

1 LAW OFFICES OF KIM E. CARD
 2 KIM E. CARD (CA Bar No: 147779)
 3 1690 Sacramento Street
 4 Berkeley, California 94702
 5 Telephone: (510) 684-5863
 6 Facsimile: (510) 644-2659
 7 kimecard@sonic.net

8 CHAVEZ & GERTLER, LLP
 9 JONATHAN E. GERTLER (CA Bar No: 111531)
 10 CHRISTIAN SCHREIBER (CA Bar No. 245597)
 11 42 Miller Avenue
 12 Mill Valley, California 94941
 13 Telephone: (415) 381-5599
 14 Facsimile: (415) 381-5572
 15 jon@chavezgertler.com
 16 christian@chavezgertler.com

17 Attorneys for Plaintiffs GERALD SMITH, et al.,
 18 and the Certified Plaintiff Class

19 UNITED STATES DISTRICT COURT
 20 NORTHERN DISTRICT OF CALIFORNIA
 21 SAN FRANCISCO DIVISION

22 GERALD SMITH, SAMIR RADY,
 23 FLORENTINO FIGUEROA, on behalf of
 24 themselves and all others similarly situated,

25 Plaintiffs,

26 vs.

27 CARDINAL LOGISTICS MANAGEMENT
 28 CORPORATION, a North Carolina
 Corporation; and Does 1 through 100,
 inclusive,

Defendants.

) **Case No.: C07-02104 SC**
) **CLASS ACTION**

) **~~[PROPOSED]~~ ORDER (1) GRANTING**
) **PRELIMINARY APPROVAL TO**
) **PROPOSED CLASS ACTION**
) **SETTLEMENT, (2) APPOINTING**
) **SETTLEMENT ADMINISTRATOR; (3)**
) **APPROVING AND DIRECTING NOTICE**
) **TO THE CLASS, AND (4) SETTING**
) **DATE FOR FINAL APPROVAL**
) **HEARING AND RELATED DATES**

) Date: April 8, 2011
) Time: 10:00 a.m.
) Courtroom: 1
) **THE HONORABLE SAMUEL CONTI**

1 This matter is before the Court on Plaintiffs’ Motion for Preliminary Approval of a
2 proposed class action settlement. The Motion is unopposed by Defendant Cardinal Logistics
3 Management Corporation. The parties have stipulated to, and the Court has approved, resolution
4 of this Motion on the papers.

5 On March 23, 2011, this Court entered an Order Re: Motion for Preliminary Approval of
6 Class Action Settlement, inviting Plaintiffs to address certain issues. On April 8, 2011, Plaintiffs
7 filed the Supplemental Declaration of Kim E. Card, with Amendments to the Settlement
8 Agreement to which the parties’ had agreed.

9 The Court has considered all of the parties’ submissions, including the terms of the
10 proposed class action settlement, the Declaration and Supplemental Declaration of Class Counsel
11 Kim E. Card, the discovery and related motion practice that has been conducted in this case, and
12 the arm’s-length negotiation process that led to the settlement. The Court has also considered the
13 parties’ submissions regarding Defendant’s financial condition and its ability to satisfy a greater
14 judgment. Based on the foregoing, and for good cause shown, the Court hereby finds and orders
15 as follows:

16 1. The Court grants preliminarily approval of the parties’ proposed class action
17 settlement (“Settlement”) under the terms set forth in the Settlement Agreement that was
18 attached as Exhibit A to the Declaration of Kim E. Card, filed in support of the Motion, as
19 modified by the Amendments to Settlement Agreement, attached as Exhibit 1 to the
20 Supplemental Declaration of Kim E. Card, filed April 8, 2011, with one exception: that no cy
21 pres distribution be made without approval of the Court upon a motion. The Court finds that the
22 Settlement is within the range of reasonableness given the recovery obtained, the nature of the
23 claims asserted, and the risks the Class faced if the litigation were to proceed to trial.
24 Accordingly, the Court preliminarily finds that the Settlement is fair, reasonable and adequate
25 under Federal Rule of Civil Procedure 23(e), and warrants notice to the Class and the scheduling
26 of a final approval hearing.

27 2. This Court has previously certified a class in this case, during the litigation and
28 pursuant to a contested motion (“the Class”), and made all necessary findings pursuant to Federal

1 Rule of Civil Procedure 23 at that time. *See* Order Granting Plaintiffs’ Motion for Class
2 Certification, filed September 5, 2008 (Document 83). The Settlement is on behalf of the same
3 Class as the Court previously certified, with a closure date of April 8, 2011 (the date that was
4 anticipated for preliminary approval), and accordingly, no new or different certification of a
5 Settlement Class is required. The two individuals who submitted timely requests for exclusion
6 from the Class following the initial Class Notice that was mailed in December of 2008 are
7 excluded from the Class and shall not be provided Notice of the Settlement.

8 3. The Court approves the appointment of Rust Consulting, Inc. (“Rust”) as the
9 Settlement Administrator. The Court directs Rust to administer the Settlement, including the
10 notice and Claims process as described in the Settlement Agreement and approved herein.

11 4. The Court approves the proposed form Notice of Class Action Settlement, attached as
12 Amended Exhibit A to the Amendments to Settlement Agreement, filed herein on April 8, 2011,
13 and directs the Settlement Administrator to provide Notice to the Class in the manner set forth in
14 the Settlement Agreement, including by conducting all address searches and the re-mailing of
15 Notices as called for under the Settlement.

16 5. The Court approves the form of the Claim Form and Release, Reminder Postcard, and
17 Request for Exclusion Form, attached as Exhibits B-D of the Settlement Agreement, (with the
18 Claim Form and Release modified in the manner reflected in Amended Exhibit B, attached to the
19 Amendments to Settlement Agreement, filed herein April 8, 2011, reflecting the 60-day claims
20 period), and directs the Settlement Administrator to provide these forms to the Class Members in
21 the manner set forth in the Settlement Agreement.

22 6. The Court approves the form of the letter attached as Exhibit G to the Settlement
23 Agreement, which shall be given by Cardinal to those class members who are currently working
24 for Defendant as independent contractors, informing them of their right under the Settlement
25 Agreement, but not their obligation, to convert to employee status.

26 7. The Court approves the form of the letter attached as Exhibit I to the Settlement
27 Agreement, which shall be sent by the Settlement Administrator to the 31 individuals who were
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1 incorrectly identified as class members, as identified on Amended Exhibit H to the Settlement
2 Agreement, filed with the parties' Amendments to Settlement Agreement on April 8, 2011.

3 8. The deadline for the submission of Claim Forms by the class members shall be sixty
4 (60) days from the date that the Notice is first mailed by the Settlement Administrator. This date
5 shall be printed as indicated in the approved forms.

6 9. As reflected in the approved form of Notice of Class Action Settlement, attached as
7 Amended Exhibit A to the Amendments to Settlement Agreement, class members shall have the
8 right to request exclusion from the class and the Settlement, or to submit objections to the
9 Settlement. The Settlement Administrator is directed to mail the approved Request for Exclusion
10 form (Exhibit D to the Settlement Agreement) to the class members as part of the Notice packet.
11 For those class members who were previously sent notice of this action in December of 2008,
12 following the certification of the class, this is a "second opt out" opportunity pursuant to Federal
13 Rule of Civil Procedure 23(e)(4). The deadline for the submission of any Requests for Exclusion
14 and for the filing and service of any objections to the Settlement shall be sixty (60) days from the
15 date that Notice is first mailed by the Settlement Administrator, and such date shall be printed on
16 the Notice, Claim Form, and Request for Exclusion forms, as indicated on the approved forms.
17 The procedures for the submission of Requests for Exclusion and for the filing and service of any
18 objections shall be as described and set forth in the Notice. Any objections to the Settlement
19 must be filed with the Court, with copies served on both Plaintiffs' and Defendants' counsel, by
20 the deadline set forth in the Notice.

21 10. The Court directs Class Counsel to file their Motion for Attorneys' Fees, Costs and
22 Expenses, pursuant to the terms of the Settlement, no later than 14 days prior to the deadline for
23 the submission of requests for exclusion and objections.

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1 11. The Court approves the following schedule for Notice and further proceedings in the
2 action:

3 Notice Mailing Date	No later than 30 days from the date this Order is entered
4 Plaintiffs to file Motion for Attorneys' Fees and Costs	No later than 14 days Prior to the Deadline for the Submission of Requests for Exclusion and Objections
5 Deadline for the submission of Claim Forms (postmark date)	60 days after Notice Mailing Date
6 Deadline for submission of Requests for Exclusion (postmark date)	60 days after Notice Mailing Date
7 Deadline for the filing and service of any Objections to the Settlement	60 days after Notice Mailing Date
8 Deadline for the filing of the Motion for Final Approval	35 days prior to Final Approval Hearing
9 Final Approval Hearing	<u>August 12, 2011 at 10:00 a.m., Courtroom 1, 450 Golden Gate Avenue, 17th Floor, San Francisco, CA, 94102</u>

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13 IT IS SO ORDERED.

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15 DATED: April 11, 2011

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17 THE HONORABLE SAMUEL CONTI
18 United States District Court Judge

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