

1 NIAL P. McCARTHY (#160175)
 nmccarthy@cpmlegal.com
 2 LAURA SCHLICHTMANN (#169699)
 lschlichtmann@cpmlegal.com
 3 JUSTIN T. BERGER (#250346)
 jberger@cpmlegal.com
 4 **COTCHETT, PITRE & MCCARTHY**
 San Francisco Airport Office Center
 5 840 Malcolm Road, Suite 200
 Burlingame, CA 94010
 6 Telephone: (650) 697-6000
 Facsimile: (650) 697-0577
 7

8 JOSEPH H. MELTZER (pro hac vice)
 jmeltzer@btkmc.com
 9 GERALD D. WELLS, III (#257496)
 gwells@btkmc.com
 ROBERT J. GRAY (pro hac vice)
 10 rgray@btkmc.com
 11 **BARROWAY TOPAZ KESSLER**
MELTZER & CHECK, LLP
 280 King of Prussia Road
 12 Radnor, PA 19087
 Telephone: (610) 667-7706
 13 Facsimile: (610) 667-7056

14 *Co-Lead Counsel for Plaintiffs*

15
 16
 17 **UNITED STATES DISTRICT COURT**
 18 **NORTHERN DISTRICT OF CALIFORNIA**

19 **IN RE AXA WAGE AND HOUR**
 20 **LITIGATION**

Case No. C-06-4291 JSW
Consolidated Actions

21 **COLLECTIVE/CLASS ACTION**

22 **~~PROPOSED~~ FINAL APPROVAL**
 23 **ORDER AND JUDGMENT**

24 Date: September 25, 2009
 25 Time: 9:00 a.m.
 Ctrm: Courtroom 11, 19th Floor
 26 Hon. Jeffrey S. White

27
 28 **~~PROPOSED~~ FINAL APPROVAL ORDER AND JUDGMENT, Case No. C-06-4291 JSE**

1 This matter was presented to the Court for hearing on September 25, 2009, upon
2 the joint application of the SETTLING PARTIES for approval of the SETTLEMENT set
3 forth in the Class Action Settlement Agreement (the "SETTLEMENT AGREEMENT").
4 Due and adequate notice having been given to the SETTLEMENT CLASS MEMBERS;
5 the Court having considered the SETTLEMENT, all papers filed and proceedings had
6 herein, and all oral and written comments received regarding the proposed
7 SETTLEMENT, and having reviewed the record in the above-captioned action (the
8 "ACTION"); and good cause appearing,

9 **IT IS HEREBY ORDERED, ADJUDGED, AND DECREED AS FOLLOWS:**

10 1. The Court, for purposes of this FINAL APPROVAL ORDER, adopts all
11 defined terms, including the class and subclass definitions and definitions of RELEASED
12 CLAIMS, as set forth in the SETTLEMENT AGREEMENT filed in this ACTION;

13 2. The Court has jurisdiction over the subject matter of this action, the
14 REPRESENTATIVE PLAINTIFFS, the SETTLEMENT CLASS MEMBERS, and AXA;

15 3. The Court finds that the ACTION presented a good faith dispute over the
16 payment of wages, and the Court finds in favor of settlement approval;

17 4. The Court finds that the distribution of the NOTICE as provided for in the
18 PRELIMINARY APPROVAL ORDER, and as confirmed in the declaration of Jonathan
19 Paul of Rust Consulting, Inc. (the Settlement Administrator), constituted the best notice
20 practicable under the circumstances to all persons within the definition of the
21 SETTLEMENT CLASS, and fully met the requirements of due process under the United
22 States Constitution and California law. Based on evidence and other material submitted
23 in conjunction with the FINAL APPROVAL HEARING, the actual NOTICE to the
24 SETTLEMENT CLASS MEMBERS was adequate. The Court further finds that the
25 SETTLING PARTIES have satisfied the requirements of notice to pertinent government
26 agencies as set forth in CAFA;

1 5. The Court finds that the SETTLEMENT CLASS satisfies the standards for
2 certification under Fed. R. Civ. P. 23 and 28 U.S.C. § 216(b), as applicable;

3 6. The Court has considered, and hereby overrules, the four objections to the
4 SETTLEMENT;

5 7. The Court approves settlement of the ACTION, as set forth in the
6 SETTLEMENT AGREEMENT, including the releases and other terms, as fair, just,
7 reasonable and adequate in all respects as to the SETTLEMENT CLASS MEMBERS and
8 the other SETTLING PARTIES. The SETTLING PARTIES are directed to perform in
9 accordance with the terms set forth in the SETTLEMENT AGREEMENT;

10 8. The ACTION is dismissed on the merits and with prejudice, permanently
11 barring the REPRESENTATIVE PLAINTIFFS and all other SETTLEMENT CLASS
12 MEMBERS (other than those who timely filed a valid EXCLUSION FORM) from
13 prosecuting RELEASED CLAIMS against the RELEASED PERSONS and all other
14 SETTLEMENT CLASS MEMBERS;

15 9. The Court further finds that the agreement between the SETTLING
16 PARTIES concerning CLASS COUNSEL'S FEE AND EXPENSE APPLICATION is
17 fair and reasonable. Having presided over this consolidated litigation since its
18 commencement and having considered the materials submitted by CLASS COUNSEL in
19 support of final approval of the SETTLEMENT and their request for attorneys' fees,
20 expenses, and approval of ENHANCEMENT AWARDS for the REPRESENTATIVE
21 PLAINTIFFS, the Court finds the requested award of attorneys' fees appropriate based
22 on several factors. First, the Court finds that the total lodestar fees of CLASS
23 COUNSEL, in the amount of \$1,571,852.90, were reasonably necessary for the
24 prosecution of Plaintiffs' original actions and this consolidated litigation, and CLASS
25 COUNSEL's request for fees in the amount of \$1,625,000 corresponds to the Ninth
26 Circuit's 25% "benchmark" for common fund cases with only a de minimis 3%
27 enhancement (i.e., a multiplier of 1.03), which will be expended during final
28

1 administration of the settlement. Second, the Court finds that the value of the class
2 SETTLEMENT is \$6.5 million, a beneficial and substantial SETTLEMENT for the class
3 of the disputed claims in this consolidated litigation. Third, the Court notes that there
4 were only four objectors to the SETTLEMENT out of a class of 8,737 members (five
5 hundredths of one percent), that none of the objections have merit, and that only 20
6 timely exclusion requests were received (approximately two-tenths of one percent); and
7 that the overall claim filing rate is 62%, reaching as high as 74% in the ESF subclass.
8 Thus, the CLASS MEMBERS have shown strong support for the SETTLEMENT.
9 Fourth, the Court finds that the SETTLEMENT vindicates important public policies
10 regarding compensation of employees. Fifth, the Court finds that CLASS COUNSEL has
11 maintained this litigation for three years on a purely contingent basis, that CLASS
12 COUNSEL was opposed by highly skilled defense counsel, that the litigation involved
13 cutting edge and complex legal issues, that the PARTIES took sufficient discovery and
14 sufficiently explored the application of wage and hour laws to determine the respective
15 strengths and vulnerabilities of their positions, and that there was substantial risk that the
16 REPRESENTATIVE PLAINTIFFS would not prevail on some or all of their claims.
17 Sixth, the Court finds that the SETTLEMENT CLASS was specifically and clearly
18 advised of the fee request that CLASS COUNSEL would submit. In addition, the Court
19 finds that CLASS COUNSEL's request for reimbursement of \$94,529.95 in litigation
20 expenses is adequately documented and reasonable in view of the results obtained on
21 behalf of the SETTLEMENT CLASS, and is authorized by the SETTLEMENT
22 AGREEMENT. Accordingly, CLASS COUNSEL'S FEE AND EXPENSE
23 APPLICATION in this action is approved, and CLASS COUNSEL are hereby awarded
24 \$94,529.95 for reimbursement of litigation expenses and \$1,625,000 for attorneys' fees.
25 AXA is directed to make such payments in accordance with the terms of the
26 SETTLEMENT AGREEMENT;

1 10. Finding that the detailed declarations previously submitted by the
2 REPRESENTATIVE PLAINTIFFS substantiate the significant services that these
3 individuals, and each of them, provided on behalf of the SETTLEMENT CLASS by
4 initiating and maintaining this litigation, the Court approves REPRESENTATIVE
5 PLAINTIFFS' ENHANCEMENT AWARDS in the amount of \$15,000 apiece (\$105,000
6 altogether) to recognize their valuable role in this litigation and in reaching the results
7 achieved;

8 11. The Court reserves exclusive and continuing jurisdiction over the ACTION,
9 the REPRESENTATIVE PLAINTIFFS, the SETTLEMENT CLASS, and AXA solely
10 for the purposes of supervising the implementation, enforcement, construction,
11 administration and interpretation of the SETTLEMENT and this FINAL APPROVAL
12 ORDER; and

13 12. This document shall constitute a judgment for purposes of Rule 58 of the
14 Federal Rules of Civil Procedure.

15 13. Pursuant to the stipulated request on the record at the hearing, the Settlement Administrator
16 is authorized to continue the processing of claims received up to and including September 24,
17 2009. **IT IS SO ORDERED.**

18 DATED: September 25, 2009


HONORABLE JEFFREY S. WHITE
UNITED STATES DISTRICT JUDGE

19
20 If the parties require modification of the language in paragraph 13, they shall submit a
21 stipulation and proposed order to the Court.
22
23
24
25
26
27
28