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12
13 **UNITED STATES DISTRICT COURT**
14 **NORTHERN DISTRICT OF CALIFORNIA**
15 **SAN FRANCISCO DIVISION**

16 CHRISTOPHER OTEY, on behalf of
himself and all others similarly situated,

17 Plaintiff,

18 v.

19 CROWDFLOWER, INC., LUKAS
20 BIEWALD and CHRIS VAN PELT,

21 Defendant.

Case No. 3:12-cv-055524-JST/MEJ

**COMBINED NOTICE OF HEARING AND
MOTION FOR APPROVAL OF PARTIES
MODIFIED FLSA COLLECTIVE ACTION
SETTLEMENT, FINAL COLLECTIVE
ACTION CERTIFICATION FOR
SETTLEMENT PURPOSES ONLY, AND
AUTHORIZATION FOR THE PARTIES TO
EFFECTUATE THEIR SETTLEMENT, AND
MEMORANDUM IN SUPPORT THEREOF**

Date:
Time:
Dept: Courtroom 9, 19th Floor

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23
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25 **I. HEARING NOTICE AND RELIEF REQUESTED**

26 Plaintiffs will call for hearing their Motion for Approval of their *Modified* FLSA Collective
27 Action Settlement, Final Collective Action Certification for Settlement Purposes Only, and
28 Authorization for the Parties to Effectuate their Settlement at 2:00 p.m. on October 30, 2014 in

1 Courtroom 9 of the U.S. District Court for the Northern District of California, 450 Golden Gate
2 Avenue, San Francisco, California, 94102, or as soon thereafter as Plaintiffs may be heard.

3 Plaintiffs request approval of their FLSA collective action settlement, final collective action
4 certification for settlement purposes only, and authorization to effectuate their settlement.

5 **II. INTRODUCTION AND OVERVIEW OF THE PARTIES' NEW SETTLEMENT**

6 Plaintiffs alleged that Defendants failed to pay minimum wage to their on-line
7 "crowdsourced" workers in violation of the Fair Labor Standards Act ("FLSA"), 29 U.S.C. 201 *et*
8 *seq.* Defendants deny that they violated the FLSA, contend among other things that they were under
9 no duty to pay minimum wage to the individuals that performed tasks made available on the internet
10 because those individuals are independent contractors, and, in any event, Defendants contend that
11 they did in fact pay an amount that equals or exceeds the minimum wage to certain contractors
12 depending on the task at issue. The crux of this dispute is whether the workers are actually
13 employees entitled to minimum wage or independent contractors.

14 On April 15, 2014, this Court denied a previous motion to approve the parties' settlement and
15 expressed various concern about those proposed terms. (Doc. 195). The parties have taken the
16 Court's concerns to heart and have negotiated a new settlement which addresses those concerns:

17 **Concern 1: Reduced Scope of the Class**

18 The parties have now negotiated the right to assert claims by all workers who received at
19 least \$5.00 cash compensation in exchange for performing tasks on Amazon Mechanical Turk
20 ("AMT") managed by Defendant Crowdfunder. The size of that class is estimated at 19,992, which
21 is much larger and comprehensive than the previous settlement class proposed by the parties. The
22 size of the Provisional Settlement Class is reduced from the estimated size of the collective action
23 conditionally certified by the Court, because a large percentage of Crowdfunder's on-line workforce
24 failed to perform at least \$5.00 worth of tasks. . Reducing the \$5.00 threshold for participation
25 would create unduly burdensome and costly administration, and would not be cost effective relative
26 to the majority of recoveries likely to be disbursed. Thus, the new class size is both reasonable and
27 practical. Notably, the new class size of 19,992 dwarfs the previously-negotiated 100-worker class
28 size.

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Concern 2: Notice to the Class

On August 27, 2013, this Court conditionally certified Plaintiffs' FLSA claim to proceed as a collective action, ordered Defendants to disclose a class list within 45 days, and ordered Plaintiffs to disseminate notice within 30 days of receiving that class list. Doc. 167, at 9-10. On September 26, 2013, the parties sought a continuance of litigation activities, other than production of the class list, pending the parties' settlement efforts including a mediation scheduled for October 18, 2013. Docs. 176 & 177. The parties mediated on October 18, 2013, culminating in execution of a term sheet. On October 22, 2013, the parties again sought a continuance of all litigation activities to complete the settlement documents. Docs. 179 & 180.

Concern 3: Relief to the Class

The new settlement provides recovery between \$.47 and \$.75 per each \$1.00 received from Defendants. Because Defendants paid about half of the minimum wage on an hourly basis, Plaintiffs believe that a recovery of \$1.00 for each \$1.00 earned from Defendants would approximately provide relief for all unpaid minimum wages. However, substantial reduction of such relief sought is reasonable considering the merits and risks of the various claims and defenses. The parties' settlement provides the opportunity for meaningful relief *now* for numerous low-wage earning workers, rather than the mere possibility of unknown relief at some uncertain future date. Also, Defendants' greatly impacts to size of the overall recovery.

The Court should consider that (1) the named Plaintiffs and their counsel substantially compromised their fees and incentive awards in an effort to provide far more recovery for the class and (2) the much larger class size means that the recovery must be divided into more shares.

Concern 4: Scope of Releases

The release is now limited to only FLSA claims "arising out of or related to any of the claims or allegations asserted, or which could have been asserted, in the Action." Only Provisional Class Members who file claims enter into any waiver or release. Persons who desire to file their own

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1 claims and / or retain their rights need not file a claim for recovery in this action. If they choose not
2 to file any such claim, then they waive and release nothing.

3 Further, the two named Plaintiffs, Christopher Otey and Mary Greth, will sign general
4 releases in exchange for their service awards. As part of his general release of claims, Plaintiff Otey
5 will waive his *individual* claims under Oregon law.¹

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6 **Concern 5: Amount of Attorneys' Fees**

7 Attorneys' fees are have been substantially reduced to equate to exactly 25% of the Gross
8 Settlement Amount. Plaintiffs' law firms, Feinstein, Doyle, Payne & Kravec and Weinhaus &
9 Potashnick, herewith submit detailed time records.

10 **Concern 6: Amount of Incentive Payments**

11 The named Plaintiffs' service awards have been substantially reduced to \$6,000.00 for
12 Plaintiff Otey and \$5,000.00 for Plaintiff Greth. The extra \$1,000.00 to Plaintiff Otey is paid in
13 consideration of his waiver of his *individual* Oregon wage claims. As stated above, the parties'
14 project that Class Members' recoveries will range from a possible low of \$2.35 to a possible high of
15 \$5,796.77. Ms. Greth's recovery as a member of the Settlement Class is estimated to be between
16 \$939.23 and \$1,500.06, depending on the amount of redistributed unclaimed funds. Mr. Otey's
17 recovery as a member of the Settlement Class is estimated to be between \$11.01 and \$17.58,
18 depending on the amount of that redistribution.

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19 Based on these changes, Plaintiffs now respectfully move the court to approve their new
20 settlement.

21 Where, as here, plaintiffs pursue private enforcement of the FLSA, the standard for approval
22 is straightforward: "if the settlement reflects 'a fair and reasonable resolution of a *bona fide*
23 dispute,' the court may approve it." *Deane v. Fastenal Co.*, 2013 U.S. Dist. LEXIS 163330, *7
24 (N.D. Cal. Nov. 14, 2013) (quoting *Lynn's Food Stores, Inc. v. U.S.*, 679 F.2d 1350, 1354-55 (11th
25 Cir. 1982)). Because the parties' new settlement clearly meets the applicable judicial standard for

26 _____
27 ¹ There is no need for Rule 23 analysis because no Rule 23 class claims under Oregon law are
28 settled. Rather, such claims are dismissed without prejudice (except for Otey, who will release his
individual wage claims with prejudice).

1 cases brought under the FLSA, and because it addresses the Court's concerns expressed in its prior
2 Order, Plaintiffs respectfully request that this Court approve the Settlement Agreement, thereby
3 initiating the process by which Class Members may participate in the benefits conferred by this
4 settlement.

5 The material terms of the settlement are memorialized in a written settlement agreement,
6 which is contemporaneously filed as "Exhibit 1" hereto. The parties proposed class notice and claim
7 form are attached to the proposed settlement agreement as "Exhibit 4" and "Exhibit 3," respectively.
8 A proposed Order is attached hereto as "Exhibit 2."

9 III. PROCEDURAL HISTORY

10 Plaintiff Otey filed his Complaint on October 26, 2012 (Doc. 1), filed his First Amended
11 Complaint on December 20, 2012 (Doc. 27), and, together with Plaintiff Mary Greth, filed their
12 Second Amended Complaint on June 17, 2013 (Doc. 121). Plaintiffs alleged on behalf of
13 themselves and a class of all individuals in the US and its territories that had performed
14 CrowdFlower tasks that Defendants violated the minimum wage provision of the FLSA (*Id.*, Count
15 I) and Plaintiff Otey alleged that Defendants violated Oregon's minimum wage law (*Id.*, Count II)
16 and violated Oregon's wage payment law (*Id.*, Count III). Defendants answered each Complaint
17 filed denying the material allegations.

18 Following the parties' Rule 26(f) conference, both sides propounded and responded to
19 extensive written discovery requests including interrogatories, requests for production and requests
20 for admissions. Both sides deposed the key witnesses, including Christopher Otey, Mary Greth and
21 Lukas Biewald, CrowdFlower's CEO and a named defendant. Additionally, both sides extensively
22 investigated this case, which for Plaintiffs included examination, analysis and cataloging of
23 substantial publicly available information regarding Defendants' business.

24 The docket sheet clearly shows that, since inception, both sides vigorously litigated this case
25 and they have contested nearly every conceivable issue.

26 IV. THE KEY SETTLEMENT TERMS

27 The key terms of the parties' settlement, all of course subject to Court approval, are:
28

1 A. The Gross Settlement Amount² is \$585,507.00. (Ex. 1, § I(31)).

2 B. The Net Settlement Amount available for claims of Provisional Class
3 Members is estimated to be \$336,693.00. The Net Settlement Amount shall equal the Gross
4 Settlement Amount less Claim Administration Expenses; Class Representative Service Awards, the
5 AMT Subpoena Cost, Attorney's Fees and Litigation Costs. The parties estimate that the Net
6 Settlement Amount will be \$336,693.00. (*Id.*, § I(33)).

7 C. Dahl Administration will serve as the Claims Administrator in this case.
8 Based on an estimate of the anticipated number of Provisional Settlement Class members who are
9 likely to submit Qualified Claims, the Claims Administration Expenses will not exceed \$29,437.00.
10 (*Id.*, § I(11)).

11 D. Defendants will not oppose Plaintiffs' requests for Class Representative
12 Service Awards in an amount not to exceed \$5,000.00 for Named Plaintiff Greth and \$6,000.00 for
13 Named Plaintiff Otey in recognition of their time and efforts incurred in this litigation and in
14 exchange for general releases. (*Id.*, § (20)).

15 E. The parties will subpoena the names and contact information of Provisional
16 Class Members from AMT. Provided that in the event either Party believes that any costs incurred
17 in obtaining a response to the subpoena which are over \$10,000.00 are unreasonable or excessive,
18 that Party may notify the other Party that it seeks to terminate this Stipulation of Settlement. Upon
19 such notification, the Parties agree to negotiate in good faith regarding whether the costs are
20 unreasonable or excessive such that the Stipulation of Settlement should be terminated. If after ten
21 (10) business days such negotiations prove unsuccessful, the Party seeking termination may apply to
22 the Court for an order terminating the Settlement. (*Id.*, § III(F)).

23 F. Defendants will not oppose Plaintiffs' request for Attorneys' Fees in an
24 amount not to exceed \$146,377.00. This amount represents 25% of the Gross Settlement Amount.
25 (*Id.*, § I(2)).

26 _____
27 ² As used herein, capitalized terms have the same meaning as set forth in the parties Settlement
28 Agreement.

1 G. Defendants will not oppose Plaintiffs' request for Litigation Costs in an
2 amount not to exceed \$52,000.00. (*Id.*, § I(32)).

3 H. Solely for the purpose of effectuating this Settlement, and subject to Court
4 approval, the Parties have stipulated to the decertification of the Conditionally Certified Collective
5 Action and the certification of a Provisional Settlement Class comprised of all contributors who
6 performed CrowdFlower managed tasks on behalf of customers posted on AMT at any time from
7 October 26, 2009, through the Approval Date, who accessed said tasks from an IP address located in
8 the United States or any of its territories (specifically, American Samoa, Guam, U.S. Virgin Islands,
9 Puerto Rico, and the Northern Mariana Islands), and whose cumulative earnings from performing
10 said tasks during this period are equal to or greater than \$5.00 (Five Dollars). Defendants estimate
11 that there are approximately 19,992 members in the Provisional Settlement Class. (*Id.*, § I(36)).

12 I. The parties estimate that at a 100% participation rate by Provisional
13 Settlement Class Members, the estimated range of Settlement Awards is \$2.36 to \$3,653.96, which
14 is the equivalent of approximately \$47 recovery for each dollar of their AMT Earnings. The
15 formula used to determine each Settlement Class Member's award is:

- 16 i. The Net Settlement Amount shall be divided by the aggregate AMT
17 Earnings received by all Provisional Settlement Class Members;
18 ii. The resulting ratio from subsection (i) shall be multiplied by the AMT
19 Earnings of the Settlement Class Member to arrive at each particular
20 Settlement Class Member's Settlement Award.

21 Further, any unclaimed funds will be redistributed to claimants using the same pro-rata formula so
22 that they receive up to a maximum of \$.75 per dollar of their AMT Earnings. Based on the maximum
23 amount of redistributed funds, the estimated range of Settlement Awards is \$3.75 to \$5,809.32 of
24 their AMT Earnings. (*Id.*, §§ I(45) & V(E)).

25 J. Any amounts remaining after such redistribution shall revert to CrowdFlower.
26 (*Id.*, § V(E)).

27 K. The Released Claims encompass any and all federal law claims, obligations,
28 demands, actions, rights, causes of action and liabilities, of whatever kind, nature, character and

1 description, whether known or unknown, whether anticipated or unanticipated, that arose or accrued
2 at any time during the period from October 26, 2009, through the Release Date, for any type of
3 wages, premium pay, damages, statutory damages, unpaid costs, statutory penalties, civil penalties,
4 liquidated damages, punitive damages, interest, attorneys' fees, litigation costs, restitution, or
5 equitable relief, arising out of or related to any of the claims or allegations asserted, or which could
6 have been asserted, in the Action, under the Fair Labor Standards Act, 29 U.S.C. § 201 *et. seq.*
7 ("FLSA"), by Settlement Class Members. (*Id.*, I(39)).

8 L. The claims asserted under Oregon law will be dismissed without prejudice.
9 (*Id.*, § I(30)).

10 V. ARGUMENT

11 Unlike settlements under Fed. R. Civ. P. 23, FLSA settlements are not subject to a two-stage
12 process of preliminary approval followed by final approval, and no final fairness hearing is required.
13 *See, e.g., Beasley v. GC Servs., LP.*, Case No. 4:09CV1748 (CDP) (E.D. Mo. Oct. 4, 2011) (finally
14 approving FLSA settlement based on motion to approve filed only 6 days earlier on September 28,
15 2011 (Doc. 193)). However, Court approval of this collective action settlement is necessary to
16 effectuate a valid and enforceable release of Class Members' FLSA claims. *See, e.g., Deane*, 2013
17 U.S. Dist. LEXIS at *6-7 (observing that "the Eleventh Circuit and numerous district courts within
18 the Ninth Circuit have determined that settlement of an action under the FLSA must either be
19 supervised by the Secretary of Labor or approved by a district court, based upon the legislative
20 purposes underpinning the FLSA.") (citing *Lynn's Food Stores*, 679 F.2d at 1353; *McKeen-Chaplin*
21 *v. Franklin Am. Mortg. Co.*, 2012 U.S. Dist. LEXIS 179635, *6 n.3 (N.D. Cal. Dec. 19, 2012)
22 (collecting cases)).

23 Where, as here, the litigation arises from a private enforcement action under Section 216(b)
24 of the FLSA, 29 U.S.C. § 216(b), the standard for approval is straightforward: "if the settlement
25 reflects 'a fair and reasonable resolution of a *bona fide* dispute,' the court may approve it." *Deane*,
26 at *7 (quoting *Lynn's Food Stores*, 679 F.2d at 1354-55). The parties' proposed settlement should
27 be approved as it reflects a reasonable compromise of the parties' claims and defenses, considering
28 all of the risks and the limited assets available to satisfy a settlement or judgment.

1 **A. The Parties Had a *Bona Fide* Dispute**

2 There is no question that the proposed settlement is the product of contested litigation.
3 Plaintiffs pled detailed factual allegations describing Defendants' allegedly unlawful pay practices,
4 and produced evidence to support their claims. Defendants denied practically all of Plaintiffs'
5 material factual allegations, asserted an array of affirmative defenses that they argued would bar
6 Plaintiffs' claims in whole or in part, and presented evidence contradicting Plaintiffs' allegations and
7 supporting their defenses.

8 As explained above, the parties conducted extensive factual investigations, propounded
9 thorough written discovery, deposed key witnesses, and reviewed document productions.
10 Additionally, both sides scoured the internet for evidence to support their respective positions.
11 Further, the parties performed considerable legal analysis of the various issues implicated in this suit,
12 including fully analyzing and extensively briefing the issues pertaining to collective action
13 certification. Notably, the crux of this litigation entailed application of employee / independent
14 contractor factors (*Donovan v. Sureway Cleaners*, 656 F.2d 1368, 1370 (9th Cir. 1981)) to a new
15 model for distributing and monitoring work over the internet. As the Court is aware, both sides
16 aggressively pursued a variety of motions.
17

18 The settlement of this lawsuit resulted only after prolonged mediation, direct follow-up
19 negotiations between the parties over the next month, consideration of this Court's concerns
20 regarding the parties' original settlement, and negotiation of a new settlement which addresses each
21 of those concerns. Prior to the settlement, the Parties had a full opportunity to analyze the pertinent
22 factual and legal issues and assess the strengths and weaknesses of the claims and defenses at issue,
23 and Defendants' ability to pay a settlement. Accordingly, the Court should readily conclude that the
24 proposed settlement was the product of a *bona fide* dispute and vigorously-contested litigation.
25

26 **B. The Settlement is Fair and Reasonable**

27 The second issue involves a review of the fairness and reasonableness of the proposed
28 settlement.

1 Plaintiffs allege that Defendants failed to pay minimum wage to their on-line workers
2 because those workers are “employees” within the scope and meaning of the FLSA. Defendants
3 adamantly deny that allegation. In any event, if Plaintiffs prove their allegations, then Defendants
4 would be faced with the prospect of a significant monetary verdict in Plaintiffs’ favor, plus the duty
5 to pay both sides’ attorney fees and costs. If Defendants are correct, then Plaintiffs faced a potential
6 dismissal of their claims and no recovery.

7 Significantly, Plaintiffs faced the real probability of no recovery even if they prevailed at trial
8 and upon appeal due to availability of assets to satisfy a judgment or settlement. Due consideration
9 was given to the fact that CrowdFlower is a start-up company, and like any other start-up company a
10 significant adverse judgment would likely be uncollectable. It is the opinion of Plaintiffs’ counsel
11 that the settlement value and payment plan is a reasonable result given the risk that too high of a
12 dollar burden could prevent workers from obtaining any remedy whatsoever. Had Plaintiffs pushed
13 for greater recovery, they likely would have forced Defendants out of business either through a
14 judgment or crippling debt.

15 Meanwhile, the proposed settlement has the salutary effect of providing substantial relief to
16 class members and eliminating the inherent risks both sides may bear if this complex litigation
17 continued to resolution on the merits. The settlement also provides reasonable compensation to the
18 workers who performed the most work during the recovery period.

19 The familiar adage that “public policy favors settlements” is particularly true in complex
20 cases, such as this, where substantial resources can be conserved by avoiding the time, cost and rigor
21 of protracted litigation. *See Jacobs & Crumplar v. Davey Jones Archaeology, Ltd.*, 1995 U.S. App.
22 LEXIS 37168, *5 n.2 (9th Cir. 1995) (“Public policy favor settlement of cases whenever possible.)
23 (citing *Decaney v. Mendoza*, 573 F.2d 1075, 1078 (9th Cir. 1978)); *Lynn’s Food Stores, Inc.*, 679
24 F.2d at 1354 (recognizing policy of encouraging settlement of FLSA litigation). There can be no
25 doubt that substantial time and money, both for this Court as well as the Parties, has been conserved
26 in fairly settling now as opposed to continuing litigation.
27
28

1 As outlined above, the parties adamantly disagree about the merits of Plaintiffs' claims and
2 the viability of the various defenses. Plaintiffs faced risk at several stages including Rule 23 class
3 certification of the Oregon claims, FLSA class decertification, dispositive motions, trial and appeals.
4 Even if successful, Plaintiffs faced the risk of no recovery or modification of business practices.
5 Although the range of potential recovery at trial may have been greater than obtained through this
6 settlement, it is equally possible that such recovery would have been less, or nothing at all. As well,
7 a large award would likely have been uncollectable. Continuing litigation would have been
8 extremely time-consuming and expensive for both sides. Consequently, this settlement provides a
9 certain result and value now, and immediate protection of on-line "crowdsourced" workers, as
10 opposed to a speculative result that may occur years from now. These substantial benefits weigh
11 heavily in favor of the Court's approval of the parties' settlement.
12

13 During this highly-contested litigation, Plaintiffs' counsel have gained a comprehensive
14 knowledge of the facts, legal issues and risks relating to the respective claims and defenses and have
15 acquired ample evidence on which to assess the proposed settlement. Based on their knowledge of
16 the facts and the applicable law, as well as their extensive experience in FLSA actions and other
17 class litigation, Plaintiffs' attorneys believe the settlement is fair, reasonable, and adequate. "Courts
18 give weight to counsels' opinions regarding the fairness of a settlement, when it is negotiated by
19 experienced counsel." *Clesceri v. Beach City Investigations & Protective Servs., Inc.*, 2011 U.S.
20 Dist. LEXIS 11676, *28-29 (C.D. Cal. Jan. 27, 2011); *In re Wash. Pub Power Supply Sys. Sec.*
21 *Litig.*, 720 F.Supp. 1379, 1387 (D. Ariz. 1989) ("Counsel's opinions warrant great weight both
22 because of their considerable familiarity with this litigation and because of their extensive
23 experience in similar actions."). Additionally, named Plaintiffs Otey and Greth have executed the
24 Settlement Agreement indicating their approval of the agreement. Accordingly, this Court should
25 conclude that the proposed settlement reflects a fair and reasonable resolution of a *bona fide* dispute
26 over FLSA coverage and approve the settlement. 11
27
28

1 **C. Incentive Payments Are Appropriate**

2 “Incentive awards are fairly typical in class action cases.” *Rodriguez v. West Publishing*
3 *Corp.*, 563 F.3d 948, 958-59 (9th Cir. 2009) (citing 4 William B. Rubenstein et al., *Newberg on Class*
4 *Actions* § 11:38 (4th ed. 2008); Theodore Eisenberg & Geoffrey P. Miller, *Incentive Awards to Class*
5 *Action Plaintiffs: An Empirical Study*, 53 U.C.L.A. L. Rev. 1303 (2006)). They “are intended to
6 compensate class representatives for work done on behalf of the class, to make up for financial or
7 reputational risk undertaken in bringing the action, and, sometimes, to recognize their willingness to
8 act as a private attorney general.” *Id.* Pursuant to the settlement, Plaintiffs seek reasonable incentive
9 awards for the two named Plaintiffs in amount of \$6,000.00 for Mr. Otey and \$5,000.00 to Ms.
10 Greth.

11 Such incentive awards suit the Ninth Circuit’s recognized purposes for incentive awards.
12 Both Mr. Otey and Ms. Greth provided invaluable assistance in pursuing the claims. They both
13 spent many hours explaining the process of working for Defendants to their counsel in great detail.
14 They both responded to comprehensive written discovery, prepared for depositions, sat for
15 depositions, and participated in a lengthy and trying mediation process. Mr. Otey also relinquished
16 his laptop computer for several days in order to make it available for forensic examination. Mr.
17 Otey traveled from Oregon to San Francisco three times for his deposition, the FLSA conditional
18 certification hearing, and mediation. Ms. Greth traveled from her home in southern Georgia to
19 Atlanta for her deposition. Moreover, both of the named Plaintiffs rejected individual offers because
20 they were focused on achieving reforms intended to help other individuals that perform tasks made
21 available by CrowdFlower on the internet. Thereby, the named Plaintiffs both demonstrated
22 selflessness for a greater cause. The named Plaintiffs have also risked their reputations, as both have
23 been named in several news stories which are publicly available to prospective employers. Also,
24 Mr. Otey attempted doggedly to secure an attorney willing to represent him and others in this novel
25 matter, until he found the undersigned. These reasons justify the incentive awards sought.
26
27
28

1 Notably, this District has approved incentive awards of \$10,000.00 and higher. *See, e.g.,*
 2 *Bolton v. U.S. Nursing Corp.*, 2013 U.S. Dist. LEXIS 150299, *18-19 (N.D. Cal. Oct. 18, 2013)
 3 (approving \$10,000.00 incentive award); *Harris v. Vector Mktg. Corp.*, 2012 U.S. Dist. LEXIS
 4 13797, *24 (N.D. Cal. Feb. 6, 2012) (approving \$12,500.00 incentive award); *Lemus v. H&R Block*
 5 *Enterp., LLC*, 2012 U.S. Dist. LEXIS 11906, *19-21 (N.D. Cal. Aug. 22, 2012) (approving
 6 \$15,000.00 incentive awards to two named plaintiffs); *Glass v. UBS Fin. Servs., Inc.*, 2007 U.S. Dist.
 7 LEXIS 8476, *50-52 (N.D. Cal. 2007) (approving incentive awards of \$25,000.00 to each of four
 8 plaintiffs).

9 **D. Attorney Fees and Costs Are Appropriate**

10 From the inception of this suit, Plaintiffs' attorneys assembled an experienced team of
 11 lawyers that are responsible for this positive result. This case presents a myriad of legal and factual
 12 complexities, not the least of which involves understanding the intricacies and methods of a high-
 13 tech venture and applying the employee / independent contractor factors to a relatively new industry
 14 and business model. Plaintiffs' counsel were able to obtain a conditionally certified FLSA collective
 15 action class, and win myriad legal issues presented to the Court through comprehensive briefing.

16 The fee recovery sought is only a fraction of the lodestar. Excluding time spent pursuing this
 17 matter by the firm of Spiro Law Corp, Plaintiff's attorneys have dedicated considerable time to
 18 pursuing this litigation. The total attorney's fees incurred by Plaintiff's counsel to date exceed \$1.2
 19 Million:

Firm: Weinhaus & Potashnick	Hours	Rate	Fees
Mark Potashnick, Attorney	806.80	\$600.00	\$535,620.00
Iman Ali, Paralegal	31.4	\$125.00	\$ 3,925.00
			\$539,545.00
Firm: Feinstein, Doyle, et al.			
William Payne	.90	\$575.00	\$ 517.50
Ellen Doyle	494.37	\$575.00	\$284,262.75
Edward Feinstein	8.10	\$575.00	\$ 4,687.50
Pamina Ewing	3.25	\$490.00	\$ 1,592.50
Joel Hurt	10.00	\$435.00	\$ 4,350.00
Wyatt Lison	1.25	\$395.00	\$ 493.75
Maureen Davidson-Welling	181.40	\$295.00	\$ 53,513.00
Yitzak Francus	31.63	\$395.00	\$ 12,493.85
McKean Evans	0.85	\$260.00	\$ 221.00
Gregory Murray	10.40	\$135.00	\$ 1,404.00
Sarah Martin	2.80	\$135.00	\$ 378.00

1	Bryan Fox	2.25	\$135.00	\$ 303.75
	Gail Brown	79.50	\$135.00	\$ 10,732.50
2	Michael Georger	82.70	\$135.00	\$ 11,164.50
	Tyson Himes	13.75	\$135.00	\$ 1,856.25
3	Abel Adoh	11.33	\$135.00	\$ 1,529.55
4				\$389,470.40
	Firm: Spiro Law Corp			
5	Ira Spiro	111.1	\$700.00	\$77,770.00
	Jennifer Connor	300.3	\$500.00	\$150,150.00
6	Justin Marquez	332.0	\$375.00	\$124,500.00
				\$352,420.00
7				
8	Total for All Firms:			\$1,205,455.40

9 The time records of all three firms are attached as Exhibits 3 through 5. The total costs

10 The total costs incurred to date are \$50,457.34 as follows:

11		
12	Airfare	\$8,776.45
	Ground Trans./Parking	\$1,319.56
13	Communications	\$847.21
	Copying	\$2,876.55
14	Court Fees.	\$1,320.00
	Process Service	\$450.00
15	Depositions / Transcription	\$6,839.80
	ESI Mgmt. & Storage	\$8,745.00
16	Hotel	\$5,049.26
	Meals	\$578.74
17	Postage / Delivery	\$1,155.93
	Scanning	\$41.10
18	Computer Research	\$6,319.40
	Med. Fee	\$5,388.34
19	Consulting Fees	\$750.00
20		\$50,457.34

21 Additionally, Plaintiffs' counsel will incur additional expenses in attending the settlement approval
 22 hearing scheduled for October 30, 2014. In sum, Class Counsel only seek to recover a small
 23 percentage of their fees and costs incurred.

24 Notably, at the time of settlement, the substantial risks and uncertainties of continued
 25 litigation made it far from certain that an ultimate recovery would be obtained for a class, or that any
 26 fees or costs would be recovered. Further, the complexity, risks and novelty of this action plainly
 27 support the fee requested. In sum, Plaintiffs' attorneys accepted great risk in pursuing this novel
 28 claim.

1 **VI. CLASS NOTICE AND CLAIM FORM**

2 The attached proposed class notice adequately informs the class members of their rights
3 under the settlement agreement, the procedure to claim their respective shares of the settlement, and
4 the consequences of both filing and declining to file a claim. The proposed notice is written to be
5 easily understood by the class. Moreover, the notice directs class members to contact Plaintiffs'
6 attorneys with any questions or concerns.

7 **VII. CONCLUSION**

8 The parties' settlement should be approved as it constitutes a fair and reasonable resolution
9 of a *bona fide* dispute between the parties. Plaintiffs believe that such agreement will substantially
10 and immediately protect the minimum wage.

11
12 WEINHAUS & POTASHNICK
13 /s/ Mark A. Potashnick
14 MARK A. POTASHNICK
15 Attorneys for Plaintiffs
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PROOF OF SERVICE

STATE OF MISSOURI)
) ss.:
COUNTY OF ST. LOUIS)

I am employed in the County of St. Louis, State of Missouri. I am over the age of 18 and am not a party to the within action. My business address is 11500 Olive Blvd., Suite 133, St. Louis, Missouri, 63141.

On September 2, 2014, using the Northern District of California’s Electronic Case Filing System with the ECF ID registered to Mark Potashnick, I filed and served the document(s) described as:

PLAINTIFFS’ NOTICE OF MOTION FOR PARTIAL JUDGMENT ON THE PLEADINGS AND MOTION TO STRIKE CERTAIN DEFENSES

[X] BY ELECTRONIC TRANSMISSION USING THE COURT’S ECF SYSTEM:

I caused the above document(s) to be transmitted by electronic mail to those ECF registered parties listed on the Notice of Electronic Filing (NEF) pursuant to Fed. R. Civ. P. 5(d)(1) and by first class mail to those non-ECF registered parties listed on the Notice of Electronic Filing (NEF). *“A Notice of Electronic Filing (NEF) is generated automatically by the ECF system upon completion of an electronic filing. The NEF, when e-mailed to the e-mail address of record in the case, shall constitute the proof of service as required by Fed. R. Civ. P. 5(d)(1). A copy of the NEF shall be attached to any document served in the traditional manner upon any party appearing pro se.”*

I declare that I am admitted *pro hac vice* in this action.

I declare under penalty of perjury under the laws of the United States that the above is true and correct.

Executed on September 2, 2014, at St. Louis, Missouri.

 s/ Mark Potashnick .
 Mark Potashnick

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General Information

Court	United States District Court for the Northern District of California; United States District Court for the Northern District of California
Federal Nature of Suit	Labor - Fair Labor Standards Act[710]
Docket Number	3:12-cv-05524