

SCOTT COLE & ASSOCIATES, APC  
ATTORNEYS AT LAW  
THE WACHOVIA TOWER  
1970 BROADWAY, NINTH FLOOR  
OAKLAND, CA 94612  
TEL: (510) 891-9800

1 Matthew R. Bainer, Esq. (S.B. #220972)  
2 Kevin R. Allen, Esq. (S.B. #237994)  
3 SCOTT COLE & ASSOCIATES, APC  
4 1970 Broadway, Ninth Floor  
5 Oakland, California 94612  
6 Telephone: (510) 891-9800  
7 Facsimile: (510) 891-7030  
8 Web: [www.scalaw.com](http://www.scalaw.com)

ENDORSED  
FILED  
ALAMEDA COUNTY

AUG 27 2010

CLERK OF THE SUPERIOR COURT  
BY [Signature] DEPUTY

6 Attorneys for Representative Plaintiff  
7 and the Plaintiff Class

8 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA  
9 IN AND FOR THE COUNTY OF ALAMEDA

11 JATINDER KULLAR, CHELSEA  
12 ROCHE individually, and on behalf of  
13 all others similarly situated,

13 Plaintiffs,

14 vs.

15 TULLY'S COFFEE CORPORATION,  
16 and DOES 1 through 100, inclusive,

17 Defendants.

) Case No. RG07362451

) CLASS ACTION

) ORDER AND JUDGMENT FOR FINAL  
) APPROVAL OF CLASS ACTION  
) SETTLEMENT AND FOR ATTORNEYS'  
) FEES AND COSTS

) Date: August 27, 2010  
) Time: 11:00 a.m.  
) Dept.: 20  
) Judge: The Hon. Robert Freedman

) Reservation No. R- 1075978

19  
20 This matter is before the Court on the motion for final approval of the proposed Stipulation  
21 of Class Action Settlement and Release ("Settlement") in the above captioned case (the "Class  
22 Action") entered into between, on the one hand, Representative Plaintiffs Jatinder Kullar and  
23 Chelsea Roche ("Plaintiffs" and/or "Representative Plaintiffs") and, on the other hand, Defendant  
24 Tully's Coffee Corporation which is now known as TC Global Inc. ("Defendants" and/or "Tully's").  
25 The entire matter of the proposed Settlement having been duly noticed, and having been fully  
26 considered by the Court,

1           **IT IS HEREBY ORDERED THAT:**

2           1.       This Court has jurisdiction over the claims of the members of the Settlement Class  
3 asserted in this proceeding, personal jurisdiction over the Representative Plaintiffs and Tully's (the  
4 "Settling Parties"), and subject matter jurisdiction to approve the Settlement.

5           2.       Notice given to the members of the Settlement Class was reasonably calculated under  
6 the circumstances to apprise the Class Members of the pendency of the Class Action, all material  
7 elements of the proposed Settlement, and their opportunity to exclude themselves from, to object to,  
8 or to comment on the Settlement and to appear at the final fairness hearing. The notice was  
9 reasonable and the best notice practicable under the circumstances and provided adequate and  
10 sufficient notice to all Class Members and complied fully with the laws of the State of California, the  
11 California Code of Civil Procedure, the California Rules of Court, due process, and any other  
12 applicable statutes or rules. A full opportunity has been afforded to the members of the Settlement  
13 Class to participate in this hearing, and all members of the Settlement Class and other persons  
14 wishing to be heard have been heard. Accordingly, the Court determines that all members of the  
15 Settlement Class are bound by this Judgment, Final Order and Decree

16           3.       The Court finds that the applicable requirements of the California Code of Civil  
17 Procedure section 382 and California Rules of Court Rules 3.769 and 3.770 have been satisfied with  
18 respect to the Settlement Class and the Settlement.

19           4.       Class certification is an appropriate method for protecting the interests of the Class  
20 Members and resolving the common issues of fact and law arising out of the alleged violations of  
21 California law.

22           5.       California Code of Civil Procedure section 382 provides for class certification when  
23 there is an ascertainable class and a well-defined community of interest among Class Members. The  
24 Settlement Class continues to meet this standard for class certification, so that final certification of  
25 the Settlement Class is appropriate.

26           6.       The Court finds for the purposes of settlement that: (a) the Settlement Class is  
27 ascertainable; (b) the members of the Settlement Class are so numerous that joinder would be  
28

1 impracticable; (c) there is a community of interest between the members of the Settlement Class; (d)  
2 there are questions of law and fact that are common to the Settlement Class and those common  
3 questions predominate over individual questions; (e) the claims of the Class Representatives are  
4 typical of the claims of absent members of the Settlement Class to which they belong; and (f) the  
5 Class Representatives and Class Counsel have and will fairly and adequately represent the interests  
6 of the absent members of the Settlement Class.

7 7. The Settlement Class meets the predominance and superiority requirements for class  
8 certification. Common issues of fact and law predominate and in this proceeding, the claims of  
9 members of the Settlement Class all hinge on whether the Class Members were nonexempt  
10 employees of Tully's who were deprived of meal and rest breaks in violation of California law. This  
11 Class Action is also superior to individual actions given the substantial costs associated with  
12 litigating so many individual actions and the relatively small amount of recoverable damages per  
13 Class Member.

14 8. Accordingly, pursuant to California Code of Civil Procedure section 382, the Court  
15 makes final its conditional certification of the Settlement Class for settlement purposes only, and  
16 confirms the appointment of the Class Representatives and Class Counsel to represent the Settlement  
17 Class, as set forth above.

18 9. The Court hereby grants final approval to the Settlement and finds that it is fair,  
19 reasonable and adequate, and in the best interests of the Class as a whole.

20 10. The Settlement is entitled to a presumption of reasonableness, as it was negotiated at  
21 arm's-length over an extended period of time by experienced and well-prepared Class Counsel,  
22 using two different skilled mediators, and no objections have been filed. *7-Eleven Owners for Fair*  
23 *Franchising v. Southland Corp.*, 85 Cal.App.4th 1135, 1151 (2001).

24 11. The Settlement is also fair, reasonable, and adequate, as measured by the relevant  
25 criteria. *See Dunk v. Ford Motor Co.*, 48 Cal.App.4th 1794, 1801 (1996) (listing and applying  
26 factors).

1 12. Prior to entering into the proposed Settlement, Class Counsel, who have extensive  
2 experience in class action and wage and hour litigation, were well-informed about the potential risks  
3 and rewards of continued litigation, having conducted extensive discovery and investigation.

4 13. The reaction of Class Members favors settlement approval. According to the claims  
5 administrator, no members of the Class objected to the settlement and very few of them opted out.

6 14. Upon final approval by the Court, and payment by Defendants of all amounts owed  
7 therein, the Settlement Class, and each Class Member who has not submitted a timely and valid  
8 Request for Exclusion form, will release TC Global Inc., formally known as Tully's Coffee  
9 Corporation, and each of its present and former affiliates, parent companies, subsidiaries,  
10 shareholders, officers, partners, directors, employees, agents, attorneys, insurers, predecessors,  
11 representatives, accountants, successors and assigns, past, present, and future, and all persons acting  
12 under, by, through, or in concert with any of them, from any and all claims, debts, liabilities,  
13 demands, obligations, guarantees, costs, expenses, attorneys' fees, damages, action or causes of  
14 action contingent or accrued for, or which relate to the claims, acts, facts, transactions, occurrences,  
15 representations, or omissions asserted in the Lawsuit, including without limitation to, claims under  
16 the California Labor Code or Business & Professions Code (including Section 17200), claims for  
17 restitution and other equitable relief, liquidated damages, punitive damages, waiting time penalties,  
18 penalties of any nature whatsoever, or any other benefit claimed on account of the allegations  
19 asserted in the Lawsuit ("Released Claims"). This Stipulation of Settlement will release all Released  
20 Claims arising between December 20, 2003 and the June 23, 2010. ("Release Period"). Each Class  
21 Member acknowledges that they have read and are familiar with the terms of California Civil Code  
22 section 1542, which states:

23 **A general release does not extend to claims which the creditor does not know or**  
24 **suspect to exist in his or her favor at the time of executing the release, which if**  
25 **known by him or her must have materially affected his or her settlement with**  
26 **the debtor.**  
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1 By submitting a claim form and failing to submit a timely request for exclusion from the settlement,  
2 each Class Member specifically waives the protections of California Civil Code section 1542, and  
3 intends to waive and does waive all claims described above, whether known or unknown.

4 15. In addition to the release as set forth immediately above, the Class Representatives  
5 also individually release the Releasees from any and all charges, complaints, claims, causes of  
6 action, demands, disputes, damages, business expenses, attorneys' fees, costs, losses and liabilities of  
7 any kind or nature whatsoever, known or unknown, suspected or unsuspected, asserted or unasserted,  
8 which Plaintiffs, at any time heretofore, have or claimed to have or which Plaintiffs may have arising  
9 out of, relating to or resulting from Plaintiffs' employment with Defendant or the subject matter of  
10 the Lawsuit. Plaintiffs specifically waive the protections of the general release provided for in this  
11 paragraph shall be valid upon final approval of the Settlement Agreement and payment by Defendant  
12 of all amounts owed herein.

13 16. The allocation of settlement proceeds, set forth in the Settlement and described in the  
14 notices disseminated to the Class Members, is also hereby approved as fair, adequate, and  
15 reasonable. The allocation was based on Class Counsel's estimate of the relative damages allegedly  
16 suffered by the Class Members.

17 17. The Court finds that Class Counsel agreed to the Settlement only after carefully  
18 considering sufficient evidence to assess the potential value of the Class Members' claims and  
19 weighed it against the risks and expenses endemic in the pursuit of further litigation.

20 18. An award of attorneys' fees of \$125,000 plus actual litigation costs in the amount of  
21 \$34,537.92 is hereby approved and awarded to Class Counsel. The Court finds that the amount of the  
22 fee award is based on all factors available to the Court and the application of both the percentage of  
23 the fee and the lodestar-plus-multiplier methods for awarding reasonable attorneys' fees and costs.  
24 Both methods are available to the Court, both produce the same result, and the Court relies on each  
25 method as an independent basis for its determination of a reasonable award of attorneys' fees and  
26 costs.

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1           19.     The award of attorneys' fees is one-third of the total value of the common benefit  
2 created by the Settlement. In setting this award, the Court has considered that fee awards that meet or  
3 exceed the percentage requested here are generally held to be reasonable. *See, e.g., Cristman v. Good*  
4 *Guys, Inc.*, (San Diego Super. Ct. 2007) Case No. GIS 21939 [33 1/3% fee award plus costs]  
5 [Cannon, J.]; *BCI Overtime Cases*, (San Bernardino Super. Ct. 2007) J.C.C.P.4280 [33 1/3% fee  
6 award plus costs] [Gunn, J.]; *Menchyk v. Beverages & More, Inc.*, (Alameda County Super. Ct.  
7 2006) Case No. RG 05196918 [33 1/3% fee award plus costs] [McKibben, J.]; *O'Hara, et al. v.*  
8 *Factory 2-U Stores, Inc.*, (Alameda County Super. Ct. 2002) No. 834123-5 [33 1/3% fee award plus  
9 costs] [Sabraw, J.]; *Davis v. The Money Store, Inc.*, (Sacramento Super. Ct. 2000) No. 99AS01716  
10 [33 1/3 % fee award]; *In re Milk Antitrust Litigation*, (L.A. Super. Ct. 1998) Civ. Case No.  
11 BC070061 [33 1/3% award] [Lefkowitz, J.]; *In re Facsimile Paper Antitrust Litigation*, (San  
12 Francisco Super. Ct. 1997) Civ. Case Nos. 963598, 964899, and 967137 [33 1/3% fee award plus  
13 costs] [Garcia, J.]; *In re Liquid Carbon Dioxide Cases*, (San Diego Super. Ct. 1996) J.C.C.P. 3012  
14 [33 1/3% award plus costs]; *In re California Indirect-Purchaser Plasticware Antitrust Litigation*,  
15 (San Francisco Super. Ct. 1995) Civ. Case Nos. 961814, 963201, and 963590 [33 1/3% fee award  
16 plus costs] [Garcia, J.]; *Abzug v. Kerkorian*, (L.A. Super. Ct., Nov. 1990) CA-000981 [45% fee  
17 award plus costs]; *Haitz v. Meyer, et al.*, (Alameda Super. Ct., Aug. 20, 1990) No. 572968-3 [45%  
18 fee award].

19           20.     The attorneys' fees award is also warranted based on the lodestar-plus-multiplier  
20 method. Having reviewed Class Counsels' time records, the Court finds Class Counsel has  
21 accumulated a lodestar of at least \$830,121.50. Class Counsel has requested attorneys' fees of  
22 \$125,000. Applying the lodestar-plus-multiplier analysis, it is seen that Class Counsel have  
23 requested a multiplier of 0.15 on their lodestar to arrive at the requested award. In granting the  
24 requested award based on the lodestar-plus-multiplier approach, the Court notes that courts routinely  
25 grant multipliers exceeding 2.0. *See, e.g., Wershba v. Apple Computer, Inc.*, 91 Cal.App.4th 224, 255  
26 ["Multipliers can range from 2 to 4 or even higher"]; *Otero v. Rent-A-Center, Inc.*, (L.A. Super. Ct.  
27 2000) No. BC217038 [awarding 2.43 multiplier in wage and hour case]; *Glendora Community*  
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1 *Redev. Agency v. Demeter*, 155 Cal.App.3d 465 (1984) [12x multiplier awarded]; *In re Cenco, Inc.*  
2 *Secs. Litig.*, 519 F.Supp. 322 (N.D. Ill. 1981) [4x multiplier awarded]; *In re Beverly Hills Fire Litig.*,  
3 639 F.Supp. 915 (E.D. Ky. 1986) [5x multiplier awarded]; *Arenson v. Board of Trade*, 372 F.Supp.  
4 1349 (N.D. Ill. 1974) [4x multiplier awarded.] The Court further notes that this is a “diminishing  
5 multiplier” in that Class Counsel have submitted their lodestar based on the time they spent through  
6 a date prior to filing the final approval moving papers, and the lodestar does not reflect the actual  
7 further billable hours Class Counsel have expended since the motion was filed and will expend in the  
8 future due to their continuing administrative and other duties in connection with implementing the  
9 Settlement. This future work should be taken into account in considering the reasonableness of Class  
10 Counsels’ requested multiplier. The Court finds that Class Counsels’ hourly rates were reasonable  
11 for the work that they performed.

12 21. The Court also finds that the fee award is supported by the other factors often used by  
13 courts when determining whether a requested fee award is reasonable. *See Serrano v. Priest*, 20  
14 Cal.3d 25, 49 (1977). The Court acknowledges that Class Counsels’ recovery of fees and costs was  
15 completely contingent upon and tied to their success on behalf of the Class. Collectively, Class  
16 Counsel invested over 2,933.7 hours litigating this case and were therefore precluded from a  
17 substantial amount of other employment. As reflected in their moving papers in support of the final  
18 approval motion, Class Counsel are very experienced in class action litigation, especially in the wage  
19 and hour arena.

20 22. The costs of \$34,537.92, as set forth by Class Counsel, are responsible and were  
21 and/or will be incurred for the benefit of the Class. The types of costs Class Counsel reported are  
22 appropriate for reimbursement.

23 23. The Court has considered Plaintiffs’ application for enhancement awards to the  
24 named plaintiffs pursuant to the Settlement. The Court has also considered Defendant’s arguments  
25 regarding the propriety of these awards. The Court hereby finds that an enhancement award of  
26 \$6,000 to plaintiff Jatinder Kullar and \$1,500 to plaintiff Chelsea Roche (a total of \$7,500) is fair,  
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1 reasonable and adequate and, hereby, directs such amounts to be paid pursuant to the terms of the  
2 Settlement.

3 24. The Court approves administration costs to the Claims Administrator, Gilardi & Co.,  
4 LLC in the amount of \$17,500 as reasonable and directs their payment pursuant to the terms of the  
5 Settlement.

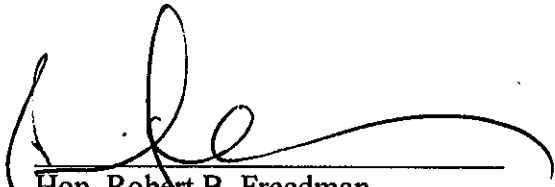
6 25. A final accounting hearing is scheduled for April 22, 2011 at 10:00 AM.  
7 Plaintiffs shall cause a final accounting statement to be filed no later than April 19, 2011. The  
8 final accounting statement shall include a declaration from the claims administrator providing details  
9 about the claims payment process and, specifically, about any settlement checks that were not cashed  
10 by the stale date. The statement shall also include the parties proposed *cy pres* organization(s)  
11 pursuant to California Code of Civil Procedure Section 384 and the terms of this Order and  
12 Judgment. 10% of the total attorneys' fees awarded to Class Counsel herein shall be held in an  
13 interest-bearing account, maintained either by the claims administrator or by Class Counsel, pending  
14 submission of final accounting of the claims payment process and the Court's designation of *cy pres*  
15 recipient(s).

16 26. Pursuant to California Rule of Court, Rule 3.779(h), the Court retains jurisdiction  
17 over the parties to enforce the terms of this Order and Judgment.

18 For all of the reasons set forth above, Representative Plaintiff's Motion for Order and  
19 Judgment Granting Final Approval to Class Action Settlement and Application for Fees and Costs is  
20 hereby **GRANTED**.

21  
22 **IT IS SO ORDERED.**

23  
24 Dated: August 27 2010

  
25 Hon. Robert B. Freedman  
26 Judge of the Superior Court  
27  
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