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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CINNAMON MILLS, individually, on a
representative basis, and on behalf of all
others similarly situated;

Plaintiff,

vs.

TARGET CORPORATION, a Minnesota
Corporation; and DOES 1 through 20,
inclusive;

Defendants.

Case No.: 5:20-CV-01460-JGB-KK
[Assigned to Hon. Jesus G. Bernal]

FRCP RULE 23 CLASS ACTION

**MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
MOTION FOR FINAL
APPROVAL OF CLASS ACTION
SETTLEMENT**

Hearing

Date: April 22, 2024
(requested to be cont.
to 7/2/24)

Time: 9:00 a.m.

Courtroom: 1

Complaint filed: June 10, 2020

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1 **I. INTRODUCTION**

2 Plaintiff Cinnamon Mills respectfully requests that this Court grant final approval
3 of the Class Action and PAGA Settlement Agreement (“Settlement Agreement” or
4 “S.A.”)¹ and enter a final order and judgment in this matter. This Motion is supported and
5 unopposed by Defendant Target Corporation (“Defendant” or “Target”).

6 This action involved years of hard-fought litigation before this Court and the Ninth
7 Circuit Court of Appeal (“Ninth Circuit”) on an issue of first impression that challenged
8 the legality of Target’s statewide practice of paying vested vacation owed to departing
9 employees at their hourly *base rate* of pay – rather than their *regular rate* of pay.

10 In the aftermath of the Ninth Circuit’s decision (which upheld this Court’s ruling
11 and therein sided with Plaintiff that employers must pay vested vacation wages at the
12 employee’s final *regular rate* of pay and held that Target was not liable for waiting time
13 penalties), trial would have merely focused on damages. But in lieu of a costly and time-
14 consuming trial, the Parties engaged in arm’s length negotiations that ultimately resulted
15 in a settlement that effectively accomplished everything that Plaintiff could have
16 achieved at trial. In short, Target agreed to pay the Class Members the *full Unpaid*
17 *Vested Vacation Wages owed* (and, in many cases, more than owed due to a \$5 minimum
18 payment), plus Target separately agreed to pay (a) a fair amount for PAGA Penalties, (b)
19 Class Counsel’s actual attorneys’ fees/lodestar and costs, (c) a Service Award to Plaintiff,
20 and (d) Administration Costs. Thus, Target deserves credit for agreeing to pay
21 everything that might have been awarded at trial while saving this Court and a jury the
22 time and burden of trial.

23 The Notice process that was approved by the Court has now been completed, and
24 the lack of objections shows that the Class Members resoundingly support the Settlement.

27 ¹ All further references to the Settlement Agreement relate to Dkt. 88-2, pages 15 to 34 (the Settlement
28 Agreement filed at the preliminary approval stage).

Accordingly, there are several reasons why this settlement should be approved, and judgment entered, as follows:

- After extensive work, the Parties reached a \$945,456 settlement tailored to a limited release of the Vested Vacation Claim;
- The Class Members were deemed to participate in the Settlement, and were not required to submit a Claim Form to receive funds;
- No reversion to Target;
- There were zero objections and only one opt-out to the Settlement, meaning 99.99% of the Class is participating in the Settlement;

In accordance with the analysis and law set forth herein, the Settlement should be approved, and judgment entered based on the determination that the Settlement is fair, reasonable, adequate, and in the best interests of the Class.

II. PERTINENT BACKGROUND AND SETTLEMENT TERMS

Plaintiff and the Class Members are former employees of Target who received final unused vacation time at their base rate of pay – a practice that runs counter to this Court and the Ninth Circuit holding that under Labor Code § 227.3 final vested vacation wages must be paid at the employee’s “*final rate*” of pay (a rate that includes shift differentials). The difference between final vested vacation wages including shift differentials and what Target paid is called “Unpaid Vested Vacation Wages” in the Settlement.

The Settlement Agreement provides that Target will pay the Gross Settlement Amount (“GSA”) of \$945,456 to fund the following:

- 1) Target will pay every Class Member the *full Unpaid Vested Vacation Wages owed* (and, in many cases, more than owed due to a \$5 minimum payment)²

² Since this Court and the Ninth Circuit disallowed waiting time penalties, many Class Members were owed less than \$1.00 in Unpaid Vested Vacation Wages, which is why Class Counsel funded the minimum payment from their fees.

- 1 2) Target will pay a fair and reasonable PAGA amount of \$48,800 to settle
2 Plaintiff's PAGA claim, allocated 75% to the California Labor Workforce
3 Development Agency ("LWDA") and 25% to all PAGA Group Members in
4 an equal share.
- 5 3) Target will pay Class Counsel's *actual* attorney's fees (*i.e.*, lodestar) through
6 final approval of \$503,750 (but from this amount, Class Counsel has agreed
7 to reduce their attorneys' fee request by \$14,356.52 to fund the \$5.00
8 Minimum Payment to the Class Members) along with Class Counsel's costs
9 of \$20,950 (which is less than costs actually incurred).
- 10 4) Target will pay a Service Award to Plaintiff of \$10,000 and will pay
11 Settlement Administrator Expenses of \$47,000.

12 Within 10 days after the Judgment becoming Final (which is the first business day
13 following the deadline to file an appeal or the resolution of any filed appeal), Target shall
14 deposit the Settlement Amount, plus Target's share of payroll taxes and withholdings.
15 The Settlement Administrator will issue the court-approved payments within 10 days of
16 receipt. Participating Class Members and PAGA Group Members will have 180 days to
17 cash a settlement check. If a person fails to timely cash a check, then the Settlement
18 Administrator shall issue the unclaimed funds to the California State Controller's Office
19 in the name of the Class Member or PAGA Group Member. (S.A. § III.A-E; III.F.7).

20 The Settlement Agreement provides that the portion of each Settlement Share
21 representing the Class Member's Unpaid Vested Vacation Wages will be considered
22 taxable wages (with IRS W-2 reporting), and any additional payment on top of the Class
23 Member's Unpaid Vested Vacation Wages (such as bringing the payment up to the \$5.00
24 minimum payment) will be considered interest with 1099 reporting. (S.A. § III.B.2).

25 The settlement is an excellent result for the Class, considering that it pays 100% of
26 the wages owed to the Class. Moreover, in light of the Class Members' positive reaction
27 to the Settlement and its overall terms, it is clear that the Settlement is fair and
28 reasonable. The Parties therefore respectfully request that the Court grant final approval

1 and enter the proposed judgment as requested.

2 **III. THE NOTICE PROCESS**

3 **A. NOTICE TO THE CLASS MEMBERS**

4 On December 15, 2023, the Court granted Plaintiff's Motion for Preliminary
5 Approval. (Dkt 97). Pursuant to the Court's Order and the Settlement Agreement, the
6 Parties directed the Settlement Administrator to review and update the Class Members'
7 addresses, mail the Court-approved Notice Packet, and process their responses. (See
8 Declaration of Settlement Administrator, Jennifer Mills of Rust Consulting, ["J. Mills
9 Decl.,"] ¶ 3). Prior to mailing the Notice Packet, the Settlement Administrator performed
10 a National Change of Address search on all Class Members to determine if any had
11 moved. (*Id.* at ¶ 10). On January 26, 2024, the Notice Packet was sent via first-class
12 mail to the 13,529 Class Members, advising of the suit and settlement. (*Id.* at ¶ 11). For
13 any Notice Packet that was returned by the post office as undeliverable, the Settlement
14 Administrator used various means to locate updated addresses for these individuals
15 including a forward address provided by the post office, performing a skip trace and other
16 means. Ultimately, it was determined that there was a **98.7%** success rate in mailing the
17 Class Notice. (*Id.* at ¶ 12).

18 The Class Notice provided Class Members with (1) a brief explanation of the case;
19 (2) an explanation of each Settlement Class Member's right to opt out of the settlement
20 class; (3) an explanation of the process (and relevant deadlines) through which a Class
21 Member could opt out of the settlement class; (4) notice about the binding nature of the
22 Judgment for Class Members who do not opt out; (5) an explanation of each Class
23 Member's right to appear through counsel; (6) an explanation of each Class Member's
24 right to appear at the fairness hearing and express views on the settlement, i.e., object or
25 otherwise respond; and (7) an explanation of each Class Member's right to participate in
26 the Settlement and receive payment accordingly. (See Exhibit A to the J. Mills Decl.)

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1 **B. THERE WERE ZERO OBJECTIONS AND ONE OPT-OUT, MEANING THAT AN**
2 **IMPRESSIVE 99.99% OF THE CLASS IS PARTICIPATING IN THE SETTLEMENT**

3 The Ninth Circuit recognizes that in the final fairness analysis, the number or
4 percentage of class members who object to the settlement is a significant factor. *See*
5 *Mandujano v. Basic Vegetable Prods., Inc.*, 541 F.2d 672, 677 (9th Cir. 1976). In this
6 case, there are zero objections and only one request for exclusion -- meaning that
7 approximately 99.99% of the Class Members elected to participate in the Settlement. (J.
8 Mills Decl. ¶¶ 16-17). Thus, it is clear that the Class overwhelming viewed this as a fair
9 and reasonable settlement.

10 **C. NOTICE TO THE LWDA**

11 Plaintiff submitted the Motion for Preliminary Approval, declarations, the Settlement
12 Agreement and Notice of PAGA Settlement to the LWDA in accordance with Labor
13 Code § 2699(1)(2). (*See* ECF Nos. 88-2, 89.) The LWDA was given timely notice of the
14 Settlement. The notice of Settlement invited comment on the Settlement.

15 **D. CAFA NOTICE**

16 Once the final approval hearing is continued to July 2, 2024, as the parties have
17 requested, Target will give notice of the settlement pursuant to the Class Action Fairness
18 Act of 2005, 28 U.S.C. § 1715 (“CAFA”), of the Settlement to the Attorney General of
19 the United States and the appropriate officials of the states where Class Members are
20 known to reside. That will ensure that notice is given at least 90 days before the final
21 approval hearing. The notice of the Settlement included the Second Amended Complaint
22 in this action; the Settlement Agreement and its exhibits; plaintiff’s Notice of Motion and
23 Motion for Preliminary Approval of Class Action Settlement, and the memorandum in
24 support of the motion; and the names of Class Members who reside in each state and the
25 estimated proportionate share of the claims of Class Members in each state to the entire
26 settlement.

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IV. THE COURT SHOULD GRANT FINAL APPROVAL OF THE SETTLEMENT

Approval of a class action under Rule 23(e) involves a two-step process: (1) the Court first determines whether the proposed class action settlement deserves preliminary approval; and (2) if preliminary approval is granted, then, after notice is given to the class members, the Court decides whether final approval is appropriate. *Nat'l Rural Telecomms. Coop v. DIRECTV, Inc.*, 221 F.R.D. 523, 525 (C.D. Cal. 2004). The first step in this process is complete as the Court has granted preliminary approval of the Settlement. Now the Court performs step two in the process and determines whether the Settlement is fundamentally fair, adequate and reasonable. *Id.*; *See also Class Plaintiffs v. City of Seattle*, 955 F.2d 1268, 1276 (9th Cir. 1992).

When reviewing a motion for final approval of a class action settlement, the Court gives due regard to “what is otherwise a private consensual agreement negotiated between the parties,” and must therefore limit the inquiry “to the extent necessary to reach a reasoned judgment that the agreement is not the product of fraud or overreaching by, or collusion between, the negotiating parties, and that the settlement, taken as a whole, is fair, reasonable and adequate to all concerned.” *Officers for Justice v. Civil Serv. Comm’n*, 688 F.2d 615, 625 (9th Cir. 1982). It is the settlement taken as a whole---rather than its component parts---that must be reviewed for overall fairness. *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1025 (9th Cir. 1998).

Settlement of a class action requires approval of the Court, which may be granted “only after a hearing and on finding that [the settlement] is fair, reasonable, and adequate.” Fed.R.Civ.P. 23(e)(2). The Ninth Circuit has set forth a number of factors to determine whether a settlement agreement meets these standards, including:

- (1) the strength of plaintiff's case; (2) the risk, expense, complexity, and likely duration of further litigation; (3) the risk of maintaining class action status throughout the trial; (4) the amount offered in settlement; (5) the extent of discovery completed, and the stage of the proceedings; (6) the experience and views of counsel; (7) the presence of a governmental

participant; and (8) the reaction of the class members to the proposed settlement.

Staton v. Boeing Co., 327 F.3d 938, 959 (9th Cir. 2003); *Hanlon*, 150 F.3d at 1026.

A. THE STRENGTH OF PLAINTIFF’S CASE

The rulings from this Court and the Ninth Circuit firmly decided all legal issues, thereby upholding Plaintiff’s legal theory on the vacation claim under Section 227.3, and ruling in favor of Target on the waiting time penalties claims under Section 203. (S.A. § II.H). Thereafter, the Parties agreed to a settlement that pays every Class Member the full amount owed under the Labor Code § 227.3 unpaid vacation wage claim. Since this Court and the Ninth Circuit rejected Plaintiff’s claims for statutory penalties, Plaintiff recovered the maximum possible amount for Class Members. And, in many cases, the Class Members will receive more than they are owed due to the \$5 minimum payment guarantee. Thus, the “fairness and adequacy” analysis is simple since there was no compromise on the value of the Class claims – Plaintiff’s counsel negotiated for and obtained every cent owed to the Class and more. (Declaration of Brian Mankin [“Mankin Decl.”] ¶ 7).

Plaintiff also sought PAGA penalties for each violation of Labor Code § 227.3, which occurred each time a PAGA Group Member was terminated with Unpaid Vested Vacation Wages owed. Although PAGA penalties (in the default amount of \$100 per pay period) could have yielded a maximum potential PAGA penalty of \$975,900 under Cal. Lab. Code. § 2699(f)(2), this maximum figure fails to account for several factors that impact valuation of PAGA claims. For instance, the maximum figure fails to acknowledge that the Court and the Ninth Circuit found that Target did not act willfully, and that this was an issue of first impression. Moreover, courts have wide latitude to reduce the amount of civil penalties “based on the facts and circumstances of a particular case” and if “to do otherwise would result in an award that is unjust, arbitrary and oppressive, or confiscatory.” Labor Code § 2699(h); *Cotter v. Lyft, Inc.*, 193 F.Supp.3d 1030, 1037 (N.D. Cal. 2016) (noting in the context of approving settlement that a

1 reduction in PAGA penalties would be “appropriate” based on the “unjust,
2 arbitrary and oppressive, or confiscatory” factors because (i) the employer did not
3 “deliberately evad[e] a clear obligation to provide legally required pay and benefits to
4 employees,” (ii) the employer did not “negligently fail to learn about its obligations under
5 the wage and hour laws,” and (iii) the employer’s obligations were “genuinely unclear”
6 because “there is no straight answer to the question.”). This reasoning is directly
7 applicable here, as Target would argue at trial that imposing *any* PAGA penalties would
8 be unjust given the uncertainty and contradictory case law regarding the proper rate at
9 which to pay vested vacation. For this reason, the Parties negotiated the value of the
10 PAGA claims and agreed on a PAGA settlement of \$48,880, which is equal to 5% of the
11 maximum amount. (Mankin Decl. ¶ 8).

12 Accordingly, the strength of Plaintiff’s case and the fact that the Class will receive
13 the maximum potential recovery available supports the Settlement.

14 **B. THE RISK, EXPENSE, COMPLEXITY, AND LIKELY DURATION OF FURTHER**
15 **LITIGATION**

16 Approval of settlement is “preferable to lengthy and expensive litigation with
17 uncertain results.” *Nat’l Rural Telecomms*, 221 F.R.D. at 529. If the Settlement were to
18 be rejected, the parties would have to proceed with additional discovery as to damages
19 and then try the case. Target may seek decertification under some theory, but the likely
20 result is a trial that would not yield a better result for the Class than this Settlement
21 achieves. Therefore, the risk, expense, and likely trial weighs in favor of approval of the
22 Settlement.

23 **C. THE RISK OF MAINTAINING CLASS ACTION STATUS THROUGHOUT THE**
24 **TRIAL**

25 There is always a risk in taking a case to trial, and it simply would not be a logical
26 decision to press-on when Target is agreeing to pay the Class Members the maximum
27 amount they are owed, as well as separately paying PAGA Penalties, attorneys fees and
28 costs, Administrator Costs, etc. Thus, this factor favors final approval of the Settlement.

1 **D. THE AMOUNT OFFERED IN SETTLEMENT JUSTIFIES FINAL APPROVAL**

2 As discussed above and at length in Plaintiff's Motion for Preliminary Approval
3 ("MPA" at Dkt. 88-1) and here, this settlement pays the Class Members 100% of what
4 they are owed. There was no discount to the Class (even after paying fees, costs, PAGA
5 Penalties, etc), so this factor favors final approval of the Settlement.

6 **E. THE EXTENT OF DISCOVERY COMPLETED AND THE STAGE OF THE**
7 **PROCEEDINGS**

8 Considering that this case settled on the verge of trial following discovery, class
9 certification, motions for summary judgment and an appeal, it is clear that Parties
10 performed the necessary work and made informed decisions when negotiating the
11 Settlement. This factor favors final approval.

12 **F. THE EXPERIENCE AND VIEWS OF COUNSEL**

13 Class Counsel include a litigation firm and appellate firm who have extensive
14 experience and success in class actions and representative actions similar to this action.
15 Class Counsel's appellate counsel is one of the top appellate firms in the county, and
16 litigation counsel have litigated well over 250 class/PAGA actions over the last 15 years,
17 have been named by the LA Times as one "Southern California Leading Lawyers" in the
18 May 2023 issue of Consumer Attorney's of Southern California (a recognition given to
19 17 employment/labor law attorneys in 2023), and have been selected as "Super Lawyer"
20 in employment litigation over the last 5 consecutive years, having achieved large
21 settlements, having prevailed at trial in PAGA-only actions and Class Action jury trials.
22 (Mankin Decl. ¶¶ 2-6). Based upon this experience, Class Counsel support this
23 Settlement and believe it to be a very good result for the Class. (Mankin Decl. ¶ 13).

24 **G. THE PRESENCE OF A GOVERNMENTAL PARTICIPANT**

25 This factor does not apply here because there is no governmental participant.

26 **H. THE REACTION OF THE CLASS MEMBERS TO THE PROPOSED SETTLEMENT**

27 No Class Member has objected to any portion of the Settlement, and only one
28 Class Member opted-out of the Settlement to date. (J. Mills Decl. ¶¶ 16-17). This shows

1 a uniformly positive reaction to the Settlement by the Class Members and is a factor of
2 great significance that weighs in favor of approving the Settlement. *See Mandujano*, 54
3 F.2d at 837.

4 **V. THE ATTORNEYS' FEES AND COSTS ALLOCATION UNDER THE**
5 **SETTLEMENT AGREEMENT IS FAIR AND REASONABLE**

6 Concurrently with this motion, Plaintiff has filed a separate Motion for Attorneys'
7 Fees, Costs, and Service Payment which fully addresses why the fee request is fair and
8 reasonable under controlling state and federal law.

9 As set forth therein, under the terms of the Settlement Agreement, Class Counsel is
10 requesting actual attorney fees of \$489,393.48 (which includes various discounts, as set
11 forth in the fee motion). Class Counsel also seeks litigation costs in the amount of
12 \$20,950 in accordance with the Settlement Agreement. (Mankin Decl. ¶ 17). These are
13 routine litigation costs necessary for the successful prosecution of this case and should be
14 awarded to Class Counsel.

15 **VI. THE REQUESTED SERVICE AWARD IS FAIR AND REASONABLE**

16 The Court's Order granting preliminary approval preliminarily granted a Service
17 Award to Plaintiff in the amount of \$10,000. Plaintiff's Motion for Fees, Costs, and
18 Service Payment (filed concurrently herewith) confirms that the requested service award
19 of \$10,000 is fair and reasonable given the efforts taken by Plaintiff; the risks she faced
20 prosecuting this action; the extremely favorable results achieved for the Class Members
21 and the full release of claims provided by Plaintiff. (*See* the supporting Declaration of
22 Plaintiff).

23 **VII. CONCLUSION**

24 Based upon all of the foregoing, Plaintiff respectfully requests that the Court grant
25 final approval of the Settlement, and enter the proposed order and judgment.

26 Dated: March 25, 2024

LAUBY, MANKIN & LAUBY LLP

27 BY: /s/ Brian J. Mankin

Brian J. Mankin, Esq.

28 Attorneys for Plaintiff and the Class