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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

CHRISTOPHER ORNELAS, on behalf of himself and all others similarly situated and CHRISTOPHER NIETO, on behalf of himself and all others aggrieved,

Plaintiffs,

vs.

TEKSYSTEMS, INC., a Maryland Corporation; and DOES 1 through 10, inclusive,

Defendants.

Case No. 19STCV39944

ASSIGNED FOR ALL PURPOSES TO:

The Honorable Carolyn B. Kuhl
Department 12

CLASS AND REPRESENTATIVE ACTION

**MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF MOTION
FOR ORDER GRANTING PRELIMINARY
APPROVAL OF CLASS AND PAGA ACTION
SETTLEMENT, CONDITIONAL
CERTIFICATION, APPROVAL OF CLASS
NOTICE, AND SETTING FINAL FAIRNESS
HEARING DATE**

Date: March 27, 2024

Time: 10:00 a.m.

Dept: SS12

Judge: Carolyn B. Kuhl

Complaint filed: November 6, 2019

Trial date: Not set

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I. INTRODUCTION

Plaintiffs Christopher Ornelas and Christopher Nieto (“Plaintiffs”) seek preliminary approval of a \$179,000 non-reversionary wage and hour class and Private Attorneys General Act (“PAGA”) settlement for a putative class of 25 non-exempt California employees of Defendant TEKsystems, Inc. (“TEKsystems” or “Defendant”) employed as security system installers at any time during the period from November 6, 2015 through July 20, 2023 (the “Class Period”) and approximately 316 aggrieved employees employed by TEKsystems from July 23, 2020 through July 20, 2023 (“PAGA Period”). Declaration of Michael D. Singer, (“Singer Decl.”), ¶12, Exh. 1 – Class Action and PAGA Settlement Agreement (“Agreement” or “SA”), ¶¶1.5, 1.12, 1.31. Plaintiffs contend that during the Class and PAGA Periods, TEKsystems violated California’s Unfair Competition Law (“UCL”), California Business and Professions Code sections 17200, *et seq.*, predicated on the following violations of the California Labor Code: 1) failure to pay wages including minimum, regular, and overtime wages for all time worked or subject to Defendant’s control; 2) failure to reimburse business-related expenses; 3) failure to provide accurate itemized wage statements; 4) failure to timely pay all final wages owed; and 5) failure to maintain accurate records. Singer Decl. ¶13.

II. THE PARTIES

A. Defendants

TEKsystems is a staffing and recruitment company that provided services to meet its clients’ needs. Among Defendant’s clients are various residential and commercial security companies, including ADT, for which Plaintiff Ornelas performed security installation services. Singer Decl. ¶14.

B. Plaintiffs and the Putative Class

Plaintiff Christopher Ornelas worked for TEKsystems in California as an hourly non-exempt security system installer until approximately July 2016. Declaration of Christopher Ornelas, (“Ornelas Decl.”), ¶3. Plaintiff Christopher Nieto worked for TEKsystems in California as an hourly non-exempt security system installer from May 2015 to May 2018 and from May 2019 to October 2021. Declaration of Christopher Nieto, (“Nieto Decl.”), ¶3.

The proposed Class is defined as all hourly paid, non-exempt “security system installers” in California at any time during the Class Period, defined as from November 6, 2015 through July 20, 2023. Singer Decl. ¶15; SA, ¶¶ 1.5, 1.12. The putative class of all non-exempt employees has an estimated 25 members¹ who worked an estimated 2,379 Workweeks during the Class Period. As of November 23, 2022², there were 316 Aggrieved Employees who worked 9,729 Pay Periods during the PAGA Period. Of the 316 Aggrieved Employees, 300 were no longer employed as of November 2022. Therefore, Plaintiffs have extrapolated the number of Pay Periods worked by the remaining 16 Aggrieved Employees through the end of the PAGA Period for an estimated 10,282 Pay Periods during the PAGA Period, July 23, 2020 through July 20, 2023. Singer Decl. ¶16; SA, ¶¶ 1.4, 1.5, 4.1.

III. PRE-MEDIATION LITIGATION

On November 6, 2019, Plaintiff Christopher Ornelas commenced this action by filing a Class Action Complaint in Los Angeles Superior alleging a cause of action for violation of the UCL predicated on violations of the California Labor Code. On July 23, 2021, Plaintiff Ornelas filed a First Amended Complaint adding Christopher Nieto as a named plaintiff and alleging causes of action against TEKsystems for civil penalties under the PAGA for violations of the California Labor Code (see, Section I *supra*). Singer Decl. ¶17, Exh. 3 – First Amended Class and PAGA Representative Action Complaint (“FAC”); SA ¶2.1.

The Court has not granted class certification. However, on May 10, 2021, the Court granted TEKsystems’s Motion to Deny Class Certification with respect to non-exempt “security system installers” who were employed by TEKsystems at any time within the State of California since November 6, 2015 and who signed an arbitration agreement with TEKsystems, leaving a proposed class consisting of 25 individuals – including Plaintiff Ornelas (see fn 1). Singer Decl. ¶18; SA ¶2.5.

¹ The estimated 25 Class Members excludes any non-exempt “security system installers” who were employed by TEKsystems within the State of California at any time since November 6, 2015 and who signed an arbitration agreement with TEKsystems.

² The date on which Defendant’s counsel provided the number of Aggrieved Employees and Pay Periods worked through November 23, 2022.

IV. MEDIATION

To prepare for mediation, Plaintiffs requested, and Defendant produced, key data that included: (1) total number of putative class members; (2) aggregate number of workweeks worked by putative class members through the date of mediation; (3) average hourly rate of pay; (4) and the amount of reimbursements paid by Defendant to putative class members. In addition, Defendant produced excel spreadsheet data containing Plaintiff Ornelas's time records (through Pay Period ending July 31, 2016). Singer Decl. ¶19; SA, ¶ 2.4.

After receipt of the data and an analysis of the information produced by, Plaintiffs' Counsel retained the services of a damages' consultant to review the information and data to assess violation rates for unpaid or underpaid expense reimbursements for tools, mileage, and cell phone expenses, unpaid or underpaid wages, including overtime wages for all hours worked including travel time between work appointments and hours worked taking inventory, and PAGA civil penalties, and to extrapolate the damages to the putative Class. Singer Decl. ¶20.

On February 2, 2021, the Parties attended mediation with Honorable Wynne Carvill (Ret.), an experienced and respected wage and hour mediator who was a presiding judge in the Alameda County Superior Court from 2003 – 2019, serving in the Complex Litigation division from 2012 – 2015. The Parties engaged in a day of serious, informed and lengthy arms'-length negotiations, but were unable to reach a settlement at the mediation. Thereafter, the Parties continued their settlement efforts and engaged in extensive post-mediation settlement negotiations, which resulted in a Settlement in principle and a memorandum of understanding executed in July of 2023. The long-form Agreement was fully executed on December 7, 2023. Singer Decl. ¶21; SA, ¶ 2.3.

V. PLAINTIFFS' CLAIMS AND TEKSYSTEM'S DEFENSES

A. Unpaid Wages for Off-the-Clock Work

Plaintiffs allege Defendant failed to pay for all hours worked because Plaintiffs were required to travel to work-related locations without payment for travel time. Plaintiffs further allege Defendant failed to pay security system installers for time spent traveling between installation appointment locations, which Plaintiffs allege was at times up to 15 hours per

workweek. Singer Decl. ¶22; FAC ¶¶3(e), 29.

TEKsystems contends that it required its non-exempt employees, including Plaintiffs, to accurately record all time work, and paid for all hours worked. According to Defendant, travel time between installation appointments was included in hours worked and paid. Singer Decl. ¶23.

B. Unreimbursed Business-Related Expenses

Plaintiffs allege security system installers were required to use their personal vehicles for travel but were not reimbursed for work-related mileage and other vehicle related expenses and were required to purchase tools for proper installation without reimbursement in violation of Labor Code section 2082. Singer Decl. ¶24; FAC ¶¶3(f), 30.

TEKsystems disputes that it did not reimburse employees for all business expenses incurred in the discharge of their duties for Defendant, including mileage for travel time and contends that it reimbursed for all business expenses whenever reimbursement was requested. In preparation for mediation, Defendant provided data of the amount of reimbursement paid to non-exempt security system installers during the Class and PAGA Period. Furthermore, Defendant contends that it did not require the purchase of any tools but if such tools were necessary, they would be exempt from reimbursement as “hand tools and equipment customarily required by the trade or craft.” (Wage Order 7, § 9(B)). Singer Decl. ¶25.

VI. SUMMARY OF PROPOSED SETTLEMENT

A. Settlement Terms

The Parties have agreed the Action be settled for the Gross Settlement Amount of \$179,000 (“GSA”) which, subject to Court approval, includes: (a) attorneys’ fees of \$59,660.70 (one-third of the GSA) to compensate Class Counsel for work performed and remaining to be performed in securing final Court approval; (b) Class Counsel’s litigation expenses of up to \$9,500; (c) Service Payments of \$5,000 each to Plaintiffs Christopher Ornelas and Christopher Nieto in consideration of their initiation and prosecution of the action, work performed, and risks undertaken for the payment of costs in the event the case was unsuccessful, and benefits conferred on absent Class Members; (d) PAGA Payment of \$75,000 of which \$56,250 (75%)

1 will be paid to the LWDA, and \$18,750 (25%) will be distributed to Aggrieved Employees; and
2 (e) Administration expenses to ILYM not to exceed \$7,500.³ Singer Decl. ¶26; SA, ¶¶ 3.1-3.2.
3 In addition to the GSA, Defendant will pay the Employer Tax Obligations. Singer Decl. ¶27;
4 SA, ¶ 3.1.

5 Based on anticipated Court-approved deductions for attorneys' fees, litigation costs,
6 Service Payments, PAGA Payment, and administration expenses, the Net Settlement Amount
7 estimated at \$17,339.30 will be distributed to Participating Class Members based on number of
8 Workweeks worked at any time during Class Period without the need to return a claim form.
9 Singer Decl. ¶28; SA, ¶¶ 1.28, 3.2.4. With an estimated 2,379 Workweeks in the Class Period
10 (SA, ¶ 4.1), a Participating Class Member will receive an estimated \$7.29 for each Workweek
11 worked during the Class Period. Singer Decl. ¶29.

12 The \$18,750 PAGA Penalties will be distributed to the aggrieved employees in the who
13 worked a total of an estimated 10,282 pay periods in the PAGA Period. The approximately 316
14 aggrieved employees will receive a PAGA penalties of approximately \$1.82 per pay period
15 ($\$18,750/10,282 = \1.82). Singer Decl. ¶30.

16 No part of the GSA may revert to Defendant under any circumstances. Singer Decl. ¶31;
17 SA, ¶ 3.1.

18 **B. Released Claims**

19 In exchange for a Settlement Payment, all Class Members who do not timely requested
20 exclusion will release the "Released Class Claims" arising from the claims alleged in the
21 operative complaint. Singer Decl. ¶32; SA, ¶ 1.39, 5.2. All Non-Participating Class Members
22 who are Aggrieved Employees will release "Released PAGA Claims" for all PAGA penalties
23 that were alleged, or reasonably could have been alleged, based on the PAGA Period, in the
24 operative complaint, and the PAGA Notice. Singer Decl. ¶33; SA, ¶¶ 1.29, 1.30, 1.33, 1.40, 5.3.

25 **C. Settlement Administration and Notice**

26 Following preliminary approval, ILYM will mail the approved Notice of Class Action
27

28 ³ See Declaration of Lisa Mullins, on behalf of ILYM Group, Inc., ("ILYM Decl."), regarding its qualifications to act as the neutral administrator of the Settlement.

Settlement (“Class Notice”) to each Class Member. Singer Decl. ¶34; SA ¶¶1.11, 7.4 – Exh. A. The Notice advises the Class: (1) of the right to participate in the Settlement and to receive a Settlement Payment without a claim form; (2) how to object or opt out of the Settlement; (3) how to dispute the information on which Settlement Payments are calculated; (4) the Released Claims; and (5) of the date, time and place to appear for the Final Approval hearing. *Id.*

ILYM will endeavor to locate Class Members to allow participation in the Settlement and receipt of settlement checks, by means which include a National Change of Address database search prior to the initial mailing of the Class Notice, and thereafter, skip tracing undelivered Class Notices. Singer Decl. ¶36; ILYM Decl. ¶¶4, 6-7; SA ¶7.4.3.

All checks not cashed by the 180th day, will be cancelled, and sums represented by the uncashed checks will be sent to the California Controller, Unclaimed Property Division for further handling on behalf of Class Members whose checks were voided. Singer Decl. ¶37; SA, ¶¶4.4.1, 4.4.3.

VII. ARGUMENT

A. Class Action Settlements Are Subject to Court Review and Approval.

“Before final approval, the court must conduct an inquiry into the fairness of the proposed settlement.” California Rules of Court, Rule 3.769(g). Court’s should disapprove settlements “only with considerable circumspection.” *Jamison v. Butcher & Sherrerd* (1975) 68 F.R.D. 479, 481. At preliminary approval, the Court “limits its 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.” *In re Microsoft I-V Cases* (2006) 135 Cal. App. 4th 706, 723 (citation omitted).

B. The Settlement is Fair, Adequate, and Reasonable

A Court must find a proposed settlement is “fair, adequate and reasonable.” *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1801. The trial court considers all relevant factors, such as: “the strength of Plaintiff’s case, the risk, expense, complexity and likely duration of further litigation, the risk of maintaining class action status through trial, the amount offered in settlement, the extent of discovery completed and the stage of the proceedings, the

1 experience and views of counsel, the presence of a governmental participant, and the reaction of
2 the class members to the proposed settlement.” *Id.* The Court’s primary function is to determine
3 the Settlement is not the product of fraud, overreaching, or collusion, and, taken as a whole, is
4 fair, adequate, and reasonable. *Id.*

5 A proposed class action settlement is presumed fair where: (1) the parties reached
6 agreement after extensive arms’-length negotiations; (2) investigation and discovery were
7 sufficient to allow counsel and the Court to act intelligently; (3) counsel is experienced in
8 similar litigation; and (4) the percentage of objectors is small. *Id.* at p. 1802.

9 **1. Serious, Informed, Non-Collusive Negotiations Led to Settlement**

10 The Parties attended a full day of mediation with Judge Carvill, and after extensive post-
11 mediation negotiations, spanning over two years, reached a settlement in principle. Thereafter,
12 the Parties continued their arms’-length, and sometimes contentious, negotiations by phone and
13 email to create the detailed written Agreement before the Court for approval. Counsel
14 aggressively pursued their respective positions at all times. Singer Decl. ¶¶19-24, 38.

15 **2. Discovery and Stage of the Proceedings Support Settlement**

16 Plaintiffs investigated the merits of Plaintiffs’ claims and potential defenses before
17 initiating this action. Following agreement to proceed to mediation, TEKsystems produced
18 essential data referenced above to allow violation rates to be identified and damages tabulated
19 and extrapolated to the Class. Proof of the claims asserted by Plaintiffs on behalf of the Class
20 would be based largely on an analysis of time and pay data provided by Defendant.

21 The investigation, discovery, and informal exchange provided the Parties with a clear
22 understanding of the strengths and weaknesses of their respective positions before negotiations.
23 *See Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles* (2010) 186 Cal. App. 4th 399, 410
24 (settlement approved where “considerable information from which to assess the strength of the
25 class claims” and risks and expense of litigation).

26 **3. Counsel are Highly Experienced in Similar Litigation**

27 Plaintiffs’ Counsel have significant experience litigating wage and hour employment
28 class actions. This allowed Counsel to evaluate settlement of the Class claims compared to the

1 risks of further litigation, including trial, appeals and collection. Defense counsel with Epstein
2 Becker & Green, PC are also highly skilled and sophisticated lawyers, with extensive class
3 action experience. They defended their client vigorously and aggressively through all phases of
4 the case, including mediation and subsequent negotiations. Singer Decl. ¶¶3-11, 39; Declaration
5 of Rodney Mesriani, (“Mesriani Decl.”), ¶¶4-6.

6 Plaintiffs’ Counsel believes the Settlement achieved in this action is fair and reasonable
7 and in the best interest of the Class in light of the monetary recovery by the Class, complexities
8 and difficulties of this litigation, the state of the law, the potential the case may not have been
9 certified, an adverse summary judgment, the lengthy process of establishing specific damages,
10 and various possible delays and uncertainty regarding the outcome of appeals. Each of these
11 factors was carefully considered before reaching agreement. Singer Decl. ¶40.

12 Experienced counsel, operating at arms’-length, weighed the case strengths and
13 examined all issues and risks of litigation and endorse the Settlement. The view of attorneys
14 actively conducting the litigation “is entitled to significant weight” in deciding whether to
15 approve the settlement. *Fisher Bros. v. Cambridge Lee Industries, Inc.* (E.D. Pa. 1985) 630 F.
16 Supp. 482, 488; *Ellis v. Naval Air Rework Facility* (N.D. Cal. 1980) 87 F.R.D. 15, 18, *affd.* 661
17 F.2d 939 (9th Cir. 1981). “The recommendations of plaintiffs’ counsel should be given a
18 presumption of reasonableness.” *In re Omnivision Technologies, Inc.* (N.D. Cal. 2007) 559 F.
19 Supp. 2d 1036, 10432 .

20 The Settlement satisfies the first three requirements of *Dunk*. The fourth, percentage of
21 objectors, remains unknown until after notice is given to the Class, and they have had an
22 opportunity to respond.

23 C. The Settlement is a Reasonable Compromise of Claims

24 “[T]o ensure that the recovery represents a reasonable compromise, given the magnitude
25 and apparent merit of the claims being released, discounted by the risks and expenses of
26 attempting to establish and collect on those claims by pursuing the litigation,” information is
27 presented to the Court, to review in its role as a fiduciary for absent class members. *Kullar v.*
28 *Foot Locker Retail, Inc.* (2008) 168 Cal. App. 4th 116, 129.

1 A reasonable compromise of class claims considers actual risks of certification,
2 decertification, dispositive motions, and trial, not merely a prediction of Defendant's maximum
3 exposure. An explicit statement of maximum class recovery on all claims is not required, only a
4 record which allows "an understanding of the amount that is in controversy and the realistic
5 range of outcomes of the litigation." *Kullar*, 168 Cal. App. 4th at p. 120.

6 "Kullar is clear that the most important factor 'is the strength of the case for plaintiffs
7 on the merits, balanced against the amount offered in settlement.'" *Munoz*, 186 Cal. App. 4th at
8 p. 409 (internal punctuation omitted). *Munoz* had "no doubt that the trial court had 'an
9 understanding of the amount ... in controversy,'" based on number of class members, payroll
10 data, variances in class member experiences, and a companion action alleging damages less than
11 twice the *Munoz* settlement. *Id.*, at p. 406. This was "an adequate basis from which to garner a
12 reasonably adequate understanding of the amount that is in controversy within the meaning of
13 *Kullar*." *Id.*, at p. 410.

14 Here, Class Counsel relied on similar types of data and documents as in *Kullar* and
15 *Munoz*, including time, pay, and employment data and records. Plaintiffs' counsel and their
16 consultant reviewed and analyzed time and pay data to assess liability and to calculate Class-
17 wide damages before attending mediation. Singer Decl. ¶41. Calculations of the potential
18 maximum value for each claim follow, with rational discounts explained by Counsel. Singer
19 Decl. ¶42. Based on the damage assessments made for each claim as discussed below, and the
20 realistic ranges of recovery, the \$179,000 Gross Settlement Amount is fair and reasonable given
21 that it represents approximately 15% of the **\$1,194,595** estimated damages on the primary
22 claims alleged (exclusive of PAGA Penalties).⁴ Singer Decl. ¶43.

23 Class Counsel also considered that Plaintiffs' claims would be difficult to certify, prove
24 and manage at trial, including the primary off-the-clock overtime wages claim, given that
25 Counsel would have to reliably survey putative class members devise a way to present this
26 evidence at trial. *See, e.g. Tavares v. Cargill, Inc.* (E.D.Cal. Oct. 10, 2023) 2023

27 ⁴ Plaintiffs' realistic recovery as discussed below is estimated at \$1,194,595.00 based on the following:
28 \$352,805.00 (unpaid minimum wages); \$529,208.00 (underpaid overtime wages); \$312,582.00 (business
expense reimbursement). The GSA is 14.98% of \$1,194,595.00.

U.S. Dist. LEXIS 182865, at *26-27 (denying certification of off-the-clock claim for approximately 4,000 non-exempt employees because it would require “a myriad of individualized inquiries”); *see also Wesson v. Staples the Office Superstore, LLC* (2021) 68 Cal.App.5th 746, 775 (finding trial court did not abuse its discretion in striking a PAGA claim it deemed unmanageable); *but see Estrada v. Royalty Carpet Mills, Inc.* (2022) 76 Cal.App.5th 685, 731 (finding error in striking a PAGA claim as unmanageable, reasoning manageability requirement does not apply to PAGA claims). Class Counsel also considered that Defendant prevailed on a motion to deny class certification, limiting the putative class to only 25 individuals, and effectively making obtaining class certification more challenging due to a potential finding of lack of numerosity. Singer Decl. ¶44.

1. Minimum, Regular, and Overtime Wages—Labor Code §§ 510, 1194

Employers must provide at least minimum wages for all hours employees work or are subject to their employer’s control. Labor Code § 1194; *see also Kaanaana v. Barrett Bus. Servs., Inc.* (2018) 29 Cal. App. 5th 778, 804 (citing Cal. Code Regs., tit. 8, § 11040, subd. 2(K).) Plaintiffs allege that installers were unpaid for travel time for distant start locations and for distant final job locations. TEKsystems would schedule the first job up to 1.5 to 2.0 hours away and did not pay for travel time to reach the first job location. Similarly, the last jobs of the day often left the installers over an hour away from home, whether by mileage or due to traffic congestion, travel all *without pay*. Singer Decl. ¶45. TEKsystems disputes the contention and contends Plaintiffs and Class Members were paid hourly for all time worked after they clocked in. Given certain information and evidence provided by TEKsystems showing hourly wages were paid from the time of the clocked in, Plaintiffs assigned a nominal value to the minimum wage claim and estimated TEKsystems’s maximum exposure at \$352,805.⁵ Plaintiffs estimated probability of certification at 50% and success at trial at 50%, resulting in a discounted realistic exposure of \$88,201.25. Singer Decl. ¶46.

Employers must pay overtime wages at 1-1/2 times employee’s regular rate of pay for

⁵ Calculated by assuming 5 hours unpaid per workweek x 2,379 workweeks in Class Period = 11,895 hours unpaid at the average hourly rate of \$29.66 = \$352,805.00.

1 hours worked over 8 per day or 40 per week. Labor Code §§ 510, 1194. Plaintiffs allege that
2 based upon time worked off-the-clock, TEKsystems did not pay overtime wages earned when
3 the off-the-clock time caused shifts to exceed 8 per day. Plaintiffs' damages' consultant
4 assumed ten hours of unpaid overtime per workweek extrapolated to the Class, the amount of
5 underpaid overtime wages at \$529,208. Singer Decl. ¶47. TEKsystems contends that all
6 overtime worked was properly paid, that no evidence exists of a policy or practice of
7 underpaying overtime, and further that this claim is not amenable to class treatment. Plaintiffs
8 estimated probability of certification at 50% and success at trial at 50%, resulting in a
9 discounted realistic exposure of **\$132,302**. Singer Decl. ¶48.

10 **2. Reimburse Business-Related Expenses—Labor Code § 2802**

11 An employer must reimburse an employee's reasonable business-related expenses. Labor
12 Code § 2802. Plaintiffs allege TEKsystems failed to adequately reimburse Class Members for
13 business-related personal cell phone, specialty tools, and mileage expenses. Singer Decl. ¶49.

14 **a. Cell Phones.**

15 A reasonable percentage of an employee's cell phone charges, which vary in each case,
16 must be reimbursed. *Cochran v. Schwan's Home Services, Inc.* (2014) 228 Cal. App. 4th 1137,
17 1145. Employees were required to use their personal cell phones to communicate with
18 TEKsystems and its customers. Plaintiffs estimated \$50 per month in cell phone expenses. The
19 average U.S. cell phone bill is estimated at \$70 per month.⁶ Using \$50.00 per month, maximum
20 exposure was calculated at \$29,737.50.⁷ Singer Decl. ¶50. TEKsystems contends that at all
21 times its policies and practices regarding reimbursing employees for necessary business
22 expenses complied with California law, and further that this claim is not amenable to class
23 treatment. Given the need for individualized inquiries as to employees' monthly cell phone bill
24 amounts and the amount of time spent using personal cell phones for work, a court may deny
25 certification. Defendant provided amounts paid for expense reimbursements during the Class
26 Period, demonstrating that some business expenses were reimbursed. Singer Decl. ¶51.

27 ⁶ <https://www.usmobile.com/blog/cut-cell-phone-bill/>

28 ⁷ Calculated at 2,379 workweeks x \$12.50/workweek (\$50 per month/4 workweeks) = \$29,737.50.

b. Mileage.

Plaintiffs allege that Class Members drove their personal vehicles between 250 to 500 miles *per week* for business use without reimbursement by TEKsystems. Singer Decl. ¶52.

Maximum exposure on this claim was estimated at \$330,681.00 [250 miles per week x \$2,379 workweeks x. \$0.556]. TEKsystems contends its policies and practices regarding reimbursing employees for necessary business expenses complied with California law and that it reimbursed mileage whenever it was requested, and that this claim is not amenable to class treatment. Singer Decl. ¶53.

c. Tools

Plaintiffs allege that Class Members were required to use many different types of tools, both regular tools and those specialized for the work, but that TEKsystems provided *zero* tools, even a basic toolset, and never provided any of the specialty tools required to install or replace security systems. Class Members were required to buy tools needed to complete their duties without reimbursement by TEKsystems. Singer Decl. ¶54.

Maximum exposure on this claim was estimated at \$75,000. Plaintiffs assumed a one-time \$3,000 tool purchase expense per class member [\$3,000 x 25 class members]. For reoccurring expenses for maintenance of installation tools and work computers, Plaintiffs estimated a total amount of \$23,790.⁸ The total estimated amount owed is thus \$98,790 [\$75,000 + \$23,790]. TEKsystems contends its policies and practices regarding reimbursing employees for necessary business expenses complied with California law, that employees would be exempt from reimbursement because “hand tools and equipment customarily required by the trade or craft” (Wage Order 7, § 9(B)), and that this claim is not amenable to class treatment. Singer Decl. ¶¶55-56.

In sum, the total estimated amount owed for all business expenses is \$459,208.50 [\$29,737.50 + \$330,681.00 + \$98,790.00]. However, Defendant paid \$146,626.78 in expense reimbursements during the Class Period. Therefore, the total estimated amount is \$312,581.72. Plaintiffs estimated probability of certification at 50%, and success at trial at 50%, resulting in a

⁸ Calculated at 2,379 workweeks x \$10.00/workweek = \$23,790.00.

discounted realistic exposure of **\$78,145.43**. Singer Decl. ¶57.

3. PAGA Penalties— Labor Code §§ 2698, *et seq.*

Labor Code section 2699(f)(2) provides for civil penalties for violations of the Labor Code for which there is no corresponding civil penalty. The civil penalty is \$100 for the initial violation and \$200 for each subsequent violation for each underpaid employee in addition to “an amount sufficient to recover underpaid wages.” Labor Code § 2699(f)(2). Plaintiffs seek PAGA penalties for all violations of the Labor Code, of which 75% would be paid to the state and 25% to the Aggrieved Employees. “Thus, in wage and hour class action cases that settle...very little of the total settlement is paid to PAGA penalties in order to maximize payments to class members.” *Magadia v. Wal-Mart Assocs.* (2019) 384 F. Supp. 3d 1058, 1101, disapproved on other grounds, *Magadia v. Wal-Mart Assocs.* (9th Cir., November 19, 2020) 999 F.3d 668; see also *Mejia v. Walgreen Co.* (E.D. Cal. Mar. 24, 2021) 2020 U.S. Dist. LEXIS 220685, *26 (citations omitted) (noting “[C]ourts frequently approve settlements in wage and hour class action and PAGA actions that minimize the total amount of the settlement that is paid to PAGA penalties in order to maximize payments to class members.”).

There are an estimated 10,282 Pay Periods in the PAGA Period, July 23, 2020 – July 20, 2023. Using the initial violation rates⁹ for the 316 Aggrieved Employees, maximum penalties were assessed for violations of Labor Code §§ 510, 1194 (minimum wages (\$100/Pay Period (“PP”) at \$1,028,200, and overtime wages (\$100/PP) at \$1,028,200). Using initial violation rates for 10,282 Pay Periods in which Aggrieved Employees did not receive proper expense reimbursements for violation of Labor Code § 2802, and assuming expenses should have been reimbursed at least monthly (10,282/4 = 2,571 Pay Periods), maximum penalties were assessed for violations (\$100/PP): **\$257,050**. Singer Decl. ¶58.

D. The Value of the Class Settlement is Reasonable

Plaintiffs concluded the Settlement is fair and reasonable in light of PowerSchool’s

⁹ Initial violation rates were used because “courts have held that employers are not subject to heightened penalties for subsequent violations unless and until a court or commissioner notifies the employer that it is in violation of the Labor Code.” *Vieyara-Flores v. Sika Corp.* (C.D. Cal. 2019) 2019 U.S. Dist. LEXIS 98081, *13.

substantive claim defenses, and the risks of non-certification, claims being stricken as unmanageable, failure to prove claims at trial, and likely appeals. The Gross Settlement Amount of \$179,000 represents approximately ninety-seven percent (15%) percent of the value of the Class claims [\$352,805 (unpaid minimum wages) + \$529,208 (unpaid overtime wages) + \$312,582 (expense reimbursements) = \$1,194,595], without accounting for reasonable discounts for probability of class certification and success at trial. Singer Decl. ¶59. Assuming a probability of certification at 50%, and success at trial at 50%, the discounted realistic exposure of \$298,648.75 [$\$1,194,595/2 = \$597,297.50/2 = \$298,648.75$]. Thus, the Gross Settlement Amount represents approximately 60% of the Class Claims. Singer Decl. ¶60.

E. The PAGA Fund is Reasonable

The \$75,000 PAGA Payment representing 41.9% of the \$179,000 settlement amount, is well within the range approved by California courts. *See Alcala v. Meyer Logistics, Inc.* (C.D. Cal. June 17, 2019) 2019 LEXIS 166879, *26 (PAGA penalties 1.25% of settlement reasonable as “within the zero to two percent range for PAGA claims approved by courts.”); *In re M.L. Stern Overtime Litig.* (S.D. Cal. Apr. 13, 2009) 2009 LEXIS 31650, *1 (PAGA penalties 2% of settlement reasonable); *Magadia*, 384 F. Supp. 3d at p. 1101, citing, among others, *Ceja-Corona v. CVS Pharm., Inc.* (E.D. Cal. Jan. 14, 2015) 2015 U.S. Dist. LEXIS 5118 (\$10,000 PAGA penalties in \$900,000 settlement, or 1.1% of settlement, reasonable, recommendation adopted, (E.D. Cal. Mar. 3, 2015) 2015 U.S. Dist. LEXIS 25730)). The LWDA was served with this preliminary approval motion on the day it was filed with Court. Singer Decl. ¶73, Exh. 4.

A court has authority to completely reduce penalties, as long as not to “zero.” *Thurman v. Bayshore Transit Management, Inc.* (2012) 203 Cal. App. 4th 1112, 1135. See also *Carrington v. Starbucks Corp.* (2018) 30 Cal. App. 5th 504, 517 (Plaintiff requested “nearly \$70 million in penalties;” trial court’s \$150,000 award upheld on appeal.). Plaintiffs believed reasonable exposure was no more than 25% of maximum exposure, or \$514,100 (25% of \$2,056,400 total PAGA penalties) based on factors considered in determining reasonable exposure for Class claims, the discretionary nature of PAGA penalties, and Court’s ability to reduce penalties to nearly zero, and that “courts have inherent authority to ensure that PAGA

claims can be fairly and efficiently tried and, if necessary, may strike a claim that cannot be rendered manageable.” *Wesson v. Staples the Office Superstore, LLC* (September 9, 2021) 2021 Cal. App. LEXIS 743, *18.

F. The Attorneys’ Fees Requested are Reasonable

Class Counsel seek attorneys’ fees up to \$59,660.70, representing one-third of the Gross Settlement Amount. The attorneys’ fees request is reasonable and should be granted. Singer Decl. ¶61.

Courts often award fees equaling one-third of the gross recovery in class action settlements. “[R]egardless whether the percentage method or the lodestar method is used, fee awards in class actions average around one-third of the recovery.” *Chavez v. Netflix, Inc.*, 162 Cal.App.4th 43, 66, n. 11 (2008); *see e.g., Laffitte*, 1 Cal. 5th at 485-87 (affirming trial court’s granting of a fee request for one-third of a \$19 million settlement). Indeed, Class Counsel have been awarded one-third of the common fund in numerous class action and PAGA actions. Singer Decl. ¶62. Class Counsel will provide their lodestar and time records at final approval. Singer Decl. ¶63.

G. The Service Awards Requested are Reasonable

Plaintiffs seeks a \$5,000 service payment each for the risks they took, the work they did, and the money their efforts will confer on the Class based on the lawsuit she filed against TEKsystems. Ornelas Decl. ¶15; Nieto Decl. ¶13. Plaintiffs estimates they spent more than forty hours working on this case with their attorneys, which they detail in their declaration. Ornelas Decl. ¶9; Nieto Decl. ¶8. Plaintiffs also executed a general release in conjunction with the Settlement. Singer Decl. ¶64; SA, ¶5.1.

These service award payments comport with others awarded by California district courts under similar circumstances. *See, e.g. Dakota Med., Inc. v. RehabCare Grp., Inc.* (E.D.Cal. Sep. 20, 2017, No. 1:14-cv-02081-DAD-BAM) 2017 U.S.Dist.LEXIS 154458, at *37-38 (\$15,000 incentive award, where sixty to seventy hours worked on case; class support for award; relatively high payments to other class members averaging \$1,300; despite “little associational or reputational risk” to Plaintiff); *Connelly v. Starbucks Corp.* (E.D.Cal. Sep. 28, 2023, No.

1 1:21-cv-00746-SAB) 2023 U.S.Dist.LEXIS 175711, at *35 (granting an “incentive and release
2 payment of \$10,000” to the plaintiff from a \$242,000 class action settlement in recognition
3 work performed and release given); *Overton v. Hat World, Inc.* (E.D.Cal. Oct. 3, 2012, No.
4 2:11-CV-01645-LKK-KJN) 2012 U.S.Dist.LEXIS 144116, at *9 (finding \$10,000 Service
5 Enhancement for a plaintiff for work performed and general release given). Indeed, Class
6 Counsel have achieved enhancement awards for Plaintiffs of \$10,000 or more in cases of similar
7 value. Thus, this Court should award Plaintiffs \$5,000 each (\$10,000 total) in recognition of
8 their service to the Class and general release. Singer Decl. ¶65.

9 **VIII. CONDITIONAL CLASS CERTIFICATION IS APPROPRIATE**

10 When an ascertainable and sufficiently numerous class exists, with a well-defined
11 community of interest, and class litigation is superior to alternate means, certification is
12 appropriate. *Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal. 4th 1004, 1021.

13 Ascertainability is determined by examining class definition, size, and means for
14 identifying class members. *Reyes v. Bd. of Supervisors* (1987) 196 Cal. App. 3d 1263, 1271.
15 Here, the Class of all non-exempt employees employed by TEKsystems during the Class Period
16 is ascertainable from TEKsystems’s records and is numerous enough so that joinder would be
17 impracticable, at 25 class members. For settlement purposes, Defendant does not dispute that
18 there is numerosity for purposes of class certification. Singer Decl. ¶66.

19 “Community of interest” embodies three factors: predominant common questions of law
20 or fact; class representatives with claims typical of the class; and representatives who can
21 adequately represent the class. *Fireside Bank v. Superior Court* (2007) 40 Cal. 4th 1069, 1089.
22 Here, the same written policies applied to the entire putative Class, and common questions
23 predominate, including: whether TEKsystem’s paid for all hours worked and whether
24 TEKsystem’s reimbursed for all business expenses incurred. Singer Decl. ¶67. Plaintiffs’ claims
25 are typical because they were non-exempt employees subject to the same written policies as the
26 putative class and because they suffered the same overtime, expense reimbursement, and
27 derivative claims as other putative class members. Singer Decl. ¶68; Ornelas Decl. ¶¶3-5; Nieto
28 Decl. ¶¶3-5.

Plaintiffs can and will continue to protect the interests of the Class. Plaintiffs accepted the risks of serving as a class representative, spent significant time assisting in the prosecution of the action, and placed the interest of the class above their own. Ornelas Decl. ¶¶6-14; Nieto Decl. ¶¶6-12; Singer Decl. ¶¶69. Plaintiffs' attorneys are qualified to conduct the litigation and Plaintiff's interests are not adverse to the interest of the Class. *McGhee v. Bank of Am.* (1976) 60 Cal.App.3d 442, 450. Ornelas Decl. ¶¶10; Nieto Decl. ¶¶9; Singer Decl. ¶¶70; Mesriani Decl. ¶¶4-6. Class Counsel has no conflicts of interest, has vigorously prosecuted this action on behalf of Plaintiffs and the Class, and has significant experience litigating employment wage and hour class actions. Plaintiffs and the Class have co-extensive claims, the terms of the Settlement apply to all Class Members equally, and no conflict exists between them. Singer Decl. ¶¶3-11, 71-72. *McGhee v. Bank of Am.* (1976) 60 Cal. App. 3d 442, 450.

IX. CONCLUSION

Plaintiffs Christopher Ornelas and Christopher Nieto request the Settlement be preliminarily approved, the Notice of Class Action Settlement be approved and ordered disseminated to the Class, that ILYM be appointed Administrator, that Cohelan Khoury & Singer and Mesriani Law Group be appointed Class Counsel, that Plaintiffs be appointed the Class Representatives, and that a Final Approval Hearing date be set.

Respectfully submitted,

COHELAN KHOURY & SINGER
MESRIANI LAW GROUP, APLC

Dated: January 17, 2024

By: 
Marta Manus, Esq.
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ORNELAS and CHRISTOPHER NIETO