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 20 **SAMUEL BRANDON KRESS, et al.**

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1 UNITED STATES DISTRICT COURT
2 EASTERN DISTRICT OF CALIFORNIA

3 SAMUEL BRANDON KRESS, et al.,

4 Plaintiffs,

5 v.

6 PRICEWATERHOUSECOOPERS LLP,

7 Defendants.
8

Case No. 2:08-CV-00965-LKK-GGH

**STIPULATION AND ORDER RE
CONDITIONAL COLLECTIVE
CERTIFICATION**

9
10 **STIPULATION**

11 WHEREAS, on April 22, 2009, the Court issued an Order directing Plaintiffs Samuel
12 Brandon Kress, Lac Ahn Le, Jason Patterson, Lauren San Mateo, James Stekelberg, Jeffrey
13 Laberge, Willow Markham, Dana Blindbury, Jesse Kenny, Kelly C. Jones, and Antoine Powell
14 (collectively, Plaintiffs) to file, *inter alia*, their second Fair Labor Standards Act ("FLSA")
15 conditional collective certification motion as to a putative nationwide class of Associates and
16 Senior Associates in Defendant PricewaterhouseCoopers LLP's ("PwC") Advisory and Tax lines
17 of service, and Senior Associates in Defendant's Assurance line of service, by May 14, 2010
18 ("Second Motion for Conditional Certification");

19 WHEREAS, the parties recognize that as to the proposed nationwide FLSA classes of
20 Associates and Senior Associates in PwC's Advisory and Tax lines of service, it is possible that
21 (a) given the standard for FLSA conditional collective certification previously applied by the
22 Court in this matter, the Court will conditionally certify this action for FLSA collective treatment
23 as to the specific groups within the Tax and Advisory lines of service in which the named
24 Plaintiffs worked; and (b) the Court will decline to conditionally certify this action for FLSA
25 collective treatment as to those specific groups within the Tax and Advisory lines of service in
26 which the named Plaintiffs did not work; and

1 WHEREAS, conditional certification motions require the expenditure of significant
2 resources of the parties and the court, and the parties recognize the importance of conserving
3 judicial and party resources in this matter;

4 **ACCORDINGLY, IT IS HEREBY STIPULATED AND AGREED** by and between
5 Plaintiffs and PwC, by and through their respective undersigned counsel, that:

6 1. Conditional collective certification shall be granted as to the position of Associate
7 in the specific subgroups in PwC's Tax and Advisory lines of service in which the named
8 Plaintiffs worked. Accordingly, pursuant to 29 U.S.C. § 216(b), this action shall be conditionally
9 certified as a collective action consisting of those individuals who (a) worked in the position of
10 Associate in the Disputes, Analysis and Investigations (“DA&I”) group of PwC’s Advisory line
11 of service, the Threat and Vulnerability Management (“TVM”) group of PwC’s Advisory line of
12 service, and/or the Tax Projects Delivery Group (“TPDG”) of PwC’s Tax line of service
13 anywhere in the United States at any point from December 11, 2005 to the present (“Relevant
14 Time Period”); and (b) did not possess a CPA license for some or all of the time they worked in
15 any of these positions during the Relevant Time Period (the “Stipulated Tax and Advisory
16 Groups”).

17 2. Conditional collective certification under the FLSA shall not be granted in this
18 action as to (a) any other Associate positions in any other subgroups within the Advisory or Tax
19 lines of service; and (b) the position of Senior Associate within the Advisory or Tax lines of
20 service (collectively, the “Excluded Tax and Advisory positions”). Counsel for Plaintiffs shall
21 not seek conditional collective certification of the Excluded Tax and Advisory positions at any
22 point in this lawsuit. Notwithstanding this paragraph, nothing in this stipulation shall preclude a
23 motion for conditional certification under the FLSA on behalf of a class in the Excluded Tax and
24 Advisory positions in a separate action.

25 3. The parties’ agreement to toll the running of the FLSA statute of limitations in this
26 action, which became effective on December 11, 2008, shall expire as to the Excluded Tax and
27 Advisory positions immediately upon entry of the Order set forth below reflecting the terms of
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1 this stipulation. Accordingly, upon entry of the Order set forth below, tolling of the FLSA statute
2 of limitations shall cease as to the Excluded Tax and Advisory positions.

3 4. This stipulation shall not apply to the proposed nationwide group of Senior
4 Associates in PwC's Assurance line of service that Plaintiffs purport to represent. Accordingly,
5 should Plaintiffs still intend to seek FLSA conditional collective certification as to the proposed
6 nationwide group of Senior Associates in PwC's Assurance line of service, Plaintiffs shall file a
7 motion for conditional certification as to this proposed group no later than the deadline for filing
8 that motion.

9 5. This stipulation shall in no way affect PwC's right to file a motion to decertify the
10 stipulated, conditionally certified DA&I, TVM and TPDG groups (or any other conditionally
11 certified groups), nor shall it in any way prejudice PwC's substantive arguments in support of
12 such a motion. Accordingly, in opposing PwC's anticipated motion to decertify the stipulated,
13 conditionally certified DA&I, TVM and TPDG groups, Plaintiffs shall not make any arguments
14 that are based on this stipulation. For example, Plaintiffs shall not argue that because the parties
15 stipulated to conditional collective certification of these groups, sufficient similarities exist to
16 defeat PwC's motion to decertify the collective action, nor shall Plaintiffs argue that PwC has
17 waived any arguments in support of its anticipated motion to decertify the action based on having
18 entered into this stipulation.

19 6. This stipulation shall in no way affect Plaintiffs' right to seek class certification
20 under Federal Rule of Civil Procedure 23 as to a proposed class of individuals who work and/or
21 worked in the positions of Associate and Senior Associate in PwC's Tax and Advisory lines of
22 service, and Senior Associate in PwC's Assurance line of service, in California. Accordingly, in
23 opposing Plaintiffs' anticipated motion to certify under Rule 23 any classes within PwC's Tax
24 and Advisory lines of service, PwC shall not make any arguments that are based on this
25 stipulation, nor shall PwC argue that Plaintiffs have waived any arguments in support of their
26 anticipated motion to certify under Rule 23 any classes within PwC's Tax and Advisory lines of
27 service based on having entered into this stipulation. Under the current scheduling order,
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1 Plaintiffs are scheduled to file a motion seeking to certify such proposed California classes of
2 PwC employees between August 2, 2010 and October 1, 2010.

3 7. This stipulation shall not otherwise be referenced, cited to or used by the parties in
4 any manner that would be prejudicial to the other party at any point in this lawsuit. This
5 stipulation is not an admission by either party on the merits of Plaintiffs' claims or of PwC's
6 defenses, nor is it in any way reflective of the merits of whether collective certification is
7 appropriate in this action as to the Stipulated Tax and Advisory Positions. This stipulation only
8 reflects the parties' shared interest in advancing this litigation in the most efficient and practical
9 manner possible.

10 8. With the exception of individual communications with plaintiffs in this action,
11 individual communications with members of the Stipulated Tax and Advisory Groups who elect
12 to become party plaintiffs to the action, and the filing of necessary papers in this litigation, and as
13 otherwise required by law, Plaintiffs and their counsel shall not publicize the existence or terms
14 of this stipulation. Thus, for example, Plaintiffs and their counsel may not (a) issue any press
15 releases regarding the existence or terms of this stipulation; (b) hold any press conferences
16 regarding the existence or terms of this stipulation; and (c) substantively comment in response to
17 any media inquiry regarding the existence or terms of this stipulation.

18 9. Should the Court enter an order reflecting the terms of this stipulation, the parties
19 shall have fifteen (15) days from the date on which the Court enters such an order to submit to the
20 Court a joint proposal for notice to the class, or separate statements as to why such a joint
21 proposal could not be reached. Plaintiffs shall bear all costs of issuing notice to the conditionally
22 certified groups, and provision of notice by mail will suffice. PwC shall not be required to post
23 notice at its places of employment.

24 10. Should the Court decline to enter an order reflecting the terms of this stipulation,
25 Plaintiffs shall not be precluded from filing a motion for collective certification on behalf of the
26 Stipulated Tax and Advisory Groups or the Excluded Tax and Advisory positions. Further,
27 should the Court enter an order modifying this stipulation in such a way that narrows the scope of
28 the Stipulated Tax and Advisory Groups, Plaintiffs shall not be precluded from seeking collective

1 certification under the FLSA in a Motion for Collective Certification on behalf of the individuals
2 in the Stipulated Tax and Advisory Groups excluded by the entered order.

3 Dated: May 28, 2010

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By: /s/ Julie A. Totten

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Counsel for Defendant

15 **LAW OFFICE OF STEVEN ELSTER**

Steven Elster

16 *Counsel for Plaintiffs*

19 **SO ORDERED:**

22 Dated: June 2, 2010

23 

24 LAWRENCE K. KARLTON
25 SENIOR JUDGE
26 UNITED STATES DISTRICT COURT