

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

Civil Division

Central District, Spring Street Courthouse, Department 7

BC525388

**ROBYN JAMES ET AL VS AMERICAN CORPORATE
SECURITY INC**

July 9, 2019

2:00 PM

Judge: Honorable Amy D. Hogue
Judicial Assistant: Alfredo Morales
Courtroom Assistant: Teresa Bivins

CSR: None
ERM: None
Deputy Sheriff: None

APPEARANCES:

For Plaintiff(s): Katherine Jean Odenbreit; Michael Andre Swift

For Defendant(s): Dana Lee Douglas

NATURE OF PROCEEDINGS: Hearing on Motion for Preliminary Approval of Settlement

The matter is called for hearing.

The parties have been provided with copies of the Court's tentative ruling. The Court's tentative ruling is as follows:

"TENTATIVE RULING

Grant Preliminary Approval contingent on counsel addressing the following:

1. Paragraph 69 of the Settlement Agreement discusses releasing "Qualified Settlement Class Member Released Claims" as defined within the Settlement, however, no definition for "Qualified Settlement Class Member Released Claims" exists within the settlement; only a definition for "Settlement Class Member Released Claims" can be found within paragraph 29 of the Settlement. Are these terms one and the same?
2. Provide Proof of service of the proposed settlement on the LWDA. (Labor Code §2699(1)(2).)

BACKGROUND

On October 23, 2013, Plaintiffs Robyn James and Tiffany Belle filed their class action complaint against Defendant American Corporate Security Inc., alleging various wage and horn violations as well as violations of the California Business and Professions Code ("B&PC").

The Complaint sought wages and penalties for California security guard employees based on Plaintiffs' allegations of Defendant's failure to pay straight time and overtime wages, failure to provide meal and rest periods, failure to timely pay wages upon termination, failure to provide accurate wage statements or keep accurate payroll records, and violations of Bus. & Prof. Code, §17200, et seq. On January 27, 2015, Plaintiffs filed a First Amended Complaint which added alleged violations of Lab. Code, § 2698,2699 et seq, (Private Attorneys General Act). On July 7, 2015, Plaintiffs filed a Second Amended Complaint which added alleged violations of failure to reimburse for necessary business expenditures in violation of Lab. Code, § 2802.

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On July 7, 2014, Defendant brought a motion to strike the class allegations asserting res judicata based on two previous actions where class certification was denied: Fluegal v. America Corporate Security, LASC case number BC402928 and Robinson v. American Corporate Security USDC case number 08-cv-06777-GAF (PJWx). On December 6, 2015, the Court granted Defendant's motion to strike the class allegations with the exception of the claim for unreimbursed expenses and denied the motion as to Plaintiffs' PAGA claims.

Counsel represents that throughout this matter, the parties engaged in discovery and investigation including the exchange of tens of thousands of pages of documents, a database of electronic and images of employee records and information several depositions of lay witness and persons most qualified, a motion to strike, motions to compel discovery, and three mediation sessions, class surveys, interviews of dozens of putative class members, and ultimately preparing the matter for trial.

On April 17, 2017, the Parties participated in mediation with mediator Steven Rottman, however the matter did not resolve. On December 21, 2017, and again on June 21, 2018, the Parties participated in two full-day mediations with mediator Michelle R. Reinglass, Esq. with Judicate West in Santa Ana, California.

During the second mediation in December 2017, Defendant raised at issue regarding the company's inability to support a seven-figure settlement/judgment in this matter. Because the primary claim left in the action involved PAGA, Plaintiffs had to consider the Court's ability to reduce penalties established at trial on the basis of certain criteria, one being the be ability of the Defendant to pay. Counsel contends that Defendant provided to Plaintiffs certain confidential financial documents including tax returns, balance sheets and Profit & Loss statements.

Plaintiffs' counsel had the documents examined by an expert, Eric R. Lietzow, CPA/ABV of Desmond, Marcello & Amster. Mr. Lietzow examined the records provided by Defendant and advised Plaintiffs' counsel with his opinion regarding Defendant's ability to pay any settlement or judgment. The Parties further discussed the financial status and other related issues during the third mediation in July 2018. Following the third mediation, the parties continued to work with the mediator and ultimately were able to agree to this settlement.

A partially executed copy of the Settlement is attached to the Supplemental Declaration of Katherine J. Odenbreit ("Odenbreit Supp. Decl."), as Exhibit 1.

On May 28, 2019, the Court issued a checklist of items for the parties to address and continued preliminary approval. In response, on June 21, 2019, counsel filed supplemental briefing ("Supp. Brief"), the Declaration of Dana Douglas ("Douglas Decl."), and a fully executed Amended Settlement Agreement attached to the Supplemental Declaration of Katherine J. Odenbreit ("Odenbreit 2nd Supp. Decl.") as Exhibit C.

Now before the Court is Plaintiff's motion for preliminary approval of the settlement agreement.

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SETTLEMENT CLASS DEFINITION

“Class” and “Settlement Class” mean all current and former non-exempt, non-event staff security guard employees employed by Defendant ACS in California on or after October 23, 2012 through December 31, 2018, who worked for Defendant more than one workweek during the Class Period. (Settlement Agreement, ¶6)

- “Class Period” shall mean October 23, 2012 through December 31, 2018. (¶8)
- The parties stipulate to class certification for settlement purposes only. (¶42)
- There are 1,055 class members. (¶54.)
- Data provided by Defendant in October 2018 indicates there are approximately 124,110 workweeks during the class period. The parties are unable to say with certainty that this total number of workweeks excludes Special Event security guards, employees who worked one week or less during the Class Period, employees whose dates of employment were unclear or not provided, assuming each Employee ID provided by Defendant represents a unique employee and assuming the employee worked all weeks between the listed hire date and date last worked. If the actual number of workweeks claimed is more than 10% greater than stated above Plaintiffs will have the option of withdrawing from the Settlement. (¶49.5)

TERMS OF SETTLEMENT AGREEMENT

The essential terms are as follows:

- The Maximum Settlement Amount (“MSA”) are is \$450,000, non-reversionary. (¶¶20, 46)
- The Net Settlement Amount (“NSA”) (\$116,040) is the MSA minus the following:
 - o Up to \$149,985 (1/3) for attorney fees (¶43.1);
 - o Up to \$145,000 for litigation costs (¶43.2.);
 - o Up to \$30,000 for Service Awards to the Class Representatives (\$15,00 each) (¶43.3);
 - o \$1,875 (75% of \$2,500 penalty) to the LWDA (¶43.5); and
 - o Estimated \$7,100 for Settlement Administration Costs. (¶43.4)
- Defendant’s employer share of the payroll taxes as required by law will be paid by Defendant outside of the Maximum Settlement Amount. (¶43.6)
- There is a claim form requirement. (¶3)
 - o Individual Class Members will be entitled to receive a Settlement Payment only if the Class Member does all of the following: (i) completes the Claim Form in its entirety; (ii) signs the Claim Form (iii) returns the Claim Form to the Settlement Administrator on or before the expiration of the Claim Submission Period. Settlement Class Members will be permitted to submit Claim Forms via U.S. Mail; to a dedicated email, or facsimile, to the Settlement Administrator by calling a toll-free number and providing identity verification information. The Settlement Agreement, Claim Form, and Opt-Out Form and final judgment will be accessible to

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Settlement Class Members through the Settlement Administrator's website. A post card reminding Settlement Class Members to submit their Claim Forms will be sent 45 days from the date of the mailing of the Notice Packet. The Settlement Administrator will take all reasonable efforts to locate updated contact information for Settlement Class Members whose reminder postcards are returned as undeliverable. (¶64)

o The Parties believe that this particular class is experienced with the notice and claim process and are confident they will receive an above-average claims rate. (Odenbreit 2nd Supp. Decl., ¶21.)

• Calculation of Settlement Class Member Settlement Amounts: The Net Settlement Sum (“NSS”) will be the amount the Class Action Administrator will calculate pro rata settlement payments to Qualified Settlement Class Members from the Net Settlement Amount based on each Qualified Settlement Class Member’s Qualifying Pay Periods as reflected on Defendant’s internal records as follows: (¶49)

o The number of Qualifying Work Weeks that each Qualified Settlement Class Member was employed shall be determined (¶49.1);

o The number of Qualifying Work Weeks that all Qualified Settlement Class Members were employed shall be aggregated (¶49.2); and

o The percentage obtained by dividing the number of Qualifying Work Weeks for an individual Qualified Settlement Class Member by the aggregate of all Qualifying Work Weeks for all Qualified Settlement Class Members shall be used to calculate that individual Qualified Settlement Class Member’s relative share of the Net Settlement Amount. (¶49.3)

o The amount of the NSA not claimed by Class Members will be distributed on a pro rata basis to those Settlement Class Members who submitted timely and valid Claim Forms. (¶50)

□ Tax Treatment: 10% as wages, 45% as interest, and 45% as penalties. (¶44)

• “Claim Submission Period” means the time period commencing on the date Claim Forms are mailed by first class U.S. mail to Class Members and ending 90 days later, unless the 90th day falls on a Sunday or federal holiday, in which case the time period will be extended to the next day on which the US. Postal Service is open. (¶2)

• “Opt-Out Period” shall mean a period of 90 calendar days from the date the Class Action Administrator mails the Settlement Documents to Settlement Class Members. If the 90th day falls on a Sunday or holiday, the Opt-Out Period shall end on the next business day that is not a Sunday or holiday. (¶23, 66)

• Disputes: Disputes must be received within 14 calendar days following the conclusion of the Opt-Out period. (¶68)

• Objections: All objections to the Settlement by any Settlement Class Member must be received by the Class Action Administrator no later than 14 calendar days following the conclusion of the Opt-Out Period. (¶70)

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o If more than 8% of the Settlement Class Members Opt-Out of the Settlement, Defendant shall have the right to withdraw from the settlement. (¶78)

• Uncashed Settlement Checks. Pursuant to California Labor Code section 384, subdivision (b) any settlement checks that remain uncashed 180 or more calendar days after issuance by the Class Action Administrator shall be voided. The entire amount of each Claimant's uncashed settlement check(s) shall be in turn sent to Bet Tzedek, a qualified cy pres recipient, in the name of Robyn James and Tiffany Belle v. American Corporate Security. (¶76)

o Neither Counsel nor the parties have any interest or direct involvement with Bet Tzedek. (Odenbreit 2nd Supp. Decl., ¶24; Douglas Decl., ¶¶2-3.)

• "Settlement Administrator" means Phoenix Class Action Administrators. (¶4)

• Pursuant to California Labor Code § 2699(l), the Settlement Agreement has been provided to the Labor and Workforce Development Agency on _____.

• Participating class members and the named Plaintiff will release certain claims against Defendants. (See further discussion below)

ANALYSIS OF SETTLEMENT AGREEMENT

1. Does a presumption of fairness exist?

1. Was the settlement reached through arm's-length bargaining? Yes. On April 17, 2017, the Parties participated in mediation with mediator Steven Rottman, however the matter did not resolve. (Declaration of Katherine J. Odenbreit ("Odenbreit Decl."), ¶7). On December 21, 2017, and again on June 21, 2018, the Parties participated in two full-day mediations with mediator Michelle R. Reinglass, Esq. with Judicate West in Santa Ana, California. (Ibid.) During the second mediation between the parties in December 2017, Defendant raised at issue regarding the company's inability to support a 7-figure settlement/judgment in this matter. Because the primary claim left in the action involved PAGA, Plaintiffs had to consider the Court's ability to reduce penalties established at trial on the basis of certain criteria, one being the ability of the Defendant to pay. Defendant provided to Plaintiffs certain confidential financial documents including tax returns, balance sheets and Profit & Loss statements. (Id. at ¶13). Plaintiffs' counsel had the documents examined by an expert, Eric R. Lietzow, CPA/ABV of Desmond, Marcello & Amster. (Ibid.) Mr. Lietzow examined the records provided by Defendant and advised Plaintiffs' counsel with his opinion regarding Defendant's ability to pay any settlement or judgment. (Ibid.) The Parties further discussed the financial status and other related issues during the third mediation in July 2018. (Ibid.) Following the third mediation, the parties continued to work with the mediator and ultimately were able to agree to this settlement. (Ibid.)

2. Were investigation and discovery sufficient to allow counsel and the court to act intelligently? Yes. Counsel represents that throughout this matter, the parties engaged in discovery and

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investigation including the exchange of tens of thousands of pages of documents, a database of electronic and images of employee records and information several depositions of lay witness and persons most qualified, a motion to strike, motions to compel discovery, three mediation sessions, class surveys, interviews of dozens of putative class members, and ultimately preparing the matter for trial. (Id. at ¶7).

3. Is counsel experienced in similar litigation? Yes. Class Counsel is experienced in class action litigation, including wage and hour class action cases. (Id. at ¶¶14-24.)

4. What percentage of the class has objected? This cannot be determined until the fairness hearing. (See Weil & Brown, Cal. Practice Guide: Civil Procedure Before Trial (The Rutter Group 2014) § 14:139.18, [“Should the court receive objections to the proposed settlement, it will consider and either sustain or overrule them at the fairness hearing.”].)

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

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

1. Strength of Plaintiff’s case. “The most important factor is the strength of the case for plaintiffs on the merits, balanced against the amount offered in settlement.” (Kullar v. Foot Locker Retail, Inc. (2008) 168 Cal.App.4th 116, 130.)

Plaintiffs’ operative second amended complaint alleges that Defendant failed to pay Plaintiffs and Plaintiffs’ class all wages owed, failed to provide legally compliant meal or rest periods, failed to pay all wages upon ending of employment, failed to keep accurate payroll records, violations of the Private Attorney General Act (PAGA) and, failure to reimburse necessary business expenditures. (Odenbreit Decl., ¶11.) One of the primary theories upon which Plaintiffs contend Defendant violated the California Labor Code is Defendant’s implementation of an on-duty meal period agreement. (Ibid.) Defendant required all security guard employees to sign an agreement upon hiring for waiver of an off-duty meal period. (Ibid.) However, on December 6, 2015, the Court granted Defendant’s motion to strike the class allegations with the exception of the claim for unreimbursed expenses and denied the motion as to Plaintiffs’ PAGA claims. (Ibid.) The PAGA claims proceeding to trial were identical to the previously dismissed class claims. (Ibid.) Counsel represents that Plaintiffs had conducted discovery, obtained documents and records for all potential aggrieved employees and had engaged the services of an expert statistician to analyze the data. (Ibid.) Plaintiffs estimated the exposure of the claims ranging from \$2,000,000 to \$3,000,000. (Id. at ¶12.)

CLAIM EXPOSURE

Unpaid Wage Claim <\$40,000

Off-Duty Meal Breaks \$1,050,000

Rest Breaks \$200,000

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Payment of Wages Upon Separation \$400,000

Itemized Wage Statements \$283,725

Business Expenses <\$50,000

PAGA \$5,497,100 (25% to aggrieved employees would be \$1,374,000)

TOTAL \$3,397,725 - \$7,520,825

Upon request for further briefing by the court, counsel has provided the following breakdown:
(Odenbreit 2nd Supp. Decl., ¶¶12-18.)

Counsel states that the dismissal of the majority of Plaintiff's claims significantly hampers the exposure. (Odenbreit Decl., ¶12.) Counsel contends that Plaintiff has secured for the class approximately 15% of the estimated value without further protracted litigation providing for a prompt and sure payment. (Id. at ¶13.) Counsel states that Plaintiff's initial evaluation was primarily based within the penalties afforded by PAGA. (Ibid.) However, not only were a number of claims dismissed by the Court, but Plaintiff has also been provided confidential financial data by Defendant and has had that data analyzed by an expert. (Ibid.) Defendant provided to Plaintiffs certain confidential financial documents including tax returns, balance sheets and Profit & Loss statements. (Ibid.) Plaintiffs' counsel had the documents examined by an expert, Eric R. Lietzow, CPA/ABV of Desmond, Marcello & Amster. (Ibid.) Mr. Lietzow examined the records provided by Defendant and advised Plaintiffs' counsel with his opinion regarding Defendant's ability to pay any settlement or judgment. (Ibid.) Counsel contends that if the case went to trial, Plaintiff contemplates there would be a substantial amount of litigation regarding liability of each Defendant and further attack on the remaining claims. (Ibid.) Even in a scenario where Plaintiffs prevail the specter of bankruptcy remains that has the possibility of leaving the class with no recovery. (Ibid.)

2. Risk, expense, complexity and likely duration of further litigation. Given the nature of the class claims, the case is likely to be expensive and lengthy to try. Procedural hurdles (e.g., motion practice and appeals) are also likely to prolong the litigation as well as any recovery by the class members.

3. Risk of maintaining class action status through trial. Even if a class is certified, there is always a risk of decertification. (See *Weinstat v. Dentsply Intern., Inc.* (2010) 180 Cal.App.4th 1213, 1226 ["Our Supreme Court has recognized that trial courts should retain some flexibility in conducting class actions, which means, under suitable circumstances, entertaining successive motions on certification if the court subsequently discovers that the propriety of a class action is not appropriate."].)

4. Amount offered in settlement. Plaintiff's counsel obtained a \$450,000 non-reversionary settlement. This is approximately between 6% and 13.2% of Plaintiff's estimated recovery, which is within the "ballpark" of reasonableness.

The \$450,000 settlement amount, after reduced by the requested deductions, leaves

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approximately \$116,040 to be divided among approximately 1,055 class members. Assuming full participation, the resulting payments will average approximately \$109.99 per class member. [\$116,040/1,055= \$109.99.]

5. Extent of discovery completed and stage of the proceedings. As indicated above, at the time of the settlement, Class Counsel had conducted sufficient discovery.

6. Experience and views of counsel. The settlement was negotiated and endorsed by Class Counsel who, as indicated above, is experienced in class action litigation, including wage and hour actions.

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

8. Reaction of the class members to the proposed settlement. The class members' reactions will not be known until they receive notice and are afforded an opportunity to object, opt-out and/or submit claim forms. This factor becomes relevant during the fairness hearing.

CONCLUSION: The settlement can be preliminarily deemed "fair, adequate, and reasonable."

3. Scope of the release

Upon the Effective Date, each Settlement Class Member on behalf of themselves and on behalf of their current, former, and future heirs, executors, administrators, attorneys, agents, representatives, and assigns, shall hereby fully and forever release, waive, acquit and discharge Defendant from all Qualified Settlement Class Member Released Claims from October 23, 2012 through December 31, 2018. (¶47)

Settlement Class Members are subject to the Settlement Class Member Released Claims.

Qualified Settlement Class Members who do not submit a valid and timely opt-out form and who endorse and cash or deposit a settlement check shall consent to the release of all Qualified Settlement Class Member Released Claims, as defined herein. (¶69)

"Settlement Class Member Released Claims" shall be the following claims, which are being released for the time period October 23, 2012 through December 31, 2018: all claims against Defendant that have been asserted in the action, or which could have been asserted in the original and operative complaint based on the same facts and circumstances as alleged in the Complaints including, failure to pay wages (regular, overtime, and inclusive of tips), the failure to pay wages upon termination, failure to timely pay wages during employment, the failure to provide meal periods, the failure to provide rest breaks, the failure to maintain or provide accurate itemized wage statements, the failure to maintain records, unlawful deduction of wages, failure to reimburse business expenditures, Business and Professions Code sections 17200 et seq., liquidated damages, waiting-time penalties, and penalties under the Labor Code Private Attorneys General Act of 2004 during the time in which they worked for Defendant. This release will be as to the released Parties which shall mean Defendant, including its past and present

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divisions, affiliates, affiliated entities, related entities, parents, subsidiaries, predecessors, successors, assigns, and their respective shareholders, owners, officers, directors, employees, agents, trustees, attorneys, insurers, representatives, administrators, fiduciaries, beneficiaries, subrogees, executors, partners, and privies. (collectively the “Released Parties” and each a “Released Party” or “Releasee”). (¶29)

Named Plaintiffs will also provide general releases and releases under CCP Section 1542. (¶¶10, 46, 69)

4. May conditional class certification be granted?

1. Standards

A detailed analysis of the elements required for class certification is not required, but it is advisable to review each element when a class is being conditionally certified (*Amchem Products, Inc. v. Windsor* (1997) 521 U.S. 620, 622-627.) The trial court can appropriately utilize a different standard to determine the propriety of a settlement class as opposed to a litigation class certification. Specifically, a lesser standard of scrutiny is used for settlement cases. (*Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1807 fn. 19.) Finally, the Court is under no “ironclad requirement” to conduct an evidentiary hearing to consider whether the prerequisites for class certification have been satisfied. (*Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 240.)

2. Analysis

a. Numerosity. There are 1,055 class members. (Odenbreit Decl., ¶3.) This element is met.

b. Ascertainability. The proposed class is defined above. The class definition is “precise, objective and presently ascertainable.” (*Sevidal v. Target Corp.* (2010) 189 Cal.App.4th 905, 919.) The proposed Settlement Class is ascertainable through Defendant’s employment records. (Motion, 15:3-5.)

c. Community of interest. “The community of interest requirement involves three factors: ‘(1) predominant common questions of law or fact; (2) class representatives with claims or defenses typical of the class; and (3) class representatives who can adequately represent the class.’” (*Linder v. Thrifty Oil Co.* (2000) 23 Cal.4th 429, 435.)

Counsel contends that here, common questions include, but are not limited to, (1) whether Defendant maintained a policy or practice of failing to provide Class Members with legally compliant meal and rest breaks; (2) whether Defendant’s on-duty meal period policy is lawful; (3) whether Defendant properly paid all wages for all hours worked, (4) whether Defendant underpaid wages to Class Members upon termination and/or resignation; (5) whether Defendant reimbursed Class Members for necessary business expenses; and (6) whether Defendant is liable for providing inaccurate wage statements. (Odenbreit Decl., ¶4).

Further, counsel contends that Plaintiffs’ claims are typical of the class because here, like other

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Class Members: 1) Plaintiffs were employed by Defendant as non-exempt, non-event staff security guards in California; 2) Plaintiffs were subject to an on-duty meal period agreement, and 3) Plaintiffs were subject to the same policies regarding timekeeping, overtime, meal and rest periods. (Id. at ¶6.) Counsel contends that Plaintiff and other Settlement Class Members share the same claims stemming from Defendant's alleged violations of the Labor Code and the wage order. (Ibid.)

Finally, counsel contends that Plaintiffs have no conflicts of interest with other Settlement Class Members and has agreed to place their interests above their own, (id. at ¶¶25-26) and are represented by adequate counsel. (Id. at ¶¶14-24.)

d. Adequacy of class counsel. As indicated above, Class Counsel is experienced in class action litigation, including wage and hour actions.

e. Superiority. Given the relatively small size of the individual claims, a class action appears to be superior to separate actions by the class members.

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

5. Is the notice proper?

1. Content of class notice. The proposed Notice Packet is attached to the Supplemental Declaration of Katherine J. Odenbreit filed on June 21, 2019 as Exhibits E, G, and I. Its content appears to be acceptable. It includes information such as: a summary of the litigation; the nature of the settlement; the terms of the settlement agreement; the proposed deductions from the gross settlement amount (attorney fees and costs, enhancement awards, and claims administration costs); the procedures and deadlines for participating in, opting out of, or objecting to, the settlement; the consequences of participating in, opting out of, or objecting to, the settlement; and the date, time, and place of the final approval hearing.

2. Method of class notice. Notice will be by direct mail. Defendant will provide the Class Data to the Class Action Administrator no later than 7 calendar days after the Court grants preliminary approval of the settlement. The Class Action Administrator shall run the Class Data list through the National Change of Address database and will use the most recent address for each Settlement Class Member when mailing the Class Notice. (¶58) Within 7 calendar days of receiving the Class Data list, the Class Action Administrator shall send, via United States First Class Mail, the Court-approved Class Notice of the Class Action Settlement, Claim Form, and the Court-approved Opt-Out Form. (¶61) For each Settlement Class Member whose Notice is returned, there will be one skip trace by the Class Action Administrator, via an approved method, using a social security number, which shall be provided by Defendant. One supplemental Notice may be mailed to each Settlement Class Member whose Notice is returned as undeliverable to

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the Class Action Administrator within 5 business days of the Class Action Administrator receiving notice that the mail was undeliverable. Any requests by the Class Action Administrator for documents or information from Defendant must be responded to within a reasonable amount of time by Class Counsel and counsel for Defendant. It is the intent of the Parties that reasonable means be used to locate the Settlement Class Member and apprise them of their rights. It shall be conclusively presumed that those Class Members whose re-mailed Notice Packet is not returned to the Settlement Administrator as undeliverable within 15 calendar days after re-mailing, actually received the Notice Packet. (¶62) A dedicated web page will be established by the administrator. (Odenbreit 2nd Supp. Dec., ¶23.) The judgment will remain on the webpage available for Settlement Class Members to download for no less than one year. (Ibid.) English-only notice is appropriate a counsel represents that the Class is required to speak English as a job requirement and does indeed speak English. (Odenbreit 2nd Supp. Decl., ¶22; Douglas Decl., ¶4.)

3. Cost of class notice. As indicated above, claims administration costs are estimated to be \$7,100. (Settlement Agreement, ¶43.4.) Prior to the time of the final fairness hearing, the claims administrator must submit a declaration attesting to the total costs incurred and anticipated to be incurred to finalize the settlement for approval by the Court.

6. Attorney fees and costs

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

Ultimately, the award of attorney fees is made by the court at the fairness hearing, using the lodestar method with a multiplier, if appropriate. (PLCM Group, Inc. v. Drexler (2000) 22 Cal.4th 1084, 1095-1096; Ramos v. Countrywide Home Loans, Inc. (2000) 82 Cal.App.4th 615, 625-626; Ketchum III v. Moses (2000) 24 Cal.4th 1122, 1132-1136.) Despite any agreement by the parties to the contrary, “the court ha[s] an independent right and responsibility to review the attorney fee provision of the settlement agreement and award only so much as it determined reasonable.” (Garabedian v. Los Angeles Cellular Telephone Company (2004) 118 Cal.App.4th 123, 128.)

The question of whether Class Counsel is entitled to \$149,985 in attorney fees will be addressed at the fairness hearing when class counsel brings a noticed motion for attorney fees. Class counsel must provide the court with billing information so that it can properly apply the lodestar method and must indicate what multiplier (if applicable) is being sought as to each counsel. Class Counsel should also be prepared to justify the costs sought (capped at \$145,000) by detailing how they were incurred.

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2:00 PM

Judge: Honorable Amy D. Hogue
Judicial Assistant: Alfredo Morales
Courtroom Assistant: Teresa Bivins

CSR: None
ERM: None
Deputy Sheriff: None

7. Incentive Awards to Class Representatives

The Settlement Agreement provides for enhancement awards of up to \$30,000.00 for the class representatives (\$15,000 each). In connection with the final fairness hearing, the named Plaintiffs must submit declarations attesting to why they should be entitled to an enhancement award in the proposed amount. The named Plaintiffs must explain why they “should be compensated for the expense or risk she has incurred I n conferring a benefit on other members of the class.” (Clark v. American Residential Services LLC (2009) 175 Cal.App.4th 785, 806.) Trial courts should not sanction enhancement awards of thousands of dollars with “nothing more than pro forma claims as to ‘countless’ hours expended, ‘potential stigma’ and ‘potential risk.’ Significantly more specificity, in the form of quantification of time and effort expended on the litigation, and in the form of reasoned explanation of financial or other risks incurred by the named plaintiffs, is required in order for the trial court to conclude that an enhancement was ‘necessary to induce [the named plaintiff] to participate in the suit’” (Id. at 806-807, italics and ellipsis in original.) The Court will decide the issue of the enhancement award at the time of final approval."

Court and counsel confer and the Court's tentative is adopted as the order of the Court. The Motion for Preliminary Approval of Settlement filed by Tiffany Belle, Robyn James on 04/02/2019 is Granted. The granting of the motion is contingent on the changes addressed in open court and listed in the tentative ruling. Plaintiff is to file a further declaration by 7/12/2019.

The motion for final approval shall be scheduled for hearing on 12/04/2019 at 10:00 a.m. in Department 7.

Plaintiff is to give notice.