

**FILED**  
LOS ANGELES SUPERIOR COURT  
MAR 02 2017  
BY *N. Navarro* Deputy  
NANCY NAVARRO

**SUPERIOR COURT OF CALIFORNIA  
COUNTY OF LOS ANGELES**

MARK THOMPSON, as an individual and on  
behalf of all similarly situated employees,

Plaintiff,

v.

PROFESSIONAL COURIER &  
NEWSPAPERS DISTRIBUTION; BRANDT  
BROTHERS, LLC and DOES 1 through 50,  
inclusive,

Defendants.

Case No.: BC568018

ORDER GRANTING  
MOTION FOR PRELIMINARY  
APPROVAL OF CLASS ACTION  
SETTLEMENT

Date: March 2, 2017  
Time: 11:00 a.m.  
Dept.: 307

**I. BACKGROUND**

This is wage and hour class action lawsuit brought by Plaintiff Mark Thompson on behalf of a class of non-exempt drivers who delivered newspapers for Defendants Professional Courier & Newspaper Distribution and Brandt Brothers, LLC.

The parties successfully negotiated a written settlement and sought preliminary approval. In advance of the original hearing date, the Court issued a Checklist of items for further briefing and continued the hearing to today's date, with supplemental briefing to be filed by February 13, 2017. The Court has read and considered the Amended Notice of Motion and Amended

1 Declaration of Kevin Mahoney filed February 14, 2017. Attached to a Supplemental Declaration  
2 of Kevin Mahoney (filed February 21, 2017) is a copy of the fully executed amended Settlement  
3 Agreement.

4 The operative Second Amended Complaint contains the following causes of action: 1.  
5 Failure to Pay All Minimum Wages; 2. Failure to Pay the Promised and Stated Piece- Rate; 3.  
6 Failure to Provide Meal Periods or Compensation in Lieu Thereof; 4. Failure to Provide Rest  
7 Periods or Compensation in Lieu Thereof; 5. Failure to Pay Wages of Terminated or Resigned  
8 Employees; 6. Failure to Keep Accurate Payroll Records; 7. Unfair Competition; 8. Violations of  
9 the California Labor Code Private Attorney's General Act (Labor Code §§ 2698-2699); and 9.  
10 Failure to Reimburse for Necessary Expenditures.

11 Now before the Court is the continued hearing on Plaintiff's motion for preliminary  
12 approval of the settlement.

13  
14 **II. DISCUSSION**

15 **A. SETTLEMENT CLASS DEFINITION**

16 The proposed settlement class is defined as, "all current and former non-exempt  
17 employees of Defendants employed between December 30, 2010 and the Preliminary Approval  
18 Date." (Settlement Agreement, ¶I.5)

19 **B. TERMS OF SETTLEMENT AGREEMENT**

20 The essential terms are as follows:

- 21 • The Gross Settlement Amount is \$300,000, non-reversionary; employer related taxes to  
22 be paid separately. (¶I.23) The class size is estimated to be 320 persons; if it increases by  
23 more than 10%, the Gross will be increased on a pro rata basis. (Ibid.)
- 24 • The Net Settlement Amount (\$175,250) is the Gross minus:  
25

- Up to \$100,000 for attorney fees (§IV.6);
- Up to \$5,000 for attorney costs (§IV.6);
- Up to \$7,500 for an incentive award to the class representative (§IV.2);
- Estimated \$8,500 for claims administration costs (§V.2); and
- \$3,750 (75% of \$5,000 PAGA penalty) to the LWDA (§IV.1).

- There is no claims process; all class members who do not opt out will receive a settlement payment. (§VI.3)
- The deadline to opt out or object is 45 days. (§§ I.13, VI.3, VI.4)
  - Class members who receive re-mailed notice packets have an additional 14 days to opt-out. (§VI.3)
  - If more than 5% opt out, Defendant may rescind. (§VIII.2)
- Settlement payments will be calculated by multiplying the Net by a fraction, the numerator of which is the pay periods worked by the class member and the denominator of which is the total number of pay periods worked by all class members who do not opt out. (§VII.2) The payments will be no less than \$100. (Ibid.)
- Settlement payments will be considered 15% wages, 10% reimbursement, and 75% penalties. (§IV.4)

Checks must be cashed within 120 days of mailing. If a check is returned to the settlement administrator, the settlement administrator will make reasonable efforts to re-mail it to the claimant at a correct address. If the check remains uncashed by the expiration of the 30-day period after this notice, the settlement administrator will void the check and send the corresponding funds to the Industrial Relations Unpaid Wages Fund. (§VII.6) The Checklist asked what was meant by a “30-day notice period,” but the

1 supplemental papers did not address this question. At oral argument counsel clarified  
2 that this language means that a class member whose notice was re-mailed will have  
3 thirty days from the date of re-mailing to cash the check. If a check is re-mailed  
4 specifically explain the time that the class member has to cash the re-mailed check (30  
5 days).

- 6 • The settlement administrator is Phoenix Settlement Administrators. (§1.36)
- 7 • All class members who do not opt out will release certain claims against Defendant.  
8 (See further discussion below)

9 **C. SETTLEMENT STANDARDS AND PROCEDURE**

10 California Rules of Court, rule 3.769(a) provides: “A settlement or compromise of an  
11 entire class action, or of a cause of action in a class action, or as to a party, requires the approval  
12 of the court after hearing.” “Any party to a settlement agreement may serve and file a written  
13 notice of motion for preliminary approval of the settlement. The settlement agreement and  
14 proposed notice to class members must be filed with the motion, and the proposed order must be  
15 lodged with the motion.” See CRC rule 3.769(c).  
16

17 “In a class action lawsuit, the court undertakes the responsibility to assess fairness in  
18 order to prevent fraud, collusion or unfairness to the class, the settlement or dismissal of a class  
19 action. The purpose of the requirement [of court review] is the protection of those class  
20 members, including the named plaintiffs, whose rights may not have been given due regard by  
21 the negotiating parties.” (*Consumer Advocacy Group, Inc. v. Kintetsu Enterprises of America*  
22 (2006) 141 Cal. App.4th 46, 60 (internal quotation marks omitted); *Wershba v. Apple Computer,*  
23 *Inc.* (2001) 91 Cal.App.4th 224, 245 (“*Wershba*”): Court needs to “scrutinize the proposed  
24 settlement agreement to the extent necessary to reach a reasoned judgment that the agreement is  
25

1 not the product of fraud or overreaching by, or collusion between, the negotiating parties, and  
2 that the settlement, taken as a whole, is fair, reasonable and adequate to all concerned,” internal  
3 quotation marks omitted.)

4 “The burden is on the proponent of the settlement to show that it is fair and reasonable.  
5 However ‘a presumption of fairness exists where: (1) the settlement is reached through arm’s-  
6 length bargaining; (2) investigation and discovery are sufficient to allow counsel and the court  
7 to act intelligently; (3) counsel is experienced in similar litigation; and (4) the percentage of  
8 objectors is small.” (*Wershba* at 245, citing *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th  
9 1794, 1802 (“*Dunk*”).) Notwithstanding an initial presumption of fairness, “the court should not  
10 give rubber-stamp approval.” (*Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116,  
11 130 (“*Kullar*”). “Rather, to protect the interests of absent class members, the court must  
12 independently and objectively analyze the evidence and circumstances before it in order to  
13 determine whether the settlement is in the best interests of those whose claims will be  
14 extinguished.” *Id.* In that determination, the court should consider factors such as “the strength  
15 of plaintiffs’ case, the risk, expense, complexity and likely duration of further litigation, the risk  
16 of maintaining class action status through trial, the amount offered in settlement, the extent of  
17 discovery completed and stage of the proceedings, the experience and views of counsel, the  
18 presence of a governmental participant, and the reaction of the class members to the proposed  
19 settlement.” *Id.* at 128. “Th[is] list of factors is not exclusive and the court is free to engage in  
20 a balancing and weighing of factors depending on the circumstances of each case.” (*Wershba* at  
21 245.)

22  
23 “A settlement need not obtain 100 percent of the damages sought in order to be fair and  
24 reasonable. Compromise is inherent and necessary in the settlement process. Thus, even if ‘the  
25

1 relief afforded by the proposed settlement is substantially narrower than it would be if the suits  
2 were to be successfully litigated,’ this is no bar to a class settlement because ‘the public interest  
3 may indeed be served by a voluntary settlement in which each side gives ground in the interest  
4 of avoiding litigation.’” (Id. at 250.)

5 **D. ANALYSIS OF SETTLEMENT AGREEMENT**

6 **1. Does a presumption of fairness exist?**

- 7 a. Was the settlement reached through arm’s-length bargaining? Yes. The parties  
8 negotiated this settlement in good faith and at arms’-length. (Declaration of  
9 Kevin Mahoney, ¶26.)
- 10 b. Were investigation and discovery sufficient to allow counsel and the court to act  
11 intelligently? Yes. Class Counsel propounded written discovery and the parties  
12 also engaged in informal discovery. (Id. at ¶¶ 19-21.) Class Counsel’s  
13 investigation included the analysis of records produced, which included a  
14 sampling of timekeeping records. (Id. at ¶¶ 19, 27.)
- 15 c. Is counsel experienced in similar litigation? Yes. Class Counsel represents he  
16 has experience in class action litigation, including wage and hour class actions.  
17 (Id. at ¶¶42, 43.)
- 18 d. What percentage of the class has objected? This cannot be determined until the  
19 fairness hearing. (Weil & Brown, Cal. Practice Guide: Civil Procedure Before  
20 Trial (The Rutter Group 2014) ¶ 14:139.18: “Should the court receive objections  
21 to the proposed settlement, it will consider and either sustain or overrule them at  
22 the fairness hearing.”)

23  
24 CONCLUSION: The settlement is entitled to a presumption of fairness.

25 **2. Is the settlement fair, adequate, and reasonable?**

- 1 a. Strength of Plaintiffs' case. "The most important factor is the strength of the case  
2 for plaintiffs on the merits, balanced against the amount offered in settlement."  
3 (*Kullar* at 130.) Based on Class Counsel's analysis of the time records produced,  
4 the following maximum damage estimates (and reasonable settlement estimates)  
5 were formulated: \$150,000 for minimum wages (\$45,000); \$190,000 for the  
6 piece-rate claim (\$95,000); \$200,000 for the meal period claim (\$20,000);  
7 \$300,000 for waiting time penalties (\$60,000); \$395,000 for pay stub violations  
8 (\$98,750); \$32,000 for reimbursement claims (no reduction). (Mahoney  
9 Declaration, ¶¶27-32.) The total maximum damage exposure is thus \$1,267,000,  
10 and the realistic exposure is \$350,750. The \$300,000 settlement represents  
11 recovery of approximately 24% of the maximum value of the claims and 85% of  
12 the realistic value of the claims. Based on class counsel's analysis the settlement  
13 is well within the ballpark of reasonableness. Settlement eliminates the  
14 difficulties of proving off-the-clock claims (and other claims), the risk that a class  
15 meal period class could not be certified, the need to establish willfulness to  
16 recover for violations, and the risk that Defendants might have viable defenses  
17 that preclude recovery.
- 18
- 19 b. Risk, expense, complexity and likely duration of further litigation. Given the  
20 nature of the class claims, the case is likely to be expensive and lengthy to try.  
21 Procedural hurdles (e.g., motion practice and appeals) are also likely to prolong  
22 the litigation as well as any recovery by the class members.
- 23 c. Risk of maintaining class action status through trial. Even if a class is certified,  
24 there is always a risk of decertification. (*Weinstat v. Dentsply Intern., Inc.*  
25

1 (2010) 180 Cal.App.4th 1213, 1226: “Our Supreme Court has recognized that  
2 trial courts should retain some flexibility in conducting class actions, which  
3 means, under suitable circumstances, entertaining successive motions on  
4 certification if the court subsequently discovers that the propriety of a class action  
5 is not appropriate.”)

6 d. Amount offered in settlement. As indicated above, the Gross Settlement Amount  
7 is \$300,000. Assuming that the Court approves all of the maximum requested  
8 deductions, approximately \$175,250 will be available for automatic distribution  
9 to participating class members. Assuming full participation, the average  
10 settlement share will be approximately **\$548**. [ $\$175,250 \div 320$  class member =  
11  $\$547.65$ ]

12 e. Extent of discovery completed and stage of the proceedings. As discussed above,  
13 at the time of the settlement, Class Counsel had conducted extensive discovery.

14 f. Experience and views of counsel. The settlement was negotiated and endorsed  
15 by Class Counsel who, as indicated above, has experience in class action  
16 litigation, including wage and hour cases.

17 g. Presence of a governmental participant. This factor is not applicable here.

18 h. Reaction of the class members to the proposed settlement. The class members’  
19 reactions will not be known until they receive notice and are afforded an  
20 opportunity to opt out or object. This factor becomes relevant during the fairness  
21 hearing.  
22

23 CONCLUSION: The settlement can be preliminarily deemed “fair, adequate, and  
24 reasonable.”  
25



1           **3.     Scope of release**

2           Upon the Effective Date, the named plaintiff and all class members who have not opted  
3 out will release the Released Parties from the Released Claims through the Opt-Out Deadline.

4           ()

5           Released Claims means all claims, “and causes of action of any nature and description  
6 whatsoever, whether known or unknown, at law or in equity, whether concealed or hidden,  
7 whether under federal, state, and/or local law, statute, ordinance, regulation, common law, or  
8 other source of law, which were asserted in the Action or could have been asserted based on the  
9 facts and claims alleged in the Complaint. Released Claims include, without limitation, claims  
10 arising under federal, state, and/or local statutory, constitutional, contractual, or common law  
11 claims for wages, damages, costs, penalties, liquidated damages, punitive damages, interest,  
12 attorney fees, litigation costs, restitution, equitable relief, or other relief under California  
13 Business & Professions Code Section 17200 et seq. (‘Section 17200’) based on the California  
14 Labor Code; the Wage Orders of the California Industrial Welfare Commission; and Section  
15 17200, including, but not limited to, failure to provide timely, off-duty meal and/or rest breaks;  
16 failure to promptly pay all wages due and owing at the time of the employee’s separation from  
17 employment; engaging in unlawful/unfair/fraudulent business practices in violation of Section  
18 17200; failure to provide accurate itemized wage statement; failure to keep accurate payroll  
19 records; failure to pay the California or federal minimum wage; failure to pay California or  
20 federal overtime; and any and all California Labor Code provision giving rise to PAGA  
21 penalties. Only those Class Members who cash their Settlement check will be deemed to have  
22 released all claims under the Fair Labor Standards Act (‘FLSA’) that could have been brought  
23 based on the allegation in the Operative Complaint whether known or unknown. It is  
24  
25

1 understood and agreed that the Stipulation will not release any person, party or entity from  
2 claims, if any, by Settlement Class Members for workers compensation, unemployment, or  
3 disability benefits of any nature. However, it is understood and agreed that any and all claims  
4 for penalties of any kind, including civil or statutory penalties with respect to any and all wages  
5 of any nature are released.” (§I.33)

6 The release is acceptable as it is tethered to the pleading and limited to the relevant time  
7 period.

8 **4. May conditional class certification be granted?**

9 a. Standards

10 A detailed analysis of the elements required for class certification is not required, but it  
11 is advisable to review each element when a class is being conditionally certified. (*Amchem*  
12 *Products, Inc. v. Winsor* (1997) 521 U.S. 591, 620, 622-627.) The trial court can appropriately  
13 utilize a different standard to determine the propriety of a settlement class as opposed to a  
14 litigation class certification. Specifically, a lesser standard of scrutiny is used for settlement  
15 cases. (*Dunk* at 1807, FN 19.) Finally, the Court is under no “ironclad requirement” to conduct  
16 an evidentiary hearing to consider whether the prerequisites for class certification have been  
17 satisfied. (*Wershba* at 240.)

19 b. Analysis

- 20 i. Numerosity. There are approximately 320 class members. (Settlement  
21 Agreement, §I.23) Although the motion states that the class has  
22 potentially 4,850 members, (Amended Motion at 18:12.), both counsel  
23 confirmed at oral arguments that this is a typographical error, and that the  
24 320 set forth in the Settlement Agreement and Notice is correct.]  
25

1 Numerosity has been established. (*Rose v. City of Hayward* (1981) 126  
2 Cal.App.3d 926, 934, stating that “[n]o set number is required as a matter  
3 of law for the maintenance of a class action” and citing examples wherein  
4 classes of as little as 10 [*Bowles v. Superior Court* (1955) 44 Cal.2d 574]  
5 and 28 [*Hebbard v. Colgrove* (1972) 28 Cal.App.3d 1017] were upheld).

- 6 ii. Ascertainability. The class is defined above. The class definition is  
7 “precise, objective and presently ascertainable.” (*Sevidal v. Target Corp.*  
8 (2010) 189 Cal.App.4<sup>th</sup> 905, 919.) Class members are identifiable from  
9 Defendant’s records. (Settlement Agreement, ¶VI.2)
- 10 iii. Community of interest. “The community of interest requirement involves  
11 three factors: ‘(1) predominant common questions of law or fact; (2) class  
12 representatives with claims or defenses typical of the class; and (3) class  
13 representatives who can adequately represent the class.’” (*Linder v.*  
14 *Thrifty Oil Co.* (2000) 23 Cal.4th 429, 435.) Here, common questions  
15 exist as to, among other things, whether Defendants had a common  
16 practice of failing to properly compensated class members, failing to  
17 provide legally required meal and rest periods, and failed to reimburse  
18 class members for business expenses. Plaintiff, like all class members,  
19 worked for Defendant during the relevant period and alleges damages  
20 based on the same alleged course of conduct. Finally, there is no conflict  
21 of interest between Plaintiff and the class, and Plaintiff has prosecuted  
22 vigorously on behalf of the class. (Amended Motion at 18:16- 20:13.)  
23  
24  
25

- 1           iv. Adequacy of class counsel. As indicated above, Class Counsel has  
2 shown experience in class action litigation.
- 3           v. Superiority. Given the relatively small size of the individual claims, a  
4 class action appears to be superior to separate actions by the class  
5 members.

6           CONCLUSION: The class may be conditionally certified since the prerequisites of class  
7 certification have been satisfied.

8           **5. Is the notice proper?**

9           a. Method of class notice.

10           Notice will be by direct mail. Notice will be provided in English and Spanish. (¶VI.5)  
11           Within 14 days of preliminary approval, Defendant will provide the settlement administrator  
12 and Class Counsel with an updated list of class members names, social security numbers, dates  
13 of employment, number of pay periods worked, last known addresses and phone numbers.

14           (¶VI.2) Within 14 days following receipt of this information, the settlement administrator will  
15 determine the pay periods worked by each class member, fill in the class notice for each, and  
16 send Notice and Opt-Out Request Forms to all class members via first-class mail. (Ibid.)

17           Phoenix Settlement Administrator will re-mail all mail returned with a forwarding  
18 address. (Ibid.) If no forwarding address is provided, Phoenix will perform skip trace(s) if  
19 necessary and will conduct a second round of mailing within an agreed number of days; if no  
20 new information is ascertained, Phoenix will immediately perform a manual “in-depth” skip  
21 trace to locate a more accurate address. (Ibid.) If an updated address is identified, Phoenix will  
22 resend the notice to the updated address within 3 calendar days. (Ibid.) This notice procedure  
23 appears to be the best practicable.  
24  
25

1           b.       Content of class notice.

2           The revised proposed class notice is attached to the Amended Mahoney Declaration as  
3 Exhibit B. The notice was modified in some but not all of the ways highlighted in the Checklist,  
4 and requires additional amending, as discussed at oral argument. It includes information such  
5 as: a summary of the litigation; the nature of the settlement; the terms of the settlement  
6 agreement; the maximum deductions to be made from the gross settlement amount (i.e., attorney  
7 fees and costs, the enhancement award, and claims administration costs); the procedures and  
8 deadlines for participating in (do nothing), opting out of, or objecting to, the settlement; the  
9 consequences of participating in, opting out of, or objecting to, the settlement; and the date,  
10 time, and place of the final approval hearing. It also provides an individualized estimated  
11 recovery, and informs employees that their employment will not be negatively affected by any  
12 decision to participate.

13           The Court’s electronic docket, as it is referred to in the Notice, does not permit members  
14 of the public to view documents for free as stated in ¶2 of the Notice. It requires users to create  
15 an account (including a user name and password), and to provide a credit card which can be  
16 charged for viewing documents. While the “docket” may be viewed for free, documents may  
17 not, and therefore class members should not be referred to this as a place for viewing  
18 documents. This item was made part of the Checklist, but had not been corrected, and indeed  
19 citations to [website] are scattered throughout the notice. Granting of this motion is made  
20 conditioned upon the submission of a revised class notice omitting all reference to the Court’s  
21 website and providing an alternate means for class members to view all documents.

22           The proposed class notice requires further modification in the following areas as well:

- 23           1. In ¶11, the words, “you’re your” need to be corrected.  
24  
25

- 1 2. In ¶15, correct the last sentence of the first paragraph; it seems as if the word “if”  
2 should have been used rather than “is.”
- 3 3. Modify ¶16 to remove any prerequisites to a class member appearing at the fairness  
4 hearing. Delete the words, “If you mail a timely objection” from the third sentence of  
5 the second paragraph.
- 6 4. Modify ¶17 to simply introduce class counsel and remove the statement that the  
7 Court has found counsel to be qualified to represent the class.
- 8 5. In ¶18, modify the sentence stating that class members will have to pay for their own  
9 lawyer; simply say that class members may retain their own lawyer if they so choose.
- 10 6. In ¶10 add language notifying class members that the taxable portion of the earnings  
11 will be reported to the Internal Revenue Service whether or not the check is cashed;

#### 12 Cost of class notice.

13 As indicated above, settlement administration costs are estimated to be no more than  
14 \$8,500. (Settlement Agreement, ¶V.2) Prior to the time of the final fairness hearing, the  
15 settlement administrator must submit a declaration attesting to the total costs incurred and  
16 anticipated to be incurred to finalize the settlement for approval by the Court.  
17

#### 18 **6. Attorney fees and costs**

19 CRC rule 3.769(b) states: “Any agreement, express or implied, that has been entered into  
20 with respect to the payment of attorney fees or the submission of an application for the approval  
21 of attorney fees must be set forth in full in any application for approval of the dismissal or  
22 settlement of an action that has been certified as a class action.”  
23

24 Ultimately, the award of attorney fees is made by the court at the fairness hearing, using  
25 the lodestar method with a multiplier, if appropriate. (*PLCM Group, Inc. v. Drexler* (2000) 22

1 Cal.4<sup>th</sup> 1084, 1095-1096; *Ramos v. Countrywide Home Loans, Inc.* (2000) 82 Cal.App.4<sup>th</sup> 615,  
2 625-626; *Ketchum III v. Moses* (2000) 24 Cal.4<sup>th</sup> 1122, 1132-1136.) In common fund cases, the  
3 court may use the percentage method, as cross-checked against the lodestar. (*Laffitte v. Robert*  
4 *Half International, Inc.* (2016) 1 Cal.5<sup>th</sup> 480, 503.) Despite any agreement by the parties to the  
5 contrary, “the court ha[s] an independent right and responsibility to review the attorney fee  
6 provision of the settlement agreement and award only so much as it determined reasonable.”  
7 (*Garabedian v. Los Angeles Cellular Telephone Company* (2004) 118 Cal.App.4<sup>th</sup> 123, 128.)

8 The question of class counsel’s entitlement to \$100,000 in attorney fees will be  
9 addressed at the fairness hearing when class counsel brings a noticed motion for attorney fees.  
10 Class counsel should also be prepared to justify the costs sought by detailing how they were  
11 incurred.

12  
13 **7. Enhancement Award to Class Representatives**

14 The Settlement Agreement provides for an enhancement award of up to \$7,500 to the  
15 sole class representative. In connection with the final fairness hearing, the named Plaintiff must  
16 submit a declaration attesting to why he should be entitled to an enhancement award in the  
17 proposed amount. The named Plaintiff must explain why he “should be compensated for the  
18 expense or risk he has incurred in conferring a benefit on other members of the class.” (*Clark v.*  
19 *American Residential Services LLC* (2009) 175 Cal.App.4<sup>th</sup> 785, 806.) Trial courts should not  
20 sanction enhancement awards of thousands of dollars with “nothing more than *pro forma* claims  
21 as to ‘countless’ hours expended, ‘potential stigma’ and ‘potential risk.’ Significantly more  
22 specificity, in the form of quantification of time and effort expended on the litigation, and in the  
23 form of reasoned explanation of financial or other risks incurred by the named plaintiffs, is  
24 required in order for the trial court to conclude that an enhancement was ‘necessary to induce  
25

1 [the named plaintiff] to participate in the suit . . . .” (Id. at 806-807, italics and ellipsis in  
2 original.)

3 The Court will decide the issue of the enhancement award at the time of final approval.

4 **III. CONCLUSION AND ORDER**

5 **A. RULING**

6 Contingent upon (1) revision of the proposed class notice in the ways listed above and  
7 (2) counsel instructing the Claims Administrator to provide specific notice to a class member  
8 that if a check is re-mailed that the class member must cash the re-mailed check within thirty  
9 (30) days of mailing, the Court:

- 10
- 11 (1) Grants preliminary approval of the settlement as fair, adequate, and reasonable;
  - 12 (2) Grants conditional class certification;
  - 13 (3) Appoints Mark Thompson as Class Representative;
  - 14 (4) Appoints Kevin Mahoney and Alina Mazeika of Mahoney Law Group, APC as Class  
15 Counsel;
  - 16 (5) Appoints Phoenix Settlement Administrator as settlement administrator;
  - 17 (6) Approves the proposed notice plan; and
  - 18 (7) Approves the proposed schedule of settlement proceedings.

19 **B. PROPOSED SCHEDULE OF SETTLEMENT PROCEEDINGS**

- 20
- 21 • Preliminary approval hearing: March 2, 2017.
  - 22 • Deadline for Defendant to provide class list to settlement administrator: March 16, 2017  
23 (14 days after preliminary approval).
  - 24 • Deadline for settlement administrator to mail notices: March 30, 2017 (14 days after  
25 preliminary approval).



- Deadline for class members to submit a claim form: Not applicable
- Deadline for class members to opt out: May 15, 2017 (45 days after mailing of notices).
- Deadline for class members to object: May 15, 2017 (45 days after mailing of notices).
- Deadline for class counsel to file motion for final approval: September 13, 2017 (16 court days prior to final fairness hearing) .
- Final fairness hearing: October 5, 2017 at 9:00 a.m.

Dated:

3/2/17



MAREN E. NELSON  
Judge of the Superior Court