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17 **UNITED STATES DISTRICT COURT**
 18 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**

19 STEPHEN SONG, as an individual and
20 on behalf of all others similarly situated,

Case No.: 3:10-CV-03583-SC

21 Plaintiffs,

CLASS ACTION

22 vs.

23 [~~PROPOSED~~] ORDER GRANTING
 24 MOTION FOR PRELIMINARY
 25 APPROVAL OF CLASS ACTION
 26 SETTLEMENT

27 KLM GROUP, INC. dba KLM
 28 ONSITE SOLUTIONS, a Pennsylvania
 corporation; and DOES 1 through 20,
 inclusive,

Defendants.

1 On June 10, 2011, the Court heard a motion by Plaintiff Stephen Song
2 (“Plaintiff”), on behalf of himself and all others similarly situated, for preliminary
3 approval of a proposed class action settlement. The Court has considered the Joint
4 Stipulation of Settlement and Release (“Agreement” or “Settlement”), the Notice
5 of Class Action Settlement (“Class Notice”), and the Claim Form, as well as the
6 other papers submitted in connection with the motion, and good cause appearing
7 therefore, the Court now FINDS and ORDERS as follows:

8 1. All defined terms contained herein shall have the same meaning as set
9 forth in the Agreement executed by the Parties and filed with this Court.

10 2. For settlement purposes only, pursuant to Federal Rule of Civil
11 Procedure 23(a) and 23(b)(3), the Court conditionally certifies the following
12 Settlement Class:
13

14 All individuals who worked for Defendant in the State of
15 California as independent contractors performing
16 marketing and sales services from June 29, 2006 to June
17 10, 2011.

18 3. The Court conditionally finds that, for the purposes of approving this
19 Settlement only, the proposed Class meets the requirements for certification of a
20 settlement class under Rule 23(a) and 23(b)(3) of the Federal Rules of Civil
21 Procedure, in that: (a) the proposed Class is ascertainable and so numerous (more
22 than 50 persons) that joinder of all members is impracticable; (b) there are
23 questions of law or fact common to the proposed Class regarding whether
24 Defendants had certain policies that violated California wage and hour laws; (c)
25 the claims of Plaintiff are typical of the claims of other members of the proposed
26 Class; (d) Plaintiff and his counsel will fairly and adequately protect the interests
27 of the proposed Class; and (e) there are certain questions of law or fact germane to
28 the Settlement Class and a settlement class action is superior to other available

1 methods for an efficient resolution of this controversy.

2 4. If the Settlement does not become final for any reason, the fact that
3 the Parties were willing to stipulate to class certification as part of the Settlement
4 shall have no bearing on, and will not be admissible in connection with, the issue
5 of whether a class in this action should be certified in a non-settlement context.
6 The Court’s findings are for purposes of conditionally certifying a Settlement Class
7 and will not have any claim or issue or evidentiary preclusion or estoppel effect in
8 any other action against the Released Parties, or in this Litigation if the Settlement
9 is not finally approved.

10 5. The Court appoints, for settlement purposes only, Plaintiff Stephen
11 Song as Class Representative.

12 6. The Court appoints, for settlement purposes only, the Diversity Law
13 Group, A Professional Corporation; and the Law Office of Sherry Jung as Class
14 Counsel. The Court finds that Plaintiff’s counsel collectively have extensive
15 experience and expertise in prosecuting wage and hour class actions.
16

17 7. The Court finds on a preliminary basis that the proposed Settlement
18 described in the Agreement (including the monetary provisions, the plan of
19 allocation, the release of claims, the proposed award of attorneys’ fees and costs
20 and the Class Representative’s Enhancement) falls within the “range of
21 reasonableness” and therefore grants preliminary approval of the Settlement.
22 Based on a review of the papers submitted by the Parties, the Court finds that the
23 Settlement is the result of extensive arms-length negotiations conducted after Class
24 Counsel had adequately investigated the claims and became familiar with the
25 strengths and weaknesses of those claims. The assistance of the Hon. Laurel
26 Beeler in the settlement process supports the Court’s conclusion that the Settlement
27 is non-collusive.

28 8. The Court finds and concludes that the Class Notice and Claim Form

1 and the procedure set forth in the Agreement for providing notice to the Class will
2 provide the best notice practicable, satisfies the notice requirements of Rule 23(e),
3 adequately advises Class Members of their rights under this Settlement, and
4 therefore meet the requirements of due process.

5 a. Class Notice: The Class Notice fairly, plainly, accurately, and
6 reasonably informs Class Members of: (1) appropriate information about the nature
7 of this Litigation, the definition of the Class, the identity of Class Counsel, and the
8 essential terms of the Settlement, including the plan of allocation; (2) appropriate
9 information about Plaintiff's and Class Counsel's forthcoming applications for the
10 Class Representative Enhancement and the Class Counsel attorneys' fees and costs
11 award; (3) appropriate information about how to claim a share of the proceeds
12 under the Settlement, and about Class Members' right to appear through counsel if
13 they desire; (4) appropriate information about how to object to the Settlement or
14 submit an Opt-Out Request, if a Class Member wishes to do so; and (5) appropriate
15 instructions as to how to obtain additional information regarding this Litigation and
16 the Settlement. The proposed plan for mailing the Class Notice and the Claim
17 Form by first class mail to the Class Members' last known addresses is an
18 appropriate method, reasonably designed to reach all individuals who would be
19 bound by the Settlement. The Administrator will distribute the Class Notice and
20 the Claim Form to all Class Members by first class mail to their last known
21 addresses, after seeking updated addresses from the U.S. Postal Service for the
22 Class Members who are former employees. If the Class Notices are returned as
23 undeliverable, the Administrator will make reasonable efforts to obtain updated
24 addresses through a skip tracing process. There is no alternative method of
25 distribution that would be practical and reasonably likely to notify Class Members
26 who may not receive notice pursuant to the proposed distribution plan. The
27 proposed Class Notice and notice plan are the best practicable notice under the
28

1 facts and circumstances of this case.

2 b. Claim Form: The proposed Claim Form allows Class Members
3 a full and fair opportunity to submit a claim for proceeds under the Settlement.
4 The Claim Form fairly, accurately, and reasonably informs Class Members that the
5 failure to complete and submit a Claim Form, in the manner and time specified,
6 will constitute a waiver of any right to obtain any share of the proceeds under the
7 Settlement.

8 9. The Class Notice and Claim Form and the manner of distributing the
9 Class Notice and Claim Form to the Class are approved.

10 10. The Parties are ordered to carry out and proceed with the Settlement
11 according to the terms of the Settlement.

12 11. The Court appoints CPT Gropup, Inc. as the Administrator. Promptly
13 following the entry of this order, the Administrator will prepare final versions of
14 the Class Notice and Claim Form, incorporating into them the relevant dates and
15 deadlines set forth in this order.

16 12. Within fifteen (15) calendar days after the entry of the Preliminary
17 Approval Order, Defendant shall provide the Administrator with a list of each
18 Class Member, setting forth in separate columns in Excel format, or some other
19 format mutually agreed upon by Defendant and the Administrator, (i) the name,
20 Social Security Number and last known mailing address of the Class Member, and
21 (ii) the amount of pay earned by each Class Member as part of their independent
22 contractor services with Defendant. The Administrator shall maintain this
23 information as private and confidential and shall not disclose such data to any
24 persons or entities other than Defendant, or Plaintiff's counsel to the extent such
25 information is needed to respond to any inquiry from a Class Member or a disputed
26 claim.
27

28 13. Within thirty (30) calendar days after the entry of the Preliminary

1 Approval Order, the Administrator, after conducting a search using the U.S. Postal
2 Service National Change of Address database to validate or update the addresses of
3 the former employee Class Members, shall send the Class Notice and Claim Form
4 to all Class Members via first class U.S. Mail.

5 14. The Administrator is directed to mail the Class Notice and Claim
6 Form in the manner provided in the Agreement and take all other actions in
7 furtherance of claims administration as specified in the Agreement.

8 15. Class Members who wish to receive a Claim Amount must complete
9 and return a timely Claim Form to the Administrator in the manner provided in the
10 Agreement. The Claims Period Deadline for submitting a Claim Form is sixty (60)
11 calendar days after the Class Notices and Claim Forms are mailed to the Class
12 Members by the Administrator, as evidenced by the postmark.

13 16. Class Members who wish to exclude themselves from the Settlement
14 must sign and submit an Opt-Out Request in the manner provided in the
15 Agreement. The deadline for submitting an Opt-Out Request is the Claims Period
16 Deadline. Any member of the Class who requests exclusion from the Settlement
17 will not be entitled to any share of the Settlement and will not be bound by the
18 Settlement Agreement or have any right to object, appeal or comment thereon.
19 Class Members who fail to submit a valid and timely Opt-Out Request shall be
20 bound by all terms of the Agreement, regardless of whether they otherwise have
21 requested exclusion from the Settlement.
22

23 17. Class Members who submit both an Opt-Out Request and a Claim
24 Form shall be sent a cure letter by the Administrator requesting clarification of the
25 Class Member's intent. The letter will state that unless the Class Member clarifies
26 by the Claims Period Deadline that he or she intends to opt out, the Class Member
27 will be deemed to be an Eligible Class Member.

28 18. A Class Member may dispute any of the information on the Claim

1 Form by completing the dispute portion of the Claim Form and providing the
2 completed form together with any supporting information or documentation to the
3 Administrator by the Claims Period Deadline. Defendant and Class Counsel shall
4 attempt in good faith to resolve any such dispute. The Administrator shall have the
5 authority, based on information provided by Defendant and information provided
6 by the actual or claimed Class Member, to issue a final non-appealable decision
7 with regard to any dispute that cannot be resolved by Defendant and Class
8 Counsel.

9
10 19. Any Class Member who does not Opt-Out but who wishes to object to
11 the Settlement or otherwise to be heard concerning the Agreement may object by
12 filing written objections with the Court and mailing a copy of his or her objections
13 to Class Counsel via first-class mail. To be considered timely, the objections must
14 be filed and mailed no later than the Claims Period Deadline. The objections must
15 include any supporting papers and arguments. Any Class Member who fails to file
16 and serve a timely written objection shall be barred from making any statement
17 objecting to the Settlement, including at said hearing, and shall forever waive his
18 or her objection, except by special permission of the Court. Either of the Parties
19 may file a responsive document to any objection no later than five (5) court days
20 before the Final Approval and Fairness Hearing.

21 20. The Court will conduct a Final Approval and Fairness Hearing on
22 **March 9, 2012, at 10:00 am** at 450 Golden Gate Ave, San Francisco, California to
23 determine: (1) whether the proposed Settlement is fair, reasonable, and adequate
24 and should be finally approved by the Court, including consideration of any timely
25 filed objections; (2) the amount of attorneys' fees and costs to award to Class
26 Counsel; and (3) the amount of Enhancement to award to the Class Representative.

27 21. In the event the Settlement is not finally approved, or otherwise does
28 not become effective in accordance with the terms of the Agreement, this order

1 shall be rendered null and void and shall be vacated, and the Parties shall revert to
2 their respective positions as of before entering into the Agreement.

3 22. The Parties are ordered to comply with all of the terms as set forth in
4 the Agreement.

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6 DATED: November 15, 2011



7 Hon. Samuel Conti
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