

1 LARRY W. LEE (State Bar No. 228175)
HOWARD L. MAGEE (State Bar No. 185199)
2 DANIEL H. CHANG (State Bar No. 183803)
3 **DIVERSITY LAW GROUP, A Professional Corporation**
444 S. Flower Street
4 Citigroup Center · Suite 1370
Los Angeles, California 90071
5 (213) 488-6555
6 (213) 488-6554 facsimile

7 SHERRY JUNG (State Bar No. 234406)
8 **LAW OFFICES OF SHERRY JUNG**
444 S. Flower Street
9 Citigroup Center · Suite 1370
Los Angeles, California 90071
10 (213) 488-6555
11 (213) 488-6554 facsimile

12 Attorneys for Plaintiff Stephen Song

13 **UNITED STATES DISTRICT COURT**
14 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**

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

16 Plaintiffs,

17 vs.

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

20 Defendants.

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

**[PROPOSED] ORDER GRANTING FINAL
APPROVAL OF CLASS ACTION
SETTLEMENT, AWARD OF CLASS
REPRESENTATIVE'S SERVICE
PAYMENT, ATTORNEYS' FEES AND
LITIGATION COSTS, AND CLAIMS
ADMINISTRATOR'S COSTS AND
ENTERING FINAL JUDGMENT**

Date: March 9, 2012

Time: 10:00 a.m.

21 Ctrm.: 1 – 17th Floor
22
23

24 On March 9, 2012, a hearing was held on the motion of Plaintiff Stephen Song, as an individual
25 and as representative of the Class (“Plaintiff”) for final approval of the proposed class action
26 settlement.

27 On May 6, 2011, Plaintiff and Defendant KLM Group, Inc. dba KLM Onsite Solutions
28

1 (“Defendants”) (collectively with Plaintiff as the “Parties”) filed their Joint Stipulation of Settlement
2 and Release (the “Agreement” or “Settlement”).

3 On November 15, 2011, the Court issued an Order (1) preliminarily approving the proposed
4 class action settlement, (2) conditionally certifying the settlement class, (3) directing mailing of notice
5 and claim form to the class, and (4) setting the schedule for the final approval process and final
6 approval hearing, which specified the manner in which notice of the proposed Settlement was to be
7 provided to the Settlement Class and scheduled a Final Approval and Fairness Hearing.

8 The Court having read and considered the papers on the motion, the response of the Settlement
9 Class Members to the Notice of Settlement, the arguments of counsel, and the evidence and law, and
10 good cause appearing therefore, the Court hereby grants Plaintiff’s Motion in its entirety (“Final
11 Order”) and HEREBY FINDS and ORDERS as follows:

12 1. Except as otherwise specified herein, for purposes of this Final Order, the Court adopts
13 and incorporates by reference all defined terms set forth in the Agreement¹

14 2. This Court has jurisdiction over the subject matter of this Action and all parties to the
15 proceeding. Specifically, this Court has subject matter jurisdiction over this action pursuant to 28
16 U.S.C. §1332. This Court also has supplemental jurisdiction over the state-law claims asserted by
17 Plaintiff because the state-law claims derive from a common nucleus of operative fact and form part of
18 the same case or controversy as those claims over which the Court has primary jurisdiction. 28 U.S.C.
19 §1367 (providing for supplemental jurisdiction over related state-law claims that “form part of the same
20 case or controversy”).

21 3. The proposed settlement class (“Class”), identified in the Court’s November 15, 2011
22 Order granting preliminary approval of this class action settlement (“Preliminary Approval Order”) and
23 incorporated herein by reference, satisfies the requirements of a settlement class because the class
24 members are readily ascertainable and a well-defined community of interest exists in the questions of
25 law and fact affecting the parties.

26 4. Notice to the Class was provided in the manner and form set forth in the Preliminary
27

28 ¹ The initial capitalization of a term indicates its usage as defined in the Agreement.

1 Approval Order. The Claims Administrator took reasonable steps to provide the Notice of Settlement
2 and Claim Form to Class Members when it learned that the address to which those documents were
3 mailed was no longer accurate. These documents informed Class Members of the terms of the
4 Settlement, their right to claim a share of the settlement proceeds and the procedure therefore, their
5 right to object to the Settlement or to opt out of the Settlement and pursue their own remedies, and their
6 right to appear in person or by counsel at the Final Approval Hearing and be heard regarding the final
7 approval of the Settlement. Notice was provided with ample time for the Class Members to follow
8 these procedures.

9 5. The Court finds that this notice procedure afforded adequate protections to Class
10 Members and provides the basis for the Court to make an informed decision regarding approval of the
11 Settlement based on the responses of Class Members. Notice was accomplished in all material respects
12 in the manner prescribed by the Settlement. The Court finds that the notice provided notice to all
13 persons entitled to such notice in this case, was the best notice practicable, and, therefore, fully satisfied
14 the requirements of due process, such that all absent class members have been given the opportunity to
15 participate fully in the claims exclusion and the approval process.

16 6. There were no objections to the Final Approval of this Settlement in response to the
17 notice.

18 7. The Court grants final approval of the Settlement between the Parties. Pursuant to Rule
19 23(e), the Court finds that the Settlement is fair, just, reasonable, and adequate to the Class when
20 balanced against the probable outcome of extensive and costly litigation. *Staton v. Boeing*, 327 F.3d
21 938, 960 (9th Cir. 2003). Substantial informal discovery, investigation, and research have been
22 conducted such that the Parties' respective counsel at this time are reasonably able to evaluate their
23 respective positions. It appears to the Court that settlement will avoid substantial additional costs by all
24 parties, as well as the delay and risk that would be presented by further prosecution of this action. The
25 Court finds that the settlement that has been reached as the result of intensive, non-collusive, arm's-
26 length negotiations, thorough factual and legal investigation, and the good faith exchange of
27 information and documents. In granting final approval of the Settlement, the Court considered the
28

1 nature of the claims, the amounts and kinds of benefits paid in settlement, the allocation of the
2 settlement proceeds amount the Class Members, and the fact that the settlement represents a
3 compromise of the Parties' respective positions rather than the result of a finding of liability at trial.
4 The Court further finds that the response of the Class to the Settlement supports final approval, as no
5 Class Member objects to the final approval of this Settlement.

6 8. The Court hereby finds the Settlement Sum to be fair, adequate and reasonable.

7 9. Payment to those Eligible Class Members who filed valid claims shall be made in
8 accordance with the terms of the Settlement. The Court orders the Parties to implement and comply
9 with the Settlement according to its terms and the Court's orders.

10 10. As provided in the Settlement, all of the Released Claims of each Class Member who
11 did not timely opt out, are and shall be deemed to be conclusively released as against the Releasees. As
12 of the date of this Final Order, all Class Members who did not timely opt out/request exclusion are
13 bound by this Final Order and Judgment, and the Settlement. Except as to rights or claims that may be
14 created by the Settlement, all Class Members as of the date of this Final Order who did not timely opt
15 out are forever barred and enjoined from commencing or prosecuting any of the claims, either directly
16 representatively, or in any other capacity, that are released by the Settlement against any of the
17 Releasees. This Final Order shall have the force and effect of *res judicata* as to each Class Member
18 who did not timely opt out of the Settlement.

19 11. The Settlement is not an admission by Defendant nor is this Final Order a finding of the
20 validity of any claim in the lawsuit or any wrongdoing by Defendant. Furthermore, the Settlement will
21 not be (i) construed as, offered or admitted in evidence as, received as, or deemed to be evidence for
22 any purpose adverse to Defendant, including, but not limited to, evidence of a presumption, concession,
23 indication or admission by Defendant of any liability, fault, wrongdoing, omission, concession or
24 damage; nor (ii) disclosed, referred to or offered in evidence against Defendant, in any further
25 proceeding in the lawsuit, or any other civil, criminal or administrative action or proceeding except for
26 purposes of effecting the Settlement. However, the Settlement may be admitted in evidence and
27 otherwise used in any and all proceedings to enforce any or all terms of the Settlement, or to support a
28

1 defense by the Releasees of *res judicata*, collateral estoppel, release, waiver, good faith settlement,
2 judgment bar or reduction, and any other applicable defenses.

3 12. In accordance with the terms of the Settlement, the Released Claims covered by the
4 Settlement shall be and hereby are dismissed on the merits with prejudice on a class-wide basis as to
5 the Representative Plaintiff and all Class Members except those who timely filed requests for
6 exclusion.

7 13. Without affecting the finality of this Final Order and Judgment, the Court reserves
8 continuing and exclusive jurisdiction over this Action and the Parties, including all Class Members, to
9 administer, supervise, construe and enforce the Settlement in accordance with its terms for the mutual
10 benefits of the Parties.

11 14. The Court determines that an award of attorneys' fees to class counsel under the
12 common fund doctrine in the collective amount of \$18,333, representing thirty-three and one third
13 percent of the \$55,000 Settlement Sum to the Class, is fair, reasonable and appropriate. The Court finds
14 that the contentious nature of the litigation, the degree of difficulty and potential defenses the amount
15 of recovery, and the other reasons set forth in the moving papers, all support this fee award.

16 15. Counsel for the Class performed work which benefitted the Class and expended
17 substantial time and effort in litigating this matter. Importantly, there were no objections to the
18 requested fee and expense award from any member of the Class.

19 16. The substantial recovery obtained and the results achieved, along with the risks of the
20 litigation, the skill required, quality of the work, the contingent nature of the fee, the financial burden
21 carried by Class Counsel, and awards made in similar cases, all justify the requested attorneys' fees
22 award.

23 17. Pursuant to the terms of the Settlement Agreement, the Court further orders that Class
24 Counsel be reimbursed for their litigation expenses in the amount of \$2,959.06. This amount represents
25 the actual and reasonable out of pocket costs Class Counsel incurred in this litigation.

26 18. The Court finds that the named Plaintiff performed his duties and role as the class
27 representative admirably. The Court hereby awards the named Plaintiff, Stephen Song, an incentive and
28

1 service award of \$900, which the Court finds to be fair and reasonable, to be paid in accordance with
2 the Settlement Agreement.

3 19. In addition, pursuant to the terms of the Settlement Agreement, the Court orders that
4 third party administrator CPT Group, Inc., be awarded \$6,500 in connection with the costs incurred in
5 administering the current Settlement.

6 20. If the Settlement does not become final and effective in accordance with the terms of the
7 Settlement, this Final Order and Judgment and all orders entered in connection herewith shall be
8 vacated and shall have not further force or effect.

9
10 THEREFORE, the Court, in the interest of justice, there being no reason for delay, expressly
11 directs the Clerk of the Court to enter this Final Order as set forth above.

12
13
14 IT IS SO ORDERED

15
16 Dated March 14, 2012



17 Hon.
18 Judge of the United States District Court