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 6 himself and all other similarly situated employees

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 8 **UNITED STATES DISTRICT COURT**
 9 **NORTHERN DISTRICT OF CALIFORNIA**
 10 **SAN JOSE DIVISION**

11 ALVARO SANCHEZ on behalf of himself
 and all other similarly situated employees,

12 Plaintiff,

13 v.

14 KEURIG GREEN MOUNTAIN, INC.; and
 DOES 1 through 100, inclusive,

15 Defendants.

Case No.: 15-CV-04657-EJD

[Monterey County Superior Court
 Case No. M132626]

~~PROPOSED~~ **ORDER (1)**
CONDITIONALLY CERTIFYING THE
SETTLEMENT CLASS; (2)
PRELIMINARILY APPROVING THE
CLASS ACTION SETTLEMENT; (3)
APPOINTING PLAINTIFF AS THE
CLASS REPRESENTATIVE AND HIS
COUNSEL AS CLASS COUNSEL; (4)
APPROVING AND DIRECTING THE
DISTRIBUTION OF THE CLASS
NOTICE PACKET; AND (5) SETTING A
HEARING FOR FINAL APPROVAL OF
THE CLASS ACTION SETTLEMENT

Date: March 22, 2018
 Time: 9:00 a.m.
 Courtroom: 4
 Judge: Hon. Edward J. Davila

Complaint Filed: July 14, 2015
 Notice of Removal Filed: October 7, 2015

26 Plaintiff Alvaro Sanchez’s Motion for Preliminary Approval of the Class Action

27 Settlement came on for hearing on March 22, 2018, in Courtroom 4 of this Court, the Honorable
 28 Edward J. Davila presiding. Attorney B. James Fitzpatrick appeared on behalf of Plaintiff and

1 attorney Jon D. Cantor appeared on behalf of Defendant Keurig Green Mountain, Inc.
2 (“Defendant”).

3 The Court, having reviewed Plaintiff’s motion, the parties’ Joint Stipulation of Class
4 Action Settlement (“Settlement”) (attached to the Declaration of B. James Fitzpatrick as Exhibit
5 A), along with the files and records of this case, and oral argument made at the hearing, hereby
6 FINDS, CONCLUDES, and ORDERS as follows:

7 **I. CONDITIONAL CERTIFICATION OF SETTLEMENT CLASS**

8 **A. Settlement Class**

9 For settlement purposes, the parties have proposed conditional certification of the
10 following settlement class (the “Class”):

11 All former non-exempt, hourly associates who worked for temporary
12 staffing agencies, including but not limited to Select Staffing, at any
13 time between July 14, 2011 and July 3, 2017 (the “Class Period”), who
14 were assigned by such temporary staffing agencies to work at
15 Defendant’s Castroville Plant. Notwithstanding the foregoing, any
16 temporary staff person who performed work and/or allegedly suffered
17 violations of any law occurring while such person was in the employ
18 of either Manpower US Inc. and/or any Manpower franchise and
19 assigned to work at Defendant’s Castroville Plant during the
20 applicable period shall not be considered a Class Member.

17 **B. Conditional Certification**

18 Pursuant to Fed. R. Civ. P. 23 the Court hereby certifies the Class for the sole and limited
19 purpose of implementing the terms of the Settlement. Entry of this Order is without prejudice to
20 the rights of Defendant to oppose certification of a class in this action should the proposed
21 Settlement not be granted final approval

22 **II. APPOINTMENT OF THE CLASS REPRESENTATIVE AND CLASS COUNSEL**

23 **A. Class Representative**

24 The Court finds and concludes that Plaintiff Alvaro Sanchez has claims typical of the
25 Class Members and is an adequate representative of them. The Court hereby appoints Plaintiff
26 Alvaro Sanchez to serve as the Class Representative.

27 **B. Class Counsel**

28 The Court appoints Plaintiff’s counsel, Fitzpatrick, Spini & Swanston as Class Counsel.

1 **III. PRELIMINARY APPROVAL OF SETTLEMENT**

2 The Court has reviewed the terms of the Settlement, including the plan of allocation and
3 the release of claims. The Court has read and considered the declaration of B. James Fitzpatrick
4 in support of preliminary approval. Based on review of those papers, and the Court’s familiarity
5 with this case, the Court finds and concludes that the Settlement is the result of arms-length
6 negotiations between the parties conducted after Class Counsel had adequately investigated
7 Plaintiff’s claims and become familiar with their strengths and weaknesses. The assistance of an
8 experienced mediator in the settlement process confirms that the Settlement is non-collusive.
9 Based on all of these factors, the Court concludes that the proposed Settlement meets the criteria
10 for preliminary settlement approval.¹ The Settlement has no obvious defects and falls within the
11 range of possible approval as fair, adequate, and reasonable, such that notice to the Class is
12 appropriate.

13 **IV. APPROVAL OF THE CLASS NOTICE, OPT-OUT FORM, MAILING**
14 **ENVELOPE AND MANNER OF DISTRIBUTION**

15 The parties have also submitted for this Court’s approval a proposed Notice of Proposed
16 Class Action Settlement and Hearing Date for Court Approval (attached as Exhibit 1 to the
17 Settlement), proposed Opt-Out Form (attached as Exhibit 2 to the Settlement), and proposed
18 mailing envelope (attached as Exhibit 3 to the Settlement) (collectively hereinafter referred to as
19 the “Class Notice Packet”). The parties have also proposed a plan for distributing these
20 documents in English and Spanish to Class Members after the Court grants preliminary approval
21 of the Settlement. After carefully reviewing these documents and plan of distribution, the Court
22 finds and concludes as follows:

23 **A. Best Notice Practicable**

24 The proposed Class Notice Packet is the best notice practicable under the circumstances
25 and allows the Class Members a full and fair opportunity to consider the Settlement. The
26 proposed mailing envelope has been designed to increase the chance that it will be opened by
27 concisely and clearly identifying the nature of its contents. The Class Notice Packet fairly,
28 plainly, accurately, and reasonably informs Class Members of: (1) appropriate information about

1 the nature of this action, the definition of the Class, the identity of Class Counsel, and the
2 essential terms of the Settlement, including the plan of allocation; (2) appropriate information
3 about Plaintiff and Class Counsels' forthcoming applications for the Class Representative's
4 Service Payment and Class Counsels attorneys' fees and costs; (3) appropriate information about
5 how settlement payments will be calculated, how to receive a settlement payment, the Class
6 Member's estimated gross individual settlement payment under the Settlement, and the
7 procedures by which Class Members may contest Defendant's records of their employment
8 history, which may affect their monetary recovery under the Settlement; (4) appropriate
9 information about this Court's procedures for final approval of the Settlement, and about Class
10 Members' right to appear if they desire; (5) appropriate information about how to object to or
11 elect not to participate in the Settlement, if a Class Member wishes to do so; and (6) appropriate
12 information as to how to obtain additional information regarding this action and the Settlement.

13 **B. Plan of Distribution**

14 The proposed plan for distributing the Class Notice Packet is a reasonable method to
15 reach all individuals who would be bound by the Settlement. Under this plan, Defendant will
16 provide the Settlement Administrator within fifteen (15) calendar days after the Court enters its
17 Preliminary Approval Order, for each Class Member, their name, last known mailing address,
18 last known telephone number, Social Security number, the dates of assignment at Defendant's
19 Castroville, California facility during the Class Period, and the number of weeks worked by each
20 Class Member at Defendant's Castroville, California facility during the Class Period ("Class
21 Information").

22 Within twenty-one (21) days after the Settlement Administrator receives the Class
23 Information, the Settlement Administrator will mail, by first-class mail, the Class Notice Packets
24 in both English and Spanish to all Class Members at their last known address, unless modified by
25 any updated address information that the Settlement Administrator obtains in the course of
26 administration of the Settlement. Prior to the mailing of the Class Notice Packets, the Settlement
27 Administrator will update any new address information for Class Members as may be available
28 through the National Change of Address database or equivalent system.

1 The Settlement Administrator will trace all returned undeliverable Class Notice Packets
2 and re-mail them to the most recent address available no later than seven (7) calendar days
3 following receipt of the returned mail. For any Class Notice Packets returned to the Settlement
4 Administrator without a forwarding address, the Settlement Administrator shall conduct a skip-
5 trace and shall promptly re-mail the Class Notice Packet to any newly found address or
6 addresses. The re-mailed Class Notice Packet shall be identical to the original Class Notice.

7 The Settlement Administrator will take all other necessary action in furtherance of the
8 administration of the Settlement as are specified in the Settlement Agreement.

9 **C. Approval**

10 Accordingly, the Court finds and concludes that the proposed plan for distributing the
11 Class Notice Packet will provide the best notice practicable, satisfies all legal and due process
12 requirements. Accordingly, the Court hereby orders as follows:

13 1. The Class Notice Packet is approved. The parties are authorized to make non-
14 substantive changes to the Class Notice Packet that are consistent with the terms of the
15 Settlement and this Order.

16 2. The manner of distributing the Class Notice Packet to the Class is approved.

17 3. Promptly following the entry of this Order, the Settlement Administrator will
18 prepare a final version of the Class Notice Packet, incorporating into it the relevant dates and
19 deadlines set forth in this Order. The Class Notice Packet will be initially prepared in English
20 and then, once finalized, translated into Spanish.

21 4. Except as otherwise specified herein, the Court for purposes of this Order adopts
22 all defined terms set forth in the Settlement.

23 **V. PROCEDURES FOR FINAL APPROVAL OF THE SETTLEMENT**

24 **A. Final Approval Hearing**

25 The Court hereby schedules a hearing to determine whether to grant final approval of the
26 Settlement (the “Final Approval Hearing”) for July 12, 2018, at 9:00 a.m. in Courtroom 4 of this
27 Court, located at 280 South 1st Street, San Jose, California.

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1 **B. Deadline for Submitting Motion Seeking Final Approval**

2 No later than 10 court days before the Final Approval Hearing, Plaintiff will file a motion
3 for final approval of the Settlement.

4 **C. Deadline for Motion for Class Counsels Attorneys' Fees and Costs Award**

5 No later than fourteen (14) calendar days before the deadline for Class Members to object
6 or opt-out from the Settlement, Plaintiff will file a motion for approval of Class Counsels
7 attorneys' fees and costs. The motion for Class Counsels attorneys' fees and costs shall be
8 heard concurrently with the motion for final approval.

9 **D. Deadline to Elect Not to Participate in the Settlement**

10 **1. Form of Election**

11 Class Members may exclude themselves from participating in the Settlement. To do so,
12 the Class Member must submit a completed Opt-Out Form by mail to the Settlement
13 Administrator and postmarked on or before the deadline. The date of the postmark on the return
14 mailing envelope shall be the exclusive means used to determine whether an Opt-Out Form has
15 been timely submitted.

16 **2. Deadline for Submitting an Opt-Out Request**

17 Class Members will have forty-five (45) calendar days after the date on which the
18 Settlement Administrator mails the Class Notice Packets to submit to the Settlement
19 Administrator a valid Opt-Out Form. A valid Opt-Out Form will be deemed timely submitted to
20 the Settlement Administrator if it is mailed to the Settlement Administrator by first-class mail
21 and postmarked by no later than forty-five (45) calendar days after the Settlement Administrator
22 first mails the Class Notice Packets to the Class Members. Only those Class Members who
23 submit a completed Opt-Out Form within the time and by the manner set forth in this Order will
24 be excluded from the Settlement. The Settlement will have no binding effect on any Class
25 Member who properly elects not to participate in the Settlement in the manner required by this
26 Order.

27 **E. Defendant's Right to Rescind the Settlement Agreement**

28 Defendant may, at its election, rescind the Settlement and all actions taken in its

1 furtherance of it will be thereby null and void, if more than 10% of the Class Members opt-out of
2 the Settlement. Defendant must exercise this right of rescission, in writing, within seven (7)
3 calendar days after the Settlement Administrator first notifies the parties that the conditions
4 expressed in this paragraph have been satisfied.

5 **F. Deadline for Filing Objections to Settlement**

6 Any Class Member who wishes to object to the fairness, reasonableness, or adequacy of
7 the Settlement must do so in writing, and filed with the Court no later than forty-five (45)
8 calendar days after the date that the Class Notice Packets are first mailed to Class Members by
9 the Settlement Administrator. Any Class Member who submits a valid and timely Opt-Out
10 Form will not have standing, and is barred from objecting to the Settlement. Any Class Member
11 who does not timely file a written objection will not be permitted to raise such objection, except
12 for good cause shown, and any Class Member who fails to object in the manner prescribed by
13 this Order will be deemed to have waived, and will be foreclosed from raising, any such
14 objection. Class Members who have timely objected to the Settlement in writing may also appear
15 and speak at the Final Approval Hearing if they have provided advance notice to the Court of
16 their intention to do so.

17 **VI. RELEASE OF CLAIMS**


18 If, at the Final Approval Hearing, this Court grants final approval to the Settlement,
19 Plaintiff and every Class Member who does not validly and timely opt-out of the Settlement will,
20 pursuant to the Settlement, be adjudicated to have granted the release of claims as set forth in the
21 Settlement.

22 **VII. APPOINTMENT OF SETTLEMENT ADMINISTRATOR**

23 Simpluris, Inc. is hereby appointed the Settlement Administrator to carry out the duties
24 set forth in this Order and the Settlement.

25 **IT IS SO ORDERED.**

26 Date: March 23, 2018

27 
28 Honorable Judge Edward J. Davila
United States District Judge

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¹ The Court’s findings are subject to the following modifications and conditions, which the parties agreed to on the record at the March 22, 2018 hearing:

1. The deadline for Class Members to submit any dispute of their pro-rata settlement payments (*see* Settlement ¶ 36) shall be sixty (60) days from the date the Class Notice is first mailed.
2. The parties shall meet and confer regarding whether their currently selected *cy pres* recipient (California Department of Industrial Relations, *see* Settlement ¶ 27) is appropriate. The parties shall file a joint stipulation informing the Court of the outcome of this meet and confer, including a proposal for an alternate *cy pres* recipient if necessary.

The parties shall modify the Settlement, Class Notice Packet materials, and all other necessary documents to be consistent with these modifications.