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**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

JOHN MOORE, BRIAN HATHEWAY,
ANTONIO CASTILLO, ALEXANDER
SILVA, JON SANDERS on their own
behalf, on behalf of all others similarly
situated, and on behalf of the general
public.

Plaintiff,

v.

R.E. STAITE ENGINEERING, INC; and
DOES 1 TO 50,
Defendants

Case No. 07 CV 718-JM (WMC)

**ORDER: (1)PRELIMINARILY
APPROVING PROPOSED CLASS
SETTLEMENT; (2)
CONDITIONALLY CERTIFYING
SETTLEMENT CLASSES; (3)
APPROVING FORM AND MANNER
OF NOTICE; AND (4) SCHEDULE
FOR FINAL APPROVAL PROCESS.**

**ORDER PRELIMINARILY APPROVING SETTLEMENT, CONDITIONALLY
CERTIFYING CLASS FOR PURPOSES OF SETTLEMENT, APPROVING FORM AND
MANNER OF NOTICE, AND SCHEDULING HEARING ON FAIRNESS OF
SETTLEMENT PURSUANT TO FED. R. CIV. P. 23**

Plaintiffs unopposed motion for an Order: (1) Preliminarily Approving Settlement of the
above captioned action pursuant the terms and conditions of the Stipulation and Agreement of
Settlement (hereinafter "Agreement" or "Settlement Agreement"); (2) approving the form of
Class Notice and directing the manner of delivery of the Notice; (3) conditionally certifying a
class under Fed. Rule. Civ. P. 23(a) and Fed. R. Civ. P. 23(b)(3) for purposes of the settlement;
and (4) scheduling a hearing to consider the fairness of the Settlement pursuant to Fed. R. Civ. P.
23(e), enhancement fees for Representative Plaintiffs, and to consider the application for fees and
expenses by Plaintiffs' Counsel; is hereby approved and granted.

Having come before the Court, and upon consideration of the Agreement, Plaintiffs'

1 motion and memorandum in support thereof and exhibits attached thereto, the pleadings and
2 records on file, and good cause appearing, it is hereby ORDERED as follows:

3 1. To the extent not otherwise deemed herein, all terms shall have the same meaning herein as
4 used in the Agreement.

5 2. The Court has jurisdiction over the subject matter of this Action and over all
6 parties to this Action, including all Plaintiffs, Class Members, and Defendants.

7 3. The settlement documented in the Agreement is hereby PRELIMINARILY
8 APPROVED as appearing on its face to be: fair, reasonable, and adequate; the product of serious,
9 informed, and extensive arms length negotiations; the result of genuine controversies between the
10 parties including but not limited to the applicability of California wage and hour law to much if
11 not all of the hours worked at issue, and whether Defendant violated any of its obligations to pay
12 wages to the Class Members as required by California or federal wage and hour laws.

13 4. The Court finds that the form of Notice proposed by Plaintiffs is hereby APPROVED. Such
14 Notice shall be mailed by first class mail, postage prepaid, to the last known address of all known
15 Class Members within 20 days of entry of this Order. The parties' Counsel will ensure that the
16 Notice shall be handled in the manner set forth in and required by the Agreement. Plaintiff's
17 Counsel shall file an affidavit attesting to the mailing of the Notice as described in the
18 Agreement, based upon information obtained and reasonably relied upon the Claims
19 Administrator, with the Court at or before the Fairness Hearing.

20 5. The form and manner of delivery of the Notice in the Agreement meets the requirements of
21 Fed. R. Civ. P. 23 and due process, constitutes the best notice practicable under the
22 circumstances, and thus shall constitute due and sufficient notice to all members of the Class.

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1 6. The Court hereby PRELIMINARY APPROVES the maintenance of the Action as a class
2 action for purposes of the settlement pursuant to Fed. R. Civ. P. 23(a) and Fed. R. Civ. P.
3 23(b)(3). Specifically, the Court FINDS that:

- 4 (a) the number of members of the Class is so onerous that joinder of all members is
5 impracticable, and that handling of this matter as a class action is superior to individual
6 lawsuits by Class Members;
7
8 (b) there are questions of law and fact common to the Class;
9
10 (c) the claims of the named Plaintiffs are typical of the claims of the Class;
11
12 (d) the named Plaintiffs will fairly and adequately represent the interest of the Class; and
13
14 (e) the prosecution of separate actions by individual members of the Class would be inferior to a
15 class action because it would create a risk of inconsistent or varying adjudications, despite
16 the fact that alleged wrongful acts complained of as plead by Plaintiffs are genuinely
17 applicable to the class as a whole.

18 7. Accordingly, for purposes of the Settlement only, this Action is hereby CERTIFIED as a class
19 action, pursuant to Fed. R. Civ. P. 23(a) and Fed. R. Civ. P. 23(b)(3), with the Class defined as
20 follows:

21 All persons who were employed by Defendant in California in non-exempt (hourly)
22 positions and who primarily worked in the field, and whose primary duties did not consist
23 of office work or clerical work, between December 22, 2002 and the date of this Court's
24 preliminary approval of the Settlement.

25 8. A hearing (the "Settlement Fairness Hearing) pursuant Fed. R. Civ. P. 23 (e) is hereby
26 SCHEDULED to be held before this Court on December 18, 2008 at 2:00 p.m.. for the following
27 purposes:

28 /

- 1 a. to determine whether the proposed Settlement Agreement is fair, reasonable and
2 adequate and thus should be approved by the Court;
- 3 b. to determine finally whether this Action satisfies the applicable prerequisites for class
4 action treatment under Fed. R. Civ. P. 23(a) and Fed. R. Civ. P. 23(b)(3) for purposes of
5 the Settlement;
- 6
7 c. to determine whether the Settlement has been negotiated at arms length by Plaintiffs
8 and their counsel on behalf of the Class Members.
- 9 d. to determine whether an Order Approving Settlement as provided under the Agreement
10 should be entered and whether the Defendant should be released of further liability for the
11 Class Claims as provided in the Agreement;
- 12 d. to determine whether Plaintiffs' Counsel's application for an award of attorneys' fees
13 and expenses is fair, reasonable, and adequate and should be approved by the Court;
- 14 e. to consider the Class Representatives' applications for awards of Class Representative
15 enhancements in the amount of \$5,000 per named Plaintiff is fair, reasonable, and
16 adequate and should be approved by the Court; and
- 17
18 f. to rule upon such other matters as the Settlement Agreement contemplates and as the
19 Court may deem just and proper.

20
21 9. Any application by Counsel for Plaintiffs for attorneys' fees and reimbursement
22 of expenses, and all papers in support thereof, shall be filed with the Court and served on all
23 counsel of record no less than 35 days before the Settlement Fairness Hearing. Copies of
24 such materials shall be available for inspection at the office of the Clerk.

25 10. The Court having determined preliminarily that this action may proceed as a class action
26 under Fed. R. Civ. P. 23(a), and Fed. R. Civ. P. 23(b)(3), Class Members having been given the
27 opportunity to opt-out in accordance with the terms of the Settlement Agreement and the Notice
28

1 to Class Members, Class members who have not opted out shall be bound by any judgment in this
2 action, subject to the Court's final determination at the Settlement Fairness Hearing.

3 11. At the Settlement Fairness Hearing the Court shall consider comments or objections: to the
4 certification of the Class under Fed. R. Civ. P. 23(a), and Fed. R. Civ. P. 23(b)(3); the Settlement
5 Agreement; the award of attorneys' fees and reimbursement or expenses; and the enhancement
6 payments to the Class Representatives; **BUT ONLY IF** comments or objections and any
7 supporting papers are filed in writing or electronically with the Clerk of the Court, United States
8 District Court for the Southern District of California, 880 Front Street, San Diego, California,
9 92101, within 45 calendar days of the date the Notice of Proposed Class Action Settlement is
10 mailed to the Class Member, and no less than 14 days before the Settlement Fairness Hearing. By
11 that same date, copies of all such papers must also be served on each of the following persons:
12

13 BRICTSON AND COHN
14 Atten: Timothy L. Bricton / Stefan M. Cohn
15 2214 Fifth Avenue
16 San Diego, California 92101
17 Telephone (619) 296-9387
18 Facsimile (619) 232-0583
19 Attorneys for Plaintiffs

20 **AND**

21 PAUL, PLEVIN, SULLIVAN & CONNAUGHTON, LLP
22 Atten: Greg Klawitter
23 401 B Street
24 Tenth Floor
25 San Diego, California 92101
26 Attorneys for Defendant

27 12. Attendance at the hearing is not necessary. However, persons wishing to provide verbal
28 argument as an enhancement to any written objections to the approval of the Settlement
Agreement, the requests for attorneys' fees, or the request for enhancement payments to the Class
Representatives, must state in their written objection their intention to appear at the hearing. Such
persons must also identify in their written objections the names of any witness they may call to
testify, and any exhibits they intend to introduce into evidence at the Settlement Fairness Hearing.

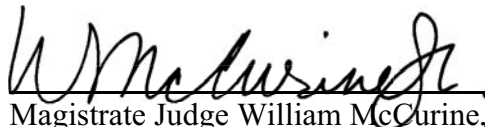
1 13. Class members do not need to appear at the hearing or take any other action to indicate their
2 approval of the Settlement Agreement.

3 14. Pending final determination of whether the Settlement should be approved, the parties and all
4 members of the Class are hereby **BARRED AND ENJOINED** from instituting or prosecuting
5 against Defendant any action that asserts any claim that is part of the Class Claims as described in
6 the Settlement Agreement.
7

8 15. The Court hereby retains jurisdiction until May 31, 2009 for purposes of implementing the
9 Agreement and reserves the power to enter additional orders to effectuate the fair and orderly
10 administration and consummation of the Settlement.

11 **IT SO ORDERED.**

12 Dated: September 4, 2008


Magistrate Judge William McCurine, Jr.
United States District Court
Southern District of California

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