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UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

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11 LINDA BURKE and LINDA GIUSTI-  
12 MANGIAMELI, on behalf of  
13 themselves and all others similarly  
14 situated,

Plaintiff,

vs.

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16

CITIMORTGAGE, INC., and  
CITIGROUP INC.,,

17

Defendants.

18

19

Case No. 06-CV-7550 ABC (PJXx)

**NOTICE OF MOTION AND JOINT  
MOTION FOR FINAL APPROVAL  
OF CLASS AND COLLECTIVE  
ACTION SETTLEMENT;  
MEMORANDUM OF POINTS AND  
AUTHORITIES IN SUPPORT  
THEREOF**

Date: October 6, 2008

Time: 10:00 a.m.

Ct. Room: 680

**The Honorable Audrey B. Collins**

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1 COHELAN & KHOURY  
 2 Timothy D. Cohelan, Esq., SBN 60827  
 3 Isam C. Khoury, Esq., SBN 58759  
 4 Michael D. Singer, Esq., SBN 115301  
 5 Diana M. Khoury, Esq., SBN 128643  
 6 605 C Street, Suite 200  
 7 San Diego, CA 92101-5305  
 8 Telephone: (619) 595-3001  
 9 Facsimile: (619) 595-3000

10 Michael J. Procopio, Esq. SBN 137318  
 11 Jill S. Kramer, Esq., SBN 172229  
 12 LAW OFFICES OF MICHAEL J. PROCOPIO  
 13 2677 N. Miami Street, Suite 860  
 14 Santa Ana, CA 92705  
 15 Tel: 714-541-1550  
 16 Fax: 714-541-1770

17 Tim Hoffman, Esq., SBN 49141  
 18 Arthur W. Lazear, SBN 83603  
 19 Morgan M. Mack, SBN 212659  
 20 HOFFMAN & LAZEAR  
 21 180 Grand Avenue, Suite 1550  
 22 Oakland, CA 94612  
 23 Tel: 510-763-5700  
 24 Fax: 510-835-1311

25 Mark R. Thierman, Esq., SBN 72913  
 26 THIERMAN LAW FIRM  
 27 7287 Lakeside Drive, Suite 101  
 28 Reno, NV 89511  
 Tel: 877-995-2267  
 Fax: 775-703-5027

Attorneys for Plaintiffs LINDA BURKE and  
 LINDA GIUSTI-MANGIAMELI,  
 on behalf of themselves and all others similarly situated

1 Daryl S. Landy, State Bar No. 136288  
2 MORGAN, LEWIS & BOCKIUS LLP  
3 2 Palo Alto Square  
4 3000 El Camino Real, Suite 700  
5 Palo Alto, CA 94306-2122  
6 Tel: 650.843.4000  
7 Fax: 650.843.4001

8 Sam S. Shaulson, Esq.  
9 MORGAN, LEWIS & BOCKIUS LLP  
10 101 Park Avenue  
11 New York, NY 10178-0060  
12 Tel: 212-309-6718  
13 Fax: 212-309-6273

14 Sarah E. Bouchard, Esq.  
15 MORGAN, LEWIS & BOCKIUS LLP  
16 1701 Market Street  
17 Philadelphia, PA 19103-2921  
18 Tel: 215-963-5077  
19 Fax: 215-963-5001  
20 *Admitted pro hac vice*

21 Attorneys for Defendants  
22 CITIMORTGAGE, INC. and CITIGROUP INC.

23 TO THE COURT AND ALL INTERESTED PARTIES:

24 PLEASE TAKE NOTICE THAT on October 6, 2008 at 10:00 a.m., or as  
25 soon thereafter as counsel may be heard in Courtroom 680 of this Court, the  
26 Honorable Judge Audrey B. Collins Presiding, Plaintiffs Linda Burke and Linda  
27 Giusti-Mangiameli (herein "Class Representatives"), and Defendants CitiMortgage,  
28 Inc. and Citigroup Inc. (herein "Citi"), will and hereby do jointly and respectfully  
move the Court to provide final approval of the proposed class and collective action  
settlement. Specifically, the parties jointly and respectfully request that the Court

1 (a) grant final approval of the proposed class and collective action settlement; and  
2 (b) enter the proposed Judgment. This joint motion is brought on the grounds that  
3 the settlement and its terms are fair, reasonable and adequate to the Class. This  
4 joint motion is based upon this Notice of Motion and Memorandum of Points and  
5 Authorities in Support Thereof; the supporting Declarations of H. Tim Hoffman,  
6 Amanda J. Myette and Angeli Murthy; all papers previously filed in support of the  
7 Joint Motion for Preliminary Approval, including but not limited to the Stipulation  
8 and Settlement Agreement; the arguments of counsel; the complete files and  
9 records in this consolidated action; and any additional matters the Court may  
10 consider.

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**MEMORANDUM OF POINTS AND AUTHORITIES**

**INTRODUCTION**

In this joint motion, Plaintiffs Linda Giusti-Mangiameli and Linda Burke, individually and on behalf of the settlement class (“Plaintiffs”), on the one hand, and Citi, on the other hand (collectively, “the Parties”), seek final approval of a wage and hour class and collective action settlement of \$8,400,000 for the benefit of the 895 current and former Citi employees whom Citi employed as Loan Officers/Lending Consultants and/or Junior Loan Officers/Junior Lending Consultants (collectively “Loan Consultants” or “LCs”) in the State of California during the period April 18, 2002 through April 28, 2008 (the “Class Period”).<sup>1</sup> The Settlement resolves the class and collective claims against the Defendants’ for alleged (1) failure to pay overtime wages under federal and California law; (2) failure to provide the requisite meal and rest periods or compensation in lieu thereof under California law; (3) failure to reimburse business expenses; and (4) improper deductions from Loan Consultants’ wages, as more fully described and discussed along with the Parties positions in the previously submitted Joint Motion for Preliminary Approval.<sup>2</sup>

**PROCEDURAL BACKGROUND**

On April 18, 2006, Linda Giusti-Mangiameli commenced a purported class action against Citi in Alameda County Superior Court. On May 26, 2006, Citi removed the action to the United States District Court for the Northern District of California. Citi then moved to transfer the action to the United States District Court for the Central District of California. The Court granted Citi’s motion on August 7,

<sup>1</sup> The Stipulation and Settlement Agreement (“Stipulation”) defined the “Participating Claimants” as the class members who timely and properly submitted both a signed Consent to Join Settlement Form and a qualifying Settlement Claim Certification Form. Declaration of Isam Khoury filed April 4, 2008, Exh. 1.

<sup>2</sup> Document No. 25, filed April 4, 2008.



1 2006, and the action was transferred, *Giusti-Mangiameli v. CitiMortgage, Inc., et*  
2 *al.*, C.D. Cal. Case No. CV 06-5135 ABC (PJWx) (“Giusti Action”).

3 On August 22, 2006, Linda Burke commenced a purported class action  
4 against Citi in the United States District Court for the Southern District of  
5 California. The Parties then jointly moved to transfer that action to the Central  
6 District of California. The Court granted the joint motion on November 16, 2006,  
7 and the action was transferred, *Burke v. CitiMortgage, Inc.*, C.D. Cal Case No. CV  
8 06-7550 DSF (FFMx) (“Burke Action”). On January 4, 2007, by general order of  
9 the Court, the Burke Action was assigned to the Honorable Judge Audrey B.  
10 Collins, Case No. CV 06-7550 ABC (PJWx).

11 After the Burke Action was transferred to the Central District of California,  
12 the Parties engaged in a series of arm’s-length negotiations, which included a full  
13 day of mediation on April 16, 2007, in Boca Raton, Florida, which was facilitated  
14 by Mark Buckstein of Professional Dispute Resolutions, Inc. The mediator’s  
15 extensive experience in labor and employment litigation assisted the Parties in  
16 reaching the conditional agreement presented here for final approval. As a result of  
17 this process, and subsequent extensive direct arm’s-length negotiations between the  
18 Parties, the Parties reached a fair compromise and settlement as described in the  
19 previously filed and preliminarily approved Stipulation and Settlement Agreement.  
20 (Declaration of Isam C. Khoury, (“Khoury Decl.”) Exhibit “1”; Declaration of H.  
21 Tim Hoffman, ¶ 13).

22 On April 2, 2008, Plaintiffs filed a First Amended and Consolidated Class  
23 and Collective Action Complaint. On April 28, 2008, this Court granted  
24 preliminary approval of the class and collective action settlement, certified the  
25 proposed class for settlement purposes only (the “Class”), and directed that the  
26 Notice of Class Action and Pending Settlement be mailed to all members of the  
27 Class. (Hoffman Decl., ¶ 22.)

1           **A.     The Proposed Settlement.**<sup>3</sup>

2           The settlement calls for a maximum settlement amount of up to \$8,400,000.

3 From this amount, attorneys’ fees and costs, as described below, Class

4 Representatives’ enhancement payments, payment to the California Labor and

5 Workforce Development Agency, and an estimated \$36,625.40 in settlement

6 administration fees and expenses to the claims administrator, Rust Consulting, Inc.

7 (“Claims Administrator”), will be deducted. Stipulation, §§1.1, 1.23, 1.26. The

8 Stipulation provides that Plaintiffs’ attorneys may request, and Citi will not oppose,

9 an amount allowed by the Court not to exceed \$2,100,000 (25%) as payment in full

10 for all attorneys’ fees, which amount is consistent with the Ninth Circuit

11 benchmark, and up to \$25,000 for all allowable litigation costs and expenses.

12 Stipulation §2.9.1. *See Six (6) Mexican Workers v. Arizona Citrus Growers*, 904

13 F.2d 1301, 1311 (9th Cir. 1990) (holding that the benchmark attorneys’ fee award

14 in common fund cases is 25% of the fund). In addition, Plaintiffs’ attorneys may

15 request, and Citi will not oppose, enhancement payments not to exceed \$25,000

16 each for both of the two Class Representatives for stepping forward in this matter,

17 their service, and the risks undertaken to pay attorneys’ fees and costs in the event

18 of an unsuccessful outcome. Stipulation §2.9.2. Both Class Representatives have

19 signed a full release of their Released Claims set forth in Section 1.10 of the

20 Stipulation in exchange for receiving their Participating Claimant payment and

21 enhancement payment. Stipulation §2.9.2. All of the fee and enhancement

22 payments are subject to the Court’s approval.

23           In addition to these deductions from the maximum settlement amount,

24 approximately \$54,000 will be paid to the California Labor Workforce

25 Development Agency pursuant to the California Labor Code Private Attorneys

26 General Act. Stipulation, §2.2.4.

27           <sup>3</sup> The proposed settlement and its terms are attached to the previously filed Declaration of Isam Khoury and

28 are described in more detail in the previously filed Joint Motion for Preliminary Approval, Document No. 25, filed April 4, 2008, at pp. 14-18.

1 The remaining amount (“Net Settlement Amount” or “NSA”),  
 2 \$6,134,374.60, was made available to the Class Members upon the submission of a  
 3 valid and timely Settlement Claim Certification Form and Consent to Join  
 4 Settlement Form. Stipulation, §2.7.4. Each Participating Claimant will receive a  
 5 proportional share of the Net Settlement Amount based on his or her total number  
 6 of months worked as an LC in California during the Class Period, in relation to the  
 7 total number of months worked by all members of the Class as LCs in California  
 8 during the Class Period by dividing the number of months worked by the  
 9 Participating Claimant as an LC in California during the Class Period by the total  
 10 number of months worked by the Class as LCs in California during the Class  
 11 Period, and multiplying this quotient by the Net Settlement Amount. Stipulation,  
 12 §2.2.1. Based on this formula, the Class was informed via the Class Notice, among  
 13 other documents as set forth below, that for each month worked as an LC in  
 14 California during the Class Period, each could expect to receive a per month  
 15 payment, upon the return of a valid and timely Settlement Claim Certification Form  
 16 and Consent to Join Settlement Form. Declaration of Amanda J. Myette (“Myette  
 17 Decl.,” ¶ 6).

18 Of the 895 Class Members, 331 (37%) are Participating Claimants; based on  
 19 their months worked for Citi in the LC position in California they are claiming  
 20 nearly 46 percent of the available funds. These Participating Claimants will receive  
 21 approximately \$490 for each covered month worked during the Class Period, less  
 22 taxes.

23 **B. Notice of the Settlement to the California Labor and Workforce**  
 24 **Development Agency.**

25 On or about April 18, 2008, Class Counsel provided written notice of the  
 26 settlement to the California Labor and Workforce Development Agency (“the  
 27 Agency”). (Hoffman Decl., ¶ 21, Exh. “1”.) The Agency has not appeared in the  
 28 action or otherwise responded to the notice of the settlement. (*Id.*)

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**C. Notice of the Settlement to the Attorney General and Appropriate State Officials.**

On April 14, 2008, Citi (through its counsel) provided written notice of the settlement to the Attorney General of the United States and the appropriate state official of each state in which any Class Member resided at the time according to Citi’s records. (Declaration of Angeli Murthy, ¶ 2.) None of these officials have appeared in this action or otherwise responded to the notice of the settlement.

**D. Notice of Settlement to the Class.**

On April 28, 2008, this Court granted preliminary approval of the class and collective action settlement, certified the Class for settlement purposes only, and directed that the Notice of Class Action and Pending Settlement be mailed to all members of the Class. (Hoffman Decl., ¶ 22.) Accordingly, after the Claims Administrator had processed and updated all addresses contained in the Class list using the National Change of Address Database maintained by the U.S. Postal Service, on or about June 12, 2008, the Claims Administrator mailed the Notice of Class Action and Pending Settlement (“Notice”), Settlement Claim Certification Form (“Claim Form”) and Consent to Join Settlement Form (“Consent Form”) (collectively “Notice Packet”) to the 895 members of the Class. (Hoffman Decl., ¶ 23; Myette Decl., ¶ 9).

The Notice advised the Class of the pertinent terms of the proposed settlement, namely, the claims to be resolved by way of the settlement, the maximum settlement amount, and the proposed deductions for attorneys’ fees, litigation costs, class representative enhancement, and claims administration expenses. (Myette Decl., ¶ 6, Exhibits “A” - Notice; “B” – Claim Form; and “C” – Consent Form.) The Notice also informed the Class of the basis upon which their payout would be calculated, the manner in which to submit a claim, to request exclusion, to object and/or to dispute the information upon which the Claims Administrator would rely to calculate his or her share of the settlement proceeds.

1 The Notice provided the names and contact information for Class Counsel, and  
2 further advised that should the Class members have questions, they could contact a  
3 Class Counsel attorney or the Claims Administrator by way of the “toll-free”  
4 telephone number provided in the Notice and Claim Form. Lastly, the Notice also  
5 advised the Class of the deadlines within which to act: through August 11, 2008 (60  
6 days after mailing of the Notice Packet) to submit a claim, request exclusion or file  
7 and serve an objection to the settlement. (*Id.*) Claim Forms and Consent Forms  
8 post-marked by August 11 and received by August 21 were timely. (*Id.*)

9 In addition, on July 16, 2008 the Claims Administrator mailed a reminder  
10 post-card to all members of the Class who had not returned a Claim Form, Consent  
11 Form or a request for exclusion to remind them of their opportunity to claim their  
12 settlement payment and to remind them of the August 11, 2008 deadline. The post-  
13 card also provided the Claims Administrator’s toll-free telephone number and  
14 contact information. (Myette Decl., ¶ 12, Exh. D.) The Claims Administrator also  
15 promptly performed address traces for all Notices returned as undeliverable and  
16 then re-mailed the Notices to the new addresses. All but four of the re-mailed  
17 Notices were received. (Myette Decl., ¶ 11.)

18 **E. Class Participation in the Settlement.**

19 Of the 895 Notice Packets mailed to the Class, there was a return of 331  
20 claim forms, zero requests for exclusion, and zero objections filed. (Myette Decl.,  
21 ¶¶ 13-15.) These 331 Participating Claimants represent 37% of the Class; their  
22 total months worked represent almost 46% of all months worked by the Class  
23 during the Class Period. (Myette Decl., ¶¶ 9, 13, 18.) With a pay rate of \$490.01  
24 for each month worked during the Class Period, these Participating Claimants have  
25 claimed \$2,811,494.49, which is nearly 46% of the Net Settlement Amount  
26 available to them. (Myette Decl., ¶¶ 9, 18.) Based thereon, the highest claim to be  
27 paid to a Participating Claimant is estimated at \$34,300.70, while the average claim  
28 to be paid is estimated at \$8,494.49. (Myette Decl., ¶ 20.)

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**ARGUMENT**

**A. Class Action Settlements are Subject to Court Review and Approval Under the Federal Rules of Civil Procedure**

Federal Rule of Civil Procedure 23(e) provides that “[a] class action shall not be dismissed, settled, or compromised without the approval of the Court, and notice of the proposed dismissal, settlement or compromise shall be given as the Court directs.” The Ninth Circuit has stated that in order to approve a final settlement in a class action, the district court must find that the proposed settlement is fundamentally fair, adequate, and reasonable. Rule 23(e)(1)(C); *Staton v. Boeing Co.*, 327 F. 938, 952 (9th Cir. 2003).

**B. The Settlement Is Fair, Adequate and Reasonable**

This Court now must make a final determination whether the proposed settlement set forth in the Stipulation is fair, adequate and reasonable. Manual for Complex Litigation (4th ed. 2004) § 21.61 at 308, *Officers for Justice v. Civil Serv. Comm’n. of the City and County of San Francisco* (9th Cir. 1982) 688 F. 2d 615, 625, cert. denied (1983) 459 U.S. 1217. The trial court considers all relevant factors, such as “the strength of plaintiffs’ case, the risk, expense, complexity and likely duration of further litigation, the risk of maintaining class action status through trial, the amount offered in settlement, the extent of discovery completed and the stage of the proceedings, the experience and views of counsel, the presence of a governmental participant, and the reaction of the class members to the proposed settlement.” *Id.* Courts act within their discretion in approving settlements which are fair, not collusive, and take into account “all the normal perils of litigation as well as the additional uncertainties inherent in complex class actions.” *In re Beef Industry Antitrust Litigation*, 607 F. 2d 167, 179 (5th Cir. 1979), cert. den. sub nom, *Iowa Beef Processors, Inc. v. Meat Price Investigators Ass’n*, 452 U.S. 905 (1981).

Where a settlement is reached on terms agreeable to all parties, a court



1 should disapprove of the settlement “only with considerable circumspection.”  
 2 *Jamison v. Butcher & Sherrerd*, 68 F.R.D. 479, 481 (E. D. Pa. 1975).

3 A proposed class action settlement is *presumed* fair under the following  
 4 circumstances: (1) the parties reached settlement after arm’s-length negotiations;  
 5 (2) investigation and discovery were sufficient to allow counsel and the court to act  
 6 intelligently; (3) counsel is experienced in similar litigation; and (4) the percentage  
 7 of objectors is small. (*Dunk v. Ford Motor Co* (1996) 48 Cal. App.4th, 1794, 1802;  
 8 see also, *Newberg & Conte, Newberg on Class Actions* (4th ed. 2002) § 11.41. The  
 9 Declaration of Class Counsel H. Tim Hoffman filed concurrently herewith  
 10 demonstrates that the proposed settlement was the product of serious, informed, and  
 11 non-collusive negotiations, otherwise proper and should be given final approval by  
 12 the Court, and demonstrates Counsels’ extensive experience in this type of  
 13 litigation. (Hoffman Decl., ¶¶ 5-13.) It also describes the investigation that Class  
 14 Counsel undertook prior to settlement. (*Id.*, ¶¶ 11-12, 17.) Indeed, it was only after  
 15 the Parties thoroughly investigated and evaluated the strengths and weaknesses of  
 16 this case, both legally and factually, and extensively discussed the same, that  
 17 settlement was contemplated. (Hoffman Decl., ¶ 19.) This litigation, therefore,  
 18 reached the stage where the Parties had and have a clear view of the strengths and  
 19 weaknesses of their cases sufficient to support the Settlement. *See Boyd v. Bechtel*  
 20 *Corp.*, 485 F. Supp. 610, 617 (N.D. Cal. 1979). Finally, as verified in the  
 21 Declaration of Amanda Myette, there are no objections. (Myette Decl., ¶ 15.)  
 22 Applying these factors, it is clear that the proposed settlement, which provides a  
 23 benefit to the Class, is fair, adequate and reasonable.

24 Experienced counsel of the Parties, negotiating at arm’s length, have weighed  
 25 the strengths of the case and examined all of the issues and risks of litigation and  
 26 endorse the proposed settlement. The view of the attorneys actively conducting the  
 27 litigation “is entitled to significant weight” in deciding whether to approve the  
 28 settlement. *Fisher Bros. v. Cambridge Lee Industries, Inc.*, 630 F. Supp. 482, 488

1 (ED.Pa. 1985); *Ellis v. Naval Air Rework Facility*, 87 F.R.D. 15, 18 (N.D.Cal.  
2 1980), *affd.* 661 F.2d 939 (9th Cir. 1981); *Boyd v. Bechtel Corp., supra*, 485 F.  
3 Supp. at pp. 616-17. There has been no collusion by counsel for the Parties, but  
4 instead, a thoughtful, careful agreement to reach settlement of Class Members’  
5 claims.

6 Class Counsel is convinced that this settlement is in the best interest of the  
7 Class based on the negotiations and a detailed knowledge of the issues present in  
8 this action. Specifically, Class Counsel balanced the terms of the proposed  
9 settlement against the probable outcome of liability and the range of recovery at  
10 trial. (Hoffman Decl., ¶ 19.) This included recent developments in the law that  
11 presented challenges for the Class, including (1) two U.S. Department of Labor  
12 Opinion Letters concluding that depending upon the specific facts retail LCs like  
13 those Citi employed in California can be classified as exempt under the outside  
14 sales exception and/or the administrative exemption (*See* DOL Opinion Letter,  
15 FLSA 2006-11 (March 31, 2006) and DOL Opinion Letter, FLSA 2006-31  
16 (September 8, 2006)), (2) a DOL Opinion Letter holding that a guaranteed payment  
17 meets the salary basis test provided that the amount of the payment does not fall  
18 below the FLSA’s minimum salary threshold (*See* DOL Opinion Letter 2006-43  
19 (November 27, 2006)),<sup>4</sup> (3) U.S. District Court decisions in California denying  
20 motions for class certification in cases brought on behalf of retail loan consultants  
21 where duties were very similar to those of the Class Members here (*See, e.g., Trinh*  
22 *v. J.P. Morgan Chase & Co.*, 2008 U.S. Dist. LEXIS 33016, No. 07-CV-1666 (S.D.  
23 Cal. 4/22/08); *Harrington v. Home Loan Funding, Inc.*, No. CV 06-6763 (C.D. Cal.  
24 3/28/08)), (4) a U.S. District Court decision granting summary judgment against a  
25 plaintiff employed in the financial services industry on the ground that the  
26 employer bank properly classified the plaintiff as exempt under the administrative

27 \_\_\_\_\_  
28 <sup>4</sup> All of the cited DOL Opinion Letters were filed April 4, 2008 as attachments to the Compendium of Authorities in support of preliminary approval of the settlement.



1 exemption (*See, e.g., Hein v. PNC Financial Services Group, Inc.*, 511 F. Supp. 2d  
2 563, 575 (E.D. Pa. 2007)), and (5) a California Supreme Court decision holding that  
3 employers need not “ensure” that eligible employees take their meal breaks (*See*  
4 *Brinker Restaurant Corp. v. Superior Court*, 2008 WL 2806613 (7/22/08)).

5 Counsel on both sides share the view that this is a fair and reasonable  
6 settlement taking into consideration the complexities of the case, the state of the  
7 law and the uncertainties of class certification and litigation, and the good result for  
8 the Class Members. Both Plaintiffs’ and Citi’s counsel are particularly experienced  
9 in wage and hour employment law and class actions. (Hoffman Decl., ¶¶ 5-8.) In  
10 light of such experience, Counsel are well qualified to evaluate the Class claims and  
11 to evaluate settlement, versus trial, on a fully informed basis, and to evaluate the  
12 viability of the defenses. Given the risks inherent in litigation and the defenses  
13 asserted, this settlement is fair, adequate, and reasonable and in the best interests of  
14 the Class and one which supports a grant of final approval.

15 Of the 895 members of the Class to whom a Notice Packet was sent, there  
16 were no requests for exclusion and no objections. (Myette Decl., ¶¶ 14-15.) This is  
17 true despite the fact that the vast majority of the Class received notice of the  
18 Settlement *twice* – first, when initially mailed with the Notice Packet, and then  
19 approximately a month later when the Claims Administrator sent reminder post-  
20 cards. (*Id.*, ¶¶ 9, 12.) Three and one-half months have passed without a single  
21 objection or request for exclusion being filed. Nor did any of the state or federal  
22 officials who received notice raise any issues or objections. (Murthy Decl., ¶ 5;  
23 Hoffman Decl., ¶ 21.) The settlement clearly is viewed as fair by all affected Class  
24 Members and by those responsible for protecting the Class Members’ interests.

25 **CONCLUSION**

26 The Parties respectfully submit that based on the foregoing, the proposed  
27 settlement is fair, adequate and reasonable, and that it is in the best interests of  
28 Plaintiffs and the settlement Class. Under the applicable class action criteria and

