanger
United States District Judge

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28