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individually and on behalf of similarly situated employees

SUPERIOR COURT OF CALIFORNIA
FOR THE COUNTY OF SAN JOAQUIN

TARA TROTTER, individually and on behalf
of all other similarly situated employees,

Plaintiff,

vs.

SEC TRANSPORTATION, INC., a California
Corporation; STOCKTON EDUCATIONAL
CENTER, INC., an unknown association; and
DOES 1 to 100, inclusive,

Defendants.

Case No. STK-CV-UOE-2023-0003641

*Assigned for All Purposes to Hon. Jayne Lee,
Department 10C*

CLASS ACTION

**[PROPOSED] ORDER GRANTING
PLAINTIFF'S MOTION FOR
PRELIMINARY APPROVAL OF CLASS
ACTION AND PAGA SETTLEMENT**

Date: _____
Time: 9:00 a.m.
Dept.: 10C
Judge: Hon. Jayne Lee

Filed: April 11, 2023
FAC Filed: July 7, 2023
Trial Date: None Set

1 TO ALL PARTIES AND THEIR RESPECTIVE COUNSEL OF RECORD:

2 The Motion for Preliminary Approval of Class Action and PAGA Settlement (“Motion”) in the
3 above referenced case came before this Court, on the date noted above at 9:00 a.m., in Department
4 10C before the Honorable Jayne Lee, presiding. Named Plaintiff Tara Trotter (“Plaintiff”) filed this
5 putative class action on April 11, 2023. The operative Complaint alleges that Defendants SEC
6 Transportation, Inc., and Stockton Educational Center, Inc. (“Defendants”) violated California wage
7 and hour law by 1) failing to pay overtime wages, 2) failing to pay minimum wages, 3) failing to
8 provide meal periods or pay premiums in lieu thereof, 4) failing to provide rest periods or pay
9 premiums in lieu thereof, 5) failing to provide accurate wage statements, 6) failing to timely pay all
10 final wages, 7) unlawfully inquiring into criminal history, and 8) engaging in unfair competition.
11 Plaintiff has also alleged Defendants are liable for a civil penalties under the Private Attorneys General
12 Act (“PAGA”) based on these violations. Plaintiff sought attorneys’ fees and costs as part of this
13 Action. Defendants denied all of Plaintiff’s claims and denied that this case was appropriate for class
14 treatment. No class has been certified.

15 The parties have agreed to settle the class and PAGA claims. Defendants will provide
16 monetary consideration in exchange for a release of claims consistent with the terms of the proposed
17 settlement as set forth in the Joint Stipulation Regarding Class Action and PAGA Settlement and
18 Release (“Agreement” or “Settlement”). Any capitalized terms herein shall have the same meaning as
19 set forth in the Agreement. The Court, having received and considered Plaintiff’s Motion for
20 Preliminary Approval of Class Action and PAGA Settlement, the declarations in support, the
21 Agreement, the proposed Notice of Settlement, and other evidence, HEREBY ORDERS AND
22 MAKES DETERMINATIONS AS FOLLOWS:

23 **I. PRELIMINARILY CERTIFYING A SETTLEMENT CLASS; APPOINTMENT OF**
24 **CLASS REPRESENTATIVES; APPOINTMENT OF CLASS COUNSEL**

25 The Court finds that certification of the following class for settlement purposes only is
26 appropriate under the California Code of Civil Procedure and related case law:

27 All nonexempt employees who have worked, or continue to work, for
28 Defendants in California at any time between April 11, 2019, up to
November 17, 2023.

1 The Court recognizes that the foregoing definition is for Class Member identification purposes
2 only and is not intended to capture the claims at issue or limit or alter the released claims under the
3 Agreement.

4 The Court finds that Class Members meet the ascertainability and numerosity requirements since
5 the parties can identify with a matter of certainty, based on payroll records, individuals who fall within
6 the definition and the number of Class Members would make joinder impractical. The commonality and
7 predominance requirements are met for settlement purposes since there are questions of law and fact
8 common to Class Members. The common questions of law or fact in this case all stem from Plaintiff's
9 contentions that Defendants caused the violations outlined above by 1) failing to pay Plaintiff and Class
10 Members' split shift premiums, 2) failing to pay Plaintiff and Class Members for all hours worked due
11 to Defendants' failure to pay Plaintiff and Class Members for the time spent waiting for clients to be
12 released from schools, 3) failing to provide Plaintiff and Class Members with off-duty meal and rest
13 periods, 4) failing to pay Plaintiff and Class Members meal period and rest period premiums for missed
14 meal and rest periods and for the on-duty meal and rest periods, 5) failing to pay for all hours worked
15 stated in Plaintiff's and Class Members' timecards, and 6) engaging in the unlawful inquiry into the
16 criminal history of Class Members. The PAGA, waiting time penalty, wage statement violation, and
17 unfair competition claims also derive from these violations. Additionally, Class Members seek the same
18 wage and hour remedies under state law. The typicality requirement for settlement purposes is also
19 satisfied since the wage and hour claims of the Class Representative are based on the same facts and
20 legal theories as those applicable to the class members.

21 The Court also finds that preliminarily and conditionally certifying the settlement class is
22 required to avoid each Class Member from litigating similar claims individually. This Settlement will
23 achieve economies of scale for Class Members with relatively small individual claims and conserve the
24 resources of the judicial system.

25 The Court finds that Plaintiff Tara Trotter and Plaintiff's counsel, Galen T. Shimoda
26 Justin P. Rodriguez, Renald Konini of Shimoda & Rodriguez Law, PC, to be adequate representatives of
27 the settlement class. The Court appoints them as Class Representative and Class Counsel, respectively.
28

II. PRELIMINARILY APPROVING CLASS ACTION AND PAGA SETTLEMENT

The Court has reviewed the Agreement, which was submitted with Plaintiff's Motion as Exhibit A. The Court finds, on a preliminary basis, that the Settlement is fair, reasonable, and adequate and falls within the range of reasonableness of a settlement that could ultimately be given final approval by this Court. The Court finds the Settlement was agreed upon only after extensive investigation, litigation, and arms-length negotiations by counsel experienced in complex litigation, who took reasonable steps and measures to weigh the potential value of the disputed claims against the risks of continued litigation. The Court also acknowledges that Class Members may present any objections to the Settlement at a fairness hearing approved by this Court or opt-out of being bound by the preliminarily approved Agreement. The Court preliminarily approves the Agreement and all terms therein as if stated here in full, including the \$200,000 Gross Settlement Amount.

The Court orders that Plaintiff Tara Trotter will receive \$5,000 as a Class Representative Enhancement Payment in addition to any amount Plaintiff may be entitled to under the Agreement's pro rata distribution formula for Plaintiff's time and effort on behalf of Class Members.

The Court approves of ILYM Group, Inc. acting as the Settlement Administrator in this case and hereby appoints them to fulfill those duties as outlined in the Agreement. The Settlement Administrator will take its fees out of the Gross Settlement Amount, which fees are not to exceed \$15,000. Any difference between the actual cost of the Settlement Administrator and the approved payment will be redistributed to Qualified Claimants on a pro-rata basis.

The Court finds that an award of fees under the common fund doctrine is appropriate in this case because there is a sufficiently identifiable class of beneficiaries (*i.e.* Class Members), the benefits can be accurately traced as set forth in the Agreement, Plaintiffs and Class Counsel were able to negotiate on behalf of Class Members, and the fee can be shifted with exactitude to those benefiting as the fee request is a specific, lump-sum percentage of the Gross Settlement Amount. *See Paul, Johnson, Alston & Hunt v. Gaulty*, 886 F.2d 268, 271 (9th Cir. 1989); *Serrano v. Priest*, 20 Cal.3d 25, 34-35 (1977); *Laffitte v. Robert Half Internat., Inc.*, 1 Cal.5th 480, 506 (2016). The Court finds the attorneys' fees request of thirty-five percent (35%) of the Gross Settlement Amount, *i.e.*, \$70,000, to be appropriate compensation for Class Counsel. The attorneys' fees request is within the range that has been approved by other

Courts in similar cases and is reasonable in light of the circumstances of this case, the substantial and beneficial results obtained on behalf of Class Members, and the contingent nature of the recovery over the course of this case, which included potential loss at summary judgment, certification, and/or trial proceedings. Additionally, the Court orders that up to \$15,000 of the settlement proceeds will be paid to Class Counsel for reasonable costs incurred in this case. Any difference between the actual costs incurred and the \$15,000 shall be paid to the Qualified Claimants on a pro-rata basis.

The Court approves of the Ten Thousand (\$10,000) PAGA Payment, which shall be paid from the Gross Settlement Amount, not in addition to the Gross Settlement Amount, to resolve the alleged PAGA claims. Seventy-Five percent (75%) of the PAGA Payment will be paid to the Labor and Workforce Development Agency (“LWDA”) and Twenty-Five percent (25%) will be paid to Aggrieved Employees on a pro rata basis as described in the Agreement. The Court also finds that the Agreement provides a recovery that creates an effective, substantial deterrent to any potential future non-compliance, furthering the purpose of the Labor Code and LWDA.

The Court approves of the identified *cy pres* beneficiaries and distribution plan wherein any checks issued to Participating Class Members and/or Aggrieved Employees that are not cashed by the deadline to do so shall be donated equally, *i.e.* 50/50, to Capital Pro Bono, Inc., and the Center for Workers’ Rights. *See In re Microsoft I-V Cases*, 135 Cal.App.4th 706, 718 (2006). No portion of the Gross Settlement Amount will revert to Defendants for any reason.

The releases and waivers for Class Members who do not opt out of being bound by the Agreement (*i.e.* Participating Class Members), Aggrieved Employees, and the Class Representative are also approved by the Court as set forth in the Agreement.

III. APPROVAL OF THE DISTRIBUTION METHOD OF NOTICE TO THE CLASS, INCLUDING THE NOTICE OF SETTLEMENT

The Court finds that the proposed Notice of Settlement, which was submitted with Plaintiff’s Motion as Exhibit F, fairly and adequately advises Class Members of the terms of the Agreement, the rights being waived, their right to opt out, the ability to dispute the number of workweeks worked during the Class Period, their pro rata share of the Net Settlement Amount, how to participate in the settlement, how to file documentation in opposition to the proposed settlement, and when to appear at the fairness

hearing to be conducted on the date set forth below. The Court further finds that the Notice of Settlement and proposed distribution of such notice by first class mail to each identified Class Member at his or her most recent address based on a National Change of Address database search from the Class Members' last known address and a skip trace on any Class Members who have the Notice of Settlement returned as "undeliverable" or "not at this address" comports with all constitutional requirements, including those of due process.

The Court also finds that because there is a strong interest in providing Class Members the opportunity to participate in the settlement, along with the Parties' efforts to minimize any intrusion to privacy rights, the sharing of employment information, including social security numbers, is not a serious intrusion on their privacy rights. Hence, the Court orders Defendants to provide first and last name, last known mailing address, social security number, and hire and termination dates, total number of workweeks during which the Class Member performed any actual work to the Settlement Administrator only, and not to Plaintiff or Class Counsel, in order to process this settlement as contemplated within the Agreement and approved by this Order. The Settlement Administrator shall only use this information for the purposes identified in the Agreement and shall keep this information confidential consistent with the terms of the Agreement.

IV. IMPLEMENTATION SCHEDULE

Accordingly, with good cause shown, the Court hereby approves and orders that the following implementation schedule be adhered to:

Last day for Defendants to provide Settlement Administrator with Class Member and Aggrieved Employee information	Within 14 calendar days after the Preliminary Approval Date
Last day for Settlement Administrator to complete NCOA search, update Class Member and Aggrieved Employee mailing information, and mail Notice of Settlement	Within 14 calendar days after the Settlement Administrators' receipt of Class Members' information from Defendants
Last day for Class Members to opt-out, submit disputes, submit objections, and submit data requests	60 calendar days after mailing of Notice of Settlement or within 10 days after Notice of Settlement is re-mailed, whichever is later

Last day for Settlement Administrator to provide Parties with signed declaration reporting on settlement administration statistics	Within 14 calendar days after end of the Notice Period
Last day for Settlement Administrator to calculate the final Net Settlement Amount, the final Individual Settlement Amounts to Participating Class Members and/or Aggrieved Employees, any applicable taxes thereon, and report the results of these calculations to Class Counsel and Defendants' Counsel	Within 7 calendar days after the Effective Date
Last day for Defendants to fund settlement	Within 21 calendar days after the Effective Date
Last day for Settlement Administrator to deliver payment of Class Counsel's attorney's fees and costs, Enhancement Payments, PAGA Payment, Settlement Administrator Costs, payment to Participating Class Members, and payment to Aggrieved Employees	Within 7 calendar days after Defendants have funded the settlement
Last day for Participating Class Members and Aggrieved Employees to cash settlement checks	180 calendar days after issuance of checks to Participating Class Members and Aggrieved Employees
Last day for Settlement Administrator to deliver value of uncashed settlement checks to <i>cy pres</i> beneficiaries	Within 14 calendar days after settlement check cashing deadline
Last day for Settlement Administrator to provide Parties with compliance declaration	Within 21 calendar days after settlement check cashing deadline

FINAL APPROVAL AND HEARING

The Court hereby grants Plaintiff's Motion and sets final approval hearing on the proposed date of July 25, 2024, at 9:00 a.m. with briefs and supporting documentation to be submitted according to the California Code of Civil Procedure, in this Department. Participating Class Members who object in a timely manner as set forth in the Agreement, may appear and present such objections at the fairness hearing in person or by counsel. Additionally, the CMC: Request for Dismissal, currently scheduled for

March 7, 2024, at 8:30 a.m., is vacated pending approval proceedings. To the extent final approval is granted, judgment consistent therewith will be entered pursuant to California Rules of Court Rule 3.769(h).

If for any reason the Court does not grant final approval of the Agreement, all evidence and proceedings held in connection therewith shall be without prejudice to the status quo and rights of the parties to the litigation, including all challenges to personal jurisdiction and to class certification for any purpose other than approving a settlement class. The parties will revert to their respective positions as if no settlement had been reached at all.

IT IS SO ORDERED.

Date: _____

By: _____
Judge of the Superior Court