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**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA**

JOSE RODRIGUEZ, on behalf of himself and all of others similarly situated,	)	Case No.: 1:14-cv1137-LJO-EPG
	)	
Plaintiffs,	)	
	)	
v.	)	ORDER AFTER HEARING ON MOTION
	)	FOR PRELIMINARY APPROVAL OF CLASS
KRAFT FOODS GROUPS, INC., a Virginia	)	ACTION SETTLEMENT
corporation, and DOES 1 through 100,	)	
inclusive,	)	
	)	
Defendant.	)	
	)	
	)	
	)	
	)	

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The Court held a hearing on Plaintiff’s Motion for Preliminary Approval of Class Action Settlement on December 4, 2015. R. Duane Westrup personally appeared on behalf of the Plaintiffs, and Douglas Farmer appeared on behalf of the Defendant. The Court heard arguments on a number of issues regarding the fairness of the settlement and requested additional information on several issues. Accordingly, no later than **January 8, 2015**, the parties shall provide the following information to the Court:

**I. Fairness of the Class Settlement**

It is well established that “a class representative must be part of the class and ‘possess the same interest and suffer the same injury’ as the class members.” *Wal-Mart Stores, Inc. v. Dukes*, 131 S.Ct.

1 2541, 2550 (2011). Moreover, Rule 23(a) provides that the named plaintiffs are appropriate  
2 representatives where: “(1) the class is so numerous that joinder of all members is impracticable; (2)  
3 there are questions of law or fact common to the class; (3) the claims or defenses of the representative  
4 parties are typical of the claims or defenses of the class; and (4) the representative parties will fairly  
5 and adequately protect the interests of the class.”

6 As discussed on the record, more information is needed to determine if Mr. Rodriguez adequately  
7 represents the class. Accordingly, Mr. Rodriguez shall submit a supplemental declaration outlining his  
8 specific allegations and how they are representative of the class. Mr. Rodriguez may also provide  
9 additional information related to his contributions to the litigation, so the Court can assess an  
10 appropriate payment for serving as a class representative.

11 Additionally, the Defendant indicated that approximately 150 employees were interviewed  
12 regarding the frequency of missed meals and that a summary of this information is available. The  
13 Defendant shall provide all declarations or related summaries of this investigation to the Court, to the  
14 extent they are not privileged.

15 Furthermore, the parties indicated that the class suffered missed or late meals approximately 70 to  
16 75 percent of the time, however, class members are only getting compensated for one hour of time per  
17 week, at an hourly rate of ten dollars an hour. Plaintiffs’ counsel indicated that one hour of pay a  
18 week is the standard compensation for this type of wage and hour violation. Plaintiff shall provide any  
19 legal support for this proposition.

20 Finally, the parties shall indicate what the average hourly rate of pay is for all employees in the  
21 purported class, so that the Court can assess whether ten dollars an hour is a fair hourly rate of  
22 reimbursement for the class. Counsel shall also indicate whether it is feasible to use the actual rate of  
23 pay for each affected employee, in lieu of the ten dollar an hour amount.

24 **II. Injunctive Relief/Prevention of Future Violations**

25 Defendant shall submit an affidavit from a business person with personal knowledge outlining  
26 what steps have been taken to rectify the problems contained in the complaint, and what practices have  
27 been devised to prevent future violations.

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1           **III.     The Notice to Class Members.**

2           The following changes need to be made to the Notice to the Class Members (Doc. 35-2, pgs. 33-  
3 39). Additionally, these changes shall also be incorporated into the corresponding sections of the  
4 Settlement Agreement (Doc. 34, pgs. 14-31):

- 5           A) The time for disputing the number of qualified work shifts for purposes of calculating the  
6           gross payout amount shall be changed from thirty (30) to forty-five days (45) in Section 5,  
7           pgs. 2-3, “What are the Terms of the Class Settlement;”
- 8           B) The notice shall be clear that the release of claims in Section 6, pg. 3, "How Does the  
9           Settlement Affect My Rights," is only limited to the time outlined in the complaint, rather  
10          than a complete release of these claims without a time limitation;
- 11          C) Under Section 6, pg. 3, "How Does the Settlement Affect My Rights,” shall indicate that  
12          the Stipulation of Settlement and Release can be viewed at the United States District Court  
13          for the Eastern District of California, *and* by contacting Plaintiff’s counsel at the address  
14          listed at the end of the document;
- 15          D) Plaintiffs shall be advised under Section 7, pg. 3, “What Do I Need To Do to Receive a  
16          Settlement Payment,” that they will receive the settlement payment approximately twenty  
17          (20) days after *the Court’s order* on the Final Approval, rather than twenty days after the  
18          final approval hearing itself;
- 19          E) If participants want to object, under Section 8, pg. 3, “What if I Don’t Want to Participate  
20          in this Settlement,” they shall be provided with a check-off form indicating their desire to  
21          be excluded, as well as a self-addressed stamped envelope to do so. Moreover, the address  
22          and specific contact information of the claims administrator shall be included in this  
23          section. Finally, potential class members may request that they may opt-out of the class  
24          within sixty (60) days of the mailing of the initial notice to class members;
- 25          F) The explanation of the PAGA claims outlined on the top of page 4 under this same section  
26          needs to be more fully explained so that a lay person can understand this provision;
- 27          G) Under Section 9, pg. 4, “What if I Want to Object to this Settlement,” class members shall  
28          be advised that objections can be filed up to thirty days before the hearing, and they can

1 appear personally or by telephone at the hearing. Moreover, failure to file a written  
2 objection will not prevent class members from objecting at the hearing, however, the Court  
3 may choose not to address the objection if a written objection is not timely filed as  
4 required. These modifications shall also be incorporated as appropriate in Section 16, pg. 6.  
5 Moreover, the address and specific contact information of the claims administrator shall be  
6 included in this section, as well as in Section 17, "How Do I Get More Information."  
7 Finally, the case number under this section shall be changed to "EPG" rather than "GSA,"  
8 to reflect the judicial reassignment of this case; and

9 H) Section 13, "How Will the Lawyers Be Paid," shall include a sentence indicating that  
10 copies of any Motion for Attorney's Fees may be obtained by contacting class counsel at  
11 the address listed at the end of the document, and that any objections to the Motion for  
12 Attorney's Fees can be filed with the Court, or be made at the time of the final approval  
13 hearing.

14 **IV. Attorney's Fees**

15 Plaintiffs' counsel shall file a formal Motion for Attorney's fees. The motion may be filed  
16 separately, or as part of the Motion for Final Approval of the Class Settlement. Any motion for  
17 attorneys' fees shall include documentation of any billable hours and evidence supporting the  
18 reasonableness of the hourly rate requested.

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20 IT IS SO ORDERED.

21 Dated: December 14, 2015

22 /s/ Eric P. Groj  
23 UNITED STATES MAGISTRATE JUDGE  
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