

**Superior Court of California
County of Los Angeles**

APR 16 2021

Sherri R. Carter, Executive Officer/Clerk
By Jontae Marquez, Deputy
Jontae M. Marquez

Case No.: BC722270

DEPARTMENT 45

MONET STERLING, individually, and on
behalf of other members of the general public
similarly situated, and as aggrieved
employees pursuant to the Private Attorneys
General Act;

Plaintiffs,

vs.

G4S SECURE SOLUTIONS (USA) INC.;

Defendant(s).

[TENTATIVE] ORDER

Action Filed: 09/17/18
First Amended Compl. Filed: 10/08/20
Trial Date: None Set

Hearing date: April 16, 2021

Moving Parties: Plaintiffs Monet Sterling and Chanell Michaels, individually and on behalf
of other members of the general public similarly situated, and as aggrieved
employees pursuant to the Private Attorneys General Act

Responding Party: None

**Motion for Preliminary Approval of Class Action Settlement and Provisional Certification
of Class**

The court has considered the moving papers. No opposition was received.

The court **GRANTS** Plaintiffs' motion for preliminary approval of class action
settlement and provisional certification of class **on condition that** Plaintiffs file proof that they
submitted the proposed settlement to the LWDA, as required by Labor Code § 2699(l)(2). This
ruling **will be effective on** the date Plaintiffs file this proof.

Background

Plaintiffs Monet Sterling and Chanell Michaels, individually and on behalf of other members of the general public similarly situated, and as aggrieved employees pursuant to the Private Attorneys General Act, filed this action on September 17, 2018. Plaintiffs filed a First Amended Complaint (FAC) on October 8, 2020 against defendant G4S Secure Solutions (USA) Inc., alleging 12 causes of action involving wage-and-hour claims as well as PAGA claim.

Plaintiffs filed this motion for preliminary approval of class action settlement and provisional certification of class on March 24, 2021. No opposition was received.

Legal Standard

Approval of class actions settlements occurs in two steps: First, the court preliminarily approves the settlement and the class members are notified as directed by the court. (See Cal. Rules of Court, Rules 3.769(c)-(g); *Cellphone Termination Fee Cases* (2009) 180 Cal.App.4th 1110, 1118.) Second, the court conducts a final approval hearing to inquire into the fairness of the proposed settlement. (*Id.*) “Any party to a settlement agreement may serve and file a written notice of motion for preliminary approval of the settlement. The settlement agreement and proposed notice to class members must be filed with the motion, and the proposed order must be lodged with the motion.” (Cal. Rules of Court, Rule 3.769(c).)

“ ‘The trial court has broad discretion to determine whether the settlement is fair.’ ” (*Cellphone Termination Fee Cases*, *supra*, 180 Cal.App.4th at 1117.) “ ‘[A] presumption of fairness exists where: (1) the settlement is reached through arm's-length bargaining; (2) investigation and discovery are sufficient to allow counsel and the court to act intelligently; (3) counsel is experienced in similar litigation; and (4) the percentage of objectors is small. [Citation.]’ ” (*Id.* at 1118, quoting *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1802.)

Before the court may approve the settlement, the settlement class must satisfy the normal prerequisites for a class action. (*Amchem. Products, Inc. v. Windsor* (1997) 521 U.S. 591, 625-627.) “The party advocating class treatment must demonstrate the [1] existence of an ascertainable and sufficiently numerous class, [2] a well-defined community of interest, and [3] substantial benefits from certification that render proceeding as a class superior to the alternatives.” (*Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal.4th 1004, 1021.)

“If the court has certified the action as a class action, notice of the final approval hearing must be given to the class members in the manner specified by the court. The notice must contain an explanation of the proposed settlement and procedures for class members to follow in filing written objections to it and in arranging to appear at the settlement hearing and state any objections to the proposed settlement.” (Cal. Rules of Court, Rule 3.769(f).)

“Any agreement, express or implied, that has been entered into with respect to the payment of attorney’s 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.” (Cal. Rules of Court, Rule 3.769(b).) Despite any agreement by the parties to the contrary, “the court ha[s] an independent right and responsibility to review the attorney fees 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.)

Discussion

Plaintiffs Monet Sterling and Chanell Michaels, individually and on behalf of other members of the general public similarly situated, and as aggrieved employees pursuant to the Private Attorneys General Act, move for preliminary approval of class action settlement and provisional certification of class.

Fairness

“ ‘[A] presumption of fairness exists where: (1) the settlement is reached through arm's-length bargaining; (2) investigation and discovery are sufficient to allow counsel and the court to act intelligently; (3) counsel is experienced in similar litigation; and (4) the percentage of objectors is small. [Citation.]’ ” (*Cellphone Termination Fee Cases*, *supra*, 180 Cal.App.4th at 1118, quoting *Dunk*, *supra*, 48 Cal.App.4th at 1802.)

Plaintiffs' counsel attests that the parties' assessment of the case is based on extensive research before and during the litigation. (Bainer Decl., ¶ 5.) Plaintiffs' counsel declares that the settlement was reached after an extensive exchange of data to compute damages and numerous conversations, exchanges of correspondence, informal discovery, and one full day of mediation. (*Id.* at ¶ 6.) The parties engaged in extensive discussions and discovery in which Defendant provided Plaintiff with relevant information, including data pertaining to the class. (Otkupman Decl., ¶ 23.) As part of the exchange of information, Defendant produced statistical data, which was used to calculate a damage model and liability analysis. (*Id.* at ¶ 22.) The mediation session was conducted with Jeff Krivis, an experienced and well-respected mediator in the wage-and-hour field. (*Id.* at ¶¶ 22-23.)

The court finds these facts are sufficient to establish that the settlement was reached through arm's-length bargaining and that investigation and discovery are sufficient to allow counsel and the court to act intelligently. The parties extensively discussed and exchanged data and records that allowed the parties to assess the merits of their case. Further, the parties participated in a mediation session with a mediator experienced in wage-and-hour issues.

In addition, Plaintiffs' counsel set forth their experience in wage-and-hour class actions. (See Bainer Decl., ¶ 3; Otkupman Decl., ¶ 6; Mauro Decl., ¶¶ 4-5.) The court finds Plaintiffs' counsel establishes substantial experience in wage-and-hour class actions. There are no objectors

to this settlement. Based on the foregoing, the court finds Plaintiffs meet their burden in establishing a presumption of fairness for their class action settlement.

Once the presumption of fairness has been established, the court still “bears the responsibility to ensure that the recovery represents a reasonable compromise, given the magnitude and apparent merit of the claims being released, discounted by the risks and expenses of attempting to establish and collect on those claims by pursuing the litigation. ‘The court has a fiduciary responsibility as guardians of the rights of the absentee class members when deciding whether to approve a settlement agreement.’ [Citation.]” (*Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 129.)

Here, the parties have agreed to settle this action on an all-inclusive basis for \$3.5 million. (Otkupman Decl., ¶ 48.) Plaintiffs’ counsel attests that they have previously litigated and settled a class action case against the same defendant. (Mauro Decl., ¶ 7.) The previous case was a certified case for a class of security officers where litigation spanned over 15 years. (*Id.* at ¶ 7.) Plaintiffs’ counsel declares that further conduct of this litigation will likely span several additional years and require the dedication of extensive resources to establish the merits of all class claims at trial or through contested motion practice. (*Id.* at ¶ 8.) Weighing all the relevant factors, including the risks and expenses of pursuing the litigation, the court finds the proposed settlement agreement is fair, reasonable, and adequate to all concerned.

Certification

“The party advocating class treatment must demonstrate the [1] existence of an ascertainable and sufficiently numerous class, [2] a well-defined community of interest, and [3] substantial benefits from certification that render proceeding as a class superior to the alternatives.” (*Brinker Restaurant Corp., supra*, 53 Cal.4th at 1021.)

Class members are ascertainable when they can be “readily identified without unreasonable expense or time by reference to official [or business] records.” (*Sevidal v. Target Corp.* (2010) 189 Cal.App.4th 905, 919.) “ ‘Ascertainability ... goes to the heart of the question of class certification,’ ” and “ ‘requires a class definition that is precise, objective and presently ascertainable....’ ” (*Id.* at 919, quotations omitted, quoting *Global Minerals & Metals Corp. v. Superior Court* (2003) 113 Cal.App.4th 836, 858.) The purpose of the ascertainability requirement is to ensure it is possible “ ‘to give adequate notice to class members’ ” and “ ‘to determine after the litigation has concluded who is barred from relitigating.’ ” (*Id.*) “The ascertainability requirement is satisfied if ‘the potential class members may be identified without unreasonable expense or time and given notice of the litigation, and the proposed class definition offers an objective means of identifying those persons who will be bound by the results of the litigation....’ [Citation.]” (*Id.* at 919, quoting *Medraza v. Honda of North Hollywood* (2008) 166 Cal.App.4th 89, 101.)

Here, the court finds Plaintiffs establish that the class members are ascertainable. The definition of the class members is “all current and former non-exempt employees of Defendant within the State of California at any time during the Class Period. The Settlement Class shall exclude any individuals who did not opt-out of the *David Arteaga v. G4S Secure Solutions (USA) Inc.* (Alameda County Superior Court, case no. RG17859072) class action settlement and whose last date of employment with G4S Secure Solutions (USA) Inc. was on or before March 3, 2018.” (Otkupman Decl., ¶ 48, Exh. A, pp. 5-6.) The “Class Period” is defined as “the period from November 27, 2015 through the date of entry of the order granting preliminary approval of this Settlement.” (*Id.* at ¶ 48, Exh. A, p. 3.) These proposed definitions offer an objective means of identifying those persons who will be bound by the results of the litigation.

Plaintiffs also assert that the class is readily ascertainable from the payroll records of Defendant. Plaintiffs counsel attests that there are approximately 14,000 class action members.

(Otkupman Decl., ¶ 45.) Thus, Plaintiffs establish that potential class members may be identified without unreasonable expense or time. Plaintiffs also establish that the class is sufficiently numerous, as the number of members is such that joinder would be impracticable. Based on the foregoing, the court finds Plaintiffs meet their burden in establishing the existence of an ascertainable and sufficiently numerous class.

As to a well-defined community of interest, “the ‘community of interest requirement embodies 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.’ ” (*Brinker Restaurant Corp.*, *supra*, 53 Cal.4th at 1021.)

“In order to be deemed an adequate class representative, the class action proponent must show it has claims or defenses that are typical of the class, and it can adequately represent the class. This is part of the community of interest requirement. [Citation.] Where there is a conflict that goes to the ‘very subject matter of the litigation,’ it will defeat a party’s claim of class representative status. [Citation.] Thus, a finding of adequate representation will not be appropriate if the proposed class representative’s interests are antagonistic to the remainder of the class. [Citation.] The adequacy inquiry ... serves to uncover conflicts of interest between named parties and the class they seek to represent. [Citation.]” (*J.P. Morgan & Co. v. Superior Court* (2003) 113 Cal.App.4th 195, 212.)

Here, Plaintiffs assert that there are predominant common questions of law or fact since each class members did not receive meal periods, rest periods, all wages due, reimbursement for business expenses, timely payment of wages due at termination, and wage statements that complied with Labor Code § 226(a). Further, Plaintiffs’ claims are the same as those of the Class. (See FAC, ¶¶ 9, 29.) Plaintiffs’ counsel attests that there is no indication of any actual (or potential) conflicts between Plaintiffs and the Class. (Otkupman Decl., ¶ 47.) Plaintiffs assert that class resolution is superior to other available methods here since each individual claim has

only a relatively small amount of damages and litigation costs would dwarf recovery. Based on the foregoing, the court finds Plaintiffs establish that they satisfy the community of interest requirement and that there are substantial benefits from certification that render proceeding as a class superior to the alternatives.

Notice

Cal. Rules of Court, Rule 3.766(d) states:

The content of the class notice is subject to court approval. If class members are to be given the right to request exclusion from the class, the notice must include the following:

- (1) A brief explanation of the case, including the basic contentions or denials of the parties;
- (2) A statement that the court will exclude the member from the class if the member so requests by a specified date;
- (3) A procedure for the member to follow in requesting exclusion from the class;
- (4) A statement that the judgment, whether favorable or not, will bind all members who do not request exclusion; and
- (5) A statement that any member who does not request exclusion may, if the member so desires, enter an appearance through counsel.

Plaintiffs' proposed notice contains a brief explanation of the case with basic contentions or denials of the parties. (See Otkupman Decl., ¶ 49, Exh. F [Notice, pp. 1, 2 (Sec. 2)].) The proposed notice also contains a statement that members will be excluded if so requested by a specified date, and the notice sets forth a procedure for the member to follow in requesting exclusion. (*Id.* [Notice, p. 4 (Sec. 12)].) Further, the proposed notice states that the judgment will

bind all members, and any member may appear through counsel. (*Id.* [Notice pp. 2 (Sec. 3), 5 (Secs. 13-14)].) Accordingly, the court finds Plaintiffs' proposed class notice satisfies Cal. Rules of Court, Rule 3.766(d).

PAGA Settlement

Labor Code § 2699(l)(2) states: "The superior court shall review and approve any settlement of any civil action filed pursuant to this part [Labor Code Private Attorneys General Act of 2004 ("PAGA")]. The proposed settlement shall be submitted to the [Labor and Workforce Development Agency ("LWDA")] at the same time that it is submitted to the court." Any settlement of any civil action filed under PAGA must be "fair and adequate in view of the purposes and policies of the statute." (*Flores v. Starwood Hotels & Resorts Worldwide, Inc.* (C.D. Cal. 2017) 253 F.Supp.3d 1074, 1077, quoting *O'Connor v. Uber Technologies, Inc.* (N.D. Cal. 2016) 201 F.Supp.3d 1110, 1135.)

75 percent of all PAGA penalties must be paid to the LWDA. (See Lab. Code § 2699(i) ["Except as provided in subdivision (j), civil penalties recovered by aggrieved employees shall be distributed as follows: 75 percent to the Labor and Workforce Development Agency for enforcement of labor laws and education of employers and employees about their rights and responsibilities under this code, to be continuously appropriated to supplement and not supplant the funding to the agency for those purposes; and 25 percent to the aggrieved employees."].) Courts have discretion to approve settlements that do not allocate any penalty amount. (See *Nordstrom Com. Cases* (2010) 186 Cal.App.4th 576, 589). Labor Code § 2699(g)(1) provides, in relevant part: "Any employee who prevails in any action shall be entitled to an award of reasonable attorney's fees and costs" (Lab. Code § 2699(g)(1).)

Here, Plaintiffs' settlement shows that \$50,000 will be allocated to the release of Plaintiffs' PAGA claim, with \$37,500 allocated to LWDA and the remaining \$12,500 to be

included as part of the Net Settlement Amount for payment to Settlement Class Members who do not request to be excluded from the settlement. (Otkupman Decl., ¶ 48, Exh. A, pp. 15-16 [Settlement Agreement, § 36e].) The court finds this satisfies Labor Code § 2699(i), which requires 75 percent of the amount to be paid to the LWDA and 25 percent of the amount to be paid to the Aggrieved Employees.

However, Plaintiffs do not establish that they submitted the proposed settlement to the LWDA, as required by Labor Code § 2699(l)(2). Thus, approval of this settlement shall be conditioned upon Plaintiffs filing proof that they submitted the proposed settlement to the LWDA.

Request for Attorney's Fees

Here, Plaintiffs request \$1,166,666 for all work previously performed in connection with the action and all remaining work to be performed. (Otkupman Decl., ¶ 26.) Further, Plaintiffs also request a class representative enhancement award of \$10,000. (*Id.* at ¶ 27.) Defendant does not oppose these requests for attorney's fees (*Id.* at ¶¶ 26-27.)

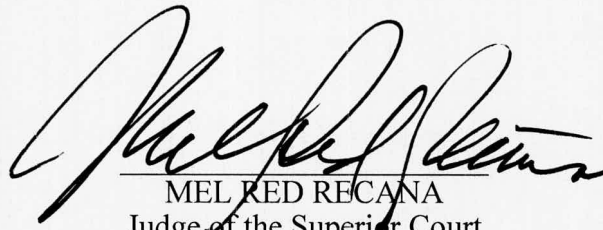
The court finds Plaintiffs' request for attorney's fees is reasonable. The amount requested is about one-third of the settlement amount and is not opposed. The court finds this proportion of attorney's fees with respect to the settlement amount is reasonable. Further, Plaintiffs' counsel achieved a result whereby each class member will receive payment depending on the amount of pay periods that person worked during the relevant time. (Otkupman Decl., ¶ 43.) Given the results achieved and Plaintiffs' counsel's substantial experience in wage-and-hour class actions, the court finds Plaintiffs' request for attorney's fees is reasonable.

Based on the foregoing, the court GRANTS Plaintiffs' motion for preliminary approval of class action settlement and provisional certification of class on condition that Plaintiffs file

proof that they submitted the proposed settlement to the LWDA, as required by Labor Code § 2699(1)(2). This ruling will be effective on the date Plaintiffs file this proof.

It is so ordered.

Dated: April 16, 2021



MEL RED RECANA
Judge of the Superior Court

04/19/2021