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ATTORNEYS FOR DEFENDANT

FERGUSON ENTERPRISES, INC.

1 On January 24, 2011, the unopposed Motion for Preliminary Approval of Class Action
2 Settlement, filed by Plaintiffs Lee Bond and Richard James Burkhart (“Class Representatives” or
3 “Plaintiffs”) came on regularly in Courtroom 3 of the above captioned court, Hon. Oliver W.
4 Wanger presiding, Craig J. Ackermann, Esq. of Ackermann & Tilajef, P.C. and Melissa M.
5 Harnett, Esq. of Wasserman, Comden, Casselman & Esensten, L.L.P. appeared on behalf of
6 Plaintiffs. Reed E. Schaper, Esq. of Curiale, Hirschfeld, Kraemer, LLP, appeared by telephone
7 on behalf of Defendant Ferguson Enterprises, Inc. (“Ferguson” or “Defendant”).
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9 This Court having fully received and considered the Plaintiffs’ notice of
10 motion, supporting memorandum of points and authorities, declarations of Melissa M.
11 Harnett and Craig J. Ackermann, the Settlement Agreement, the proposed Class Notice,
12 Claim Form, Request for Exclusion, and Rescission of Request for Exclusion Forms, the
13 oral argument presented to the Court and in recognition of the Court’s duty to make a
14 preliminary determination as to the reasonableness of any proposed class action settlement,
15 and to conduct a fairness hearing as to good faith, fairness, adequacy, and reasonableness of
16 any proposed settlement, and for the reasons set forth in the Court’s Memorandum Decision
17 Re Motion For Preliminary Approval of Class Action Settlement (Doc. 29) (“Court’s
18 Memorandum Decision”), granted the Motion for Preliminary Approval, subject to the
19 parties agreeing to narrow the scope of the release and submitting a revised released and
20 Settlement Approval Schedule to the Court within five (5) days of the issuance of the
21 Court’s Memorandum Decision. The Parties having complied with the Court’s
22 Memorandum Decision by narrowing the scope of the release for the Class and submitting
23 revised Class Notice and Claim Forms, the Court now **HEREBY ORDERS and MAKES**
24 **DETERMINATIONS** as follows:
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1 Plaintiffs and their counsel filed this class action lawsuit alleging that Defendant
2 Ferguson failed to provide timely off-duty meal periods to its California truck drivers; pay its
3 California truck drivers for missed, on-duty and untimely meal periods; pay for all hours worked
4 based on the application of an “automatic lunch deduction”; issue accurate itemized wage
5 statements to California truck drivers; and pay California truck drivers all wages due to them
6 upon termination or separation of employment. Plaintiffs also alleged on a class basis that the
7 foregoing violated California’s Unfair Competition Law, Business and Professions Code §
8 17200, *et seq.* Defendant filed an Answer denying these allegations.
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10 On November 3, 2010, after a full-day mediation session, the parties reached a class
11 settlement agreement for the disputed claims. In full settlement of the class claims that were
12 encompassed by this case, Plaintiffs and Defendant have agreed to the entry of a Joint
13 Stipulation of Class Action Settlement Agreement (“Settlement Agreement”), attached as
14 Exhibit 1 to the Declaration to the Declaration of Craig J. Ackermann, filed in support of the
15 Motion for Preliminary Approval. Defendant continues to deny all allegations contained in
16 the original and first amended class action complaints.
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19 Plaintiffs have moved this Court to (1) provisionally certify a settlement class; (2)
20 preliminarily approve the Settlement Agreement; (3) direct distribution to the class of a
21 proposed Notice of Settlement, Request for Exclusion Form, and Claim Form (collectively
22 the proposed “Class Notice Package”); and (4) set a hearing date for final approval of the
23 settlement. Defendant filed a statement of non-opposition to the motion and does not oppose
24 Plaintiffs’ motion for purposes of settlement but reserves all rights and defenses with respect
25 to the litigation.
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1 each individual Settlement Class member would be forced to litigate core common issues of
2 law and fact, including the validity of each Settlement Class member's claims that they were
3 unlawfully denied pay for time worked based on the application of the automatic lunch
4 deduction, they were denied timely off-duty meal periods and that they were not paid for
5 missed, on-duty, and untimely meal periods, as required by law. Because the Plaintiffs and
6 Settlement Class members' claims all arise from the same events and course of conduct, and
7 are based on the same legal theories, the typicality requirement of Rule 23(a)(3) is also
8 satisfied. The adequacy of representation requirement set forth in Rule 23(a)(4) is also met
9 here because the Class Representatives have the same interests as all members of the
10 Settlement Class, and are represented by experienced and competent counsel.
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13 Pursuant to Rule 23(b)(3), as the Court also discussed in its Memorandum Decision
14 (Doc. 29), the Court further finds that common issues predominate over individual issues in
15 the litigation and that class treatment is superior to other means of resolving the instant
16 dispute. Employing the class device here will not only achieve economies of scale for
17 Settlement Class members with relatively small individual claims, but will also conserve the
18 resources of the judicial system by avoiding the waste and delay of repetitive proceedings,
19 and prevent the inconsistent adjudications of similar issues and claims.
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21 For the reasons set forth in the Court's Memorandum Decision, the Court finds that
22 the Class Representatives, Lee Bond and Richard James Burkhart, are adequate class
23 representatives and appoints them as such.
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25 Pursuant to Federal Rules of Civil Procedure Rule 23(g), and for the reasons set forth
26 in the Court's Memorandum Decision (Doc. 29), the Court finds that Plaintiffs' counsel
27 Craig Ackermann (Ackermann & Tilajef, P.C.) and Melissa M. Harnett (Wasserman,
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1 Comden, Casselman & Esensten L.L.P.) have adequately represented the Settlement Class
2 and are adequate Class Counsel. Specifically, they have sufficiently identified and
3 investigated the potential claims in this matter; have presented evidence to the court of their
4 experience in handling other wage and hour class actions; have demonstrated knowledge of
5 the applicable law; and have allocated sufficient resources to represent the class.

6 Accordingly, pursuant to Rule 23(g)(1), Ackermann & Tilajef, P.C. and Wasserman,
7 Comden, Casselman and Esensten, L.L.P. are hereby appointed as Class Counsel.
8

9 The Court recognizes that certification under this Order is for settlement purposes
10 only, and shall not constitute or be construed as an admission by Defendant that this action
11 is appropriate for class treatment for litigation purposes. Entry of this Order is without
12 prejudice to the rights of Defendant to oppose certification of a class in this action, and/or to
13 seek decertification or modification of the Settlement Class should the proposed Settlement
14 Agreement not be granted final approval.
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16 **PRELIMINARY APPROVAL OF THE SETTLEMENT AGREEMENT**
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18 The Court previously reviewed the Settlement Agreement and the proposed Class
19 Notice, Claim Form, Request for Exclusion Form, and Rescission of Request for Exclusion
20 Form, which were attached as exhibits A through D to the Settlement Agreement. In
21 addition, in its Memorandum Decision (Doc. 29) and as a prerequisite to approving the
22 settlement on a preliminary basis, the Court ordered the parties to narrow the scope of the
23 release in this case, and further ordered the parties to submit a revised Class Notice and
24 Claim Form with the revised release language. The Court has reviewed and approves the
25 revised release language set forth in the parties Revised Class Notice and Revised Claim
26 Form, attached herewith as Attachments 2 and 3, respectively.
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1 For the reasons set forth in the Court’s Memorandum Decision (Doc. 29), the Court
2 finds, on a preliminary basis, that the Settlement Agreement falls within the range of
3 reasonableness of a settlement that could ultimately be given final approval by this Court.
4 The Court also finds, on a preliminary basis, that the Settlement Agreement appears to be
5 the product of intensive, non-collusive, arms’ length negotiations between well-informed
6 counsel, and thus presumptively valid. It appears to the Court on a preliminary basis that the
7 maximum settlement fund amount of \$2,250,000 (“Maximum Settlement Amount”) is fair
8 and reasonable to all Settlement Class members when balanced against the probable
9 outcome of further litigation relating to liability and damages issues. It further appears that
10 extensive and costly investigation, discovery, research and mediation have been conducted
11 such that the parties’ counsel at this time are able to reasonably evaluate their respective
12 positions. It further appears that the settlement at this time will avoid additional substantial
13 costs which have already been incurred by both parties, as well as avoid the delay and risks
14 that would be presented by the further prosecution of the litigation.
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18 For the reasons set forth in the Court’s Memorandum Decision, the Court therefore
19 preliminarily and conditionally approves the Settlement, including: (1) the proposed
20 Enhancement Awards for Plaintiffs Lee Bond and Richard James Burkhart of \$11,250 each
21 in addition to their pro rata share of the settlement fund; (2) the proposed attorneys’ fees of
22 30% of the Maximum Settlement Amount, plus up to \$10,000 in cost reimbursements; and
23 (3) payment of reasonable settlement administration costs (estimated at no more than
24 \$18,000) from the Maximum Settlement Amount. Pursuant to Rule 23(g)(4) and Rule
25 54(d)(2), Plaintiffs’ counsel will be expected to file a Motion for Approval of their
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1 attorneys' fees and costs in connection with and to be heard at the same time as the Final
2 Fairness Hearing regarding the settlement.

3 **APPROVAL OF DISTRIBUTION OF THE CLASS NOTICE**

4 This Court finds the Revised Class Notice and Claim Form Attachments 2 and 3
5 herewith, and the proposed Request for Exclusion form attached to the Settlement
6 Agreement), fairly and adequately advise potential class members of the terms of the
7 proposed settlement, the formula that will be used to compute their pro rata allocation of the
8 settlement, and the mechanisms for the class members to challenge their pro rata allocation
9 of settlement, to file documentation in opposition to the proposed settlement, and to appear
10 at the Fairness Hearing to be conducted on the date set forth below. The Court further finds
11 that the Revised Class Notice and proposed distribution of such notice by first class mail to
12 each identified Settlement Class member at his or her last known address (with database
13 search and remailing of returned mail) comports with all constitutional requirements,
14 including those of due process and is the best notice practicable under the circumstances.
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17 The Court confirms the selection of Simpluris, Inc., as the Settlement Administrator,
18 and the reasonable costs of which will be paid from the settlement fund. Accordingly, good
19 cause appearing, and for the reasons set forth in the Court's Memorandum Decision, the
20 Court hereby approves the proposed Class Notice and related materials for distribution,
21 subject to the narrowing of the release. As noted, a true and correct copy of the Revised
22 Class Notice with the revised release language is attached herewith at Attachment 2.
23 Furthermore, the Court hereby approves and adopts the following revised settlement
24 approval schedule:
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Date	Event
1/24/2011	Preliminary approval
1/29/2011	Defendant to provide to Settlement Administrator with an electronic database containing Class Member contact information and data necessary to calculate settlement shares (5 days after preliminary approval)
2/14/2011	Settlement Administrator to mail Notice Packets to all Class Members (21 days after preliminary approval)
3/11/2011	Date for Settlement Administrator to contact Class Members who have not submitted Claim Forms to remind them of the upcoming deadline
3/31/2011	Last day for Class Members to comment on or object to Settlement and mail in Claim Form or Request for Exclusion (45 days after mailing of Notice packets), other than Class Members who received a re-mailing of the Notice packets, who have 30 days
4/14/2011	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.
4/22/2011	Last day for Settlement Administrator to serve on the parties and file with the court preliminary statement of due diligence in complying with its obligations under the settlement (30 days before final approval hearing)
	Last day for Settlement Administrator to serve on the parties and file with the court final statement of due diligence in complying with its

1	5/18/2011	obligations under the settlement (3 business days before final approval hearing)
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3	4/25/2011	Due date for motion for final approval of settlement and plaintiff's
4		separate motion for class representative fee and class counsel's attorneys'
5		fees and expenses
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7	5/23/2011	Final approval hearing
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FINAL APPROVAL AND FAIRNESS HEARING

The Court hereby grants the Plaintiffs' motion to set a fairness hearing for final approval of the Settlement Agreement on May 23, 2011, at 10:00 a.m. in Courtroom 3 of this Court. Pursuant to Federal Rule of Civil Procedure 23(e)(5), members of the Settlement Class may object to the terms of the settlement. Members of the Settlement Class who object to the proposed settlement may appear and present such objections to the Fairness Hearing in person or by counsel, provided that any objecting Settlement Class members submit a written statement containing the name and address of the objecting Settlement Class member and the basis of that person's objections, together with a notice of the intention to appear, if appropriate, which must be postmarked no later than 45 days from the date on which the Notices are sent out by the Settlement Administrator. No person shall be heard, and no briefs or papers shall be received or considered, unless the foregoing documents have been filed and served as provided in this Order, except as this Court may permit for good cause shown. The Settlement Administrator shall serve Class Counsel and Defense Counsel with copies of all objections, Requests for Exclusion received, and claims form challenges and file them with the Court no later than 14 days (i.e., April 14, 2011) after the deadline for

1 eligible Class Members to submit claims forms, request for exclusions or objection to the
2 settlement (i.e., March 31, 2011).

3 Class Counsel shall file a memorandum of points and authorities in support of the final
4 approval of the Settlement Agreement and their request and motion for approval of the agreed
5 upon attorneys' fees and litigation expenses no later than 28 days before the Final Approval
6 Hearing.
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10 Dated, February 7, 2011 /s/ Oliver W. Wanger _____
11 HON. OLIVER W. WANGER
12 UNITED STATES DISTRICT COURT JUDGE
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