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14 UNITED STATES DISTRICT COURT
15 NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

16 JUANITA WYNNE and DANTE BYRD,
17 on behalf of themselves and classes of
those similarly situated,
18

19 Plaintiffs,

20 v.

21 MCCORMICK & SCHMICK'S
SEAFOOD RESTAURANTS, INC. and
22 MCCORMICK & SCHMICK
RESTAURANT CORP.,
23

24 Defendants.
25
26
27
28

Case No. 06-3153 CW

**PLAINTIFFS' NOTICE OF MOTION AND
MOTION FOR FINAL APPROVAL OF
CLASS ACTION SETTLEMENT AND
MEMORANDUM OF POINTS AND
AUTHORITIES**

Date: August 7, 2008

Time: 2:00 p.m.

Courtroom: 2, 4th Floor
The Honorable Claudia Wilken

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NOTICE OF MOTION AND MOTION

TO ALL PARTIES AND THEIR COUNSEL OF RECORD:

NOTICE IS HEREBY GIVEN that on August 7, 2008, at 2:00 p.m., or as soon thereafter as the matter may be heard, in the Courtroom of the Honorable Claudia Wilken of the Northern District of California, Oakland Division, located at 1301 Clay Street, Oakland, California, Plaintiffs Juanita Wynne and Dante Byrd (“Plaintiffs”), on behalf of themselves and all others similarly situated, will, and hereby do, move this Court (1) to grant, pursuant to Federal Rule of Civil Procedure 23(e), final approval of the Consent Decree, attached as Exhibit 1 to this Court’s April 4, 2008 order granting preliminary approval (the “Preliminary Approval Order”), and entry of judgment in accordance with the Settlement Agreement; and (2) to grant, pursuant to Federal Rule of Civil Procedure 23(a), 23(b)(2), and 23(b)(3), final class certification of the settlement Classes conditionally certified in this Court’s Preliminary Approval Order.

The Motion is based on this Notice of Motion and Motion, the attached Memorandum of Points and Authorities, the [Proposed] Order Confirming Final Certification Of Class Action And Granting Final Approval To Class Action Settlement And Consent Decree (“Final Order”), the Settlement Agreement, and the declarations of James M. Finberg and Jahan C. Sagafi, the pleadings and papers filed in this case, and any oral argument this Court permits.

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Plaintiffs hereby request that this Court grant final approval of the proposed Consent Decree, which provides substantial injunctive and monetary relief to the Class members. Specifically, the Consent Decree provides the following important injunctive remedies: (1) mechanisms to increase the recruitment of African American employees, (2) benchmarks (that are the higher of applicant flow or census data for the relevant occupational code) that will increase the percentage of African Americans in Front-of-the-House Positions, (3) financial incentives to motivate McCormick & Schmick’s managers to achieve diversity goals, (4) improved job posting procedures to ensure that all employees are aware of promotion opportunities, (5) enhanced race discrimination complaint procedures, (6) monitoring by an experienced, respected third-party

1 Diversity Monitor, and (7) continued oversight by Class Counsel. The Consent Decree also
2 provides \$1,100,000 in monetary relief to Class members who submit valid Claim Forms.

3 In short, this settlement is “fair, reasonable, and adequate” within the meaning of
4 Federal Rule of Civil Procedure 23(e). The Class has responded extremely favorably, with 982
5 Class members submitting Claim Forms. Not a single Class member has objected to any aspect
6 of the Consent Decree. Only three individuals have opted out (i.e., only three tenths of a percent
7 of the total number of people responding).¹ Class Counsel have conducted sufficient discovery to
8 enable them to evaluate the claims and defenses in the action. The settlement is in line with the
9 strength and recoverability of Plaintiffs’ claims given the risk, expense, complexity, and likely
10 duration of further litigation. *See Staton v. Boeing Co.*, 327 F.3d 938, 960 (9th Cir. 2003); *Class*
11 *Plaintiffs v. City of Seattle*, 955 F.2d 1268, 1291 (9th Cir. 1992).

12 In connection with requesting final settlement approval, the parties also request
13 that the Court confirm as final (1) the certification of the Classes conditionally certified in its
14 Preliminary Approval Order; and (2) the appointment of Plaintiff Juanita Wynne as Class
15 representative and of Plaintiffs’ counsel as Class Counsel as initially ordered in that Order.²

16 **II. THE CLASS ACTION SETTLEMENT AGREEMENT**

17 On April 4, 2008, the Court granted Plaintiffs’ Motion For Order: (1) Preliminarily
18 Approving Class Action Settlement And Proposed Consent Decree; (2) Provisionally Certifying
19 Settlement Classes; (3) Approving And Directing Distribution Of Notice Of The Settlement; And
20 (4) Setting A Schedule For The Final Settlement Approval Process (“Preliminary Approval
21 Motion”). The Court determined that the settlement falls “within the range of possible settlement
22 approval,” is “the result of extensive, arms’ length negotiations between the Parties,” “is non-
23 collusive,” and was reached only “after Class Counsel had investigated the class claims and
24 became familiar with the strengths and weakness of plaintiffs’ case.” Preliminary Approval

25 ¹ The postmark deadline for Claim Forms is July 25, 2008, and the postmark deadline for
26 objections and opt outs is July 15, 2008. Class Counsel will update the Court on the final
numbers before the fairness hearing.

27 ² McCormick & Schmick’s does not oppose this motion. Furthermore, by separate motion, Class
28 Counsel will, consistent with the terms of the Settlement Agreement, apply for attorneys’ fees and
costs and seek a service award for Ms. Wynne. McCormick & Schmick’s does not oppose those
motions either.

1 Order (Docket No. 82) at 3:14-19.

2 **A. Injunctive Relief**

3 During the five year term of the Decree, McCormick & Schmick's has agreed to
4 implement meaningful measures to increase the recruiting, hiring, promotion, and compensation
5 of African American employees, and to ensure an increase in the percentage of African
6 Americans in Front-of-the-House Positions.

7 **1. Increasing African American Representation in Front of the House**
8 **Jobs**

9 **a. Hiring Benchmarks**

10 McCormick & Schmick's will establish benchmarks increase African American
11 incumbency in Front-of-the-House (server, bartender, host) Positions. The benchmarks will be
12 set at the higher of the percentage of African Americans in the (a) applicant flow or (b) the census
13 category for the job sought in the local labor market. Consent Decree, § XI. The Diversity
14 Monitor will regularly examine McCormick & Schmick's human resources data to ensure that it
15 is taking appropriate steps to meet its benchmarks. The term of the Consent Decree is five years,
16 unless McCormick & Schmick's meets all company-wide benchmarks for three consecutive
17 years, in which case the Company may apply to the Court to terminate the Consent Decree at the
18 end of the fourth year. *Id.*, § V.

19 The Diversity Monitor will have the power to require policy changes to increase
20 African American representation. *Id.*, §§ XVIII, XX. If McCormick & Schmick's fails to meet
21 its benchmarks, the Diversity Monitor can order the Company to take corrective steps, such as
22 validating its hiring criteria, enhancing its recruitment, and/or requiring hiring of African
23 Americans from back-of-the-house positions who have expressed interest in moving to Front-of-
24 the-House Positions. *Id.*, § XI(D).

25 **b. Enhanced Recruiting Efforts**

26 McCormick & Schmick's will also hire a new Corporate Recruiter. *Id.*, § XVI(A).
27 The Company will develop a strategy for increasing and make its best efforts to increase African
28 American representation in front of the house and management positions. *Id.*, § XVI(A)-(B).

1 Specifically, one aspect of this strategy will be the development of a list of recruiting sources and
2 advertising media that reach African Americans. *Id.*, § XVI(B).

3 If any restaurant's African American applicant flow declines for two years in a
4 row, or is lower than the census-based benchmark, the Company will develop a specific plan to
5 increase the number of African American applicants in front of the house jobs at that store,
6 including by enhancing its outreach and recruitment efforts. *Id.*, § XVI(C)-(D).

7 **c. Manager Accountability**

8 McCormick & Schmick's will evaluate restaurant managers in part on their
9 success in helping achieve the diversity goals, and a meaningful portion of managers' bonuses
10 will be based on performance in that area. *Id.*, § XIV.

11 **2. Opening Pathways for Promotion**

12 Furthermore, McCormick & Schmick's will implement a "registration of interest"
13 program, which will announce openings at all area restaurants, inviting qualified individuals to
14 apply and explaining the application process. *Id.*, § XII. This reform will protect against the
15 possibility that African Americans miss promotion opportunities because they are not told about
16 them by friends in management. Every employee who registers interest and meets the basic
17 criteria for the position will be considered an applicant for that position in all area restaurants
18 when openings arise. *Id.*, § XII(B)-(C).

19 **3. Enhanced Procedures for Complaining About Race Discrimination**

20 In addition, McCormick & Schmick's will train all employees on its existing
21 "Ethics Point" complaint system, and enable employees to use Ethics Point to complain about
22 shift and section assignments, the Registration of Interest program, or other measures set out in
23 the Consent Decree. McCormick & Schmick's has also agreed to enhance its investigation
24 procedures to ensure that every complaint is fully investigated, and to document every complaint
25 and the steps taken to investigate each complaint. *Id.*, § XV.

26 **4. Monitoring and Enforcement of Decree**

27 The Diversity Monitor, Barry Goldstein, will monitor McCormick's policies and
28 practices and its human resources and payroll data, to ensure compliance with all aspects of the

1 Consent Decree. Throughout the term of the Consent Decree, McCormick & Schmick's will
2 provide regular progress reports to the Diversity Monitor. *Id.*, § XVIII(C)-(D). The Diversity
3 Monitor will also have access to data and documents reasonably related to his duties. *Id.*, §
4 XVIII(B). The Diversity Monitor will issue annual reports detailing McCormick & Schmick's
5 performance on each aspect of the Consent Decree. *Id.*, § XVIII(E).

6 The parties have agreed that Barry Goldstein will serve as the Diversity Monitor.
7 *Id.*, § X. Mr. Goldstein has significant experience in litigating race discrimination cases; he is a
8 preeminent lawyer in this field. James M. Finberg Declaration in support of Preliminary
9 Approval ("Finberg Preliminary Approval Dec."), ¶ 31.

10 Both the Diversity Monitor and Class Counsel can bring any compliance concerns
11 to the Court's attention. *Id.*, §§ XIX, XX.

12 **B. Monetary Relief**

13 In addition to the significant, comprehensive injunctive relief described above,
14 McCormick & Schmick's will pay Class members who submit valid Claim Forms \$1.1 million.
15 *Id.*, § XXI(D)(1). Importantly, none of this money can revert to McCormick & Schmick's. Each
16 Claimant's share of the monetary relief will be based on: (1) length of service and (2) status as
17 "front of the house" or "back of the house" employee. *Id.*, § XXVII(A).³ As detailed in a
18 separate motion being submitted to the Court today, Class Counsel are also applying for approval
19 of a \$5,000 class representative service award for Ms. Wynne. This amount is to be paid from the
20 \$1.1 million allocated to class monetary relief. *Id.*, § XXI(D)(1).

21 **C. Attorneys' Fees and Expenses**

22 In addition to the \$1.1 million, McCormick & Schmick's has agreed to pay
23 attorneys' fees and costs, as well as costs of settlement administration. As detailed in a further
24 separate motion, McCormick & Schmick's has agreed to pay, separate and apart from the Class
25 monetary relief, \$900,000 to reimburse Class Counsel for the substantial fees and expenses they
26 have incurred to date. *Id.*, § XXI(D)(3).

27 ³ The parties will attempt to distribute the entirety of the \$1.1 million. If, despite the claims
28 administrator's efforts, checks become invalid and are uncashed, the remaining sum shall be paid
to the Administration and Monitoring Fund. *Id.*, § XXVII(E).

1 **D. Claims Administration/Diversity Monitor**

2 McCormick & Schmick’s will pay \$90,000: (a) for claims administration, (b) to
3 compensate the Diversity Monitor, and (c) to pay fees for work to be performed by Class Counsel
4 in future monitoring the settlement, on an hourly basis. *Id.*, § XXI(D)(5).⁴

5 **E. Settlement Class Claims**

6 The Company will pay \$5,000 each to Ms. Wynne and Mr. Byrd to compensate
7 them for release of their non-class claims, including Ms. Wynne’s potential claims for racial
8 harassment/hostile work environment, and Mr. Byrd’s claims arising out of his application for
9 employment with McCormick & Schmick’s. *Id.*, §§ VII(B), XXI(D)(4).

10 **F. The Class Release**

11 In exchange for the aforementioned benefits, the Class members who do not opt
12 out of the settlement will release McCormick & Schmick’s from claims brought in this litigation.
13 As set forth in the Consent Decree:

14 Upon the Settlement Effective Date, all Monetary Relief Class
15 Members who do not timely opt out will release all race
16 discrimination claims against McCormick & Schmick’s and its
17 directors, officers, managers, agents, successors and assigns, which
18 arise out of the conduct alleged in the First Amended Complaint
19 under Title VII, 42 U.S.C. § 1981, the California FEHA and/or any
20 other state or federal law prohibiting race discrimination, for the
21 liability period of May 15, 2002 through the Preliminary Approval
22 Date [April 4, 2008].

19 *Id.*, § VII(A). The scope of this release was fully described in the Court-approved Notice.
20 (Docket No. 82-3).

21 **III. THE PROPOSED SETTLEMENT IS “FAIR, REASONABLE, AND ADEQUATE.”**

22 “[V]oluntary conciliation and settlement are the preferred means of dispute
23 resolution,” especially in complex class actions. *Officers for Justice v. Civil Serv. Comm’n*, 688
24 F.2d 615, 625 (9th Cir. 1982); *Utility Reform Project v. Bonneville Power Admin.*, 869 F.2d 437,
25 443 (9th Cir. 1989). Class action lawsuits readily lend themselves to compromise because of the
26 difficulties of proof, the uncertainties of the outcome and the typical length of the litigation. As a

27 ⁴ Interest earned on the settlement fund and amounts from uncashed checks will also be paid into
28 the Administration and Monitoring Fund. *Id.*, § XXI(D)(5). It is estimated that claims
administration will cost at least \$75,000.

1 result, courts should exercise their discretion to approve settlements “in recognition of the policy
2 encouraging settlement of disputed claims.” *In re Prudential Sec. Inc. Ltd Partnerships Litig.*,
3 163 F.R.D. 200, 209 (S.D.N.Y. 1995).

4 To approve a proposed settlement of a class action under Fed. R. Civ. P. 23(e), the
5 Court must find that the proposed settlement is “fair, adequate and reasonable,” recognizing that
6 “it is the settlement taken as a whole, rather than the individual component parts, that must be
7 examined for overall fairness.” *Staton*, 327 F.3d at 960 (quoting *Hanlon v. Chrysler Corp.*, 150
8 F.3d 1011, 1026 (9th Cir. 1998)).

9 When determining whether to grant final approval, “the court’s intrusion upon
10 what is otherwise a private consensual agreement negotiated between the parties to a lawsuit must
11 be limited to the extent necessary to reach a reasoned judgment that the agreement is not the
12 product of fraud or overreaching by, or collusion between, the negotiating parties, and that the
13 settlement, taken as a whole, is fair, reasonable and adequate to all concerned.” *Officers for*
14 *Justice*, 688 F.2d at 625. The Court should balance “the strength of plaintiffs’ case; the risk,
15 expense, complexity, and likely duration of further litigation; the risk of maintaining class action
16 status throughout the trial; the amount offered in settlement; the extent of discovery completed,
17 and the state of the proceedings; the experience and views of counsel . . . and the reaction of the
18 class to the proposed settlement.” *Class Plaintiffs*, 955 F.2d at 1291. “The recommendations of
19 plaintiffs’ counsel should be given a presumption of reasonableness.” *Boyd v. Bechtel Corp.*, 485
20 F. Supp. 610, 622 (N.D. Cal. 1979); *M. Berenson Co. v. Faneuil Hall Marketplace, Inc.*, 671 F.
21 Supp. 819 (D. Mass 1987); *Ellis v. Naval Air Rework Facility*, 87 F.R.D. 15, 18 (N.D. Cal. 1980)
22 (“[T]he fact that experienced counsel involved in the case approved the settlement after hard-
23 fought negotiations is entitled to considerable weight.”).

24 **A. The Settlement Will Benefit the Class.**

25 The settlement provides two substantial benefits to the Class. First, it creates the
26 Consent Decree, which substantially overhauls McCormick & Schmick’s employment practices
27 to enhance employment opportunities for thousands of African Americans nationwide for years or
28 decades to come. Second, the settlement creates a settlement fund of \$1,100,000, plus (a) half of

1 the employer's share of payroll taxes, (b) claims administration costs, and (c) monitoring costs.

2 Class members will reap great benefits from these improved employment practices
3 – their application and employment experience is expected to significantly improve as the reforms
4 are implemented. Furthermore, Class members will be able to receive settlement payments
5 without waiting years for payment, facing the possibility of having to participate in discovery or
6 trial, or facing the substantial risk of non-recovery.

7 **B. The Reaction of the Class Supports Approval of the Settlement.**

8 Notice was sent to 4,799 Class members on May 16, 2008. Declaration of John
9 Keane Re: Notice Procedures (“Keane Dec.”), ¶ 9. After reasonable efforts were undertaken to
10 find more accurate addresses for those whose Notice packets were returned, and to mail
11 additional Notices to the new addresses, the Claims Administrator determined that 480 Class
12 members did not receive the Notice, and could not be located through reasonable means. *Id.*, ¶
13 13. Therefore, up to 4,319 (4,799 – 480) Class members received the Notice packet by mail. As
14 a result of those efforts, 982 Class members (at least 22.7% of those receiving Notice) filed Claim
15 Forms. Furthermore, the Claims Administrator received not a single objection (0.0%). *Id.*, ¶ 17.
16 Only three individuals (0.1% of those receiving Notice, or 0.3% of those responding to the
17 Notice) opted out of the settlement. *Id.*, ¶ 16. This indicates overwhelming support for the
18 settlement and strongly favors its approval.⁵

19 **C. The Settlement Was Reached Through Arms-Length Negotiations after the**
20 **Parties Conducted An Extensive Investigation and Analysis.**

21 **1. The Parties Actively Litigated Disputed Issues And Engaged In**
22 **Substantial Discovery**

23 The parties and their counsel engaged in extensive fact-gathering, informal and
24 formal discovery, and extensive motion practice before reaching the Settlement Agreement. As
25 noted in the concurrently filed Motion For Approval Of Attorneys’ Fees And Reimbursement Of
26 Costs and the accompanying Declaration of James M. Finberg in Support of (1) Motion for Final

27 ⁵ Because the postmark deadline for Claim Forms is July 25, 2008, and the postmark deadline for
28 objections and opt outs is July 15, 2008, it is possible that these numbers will change. Class
Counsel will submit updated figures on July 31, 2008, in their reply brief in support of final
settlement approval.

1 Approval; (2) Class Counsel's Application for and Award of Attorneys' Fees and Reimbursement
2 of Costs and Expenses; and (3) Motion for Service Payments ("Finberg Final Approval Dec."),
3 Class Counsel spent thousands of hours investigating, preparing, litigating, and negotiating the
4 claims at issue.

5 **a. The Charges, Pre-Filing Investigation, And Complaints**

6 On May 3 and June 29, 2005, Class Counsel filed administrative charges with the
7 EEOC on behalf of Plaintiffs. Finberg Final Approval Dec., ¶ 12. Prior to filing the complaint,
8 Class Counsel surveyed approximately half of McCormick & Schmick's restaurants nationwide
9 and interviewed many witnesses. *Id.* On May 11, 2006, Plaintiffs filed the Complaint in this
10 action, alleging violations of Title VII, 42 U.S.C. § 1981, and FEHA. *Id.*, ¶ 13. Plaintiffs filed
11 the First Amended Complaint on July 28, 2006. *Id.*

12 **b. Litigation of Disputed Issues**

13 At and soon after the parties' Rule 26(f) initial meet and confer, Plaintiffs
14 requested nationwide data to prove their case. McCormick & Schmick's refused, arguing that (a)
15 differences in the restaurant operational practices made nationwide data irrelevant, (b) pre-class
16 certification nationwide discovery was inappropriate, and (c) the discovery was unduly
17 burdensome. On November 29, 2006, Plaintiffs moved to compel these data. (Docket No. 33.)
18 On November 28, 2006, the Court, per Magistrate Judge Zimmerman, granted Plaintiffs' motion
19 in relevant part, ordering production of nationwide data. (Docket No. 42.)

20 **c. Extensive Discovery**

21 Class Counsel took the depositions of six Fed. R. Civ. P. 30(b)(6) designees
22 relating to Company operations, hiring practices, training, compensation policies, store openings,
23 data collection, and others. *Id.*, ¶ 15. Furthermore, Class Counsel reviewed many thousands of
24 pages of documents from McCormick & Schmick's, including personnel manuals and policies,
25 training materials, and employment applications. *Id.*, ¶ 14. Class Counsel also obtained and
26 analyzed Company employment data from 2002 through 2006. *Id.*

27 In addition, both Plaintiffs responded to interrogatories, produced hundreds of
28 pages of documents related to their employment, and submitted to depositions. *Id.*, ¶ 17.

1 Class Counsel and the Company each engaged expert consultants to analyze the
2 payroll data, to determine whether disparities existed in hiring, job assignment, and
3 compensation, and to calculate potential damages exposure. The parties also retained experts
4 regarding the relevant labor pools in the cities in which McCormick's has restaurants. *Id.*, ¶ 14.
5 Expert consultants also assisted the parties in negotiating the settlement by proposing and
6 analyzing various methodologies for establishing hiring benchmarks. *Id.*, ¶ 23.

7 In sum, Class Counsel completed substantial investigation and discovery and
8 negotiated the proposed Consent Decree with fulsome knowledge regarding the strengths and
9 weaknesses of the case and the amounts necessary to compensate Class members for the harm
10 suffered.

11 **2. The Parties Participated In Arms-Length Negotiations Before An**
12 **Experienced Neutral Mediator.**

13 On July 12, September 26, and November 5, 2007, the Parties attended private
14 mediations under the guidance of experienced mediator Hunter Hughes of Atlanta, Georgia, who
15 served as the mediator in many other cases, including *Satchell v. Federal Express Corp.*, C03-
16 2659 SI; C03-2878 SI (N.D. Cal.), *Gonzalez v. Abercrombie & Fitch Stores, Inc.*, No. 03-2817
17 SI, 04-4730 SI, & 04-4731 SI (N.D. Cal.), *Butler v. Home Depot*, No. C94 4335 SI (N.D. Cal.);
18 *Shores v. Publix Super Markets, Inc.*, 95-1162-CIV-T-25E (M.D. Fla.); and *Ingram v. Coca-Cola*
19 *Co.*, 200 F.R.D. 685, 699 (N.D. Ga. 2001). *Id.*, ¶ 19. In addition, counsel for the Parties met
20 face-to-face without the mediator on August 8 and September 12, 2007, and exchanged numerous
21 written settlement proposals during the seven months from July 2007 through February 2008. *Id.*

22 **D. Litigating this Action Would Be Complex, Expensive, and Time Consuming,**
23 **and Would Delay And Endanger Recovery.**

24 As is evident from the immense amount of work performed to investigate, litigate,
25 and test the claims at issue and quantify their value, this action involved difficult legal and factual
26 questions. Litigating these claims, which arose over a period of almost six years, would require
27 additional substantial and expensive discovery and pre-trial motions, as well as the consideration,
28 preparation, and presentation of voluminous documentary and testimonial evidence and the
preparation and analysis of expert reports. Class certification alone could entail the use of expert

1 witnesses. Trial itself could require the further use of expert witnesses at both the liability and
 2 damages phases, and would involve numerous legal and factual issues. As is typical with any
 3 case, but especially so with class actions, appeals would most probably follow with the result that
 4 payments to Class members, if any, would likely occur only after several years of delay. Even if
 5 Plaintiffs prevailed, a judgment might prove larger than McCormick & Schmick's could afford to
 6 pay.

7 In contrast, the Consent Decree before the Court will yield a prompt, certain, and
 8 substantial recovery for the Class. Such a result greatly benefits the parties and the court system.

9 **E. The Recommendations of Experienced Counsel Favor Approval of the**
 10 **Settlement.**

11 The judgment of experienced counsel regarding the settlement is entitled to great
 12 weight. *Boyd*, 485 F. Supp. at 622; *Hanlon*, 150 F.3d at 1026; *M. Berenson Co.*, 671 F. Supp. at
 13 822; *Ellis*, 87 F.R.D. at 18. Here, counsel for both parties endorse the settlement as fair,
 14 adequate, and reasonable.

15 In addition, the recommendation of class counsel should be given a presumption of
 16 reasonableness. *See, e.g., Boyd*, 485 F. Supp. at 622. Class Counsel have extensive experience in
 17 prosecuting and litigating class action wage-and-hour suits like this one. *See* Finberg Final
 18 Approval Dec., ¶ 10; Declaration of Jahan C. Sagafi in Support of (1) Joint Motion for Final
 19 Approval of Class Action Settlement, (2) Plaintiff's Motion for Award of Attorneys' Fees, and
 20 (3) Plaintiff's Motion for Award of Class Representative Service Payment ("Sagafi Dec."), ¶¶ 5-
 21 14, 18. Class Counsel have conducted extensive investigation of this case, including by
 22 reviewing thousands of pages of documents produced by McCormick & Schmick's, deposing six
 23 Company representatives, reviewing Class member data, and interviewing dozens of Class
 24 Members. Finberg Final Approval Dec., ¶¶ 14-16, 39. The fact that qualified and well-informed
 25 counsel endorse the settlement as being fair, reasonable, and adequate heavily favors this Court's
 26 approval of the settlement.

27 **IV. THE COURT SHOULD CONFIRM FINAL CERTIFICATION OF THE CLASSES**

28 The Court's Preliminary Approval Order provisionally certified the settlement

1 Classes pursuant to Rule 23(a), (b)(2), and (b)(3) of the Federal Rules of Civil Procedure. The
2 Court ruled that, for purposes of settlement, the Classes meet the Rule 23 requirements. The
3 Court also appointed Plaintiff Juanita Wynne as Class Representative of both Classes and
4 Plaintiffs' counsel as Class Counsel. The Class members have responded enthusiastically to the
5 settlement. No member of the Class objects to any aspect of the settlement. For these reasons,
6 and the reasons set forth in Plaintiffs' Preliminary Approval Motion, the Court should grant final
7 certification of the Classes for purposes of settlement and should confirm the appointment of the
8 Class Representative and Class Counsel.

9 **V. CONCLUSION**

10 For the reasons set forth above, Plaintiffs respectfully request that the Court (1)
11 grant final approval to the Settlement Agreement and (2) grant final class certification of the
12 settlement Classes conditionally certified in this Court's Preliminary Approval Order.

13 Date: July 2, 2008

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