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24 UNITED STATES DISTRICT COURT
25 CENTRAL DISTRICT OF CALIFORNIA

26 DANIEL A. GUTIERREZ, ET AL.,

27 PLAINTIFFS,

28 VS.

SCHMID INSULATION
CONTRACTORS, INC., ET AL.,

DEFENDANTS.

Case No. 2:08-cv-6010 DSF (JCx)

PLAINTIFFS' NOTICE OF UNOPPOSED MOTION AND MOTION FOR ORDER: (1) FINALLY APPROVING CLASS ACTION SETTLEMENT AND PLAN OF DISTRIBUTION; (2) ENTERING FINAL JUDGMENT; (3) APPROVING SERVICE PAYMENT TO NAMED PLAINTIFFS; (4) APPROVING THE PAYMENT OF REASONABLE COSTS TO THE CLAIMS ADMINISTRATOR; AND (5) RESERVING JURISDICTION; MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT THEREOF

Date: March 9, 2009

Time: 10:00a.m.

Place: 840 Roybal Building

Hon. Dale S. Fischer

1 *Additional Counsel for Plaintiffs*

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9 Telephone: (213) 629-2512
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1 NOTICE IS HEREBY GIVEN that on March 9, 2009, at 10:00 a.m., or as soon
2 thereafter as the matter may be heard, in Courtroom 840 of the above-entitled court,
3 located at 255 East Temple Street, Los Angeles, CA 90012, Plaintiffs and Class
4 Counsel will and hereby do move the Court as follows:
5

- 6 (1) To grant final approval of the proposed class action settlement and plan
7 of distribution;
- 8 (2) To enter a final judgment consistent with the terms of the settlement;
- 9 (3) To approve the service payment of \$10,000 each to Named Plaintiffs and
10 Class Representatives;
- 11 (4) To approve the payment of reasonable costs to the Claims Administrator,
12 Settlement Services, Inc., in an amount up to \$90,000; and
- 13 (5) To reserve jurisdiction for purposes of supervising the implementation,
14 enforcement, construction, and interpretation of the Settlement
15 Agreement and hearing and determining Class Counsel's application for
16 an award of attorneys' fees, costs, and expenses.¹
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21 This motion is based upon this Notice of Motion and Motion; the executed
22 Settlement Agreement preliminarily approved by the Court on November 17, 2008;²
23 the Order Granting Motion for Preliminary Approval of Class Action Settlement and
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25

26 ¹ Class Counsel is seeking an award of attorneys' fees in the amount of \$2,125,000 and
27 reimbursement of costs not to exceed \$140,000 through their concurrently filed Motion for
28 Award of Attorneys' Fees and Reimbursement of Costs and Expenses.

² The executed agreement is attached as Exhibit JS1 to the [Proposed] Order Granting Final
Approval.

1 Class Certification; and the Declaration of Mark Patton, filed herewith in support of
2 this Motion, as well as all other papers filed in this action. This Motion is also based
3 on the Declarations of Todd F. Jackson, Donn S. Taketa, and Nancy Ramirez, which
4 are filed in support of both this Motion and the Motion for Award of Attorneys' Fees
5 and Reimbursement of Costs and Expenses, and are attached to the concurrently filed
6 Motion for Award of Attorneys' Fees and Reimbursement of Costs and Expenses.
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9
10 DATED: February 9, 2009

Respectfully submitted,

LEWIS, FEINBERG, LEE,
RENAKER & JACKSON, P.C.

11
12
13 By: — */s/ Todd Jackson* _____
14 Todd F. Jackson
15 Attorneys for Plaintiffs
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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

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4 Plaintiffs Daniel Gutierrez, Emiliano Reyna, and Arturo Navarrete, on behalf
5 of all installers employed throughout California by Defendants Western Insulation
6 LP (“Western”), Schmid Insulation Contractors, Inc. (“Schmid”), or Masco
7 Contractor Services of California³ seek final approval of a proposed settlement of
8 this action, which asserts claims for violations of the California Labor Code and
9 California’s Unfair Competition Law, Business and Professions Code section
10 17200 *et seq.* (“UCL”). The proposed Joint Stipulation of Settlement
11 (“Settlement”)⁴ resolves all of the Named Plaintiffs’ and Class Members’ stated
12 wage claims and related penalties claims against Defendants Western; Schmid;
13 American National Services, Inc. (“ANS”); Masco Contractor Services LLC
14 (“MCS”); Masco Services Group Corp. (“MSG”); and Builder Services Group, Inc.
15 (“BSG”) (collectively, “Defendants”), in exchange for the payment by Defendants
16 of \$8,500,000.00 (\$8.5 million).

17
18 This settlement readily merits final approval as “fair, reasonable, and
19 adequate,” as required under Federal Rule of Civil Procedure 23(e). *See* Fed. R. Civ.
20 P. 23(e); *see also Class Plaintiffs v. City of Seattle*, 955 F.2d 1258, 1291 (9th Cir.

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25 ³ The class of installers encompasses California installers employed by Western Insulation, L.P.,
26 between October 13, 2002, and September 30, 2008; Schmid Insulation Contractors, Inc.,
27 between October 13, 2002, and December 31, 2007; or Masco Contractor Services of California,
28 Inc., between January 1, 2008, and September 30, 2008.

⁴ The executed agreement is attached as Exhibit JS1 to the [Proposed] Order Granting Final
Approval, and was previously preliminarily approved by the Court. Exh. JS1 was previously
filed as part of Doc. 27-3, filed October 27, 2008.

1 1992); *Torrissi v. Tucson Elec. Power Co.*, 8 F.3d 1370, 1375 (9th Cir. 1983); *Nat'l*
2 *Rural Telecomm. Coop. v. DIRECTV, Inc.*, 221 F.R.D. 523, 525 (C.D. Cal. 2004).

3
4 Among the relevant factors indicating such fairness and reasonableness are that (1)
5 the settlement is commensurate with the strength of the Plaintiffs' case, and
6 \$8,500,000 falls well within the range of reasonableness given the risks, expenses,
7 complexity, and likely duration of further litigation; (2) sufficient discovery and
8 investigation have been conducted to enable Class Counsel to evaluate the claims and
9 defenses in the action and to recommend this settlement; and (3) of the approximately
10 3,000 Class Members, not one has objected to the Settlement as of the date of filing
11 this motion, nor has any class member opted out.⁵ *See, e.g., Nat'l Rural Telecomm.*
12 *Coop.*, 221 F.R.D. at 525 (citing, inter alia, *Linney v. Cellular Alaska P'ship*, 151
13 F.3d 1234, 1242 (9th Cir.1998)). As the record with respect to each of these factors
14 establishes that the settlement is fair, reasonable, and adequate, final approval should
15 therefore be granted.
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20 **II. BACKGROUND**

21 **A. Procedural Background**

22 Plaintiffs Daniel Gutierrez and Arturo Navarrete filed their initial Complaint
23 in California State Court on October 13, 2006, as a proposed class action. They
24 alleged multiple wage and hour violations related to failure to pay the required
25
26

27 ⁵ Any objections or opt-outs were required to be post-marked as of the date of this Motion,
28 February 9, 2009. In the event any are received, Class Counsel will respond comprehensively in
a reply brief.

1 compensation for all hours worked. Plaintiffs brought claims under the California
2 Labor Code, as well as claims enforceable under the California Private Attorney
3 General Act and the California Business and Professions Code section 17200 *et*
4 *seq.*⁶ They sought recovery of, among other things, unpaid compensation, waiting
5 time penalties, compensation for failure to provide correct itemized statements of
6 total hours worked, injunctive relief, and attorneys' fees and costs. Defendant
7 Schmid first removed this case on November 30, 2006. (Case No. 06-07635, Doc.
8 1). The Court granted Plaintiff's Motion for Remand in a Minute Order dated
9 February 7, 2007. (Case No. 06-07635, Doc. 22.)

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12
13 Following Defendants' second removal of this case on September 7, 2007,
14 Plaintiffs filed their First Amended Complaint in this Court on October 10, 2007,
15 with the First Amended Complaint asserting the same California claims as the
16 initial Complaint. At that point, Emiliano Reyna was also added as a Named
17 Plaintiff. (Case No. 08-6010, Doc. 1 ; Case No. 07-5852, Doc. 1.) Plaintiffs filed
18 multiple motions to compel discovery, as well as a motion for class certification.
19
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21 (*See, e.g.*, Case No. 07-5852, Doc. 54.) Following an Order to Show Cause, this
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23 ⁶ Plaintiffs alleged that Defendants denied pay for all hours worked to their installation personnel,
24 including pay for overtime, meal breaks, time driving to and from company-assigned work sites,
25 time spent setting up and performing administrative tasks, and time spent loading, maintaining,
26 and unloading the company product and equipment. Plaintiffs also alleged that Defendants'
27 installer personnel were required not to record on their time records all time spent at work, were
28 not provided adequate wage statements, and were subjected to unlawful deductions taken from
their wages. Their claims were brought under California Labor Code sections 202, 203, 221, 223,
226.7, 510, 512, 1174, 1174.5, 1194, 1194.2, 1197, 2802, as well as associated regulations and
Industrial Welfare Commission Wage Orders, claims enforceable under the California Private
Attorney General Act, (California Labor Code section 2699 *et seq.* ("PAGA")), and the California
Business and Professions Code section 17200 *et seq.*

1 Court remanded the case to state court on June 18, 2008. (Case No. 07-5852, Doc.
2 197). This case is now before the Court following the third removal by Defendants,
3 entered on September 12, 2008. (Case No. 08-6010, Doc. 1.)

4
5 **B. Discovery & Investigation**

6 Class Counsel has conducted a thorough investigation into the facts of this
7 action during extensive, hard-fought litigation, and has diligently pursued
8 Plaintiffs' and the Class' claims against Western and Schmid. Plaintiffs
9 propounded multiple discovery requests to all Defendants, including Requests for
10 Production, Requests for Admission, Interrogatories, and Special Interrogatories.
11 During discovery, Western and Schmid provided, and Class Counsel reviewed, tens
12 of thousands of pages of documents related to the claims asserted on behalf of the
13 putative class; Western and Schmid produced, and Class Counsel deposed, eight
14 corporate representatives who had knowledge regarding certain facts relating to the
15 litigation; Western and Schmid produced, and Class Counsel reviewed, data on
16 putative class members, including time recorded as worked and rates of pay,
17 positions held, codes entered for work performed, and dates of hire and termination.
18 Further, Class Counsel filed multiple motions to compel discovery. As part of their
19 ongoing investigations into the violations alleged by the Class, Class Counsel have
20 interviewed more than 150 putative class members regarding their job duties and
21 allegations of underpaid hours, including unpaid overtime, meal break, and drive
22 time hours. *See* Declaration of Todd F. Jackson in Support of Plaintiffs' Notice of
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1 Motion and Motion for Order Granting Final Approval of Class Action Settlement
2 and in Support of Motion for Award of Attorneys' Fees and Reimbursement of
3 Costs ("Jackson Decl.") at ¶¶ 17-22.⁷ Class Counsel's extensive investigation and
4 contact with the Class have continued throughout this contentious litigation.
5

6 **C. Settlement**
7

8 The Settlement is the product of arm's-length and in-depth negotiations
9 between the parties. Settlement was reached after two days of mediation,
10 conducted on August 13, 2008, and October 10, 2008, by an experienced mediator,
11 David Rotman, of Gregorio, Haldeman, Piazza, Rotman, Frank & Feder, as well as
12 continuing discussions with the Mediator. Continuing discussions and negotiations
13 have been required to settle issues as they have arisen in settlement administration.
14
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16 Following Plaintiffs' Motion for Order Preliminarily Approving Class Action
17 Settlement and Class Certification, this Court issued an order (1) preliminarily
18 approving the proposed settlement; (2) certifying a settlement class; (3) approving
19 the form of notice and opt-out form, (4) appointing Daniel Gutierrez, Arturo
20 Navarrete, and Emiliano Reyna as class representatives; (5) preliminarily approving
21 service payments to the class representatives of \$10,000 each; (6) appointing Lewis,
22 Feinberg, Lee, Renaker & Jackson, P.C., Sullivan Taketa LLP, and MALDEF as
23 class counsel; and (7) confirming Settlement Services, Inc. as the claims
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27 ⁷ The Declaration of Todd F. Jackson, along with the Declarations of Donn S. Taketa and Nancy
28 Ramirez, are filed in support of both this Motion and the Motion for Award of Attorneys' Fees and Reimbursement of Costs. They are attached to the Motion for Award of Attorneys' Fees and Reimbursement of Costs, filed concurrently with this Motion.

1 administrator and preliminarily approving administration costs estimated to be up to
2 \$90,000; as well as (8) approving and setting a schedule for the final approval
3 process. (Case No. 08-6010, Doc. 30.) In subsequent orders, pursuant to
4 stipulations by the parties, the Court has modified the schedule for the final
5 approval process, including extending the time for opt-outs and objections to be
6 filed to February 9, 2009, and moving the final hearing date to March 9, 2009.
7
8 (Case No. 08-6010, Docs. 32, 36.)

9
10 **III. THE SETTLEMENT AGREEMENT**

11 **A. Terms of the Settlement Agreement**

12 The Settlement provides that Defendants will fund a Settlement Payment of
13 \$8,500,000.00 (\$8.5 million) to compensate the Class for their damages, inclusive
14 of attorneys' fees and costs, notice, administration expenses, and payment to
15 Named Plaintiffs for their service to the Class. The employer portion of payroll
16 taxes (including, but not limited to, FICA and FUTA) will be paid from the \$8.5
17 million from the funds remaining from any uncashed checks, but if funds are
18 insufficient, Defendants will pay —on top of the \$8.5 million— any remaining
19 employer portion of payroll taxes due.
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24 Of the \$8.5 million settlement fund, Class Counsel have requested a 25
25 percent common fund fee (\$ 2.125 million), as well as reimbursement for costs,
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1 which are not to exceed \$140,000.⁸ As service payments, \$10,000 each are sought
2 for Plaintiffs Gutierrez, Navarrete, and Reyna. The remainder of the settlement
3 fund will be distributed to class members, following Final Approval of this
4 Settlement.
5

6 The Settlement includes a proposed settlement payment distribution plan.
7
8 Each Class Member who does not opt out of the settlement will receive a pro rata
9 share of the net settlement payment, calculated according to the Class Member's
10 earnings during the Class Period as a proportion of the overall earnings of the
11 Class.
12

13 All the \$8.5 million will pay out. Class Members who do not opt out of the
14 Settlement will not be required to submit a claim form in order to participate in the
15 Settlement. After attorneys' fees and costs are paid, service awards are made to
16 named plaintiffs, and distribution to the class is complete, any funds remaining in
17 the Settlement Fund 120 days after distribution as a result of uncashed checks will
18 first be used to pay the Employer's share of payroll taxes. After those payroll taxes
19 are paid, if there are funds from uncashed checks still remaining, the remainder will
20 be paid to the *cy pres* recipients to be chosen jointly by the parties.
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24 Defendants deny any liability or wrongdoing of any kind associated with the
25 claims alleged in this case. Defendants further contend, among other things, that
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27 ⁸ As noted above, pursuant to Fed. R. Civ. P. 23(h), Plaintiffs have made a separate motion for
28 attorneys' fees and reimbursement of costs, filed concurrently herewith. The Court has
previously approved costs for up to \$225,000.

1 they have complied with the California state wage and hour laws and the UCL.
2 Plaintiffs believe that they have filed meritorious actions based on alleged
3 violations of the California state wage and hour laws and California Business and
4 Professions Code section 17200 *et seq.*

5
6 As noted above, this Court preliminarily approved this Settlement in its
7 entirety on November 17, 2008, following a hearing.

8
9 **B. Notice**

10 Pursuant to the Court's November 17, 2008, Order, and subsequent orders
11 adjusting the schedule, the Notice was mailed to the Class on December 24, 2008.
12 *See* Declaration of Mark Patton ("Patton Decl.") ¶ 6, attached hereto. Following
13 the mailing, the administrator discovered that 136 of the approximately 3,000
14 notices had been mailed without any compensation data included, although those
15 notices did include employment dates. *Id.* at ¶ 8. On January 26, 2009, the Claims
16 Administrator therefore mailed new notices for 131 of these Class Members, for
17 whom it was possible to include compensation information. *Id.* at ¶ 9. In order to
18 ensure that those 131 Class Members had sufficient time to challenge that data, if
19 they so desired, their deadline to respond with any challenges was extended to
20 February 26, 2009, consistent with the terms of the parties' Joint Stipulation of
21 Settlement which provides Class Members 30 days following the mailing of the
22 notice to challenge the data if they wished. *See id.* For the remaining five Class
23 Members for whom it is was not possible to determine compensation information
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1 from Defendants' data, the following solution was achieved through discussions
2 with the Claims Administrator, counsel for Defendants, and counsel for Plaintiffs.
3
4 *See id.* at ¶ 10. For three of the Class Members, for whom the data indicates that
5 they worked at most a few days during the class period, their compensation was
6 estimated by assuming that they had worked a full 40-hour work week during the
7 class period, and that they were compensated at the weighted average pay rate of
8 \$12 an hour. *Id.* For two of the Class Members, for whom the data shows that they
9 did not receive any compensation, but for whom the dates of employment are less
10 clear, the Claims Administrator is attempting to reach them to determine their work
11 history with Western or Schmid. *Id.* As of February 9, 2009, the Administrator has
12 been unable to make contact with either Class Member, but will continue to try. *Id.*

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16 As of the date of this motion, February 9, 2009, no Class Member has opted
17 out. Jackson Decl. at ¶ 24; Patton Dec. at ¶ 12. Also as of the date of this motion,
18 not one Class Member has objected to the proposed settlement. *Id.*; Patton Dec. at ¶
19 13. Should any timely postmarked opt-outs or objections be received following the
20 submission of this Motion, Class Counsel will address them in a reply brief.
21

22 **C. Distribution Plan**

23
24 The Settlement includes a proposed settlement payment distribution plan that
25 the Court has preliminarily approved. The straightforward distribution plan
26 provides for each Class Member to receive a pro rata share of the settlement fund
27 based on his total compensation relative to the compensation of the entire class.
28

1 **D. Claims Administration**

2 The Settlement also provides for appointment of Settlement Services, Inc. as
3
4 Claims Administrator to verify amounts due to claimants, and otherwise administer
5 the settlement process under the supervision of the parties and the Court. The
6 process set forth in the Settlement provided for prompt notice to the proposed
7
8 Settlement Class and an opportunity to opt out of the claims subject to the
9 Settlement, as well as a dispute resolution process. As of February 9, 2009, just 32
10 people out of more than 3,000 have challenged their dates of employment and/or
11 total compensation data. Patton Decl. ¶ 11. The Administrator has reviewed those
12 challenges and sent them to Defendants' counsel for review, but has not yet made a
13 final determination as to their outcome. *Id.*

14
15
16 **E. Release**

17 As part of the Settlement, Class Members release and discharge Defendants
18 from any claims under California Labor Code, the UCL, and PAGA that were
19 alleged or could have been alleged based upon the facts alleged in the initial
20 Complaint and First Amended Complaint, including all claims regarding unpaid
21 wages, interest, or penalties for off-the-clock work, unpaid overtime, meal and rest
22 periods, inaccurate payroll and/or time record-keeping, inaccurate, incomplete or
23 incorrect pay instruments/stubs and/or wage statements, the collection of
24 reimbursement for tools, or unfair competition; any claims for restitution, injunctive
25 relief or punitive damages alleged in the Complaint or First Amended Complaint;

1 as well as waiting time penalties, interest and other penalties under state law. The
2 release is commensurate with the claims and class allegations that were or could
3 have been asserted based on the facts in the First Amended Complaint: nothing
4 more.
5

6 **IV. ARGUMENT**
7

8 The law favors settlement, particularly in class actions and other complex
9 cases where substantial resources can be conserved by avoiding the time, cost, and
10 rigors of formal litigation. *Van Bronkhorst v. Safeco Corp.*, 529 F.2d 943, 950 (9th
11 Cir. 1976). Final approval of a proposed class action settlement will be granted
12 where it is established that the proposed settlement is “fair, reasonable, and
13 adequate.” Fed. R. Civ. P. 23(e)(1)(C). In determining whether to grant final
14 approval, the Court does not “reach any ultimate conclusions on the contested
15 issues of fact and law which underlie the merits of the dispute, for it is the very
16 uncertainty of outcome in litigation and avoidance of wasteful and expensive
17 litigation that induce consensual settlements.” *Class Plaintiffs*, 955 F.2d at 1291
18 (quoting *Officers for Justice v. Civil Serv. Comm’n*, 688 F.2d 615, 625 (9th Cir.
19 1982)); *Nat’l Rural Telecomm.*, 221 F.R.D. at 526 (quoting same).
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24 In the Ninth Circuit, the district court determines the fairness, reasonableness
25 and adequacy of the settlement through a balancing test that considers
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27 several factors which may include, among others, some or all of the
28 following: the strength of plaintiffs’ case; the risk, expense,
complexity, and likely duration of further litigation; the risk of

1 maintaining class action status throughout the trial; the amount offered
2 in settlement; the extent of discovery completed, and the stage of the
3 proceedings; the experience and views of counsel; the presence of a
4 governmental participant; and the reaction of the class members to the
proposed settlement.⁹

5 *Id.* The relative importance of any particular factor will depend upon the nature of
6 the claims, the types of relief sought, and the unique facts and circumstances
7 presented by the individual case. *Id.* Furthermore, “[n]ot all of these factors will
8 apply to every class action settlement. Under certain circumstances, one factor
9 alone may prove determinative in finding sufficient grounds for court approval.”
10 *Nat’l Rural Telecomm.*, 221 F.R.D. at 525-62 (citing *Torrise*, 8 F.3d at 1376).
11

12
13 As explained immediately below, the relevant factors here support the
14 District Court’s granting final approval to this Settlement.
15

16 **A. The \$8.5 Million Settlement is Fair Considering the Strength of**
17 **Plaintiffs’ Case, the Risks and Complexity Involved, the Stage of**
18 **the Proceeding, and the Amount Offered in Settlement.**

19 Among the factors that support settlement here are the strength of Plaintiffs’
20 case, the risks and complexity of continued litigation, the stage of the litigation, and
21 the amount offered in settlement. While Plaintiffs believe they have a strong case
22 and would ultimately prevail, Defendants at all times have indicated they will
23 vigorously contest Plaintiffs’ claims. Defendants deny that they owe any of their
24 current and former installers overtime pay, pay for uncompensated time worked,
25 and pay for missed meal and rest breaks, and they deny all other claims brought by
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28 ⁹ As no governmental participant is involved, this factor is not discussed below.

1 Plaintiffs as well as their entitlement to any associated penalties. Additionally, in
2 settlement discussions, Defendants vigorously contested the amount of damages
3 payable to the Class, or that any damages were payable at all. Prior to settlement,
4 Defendants contested Plaintiffs' motion for class certification, and had removed this
5 case to this Court for the third time.
6

7
8 Continuing with the litigation thus poses risks and uncertainties, and would
9 involve significant expenses and delays. In comparison, the Settlement commits
10 Defendants to pay \$8.5 million now, which will compensate Class Members now.
11

12 It is well accepted that a settlement is evaluated in light of the risks and costs
13 of litigation. As *National Rural Telecommunications* stated, “[t]he Court shall
14 consider the vagaries of litigation and compare the significance of immediate
15 recovery by way of the compromise to the mere possibility of relief in the future,
16 after protracted and expensive litigation.” 221 F.R.D. at 526. Thus, ““unless the
17 settlement is clearly inadequate, its acceptance and approval are preferable to
18 lengthy and expensive litigation with uncertain results.”” *Id.* (quoting 4 A. Conte 7
19 H. Newberg, *Newberg on Class Actions* § 11:50 at 155 (4th ed. 2002)).
20
21

22 The relief obtained is substantial, and well within the range of
23 reasonableness. Assuming that the Court awards attorneys' fees of 25 percent of
24 the Settlement Fund, litigation costs of up to \$140,000 (including anticipated future
25 litigation costs relating to the Final Approval hearing and settlement administration
26 process), the Class Representative service payments of \$10,000 each, and
27
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1 settlement administrative costs of \$90,000, the Net Settlement Fund will be
2 approximately \$ 6 million, to be divided pro rata among approximately 3,000 class
3 members. This results in an average (mean) settlement of approximately \$2,000
4 per class member. Depending on the individual class member's earnings, the
5 payment to that individual class member may be substantially higher or lower than
6 \$2,000; \$2,000 is simply the average distribution.
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9 **B. The Settlement Reflects the Informed Views of Experienced**
10 **Counsel and Is the Product of Serious, Arm's-Length Negotiations**
11 **Conducted After Extensive Discovery and Investigation.**

12 “‘Great weight’ is accorded to the recommendation of counsel, who are most
13 closely acquainted with the facts of the underlying litigation.” *Nat’l Rural*
14 *Telecomm.*, 221 F.R.D. at 528 (quotations and citations omitted). Here, for more
15 than two years, Class Counsel has vigorously litigated the claims asserted against
16 Western and Schmid, and thoroughly investigated them, both through its contacts
17 with the Class and through formal discovery. As noted above, Class Counsel
18 engaged in aggressive document and testimonial discovery, reviewed thousands of
19 documents, deposed eight corporate representatives, and reviewed payroll data on
20 putative Class Members, including salary, position and location worked, and dates
21 of hire and termination. Jackson Decl. at ¶ 18-22. Counsel traveled to various sites
22 throughout Northern, Central, and Southern California to investigate this case.
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24 Additionally, confidential data provided ahead of the mediation session was
25 extensive, and sufficient to allow Counsel to assess the strengths and weaknesses of
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1 the claims against Defendants and determine that the benefits of the proposed
2 Settlement outweighed the benefits that could be achieved through further litigation
3 of this case. *See Nat'l Rural Telecomm.*, 221 F.R.D. at 526.

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5 The Settlement resulted only after extensive, arm's-length settlement
6 negotiations that were conducted after rigorous discovery regarding the merits and
7 damages of the disputed claims, and under the supervision of experienced mediator
8 David Rotman. Jackson Decl. at ¶ 23. The negotiations were protracted and the
9 mediation itself required two sessions. *Id.* Thus, the proposed Settlement is the
10 non-collusive product of hard-fought litigation. "A settlement following sufficient
11 discovery and genuine arm's-length negotiation is presumed fair." *In re Rural*
12 *Telecomm.*, 221 F.R.D. at 528 (citing *City Partnership Co. v. Atlantic Acquisition*
13 *Ltd. P'ship*, 100 F.3d 1041, 1043 (1st Cir. 1996)).

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17 In sum, the factors relating to the experience and views of counsel, as well as
18 the depth of discovery and the arm's-length nature of settlement, support settlement
19 in this case.

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21 **C. The Responses of the Settlement Class Support Approval.**

22 As described above, pursuant to the Court's preliminary approval order and
23 subsequent orders modifying the settlement administration schedule, the Claims
24 Administrator mailed the Notice of Proposed Class Action Settlement and
25 Settlement Hearing by December 24, 2009, to all putative Class Members identified
26 through the data provided by Western and Schmid. Patton Decl. at ¶ 6.

1 As the notice states, the deadlines to object or opt out of the Settlement were
2 February 9, 2009. As of February 9, 2009, the Claims Administrator has received
3 no objections to the settlement, and no opt-outs. Patton Decl. at ¶¶ 12-13; Jackson
4 Decl. at ¶ 24. The absence of opt-outs and objections demonstrates support for the
5 Settlement Agreement.
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8 ““The reactions of the members of a class to a proposed settlement is a proper
9 consideration for the trial court.”” *Nat’l Rural Telecomm.*, 221 F.R.D. at 528
10 (quoting *5 Moore’s Federal Practice* § 23.85[2][d]). Here, the fairness,
11 reasonableness, and adequacy of the settlement is well established by the complete
12 absence of any objections to the Settlement, as well as the factors discussed above.
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15 **D. The Payment to the Named Representatives for Their Service to**
16 **the Class Is Reasonable and of the Type Routinely Awarded.**

17 The payment of \$10,000 each to the Class Representatives is intended to
18 recognize the time and effort they expended on behalf of the Class. Indeed,
19 “[c]ourts routinely approve incentive awards to compensate named plaintiffs for the
20 services they provided and the risks they incurred during the course of the class
21 action litigation.” *Ingram v. The Coca-Cola Co.*, 200 F.R.D. 685, 694 (N.D. Ga.
22 2001) (quoting *In re S. Ohio Correctional Facility*, 175 F.R.D. 270, 272 (S.D. Ohio
23 1997)). In *Van Vranken v. Atl. Richfield Co.*, 901 F. Supp. 294, 299 (N.D. Cal.
24 1995), the court approved incentive awards of \$50,000 to the named plaintiff in
25 recognition of the services he provided to the class by participating in numerous
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1 telephone conferences and meetings with class counsel, attending several hearings,
2 and having his deposition taken, as well as testifying at trial. In this case, the Class
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4 Representatives have similarly performed important services for the benefit of the
5 class: they provided information regarding the structure of the company and their
6 job duties during lengthy interviews, they produced relevant documents, sat for
7 depositions, and worked with Plaintiffs' counsel throughout the case. *See Van*
8 *Vranken*, 901 F. Supp. at 299; *see also Ingram v. The Coca-Cola Co.*, 200 F.R.D.
9 685, 694 (N.D. Ga. 2001) (approving incentive awards of \$300,000 to each named
10 Plaintiff in recognition of the services they provided to the class). Accordingly, the
11 payment to the Class Representative is appropriate and justified as part of the
12 overall Settlement, in light of their services to and risks taken on behalf of the
13 Class. Jackson Decl. ¶ 25.

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17 E. **The Court Should Approve the Payment of Reasonable Costs to**
18 **the Claims Administrator.**

19 While work remains to be done in this action, the Claims Administrator has
20 fulfilled its Court-mandated duty to send to all putative members of the Settlement
21 Classes the Class Notice, to update addresses, and to review challenges to
22 employment data. Patton Decl. at ¶¶ 3-10. The Claims Administrator has also
23 expended additional time and costs answering numerous telephone inquiries from
24 Class Members. Patton Decl. at ¶ 5. At this time it is estimated that the costs of
25 settlement administration will be approximately \$75,000. Patton Decl. at ¶ 18.
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1 However, the full amount of costs incurred by Settlement Services, Inc. will not be
2 known until the Claims Administrator has calculated and distributed the Class
3 Members' settlement shares and all claims have been paid. Settlement Services,
4 Inc. has submitted a declaration setting forth the reasonable steps it has already
5 taken in order to administer this Settlement and the additional steps that will be
6 required to complete Settlement administration after Final Approval. *See generally*
7
8 Patton Decl. While not anticipated, in the event that the Claims Administrator's
9 reasonable costs exceed \$90,000, the amount preliminarily approved by the Court,
10 Settlement Services will submit for the Court's approval a written itemization of the
11 reasonable administration costs of the Settlement in excess of \$90,000.
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14 The costs of settlement administration reflect the work required to properly
15 administer a settlement involving approximately 3,000 putative Class Members,
16 including many who frequently change their addresses. In addition to mailing out
17 Notices and related documents to this class, the Claims Administrator is responsible
18 for receiving, tracking, and reporting opt-outs or objections, if any, and resolving
19 data challenges. The Claims Administrator is also fielding calls from Class
20 Members who have questions about the claims process. Much of the work involves
21 ensuring that the maximum number of Class Members receive notices and their
22 checks, including tracing and remailing mail that is returned as undeliverable or
23 marked as being from the wrong address.
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28 In light of all the work that has been done, and that remains to be done,

1 Plaintiffs request that the Court approve the payment of reasonable costs incurred
2 by Settlement Services Inc., in an amount of up to \$90,000 to be made from the
3 Settlement Fund. Plaintiffs further request that if the Claims Administrator's
4 reasonable costs in administering the settlement exceed \$90,000, the Court allow
5 the Claims Administrator to apply to the Court for such costs to be paid from the
6 Settlement Fund by Settlement Services, Inc. by submitting an itemization of costs
7 above \$90,000 and an explanation of their reasonableness.
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10 **V. CONCLUSION**
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12 For all of the foregoing reasons, Plaintiffs respectfully request that the Court:
13 (1) grant final approval of the proposed class action settlement and plan of
14 distribution; (2) enter a final judgment consistent with the terms of the settlement;
15 (3) approve the service payment of \$10,000 to Named Plaintiffs and Class
16 Representatives Daniel Gutierrez, Arturo Navarrete, and Emiliano Reyna; (4)
17 approve the payment of reasonable costs to the Claims Administrator, Settlement
18 Services, Inc.; and (5) reserve jurisdiction for purposes of supervising the
19 implementation, enforcement, construction, and interpretation of the Settlement
20 Agreement and hearing and determining Class Counsel's concurrent application for
21 an award of attorneys' fees, costs, and expenses.
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